



Maryland Association for Justice, Inc.

2021 Position Paper

Catastrophic Health Emergencies – Health Care Providers – Definition and Immunity SB 311 – UNFAVORABLE

For close to twenty years, Maryland’s hospitals sought “Birth Injury Fund” legislation, which would prospectively grant immunity from liability in cases of obstetrical malpractice in exchange for an unfair, unsustainable, and unconstitutional “no-fault” compensation scheme.

The Maryland General Assembly never, ever, gave Birth Injury Funds a favorable vote. Birth Injury Fund bills died year after year – either with an UNFAVORABLE vote, or without any vote at all. Finally, it appears, MHA has gotten the message.

This year, Maryland’s hospitals are not proposing a Birth Injury Fund. Their substitute bill, SB 311, is *even worse*: it retroactively and unconstitutionally impairs the vested rights of the victims of unreasonably unsafe medical care *without offering any compensation at all*.

SB 311 seeks to expand the current immunity that hospitals and health care providers enjoy under § 14-3A-06. This already existing immunity in § 14-3A-06 has been described by medical and legal commentators as among the “most broad immunity-conferring legislation currently in effect” in the United States.¹ SB 311 would expand immunity to cover all health care, whether or not it is COVID-related.

Birth Injury Funds were bad. SB 311 is worse.

SB 311 represents an *intolerable* expansion of the already broad immunity that health care providers currently enjoy. Physicians performing elective procedures, and obstetricians delivering babies, do not need immunity, and victims of unreasonably unsafe medical care do not deserve to have their rights stripped away by over-reaching legislation.

Maryland health care providers already enjoy robust liability protections. From pre-suit certification requirements to special expert witness qualifications to lower caps on damages – Maryland health care providers are well protected from liability, which is why malpractice insurance in Maryland is much less expensive now than it was fifteen years ago.

**The Maryland Association for Justice respectfully requests
an UNFAVORABLE report on SB 311.**

¹ Valerie Gutmann Koch, *Unique Proposals for Limiting Legal Liability and Encouraging Adherence to Ventilator Allocation Guidelines in an Influenza Pandemic*, 14 DePaul J. Health Care L. 467, 488 n.98 (2013).