

MEDICAL MUTUAL

Liability Insurance Society of Maryland

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

Date: March 27, 2024

Position: *Oppose*

Bill Summary

Senate Bill 538 raises the cap on noneconomic damages in civil actions for personal injury from \$935,000 to \$1,750,000. With this increase, the cap would rise to \$2,625,000 (150% of the individual cap) for wrongful death actions involving two or more claimants or beneficiaries, and \$4,375,000 for combined survival and wrongful death actions. The bill also increases the statute's annual escalator from \$15,000 to \$20,000.

Medical Mutual's Position

Medical Mutual opposes Senate Bill 538. Increasing the cap on noneconomic damages in personal injury and wrongful death actions could adversely affect the availability and affordability of casualty insurance in the State.

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

In 1986, the General Assembly enacted a \$350,000 cap on noneconomic damages for personal injury actions.¹ Since then, the cap has steadily increased to \$935,000 for causes of action arising on or after October 1, 2023.² This amount increases to \$1,402,500 in wrongful death actions involving two or more claimants or beneficiaries.³ And the cap in a combined survival and

¹ See Laws of Md., 1986, Ch. 639.

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

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

wrongful death action can be as high as \$2,337,500.⁴ These limits will automatically increase on October 1, 2024, and on October 1 of each subsequent year.⁵

Senate Bill 538 nearly doubles the cap on noneconomic damages in personal injury and wrongful death actions. The bill's proponents contend that the proposed increase is necessary to keep pace with inflation since the cap was increased to \$500,000 in 1994.⁶ However, the \$500,000 cap in 1994, when adjusted for inflation, is just over \$1,000,000 in today's dollars.⁷ As such, the current proposal of \$1,750,000 greatly outpaces inflation and could lead to a significant rise in settlement demands, prolonged and expensive litigation, and higher liability insurance rates for Maryland citizens.

Supporters of Senate Bill 538 also contend that the bill does not impact the noneconomic damages cap applicable to medical malpractice cases.⁸ Yet, if the cap on noneconomic damages in personal injury and wrongful death actions is substantially increased, the bill's proponents will undoubtedly return to the General Assembly seeking a substantial increase to the medical malpractice cap arguing the increase is needed in order to achieve "parity."

Nearly 40 years ago, the General Assembly enacted a reasonable limit on noneconomic damages in personal injury and wrongful death actions. This measured response to disproportionate jury awards continues to provide predictability and stability in Maryland's civil justice system today. The existing cap preserves "the availability of sufficient liability insurance, at a reasonable cost, in order to cover claims for personal injuries to members of the public."⁹ A substantial increase to the cap would upend these legitimate legislative objectives and disturb the careful balance that the General Assembly struck when enacting the cap. It also would invite legislation impacting the medical malpractice cap, which plays an important role in maintaining the availability and affordability of medical professional liability insurance and, in turn, preserving access to quality healthcare in the State.

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

For more information contact:

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⁴ See Md. Code, Cts. & Jud. Proc. § 11-108(b)(3).

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

⁶ See Laws of Md., 1994, Ch. 477.

⁷ See U.S. Bureau of Labor Statistics CPI Inflation Calculator, available at https://www.bls.gov/data/inflation_calculator.htm

⁸ See Md. Code, Cts. & Jud. Proc. § 3-2A-09(b).

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