

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 818 (Delegate A. Miller, *et al.*)  
Judiciary and Economic Matters

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**Civil Actions - Liability for Personal Injury or Property Damage Caused by Tree**

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This bill establishes that a landowner is liable for damages for personal injury or property damage on adjoining residential property caused by a defect in the condition of a tree on the landowner's land if the exercise of reasonable care by the landowner would have (1) disclosed the defect and the risk associated with the defect and (2) made the defect reasonably safe by repair or other remedial action. Any homeowner's insurance policy issued or renewed on or after October 1, 2016, for property located in or adjacent to a residential area must include coverage for potential liability under the provisions of the bill.

The bill applies prospectively to causes of action arising on or after the bill's October 1, 2016 effective date.

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**Fiscal Summary**

**State Effect:** Minimal increase in Maryland Insurance Administration (MIA) special fund revenues in FY 2017, due to the \$125 fee on rate and form filings. Review of the filings can be handled with existing resources. General fund revenues increase minimally, due to the 2% tax collected on all premiums in the State as insurers begin to provide the coverage required by the bill. Any changes in District Court caseloads resulting from the bill can be handled with existing budgeted resources.

**Local Effect:** Any changes in circuit court caseloads as a result of the bill can be handled with existing budgeted resources.

**Small Business Effect:** Potential meaningful effect on tree trimming businesses due to increased demand for their services.

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## Analysis

**Current Law:** In general, Maryland courts have adopted the remedy of “self-help,” which gives landowners the right to cut encroaching vegetation from neighboring property back to the property line. *Melnick v. C.S.X. Corp.*, 540 A.2d 1133, 1135 (Md. 1988). However, a landowner may not enter the neighbor’s property or cut back growth past the property line without the neighbor’s permission. Under this remedy, the burden is on the landowner (not the tree-owning neighbor) to cut back invading vegetation, the tree owner is not liable for damages caused by limbs or leaves that stray onto the neighboring property, the tree owner does not have a duty to prevent harm to the neighbor’s property, and the neighbor is responsible for his/her own property.

With respect to dead or decaying trees, the Court of Special Appeals held in *Hensley v. Montgomery County*, 25 Md. App. 361 (1975) that the owner of rural or suburban forest land was not liable for injuries sustained by a driver who was seriously injured when a limb from a decaying tree bordering the road fell on his windshield. In its opinion, the court noted that a rural or suburban landowner is not liable in such a situation unless the tree constitutes “a danger to lawful users of abutting public roads and the owner is aware or should be aware of the tree’s deteriorated condition.” However, urban landowners are held to a different standard, since urban landowners are typically responsible for a few trees at most and the burden to inspect trees is modest compared to the burden on a rural or suburban landowner. Thus, urban landowners have a duty of reasonable care to protect the safety of others, including inspection of trees. *Hensley*, at 366. The U.S. District Court for the District of Maryland applied the reasoning in *Hensley* when it determined that a property owner was not responsible for injuries sustained by a passenger who was struck by part of a dead tree while riding in an open gondola car on a train on neighboring railroad tracks. *Bookhultz v. Maryland Midland Railway, Inc.*, 688 F.Supp. 1061 (D. Md. 1988).

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Maryland Insurance Administration; Office of the Attorney General; *If a Tree Falls in Maryland, Who is Responsible?*, Gordon Feinblatt LLC, August 2014; Department of Legislative Services

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