

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 11-0228.01 Debbie Haskins

HOUSE BILL 11-1106

HOUSE SPONSORSHIP

Gardner B., Waller, Barker, DelGrosso, Liston, Nikkel, Sonnenberg, Stephens

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE RECOVERY OF ACTUAL DAMAGES IN PERSONAL**
102 **INJURY CASES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The purpose of this bill is to restate and reaffirm the general assembly's intent that the common-law collateral source rule is abrogated and to indicate that a recent decision of the Colorado supreme court (*Volunteers of America v. Gardenswartz*) interpreting the statute on reduction of damages for payments from collateral sources is contrary to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

the general assembly's intent to prevent compensatory damage awards for medical expenses from exceeding the amount accepted by the health care service provider for treating the injured party.

In an action by a person or a legal representative to recover economic damages, the recoverable damages for reasonable and necessary medical or health care, treatment, or services shall include only those amounts actually paid by or on behalf of the injured person to the providers. The bills states that if payment for medical or health care services has not been made at the time of trial or arbitration, the recoverable amounts shall be limited to the amounts customarily accepted by the providers in satisfaction of their bills.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 13-21-111.6, Colorado Revised Statutes, is
3 amended to read:

4 **13-21-111.6. Civil actions - reduction of damages for payment**
5 **from collateral source - legislative declaration - reduction of damages**
6 **for medical or health care costs.** (1) THE GENERAL ASSEMBLY HEREBY
7 DECLARES THAT THE PURPOSE OF THIS SECTION IS TO ABROGATE THE
8 COMMON-LAW COLLATERAL SOURCE RULE. THE GENERAL ASSEMBLY
9 FURTHER DECLARES THAT THE COLORADO SUPREME COURT'S
10 INTERPRETATION OF THIS SECTION IN *VOLUNTEERS OF AMERICA V.*
11 *GARDENSWARTZ*, 242 P.3d 1080 (2010), IS CONTRARY TO THE GENERAL
12 ASSEMBLY'S INTENT TO PREVENT COMPENSATORY DAMAGE AWARDS FOR
13 MEDICAL EXPENSES FROM EXCEEDING THE AMOUNT ACCEPTED BY THE
14 HEALTH CARE SERVICE PROVIDER FOR TREATING THE INJURED PARTY FOR
15 REASONABLE AND NECESSARY HEALTH CARE SERVICES.

16 (2) In any action by any person or his OR HER legal representative
17 to recover damages for a tort resulting in death or injury to person or
18 property, the court, after the finder of fact has returned its verdict stating
19 the amount of damages to be awarded, shall reduce the amount of the

1 verdict by the amount by which such person, his OR HER estate, or his OR
2 HER personal representative has been or will be wholly or partially
3 indemnified or compensated for his OR HER loss by any other person,
4 corporation, insurance company, or fund in relation to the injury, damage,
5 or death sustained; except that the verdict shall not be reduced by the
6 amount by which such person, his OR HER estate, or his OR HER personal
7 representative has been or will be wholly or partially indemnified or
8 compensated by a benefit paid as a result of a contract entered into and
9 paid for by or on behalf of such person. The court shall enter judgment on
10 such reduced amount.

11 (3) IN ANY ACTION BY ANY PERSON OR ANY LEGAL
12 REPRESENTATIVE TO RECOVER DAMAGES RESULTING FROM DEATH OR
13 INJURY TO A PERSON, THE DAMAGES THAT MAY BE RECOVERED BY A
14 CLAIMANT FOR ANY REASONABLE AND NECESSARY HEALTH CARE
15 SERVICES OR TREATMENT RECEIVED SHALL INCLUDE ONLY:

16 (a) AMOUNTS ACTUALLY PAID BY OR ON BEHALF OF THE INJURED
17 PERSON TO THE HEALTH CARE SERVICE PROVIDERS WHO RENDERED
18 REASONABLE AND NECESSARY CARE, TREATMENT, OR SERVICES; AND

19 (b) UNPAID CHARGES FOR REASONABLE AND NECESSARY HEALTH
20 CARE SERVICES OR TREATMENT STILL OWING AND PAYABLE TO THE
21 HEALTH CARE SERVICE PROVIDER; AND

22 (c) AMOUNTS FOR REASONABLE AND NECESSARY FUTURE HEALTH
23 CARE SERVICES OR TREATMENT.

24 (4) IF PAYMENT FOR REASONABLE AND NECESSARY HEALTH CARE
25 SERVICES OR TREATMENT HAS BEEN MADE BY AN ENTITY OTHER THAN A
26 PAYER OF BENEFITS, AS DEFINED IN SECTION 10-1-135 (2) (c) (I), C.R.S.,
27 THEN THE ENTITY THAT MADE PAYMENT TO THE HEALTH CARE SERVICE

1 PROVIDER SHALL BE ENTITLED TO RECOVER A REASONABLE AMOUNT FOR
2 ANY NECESSARY TREATMENT OR SERVICES PROVIDED TO THE CLAIMANT.

3 **SECTION 2. Act subject to petition - effective date -**
4 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
5 following the expiration of the ninety-day period after final adjournment
6 of the general assembly (August 10, 2011, if adjournment sine die is on
7 May 11, 2011); except that, if a referendum petition is filed pursuant to
8 section 1 (3) of article V of the state constitution against this act or an
9 item, section, or part of this act within such period, then the act, item,
10 section, or part shall not take effect unless approved by the people at the
11 general election to be held in November 2012 and shall take effect on the
12 date of the official declaration of the vote thereon by the governor.

13 (2) The provisions of this act shall apply to causes of action filed
14 on or after the applicable effective date of this act.