U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

April 23, 2024

Her Excellency Kirsten Hillman
Ambassador of Canada to the United States
501 Pennsylvania Avenue, NW
Washington, DC 20001

Re: British Columbia Bill 12-2024 *Public Health Accountability and Cost Recovery Act*

Dear Ambassador Hillman:

On behalf of the U.S. Chamber of Commerce, I write to request that you share the significant concerns of the Chamber and our Institute for Legal Reform (ILR) regarding British Columbia Bill 12-2024, the *Public Health Accountability and Cost Recovery Act*, with the Legislative Assembly of British Columbia. This legislation is extraordinarily broad in scope and would create potential liability for any business – including many American firms and small businesses – with even a tenuous connection to British Columbia.

The U.S. Chamber is the world's largest business federation representing the interests of companies of all sizes across every sector of the economy. Our members range from the small businesses and local chambers of commerce that line American Main Streets, to leading industry associations and large corporations. For more than 100 years, we have advocated for pro-business policies that help businesses create jobs and grow the economy. ILR is a division of the U.S. Chamber that champions fair legal systems that promote economic growth and opportunity.

BC Bill 12 is extraordinarily broad, departs from reasonable expectations of fairness and predictability, and could impose significant unwarranted costs on unsuspecting firms. It could apply to virtually any product, good, service or by-product that is offered, sold, or used in British Columbia and that may cause or contribute to disease, injury or illness, including a deterioration of health, problematic use, addiction, or even merely increase the risk of such harm.

Indeed, in a speech to the BC Legislative Assembly on April 2, 2024, Attorney General of British Columbia Niki Sharma stated: "this new act is generally applicable and wide-ranging to any wrongdoer that causes or contributes to disease, injury or illness *or the risk* of disease, injury or illness." The legislation could be applied to products that are already subject to rigorous regulatory regimes, including those that have been approved for sale or distribution by the federal or provincial government, and have not violated any applicable regulations.

Compliance with regulatory requirements may not be a defence to liability under this new legislation.

The legislation is also broad in the powers it would afford the Province, giving it sweeping advantages to pursue claims. The bill disregard foundational tort law principles, evidentiary principles that afford fairness to defendants, and has the potential for unprecedented expansion of liability. Some of the procedural and evidentiary provisions in BC Bill 12 are novel and would significantly curtail the rights and ability of defendants to defend themselves against the government's claims under the Act and limit their rights to disprove the costs that government seeks to recover under the Act. Several of these features are unprecedented in the Canadian (or American) legal system and are manifestly unfair to defendants. Moreover, these features are inconsistent with the Province's stated goal of "enabling litigation to proceed efficiently while preserving fairness."

While advocates of the legislation have asserted that this legislation would only apply to corporate "wrongdoers," there is no requirement in the legislation that any corporation or person have intentionally or knowingly violated any statute or regulation. Therefore, any breach of duty, even if unintentional or minor, could be a basis for government action. Even "law-abiding businesses" could find their products targeted by an action under this legislation.

Given the substantial procedural advantages that the legislation would provide to the government, any person or corporation named as a defendant to an action under this legislation would face significant costs of litigation and risks to reputation, even if they did not engage in any breach of duty or wrongdoing. We are concerned that actions could be commenced with little or no merit, and the legislation could be used to place substantial settlement pressure on persons or companies – including small businesses – that have not engaged in any wrongful conduct, or breached any duty, but cannot bear the costs of trial.

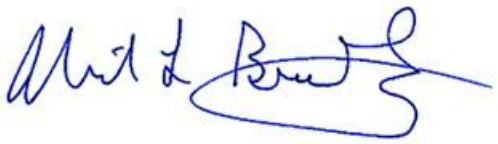
As drafted, the proposed legislation could have far-reaching implications for companies, their directors and officers in a diverse range of industries, including the food, beverage, retail, health, medical products, manufacturing, technology, and resource industries. It signals hostility towards business and innovation generally and indiscriminately. It is also could target an undefined yet broad and diverse range of companies and individual defendants who operate outside the province and yet may find themselves named in a lawsuit in British Columbia.

We are also concerned that the provision of a statutory cause of action for the federal government – and the ability for the Province to bring a class action on behalf of other Canadian governments – gives this legislation potential national impact on businesses that provide goods or services anywhere in Canada.

This legislation is likely to dampen foreign investment and economic activity in many sectors. It will inevitably cause some businesses to consider alternatives to conducting business in or directing investment to British Columbia and Canada.

We respectfully request you share our concerns with the Legislative Assembly.

Sincerely,



Neil L. Bradley
Executive Vice President, Chief Policy Officer,
and Head of Strategic Advocacy
U.S. Chamber of Commerce