

House Bill 1342

By: Representatives Westmoreland of the 86th, Dodson of the 84th, Post 1, Butler of the 88th,
Post 1, Burmeister of the 96th, Rice of the 64th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 12 of Title 51 of the Official Code of Georgia Annotated, relating to
2 damages in tort actions, so as to change certain provisions relating to damages; to create
3 provisions relating to collateral sources; to provide for definitions; to provide for legislative
4 findings; to provide for related matters; to provide for an effective date; to repeal conflicting
5 laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 12 of Title 51 of the Official Code of Georgia Annotated, relating to damages in tort
9 actions, is amended by striking Code Section 51-12-1, relating to types of damages, and
10 inserting in its place a new Code Section 51-12-1 to read as follows:

11 "51-12-1.

12 (a)(1) As used in this Code section, the term 'collateral sources' means:

13 (A)(i) Medical, dental, hospital, or other similar benefits or payments which are
14 payable by an insurer, a self-insurance plan, an employer, or any other similar benefit
15 plan.

16 (ii) Workers' compensation benefits payable under an insurance policy,
17 self-insurance plan, an employer, a governmental agency, or any other similar benefit
18 plan.

19 (iii) Wages, salary, disability income, or income replacement benefits or payments
20 payable by an insurer, a self-insurance plan, an employer, or any other similar benefit
21 plan.

22 (iv) Rehabilitation, formal education, job training, or custodial care benefits payable
23 under an insurance policy, a self-insurance plan, an employer, a governmental agency,
24 or any other similar benefit plan.

25 (v) Medical expenses, disability payments, or other similar benefits or payments
26 which are payable under public benefit programs.

1 (B) Collateral sources shall not mean life insurance, contributions, gifts, and other
 2 gratuitous assistance that have been received by or on behalf of the injured party or for
 3 which the injured party is eligible or will become eligible as a result of such a tortious
 4 injury.

5 (2) 'Plaintiff' means a plaintiff in a lawsuit or a defendant who is a plaintiff in a
 6 counterclaim or cross-claim.

7 (b) The General Assembly finds that in the public interest, it continues to be the
 8 responsibility of the state to take measures to facilitate an environment which promotes
 9 competition among current health and professional liability insurers, encourages additional
 10 competitor insurers to enter the Georgia market, to contain health insurance and
 11 professional liability insurance costs and thereby provide reasonable assurance of
 12 affordable health and professional liability insurance for the benefit of all Georgians. The
 13 General Assembly further finds that one of the ways this objective may be achieved is by
 14 the establishment of the principle that only those special damages which will not be
 15 satisfied by payments or benefits from collateral sources as defined by this Code section
 16 shall be recoverable by a plaintiff in any civil action, whether in tort or in contract, for the
 17 recovery of damages arising from a tortious injury in which special damages are sought to
 18 be recovered or evidence of the same is introduced. In making the determinations
 19 authorized by this subsection, the courts of this state shall consider the double recovery of
 20 damages to be contrary to the public policy of this state, and this Code section shall be so
 21 interpreted and applied. This Code section shall not be construed so as to create any new
 22 rights of subrogation or liens not previously existing under the laws of this state.

23 ~~(a)~~(c) Damages may be either general or special, direct or consequential.

24 ~~(b) In any civil action, whether in tort or in contract, for the recovery of damages arising~~
 25 ~~from a tortious injury in which special damages are sought to be recovered or evidence of~~
 26 ~~same is otherwise introduced by the plaintiff, evidence of all compensation, indemnity,~~
 27 ~~insurance (other than life insurance), wage loss replacement, income replacement, or~~
 28 ~~disability benefits or payments available to the injured party from any and all governmental~~
 29 ~~or private sources and the cost of providing and the extent of such available benefits or~~
 30 ~~payments shall be admissible for consideration by the trier of fact. The trier of fact, in its~~
 31 ~~discretion, may consider such available benefits or payments and the cost thereof but shall~~
 32 ~~not be directed to reduce an award of damages accordingly.~~

33 (d) In any civil action, whether in tort or in contract, for the recovery of special damages
 34 arising from a tortious injury in which special damages are sought to be recovered or
 35 evidence of the same is introduced, evidence of all monetary benefits, compensation,
 36 indemnification, or other benefits or payments from collateral sources of recovery for such
 37 special damages and of the costs incurred by the plaintiff in obtaining the same shall be

1 presented to the trial court prior to the commencement of trial. In making a legal
 2 determination of the recoverable collateral sources, the trial court can consider the benefits
 3 or payments from such collateral sources which have been or can be used to satisfy each
 4 of the special damages sought to be recovered or otherwise introduced, less the costs
 5 incurred by the plaintiff in obtaining the same. The trial court shall only consider evidence
 6 of collateral sources of recovery for future special damages, evidence of the costs incurred
 7 by the plaintiff in obtaining the same, and evidence of the likelihood or unlikelihood that
 8 such collateral sources for future special damages will be available in the future if the
 9 collateral sources for such future damages are being utilized by the plaintiff or are available
 10 to the plaintiff at the time the trial court considers such damages.

11 (e) At the close of evidence in any civil action governed by this Code section, in the event
 12 the trier of fact decides to make an award for the plaintiff which includes any amount for
 13 special damages, the trial court shall at the end of the trial reduce such amount by the
 14 recoverable collateral sources applicable to each of such special damages which have been
 15 determined by the trial court in the manner prescribed by subsection (d) of this Code
 16 section.

17 (f) No provider of collateral sources shall recover any amount against the claimant or
 18 receive any lien or credit against the claimant's recovery or be equitably or legally
 19 subrogated to the right of the claimant in any civil action. This subsection shall not apply
 20 to any action under Section 1862(b) (42 U.S.C. Section 1395y(b)) or Section 1902 (a)(25)
 21 (42 U.S.C. Section 1396a(a)(25)) of the Social Security Act."

22 SECTION 2.

23 This Act shall become effective upon its approval by the Governor or upon its becoming law
 24 without such approval. This Act shall apply only to causes of action arising on or after the
 25 effective date of this Act. Any cause of action arising prior to that date shall continue to be
 26 governed by the law in effect at the time such cause of action arose.

27 SECTION 3.

28 All laws and parts of laws in conflict with this Act are repealed.