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House Bill 6030 (Substitute H-4 as discharged)
House Bill 6031 (Substitute H-4 as discharged)
House Bill 6032 (Substitute H-2 as discharged)
House Bill 6101 (Substitute H-2 as discharged)
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: 10-13-20

CONTENT

House Bill 6030 (H-4) would enact the "COVID-19 Response and Reopening Liability Assurance Act", which would do the following:

- **Prohibit a person from bringing or maintaining a civil action alleging a COVID-19 claim unless the claim alleged harm related to a minimum medical condition.**
- **Specify that a person who complied with Federal and State statutes or regulations, executive orders, and State agency orders and consistent with public health guidance would not be liable for a COVID-19 claim or a claim related to conduct intended to reduce transmission of COVID-19.**
- **Specify that a person who designed, manufactured, labeled, sold, distributed, provided insurance coverage for, or donated a qualified product in response to COVID-19 would not be liable in a civil action that alleged a product liability claim related to the qualified product.**
- **Specify that a person who owned or controlled premises that designated and used the whole or any part of the premises to provide health care services, to provide shelter to patients, first responders, or health professionals, or for quarantine purposes in response to the COVID-19 emergency would not be civilly liable for negligence causing the death of or injury to an individual on or about the premises or for loss of or damage to the property.**
- **Specify that the bill would apply retroactively to any claim or cause of action that accrued after January 1, 2020.**

House Bill 6031 (H-4) would amend the Michigan Occupational Safety and Health Act to do the following:

- **Specify that an employer would not be liable for an employee's exposure to COVID-19 if the employer were operating in compliance with Federal or State statutes or regulations, executive orders, State agency orders, and public health guidance applicable at the time of the exposure.**
- **Specify that if more than one public health guidance applied to the employer at the time of the exposure, the bill's requirements bill would be satisfied if the employer complied with any applicable public health guidance.**

- Specify that the bill would apply retroactively to an exposure to COVID-19 that occurred after January 1, 2020.

House Bill 6032 (H-2) would create a new act to do the following:

- Prohibit an employee who tested positive for COVID-19 or displayed the principal symptoms of COVID-19 from reporting to work until certain conditions were met.
- Prohibit an employee who had close contact with an individual who tested positive for COVID-19 or was with an individual who displayed the principal symptoms of COVID-19 from reporting to work until certain conditions were met.
- Prohibit an employer from discharging, disciplining, or otherwise retaliating against an employee who complied with the return to work conditions relating to COVID-19 under the bill or opposed a violation of the bill.
- Allow an employer to discharge or discipline an employee if he or she were not prohibited from reporting to work but did not do so.
- Allow an employee aggrieved by a violation of the new act to bring a civil action for appropriate injunctive relief or damages and to award to a plaintiff who prevailed in that action damages of at least \$5,000.

House Bill 6101 (H-2) would amend the Michigan Occupational Safety and Health Act to add terms and definitions pertaining to House Bill 6031 (H-4).

The bills are tie-barred.

House Bill 6030 (H-4)

Definitions

"COVID-19 claim" would mean a claim or 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 a person's actions intended to maintain workplace safety. The term also includes a 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. "COVID-19" would mean 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.

"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.
- A medical illness or physical injury or condition caused by COVID-19 that results in the inability to engage in an individual's usual and customary daily activities for at least 14 days, which does not include any period that the individual is in quarantine to slow the spread of COVID-19.
- Death attributed to COVID-19.

"Person" would mean 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" would mean 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.

"Qualified product" would mean personal protective equipment used to protect the wearer from COVID-19 or the spread of COVID-19; medical devices, equipment, and supplies used to treat COVID-19 or prevent the spread of COVID-19; medications used to treat COVID-19 including medications prescribed or dispensed for off-label use to attempt to combat COVID-19; tests to diagnose or determine immunity to COVID-19; disinfecting or cleaning supplies; and components of qualified products. "Personal protective equipment" would mean coveralls, face shields, gloves, gowns, masks, respirators, or other equipment used to protect an individual from infection or illness or the spread of infection or illness. "Disinfecting or cleaning supplies" would include hand sanitizers manufactured in a manner consistent with United States Food and Drug Administration industry guidance, disinfectants, sprays, and wipes, if the supplies meet any applicable United States Environmental Protection Agency criteria for use against COVID-19.

"Product liability claim" would mean an action based on a legal or equitable theory of liability brought for the death of an individual or for injury to an individual or damage to property caused by or resulting from the production of a product.

"Public health guidance" would mean written guidance related to COVID-19 issued by the Centers for Disease Control and Prevention or the Occupational Safety and Health Administration of the United States Department of Labor, or by the Michigan Occupational Safety and Health Administration, the Department of Health and Human Services, the Department of Licensing and Regulatory Affairs, or another agency of the State.

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

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

"First responder" would mean a firefighter, law enforcement officer, member of a rescue squad or ambulance crew, or public safety officer as those terms are defined in Section 2 of the Public Safety Officers Benefit Act, and any other person authorized to provide emergency services during the COVID-19 emergency.

"COVID-19 emergency" would mean a state of emergency or disaster declared under a statute of this State on March 10, 2020, or under any subsequent orders or amendments to those orders.

"Health professional" would mean an individual licensed, registered, certified, or otherwise authorized to engage in a health profession under Article 15 of the Public Health Code, whether paid or unpaid, including individuals engaged in telemedicine or telehealth, any other individual authorized to provide health care during the COVID-19 emergency, and the employer or agent of a health professional who provides or arranges health care.

COVID-19 Claim

Under the proposed COVID-19 Response and Reopening Liability Assurance 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. The Act specifies that this provision would not

apply if the conduct that was the subject of the claim was a deliberate act intended to cause harm.

A person who operated in compliance with Federal and State statutes or regulations, executive orders, and State agency orders and consistent with public health guidance, that were applicable at the time to the conduct or risk that had allegedly caused harm, would not be liable for a COVID-19 claim or a claim related to conduct intended to reduce transmission of COVID-19.

COVID-19 Claim for Qualified Products

Under the Act, a person who designed, manufactured, labeled, sold, distributed, provided insurance coverage for, or donated a qualified product in response to COVID-19 would not be liable in a civil action that alleged a product liability claim related to the qualified product. A person who selected or dispensed a qualified product in response to the COVID-19 pandemic would not be liable in a civil action for injuries or damages claimed to have arisen from the selection, dispensation, or use of the product. The limitations on liability would not apply if a person had actual knowledge that the product was defective and that there was a substantial likelihood that the defect would cause the injury that was the basis of the action, and the person willfully disregarded that knowledge in the manufacture, distribution, sale, or donation of the product.

Liability for Person's Premises

The Act provides that a person who owned or controlled premises that, voluntarily or at the request or order of the State of Michigan or a political subdivision, designated and used the whole or any part of the premises to provide health care services, to provide shelter to patients, first responders, or health professionals, or for quarantine purposes in response to the COVID-19 emergency would not be civilly liable for negligence causing the death of or injury to an individual on or about the premises or for loss of or damage to the property.

The Act specifies that the provision above would not affect an obligation of a person who owned or controlled premises to disclose hidden dangers or safety hazards that were known to the owner or occupant of the premises that could possibly result in the death or injury or loss of or damage of the property.

Scope of Act

The bill specifies that the Act 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 Compensations Act, including the exclusive application of that Act.
- Amend, repeal, alter, or affect any other immunity or limitation of liability.

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

The Act would apply retroactively to any claim or cause of action that accrued after January 1, 2020.

House Bill 6031 (H-4)

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, and except as provided, an employer would not be liable under the Act for an employee's exposure to COVID-19 if the employer were operating in compliance with Federal or State statutes or regulations, executive orders, State agency orders, and public health guidance 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 bill's requirements would be satisfied if the employer complied with any applicable public health guidance. This provision would not apply if the employer willfully exposed the employee to COVID-19 unless the employee was, at the time of the exposure, working in a health care setting.

The bill 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, but not limited to, a causation or proximate cause element.
- Amend, repeal, alter, or affect any other immunity or limitation of liability.

The bill would apply retroactively to an exposure to COVID-19 that occurred after January 1, 2020.

House Bill 6101 (H-2)

The bill would add the following definitions for the following terms, as used in House Bill 6031 (H-2), to the Michigan Occupational Safety and Health Act.

"COVID-19" would mean 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.

"Public health guidance" would mean written guidance related to COVID-19 issued by the Centers for Disease Control and Prevention or the Occupational Safety and Health Administration of the United States Department of Labor, or by the Michigan Occupational Safety and Health Administration, the Department of Health and Human Services, the Department of Licensing and Regulatory Affairs, or another agency of the State.

"Wilful" would mean that term as defined in Section 6 of the Act: for the purpose of criminal prosecutions, 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 the Act, or a rule or standard promulgated pursuant to the Act, or is knowingly and purposely indifferent to a requirement of this Act, or a rule or standard promulgated pursuant to this Act. 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 provided the individual is shown to have acted or to have failed to act knowingly and purposely.

House Bill 6032 (H-2)

Definitions

Under the bill, "principal symptoms of COVID-19" would mean 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" would mean the novel coronavirus identified as SARS-CoV-2 or a virus mutating from it.

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

"First responder" would mean any of the following:

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

"Health care facility" would mean 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 veteran's 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.)

"Damages" would mean actual injury or loss, reasonable attorney fees, or reasonable court costs.

Prohibition against Reporting to Work

Under the bill, an employee who tested positive for COVID-19 or displayed the principal symptoms of COVID-19 could not report to work until all the following conditions were met:

- If the employee had a fever, 24 hours had passed since the fever had stopped without the use of fever-reducing medications.
- Ten days had 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 was later.
- The employee's principal symptoms of COVID-19 had improved.

Except as otherwise provided below, an employee who had close contact with an individual who tested positive for COVID-19 or was with an individual who displayed the principal symptoms of COVID-19 could not report to work until one of the following conditions were met:

- Fourteen days had passed since the employee last had close contact with the individual.
- The individual with whom the employee had close contact received a negative COVID-19 test result.

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

However, the prohibitions pertaining to an employee who had close contact with an individual who tested positive for COVID-19 or was with an individual who displayed the principal symptoms of COVID-19 would not apply to an employee who was 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.

Prohibition from Discharging, Disciplining, or Retaliating

Unless otherwise provided below, an employer could not discharge, discipline, or otherwise retaliate against an employee who did either of the following:

- Complied with the return to work conditions relating to COVID-19, described above.
- Opposed a violation of the bill.

However, this provision would not apply to either of the following:

- An employee who reported to work before the end of the applicable period specified for an employee who tested positive for COVID-19 or displayed the principal symptoms of COVID-19, or who had close contact with an individual who tested positive for COVID-19 or was with an individual who displayed the principal symptoms of COVID-19.
- An employee who failed to be tested for COVID-19 within three days after displaying the principal symptoms of COVID-19.

The bill would allow an employer to discharge or discipline an employee if one or more of the following applied:

- The employee consented to the discharge or discipline.
- There was any other lawful basis to discipline or discharge the employee.

In addition, an employer could discharge or discipline an employee if the employee were not prohibited from reporting to work but did not do so. The bill specifies that this provision would not apply if the employee's failure to report to work were otherwise protected by law.

Aggrieved Employee

Under the bill, an employee aggrieved by a violation of the bill could 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 was filed was located or had its principal place of business. A court would have to award to a plaintiff who prevailed in an action under the bill damages of at least \$5,000.

Scope of Act

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

If a collective bargaining agreement or other contract that was inconsistent with the bill were in effect for any employee on the bill's effective date, the bill would apply to that employee beginning on the date the collective bargaining agreement or other contract expired or was amended, extended, or renewed.

The bill also specifies that it would be repealed effective March 31, 2021.

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

Legislative Analyst: Dana Adams
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FISCAL IMPACT

The bills would have an indeterminate, but minimal, fiscal impact on State and local government. The bills would not affect State or local revenue or costs directly. Instead, House Bills 6032 (H-2) and 6031 (H-4) would prohibit an employer from discharging or terminating an employee who tested positive for COVID-19 and provide immunity from liability if an employee contracted the disease, unless the conduct was willful, respectively. These protections could encourage employers, including the State and local units of government, to continue operations, so long as they substantially complied with Federal or State health safety guidelines. The bills also could protect the State and local units of government from lawsuits filed by employees who contracted COVID-19.

Lastly, the bills, specifically House Bills 6030 (H-4) and 6031 (H-4), could prevent an increase in local court costs from COVID-19-related civil claims that otherwise could be filed if not for the language in the bills.

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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.