Written Testimony in Support of Senate Bill 463
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Madam Chair and members of the committee, I am pleased to submit testimony in support of SB 463. NFIB Kansas is the leading small business organization in Kansas representing small and independent businesses. A non-profit, nonpartisan organization founded in 1943, NFIB Kansas represents the consensus views of its nearly 3,600 members throughout the state. With the growth of lawsuit abuse, NFIB supports legislation that protects small business owners from absurd cases involving so-called negligent security.

Senate Bill 463 creates new restrictions on negligence actions in Kansas by prohibiting certain persons from recovering damages and establishing specific requirements for negligent security claims. The bill bars any person who engaged in, participated in or attempted to engage in wrongful conduct from bringing a negligence action or collecting damages for negligent conduct related to that wrongful conduct. The defendant bears the burden of proving by a preponderance of the evidence that the plaintiff was engaged in such conduct. "Wrongful conduct" is defined as any violation of federal, state or local law that constitutes a crime regardless of whether it results in an arrest or conviction, or any other conduct that constitutes an intentional or reckless tort.

As the nation's legal system continues to spiral out of control and billion-dollar lawsuits become the norm, NFIB fights hard for legal reform in all 50 states. Small business owners do not have in-house counsel, and the vast majority cannot afford to hire lawyers to defend their business and reputations in court. Trial lawyers know this and, as a result, small business owners are easy targets for the plaintiff's attorney looking for a quick payout. Just one frivolous lawsuit can force a small business to close its doors forever. Senate Bill 398 injects common sense fairness into the Kansas legal system by ensuring juries base damage awards on the evidence and actual damages paid, rather than on inflated, manipulated figures.

The cost and availability of liability insurance is a growing problem for Kansas small businesses. Following the 2019 Kansas Supreme Court decision striking the legislative caps on noneconomic damages, the number of cases and sizes of settlements and verdicts has increased. The surge in high-value, plaintiff-friendly verdicts is placing an additional strain on owners' overall insurance burden. While this bill won't reinstate caps on noneconomic damages—which we sorely need—it does assure small business owners a modicum of fairness in court proceedings and damage amounts.

Lawsuit abuse drives up insurance costs and forces small business owners to divert resources away from growth, hiring, and community support. We urge the committee and legislature to pass SB463 which provides Main Street much-needed protection against nuclear damages awards.