

BY: Senator Harris

AMENDMENTS TO SENATE BILL NO. 836

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 4, after the first “of” insert “providing for the payment of certain damages as a lump sum under certain circumstances; requiring periodic payments of certain damages in excess of a certain amount for certain causes of action; establishing procedures and requirements relating to periodic payments and annuities for funding periodic payments;”.

On page 3, after line 8, insert:

“BY adding to

Article - Courts and Judicial Proceedings

Section 3-2A-09A

Annotated Code of Maryland

(2002 Replacement Volume and 2004 Supplement)

(As enacted by Ch. 5 of the Acts of the General Assembly of the 2004 Special Session)”.

AMENDMENT NO. 2

On page 4, after line 35, insert:

“Article - Courts and Judicial Proceedings

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) SUBJECT TO THE PROVISIONS OF THIS SUBTITLE, A DEFENDANT SHALL

(Over)

PAY AN AWARD OR VERDICT FOR NONECONOMIC DAMAGES AND FUTURE ECONOMIC DAMAGES OF \$250,000 OR LESS AS A LUMP SUM WITH PAYMENTS FOR PAST ECONOMIC DAMAGES.

(C) EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, FOR AN AWARD OR VERDICT FOR NONECONOMIC DAMAGES AND FUTURE ECONOMIC DAMAGES OF MORE THAN \$250,000, THE ARBITRATION PANEL OR COURT SHALL:

(1) ORDER THE DEFENDANT TO PAY \$100,000 OF THE FUTURE ECONOMIC DAMAGES AND NONECONOMIC DAMAGES AS A LUMP SUM WITH PAST ECONOMIC DAMAGES;

(2) ORDER THE DEFENDANT TO PAY FUTURE ECONOMIC DAMAGES AND NONECONOMIC DAMAGES OF MORE THAN \$100,000 PERIODICALLY TO THE CLAIMANT OR PLAINTIFF IN THE FORM OF AN ANNUITY; AND

(3) ENTER AS THE AMOUNT OF THE AWARD OR VERDICT FOR FUTURE ECONOMIC DAMAGES AND NONECONOMIC DAMAGES OF MORE THAN \$100,000, THE PURCHASE PRICE OF AN ANNUITY PURCHASED BY THE DEFENDANT OR THE DEFENDANT'S INSURER UNDER THIS SUBSECTION.

(D) SUBJECT TO SUBSECTION (F) OF THIS SECTION, TO FUND FULLY FUTURE ECONOMIC DAMAGES AND NONECONOMIC DAMAGES IN EXCESS OF \$250,000, THE DEFENDANT OR THE DEFENDANT'S INSURER SHALL PURCHASE AN ANNUITY FOR THE AMOUNT OF THE FUTURE ECONOMIC DAMAGES AND NONECONOMIC DAMAGES LESS THE \$100,000 PAID UNDER SUBSECTION (C)(1) OF THIS SECTION, WHICH PRODUCES PERIODIC PAYMENTS FOR:

(1) FUTURE MEDICAL EXPENSES AND NONECONOMIC DAMAGES, DIVIDED BY THE LESSER OF THE NUMBER OF YEARS FOR WHICH THE CLAIMANT OR PLAINTIFF WILL NEED MEDICAL TREATMENT OR THE LIFE EXPECTANCY OF THE CLAIMANT OR PLAINTIFF AS DETERMINED UNDER SUBSECTION (E)(2)(I) OF THIS SECTION; AND

(2) FUTURE LOSS OF EARNINGS, DIVIDED BY 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 AS DETERMINED UNDER SUBSECTION (E)(2)(I) OF THIS SECTION.

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

(2) (I) FOR PURPOSES OF SUBSECTION (D) OF THIS SECTION AND PARAGRAPH (1) OF THIS SUBSECTION, THE LIFE EXPECTANCY OF THE CLAIMANT OR PLAINTIFF, THE WORKING LIFE OF THE CLAIMANT OR PLAINTIFF, THE COMMENCEMENT DATE OF THE WORKING LIFE OF THE CLAIMANT OR PLAINTIFF, OR THE DURATION OF THE MEDICAL EXPENSES AND LOST WAGES SHALL BE THOSE ASSERTED BY THE CLAIMANT OR PLAINTIFF TO THE ARBITRATION PANEL OR AT TRIAL IN SUPPORT OF THE CLAIM FOR FUTURE ECONOMIC DAMAGES.

(II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH, IN AN ACTION SUBJECT TO THIS SUBTITLE, THE DEFENDANT MAY INTRODUCE EVIDENCE OF THE LIFE EXPECTANCY OF THE CLAIMANT OR PLAINTIFF, THE WORKING LIFE OF THE CLAIMANT OR PLAINTIFF, AND THE COMMENCEMENT OF THE WORKING LIFE OF THE CLAIMANT OR PLAINTIFF, OR THE DURATION OF THE MEDICAL EXPENSES AND LOST WAGES.

(F) FOR A SURVIVAL OR WRONGFUL DEATH ACTION:

(1) NONECONOMIC DAMAGES SHALL BE PAID AT THE SAME TIME AS PAST ECONOMIC DAMAGES; AND

(2) THE PROVISIONS OF THIS SECTION APPLY ONLY TO FUTURE ECONOMIC DAMAGES EXCEEDING \$250,000.

(G) THE DEFENDANT OR THE DEFENDANT'S INSURER MAY PURCHASE

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MULTIPLE ANNUITIES IF, IN THE AGGREGATE, THE ANNUITIES FULLY FUND THE PORTION OF THE AWARD OR VERDICT FOR FUTURE ECONOMIC DAMAGES AND NONECONOMIC DAMAGES IN EXCESS OF \$100,000.

(H) AN ANNUITY PURCHASED UNDER THIS SECTION SHALL HAVE A GUARANTEED TERM EQUAL TO THE LESSER OF:

(1) THE LIFE EXPECTANCY OF THE CLAIMANT OR PLAINTIFF AS ASSERTED BY THE CLAIMANT OR PLAINTIFF TO THE ARBITRATION PANEL OR AT TRIAL IN SUPPORT OF THE CLAIM FOR FUTURE ECONOMIC DAMAGES; OR

(2) (I) FOR FUTURE MEDICAL EXPENSES, THE NUMBER OF YEARS FOR WHICH THE CLAIMANT OR PLAINTIFF WILL NEED MEDICAL TREATMENT; AND

(II) FOR FUTURE LOSS OF EARNINGS, THE NUMBER OF YEARS FOR WHICH THE CLAIMANT OR PLAINTIFF WILL SUFFER A LOSS OF EARNINGS.

(I) THE DEFENDANT'S INSURER SHALL BE OBLIGATED TO PURCHASE AN ANNUITY UNDER THIS SECTION ONLY TO THE EXTENT OF THE COVERAGE THE INSURER IS OBLIGATED TO PROVIDE UNDER THE INSURANCE POLICY ISSUED TO THE DEFENDANT.

(J) THE DEFENDANT OR THE DEFENDANT'S INSURER SHALL PURCHASE AN ANNUITY FROM AN INSURER THAT HAS ONE OF THE FOLLOWING RATINGS FROM TWO OF THE FOLLOWING RATING ORGANIZATIONS:

(1) A.M. BEST COMPANY: A++ OR A+;

(2) FITCH INC.: AAA, AA+, AA, OR AA-;

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

(4) STANDARD & POOR'S CORPORATION INSURER CLAIMS PAYING

RATING: AAA, AA+, AA, OR AA-; OR

(5) IF AGREED TO BY THE CLAIMANT OR PLAINTIFF, A RATING FROM ANOTHER NATIONAL RATING ORGANIZATION IF THE RATING AND THE RATING ORGANIZATION ARE FOUND TO BE APPROPRIATE BY THE COURT.

(K) THE ARBITRATION PANEL OR COURT SHALL APPROVE AN ANNUITY PURCHASED BY THE DEFENDANT OR THE DEFENDANT'S INSURER IF THE ANNUITY:

(1) MEETS THE REQUIREMENTS OF THIS SUBSECTION; AND

(2) WILL AT ALL TIMES BE FULLY SECURED BY ASSETS:

(I) HELD IN A VALIDLY ESTABLISHED SEPARATE ACCOUNT THAT MAY NOT BE CHARGEABLE WITH LIABILITIES ARISING OUT OF ANY OTHER BUSINESS THAT THE INSURER MAY CONDUCT; OR

(II) IN WHICH THE CLAIMANT OR PLAINTIFF HAS A PERFECTED SECURITY INTEREST.

(L) THE PURCHASE OF AN ANNUITY BY THE DEFENDANT OR THE DEFENDANT'S INSURER IN ACCORDANCE WITH THE TERMS OF THIS SECTION SHALL BE DEEMED TO HAVE FULLY SATISFIED THE PORTION OF THE AWARD OR VERDICT FOR FUTURE ECONOMIC DAMAGES AND NONECONOMIC DAMAGES IN EXCESS OF \$100,000.

(M) THE PROVISIONS OF §§ 11-108 AND 11-109 OF THIS ARTICLE DO NOT APPLY TO AN AWARD OR VERDICT FOR DAMAGES UNDER THIS SUBTITLE IN WHICH THE CAUSE OF ACTION ARISES ON OR AFTER JUNE 1, 2005.”.

(Over)