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TO: Senator William C. Smith, Jr.
Chair, Judicial Proceedings Committee

FROM: The Office of the Attorney General

RE: SB 210 – COVID-19 Claim - Civil Immunity – **Letter of Opposition**

The Office of the Attorney General urges this Committee to issue an unfavorable report on SB 210. If enacted, the legislation provides civil action immunity from liability for a person who complied with the law unless the person acted with gross negligence or intentional wrongdoing.

Many supporters argue for the need for immunity because employers may face an “avalanche” of personal injury tort suits related to the pandemic from their employees.¹ Contrarily, immunity is unnecessary because judicial systems already provide solutions to these concerns. Seen from different cases from other states, when an employee argues about employer’s negligence, the business would have to be operating “without such precautions as social distancing, gloves, masks, and disinfecting measures.”² And it is unlikely many businesses fail to satisfy these requirements. If they do, our State should penalize businesses for failing to comply with these basic requirements. Also, even without immunity, employers may have existing liability protections against these suits.³ For example, an employer may use worker’s compensation programs, and regulatory compliance defense.⁴ In contrast, many employees who are required to work are not provided with any legal protections.

Understandably, the bill is written to promote economic recovery by preventing companies from being liable for too many damages. However, an alternative measure should be considered instead of completely eliminating the risk of tort liability, where injustice may occur.

¹ See Betsy J. Grey & Samantha Orwoll, *Tort Immunity in the Pandemic*, 96 IND. L. J. SUPP. 1, 11 (2020).

² See *id.* at 22.

³ See *id.*

⁴ See *id.*

The balance between economic, health, and justice is critical before the issuance of mere liability waiver. And SB 210 did not consider all the necessary factors. Thus, to prevent injustice against employees and lack of necessity, the bill should be reconsidered with a different alternative.

For the foregoing reasons, the Office of Attorney General urges an unfavorable report on SB 210.

cc: Members of the Judicial Proceedings Committee