

Department of Legislative Services

Maryland General Assembly

2002 Session

FISCAL NOTE

House Bill 273

(Delegate Moe, *et al.*)

Judiciary

Provision and Installation of Smoke Alarm Devices and Batteries - Civil Immunity

This bill offers civil immunity from liability to nonprofit entities, governmental units, fire companies, and firefighters for losses arising out of the installation of or faulty design, manufacture, maintenance, or operation of a smoke alarm device or battery that is provided free of charge. The immunity does not apply to fire companies or firefighters if the firefighter installing a smoke alarm does not test it after installation.

The bill is to be applied prospectively only.

Fiscal Summary

State Effect: Minimal. The State is generally immune from liability for tort actions. Statutes provide limits on the liability of the State for its employees' actions, and the number of actions against the State relating to smoke alarm devices is expected to be minimal.

Local Effect: Minimal. Statutes already provide limits on local government liability and immunity to fire companies for tortious acts performed in the course of duties, and the number of actions against local government relating to smoke alarm devices is expected to be minimal.

Small Business Effect: Potential minimal. Nonprofit entities already have some limits on liability for tortious acts.

Analysis

Current Law: Governmental immunity derives from two sources: (1) common law immunity; and (2) statutory immunity. Nonprofit entities, fire companies, and firefighters are afforded some immunity via statutory law.

Common Law Immunities: Under the common law doctrine of sovereign immunity, neither a contract nor a tort action may be maintained against the State -- including a State agency -- unless specific legislative consent has been given and funds (or the means to raise them) are available to satisfy the judgment. *Baltimore Police Dept. v. Cherkas*, 2001 Md. App. Lexis 136 (Ct. Sp. App. 2001). This holds true regardless of the type of tortious act in question.

Local governmental immunity under the common law is more limited; it does not cover private or proprietary acts or liability for State constitutional torts. *Id.*

Common law immunity exists for an individual if: (1) the individual is a public official, not merely a government employee or agent; (2) the conduct occurred when the individual was performing discretionary, not ministerial duties; and (3) the act performed is within the scope of the individual's official duties. *Callahan v. Bowers*, 2000 Md. App. Lexis 51 (Ct. Sp. App. 2000).

Statutory Immunities: A statute provides civil immunity to fire companies and their personnel from acts performed in the course of their duties, so long as the acts are not willful or grossly negligent. It applies to both municipal and volunteer fire companies and their personnel.

Additionally, certain statutes limit liability of governments and nonprofit entities and provide immunity for employees acting in the scope of their employment duties. Under the Maryland Tort Claims Act (MTCA), State employees are immune from liability for acts or omissions performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. The State essentially waives its own common law immunity for its employees' actions. Volunteers are not included in the MTCA's definition of State employees. This Act limits the liability of the State to \$200,000 to a single claimant for injuries arising from a single incident.

The Local Government Tort Claims Act limits the liability of a local government to \$200,000 per individual claim and \$500,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). It further provides that the local government is liable for acts or omissions of its employees, including volunteers, acting within the scope of employment.

The Maryland Associations, Organizations, and Agents Act limits the liability of nonprofit organizations that carry insurance meeting specified minimums, and provides that agents (directors, officers, trustees, employees, or volunteers) of those nonprofit organizations cannot be held personally liable so long as the acts are made without malice or gross negligence. Liability is limited to the applicable limit of insurance coverage for acts or omissions made in the course of duties by the nonprofit entity or its agents.

Additional Comments: There have been no claims filed against the State in regard to provision of smoke alarm devices or batteries.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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