

Ohio set to expand civil immunity measures: What the healthcare industry and other businesses should watch for



Kevin Butler, Teresa Metcalf Beasley, Michael W. Wise | Monday, May 18, 2020

During the week of May 18, 2020, two committees in the Ohio General Assembly are expected to hear testimony regarding competing measures that would provide immunity from civil tort liability for certain professionals and businesses amid the coronavirus pandemic. Anyone across Ohio making heads or tails of the various national and statewide orders and best practices emerging in response to COVID-19 should pay attention.

Ohio Senate version

S.B. 308, introduced by Sen. Matt Huffman, would expand the form of immunity already protecting those who respond to disasters under an existing statute, [R.C. 2305.2311](#).

Last amended in 2019, the existing statute shields doctors, nurses, dentists, EMTs, paramedics, pharmacists and other healthcare providers from civil liability arising from their provision of emergency care as a result of a disaster, unless the emergency care is reckless or is outside the scope of the caregiver's authority. S.B. 308 would expand both the universe of people protected from tort claims and the circumstances under which they are protected.

Under the [substitute version of the bill](#) currently under consideration in the Senate Judiciary Committee, R.C. 2305.2311 would be amended as follows:

Ohio set to expand civil immunity measures

- Immunity would extend to care provided during both a disaster and an “emergency,” which means “any period during which the congress of the United States or a chief executive has declared or proclaimed that an emergency exists.” This additional language would cover the current COVID-19 pandemic.
- Covered persons and entities would be immune from both civil tort liability as well as professional disciplinary actions.
- Those additionally covered would now include athletic trainers, chiropractors, those who care for persons with developmental disabilities, home health aides, hospice caregivers, lab workers, licensed practical nurses, occupational therapists, physical therapists and respiratory care professionals, as well as the facilities employing them.
- All employees of such facilities, as well as their officers, volunteers and directors, would also be immune.
- The reckless standard giving rise to liability would be replaced by a willful and wanton standard, and a good-faith exception would apply to actions taken outside the care provider’s professional field.
- Wrongful death claims would be included in the types of actions for which immunity would apply.
- Class-action suits against healthcare providers for civil claims related to disaster or emergency caregiving would be barred in the event immunity did not apply.

While much of the Senate bill is directed at healthcare providers, additional provisions in the substitute version of S.B. 308 give sweeping immunity to any persons or businesses providing services during a disaster or emergency. Those additional provisions include the following:

- A new Revised Code section, 2305.2312, would be created to shield all such service providers from liability, other than based on intentional, willful or wanton misconduct, during a disaster or emergency and for six months after the disaster or emergency ends. Notably, the immunity would apply to any services provided “in response or related to a disaster or emergency” or those “intended to assist persons to recover from a disaster or emergency or otherwise sustain themselves during the period of the declared disaster or emergency.” The bill calls for broad interpretation of these provisions.
- The new section would specifically prevent the existence of protective measures ordered by the government (including Ohio’s health director or any local health districts) from being used as evidence of persons having a special duty of care that could give rise to tort liability. It would also bar class actions against service providers for which immunity does not apply.
- The state’s civil rights law, R.C. Chapter 4112, would be amended to permit employers and businesses to “protect the health and safety of employees or customers by preventing the transmission of an illness during a disaster” without concern for claims based on discrimination.
- Immunity would be retroactive to claims arising on or after December 1, 2019.

Ohio House version

H.B. 606, introduced by Rep. Diane Grendell, closely resembles S.B. 308 in its [current version](#), which is pending in the House Civil Justice Committee. By amending the same section of the Revised Code, R.C. 2305.2311, H.B. 606 would provide immunity to a broader set of the healthcare industry from civil liability and professional discipline based on:

- Claims arising from the provision of healthcare services during a disaster or emergency.
- Claims arising from persons or government agencies related to such care.

Ohio set to expand civil immunity measures

- Claims based on a patient's bill of rights related to such care.
- Claims based on compliance with any executive's or director's orders issued during and in response to the disaster or emergency.
- Claims based on the inability of a healthcare provider to "treat, diagnose, or test" a person due to an epidemic, a pandemic, or another public health emergency.

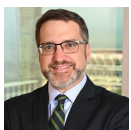
The same willful and wanton standard would limit the immunity provided by H.B. 606.

Additionally, H.B. 606 would create a new Revised Code section, 3701.26, retroactive to March 9, 2020, to provide civil immunity for any person or business from civil actions based on injuries "caused by the transmission of a coronavirus infection," unless the injury was caused by the person or business's reckless conduct – a high bar for any plaintiff in court. "A violation of an order issued by the director of health of this state, alone," the current version of the law reads, "is not sufficient to prove 'reckless conduct' regarding the transmission of a coronavirus infection."

The notable departure from S.B. 308, which limits any civil actions based on a healthcare or service provider's work during an emergency or disaster, is H.B. 606's immunity for all civil claims based specifically on the transmission of coronavirus; that immunity provision would have no expiration, pandemic or no pandemic.

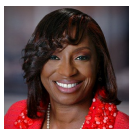
Some form of each bill is expected to pass both houses. Because both pieces of legislation would expand immunity to cover all healthcare operations and would protect other operations providing services during the current pandemic, any entities that are at risk of transmitting COVID-19 should pay heed to their progress.

McDonald Hopkins has a team of professionals dedicated to assisting clients experiencing financial distress and staying ahead of national and state developments as a result of the coronavirus. [Click here for a list of articles focused on providing legal and business solutions to the impact of the coronavirus on your business.](#)



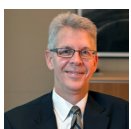
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