

1 SENATE BILL NO. 251

2 INTRODUCED BY C. SMITH

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO DAMAGES IN
5 LAWSUITS; PROVIDING THE MEASURE OF DAMAGES RECOVERABLE FOR MEDICAL SERVICES OR
6 TREATMENT IN ACTIONS ARISING FROM BODILY INJURY OR DEATH; PROVIDING THAT DAMAGES IN
7 ANY ACTION ARISING FROM BODILY INJURY OR DEATH EXCEEDING CERTAIN AMOUNTS ARE
8 UNREASONABLE, UNCONSCIONABLE, AND GROSSLY OPPRESSIVE CONTRARY TO SUBSTANTIAL
9 JUSTICE; ABROGATING THE COMMON LAW COLLATERAL SOURCE RULE, COURT DECISIONS, AND
10 ALL PRIOR STATUTES APPLICABLE TO DETERMINING THE AMOUNTS RECOVERABLE BY PLAINTIFFS
11 AS DAMAGES FOR MEDICAL SERVICES OR TREATMENT RELATING TO MEDICAL SERVICES OR
12 TREATMENT; SETTING JURY CONSIDERATIONS FOR AWARDS OF MEDICAL SERVICES OR
13 TREATMENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 27-1-202, 27-1-302, 27-1-307, AND 27-1-
14 308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
17

18 **Section 1.** Section 27-1-202, MCA, is amended to read:

19 **"27-1-202. Right to compensatory damages.** Every person who suffers detriment from the unlawful
20 act or omission of another may recover from the person in fault a compensation ~~therefor~~ for it in money, which
21 is called damages. The measure of the damages recoverable from the person in fault for the reasonable value
22 of medical services or treatment in actions arising from bodily injury or death is set forth in 27-1-308."

23
24 **Section 2.** Section 27-1-302, MCA, is amended to read:

25 **"27-1-302. Damages to be reasonable.** (1) Subject to subsection (2), Damages ~~damages~~ must in all
26 cases be reasonable, and where an obligation of any kind appears to create a right to unconscionable and
27 grossly oppressive damages contrary to substantial justice, no more than reasonable damages can be
28 recovered.

1 (2) In any action arising from bodily injury or death, damages exceeding amounts provided in 27-1-
 2 308(2) are unreasonable, unconscionable, and grossly oppressive contrary to substantial justice."

3

4 **Section 3.** Section 27-1-307, MCA, is amended to read:

5 **"27-1-307. Definitions.** As used in 27-1-308 and this section:

6 (1) "Collateral source" means a payment for something that is later included in a tort award and that is
 7 made to or for the benefit of a plaintiff or is otherwise available to the plaintiff:

8 (a) for medical expenses and disability payments under the federal Social Security Act, any federal,
 9 state, or local income disability act, or any other public program;

10 (b) under any health, sickness, or income disability insurance or automobile accident insurance that
 11 provides health benefits or income disability coverage, and any other similar insurance benefits available to the
 12 plaintiff, except life insurance;

13 (c) under any contract or agreement of any person, group, organization, partnership, or corporation to
 14 provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except gifts
 15 or gratuitous contributions or assistance;

16 (d) any contractual or voluntary wage continuation plan provided by an employer or other system
 17 intended to provide wages during a period of disability; and

18 (e) any other source, except the assets of the plaintiff or of the plaintiff's immediate family if the
 19 plaintiff is obligated to repay a member of the plaintiff's immediate family.

20 (2) "Health care provider" includes hospitals, institutions, laboratories, doctors, physicians,
 21 optometrists, dentists, nurses, therapists, and any other medical or health care facilities, professionals or
 22 persons who diagnose, evaluate, treat, or otherwise deliver medical services or treatment to a plaintiff.

23 (3) (a) "Medical services or treatment" means any actions taken by a health care provider to observe,
 24 identify, diagnose, stabilize, address, ameliorate, correct, remedy, rehabilitate, manage, combat, or care for a
 25 plaintiff's injury, condition, disease, or disorder, or symptoms of a plaintiff's injury, condition, disease, or
 26 disorder.

27 (b) The term includes any equipment, facilities, medicines, drugs, prescriptions, devices, or products
 28 provided or applied to a plaintiff by a health care provider or consumed by a plaintiff at a health care provider's

1 direction.

2 ~~(2)(4)~~ "Person" includes individuals, corporations, associations, societies, firms, partnerships, joint-
3 stock companies, government entities, political subdivisions, and any other entity or aggregate of individuals.

4 ~~(3)(5)~~ (a) "Plaintiff" means a person who alleges to have sustained bodily injury, or on whose behalf
5 recovery for bodily injury or death is sought, or who would have a beneficial, legal, or equitable interest in a
6 recovery.

7 (b) The term includes:

8 (i) a legal representative;

9 (ii) a person with a wrongful death or surviving cause of action;

10 (iii) a person seeking recovery on a claim for loss of consortium, society, assistance, companionship,
11 or services; and

12 (iv) any other person whose right of recovery or whose claim or status is derivative of one who has
13 sustained bodily injury or death."
14

15 **Section 4.** Section 27-1-308, MCA, is amended to read:

16 **"27-1-308. ~~Collateral source reductions in~~ Allowed recovery and permissible evidence --**
17 **reasonable value of medical or health care services or treatment -- actions arising from bodily injury or**
18 **death -- subrogation rights.** (1) The purpose of this section is to abrogate the common law collateral source
19 rule, court decisions, and all prior statutes applicable to determining the amounts recoverable by plaintiffs as
20 damages for medical services or treatment.

21 ~~(2) In an action arising from bodily injury or death when the total award against all defendants is in~~
22 ~~excess of \$50,000 and the plaintiff will be fully compensated for the plaintiff's damages, exclusive of court costs~~
23 ~~and attorney fees, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral~~
24 ~~source that does not have a subrogation right, a plaintiff's recovery may not exceed amounts actually:~~

25 (a) paid by or on behalf of the plaintiff to health care providers that rendered reasonable and
26 necessary medical services or treatment to the plaintiff;

27 (b) necessary to satisfy charges that have been incurred and at the time of trial are still owing and
28 payable to health care providers for reasonable and necessary medical services or treatment rendered to the

1 plaintiff; and

2 (c) necessary to provide for any future reasonable and necessary medical services or treatment for
3 the plaintiff.

4 ~~(2) Before an insurance policy payment is used to reduce an award under subsection (1), the~~
5 ~~following amounts must be deducted from the amount of the insurance policy payment:~~

6 ~~(a) the amount the plaintiff paid for the 5 years prior to the date of injury;~~

7 ~~(b) the amount the plaintiff paid from the date of injury to the date of judgment; and~~

8 ~~(c) the present value of the amount the plaintiff is obligated to pay to keep the policy in force for the~~
9 ~~period for which any reduction of an award is made pursuant to subsection (3).~~

10 (3) The jury shall determine its award for the reasonable value of medical services or treatment
11 without consideration of any charges for medical services or treatment that were included on health care
12 providers' bills but resolved by way of contractual discount, price reduction, disallowance, gift, write-off, or
13 otherwise not paid collateral sources. After the jury determines its award, reduction of the award must be made
14 by the trial judge at a hearing and upon a separate submission of evidence relevant to the existence and
15 amount of collateral sources. Evidence is admissible to establish the reasonable value of medical services or
16 treatment is limited to evidence identifying the amounts actually:

17 ~~at the hearing to show that the plaintiff has been or may be reimbursed from a collateral source that~~
18 ~~does not have a subrogation right. If the trial judge finds that, at the time of hearing, it is not reasonably~~
19 ~~determinable whether or in what amount a benefit from a collateral source will be payable, the judge shall:~~

20 ~~(a) order any person against whom an award was rendered and who claims a deduction under this~~
21 ~~section to make a deposit into court of the disputed amount, at interest~~

22 (a) paid by or on behalf of the plaintiff, regardless of the source of payment, to satisfy the financial
23 obligation for medical services or treatment that the plaintiff received; and

24 ~~(b) reduce the award by the amount deposited. The amount deposited and any interest on that~~
25 ~~amount are subject to the further order of the court, pursuant to the requirements of this section. necessary to~~
26 ~~satisfy the financial obligation for medical services or treatment rendered to the plaintiff that have been incurred~~
27 ~~but not yet satisfied. This evidence may not include any reference to sums that exceed the amount for which~~
28 ~~the unpaid charges could be satisfied if submitted to any health insurance covering the plaintiff or any public or~~

1 government-sponsored health care benefit program for which the plaintiff is eligible, regardless of whether the
 2 incurred but not yet satisfied charges have been or will be submitted to the plaintiff's health insurance or public
 3 or government-sponsored health care benefit program. If the plaintiff is not covered by any health insurance
 4 and is not eligible for any public or government-sponsored health care benefit program, evidence of the
 5 reasonable value of medical services or treatment incurred but not yet satisfied is limited to the medicare
 6 reimbursement rate in effect at the time the plaintiff's services or treatment occurred for the specific medical
 7 services or treatment rendered to the plaintiff.

8 (c) necessary to satisfy the financial obligation for any reasonable and necessary future medical
 9 services or treatment of the plaintiff. This evidence may not include any reference to sums that exceed the
 10 amount for which the future charges of health care providers could be satisfied if submitted to any health
 11 insurance covering the plaintiff or any public or government-sponsored health care benefit program for which
 12 the plaintiff is eligible. If the plaintiff is not covered by any health insurance and is not eligible for any public or
 13 government-sponsored health care benefit program, evidence of the reasonable present value of any future
 14 reasonable and necessary medical services or treatment is limited to the medicare reimbursement rate in effect
 15 at the time of trial for the reasonable and necessary future medical services or treatment of the plaintiff.

16 (4) If prior to trial a defendant, a defendant's insurer or authorized representative, or any combination
 17 of the three, pays any part of the financial obligation for medical services or treatment provided to the plaintiff,
 18 then prior to the entry of judgment the court shall reduce the sum awarded to the plaintiff at trial by the amount
 19 of the payment or other collateral source as defined in 27-1-307(1).

20 (5) Except for subrogation rights specifically granted by state or federal law, law or provided by
 21 contract, there is no right to subrogation for any amount paid or payable to a plaintiff from a collateral source if
 22 for an award is reduced by that amount under entered as provided in subsection (4) (2)."

23

24 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

25

26 NEW SECTION. Section 6. Applicability. [This act] applies to claims that accrue on or after [the
 27 effective date of this act].

28

