



Written Testimony in Support of Senate Bill 398
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Senate Committee on Judiciary
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Madam Chair and members of the committee, I am pleased to submit testimony in support of Senate Bill 398. 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 requires expert testimony to be more rigorous, helping to shield small businesses from lawsuits that rely on questionable, "hired gun" expert opinions.

Senate Bill 398 strengthens the standards for admitting expert witness testimony in court proceedings by requiring the party offering such testimony to demonstrate its reliability. Under the amended rules of evidence, before a witness qualified as an expert by knowledge, skill, experience, training or education may testify, the proponent must demonstrate to the court that it is more likely than not that the expert's specialized knowledge will help the trier of fact understand the evidence or determine a fact in issue. Additionally, the proponent must show that the testimony is based on sufficient facts or data, that it is the product of reliable principles and methods, and that the expert's opinion reflects a reliable application of those principles and methods to the facts of the case. The legislation also clarifies requirements for lay witness testimony, specifying that opinions or inferences from non-expert witnesses must be rationally based on the witness's perception, helpful to understanding the testimony, and not based on scientific, technical or other specialized knowledge that falls within the scope of expert testimony.

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 SB398 which provides Main Street much-needed protection against nuclear damages awards.