

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 17-0910.01 Duane Gall x4335

SENATE BILL 17-181

SENATE SPONSORSHIP

Gardner,

HOUSE SPONSORSHIP

Willett,

Senate Committees

Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING MODIFICATION OF THE COLLATERAL-SOURCE RULE IN**
102 **CIVIL LITIGATION IN WHICH A PARTY HAS INSURANCE**
103 **COVERAGE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill modifies the collateral-source rule, which generally states that in a civil action for damages the jury should not be told about insurance coverage or other sources from which the plaintiff has received or may receive compensation (collateral sources). The bill allows evidence of collateral sources unless the plaintiff agrees to have the jury's

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
March 15, 2017

award reduced by the lesser of:

- ! The amount paid or available to the plaintiff from collateral sources; or
- ! The amount of premiums or other contributions the plaintiff paid to those collateral sources.

The bill establishes the procedure for determining these amounts and the conditions under which the plaintiff may elect to invoke the collateral-source rule.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 10-1-135, **amend** (1)
3 introductory portion, (1)(c), (1)(f), (6)(a)(I), and (10); and **add** (1)(g),
4 (1.5), and (11) as follows:

5 **10-1-135. Reimbursement for benefits - limitations - notice -**
6 **definitions - legislative declaration.** (1) The general assembly hereby
7 finds and ~~declares~~ DETERMINES that:

8 (c) It is in the best interests of the citizens of this state to ensure
9 that each insured injured party recovers full compensation for bodily
10 injury caused by the act or omission of a third party, and that such
11 compensation is not diminished by repayment, reimbursement, or
12 subrogation rights of the payer of benefits UNLESS THE INJURED PARTY IS
13 ALSO REIMBURSED FOR THE PREMIUMS OR AMOUNTS PAID, CONTRIBUTED,
14 OR FORFEITED BY OR ON BEHALF OF THE PLAINTIFF OR MEMBERS OF THE
15 PLAINTIFF'S IMMEDIATE FAMILY THAT LED TO THE CREATION OF THE
16 COLLATERAL-SOURCE CIRCUMSTANCES FOR THE CONTRACT OR PREMIUM
17 PERIOD DURING WHICH THE INCIDENT OR ACCIDENT OCCURRED THAT
18 RESULTED IN INJURY, DAMAGES, OR LOSSES;

19 ~~(f) This section is intended to require a payer of benefits to pay a~~
20 ~~proportionate share of the attorney fees when the payer of benefits is a~~
21 ~~beneficiary of the attorney services paid for by the injured party~~ THE

1 GENERAL ASSEMBLY IS ACUTELY AWARE OF THE TOLL IN HUMAN
2 SUFFERING AND LOSS OF LIFE, LIMB, AND PROPERTY CAUSED BY
3 NEGLIGENCE IN THE OPERATION OF MOTOR VEHICLES IN OUR STATE. WHILE
4 THIS BASIC PROBLEM CAN BE AND IS BEING DEALT WITH BY DIRECT
5 MEASURES DESIGNED TO PROTECT OUR PEOPLE FROM HARM CAUSED BY
6 NEGLIGENT AND RECKLESS DRIVERS, THE GENERAL ASSEMBLY IS ALSO
7 VERY MUCH CONCERNED WITH THE FINANCIAL LOSS VISITED UPON OTHER
8 RESPONSIBLE DRIVERS THROUGHOUT THE STATE IN THE FORM OF
9 INCREASED INSURANCE PREMIUMS CAUSED BY PAYING EXAGGERATED,
10 INFLATED, AND UNREASONABLE BILLED AMOUNTS FOR MEDICAL CARE
11 THAT HAVE LITTLE OR NO RATIONAL BASIS OR CONNECTION TO THE
12 ACTUAL MARKET PRICES, PAID AMOUNTS, OR DISCOUNTING THAT OCCURS
13 ON THOSE BILLS. THE EXISTENCE OF INSURANCE COVERAGE FOR, OR CASH
14 DISCOUNTING OF, THE AMOUNT BILLED VARIES AMONG CARRIERS AND
15 PROVIDERS, BUT DISCOUNTING THE BILLED AMOUNT TO SOME DEGREE IS
16 A NEARLY UNIVERSAL OCCURRENCE.

17 (g) THE CURRENT PRACTICE OF ADMITTING EVIDENCE OF THE
18 AMOUNT BILLED FOR MEDICAL SERVICES WITHOUT ALSO ADMITTING
19 EVIDENCE OF THE AMOUNT ACTUALLY PAID CREATES AN UNREASONABLE
20 AND UNJUSTIFIABLE DANGER OF MISLEADING THE JURORS, OF CREATING A
21 CATEGORY OF INFLATED OR PHANTOM DAMAGES, AND OF PUNISHING THE
22 GENERAL DRIVING PUBLIC IN COLORADO, WHICH IS COMPELLED TO CARRY
23 MANDATORY INSURANCE, FOR THE MISCONDUCT OF A FEW.

24 (1.5) BASED ON THE FINDINGS AND DETERMINATIONS SET FORTH
25 IN SUBSECTION (1) OF THIS SECTION, THE GENERAL ASSEMBLY HEREBY
26 DECLARES THAT THIS SECTION IS INTENDED:

27 (a) TO REQUIRE A PAYER OF BENEFITS TO PAY A PROPORTIONATE

1 SHARE OF THE ATTORNEY FEES WHEN THE PAYER OF BENEFITS IS A
2 BENEFICIARY OF THE ATTORNEY SERVICES PAID FOR BY THE INJURED
3 PARTY; AND

4 (b) TO STRIKE A BALANCE WHEREBY INJURED PARTIES ARE FULLY
5 COMPENSATED FOR THEIR LOSSES, INCLUDING RECEIVING THE BENEFIT OF
6 ANY COLLATERAL SOURCE AND THE PREMIUM FOR THE APPLICABLE
7 COVERAGE PERIOD, WHILE TORTFEASORS ARE REQUIRED TO COMPENSATE
8 VICTIMS OF THEIR NEGLIGENCE WITHOUT PUNISHING OTHER, MORE
9 CAREFUL DRIVERS THROUGHOUT THE STATE FOR INCREASED PREMIUMS
10 CAUSED BY A WINDFALL TO CLAIMANTS OR THEIR ATTORNEYS.

11 (6) (a) (I) Except as provided in subparagraph (II) of this
12 paragraph (a), a payer of benefits shall not bring a direct action for
13 subrogation or reimbursement of benefits against:

14 (A) A third party allegedly at fault for the injury to the injured
15 party or an insurer providing uninsured motorist coverage; OR

16 (B) THE INSURANCE CARRIER OF A THIRD PARTY ALLEGEDLY AT
17 FAULT FOR THE INJURY TO THE INJURED PARTY, OR AGAINST AN INSURER
18 PROVIDING UNINSURED MOTORIST COVERAGE, IF THAT CARRIER OR
19 INSURER PROVIDES PAYMENT DIRECTLY TO THE INJURED PARTY OR THE
20 INJURED PARTY'S ATTORNEY.

21 (10) ~~Nothing in this section modifies~~ THE COLLATERAL SOURCE
22 RULE, INCLUDING SECTION 13-21-111.6, REGARDING THE REDUCTION OF
23 DAMAGES BASED ON AMOUNTS PAID FOR THE DAMAGES FROM A
24 COLLATERAL SOURCE, IS HEREBY MODIFIED AS FOLLOWS:

25 (a) ~~The requirement of section 13-21-111.6, C.R.S., regarding the~~
26 ~~reduction of damages based on amounts paid for the damages from a~~
27 ~~collateral source.~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (10)(b)

1 OF THIS SECTION, the fact or amount of any collateral source payment or
2 benefits, ~~shall not be admitted~~ TOGETHER WITH THE FACT OR AMOUNT OF
3 THE NET CHARGES BILLED BY A PROVIDER OF HEALTH CARE SERVICES OR
4 OTHER SERVICES, ARE ADMISSIBLE as evidence in any action against an
5 alleged third-party tortfeasor or in an action to recover benefits under
6 section 10-4-609 UNLESS THE ALLEGED THIRD-PARTY TORTFEASOR OR
7 UNINSURED MOTORIST HAS BEEN CONVICTED OF A SECOND OR
8 SUBSEQUENT ALCOHOL-RELATED DRIVING OFFENSE THAT RESULTED IN
9 INJURY. THE JURY SHALL NOT BE INSTRUCTED AS TO WHO PAID THE BILLS
10 EXCEPT UPON A SHOWING OF GOOD CAUSE FOR SUCH AN INSTRUCTION.

11 (b) (I) ~~Lien rights of hospitals pursuant to section 38-27-101,~~
12 ~~C.R.S., or of the department of health care policy and financing pursuant~~
13 ~~to section 25.5-4-301 (5), C.R.S.; or~~ SUBSECTION (10)(a) OF THIS SECTION
14 DOES NOT APPLY TO A PLAINTIFF WHO ELECTS TO EXCLUDE EVIDENCE OF
15 THE AMOUNT PAID BY A COLLATERAL SOURCE IF ALL OF THE FOLLOWING
16 CONDITIONS ARE MET:

17 (A) THE ACTION IS BASED ON EITHER CONTRACT OR TORT;

18 (B) LIABILITY IS ADMITTED OR IS TO BE DETERMINED BY THE JURY;

19 (C) THE PLAINTIFF SEEKS DAMAGES THAT INCLUDE AN AWARD TO
20 COMPENSATE THE PLAINTIFF FOR LOSSES THAT, ON OR BEFORE THE DATE
21 OF THE VERDICT, WERE OR COULD HAVE BEEN RECOVERED BY THE
22 PLAINTIFF FROM A COLLATERAL SOURCE; AND

23 (D) THE PLAINTIFF AGREES TO BE BOUND BY A REDUCTION OF
24 DAMAGES TO THE AMOUNT ACTUALLY PAID BY THE COLLATERAL SOURCE,
25 SUBJECT TO ADJUSTMENT IN ACCORDANCE WITH SUBSECTIONS (10)(b)(II)
26 TO (10)(b)(VIII) OF THIS SECTION.

27 (II) AS DETERMINED UNDER SUBSECTION (10)(b)(IV) OF THIS

1 SECTION, THE PLAINTIFF IS ENTITLED TO RECOVER THE GREATER OF:

2 (A) THE AMOUNT ACTUALLY PAID BY THE COLLATERAL SOURCE;

3 OR

4 (B) THE AMOUNT OF PREMIUMS OR CONTRIBUTIONS THE PLAINTIFF
5 PAID TO THE COLLATERAL SOURCE IN ANTICIPATION OF RECEIVING
6 COMPENSATION FOR THE PLAINTIFF'S LOSSES.

7 (III) WITHIN TEN DAYS AFTER ENTRY OF THE VERDICT, ANY PARTY
8 MAY REQUEST BY MOTION A COLLATERAL SOURCE DETERMINATION. IF THE
9 MOTION IS FILED, THE PARTIES SHALL SUBMIT WRITTEN EVIDENCE OF, AND
10 THE COURT SHALL DETERMINE:

11 (A) AMOUNTS FROM COLLATERAL SOURCES THAT HAVE BEEN PAID
12 FOR THE BENEFIT OF THE PLAINTIFF OR ARE OTHERWISE AVAILABLE TO THE
13 PLAINTIFF AS A RESULT OF LOSSES EXCEPT THOSE FOR WHICH A
14 SUBROGATION RIGHT HAS BEEN ASSERTED; AND

15 (B) AMOUNTS THAT HAVE BEEN PAID, CONTRIBUTED, OR
16 FORFEITED BY OR ON BEHALF OF THE PLAINTIFF OR MEMBERS OF THE
17 PLAINTIFF'S IMMEDIATE FAMILY FOR UP TO ONE YEAR IMMEDIATELY
18 BEFORE THE ACCRUAL OF THE ACTION TO SECURE THE RIGHT TO A
19 COLLATERAL-SOURCE BENEFIT THAT THE PLAINTIFF IS RECEIVING AS A
20 RESULT OF LOSSES.

21 (IV) THE COURT SHALL REDUCE THE JURY'S AWARD BY THE
22 AMOUNTS DETERMINED UNDER SUBSECTION (10)(b)(III)(A) OF THIS
23 SECTION AND OFFSET ANY REDUCTION IN THE AWARD BY THE AMOUNTS
24 DETERMINED UNDER SUBSECTION (10)(b)(III)(B) OF THIS SECTION.

25 (V) IF THE COURT CANNOT DETERMINE THE AMOUNTS SPECIFIED
26 IN SUBSECTION (10)(b)(III) OF THIS SECTION FROM THE WRITTEN EVIDENCE
27 SUBMITTED, THE COURT MAY WITHIN TEN DAYS REQUEST ADDITIONAL

1 WRITTEN EVIDENCE OR SCHEDULE A CONFERENCE WITH THE PARTIES TO
2 OBTAIN FURTHER EVIDENCE.

3 (VI) IF THE PLAINTIFF IS FOUND TO BE AT FAULT, THE REDUCTION
4 REQUIRED MUST BE MADE BEFORE THE PLAINTIFF'S DAMAGES ARE
5 REDUCED UNDER SUBSECTION (10)(b)(IV) OF THIS SECTION.

6 (VII) IF THE FEES FOR LEGAL SERVICES PROVIDED TO THE
7 PLAINTIFF ARE BASED ON A PERCENTAGE OF THE AMOUNT OF MONEY
8 AWARDED TO THE PLAINTIFF, THE PERCENTAGE MUST BE BASED ON THE
9 AMOUNT OF THE AWARD AS ADJUSTED. ANY SUBROGATED PROVIDER OF A
10 COLLATERAL SOURCE NOT SEPARATELY REPRESENTED BY COUNSEL SHALL
11 PAY THE SAME PERCENTAGE OF ATTORNEY FEES AS PAID BY THE PLAINTIFF
12 AND SHALL PAY ITS OWN PROPORTIONATE SHARE OF THE COSTS.

13 (VIII) THE JURY SHALL NOT BE INFORMED OF THE EXISTENCE OF
14 COLLATERAL SOURCES OR OF ANY FUTURE BENEFITS THAT MAY OR MAY
15 NOT BE PAYABLE TO THE PLAINTIFF.

16 ~~(c) Subrogation and lien rights granted to workers' compensation~~
17 ~~carriers or self-insured employers pursuant to section 8-41-203, C.R.S.~~

18 (11) NOTHING IN THIS SECTION MODIFIES:

19 (a) LIEN RIGHTS OF HOSPITALS PURSUANT TO SECTION 38-27-101
20 OR OF THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING
21 PURSUANT TO SECTION 25.5-4-301 (5); OR

22 (b) SUBROGATION AND LIEN RIGHTS GRANTED TO WORKERS'
23 COMPENSATION CARRIERS OR SELF-INSURED EMPLOYERS PURSUANT TO
24 SECTION 8-41-203.

25 **SECTION 2. Act subject to petition - effective date.** This act
26 takes effect at 12:01 a.m. on the day following the expiration of the
27 ninety-day period after final adjournment of the general assembly (August

1 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
2 referendum petition is filed pursuant to section 1 (3) of article V of the
3 state constitution against this act or an item, section, or part of this act
4 within such period, then the act, item, section, or part will not take effect
5 unless approved by the people at the general election to be held in
6 November 2018 and, in such case, will take effect on the date of the
7 official declaration of the vote thereon by the governor.