

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 871 (Senator Smith)
Judicial Proceedings

Civil Actions - Punitive Damage Awards - Surcharge

This bill establishes that punitive damages may be awarded in a civil action alleging negligence only if the plaintiff proves by clear and convincing evidence that the defendant acted with “gross negligence,” as defined under the bill. At the conclusion of all proceedings relating to the civil action, the State Court Administrator must assess a surcharge, equal to 50% of an award of punitive damages; the surcharge must be paid to the State by the defendant against whom the punitive damages were entered. A jury may not be informed of the surcharge, and the surcharge (1) is an additional payment that may not in any way impact the total amount of punitive damages a defendant is ordered to pay a plaintiff and (2) may not be construed to penalize a plaintiff who has been awarded punitive damages. The State Court Administrator must deposit money collected from the surcharge into the Blueprint for Maryland’s Future Fund (BMFF). The bill expresses the intent of the General Assembly that the bill be applied and interpreted to abrogate the holding establishing the punitive damages criteria in *Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420 (1992). The bill applies prospectively to actions for punitive damages filed on or after the bill’s October 1, 2026 effective date.

Fiscal Summary

State Effect: BMFF revenues increase beginning in FY 2027 due to surcharges assessed in applicable cases. Beginning in FY 2028, BMFF expenditures increase, reflecting assumed spending of the surcharge revenues; general fund expenditures correspondingly decrease, as discussed below. Transportation Trust Fund (TTF) expenditures increase if punitive damages are awarded and surcharges assessed against the Maryland Transit Administration (MTA). General fund expenditures for the Judiciary increase by \$9,900 in FY 2027 only for one-time computer programming. Potential increase in general fund expenditures for the Office of the Attorney General (OAG), as discussed below.

Local Effect: Local expenditures increase if the bill increases litigation costs and local governments choose to indemnify employees for punitive damages and surcharges, as discussed below. Revenues are not affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: Under the bill, “gross negligence” means disregard for the rights or safety of others, including the public at large, that:

- the actor knows or should know is likely to cause harm; and
- is characterized by a failure to exercise even slight care; willful, wanton, or outrageous misconduct; a pattern of repeated misconduct; malicious, oppressive, or fraudulent intent; acts or omissions that create a high degree of risk or harm to others; or conduct that demonstrates indifference to legal obligations or the consequences of misconduct.

Current Law:

Punitive Damages

Actual damages, also known as compensatory damages, are intended to make a plaintiff whole by returning the plaintiff to the position he or she was in prior to the alleged harm caused by the defendant. Actual damages include both economic damages – compensation for things like lost wages, medical expenses, and costs to repair or replace property – and noneconomic damages – compensation for things like pain, suffering, inconvenience, physical impairment, loss of consortium, or other nonpecuniary injury.

In contrast to actual damages, punitive damages do not compensate plaintiffs for their losses. Rather, punitive damages are designed to punish and deter blameworthy behavior. In *Owens-Illinois v. Zenobia*, 325 Md. 420 (1992), the Maryland Court of Appeals (now the Supreme Court of Maryland) held that, in a nonintentional tort action, the trier of fact may not award punitive damages unless the plaintiff establishes that the defendant’s conduct was characterized by “actual malice” – meaning evil motive, intent to injure, ill will, or fraud. The requirement for actual malice is somewhat modified in the common law regarding product liability. Maryland courts have found that the actual malice standard necessary to support an award of punitive damages is actual knowledge of a defect and a deliberate disregard of the consequences. (See *AC and S v. Goodwin*, 340 Md. 334 (1995).)

A party must be awarded compensatory damages in order to recover punitive damages. *Fisher v. McCrary Crescent City, LLC.*, 186 Md. App. 86 (2009). While there is no cap on punitive damages, according to Maryland Civil Pattern Jury Instruction 10:14, an award for punitive damages should be (1) in an amount that will deter the defendant and others from similar conduct; (2) proportionate to the wrongfulness of the defendant's conduct and the defendant's ability to pay; and (3) not designed to financially destroy a defendant.

Blueprint for Maryland's Future Fund

The BMFF was created by Chapter 771 of 2019 as the successor to the Commission on Innovation and Excellence in Education Fund. The BMFF is intended to assist in providing adequate funding for early childhood education and primary and secondary education to provide a world-class education to students in Maryland.

State Fiscal Effect: Beginning in fiscal 2027, BMFF revenues increase from surcharges assessed against defendants. The amount and frequency of these revenues cannot be reliably predicted at this time. The Judiciary did not provide information on punitive damages awarded in negligence cases under existing law, and it is unclear if the Judiciary even maintains such data. Furthermore, as noted above, the bill alters (lowers) the legal standard for punitive damages in negligence actions.

Current projections indicate that, under current law, revenues in BMFF, including prior-year fund balances, will be less than the required increases to annual expenditures under the Blueprint for Maryland's Future beginning in fiscal 2028. It is, therefore, assumed that general fund expenditures for education decrease to the same extent that any BMFF revenues and expenditures increase under the bill beginning in fiscal 2028.

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. The Maryland Tort Claims Act (MTCA) covers a multitude of personnel, including some local officials and nonprofit organizations. 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*.

Lawsuits filed under MTCA typically proceed against the State as the named defendant, not the State employee. 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.

Under MTCA, *the State does not waive its sovereign immunity for the purpose of punitive damages*. The State Treasurer's Office also advises that for purposes of tort liability under MTCA, in an action where "the plaintiff proves by clear and convincing evidence that the defendant acted with gross negligence," the underlying alleged acts would be considered outside the performance of the State employees' duties, not within their scope of employment and with malice. Therefore, MTCA would not be applicable.

Maryland Transit Administration

While most State agencies are covered by the provisions of MTCA, MTA's tort liability is governed by the Transportation Article. The Maryland Department of Transportation (MDOT) advises that while the likelihood of it being assessed punitive damages in a negligence action is low, it is still possible since MTA runs a high-risk operation and is not afforded the same legal protections available to other State agencies. Thus, TTF expenditures increase if (1) damages are awarded against MTA under the new standard for punitive damages established under the bill and (2) MTA is assessed a surcharge. According to MDOT, insurance policies typically contain exclusions in insurance coverage for punitive damages, so both the punitive damages and surcharge would be paid from State funds.

Office of the Attorney General

OAG advises that due to increased litigation under the bill, it requires four additional assistant Attorneys General and one paralegal in the Civil Litigation Division, Department of State Police, and the Department of Public Safety and Correctional Services. OAG did not provide any information as to how it developed its estimate. Thus, this estimate does not include expenditures associated with additional attorneys for OAG. Should OAG experience an increase in workload that necessitates additional positions, OAG can request those positions through the annual budget process.

Local Expenditures: Local expenditures increase to the extent that the bill increases litigation costs or local government payments for punitive damages and surcharges assessed against employees in negligence cases. The Local Government Tort Claims Act (LGTCA) establishes that a 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.

Although local governments are not liable for punitive damages under the LGTCA, in specified circumstances and subject to LGTCA liability limits, a local government may indemnify an employee for a judgment for punitive damages that is 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.

Small Business Effect: Small businesses that have to pay punitive damages and surcharges or are awarded punitive damages as a result of the bill may be meaningfully impacted. Likewise, small business law firms that recover punitive damages for their clients may also be meaningfully impacted.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1099 of 2025.

Designated Cross File: None.

Information Source(s): Maryland Municipal League; Office of the Attorney General; Comptroller's Office; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Department of Budget and Management; Maryland Department of Transportation; Department of Legislative Services

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