A bill to provide minimum requirements for claims alleging exposure to COVID-19; establishing liability standards for claims alleging exposure to COVID-19; precluding liability if conduct complies with regulations, orders, or public health guidance; and limiting liability with respect to certain products made, sold, or donated in response to COVID-19.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This act shall be known and may be cited as the "COVID-19 response and reopening liability assurance act".

Sec. 2. As used in this act:

(a) "Conduct intended to reduce transmission of COVID-19" means health screening, testing, contact tracing, and other actions intended to reduce transmission of COVID-19 in a workplace or on
other premises.

(b) "COVID-19" means the novel coronavirus identified as SARS-CoV-2 or a virus mutating from SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2, and conditions associated with the disease.

(c) "COVID-19 claim" means a claim or cause of action for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to exposure or potential exposure to COVID-19, or a person's actions intended to maintain workplace safety. COVID-19 claim also includes, but is not limited to, a claim made by or on behalf of an individual who has been exposed or potentially exposed to COVID-19, or any representative, spouse, parent, child, member of the same household, or other relative of the individual, for injury, including mental or emotional injury, death, or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or other losses allegedly caused by the individual's exposure or potential exposure to COVID-19.

(d) "COVID-19 emergency" means a state of emergency or disaster declared under a statute of this state on March 10, 2020, or under any subsequent orders or amendments to those orders.

(e) "Disinfecting or cleaning supplies" includes, but is not limited to, hand sanitizers manufactured in a manner consistent with United States Food and Drug Administration industry guidance, disinfectants, sprays, and wipes, if the supplies meet any applicable United States Environmental Protection Agency criteria for use against COVID-19.

(f) "First responder" means a firefighter, law enforcement officer, member of a rescue squad or ambulance crew, or public
safety officer as those terms are defined in section 2 of the
public safety officers benefit act, 2004 PA 46, MCL 28.632, and any
other person authorized to provide emergency services during the
COVID-19 emergency.

(g) "Health professional" means an individual licensed,
registered, certified, or otherwise authorized to engage in a
health profession under article 15 of the public health code, 1978
PA 368, MCL 333.16101 to 333.18838, whether paid or unpaid,
including individuals engaged in telemedicine or telehealth, any
other individual authorized to provide health care during the
COVID-19 emergency, and the employer or agent of a health
professional who provides or arranges health care.

(h) "Minimum medical condition" means any of the following:

(i) A positive diagnosis of COVID-19, or symptoms consistent
with COVID-19, that required inpatient hospitalization of at least
24 hours.

(ii) A medical illness or physical injury or condition caused
by COVID-19 that results in the inability to engage in an
individual's usual and customary daily activities for at least 14
days, which does not include any period that the individual is in
quarantine to slow the spread of COVID-19.

(iii) Death attributed to COVID-19.

(i) "Nonprofit charitable organization" means an organization
granted tax exempt status by the Internal Revenue Service, if no
part of the organization's net earnings inure to the benefit of a
private shareholder or individual.

(j) "Person" means an individual, partnership, corporation,
association, governmental entity, or other legal entity, including,
but not limited to, a school, a college or university, an
institution of higher education, and a nonprofit charitable organization. Person includes an employee, agent, or independent contractor of the person, regardless of whether the individual is paid or an unpaid volunteer.

(k) "Personal protective equipment" means coveralls, face shields, gloves, gowns, masks, respirators, or other equipment used to protect an individual from infection or illness or the spread of infection or illness.

(l) "Premises" means any real property and any appurtenant building or structure, or a vehicle, that serves a commercial, residential, charitable, cultural, educational, governmental, health care, religious, or other purpose.

(m) "Product liability claim" means an action based on a legal or equitable theory of liability brought for the death of an individual or for injury to an individual or damage to property caused by or resulting from the production of a product.

(n) "Public health guidance" means written guidance related to COVID-19 issued by the Centers for Disease Control and Prevention or the Occupational Safety and Health Administration of the United States Department of Labor, or by the Michigan occupational safety and health administration, the department of health and human services, the department of licensing and regulatory affairs, or another agency of this state.

(o) "Qualified product" means personal protective equipment used to protect the wearer from COVID-19 or the spread of COVID-19; medical devices, equipment, and supplies used to treat COVID-19 or prevent the spread of COVID-19; medications used to treat COVID-19 including medications prescribed or dispensed for off-label use to attempt to combat COVID-19; tests to diagnose or determine immunity
to COVID-19; disinfecting or cleaning supplies; and components of qualified products.

Sec. 3. (1) A person shall not bring or maintain a civil action alleging a COVID-19 claim unless the claim alleges harm related to a minimum medical condition.

(2) This section does not apply if the conduct that is the subject of the COVID-19 claim was a deliberate act intended to cause harm.

Sec. 5. A person that operates in compliance with federal and state statutes or regulations, executive orders, and state agency orders and consistent with public health guidance, that are applicable at the time to the conduct or risk that allegedly caused harm, is not liable for a COVID-19 claim or a claim related to conduct intended to reduce transmission of COVID-19.

Sec. 6. (1) Except as provided by subsection (3), a person that designs, manufactures, labels, sells, distributes, provides insurance coverage for, or donates a qualified product in response to COVID-19 is not liable in a civil action that alleges a product liability claim related to the qualified product.

(2) Except as provided by subsection (3), a person that selects or dispenses a qualified product in response to the COVID-19 pandemic is not liable in a civil action for injuries or damages claimed to have arisen from the selection, dispensation, or use of the qualified product.

(3) The limitations on liability provided in this section do not apply if a person had actual knowledge that the product was defective and that there was a substantial likelihood that the defect would cause the injury that is the basis of the action, and the person willfully disregarded that knowledge in the manufacture,
distribution, sale, or donation of the product.

Sec. 7. (1) A person that owns or controls premises that, voluntarily or at the request or order of this state or a political subdivision of this state, designates and uses the whole or any part of the premises to provide health care services, to provide shelter to patients, first responders, or health professionals, or for quarantine purposes in response to the COVID-19 emergency is not civilly liable for negligence causing the death of or injury to an individual on or about the premises or for loss of or damage to the property.

(2) This section does not affect any obligation of a person that owns or controls premises to disclose hidden dangers or safety hazards that are known to the owner or occupant of the premises that might possibly result in the death or injury or loss of or damage to the property.

Sec. 8. This act does not do any of the following:

(a) Create, recognize, or ratify a claim or cause of action of any kind.

(b) Eliminate a required element of any claim, including, but not limited to, causation and proximate cause elements.

(c) Affect rights, remedies, or protections under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, including the exclusive application of that act.

(d) Amend, repeal, alter, or affect any other immunity or limitation of liability.

Sec. 9. As provided by section 5 of 1846 RS 1, MCL 8.5, the provisions of this act are severable. If any portion of this act or the application of this act to any person or circumstances is found to be invalid by a court, the invalidity will not affect, impair,
or invalidate the other portions or applications of this act that can be given effect without the invalid portion or application.

Sec. 10. This act applies retroactively to any claim or cause of action that accrues after January 1, 2020.

Enacting section 1. This act does not take effect unless all of the following bills of the 100th Legislature are enacted into law:

(a) House Bill No. 6031.
(b) House Bill No. 6032.
(c) House Bill No. 6101.