

MINUTES OF THE HOUSE COMMERCE, LABOR AND ECONOMIC DEVELOPMENT
COMMITTEE

The meeting was called to order by Chairperson Sean Tarwater at 1:30 pm on Thursday, May 14, 2020, Virtual.

All members were present except:

Representative Will Carpenter – Excused

Committee staff present:

Chris Courtwright, Legislative Research Department

Dana Rooney, Committee Assistant

Zach Fridell, Office of Revisor of Statutes

Conferees appearing before the Committee:

Alan Cobb, President, Kansas Chamber

Scott J. Schneider, Kansas Restaurant and Hospitality Association

Daniel Murray, Kansas State Director, National Federation of Independent Business

Others in attendance:

No list available

Prior to the virtual meeting of the House Commerce, Labor and Economic Development Committee, the following Kansas Open Meetings Act (KOMA) materials were distributed by Charles Reimer, Assistant Revisor. ([Attachment 1](#)), ([Attachment 2](#))

Chairperson Tarwater designated Zach Fridell, Assistant Revisor, to read the KOMA statement. ([Attachment 3](#))

Review of U.S. Department of Labor Unemployment Programs and Requirements for States to Qualify

Chairperson Tarwater announced that he had received an email from the United States Department of Labor (USDOL) which stated no one would be able to testify today. The USDOL will send the requested information to Chairperson Tarwater and he will have the materials forwarded to Committee members.

Update on Effects of COVID-19 on Kansas Businesses and Suggested Solutions

Alan Cobb, President, Kansas Chamber, was recognized by Chairperson Tarwater. Mr. Cobb indicated he would cover some issues to focus on priorities for Sine Die next week, next legislative session and also a broad future related to COVID-19. ([Attachment 4](#))

The first priority for next week would be liability protection for good faith actors following

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government guidelines. Other considerations would be unemployment insurance; fixes to the shared work program; property taxes--waive penalties and interest; sales taxes--based on sales rather than prepaid; and idle funds to be used for small business loans.

Beyond Sine Die: Work with Governor Kelly on spending the billion dollars the state receives; rebuild the unemployment insurance balance; small business loans; remove obstacles to production of personal protective equipment (PPE); possible money for universities and community colleges for research and development--health and/or economic concerns.

Items for next legislative session: Review the emergency management act; consolidate small local government to be more efficient--Kansas has 3,800 units; rainy day fund; look at A&M recommendations--provide services more effectively without cutting; reshoring manufacturing--make more secure; have universities and colleges focus more on business and economic course work.

Mr. Cobb stated Governor Kelly has made some good executive orders on relief and recovery.

Chairperson Tarwater thanked Mr. Cobb for presenting and asked for questions from Committee members.

Representative Williams: Could liquor license fees or occupational license fees be prorated during this time?

Mr. Cobb: Believes EO 20-19 addresses that issue--perhaps put in statutes next year; however, some retailers like to pre-pay for a full year.

Representative Williams: Thought it would be good to address licensing proration in a bill--would not have to pay for the full licensure fee if not working an entire year.

Mr. Cobb: Yes, and some licensed businesses are shifting focus from wine production to hand sanitizer production. In addition to the COVID-19 pandemic, there are other emergencies such as fires and floods that need to be considered.

Chairperson Tarwater: Committee had looked at some regulations this session, however, next session need to look at those and additional ones more closely. The Governor has relaxed some regulations and these may need to be made permanent.

Mr. Cobb: There are some things happening naturally and may not need regulations.

Representative Corbet: The non-essential businesses that are not open are still having to pay property taxes. Is there anything being done?

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Mr. Cobb: This will be a good discussion. Once the emergency act takes place what happens to taxes when businesses are not actively open for business.

Representative Corbet: One should take a drive around communities and notice the businesses that are shut down.

Chairperson Tarwater: Have local governments and/or the Governor reached out to the Kansas Chamber in attempting to get ideas for guidelines to open businesses?

Mr. Cobb: The Governor's staff has worked with the Chamber and Mr. Cobb has reached out at times to counties. Need to take a look at local health directors who are not elected. One person should not be the deciding person--this needs to be reviewed.

New Challenges for Restaurants and Suggested Solutions

Chairperson Tarwater recognized Scott Schneider, Kansas Restaurant & Hospitality Association. Mr Schneider doesn't believe the restaurant and hospitality industry has ever experienced the level of government intervention as has been seen in the past two months. The association understands the need to stand down businesses under threat of the COVID-19 pandemic, but it has come at a significant cost, especially to small business. Since March 1, \$325 million dollars in sales have been lost and 64,000 restaurant employees have been laid off or furloughed and 38% of restaurants have closed permanently. ([Attachment 5](#)), ([Attachment 6](#)), ([Attachment 7](#))

If the legislative body doesn't do anything before next January, many restaurants will be out of business. Most restaurants have an average of 20 days of cash reserves and 60% of customers don't plan to go to a restaurant within the next month.

What is needed now? Eliminating the penalties and interest on property taxes; eliminating prepaid sales tax; allowing for the selling of mixed drinks and growlers to go as this increases total ticket price; limit legal liability for public; secure the linked deposit loan program to create a long term financing tool for access to capital; and oppose the Kansas Department of Labor's purposed rule of presumed workers compensation COVID-19 liability.

Mr. Schneider noted that several legislative committees were currently meeting to discuss and work on some of these issues.

Chairperson Tarwater thanked Mr. Schneider for his testimony and opened the meeting to questions from Committee members.

Representative Hoffman: Do you know what is the percentage of businesses who haven't paid sales taxes yet?

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Mr. Schneider: No.

Representative Highland: How do you plan to encourage confidence and demand more balanced data?

Mr. Schneider: There are few businesses that have health licenses and are checked for cleanliness like restaurants. Restaurants are using hand sanitizers, sanitizing tables between users; offering single use menus, using personal protective equipment; and distancing barriers. Health officials and the media need to emphasize the number of patients recovered and the number of new cases in each community.

Mr. Highland agrees and believes the legislature should mandate that information be given to the general public.

Chairperson Tarwater stated he has nightly conversations with others in Johnson County and they find the media news sources to be very depressing. He feels there needs to be better and new data released on those who have recovered, those who have natural anti-bodies and those who aren't showing any signs of COVID-19. Johnson County's restaurants opened a week before others. He asked Mr. Schneider what is was like in Shawnee County.

Mr. Schneider: He hasn't experienced any wait time. Restaurants are operating under stress--in Topeka at Iron Rail at 1:30 p.m., he was seated and it was the third table in use. One has to question can you make a living if you are only half-full. One has to consider the cost per square foot. Freddie's, headquartered in Wichita, has reorganized three times.

Representative Ralph: He commented on the Dodge City community he lives in. Many of the residents have had and are recovered from COVID-19 or they know of someone who has had it. The residents have not panicked and are behaving in a reasonable fashion.

Representative Ralph, also a member of the Judiciary Committee, asked Mr. Schneider if he had been involved in the legislative proposals, the potential immunities?

Mr. Schneider: Yes. He has been involved with members of the Kansas Chamber and they are taking the lead on this issue. Something needs to be done at the state and national levels.

Representative Williams: Restaurants in Sedgwick County are struggling and reorganizing with carry out sales and new seating arrangements for those who dine in. Many stores in Sedgwick are closed, how will they come back?

Mr. Schneider: The national survey reported 38% of restaurants were temporarily closed. It is unknown how many will stay closed permanently. In Kansas restaurants produced 5.5 billion in sales--would have a terrific impact on sales taxes.

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Representative Williams: Hopefully loans will be possible as revamping an entire business is difficult.

Mr. Schneider: The delivery method of food will be more mobile in the future. Also, carry out of alcohol with orders.

Representative Hoffman: Restaurants now have half of their tables open and are trying to build the confidence of those customers coming in. Is there anything the Legislature can do to reopen quicker?

Mr. Schneider: Quicker is not a stress in opening. Understanding what the rules are and who makes them is a bigger concern.

Representative Hoffman: Restaurants are not open in his area because of concerns such as food availability, starting the air conditioning, etc. They need to have certainty in the future, not soft dates.

Mr. Schneider: Restaurants need certainty and stability. Sysco and US Foods were shut down and are now getting restarted.

Representative Probst: He understands the frustration of not having the certainty of a hard date to open but because of health issues and not understanding the spread of this disease the opening dates have been uncertain. His question is related to immunity. Why the current legal framework doesn't address liability?

Mr. Schneider: Regarding the liability issue--since it is not known how this virus moves or infects people, the safest thing, at this time, is to create temporary protection from liability.

Representative Probst: Establish industry guidelines. The claimant would need to prove the liability that the business didn't follow guidelines.

Mr. Schneider: Association doesn't want to reward bad actors who aren't following guidelines.

Update on Effects of COVID-19 on Independent Businesses and Suggested Solutions

Daniel Murray, Kansas State Director, National Federation of Independent Business was recognized by Chairperson Tarwater. According to Mr. Murray, the impact from this pandemic, including government stay-at-home orders and mandated non-essential business closures has had a devastating impact on the small business economy. Owners are starting to benefit from the PPP and EIDL small business loan programs as they try to reopen and keep employees on staff. In addition to needing more flexibility in using the PPP loan to support business operations and liability protection, small business owners need additional low cost financial programs--like the proposed Linked Deposit Program--to help them survive and emerge from the crushing effects of COVID-19. ([Attachment 8](#))

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In the most recent Small Business Economic Trends Survey, small business optimism took another dive in April, falling 5.5 points to 90.9, with owners expressing certainty the economy will weaken in the near-term, but expecting it to improve over the next six months.

Real sales expectations in the next six months declined 30 points to a net negative 42 percent, the lowest reading in the survey's 46-year history. The second-lowest reading was net negative 24 percent in April 1980.

Key findings from April's Optimim Index included:

- Earnings trends declined 14 points to a net negative 20 percent. Among owners reporting weaker profits, 39 percent blamed weak sales.
- The percent of owners thinking it's a good time to expand lost 10 points falling to three percent, its lowest level since March 2010.

As reported in our most recent NFIB monthly jobs report, job creation plans fell eight points to a net one percent, the lowest level since December 2012. Forty-seven percent reported hiring or trying to hire, but 41 percent reported few or no "qualified" applicants for the positions they were trying to fill.

As you can see from these numbers, the economic outlook of small business owners is uncertain and bleak. Challenges lie ahead.

Last week, NFIB issued a set of Liability Protection Principles, intended to protect small businesses from the threat of unfounded lawsuits as they begin to reopen. An NFIB survey released this week showed that nearly 70% of small business owners are concerned about liability claims increases, while only 6% are not at all concerned.

As small business owners across America begin the process of reopening, it's imperative that we establish protections from the threat of lawsuits that exploit the already damaging effects of COVID-19. According to our survey's results, small business owners are concerned about increases in liability claims when reopening their businesses. We urge the Legislature to address these Liability Protection Principles so that our nation's small businesses who have fought to survive over the course of this pandemic can get back to work without fear of costly legal battles.

Below is NFIB's set of Liability Protection Principles designed to address the legal issues of most concern to small business and which should be addressed in any legislation the Legislature passes. To the extent the Kansas Chamber business liability legislation addresses these principles, we support the bill.

1. The Workers Compensation system should be the exclusive vehicle employees who suffer serious

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physical injury at work use to adjudicate their claims.

2. Businesses should be protected from liability to customers and other third-parties unless those customers or parties prove the business knowingly failed to develop and implement a reasonable plan for reducing the risk of exposure to COVID-19 and that failure caused the injury.

3. Permitted lawsuits should be limited to persons who experience a serious physical injury due to COVID-19 resulting in hospitalization.

4. Fines should be imposed on unscrupulous trial attorneys bringing frivolous COVID-19-related lawsuits.

Mr. Murray also gave a list of re-opening state economies best practices.

Fiscal/Regulatory: sales tax reprieve, payroll tax holiday, tax deadline extension, waive tax interest and penalties, expedited permitting, licensing recognition, business credit for quarantined workers, sales tax holiday, lodging and meals tax holiday, workers' compensation premium deferral and forgiveness, create bridge loans programs/increase funding for bridge loan programs, regulatory review, increase state tax deductions, pause new regulations, workforce development, discourage new spending

Liability/Tort: liability for PPE manufacturers, tighten intentional tort exception for workers' compensation, protections for workers in essential businesses

Labor Mandate Relief

Health: encourage social distancing, emphasize workplace safety, continue increased sanitizing, re-open outdoor industries

Chairperson Tarwater thanked Mr. Murray for testifying today.

Chairperson Tarwater: As businesses are recovering are you seeing a slow recovery?

Mr. Murray: He believes developing a vaccine will give people confidence.

There were no other questions.

Chairperson Tarwater stated he plans to expedite the minutes and get them approved. He will then prepare a report to circulate.

The meeting adjourned at 2:53 p.m.

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