

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 731

By Senator Azinger

[Introduced February 20, 2023; 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 §55-7-32; and to amend and reenact §57-5-4j of said code, all relating to an
 3 evidentiary rule involving the collateral source rule to require the adjustment of verdicts for
 4 past expenses to reflect the amount incurred and paid.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ACTION FOR INJURIES.

§55-7-32. Reduction in compensatory damages for economic losses for payments from collateral sources for the same injury.

1 (a) As used in this section, "collateral source" means a source of benefits or advantages for
 2 economic loss that the claimant has received from:

3 (1) Any federal or state act, public program or insurance which provides payments for
 4 medical expenses, disability benefits, including workers' compensation benefits, or other similar
 5 benefits. Benefits payable under the Social Security Act and Medicare are not considered
 6 payments from collateral sources except for Social Security disability benefits directly attributable
 7 to the medical injury in question;

8 (2) Any contract or agreement of any group, organization, partnership or corporation to
 9 provide, pay for or reimburse the cost of medical, hospital, dental, nursing, rehabilitation, therapy
 10 or other health care services or provide similar benefits, including any amount that a group,
 11 organization, partnership, corporation or health care provider agrees to reduce, discount or write
 12 off of a medical bill;

13 (3) Any group accident, sickness or income disability insurance, any casualty or property
 14 insurance, including automobile and homeowners' insurance, which provides medical benefits,
 15 income replacement or disability coverage, or any other similar insurance benefits, except life
 16 insurance, to the extent that someone other than the insured, including the insured's employer,

17 has paid all or part of the premium or made an economic contribution on behalf of the plaintiff; or

18 (4) Any contractual or voluntary wage continuation plan provided by an employer or
19 otherwise or any other system intended to provide wages during a period of disability.

20 (b) In any action arising after the effective date of this section, a defendant who has been
21 found liable to the plaintiff for damages that result from an injury, death, or loss to person or
22 property may present to the court, after the trier of fact has rendered a verdict, but before entry of
23 judgment, evidence of the dollar amount actually paid on behalf of the plaintiff for the same injury,
24 death or loss from collateral sources.

25 (c) In a hearing held pursuant to subsection (b) of this section, the defendant may present
26 evidence of future payments from collateral sources if the court determines that:

27 (1) There is a preexisting contractual or statutory obligation on the collateral source to pay
28 the benefits;

29 (2) The benefits, to a reasonable degree of certainty, will be paid to the plaintiff for
30 expenses the trier of fact has determined the plaintiff will incur in the future; and

31 (3) The amount of the future expenses is readily reducible to a sum certain.

32 (d) In a hearing held pursuant to subsection (b) of this section, the plaintiff may present
33 evidence of the value of payments or contributions he or she has made to secure the right to the
34 benefits paid by the collateral source.

35 (e) After hearing the evidence presented by the parties, the court shall make the following
36 findings of fact:

37 (1) The total amount of damages for economic loss found by the trier of fact;

38 (2) The total amount of damages for each category of economic loss found by the trier of
39 fact;

40 (3) The total amount of allowable collateral source payments received or to be received by
41 the plaintiff for the injury which was the subject of the verdict in each category of economic loss;

42 and

43 (4) The total amount of any premiums or contributions for the two-year period from the date
44 of the injury, death or loss paid by the plaintiff in exchange for the collateral source payments in
45 each category of economic loss found by the trier of fact.

46 (f) The court shall subtract the total premiums the plaintiff was found to have paid in each
47 category of economic loss from the total collateral source benefits the plaintiff received with regard
48 to that category of economic loss to arrive at the net amount of collateral source payments.

49 (g) The court shall then subtract the net amount of collateral source payments received or
50 to be received by the plaintiff in each category of economic loss from the total amount of damages
51 awarded to the plaintiff by the trier of fact for that category of economic loss to arrive at the
52 adjusted verdict.

53 (h) The court may not reduce the verdict rendered by the trier of fact in any category of
54 economic loss to reflect:

55 (1) Amounts paid to or on behalf of the plaintiff which the collateral source has a right to
56 recover from the plaintiff through subrogation, lien or reimbursement;

57 (2) Amounts in excess of benefits actually paid or to be paid on behalf of the plaintiff by a
58 collateral source in a category of economic loss;

59 (3) The proceeds of any individual disability or income replacement insurance paid for
60 entirely by the plaintiff;

61 (4) The assets of the plaintiff or the members of the plaintiff's immediate family; or

62 (5) A settlement between the plaintiff and another tortfeasor.

63 (i) After determining the amount of the adjusted verdict, the court shall enter judgment in
64 accordance with the provisions of §55-7-13 of this code.

65 (j) The legislature further declares that the purpose of this section is to abrogate the
66 common-law collateral source rule in determining the sums recoverable as damages and to
67 prevent compensatory damages awards from exceeding the sums actually paid to compensate for
68 the death, injury, or loss.

69 (k) The legislature further declares that the decision of the Supreme Court of Appeals of
 70 West Virginia in Kenney v. Liston, Case No. 13-0427 (W. Va. June 4, 2014) is contrary to the
 71 Legislature’s intent and shall be deemed overruled by the enactment of this statute.

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 illness,
 2 disease or injury shall be prima facie evidence that such bill so paid ~~and incurred~~ were
 3 necessary and reasonable.

NOTE: The purpose of this bill is to enable the trier of fact to determine the actual amount of the prevailing party’s pecuniary loss and to have judgment awards in tort actions be reduced by the amount of certain collateral source payments or benefits received by the plaintiff or to which the plaintiff is entitled, provided that such collateral source payments are for the same damages for which recovery is sought in the action.

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