

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 829

(Senator McCray, *et al.*)

Judicial Proceedings

**Baltimore City - Civil Claim Against Private Police - Prohibition Against
Nondisclosure Provision in Settlement Agreement**

This bill prohibits, in a claim or suit asserting misconduct in the performance of duties by a law enforcement officer of a private law enforcement agency, the use or enforcement of a confidentiality or other nondisclosure provision in a settlement agreement or any general release of liability between the parties. The bill's provisions only apply to a claim or suit arising in Baltimore City. The bill applies prospectively and may not be applied to or interpreted to have any effect on or application to any agreement or release of liability executed before the bill's October 1, 2020 effective date.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations.

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law/Background: The bill does not define "private law enforcement agency," nor is that term used in existing statute. There are no statutory provisions directly applicable to the bill.

In October 2019, the Mayor and City Council of Baltimore City enacted an ordinance prohibiting settlement agreements between Baltimore City and claimants for claims involving police misconduct or unlawful discrimination from including

“non-disparagement clauses” that require the claimant to waive the claimant’s rights to make specified statements regarding the claim.

The ordinance followed growing criticism of the practice and a federal lawsuit by a claimant who was denied 50% of her settlement in a police misconduct claim because the city elected to enforce the non-disparagement clause in her settlement agreement. The clause prohibited the claimant from making public comments about her case or the settlement process; it did not restrict Baltimore City’s ability to discuss the case. The city enforced the clause after the claimant responded online to hostile comments that were posted about her in connection to a report in the *Baltimore Sun* about police misconduct payouts. The report included a photograph of the claimant, as well as her name, address, and the amount of her proposed settlement.

The U.S. Court of Appeals for the Fourth Circuit determined that the non-disparagement clause amounted to a waiver of the claimant’s First Amendment rights that is unenforceable and void because the city’s interests in enforcing the waiver are outweighed by the strong public interests firmly established in the First Amendment. The appellate court remanded the case to the federal trial court for further proceedings.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Baltimore City; Maryland State Treasurer’s Office; Judiciary (Administrative Office of the Courts); *Baltimore Sun*; Department of Legislative Services

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mm/jkb

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