

**Subject** Civil law: damage award calculations and recovery

**Authors** Stephenson

**Analyst** Nathan Hopkins

**Date** February 27, 2024

## Overview

This bill amends several statutes regarding how a successful plaintiff's damage award is calculated in the context of a civil lawsuit, and how that plaintiff may recover money when there is more than one liable defendant.

## Summary

Section	Description
---------	-------------

1	<b>Collateral source calculations: motion.</b>
---	--

For calculating offsets to the reduction in a plaintiff's damage award due to payments from collateral sources, adds amounts paid by the plaintiff's employer. Also clarifies that the time period for calculating the offsets extends until judgment is entered in the case.

A "collateral source" is a person or entity other than the defendant that has already made payments for losses resulting from a plaintiff's injury. Collateral source payments could come from a government program, insurance company, or employer. At trial, a jury will not know about collateral source payments when it gives the plaintiff a monetary damage award. The court will therefore—upon motion by a party—calculate collateral source payments and deduct them from the plaintiff's damage award. This prevents "double recovery" by a plaintiff. (Note, however, that a plaintiff will not get a deduction for a collateral source payment if the collateral source has asserted its right of subrogation—i.e. its own ability to recover money from the defendant.)

Of course, some collateral source payments only exist because the plaintiff previously paid for them or someone else (i.e. a member of the plaintiff's immediate family) already paid for them on the plaintiff's behalf. For example, collateral source payments from a plaintiff's disability insurance came because the plaintiff paid premiums on the insurance policy. Payments like these from or on behalf of the plaintiff—with a two-year lookback period—are also factored into the calculation as an offset to the collateral source payment deduction.

Section	Description
2	<p><b>Comparative fault: scope of application.</b></p> <p>Changes the comparative fault recover bar so that the plaintiff's fault is compared to the aggregate fault of all defendants together, rather than each defendant individually.</p> <p>Generally, a plaintiff in a tort action cannot recover from a defendant if the plaintiff is more at fault for the injury than the defendant. Sometimes, though, there are multiple defendants who all share fault for a plaintiff's injury. In those cases, when determining whether a plaintiff is barred from recovery due to the plaintiff's own degree of fault, "aggregation of fault" means that the plaintiff's fault is compared to the combined fault of all defendants together, rather than to the fault attributed to each individual defendant. Current Minnesota law, however, does not permit aggregating the fault of multiple defendants and instead requires the plaintiff's fault to be compared against each defendant individually.</p>
3	<p><b>Apportionment of damages: joint liability.</b></p> <p>In apportioning damages among two or more persons liable for the same injury, provides that a person whose fault is <i>50 percent or more</i> shall be jointly and severally liable for an entire damage award, rather than <i>greater than 50 percent</i> in current law.</p> <p>"Several" liability means that a defendant is only liable for an amount of the damage award equal to that defendant's share of the fault. For example, a defendant found to be 25 percent at fault for an injury will only have to pay for 25 percent of the plaintiff's damages. "Joint and several" liability means that a defendant can potentially be held responsible for the entire amount of the plaintiff's damages regardless of that defendant's share of fault.</p>
4	<p><b>Apportionment of damages: reallocation of uncollectible amounts generally.</b></p> <p>Specifies that a court may—upon motion—reallocate an uncollectible share of a damage award for <i>any</i> defendant, regardless of whether the defendant is severally liable or jointly-and-severally liable for the damage award.</p> <p>When the legislature amended subdivision 1 of this statute in 2003 so that joint-and-several liability was no longer the default rule, it did not change this subdivision 2. See Minn. Laws 2003 ch. 71. This created uncertainty over whether uncollectible amounts may be reallocated only when the defendants are jointly-and-severally liable, or whether they may also be reallocated when defendants are merely severally liable for the damage award. In <i>Staab v. Diocese of St. Cloud</i>, 853 N.W.2d 713 (Minn. 2014), the Minnesota Supreme Court reversed the Court of Appeals and held that a party who is only severally liable under subdivision 1 <i>cannot</i> be required</p>

Section	Description
---------	-------------

---

	to contribute more than that party's equitable share of the total damages award through the reallocation-of-damages provision in subdivision 2.
--	---



**MN HOUSE  
RESEARCH**

*Minnesota House Research Department provides nonpartisan legislative, legal, and information services to the Minnesota House of Representatives. This document can be made available in alternative formats.*

[www.house.mn.gov/hrd](http://www.house.mn.gov/hrd) | 651-296-6753 | 155 State Office Building | St. Paul, MN 55155