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January 20, 2021

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Senator William C. Smith, Jr., Chair
Senator Jeff Waldstreicher, Vice Chair
Judicial Proceedings Committee
Miller Senate Office Building, 2 East Wing
11 Bladen Street
Annapolis, MD 21401

Re: Senate Bill 210
COVID-19 Claim – Civil Immunity
Hearing Date: January 26, 2021
Position: Support with Amendments

Dear Senator Smith, Senator Waldstreicher, and Judicial Proceedings Committee Members:

This letter is submitted on behalf of the Maryland Legislative Action Committee (“MD-LAC”) of the Community Associations Institute (“CAI”). CAI represents individuals and professionals who reside in or work with community associations (condominiums, homeowners’ associations, and cooperatives) throughout the State of Maryland.

After an unprecedented and difficult year for all Marylanders, MD-LAC is extremely pleased to see SB210. Limited liability immunity is critical toward achieving economic recovery, and we are even more pleased to see that ‘Associations’ are included in the definition of the businesses to which the bill applies. As you can imagine, community associations are among the many businesses that have been affected by COVID-19, and in addition to the fear of contracting the virus, the fear of liability from something unseen and nearly uncontrollable has forced many

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associations to keep their amenities and non-essential common areas closed (even after the Governor lifted restrictions subject to social distancing and load limitations). Those associations that have chosen to open these areas have done so with enormous trepidation, effort, and expense. Community associations – the very places where people live and cannot avoid – are keenly aware that even with multiple cleanings (and the expense that comes with cleanings and keeping up with CDC recommendations), it is possible that someone who has used the amenities and common area surfaces (including but not limited to elevators, entry doors, and mailbox areas) could allege that they have contracted the virus from one of these areas.

As an insurance agent, it is important that I report to the Committee, too, that virtually every insurance carrier in the marketplace is applying to an insured's General Liability policy (usually at a community association's insurance renewal date) either a "Communicable Disease Exclusion" or a "Virus and Bacteria Exclusion," effectively excluding any defense and indemnity coverage for allegations of virus transmission on an insured's premises. Even prior to the application of these exclusions, insurance industry professionals have opined that the "expected and intended" provision inherent in all General Liability policies (the exclusion that applies when an insured is already aware of a situation that could give rise to a claim) could possibly disqualify these claims from coverage. Certainly, our current pandemic conditions could trigger this provision.

Because lawsuits require that community associations respond to and defend themselves against allegations of bodily injury – even in cases where there is little to no merit – absent insurance coverage, COVID-19 liability suits alleging contraction of the virus have the potential to cost an association thousands of dollars in defense costs, and much more if there has been a death. While the burden of proof lies with the claimant who must prove beyond a reasonable doubt that he or she has contracted the virus at the association's premises, the association may face expensive legal expenses, nonetheless.

Given that, the MD-LAC overwhelmingly supports SB210, but with one amendment: We would ask that the Committee consider amending the following portions of the bill (page 3, lines 7-11 and page 4, lines 10-14) to also capture any period of time in which the Governor might reinstate the "Declaration of State of Emergency and Existence of Catastrophic Health Emergency – COVID-19" should the current order be lifted and then reinstated due to a rise in case numbers. As you know, there presently are mutations of the virus (at least one of which has not been receptive to the vaccine) and while the rollout of the vaccine will hopefully provide some resistance and herd immunity to the virus, it is conceivable that new strains could create setbacks in progress. MD-LAC would like to see limited liability immunity extended with more flexibility given the uncertainty of the future of the virus without the need to amend the law to cover changes in the emergency order:

This section applies only to a COVID-19 claim that arose between March 5, 2020, and 180 days after the expiration or rescission of the Governor's proclamation of March 5, 2020, "Declaration

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of State of Emergency and Existence of Catastrophic Health Emergency – COVID-19” [AND DURING AND 180 DAYS AFTER THE EXPIRATION OR RECISSION OF ANY REINSTATEMENT OF THE PROCLAMATION].

We are available to answer any questions the Committee Members may have. Please feel free to contact Lisa Harris Jones, lobbyist for the MD-LAC, at 410-366-1500, or by e-mail at lisa.jones@mdlobbyist.com, or Steven Randol, Chair of the MD-LAC, 410-279-8054, or by e-mail at srandol@pineorchard.com, or Robin C. Manougian, Member, of the MD-LAC, at 240-401-0855, or by e-mail at rmanougian@manougianinsurance.com.

Sincerely,

Robin C. Manougian

Steven Randol

Robin C. Manougian
Member, Insurance Chair, CAI MD-LAC

Steven Randol
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