

MEDICAL MUTUAL

Liability Insurance Society of Maryland

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

Date: February 23, 2023

Position: *Oppose*

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.¹ Noneconomic damages, on the other hand, include pain, suffering, inconvenience, and other nonpecuniary losses.² 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.³

In 1986, the General Assembly enacted a \$350,000 cap on noneconomic damages for personal injury actions.⁴ Since then, the cap has steadily increased to \$920,000 for causes of action arising on or after October 1, 2022.⁵ This amount increases to \$1,380,000 (150% of the individual cap) in wrongful death actions involving two or more claimants or beneficiaries.⁶ And the cap in

¹ See Md. Code, Cts. & Jud. Proc. § 11-109.

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

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

⁴ See Laws of Md., 1986, Ch. 639.

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

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

a combined survival and wrongful death action can be as high as \$2,300,000.⁷ These limits will automatically increase on October 1, 2023, and on October 1 of each subsequent year.⁸

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."⁹ 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***.

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

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

⁹ *Murphy v. Edmonds*, 325 Md. 342, 369 (1992).