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Position: FAV



CHESAPEAKE BAY FOUNDATION
Saving a National Treasure



MARYLAND LEAGUE
OF CONSERVATION VOTERS

Senate Bill 524

Environment – Multidefendant Oil and Hazardous Substance Pollution Cases – Effect of Settlement

Date: February 26, 2021

To: Senate Health, Education and Environmental
Affairs Committee

Position: SUPPORT

From: Robin Jessica Clark, Maryland Staff Attorney
Chesapeake Bay Foundation

Kim Coble, Executive Director, Maryland League of
Conservation Voters

Chesapeake Bay Foundation (CBF) and the Maryland League of Conservation Voters (MDLCV) **SUPPORT** SB 524 which would ensure accountability and complete restoration of natural resources following unlawful discharge of hazardous oil compounds. A fair and full assignment of liability assures that the public is not saddled with the costs of cleanup left incomplete by responsible parties.

Fair and full assignment of liability for oil discharge protects the public from additional clean-up costs

This bill allows assignment of proportionate shares of liability to various individuals and entities with fault for a hazardous oil release into State waters. Without this legislation, the State is limited in its ability to pursue liability of all parties involved. This can lead to delayed and incomplete recovery, hampering the ability of the State to remediate the environment damage resulting from the oil discharge.

Comprehensive legal authority will allow swift execution of the law and speed recovery efforts

Damage from oil discharge can be extensive and can be even more devastating when clean-up is delayed due to protracted litigation. Types of oil discharge include the release of petroleum, sludge containing oil, crude oil, gasoline, asphalt and ethanol release into State waters. Wherever there are oil spills and excess pollutants, wildlife is at risk. In the Bay watershed, even a small oil spill could devastate the blue crab population by killing its larvae. It would also poison and debilitate oysters, fish, seabirds, marine mammals, and other wildlife.

Clarity in liability promotes good governance and expedites final determinations needed for complete environmental restoration

An oil discharge case will often involve assets owned by multiple parties. For example, a spill may emanate from a tank, after traveling through a pipeline, connected to a pumping station each owned and operated by a different entity. The international event etched into the nation's memory is Deepwater Horizon. The oil rig continued to spill oil into the Gulf of Mexico as accusations of fault flipped back and forth. This legislation will help avoid a similar scene in Maryland and, most importantly, ensure a complete restoration of Maryland's natural resources following an oil discharge.

CBF and MDLCV urge the Committee's FAVORABLE report on SB 524.

For more information, contact Robin Jessica Clark, Maryland Staff Attorney, Chesapeake Bay Foundation at rclark@cbf.org, 443.995.8753.

Maryland Office • Philip Merrill Environmental Center • 6 Herndon Avenue • Annapolis • Maryland • 21403
Phone (410) 268-8816 • Fax (410) 280-3513

The Chesapeake Bay Foundation (CBF) is a non-profit environmental education and advocacy organization dedicated to the restoration and protection of the Chesapeake Bay. With over 300,000 members and e-subscribers, including over 109,000 in Maryland alone, CBF works to educate the public and to protect the interest of the Chesapeake and its resources.

SB 524 Multidefendant JM CBF Final SUP.pdf

Uploaded by: Mueller, Jon

Position: FAV



CHESAPEAKE BAY FOUNDATION

*Environmental Protection and Restoration
Environmental Education*

Senate Bill 524

Environment - Multidefendant Oil and Hazardous Substance Pollution Cases - Effect of Settlement

Date: February 26, 2021

Position: Support

To: Senate Judicial Proceedings Committee

From: Jon Mueller, Vice President of Litigation

Chesapeake Bay Foundation (CBF) **SUPPORTS** SB 524 which would ensure more complete accountability for hazardous material cleanup costs and natural resource damage restoration following unlawful discharge of hazardous oil compounds. A fair and full assignment of liability assures that the public is not saddled with the costs of cleanup left incomplete by responsible parties.

Fair and full assignment of liability for oil discharge allows for more equitable apportionment of costs and protects the public from additional clean-up costs

This bill allows assignment of proportionate shares of liability to various individuals and entities with fault for a hazardous oil release. Without this legislation, the State is limited in its ability to pursue the appropriate share of costs and damages from the responsible parties. That is, the state may be unable to recover the proportionate amount from those with a higher degree of culpability. Moreover, under current law, some parties with limited liability can be held to pay more than their fair share. Such scenarios can lead to incomplete recovery thereby requiring the State to pay more in response and restoration costs.

The proposed legislation will allow for more speedy response actions thereby preventing increased harm and expense.

Oil discharges can include the release of petroleum, sludge containing oil, crude oil, gasoline, asphalt and other contaminants harmful to humans and natural resources. As these contaminants come into contact with water, they can spread over large distances. The Exxon Valdez and BP Deepwater Horizon disasters are sad reminders of the harm oil pollution can cause. Damages from such discharges either underground to drinking water or to surface waters can be extensive. Prompt cleanup actions are essential to prevent pollutants from spreading far from the discharge point and causing further harm. In the Bay watershed, even a small oil spill could devastate the blue crab population by killing its larvae. It would also poison and debilitate oysters, fish, seabirds, marine mammals, and other wildlife. Underground releases can contaminate drinking water supplies for thousands of people. Laws that clearly articulate the State's authority to fully and fairly apportion the costs and damages among the responsible parties will improve response time and more fairly allocate expenses.

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Clarity in liability promotes good governance and expedites final determinations needed for complete environmental restoration

An oil discharge case will often involve assets owned by multiple parties. For example, a spill may emanate from an underground tank. Several parties may be responsible for such a discharge – the tank owner, the tank installer, a demolition team, or a third-party construction crew. Each of those parties may have varying degrees of responsibility for the discharge. However, as the law stands today, the State and the courts are unable to fairly apportion that liability. This can result in parties with limited liability shouldering more of the costs than those who are more directly responsible. The proposed legislation rectifies this inequity allowing the State to more fully recover the response costs and damages to natural resources associated with a discharge.

CBF urges the Committee's FAVORABLE report on SB 524. For more information, contact Robin Jessica Clark, Maryland Staff Attorney, at rclark@cbf.org or 443.995.8753.

SB524 - Multidefendant Oil & Hazardous Substance P

Uploaded by: Tulkin, Josh

Position: FAV



7338 Baltimore Ave
Suite 102
College Park, MD 20740

Committee: Judicial Proceedings

Testimony on: SB524 – “Multidefendant Oil and Hazardous Substance Pollution Cases – Effect of Settlement”

Position: Support

Hearing Date: February 26, 2021

The Maryland Sierra Club supports SB524, and urges a favorable report. This legislation will modify certain provisions in the Environment Article which negatively affect the State’s ability to bring and fully resolve multi-defendant pollution cleanup actions to protect the health of Maryland residents.

The reality of contamination incidents in Maryland involving oil and hazardous substances is that multiple entities may have contributed to the contamination. Accordingly, a lawsuit brought by the Attorney General to remedy the contamination may involve multiple defendants who the Attorney General asserts should all be held liable pursuant to the applicable legal standards. However, because the involved entities may have differentially contributed to the contamination – i.e., some contributed more, some less – a lawsuit may seek to obtain differential damage amounts from different defendants.

The problem with current law is that, when the Attorney General settles with some defendants in a multi-defendant contamination case but not with others, the legal determination of damage amounts may not be in accord with the reality of how much each defendant contributed to the problem. When some defendants settle and pay damages, it then is necessary to determine the total amount of damages the remaining defendants may be responsible for. If, for example, the settlors were responsible for one percent of the contamination, then the non-settlors (singly or together) should be responsible for the remaining 99 percent of the damages. Under current law, however, the settlors are not assigned the damage percentage they actually caused; instead, they are deemed to be responsible for that percentage which is their proportionate share of the number of named defendants. In other words, in the example given, if the settlors represented ten percent of the named defendants (e.g., ten settlors out of 100 defendants), their damage payments are deemed to cover ten percent of the damages notwithstanding that they actually were responsible for just one percent. This significantly interferes with the ability of the Attorney General to settle cases and to obtain full relief from the non-settling defendants, thus diminishing the ability of the Attorney General to protect the health of Maryland residents.

This bill will fix this by specifying that, in these types of cases, a settlement “reduces the potential liability of other [non-settling] persons responsible for the discharge by the settling person’s proportionate share of liability” (i.e. one percent, not ten percent, in the above example.) This is a common sense change in the law, and we urge a favorable report by this Committee.

Mark Posner
Legislative Chair
Mark.Posner@MDSierra.org

Josh Tulkin
Chapter Director
Josh.Tulkin@MDSierra.org

Founded in 1892, the Sierra Club is America’s oldest and largest grassroots environmental organization. The Maryland Chapter has over 75,000 members and supporters, and the Sierra Club nationwide has over 800,000 members and nearly four million supporters.

2021-02-26 SB 524 (Support) Amendments Attached.pdf

Uploaded by: Frosh, Brian

Position: FWA

BRIAN E. FROSH
Attorney General



ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.

410-576-6584

February 26, 2021

TO: The Honorable William C. Smith, Jr.
Chair, Senate Judicial Proceedings Committee

FROM: Brian E. Frosh
Attorney General

RE: SB 524 – Environment – Multidefendant Oil and Hazardous Substance Pollution Cases
– Effect of Settlement – **Support with Sponsor Amendments**

Chair Smith, Vice Chair Waldstreicher, and distinguished Members of the Judicial Proceedings Committee, please accept the following testimony in support of SB 524.

Senate Bill 524 is designed to bring accountability and fairness to Maryland's law that allocates responsibility for environmental damage when suits against multiple polluters are settled.

Under existing law, when multiple polluters damage resources in Maryland, liability is apportioned among the polluters for settlement purposes pro rata. That means that all polluters are responsible for "equal shares that are determined by dividing the common liability by the number of joint tort-feasors."¹ Thus, in a suit against 10 polluters for causing oil pollution, a settlement with one party will reduce the responsibility of the remaining polluters by 10%. This is true whether the settling polluter's contribution to the damage was 90% or 1%.

Senate Bill 524 would create a standard that is fairer and more reasonable. The standard set in SB 524 would hold polluters accountable for their fair share of the damage that they caused or contributed to. The allocation formula established by SB 524 is consistent with the principle that the polluter pays. Larger polluters will not receive a benefit when smaller polluters settle. That contrasts with existing law, under which the total liability of a polluter who is responsible for 80% of the damage would be reduced to 10% in a case with 10 polluters if the other 9 settled. Under SB 524, the liability of the large polluter would be reduced only by the

¹*Mercy Med. Ctr. v. Julian*, 429 Md. 348, 357 (2012) (internal citations omitted).

amount of the settling polluter's fair share of the pollution. Thus, the large polluter's share would remain at 80%.

This legislation will make the Environment Article more consistent with federal law² by ensuring that polluter-defendants are responsible for their fair share of the harm they cause.

The legislation will also facilitate early settlements. Early settlements are critical to the management of these large-scale cases because they simplify the case and create momentum toward resolving it. Under the bill, a defendant that settles with the State is protected from contribution claims without the State having to give up more than that settling-defendant's fair share of the overall judgment. The bill thus removes an obstacle to settlement that made it difficult for small defendants to resolve their liability and get out of these cases early on.

The bill is also narrowly drawn. It would not amend Maryland Uniform Contribution Among Joint Tort-Feasors Act (UCATA), which appears in the Courts Article. Instead, it creates a way to fairly apportion responsibility in the largest and most complex environmental pollution cases that we handle—hazardous substances (Title 7) and oil pollution (Title 4). The bill accomplishes that by removing the UCATA reference from Title 7 and applying the same fair apportionment language equally in Titles 7 and 4. The legislation thus is focused on the industry-wide pollution claims that the State brings in its *parens patriae* capacity on behalf of all Marylanders. It does not alter UCATA, which will continue to apply to all other tort suits.

We believe that SB 524 is a fairer way to allocate liability in large-scale pollution cases and that it serves judicial economy by letting less culpable defendants settle and resolve their liabilities while keeping more culpable defendants on the hook. However, some potentially interested parties have prevailed upon us to propose, and urge the Committee to adopt, certain perfecting amendments. They are as follows:

The first amendment alters the contribution provisions of the bill by prohibiting settling defendants from seeking contribution from other responsible parties. As drafted, the bill allowed for such contribution actions, which is consistent with federal law.³ But several groups representing small gas station owners raised the concern that this provision would allow big petroleum companies to settle their liability with the State and turn around and sue small retailers for contribution. The amendment addresses those concerns by simply adding the word “not” in the two relevant provisions. As a result, any party that settles with the State will not be able to obtain contribution from other entities.

The second amendment clarifies that the bill does not alter the fact that defendants in these cases are jointly and severally liable for the pollution that they cause or contribute to. As drafted, the bill expressly required the factfinder to determine and assign each defendant a share of the overall liability, which could be read as eliminating joint and several liability and making

² See generally 42 U.S.C. § 9601 *et seq.*

³ See S.B. 524 §§ 4–421(e), 7–221(f)(3), 2021 Leg., 422d Sess. (Md. 2021).

each defendant only severally liable.⁴ Deleting those provisions will remove any suggestion that the bill would have that effect, as will adding the term “joint and several” throughout the bill.

The third amendment clarifies that the liability allocation approach adopted in this bill does not apply to any statutory penalties that the Department of the Environment might be able to impose with respect to each defendant’s pollution-causing actions.⁵

The fourth and final amendment alters Section 2 of the bill to clarify that the bill’s provisions will not apply retroactively to prior settlements, but instead will apply to all settlements executed after the bill’s effective date.

For all the foregoing reasons, I urge the Judicial Proceedings Committee to favorably report Senate Bill 524 with these sponsor amendments.

cc: Members of the Committee

⁴ See S.B. 524 §§ 4–421(b), 7–221(f)(2).

⁵ See Attached Amendments on S.B. 524 §§ 4–421(c)(2)(ii), 7–221(f)(2)(ii)2.

A BILL ENTITLED

AN ACT concerning

**Environment – Multidefendant Oil and Hazardous Substance Pollution
Cases – Effect of Settlement**

FOR the purpose of exempting certain types of pollution cases from the Maryland Uniform Contribution Among Joint Tort-Feasors Act; requiring the factfinder in certain legal actions to ~~make a determination of the total liability and~~ assign comparative responsibility to certain parties; authorizing the State to continue to pursue certain legal actions or bring new legal actions if the State has obtained less than complete relief from a certain person who has resolved the person's liability with the State in a settlement; providing that a certain person is not liable for certain claims under certain circumstances; providing for the effect of a settlement that resolves the liability of a particular person with the State; preserving joint and several liability among non-settling parties; authorizing a certain person to seek contribution from certain other persons pursuant to certain provisions of law; and generally relating to legal actions involving oil or hazardous substance pollution.

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4-421.

(A) IN THIS SECTION, "PROPORTIONATE SHARE OF LIABILITY" MEANS THE PERCENTAGE OF COMPARATIVE RESPONSIBILITY ASSIGNED BY THE FACTFINDER TO A SETTLING PARTY. IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

~~(B) IN AN ACTION ARISING FROM A VIOLATION OF ANY PROVISION OF THIS SUBTITLE OR ANY RULE, REGULATION, ORDER, OR PERMIT ISSUED IN ACCORDANCE WITH THIS SUBTITLE, THE FACTFINDER SHALL:~~

~~(1) MAKE A DETERMINATION OF THE TOTAL LIABILITY IN THE LEGAL ACTION, INCLUDING DAMAGES, REMOVAL COSTS, CLEANUP COSTS, AND ALL OTHER AVAILABLE RELIEF; AND~~

~~(2) ASSIGN COMPARATIVE RESPONSIBILITY TO ALL PARTIES JOINED IN THE LEGAL ACTION, INCLUDING ALL PLAINTIFFS,~~

~~DEFENDANTS, THIRD PARTY DEFENDANTS, INTERVENORS, AND OTHER NAMED PARTIES.~~

~~(B)~~ IF THE STATE HAS OBTAINED LESS THAN COMPLETE RELIEF FROM A PERSON RESPONSIBLE FOR THE DISCHARGE WHO HAS RESOLVED THE PERSON'S LIABILITY TO THE STATE IN A SETTLEMENT, THE STATE MAY:

(1) CONTINUE TO PURSUE AN ONGOING LEGAL ACTION AGAINST ANY OTHER PERSON RESPONSIBLE FOR THE DISCHARGE WHO HAS NOT RESOLVED THE PERSON'S LIABILITY; OR

(2) BRING A NEW ACTION AGAINST ANY OTHER PERSON RESPONSIBLE FOR THE DISCHARGE WHO HAS NOT RESOLVED THE PERSON'S LIABILITY.

~~(C)~~ (1) IF A PERSON RESPONSIBLE FOR THE DISCHARGE RESOLVES THE PERSON'S LIABILITY TO THE STATE IN A SETTLEMENT, THE PERSON SHALL NOT BE LIABLE FOR CLAIMS FOR NONCONTRACTUAL CONTRIBUTION OR INDEMNITY REGARDING ANY MATTER OR CLAIM ADDRESSED IN THE SETTLEMENT, INCLUDING ANY STATUTORY OR COMMON LAW CLAIM.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, A SETTLEMENT THAT RESOLVES THE LIABILITY OF A PARTICULAR PERSON RESPONSIBLE FOR THE DISCHARGE:

(I) SHALLDOES NOT RELEASE FROM JOINT AND SEVERAL LIABILITY ANY OTHER PERSON RESPONSIBLE FOR THE DISCHARGE EXCEPT AS SPECIFICALLY PROVIDED BY THE TERMS OF THE SETTLEMENT; AND

(II) SHALLDOES NOT RELEASE ANY OTHER PERSON RESPONSIBLE FOR THE DISCHARGE FROM ITS RESPONSIBILITY TO PAY PENALTIES; BUT

(3H) A SETTLEMENT THAT RESOLVES THE LIABILITY OF A PARTICULAR PERSON RESPONSIBLE FOR THE DISCHARGE SHALLDOES REDUCES THE POTENTIAL JOINT AND SEVERAL LIABILITY OF OTHER PERSONS RESPONSIBLE FOR THE DISCHARGE BY THE SETTLING PERSON'S PROPORTIONATE SHARE OF LIABILITY FOR ALL SETTLED CLAIMS, INCLUDING ALL STATUTORY AND COMMON LAW CLAIMS.

~~(DE)~~ A PERSON RESPONSIBLE FOR THE DISCHARGE WHO HAS RESOLVED THE PERSON'S LIABILITY TO THE STATE IN A SETTLEMENT OR THROUGH THE SATISFACTION OF A JUDGMENT MAY **NOT** SEEK CONTRIBUTION FROM ANY OTHER PERSON RESPONSIBLE FOR THE DISCHARGE WHO HAS NOT SETTLED THE OTHER PERSON'S LIABILITY TO THE STATE IN ACCORDANCE WITH THIS SECTION OR § 7-221 OF THIS ARTICLE.

* * *

7-221

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(F) (1) IN THIS SUBSECTION, "PROPORTIONATE SHARE OF THE LIABILITY" MEANS THE PERCENTAGE OF COMPARATIVE RESPONSIBILITY ASSIGNED BY THE FACTFINDER TO A SETTLING PARTY, ~~IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION.~~

~~(2) IN AN ACTION UNDER SUBSECTION (B) OF THIS SECTION, THE FACTFINDER SHALL:~~

~~(I) MAKE A DETERMINATION OF THE TOTAL LIABILITY IN THE LEGAL ACTION, INCLUDING COSTS, EXPENDITURES, AND INTEREST AVAILABLE UNDER THIS SUBTITLE AND ALL OTHER AVAILABLE RELIEF; AND~~

~~(II) ASSIGN COMPARATIVE RESPONSIBILITY TO ALL PARTIES JOINED IN THE LEGAL ACTION, INCLUDING ALL PLAINTIFFS, DEFENDANTS, THIRD PARTY DEFENDANTS, INTERVENORS, AND OTHER NAMED PARTIES.~~

(32) (I) IF A RESPONSIBLE PERSON RESOLVES THE PERSON'S LIABILITY FOR A VIOLATION OF THIS SUBTITLE TO THE STATE IN A SETTLEMENT, THE PERSON SHALL NOT BE LIABLE FOR CLAIMS FOR NONCONTRACTUAL CONTRIBUTION OR INDEMNITY REGARDING ANY MATTER OR CLAIM ADDRESSED IN THE SETTLEMENT, INCLUDING ANY STATUTORY OR COMMON LAW CLAIM.

(II) **EXCEPT AS PROVIDED IN SUBPARAGRAPH 3. OF THIS PARAGRAPH,** A SETTLEMENT THAT RESOLVES THE LIABILITY OF A PARTICULAR RESPONSIBLE PERSON:

1. SHALLDOES NOT RELEASE FROM JOINT AND SEVERAL LIABILITY ANY OTHER RESPONSIBLE PERSON EXCEPT AS SPECIFICALLY PROVIDED BY THE TERMS OF THE SETTLEMENT; AND

2. SHALLDOES NOT RELEASE ANY OTHER RESPONSIBLE PERSON FROM ITS RESPONSIBILITY TO PAY PENALTIES; BUT

23. A SETTLEMENT THAT RESOLVES THE LIABILITY OF A PARTICULAR PERSON RESPONSIBLE PERSON FOR THE DISCHARGE SHALLDOES REDUCES THE POTENTIAL JOINT AND SEVERAL LIABILITY OF OTHER RESPONSIBLE PERSONS BY THE SETTLING PERSON'S PROPORTIONATE SHARE OF THE LIABILITY FOR ALL SETTLED CLAIMS, INCLUDING ALL STATUTORY AND COMMON LAW CLAIMS.

(43) A RESPONSIBLE PERSON WHO HAS RESOLVED THE PERSON'S LIABILITY TO THE STATE IN A SETTLEMENT OR THROUGH THE SATISFACTION OF A JUDGMENT MAY NOT SEEK CONTRIBUTION FROM ANY OTHER RESPONSIBLE PERSON WHO HAS NOT SETTLED THE OTHER PERSON'S LIABILITY TO THE STATE IN ACCORDANCE WITH THIS SECTION OR § 4-421 OF THIS ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply retroactively to all settlements executed after legal actions pending on the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2021.

2021-02-26 SB 524 (Support) Amendments Attached.pdf

Uploaded by: Kemerer, Hannibal

Position: FWA

BRIAN E. FROSH
Attorney General



ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
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410-576-6584

February 26, 2021

TO: The Honorable William C. Smith, Jr.
Chair, Senate Judicial Proceedings Committee

FROM: Brian E. Frosh
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RE: SB 524 – Environment – Multidefendant Oil and Hazardous Substance Pollution Cases
– Effect of Settlement – **Support with Sponsor Amendments**

Chair Smith, Vice Chair Waldstreicher, and distinguished Members of the Judicial Proceedings Committee, please accept the following testimony in support of SB 524.

Senate Bill 524 is designed to bring accountability and fairness to Maryland's law that allocates responsibility for environmental damage when suits against multiple polluters are settled.

Under existing law, when multiple polluters damage resources in Maryland, liability is apportioned among the polluters for settlement purposes pro rata. That means that all polluters are responsible for "equal shares that are determined by dividing the common liability by the number of joint tort-feasors."¹ Thus, in a suit against 10 polluters for causing oil pollution, a settlement with one party will reduce the responsibility of the remaining polluters by 10%. This is true whether the settling polluter's contribution to the damage was 90% or 1%.

Senate Bill 524 would create a standard that is fairer and more reasonable. The standard set in SB 524 would hold polluters accountable for their fair share of the damage that they caused or contributed to. The allocation formula established by SB 524 is consistent with the principle that the polluter pays. Larger polluters will not receive a benefit when smaller polluters settle. That contrasts with existing law, under which the total liability of a polluter who is responsible for 80% of the damage would be reduced to 10% in a case with 10 polluters if the other 9 settled. Under SB 524, the liability of the large polluter would be reduced only by the

¹*Mercy Med. Ctr. v. Julian*, 429 Md. 348, 357 (2012) (internal citations omitted).

amount of the settling polluter's fair share of the pollution. Thus, the large polluter's share would remain at 80%.

This legislation will make the Environment Article more consistent with federal law² by ensuring that polluter-defendants are responsible for their fair share of the harm they cause.

The legislation will also facilitate early settlements. Early settlements are critical to the management of these large-scale cases because they simplify the case and create momentum toward resolving it. Under the bill, a defendant that settles with the State is protected from contribution claims without the State having to give up more than that settling-defendant's fair share of the overall judgment. The bill thus removes an obstacle to settlement that made it difficult for small defendants to resolve their liability and get out of these cases early on.

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² See generally 42 U.S.C. § 9601 *et seq.*

³ See S.B. 524 §§ 4–421(e), 7–221(f)(3), 2021 Leg., 422d Sess. (Md. 2021).

each defendant only severally liable.⁴ Deleting those provisions will remove any suggestion that the bill would have that effect, as will adding the term “joint and several” throughout the bill.

The third amendment clarifies that the liability allocation approach adopted in this bill does not apply to any statutory penalties that the Department of the Environment might be able to impose with respect to each defendant’s pollution-causing actions.⁵

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For all the foregoing reasons, I urge the Judicial Proceedings Committee to favorably report Senate Bill 524 with these sponsor amendments.

cc: Members of the Committee

⁴ See S.B. 524 §§ 4–421(b), 7–221(f)(2).

⁵ See Attached Amendments on S.B. 524 §§ 4–421(c)(2)(ii), 7–221(f)(2)(ii)2.

A BILL ENTITLED

AN ACT concerning

Environment – Multidefendant Oil and Hazardous Substance Pollution Cases – Effect of Settlement

FOR the purpose of exempting certain types of pollution cases from the Maryland Uniform Contribution Among Joint Tort-Feasors Act; requiring the factfinder in certain legal actions to ~~make a determination of the total liability and~~ assign comparative responsibility to certain parties; authorizing the State to continue to pursue certain legal actions or bring new legal actions if the State has obtained less than complete relief from a certain person who has resolved the person's liability with the State in a settlement; providing that a certain person is not liable for certain claims under certain circumstances; providing for the effect of a settlement that resolves the liability of a particular person with the State; preserving joint and several liability among non-settling parties; authorizing a certain person to seek contribution from certain other persons pursuant to certain provisions of law; and generally relating to legal actions involving oil or hazardous substance pollution.

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4-421.

(A) IN THIS SECTION, "PROPORTIONATE SHARE OF LIABILITY" MEANS THE PERCENTAGE OF COMPARATIVE RESPONSIBILITY ASSIGNED BY THE FACTFINDER TO A SETTLING PARTY. IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

~~(B) IN AN ACTION ARISING FROM A VIOLATION OF ANY PROVISION OF THIS SUBTITLE OR ANY RULE, REGULATION, ORDER, OR PERMIT ISSUED IN ACCORDANCE WITH THIS SUBTITLE, THE FACTFINDER SHALL:~~

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~~(B)~~ IF THE STATE HAS OBTAINED LESS THAN COMPLETE RELIEF FROM A PERSON RESPONSIBLE FOR THE DISCHARGE WHO HAS RESOLVED THE PERSON'S LIABILITY TO THE STATE IN A SETTLEMENT, THE STATE MAY:

(1) CONTINUE TO PURSUE AN ONGOING LEGAL ACTION AGAINST ANY OTHER PERSON RESPONSIBLE FOR THE DISCHARGE WHO HAS NOT RESOLVED THE PERSON'S LIABILITY; OR

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~~(C)~~ (1) IF A PERSON RESPONSIBLE FOR THE DISCHARGE RESOLVES THE PERSON'S LIABILITY TO THE STATE IN A SETTLEMENT, THE PERSON SHALL NOT BE LIABLE FOR CLAIMS FOR NONCONTRACTUAL CONTRIBUTION OR INDEMNITY REGARDING ANY MATTER OR CLAIM ADDRESSED IN THE SETTLEMENT, INCLUDING ANY STATUTORY OR COMMON LAW CLAIM.

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(I) SHALLDOES NOT RELEASE FROM JOINT AND SEVERAL LIABILITY ANY OTHER PERSON RESPONSIBLE FOR THE DISCHARGE EXCEPT AS SPECIFICALLY PROVIDED BY THE TERMS OF THE SETTLEMENT; AND

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(3H) A SETTLEMENT THAT RESOLVES THE LIABILITY OF A PARTICULAR PERSON RESPONSIBLE FOR THE DISCHARGE SHALLDOES REDUCES THE POTENTIAL JOINT AND SEVERAL LIABILITY OF OTHER PERSONS RESPONSIBLE FOR THE DISCHARGE BY THE SETTLING PERSON'S PROPORTIONATE SHARE OF LIABILITY FOR ALL SETTLED CLAIMS, INCLUDING ALL STATUTORY AND COMMON LAW CLAIMS.

~~(DE)~~ A PERSON RESPONSIBLE FOR THE DISCHARGE WHO HAS RESOLVED THE PERSON'S LIABILITY TO THE STATE IN A SETTLEMENT OR THROUGH THE SATISFACTION OF A JUDGMENT MAY **NOT** SEEK CONTRIBUTION FROM ANY OTHER PERSON RESPONSIBLE FOR THE DISCHARGE WHO HAS NOT SETTLED THE OTHER PERSON'S LIABILITY TO THE STATE IN ACCORDANCE WITH THIS SECTION OR § 7-221 OF THIS ARTICLE.

* * *

7-221

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(F) (1) IN THIS SUBSECTION, "PROPORTIONATE SHARE OF THE LIABILITY" MEANS THE PERCENTAGE OF COMPARATIVE RESPONSIBILITY ASSIGNED BY THE FACTFINDER TO A SETTLING PARTY, ~~IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION.~~

~~(2) IN AN ACTION UNDER SUBSECTION (B) OF THIS SECTION, THE FACTFINDER SHALL:~~

~~(I) MAKE A DETERMINATION OF THE TOTAL LIABILITY IN THE LEGAL ACTION, INCLUDING COSTS, EXPENDITURES, AND INTEREST AVAILABLE UNDER THIS SUBTITLE AND ALL OTHER AVAILABLE RELIEF; AND~~

~~(II) ASSIGN COMPARATIVE RESPONSIBILITY TO ALL PARTIES JOINED IN THE LEGAL ACTION, INCLUDING ALL PLAINTIFFS, DEFENDANTS, THIRD PARTY DEFENDANTS, INTERVENORS, AND OTHER NAMED PARTIES.~~

(32) (I) IF A RESPONSIBLE PERSON RESOLVES THE PERSON'S LIABILITY FOR A VIOLATION OF THIS SUBTITLE TO THE STATE IN A SETTLEMENT, THE PERSON SHALL NOT BE LIABLE FOR CLAIMS FOR NONCONTRACTUAL CONTRIBUTION OR INDEMNITY REGARDING ANY MATTER OR CLAIM ADDRESSED IN THE SETTLEMENT, INCLUDING ANY STATUTORY OR COMMON LAW CLAIM.

(II) **EXCEPT AS PROVIDED IN SUBPARAGRAPH 3. OF THIS PARAGRAPH,** A SETTLEMENT THAT RESOLVES THE LIABILITY OF A PARTICULAR RESPONSIBLE PERSON:

1. SHALLDOES NOT RELEASE FROM JOINT AND SEVERAL LIABILITY ANY OTHER RESPONSIBLE PERSON EXCEPT AS SPECIFICALLY PROVIDED BY THE TERMS OF THE SETTLEMENT; AND

2. SHALLDOES NOT RELEASE ANY OTHER RESPONSIBLE PERSON FROM ITS RESPONSIBILITY TO PAY PENALTIES; BUT

23. A SETTLEMENT THAT RESOLVES THE LIABILITY OF A PARTICULAR PERSON-RESPONSIBLE PERSON FOR THE DISCHARGE-SHALLDOES REDUCES THE POTENTIAL JOINT AND SEVERAL LIABILITY OF OTHER RESPONSIBLE PERSONS BY THE SETTLING PERSON'S PROPORTIONATE SHARE OF THE LIABILITY FOR ALL SETTLED CLAIMS, INCLUDING ALL STATUTORY AND COMMON LAW CLAIMS.

(43) A RESPONSIBLE PERSON WHO HAS RESOLVED THE PERSON'S LIABILITY TO THE STATE IN A SETTLEMENT OR THROUGH THE SATISFACTION OF A JUDGMENT MAY NOT SEEK CONTRIBUTION FROM ANY OTHER RESPONSIBLE PERSON WHO HAS NOT SETTLED THE OTHER PERSON'S LIABILITY TO THE STATE IN ACCORDANCE WITH THIS SECTION OR § 4-421 OF THIS ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply retroactively to all settlements executed after legal actions pending on the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2021.

SB524 - MD Motor Truck Association - Unfavorable.p

Uploaded by: Campion, Louis

Position: UNF



Maryland Motor Truck Association

9256 Bendix Road, Suite 203, Columbia, MD 21045

Phone: 410-644-4600 Fax: 410-644-2537



HEARING DATE: February 26, 2021

BILL NO/TITLE: Senate Bill 524: Environment - Multidefendant Oil and Hazardous Substance Pollution Cases - Effect of Settlement

COMMITTEE: Senate Judicial Proceedings Committee

POSITION: **Oppose**

The members of Maryland Motor Truck Association, who drive Maryland's economy, are concerned that the passage of SB524 could have severe, unintended effects on Maryland's small trucking companies, especially those that own or operate their own underground fuel tanks or deliver products to them. Overwhelmingly the trucking industry is small business, with 97% of the industry operating 20 trucks or fewer.

MMTA understands that amendments have been offered to address some of the concerns previously expressed over the new right of contribution that would have been created for defendants that settle with the state; however, we do have other concerns about this complex legislation. These include:

- Who determines the "proportionate share" in a settlement if a case has not gone to trial or the trial is ongoing? Who is the factfinder with no trial or in a case that has not yet been decided?
- Will this increase the number of defendants in state lawsuits?
- If the Attorney General's office is concerned with being able to hold large polluters responsible for a bigger liability share, can they simply sue the largest polluters and leave smaller parties out of any litigation?

Lastly, the Association is concerned that the passage of this legislation conflicts with Maryland's contributory negligence standard by introducing one of comparative responsibility.

These are complex legal arguments that warrant substantial further review. As such, we urge an unfavorable report.

About Maryland Motor Truck Association: Maryland Motor Truck Association is a not-for-profit trade association representing the trucking industry since 1935. In service to its 1,000+ members, MMTA is committed to supporting and advocating for a safe, efficient and profitable trucking industry across all sectors and industry types, regardless of size, domicile or type of operation.

For further information, contact: Louis Campion, (c) 443-623-4223

Opposition of SB524 - Environment - Multidefendant

Uploaded by: Ferguson, Colby

Position: UNF



Maryland Farm Bureau, Inc.

3358 Davidsonville Road • Davidsonville, MD 21035 • (410) 922-3426

February 26, 2021

To: Senate Judicial Proceedings Committee

From: Maryland Farm Bureau, Inc.

Re: **Opposition of SB524 - Environment - Multidendant Oil and Hazardous Substance Pollution Cases - Effect of Settlement**

On behalf of our member families, I submit this written testimony opposing SB 524. This bill exempts pollution cases related to the discharge of oil and release of a hazardous substance from the Maryland Uniform Contribution Among Joint Tort-Feasors Act (MUCATA). The bill (1) requires a factfinder to make a determination of liability and assign comparative responsibility to all parties joined in the legal action; (2) authorizes the State to continue to pursue or begin new legal action if a settlement does not provide complete relief; (3) establishes that a settlement with the State for claims does not release other persons from liability but does reduce the remaining responsible persons' "proportionate share of liability,"; and (4) authorizes a person who satisfies claims with the State to seek contribution from other responsible persons.

Why is Maryland Farm Bureau opposing a MTBE bill?

- The bill is not limited to the MTBE case. In the House bill hearing last week, the Attorney General said he could use this bill to assist him in bringing other suits and used an example of one involving RoundUp, a crop protectant used by Maryland Farmers. We do not want to make it easier for the Attorney General to hire private attorneys on a contingent fee basis to sue farmers.

The Attorney General says this will allow defendants to settle faster. Wouldn't farmers like that?

- We can only settle faster if he sues us and then only if we give up all the protections we would get if we went to trial – such as the ability to claim contributory negligence. This bill is meant to make it easier for small companies and farmers to be sued in the first place.

Maryland law gives defendants, including farmers, a lot of what are called "affirmative defenses" like contributory negligence. This bill says that the jury will decide a farmer's or small companies' "comparative responsibility" without giving the farmer a right to assert those defenses in a full trial. Farmers in these cases should have all the rights that defendants have in other cases.

The Attorney General apparently intends to use private lawyers hired on a contingency fee to bring additional cases like he has in the MTBE case. We believe the reason why they want to collect money faster is so to help the private lawyers with cash flow. Those private lawyers drafted this bill, none of the defendants or future defendants asked for it.

MARYLAND FARM BUREAU RESPECTFULLY OPPOSES SB 524

Colby Ferguson
Director of Government Relations

For more information contact Colby Ferguson at (240) 578-0396

SB 524_Multidefendant Oil and Hazardous Substance

Uploaded by: Griffin, Andrew

Position: UNF



LEGISLATIVE POSITION:

Unfavorable

Senate Bill 524

Environment—Multidefendant Oil and Hazardous Substance Pollution Cases—Effect of Settlement

Senate Judicial Proceedings Committee

Friday, February 26, 2021

Dear Chairman Smith and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 5,000 members and federated partners, and we work to develop and promote strong public policy that ensures sustained economic recovery and growth for Maryland businesses, employees, and families.

As introduced, SB 524 is intended to affect the trial structure in *State of Maryland v. Exxon Mobil Corp., et al*, Case No. 1:18-cv-00459-SAG (D.Md), whereby the State has sued 62 defendants seeking to redress the alleged contamination of waters with methyl tertiary butyl ether (MTBE), an oxygenate additive that was commonly blended into gasoline from 1979 until mid-2006. If passed, the legislation would exempt certain types of pollution cases from the Maryland Uniform Contribution Amount Joint Tort-Feasors Act. Further, it would require the factfinder in certain legal actions to make a determination of the total liability and assign comparative responsibility to certain parties. It would also authorize the State to continue to pursue certain legal actions or bring new legal actions if the State has obtained less than complete relief from a certain person who has resolved the person's liability with the State in a settlement.

The Chamber has a number of significant concerns as it relates to this bill. If enacted, SB 524 would create new and vaguely defined rights under Maryland's Environmental Article, in addition to a new class of litigants, to seek contribution from parties not named in certain multi-defendant environmental lawsuits. We are concerned that it exposes Maryland small businesses and other non-parties to liability and expensive litigation.

We are further concerned that the new "comparative responsibility" standard included in the legislation amounts to the proverbial "nose under the tent," because the change in State law could then be extended to other chemicals or the phosphorous runoff from agricultural lands, and to other environmental claims. The General Assembly and Maryland courts have refused to do away with the contributory negligence standard under the State's joint tortfeasor statute.

However, SB 524 as drafted would undercut, if not dispense with, the contributory negligence defenses asserted by the defendants in the litigation the bill is attempting to address.

We believe this bill amounts to an attempt to interfere with pending MTBE litigation, and we are concerned that these changes to State law would expose Maryland small businesses, as well as county and local governments, to significant risks and costs.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **Unfavorable Report** on SB 524.



SB 524 WMDA.pdf

Uploaded by: McCauley, Kirk

Position: UNF



WMDA/CAR Service Station and Automotive Repair Association

Chair: William C. Smith, Jr.
Members of Judiciary Proceeding Committee

RE:SB 524

Position: Unfavorable

The bill under consideration by this committee will have major impacts on gasoline retailers in the state of Maryland. Retailers either own or operate the underground storage tank systems that exist at every retail service station in the state. When these systems incur a leak, owners and operators can be considered parties responsible for any resultant discharge under section 4-401 of the Maryland environmental article.

For this reason, retailers are among the parties most vulnerable to the contribution claims made possible, and actually encouraged by the bill. Under the bill, as you know, any party that settles with the state is entitled to seek contribution from any "party responsible for the discharge." Maryland retailers, however, are the parties least likely to be able to pay any judgement for contribution, and the least likely to be able afford to defend against a contribution claim. The large majority of retailers in Maryland are family-owned businesses that operate a single service station.

In the now pending MTBE litigation in Maryland, the defendants who might settle with the state and seek contribution from retailers include major oil companies and other large entities. Most, if not all, retailer businesses are tiny in comparison to these industry giants, and the disparity in their resources, along with the new contribution rules contained in the bill, would leave most retailers effectively defenseless in a contribution action.

Like other tank owners and operators, retailers would have responded to historic discharges from their underground storage tank systems by complying with MDE regulations and directives, and most of them would have stretched their resources to the limit in order to comply. When all is said and done, a new liability in contribution made possible by this bill could break many small Maryland retailers. Even the cost of defending a contribution action is beyond the ability of most of them.

The drafters of the bill, however, appear indifferent to the potential impact of the new contribution law on retailers and other small businesses. The bill affords them no defenses, such as contributory negligence, which would apply in cases seeking contribution if the bill is not enacted. Nor is there any affirmative or other defense based on the retailer's having already resolved its environmental issues with the MDE.

Moreover, for all intents and purposes, there is no statute of limitations defense that would bar claims that were resolved with the MDE many years ago.

In short, the exposure to liability created by the contribution provisions of the bill is too great, the potential amount of liability is too large, and the ability of most retailers to pay a judgment in contribution is too remote, to justify an enactment of this proposed legislation.

Please give SB 524 and unfavorable Report

WMDA/CAR is a trade association that has represented service stations, convenience stores and independent repair shops since 1937. Any questions can be addressed to Kirk McCauley, 301-775-0221 or kmccauley@wmda.net

SB524_unf_MRA.pdf

Uploaded by: Price, Sarah

Position: UNF



**SB524 Environment – Multidefendant Oil and Hazardous Substance Pollution
Cases – Effect of Settlement
Judicial Proceedings Committee
February 26, 2021**

Position: Unfavorable

Background: SB524 would allow legal action to be brought against additional parties under certain circumstances concerning oil and hazardous substance pollution cases.

Comments: SB524 could have major impacts on retailers in Maryland. The liabilities created by this bill could broadly affect retailers that currently store and sell a multitude of products, and the true breadth of its impact is impossible to predict.

When a product release or pollution occurs, whether from retailer storage systems or because of actions of their customers, retailers may be considered responsible parties under titles 4 & 7 of the Environment article in the Maryland Code. If SB524 passed, any party that settles with the state would be entitled to seek contribution from any “party responsible for the discharge”. This broad language is of concern to the retail industry, as small businesses do not have access to resources to any judgement for contribution, or to defend against lawsuits filed by the industry giants responsible for the manufacture of products that the state may, at some future date, include in a “state-wide” “legacy pollution” lawsuit.

The bill overlooks the fact that, in the case of a product release or pollution, retailers are legally required to report the incident and would have addressed it in accordance with State requirements and directives at that time, and may have even paid penalties to resolve State enforcement actions. The liability for contribution proposed in this bill is in addition to already satisfying the State’s requirements and compensating the State for damages.

The bill as written affords retailers no defenses and removes the contributory negligence defense that would apply to such claims under current law. Likewise, it removes the statute of limitations that would bar these claims and subjects retailers to liability for incidences that may have addressed decades ago. Any insurance that applied to a release at the time it occurred would not likely apply to these contribution claims.

In short, the exposure to liability created by the bill as currently written is too great, and we feel that it sets a dangerous precedent. We have reviewed amendments that have been proposed to address some of these concerns, and we look forward to working with the sponsor and the Office of the Attorney General on the issue. Thank you for your consideration.

ACC Informational Testimony on MD SB 524 2-24-21.p

Uploaded by: Mascarenhas, Brendan

Position: INFO

**ACC Informational Testimony on SB 524 Environment – Multidefendant Oil and Hazardous
Substance Pollution Cases – Effect of Settlement
Senate Judicial Proceedings Committee
February 26, 2021**

Comments: SB 524 could greatly expand the scope of liability for covered discharges in the state of Maryland. The expansion created by this bill could duplicate existing regulatory and enforcement authorities already administered by existing state authorities and the Environmental Protection Agency’s Clean Water Act (CWA) Section 311 Spill Prevention, Control, and Countermeasure (SPCC) program.

The requirements and penalties provided by the SPCC program provide an example of existing regulatory requirements that address potential spills and provide regulators with appropriate enforcement authority. The SPCC program covers a range of product releases or discharges depending on a number of factors including source, size of tank or storage vessel, and discharge amount, among others. The SPCC program also includes requirements for facilities to adopt mitigation measures and develop and regularly review site-specific spill response plans. Any failure to properly submit or review these plans can result in fines and penalties maintained under the SPCC program. In the event of a discharge or spill, CWA Section 311(j) provides a process to determine the resulting seriousness of the risk posed to the environment. The risk of a potential violation is determined by factors like the extent of the violation, likelihood of a spill, and sensitivity of the environment. This determination is further informed by the level of severity of the violation, which may be dependent on the storage capacity of the violator’s facility, existence, and adequacy of secondary containment and duration of the violation. In the event of a spill or discharge resulting from gross negligence or willful misconduct, the SPCC provides a type of judicial forum with minimum penalties starting at \$100,000 (33 U.S.C. § 1321(b)(7)(d)). These SPCC program requirements exist in addition to state-level requirements that also address potential spills.

Under SB 524, any party that settles with the state would be entitled to seek contribution from any “party responsible for the discharge.” This broad language is of concern to many industries in the state as well as small businesses that may lack access to resources to any judgment for contribution. In addition to its liability expansion, the bill also lacks any limiting criteria that would further refine the scope of applicability of specific “persons responsible for the discharge” or the size of covered discharges. It should also be noted that the duplicative nature of the bill overlooks the fact that, in the case of a product release or pollution, the state already administers requirements to report incidents and weigh enforcement penalties against potential violators. The liability for contribution proposed in this bill is in addition to the state’s existing requirements and compensatory damage scheme.

In short, the bill greatly expands exposure to liability to an extent that is duplicative of existing regulatory and enforcement requirements. ACC supports the position and input from the Maryland Retailers Association on the draft bill and looks forward to its continued review by the bill’s sponsor and the Maryland Office of the Attorney General on these priority issues. Thank you for your consideration.