

SECOND REGULAR SESSION

HOUSE BILL NO. 2384

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CHRISTOFANELLI.

5265H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 490.525, 490.710, and 490.715, RSMo, and to enact in lieu thereof four new sections relating to evidence of damages in civil actions.

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

Section A. Sections 490.525, 490.710, and 490.715, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 490.525, 490.710, 490.715, and 490.716, to read as follows:

490.525. 1. This section shall apply to civil actions filed in any court of this state.

2. ~~[Unless a controverting affidavit is filed as provided by this section, an affidavit that the amount a person charged for a service was reasonable at the time and place that the service was provided and that the service was necessary is sufficient evidence to support a finding of fact by judge or jury that the amount charged was reasonable or that the service was necessary.~~

~~3. The]~~ **As used in this section, "actual cost of the medical care or treatment" means the difference between the total amount billed for the claimant's medical care or treatment and the sum of all contractual adjustments, adjustments required by law, regulation or regulatory action, price reductions, discounts, and write-off applied or required to be applied by the medical care provider.**

3. If a claimant claims to have suffered bodily injury and may recover the cost of past or future medical care or treatment as damages, such damages shall be limited to the actual cost of the medical care or treatment for medical care or treatment that is necessary and a proximate result of the negligence or fault of the adverse party. Except as provided under subdivision (2) of subsection 2 of section 490.710, no party shall be permitted to

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 **introduce evidence or advise the jury of any amount of medical charges other than the**
17 **actual cost of the medical care or treatment.**

18 **4. At trial, a party may prove the actual cost of the medical care or treatment, the**
19 **necessity of such care or treatment, or the cause of such care or treatment by introducing**
20 **into evidence the testimony of a witness or an affidavit in the format or in accordance with**
21 **the procedures described under this section.**

22 **5. Testimony or an affidavit offered into evidence under this section shall:**

23 ~~(1) [Be taken before an officer with authority to administer oaths]~~ **Comply with the**
24 **requirements for admissibility of testimony or an affidavit; and**

25 **(2) For the actual cost of the medical care or treatment,** be made by the person or that
26 person's designee who provided the [service;

27 ~~—— (3) Include an itemized statement of the service and charge]~~ **care or treatment and state**
28 **only the amount of the actual cost of the medical care or treatment described to the jury**
29 **as the amount the claimant is required to pay to satisfy his or her obligations to the**
30 **provider.**

31 ~~[4. The party offering the affidavit in evidence or the party's attorney]~~ **6. A claimant**
32 **seeking to introduce an affidavit permitted under this section into evidence at trial shall file**
33 **the affidavit with the clerk of the court and serve a copy of the affidavit on each other party to**
34 **the case at least [thirty] forty-five days before the day on which evidence is first presented at the**
35 **trial of the case.**

36 **7. If a claimant received medical care or treatment for his or her bodily injury and**
37 **seeks to recover any damages for such bodily injury but elects not to introduce evidence**
38 **of the actual cost of the medical care or treatment, the opposing party shall be entitled to**
39 **introduce the evidence as permitted under this section. An opposing party seeking to**
40 **introduce into evidence an affidavit permitted under this section shall file the affidavit with**
41 **the clerk of the court and serve a copy of the affidavit on each party to the case at least**
42 **twenty-one days before the day on which evidence is first presented at the trial.**

43 ~~[5.]~~ **8. A party intending to controvert a claim reflected by [the] any affidavit filed**
44 **under this section may do so by introducing testimony or an affidavit, as permitted under**
45 **this section, into evidence at trial. To introduce a counteraffidavit at trial, the party shall**
46 **file [a] the counteraffidavit with the clerk of the court and serve a copy of the counteraffidavit**
47 **on each other party or the party's attorney of record[;**

48 ~~—— (1) Not later than:~~

49 ~~—— (a) Thirty days after the day he receives a copy of the affidavit; and~~

50 ~~—— (b) At least fourteen days before the day on which evidence is first presented at the trial~~
51 ~~of the case; or~~

52 ~~—— (2) With leave of the court, at any time before the commencement of evidence at trial.~~
 53 ~~—— 6. The counteraffidavit shall give reasonable notice of the basis on which the party filing~~
 54 ~~it intends at trial to controvert the claim reflected by the initial affidavit and must be taken before~~
 55 ~~a person authorized to administer oaths. The counteraffidavit shall be made by a person who is~~
 56 ~~qualified, by knowledge, skill, experience, training, education or other expertise, to testify in~~
 57 ~~contravention of all or part of any of the matters contained in the initial affidavit] no later than~~
 58 ~~seven days before the trial.~~

59 **9. Nothing in this section shall entitle a party to introduce evidence of the actual**
 60 **cost of the medical care or treatment for any past or future medical care or treatment**
 61 **without first establishing that evidence of the medical care or treatment itself is admissible.**
 62 **If a claimant seeks to recover for bodily injury for which the claimant received medical**
 63 **care or treatment, the actual cost of the medical care or treatment shall be admissible**
 64 **regardless of whether the claimant seeks to recover the actual cost of the medical care or**
 65 **treatment as damages.**

66 **10. If a patient's medical care or treatment is at issue but the patient is not the**
 67 **claimant, the patient shall be deemed the claimant for purposes of this section.**

490.710. 1. No advance payment or partial payment [~~of damages, predicated on possible~~
 2 ~~tort liability, as an accommodation] , **or offer of an advance payment or partial payment, by**
 3 **a party or such party's insurer or authorized representative before judgment** to an injured
 4 person, or on his behalf to others, or to the heirs at law or dependents of a deceased person, of
 5 medical expenses, loss of earnings [~~and~~] **or other [actual out-of-pocket expenses] special**
 6 **damages**, because of an injury, death [~~claim~~], property loss or potential claim against any person
 7 shall be admissible into evidence as an admission against interest or admission of liability by
 8 such party [~~or self-insurer, or if paid by an insurer of such party, as the~~] **or such party's insurer's**
 9 recognition of such liability **or liability coverage** with respect to such injured or deceased
 10 person, or with respect to any other claim arising from the same accident or event.~~

11 2. [~~Any payments made as provided in subsection 1 of this section shall constitute a~~
 12 ~~credit and be deductible from any final settlement made or judgment rendered with respect to~~
 13 ~~such injured or deceased person.] In the event of a trial involving such a claim, [~~the fact that~~
 14 ~~such payments have been made shall not be brought to the attention of the jury] **a party who**
 15 **made any payment as provided under subsection 1 of this section, or on whose behalf such**
 16 **payment was made, shall be entitled to and shall elect one of the following remedies:**~~~~

17 **(1) A credit against the final judgment rendered against such party and in favor**
 18 **of the claimant in the amount of all such payments made by or on behalf of such party; or**

19 **(2) Introduction of evidence at trial that such payments were made by or on behalf**
 20 **of the party and the amount of such payments. Such party shall also be entitled to a jury**

21 **instruction that instructs the jury to omit the amount of medical charges that were paid by**
22 **or on behalf of such party in awarding damages to the claimant. Neither the evidence nor**
23 **the instruction shall identify the person or entity making such payments if the payments**
24 **were not directly made by the party. If a party who made the payments or on whose behalf**
25 **payments were made does not introduce evidence at trial as permitted under this section,**
26 **such party shall be deemed to have elected to receive the credit described under**
27 **subdivision (1) of this subsection.**

28 **3. If reference to payments under subdivision (2) of subsection 2 of this section is**
29 **made at trial before the party who made the payments or on whose behalf the payments**
30 **were made introduces such evidence, the party shall have the right to a mistrial if the party**
31 **makes such a request.**

32 ~~[3-]~~ 4. If after an advance payment or partial payment is made as provided in this section,
33 and thereafter it is determined by final judgment of a court of competent jurisdiction that the
34 person is not liable for an amount sufficient to satisfy the advance payment or partial payment,
35 such person or insurer shall have no right of action for the recovery of such payment.

36 ~~[4-]~~ 5. The period fixed for the limitation for the commencement of actions shall
37 commence on the date of the last payment or partial payment made hereunder.

490.715. 1. No evidence of collateral sources~~], or payments rendered under subsection~~
2 ~~2 of this section,]~~ shall be admissible other than ~~[such evidence]~~ **as** provided for in this section.

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

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

12 ~~——— 4.]~~ **A party who has elected to introduce evidence of advance payments or advance**
13 **partial payments under subdivision (2) of subsection 2 of section 490.710 shall be entitled**
14 **to introduce evidence of such payments as permitted under subdivision (2) of subsection**
15 **2 of section 490.710.**

16 **3. A party shall be entitled to introduce the amount of any payments, adjustments,**
17 **discounts, reductions, or write-off as evidence of the actual cost of the medical care or**
18 **treatment as provided under section 490.525.**

19 **4. This section does not require the exclusion of evidence**

20 admissible for another proper purpose.

21 ~~[5. (1) Except as provided in subsection 2 of this section, parties may introduce evidence~~
22 ~~of the actual cost of the medical care or treatment rendered to a plaintiff or a patient whose care~~
23 ~~is at issue. Actual cost of the medical care or treatment shall be reasonable, necessary, and a~~
24 ~~proximate result of the negligence or fault of any party.~~

25 ~~—— (2) For purposes of this subsection, the phrase "actual cost of the medical care or~~
26 ~~treatment" shall be defined as a sum of money not to exceed the dollar amounts paid by or on~~
27 ~~behalf of a plaintiff or a patient whose care is at issue plus any remaining dollar amount~~
28 ~~necessary to satisfy the financial obligation for medical care or treatment by a health care~~
29 ~~provider after adjustment for any contractual discounts, price reduction, or write-off by any~~
30 ~~person or entity.]~~

490.716. The provisions of sections 490.525, 490.710, and 490.715 as amended
2 **August 28, 2020, are procedural in nature and shall apply to any proceeding instituted**
3 **prior to August 28, 2020.**

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