



March 9, 2026

The Honorable William C. Smith, Jr., Chair
The Honorable Jeff Waldstreicher, Vice Chair
Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, Maryland 21401

Re: Opposition to Senate Bill 871: Punitive Damages Award Surcharge

Dear Chair Smith, Vice Chair Waldstreicher, and members of the Senate Judicial Proceedings Committee:

Thank you for the opportunity to submit written testimony in opposition to Senate Bill (SB) 871, which would allow punitive damages awards in cases where plaintiffs show, by clear and convincing evidence, proof of gross negligence and would impose on defendants a 50% surcharge of any punitive-damages award.

A party must be awarded compensatory damages to be eligible to receive punitive damages.¹ Actual damages include both economic damages (compensation for lost wages, medical expenses, and costs to repair or replace property) and noneconomic damages (compensation for pain, suffering, inconvenience, loss of consortium, etc.).² By contrast, punitive damages are not intended to compensate plaintiffs for their losses; rather, they are intended to punish defendants for past bad behavior and deter future bad behavior.

According to the relevant jury instruction, a punitive damages award should be in an amount intended to deter the defendant and others from engaging in similar conduct in the future, proportional to the level of the defendant's wrongdoing and their ability to pay, and not designed to bankrupt or otherwise financially destroy a defendant.³ Under current Maryland law, punitive damages are awarded only in cases where plaintiffs prove that the defendant's behavior has involved "actual malice." SB 871, by contrast, would substantially lower the standard for awarding punitive damages to "gross negligence."

On behalf of the Allstate Insurance Company enterprise, I respectfully urge the members of this Committee to issue an unfavorable report on SB 871.

¹ See *Fisher v. McCrary Crescent City, LLC.*, 186 Md. App. 86 (2009) ([2026 Regular Session - Fiscal and Policy Note for Senate Bill 871](#)).

² [2026 Regular Session - Fiscal and Policy Note for Senate Bill 871](#).

³ See *Maryland Civil Pattern Jury Instruction 10:14* ([2026 Regular Session - Fiscal and Policy Note for Senate Bill 871](#)).

Permitting plaintiffs to receive punitive damages in cases involving gross negligence, where a defendant is shown to have behaved with disregard for the rights or safety of others would unacceptably lower the standard for the awarding of punitive damages against defendants. This change, combined with the imposition of an additional surcharge of 50% on said defendants, would prohibitively increase the cost of doing business in Maryland, particularly for small businesses and nonprofits.

Were SB 871 to pass, the State Court Administrator would assess a surcharge against a defendant on whom a punitive damages award is imposed, equal to 50% of the punitive damages award itself.⁴ The surcharge would be paid by said defendant to the State of Maryland, and a jury involved in the proceedings would be prohibited from knowing about the existence of the surcharge. Upon collection of the punitive damages surcharge, the State Court Administrator would be required to deposit the funds into the Blueprint for Maryland's Future Fund (BMFF), which is intended to help fund early childhood education and primary and secondary education in Maryland. Importantly, absent the passage of SB 871, the BMFF's revenue is anticipated to be lower than its expected expenditures beginning in fiscal year (FY) 2028. General fund expenditures for education are expected to decrease commensurate with that revenue gap beginning in FY 2028.

According to the Maryland Department of Legislative Services (DLS) Fiscal and Policy Note, SB 871 would have a substantial negative effect on the state economy.⁵ If punitive damages are awarded against the Maryland Transit Administration (MTA), the Transportation Trust Fund expenditures will meaningfully increase. According to the bill's Fiscal Note, the passage of SB 871 will increase local expenditures, particularly if the bill increases litigation costs. The Local Government Tort Claims Act (LGTC) permits a local government to be held liable for tortious acts or omissions of its employees acting within the scope of their employment, as long as the employee did not act with actual malice. The LGTC also prohibits local governments from asserting immunity from liability for such acts. Local governments may indemnify their employees for judgments including punitive damages and associated surcharges.⁶ DLS projects that the bill will also have a harmful economic effect on small businesses made to pay punitive damages and surcharges.

In general, the state is immune from liability for torts committed by its employees. However, the Maryland Tort Claims Act (MTCA) requires the state to waive its immunity to a limited degree.⁷ The state does not waive its sovereign immunity for the application of punitive damages. Moreover, the tort liability of the Maryland Transit Authority (MTA) is not protected by the MTCA and therefore is susceptible to substantially higher damages than most other state agencies. For that reason, the Transportation Trust Fund (TTF) could be substantially affected by the passage of SB 871 if punitive damages are awarded against MTA under the stricter SB 871 standard and a corresponding assessment is imposed. MDOT reported to DLS that insurance

⁴ [2026 Regular Session - Fiscal and Policy Note for Senate Bill 871.](#)

⁵ [2026 Regular Session - Fiscal and Policy Note for Senate Bill 871.](#)

⁶ Local governments may not, however, enter into a contract that requires them to indemnify an employee for the employee's act or omission that may result in punitive damages liability.

⁷ Suits relying on the MTCA generally proceed against the state itself, not the employee(s) who engaged in the allegedly tortious activity, unless the employee is found to have acted with malice or gross negligence or outside the scope of their official duties.

policies typically exclude coverage for punitive damages, meaning that any punitive damages award and corresponding surcharge would both come out of state funds.

SB 871 will substantially increase the overall costs of claims by wholly rewriting the punitive damages standard in the state. The existing “actual malice” standard requires an evil motive or intent to injure. Changing the standard to a clear and convincing demonstration of gross negligence will make punitive damages available to an extraordinary range of plaintiffs in a wide array of cases. Gross negligence is an overly broad standard on which to base the imposition of punitive damages, particularly where punitive damages will include a 50% surcharge. The combined effect of these changes will be to discourage businesses from operating in Maryland.

Allstate appreciates the opportunity to provide written comments in opposition to the bill, and we respectfully urge Committee members to issue an unfavorable report on SB 871. Thank you for your time and consideration of this important issue.

Sincerely,

A handwritten signature in cursive script that reads "Lauren G. Pachman".

Lauren G. Pachman
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