

HOUSE BILL 1166

D3

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By: **Delegates Elliott, Bartlett, Bates, Costa, Eckardt, Frank, George, Haddaway, Jenkins, Krebs, McComas, Miller, Myers, O'Donnell, Schuh, Serafini, Shank, Shewell, Sossi, and Stull**

Introduced and read first time: February 17, 2010

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Malpractice – Awards and Judgments – Periodic Payments**

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

9 BY renumbering

10 Article – Courts and Judicial Proceedings
11 Section 3–2A–10
12 to be Section 3–2A–11
13 Annotated Code of Maryland
14 (2006 Replacement Volume and 2009 Supplement)

15 BY adding to

16 Article – Courts and Judicial Proceedings
17 Section 3–2A–10
18 Annotated Code of Maryland
19 (2006 Replacement Volume and 2009 Supplement)

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Courts and Judicial Proceedings**

2 **3-2A-10.**

3 **(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
4 **SUBSECTION, THIS SECTION APPLIES IF AN AWARD OR A VERDICT UNDER THIS**
5 **SUBTITLE INCLUDES NONECONOMIC DAMAGES AND FUTURE ECONOMIC**
6 **DAMAGES THAT TOTAL MORE THAN \$250,000.**

7 **(2) IN A SURVIVAL ACTION OR A WRONGFUL DEATH ACTION, THIS**
8 **SECTION:**

9 **(I) DOES NOT APPLY TO NONECONOMIC DAMAGES; AND**

10 **(II) APPLIES ONLY TO FUTURE ECONOMIC DAMAGES IF THE**
11 **FUTURE ECONOMIC DAMAGES ARE MORE THAN \$250,000.**

12 **(3) THIS SECTION DOES NOT AFFECT ANY LIMITATION ON**
13 **NONECONOMIC DAMAGES UNDER ANY OTHER PROVISION OF LAW.**

14 **(B) IN AN AWARD OR A JUDGMENT, AN ARBITRATION PANEL OR A**
15 **COURT SHALL:**

16 **(1) ORDER THAT THE PORTION OF THE TOTAL OF THE**
17 **NONECONOMIC DAMAGES AND FUTURE ECONOMIC DAMAGES THAT ARE MORE**
18 **THAN \$100,000 BE PAID PERIODICALLY TO THE CLAIMANT OR PLAINTIFF IN THE**
19 **FORM OF ONE OR MORE ANNUITIES; AND**

20 **(2) ENTER THE COST OF EACH ANNUITY AS THE AMOUNT OF THE**
21 **PORTION OF AN AWARD OR A JUDGMENT DESCRIBED IN PARAGRAPH (1) OF THIS**
22 **SUBSECTION.**

23 **(C) A DEFENDANT OR THE DEFENDANT'S INSURER MAY PURCHASE ONE**
24 **OR MORE ANNUITIES THAT PRODUCE PERIODIC PAYMENTS FOR:**

25 **(1) THE NONECONOMIC DAMAGES IN THE AWARD OR VERDICT,**
26 **DIVIDED BY THE REMAINING YEARS IN THE LIFE EXPECTANCY OF THE**
27 **CLAIMANT OR PLAINTIFF AS DETERMINED BY THE ARBITRATION PANEL OR THE**
28 **TRIER OF FACT IN ACCORDANCE WITH THIS SECTION;**

29 **(2) THE FUTURE MEDICAL EXPENSES IN THE AWARD OR VERDICT,**
30 **DIVIDED BY THE LESSER OF THE NUMBER OF YEARS FOR WHICH THE CLAIMANT**
31 **OR PLAINTIFF WILL NEED MEDICAL TREATMENT OR THE REMAINING YEARS IN**
32 **THE LIFE EXPECTANCY OF THE CLAIMANT OR PLAINTIFF AS DETERMINED BY**

1 THE ARBITRATION PANEL OR THE TRIER OF FACT IN ACCORDANCE WITH THIS
2 SECTION; AND

3 (3) THE FUTURE LOSS OF EARNINGS IN THE AWARD OR VERDICT,
4 DIVIDED BY THE LESSER OF THE NUMBER OF YEARS FOR WHICH THE CLAIMANT
5 OR PLAINTIFF WILL SUFFER FUTURE LOSS OF EARNINGS OR THE NUMBER OF
6 YEARS IN THE FUTURE WORKING LIFE OF THE CLAIMANT OR PLAINTIFF AS
7 DETERMINED BY THE ARBITRATION PANEL OR THE TRIER OF FACT IN
8 ACCORDANCE WITH THIS SECTION.

9 (D) FOR THE PURPOSE OF CALCULATING PERIODIC PAYMENTS FOR
10 FUTURE LOSS OF EARNINGS, PERIODIC PAYMENTS FOR FUTURE LOSS OF
11 EARNINGS SHALL COMMENCE ON THE COMMENCEMENT DATE OF THE WORKING
12 LIFE OF THE CLAIMANT OR PLAINTIFF.

13 (E) (1) IF AN ARBITRATION PANEL AWARDS TO A CLAIMANT ANY
14 NONECONOMIC DAMAGES OR FUTURE ECONOMIC DAMAGES, THE ARBITRATION
15 PANEL SHALL SPECIFY IN THE AWARD:

16 (I) THE REMAINING YEARS IN THE LIFE EXPECTANCY OF
17 THE CLAIMANT;

18 (II) THE DURATION OF THE FUTURE WORKING LIFE OF THE
19 CLAIMANT;

20 (III) THE COMMENCEMENT DATE OF THE FUTURE WORKING
21 LIFE OF THE CLAIMANT;

22 (IV) THE DURATION OF THE FUTURE MEDICAL EXPENSES OF
23 THE CLAIMANT; AND

24 (V) THE DURATION OF THE LOSS OF FUTURE EARNINGS OF
25 THE CLAIMANT.

26 (2) IF A TRIER OF FACT AWARDS TO A PLAINTIFF ANY
27 NONECONOMIC DAMAGES OR FUTURE ECONOMIC DAMAGES, THE TRIER OF FACT
28 SHALL SPECIFY IN THE VERDICT:

29 (I) THE REMAINING YEARS IN THE LIFE EXPECTANCY OF
30 THE PLAINTIFF;

31 (II) THE DURATION OF THE FUTURE WORKING LIFE OF THE
32 PLAINTIFF;

1 **(III) THE COMMENCEMENT DATE OF THE FUTURE WORKING**
2 **LIFE OF THE PLAINTIFF;**

3 **(IV) THE DURATION OF THE FUTURE MEDICAL EXPENSES OF**
4 **THE PLAINTIFF; AND**

5 **(V) THE DURATION OF THE FUTURE LOSS OF EARNINGS OF**
6 **THE PLAINTIFF.**

7 **(F) (1) AN ANNUITY PURCHASED UNDER THIS SECTION SHALL HAVE**
8 **A GUARANTEED TERM EQUAL TO THE NUMBER OF YEARS NECESSARY TO FUND**
9 **THE APPLICABLE DAMAGES TO WHICH THE ANNUITY APPLIES.**

10 **(2) THE NUMBER OF REMAINING YEARS IN THE LIFE**
11 **EXPECTANCY OF THE CLAIMANT OR PLAINTIFF SHALL BE USED TO CALCULATE**
12 **THE TERM OF AN ANNUITY TO FUND NONECONOMIC DAMAGES.**

13 **(3) THE LESSER OF THE NUMBER OF YEARS FOR WHICH THE**
14 **CLAIMANT OR PLAINTIFF WILL NEED FUTURE MEDICAL TREATMENT OR THE**
15 **REMAINING NUMBER OF YEARS IN THE LIFE EXPECTANCY OF THE CLAIMANT OR**
16 **PLAINTIFF SHALL BE USED TO CALCULATE THE TERM OF AN ANNUITY TO FUND**
17 **FUTURE MEDICAL EXPENSES.**

18 **(4) THE LESSER OF THE NUMBER OF YEARS FOR WHICH THE**
19 **CLAIMANT OR PLAINTIFF WILL SUFFER A LOSS OF FUTURE EARNINGS OR THE**
20 **NUMBER OF YEARS IN THE WORKING LIFE OF THE CLAIMANT OR PLAINTIFF**
21 **SHALL BE USED TO CALCULATE THE TERM OF AN ANNUITY TO FUND FUTURE**
22 **LOSS OF EARNINGS.**

23 **(G) NOTHING IN THIS SECTION OBLIGATES AN INSURER TO PURCHASE**
24 **AN ANNUITY BEYOND THE EXTENT OF THE COVERAGE THE INSURER IS**
25 **OBLIGATED TO PROVIDE UNDER AN INSURANCE POLICY ISSUED TO THE**
26 **DEFENDANT.**

27 **(H) THE DEFENDANT OR THE DEFENDANT'S INSURER SHALL PURCHASE**
28 **AN ANNUITY FROM AN INSURER THAT HAS ONE OF THE FOLLOWING RATINGS**
29 **FROM AT LEAST 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,**
33 **AA1, AA2, OR AA3;**

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

3 **(5) IF AGREED TO BY THE CLAIMANT OR PLAINTIFF, A RATING**
4 **FROM ANOTHER NATIONAL RATING ORGANIZATION IF THE RATING AND THE**
5 **RATING ORGANIZATION ARE FOUND TO BE APPROPRIATE BY THE ARBITRATION**
6 **PANEL OR COURT.**

7 **(I) THE ARBITRATION PANEL OR COURT SHALL APPROVE AN ANNUITY**
8 **PURCHASED BY THE DEFENDANT OR THE DEFENDANT'S INSURER IF THE**
9 **ANNUITY:**

10 **(1) MEETS THE REQUIREMENTS OF THIS SUBSECTION; AND**

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

12 **(i) HELD IN A VALIDLY ESTABLISHED SEPARATE ACCOUNT**
13 **THAT MAY NOT BE CHARGEABLE WITH LIABILITIES ARISING OUT OF ANY OTHER**
14 **BUSINESS THAT THE INSURER MAY CONDUCT; OR**

15 **(ii) IN WHICH THE CLAIMANT HAS A PERFECTED SECURITY**
16 **INTEREST.**

17 **(J) THE PURCHASE OF AN ANNUITY BY THE DEFENDANT OR THE**
18 **DEFENDANT'S INSURER AND APPROVED BY THE ARBITRATION PANEL OR COURT**
19 **IN ACCORDANCE WITH THIS SECTION SHALL BE DEEMED TO HAVE FULLY**
20 **SATISFIED THE PORTION OF THE AWARD OR VERDICT FOR THE DAMAGES**
21 **DESCRIBED UNDER SUBSECTION (B) OF THIS SECTION.**

22 **(K) THE PROVISIONS OF § 11-109(C) OF THIS ARTICLE DO NOT APPLY**
23 **TO AN AWARD OR VERDICT UNDER THIS SUBTITLE THAT IS SUBJECT TO THIS**
24 **SECTION.**

25 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be
26 construed to apply only prospectively and may not be applied or interpreted to have
27 any effect on or application to any cause of action arising before the effective date of
28 this Act.

29 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2010.