

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 that certain verdicts for past or future loss of earnings shall exclude certain amounts; establishing certain rebuttable presumptions regarding certain payment and reimbursement rates; requiring that certain future medical expenses be adjusted for inflation in a certain manner;”.

On page 3, after line 8, insert:

“BY repealing and reenacting, with amendments,

Article - Courts and Judicial Proceedings

Section 3-2A-09(a) and (d)

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. 2

On page 4, after line 35, insert:

“Article - Courts and Judicial Proceedings

3-2A-09.

(a) [This] EXCEPT AS PROVIDED IN SUBSECTION (D)(2) OF THIS SECTION, 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 January 1, 2005.

(d) (1) A verdict for past medical expenses shall be limited to:

(Over)

(i) The total amount of past medical expenses paid by or on behalf of the plaintiff; and

(ii) The total amount of past medical expenses incurred but not paid by or on behalf of the plaintiff for which the plaintiff or another person on behalf of the plaintiff is obligated to pay.

(2) (I) THIS PARAGRAPH 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.

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

(III) 1. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSUBPARAGRAPH, THERE IS A REBUTTABLE PRESUMPTION THAT THE MEDICARE REIMBURSEMENT RATES IN EFFECT ON THE DATE OF THE VERDICT FOR THE LOCALITY IN WHICH THE CARE IS TO BE PROVIDED, ADJUSTED FOR INFLATION AS PROVIDED IN SUBSUBPARAGRAPH 5 OF THIS SUBPARAGRAPH, ARE FAIR AND REASONABLE AMOUNTS FOR FUTURE MEDICAL EXPENSES.

2. IF ON THE DATE OF THE VERDICT, THE MEDICARE WAIVER UNDER § 1814(B) OF THE FEDERAL SOCIAL SECURITY ACT IS IN EFFECT, THERE IS A REBUTTABLE PRESUMPTION THAT THE RATES APPROVED BY THE HEALTH SERVICES COST REVIEW COMMISSION IN EFFECT ON THE DATE OF THE 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, ARE FAIR AND REASONABLE AMOUNTS FOR FUTURE MEDICAL EXPENSES FOR HOSPITAL FACILITY SERVICES.

3. THERE IS A REBUTTABLE PRESUMPTION THAT 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 VERDICT, ADJUSTED FOR INFLATION AS PROVIDED IN SUBSUBPARAGRAPH 5 OF THIS SUBPARAGRAPH, IS A FAIR AND REASONABLE AMOUNT FOR FUTURE MEDICAL EXPENSES FOR NURSING HOME FACILITIES.

4. A VERDICT FOR FUTURE MEDICAL EXPENSES FOR WHICH THERE IS NO MEDICARE REIMBURSEMENT RATE, HOSPITAL FACILITY RATE, OR STATEWIDE AVERAGE PAYMENT RATE SHALL BE BASED ON ACTUAL COST ON THE DATE OF THE VERDICT, ADJUSTED FOR INFLATION AS PROVIDED IN SUBSUBPARAGRAPH 5 OF THIS SUBPARAGRAPH.

5. A. FUTURE MEDICAL EXPENSES 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.

B. THE ADJUSTMENT FOR INFLATION IN THIS SUBSUBPARAGRAPH SHALL BE BASED ON THE AVERAGE RATE OF INFLATION FOR THE 5 YEARS IMMEDIATELY PRECEDING THE AWARD OR VERDICT.

~~[(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 shall be divided equally among the parties.

(iii) Nothing contained in this subsection limits the authority of a court concerning a court's witness."