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By: **The President (By Request - Administration) and Senators Brinkley, Colburn, Greenip, Hafer, Haines, Harris, Hooper, Jacobs, Mooney, Pipkin, Schrader, and Stoltzfus**

Introduced and read first time: January 21, 2005

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Medical Injury Compensation Reform Act**

3 FOR the purpose of requiring a certificate of a qualified expert for each defendant in  
4 certain causes of action; altering certain provisions relating to the amount of  
5 time an expert may devote to certain activities; requiring the itemization of  
6 certain damages; allowing the introduction of and consideration of certain  
7 evidence relating to damages under certain circumstances; establishing a  
8 certain limitation on noneconomic damages for medical injuries for causes of  
9 action arising on or after a certain date; providing that this limitation applies in  
10 the aggregate to all claims arising from the same medical injury; requiring the  
11 itemization of certain awards and verdicts; requiring that a health care  
12 malpractice award or verdict be reduced to the extent of certain payments,  
13 reimbursements, or indemnification, less certain costs, under certain  
14 circumstances; prohibiting certain recovery and certain claims of subrogation  
15 relating to certain payments, reimbursements, or indemnification under certain  
16 circumstances; providing that certain provisions relating to advanced payments  
17 do not apply to certain causes of action; prohibiting a jury from being informed  
18 of certain limitations; requiring an award or verdict of economic damages for a  
19 medical injury exclude certain amounts for past or future medical expenses and  
20 past or future loss of earnings; requiring periodic payments of certain damages  
21 in certain awards or verdicts under certain circumstances; establishing  
22 procedures and requirements relating to periodic payments and annuities for  
23 funding periodic payments; providing that certain provisions relating to  
24 damages in personal injury and wrongful death cases apply to causes of action  
25 for medical injuries arising before a certain date and do not apply to causes of  
26 action for medical injuries arising on or after a certain date; increasing the  
27 number of jurors in civil actions involving medical injuries; altering the rate of  
28 interest on certain judgments; altering a certain definition to provide that  
29 practice of medicine includes engaging in testimony or offering an opinion as a  
30 medical expert witness under certain circumstances; providing certain  
31 exemptions from licenses; providing that certain medical expert witnesses are  
32 subject to certain hearing and disciplinary proceedings by the Board of  
33 Physicians under certain circumstances; repealing certain requirements

1 relating to purchase of policies from and commissions paid by the Medical  
2 Mutual Liability Insurance Society; defining certain terms; making stylistic  
3 changes; providing for the application of this Act; making the provisions of this  
4 Act severable; and generally relating to medical injury compensation reform.

5 BY repealing and reenacting, with amendments,  
6 Article - Courts and Judicial Proceedings  
7 Section 3-2A-04(b)(1)(i)1. and (4), 3-2A-05(h), 3-2A-06(f), 3-2A-09(a),  
8 3-2A-10, and 11-108(e)  
9 Annotated Code of Maryland  
10 (2002 Replacement Volume and 2004 Supplement)  
11 (As enacted by Chapter 5 of the Acts of the General Assembly of the 2004 Special  
12 Session)

13 BY repealing and reenacting, with amendments,  
14 Article - Courts and Judicial Proceedings  
15 Section 3-2A-05(e), (i), and (j), 3-2A-06(g), (h), and (i), 3-2A-08, 8-306,  
16 11-107(a), and 11-109(c) and (d)  
17 Annotated Code of Maryland  
18 (2002 Replacement Volume and 2004 Supplement)

19 BY adding to  
20 Article - Courts and Judicial Proceedings  
21 Section 3-2A-05(b)(4), 3-2A-05(j), 3-2A-06(h), 3-2A-09A, 3-2A-09B,  
22 3-2A-10, 9-124, and 11-109(d) and (e)  
23 Annotated Code of Maryland  
24 (2002 Replacement Volume and 2004 Supplement)

25 BY repealing and reenacting, without amendments,  
26 Article - Courts and Judicial Proceedings  
27 Section 11-108(c)  
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  
31 Session)

32 BY repealing and reenacting, with amendments,  
33 Article - Health Occupations  
34 Section 14-101(l)(1), 14-302(4)(ii) and (5)(ii)2., 14-401(i), and 14-404(a)  
35 Annotated Code of Maryland  
36 (2000 Replacement Volume and 2004 Supplement)

37 BY adding to  
38 Article - Health Occupations

1 Section 14-302(6)  
 2 Annotated Code of Maryland  
 3 (2000 Replacement Volume and 2004 Supplement)

4 BY repealing  
 5 Article - Insurance  
 6 Section 24-214  
 7 Annotated Code of Maryland  
 8 (2002 Replacement Volume and 2004 Supplement)  
 9 (As enacted by Chapter 5 of the Acts of the General Assembly of the 2004 Special  
 10 Session)

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

13 **Article - Courts and Judicial Proceedings**

14 3-2A-04.

15 (b) Unless the sole issue in the claim is lack of informed consent:

16 (1) (i) 1. Except as provided in subparagraph (ii) of this paragraph,  
 17 a claim or action filed after July 1, 1986, shall be dismissed, without prejudice, if the  
 18 claimant or plaintiff fails to file FOR EACH DEFENDANT a certificate of a qualified  
 19 expert with the Director attesting to departure from standards of care, and that the  
 20 departure from standards of care is the proximate cause of the alleged injury, within  
 21 90 days from the date of the complaint;

22 (4) A health care provider who attests in a certificate of a qualified  
 23 expert or who testifies in relation to a proceeding before an arbitration panel or a  
 24 court concerning compliance with or departure from standards of care may not devote  
 25 annually more than 20 percent of the expert's professional activities to activities that  
 26 [directly involve testimony in personal injury claims]:

27 (I) ARE UNRELATED TO THE CARE OR TREATMENT OF A PATIENT;  
 28 AND

29 (II) LEAD OR COULD LEAD TO TESTIMONY IN PERSONAL INJURY  
 30 CLAIMS.

31 3-2A-05.

32 (b) (4) EVIDENCE THAT A CLAIMANT HAS RECEIVED OR WILL RECEIVE  
 33 UNCOMPENSATED CARE OR SERVICES IS ADMISSIBLE AND MAY BE CONSIDERED BY  
 34 THE ARBITRATION PANEL WHEN AWARDING DAMAGES.

35 (e) (1) The arbitration panel shall first determine the issue of liability with  
 36 respect to a claim referred to it.

1 (2) If the arbitration panel determines that the health care provider is  
2 not liable to the claimant or claimants the award shall be in favor of the health care  
3 provider.

4 (3) If the arbitration panel determines that a health care provider is  
5 liable to the claimant or claimants, it shall then consider, itemize, assess, and  
6 apportion appropriate damages against one or more of the health care providers that  
7 it has found to be liable.

8 (4) [The award shall itemize by category and amount any damages  
9 assessed for incurred medical expenses, rehabilitation costs, and loss of earnings.  
10 Damages assessed for any future expenses, costs, and losses shall be itemized  
11 separately.] THE ARBITRATION PANEL SHALL ITEMIZE THE AWARD TO REFLECT THE  
12 MONETARY AMOUNT INTENDED FOR ANY OF THE FOLLOWING DAMAGES THAT ARE  
13 APPLICABLE TO THE CLAIM:

14 (I) PAST MEDICAL EXPENSES;

15 (II) FUTURE MEDICAL EXPENSES;

16 (III) PAST LOSS OF EARNINGS;

17 (IV) FUTURE LOSS OF EARNINGS;

18 (V) PAST PECUNIARY LOSS;

19 (VI) FUTURE PECUNIARY LOSS;

20 (VII) OTHER PAST ECONOMIC DAMAGES;

21 (VIII) OTHER FUTURE ECONOMIC DAMAGES;

22 (IX) PAST NONECONOMIC DAMAGES; AND

23 (X) FUTURE NONECONOMIC DAMAGES.

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

26 (I) (1) THIS SUBSECTION APPLIES TO A CAUSE OF ACTION ARISING BEFORE  
27 JUNE 1, 2005.

28 (2) (i) The application TO MODIFY OR CORRECT AN AWARD may  
29 include a request that damages be reduced to the extent that the claimant has been or  
30 will be paid, reimbursed, or indemnified under statute, insurance, or contract for all  
31 or part of the damages assessed.

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

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

4 (iv) The award may not be modified as to any sums paid or payable  
5 to a claimant under any workers' compensation act, criminal injuries compensation  
6 act, employee benefit plan established under a collective bargaining agreement  
7 between an employer and an employee or a group of employers and a group of  
8 employees that is subject to the provisions of the federal Employee Retirement  
9 Income Security Act of 1974, program of the Department of Health and Mental  
10 Hygiene for which a right of subrogation exists under §§ 15-120 and 15-121.1 of the  
11 Health - General Article, or as a benefit under any contract or policy of life insurance  
12 or Social Security Act of the United States.

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

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

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

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

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

26 (2) IN AN ARBITRATION PROCEEDING:

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

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

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

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

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

3 (I) CONSIDER THE EVIDENCE; AND

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

6 (4) A DEFENDANT MAY NOT INTRODUCE EVIDENCE CONCERNING ANY  
7 FUTURE EXPENSES, COSTS, AND LOSSES AND AN AWARD MAY NOT BE MODIFIED AS  
8 TO THESE DAMAGES UNLESS:

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

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

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

24 [(i)] (K) Subject to § 3-2A-06 of this subtitle, the award of the panel shall be  
25 final and binding on the parties. After the time for either rejecting or modifying the  
26 award has expired the Director may, or, when requested by any party, shall file a copy  
27 of the award with the circuit court having proper venue, as provided in Title 6,  
28 Subtitle 2 of this article and the court shall confirm the award. Upon confirmation the  
29 award shall constitute a final judgment.

30 [(j)] (L) Except for time limitations pertaining to the filing of a claim or  
31 response, the Director or the panel chairman, for good cause shown, may lengthen or  
32 shorten the time limitations prescribed in subsections (b) and (g) of this section and §  
33 3-2A-04 of this article.

34 3-2A-06.

35 (f) (1) EVIDENCE THAT A CLAIMANT HAS RECEIVED OR WILL RECEIVE  
36 UNCOMPENSATED CARE OR SERVICES IS ADMISSIBLE AND MAY BE CONSIDERED BY  
37 THE TRIER OF FACT WHEN AWARDING DAMAGES.

38 (2) [Upon timely request, the trier of fact shall by special verdict or  
39 specific findings itemize by category and amount any damages assessed for incurred

1 medical expenses, rehabilitation costs, and loss of earnings. Damages assessed for  
2 any future expenses, costs, and losses shall be itemized separately. If the verdict or  
3 findings include any amount for such expenses, costs, and losses, a] THE TRIER OF  
4 FACT SHALL ITEMIZE THE VERDICT TO REFLECT THE MONETARY AMOUNT  
5 INTENDED FOR ANY OF THE FOLLOWING DAMAGES THAT ARE APPLICABLE TO THE  
6 ACTION:

7 (I) PAST MEDICAL EXPENSES;

8 (II) FUTURE MEDICAL EXPENSES;

9 (III) PAST LOSS OF EARNINGS;

10 (IV) FUTURE LOSS OF EARNINGS;

11 (V) PAST PECUNIARY LOSS;

12 (VI) FUTURE PECUNIARY LOSS;

13 (VII) OTHER PAST ECONOMIC DAMAGES;

14 (VIII) OTHER FUTURE ECONOMIC DAMAGES;

15 (IX) PAST NONECONOMIC DAMAGES; AND

16 (X) FUTURE NONECONOMIC DAMAGES.

17 (G) (1) THIS SUBSECTION APPLIES TO A CAUSE OF ACTION ARISING BEFORE  
18 JUNE 1, 2005.

19 (2) A party filing a motion for a new trial may object to the damages as  
20 excessive on the ground that the plaintiff has been or will be paid, reimbursed, or  
21 indemnified to the extent and subject to the limits stated in § 3-2A-05(h) of this  
22 subtitle.

23 [(2)] (3) The court shall hold a hearing and receive evidence on the  
24 objection.

25 [(3)] (4) (i) If the court finds from the evidence that the damages are  
26 excessive on the grounds stated in § 3-2A-05(h) of this subtitle, subject to the limits  
27 and conditions stated in § 3-2A-05(h) of this subtitle, it may grant a new trial as to  
28 such damages or may deny a new trial if the plaintiff agrees to a remittitur of the  
29 excess and the order required adequate security when warranted by the conditions  
30 stated in § 3-2A-05(h) of this subtitle.

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

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

3 [(4)] (5) Except as expressly provided by federal law, no person may  
4 recover from the plaintiff or assert a claim of subrogation against a defendant for any  
5 sum included in a remittitur or awarded in a new trial on damages granted under this  
6 subsection.

7 [(5)] (6) Nothing in this subsection shall be construed to otherwise limit  
8 the common law grounds for remittitur.

9 (H) (1) THIS SUBSECTION APPLIES TO A CAUSE OF ACTION ARISING ON OR  
10 AFTER JUNE 1, 2005.

11 (2) IN A TRIAL:

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

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

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

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

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

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

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

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

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



1 (I) THE COURT IS ASSURED THAT THE DEFENDANT OR THE  
2 DEFENDANT'S INSURER CAN PROVIDE ADEQUATE SECURITY AND, AFTER A VERDICT,  
3 ORDERS THE DEFENDANT OR THE DEFENDANT'S INSURER TO PROVIDE ADEQUATE  
4 SECURITY TO ENSURE THE PAYMENT OF ALL FUTURE DAMAGES UP TO THE AMOUNT  
5 BY WHICH THE AWARD HAS BEEN MODIFIED IN THE EVENT THAT THE OTHER  
6 SOURCE OF COMPENSATION IS TERMINATED; OR

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

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

16 [(g)] (I) If the verdict of the trier of fact is not more favorable to the party that  
17 rejected the arbitration panel's award, than was the award, the costs of the judicial  
18 proceedings shall be assessed against the rejecting party. Otherwise, the court may  
19 determine the assessment of such costs. If the court vacates an assessment of  
20 arbitration costs, it shall reassess those costs as justice requires.

21 [(h)] (J) Venue shall be determined in accordance with the provisions of §  
22 6-201 of this article.

23 [(i)] (K) The clerk of the court shall file a copy of the verdict or any other final  
24 disposition with the Director.

25 3-2A-08.

26 (a) (1) Evidence of advanced payments made [pursuant to] UNDER §  
27 19-104(b) of the Insurance Article is not admissible in any arbitration or judicial  
28 proceeding for damages due to medical injury until there is an award, in the case of  
29 arbitration proceedings, or a verdict, in the case of judicial proceedings, in favor of the  
30 claimant OR PLAINTIFF and against the person who made the advanced payments.

31 (2) Upon the finding of such an award or verdict, the arbitration panel,  
32 or the trier of fact, shall make a finding of total damages, and shall then deduct  
33 whatever amounts it finds were paid by or on behalf of the defendants [pursuant to]  
34 UNDER § 19-104(b) of the Insurance Article.

35 (3) The net amount, after this deduction, shall be entered as its award or  
36 verdict.

37 (b) (1) THE PROVISIONS OF THIS SUBSECTION DO NOT APPLY TO A VERDICT  
38 FOR DAMAGES UNDER THIS SUBTITLE IN WHICH THE CAUSE OF ACTION ARISES ON  
39 OR AFTER JUNE 1, 2005.

1           (2)     [If] FOR AN AWARD OR VERDICT FOR DAMAGES UNDER THIS  
2 SUBTITLE IN WHICH THE CAUSE OF ACTION AROSE BEFORE JUNE 1, 2005, IF the  
3 award or verdict exceeds the amount of advanced payments and the arbitration panel  
4 or the court finds that the advanced payments were reasonable, the panel or the court  
5 may [(1) order]:

6           (I)     ORDER that the amount by which the award or verdict exceeds  
7 the amount of advanced payments be paid over a period of time consistent with the  
8 needs of the claimant OR PLAINTIFF, rather than in a lump sum[, and (2) authorize];  
9 AND

10          (II)    AUTHORIZE, as part of its order, the creation of a trust or other  
11 mechanism to assure the periodic payments.

12          (3)     The panel or court shall provide to the claimant the option to choose  
13 either a lump sum or payments paid over a period of time.

14       (c)     (1)     If the advanced payment exceeds the liability of the person making it,  
15 the arbitration panel or the court on appeal may order such adjustments as justice  
16 may require under the award or verdict, including, where appropriate, contribution  
17 by other parties found to be liable.

18          (2)     In no event shall an advance payment in excess of the liability of the  
19 person making it be repayable by the person receiving it.

20 3-2A-09.

21       (a)     This section applies to an award under § 3-2A-05 of this subtitle or a  
22 verdict under § 3-2A-06 of this subtitle for a cause of action arising on or after  
23 January 1, 2005, AND BEFORE JUNE 1, 2005.

24 3-2A-09A.

25       (A)     THIS SECTION APPLIES TO A CLAIM OR CAUSE OF ACTION FILED ON OR  
26 AFTER JUNE 1, 2005.

27       (B)     UNLESS A COURT FINDS GOOD CAUSE NOT TO APPOINT A NEUTRAL  
28 EXPERT WITNESS, THE COURT SHALL EMPLOY A NEUTRAL EXPERT WITNESS TO  
29 TESTIFY ON THE ISSUE OF A PLAINTIFF'S ECONOMIC DAMAGES AND PERIODIC  
30 PAYMENTS UNDER THIS SUBTITLE.

31       (C)     UNLESS OTHERWISE AGREED BY THE PARTIES, THE COSTS OF A NEUTRAL  
32 EXPERT WITNESS SHALL BE DIVIDED EQUALLY AMONG THE PARTIES.

33       (D)     NOTHING CONTAINED IN THIS SECTION LIMITS THE AUTHORITY OF A  
34 COURT CONCERNING A COURT'S WITNESS.

1 3-2A-09B.

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

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

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

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

13 (2) IF THE JURY AWARDS AN AMOUNT FOR NONECONOMIC DAMAGES  
14 THAT EXCEEDS THE LIMITATION ESTABLISHED UNDER SUBSECTION (B) OF THIS  
15 SECTION, THE COURT SHALL:

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

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

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

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

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

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

36 (II) IF THE AMOUNT OF NONECONOMIC DAMAGES FOR THE  
37 PRIMARY CLAIMANTS DOES NOT EXCEED THE LIMITATION UNDER SUBSECTION (B)

1 OF THIS SECTION OR A REDUCTION UNDER PARAGRAPH (4) OF THIS SUBSECTION OR  
2 IF THERE IS NO AWARD TO A PRIMARY CLAIMANT:

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

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

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

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

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

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

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

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

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

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

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

14 3-2A-10.

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

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

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

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

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

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

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

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

1 ECONOMIC DAMAGES AND FUTURE NONECONOMIC DAMAGES IN PERIODIC  
2 PAYMENTS.

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

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

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

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

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

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

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

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

26 (2) THE AMOUNT REMAINING AS PERIODIC PAYMENTS.

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

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

31 1. THE LIFE EXPECTANCY OF THE CLAIMANT OR PLAINTIFF;

32 2. THE WORKING LIFE OF THE CLAIMANT OR PLAINTIFF;

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

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

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

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

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

12                                  (II)     IN A CLAIM FOR WRONGFUL DEATH:

13                                   1.       THE PERIOD FOR WHICH THE CLAIMANT OR PLAINTIFF  
14 MIGHT REASONABLY HAVE EXPECTED A PECUNIARY BENEFIT FROM THE DECEDENT  
15 HAD THE WRONGFUL DEATH NOT OCCURRED; AND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40           (3)    PERIODIC PAYMENTS TO FUND FUTURE MEDICAL EXPENSES, OTHER  
41 FUTURE ECONOMIC DAMAGES, OR NONECONOMIC DAMAGES MAY NOT EXCEED THE



1 LIFE EXPECTANCY OF THE CLAIMANT OR PLAINTIFF AS DETERMINED UNDER  
2 SUBSECTION (E) OF THIS SECTION AND SHALL TERMINATE AT THE DEATH OF THE  
3 CLAIMANT OR PLAINTIFF.

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

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

15 (II) IF THE ARBITRATION PANEL OR COURT IS NOT SATISFIED WITH  
16 THE SECURITY POSTED BY THE DEFENDANT, THE ARBITRATION PANEL OR COURT,  
17 AFTER GIVING THE DEFENDANT AN OPPORTUNITY TO POST ADDITIONAL SECURITY,  
18 SHALL ORDER THE DEFENDANT TO PAY THE CLAIMANT OR PLAINTIFF IN A LUMP  
19 SUM.

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

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

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

29 [3-2A-10.] 3-2A-11.

30 Except as otherwise provided in §§ 3-2A-05, 3-2A-06, 3-2A-08A [and], 3-2A-09,  
31 3-2A-09B, AND 3-2A-10 of this subtitle, the provisions of this subtitle shall be deemed  
32 procedural in nature and may not be construed to create, enlarge, or diminish any  
33 cause of action not heretofore existing, except the defense of failure to comply with the  
34 procedures required under this subtitle.

35 8-306.

36 In a civil action in which a jury trial is permitted, the jury shall consist of AT  
37 LEAST 6 jurors.

1 9-124.

2 (A) IN A CIVIL ACTION, IF A COURT DETERMINES THAT SCIENTIFIC,  
3 TECHNICAL, OR OTHER SPECIALIZED KNOWLEDGE WILL ASSIST THE TRIER OF FACT  
4 TO UNDERSTAND THE EVIDENCE OR TO DETERMINE A FACT IN ISSUE, A WITNESS  
5 DETERMINED BY THE COURT TO BE QUALIFIED AS AN EXPERT BY KNOWLEDGE,  
6 SKILL, EXPERIENCE, TRAINING, OR EDUCATION MAY TESTIFY CONCERNING THE  
7 EVIDENCE OR FACT IN ISSUE IN THE FORM OF AN OPINION OR OTHERWISE ONLY IF  
8 THE FOLLOWING CRITERIA ARE MET:

9 (1) THE TESTIMONY IS BASED ON SUFFICIENT FACTS OR DATA;

10 (2) THE TESTIMONY IS THE PRODUCT OF RELIABLE PRINCIPLES AND  
11 METHODS; AND

12 (3) THE WITNESS HAS APPLIED THE PRINCIPLES AND METHODS  
13 RELIABLY TO THE FACTS OF THE CASE.

14 (B) (1) IF A COURT CONSIDERS IT NECESSARY OR ON MOTION BY A PARTY,  
15 THE COURT MAY HEAR EVIDENCE REGARDING THE CRITERIA IN SUBSECTION (A) OF  
16 THIS SECTION, INCLUDING HEARING TESTIMONY FROM THE PROPOSED EXPERT  
17 WITNESS.

18 (2) IF THE COURT DECIDES TO HEAR EVIDENCE REGARDING THE  
19 CRITERIA IN SUBSECTION (A) OF THIS SECTION, THE COURT SHALL HEAR THE  
20 EVIDENCE OUT OF THE PRESENCE OF A JURY.

21 11-107.

22 (a) Except as provided in § 11-106 of this article, the legal rate of interest on  
23 a judgment shall be at the rate of [10 percent per annum on the amount of judgment]  
24 THE WEEKLY AVERAGE 1-YEAR CONSTANT MATURITY TREASURY YIELD, AS  
25 PUBLISHED BY THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, FOR  
26 THE CALENDAR WEEK PRECEDING THE DATE OF THE JUDGMENT.

27 11-108.

28 (c) An award by the health claims arbitration panel in accordance with §  
29 3-2A-05 of this article for damages in which the cause of action arose before January  
30 1, 2005, shall be considered an award for purposes of this section.

31 (e) The provisions of this section do not apply to AN ARBITRATION AWARD OR  
32 a verdict under Title 3, Subtitle 2A of this article for damages in which the cause of  
33 action arises on or after January 1, 2005.

34 11-109.

35 (c) (1) The court [or the health claims arbitration panel] may order that all  
36 or part of the future economic damages portion of the award be paid in the form of  
37 annuities or other appropriate financial instruments, or that it be paid in periodic or

1 other payments consistent with the needs of the plaintiff, funded in full by the  
 2 defendant or the defendant's insurer and equal when paid to the amount of the future  
 3 economic damages award.

4 (2) In the event that the court [or panel] shall order that the award for  
 5 future economic damages be paid in a form other than a lump sum, the court [or  
 6 panel] shall order that the defendant or the defendant's insurer provide adequate  
 7 security for the payment of all future economic damages.

8 (3) The court [or panel] may appoint a conservator under this  
 9 subsection for the plaintiff, upon such terms as the court [or panel] may impose, who  
 10 shall have the full and final authority to resolve any dispute between the plaintiff and  
 11 the defendant or the defendant's insurer regarding the need or cost of expenses for the  
 12 plaintiff's medical, surgical, custodial, or other care or treatment.

13 [(d)] (4) If the plaintiff [under this section] dies before the final periodic  
 14 payment of an award is made, the unpaid balance of the award for future loss of  
 15 earnings shall revert to the estate of the plaintiff and the unpaid balance of the award  
 16 for future medical expenses shall revert to the defendant or to the defendant's insurer  
 17 if the insurer provided the funds for the future damages award.

18 (D) IF A HEALTH CLAIMS ARBITRATION PANEL AWARDS FUTURE ECONOMIC  
 19 DAMAGES IN ACCORDANCE WITH § 3-2A-05 OF THIS ARTICLE FOR DAMAGES IN  
 20 WHICH THE CAUSE OF ACTION ARISES BEFORE JUNE 1, 2005, THE ARBITRATION  
 21 PANEL MAY ORDER THAT FUTURE ECONOMIC DAMAGES BE PAID IN ACCORDANCE  
 22 WITH THE PROVISIONS OF SUBSECTION (C) OF THIS SECTION.

23 (E) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO AN ARBITRATION  
 24 AWARD OR VERDICT UNDER TITLE 3, SUBTITLE 2A OF THIS ARTICLE FOR DAMAGES IN  
 25 WHICH THE CAUSE OF ACTION ARISES ON OR AFTER JUNE 1, 2005.

26 **Article - Health Occupations**

27 14-101.

28 (l) (1) "Practice medicine" means to engage, with or without compensation[,  
 29 in medical];

30 (i) IN MEDICAL:

31 1. Diagnosis;

32 [(ii)] 2. Healing;

33 [(iii)] 3. Treatment; or

34 [(iv)] 4. Surgery; OR

1 (II) IN TESTIFYING AS OR OFFERING AN OPINION AS A MEDICAL  
2 EXPERT WITNESS REGARDING THE CONDUCT DESCRIBED IN ITEM (I) OF THIS  
3 PARAGRAPH IN THE COURSE OF A LEGAL PROCEEDING.

4 14-302.

5 Subject to the rules, regulations, and orders of the Board, the following  
6 individuals may practice medicine without a license:

7 (4) A physician who resides in and is authorized to practice medicine by  
8 any state adjoining this State and whose practice extends into this State, if:

9 (ii) The same privileges are extended to licensed physicians of this  
10 State by the adjoining state; [and]

11 (5) An individual while under the supervision of a licensed physician  
12 who has specialty training in psychiatry, and whose specialty training in psychiatry  
13 has been approved by the Board, if the individual submits an application to the Board  
14 on or before October 1, 1993, and either:

15 (ii) 2. Has 4,000 hours of supervised clinical experience that is  
16 approved by the Board; AND

17 (6) A PHYSICIAN LICENSED BY AND RESIDING IN ANOTHER  
18 JURISDICTION, WHILE TESTIFYING IN A CIVIL ACTION OR ATTESTING TO  
19 COMPLIANCE WITH OR DEPARTURES FROM STANDARDS OF CARE FOR PURPOSES OF  
20 A CERTIFICATE OF QUALIFIED EXPERT UNDER TITLE 3, SUBTITLE 2A OF THE COURTS  
21 ARTICLE.

22 14-401.

23 (i) (1) Those individuals not licensed under this title but covered under §  
24 14-413(a)(1)(ii)3 and 4 of this subtitle are subject to the hearing provisions of §  
25 14-405 of this subtitle.

26 (2) THOSE INDIVIDUALS WHO PRACTICE MEDICINE BUT ARE NOT  
27 LICENSED UNDER § 14-302(6) OF THIS TITLE ARE SUBJECT TO THE PROVISIONS OF  
28 THIS SUBTITLE.

29 14-404.

30 (a) Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on  
31 the affirmative vote of a majority of the quorum, may reprimand any licensee, place  
32 any licensee on probation, or suspend or revoke a license, OR TAKE SIMILAR  
33 DISCIPLINARY ACTIONS AGAINST AN INDIVIDUAL EXEMPT FROM LICENSING UNDER  
34 § 14-302(6) OF THIS TITLE if the licensee OR INDIVIDUAL:

35 (1) Fraudulently or deceptively obtains or attempts to obtain a license  
36 for the applicant or licensee or for another;

- 1 (2) Fraudulently or deceptively uses a license;
- 2 (3) Is guilty of immoral or unprofessional conduct in the practice of  
3 medicine;
- 4 (4) Is professionally, physically, or mentally incompetent;
- 5 (5) Solicits or advertises in violation of § 14-503 of this title;
- 6 (6) Abandons a patient;
- 7 (7) Habitually is intoxicated;
- 8 (8) Is addicted to, or habitually abuses, any narcotic or controlled  
9 dangerous substance as defined in § 5-101 of the Criminal Law Article;
- 10 (9) Provides professional services:
- 11 (i) While under the influence of alcohol; or
- 12 (ii) While using any narcotic or controlled dangerous substance, as  
13 defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of  
14 therapeutic amounts or without valid medical indication;
- 15 (10) Promotes the sale of drugs, devices, appliances, or goods to a patient  
16 so as to exploit the patient for financial gain;
- 17 (11) Willfully makes or files a false report or record in the practice of  
18 medicine;
- 19 (12) Willfully fails to file or record any medical report as required under  
20 law, willfully impedes or obstructs the filing or recording of the report, or induces  
21 another to fail to file or record the report;
- 22 (13) On proper request, and in accordance with the provisions of Title 4,  
23 Subtitle 3 of the Health - General Article, fails to provide details of a patient's  
24 medical record to the patient, another physician, or hospital;
- 25 (14) Solicits professional patronage through an agent or other person or  
26 profits from the acts of a person who is represented as an agent of the physician;
- 27 (15) Pays or agrees to pay any sum to any person for bringing or referring  
28 a patient or accepts or agrees to accept any sum from any person for bringing or  
29 referring a patient;
- 30 (16) Agrees with a clinical or bioanalytical laboratory to make payments  
31 to the laboratory for a test or test series for a patient, unless the licensed physician  
32 discloses on the bill to the patient or third-party payor:
- 33 (i) The name of the laboratory;

- 1 (ii) The amount paid to the laboratory for the test or test series; and
- 2 (iii) The amount of procurement or processing charge of the licensed  
3 physician, if any, for each specimen taken;
- 4 (17) Makes a willful misrepresentation in treatment;
- 5 (18) Practices medicine with an unauthorized person or aids an  
6 unauthorized person in the practice of medicine;
- 7 (19) Grossly overutilizes health care services;
- 8 (20) Offers, undertakes, or agrees to cure or treat disease by a secret  
9 method, treatment, or medicine;
- 10 (21) Is disciplined by a licensing or disciplinary authority or convicted or  
11 disciplined by a court of any state or country or disciplined by any branch of the  
12 United States uniformed services or the Veterans' Administration for an act that  
13 would be grounds for disciplinary action under this section;
- 14 (22) Fails to meet appropriate standards as determined by appropriate  
15 peer review for the delivery of quality medical and surgical care performed in an  
16 outpatient surgical facility, office, hospital, or any other location in this State;
- 17 (23) Willfully submits false statements to collect fees for which services  
18 are not provided;
- 19 (24) Was subject to investigation or disciplinary action by a licensing or  
20 disciplinary authority or by a court of any state or country for an act that would be  
21 grounds for disciplinary action under this section and the licensee:
- 22 (i) Surrendered the license issued by the state or country to the  
23 state or country; or
- 24 (ii) Allowed the license issued by the state or country to expire or  
25 lapse;
- 26 (25) Knowingly fails to report suspected child abuse in violation of § 5-704  
27 of the Family Law Article;
- 28 (26) Fails to educate a patient being treated for breast cancer of  
29 alternative methods of treatment as required by § 20-113 of the Health - General  
30 Article;
- 31 (27) Sells, prescribes, gives away, or administers drugs for illegal or  
32 illegitimate medical purposes;
- 33 (28) Fails to comply with the provisions of § 12-102 of this article;

- 1 (29) Refuses, withholds from, denies, or discriminates against an  
2 individual with regard to the provision of professional services for which the licensee  
3 is licensed and qualified to render because the individual is HIV positive;
- 4 (30) Except as to an association that has remained in continuous  
5 existence since July 1, 1963:
- 6 (i) Associates with a pharmacist as a partner or co-owner of a  
7 pharmacy for the purpose of operating a pharmacy;
- 8 (ii) Employs a pharmacist for the purpose of operating a pharmacy;  
9 or
- 10 (iii) Contracts with a pharmacist for the purpose of operating a  
11 pharmacy;
- 12 (31) Except in an emergency life-threatening situation where it is not  
13 feasible or practicable, fails to comply with the Centers for Disease Control's  
14 guidelines on universal precautions;
- 15 (32) Fails to display the notice required under § 14-415 of this title;
- 16 (33) Fails to cooperate with a lawful investigation conducted by the  
17 Board;
- 18 (34) Is convicted of insurance fraud as defined in § 27-801 of the  
19 Insurance Article;
- 20 (35) Is in breach of a service obligation resulting from the applicant's or  
21 licensee's receipt of State or federal funding for the licensee's medical education;
- 22 (36) Willfully makes a false representation when seeking or making  
23 application for licensure or any other application related to the practice of medicine;
- 24 (37) By corrupt means, threats, or force, intimidates or influences, or  
25 attempts to intimidate or influence, for the purpose of causing any person to withhold  
26 or change testimony in hearings or proceedings before the Board or those otherwise  
27 delegated to the Office of Administrative Hearings;
- 28 (38) By corrupt means, threats, or force, hinders, prevents, or otherwise  
29 delays any person from making information available to the Board in furtherance of  
30 any investigation of the Board;
- 31 (39) Intentionally misrepresents credentials for the purpose of testifying  
32 or rendering an expert opinion in hearings or proceedings before the Board or those  
33 otherwise delegated to the Office of Administrative Hearings; [or]
- 34 (40) Fails to keep adequate medical records as determined by appropriate  
35 peer review; OR

1 (41) FALSELY TESTIFIES OR ATTESTS TO COMPLIANCE WITH OR  
2 DEPARTURE FROM STANDARDS OF CARE WHEN ATTESTING TO A CERTIFICATE OF  
3 QUALIFIED EXPERT UNDER TITLE 3, SUBTITLE 2A OF THE COURTS ARTICLE OR  
4 TESTIFYING IN A CIVIL ACTION, AS DETERMINED BY APPROPRIATE PEER REVIEW.

5 **Article - Insurance**

6 [24-214.

7 (a) In this section, "medical professional liability insurance" means insurance  
8 providing coverage against damages due to medical injury arising out of the  
9 performance of professional services rendered or which should have been rendered by  
10 a health care provider.

11 (b) Notwithstanding § 10-130(a) of this subtitle, the Society shall:

12 (1) offer policyholders and potential policyholders the ability to purchase  
13 and renew coverage directly from the Society; and

14 (2) for a policyholder that purchases or renews coverage directly, provide  
15 a premium discount or rebate in an amount equivalent to the commission the Society  
16 would have paid an insurance producer to sell the same policy less 1% for  
17 administrative expense.

18 (c) Beginning January 1, 2005 until December 31, 2009, an authorized insurer  
19 that issues policies of medical professional liability insurance in the State may not  
20 pay a commission at a rate that exceeds 5% of the premium.]

21 SECTION 2. AND BE IT FURTHER ENACTED, That §§ 3-2A-05(h),  
22 3-2A-06(f)(1), (5), and (6), 3-2A-11, 5-608.1, 8-306, and 11-107(a) of the Courts  
23 Article as enacted by this Act shall be construed to apply only prospectively and may  
24 not be applied or interpreted to have any effect on or application to any cause of action  
25 arising before the effective date of this Act.

26 SECTION 3. AND BE IT FURTHER ENACTED, That §§ 3-2A-04(b)(1)1 and  
27 (4), 3-2A-05(b)(4) and (e), and 9-124 of the Courts Article as enacted by this Act shall  
28 be construed to apply only prospectively and may not be applied or interpreted to  
29 have any effect on or application to any claim or case filed before the effective date of  
30 this Act.

31 SECTION 4. AND BE IT FURTHER ENACTED, That if any provision of this  
32 Act or the application thereof to any person or circumstance is held invalid for any  
33 reason in a court of competent jurisdiction, the invalidity does not affect other  
34 provisions or any other application of this Act which can be given effect without the  
35 invalid provision or application, and for this purpose the provisions of this Act are  
36 declared severable.

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