

**INITIATIVE PETITION**

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FEBRUARY 21, 2003

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Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to certain actions against providers of health care.

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

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AN ACT relating to medical malpractice; limiting attorney's fees in actions against providers of health care; eliminating the exceptions pertaining to noneconomic damages; making changes concerning the payment of damages; revising the statute of limitations for the filing of actions; eliminating joint and several liability; making various other changes concerning such actions; and providing for other matters properly relating thereto.

1 WHEREAS, There exists a major health care crisis in this state  
2 attributable to the skyrocketing cost of medical malpractice  
3 insurance; and

4 WHEREAS, Such skyrocketing medical malpractice insurance  
5 costs have resulted in a potential breakdown in the delivery of health  
6 care in this state, severe hardships concerning the availability of  
7 health care for the medically indigent, a denial of access to health  
8 care for the economically marginal, and the depletion of physicians  
9 such as to substantially worsen the quality of health care available to  
10 the residents of this state; and

11 WHEREAS, It is necessary to provide an adequate and reasonable  
12 remedy to address this health care crisis and to protect the health,  
13 welfare and safety of the residents of this state; now, therefore,

14  
15 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
16 SENATE AND ASSEMBLY DO ENACT AS FOLLOWS:



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1       **Section 1.** Chapter 7 of NRS is hereby amended by adding  
2 thereto a new section to read as follows:

3       1. *An attorney shall not contract for or collect a fee*  
4 *contingent on the amount of recovery for representing a person*  
5 *seeking damages in connection with an action for injury or death*  
6 *against a provider of health care based upon professional*  
7 *negligence in excess of:*

- 8       (a) *Forty percent of the first \$50,000 recovered;*  
9       (b) *Thirty-three and one-third percent of the next \$50,000*  
10 *recovered;*  
11       (c) *Twenty-five percent of the next \$500,000 recovered; and*  
12       (d) *Fifteen percent of the amount of recovery that exceeds*  
13 *\$600,000.*

14       2. *The limitations set forth in subsection 1 apply to all forms*  
15 *of recovery, including, without limitation, settlement, arbitration*  
16 *and judgment.*

17       3. *For the purposes of this section, "recovered" means the net*  
18 *sum recovered by the plaintiff after deducting any disbursements*  
19 *or costs incurred in connection with the prosecution or settlement*  
20 *of the claim. Costs of medical care incurred by the plaintiff and*  
21 *general and administrative expenses incurred by the office of the*  
22 *attorney are not deductible disbursements or costs.*

23       4. *As used in this section:*

24       (a) *"Professional negligence" means a negligent act or*  
25 *omission to act by a provider of health care in the rendering of*  
26 *professional services, which act or omission is the proximate cause*  
27 *of a personal injury or wrongful death. The term does not include*  
28 *services that are outside the scope of services for which the*  
29 *provider of health care is licensed or services for which any*  
30 *restriction has been imposed by the applicable regulatory board or*  
31 *health care facility.*

32       (b) *"Provider of health care" means a physician licensed*  
33 *under chapter 630 or 633 of NRS, dentist, registered nurse,*  
34 *dispensing optician, optometrist, registered physical therapist,*  
35 *podiatric physician, licensed psychologist, chiropractor, doctor of*  
36 *Oriental medicine, medical laboratory director or technician, or a*  
37 *licensed hospital and its employees.*

38       **Sec. 2.** Chapter 41A of NRS is hereby amended by adding  
39 thereto the provisions set forth as sections 3 to 6, inclusive, of this  
40 act.

41       **Sec. 3.** *"Professional negligence" means a negligent act or*  
42 *omission to act by a provider of health care in the rendering of*  
43 *professional services, which act or omission is the proximate cause*  
44 *of a personal injury or wrongful death. The term does not include*  
45 *services that are outside the scope of services for which the*



1 *provider of health care is licensed or services for which any*  
2 *restriction has been imposed by the applicable regulatory board or*  
3 *health care facility.*

4 **Sec. 4.** *“Provider of health care” means a physician licensed*  
5 *under chapter 630 or 633 of NRS, dentist, licensed nurse,*  
6 *dispensing optician, optometrist, registered physical therapist,*  
7 *podiatric physician, licensed psychologist, chiropractor, doctor of*  
8 *Oriental medicine, medical laboratory director or technician, or a*  
9 *licensed hospital and its employees.*

10 **Sec. 5.** *In an action for injury or death against a provider of*  
11 *health care based upon professional negligence, the injured*  
12 *plaintiff may recover noneconomic damages, but the amount of*  
13 *noneconomic damages awarded in such an action must not exceed*  
14 *\$350,000.*

15 **Sec. 6.** *1. In an action for injury or death against a*  
16 *provider of health care based upon professional negligence, each*  
17 *defendant is liable to the plaintiff for economic damages and*  
18 *noneconomic damages severally only, and not jointly, for that*  
19 *portion of the judgment which represents the percentage of*  
20 *negligence attributable to the defendant.*

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

25 **Sec. 7.** NRS 41A.003 is hereby amended to read as follows:  
26 41A.003 As used in this chapter, unless the context otherwise  
27 requires, the words and terms defined in NRS 41A.004 to 41A.013,  
28 inclusive, *and sections 3 and 4 of this act* have the meanings  
29 ascribed to them in those sections.

30 **Sec. 8.** NRS 41A.097 is hereby amended to read as follows:  
31 41A.097 1. Except as otherwise provided in subsection 3, an  
32 action for injury or death against a provider of health care may not  
33 be commenced more than 4 years after the date of injury or 2 years  
34 after the plaintiff discovers or through the use of reasonable  
35 diligence should have discovered the injury, whichever occurs first,  
36 for:

37 (a) Injury to or the wrongful death of a person occurring before  
38 October 1, 2002, based upon alleged professional negligence of the  
39 provider of health care;

40 (b) Injury to or the wrongful death of a person occurring before  
41 October 1, 2002, from professional services rendered without  
42 consent; or

43 (c) Injury to or the wrongful death of a person occurring before  
44 October 1, 2002, from error or omission in practice by the provider  
45 of health care.



1 2. Except as otherwise provided in subsection 3, an action for  
2 injury or death against a provider of health care may not be  
3 commenced more than 3 years after the date of injury or ~~[2 years]~~ **1**  
4 **year** after the plaintiff discovers or through the use of reasonable  
5 diligence should have discovered the injury, whichever occurs first,  
6 for:

7 (a) Injury to or the wrongful death of a person occurring on or  
8 after October 1, 2002, based upon alleged professional negligence of  
9 the provider of health care;

10 (b) Injury to or the wrongful death of a person occurring on or  
11 after October 1, 2002, from professional services rendered without  
12 consent; or

13 (c) Injury to or the wrongful death of a person occurring on or  
14 after October 1, 2002, from error or omission in practice by the  
15 provider of health care.

16 3. This time limitation is tolled for any period during which the  
17 provider of health care has concealed any act, error or omission  
18 upon which the action is based and which is known or through the  
19 use of reasonable diligence should have been known to him.

20 4. For the purposes of this section, the parent, guardian or legal  
21 custodian of any minor child is responsible for exercising reasonable  
22 judgment in determining whether to prosecute any cause of action  
23 limited by subsection 1 or 2. If the parent, guardian or custodian  
24 fails to commence an action on behalf of that child within the  
25 prescribed period of limitations, the child may not bring an action  
26 based on the same alleged injury against any provider of health care  
27 upon the removal of his disability, except that in the case of:

28 (a) Brain damage or birth defect, the period of limitation is  
29 extended until the child attains 10 years of age.

30 (b) Sterility, the period of limitation is extended until 2 years  
31 after the child discovers the injury.

32 ~~[5. As used in this section, "provider of health care" means a~~  
33 ~~physician licensed under chapter 630 or 633 of NRS, a dentist,~~  
34 ~~registered nurse, dispensing optician, optometrist, registered~~  
35 ~~physical therapist, podiatric physician, licensed psychologist,~~  
36 ~~chiropractor, doctor of Oriental medicine, medical laboratory~~  
37 ~~director or technician, or a licensed hospital as the employer of any~~  
38 ~~such person.]~~

39 **Sec. 9.** Chapter 42 of NRS is hereby amended by adding  
40 thereto a new section to read as follows:

41 ***1. In an action for injury or death against a provider of***  
42 ***health care based upon professional negligence, if the defendant***  
43 ***so elects, the defendant may introduce evidence of any amount***  
44 ***payable as a benefit to the plaintiff as a result of the injury or***  
45 ***death pursuant to the United States Social Security Act, any state***



1 or federal income disability or worker's compensation act, any  
2 health, sickness or income-disability insurance, accident  
3 insurance that provides health benefits or income-disability  
4 coverage, and any contract or agreement of any group,  
5 organization, partnership or corporation to provide, pay for or  
6 reimburse the cost of medical, hospital, dental or other health care  
7 services. If the defendant elects to introduce such evidence, the  
8 plaintiff may introduce evidence of any amount that the plaintiff  
9 has paid or contributed to secure his right to any insurance  
10 benefits concerning which the defendant has introduced evidence.

11 2. A source of collateral benefits introduced pursuant to  
12 subsection 1 may not:

- 13 (a) Recover any amount against the plaintiff; or  
14 (b) Be subrogated to the rights of the plaintiff against a  
15 defendant.

16 3. In an action for injury or death against a provider of  
17 health care based upon professional negligence, a district court  
18 shall, at the request of either party, enter a judgment ordering that  
19 money damages or its equivalent for future damages of the  
20 judgment creditor be paid in whole or in part by periodic payments  
21 rather than by a lump-sum payment if the award equals or exceeds  
22 \$50,000 in future damages.

23 4. In entering a judgment ordering the payment of future  
24 damages by periodic payments pursuant to subsection 3, the court  
25 shall make a specific finding as to the dollar amount of periodic  
26 payments that will compensate the judgment creditor for such  
27 future damages. As a condition to authorizing periodic payments  
28 of future damages, the court shall require a judgment debtor who  
29 is not adequately insured to post security adequate to assure full  
30 payment of such damages awarded by the judgment. Upon  
31 termination of periodic payments of future damages, the court  
32 shall order the return of this security, or so much as remains, to  
33 the judgment debtor.

34 5. A judgment ordering the payment of future damages by  
35 periodic payments entered pursuant to subsection 3 must specify  
36 the recipient or recipients of the payments, the dollar amount of  
37 the payments, the interval between payments, and the number of  
38 payments or the period of time over which payments will be made.  
39 Such payments must only be subject to modification in the event of  
40 the death of the judgment creditor. Money damages awarded for  
41 loss of future earnings must not be reduced or payments  
42 terminated by reason of the death of the judgment creditor, but  
43 must be paid to persons to whom the judgment creditor owed a  
44 duty of support, as provided by law, immediately before his death.  
45 In such cases, the court that rendered the original judgment may,



1 upon petition of any party in interest, modify the judgment to  
2 award and apportion the unpaid future damages in accordance  
3 with this subsection.

4 6. If the court finds that the judgment debtor has exhibited a  
5 continuing pattern of failing to make the periodic payments as  
6 specified pursuant to subsection 5, the court shall find the  
7 judgment debtor in contempt of court and, in addition to the  
8 required periodic payments, shall order the judgment debtor to pay  
9 the judgment creditor all damages caused by the failure to make  
10 such periodic payments, including, but not limited to, court costs  
11 and attorney's fees.

12 7. Following the occurrence or expiration of all obligations  
13 specified in the periodic payment judgment, any obligation of the  
14 judgment debtor to make further payments ceases and any security  
15 given pursuant to subsection 4 reverts to the judgment debtor.

16 8. As used in this section:

17 (a) "Future damages" includes damages for future medical  
18 treatment, care or custody, loss of future earnings, loss of bodily  
19 function, or future pain and suffering of the judgment creditor.

20 (b) "Periodic payments" means the payment of money or  
21 delivery of other property to the judgment creditor at regular  
22 intervals.

23 (c) "Professional negligence" means a negligent act or  
24 omission to act by a provider of health care in the rendering of  
25 professional services, which act or omission is the proximate cause  
26 of a personal injury or wrongful death. The term does not include  
27 services that are outside the scope of services for which the  
28 provider of health care is licensed or services for which any  
29 restriction has been imposed by the applicable regulatory board or  
30 health care facility.

31 (d) "Provider of health care" means a physician licensed  
32 under chapter 630 or 633 of NRS, dentist, licensed nurse,  
33 dispensing optician, optometrist, registered physical therapist,  
34 podiatric physician, licensed psychologist, chiropractor, doctor of  
35 Oriental medicine, medical laboratory director or technician, or a  
36 licensed hospital and its employees.

37 **Sec. 10.** NRS 41A.031, 41A.041 and 42.020 are hereby  
38 repealed.

39 **Sec. 11.** If any provision of this act, or the application thereof  
40 to any person, thing or circumstance is held invalid, such invalidity  
41 shall not affect the provisions or application of this act which can be  
42 given effect without the invalid provision or application, and to this  
43 end the provisions of this act are declared to be severable.



1     **Sec. 12.** The amendatory provisions of sections 5, 6 and 8 of  
2 this act apply only to a cause of action that accrues on or after the  
3 effective date of this act.

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**TEXT OF REPEALED SECTIONS**

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**41A.031 Limitations on liability for noneconomic damages; exceptions.**

1. Except as otherwise provided in subsection 2 and except as further limited in subsection 3, in an action for damages for medical malpractice or dental malpractice, the noneconomic damages awarded to each plaintiff from each defendant must not exceed \$350,000.

2. In an action for damages for medical malpractice or dental malpractice, the limitation on noneconomic damages set forth in subsection 1 does not apply in the following circumstances and types of cases:

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

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

3. Except as otherwise provided in subsection 4, in an action for damages for medical malpractice or dental malpractice, in the circumstances and types of cases described in subsections 1 and 2, the noneconomic damages awarded to each plaintiff from each defendant must not exceed the amount of money remaining under the professional liability insurance policy limit covering the defendant after subtracting the economic damages awarded to that plaintiff. Irrespective of the number of plaintiffs in the action, in no event may any single defendant be liable to the plaintiffs in the aggregate in excess of the professional liability insurance policy limit covering that defendant.

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

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



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

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

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

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

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

**41A.041 Medical malpractice: Several liability for noneconomic damages.**

1. In an action for damages for medical malpractice, each defendant is liable for noneconomic damages severally only, and not jointly, to the plaintiff only for that portion of the judgment which represents the percentage of negligence attributable to the defendant.

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

**42.020 Actions for damages for medical malpractice: Reduction of damages by amount previously paid or reimbursed; payment of future economic damages.**

1. Except as otherwise provided in subsection 2, in any action for damages for medical malpractice, the amount of damages, if any, awarded in the action must be reduced by the amount of any prior payment made by or on behalf of the provider of health care against whom the action is brought to the injured person or to the claimant to meet reasonable expenses of medical care, other essential goods or services or reasonable living expenses.

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





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

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

(b) Subject to the provisions of subsections 5 and 6 and the discretion of the court, in periodic payments either by an annuity purchased to provide periodic payments or by other means if the defendant posts an adequate bond or other security to ensure full payment by periodic payments of the damages awarded by the judgment.

As used in this subsection, "future economic damages" includes damages for future medical treatment, care or custody, and loss of future earnings.

4. If the claimant receives periodic payments pursuant to paragraph (b) of subsection 3, the award must not be reduced to its present value. The amount of the periodic payments must be equal to the total amount of all future damages awarded by the trier of fact and approved by the court. The period for which the periodic payments must be made must be determined by the trier of fact and approved by the court. Before the entry of judgment, each party shall submit to the court a plan specifying the recipient of the payments, the amount of the payments and a schedule of periodic payments for the award. Upon receipt and review of the plans, the court shall specify in its judgment rendered in the action the recipient of the payments, the amount of the payments and a schedule of payments for the award.

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

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

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

6. If the defendant posts a bond or other security pursuant to paragraph (b) of subsection 3, upon termination of the payment of periodic payments of damages, the court shall order the return of the bond or other security, or as much as remains, to the defendant.

7. As used in this section:

(a) "Benefit from a collateral source" means any money, service or other benefit which is paid or provided or is reasonably likely to be paid or provided to a claimant for personal injury or wrongful death pursuant to:



(1) A state or federal act which provides benefits for sickness, disability, accidents, loss of income or workers' compensation;

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

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

(4) Any other publicly or privately funded program which provides such benefits.

(b) "Medical malpractice" has the meaning ascribed to it in NRS 41A.009.

