

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 680

(The President)(By Request - Office of the Attorney
General)

Judicial Proceedings

Judiciary

State Government - Attorney General - Determinations and Settlements

This emergency bill establishes procedural requirements and options for the State in obtaining relief in actions involving multiple parties brought or asserted by the State arising from or related to alleged or threatened injuries to the environment, infrastructure, or the natural resources of the State associated with the collision between the vessel known as the Dali and the Francis Scott Key Bridge on March 26, 2024. The bill requires a judge or jury in an applicable action to make a determination of the total liability and assign comparative responsibility to each party joined in the action. If the State does not obtain complete relief from a responsible person who has resolved their liability through a settlement with the State, the State may continue to pursue actions against other responsible persons in the action, as specified. Notwithstanding any other provision of State law, the Maryland Uniform Contribution Among Joint Tort-Feasors Act (MUCATA) does not apply to an action governed by the bill's provisions. The bill may not be construed to impair any express contractual rights; create new types of actions or claims; alter the burden of proof, causation standard, or elements of an action or claim governed by the bill; or grant authority to the State or the Office of the Attorney General (OAG) to bring actions or claims not otherwise authorized by law.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues and reduction of litigation costs, as discussed below. Although the precise timing of any potential impact is unclear, this analysis assumes there is no effect in FY 2024.

Local Effect: The bill is not expected to materially affect local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Judicial Determinations and Assignment of Liability

In an applicable action, the judge or jury must (1) make a determination of the total liability, including damages, costs, and any other available relief; (2) assign comparative responsibility to each party joined in the action, including all defendants, third-party defendants, intervenors, and any other named party, based on the party's relative degree of fault or responsibility for the total liability; and (3) if equity requires, determine the liability of a group of related persons on a collective basis.

Options for the State in Obtaining Relief in Applicable Actions

If the State has not obtained complete relief from a responsible person who has resolved the person's liability to the State in a settlement of an action governed by the bill, the State may (1) continue to pursue an action *against any other responsible person* who has not resolved the person's liability to the State or (2) bring a new action *against any other responsible person* who has not resolved the person's liability to the State.

If a responsible person *resolves* the person's liability to the State in a settlement of an action governed by the bill, the person *may not* be liable for claims for noncontractual contribution or indemnity regarding any action or claim resolved in the settlement. A settlement of an action governed by the bill that resolves the liability of a responsible person does not release from liability any other responsible person except as specifically provided in the terms of the settlement. However, it does reduce the potential liability of all other responsible persons liable in whole or in part by the larger of the settling person's proportionate share of liability or the amount the settling person pays to settle the action.

Current Law/Background: On March 26, 2024, the Dali, a 984-foot cargo ship, struck the Francis Scott Key Bridge in Baltimore, causing the collapse of the bridge and the death of six construction workers. According to the Maryland Department of Transportation, rebuilding the bridge is expected to take over four years; preliminary estimated costs for the project are between \$1.7 billion and \$1.9 billion.

Joint and Several Liability

Under the doctrine of joint and several liability, if two or more defendants are found liable for a single and indivisible harm to the plaintiff, each defendant is liable to the plaintiff for the entire harm. The plaintiff has the choice of collecting the entire judgment from

one defendant or portions of the judgment from various defendants, so long as the plaintiff does not recover more than the amount of the judgment.

Maryland Uniform Contribution Among Joint Tort-Feasors Act

Liability among joint tort-feasors is governed by MUCATA, which is contained in Title 3, Subtitle 14 of the Courts and Judicial Proceedings Article. “Joint tort-feasors” means two or more persons jointly or severally liable in tort for the same injury to person or property whether or not judgment has been recovered against all or some of them. Liability among joint-tort-feasors under MUCATA is determined on a *pro rata* basis, which is “equal shares that are determined by dividing the common liability by the number of joint tort-feasors.” *Mercy Med. Ctr. v. Julian*, 429 Md. 348, 357 (2012) (internal citations omitted).

In general, the right of contribution allows a tort-feasor/defendant who has paid for more than its share of the liability to pursue action against the other tort-feasors/defendants for their proportionate share of the judgment paid by the paying tort-feasor/defendant. Under MUCATA, the right of contribution exists among joint tort-feasors. A joint tort-feasor is not entitled to a money judgment for contribution until the joint tort-feasor has by payment discharged the common liability or has paid more than its *pro rata* share of the common liability. A joint tort-feasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tort-feasor whose liability to the injured person is not extinguished by the settlement.

The recovery of a judgment by the injured person against one joint tort-feasor does not discharge the other joint tort-feasor. A release by the injured person of one joint tort-feasor, whether before or after judgment, does not discharge the other tort-feasors unless the release so provides, but it reduces the claim against the other tort-feasors in the amount of the consideration paid for the release or in any amount or proportion by which the release provides that the total claim must be reduced, if greater than the consideration paid. A release by the injured person of one joint tort-feasor does not relieve the joint tort-feasor from liability to make contribution to another joint tort-feasor unless the release (1) is given before the right of the other tort-feasor to secure a money judgment for contribution has accrued and (2) provides for a reduction, to the extent of the *pro rata* share of the released tort-feasor, of the injured person’s damages recoverable against all other tort-feasors. MUCATA does not impair any right of indemnity under existing law.

State Fiscal Effect: General fund revenues increase, potentially significantly, if the bill facilitates settlements in applicable actions and allows the State to recover a greater percentage of total damages than under current statute. If the bill facilitates settlements with defendants, the bill may also reduce some litigation expenses for OAG and impacted State agencies. OAG advises that the State has not filed any actions related to the

Francis Scott Key Bridge collapse. However, the owner of the vessel has filed a petition in federal court to limit its liability to the value of the vessel and the cargo. State agencies affiliated with settlements entered into under the bill may also be affected. While the bill's impact is not possible to quantify at this time, based on the potential value of the State's claims involving the Francis Scott Key Bridge collapse, it may be significant.

As noted above, MUCATA liability among joint tort-feasors is determined on a *pro rata* basis, which is based on the total number of defendants in the case, regardless of the liability attributable to each individual defendant. According to OAG, the allocation of liability under MUCATA makes it difficult for the State to settle with small- and medium-sized tort-feasors who in reality have a relatively low share of liability in the situation leading to the claim, allows larger-sized or more liable tort-feasors to escape a greater share of liability if other tort-feasors settle, and creates a disincentive for larger or more liable tort-feasors to settle.

For example, in a case involving five defendants, each defendant is assigned 20% of the liability. If the State settles with a small defendant for a 5% share of the total claim (because of the small defendant's actual responsibility), the State must reduce its claim against the remaining defendants by 20%, resulting in the State relinquishing 15% of the total recovery through the settlement.

According to OAG, provisions included in the bill (*e.g.*, comparative responsibility, proportionate share of liability, and protection from contribution claims) allow the State to settle with tort-feasors. OAG advises that the bill (1) enables the State to settle with small and medium defendants expeditiously; (2) streamlines these cases by reducing the number of parties and issues before the court; and (3) allows the State to collect a higher percentage of the overall damages.

Local Fiscal Effect: The bill is not expected to materially affect local government finances or operations. The bill applies to settlements in actions brought by the State. OAG advises that it does not anticipate a local government being a defendant in any applicable actions.

Small Business Effect: It is unclear whether any of the potential defendants in State litigation involving the Francis Scott Key Bridge are small businesses. The bill may have a meaningful effect on small business defendants in multi-defendant actions to which the bill applies. Depending on how the judge or jury determines each defendant's relative share of responsibility, the share a small business may be ordered to pay could be different than it would have been responsible for paying in the absence of the bill. However, to the extent that the bill facilitates settlements with certain defendants, a small business defendant may benefit from the ability to settle its liability and avoid further litigation.

Additional Comments: Under the bill, § 3-1401.1 of the Courts and Judicial Proceedings Article exempts a “public welfare claim brought under § 6-106.2 of the State Government Article” from the application of MUCATA. However, § 6-106.2 does not contain language regarding a “public welfare claim.”

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years; however, legislation with similar provisions has been proposed. For example, see SB 524 and HB 729 of 2021.

Designated Cross File: HB 922 (The Speaker)(By Request - Office of the Attorney General) - Judiciary.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland Department of Transportation; Associated Press; Department of Legislative Services

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