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BEFORE THE SENATE JUDICIARY COMMITTEE

**SENATOR JOHN EKLUND
CHAIR**

**TESTIMONY
OF
BRUCE JOHNSON
PRESIDENT
INTER-UNIVERSITY COUNCIL OF OHIO**

MAY 26, 2020

The Public Universities of Ohio

The University of Akron
University of Cincinnati
Miami University
Ohio University
Wright State University

Bowling Green State University
Cleveland State University
Northeast Ohio Medical University
Shawnee State University
Youngstown State University

Central State University
Kent State University
The Ohio State University
The University of Toledo

Chair Eklund, Vice Chair Manning, Ranking Minority Member Thomas and members of the Senate Judiciary Committee, thank you for the opportunity to provide written testimony today for Senate Bill 308 on behalf of the state's fourteen public universities, all of which are members of the Inter-University Council of Ohio (IUC). My name is Bruce Johnson and I am the President of the IUC.

The IUC was established in 1939 as a voluntary educational association of Ohio's public universities. It is committed to ensuring affordable opportunities for the more than 329,000 students attending our member institutions without sacrificing the quality of their education or experience.

I am providing this testimony in support of Senate Bill 308, sponsored by Senator Matt Huffman. As you know, the bill grants qualified civil immunity to a service provider for injury, death, or loss to person or property resulting from, or related to, the person's exposure to an illness through that provider's provision of services. Ohio's fourteen public universities, which provide a vast array of services to the students we serve and the faculty and staff we employ, also need this additional protection during this uncertain period. In fact, we would suggest that it is critically necessary in order for our state colleges and universities to continue fulfilling our mission and educating our students.

A significant challenge for colleges and universities as they plan to reopen is the unknown. While universities will undertake significant safety measures to reopen for in-person classes, it is impossible to know whether those safety measures will be sufficient to prevent, or limit on-campus infections. Therefore, the liability risk for universities is that if Covid-19 were to occur on campus, despite all good-faith efforts by a university to prevent an outbreak, a university could face civil claims for damages arising from circumstances largely beyond its control.

Although individual state employees enjoy immunity from civil claims for damage or injury arising from the performance of their duties under Ohio Revised Code Section 9.86, state entities themselves do not have that same protection, having waived that immunity pursuant to Ohio Revised Code Section 2743.02. For typical claims of negligence, where duty and a breach thereof, can be determined more readily, the established statutory framework adequately protects a university and its employees. However, under the current circumstances, where it can be difficult, if not impossible, to establish what is an appropriate standard of care to prevent or minimize Covid-19 infections, the current statutory framework does not provide an adequate safeguard for universities. This especially is true when a university is subject to circumstances outside of its reasonable control, including the behavior of other individuals, to effectively implement safety measures.

Therefore, for universities to reopen effectively and to provide in-person education for their students, it is imperative that they receive the protection of statutory immunity from civil claims related to Covid-19. It is important to note that immunity is not unlimited; if institutions were to engage in willful or wanton misconduct (similar to the limitations applicable to state employee immunity under ORC 9.86), immunity does not apply.

The statutory language provides the necessary balance between immunity and reasonable accountability. However, with such immunity, universities can undertake the essential function of reopening and fulfilling their educational mission, knowing that so long as they undertake reasonable, good-faith steps to prevent or limit Covid-19-related infections on campus, they will not be subject to potentially catastrophic liability exposure. Absent such immunity protection, and with the unknown potential for civil claims related to circumstance beyond their reasonable control, it could become untenable for universities to effectively fulfill their academic mission.

The IUC recommends amending the bill to explicitly include in the list of service providers identified in the bill, a state institution of higher education as it is defined in ORC Section 3345.011 – which includes community colleges and public universities.

Thank you, Mr. Chairman and members of the committee for your consideration of this testimony and our request for inclusion in the legislation.