SPONSOR: Sen. Pettyjohn & Rep. Wilson
Sens. Bonini, Cloutier, Hocker, Lavelle, Lawson, Lopez, Richardson, Simpson, Reps. Collins, Dukes, Gray, Hudson, Kenton, Outten, Smyk

DELAWARE STATE SENATE
148th GENERAL ASSEMBLY

SENATE BILL NO. 14

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO LIMITATIONS ON NONECONOMIC DAMAGES FOR PERSONAL INJURY OR WRONGFUL DEATH OCCURRING AT SPECIAL EVENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 81, Title 10, Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§8146. Limitations on noneconomic damages for personal injury or wrongful death occurring at Special Events

(a) When used in this section:

(1) "General public" includes exclusion of those under a specific age.

(2) "Noneconomic damages" means:

(i) In an action for personal injury, pain, suffering, inconvenience, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injury; and

(ii) In an action for wrongful death, 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.

(3) "Noneconomic damages" does not include punitive damages.

(4) "Primary claimant" means a claimant in an action for the death of a person described under §3724(a) of this Title.

(5) "Secondary claimant" means a claimant in an action for the death of a person described under §3724(b) of this Title.

(6) "Special Event" means an event hosted by a nonprofit organization no more often than once per calendar year and open to the general public. The limitation provided for by this section includes not only the duration of the event itself, but a reasonable period to set up for and dismantle any structures used only for the Special Event.

(b) (1) Except as provided in this subsection, in any action for damages for personal injury or wrongful death at a Special Event in which the cause of action arises on or after the enactment of this Act, an award for noneconomic damages may not exceed $1,000,000.

(2) There is no limitation on noneconomic damages when the cause of the damages is due to gross negligence or an intentional action.

(3) The limitation on noneconomic damages provided under paragraph (1) of this subsection shall increase by 1.5% on January 1 of each year beginning on January 1 of the year after the enactment of this Act. The increased amount shall apply to causes of action arising between January 1 of that year and December 31 of that year, inclusive.

(4) (i) The limitation established under paragraph (1) of this subsection shall apply in a personal injury action to each direct victim of tortious conduct and all persons who claim injury by or through that victim.

(ii) In a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed 250% of the limitation established under paragraph (1) of this subsection, regardless of the number of claimants or beneficiaries who share in the award.

(c) (1) In a jury trial, the jury may not be informed of the limitation established under subsection (b) of this section.

(2) (i) If the jury awards an amount for noneconomic damages that exceeds the limitation established under subsection (b) of this section, the court shall reduce the amount to conform to the limitation.

(ii) 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 limitation established under (b)(4)(ii) of this section, the court shall:

1. If the amount of noneconomic damages for the primary claimants equals or exceeds the limitation under (b)(4)(ii) of this section:

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

B. Reduce each award, if any, to a secondary claimant to zero dollars; or

2. If the amount of noneconomic damages for the primary claimants does not exceed the limitation under (b)(4)(ii) of this section or if there is no award to a primary claimant:

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

B. 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.

SYNOPSIS

This Act is intended to promote the development of Special Events hosted by non-profit organizations not more often than once per calendar year by placing a liability cap on noneconomic damages [like pain and suffering] awarded for personal injury or wrongful death. There is no limitation on economic damages [like lost wages and medical bills], nor is there any limitation where gross negligence or intentional actions cause the damages, nor does it limit punitive damages. The cap on noneconomic damages begins at $1,000,000 and increases each calendar year by 1.5% except that multiple claimants under a wrongful death action may be awarded a total of 250% of that cap.

This Act is similar to the Maryland noneconomic damages cap. However, unlike Maryland's cap, Delaware's cap only applies to Special Events held by non-profits not more than once per year. .

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