



Maryland Association for Justice, Inc.

2021 Position Paper

COVID-19 Claim – Civil Immunity SB 210 – UNFAVORABLE

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.**

THE CONSTITUTIONAL BAN ON RETROACTIVE LAWS WHICH IMPAIR VESTED RIGHTS IS NOT LIMITED BY THE DATE A CAUSE OF ACTION IS FILED IN COURT BUT APPLIES TO ALL ACCRUED CAUSES OF ACTION ARISING PRIOR TO THE DATE OF LEGISLATIVE ENACTMENT

Cts. & Jud. Proc. Code Annot. § 5-101. Civil actions

A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced.

Having already broken the barrier confining the discovery principle to professional malpractice, and sensing no valid reason why that rule's sweep should not be applied to prevent an injustice in other types of cases, we now hold the discovery rule to be applicable generally in all actions and the *cause of action accrues when the claimant in fact knew or reasonably should have known of the wrong*. *Poffenberger, Jr. v. Risser et al.*, 290 Md. 631, 636 (1981) (emphasis added).

If Article 19 of the Declaration of Rights provides a degree of protection for causes of action which have not accrued at the time of the challenged governmental action, it follows that the constitutional provision would provide greater protection for a cause of action that has already accrued when the challenged governmental action occurred. Although this Court has not previously had any occasion to discuss the specific issue, courts elsewhere have held that state constitutional provisions similar to Article 19 preclude retrospective legislation abrogating accrued causes of action. (citations omitted). . . . We agree with those decisions and hold that the retroactive portions of both Ch. 59 and Ch. 569 violate Article 19 of the Maryland Declaration of Rights. *Dua v. Comcast*, 370 Md. 604, 644-645 (2002).

Any law that retroactively impairs or abrogates a cause of action which has accrued prior to the date of enactment is unconstitutional. A cause of action accrues when the claimant in fact knew or reasonably should have known of the wrong, not when suit is filed.