

SENATE BILL NO. 268

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR TRENT.

1395S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 490.715 and 537.058, RSMo, and to enact in lieu thereof four new sections relating to civil procedure.

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

Section A. Sections 490.715 and 537.058, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be
3 known as sections 490.715, 537.058, 537.092, and 537.870, to
4 read as follows:

490.715. 1. No evidence of collateral sources, or
2 payments rendered under subsection 2 of this section, shall
3 be admissible other than such evidence provided for in this
4 section.

5 2. If prior to trial a defendant or his or her insurer
6 or authorized representative, or any combination of them,
7 pays all or any part of a plaintiff's special damages, then
8 any portion of a plaintiff's claims for special damages that
9 are satisfied by a payment from a defendant or the
10 defendant's insurer or authorized representative, or any
11 combination of them, are not recoverable from that defendant.

12 3. If such payments described in subsection 2 of this
13 section are included in a plaintiff's claim for special
14 damages at trial, the defendant who made the payment, or on
15 whose behalf the payment was made, shall be entitled to
16 deduct and receive a credit for such payments from any
17 judgment as provided for in section 490.710.

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

18 4. This section does not require the exclusion of
19 evidence admissible for another proper purpose.

20 5. (1) Except as provided in subsection 2 of this
21 section, **[parties] in any action where a plaintiff seeks to**
22 **recover for personal injury, bodily injury, or death, any**
23 **party** may introduce evidence of the actual cost of the
24 medical care or treatment rendered to a plaintiff, or **[a**
25 **patient whose care is at issue]** **to the person for whose**
26 **injury or death a plaintiff seeks to recover.** Actual cost
27 of the medical care or treatment shall be reasonable,
28 necessary, and a proximate result of the negligence or fault
29 of any party.

30 (2) **No party shall introduce evidence of the amount**
31 **billed for medical care or treatment rendered to a plaintiff**
32 **or a patient whose care is at issue in a plaintiff's case if**
33 **the amount billed has been discounted pursuant to any**
34 **contract, price reduction, or write-off by any person or**
35 **entity or satisfied by payment of an amount less than the**
36 **amount billed for that medical care or treatment.**

37 6. The actual cost of medical care or treatment
38 rendered to a plaintiff or a patient whose care is at issue
39 in a plaintiff's case and discounts pursuant to any
40 contract, price reduction, or write-off shall be admissible
41 evidence relevant to the potential cost of future treatment
42 of the same type or kind to that plaintiff or patient whose
43 care is at issue in a plaintiff's case.

44 7. For purposes of this **[subsection] section**, the
45 phrase "actual cost of the medical care or treatment" shall
46 be defined as a sum of money not to exceed the dollar
47 amounts paid by or on behalf of a plaintiff, or a patient
48 whose care is at issue **in a plaintiff's case**, plus any
49 remaining dollar amount necessary to satisfy the financial

50 obligation, **including valid outstanding liens**, for medical
51 care or treatment by a health care provider after adjustment
52 for any contractual discounts, price reduction, or write-off
53 by any person or entity.

537.058. 1. As used in this section, the following
2 terms shall mean:

3 (1) "Extracontractual damages", any amount of damage
4 that exceeds the total available limit of liability
5 insurance for all of a liability insurer's liability
6 insurance policies applicable to a claim for personal
7 injury, bodily injury, or wrongful death;

8 (2) "[Time-limited] **Settlement** demand", any offer to
9 settle any claim for personal injury, bodily injury, or
10 wrongful death made by or on behalf of a claimant to a tort-
11 feisor with a liability insurance policy for purposes of
12 settling a claim against such tort-feisor within the
13 insurer's limit of liability insurance[, which by its terms
14 must be accepted within a specified period of time];

15 (3) "Tort-feisor", any person claimed to have caused
16 or contributed to cause personal injury, bodily injury, or
17 wrongful death to a claimant.

18 2. [A time-limited] **In any action alleging**
19 **extracontractual damages against the tort-feisor's liability**
20 **insurer, any prior settlement** demand to settle any claim for
21 personal injury, bodily injury, or wrongful death shall **not**
22 **be considered to have been a reasonable opportunity to**
23 **settle the claim unless the settlement demand was** in
24 writing, [shall reference] **referenced** this section, [shall
25 be] sent **by** certified mail **with** return-receipt requested to
26 the tort-feisor's liability insurer, **remained open for**
27 **acceptance by the liability insurer for at least ninety days**
28 **from the date such settlement demand was received by the**

29 **liability insurer**, and **[shall contain] contained** the
30 following material terms:

31 (1) The time period within which the offer shall
32 remain open for acceptance by the tort-feasor's liability
33 insurer, **[which shall not be less] if the time period for**
34 **acceptance is more** than ninety days from the date such
35 demand is received by the liability insurer;

36 (2) The amount of monetary payment requested or a
37 request for the applicable policy limits;

38 (3) The date and location of the loss;

39 (4) The claim number, if known;

40 (5) A description of all known injuries sustained by
41 the claimant;

42 (6) The party or parties to be released if such **[time-**
43 **limited] settlement** demand is accepted;

44 (7) A description of the claims to be released if such
45 **[time-limited] settlement** demand is accepted; and

46 (8) An offer of unconditional release for the
47 liability insurer's insureds from all present and future
48 liability for that occurrence under section 537.060.

49 3. Such **[time-limited] settlement** demand shall be
50 accompanied by:

51 (1) A list of the names and addresses of health care
52 providers who provided treatment to or evaluation of the
53 claimant or decedent for injuries suffered from the date of
54 injury until the date of the **[time-limited] settlement**
55 demand, and HIPAA compliant written authorizations
56 sufficient to allow the liability insurer to obtain such
57 records from the health care providers listed; and

58 (2) A list of the names and addresses of all the
59 claimant's employers at the time the claimant was first
60 injured until the date of the **[time-limited] settlement**

61 demand, and written authorizations sufficient to allow the
62 liability insurer to obtain such records from all employers
63 listed, if the claimant asserts a loss of wages, earnings,
64 compensation, or profits however denominated.

65 4. If a liability insurer with the right to settle on
66 behalf of an insured receives a **[time-limited] settlement**
67 demand, such insurer may accept the **[time-limited]**
68 **settlement** demand by providing written acceptance of the
69 material terms outlined in subsection 2 of this section,
70 delivered or postmarked to the claimant or the claimant's
71 representative within the time period **[set in the time-**
72 **limited demand]** **in which the settlement demand is open for**
73 **acceptance by the liability insurer, which in no event shall**
74 **be less than ninety days.**

75 5. Nothing in this section shall prohibit a claimant
76 making a **[time-limited] settlement** demand from requiring
77 payment within a specified period; provided, however, that
78 such period for payment shall not be less than ten days
79 after the insurer's receipt of a fully executed
80 unconditional release under section 537.060 as specified in
81 subsection 2 of this section.

82 6. Nothing in this section applies to offers or
83 demands or **[time-limited] settlement** demands issued within
84 ninety days of the trial by jury of any claim on which a
85 lawsuit has been filed.

86 7. In any lawsuit filed by a claimant as an assignee
87 of the tort-feasor or by the tort-feasor for the benefit of
88 the claimant, a **[time-limited] settlement** demand that does
89 not comply with the terms of this section shall not be
90 considered as a reasonable opportunity to settle for the
91 insurer and shall not be admissible in any lawsuit alleging

92 extracontractual damages against the tort-feasor's liability
93 insurer.

537.092. Notwithstanding any provision of law to the
2 contrary, in any civil action in which the trier of fact is
3 a jury, neither a party nor the attorneys of a party shall
4 seek or make reference to a specific dollar amount or state
5 a range for the jury to consider with respect to awards for
6 noneconomic damages, as that term is defined in section
7 538.205.

537.870. 1. Within thirty days of filing a civil
2 action involving a latent injury or disease or a claim for
3 medical monitoring, the claimant shall file a sworn
4 information form specifying the evidence that provides the
5 basis for each claim against each defendant. The sworn
6 information form shall include the following with
7 specificity:

8 (1) The claimant's name, date of birth, marital
9 status, occupation, smoking history, current and past
10 residences, current and past worksites, current and past
11 employers, and if applicable, the name of any individual
12 through whom the claimant alleges exposure to the product or
13 substance that forms a basis for the civil action;

14 (2) The name and address of each individual who is
15 knowledgeable about the exposures or events that form a
16 basis for the civil action and the individual's relationship
17 to the claimant;

18 (3) The manufacturer or seller and specific brand and
19 trade name of each product or substance that forms a basis
20 for the civil action;

21 (4) Each site, including the address of each site, and
22 the specific location at each site where any exposure or
23 event occurred that form a basis for the civil action;

24 (5) The beginning and ending dates of each exposure or
25 event that form a basis for the civil action and the
26 specific manner, frequency, and duration of each exposure or
27 event that form a basis for the civil action;

28 (6) The specific disease or injury that is alleged; and

29 (7) A certification that all supporting documentation
30 relating to the information required by this section has
31 been provided to the parties.

32 2. A claimant shall supplement the information
33 required by this section when the claimant receives
34 information that is required to be disclosed or becomes
35 aware that a prior disclosure was inaccurate or incomplete.

36 3. Discovery shall not commence against a defendant
37 until the defendant's product, substance, or premises is
38 specifically identified in the disclosures required by this
39 section.

40 4. The court, on motion by a defendant, shall dismiss
41 the civil action without prejudice as to any defendant whose
42 product, substance, or premises is not specifically
43 identified in the disclosures required by this section.

44 5. The court, on motion by a defendant, shall dismiss
45 the civil action without prejudice as to the moving
46 defendant or as to all defendants, as applicable, if the
47 claimant fails to comply in whole or in part with the
48 provisions of this section.

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