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Pa. Bill Would Raise State Damages Cap, but Plaintiffs Attorneys Are Not On Board

The plaintiffs bar has long fought to change the cap, but some lawyers said SB 1300 is not the way to do it.

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What You Need to Know

- A bill recently passed in the Pennsylvania Senate would raise the cap on damages against state agencies in certain cases.
- The bill has support from state agencies, but plaintiffs attorneys are critical of the legislation.
- The proposal comes as a significant challenge to the cap is brewing before the Pennsylvania Supreme Court.

A bill making its way through the Pennsylvania legislature would raise the state's nearly 50-year-old cap on damages against governmental agencies.

And government agencies are on board. Plaintiffs attorneys, on the other hand, are not as enthusiastic.

Senate Bill 1300 proposes an increase to the \$250,000 limit on damages a single plaintiff may collect against a state entity, raising the cap to \$1 million when the case involves "permanent dismemberment or death." The Republican-led bill passed in the Senate on

Oct. 8 by a 26-24 vote, almost entirely down party lines, and is currently before the House judiciary committee.

But despite the prospect of higher damages, plaintiffs attorneys are critical of the bill. The plaintiffs bar has long fought to change the cap, but some lawyers said SB 1300 is not the way to do it.

Not 'Serious'

"I don't think it's a very serious piece of legislation to try and correct what the problem has been for a while now, which is that the current cap of \$250,000 simply is too low because it's never been adjusted for inflation," said David Senoff, First Law Strategy Group founding member.

The \$250,000 limit has remained unchanged since it was enacted in 1978. If it were adjusted for inflation, it would equate to about \$1.04 million in 2022 money, according to a report on the cap from the Legislative Budget and Finance Committee.

Senoff said that while he is grateful the legislature is considering an increase, the \$1 million cap proposed in SB 1300 does not keep pace with the inflation that has already happened, let alone the inflation that will continue into the future. Without including a cost of living adjustment, he said, "You end up 20 years from now having the same conversation."

Senoff said he would also prefer to see a bill that raises the cap across all injuries, not just the most severe ones. He contended that restricting the increased limit to only instances of dismemberment or death creates a two-tiered system with a line that can be difficult to define.

However, Dechert special counsel Robert Heim said the bill struck a balance between offering severely injured plaintiffs greater remedies while still limiting state entities' financial burdens.

"It's good for catastrophically injured plaintiffs," Heim said. "It'll be difficult for some commonwealth agencies. Insurance rates may go up somewhat, but overall, it strikes me as a good development on both sides."

Heim said while some plaintiffs attorneys may argue the \$1 million cap is inadequate, it would cover most injury claims against the state. In fact, the Legislative Budget and

Finance Committee's report found the current \$250,000 limit has been sufficient for 99% of claims against the state.

"It strikes me as such a sensible compromise that it will draw enough votes to pass," Heim said.

That's not a sentiment shared by **Kline & Specter's Thomas Kline**, a longtime opponent of the damages cap. Kline posited that even if the House manages to vote before the fast-approaching conclusion of the 2024 legislative session, there is almost no chance the bill will pass and go on to receive the governor's approval.

Kline described the bill as "lipstick on a pig."

"It's terrible," Kline asserted, "and it does nearly nothing to improve the rights of people who are injured in Pennsylvania by negligence of transit authorities as well as by municipal authorities and school districts."

Kline said that, to his knowledge, SB 1300 is the General Assembly's first-ever bill seeking to amend the state damages cap.

Like Senoff, Kline asserted that SB 1300 does not represent a serious attempt to fix issues with the cap. Instead, Kline contended the bill was a political statement made as the cap comes under threat in the Pennsylvania court system.

'Before the Supreme Court Oversteps'

A high-profile challenge to the cap is brewing before the Pennsylvania Supreme Court, and SB 1300 is aimed at getting ahead of it.

The bill's prime sponsor—Sen. Wayne Langerholc Jr., R-35—noted the brewing litigation in his memorandum introducing the legislation. He framed the bill as an effort to address the issue legislatively "before the Supreme Court oversteps" by potentially ruling the cap to be unconstitutional.

In an Oct. 8 press release, Langerholc contended the bill protects state and local governments from the prospect of unlimited damages and "proactively safeguards the

authority of the General Assembly and protects the fiscal stability of both the commonwealth and local government entities from judicial interference."

The issue of the state damages cap is headed to the Supreme Court in the form of *Freilich v. SEPTA*—the case of a woman whose \$7 million stipulated verdict against SEPTA in a bus crash case was molded to \$250,000 in accordance with the cap. The plaintiff, represented by Kline, claims the cap violates her constitutional rights to a remedy and a jury trial.

Freilich is Kline's second go at challenging the constitutionality of the state damages cap before the Pennsylvania Supreme Court. His first attempt, in 2014, was unsuccessful, but the high court suggested in its ruling that it might be open to future challenges under different circumstances.

Freilich is meant to be that challenge.

So far in *Freilich*, both the trial court and the Commonwealth Court upheld the cap but expressed concerns about its fairness. The Supreme Court agreed to take up the matter in March but has not yet heard oral arguments.

The case has drawn widespread interest from entities that stand to be impacted, with more than 25 amici submitting briefs. The amici include transit agencies, Pennsylvania counties, and the cities of Philadelphia and Pittsburgh.

Several of the amici—including the Pennsylvania Chamber of Business and Industry, the Pennsylvania Municipal League, and the Pennsylvania Public Transportation Association—have also backed SB 1300, according to Langerholc's Oct. 8 press release.

Heim, who represents the Pennsylvania Public Transportation Association and other related amici, said the *Freilich* brought into focus how little recourse the current cap affords some catastrophically injured plaintiffs. However, he asserted, the proper avenue for change is through the legislature.

"The sponsors of the bill should be commended," Heim said. "It is a long time coming, and I'm sure they're mindful of the lawsuit that was brought by Ms. Freilich."

Senoff said he thinks its unlikely the high court will attempt to set a new cap when it rules on *Freilich*. He said the justices might determine that the cap is unconstitutional or too low, but in that case they would likely leave the actual number up to the legislature.

"They have the power just to cut the cap out," he said, "but you need a little bit more of a lighter touch than to just literally cut the words \$250,000 out of the statute."