

David Meyer, President  
Sydney McLafferty, President-  
Elect  
Chris Patno, Vice-President  
Nate Stuckey, Treasurer  
Lindsay Lawrence, Secretary



OHIO  
ASSOCIATION for  
JUSTICE  
TRIAL LAWYERS HELPING PEOPLE

655 Metro Place S., Suite 140  
Dublin, OH 43017  
614-341-6800

Mike Coughlin, Chief Executive Officer  
Brad Ingraham, Director of Government Affairs

## Testimony to the House Commerce and Labor Committee on Substitute HB 435

Robert Wagoner, Esq. Past-President of the Ohio Association for Justice

October 6, 2021

Chairman Stein, Vice-Chair Johnson, Ranking Member Lapore-Hagan and members of the House Commerce and Labor Committee,

Thank you for the opportunity to provide testimony on House Bill 435. My name is Bob Wagoner. I am a lawyer and business owner, managing my own law firm in Columbus. I am also the Immediate Past President of the Ohio Association for Justice (OAJ). As a voice of the plaintiff's bar in Ohio, OAJ is dedicated to preserving individuals' access to justice through our judicial system, including the Seventh Amendment and Article I of Ohio's Constitution, guaranteeing the citizens of Ohio the right to trial by a jury of their peers in civil cases.

In May 2020, I testified on behalf of OAJ to the House and Senate Committees hearing HB 606 and SB 308. My testimony focused on a few fundamental concerns about the proposed immunity law. These concerns included (1) the scope of the immunity and (2) the duration of the immunity.

When HB 606 was introduced, proponents said that immunity was needed to protect businesses and healthcare providers from the uncertainties created by the spread of the COVID-19 virus and the alleged numerous guidelines coming from the state's executive branch that were meant to address a health concern. While OAJ took the position then, as we do now, that handing out immunity is not the answer, we implored the General Assembly that, if it insisted on handing out immunity, be very careful about the scope and duration of the immunity.

Immunity only protects wrongdoers and bad actors. The majority of businesses and healthcare providers act safely and so are not subject to legal liability. Those acting safely do not benefit from the immunity because they would not have any legal responsibility anyway. Those who are acting negligently (unreasonable under the circumstances) and harm Ohioans are the ones who benefit from immunity. Normally, bad actors would be held accountable for their actions. Immunity gives wrongdoers a pass, leaving the harmed behind.

Careful consideration of these unintended consequences should be given before gifting immunity:

(1) **Scope:** The immunity afforded under the general liability section of HB 606 (former law) was at least limited to damages caused by the transmission or contraction of SARS, MERS, COVID 19 or any mutation thereof. However, the health care section of the law provides immunity in situations that were “as a result of or in response to” the COVID-19 pandemic. This language is far too broad and opens the door for immunity to shield healthcare providers from harmful conduct that does not at all relate to, or only superficially relates to, the COVID-19 virus.

HB 435 does nothing to change the overly broad scope of the immunity afforded to healthcare providers.

(2) **Duration:** When HB 606 was passed it was made clear that the law would be limited in duration. While earlier end dates were considered, the General Assembly ultimately placed a clear end date of September 30, 2021 for the immunity.

No further immunity beyond the expired deadline date of September 30, 2021 is needed. The state guidelines that caused some legislators concern no longer exist. The public, including business owners and healthcare workers are certainly more educated about the COVID-19 virus. People are deciding whether to wear facial masks, practice social distancing and to get vaccinated.

HB 435 would gift new immunity to negligent, harmful actors until June 2023, contradicting the limited intent of HB 606. Particularly given the overly broad scope of the immunity afforded to healthcare providers, extended immunity would allow any negligent healthcare provider to use COVID-19 or other emergencies and disasters as an excuse for their harmful behavior – until June 2023. This lengthy period of time is arbitrary, dangerous and unnecessary.

As we did in 2020, OAJ will work with the sponsor and General Assembly to find solutions to problems created by the COVID-19 pandemic. However, handing out new civil immunity will only result in creating more tragic opportunities for unintentionally-dangerous consequences for the citizens of Ohio.