HB 846

Department of Fiscal Services
Maryland General Assembly

FISCAL NOTE

House Bill 846 (Delegate Montague, *et al.*)
Judiciary

Maryland Comparative Negligence Act

This bill replaces the common law doctrine of contributory negligence with statutory comparative negligence except in cases where more than 50% of the negligence is attributable to the plaintiff. The bill also limits joint and several liability of codefendants.

The bill provides that its provisions are not severable and is applied prospectively.

Fiscal Summary

State Effect: Indeterminate increase in general fund expenditures. No effect on revenues.

Local Effect: Indeterminate increase in expenditures. Potential increase in revenues.

Small Business Effect: Potential meaningful effect on small businesses as discussed below.

Fiscal Analysis

Bill Summary: The bill establishes contributory negligence as the method for determining damages in tort claims arising from death, personal injury, or property damage. Damages are apportioned among all parties according to the negligence of each party involved, and reduced to the extent of the plaintiff's negligence. Discharge of any party by the plaintiff does not affect apportionment of negligence, and recovery is barred if the plaintiff's negligence exceeds that of all other parties. Defendants cannot be held jointly liable unless the entire judgement is not paid within two years after final entry of judgement. In no case can a defendant be liable for two times the amount of the judgement apportioned to that defendant.

Background: Under the doctrine of contributory negligence, there is no recovery for damages if it can be proven that the plaintiff's own negligence contributed to the death, injury, or damage.

State Expenditures: To the extent that additional tort claims are filed against the State, expenditures could increase. Agencies with federal or special fund revenue sources are charged for purchased insurance by the Treasurer. Self-insurance and purchased insurance for other agencies is paid with general funds. Although the Maryland Tort Claims Act limits the award of damages to the amount of insurance the State has to cover the claim, additional claims could increase the premiums charged by the Treasurer for both purchased insurance and the State's self-insurance pool. However, the bill allows the State to reduce the amount of damages it is found liable for to the extent that the plaintiff's negligence serves to reduce the damages owed by the State.

Although this bill is expected to increase the workload of the circuit courts and the District Court due to more tort case filings, the increase cannot be reliably estimated at this time. The State pays all costs of the District Court, as well as all costs of the judges and clerks of the circuit courts.

Local Expenditures: To the extent that additional tort claims are filed against the local governments, expenditures could increase as additional claims could increase the premiums for both purchased insurance and self-insurance pools.

Although this bill is expected to increase the workload of the circuit courts due to more tort case filings, the increase cannot be reliably estimated at this time. The counties and Baltimore City pay most operating and capital expenses of the circuit courts.

Small Business Effect: Under the current law doctrine of contributory negligence, if it can be proved that a plaintiff's negligence contributed to the death, injury, or damage claimed, the plaintiff or the plaintiff's representative would not be able to recover any damages. This bill provides that defendants in a tort claim arising from the death or injury of a person or property can be held responsible for a portion of damages if the plaintiff is less than 50% negligent in his actions.

Small businesses could be adversely affected by this legislation as it opens the employer up to greater liability. Where under contributory negligence the small business would not be liable for any damages if the plaintiff was even minimally at fault, under comparative negligence the employer would be liable for damages. However, the liability of the business would be diminished by the percentage of negligence attributed to the plaintiff. These additional claims could increase the small business's insurance premiums.

Conversely, as a plaintiff, a small business could benefit from this legislation in that it could recover damages if it was contributorily negligent, where it could not recover under current law.

Further, to the extent that more cases would be filed as a result of this legislation, attorneys would benefit significantly. This assumes that small or single person law firms are compensated based on a percentage of an award received by their client. If the client does not receive compensation, neither would the attorney. This legislation makes it more likely than not that the plaintiff, as well as the plaintiff's attorney, will receive some compensation, where under current law a similar scenario would result in no compensation for either of them.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Fiscal Services

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