



Hon. Andrew M. Cuomo  
Governor of New York State  
NYS Capitol Building  
Albany, NY 12224

Hon. Andrea Stewart-Cousins  
Majority Leader, NYS Senate  
NYS Capitol Building  
Albany, NY 12224

Hon. Carl E. Heastie  
Speaker, NYS Assembly  
NYS Capitol Building  
Albany, NY 12224

Dear Governor Cuomo, Majority Leader Stewart-Cousins, and Speaker Heastie:

In just a matter of weeks, the COVID-19 pandemic has fundamentally transformed American life, the global economy, and directly hindered the operations of thousands of New York-based businesses.

Governor Cuomo's leadership and the legislature's dedication to protecting workers and mitigating the damage to the socio-economic fabric of modern life are proving invaluable during this unprecedented health crisis. As the virus continues to spread, the resulting market volatility and fiscal impact are reverberating through every sector of society: school closures, canceled flights, empty restaurants, vacant hotels, and postponed or cancelled events.

We applaud the Governor's action to provide reasonable liability protections to the state's medical professionals under Executive Order 202.10. We also salute the legislature and Governor for expanding those protections to medical facilities as part of the budget process. Such protections should be enshrined in law to trigger automatically whenever a state of emergency is declared.

In addition, we urge the Governor and legislature to enact health-crisis liability protections for:

- Manufacturers doing their part to produce COVID-related products, like a distillery making hand sanitizer. While some products will be protected by the PREP Act, the US Department of Health and Human Services has yet to issue guidelines for which activities will be immune from liability. The state must do its part to protect both products and facilities from future litigation.
- Owners, occupants or managers of properties, such as hotels or schools, that are used in any way as part of the relief effort.
- Drivers, contractors used in any way to provide transportation or related services as part of the relief effort.
- Property owners and contractors engaged in essential construction – specifically relief from Labor Law §§ 240 and 241’s absolute liability provisions, including unique liability theories under § 241(6).
- Pharmacies, retailers, senior care facilities, municipalities, and public authorities.

The protections outlined above will ensure that as the COVID-19 outbreak begins to recede, our economic recovery will not be hampered by litigation and lawsuits. Every day of this extraordinary pandemic, our local governments and businesses are making difficult decisions, balancing the delivery of critical services with the overall safety of the general public. Unless adequate liability protections are put in place, we could be litigating those decisions for years to come, straining our economy during the critical period of recovery.

With the current unstable economic climate, COVID-19’s impact on small business, and the coming avalanche of policy payouts and lawsuits related to the outbreak, we trust that you will carefully consider how any proposal to change the state’s litigation system may adversely impact our economic stability and chances for recovery. In light of our new reality, any proposed changes to the state’s tort system that will increase risk, costs, and counteract the administration’s clear objective of protecting New York’s economy, should not be considered.

Among the proposals with such impact that we caution against are:

- S2407C/A679C, which would radically expand liability under the General Business Law. The bill incentivizes lawsuits by increasing minimum statutory damages, extending standing to sue to uninjured third parties, and adding a new private right of action for alleged “unfair” practices.
- S4006/A5612, which would expand damages recoverable in an action involving wrongful death to include grief, anguish, and other subjective, non-economic factors. An analysis produced by actuaries at Milliman found that if this legislation were to be enacted, medical professional insurance premiums alone could balloon by 47%.
- S6216/A5623 and S3634B/A5629B, which would create a private right of action for alleged unfair insurance claims settlement practices. If enacted, this bill would incentivize meritless litigation and deter insurance carriers from vigorously investigating

potentially fraudulent claims. The increase in litigation costs and fraudulent claims will lead to premium hikes as the state tries to recover.

We the undersigned thank Governor Cuomo for his thoughtful governance and the legislature's commitment to New York's citizens and industries. Providing liability protections to our medical professionals, healthcare facilities, and to the valiant volunteers who have returned to medical service, was an important first step. Taking additional steps to shield our economy from unique liability exposures and tabling any proposals that may further negatively affect businesses will help provide some certainty in these truly uncertain times.

Respectfully,

Associated General Contractors of New York State

American Property Casualty Insurance Association

Big I NY

Buffalo Niagara Partnership

Business Council of New York State

CenterState CEO

Food Industry Alliance

Lawsuit Reform Alliance of New York

Manufacturers Association of Central New York

National Federation of Independent Business/NY

National Association of Mutual Insurance Companies

New York Insurance Association

Partnership for New York City

Unshackle Upstate