Unofficial Copy **2005 Regular Session**
HB0114/222312/1

BY: House Judiciary Committee

AMENDMENTS TO HOUSE BILL NO. 114
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike "and Trueschler" and substitute "Trueschler, Barve, Arnick, Bartlett, Bates, Bohanan, Boschert, Boutin, Bozman, Branch, Burns, Cadden, G. Clagett, V. Clagett, Cluster, Conway, Costa, Cryor, D. Davis, Donoghue, Eckardt, Edwards, Elliott, Elmore, Frank, Fulton, Glassman, Haddaway, Hammen, Hixson, Howard, Hubbard, Hurson, Impallaria, James, Jones, Kach, Kelly, Kirk, Krebs, Kullen, Leopold, Love, Madaleno, Malone, Mandel, McConkey, McDonough, McKee, Menes, Miller, Minnick, Myers, Oaks, O'Donnell, Parrott, Petzold, Rosenberg, Rudolph, Shewell, Stern, Stocksdale, Stull, Walkup, Weldon, and Weir".

AMENDMENT NO. 2

On page 1, strike in its entirety line 2 and substitute "Quality Health Care Act of 2005"; and strike beginning with "prohibiting" in line 3 down through "proceedings" in line 6 and substitute "altering a certain definition of "health care provider" to include physician assistants for purposes of certain provisions of law concerning health care malpractice; requiring that certain health care malpractice awards or verdicts be modified 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 a court in certain health care malpractice actions, on a motion by a party, to employ a neutral expert witness for certain purposes; providing for the payment of the costs of a certain neutral expert witness under certain circumstances; limiting venue for certain actions against an insurer of a health care provider under certain circumstances; altering a certain evidentiary rule concerning an apology or expression of regret in certain civil actions and proceedings against health care providers; authorizing the Maryland Insurance Commissioner to determine the surplus of the Medical Mutual Insurance Society is excessive under certain circumstances; prohibiting the Commissioner from approving a rate increase sought by the Society under certain circumstances; establishing a Joint Executive - Legislative Task Force on Health Care Malpractice; providing for the composition, co-chairs, and staff of the Task

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Force; authorizing the Task Force to study any aspect of the health care, insurance, or civil justice systems related to health care malpractice; requiring the Task Force to report to the Governor and the General Assembly by a certain date; providing for the termination of the Task Force; making stylistic changes; making a certain provision of this Act contingent on the taking effect of a certain provision of another Act; providing for the application of certain provisions of this Act; and generally relating to health care malpractice".

AMENDMENT NO. 3

On page 1, after line 6, insert:

"BY repealing and reenacting, without amendments,
Article - Courts and Judicial Proceedings
Section 3-2A-01(a)
Annotated Code of Maryland
(2002 Replacement Volume and 2004 Supplement)
(As enacted by Chapter 5 of the Acts of the General Assembly of the 2004 Special Session)".

AMENDMENT NO. 4

On page 1, strike line 7 in its entirety and substitute "BY repealing and reenacting, with amendments,"; in line 9, after "Section" insert "3-2A-01(f)(1), 3-2A-06(f)(3), (4) and (5), 3-2A-05(h)(2), 3-2A-09(d)(2), and"; and after line 11, insert:

"(As enacted by Chapter 5 of the Acts of the General Assembly of the 2004 Special Session)

BY repealing and reenacting, with amendments,
Article - Courts and Judicial Proceedings
Section 6-201 and 6-203(a)
Annotated Code of Maryland
(2002 Replacement Volume and 2004 Supplement)

BY adding to
Article - Courts and Judicial Proceedings
Section 6-203(f)
Annotated Code of Maryland

(2002 Replacement Volume and 2004 Supplement)

BY repealing and reenacting, with amendments,
Article - Insurance
Section 24-212
Annotated Code of Maryland
(2002 Replacement Volume and 2004 Supplement)
(As enacted by Chapter ___ (S.B.836/H.B.1359) of the Acts of the General Assembly of 2005)".

AMENDMENT NO. 5
On page 1, after line 14, insert:

"3-2A-01.

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

(f) (1) "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, OR A PHYSICIAN ASSISTANT licensed or authorized to provide one or more health care services in Maryland.

3-2A-05.

(h) (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)] (3) (I) AFTER HEARING THE EVIDENCE IN SUPPORT AND OPPOSITION TO A REQUEST FOR MODIFICATION OF AN AWARD, IF A PANEL CHAIRMAN IS SATISFIED THAT MODIFICATION IS SUPPORTED BY THE EVIDENCE, THE PANEL CHAIRMAN SHALL MODIFY THE AWARD FOR DAMAGES FOR PAST MEDICAL EXPENSES TO THE EXTENT THAT THE CLAIMANT HAS BEEN OR WILL BE PAID, REIMBURSED, OR INDEMNIFIED UNDER STATUTE, INSURANCE, OR CONTRACT FOR THOSE DAMAGES, LESS THE COST TO OBTAIN THE PAYMENT, REIMBURSEMENT, OR INDEMNITY.

(II) THE DAMAGES FOR PAST MEDICAL EXPENSES IN AN AWARD MAY NOT BE MODIFIED AS TO ANY SUMS PAID OR PAYABLE TO THE CLAIMANT FOR WHICH A RIGHT TO ASSERT A CLAIM OF SUBROGATION AGAINST A DEFENDANT IS EXPRESSLY PROVIDED BY FEDERAL LAW.

(4) (I) THIS PARAGRAPH DOES NOT APPLY TO SUMS PAID OR PAYABLE FOR PAST MEDICAL EXPENSES.

(II) [After] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AFTER hearing the evidence in support and opposition to the request, the panel chairman, may modify the award if satisfied that modification is supported by the evidence.

[(iv)] (III) 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.

[(v)] (5) An award may not be modified as to any damages assessed for any future expenses, costs, and losses unless:

[1.] (I) The panel chairman orders the defendant or the defendant's insurer to provide adequate security; or

[2.] (II) The 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 such future damages up to the amount by which the award has been modified as to such future damages in the event of termination.

[(vi)] (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 in the modification of an award.

3-2A-06.

(f) (3) (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 plaintiff 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] ON 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.

(4) (I) ON A MOTION BY A PARTY, DAMAGES FOR PAST MEDICAL EXPENSES IN A VERDICT SHALL BE REDUCED ON THE GROUND THAT THE PLAINTIFF HAS BEEN OR WILL BE PAID, REIMBURSED, OR INDEMNIFIED FOR THOSE DAMAGES IN ACCORDANCE WITH THIS PARAGRAPH.

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

(III) IF THE COURT FINDS FROM THE EVIDENCE THAT DAMAGES FOR PAST MEDICAL EXPENSES HAVE BEEN PAID, REIMBURSED, OR INDEMNIFIED, THE COURT SHALL REDUCE THE DAMAGES FOR THE PAST MEDICAL EXPENSES TO THE EXTENT, AND SUBJECT TO THE LIMITS, STATED IN § 3-2A-05(H)(3) OF THIS SUBTITLE.

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

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

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

[(5)] (6) Nothing in this subsection shall be construed to otherwise limit the common law grounds for remittitur.

3-2A-09.

(d) (2) (I) ON A MOTION BY A PARTY, A COURT SHALL EMPLOY A NEUTRAL EXPERT WITNESS TO TESTIFY ON THE ISSUE OF A PLAINTIFF'S FUTURE MEDICAL EXPENSES OR FUTURE LOSS OF EARNINGS.

(II) UNLESS OTHERWISE AGREED TO BY THE PARTIES, A PARTY THAT MOVES TO EMPLOY A NEUTRAL EXPERT WITNESS SHALL PAY THE COSTS OF THE NEUTRAL EXPERT WITNESS WHO IS EMPLOYED UNDER THIS PARAGRAPH.

[(2)] (3) (i) A court may on its own motion[, or on motion of a party,] employ a neutral expert witness to testify on the issue of a plaintiff's future medical expenses or

future loss of earnings.

(ii) Unless otherwise agreed to by the parties, the costs of a neutral expert witness EMPLOYED UNDER THIS PARAGRAPH shall be divided equally among the parties.

[(iii)] (4) [Nothing] EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, NOTHING contained in this subsection limits the authority of a court concerning a court's witness.

6-201.

(a) Subject to the provisions of §§ 6-202 and 6-203 OF THIS SUBTITLE 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) OF THIS SECTION, 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 OF THIS SUBTITLE 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 WHO IS 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 WHO IS INSURED BY THE INSURER.".

AMENDMENT NO. 6

On page 1, strike in their entirety lines 16 through 22, inclusive, and substitute:

"(a) In this section, "health care provider" has the meaning stated in § 3-2A-01 of this article.

(B) THIS SECTION APPLIES TO AN EXPRESSION OF REGRET OR APOLOGY MADE IN WRITING, ORALLY, OR BY CONDUCT.

[(b)] (C) [(1)] [Except as provided in paragraph (2) of this subsection, in] IN a proceeding subject to Title 3, Subtitle 2A of this article or a civil action against a health care provider, an expression of regret or apology made by or on behalf of the health care provider TO A VICTIM OF ALLEGED HEALTH CARE MALPRACTICE, ANY MEMBER OF THE VICTIM'S FAMILY, OR ANY INDIVIDUAL WHO CLAIMS DAMAGES BY OR THROUGH THAT VICTIM, OUTSIDE THE PRESENCE OF ANY OTHER INDIVIDUAL, [including an expression of regret or apology made in writing, orally, or by conduct,] is inadmissible as evidence of an admission of liability or as evidence of an admission against interest.

[(2) An admission of liability or fault that is part of or in addition to a communication made under paragraph (1) of this subsection is admissible as evidence of an admission of liability or as evidence of an admission against interest in an action described under paragraph (1) of this subsection.]

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article - Insurance

24-212.

[(a) If the Society requests a rate increase of more than 7.5% and, at the time of the rate filing, the Society's surplus is more than 500% of its authorized control level risk-based capital, the Commissioner may determine whether the Society's surplus is excessive.

(b) If, after a hearing, the Commissioner determines that the surplus is excessive, the Commissioner may order the rates filed to be reduced.]

(A) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, THE COMMISSIONER MAY DETERMINE THAT THE SURPLUS OF THE SOCIETY IS EXCESSIVE IF:

(1) THE TOTAL SURPLUS IS GREATER THAN THE APPROPRIATE RISK BASED CAPITAL REQUIREMENTS, AS DETERMINED BY THE COMMISSIONER, FOR THE IMMEDIATELY PRECEDING CALENDAR YEAR; AND

(2) AFTER A HEARING, THE COMMISSIONER DETERMINES THAT THE SURPLUS IS UNREASONABLY LARGE.

(B) IF THE COMMISSIONER HAS DETERMINED THAT THE SURPLUS OF THE SOCIETY IS EXCESSIVE, THE COMMISSIONER SHALL NOT APPROVE A RATE INCREASE SOUGHT BY THE SOCIETY UNTIL THE COMMISSIONER DETERMINES THAT THE SURPLUS OF THE SOCIETY IS NO LONGER EXCESSIVE.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) There is a Joint Executive-Legislative Task Force on Health Care Malpractice.

(b) The Task Force consists of the following members:

(1) three members appointed by the Governor;

(2) three members of the Senate of Maryland, appointed by the President of the Senate; and

(3) three members of the House of Delegates appointed by the Speaker of the House.

(c) The President of the Senate and the Speaker of the House shall designate, in consultation with the Governor, the co-chairs of the Task Force.

(d) The Department of Legislative Services shall provide staff for the Task Force.

(e) The Task Force may study any aspect of the health care, insurance, or civil justice systems related to health care malpractice liability, including:

(1) structured compensation by periodic payments or annuities for future economic damages included in health care malpractice judgments;

(2) health care provided in compliance with the federal Emergency Medical Treatment and Active Labor Act (EMTALA);

(3) qualifications for expert witnesses and criteria for expert witness testimony in health care malpractice actions;

(4) calculation of economic damages in health care malpractice actions;

(5) administrative compensation for a birth-related neurological injury; and

(6) health care malpractice insurance reforms.

(f) The Task Force shall report its findings and recommendations to the Governor, and in accordance with § 2-1246 of the State Government Article, to the General Assembly on or before December 15, 2005.

SECTION 4. AND BE IT FURTHER ENACTED, That §§ 3-2A-09(d)(2) through (4), 6-203(f), and 10-920 of the Courts and Judicial Proceedings 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 a case filed before the effective date of this Act.".

AMENDMENT NO. 7

On page 1, in line 23, strike "2." and substitute "5."; in the same line, after "That" insert

",except as provided in Section 4 of this Act,"; and in line 25, strike beginning with "civil" through "initiated" and substitute "cause of action arising".

AMENDMENT NO. 8

On page 1, after line 26, insert:

"SECTION 6. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect June 1, 2005, contingent on the taking effect of § 24-212 of the Insurance Article as enacted by Chapter ____ (S.B.836/H.B.1359) of the Acts of the General Assembly of 2005, and if § 24-212 of the Insurance Article as enacted by Chapter ____ (S.B.836/H.B.1359) does not become effective, Section 2 of this Act shall be null and void without the necessity of further action by the General Assembly.

SECTION 7. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall take effect June 1, 2005. It shall remain effective for a period of 7 months and, at the end of December 31, 2005, with no further action required by the General Assembly, Section 3 of this Act shall be abrogated and of no further force and effect.".

AMENDMENT NO. 9

On page 2, in line 1, strike "3." and substitute "8."; and in the same line, after "That" insert ", except as provided in Sections 6 and 7 of this Act,".

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