



June 24, 2020

Senator John Eklund
Chair, Ohio Senate Judiciary Committee
1 Capitol Square, 1st Floor
Columbus, OH 43215

Dear Chairman Eklund:

I am writing on behalf of our nearly 22,000 governing members to provide comments on House Bill 606, legislation providing liability protections for small businesses across Ohio. NFIB commends Representatives Grendell for recognizing the importance of liability protection for Ohio's entrepreneurs. We supported House Bill 606 as it passed the Ohio House Civil Justice Committee with bipartisan support. However, we have significant concerns with an amendment added on the floor of the Ohio House of Representatives that expands Ohio's workers' compensation occupational disease statute.

The onset of the COVID-19 pandemic has thrown Ohio's economy into an unprecedented situation. We have seen tax receipts well below projections, over one million Ohioans filing for unemployment compensation benefits, and the required closure of businesses putting many entrepreneurs in dire economic situations. Unfortunately, the sad reality is some businesses will not survive. These business owners and their employees are our family, friends, and neighbors. We hope most will agree, no one planned for such a situation.

While many businesses were required to close, others were permitted to remain open to provide services and products. Our healthcare workers continued delivering medical services to individuals. Foodservice providers ensured Ohioans had access to groceries and meals. Other businesses answered the call, modifying their operations to produce products to assist combating the pandemic. The extraordinary situation changed what was seemingly the normal course of business.

As our state has now reopened most industry sectors, Ohioans continue working together, keeping us moving forward. Nearly all businesses have been permitted to open in some capacity. Yet, the economic struggles remain for so many, and will for some time. As our businesses open their doors, we must ensure they are not swallowed under by a flood of lawsuits. At the same time, we must also protect businesses that remained open to not have the specter of litigation hanging over their heads. A recent survey of Ohio NFIB members indicates nearly 70 percent are in some degree concerned about liability claim increases.

House Bill 606 provides some of this certainty for our businesses as we continue to navigate this pandemic. We want our members to open with confidence, and part of that confidence is knowing they will not be faced with unwarranted lawsuits. Our businesses value their employees and their customers. Without them, there really is no business to operate. I am confident small businesses will do everything in their power to ensure their employees and customers can operate and shop as safely as possible in their establishments. Ohio entrepreneurs have met and will continue to respond to meet the expectations of their employees and customers alike.

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As previously indicated, we believe House Bill 606 provides businesses with appropriate liability protection. The bill establishes a reckless or intentional conduct or willful or wanton misconduct standard for businesses with respect to lawsuits from March 9, 2020, the date of Governor DeWine's executive order closing some businesses through December 31, 2020. This standard provides our small business owner members confidence that they will not face frivolous lawsuits. The reality is the virus is not going away and regardless of precautions or preventative measures taken, there will continue to be cases. We do respectfully request one change to this standard we believe was an oversight when passed by the Ohio House. In line 889 of the bill, we are requesting to add "mis" to "intentional conduct" to read "intentional misconduct." We feel this change will comport with the willful and wanton misconduct language contained in that same section.

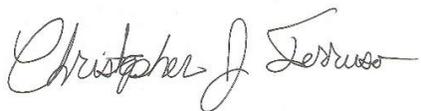
House Bill 606 also states a government order, recommendation or guideline does not create a duty of care that may be enforced in a cause of action. Additionally, the bill recognizes COVID-19 as a new emergency, asserting nothing in the Ohio Revised Code establishes duties upon businesses and premises owners to ensure members of the general public will not be exposed to such airborne germs and viruses. This is critical for our small businesses that are doing all they can to comply with regularly changing government orders and recommendations to protect their employees and the public.

In addition to the aforementioned change, we request the removal of language added on the floor of the Ohio House. This language creates a presumption, for certain classes of workers, under workers' compensation occupational disease statute, that contraction of COVID-19 occurred in the course of and arising out of the employee's employment. The presumption disrupts the normal claims adjudication process and will make contesting a claim nearly impossible for an employer who is likely unaware of who their employees have been in contact with outside the workplace that could be the source of contraction. Further, this presumption is unnecessary. The Bureau of Workers' Compensation (BWC), as of June 16, 2020, has adjudicated 137 claims for private, state-fund employers. BWC has approved nearly 84 percent of those claims. The process is working and thus the amendment is unnecessary. We respectfully request removal of the language in lines 624-966. Absent removal of this language, we will oppose House Bill 606.

Our goal is for all our members to open and resume normal operations. However, we must acknowledge the reality COVID-19 will likely be with us for some time. We can't expect our members to be subjected to unchecked litigation surrounding a virus they can't prevent. We believe House Bill 606 recognizes this reality. We look forward to working with this committee to address the previously mentioned issues to make certain House Bill 606 affords appropriate liability protections.

Thank you for the opportunity to provide written comments on House Bill 606.

Sincerely,



Christopher J. Ferruso
Ohio Legislative Director