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Introduced and read first time: January 31, 1997

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Wrongful Death - Damages**

3 FOR the purpose of establishing that a beneficiary may be entitled to noneconomic  
4 damages in a wrongful death action for the death of a child or certain parents of a  
5 child who is not a minor child; revoking certain conditions required to entitle  
6 certain beneficiaries to noneconomic damages in a wrongful death action; altering  
7 the method by which a court is required to allocate noneconomic damages in a  
8 wrongful death action in which there are two or more claimants or beneficiaries if  
9 the jury awards an amount that exceeds the statutory limit; altering the extent to  
10 which a certain person must have been dependent upon the deceased in order to be  
11 entitled to damages in a wrongful death action; establishing certain circumstances  
12 that may be used to show that an unmarried parent of a deceased child is the father  
13 of the child for purposes of recovering damages in a wrongful death action;  
14 providing a tolling provision for certain persons in a wrongful death action under  
15 certain circumstances; making certain stylistic and technical changes; defining  
16 certain terms; providing for the application of this Act; and generally relating to  
17 wrongful death actions.

18 BY repealing and reenacting, with amendments,  
19 Article - Courts and Judicial Proceedings  
20 Section 3-904, 5-201, and 11-108  
21 Annotated Code of Maryland  
22 (1995 Replacement Volume and 1996 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
24 MARYLAND, That the Laws of Maryland read as follows:

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1           **Article - Courts and Judicial Proceedings**

2 3-904.

3           (a) An action under this subtitle shall be for the benefit of the wife, husband,  
4 parent, and child of the deceased person.

5           (b) If there are no persons who qualify under subsection (a), an action shall be for  
6 the benefit of any person related to the deceased person by blood or marriage who was  
7 [wholly] SUBSTANTIALLY dependent upon the deceased.

8           (c) (1) In an action under this subtitle, damages may be awarded to the  
9 beneficiaries proportioned to the injury resulting from the wrongful death.

10           (2) SUBJECT TO § 11-108(D)(2) OF THIS ARTICLE, THE amount recovered  
11 shall be divided among the beneficiaries in shares directed by the verdict.

12           (d) [For the death of a spouse, minor child, or parent of a minor child, the] THE  
13 damages awarded under subsection (c) are not limited or restricted by the "pecuniary  
14 loss" or "pecuniary benefit" rule but may include damages for mental anguish, emotional  
15 pain and suffering, loss of society, companionship, comfort, protection, marital care,  
16 parental care, filial care, attention, advice, counsel, training, guidance, or education  
17 where applicable FOR THE DEATH OF:

18                   (1) A SPOUSE;

19                   (2) A MINOR CHILD;

20                   (3) A PARENT OF A MINOR CHILD; OR

21                   (4) AN UNMARRIED CHILD WHO IS NOT A MINOR CHILD IF:

22                           (I) THE CHILD IS 21 YEARS OLD OR YOUNGER; OR

23                           (II) A PARENT CONTRIBUTED 50 PERCENT OR MORE OF THE  
24 CHILD'S SUPPORT.

25           (e) For the death of [an unmarried] A child, who is not [a minor child]  
26 DESCRIBED UNDER SUBSECTION (D) OF THIS SECTION, OR A PARENT OF A CHILD,  
27 WHO IS NOT A MINOR CHILD, the damages awarded under subsection (c) are not limited  
28 or restricted by the "pecuniary loss" or "pecuniary benefit" rule but may include damages  
29 for mental anguish, emotional pain and suffering, loss of society, companionship, comfort,  
30 protection, care, attention, advice, counsel, training, EDUCATION, or guidance where  
31 applicable [if:

32                   (1) The child is 21 years old or younger; or

33                   (2) A parent contributed 50 percent or more of the child's support].

34           (f) Only one action under this subtitle lies in respect to the death of a person.

35           (g) (1) Except as provided in paragraph (2) of this subsection, an action under  
36 this subtitle shall be filed within three years after the death of the injured person.

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1 (2) (i) In this paragraph "occupational disease" means a disease caused  
 2 by exposure to any toxic substance in the person's workplace and contracted by a person  
 3 in the course of the person's employment.

4 (ii) If an occupational disease was a cause of a person's death, an  
 5 action shall be filed:

6 1. Within 10 years of the time of death; or

7 2. Within 3 years of the date when the cause of death was  
 8 discovered, whichever is the shorter.

9 (h) For the purposes of this section, a person born to parents who have not  
 10 participated in a marriage ceremony with each other is considered to be the child of the  
 11 mother. The person is considered to be the child of the father only if the father:

12 (1) [has] HAS been judicially determined to be the father in a proceeding  
 13 brought under § 5-1010 of the Family Law Article[, or] OR § 1-208 OF THE ESTATES  
 14 AND TRUSTS ARTICLE;

15 (2) [prior] PRIOR to the death of the child [, (a)]:

16 (I) [has] HAS acknowledged himself, in writing, to be the father[, or  
 17 (b)];

18 (II) [has] HAS openly and notoriously recognized the person to be his  
 19 child[, or (c)]; OR

20 (III) [has] HAS subsequently married the mother and has  
 21 acknowledged himself, orally or in writing, to be the father; OR

22 (3) IS SHOWN BY SCIENTIFIC EVIDENCE TO BE THE FATHER.

23 5-201.

24 (a) When a cause of action subject to a limitation under Subtitle 1 of this title OR  
 25 TITLE 3, SUBTITLE 9 OF THIS ARTICLE accrues in favor of a minor or mental  
 26 incompetent, that person shall file his action within the lesser of three years or the  
 27 applicable period of limitations after the date the disability is removed.

28 (b) This section does not apply if the statute of limitations has more than three  
 29 years to run when the disability is removed.

30 (c) Imprisonment, absence from the State, or marriage are not disabilities which  
 31 extend the statute of limitations.

32 11-108.

33 (a) In this section:

34 (1) "Noneconomic damages" MEANS:

35 (i) In an action for personal injury, [means] pain, suffering,  
 36 inconvenience, physical impairment, disfigurement, loss of consortium, or other  
 37 nonpecuniary injury; and

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1 (ii) In an action for wrongful death, [means] mental anguish,  
2 emotional pain and suffering, loss of society, companionship, comfort, protection, care,  
3 marital care, parental care, filial care, attention, advice, counsel, training, guidance, or  
4 education, or other noneconomic damages authorized under Title 3, Subtitle 9 of this  
5 article; and

6 (2) "Noneconomic damages" does not include punitive damages.

7 (3) "PRIMARY CLAIMANT" MEANS A PERSON DESCRIBED UNDER §  
8 3-904(D) OF THIS ARTICLE.

9 (4) "SECONDARY CLAIMANT" MEANS A PERSON DESCRIBED OR  
10 BENEFICIARY UNDER § 3-904(E) OF THIS ARTICLE.

11 (b) (1) In any action for damages for personal injury in which the cause of  
12 action arises on or after July 1, 1986, an award for noneconomic damages may not exceed  
13 \$350,000.

14 (2) (i) Except as provided in paragraph (3)(ii) of this subsection, in any  
15 action for damages for personal injury or wrongful death in which the cause of action  
16 arises on or after October 1, 1994, an award for noneconomic damages may not exceed  
17 \$500,000.

18 (ii) The limitation on noneconomic damages provided under  
19 subparagraph (i) of this paragraph shall increase by \$15,000 on October 1 of each year  
20 beginning on October 1, 1995. The increased amount shall apply to causes of action  
21 arising between October 1 of that year and September 30 of the following year, inclusive.

22 (3) (i) The limitation established under paragraph (2) of this subsection  
23 shall apply in a personal injury action to each direct victim of tortious conduct and all  
24 persons who claim injury by or through that victim.

25 (ii) In a wrongful death action in which there are two or more  
26 claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of  
27 the limitation established under paragraph (2) of this subsection, regardless of the  
28 number of claimants or beneficiaries who share in the award.

29 (c) An award by the health claims arbitration panel in accordance with § 3-2A-06  
30 of this article shall be considered an award for purposes of this section.

31 (d) (1) In a jury trial, the jury may not be informed of the limitation established  
32 under subsection (b) of this section.

33 (2) (i) If the jury awards an amount for noneconomic damages that  
34 exceeds the limitation established under subsection (b) of this section, the court shall  
35 reduce the amount to conform to the limitation.

36 (ii) In a wrongful death action in which there are two or more  
37 claimants or beneficiaries, if the jury awards an amount for noneconomic damages that  
38 exceeds the limitation established under subsection (b)(3)(ii) of this section [the court  
39 shall];

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1                               1. IF THE AMOUNT OF NONECONOMIC DAMAGES FOR THE  
2 PRIMARY CLAIMANTS EQUALS OR EXCEEDS THE LIMITATION UNDER SUBSECTION  
3 (B)(3)(II) OF THIS SECTION, THE COURT SHALL:

4                               A. [reduce] REDUCE each individual award OF A PRIMARY  
5 CLAIMANT proportionately TO THE TOTAL AWARD OF ALL OF THE PRIMARY  
6 CLAIMANTS so that the total award TO ALL CLAIMANTS OR BENEFICIARIES conforms  
7 to the limitation;

8                               B. REDUCE EACH AWARD, IF ANY, TO A SECONDARY  
9 CLAIMANT TO ZERO DOLLARS; OR

10                              2. IF THE AMOUNT OF NONECONOMIC DAMAGES FOR THE  
11 PRIMARY CLAIMANTS DOES NOT EXCEED THE LIMITATION UNDER SUBSECTION  
12 (B)(3)(II) OF THIS SECTION OR IF THERE IS NO AWARD TO A PRIMARY CLAIMANT,  
13 THE COURT SHALL:

14                              A. ENTER AN AWARD TO ANY PRIMARY CLAIMANT, IF ANY,  
15 AS DIRECTED BY THE VERDICT; AND

16                              B. REDUCE EACH INDIVIDUAL AWARD OF A SECONDARY  
17 CLAIMANT PROPORTIONATELY TO THE TOTAL AWARD OF ALL OF THE SECONDARY  
18 CLAIMANTS SO THAT THE TOTAL AWARD TO ALL CLAIMANTS OR BENEFICIARIES  
19 CONFORMS TO THE LIMITATION.

20               SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
21 construed prospectively to apply only to causes of action for wrongful death that arise on  
22 or after the effective date of this Act and may not be applied or interpreted to have any  
23 effect on or application to causes of action for wrongful death that arise before the  
24 effective date of this Act.

25               SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 October 1, 1997.