

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

House Bill 594
Judiciary

(Delegate Embry, *et al.*)

Civil Actions - Motor Vehicle Accidents Involving Vulnerable Individuals -
Comparative Negligence

This bill establishes a comparative negligence standard in civil actions for damages arising from the negligent operation of a motor vehicle and involving a plaintiff who was a “vulnerable individual,” as defined in § 21-901.3 of the Transportation Article. The bill applies prospectively to any cause of action arising on or after the bill’s October 1, 2025 effective date.

Fiscal Summary

State Effect: Potential significant increase in special fund expenditures and general fund expenditures if the bill increases payments in tort claims against the State and assessments on affected agencies. Revenues are not affected.

Local Effect: Potential significant increase in local expenditures for tort claims against local governments. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Under the bill, in an action to recover damages arising from the negligent operation of a motor vehicle, recovery by the plaintiff may not be barred due to the plaintiff’s negligence unless the plaintiff’s negligence was (1) a proximate cause of the plaintiff’s injury and (2) greater than the combined negligence of all defendants that proximately caused the plaintiff’s injury. The bill applies to a civil action brought by a plaintiff who, at the time of the motor vehicle accident giving rise to the cause of action,

was a “vulnerable individual,” as defined in § 21-901.3 of the Transportation Article. The damages awarded in such an action must be diminished in proportion to the amount of negligence attributed to the plaintiff. The bill’s provisions may not be construed to affect the rule of joint and several liability or the doctrine of last clear chance.

Current Law:

Vulnerable Individual

Under § 21-901.3 of the Transportation Article, a “vulnerable individual” means:

- a pedestrian, including an individual who is lawfully (1) actively working on a highway or a utility facility along a highway; (2) providing emergency services on a highway; or (3) on a sidewalk or footpath;
- an individual who is lawfully riding or leading an animal on a highway, shoulder, crosswalk, or sidewalk; or
- an individual who is lawfully operating or riding any of the following on a highway, shoulder, crosswalk, or sidewalk: a bicycle a farm tractor or farm equipment, a play vehicle, a motor scooter, a motorcycle, an animal-drawn vehicle, an electric personal assistive mobility device, or a wheelchair.

Contributory Negligence and Comparative Fault

Maryland (along with three states and the District of Columbia) retains the doctrine of contributory negligence. Under the defense of contributory negligence, an injured plaintiff’s fault, however slight, is a defense to the negligence claim and bars all recovery by the plaintiff. Contributory negligence is conduct on the part of the injured party which falls below the standard to which the injured party should conform for self-protection and is a legally contributing causal factor (along with the defendant’s negligence) in bringing about the plaintiff’s harm. Under Maryland law, contributory negligence on the part of a plaintiff bars recovery by the plaintiff. *See Board of County Commissioners of Garrett County v Bell Atlantic*, 346 Md. 160 (1997).

The terms comparative fault and comparative negligence (followed by approximately 45 states) refer to a system of apportioning damages between negligent parties according to their proportionate shares of fault. Under a comparative fault system, a plaintiff’s negligence that contributes to causing the plaintiff’s damages does not prevent recovery, but instead only reduces the amount of damages the plaintiff can recover. Comparative fault replaces the traditional contributory negligence defense. “Pure” comparative fault and “modified” comparative fault are two of the three major versions of comparative fault.

Under a pure comparative fault system, each party is held responsible for damages in proportion to the party's fault. Regardless of the level of the plaintiff's own negligence, the plaintiff can still recover something from a negligent defendant. It makes no difference whose fault was greater. Under a modified comparative fault system, each party is held responsible for damages in proportion to his or her fault, unless the plaintiff's negligence reaches a certain designated percentage of fault. If the plaintiff's own negligence reaches this percentage bar, then the plaintiff cannot recover any damages. Under a "less than" system, an injured plaintiff can recover only if the degree of fault attributable to the plaintiff's own conduct is less than the degree of fault assigned by the judge or jury to the defendant.

Joint and Several Liability

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.

Last Clear Chance

The "last clear chance" exception provides that when the defendant is negligent and the plaintiff is contributorily negligent, but the defendant has "a fresh opportunity (of which he fails to avail himself) to avert the consequences of his original negligence and the plaintiff's contributory negligence," the defendant will be liable despite the plaintiff's contributory negligence. *Smiley v. Atkinson*, 12 Md. App. 543, 553, 280 A.2d 277, 283 (1971); see also Restatement (Second) of Torts §§ 479-80 (1965). Therefore, under a last clear chance exception, the defendant becomes responsible for the entire loss of the plaintiff, regardless of the plaintiff's own contribution.

State Expenditures: Special fund expenditures for the State Insurance Trust Fund (SITF) may increase significantly if individuals who file claims against the State are allowed to recover damages under the bill that are not recoverable under the existing contributory negligence standard. General/special fund expenditures may increase significantly if State agencies that are the subject of these claims receive higher SITF assessments or have to pay additional claims.

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 the Maryland Tort Claims Act (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 limits State liability to \$400,000 to a single claimant for injuries arising from a single incident or occurrence. Higher liability limits apply to claims involving violation of a constitutional right by a law enforcement officer or child sexual abuse claims.

Claims under MTCA are paid out of SITF, which is administered by the State Treasurer’s Office (STO). STO advises that while it does not have actual statistics, claims for motor vehicle torts involving vulnerable individuals may represent as much as 10% of overall MTCA claims. These claims usually involve serious injuries or fatalities and higher payments. The use of a comparative fault standard in these cases allows for recovery of damages previously barred under contributory negligence and may also lead to an increase in claims filed since a comparative fault standard allows for recovery of damages even if a plaintiff is partially at fault.

Depending on the extent to which the bill increases SITF payments, the bill may result in higher premium assessments against relevant State agencies. 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.

STO advises that the bill may result in an increase to liabilities paid from SITF in the form of higher settlement payments and/or judgments in litigated cases and higher administrative costs to process claims and legal expenses to defend the State.

While most State agencies are covered by the liability limits of MTCA, the tort liability of the Maryland Transit Administration (MTA) is governed by the Transportation Article. Unlike MTCA, the Transportation Article does not include a limit on liability. Given the motor vehicle operations of MTA and the lack of a liability limit, the bill may significantly increase Transportation Trust Fund expenditures should MTA experience an increase the number of claims filed and a significant increase in the number of claims for which MTA would need to pay at least a portion of the damages sought. As noted above, MTA is not subject to MTCA. Under § 7-702 of the Transportation Article, MTA is liable for its

contracts and torts and for the torts of its officers, agents, and employees in connection with the performance of the duties and functions of the Administration under the title. Section 7-703 requires MTA to self-insure or purchase and maintain insurance against (1) loss or damage to its property and (2) liability for injury to persons or property.

Local Expenditures: For the reasons stated above, local expenditures may increase significantly for local governments to pay damages in and/or litigate applicable claims and associated insurance costs.

The Maryland Association of Counties advises that the bill has a significant effect on local governments and increases local government costs for the defense of additional cases filed, increased settlement and judgement costs, and higher insurance premiums due to the increased liability. The Maryland Municipal League advises that the bill may significantly increase expenditures for tort claims against local governments.

In general, 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). Higher liability limits apply for violations of a constitutional right by law enforcement officer and child sexual abuse claims.

Small Business Effect: The bill may have a meaningful impact on small business law firms that represent plaintiffs in the cases covered by the bill.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Cross File: None.

Information Source(s): Harford and Talbot counties; Maryland Association of Counties; Maryland Municipal League; Office of the Attorney General; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Maryland Department of Transportation; Matthiesen, Wickert & Lehrer; Department of Legislative Services

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