

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 350
Judiciary

(Delegate Anderson, *et al.*)

Courts - Civil Action for Law Enforcement Officer Conduct - Nondisclosure
Agreements

This bill establishes that a plaintiff in a civil action against a law enforcement officer or law enforcement agency for injuries resulting from law enforcement officer misconduct may not be required, as a part of the settlement agreement to the lawsuit, to agree not to disclose information about the lawsuit to a third party. A plaintiff in this type of lawsuit is not liable for a breach of a settlement agreement that contains such a nondisclosure agreement.

The bill applies prospectively to settlement agreements entered into on or after the bill's October 1, 2016 effective date.

Fiscal Summary

State Effect: The bill is technical/procedural in nature and does not materially affect State finances.

Local Effect: The bill does not materially affect local finances.

Small Business Effect: Potential meaningful impact on small business law firms that litigate these types of claims.

Analysis

Current Law: Maryland statutes do not prohibit the use of nondisclosure agreements in settlements in a civil action against a law enforcement officer or law enforcement agency for injuries resulting from law enforcement officer misconduct. These cases are often filed

under the Maryland Tort Claims Act (MTCA) or the Local Government Tort Claims Act (LGTCA), as described below.

Local Government Tort Claims Act: LGTCA defines local government to include counties, municipal corporations, Baltimore City, and various agencies and authorities of local governments such as community colleges, county public libraries, special taxing districts, nonprofit community service corporations, sanitary districts, housing authorities, and commercial district management authorities.

LGTCA limits the liability of a local government to \$400,000 per individual claim and \$800,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). It further establishes that the local government is liable for tortious acts or omissions of its employees acting within the scope of employment. Thus, LGTCA prevents local governments from asserting a common law claim of governmental immunity from liability for such acts of its employees.

Maryland Tort Claims Act: In general, the State is immune from tort liability for the acts of its employees and cannot be sued in tort without its consent. Under MTCA, the State statutorily waives its own common law (sovereign) immunity on a limited basis. MTCA applies to tortious acts or omissions, including State constitutional torts, by “State personnel” performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. Under MTCA, the State essentially “...waives sovereign or governmental immunity and substitutes the liability of the State for the liability of the state employee committing the tort.” (*Lee v. Cline*, 384 Md. 245, 262 (2004)).

However, MTCA limits State liability to \$400,000 to a single claimant for injuries arising from a single incident. Attorney’s fees are included in the liability cap under MTCA. Under MTCA, attorneys may not charge or receive a fee that exceeds 20% of a settlement or 25% of a judgment. MTCA claims are typically paid out of the State Insurance Trust Fund (SITF), which is administered by the State Treasurer. The liability for an MTCA tort claim may not exceed the insurance coverage granted to units of State government under the State Insurance Program/SITF.

In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State’s color of authority or sovereign immunity and may be held personally liable.

State Fiscal Effect: The bill is not anticipated to materially affect State finances. The Treasurer’s Office advises that the bill has no fiscal or operational impact because the current practice of the Insurance Division is not to include nondisclosure provisions in any settlement agreement, including any settlements resolving civil actions involving law

enforcement officer conduct. According to the office, this is consistent with the general practice throughout the State and with the Office of the Attorney General.

The Natural Resources Police (NRP) advises that the bill does not have a fiscal impact, because NRP is not permitted to enter into confidential settlements on behalf of the State or employees. The Department of State Police also advises that the bill does not have a fiscal or operational impact.

Local Fiscal Effect: The bill is not anticipated to have a material impact on local finances. Even so, Baltimore City advises that the bill may affect the city's use of nondisparagement clauses. According to the city, these clauses are an important tool in getting to the truth in the types of cases affected by the bill, preventing the filing of meritless claims, and protecting the individuals involved.

The City of Frederick advises that the bill may have a fiscal impact in the future because the city could no longer prohibit a plaintiff from disclosing the financial amount of his/her settlement. The city advises that knowledge of past settlement amounts may work against the city when trying to settle future claims.

Other local jurisdictions that responded report that the bill has no foreseeable fiscal impact.

Additional Information

Prior Introductions: HB 608 of 2015 received a hearing in the House Judiciary Committee. No further action was taken on the bill.

Cross File: None.

Information Source(s): Baltimore City, Montgomery and Prince George's counties, cities of Frederick and Havre de Grace, Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts), Department of Natural Resources, Department of State Police, Department of Legislative Services

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