

**Written Testimony on House Bill 606**  
**Senate Judiciary Committee**  
**June 30, 2020**  
**Holly Holtzen, AARP Ohio**

Chairman Eklund, Vice Chair Manning, Ranking Member Thomas, and members of the Committee,

On behalf of AARP Ohio, thank you for the opportunity to address our organization's concerns as an interested party regarding House Bill 606. AARP is a nonpartisan, social mission organization with a membership of nearly 37 million nationwide, and approximately 1.5 million members here in Ohio.

AARP has long fought to ensure the health, safety, quality of care, and quality of life for residents in nursing homes and other long-term care (LTC) facilities. We believe the right of residents and their families' to seek legal intervention through the courts is critical to holding facilities accountable. When residents are being harmed, financially exploited, neglected, or abused, they must be protected. Broad waivers of liability, such as those proposed in SB 308 create inappropriate barriers to obtaining redress. While there may be some circumstances beyond facilities' control, it is essential they remain responsible for any negligent actions to ensure long-term care residents have some protection and opportunity to hold facilities accountable.

There are far fewer eyes observing what is happening in facilities. Residents of nursing homes and other LTC facilities unable to advocate for themselves now have limited access to people who can advocate on their behalf. The formal systems meant to protect residents, such as routine nursing home inspections and in-person long-term care Ombudsman visits, are suspended or severely limited. Add to that the separation from their own families and loved ones, who have not been able to visit in-person for more than 90 days, except for extremely limited circumstances. This lack of oversight is alarming and requires us to ensure that, when all else fails, residents and their families will still have access to the courts as a last recourse.

Nursing homes and other LTC facilities must know they are responsible to continue the quality and level of care that is required of them and for which they are being compensated. This accountability also incentivizes facilities to self-correct and avoid the often significant human and financial costs associated with avoidable errors. Knowing they can be held accountable, facilities are more likely to address problems and make care improvements before such problems mature to the point that requires legal action from residents and their families. These improvements may be the difference between life and death for the nearly 80,000 Ohioans who live and work in nursing homes and LTC facilities. No family member who has lost a loved one due to neglect or abuse pursues this course of action lightly. It is always an option of last resort, but it must remain an option.

Should the committee decide to proceed with an immunity bill, despite the many overwhelming and preventable tragedies occurring in nursing homes and LTC facilities that could have been prevented, we believe that House Bill 606, as passed by the Ohio House of Representatives, represents the least harmful option that has been put forth, so far, for the following reasons: :

- The scope of the immunity is limited so that it would apply only to acts or omissions that are substantially casually related to COVID-19;
- The duration of the immunity is limited to the period of the exceptional circumstances with clearly identified beginning and end dates and defined by a state governmental authority;
- Recklessness is not immunized.
- The current civil standard for burden of proof, “by a preponderance of the evidence” is maintained. Increasing the burden of proof (to “clear and convincing”) while also lowering the standard of care (eliminating the negligence) creates an inappropriate double hurdle to establish legitimate claims; and
- Wrongful death is maintained as an allowable action. Article 1, Section 19a of the Ohio Constitution states, “The amount of damages recoverable by civil action in the courts for death caused by the wrongful act, neglect, or default of another, shall not be limited by law.”

We believe that these provisions would help mitigate some of the most significant risks associated with this legislation. AARP Ohio appreciates your consideration of these views and, should the committee determine that some level of immunity must be granted, we urge you to ensure that residents and their families can still seek redress through the courts when residents have been harmed, neglected or worse. Families all across Ohio are looking to you to protect the health and safety of their loved ones living in nursing homes and other residential care facilities. If you have questions or require additional information, please feel free to contact our office.