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By: **Delegates Zirkin, Barve, Boteler, Cardin, DeBoy, Frank, Jennings,  
Malone, Minnick, Morhaim, Shank, Sophocleus, Trueschler, and Weir**  
Introduced and read first time: February 2, 2005  
Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Malpractice - Periodic Payments**

3 FOR the purpose of requiring periodic payments of certain damages in a claim or  
4 action for health care malpractice under certain circumstances; requiring  
5 periodic payments of an attorney's fee in a claim or action for health care  
6 malpractice under certain circumstances; requiring itemization of damages by  
7 the trier of fact in a health care malpractice claim or action under certain  
8 circumstances; providing that certain provisions relating to advanced payments  
9 do not apply to certain causes of action; establishing procedures and  
10 requirements relating to certain periodic payments and annuities for funding  
11 certain periodic payments; defining certain terms; making stylistic changes;  
12 making this Act an emergency measure; and generally relating to requiring  
13 periodic payments of certain damages in claim or action for health care  
14 malpractice under certain circumstances.

15 BY repealing and reenacting, with amendments,  
16 Article - Courts and Judicial Proceedings  
17 Section 3-2A-01, 3-2A-05(e), 3-2A-06(f), 3-2A-08, 3-2A-09, and 11-109(c)  
18 and (d)  
19 Annotated Code of Maryland  
20 (2002 Replacement Volume and 2004 Supplement)

21 BY adding to  
22 Article - Courts and Judicial Proceedings  
23 Section 3-2A-09, 3-2A-10, and 11-109(d) and (e)  
24 Annotated Code of Maryland  
25 (2002 Replacement Volume and 2004 Supplement)

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

1 **Article - Courts and Judicial Proceedings**

2 3-2A-01.

3 (a) In this subtitle the following terms have the meanings indicated unless the  
4 context of their use requires otherwise.5 (b) "Arbitration panel" means the arbitrators selected to determine a health  
6 care malpractice claim in accordance with this subtitle.

7 (c) "Court" means a circuit court for a county.

8 (d) "Director" means the Director of the Health Claims Arbitration Office.

9 (E) "ECONOMIC DAMAGES" RETAINS ITS JUDICIALLY DETERMINED MEANING.

10 [(e)] (F) (1) "Health care provider" means a hospital, a related institution as  
11 defined in § 19-301 of the Health - General Article, a physician, an osteopath, an  
12 optometrist, a chiropractor, a registered or licensed practical nurse, a dentist, a  
13 podiatrist, a psychologist, a licensed certified social worker-clinical, and a physical  
14 therapist, licensed or authorized to provide one or more health care services in  
15 Maryland.16 (2) "Health care provider" does not [mean] INCLUDE any nursing  
17 institution conducted by and for those who rely upon treatment by spiritual means  
18 through prayer alone in accordance with the tenets and practices of a recognized  
19 church or religious denomination.20 (G) "MEDICAL EXPENSES" MEANS ANY COSTS THAT HAVE BEEN OR WILL BE  
21 INCURRED BY OR ON BEHALF OF THE CLAIMANT OR PLAINTIFF AS A RESULT OF A  
22 MEDICAL INJURY, INCLUDING THE COSTS OF MEDICAL AND HOSPITAL,  
23 REHABILITATIVE, RESIDENTIAL, AND CUSTODIAL CARE AND SERVICE, SPECIAL  
24 EQUIPMENT OR FACILITIES, AND RELATED TRAVEL.25 [(f)] (H) "Medical injury" means injury arising or resulting from the rendering  
26 or failure to render health care.

27 (I) "NONECONOMIC DAMAGES" MEANS:

28 (1) IN A CLAIM FOR PERSONAL INJURY, PAIN, SUFFERING,  
29 INCONVENIENCE, PHYSICAL IMPAIRMENT, DISFIGUREMENT, LOSS OF CONSORTIUM,  
30 OR OTHER NONPECUNIARY INJURY; OR31 (2) IN A CLAIM FOR WRONGFUL DEATH, MENTAL ANGUISH, EMOTIONAL  
32 PAIN AND SUFFERING, LOSS OF SOCIETY, COMPANIONSHIP, COMFORT, PROTECTION,  
33 CARE, MARITAL CARE, PARENTAL CARE, FILIAL CARE, ATTENTION, ADVICE,  
34 COUNSEL, TRAINING, GUIDANCE, OR EDUCATION, OR OTHER NONECONOMIC  
35 DAMAGES AUTHORIZED UNDER SUBTITLE 9 OF THIS TITLE.

1 3-2A-05.

2 (e) (1) The arbitration panel shall first determine the issue of liability with  
3 respect to a claim referred to it.

4 (2) If the arbitration panel determines that the health care provider is  
5 not liable to the claimant or claimants the award shall be in favor of the health care  
6 provider.

7 (3) If the arbitration panel determines that a health care provider is  
8 liable to the claimant or claimants, it shall then consider, itemize, assess, and  
9 apportion appropriate damages against one or more of the health care providers that  
10 it has found to be liable.

11 (4) [The award shall itemize by category and amount any damages  
12 assessed for incurred medical expenses, rehabilitation costs, and loss of earnings.  
13 Damages assessed for any future expenses, costs, and losses shall be itemized  
14 separately.] THE ARBITRATION PANEL SHALL ITEMIZE THE AWARD TO REFLECT THE  
15 MONETARY AMOUNT INTENDED FOR ANY OF THE FOLLOWING DAMAGES THAT ARE  
16 APPLICABLE TO THE CLAIM:

17 (I) PAST MEDICAL EXPENSES;

18 (II) FUTURE MEDICAL EXPENSES;

19 (III) PAST LOSS OF EARNINGS;

20 (IV) FUTURE LOSS OF EARNINGS;

21 (V) PAST PECUNIARY LOSS;

22 (VI) FUTURE PECUNIARY LOSS;

23 (VII) OTHER PAST ECONOMIC DAMAGES;

24 (VIII) OTHER FUTURE ECONOMIC DAMAGES; AND

25 (IX) NONECONOMIC DAMAGES.

26 3-2A-06.

27 (f) (1) [Upon timely request, the trier of fact shall by special verdict or  
28 specific findings itemize by category and amount any damages assessed for incurred  
29 medical expenses, rehabilitation costs, and loss of earnings. Damages assessed for  
30 any future expenses, costs, and losses shall be itemized separately. If the verdict or  
31 findings include any amount for such expenses, costs, and losses, a] THE TRIER OF  
32 FACT SHALL ITEMIZE THE VERDICT TO REFLECT THE MONETARY AMOUNT  
33 INTENDED FOR ANY OF THE FOLLOWING DAMAGES THAT ARE APPLICABLE TO THE  
34 ACTION:

35 (I) PAST MEDICAL EXPENSES;

- 1 (II) FUTURE MEDICAL EXPENSES;  
2 (III) PAST LOSS OF EARNINGS;  
3 (IV) FUTURE LOSS OF EARNINGS;  
4 (V) PAST PECUNIARY LOSS;  
5 (VI) FUTURE PECUNIARY LOSS;  
6 (VII) OTHER PAST ECONOMIC DAMAGES;  
7 (VIII) OTHER FUTURE ECONOMIC DAMAGES; AND  
8 (IX) NONECONOMIC DAMAGES.

9 (2) A party filing a motion for a new trial may object to the damages as  
10 excessive on the ground that the [claimant] PLAINTIFF has been or will be paid,  
11 reimbursed, or indemnified to the extent and subject to the limits stated in §  
12 3-2A-05(h) of this subtitle.

13 (3) The court shall hold a hearing and receive evidence on the objection.

14 (4) (I) If the court finds from the evidence that the damages are  
15 excessive on the grounds stated in § 3-2A-05(h) of this subtitle, subject to the limits  
16 and conditions stated in § 3-2A-05(h) of this subtitle, it may grant a new trial as to  
17 such damages or may deny a new trial if the [claimant] PLAINTIFF agrees to a  
18 remittitur of the excess and the order required adequate security when warranted by  
19 the conditions stated in § 3-2A-05(h) of this subtitle.

20 (II) In the event of a new trial granted under this subsection,  
21 evidence considered by the court in granting the remittitur shall be admissible if  
22 offered at the new trial and the jury shall be instructed to consider such evidence in  
23 reaching its verdict as to damages.

24 (III) Upon a determination of those damages at the new trial, no  
25 further objection to damages may be made exclusive of any party's right of appeal.

26 (5) Except as expressly provided by federal law, no person may recover  
27 from the [claimant] PLAINTIFF or assert a claim of subrogation against a defendant  
28 for any sum included in a remittitur or awarded in a new trial on damages granted  
29 under this subsection.

30 (6) Nothing in this subsection shall be construed to otherwise limit the  
31 common law grounds for remittitur.

32 3-2A-08.

33 (a) (1) Evidence of advanced payments made [pursuant to] UNDER §  
34 19-104(b) of the Insurance Article is not admissible in any arbitration or judicial  
35 proceeding for damages due to medical injury until there is an award, in the case of

1 arbitration proceedings, or a verdict, in the case of judicial proceedings, in favor of the  
2 claimant OR PLAINTIFF and against the person who made the advanced payments.

3 (2) Upon the finding of such an award or verdict, the arbitration panel,  
4 or the trier of fact, shall make a finding of total damages, and shall then deduct  
5 whatever amounts it finds were paid by or on behalf of the defendants [pursuant to]  
6 UNDER § 19-104(b) of the Insurance Article.

7 (3) The net amount, after this deduction, shall be entered as its award or  
8 verdict.

9 (b) (1) THE PROVISIONS OF THIS SUBSECTION DO NOT APPLY TO AN AWARD  
10 OR VERDICT FOR DAMAGES UNDER THIS SUBTITLE IN WHICH THE CAUSE OF ACTION  
11 ARISES ON OR AFTER JANUARY 1, 2005.

12 (2) [If] FOR AN AWARD OR VERDICT FOR DAMAGES UNDER THIS  
13 SUBTITLE IN WHICH THE CAUSE OF ACTION AROSE BEFORE JANUARY 1, 2005, IF the  
14 award or verdict exceeds the amount of advanced payments and the arbitration panel  
15 or the court finds that the advanced payments were reasonable, the panel or the court  
16 may [(1) order]:

17 (I) ORDER that the amount by which the award or verdict exceeds  
18 the amount of advanced payments be paid over a period of time consistent with the  
19 needs of the claimant OR PLAINTIFF, rather than in a lump sum[, and (2) authorize];  
20 AND

21 (II) AUTHORIZE, as part of its order, the creation of a trust or other  
22 mechanism to assure the periodic payments.

23 (3) The panel or court shall provide to the claimant OR PLAINTIFF the  
24 option to choose either a lump sum or payments paid over a period of time.

25 (c) (1) If the advanced payment exceeds the liability of the person making it,  
26 the arbitration panel or the court on appeal may order such adjustments as justice  
27 may require under the award or verdict, including, where appropriate, contribution  
28 by other parties found to be liable.

29 (2) In no event shall an advance payment in excess of the liability of the  
30 person making it be repayable by the person receiving it.

31 3-2A-09.

32 (A) (1) THIS SECTION APPLIES TO AN AWARD OR A VERDICT UNDER THIS  
33 SUBTITLE FOR A CAUSE OF ACTION ARISING ON OR AFTER JANUARY 1, 2005.

34 (2) THIS SECTION DOES NOT APPLY IF THE CLAIMANT OR PLAINTIFF  
35 AND THE DEFENDANT AGREE TO AN ALTERNATIVE METHOD OF PAYMENT.

36 (3) IF THE CLAIMANT OR PLAINTIFF AND THE DEFENDANT NOTIFY THE  
37 COURT WITHIN 30 DAYS OF THE ENTRY OF THE AWARD OR VERDICT THAT THEY

1 HAVE AGREED TO AN ALTERNATIVE METHOD OF PAYMENT, THE ARBITRATION  
2 PANEL OR COURT SHALL ENTER THE TERMS OF THE AGREEMENT ON THE RECORD  
3 AS PART OF THE AWARD OR JUDGMENT.

4 (4) FOR AN AWARD OR VERDICT SUBJECT TO PERIODIC PAYMENTS  
5 UNDER THIS SECTION, THE ARBITRATION PANEL OR COURT SHALL ORDER THAT THE  
6 FUTURE ECONOMIC DAMAGES PART OF THE AWARD OR VERDICT BE PAID IN  
7 PERIODIC PAYMENTS OR OTHER PAYMENTS CONSISTENT WITH THE NEEDS OF THE  
8 CLAIMANT OR PLAINTIFF, OR IN THE FORM OF ANNUITIES OR OTHER APPROPRIATE  
9 FINANCIAL INSTRUMENTS, FUNDED IN FULL BY THE DEFENDANT OR THE  
10 DEFENDANT'S INSURER AND EQUAL WHEN PAID TO THE AMOUNT REQUIRED UNDER  
11 THIS SECTION.

12 (5) (I) THE CLAIMANT OR PLAINTIFF AND THE DEFENDANT WITHIN 30  
13 DAYS OF THE AWARD OR VERDICT MAY SUBMIT TO THE ARBITRATION PANEL OR  
14 COURT A PROPOSAL TO COMPLY WITH THIS SECTION.

15 (II) THE ARBITRATION PANEL OR COURT SHALL CONSIDER A  
16 PROPOSAL SUBMITTED UNDER THIS PARAGRAPH.

17 (III) THE ARBITRATION PANEL OR COURT MAY ORDER THE  
18 DEFENDANT TO COMPLY WITH THE TERMS OF A PROPOSAL SUBMITTED UNDER THIS  
19 PARAGRAPH, WITH ANY MODIFICATIONS THAT THE ARBITRATION PANEL OR COURT  
20 CONSIDERS APPROPRIATE.

21 (6) THE ARBITRATION PANEL OR COURT:

22 (I) NEED NOT ACCEPT A PROPOSAL SUBMITTED UNDER THIS  
23 SUBSECTION; AND

24 (II) MAY ORDER PAYMENTS UNDER THIS SECTION IN A MANNER IT  
25 CONSIDERS FAIR AND APPROPRIATE.

26 (B) (1) THIS SUBSECTION DOES NOT APPLY TO A SURVIVAL OR WRONGFUL  
27 DEATH ACTION.

28 (2) IN A CLAIM OR ACTION UNDER THIS SUBTITLE, IF FUTURE  
29 ECONOMIC DAMAGES AND NONECONOMIC DAMAGES IN THE AGGREGATE ARE  
30 \$100,000 OR LESS, THE ARBITRATION PANEL OR COURT SHALL:

31 (I) ENTER THIS AMOUNT AS THE AWARD OR JUDGMENT FOR  
32 FUTURE ECONOMIC DAMAGES AND NONECONOMIC DAMAGES; AND

33 (II) ORDER THE DEFENDANT TO PAY THIS AMOUNT AS A LUMP SUM  
34 WITH PAST ECONOMIC DAMAGES.

35 (3) (I) IN A CLAIM OR ACTION UNDER THIS SUBTITLE, IF FUTURE  
36 ECONOMIC DAMAGES AND NONECONOMIC DAMAGES IN THE AGGREGATE ARE MORE  
37 THAN \$100,000, THE ARBITRATION PANEL OR COURT SHALL ORDER THE PAYMENT OF

1 FUTURE ECONOMIC DAMAGES AND NONECONOMIC DAMAGES IN PERIODIC  
2 PAYMENTS.

3 (II) FOR GOOD CAUSE SHOWN, IF THE ARBITRATION PANEL OR  
4 COURT FINDS THAT THE CLAIMANT OR PLAINTIFF WILL INCUR IMMEDIATE ONETIME  
5 EXPENSES, THE ARBITRATION PANEL OR COURT:

6 1. MAY ORDER THE DEFENDANT TO PAY THE AMOUNT OF OF  
7 IMMEDIATE ONETIME EXPENSES TO THE CLAIMANT OR PLAINTIFF AS A LUMP SUM;  
8 AND

9 2. UNLESS THE REMAINING AMOUNT OF THE FUTURE  
10 ECONOMIC AND NONECONOMIC DAMAGES IS \$100,000 OR LESS, SHALL ORDER THE  
11 PAYMENT OF THE REMAINING AMOUNT IN PERIODIC PAYMENTS TO THE CLAIMANT  
12 OR PLAINTIFF LESS THE PERIODIC PAYMENTS TO THE CLAIMANT'S OR PLAINTIFF'S  
13 ATTORNEY DESCRIBED UNDER § 3-2A-10 OF THIS SUBTITLE.

14 (C) FOR A WRONGFUL DEATH ACTION OR SURVIVAL ACTION:

15 (1) NONECONOMIC DAMAGES SHALL BE PAID AS A LUMP SUM WITH  
16 PAST ECONOMIC DAMAGES, PAST PECUNIARY LOSS, AND OTHER PAST ECONOMIC  
17 DAMAGES; AND

18 (2) IF FUTURE PECUNIARY LOSS AND OTHER FUTURE ECONOMIC  
19 DAMAGES ARE MORE THAN \$100,000, THE ARBITRATION PANEL OR COURT SHALL  
20 ORDER THE PAYMENT OF FUTURE PECUNIARY LOSS AND OTHER FUTURE ECONOMIC  
21 DAMAGES IN PERIODIC PAYMENTS TO THE CLAIMANT OR PLAINTIFF LESS THE  
22 PERIODIC PAYMENTS TO THE CLAIMANT'S OR PLAINTIFF'S ATTORNEY AS  
23 DETERMINED UNDER § 3-2A-10 OF THIS SUBTITLE.

24 (D) FOR THE PART OF AN AWARD OR JUDGMENT SUBJECT TO PERIODIC  
25 PAYMENTS TO THE CLAIMANT OR PLAINTIFF UNDER THIS SECTION, THE  
26 DEFENDANT SHALL PAY IN PERIODIC PAYMENTS:

27 (1) TO THE CLAIMANT'S OR PLAINTIFF'S ATTORNEY, THE ATTORNEY'S  
28 FEE AS DETERMINED UNDER § 3-2A-10 OF THIS SUBTITLE OWED BY THE CLAIMANT  
29 OR PLAINTIFF FOR THAT PART OF THE AWARD OR JUDGMENT; AND

30 (2) TO THE CLAIMANT OR PLAINTIFF, THE REMAINING AMOUNT IN  
31 PERIODIC PAYMENTS.

32 (E) FOR AN AWARD OR VERDICT SUBJECT TO PERIODIC PAYMENTS UNDER  
33 THIS SECTION, THE FINDER OF FACT SHALL ALSO DETERMINE:

34 (1) IN A PERSONAL INJURY ACTION OTHER THAN A SURVIVAL ACTION:

35 (I) THE LIFE EXPECTANCY OF THE CLAIMANT OR PLAINTIFF;

36 (II) THE WORKING LIFE OF THE CLAIMANT OR PLAINTIFF;

1 (III) THE COMMENCEMENT DATE OF THE WORKING LIFE OF THE  
2 CLAIMANT OR PLAINTIFF;

3 (IV) THE NUMBER OF YEARS FOR WHICH THE CLAIMANT OR  
4 PLAINTIFF WILL NEED MEDICAL TREATMENT; AND

5 (V) THE NUMBER OF YEARS FOR WHICH THE CLAIMANT OR  
6 PLAINTIFF WILL SUFFER A LOSS OF EARNINGS; OR

7 (2) IN A WRONGFUL DEATH ACTION, THE PERIOD FOR WHICH THE  
8 CLAIMANT OR PLAINTIFF MIGHT REASONABLY HAVE EXPECTED A PECUNIARY  
9 BENEFIT FROM THE DECEDENT HAD THE WRONGFUL DEATH NOT OCCURRED.

10 (F) (1) FOR AN AWARD OR VERDICT SUBJECT TO PERIODIC PAYMENTS  
11 UNDER THIS SECTION, AFTER THE FINDER OF FACT MAKES THE DETERMINATIONS  
12 DESCRIBED IN SUBSECTION (E) OF THIS SECTION, THE ARBITRATION PANEL OR THE  
13 COURT SHALL ORDER THE DEFENDANT TO MAKE PERIODIC PAYMENTS FOR:

14 (I) IN A PERSONAL INJURY ACTION OTHER THAN A SURVIVAL  
15 ACTION:

16 1. FUTURE MEDICAL EXPENSES AND OTHER FUTURE  
17 ECONOMIC DAMAGES AND NONECONOMIC DAMAGES DIVIDED BY THE LESSER OF  
18 THE NUMBER OF YEARS FOR WHICH THE CLAIMANT OR PLAINTIFF WILL NEED  
19 MEDICAL TREATMENT OR THE LIFE EXPECTANCY OF THE CLAIMANT OR PLAINTIFF  
20 AS DETERMINED UNDER SUBSECTION (E) OF THIS SECTION; AND

21 2. FUTURE LOSS OF EARNINGS DIVIDED BY THE LESSER OF  
22 THE NUMBER OF YEARS FOR WHICH THE CLAIMANT OR PLAINTIFF WILL SUFFER A  
23 LOSS OF EARNINGS OR THE WORKING LIFE OF THE CLAIMANT OR PLAINTIFF AS  
24 DETERMINED UNDER SUBSECTION (E) OF THIS SECTION; OR

25 (II) IN A WRONGFUL DEATH ACTION, FUTURE PECUNIARY LOSS  
26 AND OTHER FUTURE ECONOMIC DAMAGES DIVIDED BY THE PERIOD FOR WHICH THE  
27 CLAIMANT OR PLAINTIFF MIGHT REASONABLY HAVE EXPECTED A PECUNIARY  
28 BENEFIT FROM THE DECEDENT HAD THE WRONGFUL DEATH NOT OCCURRED AS  
29 DETERMINED UNDER SUBSECTION (E) OF THIS SECTION.

30 (2) THE PERIODIC PAYMENTS FOR FUTURE LOSS OF EARNINGS MAY NOT  
31 COMMENCE UNTIL THE COMMENCEMENT DATE OF THE WORKING LIFE OF THE  
32 CLAIMANT OR PLAINTIFF.

33 (3) THE DEFENDANT'S INSURER SHALL BE OBLIGATED TO MAKE  
34 PERIODIC PAYMENTS ONLY TO THE EXTENT OF THE COVERAGE THE INSURER IS  
35 OBLIGATED TO PROVIDE UNDER THE INSURANCE POLICY ISSUED TO THE  
36 DEFENDANT.

37 (G) (1) (I) PERIODIC PAYMENTS TO FUND FUTURE LOSS OF EARNINGS  
38 SHALL HAVE A GUARANTEED TERM EQUAL TO THE LESSER OF THE NUMBER OF  
39 YEARS FOR WHICH THE CLAIMANT OR PLAINTIFF WILL SUFFER A LOSS OF EARNINGS



1 OR THE WORKING LIFE OF THE CLAIMANT OR PLAINTIFF AS DETERMINED UNDER  
2 SUBSECTION (E) OF THIS SECTION.

3 (II) IF THE CLAIMANT OR PLAINTIFF DIES BEFORE THE END OF THE  
4 GUARANTEED TERM OF THE ANNUITY, THE UNPAID BALANCE OF THE AWARD OR  
5 JUDGMENT SHALL BE PAID TO THE ESTATE OF THE CLAIMANT OR PLAINTIFF.

6 (2) PERIODIC PAYMENTS TO FUND FUTURE MEDICAL EXPENSES, OTHER  
7 FUTURE ECONOMIC DAMAGES, OR NONECONOMIC DAMAGES MAY NOT EXCEED THE  
8 LIFE EXPECTANCY OF THE CLAIMANT OR PLAINTIFF AS DETERMINED UNDER  
9 SUBSECTION (E) OF THIS SECTION AND SHALL TERMINATE AT THE DEATH OF THE  
10 CLAIMANT OR PLAINTIFF.

11 (3) IN A WRONGFUL DEATH ACTION, PERIODIC PAYMENTS FOR FUTURE  
12 PECUNIARY LOSS SHALL TERMINATE AT THE DEATH OF THE CLAIMANT OR  
13 PLAINTIFF.

14 (H) (1) THIS SUBSECTION DOES NOT APPLY IF THE PROVISIONS OF  
15 SUBSECTION (I) OF THIS SECTION APPLY.

16 (2) UNLESS THE DEFENDANT'S INSURER IS AUTHORIZED TO DO  
17 BUSINESS IN THIS STATE AND MAINTAINS RESERVES IN COMPLIANCE WITH  
18 REGULATIONS OF THE INSURANCE COMMISSIONER TO ASSURE THE PAYMENT OF  
19 ALL FUTURE DAMAGES, THE ARBITRATION PANEL OR COURT SHALL REQUIRE THE  
20 DEFENDANT TO POST ADEQUATE SECURITY TO ENSURE THE PERIODIC PAYMENTS  
21 REQUIRED UNDER THIS SECTION.

22 (3) IF THE ARBITRATION PANEL OR COURT IS NOT SATISFIED WITH THE  
23 SECURITY POSTED BY THE DEFENDANT, THE ARBITRATION PANEL OR COURT, AFTER  
24 GIVING THE DEFENDANT AN OPPORTUNITY TO POST ADDITIONAL SECURITY, SHALL  
25 ORDER THE DEFENDANT TO PAY THE CLAIMANT OR PLAINTIFF IN A LUMP SUM.

26 (I) (1) AFTER NOTICE AND OPPORTUNITY TO COMMENT BY THE CLAIMANT  
27 OR PLAINTIFF, THE ARBITRATION PANEL OR COURT MAY APPROVE THE PURCHASE  
28 OF AN ANNUITY DESCRIBED IN SUBSECTIONS (J) AND (K) OF THIS SECTION BY THE  
29 DEFENDANT OR THE DEFENDANT'S INSURER TO SATISFY AN AWARD OR JUDGMENT  
30 SUBJECT TO PERIODIC PAYMENTS UNDER THIS SECTION.

31 (2) SATISFACTORY EVIDENCE OF THE PURCHASE OF AN ANNUITY  
32 SHALL BE DEEMED TO HAVE FULLY SATISFIED THE OBLIGATION OF THE  
33 DEFENDANT FOR THE PART OF THE AWARD OR JUDGMENT FOR FUTURE ECONOMIC  
34 DAMAGES AND NONECONOMIC DAMAGES SUBJECT TO PERIODIC PAYMENTS UNDER  
35 THIS SECTION.

36 (J) SUBJECT TO THE PROVISIONS OF THIS SECTION, A DEFENDANT OR THE  
37 DEFENDANT'S INSURER SHALL PURCHASE AN ANNUITY FROM AN INSURER THAT  
38 HAS ONE OF THE FOLLOWING FINANCIAL STRENGTH RATINGS FROM AT LEAST TWO  
39 OF THE FOLLOWING RATING ORGANIZATIONS:

40 (1) A.M. BEST COMPANY: A++ OR A+;

1 (2) FITCH INC.: AAA, AA+, AA, OR AA-;

2 (3) MOODY'S INVESTORS SERVICE CLAIMS PAYING RATING: AAA, AA1,  
3 AA2, OR AA3;

4 (4) STANDARD & POOR'S CORPORATION INSURER CLAIMS PAYING  
5 RATING: AAA, AA+, AA, OR AA-; OR

6 (5) A RATING FROM ANOTHER NATIONAL RATING ORGANIZATION IF THE  
7 RATING AND THE RATING ORGANIZATION ARE FOUND TO BE APPROPRIATE BY THE  
8 ARBITRATION PANEL OR COURT.

9 (K) THE ARBITRATION PANEL OR COURT SHALL APPROVE AN ANNUITY  
10 PURCHASED BY THE DEFENDANT OR THE DEFENDANT'S INSURER IF THE ANNUITY:

11 (1) MEETS THE REQUIREMENTS OF THIS SECTION; AND

12 (2) WILL AT ALL TIMES BE FULLY SECURED BY ASSETS:

13 (I) HELD IN A VALIDLY ESTABLISHED SEPARATE ACCOUNT THAT  
14 MAY NOT BE CHARGEABLE WITH LIABILITIES ARISING OUT OF ANY OTHER BUSINESS  
15 THAT THE INSURER MAY CONDUCT; OR

16 (II) IN WHICH THE CLAIMANT OR PLAINTIFF HAS A PERFECTED  
17 SECURITY INTEREST.

18 3-2A-10.

19 (A) IF AN AWARD OR JUDGMENT IS SUBJECT TO PERIODIC PAYMENTS UNDER  
20 THIS SUBTITLE, A CLAIMANT'S OR PLAINTIFF'S ATTORNEY SHALL BE PAID THE  
21 CONTRACT AMOUNT AGREED TO BY THE CLAIMANT OR PLAINTIFF AND THE  
22 ATTORNEY AS PROVIDED IN THIS SECTION.

23 (B) FOR ANY DAMAGES THAT ARE TO BE PAID TO A CLAIMANT OR PLAINTIFF  
24 IN PERIODIC PAYMENTS, THE DEFENDANT SHALL PAY IN PERIODIC PAYMENTS TO  
25 THE CLAIMANT'S OR PLAINTIFF'S ATTORNEY THE ATTORNEY'S FEE OWED BY THE  
26 CLAIMANT OR PLAINTIFF ACCORDING TO THE PERCENTAGE AMOUNT STATED IN THE  
27 CONTRACT FOR EACH PERIODIC PAYMENT RECEIVED BY THE CLAIMANT OR  
28 PLAINTIFF.

29 [3-2A-09.] 3-2A-11.

30 [The] EXCEPT FOR §§ 3-2A-09 AND 3-2A-10 OF THIS SUBTITLE, THE provisions  
31 of this subtitle shall be deemed procedural in nature and [shall] MAY not be  
32 construed to create, enlarge, or diminish any cause of action not heretofore existing,  
33 except the defense of failure to comply with the procedures required under this  
34 subtitle.

1 11-109.

2 (c) (1) The court [or the health claims arbitration panel] may order that all  
3 or part of the future economic damages portion of the award be paid in the form of  
4 annuities or other appropriate financial instruments, or that it be paid in periodic or  
5 other payments consistent with the needs of the plaintiff, funded in full by the  
6 defendant or the defendant's insurer and equal when paid to the amount of the future  
7 economic damages award.

8 (2) In the event that the court [or panel] shall order that the award for  
9 future economic damages be paid in a form other than a lump sum, the court [or  
10 panel] shall order that the defendant or the defendant's insurer provide adequate  
11 security for the payment of all future economic damages.

12 (3) The court [or panel] may appoint a conservator under this  
13 subsection for the plaintiff, upon such terms as the court [or panel] may impose, who  
14 shall have the full and final authority to resolve any dispute between the plaintiff and  
15 the defendant or the defendant's insurer regarding the need or cost of expenses for the  
16 plaintiff's medical, surgical, custodial, or other care or treatment.

17 [(d)] (4) If the plaintiff [under this section] dies before the final periodic  
18 payment of an award is made, the unpaid balance of the award for future loss of  
19 earnings shall revert to the estate of the plaintiff and the unpaid balance of the award  
20 for future medical expenses shall revert to the defendant or to the defendant's insurer  
21 if the insurer provided the funds for the future damages award.

22 (D) IF A HEALTH CLAIMS ARBITRATION PANEL AWARDS FUTURE ECONOMIC  
23 DAMAGES IN ACCORDANCE WITH § 3-2A-05 OF THIS ARTICLE FOR DAMAGES IN  
24 WHICH THE CAUSE OF ACTION ARISES BEFORE JANUARY 1, 2005, THE PANEL MAY  
25 ORDER THAT FUTURE ECONOMIC DAMAGES BE PAID IN ACCORDANCE WITH THE  
26 PROVISIONS OF SUBSECTION (C) OF THIS SECTION.

27 (E) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO AN ARBITRATION  
28 AWARD OR VERDICT UNDER TITLE 3, SUBTITLE 2A OF THIS ARTICLE FOR DAMAGES IN  
29 WHICH THE CAUSE OF ACTION ARISES ON OR AFTER JANUARY 1, 2005.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency  
31 measure, is necessary for the immediate preservation of the public health or safety,  
32 has been passed by a ye and nay vote supported by three-fifths of all the members  
33 elected to each of the two Houses of the General Assembly, and shall take effect from  
34 the date it is enacted.