



Maryland Association for Justice, Inc.

2021 Position Paper

COVID-19 Claim – Civil Immunity SB 210 – UNFAVORABLE

Seeking to grant broad, blanket immunity against all COVID-19 transmission claims, SB 210 is *unwise, unfair, and unconstitutional*.

SB 210 is unwise. The current catastrophic health emergency is a disaster for working families in Maryland. Accordingly, a *safe economic recovery* must be everyone's top priority.

However, SB 210 grants statewide legal immunity to every person, business, and entity, even for unreasonably unsafe conduct,¹ thereby placing returning workers and consumers at risk of contracting COVID-19 infection. This is the *wrong way to reopen an economy*.

Removing legal accountability jeopardizes the health and safety of workers, as well as the health and safety of everyone who enters those workplaces. This would be extremely damaging to the State's economic recovery, which will depend upon public confidence that businesses are operating as safely as possible. When workplaces are not properly protected, patients, customers, clients, and the community at large are all at risk. SB 210 is *bad public policy*.

SB 210 is unfair. By establishing blanket immunity for everyone – regardless of their economic circumstances or ability to pay – SB 210 is a boon for the wealthiest in society (who are well-funded and need no special protections) at the expense of the most defenseless members of our community, whose access to justice would be obliterated.

For example, SB 210 explicitly protects Maryland's corporate health systems, which carry hundreds of millions of dollars in self-insurance coverage. These actors already have "good faith" immunity for their actions under a catastrophic health emergency proclamation, and could not possibly need even more liability protection. *See* Md. Pub. Safety Code § 14-3A-06.

SB 210 is *unconstitutional*. In *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604 (2002), the Court of Appeals of Maryland overturned those portions of emergency legislation that purported to abrogate vested property rights protected by Article 24 of the Maryland Declaration of Rights and Article III, § 40, of the Maryland Constitution.

¹ SB 210 grants broad immunity, with exceptions only for conduct amounting to gross negligence or intentional wrongdoing – these very high standards would mean that businesses acting in an unreasonably unsafe manner would avoid all accountability for harm caused by such unreasonably unsafe conduct. Especially during difficult economic times, businesses looking for ways to cut overhead or operating costs are incentivized to cut corners on safety, *especially* if there were no consequences for doing so as a matter of law.



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The *Dua* Court explained:

It has been firmly settled by this Court's opinions that the Constitution of Maryland prohibits legislation which retroactively abrogates vested rights. *No matter how "rational" under particular circumstances, the State is constitutionally precluded from abolishing a vested property right or taking one person's property and giving it to someone else.* The state constitutional standard for determining the validity of retroactive civil legislation is whether vested rights are impaired and *not* whether the statute has a rational basis.

Dua, 370 Md. at 623 (emphasis added). The Court's opinion traces this constitutional rule over more than a century of legal precedent.

SB 210 ignores this ancient constitutional principle and would abrogate the vested rights of victims of unreasonably unsafe conduct *retroactively* to March 5, 2020. SB 210 violates the Maryland Constitution and the Declaration of Rights, and would be unconstitutional.

**The Maryland Association for Justice respectfully requests
an UNFAVORABLE report on SB 210.**