HOUSE BILL 1009

D3 4lr1940
CF SB 789

By: **Delegates Carter, Anderson, Rosenberg, Simmons, Smigiel, Summers, and Vallario**
Introduced and read first time: February 6, 2014
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Civil Actions – Noneconomic Damages – Catastrophic Injury

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

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

(a) **[**This**]** **EXCEPT AS PROVIDED IN SUBSECTION (B)(3) OF THIS SECTION, 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.

(b) (1) (i) Except as provided in paragraph (2)(ii) of this subsection, an 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.

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

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

(2) (i) Except as provided in subparagraph (ii) of this paragraph, 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, beneficiaries, or defendants.

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

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

(II) THE LIMITATION ON NONECONOMIC DAMAGES PROVIDED UNDER PARAGRAPHS (1) AND (2) OF THIS SUBSECTION DOES NOT APPLY 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 OCTOBER 1, 2014, IN WHICH IT IS DETERMINED BY A COURT IN A POSTTRIAL MOTION OR A HEALTH CLAIMS ARBITRATION PANEL UNDER § 3–2A–05 OF THIS SUBTITLE THAT A HEALTH CARE PROVIDER'S NEGLIGENCE OR OTHER WRONGFUL CONDUCT CAUSED A CATASTROPHIC INJURY.

11–108.

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

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

(3) "CATASTROPHIC INJURY" MEANS:

(I) DEATH; OR

(II) PERMANENT IMPAIRMENT CONSTITUTED BY:

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

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

3. SEVERE BRAIN OR CLOSED–HEAD INJURY AS EVIDENCED BY:

A. SEVERE SENSORY OR MOTOR DISTURBANCES;

B. SEVERE COMMUNICATION DISTURBANCES;

C. SEVERE COMPLEX INTEGRATED DISTURBANCES OF CEREBRAL FUNCTION;

D. SEVERE EPISODIC NEUROLOGICAL DISORDERS; OR

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

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

5. BLINDNESS;

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

7. SEVERE PHYSICAL DEFORMITY; OR

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

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

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

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

(ii) "Noneconomic damages" does not include punitive damages.

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

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

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

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

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

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

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

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

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

(c) **(1)** 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.

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

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

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

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

[(ii)**] (III)** 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 established under subsection (b)(3)(ii) **OR (4)** of this section, the court shall:

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

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

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

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

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

B. 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.

(e) The provisions of this section do not apply to 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**, EXCEPT FOR A VERDICT IN A CAUSE OF ACTION ARISING ON OR AFTER OCTOBER 1, 2014, IN WHICH IT IS DETERMINED BY A COURT IN A POSTTRIAL MOTION OR A HEALTH CLAIMS ARBITRATION PANEL UNDER § 3–2A–05 OF THIS ARTICLE THAT A CATASTROPHIC INJURY OCCURRED**.

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