

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 1457

(Delegate Dumais, *et al.*)

Judiciary

Judicial Proceedings

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Civil Liability - AMBER, Silver, or Emergency Alert Dissemination - Immunity  
for Broadcast Media

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This bill specifically exempts broadcasters and their agents from civil liability arising from an act or omission that forms part of a broadcast or dissemination of an AMBER Alert, Silver Alert, or Emergency Alert after receiving an alert notification from the Maryland State Police or, in the case of an emergency alert, an emergency management entity. The exemption applies if the broadcaster: (1) is a party to a memorandum of understanding (MOU) entered into between the State Police and the Maryland-District of Columbia-Delaware Broadcaster's Association, Inc. regarding the applicable alerts; (2) has established standard operating procedures approved by the State Police; and (3) requires each employee, officer, director, member, manager, and agent who is authorized by the broadcaster to receive or disseminate the alert information to consent to the MOU in writing or execute the MOU.

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.

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**Fiscal Summary**

**State Effect:** None. The civil liability exemption for broadcasters does not materially affect State finances.

**Local Effect:** None. The civil liability exemption for broadcasters does not materially affect local finances.

**Small Business Effect:** None.

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## Analysis

**Current Law:** Broadcasters who release false 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.” *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 approximately 495 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 age 14 or younger (or ages 15 to 17 with extenuating circumstances) occurs, law enforcement 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 11 AMBER Alerts issued in Maryland since 2007. None have been false. There have been seven Silver Alerts issued since the program began on October 1, 2009. None of the Silver Alerts have been false.

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

The Silver Alert Program within the Department of State Police was established in 2009 and provides a system for rapid dissemination of information to locate a person whose whereabouts are unknown, who suffers a cognitive impairment requiring caregiver assistance, and whose disappearance poses a credible threat to the health and safety of the individual.

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### **Additional Information**

**Prior Introductions:** Several similar bills have been introduced in recent years. SB 382 of 2007 passed the House and Senate with differing amendments, but the differences could not be reconciled by the end of the session. HB 389 of 2006 passed the House as amended, and passed the Senate as amended, but no further action was taken. HB 956 of 2005 received an unfavorable report in the House Judiciary Committee.

**Cross File:** None.

**Information Source(s):** Howard, Montgomery, and Prince George's counties; Judiciary (Administrative Office of the Courts); Department of State Police; Maryland Public Broadcasting Commission; U.S. Department of Justice; Department of Legislative Services

**Fiscal Note History:** First Reader - March 23, 2010  
mam/kdm Revised - House Third Reader - April 8, 2010

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