

## **MARYLAND EMPLOYERS FOR CIVIL JUSTICE REFORM COALITION**

### **OPPOSES SB 584**

#### **Civil Actions – Noneconomic Damages – Personal Injury and Wrongful Death**

Maryland Employers for Civil Justice Reform Coalition, comprised of many of the largest employers, businesses, and health care providers in Maryland, opposes SB 584. The bill calls for the full repeal of Maryland’s noneconomic damages caps, an unjustified public policy.

#### **Historical Context**

Caps on noneconomic damages have been an important public policy in Maryland for more than 38 years. Back in 1986, after careful study the General Assembly concluded there was a severe insurance crisis in the State, following the issuance of a 1985 report from the Governor’s Task Force to Study Liability Insurance that, among other findings, concluded:

*The current availability and affordability crisis in certain lines of insurance... is not a manufactured crisis, as some have charged... The 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, and lead to more accurate [insurance] rates because of the greater predictability of the size of the judgments. The limitation [cap] is designed to lend greater stability to the insurance market...*

*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.<sup>1</sup>*

The House Judiciary Committee helped craft the 1986 legislative solution to the crisis, noting in its Committee Report that the legislative purpose was “assuring the availability of sufficient liability insurance, at a reasonable cost, in order to cover claims for personal injury.”

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<sup>1</sup> *Franklin v. Mazda Motor Corp.*, 704 F. Supp. 1325, 1328 (D. Md. 1989) (quoting the Report of the Governor’s Task Force to Study Liability Insurance, issued Dec. 20, 1985). This issue also studied in 1985 by the Joint Executive/Legislative Task Force on Medical Insurance, resulting in a similar recommendation for statutory limits or caps.

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In light of this well studied foundation for the current caps on noneconomic damages, why *ever* would the General Assembly want to risk inviting back the insurance crisis of 1986 by removing these caps? This foundation explains why more than a dozen legislative proposals identical or similar to SB 584 have failed each and every legislative session since first introduced back in the early 2000s.

A central reason favoring the preservation of caps on noneconomic damages has always been that these damages, for pain and suffering and other nonpecuniary injuries, are difficult to quantify. Quite simply, these damages involve no direct economic loss and have no precise monetary value. Given the emotional sensitivities and differing perspectives surrounding these injuries, courts and juries often struggle to calculate fair and rational awards. Caps have proven to be the correct and best public policy to balance the need for recovery for these injuries with the avoidance of unrealistically high and excessive awards. For these reasons, more than half the states have caps currently in effect on noneconomic damages.

### **Maryland's Current Caps Are Reasonable**

The caps were originally set at \$350,000 when first enacted in 1986, and then in 1994 they were raised to \$500,000 and tied to an annual escalator of \$15,000 to adjust for inflation. Today, these inflation-adjusted caps in personal injury actions have risen to \$950,000 for the injured party. In most other states with caps, the caps range from \$250,000 to \$1,000,000, placing Maryland at the top of the range among the states.

Significantly, the caps do not end at \$950,000, they go higher under current law. In wrongful death cases, pain and suffering can be recovered on behalf of the person who died as a result of the negligent conduct, and in addition, two or more beneficiaries, such as immediate family members, can also recover noneconomic damages in wrongful death cases. Accordingly, in actions where a person is alleged to have died as a result of negligence, the total availability of noneconomic damages in Maryland is up to \$2,375,000 (\$950,000 for the decedent, plus \$1,425,000 for the immediate family). Noneconomic damages are not even a sole remedy, as damages for the full and unlimited amount of *economic* losses, together with *punitive* damages, are also available to plaintiffs in these actions. Clearly, the rights of injured parties to recover for their injuries are protected under current law.

### **Consequences of SB 584**

Each year that cap repeal legislation is introduced, the proponents contend there is no effect on insurance premiums or availability, an utterly false narrative. To the contrary, insurance costs for consumers and businesses will increase, as determined by the Maryland Insurance Administration (MIA) and the National Association of Insurance Commissioners. Last year's SB 538, which as amended would have raised the cap just to \$1,750,000, would have produced insurance increases of 15.7% to 21.4% across all liability lines, according to an independent actuarial analysis.<sup>2</sup> SB 584's outright repeal of the cap – a more extreme measure – would produce much larger adverse impacts on insurance costs.

As identified in the Fiscal Note, SB 584 creates a *material fiscal liability* for the State of Maryland in the transportation sector. Specifically, while most state agencies are covered by the

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<sup>2</sup> *Analysis of the Impact of Increasing \$ Maryland Economic Damages Cap*, Pinnacle Actuarial Resources, Inc., April 3, 2024(actuarial analysis of Maryland insurance rates (all lines) conducted on a noneconomic damages cap of \$1,750,000 and an annual escalator of \$20,000)

liability limits of the Maryland Tort Claims Act, the Maryland Transit Administration (MTA) is governed by the Transportation Article which, like SB 584, does not include a limit on liability. According to Fiscal Services, SB 584 creates significantly greater awards and settlements against MTA, a lack of predictability in litigation and settling MTA cases, and financial liability of a magnitude of at least millions of dollars.

The real purpose of SB 584 becomes evident when understanding who the only proponents of the bill are – plaintiffs’ lawyers. Removing the cap to make for unlimited noneconomic damages produces the same effect of unlimited attorneys’ fees, which are based on a percentage of the damages recovered. While the only persons supporting this legislation are plaintiffs lawyers, bill opponents include Maryland drivers, homeowners, consumers, employers, health care providers, insurers, the hospitality and transportation sectors, and small businesses across a spectrum of industries. Such self-interested conduct by bill proponents, seeking unlimited increases in the fees they extract from their clients who are victims of negligence, has no place in the public policy of Maryland.

### **False Assertions**

Proponents of SB 584 falsely assert that remittitur ensures that verdicts will not be excessive in personal injury cases, and therefore this readily-available safeguard obviates the need for a damages cap. What the proponents omit from this assertion is that the standard for remittitur is profoundly high, and thus the incidence of remittitur is extremely rare. The Supreme Court of Maryland established this high standard, requiring that the verdict “be grossly excessive” or “shock the conscience of the trial judge.”<sup>3</sup> That the rarely invoked act of remittitur would serve as a readily available safeguard or cure for excessive verdicts in Maryland has no basis in fact or law.

Finally, the proponents question the constitutionality of the current caps, but unfortunately for them this issue has been reviewed on three separate occasions by the Court of Appeals (now Supreme Court) of Maryland. In every instance, the noneconomic damages caps have been upheld by the high court.<sup>4</sup> Allegations that caps on noneconomic damages are unconstitutional are unfounded and inconsistent with established case law.

### **Conclusion**

For all these reasons, the Coalition respectfully urges an unfavorable report on SB 584.

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<sup>3</sup> *Rodriguez v. Cooper*, 458 Md. 425, 437 (2018).

<sup>4</sup> *DRD Pool Service v. Freed*, 416 Md. 46, 62 (2010); *Oaks v. Connors*, 339 Md. 24, 37 (1995); *Murphy v. Edmonds*, 325 Md. 342, 366 (1992). *See also, Martinez v. Hopkins*, 212 Md. App. 634, 656 (2013) (constitutionality of the caps was challenged but not struck down, finding that the constitutionality of the caps was moot).