

CF 7lr1177

By: Senator Stone (Task Force to Examine Maryland's Crime Victims' Rights Laws)
and ~~Senator Miller~~ Senators Miller, Colburn, Ferguson, Forehand, Green, Kelley,
and Middlebrooks

Introduced and read first time: January 15, 1997

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 4, 1997

CHAPTER _____

1 AN ACT concerning

2 **Wrongful Death - ~~Noneconomic Damages~~ - ~~Secondary Beneficiaries~~ 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 ~~a parent~~ certain
5 parents of a child who is not a minor child; revoking certain conditions required to
6 entitle certain beneficiaries to noneconomic damages in a wrongful death action;
7 altering the method by which a court is required to allocate noneconomic damages
8 in a wrongful death action in which there are two or more claimants or beneficiaries
9 if 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 ~~that scientific evidence~~
12 certain circumstances that may be used to show that an unmarried parent of a
13 deceased child is the father of the child for purposes of recovering damages in a
14 wrongful death action; providing a tolling provision for certain persons in a wrongful
15 death action under certain circumstances; making certain stylistic and technical
16 changes; defining certain terms; providing for the application of this Act; and
17 generally relating to ~~the allocation of noneconomic damages in a wrongful death~~
18 action actions.

19 BY repealing and reenacting, with amendments,
20 Article - Courts and Judicial Proceedings
21 Section 3-904, 5-201, and 11-108
22 Annotated Code of Maryland
23 (1995 Replacement Volume and 1996 Supplement)

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

3 **Article - Courts and Judicial Proceedings**

4 3-904.

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

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

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

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

14 ~~(d) For the death of a spouse, minor child, or parent of a minor child, the~~ (D) THE damages awarded under subsection 15 by the
"pecuniary loss" or "pecuniary benefit" rule but may include damages for mental
16 anguish, emotional pain and suffering, loss of society, companionship, comfort,
17 protection, marital care, parental care, filial care, attention, advice, counsel, training,
18 guidance, or education where applicable FOR THE DEATH OF:

19 (1) A SPOUSE;

20 (2) A MINOR CHILD;

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

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

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

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

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

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

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

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

36 (g) (1) Except as provided in paragraph (2) of this subsection, an action under
37 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) "~~BENEFICIARY CLAIMANT~~" MEANS A PERSON ~~WHO IS A~~
8 ~~CLAIMANT OR BENEFICIARY DESCRIBED~~ UNDER § 3-904(D) OF THIS ARTICLE.

9 (4) "~~SECONDARY BENEFICIARY CLAIMANT~~" MEANS A PERSON ~~WHO IS A~~
10 ~~CLAIMANT OR BENEFICIARY DESCRIBED~~ 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 ~~BENEFICIARIES~~ CLAIMANTS EQUALS OR EXCEEDS THE LIMITATION
3 UNDER SUBSECTION (B)(3)(II) OF THIS SECTION, ~~reduce~~:

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

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 ~~BENEFICIARIES~~ CLAIMANTS DOES NOT EXCEED THE LIMITATION UNDER
12 SUBSECTION (B)(3)(II) OF THIS SECTION, OR IF THERE IS NO AWARD TO A PRIMARY
13 CLAIMANT, THE COURT SHALL:

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

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

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

25 SECTION 2- ~~3.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 1997.