

MTA Favorable SB10 3-8-22.pdf

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Position: FAV



M a r y l a n d Troopers Association



INCORPORATED 1979

March 8, 2022

The Honorable Delores Kelley, Chairwoman and Members of the Finance Committee

RE: SB 10 Workers' Compensation – COVID-19 Occupational Disease Presumptions

POSITION: SUPPORT

The Maryland Troopers Association (MTA) has a membership strength of over 2,500 members of which more than 1,000 are active sworn Troopers involved in traffic and criminal enforcement throughout the State of Maryland.

The MTA supports SB 10, which states that first responders, public safety employees, and health care workers who test positive for COVID-19 are compensable under workers compensation.

Maryland State Troopers are integral members of the law enforcement community in Maryland. Given the role that our Maryland State Troopers perform in the public safety of our counties and state we feel that this change is warranted and justified in this unprecedented time. Therefore, the Maryland Troopers Association supports SB 10 and requests a favorable report.

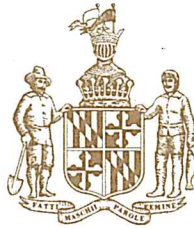
Brian Blubaugh
President
Maryland Troopers Association

JacksonSB10Testimony.pdf

Uploaded by: Michael Jackson

Position: FAV

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Legislative District 27
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Budget and Taxation Committee

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

TESTIMONY - SENATE BILL 10
WORKERS' COMPENSATION –
COVID19 OCCUPATIONAL DISEASE PRESUMPTION
FINANCE COMMITTEE

MARCH 8, 2022

Chair Kelley, Vice Chair Feldman, and Finance Committee Members:

Senate Bill 10 is a very straight-forward bill that simply creates an Occupational Disease Presumption under workers compensation law for first responders, public safety employees, and health care workers for claims related to COVID-19.

In the public safety realm, those eligible to receive the presumption would be firefighters, emergency medical technicians, law enforcement officers, correctional officers, members of the Maryland National Guard, the State Fire Marshal's Office. In the healthcare sphere, those eligible would include individuals employed in health care, home care, or long-term care settings whose duties include direct patient care or other work in areas where patients diagnosed with COVID-19 are treated. The legislation would apply retroactively and be interpreted to affect workers' compensation claims filed on or after March 1, 2020 and it would sunset on July 31, 2023.

First responders, public safety, and health professionals face unique challenges in the work that they do and those challenges have truly been magnified by the COVID-19 pandemic. Allowing this presumption would be a valuable solace for these public servants who sacrifice so much for the benefit of their communities.

For the reasons listed above, I ask for a favorable report of Senate Bill 10.

SB10 testimony.pdf

Uploaded by: Robert Phillips

Position: FAV

MARYLAND STATE FIREMEN'S ASSOCIATION

REPRESENTING THE VOLUNTEER FIRE, RESCUE, AND EMS PERSONNEL OF MARYLAND.



Robert P. Phillips

Chairman

Legislative Committee

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SB 10 Workers' Compensation – COVID-19 Occupational Disease Presumption

My name is Robert Phillips and I am the Legislative Committee Chairman for the Maryland State Firefighter's Association (MSFA).

I wish to present testimony in favor of **Senate Bill 10: Workers' Compensation – COVID-19 Occupational Disease Presumption**

The MSFA fully supports this bill. The First Responders listed in this bill are on the front lines each and every day and come in contact with the public like no other profession. The public they serve relies on them to respond anytime, anywhere in all circumstances to provide relief to the emergency at hand. This puts the first responder in a constant environment that exposes them to a greater degree of risk when it comes to this highly contagious virus. Based on the working conditions which they face every day we feel that this bill should be passed and take care of our first responders.

I thank the committee for their time on this important issue and ask that you favorably support Senate Bill 10..

Thank you and I'd be glad to answer questions that you might have.

AFSCME-FWA-SB10.pdf

Uploaded by: Lance Kilpatrick

Position: FWA



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Patrick Moran - President

Testimony
SB 10 – Workers' Compensation - COVID-19 Occupational Disease Presumption
Finance
March 8, 2022
Support with Amendment

AFSCME Council 3 strongly supports SB 10. This legislation would establish that first responders, public safety employees, and health care workers are presumed to have an occupational disease that is compensable under workers' compensation law after a positive test or diagnosis for COVID-19. It would be retroactive to the beginning of the pandemic, covering claims put forward on or after March 1, 2020. The bill would expire July 31, 2023.

We have never dealt with a challenge like COVID-19 before. Frontline employees across Maryland fearlessly continued reporting to work even through shortages of PPE and information. And because of their work, Maryland has limited community transmission out of our public congregate care facilities.

This has been done while having to surmount seemingly endless obstacles put before us:

- A lack of personal protective equipment;
- A lack of planning and safety protocols that led to wildly divergent responses to outbreaks from facility to facility, and campus to campus. To this day AFSCME has been unable to bring the University System of Maryland to the table to negotiate health and safety protocols for a virus that cares not whether you're a Terrapin or a Retriever;
- But I would be remiss if I didn't point out that Maryland's chronic understaffing of its facilities made a bad situation worse.

All of this has come with a horrible cost: thousands of state employees have contracted the virus while continuing to serve Marylanders, particularly those in crisis. And to date, we are *aware* of over a dozen deaths in the Division of Corrections, the Department of Health, the Department of Transportation and within the campuses of the University System. At least two just this year.

We applaud Senator Jackson and the other General Assembly members who have championed workers' compensation eligibility for those stricken by the pandemic. The long-term effects of COVID-19 are still being discovered, and we are still learning of these effects. But have no doubt, "long COVID" is real, and because of this we would ask that the expiration date of the legislation be removed.

We thank you, and strongly urge a favorable report of SB 10 with amendment.

Every AFSCME Maryland State and University contract guarantees a right to union representation.
An employee has the right to a union representative if requested by the employee.
800.492.1996

LeadingAge Maryland - 2022 - SB 10 - Covid-19 work

Uploaded by: Aaron Greenfield

Position: UNF



576 Johnsville Road
Sykesville, MD 21784

TO: Senate Finance Committee
FROM: LeadingAge Maryland
SUBJECT: Senate Bill 10, Workers' Compensation – COVID-19 Occupational Disease Presumption
DATE: March 8, 2022
POSITION: **Unfavorable**

LeadingAge Maryland opposes Senate Bill 10, Workers' Compensation - COVID-19 Occupational Disease Presumption.

LeadingAge Maryland is a community of more than 135 not-for-profit aging services organizations serving residents and clients through continuing care retirement communities, affordable senior housing, assisted living, nursing homes and home and community-based services. Our mission is to expand the world of possibilities for aging in Maryland. We partner with consumers, caregivers, researchers, public agencies, faith communities and others who care about aging in Maryland.

This bill establishes that that first responders, public safety employees, and health care workers are presumed to have an occupational disease that is compensable under Workers' Compensation law after a positive test or diagnosis for COVID-19. The bill applies retroactively

LeadingAge Maryland members value the purpose of workers' compensation for those who are injured within the scope of work. However, this bill unfairly shifts a workers compensation cost onto employers who are not in a position to control the actions of employees outside of the work environment. Make no mistake, passage of Senate Bill 10 will result in exorbitant premium increases, lowered coverages, lower wages, less hiring, rising employment costs and higher customer costs.

Throughout the pandemic, long-term care providers have worked to ensure a safe work environment for employees, residents, vendors and the public-at-large. At the same time, we have been balancing the cost to deliver quality care with the necessary safety requirements. We have instituted mask mandates, mandatory testing, vaccinations, contact tracing practices and

even built plexiglass barriers at great discomfort and inconvenience. The industry adheres to the latest CDC guidelines to properly protect employees and residents and to combat the rise in COVID-19 infections.

Senate Bill 10 places long-term care facilities in an untenable position by requiring them to assume liability when an employee contracts COVID-19. This virus is an airborne disease which has a known incubation period of up to 14 days after exposure. As a result, it can be challenging to determine when and where the virus was contracted.

Simply put, this bill unfairly holds an employer automatically responsible while failing to account for transmission at a location outside of the workplace. And, the bill will further increase premiums.

For these reasons, LeadingAge Maryland respectfully requests an unfavorable report for Senate Bill 10.

For additional information, please contact Aaron J. Greenfield, 410.446.1992

SB 10_UNF_MML.pdf

Uploaded by: Angelica Bailey

Position: UNF



Maryland Municipal League
The Association of Maryland's Cities and Towns

TESTIMONY

March 8, 2022

Committee: Senate Finance

Bill: _____ SB 10 – Workers' Compensation – COVID-19 Occupational Disease
Presumption

Position: Oppose

Reason for Position:

The Maryland Municipal League opposes Senate Bill 10, a retroactive bill which would establish an occupational disease presumption for a first responder, public safety employee, or health care worker who tests positive with COVID-19.

This proposed presumption that these workers should be compensated by the employer, even if there is no supporting evidence for an actual workplace exposure that caused the illness, will be nearly impossible to rebut. The employer would need to provide evidence that the employee contracted COVID-19 outside of the workplace; an employer cannot be expected to have access to this information.

Additionally, the bill's retroactive provision could result in an influx of claims against local governments. Two years is a significant period, and several variants of COVID-19 were highly contagious, resulting in literally hundreds of thousands of infections. The likelihood that a local government employee named in this bill contracted COVID-19 is high because the likelihood of most Maryland citizens contracting COVID-19 is high. Opening the door to significant difficult-to-prove but difficult-to-rebut litigation will be overly burdensome for local governments.

As such, the League respectfully requests that this committee provide Senate Bill 10 with an unfavorable report.

FOR MORE INFORMATION CONTACT:

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Angelica Bailey
Bill Jorch
Justin Fiore

Director, Government Relations
Director, Research and Policy Analysis
Manager, Government Relations

SB 10. - Oppositionpdf.pdf

Uploaded by: Ashlee Smith

Position: UNF



Maryland Defense Counsel
P.O. Box 575
Riderwood, MD 21139

Senate Finance Committee
March 8, 2022

Testimony of the Maryland Defense Counsel, Inc. (“MDC”) in Opposition to
Senate Bill 10 – Workers’ Compensation – COVID-19 Occupational Disease Presumption

Senate Bill 10 creates a rebuttable presumption that a COVID-19 diagnosis is an occupational disease arising out of and in the course of employment for certain classes of workers. SB 10 will allow an injured worker to establish a *prima facie* case for COVID-19 as an occupational disease by submitting (1) proof of a positive COVID-19 test, and (2) proof that the test was administered within 14 days after the employee worked for the employer in an assigned location other than the employee’s home. The injured worker would not be required to submit any additional proof. Once this threshold evidence is submitted, the burden would then shift to the employer/insurer to submit “substantial evidence” showing that the injured worker did not contract COVID-19 while working. Notably, SB 10 applies to all diagnoses that occur between March 1, 2020 and July 31, 2023. This renders the statute retroactive as it explicitly applies to diagnoses that occurred *prior to* the effective date of the statute.

It is the MDC’s position that the retroactive aspect of this presumption bill is unconstitutional. Retrospective statutes that abrogate vested property rights, including contractual rights, violate the Maryland Constitution; specifically, Articles 19¹ and 24² of the Maryland Declaration of Rights and Article III, § 40, of the Maryland Constitution.³ See *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 629-30, 805 A.2d 1061, 1076 (2002).

In *Dua v. Comcast Cable*, the Court of Appeals of Maryland ruled two different statutes passed by the General Assembly were unconstitutional. The first was a statute enacted in 2000 that increased the allowable recovery for late fees in consumer contracts that were “entered into, or in

¹ Article 19 of the Declaration states “[t]hat every man, for any injury done to him in his person **or property**, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land.” Md. Const. Declaration of Rights, art. 19 (emphasis added).

² Article 24 of the Declaration states “[t]hat no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty **or property**, but by the judgment of his peers, or by the Law of the land.” Md. Const. Declaration of Rights, art. 24 (emphasis added).

³ Article III of the Constitution states “[t]he General Assembly shall enact no Law authorizing private property, to be taken for public use, without just compensation, as agreed upon between the parties, or awarded by a Jury, being first paid or tendered to the party entitled to such compensation.” Md. Const. art 3, § 40.

effect, on or after November 5, 1995.” *Id.* at 610-11, 805 A.2d. at 1065. The second statute provided that contracts between a health maintenance organization (“HMO”) and its customer were permitted to contain subrogation provisions allowing the HMO to be subrogated to a cause of action that a customer had against another person. *Id.* at 611, 805 A.2d. at 1065. The HMO statute was also enacted in 2000 and it applied to “all subrogation recoveries by an [HMO] recovered on or after January 1, 1976.” *Id.*

In finding both of the statutes unconstitutional, the Court emphasized that “[n]o matter how “rational” under particular circumstances, the State is constitutionally precluded from abolishing a vested property right or taking one person's property and giving it to someone else.”⁴ *Id.* at 623, 805 A.2d at 1076. It held that **there is normally a vested property right in a cause of action which has accrued prior to the legislative action.** *See id.* at 633, 805 A.2d at 1078.

Accordingly, the legislature is barred “from retroactively creating a cause of action, or reviving a barred cause of action, thereby violating the vested right of the defendant.” *Id.* *See also Smith v. Westinghouse Electric*, 266 Md. 52, 57, 291 A.2d 452, 455 (1972). It is further precluded from “abrogating accrued causes of action.” *Dua*, 370 Md. at 645, 805 A.2d at 1085 (citing *Gibson v. Commonwealth of Pennsylvania*, 490 Pa. 156, 160–162, 415 A.2d 80, 83–84 (1980), which held that a constitutional provision similar to Maryland’s Article 19 providing that persons are entitled to justice “by the law of the land,” means “that the law relating to the transaction in controversy, at the time when it is complete, shall be an inherent element of the case, and shall guide the decision; and that the case shall not be altered, in substance, by any subsequent law.”).

The Court further clarified that even a remedial or procedural statute may not be applied retroactively if it will interfere with vested or substantive rights. *Id.* at 625, 805 A.2d at 1073. This principle applies to both common law and statutory causes of action. *Id.* at 632, 805 A.2d at 1077.

These principles were previously applied by the Court of Appeals with respect to retroactive modifications of the Workers’ Compensation Act in *Cooper v. Wicomico County Department of Public Works*. In *Cooper I* and *Cooper II* the Court issued decisions analyzing the constitutionality of a retroactive increase in the amount of benefits payable to a claimant who was found to be entitled to permanent total disability (“PTD”) benefits. *See Cooper I*, 278 Md. 596, 366 A.2d 55 (1976), and *Cooper II*, 284 Md. 576, 398 A.2d 1237 (1979). In the *Cooper* cases the subject statute increasing the compensation rate was enacted in 1973 and it retroactively applied to all injuries suffered after July 1, 1965 and prior to July 1, 1973. *See Cooper I*, 278 Md. at 598, 805 A.2d at 57. Given that Mr. Cooper was injured in 1969 and awarded PTD benefits in 1971, the statute increased the maximum compensation payable for his PTD award from \$30,000 to \$38,397 and it applied a supplemental allowance to his weekly benefit increasing it from \$45.33 to \$57.96.

The Court held that the statute unconstitutionally disturbed the vested rights of the employer and insurer because the operational effect of the statute required them to pay more than

⁴ Maryland does not apply the “rational basis” test applied by the Federal Courts when analyzing whether a retroactive civil statute violates the U.S. Constitution. *See id.* at 623, 805 A.2d at 1072.

they were required to pay under the law in effect at the time of the injury.⁵ *See id.* The Court held as such because “the basis for a compensation award is contractual and the amount payable thereunder cannot be increased retrospectively.” *Id.* at 598-99, 366 A.2d at 57. In doing so, the court noted that:

An award under the Workmen's Compensation Law is not made on the theory that a tort has been committed; on the contrary, it is upon the theory that **the statute giving the commission power to make an award is read into and becomes a part of the contract....** The contract of employment, by virtue of the statute, contains an implied provision that the employer, if the employee be injured, will pay to him a certain sum to compensate for the injuries sustained, or if death results, a certain sum to dependents.

Id. (quoting *State Industrial Commission v. Nordenholt Corp.*, 259 U.S. 263, 271 (1992)) (emphasis added). As indicated above, the Court’s holdings in *Dua*, *Cooper I* and *Cooper II*, make it clear that it is unconstitutional for the General Assembly to enact retroactive legislation that impairs or adversely impacts a defendant’s vested rights in a cause of action that has already accrued in the workers’ compensation context.

Currently, in Maryland if a workers’ compensation claim is controverted by the employer/insurer, then the injured worker generally bears the burden of proof to establish that his or her condition is an occupational disease that arises out of and in the course of employment.⁶ *See Hathcock v. Loftin*, 179 Md. 676, 678-79, 22 A.2d 479, 480 (1941). If enacted, SB 10 will shift the burden of proof in COVID-19 claims from the injured worker onto the employer and insurer in claims where the cause of action has already accrued (*i.e.*, the diagnosis has already occurred). Doing so adversely impacts the rights of employers and insurers by prejudicing their defenses and

⁵ In *Cooper I* the court held that the retroactive increase in the amount of benefits awarded was unconstitutional, but the case was remanded to obtain evidence as to whether the reimbursement provision in the statute removed the adverse financial impact to the employer/insurer. In *Cooper II* the court reviewed the evidence obtained and concluded that the reimbursement provision in the statute did not render it constitutional because there was still a financial injury to the employer and insurer. *See Cooper II*, 284 Md. at 584, 398 A.2d at 1241.

⁶ There are exceptions to this general rule due to some statutory presumptions set forth in the Act, but none of the presumptions currently set forth in the Act apply to a COVID-19 diagnosis. *See* Md. Code Ann., Lab. & Emp. §9-202(a) (2022) (presuming that a worker is a covered employee while he or she is in the service of an employer under an express or implied contract for hire); Md. Code Ann., Lab. & Emp. §9-503 (2022) (creating statutory presumptions that certain diseases (heart disease, hypertension, lung disease, Lyme disease, and specific cancers) constitute occupational diseases arising out of and in the course of employment for certain types of employees in public safety related positions); Md. Code Ann., Lab. & Emp. § 9-506(f)(1) (2022) (presuming that injuries are not the result of an employee’s deliberate act and placing the burden upon the employer to prove an employee’s intent to inflict injury); Md. Code Ann., Lab. & Emp. § 9-506(f)(2)-(3) & (g) (2022) (presuming that injuries were not caused solely or primarily by intoxication of the employee); Md. Code Ann., Lab. & Emp. § 9-702 (2022) (presuming that the claim “comes within the Act,” that the injured worker provided sufficient notice of the injury to the employer, and that the employer was not prejudiced by a claim filed more than 60 days after the injury).

substantially reducing the amount of proof required in order for a claimant to successfully pursue a claim. This will make it remarkably easier for an employee to obtain workers' compensation benefits related to COVID-19, which would have an adverse financial impact on employers and insurers by requiring it to pay claims that would normally have been defensible under the existing burden of proof. Such a shift in the burden of proof is unconstitutional when applied to the employer and insurer's vested property rights in the accrued cause of action related to a COVID-19 diagnosis.⁷

For all these reasons, the MDC respectfully requests that the Committee provide an unfavorable report on SB 10.

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⁷ See e.g., *San Carlos Apache Tribe v. Superior Court*, 972 P.2d 179 (Ariz. 1999) (finding a statute that retroactively changed standards pertaining to water rights violated the state's constitutional due process clause because it impaired or altered vested property rights and noting that legislation "may not disturb vested substantive rights by retroactively changing the law that applies to completed events."); *DeWoody v. Superior Ct.*, 8 Cal. App. 3d 52, 56-57, 87 Cal. Rptr. 210, 212-13 (1970) (finding a change in the rules of evidence by creating a presumption of intoxication based on blood alcohol levels was unconstitutional when applied retroactively because it deprived the defendant of substantial protection and permitted the defendant's conviction upon "less proof, in amount or degree," than was required at the time of the offense).

SB 10 -Workers' Compensation COVID-19 Occupational

Uploaded by: Brian Frazee

Position: UNF



Maryland
Hospital Association

March 8, 2022

To: The Honorable Delores G. Kelley, Chair, Senate Finance Committee

Re: Letter of Opposition - Senate Bill 10 - Workers' Compensation - COVID-19 Occupational Disease Presumption

Dear Chair Kelley:

On behalf of the Maryland Hospital Association's (MHA) 60 member hospitals and health systems, we appreciate the opportunity to comment in opposition to Senate Bill 10. Workers' compensation benefit is an employee safeguard that allows financial protection for an employee whose job may result in danger or injury. Like many other industries, hospitals value and appreciate the importance of workers' compensation to replace wages for employees who are injured within the scope of work. With the emergence of the COVID-19 virus and subsequent variants, hospitals worked to provide a safe environment for employees and adapt and adhere to constantly changing guidance. Maryland hospitals continue to follow to the latest CDC guidelines to properly protect employees, as well as patients and visitors, and to combat the rise in COVID-19 infections.

As this novel virus continues to evolve, hospitals have taken significant steps to support the health and safety of their employees. To advance these efforts, many Maryland hospitals offered on-demand COVID-19 testing specifically for hospital employees to reduce the COVID-19 infection rate. Additionally, hospitals established contact tracing practices that allow employers to better monitor cases and protect employees. Moreover, Maryland hospitals continue to provide sufficient PPE, enact protective procedures, and disseminate necessary information to ensure employee safety.

Ultimately, the proposed bill would place an unfair presumption against hospitals by requiring them to assume liability when an employee contracts COVID-19—which is widespread and airborne in all of our communities. With the evolution of COVID-19 variants, epidemiologists have not developed a system for scientists to determine a causal link of contraction to an employer. If SB 10 is passed, hospitals will be liable for the autonomous actions of their employees without proof they contracted the virus at work.

For these reasons, we urge an unfavorable report on SB 10.

For more information, please contact:
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SB10 Chesapeake-IWIF Testimony.pdf

Uploaded by: Carmine D'Alessandro

Position: UNF



Testimony of Chesapeake Employers’ Insurance Company and Injured Workers’ Insurance Fund in Opposition to Senate Bill 10

SB 10 proposes to add an occupational disease presumption for COVID-19 for the following first responder or public safety employment types: a career or volunteer member of a fire department; a law enforcement officer, a correctional officer, a member of the Maryland National Guard, a sworn member of the State Fire Marshal’s office, and health care workers (individuals employed in health care, home care, or long-term care settings). The bill is retroactive to March 1, 2020 and applies to any individuals listed above that worked within 14 days of their COVID-19 positive test or diagnosis. Additionally, the bill includes a rebuttable presumption with “substantial evidence”.

The chart below details the COVID claims for Chesapeake Employers’ Insurance Company and the Injured Workers Insurance Fund related to First Reports of Injury (FROIs) and Employee Claim Forms filed with the Workers’ Compensation Commission as of December 31, 2021. A large amount of these claims are from the first responder or public safety employment types as listed above.

Total First Reports of Injury (FROIs) for COVID Related Claims:	1043
Total Number of Employee Claim Forms filed with the WCC:	152

Breakdown of Employee Claim Forms Filed (152 Total)	
Claims Accepted:	111
Claim Contested and Awaiting Judicial Review:	12
Claims Withdrawn by Claimant:	12
Claims Still Being Investigated:	7
Claims Denied by WCC:	10

Breakdown of Claims by Business Type (152 Total)	
State:	107
Local Government Claims:	28
Private Industry Claims:	17

Additionally, of the 152 Employee Claim Forms mentioned above, payment to those claims is as follows:

Breakdown of Payment (152 Total)	
Paid to date:	\$721,713.64
Reserved to date:	\$2,823,745.00
Total Incurred:	\$3,545,458.64
Average Cost per Claim:	\$23,325.39

Given the average cost per claim currently filed with the Workers’ Compensation Commission, we can calculate an estimate for fiscal impact using current First Reports of Injury filed (which we believe is a low figure of first reports for various reasons).

Estimate for Current First Reports of Injury (1043):	\$24,328,377.38
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Given the above data, the presumption as proposed could be of great fiscal impact for retroactivity alone. Additionally, the retroactivity of the bill could also create constitutional questions regarding validity of the bill. Of concern currently is the new Omicron variant. Given the new data of how Omicron spreads, contact tracing will be more difficult and cases will increase (and we have already experienced this in the last two months with newly filed cases). The next variant is expected to spread faster and easier as well. Therefore, the contact tracing methods as established will alter, and this general presumption would cover community spread disease as there would be no way to rebut the presumption. Moreover, the bill does not contemplate vaccination status.

The existence of variants, such as Omicron, have, most importantly, transformed what may have once been considered an occupational hazard, a condition of life generally. This expansion has largely undermined any relation COVID-19 has to the workplace. This was succinctly stated by the United States Supreme Court in *National Federation of Independent Business v Dept. of Labor* (142 S. Ct. 661 (2022)) in regards to OSHA imposed vaccine mandates for certain employers. The Court first pointed out that: “It is the text of the agency’s [OSHA] Organic Act that repeatedly makes clear that OSHA is charged with regulating “occupational” hazards and the safety and health of “employees.”” *Id.* The court goes on to explain that: “Although COVID-19 is a risk that occurs in many workplaces, it is not an *occupational* hazard in most. COVID-19 can and does spread at home, in schools, during sporting events, and everywhere else that people gather. That kind of universal risk is no different from the day-to-day dangers that all face from crime, air pollution, or any number of communicable diseases. Permitting OSHA to regulate the hazards of daily life—simply because most Americans have jobs and face those same risks while on the clock—would significantly expand OSHA’s regulatory authority without clear congressional authorization.” *Id.* The Court does explain that exceptions to OSHA’s authority as mentioned above may exist, for instance, researchers who work with the COVID-19 virus. *Id.*

Given the statements from the United States Supreme Court as well as the Maryland Workers’ Compensation Commission’s allowing COVID-19 claims in the accidental injury context, both provide

support for COVID-19 not being an occupational disease and, as such, a statutory presumption would be misplaced in that these presumptions only apply to occupational disease claims.

*Contact: Carmine G. D'Alessandro
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Opposition to SB 10 -W. Comp. - Covid-19-Occupatio

Uploaded by: Daniel Doherty

Position: UNF



SB 10

UNF

Daniel Doherty

The Maryland State Dental Association's Opposes SB 10– Workers' Compensation – COVID-19 Occupational Disease Presumption

SB 10 would impose liability on a dental practice if one of its employees is diagnosed with COVID-19, or 2019-nCoV and the SARS-CoV-2 virus or any of its variants. This bill creates the presumption that an employee of a dental practice who becomes infected with Covid-19 contracted the virus during the course of their employment, and unjustifiably places the cost of any resulting disability on the dental practice. Such a presumption is unwarranted, unsupported by the facts, and in a significant number of cases creates a dilemma - how do you determine which dental employer is subject to the presumption.

The imposition of such a presumption is unwarranted and totally ignores the experience of dentistry during this pandemic. When the Governor declared the State of Emergency - except for dental emergencies - dental offices were shut down for 52 days. Once they were allowed to reopen, they were confronted with staff reluctant to return to work, and patients who were very hesitant to seek even much needed dental treatment. In facing these challenges, the dental profession relied on the guidance of the CDC as well as the best practice standards disseminated by the American Dental Association. This involved implementing a new level of infection control, and the use by all dental personnel of the most appropriate personal protective equipment (PPE) available. Initially, proper masks and gowns were at a premium, but the profession addressed these shortages as recommended by the CDC and the ADA. As a result, a very small number of employees contracted Covid-19, and among those employees the infection was not traceable to their employment.

An additional consideration that renders this bill unworkable is it is very common for associate dentists, dental hygienists and dental assistants to work for more than one dental practice. If one of these were to be diagnosed with Covid-19, which dental practice is presumed to be the practice where the employee contracted the virus? Further, given the minuscule number of cases traceable to dental practices, how can one justify a presumption that it is employment related as opposed to a social exposure. MSDA submits that you can't.

During the 2021 Session the testimony on similar Workers' Compensation bills by the Workers' Compensation Commission was that they had received Covid-19 claims, and were hearing and deciding these claims without a presumption.

For these reasons the MSDA urges that SB 10 be given an unfavorable report.

Respectfully submitted by:

Daniel T. Doherty, Jr

March 8, 2022

SB0010_UNF_LifeSpan, MAADS, MNCHA, Hospice_Workers

Uploaded by: Danna Kauffman

Position: UNF



Hospice & Palliative Care Network
OF MARYLAND

TO: The Honorable Delores G. Kelley, Chair
Members, Senate Finance Committee
The Honorable Clarence K. Lam

FROM: Danna L. Kauffman
Pamela Metz Kasemeyer

DATE: March 8, 2022

RE: **OPPOSE** – Senate Bill 10 – *Workers' Compensation – COVID-19 Occupational Disease Presumption*

On behalf of the LifeSpan Network, the Maryland Association of Adult Day Services, the Maryland-National Capital Homecare Association, and the Hospice and Palliative Care Network of Maryland, we respectfully **oppose** Senate Bill 10, which states that a COVID-19 infection contracted by a health care worker is presumed to be an occupational disease and covered under workers' compensation if the health care worker tests positive within 14 days of performing labor or services.

Currently, employees are filing workers' compensation claims resulting from COVID-19 and many employers/insurers are paying the claims. For others, the Workers' Compensation Commission is adjudicating these claims. We believe that this format should continue rather than creating another presumption standard under the law. Unlike other presumptions that exist in Maryland law (cancer, heart disease, and hypertension) where the causation can be more readily determined because of the line of work, many claims related to COVID-19 will be more grounded on a factual determination of whether the disease was contracted at work or outside of work. Given the highly transmissible Delta and Omicron variants, it cannot be presumed that any resulting infection occurred at a workplace. It is also important to note that health care workers have been required to wear personal protective equipment while at work during the entire pandemic, limiting their exposure, which was not required of them in public spaces, especially during the Omicron surge.

While the bill contains a rebuttable presumption, we are concerned that this will erode the employer/employee relationship, given that it is highly likely that the employer will need to rely on social media accounts and statements from other employees on the activities of the claimant to rebut the presumption. The bill also fails to provide a defense for the employer if the employer can demonstrate that it abided by required safety protocols. For these reasons, we urge an unfavorable vote.

For more information call:

Danna L. Kauffman
Pamela Metz Kasemeyer
410-244-7000

HFAM Testimony SB 10.pdf

Uploaded by: Joseph DeMattos

Position: UNF



**TESTIMONY BEFORE THE
SENATE FINANCE COMMITTEE**

March 8, 2022

SB 10 - Workers' Compensation - COVID-19 Occupational Disease Presumption

Written Testimony Only

POSITION: UNFAVORABLE

On behalf of the members of the Health Facilities Association of Maryland (HFAM), we appreciate the opportunity to respectfully express our opposition for Senate Bill 10 - Workers' Compensation - COVID-19 Occupational Disease Presumption. HFAM represents over 170 skilled nursing centers and assisted living communities in Maryland, as well as nearly 80 associate businesses that offer products and services to healthcare providers. Our members provide services and employ individuals in nearly every jurisdiction of the state.

HFAM members provide the majority of post-acute and long-term care to Marylanders in need across all payer sources annually. Thousands of Marylanders across the state depend on the high-quality services that our skilled nursing and rehabilitation centers offer every day.

Research from Brown, Harvard, and the University of Chicago indicates that there is a correlation between the positivity rate in the community and the positivity rate in congregate settings in that community. A higher positivity rate in a specific community or zip code would mean that there are more likely more positive cases among skilled nursing centers, assisted living campuses, and correctional facilities in those areas. Workers most often contract COVID-19 in the community as an accidental injury, not at work as an occupational disease.

The necessity of SB 10 is in question. We understand from our Workers Compensation consultants that there have been numerous COVID-19 cases on file with the Workers' Compensation Commission. It appears that these cases are being properly dealt with by the Commission; the ones that should be found compensable are being found compensable, and the ones that should be disallowed are being disallowed.

Presumption by its very nature places a burden on the employer to prove a negative, which is much more onerous than the burden a Claimant usually carries to prove a positive. The Claimant has knowledge of their comings and goings and possible exposures (or lack thereof), where the Employer does not.

The financial impact of this bill could be wide-reaching for some municipalities and other organizations. Finally, and considering each of these points of opposition, the retroactivity of impact proposed in this legislation is not proven necessary.

For these reasons, we request an unfavorable report from the Committee on Senate Bill 10.

Submitted by:

Joseph DeMattos, Jr.

President and CEO

(410) 290-5132

SB0010-FIN_MACo_OPP.pdf

Uploaded by: Kevin Kinnally

Position: UNF



Senate Bill 10

Workers' Compensation – COVID-19 Occupational Disease Presumption

MACo Position: **OPPOSE**

To: Finance Committee

Date: March 8, 2022

From: Brianna January and Kevin Kinnally

The Maryland Association of Counties (MACo) **OPPOSES** SB 10. This bill would establish COVID-19 as a presumed occupational disease eligible for workers' compensation for first responders, public safety employees, and health care workers. It would place an undue burden on counties as a major employer of these professions, with major fiscal impact on local governments.

While counties respect the merit of this bill to protect frontline workers who become ill with COVID-19, it is unreasonable and unenforceable. It is almost impossible to determine if someone has contracted the virus as a direct result of the nature of their work, yet SB 10 will effectively settle this matter regardless of what other factors may have been in play. For example, the bill as written does not include an exclusion for unvaccinated staff who contract the virus, or for employees who have engaged in relevant risky out-of-work behaviors, essentially placing the onus completely on public sector employers.

Further, Maryland has unusually strong exclusions of rebuttability evidence during compensability hearings related to presumptions. With employers simply unable to present information about the breadth of possible exposures that may have led to the employee's contraction of the virus, employers will surely bear more than their actual share of responsibility under this broad presumption law.

Additionally, while exact costs are still unclear, the financial implications of the presumption set by SB 10 are significant. SB 10 not only includes COVID-19 diagnosis as a presumed occupational disease, but it would also include any lingering and permanent conditions related to COVID-19, some of which are still being studied. Counties, as employers, would not only have to approve and pay workers' compensation claims related to diagnosis, but they would also have to do so potentially indefinitely for each claimant. This would have a long-term impact on counties' worker compensation premium rates, or on self-insured jurisdictions' direct costs.

Lastly, counties would likely need to hire additional staff and incur additional personnel costs to process claims covered under SB 10. It is nearly impossible to predict how many claims would result from the presumption, especially when considering that the bill is retroactive to March 1, 2020 -- again extending the counties' obligation.

In short, SB 10 places an unreasonable and unenforceable burden on counties as employers and threatens significant short-term and long-term fiscal impact on county budgets. For these reasons, MACo **OPPOSES** SB 10 and urges an **UNFAVORABLE** report.

SB0010UNFAVORABLE3:8.pdf

Uploaded by: Linda Diefenbach

Position: UNF

SB0010 Workers Compensation - Covid-19 Occupational Disease Presumption

UNFAVORABLE

I love our First Responders, but this bill is fiscally irresponsible.

There is no way to tell if one of the work groups described in this bill got COVID-19 on the job. Also, the tests are flawed giving a high number of false positives. The bill is a waste of taxpayer dollars.

Linda Diefenbach
6742 Deer Spring Ln.
Middletown, MD

SB 10 MDCC Workers' Compensation - COVID 19 Occupa

Uploaded by: Maddy Voytek

Position: UNF



LEGISLATIVE POSITION:

Unfavorable

Senate Bill 10

Workers' Compensation – COVID-19 Occupational Disease Presumption

Senate Finance Committee

Tuesday, March 8, 2022

Dear Chairwoman Kelley and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 5,500 members and federated partners working to develop and promote strong public policy that ensures sustained economic recovery and growth for Maryland businesses, employees, and families.

As introduced, SB 10 seeks to retroactively establish that the coronavirus will be presumed, under certain circumstances, to be an occupational disease that was suffered in the line of duty or course of employment and is therefore compensable as a workers' compensation claim. It is of particular concern to the Maryland Chamber that the bill would be applied retroactively, in violation of the constitution.

While the Maryland Chamber of Commerce supports workers' compensation presumption policy that places the science and data first when determining what occupations are at an increased risk to dangerous exposures, at this point, scientific studies are still lacking. By including such broad definitions of qualifying healthcare workers, SB 10 is granting presumption to employees where data does not exist showing which are at an increased risk of contracting the coronavirus.

Additionally, SB 10 places exposure to COVID-19 as an occupational disease, the wrong cause of action for workers' compensation claims in this instance. Exposure to the coronavirus should be placed as an accidental injury. Further, by adding the coronavirus as a presumptive occupational disease, SB 10 opens the door to include other common community diseases such as the flu.

Finally, it is the understanding of the Chamber that some employers have voluntarily accepted and paid COVID claims while others have provided alternative benefits for employees impacted by COVID. Moreover, the Workers' Compensation Commission is already hearing and finding COVID claims compensable on a case-by-case basis. It should be left to the WCC to make these determinations.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **unfavorable report** on SB 10.

SB 10 Covid Presumptions Oppose 03082022 FINAL.pd

Uploaded by: Nancy Egan

Position: UNF

Testimony of
American Property Casualty Insurance Association (APCIA)
Senate Finance Committee
SB 10 Workers' Compensation – Covid 19 Occupational Disease Presumptions
March 8, 2022

Oppose

The American Property Casualty Insurance Association (APCIA) is a national trade organization representing nearly 60 percent of the U.S. property casualty insurance market. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe. APCIA members write 86% of the workers' compensation insurance in Maryland. APCIA appreciates the opportunity to provide written comments about our concerns with Senate Bill 10.

APCIA opposes the creation of any presumptions of coverage for COVID-19. Workers' compensation is a no-fault system that guarantees injured workers prompt indemnity benefits and unlimited medical care, without any deductibles or co-payments, even in the absence of any fault by the employer. Essential to maintaining the foundations of this system is proof that the covered injury or disease arose out of and in the course of employment. Requiring Maryland employers to cover injuries without such proof violates core principles underlying the workers' compensation system.

Whatever small justification for a presumption of coverage might have existed in the very early stages of the pandemic – when most citizens were staying in place at home and there were no vaccines preventing serious illness or death – has long since disappeared. Presumptions create a fiction that all COVID-19 diseases somehow arise only out of the workplace even though people are now traveling, going to restaurants and bars, attending social events, and participating in other large-scale events. It would be unfair and irresponsible to place the economic burden on Maryland employers of falsely presuming that certain employees who have contracted COVID-19 during this time did so in the workplace. Accordingly, there no justification for creating a presumption of coverage

For these reasons, APCIA urges the Committee to provide an unfavorable report on Senate Bill 10.

Respectfully submitted,

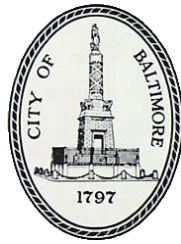
Nancy J. Egan, State Government Relations Counsel, DE, MD, VA, WV

Nancy.egan@apci.org Cell: 443-841-4174

SB0010-FIN-OPP.pdf

Uploaded by: Natasha Mehu

Position: UNF



BRANDON M. SCOTT
MAYOR

*Office of Government Relations
88 State Circle
Annapolis, Maryland 21401*

SB 10

March 8, 2022

TO: Members of the Senate Finance Committee
FROM: Natasha Mehu, Director, Office of Government Relations
RE: Senate Bill 10 – Worker Compensation – COVID-19 Occupational Disease Presumption
POSITION: OPPOSE

Chair Kelly and Vice Chair Feldman and Members of the Committee, please be advised that the Baltimore City Administration (BCA) **opposes** Senate Bill (SB) 10.

SB 10 establishes that first responders, public safety employees, and health care workers are presumed to have an occupational disease that is compensable under workers' compensation law after a positive test or diagnosis for COVID-19. The bill applies retroactively to March 1, 2020. The bill is also an emergency measure effective upon $\frac{3}{5}$ members of each House of the General Assembly. Finally, the bill remains in effect until July 31, 2023, at which time it will be abrogated with no further action by the General Assembly.

Worker compensation does not traditionally provide coverage for the cold, flu, or other community-spread illnesses that have no direct tie to the workplace. While COVID-19 has been devastating to the public health of all members of society as it is a community-spread illness that isn't particularly tied to workplace environments. The BCA is concerned with extending worker compensation without the scientifically-backed evidence to support such a presumption specifically for the occupations noted in the bill. For instance, in the City, the exposure numbers for public safety personnel are reportedly below the exposure numbers for the general public (23% for the general public and 12% for the police department). We are also concerned that this will create or exacerbate inequities in the benefits that certain occupations receive over others who also work in environments with high levels of contact with the public.

For these reasons, we respectfully request an **unfavorable** report on SB 10.