



**Testimony of**  
**American Property Casualty Insurance Association (APCIA)**

**House Judiciary Committee**

**House Bill 113 - Civil Actions - Noneconomic Damages - Personal Injury or Wrongful Death**

**February 11, 2025**

**Unfavorable**

The American Property Casualty Insurance Association (APCIA) is the primary national trade organization representing nearly 66.9% of the personal auto market, 82.4% of commercial auto, and 75.4% of commercial general liability in the Maryland property casualty insurance market. House Bill 113 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 113.

Repealing the noneconomic damages caps for personal injury cases, which currently exceeds \$950,000 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 noneconomic 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 noneconomic damage awards, placing businesses, consumers and insurers at greater risk for nuclear verdicts, since noneconomic damages have been shown to be the key drivers of nuclear verdicts.<sup>1</sup>

Noneconomic 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 noneconomic damage award. The repeal of the noneconomic 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 \$3,694 per household and decreases the state's GDP by 1.78%.<sup>2</sup>

An actuarial study was conducted by Pinnacle Actuarial Resources, Inc, an independent actuarial firm in response to last year's bill SB 538 which raised the cap to \$1,735,000 and the escalator to \$20,000. The study found that last year's change would have raised personal auto rates by as much as 19% and **commercial auto liability premiums by as much as 30%**, and general liability premiums for businesses up to 14.2%. This bill would remove the caps entirely, which would only further increase these costs. In this time of high inflation and economic stress, this would only add to the cost of doing business in the state which would translate to higher cost to all consumers.

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 claims administration, including

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<sup>1</sup> *US Chamber of Commerce Institute for Legal Reform Nuclear Verdicts Report, November 2024*

Noneconomic 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 of Commerce Institute for Legal Reform Tort Costs in America Empirical Analysis, November 2024*. For purposes of the study, tort costs are defined as the aggregate amount of judgments, settlements, and legal and administrative costs to adjudicate private claims and enforcement actions.

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

- Studies have shown that caps on noneconomic damages caps lead to a significant reduction in the number of court cases filed.<sup>3</sup>
- Caps on noneconomic damages have also been found to be especially effective in controlling tort liability costs.<sup>4</sup>
- Studies document that noneconomic 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 noneconomic 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 noneconomic 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 noneconomic 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 noneconomic 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 noneconomic 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, 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.<sup>8</sup>

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<sup>3</sup> [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 e.g., 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 \$600,000 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.

<sup>8</sup> John Campbell et al., *Time Is Money: An Empirical Assessment of Noneconomic Damages Arguments*, 95 WASH. U. L. REV. 1, 28 (2017).

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.

APCIA is not alone in its opposition but rather is part of a large alliance of business, health care and other interests in opposition to this bill.<sup>i</sup> For all these reasons, APCIA respectfully requests an unfavorable report on House Bill 113.

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<sup>i</sup> A copy of the alliance opposition is attached with permission.



## Say **NO** to removing caps on Non-Economic Damages

**STOP HB 113 AND SB 584** Protect Maryland Businesses from **HIGHER COSTS**.

### WHY IT MATTERS

A non-economic damages cap was first enacted in Maryland in 1986 at \$350,000. This cap has been adjusted over the years by an annual escalator. Maryland chose to cap non-economic damages because pain and suffering are difficult to quantify, and putting a reasonable cap on damages is the best public policy to balance a need for injury recovery with the avoidance of excessive awards.

### THE FACTS



Non-economic damages may be awarded for pain and suffering in negligence actions. In Maryland, these damages are capped at \$950,000, and they go up each year by \$15,000.



Many states have caps on non-economic damages and Maryland's cap is already one of the highest in the nation.



In the 2024 session, some legislators attempted to raise Maryland's cap. **If passed, it could have increased personal auto liability premiums by as much as 19% and commercial auto liability premiums by as much as 30%**, according to an analysis conducted by Pinnacle Actuarial Resources, Inc., an independent actuarial firm.



Plaintiffs' attorneys typically seek 30% to 40% of awards. Removal or increase in caps for non-economic damages can attract more litigation that burdens the legal system and causes price inflation across much of the economy due to its burden on business.



Economic damages, by contrast, are harms that can be quantified with information like medical bills or lost wages. Maryland does not cap economic damages, and these expenses have no caps and are paid by insurers.

### REMOVING THE NON-ECONOMIC DAMAGES CAP INCREASES COSTS FOR PRODUCTS LIKE PERSONAL AUTO LIABILITY INSURANCE



**Keep our liability laws fair. Don't remove our caps.**

Visit **FairLiabilityMaryland.com** to get engaged with our effort to say **NO** to removing caps on non-economic damages.

<sup>1</sup> Analysis of the Impact of Increasing the Maryland Noneconomic Damages Cap, Pinnacle Actuarial Resources (2024)

<sup>2</sup> Estimated using Bankrate.com data on average Maryland personal auto liability cost



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## Coalition Members

AIG	Maryland Employers for Civil Justice Reform
Allstate Insurance Company	
APCIA	Maryland Hospital Association
American Tort Reform Association	Maryland Motorcoach Association
Chubb	Maryland Motor Truck Association
CNA Insurance	Maryland Retailers Alliance
The Doctors Company	Maryland Transportation Builders & Materials Association
Enterprise	NAMIC
FedEx Corporation	Nationwide Mutual Insurance Company
GEICO	NFIB
Independent Agents of MD	Owner-Operator Indep. Drivers Assn.
The Hartford	Professionals Advocate
Lennar Corporation	Restaurant Association of Maryland
Liberty Mutual Insurance	Selective Insurance Company of America
Maryland Chamber of Commerce	Sentry
Maryland Defense Counsel	State Farm
Maryland Hispanic Chamber of Commerce	Uber
Medical Mutual of Maryland	UPS
MedChi, The Maryland State Medical Society	USAA
Maryland Building Industry Association	Westfield
	Zurich North America

Visit **FairLiabilityMaryland.com** to get engaged with our effort to say **NO** to removing caps on non-economic damages.