

FIRST REGULAR SESSION

SENATE BILL NO. 129

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR CHILDERS.

Pre-filed December 1, 2000, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0328S.011

AN ACT

To repeal sections 490.715 and 537.067, RSMo 2000, relating to civil damage awards, and to enact in lieu thereof three new sections relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 490.715 and 537.067, RSMo 2000, are repealed and three new sections enacted in lieu thereof, to be known as sections 490.715, 511.163 and 537.067, to read as follows:

490.715. 1. [No] Evidence of collateral sources shall be admissible [other than such evidence] **as** provided for in this section.

2. If prior to trial a defendant or his insurer or authorized representative, or any combination of them, pays all or any part of a plaintiff's special damages, the defendant may introduce evidence that some other person other than the plaintiff has paid those amounts. The evidence shall not identify any person having made such payments.

3. If a defendant introduces evidence described in subsection 2 of this section, such introduction shall constitute a waiver of any right to a credit against a judgment pursuant to section 490.710.

4. In a personal injury action in which the plaintiff seeks to recover for the expense of medical care, rehabilitation services, loss of earnings, loss of earning capacity, or other economic loss, evidence to establish that the expense or loss was paid or is payable, in whole or in part, by a collateral source shall be admissible to the court in which the action was brought after a verdict for the plaintiff and before a judgment is entered on the verdict. Subject to subsection 7 of this section, if the court determines that all or part of the plaintiff's expense or loss has been paid or is payable by a

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

collateral source, the court shall reduce that portion of the judgment which represents damages paid or payable by a collateral source by an amount equal to the sum determined pursuant to subsection 5 of this section. This reduction shall not exceed the amount of the judgment for economic loss or that portion of the verdict which represents damages paid or payable by a collateral source.

5. The court shall determine the amount of the plaintiff's expense or loss which has been paid or is payable by a collateral source. That amount shall then be reduced by a sum equal to the premiums, or that portion of the premiums paid for the particular benefit by the plaintiff or the plaintiff's family or incurred by the plaintiff's employer on behalf of the plaintiff in securing the benefits received or receivable from the collateral source.

6. As used in this section, "collateral source" means benefits received or receivable from an insurance policy; benefits payable pursuant to a contract with a health care corporation, dental care corporation, or health maintenance organization; employee benefits; social security benefits; worker's compensation benefits; or medicare benefits. Collateral source does not include life insurance benefits or benefits paid or payable by a person, partnership, association, corporation, or other legal entity entitled by law to a lien or subrogation against the proceeds of a recovery by a plaintiff in a civil action for damages.

7. For purposes of this section, benefits from a collateral source shall not be considered payable or receivable unless the court makes a determination that there is a previously existing contractual or statutory obligation on the part of the collateral source to pay the benefits.

[4.] 8. This section does not require the exclusion of evidence admissible for another proper purpose.

511.163. No judgment for punitive damages shall exceed one and one-half times the amount of the judgment for actual and compensatory damages on causes of action arising after January 1, 2001.

537.067. 1. In all tort actions for damages[, in which fault is not assessed to the plaintiff] **where two or more defendants are held jointly liable**, the defendants shall be jointly and severally liable for the amount of the judgment rendered against such defendants, **as provided in subsection 2 of this section.**

2. [In all tort actions for damages in which fault is assessed to plaintiff the defendants shall be jointly and severally liable for the amount of the judgment rendered against such defendants except as follows:

(1) In all such actions in which the trier of fact assesses a percentage of fault to the plaintiff, any party, including the plaintiff, may within thirty days of the date the verdict is

rendered move for reallocation of any uncollectible amounts;

(2) If such a motion is filed the court shall determine whether all or part of a party's equitable share of the obligation is uncollectible from that party, and shall reallocate any uncollectible amount among the other parties, including a claimant at fault, according to their respective percentages of fault;

(3) The party whose uncollectible amount is reallocated is nonetheless subject to contribution and to any continuing liability to the claimant on the judgment;

(4) No amount shall be reallocated to any party whose assessed percentage of fault is less than the plaintiff's so as to increase that party's liability by more than a factor of two;

(5) If such a motion is filed, the parties may conduct discovery on the issue of collectibility prior to a hearing on such motion;

(6) Any order of reallocation pursuant to this section shall be entered within one hundred twenty days after the date of filing such a motion for reallocation. If no such order is entered within that time, such motion shall be deemed to be overruled;

(7) Proceedings on a motion for reallocation shall not operate to extend the time otherwise provided for post-trial motion or appeal on other issues.

Any appeal on an order or denial of reallocation shall be taken within the time provided under applicable rules of civil procedure and shall be consolidated with any other appeal on other issues in the case.

3. This section shall not be construed to expand or restrict the doctrine of joint and several liability except for reallocation as provided in subsection 2.] **Where two or more defendants are held jointly liable:**

(1) A single defendant whose liability is found to be fifteen percent or less of the entire judgement shall be liable only for his or her percentage of liability; or

(2) A single defendant whose liability is found to be sixteen to twenty-five percent shall be liable for double the amount of his or her percentage of liability; or

(3) A single defendant whose liability exceeds twenty-five percent shall be jointly and severally liable for the full amount of the judgment.

3. The limitations set forth in subsection 2 of this section shall not apply if it is found that two or more of the defendants acted in concert or conspired to act in concert. The plaintiff shall have the burden to prove that two or more of the defendants acted in concert or conspired to act in concert.