
**By: Senator Stone (Task Force to Examine Maryland's Crime Victims' Rights Laws)
and Senator Miller**

Introduced and read first time: January 15, 1997

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Wrongful Death - Noneconomic Damages - Secondary Beneficiaries**

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

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

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

23 **Article - Courts and Judicial Proceedings**

24 3-904.

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

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

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

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

5 (d) For the death of a spouse, minor child, or parent of a minor child, the
6 damages awarded under subsection (c) are not limited or restricted by the "pecuniary
7 loss" or "pecuniary benefit" rule but may include damages for mental anguish, emotional
8 pain and suffering, loss of society, companionship, comfort, protection, marital care,
9 parental care, filial care, attention, advice, counsel, training, guidance, or education
10 where applicable.

11 (e) For the death of [an unmarried] A child, who is not a minor child, OR A
12 PARENT OF A CHILD, WHO IS NOT A MINOR CHILD, the damages awarded under
13 subsection (c) are not limited or restricted by the "pecuniary loss" or "pecuniary benefit"
14 rule but may include damages for mental anguish, emotional pain and suffering, loss of
15 society, companionship, comfort, protection, care, attention, advice, counsel, training,
16 EDUCATION, or guidance where applicable [if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 5-201.

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

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

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

15 11-108.

16 (a) In this section:

17 (1) "Noneconomic damages" MEANS:

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

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

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

27 (3) "PRIMARY BENEFICIARY" MEANS A PERSON WHO IS A CLAIMANT OR
28 BENEFICIARY UNDER § 3-904(D) OF THIS ARTICLE.

29 (4) "SECONDARY BENEFICIARY" MEANS A PERSON WHO IS A CLAIMANT
30 OR BENEFICIARY UNDER § 3-904(E) OF THIS ARTICLE.

31 (b) (1) In any action for damages for personal injury in which the cause of
32 action arises on or after July 1, 1986, an award for noneconomic damages may not exceed
33 \$350,000.

34 (2) (i) Except as provided in paragraph (3)(ii) of this subsection, in any
35 action for damages for personal injury or wrongful death in which the cause of action
36 arises on or after October 1, 1994, an award for noneconomic damages may not exceed
37 \$500,000.

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

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

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

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

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

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

19 (ii) In a wrongful death action in which there are two or more
20 claimants or beneficiaries, if the jury awards an amount for noneconomic damages that
21 exceeds the limitation established under subsection (b)(3)(ii) of this section, the court
22 shall:

23 1. IF THE AMOUNT OF NONECONOMIC DAMAGES FOR THE
24 PRIMARY BENEFICIARIES EXCEEDS THE LIMITATION UNDER SUBSECTION (B)(3)(II)
25 OF THIS SECTION, reduce each individual award OF A PRIMARY BENEFICIARY
26 proportionately TO THE TOTAL AWARD OF ALL OF THE PRIMARY BENEFICIARIES so
27 that the total award conforms to the limitation; OR

28 2. IF THE AMOUNT OF NONECONOMIC DAMAGES FOR THE
29 PRIMARY BENEFICIARIES DOES NOT EXCEED THE LIMITATION UNDER SUBSECTION
30 (B)(3)(II) OF THIS SECTION, ENTER AN AWARD TO ANY PRIMARY BENEFICIARY AS
31 DIRECTED BY THE VERDICT AND REDUCE EACH INDIVIDUAL AWARD OF A
32 SECONDARY BENEFICIARY PROPORTIONATELY TO THE TOTAL AWARD OF ALL OF
33 THE SECONDARY BENEFICIARIES SO THAT THE TOTAL AWARD CONFORMS TO THE
34 LIMITATION.

35 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
36 October 1, 1997.