



OHIO ALLIANCE FOR CIVIL JUSTICE



**Senate Judiciary Committee
House Bill 606
Interested Party Testimony
Wednesday, June 24, 2020**

Chairman Eklund, Vice-Chair Manning, Ranking Member Thomas and members of the Senate Judiciary Committee, thank you for the opportunity to provide testimony on House Bill 606.

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.

House Bill 606 has two primary parts — the first part pertains specifically to health care providers and services. The second part provides Ohio's businesses and others protection against liability from the transmission, contraction or exposure of coronavirus. Although the original language of HB 606 was placed in codified law, the language was later placed in uncodified law because it is temporary in nature and only applies to acts or omissions until December 31, 2020. We believe the uncodified law is consistent with the original spirit and intent of the bill, which is to provide the healthcare and business community protections against liability.

In the midst of a statewide pandemic, disaster, or emergency, Ohioans cannot afford to have their health care providers inhibited from necessary action due to fear of litigation or liability. Health care providers have stepped up in the face of an unprecedented pandemic and should be protected from a potential avalanche of lawsuits resulting from circumstances beyond their control. We also note that many states in the Midwest have taken similar actions to provide immunities to their health care providers. Kentucky, Indiana, Michigan, Illinois, and Pennsylvania (as well as numerous other states around the country) have provided liability protection, either by legislation or executive order, to health care providers during declared disasters and emergencies such as the current COVID-19 pandemic.

Under the general business provision, a business will be granted immunity against claims of transmission, contraction or exposure of COVID-19. Businesses should be protected during this uncertain time, because a business has no way of truly knowing if the disease is 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.

The Ohio Alliance of Civil Justice appreciates the time and effort spent on this bill and Senate Bill 308 to provide qualified immunity to Ohio's businesses so that the process can begin to get Ohio's economy back on track. The OACJ would like to make two suggestions to improve House Bill 606 and deliver stronger protections for Ohio businesses.

1. "Intentional conduct" in lines 1179 and 1237 is entirely too broad because just about anything that anyone does consciously (or while awake) can be considered intentional conduct. They may not intend to do harm, but they intend to act. The OACJ suggests that this term be changed to "intentional misconduct" (which is the term used in Senate Bill 308). This term was changed in one of the versions of H.B. 606, however, it was later changed back in a later version. We believe this may have been a drafting error; therefore, we propose the language be changed to close this inadvertent loophole.
2. The new language placed in R.C. 4123.68 defines COVID-19 as an "occupational disease" under Ohio's workers' compensation system. Under the amendment, if an employee contracts COVID-19, there is a presumption, for certain workers, that the contraction of COVID-19 was work-related. Then, the burden shifts to the employer to prove that contraction of COVID-19 was not work-related. This means that these workers are presumed to have contracted COVID-19 at their workplace regardless of whatever activities they engage in. This is contrary to current Ohio workers' compensation law which places the burden on a claimant to prove that the claimant contracted an occupational disease at work. This burden-shifting will make it extremely difficult for employers to defend COVID-19 workers' compensation claims. The amendment is unnecessary because the current workers' compensation system is already processing COVID-19 workers' compensation claims. As of June 16, 2020, 84% of the claims against private employers that have been accepted or rejected by the Ohio Bureau of Workers' Compensation were accepted. This shows that employees have a remedy and that there is no need to create new law when the current system is already working for employees and employers.

With these two suggestions, OACJ believes House Bill 606 will provide certainty and protection for businesses and health care providers during this unprecedented time. Thank you for allowing the OACJ to provide testimony on House Bill 606. We urge the committee to support the bill with our proposed amendments. I am happy to answer any questions.