

Department of Legislative Services
Maryland General Assembly

FISCAL NOTE

House Bill 1065 (Delegate Pitkin)

Judiciary

Products Liability - Tobacco Products

This bill provides that there shall be no statutory or common law immunity from or categorical defense, including assumption of the risk and contributory negligence, to a cause of action by a person who suffers personal injury or wrongful death from, or incurs injury, damages, or costs arising from, the promotion, manufacture, marketing, sale, or consumption of or exposure to tobacco products.

The bill applies retroactively to any cause of action arising before or after the bill's October 1, 1998 effective date, but does not apply to revive any claim in any action for which a final judgment has been rendered and for which appeals, if any, have been exhausted before the bill's effective date.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues. No direct effect on expenditures.

Local Effect: None.

Small Business Effect: None.

Fiscal Analysis

State Effect: The Office of the Attorney General advises that the bill would increase the State's chances of prevailing in its pending lawsuit against tobacco product manufacturers, State of Maryland v. Philip Morris, et al. A Baltimore City Circuit Court judge has dismissed the nine common law counts from the case. Those claims included breach of voluntarily undertaken duty, negligence, fraud, negligent misrepresentation, and conspiracy. The four

remaining counts are statutory consumer protection and antitrust claims, for which the defenses of assumption of the risk and contributory negligence are not available. Therefore, this bill would not affect the case as it currently exists. However, the State intends to attempt to rejoin the dismissed common law counts, if possible. Ordinarily, assumption of the risk, contributory negligence, and other defenses apply to common law claims such as the ones dismissed from the case. Therefore, the bill would benefit the case if the dismissed counts are rejoined. Whether the State will be successful in rejoining the dismissed counts, and if so, to what extent this bill would strengthen the case, cannot be reliably predicted at this time.

The maximum potential recovery from the lawsuit is estimated at \$3 billion. The nine dismissed counts sought an additional \$10 billion in punitive damages.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Attorney General, Department of Legislative Services

Fiscal Note History: First Reader - March 10, 1998

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Analysis by: Claire E. Rooney

Reviewed by: John Rixey

Direct Inquiries to:

John Rixey, Coordinating Analyst

(410) 841-3710

(301) 858-3710