

IN THE SUPREME COURT OF MARYLAND

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No. 10,  
September Term, 2024

MDEC No. SCM-REG-0010-2024

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BOARD OF EDUCATION OF HARFORD COUNTY

Appellant

vs.

JOHN DOE

Appellee

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*On Appeal from the Circuit Court for Harford County*  
*Circuit Court Case no.: C-12-CV-23-000767*  
*(The Honorable Alex M. Allman, Judge)*

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**BRIEF OF AMICI CURIAE**  
**MARYLAND ASSOCIATION OF BOARDS OF EDUCATION**  
**(“MABE”), THE MABE GROUP INSURANCE POOL,**  
**and THE PUBLIC SCHOOL SUPERINTENDENTS’ ASSOCIATION**  
**OF MARYLAND (“PSSAM”)**

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## **STATEMENT OF INTEREST OF AMICI CURIAE<sup>1</sup>**

The Maryland Association of Boards of Education (“MABE”) is a private, non-profit organization comprised of all 24 school boards in the State of Maryland. MABE speaks for all boards of education in Maryland. It assists local boards in creating and maintaining excellent public schools available to all Maryland’s children. MABE advocates for boards of education on issues of statewide importance regarding public education and for the State’s children entitled to a free public education under the Maryland Constitution.

The MABE Group Insurance Pool was founded in 1986 and began offering liability coverage to nine school systems in 1988. (Appendix p. ii, Affidavit of Milton E. Nagel, CPA, at ¶3). Since then, the Pool has grown to include 19 of the 24 Maryland school boards. (*Id.*). The Pool is an entity separate from MABE itself and is funded by its 19 members. The MABE Pool shares the interests of its 19 member boards. (*Id.*).

The Public School Superintendents’ Association of Maryland (“PSSAM”) is a non-profit advocacy organization that collaborates with local boards of education and governments to sustain excellence in education for Maryland’s nearly 900,000 students. PSSAM features representation by all 24 of Maryland’s local superintendents and shares the interests of Maryland’s 24 school boards.

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<sup>1</sup> Counsel for the amici certify, pursuant to Md. Rule 8-511(a)(1), that they obtained the written consent of counsel for all parties to this appeal to file this amici curiae brief. *See* Certification of Authorization to File Amici Curiae Brief, *infra* at p. 18.

MABE, the MABE Group Insurance Pool, and PSSAM’s interest in this case is ensuring the appropriate and necessary funding to educate current and future Maryland public school students. The retroactive effect of the Maryland Child Victims Act (the “CVA”), codified at Md. Code Ann., Cts. & Jud. Proc. § 5-117 (West Supp. 2023), Md. Code Ann., Cts. & Jud. Proc. § 5-518 (West Supp. 2023), and Md. Code Ann., Educ. § 4-105 (West Supp. 2023) (as applied to boards of education), though intended to right historical wrongs, jeopardizes current and future education funding. It does so by requiring school boards to use funds held in trust for the education of current and future students to satisfy tort damage awards to adult, former students for incidents that occurred decades ago.

The revival of formerly stale claims, with the addition of the potential retroactive increase of the damage exposure for local school boards to \$890,000 per “incident or occurrence” from previous levels of \$100,000 for incidents occurring between 1971 and 2016 and \$400,000 for claims after 2016, exposes the local boards to uninsured and otherwise unfunded tort damage payouts, in violation of Md. Code Ann., Const. Art. VIII, § 3. This is so because the insurance<sup>2</sup> available for stale claims, whether procured through private insurers or through self-insurance pools, is inadequate to pay the retroactively expanded damage awards available under the CVA. In short, the CVA unconstitutionally requires school boards to use funds that “shall be kept inviolate, appropriated only to the

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<sup>2</sup> There is no potential insurance of any kind for claims arising out of incidents that occurred before 1971, as discussed *infra* at Part I.C. and Part II.

purpose of Education,”<sup>3</sup> to pay tort damage awards to adults whose claims accrued decades ago. Moreover, to the extent that the CVA attempted a retroactive legislative waiver of the boards’ sovereign immunity, that waiver was ineffective, since the legislature provided no funds for the satisfaction of retroactively enhanced judgments against the boards, nor did it provide the boards with taxing authority for the raising of funds necessary to satisfy enhanced judgments against them.<sup>4</sup>

The amici support the position taken in this matter by the Board of Education of Harford County and offer the discussion below in further support of the Board’s position that the retroactive application of the CVA is unconstitutional and that it has standing to challenge the constitutionality of the CVA.

### **STATEMENT OF THE CASE**

Amici adopt and incorporate by reference the Statement of the Case set forth in the consolidated opening brief filed in this matter by the Key School, Incorporated and the Board of Education of Harford County (collectively, the “School Defendants”).

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<sup>3</sup> Md. Code Ann., Const. Art. VIII, § 3.

<sup>4</sup> *BEKA Industries, Inc. v. Worcester County Board of Educ.*, 419 Md. 194, 206, 18 A.3d 890, 898 (2011) (“A legislative waiver of sovereign immunity, notably, is ineffective unless there are funds available for the satisfaction of the judgment or the agency has been given the power for the raising of funds necessary to satisfy recovery against it.”) (internal quotations omitted).

## **QUESTIONS PRESENTED**

I. Does the CVA, as applied, constitute an impermissible abrogation of School Defendant's vested right in violation of Article 24 of the Maryland Declaration of Rights and/or Article III, Section 40 of the Maryland Constitution?

II. As a subdivision of the State, see *Bd. of Educ. v. Sec'y of Personnel*, 317 Md. 34, 44-45 (1989), does the ... [Board of Education of Harford County] have standing to challenge the constitutionality of the Maryland Child Victims Act of 2023 ("CVA"), 2023 Md. Laws Ch. 5 (S.B. 686), (codified at Md. Code Ann., Cts. & Jud. Proc. ("CJ") § 5-117)?

## **STATEMENT OF FACTS**

Amici adopt and incorporate by reference the Statement of Material Facts set forth in the opening brief filed by the School Defendants.

## **ARGUMENT**

**The CVA Unconstitutionally Forces Boards of Education to Divert Education Funds Away from Current Students to Pay Historical Tort Claims, in Violation of the Constitutional Mandate that Education Funds "Shall be Kept Inviolable."**

**I. Maryland's Boards of Education are Immune from Tort Liability Unless the Legislature Provides Funds for Payment of Tort Claims.**

To place the amici's arguments in perspective, it is first necessary to discuss the source of funding for public education in Maryland, the development of Maryland case law governing the liability of boards of education for actions in tort, and the legislative response to the developed Maryland case law on the tort liability of boards of education.

**A. Maryland's Public Schools are Funded by State and Local Taxes.**

Maryland's Constitution mandates "a thorough and efficient System of Free Public Schools" be established throughout the State. Md. Code Ann., Const. Art. VIII, § 1. The operation and funding of the public school system has been "a joint effort by the State and local governments" since its inception; "but, subject to that State direction and authority, it is predominantly the school boards and school superintendents in each of the 23 counties and Baltimore City that operate the public schools." *Maryland State Bd. of Educ. v. Bradford*, 387 Md. 353, 359, 875 A.2d 703, 706 (2005) (citing *Hornbeck v. Somerset County Bd. of Educ.*, 295 Md. 597, 458 A.2d 758 (1983)).

Maryland's public school system is funded primarily by State and local tax revenues. *See Hornbeck*, 295 Md. at 604, 458 A.2d at 762 (describing the history and funding of the public school system); Md. Code Ann., Const. Art. VIII, § 1 (mandating that the General Assembly "shall provide by taxation, or otherwise" for the maintenance of public schools). The 24 boards of education have no independent taxing or budgetary authority. Rather, the money needed for public schools comes from funding appropriated by the State, local government revenue sources such as county property and income taxes, and minimal federal funding. *See generally* JOHN R. WOOLUMS ET AL., MARYLAND SCHOOL LAW DESKBOOK § 4 BUDGET AND FINANCE (2023-2024 School Year Edition).

Funds appropriated for education are held in trust by the school boards to be used solely for educational purposes. Md. Code Ann., Const. Art. VIII, § 3; *see also Weddle v. Board of School Comm'rs of Frederick County*, 94 Md. 334, 51 A. 289, 291 (1902). They cannot be used for non-educational purposes, such as the payment of tort judgments.

*Weddle*, 51 A. at 291; *see also Weisner v. Board of Educ. of Montgomery County*, 237 Md. 391, 394, 206 A.2d 560, 562 (1965); *Bolick v. Board of Educ. of Charles County*, 256 Md. 180, 183, 260 A.2d 31, 32 (1969); *Thomas L. Higdon, Inc. v. Board of Educ. of Charles County*, 256 Md. 595, 596-97, 261 A.2d 783, 784 (1970); *Board of Educ. of Charles County v. Alcrymat Corp.*, 258 Md. 508, 513, 266 A.2d 349, 352 (1970).

**B. The *Weddle* Holding from 1902 Remains Good Law: A Legislative Waiver of Sovereign Immunity is Ineffective Unless the Legislature Provides the Governmental Entity Funding for Payment of Judgments or Taxing Power to Raise Funds for that Purpose.**

The seminal case analyzing a school board's liability in tort was decided by this Court in 1902. The case, *Weddle v. Board of School Comm'rs of Frederick County*, 94 Md. 334, 51 A. 289 (1902), involved a fatal injury suffered by a child while at school in Frederick County. The plaintiff in the case, the child's father, claimed that the school board's negligence in maintaining its property caused the child's death. He asserted that, because the legislation creating boards of education permitted them to sue and be sued, by implication a claim in tort against the Frederick board was legislatively authorized. *See Weddle*, 51 A. at 290. In holding that the child's father had no claim in tort against the school board, this Court explained:

There is no power given the boards of school commissioners to raise money for the purpose of paying damages, nor are they supplied with means to pay a judgment against them. All of their funds are appropriated by law to specific purposes, and they cannot be diverted by them. The constitution of the state (section 3, art. 8) provides that the school fund of the state shall be kept inviolate, and appropriated only to the purposes of education.

*Weddle*, 51 A. at 291. Analogizing to the law of trusts, the Court held that the school board could not satisfy a tort judgment out of the educational funds it held and therefore could not be liable in tort. *Id.*<sup>5</sup>

Although the *Weddle* decision mentioned neither governmental nor sovereign immunity, subsequent decisions of this Court made clear that it was an early decision regarding legislative waiver of governmental or sovereign immunity,<sup>6</sup> standing for the proposition that a legislative waiver of governmental or sovereign immunity is ineffective unless the legislature provides funds for the payment of judgments against the governmental entity, or the governmental entity has taxing power allowing it to generate funds to pay judgments. *See, e.g., State v. Rich*, 126 Md. 643, 95 A. 956, 957 (1915) (holding that the State Roads Commission, though statutorily permitted to sue and be sued, enjoyed sovereign immunity for tort judgments, since its funds were held solely for the building of roads, and it had no ability to raise taxes); *University of Maryland v. Maas*, 173 Md. 554, 559, 197 A. 123, 125 (1938) (relying on *Weddle* and holding that, even where the legislature has authorized a governmental entity to sue or be sued, the entity cannot be held liable “if there are no funds available for the satisfaction of a judgment, or no power reposed in the agency for the raising of funds necessary to satisfy a recovery against it.”);

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<sup>5</sup> This Court relied on *Perry v. House of Refuge*, 63 Md. 20, 52 Am.Rep. 495 (1885), which adopted the rule in Maryland that tort “damages cannot be recovered from a fund held in trust for charitable purposes.” *Perry*, 63 Md. at 28.

<sup>6</sup> The origin of the argument that the legislature waived sovereign immunity for boards of education was the statute creating the boards that permitted them to sue or be sued. *See Bolick v. Board of Educ. of Charles County*, 256 Md. 180, 183, 260 A.2d 31, 32 (1969).

*see also Dean v. Board of Educ. of Cecil County*, 71 Md. App. 92, 99, 523 A.2d 1059, 1062 (1987) (“The law was clear, at least since *Weddle*...that county boards enjoyed a form of governmental or sovereign immunity, since the legislature has given them no power to raise money for the purpose of paying damages, nor to pay judgments against them.”) (internal quotations marks omitted). The *Weddle* holding continues to be followed today. *E.g.*, *BEKA Industries, Inc. v. Worcester County Board of Educ.*, 419 Md. 194, 206, 18 A.3d 890, 898 (2011); *Stern v. Board of Regents, University of Maryland*, 380 Md. 691, 701, 846 A.2d 996, 1002 (2004).

**C. In 1971, the General Assembly Addressed Liability in Tort for Boards of Education and Declared Purchasing Insurance with a \$100,000 Limit to be a Valid Educational Expense.**

The rule in *Weddle* prevented any tort recovery against boards of education until July 1, 1971. On that date, 1971 Md. Laws Ch. 548, the predecessor to Md. Code Ann., Educ. §§ 4-105 and 5-518, went into effect. Through the new law, the legislature provided a mechanism to permit boards of education to fund tort judgments through insurance or self-insurance in a form approved by the State Insurance Commissioner, declared that the purchase of insurance for tort judgments was a valid educational purpose, required that the insurance have a limit not in excess of \$100,000, and confirmed that boards of education retained sovereign immunity for judgments above \$100,000. 1971 Md. Laws Ch. 548 at 1194 (codified at Md. Ann. Code, art. 77, § 56B (Michie Supp. 1971)); *see generally Board of Educ. of Worcester County v. BEKA Industries*, 190 Md. App. 668, 703, 989 A.2d 1181, 1201 (2010) (describing the history of the statute and liability of boards of education).

In 2016, the liability limit for insured judgments up to \$100,000 was increased to insured judgments up to \$400,000, with the boards retaining immunity for damages above the insured amount of the judgment. 2016 Md. Laws Ch. 680. As of October 1, 2023, the CVA increased a county board of education's liability limit to insured judgments to \$890,000 for a claim of sexual abuse made under § 5-117 of the Courts Article. Md. Code Ann., Educ. § 4-105(b)(1)(i) (West Supp. 2023).<sup>7</sup> The boards of education retain sovereign immunity for sexual abuse claims for amounts above \$890,000.

**II. Retroactively Raising the Boards' Immunity Cap to \$890,000 is an Ineffective Waiver of Governmental Immunity and Exposes Boards to Diverting Education Funding Away from Current and Future Students for the Payment of Judgments in Violation of Maryland's Constitution.**

The CVA jeopardizes funding for the education of current and future public school students. The amici anticipate that virtually all claimants with resuscitated claims will assert that they are entitled to the newly enhanced limit of liability, rather than the limitation in place at the time of their injury.<sup>8</sup> As discussed above, however, to satisfy the requirements of Md. Code Ann., Const. Art. VIII, § 3, the legislature in 1971 created a mechanism permitting boards of education to pay tort judgments without invading funds

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<sup>7</sup> The \$400,000 limit remains in place for all other claims. Md. Code Ann., Educ. § 4-105(b)(1)(ii).

<sup>8</sup> For example, in the underlying Harford County litigation, John Doe takes the position that the new \$890,000 limit applies to his claim for sexual abuse that occurred in approximately 1985-1986 and the early 1990s, not the \$100,000 insured limit in place at the time. (E.394, E.403, E.497). John Doe contends that “[t]he legislative intent was clearly to increase the amount of recovery for victims of childhood sexual abuse” and characterizes the board’s argument that the \$100,000 insured limit should apply as “arbitrarily limit[ing] Plaintiff’s damages” and “meritless.” (E.497).

appropriated for education. Rather than allocating State funds for the payment of tort judgments entered against boards or providing the boards with taxing authority to raise funds for the payment of tort judgments, the 1971 legislation mandated that boards obtain insurance in a form approved by the State Insurance Commissioner to cover tort judgments up to a set amount. The legislature declared that the boards’ “purchase of such insurance shall be considered as an educational purpose and as a valid educational expense.” 1971 Md. Laws Ch. 548 at 1195. For a judgment above the legislatively mandated insured amount, boards retained the defense of sovereign immunity. *Id.*

Each time the legislature amended the original Act, it retained insurance as the funding source for tort judgments against boards to satisfy the mandate of Art. VIII, § 3. *E.g.*, 2016 Md. Laws Ch. 680 (raising the requirement that the boards obtain insurance in the amount of \$100,000 to \$400,000).<sup>9</sup> It did so in the CVA. *See* Md. Code Ann., Educ. § 4-105(a) (West Supp. 2023) (mandating the purchase of comprehensive liability insurance and declaring the purchase “a valid educational expense”) and § 4-105(b)(1)(i) (West Supp. 2023) (mandating insurance limits of \$890,000 for each occurrence for claims of sexual abuse).

The retroactive application of the CVA for sexual abuse claims occurring before its enactment creates a gap between the insurance coverage that was mandated by the

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<sup>9</sup> The amendment raising the insurance and immunity limit to \$400,000 instructed that “this Act shall be construed to apply prospectively and may not be applied or interpreted to have any effect on or application to any cause of action before the effective date of the Act.” 2016 Md. Laws Ch. 680, § 2.

legislature at the time of the alleged abuse and the damages potentially awardable under the CVA. For claims that occurred before July 1, 1971, there is no insurance available to satisfy a judgment for alleged sexual abuse. Under *Weddle* and its successor cases, boards of education enjoyed complete immunity from suits in tort. Maryland boards of education had no reason to purchase insurance for tort claims. A ten-year-old abused in 1960 would be 74 today and able to file suit under the CVA. There exists the real potential that claims for alleged abuse for occurrences predating July 1, 1971 will be filed, yet the boards of education will have no insurance for those claims. The CVA provided no mechanism for the boards of education to pay tort judgments for claims that arose before July 1, 1971. It did not provide a State funding source for the payment of those claims, nor did it provide the boards with taxing authority to raise funds to pay those tort judgments.<sup>10</sup>

For claims of abuse for occurrences between July 1, 1971 and October 1, 2016, the legislature addressed the restriction on the use of school funds set forth in Md. Code Ann., Const. Art. VIII, § 3 by mandating that boards of education obtain insurance to fund tort judgments up to \$100,000. Assuming boards can identify historical insurance policies, those policies will only provide insurance up to their limits.<sup>11</sup> In the event that it is

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<sup>10</sup> A single award against a board of education of \$890,000 would have a significant negative impact. Beginning July 1, 2026, the minimum salary for a Maryland teacher will be \$60,000. Md. Code Ann., Educ. § 6-1009(e) (West Supp. 2023). An award of \$890,000 would fund almost 15 new teachers.

<sup>11</sup> Insurance, by nature, covers prospective losses. One cannot go into the market and obtain insurance for incidents that have already occurred. *Cf., Mayor and City Council of Baltimore v. Utica Mut. Ins. Co.*, 145 Md. App. 256, 306-07, 802 A.2d 1070, 1100 (2002)(explaining the “known loss” rule prohibits an insured from obtaining insurance to cover a loss that is known before the policy takes effect); *see also* BLACK’S LAW

determined that the \$890,000 liability cap put in place by the CVA on October 1, 2023 is applied retroactively to claims that arose prior to that date, there would be a gap between the insured amounts mandated by the legislature at the time of the alleged sexual abuse and the newly set limit of liability of \$890,000. The same is true for claims occurring between October 1, 2016 and October 1, 2023, where the mandated insurance was \$400,000. Because the Maryland legislature failed to provide funding for the gap between the available mandated insurance and the new limit of liability, and did not provide the boards with taxing authority to fund tort judgments above the available insurance limits, the legislature's attempted waiver of the boards' immunity above the historical insurance limits would be ineffective.<sup>12</sup> *BEKA Industries, Inc. v. Worcester County Board of Educ.*, 419 Md. 194, 206, 18 A.3d 890, 898 (2011).

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DICTIONARY 1041 (12th ed. 2024) (defining the known-loss doctrine as “[a] principle precluding insurance coverage when, before the policy’s effective date, the loss has begun or is substantially certain to happen, and it is known to the insured”).

<sup>12</sup> Unlike with the provisions of the Act purporting to eliminate the statute of limitations for sexual abuse claims, there was no expression of legislative intent that the increased sovereign immunity cap and comprehensive insurance coverage apply retroactively. Sovereign immunity waivers must be clear and unambiguous. *See Magnetti v. University of Maryland*, 402 Md. 548, 565, 937 A.2d 219, 229 (2007) (reasoning that “this Court must read and ‘construe legislative dilution of governmental immunity narrowly in order to avoid weakening the doctrine of sovereign immunity by judicial fiat’”); *Stern v. Board of Regents*, 380 Md. 691, 700, 846 A.2d 996, 1001 (2004) (“We have emphasized that the dilution of the doctrine of sovereign immunity should not be accomplished by the judiciary, and that any direct or implied diminution of the doctrine falls within the authority of the General Assembly.”). In this case, although the legislature was clear in its *prospective* increase of the sovereign immunity cap, it did not clearly and unambiguously increase the cap *retroactively* for prior claims such as that asserted by John Doe against the Board of Education of Harford County.

More importantly, the use of school funds to fund the gap between any available insurance and any amounts awarded in excess of that insurance for resuscitated claims violates the Maryland Constitution. Md. Code Ann., Const. Art. VIII, § 3. This Court held for generations that Maryland’s Constitution prevents the use of school funds to pay tort judgments, and that only where the legislature provides a funding source for the payment of tort judgments can a waiver of the boards’ governmental or sovereign immunity be effective. By characterizing school funds as held in trust for the education of Maryland’s children under Maryland’s Constitution, this Court as long ago as 1902 confirmed Maryland’s strong public policy in ensuring that public schools be adequately funded.

Shifting the use of school funds from enabling current and future Maryland public school students to receive a first-rate education to funding judgments on resuscitated claims pursued by adults would be catastrophic for Maryland’s school children. It is anticipated that there will be a “flood” of lawsuits, with “ready access to cash” and promises of “substantial paydays” for claims stemming from conduct as far back as the 1950s. Alex Mann, *Billboards and Banner Ads: Lawyers Seek Maryland Child Sex Abuse Survivors for Forthcoming Flood of Suits*, BALTIMORE SUN, May 1, 2023, available at <https://www.baltimoresun.com/2023/05/01/billboards-and-banner-ads-lawyers-seek-maryland-child-sex-abuse-survivors-for-forthcoming-flood-of-suits/> [last accessed Aug. 5, 2024]; see also William J. Ford, *Survivors File Lawsuits as Child Victims Act Goes Into Effect, But How Many More to Come Remains Unknown*, MARYLAND MATTERS, October 4, 2023, available at <https://marylandmatters.org/2023/10/04/survivors-file-lawsuits-as-child-victims-act-goes-into-effect-but-how-many-more-to-come-remains-unknown/> [last

accessed Aug. 5, 2024] (“When other states set aside time limits – permanently or for brief timeframes – hundreds and sometimes thousands of cases seeking delayed justice were filed in state courts.”). The legislature’s goal in enacting the CVA clearly was to permit survivors of historical sexual abuse to seek compensation for those past wrongs. The question is whether that goal can, or should, be achieved at the expense of current and future public school students. That question is not a matter for debate under Maryland law or as a matter of public policy, however, because Maryland’s Constitution answers with an unqualified “No.”

### **III. Historical Claims of Sexual Abuse Cannot be Adequately Investigated or Defended, Leaving a Great Potential for Unjust Adjudications and the Invasion into School Funds.**

The logistical burden of defending claims that arose decades in the past makes it likely that current school funds will be invaded to pay judgments for historical wrongs. For claims arising before 1971, each occurrence arguably will expose the boards to the full \$890,000 for each potential judgment. The estimated defense costs are “at least \$200,000 per case,” which will be borne in whole by a board sued for an incident before 1971. *See* Maryland General Assembly 2023 Session, SB 686 Fiscal and Policy Note, at p. 10. For insured claims that occurred after 1971, the boards will be exposed to the gap between the insurance and any judgment in excess of the insurance, assuming that the appropriate insurer can be identified. Where no insurer can be identified, again, boards arguably will be exposed to the full extent of the \$890,000 cap, if that cap is applied retroactively, and the full amount of defense costs. As in the present case against the Board of Education of Harford County, boards can expect to be sued in future actions based on allegations that a

board, a board member, a school principal, assistant principal, counselor, or other non-abusing administrator or teacher was negligent in failing to recognize the signs of the alleged abuse, or on any number of other theories of negligence against school personnel. Boards will be drawn into defending those actions, even where no insurer can be identified or, if the conduct predated 1971, no insurance was ever procured. *See* Md. Code Ann., Educ. § 4-104(d) (West Supp. 2023); *see also* *Montgomery County Bd. of Educ. v. Horace Mann Ins.*, 383 Md. 527, 860 A.2d 909 (2004).

In civil litigation, where a plaintiff’s testimonial evidence of alleged abuse suffices to get his or her case before a jury, the balance is tipped heavily against the boards in defending themselves and their former employees for claims arising decades in the past. For example, in the current litigation brought by John Doe against the Board of Education of Harford County, allegations are made against the Board and “John Does (1-10),” described as “fictitious persons who, at all relevant times, employed, supervised, controlled and/or oversaw Konski and Dehaven and/or who otherwise owed a legal duty to Plaintiff to prevent the incidents of child sexual abuse[.]” (E.395). The alleged perpetrators themselves are not defendants in the case. According to the Complaint, the plaintiff did not report the alleged abuse that occurred in the early 1990s by one of the perpetrators until November 2020, depriving the Board of any opportunity to investigate Doe’s allegations timely. (E.407).

To defend against accusations of sexual abuse that occurred in decades past, Maryland’s boards of education will be challenged to find relevant insurance policies, student records, medical records, personnel records, employment records, and other

documentary evidence, most if not all of which would likely have been kept in paper format, only, given the technology available at the time. Student records for health screenings, examinations, and evaluations are only kept until the student reaches age 21. *See* COMAR 13A.08.02.06 (requiring guidelines and standards for the retention and disposition of student records be those adopted in the Maryland Student Records System Manual; Maryland Student Records System Manual 2020, at p. 76, *available at* <https://marylandpublicschools.org/about/Documents/OCP/Publications/StudentRecordsSystemManual2020.pdf> [last accessed Aug. 5, 2024]). Discipline records are kept until the student graduates or completes a high school program or turns 21 years old. *Id.* at p. 77. Disability records, such as Individualized Education Program records, assessment reports, and medical assistance records are retained for only six years. *Id.* at p. 77. Other student records that are not specifically governed by State or local regulations “shall be destroyed when they no longer serve legitimate education purposes[.]” COMAR 13A.08.02.06(B). Medical records, a critical part of personal injury claims, are maintained by a health care provider for the longer of five years or until a patient turns 21 years old. COMAR 10.01.16.04(B). Employment records including the employee’s name and address, occupation, rate of pay, and hours worked are required to be kept for three years, while, for unemployment issues, records must be preserved for five years. Md. Code Ann., Lab. & Empl. § 3-424; COMAR 09.32.01.06A(2)(a) and (b). Regarding testimonial evidence, boards of education will be challenged to even identify potential witnesses, let alone locate former employees who may have retired, moved, or passed away in the decades since the alleged abuse occurred. Through no fault of their own, school boards will face difficult if

not impossible hurdles in substantively responding to stale allegations either with testimony or documentary evidence given the passage of time.

In enacting the CVA, the legislature may have intended to tip the balance against institutional defendants sued for claims of historical child abuse. The Maryland Constitution and this Court's precedent regarding the waiver of sovereign immunity, however, prevent the balance from being tipped against boards of education.

### **CONCLUSION**

No one questions that sexual abuse of a child is abhorrent. But the CVA places the burden of funding resuscitated claims on current and future students who must pay the high costs of litigation and damage awards for harm that occurred before they were born. Maryland's Constitution and this Court's precedent shield today's children from carrying that burden. The amici respectfully request that this Court find the retroactive application of the CVA unconstitutional as to Maryland's boards of education.

Respectfully submitted,

/s/ Gregory L. VanGeison

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**CERTIFICATION OF AUTHORIZATION TO FILE  
AMICI CURIAE BRIEF PURSUANT TO RULE 8-511(a)(1)**

Amici curiae the Maryland Association of Boards of Education (“MABE”), the MABE Group Insurance Pool, and the Public School Superintendents’ Association of Maryland (“PSSAM”), by and through counsel, file this brief upon written consent of all parties to the appeal.

/s/ Gregory L. VanGeison

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**CERTIFICATION OF WORD COUNT  
AND COMPLIANCE WITH RULE 8-112**

1. This brief contains 5,578 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ Gregory L. VanGeison

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### **RULE 8-504(a)(8) STATEMENT OF FONTS**

This brief was printed utilizing proportionally spaced font. The body and footnotes are printed in Times New Roman, 13 point.

/s/ Gregory L. VanGeison

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 7<sup>th</sup> day of August, 2024 the foregoing Brief of Amici Curiae was filed and served electronically via MDEC upon all counsel of record.

/s/ Gregory L. VanGeison

Gregory L. VanGeison (#8512010629)

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## **TEXT OF PERTINENT AUTHORITY**

### **COMAR 09.32.01.06A (“Records”)**

#### **A. Responsibility of Employing Unit.**

(1) An employing unit shall record the Social Security number of each of its employees. If an employee does not have a Social Security number, the employing unit shall require the employee to execute the proper application form to acquire a Social Security number within 5 days of the first day of employment.

#### **(2) Employment Records.**

(a) An employing unit shall keep employment records safe and readily accessible at the place of business of the employing unit. The records shall be retained and preserved for a period of 5 years from the last day of the calendar quarter to which the records relate.

(b) An employing unit that discontinues business shall keep employment records safe and readily accessible. The records shall be retained and preserved for a period of 5 years from the last day of the calendar quarter to which the records relate.

(c) Employment records include but are not limited to wage records, payroll registers, check registers, cash disbursements journals, cancelled checks, federal income tax returns (Schedule 1040C for individual proprietors), forms 1096 and 1099, and general ledgers.

(d) Employment records shall be made available to the Department for inspection and copying. Prior notice to the employing unit is not required.

(e) An employing unit that maintains, or has a third party maintain, its employment records on nine-track magnetic tape, floppy disk, or other magnetic storage formats shall retain the records in the original magnetic storage format for a period of 5 years from the last day of the calendar quarter to which those records relate.

### **COMAR 10.01.16.04(B) (“Maintenance of Medical Records”)**

B. Except as provided in Regulations .06 and .07 of this chapter, a health care provider shall maintain medical records for all patients in the health care provider's care for a

minimum of 5 years after the medical record is made or until the patient is 21 years old, whichever is longer.

**COMAR 13A.08.02.06 (“Retention, Disposition, and Destruction of Student Records”)**

A. Guidelines and standards for the retention and disposition of student records maintained under this title shall be those adopted in the Maryland Student Records System Manual.

B. Individual student records not required or specifically regulated by other State or local regulations shall be destroyed when they no longer serve legitimate education purposes, subject to the following exceptions:

- (1) The local school system or educational institution may not destroy any student record if there is an outstanding request to inspect and review them under Regulation .13 of this chapter;
- (2) Explanations placed in the education record under Regulation .15 of this chapter shall be maintained as provided in Regulation .15D of this chapter; and
- (3) The record of access required under Regulation .20 of this chapter shall be maintained for as long as the education record to which it pertains is maintained.

**Md. Ann. Code, art. 77 § 56B (Michie Supp. 1971)**

(a) *Generally.* – The county boards of education and the board of school commissioners of Baltimore City shall carry comprehensive liability insurance to protect the Board and its agents and employees. The purchase of such insurance shall be considered as an educational purpose and as a valid educational expense.

(b) *Standards and guidelines for policies.* – The State Board of Education shall adopt regulations setting up standards and guidelines for the policies including a minimum liability coverage, and the policies purchased under this section, after the adoption of these regulations, shall conform to them.

(c) *Self-insurance.* – Any of the above boards of education shall be considered in compliance herein if they are self-insured under rules and regulations promulgated by the State Insurance Commissioner. Liability shall be limited to one hundred thousand dollars (\$100,000) for each injury, the policy limits for this insurance shall not exceed one hundred thousand dollars (\$100,000).

(d) *Defense of sovereign immunity.* – Nothing in this section shall be construed as affecting the right of various boards of education, on their own behalf, from raising the defense of sovereign immunity to any amount in excess of the limit of liability.

### **Md. Code Ann., Cts. & Jud. Proc. § 5-117 (“Sexual abuse of minor”)**

#### In general

(b) Except as provided under subsection (d) of this section and notwithstanding any time limitation under a statute of limitations, a statute of repose, the Maryland Tort Claims Act, the Local Government Tort Claims Act, or any other law, an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor may be filed at any time.

### **Md. Code Ann., Cts. & Jud. Proc. § 5-518 (“County education boards”)**

#### Claims subject to defense of sovereign immunity

(b) A county board of education, described under Title 4, Subtitle 1 of the Education Article, may raise the defense of sovereign immunity to:

- (1) Any amount claimed above the limit of its insurance policy; or
- (2) If self-insured or a member of a pool described under § 4-105(c)(1)(ii) of the Education Article:
  - (i) Except as provided in item (ii) of this item, any amount above \$400,000; or
  - (ii) If the liability of the county board of education arises from a claim of sexual abuse, as defined in § 5-117 of this title, any amount above \$890,000 to a single claimant for claims arising from an incident or occurrence.

#### Sovereign immunity; cap on liability

(c)(1) Except as provided in paragraph (2) of this subsection, a county board of education may not raise the defense of sovereign immunity to any claim of \$400,000 or less.

- (2) If liability of a county board of education arises under a claim of sexual abuse, as defined in § 5-117 of this title, the liability may not exceed \$890,000 to a single claimant for injuries arising from an incident or occurrence.

#### County board joined as party to actions against employees

(d)(1) The county board shall be joined as a party to an action against a county board employee, county board member, or volunteer that alleges damages resulting from a tortious act or omission committed by the employee in the scope of employment, by the county board member within the scope of the member's authority, or by the volunteer within the scope of the volunteer's services or duties.

- (2) The issue of whether the county board employee acted within the scope of employment may be litigated separately.

- (3) The issue of whether the county board member acted within the scope of the member's authority may be litigated separately.
- (4) The issue of whether the volunteer acted within the scope of the volunteer's services or duties may be litigated separately.

**Md. Code Ann., Educ. § 4-104(d) (“Retention of counsel by board”)**

When counsel to be provided

(d)(1) In any suit or claim brought against a principal, teacher, school security guard, or other agent or employee of a county board by a parent or other claimant with respect to an action taken by the agent or employee, the board shall provide for counsel for that individual if:

- (i) The action was taken in the performance of his duties, within the scope of his employment, and without malice; and
- (ii) The board determines that he was acting within his authorized official capacity in the incident.

(2) The counsel required by this section may be provided through the office of the county attorney or city solicitor.

(3) This subsection does not require a county board to provide or reimburse the cost of counsel to a plaintiff or claimant in a suit or claim against a county board or its members, agents, or employees.

**Md. Code Ann., Educ. § 4-105 (“Comprehensive liability insurance carried by board”)**

In general

(a)(1) Each county board shall carry comprehensive liability insurance to protect the board and its agents and employees.

(2) The purchase of insurance in accordance with paragraph (1) of this subsection is a valid educational expense.

Standards for insurance policies

(b)(1) The State Board shall establish standards for these insurance policies, including a minimum liability coverage of not less than:

- (i) \$890,000 for each occurrence for claims of sexual abuse made under § 5-117 of the Courts Article; and
- (ii) \$400,000 for each occurrence for all other claims.

(2) The policies purchased under this section shall meet these standards.

Compliance with section by board

- (c)(1) A county board complies with this section if it:
- (i) Is individually self-insured for at least \$890,000 for each occurrence under the rules and regulations adopted by the State Insurance Commissioner; or
  - (ii) Pools with other public entities for the purpose of self-insuring property or casualty risks under Title 19, Subtitle 6 of the Insurance Article.
- (2) A county board that elects to self-insure individually under this subsection periodically shall file with the State Insurance Commissioner, in writing, the terms and conditions of the self-insurance.
- (3) The terms and conditions of this individual self-insurance:
- (i) Are subject to the approval of the State Insurance Commissioner; and
  - (ii) Shall conform with the terms and conditions of comprehensive liability insurance policies available in the private market.

Immunity from liability

- (d) A county board shall have the immunity from liability described under § 5-518 of the Courts and Judicial Proceedings Article.

**Md. Code Ann., Educ. § 6-1009(e) (“Teacher salary increases”)**

Minimum Salary

- (e) Beginning on July 1, 2026, the minimum teacher salary for all teachers shall be \$60,000.

**Md. Code Ann., Lab. & Empl. § 3-424 (“Wage records”)**

Each employer shall keep, for at least 3 years, in or about the place of employment, a record of:

- (1) the name, address, and occupation of each employee;
- (2) the rate of pay of each employee;
- (3) the amount that is paid each pay period to each employee;
- (4) the hours that each employee works each day and workweek; and
- (5) other information that the Commissioner requires, by regulation, as reasonable to enforce this subtitle.

**Md. Code Ann., Const. Art. VIII, § 1**

The General Assembly, at its First Session after the adoption of this Constitution, shall by Law establish throughout the State a thorough and efficient System of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance.

**Md. Code Ann., Const. Art. VIII, § 3**

The School Fund of the State shall be kept inviolate, and appropriated only to the purposes of Education.

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**IN THE SUPREME COURT OF MARYLAND**

Board of Education of Harford County

\*

Appellant

\*

Reg. No. 10, September Term, 2024  
SCM-REG-0002-2024

v.

\*

John Doe

\*

On Petition for Writ of Certiorari from the  
Circuit Court for Harford County  
Civil Case No. C-12-CV-23-767  
(The Honorable Alex M. Allman)

Appellee

\*

\* \* \* \* \*

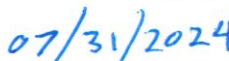
**AFFIDAVIT OF MILTON E. NAGEL, CPA**

I, Milton E. Nagel, CPA, am over the age of 18, am competent to testify in a court of law, and have personal knowledge of the following facts:

1. I am Executive Director of the Maryland Association of Boards of Education (“MABE”) and Pool Administrator of the MABE Group Insurance Pool.
2. MABE was founded in 1957. All 24 Maryland boards of education are members.
3. The MABE Group Insurance Pool was created in 1986. In 1988, the MABE Pool began offering self-insured liability coverage to nine boards of education. Since 1988, the MABE Pool has grown to include 19 of the 24 boards of education.
4. The MABE Pool self-insures liability claims and is currently funded by these 19 member boards.

**I SOLEMNLY AFFIRM UNDER THE PENALTIES OF PERJURY AND UPON PERSONAL KNOWLEDGE THAT THE CONTENTS OF THIS DOCUMENT ARE TRUE.**

  
\_\_\_\_\_  
Milton E. Nagel, CPA

  
\_\_\_\_\_  
Date

# THE ANNOTATED CODE OF THE PUBLIC GENERAL LAWS OF MARYLAND 1957

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## 1971 Cumulative Supplement

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Prepared by the Editorial Staff of the Publishers

*Under the Supervision of*

W. M. WILLSON, J. P. MUNGER, SYLVIA FAULKNER  
and H. A. FINNEGAN, JR.

*Consultant*

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Director, State Department of Legislative Reference

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## VOLUME 7

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Place in Pocket of Corresponding 1969 Replacement Volume of  
Main Set and Discard Previous Supplement

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*Effective Date of Statutes*

See Md. Const., Article XVI, § 2

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THE MICHIE COMPANY, LAW PUBLISHERS  
CHARLOTTESVILLE, VA.  
1971

When the county boards of education, with the approval of the State Superintendent of Schools, shall determine that grounds, school sites, or buildings are no longer needed for school purposes, they shall be transferred by the county boards to the county commissioners or county council and may be utilized, sold, leased, or otherwise disposed of (except by gift) by the county commissioners or county council; provided, however, that the Board of Education for Cecil County, with the approval of the State Superintendent of Schools, may transfer, with or without charge, to the board of trustees of a public community college any of its land, buildings, personal assets or other facilities.

(1971, ch. 542.)

**Effect of amendment.**—The 1971 amendment, effective July 1, 1971, added the proviso at the end of subsection (a).

As the other subsections were not affected by the amendment, they are not set forth above.

### § 49. Advisory committees.

(a) *Generally.*—Except in Anne Arundel County, for which provision is made by subsection (b) of this section, it shall be the policy of county boards of education to establish such citizen-advisory committees as they deem necessary to facilitate the activities and programs of the boards and any school or schools under their supervision.

(b) *Anne Arundel County.*—(1) The Anne Arundel County Board of Education shall establish citizen-advisory committees to advise the Board and facilitate the activities and programs of the Board in any school or schools under its supervision. The committees shall be so constituted as to be representative of the community as a whole.

(2) The members of the citizen-advisory committees serving one school shall be selected from among the parents of the students attending that school and interested citizens from the community.

(3) One committee shall be established to serve the county generally. This committee shall be composed of representatives selected generally from each school region. (1969, ch. 405, § 1; 1970, ch. 270.)

**Effect of amendment.**—The 1970 amendment, effective July 1, 1970, designated the provisions of the former section as subsection (a), inserted "Except in Anne

Arundel County, for which provision is made by subsection (b) of this section," at the beginning thereof and added subsection (b).

### § 52. Schools on or near line of two counties.

Amendment of former § 59.

(Provisions similar to those of former

§ 220 are now found in § 128 of article 77.)

### § 56B. Comprehensive liability insurance.

(a) *Generally.*—The county boards of education and the board of school commissioners of Baltimore City shall carry comprehensive liability insurance to protect the Board and its agents and employees. The purchase of such insurance shall be considered as an educational purpose and as a valid educational expense.

(b) *Standards and guidelines for policies.*—The State Board of Education shall adopt regulations setting up standards and guidelines for the policies including a minimum liability coverage, and the policies purchased under this section, after the adoption of these regulations, shall conform to them.

(c) *Self-insurance.*—Any of the above boards of education shall be considered in compliance herein if they are self-insured under rules and regulations promulgated by the State Insurance Commissioner. Liability shall be limited to one hundred thousand dollars (\$100,000) for each injury, the policy limits for this insurance shall not exceed one hundred thousand dollars (\$100,000).

(d) *Defense of sovereign immunity.*—Nothing in this section shall be construed as affecting the right of the various boards of education, on their own behalf, from raising the defense of sovereign immunity to any amount in excess of the limit of liability. (1971, ch. 548.)

Editor's note.—Section 2, ch. 548, Acts 1971, provides that the act shall take effect July 1, 1971.

#### CHAPTER 5. SUPERINTENDENT OF SCHOOLS

### § 60. Recommendations as to buildings, grounds and sites and locations for flashing caution signs.

The county superintendent of schools shall recommend for condemnation school buildings which are unsanitary and unfit for use; he shall recommend all repairs, the purchase of grounds, school sites and buildings, or the sale of the same, and shall prepare or cause to be prepared all plans and specifications for remodeling of old buildings, and the construction of new buildings, subject to the provisions of § 26 of this article; and he shall recommend to traffic safety officials of the State Roads Commission or the county government appropriate locations at or near the site of the school, of school construction, or of school condemnation for the posting of flashing signs indicating the need for caution. (An. Code, 1951, § 145; 1939, § 134; 1924, § 137; 1916, ch. 506, § 72C; 1969, ch. 405, § 1; 1971, ch. 489.)

Effect of amendment.—The 1971 amendment, effective July 1, 1971, added at the end of the section the language following "§ 26 of this article."

#### CHAPTER 6. THE PUBLIC SCHOOLS

### § 73. Admission of pupils; kindergarten programs; required school year.

All persons between the ages of five and twenty years shall be admitted free of charge to the public schools of the State provided, however, that in those counties that do not on July 1, 1971 provide kindergartens or which on this date provide less than full kindergarten programs, implementation of full kindergarten programs shall be phased in by September of

## CHAPTER 547

(House Bill 602)

AN ACT to repeal and re-enact, with amendments, Section 503 of Article 93A of the Annotated Code of Maryland (1970 Supplement), title "Protection of Minors and Other Persons Under Disability," subtitle "Subtitle 5. Miscellaneous Provisions Relating to Minors," to provide that a receipt of a minor who holds or is a party to a free share or deposit account in a building, savings and loan association is a valid release for payments to the minor on the account.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That Section 503 of Article 93A of the Annotated Code of Maryland (1970 Supplement), title "Protection of Minors and Other Persons Under Disability," subtitle "Subtitle 5. Miscellaneous Provisions Relating to Minors," be and it is hereby repealed and re-enacted, with amendments, to read as follows:

## 503.

The receipt or acquittance of any minor, who is the sole owner of or is a party to a free share or deposit account with the right to withdraw funds therefrom, in a building [or homestead], savings and loan association, shall be a valid and sufficient release and discharge of such association for any payment to such minor on any such free share account.

SEC. 2. *And be it further enacted,* That this Act shall take effect July 1, 1971.

Approved May 17, 1971.

## CHAPTER 548

(House Bill 610)

AN ACT to add new Section 56B to Article 77 of the Annotated Code of Maryland, (1969 Replacement Volume), title "Public Education," subtitle "~~County Board~~ COUNTY BOARDS of Education," to follow immediately after Section 56A thereof, to require the several boards of education in the counties and Baltimore City to purchase public liability insurance FOR PERSONAL INJURY CLAIMS COMPREHENSIVE LIABILITY INSURANCE, to authorize the State Board of Education to set standards and guidelines for the policies, and to allow the boards of education to raise the defense of sovereign immunity when the claim exceeds TO ANY AMOUNT IN EXCESS OF the limit of liability.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That new Section 56B be and it is hereby added to Article 77 of the Annotated Code of Maryland (1969 Replacement Volume), title "Public Education," subtitle "County Boards of Education," to follow immediately after Section 56A thereof, and to read as follows:

## 56B.

(a) The county boards of education and the Board of School Commissioners of Baltimore City shall carry ~~public~~ COMPREHENSIVE liability insurance ~~FOR PERSONAL INJURY CLAIMS~~ to protect the board and its agents and employees. ~~The policies shall contain a provision estopping the insurer from raising the defense of sovereign immunity.~~ The purchase of such insurance shall be considered as an educational purpose and as a valid educational expense.

(b) The State Board of Education shall adopt regulations setting up standards and guidelines for the policies including a minimum liability coverage, and the policies purchased under this section, after the adoption of these regulations, shall conform to them.

(C) ANY OF THE ABOVE BOARDS OF EDUCATION SHALL BE CONSIDERED IN COMPLIANCE HEREIN IF THEY ARE SELF-INSURED UNDER RULES AND REGULATIONS PROMULGATED BY THE STATE INSURANCE COMMISSIONER. LIABILITY SHALL BE LIMITED TO ONE-HUNDRED THOUSAND DOLLARS (\$100,000) FOR EACH OCCURRENCE INJURY, THE POLICY LIMITS FOR THIS INSURANCE SHALL ~~BE A MINIMUM OF NOT EXCEED~~ ONE-HUNDRED THOUSAND DOLLARS (\$100,000).

~~(e)~~ (D) Nothing in this ~~Act~~ SECTION shall be construed as affecting the right of the various boards of education, on their own behalf, from raising the defense of sovereign immunity ~~when the claim exceeds~~ TO ANY AMOUNT IN EXCESS OF the limit of liability.

SEC. 2. And be it further enacted, That this Act shall take effect July 1, 1971.

Approved May 17, 1971.

CHAPTER 549  
(House Bill 611)

AN ACT to add new Section 10A to Article 77A of the Annotated Code of Maryland (1969 Replacement Volume), title "Higher Education," subtitle "Community Colleges," to follow immediately after Section 10 thereof, to require the boards of trustees of community colleges to require ~~public liability insurance FOR PERSONAL INJURY CLAIMS~~ COMPREHENSIVE LIABILITY INSURANCE, to require the State Board for Community Colleges to set standards and guidelines for the policies, and to allow the ~~board~~ BOARDS of trustees to raise the defense of sovereign immunity ~~when the claim exceeds~~ TO ANY AMOUNT IN EXCESS OF the limit of liability.

SECTION 1. Be it enacted by the General Assembly of Maryland, That new Section 10A be and it is hereby added to Article 77A of the Annotated Code of Maryland (1969 Replacement Volume), title "Higher Education," subtitle "Community Colleges," to follow immediately after Section 10 thereof, and to read as follows:

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Annotated Code  
of Maryland



Courts and Judicial  
Proceedings

Title 3, Subtitle 8B to Title 5

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## § 5-115

Note 1

U.S. 841, 142 L.Ed.2d 84. Constitutional Law  
⇒ 3454; Limitation Of Actions ⇒ 4(2)

### 2. Law governing

Maryland's "borrowing statute" concerning products liability actions arising in foreign jurisdictions required that Virginia's statute of limitations and its accrual rule be applied to determine timeliness of products liability actions

## COURTS & JUDICIAL PROCEEDINGS

brought by Virginia residents which arose exclusively in Virginia. Md.Code, Courts and Judicial Proceedings, § 5-115(b); Va.Code 1950, § 8.01-243, subd. A. Helinski v. Appleton Papers, 1997, 952 F.Supp. 266, affirmed 139 F.3d 891, certiorari denied 119 S.Ct. 105, 525 U.S. 841, 142 L.Ed.2d 84, certiorari denied 119 S.Ct. 106, 525 U.S. 841, 142 L.Ed.2d 84. Limitation Of Actions ⇒ 2(3)

## § 5-116. Breast implant claims

### Class action involvement or mediation

(a) An action for damages for an injury or death caused by the effects of a breast implant or breast implant materials shall be filed within the later of:

- (1) 180 days after the date of completion of any opt-out period in a class action in which the claimant is a member of the class, including an opt-out period provided for in a settlement agreement;
- (2) 180 days after the completion of any nonbinding mediation in a class action in which the claimant is a member of the class; or
- (3) A period of limitations that would otherwise apply.

### Actions for medical injuries

(b) This section does not apply to an action for medical injuries subject to the provisions of Title 3, Subtitle 2A of this article.

Added by Acts 1995, c. 638, § 1, eff. July 1, 1995.

### Historical and Statutory Notes

#### 1995 Legislation

Acts 1995, c. 638, § 2, provides:

"SECTION 2. AND BE IT FURTHER ENACTED, That this Act is intended to allow a member of the settlement class in the In re: Silicone Gel Breast Implant Products Liability Litigation (MDL-926) to bring an action for an

injury or death caused by the effects of a breast implant or breast implant materials if the claimant elects to opt out of the settlement class in accordance with the settlement agreement after the period of limitations has expired for any civil action that might otherwise have been brought in any State or federal court in Maryland."

### Library References

Death ⇒ 37 to 39.

Limitation of Actions ⇒ 31, 126.5.

Westlaw Topic Nos. 117, 241.

C.J.S. Death §§ 98 to 104.

C.J.S. Limitations of Actions §§ 97, 286.

### Research References

#### Encyclopedias

Maryland Law Encyclopedia Products Liability § 23, Cause of Action--Breast-Implant Litigation.

## § 5-117. Sexual abuse of minor

### Sexual abuse defined in Family Law Article

(a) In this section, "sexual abuse" has the meaning stated in § 5-701 of the Family Law Article.

## LIMITATIONS,

### Within seven y

(b) An action for sexual abuse that occurs within seven years of the date of the act.

Added by Acts 2003

#### 2003 Legislation

Acts 2003, c. 360, § 1, "SECTION 2. AND BE IT ENACTED, That this Act

Limitation of Action.

Westlaw Topic No. 2

C.J.S. Limitations of

#### Encyclopedias

Maryland Law Encyclopedia Actions § 5, Proportionate.

### In general 1

#### 1. In general

Partial retroactive amendment extending claims of sexual abuse were not barred, as of new legislation, by expirations period, did not substantial right of alleged not violate due process

## § 5-118. Filing

For the purposes of Insurance Administration Article shall be deemed

Added by Acts 2007, c.

#### 2007 Legislation

Acts 2007, c. 150, § 1, each added § 5-118 Acts 2007, c. 150, § 1 complaints equal to fili

## LIMITATIONS, IMMUNITIES, PROHIBITED ACTS

§ 5-118

### Within seven years of date victim attains age of majority

(b) An action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor shall be filed within 7 years of the date that the victim attains the age of majority.

Added by Acts 2003, c. 360, § 1, eff. Oct. 1, 2003.

### Historical and Statutory Notes

#### 2003 Legislation

Acts 2003, c. 360, § 2, provides:  
"SECTION 2. AND BE IT FURTHER EN-  
ACTED, That this Act may not be construed to

apply retroactively to revive any action that was  
barred by the application of the period of limita-  
tions applicable before October 1, 2003."

### Library References

Limitation of Actions ⇨ 6(1).

Westlaw Topic No. 241.

C.J.S. Limitations of Actions §§ 9 to 11.

### Research References

#### Encyclopedias

Maryland Law Encyclopedia Limitations of  
Actions § 5, Prospective or Retroactive Op-  
eration.

### Notes of Decisions

#### In general 1

##### 1. In general

Partial retroactive application of statutory amendment extending period of limitations on claims of sexual abuse of minors to claims that were not barred, as of the effective date of the new legislation, by expiration of the prior limitations period, did not infringe any vested or substantial right of alleged abuser and, thus, did not violate due process. *Roe v. Doe*, 2010, 998

A.2d 383, 193 Md.App. 558, certiorari granted 6 A.3d 904, 416 Md. 272. Constitutional Law ⇨ 3971; Limitation of Actions ⇨ 6(1)

Statutory amendment extending period of limitations on claims of sexual abuse of minors applied partially retroactively to claims that were not barred, as of the effective date of the amendment, by expiration of prior limitations period. *Roe v. Doe*, 2010, 998 A.2d 383, 193 Md.App. 558, certiorari granted 6 A.3d 904, 416 Md. 272. Limitation of Actions ⇨ 6(1)

## § 5-118. Filing of complaint equivalent to filing action

For the purposes of this subtitle, the filing of a complaint with the Maryland Insurance Administration in accordance with § 27-1001 of the Insurance Article shall be deemed the filing of an action under § 3-1701 of this article.

Added by Acts 2007, c. 150, § 1, eff. Oct. 1, 2007.

### Historical and Statutory Notes

#### 2007 Legislation

Acts 2007, c. 150, § 1, and Acts 2007, c. 324, § 1, each added § 5-118. The section added by Acts 2007, c. 150, § 1, relating to filing of complaints equal to filing actions, became this

section, § 5-118. The section added by Acts 2007, c. 324, § 1, relating to the commencement and dismissal of claims, was designated § 5-119.



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# Annotated Code of Maryland



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A.3d 531, 231 Md.App. 686. Zoning and Planning  
⊖ 1605

3. Commencement of limitations period

Three-year limitations period for neighboring landowners to challenge setback distance of homeowner's construction of an addition began to run the latest at the time the structure had progressed to the point that the framing could pass inspection. Wood v. Valliant, 2017, 155 A.3d 531, 231 Md.App. 686. Zoning and Planning ⊖ 1607

4. Review

In the Court of Special Appeals' analysis whether neighboring landowners' petition for judicial review of decision of town board of zoning appeals was precluded by statute of limitation governing setback line violations, the Court accepted all factual findings made by the town board zoning appeals for which there was substantial evidence in the record to support the finding. Wood v. Valliant, 2017, 155 A.3d 531, 231 Md.App. 686. Zoning and Planning ⊖ 1698

Whether neighboring landowners' petition for judicial review of decision of town board of zoning appeals was precluded by the three-year statute of limitations governing setback line violations was a question of law that the Court of Special Appeals reviewed de novo. Wood v. Valliant, 2017, 155 A.3d 531, 231 Md.App. 686. Zoning and Planning ⊖ 1624

1. In general

When a building or an addition to a building is constructed in violation of a setback restriction, any person who wishes to pursue an action or proceeding arising from that setback violation must act within three years after the violation first occurred. Wood v. Valliant, 2017, 155 A.3d 531, 231 Md.App. 686. Limitation Of Actions ⊖ 95(1); Limitation Of Actions ⊖ 104.5

2. Law governing

Three-year limitations period to challenge a setback violation governed in neighboring landowners' challenge to alleged setback violation of homeowner's construction of an addition, despite argument that the dispute arose out of the zoning inspector's allegedly improper issuance of a final occupancy permit; appeal of inspector's decision to the town board of zoning appeals arose out of the setback line violation that first occurred more than three years earlier, and the same held true for the circuit court proceeding seeking judicial review of the board's ruling. Wood v. Valliant, 2017, 155

§ 5-115. Product liability cases

Research References

Encyclopedias

18 Maryland Law Encyclopedia Products Liability § 24, Limitation of Action in Foreign Jurisdiction.

Other References

Labor & Employment Law ¶ 229286, Piero A. Bugoni, Plaintiff, v. Employment Background Investigations, Inc., et al., Defendants.

Treatises and Practice Aids

Restatement (Third) of Torts: Prod. Liab. § TD 2, Definition of "Product".

Restatement (Third) of Torts: Prod. Liab. § Definition of "Product".

Restatement (Third) of Torts: Prod. Liab. § PFD, Definition of "Product".

§ 5-116. Breast implant claims

Research References

Encyclopedias

18 Maryland Law Encyclopedia Products Liability § 23, Cause of Action—Breast-Implant Litigation.

§ 5-117. Sexual abuse of minor

Definitions

(a)(1) In this section the following words have the meanings indicated.

(2) "Alleged perpetrator" means the individual alleged to have committed the specific incident or incidents of sexual abuse that serve as the basis of an action under this section.

(3) "Sexual abuse" has the meaning stated in § 5-701 of the Family Law Article.

In general

(b) An action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor shall be filed:

- (1) At any time before the victim reaches the age of majority; or
- (2) Subject to subsections (c) and (d) of this section, within the later of:
  - (i) 20 years after the date that the victim reaches the age of majority; or
  - (ii) 3 years after the date that the defendant is convicted of a crime relating to the alleged incident or incidents under:
    1. § 3-602 of the Criminal Law Article; or
    2. The laws of another state or the United States that would be a crime under § 3-602 of the Criminal Law Article.

**Actions brought more than 7 years after victim reaches age of majority**

(c) In an action brought under this section more than 7 years after the victim reaches the age of majority, damages may be awarded against a person or governmental entity that is not the alleged perpetrator of the sexual abuse only if:

- (1) The person or governmental entity owed a duty of care to the victim;
- (2) The person or governmental entity employed the alleged perpetrator or exercised some degree of responsibility or control over the alleged perpetrator; and
- (3) There is a finding of gross negligence on the part of the person or governmental entity.

**Actions against person or governmental entity not the alleged perpetrator**

(d) In no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.

Added by Acts 2003, c. 360, § 1, eff. Oct. 1, 2003. Amended by Acts 2017, c. 12, § 1, eff. Oct. 1, 2017; Acts 2017, c. 656, § 1, eff. Oct. 1, 2017.

**Historical and Statutory Notes**

**2017 Legislation**

Acts 2017, c. 12, § 1, and Acts 2017, c. 656, § 1, rewrote the section, which prior thereto read:

"(a) In this section, 'sexual abuse' has the meaning stated in § 5-701 of the Family Law Article.

"(b) An action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor shall be filed within 7 years of the date that the victim attains the age of majority."

Acts 2017, c. 12, §§ 2, 3, and Acts 2017, c. 656, §§ 2, 3, provide:

"SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2017.

"SECTION 3. AND BE IT FURTHER ENACTED, That the statute of repose under § 5-117(d) of the Courts Article as enacted by Section 1 of this Act shall be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017."

**Research References**

**ALR Library**

9 American Law Reports 5th 321, Running of Limitations Against Action for Civil Damages for Sexual Abuse of Child.

**Encyclopedias**

14 Maryland Law Encyclopedia Limitations of Actions § 51, Particular Applications of Discovery Rule on Limitations.

20A Maryland Law Encyclopedia State Government § 79, Actions in Tort Under Maryland Tort Claims Act—Filing of Claim.

**Notes of Decisions**

**1. In general**

Discovery rule does not apply to toll the statute of limitations in cases involving memory impairment relating to alleged childhood sexual abuse. *Scarborough v. Altstatt*, 2016, 140 A.3d 497, 228 Md.App. 560, certiorari denied 146 A.3d 476, 450 Md. 129. Limitation of Actions ⇐ 95(4.1)

Limitations periods on daughters' claims against their father arising out of alleged childhood sexual abuse were not tolled by their alleged dissociative amnesia. *Scarborough v. Altstatt*, 2016, 140 A.3d 497, 228 Md.App. 560, certiorari denied 146 A.3d 476, 450 Md. 129. Limitation of Actions ⇐ 95(4.1)



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§ 5-117

Research References

Encyclopedias

- 14 Maryland Law Encyclopedia Limitations of Actions § 24, Action to Enforce Setback Line Restrictions.

Notes of Decisions

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A.3d 531, 231 Md.App. 686. Zoning and Planning  
⇌ 1605

3. Commencement of limitations period

Three-year limitations period for neighboring landowners to challenge setback distance of homeowner's construction of an addition began to run at the latest at the time the structure had progressed to the point that the framing could pass inspection. *Wood v. Valliant*, 2017, 155 A.3d 531, 231 Md.App. 686. Zoning and Planning ⇌ 1607

4. Review

In the Court of Special Appeals' analysis of whether neighboring landowners' petition for judicial review of decision of town board of zoning appeals was precluded by statute of limitations governing setback line violations, the Court accepted all factual findings made by the town board of zoning appeals for which there was substantial evidence in the record to support the findings. *Wood v. Valliant*, 2017, 155 A.3d 531, 231 Md.App. 686. Zoning and Planning ⇌ 1698

Whether neighboring landowners' petition for judicial review of decision of town board of zoning appeals was precluded by the three-year statute of limitations governing setback line violations was a question of law that the Court of Special Appeals reviewed de novo. *Wood v. Valliant*, 2017, 155 A.3d 531, 231 Md.App. 686. Zoning and Planning ⇌ 1624

1. In general

When a building or an addition to a building is constructed in violation of a setback restriction, any person who wishes to pursue an action or proceeding arising from that setback violation must act within three years after the violation first occurred. *Wood v. Valliant*, 2017, 155 A.3d 531, 231 Md.App. 686. Limitation Of Actions ⇌ 95(1); Limitation Of Actions ⇌ 104.5

2. Law governing

Three-year limitations period to challenge a setback violation governed in neighboring landowners' challenge to alleged setback violation of homeowner's construction of an addition, despite argument that the dispute arose out of the zoning inspector's allegedly improper issuance of a final occupancy permit; appeal of inspector's decision to the town board of zoning appeals arose out of the setback line violation that first occurred more than three years earlier, and the same held true for the circuit court proceeding seeking judicial review of the board's ruling. *Wood v. Valliant*, 2017, 155

§ 5-115. Product liability cases

Research References

Encyclopedias

- 18 Maryland Law Encyclopedia Products Liability § 24, Limitation of Action in Foreign Jurisdiction.

§ 5-117. Sexual abuse of minor

Definitions

- (a) In this section, "sexual abuse" means any act that involves:
- (1) An adult allowing or encouraging a child to engage in:
    - (i) Obscene photography, films, poses, or similar activity;
    - (ii) Pornographic photography, films, poses, or similar activity; or
    - (iii) Prostitution;
  - (2) Incest;
  - (3) Rape;
  - (4) Sexual offense in any degree; or
  - (5) Any other sexual conduct that is a crime.

In general

- (b) Except as provided under subsection (d) of this section and notwithstanding any time limitation under a statute of limitations, a statute of repose, the Maryland Tort Claims Act,

the Local Government Tort Claims Act, or any other law, an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor may be filed at any time.

**Incident or occurrence that would have been barred by a time limitation before October 1, 2023**

(c) Except as provided in §§ 5-303 and 5-518 of this title and § 12-104 of the State Government Article, the total amount of noneconomic damages that may be awarded under this section to a single claimant in an action against a single defendant for injuries arising from an incident or occurrence that would have been barred by a time limitation before October 1, 2023, may not exceed \$1,500,000.

**Deceased alleged victim**

(d) No action for damages that would have been barred by a time limitation before October 1, 2023, may be brought under this section if the alleged victim of abuse is deceased at the commencement of the action.

Added by Acts 2003, c. 360, § 1, eff. Oct. 1, 2003. Amended by Acts 2017, c. 12, § 1, eff. Oct. 1, 2017; Acts 2017, c. 656, § 1, eff. Oct. 1, 2017; Acts 2023, c. 5, § 1, eff. Oct. 1, 2023; Acts 2023, c. 6, § 1, eff. Oct. 1, 2023.

**Historical and Statutory Notes**

**2017 Legislation**

Acts 2017, c. 12, § 1, and Acts 2017, c. 656, § 1, rewrote the section, which prior thereto read:

"(a) In this section, 'sexual abuse' has the meaning stated in § 5-701 of the Family Law Article.

"(b) An action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor shall be filed within 7 years of the date that the victim attains the age of majority."

Acts 2017, c. 12, §§ 2, 3, and Acts 2017, c. 656, §§ 2, 3, provide:

"SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2017.

"SECTION 3. AND BE IT FURTHER ENACTED, That the statute of repose under § 5-117(d) of the Courts Article as enacted by Section 1 of this Act shall be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017."

**2023 Legislation**

Acts 2023, c. 5, § 1; Acts 2023, c. 6, § 1, amended the section as follows:

"(a)(1) In this section the following words have the meanings indicated.

"(2) 'Alleged perpetrator' means the individual alleged to have committed the specific incident or incidents of sexual abuse that serve as the basis of an action under this section.

"(3) 'Sexual abuse' has the meaning stated in § 5-701 of the Family Law Article.

"(a) In this section, 'sexual abuse' means any act that involves:

"(1) An adult allowing or encouraging a child to engage in;

"(i) Obscene photography, films, poses, or similar activity;

"(ii) Pornographic photography, films, poses, or similar activity; or

"(iii) Prostitution;

"(2) Incest;

"(3) Rape;

"(4) Sexual offense in any degree; or

"(5) Any other sexual conduct that is a crime.

"(b) An Except as provided under subsection (d) of this section and notwithstanding any time limitation under a statute of limitations, a statute of repose, the Maryland Tort Claims Act, the Local Government Tort Claims Act, or any other law, an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor shall be filed:

"(1) At any time before the victim reaches the age of majority; or

"(2) Subject to subsections (c) and (d) of this section, within the later of:

"(i) 20 years after the date that the victim reaches the age of majority; or

"(ii) 3 years after the date that the defendant is convicted of a crime relating to the alleged incident or incidents under:

"1. § 3-602 of the Criminal Law Article; or

"2. The laws of another state or the United States that would be a crime under § 3-602 of the Criminal Law Article.

"(c) In an action brought under this section more than 7 years after the victim reaches the age of majority, damages may be awarded against a person or governmental entity that is not the alleged perpetrator of the sexual abuse only if:

"(1) The person or governmental entity owed a duty of care to the victim;

"(2) The person or governmental entity employed the alleged perpetrator or exercised some

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perpetrator; and

"(3) There is a finding of gross negligence on  
the part of the person or governmental entity.

"(d) In no event may an action for damages  
arising out of an alleged incident or incidents of  
sexual abuse that occurred while the victim was a  
minor be filed against a person or governmental  
entity that is not the alleged perpetrator more  
than 20 years after the date on which the victim  
reaches the age of majority may be filed at any  
time.

"(e) Except as provided in §§ 5-303 and 5-518  
of this title and § 12-104 of the State Government  
Article, the total amount of noneconomic damages  
that may be awarded under this section to a single  
claimant in an action against a single defendant for  
injuries arising from an incident or occurrence that  
would have been barred by a time limitation before  
October 1, 2023, may not exceed \$1,500,000.

"(d) No action for damages that would have  
been barred by a time limitation before October 1,  
2023, may be brought under this section if the  
alleged victim of abuse is deceased at the com-  
mencement of the action."

Acts 2023, c. 5, § 1; Acts 2023, c. 6, § 1 repealed  
Acts 2017, c. 12, §§ 2, 3 and Acts 2017, c. 656,  
§§ 2, 3, by providing:

"SECTION 2. AND BE IT FURTHER EN-  
ACTED, That this Act may not be construed to  
apply retroactively to revive any action that was

## Research References

### ALR Library

9 American Law Reports 5th 321, Running of  
Limitations Against Action for Civil Damages  
for Sexual Abuse of Child.

## Notes of Decisions

### 1. In general

Discovery rule does not apply to toll the statute  
of limitations in cases involving memory impair-  
ment relating to alleged childhood sexual abuse.  
Scarborough v. Altstatt, 2016, 140 A.3d 497, 228  
Md.App. 560, certiorari denied 146 A.3d 476, 450  
Md. 129. Limitation of Actions ⇐ 95(4.1)

Limitations periods on daughters' claims against  
their father arising out of alleged childhood sexual  
abuse were not tolled by their alleged dissociative  
amnesia. Scarborough v. Altstatt, 2016, 140 A.3d  
497, 228 Md.App. 560, certiorari denied 146 A.3d  
476, 450 Md. 129. Limitation of Actions ⇐ 95(4.1)

Statute that extended limitations period to seven  
years from the date victim attained the age of  
majority, for actions for damages arising out of an  
alleged incident or incidents of sexual abuse that  
occurred while the victim was a minor, was reme-  
dial and procedural, and, thus, statute effected an  
extension of time for the filing of claims that were  
not barred prior to October 1, 2003, by the then  
applicable limitations period; statute did not create  
a new cause of action, counts for battery, false

barred by the application of the period of limita-  
tions applicable before October 1, 2017.

"SECTION 3. AND BE IT FURTHER EN-  
ACTED, That the statute of repose under  
§ 5-117(d) of the Courts Article as enacted by  
Section 1 of this Act shall be construed to apply  
both prospectively and retroactively to provide re-  
pose to defendants regarding actions that were  
barred by the application of the period of limita-  
tions applicable before October 1, 2017."

Acts 2023, c. 5, §§ 2 through 4; Acts 2023, c. 6,  
§§ 2 through 4, provide:

"SECTION 2. AND BE IT FURTHER EN-  
ACTED, That it is the intent of the General As-  
sembly that any claim of sexual abuse that oc-  
curred while the victim was a minor may be filed  
at any time without regard to previous time limita-  
tions that would have barred the claim.

"SECTION 3. AND BE IT FURTHER EN-  
ACTED, That this Act shall be construed to apply  
retroactively to revive any action that was barred  
by the application of the period of limitations appli-  
cable before October 1, 2023.

"SECTION 4. AND BE IT FURTHER EN-  
ACTED, That, if any provision of this Act or the  
application thereof to any person or circumstance  
is held invalid for any reason in a court of compe-  
tent jurisdiction, the invalidity does not affect oth-  
er provisions or any other application of this Act  
that can be given effect without the invalid provi-  
sion or application, and for this purpose the provi-  
sions of this Act are declared severable."

imprisonment, and intentional infliction of emotion-  
al distress were viable claims prior to the enact-  
ment of statute, and statute was placed within  
limitations subtitle. Doe v. Roe, 2011, 20 A.3d 787,  
419 Md. 687. Limitation Of Actions ⇐ 6(1)

Partial retroactive application of statutory  
amendment extending period of limitations on  
claims of sexual abuse of minors to claims that  
were not barred, as of the effective date of the new  
legislation, by expiration of the prior limitations  
period, did not infringe any vested or substantial  
right of alleged abuser and, thus, did not violate  
due process. Roe v. Doe, 2010, 998 A.2d 383, 193  
Md.App. 558, certiorari granted 6 A.3d 904, 416  
Md. 272, affirmed 20 A.3d 787, 419 Md. 687. Con-  
stitutional Law ⇐ 3971; Limitation of Actions ⇐  
6(1)

Statutory amendment extending period of limita-  
tions on claims of sexual abuse of minors applied  
partially retroactively to claims that were not  
barred, as of the effective date of the amendment,  
by expiration of prior limitations period. Roe v.  
Doe, 2010, 998 A.2d 383, 193 Md.App. 558, certiora-

2016 Maryland Laws Ch. 680 (S.B. 575)

MARYLAND 2016 SESSION LAWS

REGULAR SESSION

Additions are indicated by **Text**; deletions by  
~~Text~~.

Vetoed are indicated by ~~Text~~ ;  
stricken material by ~~Text~~.

Chapter 680

S.B. No. 575

COUNTY BOARDS OF EDUCATION—LIMIT ON LIABILITY

AN ACT concerning

**County Boards of Education—Limit on Liability**

FOR the purpose of increasing the limit on liability of a county board of education; increasing the minimum amount of liability coverage that a county board must maintain and for which the State Board of Education must establish standards; making stylistic and conforming changes; providing for the application of this Act; and generally relating to the limit on liability of a county board of education.

BY repealing and reenacting, with amendments,  
Article—Courts and Judicial Proceedings  
Section 5–518(b) and (c)  
Annotated Code of Maryland  
(2013 Replacement Volume and 2015 Supplement)

BY repealing and reenacting, with amendments,  
Article—Education  
Section 4–105  
Annotated Code of Maryland  
(2014 Replacement Volume and 2015 Supplement)

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

**Article—Courts and Judicial Proceedings**

<< MD CTS & JUD PRO § 5–518 >>

**5–518.**

(b) A county board of education, described under Title 4, Subtitle 1 of the Education Article, may raise the defense of sovereign immunity to any amount claimed above the limit of its insurance policy or, if self-insured or a member of a pool described under § 4–105(c)(1)(ii) of the Education Article, above ~~\$100,000~~ **\$400,000**.

(c) A county board of education may not raise the defense of sovereign immunity to any claim of ~~\$100,000~~ **\$400,000** or less.

**Article—Education**

&lt;&lt; MD EDUC § 4-105 &gt;&gt;

**4-105.**

(a)(1) Each county board shall carry comprehensive liability insurance to protect the board and its agents and employees.

(2) The purchase of ~~this~~ insurance **in accordance with paragraph (1) of this subsection** is a valid educational expense.

(b)(1) The State Board shall establish standards for these insurance policies, including a minimum liability coverage of not less than ~~\$100,000~~ **\$400,000** for each occurrence.

(2) The policies purchased under this section shall meet these standards.

(c)(1) A county board complies with this section if it:

(i) Is individually self-insured for at least ~~\$100,000~~ **\$400,000** for each occurrence under the rules and regulations adopted by the State Insurance Commissioner; or

(ii) Pools with other public entities for the purpose of self-insuring property or casualty risks under Title 19, Subtitle 6 of the Insurance Article.

(2) A county board that elects to self-insure individually under this subsection periodically shall file with the State Insurance Commissioner, in writing, the terms and conditions of the self-insurance.

(3) The terms and conditions of this individual self-insurance:

(i) Are subject to the approval of the State Insurance Commissioner; and

(ii) Shall conform with the terms and conditions of comprehensive liability insurance policies available in the private market.

(d) A county board shall have the immunity from liability described under § 5-518 of the Courts and Judicial Proceedings Article.

&lt;&lt; Note: MD CTS &amp; JUD PRO § 5-518 &gt;&gt;

&lt;&lt; Note: MD EDUC § 4-105 &gt;&gt;

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

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2016.

Became law without the Governor's signature as of midnight, May 28, 2016, pursuant to Md. Const., Art. II, § 17(c).  
Effective date: October 1, 2016.

**Department of Legislative Services**  
Maryland General Assembly  
2023 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

Senate Bill 686

(Senator Smith)

Judicial Proceedings

Judiciary

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**Civil Actions - Child Sexual Abuse - Definition, Damages, and Statute of  
Limitations (The Child Victims Act of 2023)**

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This bill establishes that an action for damages arising out of an alleged incident or incidents of “sexual abuse,” as defined under the bill, that occurred while the victim was a minor may be filed at any time. However, no action for damages that would have been barred by a time limitation before October 1, 2023, may be brought if the alleged victim of abuse is deceased at the commencement of the action. The bill must be construed to apply retroactively to revive any action that was barred by the statutory period of limitations applicable before October 1, 2023.

The bill repeals existing provisions addressing the filing of actions for damages arising out of incidents of child sexual abuse under § 5-117 of the Courts and Judicial Proceedings Article and also repeals provisions from Chapters 12 and 656 of 2017 establishing that the statute of repose in existing statute must be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017. The bill’s provisions are severable.

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**Fiscal Summary**

**State Effect:** Special fund expenditures increase if the bill results in litigation and payments of claims against the State that would not be allowed to proceed under existing statute. Reimbursable fund expenditures for the State Treasurer’s Office increase by \$70,700 in FY 2024. Future years reflect annualization and inflation. Potential increase in general fund expenditures for impacted State agencies, as discussed below. Revenues are not materially affected.

**Local Effect:** Local expenditures increase for insurance-related expenses and if the bill results in increased litigation and payments of claims against local government entities, as discussed below. Revenues are not affected.

**Small Business Effect:** Potential meaningful impact on small business law firms that can litigate or proceed with cases as a result of the bill.

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## Analysis

**Bill Summary:** “Sexual abuse” means any act that involves an adult allowing or encouraging a child to engage in:

- obscene photography, films, poses, or similar activity; pornographic photography, films, poses, or similar activity; or prostitution;
- incest;
- rape;
- sexual offense in any degree; or
- any other sexual conduct that is a crime.

Notwithstanding any time limitation under a statute of limitations, a statute of repose, the Maryland Tort Claims Act (MTCA), the Local Government Tort Claims Act (LGTCa), or any other law, an action for damages arising out of an alleged incident or incidents of sexual abuse, as defined under the bill, that occurred while the victim was a minor may be filed at any time. However, no action for damages that would have been barred by a time limitation before October 1, 2023, may be brought if the alleged victim of abuse is deceased at the commencement of the action.

A party may appeal from an interlocutory order entered by a circuit court in a civil case denying a motion to dismiss a claim filed under the bill (*i.e.*, an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor) if the motion is based on a defense that the applicable statute of limitations or statute of repose bars the claim and any legislative action reviving the claim is unconstitutional.

Except as provided under the MTCA, LGTCa, and specified provisions pertaining to county boards of education, the total amount of noneconomic damages that may be awarded to a single claimant in an action against a single defendant for injuries arising from an incident or occurrence that would have been barred by a time limitation before October 1, 2023, may not exceed \$1.5 million. If the liability of a local government, a county board of education, the State, or the State’s units arises under a claim of sexual

abuse, the liability may not exceed \$890,000 to a single claimant for injuries arising from an incident or occurrence.

The bill increases the minimum comprehensive liability coverage county boards of education must carry under statute to reflect this \$890,000 liability limit with respect to sexual abuse claims. Consistent with existing statute, a county board of education may raise the defense of sovereign immunity to any amount above the limit of its insurance policy. If a county board of education is self-insured or a member of a public entity self-insurance pool, the board may raise the defense of sovereign immunity to any amount above \$890,000 to a single claimant for claims arising from each incident or occurrence if the liability of the board arises from a claim of sexual abuse.

**Current Law:** Pursuant to Chapters 12 and 656, under § 5-117 of the Courts and Judicial Proceedings Article, an action for damages arising out of an alleged incident or incidents of sexual abuse, as defined in § 5-701 of the Family Law Article, that occurred while the victim was a minor must be filed at any time before the victim reaches the age of majority. Alternatively, such an action must be filed within the later of 20 years after the date on which the victim reaches the age of majority, or 3 years after the date that the defendant is convicted of a crime relating to the alleged incident or incidents under § 3-602 of the Criminal Law Article (sexual abuse of a minor) or the laws of another state or the United States that would be a crime under § 3-602 of the Criminal Law Article.

In an action brought more than seven years after the victim reaches the age of majority, damages may be awarded *against a person or governmental entity that is not the alleged perpetrator* of the sexual abuse only if (1) the person or governmental entity owed a duty of care to the victim; (2) the person or governmental entity employed or exercised some degree of responsibility or control over the alleged perpetrator; and (3) there is a finding of gross negligence on the part of the person or governmental entity. “Alleged perpetrator” means the individual alleged to have committed the specific incident or incidents of sexual abuse that serve as the basis of an action arising from alleged sexual abuse under § 5-117 of the Courts and Judicial Proceedings Article.

Chapters 12 and 656 also include a “statute of repose,” which prohibits a person from filing an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor *against a person or governmental entity that is not the alleged perpetrator* more than 20 years after the date on which the victim reaches the age of majority.

Causes of action filed under the Acts’ provisions are exempt from the notice of claim requirement under LGTCA and the submission of a written claim requirement, denial of claim requirement, and the statute of limitations under MTCA.

Chapters 12 and 656 may not be construed to apply retroactively to revive any action that was barred by the statutory period of limitations applicable before October 1, 2017. The statute of repose created by the Acts must be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the statutory period of limitations applicable before October 1, 2017.

### *Statute of Limitations – In General*

In general, the statute of limitations for a civil action requires that a civil action must be filed within three years from the date it accrues unless another statutory provision permits a different period of time within which an action can be commenced. The “discovery rule” is applicable generally in all actions, and the cause of action accrues when the claimant in fact knew or reasonably should have known of the wrong. *Poffenberger v. Risser*, 290 Md. 631 (1981).

If a cause of action accrues to a minor, the general three-year statute of limitations is tolled until the child reaches the age of majority. Thus, on becoming an adult at age 18, a child victim of a tort other than one involving sexual abuse is required to file the suit before the victim reaches age 21.

### *Interlocutory Orders*

In general, an interlocutory order is a temporary order issued during litigation. Because interlocutory orders are not final, they cannot be immediately appealed. Section 12-303 of the Courts and Judicial Proceedings Article authorizes a party to appeal from specified types of interlocutory orders entered by a circuit court in a civil case.

### *Noneconomic Damages*

There is no cap on economic damages or punitive damages in Maryland. However, there are caps on noneconomic damages. For personal injury actions, “noneconomic damages” means pain, suffering, inconvenience, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injury. “Noneconomic damages” does not include punitive damages.

In any action for damages for personal injury (excluding medical malpractice) in which the cause of action arises on or after October 1, 1994, an award for noneconomic damages may not exceed \$500,000. This limitation increases by \$15,000 on October 1 of each year beginning on October 1, 1995. The increased amount must apply to causes of action arising between October 1 of that year and September 30 of the following year, inclusive. (As of October 1, 2023, this cap will be \$935,000.) This limitation applies in a personal injury

action to each direct victim of tortious conduct and all persons who claim injury by or through that victim.

In a jury trial, the jury may not be informed of this limitation on damages. If the jury awards an amount for noneconomic damages that exceeds the applicable limitation, the court must reduce the amount to conform to the limitation.

### *Maryland Tort Claims Act*

In general, the State is immune from tort liability for the acts of its employees and cannot be sued in tort without its consent. Under MTCA, the State statutorily waives its own common law (sovereign) immunity on a limited basis. MTCA applies to tortious acts or omissions, including State constitutional torts, by State personnel performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. Under MTCA, the State essentially “waives sovereign or governmental immunity and substitutes the liability of the State for the liability of the state employee committing the tort.” *Lee v. Cline*, 384 Md. 245, 262 (2004).

MTCA covers a multitude of personnel, including some local officials and nonprofit organizations. In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State’s color of authority or sovereign immunity and may be held personally liable.

In general, MTCA limits State liability to \$400,000 to a single claimant for injuries arising from a single incident. However, for claims arising on or after July 1, 2022, if liability of the State or its units arises from intentional tortious acts or omissions or a violation of a constitutional right committed by a law enforcement officer, the following limits on liability apply: (1) the combined award for both economic and noneconomic damages may not exceed a total of \$890,000 for all claims arising out of the same incident or occurrence, regardless of the number of claimants or beneficiaries who share in the award; and (2) in a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed \$1,335,000, regardless of the number of claimants or beneficiaries who share in the award.

The State does not waive its immunity for punitive damages. Attorney’s fees are included in the liability cap under MTCA. Under MTCA, attorneys may not charge or receive a fee that exceeds 20% of a settlement or 25% of a judgment.

### *Local Government Tort Claims Act*

LGTCa defines local government to include counties, municipal corporations, Baltimore City, and various agencies and authorities of local governments such as

community colleges, county public libraries, special taxing districts, nonprofit community service corporations, sanitary districts, housing authorities, and commercial district management authorities.

In general, LGTCA limits the liability of a local government to \$400,000 per individual claim and \$800,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). However, for claims arising on or after July 1, 2022, if the liability of a local government arises from intentional tortious acts or omissions or a violation of a constitutional right committed by a law enforcement officer, the following limits on liability apply: (1) the combined award for both economic and noneconomic damages may not exceed a total of \$890,000 for all claims arising out of the same incident or occurrence, regardless of the number of claimants or beneficiaries who share in the award; and (2) in a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed \$1,335,000, regardless of the number of claimants or beneficiaries who share in the award.

A local government must provide its employees a legal defense in any action that alleges damages resulting from tortious acts or omissions committed by an employee within the scope of employment with the local government. LGTCA further establishes that the local government is liable for tortious acts or omissions of its employees acting within the scope of employment, so long as the employee did not act with actual malice. Thus, LGTCA prevents local governments from asserting a common law claim of governmental immunity from liability for such acts or omissions of its employees. A person may not execute against an employee on a judgment rendered for tortious acts or omissions committed by the employee within the scope of employment with a local government. However, an employee is fully liable for all damages awarded in an action in which it is found that the employee acted with actual malice. In circumstances involving actual malice, the judgment may be executed against the employee and the local government may seek indemnification for any sums it is required to pay under LGTCA.

A local government is not liable for punitive damages. However, a local government, subject to the liability limits, may indemnify an employee for a judgment for punitive damages entered against the employee. 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.

#### *Limits on Liability for County Boards of Education*

County boards of education are not covered under LGTCA. However, a county board of education may raise the defense of sovereign immunity to any amount claimed above the limit of its insurance policy or, if self-insured or a member of an insurance pool, above

\$400,000. A county board of education may not raise the defense of sovereign immunity to any claim of \$400,000 or less. Each county board of education must carry comprehensive liability insurance to protect the board and its agents and employees. The purchase of this insurance is a valid educational expense. The State Board of Education (SBE) must establish standards for these insurance policies, including a minimum liability coverage of not less than \$400,000 for each occurrence. The policies purchased must meet the standards established by SBE. A county board complies with this requirement if it (1) is individually self-insured for at least \$400,000 for each occurrence under the rules and regulations adopted by the Insurance Commissioner or (2) pools with other public entities for the purpose of self-insuring property or casualty risks.

A county board of education must be joined as a party to an action against a county board employee, county board member, or volunteer that alleges damages resulting from a tortious act or omission committed by the employee in the scope of employment, by the county board member within the scope of the member's authority, or by the volunteer within the scope of the volunteer's services or duties.

A county board employee acting within the scope of employment, without malice and gross negligence, is not personally liable for damages resulting from a tortious act or omission for which a limitation of liability is provided for the county board, including damages that exceed the limitation on the county board's liability. Similar provisions apply to a county board member. In addition, a county board member is immune as an individual from civil liability for any act or omission if the member is acting within the scope of the member's authority; without malice; and in a discretionary capacity.

A volunteer who acts within the scope of the volunteer's services or duties is not personally liable for damages resulting from a tortious act or omission beyond the limits of any personal insurance the volunteer may have unless the damages were the result of the volunteer's negligent operation of a motor vehicle or the damages were the result of the volunteer's willful, wanton, malicious, reckless, or grossly negligent act or omission.

A judgment in tort for damages against a county board employee acting within the scope of employment, a county board member acting within the scope of the member's authority, or a volunteer acting within the scope of the volunteer's services or duties must be levied against the county board only and may not be executed against the county board employee, the county board member, or the volunteer personally.

**State Expenditures:** Special fund expenditures for the State Insurance Trust Fund (SITF) increase if the bill results in litigation and payments in cases against the State from prospective claims that would be barred under existing statute and retroactive claims that are revived. General fund expenditures increase for State agencies subject to higher SITF premiums/assessments if SITF incurs losses from MTCA payments as a result of the

bill. The extent of any such increase cannot be reliably estimated at this time. The bill (1) allows an action for damages arising out of child sexual abuse to be filed at any time and (2) establishes a higher liability limit under MTCA for cases arising from child sexual abuse.

### *State Treasurer's Office*

The Treasurer's Office advises that the bill has a substantial impact on SITF based on (1) an increase in claims and lawsuits, particularly older claims; (2) a diminished ability to investigate claims, preserve evidence, and defend against lawsuits; (3) increased litigation expenses, settlement costs, and higher verdicts; (4) the inability to properly reserve against future losses; and (5) potential additional liability for the State.

MTCA limits State liability to \$400,000 to a single claimant for injuries arising from a single incident. The bill increases this limit to \$850,000 in claims arising from sexual abuse. In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State's color of authority or sovereign immunity and may be held personally liable.

Agencies pay premiums to SITF that are comprised of an assessment for each employee covered and SITF payments for torts committed by the agency's employees. The portion of the assessment attributable to losses is allocated over five years. The Treasurer is charged with setting premiums "so as to produce funds that approximate the payments from the fund." (See *Md. State Fin. & Proc. Code Ann.* § 9-106(b).) The actuary assesses SITF's reserves and each agency's loss experience for the various risk categories, which include tort claims and constitutional claims. An agency's loss history, consisting of settlements and judgments incurred since the last budget cycle, comprises part of the agency's annual premium. That amount is electronically transferred to SITF from the appropriations in an agency's budget.

The Treasurer's Office has historically advised that while an employee who committed child sexual abuse is likely not covered under MTCA, the State may still face liability through other causes of action (*e.g.*, negligent hiring, retention, etc.). The Treasurer's Office has received multiple sexual abuse cases; none of the current cases have occurred outside of the three-year limitations period. While these cases are not typical, they usually involve numerous minors or claimants. According to the Treasurer's Office, claims filed pursuant to the bill may be so old that the office will likely experience extreme difficulties in conducting a proper investigation and defense of the claim. Other potential effects include litigation costs and an inability to reserve against future losses. The Treasurer's Office advises that on average, a case with higher value claims results in approximate expenses of \$100,000 per case, including the use of a sexual abuse expert in litigation, which can cost \$50,000 per case.

The Treasurer's Office further advises that its staff is currently working at full capacity and that the volume and complexity of cases expected under the bill require an additional adjuster to investigate claims, at a cost of \$70,749 in fiscal 2024 and increasing to \$96,096 by fiscal 2028. Additional general fund expenditures may be incurred should the Office of the Attorney General require additional staff to accommodate the increased complexity and volume of new suits filed against the State.

### *Judiciary*

The bill has an operational impact on the courts, the extent of which depends on the volume of previously time-barred cases filed under the bill. The Judiciary advises that because the number of new cases is speculative, it cannot estimate the amount of time or other judicial resources would be needed to adjudicate the potential new cases. Regardless, general fund expenditures for the Judiciary may increase to the extent additional resources are needed to process additional cases.

For context, the number of new cases filed in other states during limited revival of claims "windows" has varied. According to Child USA, approximately 11,000 cases were filed in New York during the state's two-year window for revival of child sexual abuse claims, which closed in August 2021; approximately 1,200 cases were filed under New Jersey's two-year revival window (closed November 2021).

### *Maryland State Department of Education*

The Maryland State Department of Education advises that it can establish new standards for local board of education insurance policies that reflect the increase in the required minimum liability coverage with existing budgeted resources.

**Local Expenditures:** Local expenditures increase if the bill results in litigation and payments in cases brought under the bill's provisions that would otherwise not occur under existing statute. The extent of any such increase cannot be reliably estimated at this time. Insurance-related expenditures also increase because of the bill's alteration of liability limits, increased insurance requirements for local boards of education, and the elimination of the statute of limitations.

Anne Arundel County Public Schools (AACPS) advises that it cannot quantify the fiscal impact of the bill due to uncertainty regarding the potential increase in claims. However, AACPS does advise that the bill increases the school district's exposure to claims for damages by repealing the statute of limitations and conditions that must be met before damage claims can proceed against government entities who were not the perpetrator of the sexual abuse.

As noted above, local boards of education are not covered under LGTCA. Some local governments covered under LGTCA obtain insurance coverage through the Local Government Insurance Trust (LGIT), a self-insurer that is wholly owned by its member local governments. LGIT's main purpose is to provide joint self-insurance programs or pools for towns, cities, and counties in the State. (LGIT's current membership includes 148 towns and cities, 17 counties, and 24 sponsored entities.) LGIT assesses annual premiums based on the projected claims and historical losses of its members. Any local governments that are not members of LGIT either self-insure or purchase insurance coverage from a private carrier.

LGIT has historically advised that (1) the types of causes of action affected by the bill are rarely filed against a local government employee or official and (2) while an employee who committed child sexual abuse is likely not covered under LGTCA, LGIT would still defend the local government in related actions. LGIT advises that given the complexity of cases affected by the bill, LGIT would likely retain outside counsel to represent the defendant(s), at a cost of at least \$200,000 per case. In addition to attorneys' fees, the litigation costs in these types of cases include thousands of dollars for independent medical evaluations and tens of thousands of dollars each for expert witnesses and depositions. Older claims may involve significant investigative costs, including the costs associated with locating and interviewing potential witnesses.

LGIT further advises that an increase in the number of claims alleging sexual abuse by employees of local governments increases insurance premiums for all of its members, even those without a negative claims' history. Furthermore, the increase in the statutory cap and the expansion of the limitations period also expose LGIT to previously unanticipated losses, based upon actuarial studies, and will erode the accumulated surplus maintained to satisfy existing claims and those future claims that can be reasonably anticipated. Given the uncertainty on the number of potential cases, LGIT cannot reliably predict the premium increases and risk to member equity at this time.

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### **Additional Information**

**Prior Introductions:** Similar legislation has been introduced within the last three years. See SB 134 and HB 263 of 2021 and HB 974 of 2020.

**Designated Cross File:** HB 1 (Delegate Wilson) - Judiciary.

**Information Source(s):** Maryland Association of Counties; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Anne Arundel County Public Schools; Child USA; Local Government Insurance Trust; Department of Legislative Services

**Fiscal Note History:** First Reader - February 23, 2023  
km/jkb Third Reader - March 27, 2023  
Revised - Amendment(s) - March 27, 2023

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