

# Legislative Analysis



## CIVIL IMMUNITY FOR EMPLOYERS

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 6031 (proposed substitute H-1)**  
**Sponsor: Rep. Tommy Brann**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 6101 (proposed substitute H-1)**  
**Sponsor: Rep. Wendell L. Byrd**

**Committee: Judiciary**  
**Complete to 8-31-20**

### SUMMARY:

House Bills 6031 and 6101 would together add two new sections to the Michigan Occupational Safety and Health Act (MIOSHA) to establish conditions for immunity from civil liability for an employer whose employee is exposed to COVID-19. HB 6031 would add substantive provisions, and HB 6101 would add definitions for terms used in those provisions. The immunity provided by the bills would apply retroactively to a COVID-19 exposure occurring after January 1, 2020.

#### Immunity

Under the bills, notwithstanding any other provision of MIOSHA, an employer would not be liable for damages resulting from an employee's exposure to **COVID-19** if both of the following conditions were met:

- The employee was exposed to COVID-19 during the **COVID-19 emergency**.
- The employer was operating in substantial compliance or reasonably consistent with a federal or state statute or regulation, executive order, or **public health guidance** that was relevant to, and applicable at the time of, the exposure. If more than one public health guidance applied to the employer at the time of the exposure, the requirements of this provision would be satisfied if the employer was operating in substantial compliance or reasonably consistent with any applicable public health guidance.

**COVID-19** would mean the novel coronavirus identified as SARS-CoV-2 or a virus mutating from SARS-CoV-2, the disease caused by SARS-CoV-2, and conditions associated with the disease.

**COVID-19 emergency** would mean the state of emergency declared under 1945 PA 302 or the Emergency Management Act on March 10, 2020, and any subsequent orders or amendments to those orders.

**Public health guidance** would mean written guidance related to COVID-19 issued by the Centers for Disease Control and Prevention (CDC) or the federal Occupational Safety and Health Administration (OSHA) or by the Department of Health and Human Services or another agency of this state.

### Exception

The civil immunity described above would not apply if the employer *wilfully* exposed the employee to COVID-19.

*Wilful* is defined in MIOSHA, for the purpose of criminal prosecutions, as the intent to do an act knowingly and purposely by an individual who, having a free will and choice, either intentionally disregards a requirement of MIOSHA or a rule or standard promulgated under it or is knowingly and purposely indifferent to a requirement of MIOSHA or a rule or standard promulgated under it. An omission or failure to act is wilful if it is done knowingly and purposely. Wilful does not require a showing of moral turpitude, evil purpose, or criminal intent as long as the individual is shown to have acted, or to have failed to act, knowingly and purposely.

### Scope

House Bill 6031 states that it would not do any of the following:

- Create, recognize, or ratify a claim or cause of action of any kind.
- Eliminate a required element of a claim of any kind, including a causation or proximate cause element.
- Amend, repeal, alter, or affect any other immunity or limitation of liability.

### Tie-bars

The bills are tie-barred to one another and to HBs 6030 and 6032.<sup>1</sup> A bill cannot take effect unless each bill to which it is tie-barred is also enacted into law.

Proposed MCL 408.1085 (HB 6031) and 408.1085a (HB 6101)

## **FISCAL IMPACT:**

House Bills 6031 and 6101 would have an indeterminate fiscal impact on state and local government. The bills would potentially reduce liability for damages for governmental employers, though the magnitude of the potential reduction is unknown.

The bills would also have an indeterminate fiscal impact on local court funding units. Provisions of the bills are aimed at limiting the number of lawsuits likely to be filed. Any fiscal impact would be directly related to how provisions of the bills affect court caseloads, the complexity of lawsuits, and related administrative costs.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

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<sup>1</sup> House Bill 6030 would create a new act to provide requirements and standards for certain liability claims alleging COVID-19 exposure and certain product liability claims. House Bill 6032 would create a new act to prohibit an employee from reporting to work under certain circumstances related to COVID-19, prohibit certain employer actions against an employee, and provide remedies.