

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1019 (Delegate Schmidt)
Health and Government Operations

Human Relations - Protection of the Free Exercise of Religion

This bill generally prohibits a governmental authority from substantially burdening a person's exercise of religion even if the burden results from a rule of general applicability. A person's exercise of religion may be substantially burdened only if the governmental authority demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest and the least restrictive means of furthering that compelling governmental interest. The bill authorizes a person aggrieved by a governmental authority to seek specified relief. The bill applies to a governmental action taken by a governmental authority on or after July 1, 2025, including a governmental action taken pursuant to a law, regulation, policy, guideline, or other authority that was in effect prior to July 1, 2025, unless State law expressly excludes that governmental action from coverage under the bill. **The bill takes effect July 1, 2025.**

Fiscal Summary

State Effect: State expenditures increase, potentially significantly, to account for costs associated with litigation anticipated under the bill, as generally discussed below. Revenues are not materially affected.

Local Effect: Local expenditures increase, potentially significantly, to account for costs associated with litigation anticipated under the bill, as generally discussed below. Local revenues are not materially affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Definitions

“Compelling governmental interest” means an interest arising from a substantial threat to public health, safety, peace, order, or general welfare.

“Exercise of religion” means the practice or observance of religious beliefs, whether or not compelled by or central to a system of religious belief, including observance under Article 36 of the Declaration of Rights of the Maryland Constitution or the Free Exercise Clause of the First Amendment to the U.S. Constitution.

“Governmental action” means a law, a regulation, an administrative order, a decision, a practice, or any other exercise of governmental authority.

“Governmental authority” includes (1) the State, a county, or a municipal corporation or any subdivision of the State, a county, or a municipal corporation and (2) any official or other individual acting within the scope of their employment by any such entity.

“Person” includes an individual and a religious organization, association, or corporation.

Available Relief

A person aggrieved by a violation of the bill may obtain appropriate relief in a civil action in a court of competent jurisdiction. Appropriate relief may include injunctive relief and compensatory damages including reasonable attorney’s fees. A person aggrieved by an official or employee of the State, a county, or a municipal corporation (or any subdivision of such an entity) may seek (1) injunctive relief against the official, employee, or the entity by which the official or employee is employed; (2) compensatory damages against the entity by which the official or employee is employed; and (3) if the official or employee was acting clearly outside the scope of their employment, compensatory damages against the official or employee.

The rights to free exercise of religion may be raised by a plaintiff in an action for relief under the bill or as a defense to an action.

A claim for damages is subject to the Local Government Tort Claims Act (LGTCa) or the Maryland Tort Claims Act (MTCA).

Miscellaneous Provisions

The bill may not be construed to (1) prohibit any governmental action “providing” funding, benefits, or exemptions to the extent permitted under the Maryland Declaration of Rights or the Maryland Constitution or (2) affect, interpret, or address in any way the substance of the Maryland Declaration of Rights or the Maryland Constitution. The protection of religious liberty is in addition to, and does not reduce, the protections provided under the Maryland Declaration of Rights or the Maryland Constitution. The bill specifies that “providing” does not include the denial of funding, benefits, or exemptions.

Current Law:

Article 36 of the Maryland Declaration of Rights

Article 36 of the Maryland Declaration of Rights sets forth that all persons are equally entitled to protection in their religious liberty. Protections currently specified in Article 36 include that (1) no person ought to be molested by any law on account of religious persuasion, profession, or practice, unless, under the color of religion, the person disturbs the good order, peace, or safety of the State, or injures the rights of others; (2) no person may be compelled to frequent, maintain, or generally contribute to maintain any place of worship or ministry; and (3) no person who is otherwise competent may be deemed incompetent as a witness or juror on the basis of religious belief.

Free Exercise of Religion – Generally

In *Sherbert v. Verner*, 374 U.S. 398 (1963), the Supreme Court introduced a new standard for the review of free exercise claims and held that if a law substantially burdens the claimant’s free exercise of a sincerely held religious belief, the state must show a compelling governmental interest in the enforcement of the law in order to prevail (the Supreme Court in a subsequent case stated that it did not apply the least restrictive means standard). In *Sherbert*, the Supreme Court held that a Seventh Day Adventist who was terminated from her job rather than work on Saturday, her Sabbath, was entitled to unemployment compensation.

However, in *Employment Division v. Smith*, 494 U.S. 872 (1990), the U.S. Supreme Court held that the states may prohibit or regulate conduct of general applicability even if the prohibition incidentally interferes with a person’s religious practices, unless it can be shown that the law was motivated by a desire to interfere with religion. In *Smith*, the Supreme Court held that two members of the Native American Church were not exempt from a law prohibiting the use of peyote on religious freedom grounds.

In response to the *Smith* decision, Congress passed the 1993 Religious Freedom Restoration Act (RFRA), which provided that governments may not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person is in furtherance of a compelling state interest and is the least restrictive means of furthering that compelling state interest.

In *City of Boerne v. Flores*, 521 U.S. 507 (1997), a decision by a local zoning authority to deny a church a building expansion permit was challenged under RFRA. The U.S. Supreme Court held that RFRA was unconstitutional as applied to State and local governments and that the compelling interest test provided for in the federal RFRA to protect the inalienable constitutional right of free exercise of religion must be adopted by a state through legislative act or court decision in order to apply to state or local government action.

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. MTCA covers a multitude of personnel, including some local officials and nonprofit organizations.

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). Lawsuits filed under MTCA typically proceed against the State as the named defendant, not the State employee.

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. Statute specifies additional provisions related to claims of child sexual abuse.

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 establishes that a 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.

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). Higher liability limits apply to claims involving law enforcement officers that arise on or after July 1, 2022, and claims involving child sexual abuse.

State and Local Fiscal Effect: State and local expenditures increase, potentially significantly, to the extent that claims are filed against the State or local governments by persons asserting that their rights to the free exercise of religion are substantially burdened, as specified in the bill. The magnitude of any impact depends on the bill's effect on religious exercise claims, which cannot be reliably predicted beforehand; as evidenced by the selected cases referenced above, potential litigation related to the exercise of religion may vary widely in scope (*e.g.*, zoning decisions, employment actions, health- and education-related actions, etc.). Further, regardless of the merits of any potential claim and despite the possibility that in many cases a State or political subdivision may be able to meet the compelling governmental interest and least restrictive means test as specified in the bill, it is anticipated that the bill likely results in increased litigation-related costs, some of which are further detailed below.

Office of the Attorney General

The Office of the Attorney General (OAG) estimates the need for additional resources to represent the State in additional matters brought under the bill. The bill exposes the State to potentially significantly more litigation for allegations of government entities burdening a person's exercise of religion, and permits successful plaintiffs to recover reasonable attorneys' fees, which increases complexities and costs associated with settlements.

Accordingly, OAG advises of the need for *at least* one additional assistant Attorney General, with expenditures of approximately \$185,500 on an annual basis.

State Treasurer's Office

The State Treasurer's Office (STO) similarly advises of the potential for a significant increase in the number of claims filed under MTCA. Claims under MTCA are paid out of the State Insurance Trust Fund (SITF), which is administered by the office. 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. An agency's loss history, consisting of settlements and judgments incurred since the last budget cycle, comprises part of the agency's annual premium.

According to STO, the language in the bill is ambiguous as to damages, although it explicitly provides for compensatory damages including reasonable attorney's fees and states that a claim is subject to MTCA. Under MTCA, attorney's fees are capped at 20% of a settlement or 25% of a judgment; the bill specifies that "reasonable attorney's fees" may be awarded as appropriate relief. According to STO, in some cases, the attorney's fees and costs can far exceed the value of the actual claim. Consequently, STO advises that instead of analyzing and litigating civil rights cases (involving religious exercise) based on merit, the State may be forced to settle cases that it otherwise would have litigated to a verdict. STO further advises that religious civil rights litigation is increasing in general, and lawyers and law firms that previously declined to pursue such cases are now undertaking litigation because of a perceived increased likelihood of a plaintiff's verdict in some jurisdictions; the ability to recoup attorney's fees under the bill is likely to exacerbate this effect.

STO advises that its staff is currently working at full capacity and that the volume and complexity of cases expected under the bill likely requires two additional positions to investigate claims, at a cost of \$167,876 in fiscal 2026 and increasing to \$226,810 by fiscal 2030.

Impact on Local Governments

Similar to the impacts noted above, local expenditures under the bill may increase significantly for litigation, payments of claims, and insurance costs. For example, some local governments covered under the LGTCA obtain insurance coverage through the Local Government Insurance Trust (LGIT), a self-insurer that is wholly owned by its member local governments. LGIT assesses annual premiums based on the projected claims and losses of its members. If the number of claims increases as a result of the bill, insurance premiums for all of its members will also increase, even those without a negative claims history.

For example, Baltimore County advises that the bill may expose the county to *potentially* more litigation and ambiguous penalties. The Maryland Municipal League generally notes that the bill increases municipal expenditures to defend against constitutional challenges and related claims.

Small Business Effect: The bill has a potentially meaningful impact on small business law firms that may litigate cases under the bill.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Baltimore, Carroll, Montgomery, Queen Anne's, and St. Mary's counties; Maryland Municipal League; Office of the Attorney General; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Department of Human Services; Department of Public Safety and Correctional Services; Department of Legislative Services

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