

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Finance Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 813
Workers' Compensation – Occupational Disease Presumptions –
COVID-19
DATE: February 17, 2021
(3/9)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 813. This bill amends the Labor and Employment Article, Section 9-503 by expanding the eligibility criteria for a compensable occupational disease under the workers' compensation law. The bill provides that an essential worker is presumed to be suffering from an occupational disease that was suffered in the course of employment if 1) the employee is suffering from coronavirus 2 respiratory syndrome, 2) the individual was diagnosed with COVID 19 or tests positive for severe acute respiratory syndrome Coronavirus 2 or severe acute respiratory syndrome coronavirus 2 antibodies, and 3) the individual's duties required the individual to perform labor or services at a location other than the individual's home or residence within 14 days of symptoms. This can be rebutted only if the employer shows that employment was NOT a contributing cause of the disease.

The bill defines essential worker as "an individual who is required to work on the premises of a business or government agency that has been declared essential during a declared state of emergency or under an executive order issued by a local, state, or federal authority." Judiciary operations are essential. As such, any of the approximately 4,300 Judiciary employees who report to work at a court or Judiciary office during a declared state of emergency would be deemed an essential worker and would be covered by the Act.

This bill raises separation of power concerns as it impedes the Judiciary's independence. Article IV, §18(b)(1) identifies the Chief Judge of the Court of Appeals as the administrative head of the Maryland Judiciary. The power to administer the Judiciary is not an implied or inherent power but is an express constitutional power of the Chief Judge. This constitutional authority includes managing the Judiciary's personnel.

The Judiciary has its own comprehensive personnel system with policies that address recruitment, supervision, grievances, and termination. The Judiciary is exempt from those aspects of the State Personnel Management System. Indeed, in 1996, as part of the comprehensive personnel reform bill, the General Assembly enacted State Personnel and Pensions Article §2-201, which says “Except as otherwise provided by law, an employee in the Judicial, Legislative, or Executive Branch of State Government is governed by the laws and personnel policies and procedures applicable in that branch.” The Judiciary, therefore, submits that the same principle should be applied here: that this legislation should not be applied to the Judiciary.

Finally, not only will this bill have a significant operational impact on the Judiciary but it could have a significant fiscal impact on the Judiciary. This cost has not been budgeted by the Judiciary.

cc. Hon. Katherine Klausmeier
Judicial Council
Legislative Committee
Kelley O’Connor