

Department of Legislative Services  
Maryland General Assembly

FISCAL NOTE

Senate Bill 618 (Senator Van Hollen. *et al.*)

Judicial Proceedings

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Maryland Comparative Negligence Act

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This bill replaces the prevailing common law doctrine of contributory negligence with a standard of comparative negligence, except in cases where 50% or more of the total negligence is attributable to the plaintiff.

The bill is to be applied prospectively only and may not be applied to any cause of action arising before the bill's October 1, 1998 effective date.

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Fiscal Summary

**State Effect:** Indeterminate increase in general fund expenditures and general fund revenues. Potential indeterminate increase in special and/or federal fund expenditures.

**Local Effect:** Indeterminate increase in expenditures and revenues.

**Small Business Effect:** Meaningful.

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Fiscal Analysis

**Bill Summary:** The bill establishes comparative negligence as the method for determining damages in tort actions arising from death, personal injury, or property damage. The bill does not apply to actions in strict tort liability or breach of warranty.

If the trier of fact determines that the plaintiff (or decedent in a wrongful death action) was contributorily negligent by less than 50%, the trier of fact must determine the percentage of negligence attributable to each party and each person with whom the plaintiff has settled. Damages are then apportioned among all parties and all persons with whom the plaintiff has settled according to the negligence of each such party or person, and reduced to the extent of: 1) the plaintiff's negligence; and 2) the settlement amount paid by each person with whom

the plaintiff has settled, or the percentage of negligence attributable to that person, whichever is greater. Contributory negligence is to be disregarded in determining the total amount of damages sustained by the plaintiff.

The liability of each defendant in a case in which the plaintiff was less than 50% negligent is several only and limited to the amount of damages allocated to each defendant. However, any defendant who takes part in a conspiracy is jointly and severally liable for damages. In addition, any defendant who is vicariously liable for another defendant's negligence is jointly and severally liable for that person's damages. The liability of all defendants is joint and several in any case in which the plaintiff is not negligent.

On motion made 45 days after entry of judgment or later, the court must: 1) determine whether all or part of a party's share of damages is collectible from that party; and 2) reallocate any uncollectible amount among the other parties according to their shares of fault.

**Background:** Under the doctrine of contributory negligence, the plaintiff cannot recover if the plaintiff's own negligence was, to any extent, a contributing cause of the plaintiff's damages.

**State Effect:** Because the bill would allow suits by plaintiffs who are partially at fault for their damages, it is expected that the number of tort case filings and recoveries by plaintiffs would increase. Consequently, State expenditures for liability insurance premiums would increase. The State is self-insured for claims made pursuant to the Maryland Tort Claims Act. The Treasurer bills the various agencies premiums for their shares of the coverage. Whether these premiums are paid with general funds, federal funds, or special funds depends on the agency. In fiscal 1997, Maryland Tort Claims Act agency premiums totalled \$1,911,589. The Maryland Tort Claims Act generally limits recovery to the amount of insurance the State has to cover the claim, or \$100,000 per occurrence.

An increase in the number of case filings would increase the workload of the circuit courts and the District Court. Consequently, court-related expenditures would increase. The State pays all expenses of the District Court, as well as the compensation for the judges and clerks' office employees of the circuit courts. District Court fee revenue, which goes to the State general fund, would also increase to the extent that case filings increase. The filing fee for a civil case in District Court is currently either \$5 or \$10, depending on the size of the case. Various other fees are also payable during the course of litigation, depending on the nature of the filings in a particular case.

The precise impact of the bill on State finances cannot be reliably estimated at this time.

**Local Effect:** Expenditures by local governments for liability insurance premiums would increase. The Local Government Tort Claims Act limits recovery to \$200,000 per individual claim, and \$500,000 total for multiple claims arising out of the same occurrence. Presumably, local governments carry liability insurance that would cover claims up to these

limits.

Expenditures associated with the circuit courts would increase to the extent that case filings increase. The counties and Baltimore City pay most operating and capital expenses of the circuit courts. Circuit court filing fee revenue, which is retained by the local governments, would also increase. The filing fee for a civil case in circuit court is generally \$90. Various other fees are also payable during the course of litigation, depending on the nature of the filings in a particular case.

The precise impact of the bill on local government finances cannot be reliably estimated at this time.

**Small Business Effect:** Small businesses could be adversely affected by this bill because it increases the liability exposure of defendants. Liability insurance premiums for small businesses would increase, and small business defendants could be required to pay more damage awards out of corporate funds in the absence of applicable insurance coverage. Conversely, as a plaintiff, a small business could benefit from the bill in that recovery would not be barred in cases in which the business is up to 50% at fault. However, the adverse effect of the bill would probably outweigh the positive effect for small businesses, because plaintiffs in tort actions are usually individuals.

Small law firms would benefit from the bill in that it would increase the number of viable lawsuits from which attorney's fees could be obtained.

Small insurance businesses that provide liability insurance would be required to pay out more money in settlements and judgments as a result of the bill.

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

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