

Legislative Analysis



COVID-19 RESPONSE AND REOPENING LIABILITY ASSURANCE ACT

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<http://www.house.mi.gov/hfa>

House Bill 6030 (proposed substitute H-1)

Sponsor: Rep. Thomas A. Albert

Committee: Judiciary

Complete to 8-31-20

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

SUMMARY:

House Bill 6030 would create a new act, the COVID-19 Response and Reopening Liability Assurance Act, to provide minimum requirements and establish standards for certain liability claims alleging **COVID-19** exposure and certain product liability claims. The act would apply retroactively to any claim or cause of action accruing after January 1, 2020.

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.

Under the act, a person could not bring or maintain a civil action alleging a **COVID-19 claim** unless the claim alleged harm related to a **minimum medical condition**. This prohibition would not apply if the conduct that was the subject of the claim was a deliberate act intended to cause harm.

COVID-19 claim would mean a claim or cause of action for damages, losses, indemnification, contribution, or other relief arising from, based on, or in any way related to exposure or potential exposure to COVID-19 or a person's actions intended to maintain workplace safety. It would also include, but not be limited to, a claim made by or on behalf of an individual exposed or potentially exposed to COVID-19 (or that individual's representative or relative or a member of his or her household) for injury (including mental or emotional injury, death, or loss to person), risk of disease or other injury, costs of medical monitoring or surveillance, or other losses allegedly caused by the exposure or potential exposure.

Minimum medical condition would mean any of the following:

- A positive diagnosis of COVID-19, or symptoms consistent with COVID-19, that required inpatient hospitalization of at least 24 hours.
- Medical illness or physical injury or condition caused by COVID-19 that results in an individual's inability to engage in his or her usual and customary daily activities for at least 14 days (not including any time spent in quarantine to slow the spread of COVID-19).
- Death.

Limitations of liability

A person would not be liable for a COVID-19 claim arising from exposure of an individual to COVID-19 on **premises** owned, leased, managed, or operated by the person, or during an activity managed by the person, unless it was shown by clear and convincing evidence that the

injuries were caused by a reckless disregard of a substantial and unnecessary risk that an individual would be exposed to COVID-19 or unless the person engaged in a deliberate act intended to cause harm.

Premises would mean any real property and any appurtenant building or structure (e.g., an outbuilding), or a vehicle, that serves a commercial, residential, charitable, cultural, educational, governmental, health care, religious, or other purpose.

A person also would not be liable for a COVID-19 claim or a claim related to conduct intended to reduce transmission of COVID-19 if the person operated in substantial compliance with or reasonably consistent with a federal or state statute or regulation, executive order, or **public health guidance** that was applicable at the time to the conduct or risk that allegedly caused harm. If more than one public health guidance applied to the person or conduct at issue at the time of the alleged harm, the requirements of this provision would be satisfied by conduct reasonably consistent with any public health guidance.

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.

Product liability claims

The following persons would not be liable in a civil action alleging a product liability claim:

- A person that designs, manufactures, labels, sells, delivers, distributes, provides insurance coverage for, or donates in response to COVID-19 a **qualified product** that is used by an essential business, first responder, government entity, health facility, or health professional, for a claim related to that product.
- A person that designs, manufactures, labels, sells, delivers, distributes, provides insurance coverage for, or donates disinfecting or cleaning supplies or personal protective equipment (PPE) in response to COVID-19 that does not make such products in the ordinary course of the person's business, for a claim related to those supplies or PPE.
- A person that selects or dispenses a qualified product in response to the COVID-19 pandemic, for injuries or damages claimed to have arisen from the selection, dispensation, or use of the qualified product.

Qualified product would mean all of the following:

- PPE used to protect the wearer from COVID-19 or the spread of COVID-19.
- Medical devices, equipment, and supplies used to treat COVID-19, including a product used or modified for an unapproved use outside of the product's normal use to treat or prevent the spread of COVID-19.
- Medical devices, equipment, or supplies used outside of the product's normal use to treat or prevent the spread of COVID-19.
- Medications used to treat COVID-19, including those prescribed or dispensed for off-label use to attempt to combat COVID-19.
- Tests to diagnose or determine immunity to COVID-19.
- Components of any of the above.

However, the limitations on a product liability claim described above would not apply if there was clear and convincing evidence that the person had actual knowledge that the product was defective and that there was a substantial likelihood that the defect would cause the injury that is the basis of the action and the person willfully disregarded that knowledge in the manufacture, distribution, sale, or donation of the product.

Liability of certain property owners

A person that owns or controls premises and designates and uses all or part of those premises for quarantine purposes, to provide health care services, or to provide shelter to patients, first responders, or health professionals would not be civilly liable for causing the death of or injury to an individual on or about the premises or for loss of or damage to an individual's property. This civil immunity would apply whether the person voluntarily designated and used the premises for those purposes or did so at the request or order of the state or a political subdivision of the state. The civil immunity would not apply if gross negligence was the proximate cause of the death, injury, or damage.

However, the above provisions would not affect any obligation of a person that owns or controls premises to disclose hidden dangers or safety hazards that are known to the owner or the occupant of the premises that might possibly result in the death or injury or loss of or damage to the property.

Limitations of the act

The new act 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 any claim, including causation and proximate cause elements.
- Affect rights, remedies, or protections under the Worker's Disability Compensation Act, including the exclusive application of that act.
- Amend, repeal, alter, or affect any other immunity or limitation of liability.

Tie-bar

The bill is tie-barred to House Bills 6031, 6032, and 6101, which means that it could not take effect unless all of those bills were also enacted into law.¹

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact on local court funding units. Provisions of the bill are aimed at limiting the number of lawsuits likely to be filed. Any fiscal impact would be directly related to how provisions of the bill 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.

¹ House Bills 6031 and 6101 would amend the Michigan Occupational Safety and Health Act to establish conditions for immunity from civil liability for an employer whose employee is exposed to COVID-19. 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.