

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 862
Judiciary

(Delegate Ziegler, *et al.*)

Civil Actions - Noneconomic Damages - Personal Injury or Wrongful Death

This bill repeals the limitations (caps) on noneconomic damages in civil actions for personal injury or wrongful death and related provisions. The bill does not alter the caps on damages in medical malpractice cases, which are addressed in a different statute. The bill applies prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before October 1, 2023.

Fiscal Summary

State Effect: Potential significant increase in Transportation Trust Fund (TTF) expenditures, as discussed below. The bill may have an operational effect on the Judiciary. Revenues are not materially affected.

Local Effect: The bill may have an operational effect on the circuit courts. Revenues are not materially affected.

Small Business Effect: The bill has a meaningful impact on small business law firms that litigate applicable cases and small businesses that are parties to applicable civil actions.

Analysis

Current Law: There is no cap on economic damages or punitive damages in Maryland. However, there are caps on noneconomic damages. “Noneconomic damages” means (1) for personal injury actions – pain, suffering, inconvenience, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injury and (2) for wrongful death actions – mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, care, marital care, parental care, filial care, attention, advice, counsel,

training, guidance, or education, or other noneconomic damages authorized under specified statutes pertaining to wrongful death causes of action. “Noneconomic damages” does not include punitive damages.

In any action for damages for personal injury or wrongful death (excluding medical malpractice) in which the cause of action arises on or after October 1, 1994, an award for noneconomic damages may not exceed \$500,000. This limitation increases by \$15,000 on October 1 of each year beginning on October 1, 1995. The increased amount must apply to causes of action arising between October 1 of that year and September 30 of the following year, inclusive. (As of October 1, 2023, this cap will be \$935,000.) This limitation applies in a personal injury action to each direct victim of tortious conduct and all persons who claim injury by or through that victim.

In a wrongful death action (excluding medical malpractice) in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of the limitation listed above, regardless of the number of claimants or beneficiaries who share in the award. (As of October 1, 2023, this cap will be \$1,402,500). The cap applies separately to a wrongful death claim and a survival action. (Thus, the cap for a wrongful death claim involving two or more claimants or beneficiaries accompanied by a survival action is \$2,337,500 as of October 1, 2023.)

An award by the health claims arbitration panel in accordance with specified provisions for damages in which the cause of action arose *before January 1, 2005*, must be considered an award for purposes of these provisions.

In a jury trial, the jury may not be informed of these limitations on damages. If the jury awards an amount for noneconomic damages that exceeds the applicable 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 applicable limitation, the court must reduce the award in accordance with specified provisions.

These provisions do not apply to a verdict for damages under Title 3, Subtitle 2A of the Courts and Judicial Proceedings Article (medical malpractice).

State Expenditures: TTF expenditures may increase significantly if the Maryland Transit Administration (MTA) has to pay higher noneconomic damages or insurance premiums under the bill. Should the bill result in a noticeable increase in litigation and time spent on civil cases in the circuit courts, the bill may have an operational impact on the Judiciary.

Among other provisions, the Maryland Tort Claims Act (MTCA) limits State liability to \$400,000 to a single claimant for injuries arising from a single incident. However, for

claims arising on or after July 1, 2022, if liability of the State or its units arises from intentional tortious acts or omissions or a violation of a constitutional right committed by a law enforcement officer, the following limits on liability apply: (1) the combined award for both economic and noneconomic damages may not exceed a total of \$890,000 for all claims arising out of the same incident or occurrence, regardless of the number of claimants or beneficiaries who share in the award; and (2) in a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed \$1,335,000, regardless of the number of claimants or beneficiaries who share in the award.

While most State agencies are covered by the liability limits of MTCA, MTA's tort liability is governed by the Transportation Article. Unlike MTCA, the Transportation Article does not include a limit on liability.

MTA advises that removal of the noneconomic damages cap will likely lead to significantly greater awards and settlements against MTA, and a lack of predictability in litigating and settling MTA cases. Also, it is possible that this change may affect MTA's access to excess insurance or deductible amounts. MTA has a self-insured retention of \$10.0 million for local bus and \$5.0 million for rail. Noneconomic damages are considered during all settlement negotiations. MTA has settled 12 claims that ranged from \$490,000 to \$7.0 million within the last eight years and there are several pedestrian and fatality cases that are currently reserved at \$5.0 million.

Local Expenditures: Should the bill result in a noticeable increase in litigation and time spent on civil cases in the circuit courts, the bill may have an operational impact on the circuit courts.

With respect to local governments, the liability limits of the Local Government Tort Claims Act (LGTCGA) continue to apply despite the bill's provisions. In general, LGTCGA limits the liability of a local government to \$400,000 per individual claim and \$800,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). However, for claims arising on or after July 1, 2022, if the liability of a local government arises from intentional tortious acts or omissions or a violation of a constitutional right committed by a law enforcement officer, the following limits on liability apply: (1) the combined award for both economic and noneconomic damages may not exceed a total of \$890,000 for all claims arising out of the same incident or occurrence, regardless of the number of claimants or beneficiaries who share in the award; and (2) in a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed \$1,335,000, regardless of the number of claimants or beneficiaries who share in the award.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Baltimore City; Montgomery County; Maryland Association of Counties; City of Havre de Grace; Maryland Municipal League; State Treasurer's Office; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Maryland Department of Transportation; Maryland Health Care Alternative Dispute Resolution Office; Maryland Insurance Administration; Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2023
js/jkb

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510