

# Legislative Analysis



## IMMUNITY FROM COVID-19 LIABILITY

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

**House Bill 6030 (H-4) as reported from committee**  
**Sponsor: Rep. Thomas A. Albert**

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

**House Bill 6031 (H-4) as reported from committee**  
**Sponsor: Rep. Tommy Brann**

**House Bill 6101 (H-2) as reported**  
**Sponsor: Rep. Wendell L. Byrd**

**House Bill 6032 (H-2) as reported**  
**Sponsor: Rep. Graham Filler**

**Committee: Judiciary**  
**Revised 9-23-20**

### 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.

House Bills 6031 and 6101 would together add two new sections to 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 certain employees, and provide remedies.

The immunity provided by the bills would apply retroactively to a COVID-19 exposure occurring after January 1, 2020.

**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.

**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.
- A 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 attributed to COVID-19.

#### Limitations of liability

A person 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 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 allegedly caused harm.

**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.

**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, 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 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, distributes, provides insurance coverage for, or donates a **qualified product** in response to COVID-19, for a claim related to that product.
- 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:

- Personal protective equipment (PPE) used to protect the wearer from COVID-19 or the spread of COVID-19.
- Medical devices, equipment, and supplies used 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.
- Disinfecting or cleaning supplies.
- Components of any of the above.

However, the limitations on a product liability claim described above would not apply if 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.

***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.

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.

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.

**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.

### Immunity

Under the bills, notwithstanding any other provision of MIOSHA, an employer would not be liable for damages under the act for an employee's exposure to **COVID-19** if the employer was 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 requirements of this provision would be satisfied if the employer was operating in compliance 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.

**Public health guidance** would mean written guidance related to COVID-19 issued by the CDC or the federal Occupational Safety and Health Administration, 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 this state.

### Exception

The civil immunity described above 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.

("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.

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

**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 certain employees, and provide remedies. The new act would be repealed effective March 31, 2021.

Employees with symptoms or positive test

The bill would prohibit an *employee* who tests positive for *COVID-19* or who displays the *principal symptoms of COVID-19* from reporting to work until all of 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 the later of the following:
  - The date the employee's symptoms first appeared.
  - The date the employee received the test that yielded a positive result for COVID-19.
- The employee's principal symptoms of COVID-19 have improved.

*Employee* would mean an individual employed by an *employer* and whose primary workplace is not his or her home.

*Employer* would mean an individual, partnership, corporation, association, or other legal entity, including a state or local governmental entity, that employs one or more individuals. (The bill specifies that the new act would apply to public employers and public employees to the extent consistent with section 5 of Article XI of the state constitution. That section establishes a framework for the classified state civil service and the Civil Service Commission.)

*COVID-19* would mean the novel coronavirus identified as SARS-CoV-2 or a virus mutating from SARS-CoV-2.

*Principal symptoms of COVID-19* would mean either or both of the following:

- One or more of the following not explained by a known medical or physical condition:
  - Fever.
  - Shortness of breath.
  - Uncontrolled cough.
- Two or more of the following not explained by a known medical or physical condition:
  - Abdominal pain.
  - Diarrhea.
  - Loss of taste or smell.
  - Muscle aches.
  - Severe headache.
  - Sore throat.
  - Vomiting.

### Employees with close contact

The bill would also prohibit an employee who has had *close contact* with an individual who tests positive for COVID-19 or with an individual displaying the principal symptoms of COVID-19 from reporting 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 the employee had close contact with tests negative for COVID-19.

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

However, this prohibition would not apply to the following employees:

- A health care professional. (The term is not defined in the bill. Under the Public Health Code, a health care profession means an occupation or employment performed by an individual licensed or registered under Article 15 of the code.)
- A worker at a health care facility, as that term is defined in the bill.
- A first responder, defined to mean a law enforcement officer, firefighter, or paramedic.
- A child protective service employee.
- A worker at a child caring institution, as defined in section 1 of 1973 PA 116.
- A worker at an adult foster care facility, as defined in section 3 of the Adult Foster Care Facility Licensing Act.
- A worker at a correctional facility.

### Adverse employment actions

The bill would prohibit an *employer* from discharging, disciplining, or otherwise retaliating against an employee who complies with the prohibitions described above or who opposes an employer's violation of the bill.

This provision would not apply to an employee who reports to work before the end of the applicable period described above. It also would not apply to an employee who fails to be tested for COVID-19 within three days of displaying the principal symptoms of COVID-19.

An employer could discharge or discipline an employee if one or more of the following apply:

- The bill does not prohibit the employee from reporting to work, but the employee does not report to work, and the employee's failure to report to work is not otherwise protected by law.
- The employee consents to the discharge or discipline.
- There is any other lawful basis to discipline or discharge the employee.

### Remedy for an aggrieved employee

An employee aggrieved by a violation of the new act could bring a civil action for appropriate injunctive relief or *damages*, or both. The lawsuit could be filed in the circuit court for the county where the alleged violation occurred or where the employer is located

or has its principal place of business. If an employee prevails in the action, the court would have to award him or her damages of at least \$5,000.

*Damages* would mean actual injury or loss, reasonable attorney fees, reasonable court costs, or any combination of these.

#### Employment contracts and agreements

If a collective bargaining agreement or other contract that is inconsistent with the new act is in effect for an employee on the act's effective date, the act would apply to the employee beginning on the date the collective bargaining agreement or other contract expires or is amended, extended, or renewed.

The new act would be repealed effective March 31, 2021.

#### Tie-bars

The bills are all tie-barred to one other, which means that none of them could take effect unless all of them were enacted.

### **FISCAL IMPACT:**

**House Bill 6030** 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.

**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.

**House Bill 6032** would have an indeterminate fiscal impact on local court funding units. Costs could be incurred depending on how the bill affects court caseloads, the complexity of lawsuits brought under the bill, and related administrative costs.

The bill would also create potential fiscal liabilities for state and local governments by providing a legal basis from which employees may bring a civil action against employers under circumstances related to COVID-19. However, it is not clear how the bill's clarification of employee and employer rights with regard to working during the pandemic would affect lawsuits against the state or what the extent of potential fiscal liabilities could be. According to one COVID-19 employment litigation tracker,<sup>1</sup> as of August 10, 2020,

---

<sup>1</sup> <https://www.fisherphillips.com/covid-19-litigation>

there have been 15 COVID-19-related employment lawsuits in Michigan since the start of the pandemic, seven of which were classified as employment discrimination.

If a court rules that a state employer violated the bill and a lawsuit settlement is owed, proceeds for the settlement would have to be taken from the department's existing appropriated state GF/GP or restricted revenue or the legislature would have to appropriate additional funds to support the ruling.

## **POSITIONS:**

Representatives of the following entities testified in support of the bills:

- American Tort Reform Association (9-8-20)
- Detroit Chamber (9-8-20)
- Harbor Restaurants (9-8-20)
- Michigan Chamber of Commerce (9-16-20)
- Michigan Manufacturers Association (9-15-20)
- MSU Federal Credit Union (9-8-20)
- NFIB (9-8-20)
- Shook, Hardy, and Bacon (9-1-20)

The following entities indicated support for the bills:

- ABC of Michigan (9-1-20)
- AT&T (9-1-20)
- Auto Dealers of Michigan (9-1-20)
- Business Leaders for Michigan (9-1-20)
- Clemons Food Group (9-1-20)
- Community Bankers of Michigan (9-1-20)
- Ford (9-1-20)
- Grand Rapids Chamber (9-1-20)
- Health Care Association of Michigan (9-16-20)
- Homebuilders Association of Michigan (9-1-20)
- Indiana Michigan Power Company (9-1-20)
- International Council of Shopping Centers (9-16-20)
- Lansing Chamber (9-1-20)
- Med Share, Inc. (9-1-20)
- Michigan Association of CPAs (9-8-20)
- Michigan Association of State Universities (9-8-20)
- Michigan Chemistry Council (9-16-20)
- Michigan Community College Association (9-1-20)
- Michigan Farm Bureau (9-1-20)
- Michigan Golf Association (9-1-20)
- Michigan Health and Hospital Association (9-1-20)
- Michigan Infrastructure and Transportation Association (9-1-20)
- Michigan Railroad Association (9-1-20)

- Michigan Realtors (9-1-20)
- Michigan Restaurant and Lodging Association (9-1-20)
- Michigan Retailers Association (9-1-20)
- Northern Michigan Chamber Alliance (9-1-20)
- Quicken Loans (9-1-20)
- Real Estate Development and Investment Company (REDICO) (9-1-20)
- Saginaw Chamber (9-1-20)
- Small Business Association of Michigan (9-1-20)
- Telecommunications Association of Michigan (9-1-20)
- T-Mobile (9-8-20)

The following entities indicated support for HB 6030 (9-1-20):

- American Heart Association
- Dow Chemical Company

The Michigan Bankers Association indicated support for HBs 6031 and 6032. (9-1-20)

The Michigan State Medical Society indicated support for HBs 6030 and 6031. (9-1-20)

Representatives of the following entities testified in opposition to the bills:

- AFSCME Council 25 (9-15-20)
- Michigan Association for Justice (9-15-20)
- State Bar of Michigan – Negligence Law Section (9-8-20)

The Michigan Education Association indicated opposition to the bills. (9-1-20)

The following entities indicated opposition to HBs 6030, 6031, and 6101 (9-1-20):

- Michigan League for Public Policy
- Michigan Nurses Association

Legislative Analyst: Susan Stutzky  
 Fiscal Analysts: Robin Risko  
 Marcus Coffin  
 Michael Cnossen

---

■ 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.