

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 330

(Senator Waldstreicher, *et al.*)

Judicial Proceedings

Civil Actions - Defenses - Fireman's Rule

This bill eliminates the common law doctrine known as the “Fireman’s Rule.” The “Fireman’s Rule” prevents a safety officer from recovering damages for injuries that (1) the officer sustained while performing the duties the officer is required to perform within the scope of the officer’s employment and (2) are attributable to the cause that required the officer’s assistance. The bill also eliminates as a defense in any action the use of any other similar rule based on the gross and willful negligence of a person that caused the officer’s injury, the result of a criminal act committed by a person that caused the officer’s injury, or a person’s status as the owner or occupier of land or premises where the officer was harmed. The bill may not be construed to affect (1) any other common law or statutory defense, privilege, or immunity or (2) any right to subrogation that an insurer may have under a workers’ compensation insurance policy. The bill applies prospectively to causes of action arising on or after the bill’s October 1, 2020 effective date.

Fiscal Summary

State Effect: Potential increase in general fund and special fund expenditures from increased litigation and damages awarded in suits filed and allowed to proceed under the bill. Revenues are not affected.

Local Effect: Potential increase in local expenditures from increased litigation and damages awarded in suits filed and allowed to proceed under the bill. Revenues are not affected.

Small Business Effect: Meaningful.

Analysis

Current Law/Background: The firefighter's rule prohibits firefighters and police officers from recovering tort damages from those whose negligence necessitated their service at the location where the injury occurred. Exceptions to the firefighter's rule include (1) acts that occur after the officer's arrival on the scene and are outside of the officer's anticipated occupational hazards; (2) injuries sustained by an officer after the initial period of anticipated occupational risk; (3) injuries from perils that could not be reasonably foreseen as part of the officer's occupational risk; (4) willful or wanton or intentional misconduct; and (5) failure to warn an officer of pre-existing hidden dangers when there was knowledge of the danger and an opportunity to warn.

In *White v. State*, 419 Md. 265 (2011), the Maryland Court of Appeals affirmed a lower court's ruling that the firefighter's rule barred a police officer from suing the State for damages from injuries he sustained during a high-speed car chase of a fleeing suspect. The officer engaged in the car chase because a Maryland State Police dispatcher erroneously relayed that the suspect had engaged in an armed robbery at a local hardware store, rather than a shoplifting/simple theft. According to the court, the rule traces its roots to premises liability but is now grounded in public policy based on the relationship between safety officers and the public and the inherent risk involved in safety officers' work.

State Expenditures: Special fund and general fund expenditures may increase as a result of increased litigation and payments of claims filed under the Maryland Tort Claims Act (MTCA) from the State Insurance Trust Fund (SITF) and the Maryland Transit Administration Tort Claims Act. The extent to which this occurs cannot be reliably determined at this time and depends on actual case volume and the value of claims.

Claims Against the State

The Treasurer's Office, which administers SITF, advises that the bill may result in a minimal increase in MTCA claims and associated expenses. According to the Treasurer's Office, the most likely scenario under which a claim may be filed is if a safety officer, acting within the scope of the officer's employment, sustains injuries while responding to an incident on State property. The office's estimate assumes that the bill's provisions do not supersede the workers' compensation exclusivity rule, by which workers' compensation is the exclusive remedy for work-related injury. The exclusivity rule bars a safety officer from suing the *officer's own employer* for work-related injuries.

MTCA limits State liability to \$400,000 to a single claimant for injuries arising from a single incident. 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.

General fund expenditures may increase for State agencies that experience increased SITF assessments as a result of the bill. 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.

The Treasurer's Office further advises that while the office can absorb up to 75 additional claims per year, should claims filed under the bill exceed that volume, the office will need additional personnel. *For illustrative purposes only*, the costs associated with hiring one adjuster is \$56,987 in fiscal 2021 and increases to \$73,455 by fiscal 2025.

The Maryland Department of Transportation (MDOT) advises that emergency public safety personnel from other State and local agencies regularly respond to numerous emergencies on MDOT properties. MDOT advises that the bill's repeal of the fireman's rule may add claims and claims costs to yearly payouts. MDOT does not have information available to estimate the cost of additional claims under the bill. The Maryland Transit Administration is subject to the Maryland Transit Administration Tort Claims Act, not MTCA.

Litigation Costs

General fund expenditures may also increase for State agencies that experience increased litigation costs. For example, the Department of Public Safety and Correctional Services (DPSCS) advises that the bill may result in additional litigation and liability for the department if safety officers sue the department for injuries sustained as the result of incorrect information. The department's Information Technology & Communication Division (ITCD), through its dashboards and other systems, provides extensive information to law enforcement, and the potential exists that providing incorrect information could lead to increased liability. For example, ITCD manages a warrant check system accessed by law enforcement agencies throughout the State. According to DPSCS, similar to the *White* case, should the system contain inaccurate information and an officer is injured as a result, the department could be exposed to increased liability under the bill. DPSCS advises that it requires an additional assistant Attorney General, at a cost of \$111,507 in fiscal 2021 and increasing to \$149,632 by fiscal 2025. However, the Department of Legislative Services advises that absent actual experience under the bill, it is unclear what magnitude

of increase in workload the department may experience under the bill and the corresponding need for additional personnel.

Local Expenditures: Local expenditures may increase to the extent that a safety officer employed by another jurisdiction sues a local government. Self-insuring counties may face increased general liability insurance premiums, depending on case volume and the values of claims. Conversely, the bill may result in reduced insurance premiums if workers' compensation insurance providers can recover monies paid to safety officers from damages awarded to officers in suits filed under the bill.

As previously noted, the extent to which the bill increases litigation and damages awarded against government agencies cannot be reliably determined at this time and can only be assessed with actual experience under the bill. Suits barred under the firefighter's rule often involve a safety officer suing a property owner, not a local government. This estimate assumes that the workers' compensation exclusivity rule still applies under the bill, and a safety officer may not sue the *officer's own employer* for work-related injuries.

The Local Government Tort Claims Act limits the liability of a local government to \$400,000 per individual claim and \$800,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). It further establishes that the local government is liable for the tortious acts or omissions of its employees acting within the scope of employment.

Anne Arundel County advises that while the bill is not likely to increase the county's liability, it may lead to workers' compensation subrogation liens. Garrett and Howard counties do not anticipate a fiscal impact from the bill.

Small Business Effect: The bill has a meaningful impact on small businesses that, as a result of the bill, face increased litigation and are found liable for damages from injuries sustained by safety officers when responding to incidents on their properties.

Additional Information

Prior Introductions: SB 4 of 1997 received a hearing in the Senate Judicial Proceedings Committee but was later withdrawn. Its cross file, HB 264, received a hearing in the House Judiciary Committee but was later withdrawn.

Designated Cross File: None.

Information Source(s): Maryland Institute for Emergency Medical Services Systems; Anne Arundel, Garrett, Howard, and Montgomery counties; City of Laurel; Comptroller's

Office; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); University of Maryland Medical System; University System of Maryland; Department of General Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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