

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 366 (Delegate Pruski)
Economic Matters

Workers' Compensation - Exemption From Exclusivity of Remedy - Action for Wrongful Death by Nondependent Child

This bill specifies that the Maryland Workers' Compensation Act (WCA) may not be construed to prohibit a child of a covered employee who is determined not to be a dependent of the covered employee from filing an action for damages related to the wrongful death of the covered employee. The bill only applies prospectively and may not be applied or interpreted to have any effect on or application to any action before the bill's October 1, 2026 effective date.

Fiscal Summary

State Effect: State expenditures (all funds) may increase beginning in FY 2027, potentially significantly, as discussed below. Revenues are likely not directly affected.

Local Effect: Local expenditures may increase beginning in FY 2027, potentially significantly, as discussed below. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Workers' Compensation – Exclusive Remedy

If an employee covered under workers' compensation insurance has suffered an accidental personal injury, compensable hernia, or occupational disease, the employee is entitled to

compensation benefits paid by the employer, its insurer, the Subsequent Injury Fund, or the Uninsured Employers' Fund, as appropriate. Workers' compensation benefits include wage replacement, medical treatment, and vocational rehabilitation expenses. Any workers' compensation claim for hearing loss must be measured using audiometric instruments that meet the technical requirements specified by workers' compensation law.

Under current law, workers' compensation is the *exclusive remedy* for a covered employee who has sustained an accidental personal injury, compensable hernia, occupational disease, or death (in which case specified beneficiaries may receive benefits) and an employee or the employee's beneficiaries may not normally sue the employer for damages. This exclusivity principle was the basis for the 2025 Supreme Court of Maryland holding that WCA does not authorize adult non-dependent children of a covered employee to file a wrongful death action for a work-related death of a parent and, as a result, compliant "employers are not subject to such liability." *Ledford v. Jenway Contracting, Inc.*, 490 Md. 666, 687 (2025).

Nevertheless, an employer may be sued for damages if an injury or death occurs and the employer had not secured workers' compensation insurance for the employer's employees as required by State workers' compensation law. Likewise, an employer may be sued if a covered employee is injured or killed as the result of the deliberate intent of the employer to injure or kill the covered employee. In these circumstances, a covered employee or the employee's beneficiaries may bring a claim for workers' compensation *or* sue for damages, but not both.

Wrongful Death Provisions

There is no cap on economic damages or punitive damages in Maryland. However, there are caps on noneconomic damages. "Noneconomic damages" means (1) for personal injury actions – pain, suffering, inconvenience, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injury and (2) for wrongful death actions – mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, care, marital care, parental care, filial care, attention, advice, counsel, training, guidance, or education, or other noneconomic damages authorized under specified statutes pertaining to wrongful death causes of action. "Noneconomic damages" does not include punitive damages.

In any action for damages for personal injury or wrongful death (excluding medical malpractice) in which the cause of action arises on or after October 1, 1994, an award for noneconomic damages may not exceed \$500,000. This limitation increases by \$15,000 on October 1 of each year, beginning on October 1, 1995. The increased amount must apply to causes of action arising between October 1 of that year, and September 30 of the following year, inclusive. (As of October 1, 2026, this cap will be \$980,000.) This

limitation applies in a personal injury action to each direct victim of tortious conduct and all persons who claim injury by or through that victim.

Maryland Tort Claims Act

Among other provisions, the Maryland Tort Claims Act (MTCA) limits State liability to \$400,000 to a single claimant for injuries arising from a single incident. 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. Separate provisions apply to claims involving child sexual abuse.

While most State agencies are covered by the liability limits of MTCA, the Maryland Transit Administration's tort liability is governed by the Transportation Article. Unlike MTCA, the Transportation Article does not include a limit on liability.

Local Government Tort Claims Act

The 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. Separate provisions apply to claims involving child sexual abuse.

State/Local/Small Business Fiscal Effect: The bill establishes a departure from the exclusivity principle discussed above by allowing a nondependent adult child of a deceased covered employee to pursue a wrongful death action against an employer. Currently, workers' compensation provides death benefits to dependent children, certain adults (*e.g.*, spouses), medical care (to the extent it is needed), and funeral benefits. If there are no dependents, then there are no indemnity death benefits paid.

By establishing an exception, the bill exposes employers (which includes State agencies, local governments, and small business employers) to tort damages – including noneconomic damages – as well as jury verdicts that fundamentally differ from the structured and predictable benefits provided by WCA. Moreover, even if an employer that sued is not found liable for damages, the employer would incur substantial legal costs. Chesapeake estimates that the median verdict in a wrongful death claim in the State is generally between \$1.2 million and \$2.0 million and, as a result, the fiscal impact of the bill could be significant for the State, local governments, and small business employers. However, any such impact depends on if and when the State, a local government, or a small business is sued for a wrongful death, which cannot be reliably predicted without actual experience under the bill.

Additional Information

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

Designated Cross File: SB 993 (Senator Jackson) - Rules.

Information Source(s): Judiciary (Administrative Office of the Courts); Chesapeake Employers' Insurance Company; Subsequent Injury Fund; Uninsured Employers' Fund; Workers' Compensation Commission; State Treasurer's Office; Department of Legislative Services

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