

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 114
Judiciary

(Delegate Conaway)

Judicial Proceedings

Maryland Tort Claims Act - Claim Requirement and Limit on Liability

This bill increases the liability limit under the Maryland Tort Claims Act (MTCA) from \$200,000 to \$400,000 to a single claimant for injuries arising from a single incident or occurrence. The bill also authorizes a court to entertain a cause of action by a claimant who fails to submit a written claim within one year after the injury that is the basis of the claim as required under MTCA unless the State can affirmatively show that its defense has been prejudiced by the claimant's failure to submit the claim.

The bill applies prospectively to causes of action arising on or after the bill's October 1, 2015 effective date.

Fiscal Summary

State Effect: Potential significant increase in special fund expenditures if the bill results in higher payments from the State Insurance Trust Fund (SITF) for claims filed under MTCA or increased litigation of MTCA cases. General fund expenditures increase for State agencies subject to higher costs for SITF assessments if SITF incurs losses from MTCA payments or if agencies need to employ additional legal staff to litigate MTCA cases filed as a result of the bill's provisions. Revenues are not affected.

Local Effect: The bill does not materially affect local finances.

Small Business Effect: Potential meaningful impact on small business law firms that secure higher judgment awards for their MTCA clients as a result of the bill.

Analysis

Current Law: In general, the State is immune from tort liability for the acts of its employees and cannot be sued in tort without its consent. Under MTCA, the State statutorily waives its own common law (sovereign) immunity on a limited basis. MTCA applies to tortious acts or omissions, including State constitutional torts, by “State personnel” performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. Under MTCA, the State essentially “...waives sovereign or governmental immunity and substitutes the liability of the State for the liability of the state employee committing the tort.” (*Lee v. Cline*, 384 Md. 245, 262 (2004)).

However, MTCA limits State liability to \$200,000 to a single claimant for injuries arising from a single incident. Attorney’s fees are included in the liability cap under MTCA. Under MTCA, attorneys may not charge or receive a fee that exceeds 20% of a settlement or 25% of a judgment. MTCA claims are typically paid out of SITF, which is administered by the State Treasurer. The liability for an MTCA tort claim may not exceed the insurance coverage granted to units of State government under the State Insurance Program/SITF.

In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State’s color of authority or sovereign immunity and may be held personally liable.

Chapter 639 of 1999 established the current liability limits under MTCA.

MTCA also contains specific notice and procedural requirements. A claimant is prohibited from instituting an action under MTCA unless (1) the claimant submits a written claim to the State Treasurer or the Treasurer’s designee within one year after the injury to person or property that is the basis of the claim; (2) the State Treasurer/designee denies the claim finally; and (3) the action is filed within three years after the cause of action arises. The purpose of the notice provision is “...to give the State early notice of claims against it. That early notice, in turn, affords the State the opportunity to investigate the claims while the facts are fresh and memories vivid, and, where appropriate, settle them at the earliest time.” *Haupt v. State*, 340 Md. 462, 470 (1995).

State Expenditures: Special fund expenditures increase, perhaps significantly, if the bill results in higher payments from SITF for claims filed under MTCA or increased litigation costs for MTCA cases. General fund expenditures increase for State agencies subject to higher SITF premiums/assessments if SITF incurs losses from MTCA payments as a result of the bill or if agencies have to employ additional Attorneys General to handle applicable MTCA cases.

Claims under MTCA are paid out of SITF, which is administered by the Treasurer’s Office. The Treasurer’s Insurance Division handled approximately 5,100 MTCA claims during

fiscal 2014. Between fiscal 2012 and 2014, SITF paid an average of \$3.7 million per year for tort claims under MTCA. The Treasurer's Office projects that SITF will pay approximately \$4.0 million in claims during fiscal 2015. The fiscal 2016 budget includes a \$7.31 million appropriation for tort claims (including motor vehicle torts) under MTCA. The funds are to be transferred to SITF.

Agencies pay premiums to SITF that are comprised of an assessment for each employee covered and SITF payments for torts committed by the agency's employees. The portion of the assessment attributable to losses is allocated over five years. The Treasurer is charged with setting premiums "so as to produce funds that approximate the payments from the fund." (*See* Md. State Fin. & Proc. Code Ann. § 9-106(b).) The actuary assesses SITF's reserves and each agency's loss experience for the various risk categories, which include tort claims and constitutional claims. An agency's loss history, consisting of settlements and judgments incurred since the last budget cycle, comprises part of the agency's annual premium. That amount is electronically transferred to SITF from the appropriations in an agency's budget.

During calendar 2014, there were approximately 200 active tort suits against the State. Approximately 40 of these suits (20%) were "large claims" representing settlements or payments in excess of \$95,000. Of those 40 cases, approximately 16 resulted in settlements between \$185,000 and \$200,000, and six resulted in settlements or awards at \$200,000. These settlements do not reflect the full impact to the trust fund, however, as they do not account for employee time and expenses of litigation. Additionally, monies over the \$200,000 limit were occasionally expended due to accrual of post judgment interest.

Additional litigation costs may be incurred to the extent that litigation costs are proportionate to the value of the claim. According to the Treasurer's Office, litigation costs can total as much as 50% of the claim value. On average, in a case where MTCA's full \$200,000 liability is required, litigation costs amount to approximately 20% of the value of the claim, or \$35,000 to \$40,000 per case.

Increasing the liability limit to \$400,000 may also result in additional suits and more aggressive litigation of those suits, leading to increased expenditures. Additional personnel expenditures may be incurred to handle the increased volume and complexity of cases expected under the bill. Assistant Attorneys General assigned to State agencies and a supervising tort assistant Attorney General in the Treasurer's Office litigate MTCA cases. Agencies pay the salaries of their assistant Attorneys General. The salary of the supervising tort assistant Attorney General and all other litigation costs (*e.g.*, depositions, experts, etc.) are paid out of SITF.

The bill may also increase State expenditures if the bill's alteration of the notice requirement under MTCA results in (1) the litigation of lawsuits based on claims received well after the event giving rise to the claim occurs; (2) an inability of the State to timely investigate claims; (3) increased litigation expenses for the State to defend MTCA lawsuits;

(4) an impairment of the State's ability to defend against suits; and (5) a reduction in the State's opportunity to correct any defective conditions because of late notice of claims.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Treasurer's Office, Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510