

September 9, 2020

Members of the Committee on Judiciary,

The Michigan Association for Justice (“MAJ”), formerly the Michigan Trial Lawyers Association, is a professional association of 1,400 plaintiff attorneys across Michigan. For 75 years, MAJ has been dedicated to promoting justice, equality, and the integrity of the American jury system. MAJ opposes HB 6159 for the following reasons:

***The proposed bill is redundant***

Under the 1976 Emergency Management Act, health care providers – such as nursing homes - are granted immunity during a state of disaster. Additionally, Executive Orders 31, 60 and 150 provided immunity for health care providers during the time frame from March 30, 2020 to July 13, 2020. The proposed bills attempt to provide immunity for health care providers from March 9, 2020 to July 15, 2020. Although the time frame under the proposed bills is longer than under the Executive Orders, it is mostly redundant.

***Immunity cannot be granted retroactively***

The issue of immunity is resolved according to the law as it existed when the cause of action accrued. *Rozier v Dept of Public Health*, 161 Mich App 591, 600 (1997). Therefore, this bill, which purports to give retroactive immunity, is not legally valid.

***The proposed bill will give further protection to bad nursing homes***

As noted above, this bill would expand the time frame for health care provider immunity, which will provide further protection for bad nursing homes. There are currently seven nursing homes in the state of Michigan that have had more than 100 COVID positive residents, one of which has had over 200 COVID positive residents! [https://www.michigan.gov/coronavirus/0,9753,7-406-98163\\_98173-526911-,00.html](https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173-526911-,00.html). During the pandemic, every single one of those seven nursing homes was cited for violating the federal regulations that require them to establish and maintain an infection prevention and control program. [https://spots\\_public.apps.lara.state.mi.us/#/](https://spots_public.apps.lara.state.mi.us/#/) This is unacceptable and nursing homes should not get a free pass for this type of neglect especially during a global pandemic, when the need to comply with health and safety standards is at an all-time high.

Contrary to representations by proponents of the bill, a violation of a statute or regulation is not gross negligence. Instead, in order for these nursing homes to be held accountable, a plaintiff would have to prove that the nursing home acted so recklessly as to demonstrate a substantial lack of concern for whether an injury results. The reality is that this standard is nearly impossible to meet under current Michigan law.

Therefore, on behalf of MAJ, I respectfully ask that you vote “no” on HB 6159.

I thank you for your consideration of this statement. If you have any questions, please do not hesitate to contact me.



Donna M. MacKenzie  
President, MAJ