

SENATE BILL 153

Introduced by Towe, et al.

1/21	Introduced
1/21	Referred to Judiciary
1/21	First Reading
1/29	Hearing
2/06	Committee Report--Bill Not Passed
2/06	Adverse Committee Report Adopted

*Senate* BILL NO. 153

INTRODUCED BY *Don Durbin*

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4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS  
5 RELATING TO THE MEASURE OF DAMAGES IN CIVIL CASES; REVISING  
6 THE RULE RELATING TO REDUCTION OF DAMAGE AWARDS BY AMOUNTS  
7 RECEIVED FROM COLLATERAL SOURCES; LIMITING THE REDUCTION OF  
8 AWARDS TO A REDUCTION FOR COLLATERAL PAYMENTS RECEIVED BY  
9 THE PLAINTIFF FROM THE TIME OF INJURY TO THE TIME OF  
10 JUDGMENT ONLY AND NOT FOR LATER PAYMENTS; AND AMENDING  
11 SECTIONS 27-1-307 AND 27-1-308, MCA."

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

15 "27-1-307. Definitions. As used in 27-1-307 and  
16 27-1-308:

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

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

24 (b) under any health, sickness, or income disability  
25 insurance or automobile accident insurance that provides

1 health benefits or income disability coverage, and any other  
2 similar insurance benefits available to the plaintiff,  
3 except life insurance;

4 (c) under any contract or agreement of any person,  
5 group, organization, partnership, or corporation to provide,  
6 pay for, or reimburse the costs of hospital, medical,  
7 dental, or other health care services, except gifts or  
8 gratuitous contributions or assistance; and

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

12 ~~(e) any other source except the assets of the~~  
13 ~~plaintiff or of his immediate family if he is obligated to~~  
14 ~~repay a member of his immediate family;~~

15 (2) "Person" includes individuals, corporations,  
16 associations, societies, firms, partnerships, joint stock  
17 companies, government entities, political subdivisions, and  
18 any other entity or aggregate of individuals.

19 (3) (a) "Plaintiff" means a person who alleges that he  
20 sustained bodily injury, or on whose behalf recovery for  
21 bodily injury or death is sought, or who would have a  
22 beneficial, legal, or equitable interest in a recovery.

23 (b) The term includes:  
24 (i) a legal representative;  
25 (ii) a person with a wrongful death or surviving cause



1 of action; and  
 2 ~~{iii}-a-person-seeking-recovery-on-a-claim-for--loss--of~~  
 3 ~~consortium,-society,-assistance,-companionship,-or-services,-~~  
 4 ~~and~~  
 5 ~~{iv}{iii}~~ any other person whose right of recovery or  
 6 whose claim or status is derivative of one who has sustained  
 7 bodily injury or death."

8 **Section 2.** Section 27-1-308, MCA, is amended to read:

9 "27-1-308. Collateral source reductions in actions  
 10 arising from bodily injury or death -- subrogation rights.

11 (1) In an action arising from bodily injury or death when  
 12 the total award against all defendants is in excess of  
 13 \$50,000 and the plaintiff will be fully compensated for his  
 14 damages, exclusive of court costs and attorney fees, a  
 15 plaintiff's recovery must may be reduced by any amount paid  
 16 or payable from a collateral source that does not have a  
 17 subrogation right, except that the reduction is limited to  
 18 those amounts paid prior to judgment for the plaintiff in  
 19 the action.

20 (2) Before an insurance policy payment is used to  
 21 reduce an award under subsection (1), the following amounts  
 22 must be deducted from the amount of the insurance policy  
 23 payment:

24 (a) the amount the plaintiff paid for the 5 years prior  
 25 to the date of injury; and

1 (b) the amount the plaintiff paid from date of injury  
 2 to date of judgment; and

3 ~~{c}-the-present-value-of-the-amount--the--plaintiff--is~~  
 4 ~~thereafter--obligated-to-pay-to-keep-the-policy-in-force-for~~  
 5 ~~the-period-for-which-any--reduction--of--an--award--is--made~~  
 6 ~~pursuant-to-subsection-{3};~~

7 (3) The jury shall determine its award without  
 8 consideration of any collateral sources. After the jury  
 9 determines its award, any reduction of the award must be  
 10 made by the trial judge at a hearing and upon a separate  
 11 submission of evidence relevant to the existence and amount  
 12 of collateral sources. Evidence is admissible at the hearing  
 13 to show that the plaintiff has been or may be reimbursed  
 14 from a collateral source that does not have a subrogation  
 15 right. If the trial judge finds that, at the time of  
 16 hearing, it is not reasonably determinable whether or in  
 17 what amount a benefit from such a collateral source will be  
 18 payable, he shall:

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

22 (b) reduce the award by the amount deposited. The  
 23 amount deposited and any interest thereon are subject to the  
 24 further order of the court, pursuant to the requirements of  
 25 this section.

LC 1408/01

1       (4) Except for subrogation rights specifically granted  
2 by state or federal law, there is no right to subrogation  
3 for any amount paid or payable to a plaintiff from a  
4 collateral source if an award is reduced by that amount  
5 under subsection (1)."

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