

SENATE BILL 326

D3, L6, P1

EMERGENCY BILL

4lr0420

By: **Senator Simonaire**

Introduced and read first time: January 17, 2014

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Elected Officials – Civil Cases – Liability for Costs, Judgments, and**
3 **Settlements**
4 **(Taxpayer Protection Act of 2014)**

5 FOR the purpose of authorizing a local government to require certain elected officials
6 of a local government, under certain circumstances, to reimburse the local
7 government for certain costs related to a certain legal defense provided by the
8 local government; providing that, under certain circumstances, certain elected
9 officials of a local government are fully liable for damages awarded in or for the
10 amount of a settlement resulting from certain actions; providing that, under
11 certain circumstances, a local government may not be held liable for judgments
12 against certain elected officials; providing that State elected officials, under
13 certain circumstances, are not immune under a certain provision of law from
14 suit in certain courts and from liability in tort for certain acts or omissions;
15 altering the provisions to be included in a certain agreement to enable the
16 Attorney General to require, under certain circumstances, certain State officers
17 to reimburse the Attorney General for certain costs, council fees, and expenses;
18 providing that, under certain circumstances, the State may not be held liable to
19 certain State officers for reimbursement of certain costs under a certain
20 provision of law; prohibiting the Board of Public Works, under certain
21 circumstances, from paying a settlement or judgment under a certain provision
22 of law; providing for the application of this Act; making this Act an emergency
23 measure; and generally relating to liability for certain costs, judgments, and
24 settlements related to certain civil cases filed against elected officials.

25 BY repealing and reenacting, with amendments,
26 Article – Courts and Judicial Proceedings
27 Section 5–302, 5–303, and 5–522
28 Annotated Code of Maryland
29 (2013 Replacement Volume and 2013 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – State Government
3 Section 12–305, 12–310, and 12–404
4 Annotated Code of Maryland
5 (2009 Replacement Volume and 2013 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
7 MARYLAND, That the Laws of Maryland read as follows:

8 **Article – Courts and Judicial Proceedings**

9 5–302.

10 (a) **(1)** Each local government shall provide for its employees a legal
11 defense in any action that alleges damages resulting from tortious acts or omissions
12 committed by an employee within the scope of employment with the local government.

13 **(2) A LOCAL GOVERNMENT MAY REQUIRE AN ELECTED OFFICIAL**
14 **TO REIMBURSE THE LOCAL GOVERNMENT FOR ANY COSTS ASSOCIATED WITH A**
15 **LEGAL DEFENSE PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION IF**
16 **THE ELECTED OFFICIAL:**

17 **(I) IS FOUND TO HAVE KNOWINGLY OR RECKLESSLY**
18 **VIOLATED FEDERAL, STATE, OR LOCAL LAW;**

19 **(II) ADMITTED TO KNOWINGLY OR RECKLESSLY VIOLATING**
20 **FEDERAL, STATE, OR LOCAL LAW; OR**

21 **(III) CONSENTS TO A SETTLEMENT AGREEMENT IN AN**
22 **ACTION INVOLVING A KNOWING OR RECKLESS VIOLATION OF FEDERAL, STATE,**
23 **OR LOCAL LAW.**

24 (b) (1) Except as provided in paragraph (2) of this subsection, a person
25 may not execute against an employee on a judgment rendered for tortious acts or
26 omissions committed by the employee within the scope of employment with a local
27 government.

28 (2) (i) An employee shall be fully liable for all damages awarded in
29 an action in which it is found that the employee acted with actual malice.

30 **(II) UNLESS A LOCAL GOVERNMENT AGREES TO ASSUME**
31 **LIABILITY, AN ELECTED OFFICIAL SHALL BE FULLY LIABLE FOR ALL DAMAGES**
32 **AWARDED IN AN ACTION IN WHICH:**

1 **1. IT IS FOUND THAT THE ELECTED OFFICIAL**
2 **KNOWINGLY OR RECKLESSLY VIOLATED FEDERAL, STATE, OR LOCAL LAW; OR**

3 **2. THE ELECTED OFFICIAL ADMITTED TO**
4 **KNOWINGLY OR RECKLESSLY VIOLATING FEDERAL, STATE, OR LOCAL LAW.**

5 **[(ii)] (III)** In [such] **THE** circumstances **DESCRIBED UNDER**
6 **SUBPARAGRAPH (I) OR SUBPARAGRAPH (II) OF THIS PARAGRAPH** the judgment
7 may be executed against the employee and the local government may seek
8 indemnification for any sums it is required to pay under § 5–303(b)(1) of this subtitle.

9 **(C) IF AN ELECTED OFFICIAL CONSENTS TO A SETTLEMENT IN AN**
10 **ACTION INVOLVING A KNOWING OR RECKLESS VIOLATION OF FEDERAL, STATE,**
11 **OR LOCAL LAW, THE ELECTED OFFICIAL SHALL BE FULLY LIABLE FOR THE**
12 **AMOUNT OF THE SETTLEMENT UNLESS A LOCAL GOVERNMENT AGREES TO**
13 **ASSUME THE LIABILITY.**

14 **[(c)] (D)** If the injury sustained is compensable under the Maryland
15 Workers' Compensation Act, an employee may not sue a fellow employee for tortious
16 acts or omissions committed within the scope of employment.

17 **[(d)] (E)** (1) The rights and immunities granted to an employee are
18 contingent on the employee's cooperation in the defense of any action.

19 (2) If the employee does not cooperate, the employee forfeits any and
20 all rights and immunities accruing to the employee under subsection (b) of this section.

21 5–303.

22 (a) (1) Subject to paragraph (2) of this subsection, the liability of a local
23 government may not exceed \$200,000 per an individual claim, and \$500,000 per total
24 claims that arise from the same occurrence for damages resulting from tortious acts or
25 omissions, or liability arising under subsection (b) of this section and indemnification
26 under subsection (c) of this section.

27 (2) The limits on liability provided under paragraph (1) of this
28 subsection do not include interest accrued on a judgment.

29 (b) (1) Except as provided in [subsection (c)] **SUBSECTIONS (C) AND (D)**
30 of this section, a local government shall be liable for any judgment against its
31 employee for damages resulting from tortious acts or omissions committed by the
32 employee within the scope of employment with the local government.

33 (2) A local government may not assert governmental or sovereign
34 immunity to avoid the duty to defend or indemnify an employee established in this
35 subsection.

1 (c) (1) A local government may not be liable for punitive damages.

2 (2) (i) Subject to subsection (a) of this section and except as
3 provided in subparagraph (ii) of this paragraph, a local government may indemnify an
4 employee for a judgment for punitive damages entered against the employee.

5 (ii) A local government may not indemnify a law enforcement
6 officer for a judgment for punitive damages if the law enforcement officer has been
7 found guilty under § 3-108 of the Public Safety Article as a result of the act or
8 omission giving rise to the judgment, if the act or omission would constitute a felony
9 under the laws of this State.

10 (3) A local government may not enter into an agreement that requires
11 indemnification for an act or omission of an employee that may result in liability for
12 punitive damages.

13 **(D) UNLESS THE LOCAL GOVERNMENT AGREES TO ASSUME THE**
14 **LIABILITY, A LOCAL GOVERNMENT MAY NOT BE LIABLE FOR A JUDGMENT**
15 **AGAINST AN ELECTED OFFICIAL FOR DAMAGES IF THE ELECTED OFFICIAL:**

16 **(1) IS FOUND TO HAVE KNOWINGLY OR RECKLESSLY VIOLATED**
17 **FEDERAL, STATE, OR LOCAL LAW; OR**

18 **(2) ADMITTED TO KNOWINGLY OR RECKLESSLY VIOLATING**
19 **FEDERAL, STATE, OR LOCAL LAW.**

20 **[(d)] (E)** Notwithstanding the provisions of subsection (b) of this section,
21 this subtitle does not waive any common law or statutory defense or immunity in
22 existence as of June 30, 1987, and possessed by an employee of a local government.

23 **[(e)] (F)** A local government may assert on its own behalf any common law
24 or statutory defense or immunity in existence as of June 30, 1987, and possessed by its
25 employee for whose tortious act or omission the claim against the local government is
26 premised and a local government may only be held liable to the extent that a judgment
27 could have been rendered against such an employee under this subtitle.

28 **[(f)] (G)** (1) Lexington Market, Inc., in Baltimore City, and its
29 employees, may not raise as a defense a limitation on liability described under § 5-406
30 of this title.

31 (2) Baltimore Public Markets Corporation, in Baltimore City, and its
32 employees, may not raise as a defense a limitation on liability described under § 5-406
33 of this title.

34 5-522.

1 (a) Immunity of the State is not waived under § 12–104 of the State
2 Government Article for:

3 (1) Punitive damages;

4 (2) Interest before judgment;

5 (3) A claim that arises from the combatant activities of the State
6 Militia during a state of emergency;

7 (4) Any tortious act or omission of State personnel that:

8 (i) Is not within the scope of the public duties of the State
9 personnel; or

10 (ii) Is made with malice or gross negligence;

11 (5) A claim by an individual arising from a single incident or
12 occurrence that exceeds \$200,000; or

13 (6) A cause of action that law specifically prohibits.

14 (b) **(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
15 **SUBSECTION**, State personnel, as defined in § 12–101 of the State Government
16 Article, are immune from suit in courts of the State and from liability in tort for a
17 tortious act or omission that is within the scope of the public duties of the State
18 personnel and is made without malice or gross negligence, and for which the State or
19 its units have waived immunity under Title 12, Subtitle 1 of the State Government
20 Article, even if the damages exceed the limits of that waiver.

21 **(2) UNLESS THE STATE AGREES TO ASSUME LIABILITY, A STATE**
22 **ELECTED OFFICIAL IS NOT IMMUNE UNDER PARAGRAPH (1) OF THIS**
23 **SUBSECTION IF THE STATE ELECTED OFFICIAL:**

24 **(I) WAS FOUND TO HAVE KNOWINGLY OR RECKLESSLY**
25 **VIOLATED FEDERAL, STATE, OR LOCAL LAW;**

26 **(II) ADMITTED TO KNOWINGLY OR RECKLESSLY VIOLATING**
27 **FEDERAL, STATE, OR LOCAL LAW; OR**

28 **(III) CONSENTED TO A SETTLEMENT AGREEMENT IN AN**
29 **ACTION INVOLVING A KNOWING OR RECKLESS VIOLATION OF FEDERAL, STATE,**
30 **OR LOCAL LAW.**

1 (c) The scope of public duties of State personnel shall include, but not be
2 limited to:

3 (1) Any authorized use of a State-owned vehicle by State personnel,
4 including, but not limited to, commuting to and from the place of employment; and

5 (2) Services to third parties performed by State personnel, as defined
6 by § 12-101 of the State Government Article, in the course of participation in an
7 approved clinical training or academic program.

8 (d) In a contract action under Title 12, Subtitle 2 of the State Government
9 Article, the State and its officers and units are not liable for punitive damages.

10 Article – State Government

11 12-305.

12 Before a State officer or State employee may be represented under this Part II
13 of this subtitle, the Attorney General shall have the officer or employee enter into an
14 agreement that:

15 (1) enables the Attorney General to require, from the officer or
16 employee, reimbursement of court costs, reasonable counsel fees, and other expenses
17 in representing the officer or employee if:

18 (i) 1. it is determined judicially that:

19 [1.] A. the defense of sovereign immunity is not
20 available to the officer or employee;

21 [2.] B. the injuries arose out of an act or omission of
22 the officer or employee; and

23 [3.] C. the act or omission was malicious or grossly
24 negligent or, when the act or the omission was made, the officer or employee was not
25 performing a duty within the scope of the employment of the officer or employee; and

26 [(ii)] 2. the officer or employee did not give the Attorney
27 General complete information or gave the Attorney General information that is false
28 or misleading; **OR**

29 **(II) THE STATE OFFICER IS A STATE ELECTED OFFICIAL**
30 **AND THE STATE OFFICER:**

31 1. **WAS FOUND TO HAVE KNOWINGLY OR**
32 **RECKLESSLY VIOLATED FEDERAL, STATE, OR LOCAL LAW;**

1 **2. ADMITTED TO KNOWINGLY OR RECKLESSLY**
2 **VIOLATING FEDERAL, STATE, OR LOCAL LAW; OR**

3 **3. CONSENTED TO A SETTLEMENT AGREEMENT IN AN**
4 **ACTION INVOLVING A KNOWING OR RECKLESS VIOLATION OF FEDERAL, STATE,**
5 **OR LOCAL LAW;**

6 (2) authorizes collection of the reimbursement, as a debt due to the
7 State;

8 (3) states that:

9 (i) this representation of the officer or employee does not
10 constitute an obligation for the State to pay a settlement, if the claim is settled, or a
11 judgment, if judgment is rendered against the officer or employee;

12 (ii) the State and its units are not responsible for payment of
13 the judgment; and

14 (iii) the officer or employee is entitled to submit to the Board of
15 Public Works an application for payment of a settlement or judgment;

16 (4) provides that:

17 (i) the Attorney General may not compromise or settle the
18 claim against the officer or employee without the written consent of the officer or
19 employee;

20 (ii) if the officer or employee will not consent, the Attorney
21 General may withdraw the appearance in accordance with the appropriate court rules;
22 and

23 (iii) the State is not responsible for any costs after the
24 withdrawal; and

25 (5) includes any other provisions that the Attorney General considers
26 necessary.

27 12–310.

28 (a) This section does not apply to the extent that a State officer or State
29 employee is reimbursed under § 12–309 of this subtitle.

30 (b) **[The] EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION,**
31 **THE State is liable to a State officer or State employee for reimbursement of court**

1 costs, counsel fees, and other reasonable expenses that the officer or employee incurs
2 in defending an action or proceeding if:

3 (1) the Attorney General declined representation under § 12-304(b)(1)
4 of this subtitle; and

5 (2) it is determined judicially that:

6 (i) the defense of sovereign immunity is available to the officer
7 or employee; or

8 (ii) injuries arose from an act or omission of the officer or
9 employee and, when the act or the omission was made, the officer or employee was
10 acting within the scope of employment and the act or omission was not malicious and
11 was not grossly negligent.

12 **(C) UNLESS THE STATE AGREES TO ASSUME THE LIABILITY, THE STATE**
13 **MAY NOT BE HELD LIABLE TO A STATE OFFICER WHO IS A STATE ELECTED**
14 **OFFICIAL FOR REIMBURSEMENT UNDER SUBSECTION (B) OF THIS SECTION IF**
15 **THE STATE OFFICER:**

16 **(1) WAS FOUND TO HAVE KNOWINGLY OR RECKLESSLY VIOLATED**
17 **FEDERAL, STATE, OR LOCAL LAW;**

18 **(2) ADMITTED TO KNOWINGLY OR RECKLESSLY VIOLATING**
19 **FEDERAL, STATE, OR LOCAL LAW; OR**

20 **(3) CONSENTED TO A SETTLEMENT AGREEMENT IN AN ACTION**
21 **INVOLVING A KNOWING OR RECKLESS VIOLATION OF FEDERAL, STATE, OR**
22 **LOCAL LAW.**

23 **[(c)] (D)** Reimbursement under this section shall be subject to the
24 provisions of Subtitle 5 of this title.

25 12-404.

26 **(A)** Subject to the limitations in this subtitle **AND EXCEPT AS PROVIDED IN**
27 **SUBSECTION (B) OF THIS SECTION**, the Board of Public Works may:

28 (1) pay wholly or partly a settlement or judgment against the State or
29 any State personnel; and

30 (2) include, in the payment, counsel fees and costs.

1 **(B) (1) UNLESS THE STATE AGREES TO ASSUME THE LIABILITY, THE**
2 **BOARD OF PUBLIC WORKS MAY NOT PAY WHOLLY OR PARTLY A SETTLEMENT**
3 **UNDER SUBSECTION (A) OF THIS SECTION IF:**

4 **(I) THE SETTLEMENT RESULTED FROM AN ACTION AGAINST**
5 **A STATE OFFICER WHO IS A STATE ELECTED OFFICIAL INVOLVING A KNOWING**
6 **OR RECKLESS VIOLATION OF FEDERAL, STATE, OR LOCAL LAW; AND**

7 **(II) THE STATE OFFICER CONSENTED TO THE SETTLEMENT.**

8 **(2) UNLESS THE STATE AGREES TO ASSUME THE LIABILITY, THE**
9 **BOARD OF PUBLIC WORKS MAY NOT PAY WHOLLY OR PARTLY A JUDGMENT**
10 **UNDER SUBSECTION (A) OF THIS SECTION IF:**

11 **(I) THE JUDGMENT RESULTED FROM AN ACTION AGAINST A**
12 **STATE OFFICER WHO IS A STATE ELECTED OFFICIAL; AND**

13 **(II) THE STATE OFFICER:**

14 **1. WAS FOUND TO HAVE KNOWINGLY OR**
15 **RECKLESSLY VIOLATED FEDERAL, STATE, OR LOCAL LAW; OR**

16 **2. ADMITTED TO KNOWINGLY OR RECKLESSLY**
17 **VIOLATING FEDERAL, STATE, OR LOCAL LAW.**

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
19 construed to apply only to causes of action that result in a judgment or settlement
20 after the effective date of this Act.

21 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency
22 measure, is necessary for the immediate preservation of the public health or safety,
23 has been passed by a yea and nay vote supported by three-fifths of all the members
24 elected to each of the two Houses of the General Assembly, and shall take effect from
25 the date it is enacted.