HOUSE BILL 809

D3 4lr0691

By: **Delegates Waldstreicher, Barkley, Carr, Dumais, Fraser–Hidalgo, A. Miller, and Mizeur**

Introduced and read first time: February 3, 2014
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Local Government Tort Claims Act and Maryland Tort Claims Act – Damages Sustained on Artificial or Synthetic Turf Playing Fields

FOR the purpose of establishing that the limits on liability of a local government under the Local Government Tort Claims Act do not apply to certain tort actions related to artificial or synthetic turf playing fields; providing that the State, its officers, and its units may not raise sovereign immunity as a defense in a certain action related to artificial or synthetic turf playing fields; establishing that the limit on the liability of the State under the Maryland Tort Claims Act does not apply to certain actions related to artificial or synthetic turf playing fields; providing that certain special procedures do not apply to certain actions related to artificial or synthetic turf playing fields; providing for the application of this Act; and generally relating to the Local Government Tort Claims Act and Maryland Tort Claims Act.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 5–303 and 5–304
Annotated Code of Maryland
(2013 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 12–104 and 12–106
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

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

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

Article – Courts and Judicial Proceedings

5–303.

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

(2) The limits on liability provided under paragraph (1) of this subsection do not **[**include**]:**

(I) INCLUDE interest accrued on a judgment**; OR**

(II) APPLY TO A CLAIM FOR DAMAGES SUSTAINED BY AN INDIVIDUAL ON AN ARTIFICIAL OR SYNTHETIC TURF PLAYING FIELD OWNED OR OPERATED BY A LOCAL GOVERNMENT.

(b) (1) Except as provided in subsection (c) of this section, a local government shall be liable for any judgment against its employee for damages resulting from tortious acts or omissions committed by the employee within the scope of employment with the local government.

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

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

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

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

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

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

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

(f) (1) Lexington Market, Inc., in Baltimore City, and its employees, may not raise as a defense a limitation on liability described under § 5–406 of this title.

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

5–304.

(a) This section does not apply to **[**an**]:**

(1) AN action against a nonprofit corporation described in § 5–301(d)(23), (24), (25), (26), or (28) of this subtitle or its employees**; OR**

(2) A TORT ACTION FOR DAMAGES SUSTAINED BY AN INDIVIDUAL ON AN ARTIFICIAL OR SYNTHETIC TURF PLAYING FIELD OWNED OR OPERATED BY A LOCAL GOVERNMENT.

(b) (1) Except as provided in subsections (a) and (d) of this section, an action for unliquidated damages may not be brought against a local government or its employees unless the notice of the claim required by this section is given within 180 days after the injury.

(2) The notice shall be in writing and shall state the time, place, and cause of the injury.

(c) (1) The notice required under this section shall be given in person or by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, by the claimant or the representative of the claimant.

(2) Except as otherwise provided, if the defendant local government is a county, the notice required under this section shall be given to the county commissioners or county council of the defendant local government.

(3) If the defendant local government is:

(i) Baltimore City, the notice shall be given to the City Solicitor;

(ii) Howard County or Montgomery County, the notice shall be given to the County Executive; and

(iii) Anne Arundel County, Baltimore County, Harford County, or Prince George's County, the notice shall be given to the county solicitor or county attorney.

(4) For any other local government, the notice shall be given to the corporate authorities of the defendant local government.

(d) Notwithstanding the other provisions of this section, unless the defendant can affirmatively show that its defense has been prejudiced by lack of required notice, upon motion and for good cause shown the court may entertain the suit even though the required notice was not given.

Article – State Government

12–104.

(a) (1) Subject to the exclusions and limitations in this subtitle and notwithstanding any other provision of law, the immunity of the State and of its units is waived as to a tort action, in a court of the State, to the extent provided under paragraph (2) of this subsection.

(2) **(I)** **[**The**]** **SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE** liability of the State and its units may not exceed $200,000 to a single claimant for injuries arising from a single incident or occurrence.

(II) THE STATE, ITS OFFICERS, AND ITS UNITS MAY NOT RAISE SOVEREIGN IMMUNITY AS A DEFENSE IN A TORT ACTION FOR DAMAGES SUSTAINED BY AN INDIVIDUAL ON A STATE–OWNED OR STATE–OPERATED ARTIFICIAL OR SYNTHETIC TURF PLAYING FIELD, AND THE LIMITATION ON LIABILITY ESTABLISHED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH DOES NOT APPLY TO THE AWARD.

(b) **[**Immunity**]** **SUBJECT TO SUBSECTION (A)(2)(II) OF THIS SECTION, IMMUNITY** is not waived under this section as described under § 5–522(a) of the Courts and Judicial Proceedings Article.

(c) (1) The Treasurer may pay from the State Insurance Trust Fund all or part of that portion of a tort claim which exceeds the limitation on liability established under subsection (a)(2) of this section under the following conditions:

(i) the tort claim is one for which the State and its units have waived immunity under subsections (a) and (b) of this section;

(ii) a judgment or settlement has been entered granting the claimant damages to the full amount established under subsection (a)(2) of this section; and

(iii) the Board of Public Works, with the advice and counsel of the Attorney General, has approved the payment.

(2) Any payment of part of a settlement or judgment under this subsection does not abrogate the sovereign immunity of the State or any units beyond the waiver provided in subsections (a) and (b) of this section.

12–106.

(a) This section does not apply to a claim**:**

(1) FOR DAMAGES SUSTAINED BY AN INDIVIDUAL ON A STATE–OWNED OR STATE–OPERATED ARTIFICIAL OR SYNTHETIC TURF PLAYING FIELD; OR

(2) that is asserted by cross–claim, counterclaim, or third–party claim.

(b) A claimant may not institute an action under this subtitle unless:

(1) the claimant submits a written claim to the Treasurer or a designee of the Treasurer within 1 year after the injury to person or property that is the basis of the claim;

(2) the Treasurer or designee denies the claim finally; and

(3) the action is filed within 3 years after the cause of action arises.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.