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BILL ANALYSIS

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House Bill 6030 through 6032 (as enacted)

PUBLIC ACT 236-238 of 2020

House Bill 6101 (as enacted)

PUBLIC ACT 239 of 2020

Sponsor: Representative Thomas Albert (H.B. 6030)

Representative Tommy Brann (H.B. 6031)

Representative Graham Filler (H.B. 6032)

Representative Wendell Byrd (H.B. 6101)

House Committee: Judiciary

Senate Committee: Economic and Small Business Development (discharged)

Date Completed: 11-6-20

CONTENT

House Bill 6030 enacted the "COVID-19 Response and Reopening Liability Assurance Act" to do the following:

- Specify that a person who complies with all Federal, State, and local statutes, rules, regulations, executive orders, and agency orders related to COVID-19 that had not been denied legal effect at the time of the conduct or risk that allegedly caused harm is immune from liability for a COVID-19 claim.
- Specify that an isolated, de minimis deviation from strict compliance with the statutes, rules, regulations, executive orders, and agency orders unrelated to the plaintiff's injuries does not deny a person immunity as described above.
- Specify that the bill applies retroactively to any claim or cause of action that accrued after March 1, 2020.

House Bill 6031 amended the Michigan Occupational Safety and Health Act to do the following:

- Specify that an employer is not liable under the Act for an employee's exposure to COVID-19 if the employer was operating in compliance with all Federal, State, and local statutes, rules, and regulations, executive orders, and agency orders related to COVID-19 that had not been denied legal effect at the time of the exposure.
- Specify that an isolated, de minimis deviation from strict compliance with the statutes, rules, regulations, executive orders, and agency orders unrelated to the employee's exposure to COVID-19 does not deny an employer the immunity described above.
- Specify that the bill applies retroactively to an exposure to COVID-19 that occurs after March 1, 2020.

House Bill 6101 amended the Michigan Occupational Safety and Health Act to define "COVID-19".

House Bill 6032 created a new act to do the following:

- **Prohibit an employee who tests positive for COVID-19 or displays the principal symptoms of COVID-19 from reporting to work until certain conditions are met.**
- **Prohibit an employee who has close contact with an individual who tests positive for COVID-19 or with an individual who displays the principal symptoms of COVID-19 from reporting to work until certain conditions are met.**
- **Prohibit an employer from discharging, disciplining, or otherwise retaliating against an employee who complies with the return to work conditions prescribed under the bill, opposes a violation of the bill, or reports health violations related to COVID-19.**
- **Allow an employee aggrieved by a violation of the bill to bring a civil action for appropriate injunctive relief or damages and to award to a plaintiff who prevails in an action brought under the bill damages of at least \$5,000.**

Each bill took effect October 22, 2020.

House Bill 6030

Definitions

The bill defines "COVID-19 claim" to mean a tort claim or tort cause of action for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to exposure or potential exposure to COVID-19, or to conduct intended to reduce transmission of COVID-19. The term also includes a tort claim made by or on behalf of an individual who has been exposed or potentially exposed to COVID-19, or any representative, spouse, parent, child, member of the same household, or other relative of the individual, 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 individual's exposure or potential exposure to COVID-19. The term does not include an administrative proceeding or civil action brought by a State or local government prosecutor or agency to enforce State statutes and regulations, executive orders, or State agency orders applicable to COVID-19. The term "COVID-19" means the novel coronavirus identified as SARS-CoV-2 or a virus mutating from SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2, and conditions associated with the disease.

"Conduct intended to reduce transmission of COVID-19" means health screening, testing, contact tracing, and other actions intended to reduce transmission of COVID-19 in a workplace or on other premises.

"Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity, including a school, a college or university, an institution of higher education, and a nonprofit charitable organization. Person includes an employee, agent, or independent contractor of the person, regardless of whether the individual is paid or an unpaid volunteer.

"Nonprofit charitable organization" means an organization granted tax exempt status by the Internal Revenue Service, if no part of the organization's net earnings inure to the benefit of a private shareholder or individual.

COVID-19 Claim

Under the bill, a person who acts in compliance with all Federal, State, and local statutes, rules, regulations, executive orders, and agency orders related to COVID-19 that had not been denied legal effect at the time of the conduct or risk that allegedly caused harm is immune from liability for a COVID-19 claim. An isolated, de minimis deviation from strict

compliance with these statutes, rules, regulations, executive orders, and agency orders unrelated to the plaintiff's injuries does not deny a person the immunity provided in the bill.

Scope of Act

The Act does 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 Compensations Act, including the exclusive application of that Act.
- Amend, repeal, alter, or affect any other immunity or limitation of liability.
- Create a defense to liability in an administrative proceeding or civil action brought by a State or local government prosecutor or agency to enforce State statutes and regulations, executive orders, or State agency orders, applicable to COVID-19.

As provided by Section 5 of Chapter 1 (Of the Statutes) of the Revised Statutes of 1846, the provisions of proposed Act would be severable. If any portion of the Act or the application of it to any person or circumstances is found to be invalid by a court, the invalidity will not affect, impair, or invalidate the other portions or applications of the bill that can be given effect without the invalid portion or application.

The Act applies retroactively to any claim or cause of action that occurred after March 1, 2020.

House Bill 6031

Generally, the Michigan Occupational Safety and Health Act governs working conditions in the State and prescribes the duties of employers and employees concerning places and conditions of employment.

Under the bill, notwithstanding any other provision of the Act, an employer is not liable under the Act for an employee's exposure to COVID-19 if the employer was operating in compliance with all Federal, State, and local statutes, rules, and regulations, executive orders, and agency orders related to COVID-19 that had not been denied legal effect at the time of the exposure. An isolated, de minimis deviation from strict compliance with such statutes, rules, regulations, executive orders, and agency orders unrelated to the employee's exposure to COVID-19 does not deny an employer the immunity provided above.

The bill does 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.
- Affect a right, remedy, or protection under the Worker's Disability Compensation Act, including the exclusive application of the Michigan Occupational Safety and Health Act.

The bill applies retroactively to an exposure to COVID-19 that occurs after March 1, 2020.

House Bill 6101

The bill would amend the Michigan Occupational Safety and Health Act to define "COVID-19" as the novel coronavirus identified as SARS-CoV-2 or a virus mutating from SARS-CoV-2, the

disease caused by the novel coronavirus SARS CoV-2, and conditions associated with the disease.

House Bill 6032

Definitions

Under the bill, "principal symptom of COVID-19" has the definition provided by order of the Director or Chief Medical Executive of the Michigan Department of Health and Human Services (DHHS). If the term is not defined by the Director or Chief Medical Executive of the DHHS at the time of an action taken under the bill, the term means either or both the following: a) one or more of the following not explained by a known medical or physical condition: i) fever, ii) shortness of breath, or iii) uncontrolled cough; b) two or more of the following not explained by a known medical or physical condition: i) abdominal pain, ii) diarrhea, iii) loss of taste or smell, iv) muscle aches, v) severe headache, vi) sore throat, vii) vomiting.

"COVID-19" means the novel coronavirus identified as SARS-CoV-2 or a virus mutating from it.

"Employee" means an individual employed by an employer and whose primary workplace is not the individual's residence. "Employer" means a person or a State or local government entity that employs one or more individuals. "Person" means an individual, partnership, corporation, association, or other legal entity.

"First responder" means any of the following:

- A law enforcement officer.
- A firefighter.
- A paramedic.

"Health care facility" means any of the following facilities, including those that may operate under shared or joint ownership, and a facility used as surge capacity by any of the following facilities:

- An entity listed in Section 20106(1) of the Public health Code.
- A State-owned hospital or surgical center.
- A State-operated outpatient facility.
- A State-operated veterans' facility.

(Section 20106(1) of the Public Health Code lists the following entities: an ambulance operation, aircraft transport operation, nontransport prehospital life support operation, medical first response service, a county medical care facility, a freestanding surgical outpatient facility, a health maintenance organization, a home for the aged, a hospital, a nursing home, a hospice, a hospice residence, and certain agencies listed above that are located in a university, college, or other educational institution.)

Prohibition from Discharge, Discipline, or Retaliation

Unless otherwise provided below, an employer may not discharge, discipline, or otherwise retaliate against an employee who does any of the following:

- Complies with the return to work conditions relating to COVID-19, described above.
- Opposes a violation of the bill.
- Reports health violations related to COVID-19.

This prohibition does not apply to an employee described above who, after displaying the principal symptoms of COVID-19, fails to make reasonable efforts to schedule a COVID-19 test within three days after receiving a request from their employer to get tested for COVID-19.

Prohibition Against Reporting to Work

Under the bill, an employee who tests positive for COVID-19 or displays the principal symptoms of COVID-19 may not report to work until all the following conditions are met:

- If the employee has a fever, 24 hours have passed since the fever has stopped without the use of fever-reducing medications.
- Ten days have passed since either the date of the employee's symptoms first appeared or the date the employee received the test that yielded a positive result for COVID-19, whichever is later.
- The employee's principal symptoms of COVID-19 have improved.

Except as provided below, an employee who has close contact with an individual who tests positive for COVID-19 or with an individual who displays the principal symptoms of COVID-19 may not report to work until one of the following conditions is met:

- Fourteen days have passed since the employee last had close contact with the individual.
- The individual with whom the employee had close contact receives a medical determination that they did not have COVID-19 at the time of the close contact with the employee.

"Close contact" means being within approximately six feet of an individual for 15 minutes or longer.

However, the above conditions for an employee who has close contact with an individual described above do not apply to an employee who is any of the following:

- A health care professional.
- A worker at a health care facility.
- A first responder.
- A child protective service employee.
- A worker at a child caring institution (a child care facility that is organized for the purpose of receiving minor children for care, maintenance, and supervision, usually on a 24-hour basis, in buildings maintained by the child caring institution for that purpose, and operates throughout the year).
- A worker at an adult foster care facility.
- A worker at a correctional facility.

Aggrieved Employee

Under the bill, an employee aggrieved by a violation of the bill may bring a civil action for appropriate injunctive relief or damages, or both, in the circuit court for the county where the alleged violation occurred or for the county where the employer against whom the action is filed is located or has its principal place of business. The bill requires a court to award a plaintiff who prevails in an action damages of at least \$5,000.

Scope of Act

The bill specifies that it applies to public employers and public employees, except to the extent that it is inconsistent with Section 5 of Article XI of the State Constitution of 1963 (which prescribes the scope of employees considered as part of the classified State civil service.)

The bill also specifies that it does not affect rights, remedies, or protections under the Worker's Disability Compensation Act, including the exclusive application of that Act.

The bill is effective retroactively to March 1, 2020.

MCL 408.1085 (H.B. 6031)
408.1085a (H.B. 6101)

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

The bills will have an indeterminate, but minimal, fiscal impact on State and local government. The bills do not affect State or local revenue or costs directly. Instead, House Bills 6032 and 6031 prohibit an employer from discharging or terminating an employee who tests positive for COVID-19 and provide immunity from liability if an employee contracts the disease if the employer was operating in compliance with all applicable laws and regulations related to COVID-19 at the time of the exposure, respectively. These protections may encourage employers, including the State and local units of government, to continue operations, provided they comply with Federal or State health safety guidelines. The bills also likely will protect the State and local units of government from lawsuits filed by employees who contract COVID-19.

Lastly, the bills, specifically House Bills 6030 and 6031, may prevent an increase in local court costs from COVID-19-related civil claims that otherwise may be filed if not for the language in the bills.

Fiscal Analyst: Cory Savino
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.