



May 19, 2020

Representative Steve Hambley
Chair, Ohio House Civil Committee
77 South High Street, 11th Floor
Columbus, OH 43215

Dear Chairman Hambley:

I am writing on behalf of our 21,000 governing members to lend support for House Bill 606, legislation providing liability protections for small businesses across Ohio. NFIB commends Representatives Grendell and Seitz for recognizing the importance of this issue for Ohio's entrepreneurs. We believe House Bill 606 is a great starting point. We would, however, like to see several issues, identified below, addressed to ensure our businesses are not facing unnecessary lawsuits that could severely hamper their recovery efforts.

By way of background, a typical NFIB member in Ohio employs 20 or fewer and does less than \$2 million in annual receipts. Our members come from all industry types and each of the 88 counties. We like to say if there is a type of business in operation, we count at least one as a member.

The onset of the COVID-19 pandemic has thrown Ohio's economy into an unprecedented situation. We have seen tax receipts well below projections, over one million Ohioans filing for unemployment compensation benefits, and the required closure of businesses putting many entrepreneurs in a dire economic situation. Unfortunately, the sad reality is some businesses will not survive. These business owners and their employees are our family, friends, and neighbors. We hope most will agree, no one planned for such a situation.

While many businesses were required to close, others were permitted to remain open to provide services and products. Our healthcare workers continued delivering medical services to individuals. Foodservice providers ensured Ohioans had access to groceries and meals. Other businesses answered the call, modifying their operations to produce products to assist combating the pandemic. The extraordinary situation changed what was seemingly the normal course of business.

Many of our members were shuttered having no incoming revenue. Others saw their receipts take a nosedive. The Ohio Legislature took important steps through the passage of House Bill 197 to help alleviate some of the pressures businesses face. We know many Ohio businesses received Paycheck Protection Program loans from the U.S. Small Business Administration. In fact, over \$60 billion in loans. However, some did not. Others chose to forego these loans due to the uncertainty surrounding their future viability.

As our state begins to reopen many different industry sectors, Ohioans continue working together, keeping us moving forward. According to JobsOhio, we will see approximately 92 percent of industries

able to be open by the end of May. Yet, the economic struggles will remain for so many, and for some time. We have seen other states reopen their economies, in whole or part. If the observations being made thus far are similar for Ohio, there may be a slow return to previous operations. As our businesses open their doors, we must ensure they are not swallowed under by a flood of lawsuits. At the same time, we must also protect businesses who remained open to not have the specter of litigation hanging over their heads. A recent survey of Ohio NFIB members indicates nearly 70 percent are concerned about liability claim increases.

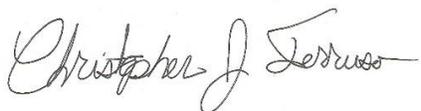
House Bill 606 provides some of this certainty for our businesses as we continue to navigate this pandemic. We want our members to open with confidence, and part of that confidence is knowing they will not be faced with unwarranted lawsuits. Our businesses value their employees and their customers. Without them there really is no business to operate. I am confident small businesses will do everything in their power to ensure their employees and customers can operate and shop as safely as possible in their establishments. Ohio entrepreneurs have met and will continue to respond to meet the expectations of the employees and customers alike.

As aforementioned, we believe House Bill 606 is a great starting point. We do believe it can be enhanced in the following ways. First, given the unprecedented situation all of us find ourselves in, we believe a standard that exceeds reckless is appropriate. The reality is the virus is not going away and regardless of precautions or preventative measures taken, there will continue to be cases. Second, for those entities that answered the call to help produce personal protective equipment by changing their normal business operations, we must ensure they are explicitly protected. Third, we appreciate the addition of language that reads: "A violation of an order issued by the director of health of this state, alone, is not sufficient to prove 'reckless conduct' regarding the transmission of a coronavirus infection." We feel language should be added that expressly indicates an order does not create a duty or standard of care. This will protect businesses from the nuances of orders that may be frequently changed. Finally, we acknowledge the protection for businesses against claims of "transmission" in House Bill 606. Our members remain concerned about claims of exposure in their operations. We strongly believe they need protection from these potential suits.

Our goal is for all our members to open and resume normal operations. However, we must acknowledge the reality COVID-19 will likely be with us for some time. We can't expect our members to be subjected to unchecked litigation surrounding a virus they can't fully prevent. We believe House Bill 606 recognizes this reality. We look forward to working with this committee to address the previously mentioned issues to make certain House Bill 606 affords appropriate liability protections.

Thank you for the opportunity to provide written comments on House Bill 606.

Sincerely,



Christopher J. Ferruso
Ohio Legislative Director