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February 20, 2024

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

Re: Senate Bill 680 - State Government - Public Welfare Actions - Determinations and Settlements

Dear Chair Smith:

The Office of the Attorney General supports Senate Bill 680 – State Government – Public Welfare Actions – Determinations and Settlements and I urge the Judicial Proceedings Committee to give the bill a favorable report.

If enacted into law, this bill will help the State to fully recover in large, statewide lawsuits brought by the Attorney General for claims related injuries to the health, safety, and environment on behalf of Maryland's citizens. It would accomplish that by ensuring that defendants pay their fair share of damages based on their actual level of culpability and not based on the total number of defendants in the action. The bill does not expand the authority of the Attorney General in the filing of any legal action, but instead addresses how damages are allocated among multiple defendants.

Most other states provide for the recovery of damages in such statewide actions based on degree of fault. Maryland is an outlier, due to how the Maryland courts have interpreted the phrase "pro rata" in the statute that governs the allocation of liability in tort claims. This bill is narrowly

tailored to change that, and only in a limited category of lawsuits, i.e., those cases that the Attorney General brings on behalf of the State for public welfare claims. An example of a public welfare action that would be covered by this bill is the State's ongoing suit related to per- and polyfluoroalkyl substances (PFAS), so-called "forever chemicals" that impact the health of Marylanders and contaminate natural resources.

Often in public welfare actions, there are multiple defendants that have contributed to the harm and are jointly and severally liable, but there can be a significant difference between each defendant's degree of culpability. For example, a large defendant may have caused 50% of the total harm, a medium defendant 35%, and three small defendants 5% of the harm each.

Under current Maryland law, if the Attorney General settles a claim against one of the defendants, the State's ability to collect against the remaining, non-settling defendants is reduced based on the total number of defendants in the case, regardless of fault. In this example, there are five defendants, so if a settlement occurs, each settling defendant is assigned a fifth of the outstanding liability, or 20%. As a result, if the State settles with the small defendant for 5% of the total harm (a fair result given the defendant's actual responsibility), the State must reduce its claims against the non-settling defendants by one full share, or 20%. This means that by settling with the small defendant for 5%, the State and Maryland citizens must give up 15% of the total recovery to which they are entitled. If the State resolves the case with all three small defendants by settling for 5% each, the State must give up a 20% share for each, or 60% of the total claim. This means that even if the State wins a large trial verdict against both remaining defendants, they will pay only 40% of the judgment, though together they caused 85% of the harm to the State. Limiting the State's ability to fully recover its damages impedes the State's ability to remediate that harm and forces Maryland's citizens to make up the shortfall.

Under current law, the State could avoid these concerns by taking all defendants to trial, but doing so bogs down the court system, imposes significant legal expenses on the State, and imposes even greater legal expenses on the small and medium-sized defendants that were not able to settle for their fair share of the damages unless the State was willing to sacrifice an unfair portion of its total recovery. Ultimately, the citizens of Maryland suffer.

If the bill were enacted, liability would be assigned to each defendant based on its degree of fault and relative responsibility for the harm. In the example above, if the State settled with the three small defendants for a total of 15% of the liability, the Attorney General could continue to pursue the public welfare claims against the medium and large defendant for the outstanding 85% of the State's injuries. The State's potential recovery would not be arbitrarily reduced based on the number of defendants in the case. This bill also recognizes that defendants should be able to settle for their fair share of damages, and it thereby helps small and medium-sized businesses in Maryland by creating a pathway for those businesses to settle claims early and avoid the time and expense of protracted litigation.

Senate Bill 680 differs from SB 524 of 2021, in that Senate Bill 680 applies to all public welfare actions brought by the Attorney General on behalf of the citizens of Maryland. In contrast, SB 524 of 2021 applied only to cases that included oil discharge claims brought under the

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Environment Article. Senate Bill 680 allows the Attorney General to seek full recovery in cases that impact claims arising from environment and the health and safety of Marylanders.

Senate Bill 680 is important for all Marylanders, wherever they live, because it applies to claims for environmental and other public welfare damages that occur statewide, including in those communities already overburdened and underserved. Senate Bill 680 does not create any new causes of action, expand the Attorney General's authority, or increase the total damages recoverable for any claim allowed under existing law. This bill is simply intended to make the allocation of existing responsibility fair – fair for small and medium-sized businesses and fair for the citizens of Maryland.

The Office of the Attorney General requests that the Judicial Proceedings Committee vote favorably on Senate Bill 680 and allow my office to equitably resolve cases that impact the lives of all Marylanders.

Sincerely,

Anthony G. Brown

cc: Committee Members

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Amendment to SB 680

On page 2, strike beginning with the colon in line 15 down through “(ii)” in line 17, inclusive.

Sincerely,

Anthony G. Brown

cc: Committee Members

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