Unofficial Copy **2004 Regular Session**
HB1299/663393/1

BY: Economic Matters Committee and House Judiciary Committee

AMENDMENTS TO HOUSE BILL NO. 1299
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike "and Simmons" and substitute "Simmons, Amedori, Arnick, Aumann, Bartlett, Boschert, Boteler, Boutin, Bozman, Brown, Burns, Cane, Cryor, D. Davis, Doory, DeBoy, Donoghue, Eckardt, Edwards, Elliott, Elmore, Feldman, Frank, Fulton, Glassman, Haddaway, Hammen, Harrison, Hurson, Impallaria, Jennings, Kach, Kirk, Krebs, Krysiak, Leopold, Love, McComas, McConkey, McHale, McKee, McMillan, Miller, Minnick, Moe, Morhaim, O'Donnell, Parrott, Pendergrass, Shank, Sophocleus, Stocksdale, Trueschler, Vaughn, Walkup, Weldon, and Zirkin".

AMENDMENT NO. 2

On page 1, in line 2, strike "Task Force on"; in the same line, after "Malpractice" insert "Reforms and Task Force"; strike beginning with "establishing" in line 3 down through "Malpractice." in line 9 and substitute "requiring that certain health care malpractice awards or verdicts be itemized in a certain manner; providing that a health care malpractice award or verdict be reduced to the extent of certain payments, reimbursements, or indemnification for past medical expenses, less certain costs, under certain circumstances; prohibiting certain recovery and certain claims of subrogation relating to certain payments, reimbursements, or indemnification under certain circumstances; requiring mediation of certain health care malpractice actions under certain circumstances; requiring the Court of Appeals to adopt a certain application process to be on a roster of mediators for a health care malpractice case; providing for certain mediation procedures and costs; providing for certain immunity from civil liability for certain mediators; requiring a certain supplemental certificate of a qualified expert in a health care malpractice claim or action under certain circumstances; providing for the contents of the supplemental certificate; requiring certain procedures concerning the supplemental certificate; providing that a health care malpractice claim or action may be dismissed if a claimant or plaintiff fails to file a certain supplemental certificate that meets certain requirements under certain circumstances; limiting venue for certain actions against an insurer of a health care provider under certain circumstances; defining certain terms; requiring

(Over)

insurers providing professional liability insurance to a health care provider in the State to submit certain information to the Maryland Insurance Commissioner; authorizing the Commissioner to require certain insurers to submit certain reports; requiring the Commissioner to submit a certain report to the House Economic Matters Committee, House Judiciary Committee, Senate Finance Committee, and Senate Judicial Proceedings Committee on or before a certain date of each year; establishing a Task Force on Medical Malpractice; providing for the composition, co-chairmen, and staff of the Task Force; providing for the duties of the Task Force; requiring the Task Force to report to the Governor and the General Assembly by a certain date; providing for the termination of certain provisions of this Act; making stylistic changes; and generally relating to medical malpractice tort and insurance reform.

BY repealing and reenacting, with amendments,
Article - Courts and Judicial Proceedings
Section 3-2A-01, 3-2A-04(b), 3-2A-05(e) and (h), 3-2A-06(f), 3-2A-09, and 5-615
Annotated Code of Maryland
(2002 Replacement Volume and 2003 Supplement)

BY repealing and reenacting, without amendments,
Article - Courts and Judicial Proceedings
Section 6-201 and 6-203(a)
Annotated Code of Maryland
(2002 Replacement Volume and 2003 Supplement)

BY adding to
Article - Courts and Judicial Proceedings
Section 3-2A-06C, 3-2A-06D, and 6-203(f)
Annotated Code of Maryland
(2002 Replacement Volume and 2003 Supplement)

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

Article - Courts and Judicial Proceedings

3-2A-01.

(a) In this subtitle the following terms have the meanings indicated unless the context of their use requires otherwise.

(b) "Arbitration panel" means the arbitrators selected to determine a health care malpractice claim in accordance with this subtitle.

(c) "Court" means a circuit court for a county.

(d) "Director" means the Director of the Health Claims Arbitration Office.

(e) (1) (I) "Health care provider" means a hospital, a related institution as defined in § 19-301 of the Health - General Article, A MEDICAL DAY CARE CENTER, A HOSPICE CARE PROGRAM, AN ASSISTED LIVING PROGRAM, A FREESTANDING AMBULATORY CARE FACILITY AS DEFINED IN § 19-3B-01 OF THE HEALTH - GENERAL ARTICLE, a physician, an osteopath, an optometrist, a chiropractor, a registered or licensed practical nurse, a dentist, a podiatrist, a psychologist, a licensed certified social worker-clinical, and a physical therapist, licensed or authorized to provide one or more health care services in Maryland.

(II) "Health care provider" does not [mean] INCLUDE any nursing institution conducted by and for those who rely upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination.

(f) "Medical injury" means injury arising or resulting from the rendering or failure to render health care.

(G) "NONECONOMIC DAMAGES" MEANS:

(1) IN A CLAIM FOR PERSONAL INJURY, PAIN, SUFFERING, INCONVENIENCE, PHYSICAL IMPAIRMENT, DISFIGUREMENT, LOSS OF CONSORTIUM, OR OTHER NONPECUNIARY INJURY; OR

(2) IN A CLAIM FOR WRONGFUL DEATH, MENTAL ANGUISH,

EMOTIONAL PAIN AND SUFFERING, LOSS OF SOCIETY, COMPANIONSHIP, COMFORT, PROTECTION, CARE, MARITAL CARE, PARENTAL CARE, FILIAL CARE, ATTENTION, ADVICE, COUNSEL, TRAINING, GUIDANCE, OR EDUCATION, OR OTHER NONECONOMIC DAMAGES AUTHORIZED UNDER SUBTITLE 9 OF THIS TITLE.

3-2A-04.

(b) Unless the sole issue in the claim is lack of informed consent:

(1) (i) 1. Except as provided in subparagraph (ii) of this paragraph, a claim filed after July 1, 1986, shall be dismissed, without prejudice, if the claimant fails to file a certificate of a qualified expert with the Director attesting to departure from standards of care, and that the departure from standards of care is the proximate cause of the alleged injury, within 90 days from the date of the complaint.

2. The claimant shall serve a copy of the certificate on all other parties to the claim or their attorneys of record in accordance with the Maryland Rules.

(ii) In lieu of dismissing the claim, the panel chairman shall grant an extension of no more than 90 days for filing the certificate required by this paragraph, if:

1. The limitations period applicable to the claim has expired; and

2. The failure to file the certificate was neither willful nor the result of gross negligence.

(2) (I) A claim filed after July 1, 1986, may be adjudicated in favor of the claimant on the issue of liability, if the defendant disputes liability and fails to file a certificate of a qualified expert attesting to compliance with standards of care, or that the departure from standards of care is not the proximate cause of the alleged injury, within 120 days from the date the claimant served the certificate of a qualified expert set forth in paragraph (1) of this subsection on the defendant.

(II) If the defendant does not dispute liability, a certificate of a qualified expert is not required under this subsection.

(III) The defendant shall serve a copy of the certificate on all other parties to the claim or their attorneys of record in accordance with the Maryland Rules.

(3) (I) The attorney representing each party, or the party proceeding pro se, shall file the appropriate certificate with a report of the attesting expert attached.

(II) Discovery is available as to the basis of the certificate.

(4) The attesting expert may not devote annually more than 20 percent of the expert's professional activities to activities that directly involve testimony in personal injury claims.

(5) An extension of the time allowed for filing a certificate of a qualified expert under this subsection shall be granted for good cause shown.

(6) In the case of a claim against a physician, the Director shall forward copies of the certificates filed under paragraphs (1) and (2) of this subsection to the State Board of Physicians.

(7) For purposes of the certification requirements of this subsection for any claim filed on or after July 1, 1989:

(i) A party may not serve as a party's expert; and

(ii) The certificate may not be signed by:

1. A party;

2. An employee or partner of a party; or

3. An employee or stockholder of any professional corporation of which the party is a stockholder.

3-2A-05.

(e) (1) The arbitration panel shall first determine the issue of liability with respect to a claim referred to it.

(2) If the arbitration panel determines that the health care provider is not liable to the claimant or claimants the award shall be in favor of the health care provider.

(3) If the arbitration panel determines that a health care provider is liable to the claimant or claimants, it shall then consider, itemize, assess, and apportion appropriate damages against one or more of the health care providers that it has found to be liable.

(4) [The award shall itemize by category and amount any damages assessed for incurred medical expenses, rehabilitation costs, and loss of earnings. Damages assessed for any future expenses, costs, and losses shall be itemized separately.] THE ARBITRATION PANEL SHALL ITEMIZE THE AWARD TO REFLECT THE MONETARY AMOUNT INTENDED FOR:

(I) PAST MEDICAL EXPENSES;

(II) FUTURE MEDICAL EXPENSES;

(III) PAST LOSS OF EARNINGS;

(IV) FUTURE LOSS OF EARNINGS;

(V) NONECONOMIC DAMAGES;

(VI) IN A WRONGFUL DEATH ACTION, THE PECUNIARY LOSS OR BENEFIT; AND

(VII) OTHER DAMAGES.

(h) (1) A party may apply to the arbitration panel to modify or correct an award as to liability, damages, or costs in accordance with § 3-222 of this article.

(2) (I) The application may include a request that damages be reduced to the extent that the claimant has been or will be paid, reimbursed, or indemnified under statute, insurance,

or contract for all or part of the damages assessed.

(II) The panel chairman shall receive such evidence in support and opposition to a request for reduction, including evidence of the cost to obtain such payment, reimbursement, or indemnity.

(III) After hearing the evidence in support and opposition to the request, the panel chairman:

1. SUBJECT TO ITEM 2 OF THIS SUBPARAGRAPH, may modify the award if satisfied that modification is supported by the evidence; AND

2. SHALL MODIFY THE AWARD FOR DAMAGES FOR PAST MEDICAL EXPENSES IF SATISFIED THAT MODIFICATION IS SUPPORTED BY THE EVIDENCE.

(IV) 1. THIS SUBPARAGRAPH DOES NOT APPLY TO SUMS PAID OR PAYABLE FOR PAST MEDICAL EXPENSES.

2. The award may not be modified as to any sums paid or payable to a claimant under any workers' compensation act, criminal injuries compensation act, employee benefit plan established under a collective bargaining agreement between an employer and an employee or a group of employers and a group of employees that is subject to the provisions of the federal Employee Retirement Income Security Act of 1974, program of the Department of Health and Mental Hygiene for which a right of subrogation exists under §§ 15-120 and 15-121.1 of the Health - General Article, or as a benefit under any contract or policy of life insurance or Social Security Act of the United States. An award may not be modified as to any damages assessed for any future expenses, costs, and losses unless the panel chairman orders the defendant or the defendant's insurer to provide adequate security or, if the insurer is authorized to do business in this State, maintains reserves in compliance with rules of the Insurance Commissioner to assure the payment of all such future damages up to the amount by which the award has been modified as to such future damages in the event of termination.

(V) THE DAMAGES FOR PAST MEDICAL EXPENSES IN AN AWARD MAY NOT BE MODIFIED AS TO ANY SUMS PAID OR PAYABLE TO A CLAIMANT:

1. UNDER ANY CRIMINAL INJURIES COMPENSATION ACT; OR

2. FOR WHICH A RIGHT TO RECOVER FROM THE CLAIMANT OR FOR WHICH A RIGHT TO ASSERT A CLAIM OF SUBROGATION AGAINST A DEFENDANT IS EXPRESSLY PROVIDED BY FEDERAL STATUTE.

(VI) [Except] NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EXCEPT as expressly provided by federal statute, no person may recover from the claimant or assert a claim of subrogation against a defendant for any sum included in the modification of an award.

3-2A-06.

(f) (1) [Upon timely request, the trier of fact shall by special verdict or specific findings itemize by category and amount any damages assessed for incurred medical expenses, rehabilitation costs, and loss of earnings. Damages assessed for any future expenses, costs, and losses shall be itemized separately. If the verdict or findings include any amount for such expenses, costs, and losses, a] THE TRIER OF FACT SHALL ITEMIZE THE VERDICT TO REFLECT THE MONETARY AMOUNT INTENDED FOR:

(I) PAST MEDICAL EXPENSES;

(II) FUTURE MEDICAL EXPENSES;

(III) PAST LOSS OF EARNINGS;

(IV) FUTURE LOSS OF EARNINGS;

(V) NONECONOMIC DAMAGES;

(VI) IN A WRONGFUL DEATH ACTION, THE PECUNIARY LOSS OR BENEFIT; AND

(VII) OTHER DAMAGES.

(2) A party filing a motion for a new trial may object to the damages as excessive on the ground that the claimant has been or will be paid, reimbursed, or indemnified to the extent and subject to the limits stated in § 3-2A-05(h) of this subtitle.

(3) The court shall hold a hearing and receive evidence on the objection.

(4) (I) If the court finds from the evidence that the damages are excessive on the grounds stated in § 3-2A-05(h) of this subtitle, subject to the limits and conditions stated in § 3-2A-05(h) of this subtitle, it may grant a new trial as to such damages or may deny a new trial if the claimant agrees to a remittitur of the excess and the order required adequate security when warranted by the conditions stated in § 3-2A-05(h) of this subtitle.

(II) In the event of a new trial granted under this subsection, evidence considered by the court in granting the remittitur shall be admissible if offered at the new trial and the jury shall be instructed to consider such evidence in reaching its verdict as to damages.

(III) Upon a determination of those damages at the new trial, no further objection to damages may be made exclusive of any party's right of appeal.

(5) (I) ON MOTION BY A PARTY, DAMAGES FOR PAST MEDICAL EXPENSES IN A VERDICT SHALL BE REDUCED ON THE GROUND THAT THE CLAIMANT WILL BE PAID, REIMBURSED, OR INDEMNIFIED TO THE EXTENT AND SUBJECT TO THE LIMITS STATED IN § 3-2A-05(H) OF THIS SUBTITLE.

(II) THE COURT SHALL HOLD A HEARING AND RECEIVE EVIDENCE ON THE MOTION.

(III) IF THE COURT FINDS FROM THE EVIDENCE THAT THE

DAMAGES FOR PAST MEDICAL EXPENSES HAVE BEEN OR WILL BE PAID, REIMBURSED, OR INDEMNIFIED AS DESCRIBED IN § 3-2A-05(H) OF THIS SUBTITLE, SUBJECT TO THE LIMITATIONS AND CONDITIONS STATED IN § 3-2A-05(H) OF THIS SUBTITLE, THE COURT SHALL MODIFY THE DAMAGES FOR THE PAST MEDICAL EXPENSES IN THE VERDICT.

(6) [Except] NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EXCEPT as expressly provided by federal law, no person may recover from the claimant or assert a claim of subrogation against a defendant for any sum included:

(I) [in] IN a remittitur or awarded in a new trial on damages granted under this subsection; OR

(II) IN A MODIFICATION FOR DAMAGES FOR PAST MEDICAL EXPENSES IN A VERDICT.

(7) Nothing in this subsection shall be construed to otherwise limit the common law grounds for remittitur.

3-2A-06C.

(A) IN THIS SECTION, "ROSTER" MEANS THE ROSTER OF MEDIATORS FOR HEALTH CARE MALPRACTICE CASES.

(B) EXCEPT AS PROVIDED IN SUBSECTION (L)(1) OF THIS SECTION, ANY CLAIM THAT IS FILED UNDER THIS SUBTITLE FOR WHICH ARBITRATION IS WAIVED UNDER § 3-2A-06A OR § 3-2A-06B OF THIS SUBTITLE IS SUBJECT TO MEDIATION UNDER THIS SECTION.

(C) (1) THE COURT OF APPEALS SHALL ADOPT AN APPLICATION PROCESS FOR QUALIFIED INDIVIDUALS TO BE ON A ROSTER OF MEDIATORS FOR A HEALTH CARE MALPRACTICE CASE.

(2) IN ORDER TO BE LISTED ON THE ROSTER, AN INDIVIDUAL SHALL:

(I) BE QUALIFIED AS A MEDIATOR UNDER MARYLAND RULE 17-104;

(II) BE A MEMBER IN GOOD STANDING OF THE MARYLAND BAR;

(III) 1. HAVE AT LEAST 10 YEARS' EXPERIENCE IN THE ACTIVE PRACTICE OF MEDICAL MALPRACTICE LAW; OR

2. HAVE SERVED AS A JUDGE IN A MARYLAND COURT; AND

(IV) AGREE:

1. TO ABIDE BY THE STANDARDS OF CONDUCT FOR MEDIATORS ADOPTED BY THE COURT OF APPEALS IN ACCORDANCE WITH MARYLAND RULE 17-104; AND

2. NOT TO CHARGE MORE THAN $300 PER HOUR.

(3) A MEDIATOR SHALL ABIDE BY THE STANDARDS ADOPTED BY THE COURT OF APPEALS.

(4) THE DIRECTOR SHALL MAINTAIN THE ROSTER OF MEDIATORS FOR A HEALTH CARE MALPRACTICE CASE.

(D) (1) WITHIN 10 DAYS AFTER A SCHEDULING ORDER WITH A DISCOVERY DEADLINE IS ISSUED BY THE COURT, THE PARTIES SHALL FILE A COPY OF THE SCHEDULING ORDER WITH THE DIRECTOR.

(2) AT LEAST 75 DAYS BEFORE THE DISCOVERY DEADLINE IN THE SCHEDULING ORDER, THE PARTIES MAY CHOOSE A MEDIATOR FROM THE ROSTER.

(3) IF THE PARTIES CHOOSE A MEDIATOR, THE PARTIES SHALL IMMEDIATELY NOTIFY THE DIRECTOR OF THE NAME OF THE MEDIATOR.

(E) (1) IF THE PARTIES DO NOT NOTIFY THE DIRECTOR THAT THEY HAVE CHOSEN A MEDIATOR WITHIN THE TIME REQUIRED UNDER SUBSECTION (D) OF THIS SECTION, THE DIRECTOR SHALL ASSIGN, WITHIN 30 DAYS, A MEDIATOR FROM THE ROSTER TO THE CASE.

(2) THE DIRECTOR MAY CONSULT WITH THE PARTIES BEFORE ASSIGNING A MEDIATOR TO THE CASE.

(3) (I) BEFORE ASSIGNING A MEDIATOR, THE DIRECTOR SHALL INQUIRE OF THE INDIVIDUAL AND BE SATISFIED THAT THE INDIVIDUAL DOES NOT HAVE A PERSONAL OR ECONOMIC RELATIONSHIP WITH ANY OF THE PARTIES OR THEIR ATTORNEYS, OR ANY CASE IN WHICH THE INDIVIDUAL IS A PARTY BEFORE THE HEALTH CLAIMS ARBITRATION OFFICE, THAT MAY FORM THE BASIS OF ANY PARTIALITY ON THE INDIVIDUAL'S PART.

(II) AFTER A PERSON IS SELECTED AS A MEDIATOR, IF THE DIRECTOR DETERMINES, IN THE DIRECTOR'S JUDGMENT, THAT THE INDIVIDUAL HAS A PERSONAL OR ECONOMIC RELATIONSHIP WITH A PARTY OR A PARTY'S ATTORNEY, OR ANY CASE IN WHICH THE INDIVIDUAL IS A PARTY BEFORE THE HEALTH CLAIMS ARBITRATION OFFICE, THAT MAY FORM THE BASIS OF ANY PARTIALITY ON THE INDIVIDUAL'S PART, THE DIRECTOR SHALL ASSIGN ANOTHER INDIVIDUAL TO BE THE MEDIATOR.

(F) (1) THE PARTIES SHALL CONTACT THE MEDIATOR TO ESTABLISH A MEDIATION SCHEDULE THAT IS CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION.

(2) THE INITIAL MEDIATION SESSION SHALL BE HELD WITHIN 30 DAYS FOLLOWING THE DISCOVERY DEADLINE.

(3) THE PARTIES SHALL SUBMIT TO A MINIMUM OF 2 HOURS OF MEDIATION.

(4) ALL MEDIATION SESSIONS SHALL BE COMPLETED NO LATER THAN 30 DAYS AFTER THE DATE THAT DISCOVERY IS COMPLETED AND AT LEAST 90 DAYS BEFORE THE DATE SCHEDULED FOR TRIAL.

(5) AT LEAST 24 HOURS BEFORE A SCHEDULED MEDIATION SESSION, A PARTY SHALL PROVIDE NOTICE TO THE MEDIATOR OF A REQUEST BY THE PARTY TO POSTPONE OR CANCEL THE MEDIATION SESSION.

(G) (1) AT LEAST 15 DAYS BEFORE THE INITIAL MEDIATION SESSION, EACH PARTY SHALL SEND THE MEDIATOR A BRIEF WRITTEN OUTLINE OF THE STRENGTHS AND WEAKNESSES OF THEIR RESPECTIVE CASES.

(2) A PARTY IS NOT REQUIRED TO PROVIDE TO ANOTHER PARTY THE WRITTEN OUTLINE DESCRIBED IN THIS SUBSECTION.

(H) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN MARYLAND RULE 17-109, THE OUTLINE DESCRIBED IN SUBSECTION (G) OF THIS SECTION AND ANY MEDIATION COMMUNICATION UNDER THIS SECTION:

(1) IS PRIVILEGED;

(2) IS CONFIDENTIAL;

(3) MAY NOT BE DISCLOSED TO ANOTHER PARTY WITHOUT CONSENT;

(4) DOES NOT CONSTITUTE AN ADMISSION; AND

(5) IS NOT DISCOVERABLE.

(I) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, EACH COUNSEL, PARTY, AND PERSON WITH ACTUAL SETTLEMENT AUTHORITY SHALL ATTEND AND PARTICIPATE IN EACH MEDIATION SESSION HELD UNDER THIS

SECTION.

(2) A HEALTH CARE PROVIDER WHO IS NAMED AS A PARTY IN THE CASE SHALL ATTEND EACH MEDIATION SESSION HELD UNDER THIS SECTION UNLESS THE PARTIES, WITH THE APPROVAL OF THE MEDIATOR, AGREE TO WAIVE THE HEALTH CARE PROVIDER'S PRESENCE AT THE MEDIATION SESSION.

(J) (1) A PARTY WHO FAILS TO COMPLY WITH THE PROVISIONS OF THIS SECTION IS SUBJECT TO THE PROVISIONS OF MARYLAND RULE 1-341.

(2) THE COURT MAY IMPOSE SANCTIONS, INCLUDING CONTEMPT OR REMOVAL OF THE CASE FROM THE TRIAL DOCKET, AGAINST A PARTY OR COUNSEL WHO FAILS TO PARTICIPATE IN ONE OR MORE MEDIATION SESSIONS.

(3) A PARTY OR COUNSEL WHO FAILS TO ATTEND A MEDIATION SESSION OR TO PROVIDE THE MEDIATOR WITH A TIMELY REQUEST FOR POSTPONEMENT OR CANCELLATION OF A MEDIATION SESSION SHALL PAY THE MEDIATOR FOR THE TIME THE MEDIATOR RESERVED FOR CONDUCTING THE MEDIATION SESSION.

(K) (1) IF A CASE IS SETTLED AS A RESULT OF MEDIATION, THE PARTIES SHALL:

(I) IMMEDIATELY NOTIFY THE DIRECTOR THAT THE CASE HAS BEEN SETTLED; AND

(II) FILE A STIPULATION OF DISMISSAL AND COURT COSTS AND A COMPLETED SETTLEMENT ORDER WITH THE COURT.

(2) IF THE PARTIES FAIL TO AGREE TO A SETTLEMENT, THE MEDIATOR SHALL:

(I) FILE A WRITTEN NOTICE WITH THE DIRECTOR AND THE COURT THAT THE MEDIATION HAS NOT BEEN EFFECTIVE; AND

(II) SEND COPIES OF THE NOTICE TO THE PARTIES.

(L) (1) (I) AT LEAST 180 DAYS BEFORE THE DISCOVERY DEADLINE, A PARTY MAY FILE A MOTION WITH THE COURT OBJECTING TO MEDIATION ON THE GROUND THAT MEDIATION IS NOT APPROPRIATE UNDER THE CIRCUMSTANCES OF THE CASE.

(II) WITHIN 30 DAYS AFTER THE MOTION UNDER THIS PARAGRAPH IS FILED, THE COURT SHALL RULE ON THE MOTION AND MAY EXCEPT THE CASE FROM MEDIATION UNDER THIS SECTION IF THE COURT FINDS THAT MEDIATION IS NOT APPROPRIATE UNDER THE CIRCUMSTANCES OF THE CASE.

(2) THE REQUIREMENTS OF THIS SECTION MAY BE MODIFIED BY:

(I) AGREEMENT OF THE PARTIES WITH THE APPROVAL OF THE MEDIATOR; OR

(II) ORDER OF THE COURT ON THE MOTION OF A PARTY.

(M) (1) THE PARTIES SHALL COMPENSATE THE MEDIATOR BASED ON THE RATE APPROVED BY THE DIRECTOR.

(2) UNLESS OTHERWISE AGREED BY THE PARTIES, THE COST OF MEDIATION SHALL BE DIVIDED EQUALLY BETWEEN THE PARTIES.

(N) A MEDIATOR SHALL HAVE THE IMMUNITY FROM SUIT DESCRIBED UNDER § 5-615 OF THIS ARTICLE.

3-2A-06D.

(A) (1) THIS SECTION APPLIES ONLY TO A CLAIM OR ACTION FOR WHICH A CERTIFICATE OF A QUALIFIED EXPERT WAS REQUIRED TO BE FILED IN ACCORDANCE WITH § 3-2A-04(B) OF THIS SUBTITLE.

(2) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS SECTION, THE MARYLAND RULES APPLY TO ANY MOTION DESCRIBED IN THIS SECTION.

(B) SUBJECT TO THE PROVISIONS OF THIS SECTION, IF A CLAIMANT OR PLAINTIFF FAILS TO FILE A SUPPLEMENTAL CERTIFICATE OF A QUALIFIED EXPERT, A PANEL CHAIRMAN OR A COURT, AS THE CASE MAY BE, SHALL DISMISS, WITH PREJUDICE, THE PLAINTIFF'S CLAIM OR ACTION.

(C) (1) WITHIN 15 DAYS AFTER THE DATE THAT MEDIATION, IF ANY, AND DISCOVERY IS REQUIRED TO BE COMPLETED, A CLAIMANT OR PLAINTIFF SHALL FILE A SUPPLEMENTAL CERTIFICATE OF A QUALIFIED EXPERT THAT ATTESTS TO:

(I) THE SPECIFIC INJURY COMPLAINED OF;

(II) THE SPECIFIC STANDARD OF CARE ALLEGED TO HAVE BEEN BREACHED;

(III) THE CERTIFYING EXPERT'S BASIS FOR ALLEGING WHAT IS THE SPECIFIC STANDARD OF CARE;

(IV) THE CERTIFYING EXPERT'S QUALIFICATIONS TO TESTIFY TO THE SPECIFIC STANDARD OF CARE;

(V) HOW THE SPECIFIC STANDARD OF CARE WAS BREACHED;

(VI) WHAT SPECIFICALLY SHOULD THE DEFENDANT HAVE DONE TO MEET THE SPECIFIC STANDARD OF CARE; AND

(VII) THE INFERENCE THAT THE BREACH OF THE STANDARD OF CARE PROXIMATELY CAUSED THE PLAINTIFF'S INJURY.

(2) AN EXTENSION OF THE TIME ALLOWED FOR FILING A SUPPLEMENTAL CERTIFICATE UNDER THIS SECTION SHALL BE GRANTED FOR GOOD CAUSE SHOWN.

(3) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, A COPY OF A SUPPLEMENTAL CERTIFICATE SHALL BE FILED WITH:

1. THE DIRECTOR; AND

2. A COURT IN WHICH AN ACTION IS PENDING.

(II) IF A PLAINTIFF FILES A SUPPLEMENTAL CERTIFICATE FOR A CLAIM DETERMINED BY A HEALTH CLAIMS ARBITRATION PANEL AND THE SUPPLEMENTAL CERTIFICATE MEETS THE REQUIREMENTS OF THIS SECTION, ANOTHER SUPPLEMENTAL CERTIFICATE IS NOT REQUIRED TO BE FILED ON A JUDICIAL REVIEW OF THE PANEL'S DECISION.

(4) THE PROVISIONS OF § 3-2A-04(B)(3)(I), (4), (6), AND (7) OF THIS SUBTITLE APPLY TO A SUPPLEMENTAL CERTIFICATE UNDER THIS SECTION.

(5) THE FACTS REQUIRED TO BE INCLUDED IN THE SUPPLEMENTAL CERTIFICATE SHALL BE CONSIDERED NECESSARY TO SHOW ENTITLEMENT TO RELIEF SOUGHT BY A CLAIMANT OR PLAINTIFF.

(D) THE CLAIMANT OR PLAINTIFF SHALL SERVE A COPY OF THE SUPPLEMENTAL CERTIFICATE ON EACH PARTY TO THE CLAIM OR ACTION, OR THE PARTY'S ATTORNEY OF RECORD, IN ACCORDANCE WITH THE MARYLAND RULES.

(E) (1) A DEFENDANT MAY MOVE TO DISMISS A CLAIM OR ACTION IF:

(I) THE CLAIMANT OR PLAINTIFF FAILS TO FILE A SUPPLEMENTAL CERTIFICATE AS REQUIRED UNDER THIS SECTION; OR

(II) A SUPPLEMENTAL CERTIFICATE FILED BY THE CLAIMANT OR PLAINTIFF DOES NOT CONTAIN THE STATEMENTS OF FACT REQUIRED UNDER THIS SECTION AND NECESSARY TO SHOW ENTITLEMENT TO RELIEF.

(2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A DEFENDANT MAY FILE A MOTION TO DISMISS UNDER THIS SECTION WITHIN 15 DAYS AFTER BEING SERVED WITH THE SUPPLEMENTAL CERTIFICATE.

(3) NOTHING CONTAINED IN THIS SECTION PROHIBITS OR LIMITS A DEFENDANT FROM MOVING FOR SUMMARY JUDGMENT IN ACCORDANCE WITH THE MARYLAND RULES.

(F) A CLAIMANT OR PLAINTIFF SHALL FILE ANY RESPONSE WITHIN 15 DAYS AFTER BEING SERVED WITH THE MOTION TO DISMISS.

(G) A PARTY DESIRING A HEARING ON A MOTION TO DISMISS UNDER THIS SECTION SHALL REQUEST THE HEARING IN THE MOTION OR RESPONSE.

3-2A-09.

[The] EXCEPT AS OTHERWISE PROVIDED, THE provisions of this subtitle shall be deemed procedural in nature and shall not be construed to create, enlarge, or diminish any cause of action not heretofore existing, except the defense of failure to comply with the procedures required under this subtitle.

5-615.

In the absence of an affirmative showing of malice or bad faith, each arbitrator OR MEDIATOR in a health care malpractice claim under Title 3, Subtitle 2A of this article from the time of acceptance of appointment has immunity from suit for any act or decision made during tenure and within the scope of designated authority.

6-201.

(a) Subject to the provisions of §§ 6-202 and 6-203 and unless otherwise provided by law, a civil action shall be brought in a county where the defendant resides, carries on a regular business, is employed, or habitually engages in a vocation. In addition, a corporation also may be sued where it maintains its principal offices in the State.

(b) If there is more than one defendant, and there is no single venue applicable to all defendants, under subsection (a), all may be sued in a county in which any one of them could be sued, or in the county where the cause of action arose.

6-203.

(a) The general rule of § 6-201 does not apply to actions enumerated in this section.

(F) (1) THIS SUBSECTION APPLIES ONLY TO AN ACTION TO RECOVER DAMAGES AGAINST AN INSURER BASED ON THE INSURER'S FAILURE TO SETTLE A HEALTH CARE MALPRACTICE ACTION BROUGHT AGAINST A HEALTH CARE PROVIDER INSURED BY THE INSURER.

(2) THE ONLY VENUE FOR AN ACTION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION IS IN THE COUNTY IN WHICH THE HEALTH CARE MALPRACTICE ACTION WAS BROUGHT AGAINST THE HEALTH CARE PROVIDER INSURED BY THE INSURER.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) (1) Every insurer providing professional liability insurance to a health care provider in the State shall submit to the Maryland Insurance Commissioner information on:

(i) the nature and cost of reinsurance;

(ii) the claims experience by category of health care providers;

(iii) the amount of claims settlements and claims awards;

(iv) the amount of reserves for claims incurred and incurred but unreported claims;

(v) the number of structured settlements used in payment of claims; and

(vi) any other information relating to health care malpractice claims as prescribed by the Commissioner in regulations.

(2) The Commissioner shall adopt regulations on the submission of information under paragraph (1) of this subsection.

(b) The Commissioner may require by regulation insurers of other lines of liability insurance to submit reports.

(c) The Commissioner shall report, in accordance with § 2-1246 of the State Government Article, the Commissioner's findings as to the impact of §§ 3-2A-05(h), 3-2A-06(f), 3-2A-06C, 3-2A-06D, 6-203(f), 10-913, 11-108, and 11-109 of the Courts and Judicial Proceedings Article and Chapter 477 of the Acts of the General Assembly of 1994 on the availability of health care malpractice and other liability insurance in the State to the House Economic Matters Committee, House Judiciary Committee, and Senate Finance Committee, and Senate Judicial Proceedings Committee on or before September 1 of each year.".

AMENDMENT NO. 3

On page 1, in line 10, strike "1." and substitute "3."; and in lines 10 and 11, strike "BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND" and substitute "AND BE IT FURTHER ENACTED".

On page 1, in lines 14 and 16, in each instance, strike "three" and substitute "six"; and in line 15, after "Senate;" insert "and".

On pages 1 and 2, strike beginning with the semicolon in line 17 on page 1 down through "industry" in line 18 on page 2; strike beginning with ", in" in line 19 down through "Governor," in line 20; in line 20, strike "chairman" and substitute "co-chairmen"; strike in their entirety lines 23 through 25, inclusive; and in line 26, strike "(f)" and substitute "(e)".

On page 3, in line 3, strike "(g)" and substitute "(f)".

AMENDMENT NO. 4

On page 3, after line 5, insert:

"SECTION 4. AND BE IT FURTHER ENACTED, That §§ 3-2A-01, 3-2A-05, 3-2A-06, and 5-615 of the Courts Article, as enacted by Section 1 of this Act, shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of this Act.

SECTION 5. AND BE IT FURTHER ENACTED, That §§ 3-2A-06C, 3-2A-06D, and 6-203 of the Courts Article, as enacted by Section 1 of this Act, shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any case filed before the effective date of this Act.

SECTION 6. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect June 1, 2004. It shall remain effective for a period of 5 years and, at the end of May 31, 2009, with no further action required by the General Assembly, Section 2 of this Act shall be abrogated and of no further force and effect.".

AMENDMENT NO. 5

On page 3, in line 6, strike "2." and substitute "7."; in the same line, after "That" insert "Section 3 of"; and in line 8, after "Assembly," insert "Section 3 of".

AMENDMENT NO. 6

On page 3, after line 9, insert:

"SECTION 8. AND BE IT FURTHER ENACTED, That this Act shall take effect on June 1, 2004.".