



LAWSUIT REFORM ALLIANCE OF NEW YORK

OPPOSE

BILL NUMBER: S.1034 (Gianaris) / A.2618 (Reyes)
SUBJECT: Prevent Occupational Exposure to Airborne Disease
DATE: January 27, 2021
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Summary:

This legislation would create a new regulatory framework for employers, require them to establish health and safety committees, and imposes civil penalties for failure to comply. It also creates a private right of action with awards up to twenty-five thousand dollars and legal fees.

Why we strongly oppose this legislation:

Private Attorneys are Not Accountable to the Public

- Enforcement and punishment of unsafe workplaces is currently the purview of the Department of Labor and the Occupational Health and Safety Administration. These agencies are accountable public servants. Current enforcement actions are transparent, and these entities have a sworn duty to act in the public interest. This legislation would functionally grant enforcement powers to private attorneys, who act in the interest of profit, not the public good. Moreover, private litigation lacks transparency—private settlements are not often not publicly disclosed, and there is little way to determine if the litigation is serving the public's best interests.

Will Lead to a Massive Increase in Litigation Against Small Business

- There is no evidence that a private rights of action improve safety but there is ample evidence that they need to a massive increase in questionable litigation.¹ Small businesses are frequently the target of speculative litigation since they do not have in-house counsel to defend cases, nor the funds to hire outside counsel. A recent study found that small businesses represent 53% of the lawsuits, while only accountings for 19% of the economy.² This would hit them at the worst time. According to a recent study, 47% of small businesses believe they will not be able to operate longer than 7-12 months in the current economic conditions.³

Does Not Solve the Problem at the Source

- Recent contract tracing data made public by New York State clearly indicates that places of business and the course of general commerce are not significant sources of spread and transmission. Workplace committees and private rights of action will only create burdens and risks, without reducing the spread of disease.

¹ US Chamber Institute for Legal Reform. "Ill-Suited Private Rights of Action and Privacy Claims," July 2019.

² McKnight D. and Hinton P., "Tort Liability Costs for Small Business," The Brattle Group, October 2020

³ National Federation of Independent Business (NFIB) 2020 survey