

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 451 (Senator Hooper, *et al.*)
Judicial Proceedings

Civil Actions - Limitations on Awards for Noneconomic Damages - Latent Diseases or Injuries

This bill provides that a cause of action for damages for personal injury in a latent disease or latent injury case arises on the earlier of: (1) the diagnosis; or (2) the manifestation of symptoms of a legally compensable injury or disease. If the cause of action arises on or after July 1, 1986, the amount of noneconomic damages is subject to a statutory limit.

The bill applies to all filed or pending cases in which a trial has not commenced before July 1, 2006.

Fiscal Summary

State Effect: The bill would not materially affect governmental operations or finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: Generally, a plaintiff in a personal injury or wrongful death suit may recover both economic and noneconomic damages. Punitive damages are only authorized under limited circumstances.

In an action for personal injury, noneconomic damages include pain, suffering, inconvenience, physical impairment, disfigurement, and loss of consortium. In an action

for wrongful death, noneconomic damages include mental anguish; emotional pain and suffering; loss of companionship; and marital, parental, and filial care.

Noneconomic damages for personal injury are limited to \$350,000 in a case in which the cause of action arose on or after July 1, 1986. Noneconomic damages for personal injury and wrongful death lawsuits are limited to \$500,000 for actions arising on or after October 1, 1994. The limit increases by \$15,000 on October 1 each year. The current limit is \$665,000. The limit applies to each direct victim of tortious conduct and all persons who claim injury by or through that victim. If there are two or more claimants as beneficiaries in a wrongful death action, the award may not exceed 150% of the statutory cap. The cap does not apply to intentional torts.

For a medical malpractice award in which the cause of action arises on or after January 1, 2005, noneconomic damages are limited to \$650,000. The limit is frozen for four years, through calendar 2008, and then the amount increases by \$15,000 annually. Generally, this aggregate amount applies to all claims for personal injury and wrongful death arising from the same medical injury, regardless of the number of claims, claimants, plaintiffs, beneficiaries, or defendants. However, if there is a wrongful death action in which there is more than one claimant or beneficiary, whether or not there is a personal injury action arising from the same injury, the total amount of noneconomic damages that may be awarded is 125% of the established limit, regardless of the number of claims, plaintiffs, beneficiaries, or defendants. If there is more than one claimant or beneficiary, noneconomic damages would be apportioned among them if the jury awards an amount that exceeds the limit.

Background: The time that a cause of action arises is a legal determination. In a wrongful death case, the action arises on the date of death. In a personal injury case caused by a latent disease or injury, the situation is more complex.

If the cause of action arises from exposure to asbestos, coal dust, a carcinogen, or a similar substance, many years may pass between the time the victim is exposed to the substance, develops the connected disease, and the disease is diagnosed or becomes symptomatic. In *Crane v. Schribner*, 369 Md. 369 (2002), the Court of Appeals held that, in a case resulting from exposure to asbestos, the cause of action arose on the date of the plaintiff's last exposure to the defendant's asbestos-containing product. In adopting the "exposure" approach, the court rejected two others: the "manifestation" approach, which looks to when the disease first becomes either symptomatic or is diagnosed; and the approach followed in some earlier cases that looks to when the disease itself first arose in the body (which can be difficult to determine).

In adopting the “exposure” approach, the court cited the distinction between when a cause of action arises and when it accrues, or becomes actionable. Some people exposed to asbestos, for example, never fall ill. If they do, the cause of action arises at the time of exposure; but it does not accrue until the disease becomes symptomatic or is diagnosed. In *Crane*, the plaintiff was exposed to asbestos between 1972 and 1978. He became ill with mesothelioma (a cancer tied to asbestos exposure) in 1994 and died in 1995. The Court of Appeals held that his cause of action arose in 1978.

The bill adopts the “manifestation” approach.

Additional Information

Prior Introductions: Identical bills, SB 649 of 2005, HB 1362 of 2005, and HB 1346 of 2004, were recently introduced. SB 649 of 2005 was heard in the Judicial Proceedings Committee, but no further action was taken. HB 1362 and HB 1346 were heard in the Judiciary Committee in 2005 and 2004, respectively, but no further action was taken on either bill.

Cross File: HB 767 (Delegate McComas, *et al.*) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Attorney General, Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2006
nas/jr

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