



# Maryland Association for Justice, Inc.

## 2021 Position Paper

### Civil Actions – Immunity from Civil Liability – COVID-19 Exposure HB 1106 – UNFAVORABLE

Seeking to grant broad, blanket immunity against all COVID-19 transmission claims, HB 1106 is *unwise*, *unfair*, and *unconstitutional*.

**HB 1106 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, HB 1106 grants statewide legal immunity to every person, business, and entity, even for unreasonably unsafe conduct.<sup>1</sup> HB 1106 places returning workers and consumers at risk. 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. HB 1106 is *bad* public policy.

**HB 1106 is unfair.** By establishing blanket immunity for everyone – regardless of their economic circumstances or ability to pay – HB 1106 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.

Multinational corporations, with hundreds of millions of dollars in assets and insurance coverage, do not need protection from lawsuits when their unreasonably unsafe conduct exposes their employees and the public to risks of harm. Maryland tort law should protect middle class and working families – not giant corporations whose profits have increased during this crisis.

HB 1106 is *unconstitutional*. Drafted explicitly to apply retroactively (page 4, lines 27-30), HB 1106 would impair the rights of Marylanders harmed by unreasonably unsafe conduct.

In Dua v. Comcast Cable of Maryland, Inc., 370 Md. 604 (2002), the Court of Appeals of Maryland overturned those portions of emergency legislation that purported to abrogate vested

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<sup>1</sup> HB 1106 grants broad immunity *without exceptions, even for gross negligence*. Such exceptions would not make the rest of the bill either acceptable or constitutional, but the absence of exceptions is an independent, fatal flaw in this legislative proposal.



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property rights protected by Article 24 of the Maryland Declaration of Rights and Article III, § 40, of the Maryland Constitution.

The Dua Court explained:

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

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

HB 1106 ignores this ancient constitutional principle and would abrogate the vested rights of victims of unreasonably unsafe conduct *retroactively* to March 5, 2020. Because it violates the Maryland Constitution and the Declaration of Rights, HB 1106 is unconstitutional.

**The Maryland Association for Justice respectfully requests  
an UNFAVORABLE report on HB 1106.**