

HB 392 - beekeeper civil immunity
Testimony by John Van Doorn
For the Ohio Association for Justice
Before the House Economic Development, Commerce & Labor Committee
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Chairman Young, Vice Chairman DeVitis, Ranking member Lepore-Hagan and members,

Introduction – John Van Doorn with the Ohio Association for Justice, the state bar association for attorneys who help people get back on their feet financially after they have been injured in a car collision or in the workplace, by a defective product, or as a result of a medical error.

OAJ opposes immunity legislation in general because immunity creates a special set of rules for an exclusive set of people.

Immunity means stripping Ohioans of one of their basic freedoms guaranteed in the US and Ohio Constitutions.

In the United States, the Founding Fathers considered the right of a citizen to have civil suits heard by a jury of peers to be so precious they guaranteed it in the 7th Amendment of the Bill of Rights. The Ohio Constitution, Article I, Section 5, states that the right to trial by jury shall be “inviolable.”

Address the exceptions to the immunity found in HB 392. The bill says immunity does not apply if beekeeper engaged in “intentional tortious conduct or acts or omissions constituting gross negligence.”

Intentional tortious conduct is a type of civil wrong that can only result from the intentional act of the defendant. Typical intentional torts are battery, assault, false imprisonment, trespassing, and intentional infliction of emotional distress.

There are several Ohio Supreme Court decisions defining gross negligence. In one case, the Court defined gross negligence as “wanton conduct that is done with conscious or reckless disregard for the rights and safety of others.” In another case, the Court stated: “The distinction between negligence and gross negligence is not merely a question of degree of inadvertence or carelessness but one of reckless disregard.”

Safe to say that the legal bar to establish a claim under the intentional tortious conduct or gross negligence standard is set so high that it is almost an impossible legal hurdle.

Why is this special legal protection needed?

According to proponents, this legislation is intended to address decline in bee population, particularly honey bees, by encouraging more people to take up the hobby of beekeeping.

The proponents say one impediment that stands in the way of more people becoming beekeepers is that homeowner's insurance policies don't cover beekeeping activities. Some homeowner's policies have an exclusion referred to as "open peril exclusions", which apply to certain pets and pests. The proponents answer is to provide beekeepers with immunity.

How real is their concern about litigation?

Proponents admit there has been no lawsuit in which beekeeper been found liable for damages.

In fact, there has been only one lawsuit filed against a beekeeper that proponents are aware of.

Further, the proponents commented that beekeeper can't be found responsible because there is no way to tie the bee that caused the sting to the beekeepers hive.

This is not a liability crisis by any stretch of the imagination.

We would submit that the bigger obstacle to becoming a backyard beekeeper is the neighbors' objections.

As members of the committee have noted, a number of municipalities and townships have responded to their constituents by passing ordinances prohibiting man-made beehives in their community ... because people in those communities don't want beehives in their backyards. Those objections aren't going to disappear just if you pass this bill.

Rather than blowing a hole in Ohioan's constitutional rights, I humbly propose a modest suggestion. The Ohio State Beekeepers Association should work with the property casualty insurance industry, or perhaps with one or two insurance companies, to develop a rider for beekeepers that could be sold as part of homeowner's insurance policy. Require that to remain in compliance with the insurance policy the beekeeper must abide by the best practices of the Beekeepers Association.

To conclude, this legislation does not address a real problem. There is no liability crisis for beekeepers. They may face a homeowner's insurance problem, but this legislation is not the answer.

Thank you for your attention.