SB 342

Department of Legislative Services

Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 342 (Senator Manno)
Judicial Proceedings

State Employees - Fairness in Financial Disclosures Act

This bill establishes that a State employee is immune from liability in any civil, criminal, or administrative action for any representation made by the employee about the employee's compensation for calendar 2015 – if the employee relied in good faith on the amount appropriated in the fiscal 2015 State operating budget.

The bill takes effect June 1, 2015.

Fiscal Summary

State Effect: The bill does not directly affect governmental operations or finances.

Local Effect: None

Small Business Effect: None.

Analysis

Current Law: No current law exists to hold State personnel immune from liability outside of acts or omissions performed in the course of their official duties. 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 essentially waives its own common law immunity. However, MTCA limits State liability to $200,000 to a single claimant for injuries arising from a single incident. MTCA covers a multitude of personnel, including some local officials and nonprofit organizations. In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State's color of authority or sovereign immunity and may be held personally liable.

Background: The Governor's proposed fiscal 2016 operating budget reduces State salary schedules by 2% on July 1, 2015. Additionally, the Governor's proposed fiscal 2016 operating budget eliminates the July 1, 2015 and January 1, 2016 merit increases for State employees. The proposed Budget Reconciliation and Financing Act of 2015 (Senate Bill 57/House Bill 72) prohibits cost-of-living adjustments and merit increases for State employees in fiscal 2016.

While State employees experienced furloughs in fiscal 2009 through 2011, in which State employees were paid less than their salary for days not worked, the Governor's proposed fiscal 2016 budget is the first time State employees experience a permanent reduction in their salary.

Mortgage fraud is a material misstatement, misrepresentation, or omission relied on by an underwriter or lender to fund, purchase, or insure a loan. A creditor must make a reasonable and good faith determination based on verified and documented information, usually through recent pay stubs and W-2 forms, that the consumer has a reasonable ability to repay a residential mortgage loan.

The State Attorney General reports that the term "fraud," used in criminal law, does not simply apply to falsehood and deceit, but requires additional elements. In the civil context, to recover damages for fraud or deceit, a plaintiff must prove "(1) that the defendant made a false representation to the plaintiff, (2) that its falsity was either known to the defendant or that the representation was made with reckless indifference as to its truth, (3) that the misrepresentation was made for the purpose of defrauding the plaintiff, (4) that the plaintiff relied on the misrepresentation and had the right to rely on it, and (5) that the plaintiff suffered compensable injury resulting from the misrepresentation."

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Budget and Management, Judiciary (Administrative Office of the Courts), Cornell University Law School, Financial Crimes Intelligence Unit, Department of Legislative Services

Fiscal Note History: First Reader - February 13, 2015
md/mcr

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