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MARYLAND EMPLOYERS FOR CIVIL JUSTICE REFORM COALITION

OPPOSITION TO SB 1031

Civil Actions – Lead Poisoning – Liability and Statute of Limitations
(Maryland Lead Poisoning Compensation Act)

Maryland Employers for Civil Justice Reform Coalition, comprised of many of the largest employers, businesses, and health care providers in Maryland, opposes SB 1031. Among other measures in the bill that enhance damages for lead poisoning, SB 1031 would create an exception to Maryland's caps on noneconomic damages, an inappropriate and unfounded public policy.

Caps on noneconomic damages have been an important public policy in Maryland for more than 37 years. Back in 1986, the General Assembly concluded there was a severe liability insurance affordability and availability crisis in the State. The Executive and Legislative branches had previously commissioned studies of the problem, producing a 1985 report from the Governor's Task Force to Study Liability Insurance that concluded, among other recommendations, that the State could no longer afford unlimited awards for noneconomic damages (*i.e.*, damages for pain and suffering). The solution recommended by the Task Force was a cap on these damages:

A cap on allowable pain and suffering awards will help reduce the incidence of unrealistically high liability awards, yet at the same time protect the right of the injured party to recover the full amount of economic loss, including all lost wages and medical expenses.¹

On the strength of these study findings, the General Assembly crafted the 1986 legislative solution, noting in a Committee Report that the legislative purpose was "assuring the availability of sufficient liability insurance, at a reasonable cost, in order to cover claims for personal injury."

In light of this well studied foundation for the current caps on noneconomic damages, why ever would the General Assembly want to risk inviting back the insurance crisis of 1986 by creating an exception to these caps? An exception to the caps for one type of tort action will encourage other plaintiffs to argue, on equal protection grounds, that the exception should be extended to their actions, leading to the eventual repeal of the caps entirely.

A further reason favoring the preservation of caps on noneconomic damages is that these damages, for pain and suffering and other nonpecuniary injuries, are difficult to quantify. Quite simply, these damages involve no direct economic loss and have no precise monetary value. Given the emotional sensitivities and differing perspectives surrounding these injuries, courts and juries often struggle to calculate fair and rational awards. Caps are the correct and best public policy to balance the

¹ *Franklin v. Mazda Motor Corp.*, 704 F. Supp. 1325, 1328 (D. Md. 1989) (quoting the Report of the Governor's Task Force to Study Liability Insurance, issued Dec. 20, 1985). This issue was also studied in 1985 by the Joint Executive/Legislative Task Force on Medical Insurance, resulting in a similar recommendation for statutory limits or caps.



need for recovery for these injuries with the avoidance of unrealistically high and excessive awards. For this reason, more than half the states have caps currently in effect on noneconomic damages.

In addition, the current caps are reasonable. The caps were originally set at \$350,000 when first implemented in 1986 (the 1985 Task Force had recommended \$250,000), and then in 1994 they were raised to \$500,000 and tied to an annual escalator of \$15,000 to adjust for inflation. Today, these inflation-adjusted caps in personal injury actions have risen to \$935,000 for the injured party.

Moreover, in wrongful death cases, pain and suffering can be recovered on behalf of the person who died as a result of the negligent conduct. In addition, two or more beneficiaries, such as immediate family members, can also recover noneconomic damages in wrongful death cases under current law. Accordingly, in actions where a person is alleged to have died as a result of negligence, the total availability of noneconomic damages is up to \$2.337 million (\$935,000 for the decedent, plus \$1,402,500 for the immediate family). Thus, the adequacy of Maryland's caps to address damages for pain and suffering alone cannot reasonably be questioned, and as the 1985 Governor's Task Force aptly noted, noneconomic damages are not a sole remedy, as damages for the full and unlimited amount of *economic* losses are *also* available to plaintiffs in any tort action.

Finally, the Coalition notes that the validity of the current caps has been reviewed on three separate occasions by the Court of Appeals (now Supreme Court) of Maryland. In every instance, the noneconomic damage caps have been upheld by the high court.² Allegations that caps on noneconomic damages are unconstitutional are unfounded and inconsistent with established case law.

For all these reasons, the Coalition respectfully urges an unfavorable report on SB 1031.

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² *DRD Pool Service v. Freed*, 416 Md. 46, 62 (2010); *Oaks v. Connors*, 339 Md. 24, 37 (1995); *Murphy v. Edmonds*, 325 Md. 342, 366 (1992). *See also, Martinez v. Hopkins*, 212 Md. App. 634, 656 (2013) (constitutionality of the caps was challenged but not struck down, finding that the constitutionality of the caps was moot).