

HOUSE BILL 721

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1lr2394
CF 1lr2389

By: **Delegate Moon**

Introduced and read first time: January 26, 2021

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Tort Claims Acts – Limits on Liability**

3 FOR the purpose of increasing the limits on liability of a local government and the State
4 and its units for claims arising from tortious acts or omissions committed by an
5 employee within the scope of employment with the local government or the State or
6 its units; altering the limits on liability of a local government and the State and its
7 units for claims arising from tortious acts or omissions committed by a law
8 enforcement officer; providing for the retroactive application of this Act for a cause
9 of action arising before the effective date of this Act if the cause of action is filed on
10 or after the effective date of this Act; and generally relating to liability under the
11 Local Government Tort Claims Act and the Maryland Tort Claims Act.

12 BY repealing and reenacting, with amendments,
13 Article – Courts and Judicial Proceedings
14 Section 5–303
15 Annotated Code of Maryland
16 (2020 Replacement Volume)

17 BY repealing and reenacting, with amendments,
18 Article – State Government
19 Section 12–104
20 Annotated Code of Maryland
21 (2014 Replacement Volume and 2020 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
23 That the Laws of Maryland read as follows:

24 **Article – Courts and Judicial Proceedings**

25 5–303.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(a) (1) Subject to [paragraph (2)] **PARAGRAPHS (2) AND (3)** of this subsection, the liability of a local government may not exceed **[\$400,000] \$600,000** per an individual claim, and **[\$800,000] \$1,200,000** per total claims that arise from the same occurrence for damages resulting from tortious acts or omissions, or liability arising under subsection (b) of this section and indemnification under subsection (c) of this section.

(2) The limits on liability provided under paragraph (1) of this subsection do not include interest accrued on a judgment.

(3) (I) IF THE LIABILITY OF A LOCAL GOVERNMENT ARISES FROM TORTIOUS ACTS OR OMISSIONS COMMITTED BY A LAW ENFORCEMENT OFFICER, THE LIMITS ON LIABILITY PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION:

1. DO NOT APPLY TO ECONOMIC DAMAGES; AND

2. SHALL INCREASE FOR NONECONOMIC DAMAGES:

A. FOR INDIVIDUAL CLAIMS, BY \$15,000 ON OCTOBER 1 EACH YEAR BEGINNING OCTOBER 1, 2021; AND

B. FOR TOTAL CLAIMS THAT ARISE FROM THE SAME OCCURRENCE, BY \$30,000 ON OCTOBER 1 EACH YEAR BEGINNING OCTOBER 1, 2021.

(II) AN INCREASE IN A LIMIT ON LIABILITY UNDER THIS PARAGRAPH SHALL APPLY TO CAUSES OF ACTION ARISING BETWEEN OCTOBER 1 THE YEAR THE INCREASE OCCURS AND SEPTEMBER 30 THE FOLLOWING YEAR, INCLUSIVE.

(b) (1) Except as provided in subsection (c) of this section, a local government shall be liable for any judgment against its employee for damages resulting from tortious acts or omissions committed by the employee within the scope of employment with the local government.

(2) A local government may not assert governmental or sovereign immunity to avoid the duty to defend or indemnify an employee established in this subsection.

(c) (1) A local government may not be liable for punitive damages.

(2) (i) Subject to subsection (a) of this section and except as provided in subparagraph (ii) of this paragraph, a local government may indemnify an employee for a judgment for punitive damages entered against the employee.

(ii) A local government may not indemnify a law enforcement officer

for a judgment for punitive damages if the law enforcement officer has been found guilty under § 3–108 of the Public Safety Article as a result of the act or omission giving rise to the judgment, if the act or omission would constitute a felony under the laws of this State.

(3) A local government may not enter into an agreement that requires indemnification for an act or omission of an employee that may result in liability for punitive damages.

(d) Notwithstanding the provisions of subsection (b) of this section, this subtitle does not waive any common law or statutory defense or immunity in existence as of June 30, 1987, and possessed by an employee of a local government.

(e) A local government may assert on its own behalf any common law or statutory defense or immunity in existence as of June 30, 1987, and possessed by its employee for whose tortious act or omission the claim against the local government is premised and a local government may only be held liable to the extent that a judgment could have been rendered against such an employee under this subtitle.

(f) (1) Lexington Market, Inc., in Baltimore City, and its employees, may not raise as a defense a limitation on liability described under § 5–406 of this title.

(2) Baltimore Public Markets Corporation, in Baltimore City, and its employees, may not raise as a defense a limitation on liability described under § 5–406 of this title.

Article – State Government

12–104.

(a) (1) Subject to the exclusions and limitations in this subtitle and notwithstanding any other provision of law, the immunity of the State and of its units is waived as to a tort action, in a court of the State, to the extent provided under paragraph (2) of this subsection.

(2) (I) [The] SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE liability of the State and its units may not exceed [\$400,000] **\$600,000** to a single claimant for injuries arising from a single incident or occurrence.

(II) IF LIABILITY OF THE STATE OR ITS UNITS ARISES FROM TORTIOUS ACTS OR OMISSIONS COMMITTED BY A LAW ENFORCEMENT OFFICER, THE LIMITATION ON LIABILITY UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH:

1. DOES NOT APPLY TO ECONOMIC DAMAGES; AND

2. SHALL INCREASE FOR NONECONOMIC DAMAGES BY **\$15,000** ON OCTOBER 1 EACH YEAR BEGINNING OCTOBER 1, 2021, AND THE

1 INCREASED AMOUNT SHALL APPLY TO CAUSES OF ACTION ARISING BETWEEN
2 OCTOBER 1 THAT YEAR AND SEPTEMBER 30 THE FOLLOWING YEAR, INCLUSIVE.

3 (b) Immunity is not waived under this section as described under § 5–522(a) of
4 the Courts and Judicial Proceedings Article.

5 (c) (1) The Treasurer may pay from the State Insurance Trust Fund all or part
6 of that portion of a tort claim which exceeds the limitation on liability established under
7 subsection (a)(2) of this section under the following conditions:

8 (i) the tort claim is one for which the State and its units have waived
9 immunity under subsections (a) and (b) of this section;

10 (ii) a judgment or settlement has been entered granting the claimant
11 damages to the full amount established under subsection (a)(2) of this section; and

12 (iii) the Board of Public Works, with the advice and counsel of the
13 Attorney General, has approved the payment.

14 (2) Any payment of part of a settlement or judgment under this subsection
15 does not abrogate the sovereign immunity of the State or any units beyond the waiver
16 provided in subsections (a) and (b) of this section.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
18 apply retroactively and shall be applied to and interpreted to affect any cause of action
19 arising before the effective date of this Act if the cause of action is filed on or after the
20 effective date of this Act.

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