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Judicial Proceedings Committee

Vice Chair, Baltimore County  
Senate Delegation



**THE SENATE OF MARYLAND**  
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January 26, 2021

Senate Judicial Proceedings Committee  
The Honorable William C. Smith, Jr.  
2 East Miller Senate Building  
Annapolis, Maryland 21401-1991

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

Dear Chairman Smith and Members of the Committee:

I am pleased to introduce Senate Bill 210, which is an important bill of the bi-partisan Senate Small Business Jobs Caucus. You will note that the four sponsors of this bill are Senators Hester, Carozza, Peters and myself. I understand that this bill is the top legislative priority this year of the Maryland Chamber of Commerce, the National Association of Independent Businesses and the Maryland small business community.

Senate Bill 210 is a direct response to the COVID-19 pandemic, which has so devastated so many Maryland businesses, both small and large. No business has been immune, but many have been especially hard hit. Numerous bars and restaurants have closed permanently. Others are boarded up and may never re-open. Most have seen sharply diminished income and are barely hanging on. The same is true of retailers, as so many Maryland citizens have gone online to purchase desired goods rather than patronize brick and mortar stores.

The same can be said about nearly all of the State's business establishments. Walk through the offices of law firms, accounting firms and most other firms in Maryland, and you will travel deserted corridors and pass by empty offices. Most officers of these firms will tell you that working remotely is an inadequate substitute for the synergies of having your work force physically present each day in the company's offices.

This disastrous situation is not limited to the State's "for profit" businesses. The same distress has afflicted its non-profits, its schools and colleges. Health care facilities across the State have been hit hard as well, the more so as their heroic personnel have had to work harder than ever, while endangering their own lives in order to care for others.

And now, at the 11<sup>th</sup> hour, after so many Maryland businesses have closed their doors altogether or are just hanging on, they face the prospect of having to defend lawsuits filed by the families of the thousands of Maryland citizens who have died or the tens of thousands who have survived the virus but whose long-term health has been gravely impaired by the collateral effect of COVID-19 on their bodies.

It is expected that many lawsuits will be filed alleging that those felled by the COVID-19 virus contracted the virus at the time that they were on the premises of the business defendants in the lawsuits. Of course, it will be exceedingly difficult for the plaintiffs in those cases to establish by a preponderance of the evidence that the virus was caught at the time the plaintiff was on the premises of the defendants, as opposed to at any number of other locations visited by the plaintiffs in the weeks prior to their getting sick. Nonetheless, every case has a settlement value, and, faced with the necessity of paying defense counsel to defend such cases, many businesses in Maryland will knuckle under and pay a negotiated amount of money in order to get out from under such COVID-19 cases. For Maryland businesses already barely hanging on financially, the prospect of paying large sums of money to get out from under expensive COVID-19 litigation could be the last straw.

Senate Bill 210 is a deceptively simple response to this situation and is intended to throw a lifeline to Maryland organizations that, in good faith, have endeavored to adhere to COVID-19 guidelines promulgated at the federal, state and local levels.

It defines the term “person” very broadly to include an individual, a business entity or other legal entity, including corporations, partnerships, limited liability companies, business trusts, estates, joint ventures, Section 501 (c)(3) non-profits, schools, institutions of higher learning and health care facilities of all types. It also includes employees, agents and independent contractors.

Senate Bill 210 is limited to COVID-19 claims that arose between March 5, 2020 and 180 days after the Governor’s Executive Order expires or is rescinded. The bill states that a “person” who in the exercise of good faith acts in compliance with all federal, state and local statutes, rules, regulations, executive orders and agency orders related to COVID-19 is immune from civil liability for a COVID-19 claim, unless the person’s actions amount to gross negligence or intentional wrongdoing. The bill also provides that a deviation from compliance with the rules or regulations that is unrelated to the plaintiff’s injuries does not deny a person the immunity provided under the bill.

My attention has been called to the Maryland Court of Appeals decision in *Dua v. Comcast*. In that decision, various Comcast subscribers who had paid Comcast late fees exceeding the permitted rate of 6% under the Maryland Constitution sued Comcast for the recovery of the excessive late fees that had been paid. The General Assembly then passed a law authorizing higher late fees and extending the new statute retroactively for five years. Comcast thereupon moved to dismiss the actions of its customers. The Court held that the Maryland Constitution prohibits legislation which retroactively abrogates vested rights, in that case, the rights of the Comcast subscribers to sue Comcast to get their money back.

In the *Dua* case, the statute passed by the General Assembly purported to completely extinguish the rights of the Comcast subscribers to sue to get their money back. In the case of Senate Bill 210, the proposed legislation does not extinguish the rights of people allegedly injured due to contracting COVID-19 at a particular business location to file suit. Rather what this bill does is to raise the level of proof that must be introduced at a trial for the plaintiff to prevail. If Senate Bill 210 should pass the General Assembly, the plaintiff would not only need to establish that the defendant acted negligently but also that the defendant failed to act in good faith and failed to comply with federal, state and local COVID-19 guidelines. Unlike in *Dua*, therefore, this bill does not extinguish rights; it merely increases the level of proof that the plaintiff must establish in order to prevail in court. To be clear, this bill will not prevent any plaintiff from filing a lawsuit. It may discourage such suits due to the higher evidentiary burden that will be required in court. But if a Maryland business failed to act in good faith and failed to act in compliance with federal, state and local COVID-19 guidance, such a business will have left itself open to suits by people who caught the virus while the people were present on the premises of the business.

This bill is fair and reasonable and balanced. For these reasons I ask the committee to vote favorably on Senate Bill 210.

**SB0210/393521/1**

BY: Senator West  
(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO SENATE BILL 210  
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 6, strike the first “certain”.

AMENDMENT NO. 2

On page 3, in line 19, strike “**AN ISOLATED, MINOR**” and substitute “**A**”; and in the same line, strike “**STRICT**”.

**SB0210/783628/1**

BY: Senator West

(To be offered in the Judicial Proceedings Committee)

AMENDMENT TO SENATE BILL 210

(First Reading File Bill)

On page 2, in line 26, strike “**510(C)(3)**” and substitute “**501(C)(3)**”.

**SB0210/813226/1**

BY: Senator West  
(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO SENATE BILL 210  
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 4, strike “compliance” and substitute “good faith in an attempt to comply”.

AMENDMENT NO. 2

On page 3, in line 13, strike “COMPLIANCE” and substitute “GOOD FAITH IN AN ATTEMPT TO COMPLY”.