

Testimony of the Manufacturing Policy Alliance on Sub. H.B. 606
by Thomas M. Zaino, JD, CPA
House Civil Justice Committee
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Chairman Hambly, Ranking Member Brown, and fellow distinguished members of the House Civil Justice Committee, my name is Tom Zaino, and I am Managing Member of Zaino Hall & Farrin LLC, a Columbus-based law firm. I am here today on behalf of the Manufacturing Policy Alliance (MPA) to support Sub. H.B. 606.

Who is MPA? The Manufacturing Policy Alliance (MPA) is a group of large manufacturers around the state of Ohio who operate in all eighty-eight counties. Combined, MPA has had an annual payroll of \$2.5 billion and has spent approximately \$11 billion with suppliers around the state.

MPA Members and the COVID-19 Pandemic: MPA was formed to provide an effective voice on critical policy matters that affect the competitiveness of Ohio and its large manufacturing companies. We strive to work with the General Assembly and the Governor to help sustain a healthy and vibrant economy. MPA member companies were deemed essential business operations and they have generally maintained their manufacturing and retail operations throughout the COVID-19 pandemic. Two of our members have even teamed up to increase ventilator production (GE and Ford). We are providing this testimony today in support of Substitute House Bill 606, as well as some possible improvements. This bill will provide important liability protections that allow all businesses, including manufacturers, get back to work during the COVID-19 pandemic.

MPA Member Goals: If Ohio wants to get people back to work and tax dollars coming back in, this type of legislation is very important. Our members are concerned about two primary areas:

- 1) Lawsuits filed by employees asserting that they contracted COVID-19 at work and were inappropriately put at risk, and
- 2) Lawsuits filed by customers, contractors, and others that visit business operations and also assert that they contracted COVID-19 at a business facility.

We are just two months into the pandemic and some of our members have already been sued in other states.

Need for Liability Protection: As Ohio businesses continue their ongoing operations or reopen, Sub. H.B. 606 would protect persons from lawsuits related to COVID-19. Even though businesses may ultimately be successful with such claims under current law, the volume of frivolous lawsuits and the related defense costs will likely be overwhelming. Lack of immunity from such lawsuits will hurt the effort to return to normal and it will hurt Ohio's competitiveness.

Needed Improvements: While the bill goes a long way to address MPA member concerns, it could be improved.

1. **Exceptions to Immunity**. Sub. H.B. 606 provides that the immunity will not apply if it is established by clear and convincing evidence that the infection was transmitted by reckless or intentional conduct, or with willful or wanton intentional conduct. While there should be some room for lawsuits in abusive situations, providing a menu of four available options to eliminate immunity keeps the door wide open for aggressive plaintiff attorneys. MPA believes that a higher intentional standard should be the only exception to immunity used in Sub. H.B. 606. For example, MPA believes that the 2005 federal Public Readiness and Emergency Preparedness (PREP) Act (Public Law 109-148) provides a better approach and should replace the current exceptions. For similar situations, the federal law provides immunity except in cases of “willful misconduct,” which is defined as follows:

(A) In General.— Except as the meaning of such term is further restricted pursuant to paragraph (2), the term “willful misconduct” shall, for purposes of subsection (d), denote an act or omission that is taken—

- (i) intentionally to achieve a wrongful purpose;
- (ii) knowingly without legal or factual justification; and
- (iii) in disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.

(B) Rule of Construction.— The criterion stated in subparagraph (A) shall be construed as establishing a standard for liability that is more stringent than a standard of negligence in any form or recklessness.

We can’t forget that in the early days of the pandemic, the government wanted essential businesses to remain open. Was it reckless for such essential businesses to remain open in March and April although personal protection equipment may not have been readily available or appropriate social distancing was not immediately practical given the type of operation? The federal language is much more helpful at achieving the bill’s goal of reducing lawsuits when compared to the bill’s currently proposed standards.

2. **Workers’ Compensation**. The bill does not directly address claims by employees and the application of the workers’ compensation system. Any claims brought by employees asserting they contracted COVID-19 as a result of their employment should only be brought through the workers’ compensation system. Further, such claims should be “mutualized,” similar to what was done for unemployment purposes.

Support for Sub. H.B. 606: The Manufacturing Policy Alliance believes Sub. H.B. 606, and the changes we outlined above, will go a long way to help get Ohio back to work and return Ohio’s healthy and vibrant economy. We appreciate the leadership shown by Representatives Seitz and Grendell in bringing this bill forward and encourage the House to enact Sub. H.B. 606 as soon as possible.

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions you or members of the Committee may have—I can be reached at tzaino@zhftaxlaw.com or 614-598-1596.