

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1490

(Delegate Dumais, *et al.*)

Judiciary

Judicial Proceedings

State Government - Maryland Tort Claims Act - Broadcasting of AMBER Alert

This bill limits the liability of a person or an officer, director, employee, or agent of the person who voluntarily broadcasts an AMBER alert and meets additional specified criteria by expanding the definition of “State personnel” under the Maryland Tort Claims Act (MTCA) to include such persons. The bill provides that the general MTCA requirements of notice to the Treasurer within one year of an injury and a final denial of the claim by the Treasurer before an action is filed do not apply to an action filed under this bill. The bill requires an individual against whom an action is filed to provide written notice to the Treasurer within 30 days of the filing of the action.

Fiscal Summary

State Effect: Potential increase in expenditures for the State Insurance Trust Fund to the extent that claims are filed and successful. Any potential increase in workload for the Treasurer’s Office could be handled with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill expands the definition of “State personnel” under MTCA to include a person, or an officer, director, employee, or agent of the person who voluntarily broadcasts an AMBER alert if the person:

- is a party to a memorandum of understanding regarding the AMBER alert plan entered into between the Maryland State Police and the Maryland-District of Columbia-Delaware Broadcasters' Association, Inc.;
- has established standard operating procedures approved by the Maryland State Police, including procedures governing the management, receipt, dissemination, and broadcast of the AMBER alert information provided by the State Police and the appropriate individuals to receive and disseminate the information; and
- requires each authorized officer, director, employee, and agent to consent to, in writing, or execute the memorandum of understanding.

Current Law: Under the Maryland Tort Claims Act (MTCA), State personnel 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. Under MTCA, the State waives its own common law sovereign immunity, but its liability is limited to \$200,000 to a single claimant for injuries arising from a single incident.

MTCA's definition of State personnel includes:

- State employees or officials paid through the Central Payroll Bureau;
- employees or officials of various State agencies and public corporations, including the Maryland Technology Development Corporation and the Maryland Economic Development Corporation;
- individuals who, without compensation, exercise a part of the sovereignty of the State;
- students of a State educational institution providing clinical services who also meet specified liability insurance requirements;
- a sheriff or deputy sheriff of a county or Baltimore City;
- a county employee assigned to a local department of social services;
- a State's Attorney and employees of a State's Attorney's office;
- members of various county boards;
- judges and employees of the circuit courts and orphans' courts;
- nonprofit organizations, without other insurance, that have been approved as a third-party payee;
- payees for providing temporary cash assistance, transitional assistance, or child-specific benefits to Family Investment Program recipients; and
- students, faculty, or staff of a higher education institution who are providing a service under the Family Investment Program.

A claimant may not institute an action under MTCA unless (1) the claimant has submitted a written claim to the Treasurer or the Treasurer's designee within one year after the applicable injury; (2) there has been a final denial of the claim by the Treasurer or the designee; and (3) the action is filed within three years after the cause of action arises.

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: 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 age 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.

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

State Fiscal Effect: The State is self-insured for claims made pursuant to MTCA, with tort losses paid out by the Treasurer's Office. Any potential claim settlement or judgment resulting from a successful claim brought against an individual covered under this act would be paid from the State Insurance Trust Fund. The Treasurer's Office advises that because there is no single agency designated to pay any losses associated with covering these individuals under MTCA, premiums to other State agencies would increase each year to the extent necessary to cover any costs associated with this bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Public Broadcasting Commission, Department of State Police, Treasurer's Office, Department of Legislative Services

Fiscal Note History: First Reader - March 10, 2008
mll/jr Revised - House Third Reader - March 25, 2008

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