Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 712   (Delegate Grammer)

Judiciary

Civil Actions - Product Liability - Artificial Intelligence Systems

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This bill establishes a cause of action against the developer or deployer of an artificial intelligence (AI) system product for harm caused by defective design, failure to provide adequate instruction or warning, and breach of express warranty. There is a rebuttable presumption that an AI system is not dangerous or defective if a developer or deployer engaged in specified actions. The Attorney General may bring an action against a developer or deployer of an AI system for harm caused by a dangerous or defective product. Contributory negligence is not a defense to an action under the bill, and the recovery by a plaintiff must be reduced by the percentage of fault attributable to the plaintiff. A developer and a deployer may be held jointly and severally liable in a lawsuit brought under the bill. The bill does not apply to AI systems used only for peer-reviewed scientific research. The bill supplements any common law tort liability cause of action and any State product liability laws. The bill may not be interpreted to prohibit any product liability cause of action involving a product brought under any different claim under product liability common law or statute.

Fiscal Summary

State Effect: Depending on actual case volume and recoveries, general fund revenues and expenditures for the Office of the Attorney General (OAG) may increase, as discussed below.

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: Minimal, assuming that most developers and deployers are not small businesses.

Analysis

Bill Summary:

Definitions

"Artificial intelligence system" means an engineered or machine-based system with varying levels of autonomy that can, for explicit or implicit objectives, infer from the inputs it receives how to generate outputs that can influence physical or virtual environments.

"Deployer" means a person, including a developer, that uses or operates an AI system for use by the deployer or third parties. "Deployer" does not include an individual or small business that has fewer than 20 employees or 10,000 users of its product.

"Developer" means a person that designs, codes, produces, owns, or substantially modifies an AI system for use by a developer or for use by third parties. "Developer" does not include a person that uses an open source AI system and does not substantially modify the system.

"Harm" means (1) damage to property other than the AI system itself; (2) personal physical, financial, or reputational injury, illness, or death; (3) mental or physiological anguish, emotional harm, or distortion of a person's behavior that would be highly offensive to a reasonable person; or (4) any loss of consortium or services, or other loss deriving from any type of harm described under this subsection.

"High-impact artificial intelligence system" means any AI system, regardless of the number of parameters and supervision structure, that is used, or reasonably foreseeably may be used, as a controlling factor in making consequential decisions; to categorize groups of persons by protected characteristics; in the direct management or operation of critical infrastructure; in a vehicle, in a medical device, or in the safety system of a vehicle or medical device; or to engage in a synthetic relationship. It can also be an AI system that exhibits, or could be easily modified to exhibit, high levels of performance at tasks that pose a serious risk to economic security or public health or safety.

"Product" means a high-impact AI system or a generative AI system.

Cause of Action

In an action against a developer alleging harm caused by a dangerous or defective product due to the defective design of the product, the plaintiff must prove by a preponderance of the evidence that the harm was proximately caused by the failure of the developer to exercise reasonable care and that, at the time the product left the developer's control,

certain conditions were satisfied, including that (1) the developer knew or reasonably should have known of the harm-causing design defect and (2) a technologically feasible and practical alternative design existed that would have mitigated or avoided the foreseeable risk of harm without significantly impairing the intended use of the product.

In an action against a developer alleging harm caused by a dangerous or defective product due to a failure to provide "adequate instruction or warning," a plaintiff must prove by a preponderance of the evidence that the harm was proximately caused by the failure to provide adequate instruction or warning and that, at the time the product left the developer's control, the developer knew or reasonably should have known of the danger posed by the product.

It is a defense to an action against a developer for harm caused by a failure to instruct or warn that (1) the user or consumer of the product was at least age 17, and (2) the product danger was or should have been known or open and obvious to the user or consumer of the product.

In an action against a developer alleging harm caused by a dangerous or defective product due to the failure of the product to conform to an express warranty, the plaintiff must prove by a preponderance of the evidence that the harm was proximately caused by the failure of the developer to exercise reasonable care and that (1) the plaintiff reasonably relied on an express warranty made by a developer about a material fact concerning the safety of the product, *and* (2) the product failed to conform to the express warranty, which resulted in the harm *or* the express warranty was untrue and the harm would not have occurred had the express warranty been true.

A deployer may be held liable in place of a developer if specified conditions are met. However, a deployer licensing a product may not be held liable to a plaintiff solely by reason of ownership or use of product.

Rebuttable Presumption

There is a rebuttable presumption that a product is not dangerous or defective if a developer engaged in specified testing and evaluation procedures; mitigated and disclosed foreseeable risks, as specified; and, for products designed for or likely to be used by minors, considered and mitigated foreseeable risks to minors.

In an action against a deployer, there is a rebuttable presumption that a product is not dangerous or defective if the deployer implemented and adhered to a risk management policy that meets specified criteria and is electronically available to its employees and to the Attorney General on request.

Actions Filed by the Attorney General

The Attorney General may bring an action against a developer or a deployer for harm caused by a dangerous or defective product. The Attorney General may obtain (1) injunctive relief; (2) a civil penalty; (3) damages, restitution, or other compensation on behalf of an individual who has been harmed by an AI system; and (4) any other relief that the Attorney General considers appropriate. If use of the software causes personal injury or death, a civil penalty imposed may not exceed the caps on noneconomic damages in medical malpractice cases. The Attorney General is entitled to recover the costs of the action for the use of the State. The Attorney General must comply with specified notice requirements before bringing an action seeking injunctive relief.

Current Law:

Product Liability and Strict Liability

In general, product liability actions allow a plaintiff to recover damages from a manufacturer due to injuries sustained from a product as a result of a design defect, manufacturing defect, or failure to adequately warn or instruct consumers about potential risks in using the product. Distributors, suppliers, and other individuals involved with bringing a product to market can also be sued under product liability. While personal injury cases (including product liability cases) are often based on negligence, defective products cases are one type of cause of action to which Maryland applies strict liability. Strict liability is liability imposed on an individual based on the commission of a particular act, regardless of the individual's negligence or intent to do harm.

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.

Noneconomic Damages Caps

There is no cap on economic damages or punitive damages in Maryland. However, there are caps on noneconomic damages (often referred to as "pain and suffering" damages). Separate caps apply to noneconomic damages in medical malpractice cases and non-medical malpractice cases involving personal injury and wrongful death actions. The bill incorporates the caps on noneconomic damages in medical malpractice cases. The caps on noneconomic damages that will be in effect on the bill's October 1, 2026 effective date were set on January 1, 2026. As of January 1, 2026, Maryland's cap for noneconomic damages in medical malpractice claims is $920,000; the cap increases by $15,000 on January 1 of each year. This cap applies in the aggregate to all claims for personal injury and wrongful death arising from the same medical injury, regardless of the number of claims, claimants, plaintiffs, beneficiaries, or defendants. However, the cap is 125% of that amount in wrongful death actions in which there are two or more claimants or beneficiaries, whether or not there is a personal injury action arising from the same medical injury and regardless of the number of claims, claimants, plaintiffs, beneficiaries, or defendants. As of January 1, 2026, this cap is $1,150,000. The cap for individual causes of action is based on the date of the incident.

State Revenues: General fund revenues may increase if OAG is able to collect penalties and costs in cases filed under the bill.

State Expenditures: OAG advises that it requires an assistant Attorney General and a technologist to litigate cases under the bill, at a cost of $276,569 in fiscal 2027 and increasing to $374,894 by fiscal 2031. However, the Department of Legislative Services advises that it remains unclear if or how many cases OAG will file and litigate under the bill. Should actual case volume necessitate additional personnel, OAG can request those resources through the annual budget process.

Additional Information

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

Designated Cross File: None.

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

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