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Date: May 13, 2020

Re: S-2380 (Sweeney) Concerns Employment Benefits and Coronavirus Disease 2019 Infections Contracted by Essential Employees.

Dear Members of the New Jersey Senate

From: New Jersey Business Coalition

African American Chamber of Commerce of New Jersey, Inc.
American Camp Association NY/NJ
American Council of Engineering Companies of New Jersey
American Physical Therapy Association of New Jersey
Bernards Township Regional Chamber of Commerce
BioNJ
Burlington County Regional Chamber of Commerce
Bus Association of New Jersey
Cape May County Chamber of Commerce
Capital Region Minority Chamber of Commerce
Chamber of Commerce Southern New Jersey
Chemistry Council of New Jersey
Commerce and Industry Association of New Jersey
Early Childhood Education Advocates
Employers Association of NJ
Fuel Merchants Association of NJ
Garden State Pharmacy Owners, Inc.
Global Business Alliance
Gloucester County Chamber of Commerce
Greater Atlantic City Chamber of Commerce
Greater Toms River Chamber of Commerce
Greater Westfield Area Chamber of Commerce
Health Care Association of NJ
Hoboken Chamber of Commerce
Home Care & Hospice Association of New Jersey
Home Health Services Association of New Jersey
Hudson County Chamber of Commerce
Hunterdon County Chamber of Commerce
Insurance Council of New Jersey
Mahwah Regional Chamber of Commerce
Marine Trades Association of New Jersey

Meadowlands Chamber
Middlesex County Regional Chamber of Commerce
Monmouth-Ocean Development Council
NAIOP - NJ
New Jersey Apartment Association
New Jersey Asphalt Pavement Association
New Jersey Association of Mental Health and Addiction Agencies
New Jersey Association of Osteopathic Physicians and Surgeons
New Jersey Bankers Association
New Jersey Builders Association
New Jersey Business & Industry Association
New Jersey Campground Owners and Outdoor Lodging Association
New Jersey Chamber of Commerce
New Jersey Child Care Association
New Jersey Civil Justice Institute
New Jersey Coalition of Automotive Retailers
New Jersey Concrete and Aggregate Association
New Jersey Council of County Colleges
New Jersey Dental Association
New Jersey Food Council
New Jersey Gasoline-Convenience-Automotive Association
New Jersey Hotel and Lodging Industry Association
New Jersey Independent Electrical Contractors Association
New Jersey LGBT Chamber of Commerce
New Jersey Manufacturing Extension Program, Inc.
New Jersey Motor Truck Association
New Jersey Pharmacists Association
New Jersey Podiatric Medical Society
New Jersey Restaurant & Hospitality Association
New Jersey Retail Merchants Association
New Jersey Self Insurers Association
New Jersey Society of Certified Public Accountants
New Jersey State Funeral Directors Association
New Jersey Tech Council
New Jersey Tourism Industry Association
New Jersey Utilities Association
New Jersey State Veterans Chamber of Commerce
New Jersey Warehousemen & Movers Association
New York Shipping Association, Inc.
Newark Regional Business Partnership
NFIB

North Jersey Jewish Business Alliance
Ocean City Chamber of Commerce
Princeton Mercer Regional Chamber of Commerce
Salem County Chamber of Commerce
Somerset County Business Partnership
Southern NJ Development Council
Southern Ocean County Chamber of Commerce
Statewide Hispanic Chamber of Commerce of New Jersey
Sussex County Chamber of Commerce
The Chamber of Commerce of Greater Philadelphia
The New Jersey Leadership Council of the National Association of Professional Employer Organizations
Union Township Chamber of Commerce

On behalf of the Business Coalition, we write to you with concern about Senate Bill No. 2380 (Sweeney) which would create a rebuttable presumption, for workers' compensation insurance purposes, that certain essential employees contracted the virus during the scope of their employment. The business community is appreciative of the need to ensure that our front-line workers who have contracted COVID-19, and who have been negatively affected, receive the benefits that they need to make them whole. We will continue to work with the Senate President on this legislation.

We have significant concerns, however, with using the workers' compensation system as the primary method to provide these benefits. Our primary concerns are that the cost of these claims can overwhelm the system, which was not designed to handle claims during a worldwide pandemic, and that the costs will be pushed back onto the business community, which is also struggling to survive. Workers' compensation benefits are, by law, an injured worker's exclusive remedy for workplace injuries. Therefore, this legislation will only serve to shift the cost of the pandemic response to New Jersey's workers' compensation system and the essential businesses paying premiums for this insurance. No new short-term financial benefits will be provided under this legislation. In fact, it may create barriers to workers needing immediate assistance.

To support our position we've attached a document that explains: a) the availability of federal Pandemic Unemployment Assistance (PUA) funding for employees who are unable to work due to COVID-19 related reasons, but who nevertheless remain employed, and b) that those PUA payments would be reduced by the amount the employee received from workers' compensation.

We have confirmed the U.S. Department of Labor's interpretation on both of these points. They are working on updating their guidance to clarify that the CARES Act provides benefits under the

PUA program to employees who are not able to work for COVID-19 related reasons, even if they remain employed.

COVID-19 medical costs are also addressed by recent federal legislation. The new Health and Human Services portal is now covering any expenses for COVID-19 testing and treatment for anyone who lacks health insurance coverage. Healthcare providers treating uninsured patients can submit their expenses [here](#) to receive reimbursement. Providing the exclusive remedy of workers' compensation would only serve to shift these costs to New Jersey employers, effectively leaving federal dollars on the table. To the extent there were gaps in health insurance coverage for front-line retail employees, the federal government has taken that on.

Because existing federal programs are already addressing the immediate needs of workers, we believe now is not the time to enact a program that would displace otherwise available federal dollars. This is especially true given the fact that Congress is currently negotiating an additional worker benefit package.

Nevertheless, if legislators choose to move a bill now, despite the availability of federal funding that may be lost, please be aware that we also have particular concerns about some specific provisions in the legislation, including but not limited to the following:

Definition of Essential Employee: An "essential employee" is not clearly defined.

Theory of exposure: A claimant should have some credible reason to believe the exposure occurred at work. Data coming out of a New York study suggests lower infection rate for some front-line workers than the public at large – perhaps due to better protective equipment and safety protocols. For the presumption of causation to make sense, there should be some basis for it. Close interaction with customers and no known exposure in any other context would suffice to establish the presumption, but the claimant should have some articulable basis.

Duration of Rebuttable Presumption: As the existing stay-at-home order is loosened by subsequent executive orders, permitting more opportunities to interact with other people outside of the home, the basis for the presumption will be significantly weaker. Already, there is emerging data revealing that the vast majority of newly hospitalized COVID-19 patients are getting the virus not from work but from being at home. Because the virus is so new, perhaps we don't yet have a complete scientific understanding of its transmission.

Proof of Infection: Given the shortages in testing capabilities, employees should not have to provide a positive test for COVID-19, but a diagnosis by a licensed physician. Even the use of telemedicine is appropriate to maintain the integrity of the system.

Not to Be Used in Other Liability Contexts: Whatever the policy rationale for a rebuttable presumption to facilitate no-fault workers' compensation payments to essential employees, the same is not true for other tort actions that might be brought for COVID-19 injuries. The legislation should specify that the presumption shall not be used to establish liability in any other context.

We respectfully ask that this legislation be held to determine the appropriate way to handle such claims as a result of a global pandemic.

Please contact Chrissy Buteas, Chief Government Affairs Officer, NJBIA at cbuteas@njbias.org or 908-447-3466 with any questions.