

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 815 (Senator Lee)
Judicial Proceedings

Civil Actions - Tortious Injury to or Death of Pet - Damages

This bill establishes that a person who tortiously causes an injury to or the death of a pet under specified circumstances is liable to the pet’s owner for noneconomic damages. The bill also establishes that the \$10,000 cap on damages that currently applies to these cases does not apply if the tortfeasor acted with gross negligence, intent, or malice or in violation of the Maryland Declaration of Rights. The bill applies prospectively to causes of action that arise on or after the bill’s October 1, 2022 effective date.

Fiscal Summary

State Effect: Minimal increase in special fund expenditures, as discussed below. Revenues are not affected.

Local Effect: Minimal increase in local expenditures, as discussed below. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Noneconomic damages” includes mental anguish, emotional pain and suffering, loss of companionship, comfort, and protection.

Current Law: A person who tortiously causes an injury to or the death of a pet while acting individually or through an animal under the person’s ownership, direction, or control is liable to the owner of the pet for up to \$10,000 in compensatory damages. The current damages cap went into effect on October 1, 2017.

“Pet” means a domesticated animal and does not include livestock. “Compensatory damages” mean (1) the reasonable and necessary cost of veterinary care for a pet that was injured and (2) in a case involving the death of a pet, the fair market value of the pet before death and the reasonable and necessary cost of veterinary care.

In *Anne Arundel County, Maryland and Rodney Price v. Michael H. Reeves*, 474 Md. 46 (2021), the Court of Appeals held that § 11-110 of the Courts and Judicial Proceedings Article (the statute amended by the bill) defines and caps the recovery of compensatory damages for the tortious injury or death of a pet to the amount specified by the statute (currently \$10,000) and does not allow for the recovery of additional uncapped compensatory damages, including noneconomic damages. The court specifically noted that while its analysis is based on the statutory language, “[t]he Legislature may wish to amend CJP § 11-110 in response to the various policy arguments in this case in order to allow for other forms of compensatory damages in cases involving the tortious injury or death of pets.”

The case concerned the fatal shooting of a Chesapeake Bay Retriever by an Anne Arundel County police officer while the officer was canvassing a neighborhood for information regarding a series of burglaries. The case involved claims of trespass to chattel, violations of constitutional rights under the Maryland Declaration of Rights, and gross negligence. A detailed summary of this case can be found in the [2021 Court of Appeals Cases and Decisions Update](#).

State Expenditures: Special fund expenditures increase minimally for the State Insurance Trust Fund (administered by the Treasurer’s Office) for payments in cases involving tortious injury to pets. While data regarding these cases is not readily available, this estimate assumes (1) cases involving tortious injury to pets by defendants who are State employees performing their official duties are a rare occurrence and (2) the damages in the *Reeves* case represent the higher end of potential damages in these cases. The liability limits under the Maryland Tort Claims Act (MTCA) still apply to cases affected by the bill that are covered under MTCA.

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). MTCA covers a multitude of personnel, including some local officials and nonprofit organizations. 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. MTCA limits State liability to \$400,000 to a single claimant for injuries arising from a single incident. However, for claims arising on or after July 1, 2022, if liability of the State or its units arises from intentional tortious acts or omissions or a violation of a constitutional right committed by a law enforcement officer, the following limits on liability apply: (1) the combined award for both economic and noneconomic damages may not exceed a total of \$890,000 for all claims arising out of the same incident or occurrence, regardless of the number of claimants or beneficiaries who share in the award; and (2) in a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed \$1,335,000, regardless of the number of claimants or beneficiaries who share in the award.

The jury in the Reeves case awarded \$500,000 in economic damages and \$750,000 in noneconomic damages for gross negligence, \$10,000 for trespass to chattel, and no damages for the constitutional claims. The trial court reduced the award for gross negligence pursuant to the liability limit under the Local Government Tort Claims Act (LGTCA) in effect in 2014 and reduced the award for trespass to chattel to comply with the then-applicable cap on damages under § 11-110; on appeal, the entire award was further reduced to comply with the cap on damages under § 11-110 in effect in 2014.

Local Expenditures: For the reasons and using the assumptions discussed above, local expenditures increase minimally for payments of claims/damages for cases affected by the bill. The liability limits under LGTCA would still apply to these cases.

In general, LGTCA 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). However, for claims arising on or after July 1, 2022, if the liability of a local government arises from intentional tortious acts or omissions or a violation of a constitutional right committed by a law enforcement officer, the following limits on liability apply: (1) the combined award for both economic and noneconomic damages may not exceed a total of \$890,000 for all claims arising out of the same incident or occurrence, regardless of the number of claimants or beneficiaries who share in the award; and (2) in a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed \$1,335,000, regardless of the number of claimants or beneficiaries who share in the award.

LGTCA further establishes that the local government is liable for tortious acts or omissions of its employees acting within the scope of employment, so long as the employee did not act with *actual malice*. Thus, LGTCA prevents local governments from asserting a

common law claim of governmental immunity from liability for such acts or omissions of its employees.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1375 (Delegate Kipke) - Judiciary.

Information Source(s): Charles, Frederick, Montgomery, and Somerset counties; City of Havre de Grace; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Department of State Police; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2022
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