

CF 7lr1178

---

**By:** ~~Delegates Vallario,~~ Delegate Vallario (Task Force to Examine Maryland's Crime Victims' Rights Laws) and ~~Delegates~~ R. Baker, Barve, Beck, Bozman, E. Burns, M. Burns, Cadden, Conway, Cryor, D. Davis, DeCarlo, Dembrow, Dewberry, Doory, Dypski, Edwards, Exum, Frank, Frush, Fulton, Genn, Goldwater, Gordon, Grosfeld, Harkins, Harrison, Healey, Hecht, Heller, Hixson, Howard, Hubbard, B. Hughes, Hurson, Hutchins, Kach, Klima, Kopp, Krysiak, Love, McIntosh, McKee, Montague, Morhaim, T. Murphy, Owings, Parker, Patterson, Pendergrass, Perry, Pitkin, Proctor, Rawlings, Redmer, Rosapepe, Rudolph, Shriver, Snodgrass, Taylor, Turner, Valderrama, and Workman

Introduced and read first time: January 31, 1997

Assigned to: Judiciary

---

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 1997

---

CHAPTER \_\_\_\_\_

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 specifying a certain time period for determining certain support; providing a tolling  
 15 provision for certain persons in a wrongful death action under certain  
 16 circumstances; making certain stylistic and technical changes; defining certain  
 17 terms; providing for the application of this Act; and generally relating to wrongful  
 18 death actions.

19 BY repealing and reenacting, with amendments,

2

1 Article - Courts and Judicial Proceedings  
2 Section 3-904, 5-201, and 11-108  
3 Annotated Code of Maryland  
4 (1995 Replacement Volume and 1996 Supplement)

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

7 **Article - Courts and Judicial Proceedings**

8 3-904.

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

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

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

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

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

24 (1) A SPOUSE;

25 (2) A MINOR CHILD;

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

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

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

29 (II) A PARENT CONTRIBUTED 50 PERCENT OR MORE OF THE  
30 CHILD'S SUPPORT WITHIN THE 12-MONTH PERIOD IMMEDIATELY BEFORE THE DATE  
31 OF DEATH OF THE CHILD.

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

3

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (III) [has] HAS subsequently married the mother and has  
26 acknowledged himself, orally or in writing, to be the father ~~OR~~

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

28 5-201.

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

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

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

4

1 11-108.

2 (a) In this section:

3 (1) "Noneconomic damages" MEANS:

4 (i) In an action for personal injury, [means] pain, suffering,  
5 inconvenience, physical impairment, disfigurement, loss of consortium, or other  
6 nonpecuniary injury; and7 (ii) In an action for wrongful death, [means] mental anguish,  
8 emotional pain and suffering, loss of society, companionship, comfort, protection, care,  
9 marital care, parental care, filial care, attention, advice, counsel, training, guidance, or  
10 education, or other noneconomic damages authorized under Title 3, Subtitle 9 of this  
11 article; and

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

13 (3) "PRIMARY CLAIMANT" MEANS A PERSON DESCRIBED UNDER §  
14 3-904(D) OF THIS ARTICLE.15 (4) "SECONDARY CLAIMANT" MEANS A PERSON DESCRIBED ~~OR~~  
16 ~~BENEFICIARY~~ UNDER § 3-904(E) OF THIS ARTICLE.17 (b) (1) In any action for damages for personal injury in which the cause of  
18 action arises on or after July 1, 1986, an award for noneconomic damages may not exceed  
19 \$350,000.20 (2) (i) Except as provided in paragraph (3)(ii) of this subsection, in any  
21 action for damages for personal injury or wrongful death in which the cause of action  
22 arises on or after October 1, 1994, an award for noneconomic damages may not exceed  
23 \$500,000.24 (ii) The limitation on noneconomic damages provided under  
25 subparagraph (i) of this paragraph shall increase by \$15,000 on October 1 of each year  
26 beginning on October 1, 1995. The increased amount shall apply to causes of action  
27 arising between October 1 of that year and September 30 of the following year, inclusive.28 (3) (i) The limitation established under paragraph (2) of this subsection  
29 shall apply in a personal injury action to each direct victim of tortious conduct and all  
30 persons who claim injury by or through that victim.31 (ii) In a wrongful death action in which there are two or more  
32 claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of  
33 the limitation established under paragraph (2) of this subsection, regardless of the  
34 number of claimants or beneficiaries who share in the award.35 (c) An award by the health claims arbitration panel in accordance with § 3-2A-06  
36 of this article shall be considered an award for purposes of this section.37 (d) (1) In a jury trial, the jury may not be informed of the limitation established  
38 under subsection (b) of this section.

5

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

4 (ii) In a wrongful death action in which there are two or more  
5 claimants or beneficiaries, if the jury awards an amount for noneconomic damages that  
6 exceeds the limitation established under subsection (b)(3)(ii) of this section ~~the court~~  
7 shall};

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

11 A. ~~[reduce]~~ REDUCE each individual award OF A PRIMARY  
12 CLAIMANT proportionately TO THE TOTAL AWARD OF ALL OF THE PRIMARY  
13 CLAIMANTS so that the total award TO ALL CLAIMANTS OR BENEFICIARIES conforms  
14 to the limitation; AND

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

17 2. IF THE AMOUNT OF NONECONOMIC DAMAGES FOR THE  
18 PRIMARY CLAIMANTS DOES NOT EXCEED THE LIMITATION UNDER SUBSECTION  
19 (B)(3)(II) OF THIS SECTION OR IF THERE IS NO AWARD TO A PRIMARY CLAIMANT;  
20 ~~THE COURT SHALL:~~

21 A. ENTER AN AWARD TO ~~ANY~~ THE PRIMARY CLAIMANT, IF  
22 ANY, AS DIRECTED BY THE VERDICT; AND

23 B. REDUCE EACH INDIVIDUAL AWARD OF A SECONDARY  
24 CLAIMANT PROPORTIONATELY TO THE TOTAL AWARD OF ALL OF THE SECONDARY  
25 CLAIMANTS SO THAT THE TOTAL AWARD TO ALL CLAIMANTS OR BENEFICIARIES  
26 CONFORMS TO THE LIMITATION.

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

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

