

Testimony of
American Property Casualty Insurance Association (APCIA)
Senate Judicial Proceedings Committee
SB 1031 Civil Actions – Lead Poisoning – Liability and Statute of Limitations
March 7, 2024

Letter of Opposition

The American Property Casualty Insurance Association (APCIA) is a national trade organization representing nearly 60 percent of the U.S. property casualty insurance market. Our members write approximately 67.1 percent of all property and casualty insurance sold in Maryland. APCIA appreciates the opportunity to provide written comments in opposition to Senate Bill 1031.

This bill would eliminate the statute of limitations for actions against the owner or manager of certain property to recover certain damages arising from injuries suffered as a result of lead poisoning may be filed at any time, establishes strict liability and removes the current non-economic caps for this type of action and subjects state governments, local governments and school boards to full damages, exempting such actions from the state tort claims action damage limits.

We oppose the limitless civil litigation proposed in this legislation because civil defendants and those we insure may not receive a reasonable opportunity to defend themselves with the passage of time. This provision *may* apply to claims against any defendant (e.g. property owner, property manager, or a manufacturer/seller/distributor). In addition, this legislation would subject local governments and public schools to the same limitless civil litigation.

This legislation would eliminate the statute of limitation for lead liability actions. The Maryland Supreme Court has repeatedly recognized that statutes of limitations strike a balance and “primarily to assure fairness to defendants on the theory that claims, asserted after evidence is gone, memories have faded, and witnesses disappeared, are so stale as to be unjust.” *Shailendra Kumar, P.A. v. Dhanda*, 426 Md. 185, 205, 43 A.3d 1029 (2012) (quoting *Bertonazzi v. Hillman*, 241 Md. 361, 367, 216 A.2d 723 (1966)). Without statutes of limitation, civil defendants and those we insure may not receive a reasonable opportunity to defend themselves before the passage of time eliminates documents, memories or witnesses.

With its adoption of strict liability for owners or managers of property SB 1031 would eliminate or reduce customary defenses for civil litigants. This strips away well founded elements of tort that seek to have people or businesses pay what they owe based on their own negligence. See e.g., *Medical Mutual Liability Society of Maryland v. B, Dixon Evander and Associates*, 339 Md. 41, 54-55, 660 A.2d 433 (1995) (citations omitted) (emphasis added) Repealing the non-economic damages caps for personal injury cases, which currently exceeds \$935,000 and increases by \$15,000 every year, will also significantly complicate the ability to settle lawsuits, since plaintiffs’ lawyers will demand significantly higher amounts for immeasurable harm. The current law strikes a reasonable balance between unlimited subjective awards and the consistency and predictability that contribute to a stable civil justice system in Maryland. The escalating non-economic personal injury damage caps should be retained. The practical effect of this repeal is to provide yet another avenue for lawyers to seek uncapped and subjective non-economic damage awards, placing businesses, consumers and insurers at greater risk for nuclear verdicts, since non-economic damages have been shown to be the key drivers of nuclear verdicts.¹

¹ *US Chamber of Commerce Nuclear Verdicts Report, September 2022*

For all these reasons, the APCIA urges the Committee to provide an unfavorable report on Senate Bill 1031.

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Non-economic damages may far exceed the amount of economic damage awards because of intangible factors such as subjective values, beliefs, emotional sensitivities and differing perspectives, and courts and juries often struggle to calculate fair and rational non-economic damage award.
