

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Introduced**

## **Senate Bill 511**

BY SENATORS TAKUBO, MAYNARD, SMITH, AND WELD

[Introduced March 1, 2021; referred  
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §55-7-32; and to amend and reenact §57-5-4j of said code, all relating to  
 3 preventing compensatory damage awards for medical expenses from including sums that  
 4 the claimant has not and will not pay for medical services or treatment.

*Be it enacted by the Legislature of West Virginia:*

**CHAPTER 55. ACTIONS, SUITS, AND ARBITRATION; JUDICIAL SALE.**

**ARTICLE 7. ACTIONS FOR INJURIES.**

**§55-7-32. Damages for medical services or treatment received; abrogation of common law Rule; limitation at damages.**

1 (a) The Legislature hereby declares that the purpose of this section is to abrogate the  
 2 common law collateral source rule in determining the sums recoverable by injured persons as  
 3 damages for medical expenses and to prevent compensatory damage awards for the value of  
 4 necessary and reasonable medical services or treatment from exceeding the sums accepted by  
 5 the health care provider for treating the injured party. The Legislature further declares that the  
 6 decision of the Supreme Court of Appeals of West Virginia in *Kenny v. Liston*, Case No 13-0427  
 7 (W. Va. June 4, 2014), and any other decision of the Supreme Court of West Virginia inconsistent  
 8 with this legislation is contrary to the Legislature’s intent and is superseded by the enactment of  
 9 this section.

10 (b) In an action by any person or a legal representative to recover damages resulting from  
 11 death or injury to a person, the damages that may be recovered for the reasonable value of any  
 12 necessary and reasonable medical services or treatment may include only:

13 (1) Sums actually paid by or on behalf of the injured person to the health care providers  
 14 who rendered the necessary and reasonable medical services or treatment to the injured person;

15 (2) Sums actually necessary to satisfy unpaid charges still owed and payable to the health  
 16 care providers for necessary and reasonable medical services or treatment rendered to the

17 injured person; and

18 (3) Sums actually necessary to provide for any further necessary and reasonable medical  
19 services or treatment for the injured person.

**CHAPTER 57. EVIDENCE AND WITNESSES.**

**ARTICLE 5. MISCELLANEOUS PROVISIONS.**

**§57-5-4j. Hospital records; evidence of reasonableness of medical expenses.**

1 (a) Proof that medical, hospital and doctor bills were paid or incurred because of any  
2 illness, disease or injury shall be is prima facie evidence that such bills so paid or incurred were  
3 necessary and reasonable. Proof that medical, hospital, and doctor bills were incurred but  
4 resolved by way of discount, reduction, disallowance, gift, or write-off and not paid may not be  
5 used to establish the necessity or reasonableness of medical expenses.

6 (b) Evidence offered to prove past medical expenses is limited to evidence of the sums  
7 actually paid by or on behalf of the injured party to discharge the medical, hospital, and doctor  
8 bills that have been satisfied regardless of the source of payment, and evidence of the sums  
9 actually necessary to discharge the financial obligation of any unpaid medical, hospital, and doctor  
10 bills that have been Incurred and remain owing and payable to the health care provider. Such  
11 evidence shall not include any reference to sums that exceed the amount for which the unpaid  
12 bills could be satisfied if submitted to any health insurance covering the injured person or any  
13 public or government-sponsored health care benefit program for which the injured person is  
14 eligible, regardless of whether the unpaid bills have been or will be submitted to the injured  
15 person's health insurance or public or government-sponsored health care benefit program.

16 (c) Evidence offered regarding the cost or reasonable value of future necessary and  
17 reasonable medical services or treatment claimed by or on behalf of the injured person is limited  
18 to evidence of sums that will be actually necessary and sufficient to provide the future necessary  
19 and reasonable medical services or treatment for the injured person.

NOTE: The purpose of this bill is to prevent compensatory damage awards for medical expenses from including sums that the claimant has not and will not pay for medical care or treatment.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.