



OHIO ALLIANCE FOR CIVIL JUSTICE



**Senate Judiciary Committee
Senate Bill 308
Proponent Testimony
Wednesday, May 13, 2020**

Chairman Eklund, Vice-Chair Manning, Ranking Member Thomas and members of the Senate Judiciary Committee, thank you for the opportunity to provide testimony in support of Senate Bill 308.

My name is Anne Marie Sferra and I am here on behalf of the Ohio Alliance for Civil Justice (OACJ). I am an attorney with Bricker & Eckler who serves as counsel to the OACJ. By way of background, the OACJ was founded in the mid-1980s to stop lawsuit abuse and promote a common-sense civil justice system in Ohio. The OACJ is comprised of representatives of dozens of Ohio trade and professional associations, small and large businesses, medical groups, farmers, non-profit organizations and local government associations — for a combined representation of more than 100,000 individuals and businesses. The OACJ's leadership team includes representatives from the following organizations: NFIB/Ohio, Ohio Chamber of Commerce, Ohio Council of Retail Merchants, Ohio Hospital Association, Ohio Manufacturers' Association, Ohio Society of CPAs, and the Ohio State Medical Association.

Senate Bill 308 has two primary parts — the first part amends R.C. 2305.2311 and pertains specifically to healthcare providers and professionals. The second part proposes a new Ohio law — R.C. 2305.2312 – which provides additional protections from liability to Ohio businesses and others, including those who rise to the occasion of providing goods and services needed to respond to disasters, like the one Ohio and most of the world is currently facing. It is this new provision that the OACJ wishes to address today.

First, we would like to provide background information that led to the development of this legislation. During this unprecedented time, Ohio businesses have stepped up to provide services and products needed for Ohioans — including those employed on the front lines — to combat the novel coronavirus, which causes the disease known as COVID-19. Governor DeWine and other leaders expressed the need for personal protective equipment, ventilators, and other healthcare equipment and products by calling out to the business community to help by manufacturing, procuring, or even donating these supplies. Certain services were direly needed to maintain safety for certain populations, like our healthcare and other front-line workers, or our homeless population who needed shelter to help protect them from the spread of disease.

Some real-life examples include manufacturers who retooled to produce masks and plastic face shields, hotels and convention centers prepared to serve as medical facilities for patients, even liquor distilleries produced hand sanitizer for front-line workers and others. These examples show that some Ohio businesses chose to act outside the scope of their normal business activities in order to help others. They should not have to fear what liabilities may occur on the back end of

this pandemic. The same goes for businesses who responded to the government's call for products or services within the normal scope of their business activities.

This fear is not unfounded. Well-known companies like Purell and Target have recently been sued in connection with the current pandemic. It is not a matter of whether, but when, such lawsuits will be filed against additional businesses.

Senate Bill 308 — specifically proposed R.C. 2305.2312(B) — grants qualified immunity from civil lawsuits for businesses and others who manufacture or provide products and services in response to a disaster. It is important to note the protections given to such businesses under Senate Bill 308 are only triggered if the business is providing such services or products in response to a disaster. This trigger is important because the business must be acting in response to the disaster as declared by the federal government, the state, or a political subdivision. Thus, it is not a blanket immunity, and there is no immunity for intentional, wanton, or willful misconduct.

Another protection afforded in this bill also provides immunity to businesses against lawsuits by patrons, employees, and others seeking to impose liability for exposure to the novel coronavirus at their business. Under this provision, a business will be granted qualified immunity against claims of exposure to disease, in this instance COVID-19. This will protect a business against a lawsuit brought by visitors, guests, and any employees of the business. We should protect businesses during this uncertain time, because a business has no proven way of truly knowing if the disease remains in its building or on its products. As we are well aware, this pandemic is caused by an unseen enemy. Businesses should not be held liable for something they cannot see or control, even when they take the recommended steps to provide a safe environment.

Another key aspect to the bill is that the language used is flexible enough to be used not only for the current pandemic, but thereafter — allowing for protections in the future if something similar to the current pandemic occurs.

Thank you for allowing the OACJ to provide testimony in support of Senate Bill 308. We urge the committee to support Senate Bill 308, and I am happy to answer any questions.