

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 816 (Senator Shank)
Judicial Proceedings

Courts - Civil Action for Embezzlement by Employee

This bill establishes that a former or current employee is civilly liable to a former or current employer if the employee (1) fraudulently and willfully appropriates money or a thing of value that the employee holds in an employment capacity contrary to the requirements of the employee's trust responsibility or (2) secretes money or a thing of value that the employee holds in an employment capacity with a fraudulent intent to use the money or thing of value contrary to the requirements of the employee's trust responsibility. An employer must prove his/her claims by a preponderance of the evidence, and a civil action must be filed within three years from the date on which the employer knew or should have known of the conduct on which the action is based.

An employer that prevails in a civil action brought under the bill is entitled to (1) damages in an amount equal to three times the value of the money or thing appropriated or secreted and (2) an award of prejudgment interest, court costs, and reasonable attorney's fees.

The bill has prospective application and does not apply to any act or omission by a former or current employee before the bill's October 1, 2013 effective date.

Fiscal Summary

State Effect: The bill does not materially affect State finances.

Local Effect: The bill does not materially affect local finances.

Small Business Effect: Potential meaningful impact on small businesses that are able to recover more funds from former or current employees as a result of the bill.

Analysis

Bill Summary: The bill authorizes a court to issue a preliminary injunction as necessary to preserve the money or other thing of value allegedly appropriated or secreted and to require expedited discovery of the employee's assets.

A criminal prosecution for embezzlement is not a prerequisite to the maintenance of a civil action by an employer to recover misappropriated funds or items from a current or former employee. The recovery of damages in a civil action under the bill does not preclude a criminal prosecution. However, the payment of damages in a civil action brought under the bill is not admissible in a criminal proceeding as an admission of guilt or as evidence of guilt.

Current Law: A fiduciary is a position of trust and has a duty, created by his or her undertaking of a specific assignment or function, to act primarily for the benefit of another in connection with the undertaking. A fiduciary is prohibited from (1) fraudulently and willfully appropriating money or a thing of value that the fiduciary holds in a fiduciary capacity contrary to the requirements of the fiduciary's trust responsibility or (2) secreting money or a thing of value that the fiduciary holds in a fiduciary capacity with a fraudulent intent to use the money or thing of value contrary to the requirements of the fiduciary's trust responsibility. Violators are guilty of embezzlement, a misdemeanor punishable by imprisonment for at least one year but no more than five years.

In a criminal or juvenile delinquency proceeding, the court may enter a judgment of restitution that orders a defendant or child respondent to make restitution in addition to any other penalty for the commission of a crime or delinquent act, if, as a direct result of the crime or delinquent act, property of the victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value substantially decreased.

A judgment of restitution does not preclude the property owner or the victim from bringing a civil action to recover damages from the restitution obligor. A civil verdict must be reduced by the amount paid under the criminal judgment of restitution.

Background: In fiscal 2011, the Division of Correction conducted intake on one individual for embezzlement. During the same period, the Division of Parole and Probation conducted intake on 48 individuals for embezzlement.

Additional Comments: Although this bill references the Division of Correction and the Division of Parole and Probation, the Department of Legislative Services notes that the Department of Public Safety and Correctional Services implemented a major reorganization during fiscal 2012. As a result of the reorganization, the Division of

Correction, the Division of Parole and Probation, the Patuxent Institution, and the Division of Pretrial Detention and Services no longer exist within the department by those names as separate budgetary units.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - February 15, 2013
mlm/kdm

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510