

IN THE HOUSE

APRIL 8, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 9, 1987

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 16, 1987

FREE CONFERENCE COMMITTEE REPORTED.

IN THE SENATE

APRIL 20, 1987

FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 20, 1987

SECOND READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

APRIL 21, 1987

THIRD READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

SENT TO ENROLLING.

1
 2 INTRODUCED BY *House* BILL NO. *567*
 3 *Mercer* *Ramirez Speeth Loy & Brown*

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT IN AN
 5 ACTION ARISING FROM BODILY INJURY OR DEATH, PLAINTIFF'S
 6 REIMBURSEMENT FROM A COLLATERAL SOURCE IS ADMISSIBLE IN
 7 EVIDENCE AND THAT UNLESS THE SOURCE OF THE REIMBURSEMENT HAS
 8 A SUBROGATION RIGHT UNDER STATE OR FEDERAL LAW, AN AWARD TO
 9 PLAINTIFF MUST BE REDUCED BY THE AMOUNT OF THE
 10 REIMBURSEMENT; PROVIDING THAT UNLESS A SUBROGATION RIGHT IS
 11 SPECIFICALLY GRANTED BY STATE OR FEDERAL LAW, THERE IS NO
 12 SUBROGATION RIGHT REGARDING AN AMOUNT PAID OR PAYABLE IF AN
 13 AWARD IS REDUCED BY THAT AMOUNT; AND PROVIDING AN
 14 APPLICABILITY DATE."

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

17 Section 1. Definitions. As used in [sections 1 and 2]:

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

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

25 (b) under any health, sickness, or income disability

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

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

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

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

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

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

24 (b) The term includes:

25 (i) a legal representative;



-2- INTRODUCED BILL
 HB 567

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

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

6 (iv) any other person whose right of recovery or whose
7 claim or status is derivative of one who has sustained
8 bodily injury or death.

9 Section 2. 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,
12 evidence is admissible to show that plaintiff has been or
13 may be reimbursed from a collateral source for an element of
14 damages and, except as otherwise provided in this section,
15 the trier of fact must reduce the award by the amount found
16 paid or payable. The damages must be found and reduced by
17 special verdict, or by special findings if trial is not by
18 jury. If the trier of fact finds by a preponderance of the
19 evidence that plaintiff is likely to receive future
20 collateral source benefits, the special verdict or findings
21 must reduce any future damages, as well as damages already
22 incurred, by the amount of the future collateral source
23 benefits.

24 (2) Amounts paid or payable to a plaintiff from a
25 collateral source that has a subrogation right under state

1 or federal law are admissible in evidence but may not be
2 used to reduce an award.

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

8 (4) Before an insurance policy payment is used to
9 reduce an award under subsection (1), the amount plaintiff
10 paid or is obligated to pay to keep the policy in force for
11 the policy period during which the insurance policy payment
12 was made must be deducted from the amount of the insurance
13 policy payment.

14 Section 3. Applicability. This act applies only to
15 causes of action arising after the effective date of this
16 act.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB567, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing that in an action arising from Bodily Injury or Death, Plaintiff's Reimbursement from a Collateral Source is admissible in evidence and that unless the source of the reimbursement has a subrogation right under state or federal law, an award to plaintiff must be reduced by the amount of the reimbursement; providing that unless a subrogation right is specifically granted by state or federal law, there is no subrogation right regarding an amount paid or payable if an award is reduced by that amount; and providing an applicability date.

FISCAL IMPACT:

Currently impossible to accurately predict the overall fiscal impact. The bill would reduce the amount of damages a plaintiff can claim in a lawsuit and therefore would reduce the state's liability by a like amount (usually in the areas of medical bills paid for by insurance and lost wages paid by unemployment benefits).

David L. Hunter DATE 2/20/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

Ramirez DATE 2/21/87
JACK RAMIREZ, PRIMARY SPONSOR
Fiscal Note for HB567, as introduced.

HB 567

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 567

INTRODUCED BY RAMIREZ, SPAETH, LORY,

J. BROWN, MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT IN AN ACTION ARISING FROM BODILY INJURY OR DEATH, PLAINTIFF'S REIMBURSEMENT FROM A COLLATERAL SOURCE IS ADMISSIBLE IN EVIDENCE AND THAT UNLESS THE SOURCE OF THE REIMBURSEMENT HAS A SUBROGATION RIGHT UNDER STATE OR FEDERAL LAW, AN AWARD TO PLAINTIFF MUST MAY BE REDUCED BY THE AMOUNT OF THE REIMBURSEMENT; PROVIDING THAT UNLESS A SUBROGATION RIGHT IS SPECIFICALLY GRANTED BY STATE OR FEDERAL LAW, THERE IS NO SUBROGATION RIGHT REGARDING AN AMOUNT PAID OR PAYABLE IF AN AWARD IS REDUCED BY THAT AMOUNT; PROVIDING THAT EVIDENCE OF INSURANCE DEFENDANT MAY HAVE AND EVIDENCE OF PLAINTIFF'S AND DEFENDANT'S LITIGATION COSTS AND ATTORNEY FEES ARE ADMISSIBLE; AMENDING SECTION 33-23-102, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Definitions. As used in [sections 1 and 2]:

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

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

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

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

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

(e) any other source, except the assets of the plaintiff or of his immediate family if he is obligated to repay a member of his immediate family.

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

(3) (a) "Plaintiff" means a person who alleges that he sustained bodily injury, or on whose behalf recovery for

1 bodily injury or death is sought, or who would have a
2 beneficial, legal, or equitable interest in a recovery.

3 (b) The term includes:

4 (i) a legal representative;

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

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

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

13 Section 2. Collateral source reductions in actions
14 arising from bodily injury or death -- subrogation rights.

15 (1) In an action arising from bodily injury or death,
16 evidence is admissible to show that plaintiff has been or
17 may be reimbursed from a collateral source for an element of
18 damages and, except as otherwise provided in this section,
19 the trier of fact must MAY reduce the award by the amount
20 found paid or payable. ~~The damages must be found and reduced~~
21 ~~by special verdict, or by special findings if trial is not~~
22 ~~by jury. If the trier of fact finds by a preponderance of~~
23 ~~the evidence that plaintiff is likely to receive future~~
24 ~~collateral source benefits, the special verdict or findings~~
25 ~~must reduce any future damages, as well as damages already~~

1 ~~incurred, by the amount of the future collateral source~~
2 ~~benefits.~~

3 (2) Amounts paid or payable to a plaintiff from a
4 collateral source that has a subrogation right under state
5 or federal law are admissible in evidence but may not be
6 used to reduce an award.

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

12 (4) Before an insurance policy payment is used to
13 reduce an award under subsection (1), the amount plaintiff
14 paid or is obligated to pay to keep the policy in force for
15 the policy period during which the insurance policy payment
16 was made must be deducted from the amount of the insurance
17 policy payment.

18 (5) EVIDENCE OF THE FOLLOWING IS ADMISSIBLE IN AN
19 ACTION ARISING FROM BODILY INJURY OR DEATH:

20 (A) INSURANCE, INCLUDING LIABILITY DOLLAR LIMITS, THAT
21 IS AVAILABLE TO DEFENDANT TO PAY FOR A JUDGMENT AGAINST
22 DEFENDANT; AND

23 (B) PLAINTIFF'S AND DEFENDANT'S CURRENT AND EXPECTED
24 FUTURE LITIGATION COSTS AND ATTORNEY FEES.

25 SECTION 3. SECTION 33-23-102, MCA, IS AMENDED TO READ:

1 "33-23-102. Existence of insurance not to be made
2 evident -- exception. No Except as provided in [section
3 2(5)], no attempt may be made in the trial of an action
4 brought against a political subdivision of the state,
5 municipality, or any public body, corporation, commission,
6 board, agency, organization, or other public entity to
7 suggest the existence of any insurance which covers in whole
8 or in part any judgment or award which may be rendered in
9 favor of plaintiff."

10 Section 4. Applicability. This act applies only to
11 causes of action arising after the effective date of this
12 act.

-End-

1 HOUSE BILL NO. 567

2 INTRODUCED BY RAMIREZ, SPAETH, LORY,

3 J. BROWN, MERCER
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT IN AN
6 ACTION ARISING FROM BODILY INJURY OR DEATH, PLAINTIFF'S
7 REIMBURSEMENT FROM A COLLATERAL SOURCE IS ADMISSIBLE IN
8 EVIDENCE AND THAT UNLESS THE SOURCE OF THE REIMBURSEMENT HAS
9 A SUBROGATION RIGHT UNDER STATE OR FEDERAL LAW, AN AWARD TO
10 PLAINTIFF MUST MAY BE REDUCED BY THE AMOUNT OF THE
11 REIMBURSEMENT; PROVIDING THAT UNLESS A SUBROGATION RIGHT IS
12 SPECIFICALLY GRANTED BY STATE OR FEDERAL LAW, THERE IS NO
13 SUBROGATION RIGHT REGARDING AN AMOUNT PAID OR PAYABLE IF AN
14 AWARD IS REDUCED BY THAT AMOUNT; PROVIDING THAT EVIDENCE OF
15 INSURANCE DEFENDANT MAY HAVE AND EVIDENCE OF PLAINTIFF'S AND
16 DEFENDANT'S LITIGATION COSTS AND ATTORNEY FEES ARE
17 ADMISSIBLE; AMENDING SECTION 33-23-102, MCA; AND PROVIDING
18 AN APPLICABILITY DATE."
19

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

21 Section 1. Definitions. As used in {sections 1 and 2}:

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

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

4 (b) under any health, sickness, or income disability
5 insurance or automobile accident insurance that provides
6 health benefits or income disability coverage, and any other
7 similar insurance benefits available to the plaintiff,
8 except life insurance;

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

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

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

20 (2) "Person" includes individuals, corporations,
21 associations, societies, firms, partnerships, joint stock
22 companies, government entities, political subdivisions, and
23 any other entity or aggregate of individuals.

24 (3) (a) "Plaintiff" means a person who alleges that he
25 sustained bodily injury, or on whose behalf recovery for

1 bodily injury or death is sought, or who would have a
2 beneficial, legal, or equitable interest in a recovery.

3 (b) The term includes:

4 (i) a legal representative;

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

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

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

13 Section 2. Collateral source reductions in actions
14 arising from bodily injury or death -- subrogation rights.

15 (1) In an action arising from bodily injury or death,
16 evidence is admissible to show that plaintiff has been or
17 may be reimbursed from a collateral source for an element of
18 damages and, except as otherwise provided in this section,
19 the trier of fact must MAY reduce the award by the amount
20 found paid or payable. ~~The damages must be found and reduced~~
21 ~~by special verdict, or by special findings if trial is not~~
22 ~~by jury. If the trier of fact finds by a preponderance of~~
23 ~~the evidence that plaintiff is likely to receive future~~
24 ~~collateral source benefits, the special verdict or findings~~
25 ~~must reduce any future damages, as well as damages already~~

1 incurred,--by--the--amount--of--the--future--collateral--source
2 benefits.

3 (2) Amounts paid or payable to a plaintiff from a
4 collateral source that has a subrogation right under state
5 or federal law are admissible in evidence but may not be
6 used to reduce an award.

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

12 (4) Before an insurance policy payment is used to
13 reduce an award under subsection (1), the amount plaintiff
14 paid or is obligated to pay to keep the policy in force for
15 the policy period during which the insurance policy payment
16 was made must be deducted from the amount of the insurance
17 policy payment.

18 (5) EVIDENCE OF THE FOLLOWING IS ADMISSIBLE IN AN
19 ACTION ARISING FROM BODILY INJURY OR DEATH:

20 (A) INSURANCE, INCLUDING LIABILITY DOLLAR LIMITS, THAT
21 IS AVAILABLE TO DEFENDANT TO PAY FOR A JUDGMENT AGAINST
22 DEFENDANT; AND

23 (B) PLAINTIFF'S AND DEFENDANT'S CURRENT AND EXPECTED
24 FUTURE LITIGATION COSTS AND ATTORNEY FEES.

25 SECTION 3. SECTION 33-23-102, MCA, IS AMENDED TO READ:

1 "33-23-102. Existence of insurance not to be made
2 evident -- exception. No Except as provided in [section
3 2(5)], no attempt may be made in the trial of an action
4 brought against a political subdivision of the state,
5 municipality, or any public body, corporation, commission,
6 board, agency, organization, or other public entity to
7 suggest the existence of any insurance which covers in whole
8 or in part any judgment or award which may be rendered in
9 favor of plaintiff."

10 Section 4. Applicability. This act applies only to
11 causes of action arising after the effective date of this
12 act.

-End-

HOUSE BILL NO. 567

INTRODUCED BY RAMIREZ, SPAETH, LORY,

J. BROWN, MERCER

1 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT--IN--AN
 2 ACTION--ARISING--FROM--BODILY--INJURY--OR--DEATH, PLAINTIFF'S
 3 REIMBURSEMENT--FROM--A--COLLATERAL--SOURCE--IS--ADMISSIBLE--IN
 4 EVIDENCE--AND--THAT--UNLESS--THE--SOURCE--OF--THE--REIMBURSEMENT--HAS
 5 A--SUBROGATION--RIGHT--UNDER--STATE--OR--FEDERAL--LAW, AN AWARD TO
 6 PLAINTIFF--MUST MAY BE--REDUCED--BY--THE--AMOUNT--OF--THE
 7 REIMBURSEMENT,--PROVIDING--THAT--UNLESS--A--SUBROGATION--RIGHT--IS
 8 SPECIFICALLY--GRANTED--BY--STATE--OR--FEDERAL--LAW,--THERE--IS--NO
 9 SUBROGATION--RIGHT--REGARDING--AN--AMOUNT--PAID--OR--PAYABLE--IF--AN
 10 AWARD--IS--REDUCED--BY--THAT--AMOUNT; PROVIDING--THAT--EVIDENCE--OF
 11 INSURANCE--DEPENDANT--MAY--HAVE--AND--EVIDENCE--OF--PLAINTIFF'S--AND
 12 DEPENDANT'S--LITIGATION--COSTS--AND--ATTORNEY--FEES--ARE
 13 ADMISSIBLE,--AMENDING--SECTION--33-23-102,--MCA, FOR THE
 14 REDUCTION OF JURY AWARDS BY THE TRIAL COURT FOR AMOUNTS PAID
 15 OR PAYABLE FROM COLLATERAL SOURCES AND PROVIDING AN
 16 APPLICABILITY DATE."

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

18 Section 1. Definitions. As used in [sections 1 and 2]:

19 (1) "Collateral source" means a payment for something
 20 that is later included in a tort award and which is made to

1 or for the benefit of a plaintiff or is otherwise available
 2 to the plaintiff:

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

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

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

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

19 (e) any other source, except the assets of the
 20 plaintiff or of his immediate family if he is obligated to
 21 repay a member of his immediate family.

22 (2) "Person" includes individuals, corporations,
 23 associations, societies, firms, partnerships, joint stock
 24 companies, government entities, political subdivisions, and
 25 any other entity or aggregate of individuals.

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

5 (b) The term includes:

6 (i) a legal representative;

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

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

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

15 ~~Section 2--Collateral--source--reductions--in--actions~~
 16 ~~arising--from--bodily--injury--or--death----subrogation--rights--~~
 17 ~~{1}--In--an--action--arising--from--bodily--injury--or--death,~~
 18 ~~evidence--is--admissible--to--show--that--plaintiff--has--been--or~~
 19 ~~may--be--reimbursed--from--a--collateral--source--for--an--element--of~~
 20 ~~damages--and,--except--as--otherwise--provided--in--this--section,~~
 21 ~~the--trier--of--fact--must--MAY--reduce--the--award--by--the--amount~~
 22 ~~found--paid--or--payable--The--damages--must--be--found--and--reduced~~
 23 ~~by--special--verdict,--or--by--special--findings--if--trial--is--not~~
 24 ~~by--jury,--if--the--trier--of--fact--finds--by--a--preponderance--of~~
 25 ~~the--evidence--that--plaintiff--is--likely--to--receive--future~~

1 collateral-source-benefits,--the--special--verdict--or--findings
 2 must--reduce--any--future--damages,--as--well--as--damages--already
 3 incurred,--by--the--amount--of--the--future--collateral--source
 4 benefits--

5 {2}--Amounts--paid--or--payable--to--a--plaintiff--from--a
 6 collateral--source--that--has--a--subrogation--right--under--state
 7 or--federal--law--are--admissible--in--evidence--but--may--not--be
 8 used--to--reduce--an--award--

9 {3}--Except--for--subrogation--rights--specifically--granted
 10 by--state--or--federal--law,--there--is--no--right--to--subrogation
 11 for--any--amount--paid--or--payable--to--a--plaintiff--from--a
 12 collateral--source--if--an--award--is--reduced--by--that--amount
 13 under--subsection--{1}--

14 {4}--Before--an--insurance--policy--payment--is--used--to
 15 reduce--an--award--under--subsection--{1},--the--amount--plaintiff
 16 paid--or--is--obligated--to--pay--to--keep--the--policy--in--force--for
 17 the--policy--period--during--which--the--insurance--policy--payment
 18 was--made--must--be--deducted--from--the--amount--of--the--insurance
 19 policy--payment--

20 {5}--EVIDENCE--OF--THE--FOLLOWING--IS--ADMISSIBLE--IN--AN
 21 ACTION--ARISING--FROM--BODILY--INJURY--OR--DEATH:

22 {A}--INSURANCE,--INCLUDING--LIABILITY--DOLLAR--LIMITS,--THAT
 23 IS--AVAILABLE--TO--DEPENDANT--TO--PAY--FOR--A--JUDGMENT--AGAINST
 24 DEPENDANT,--AND

25 {B}--PLAINTIFF'S--AND--DEPENDANT'S--CURRENT--AND--EXPECTED

PUTURE LITIGATION COSTS AND ATTORNEY FEES.

SECTION 3. -- SECTION 33-23-102, MCA, IS AMENDED TO READ:

"33-23-102. -- Existence of insurance not to be made evident -- exception. -- No Except as provided in section 2(5); -- no attempt may be made in the trial of an action brought against a political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of plaintiff."

SECTION 2. COLLATERAL SOURCE REDUCTIONS IN ACTIONS ARISING FROM BODILY INJURY OR DEATH -- SUBROGATION RIGHTS.

(1) IN AN ACTION ARISING FROM BODILY INJURY OR DEATH WHEN THE TOTAL AWARD AGAINST ALL DEFENDANTS IS IN EXCESS OF \$100,000 AND THE PLAINTIFF WILL BE FULLY COMPENSATED FOR HIS DAMAGES, A PLAINTIFF'S RECOVERY MUST BE REDUCED BY ANY AMOUNT PAID OR PAYABLE FROM A COLLATERAL SOURCE THAT DOES NOT HAVE A SUBROGATION RIGHT.

(2) BEFORE AN INSURANCE POLICY PAYMENT IS USED TO REDUCE AN AWARD UNDER SUBSECTION (1), THE AMOUNT THE PLAINTIFF PAID AND IS OBLIGATED TO PAY TO KEEP THE POLICY IN FORCE MUST BE DEDUCTED FROM THE AMOUNT OF THE INSURANCE POLICY PAYMENT.

(3) THE JURY SHALL DETERMINE ITS AWARD WITHOUT

CONSIDERATION OF ANY COLLATERAL SOURCES. AFTER THE JURY DETERMINES ITS AWARD, REDUCTION OF THE AWARD MUST BE MADE BY THE TRIAL JUDGE AT A HEARING AND UPON A SEPARATE SUBMISSION OF EVIDENCE RELEVANT TO THE EXISTENCE AND AMOUNT OF COLLATERAL SOURCES. EVIDENCE IS ADMISSIBLE AT THE HEARING TO SHOW THAT THE PLAINTIFF HAS BEEN OR MAY BE REIMBURSED FROM A COLLATERAL SOURCE THAT DOES NOT HAVE A SUBROGATION RIGHT. IF THE TRIAL JUDGE FINDS THAT, AT THE TIME OF HEARING, IT IS NOT REASONABLY DETERMINABLE WHETHER OR IN WHAT AMOUNT A BENEFIT FROM SUCH A COLLATERAL SOURCE WILL BE PAYABLE, HE SHALL:

(A) ORDER ANY PERSON AGAINST WHOM AN AWARD WAS RENDERED AND WHO CLAIMS A DEDUCTION UNDER THIS SECTION TO MAKE A DEPOSIT INTO COURT OF THE DISPUTED AMOUNT, AT INTEREST; AND

(B) REDUCE THE AWARD BY THE AMOUNT DEPOSITED. THE AMOUNT DEPOSITED AND ANY INTEREST THEREON ARE SUBJECT TO THE FURTHER ORDER OF THE COURT, PURSUANT TO THE REQUIREMENTS OF THIS SECTION.

(4) EXCEPT FOR SUBROGATION RIGHTS SPECIFICALLY GRANTED BY STATE OR FEDERAL LAW, THERE IS NO RIGHT TO SUBROGATION FOR ANY AMOUNT PAID OR PAYABLE TO A PLAINTIFF FROM A COLLATERAL SOURCE IF AN AWARD IS REDUCED BY THAT AMOUNT UNDER SUBSECTION (1).

Section 3. Applicability. This act applies only to

HB 0567/03

1 causes of action arising after the effective date of this
2 act.

-End-

STANDING COMMITTEE REPORT

SENATE

SCRHB567

March 26, 1987

SCRHB567.SCR

Page 2 of 2
SCRHB567

SENATE JUDICIARY
HB 567
Page 2

March 27, 1987

MR. PRESIDENT

Judiciary

We, your committee on

House Bill 567

having had under consideration No.

third blue

reading copy (color)

REDUCTION OF TORT AWARD BY AMOUNT OF COLLATERAL SOURCE PAYMENTS

Ramirez (Mazurek)

Respectfully report as follows: That House Bill No. 567

BE AMENDED AS FOLLOWS:

1. Title, lines 5 through 17.

Following: "PROVIDING"

Strike: remainder of line 5 through "MCA" on line 17

Insert: "FOR THE REDUCTION OF JURY AWARDS BY THE TRIAL COURT FOR AMOUNTS PAID OR PAYABLE FROM COLLATERAL SOURCES"

2. Page 3, line 13 through page 5, line 9.

Strike: sections 2 and 3 in their entirety

Insert: "Section 2. Collateral source reductions in actions arising from bodily injury or death - - subrogation rights. (1)

In an action arising from bodily injury or death when the total award against all defendants is in excess of \$100,000 and the plaintiff will be fully compensated for his damages, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral source that does not have a subrogation right.

(2) Before an insurance policy payment is used to reduce an award under subsection (1), the amount the plaintiff paid and is obligated to pay to keep the policy in force must be deducted from the amount of the insurance policy payment.

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

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

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

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

Renumber: subsequent section

AND AS AMENDED
BE CONCURRED IN

XXXXXXXX

XXXXXXXX CONTINUED

Chairman

CONTINUED

337-84
24
6:55

C:\LANE\WP\AMDEB567.

Senator Mazurek

337-84
24
6:55

4-16-1987

MR. SPEAKER

We, your FREE Conference Committee on
House Bill 567

met and considered House Bill 567 in its entirety.

We recommend as follows: That HB 567, reference copy (salmon), be amended as follows:

1. Page 5, line 16.
Strike: "\$100,000"
Insert: "\$50,000"

2. Page 5, line 17.
Following: "DAMAGES,"
Insert: "exclusive of court costs and attorney fees,"

3. Page 5, line 21.
Following: "(1),"
Insert: "the following amounts must be deducted from the amount of the insurance policy payment: (a)"

4. Page 5, line 22.
Following: "PAID"
Insert: "for the 5 years prior to the date of injury;
(b) the amount the plaintiff paid from date of injury to date of judgment;"

CONTINUED

And that this Conference Committee report be adopted.

FOR THE SENATE

[Signature]
Sen. Halligan, Chairman
[Signature]
Sen. Bishop
[Signature]
Sen. Mazurek

FOR THE HOUSE

[Signature]
Rep. Ramirez
[Signature]
Rep. Hannah
[Signature]
Rep. Miles

ADOPT REJECT

5. Page 5, line 22.
Following: "AND"
Insert: "(c) the present value of the amount the plaintiff"

6. Page 5, line 22.
Following: "IS"
Insert: "thereafter"

7. Page 5, lines 23 and 24.
Following: "FORCE" on line 23
Strike: remainder of line 23 through
"PAYMENT" on line 24
Insert: "for the period for which any reduction of an award is made pursuant to subsection (3)"

TBC

1 HOUSE BILL NO. 567

2 INTRODUCED BY RAMIREZ, SPAETH, LORY,

3 J. BROWN, MERCER

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ~~THAT--IN--AN~~
6 ~~ACTION--ARISING--FROM--BOBILY--INJURY--OR--DEATH, PLAINTIFF'S~~
7 ~~REIMBURSEMENT--FROM--A--COLLATERAL--SOURCE--IS--ADMISSIBLE--IN~~
8 ~~EVIDENCE--AND--THAT--UNLESS--THE--SOURCE--OF--THE--REIMBURSEMENT--HAS~~
9 ~~A--SUBROGATION--RIGHT--UNDER--STATE--OR--FEDERAL--LAW, AN--AWARD--TO~~
10 ~~PLAINTIFF--MUST MAY BE--REDUCED--BY--THE--AMOUNT--OF--THE~~
11 ~~REIMBURSEMENT,--PROVIDING--THAT--UNLESS--A--SUBROGATION--RIGHT--IS~~
12 ~~SPECIFICALLY--GRANTED--BY--STATE--OR--FEDERAL--LAW,--THERE--IS--NO~~
13 ~~SUBROGATION--RIGHT--REGARDING--AN--AMOUNT--PAID--OR--PAYABLE--IF--AN~~
14 ~~AWARD--IS--REDUCED--BY--THAT--AMOUNT; PROVIDING--THAT--EVIDENCE--OF~~
15 ~~INSURANCE--DEPENDANT--MAY--HAVE--AND--EVIDENCE--OF--PLAINTIFF'S--AND~~
16 ~~DEPENDANT'S--LITIGATION--COSTS--AND--ATTORNEY--FEES--ARE~~
17 ~~ADMISSIBLE;--AMENDING--SECTION--33-23-102,--MCA; FOR THE~~
18 REDUCTION OF JURY AWARDS BY THE TRIAL COURT FOR AMOUNTS PAID
19 OR PAYABLE FROM COLLATERAL SOURCES AND PROVIDING AN
20 APPLICABILITY DATE."

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 Section 1. Definitions. As used in [sections 1 and 2]:

24 (1) "Collateral source" means a payment for something
25 that is later included in a tort award and which is made to1 or for the benefit of a plaintiff or is otherwise available
2 to the plaintiff:3 (a) for medical expenses and disability payments under
4 the federal Social Security Act, any federal, state, or
5 local income disability act, or any other public program;6 (b) under any health, sickness, or income disability
7 insurance or automobile accident insurance that provides
8 health benefits or income disability coverage, and any other
9 similar insurance benefits available to the plaintiff,
10 except life insurance;11 (c) under any contract or agreement of any person,
12 group, organization, partnership, or corporation to provide,
13 pay for, or reimburse the costs of hospital, medical,
14 dental, or other health care services, except gifts or
15 gratuitous contributions or assistance;16 (d) any contractual or voluntary wage continuation
17 plan provided by an employer, or other system intended to
18 provide wages during a period of disability; and19 (e) any other source, except the assets of the
20 plaintiff or of his immediate family if he is obligated to
21 repay a member of his immediate family.22 (2) "Person" includes individuals, corporations,
23 associations, societies, firms, partnerships, joint stock
24 companies, government entities, political subdivisions, and
25 any other entity or aggregate of individuals.

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

5 (b) The term includes:

6 (i) a legal representative;

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

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

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

15 ~~Section 2. Collateral source reductions in actions~~
 16 ~~arising from bodily injury or death. Subrogation rights.~~
 17 ~~{1} In an action arising from bodily injury or death,~~
 18 ~~evidence is admissible to show that plaintiff has been or~~
 19 ~~may be reimbursed from a collateral source for an element of~~
 20 ~~damages and, except as otherwise provided in this section,~~
 21 ~~the trier of fact must MAY reduce the award by the amount~~
 22 ~~found paid or payable. The damages must be found and reduced~~
 23 ~~by special verdict, or by special findings if trial is not~~
 24 ~~by jury. If the trier of fact finds by a preponderance of~~
 25 ~~the evidence that plaintiff is likely to receive future~~

1 collateral source benefits, the special verdict or findings
 2 must reduce any future damages, as well as damages already
 3 incurred by the amount of the future collateral source
 4 benefits.

5 {2} Amounts paid or payable to a plaintiff from a
 6 collateral source that has a subrogation right under state
 7 or federal law are admissible in evidence but may not be
 8 used to reduce an award.

9 {3} Except for subrogation rights specifically granted
 10 by state or federal law, there is no right to subrogation
 11 for any amount paid or payable to a plaintiff from a
 12 collateral source if an award is reduced by that amount
 13 under subsection {1}.

14 {4} Before an insurance policy payment is used to
 15 reduce an award under subsection {1}, the amount plaintiff
 16 paid or is obligated to pay to keep the policy in force for
 17 the policy period during which the insurance policy payment
 18 was made must be deducted from the amount of the insurance
 19 policy payment.

20 {5} EVIDENCE OF THE FOLLOWING IS ADMISSIBLE IN AN
 21 ACTION ARISING FROM BODILY INJURY OR DEATH:

22 {A} INSURANCE, INCLUDING LIABILITY DOLLAR LIMITS, THAT
 23 IS AVAILABLE TO DEPENDANT TO PAY FOR A JUDGMENT AGAINST
 24 DEPENDANT, AND

25 {B} PLAINTIFF'S AND DEPENDANT'S CURRENT AND EXPECTED

1 FUTURE LITIGATION COSTS AND ATTORNEY FEES.

2 SECTION 3. -- SECTION 33-23-102, MCA, IS AMENDED TO READ:

3 "33-23-102. -- Existence of insurance not to be made
4 evident -- exception. -- No Except as provided in {section
5 2(5)}; -- no attempt may be made in the trial of an action
6 brought against a political subdivision of the state,
7 municipality, or any public body, corporation, commission,
8 board, agency, organization, or other public entity to
9 suggest the existence of any insurance which covers in whole
10 or in part any judgment or award which may be rendered in
11 favor of plaintiff."

12 SECTION 2. COLLATERAL SOURCE REDUCTIONS IN ACTIONS
13 ARISING FROM BODILY INJURY OR DEATH -- SUBROGATION RIGHTS.

14 (1) IN AN ACTION ARISING FROM BODILY INJURY OR DEATH WHEN
15 THE TOTAL AWARD AGAINST ALL DEFENDANTS IS IN EXCESS OF
16 \$100,000 \$50,000 AND THE PLAINTIFF WILL BE FULLY COMPENSATED
17 FOR HIS DAMAGES, EXCLUSIVE OF COURT COSTS AND ATTORNEY FEES,
18 A PLAINTIFF'S RECOVERY MUST BE REDUCED BY ANY AMOUNT PAID OR
19 PAYABLE FROM A COLLATERAL SOURCE THAT DOES NOT HAVE A
20 SUBROGATION RIGHT.

21 (2) BEFORE AN INSURANCE POLICY PAYMENT IS USED TO
22 REDUCE AN AWARD UNDER SUBSECTION (1), THE FOLLOWING AMOUNTS
23 MUST BE DEDUCTED FROM THE AMOUNT OF THE INSURANCE POLICY
24 PAYMENT:

25 (A) THE AMOUNT THE PLAINTIFF PAID FOR THE 5 YEARS

1 PRIOR TO THE DATE OF INJURY;

2 (B) THE AMOUNT THE PLAINTIFF PAID FROM DATE OF INJURY
3 TO DATE OF JUDGMENT; AND

4 (C) THE PRESENT VALUE OF THE AMOUNT THE PLAINTIFF IS
5 THEREAFTER OBLIGATED TO PAY TO KEEP THE POLICY IN FORCE MUST
6 BE DEDUCTED FROM THE AMOUNT OF THE INSURANCE POLICY PAYMENT
7 FOR THE PERIOD FOR WHICH ANY REDUCTION OF AN AWARD IS MADE
8 PURSUANT TO SUBSECTION (3).

9 (3) THE JURY SHALL DETERMINE ITS AWARD WITHOUT
10 CONSIDERATION OF ANY COLLATERAL SOURCES. AFTER THE JURY
11 DETERMINES ITS AWARD, REDUCTION OF THE AWARD MUST BE MADE BY
12 THE TRIAL JUDGE AT A HEARING AND UPON A SEPARATE SUBMISSION
13 OF EVIDENCE RELEVANT TO THE EXISTENCE AND AMOUNT OF
14 COLLATERAL SOURCES. EVIDENCE IS ADMISSIBLE AT THE HEARING TO
15 SHOW THAT THE PLAINTIFF HAS BEEN OR MAY BE REIMBURSED FROM A
16 COLLATERAL SOURCE THAT DOES NOT HAVE A SUBROGATION RIGHT. IF
17 THE TRIAL JUDGE FINDS THAT, AT THE TIME OF HEARING, IT IS
18 NOT REASONABLY DETERMINABLE WHETHER OR IN WHAT AMOUNT A
19 BENEFIT FROM SUCH A COLLATERAL SOURCE WILL BE PAYABLE, HE
20 SHALL:

21 (A) ORDER ANY PERSON AGAINST WHOM AN AWARD WAS
22 RENDERED AND WHO CLAIMS A DEDUCTION UNDER THIS SECTION TO
23 MAKE A DEPOSIT INTO COURT OF THE DISPUTED AMOUNT, AT
24 INTEREST; AND

25 (B) REDUCE THE AWARD BY THE AMOUNT DEPOSITED. THE

1 AMOUNT DEPOSITED AND ANY INTEREST THEREON ARE SUBJECT TO THE
2 FURTHER ORDER OF THE COURT, PURSUANT TO THE REQUIREMENTS OF
3 THIS SECTION.

4 (4) EXCEPT FOR SUBROGATION RIGHTS SPECIFICALLY GRANTED
5 BY STATE OR FEDERAL LAW, THERE IS NO RIGHT TO SUBROGATION
6 FOR ANY AMOUNT PAID OR PAYABLE TO A PLAINTIFF FROM A
7 COLLATERAL SOURCE IF AN AWARD IS REDUCED BY THAT AMOUNT
8 UNDER SUBSECTION (1).

9 Section 3. Applicability. This act applies only to
10 causes of action arising after the effective date of this
11 act.

-End-