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March 16, 2021

The Honorable Kellie Warren
Chair, Senate Judiciary Committee

Reference: HB 2126 — AARP Kansas' Strong Opposition to providing immunity from civil liability for COVID-19 claims for adult care facilities.

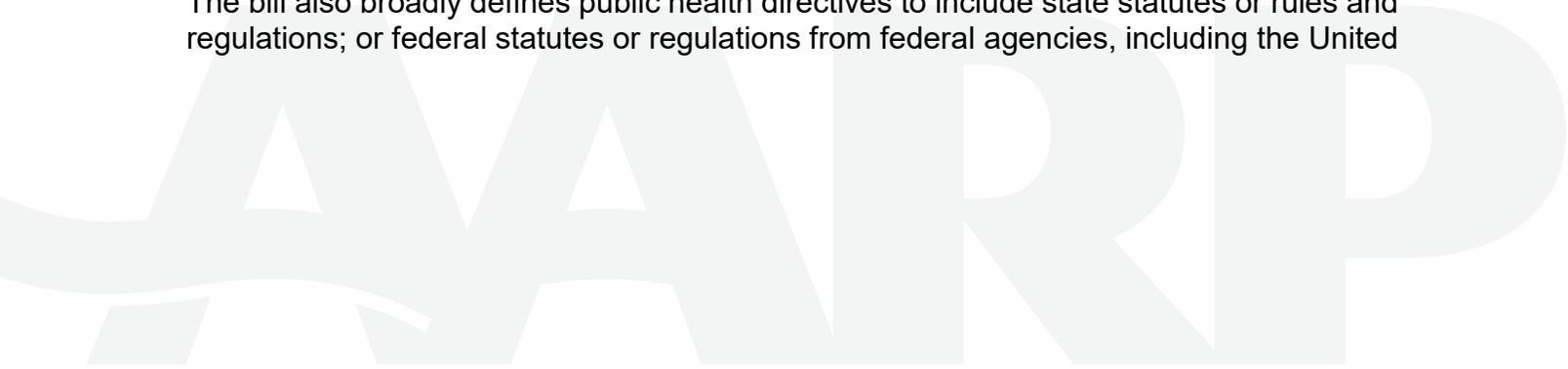
Good morning Madam Chair and Members of the Senate Judiciary Committee. My name is Judy Bellome. I am the AARP Kansas Volunteer State President. I am a Registered Nurse and former Navy Nurse Corp Officer. I have worked as a registered nurse in home care and hospice and with many long-term care facilities, and I believe myself an expert on geriatric care.

AARP Kansas, on behalf of our more than 290,000 members strongly opposes House Bill 2126, even as amended. I presented testimony in opposition to the bill in February of this year in the House Judiciary Committee. We continue to oppose this bill, as amended by this Committee on February 25, because of the serious negative impact it would have on seniors and their families.

House Bill 2126 would strip away the rights of Kansans by granting sweeping immunity to adult care homes and other providers serving vulnerable populations from "COVID-19" claims. An adult care home includes many places seniors call their homes, such as nursing homes, assisted living facilities, residential healthcare facilities, boarding care homes, and all-inclusive care for the elderly programs (PACE). We believe this is a step in the wrong direction.

H.B. 2126 would grant immunity "if such facility was in substantial compliance with public health directives applicable to the activity giving rise to the cause of action when the cause of action accrued". The bill also broadly defines public health directives to include state statutes or rules and regulations; or federal statutes or regulations from federal agencies, including the United States Centers for Disease Control and Prevention and the Occupational Safety and Health Administration of the United States Department of Labor. This is not the direction we should move toward as a state.

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States Centers for Disease Control and Prevention and the Occupational Safety and Health Administration of the United States Department of Labor.

All of this is particularly alarming in that the bill would immunize (release from liability) just about anything a nursing home or assisted living facility did or did not do, so long as they could claim they were in substantial compliance with any one of the public health directives in effect at the time. This leaves families and nursing home residents at risk of being unable to clearly understand their rights and how they could pursue legal remedies in the courts. We also remain greatly concerned that this bill would be implemented to immunize facilities from liability retroactively beginning March 12, 2020, which would further complicate the entire process for residents and their families. This bill would require families to navigate, what if any, public health directives at each level of state and local government were in effect at the time that the potential cause of action had arisen.

AARP has long fought for the rights of residents in nursing homes and other residential care facilities and to ensure their health, safety, quality of care, and quality of life. This includes the right of residents and their families to seek legal redress through the courts to hold facilities accountable when residents are harmed, neglected, or abused.

Nursing homes and other long-term care facilities play an important role in America's long-term services and supports system, and during this time of pandemic they face unprecedented challenges. However, while there may be some circumstances beyond facilities' control for which they should not be held responsible, it is essential that these long-term care providers remain responsible for their negligent actions to ensure long-term care residents have some protection and opportunity for redress.

Residents of nursing homes, assisted living and other adult care homes may be unable to advocate for themselves and have limited access to visitors who can advocate on their behalf. This lack of oversight is alarming, and requires us to ensure that, when all else fails, residents and their families will still have access to the courts to seek redress. Pursuing a neglect or abuse case in court is not easy to do. There exist many significant barriers to accessing the courts by a nursing home resident or family member. No resident or family member who has lost a loved one due to neglect or abuse pursues this course of action lightly. It is always an option of last resort, but it must remain an option.

Kansas should not strip away the rights and protections of residents. Kansas adult care homes, including assisted living facilities and nursing homes, should know they will continue to be held responsible for providing the level of quality care that is required of them, and for which they are being compensated. This also incentivizes facilities to self-correct by addressing problems to improve care.

AARP Kansas appreciates your consideration of these views and urges you to reject House Bill 2126. Families all across Kansas are looking to this committee to protect the health and safety of their loved ones living in nursing homes and other adult care facilities.

Thank you. I will stand for questions.

