

HOUSE BILL 890

E4, C4, D3

5lr1395

By: **Delegates Carter, Anderson, and B. Robinson**

Introduced and read first time: February 13, 2015

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **State and Local Police Officers – Liability Insurance – Required**

3 FOR the purpose of prohibiting the Police Training Commission from certifying an
4 individual as a police officer unless the individual provides proof of professional
5 liability insurance in a certain amount; requiring police officers to maintain
6 professional liability insurance coverage during a certain period of employment;
7 providing that certain professional liability insurance is primary coverage under
8 certain circumstances and shall include coverage for certain acts or omissions;
9 authorizing a law enforcement agency to reimburse a police officer for a certain
10 premium under certain circumstances, with a certain limitation; prohibiting the
11 State, a county, or a municipal corporation from indemnifying a police officer in a
12 certain amount except under certain circumstances; providing that the liability of a
13 local government for a certain judgment is subject to certain provisions of law;
14 providing that the authority of a local government to indemnify an employee under
15 certain circumstances is subject to certain provisions of law; providing that the
16 immunity of State personnel under certain circumstances is subject to certain
17 provisions of law; providing that the authority of the State Treasurer to pay a certain
18 tort claim under certain circumstances is subject to certain provisions of law; and
19 generally relating to liability insurance for police officers of the State, counties, and
20 municipal corporations.

21 BY repealing and reenacting, with amendments,
22 Article – Public Safety
23 Section 3–209
24 Annotated Code of Maryland
25 (2011 Replacement Volume and 2014 Supplement)

26 BY repealing and reenacting, with amendments,
27 Article – Courts and Judicial Proceedings
28 Section 5–303 and 5–522
29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2013 Replacement Volume and 2014 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 12–104
Annotated Code of Maryland
(2014 Replacement Volume)

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

Article – Public Safety

3–209.

(a) **[The] SUBJECT TO SUBSECTION (D) OF THIS SECTION, THE** Commission shall certify as a police officer each individual who:

(1) satisfactorily meets the standards of the Commission; or

(2) provides the Commission with sufficient evidence that the individual has satisfactorily completed a training program in another state of equal quality and content as required by the Commission.

(b) The Commission may certify as a police officer an individual who is not considered a police officer under § 3–201(e)(3) of this subtitle if the individual meets the selection and training standards of the Commission.

(c) Each certificate issued to a police officer under this subtitle remains the property of the Commission.

(D) (1) THE COMMISSION MAY NOT CERTIFY AN INDIVIDUAL AS A POLICE OFFICER UNLESS THE INDIVIDUAL PROVIDES PROOF OF PROFESSIONAL LIABILITY INSURANCE IN AN AMOUNT CONSISTENT WITH:

(I) FOR AN INDIVIDUAL WHO IS EMPLOYED BY A COUNTY OR MUNICIPAL CORPORATION OR A UNIT OF A COUNTY OR MUNICIPAL CORPORATION, THE LIMITS OF LIABILITY UNDER § 5–303 OF THE COURTS ARTICLE; OR

(II) FOR AN INDIVIDUAL WHO IS EMPLOYED BY THE STATE OR A UNIT OF THE STATE, THE LIMITS OF LIABILITY UNDER § 12–104 OF THE STATE GOVERNMENT ARTICLE.

(2) EACH POLICE OFFICER SHALL MAINTAIN PROFESSIONAL LIABILITY INSURANCE COVERAGE IN THE AMOUNT REQUIRED BY PARAGRAPH (1) OF THIS SUBSECTION AS LONG AS THE POLICE OFFICER IS EMPLOYED AS A POLICE

1 OFFICER BY THE STATE, A COUNTY, OR A MUNICIPAL CORPORATION OR A UNIT OF
2 THE STATE, A COUNTY, OR A MUNICIPAL CORPORATION.

3 (3) THE PROFESSIONAL LIABILITY INSURANCE REQUIRED BY THIS
4 SUBSECTION:

5 (I) IS PRIMARY COVERAGE FOR TORTIOUS ACTS OR OMISSIONS
6 COMMITTED BY THE POLICE OFFICER WITHIN THE SCOPE OF EMPLOYMENT; AND

7 (II) SHALL INCLUDE COVERAGE FOR MALICIOUS ACTS OR
8 OMISSIONS COMMITTED BY THE POLICE OFFICER OUTSIDE THE SCOPE OF
9 EMPLOYMENT OF THE POLICE OFFICER.

10 (4) IF THE LAW ENFORCEMENT AGENCY THAT EMPLOYS THE POLICE
11 OFFICER CHOOSES:

12 (I) THE LAW ENFORCEMENT AGENCY MAY REIMBURSE THE
13 POLICE OFFICER FOR THE BASE RATE OF LIABILITY INSURANCE COVERAGE
14 REQUIRED BY PARAGRAPH (1) OF THIS SUBSECTION; BUT

15 (II) THE POLICE OFFICER IS RESPONSIBLE FOR ANY
16 ADDITIONAL PREMIUM COSTS DUE TO THE POLICE OFFICER'S CLAIMS HISTORY
17 UNDER THE PROFESSIONAL LIABILITY INSURANCE POLICY.

18 (5) THE STATE OR A COUNTY OR MUNICIPAL CORPORATION MAY NOT
19 INDEMNIFY A POLICE OFFICER FOR A JUDGMENT AGAINST THE POLICE OFFICER IN
20 AN AMOUNT GREATER THAN THE LIMITS OF LIABILITY UNDER § 5-303 OF THE
21 COURTS ARTICLE OR § 12-104 OF THE STATE GOVERNMENT ARTICLE UNLESS THE
22 POLICE OFFICER'S PROFESSIONAL LIABILITY INSURANCE IS EXHAUSTED.

23 **Article – Courts and Judicial Proceedings**

24 5-303.

25 (a) (1) Subject to paragraph (2) of this subsection, the liability of a local
26 government may not exceed \$200,000 per an individual claim, and \$500,000 per total
27 claims that arise from the same occurrence for damages resulting from tortious acts or
28 omissions, or liability arising under subsection (b) of this section and indemnification under
29 subsection (c) of this section.

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

1 (b) (1) Except as provided in subsection (c) of this section **AND SUBJECT TO §**
2 **3-209(D) OF THE PUBLIC SAFETY ARTICLE**, a local government shall be liable for any
3 judgment against its employee for damages resulting from tortious acts or omissions
4 committed by the employee within the scope of employment with the local government.

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

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

9 (2) (i) Subject to subsection (a) of this section and **§ 3-209(D) OF THE**
10 **PUBLIC SAFETY ARTICLE AND** except as provided in subparagraph (ii) of this paragraph,
11 a local government may indemnify an employee for a judgment for punitive damages
12 entered against the employee.

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

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

20 (d) Notwithstanding the provisions of subsection (b) of this section, this subtitle
21 does not waive any common law or statutory defense or immunity in existence as of June
22 30, 1987, and possessed by an employee of a local government.

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

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

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

33 5-522.

34 (a) Immunity of the State is not waived under § 12-104 of the State Government
35 Article for:

- 1 (1) Punitive damages;
- 2 (2) Interest before judgment;
- 3 (3) A claim that arises from the combatant activities of the State Militia
4 during a state of emergency;
- 5 (4) Any tortious act or omission of State personnel that:
 - 6 (i) Is not within the scope of the public duties of the State personnel;
7 or
 - 8 (ii) Is made with malice or gross negligence;
- 9 (5) A claim by an individual arising from a single incident or occurrence
10 that exceeds \$200,000; or
- 11 (6) A cause of action that law specifically prohibits.

12 (b) [State] **SUBJECT TO § 3-209(D) OF THE PUBLIC SAFETY ARTICLE,**
 13 **STATE** personnel, as defined in § 12-101 of the State Government Article, are immune
 14 from suit in courts of the State and from liability in tort for a tortious act or omission that
 15 is within the scope of the public duties of the State personnel and is made without malice
 16 or gross negligence, and for which the State or its units have waived immunity under Title
 17 12, Subtitle 1 of the State Government Article, even if the damages exceed the limits of that
 18 waiver.

19 (c) The scope of public duties of State personnel shall include, but not be limited
 20 to:

- 21 (1) Any authorized use of a State-owned vehicle by State personnel,
 22 including, but not limited to, commuting to and from the place of employment; and
- 23 (2) Services to third parties performed by State personnel, as defined by §
 24 12-101 of the State Government Article, in the course of participation in an approved
 25 clinical training or academic program.

26 (d) In a contract action under Title 12, Subtitle 2 of the State Government Article,
 27 the State and its officers and units are not liable for punitive damages.

28 **Article – State Government**

29 12-104.

30 (a) (1) Subject to the exclusions and limitations in this subtitle and
 31 notwithstanding any other provision of law, the immunity of the State and of its units is

1 waived as to a tort action, in a court of the State, to the extent provided under paragraph
2 (2) of this subsection.

3 (2) The liability of the State and its units may not exceed \$200,000 to a
4 single claimant for injuries arising from a single incident or occurrence.

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

7 (c) (1) **[The] SUBJECT TO § 3–209(D) OF THE PUBLIC SAFETY ARTICLE,**
8 **THE** Treasurer may pay from the State Insurance Trust Fund all or part of that portion of
9 a tort claim which exceeds the limitation on liability established under subsection (a)(2) of
10 this section under the following conditions:

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

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

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

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

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2015.