

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 680

(The President)(By Request - Office of the Attorney
General)

Judicial Proceedings

State Government - Public Welfare Actions - Determinations and Settlements

This bill establishes procedural requirements and options for the State in obtaining relief in “public welfare actions” involving multiple parties. The bill requires the factfinder in a public welfare action to make a determination of the total liability and assign comparative responsibility to all parties joined in the public welfare action. If the State does not obtain complete relief from a responsible person who has resolved their liability through a settlement with the State, the State may continue to pursue actions against other responsible persons in the public welfare action, as specified. The Maryland Uniform Contribution Among Joint Tortfeasors Act (MUCAJTA) does not apply to public welfare claims. The bill may not be construed to impair any express contractual rights or grant authority to the State or the Office of the Attorney General (OAG) to bring actions or claims not otherwise authorized by law. **The bill applies only prospectively to any settlement of a public welfare action finalized on or after its July 1, 2024 effective date.**

Fiscal Summary

State Effect: Potential *significant* increase in special fund revenues (likely in excess of \$10.0 million over the time period covered by this analysis) and reduction of litigation costs, as discussed below.

Local Effect: Potential indeterminate effect on local government finances, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Definitions

“Public welfare action” means any civil action in which the State or the Attorney General has asserted a public welfare claim. A “public welfare claim” means any claim, counterclaim, cross claim, or other demand for relief of any kind brought or asserted by OAG or the State under common law, statutory law, or any other basis for consumer protection or arising from or related to alleged injuries to or threatened injuries to the health, safety, environment, or welfare of the residents of Maryland. “Responsible person” means any person allegedly liable in whole or in part for any public welfare claim.

Judicial Determinations and Assignment of Liability

In a public welfare action, the factfinder must (1) make a determination of the total liability, including damages, costs, and all other available relief; (2) assign comparative responsibility to all parties joined in the public welfare action, including all defendants, third-party defendants, intervenors, and any other named party, based on the party’s relative degree of fault or responsibility for the total liability; and (3) if equity requires, determine the liability of a group of related persons on a collective basis.

Options for the State in Obtaining Relief in Public Welfare Actions

If the State has not obtained complete relief from a responsible person who has resolved the person’s liability to the State in a settlement for a public welfare claim, the State may (1) continue to pursue an ongoing public welfare action *against any other responsible person* who has not resolved the person’s liability to the State for the public welfare claim that is the subject of the public welfare action or (2) bring a new public welfare action *against any other responsible person* who has not resolved the person’s liability to the State for the public welfare claim that is the subject of the public welfare action.

If a responsible person *resolves* the person’s liability to the State in a settlement of a public welfare claim, the person *may not* be liable for claims for noncontractual contribution or indemnity regarding any matter or claim addressed in the settlement, including any statutory or common law claim. A settlement of a public welfare claim that resolves the liability of a responsible person does not release from liability any other responsible person except as specifically provided in the terms of the settlement. However, it does reduce the potential liability of all other responsible persons liable in whole or in part for the public welfare claim that is the subject of the settlement by the settling person’s proportionate share of liability for all settled public welfare claims, including all statutory and common law claims.

Current Law/Background: According to OAG, examples of the types of cases affected by the bill include the State’s suit against the petroleum industry for groundwater contamination stemming from the use of Methyl tert-butyl ether as a gasoline additive and the State’s suit against the manufacturers of Per- and polyfluoroalkyl substances (known as PFAS) products, the “forever chemicals” that are present in fire-fighting foam and countless household products treated with nonstick coatings. It appears that liability among joint tortfeasors in these cases is determined on a *pro rata* basis, which is “equal shares that are determined by dividing the common liability by the number of joint tort-feasors.” *Mercy Med. Ctr. v. Julian*, 429 Md. 348, 357 (2012) (internal citations omitted).

Maryland Uniform Contribution Among Joint Tort-Feasors Act

MUCAJTA is contained in Title 3, Subtitle 14 of the Courts and Judicial Proceedings Article. “Joint tort-feasors” means two or more persons jointly or severally liable in tort for the same injury to person or property whether or not judgment has been recovered against all or some of them. Under the doctrine of joint and several liability, if two or more defendants are found liable for a single and indivisible harm to the plaintiff, each defendant is liable to the plaintiff for the entire harm. The plaintiff has the choice of collecting the entire judgment from one defendant or portions of the judgment from various defendants, so long as the plaintiff does not recover more than the amount of the judgment. If a defendant ends up paying for more than the defendant’s share of the liability, the paying defendant may pursue action against the other tortfeasors/defendants for their proportionate share of the judgment paid by the paying defendant.

Under MUCAJTA, the right of contribution exists among joint tortfeasors. A joint tortfeasor is not entitled to a money judgment for contribution until the joint tortfeasor has by payment discharged the common liability or has paid more than a *pro rata* share of the common liability. A joint tortfeasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement.

The recovery of a judgment by the injured person against one joint tortfeasor does not discharge the other joint tortfeasor. A release by the injured person of one joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasors unless the release so provides, but it reduces the claim against the other tortfeasors in the amount of the consideration paid for the release or in any amount or proportion by which the release provides that the total claim must be reduced if greater than the consideration paid. A release by the injured person of one joint tortfeasor does not relieve the joint tortfeasor from liability to make contribution to another joint tortfeasor unless the release (1) is given before the right of the other tortfeasor to secure a money judgment for contribution has accrued and (2) provides for a reduction, to the extent of the *pro rata* share of the released tortfeasor, of the injured person’s damages recoverable against all other tortfeasors.

MUCAJTA does not impair any right of indemnity under existing law.

State Fiscal Effect: Special fund revenues increase, potentially *significantly*, from settlements of public welfare claims made possible by the bill. Although the bill does not require additional spending of any recovered revenues, significant additional funding would be available for impacted funds (potentially including, for example, the Clean Water Fund and the Maryland Oil Disaster Containment, Clean-Up, and Contingency Fund, according to OAG). If the bill facilitates settlements with defendants, the bill may also reduce some litigation expenses for OAG and impacted State agencies. This estimate assumes that any reduction in *staffing* resources devoted to litigation of applicable cases is redirected to other cases, however.

According to OAG, the cases affected by the bill are not settling. In one example, small and medium defendants have been contacting counsel for the State for several years and offering to pay money to settle the State's claims against them. However, the State has not been able to do so because of the lack of the provisions included in the bill (*e.g.*, comparative responsibility, proportionate share of liability, and protection from contribution claims). As a result, these defendants remain in the case, and the State is unable to collect millions of dollars in damages. OAG advises that if the bill were enacted, it would be able to settle with these defendants expeditiously and begin collecting the money necessary to fund the investigation, monitoring, and clean-up of environmental damage. Doing so would also streamline these cases by reducing the number of parties and issues before the court and allow the State to collect a higher percentage of the overall damages, thereby significantly increasing special fund revenues for various funds, depending on the type of public welfare action.

State agencies affiliated with settlements entered into under the bill may be affected. For example, to the extent the bill increases the likelihood that defendants in multi-defendant oil and controlled hazardous substance cases enter into settlements with the State, the Maryland Department of the Environment is affected. While this impact is not possible to quantify at this time, based on the information provided by OAG discussed above, it may be significant.

Local Fiscal Effect: The bill has an indeterminate effect on local finances. OAG did not indicate if local governments are defendants in any current applicable cases. However, if the bill facilitates settlements with certain defendants, a local government defendant may benefit from the ability to settle its liability and avoid the expense of trial. Conversely, the bill may increase local government expenditures to an indeterminate extent. If a local government is a defendant in an applicable lawsuit, depending on how the factfinder determines each defendant's relative share of responsibility, the share a local government may be ordered to pay could be more or less than it would have been responsible for paying absent the bill.

Furthermore, if the bill holds responsible parties accountable for public welfare claims that affect local jurisdictions, (*e.g.*, hazardous materials disposal), it may reduce this risk on the local jurisdiction's behalf for related future hazards and mitigation efforts.

Finally, as noted above, the bill is anticipated to increase special fund revenues significantly; accordingly, additional grant funding for local jurisdictions may be available, depending on the affected fund type and purpose.

Small Business Effect: The bill may have a meaningful effect on small business defendants in multi-defendant actions to which the bill applies. Depending on how the factfinder determines each defendant's relative share of responsibility, the share a small business may be ordered to pay could be more or less than it would have been responsible for paying in the absence of the bill. However, to the extent that the bill facilitates settlements with certain defendants, a small business defendant may benefit from the ability to settle its liability and avoid the expense of trial.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 524 and HB 729 of 2021.

Designated Cross File: HB 922 (The Speaker)(By Request - Office of the Attorney General) - Judiciary.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2024
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