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1997 Regular Session
7r0971

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

Introduced and read first time: January 17, 1997

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 25, 1997

CHAPTER ____

1 AN ACT concerning

2 **Legislative Immunity - Constituent Service Activities and Communications**

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 and
6 certain communications made on behalf of a constituent; ~~providing that the member~~
7 ~~is not subject to deposition or examination regarding these constituent services~~;
8 providing for the construction of this Act; providing for the codification of this Act;
9 providing for the application of this Act; and generally relating to the immunity of
10 state legislators for the performance of constituent services.

11 BY adding to

12 Article - Courts and Judicial Proceedings
13 Section 5-399.8
14 Annotated Code of Maryland
15 (1995 Replacement Volume and 1996 Supplement)

16 BY repealing and reenacting, with amendments,

17 Article - State Government
18 Section 2-1801
19 Annotated Code of Maryland
20 (1995 Replacement Volume and 1996 Supplement)

2

1 Preamble

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

5 WHEREAS, ~~A quarter century ago the U.S. Supreme Court in U.S. v. Brewster,~~
 6 ~~408 U.S. 501, 512 (1972), said that the legislative privilege of members of Congress did~~
 7 ~~not apply to "entirely legitimate" activities such as errands performed for constituents;~~
 8 ~~and~~

9 WHEREAS, ~~Numerous scholars have since concluded that the performance of~~
 10 ~~constituent service results in better representation, serves a useful role in the~~
 11 ~~performance of legislative oversight, and strengthens citizens' faith in their government;~~
 12 ~~and~~

13 WHEREAS, ~~In the past, some members of the General Assembly have been~~
 14 ~~threatened with civil litigation, sued, or deposed in connection with constituent service~~
 15 ~~activities; and~~

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

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

23 Article - Courts and Judicial Proceedings

24 5-399.8.

25 (A) (1) IN THIS SECTION, "CONSTITUENT SERVICE" INCLUDES GOOD FAITH
 26 INTERVENTION FOR INDIVIDUALS, GROUPS, ORGANIZATIONS, OR BUSINESSES OR
 27 ENTITIES THAT HAVE REQUESTS OF, OR GRIEVANCES AGAINST, OR A NEED FOR
 28 ACCESS TO ANY PUBLIC OR PRIVATE ENTITY OR INDIVIDUAL.

29 (2) "CONSTITUENT SERVICE" DOES NOT INCLUDE:

30 (I) THE OPERATION OF A MOTOR VEHICLE OR OTHER
 31 CONVEYANCE; OR

32 (II) AN ACT OR OMISSION THAT CONSTITUTES A CRIMINAL
 33 OFFENSE.

34 (B) A MEMBER OF A STATE LEGISLATURE, INCLUDING A MEMBER OF THE
 35 GENERAL ASSEMBLY OF MARYLAND, WHO PROVIDES A ~~CONSTITUENT SERVICES~~
 36 SERVICE OR MAKES A COMMUNICATION ON BEHALF OF A CONSTITUENT IS NOT
 37 CIVILLY LIABLE ~~OR SUBJECT TO DEPOSITION OR EXAMINATION~~ FOR ANY ACT OR
 38 OMISSION RELATED TO THE CONSTITUENT SERVICE AND WITHIN THE SCOPE OF THE
 39 PUBLIC DUTIES OF THE MEMBER.

3

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

3 **Article - State Government**

4 2-1801.

5 (A) Privileges from testifying for members of the General Assembly are found in §
6 9-122 of the Courts [and Judicial Proceedings] Article.

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

10 SECTION 2. AND BE IT FURTHER ENACTED, That if Title 5, Subtitle 3 of the
11 Courts and Judicial Proceedings Article is restructured by legislation enacted during the
12 1997 Session of the General Assembly, the publishers of the Annotated Code, in
13 coordination with the Department of Legislative Reference, shall designate an
14 appropriate codification for the provisions ~~enacted as § 5-399.8~~ of § 5-339.8 of the Courts
15 Article as enacted by this Act.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed
17 only prospectively and may not be applied or interpreted to have any effect on or
18 application to any cause of action arising before the effective date of this Act.

19 SECTION ~~3.~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 1997.