

Amendment No. 744

Senate Amendment to Senate Bill No. 291	(BDR 3-951)
Proposed by: Senate Committee on Judiciary	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date
Adopted	<input type="checkbox"/>	Lost <input type="checkbox"/>	Adopted	<input type="checkbox"/>	Lost <input type="checkbox"/>
Concurred In	<input type="checkbox"/>	Not <input type="checkbox"/>	Concurred In	<input type="checkbox"/>	Not <input type="checkbox"/>
Receded	<input type="checkbox"/>	Not <input type="checkbox"/>	Receded	<input type="checkbox"/>	Not <input type="checkbox"/>

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

NCA/BAW



Date: 5/14/2015

S.B. No. 291—Provides for the determination of damage awards in certain civil actions. (BDR 3-951)



SENATE BILL NO. 291—SENATOR ROBERSON

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Provides for the determination of damage awards in certain civil actions. (BDR 3-951)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to civil actions; requiring a court to make certain reductions in the amounts awarded as damages in certain civil actions; ~~imposing limits on the amount of certain medical expenses recoverable as damages in certain civil actions; authorizing the admission of certain evidence in certain civil actions; authorizing recovery or subrogation for the amount of certain medical expenses by certain persons in such actions;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

A common law doctrine, known as the “collateral source rule,” prohibits a defendant in a tort case from introducing into evidence proof of amounts that the plaintiff received or was entitled to receive from a source other than the defendant in compensation for the harms or injuries caused by the defendant.

Existing law provides a limited exception to the collateral source rule by allowing a defendant in a case against a provider of health care based upon professional negligence to introduce evidence of amounts paid or payable to a plaintiff pursuant to policies of health or accident insurance, the United States Social Security Act, worker’s compensation statutes and other programs or contracts that pay for or reimburse costs of health care. (NRS 42.021)

This bill replaces the existing limited exception to the collateral source rule and instead requires a court, upon a motion by a defendant in any tort case, to reduce the amount of damages initially determined by the jury or other finder of fact by the amount ~~that the plaintiff has been or will be compensated for his or her loss by an insurer or certain other persons in relation~~ of past medical expenses paid in relation to the injury or death sustained. However, this bill prohibits the court from reducing the amount of the damages by any amount ~~that the plaintiff has been or will be compensated under a contract entered into and~~ :(1) paid for by or on behalf of the plaintiff.

~~This bill also provides that the amount of damages for reasonable and necessary medical expenses that may be recovered by a successful plaintiff are limited to the amounts that are actually or likely to be actually incurred and paid to providers of health care or medical facilities for reasonable and necessary medical treatment, care and custody provided to the dead or injured person. This bill further allows evidence of those amounts to be introduced at trial for the use of the jury or other finder of fact in making the initial determination of the amount of damages incurred by the plaintiff.~~

~~Finally, this bill provides that if a plaintiff receives an award of damages that includes amounts paid by another person or entity to a provider of health care or medical facility by or~~

on behalf of the person whose death or injury is the subject of the action for reasonable and necessary medical treatment, care and custody, the person or entity is entitled to recover the amount of those payments directly or indirectly from the plaintiff; any treatment, care or custody provided by a provider of health care or medical facility on a lien; or (2) paid pursuant to medical payment coverage.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 42 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this section, in any action to recover damages for death or injury to a person ~~for for injury to property, the court shall:~~

~~—(a) Reduce the amount of damages to be awarded initially determined by a jury or other finder of fact by the amount that the plaintiff has been or will be indemnified or compensated by any other person, insurance company or fund in relation to the injury or death sustained; and~~

~~—(b) Enter judgment in the amount as reduced pursuant to paragraph (a).~~

~~↪ The court shall not reduce the amount of the damages to be awarded by the amount that the plaintiff has been or will be indemnified or compensated by a benefit paid pursuant to a contract entered into and paid for by or on behalf of the person whose death or injury or injury to his or her property is the subject of the action.~~

~~2. Except as otherwise provided in this section, in any action to recover damages for the person whose death or injury is the subject of the action, the amount that may be recovered by a plaintiff as compensation for payments to a provider of health care or medical facility by or on behalf of the dead or injured person for reasonable and necessary medical treatment, care and custody is limited to the sum of:~~

~~—(a) Amounts actually paid to the provider of health care or medical facility by or on behalf of the dead or injured person for such treatment, care and custody;~~

~~—(b) Amounts actually incurred, but not yet paid, to the provider of health care or medical facility by or on behalf of the dead or injured person for such treatment, care and custody; and~~

~~—(c) Estimates of amounts that are likely to be actually incurred and paid in the future by or on behalf of the dead or injured person to a provider of health care or medical facility for such treatment, care and custody.~~

~~↪ If the defendant so elects, the defendant may introduce evidence concerning those amounts for the use of the jury or other finder of fact in making the initial determination of the amount of damages incurred by the dead or injured person.~~

~~3. If a plaintiff receives an award of damages that includes amounts paid by another person or entity to a provider of health care or medical facility by or on behalf of a dead or injured person for reasonable and necessary medical treatment, care and custody pursuant to subsection 2, the person or entity may:~~

~~—(a) Recover the amount of such payments from the plaintiff; or~~

~~—(b) Be subrogated to the rights of the plaintiff against a defendant with respect to the amount of those payments.~~

~~4.:~~

(a) A plaintiff may, in the initial presentation of the case to a judge, jury, tribunal, arbitrator or other finder of fact, claim the full amount of any past and future medical expenses charged or to be charged by a provider of health care or medical facility.

(b) The judge, jury, tribunal, arbitrator or other finder of fact shall return a verdict or award based upon the past and future medical charges as set forth in the claim, and the court or appropriate judicial officer shall enter judgment in accordance with the verdict or award.

(c) Within 10 days after entry of judgment, the defendant may file a motion to reduce the judgment. Except as otherwise provided in this paragraph and paragraph (d), upon the filing of such a motion, the court or appropriate judicial officer shall reduce the judgment to the extent that the defendant proves by a preponderance of evidence that:

(1) The verdict or award includes the amount of any past medical expense that is covered by a policy of health insurance or other agreement with a third party if the amount charged by a health care provider or medical facility is greater than the amount to which the health care provider or medical facility is entitled under the terms of a contract with the health insurer or third party; and

(2) The health insurer or third party actually paid the amount set forth in the contract.

↳ The court or appropriate judicial officer shall not reduce the judgment by the amount of any payment pursuant to medical payment coverage.

(d) Before entering judgment in accordance with paragraph (c), the court or appropriate judicial officer shall determine:

(1) Any amount the plaintiff is required to pay the health insurer or third party pursuant to any lien or right of subrogation obtained by the health insurer or third party; and

(2) The costs incurred by the plaintiff to procure the coverage provided by the policy of health insurance or other agreement with a third party during the calendar year in which the death or injury to the person occurs regardless of the date on which the policy or other agreement was initially procured.

↳ The court or appropriate judicial officer may, for good cause shown, increase the judgment by the amounts determined pursuant to this paragraph.

2. The provisions of subsection 1 do not apply to an amount paid for any treatment, care or custody provided by a provider of health care or medical facility on a lien to a dead or injured person or other plaintiff. Such a lien must not be considered a source of collateral benefits. A defendant is not permitted to introduce evidence concerning any sale or other transfer of such a lien to a third party unless the payment obligations of the dead or injured person or other plaintiff are fully extinguished.

3. As used in this section:

(a) "Medical facility" has the meaning ascribed to it NRS 449.0151.

(b) "Plaintiff" includes, without limitation, the estate, heirs and legal representatives of the person ~~for~~ whose death or injury ~~for injury to his or her property~~ is the subject of the action ~~for~~ and any other aggrieved party or complainant whose rights are at issue in the action.

(c) "Provider of health care" has the meaning ascribed to it in NRS 42.021.

Sec. 2. NRS 42.021 is hereby amended to read as follows:

42.021 1. ~~In an action for injury or death against a provider of health care based upon professional negligence, if the defendant so elects, the defendant may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the injury or death pursuant to the United States Social Security Act, any state or federal income disability or worker's compensation act, any health, sickness or income disability insurance, accident insurance that provides health benefits or income disability coverage, and any contract or agreement of any group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental or other health care services. If the defendant elects to~~

1 ~~introduce such evidence, the plaintiff may introduce evidence of any amount that~~
2 ~~the plaintiff has paid or contributed to secure the plaintiff's right to any insurance~~
3 ~~benefits concerning which the defendant has introduced evidence.~~

4 ~~— 2. A source of collateral benefits introduced pursuant to subsection 1 may not:~~

5 ~~— (a) Recover any amount against the plaintiff; or~~

6 ~~— (b) Be subrogated to the rights of the plaintiff against a defendant.~~

7 ~~— 3. In an action for injury or death against a provider of health care based~~
8 ~~upon professional negligence, a district court shall, at the request of either party,~~
9 ~~enter a judgment ordering that money damages or its equivalent for future damages~~
10 ~~of the judgment creditor be paid in whole or in part by periodic payments rather~~
11 ~~than by a lump-sum payment if the award equals or exceeds \$50,000 in future~~
12 ~~damages.~~

13 ~~14. 2.~~ In entering a judgment ordering the payment of future damages by
14 periodic payments pursuant to subsection ~~13.1~~ **1**, the court shall make a specific
15 finding as to the dollar amount of periodic payments that will compensate the
16 judgment creditor for such future damages. As a condition to authorizing periodic
17 payments of future damages, the court shall require a judgment debtor who is not
18 adequately insured to post security adequate to assure full payment of such
19 damages awarded by the judgment. Upon termination of periodic payments of
20 future damages, the court shall order the return of this security, or so much as
21 remains, to the judgment debtor.

22 ~~15. 3.~~ A judgment ordering the payment of future damages by periodic
23 payments pursuant to subsection ~~13.1~~ **1** must specify the recipient or
24 recipients of the payments, the dollar amount of the payments, the interval between
25 payments, and the number of payments or the period of time over which payments
26 will be made. Such payments must only be subject to modification in the event of
27 the death of the judgment creditor. Money damages awarded for loss of future
28 earnings must not be reduced or payments terminated by reason of the death of the
29 judgment creditor, but must be paid to persons to whom the judgment creditor owed
30 a duty of support, as provided by law, immediately before the judgment creditor's
31 death. In such cases, the court that rendered the original judgment may, upon
32 petition of any party in interest, modify the judgment to award and apportion the
33 unpaid future damages in accordance with this subsection.

34 ~~16. 4.~~ If the court finds that the judgment debtor has exhibited a continuing
35 pattern of failing to make the periodic payments as specified pursuant to subsection
36 ~~15.1~~ **3**, the court shall find the judgment debtor in contempt of court and, in addition
37 to the required periodic payments, shall order the judgment debtor to pay the
38 judgment creditor all damages caused by the failure to make such periodic
39 payments, including, but not limited to, court costs and attorney's fees.

40 ~~17. 5.~~ Following the occurrence or expiration of all obligations specified in
41 the periodic payment judgment, any obligation of the judgment debtor to make
42 further payments ceases and any security given pursuant to subsection ~~14.1~~ **2** reverts
43 to the judgment debtor.

44 ~~18. 6.~~ As used in this section:

45 (a) "Future damages" includes damages for future medical treatment, care or
46 custody, loss of future earnings, loss of bodily function, or future pain and suffering
47 of the judgment creditor.

48 (b) "Periodic payments" means the payment of money or delivery of other
49 property to the judgment creditor at regular intervals.

50 (c) "Professional negligence" means a negligent act or omission to act by a
51 provider of health care in the rendering of professional services, which act or
52 omission is the proximate cause of a personal injury or wrongful death. The term
53 does not include services that are outside the scope of services for which the

1 provider of health care is licensed or services for which any restriction has been
2 imposed by the applicable regulatory board or health care facility.

3 (d) "Provider of health care" means a physician licensed under chapter 630 or
4 633 of NRS, dentist, licensed nurse, dispensing optician, optometrist, registered
5 physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor
6 of Oriental medicine, medical laboratory director or technician, licensed dietitian or
7 a licensed hospital and its employees.

8 **Sec. 3. ~~[This act becomes effective upon passage and approval.]~~ The**
9 **amendatory provisions of this act apply to a cause of action that accrues on or**
10 **after October 1, 2015.**