SB 210 -Bernstein Mgmt--FAV.pdf Uploaded by: Bradley, Erin



January 22, 2021

Dear Members of the Judicial Proceedings Committee,

Since last February, the multifamily real estate industry has worked tirelessly to follow and share public health guidance to provide our tenants with the best service possible during the COVID-19 pandemic. As essential workers, our staff members have been on the frontline ensuring our buildings operate safely for everyone, and we have been tasked with trying to enforce a variety of new public health guidelines in the shared spaces within our buildings. We have additionally been limited in our ability to address violations to these and other rules through the appropriate legal process, due to Court scheduling limitations and other legal limitations put in place to reduce the spread of the virus. While we are proud that so many residents heeded these public health guidelines, we worry that without adequate protections, we may be held liable for those few who failed to heed these new rules.

This last year has been particularly difficult for companies like ours, with assets spread across multiple jurisdictions, given the range of guidelines that were being issued by state and local leaders, and the pace with which these changes were made in the past year. We have worked diligently to follow all applicable guidelines in each of our jurisdictions while adapting to the new working environment and have invested heavily in personal protective equipment for our staff, disinfectants for our cleaning staff, virtual options for submitting maintenance requests and paying rent, as well as implementing a number of new community rules per public health officials.

Many other jurisdictions have, in one form or another, provided reasonable liability protections for companies like ours which worked in good faith to implement critical public health guidelines during this time. Unfortunately, Maryland has not yet provided such reassurance. We therefore ask that you support Senate Bill 210 concerning COVID-19 Claim—Civil Liability to give us a bit more certainty as our industry continues to recover from the impacts of COVID-19. Given the sheer volume of emergency legislation and public health guidance that has impacted our industry over the past year, we are concerned that without such protection, we could face spurious, but costly, legal action in the coming years.

Our goal as an industry has always been to operate on a fair and honest basis with all our tenants, employees, vendors and investors, regardless of the market uncertainties surrounding our industry. We hope that Senate Bill 210 can be passed to help increase our certainty as we move forward.

Thank you for your time and attention to this matter.

Luke Lanciano

January 22, 2021

Compliance Administrator

Bernstein Management Corporation 5301 Wisconsin Ave. NW Ste 500

Washington, DC 20015

SB 210--ACT--FAV.pdfUploaded by: Bradley, Erin Position: FAV

























January 22, 2021

Chairman Smith & Members of the Senate Judicial Proceedings Committee Miller Senate Office Building, 2 East Wing 11 Bladen St.
Annapolis, MD 21401-1991

Dear Chairman Smith and Members of the Senate Judicial Proceedings Committee,

We, the undersigned represent the Associate's Coalition Team of the Apartment and Office Building Association of Metropolitan Washington (AOBA). Members of ACT represent the backbone of the commercial real estate industry and are comprised of maintenance companies, concierge service companies, housekeeping, pest control and the plethora of other businesses that keep commercial real estate and multifamily apartment communities running. We are small, local and often family or minority-owned businesses that are proud to operate in Maryland. As such, we urge you to support Senate Bill 210.

Senate Bill 210 will create critical protections for our businesses—shielding them from the threat of lawsuits that will exacerbate the damaging effects of COVID-19. AOBA's members of all types and sizes are working hard to protect employees, customers, citizens, and everyday residents from exposure to COVID-19 in an environment often filled with incomplete and inconsistent information. Yet they are meeting each guideline and enforcing all relevant health and safety measures enacted at the local and state level.

The growing risk of opportunistic lawsuits against these organizations poses a significant barrier in our ability to reignite the Northern Virginia, Maryland, and DC economy.

None the less, businesses such as ours face liability challenges. As a result, businesses require protection from frivolous lawsuits so they can get our region back on the path to economic recovery. Without the liability protections in SB 210, we face unfounded threats of legal action that could wind up costing thousands of dollars at a time when we need every financial resource available to keep the doors open and thousands of Marylanders employed.

We ask that, In the absence of federal action, the state legislature act to shield business owners from lawsuits unless plaintiffs can prove a business willfully failed to develop and implement a plan to reduce the risk of COVID-19. We have followed the advice of public health experts and all applicable guidelines to protect the public, often at a great financial cost. We would appreciate the certainty that our businesses will not suffer more financial hardships from unwarranted lawsuits.

Please support SB 210 with a favorable vote.

Sincerely,

Members of the Associate's Coalition Team of the Apartment and Office Building Association of Metropolitan Washington

SB 210--AOBA Statement--FAV.pdf Uploaded by: Bradley, Erin



Bill No: SB 210—COVID-19 Claim—Civil Immunity

Committee: Judicial Proceedings

Date: 1/26/2021

Position: Support

The Apartment and Office Building Association of Metropolitan Washington (AOBA) represents members that own or manage more than 23 million square feet of commercial office space and 133,000 apartment rental units in Montgomery and Prince George's counties. Members own and operate places where people work, shop and live. They also employ thousands of Marylanders. In this capacity, AOBA supports Senate Bill 210.

This bill provides that businesses, educational institutions, and healthcare facilities that act in compliance with all federal, state, and local statutes, rules, regulations, executive and agency orders related to COVID-19 shall be immune from civil liability for a COVID-19 claim unless gross negligence or intentional wrongdoing can be proven. The protections would only apply to claims between March 5, 2020 and 180 days after the expiration or rescission of the Governor's Declaration of State of Emergency. In essence, the bill ensures that employers and businesses following government and health guidance are not able to be sued in the unfortunate event a person believes they contacted COVID-19 at their business, office or multifamily community.

This bill affords an important protection to Maryland companies and employers. Businesses AOBA represents are already struggling due to capacity restrictions, decreased rent payments and an overall decline in the economy with rising unemployment rates —litigation could certainly force these besieged businesses to close permanently. Housing providers, businesses and organizations of all types and sizes have adapted practices and invested in various new technologies to ensure the safety of their communities while simultaneously keeping people employed. However, AOBA members remain concerned that, despite their efforts to follow applicable guidelines, they will be required to defend against a wave of frivolous lawsuits. The financial impact of these type of lawsuits nationally is significant. According to the U.S. Chamber Institute for Legal Reform, U.S. commercial tort liability cost \$343 billion in 2018.

Because there has yet to be any protection extended to businesses at the federal level, the responsibility falls to state governments to protect entities acting in the best

interest of the community and abiding by the rules. As of December 11, 2020, 20 states, including our neighbors in Washington D.C., Virginia and Pennsylvania have passed some type of COVID-19 protections from tort claims. In Maryland, Senate Bill 210 provides temporary protection, rather than blanket immunity, for good actors while allowing those who engage in gross negligence to face the consequences of their actions.

For these reasons AOBA urges a favorable report on SB 210.

For further information contact Erin Bradley, AOBA Vice President of Government Affairs, at 301-904-0814 or ebradley@aoba-metro.org.

SB210 - Maryland Motor Truck Association - Support Uploaded by: Campion, Louis



Maryland Motor Truck Association

9256 Bendix Road, Suite 203, Columbia, MD 21045 Phone: 410-644-4600 Fax: 410-644-2537



HEARING DATE: January 26, 2021

BILL NO/TITLE: Senate Bill 210 - COVID-19 Claim - Civil Immunity

COMMITTEE: Senate Judicial Proceedings Committee

POSITION: Support

The commercial trucking industry is playing a vital role in the effort to end the COVID-19 pandemic. Everyday Maryland trucking companies deliver critical supplies such as food, water, medicine, fuel, and other necessities. Without the industry's heroes, there is no food on the grocery shelves, there are no medical supplies in hospitals, and there are no vaccines in pharmacies.

Trucks are the hub of Maryland's distribution wheel, supporting the state's manufacturing, agricultural, grocery and retail industries. Now more than ever, the resilience and integrity of our supply chain needs to be protected. As we witnessed at the onset of the pandemic, when supply chains are disrupted, supply shortages are quick to follow.

Protecting those essential businesses that are following government guidelines from frivolous lawsuits should be a priority. Such lawsuits have the potential to paralyze the recovery effort. Maryland Motor Truck Association urges the committee to support the narrow, limited protections offered by SB210 so that we can continue safely delivering the goods Marylanders depend on each day.

<u>About Maryland Motor Truck Association:</u> Maryland Motor Truck Association is a not-for-profit trade association representing the trucking industry since 1935. In service to its 1,000+ members, MMTA is committed to supporting and advocating for a safe, efficient, and profitable trucking industry across all sectors and industry types, regardless of size, domicile, or type of operation.

For further information, contact: Louis Campion, (c) 443-623-4223, louis@mdtrucking.org

SB 210 MBC Test Final.pdf Uploaded by: Carozza, Senator Mary Beth Position: FAV

MARY BETH CAROZZA

Legislative District 38

Somerset, Wicomico,
and Worcester Counties

Education, Health, and Environmental Affairs Committee



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THE SENATE OF MARYLAND ANNAPOLIS, MARYLAND 21401

January 26, 2021 The Senate Judicial Proceedings Committee SB 210 – COVID-19 Claim – Civil Immunity Statement of Support by Co-Sponsor – Senator Mary Beth Carozza

Thank you, Senator Chris West, for introducing Senate Bill 210 – COVID-19 Claim – Civil Immunity, which is critical legislation for the very survival of the business community. I write in strong support of Senate Bill 210 and respectfully request a favorable report from the Senate Judicial Proceedings Committee.

Throughout the COVID-19 crisis, members of the bipartisan Senate Small Business Workgroup have been holding Zoom meeting with leaders of key business associations including the Maryland Chamber of Commerce, the National Federation of Independent Business, and the Restaurant Association of Maryland to better understand their most pressing COVID-19 challenges and their recovery priorities. These small business advocates made clear that protection against unfair and frivolous COVID-19 lawsuits is a top priority.

As a member of the Senate Small Business Workgroup and after working with hundreds of local small businesses during COVID-19, I personally can attest to the sense of urgency on the part of small businesses to pass this emergency COVID-19 civil immunity bill now as so many of our job creators are suffering under the economic downturn caused by COVID-19.

My district includes three of the largest small business advocacy groups -- the Ocean City Chamber of Commerce, the Ocean City Hotel-Motel-Restaurant Association, and the Salisbury Area Chamber of Commerce. These local business operators are doing all they can to keep the doors open during COVID-19.

Limited liability protection for businesses that have made good faith efforts to comply with recommended State and Federal guidelines is critical to their long-term success, impacting jobs and income.

The most powerful testimony comes from those on the front lines of our small businesses. Salisbury Chamber of Commerce President and CEO wrote in this testimony in strong support of SB 210: "The prospect that a business financially survives this economic disaster but fails under the weight of litigation is frightening."

Susan Jones, Executive Director of the Ocean City Hotel-Motel-Restaurant Association, also writes in strong support of SB 210: "Now more than ever, we need to come together to pass needed liability protections. We are certain you understand the acute threat of lawsuits during moments of economic vulnerability. We urge you to act now and provide protections to prevent a wave of lawsuits from hampering Maryland's return to a robust economy."

With great urgency on behalf of Maryland's small businesses, I urge a favorable report of Senate Bill 210.

SB 210.pdfUploaded by: Castelli, William
Position: FAV



Senate Bill 210 – COVID-19 Claim – Civil Immunity

Position: Support

Maryland REALTORS® supports SB 210 which provides liability protection for professionals, individuals and businesses that are in compliance with federal, state and local laws and regulations related to safe COVID-19 protocols.

During the last year, REALTORS® have worked with many clients in both the rental and sales markets. Our members have worked with clients looking for housing due to job changes (sometime job losses too). Our members have worked with first-time buyers seeking to take advantage of historically low interest rates. Our members have also worked with families where both parents are now working from home while their children attend school at home and the family needs additional space.

SB 210 helps ensure that professionals and others who are working to provide important services to Marylanders during this difficult year -- often at risk to themselves -- do not face frivolous law suits. The legislation also makes clear that if the individual is not abiding by the federal, state and local laws and regulations regarding COVID-19 by engaging in gross negligence or intentional wrongdoing, then the individual is not immune from civil liability related to COVID-19.

The Maryland REALTORS® believe SB 210 is an appropriately targeted bill extending liability protection to individuals operating in compliance with the many federal, state, and local directives on COVID-19 and we encourage a favorable report.

For more information contact bill.castelli@mdrealtor.org, susan.mitchell@mdrealtor.org, or lisa.may@mdrealtor.org



2021 Testimony - SB 210 - COVID-19 Claim - Civil I Uploaded by: DeLong, Ashton



Liability Insurance Society of Maryland

Bill: Senate Bill 210 – COVID-19 Claim – Civil Immunity

Date: January 26, 2021

Position: SUPPORT

Bill Summary

Senate Bill 210 provides individuals, business entities, government entities, health care providers, health care facilities, schools, and other legal entities (collectively "Person") with immunity from private causes of action related to the exposure or potential exposure to SARS-CoV-2 and the Coronavirus Disease 2019 (collectively "COVID-19") unless the Person acts with gross negligence or intentional wrongdoing. For a Person to qualify for immunity, the Person must have acted in compliance with all federal, state, and local statutes, rules, regulations, executive orders, and agency orders related to COVID-19; but isolated, minor deviations from federal, state, and local laws that are unrelated to the injury claimed will not strip the Person of immunity. Lastly, Senate Bill 210 only applies to causes of action arising between March 5, 2020, and 180 days after the expiration or rescission of Maryland's March 5, 2020 Declaration of State of Emergency and Existence of Catastrophic Health Emergency-COVID-19.

Medical Mutual's Position

As a mutual company, Medical Mutual is owned by its physician policyholders, and it is our mission to provide quality medical professional liability insurance to Maryland physicians. Our policyholders are not only physicians, but a great deal of them are also small business owners. They own their practices and employ Maryland medical and administrative staff. During this ongoing COVID-19 pandemic, and like businesses across the state, many of our physician policyholders had to temporarily close, and some are just getting back to treating patients at prepandemic levels.

In enacting Senate Bill 210, Maryland would follow a number of its sister states by recognizing the extraordinary circumstances presented by the COVID-19 pandemic and the need to infuse legal certainty into a recovering economy. This bill does not provide immunity for an infinite period and, instead, narrowly applies to causes of action arising from March 5, 2020, to 180 days after the expiration or rescission of the March 5, 2020 Declaration of State of Emergency and Existence of Catastrophic Health Emergency-COVID-19. In our view, Senate Bill 210 strikes the proper balance of providing targeted protections for those following federal, state, and local

law while allowing actions to proceed against those who have acted with gross negligence or willful misconduct.
For the reasons contained herein, Medical Mutual respectfully requests a <i>FAVORABLE</i> report of <i>Senate Bill 210</i> .
For more information contact: Cheryl F. Matricciani / cmatricciani @ weinsuredocs.com Ashton DeLong / adelong @ weinsuredocs.com
(410) 785-0050

MSDA Supports SB 210 - COVID 19 Claim - Civil Immu Uploaded by: Doherty, Daniel

The Maryland State Dental Association Supports SB 210 – COVID-19 Claim Civil Immunity

Respectfully submitted by Daniel T. Doherty, Jr. on behalf of MSDA

The impact of the COVID 19 pandemic has negatively impacted everyone, especially health care providers and facilities. For 52 days Maryland dental offices had to be closed except for emergencies. In answer to a call for needed PPE, many dental offices during this period of closure donated their PPE supplies to various health facilities. However, once the Governor ordered that dental offices could reopen, many dentists found a shortage of PPE, and what was available was being offered at huge increases in cost.

Despite these closures and shortages of PPE, dentistry responded to the needs of their patients, treating them using the best infection control protocols possible under these circumstances. Infection control under COVID 19 is especially difficult in dentistry. Dental treatment by its very nature crates aerosols which make the transmission of COVID 19 a higher risk than in other health professions. Further, dental treatment is always delivered to persons who are not masked.

Unfortunately delivering essential dental care to unmasked patients during this pandemic makes dental providers potentially a target for COVID 19 claims. Despite the current evidence that supports the effectiveness of dental infection protocols, the risk of COVID claims is not insubstantial. Dentists and all of the other health care providers who have continued to treat patients during these trying times are entitled to protection from claims of exposure, or potential exposure to COVID 19, or claims that their sanitation and infection control protocols failed in a particular instance.

SB 210 provides necessary immunity from civil liability to dentists and other providers who have acted in compliance with applicable statutes, rules, regulations, executive and agency orders. This immunity applies only to claims that arose between March 5, 2020 and 180 days after the expiration or recission of the Governor's Proclamation of March 5, 2020. This immunity will not apply when the person's actions amount to gross negligence or intentional wrongdoing.

For these reasons the Maryland State Dental Association urges that SB 210 be given a favorable report.

Submitted by: Daniel T. Doherty, Jr. January 26, 2021

SB210 COVID-19 Claim - Civil Immunity.pdf Uploaded by: Doyle, Lori



Testimony on SB 210 COVID-19 Claim – Civil Immunity

Senate Judicial Proceedings Committee
January 26, 2021

POSITION: SUPPORT

The Community Behavioral Health Association of Maryland (CBH) is the leading voice for community-based providers serving the mental health and addiction needs of vulnerable Marylanders. Our 95 members serve the majority of those accessing care through the public behavioral health system. CBH members provide outpatient and residential treatment for mental health and addiction-related disorders, day programs, case management, Assertive Community Treatment (ACT), employment supports, and crisis intervention.

The COVID pandemic has been extremely hard on all healthcare providers and community behavioral health providers are no exception. At a time when hospitals and large healthcare systems were challenged to find and provide sufficient personal protective equipment (PPE) for their clients and staff, our much smaller and lesser-resourced providers struggled for months to find and supply adequate PPE. In fact, there are factors that raised the risk exposure for community behavioral health providers beyond those of other healthcare entities.

The population we serve is at higher risk of COVID infection.

A recent Lancet article highlighted research showing that those with a mental health diagnosis are 65% more likely to contract COVID than those without a mental health diagnosis. In addition, many of the individuals we serve with serious mental illness have difficulty in complying with mask wearing, social distancing, and hygiene recommendations that lessen the threat of contracting the virus.

Our services include congregate living arrangements and services provided in clients' homes.

One of the most critical services we offer is residential rehabilitation. These programs can vary from housing anywhere from three to sixteen individuals. The programs are staffed up to 24-hours a day in the most intensive settings. Since these settings are houses in the community, they tend not to have unused space for social distancing or quarantining. Providers have reduced admissions in hopes of keeping clients and staff safe but there is only so much flexibility in these settings.

Our direct care staff often work more than one job to make ends meet.

Our rates are set by the Maryland Medicaid program and until recently, had not been adjusted for inflation on any regular basis. Salaries paid to our direct care workers are low, forcing many to work second or third jobs, often in other human service capacities, such as nursing home aides. Working multiple human service jobs increases the risk of contracting and spreading the COVID virus.

Our organizations have done the best they could under extremely trying circumstances. It would prove a serious economic burden for them to defend against claims related to COVID that they had little or no ability to prevent. For these reasons we urge a favorable report on SB 210.

For more information contact Lori Doyle, public policy director, at 410-456-1127.

SB 210 - JPR 01-26-2021 - MDC FAV.pdf Uploaded by: Duvall, Gardner



MARYLAND DEFENSE COUNSEL, INC.

Promoting justice. Providing solutions.

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DRI YOUNG LAWYERS LIAISON

Thomasina E. Poirot

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Senate Judicial Proceedings Committee SB 210 - COVID-19 Claim - Civil Immunity

> **Position: Favorable January 26, 2021**

Maryland Defense Counsel, Inc., (MDC) urges passage of SB 210 concerning liability for COVID-19. COVID-19 is a crisis unique in the life of any of us, not just because it is a pandemic but because the disease arose quickly with no chance for society to determine what constituted due care in the reasonable avoidance of exposure to the Novel Coronavirus.

Accordingly, SB 210 should be viewed as a legislative determination that the ordinary elements of a negligence claim never applied to COVID-19. Prior to the time of governmental action and regulations, there was no opportunity for a societal consensus to arise concerning due care regarding Novel Coronavirus. Likewise, the General Assembly can and should determine that there is no standard for determining the causation questions of reasonable foreseeability. Finally, standards for the defenses of assumption of risk and contributory negligence have had no chance to form. These critical elements of any negligence claim simply do not apply to Novel Coronavirus exposures during the state of emergency, and the General Assembly has the power to so state.

Thus, retroactive denial of an accrued cause of action does not apply if the General Assembly determines that no cause of action exists in this unprecedented circumstance. This is the proper decision in this situation, as is recognizing a cause of action for non-compliance with government mandates which results in cases of COVID-19, or action which is gross negligence or intentional wrongdoing.

Fortunately, this state of emergency will be lifted at some uncertain time in the future. MDC respectfully suggests that lifting the state of emergency will be too abrupt and unpredictable to instantly change the landscape for COVID negligence, so that a transition period of continued limited liability makes sense. That period may reasonably be less than the 180 days stated in SB 210, indicating that some shorter period of time might be adopted.

For additional information, please contact:

Gardner Duvall, 410 347-9417, gduvall@wtplaw.com

SB 210 Covid Immunity Support Jan 26 .pdf Uploaded by: Egan, Nancy

Nancy J. Egan, State Government Relations Counsel Nancy.egan@APCIA.org Cell: 443-841-4174

Testimony of American Property Casualty Insurance Association (APCIA)

Senate Judicial Proceedings Committee

Senate Bill 210

COVID-19 Claim - Civil Immunity January 26, 2021

Letter of Support

The American Property Casualty Insurance Association (APCIA) represents more than 1200 insurers and reinsurers that provide critically important insurance protection throughout the U.S. and world. In combination, our members write 60% of the U.S. property casualty market. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe. In Maryland, our members write 66.6% of all written premium. APCIA appreciates the opportunity to provide written comments in support of Senate Bill 210.

Thousands of COVID-19 related lawsuits have been filed against businesses including small businesses, shopping centers, restaurants, manufacturers, hotels, nursing homes, medical providers, universities, schools, and more. These numbers increase daily and are a tremendous drag on an already fragile economy. Even though the COVID-19 virus is universally circulating, businesses and individuals are being accused of spreading it notwithstanding their efforts to conform to government guidance or direction. Businesses of all sizes are working hard to protect their employees and customers from Covid-19.

APCIA supports the concepts in Senate Bill 210 the following reasons. First, this proposal would only apply to those who have <u>made or make good faith efforts</u> to make their operations and customers safer. Second, it provides protections for front line health care workers who are risking their own lives as they serve others. Third, this proposal expressly preserves state workers' compensation law and protections.

For these reasons, the APCIA urges the Committee to provide a favorable report on Senate Bill 210.

¹ 1 COVID-19 Complaint Tracker, Hunton Andrews Kurth (12.3.20) at https://www.huntonak.com/en/covid-19-tracker.html

MTBMA & MAA SB210 Testimony .pdf Uploaded by: Evans, Hayley





Senator William C. Smith, Jr. Judicial Proceedings Committee 2 East, Miller Senate Office Building Annapolis, MD 21401

FAVORABLE

January 21, 2021

RE: SB 210-FAVORABLE- COVID-19 Claim - Civil Immunity

Dear Chairman Smith and Members of the Senate Judicial Proceedings Committee:

The Maryland Transportation Builders and Materials Association ("MTBMA") and the Maryland Asphalt Association ("MAA") collectively represent tens of thousands of Marylanders who operate in the areas of transportation construction, production and engineering. Together, for nearly 100 years these organizations have served as the voice of the transportation construction industry. The mission of both MTBMA and MAA is to encourage, develop, and protect the prestige of the transportation construction and materials industry in Maryland by establishing and maintaining respected relationships with federal, state, and local public officials. We proactively work with regulatory agencies and governing bodies to represent the interests of the transportation industry, and also advocate for adequate state and federal funding for Maryland's multimodal transportation system.

We would like to share our strong support for SB210. As an industry, we have been working very hard to ensure the safety of our employees and members. As the COVID-19 pandemic continues, we will continue to abide by all of the rules and regulations that the State has put in place to protect our people. Our industry supports the initiatives that will help us safely get through this unprecedented time. However, sometimes the spread of this virus is inevitable, even when all of the guidelines are being properly followed. Because of this, we strongly urge you to pass SB 210. As we learn more about this virus and how it spreads, it would be unjust to hold companies liable for something outside of their knowledge or control. We will continue to listen to the experts and government officials on how to best protect our communities, and we ask that you help us in protecting our industry from liability claims by supporting this bill.

We thank you for your time and consideration of this bill and ask you to pass SB 210.

Michael Sakata

Sincerely

President & CEO, MTBMA

Marshall Klinefelter

President, MAA

Support of SB 210 - COVID-19 Claim - Civil Immunit Uploaded by: Ferguson, Colby

3358 Davidsonville Road • Davidsonville, MD 21035 • (410) 922-3426

January 26, 2021

To: Senate Judicial Proceedings Committee

From: Maryland Farm Bureau, Inc.

Re: Support of SB 210 - COVID-19 Claim - Civil Immunity

On behalf of our member families, I submit this written testimony in support of SB 210, legislation that would make it that if a business, government, non-profit, school or healthcare facility was abiding by federal, state, local statutes, rules, regulations, executive orders and agency orders related to COVID-19, they would be immune from civil liability for a COVID-19 claim, unless there is gross negligence or intentional wrongdoing.

Maryland agriculture is made up of thousands of small farm businesses. Many of these farms have moved into a direct to the consumer type of agriculture operation. One of the many concerns that farmers face during this COVID-19 pandemic is the possibility of being sued even if they were following all the guidelines. This bill would help address this concern and help small businesses feel more comfortable to open back up.

MARYLAND FARM BUREAU SUPPORTS SB 210 AND ENCOURAGES A FAVORABLE REPORT.

Colby Ferguson

Director of Government Relations

Ga) Cly Z

For more information contact Colby Ferguson at (240) 578-0396

SB0210 - 1.26.21 -- COVID-19 Claim - Civil Immunit

Uploaded by: Fry, Donald

TESTIMONY PRESENTED TO THE SENATE JUDICIAL PROCEEDINGS COMMITTEE

SENATE BILL 210 - COVID-19 Claim - Civil Immunity

Sponsor: Senators West, Carozza, Hester, and Peters

January 26, 2021

DONALD C. FRY PRESIDENT & CEO GREATER BALTIMORE COMMITTEE

Position: Support

The Greater Baltimore Committee (GBC) supports Senate Bill 210, which provides civil immunity from liability from a COVID-19 claim to a person who acts in compliance with certain statutes, rules, regulations, executive orders, and agency orders, unless the person acted with gross negligence or intentional wrongdoing.

The coronavirus outbreak is a novel and unprecedented event. The sudden emergence of the pandemic coupled with a growing evolution of medical knowledge surrounding the coronavirus' transmutability and safety measures has created an environment where the definitions of "safe practices" can rapidly change.

Senate Bill 210 provides immunity from civil liability for a COVID-19 cause of action subject to certain limitations. The proposal does not apply to administrative proceedings or civil actions brought by state or local government to enforce state statutes and regulations, executive orders, or state agency orders applicable to COVID-19.

Without question, every individual should have the right to pursue a legitimate claim for personal injuries caused by the negligence of another person or entity. However, in this time of unpredictability and uncertainty, a reasonable standard of culpability is needed that is consistent with the unique nature of the current pandemic.

The provisions contained in SB 210 provide liability protection to persons, business entities, and other legal entities if they had complied with all federal, state, and local COVID-related regulations and ordinances at the time of the conduct or risk that allegedly caused the harm. The proposed legislation <u>does not</u> serve as a liability shield protecting those who have acted with gross negligence or with intentional wrongdoing.

The Greater Baltimore Committee's report entitled <u>Gaining a Competitive Edge: Keys to Economic Growth and Job Creation in Maryland</u> identified competitive costs of doing business as one of the core pillars of a competitive business environment. Subjecting a business to the risk of compensatory damages or incurring the costs of defending itself against claims despite having fully complied with federal, state and local regulations and ordinances does not advance a competitive business climate.

A healthy business environment demands policies that do not impose unreasonable and unnecessary costs of doing business. Exposing Maryland businesses to pecuniary damages despite full compliance with all laws that have been enacted or regulations and ordinances promulgated is an unnecessary and unwarranted burden.

The GBC's 2021 Legislative Priorities calls on the Maryland General Assembly to adopt policies that accelerate economic recovery to ensure businesses can weather the pandemic and are positioned to recover once it has been contained.

Senate Bill 210 is consistent with that priority and provides needed protection for businesses, including small and minority businesses, to survive a global pandemic that has threatened their economic stability.

For these reasons, the Greater Baltimore Committee urges a favorable report on Senate Bill 210.

The Greater Baltimore Committee (GBC) is a non-partisan, independent, regional business advocacy organization comprised of hundreds of businesses -- large, medium and small -- educational institutions, nonprofit organizations and foundations located in Anne Arundel, Baltimore, Carroll, Harford, and Howard counties as well as Baltimore City. The GBC is a 66-year-old, private-sector membership organization with a rich legacy of working with government to find solutions to problems that negatively affect our competitiveness and viability.

MBIA Testimony SB 210.pdf Uploaded by: Graf, Lori Position: FAV



January 26, 2021

The Honorable William C. Smith Jr. Senate Judicial Proceedings Committee Miller Senate Office Building, 2 East Wing 11 Bladen St., Annapolis, MD, 21401

RE: SB 210 COVID-19 Claim - Civil Immunity

Dear Chairman Smith:

The Maryland Building Industry Association, representing 1,100 member firms statewide, appreciates the opportunity to participate in the discussion surrounding SB 210 COVID-19 Claim - Civil Immunity. MBIA Supports the Act in its current version.

This bill would Provides immunity from civil liability for a Covid-19 claim to a person who acts in compliance with statues and rules regarding COVID -19 precautions unless that person acted with gross negligence or with the intent to commit intentional wrongdoing.

MBIA supports the efforts to limit liability for unintentional violations of COVID-19 efforts. Due to the ongoing pandemic and the fluctuating rates of infection public policy regarding COVID-19 has changed multiple times of necessity as lawmakers gain new information and the pattern and spread of the virus becomes more predictable. This information is often difficult to immediately convey to individuals and institutions that it effects and that makes it difficult even for people that want to remain in compliance to do so. It is important that people have the opportunity to learn how to apply public safety measures in their own lives without the fear of punishment for minor mistakes. It incentivizes people to do their best to maintain public health while eliminating part of the undercurrent of fear and hardship that the pandemic has unfortunately been so successful at fostering.

For these reasons, MBIA respectfully requests the Committee give this measure a favorable report. Thank you for your consideration.

For more information about this position, please contact Lori Graf at 410-800-7327 or lgraf@marylandbuilders.org.

Senate Judicial Proceedings Committee cc:

SB 210_COVID 19 Claim_Civil Immunity_FAV.pdf Uploaded by: Griffin, Andrew



LEGISLATIVE POSITION:
Favorable
Senate Bill 210
COVID-19 Claim-Civil Immunity
Senate Judicial Proceedings Committee

Tuesday, January 26, 2021

Dear Chairman Smith and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 5,000 members and federated partners, and we work to develop and promote strong public policy that ensures sustained economic recovery and growth for Maryland businesses, employees, and families.

Businesses of all types and sizes, educational institutions and nonprofit organizations are working hard to protect employees, customers, students, and everyday Marylanders from exposure to COVID-19 in an environment often filled with incomplete and inconsistent information. The growing risk of opportunistic lawsuits against these organizations poses a significant barrier in our ability to reignite Maryland's economy.

As the private sector contributes to COVID-19 response, it faces liability challenges. As a result, businesses require protection from frivolous lawsuits so they can get Maryland back on the path to economic recovery. Without it, they face unfounded threats of legal action that could wind up costing thousands of dollars at a time when they need every financial resource available to keep their doors open and Marylanders employed.

In the absence of federal action, state governments must act to shield business owners from lawsuits unless plaintiffs can prove a business willfully failed to develop and implement a plan to reduce the risk of COVID-19.

Employers following proper government and health department guidance should not be sued out of business. Employers need assurance that when they do the right thing, and follow the advice of public health experts, they will not face more financial hardships from unwarranted lawsuits.

Relief should be temporary and targeted. Gross negligence and bad actors should be held accountable. The Chamber and its members are simply asking for temporary 'safe harbor' protections, not blanket immunity.

As of December 11, 2020, 20 states and the District of Columbia have passed some type of COVID-19 liability protections from tort claims. (AK, GA, ID, IA, KS, KY, LA, MI, MS, NH, NV, NC, OH, OK, PA, SC, TN, UT, VA, WY). One state has enacted COVID liability protections for businesses through EO (Alabama). Minnesota currently has legislation pending for COVID liability protections for businesses and healthcare facilities. This means roughly half (22) of the states have acted or are planning to take action to grant liability protections to businesses from COVID related claims.

SB 210 provides that businesses, educational institutions, and health care facilities that act in compliance with all federal, state, and local statutes, rules and regulations, executive and agency orders related to COVID-19 shall be held immune from civil liability for a COVID-19 claim unless gross negligence or intentional wrongdoing can be proven. If passed, the temporary protections would apply only to claims that arose between March 5, 2020 and 180 days after the expiration or recission of the Governor's Declaration of the State of Emergency.

As business owners in Maryland continue through the process of reopening and economic recovery, it is imperative that the legislature establishes protections from the threat of lawsuits that exploit the already damaging effects of COVID-19.

For these reasons, the Maryland Chamber of Commerce respectfully requests a **favorable report** on **SB 210.**

SB 210 – COVID-19 Liability Immunity - Testimony.p Uploaded by: Hall, Charles



January 26, 2021

Re: The American Kennel Club Supports Senate Bill 210 - Liability Protection

Dear Chair Smith and Members of the Senate Judicial Proceedings Committee:

The American Kennel Club (AKC) provides this written testimony on behalf of our 77 local constituent dog clubs in Maryland and the Responsible Dog Owners of Maryland (RDO-MD) to express our support and appreciation to Senator Chris West for sponsoring this bill which should protect our local Maryland dog clubs from liability when safely hosting events in the state.

The American Kennel Club (AKC) was established in 1884 to promote the study, breeding, exhibiting, and advancement of purebred dogs. Today, the AKC, along with our Maryland dog clubs, are dedicated to promoting responsible dog ownership and breeding throughout the state, including hosting dog events such as breed conformation shows, field trials, obedience trials, and performance events that focus on a dog's ability to perform jobs for which its breed was originally developed.

AKC licensed and sanctioned 549 events in the state of Maryland, in which more than 65,100 dogs participated. Surveys demonstrate that exhibitors at AKC conformation dog shows spend an average of \$685 per show weekend. This means spending by AKC dog show exhibitors for a show weekend could inject more than \$1.7 million into the local economy. And because AKC dog shows are an educational and family-friendly event, large spectator gates can generate additional revenues for cities and towns statewide.

Obviously COVID-19 impacted the ability to host events throughout much of 2020 and many clubs are uncertain as to when they may restart hosting event. During this time, in an effort to ensure the safety of exhibitors and animals, the AKC has provided our clubs with extensive guidelines to be used in conjunction with CDC and state COVID-19 guidelines to follow when hosting events and shows.

While one can infer that Senate Bill 210 would extend liability protection to include premises owned or managed by a person, and activities managed, organized, or sponsored by a person, it is not clearly mentioned in the bill. Therefore, we support this bill but would like to request that an amendment be added to make it clear that the liability protection includes premises owned or managed by a person, and activities managed, organized, or sponsored by a person when holding events in the state if someone chooses to not comply with reasonable guidelines established to prevent the spread of COVID-19.

We encourage a favorable report on this bill has it would be a great benefit to local dog clubs and the numerous events they host, which in turn have a significant positive impact on Maryland communities.

Thank you for reviewing and considering my testimony.

Charley Hall

CharleyHoll

Legislative Analyst/Community Outreach Coordinator

American Kennel Club

t: 919-816-3971 | e: charles.hall@akc.org

SB 210 - MACPA Written SUPPORT.pdf Uploaded by: Halpern, MB



Jan. 22, 2021

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

RE: SB 210 COVID-19 Claim - Civil Immunity - SUPPORT

Dear Chairman Smith and members of the committee.

The Maryland Association of CPAs represents nearly 9,000 Certified Public Accountants throughout the state. As trusted advisors to business, nonprofit, and governmental clients, CPAs are keenly aware of the unprecedented pandemic-related challenges facing Maryland's economy and its workforce. The accounting profession and the MACPA have been tirelessly working to improve public understanding of how key provisions in coronavirus relief legislation can be utilized to support small businesses and bolster Maryland's economic recovery.

We look forward to when many of these businesses, nonprofits, and public services begin to reopen or restart, yet we are concerned about a wave of meritless coronavirus-related lawsuits against employers trying their best to operate safely in an uncertain environment. Employers and employees must both feel safe and confident about returning to work.

SB 210 is a bipartisan bill that will provide temporary and targeted 'safe harbor' protections that do not diminish key worker protections. Maryland businesses of all types and sizes are working hard to protect employees, customers, and students from exposure to COVID-19. We believe SB 210 offers fair and reasonable safeguards to protect the health of employees and shield business owners from unnecessary and unfair lawsuits so that they can continue to contribute to a safe and effective recovery from this pandemic.

We appreciate the opportunity to offer these comments and request a favorable opinion for SB 210.

Sincerely,

J. Thomas Hood, III, CPA CEO & Executive Director

cc: Nick Manis, Manis Canning & Associates

COVID Civil Immunity SB210 Support Letter 012621.p Uploaded by: Jones, Susan



HOTEL · MOTEL · RESTAURANT · ASSOCIATION · INC.

TESTIMONY OFFERED ON BEHALF OF THE OCEAN CITY HOTEL-MOTEL-RESTAURANT ASSOCIATION

IN SUPPORT OF SB210 COVID-19 Claim - Civil Immunity Before the Judicial Proceedings Committee

January 26, 2021

On behalf of Ocean City hospitality industry, we respectfully request your support of SB210. These essential protections would safeguard against unfair lawsuits so businesses can continue to contribute to a safe and effective economic recovery. We believe this legislation is critical to recovery and should be enacted as soon as possible.

Our members have continued to adapt in creative ways to provide a safe place to work and visit. Through their perseverance, many have been successful in keeping workers employed and our local tourism economy afloat. Our hospitality businesses continue to agonize that despite doing their best to follow government guidelines, they will be forced to defend against frivolous lawsuits. Unfortunately, this concern has already begun to materialize around the nation. Corporations are restricting business travel and not putting their employees back on the road until liability protections are in place.

Throughout this crisis, Maryland businesses and government have proven that we can come together for the good of all. Now, more than ever, we need to come together to pass needed liability protections. As lawmakers, we are certain you understood the acute threat of lawsuits during moments of economic vulnerability. We urge you to act now and provide protections to prevent a wave of lawsuits from hampering Maryland's return to a robust economy.

Protecting Maryland businesses allows us to stay afloat and in turn protects jobs. The OCHMRA respectfully requests your support of SB210. Thank you for your time.

Sincerely,

Susan L. Jones Executive Director

Maryland Catholic Conference_FAV_SB210.pdf Uploaded by: Kraska, Jenny



ARCHDIOCESE OF BALTIMORE † ARCHDIOCESE OF WASHINGTON † DIOCESE OF WILMINGTON

January 26, 2021

Senate Bill 210

COVID-19 Claim - Civil Immunity

Senate Judicial Proceedings Committee

Position: SUPPORT

The Maryland Catholic Conference represents the mutual public-policy interests of the three (arch)dioceses serving Maryland, including the Archdiocese of Baltimore, the Archdiocese of Washington, and the Diocese of Wilmington. We offer this testimony in support of Senate Bill 210.

Senate Bill 210 would provide immunity from civil liability for a COVID-19 claim to a "person", which includes, but is not limited to 501(c)(3) organizations and schools, who acts in compliance with certain statues, rules, regulations, executive orders, and agency orders, unless the person acted with gross negligence or intentional wrongdoing.

During this pandemic so many entities have stepped up and developed innovative ways to permit them to continue to provide critical services, supplies and education and have done so in a way that is safe and protects those they are serving. Catholic parishes, schools and charities have gone above and beyond to provide for the needs of so many in the communities they serve.

This pandemic is an unprecedented situation and despite the best efforts of entities to comply with public health guidance and executive orders many entities are concerned that they will be forced to defend themselves from what could be frivolous lawsuits that, while perhaps ultimately unsuccessful, would be prohibitively costly to defend.

Senate Bill 210 is an important measure to help ensure that "persons", as defined in this legislation, can continue to fight the pandemic while also keeping people safe.

For these reasons, we urge a favorable report on Senate Bill 210.

SB 210 pdf.pdfUploaded by: McCauley, Kirk
Position: FAV



January 21, 2021

Chairman: William C. Smith Jr.

Members of Judicial Proceedings Committee

RE: SB 210

Position: Favorable

This bill is extremely limited in time and only protects those that are not negligent. It protects not only businesses but individuals who have stayed the course so we would have essentials and health care during these dark days of COVID !9.

Insurance costs will escalate, and countless hours will be lost negotiating unwarranted civil actions unless immunity is given to those businesses and individuals that have done everything proper and through no fault, are being hit with unwarranted civil suits.

Please Give SB210 a Favorable Report

Kirk McCauley WMDA/CAR 301-775-0221 kmccauley@wmda.net

MDDCCUA SB210- COVID-19 Claim - Civil Immunity-V2. Uploaded by: Murray, Rory



Chairman William C. Smith, Jr. 2 East Miller Senate Office Building Annapolis, Maryland 21401

SB210: COVID-19 Claim – Civil Immunity

Testimony on Behalf of: MD|DC Credit Union Association

Position: Support

Chairman Smith, Vice-Chair Waldstreicher, and Members of the Committee:

The MD|DC Credit Union Association, on behalf of the 77 Credit Unions and their 2.2 million members that we represent in the State of Maryland, appreciates the opportunity to testify on this legislation. Credit Unions are member-owned, not-for-profit financial cooperatives whose mission is to educate and help members achieve financial well-being. We respectfully support this bill.

Credit unions are essential businesses that have remained open and operating since the start of the pandemic. Credit unions have done everything possible to limit COVID-19 exposure for their members and staff while ensuring that their members feel confident their financial needs are being met. At times this balance has been difficult, but credit unions have risen to the challenge.

Laws, regulations, and executive orders from the Federal, State, and Local governments have guided businesses when determining what measures to implement to stay safe. However, as we all know at this point, exposure remains a constant threat. We support this bill because it requires that businesses comply with all applicable laws and regulations but acknowledges that people may be exposed even with compliance. Businesses may be targets for lawsuits simply because a person visited the business in a specific timeframe before testing positive for COVID.

To limit unfounded lawsuits and protect businesses that are taking precautions and acting in the best interest of their consumers and employees alike, this bill states that unless a person's actions amount to gross negligence or intentional wrongdoing, they are immune from civil liability. We request a favorable vote on this bill.

Please reach out to me at jbratsakis@mddccua.org or our VP of Advocacy, Rory Murray, at murray@mddccua.org with comments or questions.

Thank you!

Sincerely,

John Bratsakis

alen Bustan

President/CEO MD|DC Credit Union Association

NFIB - COVID-19 Civil Immunity - SB210 (2021).pdf Uploaded by: O'Halloran, Mike



NFIB-Maryland – 60 West St., Suite 101 – Annapolis, MD 21401 – www.NFIB.com/Maryland

TO: Senate Judicial Proceedings Committee

FROM: NFIB - Maryland

DATE: January 26, 2021

RE: SUPPORT SENATE BILL 210 – COVID-19 Claim – Civil Immunity

Founded in 1943, NFIB is the voice of small business, advocating on behalf of America's small and independent business owners, both in Washington, D.C., and in all 50 state capitals. With more than 250,000 members nationwide, and nearly 4,000 here in Maryland, we work to protect and promote the ability of our members to grow and operate their business.

On behalf of Maryland's small businesses, NFIB supports Senate Bill 210 – legislation that provides businesses, educational institutions, non-profits, and health care facilities that act in compliance with federal, state, and local statutes, rules, regulations, executive and agency orders related to COVID-19 shall be immune from civil liability for a COVID-19 claim unless there is gross negligence or intentional wrongdoing by the defendant.

Civil liability from COVID-19 exposure is a real threat to nearly every person, business, and non-profit in Maryland. Left unaddressed, civil liability from COVID-19 exposure poses a serious hurdle to our state's economic recovery. Without the passage of SB210, Maryland small business owners face unfounded threats of legal action that could wind up costing thousands of dollars at a time when they need every financial resource available to keep their doors open and workers employed. In fact, legal experts estimate businesses will spend approximately \$20,000 to \$50,000 in just legal fees defending themselves from a lawsuit.

Small businesses cannot afford these additional costs. Many would be forced to close their doors forever and file for bankruptcy. All of this arising from a pandemic they had no control over and like everyone else were doing their best to keep their employees, customers, and clients safe.

There are two facts of this legislation that even opponents must acknowledge. First, the bill preserves the right of anyone to file a cause of action against an entity that person feels is responsible for exposing the plaintiff to COVID-19. This is not a blanket immunity bill. Second,

SB210

the protections provided in this bill expire 180 days after the expiration or recission of the Governor's proclamation of March 5, 2020, "Declaration of State of Emergency and Existence of Catastrophic Health Emergency – COVID-19." Senate Bill 210 will not apply to any future emergency.

Senate Bill 210 still holds "bad actors" accountable. Establishments that willfully disobey health guidelines will still be subject to legal action if an employee or customer was exposed to COVID-19. The protection in this legislation is for the small business that is doing everything they are told will keep themselves, their business, their employees, and customers safe.

Small business owners are worried about this issue. Nearly 70% expressed concern about liability claims increasing as a result of the pandemic, with 38% saying they are "very concerned."¹

For these reasons, NFIB supports SB210 and requests a favorable report.

¹ Source: NFIB Research Center - https://www.nfib.com/content/press-release/coronavirus/nfib-issues-liability-protection-principles-for-americas-small-businesses/

2021 SB0210 Testimony in Support - MTC.pdf Uploaded by: Plaut, Ari



LETTER OF SUPPORT ON BEHALF OF MARYLAND TOURISM COALITION

IN SUPPORT OF SB0210 COVID-19 CLAIM - CIVIL IMMUNITY

Before the Senate Judicial Proceedings Committee, January 26, 2021

Dear Chairman & Committee Members,

My name is Ruth Toomey, Executive Director of Maryland Tourism Coalition, a 50-year old organization that represents the various services, attractions, organizations and accommodations that make up the State's Industry. MTC is the voice of our state's diverse tour and travel community, bringing together the entire industry to enhance business growth and to promote Maryland as a first-class destination for visitors. On behalf of our 1,000+ members, I would like to express our support of SB0210.

Tourism is vital to Maryland's economy! In a typical year, tourism supports 226,000 direct and indirect jobs, making it the 11th largest industry in the state. Visitors to Maryland spend nearly \$18.6 billion in Maryland each year and those same visitors generate close to \$2.6 billion in state and local taxes. Without tourism in the state of Maryland, each household would pay \$1,175 more in local taxes.

But as we all well know, this past year has been anything but typical. Our industry was among the hardest hit due to the pandemic. Many of our members have been forced to close and some are even now unable to reopen. 95% of all tourism businesses are small businesses and many are hanging on by a thread. The immunity this bill provides will help protect businesses from spurious claims that may end up putting them out of business permanently. MTC is in favor of additional protection that gives employers immunity for COVID claims for injuries sustained between 3/5/20 through 180 days after the lifting of the emergency COVID order provided all local, state, and federal rules regarding COVID safety were followed for all our members.

On behalf of the Maryland Tourism Coalition, we respectfully request that you support SB0210.

Sincerely,

Ruth Toomey

Ruth Toomey
MTC Executive Director

SB 210_FAV_bfp on behalf of BOMA.pdf Uploaded by: Popham, Bryson

Bryson F. Popham, P.A.

Bryson F. Popham, Esq.

191 Main Street Suite 310 Annapolis, MD 21401 410-268-6871 (Telephone) 443-458-0444 (Facsimile)

www.papalaw.com

January 22, 2021

The Honorable Chris West Senate Judicial Proceedings Committee 303 James Senate Office Building 11 Bladen Street Annapolis, MD 21401

RE: Senate Bill 210 COVID-19 Claim - Civil Immunity - FAVORABLE

Dear Senator West and Members of the Committee.

I am writing on behalf of the Building Owners and Managers Association (BOMA), to respectfully request an favorable report on Senate Bill 210.

BOMA is a professional trade association that represents the best interests of commercial and real estate owners, real estate professionals and our associate members through effective leadership in advocacy, collection and dissemination of industry information, education, community involvement, membership participation, and professional development.

As the Committee is aware, office and other commercial buildings have a steady stream of persons flowing through them: tenants, visitors, persons providing building services, etc. Each of these individuals is a potential claim for COVID 19 exposure. The prospect of successful litigation may be low; however, the cost of defending lawsuits arising from COVID 19 claims would, at a minimum, be substantial. It could be ruinous for the landlord or any entity against whom such claims are brought. SB 210 provides a commonsense, measured, temporary protection against unwarranted litigation. For that reason, BOMA respectfully requests a favorable report on this legislation.

Very truly yours,

Bryson F. Popham

cc: Kevin Bauer Joan Smith

sb 210_FAV_bfp on behalf of IAB.pdf Uploaded by: Popham, Bryson

Bryson F. Popham, P.A.

Bryson F. Popham, Esq.

191 Main Street Suite 310 Annapolis, MD 21401 www.papalaw.com 410-268-6871 (Telephone) 443-458-0444 (Facsimile)

January 22, 2021

The Honorable Chris West Senate Judicial Proceedings Committee 303 James Senate Office Building 11 Bladen Street Annapolis, MD 21401

RE: Senate Bill 210 COVID-19 Claim - Civil Immunity - FAVORABLE

Dear Senator West and Members of the Committee,

On behalf our client, the Insurance Agents and Brokers of Maryland (IA&B) we wish to register their support for Senate Bill 210.

IA&B is a trade association of independent insurance agencies whose members do business in Maryland.

Early last year, when various businesses sought "essential worker" classification in order to remain in business, insurance producers were among the first to be deemed essential. That classification reflects the importance of their services and of insurance itself to the orderly functioning of our society.

For this reason, there has necessarily been interaction between insurance producers, their clients and others throughout the pandemic. For example, some insured persons needed to visit their agents to pay their insurance premiums. This is merely one example of the types of interactions that insurance producers have experienced in order to provide their essential services.

For the most part, insurance producers are small businesses. Exposing them to litigation arising from COVID 19 exposure claims would likely not be successful, although these small businesses would incur enormous expenses related to such litigation. SB 210 provides commonsense protection for businesses that have complied with the published rules for their operation.

We respectfully urge a favorable report for SB 210.

Very truly yours,

Bryson F. Popham, Esq.

SB 210_FAV_bfp on behalf of MAMIC.pdf Uploaded by: Popham, Bryson

Bryson F. Popham, P.A.

Bryson F. Popham, Esq.

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January 22, 2021

The Honorable Chris West
Senate Judicial Proceedings Committee
303 James Senate Office Building
11 Bladen Street
Annapolis, MD 21401

RE: Senate Bill 210 COVID-19 Claim - Civil Immunity - FAVORABLE

Dear Senator West and Members of the Committee,

I am writing on behalf of the Maryland Association of Mutual Insurance Companies (MAMIC) in support of SB 210.

MAMIC is comprised of 12 mutual insurance companies that are headquartered in Maryland and neighboring states. Approximately one-half of MAMIC members are domiciled in Maryland and are key contributors and employers in their local communities. Together, MAMIC members offer a wide variety of insurance products and services and provide coverage for thousands of Maryland citizens. Although some mutual insurance companies may be large organizations, MAMIC members tend to be small and medium-sized businesses.

MAMIC companies are local insurance providers to their customers. They are close to the customer, and they are small businesses providing their essential services throughout the state of Maryland. MAMIC members know, better than most of us, what the cost of a wave of COVID 19 litigation would be. Even if unsuccessful, the litigation costs alone would be unsustainable.

MAMIC strongly believes that legislation like SB 210 is the only way that our society can measure the right of any citizen to compensation caused by the negligence of others against the likelihood of success of such claims based on exposure to COVID 19. For this reason, MAMIC respectfully requests a favorable report on SB 210.

Very truly yours,

Bryson F. Popham

2021 SB210 COVID-19 Claim Civil Immunity.pdf Uploaded by: Porter, Holly



Educate. Advocate. Innovate.

Date: January 22, 2021

To: Members of the Senate Judicial Proceedings

From: Holly Porter, Executive Director

Re: SB 210 - COVID-19 Claim - Civil Immunity - FAVORABLE

Delmarva Chicken Association (formerly Delmarva Poultry Industry, Inc.), the 1,600-member trade association representing the meat-chicken growers, processing companies and allied business members on the Eastern Shore of Maryland, the Eastern Shore of Virginia, and Delaware strongly supports SB 210 and urges a favorable committee report.

SB 210 makes it clear that if any business, government entity, school or healthcare facility is abiding by all federal, state and local laws, regulations and executive orders specific to COVID-19, they will be protected from civil liability for a COVID-19 claim.

This bill is extremely important for all of our members, from growers to chicken processing companies to our allied partners – all of whom are businesses. From early in the pandemic, our chicken community has acted swiftly to take all measures possible to protect their employees while continue to operate and provide food for all citizens.

As guidance from the federal Centers for Disease Control (CDC) was regularly updated, our chicken company members also update practices and measures (see attached list). The efforts of the companies were further recognized when CDC and the National Institute for Occupational Safety & Health (NIOSH) visited the plants in May and left very good remarks with only a few minor suggestions. And the measures have worked; while cases of COVID within the communities have risen this fall and winter, they have not within the processing plants and other businesses.

This bill is just one more way of emphasizing that when businesses do the right thing for their employees, they should not have to face the expenses and burdens of frivolous lawsuits.

There was no playbook or processing manual written for this global pandemic. As more knowledge about the virus was found, guidance changed. And as that guidance change, businesses adapted as quickly as possible. For those businesses that clearly followed the rules and guidance, they should not be penalized and offering civil immunity is important.

We urge a **favorable** vote on SB 210.

Should you have any additional questions, please feel free to contact me at porter@dcachicken.com or 302-222-4069 or Nick Manis, Manis Canning & Associates, 410-263-7882.







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Measures Taken by Chicken Processing Companies to Protect Employees **Administrative Controls**

- Implemented travel restrictions and only allowed essential personnel into the plant
- Encourage employees to stay home if they are not feeling well or believe they may have been exposed to the virus, while still receiving pay and no attendance penalty
- Staggered break times throughout the day, where possible.
- Workers naturally stagger in for each shift. Implemented staggered departing times at the end of each shift
- Company medical professionals had been trained on CDC protocols for COVID-19
- Waiving short-term disability waiting periods for employees who contract COVID-19
- Extended hours for onsite wellness centers
- Offered free on-site COVID-19 testing at the plant for all employees first private companies to offer universal employee testing
- Worked closely with county, state and federal agencies, including site visits by the Centers for Disease Control (CDC) and National Institute of Occupational Safety and Health (NIOSH)
- Each company policy is different, but companies offered paid sick leave, bonus pay, free chicken for employees, made paid time off policies more flexible, and many other ways to show appreciation for workers

Engineering Controls

- Required the use of face masks or face shields, beyond the PPE that is normally worn and
- Increased cleaning, sanitation and fogging frequencies and intensities for equipment and common areas at processing facilities, in additional to strict cleaning regulations as a USDA federally inspected facility.
- Increased frequency and locations of hand washing/sanitation for employees
- Practice social distancing not only in common areas, such as break rooms and cafeterias, but also on production lines where possible
- Added outdoor tents/space in order to social distance for breaks
- Where social distancing is not possible on production lines, companies installed plastic dividers between workstations and clean or replace the dividers between shifts
- Increased air exchanged in the facilities and/or added air purifiers

Other Controls

- Created internal teams focused on COVID response
- Heightened employee screening for any signs of illness, including non-contact temperature checks before entering the plant
- Treating worker safety as a non-competitive issue and sharing best practices





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Communications

- Communicated with employees in a variety of languages and including written, verbally, electronic billboards, flyers, and social media on topics including:
 - **Proper Hand Hygiene**
 - Stop the Spread of Germs
 - What you Should Know about COVID-19 to Protect Yourself and Others
 - Carpooling safety
- Provided employees take-home cleaning supplies as well as information for family members

And to view some of these measures, we encourage you to click here to view a short video produced by the National Chicken Council that shows safety measures inside processing plants, including a Maryland plant.





SB210 Letter to JPR.pdfUploaded by: Presley, Mary Position: FAV



HEARING DATE: January 26, 2021

BILL NO/TITLE: Senate Bill 210 - COVID-19 Claim - Civil Immunity

COMMITTEE: Senate Judicial Proceedings Committee

POSITION: Support

The Maryland motorcoach industry is vital to Maryland providing essential transportation services connecting rural communities, relieving congestion in urban centers with commuter operations, transporting children to school and educational events, and serving as the only means of transportation for travelers on fixed incomes or without cars. We also play a key role in emergency and defense planning. In times of hurricanes and other natural disasters, motorcoaches are a critical to helping evacuate residents, particularly senior citizens. We constantly support our U.S. military by moving troops and their equipment for deployments and training around the country, similar to what we did at the recent inauguration of our 46th president, and our industry plays a direct role in defending the U.S. Capitol and Maryland.

Motorcoaches are essential to Maryland's transportation, supporting the students, military, commuters and residents alike. Now more than ever, the flexibility and reliability of our services should be protected. As we witnessed at the onset of the pandemic private motorcoach carriers' services came to an abrupt halt and their wheel's stopped rolling decreasing their annual revenue by almost 95%. We need to roll again to remain in business.

Protecting our members that are following government guidelines from frivolous lawsuits is a priority of MMA and these lawsuits have the potential to cripple their recovery effort. MMA urges this committee to support the narrow, limited protections offered by SB210 so that we can continue safely transporting Marylanders without worrying about potential frivolous lawsuits.

About Maryland Motorcoach Association(MMA): MMA represents the interests of the Privately Owned Maryland Motorcoach Operators across the state and industry together with our tourism partners, destination marketing organizations, small businesses, coach manufacturers, and equipment suppliers all of whom are counted among our members we strive to promote the efficient and secure transportation of Marylanders across the state and throughout the country transporting students, seniors, military, church groups, commuters, and a multitude of other Marylanders as they go about their day to day business of working and enjoying life in Maryland.

For further information, contact: Mary Presley, Executive Administrator, (c) 571-297-5629 mpresley@marylandmotorcoach.org

SB210_Support_MRA.pdf Uploaded by: Price, Sarah

MARYLAND RETAILERS ASSOCIATION

The Voice of Retailing in Maryland



SB210 COVID-19 Claim – Civil Immunity Judicial Proceedings Community January 26, 2021

Position: Support

Background: SB210 provides immunity to certain businesses against claims for damages caused by exposure to COVID-19.

Comments: The Maryland Retailers Association (MRA) supports SB210, which provides protections for diligent businesses against frivolous claims for COVID-19-related damages. Businesses across the state, particularly essential businesses that have remained open through months of restrictions in order to serve their communities, have been doing everything they can to protect their customers and their employees against the COVID-19 novel coronavirus.

MRA believes that businesses that have followed the letter of the law and complied with all operating directives during the State of Emergency should not be responsible for exposures that may have occurred despite all efforts to operate safely. Efforts to protect the public, including requiring additional cleaning and sanitation, setting up floor markers and one-way aisles, door counting to restrict occupancy, and providing PPE for employees, have driven up operating costs for businesses that are already suffering due to social restrictions. While bad apples should always be held accountable for their actions, businesses that have followed all requirements and gone above and beyond to operate as safely as possible should not have to fear civil claims for exposures that may have occurred outside of their control.

Thank you for your consideration, and we urge a favorable report on SB210.

SB210 - MHLA Testimony - Support.pdf Uploaded by: Rohrer, Amy



SB 210 - Support COVID-19 Claim – Civil Immunity Judicial Proceedings Committee January 26, 2020

Dear Chairman Smith and Members of the Committee:

As the sole statewide trade association dedicated to advocacy for Maryland's lodging industry, with more than 700 hotels totaling 75,000+ rooms, we urge a favorable report on SB 210.

The COVID-19 virus continues to rage throughout Maryland and the country, presenting once-in-a-generation public health and economic challenges. Despite these difficulties, the development and distribution of vaccines give new hope for a future free of the crushing social and economic effects of the virus. Unfortunately, for hotels who have remained on the front lines and continue to serve our communities during this pandemic, the threat of unfair litigation continues to loom. In 2020, over \$23 million was spent by plaintiffs' firms on COVID-19-related lawsuit advertisements, a clear indication that a litigation wave is lurking.

Early in the COVID-19 pandemic, hotels responded to the very appropriate call for face coverings and other protective steps. <u>Safe Stay Guidelines</u>, created by an advisory council comprised of leaders from all segments of the hotel industry in accordance with CDC best practices and insights from leading health and cleaning experts, have been embraced and adopted by the industry. We should not have to worry that our efforts on behalf of our guests, employees and communities-at-large - State and self-driven - will invite costly and unnecessary litigation.

We believe it is incumbent upon you as policy makers to ensure that unfair lawsuits will not hamper those who work to comply with applicable government guidelines. SB 210 is limited in duration and scope in addition to preserving reasonable recourse for those harmed by truly bad actors. Protection from unfair and harmful lawsuits for hotels who continue to serve Maryland communities during this pandemic is critical to recovery for our industry and Maryland's economy moving forward.

Please give a favorable report to SB 210.

Respectfully submitted,

Amy Rohrer, CAE President & CEO

SB0210-JPR_MACo_SUP.pdfUploaded by: Sanderson, Michael



Senate Bill 210

COVID-19 Claim - Civil Immunity

MACo Position: **SUPPORT**To: Judicial Proceedings Committee

Date: January 26, 2021 From: Michael Sanderson

The Maryland Association of Counties (MACo) **SUPPORTS SB 210.** This bill presents a reasonable immunity protection for lawful and proper actions taken during the COVID-19 pandemic – while preserving an avenue for individuals to seek compensation for gross negligence or intentional wrongdoing.

The ongoing COVID-19 crisis that struck Maryland and much of the world in 2020 has posed considerable public health and fiscal challenges. Maryland's response to this unique circumstance must reflect a proper balance of consideration for individuals, but also for businesses and institutions, who have engaged in reasonable contact but nonetheless are connected to the virus's spread.

SB 210 suggests such a balanced approach. Employers of all types were pressed to fashion accommodations for their workplaces – in many cases doing so without clear guidance from federal or other authorities. For the most part, the employer community – including local governments – accomplished their tasks while preserving the safety of employees and their customers, clients, or residents.

However, Maryland's worrisome caseload data shows that the virus's spread has taken many turns, and some precautions may have failed to fully contain its spread. Litigation surely awaits, ranging from the serious to the opportunistic. SB 210 carves out a standard for assessing any lawsuits arising from this impossible situation – holding employers accountable if their conduct amounted to gross negligence or intentional wrongdoing. Countless employers who sought to act reasonably (many of whom are still fighting for their long-term survival) would be spared the uncertainty of a potential wave of COVID-19 lawsuits arising from even the most trivial workplace decisions. These protections would expire after the current health crisis abates.

SB 210 offers reasonable and temporary protections for businesses and other employers for reasonable and emergency-driven decisions made during the 2020 health emergency. For these reasons, MACo requests the Committee give SB 210 a **FAVORABLE** report.

20210122-MDHCC-SB 210_COVID 19 Claim_Civil Immunit Uploaded by: Santos, Carlos



LEGISLATIVE POSITION:

Favorable
Senate Bill 210
COVID-19 Claim-Civil Immunity
Senate Judicial Proceedings Committee

Friday, January 22, 2021

Dear Chairman Smith and Members of the Committee:

Founded in 1986, the Maryland Hispanic Chamber of Commerce is a leading voice for Hispanic and Latino owned businesses in Maryland. We are a statewide coalition of more than 325 members and federated partners, and we work to develop and promote strong public policy that ensures sustained economic recovery and growth for Maryland businesses, employees, and families.

Businesses of all types and sizes, educational institutions and nonprofit organizations are working hard to protect employees, customers, students, and everyday Marylanders from exposure to COVID-19 in an environment often filled with incomplete and inconsistent information. The growing risk of opportunistic lawsuits against these organizations poses a significant barrier in our ability to reignite Maryland's economy.

As the private sector contributes to the COVID-19 response, it faces liability challenges. As a result, businesses require protection from frivolous lawsuits so they can get Maryland back on the path to economic recovery. Without it, they face unfounded threats of legal action that could wind up costing thousands of dollars at a time when they need every financial resource available to keep their doors open and Marylanders employed.

In the absence of federal action, state governments must act to shield business owners from lawsuits unless plaintiffs can prove a business willfully failed to develop and implement a plan to reduce the risk of COVID-19.

Employers following proper government and health department guidance should not be sued out of business. Employers need assurance that when they do the right thing, and follow the advice of public health experts, they will not face more financial hardships from unwarranted lawsuits.

Relief should be temporary and targeted. Gross negligence and bad actors should be held accountable. The Chamber and its members are simply asking for temporary 'safe harbor' protections, not blanket immunity.

As of December 11, 2020, 20 states and the District of Columbia have passed some type of COVID-19 liability protections from tort claims. (AK, GA, ID, IA, KS, KY, LA, MI, MS, NH, NV, NC, OH, OK, PA, SC, TN, UT, VA, WY). One state has enacted COVID liability protections for businesses through EO (Alabama). Minnesota currently has legislation pending for COVID liability protections for businesses and healthcare facilities. This means roughly half (22) of the states have acted or are planning to take action to grant liability protections to businesses from COVID related claims.

SB 210 provides that businesses, educational institutions, and health care facilities that act in compliance with all federal, state, and local statutes, rules and regulations, executive and agency orders related to COVID-19 shall be held immune from civil liability for a COVID-19 claim unless gross negligence or intentional wrongdoing can be proven. If passed, the temporary protections would apply only to claims that arose between March 5, 2020 and 180 days after the expiration or recission of the Governor's Declaration of the State of Emergency.

As business owners in Maryland continue through the process of reopening and economic recovery, it is imperative that the legislature establishes protections from the threat of lawsuits that exploit the already damaging effects of COVID-19.

For these reasons, the Maryland Hispanic Chamber of Commerce respectfully requests a **favorable report** on **SB 210.**

Marco V. Ávila, P.E.

(Marco V. Livila, P.S.

Chairman of the Board & President Maryland Hispanic Chamber of Commerce

SB210_COVID-19 Claim Immunity_Support.pdfUploaded by: Taylor, Allison

Position: FAV



Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc 2101 East Jefferson Street Rockville, Maryland 20852

January 26, 2021

The Honorable William C. Smith, Jr. Senate Judicial Proceedings Committee 2 East, Miller Senate Office Building 11 Bladen Street Annapolis, Maryland 21401

RE: SB 210 – Support

Dear Chair Smith and Members of the Committee:

Kaiser Permanente strongly supports SB 210, "COVID-19 Claim – Civil Immunity."

Kaiser Permanente is the largest private integrated health care delivery system in the United States, delivering health care to over 12 million members in eight states and the District of Columbia. Kaiser Permanente of the Mid-Atlantic States, which operates in Maryland, provides and coordinates complete health care services for approximately 775,000 members. In Maryland, we deliver care to over 450,000 members.

During the coronavirus pandemic, Kaiser Permanente's top priority continues to be keeping our members, staff, and communities safe and healthy. We have instituted new safety protocols and greatly expanded telehealth services, including video, audio, and secure messaging, while also continuing to make health care services available in person for members who need them. We have also immediately implemented new protocols in response to statutes, executive orders, and other COVID-related mandates as they've been enacted.

At the same, and despite our collective good faith and exhaustive efforts to meet the needs of our state and community, facing environmental factors that are outside of our control, we have seen a marked increase among the legal community discussing and advertising the possibility of tort litigation to take advantage of the circumstances of the crisis. We appreciate that this legislation would protect us from some legal liability for acts that may occur in compliance with state and federal mandates. To that end, we urge a favorable report for SB 210.

Thank you for the opportunity to comment. Please feel free to contact Allison Taylor at Allison.W.Taylor@kp.org or (202) 924-7496 with questions.

¹ Kaiser Permanente comprises Kaiser Foundation Health Plan, Inc., the nation's largest not-for-profit health plan, and its health plan subsidiaries outside California and Hawaii; the not-for-profit Kaiser Foundation Hospitals, which operates 39 hospitals and over 650 other clinical facilities; and the Permanente Medical Groups, self-governed physician group practices that exclusively contract with Kaiser Foundation Health Plan and its health plan subsidiaries to meet the health needs of Kaiser Permanente's members.

Kaiser Permanente Comments on SB 210 January 26, 2021

Sincerely,

Wayne D. Wilson

Hagne D. Milson

Vice President, Government Programs and External Relations Kaiser Foundation Health Plan of Mid-Atlantic States, Inc.

MMHA - SB210 - Favorable.pdf Uploaded by: Wiggins, Grason

Position: FAV



Senate Bill 210: COVID-19 Claim – Civil Immunity

Committee: Judicial Proceedings Committee

Date: January 26, 2021

Position: Favorable

This testimony is offered on behalf of the Maryland Multi-Housing Association (MMHA). MMHA is a professional trade association established in 1996, whose members consist of owners and managers of more than 210,000 rental housing homes in over 958 apartment communities. Our members house over 538,000 residents of the State of Maryland. MMHA also represents over 250 associate member companies who supply goods and services to the multi-housing industry.

Senate Bill 210 establishes immunity for businesses against civil liability claims stemming from exposure to COVID-19. To qualify for immunity, businesses must comply with all federal, state, and local statutes, rules, regulations, executive orders, and agency orders related to COVID-19. Further the bill covers only claims that arise between March 5, 2020 and 180 days after the expiration or recession of the COVID-19 state of emergency.

SB 210 is a critical bill that will ensure an effective economic recovery from the COVID-19 pandemic. Businesses have confronted unprecedented complications throughout the pandemic while complying with all federal, state, and local mandates, and SB 210 would enact reasonable measures to ensure that compliant businesses are not further confronted with unnecessary lawsuits.

A significant number of states have enacted legislation to provide some form of civil immunity against COVID-19 claims for businesses. Similar to other states, SB 210 establishes a reasonable timeframe for immunity and requires businesses to comply with all federal, state, and local mandates in order to qualify for immunity. Moreover, SB 210 establishes a reasonable provision in which businesses that are grossly negligent or responsible for intentional wrongdoing will forfeit their immunity from civil claims.

SB 210 will promote economic recovery through reasonable and necessary protection against civil claims stemming from COVID-19. For these reasons, MMHA supports SB 210 and respectfully requests a favorable report from the committee.

Grason Wiggins, MMHA Senior Manager of Government Affairs, 912.687.5745

SB0210_FAV_MedChi, MACHC, MDACEP, MARFY, HPCNM, MD

Uploaded by: Wise, Steve

Position: FAV



MID-ATLANTIC ASSOCIATION OF COMMUNITY HEALTH CENTERS

Serving Maryland and Delaware













TO: The Honorable William C. Smith, Jr., Chair

Members, Senate Judicial Proceedings Committee

The Honorable Chris West

FROM: J. Steven Wise

Pamela Metz Kasemeyer Danna L. Kauffman

DATE: January 26, 2021

RE: SUPPORT – Senate Bill 210 – COVID-19 Claim – Civil Immunity

On behalf of the Maryland State Medical Society, the Maryland Chapter of the American College of Emergency Physicians, the Maryland Chapter of the American Academy of Pediatrics, the Mid-Atlantic Association of Community Health Centers, the Hospice & Palliative Care Network of Maryland, the LifeSpan Network, the Maryland/District of Columbia Society of Clinical Oncology and the Maryland Association of Resources for Families & Youth, we submit this letter of **support** for **Senate Bill 210**.

Senate Bill 210 creates immunity from civil liability for certain persons, including health care providers and business entities against claims related to COVID-19 exposure. The immunity is qualified in that it does not include claims where gross negligence or intentional wrongdoing is shown, and it also requires that the person or entity have complied with federal, state, and local laws related to COVID that were in place at the time.

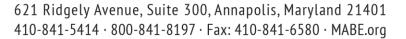
Employers and providers who have struggled through the COVID pandemic have made every effort to comply with applicable laws and regulations, which at times changed by the day. Still, the virus spread and continues to spread almost uncontrollably. Those who would be protected by this bill gave their very best efforts to implement policies and procedures to protect against the virus as directed, despite a shortage of supplies and equipment. They should not emerge from the pandemic, as we all hope we will very soon, only to find themselves facing a barrage of lawsuits alleging fault for someone's exposure to the virus. For these reasons, the above organizations urge the Committee to support Senate Bill 210.

For more information call:

Schwartz, Metz, & Wise, P.A. 410-244-7000

SB 210.COVID Claims Liability Protection.pdf Uploaded by: Woolums, John

Position: FAV





BILL: Senate Bill 210

TITLE: COVID-19 Claim - Civil Immunity

DATE: January 20, 2021

POSITION: SUPPORT

COMMITTEE: Judicial Proceedings Committee

CONTACT: John R. Woolums, Esq.

The Maryland Association of Boards of Education (MABE), representing all of the state's local boards of education, supports Senate Bill 210.

MABE supports this legislation in order to provide much needed liability protection for Maryland's local school systems from lawsuits arising from alleged exposure or potential exposure to COVID-19. This legislation, if passed, would greatly assist local school systems in avoiding and thereby reducing litigation costs involving limited staff resources and legal fees. These funds could be much better invested in the education of our nearly 1 million public school students.

On behalf of local boards, MABE appreciates the reasonable and narrowly tailored approach of this legislation to ensure that no protections from liability are provided to those who have failed to comply with "all federal, state, and local statutes, rules, regulations, executive orders, and agency orders related to COVID-19." Similarly, the bill would provide not immunity, nor should it, from any "administrative proceeding or civil action brought by a state or local government prosecutor or agency to enforce state statutes and regulations, executive orders, or state agency orders applicable to COVID-19." In addition, the scope of the liability protection is limited to the time during which the Governor's "Declaration of State of Emergency and Existence of Catastrophic Health Emergency – COVID-19."

The National School Boards Association and American Association of School Administrators have joined in support of the type of liability protections provided by Senate Bill 210, stating the following in a 2020 letter to the U.S. Congress:

"School system leaders are hard at work planning and preparing for the eventual reopening of schools and the return to in-person instruction. The logistics and considerations are immense. Transportation, providing social distancing and personal protective equipment (PPE) for staff and students, innovative scheduling and staffing patterns, facility preparedness, sanitation, and deep cleaning are just some of the issues that must be addressed for schools to reopen. As school systems prepare to help the country with this essential step in emerging from the pandemic, they are concerned also that despite their best efforts to follow applicable guidelines, they will be forced to defend against an onslaught of lawsuits. The prospect of such litigation and significant related costs are a very real concern."

Again, local boards are not seeking broad tort reform or requesting any permanent change to the State's sovereign immunity law. MABE supports Senate Bill 210 because it would grant much needed temporary immunity for claims arising from possible COVID-19 exposure in the school setting unless such exposure is the result of gross negligence or willful misconduct on the part of public schools or school officials.

For these reasons, MABE requests a favorable report on Senate Bill 210.

SB 210.FWA.MACS.pdfUploaded by: Kallins, Lauren Position: FWA

ph 410-740-5125 ph 888-838-6227 fax 410-740-5124

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Daphne Pallozzi Ardmore Enterprises

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Matt Rice Self Advocate

Jonathon Rondeau
The Arc Central Chesapeake Region

Chrissy Shawver
The Arc Montgomery County

Sequya Tasker Lt. J.P. Kennedy Institute Senate Judicial Proceedings Committee
SB 210: COVID-19 Claim - Civil Immunity
Position: Support with Amendment

January 26, 2021

The Maryland Association of Community Services (MACS) is a non-profit association of over 100 agencies across Maryland serving people with intellectual and developmental disabilities (IDD). MACS members provide residential, day and supported employment services to thousands of Marylanders, so that they can live, work and fully participate in their communities.

Health and safety is central to the core mission of enabling people with intellectual and developmental disabilities (IDD) to live meaningful, inclusive lives in their communities. DDA-licensed community service providers are highly regulated with regard to health, safety and emergency protocols as part of the regular licensing process. The COVID-19 pandemic required compliance with many new protocols issued by federal, state and local governmental entities with regard to social distancing, limitations on gatherings, personal protective equipment, hand washing, and sanitizing, often when the staff and supplies needed for full compliance with all relevant guidance were, at times, in scarce supply for IDD providers.

MACS is in strong support of the bill's recognition of the good faith efforts of providers-- under the most extreme circumstances—to protect the people they support. However, we are concerned that the use of the word "all" on line 13 of page 2 of the bill may limit a court's ability to make a finding of immunity in the face of a minor variance from the applicable COVID-19 guidance in effect at the time. MACS recommends removing "all" and replacing it with language that gives courts the discretion to make a finding of immunity when presented with evidence of good faith compliance with all relevant COVID-19 related laws, statutes, etc.

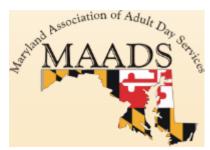
In addition, MACS seeks an amendment that would clarify that all DDA-licensed providers are included in the bill as defined in Health General §7-101. Currently, the bill specifically references Health General §19-114 which only includes DDA licensed group home providers.

Respectfully submitted: Lauren Kallins, LKallins@macsonline.org

SB0210_FWA_MAADS_Covid-19 Claim - Civil Immunity.p

Uploaded by: Kauffman, Danna

Position: FWA



Managed by LifeSpan

TO: The Honorable William C. Smith, Jr., Chair

Members, Senate Judicial Proceedings Committee

The Honorable Chris West

FROM: Danna L. Kauffman

Pamela Metz Kasemeyer

DATE: January 26, 2021

RE: SUPPORT WITH AN AMENDMENT – Senate Bill 210 – COVID-19 Claim - Civil

Immunity

On behalf of the Maryland Association of Adult Day Services (MAADS), a provider association representing medical adult day care centers throughout Maryland, we respectfully support the passage of Senate Bill 210 with an amendment. Senate Bill 210 provides civil immunity from liability for a COVID-19 claim to a person, including a health care facility, who acts in compliance with statutes, rules, regulations, executive orders, and agency orders, unless the person acted with gross negligence or intentional wrongdoing. The bill defines a health care facility as those listed under § 19-114 of the Health-General Article. Unfortunately, medical adult day centers are not included under this section of law and, hence, are not afforded protection from liability.

Throughout the COVID-19 pandemic, the Maryland Department of Health has required medical adult day care centers to provide remote services to clients through daily phone calls to monitor their health status and avoid potential declines. Medical adult day care services continue to provide this service and hope to reopen their centers and provide direct care under the requirements imposed on them by the State. As such, they should be afforded the same protections provided to other health care facilities. Therefore, on behalf of our members, MAADS respectfully requests that Senate Bill 210 be amended to include medical adult day centers. Thank you.

For more information call:

Danna L. Kauffman Pamela Metz Kasemeyer 410-244-7000

SB0210_FWA_MNCHA_COVID-19 Claim - Civil Immunity.p

Uploaded by: Kauffman, Danna

Position: FWA



Maryland-National Capital Homecare Association

Senate Bill 210: COVID-19 Claim - Civil Immunity Senate Judicial Proceedings Committee January 26, 2021

Position: SUPPORT WITH AMENDMENT

On behalf of the Maryland-National Capital Homecare Association (MNCHA), whose members include Medicare-certified home health agencies, private duty companies and durable medical equipment suppliers across the State, we support Senate Bill 210 with an amendment. Senate Bill 210 provides civil immunity from liability for a COVID-19 claim to a person, including a health care facility, who acts in compliance with statutes, rules, regulations, executive orders, and agency orders, unless the person acted with gross negligence or intentional wrongdoing.

Unfortunately, because the bill defines "health care facility" as a facility under §19-114 of the Health-General Article, residential service agencies (defined under §19-4A-01 of the Health-General Article) have been inadvertently omitted from the bill's protections. However, they have been on the front lines, providing care to individuals in their home. Like other providers and employers, they have struggled to secure necessary personal protective equipment, provide hero's pay, and comply with applicable requirements, often with little or no guidance. Consequently, they deserve the same protection afforded to other health care facilities under this bill. Therefore, we respectfully request that the bill be amended to include residential service agencies. With this amendment, we urge a favorable vote.

For More Information:

Dawn Seek Executive Director Maryland-National Capital Homecare Association Office: 410-980-6135 Danna Kauffman Schwartz, Metz and Wise, P.A. dkauffman@smwpa.com 410-294-7759

SB210 Testimony (CAI - MD-LAC, Hearing Date, Jan 2 Uploaded by: Manougian, Robin

Position: FWA



Maryland Legislative Action Committee The Legislative Voice of Maryland Community Association Homeowners

Steven Randol, Chair Charlene Morazzani Hood, MS, CMCA, AMS, PCAM, Vice Chair Vicki Caine, Secretary Marie Fowler, PCAM, Treasurer Ruth Katz, Esq., Asst. Secretary Kathleen M. Elmore, Esq., Asst. Treasurer

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Peter Philbin, Esq. Member
Brenda Reiber, Member
Susan Saltsman, Member
Scott Silverman, Member
John Taylor, Member
Aimee Winegar, CMCA, LSM, PCAM, Member

January 20, 2021

will.smith@senate.state.md.us jeff.waldstreicher@senate.state.md.us

Senator William C. Smith, Jr., Chair Senator Jeff Waldstreicher, Vice Chair Judicial Proceedings Committee Miller Senate Office Building, 2 East Wing 11 Bladen Street Annapolis, MD 21401

Re: Senate Bill 210

COVID-19 Claim – Civil Immunity Hearing Date: January 26, 2021 Position: Support with Amendments

Dear Senator Smith, Senator Waldstreicher, and Judicial Proceedings Committee Members:

This letter is submitted on behalf of the Maryland Legislative Action Committee ("MD-LAC") of the Community Associations Institute ("CAI"). CAI represents individuals and professionals who reside in or work with community associations (condominiums, homeowners' associations, and cooperatives) throughout the State of Maryland.

After an unprecedented and difficult year for all Marylanders, MD-LAC is extremely pleased to see SB210. Limited liability immunity is critical toward achieving economic recovery, and we are even more pleased to see that 'Associations' are included in the definition of the businesses to which the bill applies. As you can imagine, community associations are among the many businesses that have been affected by COVID-19, and in addition to the fear of contracting the virus, the fear of liability from something unseen and nearly uncontrollable has forced many

Page 2, Senate Bill 210 Community Associations Institute

associations to keep their amenities and non-essential common areas closed (even after the Governor lifted restrictions subject to social distancing and load limitations). Those associations that have chosen to open these areas have done so with enormous trepidation, effort, and expense. Community associations – the very places where people live and cannot avoid – are keenly aware that even with multiple cleanings (and the expense that comes with cleanings and keeping up with CDC recommendations), it is possible that someone who has used the amenities and common area surfaces (including but not limited to elevators, entry doors, and mailbox areas) could allege that they have contracted the virus from one of these areas.

As an insurance agent, it is important that I report to the Committee, too, that virtually every insurance carrier in the marketplace is applying to an insured's General Liability policy (usually at a community association's insurance renewal date) either a "Communicable Disease Exclusion" or a "Virus and Bacteria Exclusion," effectively excluding any defense and indemnity coverage for allegations of virus transmission on an insured's premises. Even prior to the application of these exclusions, insurance industry professionals have opined that the "expected and intended" provision inherent in all General Liability policies (the exclusion that applies when an insured is already aware of a situation that could give rise to a claim) could possibly disqualify these claims from coverage. Certainly, our current pandemic conditions could trigger this provision.

Because lawsuits require that community associations respond to and defend themselves against allegations of bodily injury – even in cases where there is little to no merit – absent insurance coverage, COVID-19 liability suits alleging contraction of the virus have the potential to cost an association thousands of dollars in defense costs, and much more if there has been a death. While the burden of proof lies with the claimant who must prove beyond a reasonable doubt that he or she has contracted the virus at the association's premises, the association may face expensive legal expenses, nonetheless.

Given that, the MD-LAC overwhelmingly supports SB210, but with one amendment: We would ask that the Committee consider amending the following portions of the bill (page 3, lines 7-11 and page 4, lines 10-14) to also capture any period of time in which the Governor might reinstate the "Declaration of State of Emergency and Existence of Catastrophic Health Emergency – COVID-19" should the current order be lifted and then reinstated due to a rise in case numbers. As you know, there presently are mutations of the virus (at least one of which has not been receptive to the vaccine) and while the rollout of the vaccine will hopefully provide some resistance and herd immunity to the virus, it is conceivable that new strains could create setbacks in progress. MD-LAC would like to see limited liability immunity extended with more flexibility given the uncertainty of the future of the virus without the need to amend the law to cover changes in the emergency order:

This section applies only to a COVID-19 claim that arose between March 5, 2020, and 180 days after the expiration or recission of the Governor's proclamation of March 5, 2020, "Declaration

Page 3, Senate Bill 210 Community Associations Institute

of State of Emergency and Existence of Catastrophic Health Emergency – COVID-19" [AND DURING AND 180 DAYS AFTER THE EXPIRATION OR RECISSION OF ANY REINSTATEMENT OF THE PROCLAMATION].

We are available to answer any questions the Committee Members may have. Please feel free to contact Lisa Harris Jones, lobbyist for the MD-LAC, at 410-366-1500, or by e-mail at lisa.jones@mdlobbyist.com, or Steven Randol, Chair of the MD-LAC, 410-279-8054, or by e-mail at srandol@pineorchard.com, or Robin C. Manougian, Member, of the MD-LAC, at 240-401-0855, or by e-mail at rmanougian@manougianinsurance.com.

Sincerely,

Robin C. Manougian

Steven Randol

Robin C. Manougian Member, Insurance Chair, CAI MD-LAC Steven Randol Chair, CAI MD-LAC

Senate Bill 210 - COVID-19 Claim Civil Immunity.pd Uploaded by: West, Christopher

Position: FWA



January 21, 2021

The Honorable Christopher West Edward C. Papenfuse State Archives Building 350 Rowe Blvd. Annapolis, MD 21401

RE: Senate Bill 210, COVID-19 Claim-Civil Immunity

Dear Honorable West,

Kay Management Co., Inc. has almost 50 years of history working in Maryland. We currently manage approximately 10,000 units of which most are in Montgomery County and Prince George's County. We would like to express our support of Senate Bill 210 which will protect businesses like ours and countless others from frivolous, opportunistic lawsuits. These type of lawsuits are already on the rise and we do not need COVID-19 to enable even more lawsuits with no merit or justification. The sad or discouraging fact is that even if the defendant is one hundred percent innocent; "economic" settlements are made to prevent the never-ending legal expenses for a defense.

Thank you for your time and consideration.

Sincerely.

7. Clark Melillo President

Senator West - SB210 - COVID-19 Claim - Civil Imm

Uploaded by: West, Christopher

Position: FWA

CHRIS WEST

Legislative District 42

Baltimore County

Judicial Proceedings Committee

Vice Chair, Baltimore County Senate Delegation



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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 11th 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)

$\underline{\text{AMENDMENTS TO SENATE BILL } 210}$

(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 " $\underline{\mathbf{A}}$ "; and in the same line, strike "STRICT".

SB0210/783628/1

BY: Senator West

(To be offered in the Judicial Proceedings Committee)

$\underline{\text{AMENDMENT TO SENATE BILL } 210}$

(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)

$\underline{\text{AMENDMENTS TO SENATE BILL } 210}$

(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 " $\underline{\text{GOOD FAITH IN AN}}$ ATTEMPT TO COMPLY".

SB 210_UNF_MML.pdfUploaded by: Bailey, Angelica Position: UNF



Maryland Municipal League

The Association of Maryland's Cities and Towns

TESTIMONY

January 26, 2021

Committee: Senate Judicial Proceedings

Bill: SB 210 – COVID-19 Claim - Civil Immunity

Position: Oppose

Reason for Position:

The Maryland Municipal League opposes SB 210. This bill allows an individual to bring a claim for damages if they or someone in their household was exposed to COVID-19. This bill also indemnifies persons, including local governments, who abided by all federal, state, and local rules unless they were grossly negligent.

While we appreciate that local governments are protected unless grossly negligent, our members will still have to defend against these suits. The COVID-19 pandemic has been a scary, stressful, and emotionally charged time for our everyone, but its individual impact varies greatly depending on location, race, age, gender, financial resources, and pre-existing health concerns. As a result, a government restriction designed to limit the spread could seem reasonable to one person, overly burdensome to another, and grossly negligent to a third. This could result in a number of lawsuits filed with a variety of viability, requiring local governments to spend significant time and resources on their defense.

COVID-19 is a serious disease and bad actors should be held responsible. Appropriate causes of action are already available to potential plaintiffs. This measure would expose local governments to a new type of lawsuit and additional expense. For these reasons, the Maryland Municipal League opposes SB 210 and respectfully requests an unfavorable committee report.

FOR MORE INFORMATION CONTACT:

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SB 210 COVID-19 Claim - Civil Immunity.pdf Uploaded by: Bresnahan, Tammy

Position: UNF



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SB 210 COVID-19 Claim - Civil Immunity Oppose Senate Judicial Proceedings January 26, 2021

Good afternoon Chairman Smith and members of the Senate Judicial Proceedings Committee. My name is Tammy Bresnahan. I am the Director of Advocacy for AARP MD. AARP Maryland, on behalf of our over 850,000 members and all older Marylanders, are sharing our strong opposition to **SB 210 COVID–19 Claim – Civil Immunity** to grant immunity related to COVID-19 for health care facilities including nursing homes. AARP has long fought for the rights of residents in nursing homes and other residential care facilities and to ensure their health, safety, quality of care, and quality of life. This includes the right of residents and their families to seek legal redress through the courts to hold facilities accountable when residents are harmed, neglected, or abused.

Nursing homes play an important role in America's long-term care services and supports system. There are about 300 nursing homes in Maryland. During this time of a pandemic, nursing homes and health care facilities face unprecedented challenges, and tragically, in Maryland over 3100 residents and staff have lost their lives in long term care. While there may be some circumstances beyond facilities' control for which they should not be held responsible, it is essential that long-term care providers, as well as health care providers more broadly, remain responsible for any negligent actions to ensure long-term care residents have some protection and opportunity for redress.

Given that most inspections of nursing homes were suspended, family in-person visits were and are effectively prohibited except in limited circumstances, and in-person long-term care Ombudsman visits were restricted, there have been fewer eyes observing what is happening in facilities. Residents of nursing homes may be unable to advocate for themselves and now have limited access to people who can advocate on their behalf. This lack of oversight is alarming, and requires us to ensure that, when all else fails, residents and their families will still have access to the courts to seek redress.

Pursuing neglect or abuse in long term care in court is not easy to do. No family member who has lost a loved one due to neglect or abuse pursues this course of action lightly. It is always an option of last resort, but it must remain an option.



Maryland should not strip away the rights and protections of residents. Nursing homes and other health care facilities should know they will continue to be held responsible for providing the level of quality care that is required of them, and for which they are being compensated. This also incentivizes facilities to self-correct by addressing problems to improve care.

AARP MD appreciates your consideration of these views and respectfully urges you to reject **SB 210 COVID–19 Claim – Civil Immunity**. Families all across Maryland are looking to you to protect the health and safety of their loved ones living in nursing homes and other residential care facilities. If you have questions, please feel free to contact Tammy Bresnahan thesanahan@aarp.org or by calling 410-302-8451.

SB 210 - COVID-19 Claim - Civil Immunity.pdf Uploaded by: Edwards, Donna

Position: UNF



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MARYLAND STATE & D.C. AFL-CIO

AFFILIATED WITH NATIONAL AFL-CIO

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President

Donna S. Edwards

Secretary-Treasurer
Gerald W. Jackson

SB 210 – COVID-19 Claim – Civil Immunity Senate Judicial Proceedings Committee January 26, 2021

OPPOSE

Donna S. Edwards President Maryland State and DC AFL-CIO

Chairman and members of the Committee, thank you for the opportunity to provide testimony in opposition SB 210 – COVID-19 Claim – Civil Immunity. My name is Donna Edwards, President of the Maryland State and DC, AFL-CIO. On behalf of the 340,000 union members in the state of Maryland, I offer the following comments.

In May of 2020, The Maryland State and DC AFL-CIO and our affiliated unions set a letter to Governor Hogan, urging to, by Executive Order, have MOSH promulgate an Emergency Temporary Standard (ETS) for all workers, broken down by industry. An ETS is absolutely necessary, as we are witnessing new daily records of COVID infections. Unfortunately, the Governor took no action on the request. This has left Maryland in a position with ever-changing guidelines for businesses, as well as inconsistencies between jurisdictions who have markedly different standards from one another.

SB 210 would be measured against this backdrop of constantly changing and inconsistent patchwork of state and local regulations, making it harder for workers to action against employers for putting their lives in danger. Without any kind of real standard to be measured against, SB 210 provides an enormous loophole by which bad businesses can take advantage of their workers pitting their livelihoods against their lives.

The strongest argument against SB 210, in general is that it simply is not needed. Businesses are seizing upon this pandemic to get immunity, by claiming that there is going to be an onslaught of cases which would make businesses afraid to reopen. However, there have actually been very few cases that have been brought, and certainly not an onslaught as the proponents of SB 210 would argue.

Ultimately, this comes down to fairness and balance. If businesses want some form of immunity then there needs to be an ETS in place, that will provide consistent and uniform protections for workers. In the absence of any real protections, there should be no immunity of any kind. We simply cannot have a system wherein we tell workers to choose between a paycheck and their health.

For the lives and livelihoods of Maryland's workers and their families, we urge an unfavorable report.

2021-01-26 SB 210 (Oppose).pdf Uploaded by: Jung, Roy Position: UNF

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Deputy Attorney General

STATE OF MARYLAND OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO. 410-576-7036

WRITER'S DIRECT DIAL NO. 410-576-6584

January 26, 2021

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. 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." 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. For example, an employer may use worker's compensation programs, and regulatory compliance defense. 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

SB 210 - COVID Immunity_SenWest_MSBAOppose.pdf Uploaded by: Montgomery, Richard





To: Members of the Senate Judicial Proceedings Committee

From: Richard A. Montgomery III

Director of Legislative & Governmental Relations

Date: January 26, 2021

Subject: Senate Bill 210 - COVID-19 Claim -Civil Immunity

Position: Oppose

The Maryland State Bar Association (MSBA) opposes **Senate Bill 210 – COVID-19 Claim – Civil Immunity.** Senate Bill 210 would provide immunity from civil liability for a COVID–19 claim to a person who acts in compliance with certain statutes, rules, regulations, executive orders, and agency orders, unless the person acted with gross negligence or intentional wrongdoing. Further, the bill would provide that certain deviations from certain statutes, rules, regulations, executive orders, and agency orders does not deny a person civil immunity provided under the Act.

While the MSBA believe that this measure is well-intended, we believe that the immunity provisions contained in the bill are overly broad and would serve to preemptively deny injured individuals potential redress though the legal system.

Accordingly, the MSBA opposes Senate Bill 210 and urges an Unfavorable Committee Report. Should you have any questions, please contact MSBA Legislative Director, Richard Montgomery at (410) 269-6464 or at Richard@msba.org

SB 210 COVID 19 Civil Immunity OPP - Owusu.pdf Uploaded by: Owusu-Acheaw, Pokuaa





marylandeducators.org

Testimony in Opposition of Senate Bill 210 COVID-19 Claim - Civil Immunity

Judicial Proceedings January 26, 2021 1:00 PM

Pokuaa Owusu-Acheaw **Government Relations**

The Maryland State Education Association opposes Senate Bill 210 which would provide civil immunity from liability for a COVID-19 claim to certain persons, who are deemed in compliance with federal, state, and local statutes, rules, regulations, executive orders, and agency orders, unless the person acted with gross negligence or intentional wrongdoing.

MSEA represents 75,000 educators and school employees who work in Maryland's public schools, teaching and preparing our 896,837 students for careers and jobs of the future. MSEA also represents 39 local affiliates in every county across the state of Maryland, and our parent affiliate is the 3 millionmember National Education Association (NEA).

Under existing statue, it is not clear that a COVID-19 claim is covered under workers' compensation. Additionally, there are no minimum standards for a COVID-19 claim set by Maryland Occupational Safety and Health(MOSH). This bill would give employers a pass from liability, so long as they can claim that they have adhered to non-existent standards. Without existing standards created by MOSH, this bill creates a complete pass on liability.

MSEA requests an unfavorable report on Senate Bill 210.



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Uploaded by: Wildberger, David



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, 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 <u>Dua v. Comcast Cable of Maryland, Inc.</u>, 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.



Maryland Association for Justice, Inc. 2021 Position Paper

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.

<u>Dua</u>, 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.

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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.