

AMENDMENTS TO LB1100

Introduced by Judiciary.

1           1. Strike the original sections and insert the following new  
2 sections:

3           **Section 1.** For purposes of sections 1 to 5 of this act:

4           (1) Claimant means a person seeking damages in a personal injury or  
5 wrongful death action;

6           (2) Factoring company means a person who purchases a health care  
7 provider's accounts receivable at a discount below the invoice value of  
8 such accounts;

9           (3) Health care coverage means any third-party health care or  
10 disability services financing arrangement, including, but not limited to,  
11 arrangements with entities certified or authorized under state or federal  
12 law; state or federal health care benefit programs; workers'  
13 compensation; and personal injury protection;

14           (4) Health care provider means any of the following professionals  
15 and entities, and professionals and entities similarly licensed in  
16 another jurisdiction:

17           (a) A facility licensed under the Health Care Facility Licensure Act  
18 and its clinical and nonclinical staff providing inpatient or outpatient  
19 services;

20           (b) A health care professional licensed under the Uniform  
21 Credentialing Act;

22           (c) A professional health care service entity as defined in section  
23 71-7910.01;

24           (d) An organization or association of health care professionals  
25 licensed under the Uniform Credentialing Act;

26           (e) A clinical laboratory providing services in this state or  
27 services to health care providers in this state, if the clinical

1 laboratory is certified by the Centers for Medicare and Medicaid Services  
2 of the United States Department of Health and Human Services under the  
3 federal Clinical Laboratories Improvement Act of 1967, as amended, and  
4 any rules issued thereunder, as such act and rules existed on January 1,  
5 2025;

6 (f) A federally-qualified health center as defined in 42 U.S.C.  
7 1396d(1)(2)(B), as such section existed on January 1, 2025; and

8 (g) A home health aide as defined in section 71-6602; and

9 (5) Letter of protection means any arrangement by which a health  
10 care provider renders treatment in exchange for a promise of payment for  
11 the claimant's medical expenses from any judgment or settlement of a  
12 personal injury or wrongful death action. The term includes any such  
13 arrangement, regardless of whether referred to as a letter of protection.

14 **Sec. 2.** (1) Evidence offered to prove the amount of damages for  
15 past or future medical treatment or services in a personal injury or  
16 wrongful death action shall only be admissible as provided in this  
17 section.

18 (2) Evidence offered to prove the amount of damages for charges for  
19 past medical treatment or services that have been satisfied is limited to  
20 evidence of the amount actually paid, regardless of the source of  
21 payment.

22 (3) Evidence offered to prove the amount necessary to satisfy unpaid  
23 charges incurred for medical treatment or services is limited to the  
24 following:

25 (a) If the claimant has health care coverage other than medicare or  
26 medicaid, evidence of the amount which such health care coverage is  
27 obligated to pay the health care provider to satisfy such charges, plus  
28 the claimant's share of such charges;

29 (b) If the claimant has health care coverage but obtains treatment  
30 under a letter of protection or otherwise does not submit charges for any  
31 health care provider's medical treatment or services to health care

1 coverage, evidence of the amount the claimant's health care coverage  
2 would pay the health care provider to satisfy such past unpaid charges,  
3 plus the claimant's share of such charges, had the claimant obtained  
4 medical services or treatment pursuant to the health care coverage;

5 (c) If the claimant does not have health care coverage or has health  
6 care coverage through medicare or medicaid, evidence of one hundred fifty  
7 percent of the medicare reimbursement rate in effect on the date of the  
8 claimant's incurred medical treatment or services or, if there is no  
9 applicable medicare rate for a medical treatment or service, one hundred  
10 seventy percent of the applicable state medicaid rate in effect on such  
11 date; and

12 (d) If the claimant obtains medical treatment or services under a  
13 letter of protection and the health care provider subsequently transfers  
14 the right to receive payment under the letter of protection to a third  
15 party, evidence of the amount the third party paid or agreed to pay the  
16 health care provider in exchange for the right to receive payment  
17 pursuant to the letter of protection.

18 (4) Evidence offered to prove the amount of damages for any unpaid  
19 charges for future medical treatment or services the claimant will  
20 receive is limited to the following:

21 (a) If the claimant has health care coverage, other than medicare or  
22 medicaid, or is eligible for any such health care coverage, evidence of  
23 the amount for which such future charges of health care providers would  
24 be satisfied if submitted to such health care coverage at the time of  
25 trial, plus the claimant's share of such charges;

26 (b) If the claimant does not have health care coverage, has health  
27 care coverage through medicare or medicaid, or is eligible for such  
28 coverage through medicare or medicaid, evidence of one hundred fifty  
29 percent of the medicare reimbursement rate in effect at the time of trial  
30 for the medical treatment or services the claimant will receive or, if  
31 there is no applicable medicare rate for a medical treatment or service,

1 one hundred seventy percent of the applicable state medicaid rate in  
2 effect at such time; and

3 (c) Any evidence of reasonable future amounts to be billed to the  
4 claimant for medically necessary treatment or medically necessary  
5 services, calculated as provided in subdivision (4)(a) or (b) of this  
6 section, as applicable.

7 (5) This section does not impose an affirmative duty upon any party  
8 to seek a reduction in billed charges to which the party is not  
9 contractually entitled.

10 (6) Individual contracts between health care providers and  
11 authorized commercial insurers or authorized health maintenance  
12 organizations are not subject to discovery or disclosure and are not  
13 admissible into evidence to prove the amount of damages for past or  
14 future medical treatment or services in a personal injury or wrongful  
15 death action.

16 (7) Health care providers and authorized commercial insurers,  
17 including in their capacity as third-party administrators, are not  
18 subject to third-party subpoenas, depositions, or discovery requests to  
19 the extent that such subpoena, deposition, or discovery request solicits  
20 expert testimony on the evidence subject to sections 1 to 5 of this act.

21 **Sec. 3.** In a personal injury or wrongful death action, evidence of  
22 past medical expenses actually paid may be offered by any party, as such  
23 evidence is relevant to economic and noneconomic damages.

24 **Sec. 4.** In a personal injury or wrongful death action, as a  
25 condition precedent to asserting any claim for expenses for medical  
26 treatment or services rendered under a letter of protection, the claimant  
27 shall disclose:

28 (1) A copy of the letter of protection;

29 (2) All billings for such medical expenses, which must be itemized  
30 and, to the extent applicable, coded according to:

31 (a) For health care providers billing at the provider level, the

1 American Medical Association's Current Procedural Terminology (CPT), or  
2 the Centers for Medicare and Medicaid Services' Healthcare Common  
3 Procedure Coding System (HCPCS), in effect on the date the medical  
4 treatment or services were rendered;

5 (b) For health care providers billing at the facility level for  
6 expenses incurred in a clinical or outpatient setting, including when  
7 billing through an Ambulatory Payment Classification (APC) or Enhanced  
8 Ambulatory Patient Grouping (EAPG), the International Classification of  
9 Diseases (ICD) diagnosis code and, if applicable, the American Medical  
10 Association's Current Procedural Terminology (CPT), in effect on the date  
11 the medical treatment or services were rendered; and

12 (c) For health care providers billing at the facility level for  
13 expenses incurred in an inpatient setting, including when billing through  
14 a Diagnosis Related Group (DRG), the International Classification of  
15 Diseases (ICD) diagnosis and procedure codes in effect on the date on  
16 which the claimant is discharged;

17 (3) If the health care provider sells the accounts receivable for  
18 the claimant's medical expenses to a factoring company or other third  
19 party:

20 (a) The name of the factoring company or other third party who  
21 purchased such accounts; and

22 (b) The dollar amount for which the factoring company or other third  
23 party purchased such accounts, including any discount provided below the  
24 invoice amount;

25 (4) Whether the claimant, at the time medical treatment or services  
26 were rendered, had health care coverage and, if so, the identity of such  
27 coverage; and

28 (5) Whether the claimant was referred for medical treatment or  
29 services under a letter of protection and, if so, the identity of the  
30 person who made the referral. If the referral is made by the claimant's  
31 attorney, disclosure of the referral is permitted, and evidence of such

1 referral is admissible notwithstanding any attorney-client privilege  
2 asserted. In such situation, the financial relationship between a law  
3 firm and a health care provider, including the number of referrals,  
4 frequency, and financial benefit obtained, is relevant to the issue of  
5 the bias of a testifying health care provider.

6 **Sec. 5.** The damages that may be recovered by a claimant in a  
7 personal injury or wrongful death action for the reasonable and necessary  
8 cost or value of past or future medical treatment or services shall not:

9 (1) Include any amount in excess of the evidence of charges for  
10 medical treatment or services admitted pursuant to section 2 of this act;  
11 or

12 (2) Exceed the sum of the following:

13 (a) Amounts actually paid by or on behalf of the claimant to a  
14 health care provider who rendered medical treatment or services;

15 (b) Amounts necessary to satisfy charges for medical treatment or  
16 services that are due and owing but at the time of trial are not yet  
17 satisfied, calculated as provided in section 2 of this act; and

18 (c) Amounts necessary to provide for any reasonable and necessary  
19 medical treatment or services the claimant will receive in the future,  
20 calculated as provided in section 2 of this act.

21 **Sec. 6.** (1) For purposes of this section:

22 (a) Commercial motor vehicle has the same meaning as in section  
23 60-316; and

24 (b) Commercial motor vehicle carrier means any person that  
25 transports property by commercial motor vehicle upon the public highways.

26 (2)(a) The sum total amount recoverable per plaintiff for  
27 noneconomic damages against all defendants and other responsible persons  
28 in a civil action for personal injury or death involving a commercial  
29 motor vehicle requiring a commercial driver's license, whether in tort or  
30 otherwise, is:

31 (i) For civil actions filed before January 1, 2029, five million

1 dollars; and

2 (ii) For civil actions filed on or after January 1, 2029, the amount  
3 set forth in subsection (3) of this section.

4 (b) The limit on damages provided in this subsection applies  
5 regardless of the number of derivative claims or theories of liability in  
6 the civil action.

7 (3) Beginning on January 1, 2029, and each January 1 of each odd-  
8 numbered year thereafter, the State Court Administrator shall adjust the  
9 limit on damages set forth in subsection (2) of this section. The  
10 adjusted limit shall be equal to the then current limit adjusted by the  
11 cumulative percentage change in the Consumer Price Index for All Urban  
12 Consumers for the Midwest region, all items, published by the United  
13 States Department of Labor, Bureau of Labor Statistics, or its successor  
14 index, for the two-year period ending on the previous September 30. The  
15 amount shall be rounded to the next highest one-thousand-dollar amount.

16 (4) In a civil action subject to the limit provided in subsection  
17 (2) of this section:

18 (a) If the action is tried before a jury, the jury shall first make  
19 a finding as to noneconomic damages without regard to the limit in  
20 subsection (2) of this section. If the noneconomic damages exceed such  
21 limit, the court shall then reduce the award to comply with such limit;  
22 and

23 (b) If the action is tried without a jury, the court shall first  
24 make a finding as to noneconomic damages without regard to the limit in  
25 subsection (2) of this section. If the noneconomic damages exceed such  
26 limit, the court shall then reduce the award to comply with such limit.

27 **Sec. 7.** For purposes of sections 7 to 10 of this act:

28 (1) Conduct refers to acts of commission and omission;

29 (2)(a) Ethylene oxide exposure action means a civil action seeking  
30 damages for personal injury caused by the exposure of an individual to  
31 ethylene oxide.

1       (b) Ethylene oxide exposure action does not include any claim  
2 covered by the Nebraska Workers' Compensation Act; and

3       (3) Health care business means a person engaged in business in the  
4 health care industry, including the manufacturing, sale and distribution,  
5 sterilization, storage, and transportation of medical devices.

6       **Sec. 8.** A health care business shall not be liable for damages in  
7 an ethylene oxide exposure action unless the plaintiff proves by clear  
8 and convincing evidence that:

9       (1) The conduct of the health care business giving rise to the  
10 action was not in substantial compliance with relevant federal laws and  
11 regulations;

12       (2) At the time of such conduct, the health care business was not  
13 making reasonable efforts, in light of all the circumstances, to maintain  
14 substantial compliance with such federal laws and regulations;

15       (3) Such conduct amounted to gross negligence or willful misconduct;  
16 and

17       (4) Such conduct directly and proximately resulted in the  
18 plaintiff's exposure to ethylene oxide and directly and proximately  
19 caused personal injury to the plaintiff.

20       **Sec. 9.** (1) In any ethylene oxide exposure action, the plaintiff  
21 shall plead with particularity:

22       (a) Each element of the plaintiff's claim; and

23       (b) Each alleged act or omission constituting gross negligence or  
24 willful misconduct that resulted in personal injury caused by exposure to  
25 ethylene oxide.

26       (2) In any ethylene oxide exposure action, the plaintiff shall file  
27 with the complaint a statement of specific information as to the nature  
28 and amount of each element of damages claimed and the factual basis for  
29 the damages calculation.

30       (3) In any ethylene oxide exposure action in which a claim is  
31 asserted on which the plaintiff may prevail only on proof that the

1 defendant acted with a particular state of mind, there shall be filed  
2 with the complaint, with respect to each element of that claim, a  
3 statement of the facts giving rise to a strong inference that the  
4 defendant acted with the required state of mind.

5 **Sec. 10.** (1) Sections 7 to 10 of this act constitute an exclusive  
6 cause of action for ethylene oxide exposure actions.

7 (2) A plaintiff may prevail in an ethylene oxide exposure action  
8 only in accordance with the requirements of sections 7 to 10 of this act.

9 **Sec. 11.** This act becomes operative on July 1, 2026.

10 **Sec. 12.** Since an emergency exists, this act takes effect when  
11 passed and approved according to law.