Governor signs qualified immunity bill for COVID-19 related lawsuits

September 8, 2020

Updated September 14, 2020

On September 14, 2020, Governor DeWine signed House Bill 606, a measure that provides widespread qualified immunity to Ohio's healthcare providers and others, including Ohio businesses, for liability related to COVID-19. The new law will become effective on December 13, 2020.

Introduced in May, the bill provides certainty to health care providers, businesses and others as they provide much needed products and services during these challenging and uncertain times. H.B. 606 recognizes the difficult decisions health care providers face as they care for patients during the pandemic; it also accounts for the impact of the government's orders on non-emergency medical procedures. H.B. 606 also recognizes the importance of reopening Ohio's businesses and the business community's concerns with lawsuits alleging liability for transmission of the virus, which cannot be eliminated, even when businesses take the recommended steps to provide a safe environment.

The new law has two primary parts. Section 1 provides qualified civil immunity to those providing health care and emergency services during a government-declared disaster or emergency. This section expands upon protections provided under current R.C. 2305.211. Section 2 provides qualified immunity to individuals, businesses and other entities from liability in civil lawsuits alleging exposure, transmission or contraction of COVID-19. The bill is designed to provide relief for a limited period of time, therefore, has been enacted as a temporary law. Temporary law is not codified (i.e., is not assigned to revised code sections), but has the full force and effect of codified law through its expiration date. The provisions of H.B. 606 expire on September 30, 2021.

Below are some of the highlights of Sections 1 and 2 of H.B. 606.

Provisions specific to the health care industry (Section 1)

Under existing R.C. 2305.2311, certain healthcare providers and entities enjoy **qualified immunity** from civil liability during declared disasters. H.B. 606 expands the types of health care providers and entities that enjoy qualified immunity and makes clear that the protection applies to declared emergencies, as well as declared disasters (which have different technical meanings). This section applies from March 9, 2020, (the date the Governor declared a state of emergency due to COVID-19) through September 30, 2021. The qualified immunity does not apply in a tort action, "if the health care provider's action, omission, decision, or compliance constitutes a **reckless disregard** for the consequences so as to affect the life, or health of the patient or **intentional misconduct or willful or wanton misconduct** on the part of the person against whom the action is brought." (Section 1, (B)(2).) Reckless disregard is defined in the bill (Section 1, (A)(42)), but intentional, willful and wanton misconduct are not.

The bill covers the provision of "health care services, emergency medical services, first-aid treatment, or other emergency professional care," including the provision of any medication, equipment or product "as a result of or in response to a disaster or emergency." (Section 1, (B)(1)). It also covers "decisions related to such services or care." (Section 1, (B)(5)).

Provisions of the bill also impact **disciplinary actions.** For example, there is no immunity in a professional disciplinary action for "actions that are outside the skills, education, and training of the health care provider, **unless the health care provider undertakes the action in good faith and in response to a lack of resources caused by a disaster or emergency.**" (Section 1, (C)(3)).

The bill also limits class actions against health care providers rendering services during a disaster or emergency. (Section 1, (D)).

General provisions applicable to businesses and others (Section 2)

This section of the bill was designed to provide qualified immunity to **any** person sued for causing harm by exposure to, or the transmission or contraction of, COVID-19 (or other specified coronaviruses). As used in the bill, "person" has the same broad meaning as in R.C. 1.59 and **includes businesses, schools, non-profit entities, governmental entities, religious entities and state institutions of higher education**. (Section 2, (D)(2)).

There is no immunity if it is established that the exposure to, or the transmission or contraction of, one of the specified coronaviruses or any mutation thereof, was "by reckless conduct or intentional misconduct or willful and wanton misconduct on the part of the person against whom the action was brought." (Section 2, (A)). Reckless conduct is defined in the bill (Section 2, (D)(3)), but intentional, willful and wanton misconduct are not.

The bill provides a presumption that government orders, recommendations and guidelines related to COVID-19 are not admissible as evidence "that a duty of care, a new cause of action, or a substantive legal right has been established." (Section 2, (B)).

The bill also limits class actions in cases where the qualified immunity does not apply. (Section 2, (C)).

For more information regarding House Bill 606, contact the authors or any member of the Bricker team.

Authors

Anne Marie Sferra
Partner & Litigation Practice Group Chair

Columbus
614.227.2394
asferra@bricker.com

Rachael N. Mains
Associate

Columbus
614.227.4851
rmains@bricker.com