

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; 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, upon a motion by a defendant in any tort case, to reduce
13 the amount of damages initially determined by the jury or other finder of fact by the
14 amount of past medical expenses paid in relation to the injury or death sustained.
15 However, this bill prohibits the court from reducing the amount of the damages by
16 any amount: (1) paid for any treatment, care or custody provided by a provider of
17 health care or medical facility on a lien; or (2) paid pursuant to medical payment
18 coverage.



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:***

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

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

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

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

27 ***(2) The health insurer or third party actually paid the***
28 ***amount set forth in the contract the health care provider or***
29 ***medical facility has with the health insurer or third party.***

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

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

35 ***(1) Any amount the plaintiff is required to pay the health***
36 ***insurer or third party pursuant to any lien or right of subrogation;***

37 ***(2) The costs and attorney's fees incurred by the plaintiff to***
38 ***pay the health insurer or third party pursuant to any lien or right***
39 ***of subrogation; and***

40 ***(3) The costs incurred by the plaintiff to procure the***
41 ***coverage provided by the policy of health insurance or other***
42 ***agreement with a third party during the calendar year in which***



1 *the death or injury to the person occurs regardless of the date on*
2 *which the policy or other agreement was initially procured.*

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

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

14 3. *As used in this section:*

15 (a) *“Medical facility” has the meaning ascribed to it*
16 *NRS 449.0151.*

17 (b) *“Plaintiff” includes, without limitation, the estate, heirs*
18 *and legal representatives of the person whose death or injury is*
19 *the subject of the action and any other aggrieved party or*
20 *complainant whose rights are at issue in the action.*

21 (c) *“Provider of health care” has the meaning ascribed to it in*
22 *NRS 42.021.*

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

24 42.021 1. ~~In an action for injury or death against a provider~~
25 ~~of health care based upon professional negligence, if the defendant~~
26 ~~so elects, the defendant may introduce evidence of any amount~~
27 ~~payable as a benefit to the plaintiff as a result of the injury or death~~
28 ~~pursuant to the United States Social Security Act, any state or~~
29 ~~federal income disability or worker’s compensation act, any health,~~
30 ~~sickness or income disability insurance, accident insurance that~~
31 ~~provides health benefits or income disability coverage, and any~~
32 ~~contract or agreement of any group, organization, partnership or~~
33 ~~corporation to provide, pay for or reimburse the cost of medical,~~
34 ~~hospital, dental or other health care services. If the defendant elects~~
35 ~~to introduce such evidence, the plaintiff may introduce evidence of~~
36 ~~any amount that the plaintiff has paid or contributed to secure the~~
37 ~~plaintiff’s right to any insurance benefits concerning which the~~
38 ~~defendant has introduced evidence.~~

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

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

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

44 ~~—3.] In an action for injury or death against a provider of health~~
45 ~~care based upon professional negligence, a district court shall, at the~~



1 request of either party, enter a judgment ordering that money
2 damages or its equivalent for future damages of the judgment
3 creditor be paid in whole or in part by periodic payments rather than
4 by a lump-sum payment if the award equals or exceeds \$50,000 in
5 future damages.

6 ~~[4.]~~ 2. In entering a judgment ordering the payment of future
7 damages by periodic payments pursuant to subsection ~~[3.]~~ 1, the
8 court shall make a specific finding as to the dollar amount of
9 periodic payments that will compensate the judgment creditor for
10 such future damages. As a condition to authorizing periodic
11 payments of future damages, the court shall require a judgment
12 debtor who is not adequately insured to post security adequate to
13 assure full payment of such damages awarded by the judgment.
14 Upon termination of periodic payments of future damages, the court
15 shall order the return of this security, or so much as remains, to the
16 judgment debtor.

17 ~~[5.]~~ 3. A judgment ordering the payment of future damages by
18 periodic payments entered pursuant to subsection ~~[3.]~~ 1 must specify
19 the recipient or recipients of the payments, the dollar amount of the
20 payments, the interval between payments, and the number of
21 payments or the period of time over which payments will be made.
22 Such payments must only be subject to modification in the event of
23 the death of the judgment creditor. Money damages awarded for loss
24 of future earnings must not be reduced or payments terminated by
25 reason of the death of the judgment creditor, but must be paid to
26 persons to whom the judgment creditor owed a duty of support, as
27 provided by law, immediately before the judgment creditor's death.
28 In such cases, the court that rendered the original judgment may,
29 upon petition of any party in interest, modify the judgment to award
30 and apportion the unpaid future damages in accordance with this
31 subsection.

32 ~~[6.]~~ 4. If the court finds that the judgment debtor has exhibited
33 a continuing pattern of failing to make the periodic payments as
34 specified pursuant to subsection ~~[5.]~~ 3, the court shall find the
35 judgment debtor in contempt of court and, in addition to the
36 required periodic payments, shall order the judgment debtor to pay
37 the judgment creditor all damages caused by the failure to make
38 such periodic payments, including, but not limited to, court costs
39 and attorney's fees.

40 ~~[7.]~~ 5. Following the occurrence or expiration of all obligations
41 specified in the periodic payment judgment, any obligation of the
42 judgment debtor to make further payments ceases and any security
43 given pursuant to subsection ~~[4.]~~ 2 reverts to the judgment debtor.

44 ~~[8.]~~ 6. As used in this section:



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

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

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

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

20 **Sec. 3.** The amendatory provisions of this act apply to a cause
21 of action that accrues on or after October 1, 2015.

