

COVID-19 RESPONSE AND REOPENING LIABILITY ASSURANCE ACT

House Bills 6030-32, Senate Bills 1022-24

As Michigan's businesses begin to reopen, the proposed legislation will provide assurance that they will not be subject to unwarranted lawsuits and excessive liability, particularly in fragile economic times. Through its targeted, balanced requirements, the proposed legislation both alleviates the concerns of businesses and protects the public. The legislation also ensures that those who are aiding in the state's response to the pandemic by making vital personal protective equipment, medical supplies, and other products are not exposing themselves to lawsuits.

Requiring an Actual Injury

Nationwide, there are over 1.5 million confirmed cases of COVID-19 as of May 22, including about 54,000 cases in Michigan. By the end of the pandemic, all of us will likely have been exposed to COVID-19. The vast majority of people who are diagnosed with COVID-19, however, will experience no more than flu-like symptoms. Just as a person would not sue for contracting the flu at work or while visiting the supermarket, the proposed legislation does not permit lawsuits by those who allege no more than exposure to COVID-19, a diagnosis of COVID-19 without illness, or common flu-like symptoms.

The proposed legislation permits those who were hospitalized or otherwise experienced a serious illness to file a lawsuit, which would need to satisfy existing tort law requirements. What this provision would do is prevent opportunistic lawyers from filing individual, mass tort, and class action lawsuits on behalf of people whose COVID-19 experience is similar to millions of Americans. Just one of these lawsuits in a fragile economy can be the death knell for a business that is attempting to reopen.

Duty of Care for Premise Owners

The proposed legislation would protect Michigan's businesses, schools, churches, nonprofit organizations and others from claims alleging that they negligently exposed a visitor to COVID-19. As Michigan reopens, it is impossible to fully eliminate the possibility of exposure to COVID-19 whether on a person's property or otherwise. Michiganders are all well aware of that inherent, unavoidable risk.

The proposed legislation provides that a premise owner is subject to liability only if he or she recklessly disregards a substantial and unnecessary risk that an individual would be exposed to COVID-19, or deliberately exposes a person to the virus. In other words, if a business knew, for example, that one of its employees had COVID-19 and permitted that person to continue to work, that business would be subject to liability. Likewise, if a business was aware that a customer or client who frequently visited was diagnosed with COVID-19 but did not clean and disinfect the premises, it could face a lawsuit.

Encouraging & Rewarding Businesses that Follow Public Health Guidance

As businesses operate during the pandemic and reopen, they will look for guidance on how to do the right thing by minimizing the risk of exposure to COVID-19 for their customers and employees. Agencies such as the Centers for Disease Control and the Occupational Safety and Health Administration have issued guidance that provides best practices for all business and for specific industries. In addition, Governor Gretchen Whitmer has issued executive orders providing specific

requirements for operating during the pandemic. The Michigan Department of Health and Human Services and the state's coronavirus website also provide extensive guidance to Michigan businesses. Governor Whitmer's Safe Start plan anticipates a phased reopening in which areas of the state's economy restart subject to additional safety measures and guidelines.

The proposed legislation provides that a business is not liable in a lawsuit alleging that the steps it took were insufficient to protect a person from exposure to COVID-19 when the business followed public health guidance applicable at that time. This provision would also protect businesses that adopt health screenings, contact tracing, or other practices to reduce transmission of COVID-19, as recommended by public health experts, from liability.

Encouraging Production of Vital Products

There is a vital need for personal protective equipment, such as masks and respirators, medical equipment, and other products designed to guard against, treat, or test for COVID-19. Some manufacturers have quickly increased their production of critical products in response to the crisis, which could lead to compromised quality control. Others are making products they do not ordinarily produce to help, posing a risk of a flaw in the product's design, instructions, or warnings.

The proposed legislation places a reasonable limit on the liability exposure of anyone who makes, sells, or donates certain needed products for use by government entities, health care providers, first responders, or essential businesses during the pandemic. It also protects companies that retool to make personal protective equipment or household cleaning or disinfecting supplies for the public. Any business involved in making, selling, distributing, or donating these products would remain subject to liability if it knew a product was defective.

Protecting Those Who Repurpose Property to Aid the COVID-19 Response

During the COVID-19 pandemic, businesses may repurpose their property to aid the state's response. Hotels may provide shelter to first responders or for Michiganders during periods of quarantine. Retailer parking lots may be used for COVID-19 testing. Other properties may temporarily provide space for medical care. Businesses that used their properties for purposes for which they were not designed face a risk of liability.

When properties are repurposed, the proposed legislation limits the owner's liability to instances in which an owner acted in a grossly negligent manner. Owners would continue to be responsible for disclosing any known, hidden dangers or safety hazards on the property.