

Senate Bill 240

Dear Governor Hughes:

We have reviewed House Bill 155 and Senate Bill 240, identical bills purporting to exempt an operator of certain emergency vehicles from tort liability and to impose liability on the owner or lessee of the vehicle. Although these bills are constitutional, they contain severe interpretative problems that will unnecessarily perplex both courts and litigants.

Both bills add § 19-103 to the Transportation Article and provide in § 19-103(b)(1) that:

"An authorized operator of an emergency vehicle who is authorized to operate the emergency vehicle by its owner or lessee, is not liable in his individual capacity, when exercising reasonable care, for any damages resulting from a tortious act or omission within the scope of performing emergency service."

The bills also provide in § 19-103(c)(1) that:

"An owner or lessee of an emergency vehicle, including a political subdivision, is liable to the extent provided in subsection (d) of this section for any damages caused by a tortious act or omission of an authorized operator of an emergency vehicle, when exercising reasonable care, within the scope of performing emergency service."

We believe the original intent of the legislation was to exempt operators of certain emergency vehicles from liability for negligent (but not grossly negligent) acts and to impose such liability on the owners or lessees of the vehicles, thus making the latter strictly liable for the negligence (but not the gross negligence) of the operators. Unfortunately, this purpose is obscured by the addition of the words "when exercising reasonable care." When a person is exercising reasonable care, he cannot be liable for negligence; only if there is a lack of reasonable care will an action for negligence lie. Baltimore Transit Co. v. Prinz, 215 Md. 398, 403 (1958).

Section 19-103(b)(1) seems to say that an operator is not liable in tort if he exercises reasonable care. But, under such circumstances, he would not be liable in tort in any event, be it for negligence or gross negligence. On the other hand, § 19-103(c)(1) would appear to impose liability on the owner or lessee of the vehicle even if the operator