

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1192

(Delegates Frank and Morhaim)

Judiciary

Health Care Malpractice - Expression of Regret or Apology - Inadmissibility

This bill modifies provisions of law that prohibit the admission of an expression of regret or apology, made by or on behalf of a health care provider, as evidence of an admission of liability or a statement against interest. The bill repeals an exception to the prohibition that permits evidentiary use of an admission of liability or fault that is part of, or in addition to, communication of an expression of regret or apology.

The bill applies only prospectively and does not apply to any cause of action arising before October 1, 2011.

Fiscal Summary

State Effect: None. The change is procedural in nature and does not directly affect governmental finances.

Local Effect: None. The change is procedural in nature and does not directly affect governmental finances.

Small Business Effect: Potential minimal.

Analysis

Current Law: State law prohibits the evidentiary use of an admission of regret or apology made by or on behalf of a health care provider in a civil action against the provider. This prohibition applies to expressions made orally, in writing, or by conduct, and it bars the use of the expression as evidence of an admission of liability or an admission against interest. Under the current law's single exception, admissions of

liability or fault that are made as part of or in addition to an admission of regret or apology *are* admissible as evidence.

Additional Information

Prior Introductions: Similar bills were introduced in the 2008, 2009, and 2010 sessions. SB 358 of 2010 was heard in the Senate Judicial Proceedings Committee, but no further action was taken. SB 906 of 2009 was referred to the Senate Rules Committee, but no further action was taken. HB 279 of 2009 was withdrawn after a hearing. HB 607 of 2008 received an unfavorable report from the House Judiciary Committee. HB 147 of 2007, an identical bill, received an unfavorable report from the House Judiciary Committee. Its cross file, SB 84 of 2007, was withdrawn after a hearing in the Senate Judicial Proceedings Committee. HB 790 of 2006, another identical bill, passed the House and received a hearing in the Senate Judicial Proceedings Committee; no further action was taken.

Cross File: None.

Information Source(s): Office of the Attorney General, Maryland Health Claims Alternative Dispute Resolution Office, Department of Health and Mental Hygiene, Maryland Insurance Administration, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - March 14, 2011
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Analysis by: Jennifer A. Ellick

Direct Inquiries to:
(410) 946-5510
(301) 970-5510