

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 813 (Senator Smith)
Judicial Proceedings

Personal Injury or Wrongful Death - Noneconomic Damages

This bill increases the maximum amount of noneconomic damages that may be recovered in specified personal injury or wrongful death actions, including health care malpractice actions.

Fiscal Summary

State Effect: The bill does not directly affect governmental operations or finances.

Local Effect: The bill does not directly affect local government operations or finances.

Small Business Effect: Meaningful.

Analysis

Bill Summary/Current Law: State law distinguishes between ordinary negligence claims and health care malpractice claims. The Courts and Judicial Proceedings Article sets various caps on noneconomic damages in civil actions, depending on the type of action and when the cause of action arose. Noneconomic damages include pain and suffering but do not include punitive damages. A survival action is brought on behalf of a decedent's estate for injuries or damages incurred by the decedent prior to the person's death.

Health Care Malpractice Claims

Under current law, parties to health care malpractice claims are required to file a claim with the Health Care Alternative Dispute Resolution Office. Claims may proceed through the arbitration process, or claimants or defendants may waive participation and instead transfer

the case to the circuit court or U.S. District Court, as specified provisions of the Courts and Judicial Proceedings Article specify as the appropriate venue, for trial. Parties may also seek judicial review of a final arbitration award.

For health care malpractice actions, the cap for noneconomic damages was set at \$650,000 for causes of action arising between January 1, 2005, and December 31, 2008, increasing by \$15,000 each year, beginning on January 1, 2009. Thus, under current law, for causes of action arising in 2019, the cap is \$815,000. The cap applies in the aggregate 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, for a wrongful death action in which there are two or more claimants or beneficiaries, the total amount awarded may not exceed 125% of the cap, or \$1,018,750 in 2019.

In a jury trial, the jury may not be informed of the limitation on noneconomic damages. If the jury awards an amount for noneconomic damages that exceeds the limitation, the court must reduce the amount to conform to the limitation. In a wrongful death action in which there are two or more claimants or beneficiaries, if the jury awards an amount for noneconomic damages that exceeds the limitation or reduction, the court must reduce the award in accordance with specified procedures based on the primacy of the various claims.

The bill establishes that both the general limit for noneconomic damages and the limit on jury verdicts for noneconomic damages in health care malpractice actions do not apply for a wrongful death or survival action arising on or after October 1, 2019. Instead, the limits on noneconomic damages for other personal injury claims apply.

Personal Injury Claims

Under current law, in an action for noneconomic damages for personal injury or wrongful death (excluding health care malpractice), the cap is \$875,000 for causes of action arising on or after October 1, 2019. This cap also increases by \$15,000 a year. Thus, for causes of action arising on or after October 1, 2020, the cap is \$890,000. This limitation applies in a personal injury action to each direct victim of tortious conduct and all persons who claim injury through that victim. The cap also applies separately to a personal injury action and wrongful death action, so that damages may be aggregated. However, in a wrongful death action in which there are two or more claimants or beneficiaries, an award of noneconomic damages may not exceed 150% of the applicable cap, regardless of the number of claimants or beneficiaries. In a jury trial, a jury may not be informed of these limitations.

The bill establishes separate formulas for calculating the limit on noneconomic damages based on the number of claimants or beneficiaries in an action, as shown in **Exhibit 1**.

Exhibit 1
Limit on Noneconomic Damages for Personal Injury Claims
in Cases with Multiple Claimants or Beneficiaries

Current Law

Two or more claimants or beneficiaries:
150% of the applicable cap

Proposed under the Bill

Two claimants or beneficiaries:
150% of the applicable cap

Three claimants or beneficiaries:
200% of the applicable cap

Four claimants or beneficiaries:
250% of the applicable cap

Five or more claimants or beneficiaries:
300% of the applicable cap

Note: Applicable cap refers to the noneconomic damages in a personal injury case which increases by \$15,000 on October 1 each year.

Source: Department of Legislative Services

The bill specifies that the limits based on the number of claimants or beneficiaries apply to an award for noneconomic damages in a health care malpractice claim arising on or after the bill's October 1, 2019 effective date.

Small Business Effect: Small businesses may be subject to higher liability for noneconomic damages as shown in **Exhibit 2**. The bill may also result in increased insurance premiums for small businesses, including health care practitioners, as a result of the increases in potential liability. Finally, small business law firms that successfully litigate claims under the increased liability limits may realize additional revenues under contingency fee agreements.

Exhibit 2
Maximum Liability for Noneconomic Damages for
Personal Injury Claims, or Wrongful Death or Survival Actions,
In Cases with Multiple Claimants or Beneficiaries

<u>Limit on Noneconomic Damages</u>	<u>Maximum Dollar Amount*</u>
Two claimants or beneficiaries at 150% of the applicable cap	\$1,312,500
Three claimants or beneficiaries at 200% of the applicable cap	1,750,000
Four claimants or beneficiaries at 250% of the applicable cap	2,187,500
Five or more claimants or beneficiaries at 300% of the applicable cap	2,625,000

*Assumes a case arising on January 1, 2020, when the applicable limit for one claimant or beneficiary will be \$875,000.

Note: Under a health care malpractice action, the applicable limit under current law on that date will be \$830,000 for one claimant or beneficiary and 125% of that amount (\$1,037,500) for two or more claimants or beneficiaries.

Source: Department of Legislative Services

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Health Care Alternative Dispute Resolution Office; Maryland Insurance Administration; Department of Legislative Services

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