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By: **Delegates Barve, Kach, Jones, Donoghue, Arnick, Boschert, Bozman, Burns, Cadden, G. Clagett, V. Clagett, Conway, Costa, DeBoy, Glassman, Hammen, Hixson, Howard, Hubbard, Hurson, James, Kirk, Kullen, Love, Madaleno, Mandel, McDonough, Menes, Morhaim, Petzold, Rudolph, Stern, Trueschler, Weir, and Zirkin**

Introduced and read first time: February 11, 2005

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Courts - Medical Injury Claims - Damages**

3 FOR the purpose of providing that a medical injury award or verdict be reduced to the  
 4 extent of certain payments, reimbursements, or indemnification for past  
 5 medical expenses, less certain costs, under certain circumstances; prohibiting  
 6 certain recovery and certain claims of subrogation relating to certain payments,  
 7 reimbursements, or indemnification under certain circumstances; requiring that  
 8 an award or verdict of economic damages for a medical injury exclude certain  
 9 amounts for past or future loss of earnings; requiring that an award or verdict  
 10 for past or future loss of earnings shall be limited to a certain percentage;  
 11 requiring periodic payments of certain damages in excess of a certain amount for  
 12 certain causes of action; establishing procedures and requirements relating to  
 13 periodic payments and annuities for funding periodic payments; exempting  
 14 certain health care providers from civil liability for certain acts or omissions in  
 15 providing assistance or medical aid to a victim in a medical facility under certain  
 16 circumstances; creating a Task Force on Administrative Compensation for  
 17 Patient Injury Claims; providing for the membership, cochairs, and staffing of  
 18 the Task Force; prohibiting a member of the Task Force from receiving certain  
 19 compensation; authorizing a member of the Task Force to be reimbursed for  
 20 certain expenses; providing for the duties of the Task Force; requiring the Task  
 21 Force to submit a certain report to the Governor and the General Assembly by a  
 22 certain date; providing for the termination of the Task Force; providing for the  
 23 application of this Act; and generally relating to the payment of damages in  
 24 medical injury claims.

25 BY repealing and reenacting, without amendments,  
 26 Article - Court and Judicial Proceedings  
 27 Section 3-2A-05(h)  
 28 Annotated Code of Maryland  
 29 (2002 Replacement Volume and 2004 Supplement)  
 30 (As enacted by Chapter 5 of the Acts of the General Assembly of the 2004 Special

1 Session)

2 BY repealing and reenacting, with amendments,  
3 Article - Courts and Judicial Proceedings  
4 Section 3-2A-06(f), 3-2A-09, and 3-2A-10  
5 Annotated Code of Maryland  
6 (2002 Replacement Volume and 2004 Supplement)  
7 (As enacted by Chapter 5 of the Acts of the General Assembly of the 2004 Special  
8 Session)

9 BY adding to  
10 Article - Courts and Judicial Proceedings  
11 Section 3-2A-10  
12 Annotated Code of Maryland  
13 (2002 Replacement Volume and 2004 Supplement)

14 BY repealing and reenacting, with amendments,  
15 Article - Courts and Judicial Proceedings  
16 Section 5-603  
17 Annotated Code of Maryland  
18 (2002 Replacement Volume and 2004 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article - Courts and Judicial Proceedings**

22 3-2A-05.

23 (h) (1) A party may apply to the arbitration panel to modify or correct an  
24 award as to liability, damages, or costs in accordance with § 3-222 of this title.

25 (2) (i) The application may include a request that damages be reduced  
26 to the extent that the claimant has been or will be paid, reimbursed, or indemnified  
27 under statute, insurance, or contract for all or part of the damages assessed.

28 (ii) The panel chairman shall receive such evidence in support and  
29 opposition to a request for reduction, including evidence of the cost to obtain such  
30 payment, reimbursement, or indemnity.

31 (iii) After hearing the evidence in support and opposition to the  
32 request, the panel chairman may modify the award if satisfied that modification is  
33 supported by the evidence.

34 (iv) The award may not be modified as to any sums paid or payable  
35 to a claimant under any workers' compensation act, criminal injuries compensation  
36 act, employee benefit plan established under a collective bargaining agreement

1 between an employer and an employee or a group of employers and a group of  
2 employees that is subject to the provisions of the federal Employee Retirement  
3 Income Security Act of 1974, program of the Department of Health and Mental  
4 Hygiene for which a right of subrogation exists under §§ 15-120 and 15-121.1 of the  
5 Health - General Article, or as a benefit under any contract or policy of life insurance  
6 or Social Security Act of the United States.

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

9 1. The panel chairman orders the defendant or the  
10 defendant's insurer to provide adequate security; or

11 2. The insurer is authorized to do business in this State and  
12 maintains reserves in compliance with rules of the Insurance Commissioner to assure  
13 the payment of all such future damages up to the amount by which the award has  
14 been modified as to such future damages in the event of termination.

15 (vi) Except as expressly provided by federal law, no person may  
16 recover from the claimant or assert a claim of subrogation against a defendant for any  
17 sum included in the modification of an award.

18 3-2A-06.

19 (f) (1) [Upon] EXCEPT AS PROVIDED IN PARAGRAPHS (4) AND (5) OF THIS  
20 SUBSECTION, ON timely request, the trier of fact shall by special verdict or specific  
21 findings itemize by category and amount any damages assessed for incurred medical  
22 expenses, rehabilitation costs, and loss of earnings. Damages assessed for any future  
23 expenses, costs, and losses shall be itemized separately. If the verdict or findings  
24 include any amount for such expenses, costs, and losses, a party filing a motion for a  
25 new trial may object to the damages as excessive on the ground that the plaintiff has  
26 been or will be paid, reimbursed, or indemnified to the extent and subject to the limits  
27 stated in § 3-2A-05(h) of this subtitle.

28 (2) The court shall hold a hearing and receive evidence on the objection.

29 (3) (i) If the court finds from the evidence that the damages are  
30 excessive on the grounds stated in § 3-2A-05(h) of this subtitle, subject to the limits  
31 and conditions stated in § 3-2A-05(h) of this subtitle, it may grant a new trial as to  
32 such damages or may deny a new trial if the plaintiff agrees to a remittitur of the  
33 excess and the order required adequate security when warranted by the conditions  
34 stated in § 3-2A-05(h) of this subtitle.

35 (ii) In the event of a new trial granted under this subsection,  
36 evidence considered by the court in granting the remittitur shall be admissible if  
37 offered at the new trial and the jury shall be instructed to consider such evidence in  
38 reaching its verdict as to damages.

39 (iii) Upon a determination of those damages at the new trial, no  
40 further objection to damages may be made exclusive of any party's right of appeal.

1 (4) (I) THIS PARAGRAPH APPLIES TO A VERDICT FOR A CAUSE OF  
2 ACTION ARISING ON OR AFTER JUNE 1, 2005.

3 (II) ON MOTION BY A PARTY, DAMAGES FOR PAST MEDICAL  
4 EXPENSES IN A VERDICT SHALL BE REDUCED ON THE GROUND THAT THE CLAIMANT  
5 WILL BE PAID, REIMBURSED, OR INDEMNIFIED TO THE EXTENT AND SUBJECT TO  
6 THE LIMITS STATED IN § 3-2A-05(H) OF THIS SUBTITLE.

7 (III) THE COURT SHALL HOLD A HEARING AND RECEIVE EVIDENCE  
8 ON THE MOTION.

9 (IV) IF THE COURT FINDS FROM THE EVIDENCE THAT THE  
10 DAMAGES FOR PAST MEDICAL EXPENSES HAVE BEEN OR WILL BE PAID,  
11 REIMBURSED, OR INDEMNIFIED AS DESCRIBED IN § 3-2A-05(H) OF THIS SUBTITLE,  
12 SUBJECT TO THE LIMITATIONS AND CONDITIONS STATED IN § 3-2A-05(H) OF THIS  
13 SUBTITLE, THE COURT SHALL MODIFY THE DAMAGES FOR THE PAST MEDICAL  
14 EXPENSES IN THE VERDICT.

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

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

20 (II) IN A CAUSE OF ACTION ARISING ON OR AFTER JUNE 1, 2005, IN A  
21 MODIFICATION FOR DAMAGES FOR PAST MEDICAL EXPENSES IN A VERDICT.

22 [(5)] (6) Nothing in this subsection shall be construed to otherwise limit  
23 the common law grounds for remittitur.

24 3-2A-09.

25 (a) [This] EXCEPT AS PROVIDED IN SUBSECTION (D)(2) OF THIS SECTION,  
26 THIS section applies to an award under § 3-2A-05 of this subtitle or a verdict under  
27 § 3-2A-06 of this subtitle for a cause of action arising on or after January 1, 2005.

28 (b) (1) (i) Except as provided in paragraph (2)(ii) of this subsection, an  
29 award or verdict under this subtitle for noneconomic damages for a cause of action  
30 arising between January 1, 2005, and December 31, 2008, inclusive, may not exceed  
31 \$650,000.

32 (ii) The limitation on noneconomic damages provided under  
33 subparagraph (i) of this paragraph shall increase by \$15,000 on January 1 of each  
34 year beginning January 1, 2009. The increased amount shall apply to causes of action  
35 arising between January 1 and December 31 of that year, inclusive.

36 (2) (i) Except as provided in subparagraph (ii) of this paragraph, the  
37 limitation under paragraph (1) of this subsection shall apply in the aggregate to all

1 claims for personal injury and wrongful death arising from the same medical injury,  
2 regardless of the number of claims, claimants, plaintiffs, beneficiaries, or defendants.

3 (ii) If there is a wrongful death action in which there are two or  
4 more claimants or beneficiaries, whether or not there is a personal injury action  
5 arising from the same medical injury, the total amount awarded for noneconomic  
6 damages for all actions may not exceed 125% of the limitation established under  
7 paragraph (1) of this subsection, regardless of the number of claims, claimants,  
8 plaintiffs, beneficiaries, or defendants.

9 (c) (1) In a jury trial, the jury may not be informed of the limitation under  
10 subsection (b) of this section.

11 (2) If the jury awards an amount for noneconomic damages that exceeds  
12 the limitation established under subsection (b) of this section, the court shall reduce  
13 the amount to conform to the limitation.

14 (3) In a wrongful death action in which there are two or more claimants  
15 or beneficiaries, if the jury awards an amount for noneconomic damages that exceeds  
16 the limitation under subsection (b) of this section or a reduction under paragraph (4)  
17 of this subsection, the court shall:

18 (i) If the amount of noneconomic damages for the primary  
19 claimants, as described under § 3-904(d) of this title, equals or exceeds the limitation  
20 under subsection (b) of this section or a reduction under paragraph (4) of this  
21 subsection:

22 1. Reduce each individual award of a primary claimant  
23 proportionately to the total award of all primary claimants so that the total award to  
24 all claimants or beneficiaries conforms to the limitation or reduction; and

25 2. Reduce each award, if any, to a secondary claimant as  
26 described under § 3-904(e) of this title to zero dollars; or

27 (ii) If the amount of noneconomic damages for the primary  
28 claimants does not exceed the limitation under subsection (b) of this section or a  
29 reduction under paragraph (4) of this subsection or if there is no award to a primary  
30 claimant:

31 1. Enter an award to each primary claimant, if any, as  
32 directed by the verdict; and

33 2. Reduce each individual award of a secondary claimant  
34 proportionately to the total award of all of the secondary claimants so that the total  
35 award to all claimants or beneficiaries conforms to the limitation or reduction.

36 (4) In a case in which there is a personal injury action and a wrongful  
37 death action, if the total amount awarded by the jury for noneconomic damages for  
38 both actions exceeds the limitation under subsection (b) of this section, the court shall

1 reduce the award in each action proportionately so that the total award for  
2 noneconomic damages for both actions conforms to the limitation.

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

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

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

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

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

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

23 2. IF ON THE DATE OF THE VERDICT, THE MEDICARE  
24 WAIVER UNDER § 1814(B) OF THE FEDERAL SOCIAL SECURITY ACT IS IN EFFECT,  
25 THERE IS A REBUTTABLE PRESUMPTION THAT THE RATES APPROVED BY THE  
26 HEALTH SERVICES COST REVIEW COMMISSION IN EFFECT ON THE DATE OF THE  
27 VERDICT FOR THE HOSPITAL FACILITY IN WHICH SERVICES ARE TO BE PROVIDED,  
28 ADJUSTED FOR INFLATION AS PROVIDED IN THE ANNUAL RATE UPDATES APPROVED  
29 BY THE HEALTH SERVICES COST REVIEW COMMISSION, ARE FAIR AND REASONABLE  
30 AMOUNTS FOR FUTURE MEDICAL EXPENSES FOR HOSPITAL FACILITY SERVICES.

31 3. THERE IS A REBUTTABLE PRESUMPTION THAT THE  
32 STATEWIDE AVERAGE PAYMENT RATE FOR THE MEDICAL ASSISTANCE PROGRAM  
33 DETERMINED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE IN EFFECT  
34 ON THE DATE OF THE VERDICT, ADJUSTED FOR INFLATION AS PROVIDED IN  
35 SUBSUBPARAGRAPH 5 OF THIS SUBPARAGRAPH, IS A FAIR AND REASONABLE  
36 AMOUNT FOR FUTURE MEDICAL EXPENSES FOR NURSING HOME FACILITIES.

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

1                                   5.     A.     FUTURE MEDICAL EXPENSES SHALL BE ADJUSTED  
2 FOR INFLATION FOR THE EXPENDITURE CATEGORY OF THE CONSUMER PRICE INDEX  
3 PUBLISHED BY THE BUREAU OF LABOR STATISTICS TO WHICH THE EXPENSE  
4 APPLIES.

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

8                    [(2)]   (3)   (i)     A court may on its own motion, or on motion of a party,  
9 employ a neutral expert witness to testify on the issue of a plaintiff's future medical  
10 expenses or future loss of earnings.

11                                   (ii)    Unless otherwise agreed to by the parties, the costs of a neutral  
12 expert witness shall be divided equally among the parties.

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

15 3-2A-10.

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

19     (B)     SUBJECT TO THE PROVISIONS OF THIS SUBTITLE, A DEFENDANT SHALL  
20 PAY AN AWARD OR VERDICT FOR NONECONOMIC DAMAGES AND FUTURE ECONOMIC  
21 DAMAGES OF \$250,000 OR LESS AS A LUMP SUM WITH PAYMENTS FOR PAST  
22 ECONOMIC DAMAGES.

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

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

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

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

36     (D)     SUBJECT TO SUBSECTION (F) OF THIS SECTION, TO FUND FULLY FUTURE  
37 ECONOMIC DAMAGES AND NONECONOMIC DAMAGES IN EXCESS OF \$250,000, THE  
38 DEFENDANT OR THE DEFENDANT'S INSURER SHALL PURCHASE AN ANNUITY FOR

1 THE AMOUNT OF THE FUTURE ECONOMIC DAMAGES AND NONECONOMIC DAMAGES  
2 LESS THE \$100,000 PAID UNDER SUBSECTION (C)(1) OF THIS SECTION, WHICH  
3 PRODUCES PERIODIC PAYMENTS FOR:

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

9 (2) FUTURE LOSS OF EARNINGS, DIVIDED BY THE LESSER OF THE  
10 NUMBER OF YEARS FOR WHICH THE CLAIMANT OR PLAINTIFF WILL SUFFER A LOSS  
11 OF EARNINGS OR THE WORKING LIFE OF THE CLAIMANT OR PLAINTIFF AS  
12 DETERMINED UNDER SUBSECTION (E)(2)(I) OF THIS SECTION.

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

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

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

29 (F) FOR A SURVIVAL OR WRONGFUL DEATH ACTION:

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

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

34 (G) THE DEFENDANT OR THE DEFENDANT'S INSURER MAY PURCHASE  
35 MULTIPLE ANNUITIES IF, IN THE AGGREGATE, THE ANNUITIES FULLY FUND THE  
36 PORTION OF THE AWARD OR VERDICT FOR FUTURE ECONOMIC DAMAGES AND  
37 NONECONOMIC DAMAGES IN EXCESS OF \$100,000.

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

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

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

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

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

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

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

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

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

19 (4) STANDARD & POOR'S CORPORATION INSURER CLAIMS PAYING  
20 RATING: AAA, AA+, AA, OR AA-; OR

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

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

26 (1) MEETS THE REQUIREMENTS OF THIS SUBSECTION; AND

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

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

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

33 (L) THE PURCHASE OF AN ANNUITY BY THE DEFENDANT OR THE  
34 DEFENDANT'S INSURER IN ACCORDANCE WITH THE TERMS OF THIS SECTION SHALL  
35 BE DEEMED TO HAVE FULLY SATISFIED THE PORTION OF THE AWARD OR VERDICT

1 FOR FUTURE ECONOMIC DAMAGES AND NONECONOMIC DAMAGES IN EXCESS OF  
2 \$100,000.

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

6 [3-2A-10.] 3-2A-11.

7 Except as otherwise provided in §§ 3-2A-08A [and 3-2A-09], 3-2A-09, AND  
8 3-2A-10 of this subtitle, the provisions of this subtitle shall be deemed procedural in  
9 nature and may not be construed to create, enlarge, or diminish any cause of action  
10 not heretofore existing, except the defense of failure to comply with the procedures  
11 required under this subtitle.

12 5-603.

13 (a) A person described in subsection (b) of this section is not civilly liable for  
14 any act or omission in giving any assistance or medical care, if:

15 (1) The act or omission is not one of gross negligence;

16 (2) The assistance or medical care is provided without fee or other  
17 compensation; and

18 (3) The assistance or medical care is provided:

19 (i) At the scene of an emergency;

20 (ii) In transit to a medical facility; or

21 (iii) Through communications with personnel providing emergency  
22 assistance.

23 (b) Subsection (a) of this section applies to the following:

24 (1) An individual who is licensed by this State to provide medical care;

25 (2) A member of any State, county, municipal, or volunteer fire  
26 department, ambulance and rescue squad or law enforcement agency or of the  
27 National Ski Patrol System, or a corporate fire department responding to a call  
28 outside of its corporate premises, if the member:

29 (i) Has completed an American Red Cross course in advanced first  
30 aid and has a current card showing that status;

31 (ii) Has completed an equivalent of an American Red Cross course  
32 in advanced first aid, as determined by the Secretary of Health and Mental Hygiene;

33 or

1 (iii) Is certified or licensed by this State as an emergency medical  
2 services provider;

3 (3) A volunteer fire department, ambulance and rescue squad whose  
4 members have immunity; and

5 (4) A corporation when its fire department personnel are immune under  
6 paragraph (2) of this subsection.

7 (c) An individual who is not covered otherwise by this section is not civilly  
8 liable for any act or omission in providing assistance or medical aid to a victim [at]:

9 (1) AT the scene of an emergency, if:

10 [(1)] (I) The assistance or aid is provided in a reasonably prudent  
11 manner;

12 [(2)] (II) The assistance or aid is provided without fee or other  
13 compensation; and

14 [(3)] (III) The individual relinquishes care of the victim when someone  
15 who is licensed or certified by this State to provide medical care or services becomes  
16 available to take responsibility; OR

17 (2) IN A MEDICAL FACILITY, IF:

18 (I) THE VICTIM INITIALLY VISITED THE EMERGENCY  
19 DEPARTMENT OF A MEDICAL FACILITY REQUESTING EXAMINATION OR TREATMENT  
20 FOR AN EMERGENCY MEDICAL CONDITION;

21 (II) THE INDIVIDUAL IS A HEALTH CARE PROVIDER AS DEFINED IN  
22 § 3-2A-01 OF THIS ARTICLE;

23 (III) THE ACT OR OMISSION IS NOT ONE OF GROSS NEGLIGENCE;

24 (IV) THE TIMING AND TYPE OF DIAGNOSIS AND TREATMENT ARE  
25 NOT AFFECTED BY FINANCIAL CONSIDERATIONS; AND

26 (V) THE INDIVIDUAL IS ACTING IN FULL COMPLIANCE WITH THE  
27 FEDERAL EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT (EMTALA) AND  
28 THE REGULATIONS ADOPTED UNDER THAT ACT.

29 SECTION 2. AND BE IT FURTHER ENACTED, That:

30 (a) There is a Task Force on Administrative Compensation for Patient Injury  
31 Claims.

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

33 (1) one member of the Senate of Maryland, appointed by the President of  
34 the Senate;

- 1 (2) one member of the House of Delegates, appointed by the Speaker of  
2 the House;
- 3 (3) the Attorney General, or the Attorney General's designee;
- 4 (4) a circuit court judge, appointed by the Chief Judge of the Court of  
5 Appeals;
- 6 (5) the Secretary of the Department of Health and Mental Hygiene, or  
7 the Secretary's designee;
- 8 (6) the Chairman of the State Board of Physicians, or the Chairman's  
9 designee;
- 10 (7) the State Insurance Commissioner, or the Commissioner's designee;
- 11 (8) the Chairman of the State Workers' Compensation Commission, or  
12 the Chairman's designee; and
- 13 (9) the following members appointed by the Governor, in consultation  
14 with the President of the Senate and the Speaker of the House:
- 15 (i) one representative of the Medical and Chirurgical Faculty of  
16 Maryland;
- 17 (ii) one representative of the Medical Mutual Liability Insurance  
18 Society of Maryland;
- 19 (iii) one representative of the Maryland Hospital Association;
- 20 (iv) one representative of the Maryland State Bar Association;
- 21 (v) one representative of the Maryland Defense Council, Inc.;
- 22 (vi) one representative of the Maryland Trial Lawyers Association;  
23 and
- 24 (vii) one representative of the health insurance industry.
- 25 (c) The President of the Senate and the Speaker of the House shall designate  
26 the cochairs of the Task Force.
- 27 (d) The Department of Health and Mental Hygiene and the State Workers'  
28 Compensation Commission, in consultation with appropriate state agencies, jointly  
29 shall provide staff support to the Task Force.
- 30 (e) A member of the Task Force:
- 31 (1) may not receive compensation; but

1 (2) is entitled to reimbursement for expenses under the Standard State  
2 Travel Regulations, as provided in the State budget.

3 (f) The Task Force shall:

4 (1) study the feasibility of developing a statewide administrative  
5 compensation system, based on a workers' compensation model, that would  
6 compensate medically injured patients administratively instead of through the courts  
7 by creating a quasi-governmental entity that would be the sole remedy for injured  
8 patients;

9 (2) gather and analyze data on the cost of compensating medical injuries  
10 through the existing tort system and compare the cost of an administrative  
11 compensation system with that of the existing tort system;

12 (3) investigate the financial, policy, and legal issues critical to the design  
13 of an administrative compensation system;

14 (4) study other medical administrative compensation systems such as in  
15 Sweden, New Zealand, and the states of Virginia and Florida, and other medical  
16 administrative compensation pilot programs as proposed in Utah, Colorado, and  
17 Massachusetts; and

18 (5) study the feasibility of developing a pilot program, based on a  
19 workers' compensation model, that:

20 (i) would be conducted in a selected community-based hospital and  
21 a hospital affiliated with an academic institution, with a second community-based  
22 hospital and second hospital affiliated with an academic institution serving as the  
23 control group;

24 (ii) would be limited to a high-risk medical specialty such as the  
25 practice of obstetrics;

26 (iii) would use an administrative tribunal to hear medical injury  
27 claims instead of a jury, with the tribunal's decision being the exclusive remedy for  
28 the claim, and with the claimant having a limited right of appeal of the tribunal's  
29 decision to an administrative law judge; and

30 (iv) would compensate injured patients according to a schedule of  
31 damages for specific injuries.

32 (g) The Task Force shall report its findings and recommendations to the  
33 Governor and, in accordance with § 2-1246 of the State Government Article, the  
34 General Assembly, on or before June 30, 2007.

35 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall  
36 be construed to apply only prospectively and may not be applied or interpreted to  
37 have any effect on or application to any cause of action arising before the effective  
38 date of this Act.

1 SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall  
2 remain effective for a period of 2 years, and, at the end of June 30, 2007, with no  
3 further action required by the General Assembly, Section 2 of this Act shall be  
4 abrogated and of no further force and effect.

5 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect  
6 June 1, 2005.