



THE BUCKEYE INSTITUTE

Protecting Businesses and Workers from COVID-19 Related Lawsuit

Interested Party Testimony
Ohio Senate Judiciary Committee
Senate Bill 308

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May 13, 2020

As Submitted

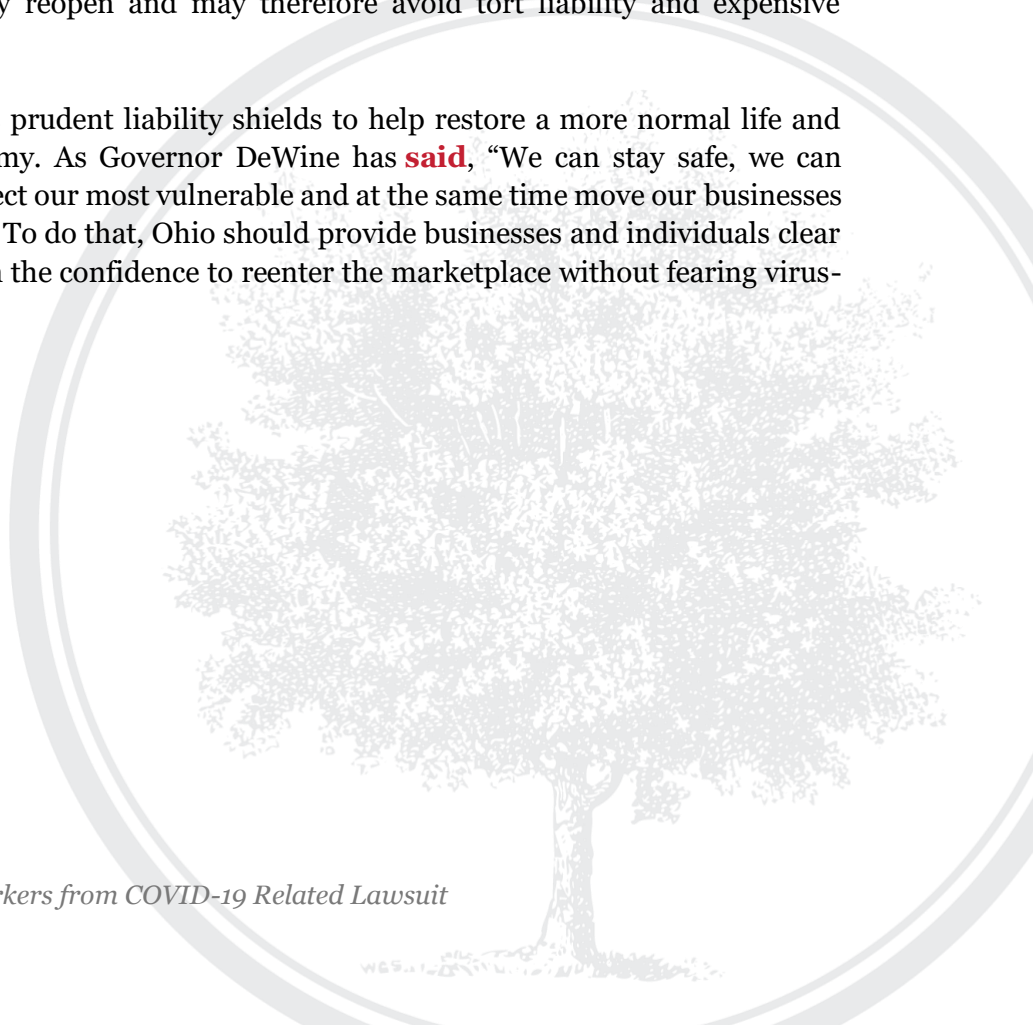
Chairman Eklund, Vice Chair Manning, Ranking Member Thomas, and members of the Committee, thank you for the opportunity to submit written testimony regarding Senate Bill 308.

My name is Andrew Geisler and I am a legal fellow at **The Buckeye Institute**, an independent research and educational institution—a think tank—whose mission is to advance free-market public policy in the states.

Senate Bill 308 ensures that Ohio businesses taking reasonable precautions against the spread of COVID-19 can begin to reopen without fearing virus-related lawsuits and liability. Our recent policy memo ***Policy Solutions for the Pandemic: Protecting Businesses and Workers from COVID-19 Related Lawsuits*** recommended that policymakers immunize businesses and front-line workers from tort liability as long as they take reasonable, anti-virus precautions. Lawsuits and the threat of lawsuits alleging virus exposure will further strain our dormant economy as it moves toward recovery. Many businesses may delay reopening or spend significant resources to take reasonable precautions only to be sued despite their best efforts. Ohio should keep that from happening by adopting a “safe harbor” rule that shields businesses and individuals adhering to recommended health and safety guidelines.

The Buckeye Institute applauds this Committee’s efforts on this important issue. In order to ensure that the legal safe harbor provides adequate protection, the Committee should examine a special tort rule that defines “reasonable conduct” in the COVID-19 context consistent with either the **state’s** or the **Centers for Disease Control and Prevention’s** guidelines for workplace safety. Businesses operating within the prescribed guidelines should be presumed to have taken reasonable precautions as they reopen and may therefore avoid tort liability and expensive litigation defense.

To reopen Ohio safely requires prudent liability shields to help restore a more normal life and awaken the slumbering economy. As Governor DeWine has **said**, “We can stay safe, we can protect each other, we can protect our most vulnerable and at the same time move our businesses back, get people back to work.” To do that, Ohio should provide businesses and individuals clear safety guidelines that give them the confidence to reenter the marketplace without fearing virus-related lawsuits.



About The Buckeye Institute

Founded in 1989, The Buckeye Institute is an independent research and educational institution – a think tank – whose mission is to advance free-market public policy in the states.

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POLICY SOLUTIONS FOR THE PANDEMIC

POLICY MEMO: PROTECTING BUSINESSES AND WORKERS FROM COVID-19 RELATED LAWSUITS MAY 8, 2020

The Buckeye Institute's Recommendation

As Ohio looks to **reopen** safely from the pandemic shutdown, policymakers should create a special tort rule defining “reasonable conduct” to shield businesses and individuals from liability and unnecessary litigation risk related to COVID-19. For the duration of the crisis, Ohio should base the tort liability standard for preventing injuries related to the virus on either the **state's** or the **Centers for Disease Control's** guidelines for workplace safety. Those operating within the prescribed guidelines should be presumed to have taken reasonable precautions as they reopen and may therefore avoid tort liability and expensive litigation defense.

Background

To avoid tort liability, businesses and individuals must take reasonable precautions to protect the health and safety of their employees and customers from obvious risks. The unique uncertainty and health risks created by the novel coronavirus, however, make defining “reasonable precautions” on a case-by-case basis untenable and would invite unnecessary litigation even against businesses taking reasonable precautions as they reopen. Lawsuits and the threat of lawsuits alleging virus exposure will further strain our dormant economy as it moves toward recovery. Many businesses may delay reopening or spend significant resources to take reasonable precautions only to be sued despite their best efforts. Ohio should keep that from happening by shielding those businesses and individuals adhering to recommended safety guidelines from tort liability for virus-related harms.

Similarly, as health care and other front-line workers continue to take great personal risk in the fight against COVID-19, Ohio should shield them from virus-related tort liability for the actions they take in the scope of their employment. The special tort liability rule should allow the medical community to continue taking reasonable care and precautions to treat patients without the latent threat of costly tort litigation. Such a rule will help health care providers, business owners, and individuals to continue to act safely and with confidence.

Conclusion

To reopen Ohio safely requires prudent liability shields to help restore a more normal life and awaken the slumbering economy. As Governor DeWine has **said**, “We can stay safe, we can protect each other, we can protect our most vulnerable and at the same time move our businesses back, get people back to work.” To do that, Ohio should provide businesses and individuals clear safety guidelines that give them the confidence to reenter the marketplace without fearing virus-related lawsuits.