

**Sponsor Testimony of Senator Steve Buehrer for SB 86 before the Senate
Judiciary-Civil Justice Committee, Senator Bill Seitz, Chair
April 22, 2009**

I have introduced SB 86- *Access to Emergency and Disaster Care*-which proposes amending Ohio statute to provide new limited liability protection for all physician health care providers in disaster and emergency situations.

Emergency medicine is an essential public service that involves unique challenges and circumstances. Emergency physicians must make immediate, lifesaving decisions regarding diagnosis and treatment without the benefit of a prior relationship to the patient and often without any knowledge of the patient's medical history. Emergency physicians are mandated by the federal law EMTALA (Emergency Medical Treatment and Labor Act) to treat anyone who comes to an emergency department, regardless of the nature, severity or complexity of their condition. Emergency physicians treat everyone regardless of their ability to pay and provide a large and growing amount of uncompensated and undercompensated care. While emergency physicians are experts in providing stabilizing care, they do require specialty support from time-to-time. Other specialists providing essential on-call services to emergency patients are often in critically short supply, due largely to increased liability exposure, higher liability premiums and reduced reimbursements for providing emergency care. State liability laws should not act to further discourage these specialists from agreeing to provide vital on-call services to emergency patients.

The purpose of this bill is to improve every patient's access to the highest quality emergency and disaster care. This bill will help patients in the State of Ohio, by encouraging participation in emergency medical care, and providing appropriately limited liability for these dedicated medical providers who provide emergency care under EMTALA requirements.

Ohio statute already provides this additional civil liability protection to individuals who provide services related to health care, emergencies, or disasters. Ohio law already provides limited liability protection to physicians providing medical care in free clinics (ORC §2305.234) and to EMT's and paramedics (ORC §4765.49) for pre-hospital

emergency care provided to patients who are then delivered to the emergency room, where EMTALA mandates that they receive evaluation and treatment. The same standard is applied as well to physicians who register as volunteers for disaster services, including the members of the Ohio Medical Reserve Corps (R.C. 121.404). SB 86 simply extends this same civil liability protection to physicians who serve our citizens in the emergency department or in the case of a disaster, as a measure to ensure access to care.

Several other states have recognized the unique needs and circumstances of emergency care and have enacted special liability protections for emergency care providers, including placing lower caps on non-economic damages and requiring a higher standard of negligence that must be proven in emergency care cases, including prohibiting emergency care providers from being held liable in medical liability cases unless damages result from providing, or failing to provide, medical care or treatment under circumstances demonstrating a willful and wanton disregard for the consequences so as to affect the life or health of another. Landmark similar reforms in Texas in 2003 created by 2008 a record influx of physicians to the Texas Medical Board and are credited for increased access to all levels of care and specialty care services. The Texas Legislature passed House Bill 4, which contained medical liability reforms designed to ensure Texans' access to high-quality medical care in 2003. As a result, In February 2009, the Texas College of Emergency Physicians and the Texas Medical Board reported that 43 metropolitan counties and 33 rural counties had seen a net gain in emergency physicians—39 of those counties previously underserved in terms of emergency medicine.

Ohio can similarly benefit from enacting the reforms contained in SB 86. The downturn in Ohio's economy is resulting in an even higher number of uninsured and an increased reliance on Ohio's Emergency Departments. SB 86 offers a no-cost way to increase access to vital emergency and disaster medical services.

Current supporters of this measure include:

The Ohio Chapter, American College of Emergency Physicians

The Ohio State Medical Society

The Ohio Osteopathic Association

The Ohio Chapter, American College of Cardiology

The Ohio Chapter, American Academy of Pediatrics

I appreciate the opportunity to present sponsor testimony on SB 86 and would be happy to answer any of the committee's questions.