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Covid-19 liability protection for small businesses emerges in Legislature

By Katy Murphy

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SACRAMENTO — A nationwide push for Covid-19 liability protection has suddenly gained a foothold in California with a new bill to give legal immunity to small businesses.

[CA AB1035 \(19R\)](#) — which emerged Friday morning as a gut-and-amend proposal — would shield from Covid-19 lawsuits businesses with 25 or fewer employees that have followed state public health laws and protocols.

The urgency legislation sets up a fight between business groups and consumer and labor interests during an economic reopening fraught with [a troubling uptick](#) in positive cases and hospitalizations. If it passes with the two-thirds vote its authors are seeking for it to take effect immediately, it could push Gov. Gavin Newsom into rocky political terrain, forcing him to pick sides.

The Democratic governor has so far held off on [a June 5 bipartisan request](#) from two dozen lawmakers — including the bill's co-authors, Assemblymembers James Ramos (D-Highland) and Chad Mayes, a Republican-turned-Independent from Yucca Valley — to issue an executive order shielding small businesses from lawsuits from employees or customers who contract the disease.

Ramos pointed to the state's soaring unemployment rate and the many minority-owned small businesses that are on the verge of permanent closure amid the pandemic. The threat of legal exposure, he argues, could further complicate their reopening.

"California's four million small businesses are struggling and need assistance," Ramos said in a statement on Friday. "We need to help them reopen so that employees and the state get back to work."

The details of the new proposal are so thin, however, that two groups that have been pushing generally for liability provisions, the California Chamber of Commerce and the state chapter of the National Federation of Independent Business, had yet to take a position Friday.

The proposal has "great promise," said John Kabateck, NFIB's California state director. "We have grave concern that a number of scheming plaintiffs attorneys will seize the moment to prey upon vulnerable, unprepared small business owners during this chaotic time," he said.

In its current form, the bill would not protect other types of organizations, [such as colleges](#), which — at least nationally — have pushed for a liability shield. Another point of contention could be a provision that limits the

bill's application only to establishments that follow "all applicable state and local health laws, regulations, and protocols."

But one prominent employment attorney describes this and other Covid-19 liability-shield proposals as worrisome and unnecessary. An employee would have no case against a business that followed state and federal public safety guidelines, even if the business was not shielded from such lawsuits, argued Wendy Musell, an attorney based in San Francisco.

Policymakers should be focused on increasing public health and safety compliance, she said, not eroding standards by expanding legal immunity.

"This is part of an incredibly troubling trend," Musell said. "It will not assist us to get back on our feet economically and it will cause much more damage. We rely on these basic workplace protections to keep us all safe."

AB 1035 is slated to be heard next by the Senate Judiciary Committee, likely after the Senate reconvenes next month from summer recess.