

**Testimony of the Manufacturing Policy Alliance on S.B. 308**  
**by Thomas M. Zaino, JD, CPA**  
**Senate Judiciary Committee**  
**May 13, 2020**

Chairman Eklund, Ranking Member Thomas, and fellow distinguished members of the Senate Judiciary 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).

**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). I am here today to speak to the Committee in support of Senate Bill 308, which provides important liability protections as 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, S.B. 308 would protect businesses, non-profits and religious institutions 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. All Businesses Should be Protected:** S.B. 308's immunity may not apply to all types of service businesses or operations, including construction, professional services, and repair services. While our members are manufacturers, they also provide many services and operate

many other types of businesses. The language should provide protections to all types of businesses, not just certain industries.

2. Protection Should be Limited to Consequences of COVID-19. The language seems to provide immunity beyond damage related to the transmission of COVID-19—it could include other torts, such as traffic accidents, slip and falls, etc. This is too broad and should be fixed.
3. “Reckless” Behavior Should be the Only Exception to Immunity. S.B. 308 also provides that the immunity will not apply if the service provider's act or omission is intentional, willful, or wanton misconduct. While there should be some room for lawsuits in abusive situations, these three standards keep the door wide open for aggressive plaintiff attorneys. In 1989, the General Assembly provided similar immunity to employers with regard to the HIV virus. In R.C. 3701.249, Ohio provided immunity from anyone that may have contracted HIV from employees that tested positive for HIV unless the transmission occurred as a result of the “reckless” conduct of the employer. MPA believes that the higher of “reckless” should be the only exception to immunity used in S.B. 308. Another approach would be to replace the exceptions with the “willful misconduct” definition used in the 2005 federal Public Readiness and Emergency Preparedness (“PREP”) Act (Public Law 109-148).
4. 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 S.B. 308:** The Manufacturing Policy Alliance believes S.B. 308 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 Sen. Huffman and the other co-sponsors by bringing this bill forward and encourage the Senate to enact S.B. 308 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.