

**Written Testimony of George S. Tolley III, Esq.**

**HB 113 Civil Actions – Noneconomic Damages – Personal  
Injury and Wrongful Death (cross-filed with SB 584)**

**FAVORABLE**

Dear Chairman Clippinger and Members of the House Judiciary Committee:

I respectfully ask for a **FAVORABLE** report on **House Bill 113**, which would repeal Md. Cts. & Jud. Procs. Code § 11-108, the cap on non-economic damages applicable to personal injury and wrongful death actions.

When innocent Marylanders suffer catastrophic injuries due to negligence, § 11-108 deprives them of fair compensation, determined by a jury of their peers after a fair and impartial trial. When a Maryland family loses a loved one to negligence, § 11-108 deprives that family of compensation for the harms done to them.

Eliminating the § 11-108 cap will make Maryland safer by increasing the deterrent effect of the tort law in our State. Tort law exists to compensate the victims of unreasonably unsafe conduct, and also to deter negligent conduct that would produce more injuries.

Moreover, HB 113 does not affect the cap in medical malpractice cases (which is found in § 3-2A-09), nor the damages caps applicable to the State or Local Governments or Boards of Education. Those caps will remain unchanged by HB 113.

The § 11-108 cap is arbitrary, unjust, and unfair. It must be repealed.

**The arbitrary § 11-108 cap has outlived its usefulness (assuming it was ever useful)**

The § 11-108 cap was enacted in 1986 in response to a perceived nationwide “crisis” in the availability and affordability of property and casualty insurance. A small number of state legislatures, including Maryland’s General Assembly, enacted permanent caps on noneconomic damages in personal injury actions.

***The 1980s “crisis” was only temporary.*** Across the country – in states with and without caps – the “crisis” ended, and property and casualty insurance industry returned to profitability. The § 11-108 cap doesn’t keep insurance markets stable, because stable markets exist in states without caps.

Some states, including Arizona, Arkansas, Kentucky and Wyoming, have state constitutions that forbid damages caps altogether. In 1891, Kentucky added this language to its Constitution:

The General Assembly shall have no power to limit the amount to be recovered for injuries resulting in death, or for injuries to person or property.

Ky. Const. § 54. *See also* Ariz. Const., art. 2, § 31; Ark. Const, art. 5, § 32; Wyo. Const., art. 10, § 4(a). Obviously, these states have never had a § 11-108 cap, because caps are not allowed. Without caps, the 1980s “crisis” also ended in those jurisdictions, just like it did in Maryland.

**The arbitrary § 11-108 cap has no effect on verdicts, because juries are never told about the cap**

The opponents of HB 113 claim that repealing the § 11-108 cap will result in larger jury verdicts in Maryland. But that cannot be true: Since 1989, Maryland law has forbidden courts from telling juries anything about the § 11-108 cap. In Maryland, juries deliberate, and reach unanimous verdicts, without ever hearing any information about caps.

If the § 11-108 cap were repealed, juries would get the same information about caps on damages that juries get today – no information at all. Jury verdicts would continue to be based on the evidence presented at trial, without later being reduced to an arbitrary number.

**Repealing the arbitrary § 11-108 cap will not cause insurance rates to skyrocket**

As noted above, many states have no cap on non-economic damages like § 11-108. Those states without a § 11-108 cap are, nevertheless, growing their state economies much faster than Maryland.

Indeed, some states like Arizona, Arkansas, Kentucky and Wyoming forbid caps in their state constitutions. If having a cap like § 11-108 was so essential to a strong state economy – or to stable and affordable insurance markets – those states would have repealed those constitutional provisions and followed Maryland's example many years ago.

The fact is that, despite nearly four decades of § 11-108, even the opponents of HB 113 admit that Maryland's economy ranks no. 49 in job growth and no. 44 in new business applications since 2019. The § 11-108 cap is not helping Maryland's economy; if anything, the cap makes things worse.

**I ask for a FAVORABLE report on House Bill 113.** Thank you for your consideration.