

Legislative Analysis



TORTS: REVISE APPLICATION OF OPEN AND OBVIOUS DOCTRINE

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5744

Sponsor: Rep. Andrew Kandrevas

Committee: Judiciary

Complete to 6-29-10

A REVISED SUMMARY OF HOUSE BILL 5744 AS INTRODUCED 1-12-10

The bill would amend the Revised Judicature Act (MCL 600.2959). Under the bill, in a tort action, a jury (or a judge if a bench trial), could consider whether a condition is "open and obvious" only in assessing the degree of comparative fault, if any. The question of whether a condition is open and obvious could not be considered with respect to any other issue of law or fact, including the issue of duty.

BACKGROUND INFORMATION:

The doctrine of "open and obvious" pertains to a legal defense that a property owner, or a manufacturer in a product liability case, can use to avoid liability. Generally speaking, in the case of a property owner such as a business, there is a duty to warn customers of any dangerous conditions on the property that the customer is not likely to see or discover. But, if the dangerous condition is open and obvious to a reasonable person, the business does not have a duty to warn. Without a duty being established, a civil suit cannot go forward.

Comparative fault (sometimes referred to as comparative negligence) means that the damages that can be awarded to a plaintiff (the injured person) will be reduced by the percentage of the plaintiff's fault in causing the incident that led to his or her own injuries. If a plaintiff is found to be more than 50 percent at fault, only economic damages can be awarded; noneconomic damages (i.e., pain and suffering) cannot be awarded to a plaintiff found to have 51 percent or more of comparative fault.

Thus, the significance of the bill appears to be that the use or application of the open and obvious doctrine by a defendant could only be considered by the trier of fact (a jury or a judge if a bench trial) to determine comparative fault.

FISCAL IMPACT:

House Bill 5744 would have an indeterminate fiscal impact on the judicial branch. Under the provisions of the bill, application of the open and obvious doctrine could only be used to determine comparative fault. This would eliminate the use of the doctrine on the issue of duty. Therefore, civil suits that could have been dismissed for failure to establish duty under the open and obvious doctrine would now be allowed to go forward to determine damages.

Legislative Analyst: Susan Stutzky

Fiscal Analyst: Ben Gielczyk

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.