

# Noneconomic Damages in Maryland – Personal Injury and Wrongful Death

---

## Introduction

In Maryland, the cap on noneconomic damages for personal injury and wrongful death claims may significantly impact the total compensation a plaintiff can receive in these lawsuits. Noneconomic damages compensate an injured party for subjective, nonfinancial losses, such as pain and suffering, emotional distress, and loss of enjoyment of life. Unlike economic damages, which are objective costs such as medical expenses and lost wages, noneconomic damages are difficult to quantify and are subject to a legal limit (or cap) in Maryland.

During the 2024 legislative session, there was extensive debate over whether to repeal or raise the cap on noneconomic damages. Proponents of the cap argue it is necessary to prevent high insurance costs and excessive payouts in personal injury and wrongful death cases, while opponents claim the cap is arbitrary and unfairly limits compensation for victims, particularly those who suffer catastrophic and severe injuries.

This report provides an overview of Maryland’s noneconomic damages cap in personal injury and wrongful death cases, the history of the cap, and legislative developments. This report does *not* address noneconomic damages in medical malpractice cases in Maryland, which are subject to different statutes.

## Noneconomic Damages – Definition, Examples, etc.

### Noneconomic Damages v. Economic Damages v. Punitive Damages

Damages are money claimed or ordered to be paid to a person as compensation for an injury or loss. Economic, noneconomic, or punitive damages are the types of damages available in personal injury and wrongful death claims.

Economic damages are monetary compensation for quantifiable financial losses resulting from the harm caused by a defendant. For personal injury causes of action, § 11-109 of the Courts and Judicial Proceedings Article defines economic damages as “loss of earnings and medical expenses.” They include past medical expenses, future medical expenses, past loss of earnings or earning capacity, and future loss of earnings or earning capacity.

Noneconomic damages are monetary compensation for nonfinancial losses that can occur with an injury. In contrast to economic damages, noneconomic damages are subjective and generally more difficult to quantify. Section 11-108 of the Courts and Judicial Proceedings Article defines noneconomic damages as damages for “pain, suffering, inconvenience, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injury.” In an action for

wrongful death, noneconomic damages are damages for “mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, care, marital care, parental care, filial care, attention, advice, counsel, training, guidance, or education, or other noneconomic damages authorized under Title 3, Subtitle 9 of [the Courts and Judicial Proceedings Article].”

The third category of damages, punitive damages (sometimes referred to as exemplary damages), are damages awarded to a plaintiff for public policy reasons, not as a reward, but as a punishment to the defendant and to deter similar conduct in the future.<sup>1</sup> For a plaintiff to recover punitive damages, they must prove by clear and convincing evidence that a defendant acted with actual malice.<sup>2</sup> As a result, punitive damages awards are not common in cases involving nonintentional torts.

## **Examples of Noneconomic Damages**

Courts recognize many types of noneconomic damages, and there is some overlap in the categories and terminology used to describe these damages. Essentially, noneconomic damages include every loss a plaintiff may suffer as a result of an injury, excluding lost earnings and medical costs. This report addresses a few of the most common categories of noneconomic damages.

### **Pain and Suffering/Mental Anguish**

A successful plaintiff is entitled to an award, which will fairly compensate for their injury. Damages for emotional distress or mental anguish may be recovered if they are proximately caused by the wrongful act of the defendant and result in a physical injury or are capable of objective determination.<sup>3</sup> In Maryland, “... in the absence of a physical impact or injury directly resulting in harm, mental and emotional injuries are not compensable unless there are objective manifestations of such injury.”<sup>4</sup> The term “pain and suffering” is sometimes used loosely as an umbrella term that encompasses all categories of noneconomic damages.

### **Pre-impact Fright**

Pre-impact fright is a category of damages for the mental anguish a plaintiff suffers prior to an injury. These damages are recoverable so long as the wrongful act proximately causes the fright. The fright need not result from a physical injury. For example, a decedent’s estate would be able to seek noneconomic damages for pre-impact fright for the period of apprehension prior to a fatal car crash. Likewise, the conscious physical pain that a decedent suffers while succumbing to a fatal injury such as drowning may be recovered as well.<sup>5</sup>

---

<sup>1</sup> *Testerman v. H & R Block, Inc.*, 22 Md. App. 320 (1974), *rev’d on other grounds*, 275 Md. 36 (1975).

<sup>2</sup> *Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420 (1992).

<sup>3</sup> *Beynon v. Montgomery Cablevision Ltd. P’ship*, 351 Md. 460, 505 (1998).

<sup>4</sup> *Id.* at 463-464.

<sup>5</sup> *DRD Pool Service, Inc. v. Freed*, 416 Md. 46 (2010).

### **Inconvenience**

The simple inconvenience of being injured is another type of damage that is compensable even if it is not fully quantifiable in economic terms. Damages for inconvenience do not necessarily qualify as “pain and suffering” even if a plaintiff’s quality of life is significantly impacted. Examples of damages for inconvenience include not being able to drive, having to use a wheelchair, or sleeping in a hospital bed while recovering from an injury.

### **Physical Impairment/Disfigurement**

Sometimes when a plaintiff is injured, they will have injuries that significantly impair their physical functioning that affect their quality of life or subject them to embarrassment or humiliation. These can include the loss of a limb, loss of vision, or mental impairments such as memory loss. Compensation for these damages recognize the long-term impact of an injury even if it does not have significant impact on a plaintiff’s earning capacity or medical costs. Similarly, with an injury that disfigures a plaintiff, noneconomic damages serve to compensate for the emotional toll that such an injury can take on the daily life of an injured party.

### **Loss of Consortium**

Loss of consortium damages are recompense for the loss of society, affection, assistance, and conjugal fellowship.<sup>6</sup> These damages occur when an injured party cannot fully participate in a marriage due to an injury. A loss of consortium claim is derivative of the injured spouse’s personal injury claim, and a single noneconomic damages cap applies to the whole action.<sup>7</sup> While the general rule is that a loss of consortium claim does not apply to a premarital tort, with respect to a premarital latent injury, “... a loss of consortium claim is barred only if, at the time the parties marry, the couple knew or reasonably should have known of the injury that formed the basis for their joint claim.”<sup>8</sup> Loss of consortium claims do not extend to a child’s loss of “parental society or affection,” such as when a parent is disabled by the negligence of a third party.<sup>9</sup>

## **Types of Claims That Could Involve Noneconomic Damages**

### **Personal Injury/Survival Claim/Medical Malpractice**

An injured party may be awarded compensatory damages, including noneconomic damages, for harm negligently caused by another. Ordinarily, noneconomic damages may not be awarded for claims for damages to property. However, if the tortious act that damaged property is committed through fraud, malice, or a similar motive, noneconomic damages may be

---

<sup>6</sup> *Deems v. Western M.R. Co.*, 247 Md. 95, 100 (1967).

<sup>7</sup> *Oaks v. Connors*, 339 Md. 24, 38 (1995).

<sup>8</sup> *Owens-Illinois, Inc. v. Cook*, 148 Md. App. 457, 493 (2002).

<sup>9</sup> *Gaver v. Harrant*, 316 Md. 17 (1989).

recoverable.<sup>10</sup> For personal injury claims brought by the estate of a decedent (survivor claims), the estate is limited to recovery of noneconomic damages that the decedent would have been entitled to recover had they survived.

While not the focus of this report, noneconomic damages may also be awarded in medical malpractice claims. Medical malpractice claims are governed by Title 3, Subtitle 2A of the Courts and Judicial Proceedings Article; the cap on noneconomic damages for these claims arising on or after January 1, 2024, is \$890,000 for all claims arising from the same medical injury (\$1,112,500 for all claims if there is a wrongful death action with two or more claimants or beneficiaries).<sup>11</sup>

### **Wrongful Death/Drug Dealer Liability Act**

A person may bring a wrongful death action against a person whose wrongful act causes the death of another. This action may be brought for the benefit of (1) the spouse, parent, or child of the decedent or (2) in the absence of such persons, any person related to the deceased by blood or marriage who was substantially dependent upon the deceased.<sup>12</sup> Similar to the wrongful death statute, the Drug Dealer Liability Act authorizes a parent, legal guardian, child, spouse, or sibling of an individual to bring a civil action for damages for the death of the individual against a person convicted of specified drug distribution offenses if the individual's death was proximately caused by the actual use of drugs supplied by the defendant. Plaintiffs may recover (1) economic damages and any other pecuniary loss and (2) noneconomic damages, including pain and suffering, emotional distress, mental anguish, loss of enjoyment, loss of companionship, services and consortium, and other nonpecuniary loss.<sup>13</sup>

### **Valuation of Noneconomic Damages**

An injured party has the right to be compensated for all losses related to an injury. The damages do not need to be capable of precise measurement but must be estimable by the trier of fact.<sup>14</sup> There is no single method required by law for calculating noneconomic damages, but an award should not be based on guesswork. A typical jury instruction will require that the jury evaluate “the plaintiff's condition and health prior to the accident as compared with his present condition and health in consequence of the injuries sustained as a result of the accident; his medical and hospital expenses, if any, incurred for treatment of such injuries; to what extent, if any, said injuries disabled him and prevented him from engaging in his usual employment and activities and any loss of earnings suffered thereby; whether the injuries were permanent in nature; to what extent, if at all, they were calculated to disable the plaintiff from engaging in those employments or activities for which, in the absence of such injuries, he would have been qualified; and the physical

---

<sup>10</sup> *Zeigler v. F St. Corp.*, 248 Md. 223, 226 (1967). (“As was stated in 25 C.J.S., Damages 68, page 826, ‘... [When] the act occasioning the injury to the property is inspired by fraud, malice, or like motives, mental suffering is a proper element of damage.’”)

<sup>11</sup> Md. Code Ann., Cts. & Jud. Proc. § 3-2A-09 (2024).

<sup>12</sup> Md. Code Ann., Cts. & Jud. Proc. § 3-904 (2024).

<sup>13</sup> Md. Code Ann., Cts. & Jud. Proc. Title 3, Subtitle 16 (2024).

<sup>14</sup> *Superior Constr. Co. v. Elmo*, 204 Md. 1 (1954).

pain and suffering and mental anguish, if any, to which he had been subjected in the past and might be subjected to in the future as a result of said injuries.”<sup>15</sup>

Because of the subjective nature of noneconomic damages, attorneys for plaintiffs will sometimes provide a method for the factfinder to calculate the award. One such method is the multiplier method. This method entails totaling the economic damages in a claim and multiplying them by a multiplier. The more severe the injury, the higher the multiplier. A second method of calculating damages is the *per diem* method. The *per diem* method assigns a specific dollar amount per day and multiplies it by the number of recovery days or, if an injury is permanent, the expected life expectancy of the plaintiff. If a *per diem* argument is made at trial, upon request or if deemed appropriate by the trial judge, the jury must be instructed that the *per diem* argument made by a party is not evidence but is merely a method suggested for calculating damages.<sup>16</sup>

## **Overview of the Legislative History of Noneconomic Damages Caps in Maryland**

### **Damages Caps – In General**

A damages cap establishes a legal limit on the amount of compensation that a plaintiff may receive for their losses in a lawsuit. These caps vary by state and can apply to specific types of damages such as noneconomic, economic, or punitive damages, which are discussed in detail above. While Maryland caps noneconomic damages for personal injury and wrongful death, it does not impose a cap on economic damages or punitive damages.

### **Current Statutory Noneconomic Damages Cap in Maryland**

Chapter 477 of 1994 established the formula for the current statutory cap. Effective October 1, 1994, 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. The noneconomic damages 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.

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. The cap applies separately to a wrongful death claim and a survival action.

Using this statutory formula, as of October 1, 2024, the noneconomic damages cap for personal injury and wrongful death claims for a single claimant in Maryland is \$950,000. The

---

<sup>15</sup> *Rhone v. Fisher*, 224 Md. 223, 225 (1961).

<sup>16</sup> *Giant Food Inc. v. Satterfield*, 90 Md. App. 660, 668-669 (1992).

current noneconomic damages cap in a wrongful death action in which there are two or more claimants or beneficiaries is \$1,425,000, and the current cap for a wrongful death claim involving two or more claimants or beneficiaries accompanied by a survival action is \$2,375,000.

The jury is not informed of these limitations, and 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.

### **Brief History of the Noneconomic Damages Cap in Maryland**

Chapter 639 of 1986 established Maryland's first cap on noneconomic damages. As initially introduced, the bill applied strictly to medical malpractice cases. The bill was a direct response to rising concerns about the escalation in noneconomic damages awards during the 1980s. The main proponents of the cap were the insurance industry and doctors' advocacy groups, who argued that the increase in awards (nearly 300% nationwide from the 1960s to the 1980s) was driving up insurance premiums and posing challenges for securing affordable liability coverage.

The bill was amended to expand its scope and as enacted, Chapter 639 established a \$350,000 cap on noneconomic damages that applied to *all* personal injury cases, including medical malpractice, that arise on or after July 1, 1986. Prior to this law, there was no limit on the amount that an injured party could recover for noneconomic damages. Maryland was the first state to adopt a limit generally applicable to personal injury cases.<sup>17</sup>

The bill file for Chapter 639 indicates that stakeholders engaged in a complex and contentious debate over establishing the State's first cap on noneconomic damages. Stakeholders included a range of healthcare and medical providers, insurance companies and representatives, personal injury attorneys, and victim advocacy groups. Proponents testified that there was an insurance crisis of the 1980s, and a cap was necessary to combat high insurance rates resulting from the rising amounts of noneconomic damages awards. Proponents of the cap also 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 to the cap focused on the \$350,000 figure, which they argued was an arbitrary amount that unfairly compensated victims without accounting for the severity of injuries. The multiple letters of advice from the Attorney General in the bill file also suggest there was heightened debate over the constitutionality of enacting a cap and whether a cap violated a plaintiff's right to a trial by a jury. In a letter dated May 6, 1986, to Governor Harry Hughes, the Office of the Attorney General concluded that Chapter 639 was constitutional. In its explanation, the office referred to the U.S. Supreme Court's 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. When the Attorney General first offered advice, it was on the bill as introduced, which only imposed a limitation on medical malpractice damages. However, the Attorney General's letter later concluded that even though the bill was amended to

---

<sup>17</sup> See Maryland Legislature Puts Ceiling on Personal Injury Awards, N.Y. Times, Apr. 13, 1986.

apply to all personal injury actions, 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 the right to a remedy for injury to person or property under Article 19 of the Maryland Declaration of Rights, the Attorney General determined that Chapter 639 did not deny a claimant due process and access to the courts.

Chapter 629 of 1989 prohibited juries from being informed of the noneconomic damages cap and required a court to reduce excessive jury awards to conform to the cap.

The next legislative development in Maryland regarding noneconomic damages did not occur until Chapter 477. According to sponsor testimony, the primary purpose of the legislation was 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.

To address the *Streidel* ruling, Chapter 477 first specified that the cap applied to any wrongful death action where the cause of action arises on or after October 1, 1994, and the Act redefined noneconomic damages in wrongful death actions. Second, Chapter 477 raised the cap for noneconomic damages from \$350,000 to \$500,000 for personal injury and wrongful death actions arising 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 specified that in personal injury actions, the cap applied to each victim of tortious conduct and all persons who claim injury through that victim. Finally, the Act specified that 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. If the jury exceeds the amount in its award, the court is required to reduce the amount to conform to the legal limitations. The Act applied prospectively only.

While not the focus of this report, it is worth noting for clarification purposes that in 2004, Maryland held a special legislative session to address medical malpractice issues. The legislature passed House Bill 2 of the 2004 Special Session, which eventually became Chapter 5 of the 2004 Special Session following an override of Governor Robert L. Ehrlich, Jr.'s veto. Chapter 5 established the foundation for many of the medical malpractice statutes codified under Title 3, Subtitle 2A of the Courts and Judicial Proceedings Article, including the separate damage caps for medical malpractice cases.<sup>18</sup>

## **Recent Legislative Efforts to Eliminate or Raise the Cap**

Since 1994, there have been a variety of bills introduced to modify the noneconomic damages cap. These proposals include adjusting the cap, repealing the cap, and differentiating caps

---

<sup>18</sup> H.B. 2, 2004, 417th Gen. Assembly., Spec. Sess. (Md. 2004).

based on the type of injury or case. None of the proposals have been enacted. A few of these legislative initiatives are listed below.

- Raising or Altering the Cap:
  - Senate Bill 682/House Bill 1459 (2017) and its reintroductions Senate Bill 36 (2018) and House Bill 289 (2018). These bills would have established that the existing limits on noneconomic damages in health care malpractice actions do not apply to an award from an arbitration panel or a verdict for a wrongful death or survival action. Instead, the general limit on noneconomic damages for other civil actions would have applied. The bills would have also increased the maximum amount of noneconomic damages that may be recovered in a wrongful death or survival action in which there are two or more claimants or beneficiaries, including in health care malpractice actions, to up to 450% of the general cap and would have authorized juries to be informed of the caps.
  - Senate Bill 813 (2019). This bill would have established that the existing limits on noneconomic damages in health care malpractice actions do not apply to an award from an arbitration panel or a verdict arising on or after October 1, 2019. Instead, the general limit on noneconomic damages for other civil actions would have applied. The bill also would have established separate formulas for calculating the general limit on noneconomic damages based on the number of claimants or beneficiaries in an action.
  - House Bill 1037 (2020). This bill would have established that notwithstanding any other provision of law, in any claim or action for damages for personal injury or wrongful death arising on or after October 1, 2020, any statutory limitation on noneconomic damages does not apply if the trier of fact finds, by a preponderance of the evidence, that the damages resulted from one or more willful, wanton, malicious, reckless, or grossly negligent acts or omissions.
- Repealing the General Noneconomic Damages Caps Entirely:
  - House Bill 263 (2000).
  - House Bill 862 (2023).
  - Senate Bill 538 (as introduced)/House Bill 83 (2024).
- Differentiating the Cap:
  - Senate Bill 626 (1999). This bill would have established that the noneconomic damages caps do not apply to personal injury or wrongful death actions in which



contact by a person with a substance that occurred before July 1, 1986, was a cause that ultimately resulted in personal injury or death to the person.

- House Bill 1060 (1999) (as amended) and House Bill 1096 (2000). These bills would have established that the noneconomic damage caps do not apply to personal injury or wrongful death actions based on specified occupational exposures to a substance that occurred before July 1, 1986.

### 2024 Legislation to Eliminate or Raise the Cap

As introduced, Senate Bill 538 of 2024 (and its cross-filed bill House Bill 83) would have repealed the caps on noneconomic damages in civil actions for personal injury and wrongful death entirely. Senate Bill 538 was later amended to raise the caps. **Exhibit 1** compares the existing statutory caps to the caps in SB 538 as passed by the Senate. The bill would have applied prospectively and would not have had any effect on or application to any cause of action arising before October 1, 2024.

---

#### Exhibit 1

### 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.

Source: Department of Legislative Services

---

### Recently Proposed Legislation to Alter Maryland’s Cap – Arguments by Proponents and Opponents

According to proponents to increase or eliminate Maryland’s cap on noneconomic damages, the cap denies plaintiffs just compensation for their injuries when a factfinder has determined the value of fair compensation based on the evidence. They also contend that 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 are able to be compensated with more economic damages which are not capped. This injustice is also magnified when a child dies due to negligence. The

estate of the decedent may not have significant economic damages because the child has no earnings or future medical costs. In such a situation, the estate is limited by the noneconomic damages cap. Increasing or eliminating the cap would also serve as a deterrent to large entities from allowing dangerous conditions that lead to large claims in the first place.

Opponents of legislation to alter the cap have argued that this type of legislation will negatively impact employers who will experience increased insurance rates due to greater liability exposure. Smaller businesses are most affected by increased insurance costs due to their lower revenue margins, and increased insurance costs are ultimately passed on to consumers in the form of higher prices for goods and services. The cap allows for a more predictable and stable insurance marketplace, which leads to more insurers being willing to enter the marketplace; increased competition leads to lower premiums.<sup>19</sup> Altering the cap would also lead to more frequent excessive verdicts and increased litigation costs, which could cause insurers to leave the marketplace. Opponents note that the current cap with the \$15,000 annual escalator does not need to be altered because it has closely approximated the rate of inflation since the cap was set at \$500,000 in 1994.

## Conclusion

Maryland's noneconomic damages cap remains a contentious issue, with stakeholders and lawmakers seeking to navigate a balance between fair compensation for victims and maintaining economic and legal predictability in personal injury and wrongful death cases. The 2024 legislative session revealed a growing divide among stakeholders, with evolving arguments on all sides about whether to maintain, alter, or repeal the noneconomic damages cap.

As Maryland approaches the 2025 legislative session, this issue is expected to be a major topic of discussion, and there will likely be legislative proposals introduced to alter the existing statutory cap. The House Judiciary Committee has scheduled a briefing to address the matter early in the 2025 session, and the outcome of legislative discussions will play a significant role in shaping how noneconomic damages are awarded in personal injury and wrongful death cases in the State.

---

<sup>19</sup> See *Murphy v. Edmonds*, 325 Md. 342, 369-370 (1992) (“The General Assembly’s objective in enacting the cap was to assure the availability of sufficient liability insurance, at a reasonable cost, in order to cover claims for personal injuries to members of the public. This is obviously a legitimate legislative objective. A cap on noneconomic damages may lead to greater ease in calculating premiums, thus making the market more attractive to insurers, and ultimately may lead to reduced premiums, making insurance more affordable for individuals and organizations performing needed services. The cap, therefore, is reasonably related to a legitimate legislative objective.”)