

SENATE BILL 789

D3

4r2627
CF 4r1940

By: **Senators Ramirez, Raskin, and Stone**
Introduced and read first time: January 31, 2014
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Civil Actions – Noneconomic Damages – Catastrophic Injury**

3 FOR the purpose of altering the maximum amount of noneconomic damages that may
4 be recovered in health care malpractice and other civil actions for a catastrophic
5 injury under certain circumstances; providing for certain procedures; defining
6 certain terms; and generally relating to altering the maximum amount of
7 noneconomic damages that may be recovered in health care malpractice and
8 other civil actions for a catastrophic injury under certain circumstances.

9 BY repealing and reenacting, with amendments,
10 Article – Courts and Judicial Proceedings
11 Section 3–2A–09(a) and (b) and 11–108
12 Annotated Code of Maryland
13 (2013 Replacement Volume and 2013 Supplement)

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

16 **Article – Courts and Judicial Proceedings**

17 3–2A–09.

18 (a) [This] **EXCEPT AS PROVIDED IN SUBSECTION (B)(3) OF THIS**
19 **SECTION, THIS** section applies to an award under § 3–2A–05 of this subtitle or a
20 verdict under § 3–2A–06 of this subtitle for a cause of action arising on or after
21 January 1, 2005.

22 (b) (1) (i) Except as provided in paragraph (2)(ii) of this subsection, an
23 award or verdict under this subtitle for noneconomic damages for a cause of action

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 arising between January 1, 2005, and December 31, 2008, inclusive, may not exceed
2 \$650,000.

3 (ii) The limitation on noneconomic damages provided under
4 subparagraph (i) of this paragraph shall increase by \$15,000 on January 1 of each year
5 beginning January 1, 2009. The increased amount shall apply to causes of action
6 arising between January 1 and December 31 of that year, inclusive.

7 (2) (i) Except as provided in subparagraph (ii) of this paragraph,
8 the limitation under paragraph (1) of this subsection shall apply in the aggregate to all
9 claims for personal injury and wrongful death arising from the same medical injury,
10 regardless of the number of claims, claimants, plaintiffs, beneficiaries, or defendants.

11 (ii) If there is a wrongful death action in which there are two or
12 more claimants or beneficiaries, whether or not there is a personal injury action
13 arising from the same medical injury, the total amount awarded for noneconomic
14 damages for all actions may not exceed 125% of the limitation established under
15 paragraph (1) of this subsection, regardless of the number of claims, claimants,
16 plaintiffs, beneficiaries, or defendants.

17 (3) (I) IN THIS PARAGRAPH, "CATASTROPHIC INJURY" HAS
18 THE MEANING STATED IN § 11-108 OF THIS ARTICLE.

19 (II) THE LIMITATION ON NONECONOMIC DAMAGES
20 PROVIDED UNDER PARAGRAPHS (1) AND (2) OF THIS SUBSECTION DOES NOT
21 APPLY TO AN AWARD UNDER § 3-2A-05 OF THIS SUBTITLE OR A VERDICT
22 UNDER § 3-2A-06 OF THIS SUBTITLE FOR A CAUSE OF ACTION ARISING ON OR
23 AFTER OCTOBER 1, 2014, IN WHICH IT IS DETERMINED BY A COURT IN A
24 POSTTRIAL MOTION OR A HEALTH CLAIMS ARBITRATION PANEL UNDER §
25 3-2A-05 OF THIS SUBTITLE THAT A HEALTH CARE PROVIDER'S NEGLIGENCE OR
26 OTHER WRONGFUL CONDUCT CAUSED A CATASTROPHIC INJURY.

27 11-108.

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

29 (2) "BLINDNESS" MEANS MODERATE TO TOTAL VISUAL
30 IMPAIRMENT THAT IS NOT CORRECTABLE BY STANDARD GLASSES, CONTACT
31 LENSES, MEDICATION, OR SURGERY AND THAT INTERFERES WITH THE ABILITY
32 TO PERFORM ACTIVITIES OF DAILY LIVING.

33 (3) "CATASTROPHIC INJURY" MEANS:

34 (I) DEATH; OR

1 **(II) PERMANENT IMPAIRMENT CONSTITUTED BY:**

2 **1. SPINAL CORD INJURY ASSOCIATED WITH SEVERE**
3 **PARALYSIS OF AN ARM, A LEG, OR THE TRUNK OR LOSS OF CONTINENCE OF THE**
4 **BOWEL OR BLADDER;**

5 **2. AMPUTATION OF AN ARM, A HAND, A FOOT, OR A**
6 **LEG INVOLVING THE EFFECTIVE LOSS OF USE OF THAT APPENDAGE;**

7 **3. SEVERE BRAIN OR CLOSED-HEAD INJURY AS**
8 **EVIDENCED BY:**

9 **A. SEVERE SENSORY OR MOTOR DISTURBANCES;**

10 **B. SEVERE COMMUNICATION DISTURBANCES;**

11 **C. SEVERE COMPLEX INTEGRATED DISTURBANCES**
12 **OF CEREBRAL FUNCTION;**

13 **D. SEVERE EPISODIC NEUROLOGICAL DISORDERS;**
14 **OR**

15 **E. OTHER BRAIN OR CLOSED-HEAD INJURY**
16 **CONDITIONS THAT ALONE OR IN COMBINATION ARE AT LEAST AS SEVERE IN**
17 **NATURE AS A SINGLE CONDITION DESCRIBED IN ITEMS A THROUGH D OF THIS**
18 **ITEM;**

19 **4. SEVERE INJURY TO A MAJOR INTERNAL ORGAN**
20 **THAT INTERFERES WITH THE ABILITY TO PERFORM ACTIVITIES OF DAILY**
21 **LIVING OR SHORTENS LIFE EXPECTANCY;**

22 **5. BLINDNESS;**

23 **6. LOSS OF REPRODUCTIVE ORGANS THAT RESULTS**
24 **IN AN INABILITY TO PROCREATE;**

25 **7. SEVERE PHYSICAL DEFORMITY; OR**

26 **8. MODERATE TO MAJOR BURNS AS CLASSIFIED**
27 **UNDER GUIDELINES ISSUED BY THE AMERICAN BURN ASSOCIATION.**

28 **[(2)] (4) (i) "Noneconomic damages" means:**

1 1. In an action for personal injury, pain, suffering,
2 inconvenience, physical impairment, disfigurement, loss of consortium, or other
3 nonpecuniary injury; and

4 2. In an action for wrongful death, mental anguish,
5 emotional pain and suffering, loss of society, companionship, comfort, protection, care,
6 marital care, parental care, filial care, attention, advice, counsel, training, guidance, or
7 education, or other noneconomic damages authorized under Title 3, Subtitle 9 of this
8 article.

9 (ii) “Noneconomic damages” does not include punitive damages.

10 **[(3)] (5)** “Primary claimant” means a claimant in an action for the
11 death of a person described under § 3–904(d) of this article.

12 **[(4)] (6)** “Secondary claimant” means a claimant in an action for the
13 death of a person described under § 3–904(e) of this article.

14 (b) (1) In any action for damages for personal injury in which the cause of
15 action arises on or after July 1, 1986, an award for noneconomic damages may not
16 exceed \$350,000.

17 (2) (i) Except as provided in paragraph (3)(ii) of this subsection, in
18 any action for damages for personal injury or wrongful death in which the cause of
19 action arises on or after October 1, 1994, an award for noneconomic damages may not
20 exceed \$500,000.

21 (ii) The limitation on noneconomic damages provided under
22 subparagraph (i) of this paragraph shall increase by \$15,000 on October 1 of each year
23 beginning on October 1, 1995. The increased amount shall apply to causes of action
24 arising between October 1 of that year and September 30 of the following year,
25 inclusive.

26 (3) (i) The limitation established under paragraph (2) of this
27 subsection shall apply in a personal injury action to each direct victim of tortious
28 conduct and all persons who claim injury by or through that victim.

29 (ii) In a wrongful death action in which there are two or more
30 claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of
31 the limitation established under paragraph (2) of this subsection, regardless of the
32 number of claimants or beneficiaries who share in the award.

33 **(4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF A**
34 **COURT IN A POSTTRIAL MOTION OR A HEALTH CLAIMS ARBITRATION PANEL**
35 **UNDER § 3–2A–05 OF THIS ARTICLE DETERMINES THAT THE DEFENDANT’S**
36 **NEGLIGENCE OR OTHER WRONGFUL CONDUCT CAUSED AT LEAST ONE**

1 CATASTROPHIC INJURY, THE LIMITATION ON NONECONOMIC DAMAGES
2 ESTABLISHED UNDER PARAGRAPH (2) OF THIS SUBSECTION SHALL BE TRIPLED.

3 (c) (1) An award by the health claims arbitration panel in accordance
4 with § 3-2A-05 of this article for damages in which the cause of action arose before
5 January 1, 2005, shall be considered an award for purposes of this section.

6 (2) AN AWARD BY A HEALTH CLAIMS ARBITRATION PANEL IN
7 ACCORDANCE WITH § 3-2A-05 OF THIS ARTICLE FOR DAMAGES IN WHICH THE
8 CAUSE OF ACTION AROSE ON OR AFTER OCTOBER 1, 2014, SHALL BE
9 CONSIDERED AN AWARD FOR PURPOSES OF THIS SECTION IF THE HEALTH
10 CLAIMS ARBITRATION PANEL DETERMINES THAT A CATASTROPHIC INJURY
11 OCCURRED.

12 (d) (1) In a jury trial, the jury may not be informed of the limitation
13 established under subsection (b) of this section.

14 (2) (i) [If] SUBJECT TO SUBPARAGRAPH (II) OF THIS
15 PARAGRAPH, IF the jury awards an amount for noneconomic damages that exceeds
16 the limitation established under subsection (b) of this section, the court shall reduce
17 the amount to conform to the limitation.

18 (II) IF THE JURY AWARDS AN AMOUNT FOR NONECONOMIC
19 DAMAGES THAT EXCEEDS THE LIMITATION ESTABLISHED UNDER SUBSECTION
20 (B)(2) OR (3) OF THIS SECTION, ON MOTION OF A PARTY THE COURT SHALL
21 DETERMINE WHETHER A CATASTROPHIC INJURY OCCURRED.

22 [(ii)] (III) In a wrongful death action in which there are two or
23 more claimants or beneficiaries, if the jury awards an amount for noneconomic
24 damages that exceeds the limitation established under subsection (b)(3)(ii) OR (4) of
25 this section, the court shall:

26 1. If the amount of noneconomic damages for the
27 primary claimants equals or exceeds the limitation under subsection (b)(3)(ii) OR (4)
28 of this section:

29 A. Reduce each individual award of a primary claimant
30 proportionately to the total award of all of the primary claimants so that the total
31 award to all claimants or beneficiaries conforms to the limitation; and

32 B. Reduce each award, if any, to a secondary claimant to
33 zero dollars; or

1 2. If the amount of noneconomic damages for the
2 primary claimants does not exceed the limitation under subsection (b)(3)(ii) **OR (4)** of
3 this section or if there is no award to a primary claimant:

4 A. Enter an award to the primary claimant, if any, as
5 directed by the verdict; and

6 B. Reduce each individual award of a secondary claimant
7 proportionately to the total award of all of the secondary claimants so that the total
8 award to all claimants or beneficiaries conforms to the limitation.

9 (e) The provisions of this section do not apply to a verdict under Title 3,
10 Subtitle 2A of this article for damages in which the cause of action arises on or after
11 January 1, 2005, **EXCEPT FOR A VERDICT IN A CAUSE OF ACTION ARISING ON OR**
12 **AFTER OCTOBER 1, 2014, IN WHICH IT IS DETERMINED BY A COURT IN A**
13 **POSTTRIAL MOTION OR A HEALTH CLAIMS ARBITRATION PANEL UNDER**
14 **§ 3-2A-05 OF THIS ARTICLE THAT A CATASTROPHIC INJURY OCCURRED.**

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2014.