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OHIO LEGISLATURE GRANTS QUALIFIED IMMUNITY TO SCHOOLS FOR COVID-19 RELATED LAWSUITS

On Sept. 2, the Ohio General Assembly enacted House Bill 606, a measure that provides widespread qualified immunity to various groups, including schools, for liability related to COVID-19. Once Governor DeWine receives the bill, he has 10 days to sign, let it become law without his signature, or veto. The law will go into effect 90 days after it is signed by the Governor, or, if he does not sign, 100 days after it is received. The law is retroactive and covers acts, omissions and other conduct from March 9 through Sept. 30, 2021. Additionally, because the legislature acknowledged that this law is not general or permanent, it will not be given specific section numbers in the Revised Code. However, through its expiration date, it still has the full force and effect of regular, permanent law.

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. Section 2 provides qualified immunity to individuals, schools, businesses and other entities from liability in civil lawsuits alleging exposure, transmission or contraction of COVID-19.

Section 2 was designed to provide qualified immunity to any person sued for causing harm by exposure to, transmission or contraction of COVID-19 and other specified coronaviruses. As used in the bill, "person" has the same broad meaning as in Revised Code 1.59, which includes schools, businesses and other organizations. A school does not have immunity if it is established that the exposure, transmission or contraction occurred by reckless conduct, intentional misconduct or

willful and wanton misconduct. While the last two terms are not defined in the statute, "reckless conduct" is defined as someone who acts with "heedless indifference" and disregards "a substantial and unjustifiable risk" that their conduct will cause exposure to, transmission or contraction of one of the specified coronaviruses.

Section 2 also clarifies that government orders, recommendations and guidelines do not create duties of care for schools, and those orders and other documents cannot be used as evidence to establish a duty of care. In other words, a plaintiff in a lawsuit could not argue that an order from the Ohio Department of Health, a guideline from the Ohio Department of Education, or another similar document from a government entity created a duty for a school to either take or leave a certain action. Establishing a duty of care is a required

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element for a successful negligence lawsuit, so Section 2 makes such lawsuits more difficult for those seeking to pursue them. Additionally, Section 2 prevents class actions in cases where qualified immunity does not apply.

The bill offers a measure of relief to schools as they provide much needed services and contend with uncertainty during the pandemic. It recognizes the importance of reopening Ohio's schools and businesses while balancing those stakeholders' concerns with lawsuits alleging liability for transmission of the virus, which cannot be eliminated, even when organizations take the recommended steps to provide a safe environment. ■

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IS NOTHING PRIVATE ANYMORE?

In the quest for tracking the spread of COVID-19, public health authorities are applying increasingly sophisticated and reliable technological measures to keep track of all things "poop." Human waste in sewage systems has been examined in prior times to monitor the existence of diseases such as polio and hepatitis and other viruses that can be shed through fecal matter. The analysis of the microbes that populate the human gut and the incorporated DNA can provide a unique autograph for a specific population, even predicting obesity levels and drug use of a municipality. The analysis of food and drug residue in wastewater has also been used to reveal the income levels and other sociodemographic patterns present in

different neighborhoods.

This information can not only reveal real time data as to disease outbreaks, it can alert public health authorities to the advance of a disease before any cases have been reported. Using SARS-CoV-2 RNA (the virus behind COVID-19), scientists have been able to track COVID-19 to determine the onset of the presence of COVID-19 in a city and to estimate the percentage of the population affected. It has revealed more cases of COVID-19 present in a community than what other testing methods indicated. The importance of tracking sewage has not gone unnoticed by colleges and universities. The benefits of this science to curtailing a pandemic, or even predicting

one, are uncontestable. Although such information can be helpful to understand trends in a community, address sociodemographic issues, or curtail the spread of a pandemic, all of this knowledge is gathered without anyone's consent. There may be no privacy concerns since the information is collected from the aggregated waste of thousands of people – or is it? Depending on where the waste is gathered along a waste pipeline it may be possible to identify a smaller group of people. The University of Arizona has found wastewater-based tracking an effective way to detect COVID-19 in student dormitories and was able to identify two asymptomatic students who were then tested and



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isolated. And if you can trace wastewater to specific populations, neighborhoods or racial groups, what is the impact of the stigma applied by the data indicating such identifiers as illicit drug use, education levels or health issues?

Thus far, there has been little oversight as to the ethical and privacy issues surrounding the surveillance of our personal physical emissions. However, Sewage Analysis CORE group Europe (SCORE) is making headway on developing policy to ensure that the technology of this emerging field of study is used in a responsible and effective manner. However, the full boundaries of ethics and privacy are yet to be determined. ■



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