

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 1346
Judiciary

(Delegate Mitchell)

Civil Actions - Limitations on Awards for Noneconomic Damages - Latent Diseases or Injuries

This bill provides that a cause of action for damages for personal injury in a latent disease or latent injury case arises on the earlier of: (1) the diagnosis; or (2) the manifestation of symptoms of a legally compensable injury or disease. If this occurs on or after July 1, 1986, the amount of noneconomic damages is subject to a statutory limit.

The bill applies to all filed or pending cases in which a trial has not commenced on or after July 1, 2004.

Fiscal Summary

State Effect: The bill would not materially affect governmental operations or finances.

Local Effect: None – see above.

Small Business Effect: Potential meaningful. Small law firms that represent plaintiffs in toxic substance cases could receive lower contingency fees as a result of the bill.

Analysis

Current Law: A plaintiff in a personal injury or wrongful death suit may recover both economic and noneconomic damages. Punitive damages are authorized under certain circumstances.

In an action for personal injury, noneconomic damages include pain, suffering, inconvenience, physical impairment, disfigurement, and loss of consortium. In an action for wrongful death, noneconomic damages include mental anguish; emotional pain and suffering; loss of companionship; and marital, parental, and filial care.

Noneconomic damages for personal injury were first capped at \$350,000 in cases in which the cause of action arose on or after July 1, 1986. Noneconomic damages for personal injury and wrongful death lawsuits are capped at \$500,000, for actions arising on or after October 1, 1994. The cap increases by \$15,000 on October 1 each year. The cap for October 1, 2003 through September 30, 2004 is \$635,000. The limit applies to each direct victim of tortious conduct, and all persons who claim injury by or through that victim. If there are two or more claimants as beneficiaries in a wrongful death action, the award may not exceed 150% of the statutory cap. The cap does not apply to intentional torts.

Background: The time that a cause of action arises is a legal determination. In a wrongful death case, the action arises on the date of death. In a personal injury case caused by a latent disease or injury, the situation is more complex.

If the cause of action arises from exposure to asbestos, coal dust, a carcinogen, or a similar substance, many years may pass between the time the victim is exposed to the substance, develops the connected disease, and the disease is diagnosed or becomes symptomatic. In *Crane v. Schribner*, 369 Md. 369 (2002), the Court of Appeals held that, in a case resulting from exposure to asbestos, the cause of action arose on the date of the plaintiff's last exposure to the defendant's asbestos-containing product. In adopting the "exposure" approach, the court rejected two others: the "manifestation" approach, which looks to when the disease first becomes either symptomatic or is diagnosed; and the approach followed in some earlier cases that looks to when the disease itself first arose in the body (which can be difficult to determine).

In adopting the "exposure" approach, the court cited the distinction between when a cause of action arises and when it accrues, or becomes actionable. Some people exposed to asbestos, for example, never fall ill. If they do, the cause of action arises at the time of exposure; but it does not accrue until the disease becomes symptomatic or is diagnosed. In *Crane*, the plaintiff was exposed to asbestos between 1972 and 1978. He became ill with mesothelioma (a cancer tied to asbestos exposure) in 1994 and died in 1995. The Court of Appeals held that his cause of action arose in 1978.

The bill incorporates the manifestation approach into the Maryland Code.

Additional Information

Prior Introductions: HB 1096 of 2000 and HB 1060 of 1999 would have excluded from the noneconomic damages caps any action for damages for personal injury or wrongful death that was based on an “occupational exposure” that occurred before July 1, 1986. HB 1096 received an unfavorable report from the House Judiciary Committee and HB 1060 passed the House, but no further action was taken.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts) Department of Legislative Services

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