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# Noneconomic Damages

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*Personal Injury and Wrongful Death*

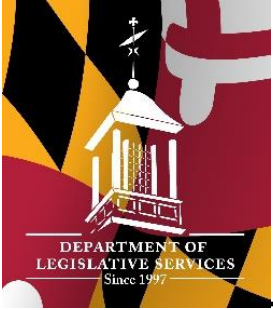
**Presentation to the House Judiciary Committee**



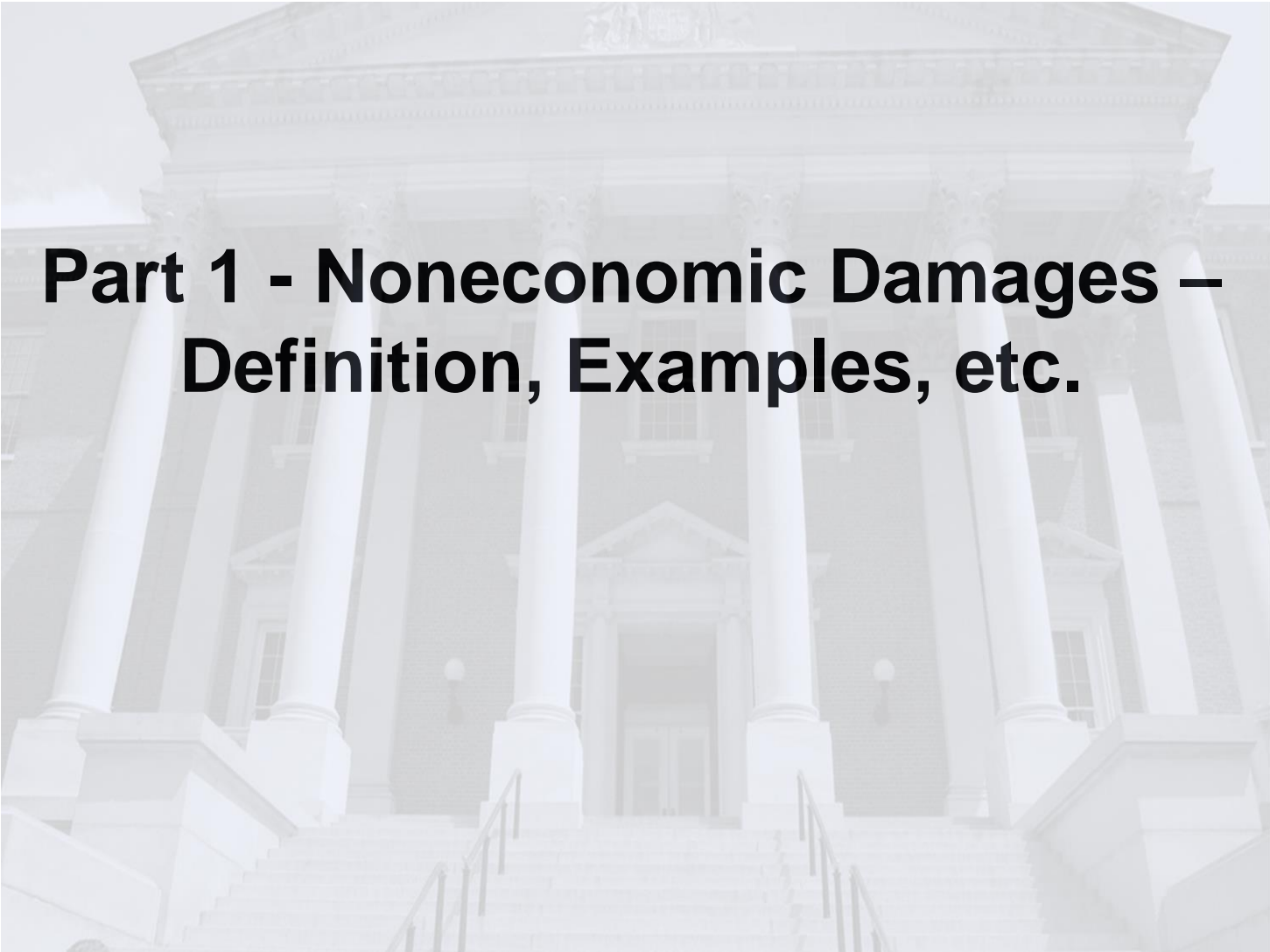
**January 14, 2025**

# Introduction

- During this presentation, the Department of Legislative Services (DLS) will provide an overview of Maryland's noneconomic damages cap in personal injury and wrongful death cases, the history of the cap, and legislative developments. The National Conference of State Legislatures (NCSL) will conclude the presentation by providing state comparisons.
  - Refer to § 11-108 of the Courts and Judicial Proceedings Article (civil actions for personal injury and wrongful death)
- This presentation **does not** address noneconomic damages in medical malpractice cases in Maryland, which are subject to different statutes.
  - Refer to Title 3, Subtitle 2A of the Courts and Judicial Proceedings Article (medical malpractice)



# **Part 1 - Noneconomic Damages – Definition, Examples, etc.**

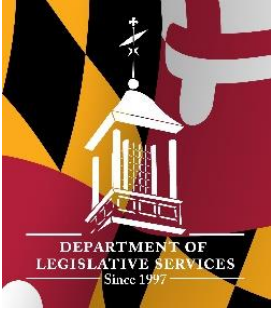




# Damages

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- Money claimed or ordered to be paid to a person as compensation for an injury or loss
- There are three types of damages available in personal injury and wrongful death claims:
  - Economic Damages
  - Noneconomic Damages
  - Punitive Damages



# Noneconomic Damages v. Economic Damages v. Punitive Damages

## Economic Damages

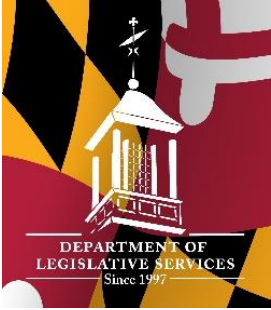
- **Tangible financial losses**
- **Objectively verifiable, quantifiable damages that have monetary value attached**
- **Examples include:**
  - **Medical expenses and treatment (past and future)**
  - **Lost income (past and future)**
  - **Lost property**
  - **Lost business opportunities**
  - **Property damages including repair or replacement**

## Noneconomic Damages

- **Intangible losses**
- **Noneconomic Damages are subjective, nonquantifiable damages**
- **Examples include:**
  - **Pain and suffering**
  - **Intentional infliction of emotional distress**
  - **Loss of care**
  - **Loss of support**
  - **Loss of enjoyment of life**

## Punitive Damages

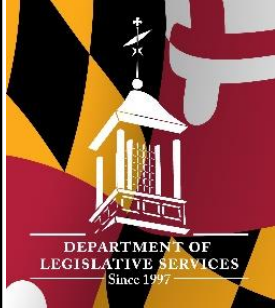
- **Sometimes referred to as exemplary damages**
- **Damages awarded for the purpose of punishment – to deter intentional or reckless behavior or actions motivated by malice**
- **Punitive damages are neither economic nor noneconomic damages because they are not awarded to compensate any loss**



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There is **no** cap on economic damages or punitive damages in Maryland.

However, there is a cap on noneconomic damages in Maryland.



# What Are Noneconomic Damages?

- “Noneconomic damages” are defined in § 11-108 of the Courts and Judicial Proceedings Article
- The section defines “Noneconomic Damages” as:
  - **In Personal Injury Actions:** Pain, suffering, inconvenience, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injuries
  - **In Wrongful Death Actions:** Mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, care, marital care, parental care, filial care, attention, advice, counsel, training, guidance, education, or other noneconomic damages authorized under specified statutes pertaining to wrongful death causes of action

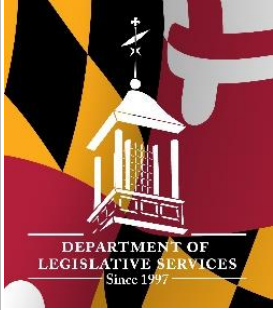


# Examples of Specific Noneconomic Damages

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- **Pain and Suffering/Mental Anguish**
  - Physical and mental pain
- **Pre-impact Fright**
  - Anguish suffered prior to an injury
- **Inconvenience**
  - Inconvenience of being injured (e.g., an inability to drive or having to use a wheelchair)
- **Psychological Impact of an Accident**
  - Anxiety, depression, PTSD resulting from an injury
- **Physical Impairment/Disfigurement**
  - Noticeable scarring or deformities causing emotional distress
- **Embarrassment or Humiliation**
  - Feeling uncomfortable or self-conscious due to the injury
  - Social withdrawal
- **Loss of Ability to Participate in Activities**
  - Inability to enjoy hobbies, recreational activities, or social events due to an injury
- **Loss of Consortium**
  - Loss of society and affection
  - Injured spouse cannot fully participate in the marriage





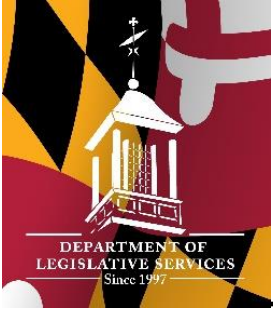
# Valuation of Noneconomic Damages

## Multiplier Method

- Uses economic damages to estimate a plaintiff's noneconomic damages
- Takes the sum of the plaintiff's economic damages and multiplies that amount by a multiplier
- Multiplier will vary based on the severity and duration of the injuries
- The multiplier can range between 1.5 and 5.0
  - A relatively minor injury might receive a low multiplier while a severe injury might receive a high multiplier
- For example, if a plaintiff incurred \$200,000 in economic damages and the multiplier is 2.0, the total noneconomic damages would be \$400,000
  - Total damages would be \$600,000 (\$200,000 in economic damages and \$400,000 in noneconomic damages)

## Per Diem Method

- Attempts to directly measure noneconomic losses
- Multiplies the daily value of a plaintiff's noneconomic losses by the number of days the plaintiff's injuries persisted
- For example, if the plaintiff's noneconomic losses were \$150 a day and lasted for 90 days, their noneconomic damages would total \$13,500 (90 days x \$150 per day)
  - If their economic damages were \$15,000, their overall damages would total \$28,500 (\$15,000 in economic damages plus \$13,500 in noneconomic damages)



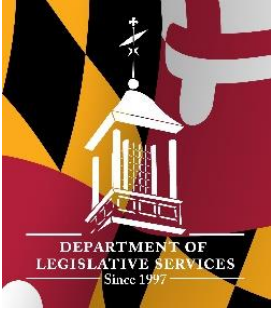
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## **Part 2 – The Legislative History of the Noneconomic Damages Cap in Maryland**



# Chapter 639 of 1986

- Chapter 639 of 1986 established the first cap on noneconomic damages in Maryland
- **\$350,000** cap on noneconomic damages applied to *all* personal injury cases, including medical malpractice
  - Effective July 1, 1986
  - Prior to this law, there was ***no limit*** on the amount that an injured party could recover for noneconomic damages
  - Codified under § 11-108 of the Courts and Judicial Proceedings Article



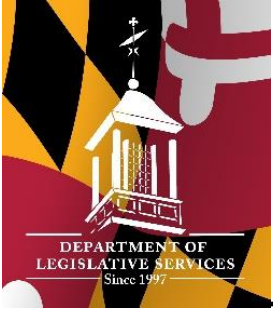
# Arguments For and Against a Damages Cap

## Proponents

- Primarily healthcare and medical providers and insurance companies and representatives
- Argued a cap was necessary to combat high insurance rates and to deter the rising amounts of noneconomic damages awards
- Argued that noneconomic damages are difficult to quantify and enacting a reasonable cap was in the interest of public policy because it would stabilize the insurance markets

## Opponents

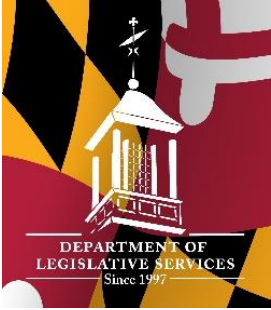
- Personal Injury attorneys and victims
- Argued the \$350,000 figure was an arbitrary amount that unfairly compensated victims without considering the severity of injuries
- Heightened debate over the constitutionality of enacting a cap and whether a cap violated a plaintiff's right to a trial by a jury



# Constitutionality of Chapter 639

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- Multiple Attorney General letters of advice in the bill file
- In a May 6, 1986 letter to Governor Harry Hughes, the Office of the Attorney General concluded Chapter 639 was constitutional.
  - Referred to a U.S. Supreme Court summary disposition in *Fein v. Permanente Medical Group*, 106 S. Ct. 214 (1985), which upheld a \$250,000 cap imposed by California on noneconomic losses in medical malpractice cases.



# Constitutionality of Chapter 639 (Cont.)

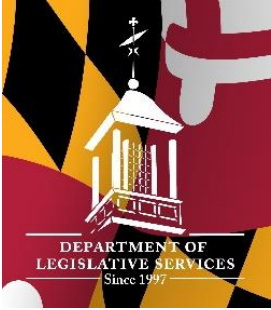
- The Attorney General's initial advice was on the bill as introduced, which **only** imposed a damages cap on medical malpractice damages
  - The bill was amended to apply the noneconomic damages cap to **all** personal injury cases
  - Maryland was the first state to adopt a limit generally applicable to personal injury cases
- The Attorney General later concluded that even though the bill was amended, it **did not** change the office's opinion that the equal protection standard to review the legislation was the "rational basis" test and "the preservation of viable insurance programs in personal injury cases was a legitimate goal"
- When evaluating whether the damages cap violated Article 19 of the Maryland Declaration of Rights (right to a remedy for injury to person or property), the Attorney General determined that Chapter 639 **did not** deny a claimant due process and access to the courts

# Chapter 629 of 1989



DEPARTMENT OF  
LEGISLATIVE SERVICES  
Since 1997

- Prohibited juries from being informed of the noneconomic damages cap
- Required a court to reduce an award to conform to the cap if a jury awarded noneconomic damages in excess of the cap



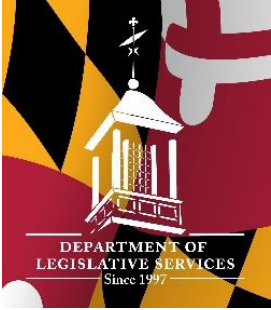
# The Next Legislative Initiative

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- **Chapter 477 of 1994**

- According to sponsor testimony, Chapter 477 was proposed primarily to overturn legislatively the ruling in *United States v. Streidel*, 329 Md. 533 (1993), in which the Maryland Court of Appeals held that the cap on noneconomic damages did not apply to wrongful death actions
- Chapter 477 specified that the cap applied to any wrongful death action where the cause of action occurred on or after October 1, 1994, and the Act redefined noneconomic damages in wrongful death actions



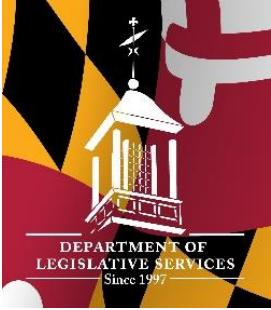


# Chapter 477 of 1994

## Additional Changes to the Noneconomic Damages Cap

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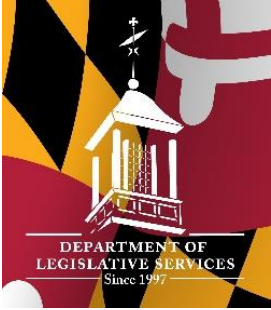
- Established the current formula for the cap.
- Raised the cap for noneconomic damages from **\$350,000 to \$500,000** for personal injury or wrongful death actions occurring on or after October 1, 1994, and required the cap to increase by \$15,000 on October 1 of each year to adjust for inflation
- The Act also specified:
  - in personal injury actions, the cap applies to each victim of tortious conduct and all persons who claim injury through that victim
  - in a wrongful death action, where there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of the cap, regardless of the number of claimants or beneficiaries
  - the Act applied prospectively only



Since 1994, there have been a variety of bills introduced to modify the noneconomic damage caps, a few of these include:

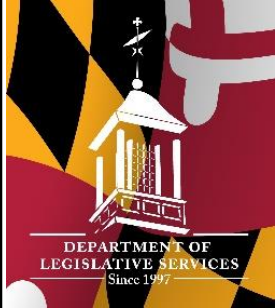
- **Raising or Altering the Cap:**
  - SB 682/HB 1459 (2017) and its reintroductions SB 36 (2018) and HB 289 (2018)
  - SB 813 (2019)
  - HB 1037 (2020)
- **Repealing the General Noneconomic Damages Caps Entirely:**
  - HB 263 (2000)
  - HB 862 (2023)
  - SB 538 (as introduced)/HB83 (2024)
- **Differentiating the Cap:**
  - SB 626 (1999)
  - HB 1060 (1999) (as amended) and HB 1096 (2000)

None of these proposals passed.



# Current Noneconomic Damages Cap in Maryland

- **As of October 1, 2024, the Noneconomic Damages Cap is \$950,000**
  - The cap applies to any action for damages for personal injury or wrongful death in which the cause of action arises on or after October 1, 1994
  - Chapter 477 of 1994 established the formula for the current statutory cap
    - Chapter 477 increased the initial noneconomic damages cap (enacted in 1986) from \$350,000 to \$500,000 and, in an effort to address inflation, required the cap to increase by \$15,000 each subsequent year, beginning October 1, 1995, thus making the current cap **\$950,000**
  - The cap applies in a personal injury action to each direct victim of tortious conduct and all persons who claim injury by or through that victim



# Wrongful Death Action with Multiple Claimants or Beneficiaries

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- In a wrongful death action in which there are two or more claimants or beneficiaries the cap may not exceed 150% of the standard noneconomic damages cap regardless of the number of claimants or beneficiaries who share in the award.
- **As of October 1, 2024, this cap is \$1,425,000**
  - The cap applies separately to a wrongful death claim and a survival action
  - The cap for a wrongful death claim involving two or more claimants or beneficiaries accompanied by a survival action is \$2,375,000 as of October 1, 2024

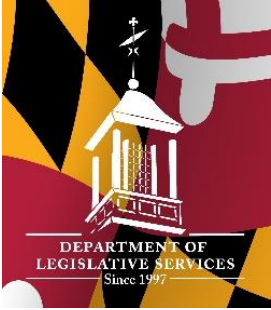


# **Current Cap Structure (as of October 1, 2024)**

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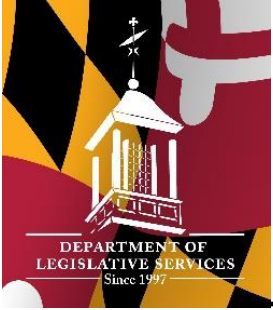
- **Personal Injury or Wrongful Death\* (Single Claimant): \$950,000**
- **Wrongful Death (Two or More Claimants): \$1,425,000 (150% of the standard cap)**
- **Annual Increase (October 1 of each year): \$15,000**

**\*Cap Applies Separately to a Survival Action**



- The jury is not informed of these caps
- If the jury awards an amount for noneconomic damages that exceeds the applicable legal limit, the court must reduce the amount to conform to the specified cap





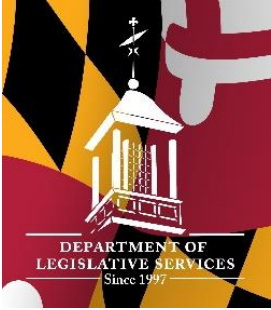
# 2024 Legislation to Eliminate or Raise the Cap

## Senate Bill 538 of 2024

As introduced, SB 538 (and its cross-filed bill HB 83) would have repealed the cap on noneconomic damages in civil actions for personal injury or wrongful death entirely



SB 538 was later amended to raise the caps



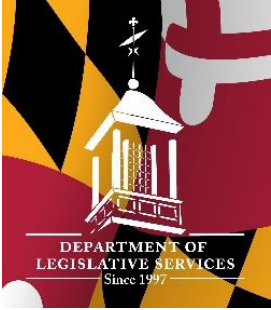
# SB 538 of 2024 – Raising the Cap

## Caps on Noneconomic Damages under Existing Statute and Senate Bill 538 Personal Injury and Wrongful Death – Excluding Medical Malpractice (As of October 1, 2024)

	<u>Current Law</u>	<u>Senate Bill 538</u>
Personal Injury or Wrongful Death*	\$950,000	\$1,750,000
Wrongful Death with Two or More Claimants	1,425,000	2,625,000
Annual Increase (October 1 of Each Subsequent Year)	15,000	20,000

\* Cap applies separately to a survival action.

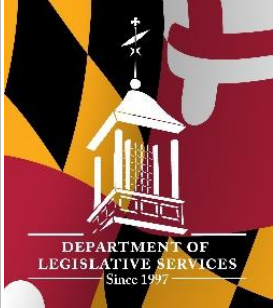




# Proponents of Legislation to Increase or Eliminate the Cap

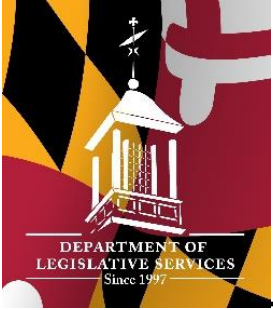
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- The cap denies plaintiffs just compensation for their injuries when a factfinder has determined the value of fair compensation based on the evidence, especially in severe personal injury or wrongful death cases
- As the cost-of-living rises, the current cap may not reflect the true value of noneconomic damages
- Increasing or eliminating the cap may deter negligent behavior that leads to large claims in the first place
- The cap on noneconomic damages has a discriminatory impact on women and the elderly who earn lower wages
- The law as it stands favors high earners who can be compensated with more economic damages which are not capped



# Opponents of Legislation to Alter the Cap

- Raising the noneconomic damages cap will negatively impact employers who will see insurance rates rise due to greater liability exposure.
  - Higher insurance premiums
    - Smaller businesses will be most affected by increased insurance costs due to their lower revenue margins
  - Increased insurance costs will ultimately be passed on to consumers in the form of higher prices for goods and services (resulting in higher insurance costs for Maryland drivers, homeowners, and businesses)
- Altering the cap would lead to more frequent excessive verdicts and increased litigation costs and lengthy appeals, which could cause insurers to leave the marketplace
- The current cap of \$950,000 with the \$15,000 yearly escalator does not need to change because it has closely approximated the rate of inflation since the cap was set at \$500,000 in 1994
- The State needs a consistent cap on noneconomic damages because it is good for public policy and creates a predictable and stable insurance marketplace



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## **Part 3 – Presentation by NCSL**

### **How Other States Address Noneconomic Damages**