



Summary of Changes to House Bills 6030 – 32, and 6101 Relating to COVID-19 Liability Protection for Businesses Acting in Good Faith

**Notes provided by the writers of the bill substitutes.*

6030:

Section 2: Definitions

- Modified “disinfecting and cleaning supplies” to refer to hand sanitizers “manufactured in a manner consistent with U.S. Food and Drug Administration guidance” to address a concern raised at the hearing.
 - LaGrand concern – “toxic hand sanitizer”
- Eliminated “gross negligence,” which is no longer used in the bill.
 - Rationale: MAJ referenced this in the past so we decided to be proactive.
- Tweaked “minimum medical condition” to refer to a death “attributed to COVID-19.”
 - Rationale: This is clarifying; otherwise “death” for any reason could be viewed as giving a green light to sue)
- Revised “person” to include “institution of higher education” per Dan Hurley’s request.
- Revised “public health guidance” to explicitly include the Michigan Department of Occupational Safety and Health Administration and Department of Licensing and Regulatory Affairs, which has published COVID guidance for various businesses and professions.
 - Rationale: This is intended to respond to members who expressed at the hearing a sense that the bill should point employers to where the guidance can be found.
- Added definition of “nonprofit charitable organization”
 - The American Heart Association asked for this language.
- Modified “qualified products” to cut language referring to unapproved uses. Added disinfecting and cleaning supplies to “qualified products” to have a uniform product liability protection.
 - LaGrand concern about people gurgling bleach to fight COVID or buying a shoe box w/ a tube attached off the internet and calling it a ventilator.
- Eliminated “essential business” and “health facility.”
 - Rationale: These terms no longer included in the product liability provision, which, as revised, applies to all product sales.

Section 3: Minimum Medical Condition

- No change. We have some advocates of the bill who would like to see this threshold increase but this does not seem advisable at this time.

Section 4: Premise Liability / Exposure Claims

- Eliminated the “clear and convincing evidence” requirement
 - Rationale: This language was questioned in the House committee so we opted to remove it.

Section 5: Safe Harbor

- Significantly narrowed this defense by requiring compliance with all applicable state and federal orders and guidance governing the applicable risk or conduct at the time.
 - Rationale: Addresses MAJ/LaGrand concerns about which guidance applies and whether you could go with the weakest.
- “Substantial” compliance or conduct “reasonably consistent” with guidance is no longer a defense.
 - Rationale: As with the above, we changed this in response to strong opposition primarily from plaintiffs’ bar.
- Eliminated ability for an entity to assert a defense based on compliance with one source of guidance when there are multiple sources.
 - Rationale: See above. While this provision was intended to address the potential for conflicting guidance, it led to concern that an entity could pick and choose the guidance with the weakest responsibilities to assert a defense. We eliminated it.
- Added “state agency orders” as the Michigan Department of Health has issued some COVID orders (in addition to the Governor’s executive orders).
 - Rationale: See above. Want to make this language as tight/bullet proof as possible.

NOTE: LaGrand had suggested combine 4 and 5 but Section 4 is limited to exposure claims, while Section 5 potentially provides a broader defense. We are hopeful that the changes to 4 and 5 are significant enough...but we shall see.

Section 6: Product Liability

- Combined paragraphs 1 and 2, providing a single standard for product liability actions for any qualified product (including disinfecting and cleaning supplies) regardless of who buys it or whether the business ordinarily makes such products.
 - Rationale: There seemed to be confusion about the need for (1) and (2) so we streamlined the language.
- As noted above, hand sanitizers are covered only if made consistent with FDA guidance.
 - Rationale: LaGrand. Could also exempt foreign made?
- Eliminated the “clear and convincing evidence” requirement, as in Section 4.
 - Rationale: As in Sec. 4, this language was questioned in the House committee so we opted to remove it.

Section 7: Repurposing Property

- Eliminated the gross negligence requirement. The provision now precludes “negligence” claims, which is intended to permit actions alleging gross negligence, recklessness, or intentional conduct, or failure to disclose a known hidden hazard.

- Rationale: MAJ previously poked at this language, saying it's too high a burden for plaintiffs to meet under Michigan law. Trying to proactively address.

Sections 8-10

- No changes

6031 (Miosha bill):

- Clarifies we're not concerned about "damages" but, rather, liability/fines. MIOSHA does not assess damages.
- Aligns "substantial compliance" language with 6030

6032 (Employee protection bill):

- Defaults to CDC re: symptoms, federal timelines for quarantine/isolation/etc.
- Makes consistent w/ the most recent EO on this topic, 2020-172.

Courtesy: Michigan Chamber of Commerce