

SENATE BILL 299

L2, D3

4r1760
CF HB 147

By: **Montgomery County Senators**

Introduced and read first time: January 17, 2014

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 13, 2014

CHAPTER _____

1 AN ACT concerning

2 **Montgomery County – Maryland Tort Claims Act – Human Services Torts**

3 FOR the purpose of clarifying that, under certain circumstances, Montgomery County
4 acts as a unit of the State and, for the purposes of certain tort claims, the State
5 shall be named as the proper defendant and damages shall be limited in a
6 certain manner; ~~altering certain procedures;~~ altering a certain definition;
7 ~~providing for the application of this Act;~~ and generally relating to the Maryland
8 Tort Claims Act and claims arising out of human services administered by
9 Montgomery County.

10 BY repealing and reenacting, with amendments,
11 Article – State Government
12 Section 12-103.2 ~~and 12-106~~
13 Annotated Code of Maryland
14 (2009 Replacement Volume and 2013 Supplement)

15 ~~BY repealing and reenacting, with amendments,~~
16 ~~Article – Courts and Judicial Proceedings~~
17 ~~Section 5-304~~
18 ~~Annotated Code of Maryland~~
19 ~~(2013 Replacement Volume and 2013 Supplement)~~

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 **Article – State Government**

2 12-103.2.

3 (a) In this section, “tort claim” means a tort claim, ~~INCLUDING STATE AND~~
 4 ~~CONSTITUTIONAL TORTS,~~ filed in ~~[State court against the Montgomery County~~
 5 ~~government relating to] COURT ARISING OUT OF~~ the administration of a State
 6 program under Title 3, Subtitle 4 of the Human Services Article **BY THE**
 7 **MONTGOMERY COUNTY GOVERNMENT.**

8 (b) (1) A tort claim shall be considered, defended, settled, and paid in the
 9 same manner as any other claim covered by the Montgomery County Self-Insurance
 10 Fund.

11 (2) **UNDER THIS SECTION, WHENEVER MONTGOMERY COUNTY**
 12 **ADMINISTERS A STATE PROGRAM UNDER TITLE 3, SUBTITLE 4 OF THE HUMAN**
 13 **SERVICES ARTICLE, MONTGOMERY COUNTY ACTS AS A UNIT OF THE STATE,**
 14 **AND ANY TORT CLAIM SHALL NAME THE STATE OF MARYLAND AS THE PROPER**
 15 **DEFENDANT.**

16 (c) Liability for a tort claim may not exceed the insurance coverage granted
 17 to units of State government under Title 9 of the State Finance and Procurement
 18 Article.

19 (d) (1) The State Treasurer is not liable under § 9-107(c) of the State
 20 Finance and Procurement Article for a tort claim.

21 (2) For tort claims, the duties, responsibilities, and liabilities of the
 22 Treasurer under this subtitle shall be assumed by the Montgomery County
 23 Self-Insurance Fund **WITH DAMAGES LIMITED IN ACCORDANCE WITH**
 24 **SUBSECTION (C) OF THIS SECTION.**

25 ~~(E) THE NOTICE REQUIREMENTS UNDER § 12-106 OF THIS SUBTITLE~~
 26 ~~SHALL APPLY TO ALL TORT CLAIMS MADE UNDER THIS SECTION.~~

27 ~~12-106.~~

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

30 ~~(b) A claimant may not institute an action under this subtitle unless:~~

31 ~~(1) the claimant submits a written claim to the Treasurer or a~~
 32 ~~designee of the Treasurer AND, IN THE CASE OF A TORT CLAIM UNDER § 12-103.2~~
 33 ~~OF THIS SUBTITLE, THE COUNTY EXECUTIVE OF MONTGOMERY COUNTY within~~
 34 ~~1 year after the injury to person or property that is the basis of the claim;~~

1 ~~(2) the Treasurer or designee AND, IN THE CASE OF A TORT CLAIM~~
2 ~~UNDER § 12-103.2 OF THIS SUBTITLE, THE COUNTY EXECUTIVE OF~~
3 ~~MONTGOMERY COUNTY denies the claim finally; and~~

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

5 ~~**Article Courts and Judicial Proceedings**~~

6 ~~5-304.~~

7 ~~(a) This section does not apply to an action against a nonprofit corporation~~
8 ~~described in § 5-301(d)(23), (24), (25), (26), or (28) of this subtitle or its employees.~~

9 ~~(b) (1) Except as provided in subsections (a) and (d) of this section AND AS~~
10 ~~OTHERWISE PROVIDED IN §§ 12-103.2 AND 12-106 OF THE STATE~~
11 ~~GOVERNMENT ARTICLE, an action for unliquidated damages may not be brought~~
12 ~~against a local government or its employees unless the notice of the claim required by~~
13 ~~this section is given within 180 days after the injury.~~

14 ~~(2) The notice shall be in writing and shall state the time, place, and~~
15 ~~cause of the injury.~~

16 ~~(c) (1) The notice required under this section shall be given in person or~~
17 ~~by certified mail, return receipt requested, bearing a postmark from the United States~~
18 ~~Postal Service, by the claimant or the representative of the claimant.~~

19 ~~(2) Except as otherwise provided, if the defendant local government is~~
20 ~~a county, the notice required under this section shall be given to the county~~
21 ~~commissioners or county council of the defendant local government.~~

22 ~~(3) If the defendant local government is:~~

23 ~~(i) Baltimore City, the notice shall be given to the City~~
24 ~~Solicitor;~~

25 ~~(ii) Howard County or Montgomery County, the notice shall be~~
26 ~~given to the County Executive; and~~

27 ~~(iii) Anne Arundel County, Baltimore County, Harford County,~~
28 ~~or Prince George's County, the notice shall be given to the county solicitor or county~~
29 ~~attorney.~~

30 ~~(4) For any other local government, the notice shall be given to the~~
31 ~~corporate authorities of the defendant local government.~~

1 ~~(d) Notwithstanding the other provisions of this section, unless the~~
 2 ~~defendant can affirmatively show that its defense has been prejudiced by lack of~~
 3 ~~required notice, upon motion and for good cause shown the court may entertain the~~
 4 ~~suit even though the required notice was not given.~~

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

9 SECTION ~~3.~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take
 10 effect October 1, 2014.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.