

MEDICAL MUTUAL

Liability Insurance Society of Maryland

Bill: Senate Bill 538 – Civil Actions – Noneconomic Damages – Personal Injury and Wrongful Death

Date: February 16, 2024

Position: *Oppose*

Bill Summary

Senate Bill 538 eliminates the cap on noneconomic damages in civil actions for personal injury or wrongful death.

Medical Mutual's Position

Medical Mutual opposes Senate Bill 538. Eliminating the cap on noneconomic damages in personal injury and wrongful death actions would expose Maryland residents and businesses to unpredictable and potentially unlimited liability that could adversely affect the availability and affordability of casualty insurance in the State.

In a personal injury or wrongful death action, a plaintiff may be entitled to recover economic damages and noneconomic damages. Economic damages include past and future loss of earnings and medical expenses.¹ Noneconomic damages, on the other hand, include pain, suffering, inconvenience, and other nonpecuniary losses.² Noneconomic damages do not include punitive damages, which may be awarded in cases where the plaintiff has proven, by clear and convincing evidence, that the defendant acted with actual malice.³

Economic damages for past and future medical expenses, past and future loss of income, and other pecuniary losses are calculable and can be objectively measured. In contrast, noneconomic damages for pain and suffering, loss of consortium, emotional distress, and other nonpecuniary losses have no calculable economic basis and are inherently subjective. Removing the cap on noneconomic damages would allow for limitless jury awards. The possibility of unlimited noneconomic damages awards could lead to a significant rise in settlement demands, prolonged and expensive litigation, and higher liability insurance rates for Maryland citizens.

¹ See Md. Code, Cts. & Jud. Proc. § 11-109.

² See Md. Code, Cts. & Jud. Proc. § 11-108(a)(2).

³ See *Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420, 460, 469 (1992).

In 1986, the General Assembly enacted a \$350,000 cap on noneconomic damages for personal injury actions.⁴ Since then, the cap has steadily increased to \$935,000 for causes of action arising on or after October 1, 2023.⁵ This amount increases to \$1,402,500 (150% of the individual cap) in wrongful death actions involving two or more claimants or beneficiaries.⁶ And the cap in a combined survival and wrongful death action can be as high as \$2,337,500.⁷ These limits will automatically increase on October 1, 2024, and on October 1 of each subsequent year.⁸

Nearly 40 years ago, the General Assembly enacted a reasonable limit on noneconomic damages. This measured response to disproportionate jury awards continues to provide predictability and stability in Maryland's civil justice system today. The noneconomic damages cap also preserves "the availability of sufficient liability insurance, at a reasonable cost, in order to cover claims for personal injuries to members of the public."⁹ Eliminating the noneconomic damages cap would upend these legitimate legislative objectives and disturb the careful balance that the General Assembly struck when enacting the cap.

For these reasons, Medical Mutual respectfully requests an *UNFAVORABLE* report on *Senate Bill 538*.

For more information contact:

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⁴ See Laws of Md., 1986, Ch. 639.

⁵ See Md. Code, Cts. & Jud. Proc. § 11-108(b)(2).

⁶ See Md. Code, Cts. & Jud. Proc. § 11-108(b)(3)(ii).

⁷ See Md. Code, Cts. & Jud. Proc. § 11-108(b)(3).

⁸ See Md. Code, Cts. & Jud. Proc. § 11-108(b)(2)(ii).

⁹ *Murphy v. Edmonds*, 325 Md. 342, 369 (1992).