

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 859
Judiciary

(Delegate Cox)

Maryland Arms Protection Act

This bill (1) prohibits the enforcement of specified federal laws relating to firearms, firearm accessories, and firearm ammunition; (2) requires the Attorney General to defend a resident of the State in a prosecution for violations of federal firearms laws deemed by the bill to be unenforceable in the State; and (3) authorizes a resident of the State to file suit against a federal actor or State actor who enforces or aids and abets the enforcement of specified federal laws and authorizes a court to award attorney's fees, court costs, and damages to a prevailing plaintiff. The bill contains a severability clause specifying that if any provision of the bill or the application of the bill is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of the bill.

Fiscal Summary

State Effect: Potential increase in general fund expenditures for expenses related to litigation under the bill. Potential decrease in federal fund revenues and expenditures if federal funds are remitted.

Local Effect: Potential increase in local expenditures for expenses related to litigation under the bill. Potential decrease in federal fund revenues and expenditures if federal funds are remitted.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Unenforceable Federal Actions

A federal action relating to a firearm, firearm magazine, firearm accessory, or firearm ammunition that is intended to restrict the possession, transfer, or use of a firearm, firearm magazine, firearm accessory, or firearm ammunition is unenforceable by a State actor in the State. Any federal action effective on or after December 31, 2020, that attempts to register, restrict, or ban the ownership or purchase of a firearm, firearm magazine, firearm accessory, or firearm ammunition or to reclassify those items that results in the prohibition against or restriction of continued ownership or common use is unenforceable in the State. The federal government may not create a firearm or firearm accessory registry in the State.

Defense of State Residents in Federal Criminal Cases

The Attorney General must defend a resident of the State who is prosecuted by the federal government for the resident's alleged violation in the State of a federal law that is unenforceable under the bill.

Causes of Action Against Federal and State Actors

A federal actor or State actor owes an individual duty to each resident of the State not to violate the resident's Second Amendment right to bear arms. This duty is for the purpose of establishing a direct action for civil liability if a federal actor or State actor breaches this duty against a State resident.

A federal actor within the State and a State actor may not violate, or aid or abet a violation of, the Second Amendment right to bear arms of a resident of the State. An individual affected by a violation of this prohibition may file suit seeking damages against the federal actor, State actor, or governmental entity employing or contracting with the federal actor or State actor in the circuit court for the county where the violation occurred. The immunity provisions protecting State and local government personnel under the Local Government Tort Claims Act (LGTCA) or the Maryland Tort Claims Act (MTCA) do not apply to a civil action brought under the bill. Any element of governmental immunity, including qualified immunity, is not a defense to a claim brought under this section.

In an action filed under the bill, the court may award a prevailing plaintiff reasonable attorney's fees, court costs, and damages, including punitive damages.

Additional Consequences of Violations

Beginning on the date of a determination of a violation, a federal actor or State actor is subject to (1) termination of employment and any entitlements, except for pension or health care benefits related to retirement, bestowed by the employment; (2) a bar from State employment in any capacity for at least 10 years; or (3) a bar from contracting with the State, as specified. Also, a person that contracts with the State or submits a bid for consideration to a State bid request may not hire, employ, or subcontract with an individual found liable under the bill.

Use and Return of Federal Funds

An agency, an office, a department, or an entity of the State or a political subdivision of the State may not use federal money or grants received to support or advance a federal provision that is unenforceable under the bill. Federal funds to support or advance a federal provision that is unenforceable under the bill received by the State must be used for the improvement of public hunting lands and shooting ranges owned and maintained by the State. A political subdivision of the State that has received federal funds to support or advance a federal provision that is unenforceable under the bill must remit the money or grants to the State Treasurer within 10 days of receipt. Funds received by the State Treasurer must be deposited in the general fund and used for the improvement of public hunting lands and shooting ranges owned and maintained by the State. If the use of federal money or grants received by the State or a political subdivision of the State is restricted, the federal money or grant must be returned to the appropriate federal entity.

Current Law:

Federal Firearms Regulation

The regulation of firearms is shared among federal, state, and local governments. The Gun Control Act of 1968 establishes a regulatory framework for the lawful manufacture, sale, and possession of firearms at the national level and serves as the minimum for permissible firearm use and transactions. States supplement federal law with additional restrictions so long as they do not conflict with federal law.

There is no federal registration requirement for most conventional firearms; however, firearms subject to the National Firearms Act (NFA) must be registered with the Bureau of Alcohol, Tobacco, Firearms, and Explosives. Examples of firearms subject to NFA include machine guns, short-barrel firearms, silencers, and destructive devices.

Federal law requires that citizens and legal residents must be at least (1) 18 years of age to purchase shotguns or rifles and ammunition and (2) at least 21 years of age to purchase all other firearms, including handguns.

In addition, federal law prohibits a person from possessing a firearm, if the person:

- has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year (this does not include a State offense classified as a misdemeanor that is punishable by a term of imprisonment of less than two years);
- is a fugitive from justice;
- is an unlawful user of or addicted to any controlled dangerous substance;
- has been adjudicated as a mental defective or has been committed to a mental institution;
- is an alien that is illegally or unlawfully in the United States, or has been admitted to the United States under a nonimmigrant visa (with exceptions);
- has been dishonorably discharged from the U.S. Armed Forces;
- has, as a citizen of the United States, renounced citizenship;
- is, after a hearing, subject to a court order restraining that person from harassing, stalking, or threatening an intimate partner or child; or
- has been convicted in any court of a misdemeanor crime of domestic violence.

On conviction, a prohibited person who possesses a firearm is subject to imprisonment not exceeding 10 years or a \$250,000 fine or both.

Maryland Tort Claims Act

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.

In general, 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 State does not waive its immunity for punitive damages. 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.

Local Government Tort Claims Act

LGTCa defines local government to include counties, municipal corporations, Baltimore City, and various agencies and authorities of local governments such as community colleges, county public libraries, special taxing districts, nonprofit community service corporations, sanitary districts, housing authorities, and commercial district management authorities.

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.

A local government is not liable for punitive damages. However, a local government, subject to the liability limits, may indemnify an employee for a judgment for punitive damages entered against the employee. A local government may not indemnify a law enforcement officer for a judgment for punitive damages if the law enforcement officer has been found guilty under § 3-108 of the Public Safety Article (as a disposition in an administrative action pursuant to the Law Enforcement Officers' Bill of Rights) as a result of the act or omission giving rise to the judgment, if the act or omission would constitute a felony under State law. A local government may not enter into an agreement that requires indemnification for an act or omission of an employee that may result in liability for punitive damages.

Federal Qualified Immunity

Qualified immunity is a legal doctrine created by the U.S. Supreme Court under which a government official is shielded from civil liability if the official's actions do not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

Immunity under Title 5, Subtitle 5 of the Courts and Judicial Proceedings Article

Under § 5-522 of the Courts and Judicial Proceedings Article, State personnel are immune from suit in courts of the State and from liability in tort for a tortious act or omission that is within the scope of the public duties of the State personnel and is made without malice or gross negligence, and for which the State or its units have waived immunity under MTCA, even if the damages exceed the limits of that waiver.

Section 5-507 of the Courts and Judicial Proceedings Article establishes that, with the exception of specified motor vehicle torts, an official of a municipal corporation, while acting in a discretionary capacity, without malice, and within the scope of the official's employment or authority, must be immune as an official or individual from any civil liability for the performance of the action.

Public Official Immunity

Under common law public official immunity, a public official is protected from civil liability for negligent acts committed during the performance of his or her discretionary duties. Public official immunity does not apply to acts undertaken with malice or gross negligence. *Howard v. Crumlin*, 239 Md. App. 515, 526 (2018) (citing *Cooper v. Rodriguez*, 443 Md. 680, 729 (2015)). Additionally, the defense of public official immunity "has no application in tort actions based upon alleged violations of state constitutional rights." *Lee v. Cline*, 384 Md. 245, 258 (2004).

State and Local Fiscal Effect: This analysis assumes that the bill is enforceable in its entirety and that use of federal funding subject to the bill's provisions (if received) is restricted to specified purposes and may not be used for State public hunting lands and shooting ranges. It should be noted that State and local law enforcement enforce State firearms laws, not federal laws. Also, the extent to which civil suits are filed under the provisions of the bill and the extent to which monetary damages and attorney's fees are awarded cannot be reliably estimated at this time.

The bill (1) authorizes causes of action against governmental entities and individual State and local government employees and (2) exempts application of various immunities to these causes of action.

General fund expenditures may increase for litigation-related expenses. The Office of the Attorney General (OAG) did not respond to a request for information on the potential fiscal and operational impact of the bill. However, general fund expenditures for OAG increase if OAG is authorized to defend State residents in federal criminal cases as contemplated under the bill and actually provides such legal representation. General fund expenditures increase further if OAG represents State employees named individually in causes of action, and the State pays damages and attorney's fees awarded in cases filed under the bill. Similarly, local expenditures may increase if local governments face lawsuits under the bill, defend employees in cases filed under the bill, and pay damages and attorney's fees in cases filed under the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Harford and Talbot counties; City of College Park; Maryland Municipal League; Maryland State Treasurer's Office; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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