

SB871 HB906 - 2026 - Written Testimony.pdf

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2026 WRITTEN TESTIMONY

CIVIL ACTIONS - PUNITIVE DAMAGE REWARDS - SURCHARGE

SB871 / HB 906 - FAVORABLE WITH AMENDMENTS

In civil actions based on negligence, compensatory damages are included in the verdict if the jury finds by a preponderance of the evidence that the defendant tortfeasor acted in a way that was unreasonable under the circumstances and that harmed the plaintiff. Compensatory damages are intended to make the plaintiff whole, i.e., to remedy the harm suffered by the plaintiff.

In such cases, most states (but not Maryland) allow juries to include punitive damages in their verdict, if the jury finds by clear and convincing evidence (a higher burden of proof) that the defendant tortfeasor acted with “gross negligence,” i.e., a “wanton and reckless disregard for human life.”[1] Punitive damages are intended to punish such conduct, and to deter others from acting in a similarly reprehensible fashion in the future.

Thirty-four years ago, the Maryland Supreme Court decided that punitive damages no longer are allowed in our State, even when a jury finds by clear and convincing evidence that the defendant tortfeasor acted with “gross negligence.”

Since 1992, more than forty other states throughout the country have continued to use punitive damages to punish and deter reprehensible conduct. **SB871/HB 906 would restore Maryland’s “gross negligence” standard for punitive damages, thereby bringing Maryland back into alignment with the mainstream approach.**

Moreover, SB871/HB 906 would allocate punitive damages between the State and the plaintiff whose litigation uncovered and proved the reprehensible conduct at issue. A 2017 House Workgroup on Punitive Damages found that about ten States similarly allocate punitive damages between the State and the plaintiff. A 50% surcharge, however, is unnecessary and could be amended out of the bill as currently drafted.

Maryland Association for Justice urges a FAVORABLE Report on SB871/HB 906.

[1] Until 1992, the Supreme Court of Maryland defined “gross negligence” as a “wanton and reckless disregard for human life.” *Smith v. Gray Concrete Pipe Co.*, 267 Md. 149, 167 (1972). HB 906 restores that “gross negligence” standard.

About Maryland Association for Justice

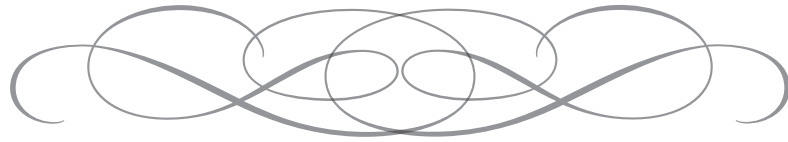
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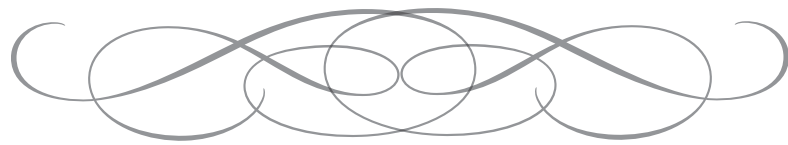
2017 House Workgroup Report.pdf

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House Workgroup on Punitive Damages



FINAL REPORT



Annapolis, Maryland
February 2017

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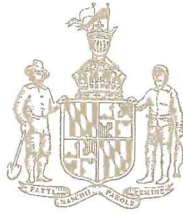
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THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401-1991

February 24, 2017

The Honorable Thomas V. Mike Miller, Jr., President of the Senate
The Honorable Michael E. Busch, Speaker of the House of Delegates
Members of the Maryland General Assembly

Ladies and Gentlemen:

The House Workgroup on Punitive Damages respectfully submits its final report. The workgroup met three times during the 2016 interim to review the current structure for awarding punitive damages under Maryland law, examine other states' punitive damages schemes, and consider the possible implications of expanding or contracting the use of punitive damages in Maryland – including the likely impact on insurance consumers in the State. Because of the complexity of the issues, there was no consensus as to a recommendation. Nevertheless, we hope that the information in this report will be of assistance to the General Assembly as it considers future bills on the subject of punitive damages.

On behalf of the workgroup, I wish to thank the many individuals who contributed their time and expertise during this process; the information and perspectives they provided were invaluable. I also wish to thank the Department of Legislative Services and committee staff for their continued support.

Sincerely,

A handwritten signature in blue ink that reads "Kathleen M. Dumais".

Kathleen M. Dumais
Chair

cc: Mr. Warren G. Deschenaux

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Contents

Transmittal Letter.....	iii
Introduction	1
Punitive Damages in Maryland.....	3
Punitive Damages in Other States.....	5
Insurability of Punitive Damages.....	15
Conclusion	19
Appendix I. Maryland Statutes Authorizing Punitive or Exemplary Damages.....	21
Appendix II. Why Expanding Punitive Damages Liability Will Not Effectively Deter or Punish Drunk Driving, But Raise Auto Insurance Costs in Maryland	29
Appendix III. Report on Punitive Damages of the Committee on Special Problems in the Administration of Justice	39
Appendix IV. Presentation to the House of Delegates Workgroup on Punitive Damages.....	77

Introduction

Introduction

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. Under Maryland law, punitive damages are available only in a narrow category of cases – either where explicitly authorized by statute, or where the defendant’s conduct rises to the level of “actual malice.”

In recent years, the General Assembly has considered several bills that would have expanded the use of punitive damages in Maryland, particularly in cases involving drunk driving. House leadership created the House Workgroup on Punitive Damages in response to these bills and to the perceived need to take a broader, more holistic look at punitive damages in the State. The workgroup included members of the Economic Matters, Health and Government Operations, and Judiciary committees, as well as private individuals from the plaintiff and defense bar and the insurance and health care worlds. The workgroup’s mandate was to (1) review the current structure of awarding punitive damages under Maryland tort law and determine whether the array of covered actions should be expanded or limited; (2) examine other states’ punitive damages schemes to determine whether there are best practices that Maryland should adopt; (3) review the opportunities for treble damages and compensatory damages under Maryland law; and (4) determine what impact any expansion or contraction of punitive damages and treble damages would have on insurance consumers in the State.

The workgroup met three times during the 2016 interim, on November 10, December 6, and December 20. The first meeting focused on the evolution of Maryland case law on punitive damages, Maryland statutes authorizing punitive and treble damages, and how Maryland law compares with other states on this issue of punitive damages. The second meeting focused on insurance issues, including questions relating to the insurability of punitive damage awards and the possible impact that expanding the use of punitive damages in Maryland would have on the affordability and availability of insurance in the State. At the third and final meeting, members of the workgroup discussed their perspectives and considered recommendations.

Ultimately, the workgroup unanimously agreed that there was no consensus because of the complexity of the issues. The workgroup instead decided to issue this report summarizing the

information it had gathered over the course of its meetings. The following sections provide an overview of punitive damages in Maryland, punitive damages in other states, and the insurability of punitive damages. Additional materials submitted to the workgroup have been included as appendixes.

Punitive Damages in Maryland

Maryland Case Law

In the 1940s, the Maryland Court of Appeals set a high bar for the recovery of punitive damages in negligence actions:

The basic rule for the entitlement of punitive or exemplary damages is that there must be actual malice. That is, there must be an element of fraud, or malice, or evil intent, or oppression entering into and forming part of the wrongful act. *Philadelphia, W.&B. R.R. Co. v. Hoeflich*, 62 Md. 300, 307, quoted in *Davis v. Gordon*, 183 Md. 129, 133 (1944).

The above cited rule held fast in Maryland until the Court of Appeals' decision in *Smith v. Gray Concrete Pipe Co.*, 267 Md. 149 (1972). In *Smith*, the court, for the first time, fashioned a gross negligence standard for the award of punitive damages in a motor vehicle case. Defining "gross negligence" as a "wanton or reckless disregard for human life" (*Id.* at 167), the Court stated, "We regard 'a wanton or reckless disregard for human life' in the operation of a motor vehicle, with the known dangers and risks attendant to such conduct, as the legal equivalent of malice." *Id.* at 168.

In *Nast v. Lockett*, 312 Md. 343 (1988), the Court of Appeals considered the application of the *Smith* decision to automobile tort cases involving intoxication. The Court held that evidence that the defendant was driving while intoxicated could support the conclusion that the defendant had a wanton or reckless disregard for human life. Therefore, such evidence could be weighed by the trier of fact on the issue of punitive damages.

After the gradual expansion of the use of punitive damages in negligence actions in the 1970s and 80s, the Court of Appeals reversed course. In *Owens-Illinois v. Zenobia*, 325 Md. 420 (1992), the Court expressly overruled the *Smith* and *Nast* decisions, holding 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 Court expanded on this decision in *Komornik v. Sparks*, 331, Md. 720 (1993), specifically holding that evidence of the defendant's driving while intoxicated was insufficient to support a finding of actual malice.

Maryland Statutes

Punitive damages are also available under more than 40 Maryland statutes. These statutes generally apply to legislatively created causes of action based on intentional misconduct. Nearly

half of the statutes are intended to protect consumers. Usually, the statutes place a limit on the amount of the punitive damages that may be recovered in the form of a multiple of the actual damages. **Appendix 1** contains a list of Maryland statutes that authorize punitive damage awards.

Punitive Damages in Other States

Introduction

In the United States, 47 states, including Maryland, authorize the award of punitive damages in at least some cases. Of these 47, 4 states (Louisiana, Massachusetts, New Hampshire, and South Dakota) award punitive damages only where expressly authorized by statute. Three states (Michigan, Nebraska, and Washington) prohibit the award of punitive damages outright. **Exhibit 1** summarizes the availability of punitive damages across the country.

Exhibit 1 Punitive Damages Across the Country

<u>Availability of Punitive Damages</u>	<u>Number of States</u>
Generally available	43
Available only when expressly authorized by statute	4
Prohibited	3

Source: Wilson Elser

This section provides a broad overview of the treatment of punitive damages in the states that allow them.

Standards of Conduct

Punitive damages are intended to punish conduct that is particularly culpable or egregious. In general, it is not enough that a defendant acted negligently. Rather, the defendant must have acted with a specific state of mind, such as (1) “actual malice”; (2) “conscious disregard” of the likely consequences of his or her actions; (3) “reckless indifference” to the likely consequence of his or her actions; or (4) “gross negligence.” **Exhibit 2** summarizes the standards of conduct in the 43 states where punitive damages are generally available.¹

¹ In Louisiana, Massachusetts, New Hampshire, and South Dakota, the conduct required to obtain an award of punitive damages is set for each cause of action by the statute authorizing the award of punitive damages. This report does not address the standards of conduct in these states.

Exhibit 2
Standard of Conduct Where Punitive Damages are Available

<u>Standard of Conduct</u>	<u>Number of States</u>
Actual malice (express or implied)	9
Conscious disregard	7
Reckless indifference	13
Gross negligence	5
Other	9

Source: Wilson Elser

In general, a defendant acts with “actual malice” if he or she actually intends to cause harm. However, some jurisdictions further distinguish between “express malice” and “implied malice.” Express malice exists where the defendant’s tortious conduct is motivated by ill will (*i.e.*, hatred, spite, or similar motive toward the plaintiff.) Implied malice exists where the defendant’s conduct, although not necessarily motivated by ill will, is so outrageous that the court may infer malice on the part of the defendant. Maryland and North Dakota appear to be the only states to require proof of express malice to obtain punitive damages.² Seven other states apply a more flexible implied malice standard, including:

- California (CAL. CIVIL CODE § 3294)³ ;
- Kentucky (KY. REV. STAT. § 411.184)⁴;
- Maine (*St. Francis De Sales Fed. Credit Union v. Sun Ins. Co. of N.Y.*, 818 A.2d 995 (Me. 2003))⁵;

² There is a possible exception to the express malice requirement in Maryland. In product liability cases, Maryland courts have found that the “actual malice” necessary to support an award of punitive damages is actual knowledge of a defect and deliberate disregard of the consequences. (*AC and S v. Godwin*, 667 A.2d 116 (Md. 1995)). This is essentially an implied malice standard.

³ In California, punitive damages may be awarded only if the defendant is guilty of “oppression, fraud, or malice.” “Malice” is defined to include both conduct that is intended to cause harm and “despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.”

⁴ In Kentucky, punitive damages may be awarded only where the defendant acted towards the plaintiff with “oppression, fraud, or malice.” “Malice” is defined as “conduct which is specifically intended by the defendant to cause tangible or intangible injury to the plaintiff or conduct that is carried out by the defendant both with a flagrant indifference to the rights of the plaintiff and with a subjective awareness that such conduct will result in human death or bodily harm.”

⁵ In Maine, punitive damages may be awarded in cases involving implied malice. Implied malice arises where “deliberate conduct by the defendant, although motivated by something other than ill will toward any particular party, is so outrageous that malice toward a person injured as a result of that conduct can be implied.” *Tuttle v. Raymond*, 494 A.2d 1353, 1361 (Me. 1985).

- Montana (MONT. CODE ANN. § 27-1-221)⁶;
- Nevada (NEV. REV. STAT. § 42.005);⁷
- Ohio (OHIO REV. CODE ANN. § 2315.21); and⁸
- Virginia (*Lee v. Southland Corp.*, 244 S.E.2d 756 (Va. 1978)).⁹

A defendant acts with “conscious disregard” if he or she is consciously aware that his or her actions will probably injure another. The defendant does not necessarily intend to injure the plaintiff, but he or she has actual knowledge of the likely consequences of his or her actions and deliberately proceeds despite this knowledge. States that require proof of conscious disregard before awarding punitive damages include:

- Arizona (*Rawlings v. Apodaca*, 726 P.2d 565 (Ariz. 1986));
- Georgia (GA. CODE ANN. § 51-12-5.1);
- Iowa (IOWA CODE § 668A.1);
- Minnesota (MINN. STAT. § 549.20);
- New Jersey (N.J.S.A. § 2A:15-5.12);
- Utah (UTAH CODE ANN. § 78B-8-201); and
- Wisconsin (WIS. STAT. ANN. § 895.043).

A defendant acts with “reckless indifference” if he or she knows or should know that his or her actions will probably injure another. The defendant does not intend to cause injury, but he or she acts without concern for the likely consequences of his or her actions. States that authorize punitive damage awards based on a finding of reckless indifference include:

- Alabama (ALA. CODE ANN. § 6-11-20);
- Alaska (ALASKA STAT. § 09.17.020);
- Arkansas (ARK. CODE ANN. § 16-55-206);

⁶ In Montana, punitive damages may be awarded only if the defendant is guilty of “actual fraud or actual malice.” A defendant is guilty of actual malice “if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff and: (a) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to the plaintiff or (b) deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.” MONT. CODE ANN. § 27-1-221.

⁷ In Nevada, punitive damages are available where the defendant is guilty of oppression, fraud, or malice, express or implied.” NEV. REV. STAT. § 42.005. “Malice, express or implied” is defined as “conduct which is intended to injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or safety of others.” NEV. REV. STAT. § 42.001.

⁸ Although Ohio’s punitive damages statute requires proof of “malice, aggravated or egregious fraud, oppression or insult,” Ohio courts have defined malice to include a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm. *Malone v. Courtyard by Marriott P’ship*, 659 N.E.2d 1242, 1259 (Ohio, 1996).

⁹ In Virginia, actual malice may be shown where the defendant’s action exhibit “ill will, violence, grudge, spite, wicked intention or a conscious disregard of the rights of another.” *Lee v. Southland Corp.*, 244 S.E.2d 756 (Va. 1978).

- Colorado (COLO. REV. STAT. § 13-21-102);
- Connecticut (*Chapman Lumber, Inc. v. Clifford L. Tager*, Conn. Super. 2005);
- Delaware (*Eby v. Thompson*, 2005 Del. Super. LEXIS 63 (Feb. 8 2005));
- Florida (FLA. STAT. ANN. § 768.72);
- Mississippi (MISS. CODE ANN. § 11-1-65);
- New Mexico (*Gonzalez v. Surgidev. Corp.*, 899 P.2d 594 (N.M. 1995));
- New York (*Martin v. Group Health Inc.*, 767 N.Y.S. 2d 803 (N.Y. App. Div. 2003));
- Oklahoma (OKLA. STAT. ANN. tit. 23, § 9.1);
- Pennsylvania (*Feld v. Merriam*, 485 A.2d 742 (Pa. 1984)); and
- South Carolina (*Nesbitt v. Lewis*, 517 S.E.2d 11 (S.C. 1999)).

Several states allow imposition of punitive damages if the plaintiff proves that the defendant acted in a grossly negligent manner. West’s Encyclopedia of American Law defines “gross negligence” as “a conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable grave injury or harm to persons, property, or both.” States that allow imposition of punitive damages for gross negligence include:

- Idaho (*Curtis v. Firth*, 850 P.2d 749 (Idaho 1993));
- Illinois (*Ainsworth v. Century Supply Co.*, 693 N.E.2d 510 (Ill. App. Ct. 1998));
- Indiana (*Erie Ins. Co. v. Hickman by Smith*, 622 N.E.2d 515 (Ind. Ct. App. 1993));
- Missouri (*Letz v. Turbomeca Engine Corp.*, 975 S.W.2d 155 (Mo. Ct. App. 1998)); and
- Texas (TEX. CIV. PRAC. & REM. CODE § 41.003).

Standards of conduct do not always fit neatly into the categories described above. The following states have formulated various standards requiring behavior that amounts to less than express malice but more than gross negligence for the imposition of punitive damages:

- Hawaii (*Kang v. Harrington*, 587 P.2d 285 (Haw. 1978));
- Kansas (KAN. STAT. ANN. § 60-3702; *Reeves v. Carlson*, 969 P.2d 252 (Kan. 1988));
- North Carolina (N.C. GEN. STAT. § 1D-15);
- Oregon (OR. REV. STAT. § 31.730);
- Rhode Island (*Johnson v. Johnson*, 654 A.2d 1212 (R.I. 1995));
- Tennessee (*Hodges v. S.C. Tool & Co.*, 833 S.W.2d 896 (Tenn. 1992));
- Vermont (*McCormick v. McCormick*, 621 A.2d 238 (Vt. 1993));
- West Virginia (*Mayer v. Frobe*, 22 S.E. 58 (W. Va. 1895)); and
- Wyoming (*Alexander v. Meduna*, 47 P.3d. 206 (Wyo. 2002)).

Standards of Proof

Because punitive damages are intended to punish quasi-criminal behavior, a vast majority of jurisdictions, including Maryland, require punitive damages to be proved by “clear and convincing” evidence. One state (Colorado) has established an even higher “beyond a reasonable doubt” standard for punitive damages. Eight states (Connecticut, Illinois, Louisiana, Massachusetts, New Mexico, Vermont, Virginia, and West Virginia) apply the preponderance of the evidence standard generally applicable to civil cases. There is no clear standard in New Hampshire, New York, or Wyoming. **Exhibit 3** summarizes standards of proof across the country.

Exhibit 3 Standards of Proof

<u>Standard of Proof</u>	<u>Number of States</u>
Preponderance of the evidence	8
Clear and convincing	35
Beyond a reasonable doubt	1
Undetermined/no clear standard	3

Source: Wilson Elser

Caps and Limitations

In *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), the Supreme Court held that “grossly excessive” punitive damage awards violate the due process clause of the Fourteenth Amendment of the U.S. Constitution. Additionally, 27 states (not including Maryland) have enacted specific statutory limitations on the amount of punitive damages that may be awarded. **Exhibit 4** summarizes these statutory caps and limitations.

Exhibit 4
Limitations on Punitive Damages

<u>State</u>	<u>Limitation</u>	<u>Notes</u>
Alabama	\$500,000 or 3 x compensatory damages	Nonphysical injury only.
	\$1,500,000 or 3 x compensatory damages	Physical injury only.
Alaska	\$500,000 or 3 x compensatory damages	Subject to exceptions – under certain circumstances, recovery up to \$7 million may be allowed.
Arkansas	\$250,000 or 3 x compensatory damages	Punitive award may not exceed \$1 million.
Colorado	1x compensatory damages	May be increased to 3x compensatory damages under certain circumstances.
Connecticut	Costs of litigation less taxable costs	Subject to statutory exceptions.
Florida	\$500,000 or 3 x compensatory damages	General cap.
	\$2,000,000 or 4 x compensatory damages	Wrongful conduct motivated by unreasonable financial gain or defendant knew likelihood of harm.
Georgia	\$250,000	Does not apply in product liability cases.
Idaho	\$250,000 or 3 x compensatory damages	General cap.
Indiana	\$50,000 or 3 x compensatory damages	General cap.
Iowa	3 x clean-up costs	Applies only in environmental cases.
Kansas	\$5,000,000	Award may not exceed defendant's annual gross income or 1.5x the profit that the defendant gained or is expected to gain as a result of the misconduct.
Maine	\$75,000	Applies only in wrongful death actions.
Massachusetts	\$100,000 or as otherwise specified in statute	Caps appear in statutes authorizing punitive damage awards.
Mississippi	\$20,000,000	In general, cap is tied to the defendant's net worth; cap does not apply in certain cases.

<u>State</u>	<u>Limitation</u>	<u>Notes</u>
Missouri	\$500,000 or 5 x compensatory damages	General cap.
Montana	\$10,000,000	Generally, cap may not exceed 3% of the defendant's net worth; cap does not apply in certain cases.
Nevada	\$300,000 or 3 x compensatory damages	Does not apply to insurer bad faith claims or certain other cases.
New Jersey	\$350,000 or 5 x compensatory damages	Does not apply in certain cases.
North Carolina	\$250,000 or 3 x compensatory damages	Does not apply to actions under "driving while impaired" statute.
North Dakota	\$250,000 or 2 x compensatory	General cap.
Ohio	10% or defendant's net worth or 2 x compensatory damages	Award may not exceed \$350,000.
Oklahoma	\$100,000 or 1 x compensatory damages	"Category I" cases.
	\$500,000 or 2 x compensatory damages	"Category II" cases.
	No cap	"Category III" cases.
Oregon	4 x compensatory damages	Applies only in cases where harm is purely economic.
Rhode Island	2 x compensatory damages	Applies only in willful and malicious misappropriation of trade secrets cases.
Texas	\$200,000 or 2 x (economic damages + noneconomic damages up to \$750,000)	General cap.
Utah	3 x compensatory damages	General cap.
Virginia	\$350,000	General cap.

Source: Wilson Elser

Awards Against the State

In a vast majority of jurisdictions, including Maryland, punitive damages may not be awarded against the state. However, in some jurisdictions this prohibition is subject to certain exceptions. For example, Colorado allows public entities to defend, pay, or otherwise settle punitive damage claims against a public employee, but only after adoption of a general resolution at an open, public meeting.

Louisiana, South Dakota, and Vermont allow punitive damages to be awarded against the state, subject to certain conditions and restrictions such as damage caps and insurance requirements. Kentucky appears to be the only state that places no limitations on punitive damage awards against the state. **Exhibit 5** summarizes the availability of punitive damage awards in actions against state governments.

Exhibit 5
Availability of Punitive Damages Against States

<u>Availability of Punitive Damages in Actions Against State</u>	<u>Number of States</u>
Generally not available	42
Available subject to damage caps or other limitations	3
Generally available	1
Unclear / no information	1

Source: Wilson Elser

Payment of Awards

In general, punitive damages are paid to the plaintiff. However, because punitive damages are not intended to compensate the plaintiff for his or her losses, some jurisdictions require a certain percentage of every punitive damages award to be paid to the state. **Exhibit 6** summarizes the allocation of punitive damages in these jurisdictions.

Exhibit 6
Allocation of Punitive Damages

<u>State</u>	<u>Allocation of Punitive Damages</u>
Alaska	50% paid to state, deposited into general fund.
Georgia	75% paid to state, deposited into general fund.
Illinois	Trial court has discretion (rarely used in practice) to apportion punitive damages among the plaintiff, the plaintiff's attorney, and the State of Illinois Department of Human Services.
Indiana	75% paid to state, deposited into the Violent Crime Victims' Compensation Fund.
Iowa	Where conduct was not directed specifically at the plaintiff, at least 75% paid to state, deposited into a civil reparations trust fund administered by the State Court Administrator.
Missouri	50% paid to state, deposited into the Tort Victims' Compensation Fund.
Oregon	60% paid to state, deposited into the Criminal Injuries Compensation Account.
Pennsylvania	In medical malpractice cases only, 25% paid to state, deposited into the Medical Care Availability and Reduction of Error (MCARE) Fund.
Utah	50% of punitive damages in excess of \$20,000 (after attorney's fees and costs) paid to state, deposited into general fund.

Source: Wilson Elser

Categories of Cases

The availability of punitive damages in different types of cases varies widely from state to state. These variations have their basis in both case law and statute. **Exhibit 7** summarizes the availability of punitive damages in three types of cases: (1) products liability; (2) medical malpractice; and (3) wrongful death. In Maryland, punitive damages are available in products liability and medical malpractice cases, but not in wrongful death cases.

Exhibit 7
Availability of Punitive Damages

Availability of Punitive Damages **Number of States**

Products Liability

Available	43
Not available	3
No information	1

Medical Malpractice

Available	39
Not available	6
No information	2

Wrongful Death

Available	10
Not available	5
No information	32

Sources: Wilson Elser; Congressional Research Service

Insurability of Punitive Damages

Overview

As a mechanism to manage risk of loss, insurance is generally available to anticipate and manage the effects of losses that are foreseeable and capable of estimation, such as compensatory damages for losses in tort or contract. Punitive damages are another variety of damage assessed as the result of loss, principally to punish the person for inflicting the loss, or to make the person an example to others. As noted earlier in this report, punitive damages are widely but not universally available in the United States, they are generally available in 43 states, available only by statute in 4, and entirely prohibited in 3. In addition, punitive damages may be authorized, or prohibited, under a federal statute for an action that also gives rise to potential punitive damages under state law.

Where available, punitive damages may be assessed against a tortfeasor or other violator for a variety of reasons, often to punish the violator beyond merely making the injured party whole, either because compensatory damages are nominal or because they are inadequate to address nonmonetary aspects of the injury sustained. Another principal purpose of punitive damages is to make the violator an example, so that others who might otherwise risk an action will think twice, based on the level of punitive damages assessed. When assessed against the violator for the violator's own intended or negligent action, the damages are "directly assessed." In the case of a violator in the employ or under the control of a third party, punitive damages may be assessed against the third party as "vicariously assessed" punitive damages.

Where punitive damages may be awarded, they may or may not be insurable. Factors vary considerably from state to state, such as whether the underlying injury arises purely out of contract or whether some tortious conduct is required to make the damages insurable. In some jurisdictions, directly assessed punitive damages for intentional or willful conduct are not insurable, even if such damages are insurable when arising from gross negligence. In a number of jurisdictions, public policy prohibits the insurability of directly assessed punitive damages, but allows vicariously assessed damages to be insured.

An overview of the insurability of directly assessed and vicariously assessed in domestic jurisdictions is shown below in **Exhibit 8**, as prepared by McCullough, Campbell and Lane, Chicago. In general, where directly assessed are insurable, vicariously assessed damages are assumed to be so as well. According to the chart, 31 jurisdictions allow the insurability of directly assessed punitive damages. Of these, 9 disallow insurability of punitive damages assessed for intentional conduct. In 16 jurisdictions, directly assessed punitive damages are not insurable. Out of these 16, 10 allow for insurability of vicariously assessed punitive damages, and 2 further prohibit insurability of vicarious liability. In the remaining jurisdictions, the insurability of either directly or vicariously assessed punitive damages is undecided.

The chart is only a guide, however, and must be reviewed in light of state-specific interpretation of statutes and case law. Comparing the chart to a similar listing in Wilson Elser's *Punitive Damages Review, 50-State Survey* (2014 Edition) shows minor discrepancies arising from nuances in interpreting state-specific matters. In addition, the insurance law of the various states may allow an insurer to specifically exclude coverage for punitive damages even if the insurer does provide coverage for compensatory damages arising from the same situation.

Exhibit 8 Punitive Damages by State

<u>Jurisdiction</u>	<u>Directly Assessed Punitive Damages</u>	<u>Vicariously Assessed Punitive Damages</u>
Alabama	Insurable	Insurable
Alaska	Insurable	Insurable
Arizona	Insurable	Insurable
Arkansas	Insurable*	Insurable
California	Not Insurable	Insurable
Colorado	Not Insurable	Undecided
Connecticut	Not Insurable	Insurable
Delaware	Insurable	Insurable
District of Columbia	Undecided	Undecided
Florida	Not Insurable	Insurable
Georgia	Insurable	Insurable
Hawaii	Insurable	Insurable
Idaho	Insurable	Insurable
Illinois	Not Insurable	Insurable
Indiana	Not Insurable	Insurable
Iowa	Insurable	Insurable
Kansas	Not Insurable	Insurable
Kentucky	Insurable*	Insurable
Louisiana	Insurable*	Insurable
Maine	Not Insurable	Undecided
Maryland	Insurable	Insurable
Massachusetts	Not Insurable	Undecided
Michigan	Insurable	Insurable
Minnesota	Not Insurable	Insurable
Mississippi	Insurable	Insurable
Missouri	Insurable	Insurable
Montana	Insurable*	Insurable
Nebraska ²	Not Applicable	Not Applicable
Nevada	Insurable*	Insurable
New Hampshire	Insurable	Insurable
New Jersey	Not Insurable	Insurable
New Mexico	Insurable	Insurable
New York	Not Insurable	Not Insurable
North Carolina	Insurable	Insurable

<u>Jurisdiction</u>	<u>Directly Assessed Punitive Damages</u>	<u>Vicariously Assessed Punitive Damages</u>
North Dakota	Insurable*	Insurable
Ohio	Insurable	Insurable
Oklahoma	Not Insurable	Insurable
Oregon	Insurable*	Insurable
Pennsylvania	Not Insurable	Insurable
Rhode Island	Not Insurable	Undecided
South Carolina	Insurable	Insurable
South Dakota	Undecided	Undecided
Tennessee	Insurable*	Insurable
Texas	Undecided	Insurable
Utah	Not Insurable	Not Insurable
Vermont	Insurable	Insurable
Virginia ³	Insurable*	Not Applicable
Washington	Insurable	Insurable
West Virginia	Insurable	Insurable
Wisconsin	Insurable	Insurable
Wyoming	Insurable	Insurable

¹In states without specific authority, the table assumes that vicariously assessed punitive damages are insurable if directly assessed punitive damages are insurable.

²Nebraska does not recognize punitive damages in any form.

³Virginia does not recognize the vicarious imposition of punitive damages.

*Punitive damages are insurable unless awarded for intentional conduct.

Source: McCullough, Campbell & Lane LLP

Insurability of Punitive Damages in Maryland

In Maryland, the situation is fairly straightforward. Public policy does not preclude insurance against the risk of enhanced damages in most instances. The damages may be termed punitive or exemplary, without distinction. When these damages are directly assessed, they are generally insurable. *First Nat'l Bank v. Fid. & Deposit Co.*, 283 Md. 228, 389 A.2d 359 (1978); *accord Medical Mut. Liability Ins. Society of Maryland v. Miller*, 52 Md. App. 602, 451 A.2d 930 (1982); *Alcolac, Inc. v. St. Paul Fire & Marine Ins. Co.*, 716 F. Supp. 1541 (D. Md. 1989). However, punitive damages are not generally available in the State for *pure* breach of contract. *Food Fair Stores, Inc. v. Hevey*, 275 Md. 50, 338 A.2d 43 (1975); *Siegman v. Equitable Trust Co.*, 267 Md. 309, 297 A.2d 758 (1972); *but see, Carter v. Aramark Sports & Ent't Svcs*, 153 Md.App. 210, 835 A.2d 262 (2003)(actual malice). But this does not preclude such damages for a tort action arising out of contract, or from those damages being insurable.

There is no reason to assume that vicariously imposed punitive damages may not be insured in the State.

Conclusion

At the conclusion of the workgroup, several important questions remained unanswered.

- **What deterrent effect do punitive damages have on bad actors?** Some workgroup members argued that expanding the use of punitive damages could help to discourage harmful behavior such as drunk driving or medical malpractice. Additionally, some workgroup members saw punitive damages as an important tool for combating corporate misconduct, noting that criminal prosecutions of corporate officers are rare. However, other workgroup members raised questions about the value of punitive damages as a deterrent, noting that the State already has strong laws and regulations to prohibit and punish bad behavior. Moreover, the workgroup received no data to suggest that misconduct is less common in states where punitive damages are applied more broadly.
- **How might changing the standard of conduct for punitive damage awards affect the affordability and availability of insurance in Maryland?** Some workgroup members, particularly those involved in the insurance and health care industries, worried that expanding the use of punitive damages would result in less predictability and larger settlements, causing insurance rates to rise (*e.g.*, **Appendix 2** for one version of this argument). However, it is difficult to predict the exact impact such a change would have. Comparisons between states with different punitive damage standards are unhelpful because insurance rates are affected by so many variables.
- **If the General Assembly were to change the standard of conduct for punitive damages in Maryland, what should the new standard be?** Some workgroup members argued for a standard that more broadly encompasses “reprehensible behavior” and that takes into account factors like the probable ill effects of a defendant’s behavior and the defendant’s ability to prevent those ill effects (*e.g.*, **Appendix 3** for the American College of Trial Lawyers’ suggestions on how punitive damages should be applied). Others argued that such a standard would be inherently vague and subjective, leading to more costly litigation and inconsistent results.

Because of the complexity of these issues, the workgroup unanimously agreed that there was no consensus on a recommendation.

Appendix I.

Maryland Statutes Authorizing Punitive or Exemplary Damages

The following is a brief description of each statute that authorizes an award of punitive or exemplary damages:

Charitable Solicitations: A person who willfully fails to comply with a requirement concerning charitable solicitations is liable to the donor of the charitable contribution for punitive damages not exceeding three times the actual damages. (BR, § 6-509(b)(2))

Returnable Containers and Returnable Textiles: In an action brought by the owner of a returnable container or returnable textile, the owner may recover up to three times the value of the actual damages for a violation of this subtitle. (BR, § 19-302(b)(2))

Defamation by Television or Radio Station or Network: An owner, licensee, or operator of a television or radio station or network and an agent or employee is liable for punitive damages for a defamatory statement published or uttered with actual malice over the facilities of the station or network by a candidate for public office as to a person other than the candidate's opponent. (CJ, § 3-504(b))

Unlawful Wiretapping and Electronic Surveillance: A person whose communication is intercepted, disclosed, or used in violation of this subtitle may recover punitive damages. (CJ, § 10-410(a)(2))

Foreign Discriminatory Boycotts Act: A person who is injured by a violation of this Act may recover three times the amount of actual damages which result from the violation. (CL, § 11-109(b)(4))

Bad Faith Assertion of Patent Infringement: A target of a bad faith assertion of patent infringement may be awarded exemplary damages not exceeding the greater of \$50,000 or three times the total of actual damages, costs, and fees. (CL, § 11-605(b)(2))

Hulls of Vessels: A person who is injured in the person's business by virtue of a violation of this subtitle may recover three times the amount of the damages incurred. (CL, § 11-1001(d)(1))

Maryland Uniform Trade Secrets Act: A complainant may be awarded exemplary damages not exceeding twice the damages caused by the misappropriation of a trade secret. (CL, § 11-1203(d))

Interest and Usury: A person who willfully requires a borrower to make a false or misleading statement that a loan is a commercial loan shall forfeit to the borrower three times the amount of interest and charges contracted for or collected in excess of that permitted by law. (CL § 12-106.1 (b)). A person who violates the usury provisions of this subtitle shall forfeit to the

borrower the greater of three times the amount of interest and charges collected in excess of that authorized by this subtitle or \$500. (CL, § 12-114(a))

Maryland Consumer Loan Law: A lender is liable to the borrower for an amount equal to three times the excess amount. (CL, § 12-313(b))

Secondary Mortgage Loans – Credit Provisions: A lender who knowingly violates any provision of this subtitle shall forfeit to the borrower three times the amount of interest and charges collected in excess of that authorized by law. (CL, § 12-413)

Equal Credit Opportunity Act: A creditor who fails to comply with the Act is liable for punitive damages not exceeding \$10,000 to an individual applicant and not exceeding the lesser of \$100,000 or 1 percent of the net worth of the creditor in a class action. (CL, § 12-707(b) and (c))

Loans – Finder’s Fees: A mortgage broker who violates any provision of this subtitle shall forfeit to the borrower the greater of \$500 or three times the amount of the finder’s fee collected. (CL, § 12-807)

Creditor Grantor Revolving Credit Provisions: A credit grantor who knowingly violates any provision of this subtitle shall forfeit to the borrower three times the amount of interest, fees, and charges collected in excess of that authorized by this subtitle. (CL, § 12-918(b))

Creditor Grantor Closed End Credit Provisions: A credit grantor that knowingly violates any provision of this subtitle shall forfeit to the borrower three times the amount of interest, fees, and charges collected in excess of that authorized by this subtitle. (CL, § 12-1018(b))

Consumer Credit Reporting Agencies: A consumer reporting agency or user of information which willfully fails to comply with a statutory requirement with respect to a consumer is liable for punitive damages allowed by the court. (CL, § 14-213(a)(2))

Fine Prints: A person who sells a fine print in willful violation of this subtitle is liable to the purchaser for an amount equal to three times the sum of the purchase price and interest. (CL, § 14-505(b))

Layaway Sales Act: A seller who makes a layaway sale in willful violation of this Act is liable to the buyer for an amount equal to three times the amount paid by the buyer under the layaway agreement. (CL, § 14-1109(b))

Maryland Credit Services Businesses Act: A credit services business which willfully fails to comply with a requirement of this subtitle with respect to a consumer is liable to that consumer for a monetary award in an amount equal to three times the total amount collected from the consumer and such amount of punitive damages as the court may allow. (CL, § 14-1912(a))

Consumer Motor Vehicle Leasing Contracts: A lessor who knowingly violates any provision of this subtitle shall be liable to the lessee for three times the amount of fees and charges collected in excess of that authorized by this subtitle. (CL, § 14-2007(f)(4))

Maryland Immigration Consultant Act: An immigration consultant who violates this subtitle is liable for an award equal to three times the amount of the damages. (CL, § 14-3306(c))

Dishonored Checks and Other Instruments: If a check or other instrument has not been paid within 30 days after the holder has sent notice of dishonor, the maker or drawer of the check or other instrument shall be liable for the amount of the check or other instrument, a collection fee of \$35, and an amount up to two times the amount of the check or instrument, but not more than \$1,000. (CL, § 15-802(b))

Unlawful Picketing and Assembly: A court may award punitive damages if a person intentionally assembles with another in a manner that disrupts a person's right to tranquility in the person's home. (CR, § 3-904(e)(2))

Controlled Hazardous Substances: A responsible person who fails without sufficient cause to comply with a final order issued under the Controlled Hazardous Substances Act is subject to punitive damages not exceeding three times the amount of the costs incurred by the State. (EN, § 7-266.1(a))

Check Cashing Services: A court may award a prevailing plaintiff who is injured by a violation of this subtitle up to three times the amount of actual damages. (FI, § 127(b)(1))

False Claims against State or County – Prohibitions: A person who violates the prohibitions against false claims is liable to the governmental entity for not more than three times the amount of damages sustained. (GP, § 8-102(c))

False Claims against State or County – Retaliatory Action: An employee, a contractor, or a grantee may be awarded punitive damages if a person takes a retaliatory action against the employee, contractor, or grantee. (GP, § 8-107(b)(2)(vi))

False Claims against State Health Plans and State Health Programs – Prohibitions: A person who violates the prohibitions against false claims is liable to the governmental entity for not more than three times the damages sustained. (HG, § 2-602(b))

False Claims against State Health Plans and State Health Programs – Retaliatory Action: An employee, a contractor, or a grantee may be awarded punitive damages if a person takes a retaliatory action against the employee, contractor, or grantee. (HG, § 2-607(b)(2)(vi))

Developmental Disabilities Law – Disclosure of Records: A custodian of a record who unlawfully discloses the record is liable to the individual whose record is disclosed for punitive damages not exceeding \$500. (HG, § 7-1103(b))

Rescission of Continuing Care Agreement: A subscriber is entitled to treble damages for extensive injuries arising from a violation of the subscriber's right to rescind a continuing care agreement. (HS, § 10-446(d))

Wage Payment and Collection: If a court finds that an employer withheld the wage of an employee in violation of this subtitle and not as a result of a bona fide dispute, the court may award the employee an amount not exceeding three times the wage. (LE, §§ 3-507(b) and 3-507.2(b))

Wholesale Sales Representatives: A sales representative may bring an action against the principal to recover up to three times the amount of all commissions that the principal owes. (LE, § 3-605(a)(1))

Healthy Retail Employee Act: If an employer fails to comply with an order issued for a subsequent violation against the same employee within three years, the employee may be entitled to three times the value of the employee's hourly wage for each shift break violation. (LE, § 3-710(d)(8))

Workplace Fraud: A court or administrative agency may order an employer who knowingly fails to properly classify an employee to pay the employee up to three times the amount of restitution to which the employee is entitled. (LE, § 3-909(c)) An employee is entitled to up to three times the amount of any economic damages awarded in a civil action. (LE, § 3-911(c)(2))

Aquaculture-Liability for Trespass: A person who willfully, negligently, wrongfully, or maliciously enters an area leased to another person to harvest, damage, or transfer shellfish or to alter, damage, or remove any markings or equipment is liable to the leaseholder for damages up to three times the value of the shellfish harvested, damaged, or transferred. (NR, § 4-11A-16.1(a)(1))

Protection of Homeowners in Foreclosure Act: If a court finds that the defendant willfully or knowingly violated this Act, the court may award the homeowner damages equal to three times the amount of actual damages. (RP, § 7-320(c))

Maryland Mortgage Fraud Protection Act: If a court finds that the defendant violated this Act, the court may award damages equal to three times the amount of actual damages. (RP, § 7-406(c))

Maryland Mortgage Assistance Relief Services Act: If a court finds that the defendant violated this Act, the court may award damages equal to three times the amount of actual damages. (RP, § 7-507(c)).

Security Deposits for Residential Leases: If a landlord, without a reasonable basis, fails to return any part of a security deposit, within 45 days after termination of a tenancy, the tenant has an action of up to three times the withheld amount. (RP, § 8-203(e)(4))

Procurement – Defrauding the State: A person who, for the purpose of defrauding the State, acts in collusion with another person in connection with the procurement process is liable for damages up to three times the value of the loss to the State. (SF, § 11-205(b))

Violation of Prevailing Wage Rates – Public Works Contracts: An employer who withheld wages or fringe benefits willfully and knowingly or with deliberate ignorance or reckless disregard of the employer's obligations is liable for double or treble damages. (SF, § 17-224(d)(3)) A

contractor or subcontractor who retaliates or discriminates against an employee may be ordered to pay the employee three times the amount of back wages. (SF, § 17-224(h)(3)(ii))

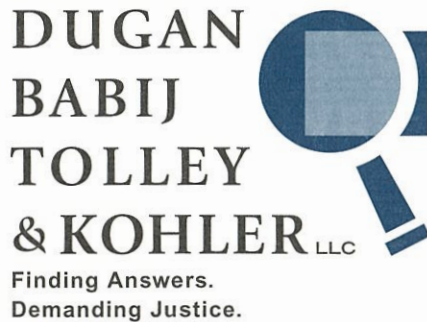
Unlawful Employment Practices: A complainant is entitled to punitive damages, subject to specified monetary limits, if the respondent engaged in an unlawful employment practice with actual malice. (SG, § 20-1013(e))

Discriminatory Housing Practices: A person who is subjected to a discriminatory housing practice may be awarded punitive damages. (SG, § 20-1035(e)(1)(i))

2026 SB 871 FWA.PDF

Uploaded by: George Tolley

Position: FWA



March 9, 2026

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

Re: **SB 871 – Civil Actions – Punitive Damage Awards – Surcharge**

Dear Chair Smith and Members of the Senate Judicial Proceedings Committee,

Throughout history, a critical function of the civil justice system has been to deter unreasonably unsafe conduct by imposing financial liability on wrongdoers. In a civil action for money damages, a plaintiff may recover compensatory damages, which are intended to compensate the plaintiff for the harms and losses caused by the defendant's wrongful conduct.

In addition to compensatory damages, *punitive damages* are an effective tool of the civil justice system in many states. Where such a remedy is available, punitive damages are intended (a) to punish egregious conduct and (b) to deter others from engaging in such conduct in the future.

In states that allow their recovery, punitive damages protect residents by deterring conduct that is "grossly negligent," *i.e.*, conduct that recklessly disregards the rights and safety of the public at large, or is characterized by malicious, oppressive, or fraudulent intent.

Prior to 1992, Maryland law allowed punitive damages if the jury found, by clear and convincing evidence, that the defendant acted with gross negligence (also referred to as "implied malice"), defined by a "wanton and reckless disregard for human life." *Smith v. Gray Concrete Pipe Co.*, 267 Md. 149, 167 (1972).

In 1992, a divided Supreme Court of Maryland decided that punitive damages no longer should be available to punish or deter defendants who would act with a "wanton and reckless disregard for human life" in Maryland. *Owens-Illinois v. Zenobia*, 325 Md. 420 (1992). In a separate opinion, Judge Robert M. Bell (later Chief Judge of the Court of Appeals) warned against the "actual malice" standard:

Permitting punitive damages when one acts with actual malice, but not when, given the totality of the circumstances, that same person acts in total disregard for the safety of others, has *no reasoned basis*. . . .

Insulating a defendant from an award of punitive damages except when he or she acts with actual malice . . . provides a disincentive for that defendant to act reasonably. Since, from the standpoint of a defendant's pocketbook, it makes no difference in the award of damages, whether he or she is negligent or grossly negligent, that is, his or her conduct is extreme to a point just short of being intentional, requiring that defendant to pay compensatory damages

for the victims' injuries is not likely to have a deterrent effect; it is not likely to cause him or her to consider, not to mention, change, his or her conduct.

Id. at 482 (Bell, J., concurring and dissenting) (emphasis added). Judge Bell further criticized the Court's "two-prong standard, one applicable to non-intentional torts and the other, containing an aspect [of "implied malice"], applicable to products liability cases." *Id.* at 485.

Notwithstanding the decision in *Zenobia*, punitive damages are not a disfavored tool for public policy in Maryland. A House Workgroup Report on Punitive Damages in 2017 identified more than 40 instances in the Maryland Code where punitive damages were allowed for certain specific conduct. .

SB 871 would overturn *Zenobia* and bring Maryland back into the mainstream, allowing punitive damages in non-intentional tort actions (including wrongful death actions) according to a standard drawn from case law followed by a majority of states (including AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, IA, ID, IN, KY, ME, MN, MO, MS, MT, ND, NJ, NM, NV, NY, OH, OK, PA, SC, TX, UT, VA, and WI). In all of those states, punitive damages are available to punish and deter conduct that disregards the rights and safety of the public at large.

Marylanders deserve no less protection than the residents of other states. SB 871 finally restores a legal deterrent in Maryland against wanton and reckless disregard for human life – a legal deterrent that has been missing since the Court in *Zenobia* abolished it 35 years ago.

Because the recovery of punitive damages represents a public determination that conduct should be punished, the law in some jurisdictions allocates a portion of punitive damage awards to the state. That allocation may take the form of a share of the award or a surcharge.

I propose several amendments to SB 871 for the Committee's consideration.

The first proposed amendment would clarify that punitive damages are available, under the same standard of "gross negligence," in wrongful death actions:

At page 2, line 18, after **NEGLIGENCE**, insert "**OR A WRONGFUL ACT,**"

Maryland's Wrongful Death Act, Md. Cts. & Jud. Procs. Code §§ 3-902(a), establishes that an action for wrongful death "may be maintained against a person whose wrongful act causes the death of another." It would be incongruent to allow punitive damages in all cases *except* where gross negligence causes death.

The second proposed amendment would clarify the manner in which punitive damages are shared between the plaintiff and the State:

Strike page 2, line 17 through page 3, line 11, and insert:

(C) (1) UPON A VERDICT INCLUDING AN AWARD OF PUNITIVE DAMAGES, THE STATE BECOMES A JUDGMENT CREDITOR AS TO THE AMOUNTS PAYABLE UNDER SUB-PARAGRAPH (II) OF THIS SUBSECTION, AND THE PUNITIVE DAMAGES PORTION OF THE AWARD SHALL BE ALLOCATED AS FOLLOWS:

(I) ONE-HALF ALLOCATED TO THE PREVAILING PARTY OR PARTIES, AND

(II) ONE-HALF ALLOCATED TO THE STATE OF MARYLAND.

(2) UPON THE ENTRY OF JUDGMENT ON A VERDICT INCLUDING AN AWARD OF PUNITIVE DAMAGES GOVERNED BY THIS SECTION, THE PREVAILING PARTY SHALL PROVIDE WRITTEN NOTICE OF THE ENTRY OF JUDGMENT TO THE OFFICE OF THE ATTORNEY GENERAL.

(3) ANY JUDGMENT ENTERED ON A VERDICT INCLUDING AN AWARD OF PUNITIVE DAMAGES, AND ANY REVISED JUDGMENT INCLUDING AN AWARD OF PUNITIVE DAMAGES ENTERED THEREAFTER, SHALL IDENTIFY THE JUDGMENT CREDITORS SPECIFIED IN SUBSECTION (1).

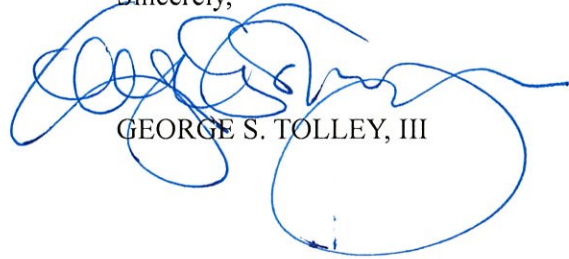
(4) WHENEVER A JUDGMENT INCLUDES BOTH COMPENSATORY AND PUNITIVE DAMAGES, ANY PAYMENT ON THE JUDGMENT BY OR ON BEHALF OF ANY DEFENDANT, WHETHER VOLUNTARY OR BY EXECUTION OR OTHERWISE, SHALL BE APPLIED FIRST TO COMPENSATORY DAMAGES, COSTS AND COURT-AWARDED ATTORNEYS FEES, IF ANY, AND THEN TO PUNITIVE DAMAGES AWARDED AGAINST THAT DEFENDANT UNLESS ALL AFFECTED PARTIES, INCLUDING THE STATE OF MARYLAND, EXPRESSLY AGREE OTHERWISE, OR UNLESS THAT APPLICATION IS CONTRARY TO THE EXPRESS TERMS OF THE JUDGMENT.

(5) WHENEVER ANY JUDGMENT CREDITOR OF A JUDGMENT WHICH INCLUDES PUNITIVE DAMAGES GOVERNED BY THIS SECTION RECEIVES ANY PAYMENT ON THE JUDGMENT BY OR ON BEHALF OF ANY DEFENDANT, THE JUDGMENT CREDITOR RECEIVING THE PAYMENT SHALL NOTIFY ALL OTHER JUDGMENT CREDITORS AND ALL SUMS SHALL BE APPLIED AS REQUIRED BY THIS SECTION, UNLESS ALL AFFECTED PARTIES, INCLUDING THE STATE OF MARYLAND, EXPRESSLY AGREE OTHERWISE, OR UNLESS THAT APPLICATION IS CONTRARY TO THE EXPRESS TERMS OF THE JUDGMENT.

This proposed amendment tracks Oregon's statutory punitive damages law, ORS § 31.735, with half of any punitive damages award being allocated to the State of Maryland and half of the award allocated to the prevailing party or parties.

Subject to these proposed amendments, I respectfully ask for a FAVORABLE report on SB 871.

Sincerely,

A handwritten signature in blue ink, appearing to read "George S. Tolley, III", is written over the typed name. The signature is highly stylized and cursive.

GEORGE S. TOLLEY, III

GSTIII

SB 871 - Medical Mutual - Written Testimony in Opp

Uploaded by: Alexis Braun

Position: UNF

MEDICAL MUTUAL

Liability Insurance Society of Maryland

Bill: Senate Bill 871 – Civil Actions – Punitive Damage Awards – Surcharge

Date: March 11, 2026

Position: Oppose

Medical Mutual opposes Senate Bill 871. Senate Bill 871 would allow punitive damages to be awarded in a civil action if the plaintiff proves by clear and convincing evidence that the defendant acted with “gross negligence.” Gross negligence as defined in the Bill includes, among other things, a “failure to exercise even slight care,” a “pattern of repeated misconduct,” and “acts or omissions that create a high degree of risk or harm to others.” This drastic relaxation of the standard for an award of punitive damages could transform practically every medical liability action into one in which punitive damages are sought, increasing the complexity of medical liability litigation and the cost of defending claims, likely leading to higher medical professional liability (MPL) insurance rates.

Unlike compensatory damages, which are intended to compensate injured parties for their injuries or losses to make the injured person whole, punitive damages are aimed at the different purposes of deterrence and retribution.¹ Senate Bill 871 would overturn the current standard of liability for an award of punitive damages as established in *Owens-Illinois v. Zenobia*, 325 Md. 420 (1992). In *Zenobia*, the Supreme Court of Maryland held that punitive damages may be awarded if the defendant’s conduct rose to the level of actual malice (evil motive or intent to do harm, or knowing that its actions would be harmful) as opposed to implied malice (gross negligence, recklessness, or should have known of the harm). As a result of the *Zenobia* decision, Maryland citizens and businesses have had a very clear standard of liability that has been consistently applied by the courts over the past 34 years.

As the largest provider of MPL insurance to private practice physicians in Maryland,² Medical Mutual is concerned that substantially weakening the high bar required for an award of punitive damages will put pressure on a precarious balance in the civil liability system that allows plaintiffs to recover damages for an injury while maintaining continued access to quality health care across the State. Making it much easier for plaintiffs to obtain punitive damages, in addition to the economic and non-economic damages that may be awarded, could tip the balance and upend the current stability in the MPL insurance market.

¹ *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003).

² Medical Mutual was created in 1975 by an act of the General Assembly at a time when other MPL insurers withdrew from the State, leaving most physicians without insurance protection. Thanks to the wisdom of the General Assembly, the Governor, and others who were involved in Medical Mutual’s creation, we celebrated our 50th year as a physician-owned and directed mutual insurer last year and continue to provide comprehensive MPL insurance to Maryland Physicians.

The purpose of punitive damages is not to compensate a person for an injury, but to punish a defendant for misconduct and to deter others contemplating similar conduct. Medical Mutual believes that the *Zenobia* standard continues to adequately meet the purpose of punitive damages while providing appropriate and predictable relief to injured plaintiffs.

Most states require actual malice or other intentional, outrageous, or fraudulent conduct as the predicate for an award of punitive damages and some cap the amount of punitive damages that may be awarded. Senate Bill 871 would make Maryland the only state where virtually unlimited punitive damages may be awarded for gross negligence.³

As shown in the attached chart, some states prohibit punitive damages in medical liability actions. Although Medical Mutual opposes any relaxation of the actual malice standard, if the Bill moves forward, Medical Mutual respectfully asks that this Committee exclude medical liability actions. Allowing an award of punitive damages against a Physician or other health care provider for conduct falling well below actual malice would make demands for punitive damages in medical liability actions the rule rather than the exception. Creating such additional exposure for health care providers is bad public policy as it may worsen Physician shortages and other access to care issues in the State.

For these reasons, Medical Mutual respectfully requests an UNFAVORABLE report on Senate Bill 871.

For more information contact:
Alexis Braun / abraun@weinsuredocs.com
(443) 689-0208

Attachment: State Punitive Damage Laws, Medical Professional Liability Association (updated January 5, 2026).

³ States take varied approaches to punitive damages, including differing standards of conduct and burdens of proof. Some states prohibit punitive damages altogether in certain categories of cases, while others permit such damages but impose statutory caps. Senate Bill 871 would make Maryland an outlier by lowering the standard of conduct required to impose punitive damages – from actual malice to gross negligence – without imposing any corresponding cap on the amount of those damages. The attached chart, prepared by the Medical Professional Liability Association, compares each state’s approach to punitive damages.

State Punitive Damage Laws

Medical Professional Liability

(as of 1/5/2026)

ST	Conduct	Proof	Other
		10 Preponderance; 39 Clear and convincing	27 cap damages; 4 prohibit in MPL cases
AL	Malice, willfulness, wanton or reckless disregard	Clear and convincing	Must prove breach of SOC for each act of wantonness
AK	Outrageous or reckless indifference	Clear and convincing	Capped at greater of \$500k or 3X compensatory
AZ	More than conduct necessary to establish a tort	Clear and convincing	Must have compensatory damages to award
AR	Intentional or knew of injury and malice/reckless	Clear and convincing	Must have compensatory damages to award
CA	Guilty of oppression, fraud or malice	Clear and convincing	No MPL punitives unless prior court order for proof of win
CO	Fraud, malice, or wanton and reckless	Beyond a reasonable doubt	May not allege until discovery completed/limited to compensatory amount (with limited exceptions)
CT	Reckless indifference, intentional, wanton	Preponderance of evidence	Capped at cost of litigation, less taxable costs
DE	Outrageous due to evil motive or reckless indifference	Clear and convincing	MPL must be maliciously intended, willful or wanton; must be proportionate to harm
DC	Fraud, ill will, recklessness, wantonness, oppressiveness, willful disregard	Clear and convincing	Must have compensatory damages to award
FL	Intentional misconduct or gross negligence	Clear and convincing	Capped at greater of \$500k or 3X compensatory; compensatory not needed
GA	Willful misconduct, malice, fraud, wantonness, oppression or conscious indifference	Clear and convincing	Capped at \$250k unless intent proven
HI	Wantonly or oppressively with such malice to imply mischief or criminal indifference	Clear and convincing	
ID	Oppressive, fraudulent, malicious, or outrageous	Clear and convincing	Capped at \$250k or 3X compensatory; must bear relationship to compensatory



State Punitive Damage Laws

Medical Professional Liability

(as of 1/5/2026)

ST	Conduct	Proof	Other
IL	Fraud, actual malice, deliberate violence or oppression or wanton disregard for rights of others	Preponderance of evidence	Not allowed in MPL
IN	Malice, fraud, gross negligence or oppressiveness not resulting from mere negligence	Clear and convincing	Capped at greater of 3X compensatory or \$50,000
IA	Willful and wanton disregard for rights or safety of others	Preponderance of clear, convincing and satisfactory evidence of disregard	Persistent course of actions with no care or disregard for consequences
KS	Willful or wanton conduct, fraud or malice	Clear and convincing	Lesser of annual gross income of D or \$5M. Court may adjust to 50% of net worth or \$5M
KY	Malice, willfulness, wanton or reckless disregard	Clear and convincing	
LA	Determined by separate statutes	Preponderance of evidence	Not authorized for MPL claims
ME	Malice	Clear and convincing	No compensatory damages required; Capped for wrongful death
MD	Actual malice (evil motive or intent to injure)	Clear and convincing	Must be nominal compensatory damages; D's financial means not admissible unless punitives are supported
MA	Only if specifically allowed in statute	Preponderance (although not clear in statute)	Only if specifically authorized . No compensatory damages required; Capped for wrongful death. Capped at \$500k in MPL cases.
MI	Exemplary damages as compensation for humiliation, outrage or indignity	Preponderance of the evidence	Punitive damages specifically not allowed
MN	Deliberate disregard for rights/safety of others	Clear and convincing	Must have compensatory damages



State Punitive Damage Laws

Medical Professional Liability

(as of 1/5/2026)

ST	Conduct	Proof	Other
MO	Deliberate harm or deliberate and flagrant disregard for safety of others	Clear and convincing	Greater of \$500k or 5 times net award. Bifurcated trial.
MT	Actual fraud or actual malice	Clear and convincing	Compensatory damages required; Capped at \$10M or 3% of D net worth
NE	Prohibited by constitution	N/A	N/A
NV	Oppression, fraud or malice. Beyond recklessness or gross negligence.	Clear and convincing	3X compensatory damages (if over \$100k) or \$300k
NH	Liberal compensatory damages; hatred, hostility or evil motive	No specific standard	No MPL punitives, LCD for wanton, malicious or oppressive
NJ	Actual malice or wanton disregard for those foreseeably harmed	Clear and convincing	Bifurcated, must first have compensatory award; Greater of 5X compensatory or \$350k
NM	Maliciously intentional, fraudulent, oppressive or reckless or wanton disregard for P rights	Preponderance of evidence	Mere negligence insufficient (allegedly); reckless indifference required for MPL. Actual damages required
NY	Criminal indifference; malice, fraud, oppression, wanton/reckless disregard for rights	Mixed (1993 preponderance), 2003 (clear and convincing)	In MPL must be aggravated beyond mere negligence
NC	Fraud, malice, willful or wanton conduct	Clear and convincing	Aggravating circumstances necessary for MPL; compensatory required; Greater of 3X compensatory or \$250k
ND	Oppression, fraud or actual malice	Clear and convincing	Compensatory required; Greater of 2X compensatory or \$250k
OH	Actual malice or aggravated or egregious fraud.	Clear and convincing	Compensatory required; capped at 2X compensatory
OK	Wanton/reckless disregard for rights, malice, fraud or oppression	Clear and convincing	Breach of fiduciary duty allowed for MPL; compensatory required; two tiers of caps, one tier uncapped



State Punitive Damage Laws

Medical Professional Liability

(as of 1/5/2026)

ST	Conduct	Proof	Other
PA	Outrageous, evil motive, reckless indifference	Clear and convincing	Preponderance of evidence awards have been upheld; no compensatory but must be dismissed if compensatory damages are dismissed
RI	Willful, reckless or wicked conduct amounting to criminality	Preponderance of evidence	Compensatory not required;
SC	Willful, wanton or in reckless disregard	Clear and convincing	Compensatory damages required
SD	Oppression, fraud, malice	Clear and convincing	Compensatory damages required
TN	Maliciously intentional, fraudulent, oppressive or reckless	Clear and convincing	Actual damages (but not necessarily monetary) required; capped at 2X compensatory or \$500k
TX	Fraud, malice or gross negligence	Clear and convincing	Reasonable relationship to compensatory damages; capped at 2X econs + nonecons up to \$750k, or \$200k
UT	Willful and malicious or intentionally fraudulent or knowing and reckless indifference	Clear and convincing	Compensatory or general damages required; may not exceed 3X actual damages
VT	Malice, reckless disregard or ill will, insult or oppression	Preponderance of evidence	
VA	Actual malice	Preponderance of evidence	Total cap includes punitives; compensatory damages required; punitives capped at \$350,000
WA	Not unless authorized in statute	N/A	N/A
WV	wanton or oppressive, of if with such malice to imply mischief or criminal indifference	Clear and convincing	Compensatory damages required; capped at greater of 4X compensatory or \$500k
WI	Malice or intentional disregard for P's rights	Clear and convincing	No punitives in MPL cases; otherwise greater of 2X compensatory or \$200,000
WY	Outrageous conduct, malice, willful and wanton misconduct	Preponderance of evidence	Actual damages must be proven



SB0871 -- Civil Actions - Punitive Damage Awards -

Uploaded by: Brian Levine

Position: UNF



Senate Bill 871 -- *Civil Actions - Punitive Damage Awards - Surcharge*
Senate Judicial Proceedings Committee
March 11, 2026
Oppose

The Montgomery County Chamber of Commerce (MCCC), the voice of business in Metro Maryland, opposes Senate Bill 871 -- *Civil Actions - Punitive Damage Awards - Surcharge*.

Senate Bill 871 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. Additionally, this bill would allow courts to assess an additional surcharge up to 50% of the value of the punitive damages award.

This bill would expose Maryland businesses to a significantly higher risk of large punitive awards across multiple industries, reducing the state's overall competitiveness. Unlike noneconomic damages, punitive damages are unlimited, and lowering the standard for awarding these uncapped damages, while also imposing a 50% surcharge, would further harm Maryland's business climate.

Maintaining a fair, stable, and predictable tort environment is essential to economic growth. Expanding exposure and financial liability, as the bill proposes, could be especially damaging to businesses and contribute to a broader perception that Maryland is a less business-friendly state.

Maryland's business climate is shaped by many factors, with the legal and tort environment playing a key role. When companies evaluate where to grow or relocate, the predictability and fairness of a state's tort system are major considerations. To remain competitive with neighboring and peer states, Maryland must ensure that its tort climate, alongside taxation, regulatory structure, education, and transportation infrastructure, supports long-term economic growth and continues to attract investment.

For these reasons, the Montgomery County Chamber of Commerce opposes Senate Bill 871 and respectfully requests an unfavorable report.

The Montgomery County Chamber of Commerce (MCCC), on behalf of its members, champions the growth of business opportunities, strategic infrastructure investments, and a strong workforce to position Metro Maryland as a premier regional, national, and global business location. Established in 1959, MCCC is an independent, non-profit membership organization.

*Brian Levine | Vice President of Government Affairs
Montgomery County Chamber of Commerce
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Rockville, Maryland 20850
301-738-0015 | www.mcccmd.com*

SB 871_MAMIC_UNF.pdf

Uploaded by: Bryson Popham

Position: UNF



191 Main Street, Suite 310 – Annapolis MD 21401 – 410-268-6871

March 9, 2026

The Honorable William C. Smith, Jr., Chairman
Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, MD 21401

RE: Senate Bill 871 - Civil Actions - Punitive Damage Awards – Surcharge

UNFAVORABLE

Dear Chairman Smith and Members of the Committee,

I'm writing today on behalf of the Maryland Association of Mutual Insurance Companies (MAMIC) in opposition to Senate Bill 871.

MAMIC is comprised of 12 mutual insurance companies that are headquartered in Maryland and neighboring states. Approximately one-half of its members are domiciled in Maryland, and are key contributors and employers in our local communities. Together, MAMIC members offer a wide variety of insurance products and services and provide coverage for thousands of Maryland citizens.

Senate Bill 871 would make a very significant change in Maryland law with respect to the award of punitive damages. The State has a long history of case law on this subject, which operates to ensure that all damage awards, including those of punitive damages, are fairly administered. Furthermore, this bill introduces the concept of an assessment imposed by the State Court Administrator of 50% on a punitive damage award. The real purpose for this assessment is found on page 2, lines 25 and 26 of the bill, which require that the surcharge be deposited into a State fund intended to support education.

Should the General Assembly wish to examine the subject of punitive damages awards in connection with civil liability judgments, MAMIC believes the better approach is to convene a legislative study for that purpose. Respectfully, therefore, we urge an unfavorable report on Senate Bill 871.

Very truly yours,

Melissa Shelley, President, MAMIC

cc: Bryson Popham

Opposes SB 871.pdf

Uploaded by: Carville Collins

Position: UNF

MARYLAND EMPLOYERS FOR CIVIL JUSTICE REFORM COALITION**OPPOSES SB 871****Civil Actions – Punitive Damage Awards - Surcharge**

Maryland Employers for Civil Justice Reform Coalition, comprised of many of the largest employers, businesses, and health care providers in Maryland, opposes SB 871. For the apparent purpose of addressing the State's fiscal challenges, the bill calls for a substantial relaxation of Maryland's long-held standard for the award of punitive damages. Under the bill, the standard would be profoundly reduced to a contrived and illusory gross negligence standard, under which practically every tort claim in Maryland would qualify for punitive damages, an unjustified and costly policy.

It is long settled law that the standard for the award of punitive damages in Maryland is actual malice. This means that the trier of fact may not award punitive damages unless the plaintiff has established by clear and convincing evidence that the defendant's conduct was characterized by evil motive, intent to injure, ill will, or fraud. This current standard is appropriate - - it is an extraordinary standard because punitive damages, which are unlimited in Maryland, are an extraordinary remedy.

The Supreme Court of Maryland explained why the lower standard of implied malice (i.e., gross negligence), which had been the standard for a short time in 1972-1992, was a mistake that needed to be overruled:

The implied malice test adopted in *Smith v. Gray Concrete Pipe Co.* has been overbroad in its application and has resulted in inconsistent jury verdicts involving similar facts. It provides little guidance for individuals and companies to enable them to predict behavior that will either trigger or avoid punitive damages liability, and it undermines the deterrent effect of these awards.

Maryland's high court went on to emphasize the penal nature and serious consequences of punitive damages, noting that such awards are to be made *judiciously and only in the most egregious cases*. By requiring actual knowledge and deliberate disregard, the court aligned the punitive damages standard with the underlying objectives of punishment and deterrence. The court's 1992 decision -- to abandon the implied malice (gross negligence) standard and return to the prior standard of actual malice -- clarified and tightened the criteria for awarding punitive damages, aiming to avoid inconsistent and unpredictable application. The return to actual malice was also based on the court's finding of "a literal explosion of punitive damage awards and practice" under the lesser implied malice standard.¹

¹ *Owens-Illinois v. Zenobia*, 325 Md. 420, 456-459 (1992).

Significantly, SB 871 does not stop at the previously-abandoned standard of implied malice (gross negligence). It goes even lower, and lower than the interpretation by any Maryland court, so as to allow punitive damages for such minimal and arbitrary infractions as “a failure to exercise even slight care.” Such a low standard could include someone’s forgetfulness. Other minimal standards include “a pattern of repeated conduct” or “indifference to legal obligations.” Such low and arbitrary standards would expose practically every claim of negligence, including simple negligence claims, to a punitive damage award. SB 871 contains a total of six of these low and arbitrary standards, and under the bill meeting any of them triggers a punitive damage award, an absurdly low bar to such a high and extraordinary remedy.

SB 871 requires that a plaintiff meet an evidentiary standard, “clear and convincing evidence,” to prove implied malice (gross negligence). This standard is already the evidentiary standard for the award of punitive damages. Any notion by the proponents that SB 871 establishes a high threshold or a similar safeguard for the award of punitive damages because of this high evidentiary standard is patently false, as this bill language is already enacted law in Maryland.

A final provision of the bill creates a surcharge on defendants who are found liable for punitive damages, with the proceeds of the surcharge to be directed to K-12 public education. While the Coalition takes no position on how monies are directed to meet the State’s funding priorities, it does note that proceeds from punitive damage awards cannot be quantified. Specifically, in the event of an appeal of a punitive damage verdict, the result could modify, overturn or delay for years an award of punitive damages, producing volatility and unpredictability in the amount of funds that the State could expect to receive. A revenue source dependent upon a surcharge on punitive damage awards affords no financial certainty, and therefore no budgeting, planning, or even estimating of revenues is possible under such a scheme. In addition, the experience in another state, Georgia, where 75% of certain punitive damage awards go to the State, has been that such payments are hardly ever paid as parties have circumvented around punitive damages. Accordingly, the enactment of this legislation for fiscal reasons will not provide any fiscal relief to the State.

While the State’s fiscal outlook will not benefit from such legislation, there is one group of beneficiaries -- plaintiffs’ lawyers – who will benefit from an extraordinary windfall of higher legal fees. This is because their fees are based on a percentage of punitive damage awards. As plaintiffs’ lawyers are the only proponents of this bill, such a nakedly self-serving attempt to enrich plaintiffs’ lawyers has no place in the public policy of Maryland.

For all these reasons, the Coalition urges an unfavorable report on SB 871.

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Counsel for Maryland Employers for
Civil Justice Reform Coalition

March 11, 2026

ATRA SB 871 Maryland Punitive Damages Legislation

Uploaded by: Cary Silverman

Position: UNF

Testimony in Opposition to S.B. 871: A Bill That Would Make Punitive Damages Significantly More Common in Maryland

**Cary Silverman on Behalf of the American Tort Reform Association
Before the Maryland Senate Judicial Proceedings Committee**

March 11, 2026

On behalf of the American Tort Reform Association (ATRA), thank you for the opportunity to testify today. ATRA opposes S.B. 871, which would reduce the standard for imposing punitive damages, exposing those who live, work, and do business in Maryland to a significantly higher risk of massive awards.

ATRA is a broad-based coalition of businesses, municipalities, associations, and professional firms that share the goal of having a fair, balanced, and predictable civil justice system. I am a Maryland resident, a member of the Maryland Bar, and a partner in the Washington, D.C. office of Shook, Hardy & Bacon L.L.P.

The first part of S.B. 871 abrogates longstanding Maryland Supreme Court precedent that ensures that punitive damages are reserved for punishing and deterring truly reprehensible conduct.¹ It would replace a requirement that plaintiffs show a defendant's conduct was malicious, meaning it was "characterized by evil motive, intent to injure, fraud, or actual knowledge of the defective nature of the products coupled with a deliberate disregard of the consequences"² with what the bill calls a "gross negligence" standard. For twenty years, between 1972 and 1992, Maryland courts allowed punitive damages for gross negligence. The Maryland Supreme Court found this experience proved to be a mistake – it resulted in inconsistent results, overextended the availability of punitive damages, frustrated their objective of responding to misconduct, and resulted in a "literal explosion" of lawyers seeking, obtaining, and appealing punitive damage awards nationwide.³ The high court overruled this case law and restored the actual malice standard. Now, S.B. 871 proposes going back to the abandoned gross negligence standard.

In addition, the bill includes a definition of "gross negligence" that confusingly mixes high culpability levels such as willful and outrageous conduct, and malicious and fraudulent intent with far lower levels. As a practical matter, since the six different standards included in the bill as "gross negligence" are connected by an "or," only the lowest of these culpability levels matters. As a result, the bill subjects an individual or business that operates in Maryland to punitive damages if its conduct "create[s] a high degree of risk or of harm to others" or suggests "indifference to legal obligations." Many cases will arguably meet that standard, including those involving no more than simple negligence.

The bill's definition of gross negligence is inconsistent with—and lower than—the Maryland Supreme Court's understanding of the standard. In a 2019 decision, the Court explained that "gross negligence" is "an intentional failure to perform a manifest duty in reckless disregard of the consequences [A] wrongdoer is guilty of gross negligence or acts wantonly and willfully only when he inflicts injury intentionally or is so utterly

¹ *Owens-Illinois, Inc. v. Zenobia*, 601 A.2d 633, 651 (Md. 1992).

² *Id.* at 461.

³ *Id.* at 456-58.

indifferent to the rights of others that he acts as if such rights did not exist.”⁴ Even with this definition, which sets an “objectively higher threshold” for gross negligence, the Court cautioned that, “in many cases . . . ‘gross negligence will be treated as ‘just big negligence.’”⁵ The bill’s multi-prong definition of gross negligence fails to heed this warning. It is, essentially, a “big negligence” standard.

You will hear from proponents that Maryland’s standard for punitive damages is higher than many other states. This assertion needs to be put into context.

- Unlike Maryland, six states generally do not authorize punitive damage awards or allow them only in certain contexts where specifically authorized by statute. These states include Louisiana, Massachusetts, Michigan, Nebraska, New Hampshire, and Washington.⁶
- Several other states have codified a high standard for punitive damages that is similar to Maryland, reserving them for malicious, fraudulent, or deliberate misconduct.⁷ In other jurisdictions, such as the District of Columbia,⁸ New York,⁹ and Maine,¹⁰ courts have adopted this high standard.
- The vast majority of states that award punitive damages, like Maryland, require clear and convincing evidence to support an award. This aspect of the bill simply codifies existing law.¹¹
- While some states have, over time, relaxed their standards for punitive damages, making such awards highly unpredictable and increasingly

⁴ *Stracke v. Estate of Butler*, 214 A.3d 561, 569 (Md. 2019) (quoting *Barbre v. Pope*, 935 A.2d 699 (Md. 2007)). This decision addressed whether paramedics’ failure, during an emergency call, to diagnose a heart attack subjected them to liability when a statute granted immunity in the absence of a willful or grossly negligent act).

⁵ *Id.* at 569; see also *Beall v. Holloway-Johnson*, 130 A.3d 406 (Md. 2016) (“The distinction between negligence and gross negligence, however, can be a difficult one to establish in practice”).

⁶ See La. C.C. Art. 3546; *Gilbert v. DaimlerChrysler Corp.*, 685 N.W.2d 391 (Mich. 2004); *Miller v. Kingsley*, 230 N.W.2d 472, 474 (Neb. 1975); N.H. Rev. Stat. § 507:16; *Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 726 P.2d 8 (Wash. 1986).

⁷ See, e.g., Ala. Code § 6-11-20(a) (“consciously or deliberately engaged in oppression, fraud, wantonness, or malice with regard to the plaintiff”); Cal. Civ. Code § 3294(a) (“oppression, fraud, or malice”); Idaho Code § 6-1604(1) (“oppressive, fraudulent, malicious or outrageous conduct”); Mont. Code Ann. § 27-1-221(1) (“actual fraud or actual malice”); Ohio Rev. Code Ann. § 2315.21(C)(1) (“malice or aggravated or egregious fraud”); N.D. Cent. Code § 32-03.2-11(1) (“oppression, fraud, or actual malice”); Wis. Stat. § 895.043(3) (when a “defendant acted maliciously toward the plaintiff or in an intentional disregard of the rights of the plaintiff”). After court rulings relaxed the standard for punitive damages, Missouri restored a higher standard. See Mo. Rev. Stat. § 510.261(1) (amended 2020) (requiring clear and convincing evidence that a defendant “intentionally harmed the plaintiff without just cause or acted with a deliberate and flagrant disregard for the safety of others”).

⁸ *Dist. of Columbia v. Bamidele*, 103 A.3d 516, 522 (D.C. 2014) (requiring “a state of mind evincing malice or its equivalent”); *Croley v. Republican Nat’l Comm.*, 759 A.2d 682, 695 (D.C. 2000) (requiring a showing of “evil motive or actual malice”).

⁹ *Ross v. Louise Wise Servs.*, 868 N.E.2d 189, 196 (N.Y. 2007) (“Punitive damages are permitted when the defendant’s wrongdoing is not simply intentional but evince[s] a high degree of moral turpitude and demonstrate[s] such wanton dishonesty as to imply a criminal indifference to civil obligations. . . .”); *Prozeralik v. Capital Cities Commc’n, Inc.*, 82 N.Y.2d 466, 479 (1993) (“Punitive damages are awarded in tort actions ‘where the defendant’s wrongdoing has been intentional and deliberate and has the character of outrage frequently associated with crime.’”).

¹⁰ *Kinderhaus North LLC v. Nicolas*, 314 A. 3d 300, 313 (Maine 2024) (“Under Maine law, punitive damages may be awarded for tortious conduct only if the defendant acted with malice.”); see also *Tuttle v. Raymond*, 494 A.2d 1353, 1361, 1361 (Me.1985) (rejecting gross negligence standard for punitive damages as “too broad and too vague” and having an insufficient distinction from mere negligence).

¹¹ Colorado requires proof “beyond a reasonable doubt” to support a punitive damage award. Colo. Rev. Stat. § 13-25-127(2).

commonplace, keep in mind that half of states that award punitive damages have a statutory limit.¹² Maryland does not. While lowering the standard, this bill continues to allow unlimited awards.

The second part of S.B. 871 proposes a 50% “surcharge” on top of a jury’s punitive damage award, which the state (which is not a party to the litigation) would take and place into the “Blueprint for Maryland’s Future Fund.” This money would apparently go toward improving public education in Maryland.

No other state does this. Just seven states currently allocate a portion of a punitive damage award to the state or a state fund.¹³ A few other states – such as New York and Florida – briefly had such laws and abandoned them,¹⁴ and the Colorado Supreme Court struck down that state’s punitive-damage sharing law as unconstitutional.¹⁵ The few states that continue to have these laws allocate a percentage of the plaintiff’s punitive damage award (which is not compensation for an injury) to the state. They do not impose a state surcharge on top of the jury’s award, as the bill proposes.

Giving a portion of punitive damage awards to the state or, as here, imposing a surcharge on such awards, raises a range of public policy concerns. First and foremost, like other punitive-damage sharing laws, this practice provides an incentive to misuse punitive damages. As discussed, punitive damages are intended to punish and deter wrongful conduct. They are not there to fill budget gaps or fund educational programs. The public will inevitably learn that, in Maryland, punitive damage awards support educational programming. When they serve as jurors, this should not consciously or unconsciously factor into their consideration. Nor should Maryland rely on punitive damage awards to fund public programs or services. Such reliance could create an incentive for the state to further relax the standard for punitive damages, pass new laws

¹² Ala. Code § 6-11-21 ; Alaska Stat. § 9.17.020(f)-(h); Colo. Rev. Stat. § 13-21-102(1)(a); Conn. Gen. Stat. Ann. § 52-240b; Fla. Stat. Ann. § 768.73; Ga. Code Ann. § 51-12-5.1(f), (g); Idaho Code Ann. § 6-1604; Ind. Code Ann. § 34-51-3-4; Kan. Stat. Ann. § 60-3702; 18-C Me. Rev. Stat. Ann. § 2-807(2) (wrongful death); Miss. Code Ann. § 11-1-65; Mont. Code Ann. § 27-1-220(3); Nev. Rev. Stat. Ann. § 42.005; N.J. Stat. Ann. § 2A:15-5.14; N.C. Gen. Stat. § 1D-25; Ohio Rev. Code Ann. § 2315.21; Okla. Stat. Ann. tit. 23, § 9.1 ; 40 Pa. Cons. Stat. Ann. § 1303.505 (healthcare providers); S.C. Code Ann. § 15-32-530; Tenn. Code Ann. § 29-39-104; Tex. Civ. Prac. & Rem. Code Ann. § 41.008; Va. Code Ann. § 8.01-38.1; W. Va. Code § 55-7-29(c); Wis. Stat. § 895.043(6).

¹³ Alaska Stat. § 09.17.020(j) (50% of a punitive damage award to state’s general fund); Ga. Code Ann. § 51-12-5.1(e)(2) (75% of punitive damage awards in product liability actions to the state treasury); Ind. Code Ann. § 34-51-3-6(c) (75% of punitive damage awards to a Violent Crime Victims Compensation Fund); Iowa Code Ann. § 668A.1 (75% of punitive damage awards in certain cases to the Iowa’s Civil Reparations Trust Fund); Mo. Rev. Stat. § 537.675(3) (50% of a punitive damage award, after deducting attorney’s fees and expense, to a tort victim’s compensation fund); Or. Rev. Stat. Ann. § 31.735(1) (60% of a punitive damage award to a Crime Victims’ Assistance Fund and 10% for the State Court Facilities and Security Account); Utah Code Ann. § 78B-8-201(3)(a) (first \$50,000 in punitive damages to the plaintiff and 50/50 split of the remainder); *see also* 735 Ill. Comp. Stat. Ann. 5/2-1207 (permitting a trial court, in its discretion, to apportion a punitive damage award among the plaintiff, plaintiff’s attorney, and the state’s Department of Human Services).

¹⁴ New York had a law requiring 20% of punitive damage award to go to the state’s general fund between 1992 and 1994. N.Y. C.P.L.R. § 8701 (sunset Apr. 1, 1994). Florida law required 60% of punitive damage awards in personal injury and wrongful death cases to go into a Public Medical Assistance Trust Fund and, in other actions, to the General Fund. Fla. Stat. Ann. § 768.73(2) (1986). Florida amended the percentage down to 35% in 1992 and sunset that law in 1995. A Kansas split-recovery law applicable only to medical malpractice cases expired in 1989.

¹⁵ *Kirk v. Denver Publishing Co.*, 818 P.2d 262, 270-72 (Colo. 1991) (finding Colo. Rev. Stat. § 13-21-102 (1989), which sent one-third of punitive damage awards to the state general fund, an unconstitutional taking). Colorado repealed that law in 1995.

providing for punitive damages, or favor plaintiffs in private disputes by intervening or filing amicus briefs to protect the state's share of massive awards.¹⁶

The surcharge approach, which will transform a jury's \$20 million punitive damage award into a \$30 million punitive damage award, is also likely to result in excessive awards. The U.S. Supreme Court requires punishment imposed through punitive damages to be proportional to the harm. Arbitrarily boosting punitive damage awards, which will become more common under this bill, by 50% will, in some cases, breach the constitutional line. The surcharge has no relationship to the degree of reprehensibility of the defendant's actions or the actual harm that resulted from that conduct.¹⁷ It appears geared to ensure that plaintiffs—and their lawyers through a contingency fee—receive the entire punitive damage award, even though a punitive damage award is not compensation for an injury.

For these reasons, ATRA respectfully requests an unfavorable report.

¹⁶ See generally Victor E. Schwartz, Mark A. Behrens, & Cary Silverman, *I'll Take That: Legal and Public Policy Problems Raised by Statutes That Require Punitive Damages Awards to be Shared with the State*, 68 Mo. L. Rev. 525, 538-46 (2003).

¹⁷ See *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575-85 (1996) (establishing constitutional guideposts for evaluating whether punitive damages are excessive including (1) the degree of reprehensibility of the defendant's conduct; (2) the ratio of actual damages to punitive damages; and (3) the civil or criminal penalties that could be imposed for the defendant's conduct); see also *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2002) (indicating that "few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.").

MDC Opposition Letter to HB 906 - Punitive Damages

Uploaded by: Chris Jeffries

Position: UNF



MARYLAND DEFENSE COUNSEL, INC.

Promoting justice. Providing solutions.

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EXECUTIVE DIRECTOR
Aimee Hiers

February 16, 2026

Chair J. Sandy Bartlett
House Judiciary Committee
100 Taylor House Office Building
Annapolis, Maryland 21401

**RE: HB 906 - Civil Actions - Punitive Damage Awards -
Surcharge - OPPOSE**

Dear Chair Bartlett, Vice Chair Davis, and Members of the House Judiciary Committee:

On behalf of Maryland Defense Counsel, Inc. (“MDC”) we oppose House Bill 906, which seeks to allow for the award of punitive damages in a civil action where the defendant acted with gross negligence, instead of actual malice, and requires the State Court Administrator to assess a certain surcharge on a defendant against whom a judgment for punitive damages is entered.

In Maryland, there is a large body of well-settled case law regarding the legal standard to allow for recovery of punitive damages in civil cases. The Supreme Court of Maryland “has imposed an onerous standard for plaintiffs seeking punitive damages.” *Odyssey Travel Ctr., Inc. v. RO Cruises, Inc.*, 262 F. Supp. 2d 618, 630 (D. Md. 2003). “Under Maryland law, a plaintiff seeking punitive damages must prove ‘**actual malice**’ on the part of the defendant, justifying an award of punitive damages based upon the ‘heinous nature of the defendant’s tortious conduct[.]’” *Id.* (quoting *Owens-Illinois v. Zenobia*, 325 Md. 420, 454, 460 (1992)) (emphasis added). “Actual malice” has been defined as “the performance of an unlawful act, intentionally or wantonly, without legal justification or excuse but **with an evil or rancorous motive influenced by hate; the purpose being to deliberately and wilfully injure the plaintiff.**” *Darcars Motors of Silver Spring, Inc. v. Borzym*, 150 Md. App. 18, 28 (2003) (quoting *Drug Fair of Md., Inc. v. Smith*, 263 Md. 341, 352 (1971)) (emphasis added). “The court stated in *Zenobia* that ‘punitive damages are awarded in an attempt to punish a defendant whose conduct is characterized by evil motive, intent to injure, or fraud, and to warn others contemplating similar conduct of the serious risk of monetary liability.’” *Odyssey Travel*, 262 F. Supp. 2d at 630 (quoting *Zenobia*, 325 Md. at 454). “Additionally, the court stated that ‘in any tort case a plaintiff must establish by clear and convincing evidence the basis for an award of punitive damages.’” *Id.* (quoting *Zenobia*, 325 Md. at 469) (emphasis in original).



HB 906 would fundamentally change Maryland's common law on punitive damages by lowering the legal threshold for recovery of punitive damages from actual malice (*i.e.*, "evil motive, intent to injure, or fraud") to mere gross negligence. As the Supreme Court of Maryland explained in *Stracke v. Estate of Butler*, "[i]ssues involving gross negligence are often more troublesome than those involving malice because a fine line exists between allegations of negligence and gross negligence." 465 Md. 407, 420 (2019) (quoting *Barbre v. Pope*, 402 Md. 157, 187 (2007)). "Ordinary, simple negligence is 'any conduct, except conduct recklessly disregarding of an interest of others, which falls below the standard established by law for protection of others against unreasonable risk of harm.'" *Id.* (quoting *Barbre*, 402 Md. at 187). On the other hand, gross negligence is "an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another, and also implies a thoughtless disregard of the consequences without the exertion of any effort to avoid them." *Id.* at 420-421 (quoting *Barbre*, 402 Md. at 187).

From 1972 to 1992 the Supreme Court of Maryland grappled with the issue of whether to require proof of actual malice before recovery of punitive damages in negligence actions, or whether, in the context of automobile negligence cases, "implied malice" should suffice. "Implied malice" was different from actual malice, and was defined as "non-intentional conduct so reckless or wanton as to be 'grossly negligent.'" *Scott v. Jenkins*, 345 Md. 21, 29 n.3 (1997).¹ Before 1972, the Supreme Court of Maryland held fast to a standard requiring "actual malice," but then in 1972, the Court departed from that rule and held that "implied malice" would suffice in auto negligence cases. The consequence of that change was "an explosion of punitive damages litigation ..., fueled in part by two opinions which, in effect, severed punitive damage awards from their historical rationales of punishment and deterrence." *Scott*, 345 Md. at 30 (*Schaefer v. Miller*, 322 Md. 297, 322 (1991)(Eldridge, J., concurring)).² In 1992, the Court in *Zenobia* rejected the implied malice standard and held that "in a non-intentional tort action, the trier of fact may not award punitive damages unless the plaintiff has established that the defendant's conduct was characterized by evil motive, intent to injure, ill will, or fraud, *i.e.*, 'actual malice.'" *Scott*, 345 Md. at 31 (quoting *Zenobia*, 325 Md. at 460).

In *Scott*, the Supreme Court of Maryland explained why the Court, in *Zenobia*, returned to requiring actual malice for recovery of punitive damages:

[T]he prophetic warning in *Smith v. Gray Concrete, supra*, that the "implied malice" or as there used, "gross negligence," standard "may be so flexible that it can become virtually unlimited in its application," proved true. "Despite [that] Court's [attempts to limit] the implied malice standard to torts involving the operation of motor vehicles, the standard [was] freely applied to other non-intentional torts."

¹ *Scott* was superseded on other grounds as stated in *Hoile v. State*, 404 Md. 591 (2008).

² Since *Zenobia*, the Supreme Court of Maryland has held that the "actual malice" standard applies to both intentional and non-intentional torts. See *Scott*, 345 Md. at 33.



Perhaps the most compelling reason for casting aside the implied malice standard was its elusive nature. Although the purported basis for assessing punitive damages is to punish and deter particularly reprehensible conduct motivated by a conscious and evil motive, the various formulations of “implied malice” reached conduct that was perhaps reprehensible, but otherwise free of the ill-will appropriately targeted by a punitive damages award. **Not only did this inconsistency expose individuals and companies alike to an ever changing legal landscape which more often concealed, rather than revealed, the conduct subject to a punitive damages award, it also “undermined the deterrent effect of [such] awards.”** *Id.*, 325 Md. 459 (citing 2 L. SCHLUETER AND K. REDDEN, PUNITIVE DAMAGES, Appendix B, at 418-19 (2d ed. 1989)(suggesting that under the “implied malice” standard, potential defendants may either refrain from socially beneficial behavior out of fear, or engage in conduct harmful to society).

Scott, 345 Md. at 32 (emphasis added) (internal quotations and footnote omitted).

HB 906 would undo decades of well-settled case law in which the Supreme Court of Maryland in its wisdom decided that allowing for recovery of punitive damages based upon mere gross negligence, rather than actual malice, was ill-advised because it created what essentially was too slippery of a slope between ordinary negligence claims and gross negligence claims. As occurred between 1972 and 1992, HB 906 will likely lead to an explosion of punitive damages litigation in Maryland. The Maryland General Assembly would be incentivizing individuals to tune up what really is a negligence claim into a gross negligence claim in seeking recovery of punitive damages, which are uncapped as damages.

For all these reasons, MDC urges an unfavorable report on HB 906.

Sincerely,

/s/ Christopher C. Jeffries

cjeffries@kg-law.com

(410) 347-7412

on behalf of Maryland Defense Counsel, Inc.

NAMIC Letter Opposing SB 871.pdf

Uploaded by: Gina Rotunno

Position: UNF

March 9, 2026

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

Re: Senate Bill 871 - Civil Actions - Punitive Damage Awards - Surcharge

Chair Smith and Members of the Committee:

Thank you for the opportunity to provide written testimony on Senate Bill 871 - Civil Actions - Punitive Damage Awards - Surcharge. On behalf of the National Association of Mutual Insurance Companies (NAMIC), we must respectfully oppose SB 871 and request an unfavorable report.

The National Association of Mutual Insurance Companies (NAMIC) is the foremost trade association representing the property/casualty insurance industry. Serving more than 1,300 member companies—including local and regional insurers as well as some of the nation’s largest carriers—NAMIC members collectively write \$467 billion in annual premiums, representing 61% of the homeowners and 53% of the automobile insurance markets. For more than 130 years, NAMIC has been the leading voice advancing public policy solutions and regulatory frameworks that promote a strong, competitive market and protect our members and their policyholders.

SB 871 would make it easier for plaintiffs to pursue punitive damages by adopting a much broader definition of “gross negligence.” This shift could open the door to punitive claims in many routine cases, driving up defense and settlement costs for insurers ultimately leading to upward pressure on insurance rates. The bill also prevents juries from being told about the State’s 50% surcharge on punitive awards, making verdicts harder to predict and increasing overall financial exposure.

Our members have a responsibility to protect policyholders from unnecessary risks and unexpected costs, and this bill could undermine that stability. While SB 871 aims to address truly egregious misconduct, its broad standards and additional surcharge could significantly raise liability costs for both insurers and policyholders. The result is likely to be higher premiums and reduced access to affordable coverage. In short, SB 871 would increase litigation, raise claim costs, and ultimately make insurance more expensive for Maryland consumers.

For these reasons, we respectfully request an unfavorable report for SB 871.



Gina Rotunno
Regional Vice President, Mid-Atlantic

MDCC_SB 871_Unfavorable.pdf

Uploaded by: Grason Wiggins

Position: UNF



Senate Bill 871

Position: Unfavorable

Committee: Judicial Proceedings

Date: March 11, 2026

Founded in 1968, the Maryland Chamber of Commerce ("Maryland Chamber") is a statewide coalition of more than 7,000 members working to develop and promote strong public policy that ensures sustained economic growth and opportunity for all Marylanders.

Senate Bill 871 ("SB 871") would reduce the standard in Maryland for imposing punitive damages, expose those who live, work, and do business in the state to a notably higher risk of extensive awards, and assess an additional 50% surcharge on punitive damages. SB 871 would overturn longstanding Maryland Supreme Court precedent by lowering the standard for awarding punitive damages. Specifically, SB 871 would replace the "malice" requirement with a "gross negligence" standard that was previously abandoned by the State.

The bill defines "gross negligence" by combining high levels of wrongdoing, like malicious intent, with lower ones, such as simple negligence. Since the bill uses an "or" between six standards, only the lowest level applies, potentially allowing punitive damages for cases of simple negligence. This definition contradicts the Maryland Supreme Court's 2019 ruling, which set a higher bar, requiring reckless disregard or intentional harm.

SB 871 proposes a 50% surcharge on punitive damage awards and allocates the surcharge funds to Maryland's public schools. The surcharge raises an exceptional concerning incentive to assess punitive damages, which are intended to punish and deter wrongful conduct, as a funding mechanism for state programs. As the public becomes aware of the surcharge, the incentive could influence jurors to award punitive damages as a funding mechanism for the State instead of in the pursuit of justice. Additionally, the surcharge could lead to excessive damage awards, potentially violating constitutional limits on proportional punishment.

SB 871 would have negative, unintended consequences for Maryland businesses, residents, and the State's legal environment. It is critical to maintain a higher standard for punitive damages, as set by the Maryland Supreme Court, to protect the rights of all parties involved and prevent the misuse of the legal system for unintended financial gain. **For these reasons, the Maryland Chamber of Commerce respectfully requests an unfavorable report on SB 871.**

SB 871- Civil Actions - Punitive Damage Awards – S

Uploaded by: Jake Whitaker

Position: UNF



Maryland
Hospital Association

Senate Bill 871- Civil Actions - Punitive Damage Awards – Surcharge

Position: *Oppose*

March 11, 2026

Senate Judicial Proceedings Committee

MHA Position

On behalf of the Maryland Hospital Association's (MHA) member hospitals and health systems, we appreciate the opportunity to comment in opposition of Senate Bill 871. Maryland hospitals oppose efforts that would make the state's highly litigious environment even more unsustainable. This bill would needlessly raise the cost of health care and make it difficult to attract and retain the doctors necessary to continue to provide the highest quality care.

This proposal risks undermining patient access to care by increasing liability exposure and redirecting limited health care dollars from bedside care to insurance and litigation costs. When hospitals face higher premiums and greater uncertainty, the effect is reduced capacity, difficulty recruiting needed specialists, and pressure on high-risk services that Maryland communities rely on.

SB 871 will result in more frequent and substantially larger damages awards. Maryland insurers, as a result of potentially higher and more frequent payouts, would likely raise premiums to cover these increased liabilities. As a result, Maryland hospitals would potentially face increased premiums and other insurance costs, which would divert limited funds from patient care.

Maryland hospitals simply cannot absorb new financial burdens. Under the state's global budget system, each hospital operates with a fixed annual revenue cap, meaning we cannot raise revenue to cover unexpected expenses. With the transition to the new AHEAD model, hospitals now face over \$800 million in reduced payments from Medicare and Medicaid combined and there remains significant uncertainty regarding several aspects of the model's implementation. Any added litigation costs directly reduce the money available for patient care.

At the same time, hospitals are also facing major financial strain from looming Medicaid cuts and growing uncertainty at the federal level. Increasing our liability exposure in this environment only makes it harder to maintain quality and accessible health services.

For these reasons, we request a unfavorable report on SB 871.

For more information, please contact:

Jake Whitaker, Assistant Vice President, Government Affairs & Policy

Jwhitaker@mhaonline.org

2026-03-09 MDC Opposition to SB 871 - Punitive Dam

Uploaded by: Joseph Johnston

Position: UNF



MARYLAND DEFENSE COUNSEL, INC.

Promoting justice. Providing solutions.

March 9, 2026

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Chair William C. Smith, Jr.
Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, Maryland 21401

**RE: SB 871 - Civil Actions - Punitive Damage Awards -
Surcharge - OPPOSE**

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

On behalf of Maryland Defense Counsel, Inc. (“MDC”) we oppose Senate Bill 871, which seeks to allow for the award of punitive damages in a civil action where the defendant acted with gross negligence, instead of actual malice, and requires the State Court Administrator to assess a certain surcharge on a defendant against whom a judgment for punitive damages is entered.

In Maryland, there is a large body of well-settled case law regarding the legal standard to allow for recovery of punitive damages in civil cases. The Supreme Court of Maryland “has imposed an onerous standard for plaintiffs seeking punitive damages.” *Odyssey Travel Ctr., Inc. v. RO Cruises, Inc.*, 262 F. Supp. 2d 618, 630 (D. Md. 2003). “Under Maryland law, a plaintiff seeking punitive damages must prove ‘**actual malice**’ on the part of the defendant, justifying an award of punitive damages based upon the ‘heinous nature of the defendant’s tortious conduct[.]’” *Id.* (quoting *Owens-Illinois v. Zenobia*, 325 Md. 420, 454, 460 (1992)) (emphasis added). “Actual malice” has been defined as “the performance of an unlawful act, intentionally or wantonly, without legal justification or excuse but **with an evil or rancorous motive influenced by hate; the purpose being to deliberately and wilfully injure the plaintiff.**” *Darcars Motors of Silver Spring, Inc. v. Borzym*, 150 Md. App. 18, 28 (2003) (quoting *Drug Fair of Md., Inc. v. Smith*, 263 Md. 341, 352 (1971)) (emphasis added). “The court stated in *Zenobia* that ‘punitive damages are awarded in an attempt to punish a defendant whose conduct is characterized by evil motive, intent to injure, or fraud, and to warn others contemplating similar conduct of the serious risk of monetary liability.’” *Odyssey Travel*, 262 F. Supp. 2d at 630 (quoting *Zenobia*, 325 Md. at 454). “Additionally, the court stated that ‘in any tort case a plaintiff must establish by clear and convincing evidence the basis for an award of punitive damages.’” *Id.* (quoting *Zenobia*, 325 Md. at 469) (emphasis in original).

SB 871 would fundamentally change Maryland’s common law on punitive damages by lowering the legal threshold for recovery of punitive damages from actual malice (*i.e.*, “evil motive, intent to injure, or fraud”) to mere gross negligence. As the Supreme Court of Maryland explained in *Stracke v. Estate of Butler*, “[i]ssues involving gross negligence are often more troublesome than those involving malice because a fine line exists between allegations of negligence and gross negligence.” 465 Md. 407, 420 (2019) (quoting *Barbre v. Pope*, 402 Md. 157, 187 (2007)). “Ordinary, simple negligence is ‘any conduct, except conduct recklessly disregarding of an interest of others, which falls below the standard established by law for protection of others against unreasonable risk of harm.’” *Id.* (quoting *Barbre*, 402 Md. at 187). On the other hand, gross negligence is “an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another, and also implies a thoughtless disregard of the consequences without the exertion of any effort to avoid them.” *Id.* at 420-421 (quoting *Barbre*, 402 Md. at 187).

From 1972 to 1992 the Supreme Court of Maryland grappled with the issue of whether to require proof of actual malice before recovery of punitive damages in negligence actions, or whether, in the context of automobile negligence cases, “implied malice” should suffice. “Implied malice” was different from actual malice, and was defined as “non-intentional conduct so reckless or wanton as to be ‘grossly negligent.’” *Scott v. Jenkins*, 345 Md. 21, 29 n.3 (1997).¹ Before 1972, the Supreme Court of Maryland held fast to a standard requiring “actual malice,” but then in 1972, the Court departed from that rule and held that “implied malice” would suffice in auto negligence cases. The consequence of that change was “an explosion of punitive damages litigation ..., fueled in part by two opinions which, in effect, severed punitive damage awards from their historical rationales of punishment and deterrence.” *Scott*, 345 Md. at 30 (*Schaefer v. Miller*, 322 Md. 297, 322 (1991)(Eldridge, J., concurring)).² In 1992, the Court in *Zenobia* rejected the implied malice standard and held that “in a non-intentional tort action, the trier of fact may not award punitive damages unless the plaintiff has established that the defendant’s conduct was characterized by evil motive, intent to injure, ill will, or fraud, *i.e.*, ‘actual malice.’” *Scott*, 345 Md. at 31 (quoting *Zenobia*, 325 Md. at 460).

In *Scott*, the Supreme Court of Maryland explained why the Court, in *Zenobia*, returned to requiring actual malice for recovery of punitive damages:

[T]he prophetic warning in *Smith v. Gray Concrete, supra*, that the “implied malice” or as there used, “gross negligence,” standard “may be so flexible that it can become virtually unlimited in its application,” proved true. “Despite [that] Court’s [attempts to limit] the implied malice standard to torts involving the operation of motor vehicles, the standard [was] freely applied to other non-intentional torts.”

¹ *Scott* was superseded on other grounds as stated in *Hoile v. State*, 404 Md. 591 (2008).

² Since *Zenobia*, the Supreme Court of Maryland has held that the “actual malice” standard applies to both intentional and non-intentional torts. See *Scott*, 345 Md. at 33.

Perhaps the most compelling reason for casting aside the implied malice standard was its elusive nature. Although the purported basis for assessing punitive damages is to punish and deter particularly reprehensible conduct motivated by a conscious and evil motive, the various formulations of “implied malice” reached conduct that was perhaps reprehensible, but otherwise free of the ill-will appropriately targeted by a punitive damages award. **Not only did this inconsistency expose individuals and companies alike to an ever changing legal landscape which more often concealed, rather than revealed, the conduct subject to a punitive damages award, it also “undermined the deterrent effect of [such] awards.”** *Id.*, 325 Md. 459 (citing 2 L. SCHLUETER AND K. REDDEN, PUNITIVE DAMAGES, Appendix B, at 418-19 (2d ed. 1989)(suggesting that under the “implied malice” standard, potential defendants may either refrain from socially beneficial behavior out of fear, or engage in conduct harmful to society).

Scott, 345 Md. at 32 (emphasis added) (internal quotations and footnote omitted).

SB 871 would undo decades of well-settled case law in which the Supreme Court of Maryland in its wisdom decided that allowing for recovery of punitive damages based upon mere gross negligence, rather than actual malice, was ill-advised because it created what essentially was too slippery of a slope between ordinary negligence claims and gross negligence claims. As occurred between 1972 and 1992, SB 871 will likely lead to an explosion of punitive damages litigation in Maryland. The Maryland General Assembly would be incentivizing individuals to tune up what really is a negligence claim into a gross negligence claim in seeking recovery of punitive damages, which are uncapped as damages.

For all these reasons, MDC urges an unfavorable report on SB 871.

Sincerely,

/s/ Christopher C. Jeffries

cjeffries@kg-law.com

(410) 347-7412

on behalf of Maryland Defense Counsel, Inc

Allstate testimony in opposition to punitive damag

Uploaded by: Lauren Pachman

Position: UNF



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
Legislative & Regulatory Senior Counsel

Government & Industry Relations
Allstate Insurance Company
3100 Sanders Road
Northbrook, IL 60062

Lauren.Pachman@allstate.com

SB871 - Oppose - Maryland Motor Truck Association.

Uploaded by: Louis Campion

Position: UNF



HEARING DATE: March 11, 2026

BILL NO/TITLE: SB871: Civil Actions - Punitive Damage Awards - Surcharge

COMMITTEE: Senate Judicial Proceedings

POSITION: **Oppose**

Maryland Motor Truck Association (MMTA) respectfully opposes this legislation, which would lower the standard for uncapped punitive damages from actual malice to gross negligence, while also imposing a 50% surcharge on these awards.

The trucking industry has been plagued by an astronomical rise in nuclear verdicts over \$10 million in recent years. The American Transportation Research Institute completed a study in 2020 to better understand the impact of rising verdicts on trucking. The research evaluated 600 cases between 2006 and 2019. In the first five years of data, there were 26 cases over \$1 million involving heavy-duty trucks. In the last five years, there were nearly 300 cases. The number of verdicts over \$10 million nearly doubled in that time. According to CaseMetrix, the average verdict against a trucking company in 2012 was about \$2.6 million. In 2017, that figure was just over \$7 million. Today it exceeds \$27 million.

The impacts on motor carriers of these nuclear verdicts have included bankruptcy filings, businesses closing, and unsustainable higher insurance premiums as fewer insurance companies are willing to provide insurance to the trucking industry. Over the past few years carriers such as Nationwide E&S and Zurich have exited the truck insurance market, making it more and more difficult for the trucking industry to deliver the products our businesses and citizens need.

Punitive damages are an extreme remedy and should remain such. According to the U.S. Chamber of Commerce, awarding these damages occurs in only about one quarter of nuclear verdicts; however, when they are given they are often for extraordinary amounts. These "send-a-message" verdicts are frequently uncollectable, particularly when imposed on a small business. "Nevertheless, a business facing litigation must consider the cost of a lengthy appeal that will follow...even if a court ultimately overturns the judgment or reduces the award to a fraction of its original size. When a mega nuclear verdict is reduced or uncollectable, plaintiffs' lawyers often still tout the award in television, social media, and website advertising to solicit clients to bring new cases."

Data shows that in about 75% of serious injury or fatal crashes involving a car and a truck, the fault of the accident was with the car driver. However, the risk of inflated verdicts has been shown not only to result in higher settlement payments, but also settlements where the liability of the trucking company itself is questionable. As a result, many trucking companies have now resorted to the added cost of installing dashboard cameras to their fleets to protect their drivers and businesses.

For the reasons noted above, MMTA asks for an unfavorable report.

About Maryland Motor Truck Association: Maryland Motor Truck Association is a non-profit trade association that has represented the trucking industry since 1935. In service to its 1,000 members, MMTA is committed to support, advocate and educate for a safe, efficient and profitable trucking industry in Maryland.

For further information, contact: Louis Campion, (c) 443-623-5663

SB 871 Punitive Damages Hs Jud UNF 03112026.pdf

Uploaded by: Nancy Egan

Position: UNF



Testimony of
American Property Casualty Insurance Association (APCIA)
Senate Judicial Proceedings Committee
Senate Bill 871- Civil Actions - Punitive Damage Awards - Surcharge
March 11, 2026

Unfavorable

The American Property Casualty Insurance Association (APCIA) is the primary national trade organization representing 71% of the Maryland property casualty insurance market. Contrary to longstanding legal precedent in MD, SB 871 would allow the awarding of punitive damages for much less than intentional wrongdoing. The bill’s new and extremely broad standard of gross negligence would conflate punitive conduct with negligence and would likely result in jury confusion with many nuclear verdicts with punitive damage awards. In Maryland, punitive damages are designed to punish a wrongdoer for particularly egregious or heinous conduct and to deter similar conduct with a requirement that a plaintiff plead and prove “actual malice” to recover. (See *Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420, 460 (1992). *Anne Arundel Cnty. v. Reeves*, 474 Md. 46, 66 (2021).)

The very low bar of gross negligence, which conflates punitive conduct with ordinary negligence would generate excessive and un-warranted punitive damage awards, with the jury focusing on prejudicial factors focused on the wealth of the defendant, the profitability of the conduct to the defendant, and the plaintiff’s financial vulnerability in deciding the amount to award. This may bolster a “David vs. Goliath” theme by plaintiffs’ attorneys at trial and lead to much larger awards against civil defendants.

This change may also increase the cost of doing business in the state and may put small businesses and non-profits out of business. Maryland residents already pay one of the highest “tort taxes” in the nation every year, at more than [\\$1,731](#) per resident due to excessive litigation costs. These costs further result in a loss of nearly 92,000 jobs per year.

The bill also mandates that when punitive damages are awarded, the defendant must pay an additional 50% surcharge to be deposited into a state education funding mechanism. Importantly, this surcharge is an extra payment that does not reduce the original punitive damages award. Juries may end up awarding punitive damages for the improper purpose of funding state education.

Moreover, unlike many states, Maryland’s punitive damages are unlimited. In Virginia, the total amount awarded for punitive cannot exceed \$350,000. In the District of Columbia, punitive damages are not allowed in wrongful death cases. In West Virginia, the amount of punitive damages may not exceed the greater of four times the amount of compensatory damages or \$500,000.

APCIA opposes this legislation and urges the Committee to issue an unfavorable report. Thank you for your consideration.

Nancy J. Egan,

State Government Relations Counsel, DC, DE, MD, VA, WV

Nancy.egan@APCIA.org Cell: 443-841-4174

SB0871_UNF_MedChi, MDACEP_Civil Actions - Punitive

Uploaded by: Steve Wise

Position: UNF



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Senate Judicial Proceedings Committee
March 11, 2026
Senate Bill 871 – *Civil Actions – Punitive Damage Awards – Surcharge*
POSITION: OPPOSE

On behalf of MedChi, The Maryland State Medical Society and the Maryland Chapter of the American College of Emergency Physicians (MDACEP), we submit this letter of **opposition** for Senate Bill 871.

This bill would both lower the current standard for an award of punitive damages and impose a 50% surcharge on any such award, with that surcharge being paid not to the plaintiff or plaintiffs, but to the State of Maryland. MedChi and MDACEP strongly oppose this legislation for the following reasons.

The current standard for an award of punitive damages in Maryland remains “actual malice”, as set forth by the then Maryland Court of Appeals in Owens-Illinois vs. Zenobia, 325 Md. 420 (1992). Senate Bill 871 would expressly abrogate the holding in that case and lower the standard to one of “gross negligence”, which is defined as “a pattern of repeated misconduct”, or “acts or omissions that create a high degree of risk of harm to others”, among other things. Should this legislation pass, nearly every medical malpractice case would expose the defendant to punitive damages, with the plaintiff’s attorney arguing that the defendant’s act constituted an “act or omission that created a high degree of risk” to the patient. If this legislation is adopted, punitive damages likely would be regularly awarded along with economic and noneconomic damages.

The surcharge on top of the punitive damage award is rife with legal problems. Under the bill, the State of Maryland could receive a 50% surcharge on top of any punitive damage award. In short, the State would ostensibly be collecting damages on behalf of people who are “strangers to the litigation,” a practice held to be an unconstitutional taking in Philip Morris USA v. Williams, 549 U.S. 346 (2007). The surcharge is then allocated to the Blueprint for Maryland’s Future Fund, a purpose that is almost assuredly unrelated to the harm caused by the defendant in the underlying case. This strains credulity and should be rejected.

For these reasons and others, MedChi and MDACEP oppose Senate Bill 871.

For more information call:

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Uploaded by: Will Vormelker

Position: INFO

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MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 871
Civil Actions – Punitive Damage Awards - Surcharge
DATE: February 11, 2026
(3/11)

INFORMATIONAL COMMENT PAPER

The Judiciary respects the separation of powers doctrine and acknowledges the policy-making authority of the legislative branch. As such, the Judiciary has no position on the policy aims of this legislation.

The Judiciary provides the following information for the Committee's consideration. As drafted, the bill seems to allow punitive damages only in cases where an individual acted with gross negligence. This language appears to eliminate the ability to award punitive damages for intentional acts or acts with malice. It is unclear if that was the intent of the legislation.

In addition, the bill requires the State Court Administrator (SCA) to assess a surcharge on punitive damages. The General Assembly has required the SCA to assess surcharges in two other contexts, but only at the time of filing. This bill differs from those instances. Under existing Courts and Judicial Proceedings § 7-102(b), the SCA is required to assess a surcharge of \$11 per case filed with the Clerk of the Supreme Court of Maryland and

the Clerk of the Appellate Court of Maryland. Also, pursuant to Courts and Judicial Proceedings § 7-202(d), the SCA is required to assess a surcharge of \$85 per civil case filed in the circuit courts. As noted, those surcharges are imposed at the time of filing and, thus, easily collectible and enforced at the outset of a case filing. This bill requires a surcharge post-judgment but does not provide a mechanism for the collection of such surcharge. It is unclear how the surcharge would be collected and what post-judgment collection method would be employed. This presents operational concerns as well as concerns about the Court operating outside of its judicial function in potentially pursuing collection actions.

cc. Hon. William Smith, Jr.
Judicial Council
Legislative Committee
Kelley O'Connor