

SENATE BILL NO. 292—SENATOR ROBERSON

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to certain civil actions involving negligence. (BDR 3-954)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to civil actions; providing immunity from civil actions for a board of trustees of a school district or the governing body of a charter school under certain circumstances; revising the applicability of certain provisions of existing law pertaining to certain civil actions involving negligence; revising provisions governing the limitation on the amount of noneconomic damages that may be awarded in certain civil actions; making various other changes relating to certain actions involving negligence; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

- 1 **Section 1** of this bill provides that a board of trustees of a school district or the
- 2 governing body of a charter school is not liable for any civil damages arising from
- 3 any act or omission by a person employed by or volunteering at a school-based
- 4 health center. **Section 1** also defines “school-based health center” for such
- 5 purposes.
- 6 Existing law defines “medical malpractice,” “dental malpractice” and
- 7 “professional negligence” and contains various provisions relating to civil actions
- 8 involving claims of medical malpractice, dental malpractice and professional
- 9 negligence. (Chapter 41A of NRS) This bill removes references in existing law to
- 10 medical malpractice and dental malpractice and replaces those references with
- 11 references to professional negligence. **Section 1.5** of this bill also revises the
- 12 definition of professional negligence to incorporate provisions of the previously
- 13 used definition of medical malpractice.
- 14 Existing law defines the term “provider of healthcare” for the purposes of
- 15 certain civil actions involving professional negligence. (NRS 41A.017) **Section 2**
- 16 of this bill revises that definition to include certain other professionals who provide



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17 health care and to include clinics, surgery centers and other entities that employ  
18 physicians and other such persons.

19 Existing law limits the amount of noneconomic damages that may be awarded  
20 in an action for injury or death against a provider of health care based upon  
21 professional negligence. (NRS 41A.035) **Section 3** of this bill limits the total  
22 noneconomic damages that may be awarded in such an action to \$350,000,  
23 regardless of the number of plaintiffs, defendants or theories of liability.

24 Existing law establishes a rebuttable presumption in actions for negligence  
25 against providers of medical care that the personal injury or death was caused by  
26 negligence when certain injuries are sustained. (NRS 41A.100) **Section 9** of this  
27 bill provides that the rebuttable presumption does not apply in an action in which:  
28 (1) a plaintiff submits an affidavit or designates an expert witness to establish that a  
29 provider of health care deviated from the accepted standard of care; or (2) expert  
30 medical testimony is used to establish a claim of professional negligence.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 41 of NRS is hereby amended by adding  
2 thereto a new section to read as follows:

3 *1. The board of trustees of a school district or the governing*  
4 *body of a charter school that allows or establishes a school-based*  
5 *health center is not liable for any civil damages as a result of any*  
6 *act or omission by a person employed by or volunteering for or*  
7 *affiliated with a school-based health center or a sponsoring entity*  
8 *of the school-based health center.*

9 *2. As used in this section, "school-based health center"*  
10 *means a health center located on or in school grounds, property,*  
11 *buildings or any other school district facilities for the purpose of*  
12 *rendering care or services to any person.*

13 **Sec. 1.3.** NRS 41A.003 is hereby amended to read as follows:

14 41A.003 As used in this chapter, unless the context otherwise  
15 requires, the words and terms defined in NRS ~~41A.004~~ 41A.007 to  
16 41A.017, inclusive, have the meanings ascribed to them in those  
17 sections.

18 **Sec. 1.5.** NRS 41A.015 is hereby amended to read as follows:

19 41A.015 "Professional negligence" means ~~the failure of a provider of health care, in the~~  
20 ~~rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death. The term~~  
21 ~~does not include services that are outside the scope of services for which the provider of health care is licensed or services for which~~  
22 ~~any restriction has been imposed by the applicable regulatory board or health care facility.]~~ *to use the reasonable care, skill or*  
23 *knowledge ordinarily used under similar circumstances by*  
24 *similarly trained and experienced providers of health care.*  
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1       **Sec. 2.** NRS 41A.017 is hereby amended to read as follows:

2       41A.017 “Provider of health care” means a physician licensed  
3 ~~under~~ *pursuant to* chapter 630 or 633 of NRS, *physician assistant,*  
4 dentist, licensed nurse, dispensing optician, optometrist, registered  
5 physical therapist, podiatric physician, licensed psychologist,  
6 chiropractor, doctor of Oriental medicine, medical laboratory  
7 director or technician, licensed dietitian or a licensed hospital ,  
8 *clinic, surgery center, physicians’ professional corporation or*  
9 *group practice that employs any such person* and its employees.

10       **Sec. 3.** NRS 41A.035 is hereby amended to read as follows:

11       41A.035 In an action for injury or death against a provider of  
12 health care based upon professional negligence, the injured plaintiff  
13 may recover noneconomic damages, but the amount of  
14 noneconomic damages awarded in such an action must not exceed  
15 \$350,000 ~~+~~, *regardless of the number of plaintiffs, defendants or*  
16 *theories upon which liability may be based.*

17       **Sec. 4.** (Deleted by amendment.)

18       **Sec. 5.** NRS 41A.061 is hereby amended to read as follows:

19       41A.061 1. Upon the motion of any party or upon its own  
20 motion, unless good cause is shown for the delay, the court shall,  
21 after due notice to the parties, dismiss an action involving ~~medical~~  
22 ~~malpractice or dental malpractice~~ *professional negligence* if the  
23 action is not brought to trial within ~~+~~:

24 ~~—(a) Three years after the date on which the action is filed, if the~~  
25 ~~action is filed on or after October 1, 2002, but before October 1,~~  
26 ~~2005.~~

27 ~~—(b) Two~~ **3** years after the date on which the action is filed . ~~+~~ *if*  
28 ~~the action is filed on or after October 1, 2005.~~

29       2. Dismissal of an action pursuant to subsection 1 is a bar to  
30 the filing of another action upon the same claim for relief against the  
31 same defendants.

32       3. Each district court shall adopt court rules to expedite the  
33 resolution of an action involving ~~medical malpractice or dental~~  
34 ~~malpractice~~ *professional negligence.*

35       **Sec. 6.** NRS 41A.071 is hereby amended to read as follows:

36       41A.071 If an action for ~~medical malpractice or dental~~  
37 ~~malpractice~~ *professional negligence* is filed in the district court,  
38 the district court shall dismiss the action, without prejudice, if the  
39 action is filed without an affidavit ~~+~~ *supporting* ~~that:~~

40       1. *Supports* the allegations contained in the action ~~+~~;

41       2. *Is* submitted by a medical expert who practices or has  
42 practiced in an area that is substantially similar to the type of  
43 practice engaged in at the time of the alleged ~~malpractice.~~  
44 *professional negligence;*



1       **3. Identifies by name, or describes by conduct, each provider**  
2 **of health care who is alleged to be negligent; and**

3       **4. Sets forth factually a specific act or acts of alleged**  
4 **negligence separately as to each defendant in simple, concise and**  
5 **direct terms.**

6       **Sec. 7.** NRS 41A.081 is hereby amended to read as follows:

7       41A.081 1. In an action for ~~medical malpractice or dental~~  
8 ~~malpractice,~~ **professional negligence**, all the parties to the action,  
9 the insurers of the respective parties and the attorneys of the  
10 respective parties shall attend and participate in a settlement  
11 conference before a district judge, other than the judge assigned to  
12 the action, to ascertain whether the action may be settled by the  
13 parties before trial.

14       2. The judge before whom the settlement conference is held:

15       (a) May, for good cause shown, waive the attendance of any  
16 party.

17       (b) Shall decide what information the parties may submit at the  
18 settlement conference.

19       3. The judge shall notify the parties of the time and place of the  
20 settlement conference.

21       4. The failure of any party, the party's insurer or the party's  
22 attorney to participate in good faith in the settlement conference is  
23 grounds for sanctions, including, without limitation, monetary  
24 sanctions, against the party or the party's attorney, or both. The  
25 judges of the district courts shall liberally construe the provisions of  
26 this subsection in favor of imposing sanctions in all appropriate  
27 situations. It is the intent of the Legislature that the judges of the  
28 district courts impose sanctions pursuant to this subsection in all  
29 appropriate situations to punish for and deter conduct which is not  
30 undertaken in good faith because such conduct overburdens limited  
31 judicial resources, hinders the timely resolution of meritorious  
32 claims and increases the costs of engaging in business and providing  
33 professional services to the public.

34       **Sec. 8.** NRS 41A.085 is hereby amended to read as follows:

35       41A.085 1. In an action for damages for ~~medical malpractice~~  
36 ~~or dental malpractice,~~ **professional negligence** in which the  
37 defendant is insured pursuant to a policy of insurance covering the  
38 liability of the defendant for a breach of the defendant's professional  
39 duty toward a patient:

40       (a) At any settlement conference, the judge may recommend that  
41 the action be settled for the limits of the policy of insurance.

42       (b) If the judge makes the recommendation described in  
43 paragraph (a), the defendant is entitled to obtain from independent  
44 counsel an opinion letter explaining the rights of, obligations of and  
45 potential consequences to the defendant with regard to the



1 recommendation. The insurer shall pay the independent counsel to  
2 provide the opinion letter described in this paragraph, except that the  
3 insurer is not required to pay more than \$1,500 to the independent  
4 counsel to provide the opinion letter.

5 2. The section does not:

6 (a) Prohibit the plaintiff from making any offer of settlement.

7 (b) Require an insurer to provide or pay for independent counsel  
8 for a defendant except as expressly provided in this section.

9 **Sec. 9.** NRS 41A.100 is hereby amended to read as follows:

10 41A.100 1. Liability for personal injury or death is not  
11 imposed upon any provider of ~~medical~~ *health* care based on  
12 alleged negligence in the performance of that care unless evidence  
13 consisting of expert medical testimony, material from recognized  
14 medical texts or treatises or the regulations of the licensed medical  
15 facility wherein the alleged negligence occurred is presented to  
16 demonstrate the alleged deviation from the accepted standard of care  
17 in the specific circumstances of the case and to prove causation of  
18 the alleged personal injury or death, except that such evidence is not  
19 required and a rebuttable presumption that the personal injury or  
20 death was caused by negligence arises where evidence is presented  
21 that the *provider of health care caused the* personal injury or death  
22 occurred in any one or more of the following circumstances:

23 (a) A foreign substance other than medication or a prosthetic  
24 device was unintentionally left within the body of a patient  
25 following surgery;

26 (b) An explosion or fire originating in a substance used in  
27 treatment occurred in the course of treatment;

28 (c) An unintended burn caused by heat, radiation or chemicals  
29 was suffered in the course of medical care;

30 (d) An injury was suffered during the course of treatment to a  
31 part of the body not directly involved in the treatment or proximate  
32 thereto; or

33 (e) A surgical procedure was performed on the wrong patient or  
34 the wrong organ, limb or part of a patient's body.

35 2. Expert medical testimony provided pursuant to subsection 1  
36 may only be given by a provider of ~~medical~~ *health* care who  
37 practices or has practiced in an area that is substantially similar to  
38 the type of practice engaged in at the time of the alleged negligence.

39 3. ~~[As used in this section, "provider of medical care" means a~~  
40 ~~physician, dentist, registered nurse or a licensed hospital as the~~  
41 ~~employer of any such person.]~~ *The rebuttable presumption*  
42 *pursuant to subsection 1 does not apply in an action in which a*  
43 *plaintiff submits an affidavit pursuant to NRS 41A.071, or*  
44 *otherwise designates an expert witness to establish that the specific*



1 *provider of health care deviated from the accepted standard of*  
2 *care.*

3 *4. Nothing in this section shall be construed to preclude any*  
4 *party to the suit from designating and presenting expert testimony*  
5 *as to the legal or proximate cause of any alleged personal injury*  
6 *or death.*

7 **Sec. 10.** NRS 3.029 is hereby amended to read as follows:

8 3.029 *1. The Supreme Court shall provide by court rule for*  
9 *mandatory appropriate training concerning the complex issues of*  
10 ~~medical malpractice~~ *litigation alleging professional negligence*  
11 *for each district judge to whom actions involving* ~~medical~~  
12 ~~malpractice~~ *professional negligence* are assigned.

13 *2. As used in this section, “professional negligence” has the*  
14 *meaning ascribed to it in NRS 41A.015.*

15 **Sec. 11.** The amendatory provisions of this act apply to a  
16 cause of action that accrues on or after the effective date of this act.

17 **Sec. 12.** NRS 41A.004, 41A.009 and 41A.013 are hereby  
18 repealed.

19 **Sec. 13.** This act becomes effective upon passage and  
20 approval.

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**TEXT OF REPEALED SECTIONS**

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**41A.004 “Dental malpractice” defined.** “Dental malpractice” has the meaning ascribed to the term “malpractice” in NRS 631.075.

**41A.009 “Medical malpractice” defined.** “Medical malpractice” means the failure of a physician, hospital or employee of a hospital, in rendering services, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances.

**41A.013 “Physician” defined.** “Physician” means a person licensed pursuant to chapter 630 or 633 of NRS.





