

SB 325 – AS INTRODUCED

2012 SESSION

12-3013

09/10

SENATE BILL           **325**

AN ACT               relative to periodic payments of judgments.

SPONSORS:       Sen. Luther, Dist 12; Sen. Barnes, Jr., Dist 17; Sen. Boutin, Dist 16; Sen. Bradley,  
Dist 3; Sen. De Blois, Dist 18; Sen. Gallus, Dist 1

COMMITTEE:       Judiciary

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ANALYSIS

This bill establishes procedures for determining periodic payments of judgments for future damages for economic loss in bodily injury actions.

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Explanation:       Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struckthrough.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twelve*

AN ACT relative to periodic payments of judgments.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 New Subdivision; Periodic Payment of Judgments for Future Damages for Economic Loss in  
2 Bodily Injury Actions. Amend RSA 524 by inserting after section 12 the following new subdivision:

3 Periodic Payment of Judgments for Future Damages  
4 for Economic Loss in Bodily Injury Actions

5 524:13 Definitions. In this subdivision:

6 I. “Bodily injury” means bodily harm, sickness, disease, or emotional or mental distress  
7 sustained by an individual, including death resulting from any of those conditions at any time.

8 II. “Claimant” includes an individual suffering bodily injury, an individual claiming on  
9 behalf of or as a result of bodily injury to another, the representative of the estate of a deceased  
10 individual, and a beneficiary of an action for wrongful death.

11 III. “Economic loss” means pecuniary harm arising from bodily injury for which damages are  
12 recoverable, but the term does not include prejudgment interest.

13 IV. “Future damages” means economic and noneconomic loss that will accrue after trial of a  
14 claim under this subdivision.

15 V. “Medical expenses” means the cost of medical, hospital, attendant, and rehabilitative  
16 care, services, and supplies, and related expenses.

17 VI. “Noneconomic loss” means nonpecuniary harm arising from bodily injury for which  
18 damages are recoverable, but the term does not include punitive or exemplary damages.

19 VII. “Past damages” means economic and noneconomic loss that has accrued by the time a  
20 claim is tried under this subdivision.

21 524:14 Election for Subdivision to Apply.

22 I. This subdivision applies to claims for future damages for economic loss and requires that  
23 certain awards for those damages be paid periodically. The parties may agree at any time to invoke  
24 this subdivision, or a party may elect to invoke this subdivision in accordance with this section.

25 II. Unless otherwise provided by rule or order of court, an election shall be made by motion  
26 directed to the court with notice to all parties filed not less than 120 days before trial, and an  
27 objection to the election shall be made by motion directed to the court with notice to all parties not  
28 more than 30 days after notice of the election. The court may excuse failure to comply with these  
29 time limits upon a showing of good cause.

30 III. An election is effective if filed by a party claiming or responding to a claim for future  
31 damages for economic loss unless:

1 (a) The claimant stipulates or admits that the claim for future damages for economic  
2 loss, without reduction to present value, does not exceed \$100,000; or

3 (b) The court finds, pursuant to RSA 524:15, good cause why the trial of a claim affecting  
4 the objecting party should not be conducted under this subdivision.

5 IV. If an effective election is on file at the commencement of trial, all claims, including third-  
6 party claims, counterclaims, and claims consolidated for trial, shall be tried under this subdivision  
7 unless there is a finding that, in the interest of justice, a separate trial or other proceeding should be  
8 held on some or all of the claims that are not the subject of the election.

9 V. An effective election may be withdrawn only by consent of all parties to the claim to  
10 which the election relates.

11 524:15 Good Cause Why Subdivision Should Not Apply.

12 I. In a proceeding to determine whether good cause exists for not trying a claim under this  
13 subdivision, the burden is on the objecting party. Good cause may be found only if:

14 (a) The time over which payments would be made is too short, or the amount of damages  
15 is too small in relation to the time over which the payments would be made, to warrant periodic  
16 payments rather than payment in a lump sum; or

17 (b) A party responding to a claim for future damages is unable to fund a periodic  
18 payment judgment under RSA 524:22.

19 II. Unless the court finds by clear and convincing evidence that good cause exists, it shall  
20 overrule the objection to the election to try a claim under this subdivision.

21 III. If the court finds that good cause exists for not trying a claim under this subdivision, it  
22 shall set forth in the record the reasons for the finding.

23 524:16 Special Findings Regarding Future Damages.

24 I. If liability is found in a trial conducted under this subdivision, the trier of fact, in addition  
25 to any other appropriate findings, shall make separate findings for each claimant specifying the  
26 amount of:

27 (a) Any past damages in a lump sum;

28 (b) Any future damages for noneconomic loss in a lump sum; and

29 (c) Any future damages for medical expenses and other economic loss and the annual  
30 periods over which each will accrue.

31 II. Future damages for economic loss may be discounted to present value only in accordance  
32 with RSA 524:21.

33 III. In an action other than for wrongful death, the findings for future damages for medical  
34 expenses and noneconomic loss shall be based on the losses during the period the trier of fact finds  
35 the claimant will live, and findings for future damages for economic loss other than medical expenses  
36 shall be based on the losses that the claimant will sustain over the period the claimant would have  
37 lived but for the bodily injury upon which the claim is based.

1 IV. In an action for wrongful death, the findings for future damages shall be based on the  
2 losses the claimant will sustain over the period the claimant is entitled to recover damages under the  
3 wrongful death law governing the claim.

4 V. In all actions tried to a jury under this subdivision, if the evidence would support the  
5 finding, the jury shall be instructed that it is permissible to find that future damages for medical  
6 expenses will continue for the duration of the claimant's life, in which case it is not necessary to  
7 decide how long the claimant will live in order to award those damages. If the jury so finds, the jury  
8 shall determine the amount of medical expenses the claimant will incur annually while living. If a  
9 court serves as the trier of fact, the court may make the findings and determine the amount of  
10 damages.

11 VI. For the purposes of this section, the annual period commences on the date the jury  
12 returns its verdict or the court makes its findings of damages.

13 524:17 Evidence and Findings Regarding Changes in Purchasing Power of Dollar.

14 I. In a trial under this subdivision, evidence of future changes in the purchasing power of  
15 the dollar is admissible on the issue of future damages for economic loss.

16 II. In a jury trial in which special findings of future damages are required under this  
17 subdivision and future changes in the purchasing power of the dollar are to be taken into account,  
18 the court shall instruct the jury either to:

19 (a) Include future changes in the purchasing power of the dollar, if any, in its findings of  
20 future damages for economic loss; or

21 (b) Exclude future changes in the purchasing power of the dollar, if any, from its  
22 findings of future damages for economic loss, but make a separate finding of the annual percentage  
23 rate or rates of change in the purchasing power of the dollar, if any, that will occur over the period  
24 the future damages for economic loss will accrue.

25 III. If a court serves as the trier of fact, the court shall make the findings referred to in  
26 paragraph II.

27 524:18 Payment of Future Damages. Future damages for medical expenses and other economic  
28 loss shall be paid in the years that the trier of fact finds they will accrue. Unless the court orders or  
29 approves a different schedule for payment, the annual amounts due shall be paid in 12 equal  
30 monthly installments, rounded to the nearest dollar. Each installment is due and payable on the  
31 first day of the month in which it accrues.

32 524:19 Entering Judgment.

33 I. In this section, "present value" means the cost of a qualified funding plan under RSA  
34 524:23 which would pay the annual amounts found by the trier of fact or portions thereof referred to  
35 in the paragraph in which the term is used.

36 II. If special findings for future damages are made in a case tried under this subdivision, the  
37 court shall make the adjustments and enter judgment pursuant to this section.

1           III. The court shall first apply to the findings of past and future damages any applicable  
2 rules of law other than setoff or credit, including additurs, remittiturs, comparative fault, and  
3 limitations on damages, which have the effect of increasing or reducing the damages the claimant is  
4 entitled to recover. Those adjustments shall be applied in the order stated in the first sentence of  
5 this paragraph. Further adjustments shall be made in the order specified in paragraphs IV, V, and  
6 VI.

7           IV. The court shall apply to the findings for past and future damages any applicable setoff or  
8 credit, including any pro tanto reduction based upon a settlement with a joint tortfeasor, that has  
9 the effect of reducing the damages the claimant is entitled to recover, in the following manner:

10           (a) If the setoff or credit includes a lump-sum payment to the claimant, the setoff or  
11 credit for the lump sum shall be applied first to past damages and then to future damages for  
12 noneconomic loss. If the setoff or credit exceeds the amount of those damages, the remainder of the  
13 setoff or credit shall be applied to future damages for medical expenses and other economic loss, and  
14 it has the effect of reducing each annual amount for future medical expenses and other economic loss  
15 by the percentage that the setoff or credit bears to the present value of those future damages after  
16 any adjustments pursuant to subparagraph (c).

17           (b) If the setoff or credit includes periodic payments to be made to the claimant, the  
18 amount of the setoff or credit for the periodic payments is the amount paid to fund the payments.  
19 The setoff or credit for the periodic payments shall be applied first to future damages for medical  
20 expenses and other economic loss, then to future damages for noneconomic loss, and lastly to past  
21 damages. The setoff or credit applied to future damages for medical expenses and other economic  
22 loss reduces each annual amount for medical expenses and other economic loss by the percentage  
23 that the setoff or credit bears to the present value of those future damages after any adjustments  
24 pursuant to subparagraph (a) and paragraph V.

25           (c) The manner of allocating a setoff or credit prescribed in subparagraphs (a) and (b)  
26 governs notwithstanding any other allocation previously made by contract, law, or court ruling.

27           V. The court shall specify payment of attorney's fees and litigation expenses pursuant to any  
28 agreement between the claimant and the claimant's attorney, except as limited in this paragraph:

29           (a) Under a percentage attorney's fees agreement, a lump-sum fee for obtaining future  
30 damages for medical expenses and other economic loss shall be computed by multiplying the fee  
31 percentage times the present value of those future damages after any adjustments pursuant to  
32 paragraphs III and IV; and

33           (b) Funds for paying attorney's fees and litigation expenses attributable to an award of  
34 enhanced compensatory damages shall be taken from the enhanced compensatory damages. Funds  
35 for paying all other attorney's fees and litigation expenses owed in a lump sum shall be taken first  
36 from any prejudgment interest award and then from future damages for noneconomic loss. If those  
37 attorney's fees and litigation expenses exceed the amount of prejudgment interest and future

1 damages for noneconomic loss, the funds for paying the remainder of those fees and expenses shall  
2 be taken proportionately from past damages and other future damages.

3 (c) Any use of future damages for medical expenses and other economic loss to pay  
4 attorney's fees or litigation expenses in a lump sum has the effect of reducing each annual amount  
5 for future medical expenses and other economic loss by the percentage that the fees or expenses bear  
6 to the present value of those future damages after any adjustments pursuant to paragraphs III and  
7 IV.

8 VI. If, for any other reason, including a right of subrogation, a portion of future damages for  
9 medical expenses or other economic loss shall be paid in a lump sum, the effect is to reduce each  
10 annual amount for those damages by the percentage that the lump sum bears to the present value of  
11 those damages after any adjustments pursuant to paragraphs III - V.

12 VII. After taking into account the foregoing matters, the court shall enter judgment in a  
13 lump sum for any enhanced compensatory damages, prejudgment interest, past damages, future  
14 damages for noneconomic loss, and future damages for medical expenses and other economic loss  
15 payable in a lump sum under paragraphs V and VI. The judgment shall also provide for periodic  
16 payment of the remaining future damages for medical expenses and other economic loss. The  
17 periodic payments shall be set out in the judgment in a schedule showing the annual amount due in  
18 each year the trier of fact has found that losses will accrue. If a finding has been made that medical  
19 expenses will continue for the duration of the claimant's life under RSA 524:16, V, the judgment  
20 shall set forth the finding and the annual amount of those damages. The judgment shall describe  
21 the qualified funding plan approved by the court pursuant to RSA 524:23.

22 VIII. For the purpose of determining present value under this section, a party liable for  
23 future damages shall select a qualified funding plan and submit evidence of the cost of the plan to  
24 the court. If the cost of the plan is disputed, the court shall make a finding of the cost.

25 524:20 Interest on Periodic Payments. Interest does not accrue on a periodic payment before  
26 payment is due. If the payment is not made on or before the due date, interest accrues as of that  
27 date.

28 524:21 Inability to Fund Periodic-Payment Judgment.

29 I. Upon petition of a party after trial and before entry of judgment and upon a finding of  
30 inability to fund the judgment under RSA 524:22, the court, at the election of the claimant, shall  
31 discount the annual amounts found by the trier of fact for future medical expenses and other  
32 economic loss to present value pursuant to paragraph II, make any adjustments prescribed in RSA  
33 524:19, and enter judgment in a lump sum for the total amount found for past and future damages.

34 II. The court shall compute the present value of the future damages for medical expenses  
35 and other economic loss by discounting each annual amount by a rate of interest equal to the rate of  
36 the most recent issue of 3-year United States Treasury notes sold before the date the damages are

1 discounted. For purposes of discounting under this paragraph, each annual payment is due at the  
2 beginning of the year.

3 III. To compute the present value of a lifetime award of future damages for medical expenses  
4 determined under RSA 524:16, III, the duration of the term of payments is the life expectancy of an  
5 individual of the same sex and age as the claimant, at the time the computation is made, prescribed  
6 by a race-neutral life expectancy table based on the most recent Current Population Survey collected  
7 by the Bureau of the Census for the Bureau of Labor Statistics of the United States Department of  
8 Labor.

9 524:22 Funding of Periodic-Payment Judgments.

10 I. If a judgment containing periodic payments is entered under this subdivision, each party  
11 liable for all or a portion of the judgment, unless found to be unable to do so under RSA 524:21, shall  
12 provide funding, separately or jointly with one or more others, by means of a qualified funding plan  
13 complying with RSA 524:23. The funding shall be provided not later than 30 days after the  
14 judgment is entered, unless the court allows additional time upon a showing of good cause. During  
15 that period, the judgment is not subject to execution. The funding need not be provided if the  
16 judgment is superseded under RSA 524:24.

17 II. A liability insurer having a contractual obligation and any other person adjudged to have  
18 an obligation to pay all or part of a judgment entered under this subdivision on behalf of a judgment  
19 debtor is obligated to provide funding to the extent of its contractual or adjudged obligation. To  
20 determine whether or to what extent a judgment containing periodic payments for future damages  
21 for medical expenses and other economic loss entered under this subdivision exceeds limits under a  
22 liability insurance policy, the court shall add the cost of the qualified funding plan, as determined  
23 under RSA 524:19, VIII, to the total of lump-sum damages contained in the judgment and compare  
24 the sum so computed to applicable limits under the policy.

25 III. If only one person is liable for a portion of a judgment for periodic payments and is  
26 unable to provide funding, the right to payment in a lump sum prescribed in RSA 524:21 applies only  
27 against that person and the portion of the judgment so owed.

28 IV. If more than one person is liable for all or a portion of a judgment requiring funding  
29 under this subdivision and the required funding is provided by one or more but fewer than all of the  
30 persons liable, the funding requirements are satisfied. A person providing funding may proceed to  
31 enforce rights of reimbursement for funding from a person who is obligated to but has not provided  
32 funding. The cost of the funding provided shall be the basis upon which contribution or indemnity is  
33 awarded.

34 524:23 Qualified Funding Plans.

35 I. A qualified funding plan shall be approved by a court having jurisdiction to enter the  
36 periodic payment judgment and be one of the following:

1 (a) A funding plan may be one in which the judgment debtor is obligated to make the  
2 periodic payments. If the judgment debtor is a governmental entity, it may elect to participate in a  
3 self-funding plan enacted by the state or the federal government. Otherwise, in order for the plan to  
4 qualify:

5 (1) The judgment debtor's obligation to the judgment creditor shall be guaranteed by  
6 a surety bond issued by a qualified insurer listed pursuant to RSA 524:30; or

7 (2) The judgment debtor shall purchase an annuity contract from a qualified insurer  
8 listed pursuant to RSA 524:30 and the judgment creditor shall have a perfected security interest in  
9 the annuity contract pursuant to paragraph III.

10 (b) A funding plan may be one in which the judgment debtor's liability insurer is  
11 obligated to make the periodic payments. In order for such a plan to qualify:

12 (1) The liability insurer shall be a qualified insurer listed pursuant to RSA 524:30;

13 (2) The liability insurer's obligation to the judgment creditor shall be guaranteed by  
14 a surety bond issued by a qualified insurer listed pursuant to RSA 524:30; or

15 (3) The liability insurer shall purchase an annuity contract from a qualified insurer  
16 listed pursuant to RSA 524:30 and the judgment creditor shall have a perfected security interest in  
17 the annuity contract pursuant to paragraph III.

18 (c) A funding plan may be one in which an assignee of the judgment debtor or an  
19 assignee of the judgment debtor's liability insurer is obligated to make the periodic payments. In  
20 order for such a plan to qualify:

21 (1) The assignee shall be a qualified insurer listed pursuant to RSA 524:30;

22 (2) The assignee's obligation to the judgment creditor shall be guaranteed by a  
23 surety bond issued by a qualified insurer listed pursuant to RSA 524:30; or

24 (3) The assignee shall purchase an annuity contract from a qualified insurer listed  
25 pursuant to RSA 524:30 and the judgment creditor shall have a perfected security interest in the  
26 annuity contract pursuant to paragraph III.

27 (d) A funding plan may be one in which the judgment debtor or the judgment debtor's  
28 liability insurer is released from liability and a qualified insurer listed pursuant to RSA 524:30  
29 assumes the obligation to make the periodic payments pursuant to an insurance contract, such as an  
30 assumption reinsurance agreement.

31 (e) A funding plan may be one to which all the affected parties agree.

32 II. An annuity contract issued by a qualified insurer listed pursuant to RSA 524:30 is not a  
33 qualified funding plan under subparagraph I(a)(2), I(b)(3), or I(c)(3) unless the applicable federal  
34 income tax laws permit a security agreement without treating the annuity payments as gross income  
35 to the judgment creditor.

36 III. A security interest in an annuity contracted pursuant to this subdivision may be created  
37 and perfected by giving notice thereof in writing to the insurer issuing the annuity. The security



1 interest is subject to RSA 382-A, Article 9, but no security agreement, other than as represented by  
2 the written notice, is necessary to make the security interest enforceable, and the security interest  
3 has priority over conflicting perfected security interests in the annuity contract. This paragraph  
4 applies to structured settlements as well as to periodic-payment judgments.

5 524:24 Supersedeas Bond. The amount of a bond to supersede a periodic-payment judgment  
6 shall be determined in accordance with state law. For the purpose of determining the amount of the  
7 damage award in the judgment, the present value of the periodic payments shall be added to the  
8 total lump-sum damages contained in the judgment. The present value of the periodic payments is  
9 the cost of a qualified funding plan complying with RSA 524:23, as determined under RSA 524:19,  
10 VIII, at the time the judgment is entered.

11 524:25 Effect of Death.

12 I. In cases covered by this subdivision, liability to a claimant for periodic payments not yet  
13 due for medical expenses terminates upon the claimant's death.

14 II. In an action other than for wrongful death, if a judgment for periodic payments is entered  
15 and a claimant entitled to receive payments for economic losses, other than for medical expenses,  
16 under the judgment dies, any periodic payments for those economic losses not yet due at the death  
17 shall be paid to the estate of the decedent.

18 III. In an action for wrongful death, if a judgment for periodic payments provides payments  
19 to more than one claimant entitled to receive benefits for future damages and one or more but fewer  
20 than all of them die, the surviving claimants are entitled to shares proportionate to their shares in  
21 the periodic payments not yet due, but they are not entitled to receive payments beyond the  
22 respective periods specified for them in the judgment. If periodic payments are payable to only one  
23 wrongful death claimant, liability for payments not yet due ceases upon the claimant's death.  
24 Payments that have become due on the death of a claimant are payable to the estate of the deceased  
25 claimant.

26 524:26 Satisfaction of Liens and Other Rights. An assignment of or an agreement to assign a  
27 right to periodic payments for future damages contained in a judgment entered under this  
28 subdivision is not enforceable except for:

29 I. Attorney's fees and other expenses of litigation incurred in obtaining or enforcing the  
30 judgment;

31 II. Costs of products, services, or accommodations provided by the assignee for medical  
32 expenses; or

33 III. Alimony, maintenance, spousal support, child support, or a division of marital property.

34 524:27 Exemption of Benefits. Periodic payments for future damages for loss of earnings or  
35 economic support are exempt from garnishment, attachment, execution, and any other process or  
36 claim to the extent wages or earnings are exempt under applicable law. Except to the extent they

1 may be assigned under RSA 524:26, periodic payments for all other future damages are exempt from  
2 garnishment, attachment, execution, and any other process or claim.

3 524:28 Release of Judgment Debtors and Liability Insurers. If all lump-sum amounts in a  
4 judgment, including costs and interest, have been satisfied and funding has been provided under  
5 RSA 524:22 for all periodic payments and approved under a judgment entered pursuant to this  
6 subdivision which has become final, the judgment debtor on whose behalf the funding is provided is  
7 discharged and any lien against the judgment debtor as a result of the judgment is released. A  
8 liability insurer that provides a qualified funding plan on behalf of a judgment debtor complying  
9 with RSA 524:23 has satisfied its duty to pay damages under any applicable liability insurance  
10 contract.

11 524:29 Retention of Jurisdiction. If a judgment for periodic payments is entered under this  
12 subdivision, the court entering judgment retains jurisdiction to enforce this subdivision.

13 524:30 Duties of Insurance Commissioner.

14 I. The insurance commissioner shall publish a list of insurers designated by the  
15 commissioner as qualified to participate in the funding of periodic-payment judgments under RSA  
16 524:23. The list shall be updated as often as necessary to keep it current.

17 II. In order for an insurer to be designated by the commissioner as a qualified insurer, it  
18 shall:

19 (a) Request the designation;

20 (b) Be an insurer licensed in this state;

21 (c) Have a minimum of \$100,000,000 of capital and surplus, exclusive of any mandatory  
22 security valuation reserve; and

23 (d) Have one of the following ratings from 2 of the following rating organizations:

24 (1) A.M. Best Company: A+, A+g, A+p, A+r, or A+s.

25 (2) Moody's Investors Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa.

26 (3) Standard & Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA,  
27 AA+, or AAA.

28 (4) Duff & Phelps Credit Rating Company Insurance Company Claims Paying  
29 Ability Rating: AA-, AA, AA+, or AAA.

30 III. The list of rating organizations in paragraph II is not exclusive. The commissioner may  
31 accept a rating equivalent to those listed from any other nationally recognized rating organization.

32 IV. In addition to the requirements of paragraph II, a qualified insurer shall meet any other  
33 requirements the commissioner considers necessary to assure that funding to satisfy periodic-  
34 payment judgments will be provided and maintained under this subdivision.

35 V. A previously qualified insurer that no longer meets the requirements of paragraph II and  
36 any additional requirements prescribed by the commissioner pursuant to paragraph IV shall be  
37 removed from the list of qualified insurers published by the commissioner.

1 VI. The commissioner shall adopt rules, pursuant to RSA 524-A, to establish standards and  
2 procedures to:

3 (a) Determine the accounting conventions to be used to measure an insurer's capital and  
4 surplus and any mandatory security valuation reserve under paragraph II(c);

5 (b) Determine whether a rating organization not listed in paragraph II(d) is nationally  
6 recognized and, if so, determine which of its ratings are equivalent to the ratings specified in  
7 paragraph II(d);

8 (c) Establish any additional requirements under paragraph IV which an insurer shall  
9 meet in order to be designated as a qualified insurer;

10 (d) Determine whether an insurer should be removed from the list of qualified insurers  
11 pursuant to paragraph V; and

12 (e) Require a liability insurer to provide funding under RSA 524:22 if the court finds that  
13 the insurer is obligated to provide and capable of providing funding.

14 VII. A qualified insurer issuing an annuity contract pursuant to a qualified funding plan  
15 under RSA 524:23 may not enter into an assumption reinsurance agreement for the annuity contract  
16 without the approval of the commissioner, the owner of the annuity contract, and the claimant  
17 having a secured interest in the annuity contract. The commissioner may not approve assumption  
18 reinsurance unless the reinsurer is a qualified insurer.

19 524:31 Arbitration and Settlement Agreements.

20 I. This subdivision also applies to claims for bodily injury that are subject to arbitration by  
21 law or by contract if the contract so provides.

22 II. Parties to an action on any claim for bodily injury may file with the clerk of the court in  
23 which the action is pending or, if none is pending, with the clerk of a court of competent jurisdiction  
24 over the claim, a settlement agreement to pay future damages periodically. The settlement  
25 agreement may provide that one or more sections of this subdivision apply to it.

26 524:32 Severability. If any provision of this subdivision or its application to any person or  
27 circumstance is held invalid, the invalidity does not affect other provisions or applications of this  
28 subdivision which can be given effect without the invalid provision or application, and to this end the  
29 provisions of this subdivision are severable.

30 2 Applicability. This subdivision shall apply to claims for relief accruing on or after January 1,  
31 2013.

32 3 Effective Date. This act shall take effect January 1, 2013.