

SENATE BILL 605

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By: **Senator West**

Introduced and read first time: February 2, 2022

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Medical Malpractice – Collateral Sources**

3 FOR the purpose of requiring collateral source evidence to be admissible in medical
4 malpractice jury trials for a certain purpose; requiring the trier of fact to consider
5 collateral source evidence when determining damages; requiring the court to deduct
6 certain benefits in jury awards; repealing the prohibition that awards in medical
7 malpractice arbitration proceedings may not be modified in a certain manner; and
8 generally relating to the admissibility of collateral sources in medical malpractice
9 proceedings.

10 BY repealing and reenacting, with amendments,
11 Article – Courts and Judicial Proceedings
12 Section 3–2A–05(h) and 3–2A–09
13 Annotated Code of Maryland
14 (2020 Replacement Volume and 2021 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
16 That the Laws of Maryland read as follows:

17 **Article – Courts and Judicial Proceedings**

18 3–2A–05.

19 (h) (1) A party may apply to the arbitration panel to modify or correct an
20 award as to liability, damages, or costs in accordance with § 3–222 of this title.

21 (2) (i) The application may include a request that damages be reduced
22 to the extent that the claimant has been or will be paid, reimbursed, or indemnified under
23 statute, insurance, or contract for all or part of the damages assessed.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(ii) The panel chairman shall receive such evidence in support and opposition to a request for reduction, including evidence of the cost to obtain such payment, reimbursement, or indemnity.

(iii) After hearing the evidence in support and opposition to the request, the panel chairman may modify the award if satisfied that modification is supported by the evidence.

[(iv) The award may not be modified as to any sums paid or payable to a claimant under any workers' compensation act, criminal injuries compensation act, employee benefit plan established under a collective bargaining agreement between an employer and an employee or a group of employers and a group of employees that is subject to the provisions of the federal Employee Retirement Income Security Act of 1974, program of the Maryland Department of Health for which a right of subrogation exists under §§ 15–120 and 15–121.1 of the Health – General Article, or as a benefit under any contract or policy of life insurance or Social Security Act of the United States.]

[(v)] (IV) An award may not be modified as to any damages assessed for any future expenses, costs, and losses unless:

1. The panel chairman orders the defendant or the defendant's insurer to provide adequate security; or

2. The insurer is authorized to do business in this State and maintains reserves in compliance with rules of the Insurance Commissioner to assure the payment of all such future damages up to the amount by which the award has been modified as to such future damages in the event of termination.

[(vi)] (V) Except as expressly provided by federal law, no person may recover from the claimant or assert a claim of subrogation against a defendant for any sum included in the modification of an award.

3–2A–09.

(A) IN THIS SECTION, “COLLATERAL SOURCE” INCLUDES PAYMENTS MADE TO OR FOR THE BENEFIT OF THE PLAINTIFF UNDER ANY:

(1) WORKERS' COMPENSATION ACT;

(2) CRIMINAL INJURIES COMPENSATION ACT;

(3) EMPLOYEE BENEFIT PLAN ESTABLISHED UNDER A COLLECTIVE BARGAINING AGREEMENT BETWEEN AN EMPLOYER AND AN EMPLOYEE OR A GROUP OF EMPLOYERS AND A GROUP OF EMPLOYEES THAT IS SUBJECT TO THE PROVISIONS OF THE FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974;

1 **(4) PROGRAM OF THE MARYLAND DEPARTMENT OF HEALTH;**

2 **(5) CONTRACT OR AGREEMENT OF ANY PERSON, GROUP,**
3 **ORGANIZATION, PARTNERSHIP, OR CORPORATION TO PROVIDE, PAY FOR, OR**
4 **REIMBURSE THE COSTS OF HOSPITAL, MEDICAL, DENTAL, OR OTHER HEALTH CARE**
5 **SERVICES; OR**

6 **(6) BENEFIT UNDER ANY CONTRACT OR POLICY OF LIFE INSURANCE**
7 **OR SOCIAL SECURITY ACT OF THE UNITED STATES.**

8 **[(a)] (B)** This section applies to an award under § 3–2A–05 of this subtitle or a
9 verdict under § 3–2A–06 of this subtitle for a cause of action arising on or after January 1,
10 2005.

11 **[(b)] (C)** (1) (i) Except as provided in paragraph (2)(ii) of this subsection,
12 an award or verdict under this subtitle for noneconomic damages for a cause of action
13 arising between January 1, 2005, and December 31, 2008, inclusive, may not exceed
14 \$650,000.

15 (ii) The limitation on noneconomic damages provided under
16 subparagraph (i) of this paragraph shall increase by \$15,000 on January 1 of each year
17 beginning January 1, 2009. The increased amount shall apply to causes of action arising
18 between January 1 and December 31 of that year, inclusive.

19 (2) (i) Except as provided in subparagraph (ii) of this paragraph, the
20 limitation under paragraph (1) of this subsection shall apply in the aggregate to all claims
21 for personal injury and wrongful death arising from the same medical injury, regardless of
22 the number of claims, claimants, plaintiffs, beneficiaries, or defendants.

23 (ii) If there is a wrongful death action in which there are two or more
24 claimants or beneficiaries, whether or not there is a personal injury action arising from the
25 same medical injury, the total amount awarded for noneconomic damages for all actions
26 may not exceed 125% of the limitation established under paragraph (1) of this subsection,
27 regardless of the number of claims, claimants, plaintiffs, beneficiaries, or defendants.

28 **[(c)] (D)** (1) In a jury trial, the jury may not be informed of the limitation
29 under subsection **[(b)] (C)** of this section.

30 (2) If the jury awards an amount for noneconomic damages that exceeds
31 the limitation established under subsection **[(b)] (C)** of this section, the court shall reduce
32 the amount to conform to the limitation.

33 (3) In a wrongful death action in which there are two or more claimants or
34 beneficiaries, if the jury awards an amount for noneconomic damages that exceeds the
35 limitation under subsection **[(b)] (C)** of this section or a reduction under paragraph (4) of
36 this subsection, the court shall:

(i) If the amount of noneconomic damages for the primary claimants, as described under § 3–904(d) of this title, equals or exceeds the limitation under subsection [(b)] (C) of this section or a reduction under paragraph (4) of this subsection:

1. Reduce each individual award of a primary claimant proportionately to the total award of all primary claimants so that the total award to all claimants or beneficiaries conforms to the limitation or reduction; and

2. Reduce each award, if any, to a secondary claimant as described under § 3–904(e) of this title to zero dollars; or

(ii) If the amount of noneconomic damages for the primary claimants does not exceed the limitation under subsection [(b)] (C) of this section or a reduction under paragraph (4) of this subsection or if there is no award to a primary claimant:

1. Enter an award to each primary claimant, if any, as directed by the verdict; and

2. Reduce each individual award of a secondary claimant proportionately to the total award of all of the secondary claimants so that the total award to all claimants or beneficiaries conforms to the limitation or reduction.

(4) In a case in which there is a personal injury action and a wrongful death action, if the total amount awarded by the jury for noneconomic damages for both actions exceeds the limitation under subsection [(b)] (C) of this section, the court shall reduce the award in each action proportionately so that the total award for noneconomic damages for both actions conforms to the limitation.

(E) (1) IN A TRIAL, EVIDENCE SHALL BE ADMISSIBLE FOR CONSIDERATION BY THE JURY TO ESTABLISH THAT ANY PAST OR FUTURE COST OR EXPENSE OF THE DAMAGES ASSESSED WAS OR WILL BE, WITH REASONABLE CERTAINTY, PAID, PROVIDED, OR INDEMNIFIED, IN WHOLE OR IN PART, FROM ANY COLLATERAL SOURCE.

(2) THE TRIER OF FACT SHALL CONSIDER THE EVIDENCE INTRODUCED UNDER PARAGRAPH (1) OF THIS SUBSECTION WHEN DETERMINING THE AMOUNT OF DAMAGES AWARDED.

(3) IF THE COURT CONCLUDES THAT THE JURY FAILED TO TAKE INTO CONSIDERATION COLLATERAL SOURCE BENEFITS, ANY COLLATERAL SOURCE BENEFIT THAT DUPLICATES ANY BENEFIT CONTAINED IN THE JURY'S AWARD TO THE PLAINTIFF SHALL BE DEDUCTED BY THE COURT FROM ANY AWARD RECOVERED BY THE PLAINTIFF.

1 **(4) ANY RIGHT OF SUBROGATION OF A FEDERAL OR STATE PROGRAM**
2 **SHALL BE PRESERVED WHERE OTHERWISE REQUIRED BY LAW.**

3 **[(d)] (F)** (1) A verdict for past medical expenses shall be limited to:

4 (i) The total amount of past medical expenses paid by or on behalf
5 of the plaintiff; and

6 (ii) The total amount of past medical expenses incurred but not paid
7 by or on behalf of the plaintiff for which the plaintiff or another person on behalf of the
8 plaintiff is obligated to pay.

9 (2) (i) A court may on its own motion, or on motion of a party, employ a
10 neutral expert witness to testify on the issue of a plaintiff's future medical expenses or
11 future loss of earnings.

12 (ii) Unless otherwise agreed to by the parties, the costs of a neutral
13 expert witness shall be divided equally among the parties.

14 (iii) Nothing contained in this subsection limits the authority of a
15 court concerning a court's witness.

16 **(G) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO OTHERWISE LIMIT**
17 **THE RIGHT OF A PARTY TO FILE A MOTION FOR A NEW TRIAL OR OTHERWISE LIMIT**
18 **THE COMMON LAW GROUNDS OF REMITTITUR ON THE BASIS OF EXCESSIVE**
19 **DAMAGES.**

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
21 apply only prospectively and may not be applied or interpreted to have any effect on or
22 application to any claim or case filed before the effective date of this Act.

23 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2022.