

# **HB 862\_MDCC\_Civil Actions\_Noneconomic Damages\_Pers**

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Position: UNF



**MARYLAND**  
Chamber of Commerce

**LEGISLATIVE POSITION:**

**Unfavorable**

**House Bill 862 - Civil Actions - Noneconomic Damages - Personal Injury or Wrongful Death**

**House Judiciary Committee**

**Wednesday, March 1, 2023**

Dear Chairman Clippinger and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 6,400 members and federated partners working to develop and promote strong public policy that ensures sustained economic health and growth for Maryland businesses, employees, and families.

House Bill 862 seeks to repeal limitations on noneconomic damages in civil actions in specified personal injury or wrongful death incidents. The Maryland Chamber of Commerce is deeply concerned about the negative impact this bill would have on employers and their employees. For employers, they will see their property and casualty insurance rates increase due to the greater liability exposure this higher limit on noneconomic damages will bring. This is especially problematic for small businesses with razor-thin revenue margins. For both employers and employees, they will see their healthcare costs rise as a product of physicians and hospitals passing along their increased premium rates to patients. This cost will be even more burdensome with the consistently rising cost of insurance premiums.

In the fiscal note for similar legislation introduced in the 2020 Legislative Session that would have lifted limitations on noneconomic damages, Maryland's Department of Legislative Services indicated that, "Under this bill, liability risk for small businesses, including health care providers, significantly increases." With Maryland's consumers already struggling to adjust in this historic and prolonged inflation crisis, continuing to increase the cost of doing business in Maryland will devastate our small business community and deliver worse outcomes for our most vulnerable communities.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **Unfavorable Report** on **HB 862**.

MDCHAMBER.ORG

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# **HB0862 -- Civil Actions - Noneconomic Damages - Pe**

Uploaded by: Brian Levine

Position: UNF



**House Bill 862 -- *Civil Actions - Noneconomic Damages - Personal Injury or Wrongful Death***  
**House Judiciary Committee**  
**March 1, 2023**  
**Oppose**

The Montgomery County Chamber of Commerce (MCCC), the voice of business in Metro Maryland, opposes House Bill 862 -- *Civil Actions - Noneconomic Damages - Personal Injury or Wrongful Death*.

House Bill 862 repeals limitations on noneconomic damages in civil actions for personal injury or wrongful death. Non-economic damages compensate injuries and losses that are not easily quantified by a dollar amount while economic damages can be calculated from documents or records, such as medical expenses and earnings.

MCCC is concerned about House Bill's 862 impact on Maryland's ability to keep costs of doing business competitive. Limitations on noneconomic damages is generally considered friendly to a state's business climate. This holds especially true for small businesses, which are at greater risk in litigation involving noneconomic damages. Not only would small businesses and other impacted entities confront increased exposure and potential financial burden, but the perception of Maryland's business competitiveness would be harmed as well.

There are many ways to measure whether Maryland has a positive business climate, and that includes its legal and tort environment. When businesses are making decisions regarding location or expansion, they often consider the tort environment. For this reason, Maryland needs to ensure it competes favorably with surrounding and competitor states on tort climate, in addition to factors like taxation, regulations, educational system, and transportation network.

**For these reasons, the Montgomery County Chamber of Commerce opposes House Bill 862 and respectfully requests an unfavorable report.**

*The Montgomery County Chamber of Commerce, on behalf of our nearly 500 members, advocates for growth in business opportunities, strategic investment in infrastructure, and balanced tax reform to advance Metro Maryland as a regional, national, and global location for business success. Established in 1959, MCCC is an independent non-profit membership organization and a proud Montgomery County Green Certified Business.*

Brian Levine | Vice President of Government Affairs  
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**HB 862\_MAMIC\_UNF.pdf**

Uploaded by: Bryson Popham

Position: UNF



191 Main Street, Suite 310 – Annapolis MD 21401 – 410-268-6871

February 27, 2023

The Honorable Luke Clippinger, Chairman  
House Judiciary Committee  
Room 101  
House Office Building  
Annapolis, Maryland 21401

RE: HB 862 – Civil Actions - Noneconomic Damages - Personal Injury or Wrongful Death  
UNFAVORABLE

Dear Chairman Clippinger and Members of the Committee,

On behalf of the Maryland Association of Mutual Insurance Companies (MAMIC), I write in opposition to House Bill 862 - Civil Actions - Noneconomic Damages - Personal Injury or Wrongful Death.

As you may know, MAMIC is comprised of eleven mutual insurance companies that are headquartered in Maryland and neighboring states. Approximately one-half of our members are domiciled in Maryland, and are key contributors and employers in our local communities. Together, MAMIC members offer a wide variety of insurance products and services and provide coverage for thousands of Maryland citizens.

House Bill 862 completely upends the system of determining noneconomic damages under Maryland's tort liability law that has been in place for many years. MAMIC is aware of no evidence that would support such a radical change.

The cost of liability insurance provided by MAMIC members to Maryland citizens is the product of this statutory formula. It represents a fair balance between the interests of plaintiffs seeking relief and defendants who are responsible for any judgements. House Bill 862 sweeps away this statutory formula, which has been established and modified several times over many years, by repealing Section 11-108 of the Courts and Judicial Proceedings Article. In so doing, it would return the State to a system of determining damages for noneconomic loss in tort cases to a condition that is not a system at all.

To be effective, any tort liability system must utilize principles of fairness in an organized fashion. While the current law contains limitations that, inevitably, some may view as unfair, past General Assemblies have worked hard to achieve a compromise on both the maximum amounts of noneconomic damages and the method by which they may be adjusted. Together, these factors comprise the statutory formula which is the current law in Maryland. This formula represents the best effort of our legislators to achieve the fairness referenced above for all parties. A majority of legislators past and present have supported the formula, on behalf of the majority of Maryland citizens. In short, the formula works and it should not be abandoned.

We respectfully request an unfavorable report on HB 862.

Sincerely,

President, MAMIC

cc: The Honorable Natalie Ziegler  
Bryson F. Popham

# **ATRA MD HB862 2023 Maryland Noneconomic Damages Te**

Uploaded by: Cary Silverman

Position: UNF

**Testimony Before the Maryland House Judiciary Committee  
in Opposition to H.B. 862  
A Bill That Would Allow Unlimited Pain & Suffering Awards  
in Personal Injury and Wrongful Death Cases**

**March 1, 2023**

**Cary Silverman  
On Behalf of the American Tort Reform Association**

On behalf of the American Tort Reform Association (“ATRA”), thank you for providing me with the opportunity to testify today. ATRA opposes H.B. 862, which would eliminate Maryland’s statutory limits on noneconomic damages in personal injury cases. As a result, the bill would lead to unreasonable settlement demands and unpredictable awards in a wide range of cases, which will be felt by Maryland’s drivers, homeowners, and businesses in the form of higher insurance rates.

ATRA is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources with the goal of ensuring fairness, balance, and predictability in civil litigation. I am a Maryland resident, a member of the Maryland Bar, and a partner in the Washington, D.C. office of Shook, Hardy & Bacon L.L.P. As part of my practice, I have studied the issue of noneconomic damage awards, authoring law review articles and research papers on the topic. I have had the privilege of testifying before this Committee when it considered legislation to raise or repeal Maryland’s limits on noneconomic damages in past sessions.

There is no true way to place a monetary value on the pain and suffering associated with an injury. The instinct to permit large awards for pain and suffering to those who have suffered serious injuries, on top of what is already likely to be a large award for medical expenses, lost income, and other economic losses, must be balanced against the adverse effects that rising damage awards have on the cost of insurance for homeowners, drivers, and businesses, the economy, and the civil justice system. H.B. 862 would disturb the careful balance that the General Assembly has set, which has positively contributed to a stable civil liability environment in Maryland for decades.

**Damages Available Under Maryland Law**

In considering the limit on noneconomic damages, it is helpful to consider the full picture of damages in personal injury and wrongful death cases.

**Economic Damages.** Maryland residents who experience an injury as a result of the negligence or other wrongful conduct of others are entitled to be made whole for



their losses. They can seek and recover compensation for their medical expenses, lost wages, and other costs. Recoveries for these types of expenses—economic damages—are *not* limited by Maryland law. In cases of severe permanent injuries or death, economic damages can reach into the millions of dollars.

**Noneconomic Damages.** Plaintiffs can also recover noneconomic damages, the subject of H.B. 862. Noneconomic damages provide plaintiffs with compensation for types of harms that cannot be documented with a dollar value, such as pain, suffering, inconvenience, and loss of consortium.<sup>1</sup> Traditionally, noneconomic damage awards were relatively small in amount and high awards were uniformly reversed.<sup>2</sup> For various reasons,<sup>3</sup> the size of pain and suffering awards increased exponentially between the 1950s and 1980s.<sup>4</sup> By that time, pain and suffering awards had become the largest single item of recovery in personal injury cases, exceeding medical expenses and lost wages.<sup>5</sup> This prompted state legislatures to enact limits on these inherently subjective damage awards.

**Punitive Damages.** Finally, when an injury or death is caused by malicious conduct, a plaintiff can also recover punitive damages in Maryland. About half of the states limit punitive damages to an amount set by statute or a multiple of compensatory damages. A half dozen other states generally do not authorize punitive damage awards. In Maryland, punitive damages are available and *uncapped*. Such awards are

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<sup>1</sup> Md. Cts. & Jud. Code Ann. § 11-108(a)(1).

<sup>2</sup> See Ronald J. Allen & Alexia Brunet, *The Judicial Treatment of Non-economic Compensatory Damages in the Nineteenth Century*, 4 J. Empirical Legal Studies 365, 396-87 (2007) (finding that prior to the Twentieth Century, there were only two reported cases affirmed on appeal involving total damages in excess of \$450,000 in current dollars, each of which may have included an element of noneconomic damages); see also Fleming James, Jr., *The Columbia Study of Compensation for Automobile Accidents: An Unanswered Challenge*, 59 Colum. L. Rev. 408, 411 (1959) (observing that an award in excess of \$10,000 was rare).

<sup>3</sup> Scholars largely attribute the initial rise in noneconomic damage awards to: (1) the availability of future pain and suffering damages; (2) the rise in automobile ownership and personal injuries resulting from automobile accidents; (3) the greater availability of insurance and willingness of plaintiffs' attorneys to take on lower value cases; (4) the rise in affluence of the public and a change in attitude that "someone should pay"; and (5) a campaign to increase such awards by the organized plaintiffs' bar. See Philip L. Merkel, *Pain and Suffering Damages at Mid-Twentieth Century: A Retrospective View of the Problem and the Legal Academy's First Responses*, 34 Cap. U. L. Rev. 545, 553-68 (2006); Joseph H. King, Jr., *Pain and Suffering, Noneconomic Damages, and the Goals of Tort Law*, 57 SMU L. Rev. 163, 170 (2004); see also Melvin M. Belli, *The Adequate Award*, 39 Cal. L. Rev. 1 (1951) (seminal article arguing for higher noneconomic damage awards).

<sup>4</sup> See David W. Leebron, *Final Moments: Damages for Pain and Suffering Prior to Death*, 64 N.Y.U. L. Rev. 256, 301 (1989).

<sup>5</sup> See *Nelson v. Keefer*, 451 F.2d 289, 294 (3d Cir. 1971). Judge Paul Niemeyer, a former Maryland federal judge who currently serves on the U.S. Court of Appeals for the Fourth Circuit, observed, "Money for pain and suffering . . . provides the grist for the mill of our tort industry." Paul V. Niemeyer, *Awards for Pain and Suffering: The Irrational Centerpiece of Our Tort System*, 90 Va. L. Rev. 1401, 1401 (2004).

permissible so long as they are supported by the evidence of malicious conduct and are not unconstitutionally excessive.

### **Maryland's Limit on Noneconomic Damages**

The General Assembly first limited noneconomic damages in 1985 in response to an insurance crisis and initially set the cap at \$350,000. It did so after Maryland Governor Harry Hughes and the General Assembly established two task forces, the Governor's Task Force to Study Liability Insurance and the Joint Executive/Legislative Task Force on Medical Insurance, both of which, after hearings, meetings, and substantial research, recommended statutory limits. As the Governor's Task Force concluded:

[T]he civil justice system can no longer afford unlimited awards for pain and suffering.

The ceiling on noneconomic damages will help contain awards within realistic limits, reduce the exposure of defendants to unlimited damages for pain and suffering, lead to more settlements, and enable insurance carriers to set more accurate rates because of the greater predictability of the size of judgments. The limitation is designed to lend greater stability to the insurance market and make it more attractive to underwriters.

A substantial portion of the verdicts being returned in liability cases are for noneconomic loss. The translation of these losses into dollar amounts is an extremely subjective process as these claims are not easily amenable to accurate, or even approximate, monetary valuation. There is a common belief that these awards are the primary source of overly generous and arbitrary liability claim payments. They vary substantially from person to person, even when applied to similar cases or similar injuries, and can be fabricated with relative ease.

A cap on allowable pain and suffering awards will help reduce the incidence of unrealistically high liability awards, yet at the same time protect the right of the injured party to recover the full amount of economic loss, including all lost wages and medical expenses.

*Franklin v. Mazda Motor Corp.*, 704 F. Supp. 1325, 1328 (D. Md. 1989), (quoting report of the Governor's Task Force to Study Liability Insurance issued Dec. 20, 1985).

There are now separate limits applicable to general personal injury and medical malpractice cases that rise to account for inflation by \$15,000 per year.<sup>6</sup> The Maryland

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<sup>6</sup> The noneconomic damage limit in personal injury cases increases each year on October 1. Md. Cts. & Jud. Code Ann. § 11-108(b)(2)(ii).

Supreme Court has repeatedly upheld the limit on noneconomic damages as constitutional.<sup>7</sup>

Today, the inflation-adjusted limit on noneconomic damages in personal injury actions is \$920,000. This amount rises to \$1,380,000 (150% of the individual limit) in wrongful death actions involving two or more beneficiaries. In wrongful death cases, pain and suffering can also be recovered on behalf of the person who died as a result of negligent conduct in addition to beneficiaries, such as a spouse or children. In those actions, the limit on noneconomic damages is also \$920,000. Thus, in actions alleging that a person died as a result of negligence, total noneconomic damaged can reach \$2.3 million (\$920,000 for the decedent plus \$1,380,000 for his or her family). These limits will automatically increase to \$935,000/\$1,402,500/\$2,337,500 in October 2023.

The statutory limit is accomplishing its goal. It has prevented outlier awards and provided for greater consistency and predictability in Maryland’s civil justice system. It has ensured that those who are injured as a result of another party’s tortious conduct can receive full compensation for economic losses plus a reasonable, though not unlimited, amount for pain and suffering. It has also provided consistency for plaintiffs by precluded widely varying noneconomic damage awards for similar injuries.

### **The Proposed Legislation**

H.B. 862 would eliminate the limit on noneconomic damages that applies in general personal injury cases effective October 1, 2023. This bill goes even further than prior proposals that the General Assembly chose not to enact, which proposed increasing the limit or eliminating it only in certain cases.

### **Implications for Maryland for Eliminating the Statutory Limit**

The Maryland Supreme Court has recognized that the General Assembly enacted the statutory limit to preserve “the availability of sufficient liability insurance, at a reasonable cost, in order to cover claims for personal injuries to members of the public.”<sup>8</sup> Limiting noneconomic damages “may lead to greater ease in calculating premiums, thus making the market more attractive to insurers, and ultimately may lead

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<sup>7</sup> *Martinez v. The John Hopkins Hosp.*, 70 A.3d 397, 410 n.19 (2013); *DRD Pool Serv., Inc. v. Freed*, 5 A.3d 45, 63 (Md. 2010); *Oaks v. Connors*, 660 A.2d 423, 430 (Md. 1995); *Murphy v. Edmonds*, 601 A.2d 102, 118 (Md. 1992).

<sup>8</sup> *DRD Pool Serv.*, 5 A.3d at 67 (Md. 2010) (quoting *Murphy*, 601 A.2d at 115).

to reduced premiums, making insurance more affordable for individuals and organizations performing needed services.”<sup>9</sup>

As we see a resurgence of massive pain and suffering awards nationwide, now is certainly not the time to eliminate this limit. Awards in excess of \$10 million, known as “nuclear verdicts,” are rising in frequency and size in personal injury and wrongful death cases.<sup>10</sup> The largest component of these awards are noneconomic damages.<sup>11</sup> While about one quarter of nuclear verdicts are reached in medical liability cases, auto accident, product liability cases, and premises liability cases make up similar shares.<sup>12</sup> In other states, we have seen juries, prompted by plaintiffs’ lawyers, award amounts for past and future pain and suffering for \$12 million, \$33 million, \$40 million, even \$85 million or more.<sup>13</sup> These verdicts are sometimes improperly prompted by a push by the plaintiffs’ lawyer for the jury to “send a message,” even if a defendant’s conduct does not rise to a level that warrants punitive damages.

In states that lack limits on noneconomic damages, personal injury lawyers have long understood that the more you ask for, the more you get,<sup>14</sup> and they have become increasingly bold in their requests to juries for extraordinarily high pain and suffering awards. This tactic, known as “anchoring,” implants in the minds of jurors an arbitrary sum or a mathematical formula (such as an amount per day or hour, referred to as a “per diem” argument) designed to lead to an excessive award. An “anchor” creates a psychologically powerful baseline for jurors struggling with assigning a monetary value to pain and suffering. Once a lawyer provides an anchor, jurors accept the suggested amount or “compromise” by negotiating it upward or downward. Studies show that both use of a specific sum or mathematical formula leads juries to reach a substantially higher award—double<sup>15</sup> or quadruple<sup>16</sup> the amount they would have if left to determine a just and reasonable award on their own.

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<sup>9</sup> *Id.*

<sup>10</sup> Cary Silverman & Christopher E. Appel, Nuclear Verdicts Trends, Causes, and Solutions, at 8-10 (U.S. Chamber Inst. for Legal Reform 2022) (examining 1,376 reported personal injury and wrongful death verdicts over \$10 million between 2010 and 2019).

<sup>11</sup> *Id.* at 10-11.

<sup>12</sup> *See id.*

<sup>13</sup> *See* Mark A. Behrens, Cary Silverman & Christopher E. Appel, *Summation Anchoring: Is it Time to Cast Away Inflated Requests for Noneconomic Damages*, 44 *Am. J. of Trial Advoc.* 321, 327-29 (2021) (providing examples from several states).

<sup>14</sup> Gretchen B. Chapman & Brian H. Bornstein, *The More You Ask For, the More You Get: Anchoring in Personal Injury Verdicts*, 10 *Applied Cognitive Psychology* 519, 534 (1996).

<sup>15</sup> *See* Bradley D. McAuliff & Brian H. Bornstein, *All Anchors are Not Created Equal: The Effects of Per Diem Versus Lump Sum Requests on Pain and Suffering Awards*, 34 *L. & Human Behavior* 164, 167 (2010).

Fortunately, Maryland is not on the list of the top states for nuclear verdicts. While anchoring is permissible in Maryland,<sup>17</sup> this type of manipulation and the potential for excessive awards has been constrained by the statutory limit on noneconomic damages. I'll give you one recent example that is a preview of what is to come if the statutory limit is eliminated. In a case arising from a Maryland inmate who fractured his wrist during a fight, the plaintiffs' attorney requested that the jury award his client \$100 per day for pain and suffering for his remaining life expectancy of fifty years. That doesn't sound like much, but it adds up to nearly \$2 million. The defendant's counsel objected to the arbitrary amount as highly prejudicial, noting that he had never seen this done before, but the trial court allowed it. Prompted by that high figure, the jury ultimately returned a \$3 million verdict. The trial court reduced that \$3 million award pursuant to the noneconomic damage limit in place at the time, \$770,000. That judgment was affirmed on appeal.<sup>18</sup> Without a statutory limit, these types of arguments, and awards at significantly higher levels, will become the norm in Maryland.

### **How Maryland's Noneconomic Damage Limit Compares to Other States**

Maryland is not alone in trying to restrain rising pain and suffering awards. When Maryland enacted its statutory limit in 1986, it was the first state to adopt a limit generally applicable to personal injury cases.<sup>19</sup> Now, it is among several states that have done so outside of healthcare liability. For example:

- Alaska limits noneconomic damages in personal injury cases to the greater of \$400,000 or injured person's life expectancy in years multiplied by \$8,000. In cases involving "severe physical impairment or severe disfigurement," the limit increases to the greater of \$1 million or injured person's life expectancy in years multiplied by \$25,000.<sup>20</sup>

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<sup>16</sup> See John Campbell, et al., *Time is Money: An Empirical Assessment of Non-Economic Damages Arguments*, 95 Wash. U. L. Rev. 1, 22 (2017).

<sup>17</sup> *Bauman v. Woodfield*, 223 A.2d 364, 373 (Md. 1966); *E. Shore Pub. Serv. Co. v. Corbett*, 177 A.2d 701, *adhered to sub nom.*, 180 A.2d 681 (Md. 1962); *Giant Food Inc. v. Satterfield*, 603 A.2d 877, 881 (Md. Ct. Spec. App. 1992).

<sup>18</sup> *Rivera-Ramirez v. Hall*, No. 756, 2023 WL 1987860, at \*4 (Md. Ct. Spec. App. Feb. 14, 2023). This case was brought against a contractor that provided medical services to correction facilities, alleging that its physician provided inadequate care for the inmate's injury. The same tactics, however, can occur in any personal injury case.

<sup>19</sup> See *Maryland Legislature Puts Ceiling on Personal Injury Awards*, N.Y. Times, Apr. 13, 1986.

<sup>20</sup> Alaska Stat. § 09.17.010;

- Colorado’s inflation-adjusted limit on noneconomic damages in any civil action other than medical malpractice actions is \$642,180, which may increase upon clear and convincing evidence to \$1,284,370.<sup>21</sup>
- Hawaii limits noneconomic damages in personal injury actions to \$375,000 with certain exceptions.<sup>22</sup>
- Idaho’s current inflation-adjusted limit on noneconomic damages in personal injury cases is \$430,740.<sup>23</sup>
- Michigan’s inflation-adjusted limit for noneconomic damages in product liability actions is \$537,900, rising to \$960,500 in catastrophic injury cases in 2023.<sup>24</sup>
- Mississippi limits noneconomic damages in personal injury cases outside of healthcare liability to \$1 million.<sup>25</sup>
- Ohio limits noneconomic damages in personal injury cases to \$250,000, or three times economic loss, up to a maximum of \$350,000, which does not apply to certain permanent and substantial physical injuries.<sup>26</sup>
- Tennessee limits noneconomic damages in personal injury cases to \$750,000 or \$1 million in cases involving specified catastrophic injuries.<sup>27</sup>

As these state laws shows, Maryland’s current limit on noneconomic damages – at nearly a million dollars in personal injury cases, significantly more in wrongful death cases, and adjusted upward each year – is well within the mainstream. Indeed, it is at the higher end of these limits.

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<sup>21</sup> Colo. Rev. Stat. § 13-21-102.5, as adjusted, [https://www.sos.state.co.us/pubs/info\\_center/files/damages\\_new.pdf](https://www.sos.state.co.us/pubs/info_center/files/damages_new.pdf).

<sup>22</sup> Haw. Rev. Stat. § 663-8.7.

<sup>23</sup> Idaho Code § 6-1603, as adjusted <https://iic.idaho.gov/wp-content/uploads/2022/06/Benefits-Non-economic-caps-thru-2022.pdf>.

<sup>24</sup> Mich. Comp. Laws § 600.2946a, as adjusted, State of Michigan, Dep’t of Treasury, Limitation on Noneconomic Damages and Product Liability Determination of Economic Damages, Jan. 31, 2023.

<sup>25</sup> Miss. Code Ann. § 11-1-60(2)(b).

<sup>26</sup> Ohio Rev. Code Ann. § 2315.18.

<sup>27</sup> Tenn. Code Ann. § 29-39-102.

## **Conclusion**

The General Assembly's foresight in enacting a reasonable limit on noneconomic damages is an important, rational measure that continues to control outlier awards. It provides consistency and predictability in Maryland's civil justice system. It has avoided the rise of nuclear verdicts that we have seen in other states.

The bill's proposal to allow unlimited pain and suffering awards outside of healthcare liability claims will have adverse effects. It will:

- Complicate the ability to reach reasonable settlements, since plaintiffs' lawyers will demand significantly higher amounts for immeasurable harm. Some may hold out for the chance of a jackpot verdict.
- Lead to more frequent excessive verdicts for a wide range of businesses and nonprofit organizations and lengthy appeals.
- Result in higher insurance costs for Maryland drivers, homeowners, and businesses.

# **HB 862\_UNF\_Medical Mutual.pdf**

Uploaded by: John Stierhoff

Position: UNF



# MEDICAL MUTUAL

*Liability Insurance Society of Maryland*

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**Bill:** House Bill 862 – Civil Actions – Noneconomic Damages – Personal Injury or Wrongful Death

**Date:** February 23, 2023

**Position:** *Oppose*

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## ***Bill Summary***

House Bill 862 eliminates the cap on noneconomic damages in civil actions for personal injury or wrongful death.

## ***Medical Mutual's Position***

Medical Mutual opposes House Bill 862. Eliminating the cap on noneconomic damages in personal injury and wrongful death actions would expose Maryland residents and businesses to unpredictable and potentially unlimited liability that could adversely affect the availability and affordability of casualty insurance in the State.

In a personal injury or wrongful death action, a plaintiff may be entitled to recover economic damages and noneconomic damages. Economic damages include past and future loss of earnings and medical expenses.<sup>1</sup> Noneconomic damages, on the other hand, include pain, suffering, inconvenience, and other nonpecuniary losses.<sup>2</sup> Noneconomic damages do not include punitive damages, which may be awarded in cases where the plaintiff has proven, by clear and convincing evidence, that the defendant acted with actual malice.<sup>3</sup>

In 1986, the General Assembly enacted a \$350,000 cap on noneconomic damages for personal injury actions.<sup>4</sup> Since then, the cap has steadily increased to \$920,000 for causes of action arising on or after October 1, 2022.<sup>5</sup> This amount increases to \$1,380,000 (150% of the individual cap) in wrongful death actions involving two or more claimants or beneficiaries.<sup>6</sup> And the cap in

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<sup>1</sup> See Md. Code, Cts. & Jud. Proc. § 11-109.

<sup>2</sup> See Md. Code, Cts. & Jud. Proc. § 11-108(a)(2).

<sup>3</sup> See *Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420, 460, 469 (1992).

<sup>4</sup> See Laws of Md., 1986, Ch. 639.

<sup>5</sup> See Md. Code, Cts. & Jud. Proc. § 11-108(b)(2).

<sup>6</sup> See Md. Code, Cts. & Jud. Proc. § 11-108(b)(3)(ii).

a combined survival and wrongful death action can be as high as \$2,300,000.<sup>7</sup> These limits will automatically increase on October 1, 2023, and on October 1 of each subsequent year.<sup>8</sup>

Economic damages for past and future medical expenses, past and future loss of income, and other pecuniary losses are calculable and can be objectively measured. In contrast, noneconomic damages for pain and suffering, loss of consortium, emotional distress, and other nonpecuniary losses have no calculable economic basis and are inherently subjective. Removing the cap for noneconomic damages would pave the way for jury awards with no measurable basis. The possibility of unlimited noneconomic damages awards could lead to a significant rise in settlement demands, prolonged and expensive litigation, and higher liability insurance rates for Maryland citizens.

Nearly 40 years ago, the General Assembly enacted a reasonable limit on noneconomic damages. This measured response to disproportionate jury awards continues to provide predictability in Maryland's civil justice system today. The noneconomic damages cap preserves "the availability of sufficient liability insurance, at a reasonable cost, in order to cover claims for personal injuries to members of the public."<sup>9</sup> Eliminating the noneconomic damages cap would upend this legitimate legislative objective and disturb the careful balance that the General Assembly struck when enacting the cap. The current law prevents unlimited subjective noneconomic damages awards and promotes stability in the State's civil justice system and insurance marketplace.

For these reasons, Medical Mutual respectfully requests an *UNFAVORABLE* report on *House Bill 862*.

**For more information contact:**

Cheryl F. Matricciani / [cmatricciani@weinsuredocs.com](mailto:cmatricciani@weinsuredocs.com)  
(410) 785-0050

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<sup>7</sup> See Md. Code, Cts. & Jud. Proc. § 11-108(b)(3).

<sup>8</sup> See Md. Code, Cts. & Jud. Proc. § 11-108(b)(2)(ii).

<sup>9</sup> *Murphy v. Edmonds*, 325 Md. 342, 369 (1992).

# **Maryland Motor Truck UNFAV**

Uploaded by: Louis Campion

Position: UNF



# Maryland Motor Truck Association

9256 Bendix Road, Suite 203, Columbia, MD 21045

Phone: 410-644-4600 Fax: 410-644-2537



**HEARING DATE:** March 1, 2023

**BILL NO/TITLE:** House Bill 862: Civil Actions - Noneconomic Damages - Personal Injury or Wrongful Death

**COMMITTEE:** Judiciary

**POSITION:** **Oppose**

Maryland Motor Truck Association (MMTA) is extremely concerned about efforts to eliminate Maryland's noneconomic damages cap given the rise in nuclear verdicts and staged truck accidents that have plagued the trucking industry in recent years.

The American Transportation Research Institute completed a study in 2020 to better understand the impact of rising verdicts on trucking. The research evaluated 600 cases between 2006 and 2019. In the first five years of data, there were 26 cases over \$1 million involving heavy-duty trucks. In the last five years, there were nearly 300 cases. The number of verdicts over \$10 million nearly doubled in that time. The impacts on motor carriers have included bankruptcy filings, businesses closing, and unsustainable higher insurance premiums as fewer insurance companies are willing to provide insurance to the trucking industry. Over the past few years numerous carriers, such as Zurich, exited trucking completely.

Another outcome of these large awards is the target that has been branded on the industry in the form of staged fraudulent accidents. In these cases, cars intentionally collide with trucks or buses in the hopes of a large jury award or insurance settlement. In Louisiana at least 47 individuals have been charged federally going back to 2020, with at least 30 guilty pleas. In January 2022, a federal indictment charged 23 defendants in Washington, California, Michigan, Nevada, and British Columbia, Canada with participating in a staged automobile accident scheme.

Accident data shows that in about 75% of serious injury or fatal crashes involving a car and a truck, the fault of the accident was with the car driver. Many trucking companies have now resorted to the added cost of installing dashboard cameras to their fleets to protect their drivers and businesses. In the case of non-fraudulent accidents, dash cam footage can help exonerate a commercial driver. As for staged accidents, video evidence can expose the criminal activity.

Maryland statute already allows for the noneconomic damages cap to increase annually. On October 1, 2005, it was \$665,000. Today it is \$930,000. Removing the cap entirely will make Maryland a laboratory for similarly staged accidents and expose the trucking industry to unlimited liability. For the reasons noted above MMTA respectfully requests an unfavorable report on HB862.

**About Maryland Motor Truck Association:** Maryland Motor Truck Association is a non-profit trade association representing the trucking industry since 1935. In service to its 1,000 members, MMTA is committed to support, advocate and educate for a safe, efficient and profitable trucking industry in Maryland.

**For further information, contact:** Louis Campion, (c) 443-623-4223

# **MD 2023 NAMIC letter HB 862 Economic Damages.pdf**

Uploaded by: Matt Overturf

Position: UNF

**HOUSE JUDICIARY COMMITTEE**

**HB 862: Civil Actions – Noneconomic Damages – Personal Injury or Wrongful Death**

**UNFAVORABLE**

**March 1, 2023**

Chairman Clippinger and Members of the House Judiciary Committee:

On behalf of the National Association of Mutual Insurance Companies<sup>1</sup> (NAMIC) thank you for the opportunity to submit this statement to express our opposition to House Bill 862 and request an unfavorable report.

NAMIC consists of more than 1,500 member companies, including seven of the top 10 property/casualty insurers in the United States. The association supports local and regional mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

House Bill 862 repeals the existing limitations on noneconomic damages in civil actions for personal injury or wrongful death which have been in places for over 25 years. Damages caps provide for a more stable insurance marketplace where damages and insurance costs can be modeled and predictable. Removal of the damage caps will create inconsistent and unfair judgements that become outlier verdicts and create one of the highest cost drivers for the Maryland insurance market because of the difficulty to model for losses without limits.

Inconsistent, uncapped noneconomic damages are detached from the economic realities of a potential loss and make it difficult for juries to assign damage amounts with little direction and an open-ended scope—maintaining noneconomic damages caps alleviate that burden and ultimately provide for better price stability of insurance rates for all involved.

For these reasons, NAMIC is opposed to House Bill 862 and respectfully requests an unfavorable report of the bill.

Sincerely,



Matt Overturf, NAMIC Regional Vice President  
Ohio Valley/Mid-Atlantic Region

<sup>1</sup> NAMIC member companies write \$357 billion in annual premiums and represent 69 percent of homeowners, 56 percent of automobile, and 31 percent of the business insurance markets. Through its advocacy programs NAMIC promotes public policy solutions that benefit member companies and the policyholders they serve and fosters greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

**HB 862 APCIA Opposes 030123 FINAL .pdf**

Uploaded by: Nancy Egan

Position: UNF



## Testimony of

### American Property Casualty Insurance Association (APCIA)

#### House Judiciary Committee

#### House Bill 862 Civil Actions - Noneconomic Damages - Personal Injury or Wrongful Death

March 1, 2023

#### Unfavorable

The American Property Casualty Insurance Association (APCIA) is the primary national trade organization representing nearly 60 percent of the U.S. property casualty insurance market. Our members write approximately 70.5 percent of total commercial general liability insurance sold in Maryland. House Bill 862 would be a significant policy shift that would have a detrimental impact on Maryland civil defendants, residents, businesses and insurers due to increased claims, litigation jury verdicts and settlements. APCIA appreciates the opportunity to provide written comments in opposition to House Bill 862.

Repealing the non-economic damages caps for personal injury cases, which currently exceeds \$900,000 and increases by \$15,000 every year, will also significantly complicate the ability to settle lawsuits, since plaintiffs' lawyers will demand significantly higher amounts for immeasurable harm. The current law strikes a reasonable balance between unlimited subjective awards and the consistency and predictability that contribute to a stable civil justice system in Maryland. The escalating non-economic personal injury damage caps should be retained. The practical effect of this repeal is to provide yet another avenue for plaintiffs to seek uncapped and subjective non-economic damage awards, placing businesses, consumers and insurers at greater risk for nuclear verdicts, since non-economic damages have been shown to be the key drivers of nuclear verdicts.<sup>1</sup>

Non-economic damages may far exceed the amount of economic damage awards because of intangible factors such as subjective values, beliefs, emotional sensitivities and differing perspectives, and courts and juries often struggle to calculate fair and rational non-economic damage award. The repeal of the non-economic damages cap only provides incentives for plaintiff's attorneys to file litigation, which will significantly increase the number of lawsuits going forward and increase Maryland's already high tort tax of \$3,186 per household.<sup>2</sup>

The broad discretion given juries in awarding damages for noneconomic loss is the single greatest contributor to the inequities and inefficiencies of the tort liability system. It is a difficult issue to address objectively because of the emotions involved in cases of serious injury and because of the financial interests of plaintiffs' lawyers.

Pain and suffering awards are typically subject to imprecise and ineffective standards of review, such as whether the amount is so high that it "shocks the conscience." Increasing the available damages in this manner will almost certainly result in an increase in claims and lawsuit filings, and will drive up the costs of defense, settlement and

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<sup>1</sup> *US Chamber of Commerce Nuclear Verdicts Report, September 2022*

Non-economic damages may far exceed the amount of economic damage awards because of intangible factors such as subjective values, beliefs, emotional sensitivities and differing perspectives, and courts and juries often struggle to calculate fair and rational non-economic damage award.

<sup>2</sup> *US Chamber Tort Costs in America Empirical Analysis, November 2022 Report*



claims administration, including due to the increased need for experts to now necessary to testify about pain and suffering on both sides given that caps would be eliminated.

- Studies have shown that caps on non-economic damages caps lead to a significant reduction in the number of court cases filed.<sup>3</sup>
- Caps on non-economic damages have also been found to be especially effective in controlling tort liability costs.<sup>4</sup>
- Studies document that non-economic damages caps are linked to lower insurance premiums. For example, using state-specific data, the National Association of Insurance Commissioners (NAIC) found that premium rates were lower in states that regulated the amount of non-economic damages.<sup>5</sup>

There is no need to repeal Maryland's noneconomic damage caps. When Maryland enacted its statutory limit in 1986, it was the first state to adopt a limit generally applicable to personal injury cases. Now, nearly two thirds of states have statutory limits on noneconomic damages that apply to all personal injury cases, medical malpractice cases, or both.<sup>6</sup> Eighteen states cap or disallow wrongful death non-economic damages. Maryland's current limits on personal injury noneconomic damages are among the highest amounts in the country.<sup>7</sup>

Maryland's current limits on noneconomic damages in personal injury and wrongful death cases contribute to a predictable and stable business and healthcare environment in Maryland. They are within the mainstream of how other states have treated non-economic damages and should not be altered. Repeal of the caps would disturb this careful balance that the legislature has set by exposing Maryland residents and businesses to unpredictable and potentially extraordinary liability. Eliminating the statutory limit on subjective non-economic damages will result in unpredictability and will place upwards pressure on insurance rates for Maryland consumers, businesses, and insurers as the amount of insured losses skyrockets.

The legislature's foresight in enacting a reasonable limit on noneconomic damages is an important, rational measure that continues to control outlier awards and provide predictability in Maryland's civil justice system today. A statutory limit only facilitates reasonable settlements and keeps insurance rates stable if its application is predictable and consistent. If non-economic damage caps for personal injury cases are repealed, plaintiffs will increasingly utilize such tactics as summation 'jury anchoring,' arguing for an excessive pain and suffering award,

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<sup>3</sup> See, e.g., [https://www.cbo.gov/sites/default/files/108th-congress-2003-2004/reports/report\\_2.pdf](https://www.cbo.gov/sites/default/files/108th-congress-2003-2004/reports/report_2.pdf)

<sup>4</sup> [https://www.insurance-research.org/sites/default/files/news\\_releases/IRCsocinfFINAL..pdf](https://www.insurance-research.org/sites/default/files/news_releases/IRCsocinfFINAL..pdf)

<sup>5</sup> NAIC, *Profitability by Line by State, various reports*

<sup>6</sup> See Alaska Stat. § 09.55.549; Cal. Civ. Code § 3333.2; Colo. Rev. Stat. § 13-64-302; Ind. Code § 34-18-14-3; La. Rev. Stat. Ann. § 40:1299.42; Md. Cts. & Jud. Proc. Code § 3-2A-09; Mass. Gen. Laws ch. 231 § 60H; Mich. Comp. Laws Ann. § 600.1483; Miss. Code Ann. § 11-1-60(2)(a); Mont. Code Ann. § 25-9-411; Neb. Rev. Stat. § 44-2825; Nev. Rev. Stat. § 41A.035; N.M. Rev. Stat. § 41-5-6; N.C. Gen. Stat. § 90-21.19; N.D. Cent. Code § 32-42-02; Ohio Rev. Code Ann. § 2323.43; S.C. Code Ann. § 15-32-220; S.D. Codified Laws §21-3-11; Tex. Civ. Prac. & Rem. Code Ann. § 74.301; Utah Code § 78B-3-410; Va. Code Ann. § 8.01-581.15; W. Va. Code § 55-7B-8.

<sup>7</sup> A few states limit noneconomic damages to \$250,000. Most states with caps have limits in \$350,000 to \$500,000 range. Maryland is one of only seven states that automatically adjust the limit on noneconomic damages on a regular basis to account for inflation. While some states adjust or lift the cap for catastrophic injuries or wrongful death, many are still at levels that are lower than Maryland's limit.

which will cause Maryland to become a nuclear verdict state, with all of the associated adverse consequences. Empirical evidence confirms that anchoring “dramatically increases” noneconomic damage awards.

Finally, when an injury or death is caused by malicious conduct, a plaintiff can also recover punitive damages in Maryland. About half of the states limit punitive damages to an amount set by statute or a multiple of compensatory damages. A half dozen other states generally do not authorize punitive damage awards. In Maryland, punitive damages are available and uncapped.

For all these reasons, APCIA respectfully requests an unfavorable report on House Bill 862.