

# **G&B Support Senate Bill 538 Written Witness.pdf**

Uploaded by: Andrew Bederman

Position: FAV



# GREENBERG & BEDERMAN LLC

1111 Bonifant Street | Silver Spring, Maryland 20910  
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Legislative Services Building  
90 State Circle  
Annapolis, MD 21401

Dear Sir or Madam:

Attached please find attached please find my statement in support of Senate Bill 538.

Thank you for your prompt attention to this request, we remain,

Yours very truly,

Andrew E. Bederman  
GREENBERG & BEDERMAN  
1111 Bonifant Street  
Silver Spring, MD 20910  
301 589 2200

Andrew E. Bederman (MD, DC) | Jason W. Fernandez (MD, DC, VA)  
Adrienne R. Fernandez (MD) | Eugene Khudoley (MD) | Simba D. T. Hodari (MD, DC, VA)  
Ryan J. Frazier (MD, DC) | Christopher Salsman (MD, DC, KY) | Joseph C. Garland (MD, DC)  
Gabriela Rubio Gonzalez (MD, DC, PR) Howlett Jackson, Jr. (MD) | Michael A. Jones (MD, DC)

• Roger E. Greenberg (1943-2013) •

Of Counsel:

Hodari Fernandez, LLC • David S. Bederman

One day about two years ago, at the Friendly Garden Apartments on the 2400 block of Lyttonsville Road in Silver Spring, a maintenance worker was doing plumbing work in the basement. While cutting pipe, the worker negligently severed a gas line, which allowed dangerous and explosive gas to leak out, filling the basement. On the morning of March 3, 2022, that leaking gas exploded.<sup>1</sup>

On that day, Jane Doe,<sup>2</sup> a 60-year-old grandmother, was sitting in her daughter's unit at Friendly Garden Apartments, waiting for her daughter and grandchildren to return. When the gas ignited, the apartment building was destroyed, with Doe still inside her daughter's apartment.

Unconscious but fortunate to survive, Doe was pulled from the smoldering rubble and taken by ambulance to the Burn Unit at Washington Hospital Center. When she woke up, she learned that second and third-degree burns covered her body, including her scalp, face, eyelids, wrists, hands, neck, arms, shoulders, and legs. She needed to breathe through a tube because the searing heat from the explosion had burned her airway, making it hard to breathe on her own.

Over two months in the hospital, Doe endured more than a dozen surgeries, including skin grafts to her arms, legs, shoulders and face. Her eyes and eyelids were so damaged by the fire that her eyesight was impaired and she could not close her eyes to sleep. She had muscle contractures in her hands, limiting her strength and range of motion. On April 15, 2022, a finger on her left hand was amputated because it could not be saved.

Doe was discharged on May 26, 2022, but her nightmarish ordeal has not ended. She spent most of the past twenty (20) months going in and out of hospitals for multiple scar revision procedures, occupational and physical therapy sessions, and treatments for ocular, pulmonary, and cardiovascular injuries that she suffered due to the gas explosion.

Doe has more than \$3 million in medical expenses to date, and her future medical, surgical, rehabilitation, and life care needs will cost much more. Any compensation she might obtain in a lawsuit for medical expenses, however, will go to reimburse her health insurer and to pay doctors and hospitals for the future care that she needs, for the remainder of her life expectancy.

Doe's life as she knew it was changed irrevocably on March 3, 2022. Although the Friendly Garden Apartments have ample insurance coverage, Maryland law arbitrarily and unfairly limits what Doe can recover as compensation for her persistent and ongoing pain, anguish, disfigurement, and loss of enjoyment of the life she once had – the life that she would still be living, but for the unreasonably unsafe conduct of a poorly-trained maintenance worker.

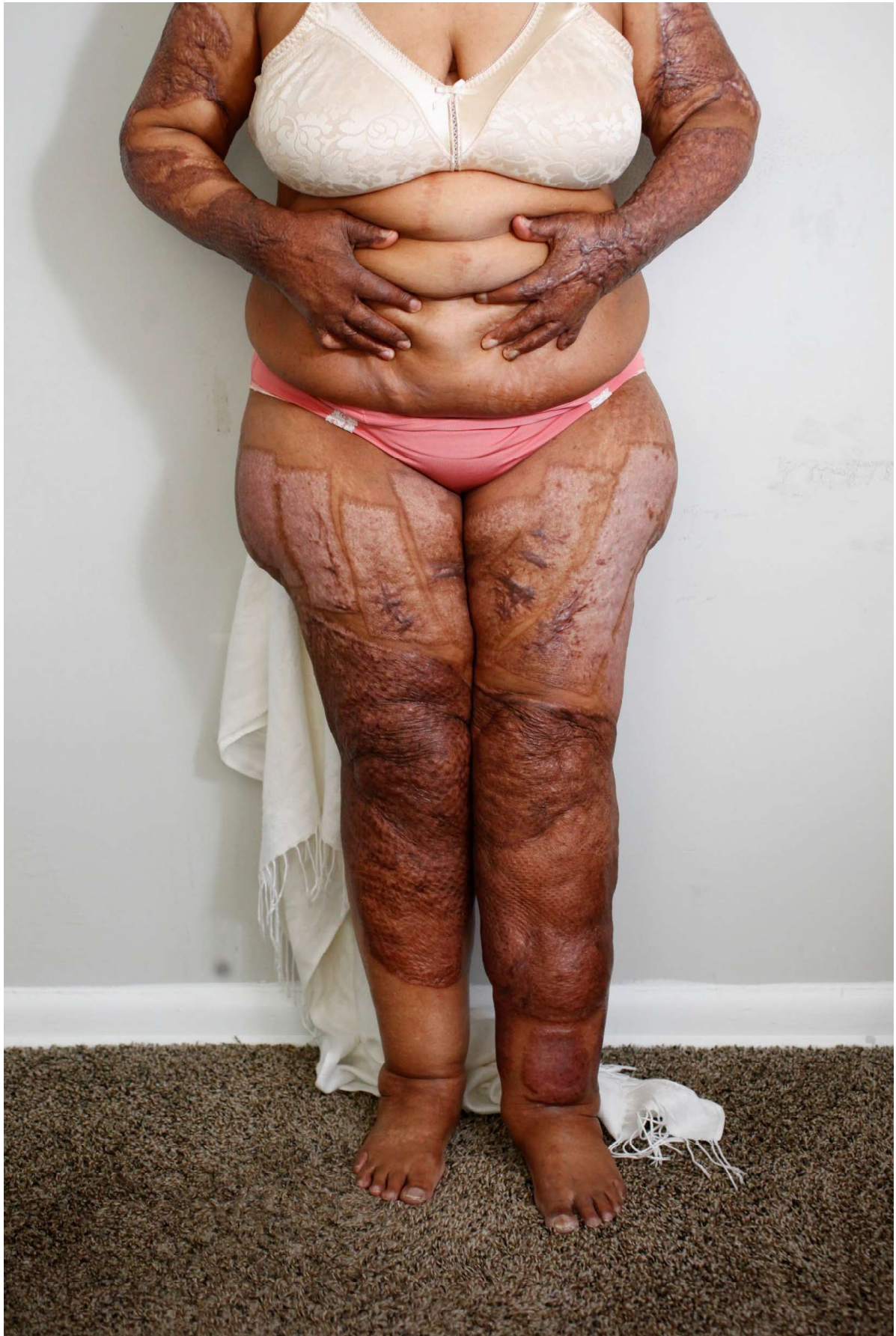
If the incident had happened just 2.0 miles away in Washington DC, the law would not limit Doe's compensation unfairly. Maryland law should not limit fair and just compensation for injured Marylanders. **Please enact HB83 and repeal § 11-108.**

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<sup>1</sup> Washington Post, "Silver Spring apartment explosion sends 10 to the hospital, leaves others missing" (Mar. 3, 2022) available at <https://www.washingtonpost.com/dc-md-va/2022/03/03/laytonsville-fire-apartment-collapse/>.

<sup>2</sup> My client is still recovering from the severe injuries she suffered in this incident and she does not wish for her name to be made public at this time.





















**2024 Position Paper - Caps HB83 SB538 Main.pdf**

Uploaded by: Chris Figueras

Position: FAV



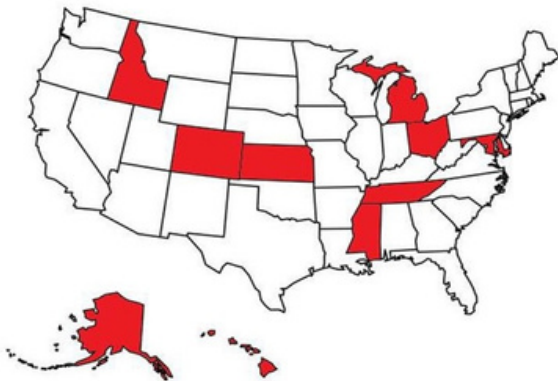
## 2024 POSITION PAPER

HB83 / SB538

### CIVIL ACTIONS - NONECONOMIC DAMAGES PERSONAL INJURY AND WRONGFUL DEATH FAVORABLE

Under the current law, a cap on “noneconomic damages” (including every kind of loss other than wages/earnings or medical expenses) arbitrarily restricts the rights of Marylanders to access full and fair compensation when unreasonably unsafe conduct causes injury or death.

When enacted in 1984, Maryland’s general cap (in § 11-108 of the Courts Article)<sup>1</sup> was the first such cap in the country. Four decades later, only nine other states have such a cap:



No neighboring State, and no State on the Eastern seaboard, restricts the rights of its own citizens to fair compensation the same way Maryland does with § 11-108.

Over four decades, § 11-108 has failed to make insurance any cheaper in Maryland, nor wages any higher, nor life any better for millions of Marylanders.

The Maryland Association for Justice supports HB 83/SB538, and repeal of § 11-108.

Because of 11-108, Maryland’s civil justice system disproportionately favors high-wage earners, and disfavors people on the “wrong side” of the wealth gap. Moreover, decades of legal scholarship have shown the discriminatory impact of general cap statutes like § 11-108.<sup>2</sup>

The time has come to repeal § 11-108, and allow Marylanders to access civil justice and fair compensation without arbitrary legislative restrictions on recoverable damages.

### The Maryland Association for Justice urges a FAVORABLE Report on HB 83 / SB 538.

<sup>1</sup> HB 83 repeals the “general” noneconomic damages cap in Md. Courts & Jud. Procs. Code § 11-108. **HB 83 has no effect** on caps applicable to health care providers, local or State government, boards of education, or the cap enacted last year pertaining to claims of sexual assault against a child.

<sup>2</sup> See, e.g., Finley, “The Hidden Victims of Tort Reform: Women, Children, and the Elderly,” 53 Emory L.J. 1263, 1265 (2004) (“caps on noneconomic damages . . . have a significant adverse impact on women and the elderly”).

### About Maryland Association for Justice

The Maryland Association for Justice (MAJ) represents over 1,250 trial attorneys throughout the state of Maryland. MAJ advocates for the preservation of the civil justice system, the protection of the rights of consumers and the education and professional development of its members.

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**2024 Position Paper - Caps HB83 SB538 V2.pdf**

Uploaded by: Chris Figueras

Position: FAV



## 2024 POSITION PAPER

HB83 / SB538

### CIVIL ACTIONS - NONECONOMIC DAMAGES PERSONAL INJURY AND WRONGFUL DEATH FAVORABLE

#### The Impact of Maryland's Cap on Noneconomic Damages

Md. Cts. & Jud. Procs. Code § 11-108 limits the recovery of “noneconomic damages” (*i.e.*, every kind of loss other than wages/earnings or medical expenses) when unreasonably unsafe conduct causes personal injury or wrongful death.<sup>1</sup>

For example, in a Maryland case, a tractor-trailer rear-ended a car driven by a 24-year-old female, who suffered shoulder injuries that required her to undergo disfiguring breast reduction surgery. The jury's total verdict of \$3,156,000 included \$2,367,000 in non-economic damages, reflecting the jury's understanding of the magnitude of the young woman's lifetime of pain and impaired self-esteem. Because of § 11-108, the verdict was cut by nearly two-thirds.<sup>2</sup>

In another example, a 25-year-old woman was kidnapped from her building's lobby by a felon who got a set of keys from the landlord, despite assurances to tenants that only carefully screened tenants could access common areas. Beaten and sexually assaulted, the young woman's traumatic experience did not stop her from working, so she had no significant wage loss. The jury's verdict was entirely non-economic, and was reduced to less than half by § 11-108.<sup>3</sup>

Decades of legal scholarship has shown that cap statutes like § 11-108 disproportionately limit the recoveries of women injured by negligence, due in part to disparities in wage-earning power, and also because the impact of harms more commonly experienced by women, such as sexual violence and reproductive impairment (such as pregnancy loss or infertility), commonly are compensated as non-economic loss damages: grief and emotional distress, altered sense of self, impaired relationships, *etc.*<sup>4</sup>

In similar fashion, § 11-108 impacts jury verdicts where unreasonably unsafe conduct injures or kills very young or very old Marylanders, because such cases have a very low lost wages/earning component. When a five-year old child drowned in a negligently managed pool at an Anne Arundel County country club, § 11-108 slashed the jury's verdict for his parents' grief and anguish by almost 75%.<sup>5</sup>

Enacted in 1986 as the first such “cap” statute in the nation, § 11-108 has limited the rights of all Maryland residents to obtain full and fair compensation in our own State Courts for close to four decades.

Meanwhile, ***none*** of Maryland's neighbors has enacted a similar cap on non-economic damages; indeed, Maryland is the only place on the U.S. Eastern Seaboard where the legislature has limited its own residents' rights to compensation in all personal injury and wrongful death actions.





## 2024 POSITION PAPER

HB83 / SB538

### CIVIL ACTIONS - NONECONOMIC DAMAGES PERSONAL INJURY AND WRONGFUL DEATH FAVORABLE

If any legitimate public policy reason existed for adopting a cap like § 11-108 – if such a law made Maryland’s economy more competitive (it does not), or made Maryland attractive to business (it does not), or reduced the cost of insurance (it does not), or improved life in Maryland in any way at all (it does not) – then more States would have followed Maryland’s lead. Instead, just nine other states have a law like § 11-108.

After almost forty years, we can see that § 11-108 has not boosted the State’s economy, or kept insurance costs low, or made life better. Of course, corporations and their insurers love § 11-108 because it makes unreasonably unsafe conduct affordable, and protects negligent actors from accountability to victims of unreasonably unsafe conduct, so they can cut corners on safety. The public policy of Maryland should not put corporate and insurance profits ahead of the safety of our residents and the people who visit here.

The § 11-108 cap on non-economic damages is bad public policy. The time has come to repeal § 11-108, and allow Marylanders once again to enjoy full access to civil justice and fair compensation when they are injured by unreasonably unsafe conduct.

### **The Maryland Association for Justice respectfully requests a FAVORABLE Report on HB 83 / SB 538.**

<sup>1</sup> HB 83 would repeal this “general” noneconomic damages cap. HB 83 has no effect on caps applicable to health care providers, local or State government, boards of education, or the cap enacted last year pertaining to claims of sexual assault against a child.

<sup>2</sup> Wertz v. Wakefoose, Case No. 71695V (Cir. Ct. Montgomery County, Md. Dec. 2, 1993). Because the cap was \$350,000 in 1993, § 11-108 took away nearly two-thirds of the jury’s verdict.

<sup>3</sup> Solder v. Queen-Anne Belvedere Assocs., Ltd., Case No. 24-L-90002826 (Cir. Ct. Baltimore County, Md. Jul 23, 1993).

<sup>4</sup> See, e.g., Finley, “The Hidden Victims of Tort Reform: Women, Children, and the Elderly,” 53 Emory L.J. 1263, 1265 (2004) (“caps on noneconomic damages . . . have a significant adverse impact on women and the elderly”).

<sup>5</sup> Freed v. DRD Pool Serv., Inc., 416 Md. 46, 5 A.3d 45 (2010). In this reported appellate decision, the Maryland Supreme Court refused to find § 11-108 unconstitutional. Accordingly, the only way Marylanders can get relief from § 11-108 is for the General Assembly to repeal it.

## About Maryland Association for Justice

The Maryland Association for Justice (MAJ) represents over 1,250 trial attorneys throughout the state of Maryland. MAJ advocates for the preservation of the civil justice system, the protection of the rights of consumers and the education and professional development of its members.

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# **David Harak Written testimony on SB0538.pdf**

Uploaded by: David Harak

Position: FAV



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February 15, 2023

The Judicial Proceedings Committee  
of the Maryland Senate

Re: Favorable Support of SB0538

Dear Committee Members:

I write this letter to urge a favorable report on SB0538.

I am a trial lawyer, who for over twenty-five years, has represented clients who have suffered life altering injuries as a result of the carelessness and negligence of others. Sadly, despite suffering life altering injuries, Maryland law has repeatedly prevented many of my past and current clients from holding the people and corporations fully accountable for the catastrophic life changing harm that they have negligently caused. Two of these clients are Doug and Monica Murphy whose son was killed as a result of the negligence of a driver of a commercial van who was smoking crack and ran him over. I also submit this testimony on behalf of the rest of the citizens of our state, many of whom in the future will also suffer life altering injuries as a result of future carelessness and negligence of people and/or corporations that injure them.

Sitting on a jury is the one chance that ordinary citizens have of exercising direct democracy in the form of a verdict. The members of the jury who are called upon to hear personal injury cases hear all of the evidence, deliberate, and decide if negligence was a cause of the injuries that are being asserted. If they find that negligence was a cause of the injury they then consider all of the evidence to determine what amount it owed to the victim to compensate the negligently injured victim.

In addition to compensation juries determine on their verdict, as Judge Learned Hand observed well over two hundred years ago, the tort system exists to make society a safer place for everyone. When people and corporations know in advance that they will

be held fully accountable for the injuries their negligence causes they have an incentive to be more careful. As a result, less people become injured and society benefits as a whole.

The current state of the law prevents the tort system from achieving either of its founding goals. When legislatures, who have heard none of the evidence of the actual catastrophic injuries a victim of negligence has suffered, arbitrarily determine the maximum amount of recovery the law will allow, victims of negligence are not fully compensated. Negligent actors no longer need to worry about being careful because they can avoid any direct repercussions for their negligent acts by obtaining enough insurance to cover them for the damage cap. Consequently, the two goals that the tort system was founded upon are seriously undermined if not eliminated entirely to a number on a business spreadsheet.

I mentioned that I will be testifying on behalf of my past clients Doug and Monica Murphy. You have heard from the Murphy's on a previous bill to enhance criminal penalties for impaired driving. I watched the video of their testimony and saw how hard it was for them to testify. They did testify in support of SB0538 in the House and I simply could not ask them to go through this pain and emotional damages a third time.

You may recall, their son Matthew was killed by the negligence of a drugged driver driving a company vehicle. Tragically Monica was present when this drugged driver ran up onto the curve and actually witnessed her son die. As you will hear, the insurance adjuster who was assigned the case told me that there was Five Million Dollars in coverage that the drugged driver's company had purchased and could be used to pay out the claim. The adjuster then told me that the Murphy's case was worth every penny of the Five Million Dollars in Coverage.

Amazingly, the insurance adjuster then told me that she was upset and disturbed by the fact that Maryland had a cap on non-economic damages because the existence of this stator cap prevented her from paying the full amount of the coverage. She lamented that her company would not allow her to pay what the law the allow did not allow my clients to recover. In short, the business who insured the drug impaired driver bought coverage in an amount to make sure that if its employees caused catastrophic harm that they would be compensated. Unfortunately, Maryland law would not allow this compensation to take place.

Thank you for allowing me to be heard on their behalf and on behalf of my other past and future clients who have or will find themselves in the same situation as the Murphy's if SB 0538 does not pass.

Sincerely,

**THE HARAK LAW FIRM, LLC**



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DAVID A. HARAK

**Letter to JPR -- 2-16-24.pdf**

Uploaded by: George Tolley

Position: FAV



Finding Answers.  
Demanding Justice.

ATTORNEYS AT LAW

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February 15, 2024

Chairman William C. Smith, Jr.  
Senate Judicial Proceedings Committee  
Miller Senate Office Building, Room 2 East  
Annapolis, Maryland 21401

**SB 538 – Civil Actions – Noneconomic Damages  
Personal Injury and Wrongful Death**

Dear Chairman Smith and Distinguished Members of the Senate Judicial Proceedings Committee:

I write to urge a FAVORABLE report on SB 538, which repeals the arbitrary non-economic damages cap in personal injury actions in Md. Cts. & Jud. Procs. Code § 11-108.

The General Assembly enacted § 11-108 in the mid-1980s, in response to unsupported claims of a “crisis” from the insurance industry. Those claims had no support in the 1980s, and they have no support today; indeed, no legitimate public policy would support enacting such a cap today, and the reasons for enacting the cap decades ago retain no legitimacy.

While some States do have similar caps, 85% of the U.S. population reside in jurisdictions (40 States plus DC) without any caps like § 11-108. The civil justice system functions, and insurance is available and affordable, throughout the country. Every day, in courtrooms all across the United States, juries reach unanimous verdicts to compensate victims of negligence, including for non-economic damages. Maryland law should not continue to deny fair compensation to Maryland residents, when that compensation has been determined by a jury, under the watchful supervision of a trial judge, based on the facts, circumstances, and evidence in a particular case.

Maryland law should provide equal justice for all. Please enact SB 538 and repeal § 11-108.

Respectfully Submitted,

George S. Tolley, III

GSTIII/taa

# **SB0538 -- Civil Actions - Noneconomic Damages - Pe**

Uploaded by: Brian Levine

Position: UNF



**Senate Bill 538 -- *Civil Actions - Noneconomic Damages - Personal Injury and Wrongful Death***  
**Senate Judicial Proceedings Committee**  
**February 16, 2024**  
**Oppose**

The Montgomery County Chamber of Commerce (MCCC), the voice of business in Metro Maryland, opposes Senate Bill 538 -- *Civil Actions - Noneconomic Damages - Personal Injury or Wrongful Death*.

Senate Bill 538 repeals limitations on noneconomic damages in civil actions for personal injury or wrongful death. Non-economic damages compensate injuries and losses that are not easily quantified by a dollar amount while economic damages can be calculated from documents or records, such as medical expenses and earnings.

MCCC is concerned about Senate Bill 538 and its impact on Maryland's ability to keep the costs of doing business competitive. Limitations on noneconomic damages are generally considered friendly to a state's business climate. This holds especially true for small businesses, which are at greater risk in litigation involving noneconomic damages. Not only would small businesses and other impacted entities confront increased exposure and potential financial burden, but the perception of Maryland's business competitiveness would be harmed as well.

There are many ways to measure whether Maryland has a positive business climate, and that includes its legal and tort environment. When businesses are making decisions regarding location or expansion, they often consider the tort environment. For this reason, Maryland needs to ensure it competes favorably with surrounding and competitor states on tort climate, in addition to factors like taxation, regulations, educational system, and transportation network.

**For these reasons, the Montgomery County Chamber of Commerce opposes Senate Bill 538 and respectfully requests an unfavorable report.**

*The Montgomery County Chamber of Commerce, on behalf of our nearly 500 members, advocates for growth in business opportunities, strategic investment in infrastructure, and balanced tax reform to advance Metro Maryland as a regional, national, and global location for business success.*

*Established in 1959, MCCC is an independent non-profit membership organization and a proud Montgomery County Green Certified Business.*

*Brian Levine | Vice President of Government Affairs  
Montgomery County Chamber of Commerce  
51 Monroe Street | Suite 1800  
Rockville, Maryland 20850  
301-738-0015 | [www.mcccmd.com](http://www.mcccmd.com)*



**SB 538\_ UNF\_ MAMIC.pdf**

Uploaded by: Bryson Popham

Position: UNF



191 Main Street, Suite 310 – Annapolis MD 21401 – 410-268-6871

February 15, 2024

The Honorable William C. Smith, Jr.  
Chair, Senate Judicial Proceedings Committee  
2 East, Miller Senate Office Building  
Annapolis, Maryland 21401

RE: Senate Bill 538 - Civil Actions - Noneconomic Damages - Personal Injury and Wrongful Death - UNFAVORABLE

Dear Chairman Smith and Members of the Committee,

On behalf of the Maryland Association of Maryland Insurance Companies (MAMIC), we respectfully oppose Senate Bill 538.

As you may recall, MAMIC is comprised of 12 mutual insurance companies that are headquartered in Maryland and neighboring states. Approximately one-half of our members are domiciled in Maryland, and are key contributors and employers in our local communities. Together, MAMIC members offer a wide variety of insurance products and services and provide coverage for thousands of Maryland citizens.

Senate Bill 538 completely upends the system of determining noneconomic damages under Maryland's tort liability law that has been in place for many years. MAMIC is aware of no evidence that would support such a radical change. While MAMIC has opposed such legislation in the past, our focus this year is different. The Committee is well aware that inflation has been a major driver in the increasing cost of property and liability insurance in Maryland and across the country. As smaller insurers in the highly competitive Maryland market, MAMIC members strive to keep costs as low as possible for our policyholders.

Like all insurers, MAMIC members must purchase reinsurance – essentially, insurance for insurance companies. The cost of reinsurance has been rising rapidly as well and that places extra pressure on our members who are offering their Maryland policyholders various products and services.

We should point out that MAMIC includes the second oldest mutual insurer in the United States, located in District 46 in Baltimore City. We have other domestic insurer-members headquartered in Bel Air, Hagerstown and Frederick. Other members may be headquartered in adjoining states, but Maryland is a very important market for them. For example, one MAMIC member is a major writer of residential property (homeowners) insurance on the Lower Eastern Shore. Experienced legislators know that coastal insurance exposures are among the most difficult to insure. In short, MAMIC members offer insurance products that is vitally important to many Marylanders.

Understanding that reinsurance is a subject with which Committee members are likely unfamiliar, we believe the attached article about current insurance problems in Florida may be helpful. The last several paragraphs of the article deal with the role of reinsurance and recent cost increases for that product. We offer the article to illustrate the essential role of reinsurance in the entire insurance system.

All MAMIC members depend heavily on solid, stable, reinsurance programs. Reinsurers in Maryland, by extension, depend on a solid, stable, tort liability environment in order to offer their products at affordable rates. The passage of Senate Bill 538 would completely disrupt our statutorily constructed model for assessing noneconomic damages in our State. This model has developed over decades, and it serves Maryland citizens well. To be effective, the model requires a healthy, competitive

liability insurance market that can pay claims, including claims for noneconomic damages, when necessary. For these reasons MAMIC and its members do not believe that any material change to the system of ascertaining noneconomic damages is warranted. In fact, we believe the dangers far outweigh any speculative benefit offered by the proponents of this bill. We respectfully request an unfavorable report on Senate Bill 538.

Thank you for your consideration of our views on this legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeane A. Peters".

Jeane A. Peters, President

cc: Bryson Popham

# Insurer's Retreat in Florida Signals Crisis With No Easy Fix

Farmers is ending some policies in the Sunshine State as insurers struggle with the rising costs of covering climate change-related damage. No one can agree on whom to blame.



*Farmers, one of the nation's largest home insurers, is cutting back on business in Florida. Credit...Kristoffer Tripplaar/Sipa, via Associated Press*

By Emily Flitter

Emily Flitter covers finance.

July 14, 2023

Insurers are trapped in a riddle: In a world where the risk of costly disasters is rising but high premiums are squeezing policyholders and angering state regulators, how can they continue to make money?

That question was at the center of the decision by Farmers Insurance this week to stop renewing almost a third of the policies it has written in Florida, becoming the latest insurer to pull business from a state as the industry grapples with the rising costs of covering damage tied to floods, hurricanes, wildfires and other climate-related disasters.

Farmers, one of America's biggest home insurers, didn't say what specifically led to its decision. Was the cost of payouts too high in recent years, which saw [record-setting](#) numbers of billion-dollar disasters, just as rates charged by reinsurers, which sell insurance to insurers, were rising? Was it too many lawsuits from policyholders? Or is Farmers playing a game of chicken with state regulators, hoping that walking away now will give it leverage to charge customers more in the future?

“A lot of insurers have been losing a lot of money in Florida and they’ve been threatening to leave for years,” said Daniel Schwarcz, a professor at the University of Minnesota Law School who specializes in insurance.

In most states, insurers have to behave like electrical utilities: If they want to increase the rates they’re charging their customers, they have to apply for regulatory approval from the state government to do so.

Insurers’ trouble in raising rates may be among the reasons they are retreating in places like Florida and California, where climate change is causing the costs of paying claims — which insurers refer to as “losses” — to soar. When it’s hard to raise rates as companies have done in certain places, the best business decision is to leave.

In May, State Farm, the country’s largest insurance company, [said](#) it would stop selling homeowners’ coverage in California. Last month, Allstate [said](#) it had stopped selling new home and commercial policies in the state, citing the worsening climate and rising building costs. Farmers itself said this month that it would limit new homeowners insurance policies in California, citing rising inflation and risks from worsening climate disasters as among the reasons.

## More on California

- **San Francisco Mayorship:** Mark Farrell, a venture capitalist who led the city for six months in 2018, [wants his old job back](#). His chances hinge on how far San Francisco residents have moved from the left to centrist politics.
- **Age Is Just a Number:** Edith Ceccarelli is the oldest known person in the United States and the second oldest on Earth. When she had her 116 birthday, a California community [made sure to celebrate](#).
- **A California Radio Station:** KGAY — the only terrestrial radio station in America [geared toward L.G.B.T.Q. listeners and their allies](#) — in Palm Springs counts as listeners Gen X and older gay men who enjoy Rihanna but still worship Donna Summer.
- **Pandemic Losses:** California [agreed to use at least \\$2 billion](#) meant for pandemic recovery to help those students who are still trying to catch up after the 2020 school shutdowns as part of a settlement with families in the Oakland and Los Angeles school districts.

Florida law lets regulators deny rate increases or even force insurers to return money to customers if the rates they’re charging or hoping to charge are “excessive,” meaning they could generate a profit regulators consider “unreasonably high in relation to the risk involved.” Floridians already [pay more](#) than the national average for homeowners insurance. Insurance on a \$250,000 home in Florida cost an average of \$1,981 this year, while the national average was \$1,428.

Some experts, like Mr. Schwarcz, say state regulators have too much control over how insurers set rates, keeping them artificially low even as the cost of paying out claims after devastating and more frequent storms continues to rise.

Other experts say it’s not less regulation that is needed, but more of it — specifically, better management of so-called reinsurance companies that operate out of the sight of consumers and sell insurance to home and auto insurers to help them manage their risk. These companies have raised their rates sharply in recent years. State regulators have less authority over reinsurers, allowing those companies more freedom to charge insurers rates as they see fit.

Industry groups say that it’s neither of those things and that insurers are folding parts of their business to reduce the number of claims-related lawsuits from policyholders.

“This business decision was necessary to effectively manage risk exposure,” Trevor Chapman, a spokesman for Farmers, said in an email.

Mr. Chapman added that Farmers was not totally pulling out of the state, just ending its home, auto and umbrella policies sold under the Farmers brand. Any damage that occurs to policyholders’ properties before their yearlong policies end will still be covered. The company sells policies under several other brands, which it plans to keep running.

A spokeswoman from the Office of Insurance Regulation said the written notice the company sent to the regulatory agency on Wednesday was marked as a “trade secret.”



Geography, construction and climate change have made Florida especially vulnerable to damage from natural disasters. Credit...Josh Ritchie for The New York Times

Mr. Schwarcz said Florida’s politicians and regulators should have seen this coming.

The Florida insurance industry has also seen smaller insurers vanish. Over the past two years, eight small insurers have [gone bankrupt](#) in the state. The string of retreats and bankruptcies has left many homeowners with few options other than a nonprofit, [state-backed carrier](#).

According to the Insurance Information Institute, an industry trade group, property and casualty insurers have not, as a whole, earned profits on underwriting — or as a result of their overall business activities — in Florida since 2016. The industry’s cumulative underwriting losses have topped \$1 billion for the last three years. Last year, the institute said, insurers’ cumulative net income losses in the state totaled \$900 million.

“While some states have very bad years financially, like Louisiana in 2020 and 2021 due to the record level of hurricanes, no other state has reported sustained losses for property insurers like Florida has since its last profitable year in 2016,” said Mark Friedlander, a spokesman for the institute, which represents consumer insurance companies.

“The problem is that there’s denial among folks that live in Florida and folks that live in California — and, frankly, the American population — about the dangers that we’re facing,” Mr. Schwarcz said.

His [proposed](#) solution: Let insurers charge whatever they want to for policies in disaster-prone areas. Eventually, that would lead people to stop building homes and businesses that were very likely to be destroyed by natural disasters. “That would actually result in a more resilient infrastructure, more adaptive to climate change.”

Birny Birnbaum, an insurance expert who is the executive director of the Center for Economic Justice, a nonprofit working toward equal access to economic opportunity, said Mr. Schwarcz’s idea — letting market forces dictate how homeowners respond to climate change risks — would not fly.

“That’s like saying, ‘As long as I can keep paying more and more each year, I don’t care if my house burns down because there will always be more to pay for it,’” Mr. Birnbaum said. “That’s insane.”

Insurers in Florida and other states where the disaster threats are higher, like California, are struggling because the reinsurance companies they’re turning to for help managing their risks are charging too much, and no one is regulating them, Mr. Birnbaum said.

Reinsurers offer insurance companies a guarantee that if something huge goes wrong like a [giant hurricane hitting southwest Florida](#), they’ll be able to find the cash to pay for it. The reinsurance market, though large, tends to be [volatile](#), with prices spiking quickly just when insurers are least prepared to handle the increases.

Mr. Birnbaum, who sits on a committee that advises the Treasury Department on insurance matters, said reinsurers should have their rates regulated more like consumer insurance companies do. He also argued that the federal government should create a national reinsurance backstop similar to its terrorism insurance program, which guarantees that the government will step in and help cover catastrophic losses once they reach a certain dollar amount.

The Reinsurance Association of America, a leading trade group representing dozens of reinsurers doing business in the United States, did not respond to requests for comment about the role of the industry or debates about more stringent regulation.

The cost of reinsurance in Florida jumped 40 to 70 percent this year over last year, according to the Insurance Information Institute. But Mr. Friedlander, the group’s spokesman, said reinsurance rates were higher in Florida than in other storm-prone states because of insurer losses tied to lawsuits.

“Legal system abuse and claim fraud are the man-made factors that have generated Florida’s property insurance crisis, not catastrophe losses,” Mr. Friedlander said. In Florida, insurance companies feel it’s too easy for people to sue them, he said. More than 100,000 lawsuits have been filed each year against insurers in Florida for the past several years, he added.

Insurers have been demanding more protection from lawsuits, and Florida legislators have recently delivered. Since 2021, the State Legislature has passed five bills to make it harder for policyholders to sue insurers. The new laws change the way policyholders can get compensation for legal costs and prohibit them from passing off responsibility for a claim to a third party, like a construction company, willing to fight for payment.

“These are the first steps toward a stable market environment but it may take several years to see improvements due to the treacherous conditions Florida consumers and insurers have faced for so long,” Mr. Friedlander said.

[Emily Flitter](#) covers finance. She is the author of “The White Wall: How Big Finance Bankrupts Black America.” [More about Emily Flitter](#)



# **Opposition to SB 538.pdf**

Uploaded by: Carville Collins

Position: UNF



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## MARYLAND EMPLOYERS FOR CIVIL JUSTICE REFORM COALITION

### **OPPOSES SB 538**

Civil Actions – Noneconomic Damages – Personal Injury or Wrongful Death

Maryland Employers for Civil Justice Reform Coalition, comprised of many of the largest employers, businesses, and health care providers in Maryland, opposes SB 538. The bill calls for the repeal of Maryland’s noneconomic damages caps, an inappropriate and unfounded public policy.

Caps on noneconomic damages addressed in the Bill have been an important public policy in Maryland for more than 37 years. Back in 1986, after careful study the General Assembly concluded there was a severe insurance problem in the State, following the issuance of a 1985 report from the Governor’s Task Force to Study Liability Insurance that concluded:

*The current availability and affordability crisis in certain lines of insurance . . . is not a manufactured crisis, as some have charged. . . . The civil justice system can no longer afford unlimited awards for pain and suffering.*

*The ceiling on noneconomic damages will help contain awards within realistic limits, reduce the exposure of defendants to unlimited damages for pain and suffering, and lead to more accurate [insurance] rates because of the greater predictability of the size of the judgments. The limitation is designed to lend greater stability to the insurance market. . . .*

*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.<sup>1</sup>*

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 removing these caps? Perhaps this foundation is why more than a dozen legislative proposals identical or similar to SB 538 have failed each and every time in Annapolis since first introduced back in the early 2000s.

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<sup>1</sup> *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.



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 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, 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). Significantly, 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 these actions.

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.<sup>2</sup> 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 538.

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Civil Justice Reform Coalition

February 16, 2024

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<sup>2</sup> *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).

# **ATRA Maryland Noneconomic Damages Testimony.pdf**

Uploaded by: Cary Silverman

Position: UNF

**Testimony Before the Maryland Senate Judicial Proceedings Committee  
in Opposition to S.B. 538  
A Bill That Would Allow Unlimited Pain & Suffering Awards  
in Personal Injury and Wrongful Death Cases**

**February 16, 2024**

**Cary Silverman  
On Behalf of the American Tort Reform Association**

On behalf of the American Tort Reform Association (“ATRA”), thank you for providing me with the opportunity to testify today. ATRA opposes S.B. 538, which would eliminate Maryland’s statutory limits on noneconomic damages in personal injury cases. As a result, the bill would lead to unreasonable settlement demands and unpredictable awards in a wide range of cases, which will be felt by Maryland’s drivers, homeowners, and businesses in the form of higher insurance rates.

ATRA is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources with the goal of ensuring fairness, balance, and predictability in civil litigation. I am a Maryland resident, a member of the Maryland Bar, and a partner in the Washington, D.C. office of Shook, Hardy & Bacon L.L.P. As part of my practice, I have studied the issue of noneconomic damage awards, authoring law review articles and research papers on the topic. I have had the privilege of testifying before this Committee when it considered legislation to raise or repeal Maryland’s limits on noneconomic damages in past sessions.

There is no true way to place a monetary value on the pain and suffering associated with an injury. The instinct to permit large awards for pain and suffering to those who have suffered serious injuries, on top of what is already likely to be a large award for medical expenses, lost income, and other economic losses, must be balanced against the adverse effects that rising damage awards have on homeowners, drivers, and businesses, the economy, and the civil justice system. S.B. 538 would disturb the careful balance that the General Assembly has set, which has positively contributed to a stable civil liability environment in Maryland for decades.

**Damages Available Under Maryland Law**

In considering the limit on noneconomic damages, it is helpful to consider the full picture of damages in personal injury and wrongful death cases.

**Economic Damages.** Maryland residents who experience an injury as a result of the negligence or other wrongful conduct of others are entitled to be made whole for

their losses. They can seek and recover compensation for medical expenses, lost income or earning capacity, and other expenses incurred or expected. Recoveries for these types of expenses—economic damages—are *not* limited by Maryland law. Basically, any past cost or anticipated future expense resulting from an injury that has a measurable market value falls into this unlimited category.

For example, under Maryland law, the value household services that a person who has been injured or who has died can no longer perform is considered *economic* damages. The Maryland Supreme Court has indicated that these tasks may include “cooking, cleaning, and gardening” and can range from “polishing the family silver to pulling up weeds from the garden.”<sup>1</sup> Hauling out the garbage, mowing the lawn, and making repairs are other examples recognized by Maryland courts as having an economic price.<sup>2</sup> A plaintiff can recover the cost of hiring someone to perform these services, which can add up to hundreds of thousands of dollars.

In cases of severe permanent injuries or death, economic damages can reach into the millions of dollars.

**Noneconomic Damages.** Plaintiffs can also recover noneconomic damages, the subject of S.B. 538. Noneconomic damages provide plaintiffs with compensation for types of harms that cannot be documented with a dollar value, such as pain, suffering, inconvenience, and loss of consortium.<sup>3</sup> In wrongful death cases, Maryland law allows for an especially broad range of noneconomic damages – more expansive than most other states (but which are constrained by the statutory limit).<sup>4</sup>

Traditionally, noneconomic damage awards were relatively small in amount and high awards were uniformly reversed.<sup>5</sup> For various reasons,<sup>6</sup> the size of pain and

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<sup>1</sup> See *Murphy v. Edmonds*, 601 A.2d 102, 118 (Md. 1992) (affirming \$245,000 award for past and future loss of household services); see also *Choudhry v. Fowlkes*, 219 A.3d 107 (Md. Ct. Spec. App. 2019) (reaffirming that loss of household services are recoverable as uncapped *economic* damages so long as the plaintiff supports the request by identifying the tasks, providing their market value, and showing a reasonable expectation that a decedent would have performed those tasks).

<sup>2</sup> *Choudhry*, 219 A.3d at 113-14 (citing *Morvant v. Constr. Aggregates Corp.*, 570 F.2d 626, 633 (6th Cir. 1978)).

<sup>3</sup> Md. Cts. & Jud. Code Ann. § 11-108(a)(1).

<sup>4</sup> Md. Cts. & Jud. Code Ann. § 3-904(d) (providing that damages in wrongful death actions are not limited to pecuniary losses and may include “damages for mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, marital care, parental care, filial care, attention, advice, counsel, training, guidance, or education”). As the American Law Institute’s (ALI) tentatively approved new Restatement of the Law Third Torts: Remedies recognizes in examining Wrongful Death Acts, “most states do not compensate grief or emotional distress,” unlike Maryland.

<sup>5</sup> See Ronald J. Allen & Alexia Brunet, *The Judicial Treatment of Non-economic Compensatory Damages in the Nineteenth Century*, 4 J. Empirical Legal Studies 365, 396-87 (2007) (finding that prior to the Twentieth Century, there were only two reported cases affirmed on appeal involving total damages in excess of \$450,000 in current dollars, each of which may have included an element of noneconomic damages); see also Fleming James,

suffering awards increased exponentially between the 1950s and 1980s.<sup>7</sup> By that time, pain and suffering awards had become the largest single item of recovery in personal injury cases, exceeding medical expenses and lost wages.<sup>8</sup> This prompted state legislatures to enact limits on these inherently subjective damage awards.

**Punitive Damages.** Finally, when an injury or death is caused by malicious conduct, a plaintiff can also recover punitive damages in Maryland. About half of the states limit punitive damages to an amount set by statute or a multiple of compensatory damages. A half dozen other states generally do not authorize punitive damage awards. In Maryland, punitive damages are available and *uncapped*. Such awards are permissible so long as they are supported by the evidence of malicious conduct and are not unconstitutionally excessive.

### **Maryland's Limit on Noneconomic Damages**

The General Assembly first limited noneconomic damages in 1985 in response to an insurance crisis and initially set the cap at \$350,000. It did so after Maryland Governor Harry Hughes and the General Assembly established two task forces, the Governor's Task Force to Study Liability Insurance and the Joint Executive/Legislative Task Force on Medical Insurance, both of which, after hearings, meetings, and substantial research, recommended statutory limits. As the Governor's Task Force concluded:

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Jr., *The Columbia Study of Compensation for Automobile Accidents: An Unanswered Challenge*, 59 Colum. L. Rev. 408, 411 (1959) (observing that an award in excess of \$10,000 was rare).

<sup>6</sup> Scholars largely attribute the initial rise in noneconomic damage awards to: (1) the availability of future pain and suffering damages; (2) the rise in automobile ownership and personal injuries resulting from automobile accidents; (3) the greater availability of insurance and willingness of plaintiffs' attorneys to take on lower value cases; (4) the rise in affluence of the public and a change in attitude that "someone should pay"; and (5) a campaign to increase such awards by the organized plaintiffs' bar. See Philip L. Merkel, *Pain and Suffering Damages at Mid-Twentieth Century: A Retrospective View of the Problem and the Legal Academy's First Responses*, 34 Cap. U. L. Rev. 545, 553-68 (2006); Joseph H. King, Jr., *Pain and Suffering, Noneconomic Damages, and the Goals of Tort Law*, 57 SMU L. Rev. 163, 170 (2004); see also Melvin M. Belli, *The Adequate Award*, 39 Cal. L. Rev. 1 (1951) (seminal article arguing for higher noneconomic damage awards).

<sup>7</sup> See David W. Leebron, *Final Moments: Damages for Pain and Suffering Prior to Death*, 64 N.Y.U. L. Rev. 256, 301 (1989).

<sup>8</sup> See *Nelson v. Keefer*, 451 F.2d 289, 294 (3d Cir. 1971). Judge Paul Niemeyer, a former Maryland federal judge who currently serves on the U.S. Court of Appeals for the Fourth Circuit, observed, "Money for pain and suffering . . . provides the grist for the mill of our tort industry." Paul V. Niemeyer, *Awards for Pain and Suffering: The Irrational Centerpiece of Our Tort System*, 90 Va. L. Rev. 1401, 1401 (2004).

[T]he civil justice system can no longer afford unlimited awards for pain and suffering.

The ceiling on noneconomic damages will help contain awards within realistic limits, reduce the exposure of defendants to unlimited damages for pain and suffering, lead to more settlements, and enable insurance carriers to set more accurate rates because of the greater predictability of the size of judgments. The limitation is designed to lend greater stability to the insurance market and make it more attractive to underwriters.

A substantial portion of the verdicts being returned in liability cases are for noneconomic loss. The translation of these losses into dollar amounts is an extremely subjective process as these claims are not easily amenable to accurate, or even approximate, monetary valuation. There is a common belief that these awards are the primary source of overly generous and arbitrary liability claim payments. They vary substantially from person to person, even when applied to similar cases or similar injuries, and can be fabricated with relative ease.

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.

*Franklin v. Mazda Motor Corp.*, 704 F. Supp. 1325, 1328 (D. Md. 1989), (quoting report of the Governor's Task Force to Study Liability Insurance issued Dec. 20, 1985).

There are now separate limits applicable to general personal injury and medical malpractice cases that rise to account for inflation by \$15,000 per year.<sup>9</sup> The Maryland Supreme Court has repeatedly upheld the limit on noneconomic damages as constitutional.<sup>10</sup>

Today, the inflation-adjusted limit on noneconomic damages in personal injury actions is \$935,000. This amount rises to \$1,402,000 (150% of the individual limit) in wrongful death actions involving two or more beneficiaries. In wrongful death cases, pain and suffering can also be recovered on behalf of the person who died as a result of negligent conduct in addition to beneficiaries, such as a spouse or children. In those actions, the limit on noneconomic damages is also \$935,000. Combined, in actions alleging that a person died as a result of negligence, total noneconomic damages can reach \$2,337,500 million (\$935,000 for the decedent plus \$1,402,000 for his or her

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<sup>9</sup> The noneconomic damage limit in personal injury cases increases each year on October 1. Md. Cts. & Jud. Proc. Code Ann. § 11-108(b)(2)(ii).

<sup>10</sup> *Martinez v. The John Hopkins Hosp.*, 70 A.3d 397, 410 n.19 (2013); *DRD Pool Serv., Inc. v. Freed*, 5 A.3d 45, 63 (Md. 2010); *Oaks v. Connors*, 660 A.2d 423, 430 (Md. 1995); *Murphy v. Edmonds*, 601 A.2d 102, 118 (Md. 1992).



family). These limits will automatically increase to \$950,000/\$1,425,000/\$2,375,000 in October 2024.

The statutory limit is accomplishing its goal. It has prevented outlier awards and provided for greater consistency and predictability in Maryland’s civil justice system. It has ensured that those who are injured as a result of another party’s tortious conduct can receive full compensation for economic losses plus a reasonable, though not unlimited, amount for pain and suffering. It has also provided consistency for plaintiffs by precluded widely varying noneconomic damage awards for similar injuries.

### **The Proposed Legislation**

S.B. 538 would eliminate the limit on noneconomic damages that applies in general personal injury cases effective October 1, 2024. This bill is identical to last year’s H.B. 862 and goes even further than prior proposals that the General Assembly chose not to enact, which proposed increasing the limit or eliminating it only in certain cases.

### **Implications for Maryland for Eliminating the Statutory Limit**

The Maryland Supreme Court has recognized that the General Assembly enacted the statutory limit to preserve “the availability of sufficient liability insurance, at a reasonable cost, in order to cover claims for personal injuries to members of the public.”<sup>11</sup> Limiting noneconomic damages “may lead to greater ease in calculating premiums, thus making the market more attractive to insurers, and ultimately may lead to reduced premiums, making insurance more affordable for individuals and organizations performing needed services.”<sup>12</sup>

As we see a resurgence of massive pain and suffering awards nationwide, now is certainly not the time to eliminate this limit. Awards in excess of \$10 million, known as “nuclear verdicts,” are rising in frequency and size in personal injury and wrongful death cases.<sup>13</sup> The largest component of these awards are noneconomic damages.<sup>14</sup> While about one quarter of nuclear verdicts are reached in medical liability cases, auto accident, product liability cases, and premises liability cases make up similar shares.<sup>15</sup>

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<sup>11</sup> *DRD Pool Serv.*, 5 A.3d at 67 (Md. 2010) (quoting *Murphy*, 601 A.2d at 115).

<sup>12</sup> *Id.*

<sup>13</sup> Cary Silverman & Christopher E. Appel, *Nuclear Verdicts Trends, Causes, and Solutions*, at 8-10 (U.S. Chamber Inst. for Legal Reform 2022) (examining 1,376 reported personal injury and wrongful death verdicts over \$10 million between 2010 and 2019).

<sup>14</sup> *Id.* at 10-11.

<sup>15</sup> *See id.*

In other states, we have seen juries, prompted by plaintiffs' lawyers, award amounts for past and future pain and suffering for \$12 million, \$33 million, \$40 million, even \$85 million or more.<sup>16</sup> These verdicts are sometimes improperly prompted by a push by the plaintiffs' lawyer for the jury to "send a message," even if a defendant has not committed misconduct that would warrant punitive damages.

In states that lack limits on noneconomic damages, personal injury lawyers have long understood that the more you ask for, the more you get,<sup>17</sup> and they have become increasingly bold in their requests to juries for extraordinarily high pain and suffering awards. This tactic, known as "anchoring," implants in the minds of jurors an arbitrary sum or a mathematical formula (such as an amount per day or hour, referred to as a "per diem" argument) designed to lead to an excessive award. An "anchor" creates a psychologically powerful baseline for jurors struggling with assigning a monetary value to pain and suffering. Once a lawyer provides an anchor, jurors accept the suggested amount or "compromise" by negotiating it upward or downward. Studies show that both use of a specific sum or mathematical formula leads juries to reach a substantially higher award—double<sup>18</sup> or quadruple<sup>19</sup> the amount they would have if left to determine a just and reasonable award on their own.

Fortunately, Maryland is not known for excessive awards. While anchoring is permissible in Maryland,<sup>20</sup> this type of manipulation and the potential for excessive awards has been constrained by the statutory limit on noneconomic damages. I'll give you one example that is a preview of what is to come if the statutory limit is eliminated. In a case arising from a Maryland inmate who fractured his wrist during a fight, the plaintiffs' attorney requested that the jury award his client \$100 per day for pain and suffering for his remaining life expectancy of fifty years. That doesn't sound like much, but it adds up to nearly \$2 million. The defendant's counsel objected to the arbitrary amount as highly prejudicial, noting that he had never seen this done before, but the trial court allowed it. Prompted by that high figure, the jury ultimately returned a \$3 million verdict. The trial court reduced that \$3 million award pursuant to the

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<sup>16</sup> See Mark A. Behrens, Cary Silverman & Christopher E. Appel, *Summation Anchoring: Is it Time to Cast Away Inflated Requests for Noneconomic Damages*, 44 Am. J. of Trial Advoc. 321, 327-29 (2021) (providing examples from several states).

<sup>17</sup> Gretchen B. Chapman & Brian H. Bornstein, *The More You Ask For, the More You Get: Anchoring in Personal Injury Verdicts*, 10 Applied Cognitive Psychology 519, 534 (1996).

<sup>18</sup> See Bradley D. McAuliff & Brian H. Bornstein, *All Anchors are Not Created Equal: The Effects of Per Diem Versus Lump Sum Requests on Pain and Suffering Awards*, 34 L. & Human Behavior 164, 167 (2010).

<sup>19</sup> See John Campbell, et al., *Time is Money: An Empirical Assessment of Non-Economic Damages Arguments*, 95 Wash. U. L. Rev. 1, 22 (2017).

<sup>20</sup> *Bauman v. Woodfield*, 223 A.2d 364, 373 (Md. 1966); *E. Shore Pub. Serv. Co. v. Corbett*, 177 A.2d 701, *adhered to sub nom.*, 180 A.2d 681 (Md. 1962); *Giant Food Inc. v. Satterfield*, 603 A.2d 877, 881 (Md. Ct. Spec. App. 1992).

noneconomic damage limit in place at the time, \$770,000. That judgment was affirmed on appeal.<sup>21</sup> Without a statutory limit, these types of arguments, and awards at significantly higher levels, will become the norm in Maryland.

### **How Maryland's Noneconomic Damage Limit Compares to Other States**

Maryland is not alone in trying to restrain rising pain and suffering awards. When Maryland enacted its statutory limit in 1986, it was the first state to adopt a limit generally applicable to personal injury cases.<sup>22</sup> Now, it is among several states that have done so outside of healthcare liability. For example:

- Colorado's inflation-adjusted limit on noneconomic damages in any civil action other than medical malpractice actions is \$642,180, which may increase upon clear and convincing evidence to \$1,284,370.<sup>23</sup>
- Idaho's current inflation-adjusted limit on noneconomic damages in personal injury cases is \$458,729.<sup>24</sup>
- Ohio limits noneconomic damages in personal injury cases to \$250,000, or three times economic loss, up to a maximum of \$350,000, which does not apply to certain permanent and substantial physical injuries.<sup>25</sup>
- Michigan's inflation-adjusted limit for noneconomic damages in product liability actions is \$537,900, rising to \$960,500 in catastrophic injury cases in 2023.<sup>26</sup>
- Mississippi limits noneconomic damages in personal injury cases outside of healthcare liability to \$1 million.<sup>27</sup>
- Tennessee limits noneconomic damages in personal injury cases to \$750,000, which rise to \$1 million in cases involving specified catastrophic injuries.<sup>28</sup>

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<sup>21</sup> *Rivera-Ramirez v. Hall*, No. 756, 2023 WL 1987860, at \*4 (Md. Ct. Spec. App. Feb. 14, 2023). This case was brought against a contractor that provided medical services to correction facilities, alleging that its physician provided inadequate care for the inmate's injury. The same tactics, however, can occur in any personal injury case.

<sup>22</sup> *See Maryland Legislature Puts Ceiling on Personal Injury Awards*, N.Y. Times, Apr. 13, 1986.

<sup>23</sup> Colo. Rev. Stat. § 13-21-102.5, as adjusted, [https://www.sos.state.co.us/pubs/info\\_center/files/damages\\_new.pdf](https://www.sos.state.co.us/pubs/info_center/files/damages_new.pdf).

<sup>24</sup> Idaho Code § 6-1603, as adjusted, [https://iic.idaho.gov/wp-content/uploads/2023/07/Benefits-Non-economic-caps-effective-07\\_01\\_23.pdf](https://iic.idaho.gov/wp-content/uploads/2023/07/Benefits-Non-economic-caps-effective-07_01_23.pdf).

<sup>25</sup> Ohio Rev. Code Ann. § 2315.18.

<sup>26</sup> Mich. Comp. Laws § 600.2946a, as adjusted, State of Michigan, Dep't of Treasury, Limitation on Noneconomic Damages and Product Liability Determination of Economic Damages, Jan. 31, 2023.

<sup>27</sup> Miss. Code Ann. § 11-1-60(2)(b).

- Alaska limits noneconomic damages in personal injury cases to the greater of \$400,000 or injured person’s life expectancy in years multiplied by \$8,000. In cases involving “severe physical impairment or severe disfigurement,” the limit increases to the greater of \$1 million or injured person’s life expectancy in years multiplied by \$25,000.<sup>29</sup>
- Hawaii limits damages for pain and suffering in personal injury actions to \$375,000 with certain exceptions.<sup>30</sup>

As these state laws show, Maryland’s current limit on noneconomic damages – at nearly a million dollars in personal injury cases, significantly more in wrongful death cases, and adjusted upward each year – is well within the mainstream. Indeed, it is at the higher end of these limits.

### **Conclusion**

The General Assembly’s foresight in enacting a reasonable limit on noneconomic damages is an important, rational measure that continues to control outlier awards. It provides consistency and predictability in Maryland’s civil justice system. It has avoided the rise of awards to the astounding levels that we have seen in other states.

The bill’s proposal to allow unlimited pain and suffering awards outside of healthcare liability claims will have adverse effects. It will:

- Complicate the ability to reach reasonable settlements, since plaintiffs’ lawyers will demand significantly higher amounts for immeasurable harm. Some may hold out for the chance of a jackpot verdict.
- Lead to more frequent excessive verdicts for a wide range of businesses and nonprofit organizations and lengthy appeals.
- Result in higher insurance costs for Maryland drivers, homeowners, and businesses.

Thank you for considering our concerns. We respectfully ask that you not favorably report this bill.

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<sup>28</sup> Tenn. Code Ann. § 29-39-102.

<sup>29</sup> Alaska Stat. § 09.17.010.

<sup>30</sup> Haw. Rev. Stat. § 663-8.7.

# **MSDA Opposition to SB 538 Noneco. damages.pdf**

Uploaded by: Daniel Doherty

Position: UNF



**The Maryland State Dental Association Opposes SB 538 – Civil Actions –  
Noneconomic Damages – Personal Injury and Wrongful Death**  
*Submitted by Daniel T. Doherty, Jr. on Behalf of the Maryland State Dental Association*

The limitations on the amount of non-economic damages were enacted in 1985 in response to the serious threat that physicians, dentists and some other health care providers would cease practicing in Maryland due to the exposure to huge jury awards to noneconomic damages, and the withdrawal of many insurers from the medical malpractice market. Noneconomic damages include emotional pain and suffering, loss of society, and many other results of injury or death that cannot be quantified on a monetary basis, leaving valuation to the subjective determination of a jury. Initially the cap on these damages was set in statute as \$350,000 for personal injury after July 1, 1986, and \$500,000 for personal injury or wrongful death after October 1, 1994. Beginning on October 1, 1995 that cap amount increased by \$15,000 each year. The enactment of this legislation in 1985 stabilized the medical insurance crisis in Maryland.

Today, we are in an environment where insurance companies are consistently reducing reimbursement rates to a point that the profitability of many medical or dental practices are operating at paper thin margins. To repeal the cap on noneconomic damages likely will lead to a negative domino effect. Malpractice rates will increase significantly, narrowing even more the profitability of medical practices, driving many practitioners either into retirement or force them to move to another state with better tort protections.

**For these reasons the Maryland State Dental Association requests that SB 538 receive an unfavorable report.**

**Submitted by  
Daniel T. Doherty, Jr.  
February 7, 2025**

# **SB 538\_MDCC\_Civil Actions - Noneconomic Damages -**

Uploaded by: Hannah Allen

Position: UNF



**LEGISLATIVE POSITION:**

**Unfavorable**

**Senate Bill 538**

**Civil Actions - Noneconomic Damages - Personal Injury and Wrongful Death**

**Senate Judicial Proceedings Committee**

**Friday, February 16, 2024**

Dear Chairman Smith and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 6,800 members and federated partners working to develop and promote strong public policy that ensures sustained economic recovery and growth for Maryland businesses, employees, and families.

Senate Bill 538 seeks to repeal limitations on noneconomic damages in civil actions in specified personal injury or wrongful death incidents. The Maryland Chamber of Commerce is deeply concerned about the negative impact this bill would have on employers and their employees. **For employers, they will see their property and casualty insurance rates increase due to the greater liability exposure this higher limit on noneconomic damages will bring.** This is especially problematic for small businesses with razor-thin revenue margins. **For both employers and employees, they will see their healthcare costs rise as a product of physicians and hospitals passing along their increased premium rates to patients.** This cost will be even more burdensome with the consistently rising cost of insurance premiums. The National Association of Insurance Commissioners found that premium rates were lower in states that regulated the amount of noneconomic damages.<sup>1</sup>

In the fiscal note for similar legislation introduced in the 2020 Legislative Session that would have lifted limitations on noneconomic damages, Maryland's Department of Legislative Services indicated that, "Under this bill, liability risk for small businesses, including health care providers, significantly increases." In the fiscal note for this legislation introduced in the 2023 Legislative Session, the fiscal note included that the bill would have meaningful impact on small businesses that are parties to civil actions. If passed, SB 538 could lead to more frequent excessive verdicts for a wide range of businesses and nonprofit organizations, along with lengthy appeals. With Maryland's consumers already struggling to adjust in this historic and prolonged inflation crisis, continuing to increase the cost of doing business in Maryland will devastate our small business community and deliver worse outcomes for our most vulnerable communities.

Maryland's current limits on noneconomic damages in personal injury and wrongful death cases contribute to a predictable and stable business and healthcare environment.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **unfavorable report** on **SB 538**.



<sup>1</sup> NAIC, *Profitability by Line by State, various reports*



**SB538\_NoneconDamagesCapRemovalPIWD\_LOO.pdf**

Uploaded by: Jake Whitaker

Position: UNF



Maryland  
Hospital Association

February 16, 2024

To: The Honorable William C. Smith Jr., Chair, Senate Judicial Proceedings Committee

Re: Letter of Opposition - Senate Bill 538 - Civil Actions - Noneconomic Damages - Personal Injury and Wrongful Death

Dear Chair Smith:

On behalf of the Maryland Hospital Association's (MHA) member hospitals and health systems, we appreciate the opportunity to comment on Senate Bill 538. Maryland hospitals oppose efforts that would make the state's highly litigious environment even more unsustainable. SB 538 would needlessly raise the cost of health care and make it difficult to attract and retain the doctors necessary to continue to provide the highest quality care.

A plaintiff in Maryland currently can seek economic and noneconomic damages for an injury. Compensation for economic damages, which are calculated to include lost wages or earning capacity and future medical care, is unlimited. These damages ensure the plaintiff will be cared for and that any income losses are adequately compensated not only to the plaintiff, but also to their family.

Noneconomic damages, on the other hand, are not established using traditional methods. These damages purport to consider the plaintiff's pain and suffering as a result of the injuries sustained. **Maryland currently has one of the highest caps in the country at \$935,000, and it automatically increases each year by \$15,000. For combined survival and death actions the damages can be as much as \$2,337,500.**

In 1986, the General Assembly enacted reasonable limits on noneconomic damages in response to disproportionate jury awards. These limits on noneconomic damages help to ensure the stability of Maryland's liability insurance market and civil justice system, while allowing reasonable compensation for pain and suffering. Reasonable limits on jury awards for noneconomic damages help preserve "the availability of sufficient liability insurance, at reasonable cost, in order to cover claims for personal injuries to members of the public."<sup>1</sup> Eliminating the caps on noneconomic damages would threaten the viability of Maryland's liability insurance market, raise insurance costs, and potentially limit access to care.

For these reasons, we request an *unfavorable* report on SB 538.

For more information, please contact:  
Jake Whitaker, Director, Government Affairs  
Jwhitaker@mhaonline.org

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<sup>1</sup> Murphy v. Edmonds, 325 Md. 342, 369 (1992).

**FINAL Medical Mutual - 2024 Testimony - HB 538 -**

Uploaded by: Lauren Graziano

Position: UNF

# MEDICAL MUTUAL

*Liability Insurance Society of Maryland*

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

**Date:** February 16, 2024

**Position:** *Oppose*

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## ***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.<sup>1</sup> Noneconomic damages, on the other hand, include pain, suffering, inconvenience, and other nonpecuniary losses.<sup>2</sup> 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.<sup>3</sup>

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.

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<sup>1</sup> See Md. Code, Cts. & Jud. Proc. § 11-109.

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

<sup>3</sup> 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.<sup>4</sup> Since then, the cap has steadily increased to \$935,000 for causes of action arising on or after October 1, 2023.<sup>5</sup> This amount increases to \$1,402,500 (150% of the individual cap) in wrongful death actions involving two or more claimants or beneficiaries.<sup>6</sup> And the cap in a combined survival and wrongful death action can be as high as \$2,337,500.<sup>7</sup> These limits will automatically increase on October 1, 2024, and on October 1 of each subsequent year.<sup>8</sup>

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."<sup>9</sup> 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:**

Lauren C. Graziano / [lgraziano@weinsuredocs.com](mailto:lgraziano@weinsuredocs.com)  
(443) 689-0221

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<sup>4</sup> See Laws of Md., 1986, Ch. 639.

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

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

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

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

<sup>9</sup> *Murphy v. Edmonds*, 325 Md. 342, 369 (1992).

# **SB538 - Maryland Motor Truck Association - Oppose.**

Uploaded by: Louis Campion

Position: UNF



# Maryland Motor Truck Association

9256 Bendix Road, Suite 203, Columbia, MD 21045

Phone: 410-644-4600 Fax: 410-644-2537



**HEARING DATE:** February 16, 2024

**BILL NO/TITLE:** Senate Bill 538: Civil Actions - Noneconomic Damages - Personal Injury or Wrongful Death

**COMMITTEE:** Judicial Proceedings

**POSITION:** **Oppose**

Maryland Motor Truck Association (MMTA) is extremely concerned about efforts to eliminate Maryland's noneconomic damages cap given the rise in nuclear verdicts and staged truck accidents that have plagued the trucking industry in recent years.

The American Transportation Research Institute completed a study in 2020 to better understand the impact of rising verdicts on trucking. The research evaluated 600 cases between 2006 and 2019. In the first five years of data, there were 26 cases over \$1 million involving heavy-duty trucks. In the last five years, there were nearly 300 cases. The number of verdicts over \$10 million nearly doubled in that time. According to CaseMetrix, the average verdict against a trucking company in 2012 was about \$2.6 million. In 2017, that figure was just over \$7 million. As of 2019 it exceeded \$17 million. The impacts on motor carriers have included bankruptcy filings, businesses closing, and unsustainable higher insurance premiums as fewer insurance companies are willing to provide insurance to the trucking industry. Over the past few years carriers such as Nationwide E&S and Zurich have exited the truck insurance market.

Another outcome of these large awards is the target that has been branded on the industry in the form of staged fraudulent accidents. In these cases, cars intentionally collide with trucks or buses in the hopes of a large jury award or insurance settlement. In Louisiana at least 47 individuals have been charged federally going back to 2020, with at least 30 guilty pleas. Those individuals caused at least 77 wrecks involving commercial trucks. In January 2022, a federal indictment charged 23 defendants in Washington, California, Michigan, Nevada, and British Columbia, Canada with participating in a staged automobile accident scheme.

Accident data shows that in about 75% of serious injury or fatal crashes involving a car and a truck, the fault of the accident was with the car driver. Many trucking companies have now resorted to the added cost of installing dashboard cameras to their fleets to protect their drivers and businesses. In the case of non-fraudulent accidents, dash cam footage can help exonerate a commercial driver. As for staged accidents, video evidence can expose the criminal activity.

Maryland statute already allows for the noneconomic damages cap to increase annually. On October 1, 2005, it was \$665,000. Today it is \$935,000. Removing the cap entirely will make Maryland a laboratory for similarly staged accidents and expose the trucking industry to unlimited liability, making it more difficult to obtain insurance and operate in the state. For the reasons noted above MMTA respectfully requests an unfavorable report on SB538.

**About Maryland Motor Truck Association:** Maryland Motor Truck Association is a non-profit trade association representing the trucking industry since 1935. In service to its 1,000 members, MMTA is committed to support, advocate and educate for a safe, efficient and profitable trucking industry in Maryland.

**For further information, contact:** Louis Campion, (c) 443-623-4223



**MD 2024 NAMIC letter SB 538 non-economic Damages.p**

Uploaded by: Matt Overturf

Position: UNF

**Senate Judicial Proceedings Committee**  
**SB 538: Civil Actions – Noneconomic Damages – Personal Injury and Wrongful Death**  
**UNFAVORABLE | February 16, 2024**

Chair Smith and Members of the Senate Judicial Proceedings Committee:

On behalf of the National Association of Mutual Insurance Companies<sup>1</sup> (NAMIC) thank you for the opportunity to submit this statement to express our opposition to Senate Bill 538 and request an unfavorable report.

NAMIC consists of nearly 1,500 member companies, including seven of the top 10 property/casualty insurers in the United States. The association supports local and regional mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

Senate Bill 538 repeals the existing limitations on noneconomic damages in civil actions for personal injury or wrongful death which have been in places for over 25 years. Damages caps provide for a more stable insurance marketplace where damages and insurance costs can be modeled and predictable. Removal of the damage caps will create inconsistent and unfair judgements that become outlier verdicts and create one of the highest cost drivers for the Maryland insurance market because of the difficulty to model for losses without limits.

Inconsistent, uncapped noneconomic damages are detached from the economic realities of a potential loss and make it difficult for juries to assign damage amounts with little direction and an open-ended scope—maintaining noneconomic damages caps alleviate that burden and ultimately provide for better price stability of insurance rates for all involved.

For these reasons, NAMIC is opposed to Senate Bill 538 and respectfully requests an unfavorable report of the bill.

Sincerely,



Matt Overturf, NAMIC Regional Vice President  
Ohio Valley/Mid-Atlantic Region

<sup>1</sup> NAMIC member companies write \$357 billion in annual premiums and represent 69 percent of homeowners, 56 percent of automobile, and 31 percent of the business insurance markets. Through its advocacy programs NAMIC promotes public policy solutions that benefit member companies and the policyholders they serve and fosters greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

**SB538\_NFIB\_unfav (2024).pdf**

Uploaded by: Mike O'Halloran

Position: UNF



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NFIB-Maryland – 60 West St., Suite 101 – Annapolis, MD 21401 – [www.NFIB.com/Maryland](http://www.NFIB.com/Maryland)

TO: Senate Judicial Proceedings Committee

FROM: NFIB – Maryland

DATE: February 16, 2024

RE: **OPPOSE SENATE BILL 538** – Civil Actions – Noneconomic Damages – Personal Injury and Wrongful Death

Founded in 1943, NFIB is the voice of small business, advocating on behalf of America’s small and independent business owners, both in Washington, D.C., and in all 50 state capitals. With more than 250,000 members nationwide, and nearly 4,000 here in Maryland, we work to protect and promote the ability of our members to grow and operate their business.

On behalf of Maryland’s small businesses, NFIB opposes Senate Bill 538 – legislation repealing the caps on noneconomic damages in civil actions for personal injury or wrongful death.

Limitlessly raising injury awards will expose our state’s small employers to increased litigation and place upward pressure on liability insurance rates. When damage awards increase, so do insurance costs. Businesses, who cannot operate without liability protection, must then reallocate scarce resources to cover this subsequent increase as the “cost of doing business” in Maryland.

Too many small businesses are working off of small and diminishing profit margins and we cannot keep asking them to pass of these sorts of new or increased costs to their customers and clients.

Maryland’s limits on noneconomic damages are already among the highest in the nation. We are one of the few states that statutorily increases noneconomic damages each year – currently it is \$950,000 for personal injury. Maryland’s small business owners fear that exorbitant damage claims and the associated costs to defend against them will easily bankrupt their business.

For these reasons, **NFIB opposes SB538** and requests an unfavorable report.

**SB 538 APCIA Opposes 02162024 FINAL JPR .pdf**

Uploaded by: Nancy Egan

Position: UNF



## Testimony of

### American Property Casualty Insurance Association (APCIA)

#### Senate Judicial Proceedings Committee

#### Senate Bill 538 Civil Actions - Noneconomic Damages - Personal Injury or Wrongful Death

February 16, 2024

#### Unfavorable

The American Property Casualty Insurance Association (APCIA) is the primary national trade organization representing nearly 67.1 percent of the Maryland property casualty insurance market. Senate Bill 538 would be a significant policy shift that would have a detrimental impact on Maryland civil defendants, residents, businesses and insurers due to increased claims, litigation jury verdicts and settlements. APCIA appreciates the opportunity to provide written comments in opposition to Senate Bill 538.

Repealing the non-economic damages caps for personal injury cases, which currently exceeds \$935,000 and increases by \$15,000 every year, will also significantly complicate the ability to settle lawsuits, since plaintiffs' lawyers will demand significantly higher amounts for immeasurable harm. The current law strikes a reasonable balance between unlimited subjective awards and the consistency and predictability that contribute to a stable civil justice system in Maryland. The escalating non-economic personal injury damage caps should be retained. The practical effect of this repeal is to provide yet another avenue for plaintiffs to seek uncapped and subjective non-economic damage awards, placing businesses, consumers and insurers at greater risk for nuclear verdicts, since non-economic damages have been shown to be the key drivers of nuclear verdicts.<sup>1</sup>

Non-economic damages may far exceed the amount of economic damage awards because of intangible factors such as subjective values, beliefs, emotional sensitivities and differing perspectives, and courts and juries often struggle to calculate fair and rational non-economic damage award. The repeal of the non-economic damages cap only provides incentives for plaintiff's attorneys to file litigation, which will significantly increase the number of lawsuits going forward and increase Maryland's already high tort tax of \$3,186 per household.<sup>2</sup>

The broad discretion given juries in awarding damages for noneconomic loss is the single greatest contributor to the inequities and inefficiencies of the tort liability system. It is a difficult issue to address objectively because of the emotions involved in cases of serious injury and because of the financial interests of plaintiffs' lawyers.

Pain and suffering awards are typically subject to imprecise and ineffective standards of review, such as whether the amount is so high that it "shocks the conscience." Increasing the available damages in this manner will almost certainly result in an increase in claims and lawsuit filings, and will drive up the costs of defense, settlement and

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<sup>1</sup> *US Chamber of Commerce Institute for Legal Reform Nuclear Verdicts Report, September 2022*

Non-economic damages may far exceed the amount of economic damage awards because of intangible factors such as subjective values, beliefs, emotional sensitivities and differing perspectives, and courts and juries often struggle to calculate fair and rational non-economic damage award.

<sup>2</sup> *US Chamber of Commerce Institute for Legal Reform Tort Costs in America Empirical Analysis, November 2022*. For purposes of the study, tort costs are defined as the aggregate amount of judgments, settlements, and legal and administrative costs to adjudicate private claims and enforcement actions.

claims administration, including due to the increased need for experts to now necessary to testify about pain and suffering on both sides given that caps would be eliminated.

- Studies have shown that caps on non-economic damages caps lead to a significant reduction in the number of court cases filed.<sup>3</sup>
- Caps on non-economic damages have also been found to be especially effective in controlling tort liability costs.<sup>4</sup>
- Studies document that non-economic damages caps are linked to lower insurance premiums. For example, using state-specific data, the National Association of Insurance Commissioners (NAIC) found that premium rates were lower in states that regulated the amount of non-economic damages.<sup>5</sup>

There is no need to repeal Maryland's noneconomic damage caps. When Maryland enacted its statutory limit in 1986, it was the first state to adopt a limit generally applicable to personal injury cases. Now, nearly two thirds of states have statutory limits on noneconomic damages that apply to all personal injury cases, medical malpractice cases, or both.<sup>6</sup> Eighteen states cap or disallow wrongful death non-economic damages. Maryland's current limits on personal injury noneconomic damages are among the highest amounts in the country.<sup>7</sup>

Maryland's current limits on noneconomic damages in personal injury and wrongful death cases contribute to a predictable and stable business and healthcare environment in Maryland. They are within the mainstream of how other states have treated non-economic damages and should not be altered. Repeal of the caps would disturb this careful balance that the legislature has set by exposing Maryland residents and businesses to unpredictable and potentially extraordinary liability. Eliminating the statutory limit on subjective non-economic damages will result in unpredictability and will place upwards pressure on insurance rates for Maryland consumers, businesses, and insurers as the amount of insured losses skyrockets.

The legislature's foresight in enacting a reasonable limit on noneconomic damages is an important, rational measure that continues to control outlier awards and provide predictability in Maryland's civil justice system today. A statutory limit only facilitates reasonable settlements and keeps insurance rates stable if its application is predictable and consistent. If non-economic damage caps for personal injury cases are repealed, plaintiffs will increasingly utilize such tactics as summation 'jury anchoring,' arguing for an excessive pain and suffering award,

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<sup>3</sup> [https://www.cbo.gov/sites/default/files/108th-congress-2003-2004/reports/report\\_2.pdf](https://www.cbo.gov/sites/default/files/108th-congress-2003-2004/reports/report_2.pdf)

<sup>4</sup> [https://www.insurance-research.org/sites/default/files/news\\_releases/IRCsocinfFINAL..pdf](https://www.insurance-research.org/sites/default/files/news_releases/IRCsocinfFINAL..pdf)

<sup>5</sup> NAIC, *Profitability by Line by State, various reports*

<sup>6</sup> See e.g., Alaska Stat. § 09.55.549; Cal. Civ. Code § 3333.2; Colo. Rev. Stat. § 13-64-302; Ind. Code § 34-18-14-3; La. Rev. Stat. Ann. § 40:1299.42; Md. Cts. & Jud. Proc. Code § 3-2A-09; Mass. Gen. Laws ch. 231 § 60H; Mich. Comp. Laws Ann. § 600.1483; Miss. Code Ann. § 11-1-60(2)(a); Mont. Code Ann. § 25-9-411; Neb. Rev. Stat. § 44-2825; Nev. Rev. Stat. § 41A.035; N.M. Rev. Stat. § 41-5-6; N.C. Gen. Stat. § 90-21.19; N.D. Cent. Code § 32-42-02; Ohio Rev. Code Ann. § 2323.43; S.C. Code Ann. § 15-32-220; S.D. Codified Laws §21-3-11; Tex. Civ. Prac. & Rem. Code Ann. § 74.301; Utah Code § 78B-3-410; Va. Code Ann. § 8.01-581.15; W. Va. Code § 55-7B-8.

<sup>7</sup> A few states limit noneconomic damages to \$250,000. Most states with caps have limits in \$350,000 to \$600,000 range. Maryland is one of only seven states that automatically adjust the limit on noneconomic damages on a regular basis to account for inflation. While some states adjust or lift the cap for catastrophic injuries or wrongful death, many are still at levels that are lower than Maryland's limit.

which will cause Maryland to become a nuclear verdict state, with all of the associated adverse consequences. Empirical evidence confirms that anchoring “dramatically increases” noneconomic damage awards.<sup>8</sup>

Finally, when an injury or death is caused by malicious conduct, a plaintiff can also recover punitive damages in Maryland. About half of the states limit punitive damages to an amount set by statute or a multiple of compensatory damages. A half dozen other states generally do not authorize punitive damage awards. In Maryland, punitive damages are available and uncapped.

For all these reasons, APCIA respectfully requests an unfavorable report on Senate Bill 538.

Nancy J. Egan,

State Government Relations Counsel, DC, DE, MD, VA, WV

[Nancy.egan@APCIA.org](mailto:Nancy.egan@APCIA.org) Cell: 443-841-4174

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<sup>8</sup> John Campbell et al., Time Is Money: An Empirical Assessment of Non-Economic Damages Arguments, 95 WASH. U. L. REV. 1, 28 (2017).



**SB0538\_UNF\_MedChi, MDACEP, MDACOG\_Civil Actions -**

Uploaded by: Steve Wise

Position: UNF



*The Maryland State Medical Society*

1211 Cathedral Street  
Baltimore, MD 21201-5516  
410.539.0872  
Fax: 410.547.0915

1.800.492.1056

www.medchi.org

TO: The Honorable William C. Smith, Jr., Chair  
Members, Senate Judicial Proceedings Committee  
The Honorable Jeff Waldstreicher

FROM: J. Steven Wise  
Pamela Metz Kasemeyer  
Danna L. Kauffman  
Andrew G. Vetter  
Christine K. Krone

DATE: February 16, 2024

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

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On behalf of The Maryland State Medical Society, the Maryland Chapter of the American College of Emergency Physicians, and the Maryland Section of The American College of Obstetricians and Gynecologists, we submit this letter of **opposition** for Senate Bill 538.

Senate Bill 538 would repeal the State’s cap on non-economic damages that applies to cases other than health care claims. While the physician groups joining in this letter would not be directly affected by its repeal, they know that the next effort by the plaintiff’s bar after this one will be to seek a similar repeal of the cap which applies to health care claims. For this reason, these groups oppose Senate Bill 538.

Non-economic damages are the damages awarded to plaintiffs for pain and suffering. One of the reasons for a cap on non-economic damages is that pain and suffering and emotional distress are inherently subjective and there is no method to accurately calculate or measure how much money to pay someone for these items. These damage awards are the most likely to be disproportionate because by their very nature they are based on emotion. On the other hand, loss of income from employment or the cost of nursing and custodial care for a seriously injured person, and actual medical bills from hospitals, nursing homes and the like, can be calculated and determined with reasonable accuracy. These “economic damages” have always been fully compensable under Maryland law; they are not capped.

Recognizing that our insurance market could not withstand repeatedly large non-economic damage awards, the General Assembly intervened in the 1980s and implemented a cap on them, as have many other states. Even with that cap in place, in 2004, a Special Session of the Legislature was called because of a medical liability insurance crisis, driven by excessive verdicts, which was forcing OB-GYNs to leave

obstetrics practice and causing some doctors to leave Maryland or to retire early. The Legislature again stepped in and enacted a separate cap on non-economic damages for actions in medical malpractice.

Today, Maryland has one of the highest non-economic damage caps in the country for medical malpractice cases at nearly \$900,000. For wrongful death medical malpractice actions involving two or more claimants or beneficiaries, the total amount awarded is limited to 125% of the cap, or over \$1.1 million. These amounts automatically increase each year by \$15,000.

Passage of Senate Bill 538 will undoubtedly be followed by legislation calling for a repeal of the medical malpractice cap, or by litigation seeking the same. The General Assembly should heed the lessons of past Legislatures which recognized the need for these damage caps, and not accept this invitation from the plaintiff's bar to once again inject instability into the State's insurance market and to make even worse our current healthcare workforce shortages. We respectfully request that you oppose Senate Bill 538.

**For more information call:**

J. Steven Wise  
Pamela Metz Kasemeyer  
Danna L. Kauffman  
Andrew G. Vetter  
Christine K. Krone  
410-244-7000

**SB0538- MTA - Noneconomic Damages - LOI\_FINAL.pdf**

Uploaded by: Patricia Westervelt

Position: INFO

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February 16, 2024

The Honorable William C. Smith Jr.  
Chair, Senate Judicial Proceedings Committee  
2 East, Miller Senate Office Building  
Annapolis, Maryland 21401

***RE: Letter of Information – Senate Bill 538 – Civil Actions - Noneconomic Damages -  
Personal Injury and Wrongful Death***

Dear Chair Smith and Committee Members:

The Maryland Department of Transportation (MDOT) offers the following information for the Committee's consideration on Senate Bill 538.

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

Unlike other State agencies, the Maryland Transit Administration's (MTA) tort liability is governed by the Transportation Article, not the Maryland Tort Claims Act; the Transportation Article does not include a limit on liability. Current law provides a cap on noneconomic damages, which provides plaintiffs with significant levels of recovery and protects MTA from unlimited exposure to noneconomic damages.

Removal of the noneconomic damages cap will likely lead to significantly greater awards and settlements against MTA and could result in a lack of predictability in litigating and settling MTA cases. Senate Bill 538 may also affect MTA's access to excess insurance or deductible amounts.

The Maryland Department of Transportation respectfully requests the Committee consider this information when deliberating Senate Bill 538.

Respectfully submitted,

Melissa Einhorn  
Director of Governmental Affairs  
Maryland Transit Administration  
410-767-0820

Pilar Helm  
Director of Government Affairs  
Maryland Department of Transportation  
410-865-1090