

# HOUSE BILL 808

D3, P1

9lr2251  
CF SB 457

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By: **Delegate Heller (Chair, Joint Committee on the Management of Public Funds) and Delegates Elmore, Howard, and Levy**

Introduced and read first time: February 11, 2009

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **State Government – Maryland Tort Claims Act – Malice or Gross Negligence**

3 FOR the purpose of providing that claims filed against State personnel individually for  
4 any malicious or grossly negligent tortious act or omission of the State  
5 personnel are subject to the restrictions placed on filing a claim under the  
6 Maryland Tort Claims Act; providing for the application of this Act; and  
7 generally relating to the Maryland Tort Claims Act.

8 BY repealing and reenacting, without amendments,  
9 Article – Courts and Judicial Proceedings  
10 Section 5–522(a)  
11 Annotated Code of Maryland  
12 (2006 Replacement Volume and 2008 Supplement)

13 BY repealing and reenacting, with amendments,  
14 Article – State Government  
15 Section 12–106  
16 Annotated Code of Maryland  
17 (2004 Replacement Volume and 2008 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article – Courts and Judicial Proceedings**

21 5–522.

22 (a) Immunity of the State is not waived under § 12–104 of the State  
23 Government Article for:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (1) Punitive damages;
- 2 (2) Interest before judgment;
- 3 (3) A claim that arises from the combatant activities of the State  
4 Militia during a state of emergency;
- 5 (4) Any tortious act or omission of State personnel that:
  - 6 (i) Is not within the scope of the public duties of the State  
7 personnel; or
  - 8 (ii) Is made with malice or gross negligence;
- 9 (5) A claim by an individual arising from a single incident or  
10 occurrence that exceeds \$200,000; or
- 11 (6) A cause of action that law specifically prohibits.

#### 12 Article – State Government

13 12–106.

14 (a) This section does not apply to a claim that is asserted by cross-claim,  
15 counterclaim, or third-party claim.

16 (b) A claimant may not institute an action under this subtitle **OR FOR A**  
17 **CLAIM DESCRIBED IN SUBSECTION (C) OF THIS SECTION** unless:

18 (1) the claimant submits a written claim to the Treasurer or a  
19 designee of the Treasurer within 1 year after the injury to person or property that is  
20 the basis of the claim;

21 (2) the Treasurer or designee denies the claim finally; and

22 (3) the action is filed within 3 years after the cause of action arises.

23 (c) **THE CLAIMS TO WHICH THIS SECTION APPLIES INCLUDE CLAIMS**  
24 **SUBJECT TO A DEFENSE OF SOVEREIGN IMMUNITY UNDER § 5–522(A)(4)(II) OF**  
25 **THE COURTS ARTICLE.**

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
27 construed to apply only prospectively and may not be applied or interpreted to have  
28 any effect on or application to any cause of action arising before the effective date of  
29 this Act.

1           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   October 1, 2009.