

Department of Legislative Services  
Maryland General Assembly  
2020 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1037  
Judiciary

(Delegate Moon)

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Civil Actions - Noneconomic Damages - Personal Injury or Wrongful Death

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This bill specifies that, notwithstanding any other provision of law, in *any* claim or action for damages for personal injury or wrongful death arising on or after October 1, 2020, any statutory limitation on noneconomic damages does not apply if the trier of fact finds, by a preponderance of the evidence, that the damages resulted from one or more willful, wanton, malicious, reckless, or grossly negligent acts or omissions.

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Fiscal Summary

**State Effect:** Potential increase in Transportation Trust Fund (TTF) expenditures, as discussed below. Otherwise, the bill is not expected to materially affect State finances or operations.

**Local Effect:** The bill is not expected to materially affect local government finances or operations, as discussed below.

**Small Business Effect:** Meaningful.

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Analysis

**Current Law:** The Courts and Judicial Proceedings Article sets various caps on noneconomic damages in civil actions, depending on the type of action and when the cause of action arose. “Noneconomic damages” means:

- in an action for personal injury, pain, suffering, inconvenience, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injury; and

- in an action for wrongful death, mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, care, marital care, parental care, filial care, attention, advice, counsel, training, guidance, or education, or other noneconomic damages authorized under Title 3, Subtitle 9 of the Courts and Judicial Proceedings Article (wrongful death provisions).

### *Medical Malpractice Claims*

As of January 1, 2020, Maryland's cap for noneconomic damages in medical malpractice claims is \$830,000, and it increases annually by \$15,000. The cap is 125% of that amount in wrongful death actions in which there are two or more claimants or beneficiaries, whether or not there is a personal injury action arising from the same medical injury; thus, as of January 1, 2020, it is \$1,037,500. The cap for individual causes of action is based on the date of the incident.

### *Other Personal Injury and Wrongful Death Civil Actions*

As of October 1, 2020, Maryland's cap for noneconomic damages for injuries and wrongful death causes of action (other than those for medical malpractice) is \$890,000, and it increases annually by \$15,000. The cap is 150% of that amount in wrongful death actions made by two or more surviving family members; thus, as of October 1, 2020, it is \$1,335,000. The cap for individual causes of action is based on the date of the incident.

### *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 the Maryland Tort Claims Act (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. (Chapter 132 of 2015 increased the liability limit under MTCA from \$200,000 to \$400,000 for causes of action arising on or after October 1, 2015.)

MTCA covers a multitude of personnel, including some local officials and nonprofit organizations. 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.

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.

### *Maryland Transit Administration Tort Claims Act*

The Maryland Transit Administration (MTA) is subject to the Maryland Transit Administration Tort Claims Act (MTATCA), not MTCA. MTATCA does not have a specific liability limit; thus, actions under MTATCA are subject to liability limits contained elsewhere in statute, including the limitation on noneconomic damages.

### *Local Government Tort Claims Act*

The 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. Pursuant to Chapter 131 of 2015, for causes of action arising on or after October 1, 2015, LGTCA limits the liability of a local government to \$400,000 per individual claim and \$800,000 for all 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 the 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 or omissions of their employees.

**State Expenditures:** TTF expenditures may increase if the bill's provisions increase the amount of damages awarded against MTA. Information is not readily available on the monetary value of claims filed against MTA and the extent to which claims approach existing statutory limits. Regardless, the bill exposes MTA to increased liability and may result in additional TTF expenditures for payments of damages awarded under the bill or related insurance premiums. The extent to which this occurs cannot be reliably estimated at this time.

Otherwise, assuming that the bill does not affect the limit on liability under MTCA, the bill is not expected to materially affect State finances or operations.

**Local Expenditures:** Assuming that the bill's provisions do not affect the limit on liability under LGTCA, the bill is not expected to materially affect local government finances or operations.

**Small Business Effect:** Under the bill, the liability risk for small businesses, including health care providers, significantly increases. Similarly, revenues for plaintiff's attorneys

who work under contingency fees in wrongful death and personal injury cases likely significantly increase.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Maryland Health Care Alternative Dispute Resolution Office; Department of Legislative Services

**Fiscal Note History:** First Reader - February 25, 2020  
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