

MEDICAL MUTUAL

Liability Insurance Society of Maryland

Bill: Senate Bill 584 – Civil Actions – Noneconomic Damages – Personal Injury and Wrongful Death

Date: February 11, 2025

Position: Oppose

Medical Mutual opposes Senate Bill 584. 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 1986, the General Assembly enacted a \$350,000 cap on noneconomic damages for personal injury actions.¹ Effective October 1, 1994, the cap was raised to \$500,000, and in an effort to address inflation, an annual escalator was enacted that increases the cap by \$15,000 each year beginning on October 1, 1995.² Since then, the cap has steadily increased to \$950,000 for causes of action arising on or after October 1, 2024.³ This amount increases to \$1,425,000 (150% of the individual cap) in wrongful death actions involving two or more claimants or beneficiaries.⁴ And the cap in a combined survival and wrongful death action can be as high as \$2,375,000.⁵

¹ 1986 Md. Laws, ch. 639. Noneconomic damages include pain and suffering and other nonpecuniary losses. Economic damages, which are not capped, include past and future loss of earnings, past and future medical expenses, and other pecuniary losses.

² 1994 Md. Laws, ch. 477.

³ Md. Code, Cts. & Jud. Proc. § 11-108(b)(2).

⁴ Md. Code, Cts. & Jud. Proc. § 11-108(b)(2), (3). The cap for wrongful death actions increases by \$22,500 annually. *Id.*

⁵ *Goss v. Estate of Jennings*, 207 Md. App. 151, 173, 51 A.3d 761, 773-74 (2012) (holding that the § 11-108 cap applies separately to damage awards in combined survival and wrongful death actions). The cap for combined survival and wrongful death actions increases by \$37,500 annually. Md. Code, Cts. & Jud. Proc. § 11-108(b)(2), (3).

The General Assembly enacted a reasonable limit on noneconomic damages. This measured response to disproportionate jury awards continues to provide predictability and stability in Maryland's civil justice system today. The noneconomic damages cap also preserves "the availability of sufficient liability insurance, at a reasonable cost, in order to cover claims for personal injuries to members of the public."⁶ Eliminating the noneconomic damages cap would upend these legitimate legislative objectives and disturb the careful balance that the General Assembly struck when enacting the cap.

Medical Mutual was created in 1975 by an act of the General Assembly at a time when other medical professional liability (MPL) insurers withdrew from the State, leaving most physicians without insurance protection. Thanks to the wisdom of the General Assembly, the Governor, and others who were involved in Medical Mutual's creation, we are celebrating our 50th year as a physician-owned and directed mutual insurer, providing comprehensive MPL insurance to Maryland Physicians.

As the largest provider of MPL insurance to private practice physicians in Maryland, Medical Mutual is concerned that a repeal of the cap on noneconomic damages in civil actions for personal injury or wrongful death may lead to a proliferation of judicial challenges that seek to invalidate the cap on noneconomic damages applicable to medical liability actions. The bill file for the 1986 legislation that created the cap bears this out.⁷

The bill file includes a letter from Attorney General Sachs to Governor Hughes, approving the constitutionality and legal sufficiency of the bill.⁸ In the letter, the Attorney General stated that the bill, which as introduced would only have applied to medical liability actions, was amended to apply to all personal injury actions, thus removing "an alleged constitutional objection that the legislation impermissibly treats medical liability actions differently from other types of cases." Repealing the cap on noneconomic damages in civil actions for personal injury or wrongful death could lead to the very judicial challenges the General Assembly sought to avoid. Even if those challenges ultimately fail, the mere possibility of a successful challenge could lead to costly and protracted litigation and destabilize the market for MPL insurance in Maryland.

Private practice physicians are already struggling with increasing labor and other practice costs and decreasing reimbursement rates. Adding MPL insurance premium increases to these struggles could negatively impact the availability of quality healthcare for Maryland citizens.

For these reasons, Medical Mutual respectfully requests an UNFAVORABLE report on Senate Bill 584.

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⁶ *Murphy v. Edmonds*, 325 Md. 342, 369 (1992).

⁷ Bill File, Senate Bill 558, 1986 Session, Maryland General Assembly.

⁸ Letter from Stephen H. Sachs, Attorney General, Maryland, to Harry Hughes, Governor, Maryland (May 6, 1986) (included in bill file for Senate Bill 558, 1986 Session).