

Department of Legislative Services  
Maryland General Assembly  
2024 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

Senate Bill 538

(Senator Waldstreicher, *et al.*)

Judicial Proceedings

Judiciary

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Civil Actions - Noneconomic Damages - Personal Injury and Wrongful Death

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This bill raises the limitations (caps) on noneconomic damages in civil actions for personal injury or wrongful death and related provisions. The bill does not alter the caps on damages in medical malpractice cases, which are addressed in a different statute. The bill applies prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before October 1, 2024.

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Fiscal Summary

**State Effect:** Potential significant cumulative increase in Transportation Trust Fund (TTF) expenditures, as discussed below. Revenues are not materially affected.

**Local Effect:** The bill may have an operational effect on the circuit courts. Revenues are not materially affected.

**Small Business Effect:** Potential meaningful.

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Analysis

**Bill Summary:** Exhibit 1 compares the damages caps under the bill with the damages cap under existing statute.

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**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

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**Current Law:** There is no cap on economic damages or punitive damages in Maryland. However, there are caps on noneconomic damages. “Noneconomic damages” means (1) for personal injury actions – pain, suffering, inconvenience, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injury and (2) for 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, or education, or other noneconomic damages authorized under specified statutes pertaining to wrongful death causes of action. “Noneconomic damages” does not include punitive damages.

In any action for damages for personal injury or wrongful death (excluding medical malpractice) in which the cause of action arises on or after October 1, 1994, an award for noneconomic damages may not exceed \$500,000. This limitation increases by \$15,000 on October 1 of each year beginning on October 1, 1995. The increased amount must apply to causes of action arising between October 1 of that year and September 30 of the following year, inclusive. (As of October 1, 2024, this cap will be \$950,000.) This limitation 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 (excluding medical malpractice) in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of the limitation listed above, regardless of the number of claimants or beneficiaries who share in the award. (As of October 1, 2024, this cap will be \$1,425,000). The cap applies

separately to a wrongful death claim and a survival action. (Thus, 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.)

An award by the health claims arbitration panel in accordance with specified provisions for damages in which the cause of action arose *before January 1, 2005*, must be considered an award for purposes of these provisions.

In a jury trial, the jury may not be informed of these limitations on damages. If the jury awards an amount for noneconomic damages that exceeds the applicable limitation, the court must reduce the amount to conform to the limitation. In a wrongful death action in which there are two or more claimants or beneficiaries, if the jury awards an amount for noneconomic damages that exceeds the applicable limitation, the court must reduce the award in accordance with specified provisions.

These provisions do not apply to a verdict for damages under Title 3, Subtitle 2A of the Courts and Judicial Proceedings Article (medical malpractice).

**State Expenditures:** Cumulative TTF expenditures may increase significantly if the Maryland Transit Administration (MTA) has to pay higher noneconomic damages or insurance premiums under the bill.

Among other provisions, the Maryland Tort Claims Act (MTCA) limits State liability to \$400,000 to a single claimant for injuries arising from a single incident. However, for claims arising on or after July 1, 2022, if liability of the State or its units arises from intentional tortious acts or omissions or a violation of a constitutional right committed by a law enforcement officer, the following limits on liability apply: (1) the combined award for both economic and noneconomic damages may not exceed a total of \$890,000 for all claims arising out of the same incident or occurrence, regardless of the number of claimants or beneficiaries who share in the award and (2) in a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed \$1,335,000, regardless of the number of claimants or beneficiaries who share in the award. If the liability of the State or the State's units arises under a claim of child sexual abuse, the liability may not exceed \$890,000 to a single claimant for injuries arising from an incident or occurrence.

While most State agencies are covered by the liability limits of MTCA, MTA's tort liability is governed by the Transportation Article. Unlike MTCA, the Transportation Article does not include a limit on liability.

MTA advises that raising the noneconomic damages cap will likely lead to higher awards and settlements against MTA. MTA had a self-insured retention of \$10.0 million for local

bus and \$5.0 million for rail. Noneconomic damages are considered during all settlement negotiations. MTA advises that it has settled 12 claims that ranged from \$490,000 to \$7.0 million within the last eight years and has several pedestrian and fatality cases that are reserved at \$5.0 million.

**Local Expenditures:** With respect to local governments, the liability limits of the Local Government Tort Claims Act (LGTCGA) continue to apply despite the bill's provisions. In general, LGTCGA limits the liability of a local government to \$400,000 per individual claim and \$800,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). However, for claims arising on or after July 1, 2022, if the liability of a local government arises from intentional tortious acts or omissions or a violation of a constitutional right committed by a law enforcement officer, the following limits on liability apply: (1) the combined award for both economic and noneconomic damages may not exceed a total of \$890,000 for all claims arising out of the same incident or occurrence, regardless of the number of claimants or beneficiaries who share in the award; and (2) in a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed \$1,335,000, regardless of the number of claimants or beneficiaries who share in the award. If the liability of a local government arises under a claim of child sexual abuse, the liability may not exceed \$890,000 to a single claimant for injuries arising from an incident or occurrence.

**Small Business Effect:** The bill may have a meaningful impact on small business law firms that litigate applicable cases and small businesses that are parties to applicable civil actions. Depending on the overall effect of the bill on the insurance market, the bill may have a meaningful effect on insurance costs for small businesses.

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### Additional Information

**Recent Prior Introductions:** Similar legislation has not been introduced during the past three years.

**Designated Cross File:** HB 83 (Delegate Ziegler, *et al.*) - Judiciary.

**Information Source(s):** Baltimore City; Harford, Montgomery, and Talbot counties; Maryland Association of Counties; Maryland Municipal League; Office of the Attorney General; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Maryland Department of Transportation; Maryland Insurance Administration; Department of Legislative Services

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