

# HOUSE BILL 1353

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By: **Delegate Waldstreicher**

Introduced and read first time: February 10, 2017

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Local Government Tort Claims Act and Maryland Tort Claims Act – Damages**  
3 **Sustained on Artificial or Synthetic Turf Playing Fields**

4 FOR the purpose of establishing that the limits on liability of a local government under the  
5 Local Government Tort Claims Act do not apply to certain tort actions related to  
6 artificial or synthetic turf playing fields; providing that the State, its officers, and its  
7 units may not raise sovereign immunity as a defense in a certain action related to  
8 artificial or synthetic turf playing fields; establishing that the limit on the liability  
9 of the State under the Maryland Tort Claims Act does not apply to certain actions  
10 related to artificial or synthetic turf playing fields; providing that certain special  
11 procedures do not apply to certain actions related to artificial or synthetic turf  
12 playing fields; providing for the application of this Act; and generally relating to the  
13 Local Government Tort Claims Act and the Maryland Tort Claims Act.

14 BY repealing and reenacting, with amendments,  
15 Article – Courts and Judicial Proceedings  
16 Section 5–303 and 5–304  
17 Annotated Code of Maryland  
18 (2013 Replacement Volume and 2016 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Article – State Government  
21 Section 12–104 and 12–106  
22 Annotated Code of Maryland  
23 (2014 Replacement Volume and 2016 Supplement)

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

26 **Article – Courts and Judicial Proceedings**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 5-303.

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

7 (2) The limits on liability provided under paragraph (1) of this subsection  
8 do not [include]:

9 (I) **INCLUDE** interest accrued on a judgment; **OR**

10 (II) **APPLY TO A CLAIM FOR DAMAGES SUSTAINED BY AN**  
11 **INDIVIDUAL ON AN ARTIFICIAL OR SYNTHETIC TURF PLAYING FIELD OWNED OR**  
12 **OPERATED BY A LOCAL GOVERNMENT.**

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

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

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

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

24 (ii) A local government may not indemnify a law enforcement officer  
25 for a judgment for punitive damages if the law enforcement officer has been found guilty  
26 under § 3-108 of the Public Safety Article as a result of the act or omission giving rise to  
27 the judgment, if the act or omission would constitute a felony under the laws of this State.

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

31 (d) Notwithstanding the provisions of subsection (b) of this section, this subtitle  
32 does not waive any common law or statutory defense or immunity in existence as of June  
33 30, 1987, and possessed by an employee of a local government.

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

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

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

11 5–304.

12 (a) This section does not apply to [an]:

13 **(1) AN action against a nonprofit corporation described in**  
14 **§ 5–301(d)(23), (24), (25), (26), (28), or (29) of this subtitle or its employees; OR**

15 **(2) A TORT ACTION FOR DAMAGES SUSTAINED BY AN INDIVIDUAL ON**  
16 **AN ARTIFICIAL OR SYNTHETIC TURF PLAYING FIELD OWNED OR OPERATED BY A**  
17 **LOCAL GOVERNMENT.**

18 (b) (1) Except as provided in subsections (a) and (d) of this section, an action  
19 for unliquidated damages may not be brought against a local government or its employees  
20 unless the notice of the claim required by this section is given within 1 year after the injury.

21 (2) The notice shall be in writing and shall state the time, place, and cause  
22 of the injury.

23 (c) (1) The notice required under this section shall be given in person or by  
24 certified mail, return receipt requested, bearing a postmark from the United States Postal  
25 Service, by the claimant or the representative of the claimant.

26 (2) Except as otherwise provided, if the defendant local government is a  
27 county, the notice required under this section shall be given to the county commissioners  
28 or county council of the defendant local government.

29 (3) If the defendant local government is:

30 (i) Baltimore City, the notice shall be given to the City Solicitor;

31 (ii) Howard County or Montgomery County, the notice shall be given  
32 to the County Executive; and

(iii) Anne Arundel County, Baltimore County, Frederick County, Harford County, or Prince George's County, the notice shall be given to the county solicitor or county attorney.

(4) For any other local government, the notice shall be given to the corporate authorities of the defendant local government.

(d) Notwithstanding the other provisions of this section, unless the defendant can affirmatively show that its defense has been prejudiced by lack of required notice, upon motion and for good cause shown the court may entertain the suit even though the required notice was not given.

(e) This section does not apply if, within 1 year after the injury, the defendant local government has actual or constructive notice of:

(1) The claimant's injury; or

(2) The defect or circumstances giving rise to the claimant's injury.

#### 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 to a single claimant for injuries arising from a single incident or occurrence.

**(II) THE STATE, ITS OFFICERS, AND ITS UNITS MAY NOT RAISE SOVEREIGN IMMUNITY AS A DEFENSE IN A TORT ACTION FOR DAMAGES SUSTAINED BY AN INDIVIDUAL ON A STATE-OWNED OR STATE-OPERATED ARTIFICIAL OR SYNTHETIC TURF PLAYING FIELD, AND THE LIMITATION ON LIABILITY ESTABLISHED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH DOES NOT APPLY TO THE AWARD.**

(b) **[Immunity] SUBJECT TO SUBSECTION (A)(2)(II) OF THIS SECTION, IMMUNITY** is not waived under this section as described under § 5–522(a) of the Courts and Judicial Proceedings Article.

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

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

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

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

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

10 12–106.

11 (a) This section does not apply to a claim:

12 **(1) FOR DAMAGES SUSTAINED BY AN INDIVIDUAL ON A**  
13 **STATE-OWNED OR STATE-OPERATED ARTIFICIAL OR SYNTHETIC TURF PLAYING**  
14 **FIELD; OR**

15 **(2)** that is asserted by cross-claim, counterclaim, or third-party claim.

16 (b) Except as provided in subsection (c) of this section, a claimant may not  
17 institute an action under this subtitle unless:

18 (1) the claimant submits a written claim to the Treasurer or a designee of  
19 the Treasurer within 1 year after the injury to person or property that is the basis of the  
20 claim;

21 (2) the Treasurer or designee denies the claim finally; and

22 (3) the action is filed within 3 years after the cause of action arises.

23 (c) (1) If a claimant fails to submit a written claim in accordance with  
24 subsection (b)(1) of this section, on motion by a claimant and for good cause shown, the  
25 court may entertain an action under this subtitle unless the State can affirmatively show  
26 that its defense has been prejudiced by the claimant's failure to submit the claim.

27 (2) Subsection (b)(1) and (2) of this section does not apply if, within 1 year  
28 after the injury to person or property that is the basis of the claim, the State has actual or  
29 constructive notice of:

30 (i) the claimant's injury; or

31 (ii) the defect or circumstances giving rise to the claimant's injury.

1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to  
2 apply only prospectively and may not be applied or interpreted to have any effect on or  
3 application to any cause of action arising before the effective date of this Act.

4           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 October 1, 2017.