

SENATE BILL 457

D3, P1

9lr2246
CF 9lr2251

By: **Senator Jones (Chair, Joint Committee on the Management of Public Funds) and Senators Currie, Forehand, and Haines**

Introduced and read first time: February 4, 2009

Assigned to: Judicial Proceedings

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:

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.