

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 382

(Senator Raskin, *et al.*)

Judicial Proceedings

Judiciary

**Civil Liability - AMBER Alert Dissemination - Immunity for Media and
Commercial Mobile Radio Service Providers**

This bill specifically exempts broadcasters, commercial mobile radio service providers, and their employees and agents from civil liability arising from an act or omission that forms part of a broadcast or dissemination of an AMBER Alert after receiving an AMBER Alert notification from a Maryland law enforcement agency, unless that act or omission constitutes willful or wanton misconduct, gross negligence, or intentionally tortious conduct.

The bill defines a “broadcaster” as an individual or entity engaged in the broadcasting of television, cable, or radio programming by any means of communication, including through the public airwaves, by cable, or by direct or indirect satellite transmission. “Commercial mobile radio service” is defined as a mobile telecommunications service that is an interconnected, two-way service, is provided for profit, and is available to the public.

Fiscal Summary

State Effect: The civil liability exemption for broadcasters should not affect State operations or finances.

Local Effect: None, see above.

Small Business Effect: None.

Analysis

Current Law: Broadcasters who release false AMBER Alerts could be subject to defamation actions. Maryland courts have defined a defamatory statement as “...one which tends to expose a person to public scorn, hatred, contempt or ridicule, thereby discouraging others in the community from having a good opinion of, or from associating or dealing with, that person.” *See Batson v. Shiflett*, 325 Md. 684, 723-4, 602 A. 2d 1191, 1210 (1992). The common law has traditionally recognized false accusations relating to the commission of infamous crimes as defamatory.

Maryland, however, recognizes a fair reporting privilege. Under this qualified privilege, even if the report contains a defamatory statement, the broadcaster cannot be held liable for it so long as the report is fair and substantially accurate. *See Chesapeake Publishing Corp. v. Williams*, 339 Md. 285, 296, 661 A.2d 1169, 1174 (1995). *See also Rosenberg v. Helinski*, 328 Md. 664, 677, 616 A.2d 866, 872 (1992); *Batson, supra*, 325 Md. at 727.

Background: America’s Missing: Broadcast Emergency Response Alerts, also known as AMBER Alerts, were created in 1996 in response to the January 13, 1996 abduction and murder of nine year old Amber Hagerman in Arlington, Texas. The program started in the Dallas-Fort Worth area, and soon expanded to all 50 states. According to the U.S. Department of Justice, the AMBER Alert program has saved the lives of over 200 children nationwide. In August 2002, Maryland became an AMBER Alert state.

The AMBER Alert Plan in Maryland is a voluntary partnership between law enforcement agencies and broadcasters to activate an urgent bulletin in the most serious child abduction cases. Broadcasters use the Emergency Alert System, formerly called the Emergency Broadcast System, to air a description of the abducted child and suspected abductor. This is the same concept used during severe weather emergencies. AMBER Alert information is coordinated by the Maryland State Police.

The alerts rely on the use of highway message boards as well as television and radio stations to broadcast the messages. They are issued when police believe that a child is in danger of serious bodily harm or death and have descriptive information about the child and suspect.

There are certain criteria that must be met before an AMBER Alert is activated, including:

- law enforcement must confirm a child has been abducted;

- law enforcement must have reason to believe the circumstances surrounding the abduction indicate the child is in danger of serious bodily harm or death; and
- there must be enough descriptive information about the child, abductor, and/or the suspect's vehicle to believe an immediate broadcast alert will help the case.

According to Maryland's AMBER Alert Plan, when the abduction of a child of 14 or under (or 15-17 with extenuating circumstances) occurs, police officers responding to the call will contact a State Police duty officer trained to handle such cases. After verifying the abduction meets the AMBER Alert criteria, the State Police activate the Emergency Alert System, notifying radio, television and cable outlets, the Maryland Department of Transportation, and surrounding states.

There have been 10 AMBER Alerts issued in Maryland since 2005. One of these alerts was false. There have been three false alerts since the beginning of the AMBER Alert program in 2002. There have been no known cases of litigation against broadcasters in Maryland for false AMBER Alerts.

Several states have enacted statutes providing broadcasters of AMBER Alerts with immunity, including Connecticut, Georgia, Indiana, Louisiana, Michigan, Minnesota, Nevada, and Vermont.

Chapter 528 of 2004 established a Task Force on Missing Vulnerable Adults to, in part, investigate integration with the Maryland AMBER Alert Plan and the broadcast media in locating missing vulnerable adults. In its final report, issued October 1, 2005, the task force did not recommend integration with the Maryland AMBER Alert Plan due to Federal Communications Commission requirements and protocol.

Additional Information

Prior Introductions: HB 389 of 2006, a similar bill, passed the House as amended, and passed the Senate as amended, but no further action was taken. HB 956 of 2005, a similar bill received an unfavorable report in the House Judiciary Committee.

Cross File: HB 491 (Delegate Anderson, *et al.*) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, U.S. Department of Justice, Office of Justice Programs, Department of Legislative Services

Fiscal Note History: First Reader - February 14, 2007
nas/jr Revised - Senate Third Reader - March 21, 2007

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