

Legislative Analysis



BOWLING CENTERS: PROVIDE IMMUNITY IN SLIP & FALL SUITS

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

Senate Bill 281 (Substitute H-2)

Sponsor: Sen. Joe Hune

House Committee: Judiciary

Senate Committee: Judiciary

First Analysis (10-19-11)

BRIEF SUMMARY: The bill would provide, under certain circumstances, immunity to a bowling center from a civil action arising from a slip and fall that occurred after a patron had worn bowling shoes outside.

FISCAL IMPACT: The bill is not expected to have a significant impact on the Judiciary, as discussed in greater detail later in the analysis.

THE APPARENT PROBLEM:

Ever since the smoking ban went into effect May 1, 2010, bowling centers have reported an increased number of bowlers wearing bowling shoes when they go outside to smoke. Bowling shoes are not like regular shoes. They have a special sole that allows a bowler to slide along the alley when releasing the bowling ball. If foreign substances are picked up on the sole when a bowler goes outside, the shoe can stick or have no traction, a dangerous situation for a person in the act of throwing a heavy bowling ball down an alley.

Since the implementation of the indoor smoking ban, lawsuits against bowling centers for slip and falls have increased – reportedly, about 30-40 actions have been filed since last year. Proprietors of bowling centers are concerned that their livelihoods may be threatened by dangerous conditions created by the bowlers themselves. Legislation has been offered to create protection from liability for bowling center operators that clearly communicate to their patrons the inherent danger of bowling with bowling shoes that have been worn outside.

THE CONTENT OF THE BILL:

Senate Bill 281 would create the Bowling Center Act. Under the new act, an operator of a bowling center would not be civilly liable for injuries to a bowler resulting from a slip, trip, stumble, or fall inside the bowling center that is "substantially" caused by a substance or material on the bowler's bowling shoes that had been acquired outside the bowling center before the bowler entered or reentered the center. The bill would apply only to a cause of action accruing on or after January 1, 2012.

The immunity would attach only if the operator of a bowling center posted a conspicuous notice as specified in the bill in a conspicuous place near each entrance and exit warning bowlers about the dangers of slips and falls on floors or alleys associated with having worn bowling shoes outside. Further, the protection from liability would not apply if the injury to the bowler had resulted from acts or omissions amounting to willful or wanton misconduct or if the operator had failed to maintain the premises in a reasonably safe condition and the condition substantially caused the injury to the bowler.

The bill would also define the terms "bowler," "bowling center," and "operator." "Bowling shoes" would mean shoes that were specifically designed for the purpose of recreational or competitive bowling.

The wording of the sign would be as follows:

Do not wear bowling shoes outside. Bowling shoes are specialized footwear for indoor use only. Bowling shoes worn outside may be affected by substances or materials including but not limited to snow, ice, rain, moisture, food, or debris that may cause the person wearing the bowling shoes to slip, trip, stumble, or fall on the floor or alley surfaces inside the bowling center. Michigan law makes a bowling center posting this notice immune from liability for such an injury.

HOUSE COMMITTEE ACTION:

The committee adopted and reported a substitute that revised the wording of the sign required to be posted in order for immunity to attach, required the notice to be conspicuous, and specified that protection from liability applied if the injury resulted from acts or omissions on the part of the bowling center operator that amounted to willful or wanton misconduct.

FISCAL INFORMATION:

Senate Bill 281 (H-2) would not have a significant fiscal impact on the state resulting from the statutory limitation on "slip and fall" liability for operators of bowling centers if bowling shoes are substantially involved. If SB 281 (H-2) is enacted, lawsuits related to this former liability will decrease and thus reduce caseloads in proportion to how many of these suits are typically filed. However, these lawsuits would not necessarily be entirely eliminated. If a lawsuit is filed, the courts would still have to judge whether bowling shoes were substantially involved in the "slip and fall." The court costs and caseload related to the lawsuits filed will remain, irrespective of the "substantial" liability judgment.

Under current state common law, a "slip and fall" is a type of premises liability tort (a tort is a breach of civil duty owed). Persons who are entering a premise for the mutual benefit of themselves and the owner or occupant (i.e. commercial purposes) are considered "invitees" and are owed the highest duty under premises liability law. There is a large body of case law pertaining to premises liability torts and various guidelines

regarding "possession and control," "actual knowledge or constructive notice," and "open and obvious condition."

ARGUMENTS:

For:

Most seasoned bowlers know that bowling shoes are never to be worn outside. A bowling shoe that is not properly cared for can impact a bowler's score just as much as dents in a ball or cracks in a lane. Further, a shoe that sticks or slides inappropriately when a bowler is in the act of releasing a bowling ball can throw the bowler off balance, thus resulting in a fall. A shoe with outside residue can also contribute to a slip or fall on other uncarpeted areas in a bowling center. Thus, most experienced bowlers either change into street shoes if they need to exit the bowling center for any reason or slip special shoe covers over the bowling shoes to protect the soles. Reportedly, many bowling centers provide bowlers with disposable shoe covers if requested.

The problem seems more to be with casual bowlers – those who are first-time bowlers or bowl only on occasion with friends. Bowling center proprietors certainly want to provide a fun and safe experience for all their patrons, whether a league bowler or a casual bowler. However, it is unfair to expect proprietors to be liable for a lawsuit claiming injuries from a slip and fall if the injured person caused or significantly contributed to the fall by wearing bowling shoes outside. The economic impact would cause many of these centers to go under, thus depriving many communities of a place to engage in a safe and enjoyable sport.

The bill would address the problem faced by bowling center operators by requiring them to post a sign warning of the dangers posed by a shoe worn outside and also that the bowler would lose the right to sue for any injuries caused by a shoe worn outside. The sign itself must be conspicuous and must be posted in a conspicuous place near each set of doors leading inside and outside.

Importantly, the bill does not protect bowling center operators from injuries caused by other factors within the control and responsibility of the operator. For example, the operator would still be liable for an injury caused by an unsafe condition in the center not related to wearing bowling shoes outside.

Response:

Unless the bowling shoes worn by a person who slipped and fell in a bowling center were preserved, it could be difficult for either the bowling center operator to invoke the immunity by proving that the shoes had been worn outside or for the patron who was injured to overcome the immunity by proving that the shoes had NOT been worn outside. Hopefully, the required signs and the possibility of not having the ability to sue for an injury will lead more bowling center patrons to be more careful. A reduction of injuries from any source could only be beneficial to the bowling public and bowling center operators alike.

POSITIONS:

A representative of Community Bowling Centers and Bowling Centers Association of Michigan testified in support of the bill. (9-22-11)

The Michigan Association for Justice indicated a neutral position on the bill. (9-22-11)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Paul Holland
Erik Jonasson

■ 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.