
By: **The President (By Request - Administration) and Senators Brinkley, Colburn, Greenip, Haines, Hooper, Jacobs, Jimeno, Kittleman, Mooney, Schrader, and Stoltzfus**

Introduced and read first time: January 23, 2006

Rules suspended

Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Maryland Medical Injury Compensation Reform Act

FOR the purpose of requiring a certificate of a qualified expert for each defendant in certain causes of action; altering certain provisions relating to the amount of time an expert may devote to certain activities; allowing the introduction of and consideration of certain evidence relating to damages under certain circumstances; requiring a court to appoint a neutral expert under certain circumstances; establishing a certain limitation on noneconomic damages for medical injuries for causes of action arising on or after a certain date; providing that this limitation applies in the aggregate to all claims arising from the same medical injury; requiring that a health care malpractice award or verdict be reduced to the extent of certain payments, reimbursements, or indemnification, less certain costs, under certain circumstances; prohibiting certain recovery and certain claims of subrogation relating to certain payments, reimbursements, or indemnification under certain circumstances; prohibiting a jury from being informed of certain limitations; requiring an award or verdict of economic damages for a medical injury to exclude certain amounts for past or future medical expenses and past or future loss of earnings; providing for the number of jurors in civil actions; altering the rate of interest on certain judgments; establishing a Task Force on Health Care Malpractice; providing for the composition, chairman, and staff of the Task Force; authorizing the Task Force to study any aspect of the health care, insurance, or civil justice systems related to health care malpractice; requiring the Task Force to report to the Governor and the General Assembly by a certain date; providing for the termination of the Task Force; altering the definition of a certain term; making stylistic changes; providing for the application of this Act; making the provisions of this Act severable; and generally relating to civil proceedings and medical injury compensation reform.

BY repealing and reenacting, with amendments,

Article - Courts and Judicial Proceedings

Section 3-2A-01(f)(1), 3-2A-04(b)(1)(i)1. and (4), 3-2A-05(h), (i), and (j),

3-2A-06(f), (g), (h), and (i), 3-2A-09(a), 3-2A-10, 8-306, 10-920,
11-107(a), and 11-108(e)

Annotated Code of Maryland
(2002 Replacement Volume and 2005 Supplement)

BY adding to

Article - Courts and Judicial Proceedings
Section 3-2A-05(j), 3-2A-06(g), 3-2A-09A, 3-2A-09B, and 9-124
Annotated Code of Maryland
(2002 Replacement Volume and 2005 Supplement)

BY repealing and reenacting, without amendments,

Article - Courts and Judicial Proceedings
Section 11-108(c)
Annotated Code of Maryland
(2002 Replacement Volume and 2005 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

3-2A-01.

(f) (1) "Health care provider" means a hospital, a related institution as defined in § 19-301 of the Health - General Article, a medical day care center, a hospice care program, an assisted living program, a freestanding ambulatory care facility as defined in § 19-3B-01 of the Health - General Article, a physician, an osteopath, an optometrist, a chiropractor, a registered or licensed practical nurse, a dentist, a podiatrist, a psychologist, a licensed certified social worker-clinical, [and] a physical therapist, OR A PHYSICIAN ASSISTANT licensed or authorized to provide one or more health care services in Maryland.

3-2A-04.

(b) Unless the sole issue in the claim is lack of informed consent:

(1) (i) 1. Except as provided in subparagraph (ii) of this paragraph, a claim or action filed after July 1, 1986, shall be dismissed, without prejudice, if the claimant or plaintiff fails to file FOR EACH DEFENDANT a certificate of a qualified expert with the Director attesting to departure from standards of care, and that the departure from standards of care is the proximate cause of the alleged injury, within 90 days from the date of the complaint;

(4) A health care provider who attests in a certificate of a qualified expert or who testifies in relation to a proceeding before an arbitration panel or a court concerning compliance with or departure from standards of care may not devote

annually more than 20 percent of the expert's professional activities to activities that [directly involve testimony in personal injury claims]:

- AND
- (I) ARE UNRELATED TO THE CARE OR TREATMENT OF A PATIENT;
 - (II) LEAD OR COULD LEAD TO TESTIMONY IN PERSONAL INJURY CLAIMS.

3-2A-05.

(h) [(1)] A party may apply to the arbitration panel to modify or correct an award as to liability, damages, or costs in accordance with § 3-222 of this title.

(I) (1) THIS SUBSECTION APPLIES TO A CAUSE OF ACTION ARISING BEFORE JUNE 1, 2006.

(2) (i) The application TO MODIFY OR CORRECT AN AWARD may include a request that damages be reduced to the extent that the claimant has been or will be paid, reimbursed, or indemnified under statute, insurance, or contract for all or part of the damages assessed.

(ii) The panel chairman shall receive such evidence in support and opposition to a request for reduction, including evidence of the cost to obtain such payment, reimbursement, or indemnity.

(iii) After hearing the evidence in support and opposition to the request, the panel chairman may modify the award if satisfied that modification is supported by the evidence.

(iv) The award may not be modified as to any sums paid or payable to a claimant under any workers' compensation act, criminal injuries compensation act, employee benefit plan established under a collective bargaining agreement between an employer and an employee or a group of employers and a group of employees that is subject to the provisions of the federal Employee Retirement Income Security Act of 1974, program of the Department of Health and Mental Hygiene for which a right of subrogation exists under §§ 15-120 and 15-121.1 of the Health - General Article, or as a benefit under any contract or policy of life insurance or Social Security Act of the United States.

(v) An award may not be modified as to any damages assessed for any future expenses, costs, and losses unless:

1. The panel chairman orders the defendant or the defendant's insurer to provide adequate security; or

2. The insurer is authorized to do business in this State and maintains reserves in compliance with rules of the Insurance Commissioner to assure the payment of all such future damages up to the amount by which the award has been modified as to such future damages in the event of termination.

(vi) Except as expressly provided by federal law, no person may recover from the claimant or assert a claim of subrogation against a defendant for any sum included in the modification of an award.

(J) (1) THIS SUBSECTION APPLIES TO A CAUSE OF ACTION ARISING ON OR AFTER JUNE 1, 2006.

(2) IN AN ARBITRATION PROCEEDING:

(I) A DEFENDANT MAY INTRODUCE EVIDENCE THAT THE CLAIMANT HAS BEEN OR WILL BE PAID, REIMBURSED, OR INDEMNIFIED BY A GOVERNMENT OR THROUGH A GOVERNMENTAL PROGRAM, BY INSURANCE, OR UNDER CONTRACT FOR ALL OR PART OF THE DAMAGES ASSESSED; OR

(II) IF THE DEFENDANT INTRODUCES EVIDENCE UNDER ITEM (I) OF THIS PARAGRAPH, THE CLAIMANT MAY INTRODUCE EVIDENCE:

1. OF THE COST TO OBTAIN THE PAYMENT, REIMBURSEMENT, OR INDEMNITY; AND

2. THAT A PERSON OR A GOVERNMENTAL ENTITY HAS A RIGHT OF SUBROGATION FOR RECOVERY OF ANY COSTS PAID TO THE PLAINTIFF, AND THE AMOUNT OF THE SUBROGATED INTEREST.

(3) IF EVIDENCE IS INTRODUCED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE ARBITRATION PANEL SHALL:

(I) CONSIDER THE EVIDENCE; AND

(II) REDUCE OR MODIFY THE AWARD IF SATISFIED THAT A REDUCTION OR MODIFICATION IS SUPPORTED BY THE EVIDENCE.

(4) A DEFENDANT MAY NOT INTRODUCE EVIDENCE CONCERNING ANY FUTURE EXPENSES, COSTS, AND LOSSES AND AN AWARD MAY NOT BE MODIFIED AS TO THESE DAMAGES UNLESS:

(I) THE ARBITRATION PANEL IS ASSURED THAT THE DEFENDANT OR THE DEFENDANT'S INSURER CAN PROVIDE ADEQUATE SECURITY AND, AFTER AN AWARD, ORDERS THE DEFENDANT OR THE DEFENDANT'S INSURER TO PROVIDE ADEQUATE SECURITY TO ENSURE THE PAYMENT OF ALL FUTURE DAMAGES UP TO THE AMOUNT BY WHICH THE AWARD HAS BEEN MODIFIED IN THE EVENT THAT THE OTHER SOURCE OF COMPENSATION IS TERMINATED; OR

(II) THE DEFENDANT'S INSURER IS AUTHORIZED TO DO BUSINESS IN THIS STATE AND MAINTAINS RESERVES IN COMPLIANCE WITH RULES OF THE INSURANCE COMMISSIONER TO ENSURE THE PAYMENT OF ALL FUTURE DAMAGES UP TO THE AMOUNT BY WHICH THE AWARD HAS BEEN MODIFIED IN THE EVENT THAT THE OTHER SOURCE OF COMPENSATION IS TERMINATED.

(5) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS SUBSECTION OR AS EXPRESSLY PROVIDED BY FEDERAL LAW, A PERSON MAY NOT RECOVER FROM THE CLAIMANT OR ASSERT A CLAIM OF SUBROGATION AGAINST A DEFENDANT FOR ANY SUM INCLUDED IN THE MODIFICATION OF A VERDICT.

[(i)] (K) Subject to § 3-2A-06 of this subtitle, the award of the panel shall be final and binding on the parties. After the time for either rejecting or modifying the award has expired the Director may, or, when requested by any party, shall file a copy of the award with the circuit court having proper venue, as provided in Title 6, Subtitle 2 of this article and the court shall confirm the award. Upon confirmation the award shall constitute a final judgment.

[(j)] (L) Except for time limitations pertaining to the filing of a claim or response, the Director or the panel chairman, for good cause shown, may lengthen or shorten the time limitations prescribed in subsections (b) and (g) of this section and § 3-2A-04 of this article.

3-2A-06.

(f) (1) THIS SUBSECTION APPLIES TO A CAUSE OF ACTION ARISING BEFORE JUNE 1, 2006.

(2) Upon timely request, the trier of fact shall by special verdict or specific findings itemize by category and amount any damages assessed for incurred medical expenses, rehabilitation costs, and loss of earnings. Damages assessed for any future expenses, costs, and losses shall be itemized separately. If the verdict or findings include any amount for such expenses, costs, and losses, a party filing a motion for a new trial may object to the damages as excessive on the ground that the plaintiff has been or will be paid, reimbursed, or indemnified to the extent and subject to the limits stated in § [3-2A-05(h)] 3-2A-05(I) of this subtitle.

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

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

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

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

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

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

(G) (1) THIS SUBSECTION APPLIES TO A CAUSE OF ACTION ARISING ON OR AFTER JUNE 1, 2006.

(2) IN A TRIAL:

(I) A DEFENDANT MAY INTRODUCE EVIDENCE THAT THE PLAINTIFF HAS BEEN OR WILL BE PAID, REIMBURSED, OR INDEMNIFIED BY A GOVERNMENT OR THROUGH A GOVERNMENTAL PROGRAM, BY INSURANCE, OR UNDER CONTRACT FOR ALL OR PART OF THE DAMAGES ASSESSED; AND

(II) IF THE DEFENDANT INTRODUCES EVIDENCE UNDER ITEM (I) OF THIS PARAGRAPH, THE PLAINTIFF MAY INTRODUCE EVIDENCE:

1. OF THE COST TO OBTAIN THE PAYMENT, REIMBURSEMENT, OR INDEMNITY; OR

2. THAT A PERSON OR A GOVERNMENTAL ENTITY HAS A RIGHT OF SUBROGATION FOR RECOVERY OF ANY COSTS PAID TO THE PLAINTIFF, AND THE AMOUNT OF THE SUBROGATED INTEREST.

(3) THE TRIER OF FACT SHALL CONSIDER THE EVIDENCE INTRODUCED UNDER PARAGRAPH (2) OF THIS SUBSECTION WHEN DECIDING THE ISSUE OF DAMAGES.

(4) (I) IF EVIDENCE IS INTRODUCED UNDER PARAGRAPH (2) OF THIS SUBSECTION, EITHER PARTY MAY MOVE THAT THE VERDICT BE MODIFIED BASED ON THE EVIDENCE.

(II) THE COURT SHALL HOLD A HEARING ON THE MOTION.

(III) SUBJECT TO THIS SUBSECTION, AFTER CONSIDERING THE EVIDENCE IN SUPPORT OF AND OPPOSITION TO THE REQUEST, THE COURT SHALL MODIFY THE AWARD IF SATISFIED THAT MODIFICATION IS SUPPORTED BY THE EVIDENCE.

(5) A DEFENDANT MAY NOT INTRODUCE EVIDENCE CONCERNING ANY FUTURE EXPENSES, COSTS, AND LOSSES AND A VERDICT MAY NOT BE MODIFIED AS TO THESE DAMAGES UNLESS:

(I) THE COURT IS ASSURED THAT THE DEFENDANT OR THE DEFENDANT'S INSURER CAN PROVIDE ADEQUATE SECURITY AND, AFTER A VERDICT, ORDERS THE DEFENDANT OR THE DEFENDANT'S INSURER TO PROVIDE ADEQUATE

SECURITY TO ENSURE THE PAYMENT OF ALL FUTURE DAMAGES UP TO THE AMOUNT BY WHICH THE AWARD HAS BEEN MODIFIED IN THE EVENT THAT THE OTHER SOURCE OF COMPENSATION IS TERMINATED; OR

(II) THE DEFENDANT'S INSURER IS AUTHORIZED TO DO BUSINESS IN THIS STATE AND MAINTAINS RESERVES IN COMPLIANCE WITH RULES OF THE INSURANCE COMMISSIONER TO ENSURE THE PAYMENT OF ALL FUTURE DAMAGES UP TO THE AMOUNT BY WHICH THE AWARD HAS BEEN MODIFIED IN THE EVENT THAT THE OTHER SOURCE OF COMPENSATION IS TERMINATED.

(6) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (4) OF THIS SUBSECTION OR AS EXPRESSLY PROVIDED BY FEDERAL LAW, A PERSON MAY NOT RECOVER FROM THE PLAINTIFF OR ASSERT A CLAIM OF SUBROGATION AGAINST A DEFENDANT FOR ANY SUM INCLUDED IN THE MODIFICATION OF A VERDICT.

[(g)] (H) If the verdict of the trier of fact is not more favorable to the party that rejected the arbitration panel's award, than was the award, the costs of the judicial proceedings shall be assessed against the rejecting party. Otherwise, the court may determine the assessment of such costs. If the court vacates an assessment of arbitration costs, it shall reassess those costs as justice requires.

[(h)] (I) Venue shall be determined in accordance with the provisions of § 6-201 of this article.

[(i)] (J) The clerk of the court shall file a copy of the verdict or any other final disposition with the Director.

3-2A-09.

(a) This section applies to an award under § 3-2A-05 of this subtitle or a verdict under § 3-2A-06 of this subtitle for a cause of action arising on or after January 1, 2005, AND BEFORE JUNE 1, 2006.

3-2A-09A.

(A) THIS SECTION APPLIES TO A CLAIM OR CAUSE OF ACTION FILED ON OR AFTER JUNE 1, 2006.

(B) ON A MOTION BY A PARTY, A COURT SHALL EMPLOY A NEUTRAL EXPERT WITNESS TO TESTIFY ON THE ISSUE OF A PLAINTIFF'S ECONOMIC DAMAGES.

(C) UNLESS OTHERWISE AGREED TO BY THE PARTIES, A PARTY THAT MOVES TO EMPLOY A NEUTRAL EXPERT WITNESS SHALL PAY THE COSTS OF THE NEUTRAL EXPERT WITNESS WHO IS EMPLOYED UNDER THIS PARAGRAPH.

(D) NOTHING CONTAINED IN THIS SECTION LIMITS THE AUTHORITY OF A COURT CONCERNING A COURT'S WITNESS.

3-2A-09B.

(A) THIS SECTION APPLIES TO AN AWARD UNDER § 3-2A-05 OF THIS SUBTITLE OR A VERDICT UNDER § 3-2A-06 OF THIS SUBTITLE FOR A CAUSE OF ACTION ARISING ON OR AFTER JUNE 1, 2006.

(B) (1) AN AWARD OR VERDICT UNDER THIS SUBTITLE FOR NONECONOMIC DAMAGES MAY NOT EXCEED \$500,000.

(2) THE LIMITATION UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL APPLY IN THE AGGREGATE TO ALL CLAIMS FOR PERSONAL INJURY AND WRONGFUL DEATH ARISING FROM THE SAME MEDICAL INJURY, REGARDLESS OF THE NUMBER OF CLAIMS, CLAIMANTS, PLAINTIFFS, OR DEFENDANTS.

(C) (1) IN A JURY TRIAL, THE JURY MAY NOT BE INFORMED OF THE LIMITATION UNDER SUBSECTION (B) OF THIS SECTION.

(2) IF THE JURY AWARDS AN AMOUNT FOR NONECONOMIC DAMAGES THAT EXCEEDS THE LIMITATION ESTABLISHED UNDER SUBSECTION (B) OF THIS SECTION, THE COURT SHALL:

(I) REDUCE THE AMOUNT TO CONFORM TO THE LIMITATION; AND

(II) IF THE AWARD INCLUDES AMOUNTS FOR BOTH PAST AND FUTURE NONECONOMIC DAMAGES, REDUCE EACH AMOUNT PROPORTIONATELY TO THE TOTAL AWARD SO THAT THE TOTAL AWARD CONFORMS TO THE LIMITATION UNDER SUBSECTION (B)(1) OF THIS SECTION.

(3) IN A WRONGFUL DEATH ACTION IN WHICH THERE ARE TWO OR MORE CLAIMANTS OR BENEFICIARIES, IF THE JURY AWARDS AN AMOUNT FOR NONECONOMIC DAMAGES THAT EXCEEDS THE LIMITATION UNDER SUBSECTION (B) OF THIS SECTION OR A REDUCTION UNDER PARAGRAPH (4) OF THIS SUBSECTION, THE COURT SHALL:

(I) IF THE AMOUNT OF NONECONOMIC DAMAGES FOR THE PRIMARY CLAIMANTS, AS DESCRIBED UNDER § 3-904(D) OF THIS TITLE, EQUALS OR EXCEEDS THE LIMITATION UNDER SUBSECTION (B) OF THIS SECTION OR A REDUCTION UNDER PARAGRAPH (4) OF THIS SUBSECTION:

1. REDUCE EACH INDIVIDUAL AWARD OF A PRIMARY CLAIMANT PROPORTIONATELY TO THE TOTAL AWARD OF ALL PRIMARY CLAIMANTS SO THAT THE TOTAL AWARD TO ALL CLAIMANTS OR BENEFICIARIES CONFORMS TO THE LIMITATION OR REDUCTION; AND

2. REDUCE EACH AWARD, IF ANY, TO A SECONDARY CLAIMANT AS DESCRIBED UNDER § 3-904(E) OF THIS TITLE TO ZERO DOLLARS; OR

(II) IF THE AMOUNT OF NONECONOMIC DAMAGES FOR THE PRIMARY CLAIMANTS DOES NOT EXCEED THE LIMITATION UNDER SUBSECTION (B)

OF THIS SECTION OR A REDUCTION UNDER PARAGRAPH (4) OF THIS SUBSECTION OR IF THERE IS NO AWARD TO A PRIMARY CLAIMANT:

1. ENTER AN AWARD TO EACH PRIMARY CLAIMANT, IF ANY, AS DIRECTED BY THE VERDICT; AND

2. REDUCE EACH INDIVIDUAL AWARD OF A SECONDARY CLAIMANT PROPORTIONATELY TO THE TOTAL AWARD OF ALL OF THE SECONDARY CLAIMANTS SO THAT THE TOTAL AWARD TO ALL CLAIMANTS OR BENEFICIARIES CONFORMS TO THE LIMITATION OR REDUCTION.

(4) IN A CASE IN WHICH THERE IS A PERSONAL INJURY ACTION AND A WRONGFUL DEATH ACTION, IF THE TOTAL AMOUNT AWARDED BY THE JURY FOR NONECONOMIC DAMAGES FOR BOTH ACTIONS EXCEEDS THE LIMITATION UNDER SUBSECTION (B) OF THIS SECTION, THE COURT SHALL REDUCE THE AWARD IN EACH ACTION PROPORTIONATELY SO THAT THE TOTAL AWARD FOR NONECONOMIC DAMAGES FOR BOTH ACTIONS CONFORMS TO THE LIMITATION.

(D) (1) AN AWARD OR VERDICT FOR PAST MEDICAL EXPENSES SHALL EXCLUDE ANY AMOUNT NOT ACTUALLY PAID BY OR ON BEHALF OF THE CLAIMANT OR PLAINTIFF OR ANY AMOUNT ACTUALLY OWED BY THE CLAIMANT OR PLAINTIFF TO A HEALTH CARE PROVIDER.

(2) THE AWARD OR VERDICT FOR PAST OR FUTURE LOSS OF EARNINGS SHALL EXCLUDE ANY AMOUNT FOR FEDERAL, STATE, OR LOCAL INCOME TAXES OR PAYROLL TAXES THAT THE CLAIMANT OR PLAINTIFF WOULD HAVE PAID ON THESE EARNINGS, DETERMINED AT THE TAX RATES IN EFFECT FOR THE CLAIMANT OR PLAINTIFF AT THE TIME THE AWARD OR VERDICT IS ENTERED.

(3) (I) EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, AN AWARD OR VERDICT FOR FUTURE MEDICAL EXPENSES SHALL BE BASED SOLELY ON MEDICARE REIMBURSEMENT RATES IN EFFECT ON THE DATE OF THE AWARD OR VERDICT FOR THE LOCALITY IN WHICH THE CARE IS TO BE PROVIDED, ADJUSTED FOR INFLATION AS PROVIDED IN SUBPARAGRAPH (V) OF THIS PARAGRAPH.

(II) IF ON THE DATE OF THE AWARD OR VERDICT, THE MEDICARE WAIVER UNDER § 1814(B) OF THE FEDERAL SOCIAL SECURITY ACT IS IN EFFECT, AN AWARD OR VERDICT FOR FUTURE MEDICAL EXPENSES FOR HOSPITAL FACILITY SERVICES SHALL BE BASED SOLELY ON THE RATES APPROVED BY THE HEALTH SERVICES COST REVIEW COMMISSION IN EFFECT ON THE DATE OF THE AWARD OR VERDICT FOR THE HOSPITAL FACILITY IN WHICH SERVICES ARE TO BE PROVIDED, ADJUSTED FOR INFLATION AS PROVIDED IN THE ANNUAL RATE UPDATES APPROVED BY THE HEALTH SERVICES COST REVIEW COMMISSION.

(III) AN AWARD OR VERDICT FOR FUTURE MEDICAL EXPENSES FOR NURSING FACILITY SERVICES SHALL BE BASED SOLELY ON THE STATEWIDE AVERAGE PAYMENT RATE FOR THE MEDICAL ASSISTANCE PROGRAM DETERMINED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE IN EFFECT ON THE DATE OF THE AWARD OR VERDICT, ADJUSTED FOR INFLATION AS PROVIDED IN SUBPARAGRAPH (V) OF THIS PARAGRAPH.

(IV) AN AWARD OR VERDICT FOR FUTURE ECONOMIC DAMAGES FOR WHICH THERE IS NO MEDICARE REIMBURSEMENT RATE, HOSPITAL FACILITY RATE, OR STATEWIDE AVERAGE PAYMENT SHALL BE BASED ON ACTUAL COST ON THE DATE OF THE AWARD OR VERDICT, ADJUSTED FOR INFLATION AS PROVIDED IN SUBPARAGRAPH (V) OF THIS PARAGRAPH.

(V) 1. FUTURE MEDICAL ECONOMIC DAMAGES SHALL BE ADJUSTED FOR INFLATION FOR THE EXPENDITURE CATEGORY OF THE CONSUMER PRICE INDEX PUBLISHED BY THE BUREAU OF LABOR STATISTICS TO WHICH THE EXPENSE APPLIES.

2. THE ADJUSTMENT FOR INFLATION UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH SHALL BE BASED ON THE AVERAGE RATE OF INFLATION FOR THE 5 YEARS IMMEDIATELY PRECEDING THE AWARD OR VERDICT.

3-2A-10.

Except as otherwise provided in §§ 3-2A-05, 3-2A-06, 3-2A-08A [and], 3-2A-09, AND 3-2A-09B of this subtitle, the provisions of this subtitle shall be deemed procedural in nature and may not be construed to create, enlarge, or diminish any cause of action not heretofore existing, except the defense of failure to comply with the procedures required under this subtitle.

8-306.

In a civil action in which a jury trial is permitted, the jury shall consist of AT LEAST 6 jurors.

9-124.

(A) IN A CIVIL ACTION, IF A COURT DETERMINES THAT SCIENTIFIC, TECHNICAL, OR OTHER SPECIALIZED KNOWLEDGE WILL ASSIST THE TRIER OF FACT TO UNDERSTAND THE EVIDENCE OR TO DETERMINE A FACT IN ISSUE, A WITNESS DETERMINED BY THE COURT TO BE QUALIFIED AS AN EXPERT BY KNOWLEDGE, SKILL, EXPERIENCE, TRAINING, OR EDUCATION MAY TESTIFY CONCERNING THE EVIDENCE OR FACT IN ISSUE IN THE FORM OF AN OPINION OR OTHERWISE ONLY IF THE FOLLOWING CRITERIA ARE MET:

- (1) THE TESTIMONY IS BASED ON SUFFICIENT FACTS OR DATA;
- (2) THE TESTIMONY IS THE PRODUCT OF RELIABLE PRINCIPLES AND METHODS; AND
- (3) THE WITNESS HAS APPLIED THE PRINCIPLES AND METHODS RELIABLY TO THE FACTS OF THE CASE.

(B) (1) IF A COURT CONSIDERS IT NECESSARY OR ON MOTION BY A PARTY, THE COURT MAY HEAR EVIDENCE REGARDING THE CRITERIA IN SUBSECTION (A) OF

THIS SECTION, INCLUDING HEARING TESTIMONY FROM THE PROPOSED EXPERT WITNESS.

(2) IF THE COURT DECIDES TO HEAR EVIDENCE REGARDING THE CRITERIA IN SUBSECTION (A) OF THIS SECTION, THE COURT SHALL HEAR THE EVIDENCE OUT OF THE PRESENCE OF A JURY.

10-920.

(a) In this section, "health care provider" has the meaning stated in § 3-2A-01 of this article.

(B) THIS SECTION APPLIES TO AN EXPRESSION OF REGRET OR APOLOGY MADE IN WRITING, ORALLY, OR BY CONDUCT.

[(b)] (C) [(1) Except as provided in paragraph (2) of this subsection, in] IN a proceeding subject to Title 3, Subtitle 2A of this article or a civil action against a health care provider, an expression of regret or apology made by or on behalf of the health care provider TO A VICTIM OF ALLEGED HEALTH CARE MALPRACTICE, ANY MEMBER OF THE VICTIM'S FAMILY, OR ANY INDIVIDUAL WHO CLAIMS DAMAGES BY OR THROUGH THAT VICTIM [, including an expression of regret or apology made in writing, orally, or by conduct,] is inadmissible as evidence of an admission of liability or as evidence of an admission against interest.

[(2) An admission of liability or fault that is part of or in addition to a communication made under paragraph (1) of this subsection is admissible as evidence of an admission of liability or as evidence of an admission against interest in an action described under paragraph (1) of this subsection.]

11-107.

(a) Except as provided in § 11-106 of this article, the legal rate of interest on a judgment shall be at the rate of [10 percent per annum on the amount of judgment] THE WEEKLY AVERAGE 1-YEAR CONSTANT MATURITY TREASURY YIELD, AS PUBLISHED BY THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, FOR THE CALENDAR WEEK PRECEDING THE DATE OF THE JUDGMENT.

11-108.

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

(e) The provisions of this section do not apply to AN ARBITRATION AWARD OR a verdict under Title 3, Subtitle 2A of this article for damages in which the cause of action arises on or after January 1, 2005.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) There is a Task Force on Health Care Malpractice.

- (b) The Task Force consists of the following members:
- (1) the Secretary of Health and Mental Hygiene;
 - (2) the Insurance Commissioner;
 - (3) two members of the Senate of Maryland, appointed by the President of the Senate;
 - (4) two members of the House of Delegates appointed by the Speaker of the House; and
 - (5) the following members appointed by the Governor:
 - (i) a person with expertise in income tax law;
 - (ii) a lawyer with expertise in defending medical malpractice cases;
 - (iii) a lawyer with expertise in representing victims of medical malpractice;
 - (iv) a judge;
 - (v) a patient safety advocate;
 - (vi) an expert in structured settlements;
 - (vii) a physician;
 - (viii) a representative from a hospital or other health care facility;
 - (ix) a representative of a medical malpractice insurer.

(c) The Governor shall designate the chairman of the Task Force from among the members.

(d) The Department of Health and Mental Hygiene and the Maryland Insurance Administration shall provide staff for the Task Force.

(e) The Task Force may study any aspect of the health care, insurance, or civil justice systems related to health care malpractice liability, including:

- (1) patient safety issues;
- (2) structured compensation by periodic payments or annuities for future economic damages included in health care malpractice judgments;
- (3) health care provided in compliance with the federal Emergency Medical Treatment and Active Labor Act (EMTALA);

- (4) qualifications for expert witnesses and criteria for expert witness testimony in health care malpractice actions;
 - (5) calculation of economic damages in health care malpractice actions;
 - (6) administrative compensation for a birth-related neurological injury;
- and
- (7) health care malpractice insurance reforms.

(f) The Task Force shall report its findings and recommendations to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly on or before December 15, 2007.

SECTION 3. AND BE IT FURTHER ENACTED, That §§ 3-2A-04(b)(1)1 and (4), 8-306, 9-124, and 11-107(a) of the Courts Article as enacted by 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 claim or case filed before the effective date of this Act.

SECTION 4. AND BE IT FURTHER ENACTED, 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 competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2006.