

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 36

(Senator Smith)

Judicial Proceedings

Civil Actions - Noneconomic Damages

This bill increases the maximum amount of noneconomic damages that may be recovered in specified wrongful death or survival actions, including health care malpractice actions.

Fiscal Summary

State Effect: The bill does not directly affect governmental operations or finances.

Local Effect: The bill does not directly affect local government operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law: State law distinguishes between ordinary negligence claims and health care malpractice claims. The Courts and Judicial Proceedings Article sets various caps on noneconomic damages in civil actions, depending on the type of action and when the cause of action arose. Noneconomic damages include pain and suffering but do not include punitive damages.

A survival action is brought on behalf of a decedent's estate for injuries or damages incurred by the decedent prior to the person's death.

Health Care Malpractice Actions

Under current law, parties to health care malpractice claims are required to file a claim with the Health Care Alternative Dispute Resolution Office. Claims may proceed through the

arbitration process, or claimants or defendants may waive participation and instead transfer the case to the circuit court or U.S. District Court for trial. Parties may also seek judicial review of a final arbitration award.

For health care malpractice actions, the cap for noneconomic damages was set at \$650,000 for causes of action arising between January 1, 2005, and December 31, 2008, increasing by \$15,000 each year, beginning on January 1, 2009. Thus, under current law, for causes of action arising in 2018, the cap is \$800,000; for causes of action arising in 2019, the cap is \$815,000. The cap applies 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. However, for a wrongful death action in which there are two or more claimants or beneficiaries, the total amount awarded may not exceed 125% of the cap, or \$1.0 million in 2018.

The bill establishes that the existing limits on noneconomic damages in health care malpractice actions do not apply to an award from an arbitration panel, or a verdict by a judge or jury on judicial review of an arbitration award, for a wrongful death or survival action arising on or after October 1, 2018. Instead, the general limit on noneconomic damages for other civil actions applies.

Other Civil Actions (Excluding Health Care Malpractice)

Under current law, in an action for damages for personal injury or wrongful death (excluding health care malpractice), the cap is \$860,000 for causes of action arising on or after October 1, 2018. This cap also increases by \$15,000 a year. Thus, for causes of action arising on or after October 1, 2019, the cap is \$875,000. This limitation applies in a personal injury action to each direct victim of tortious conduct and all persons who claim injury through that victim. The cap also applies separately to a personal injury action and wrongful death action, so that damages may be aggregated. However, in a wrongful death action in which there are two or more claimants or beneficiaries, an award of noneconomic damages may not exceed 150% of the applicable cap, regardless of the number of claimants or beneficiaries. In a jury trial, a jury *may not* be informed of these limitations.

The bill increases the cap for noneconomic damages in a wrongful death action, in which there are two or more claimants or beneficiaries, to up to 450% of the applicable cap. Further, under the bill, a jury *may* be informed of the limitations on noneconomic damages.

Small Business Effect: Potential meaningful impact on small businesses subject to higher liability under the bill and small business law firms that successfully litigate claims under the increased liability limits.

The bill increases the noneconomic damages cap for a wrongful death or survival action award from an arbitration panel, or a verdict resulting from judicial review of an arbitration award, in a health care malpractice action that arises on or after October 1, 2018. Thus, the cap would be \$860,000 (rather than \$800,000) for an action that arises on October 1, 2018. (These caps continue to increase by \$15,000 a year.)

The bill also increases the cap for a wrongful death action with two or more claimants or beneficiaries (in both health care malpractice and general civil actions). Thus, the cap would be 450% of \$860,000, or approximately \$3.9 million (rather than \$1.0 million for a health care malpractice action or \$1.3 million in a general civil action) for an action that arises on October 1, 2018. (Again, these caps continue to increase each year.)

Further, the bill excludes an award from an arbitration panel, or a verdict resulting from judicial review of an arbitration award, for wrongful death in a health care malpractice action from the existing aggregation limitations in health care malpractice actions. Thus, for an action that arises on October 1, 2018, total damages for a survival action *and* wrongful death action could reach more than \$1.7 million in actions with one claimant or beneficiary (\$860,000 for the survival action and \$860,000 for the wrongful death action), or more than \$4.7 million in actions with two or more claimants or beneficiaries (\$860,000 for the survival action and approximately \$3.9 million for the wrongful death action).

Additional Information

Prior Introductions: SB 682 of 2017 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 1459, received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Health Care Alternative Dispute Resolution Office; Maryland Insurance Administration; Department of Legislative Services

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