

May 11, 2020

The Honorable John Eklund
Senate Judiciary Chairman
Senate Building
1 Capital Square
First Floor
Columbus, OH 43215

Re: ATRA Supports Senate Bill 308

I am writing on behalf of the American Tort Reform Association (ATRA) in support of Senate Bill 308. This legislation is critical to Ohio's response to COVID-19 and its ability to restart the state's economy.

Each day, hundreds of people in Ohio are contracting coronavirus. The virus is devastating families, stretching the ability of health care providers to help those who become sick, and crippling businesses and the economy. Manufacturers have ramped up production of medical supplies and protective equipment and are investigating treatment options and developing vaccines. Some personal injury lawyers, however, appear to view individuals exposed to COVID-19 as a large new pool of plaintiffs, and health care providers and businesses that aid in the response effort or provide essential services as defendants to cast blame.

The first lawsuits targeting health care providers, employers, retailers and other businesses for COVID-related injuries have already been filed.¹ Many more are to come. For example, a coalition of national law firms specializing in mass tort litigation has formed a "Coronavirus Litigation Task Force" to identify targets and theories for litigation.² Plaintiffs' lawyer-affiliated websites provide a roadmap for suing for contracting COVID-19 at work.³ Another website, "Top Class Actions," informs readers that "If you believe that your rights were violated by a company as a result of the coronavirus pandemic, you may be entitled to compensation."⁴

¹ Amanda Bronstad, [As Businesses Reopen, Lawsuits Loom Over COVID-19 Exposure](#), Law.com, May 1, 2020; Shayna Jacobs, [771 Lawsuits — and Counting: Wave of Virus Litigation Hits Businesses Across the U.S.](#), Wash. Post, May 1, 2020.

² See Press Release, [Milberg, SPG, and Greg Coleman Launch Coronavirus Task Force](#), Mar. 27, 2020.

³ See, e.g., Work Injury Source, [Does Workers' Compensation Cover Coronavirus \(COVID-19\)](#), Work Injury Source, Mar. 14, 2020.

⁴ Melissa LaFreniere, [A Complete Guide to Coronavirus Lawsuits & Legal Issues](#), Top Class Actions, May 8, 2020.

As Ohio's economy reopens, Senate Bill 308 will provide needed assurance those providing vital services—from small businesses to schools and daycare centers—that they will not be subject to unwarranted lawsuits. The bill will also protect Ohio's health care providers who are operating in extraordinary circumstances.

**Providing Assurance to Businesses and Others That
They Will Not be Sued When a Person Contracts COVID-19**

Businesses that have operated during the pandemic and those who own or manage property are concerned that they may face lawsuits by guests, customers, tenants or others blaming them for a person contracting COVID-19. These concerns will rise as Ohio's economy begins to reopen.

The vast majority of those who operate workplaces, schools, religious institutions, supermarkets, restaurants, entertainment venues, hotels, and daycare centers will carefully follow federal and state guidance for operating as safely as possible during the pandemic. Under current tort law, however, such responsible behavior does not preclude lawsuits claiming that they should have taken some additional action to reduce the chance of exposure or closed entirely. These cases, litigated years later, will be viewed in hindsight, rather than under the constantly developing knowledge and evolving practices that we live with today.

This concern is not hypothetical. We have already seen individual and class action lawsuits filed along these lines.⁵ Some of these lawsuits have been brought on behalf of people who, while potentially exposed to the virus, were not diagnosed with or developed symptoms of the disease. These lawsuits may punish essential businesses that are providing vital services during the pandemic and delay the reopening of Ohio's economy.

Cases alleging exposure to COVID-19 should not be treated in the same manner as slip-and-fall lawsuits. It is impossible to completely eliminate the possibility of exposure to COVID-19 on a person's property. Ohio residents are well aware of that inherent, unavoidable risk. While plaintiffs' in these lawsuits will certainly face challenges in proving the source of exposure or cause of the illness, the cost of defending a single lawsuit could force already struggling small businesses to shut down.

Senate Bill 308 addresses these concerns by providing that a person who provides services during a declared disaster is generally not liable if someone is exposed to an illness when providing those services. This liability protection would not apply, however, if a person or business acts in an intentional, willful, or wanton manner. In other words, a person who is aware of a substantial risk that others will be exposed to COVID-19, but is indifferent, would be subject to liability.⁶ Businesses that try their

⁵ See, e.g., Amanda Bronstad, [Lief Cabraser Files First Class Action Over Quarantined Grand Princess Cruise Ship](#), Law.com, Apr. 8, 2020; Joyce Hansen, [Princess Cruise Lines Hit by Wave of COVID-19 Suits](#), Law360, Mar. 17, 2020.

⁶ See *Anderson v. Massillon*, 134 Ohio St.3d 380, 388, 2012-Ohio-5711 ¶ 33 (2012).

best to follow public health guidance would not be liable in lawsuits alleging that they could have responded differently or not operated at all.

Protecting Those That Aid in the Response to COVID-19 from Lawsuits

Many businesses and organizations have stepped up to provide goods, services, and facilities to aid in the state's response to the COVID-19 pandemic. For example, automakers are manufacturing personal protective equipment, including ventilators and respirators.⁷ A coalition of nineteen Ohio manufacturers have committed to making between 750,000 and one million face shields for hospital workers.⁸ Ohio distilleries are producing hand sanitizer.⁹ Hotels or other property owners in Ohio may provide additional space for overcrowded hospitals or provide shelter to health care workers or individuals in need of a place to stay during quarantine.¹⁰

As these examples show, some manufacturers have quickly increased their production of critical products in response to the crisis, which could lead to compromised quality control. Others are making products they do not ordinarily produce to help, posing a risk of a flaw in the product's design, instructions, or warnings. Those who aid in the state and the public during a pandemic or other emergency should have some assurance that their good intentions will not backfire and invite lawsuits.

For that reason, Senate Bill 308 limits the liability of anyone who provides or performs services in response to a disaster, to assist persons recover from a disaster, or to otherwise help people sustain themselves during a disaster, including the COVID-19 pandemic. Any person contributing to the COVID-19 response in this way would remain liable, as in exposure cases, for intentional, willful, or wanton misconduct.

Protecting Health Care Providers

Operating during the COVID-19 pandemic presents significant challenges for health care providers. They are providing care with shortages of medical personnel, bed space, equipment, and supplies. They may be relying on experimental treatments or using medications or medical devices that have not gone through the usual level of

⁷ Kevin Barry, [Ford Preparing to Make 50,000 Ventilators in 100 Days for Hospitals Amid COVID-19 Pandemic](#), News 5 Cleveland, Apr. 4, 2020; Thomas Gnau, [Automakers Pivot to Battle Against COVID-19](#), Dayton Daily News, Mar. 31, 2020.

⁸ Peter Krouse, [Ohio Manufacturers to Make Up to One Million Face Shields For Health-Care Workers Battling the Coronavirus](#), Cleveland.com, Apr. 9, 2020.

⁹ Maija Zummo, [1 Million Ounces of Hand Sanitizer Made at Ohio Distilleries Being Delivered to State Food Banks by JobsOhio](#), Scene, Apr. 13, 2020; Patrick Cooley, [Central Ohio Distilleries Making Sanitizer in Fight Against New Coronavirus](#), Columbus Dispatch, Mar. 19, 2020.

¹⁰ Susan Glaser, [Empty Ohio Hotels Offer Up Space to Hospitals, Homeless Shelters, Health Care Workers During Coronavirus Pandemic](#), Plain Dealer, Mar. 30, 2020; Jo Ingles, [Coronavirus in Ohio: College Dorms, Hotels Could House COVID-19 Patients](#), WOSU Radio, Mar. 25, 2020; Jim Weiker, [Coronavirus: Ohio Hotels to Offer Emergency Shelter](#), Columbus Dispatch, Mar. 25, 2020.

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testing and approval. The constraints on care during the COVID-19 pandemic impacts both COVID-19 patients and those who need treatment for other conditions. For example, health care providers temporarily stopped performing non-essential or elective surgeries and procedures, in compliance with a March 17 order of the Ohio Department of Health, a prohibition that was only recently lifted. In some cases, the COVID-19 pandemic may complicate the ability of a patient to obtain care and pose obstacles to a doctor following the usual standard of care. In other cases, patients may experience an unfortunate outcome as a result of their illness during the pandemic that is unrelated to the medical care he or she received. Health care providers should not face lawsuits in these situations, but they are bracing for a surge of malpractice claims.¹¹ About half of states have already placed reasonable limits on the liability of health care providers during COVID-19 through Executive Order, statute, or both.

Senate Bill 308 addresses these concerns by amending RC 2305.2311, which currently limits the liability of health care providers and emergency medical technicians who provide care during a disaster. The bill extends this law's protections to apply to the professionals and facilities that are helping Ohio residents during the COVID-19 pandemic and the concerns that have arisen when providing care during this unprecedented time. Under Senate Bill 308, a health care provider is not liable when treatment decisions are affected by the need to withhold or withdraw services or the provider's actions complied with an executive order or order of the Department of Health during and in response to a disaster or emergency, such as COVID-19. In addition, the bill clarifies current law to protect health care providers from professional disciplinary actions so long as they are acting within their skills, education, and training. These liability protections would apply only during a disaster or emergency and would not extend to willful or wanton misconduct.

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In conclusion, ATRA urges the Committee to support Senate Bill 308. Thank you for considering our views.

Sincerely,



Sherman Joyce
President

¹¹ Tom Hals, [U.S. Doctors on Coronavirus Frontline Seek Protection From Malpractice Suits](#), Reuters, Apr. 2, 2020.