

# Negligence Law Section

## *Negligence Law Section Quarterly*

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### **Government Affairs Update**

#### **Fight between Governor and Legislative Leaders Grows More Bitter**

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Whenever you have the Legislative and Executive Branches of government controlled by different political parties, some acrimony is expected. There is always tension and competition to win not only favored policies, but also to win the public relations battle. However, a solid year of pandemic restrictions have raised the temperature to unprecedented levels in Lansing. The Legislature has already been victorious in one lawsuit against Governor Whitmer, and it is possible that another may be coming soon to a courtroom near you.

Last year, the issue was over Governor Whitmer's executive orders and whether or not she had the ability and authority to extend them beyond a 30 day period without the Legislature's permission. In a 4-3 decision, the Michigan Supreme Court sided with the State Legislature, a result that even some Republican members of the House and Senate did not seem to expect. The sudden termination of several pandemic-related executive orders sent the Michigan Legislature scrambling to codify several popular and important ones, such as the ability to have remote local government meetings and to handle witnessing and notarization requirements on some legal documents online.

Once the Governor could no longer issue executive orders that would not be countermanded by the State Legislature, she turned to the Public Health Code. This statute has sections that allow the Michigan Department of Health and Human Services to issue safety orders addressing public health emergencies. The Legislature has tried to tie portions of the federal COVID-19 relief funds to a repeal of state health department authority to issue such orders, but to date Governor Whitmer has vetoed each attempt.

The threat of a veto might also explain why the new legislature seated in January has yet to re-introduce legislation aimed at limiting liability for businesses pertaining to injuries arising from the pandemic. Such legislation was a top goal of business interest groups during the *Lame Duck* session in December, and it passed on a party-line vote just before the Legislature adjourned. Governor Whitmer then vetoed the bill on December 30. With the promise of another veto, and the fact that there has not yet been a deluge of pandemic-related negligence cases, it is possible that the appetite to have another battle on the issue has evaporated.

It could also just be that House and Senate leaders have already found plenty of other things to fight with Governor Whitmer about. As the hostility grows, even the Senate confirmation process for some gubernatorial appointments – something that has almost always been pro forma – has been turned into a COVID battleground. Several state boards have had nominees rejected to express unhappiness with Governor Whitmer’s actions, and as of this writing there is even the possibility that the Senate will refuse to confirm Elizabeth Hertel as the new MDHHS Director. As another round of federal relief funds head to state and local governments, and as the Michigan Legislature begins work on the 2022 budget process, the chasm between the Legislature and Governor Whitmer shows no sign of closing.

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