
ASSEMBLY BILL NO. 187—ASSEMBLYMEN ANGLE, KNECHT,
GUSTAVSON, GRIFFIN, SHERER AND WEBER

FEBRUARY 24, 2003

JOINT SPONSORS: SENATORS RAWSON, O'CONNELL,
CEGAVSKE AND SHAFFER

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning tort actions.
(BDR 3-161)

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 tort actions; providing that defendants in an action for medical malpractice are severally liable for economic and noneconomic damages; limiting the recovery of noneconomic damages in all tort actions; requiring that damages awarded in certain actions be reduced by the amount of any benefit received from a collateral source; providing that defendants in an action for personal injury or wrongful death are severally liable for noneconomic damages; and providing other matters properly relating thereto.

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

1 **Section 1.** NRS 41A.031 is hereby amended to read as
2 follows:
3 41A.031 1. Except as otherwise provided in subsection 2 and
4 except as further limited in subsection 3, in an action for damages
5 for medical malpractice or dental malpractice ~~[,]~~ *where the alleged*
6 *malpractice occurred on or after October 1, 2002, but before*



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1 *October 1, 2003*, the noneconomic damages awarded to each
2 plaintiff from each defendant must not exceed \$350,000.

3 2. In an action for damages for medical malpractice or dental
4 malpractice ~~[]~~ *where the alleged malpractice occurred on or after*
5 *October 1, 2002, but before October 1, 2003*, the limitation on
6 noneconomic damages set forth in subsection 1 does not apply in the
7 following circumstances and types of cases:

8 (a) A case in which the conduct of the defendant is determined
9 to constitute gross malpractice; or

10 (b) A case in which, following return of a verdict by the jury or
11 a finding of damages in a bench trial, the court determines, by clear
12 and convincing evidence admitted at trial, that an award in excess of
13 \$350,000 for noneconomic damages is justified because of
14 exceptional circumstances.

15 3. Except as otherwise provided in subsection 4, in an action
16 for damages for medical malpractice or dental malpractice ~~[]~~ *where*
17 *the alleged malpractice occurred on or after October 1, 2002, but*
18 *before October 1, 2003*, in the circumstances and types of cases
19 described in subsections 1 and 2, the noneconomic damages
20 awarded to each plaintiff from each defendant must not exceed the
21 amount of money remaining under the professional liability
22 insurance policy limit covering the defendant after subtracting the
23 economic damages awarded to that plaintiff. Irrespective of the
24 number of plaintiffs in the action, in no event may any single
25 defendant be liable to the plaintiffs in the aggregate in excess of the
26 professional liability insurance policy limit covering that defendant.

27 4. The limitation set forth in subsection 3 does not apply in an
28 action for damages for medical malpractice or dental malpractice
29 unless the defendant was covered by professional liability insurance
30 at the time of the occurrence of the alleged malpractice and on the
31 date on which the insurer receives notice of the claim, in an amount
32 of:

33 (a) Not less than \$1,000,000 per occurrence; and

34 (b) Not less than \$3,000,000 in the aggregate.

35 5. This section is not intended to limit the responsibility of any
36 defendant for the total economic damages awarded.

37 6. For the purposes of this section, "gross malpractice" means
38 failure to exercise the required degree of care, skill or knowledge
39 that amounts to:

40 (a) A conscious indifference to the consequences which may
41 result from the gross malpractice; and

42 (b) A disregard for and indifference to the safety and welfare of
43 the patient.



1 **Sec. 2.** NRS 41A.041 is hereby amended to read as follows:
2 41A.041 1. In an action for damages for medical malpractice,
3 each defendant is liable for *economic and* noneconomic damages
4 severally only, and not jointly, to the plaintiff only for that portion
5 of the judgment which represents the percentage of negligence
6 attributable to the defendant.

7 2. As used in this section, “medical malpractice” means the
8 failure of a physician, hospital, employee of a hospital, certified
9 nurse midwife or certified registered nurse anesthetist in rendering
10 services to use the reasonable care, skill or knowledge ordinarily
11 used under similar circumstances.

12 **Sec. 3.** Chapter 42 of NRS is hereby amended by adding
13 thereto the provisions set forth as sections 4, 5 and 6 of this act.

14 **Sec. 4. 1.** *In an action for damages for personal injury or*
15 *wrongful death, the trier of fact shall itemize, in the verdict, the*
16 *award of damages to reflect the monetary amount intended for:*

- 17 (a) *Past expenses for medical treatment, care or custody;*
18 (b) *Future expenses for medical treatment, care or custody;*
19 (c) *Past loss of earnings;*
20 (d) *Future loss of earnings;*
21 (e) *Noneconomic damages; and*
22 (f) *Other damages.*

23 2. *Except as otherwise provided in this section and NRS*
24 *41.035 and 41.503, in an action for damages for personal injury or*
25 *wrongful death, a judgment for noneconomic damages must not*
26 *exceed \$250,000 per claim, regardless of the number of*
27 *defendants.*

28 3. *If the action is tried before a jury, the court or a party to*
29 *the action must not instruct or otherwise advise the jury*
30 *concerning the limitation on noneconomic damages set forth in*
31 *this section.*

32 4. *The limitation on noneconomic damages set forth in*
33 *subsection 2 does not apply to a cause of action that arises from:*

- 34 (a) *Willful misconduct; or*
35 (b) *An act or omission that constitutes a felony.*

36 5. *This section applies to an act, error or omission occurring*
37 *on or after October 1, 2003, that allegedly caused the personal*
38 *injury or wrongful death.*

39 6. *As used in this section, “noneconomic damages” includes*
40 *damages to compensate for pain, suffering, inconvenience,*
41 *physical impairment, disfigurement and other nonpecuniary*
42 *damages.*

43 **Sec. 5. 1.** *In an action for damages for personal injury or*
44 *wrongful death in which the liability of the defendant is*
45 *established or admitted, the court shall, before the entry of*



1 judgment, hold a separate hearing to determine if the plaintiff, as
2 the result of the personal injury or wrongful death, has received a
3 benefit from a collateral source. If the court determines that the
4 plaintiff has received a benefit from a collateral source, the court
5 shall reduce the amount of damages, if any, awarded in the action
6 by the amount of the benefit.

7 2. As used in this section and except as otherwise provided in
8 subsection 3, "benefit from a collateral source" means any money,
9 service or other benefit that is paid, provided or reimbursed, or is
10 reasonably likely to be paid, provided or reimbursed, to the
11 plaintiff for the personal injury or wrongful death pursuant to:

- 12 (a) A state or federal act;
- 13 (b) A policy of insurance;
- 14 (c) A contract or agreement of any group, organization,
15 partnership or corporation; or
- 16 (d) Any other publicly or privately funded program,
17 that provides benefits for sickness, physical injury, dental injury,
18 emotional injury, disability, accidents, loss of earnings or workers'
19 compensation.

20 3. A benefit from a collateral source does not include a
21 benefit that is received by the plaintiff pursuant to subsection 2 to
22 the extent that the provider of the benefit:

- 23 (a) Is entitled to recover the benefit from the plaintiff; or
- 24 (b) Is subrogated to the rights of the plaintiff, if the right of
25 subrogation is exercised by serving a notice of lien on the plaintiff
26 before the settlement of or the entry of judgment in the action. The
27 plaintiff shall provide notice of the commencement of the action to
28 each provider of benefits that holds a lien provided by statute.

29 **Sec. 6.** In an action for damages for personal injury or
30 wrongful death, other than an action for damages for medical
31 malpractice, each defendant is liable for noneconomic damages
32 severally only, and not jointly, to the plaintiff only for that portion
33 of the judgment which represents the percentage of negligence
34 attributable to the defendant.

35 **Sec. 7.** NRS 42.020 is hereby amended to read as follows:

36 42.020 1. ~~Except as otherwise provided in subsection 2, in~~
37 ~~any~~ In an action for damages for *personal injury or wrongful*
38 *death caused by* medical malpractice, the *court shall, in addition to*
39 *any reduction in the amount of damages required pursuant to*
40 *section 5 of this act, reduce the* amount of damages, if any, awarded
41 in the *action* ~~must be reduced~~ by the amount of any prior payment
42 made by or on behalf of the ~~provider of health care against whom~~
43 ~~the action is brought~~ *defendant* to the injured person or to the
44 claimant to meet reasonable expenses ~~of~~ *for* medical *treatment,*



1 care ~~[1]~~ or custody, reasonable expenses for other essential goods or
2 services, or reasonable living expenses.

3 2. ~~[In any action described in subsection 1 in which liability for
4 medical malpractice is established or admitted, the court shall,
5 before the entry of judgment, hold a separate hearing to determine if
6 any expenses incurred by the claimant for medical care, loss of
7 income or other financial loss have been paid or reimbursed as a
8 benefit from a collateral source. If the court determines that a
9 claimant has received such a benefit, the court shall reduce the
10 amount of damages, if any, awarded in the action by the amount of
11 the benefit. The amount so reduced must not include any amount for
12 which there is a right of subrogation to the rights of the claimant if
13 the right of subrogation is exercised by serving a notice of lien on
14 the claimant before the settlement of or the entry of judgment in the
15 action. Notice of the action must be provided by the claimant to any
16 statutory holder of a lien.~~

17 ~~—3.]~~ If future economic damages are awarded in an action for
18 medical malpractice, the court may, at the request of the claimant,
19 order the award to be paid:

20 (a) In a lump sum which has been reduced to its present value as
21 determined by the trier of fact and approved by the court; or

22 (b) Subject to the provisions of subsections **4 and 5** ~~[and 6]~~ and
23 the discretion of the court, in periodic payments either by an annuity
24 purchased to provide periodic payments or by other means if the
25 defendant posts an adequate bond or other security to ensure full
26 payment by periodic payments of the damages awarded by the
27 judgment.

28 As used in this subsection, “future economic damages” includes
29 damages for future medical treatment, care or custody, and loss of
30 future earnings.

31 ~~[4.]~~ **3.** If the claimant receives periodic payments pursuant to
32 paragraph (b) of subsection ~~[3.]~~ **2**, the award must not be reduced to
33 its present value. The amount of the periodic payments must be
34 equal to the total amount of all future damages awarded by the trier
35 of fact and approved by the court. The period for which the periodic
36 payments must be made must be determined by the trier of fact and
37 approved by the court. Before the entry of judgment, each party
38 shall submit to the court a plan specifying the recipient of the
39 payments, the amount of the payments and a schedule of periodic
40 payments for the award. Upon receipt and review of the plans, the
41 court shall specify in its judgment rendered in the action the
42 recipient of the payments, the amount of the payments and a
43 schedule of payments for the award.



1 ~~[5.]~~ 4. If an annuity is purchased pursuant to paragraph (b) of
2 subsection ~~[3.]~~ 2, the claimant shall select the provider of the
3 annuity. Upon purchase of the annuity, the claimant shall:

4 (a) Execute a satisfaction of judgment or a stipulation for
5 dismissal of the claim with prejudice; and

6 (b) Release forever the defendant and his insurer, if any, from
7 any obligation to make periodic payments pursuant to the award.

8 ~~[6.]~~ 5. If the defendant posts a bond or other security pursuant
9 to paragraph (b) of subsection ~~[3.]~~ 2, upon termination of the
10 payment of periodic payments of damages, the court shall order
11 the return of the bond or other security, or as much as remains, to
12 the defendant.

13 ~~[7.]~~ 6. As used in this section ~~[-]~~:

14 ~~—(a) “Benefit from a collateral source” means any money, service~~
15 ~~or other benefit which is paid or provided or is reasonably likely to~~
16 ~~be paid or provided to a claimant for personal injury or wrongful~~
17 ~~death pursuant to:~~

18 ~~—(1) A state or federal act which provides benefits for~~
19 ~~sickness, disability, accidents, loss of income or workers’~~
20 ~~compensation;~~

21 ~~—(2) A policy of insurance which provides health benefits or~~
22 ~~coverage for loss of income;~~

23 ~~—(3) A contract of any group, organization, partnership or~~
24 ~~corporation which provides, pays or reimburses the cost of medical,~~
25 ~~hospital or dental benefits or benefits for loss of income; or~~

26 ~~—(4) Any other publicly or privately funded program which~~
27 ~~provides such benefits.~~

28 ~~—(b) “Medical], “medical malpractice” has the meaning ascribed~~
29 ~~to it in NRS 41A.009.~~

