

Negligence Law Section

Negligence Law Section Quarterly

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Government Affairs Update

“Legislature Pushes for COVID-related Liability Limits”

Todd Tennis, Capitol Services

After Governor Whitmer vetoed Senate Bill 899 – a bill that sought to extend civil liability protections to health care providers for COVID-19 related litigation – the Michigan House and Senate responded by introducing a broader package of bills that would apply to all Michigan businesses. House Bills 6030-1, and Senate Bills 1023-4, would grant broad immunity for businesses protecting them from nearly all COVID-19 liability claims. The bills as of this writing have received two hearings in the House Judiciary Committee and a single hearing in the Senate Economy and Small Business Development Committee.

The Negligence Law Section voted to oppose these bills in light of the Section’s longstanding advocacy to protect access to the civil justice system. The bills as introduced would have granted sweeping liability limitations for businesses and made it all but impossible for an injured worker or patron to seek damages for negligent behavior on the part of a business. For example, the bills as introduced would:

- Immunize businesses who violated federal or state COVID-19 guidelines providing that they “substantially” complied with them;
- Require claimants to demonstrate a minimum injury threshold in order to pursue a case;
- Force plaintiffs to show that the defendant acted in a reckless manner in order to pursue a claim;
- Bar claims from employees based who were fired for reporting an employer’s violations of safety guidelines;

- Eliminate most if not all products liability cases based on personal protective equipment or other COVID-related manufacturing.

Robert Riley provided testimony to both the House and Senate Committees on behalf of the Negligence Council. He explained to the committee members that current negligence law already adequately protects businesses that are acting within state and federal guidelines. He pushed back against the notion – being promoted by the Michigan Chamber of Commerce and the American Tort Reform Association – that there would be a “deluge of frivolous lawsuits” coming to Michigan. There have only been a handful of tort claims across the country related to COVID-19, and none to this point in Michigan.

This legislation is a top priority for the business lobby, and they have been putting tremendous pressure on lawmakers to pass these bills. Debra Freid and Marla Linderman, speaking on behalf of the Michigan Association for Justice, pointed out that these bills would actually cause additional damages by lowering the standards by which businesses had to comply to keep staff and customers safe. They argued that allowing businesses to be immunized even if they fail to comply with COVID-19 regulations sends a message that will embolden the bad actors and frustrate the good ones. The outcome would likely prolong the pandemic and make the injuries more widespread and severe. Moreover, it would further reduce the public’s confidence that they can return to in-person businesses safely, thereby making it even harder for hard-pressed businesses to survive.

Governor Whitmer has expressed opposition to the bills, and she has maintained that they will meet with a veto if placed on her desk. Business advocates are as of this writing trying to offer amendments that they hope might entice the Governor to allow for some sort of limited liability. The Negligence Section continues to maintain its opposition to these bills, and we will maintain our efforts to defeat them or change them so completely that victims of negligence will still get their day in court.

Todd Tennis
Capitol Services
517-372-0860
ttennis@capitolservices.org