
By: **Delegates Morhaim, Zirkin, Hammen, Barve, Jones, McComas, Shank,
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Introduced and read first time: February 9, 2006

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Malpractice - Damages - Periodic Payments**

3 FOR the purpose of requiring periodic payments of certain damages in excess of a
4 certain amount for certain causes of action; establishing procedures and
5 requirements relating to periodic payments and annuities for funding periodic
6 payments; providing for the application of this Act; and generally relating to
7 periodic payments for awards or judgments in health care malpractice claims.

8 BY adding to

9 Article - Courts and Judicial Proceedings
10 Section 3-2A-10
11 Annotated Code of Maryland
12 (2002 Replacement Volume and 2005 Supplement)

13 BY repealing and reenacting, with amendments,

14 Article - Courts and Judicial Proceedings
15 Section 3-2A-10
16 Annotated Code of Maryland
17 (2002 Replacement Volume and 2005 Supplement)

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

20 **Article - Courts and Judicial Proceedings**

21 3-2A-10.

22 (A) (1) THIS SECTION APPLIES TO AN AWARD UNDER § 3-2A-05 OF THIS
23 SUBTITLE OR A VERDICT UNDER § 3-2A-06 OF THIS SUBTITLE FOR A CAUSE OF
24 ACTION ARISING ON OR AFTER JUNE 1, 2006.

25 (2) THIS SECTION DOES NOT APPLY IF THE CLAIMANT OR PLAINTIFF
26 AND THE DEFENDANT AGREE TO AN ALTERNATIVE METHOD OF PAYMENT.

1 (3) IF THE CLAIMANT OR PLAINTIFF AND DEFENDANT NOTIFY THE
2 COURT WITHIN 30 DAYS OF THE ENTRY OF THE AWARD OR VERDICT THAT THEY
3 HAVE AGREED TO AN ALTERNATIVE METHOD OF PAYMENT, THE ARBITRATION
4 PANEL OR COURT SHALL ENTER THE TERMS OF THE AGREEMENT ON THE RECORD
5 AS PART OF THE AWARD OR JUDGMENT.

6 (B) IF FUTURE ECONOMIC DAMAGES, DETERMINED IN ACCORDANCE WITH
7 SUBSECTION (E)(1) OF THIS SECTION, AND NONECONOMIC DAMAGES, LIMITED IN
8 ACCORDANCE WITH § 3-2A-09 OF THIS SUBTITLE, IN AGGREGATE ARE \$250,000 OR
9 LESS, THE ARBITRATION PANEL OR THE COURT SHALL:

10 (1) ENTER THIS AMOUNT AS THE AWARD OR VERDICT FOR FUTURE
11 ECONOMIC DAMAGES AND NONECONOMIC DAMAGES; AND

12 (2) ORDER THE DEFENDANT TO PAY THIS AMOUNT AS A LUMP SUM
13 WITH PAST ECONOMIC DAMAGES.

14 (C) IF FUTURE ECONOMIC DAMAGES, DETERMINED IN ACCORDANCE WITH
15 SUBSECTION (E)(1) OF THIS SECTION, AND NONECONOMIC DAMAGES, LIMITED IN
16 ACCORDANCE WITH § 3-2A-09 OF THIS SUBTITLE, IN THE AGGREGATE ARE MORE
17 THAN \$250,000, THE ARBITRATION PANEL OR THE COURT SHALL:

18 (1) ENTER AS THE AWARD OR VERDICT FOR FUTURE ECONOMIC
19 DAMAGES AND NONECONOMIC DAMAGES THE AMOUNT SPECIFIED IN SUBSECTION
20 (G) OF THIS SECTION; AND

21 (2) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, ORDER
22 THE DEFENDANT TO PAY:

23 (I) \$100,000 AS A LUMP SUM WITH PAST ECONOMIC DAMAGES; AND

24 (II) THE AMOUNT IN EXCESS OF \$100,000 IN PERIODIC PAYMENTS IN
25 THE FORM OF AN ANNUITY.

26 (D) FOR A SURVIVAL OR WRONGFUL DEATH ACTION:

27 (1) NONECONOMIC DAMAGES SHALL BE PAID AS A LUMP SUM WITH
28 PAST ECONOMIC DAMAGES; AND

29 (2) ONLY FUTURE ECONOMIC DAMAGES IN EXCESS OF \$250,000 SHALL
30 BE SUBJECT TO PERIODIC PAYMENTS IN THE FORM OF AN ANNUITY.

31 (E) (1) FOR A CLAIM SUBJECT TO THIS SECTION, THE FINDER OF FACT
32 SHALL:

33 (I) DETERMINE FUTURE ECONOMIC DAMAGES WITHOUT
34 DISCOUNTING THE DAMAGES TO PRESENT VALUE; AND

35 (II) ITEMIZE FUTURE ECONOMIC DAMAGES AS:

36 1. FUTURE MEDICAL EXPENSES;

1 (II) IN A CLAIM FOR WRONGFUL DEATH, PECUNIARY LOSS OR
2 BENEFIT, DETERMINED UNDER SUBSECTION (E)(1) OF THIS SECTION, DIVIDED BY
3 THE PERIOD FOR WHICH THE CLAIMANT MIGHT REASONABLY HAVE EXPECTED A
4 PECUNIARY BENEFIT FROM THE DECEDENT HAD THE WRONGFUL DEATH NOT
5 OCCURRED, DETERMINED UNDER SUBSECTION (E)(2) OF THIS SUBSECTION.

6 (2) THE PERIODIC PAYMENTS FOR FUTURE LOSS OF EARNINGS MAY NOT
7 COMMENCE UNTIL THE COMMENCEMENT DATE OF THE WORKING LIFE OF THE
8 CLAIMANT.

9 (3) (I) THE AMOUNT OF FUTURE ECONOMIC DAMAGES AND
10 NONECONOMIC DAMAGES TO BE FUNDED BY AN ANNUITY PURSUANT TO
11 PARAGRAPH (1)(I) OF THIS SUBSECTION SHALL BE REDUCED BY THE AMOUNT OF THE
12 LUMP-SUM PAYMENT FOR FUTURE ECONOMIC DAMAGES AND NONECONOMIC
13 DAMAGES REQUIRED BY SUBSECTION (C)(2)(I) OF THIS SECTION.

14 (II) THE AMOUNT OF FUTURE ECONOMIC DAMAGES TO BE FUNDED
15 BY AN ANNUITY PURSUANT TO PARAGRAPH (1)(II) OF THIS SUBSECTION SHALL BE
16 REDUCED BY THE AMOUNT OF THE LUMP-SUM PAYMENT FOR FUTURE ECONOMIC
17 DAMAGES REQUIRED BY SUBSECTION (D)(2) OF THIS SECTION.

18 (G) AFTER THE DEFENDANT PROVIDES THE ARBITRATION PANEL OR THE
19 COURT THE INFORMATION DESCRIBED IN SUBSECTION (F)(1) OF THIS SECTION, THE
20 ARBITRATION PANEL OR THE COURT SHALL:

21 (1) FOR A CLAIM SUBJECT TO SUBSECTION (C) OF THIS SECTION, ENTER
22 AS THE AWARD OR VERDICT FOR FUTURE ECONOMIC DAMAGES AND NONECONOMIC
23 DAMAGES THE SUM OF:

24 (I) THE LUMP-SUM PAYMENT FOR FUTURE ECONOMIC DAMAGES
25 AND NONECONOMIC DAMAGES REQUIRED BY SUBSECTION (C)(2)(I) OF THIS SECTION;
26 AND

27 (II) THE PURCHASE PRICE OF THE ANNUITY DESCRIBED IN
28 SUBSECTION (F)(1)(I) OF THE SECTION; OR

29 (2) FOR A CLAIM SUBJECT TO SUBSECTION (D) OF THIS SECTION, ENTER
30 AS THE AWARD OR VERDICT FOR FUTURE ECONOMIC DAMAGES AND NONECONOMIC
31 DAMAGES THE SUM OF:

32 (I) THE LUMP-SUM PAYMENT FOR FUTURE ECONOMIC DAMAGES
33 AND NONECONOMIC DAMAGES REQUIRED BY SUBSECTION (D) OF THIS SECTION;
34 AND

35 (II) THE PURCHASE PRICE OF THE ANNUITY DESCRIBED IN
36 SUBSECTION (F)(1)(II) OF THIS SECTION.

37 (H) (1) THE DEFENDANT OR THE DEFENDANT'S INSURER MAY PURCHASE
38 MULTIPLE ANNUITIES IF, IN THE AGGREGATE, THE ANNUITIES SATISFY THE
39 REQUIREMENTS OF THIS SECTION.

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

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

10 (II) IF THE CLAIMANT DIES BEFORE THE END OF THE
11 GUARANTEED TERM OF THE ANNUITY, THE UNPAID BALANCE OF THE ANNUITY
12 SHALL BE PAID TO THE ESTATE OF THE CLAIMANT.

13 (2) AN ANNUITY PURCHASED UNDER THIS SECTION TO FUND FUTURE
14 MEDICAL EXPENSES, NONECONOMIC DAMAGES, OR PECUNIARY LOSS OR BENEFIT
15 MAY NOT HAVE A GUARANTEED TERM AND SHALL TERMINATE AT THE DEATH OF
16 THE CLAIMANT.

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

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

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

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

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

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

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

32 (1) MEETS THE REQUIREMENTS OF THIS SECTION; AND

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

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

1 (II) IN WHICH THE CLAIMANT HAS A PERFECTED SECURITY
2 INTEREST.

3 (L) THE PURCHASE OF AN ANNUITY BY THE DEFENDANT OR THE
4 DEFENDANT'S INSURER IN ACCORDANCE WITH THE TERMS OF THIS SECTION SHALL
5 BE DEEMED TO HAVE FULLY SATISFIED THE PORTION OF THE AWARD OR VERDICT
6 FOR FUTURE ECONOMIC DAMAGES AND NONECONOMIC DAMAGES NOT SUBJECT TO
7 A LUMP-SUM PAYMENT UNDER SUBSECTION (C) OR (D) OF THIS SECTION.

8 (M) IF THE LUMP-SUM PAYMENT FOR FUTURE ECONOMIC DAMAGES AND
9 NONECONOMIC DAMAGES UNDER SUBSECTION (C) OR (D) OF THIS SECTION,
10 TOGETHER WITH THE LUMP-SUM PAYMENT FOR PAST ECONOMIC DAMAGES IS NOT
11 SUFFICIENT TO SATISFY THE CLAIMANT'S OBLIGATION TO PAY ATTORNEY'S FEES
12 AND EXPENSES, THE ARBITRATION PANEL OR THE COURT SHALL:

13 (1) INCREASE THE LUMP-SUM PAYMENT FOR FUTURE ECONOMIC
14 DAMAGES AND NONECONOMIC DAMAGES SO THAT THE TOTAL LUMP-SUM PAYMENT
15 TO THE CLAIMANT OR PLAINTIFF IS SUFFICIENT TO SATISFY THE OBLIGATION OF
16 THE CLAIMANT OR PLAINTIFF TO PAY ATTORNEY'S FEES AND EXPENSES; AND

17 (2) REDUCE, BY THE AMOUNT BY WHICH THE LUMP-SUM PAYMENT IS
18 INCREASED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE PURCHASE PRICE OF
19 THE ANNUITY TO FUND FUTURE ECONOMIC DAMAGES AND NONECONOMIC
20 DAMAGES UNDER SUBSECTION (C) OR (D) OF THIS SECTION.

21 [3-2A-10.] 3-2A-11.

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

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 June 1, 2006.