



Maryland Association for Justice Strongly Opposes “Immunity Bills”

Rationale for Opposing Immunity Bills

Every year, legislation is introduced in the General Assembly that would grant immunity or qualified immunity to one or more selected classes of individual(s) or corporations.

The Maryland Association for Justice (MAJ) strongly opposes legislation that would limit or eliminate the rights of Maryland citizens who are injured by negligence and seek redress in the courts.

This briefing paper reviews issues related to immunity bills. Each year, a dozen or more bills introduced in the Legislature would extend immunity to, or limit exposure to liability for, a class of individuals and/or entities ranging from health care providers to multi-national corporations.

Q. What does MAJ mean when it says something is an “immunity bill”?

A. For our purposes, an “immunity bill” is any proposed legislation that either (a) grants blanket or qualified immunity from civil liability to specified individual(s); or (b) expands the scope of an immunity already in existence (including, e.g., the State Tort Claims Act (STCA), the Local Government Tort Claims Act (LGTCA), or similar legislation).

Also called “statutory defenses,” an immunity bill represents a legislative decision to favor a class of specified individual(s) by abolishing or limiting the civil rights and remedies available to everyone and anyone who, in the future, might suffer personal injury and/or death as a result of the negligence and/or carelessness of a member of the favored class.

Q. Why are immunity bills bad?

A. There are a number of reasons why – as a general matter – immunity bills are bad public policy.

First, legislative grants of immunity abolish or limit access to justice. That is **never** a good thing.

Legislative immunities are unfair because people typically never know that their access to justice was abolished or limited. By the time a person is injured, it is too late – the immunity statute will shut the courthouse doors and the injured person has no remedy in court.

Moreover, legislative immunities erode everyone’s civil rights. After all, if the General Assembly gives immunity to one group, then other groups will ask for similar immunities. “There are dozens of immunities in the Maryland Code,” they argue, “so what harm comes from enacting just one more?”

When you come to basics, every member of society should be held to the standard of reasonably prudent or careful conduct under the circumstances. If someone who owes a duty of reasonable care breaches that duty and causes harm, civil justice requires accountability for that negligence. When everyone must use reasonable care for the safety of others, fewer injuries occur and everyone benefits.

Q. Can't we trust that members of the favored class will use reasonable care?

A. No, frankly, we can't. If members of the favored class always acted with reasonable care, then there would be no need for immunity, because people cannot be held liable for negligence if they were acting with reasonable care. To state the matter plainly, immunity is a **license to act unreasonably** without fear of accountability to anyone who might be harmed. That is inherently bad legislative policy.

Some immunity legislation changes the legal standard from "acting with reasonable care" (an objective standard) to "acting in good faith" (a subjective standard). This is still immunity, because everyone will claim to have been acting in good faith (especially after they get advice from insurance carriers and defense attorneys), even if their conduct appeared objectively unreasonable under the circumstances.

Q. Suppose an immunity bill appears to promote socially beneficial conduct. Wouldn't it be acceptable to give immunity to people who do good things for others in society?

A. No. First, granting immunity for one purpose encourages others to seek immunity for themselves.

Second, if people already do good things for others without immunity then, clearly, we do not need to enact immunity to encourage them to do those good things. Immunity in that instance is just a license for people to act **without** taking reasonable care, and that's just wrong.

Moreover, there are literally dozens of immunities hidden in the Maryland Code, but most of us couldn't quickly name any five of them. The absence of any publicity about immunities is evidence that hidden immunities were never really intended to encourage socially positive conduct.

Genuine Good Samaritans are not motivated to act because they have immunity; they do good things for others because it is the right thing to do. Maryland law provides Good Samaritans with protection from civil liability in the Good Samaritan law, Md. Cts. & Jud. Procs. Code Ann. § 5-603(c). That statute is the gold standard for what an immunity statute should be.

Q. Will MAJ sometimes work with sponsors to amend immunity language?

A. Absolutely. In some instances, bills are drafted with immunity language even when the legislator never requested an immunity. In those instances, MAJ can offer a friendly amendment to remove the immunity language, or to amend the immunity language. Examples include an objective standard of conduct ("reasonable care" vs. "good faith"), and limiting the scope of the bill (a statute can impose "no affirmative duty to act," rather than "no civil liability" for negligent conduct).

**MAJ strongly opposes bills that grant new immunities
or expand immunities already on the books.**