
By: **Delegates O'Donnell, Amedori, Dwyer, Elmore, Hogan, Jennings,
McComas, McConkey, McMillan, Redmer, and Shank**

Introduced and read first time: February 7, 2003

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Payment of Future Economic Damages**

3 FOR the purpose of requiring a court or health claims arbitration panel to order that
4 all or part of the future economic damages portion of an award of damages be
5 paid by certain methods under certain circumstances; requiring an election to
6 have an award for future economic damages paid in a certain form and an
7 objection to an election to be filed within certain time periods; authorizing the
8 court or panel to waive certain time requirements for good cause; establishing
9 that an election is effective unless the plaintiff makes a certain stipulation or
10 the court or panel makes a certain finding; authorizing an effective election to be
11 withdrawn only by consent of all parties; providing that, if a court or health
12 claims arbitration panel orders future economic damages to be paid in certain
13 forms, the court or panel shall order the defendant or the defendant's insurer to
14 purchase an annuity that meets certain requirements rather than order the
15 providing of adequate security for the payment of the future economic damages;
16 providing for the application of this Act; and generally relating to requiring a
17 court or a health claims arbitration panel to order future economic damages to
18 be paid by an annuity that meets certain requirements under certain
19 circumstances.

20 BY repealing and reenacting, with amendments,
21 Article - Courts and Judicial Proceedings
22 Section 11-109
23 Annotated Code of Maryland
24 (2002 Replacement Volume)

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

1 **Article - Courts and Judicial Proceedings**

2 11-109.

3 (a) (1) In this section, "economic damages" means loss of earnings and
4 medical expenses.

5 (2) "Economic damages" does not include punitive damages.

6 (b) As part of the verdict in any action for damages for personal injury in
7 which the cause of action arises on or after July 1, 1986 or for wrongful death in
8 which the cause of action arises on or after October 1, 1994, the trier of fact shall
9 itemize the award to reflect the monetary amount intended for:

10 (1) Past medical expenses;

11 (2) Future medical expenses;

12 (3) Past loss of earnings;

13 (4) Future loss of earnings;

14 (5) Noneconomic damages; and

15 (6) Other damages.

16 (c) (1) (I) [The] IF ALL PARTIES TO THE ACTION AGREE AT ANY TIME OR
17 IF ANY PARTY FILES AN EFFECTIVE ELECTION UNDER SUBPARAGRAPH (II) OF THIS
18 PARAGRAPH, FOR FUTURE ECONOMIC DAMAGES EXCEEDING \$100,000, THE court or
19 the health claims arbitration panel [may] SHALL order that all or part of the future
20 economic damages portion of the award be paid in the form of annuities or other
21 appropriate financial instruments, or that it be paid in periodic or other payments
22 consistent with the needs of the plaintiff, funded in full by the defendant or the
23 defendant's insurer and equal when paid to the amount of the future economic
24 damages award.

25 (II) 1. A PARTY SHALL FILE AN ELECTION TO HAVE AN AWARD
26 FOR FUTURE ECONOMIC DAMAGES PAID IN A FORM DESCRIBED IN SUBPARAGRAPH
27 (I) OF THIS PARAGRAPH AT LEAST 120 DAYS BEFORE TRIAL.

28 2. AN OBJECTION TO AN ELECTION MUST BE FILED WITHIN
29 30 DAYS AFTER SERVICE OF THE ELECTION.

30 3. THE COURT OR PANEL MAY WAIVE FAILURE TO COMPLY
31 WITH THE TIME LIMITS UNDER SUBSUBPARAGRAPHS 1 AND 2 OF THIS
32 SUBPARAGRAPH ON A SHOWING OF GOOD CAUSE.

33 4. AN ELECTION FILED UNDER THIS SUBPARAGRAPH IS
34 EFFECTIVE UNLESS:

1 A. THE PLAINTIFF STIPULATES THAT THE CLAIM FOR
2 FUTURE ECONOMIC DAMAGES DOES NOT EXCEED \$100,000; OR

3 B. AT LEAST 30 DAYS BEFORE TRIAL, THE COURT OR PANEL
4 FINDS GOOD CAUSE WHY AN AWARD FOR FUTURE ECONOMIC DAMAGES SHOULD
5 NOT BE PAID IN A FORM DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH.

6 5. AN EFFECTIVE ELECTION MAY BE WITHDRAWN ONLY BY
7 CONSENT OF ALL PARTIES TO THE ACTION.

8 (2) In the event that the court or panel [shall order] ORDERS that the
9 award for future economic damages be paid in a form other than a lump sum, the
10 court or panel shall order that the defendant or the defendant's insurer [provide
11 adequate security for the payment of all future economic damages] PURCHASE AN
12 ANNUITY FROM AN INSURANCE COMPANY THAT HAS ONE OF THE FOLLOWING
13 RATINGS FROM TWO OF THE FOLLOWING RATING ORGANIZATIONS:

14 (I) A.M. BEST COMPANY: A+, A+G, A+P, A+R, OR A+S;

15 (II) DUFF & PHELPS CREDIT RATING COMPANY INSURANCE
16 COMPANY CLAIMS PAYING ABILITY RATING: AA-, AA, AA+, OR AAA;

17 (III) MOODY'S INVESTORS SERVICE CLAIMS PAYING RATING: AA3,
18 AA2, AA1, OR AAA;

19 (IV) STANDARD & POOR'S CORPORATION INSURER CLAIMS PAYING
20 RATING: AA-, AA, AA+, OR AAA; OR

21 (V) A RATING FROM ANOTHER NATIONAL RATING ORGANIZATION
22 IF THE RATING AND THE RATING ORGANIZATION ARE FOUND TO BE APPROPRIATE BY
23 THE COURT OR PANEL.

24 (3) The court or panel may appoint a conservator under this subsection
25 for the plaintiff, upon such terms as the court or panel may impose, who shall have
26 the full and final authority to resolve any dispute between the plaintiff and the
27 defendant or the defendant's insurer regarding the need or cost of expenses for the
28 plaintiff's medical, surgical, custodial, or other care or treatment.

29 (d) If the plaintiff under this section dies before the final periodic payment of
30 an award is made, the unpaid balance of the award for future loss of earnings shall
31 revert to the estate of the plaintiff and the unpaid balance of the award for future
32 medical expenses shall revert to the defendant or to the defendant's insurer if the
33 insurer provided the funds for the future damages award.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
35 construed to apply only prospectively and may not be applied or interpreted to have
36 any effect on or application to actions filed before the effective date of this Act.

37 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
38 effect October 1, 2003.

