

# SENATE BILL 813

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By: **Senator Smith**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Personal Injury or Wrongful Death – Noneconomic Damages**

3 FOR the purpose of repealing a certain limitation on noneconomic damages for health care  
4 malpractice actions that arise on or after a certain date; increasing certain  
5 limitations on noneconomic damages in an action for wrongful death in which there  
6 are two or more claimants or beneficiaries; applying certain limitations on  
7 noneconomic damages in an action for personal injury or wrongful death to a health  
8 care malpractice action that arises on or after a certain date; making conforming  
9 changes; and generally relating to limitations on noneconomic damages.

10 BY repealing and reenacting, with amendments,  
11 Article – Courts and Judicial Proceedings  
12 Section 3–2A–09 and 11–108  
13 Annotated Code of Maryland  
14 (2013 Replacement Volume and 2018 Supplement)

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

17 **Article – Courts and Judicial Proceedings**

18 3–2A–09.

19 (a) **(1)** [This] **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**  
20 **SUBSECTION, THIS** section applies to an award under § 3–2A–05 of this subtitle or a  
21 verdict under § 3–2A–06 of this subtitle for a cause of action arising on or after January 1,  
22 2005.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1           **(2) SUBSECTIONS (B) AND (C) OF THIS SECTION DO NOT APPLY TO AN**  
2 **AWARD UNDER § 3-2A-05 OF THIS SUBTITLE OR TO A VERDICT UNDER § 3-2A-06 OF**  
3 **THIS SUBTITLE FOR A CAUSE OF ACTION ARISING ON OR AFTER OCTOBER 1, 2019.**

4           (b) (1) (i) Except as provided in paragraph (2)(ii) of this subsection, an  
5 award or verdict under this subtitle for noneconomic damages for a cause of action arising  
6 between January 1, 2005, and December 31, 2008, inclusive, may not exceed \$650,000.

7                           (ii) The limitation on noneconomic damages provided under  
8 subparagraph (i) of this paragraph shall increase by \$15,000 on January 1 of each year  
9 beginning January 1, 2009. The increased amount shall apply to causes of action arising  
10 between January 1 and December 31 of that year, inclusive.

11           (2) (i) Except as provided in subparagraph (ii) of this paragraph, the  
12 limitation under paragraph (1) of this subsection shall apply in the aggregate to all claims  
13 for personal injury and wrongful death arising from the same medical injury, regardless of  
14 the number of claims, claimants, plaintiffs, beneficiaries, or defendants.

15                           (ii) If there is a wrongful death action in which there are two or more  
16 claimants or beneficiaries, whether or not there is a personal injury action arising from the  
17 same medical injury, the total amount awarded for noneconomic damages for all actions  
18 may not exceed 125% of the limitation established under paragraph (1) of this subsection,  
19 regardless of the number of claims, claimants, plaintiffs, beneficiaries, or defendants.

20           (c) (1) In a jury trial, the jury may not be informed of the limitation under  
21 subsection (b) of this section.

22           (2) If the jury awards an amount for noneconomic damages that exceeds  
23 the limitation established under subsection (b) of this section, the court shall reduce the  
24 amount to conform to the limitation.

25           (3) In a wrongful death action in which there are two or more claimants or  
26 beneficiaries, if the jury awards an amount for noneconomic damages that exceeds the  
27 limitation under subsection (b) of this section or a reduction under paragraph (4) of this  
28 subsection, the court shall:

29                           (i) If the amount of noneconomic damages for the primary  
30 claimants, as described under § 3-904(d) of this title, equals or exceeds the limitation under  
31 subsection (b) of this section or a reduction under paragraph (4) of this subsection:

32   1. Reduce each individual award of a primary claimant  
33 proportionately to the total award of all primary claimants so that the total award to all  
34 claimants or beneficiaries conforms to the limitation or reduction; and

35   2. Reduce each award, if any, to a secondary claimant as  
36 described under § 3-904(e) of this title to zero dollars; or

1 (ii) If the amount of noneconomic damages for the primary claimants  
2 does not exceed the limitation under subsection (b) of this section or a reduction under  
3 paragraph (4) of this subsection or if there is no award to a primary claimant:

4 1. Enter an award to each primary claimant, if any, as  
5 directed by the verdict; and

6 2. Reduce each individual award of a secondary claimant  
7 proportionately to the total award of all of the secondary claimants so that the total award  
8 to all claimants or beneficiaries conforms to the limitation or reduction.

9 (4) In a case in which there is a personal injury action and a wrongful death  
10 action, if the total amount awarded by the jury for noneconomic damages for both actions  
11 exceeds the limitation under subsection (b) of this section, the court shall reduce the award  
12 in each action proportionately so that the total award for noneconomic damages for both  
13 actions conforms to the limitation.

14 (d) (1) A verdict for past medical expenses shall be limited to:

15 (i) The total amount of past medical expenses paid by or on behalf  
16 of the plaintiff; and

17 (ii) The total amount of past medical expenses incurred but not paid  
18 by or on behalf of the plaintiff for which the plaintiff or another person on behalf of the  
19 plaintiff is obligated to pay.

20 (2) (i) A court may on its own motion, or on motion of a party, employ a  
21 neutral expert witness to testify on the issue of a plaintiff's future medical expenses or  
22 future loss of earnings.

23 (ii) Unless otherwise agreed to by the parties, the costs of a neutral  
24 expert witness shall be divided equally among the parties.

25 (iii) Nothing contained in this subsection limits the authority of a  
26 court concerning a court's witness.

27 11–108.

28 (a) (1) In this section the following words have the meanings indicated.

29 (2) (i) “Noneconomic damages” means:

30 1. In an action for personal injury, pain, suffering,  
31 inconvenience, physical impairment, disfigurement, loss of consortium, or other  
32 nonpecuniary injury; and

1                   2. In an action for wrongful death, mental anguish,  
2 emotional pain and suffering, loss of society, companionship, comfort, protection, care,  
3 marital care, parental care, filial care, attention, advice, counsel, training, guidance, or  
4 education, or other noneconomic damages authorized under Title 3, Subtitle 9 of this  
5 article.

6                   (ii) “Noneconomic damages” does not include punitive damages.

7                   (3) “Primary claimant” means a claimant in an action for the death of a  
8 person described under § 3–904(d) of this article.

9                   (4) “Secondary claimant” means a claimant in an action for the death of a  
10 person described under § 3–904(e) of this article.

11           (b) (1) In any action for damages for personal injury in which the cause of  
12 action arises on or after July 1, 1986, an award for noneconomic damages may not exceed  
13 \$350,000.

14                   (2) (i) Except as provided in paragraph (3)(ii) of this subsection, in any  
15 action for damages for personal injury or wrongful death in which the cause of action arises  
16 on or after October 1, 1994, an award for noneconomic damages may not exceed \$500,000.

17                   (ii) The limitation on noneconomic damages provided under  
18 subparagraph (i) of this paragraph shall increase by \$15,000 on October 1 of each year  
19 beginning on October 1, 1995. The increased amount shall apply to causes of action arising  
20 between October 1 of that year and September 30 of the following year, inclusive.

21                   (3) (i) The limitation established under paragraph (2) of this subsection  
22 shall apply in a personal injury action to each direct victim of tortious conduct and all  
23 persons who claim injury by or through that victim.

24                   (ii) In a wrongful death action in which there are two [or more]  
25 claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of the  
26 limitation established under paragraph (2) of this subsection[, regardless of the number of  
27 claimants or beneficiaries who share in the award].

28                   **(III) IN A WRONGFUL DEATH ACTION IN WHICH THERE ARE**  
29 **THREE CLAIMANTS OR BENEFICIARIES, AN AWARD FOR NONECONOMIC DAMAGES**  
30 **MAY NOT EXCEED 200% OF THE LIMITATION ESTABLISHED UNDER PARAGRAPH (2)**  
31 **OF THIS SUBSECTION.**

32                   **(IV) IN A WRONGFUL DEATH ACTION IN WHICH THERE ARE FOUR**  
33 **CLAIMANTS OR BENEFICIARIES, AN AWARD FOR NONECONOMIC DAMAGES MAY NOT**  
34 **EXCEED 250% OF THE LIMITATION ESTABLISHED UNDER PARAGRAPH (2) OF THIS**  
35 **SUBSECTION.**

1           **(v) IN A WRONGFUL DEATH ACTION IN WHICH THERE ARE FIVE**  
2 **OR MORE CLAIMANTS OR BENEFICIARIES, AN AWARD FOR NONECONOMIC DAMAGES**  
3 **MAY NOT EXCEED 300% OF THE LIMITATION ESTABLISHED UNDER PARAGRAPH (2)**  
4 **OF THIS SUBSECTION, REGARDLESS OF THE NUMBER OF CLAIMANTS OR**  
5 **BENEFICIARIES WHO SHARE IN THE AWARD.**

6           (c) An award by the health claims arbitration panel in accordance with §  
7 3-2A-05 of this article for damages in which the cause of action arose before January 1,  
8 2005, shall be considered an award for purposes of this section.

9           (d) (1) In a jury trial, the jury may not be informed of the limitation  
10 established under subsection (b) of this section.

11           (2) (i) If the jury awards an amount for noneconomic damages that  
12 exceeds the limitation established under subsection (b) of this section, the court shall  
13 reduce the amount to conform to the limitation.

14           (ii) In a wrongful death action in which there are two or more  
15 claimants or beneficiaries, if the jury awards an amount for noneconomic damages that  
16 exceeds the **APPLICABLE** limitation established under subsection [(b)(3)(ii)] **(B)(3)** of this  
17 section, the court shall:

18                   1. If the amount of noneconomic damages for the primary  
19 claimants equals or exceeds the **APPLICABLE** limitation under subsection [(b)(3)(ii)] **(B)(3)**  
20 of this section:

21                           A. Reduce each individual award of a primary claimant  
22 proportionately to the total award of all of the primary claimants so that the total award to  
23 all claimants or beneficiaries conforms to the limitation; and

24                           B. Reduce each award, if any, to a secondary claimant to zero  
25 dollars; or

26                   2. If the amount of noneconomic damages for the primary  
27 claimants does not exceed the **APPLICABLE** limitation under subsection [(b)(3)(ii)] **(B)(3)**  
28 of this section or if there is no award to a primary claimant:

29                           A. Enter an award to the primary claimant, if any, as  
30 directed by the verdict; and

31                           B. Reduce each individual award of a secondary claimant  
32 proportionately to the total award of all of the secondary claimants so that the total award  
33 to all claimants or beneficiaries conforms to the limitation.

34           (e) **(1) [The] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**  
35 **SUBSECTION, THE** provisions of this section do not apply to a verdict under Title 3, Subtitle

1 2A of this article for damages in which the cause of action arises on or after January 1,  
2 2005.

3 **(2) THE PROVISIONS OF THIS SECTION APPLY TO AN AWARD UNDER §**  
4 **3-2A-05 OF THIS ARTICLE OR TO A VERDICT UNDER § 3-2A-06 OF THIS ARTICLE**  
5 **FOR A CAUSE OF ACTION ARISING ON OR AFTER OCTOBER 1, 2019.**

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
7 October 1, 2019.