

Department of Legislative Services  
Maryland General Assembly  
2025 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 818  
Judiciary

(Delegate Ruff, *et al.*)

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Award of Attorney's Fees and Expenses - Violation of Maryland Constitutional  
Right

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This bill authorizes a court to award reasonable attorney’s fees and expenses to a prevailing plaintiff for any claim for relief against the State, any political subdivision of the State, or any employee or agent of the State or any political subdivision of the State, if the claim for relief seeks to remedy a violation of a right that is secured by the Maryland Constitution or the Maryland Declaration of Rights. A court may award reasonable attorney’s fees and expenses to a prevailing defendant only on a finding that the relevant claim for relief brought by the plaintiff was maintained in bad faith or without substantial justification. A court must determine whether to award attorney’s fees and expenses by considering the factors listed in Maryland Rule 2-703(f)(3). The bill applies prospectively to cases filed on or after the bill’s October 1, 2025 effective date.

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Fiscal Summary

**State Effect:** Potential significant increase in special fund expenditures if the bill results in higher payments from the State Insurance Trust Fund (SITF) for claims filed under the Maryland Tort Claims Act (MTCA). General fund expenditures increase for State agencies subject to higher SITF assessments if SITF incurs losses from MTCA payments as a result of the bill and for payments of attorney’s fees in non-MTCA claims against the State. Potential increase in general fund expenditures for additional staff for the Office of the Attorney General (OAG) if the bill increases the volume and duration of OAG litigation.

**Local Effect:** Local expenditures increase, perhaps significantly, for payments for claims filed under the Local Government Tort Claims Act (LGTC), litigation-related costs, and higher insurance-related costs (including higher assessments for local governments) if the Local Government Insurance Trust (LGIT) incurs losses from payments authorized by the bill.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Current Law:** In general, a party to a lawsuit is responsible for the party's own legal fees, regardless of the outcome of the case. However, there are more than 80 exceptions to this general rule in State law, including wage and hour cases, workers' compensation cases, and consumer protection cases. The conditions under which an individual is eligible for an award of attorney's fees and the extent of these awards is inconsistent among the cases eligible for attorney's fees awards under State law. Most of the applicable statutes do not provide guidance on the calculation of attorney's fees. In the absence of a statute, Maryland Rule 2-703 (discussed below) lists the factors that a circuit court must consider when determining the amount of an award of attorney's fees. There are no provisions granting attorney's fees for a claim filed under the Maryland Constitution or the Maryland Declaration of Rights.

### *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 or occurrence. 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. If the liability of the State or the State's units arises under a claim of child sexual abuse, the liability may not exceed \$890,000 to a single claimant for injuries arising from an incident or occurrence.

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*

LGTCGA 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, LGTCGA 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. If the liability of a local government arises under a claim of child sexual abuse, the liability may not exceed \$890,000 to a single claimant for injuries arising from an incident or occurrence.

A local government must provide its employees a legal defense in any action that alleges damages resulting from tortious acts or omissions committed by an employee within the scope of employment with the local government. LGTCGA 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, LGTCGA prevents local governments from asserting a common law claim of governmental immunity from liability for such acts or omissions of its employees. A person may not execute against an employee on a judgment rendered for tortious acts or omissions committed by the employee within the scope of employment with a local government. However, an employee is fully liable for all damages awarded in an action in which it is found that the employee acted with actual malice. In circumstances involving actual malice, the judgment may be executed against the employee and the local government may seek indemnification for any sums it is required to pay under LGTCGA.

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 enter into an agreement that requires indemnification for an act or omission of an employee that may result in liability for punitive damages.

### *Maryland Rule 2-703*

Rule 2-703 applies to claims for attorney's fees allowable by law to a party in an action in a circuit court. Under the rule, a court must consider the following factors when determining the amount of an award of attorney's fees:

- the time and labor required;
- the novelty and difficulty of the questions;
- the skill required to perform the legal service properly;
- whether acceptance of the case precluded other employment by the attorney;
- the customary fee for similar legal services;
- whether the fee is fixed or contingent;
- any time limitations imposed by the client or the circumstances;
- the amount involved and the results obtained;
- the experience, reputation, and ability of the attorneys;
- the undesirability of the case;
- the nature and length of the professional relationship with the client; and
- awards in similar cases.

**State Expenditures:** Special fund expenditures increase, perhaps significantly, if the bill results in higher payments from SITF for claims filed under MTCA. General fund expenditures increase for State agencies subject to higher SITF premiums/assessments if SITF incurs losses from MTCA payments as a result of the bill. General fund expenditures may increase to hire additional staff for OAG if the bill increases the volume and duration of OAG litigation.

*State Insurance Trust Fund:* As noted above, attorney's fees under MTCA are currently subject to the liability cap but may not exceed 20% of a settlement or 25% of a judgment. Assuming that the "reasonable attorney's fees" under the bill are also subject to MTCA's liability cap (which is not explicit under the bill), the impact of the bill stems mainly from cases that are below the liability cap but where attorney's fees increase the overall amount paid out of SITF. The bill may also impact the State's legal strategy and create an incentive for the State to settle an MTCA claim instead of litigating the claim in court if there is the potential for the State to have to pay significant attorney's fees in a case.

The State Treasurer's Office (STO) notes that civil rights litigation in general is increasing. To date, STO received and processed approximately 3,057 new claims (all types) in fiscal 2025, resulting in approximately \$13.4 million in total payments. STO advises that approximately 125-150 cases are litigated under MTCA each year, with one-third of these cases involving violations of the Maryland Constitution and/or the Maryland Declaration of Rights.

Claims under MTCA are paid out of SITF, which is administered by STO. 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 costs associated with the awards for attorney's fees under the bill were not anticipated as a component in the Treasurer's actuarial calculation of the recommended SITF balance. 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.

Because the bill excludes awards for attorney's fees from the limits on attorney's fees under MTCA, as specified, any such award in an MTCA case increases special fund expenditures for SITF through an increase in premiums should the award of attorney's fees be factored into the cost of the settlements or judgments in MTCA cases. Special fund expenditures for SITF also increase to the extent that the bill increases the number of MTCA claims. General fund expenditures for the affected agencies may increase in future years if SITF incurs losses from awards in MTCA cases resulting from the bill.

*Office of the Attorney General:* OAG advises that the bill likely increases workloads and caseloads, necessitating the hiring of five additional attorneys, at a cost of \$697,128 in fiscal 2026, increasing to \$968,738 by fiscal 2030. However, OAG did not provide any additional information as to how it developed this estimate. Regardless, the Department of Legislative Services advises that the bill may result in a significant increase in general fund expenditures for OAG.

OAG has historically advised that (1) that the promise of attorney's fees is expected to cause a substantial increase in cases filed against State agencies, thereby increasing caseloads and requiring additional personnel; (2) the availability of attorney's fees in federal constitutional and civil rights claims has subjected State agencies and officers to protracted litigation over eligibility for attorney's fees, resulting in increased litigation

expenditures; and (3) lawsuits against State agencies and State officers typically outnumber similar cases based on federal law.

**Local Expenditures:** Several local governments covered by LGTCA are insured by LGIT, a self-insurer that operates similarly to SITF. Thus, future year expenditures increase for local agencies affected by the bill if (1) awards for attorney's fees increase overall awards in LGTCA cases and (2) LGIT incurs losses from payments of attorney's fees in LGTCA cases. Counties that self-insure or obtain insurance coverage from other methods face similar impacts.

The Maryland Association of Counties (MACo) advises that the bill significantly increases the costs of litigation, settlements, judgements, and insurance premiums. MACo notes that the bill likely increases the number of cases filed against local governments and their employees. The bill also has the potential to change a smaller claim into a significantly more expensive claim through the addition of attorney's fees. MACo advises that the need for counties to hire additional attorneys and staff to manage an increased caseload is significant.

The Maryland Municipal League similarly anticipates a significant increase in expenditures for municipalities under the bill. Many municipalities covered by LGTCA are insured by LGIT. If awards for attorney's fees increase in LGTCA cases, and LGIT incurs losses from paying those fees, expenditures would significantly increase for municipalities. Further, the number of cases would increase, including tort claims filed as constitutional claims to qualify for attorney's fees under the bill, creating increased financial liability for municipalities. More cases filed could also mean more cases settled; should a municipality decide to settle cases that are currently litigated to avoid potentially high attorney's fees, settlement fees would increase.

**Small Business Effect:** The bill may have a meaningful impact on small business law firms that are able to litigate cases as a result of the bill or receive higher attorney's fees under the bill.

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### **Additional Information**

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

**Designated Cross File:** None.

**Information Source(s):** Calvert County; Maryland Association of Counties; Maryland Municipal League; Office of the Attorney General; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Department of Legislative Services

**Fiscal Note History:** First Reader - February 18, 2025  
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