
By: **Delegates Donoghue, Barve, Kach, Rudolph, and Zirkin**

Introduced and read first time: February 10, 2006

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Malpractice Actions - Payment of Future Damages**

3 FOR the purpose of requiring that if the verdict for future damages in a certain health
4 care malpractice action exceeds a certain amount, on motion of any party, the
5 court shall appoint a neutral expert to evaluate whether all or part of the future
6 damages should be paid in a certain form and, if the neutral expert makes a
7 certain finding, to recommend how the payments should be structured;
8 providing for the selection and qualifications of a neutral expert; requiring each
9 party to provide certain information and records to a neutral expert; requiring a
10 neutral expert to report the neutral expert's findings and recommendations
11 within a certain time after appointment by the court; requiring a court to hold a
12 hearing on the report on motion of any party; requiring the court to make a
13 certain finding if the court rejects the findings and recommendations of the
14 neutral expert; providing for the assessment of the costs of a neutral expert;
15 requiring that a certain annuity have a certain rating and be secured by certain
16 assets; providing for the calculation of attorneys' fees under certain
17 circumstances; providing for the application of this Act; defining a certain term;
18 and generally relating to the payment of future damages in certain health care
19 malpractice actions.

20 BY renumbering

21 Article - Courts and Judicial Proceedings
22 Section 3-2A-10
23 to be Section 3-2A-11
24 Annotated Code of Maryland
25 (2002 Replacement Volume and 2005 Supplement)

26 BY adding to

27 Article - Courts and Judicial Proceedings
28 Section 3-2A-10
29 Annotated Code of Maryland
30 (2002 Replacement Volume and 2005 Supplement)

31 BY repealing and reenacting, without amendments,

1 Article - Courts and Judicial Proceedings
2 Section 11-109
3 Annotated Code of Maryland
4 (2002 Replacement Volume and 2005 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
6 MARYLAND, That Section(s) 3-2A-10 of Article - Courts and Judicial Proceedings of
7 the Annotated Code of Maryland be renumbered to be Section(s) 3-2A-11.

8 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
9 read as follows:

10 **Article - Courts and Judicial Proceedings**

11 3-2A-10.

12 (A) (1) IN THIS SECTION, "FUTURE DAMAGES" MEANS FUTURE ECONOMIC
13 DAMAGES AND FUTURE NONECONOMIC DAMAGES.

14 (2) "FUTURE DAMAGES" DOES NOT INCLUDE FUTURE LOSS OF
15 EARNINGS.

16 (B) THIS SECTION APPLIES TO A VERDICT UNDER THIS SUBTITLE FOR A
17 CAUSE OF ACTION ARISING ON OR AFTER OCTOBER 1, 2006.

18 (C) IF A VERDICT FOR FUTURE DAMAGES EXCEEDS \$250,000, ON MOTION OF
19 ANY PARTY, THE COURT SHALL APPOINT A NEUTRAL EXPERT IN ACCORDANCE WITH
20 SUBSECTION (D) OF THIS SECTION TO:

21 (1) EVALUATE WHETHER ALL OR PART OF THE FUTURE DAMAGES
22 SHOULD BE PAID IN THE FORM OF ANNUITIES OR OTHER APPROPRIATE FINANCIAL
23 INSTRUMENTS OR IN PERIODIC OR OTHER PAYMENTS CONSISTENT WITH THE NEEDS
24 OF THE PLAINTIFF, FUNDED IN FULL BY THE DEFENDANT OR THE DEFENDANT'S
25 INSURER; AND

26 (2) IF THE NEUTRAL EXPERT FINDS THAT IT WOULD BE APPROPRIATE
27 AND IN THE INTERESTS OF JUSTICE FOR THE FUTURE DAMAGES TO BE PAID IN THE
28 FORM OF ANNUITIES OR OTHER APPROPRIATE FINANCIAL INSTRUMENTS OR IN
29 PERIODIC OR OTHER PAYMENTS, RECOMMEND HOW THE PAYMENTS SHOULD BE
30 STRUCTURED.

31 (D) (1) A NEUTRAL EXPERT SHALL BE APPOINTED FROM A LIST OF
32 QUALIFIED EXPERTS MAINTAINED BY THE ADMINISTRATIVE OFFICE OF THE
33 COURTS.

34 (2) THE COURT OF APPEALS MAY ADOPT RULES GOVERNING THE
35 SELECTION AND QUALIFICATIONS OF A NEUTRAL EXPERT.

1 (3) TO BE ELIGIBLE FOR APPOINTMENT AS A NEUTRAL EXPERT UNDER
2 THIS SECTION, IN ADDITION TO ANY QUALIFICATIONS ESTABLISHED BY THE COURT
3 OF APPEALS BY RULE, AN INDIVIDUAL SHALL BE:

4 (I) AN ATTORNEY OR FORMER JUDGE WITH AT LEAST 5 YEARS'
5 EXPERIENCE IN HEALTH CARE MALPRACTICE LITIGATION;

6 (II) FAMILIAR WITH ANNUITIES AND RELATED FINANCIAL
7 PRODUCTS; AND

8 (III) FAMILIAR WITH FEDERAL AND STATE ENTITLEMENT
9 PROGRAMS.

10 (E) EACH PARTY SHALL PROVIDE ANY INFORMATION AND RECORDS THAT
11 THE NEUTRAL EXPERT DETERMINES TO BE NEEDED TO CARRY OUT THE NEUTRAL
12 EXPERT'S DUTIES UNDER THIS SECTION, INCLUDING INFORMATION THAT
13 OTHERWISE WOULD BE CONFIDENTIAL UNDER ANY OTHER PROVISION OF LAW.

14 (F) UNLESS THE COURT GRANTS AN EXTENSION FOR GOOD CAUSE, THE
15 NEUTRAL EXPERT SHALL REPORT THE NEUTRAL EXPERT'S FINDINGS AND
16 RECOMMENDATIONS TO THE COURT AND EACH ATTORNEY OF RECORD WITHIN 60
17 DAYS AFTER APPOINTMENT BY THE COURT.

18 (G) ON MOTION OF ANY PARTY, THE COURT SHALL HOLD A HEARING ON THE
19 REPORT.

20 (H) IF THE COURT REJECTS THE FINDINGS AND RECOMMENDATIONS OF THE
21 NEUTRAL EXPERT, THE COURT SHALL MAKE A WRITTEN FINDING OR A SPECIFIC
22 FINDING ON THE RECORD STATING THE REASONS FOR THE REJECTION.

23 (I) THE COURT SHALL ASSESS THE COSTS OF THE NEUTRAL EXPERT AGAINST
24 THE PARTY OR PARTIES WHO REQUESTED THE APPOINTMENT OF A NEUTRAL
25 EXPERT.

26 (J) IF THE COURT ORDERS THAT ALL OR PART OF THE FUTURE DAMAGES BE
27 PAID IN THE FORM OF AN ANNUITY, THE DEFENDANT OR THE DEFENDANT'S
28 INSURER SHALL PURCHASE AN ANNUITY FROM AN INSURER THAT HAS ONE OF THE
29 FOLLOWING RATINGS FROM TWO OF THE FOLLOWING RATING ORGANIZATIONS:

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

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

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

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

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

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

6 (1) MEETS THE REQUIREMENTS OF SUBSECTION (J) OF THIS SECTION;
7 AND

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

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

12 (II) IN WHICH THE CLAIMANT HAS A PERFECTED SECURITY
13 INTEREST.

14 (L) (1) IF THE COURT ORDERS THAT ALL OR PART OF THE FUTURE
15 DAMAGES BE PAID IN THE FORM OF AN ANNUITY, THE AMOUNT OF ATTORNEYS' FEES
16 OWED BY THE PLAINTIFF TO THE PLAINTIFF'S ATTORNEY SHALL BE BASED ON THE
17 COST OF THE ANNUITY RATHER THAN THE AMOUNT OF THE JUDGMENT FOR FUTURE
18 DAMAGES, UNLESS THE COURT FINDS THAT THE AMOUNT WOULD BE
19 UNREASONABLE UNDER THE CIRCUMSTANCES OF THE CASE.

20 (2) IF THE COURT FINDS THAT THE AMOUNT OF ATTORNEYS' FEES
21 CALCULATED UNDER PARAGRAPH (1) OF THIS SUBSECTION WOULD BE
22 UNREASONABLE UNDER THE CIRCUMSTANCES OF THE CASE, THE COURT MAY
23 ORDER A HIGHER OR LOWER AMOUNT BASED ON:

24 (I) THE TIME AND LABOR REQUIRED, THE NOVELTY AND
25 DIFFICULTY OF THE QUESTIONS INVOLVED, AND THE SKILL REQUISITE TO PERFORM
26 THE LEGAL SERVICE PROPERLY;

27 (II) WHETHER THE ACCEPTANCE OF THE PARTICULAR
28 EMPLOYMENT PRECLUDED OTHER EMPLOYMENT OF THE LAWYER;

29 (III) THE FEE CUSTOMARILY CHARGED IN THE LOCALITY FOR
30 SIMILAR LEGAL SERVICES;

31 (IV) THE AMOUNT INVOLVED AND THE RESULTS OBTAINED;

32 (V) THE TIME LIMITATIONS IMPOSED BY THE CLIENT OR BY THE
33 CIRCUMSTANCES;

34 (VI) THE NATURE AND LENGTH OF THE PROFESSIONAL
35 RELATIONSHIP WITH THE CLIENT; AND

1 (VII) THE EXPERIENCE, REPUTATION, AND ABILITY OF THE LAWYER
2 OR LAWYERS PERFORMING THE SERVICES.

3 11-109.

4 (a) (1) In this section, "economic damages" means loss of earnings and
5 medical expenses.

6 (2) "Economic damages" does not include punitive damages.

7 (b) As part of the verdict in any action for damages for personal injury in
8 which the cause of action arises on or after July 1, 1986 or for wrongful death in
9 which the cause of action arises on or after October 1, 1994, the trier of fact shall
10 itemize the award to reflect the monetary amount intended for:

11 (1) Past medical expenses;

12 (2) Future medical expenses;

13 (3) Past loss of earnings;

14 (4) Future loss of earnings;

15 (5) Noneconomic damages; and

16 (6) Other damages.

17 (c) (1) The court or the health claims arbitration panel may order that all or
18 part of the future economic damages portion of the award be paid in the form of
19 annuities or other appropriate financial instruments, or that it be paid in periodic or
20 other payments consistent with the needs of the plaintiff, funded in full by the
21 defendant or the defendant's insurer and equal when paid to the amount of the future
22 economic damages award.

23 (2) In the event that the court or panel shall order that the award for
24 future economic damages be paid in a form other than a lump sum, the court or panel
25 shall order that the defendant or the defendant's insurer provide adequate security
26 for the payment of all future economic damages.

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

32 (d) If the plaintiff under this section dies before the final periodic payment of
33 an award is made, the unpaid balance of the award for future loss of earnings shall
34 revert to the estate of the plaintiff and the unpaid balance of the award for future
35 medical expenses shall revert to the defendant or to the defendant's insurer if the
36 insurer provided the funds for the future damages award.

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2006.