

Senate Bill 209

In The Senate

January 20, 1981

Introduced and referred
to Committee on Judiciary.

February 14, 1981

Committee recommend bill
do not pass.

1 *Spencer* BILL NO. 209
 2 INTRODUCED BY *Thompson* _____
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
 5 PAYMENT OF COURT JUDGMENTS IN PERIODIC INSTALLMENTS."
 6

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

8 Section 1. Purposes. The purposes of [this act] are
 9 to:

- 10 (1) alleviate some of the practical problems incident
- 11 to unpredictability of large future losses;
- 12 (2) effectuate more precise awards of damages for
- 13 actual losses;
- 14 (3) allow for payment of damages as the trier of fact
- 15 finds the losses will accrue; and
- 16 (4) assure that payments of damages more nearly serve
- 17 the purposes for which they are awarded.

18 Section 2. Definitions. As used in [this act] the
 19 following definitions apply:

- 20 (1) "Bodily injury" means bodily harm, sickness,
- 21 disease, or death.
- 22 (2) "Economic loss" means pecuniary harm for which
- 23 damages are recoverable.
- 24 (3) "Future damages" means damages arising from bodily
- 25 injury which the trier of fact finds will accrue after the

1 damages findings are made.

2 (4) "Noneconomic loss" means nonpecuniary harm for
 3 which damages are recoverable, but the term does not include
 4 punitive or exemplary damages.

5 (5) "Past damages" means damages that have accrued
 6 when the damages findings are made, including any punitive
 7 or exemplary damages allowed by law.

8 (6) "Qualified insurer" means an insurer,
 9 self-insurer, plan, or arrangement approved pursuant to
 10 [section 17].

11 Section 3. Election to seek judgment in periodic
 12 payments. (1) In order to invoke the provisions of [this
 13 act], a party to an action for bodily injury must make an
 14 effective election in accordance with this section.

15 (2) The election must be made by motion directed to
 16 the court with notice to all parties not less than 60 days
 17 before commencement of a trial involving issues of future
 18 damages, unless leave of court is obtained. Any objection to
 19 the election must be made by motion directed to the court
 20 with notice to all parties not less than 30 days after
 21 notice of the election.

- 22 (3) An election is effective if:
- 23 (a) all parties have consented;
- 24 (b) no timely objection is filed by any party; or
- 25 (c) a timely objection is filed, but:

1 (i) the electing party is a claimant and shows there
2 is a good faith claim that future damages will exceed
3 \$100,000; or

4 (ii) the electing party is a party responding to a
5 claim for future damages in excess of \$100,000 and shows
6 that security in the amount of the claim for past and future
7 damages or \$500,000, whichever is less, can be provided
8 under [this act].

9 (4) If an objecting party shows that the purposes of
10 [this act] would not be served by conducting the trial of
11 the claim affecting him under [this act], the court may
12 determine not to try the claim under [this act] even though
13 the conditions of subsections (3)(c)(i) or (3)(c)(ii) are
14 satisfied. Such determination must be made by the court at
15 least 30 days prior to trial.

16 (5) If an effective election is on file at the
17 commencement of trial, all actions, including third-party
18 claims, counterclaims, and actions consolidated for trial,
19 must be tried under [this act] unless the court finds that
20 the purposes of [this act] would not be served by doing so
21 or in the interest of justice a separate trial or proceeding
22 should be held on some or all of the claims that are not the
23 subject of the election.

24 (6) An effective election can be withdrawn only by
25 consent of all parties to the claim to which the election

1 relates.

2 Section 4. Special damages findings required. (1) If
3 liability is found in a trial under [this act], the trier of
4 fact, in addition to other appropriate findings, shall make
5 separate findings for each claimant specifying the amount
6 of:

7 (a) any past damages; and

8 (b) any future damages and the periods over which they
9 will accrue, on an annual basis, for each of the following
10 types:

11 (i) medical and other costs of health care;

12 (ii) other economic loss; and

13 (iii) noneconomic loss.

14 (2) The calculation of future damages for the types
15 specified in subsections (1)(b)(i) and (1)(b)(iii) must be
16 based on the costs and losses during the period of time the
17 claimant will sustain those costs and losses. The
18 calculation for the type specified in subsection (1)(b)(ii)
19 must be based on the losses during the period of time the
20 claimant would have lived but for the injury upon which the
21 claim is based.

22 Section 5. Calculation of future damages -- jury
23 instructions. (1) In all trials under [this act], evidence
24 of future damages must be expressed in current values and
25 those damages must be calculated by the trier of fact

1 without regard to future changes in the earning power or
2 purchasing power of the dollar.

3 (2) In all jury trials in which special damages
4 findings are required under [this act], the jury must be
5 informed that, with respect to future damages:

6 (a) the law provides for adjustments to be made later
7 to take account of future changes in the purchasing power of
8 the dollar;

9 (b) the law takes into account the fact that those
10 payments may be made in the future rather than in one lump
11 sum now; and

12 (c) the jury will make their findings on the
13 assumption that appropriate adjustments for future changes
14 in the purchasing power of the dollar will be made later.

15 Section 6. Basis for determining judgment to be
16 entered. In order to determine what judgment is to be
17 entered on a verdict requiring findings of special damages
18 under [this act], the court shall proceed as follows:

19 (1) The court shall apply to the findings of past and
20 future damages any applicable rules of law, including
21 setoffs, credits, comparative fault, additurs, and
22 remittiturs, in calculating the respective amounts of past
23 and future damages each claimant is entitled to recover and
24 each party is obligated to pay.

25 (2) If the total amount of future damages recoverable

1 by a claimant in an action for bodily injury or by all of
2 the beneficiaries in an action for wrongful death is less
3 than \$100,000, the court, unless the claimant or
4 beneficiaries elect to receive a judgment for periodic
5 installments, shall reduce the amounts payable for future
6 damages in accordance with [section 10] to determine the
7 equivalent lump-sum value and enter judgment for that amount
8 plus the amounts found for past damages.

9 (3) If the total amount of future damages recoverable
10 by a claimant in an action for bodily injury or by all of
11 the beneficiaries in an action for wrongful death is
12 \$100,000 or more, or the claimant or beneficiaries so elect,
13 the court shall enter judgment as follows:

14 (a) If a judgment for periodic installments is
15 entered, it must specify payment of attorney's fees and
16 litigation expenses in a manner separate from the periodic
17 installments payable to the claimant, either in lump sum or
18 by periodic installments, pursuant to any agreement entered
19 into between the claimant or beneficiary and his attorney.
20 If any portion of future damages is payable in advance of
21 the period to which it applies in satisfaction of the
22 agreement, the amount of the damages is subject to discount
23 in accordance with [section 10].

24 (b) Upon election of a subrogee, including an employer
25 or insurer who provided workers' compensation, filed within

1 10 days after verdict, any part of future damages allocable
 2 to reimbursement of payments previously made by the subrogee
 3 is payable in lump sum to the subrogee and the appropriate
 4 reduction of future damages must be calculated in accordance
 5 with [section 10].

6 (c) The court shall enter judgment in lump sum for
 7 past damages and for any damages payable in lump sum or
 8 otherwise under subsections (3)(a) and (3)(b). Any lump-sum
 9 payments for future damages reduce proportionately all
 10 periodic installments for future damages.

11 (d) After making any adjustments prescribed by the
 12 preceding subsections, the court shall reduce the remaining
 13 amounts for future damages to present value in accordance
 14 with [section 10] to determine the equivalent lump-sum
 15 value. If the equivalent lump-sum value is more than \$50,000
 16 or the claimant or beneficiaries elect to receive a judgment
 17 for periodic installments, the court shall enter a judgment
 18 for the payment of the remaining amounts of future damages,
 19 without reduction, in periodic installments in accordance
 20 with [section 7]; otherwise, the court shall enter a
 21 judgment for the equivalent lump-sum value.

22 (e) In an action for wrongful death, the calculation
 23 of the equivalent lump-sum value under subsection (3)(d) of
 24 the remaining amounts for future damages must be based on
 25 the total recovery for all beneficiaries of the action. If

1 the lump-sum equivalent of the total is more than \$50,000,
 2 each beneficiary must be paid in periodic installments in
 3 accordance with [section 7].

4 (4) Upon petition of a party before entry of judgment
 5 and a finding of incapacity to post the required security,
 6 the court, at the election of the claimant or beneficiaries
 7 in an action for wrongful death, shall:

8 (a) enter a judgment in accordance with subsection
 9 (3); or

10 (b) reduce the amounts payable for future damages in
 11 accordance with [section 10], unless subsection (3)(a) of
 12 [section 9] applies, to determine the equivalent lump-sum
 13 value and enter judgment for that amount plus the amounts
 14 found for past damages.

15 Section 7. Adjustment of periodic installment
 16 obligations. (1) A judgment for periodic installments must
 17 set out:

18 (a) the findings of the future damages for each
 19 calendar year; and

20 (b) a schedule of the base figure for each calendar
 21 year to be used in calculating future payments. The base
 22 figure is determined by discounting the findings for each
 23 calendar year in accordance with [section 10].

24 (2) As of the first day of each calendar year after a
 25 judgment for periodic installments is entered, the schedule

1 of all installments not previously due must be adjusted by
2 adding to the base figure for each installment, in the most
3 recently modified schedule, a sum determined by multiplying
4 the base figure by the index factor defined in subsection
5 (3).

6 (2) If a judgment for periodic installments has been
7 in effect for:

8 (a) one year or more at the time of adjustment, the
9 index factor is the rate of discount per annum for the last
10 issue of 52-week United States treasury bills in the year
11 before the year immediately preceding the year of
12 adjustment;

13 (b) less than 1 year but more than 6 months at the
14 time of adjustment, the index factor is one-half of the
15 index factor defined in subsection (3)(a); and

16 (c) less than 6 months but more than 3 months at the
17 time of adjustment, the index factor is one-fourth of the
18 index factor defined in subsection (3)(a).

19 (4) In all other cases, no adjustment may be made.

20 (5) Unless the court directs otherwise or the parties
21 otherwise agree, payments must be scheduled at 1-month
22 intervals. Payments for damages accruing during the
23 scheduled intervals are due at the beginning of the
24 intervals.

25 Section 8. Form of security. (1) Security authorized

1 or required for payment of a judgment for periodic
2 installments entered in accordance with [this act] must be
3 in one or more of the following forms and approved by the
4 court:

- 5 (a) bond executed by a qualified insurer;
- 6 (b) annuity contract executed by a qualified insurer;
- 7 (c) evidence of applicable and collectable liability
8 insurance with one or more qualified insurers;
- 9 (d) an agreement by one or more qualified insurers to
10 guarantee payment of the judgment; or
- 11 (e) any other satisfactory form of security.

12 (2) Security complying with this section serves also
13 as a required supersedeas bond.

14 Section 9. Posting and maintaining security. (1) If
15 the court enters a judgment for periodic installments, each
16 party liable for all or a portion of the judgment, unless
17 found to be incapable of doing so under subsection (4) of
18 [section 6], shall separately or jointly with one or more
19 others post security in an amount equal to the present
20 lump-sum equivalent of the unpaid judgment, including past
21 damages, in a form prescribed in [section 3], within 30 days
22 after the date the judgment is subject to execution. A
23 liability insurer having a contractual obligation and any
24 other person adjudged to have an obligation to pay all or
25 part of a judgment for periodic installments on behalf of a

1 judgment debtor is obligated to post security to the extent
2 of its contractual or adjudged obligation if the judgment
3 debtor has not done so.

4 (2) A judgment creditor or successor in interest and
5 any party having rights under subsection (5) may move that
6 the court find that security has not been posted and
7 maintained with regard to a judgment obligation owing to the
8 moving party. Upon so finding, the court shall order that
9 security complying with [this act] be posted within 30 days.

10 If security is not posted within that time and subsection
11 (3) does not apply, the court shall calculate the lump-sum
12 equivalent of the obligation under [section 10] and enter a
13 judgment for that amount in favor of the moving party.

14 (3) Upon motion by the claimant, or the beneficiaries
15 in an action for wrongful death, the court, in the absence
16 of a showing of good cause, shall enter a lump-sum judgment
17 without applying the discount factor in [section 10] if:

18 (a) a responding party elects to have [this act] apply
19 and makes the required showing as to security under
20 subsection (3)(c)(ii) of [section 3] but thereafter fails to
21 post security; or

22 (b) a party fails to maintain security.

23 (4) If a judgment debtor who is the only person liable
24 for a portion of a judgment for periodic installments fails
25 to post and maintain security, the right to lump-sum payment

1 described in subsection (2) applies only against that
2 judgment debtor and the portion of the judgment so owed.

3 (5) If more than one party is liable for all or a
4 portion of a judgment requiring security under [this act]
5 and the required security is posted by one or more but fewer
6 than all of the parties liable, the security requirements
7 are satisfied and those posting security may proceed under
8 subsection (2) to enforce rights for security or lump-sum
9 payment to satisfy or protect rights of reimbursement from a
10 party not posting security.

11 Section 10. Discounting future damages to present
12 value. The court shall apply a discount factor of 3%,
13 compounded annually, if:

14 (1) future damages are determined in accordance with
15 [section 5] but are ordered to be paid in advance of the
16 period to which they apply; or

17 (2) base figures are required under [section 7].

18 Section 11. Effect of death of claimant or
19 beneficiary. (1) In all cases covered by [this act] in which
20 future damages are payable in periodic installments, the
21 liability for payment of any installments for medical or
22 other costs of health care or noneconomic loss not yet due
23 at the death of a person entitled to receive these benefits
24 terminates upon the death of that person. The liability for
25 payment of any other installments or portions thereof not

1 yet due at the death of the person entitled to receive them
2 likewise terminates except as provided in subsections (2)
3 and (3).

4 (2) If, in an action for wrongful death, a judgment
5 for periodic installments provides payments to more than one
6 person entitled to receive benefits for losses that do not
7 terminate under subsection (1) and one or more but fewer
8 than all of them die, the surviving beneficiaries succeed to
9 the shares of the deceased beneficiaries. The surviving
10 beneficiaries are entitled to shares proportionate to their
11 shares in the periodic installments not yet paid, but they
12 are not entitled to receive payments beyond the respective
13 periods specified for them in the judgment.

14 (3) If, in an action other than one for wrongful
15 death, a judgment for periodic installments is entered and a
16 person entitled to receive benefits for losses that do not
17 terminate under subsection (1) under the judgment dies and
18 is survived by one or more qualifying survivors, any
19 periodic installments not yet due at the death must be
20 shared equitably by those survivors. Amounts due each
21 survivor may not exceed the survivor's economic loss
22 resulting from the death.

23 (4) "Qualifying survivor" means a person who, had the
24 death been caused under circumstances giving rise to a claim
25 for relief for wrongful death, would have qualified as a

1 beneficiary at the time of the death according to the law
2 that would be applied in an action for wrongful death by the
3 jurisdiction under which the issue of liability was resolved
4 in entering the judgment for periodic installments.

5 Section 12. Liability insurance policy limits. (1) In
6 determining whether or to what extent a judgment for
7 periodic installments exceeds limits under a liability
8 insurance policy, the total of the base figures calculated
9 in accordance with subsection (1)(b) of [section 7] must be
10 added to the lump-sum damages in the judgment. The sum so
11 calculated must be compared to applicable limits under the
12 policy.

13 (2) If the sum calculated under subsection (1) does
14 not exceed applicable policy limits when the judgment is
15 entered, amounts due by reason of the adjustments required
16 under [section 7] are entirely within those limits.

17 (3) If the sum calculated under subsection (1) exceeds
18 applicable policy limits when the judgment is entered, the
19 adjustments required under [section 7] must be allocated
20 proportionately to amounts within and amounts in excess of
21 those limits.

22 Section 13. Assignment of periodic installments. An
23 assignment of or an agreement to assign any right to
24 periodic installments for future damages contained in a
25 judgment entered under [this act] is enforceable only as to

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1 amounts:

2 (1) to secure payment of maintenance or child support;

3 (2) for the costs of products, services, or
4 accommodations provided or to be provided by the assignee
5 for medical or other health care; or

6 (3) for attorney's fees and other expenses of
7 litigation incurred in securing the judgment.

8 Section 14. Exemption of benefits. Periodic
9 installments for future damages contained in a judgment
10 entered under [this act] for loss of earnings are exempt
11 from garnishment, attachment, execution, and any other
12 process or claim to the extent that wages or earnings are
13 exempt under any applicable law. Except to the extent that
14 they may be assigned under [section 13], periodic
15 installments for all other future damages are exempt from
16 garnishment, attachment, execution, and any other process or
17 claim.

18 Section 15. Settlement agreements and consent
19 judgments. (1) Parties to an action on a claim for bodily
20 injury may file with the clerk of the court in which the
21 action is pending, or, if none is pending, with the clerk of
22 a court of competent jurisdiction over the claim, a
23 settlement agreement for future damages payable in periodic
24 installments. The settlement agreement may provide that one
25 or more sections of [this act] apply to it.

1 (2) Upon petition of the parties, a court of competent
2 jurisdiction may enter a consent judgment adopting one or
3 more of the sections of [this act].

4 Section 16. Satisfaction of judgments. If security is
5 posted in accordance with [section 9] and approved under a
6 final judgment entered under [this act], the judgment is
7 satisfied and the judgment debtor on whose behalf the
8 security is posted is discharged.

9 Section 17. Duties of commissioner of insurance. The
10 commissioner of insurance shall adopt rules in accordance
11 with the Montana Administrative Procedure Act:

12 (1) for determining which insurers, self-insurers,
13 plans, or arrangements are financially qualified to provide
14 the security required under [this act] and to be designated
15 as qualified insurers;

16 (2) to require insurers to post security under
17 [section 9] if found by the court to be obligated and
18 capable of posting security; and

19 (3) for publishing prior to January 1 of each year the
20 rate of discount per annum set out in subsection (3) of
21 [section 7].

22 Section 18. Severability. If a part of this act is
23 invalid, all valid parts that are severable from the invalid
24 part remain in effect. If a part of this act is invalid in
25 one or more of its applications, the part remains in effect

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1 in all valid applications that are severable from the
2 invalid applications.

-End-