

HB 95 -- COLLATERAL SOURCE RULE

SPONSOR: McGaugh

COMMITTEE ACTION: Voted "Do Pass" by the Special Committee on Litigation Reform by a vote of 9 to 3. Voted "Do Pass" by the Rules- Legislative Oversight Committee by a vote of 8 to 3.

This bill specifies that special damages claimed by the plaintiff at trial that have been satisfied by a payment from a defendant, the defendant's insurer, or authorized representative prior to trial are not recoverable. The defendant is entitled to deduct such payments toward special damages from any judgment as provided in current law.

Parties may introduce evidence of the actual cost, rather than the value, of the medical care or treatment to the plaintiff. The bill repeals a provision of law which provides that there is a rebuttable presumption that the value of the medical treatment provided is represented by the dollar amount necessary to satisfy the financial obligation to the health care provider. The actual cost of the medical care or treatment cannot exceed the dollar amounts paid by or on behalf of a patient whose care is at issue plus any remaining amount necessary to satisfy the financial obligation for medical care by a health care provider after adjustment for any contractual discounts, or price reduction.

PROPONENTS: Supporters say that this bill will allow judges and juries to know the actual cost of medical care in deciding what compensable damages should be awarded in injury litigation. This bill will allow a plaintiff to be made whole but avoid an unfair windfall. Further, it will improve insurer's loss experience and lower insurance premiums in Missouri.

Testifying for the bill were Representative McGaugh; Missouri Organization of Defense Lawyers; Healthcare Services Group; Missouri Hospital Association; Shelter Insurance; Missouri Insurance Coalition; Chubb Insurance Group; American Family; State Farm; Missouri Railroad Association; National Federation of Independent Business; Enterprise; Doe Run; Monsanto; Johnson & Johnson; Missouri State Medical Association; Missouri Retailers Association; Missouri Grocers Association; Ford Motor Company; Associated Industries Of Missouri; Missouri Chamber of Commerce and Industry; Missouri Petroleum Council - A Division of The American Petroleum Institute; Property Casualty Insurers Association of America; BJC Health Care Systems; Washington University; and The Doctor's Company.

OPPONENTS: Those who oppose the bill say that the current

collateral source doctrine has been the law for over two centuries and that the changes to the doctrine violate an individual's right to a fair trial under the Seventh Amendment. There is no windfall to the injured party in most cases because of the subrogation interests of health insurance companies, Medicare and Medicaid. In addition, individuals that pay for health insurance do not get the benefit of their out of pocket costs for health insurance.

Testifying against the bill was the Missouri Association of Trial Attorneys.

This bill is similar to SS No. 2 SB 847 (2016).