
By: Delegates Dembrow, Bissett, Menes, Harkins, and Petzold

Introduced and read first time: January 17, 1997

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Legislative Immunity - Constituent Service Activities**

3 FOR the purpose of providing immunity from civil liability to a member of a state
4 legislature, including the General Assembly of Maryland, for any act or omission
5 relating to certain constituent services provided to certain individuals or entities;
6 providing that the member is not subject to deposition or examination regarding
7 these constituent services; providing for the construction of this Act; and generally
8 relating to the immunity of state legislators for the performance of constituent
9 services.

10 BY adding to

11 Article - Courts and Judicial Proceedings
12 Section 5-399.8
13 Annotated Code of Maryland
14 (1995 Replacement Volume and 1996 Supplement)

15 BY repealing and reenacting, with amendments,

16 Article - State Government
17 Section 2-1801
18 Annotated Code of Maryland
19 (1995 Replacement Volume and 1996 Supplement)

20 Preamble

21 WHEREAS, The constitutions of Maryland and of most other states recognize
22 that state legislators should be absolutely immune from liability for or inquiry into their
23 legislative acts; and

24 WHEREAS, A quarter century ago the U.S. Supreme Court in U.S. v. Brewster,
25 408 U.S. 501, 512 (1972), said that the legislative privilege of members of Congress did
26 not apply to "entirely legitimate" activities such as errands performed for constituents;
27 and

28 WHEREAS, Numerous scholars have since concluded that the performance of
29 constituent service results in better representation, serves a useful role in the

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1 performance of legislative oversight, and strengthens citizens' faith in their government;
2 and

3 WHEREAS, In the past, some members of the General Assembly have been
4 threatened with civil litigation, sued, or deposed in connection with constituent service
5 activities; and

6 WHEREAS, It is desirable and in the public interest that members of the General
7 Assembly be fully protected from civil liability for or inquiry into constituent service
8 activities performed within the scope of their public duties, and that other states be
9 encouraged to enact immunity provisions such as those embodied in this legislation; now,
10 therefore,

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article - Courts and Judicial Proceedings**

14 5-399.8.

15 (A) IN THIS SECTION, "CONSTITUENT SERVICE" INCLUDES INTERVENTION
16 FOR INDIVIDUALS, GROUPS, ORGANIZATIONS, OR BUSINESSES THAT HAVE
17 REQUESTS OF, GRIEVANCES AGAINST, OR A NEED FOR ACCESS TO ANY PUBLIC OR
18 PRIVATE ENTITY.

19 (B) A MEMBER OF A STATE LEGISLATURE, INCLUDING A MEMBER OF THE
20 GENERAL ASSEMBLY OF MARYLAND, WHO PROVIDES CONSTITUENT SERVICES OR
21 MAKES A COMMUNICATION ON BEHALF OF A CONSTITUENT IS NOT CIVILLY LIABLE
22 OR SUBJECT TO DEPOSITION OR EXAMINATION FOR ANY ACT OR OMISSION
23 RELATED TO THE CONSTITUENT SERVICE AND WITHIN THE SCOPE OF THE PUBLIC
24 DUTIES OF THE MEMBER.

25 (C) THIS SECTION DOES NOT CONSTITUTE A WAIVER OF A MEMBER'S
26 CONSTITUTIONAL, STATUTORY, OR COMMON LAW PRIVILEGES.

27 **Article - State Government**

28 2-1801.

29 (A) Privileges from testifying for members of the General Assembly are found in §
30 9-122 of the Courts [and Judicial Proceedings] Article.

31 (B) PROVISIONS RELATING TO CIVIL IMMUNITY FOR ACTS AND OMISSIONS IN
32 THE PERFORMANCE OF CONSTITUENT SERVICES BY MEMBERS OF THE GENERAL
33 ASSEMBLY ARE FOUND IN § 5-399.8 OF THE COURTS ARTICLE.

34 SECTION 2. AND BE IT FURTHER ENACTED, That if Title 5, Subtitle 3 of the
35 Courts and Judicial Proceedings Article is restructured by legislation enacted during the
36 1997 Session of the General Assembly, the publishers of the Annotated Code, in
37 coordination with the Department of Legislative Reference, shall designate an
38 appropriate codification for the provisions enacted as § 5-399.8 by this Act.

39 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
40 October 1, 1997.

