American Property Casualty Insurance Association
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Testimony of

American Property Casualty Insurance Association (APCIA)

House Judiciary Committee

House Bill 922 State Government – Public Welfare Actions – Determinations and Settlements

February 21, 2024

Unfavorable

The American Property Casualty Insurance Association (APCIA) is the primary national trade organization representing nearly 67.1 percent of the Maryland property casualty insurance market. House Bill 922 would be a significant policy shift that would have a detrimental impact on Maryland civil defendants, residents, businesses and insurers due to increased claims, litigation jury verdicts and settlements. APCIA appreciates the opportunity to provide written comments in opposition to House Bill 922.

APCIA strongly opposes HB 922 as a strikingly broad new form of civil litigation authority granted to the Attorney General. HB 922 would give the Attorney General nationally unprecedented authority to pursue all manner of claim collectively against whole segments of the business community in Maryland.

HB 922 adopts entirely new forms of claims and actions with little to no guidance, definitions or boundaries. Indeed, they could be described as unbounded. For example, a "Public welfare claim" means:

any claim, counterclaim, cross claim, or other demand for relief of **any kind brought or asserted by the attorney general or the state under common law, statutory law, or any other basis** … for **consumer protection** or … arising from or related to alleged injuries to or **threatened injuries** to the **health, safety, environment, or welfare** of the residents of Maryland.

(emphasis added). This is a remarkably broad, undefined and, having researched the term, an ***entirely new statutory claim nationwide***. The definition of a "public welfare action" would permit the attorney general and the state to assert such a claim.

Perhaps, most importantly, this would encompass "threatened injuries." In other words, the Attorney General would be permitted to pursue a case or claim *without an actual harm.*

What is more, HB 922 would eliminate or reduce customary defenses for civil litigants facing such claims. For example, it includes "proportionate liability," "comparative responsibility" and "permits the determination of liability of a group on a collective basis." In essence, in such entirely new matters, the bill further upends long standing Maryland law by eliminating the typical requirement of causation, adopting comparative fault and enterprise or market share liability.

These attributes strip away well-founded elements of tort that seek to have people or businesses pay what they owe based on their own negligence. Maryland's high court articulated these bedrock principles succinctly in *Medical Mutual Liability Society of Maryland v. B, Dixon Evander and Associates*:

In any tort action, the plaintiff must establish that ***the defendant's tortious conduct was a cause in fact of the injury*** for which compensation is sought.

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Thus, "the burden is on the plaintiff to prove by a preponderance of the evidence that 'it is more probable than not that defendant's act caused his injury.' "

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In addition, the ***plaintiff must establish that any damages sought are a "natural, proximate and direct effect of the tortious misconduct***."

Medical Mut. Liability Soc. v. B. Dixon Evander and Assoc., 339 Md. 41, 54-55, 660 A.2d 433 (1995) (citations omitted) (emphasis added).

HB 922 stripes away historic protections for Maryland civil defendants, permitting them to be adjudicated on a comparative basis with responsibility for damages collectively. This law would permit the Attorney General and State to prosecute all manner of civil claims on a mass basis and with other standards not available to private civil claimants. For example, we might see a mass environmental civil suit pursued against businesses by the Attorney General rather than actually injured parties. Imagine gas stations, auto dealerships, auto repair facilities, etc. They often have fuel tanks, collect refuse fluids, etc. They may be sued collectively by the Attorney General for all manner of remediation and payments to adjoining property owners and all without adequately demonstrating who actually caused any the harm.

Per- and polyfluoroalkyl substances (PFAS) are a large, complex group of synthetic chemicals that have been used in consumer products around the world since about the 1950s. They are ***ingredients in various everyday products.***[1] PFAS are a very major concern now, ubiquitous and found in many, many products and at all manner of facilities, producers, recyclers, waste handlers and more. Again, those businesses will be subject to a suit in which the customary defenses of causation and responsibility have been significantly diminished if not removed all together.

And, under HB 922 , the same would be true for some perceived failing in safety standards. For example, if there is another pandemic and hospitality businesses do not close entirely while having other safety measures, not only could the Attorney General seek to enjoin activity, he or she could pursue the personal injury damage claims of the individuals, patrons, etc. even as causation in a pandemic would be incredibly hard to prove otherwise.

Finally, subsection D appears to eliminate contribution claims amongst codefendants and impair the subrogation rights of their insurers, "The person shall not be liable for claims for noncontractual contribution or indemnity regarding any matter or claim addressed in the settlement, including any statutory or common law claim."

We expect proponents of the bill to cite its last substantive provision that it shall not be construed to "Grant authority to the state or the attorney general to bring actions or claims not otherwise authorized by law." This misses the point—even if the bill does directly create new causes of action, it permits adjudication without normal, existing standards intended to protect Maryland's civil defendants.

The simple fact is that this bill is exceptionally broad, permits all manner of civil litigation and permits matters to proceed on a collective basis against whole sectors of the economy. It is not enough to say that the Attorney General or the State will use good judgment in deciding who should be subject to such unbound litigation. This bill impairs civil defendants' rights and fairness and needs to be rejected. In this situation, that is particularly true

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[1] *Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS*), *National Institute of Environmental Health Sciences,* at https://www.niehs.nih.gov/health/topics/agents/pfc#:~:text=They%20are%20ingredients%20in%20various,linked%20carbon%20and%20fluorine%20atoms. See also *An overview of the uses of per- and polyfluoroalkyl substances (PFAS)*, Environ Sci Process Impacts (2020) at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7784712/ .

as an Attorney General will have the power of the state at his or her disposal in terms of prosecuting claims, developing information, facts, claims, etc. Conversely, civil defendants will have demised defenses. This legislation is unfair to Maryland businesses and civil defendants and for all these reasons, APCIA respectively requests an unfavorable report on House Bill 922.

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