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Uploaded by: Carter, Jill

Position: FAV



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Chairwoman Kelley, Vice-Chair Feldman, and Members of the Finance Committee,

I am proud to present to you today Senate Bill 756 which deals with an issue that you all are very familiar with, presumptions in workers' compensation. This bill is specifically targeted at our brave men and women who have put their lives on the lines every single day since we all first learned the word coronavirus. Doctors, nurses, paramedics, police officers, firefighters, and so many more have risked their lives every single day to save ours. We can never say thank you enough.

Senate Bill 756 establishes a presumption for purposes of workers compensation that an individual in one of a number of front-line professions who contracts Covid did so at their profession. The presumption, like others in our law, may be rebutted by evidence. But the presumption takes this burden of persuasion off of the frontline worker and permits easier compensation for their injury. And we all know that a growing body of evidence suggests some long-lasting health effects for contracting Covid.

We are not breaking any new ground in this legislation. As you know, paid firefighters, police officers, sheriffs, correctional officers, and others have various presumptions for purposes of workers compensation such as heart disease, hypertension, and lung disease. Section 9-503 of the Labor and Employment Article lists in great detail a number of these current presumptions under the law.

Senate Bill 756, like several other like bills you are hearing today, lists a number of individuals who have been on the front line of the fight against Covid such as health care workers, police officers, firefighters and paramedics, workers in long-term care facilities, and more. The bill creates that rebuttable presumption for those workers under certain circumstances that the illness contracted was done so at their employment for purposes of compensation under workers comp.

The bills you are hearing today differ in a few ways. One is who would be covered. I believe that this Committee should look to the broadest definition of our frontline workers. I am not wedded to my particular list although it is a solid group. The more important difference is in the area of prospective versus retroactivity. On this issue, I hope this Committee will look to my language, and ensure that anyone infected beginning from March of this past year until the present and beyond will be able to use this presumption. If this bill is prospective only, the hurdle of proof for these brave individuals will simply be too high.

Senators, we all have suffered this past year in so many ways. But none more so on a day-to-day basis than our incredible heroes and heroes on the frontline. We owe them an enormous debt of gratitude, and Senate Bill 756 would be a small way to say thank you.

I appreciate your consideration and support for Senate Bill 756.

Respectfully,

A handwritten signature in blue ink that reads "Jill P. Carter". The signature is written in a cursive, flowing style.

Jill P. Carter

SB0756_WC_COVID-19_MLC_FAV.pdf

Uploaded by: Plante, Cecilia

Position: FAV



**TESTIMONY FOR SB0756
WORKERS' COMPENSATION – OCCUPATIONAL DISEASE PRESUMPTIONS –
COVID–19**

Bill Sponsor: Senator Carter

Committee: Finance

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: FAVORABLE

I am submitting this testimony in favor of SB0756 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists, and our Coalition supports well over 30,000 members.

Our members support the expansion of worker's compensation for those essential workers who contracted COVID-19 while at (they experienced symptoms within 14 days of working). We feel that if they were required to put themselves at risk that they should be able to claim worker's compensation if they become sick.

The Maryland Legislative Coalition supports this bill and we recommend a **FAVORABLE** report in Committee.

SB 756_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 756 Workers' Compensation – Occupational Disease Presumptions – COVID-19

Position: Oppose

Reason for Position:

The Maryland Municipal League opposes Senate Bill 756, 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 756 and respectfully requests an unfavorable committee report.

FOR MORE INFORMATION CONTACT:

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Scott A. Hancock
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Executive Director
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Manager, Government Relations

SB756_USM_UNF.pdf

Uploaded by: Clark, Andy

Position: UNF



SENATE FINANCE COMMITTEE

Senate Bill 756

Workers' Compensation – Occupational Disease Presumptions – COVID-19

March 9, 2021

Urging an Unfavorable Report

Chair Kelley, Vice Chair Feldman, and members of the committee, thank you for the opportunity to share our thoughts regarding Senate Bill 756. The bill would create a legal presumption that “health care workers” at public higher education institutions who test positive for COVID-19 are presumed to be entitled to worker’s compensation benefits if their duties require them to be in direct contact with patients or to occupy, clean or repair areas occupied by patients. The bill does not require that the patients have tested positive for COVID-19. For example, this could include a security guard working in the lobby of a dermatology clinic and many others for whom there is no reasonable risk of contracting COVID-19 through close contact with an infected individual.

Extensive health and safety equipment and protocols have been put in place to limit employees’ potential exposure to COVID-19 and, as a result, the positivity rate on many USM campuses is lower than the rate in surrounding communities. The University of Maryland Baltimore, which includes the medical school, has conducted significant contact tracing throughout the pandemic, it has revealed very few instances of on-campus spread. Instead, community exposure appears to be responsible for almost all cases of COVID-19 among the university’s first responders.

The fiscal impact of Senate Bill 756 is indeterminate, but it would result in the USM institutions assuming significant costs due to COVID-19 cases that predominantly are not work related.

Without the foresight of a cost-determination, and the possible negative impact to the budgets of USM institutions, we respectfully urge an unfavorable report.

SB 756 812 813 860 Chesapeake-IWIF Bill - COVID pr

Uploaded by: D'Alessandro, Carmine

Position: UNF



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 statutory 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
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HFAM Testimony - SB 756 Final.pdf

Uploaded by: DeMattos, Joseph

Position: UNF



**TESTIMONY BEFORE THE
SENATE FINANCE COMMITTEE**

March 9, 2021

SB 756 - 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 756 - 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 756 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 756 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 756.

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

Opposition to SB 756 -W. Comp. - Covid-19 Presumpti

Uploaded by: Doherty, Daniel

Position: UNF



The Maryland State Dental Association's Opposes SB 756 – Workers' Compensation – Occupational Disease Presumptions – COVID-19

SB 756 would impose liability on a dental practice if one of its employees is diagnosed with COVID-19, or tests positive for severe acute respiratory syndrome coronavirus 2 or coronavirus 2 antibodies. 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 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, in the course of which employment is it to be presumed 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.

For these reasons the MSDA urges that SB 756 be given an unfavorable report.

Respectfully submitted by:
Daniel T. Doherty, Jr
March 9, 2021

SB 756_ Workers' Compensation-Occupational Disease

Uploaded by: Duckman, Ashley

Position: UNF



LEGISLATIVE POSITION:

Unfavorable

Senate Bill 756

Workers' Compensation – Occupational Disease Presumptions – COVID-19

Senate Finance Committee

Tuesday, March 9, 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.

As introduced, SB 756 seeks to 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.

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 showing a higher incidence of infection by industry are lacking or non-existent and additional time is needed for studies to catch up. Additionally, SB 756 places exposure to COVID-19 as an occupational disease, which would likely be 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 756 opens the door to include other common community diseases such as the flu. As the vaccination rollout places the occupations included in SB 756 at a high priority already, the concern of high exposure should be addressed.

Finally, it is the understanding of the Chamber that 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, particularly with the lack of data around what occupations truly constitute higher risk of exposure.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **unfavorable report** on SB 756.



SB 756 APCIA 0309 2021 - FINAL.pdf

Uploaded by: Egan, Nancy

Position: UNF

Testimony of

American Property Casualty Insurance Association (APCIA)

Senate Finance Committee

SB 756 Workers' Compensation - Occupational Disease Presumptions – OCIVD-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 756.

APCIA understands and agrees with the need to assist our front-line 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.

Senate Bill 756 would create a presumption of coverage of COVID-19 as an occupational disease for a broad range of workers including certain firefighters, rescue squad members, advance life support unit members, police officers, sheriffs, deputy sheriffs, correctional officers, and certain health care workers. 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 certain amendments are necessary. The categories of workers covered need to be refined; meaningful proof of disease needs to be added; an employer's ability to rebut the presumption needs to be expanded; the presumption should be prospective only, not retroactive; and the presumption should expire when the state of emergency ceases.

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 756 states "COVID-19 is an occupational disease" and provides that for purposes of adjudicating workers' compensation claims, an employee who has been diagnosed with COVID-19 shall be presumed to have contracted the virus in the line of duty or course of employment. 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 is willing to accept extending a presumption to certain categories of workers, 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 those workers are significantly higher risk of being exposed to the disease than workers in other industries.

APCIA would accept extending a presumption of coverage to the listed first responders whose duties require them to have direct contact with the public, since the nature of many of their duties makes social distancing and other safety measures impractical if not impossible.

APCIA would also accept extending a presumption to certain health care workers, though the scope of this presumption must be refined. Merely requiring direct care of "patients" is insufficient from a true risk standpoint and would result in a massive and unjustified increase in system costs, so the presumption should be limited to health care workers who have both regular and direct contact with patients *known or suspected to have COVID-19*. There should also **not** be a separate presumption for health care workers who "occupy, clean, or repair areas occupied by patients," even in areas where patients with COVID-19 are diagnosed or treated. Individuals who perform these duties should only qualify for a presumption if, as with health care workers providing treatment, they have both regular and direct contact with patients *known or suspected to have COVID-19*. According to the Centers for Disease Control (CDC), spread from touching surfaces is not thought to be a common way that COVID-19 spreads.

Proof of Disease

The current standards in SB 756 for proving that an individual has COVID-19 to the point of warranting a presumption of coverage need significant improvement, since they call for accepting (i) a mere diagnosis without a test or tests positive for COVID-19 or a positive result on a mere antibody test. Accordingly, "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

Any legislation creating a presumption of coverage, which permits claims to be brought without any proof, must provide an option by which the presumption can reasonably be rebutted. However, SB 756 does not do that. This must be cured by making the presumption rebuttable 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 course and scope of employment.

Retroactive Application

SB 756 would be retroactive to claims filed on or after March 5, 2020. Retroactive application of any legislation – much less a bill that fundamentally changes the nature of coverage for workers’ compensation claims – is fundamentally unfair. Neither employers nor insurers ever calculated that an ordinary disease of life would be presumed to be covered workers’ compensation claims absent any proof that it was contracted in the course and scope of employment. Furthermore, issues of proof and rebuttal, which present challenges even on prospective claims due to the fact that COVID-19 can be contracted anywhere outside of the workplace and has symptoms that resemble other illnesses, would be unfairly and unreasonably exacerbated by making any presumption retroactive.

Duration of Presumption

While it is critical that there be a specific, defined end date to any presumption of coverage, SB 756 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 provide an unfavorable report on Senate Bill 756.

Respectfully submitted,

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

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2021-03-05 Memorandum to Senate Finance Committee w

Uploaded by: Erlandson, Robert

Position: UNF

MEMORANDUM

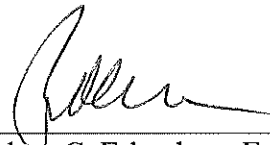
TO: MEMBERS OF THE SENATE FINANCE COMMITTEE

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
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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

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 learned 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

SB 756 - Workers' Compensation - Occupational Disease

Uploaded by: Frazee, Brian

Position: UNF



Maryland
Hospital Association

March 9, 2021

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

Re: Oppose- Senate Bill 756 – Workers' Compensation – Occupational Disease Presumptions – COVID-19

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 of Senate Bill 756. 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, hospitals worked to ensure a safe work environment for employees amidst the consistently changing landscape of a new virus. Maryland hospitals adhere to the latest CDC guidelines to properly protect employees 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 enacted 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 scientific 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 756 is enacted, 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 756.

For more information, please contact:
Brian Frazee, Vice President, Government Affairs
Bfrazee@mhaonline.org

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Uploaded by: Italiano, Ginanne

Position: UNF

March 5, 2021

Senator Delores G. Kelley
Chair, Finance Committee
Maryland State Senate
3 East
Miller Senate Office Building
Annapolis, MD 21401

RE: SB756- Workers' Compensation – Occupational Disease Presumptions – COVID-19
Position: OPPOSE

Dear Senator Kelley, Vice Chair Feldman and Members of the Committee:

On behalf of our 500-member businesses and more than 45,000 employees in Montgomery County, The Greater Bethesda Chamber of Commerce is in Opposition to **SB756- Workers' Compensation – Occupational Disease Presumptions – COVID-19**. This bill provides that covered employees who are suffering from the effects of COVID-19 are presumed, to have the disease that was contracted in the line of duty or while under the course of employment and is compensable in a certain manner. It would require that an individual who is eligible for workers' compensation benefits provide a copy of a certain test or written documentation to the employer or insurer. This emergency Act will be applied retroactively and shall be applied to and interpreted to affect any claim for workers' compensation benefits filed on or after March 5, 2020

We oppose this bill as it creates an occupational disease presumption and unfairly shifts the burden to employers for a pandemic which is boundless. It seems questionable whether the presumption is fairly supported by the know science.

For these reasons, we ask for a **UNFAVORABLE** report and thank you for your consideration of our remarks.

Sincerely,



Allie Williams
President & CEO

SB0756-FIN_MACo_OPP.pdf

Uploaded by: Jabin, Drew

Position: UNF



Senate Bill 756

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 756. This bill would dramatically expand the scope of presumption for workers' compensation claims, therefore placing significant costs on local jurisdictions.

SB 756 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 756 and requests an **UNFAVORABLE** report.

SB 756.UNF.MACS.pdf

Uploaded by: Kallins, Lauren

Position: UNF

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Laura Howell,
Executive Director

Senate Finance Committee
**SB 756: Workers' Compensation – Occupational Disease
Presumptions – COVID-19**
Position: Oppose

March 9, 2021

The Maryland Association of Community Services (MACS) is a non-profit association of over 100 agencies across Maryland serving people with intellectual and developmental disabilities (IDD). MACS members provide residential, day and supported employment services to thousands of Marylanders, so that they can live, work and fully participate in their communities. We respectfully oppose SB 756 which would create a presumption that COVID-19 was contracted by an employee at work and thus compensable under workers' compensation.

Under the bill, an employee would no longer have to prove that they were exposed to COVID-19 at work in order to be eligible for compensation. All that would be required is proof of a diagnosis, that they are suffering from symptoms and that the individual worked in direct contact with patients or occupied, cleaned or repaired areas occupied by patients, regardless of whether the patients tested positive for COVID. MACS members that have employees who have filed COVID-19 claims, report that those claims are being adjudicated and paid out to employees-- often without argument from the provider when the employee had been in close contact with someone who had tested positive.

While existing law creates a presumption for certain non-communicable diseases (cancer, heart disease, hypertension), that presumption applies within the context of diseases where causation can be ascertained with a medical evaluation. By contrast, COVID-19 can be contracted anywhere. Furthermore, a recent study of health care workers published in the *Annals of Internal Medicine* suggests that such a presumption is unjustified in light of the findings that “a substantial number of infections among [health care workers] **could not be traced to occupational exposures and that community exposures were as or more strongly associated with infection.**” Baker, Julia, et al. “Quantification of Occupational and Community Risk Factors for SARS-CoV-2 Seropositivity Among Health Care Workers in a Large U.S. Health Care System” *Annals of Internal Medicine*, January 29, 2021, doi:10.7326/M20-7145. While SB 756 creates a rebuttable presumption, it will likely require the employer to explore the employee's social media accounts, talk to other employees about the claimant's actions and behaviors, etc.—none of which is beneficial to the employer-employee relationship.

For all of these reasons, MACS respectfully urges an unfavorable vote.

Sincerely,

Laura Howell
Executive Director



SB0756_SB0812_SB0813__UNF_LS,Hospice,MNCHA_Workers

Uploaded by: Kauffman, Danna

Position: UNF



Hospice & Palliative Care Network
OF MARYLAND

TO: The Honorable Delores Kelley, Chair
Members, Senate Finance Committee
The Honorable Jill P. Carter
The Honorable Katherine Klausmeier

FROM: Danna L. Kauffman
Pamela Metz Kasemeyer

DATE: March 9, 2021

RE: **OPPOSE – Senate Bill 756, Senate Bill 812, and Senate Bill 813 – Workers’ Compensation – Occupational Disease Presumptions – COVID-19**

On behalf of the LifeSpan Network, the Maryland-National Capital Homecare Association (MNCHA), and the Hospice & Palliative Care Network of Maryland (HPCNM), we respectfully oppose Senate Bills 756, 812 and 813. These bills all in various forms state that a COVID-19 infection contracted by a health care worker is presumed to be work-related and covered under workers’ compensation. The bills then place the burden on the employer and insurer to prove that the infection was not work-related.

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. While the bills contain 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 bills also fail 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

SB756-FIN-OPP.pdf

Uploaded by: Mehu, Natasha

Position: UNF



BRANDON M. SCOTT
MAYOR

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

SB 756

March 9, 2021

TO: Members of the Senate Finance Committee

FROM: Natasha Mehu, Director of Government Relations

RE: Senate Bill 756 – 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 756.

SB 756 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 756 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.

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<https://mogr.baltimorecity.gov/>*

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. Further, in this bill, the inclusion of non-public safety employees under this section could lead to arguments that the other workers referenced in this bill would be entitled to what is known as “second tier” benefits for minor claims which are presently specifically reserved for public safety employees.

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 is made with the presumption being specifically rebuttable by evidence of exposure outside of the workplace.

We respectfully request an **unfavorable** report on Senate Bill 756.

SB756_UNF_MRA.pdf

Uploaded by: Price, Sarah

Position: UNF

MARYLAND RETAILERS ASSOCIATION

The Voice of Retailing in Maryland



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: SB756 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 SB756, 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 SB756.

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.