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S.F. No. 3573 – Collateral source calculation; comparative fault; joint & several liability; reallocation of uncollectable shares

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Date: March 3, 2024

SF 3573 makes several changes related to the amount of damages a prevailing plaintiff receives; how the plaintiff's fault is factored; and when a defendant may be responsible for payment of an entire award, even if there are multiple tortfeasors.

Collateral Source Calculation Modification

The “collateral source rule,” codified in Minnesota Statutes 548.251, seeks to prevent the plaintiff from “double-recovery.” Collateral sources include payments made by a third party related to the plaintiff's injury or disability. Within ten days of a verdict issued in favor of a plaintiff, a party may file a motion requesting the court to determine the effects of collateral sources on the amount of damages awarded. The court must reduce the amount of damages awarded by the amount of collateral sources paid to plaintiff and offset that reduction by any amount paid to secure the right to the collateral source benefit that the plaintiff received. **Section 1** of this bill requires the court to offset the collateral source reduction by the amounts paid by the plaintiff's employer and extends the period for calculating the offset amount to when the judgment is rendered.

Comparative Fault

Current law states that in a civil action, alleging injury or loss, the plaintiff's fault does not bar recovery if their fault was not greater than the fault of the person against whom recovery is sought, but any damages allowed must be diminished in proportion to the amount of fault attributable to the plaintiff. **Section 2** provides that the plaintiff's fault must not be greater than the aggregate fault of all persons against whom recovery is sought.

Apportionment of Damages: Joint & Several Liability

Under current law, when two or more persons are *severally* liable, each person's contribution to an award of damages is in proportion to the percentage of fault attributable to the person. Persons whose

fault is greater than 50 percent, persons who act together, or persons who commit an intentional tort are *jointly and severally* liable for the whole award, meaning that each person may be held responsible for payment of the entire award amount regardless of their percentage of attributable fault. **Section 3** makes a person who is 50 percent at fault, jointly and severally liable for the whole award.

Reallocation of Uncollectible Damages of a Severally Liable Party

Under Minnesota Statutes 604.02, subdivision 2, upon motion, a court must determine whether all or part of a party's equitable share of an obligation to pay an award of damages is uncollectible from that party, and therefore must be reallocated among the other parties. The Minnesota Supreme Court, in *Staab v. Diocese of St. Cloud*, 853 N.W.2d 713 (Minn. 2014), held that an uncollectible portion of a party's equitable share of damages cannot be reallocated to a party that is only severally liable. **Section 4** provides that the court may reallocate an uncollectible share of a damage award for *any* party, including those who are severally liable.

Effective Date

The sections in this bill are effective August 1, 2024, and apply to actions commenced on or after that date.