
By: **Delegate Vallario**

Introduced and read first time: February 9, 2001

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Attorney General - Representation of State Officer or State Employee**

3 FOR the purpose of expanding a requirement that the Attorney General appear in a
4 civil action or special proceeding against an officer or employee of the State in a
5 court of the State or of the United States under certain circumstances to include
6 a civil action or special proceeding in any other judicial or administrative forum;
7 providing for the application of this Act; and generally relating to a requirement
8 that the Attorney General appear in certain civil actions and special proceedings
9 in certain judicial or administrative forums against an officer or employee of the
10 State.

11 BY repealing and reenacting, with amendments,
12 Article - State Government
13 Section 12-304
14 Annotated Code of Maryland
15 (1999 Replacement Volume and 2000 Supplement)

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

18 **Article - State Government**

19 12-304.

20 (a) (1) Except as otherwise provided in this Part II of this subtitle, the
21 Attorney General shall appear in a civil action or special proceeding against a State
22 officer or State employee to represent the officer or employee if:

23 (i) the action or proceeding is in a court of the State or of the
24 United States OR IN ANY OTHER JUDICIAL OR ADMINISTRATIVE FORUM;

25 (ii) the officer or employee submits to the Attorney General a
26 written request for representation;

27 (iii) the Attorney General or a person whom the Attorney General
28 designates investigates the facts on which the action or proceeding is based;

1 (iv) the Attorney General does not find the officer or employee
2 ineligible for representation under subsection (b)(1) of this section; and

3 (v) the officer or employee enters into an agreement as required by
4 § 12-305 of this subtitle.

5 (2) The Attorney General may provide this representation by a deputy
6 attorney general, assistant attorney general, special counsel, or other private counsel.

7 (b) (1) The Attorney General shall decline to represent a State officer or
8 State employee if, on the basis of the investigation, the Attorney General finds that:

9 (i) the officer or employee was not acting within the scope of
10 employment of the officer or employee;

11 (ii) the act or omission was malicious; or

12 (iii) the act or omission was grossly negligent.

13 (2) The Attorney General may decline to represent a State officer or
14 State employee who otherwise is eligible for representation if the officer or employee:

15 (i) retains other counsel; or

16 (ii) is covered by insurance that requires the carrier to provide
17 counsel.

18 (c) (1) Subject to the requirements of this section, the Attorney General has
19 sole discretion in undertaking to represent the State officer or State employee.

20 (2) A decision of the Attorney General not to represent an officer or
21 employee is inadmissible in any legal action or special proceeding. Reference to the
22 decision may not be made in any hearing or trial.

23 (d) This section does not:

24 (1) deprive a State officer or State employee of any right to retain
25 counsel, at the expense of the officer or employee; or

26 (2) prevent the appearance of the Attorney General to protect the
27 interests of the State, even if the officer or employee does not request the appearance.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be applied
29 to and interpreted to affect any case filed or pending on or after the effective date of
30 this Act.

31 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2001.