

Tort Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kirk A. Cullimore

House Sponsor:

LONG TITLE**General Description:**

This bill addresses evidence in a civil tort action.

Highlighted Provisions:

This bill:

- defines terms;
- addresses evidence relating to a collateral source in a civil action for damages arising out of a tort; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-3-405, as last amended by Laws of Utah 2023, Chapter 330

ENACTS:

78B-5-621, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-3-405** is amended to read:

78B-3-405 . Amount of award reduced by amounts of collateral sources available to plaintiff -- No reduction where subrogation right exists -- Procedure to preserve subrogation rights -- Evidence admissible -- Exceptions.

~~[(1) In all malpractice actions against health care providers as defined in Section 78B-3-403 in which damages are awarded to compensate the plaintiff for losses sustained, the court shall reduce the amount of the award by the total of all amounts paid to the plaintiff from all collateral sources which are available to him. No reduction may be made for~~

collateral sources for which a subrogation right exists as provided in this section nor shall there be a reduction for any collateral payment not included in the award of damages.]

[(2) Upon a finding of liability and an awarding of damages by the trier of fact, the court shall receive evidence concerning the total amounts of collateral sources which have been paid to or for the benefit of the plaintiff or are otherwise available to him. The court shall also take testimony of any amount which has been paid, contributed, or forfeited by, or on behalf of the plaintiff or members of his immediate family to secure his right to any collateral source benefit which he is receiving as a result of his injury, and shall offset any reduction in the award by those amounts. Evidence may not be received and a reduction may not be made with respect to future collateral source benefits except as specified in Subsection (5).]

[(3) For purposes of this section "collateral source" means payments made to or for the benefit of the plaintiff for:]

[(a) medical expenses and disability payments payable under the United States Social Security Act, any federal, state, or local income disability act, or any other public program, except the federal programs which are required by law to seek subrogation;]

[(b) any health, sickness, or income replacement insurance, automobile accident insurance that provides health benefits or income replacement coverage, and any other similar insurance benefits, except life insurance benefits available to the plaintiff, whether purchased by the plaintiff or provided by others;]

[(c) any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except benefits received as gifts, contributions, or assistance made gratuitously; and]

[(d) any contractual or voluntary wage continuation plan provided by employers or any other system intended to provide wages during a period of disability.]

(1) As used in this section, "collateral source" means a payment made to or for the benefit of the plaintiff for:

(a) medical expenses and disability payments payable under the United States Social Security Act, any federal, state, or local income disability act, or any other public program, except the federal programs which are required by law to seek subrogation;

(b) any health, sickness, or income replacement insurance, automobile accident insurance that provides health benefits or income replacement coverage, and any

other similar insurance benefits, except life insurance benefits available to the plaintiff, whether purchased by the plaintiff or provided by others;

(c) any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except benefits received as gifts, contributions, or assistance made gratuitously; and

(d) any contractual or voluntary wage continuation plan provided by employers or any other system intended to provide wages during a period of disability.

(2) This section applies to any malpractice action against a health care provider in which damages are awarded to compensate the plaintiff for losses.

(3)(a) Notwithstanding Section 78B-5-621 and except as provided in Subsection (3)(b), the court shall reduce the amount of damages awarded by the total of all amounts paid to the plaintiff from all collateral sources available to the plaintiff.

(b) A court may not make a reduction described in Subsection (3)(a) for:

(i) a collateral source for which a subrogation right exists, as described in Subsection (4); or

(ii) a collateral source that is not included in the award of damages.

(c) Upon a finding of liability and an awarding of damages by the trier of fact, the court shall:

(i) receive evidence concerning the total amounts of collateral sources:

(A) paid to or for the benefit of the plaintiff; or

(B) otherwise available to the plaintiff;

(ii) take testimony of any amount paid, contributed, or forfeited by or on behalf of the plaintiff or members of the plaintiff's immediate family to secure the plaintiff's right to any collateral source benefit that the plaintiff is receiving as a result of the plaintiff's injury; and

(iii) offset any reduction in the award by the amounts described in Subsection (3)(c)(ii).

(d) A court may only receive evidence or make a reduction with respect to future collateral source benefits in accordance with Subsection (5).

(4)(a) To preserve subrogation rights for amounts paid or received prior to settlement or judgment, a provider of a collateral [sources] source shall, at least 30 days before settlement or trial of the action, serve a written notice upon each health care provider against whom the malpractice action has been asserted.

(b) The written notice described in Subsection (4)(a) shall state:

~~[(a)]~~ (i) the name and address of the provider of the collateral ~~[sources]~~ source;

~~[(b)]~~ (ii) the amount of ~~[collateral sources paid]~~ the collateral source;

~~[(c)]~~ (iii) the names and addresses of all persons who received payment; and

~~[(d)]~~ (iv) the items and purposes for which payment has been made.

(5) Notwithstanding Section 78B-5-621:

(a) ~~[Evidence]~~ evidence is admissible of government programs that provide payments or benefits ~~[available in the future]~~ to or for the benefit of the plaintiff in the future, to the extent those payments or benefits are available ~~[irrespective]~~ regardless of the recipient's ability to pay~~[-]~~ ;

(b) ~~[Evidence]~~ evidence of the likelihood or unlikelihood that the programs, payments, or benefits will be available in the future is also admissible~~[-]~~ ; and

(c) ~~[The]~~ the trier of fact may consider the evidence in determining the amount of damages awarded to a plaintiff for future expenses.

(6) A provider of collateral sources is not entitled to recover any amount of benefits from a health care provider, the plaintiff, or any other person or entity as reimbursement for collateral source payments made prior to settlement or judgment, including any payments made under Title 26B, Chapter 3, Part 10, Medical Benefits Recovery, except to the extent that subrogation rights to amounts paid prior to settlement or judgment are preserved as provided in ~~[this section]~~ Subsection (4).

(7) All policies of insurance providing benefits affected by this section are construed in accordance with this section.

Section 2. Section **78B-5-621** is enacted to read:

78B-5-621 . Evidence relating to a collateral source in a civil tort case.

(1) As used in this section, "collateral source" means the same as that term is defined in Section 78B-3-405.

(2) This section applies to a civil action for damages arising out of a tort.

(3)(a) Except as provided in Subsection (3)(c), the following evidence is inadmissible for any purpose, including the determination of liability, the assessment of damages, impeachment, or credibility:

(i) the existence of a collateral source;

(ii) an amount of a collateral source;

(iii) evidence that a medical expense or other cost related to an injury at issue in the action was paid, adjusted, waived, written off, or otherwise reduced or satisfied by

- 133 a third party or as a result of a negotiated rate, including an adjustment under a
134 public program such as Medicare or Medicaid;
- 135 (iv) whether the plaintiff has paid, or is personally obligated to pay, an amount for
136 medical care or treatment resulting from an injury at issue in the action;
- 137 (v) evidence of an amount actually paid by a party or third-party for medical care or
138 treatment resulting from an injury at issue in the action; and
- 139 (vi) the existence of a health care provider lien or right of subrogation related to the
140 plaintiff's medical expenses or other claimed damages.
- 141 (b) Evidence described in Subsection (3)(a) may not be referenced, disclosed, or alluded
142 to in any manner during trial, including through testimony, exhibits, examination of
143 witnesses, or argument.
- 144 (c) Evidence described in Subsection (3)(a) is admissible under circumstances described
145 in Subsections 78B-3-405(3) and 78B-3-405(5).
- 146 (4) A defendant may not reduce, limit, or deny a settlement offer or claim valuation based
147 on the amount actually paid for medical care or treatment resulting from an injury at
148 issue in the action, including a discounted or written off amount.
- 149 (5) During the action, a plaintiff may not be required to disclose any health care provider
150 lien arising from the plaintiff's medical expenses or claimed damages related to an injury
151 at issue in the action.
- 152 (6) If requested by a party, the court shall instruct the jury that the jury may not consider or
153 speculate about the existence of a collateral source, lien, or the plaintiff's personal
154 financial obligations for medical treatment.

155 **Section 3. Effective Date.**

156 This bill takes effect on May 6, 2026.