

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Joint Resolution 5 (Senator Kasemeyer, *et al.*)

Budget and Taxation

Rules and Executive Nominations

Attorney General - Powers - Maryland Defense Act of 2017

This joint resolution directs the Attorney General to investigate, commence, and prosecute or defend any civil or criminal suit or action that is based on the federal government's action or inaction that threatens the public interest and welfare of the State's residents, as specified. The joint resolution sets forth a process by which the Attorney General must provide notice to the Governor.

Fiscal Summary

State Effect: The Office of the Attorney General can use existing resources to handle any litigation initiated as a result of the resolution.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The General Assembly directs the Attorney General to investigate, commence, and prosecute or defend any civil or criminal suit or action that is based on the federal government's action or inaction that threatens the public interest and welfare of the residents of the State with respect to (1) protecting the health of the residents of the State and ensuring the availability of affordable health care; (2) safeguarding public safety and security; (3) protecting civil liberties; (4) preserving and enhancing the economic security of workers and retirees; (5) protecting financial security of the residents of the State, including their pensions, savings, and investments, and ensuring fairness in mortgages, student loans, and the marketplace; (6) protecting the residents of the State against fraud

and other deceptive and predatory practices; (7) protecting the natural resources and environment of the State; (8) protecting the residents of the State against illegal and unconstitutional federal immigration and travel restrictions; or (9) otherwise protecting as *parens patriae*, the State's interest in the general health and well-being of its residents.

Before commencing a suit or action, the Attorney General must provide the Governor with written notice and an opportunity for review and comment, unless the Attorney General determines that emergency circumstances require immediate action. If the Governor objects to the intended suit or action, then the Governor must provide in writing to the Attorney General the reasons for the objection within 10 days after receiving the notice. Unless there are emergency circumstances that require the immediate commencement of the suit or action, the Attorney General must consider the Governor's objection before proceeding. If the Attorney General determines that emergency circumstances require the immediate commencement of a suit or action to protect the public interest and welfare of the residents of the State, as specified, the Attorney General must provide the Governor notice of the suit or action as soon as reasonably practicable.

Current Law/Background: The Attorney General is an elected official who serves a four-year term of office. Pursuant to the State Constitution, the Attorney General has enumerated responsibilities, including investigating, commencing, and prosecuting or defending any civil or criminal suit or actions, as specified, which the General Assembly by law or joint resolution, or the Governor, directs to be investigated, commenced, and prosecuted or defended. The Attorney General also has and must perform any other duties and possess any other powers as the General Assembly prescribes by law.

According to the National Association of Attorneys General (NAAG), the common law is the origin of an attorney general's authority to represent, defend, and enforce the legal interests of the public and is a critical source of power for attorneys general seeking to protect public interests in developing areas of the law. NAAG notes that in the vast majority of states, the attorney general retains common law authority in addition to the power and duties specifically enumerated by state constitutions and statutory language. However, Maryland is one of only a handful of states in which the attorney general expressly lacks common law authority and has only the powers as are vested by the State Constitution and various enactments of the General Assembly. *See, e.g. State v. Burning Tree Club*, 301 Md. 9, 481 (1984).

Recently, attorneys general from several states have used common law or prescribed authority on behalf of individuals impacted as a result of President Trump's Executive Order of January 27, 2017, restricting travel into the United States by refugees and visitors from seven countries. The attorneys general in Washington and Minnesota initiated action against the President on behalf of their states and a federal judge issued a temporary restraining order banning enforcement of the executive order; the case is being appealed.

These actions follow a trend over the past several decades of attorneys general joining together to take proactive measures deemed to be on behalf of the public interests of states, such as lawsuits against the tobacco and cable television industries.

Additional Information

Prior Introductions: None.

Cross File: HJ 3 (Delegate Rosenberg, *et al.*) - Rules and Executive Nominations.

Information Source(s): Office of the Attorney General; Governor's Office; National Association of Attorneys General; Washington State Office of Attorney General; Department of Legislative Services

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