

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 296

BY SENATORS TAKUBO, GAUNCH, MULLINS AND BOSO

[Introduced January 15, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §55-7-30; and to amend and reenact §57-5-4j of said code, all relating to
 3 preventing compensatory damage awards for medical expenses from including sums that
 4 the claimant has not and will not pay for medical care or treatment.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 section, designated §55-7-30; and that §57-5-4j of said code be amended and reenacted, all to
 3 read as follows:

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-30. Damages for health care services or treatment received; abrogation of common law rule; limitation of damages.

1 (a) The Legislature hereby declares that the purpose of this section is to abrogate the
 2 common law collateral source rule in determining the sums recoverable by injured persons as
 3 damages for medical expenses and to prevent compensatory damage awards for the value of
 4 reasonable and necessary health care services from exceeding the sums accepted by the health
 5 care service provider for treating the injured party. The Legislature further declares that the
 6 decision of the Supreme Court of Appeals of West Virginia in Kenney v. Liston, Case No. 13-0427
 7 (W. Va. June 4, 2014), and any other decision of the Supreme Court of West Virginia inconsistent
 8 with this legislation, is contrary to the Legislature’s intent and is superseded by the enactment of
 9 this section.

10 (b) In an action by any person or a legal representative to recover damages resulting from
 11 death or injury to a person, the damages that may be recovered by a claimant for reasonable and
 12 necessary health care services or treatment received may include only:

13 (1) Sums actually paid by or on behalf of the injured person to the health care service

14 providers who rendered reasonable and necessary services or treatment;

15 (2) Sums necessary to satisfy unpaid charges still owing and payable to the health care
16 service providers for reasonable and necessary health care services or treatment; and

17 (3) Sums sufficient to provide for any future reasonable and necessary health care
18 services or treatment for the injured person.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§57-5-4j. Hospital records; evidence of ~~reasonableness~~ of medical expenses.

1 Proof that medical, hospital and doctor bills were paid ~~or incurred~~ because of ~~any an~~
2 illness, disease or injury ~~shall be~~ is prima facie evidence that ~~such the~~ the bills so paid ~~or incurred~~
3 were necessary and reasonable. Proof that medical, hospital and doctor bills were incurred but
4 resolved by way of discount, reduction or write-off and not paid may not be used to establish the
5 necessity or reasonableness of medical expenses.

6 Evidence offered to prove past medical expenses is limited to evidence of the sums
7 actually paid by or on behalf of the claimant to discharge the medical, hospital and doctor bills
8 that have been satisfied, regardless of the source of payment, and evidence of the sums
9 necessary to satisfy any unpaid medical, hospital and doctor bills that have been incurred and
10 remain owing and payable to the health care service provider.

11 Evidence offered regarding the cost or value of future medical expenses claimed by the
12 injured person is limited to evidence of sums that will be sufficient to provide future necessary and
13 reasonable health care services or treatment for the injured person.

NOTE: The purpose of this bill is to prevent compensatory damage awards for medical expenses from including sums that the claimant has not and will not pay for medical care or treatment.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.