

**OPPONENT TESTIMONY TO HB 606  
BY THE OHIO EMPLOYMENT LAWYERS ASSOCIATION AND  
PROTECTING OHIO EMPLOYEES  
MAY 27, 2020**

Chairman Hambley and members of the House Civil Justice Committee,

I previously submitted written testimony jointly with representatives of 8 other organizations concerning the earlier version of this bill. I submit this testimony about the latest version of House Bill 606 to make it clear that many of the problems with the previous versions have not been corrected, and even more concerning, other provisions have been amended in ways that increase their discriminatory impact on employees, low income communities, senior citizens, people with disabilities and people of color.

The changes in the newest version assure that even irresponsible or reckless employers and medical providers cannot be held accountable for dangerous or illegal conduct that sickens, kills, or injures Ohioans. As important, it extends unprecedented protection to state and local government agencies that would strip some of our most vulnerable citizens and our most vital public employees of their rights in times of crisis. The purpose of my testimony is to highlight the provisions in the pending bill that will cause those who need protection to be abandoned and left without any meaningful protection.

**INCOMPETENT, IRRESPONSIBLE AND RECKLESS MEDICAL PROVIDERS CANNOT BE HELD ACCOUNTABLE**

The bill protects all medical providers (a term defined so broadly that, besides doctors and nurses, it includes personal trainers and masseuses) from being held accountable in any way for irresponsible, negligent, and reckless treatment during a disaster or emergency that causes injury, illness or death. The bill will ban any lawsuit against providers (and any institution at which a provider works, whether or not it is really a medical facility). Even more disturbing, the bill will prohibit the Ohio Medical Board, Board of Nursing, and other boards that license providers from investigating or disciplining them for incompetent, irresponsible, and negligent treatment. In fact, given the extremely unclear, conflicting, and undefined language in the bill, it is possible that even grossly negligent and reckless conduct will be beyond the reach of these boards. The applicable language of the bill could be read to permit such disciplinary action only for conduct that is both grossly negligent and related to “regulatory requirements applicable to facilities”—a term not defined in this bill or any other area of Ohio law.

The bill gives providers, during any declared disaster or emergency, nothing less than a license to be irresponsible, negligent, and reckless. Under the bill, an incompetent doctor, nurse, or other provider can proceed without any concern about consequences. A heavy drinking physician need not hesitate to have a few stiff ones before surgery, as long as there is a declared disaster or emergency in place. All that is required is that the condition being treated is related to the event or disease that caused the emergency. This would include catastrophic weather, fires, major industrial accidents or explosions, large scale drinking water contamination, or new contagious diseases. Obviously, the range of injuries or illnesses related to such catastrophes could include broken bones, heart damage, neurological impairments, kidney damage, fever, sepsis from open wounds, loss of lung capacity – and the list goes on and on.

## **MANY OF THE IMMUNITIES CREATED BY THE BILL ARE VIRTUALLY PERMANENT**

Making matters worse, most of the bill's new immunities will stay in effect permanently. The only sunset provision in the bill applies to the provision that allows medical providers to act recklessly—negligent conduct in response to a disaster or emergency will be licensed permanently. Disaster and emergency declarations typically have no specified end date. And, as is apparent from the above examples, sadly, disasters and emergencies happen all too often. In addition, the bill includes disaster and emergency declarations by state officials as well as the federal government. In effect, the legislators who vote for the bill, as presently written, are likely banning any medical board enforcement actions and lawsuits by injured patients or the families of deceased patients for negligent and irresponsible treatment and diagnoses permanently, or for a period of time that is not even knowable.

## **THE BILL STRIPS STATE EMPLOYEES OF ANY PROTECTION FROM EVEN INTENTIONAL AND RECKLESS CONDUCT BY THE STATE DURING THE COVID-19 PANDEMIC, AND IT GIVES UNLIMITED, PERMANENT IMMUNITY TO LOCAL AND COUNTY GOVERNMENTS DURING PUBLIC HEALTH EMERGENCIES**

Ohio's state prisons have proven to be among the most dangerous places in the country during the current pandemic—not just for inmates, but for prison workers and medical personnel. This bill's response, rather than focusing on corrective measures, is to provide absolute, permanent immunity to the state for any conduct by an agency in response to the COVID-19 pandemic, including, but not limited to, the infection of any person in the custody of the state (such as prison inmates or mental health patients) with COVID-19, or the infection of any officer or other employee (such as corrections officers). The bill's provisions are so broad that it would be impossible for the state to be sued under state law even if an inmate or corrections officer could prove that they were intentionally infected with COVID-19 as part of some kind of sadistic and inhumane medical experiment.

Corrections officers and other vitally important workers in state prisons and other facilities are placed in an impossible bind by this bill. They cannot refuse to work in unsafe conditions, as they will lose their jobs and will not even be eligible for unemployment if they do so. If they are in fact exposed to and sickened by the virus, they will most likely be unable to obtain workers' compensation because of the difficulty of proving they were infected at work. But they will now be told that even if their employers take no care whatsoever for their safety, or actually expose them to a deadly contagion through intentionally harmful conduct, they will never have a remedy under Ohio law. The bill even further deprives them of protection by barring the state from providing indemnity to individual officers who are sued by inmates or others for infecting them with the virus. The message for prison workers is clear: your health and safety is not a priority for this state, and if something goes wrong, you are on your own.

The bill extends similar broad immunity to counties, cities, and other local government agencies for virtually any action taken by such agencies during this or any future public health emergency. This means these agencies generally cannot be sued even if their actions are intentionally, wantonly, or recklessly harmful to the public. Nothing in the bill limits this immunity to COVID-19-related conduct, and in fact, beyond extending to future, unknown "public health emergency declarations," it is so broad that it covers "any function of local government" (from road repair to trash collection) so long as it happens to occur during such an emergency declaration—which, again, may not even have an end date.

**IRRESPONSIBLE CONDUCT THAT SPREADS CORONAVIRUS INFECTION WILL BE IMMUNIZED, AND THE BILL BANS THE EVIDENCE NECESSARY TO PROVE RECKLESSNESS**

The bill does not limit its extreme protections to medical providers. The legislation also shelters all businesses, religious organizations, and government entities, including state institutions of higher education, from liability for transmitting a coronavirus infection, even if they are clearly at fault because of irresponsible and negligent conduct. At a time when public health and the health of Ohio's essential employees and public servants depends on businesses and others taking appropriate precautions against infection, this bill removes any incentive for them to do so.

Although the bill purports to provide an exception to this immunity for recklessness, it engages in a kind of sleight of hand as to the recklessness exception. Under the bill, if a business, religious institution, or government agency commits reckless conduct that causes a coronavirus infection, the individual who suffered (and in death cases, their family) can sue. But the bill takes away the evidence that the individual would need to prove recklessness in cases involving COVID-19.

Under the bill, government orders, such as those issued by the Ohio Department of Health during the current emergency, do not create any duty or obligations on a business or other service provider, and the definition of "reckless" specifically excludes the violation of such an order. Per the bill's findings, such orders or standards cannot even be used as evidence in court, as they are presumed to be inadmissible. As a result, businesses and even government officials are licensed to recklessly thumb their noses at directives and guidelines specifically designed to help prevent the spread of infection without concern about being held accountable.

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