

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; 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; requiring a trier of fact to determine the percentage of responsibility for a plaintiff’s harm assigned to various parties 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 Existing law defines “medical malpractice,” “dental malpractice” and  
2 “professional negligence” and contains various provisions relating to civil actions  
3 involving claims of medical malpractice, dental malpractice and professional  
4 negligence. (Chapter 41A of NRS) This bill removes references in existing law to  
5 medical malpractice and dental malpractice and replaces those references with  
6 references to professional negligence.

7 Existing law defines the term “provider of healthcare” for the purposes of  
8 certain civil actions involving professional negligence. (NRS 41A.017) **Section 2**  
9 of this bill revises that definition to include certain other professionals who provide  
10 health care and to include clinics, surgery centers and other entities that employ  
11 physicians and other such persons.

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

17 Existing law provides that in an action for injury or death against a provider of  
18 health care based upon professional negligence, each defendant is liable to the



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19 plaintiff for certain damages severally only, and not jointly. (NRS 41A.045)  
20 **Section 4** of this bill: (1) requires the trier of fact in an action for professional  
21 negligence to determine the percentage of responsibility assigned to each person;  
22 and (2) authorizes a defendant to present certain evidence to establish the  
23 percentage of responsibility of any party or nonparty to such an action.

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.** NRS 41A.003 is hereby amended to read as  
2 follows:

3 41A.003 As used in this chapter, unless the context otherwise  
4 requires, the words and terms defined in NRS ~~41A.004~~ **41A.007** to  
5 41A.017, inclusive, have the meanings ascribed to them in those  
6 sections.

7 **Sec. 2.** NRS 41A.017 is hereby amended to read as follows:

8 41A.017 "Provider of health care" means a physician licensed  
9 ~~under~~ **pursuant to** chapter 630 , **630A** or 633 of NRS, **physician**  
10 **assistant**, dentist, licensed nurse, dispensing optician, optometrist,  
11 **practitioner of respiratory care**, registered physical therapist,  
12 **occupational therapist**, podiatric physician, licensed psychologist,  
13 **licensed marriage and family therapist, licensed clinical**  
14 **professional counselor, music therapist**, chiropractor, **athletic**  
15 **trainer, perfusionist**, doctor of Oriental medicine ~~H~~ **in any form**,  
16 medical laboratory director or technician, **pharmacist or** licensed  
17 dietitian or a licensed hospital , **clinic, surgery center or other**  
18 **entity that employs any such person** and its employees.

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

20 41A.035 In an action for injury or death against a provider of  
21 health care based upon professional negligence, the injured plaintiff  
22 may recover noneconomic damages, but the amount of  
23 noneconomic damages awarded in such an action must not exceed  
24 \$350,000 ~~H~~ , **regardless of the number of plaintiffs, defendants or**  
25 **theories upon which liability may be based.**

26 **Sec. 4.** NRS 41A.045 is hereby amended to read as follows:

27 41A.045 1. In an action for injury or death against a provider  
28 of health care based upon professional negligence, each defendant is  
29 liable to the plaintiff for economic damages and noneconomic  
30 damages severally only, and not jointly, for that portion of the



1 judgment which represents the percentage of ~~negligence~~ *fault*  
2 attributable to the defendant.

3 2. *In an action described in subsection 1, the trier of fact*  
4 *shall determine the percentage of responsibility assigned to all*  
5 *persons relating to the harm caused for which recovery is being*  
6 *sought. The trier of fact shall consider the percentage of*  
7 *responsibility of any person who could have contributed to the*  
8 *alleged injury or death, regardless of whether the person was, or*  
9 *could have been, named as a party to the action. A determination*  
10 *of the percentage of responsibility for any nonparty:*

11 (a) *May only be used as a vehicle for accurately determining*  
12 *the fault of the named parties;*

13 (b) *Does not subject the nonparty to liability in the action or in*  
14 *any other action; and*

15 (c) *May be introduced as evidence of liability in any action.*

16 3. *To establish the percentage of responsibility of any party or*  
17 *nonparty, a defendant may present to the trier of fact:*

18 (a) *An affidavit produced pursuant to NRS 41A.071;*

19 (b) *A report prepared by an expert pursuant to the Nevada*  
20 *Rules of Civil Procedure; and*

21 (c) *Testimony of an expert designated by any party, at any*  
22 *time, pursuant to the Nevada Rules of Civil Procedure.*

23 4. This section is intended to abrogate joint and several liability  
24 of a provider of health care in an action for injury or death against  
25 the provider of health care based upon professional negligence.

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

27 41A.061 1. Upon the motion of any party or upon its own  
28 motion, unless good cause is shown for the delay, the court shall,  
29 after due notice to the parties, dismiss an action involving ~~medical~~  
30 ~~malpractice or dental malpractice~~ *professional negligence* if the  
31 action is not brought to trial within ~~1~~:

32 ~~—(a) Three years after the date on which the action is filed, if the~~  
33 ~~action is filed on or after October 1, 2002, but before October 1,~~  
34 ~~2005.~~

35 ~~—(b) Two~~ 2 years after the date on which the action is filed. ~~1, if~~  
36 ~~the action is filed on or after October 1, 2005.~~

37 2. Dismissal of an action pursuant to subsection 1 is a bar to  
38 the filing of another action upon the same claim for relief against the  
39 same defendants.

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

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

44 41A.071 If an action for ~~medical malpractice or dental~~  
45 ~~malpractice~~ *professional negligence* is filed in the district court,



1 the district court shall dismiss the action, without prejudice, if the  
2 action is filed without an affidavit ~~[- supporting]~~ *that:*

3 *1. Supports* the allegations contained in the action ~~[-]~~;

4 *2. Is* submitted by a medical expert who practices or has  
5 practiced in an area that is substantially similar to the type of  
6 practice engaged in at the time of the alleged ~~[-malpractice-]~~  
7 *professional negligence;*

8 *3. Identifies by name, or describes by conduct, each alleged*  
9 *provider of health care; and*

10 *4. Complies with any written report required pursuant to Rule*  
11 *16.1 of the Nevada Rules of Civil Procedure.*

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

13 41A.081 1. In an action for ~~[-medical malpractice or dental~~  
14 ~~malpractice-]~~ *professional negligence*, all the parties to the action,  
15 the insurers of the respective parties and the attorneys of the  
16 respective parties shall attend and participate in a settlement  
17 conference before a district judge, other than the judge assigned to  
18 the action, to ascertain whether the action may be settled by the  
19 parties before trial.

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

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

23 (b) Shall decide what information the parties may submit at the  
24 settlement conference.

25 3. The judge shall notify the parties of the time and place of the  
26 settlement conference.

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

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

41 41A.085 1. In an action for damages for ~~[-medical malpractice~~  
42 ~~or dental malpractice-]~~ *professional negligence* in which the  
43 defendant is insured pursuant to a policy of insurance covering the  
44 liability of the defendant for a breach of the defendant's professional  
45 duty toward a patient:



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

3 (b) If the judge makes the recommendation described in  
4 paragraph (a), the defendant is entitled to obtain from independent  
5 counsel an opinion letter explaining the rights of, obligations of and  
6 potential consequences to the defendant with regard to the  
7 recommendation. The insurer shall pay the independent counsel to  
8 provide the opinion letter described in this paragraph, except that the  
9 insurer is not required to pay more than \$1,500 to the independent  
10 counsel to provide the opinion letter.

11 2. The section does not:

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

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

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

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

29 (a) A foreign substance other than medication or a prosthetic  
30 device was unintentionally left within the body of a patient  
31 following surgery;

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

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

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

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

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



1 3. ~~As used in this section, “provider of medical care” means a~~  
2 ~~physician, dentist, registered nurse or a licensed hospital as the~~  
3 ~~employer of any such person.~~ *The rebuttable presumption*  
4 *pursuant to subsection 1 does not apply in an action in which:*

5 (a) *A plaintiff submits an affidavit pursuant to NRS 41A.071,*  
6 *or otherwise designates an expert witness pursuant to the Nevada*  
7 *Rules of Civil Procedure, to establish that a provider of health*  
8 *care deviated from the accepted standard of care or caused the*  
9 *alleged personal injury or death.*

10 (b) *Expert medical testimony is used to establish a claim of*  
11 *negligence.*

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

13 3.029 1. The Supreme Court shall provide by court rule for  
14 mandatory appropriate training concerning the complex issues of  
15 ~~medical malpractice~~ litigation *alleging professional negligence*  
16 for each district judge to whom actions involving ~~medical~~  
17 ~~malpractice~~ *professional negligence* are assigned.

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

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

22 **Sec. 12.** NRS 41A.004, 41A.009 and 41A.013 are hereby  
23 repealed.

24 **Sec. 13.** This act becomes effective upon passage and  
25 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.





