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MARYLAND EMPLOYERS FOR CIVIL JUSTICE REFORM COALITION

OPPOSES SB 538, AS AMENDED

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. As amended, the bill raises Maryland's existing cap on noneconomic damages from \$935,000 to \$1,750,000 and increases the annual escalator of the cap from \$15,000 to \$20,000. Such profound overnight increases are arbitrary, inappropriate and unfounded.

Maryland's noneconomic damage cap has been an important public policy since 1986. Noneconomic damages are damages that may be awarded for pain and suffering in negligence actions. Along with a majority of the 50 states, Maryland's General Assembly chose to cap these damages because pain and suffering are difficult to quantify, and placing a cap on these damages is the best way to balance the need for recovery for these injuries with the avoidance of excessive awards. In most other states with caps, the caps range from \$250,000 to \$1,000,000, placing Maryland at the higher end of the mainstream of states.

The consequences of enacting SB 583 are considerable:

- it would increase insurance costs for consumers and businesses, as determined by the National Association of Insurance Commissioners;
- it would ignore the Maryland Supreme Court's finding in *DRD Pool Service v. Freed*, 416 Md. 46 (2010), in which the Court recognized the General Assembly's intent in enacting the cap 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."
- it would increase claims and lawsuit filings, driving up the costs of defense, settlement and claims administration that will ultimately be passed on to consumers of insurance; and
- it would create impediments to reaching reasonable settlements, since plaintiffs' lawyers will demand significantly higher amounts for immeasurable harm as they hold out for the chance of a jackpot verdict.

The real purpose of SB 538 becomes evident when understanding who the only proponents of the bill are – plaintiffs' lawyers. A cap increase of nearly 90% produces the same nearly 90% increase in their attorneys' fees, which are based on a percentage of the damages recovered. While the only persons testifying in favor of SB 538 were plaintiffs' lawyers, bill opponents included Maryland drivers, homeowners, consumers, chambers of commerce, health care providers and insurers, the hospitality and transportation sectors, property and casualty insurers, and small businesses across a spectrum of industries. The higher insurance costs and damage awards triggered by higher caps even create a



material fiscal liability concern for the State of Maryland (Maryland Transit Administration), as explained in the bill's Fiscal Note.

A reasonable compromise exists. If the current cap was adjusted for actual inflation since its 1994 inception, it would stand at \$1,020,000, according to committee counsel in the Senate. If Maryland's cap needs to be adjusted at all, it could reasonably be increased to \$1,020,000, and under no circumstances exceeding \$1,100,000. Any higher amount is excessive, arbitrary, and would make Maryland an extreme outlier among States. As to Maryland's current annual cap escalator of \$15,000, since its enactment in 1994 it has substantially kept pace with the actual amount of inflation, and therefore no change – and certainly not an arbitrary overnight 33% increase – is warranted.

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