Bruce A. Timmons

To the Honorable Kelly Breen, Chair,
and Members of the House Committee on Judiciary

October 25, 2023

Statement Submitted regarding **SB 410** – Liability of manufacturers of FDA-approved drugs; remove limitations by striking **MCL 600.2946(5).**

I write in **Support** of SB 410. Passage of a bill to remove the misguided limitations on liability contained in subsection (5) of MCL 600.2946 is long overdue and would restore a right of action that residents in other states have if harmed by an FDA-approved drug.

I did not cover the legislation that added subsection (5). 1995 SB 344 went through the House Commerce Committee that a colleague covered, but I did cover the issue in subsequent Sessions for the House Republican Policy Office when bills were introduced in 2005, 2007, and 2009 to remove subsection (5). Two of those bills passed the House but died in the Senate:

In **2007, HB 4044** was reported from House Judiciary (12-3, w/3 Rs 'aye') and passed by House (70-39, 2/22/2007), one of first bills passed by House after Democrats regained the majority in the 2006 election. That bill had bipartisan support in committee and on the Floor.

In **2009**, **HB 4316** was reported from House Judiciary (10-5) and passed the House (61-48, 3/26/2009) – mostly on party-line votes, reflecting the influence of drug companies.

When SB 410 came up in Senate committee October 5, I submitted a statement with questions that merited further answers. At that meeting Tiffany Ellis, on behalf of the Michigan Association for Justice, answered in compelling testimony how MCL 600.2946(5) has denied recovery in multiple lawsuits based on harm caused by defective FDA-approved drugs. That history was not available when a predecessor to SB 410 came up in 2007 and 2009; it now is. The ban is total, no exceptions. I am unaware of any evidence that any Michigan residents have recovered damages for harm caused by FDA-approved drugs since 600.2946(5) became law.

The Chamber of Commerce would like the Legislature to find out what other states have done – having apparently not explored that avenue in the prior 9 two-year Sessions when an identical bill was introduced. There is the concept of "laches", waiting too long for further delay.

Let's be clear:

USFDA approval was intended to provide consumers with a mechanism to better ensure that safe and effective products are dispensed to the public. It was never envisioned to be – nor is it – a guarantor; nor was the agency or its role designated by the US Congress to insulate manufacturers or sellers from liability if, despite studies and good faith decisions, a drug proved defective or harmful to users. Were immunity from liability provided, it should be done uniformly by Congress and not selectively by individual states. Congress has not chosen to do so.

Subsection (5) was intended to keep Upjohn in Kalamazoo. Its successors left the state.

Absent testimony to the contrary, an injured resident of this state is not allowed the same opportunity to recover damages caused by a defective drug that a resident in all other states has

Without the specific drug liability exemption, drug companies would still benefit from the rebuttable presumption in ML 600.2946(4) that applies to all other manufacturers and sellers of products which are produced in compliance with federal and state statute or in compliance with, or approved by, state or federal regulators. Ironically, a legal 'brief' presented by PhARMA to House Judiciary, and in a later Session to the Senate, in defense of subsection (5) was an endorsement of what the law would be if 410 were to become law.

I encourage the Committee to support SB 410 and send it to the House Floor

Respectfully,

Bruce A. Timmons