MARYLAND
Chamber of Commerce

LEGISLATIVE POSITION:
UNFAVORABLE
Senate Bill 727
Maryland Healthy Working Families Act—Revisions and Public Health Emergency Leave
Senate Finance Committee

Wednesday, March 17, 2021

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 5,000 members and federated partners, and we work to develop and promote strong public policy that ensures sustained economic recovery and growth for Maryland businesses, employees, and families.

Senate Bill 727, as introduced, would make many changes to the Maryland Healthy Working Families Act during a declared state of public health emergency including: 1) repealing certain exemptions for on-call employees; 2) requiring employers to allow employees to use earned sick and safe leave during a public health emergency; 3) requiring certain employers to provide employees sick and safe leave on the date that a public health emergency is declared; 4) requiring an employer to provide certain earned sick and safe leave regardless of the employee's length of employment; among many other things.

To say that COVID-19 has had a tremendous, far-reaching, and extremely detrimental impact on Maryland's economy would be a gross understatement. Employment, retail sales, and many other economic indicators continue to move in the wrong direction as the virus rages on throughout our State, with no clear end in sight. As a result, Maryland's job creators continue to struggle to survive and to maintain operations, with the Comptroller's Office previously estimating that approximately 30,000 Maryland businesses have closed or will close permanently as a direct result of the pandemic. Indeed, the economic impact of COVID-19 is unprecedented.

While we believe that Senate Bill 727 is well-intentioned in that it attempts to provide financial support for workers impacted by a declared public health emergency, there are a number of significant challenges and unintended consequences that will result from the imposition of expanded leave mandates on employers. Maryland's job creators cannot reasonably be expected to comply with the expanded mandates contained within SB 727, especially now, as they struggle to juggle previously passed employer directives and the operational and economic implications of COVID-19.

Throughout the duration of the pandemic, the Chamber and our 5,000 business and federated partners have remained committed to doing our part to mitigate the impact of COVID-19. The health and safety of our members, their employees, and the general public remains our top priority. We look forward to working with the bill sponsors, Maryland General Assembly, and other stakeholders toward policy outcomes that balance health and safety with the operational and economic realities that Maryland job creators are managing at this time.

For these reasons and based on the comprehensive list of concerns outlined below, the Maryland Chamber of Commerce respectfully requests an **UNFAVORABLE REPORT** on SB 727

Section 3-1301(g): Definitions
SB 727 expands the definition of "Family member" in the Maryland Healthy Working Families Act to include: 1) a child of the employee's domestic partner, 2) an individual who is recognized as the employee's spouse or domestic partner or as being in a similar union with the employee, and 3) ***any other individual related by blood to or whose close association with the employee is the equivalent of a family relationship.***

We believe that the expansive definition as it relates to domestic partners and their children is not necessary. All 50 states now recognize same sex marriage. Every person now shares an equal right to marry their partner, regardless of that person's sex. Expanding the definition to include domestic partners and their children served a purpose when the legal barriers to marriage existed. Today, those barriers have been removed.

Regarding the expansion to any other individual related by blood or who has an association that is like a family member, which would include any person who simply chooses to not marry, the mandate now becomes open and would require providing paid leave to care for one's neighbor, friends, or distant cousins. Further, it is unclear what is meant by "the equivalent of a family relationship" as it is subjective and exists on a spectrum that is up for vast interpretation.

During the original debate over the Maryland Healthy Working Families Act, the Chamber and its members argued that the definition of "family member" was overly broad. We maintain that the definition, like the federal Family and Medical Leave Act and the Maryland Flexible Leave Act, should be limited to immediate family members. The revisions in this bill expand the definition well beyond what exists in current law.

Section 3-1306: Paid Earned Sick and Safe Leave During a Declared Public Health Emergency

3-1306 (A) On the date that a public health emergency is declared, each employer shall provide each employee paid earned sick and safe leave **in addition** to that which is already required by MHWFA.

Leave shall be provided in the following amounts:

For FTEs working more than 40 hours per week, 112 hours (14 business days?)
For PTEs working less than 40 hours per week, a number of hours equivalent to the amount of hours the employee works on average over a typical 2 week or 4 week period, whichever is greater.

Though a fiscal note was not made available at the time this testimony was drafted, we can safely assume that the cost implications of providing this new bank of paid leave would be devastating to Maryland's job creators.

It is critical that the General Assembly recognize the impact of mandated benefits laws on employers, particularly small businesses. The federal government has long recognized that smaller employers are less able to provide certain types of benefits. For example, the Family and Medical Leave Act (FMLA) mandates unpaid leave for medical reasons and applies to conditions that last longer than 3 days. Further, it only applies to employers with 50 or more employees. Congress has recognized that even an unpaid leave requirement is burdensome to small businesses. Paid leave, of course represents an even greater payroll liability and cost burden.

COVID-19 has had an extremely detrimental impact on our economy, striking our small business owners the hardest as they struggle to survive to maintain operations. In our present economy, as Maryland employers attempt to recover from a lengthy period of economic downturn, they simply cannot bear the costs of new employer mandates, particularly as they struggle to comply with previously implemented directives including MWHFA and the increase in minimum wage.

3-1306(B)(1) – The employer shall provide sick and safe leave regardless of the employee's length of employment. Employers are currently required to provide sick and safe leave upon an employee's first day of employment, either through an accrual or front-end loading method. They are also permitted to delay an employee's ability to use that leave for the first 106 days. The language of this bill, e.g., "provide" is unclear as to whether it refers to the employer's obligation to begin loading or accruing the leave or the employee's ability to use that leave. For all the reasons that the MHWFA was first passed, requiring employers to permit employees to use this entire bank of additional leave or any portion thereof not only significantly increases the employers' accounts payable liability, but sets employees up for discord. For example, this bill basically tells a newly hired employee who is undergoing chemotherapy that his or her illness is not as exigent and can wait for 106 days, while the newly hired coworker who is completely

asymptomatic and seeks only preventive care can take the first two weeks off from work. We are sure that is not this body's intended result.

3-1306(B)(2) Employees shall be allowed to use the paid sick and safe leave provided under Subsection A of the existing law during the 3 weeks immediately following the official termination of the public health emergency. However, absolutely no reason for using that leave is listed in this bill or in Subsection A of the existing law. On its face, this allows an employee completely unaffected in any way by a declaration or any emergency as described in this bill or under the current law, to stay home for 14 working days for any reason or for no reason. This appears to be a mandate for vacation leave.

3-1306(C) Employees can use paid earned sick and safe leave to isolate without an order to do so for at least twelve different reasons. Even the federal Families First Coronavirus Response Act (FFCRA) required employers to provide paid leave for any one of six reasons, of which only five ever came to fruition. These wide-ranging reasons are fraught with challenges. Here are just a few:

- The bill requires paid leave be provided to an employee who stays home without an order to do so. However, "order" is not defined. The FFCRA required coverage only if an employee was under an order from its attending physician or a federal, state, or local order to self-isolate or quarantine.

- The employee who chooses to stay home must receive paid SSL if he/she has been diagnosed with or is experiencing any symptoms associated with a communicable disease. Communicable disease is also not defined. Thus, an employee with symptoms associated with any malady, such as the common cold, would have the right to stay home, not see any physician, and receive this "emergency" SSL.

- As described above, the bill requires an employer to pay emergency SSL for preventive care concerning a communicable disease. As written, this could include the common cold, completely unrelated to any emergency.

- These same issues apply to:
    - caring for a family member who has chosen or been ordered to self-isolate due to symptoms of *any* communicable disease,
    - the employee's doctor recommending the employee stay home due to symptoms of *any* communicable disease.

- Paid leave is provided if an employee needs to stay home to care for a family member due to the unavailability of a family member's care provider, including school, due to a public health emergency. Could inclement weather meet the definition of a public health emergency? If not, we again are providing paid for employees who need to care for family members in some instances but not others.

- The bill grants paid leave to employees with underlying medical conditions that may make a person more susceptible to or risk of a communicable disease. The CDC, WHO and others have cited no evidence, to date and, with the possible exception of compromised immune systems, there is no evidence that any condition puts a person at greater risk of *contracting* COVID-19. There are some conditions, including non-medical, that may put a person at greater risk of complications if and when they do contract the disease.

3-1306(D) gives the employee the choice of using this emergency paid leave before the existing SSL. Therefore, this bill increases employers' accounts payable liability by requiring them to provide nearly four times the amount of paid leave as currently required (a total of 112 instead of 40 hours) but then that burden is compounded by limiting the employer's ability to require use of existing SSL first.

3-1306(F) prohibits an employer from requiring any documentation, such as a doctor's note, for *any* related absence. No existing law has that bar. The bill even acknowledges that under existing 3-1305 an employer may require documentation after an employee is absent for two consecutive shifts. The FFCRA permits a documentation requirement for every related absence.

3-1306 (G) adds two notice requirements that are in addition to the two that already exist under the HWFA. That is four notice requirements regarding the same issue. Even employees might find that a bit irritating or insulting. We believe they "get it" after the first or second notice.