

**Department of Legislative Services**  
Maryland General Assembly  
2024 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 1031

(Senator Carter)

Judicial Proceedings

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**Civil Actions - Lead Poisoning - Liability and Statute of Limitations (Maryland  
Lead Poisoning Compensation Act)**

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This bill (1) establishes that an action against the owner or manager of property to recover damages related to lead poisoning may be brought at any time; (2) establishes that the owner or manager of a property is strictly liable for compensatory and noneconomic damages caused by lead poisoning arising from lead-based paint hazards on the property; (3) establishes that the statutory limits on noneconomic damages do not apply to these claims; (4) prohibits the State, a local government, or a county school board from raising a defense of sovereign immunity for claims brought under the bill that exceed specified claim limits; and (5) establishes an affirmative defense if the owner or manager of the property complied with specified environmental laws at the time the plaintiff was exposed to lead-based paint hazards on the property. The bill's provisions are severable, and the bill must be construed to revive any action barred by the statute of limitations applicable before October 1, 2024.

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**Fiscal Summary**

**State Effect:** Potential significant increase in State expenditures (multiple fund types), as discussed below. The bill may also have a significant operational impact on affected agencies, including the State Treasurer's Office (STO) and the Judiciary. Revenues are not materially affected.

**Local Effect:** Potential significant increase in local government expenditures, as discussed below. Revenues are not affected.

**Small Business Effect:** Meaningful.

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## Analysis

### **Bill Summary:**

#### *Statute of Limitations*

Notwithstanding any time limitation under a statute of limitations, the Maryland Tort Claims Act (MTCA), the Local Government Tort Claims Act (LGTC), or any other law, an action for compensatory and noneconomic damages for injuries sustained due to lead poisoning allegedly caused by lead-based paint hazards on a property may be filed at any time.

#### *Limits on Damages*

The limitations on noneconomic damages under § 11-108 of the Courts and Judicial Proceedings Article do not apply to claims brought under the bill, and the State, a local government, or a county school board may not raise a defense of sovereign immunity for claims exceeding claim limits under MTCA, LGTC, or § 5-518 of the Courts and Judicial Proceedings Article.

#### *Affirmative Defense*

It is an affirmative defense to a claim under the bill that an owner or manager of a property was compliant with requirements for lead-affected properties under Title 6, Subtitle 8 of the Environment Article at the time of the plaintiff's alleged exposure to lead-based paint hazards on the property.

#### *Definitions*

Under the bill, "lead poisoning" means elevated blood lead levels in an individual, determined by the reference value established by the Centers for Disease Control and Prevention. "Owner or manager of a property" includes the State, a local government, and a county board of education.

### **Current Law:**

#### *Statute of Limitations*

In general, the statute of limitations for a civil action requires that a civil action must be filed within three years from the date it accrues unless another statutory provision permits a different period of time within which an action can be commenced. The "discovery rule" is applicable generally in all actions, and the cause of action accrues when the claimant in

fact knew or reasonably should have known of the wrong. *Poffenberger v. Risser*, 290 Md. 631 (1981). If a cause of action accrues to a minor, the general three-year statute of limitations is tolled until the child reaches the age of majority (age 18). Thus, on becoming an adult at age 18, a child victim of a tort is required to file the suit before the victim reaches age 21.

### *Strict Liability*

Strict liability is liability imposed on an individual based on the commission of a particular act, regardless of the individual's negligence or intent to do harm. Abnormally dangerous activities and products liability are two types of cases to which strict liability applies. Abnormally dangerous activities are uncommon acts that carry a significant risk of serious harm to persons or property, even if the actor used reasonable care.

According to the Restatement (Second) of Torts, determining whether an activity is abnormally dangerous involves the following analysis: (1) whether the activity involves a high degree of risk of harm; (2) whether the harm associated with the activity is substantial; (3) the ability of the exercise of reasonable care to eliminate the risk of harm; (4) whether the activity is a common one; (5) whether the activity is appropriate to the location in which it occurs; and (6) whether the value of the activity to society outweighs the danger it presents.

### *Noneconomic Damages*

There is no cap on economic damages or punitive damages in Maryland. However, there are caps on noneconomic damages. "Noneconomic damages" means (1) for personal injury actions – pain, suffering, inconvenience, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injury and (2) for wrongful death actions – 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 specified statutes pertaining to wrongful death causes of action. "Noneconomic damages" does not include punitive damages.

In any action for damages for personal injury or wrongful death (excluding medical malpractice) in which the cause of action arises on or after October 1, 1994, an award for noneconomic damages may not exceed \$500,000. This limitation increases by \$15,000 on October 1 of each year beginning on October 1, 1995. The increased amount must apply to causes of action arising between October 1 of that year and September 30 of the following year, inclusive. (As of October 1, 2024, this cap will be \$950,000.) This limitation applies in a personal injury action to each direct victim of tortious conduct and all persons who claim injury by or through that victim.

In a wrongful death action (excluding medical malpractice) in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of the limitation listed above, regardless of the number of claimants or beneficiaries who share in the award. (As of October 1, 2024, this cap will be \$1,425,000). The cap applies separately to a wrongful death claim and a survival action. (Thus, the cap for a wrongful death claim involving two or more claimants or beneficiaries accompanied by a survival action is \$2,375,000 as of October 1, 2024.)

### *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).

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.

MTCA contains specific notice and procedural requirements. A claimant is prohibited from instituting an action under MTCA unless (1) the claimant submits a written claim to the State Treasurer or the Treasurer’s designee within one year after the injury to person or property that is the basis of the claim; (2) the State Treasurer/designee denies the claim finally; and (3) the action is filed within three years after the cause of action arises. STO previously advised that the one-year claim requirement under MTCA has been expanded to include the agency on notice of the incident. An exception to the first two steps applies if the State receives actual or constructive notice within one year after the claimant’s injury.

In general, MTCA limits State liability to \$400,000 to a single claimant for injuries arising from a single incident. Higher liability limits apply to claims involving law enforcement officers that arise on or after July 1, 2022, and claims involving child sexual abuse.

The State does not waive its immunity for punitive damages. 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.

## *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 also specifies that an action for unliquidated damages may not be brought unless notice of the claim is given within one year after the injury. The notice must be in writing and must state the time, place, and cause of the injury. The notice must also meet other specified requirements regarding the type of delivery and to whom the notice must be given. However, there are exceptions to these notice requirements that allow a lawsuit to proceed if (1) the defendant local government, within one year after the injury, had actual or constructive notice of the claimant's injury or the defect or circumstances giving rise to the claimant's injury or (2) the defendant cannot affirmatively show that its defense has been prejudiced by lack of required notice, as specified.

A plaintiff who does not strictly comply with the notice requirement may substantially comply with LGTCa's notice requirement by providing notice "in fact" which, while not strictly compliant with the statutory notice requirements, provides requisite and timely notice of the facts and circumstances giving rise to the plaintiff's claim and fulfills the purpose of the notice requirement – to apprise the local government of its potential liability at a time when it is still possible for the local government to conduct a proper investigation. *Faulk v. Ewing*, 371 Md. 284, at 298-99 (2002).

In general, 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). Higher liability limits apply to claims involving law enforcement officers that arise on or after July 1, 2022, and claims involving child sexual abuse.

LGTCa further establishes that the local government is liable for tortious acts or omissions of its employees acting within the scope of employment, so long as the employee did not act with actual malice. Thus, LGTCa prevents local governments from asserting a common law claim of governmental immunity from liability for such acts or omissions of its employees.

A local government is not liable for punitive damages. However, a local government, subject to the liability limits and certain exceptions, may indemnify an employee for a judgment for punitive damages entered against the employee.

*Limits on Liability for County Boards of Education (§ 5-518 of the Courts and Judicial Proceedings Article and § 4-105 of the Education Article)*

Under § 5-518 of the Courts and Judicial Proceedings Article, a county board of education employee acting within the scope of employment, without malice and gross negligence, is not personally liable for damages resulting from a tortious act or omission for which a limitation of liability (discussed below) is provided for the county board, including damages that exceed the limitation on the county board's liability. In these cases, a civil claim may be filed against the employee, but the board of education must be joined as a party and is required to indemnify the employee for any personal liability associated with a money judgment entered against the employee.

County boards of education are not covered under the LGTCA. However, a county board of education may raise the defense of sovereign immunity to any amount claimed above the limit of its insurance policy or, if self-insured or a member of an insurance pool, above \$400,000 (above \$890,000 to a single claimant for a sexual abuse claim). A county board of education may not raise the defense of sovereign immunity to any claim of \$400,000 or less. For sexual abuse claims, the liability of a county board of education may not exceed \$890,000 to a single claimant for injuries arising from an incident or occurrence.

Each county board of education must carry comprehensive liability insurance to protect the board and its agents and employees. The purchase of this insurance is a valid educational expense. The State Board of Education (SBE) must establish standards for these insurance policies, including a minimum liability coverage of not less than \$400,000 for each occurrence (\$890,000 for claims of sexual abuse as specified). The policies purchased must meet the standards established by SBE.

A county board complies with this requirement if it (1) is individually self-insured for at least \$890,000 for each occurrence (under the rules and regulations adopted by the Insurance Commissioner) or (2) pools with other public entities for the purpose of self-insuring property or casualty risks.

*Reduction of Lead Risk in Housing Law (Title 6, Subtitle 8 of the Environment Article)*

Title 6, Subtitle 8 of the Environment Article contains extensive provisions that address the reduction of lead risk in housing. Chapter 114 of 1994 established the Lead Poisoning Prevention Program within the Maryland Department of the Environment (MDE). Chapter 114 established a comprehensive plan to regulate compensation for children who are poisoned by lead paint, treat affected residential rental properties to reduce risks, and limit liability of landlords who act to reduce lead hazards in accordance with various regulatory requirements.

If a landlord complies with the regulatory provisions, Chapter 114 provides liability protection, through a qualified offer, by limiting compensation to children who resided in the rental unit to a maximum of \$7,500 for all medically necessary treatments and a maximum of \$9,500 for relocation benefits, for a total of \$17,000. Compliance with Chapter 114 includes having registered with MDE, having implemented all lead risk reduction treatment standards, and having provided notice to tenants about their legal rights and specified lead poisoning prevention information. The liability protection provisions of Chapter 114, however, were rendered invalid by a 2011 Maryland Court of Appeals decision.

### *Court of Appeals Deems Liability Limitation Unconstitutional*

In *Jackson et al., v. Dackman Co. et al.*, 422 Md. 357 (2011), the Court of Appeals (now the Supreme Court of Maryland) ruled that the limits on landlord liability in Chapter 114 are unconstitutional because the provisions violate Article 19 of the Maryland Declaration of Rights. Article 19 protects a right to a remedy for an injury and a right of access to the courts. The court stated that the test to be applied under an Article 19 challenge is whether the restriction on a judicial remedy was reasonable. The court found that the \$17,000 remedy available under Chapter 114 was “miniscule” and, thus, not reasonable compensation for a child permanently damaged by lead poisoning. Therefore, the court held the limited liability provisions under Chapter 114 to be invalid under Article 19 because a qualified offer does not provide a reasonable remedy.

**State Expenditures:** Due to the totality of the bill’s provisions (*e.g.*, revival of time-barred claims, exemption from the statute of limitations, waiver of sovereign immunity, removal of liability limits and exemption from limits on noneconomic damages), the bill has the potential to significantly increase State expenditures (multiple fund types) and significantly affect court operations, as discussed below. Generally, the magnitude of expenditures depends on the scope and volume of any litigation under the bill, how frequently the State is a defendant in any actions, and what relief is awarded by the courts.

### *State Treasurer’s Office*

The bill may significantly increase the number of claims filed under MTCA and the State Insurance Trust Fund (SITF), which is used for payments in MTCA claims. STO – the administrator of SITF – generally advises that the State’s current ownership in real property (buildings) is split among 88 different agencies at over 7,500 locations, with values totaling \$55.7 million. Information regarding any present or past lead paint-related issues in State-owned or managed property (especially property frequented by young children) is not readily available.

However, likely effects of the bill's provisions include a surge in claims (including older, previously time-barred claims); impairment of STO's ability to timely investigate claims and properly defend the State in lawsuits; increased litigation and lawsuits, and an impairment of STO's ability to assess and properly reserve losses.

Furthermore, if the bill results in higher payments from SITF for claims filed under MTCA and/or increased litigation costs for MTCA, SITF expenditures may increase significantly and affected State agencies may incur increased general fund expenditures for SITF premiums and assessments.

STO estimates that an additional 300 to 500 claims will need to be thoroughly investigated, settled, and/or litigated under the bill, resulting in the need for two additional claims adjusters and one administrative assistant. However, given the exemption of time limitations under the MTCA and the lack of a statute of limitations in these cases under the bill, it is unclear whether there is an *immediate* need for additional STO personnel; accordingly, expenditures associated with these resources have not specifically been accounted for in this analysis. *For illustrative purposes only*, costs associated with these positions are approximately \$275,000 on an annual basis.

#### *Office of the Attorney General*

The Office of the Attorney General may also require additional resources and staff to handle an increased litigation workload.

#### *Judiciary*

The bill may have a significant fiscal and operational impact on the courts, particularly in urban areas, such as Baltimore City. According to the Judiciary, potential effects include (1) the need to establish a Lead Paint Case Management program and a Lead Paint Docket (similar to the Asbestos Docket in Baltimore City) and (2) the need for additional staff, including judges and clerks to manage an anticipated high volume of complex cases. Absent experience under the bill, however, the precise need for additional staffing resources is speculative.

**Local Expenditures:** For reasons similar to those referenced above, the bill may result in a significant increase in local expenditures. The extent to which local governments own or manage property (past or present) that may be the subject of applicable lead paint claims cannot be reliably determined. The Maryland Association of Counties and Baltimore City did not respond to requests for information regarding the fiscal and operational impact of the bill.



The Maryland Municipal League advises that the bill's provisions, combined with the quantity and variety of property owned or operated by municipalities, subject municipal governments to extensive liability and a potentially significant increase in costs.

Anne Arundel County Public Schools advises that it is impossible to quantify the amount of potential liability for a school system under the bill's extensive provisions.

**Small Business Effect:** The bill has a meaningful effect on small business property owners and property management companies that face litigation under the bill and small business law firms that litigate lead paint personal injury cases.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

**Information Source(s):** Harford and Montgomery counties; Maryland Municipal League; Office of the Attorney General; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Maryland School for the Deaf; Maryland Department of Health; Department of Housing and Community Development; Department of Juvenile Services; Department of Human Services; Department of Public Safety and Correctional Services; Anne Arundel County Public Schools; Department of Legislative Services

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