

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:

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

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

11 This bill replaces the existing limited exception to the collateral source rule and
12 instead requires a court, in any tort case, to reduce the amount of damages initially
13 determined by the jury or other finder of fact by the amount that the plaintiff has
14 been or will be compensated for his or her loss by an insurer or certain other
15 persons in relation to the injury or death sustained. However, this bill prohibits the
16 court from reducing the amount of the damages by any amount that the plaintiff has
17 been or will be compensated under a contract entered into and paid for by or on
18 behalf of the plaintiff.



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

27 Finally, this bill provides that if a plaintiff receives an award of damages that
28 includes amounts paid by another person or entity to a provider of health care or
29 medical facility by or on behalf of the person whose death or injury is the subject of
30 the action for reasonable and necessary medical treatment, care and custody, the
31 person or entity is entitled to recover the amount of those payments directly or
32 indirectly from the plaintiff.

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

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

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

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

11 *(b) Enter judgment in the amount as reduced pursuant to*
12 *paragraph (a).*

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

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

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



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

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

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

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

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

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

20 4. As used in this section:

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

23 (b) "Plaintiff" includes, without limitation, the estate, heirs
24 and legal representatives of the person for whose death or injury
25 or injury to his or her property is the subject of the action.

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

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

29 42.021 1. ~~In an action for injury or death against a provider
30 of health care based upon professional negligence, if the defendant
31 so elects, the defendant may introduce evidence of any amount
32 payable as a benefit to the plaintiff as a result of the injury or death
33 pursuant to the United States Social Security Act, any state or
34 federal income disability or worker's compensation act, any health,
35 sickness or income disability insurance, accident insurance that
36 provides health benefits or income disability coverage, and any
37 contract or agreement of any group, organization, partnership or
38 corporation to provide, pay for or reimburse the cost of medical,
39 hospital, dental or other health care services. If the defendant elects
40 to introduce such evidence, the plaintiff may introduce evidence of
41 any amount that the plaintiff has paid or contributed to secure the
42 plaintiff's right to any insurance benefits concerning which the
43 defendant has introduced evidence.~~

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



1 ~~—(a) Recover any amount against the plaintiff; or~~
2 ~~—(b) Be subrogated to the rights of the plaintiff against a~~
3 ~~defendant.~~

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

11 ~~[4.]~~ 2. In entering a judgment ordering the payment of future
12 damages by periodic payments pursuant to subsection ~~[3.]~~ 1, the
13 court shall make a specific finding as to the dollar amount of
14 periodic payments that will compensate the judgment creditor for
15 such future damages. As a condition to authorizing periodic
16 payments of future damages, the court shall require a judgment
17 debtor who is not adequately insured to post security adequate to
18 assure full payment of such damages awarded by the judgment.
19 Upon termination of periodic payments of future damages, the court
20 shall order the return of this security, or so much as remains, to the
21 judgment debtor.

22 ~~[5.]~~ 3. A judgment ordering the payment of future damages by
23 periodic payments entered pursuant to subsection ~~[3.]~~ 1 must specify
24 the recipient or recipients of the payments, the dollar amount of the
25 payments, the interval between payments, and the number of
26 payments or the period of time over which payments will be made.
27 Such payments must only be subject to modification in the event of
28 the death of the judgment creditor. Money damages awarded for loss
29 of future earnings must not be reduced or payments terminated by
30 reason of the death of the judgment creditor, but must be paid to
31 persons to whom the judgment creditor owed a duty of support, as
32 provided by law, immediately before the judgment creditor's death.
33 In such cases, the court that rendered the original judgment may,
34 upon petition of any party in interest, modify the judgment to award
35 and apportion the unpaid future damages in accordance with this
36 subsection.

37 ~~[6.]~~ 4. If the court finds that the judgment debtor has exhibited
38 a continuing pattern of failing to make the periodic payments as
39 specified pursuant to subsection ~~[5.]~~ 3, the court shall find the
40 judgment debtor in contempt of court and, in addition to the
41 required periodic payments, shall order the judgment debtor to pay
42 the judgment creditor all damages caused by the failure to make
43 such periodic payments, including, but not limited to, court costs
44 and attorney's fees.



1 ~~[7.]~~ 5. Following the occurrence or expiration of all obligations
2 specified in the periodic payment judgment, any obligation of the
3 judgment debtor to make further payments ceases and any security
4 given pursuant to subsection ~~[4]~~ 2 reverts to the judgment debtor.

5 ~~[8.]~~ 6. As used in this section:

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

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

12 (c) "Professional negligence" means a negligent act or omission
13 to act by a provider of health care in the rendering of professional
14 services, which act or omission is the proximate cause of a personal
15 injury or wrongful death. The term does not include services that are
16 outside the scope of services for which the provider of health care is
17 licensed or services for which any restriction has been imposed by
18 the applicable regulatory board or health care facility.

19 (d) "Provider of health care" means a physician licensed under
20 chapter 630 or 633 of NRS, dentist, licensed nurse, dispensing
21 optician, optometrist, registered physical therapist, podiatric
22 physician, licensed psychologist, chiropractor, doctor of Oriental
23 medicine, medical laboratory director or technician, licensed
24 dietitian or a licensed hospital and its employees.

25 **Sec. 3.** This act becomes effective upon passage and approval.

