



EQUALITY ♦ LAW ♦ JUSTICE

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**Opponent on HB 2126
House Judiciary Committee
February 3, 2021**

Chairman Patton and members of the Committee:

My name is Mike Burgess. I am the Director of Policy & Outreach at the Disability Rights Center of Kansas (DRC). DRC is a public interest legal advocacy organization that is part of a national network of federally mandated organizations empowered to advocate for Kansans with disabilities. DRC is officially designated by the State of Kansas as Kansas' protection and advocacy system. DRC is a private, 501(c)(3) nonprofit corporation, organizationally independent of state government and whose focus is the protection and enhancement of the rights of Kansans with disabilities.

I am here today to speak in opposition to HB2126. I followed the legislation last session closely on the COVID-19 liability issue. We were very much against blanket immunity as was passed last session and ultimately vetoed. The existing affirmative defense provision, which was passed into law last as an effective response to COVID-19, is a reasonable and commonsense solution on this issue. The current law was a compromise that protected resident's rights and provided an affirmative defense for nursing facilities.

I just want to remind the committee the Kansans who would be impacted by the bill as it is written. It includes senior citizens and people with disabilities who are far more likely to have been negatively impacted by COVID-19 in general. It includes America's Greatest Generation, who protected and healed the world from the ravages of WWII. It includes people with disabilities who are far too often forced to live in facilities because of the institutional bias and the lack of state support for community-based services. These Kansans disproportionately require health care services and hospitalizations due to their medical conditions from the novel coronavirus. They are also more likely to be living in group settings and to be under the care of others. Seniors and people with disabilities are far more likely to have damages inflicted on them whose right to remedy and redress through the legal system could be practically eliminated under this bill.

The bill appears to basically grant what amounts to blanket immunity to nursing facilities. The bill technically has a "reckless and wanton" provision that facilities must abide by, however that is such a low bar for facilities to pass that it effectively will help ensure blanket immunity the vast majority of the time. As long as they can tie the incident to COVID or the crisis then they have an easy path to immunity, even if they are not following the state and federal guidelines on COVID. The protection for facilities in the current law already grants an affirmative defense and is fair to all sides, including seniors and people with disabilities residing in these facilities. Imagine your mother was in a nursing facility and died because of harm perpetrated by a nursing facility. Now imagine your shock when that same facility was able to get off scot free simply because of this bill and the new immunity it provides.

In addition, we would forcefully oppose adding any additional disability providers to this COVID blanket immunity bill.

As I mentioned before, the existing affirmative defense provision is a fair and commonsense compromise on this issue.

Thank you for the opportunity to speak in opposition to this bill. I would be happy to stand for questions at the appropriate time.