



American Justice Partnership

AJP State Survey Initiative

How Kansas Business Leaders Regard The Legal Climate in Kansas

August 2006

Results of An Opinion Survey
Conducted By:



The **AJP State Survey Initiative** is an ongoing effort to identify the impact of state liability laws on the ability of businesses to create jobs, develop new products and services, and contribute to economic prosperity. The American Justice Partnership is a national nonprofit coalition of leading corporations, think tanks, foundations, trade associations, individuals and organizations advocating for legal reform, primarily at the state level. Dan Pero, President, 600 South Walnut Street, Lansing, MI 48933 517-371-7276 © 2006 American Justice Partnership www.AmericanJusticePartnership.org



About This Survey

This survey was sponsored and implemented by The Kansas Chamber of Commerce in May 2006 with assistance and technical support from the American Justice Partnership.

For further information, please contact:

The Kansas Chamber of Commerce

Marlee Carpenter, Vice President, Government Affairs
785-357-6321
mcarpenter@kansaschamber.org

American Justice Partnership

Steve Nowlan, Vice President
973-644-3387
snowlan@lawexec.com

How Kansas Business Leaders Regard The Legal Climate in Kansas

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Introduction

In recent years, the Kansas Legislature made a number of improvements to the Kansas legal climate, including:

1. Updating the Kansas Corporate Code;
2. Harmonizing state laws with Federal statutes for Class Action suits;
3. Increasing monetary limits for Small Claims court
4. Passing the Commonsense Consumption Act, which protects those in the Food Chain from lawsuits brought by overweight individuals;
5. Reforming Appeal Bond Waivers; and,
6. Passing the Silica and Asbestos Fairness Act.

It is important to recognize these improvements in the legal climate while at the same time objectively assessing how business decision-makers feel about their future economic and investment decisions in light of risks arising from current Kansas liability laws.

The Kansas Chamber of Commerce, with assistance from the American Justice Partnership, completed a landmark survey in May 2006 in which Kansas business leaders and owners were invited to anonymously complete an internet-based questionnaire.

Nearly one-quarter, 23%, of those leaders responding to the survey represent small businesses with 49 or fewer employees. Another 11% have 50 to 99 employees and 44% have 100 to 499 employees. Leaders representing businesses with 500 or more employees comprise 22% of the respondents. Thus, the survey respondents reflect the group of small and medium size businesses that traditionally generate the greatest share of new jobs and fuel local economic growth.

The survey reveals how the legal climate in Kansas impacts the state's economy and how business investors view the effect of the legal climate on their companies. Although the state court system ranks in the top 30% of the nation, Kansas business owners still feel threatened by lawsuits and are spending a great deal of time and money protecting their businesses from them.

Even with the recent legislative changes, the results of this survey show that the legal climate in Kansas continues to effect the state's economy. The future economic prosperity of the state is, without a doubt, tied to the ability of these companies to expand their activities and create new jobs that provide attractive opportunities for employees and their families to remain in or move to Kansas.

Simply put, Kansas cannot achieve strong economic growth and successfully compete in the global marketplace in the future while the state's business leaders feel required to devote such a high level of company resources to coping with unwarranted liability risks.

Thus, it is of paramount importance that Kansas state government officials take into account these survey findings when considering ways to ensure that Kansas remains competitive in the U.S. and global markets of the 21st century. The bottom line is that the legislature needs to come to grips with the facts and make comprehensive legal reform a priority.

Marlee Carpenter

Marlee Carpenter

Vice President, Government Affairs

THE KANSAS CHAMBER OF COMMERCE

Key Findings

- **83% of those business leaders responding say that the legal climate in Kansas imposes costs on businesses that hurt job growth.**
- More than four out of five business leaders responding, 84%, say that they now spend more time than ever before trying to manage the risks of being sued.
- Nearly two-thirds, 60%, have increased their liability insurance, changed their operations and paid lawyers for advice to protect against liability lawsuits.
- Nearly eight out of ten, 77%, have experienced increases in the cost of liability insurance over the last two years. These insurance cost increases range from a low of 5% (14% of respondents), to a high of 20% or more (11% of respondents).
- Nearly four out of ten, 37%, have decided against developing new products and/or services in order to avoid liability lawsuits.
- Three out of ten, 30%, spend more time on potential or actual liability problems than they spend on improving productivity in their business.
- About one-quarter to one-third spend more time on potential or actual liability problems than they do on developing new products (27%) or on plans to expand the business (31%).
- More than half, 56%, are dissatisfied with state government efforts to restore fairness and predictability to state liability laws.
- Six out of ten of those responding, 60%, say that the legal climate in Kansas creates disadvantages for businesses in Kansas compared with other states.
- More than four out of ten, 41%, say that the legal climate in Kansas discourages them from spending to create or improve products and/or services.
- About one-third, 30%, say that the legal climate in Kansas encourages them to want to move their businesses to another state.
- More than four out of five, 88%, say that the legal climate in Kansas increases the cost of everything consumers buy in Kansas.

I. Impact of The Legal Climate in Kansas

According to nearly nine out of ten business leaders completing the survey, 88%, the legal climate in Kansas increases the cost of everything that consumers buy in Kansas.

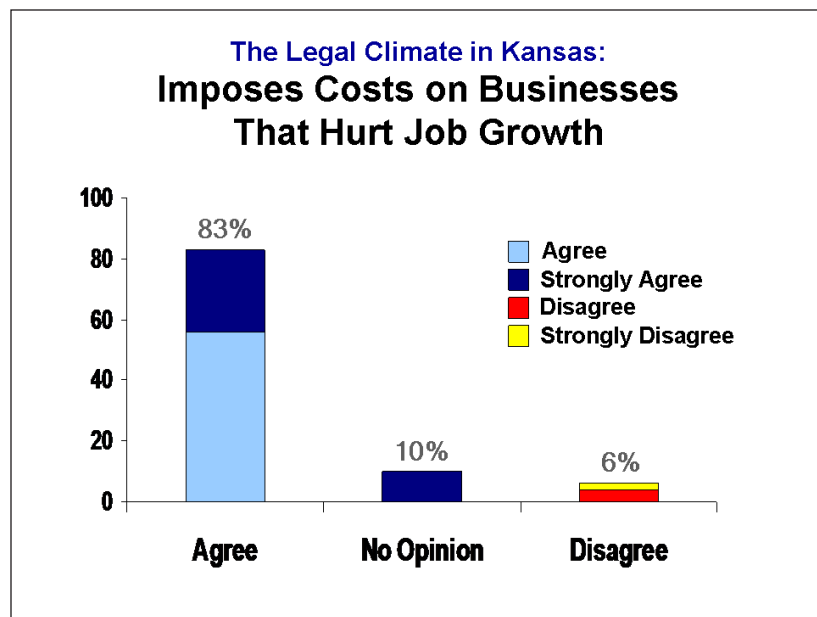
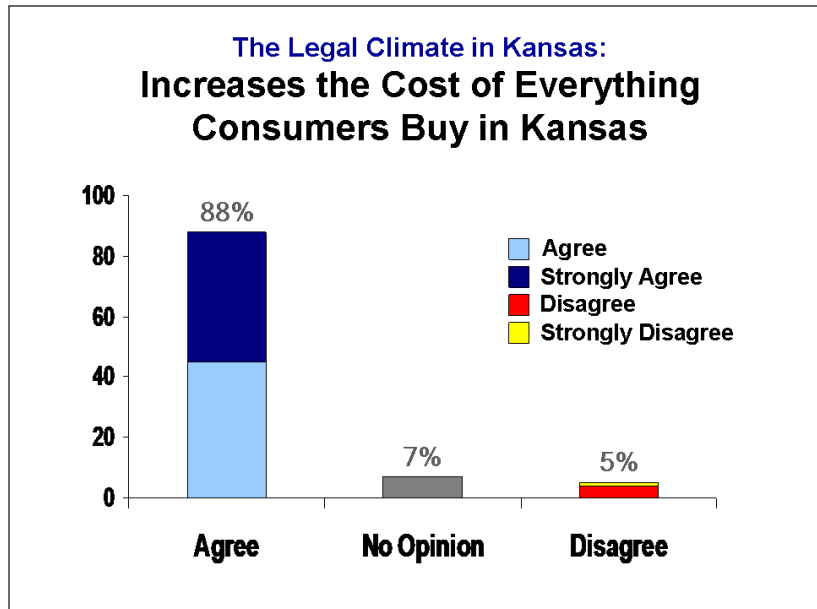
These leaders, who reflect a very diverse group of small and medium size businesses in the state, have a first-hand understanding of how the costs associated with lawsuit abuse and unwarranted litigation drive up the cost of doing business.

These costs include the increasing costs of liability insurance, the costs of defending lawsuits and paying settlements and awards, and many indirect costs such as management and employee time spent on dealing with potential or actual liability issues.

Even while consumers are paying more in Kansas for everything they buy, not all costs to businesses are passed along to consumers. For example, when a Kansas business sells a product that is also offered by a business from another state or country that maintains a more competitive and less expensive legal climate, the Kansas business cannot raise prices to cover legal costs without risking that its prices will be higher than those of the competition.

As the chart on the right shows, more than eight out of ten business leaders, 83%, report that the legal climate in Kansas imposes costs on business that hurt job growth.

Such costs take many forms, including direct costs that involve financial expenses, and indirect costs such as the distraction of liability problems taking the attention of managers away from business expansion activities.



The two graphs below depict the percentage of managers reporting how their businesses have experienced both direct and indirect costs triggered by the legal climate.

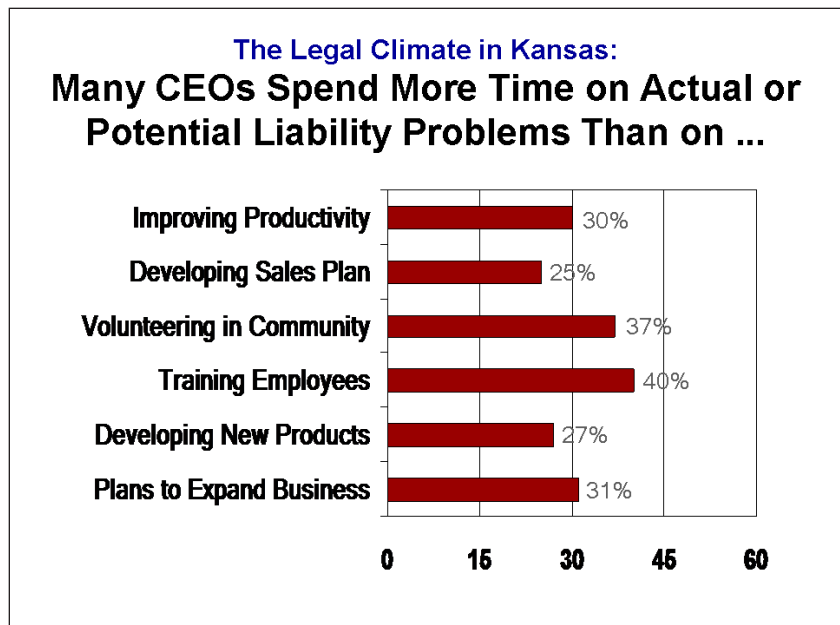
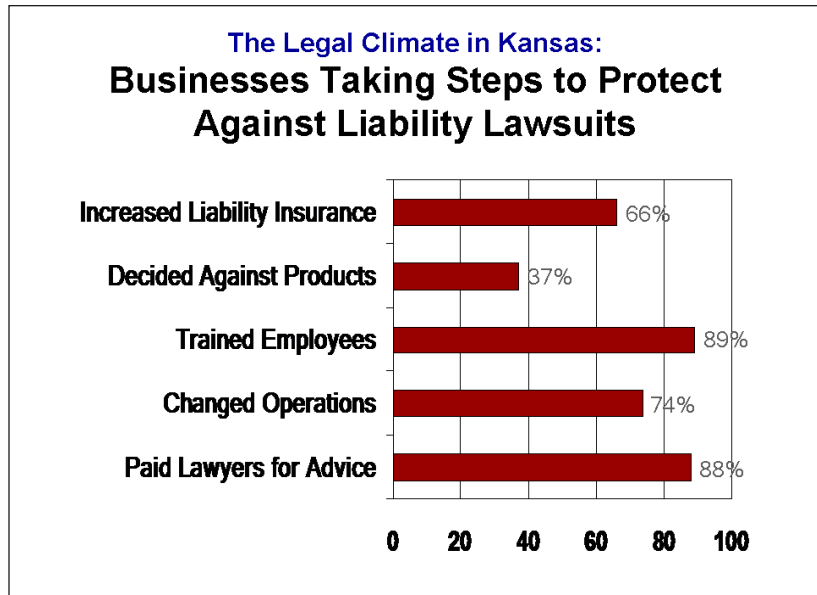
As shown in the graph to the right, 66% of participating managers report that they have increased their liability insurance to protect against liability lawsuits. Nearly four out of ten, 37%, report they have decided against developing new products, services or improvements to existing products or services. No doubt these decisions have deprived Kansans of valuable products and services.

Nearly nine out of ten, 89%, report that they have trained employees to protect against liability lawsuits, a defensive measure that demonstrates that most businesses are alert to the possibility of liability problems and taking responsibility for proactively preventing problems. Similarly, nearly three-quarters, 74%, report that they have changed their operations to protect against liability lawsuits.

However, even with these steps, nearly nine out of ten, 88%, have paid one or more lawyers for advice to help them protect the business and /or the business owners from possible liability lawsuits.

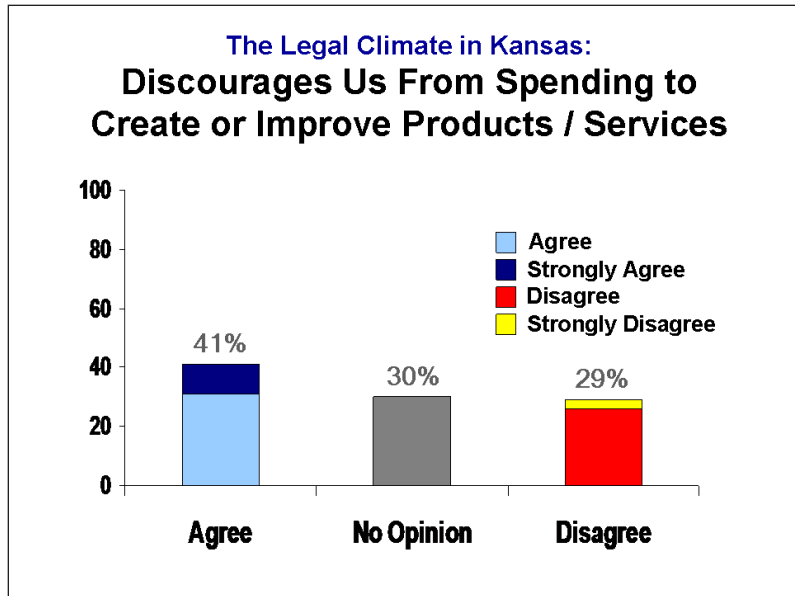
There is also the indirect cost to the economy and businesses when the CEO and other managers are distracted from expansion activities to spend time on actual or potential liability problems and lawsuits.

As the chart to the right indicates, a substantial number of business managers in Kansas spend more time dealing with liability issues than they spend developing growth opportunities.



Considering how important it is for the leadership of a business to be focused on planning for and building for the future, particularly in smaller businesses which comprise the overwhelming majority of those in this survey, it is alarming that about one-third of the CEOs feel the need to spend more time on liability issues than they spend on growing their businesses.

Not surprisingly, nearly half of Kansas business leaders, 41%, feel that the state’s legal climate discourages them from spending to create or improve products and services as depicted by the graph to the right.

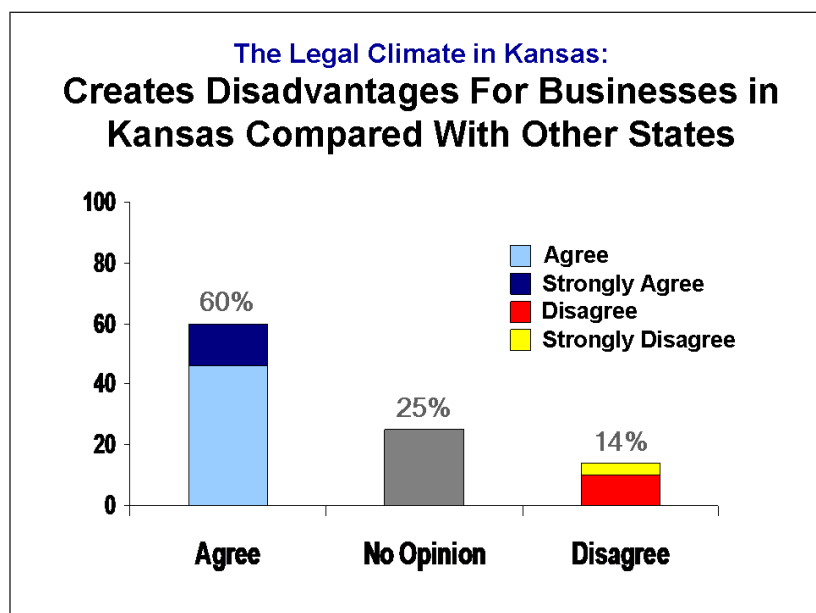


The businesses represented by these respondents, 46% of whom have 99 or fewer employees, comprise the group of companies to which Kansas needs to look for precisely the type of product and service innovation that will fuel future economic growth in the state.

Businesses such as these traditionally serve as seedbed for major job expansion. So, if this group of managers is discouraged now from investing in the future, Kansas is likely to face lower economic growth in the future when the new products and services that should be in development now would be expected to come to market.

Again not surprisingly, business leaders who naturally want to invest in their businesses are very aware of how the state’s legal climate creates disadvantages for them compared to the legal climates in other states.

As the graph to the right illustrates, nearly two-thirds of those completing the survey, 60%, believe that Kansas’s legal climate creates disadvantages for businesses in the state compared with the legal climates in other states.



It should be alarming to state government leaders that

one out of six leaders completing the survey, 14%, *strongly* agree that the legal climate in Kansas creates disadvantages for their businesses, compared to the legal climates in other states.

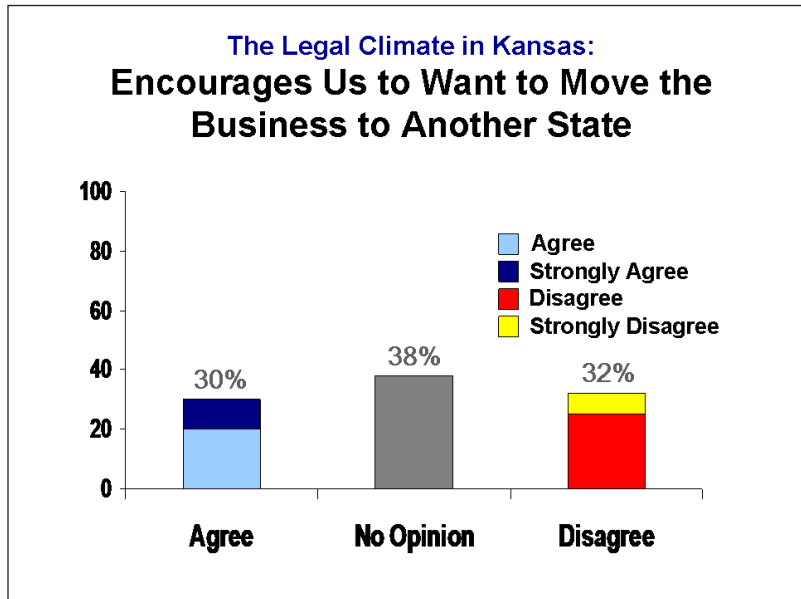
This high response demonstrates a level of intense concern among business leaders that needs to be addressed because these business leaders are making decisions on a daily basis about how and whether to continue to invest in business activities in Kansas.

Nearly one-third of those responding, 30%, believe that the legal climate in Kansas actually encourages them to move their businesses to another state, as illustrated in the chart to the right.

It should be of special concern that the industries represented by this group of leaders are predominately manufacturing, financial services and service firms such as healthcare, education and engineering.

Again, the companies represented by this group of leaders are exactly the type of companies and jobs that Kansas should be striving to retain in Kansas and attract to the state so as to ensure a diverse and economically sound business base in the state.

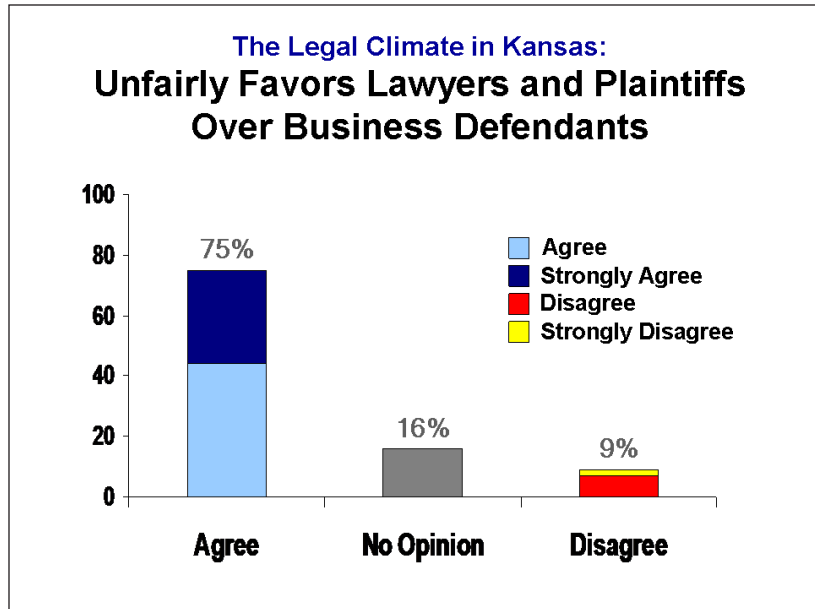
To further illustrate the intensity of concern among these leaders for Kansas's legal climate, nearly six out of ten, 56%, are dissatisfied with the efforts of state government to enact laws that will restore fairness and predictability to the liability laws of Kansas. One out of ten participating business leaders, 10%, are *very* dissatisfied with these efforts.



II. The Legal Climate Unfairly Favors Lawyers and Plaintiffs

Three-quarters of business leaders, 75%, believe that the legal climate in Kansas unfairly favors lawyers and plaintiffs over business defendants, as illustrated by the graph to the right.

Importantly, nearly one-third, 31%, agree *strongly* with this statement, showing that the business community intensely believes that the legal climate in Kansas is skewed to create unfair advantages for trial lawyers and plaintiffs at the expense of businesses.

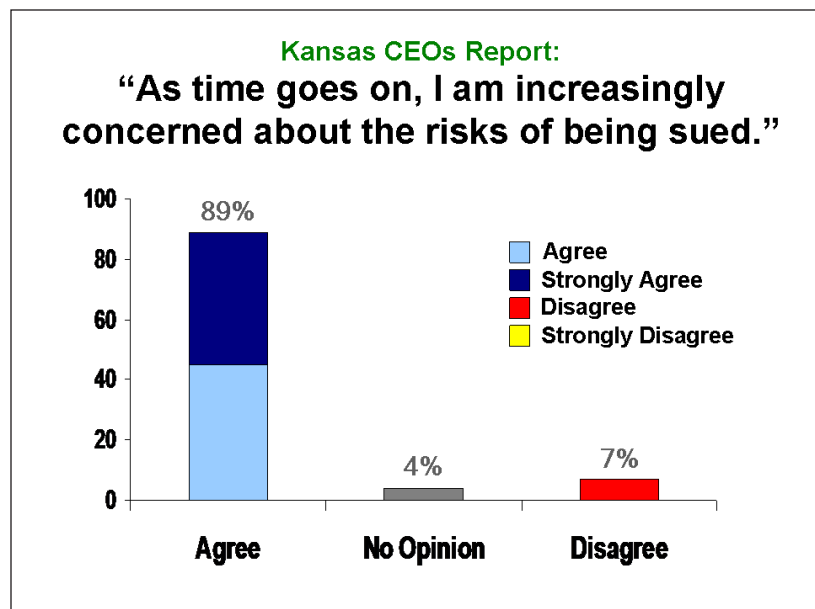


In light of today’s legal climate in Kansas, business owners and managers are forced to focus on managing legal risks as a key component of their daily activities rather than focusing on building the business and creating jobs.

As this graph depicts, Kansas business leaders are “*increasingly concerned about the risks of being sued*”. Nearly half of all respondents, 45%, agree strongly and another 44% agree with this statement.

Thus, a total of nearly nine out of ten, 89%, are focusing more and more attention on legal risks instead of entrepreneurial business priorities.

Conversely, it is striking that only 7% of the business leaders responding to the survey disagree that they are *increasingly concerned* about the risks of being sued. Many in this group are likely to be concerned about being sued even though their concerns are not necessarily increasing over time.



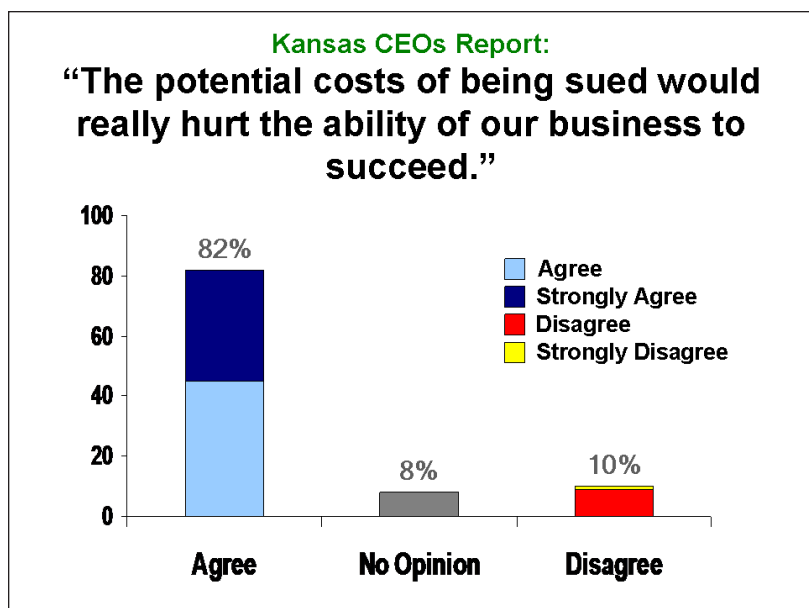
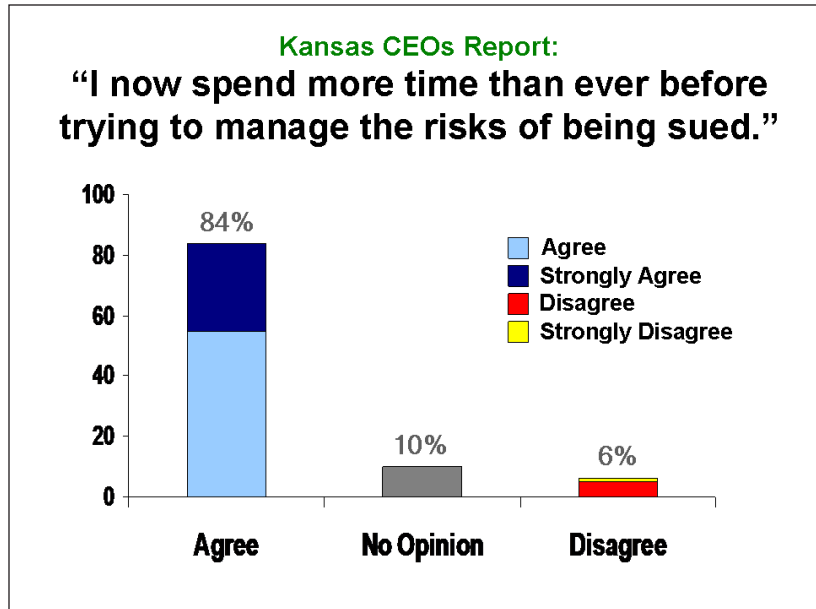
More than four out of five of the business leaders completing the survey, 84%, indicate that they “now spend more time than ever before trying to manage the risks of being sued”, as the graph on the right illustrates. Nearly one-third, 29%, agree *strongly* with this statement, indicating that their focus on legal liability figures heavily in their responsibilities.

Importantly, nearly half of those indicating they “strongly agree”, 46%, represent companies with fewer than 200 employees. Here again, this shows that the very leaders that Kansas needs to depend on to build the economy and expand jobs in the future are having to focus seriously on managing the risks of being sued instead of building the future economy for the state.

It is clear that Kansas business leaders recognize that, with increasing competition from companies based in other states and other countries that have more favorable legal climates, the high costs of defending against frivolous and unwarranted lawsuits are potentially fatal to their operations.

In small companies, lawsuits can be disastrous *even when the business defendants win*. The cost of legal representation, much of which is not covered by insurance, can represent most or all of the profits from one or more years of operation. Importantly, in smaller companies, such lawsuits are highly distracting to the business owner and manager and this can tremendously diminish the focus on running the business.

As the chart to the right depicts, more than eight out of ten business leaders, 82%, report that “the potential costs of being sued would really hurt the ability of our business to succeed”. Again, more than one-third of those responding to



the survey, 37%, agree strongly with this statement.

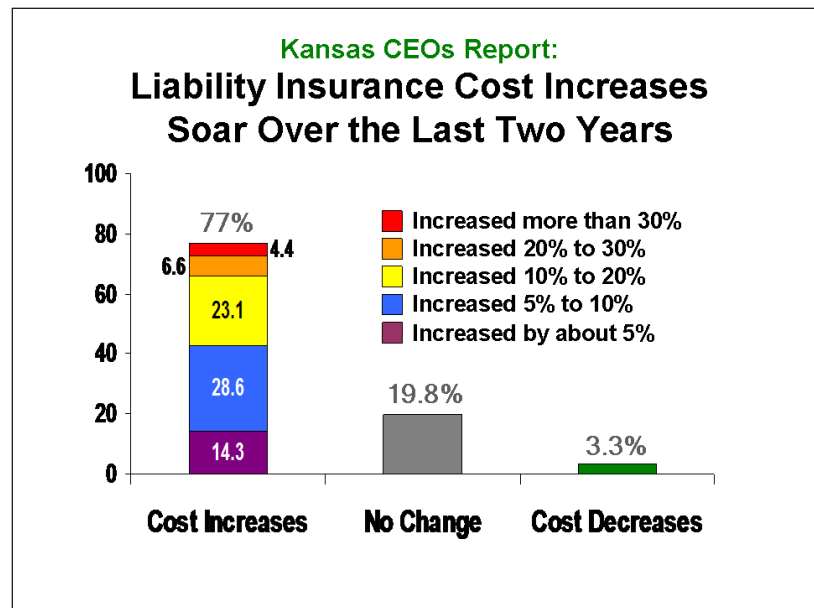
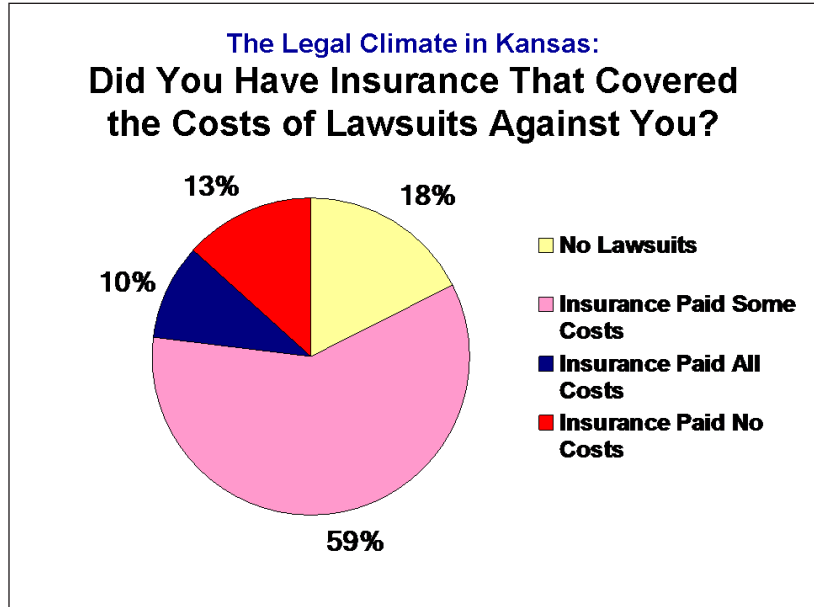
In this context, it is easy to understand why Kansas business owners and managers are so concerned about the fairness of the legal climate in the state: As if the demands of running their businesses in the highly competitive global economy of the 21st century are not challenging enough, the civil justice system in the state provides unfair advantages for trial lawyers and plaintiffs to sue businesses. Even if the businesses win their lawsuits, the cost and time involved in defending themselves can be ruinous.

Not even liability insurance provides adequate protection against the threat of being sued. As this graph shows, about eight out of ten of those completing the survey, 82%, report that they have been sued in the last five years. (Some have not been in business for a full five years.)

Just over half, 59%, report that insurance paid *some* of the costs associated with the lawsuits and nearly one in six, 13%, indicate that insurance paid *none* of the costs. This shows that nearly three-quarters of the companies in the survey have incurred lawsuit costs that were *not* covered by insurance.

The increasing cost of liability insurance is also a growing burden for Kansas companies. As the chart on the right shows, nearly eight out of ten business owners and managers, 77%, report that the costs of liability insurance have increased in the last two years.

In fact, several industry groups have been the hardest hit with increases of 20% to 30% or more. These include manufacturing, construction, wholesale, and financial services firms as well as service firms in the healthcare, education and engineering sectors.

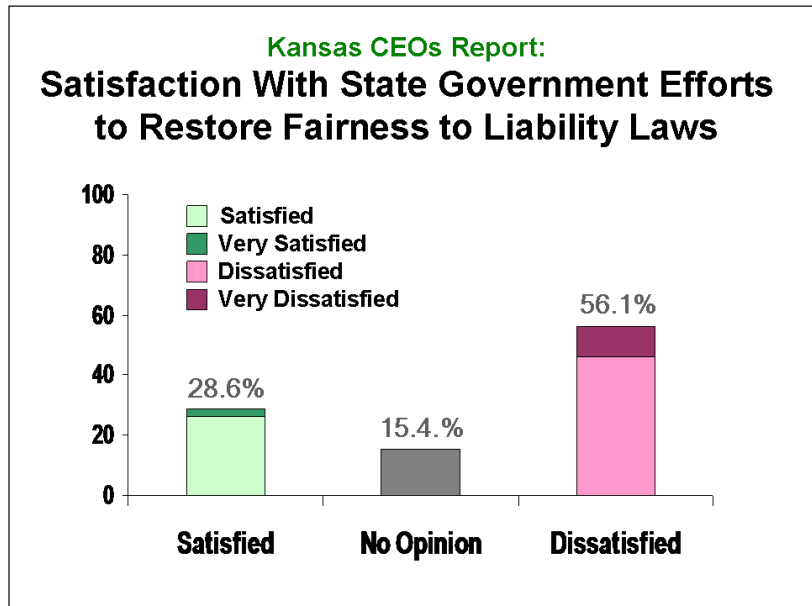


III. Satisfaction With State Government Efforts

More than half of business owners and managers responding to the survey, 57%, are dissatisfied with the efforts of state government to enact laws that will restore fairness and predictability to the liability laws of Kansas.

Importantly, nearly 10%, are *very* dissatisfied with state government’s performance.

Leaders in manufacturing, financial services, construction and wholesale industries comprise more than half of those who are most dissatisfied with state government’s efforts.

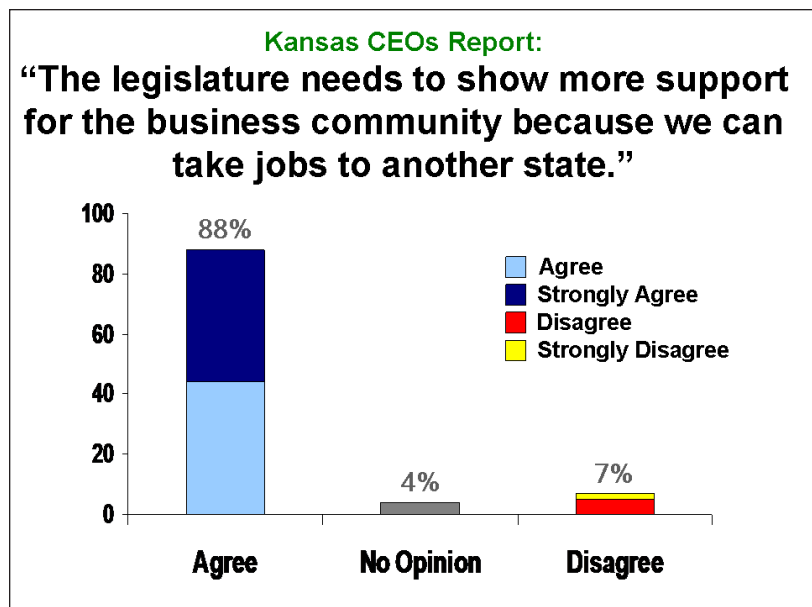


In recent years, well publicized efforts by various states, including Texas, have made it clear that there are alternatives to remaining in Kansas. Additionally, business owners and managers can elect to expand their businesses in a different state rather than in Kansas.

Business leaders believe that the state legislature needs to show more support for the business community because business can elect to take jobs to another state if the legal climate is not improved.

As the graph on the right shows, nearly nine out of ten business leaders share this view.

In fact, nearly half of all survey participants, 44%, *agree strongly* with this statement.



This highlights the disconnect between the state’s current economic development goals and the perception held by the business community that the legislature is out of touch with the very real challenges of successfully managing a business in Kansas.

Business leaders are prepared to support candidates for public office who are willing to vote for laws that are fair to business.

More than nine out of ten leaders, 98%, indicate that they will support candidates who support legal reform that is more fair to business. More than seven out of ten, 74%, agree *strongly* that they will support such candidates. Not a single survey participant disagrees.

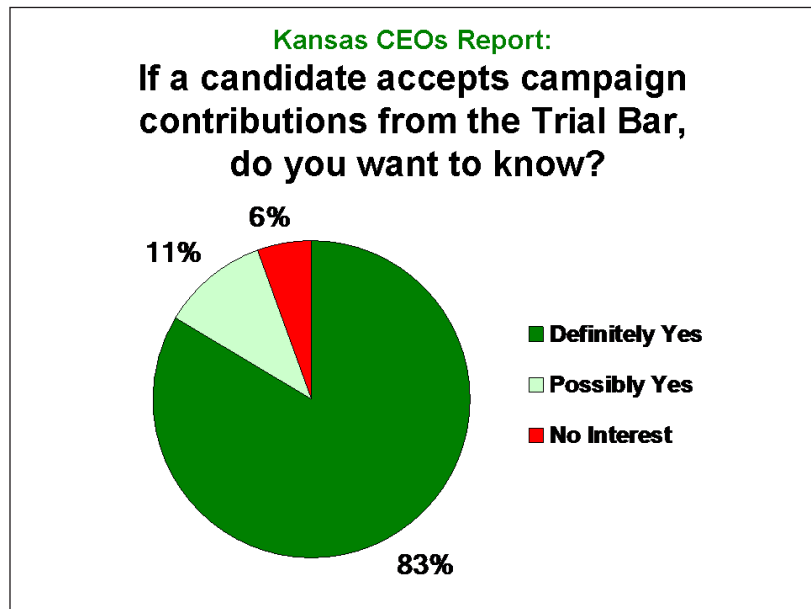
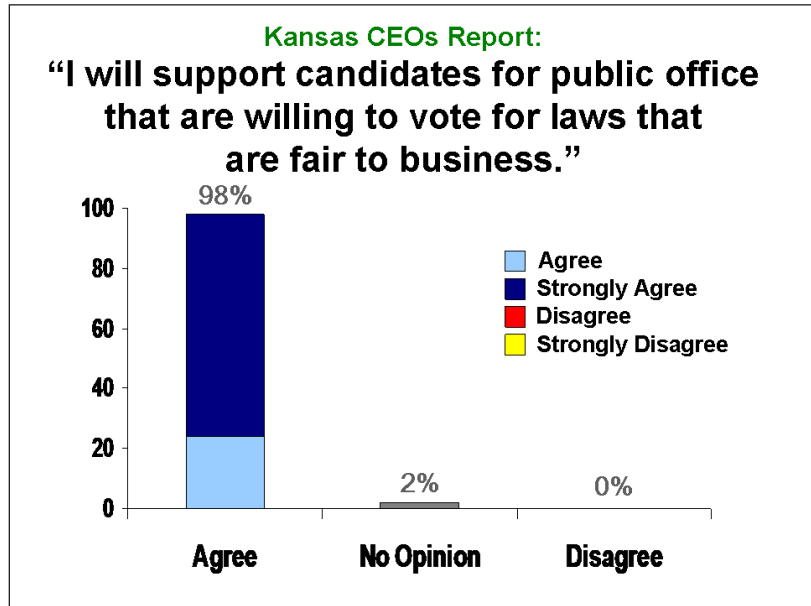
Two-thirds of those responding, 66%, indicated they would definitely or probably contribute to the candidate’s campaign.

More than eight out of ten respondents, 83%, said that they would definitely or probably encourage friends and neighbors to vote for such candidates.

Business leaders also recognize that the Trial Bar makes significant contributions to the campaigns of legislators who are willing to vote against liability law reforms to preserve the current unfair advantages for lawyers and plaintiffs.

More than eight in ten business leaders, 83%, indicated that they would *definitely* want to know if a candidate for political office accepts campaign contributions from the Trial Bar.

Another 11% said they would possibly be interested in knowing. Only 6% indicated that they have no interest in knowing whether the candidate accepts Trial Bar campaign contributions.



IV. Survey Demographics

All respondents are members of the Kansas Chamber of Commerce.

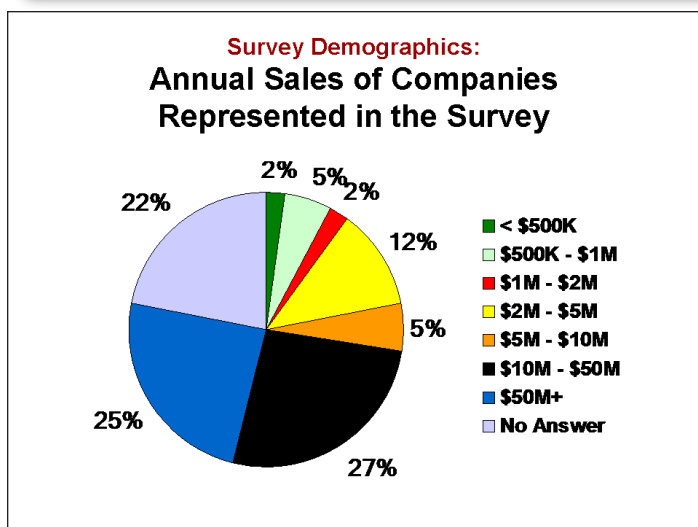
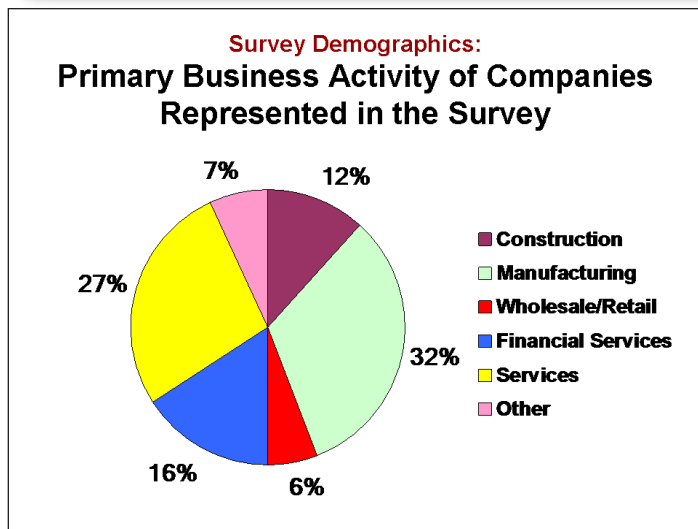
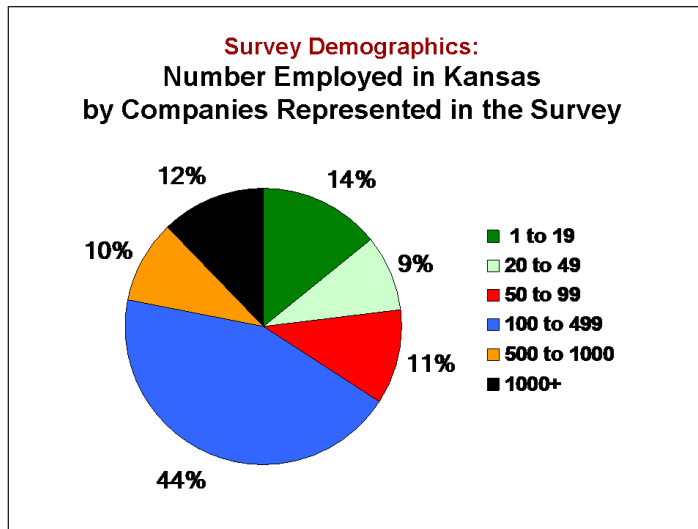
Nearly one-quarter of the business owners and managers participating in this survey, 23%, have 49 or fewer employees. Another 11% have 50 to 99 employees and 44% have 100 to 499 employees. Leaders representing businesses with 500 or more employees comprise 22% of the respondents.

Nearly nine out of ten survey participants, 87%, represent businesses that have their main offices in Kansas.

Business leaders participating in the survey represent the wide diversity of industries in Kansas. No one industry dominates the survey results, although manufacturing companies represent about one-third of all participants.

Similarly, businesses represented in the survey reflect many levels of annual sales revenue. Overall, the survey respondents are small and medium size Kansas-based businesses.

About one in ten of the companies, 9%, have annual sales revenue of less than \$2 million. Another 17%, have sales between \$2 million and \$10 million. About one-quarter, 27%, have sales between \$10 million and \$50 million. One-quarter, 25%, of the companies represented in the survey have sales above \$50 million.





Dan Pero, President
600 South Walnut Street
Lansing, MI 48933
517-371-7276

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