

SENATE BILL NO. 171—COMMITTEE ON JUDICIARY

FEBRUARY 11, 1999

Referred to Committee on Judiciary

SUMMARY—Provides for reduction of damages in action for personal injury or wrongful death based on payment received from collateral source. (BDR 3-337)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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

AN ACT relating to damages in a civil action; providing for the reduction of damages a plaintiff may receive in an action for personal injury or wrongful death based on any payment the plaintiff receives from a collateral source; and providing other matters properly relating thereto.

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 thereto a
2 new section to read as follows:
3 ***1. In an action for damages for personal injury or wrongful death,***
4 ***the court shall, before the entry of judgment, hold a separate hearing to***
5 ***determine whether the plaintiff, as a result of the personal injury, has***
6 ***received a benefit from a collateral source.***
7 ***2. If the court determines that the plaintiff has received a benefit***
8 ***from a collateral source, the court shall reduce the amount of damages,***
9 ***if any, awarded in the action by the amount of the benefit.***
10 ***3. Except as otherwise provided in subsection 4, as used in this***
11 ***section, “benefit from a collateral source” means any money, service or***
12 ***other benefit that is paid, provided or reimbursed or is reasonably likely***
13 ***to be paid, provided or reimbursed to the plaintiff for personal injury or***
14 ***wrongful death pursuant to:***
15 ***(a) A state or federal act that provides benefits for sickness, physical***
16 ***injury, dental injury, emotional injury, disability, accidents, loss of***
17 ***earnings or workers’ compensation;***

1 **(b) A policy of insurance that provides benefits for sickness, physical**
2 **injury, dental injury, emotional injury, disability, accidents or loss of**
3 **earnings;**

4 **(c) A contract or agreement of a group, organization, partnership or**
5 **corporation that provides benefits for sickness, physical injury, dental**
6 **injury, emotional injury, disability, accidents or loss of earnings; or**

7 **(d) Any other publicly or privately funded program that provides**
8 **benefits for sickness, physical injury, dental injury, emotional injury,**
9 **disability, accidents or loss of earnings.**

10 **4. A benefit from a collateral source does not include a benefit**
11 **received by the plaintiff pursuant to subsection 3 if:**

12 **(a) The provider of the benefit is entitled to recover any amount of the**
13 **benefit from the plaintiff; or**

14 **(b) The provider of the benefit is subrogated to the rights of the**
15 **plaintiff and the provider exercises the right of subrogation by serving a**
16 **notice of lien on the plaintiff before the settlement of or the entry of**
17 **judgment in the action.**

18 **5. The plaintiff shall provide notice of his action for damages for**
19 **personal injury or wrongful death to any statutory holder of a lien.**

20 **Sec. 2.** NRS 42.020 is hereby amended to read as follows:

21 **42.020 1. ~~{Except as otherwise provided in subsection 2, in any}~~ In**
22 **an action for damages for *personal injury or wrongful death caused by***
23 **medical malpractice, *the court shall, at the time of making the reduction***
24 ***required pursuant to section 1 of this act, also reduce* the amount of**
25 **damages, if any, awarded in the action ~~{must be reduced}~~ by the amount of**
26 **any prior payment made by or on behalf of the provider of health care**
27 **against whom the action is brought to the injured person or to the claimant**
28 **to meet reasonable expenses ~~{eff}~~ for medical care, other essential goods or**
29 **services , or reasonable living expenses.**

30 **2. ~~{In any action described in subsection 1 in which liability for~~**
31 **medical malpractice is established or admitted, the court shall, before the**
32 **entry of judgment, hold a separate hearing to determine if any expenses**
33 **incurred by the claimant for medical care, loss of income or other financial**
34 **loss have been paid or reimbursed as a benefit from a collateral source. If**
35 **the court determines that a claimant has received such a benefit, the court**
36 **shall reduce the amount of damages, if any, awarded in the action by the**
37 **amount of the benefit. The amount so reduced must not include any amount**
38 **for which there is a right of subrogation to the rights of the claimant if the**
39 **right of subrogation is exercised by serving a notice of lien on the claimant**
40 **before the settlement of or the entry of judgment in the action. Notice of the**
41 **action must be provided by the claimant to any statutory holder of a lien.**

42 **~~—3.1~~ If future economic damages are awarded in an action for medical**
43 **malpractice, the award must be paid, at the election of the claimant:**

1 (a) In a lump sum which has been reduced to its present value as
2 determined by the trier of fact and approved by the court; or

3 (b) Subject to the provisions of subsection ~~{5,} 4~~, by an annuity
4 purchased to provide periodic payments.

5 As used in this subsection, "future economic damages" includes damages
6 for future medical treatment, care or custody, and loss of future earnings.

7 ~~{4,} 3.~~ If the claimant elects to receive periodic payments pursuant to
8 paragraph (b) of subsection ~~{3,} 2~~, the award must not be reduced to its
9 present value. The amount of the periodic payments must be equal to the
10 total amount of all future damages awarded by the trier of fact and
11 approved by the court. The period for which the periodic payments must be
12 made must be determined by the trier of fact and approved by the court.
13 Before the entry of judgment, each party shall submit to the court a plan
14 specifying the recipient of the payments, the amount of the payments and a
15 schedule of periodic payments for the award. Upon receipt and review of
16 the plans, the court shall specify in its judgment rendered in the action the
17 recipient of the payments, the amount of the payments and a schedule of
18 payments for the award.

19 ~~{5,} 4.~~ If an annuity is purchased pursuant to paragraph (b) of
20 subsection ~~{3,} 2~~, the claimant shall select the provider of the annuity. Upon
21 purchase of the annuity, the claimant shall:

22 (a) Execute a satisfaction of judgment or a stipulation for dismissal of
23 the claim with prejudice; and

24 (b) Release forever the defendant and his insurer, if any, from any
25 obligation to make periodic payments pursuant to the award.

26 ~~{6,} 5.~~ As used in this section ~~{:~~

27 ~~—(a) "Benefit from a collateral source" means any money, service or other~~
28 ~~benefit which is paid or provided or is reasonably likely to be paid or~~
29 ~~provided to a claimant for personal injury or wrongful death pursuant to:~~

30 ~~—(1) A state or federal act which provides benefits for sickness,~~
31 ~~disability, accidents, loss of income or workers' compensation;~~

32 ~~—(2) A policy of insurance which provides health benefits or coverage~~
33 ~~for loss of income;~~

34 ~~—(3) A contract of any group, organization, partnership or corporation~~
35 ~~which provides, pays or reimburses the cost of medical, hospital or dental~~
36 ~~benefits or benefits for loss of income; or~~

37 ~~—(4) Any other publicly or privately funded program which provides~~
38 ~~such benefits.~~

39 ~~—(b) "Medical", "medical malpractice" has the meaning ascribed to it in~~
40 NRS 41A.009.