

BY: Delegate Edwards

AMENDMENTS TO HOUSE BILL NO. 114, AS AMENDED

AMENDMENT NO. 1

On page 1 of the House Judiciary Committee Amendments (HB0114/222312/1), in line 16 of Amendment No. 2, after “circumstances;” insert “allowing the introduction and consideration of certain evidence relating to damages under certain circumstances; establishing a certain limitation on noneconomic damages for medical injuries for causes of action arising on or after a certain date; providing that this limitation applies in the aggregate to all claims arising from the same medical injury; requiring that a health care malpractice award or verdict be reduced to the extent of certain payments, reimbursements, or indemnification, less certain costs, under certain circumstances; prohibiting certain recovery and certain claims of subrogation relating to certain payments, reimbursements, or indemnification under certain circumstances; providing that certain provisions relating to advanced payments do not apply to certain causes of action; prohibiting a jury from being informed of certain limitations; requiring an award or verdict of economic damages for a medical injury to exclude certain amounts for past or future medical expenses and past or future loss of earnings; requiring periodic payments of certain damages in certain awards or verdicts under certain circumstances; establishing procedures and requirements relating to periodic payments and annuities for funding periodic payments;”.

On page 2 of the House Judiciary Committee Amendments, in line 3 of Amendment No. 4, after “3-2A-09(d)(2),” insert “3-2A-10,”; and in line 12, after “Section” insert “3-2A-05(k), 3-2A-06(j), 3-2A-09A, 3-2A-10, and”.

AMENDMENT NO. 2

On page 9 of the House Judiciary Committee Amendments, after line 11 of Amendment No. 6, insert:

“SECTION 3, AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

(Over)

Article - Courts and Judicial Proceedings

3-2A-05.

(K) (1) (I) THIS SUBSECTION APPLIES TO A CAUSE OF ACTION ARISING ON OR AFTER JUNE 1, 2005.

(II) THIS SUBSECTION DOES NOT APPLY TO THE AMOUNT OF AN AWARD THAT IS MODIFIED UNDER SUBSECTION (H) OF THIS SECTION.

(2) IN AN ARBITRATION PROCEEDING:

(I) A DEFENDANT MAY INTRODUCE EVIDENCE THAT THE CLAIMANT HAS BEEN OR WILL BE PAID, REIMBURSED, OR INDEMNIFIED BY A GOVERNMENT OR THROUGH A GOVERNMENTAL PROGRAM, BY INSURANCE, OR UNDER CONTRACT FOR ALL OR PART OF THE DAMAGES ASSESSED; OR

(II) IF THE DEFENDANT INTRODUCES EVIDENCE UNDER ITEM (I) OF THIS PARAGRAPH, THE CLAIMANT MAY INTRODUCE EVIDENCE:

1. OF THE COST TO OBTAIN THE PAYMENT, REIMBURSEMENT, OR INDEMNITY; AND

2. THAT A PERSON OR A GOVERNMENTAL ENTITY HAS A RIGHT OF SUBROGATION FOR RECOVERY OF ANY COSTS PAID TO THE PLAINTIFF, AND THE AMOUNT OF THE SUBROGATED INTEREST.

(3) IF EVIDENCE IS INTRODUCED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE ARBITRATION PANEL SHALL:

(I) CONSIDER THE EVIDENCE; AND

(II) REDUCE OR MODIFY THE AWARD IF SATISFIED THAT A REDUCTION OR MODIFICATION IS SUPPORTED BY THE EVIDENCE.

(4) A DEFENDANT MAY NOT INTRODUCE EVIDENCE CONCERNING ANY FUTURE EXPENSES, COSTS, AND LOSSES AND AN AWARD MAY NOT BE

MODIFIED AS TO THESE DAMAGES UNLESS:

(I) THE ARBITRATION PANEL IS ASSURED THAT THE DEFENDANT OR THE DEFENDANT'S INSURER CAN PROVIDE ADEQUATE SECURITY AND, AFTER AN AWARD, ORDERS THE DEFENDANT OR THE DEFENDANT'S INSURER TO PROVIDE ADEQUATE SECURITY TO ENSURE THE PAYMENT OF ALL FUTURE DAMAGES UP TO THE AMOUNT BY WHICH THE AWARD HAS BEEN MODIFIED IN THE EVENT THAT THE OTHER SOURCE OF COMPENSATION IS TERMINATED; OR

(II) THE DEFENDANT'S INSURER IS AUTHORIZED TO DO BUSINESS IN THIS STATE AND MAINTAINS RESERVES IN COMPLIANCE WITH RULES OF THE INSURANCE COMMISSIONER TO ENSURE THE PAYMENT OF ALL FUTURE DAMAGES UP TO THE AMOUNT BY WHICH THE AWARD HAS BEEN MODIFIED IN THE EVENT THAT THE OTHER SOURCE OF COMPENSATION IS TERMINATED.

(5) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS SUBSECTION OR AS EXPRESSLY PROVIDED BY FEDERAL LAW, A PERSON MAY NOT RECOVER FROM THE CLAIMANT OR ASSERT A CLAIM OF SUBROGATION AGAINST A DEFENDANT FOR ANY SUM INCLUDED IN THE MODIFICATION OF A VERDICT.

3-2A-06.

(J) (1) (I) THIS SUBSECTION APPLIES TO A CAUSE OF ACTION ARISING ON OR AFTER JUNE 1, 2005.

(II) THIS SUBSECTION DOES NOT APPLY TO A VERDICT THAT HAS BEEN REDUCED UNDER SUBSECTION (F) OF THIS SECTION.

(2) IN A TRIAL:

(I) A DEFENDANT MAY INTRODUCE EVIDENCE THAT THE PLAINTIFF HAS BEEN OR WILL BE PAID, REIMBURSED, OR INDEMNIFIED BY A GOVERNMENT OR THROUGH A GOVERNMENTAL PROGRAM, BY INSURANCE, OR

(Over)

UNDER CONTRACT FOR ALL OR PART OF THE DAMAGES ASSESSED; AND

(II) IF THE DEFENDANT INTRODUCES EVIDENCE UNDER ITEM (I) OF THIS PARAGRAPH, THE PLAINTIFF MAY INTRODUCE EVIDENCE:

1. OF THE COST TO OBTAIN THE PAYMENT, REIMBURSEMENT, OR INDEMNITY; OR

2. THAT A PERSON OR A GOVERNMENTAL ENTITY HAS A RIGHT OF SUBROGATION FOR RECOVERY OF ANY COSTS PAID TO THE PLAINTIFF AND THE AMOUNT OF THE SUBROGATED INTEREST.

(3) THE TRIER OF FACT SHALL CONSIDER THE EVIDENCE INTRODUCED UNDER PARAGRAPH (2) OF THIS SUBSECTION WHEN DECIDING THE ISSUE OF DAMAGES.

(4) (I) IF EVIDENCE IS INTRODUCED UNDER PARAGRAPH (2) OF THIS SUBSECTION, EITHER PARTY MAY MOVE THAT THE VERDICT BE MODIFIED BASED ON THE EVIDENCE.

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

(III) SUBJECT TO THIS SUBSECTION, AFTER CONSIDERING THE EVIDENCE IN SUPPORT AND OPPOSITION TO THE REQUEST, THE COURT SHALL MODIFY THE AWARD IF SATISFIED THAT MODIFICATION IS SUPPORTED BY THE EVIDENCE.

(5) A DEFENDANT MAY NOT INTRODUCE EVIDENCE CONCERNING ANY FUTURE EXPENSES, COSTS, AND LOSSES, AND A VERDICT MAY NOT BE MODIFIED AS TO THESE DAMAGES UNLESS:

(I) THE COURT IS ASSURED THAT THE DEFENDANT OR THE DEFENDANT'S INSURER CAN PROVIDE ADEQUATE SECURITY AND, AFTER A VERDICT, ORDERS THE DEFENDANT OR THE DEFENDANT'S INSURER TO PROVIDE

ADEQUATE SECURITY TO ENSURE THE PAYMENT OF ALL FUTURE DAMAGES UP TO THE AMOUNT BY WHICH THE AWARD HAS BEEN MODIFIED IN THE EVENT THAT THE OTHER SOURCE OF COMPENSATION IS TERMINATED; OR

(II) THE DEFENDANT'S INSURER IS AUTHORIZED TO DO BUSINESS IN THIS STATE AND MAINTAINS RESERVES IN COMPLIANCE WITH RULES OF THE INSURANCE COMMISSIONER TO ENSURE THE PAYMENT OF ALL FUTURE DAMAGES UP TO THE AMOUNT BY WHICH THE AWARD HAS BEEN MODIFIED IN THE EVENT THAT THE OTHER SOURCE OF COMPENSATION IS TERMINATED.

(6) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (4) OF THIS SUBSECTION OR AS EXPRESSLY PROVIDED BY FEDERAL LAW, A PERSON MAY NOT RECOVER FROM THE PLAINTIFF OR ASSERT A CLAIM OF SUBROGATION AGAINST A DEFENDANT FOR ANY SUM INCLUDED IN THE MODIFICATION OF A VERDICT.

3-2A-09A.

(A) THIS SECTION APPLIES TO AN AWARD UNDER § 3-2A-05 OF THIS SUBTITLE OR A VERDICT UNDER § 3-2A-06 OF THIS SUBTITLE FOR A CAUSE OF ACTION ARISING ON OR AFTER JUNE 1, 2005.

(B) (1) AN AWARD OR VERDICT UNDER THIS SUBTITLE FOR NONECONOMIC DAMAGES MAY NOT EXCEED \$500,000.

(2) THE LIMITATION UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL APPLY IN THE AGGREGATE TO ALL CLAIMS FOR PERSONAL INJURY AND WRONGFUL DEATH ARISING FROM THE SAME MEDICAL INJURY, REGARDLESS OF THE NUMBER OF CLAIMS, CLAIMANTS, PLAINTIFFS, OR DEFENDANTS.

(C) (1) IN A JURY TRIAL, THE JURY MAY NOT BE INFORMED OF THE LIMITATION UNDER SUBSECTION (B) OF THIS SECTION.

(2) IF THE JURY AWARDS AN AMOUNT FOR NONECONOMIC

(Over)

DAMAGES THAT EXCEEDS THE LIMITATION ESTABLISHED UNDER SUBSECTION (B) OF THIS SECTION, THE COURT SHALL:

(I) REDUCE THE AMOUNT TO CONFORM TO THE LIMITATION;  
AND

(II) IF THE AWARD INCLUDES AMOUNTS FOR BOTH PAST AND FUTURE NONECONOMIC DAMAGES, REDUCE EACH AMOUNT PROPORTIONATELY TO THE TOTAL AWARD SO THAT THE TOTAL AWARD CONFORMS TO THE LIMITATION UNDER SUBSECTION (B)(1) OF THIS SECTION.

(3) IN A WRONGFUL DEATH ACTION IN WHICH THERE ARE TWO OR MORE CLAIMANTS OR BENEFICIARIES, IF THE JURY AWARDS AN AMOUNT FOR NONECONOMIC DAMAGES THAT EXCEEDS THE LIMITATION UNDER SUBSECTION (B) OF THIS SECTION OR A REDUCTION UNDER PARAGRAPH (4) OF THIS SUBSECTION, THE COURT SHALL:

(I) IF THE AMOUNT OF NONECONOMIC DAMAGES FOR THE PRIMARY CLAIMANTS, AS DESCRIBED UNDER § 3-904(D) OF THIS TITLE, EQUALS OR EXCEEDS THE LIMITATION UNDER SUBSECTION (B) OF THIS SECTION OR A REDUCTION UNDER PARAGRAPH (4) OF THIS SUBSECTION:

1. REDUCE EACH INDIVIDUAL AWARD OF A PRIMARY CLAIMANT PROPORTIONATELY TO THE TOTAL AWARD OF ALL PRIMARY CLAIMANTS SO THAT THE TOTAL AWARD TO ALL CLAIMANTS OR BENEFICIARIES CONFORMS TO THE LIMITATION OR REDUCTION; AND

2. REDUCE EACH AWARD, IF ANY, TO A SECONDARY CLAIMANT AS DESCRIBED UNDER § 3-904(E) OF THIS TITLE TO ZERO DOLLARS; OR

(II) IF THE AMOUNT OF NONECONOMIC DAMAGES FOR THE PRIMARY CLAIMANTS DOES NOT EXCEED THE LIMITATION UNDER SUBSECTION (B) OF THIS SECTION OR A REDUCTION UNDER PARAGRAPH (4) OF THIS SUBSECTION OR IF THERE IS NO AWARD TO A PRIMARY CLAIMANT:

1. ENTER AN AWARD TO EACH PRIMARY CLAIMANT, IF ANY, AS DIRECTED BY THE VERDICT; AND

2. REDUCE EACH INDIVIDUAL AWARD OF A SECONDARY CLAIMANT PROPORTIONATELY TO THE TOTAL AWARD OF ALL OF THE SECONDARY CLAIMANTS SO THAT THE TOTAL AWARD TO ALL CLAIMANTS OR BENEFICIARIES CONFORMS TO THE LIMITATION OR REDUCTION.

(4) IN A CASE IN WHICH THERE IS A PERSONAL INJURY ACTION AND A WRONGFUL DEATH ACTION, IF THE TOTAL AMOUNT AWARDED BY THE JURY FOR NONECONOMIC DAMAGES FOR BOTH ACTIONS EXCEEDS THE LIMITATION UNDER SUBSECTION (B) OF THIS SECTION, THE COURT SHALL REDUCE THE AWARD IN EACH ACTION PROPORTIONATELY SO THAT THE TOTAL AWARD FOR NONECONOMIC DAMAGES FOR BOTH ACTIONS CONFORMS TO THE LIMITATION.

(D) (1) AN AWARD OR VERDICT FOR PAST MEDICAL EXPENSES SHALL EXCLUDE ANY AMOUNT NOT ACTUALLY PAID BY OR ON BEHALF OF THE CLAIMANT OR PLAINTIFF OR ANY AMOUNT ACTUALLY OWED BY THE CLAIMANT OR PLAINTIFF TO A HEALTH CARE PROVIDER.

(2) THE AWARD OR VERDICT FOR PAST OR FUTURE LOSS OF EARNINGS SHALL EXCLUDE ANY AMOUNT FOR FEDERAL, STATE, OR LOCAL INCOME TAXES OR PAYROLL TAXES THAT THE CLAIMANT OR PLAINTIFF WOULD HAVE PAID ON THESE EARNINGS, DETERMINED AT THE TAX RATES IN EFFECT FOR THE CLAIMANT OR PLAINTIFF AT THE TIME THE AWARD OR VERDICT IS ENTERED.

(3) (I) EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, AN AWARD OR VERDICT FOR FUTURE MEDICAL EXPENSES SHALL BE BASED SOLELY ON MEDICARE REIMBURSEMENT RATES IN EFFECT ON THE DATE OF THE AWARD OR VERDICT FOR THE LOCALITY IN WHICH THE CARE IS TO BE PROVIDED, ADJUSTED FOR INFLATION AS PROVIDED IN SUBPARAGRAPH (V) OF THIS PARAGRAPH.

(II) IF ON THE DATE OF THE AWARD OR VERDICT, THE MEDICARE WAIVER UNDER § 1814(B) OF THE FEDERAL SOCIAL SECURITY ACT IS IN EFFECT, AN AWARD OR VERDICT FOR FUTURE MEDICAL EXPENSES FOR HOSPITAL FACILITY SERVICES SHALL BE BASED SOLELY ON THE RATES APPROVED BY THE HEALTH SERVICES COST REVIEW COMMISSION IN EFFECT ON THE DATE OF THE AWARD OR VERDICT FOR THE HOSPITAL FACILITY IN WHICH SERVICES ARE TO BE PROVIDED, ADJUSTED FOR INFLATION AS PROVIDED IN THE ANNUAL RATE UPDATES APPROVED BY THE HEALTH SERVICES COST REVIEW COMMISSION.

(III) AN AWARD OR VERDICT FOR FUTURE MEDICAL EXPENSES FOR NURSING FACILITY SERVICES SHALL BE BASED SOLELY ON THE STATEWIDE AVERAGE PAYMENT RATE FOR THE MEDICAL ASSISTANCE PROGRAM DETERMINED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE IN EFFECT ON THE DATE OF THE AWARD OR VERDICT, ADJUSTED FOR INFLATION AS PROVIDED IN SUBPARAGRAPH (V) OF THIS PARAGRAPH.

(IV) AN AWARD OR VERDICT FOR FUTURE ECONOMIC DAMAGES FOR WHICH THERE IS NO MEDICARE REIMBURSEMENT RATE, HOSPITAL FACILITY RATE, OR STATEWIDE AVERAGE PAYMENT SHALL BE BASED ON ACTUAL COST ON THE DATE OF THE AWARD OR VERDICT, ADJUSTED FOR INFLATION AS PROVIDED IN SUBPARAGRAPH (V) OF THIS PARAGRAPH.

(V) 1. FUTURE MEDICAL ECONOMIC DAMAGES SHALL BE ADJUSTED FOR INFLATION FOR THE EXPENDITURE CATEGORY OF THE CONSUMER PRICE INDEX PUBLISHED BY THE BUREAU OF LABOR STATISTICS TO WHICH THE EXPENSE APPLIES.

2. THE ADJUSTMENT FOR INFLATION UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH SHALL BE BASED ON THE AVERAGE RATE OF INFLATION FOR THE 5 YEARS IMMEDIATELY PRECEDING THE AWARD OR VERDICT.



(A) (1) THIS SECTION APPLIES TO AN AWARD OR A VERDICT UNDER THIS SUBTITLE FOR A CAUSE OF ACTION ARISING ON OR AFTER JUNE 1, 2005.

(2) (I) THIS SECTION DOES NOT APPLY IF THE CLAIMANT OR PLAINTIFF AND THE DEFENDANT AGREE TO AN ALTERNATIVE METHOD OF PAYMENT.

(II) IF THE CLAIMANT OR PLAINTIFF AND DEFENDANT NOTIFY THE ARBITRATION PANEL OR COURT WITHIN 30 DAYS OF THE ENTRY OF THE AWARD OR VERDICT THAT THEY HAVE AGREED TO AN ALTERNATIVE METHOD OF PAYMENT, THE ARBITRATION PANEL OR COURT SHALL ENTER THE TERMS OF THE AGREEMENT ON THE RECORD AS PART OF THE AWARD OR JUDGMENT.

(B) (1) THIS SUBSECTION DOES NOT APPLY TO A SURVIVAL ACTION OR WRONGFUL DEATH ACTION.

(2) IN A CLAIM OR ACTION UNDER THIS SUBTITLE, IF FUTURE ECONOMIC DAMAGES AND FUTURE NONECONOMIC DAMAGES LIMITED IN ACCORDANCE WITH THIS SUBTITLE IN THE AGGREGATE ARE \$100,000 OR LESS, THE ARBITRATION PANEL OR THE COURT SHALL:

(I) ENTER THIS AMOUNT AS THE AWARD OR JUDGMENT FOR FUTURE ECONOMIC DAMAGES AND FUTURE NONECONOMIC DAMAGES; AND

(II) ORDER THE DEFENDANT TO PAY THIS AMOUNT AS A LUMP-SUM WITH PAST ECONOMIC DAMAGES AND PAST NONECONOMIC DAMAGES.

(3) (I) IN A CLAIM OR ACTION UNDER THIS SUBTITLE, IF FUTURE ECONOMIC DAMAGES AND FUTURE NONECONOMIC DAMAGES LIMITED IN ACCORDANCE WITH THIS SUBTITLE IN THE AGGREGATE ARE MORE THAN \$100,000, THE ARBITRATION PANEL OR THE COURT SHALL ORDER THE PAYMENT OF FUTURE ECONOMIC DAMAGES AND FUTURE NONECONOMIC DAMAGES IN PERIODIC PAYMENTS.

(II) FOR GOOD CAUSE SHOWN, IF THE ARBITRATION PANEL OR COURT FINDS THAT THE CLAIMANT OR PLAINTIFF WILL INCUR IMMEDIATE ONE-TIME EXPENSES, THE ARBITRATION PANEL OR THE COURT:

1. MAY ORDER THE DEFENDANT TO PAY THE AMOUNT OF IMMEDIATE ONE-TIME EXPENSES TO THE CLAIMANT OR PLAINTIFF AS A LUMP-SUM; AND

2. UNLESS THE REMAINING AMOUNT OF THE FUTURE ECONOMIC DAMAGES AND FUTURE NONECONOMIC DAMAGES IS LESS THAN \$100,000, SHALL ORDER THE REMAINING AMOUNT TO BE PAID PERIODICALLY TO THE CLAIMANT OR PLAINTIFF AFTER PAYMENT OF THE CLAIMANT OR PLAINTIFF'S ATTORNEY'S FEES.

(C) FOR A SURVIVAL ACTION OR WRONGFUL DEATH ACTION:

(1) ALL NONECONOMIC DAMAGES SHALL BE PAID AS A LUMP-SUM WITH PAST ECONOMIC DAMAGES, PAST PECUNIARY LOSS, AND OTHER PAST ECONOMIC DAMAGES; AND

(2) IF FUTURE PECUNIARY LOSS AND OTHER FUTURE ECONOMIC DAMAGES ARE IN EXCESS OF \$100,000, THE ARBITRATION PANEL OR COURT SHALL ORDER THE FUTURE PECUNIARY LOSS AND OTHER FUTURE ECONOMIC DAMAGES TO BE PAID AS PERIODIC PAYMENTS UNDER THIS SECTION.

(D) FOR ANY PART OF AN AWARD OR JUDGMENT SUBJECT TO PERIODIC PAYMENTS UNDER THIS SECTION, THE DEFENDANT SHALL PAY:

(1) THE CLAIMANT'S OR PLAINTIFF'S ATTORNEY'S FEES OWED BY THE CLAIMANT OR PLAINTIFF FOR THE AMOUNT SUBJECT TO PERIODIC PAYMENTS; AND

(2) THE AMOUNT REMAINING AS PERIODIC PAYMENTS.

(E) (1) FOR A CLAIM SUBJECT TO PERIODIC PAYMENTS UNDER THIS SECTION, THE FINDER OF FACT SHALL ALSO DETERMINE:

(I) IN A CLAIM FOR PERSONAL INJURY OTHER THAN A SURVIVAL ACTION:

1. THE LIFE EXPECTANCY OF THE CLAIMANT OR PLAINTIFF;

2. THE WORKING LIFE OF THE CLAIMANT OR PLAINTIFF;

3. THE COMMENCEMENT DATE OF THE WORKING LIFE OF THE CLAIMANT OR PLAINTIFF;

4. THE NUMBER OF YEARS FOR WHICH THE CLAIMANT OR PLAINTIFF WILL NEED MEDICAL TREATMENT, IF LESS THAN THE LIFE EXPECTANCY OF THE CLAIMANT OR PLAINTIFF;

5. THE NUMBER OF YEARS FOR WHICH THE CLAIMANT OR PLAINTIFF WILL SUFFER A LOSS OF EARNINGS, IF LESS THAN THE WORKING LIFE OF THE CLAIMANT OR PLAINTIFF;

6. THE TOTAL AMOUNT OF FUTURE ECONOMIC DAMAGES, OTHER THAN FUTURE LOST EARNINGS, BEFORE DISCOUNTING THIS AMOUNT TO PRESENT VALUE; AND

7. THE TOTAL AMOUNT OF FUTURE LOST EARNINGS BEFORE DISCOUNTING THIS AMOUNT TO PRESENT VALUE; OR

(II) IN A CLAIM FOR WRONGFUL DEATH:

1. THE PERIOD FOR WHICH THE CLAIMANT OR

(Over)

PLAINTIFF MIGHT REASONABLY HAVE EXPECTED A PECUNIARY BENEFIT FROM THE DECEDENT HAD THE WRONGFUL DEATH NOT OCCURRED; AND

2. THE TOTAL AMOUNT OF PECUNIARY BENEFIT BEFORE DISCOUNTING THIS AMOUNT TO PRESENT VALUE.

(F) (1) THE CLAIMANT OR PLAINTIFF AND THE DEFENDANT WITHIN 30 DAYS OF THE AWARD OR JUDGMENT MAY SUBMIT TO THE ARBITRATION PANEL OR THE COURT A PROPOSAL TO COMPLY WITH THIS SECTION.

(2) AN ARBITRATION PANEL OR COURT SHALL REQUIRE A NEUTRAL EXPERT APPOINTED UNDER § 3-2A-09 OF THIS SUBTITLE TO SUBMIT A PROPOSAL TO FULFILL THE REQUIREMENTS OF THIS SECTION CONCERNING PERIODIC PAYMENTS.

(3) THE ARBITRATION PANEL OR COURT SHALL ORDER THE DEFENDANT TO COMPLY WITH THE TERMS OF A PROPOSAL SUBMITTED UNDER THIS SUBSECTION THAT BEST SUITS THE NEEDS OF THE CLAIMANT OR PLAINTIFF, WITH ANY MODIFICATIONS THAT THE ARBITRATION PANEL OR COURT CONSIDERS APPROPRIATE.

(G) (1) A PROPOSAL UNDER SUBSECTION (F) OF THIS SECTION MAY INCLUDE A RECOMMENDATION CONCERNING THE PURCHASE OF AN ANNUITY OR ANNUITIES TO SATISFY THIS SECTION, INCLUDING THE NAME OF THE PERSON WHO WILL ISSUE THE ANNUITY AND ANY RELEVANT INFORMATION CONCERNING THE RATING OF THE PERSON BY A NATIONAL RATING ORGANIZATION.

(2) SUBJECT TO PARAGRAPHS (3), (4), AND (5) OF THIS SUBSECTION, ANY ANNUITY OR ANNUITIES SHALL ENSURE THAT THE CLAIMANT OR PLAINTIFF RECEIVES FOR THE LENGTH OF TIME DETERMINED UNDER SUBSECTION (E) OF THIS SECTION THE AMOUNTS DETERMINED UNDER SUBSECTION (E)(I)6 AND 7 AND (II)2 OF THIS SECTION, LESS THE PERCENTAGE OF ATTORNEY'S FEES PAID UNDER SUBSECTION (D) OF THIS SECTION.

(3) (I) AN ANNUITY TO FUND FUTURE LOSS OF EARNINGS SHALL

HAVE A GUARANTEED TERM EQUAL TO THE LESSER OF THE NUMBER OF YEARS FOR WHICH THE CLAIMANT OR PLAINTIFF WILL SUFFER A LOSS OF EARNINGS OR THE WORKING LIFE OF THE CLAIMANT OR PLAINTIFF, DETERMINED UNDER SUBSECTION (E) OF THIS SECTION.

(II) IF THE CLAIMANT OR PLAINTIFF DIES BEFORE THE END OF THE GUARANTEED TERM OF THE ANNUITY, THE UNPAID BALANCE OF AN ANNUITY SHALL BE PAID AS A LUMP-SUM TO THE ESTATE OF THE CLAIMANT OR PLAINTIFF.

(4) AN ANNUITY TO FUND FUTURE MEDICAL EXPENSES, OTHER FUTURE ECONOMIC DAMAGES, OR NONECONOMIC DAMAGES SHALL TERMINATE ONLY ON THE DEATH OF THE CLAIMANT OR PLAINTIFF.

(5) AN ANNUITY TO FUND PECUNIARY BENEFIT IN A WRONGFUL DEATH CLAIM OR ACTION SHALL TERMINATE AT THE EARLIER OF THE PERIOD FOR WHICH THE CLAIMANT OR PLAINTIFF MIGHT REASONABLY HAVE EXPECTED A PECUNIARY BENEFIT FROM THE DECEDENT HAD THE WRONGFUL DEATH NOT OCCURRED AS DETERMINED UNDER SUBSECTION (E) OF THIS SECTION OR THE DEATH OF THE CLAIMANT OR PLAINTIFF.

(6) IF AN ARBITRATION PANEL OR COURT FINDS THAT THE PURCHASE OF AN ANNUITY OR ANNUITIES PROPOSED UNDER THIS SUBSECTION WILL FULLY FUND THE AWARD OR JUDGMENT AND IS FINANCIALLY SECURE, EXCEPT FOR GOOD CAUSE SHOWN, THE ARBITRATION PANEL OR COURT SHALL ORDER THE DEFENDANT TO PURCHASE THE ANNUITY OR ANNUITIES.

(7) IF AN ARBITRATION PANEL OR COURT APPROVES A PROPOSAL TO PAY PERIODIC PAYMENTS BY MEANS OF AN ANNUITY OR ANNUITIES UNDER THIS SECTION, SATISFACTORY EVIDENCE OF THE PURCHASE OF AN ANNUITY OR ANNUITIES SHALL FULLY SATISFY THE PORTION OF THE AWARD OR JUDGMENT FOR FUTURE DAMAGES SUBJECT TO PERIODIC PAYMENTS UNDER THIS SECTION.

(H) (1) THIS SUBSECTION DOES NOT APPLY IF THE ARBITRATION PANEL OR COURT ORDERS PAYMENTS BY MEANS OF AN ANNUITY OR ANNUITIES UNDER

SUBSECTION (G) OF THIS SECTION.

(2) (I) PERIODIC PAYMENTS TO FUND FUTURE LOSS OF EARNINGS SHALL HAVE A GUARANTEED TERM EQUAL TO THE LESSER OF THE NUMBER OF YEARS FOR WHICH THE CLAIMANT OR PLAINTIFF WILL SUFFER A LOSS OF EARNINGS OR THE WORKING LIFE OF THE CLAIMANT OR PLAINTIFF, DETERMINED UNDER SUBSECTION (E) OF THIS SECTION.

(II) IF THE CLAIMANT OR PLAINTIFF DIES BEFORE THE END OF THE GUARANTEED TERM OF THE PERIODIC PAYMENTS FOR FUTURE LOSS OF EARNINGS, THE UNPAID BALANCE OF THE AWARD OR JUDGMENT SHALL BE PAID AS A LUMP-SUM TO THE ESTATE OF THE CLAIMANT OR PLAINTIFF.

(3) PERIODIC PAYMENTS TO FUND FUTURE MEDICAL EXPENSES, OTHER FUTURE ECONOMIC DAMAGES, OR NONECONOMIC DAMAGES MAY NOT EXCEED THE LIFE EXPECTANCY OF THE CLAIMANT OR PLAINTIFF AS DETERMINED UNDER SUBSECTION (E) OF THIS SECTION AND SHALL TERMINATE AT THE DEATH OF THE CLAIMANT OR PLAINTIFF.

(4) IN A WRONGFUL DEATH CASE, PERIODIC PAYMENTS FOR FUTURE PECUNIARY LOSS SHALL TERMINATE AT THE EARLIER OF THE PERIOD FOR WHICH THE CLAIMANT OR PLAINTIFF MIGHT REASONABLY HAVE EXPECTED A PECUNIARY BENEFIT FROM THE DECEDENT HAD THE WRONGFUL DEATH NOT OCCURRED AS DETERMINED UNDER SUBSECTION (E) OF THIS SECTION OR THE DEATH OF THE CLAIMANT OR PLAINTIFF.

(5) (I) UNLESS THE DEFENDANT'S INSURER IS AUTHORIZED TO DO BUSINESS IN THIS STATE AND MAINTAINS RESERVES IN COMPLIANCE WITH RULES OF THE INSURANCE COMMISSIONER TO ASSURE THE PAYMENT OF ALL FUTURE DAMAGES, THE COURT SHALL REQUIRE THE DEFENDANT TO POST ADEQUATE SECURITY TO ENSURE THE PERIODIC PAYMENTS REQUIRED UNDER THIS SECTION.

(II) IF THE ARBITRATION PANEL OR COURT IS NOT SATISFIED

WITH THE SECURITY POSTED BY THE DEFENDANT, THE ARBITRATION PANEL OR COURT, AFTER GIVING THE DEFENDANT AN OPPORTUNITY TO POST ADDITIONAL SECURITY, SHALL ORDER THE DEFENDANT TO PAY THE CLAIMANT OR PLAINTIFF IN A LUMP-SUM.

(I) (1) PERIODIC PAYMENTS FOR FUTURE LOSS OF EARNINGS MAY NOT COMMENCE UNTIL THE COMMENCEMENT DATE OF THE WORKING LIFE OF THE CLAIMANT OR PLAINTIFF.

(2) THE DEFENDANT'S INSURER SHALL BE OBLIGATED TO MAKE PERIODIC PAYMENTS ONLY TO THE EXTENT OF THE COVERAGE THE INSURER IS OBLIGATED TO PROVIDE UNDER THE INSURANCE POLICY ISSUED TO THE DEFENDANT.

(J) THE PROVISIONS OF TITLE 5, SUBTITLE 11 OF THIS ARTICLE APPLY TO A TRANSFER OF PAYMENT RIGHTS UNDER THIS SECTION.

(K) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, REGARDLESS OF THE AGE OF THE BENEFICIARY THE PAYMENT OF A JUDGMENT FOR PERIODIC PAYMENTS UNDER THIS SECTION, INCLUDING PAYMENTS UNDER AN ANNUITY PURCHASED UNDER THIS SECTION, TO A SPECIAL NEEDS TRUST MAY NOT BE CONSIDERED AS AVAILABLE RESOURCES OF THE BENEFICIARY OF THE TRUST FOR PURPOSES OF DETERMINING ELIGIBILITY FOR MEDICAL ASSISTANCE.

[3-2A-10.] 3-2A-11.

Except as otherwise provided in §§ 3-2A-05, 3-2A-06, 3-2A-08A [and], 3-2A-09, 3-2A-09A, AND 3-2A-10 of this subtitle, the provisions of this subtitle shall be deemed procedural in nature and may 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.”.

AMENDMENT NO. 3

On page 9 of the House Judiciary Committee Amendments, in line 12 of Amendment No. 6,

(Over)

strike "3." and substitute "4.".

On page 10 of the House Judiciary Committee Amendments, in line 15 of Amendment No. 6, strike "4." and substitute "5."; in line 1 of Amendment No. 7, strike "5." and substitute "6."; and in line 2, strike "4" and substitute "5".

On page 11 of the House Judiciary Committee Amendments, in lines 1 and 7 of Amendment No. 8, strike "6." and "7.", respectively, and substitute "7." and "9.", respectively; in line 7 and 9, in each instance, strike "3" and substitute "4"; and after line 6, insert:

"SECTION 8. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall take effect June 1, 2005."

On page 11 of the House Judiciary Committee Amendments, in line 1 of Amendment No. 9, strike "8." and substitute "10."; and in line 2, strike "6 and 7" and substitute "7, 8, and 9".