

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

Senate Bill 267 (Senator Lenett)
Judicial Proceedings

Maryland Comparative Negligence Act

This bill provides that in a negligence lawsuit, the fact that the plaintiff may have been contributorily negligent may not bar recovery by the plaintiff if the negligence of the plaintiff was less than the negligence of the defendant or the combined negligence of all defendants. Any damages awarded to the plaintiff must be diminished in proportion to the amount of negligence attributed to the plaintiff.

The bill does not apply to actions in strict tort liability (typically, product liability cases). The bill may not be applied to any cause of action arising before the bill's October 1, 2007 effective date.

Fiscal Summary

State Effect: Potential increase in tort claim payments and agency premiums. Potential increase in expenditures and revenues for the District Court.

Local Effect: Potential increase in tort claim payments and liability insurance premiums. Potential increase in expenditures and revenues for the circuit courts.

Small Business Effect: Meaningful.

Analysis

Current Law: Contributory negligence on the part of a plaintiff bars recovery by the plaintiff. *See Board of County Commissioner of Garrett County v Bell Atlantic*, 695 A.2d 171 (Md. 1997).

Background: Maryland is one of five jurisdictions, along with Virginia, Alabama, North Carolina, and the District of Columbia, that retains a contributory negligence standard. The majority of states have adopted some form comparative negligence since the 1960s. This bill creates a “50 percent bar” standard, previously adopted by statute in 10 states, and by precedent in 2 states. The General Assembly has considered a switch to this standard in past sessions, most recently in 2002.

Among the 46 states with some form of comparative negligence, nine states do not apply this standard to strict product liability cases, while three apply a modified version.

For more information on contributory and comparative negligence, consult *Negligence Systems: Contributory Negligence, Comparative Fault, and Joint and Several Liability*, published by the Department of Legislative Service in 2004. This publication surveys the history of comparative and contributory negligence law and the variations in approaches taken by each of the 50 states. The publication also discusses several studies attempting to assess the economic effects of a shift to comparative negligence.

In general, these studies have failed to arrive at a definitive conclusion about the impact of such a change with respect to court workloads, plaintiff recoveries, and insurance premiums. For example, a 1987 study conducted by the University of North Carolina concluded that automobile insurance premiums would increase by approximately 32% if the state were to shift from contributory negligence to modified comparative negligence. A 1989 study comparing Delaware and Maryland concluded that insurance premiums, claim frequency, and claim severity increased much faster in the years after Delaware adopted comparative negligence in 1984 than in immediate prior years, and that this increase occurred at a time when the rate of increase of insurance premiums, claim frequency, and claim severity in Maryland was declining.

However, a study by Peck found that the impact of comparative negligence on filings and insurance rates is inconclusive, while the Maryland Trial Lawyers Association claims that contributory negligence states have insurance premiums that are 6.1% higher than states with comparative negligence, and that several states have seen a decrease in premiums following a change to comparative negligence.

State Fiscal Effect: Because the bill would allow suits by plaintiffs who are partially at fault for their damages, the number of tort case filings and recoveries by plaintiffs could increase. Consequently, State tort claim payments and expenditures for liability insurance premiums could increase. The State is self-insured for claims made pursuant to the Maryland Tort Claims Act. The Treasurer charges premiums to the various agencies for their shares of the coverage. These premiums are paid with either general funds, federal funds, or special funds depending on the agency. For fiscal 2007, State tort losses are estimated at \$4.0 million, and agency premiums are estimated at \$4.5 million. The

Maryland Tort Claims Act generally limits recovery to \$200,000 to a single claimant for injuries arising from a single occurrence.

An increase in the number of case filings would increase the workload of the circuit courts and the District Court. Court-related expenditures would increase if case filings go up significantly. The State pays all expenses of the District Court, as well as the compensation for the judges and clerks' office employees of the circuit courts. District Court fee revenue, which goes to the State general fund, would also increase to the extent that case filings increase. The filing fee for a civil case in District Court is currently either \$10 or \$20, depending on the size of the case, plus a \$10 surcharge to the Maryland Legal Services Corporation. Various other fees are also payable during the course of litigation, depending on the nature of the filings in a particular case.

The impact of the bill on the Judiciary's workload cannot be reliably estimated.

Local Fiscal Effect: Tort claim payments by local governments and expenditures by local governments for liability insurance premiums could increase. The Local Government Tort Claims Act limits recovery to \$200,000 per individual claim, and \$500,000 total for multiple claims arising out of the same occurrence. Local governments generally carry liability insurance that covers claims up to these limits.

Expenditures associated with the circuit courts could increase to the extent that case filings increase. The counties and Baltimore City pay most operating and capital expenses of the circuit courts. Circuit court filing fee revenue, which is retained by the local governments, could also increase. The basic filing fee for a civil case in circuit court is \$80, plus a \$25 surcharge for the Maryland Legal Services Corporation. Various other fees are also payable during the course of litigation, depending on the nature of the filings in a particular case.

The impact of the bill on local government finances cannot be reliably estimated.

Small Business Effect: Small businesses could be adversely affected by this bill because it increases the liability exposure of defendants. Liability insurance premiums for small businesses could increase, and small business defendants could be required to pay more damages awards out of corporate funds in the absence of applicable insurance coverage. Conversely, as a plaintiff, a small business could benefit from the bill in that recovery would not be barred in cases in which the business is up to 50% at fault.

Small law firms would benefit in that the bill would increase the number of viable lawsuits from which attorney's fees could be obtained.

Additional Information

Prior Introductions: SB 872 of 2002, a similar bill, was introduced but no further action was taken. SB 483 of 2001, a similar bill, received an unfavorable report in the Senate Judicial Proceedings Committee.

Cross File: HB 110 (Delegate Simmons, *et al.*) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), State Treasurer's Office, Maryland Chamber of Commerce, National Conference of State Legislatures, Department of Legislative Services

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