

**OPPONENT TESTIMONY OF MICHAEL SMALZ ON BEHALF OF THE CENTRAL OHIO WORKER CENTER,
ON SUBSTITUTE HOUSE BILL 80,
TO SENATE INSURANCE AND FINANCIAL INSTITUTIONS COMMITTEE ON JUNE 19, 2019**

Chairman Hackett, Vice Chairman Hottinger, Ranking Minority Member Craig, and Committee Members:

I am Co-Chair of the Worker Justice Committee of the Central Ohio Worker Center. The Worker Center educates and advocates for low-wage and immigrant workers in Central Ohio. I am testifying on behalf of the Worker Center in opposition to the immigrant status reporting amendment that was added on the House floor without any committee hearings or testimony. The House amendment is much more than a data collection measure. It would undermine workplace health and safety, provide financial incentives for unscrupulous employers to hire unauthorized (“undocumented”) workers so they can cut corners on health and safety measures, unfairly disadvantage more scrupulous employers, and place additional burdens on the Bureau of Workers’ Compensation (BWC) and taxpayers.

Workers’ compensation is an employer premium-funded insurance system that works best when all employees are covered. Workers’ compensation benefits serve a dual purpose: (1) they protect workers by ensuring that injured workers have access to medical care and financial relief; (2) and further ensure that employers are protected from tort liability while protecting the state, taxpayers, healthcare providers, and the community from having to pick up the cost of caring for indigent injured workers. Excluding undocumented workers who are afraid to “out” themselves on their workers’ comp application or intimidating those workers from even applying for benefits because of the reporting requirement – and also barring those workers from suing their employers for negligence – upsets that balance and frustrates both purposes of the workers’ compensation program. It also may be unconstitutional and unlawfully discriminatory.

The House amendment to Sub HB 80 would harm workers by incentivizing unscrupulous employers to hire undocumented workers and then use their immigration status as a legal shield to escape responsibility for on-the-job injuries. That would give employers who cheat on health and safety an unfair financial advantage over employers who play by the rules and implement appropriate health and safety measures. Economists have characterized such perverse financial incentives as creating “moral hazard.” Moral hazard occurs when someone has a financial incentive to engage in unduly risky behavior because they know that it is protected against those risks and/or another party would incur those costs.

Ohio should not provide financial incentives to employers to ignore safety and health. Indeed, an Ohio appellate court has explicitly recognized the social harm and perverse financial incentives that would result from the exclusion of undocumented workers from coverage under workers’ compensation. As the Seventh District Court of Appeals stated:

“Employers try to ensure safe workplaces, in part because if an employee is injured at their place of work, the employer bears the cost. However, if illegal aliens were exempt from collecting workers’ compensation, underhanded employers might be prone to hire illegal aliens.

If illegal aliens were injured, the employer would not lose any money because the aliens cannot collect workers' compensation. Therefore, the employer may become lax in workplace safety, knowing it would suffer no consequences if its employees were injured at work." *Rajeh v. Steel City Corp.*, 157 Ohio App.3d 72 (2004).

The enactment of the current version of Sub HB 80 would make it easier for unscrupulous employers to take advantage of undocumented workers. The infamous example of Case Farms, as reported in the *New Yorker*, illustrates the unfairness of this legislation. Case Farms took advantage of undocumented workers only to fire them when they protested unsafe working conditions or when they were seriously injured. Giving such employers immunity for negligent, grossly negligent or even reckless conduct that causes serious injuries to their workers devalues workplace health and safety, rewards irresponsible employers, and makes no sense as a matter of public policy.

Finally, it is noteworthy that almost every state fully includes undocumented workers in their workers' compensation system. Only one state – Wyoming – restricts or excludes undocumented workers from workers' compensation benefits. However, even Wyoming only excludes such workers if they are both unauthorized to work and the employer failed to follow the I-9 verification process, and Wyoming does not restrict those workers' ability to sue their employers for negligence. Moreover, other states that have considered legislation that could restrict benefits for undocumented workers – including Colorado, Georgia, Montana, South Carolina, and Virginia – have rejected such legislation.

In 2017, 117,000 Ohio workers suffered a serious job-related injury or illness requiring medical treatment and/or days away from work or restricted duty. Workers' compensation provides an incentive for employers to strive to prevent these injuries by providing a safe workplace. This bill would rip that incentive away from unscrupulous employers – and the number of work-related injuries would rise in Ohio. Workers and scrupulous employers who maintain safe working conditions would not be the only losers. Hospitals, taxpayers, and the public will bear the costs of medical care for those undocumented workers who are ineligible for or intimidated into not applying for worker' comp benefits. There will also be additional burdens imposed on the BWC. The BWC does not have the resources to investigate the legal status of immigrant workers; its job is to process worker's comp claims, not to collect immigration data and verify workers' immigration status.

In summary, the Central Ohio Worker Center urges this Committee to remove the House amendment to Sub HB 80 because it undermines workplace health and safety, is unfair to injured workers, rewards unscrupulous employers, punishes law-abiding and responsible employers, places additional burdens on taxpayers and the BWC, and may be unconstitutional or unlawfully discriminatory. This legislative change should be considered on its merits in stand-alone legislation, not rushed through the budget process.

Thank you.