MTA Favorable SB725.pdf
Uploaded by: Massoni, Jenna
Position: FAV

Maryland Troopers Association

INCORPORATED 1979

March 9, 2021

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

RE: **SB725 Workers' Compensation – Occupational Disease Presumptions – COVID -19**

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 SB725, which covers certain employees suffering from COVID-19 while in the line of duty and is compensable in a certain manner.

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 SB725 and request a favorable report.

Brian Blubaugh
President
Maryland Troopers Association

Member of National Troopers Coalition
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E-mail: info@mdtroopers.org

Testimony-SB725-Workers' Compensation - Occupation

Uploaded by: Stevenson, Christopher

Position: FAV

Testimony on SB725
Workers' Compensation - Occupational Disease Presumptions - COVID-19 Act of 2021
Position: FAVORABLE

Dear Madam Chair and Members of the Finance Committee,

My name is Ricarra Jones, and I am the Political Director with 1199SEIU- the largest healthcare union in the nation, where we represent over 10,000 healthcare workers in Maryland. Given the need to fiscally support and relieve health issues for certain essential workers, we are supportive of SB725- The Workers' Compensation - Occupational Disease Presumptions - COVID-19 Act of 2021.

Nearly 380,000 Maryland residents have contracted COVID-19 thus far, and over 7,800 residents have lost their lives. A number of those residents who work in the emergency services sector contracted COVID-19 such as firefighters and police officers. Under current law, workers who cannot link exposure to COVID-19 directly to their worksite activities, are often denied employer and workers' compensation claims. Many workers thus find themselves financially strained and without work for extended periods due to this systemic flaw. Therefore, this legislation is necessary to categorizing COVID-19 as an occupational disease which will give thousands of workers access to a more just compensation process.

Our members are doctors, nurses, and other healthcare professionals that not only interact with the public during this pandemic, but specifically treat members of the public that are positive for COVID-19. Like our members, this bill concentrates on emergency services workers who also interact with the public daily to keep our communities safe. In this capacity, we stand with our brothers and sisters that put their lives on the line just as much as healthcare workers and believe that their daily sacrifice should be financially valued if COVID-19 contraction occurs.

For this reason, we believe that this Act will provide a financial safety net for essential Maryland workers and ask that you support SB725- Workers' Compensation - Occupational Disease Presumptions - COVID-19 Act of 2021.

Respectfully,

Ricarra Jones
Maryland/DC Political Director
1199SEIU United Healthcare Workers- East
Cell: 443-844-6513

SB 725_UNF_MML.pdf
Uploaded by: Bailey, Angelica
Position: UNF

Maryland Municipal League

The Association of Maryland's Cities and Towns

TESTIMONY

March 9, 2021

Committee: Senate Finance

Bill: SB 725 Workers' Compensation – Occupational Disease Presumptions – COVID–19

Position: Oppose

Reason for Position:

The Maryland Municipal League opposes Senate Bill 725, which establishes an occupational disease presumption for employees with specified public safety and first responder occupations that are suffering from the effects of COVID-19.

This proposed presumption that any affected worker 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.

This bill also treats regular employees and front-facing employee the same, therefore significantly increasing the pool of eligible employees able to claim workers' compensation even though non-public-facing employees are at a significantly reduced risk of transmission.

This measure also alters the way the statute of limitations typically applies to workers compensation claims. Typically, the statute of limitations tolls two years from the date the employee stopped working. This measure proposes that the statute tolls two years from when the employee had actual knowledge that contraction of COVID-19 was due to their employment. This is a significant expansion that could raise costs for local governments, without providing a predictable procedure or timeline by which they may budget.

For these reasons, the Maryland Municipal League opposes Senate Bill 725 and respectfully requests an unfavorable committee report.

FOR MORE INFORMATION CONTACT:

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Scott A. Hancock	Executive Director
Angelica Bailey	Director, Government Relations
Bill Jorch	Director, Research and Policy Analysis
Justin Fiore	Manager, Government Relations

SB 756 812 813 860 Chesapeake-IWIF Bill - COVID pr
Uploaded by: D'Alessandro, Carmine
Position: UNF

Chesapeake Employers Insurance
Your workers' compensation specialist

Senate Finance Committee
March 9, 2021

Testimony of Chesapeake Employers' Insurance Company and
Injured Workers' Insurance Fund in Opposition to
Senate Bills 725, 756, 812, 813, 860

Senate Bills 725, 756, 812, 813 and 860 seek to provide a presumption of compensability under the Workers' Compensation Act for certain employees diagnosed with severe acute respiratory syndrome Coronavirus (COVID-19). For the following reasons, Chesapeake Employers' Insurance Company and Injured Workers' Insurance Fund respectfully oppose Senate Bills 725, 756, 812, 813 and 860.

Under current law, any employee contracting COVID-19 is permitted to file a workers' compensation claim alleging the condition arose out of and in the course of his or her employment. In fact, numerous individuals have filed such claims and been awarded or received benefits. Chesapeake and IWIF have received 785 First Reports of Injury as of this writing, with only 69 of those reports being "denied." No presumption has been needed to assist with an injured worker's evidentiary burden as, unlike conditions such as lung cancer or asbestosis, COVID-19 can often be contact traced to its source. The ability to trace the cause of the condition obviates the need for a presumption.

Senate Bills 725, 756, 812, 813 and 860 seek to first classify COVID-19 as an occupational disease under Maryland Law; per current law, however, COVID-19 is not an occupational disease as that term is defined. Under current law, an occupational disease must (a) be an inherent hazard of a specific employment and (b) be slow and insidious in its approach (Asbestosis, for example). COVID -19 does not meet either criteria; it is not a hazard inherent in any employment and contracting the condition is not a slow or insidious process. COVID-19,

under current workers' compensation law, would be treated as an accident as there is one specific source of exposure for COVID-19. This is significant in that presumptions do not attach to accidents. As such, Senate Bills 725, 756, 812, 813 and 860 run afoul of current law.

Additionally, Senate Bills 725, 756, 812, 813 and 860 seek to create a permanent statuary framework for a condition that has not been deemed to be permanent in nature. In the limited number of states addressing this issue, sunset provisions have become common place. Not all referenced bills contain such a provision.

Senate Bills 725, 756, 812, 813 and 860 also confer a presumption on classes of employees never before included in presumption legislation which, under years of settled law, are the exclusive province of public safety employees.

Lastly, the bills, as drafted, present differing evidentiary standards depending on the condition: heart and lung cases would differ from COVID-19 cases, causing uncertainty in the presentation of evidence.

Chesapeake and IWIF are obviously mindful of the effects COVID-19 has had on Maryland society. We contend, however, that as for workers' compensation, the system is working as presently constructed and no legislation is needed in this area. Current law adequately protects those contracting COVID-19 in the workplace.

For those reasons, Chesapeake and IWIF respectfully oppose Senate Bills 725, 756, 812, 813 and 860 and request an unfavorable report.

Contact: *Carmine G. D'Alessandro*
Chief Legal Officer
Chesapeake Employers Insurance Company/IWIF
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HFAM Testimony - SB 725 Final.pdf
Uploaded by: DeMattos, Joseph
Position: UNF

TESTIMONY BEFORE THE
SENATE FINANCE COMMITTEE
March 9, 2021
SB 725 - Workers' Compensation - Occupational Disease Presumptions - COVID-19
Written Testimony Only

POSITION: UNFAVORABLE

On behalf of the members of the Health Facilities Association of Maryland (HFAM), we appreciate the opportunity to express our opposition for Senate Bill 725 - Workers' Compensation - Occupational Disease Presumptions - COVID-19.

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: 6 million days of care across all payer sources annually, including more than 4 million Medicaid days of care and one million Medicare days of care. 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. For example, a higher positivity rate in Laurel, Elkridge, Silver Spring, Gambrills, or Hagerstown would mean that there are more likely more positive cases among skilled nursing centers, assisted living campuses, and correctional facilities in those communities. Workers most often contract COVID-19 in the community as an accidental injury, not at work as an occupational disease.

Furthermore, this legislation is written so broadly that its provisions could extend to additional viruses and ailments that are spread in the community once the COVID-19 pandemic is behind us. Currently, there is a lack of a scientific basis to support the presumptions in this legislation. The presumptions laid out in Section 9-503 were all created as a result of science showing that police officers, firefighters, etc., had greater instances of certain types of cancers and ailments because of their exposures at work. To date, there has been no scientific study that has shown healthcare workers are necessarily at a greater risk for COVID (although there is certainly a public perception that healthcare workers are at greater risk).

Additionally, the financial impact of this bill could be wide-reaching for some municipalities and other organizations. The necessity of SB 725 is also in question. We understand from our Workers Compensation consultants that there are 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.

Finally, and considering each of these points of opposition, the retroactivity of impact proposed in SB 725 is not proven necessary, and it is important to note additionally that other states draft pieces of such legislation include sunset provisions.

For these reasons, we request an unfavorable report from the Committee on Senate Bill 725.

Submitted by:

Joseph DeMattos, Jr.
President and CEO
(410) 290-5132

AND

LaShuan Bethea J.D., M.Ed., BSN, RN
Vice President, Reimbursement & Legislative Affairs
Genesis Healthcare

SB 725 OPPOSE APCIA 0309 2021 - FINAL.pdf

Uploaded by: Egan, Nancy

Position: UNF

American Property Casualty Insurance Association
INSURING AMERICA apci.org

Testimony of

American Property Casualty Insurance Association (APCIA)

Senate Finance Committee

SB725 Workers' Compensation - Occupational Disease Presumptions – COVID-19

March 9, 2021

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 concerns with Senate Bill 725.

APCIA understands and agrees with the need to assist our front-line first responders and public safety workers who contracted COVID-19 as a result of exposure in the workplace. We appreciate the magnitude of the current national emergency and greatly respect all those on the front lines. APCIA and the rest of the workers' compensation industry stand ready to do our part to support both Maryland employers and employees in resolving problems arising from the current crisis. Accordingly, APCIA would support Senate Bill 725 with amendments.

Senate Bill 725 would create a presumption of coverage of COVID-19 as an occupational disease for certain first responders and public safety officials. In view of the drastic nature of presumptions of coverage, which are rarely enacted because they dispense with the fundamental and reasonable requirement that a worker prove that an injury or illness is work-related, we believe that these categories of workers have been thoughtfully identified in order to avoid imposing ruinous and unsupportable costs on Maryland's workers' compensation system. However, we also believe that SB 725 must be amended in several important respects to require sufficient proof of disease, permit employers to rebut the presumption, and establish a reasonable sunset date.

COVID-19 Presumption and Basic Principles of Workers' Compensation

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. This no-fault system benefits both Maryland employers and Maryland employees. Prior to enactment of workers' compensation in 1913, an injured worker was without remedy for workplace injury or illness unless he or she successfully proved negligence on the part of the employer, and similarly, was without remedy if the employer could prove the employee's own negligence contributed to the injury. In return for no-fault compensation, the employer was free from

the threat of civil litigation. Essential to maintaining this no-fault workers' compensation system, however, *is proof that the covered injury or disease arose out of and in the course of employment.* Requiring Maryland employers to cover injuries on an absence of fault basis without proof that the injury or disease arose out of and in the course of employment violates basic core principles underlying the workers' compensation system.

Senate Bill 725 provides that for purposes of adjudicating workers' compensation claims, specified employees who have been diagnosed with COVID-19 shall be presumed to have contracted the virus as an occupational disease in the line of duty. The presumption that anyone who contracts COVID-19 must have contracted it at the workplace, however, lacks scientific and medical proof. COVID-19 represents a global pandemic, now with over 112 million cases worldwide and almost 2.5 million deaths, precisely because it is not an occupational disease but instead is a disease of ordinary life transmitted between persons who are in close contact with an infected person. Simply put, presumptions create a fiction that all COVID-19 disease for certain categories of workers somehow arise only out of the workplace, even though people are interacting with family and friends, going to restaurants, attending social events or religious meetings, etc.

Individuals Eligible for Presumption

Notwithstanding these strong public policy reasons weighing against presumptions of workers' compensation coverage, APCIA would accept extending a presumption to the categories of workers identified in SB 725, as further refined by the provision establishing that these individuals' duties must "**require them to have direct contact with the public,**" since the nature of many such duties makes social distancing and other safety measures impractical if not impossible. In doing so, we are guided by the principle that the only reasonable justification for granting a presumption for an "ordinary disease of life" that the general public is broadly exposed to is that a small number of workers are at a significantly higher risk of being exposed to the disease than workers in other industries.

Proof of Disease

The standards in SB 725 for proving that an individual has COVID-19 to the point of warranting a presumption of coverage are inadequate, since they call for accepting (i) a mere diagnosis without a test; (ii) a positive result on an undefined test; or (iii) a positive result on a mere antibody test. "Diagnosis" should be defined as a positive PCR test for COVID-19, an incubation period consistent with COVID-19, and symptoms and signs of COVID-19 that require medical treatment.

The most reliable laboratory test for determining whether a person has COVID-19 is a nucleic acid detection test, such as a positive polymerase chain reaction ("PCR") test. Both the Council of State and Territorial Epidemiologists (CSTE) and the Infectious Diseases Society of America (IDSA) have concluded that the most appropriate test to determine whether an individual currently has COVID-19 is the PCR test. These tests are readily available in the United States.

Unlike PCR tests, antibody tests do not tell whether a person has COVID-19 at the time of the test, but only whether an individual may have been exposed to the virus associated with COVID-19 such that the body developed antibodies. A person can test positive for COVID-19 under an antibody test without having the disease and without having any symptoms. Antibody tests have a high prevalence of false positive and false negatives, and medically are not indicated for use in patient management or medical treatment. Medically, the results of an antibody test do not impact decisions in treatment of a workplace injury or disease. Similarly, subjective diagnosis based on mere symptoms, without a PCR test, is not an accurate method of determining whether a person has COVID-19.

Reliance on inappropriate, and often inaccurate, antibody tests, or a subjective diagnosis without a PCR test, can be detrimental to a worker's health. The high proportion of false positives and false negatives could lead medical providers to prescribe dangerous toxic anti-viral therapeutics with potentially long-term side effects or could cause misdiagnosis and delay treatment of a potentially fatal disease. Toxic antiviral treatments, such as currently used to fight COVID-19, can result in side effects including eye damage, heart arrhythmia, liver toxicity, and impaired kidney function.

Ability to Rebut Presumption

SB 725 does not provide employers any opportunity to rebut a presumption that a proven case of COVID-19 arose in the line of duty and is therefore compensable. If a claim can be brought without any proof, fundamental due process demands that an employer should be able to rebut the presumption by (among other things but not limited to) evidence that the employee was at least equally likely to have been exposed to COVID-19 outside the line of duty.

Duration of Presumption

While it is critical that there be a specific, defined end date to any presumption of coverage, SB 725 is completely lacking in this regard. As the state continues to re-open, there are more opportunities for individuals to move around and interact with others, thus making it more difficult to pinpoint where those infected by COVID-19 had contracted the virus and more illogical and unfair to simply presume that the disease was contracted at the workplace. Accordingly, any presumption law should sunset six months after enactment or upon the expiration of the last consecutive emergency order, whichever occurs sooner.

For these reasons, APCIA urges the Committee to consider these amendments to Senate Bill 725.

Respectfully submitted,

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

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

2021-03-05 Memorandum to Senate Finance Commitee w

Uploaded by: Erlandson, Robert

Position: UNF

MEMORANDUM

TO: MEMBERS OF THE SENATE FINANCE COMMITTEE

RE: SENATE BILL 0725, SENATE BILL 0756, SENATE BILL 0812, SENATE BILL 0813, AND SENATE BILL 0860

DATE: MARCH 5, 2021

I am writing on behalf of myself and the Maryland Self-Insurers and Employers Compensation Association, and requesting an unfavorable report on the above referenced Bills. Attached is written testimony presented to the House Economic Matters Committee on similar bills pending in the House of Delegates. In addition to those arguments, I wish to point out that several of the bills are retroactive, and any retroactivity has questionable constitutionality under both the Federal and State Constitutions. Further, retroactivity plays havoc on existing reserves for Self-Insured Employers, including public employers, as well as the premium basis for insurance companies who have already charged premiums to private employers.

Very truly yours,

Robert C. Erlandson, Esquire
Erlandson, Vernon & Daney, LLC
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Erlandson, Vernon & Daney, LLC

February 26, 2021

Delegate Kriselda Valderrama

Re: House Bill 765, House Bill 1199, House Bill 1247
Hearing Date : House Economic Matters Committee March 2, 2021 at 1:30 p.m.

Dear Delegate Valderrama:

The above referenced bills are scheduled for hearings before the House Economic Matters Committee on Tuesday, March 2, 2021 at 1:30 p.m. All three bills attempt to provide presumptions for occupational diseases under the Workers' Compensation Statute for various classes of employees as a result of COVID-19. I wish to express opposition on behalf of myself and the Maryland Self-Insurers and Employers Compensation Association to the three bills and request an unfavorable report, for the reasons stated below.

There is little question that COVID-19 has had a significant and harmful effect upon society as a whole. Hundreds of thousands of individuals have died as a result of the disease, and families and businesses have been devastated by its collateral effects.

It should be noted, however, that the Federal Government and the Workers' Compensation system have responded to the results of the pandemic. Federal statutes have provided temporary relief for those who have contracted the disease or have been required to be quarantined as a result of family members or co-workers becoming infected.

According to recent statistics, approximately 1,200 COVID-19 workers' compensation claims have been filed with the Maryland Workers' Compensation Commission. That is a very small number in relation to the number of people who have been infected by COVID-19, and it reflects the dubious basis for contending that COVID-19 is an occupational disease or a disease stemming from employment. It should also be noted that a large majority of the deaths resulting from COVID-19 have occurred among individuals who are of retirement age.

Under current workers' compensation law, COVID-19 cases have been treated as "accidental injuries", i.e. an injury that arises out of and has occurred in the course of employment. The reason for this that individuals obtain the disease from a usually limited time frame exposure. An occupational disease, however, is a disease that occurs over a long period of time and is slow and insidious in its nature, the exact opposite of an accidental injury. Claims are either accepted or disallowed based upon the merits of the individual case. Individuals who have no proof of

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exposure at work have their claims rightfully denied, and individuals who establish exposure to the disease as a result of their work have their claims accepted. That is the way the system works, and that is the way it should be.

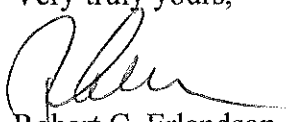
The Bills in question, however, create a presumption that certain classes of individuals are entitled to workers' compensation benefits if they have a positive test for COVID-19. For example, House Bill 765 provides a presumption in favor of those individuals already entitled to presumption for other diseases and to an individual who is "...suffering from the effects of severe acute respiratory syndrome Coronavirus II...". Most occupational diseases require a "date of disablement", i.e. an inability to perform duties for which they were previously qualified. This statute, however, determines a "date of injury" to be the first date in which the employee is unable to work due to the diagnosis of COVID-19 or "due to symptoms that were later diagnosed as COVID-19", which ever occurred first. This opens the door to considerable litigation over when and where any compensable exposure occurred. Most importantly, this disease is presumed to be compensable and may be rebutted "...only if the Employer or Insurer shows the employment was not a direct cause of the disease".

This shifting of a burden on the Employer is to essentially prove a negative. Past experience establishes that, once a workers' compensation presumption is created, defeating such a claim is nearly impossible. The costs can be prohibitive, particularly for those public employers who are already struggling to deal with the effects of COVID-19. House Bill 1199 is even more onerous to Employers because the presumption may only be rebutted by the Employer or the Insurer if the employment "...was not a contributing cause of the disease." This term is undefined, and the standard of proof is vague and subject to multiple, inconsistent interpretations.

The scientific basis for establishing such a presumption in House Bill 765 and the other Bills is questionable at best. The disease has only been prevalent for approximately one year, and even the most knowledgeable and distinguished scientists and medical researchers, many of whom are employed right there in Maryland, will indicate that there is much to be learn about the disease and its long term effects. To place such a burden on Employers in this State is unnecessary and unreasonable.

For the above stated reasons, I respectfully request an unfavorable report on the three Bills in question.

Very truly yours,



Robert C. Erlandson

RCE/sml

SB0725-FIN_MACo_OPP.pdf
Uploaded by: Jabin, Drew
Position: UNF

MARYLAND Association of COUNTIES

Senate Bill 725

Workers' Compensation - Occupational Disease Presumptions - COVID-19

MACo Position: **OPPOSE**

To: Finance Committee

Date: March 9, 2021

From: Drew Jabin

The Maryland Association of Counties (MACo) **OPPOSES** SB 725. This bill would dramatically expand the scope of presumption for workers' compensation claims, therefore placing significant costs on local jurisdictions.

SB 725 would add COVID-19 as a compensable occupational disease for workers' compensation, creating a nearly irrebuttable presumption that any affected worker should be compensated by the employer, even if there is no supporting evidence for an actual workplace exposure that caused the illness.

The bill's changes also essentially mean there would be no statute of limitations that would apply to these claims, creating the potential for exorbitant county costs and financial burden. This is because instead of the statute of limitations running two years from the date of being off from work, the statute runs two years from when the employee had actual knowledge that contraction of COVID-19 was due to their employment. Actual knowledge could extend the limitations by decades and has done so in many county cases under the heart-lung presumption and other occupational diseases.

This bill, as woven into current statutory law (and case law), does not include any means for an employer to rebut the presumption. As a result, even if the claimant were out grocery shopping, attending parties, eating in restaurants, or engaging in any risky behavior (e.g., not wearing masks, not social distancing, travelling, etc.), the employer would still be responsible. It does not even matter if the employee can trace the diagnosis to a family member. These practical effects ultimately make the employer responsible and applies strict liability to the employer. Additionally, under this bill there is no differentiating between a front-facing employee and another employee who may have a member of the public walk by their workstation, therefore increasing the pool of eligible employees able to claim workers' compensation by a significant amount.

This legislation would create new, unbalanced laws to manage workplace COVID claims, and would have significant effects on county government finances. Accordingly, MACo **OPPOSES** SB 725 and requests an **UNFAVORABLE** report.

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SB725-FIN-OPP.pdf
Uploaded by: Mehu, Natasha
Position: UNF

BRANDON M. SCOTT
MAYOR

Office of Government Relations
88 State Circle
Annapolis, Maryland 21401

SB 725

March 9, 2021

TO: Members of the Senate Finance Committee

FROM: Natasha Mehu, Director of Government Relations

RE: Senate Bill 725 – Workers Compensation-Occupational Disease Presumptions-COVID19

POSITION: OPPOSE

Chair Kelley, Vice Chair Feldman, and Members of the Committee, please be advised that the Baltimore City Administration (BCA) **opposes** Senate Bill (SB) 725.

SB 725 establishes an occupational disease presumption for employees with specified public safety and first responder occupations (such as paid and volunteer firefighters and police officers) that are suffering from the effects of severe acute respiratory syndrome coronavirus (which is the virus that causes COVID-19) and meet other specified requirements.

Workers' compensation law establishes a presumption of compensable occupational disease for certain public safety employees who are exposed to unusual hazards in the course of their employment. It is assumed that these injuries or diseases are due to the employees' work and, therefore, require no additional evidence in the filing of a claim for workers' compensation.

Presumptions by their very nature are not favorable for local governments given that the presumptions are generally interpreted favorably for the Claimant and thus these claims are very difficult to win. Such claims are practically irrebuttable with little ability to show flaws in the Claimant's case.

SB 725 is one of several bills proposing COVID 19 related presumptions. All of the proposed bills list the COVID-19 presumption under the section that specifically applies to public safety employees i.e. police, fire, EMTs, etc. and which creates a presumption for an "occupational disease". An occupational disease (OD) is a disease or condition that develops over time. Exposure to COVID-19 more properly falls under the definition of an "accidental injury" which involves a "one time" or sudden event.

This difference in definition is important regarding how the claim can be defended and what type of offset may likely apply once a claim is found compensable and a Claimant is awarded a service or disability pension.

In addition, the wording of these bills appears to entirely discount the exposure workers' may have outside of their employment. This disease a threat to the entire public and yet those outside exposures are not considered when determining if the exposure occurred while on the job. Such claims would be compensable regardless of whether the worker went to parties, dined in restaurants, traveled, failed to follow distancing requirements in public, failed to obey masking requirements or otherwise engaged in risky behavior outside of employment.

Lastly, the terms providing the requirements for finding workers' compensation coverage are vague and not well defined. We like the fact that the bills appear to provide coverage only for the most serious claims but these terms are ambiguous. What is meant by "severe acute respiratory syndrome"? How does one quantify "severe"? Does the worker have to test positive, have severe symptoms or just have a "diagnosis" of COVID-19 with no positive tests? If there is no positive test but a doctor provides an opinion stating that the worker had contracted COVID-19 several weeks or months prior as reflected by symptoms, will the presumption apply?

Any legislative presumption allowing for COVID-19 claims to be found compensable should be very detailed with specifically defined requirements. It should specifically apply to only the most serious claims (and specifically state so). It should be set apart from the presumption statute that exists for public safety employees and should stand on its own if it is to include all employees dealing with the public. Finally, it should specifically state that ALL exposures should be considered by the Commission before a finding of compensability be made with the presumption being specifically rebuttable by evidence of exposure outside of the workplace.

We respectfully request an **unfavorable** report on Senate Bill 725.

SB725_UNF_MRA.pdf
Uploaded by: Price, Sarah
Position: UNF

SB725 Workers' Compensation – Occupational Disease Presumptions – COVID-19
SB756 Workers' Compensation – Occupational Disease Presumptions – COVID-19
SB812 Workers' Compensation – Occupational Disease Presumptions – COVID-19
SB813 Workers' Compensation – Occupational Disease Presumptions – COVID-19
Finance Committee
March 9, 2021

Position: Unfavorable

Background: SB725 would presume that a person who tests positive for the COVID-19 coronavirus contracted the virus at their place of work.

Comments: The Maryland Retailers Association opposes the presumption proposed in SB725, which is unreasonable given the nature of how the COVID-19 coronavirus is transmitted.

The novel coronavirus is an airborne disease which has a known incubation period of up to 14 days after exposure. With such a wide window of time in which a person may become ill after exposure, it is often impossible to determine when and where the virus was contracted. Employers in Maryland are already following strict requirements for sanitation, social distancing, and limited operation in an effort to protect their employees and customers to the best of their ability. Business owners that are following every possible guidance for safe operations should not have an additional sword hanging over their heads for the responsibility of transmissions that may not be reasonably traced back to the workplace. Additionally, employers have no control over how their employees behave outside of the workplace, and this bill does not acknowledge the potential risks posed by any activity that employees may participate in during their personal time away from work. Due to that oversight and the nature of how the virus is transmitted, it would also be wholly inappropriate to employ this presumption retroactively.

The proposed legislation is also unnecessary due to current guidance from the Occupational Safety and Health Administration (OSHA) regarding OSHA Form 300. Under the current guidance, all businesses who employ an individual who tests positive for COVID-19 must conduct an investigation to determine whether the virus was contracted in the workplace or while performing work-related activities. If it is found that the exposure did occur at the business, the employer must report that information on an OSHA Form 300. These current practices should remain the standard for determining potential workplace exposure, rather than the automatic presumption proposed in SB725.

The presumption proposed in this bill does not accurately reflect the reality of the risks of COVID-19 transmission or current practices under OSHA guidelines, and the Maryland Retailers Association would urge an unfavorable report on these bills. Thank you for your consideration.