

SB813 Support - Essential Workers Compensation FIN

Uploaded by: Demchuk, Pete

Position: FAV

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS - LOCAL UNION No. 24

AFFILIATED WITH:

Baltimore-D.C. Metro Building Trades Council — AFL-CIO
Baltimore Port Council
Baltimore Metro Council — AFL-CIO
Central MD Labor Council — AFL-CIO
Del-Mar-Va Labor Council — AFL-CIO
Maryland State - D.C. — AFL-CIO
National Safety Council



AFL-CIO-CLC

BALTIMORE, MARYLAND 21230

JOHN L. RANKIN, President
DAVID W. SPRINGHAM, JR., Recording Secretary
MICHAEL J. McHALE, Financial Secretary
PETER P. DEMCHUK, Business Manager

OFFICE:

2701 W. PATAPSCO AVE
SUITE 200

Phone: 410-247-5511

FAX: 410-536-4338

Written Testimony of

Peter Demchuk, Business Manager, IBEW LOCAL 24

Before the

Senate Finance Committee On

SB 813 – Worker’s Compensation – Occupational Disease Presumptions – Covid - 19

SUPPORT

March 5, 2021

Dear Madame Chair Kelley and Committee Members,

Thank you for the opportunity to submit my written testimony supporting Senate Bill 813.

For the record, my name is Peter Demchuk. I am a 41-year member, and the Business Manager, of the International Brotherhood of Electrical Workers Local 24, located in Baltimore. I represent approximately 2,000 hardworking, Maryland tax paying electricians. I am a lifelong resident of Maryland and reside in District 7 of Baltimore County.

None of us could have seen a global emergency like Covid-19 coming. However, we could have and should have seen the lack of protection in place for our essential workers. Often times the media has described essential workers as nurses and doctors on the frontlines of fighting this pandemic. While this is true, it doesn’t address the tens of thousands of other Marylanders who were considered essential during this emergency. From grocery and fast food employees to retail and transportation workers. The men and women that kept our State going were typically some of the lowest paid, and least protected. They worked countless hours in

unsafe conditions while many white collar and higher salaried employees worked from home or collected unemployment. The very least we could do is compensate these workers when they are diagnosed with an illness while performing that essential work.

This is why we strongly support SB 813 and ask you to give it a favorable report.

Thank you,



Peter P. Demchuk

PPD:clr
AFL-CIO
OPEIU # 2

SB 813 - MD DC AFL-CIO - SUPPORT.pdf

Uploaded by: Edwards, Donna

Position: FAV



MARYLAND STATE & D.C. AFL-CIO

AFFILIATED WITH NATIONAL AFL-CIO

7 School Street • Annapolis, Maryland 21401-2096

Office. (410) 269-1940 • Fax (410) 280-2956

President

Donna S. Edwards

Secretary-Treasurer

Gerald W. Jackson

SB 813 – Workers’ Compensation – Occupational Disease Presumptions – COVID-19 Senate Finance Committee March 9, 2021

SUPPORT

**Donna S. Edwards
President
Maryland State and DC AFL-CIO**

Madam Chair and members of the Committee, thank you for the opportunity to provide testimony in support of SB 813 – Workers’ Compensation – Occupational Disease Presumptions – COVID-19. My name is Donna Edwards, and I am the President of the Maryland State and DC, AFL-CIO. On behalf of the 340,000 union members in the state of Maryland, I offer the following comments.

COVID-19 has negatively impacted every family. All of us have seen the effects – economically and in health care – and many of us have lost loved ones and friends to this global pandemic. It has been a defining moment in the lives of everyone. With all the conversations in policy circles focused on how to “return to normal”, many of our friends and family do not have the luxury of that return because they are working hard, every day, in this “new normal”. It is imperative that we do everything that we can to provide the support to our first responders, front-line health care workers, public-sector workers, teachers and school staff, and those who must work in environments where their potential exposure to this virus is at its highest level. In short, we must protect our essential workers.

SB 813 adds COVID-19 as a presumption to Workers’ Compensation law to these essential workers. This is not a concept confined to Maryland. According to the National Conference of State Legislatures (NCSL), 17 states and Puerto Rico have taken action to extend workers compensation coverage to include COVID-19 as a work-related illness. Nine states have enacted legislation creating a presumption of coverage for various types of workers¹. This pandemic is truly global in scope, and States are taking action to protect our essential workers.

¹ <https://www.ncsl.org/>

Failure to take action to add COVID-19 as a Workers Compensation presumption means that Maryland taxpayers will be picking up the tab for the health care costs of many workers who are not covered by insurance. While we are facing a pandemic-related recession that is already displacing workers and wreaking economic havoc on our State, the last thing we need is to continue to divert tax dollars to the health care needs of essential workers who contract COVID-19 at the workplace. COVID-19 is a workplace-related injury for far too many workers in our State, and it should be treated as such.

For these reasons, we urge a favorable report on SB 813.

Kim Ried-FAV-SB813.pdf

Uploaded by: Reid, Kimberly

Position: FAV

Good afternoon Chair Kelley and members of the Senate Finance Committee.

My name is Kimberly Reid and I am also here on behalf of my sister, Theresa Leaman, who could not testify today as she is recovering in a rehabilitation facility from contracting COVID-19 at her place of employment. Residents just like my sister, we call for a favorable report to SB 813.

You will hear from representatives and lobbyists from the lucrative insurance companies who will argue that this bill is not necessary because the current process—whereby the burden of proof is on the employee, not management, to show that they contracted COVID-19 at their employment—works. My sister's case, in which management at her job terminated her while she was in a drug-induced coma from COVID-19 and denied her workers compensation claim, proves otherwise.

In March of 2020, my sister, who has been employed at Patuxent River Health and Rehabilitation Center came into contact at her job with a resident who had contracted COVID-19. The initial response from management was to give employees a surgical mask with directions to "make it last the week or until it falls apart." Other forms of PPE—hospital gowns, hazmat suits, face shields, etc. were hardly ever in use, and when they were, hospital staff were told to reuse them frequently, or even asked to wear patient gowns to protect them from the virus.

At the end of March 2020, while the Governor instituted a mandated stay-at-home order, my employer labeled me an essential employee, and required that I report in person to my workplace. During this time period, we had a number of residents and employees at the facility test positive for COVID-19, and with some infected staff having to quarantine for at least 14 days, many staff still at her work would have to scramble and move throughout the building in order to cover the tasks that needed to be completed on a day-to-day basis. This demanding and hectic schedule, coupled with the governor's stay-at-home order, made it so the only activity she did outside of her home was to travel to and from work.

Within one month, my sister tested positive for COVID-19. Her oxygen levels hovered around 90%. When those levels declined to around 85%, my sister was rushed to the University of Maryland St. Charles Regional Hospital, and remained intubated and in intensive care for roughly a month. On June first, she was taken out of the ICU and moved into a negative pressure room, and was celebrated by the hospital staff as the first person make it off the ventilator in 4 or 5 years. After nearly two months of intensive physical therapy, she was finally able, with the help of a few strong fireman, to make it up my steps back into my home. However, she had learned that while she was in a comma on a ventilator on May 11, management terminated her from her position. (Technically, management at her job said she "voluntarily quit" her position, while she was in a comma and on a ventilator.)

She still suffers from some complications due the contracting the virus to this very day—including congestive heart failure, something that has been known to be a long-term effect of contracting the virus. She has had to fight two fronts in this battle—one with the virus and its long-term complications on her health, and, unfortunately, one against her employer who terminated her while she was in a comma, denied her unemployment insurance claims, and is currently denying her on a workers compensation claim.

Members of the committee, what has happened to my sister is what is what is happening, or can happen in the future, to any working Marylander as we try to emerge from this pandemic. She, along with other essential workers, have been on the frontlines in the war against COVID-19 for over one year

and counting. Please do not force them to fight two fights, one against the virus and one against bosses and their well-to-do insurance companies who will deny workers comp benefits just to maintain their bottom line. I again call for a favorable report to SB 813. Thank you.

SB813Written Presumptive Language.pdf

Uploaded by: Reynolds, Todd

Position: FAV



**Written Testimony Submitted to the
Maryland Senate Finance Committee
HB 813 – Workers’ Compensation – Occupational Disease Presumptions – COVID-19
March 2, 2021**

SUPPORT

Chair Kelley and members of the committee, on behalf of our more than 20,000 state, county and municipal government workers in Maryland, we urge a favorable report on SB 813.

Presumptive language to cover COVID-19 is needed for workers who have risked their health and lives to keep us safe, fed and healthy during the pandemic. These employees, who are required to report to work despite the risks to their health and lives - are our heroes. They must be protected against losing their jobs, pay and benefits if they become ill from COVID-19 while at work.

Research by the Center for Disease Control (CDC) shows it takes an average of two weeks for a person with mild case of COVID-19, or up to six weeks for severe or critical cases to recover.¹ The vast majority of workers will use their sick and vacation time at 100% pay, before they apply for workers compensation.

For those who must apply, they must not have the added burden of proving they contracted COVID-19 on the job. Essential workers who risk so much, should be able to keep their jobs while recovering from COVID-19 and their employer health benefits. To lose pay and benefits will require the State to pick-up the tab for unemployment insurance and Medicaid.

Many states have already adopted presumptive language for essential and frontline workers or have pending legislation. According to the National Conference of State Legislators (NCSL)²:

- Nine states have enacted legislation creating a presumption of coverage of workers.
- Another four states including California and Kentucky have taken executive action to provide coverage to other essential workers.

The state’s economy heavily depends on these workers to stay on the job during the pandemic. Employees on the frontlines of the battle against the virus are deeply concerned that if they succumb to the virus, they, their families and dependents will not be financially protected.

Maryland needs to adopt presumptive language on COVID-19 for essential workers. We ask for a favorable report on SB 813. Thank you.

Marietta English, President

¹ <https://www.cdc.gov/mmwr/volumes/69/wr/mm6930e1.htm>

² <https://www.ncsl.org/research/labor-and-employment/covid-19-workers-compensation.aspx>

CUB-SB813.pdf

Uploaded by: Ryan-Johnson, Antoinette

Position: FAV



City Union of Baltimore

Local 800, AFT, AFL-CIO

President

Antoinette Ryan-Johnson

Executive Vice President

Donna Price

**Written Testimony Submitted for the Record to the Maryland House of Delegates
Before the Senate Finance Committee**

Testimony by Antoinette Ryan-Johnson, President

City Union of Baltimore

SB 813 –

Workers' Compensation – Occupational Disease Presumptions – COVID-19

Favorable

Good afternoon Chair Kelley and members of the Senate Finance Committee.

My name is Antoinette Ryan-Johnson, and I am President of the City Union of Baltimore. The members of the City Union of Baltimore are employees of various agencies including the Baltimore City School System, Department of Transportation, Recreation and Parks, Baltimore City Health Department, Finance Department, Department of Public Works, Fire Department and Police Departments, amongst others. I call on this committee to give a favorable report to SB 813.

During this pandemic, many of our members still had to report to worksites, as they are essential employees. This put our members under a tremendous amount of stress and fear of possibly contracting COVID at a worksite and not being completely covered financially if the inevitable happened because as an essential employee, they were not able to telework. Additionally, there are facilities where it has been difficult to move permanent workstations, in order to maintain the CDC recommended six feet social distancing space.

Governor Hogan issued a stay-at-home order to combat the rampant spread of the virus. He stated, "If you can telework, you should be teleworking." The essential health workers at the Baltimore City of Health Department, Fire Department 911 center, Baltimore City Police Department and Department of Public Works, to name a few, still had to physically report to their work assignments. Many of these workers have underlying health conditions or live with family members who have pre-existing conditions that make exposure to COVID-19 more dangerous.

Numerous essential employees have contracted COVID-19 at work. Some are seriously ill in the hospital for periods, some have had to be placed into rehab facilities and others have long-term effects of contracting the disease. Workers who have risked their lives and health to keep us all safe and healthy, should not have an added burden of worrying how to put food on the table and keep a roof over their heads if they are out of work for an extended period of time. You will hear from insurance companies and their lawyers, who have safely telecommuted from their homes during the pandemic, about the cost of

"Strength in Unity"

*2117 North Howard Street * Baltimore, Maryland 21218-5063* 410-962-1492* www.cub-aft.org*

workers compensation for their bottom line. But I am here to tell you the cost to the essential workers who risked their lives for them. For them the bottom line is to eat and have shelter.

Members of the committee, it is patently unfair to ask that essential workers bear the burden of proof against the wealthiest of insurance companies for their COVID-19 workers compensation claims. Essential workers risk their lives everyday to provide vital services to our state's residents. We owe them so much for what they have done, not add to the burden for those who do catch COVID on the job and must take time off from work due to the impact on their health from the disease. I call for a favorable report to SB 813. Thank you.

Testimony-SB813-Workers' Compensation – Occupation

Uploaded by: Stevenson, Christopher

Position: FAV



Testimony on SB813
Workers' Compensation – Occupational Disease Presumptions – COVID-19
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. Due to the fact that the worksite is the number one area where COVID-19 contraction occurs(as reported by the Maryland Department of Health), we are supportive of SB813 to ensure that Maryland's emergency services workers who contract COVID-19 are eligible for workers' compensation.

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, healthcare, public safety, and even childcaring industries have contracted COVID-19 such as firefighters, police officers, correctional officers, healthcare workers, and childcare workers. 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 categorize COVID-19 as an occupational disease, which will give thousands of workers access to a more just compensation process under this legislation.

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 various workers who also interact with the public daily to care for and 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 legislation will create financial security for emergency services workers in the event that they do contract COVID-19, to enable them to seek compensatory relief to continue to live their life without financial distress. We, therefore, ask this Committee to give SB813 a favorable report.

Respectfully,

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

DEU SB0813 written testimony.pdf

Uploaded by: Udoff, Daniel

Position: FAV



Attorneys At Law
201 North Charles Street • Tenth Floor
Baltimore, Maryland 21201
410-244-1010 phone
410-244-8001 fax
www.kahnsmith.com

Francis J. Collins
Keith J. Zimmerman
David Gray Wright
Christopher R. Ryon
Heather Heilman
Daniel E. Udoff
Ernie Dominguez
Trevonne Walford
David Maher

Joel A. Smith
Of Counsel

Testimony of Daniel E. Udoff

SB0813 – Workers’ Compensation – Occupational Disease Presumptions - COVID-19
Finance Committee
March 9, 2021
Support

Legal presumptions shift the burden of proof from the employee to the employer/insurer in workers’ compensating claims. Presumptive legislation is well established. Examples include certain law enforcement personnel who develop hypertension, and firefighters who are afflicted with specific forms of cancer. Without presumptions, innumerable employees would be denied the vital benefits intended by our laws to protect injured workers. **The right presumptions relating to COVID must be established now. This bill uses the right standards to create presumptions for the right employees: those on the frontlines.**

Workers’ compensation claims involving occupational diseases require the claimant to bear the burden of proof relative to a diagnosis and date of disablement. A causal relation opinion, provided within a reasonable degree of medical certainty, must be introduced. The opinion must assert that the inherent nature of the employment was at least a contributing factor to the development of the affliction.

The General Assembly periodically levels the evidentiary playing field for certain occupational disease claims. A disability may become a known risk from certain occupations – even when common in the general population. These are the situations – the ones in which establishment of causation with absolute certainty may not be possible - which require the factoring of morality, justice, and common sense into the legal analysis. These claimants are afforded presumptions to ensure fair protection against the inherent, unavoidable risks which often arise from their essential duties.

The COVID-19 pandemic, as it relates to employees specified in HB1199, incontrovertibly requires the enactment of the proposed legislation. The essential duties inherent to their employment inarguably increase their risks of contracting the virus. **The transmissible nature of COVID-19, while a relevant consideration, should not be wielded as the controlling evidence in these cases.** The bill does not place undue burdens on the employer/insurer. The bill in no way purports to establish a strict liability standard, and presumptions shall remain rightfully rebuttable. Shifting the burden of proof will not alleviate the claimant’s evidentiary obligation to introduce the requisite medical documentation and causal relation opinions necessary to establish a meritorious claim.

I have been representing injured workers for more than two decades. This bill is not only fair, but needed to protect those who our society and economy rely on the most.

testimony sb 813 2021.pdf

Uploaded by: Wertz, Rose

Position: FAV

AFT HEALTHCARE-MARYLAND

TESTIMONY

SENATE BILL 813

HEARING DATE 3/9/21

POSITION: SUPPORT

FINANCE COMMITTEE

Good afternoon, Chair Klausmeier and members of the Senate Finance Committee.

I am Rosemary Wertz, Field Coordinator, for AFT Healthcare-Maryland. We are the labor union representing Healthcare professionals in state government. We thank you for the opportunity to speak in support of SB 813.

Our members are spread out around the state. Many of them have been reassigned to duties related to COVID response. Office of Healthcare Quality Nurse Surveyors have been assigned to the strike teams the state sent into long-term care facilities with COVID outbreaks. Our nurses have been conducting testing, administering COVID vaccines, and taking temperatures as part of the screening process. Our members include nurses, doctors and other health professionals working in residential healthcare facilities and juvenile detention facilities. These state employees, your employees, have taken on these new necessary tasks when asked. The majority of our members have not been able to telework during the pandemic. They are at increased risk of exposure to COVID-19 due to the nature of their work.

As you know, since the beginning of the pandemic, the Maryland Department of Health has been engaged in contact tracing. When an individual tests positive for COVID-19 they are interviewed to determine where they were and who they had contact with in the previous 2 weeks. Then their contact list is interviewed, questioned about the contact, about any possible symptoms, and may be instructed to be tested. The process spreads to other possible contacts from there. Our members working in facilities that operate 24 hours a day, 7 days a week, have been on a regular COVID-19 testing schedule at work for months. Depending on the level of infection within a facility, they may be required to be tested weekly, biweekly or monthly. Management has all of the records relating to positive test results for patients and staff. Management has all the records

relating to who was identified as having a possible exposure during the contact tracing process. We have asked multiple times, at multiple facilities for specific information to be distributed to all staff on which patients and/or staff have tested positive for the virus, so that employees will be more informed. All such requests were denied by management. According to management, all of the records relating to testing, contact tracing, screening, and vaccinating are confidential medical records protected by HIPPA. In addition, during meetings at the facilities during the pandemic we have heard many times that employees may have been exposed at the gas station or the grocery store. It is more likely that a nurse working with COVID positive patients 60 hours a week was infected at work than during the 5 minutes she spent outside putting gas in her car to go to work, or the 30 minutes in the grocery store?

Management clearly has access to all of the information available to prove whether or not an employee, who tests positive for COVID-19, was exposed at work within the prior 14 days. The data available to management in continuing to increase. Now different strains of the virus are being tracked. The burden of proof, under these unique circumstances, should shift to management. The bill includes language on page 6, line 2 through 4, that allows management to rebut the presumption if the employer can show that employment was not a contributing cause. For our members, management is the State of Maryland. Most of them work for the Health Department. If one of our nurses was not exposed at work, in this unique situation, management has access to the evidence necessary to bear the burden of proof. The employees do not.

The long term effects of contracting COVID-19 are not clear at this time. Severe long term effects of the virus requiring continuing medical treatment are rare. Your employees should not bear the financial burden of medical costs related to long term illness as a result of contacting COVID-19 at work. They take risks with their health everyday they come to work. They do this willingly. They should not have to worry about the financial impact on their families, of contracting COVID-19 at work. This a burden you can lift from your employees. We are asking that you support them by giving a favorable report for SB 813.

Respectfully submitted,

Rosemary Wertz, Field Coordinator

AFT Healthcare-Maryland

rwertz@afthcmd.org, 443-370-0706

AFSCME-FWA-SB813.pdf

Uploaded by: Kilpatrick, Lance

Position: FWA



190 West Ostend St., #201
Baltimore, MD 21230
Phone: 410.547.1515
Fax: 410.837.5436

Patrick Moran - President

Testimony
SB 813 – Workers’ Compensation – Occupational Disease Presumptions – COVID–19
Finance
March 9, 2021
Support with Amendment

AFSCME Council 3 strongly supports SB 813. This legislation would provide that employees who are suffering from the effects of severe acute respiratory syndrome coronavirus 2 are presumed to have an occupational disease they suffered in the line of duty or course of employment and is workers’ compensation eligible.

We have never dealt with a challenge like COVID-19 before. Frontline employees across Maryland have fearlessly continued reporting to work even through shortages of PPE and information. As we learned more about the virus, other states identified ‘hot spots’ where the virus was likely to grow out of. In Maryland, frontline staff heard the call and responded to the challenge. Because of the work of frontline employees, we have limited community transmission out of our public congregate care facilities.

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

- A lack of Personal Protective Equipment, a fight still ongoing over getting N95 masks to our members and appropriate gowns for those in closest contact of the virus;
- A lack of planning and safety protocols that have led to wildly divergent responses to outbreaks from facility to facility, campus to campus. To this day AFSCME has been unable to bring the University System of Maryland to the table to negotiate health and safety protocols for a virus that cares not whether you’re a Terrapin or a Terrier.
- Our neighbor to the south, Virginia, became the first state in the nation to establish detailed coronavirus-related safety mandates that all companies under the jurisdiction of VOSH must abide by. The General Assembly has seen numerous bills introduced this session to address this situation, and AFSCME is wholeheartedly supporting them.
- But I would be remiss if I didn’t point out that Maryland’s chronic understaffing of its facilities made a bad situation worse.

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

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

We applaud Senator Klausmeier and the other General Assembly members who have championed workers' compensation eligibility for those stricken by the pandemic. The long-term effects of COVID-19 are still being discovered, and while we are still learning of these effects, we know that a fair and equitable starting point for presumption of eligibility should be the date of declared emergency, March 5, 2020. We respectfully request that the bill be amended to retroactively apply to that date.

We thank you, and strongly urge a favorable report of SB 813 with amendment.

SB 813 - Workers' Compensation – Occupational Dise

Uploaded by: Zwerling, Samantha

Position: FWA

**Testimony in SUPPORT with Amendment of Senate Bill 813
Workers' Compensation – Occupational Disease Presumptions – COVID-19**

**Senate Finance Committee
March 9, 2021**

**Samantha Zwerling
Government Relations**

The Maryland State Education Association supports Senate Bill 813, which presumes that educators and other workers who contract COVID-19 after reporting to the job site to have suffered an occupational disease in the line of duty. MSEA respectfully asks, however, that the Committee consider amending the bill to take effect retroactively.

MSEA represents 75,000 educators and school employees who work in Maryland's public schools, teaching and preparing our 896,837 students for careers and jobs of the future. MSEA also represents 39 local affiliates in every county across the state of Maryland, and our parent affiliate is the 3 million-member National Education Association (NEA).

MSEA strongly supports this bill that would help to ensure that educators who are forced back into school buildings are able to access workers compensation benefits.

As MSEA's President wrote to Dr. Salmon, "No one wants to get back to school safely and sustainably more than educators. We, the educators working daily with students and families, are painfully aware of the effects of this year's challenges and trauma upon our students and their families. We are frustrated by the lackadaisical implementation of, and resources for, safety measures in our schools. We are frustrated by the lack of availability of vaccines after being told how important it is for us to get vaccinated. We want to be back in our schools, safely and sustainably, for our students."

Passage of this bill would provide an incentive for school systems and other employers to implement re-opening health and safety protocols with fidelity. While educators have been told they would be provided with adequate personal protective equipment and that schools would have thorough health and safety procedures, that is not what our educators are seeing on the ground. This bill adds another layer of accountability to ensure that local education agencies are actually implementing these policies appropriately to avoid unnecessary exposure to COVID-19.

MSEA respectfully requests one amendment to this bill:



Retroactivity back to the Governor's State of Emergency, March 5, 2020

MSEA is grateful for this legislation and that the committee is considering moving forward with this concept. We urge the committee to consider amending Section 2 of the bill and to allow this to be applied retroactively from March 5, 2020, the day the Governor declared a State of Emergency.

Many of our members never left or returned to the school buildings during the shutdown. The staff included custodial staff, technology assistants, food and nutrition workers, to name a few. Unfortunately, some of these frontline heroes contracted COVID-19 during that time. They should not be excluded from protections and benefits that this bill would provide while at the same time limiting the school system's potential exposure to costly litigation.

MSEA urges a Favorable Report with an Amendment on Senate Bill 813.

SB 813_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 813 Workers' Compensation – Occupational Disease Presumptions – COVID-19

Position: Oppose

Reason for Position:

The Maryland Municipal League opposes Senate Bill 813, 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 813 and respectfully requests an unfavorable committee report.

FOR MORE INFORMATION CONTACT:

1212 West Street, Annapolis, Maryland 21401

410-268-5514 | 800-492-7121 | FAX: 410-268-7004 | www.mdmunicipal.org

Scott A. Hancock
Angelica Bailey
Bill Jorch
Justin Fiore

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

SB813 - Maryland Motor Truck Association - Oppose.

Uploaded by: Champion, Louis

Position: UNF



Maryland Motor Truck Association

9256 Bendix Road, Suite 203, Columbia, MD 21045
Phone: 410-644-4600 Fax: 410-644-2537



HEARING DATE: March 5, 2021

BILL NO/TITLE: **Senate Bill 813: Workers' Compensation – Occupational Disease Presumptions – COVID-19**

COMMITTEE: Finance Committee

POSITION: **Oppose**

Senate Bill 813 assumes that any essential worker, regardless of industry or risk, who tests positive for COVID-19 is presumed to have contracted the virus *in the course of employment* for purposes of awarding workers' compensation benefits if the employee worked outside the home in the previous 14 days.

This legislation fails to consider the differences between high and low risk occupations, which vary even among essential industries, and the likelihood of contraction at work. For example, the Advisory Committee on Immunization Practices recently updated its recommendations of when groups should receive the coronavirus vaccine. As part of that update truck drivers were actually moved further down on the list because it was recognized that they frequently work in an isolated environment that is lower risk than those jobs which are performed inside and involve being in close proximity to the public or to coworkers.

SB813 also does not consider:

- The potential for transmission to have occurred at a location outside of work, such as from a family member, at church, or while shopping.
- Activities that the employee is doing in their personal life that may put them at risk.
- Whether the employee has had an opportunity for vaccination that was declined.

Under guidance from the Occupational Safety and Health Administration, all employers are required to do a mini-investigation to determine whether employees who have COVID-19 contracted it at work. If the employee caught the coronavirus at work or while performing work-related activities, the employer must record the illness on the OSHA Form 300. That should be the basis for determining whether an employee has a compensable workers compensation claim, not the automatic assumption that would be created by SB813.

For the reasons noted above, Maryland Motor Truck Association asks the Committee for an unfavorable report.

About Maryland Motor Truck Association: Maryland Motor Truck Association is a not-for-profit trade association representing the trucking industry since 1935. In service to its 1,000+ members, MMTA is committed to supporting and advocating for a safe, efficient, and profitable trucking industry across all sectors and industry types, regardless of size, domicile, or type of operation.

For further information, contact: Louis Campion, (c) 443-623-4223, louis@mdtrucking.org

SB 813_MAA_UNF.pdf

Uploaded by: Clark, Rachel

Position: UNF

CHAIRMAN:
Brian Russell
VICE CHAIRMAN
Jeff Graf

MARYLAND ASPHALT ASSOCIATION



SECRETARY:
Curtis Hall
TREASURER:
David Slaughter
PRESIDENT:
G. Marshall Klinefelter

March 9th, 2021

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

RE: SB 813 – UNFAVORABLE – Workers’ Compensation – Occupational Disease Presumptions – COVID-19

Dear Chair Kelley and Committee Members:

The Maryland Asphalt Association is comprised of 18 producer members representing more than 48 production facilities, 20 contractor members, 24 consulting engineer firms and 40 other associate members. Combined our members employ more than 4,000 Marylanders in our operations. We assist with the education of our workforce, sponsor safety activities and promote best practices while working diligently to produce the highest performing pavement materials with the lowest carbon footprint. We proactively work with regulatory agencies to represent the interests of the asphalt industry both in the writing and interpretation of state and federal regulations that may affect our members. We also advocate for adequate state and federal funding for Maryland’s multimodal transportation system.

While we are extremely sympathetic to the plight of the COVID-19 pandemic, this bill is far-reaching and promotes bad public policy. SB 813 would create a presumption that any employee who works in education, healthcare, child care, or is deemed essential who contracts COVID-19 did so in the course of employment. COVID-19 is a highly contagious respiratory virus that can be contracted anywhere at any time, even while adhering to proper CDC guidelines. To assume that an employee contracted the virus at work simply based on their job description is a matter of bad public policy. The safety of our employees is and has been our utmost concern since this pandemic started. We follow and enforce all recommended safety guidelines while on the job site; however, we have no way to enforce those said guidelines when our employees are not working. Contact tracing is not always successful, so putting the onus on the employer to prove the employee did not contract COVID-19 at work is extremely burdensome, time consuming, and costly. Our business community has suffered immeasurable losses from this virus and we feel strongly that legislation such as this will only continue to hurt us.

We thank you for your time and consideration and ask for a UNFAVORABLE report on SB 813.

Thank you,

Marshall Klinefelter
President
Maryland Asphalt Association

SB 813_MTBMA_UNF.pdf

Uploaded by: Clark, Rachel

Position: UNF



MTBMA
MARYLAND TRANSPORTATION BUILDERS
AND MATERIALS ASSOCIATION

March 9th, 2021

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

RE: SB 813 – UNFAVORABLE – Workers’ Compensation – Occupational Disease Presumptions – COVID-19

Dear Chair Kelley and Committee Members:

The Maryland Transportation Builders and Materials Association (“MTBMA”) has been and continues to serve as the voice for Maryland’s construction transportation industry since 1932. Our association is comprised of 200 members. MTBMA encourages, develops, and protects the prestige of the transportation construction and materials industry in Maryland by establishing and maintaining respected relationships with federal, state, and local public officials.

While we are extremely sympathetic to the plight of the COVID-19 pandemic, this bill is far-reaching and promotes bad public policy. SB 813 would create a presumption that any employee who works in education, healthcare, child care, or is deemed essential who contracts COVID-19 did so in the course of employment. COVID-19 is a highly contagious respiratory virus that can be contracted anywhere at any time, even while adhering to proper CDC guidelines. To assume that an employee contracted the virus at work simply based on their job description is a matter of bad public policy. The safety of our employees is and has been our utmost concern since this pandemic started. We follow and enforce all recommended safety guidelines while on the job site; however, we have no way to enforce those said guidelines when our employees are not working. Contract tracing is not always successful, so putting the onus on the employer to prove the employee did not contract COVID-19 at work is extremely burdensome, time consuming, and costly. Our business community has suffered immeasurable loses from this virus and we feel strongly that legislation such as this will only continue to hurt us.

We thank you for your time and consideration and ask for a UNFAVORABLE report on SB 813.

Thank you,

Michael Sakata
President and CEO
Maryland Transportation Builders and Materials Association

SB 813 and HB 1199 SB 813 - Workers' Compensation

Uploaded by: Costello, Christopher

Position: UNF



6240 Old Dobbin Lane ■ Suite 110 ■ Columbia, MD 21045



February 18, 2021

The Honorable Delores G. Kelley
Chair, Senate Finance Committee
3 East
Miller Senate Office Building
Annapolis, Maryland 21401

The Honorable Delegate Dereck E. Davis
Chair, Economic Matters Committee
Room 231
House Office Building
Annapolis, Maryland 21401

Re: UNFAVORABLE

**Subj: SB 813 - Workers' Compensation – Occupational Disease Presumptions – COVID-19
HB 1199 - Workers' Compensation – Occupational Disease Presumptions – COVID-19**

Dear Senator Kelley and Delegate Davis:

The Howard County Chamber of Commerce (“Chamber”) is a business organization comprised of small business, corporations, non-profits, and governmental agencies all working together for the betterment of the Howard County business community. Our mission is to provide advocacy, connections, and access to timely information to advance the growth and success of the Howard County business community. I write to you at this moment on behalf of our 700 plus member companies out of concerns relative to the administrative and legal pitfalls that would arise from the ill-advised occupational disease presumptions proposed by SB 813 and HB 1199.

These legislative proposals would amend the occupational disease provisions in the Workers’ Compensation Law Section 9-503 to include Covid 19) as an infectious disease. This may be the first time any state has assigned a presumption to a contagious condition that can be transmitted via multiple possible encounters in the community. The only recourse available to the employer in this bill would be to prove the employee was exposed outside the workplace.

If enacted, anyone on the list of job descriptions listed below would be presumed to be suffering from an occupational disease that occurred in the course of employment and is eligible to receive Workers’ Compensation if ‘the individual is suffering from the effects of severe acute respiratory syndrome coronavirus.’ Covered individuals include:

1. First responders: health care workers; firefighters; rescue squad members; members of advanced life support units; paid police officers; sheriffs, deputy sheriffs, or correctional officers.
2. patients or the children of: first responders or health care workers;
3. people who occupy, clean, or repair areas occupied by patients, children, or health care workers of first responders.
4. An “essential worker who is required to work on the premises of a business or government agency that has been declared essential during a declared state of emergency or under an executive order issued by a local, state, or federal authority.”

The current presumptions in the Section 9-503 relate to chronic health conditions for exposure to toxic materials or work-related stress that result in lung disease heart disease, hypertension, leukemia, prostate, rectal, throat, multiple myeloma, non–Hodgkin’s lymphoma, brain, testicular, bladder, kidney or renal cell, or breast cancer, none of which are infectious conditions.



6240 Old Dobbin Lane ■ Suite 110 ■ Columbia, MD 21045

Page 2 of 2 pages
Re: UNFAVORABLE

Subj: SB 813 & HB 1199 - Workers' Compensation – Occupational Disease Presumptions

Three concerns to consider:

1. It not reasonably possible to accurately determine where someone was exposed to an infectious disease such as COVID-19. Never-the-less this bill provides that every case where an employee has been infected with COVID 19 among the designated classifications would be eligible to file an occupational disease claim under the Workers' Compensation Law;
2. Claimants would be eligible for Temporary Total Benefits, Permanent Partial Benefits, Permanent Total Benefits and Death Benefits, the cost for which would increase employer costs for Worker's Compensation significantly for years to come; and
3. If this president were established, the General Assembly should expect that there would be a litany of other diseases that could be proposed year after year on behalf of workers who will want to add their illness to the list of infectious, occupational diseases that qualify for a presumption under the Workers' Compensation Law i.e., Flu, STDs, etc.

Workers' Compensation is not a health care or a social benefit program. It is a insurance program that was created over 100 years ago to provide injured workers with prompt, quality medical care and reimburse the loss of income when there is a work-related injury or occupational disease.

That is not to say are not some individuals, such as those working in hospitals in close proximity with COVID-19 patients, who might be able to assign their infection to their work. However, those individuals would qualify for Workers' Compensation should they choose to file a claim.

The members of the Howard County Chamber of Commerce view COVID-19 as a worldwide pandemic not an occupational disease and hope that the members of the Economic Matters Committee will agree that the to vote Unfavorable on SB 813 and HB 1199.

For questions on the Chamber's concerns, I can be reached directly at 443-878-1234.

Respectfully,

A handwritten signature in black ink that reads 'Leonardo McClarty'.

Leonardo McClarty
President, Howard County Chamber of Commerce

CC: Howard County General Assembly Delegation
Howard County Chamber Board of Directors
Howard County Legislative Affairs Committee Members

SB 813_Workers' Compensation-Occupational Disease

Uploaded by: Courson, Nancy

Position: UNF



MARYLAND
Chamber of Commerce

LEGISLATIVE POSITION:

Unfavorable

Senate Bill 813

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 813 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. It is of particular concern to the Maryland Chamber that SB 813 includes "child-care worker" that looks after the children of first responders, a broad definition of "health care worker" that would include employees that do not encounter individuals diagnosed with COVID-19, "educational worker" which includes anyone who works in a school or institution of higher education, and "essential worker" which would include many occupations that are not at high risk of COVID-19 exposure.

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. By including such broad definitions of qualifying occupations, SB 813 is granting presumption to employees where data does not exist showing they are at an increased risk of contracting the coronavirus. Additionally, SB 813 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.

MDCHAMBER.ORG

60 West Street, Suite 100, Annapolis 21401 | 410-269-0642

Further, by adding the coronavirus as a presumptive occupational disease, SB 813 opens the door to include other common community diseases such as the flu. As the vaccination rollout places the occupations included in SB 813 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 813.



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
Chief Legal Officer
Chesapeake Employers Insurance Company/IWIF
(410)-494-2305
cdalessandro@ceiwc.com*

HFAM Testimony - SB 813 Final.pdf

Uploaded by: DeMattos, Joseph

Position: UNF



**TESTIMONY BEFORE THE
SENATE FINANCE COMMITTEE**

March 9, 2021

SB 813 - 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 813 - 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 813 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.

HFAM Testimony - SB 813

March 9, 2021

Page 2

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 813 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 813.

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 813 -W. Comp. - Covid-19 Presumpt

Uploaded by: Doherty, Daniel

Position: UNF



The Maryland State Dental Association's Opposes SB 813 – Workers' Compensation – Occupational Disease Presumptions – COVID-19

SB813 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 813 be given an unfavorable report.

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

SB813 Oppose APCIA 0309 2021 - FINAL.pdf

Uploaded by: Egan, Nancy

Position: UNF

Testimony of

American Property Casualty Insurance Association (APCIA)

Senate Finance Committee

SB 813 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 813.

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. However, SB 813 is overly broad and should be rejected.

Senate Bill 813 would create a presumption of coverage of COVID-19 as an occupational disease for a broad range of workers, including certain first responders and public safety officials, child care workers, education workers, essential workers, or 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 that this universe of workers is far too broad and would impose ruinous and unsupportable costs on Maryland's workers' compensation system. The bill also drastically misses the mark in several other important respects, including insufficient proof of disease, inadequate ability for employers to rebut a presumption, and unlimited duration of the presumption provisions.

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 813 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 as an occupational disease in the line of duty or in the 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 limited 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 at a significantly higher risk of being exposed to the disease than workers in other industries.

APCIA would accept extending a presumption of coverage to the first responders and public safety officials listed in Section 9-503(e) *as long as their duties 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.

APCIA would also accept extending a presumption to certain health care workers, though the scope of the presumption for those workers in SB 813 is overly broad. Merely requiring that the duties of health care workers must "include direct patient care or ancillary work in areas where patients diagnosed with COVID-19 are treated" is insufficient from a true risk standpoint and would result in a massive and unjustified increase in system costs. For this presumption to be rational, it should be limited to health care workers who have both regular and direct contact with patients known or suspected to have COVID-19.

However, APCIA strongly opposes extending a presumption of coverage to any other category of workers listed in SB 813:

Individuals required to provide child care to first responders or health care workers – Given the extreme nature of presumptions of coverage, which relieve an individual from the basic obligation of proving their claim, it is simply a step too far to stack a presumption on top of a presumption – and this proposal would go even farther by granting a presumption to an individual who does not even come into contact with a person entitled to a presumption (i.e., a first responder or a health care worker) but one of their relatives (i.e., a child). This is far too attenuated a causal chain to warrant a presumption.

Education workers – Unlike, e.g., front-line health care workers, education workers do not have regular or direct – and unavoidable – exposure to individuals known or suspected to have COVID-19. If there are known or suspected COVID-19 cases in a school, the school will be closed – something that cannot occur with a hospital.

Essential workers – Granting a presumption to workers in this extremely broad category would, to put it bluntly, imperil the stability of Maryland’s workers’ compensation system. Using the NCCI COVID-19 Hypothetical Scenario Tool¹, it is estimated that, assuming a 10% infection rate, a broad presumption of this nature would increase Maryland workers’ compensation losses by more than \$792 million, a 76% increase in annual losses. Applying a 20% infection rate would increase losses by nearly \$1.6 billion, a 152% increase in annual losses.

Proof of Disease

The standards in SB 813 for proving that an individual has COVID-19 to the point of warranting a presumption of coverage are severely 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

The current manner in which a presumption can be rebutted – only upon showing that the employment was not a direct cause of the disease – is far too narrow. If a claim can be brought without any proof, there should not be artificial constraints placed on an employer’s ability to rebut the claim. The presumption should be rebuttable by (among other things but not limited to) evidence that

¹ <https://www.ncci.com/SecureDocuments/COVID-19-Scenarios.html>

the employee was at least equally likely to have been exposed to COVID-19 outside the course and scope of employment.

Duration of Presumption

While it is critical that there be a specific, defined end date to any presumption of coverage, SB 813 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 813.

Respectfully submitted,

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

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

MD Judiciary - Testimony SB 813.pdf

Uploaded by: Elalamy, Sara

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Finance Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 813
Workers' Compensation – Occupational Disease Presumptions –
COVID-19
DATE: February 17, 2021
(3/9)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 813. This bill amends the Labor and Employment Article, Section 9-503 by expanding the eligibility criteria for a compensable occupational disease under the workers' compensation law. The bill provides that an essential worker is presumed to be suffering from an occupational disease that was suffered in the course of employment if 1) the employee is suffering from coronavirus 2 respiratory syndrome, 2) the individual was diagnosed with COVID 19 or tests positive for severe acute respiratory syndrome Coronavirus 2 or severe acute respiratory syndrome coronavirus 2 antibodies, and 3) the individual's duties required the individual to perform labor or services at a location other than the individual's home or residence within 14 days of symptoms. This can be rebutted only if the employer shows that employment was NOT a contributing cause of the disease.

The bill defines essential worker as "an individual who is required to work on the premises of a business or government agency that has been declared essential during a declared state of emergency or under an executive order issued by a local, state, or federal authority." Judiciary operations are essential. As such, any of the approximately 4,300 Judiciary employees who report to work at a court or Judiciary office during a declared state of emergency would be deemed an essential worker and would be covered by the Act.

This bill raises separation of power concerns as it impedes the Judiciary's independence. Article IV, §18(b)(1) identifies the Chief Judge of the Court of Appeals as the administrative head of the Maryland Judiciary. The power to administer the Judiciary is not an implied or inherent power but is an express constitutional power of the Chief Judge. This constitutional authority includes managing the Judiciary's personnel.

The Judiciary has its own comprehensive personnel system with policies that address recruitment, supervision, grievances, and termination. The Judiciary is exempt from those aspects of the State Personnel Management System. Indeed, in 1996, as part of the comprehensive personnel reform bill, the General Assembly enacted State Personnel and Pensions Article §2-201, which says “Except as otherwise provided by law, an employee in the Judicial, Legislative, or Executive Branch of State Government is governed by the laws and personnel policies and procedures applicable in that branch.” The Judiciary, therefore, submits that the same principle should be applied here: that this legislation should not be applied to the Judiciary.

Finally, not only will this bill have a significant operational impact on the Judiciary but it could have a significant fiscal impact on the Judiciary. This cost has not been budgeted by the Judiciary.

cc. Hon. Katherine Klausmeier
Judicial Council
Legislative Committee
Kelley O’Connor

2021-03-05 Memorandum to Senate Finance Committee w

Uploaded by: Erlandson, Robert

Position: UNF

MEMORANDUM

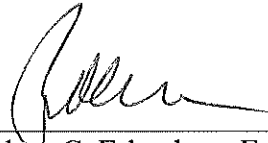
TO: MEMBERS OF THE SENATE FINANCE COMMITTEE

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
Erlandson, Vernon & Daney, LLC
8815 Centre Park Drive, Suite 340
Columbia, Maryland 21045
(443) 656-6767
FAX: (443) 545-5237
Erlandson@evdlaw.com

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 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

SB 813 WC Covid presumption - PSSAM OPP.doc.pdf

Uploaded by: Fannon, Mary Pat

Position: UNF



Mary Pat Fannon, Executive Director
P.O. Box 12040
Baltimore, Md 21281
410-935-7281
marypat.fannon@pssam.org

Bill: SB 813
Title: Workers' Compensation – Occupational Disease Presumptions – COVID-19
Date: March 9, 2021
Position: Oppose
Committee: Senate Education, Health and Environmental Affairs Committee
Contact: Mary Pat Fannon, Executive Director, PSSAM

This emergency bill establishes an occupational disease presumption for employees with specified public safety and first responder occupations (such as paid and volunteer firefighters, police officers, and paramedics) and certain child care workers, education workers, essential workers, and health care workers that are suffering from the effects of severe acute respiratory syndrome coronavirus 2 (which is the virus that causes COVID-19) and meet other specified requirements. The bill also makes technical and conforming changes related to new and existing occupational disease presumptions. The bill must be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any claim for benefits filed before the effective date.

The Public Schools Superintendents' Association of Maryland (PSSAM), **opposes** SB 813.

Seventeen of Maryland's twenty-four school districts participate in the MABE Worker's Compensation Group Self-Insurance Fund "Fund," while the rest of the districts are self-insured. Regardless of how districts provide workers' compensation, the effect of this legislation would be the same – increased claims that are difficult to rebut, and a significant increase in the number of workers' compensation cases leading to increased costs for the school systems.

Public schools are not closed environments and with this worldwide pandemic, it is extremely difficult to pinpoint where an individual may have contracted COVID-19. This proposed presumption would be extremely detrimental to school systems, and in the most extreme of scenarios, deter the re-opening of schools to limit potential risks and claims. This is clearly not in the public interest, but either is creating a nearly impossible refutable claim that an employee contracted COVID-19 in a school setting.

Unlike other occupational hazards associated with jobs identified in existing State law, COVID-19 is not unique to public school employees. Maryland law already provides provisions to cover compensable occupational disease and accidental injuries, and a school employee could make a claim under these existing provisions. This is a much more appropriate remedy for employees and school systems as opposed to the potential of paying for lifetime presumptive workers' compensation medical and indemnity benefits. Presumptive claims for COVID-19 through workers' compensation could lead to significant payments for hospitalization, medical treatment, prescriptions, temporary total disability, death, lifetime medical payments and permanency. For school systems, this could result in significant local budget increases for workers' compensation coverage for decades. For the funds themselves, the increase in high dollar claims would impact their ability to purchase reinsurance

protection from catastrophic claims on the insurance marketplace. Lastly, this new inclusion could lead to the depletion of reserves due to high claims costs and/or the inability to purchase reinsurance would impact the financial sustainability of workers compensation funds.

Maryland superintendents and their local boards of education are working feverishly to provide for a safe and healthy return to schools for students and staff. Each school system follows strict federal, state and local health and safety guidelines. For employees who contract COVID-19 there are processes in place to assist those employees and their families. Additionally, schools take part in contact tracing and quarantining to help contain the spread within schools and communities.

We are all looking forward to a COVID-19-free future, and we know it will take us years to fully recover from the educational, emotional, and physical side effects from this pandemic. Including presumption claims for COVID-19 creates a lifetime, unaffordable option for schools and will shift funding from the classrooms to the courtrooms.

For the reasons noted above, PSSAM **opposes** Senate Bill 813 and requests an **unfavorable** committee report.

SB 813 - 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 813 – 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 813. 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 813 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 813.

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

MBIA Testimony SB 813.pdf

Uploaded by: Graf, Lori

Position: UNF

March 9, 2021

The Honorable Delores G. Kelley
Senate Finance Committee
Miller Senate Office Building,
3 East Wing 11 Bladen St.,
Annapolis, MD, 21401

RE: SB 813 Workers' Compensation – Occupational Disease Presumptions – COVID-19

Dear Chairwoman Kelley:

The Maryland Building Industry Association, representing 1,100 member firms statewide, appreciates the opportunity to participate in **SB 813 Workers' Compensation – Occupational Disease Presumptions – COVID-19**. MBIA **Opposes** the Act in its current version.

This bill would create a presumption that essential workers contracted COVID-19 on the job and would make them automatically eligible for workman's compensation claims in the event of a diagnosis. MBIA respectfully opposes this measure. There is not way to determine with any accuracy where an employee contracts COVID-19 nor can employers account for what safety behaviors employees engage in outside of their other duties. It is unfair to put the burden on insurance claims and drive up premiums for employers when they cannot be established as the party at fault for the contraction of the disease.

For these reasons, MBIA respectfully requests the Committee give this measure an unfavorable report. Thank you for your consideration.

For more information about this position, please contact Lori Graf at 410-800-7327 or lgraf@marylandbuilders.org.

cc: Members of the Senate Finance Committee

SB0813 Howard Co BOE Testimony 030921 for FIN - Wo

Uploaded by: Howard County, BOE

Position: UNF



**Board of Education of Howard County
Testimony Submitted to the Maryland Senate,
Finance Committee
March 9, 2021**

**Board of Education
of Howard County**

Chao Wu, Ph.D.
Chair

Jennifer Swickard Mallo
Vice Chair

Vicky Cutroneo

Christina Delmont-Small

Yun Lu, Ph.D.

Jolene Mosley

Antonia Watts

Zachary F. Koung
Student Member

Michael J. Martirano, Ed.D.
*Superintendent
Secretary/Treasurer*

SB0813: UNFAVORABLE

Workers' Compensation – Occupational Disease Presumptions – COVID-19

The Board of Education of Howard County (the Board) opposes **SB0813 Workers' Compensation – Occupational Disease Presumptions – COVID-19** as an unfunded mandate that will severely impact school system resources.

Worker's compensation is an important insurance coverage for all employees, including teachers and support staff in schools. SB0813/HB1199 broadens that coverage however by adding, to an existing section of law related to first responders, a provision that education workers who fall ill are presumed to be suffering from an occupational disease contracted in the course of employment if they test positive for COVID-19 and were required to work at a location other than their home within 14 days before the onset of symptoms. Education workers include teachers, paraprofessionals, support staff, administrative personnel, maintenance workers and food service staff – over 8,500 employees within the Howard County Public School System (HCPSS). As a prospective bill, it would apply to cases meeting these parameters following its passage.

Unlike, for instance, the presumption as noted in the existing section of law for firefighters who have lung cancer, the ability to prove the origin of a highly prolific illness such as COVID-19 will be challenging. The bill indicates COVID-19 claims may be rebutted only if the employer can show that employment was not a contributing cause of the disease. With this presumption for an occupational disease, HCPSS will face huge financial burdens for providing worker's compensation and the investigations needed to determine if the illness was caused by the nature of the employee's job.

For these reasons, we urge an UNFAVORABLE report of SB0813 from this Committee.

SB813--~1.PDF

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: SB813- 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 **SB813- Workers' Compensation – Occupational Disease Presumptions – COVID-19**.

This emergency bill establishes an occupational disease presumption for employees with specified public safety and first responder and certain child care workers, education workers, essential workers, and health care workers that are suffering from the effects of COVID-19 and meet other specified requirements. The bill also makes technical and conforming changes related to new and existing occupational disease presumptions.

We oppose this bill as similar to SB756, 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 known science.

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

Sincerely,



Allie Williams
President & CEO

SB0813-FIN_MACo_OPP.pdf

Uploaded by: Jabin, Drew

Position: UNF



Senate Bill 813

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

SB 813 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 the 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.

The only way to rebut the presumption under this bill is to show that the employment was not a "contributing cause." As a result, even if the claimant were out grocery shopping, attending social gatherings, 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.

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 813 and requests an **UNFAVORABLE** report.

SB 813.UNF.MACS .pdf

Uploaded by: Kallins, Lauren

Position: UNF

Board of Directors

Shawn Kros, President
The Arc Northern
Chesapeake Region

**Karen Adams-Gilchrist, President
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The Center for Life Enrichment

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The Arc Central Chesapeake Region

Chrissy Shawver
The Arc Montgomery County

Sequya Tasker
Lt. J.P. Kennedy Institute

Laura Howell,
Executive Director

Senate Finance Committee
**SB 813: 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 813 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 "at a location other than the individual's home or residence within 14 days before the onset of symptoms." It is MACS' understanding from our members that have employees who have filed COVID-19 claims, 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. While SB 813 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. 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.

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

SB813-FIN-OPP.pdf

Uploaded by: Mehu, Natasha

Position: UNF



BRANDON M. SCOTT
MAYOR

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

SB 813

March 9, 2021

TO: Members of the Senate Finance Committee

FROM: Natasha Mehu, Director of Government Relations

RE: Senate Bill 813 – 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 813.

SB 813 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 813 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.

*Annapolis – phone: 410.269.0207 • fax: 410.269.6785
Baltimore – phone: 410.396.3497 • fax: 410.396.5136
<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 813.

NFIB - Workers' Compensation Presumption COVID-19

Uploaded by: O'Halloran, Mike

Position: UNF



NFIB-Maryland – 60 West St, Ste. 101 – Annapolis, MD 21401 – www.NFIB.com/Maryland

TO: Senate Finance Committee

FROM: NFIB – Maryland

DATE: March 9, 2021

RE: **OPPOSE SENATE BILL 813** – Workers’ Compensation – Occupational Disease Presumptions – COVID-19

Founded in 1943, NFIB is the voice of small business, advocating on behalf of America’s small and independent business owners, both in Washington, D.C., and in all 50 state capitals. With more than 250,000 members nationwide, and nearly 4,000 here in Maryland, we work to protect and promote the ability of our members to grow and operate their business.

On behalf of Maryland’s small businesses, NFIB-Maryland opposes Senate Bill 813 – legislation that would establish a presumption that certain employees who contracted COVID-19 and the affiliated respiratory ailments did so in the course of employment.

Worker’ compensation claims are heavily based on science and data. The medical field is learning new things about COVID-19 each day – prevalence among specific cohorts, transmission rates, mutations, etc. Senate Bill 813 makes a very broad assumption that all “essential workers” contracting COVID-19 did so as a result of their employment. Peer reviewed research justifying this does not exist and should therefore not be codified for purposes of granting essential employees workers’ compensation benefits.

Including COVID-19 as a presumptive occupational disease sets the precedent to include other community diseases for workers’ compensation benefits. That would be particularly troubling given the fact that reports show the most common instance where COVID-19 is spread is at family gatherings of 10 or more people and *not* at work.

NFIB encourages the legislature to allow the Workers’ Compensation Commission to continue looking at COVID-19 claims on a case-by-case basis and resist the move to make it a presumed occupational disease. For these reasons, **NFIB opposes SB813** and requests an unfavorable committee report.

AACPS SB813 Workers' Comp 3.9.21.pdf

Uploaded by: Ortiz, Jeanette

Position: UNF



SB813 WORKERS' COMPENSATION – OCCUPATIONAL DISEASE PRESUMPTIONS – COVID-19

March 9, 2021

FINANCE COMMITTEE

OPPOSE

Jeanette Ortiz, Esq., Legislative & Policy Counsel (410.703.5352)

Anne Arundel County Public Schools (AACPS) opposes **SB813 Workers' Compensation – Occupational Disease Presumptions – COVID-19**. This bill establishes that, under certain circumstances, specified employees in the State, including education workers, are presumed to have an occupational disease that is compensable under workers' compensation law after a certain positive test or diagnosis for COVID-19. It also provides that the presumption may be rebutted with certain evidence.

While well intentioned, this legislation is problematic in a couple of ways. First, the bill does not specify how a public elementary and secondary school employee is to prove that the employee contracted COVID-19 while on the job. Unlike occupational hazards specifically associated with other jobs and identified in existing State law, COVID-19 is not unique to public school employees. In fact, as the growing number of cases in the United States indicate, COVID-19 can be contracted anywhere and at any point in time. Because the legislation presumes that a public school employee has an occupational disease, COVID-19, that is compensable under current law, the employee is not required to prove that the employee contracted COVID-19 while at work. The presumption is that the employee did, in fact, contract the virus at work. AACPS would then only be able to rebut the presumption if we can somehow show that the employment was not a contributing cause of the disease. This would be difficult to prove at best.

AACPS takes the health and safety of students and employees seriously. The school system has a comprehensive process in place to assist employees who have contracted COVID-19 or have been in contact with someone with COVID-19. The AACPS Contact Tracing Team is a group of education professionals that assists families, employees, schools, satellite offices, and central office with the rapid and efficient collection of information regarding positive COVID-19 cases in school system buildings. If an employee must quarantine due to exposure to someone in the workplace with COVID-19, that employee is able to quarantine without the need to use leave. AACPS will continue to work with employees as we all navigate through these unprecedented times.

Finally, this legislation creates an unfunded mandate on school systems, especially since there is no sunset to the legislation. AACPS opposes unfunded mandates. It is difficult, at this time, to project what the fiscal impact would be on AACPS but we believe that the fiscal impact would be significant.

Accordingly, AACPS respectfully requests an **UNFAVORABLE** committee report on SB813.

2021 SB813 Workers' Comp - Presumption COVID-19.pd

Uploaded by: Porter, Holly

Position: UNF



Educate. Advocate. Innovate.

Date: March 5, 2021
To: Members of the Senate Finance Committee
From: Holly Porter, Executive Director
Re: SB 813 – Worker’s Compensation – Occupational Disease Presumptions – COVID-19 - OPPOSE

Delmarva Chicken Association (formerly Delmarva Poultry Industry, Inc.), the 1,600-member trade association representing the meat-chicken growers, processing companies and allied business members on the Eastern Shore of Maryland, the Eastern Shore of Virginia, and Delaware opposes SB 813 and asks for an unfavorable committee report.

SB 813 would provide that essential employees who are suffering from COVID-19 effects are presumed to have gotten the virus due to employment and would be entitled to worker’s compensation.

From the onset of this pandemic, our chicken community has prioritized employee safety to the fullest extent, while still providing food for our tables. Each change in guidance from the Center for Disease Control was adapted and millions of dollars has been spent in PPE, sick leave, new ventilation systems, additional hand sanitation and more.

Throughout this pandemic county and state health officials have often had difficulties determining where the virus has come from – the community or the workplace? As a matter of fact, the vast majority of contact tracing over the fall and winter has indicated that most COVID cases have been due to small gatherings. While the numbers of cases in the community around us were rising, the numbers of cases within our chicken processing plants were decreasing.

There are many essential employees within our chicken community who have very little contact with other co-workers or the public. They may work in fields, alone in equipment or work on the farm. Their risks of being exposed at work are low. However, if they contracted COVID-19 from a family gathering they attended, they would automatically be qualified for worker’s compensation?

As the vaccine continues to be more available to essential employees, will employees who refuse the vaccine still be entitled to worker’s compensation if they should contract the virus, again with no indication that it came from the workplace itself?

The original intent of this bill seemed to specifically address first responders, police and health care employees. By adding additional definitions under Section F – line 24, this bill expands that scope and greatly expands the economic impact this will have on businesses – both small and large.

We urge **an unfavorable** committee report on SB 813.

Should you have any additional questions, please feel free to contact me at porter@dcachicken.com or 302-222-4069 or Nick Manis, Manis Canning & Associates, 410-263-7882.

SB813_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: SB813 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 SB813, 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 SB813.

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.

SB 813 - MHLA - Rohrer - UNF.pdf

Uploaded by: Rohrer, Amy

Position: UNF

MHLA
Maryland Hotel
Lodging Association

SB 813 - Oppose
Workers' Compensation – Occupational Disease Presumptions – COVID-19
Senate Finance Committee
March 9, 2021

Dear Chairwoman Kelley and Members of the Committee:

As the sole statewide trade association dedicated to advocacy for Maryland's lodging industry, with more than 700 hotels totaling 75,000+ rooms, we request an unfavorable report on SB 813.

Conditions Don't Warrant a Broad Presumption

When the "Stay at Home" Executive Order was issued by Governor Hogan, the entire state was subject to it; except essential workers. At that moment in time, those workers may have been subject to a higher risk for contracting COVID-19 because they were, for purposes of their employment, the only Marylanders not actively sheltering in place. Maryland is no longer subject to that order, and business of all varieties are open and will be open for the life of the presumption established by SB 813. Marylanders are getting back to their lives the best they know how, and the law should not make Maryland employers financially responsible for the actions of employees outside of the workplace.

The current CDC guidance and requirements on re-opening various workplaces means that employers have been and continue to invest massively in procedures, training, equipment, and facility modifications to protect their employees. A person's place of employment is most likely the place where they are most compliant with masking, social distancing, and other protections. Due to the prevalence of community spread, and despite the best efforts of employers, reality is all individuals are at risk anytime they are out in public or gathered with others within their own homes.

The presumption policy proposed by SB 813 would cause the workers' compensation system to absorb an unknown number of COVID-19 infections that were not work related. With no demonstrable problem we simply don't believe this is necessary.

Increased Liability for Hotels will Hinder Maryland's Broader Emergency Response

Designating COVID-19 as a presumptive occupational disease for workers' compensation purposes in the hospitality sector will hinder the state's broader emergency response efforts. Through various stages of this public health emergency, hotels across the state have been depended upon to house COVID patients, first responders, healthcare workers, unsheltered populations, and function as vaccination sites. This policy change would increase liability for hotel operators to a prohibitive extent, potentially leaving

MHILA
Maryland Hotel
Lodging Association

them unable to accommodate arrangements involving high-risk populations that need to self-isolate.

Hotels that have already agreed to work with the state or local governments to accommodate high-risk populations will effectively be left out to dry as this policy change would exponentially increase their legal and financial exposure overnight.

In conclusion, we welcome every opportunity to partner with policy makers and government officials on recovery efforts in Maryland. However, we are deeply concerned by the long-term cost implications of such a unilateral presumption including “essential businesses” on the other side of this pandemic, given the extreme impacts being felt in the lodging industry now.

For these reasons, we urge an unfavorable report on SB 813.

Respectfully submitted,

Amy Rohrer, CAE
President & CEO