

ASSEMBLY BILL NO. 225—ASSEMBLYMAN MARVEL

FEBRUARY 15, 1999

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning tort actions. (BDR 3-18)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: 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; requiring that damages in certain actions be reduced by benefits received from a collateral source; limiting noneconomic damages in certain actions; providing for periodic payments of future damages in certain actions; limiting attorney's fees in certain actions; providing a period of limitation for commencing actions for product liability; 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.** Chapter 42 of NRS is hereby amended by adding thereto
- 2 the provisions set forth as sections 2, 3 and 4 of this act.
- 3 **Sec. 2. 1. *In an action for damages for personal injury or***
- 4 ***wrongful death in which the liability of the defendant is established or***
- 5 ***admitted, the court shall, before the entry of judgment, hold a separate***
- 6 ***hearing to determine if the plaintiff, as the result of the personal injury***
- 7 ***or wrongful death, has received a benefit from a collateral source. If the***
- 8 ***court determines that the plaintiff has received a benefit from a collateral***
- 9 ***source, the court shall reduce the amount of damages, if any, awarded in***
- 10 ***the action by the amount of the benefit.***
- 11 **2. *As used in this section and except as otherwise provided in***
- 12 ***subsection 3, "benefit from a collateral source" means any money,***
- 13 ***service or other benefit that is paid, provided or reimbursed, or is***
- 14 ***reasonably likely to be paid, provided or reimbursed, to the plaintiff for***
- 15 ***personal injury or wrongful death pursuant to:***
- 16 ***(a) A state or federal act;***
- 17 ***(b) A policy of insurance;***

1 (c) A contract or agreement of any group, organization, partnership
2 or corporation; or

3 (d) Any other publicly or privately funded program,
4 that provides benefits for sickness, physical injury, dental injury,
5 emotional injury, disability, accidents, loss of earnings or workers'
6 compensation.

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

10 (a) Is entitled to recover the benefit from the plaintiff; or

11 (b) Is subrogated to the rights of the plaintiff, if the right of
12 subrogation is exercised by serving a notice of lien on the plaintiff before
13 the settlement of or the entry of judgment in the action. The plaintiff
14 shall provide notice of the commencement of the action to each provider
15 of benefits that holds a lien provided by statute.

16 **Sec. 3. 1.** In an action for damages for personal injury or
17 wrongful death that arises on or after October 1, 1999, the trier of fact
18 shall itemize, in the verdict, the award of damages to reflect the monetary
19 amount intended for:

20 (a) Past expenses for medical treatment, care or custody;

21 (b) Future expenses for medical treatment, care or custody;

22 (c) Past loss of earnings;

23 (d) Future loss of earnings;

24 (e) Noneconomic damages; and

25 (f) Other damages.

26 2. Except as otherwise provided in this section and NRS 41.035, in
27 an action for damages for personal injury or wrongful death, a judgment
28 for noneconomic damages must not exceed \$250,000.

29 3. If the action is tried before a jury, the court or a party to the action
30 shall not instruct or otherwise advise the jury concerning the limitation
31 on noneconomic damages prescribed by subsection 2.

32 4. The limitation on noneconomic damages prescribed by subsection
33 2 does not apply to a cause of action arising out of:

34 (a) Willful or reckless misconduct; or

35 (b) An act or omission constituting a felony.

36 5. As used in this section, "noneconomic damages" means damages
37 for pain and suffering, emotional distress and loss of consortium or
38 companionship. The term does not include exemplary or punitive
39 damages.

40 **Sec. 4. 1.** If the trier of fact in an action for damages for personal
41 injury or wrongful death awards the plaintiff future economic damages,
42 the defendant shall pay the award of future economic damages, at the
43 election of the plaintiff:

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

3 (b) In an annuity or other appropriate financial instrument purchased
4 by the defendant to provide periodic payments to the plaintiff. The court
5 shall not reduce an award of future economic damages to its present
6 value if the plaintiff elects to receive the award pursuant to this
7 paragraph.

8 2. If the plaintiff elects to receive an award of future economic
9 damages in an annuity or other appropriate financial instrument that
10 provides periodic payments:

11 (a) The plaintiff shall select the provider of the annuity or other
12 appropriate financial instrument.

13 (b) The court shall determine the duration of the period during which
14 the periodic payments are to be received.

15 (c) Each party, before the entry of judgment, shall submit to the court
16 a plan specifying the person who is to be the recipient of the periodic
17 payments, the schedule for the periodic payments and the amount of
18 each periodic payment.

19 (d) After reviewing the plans, the court shall specify in its judgment:

20 (1) The provider of the annuity or other appropriate financial
21 instrument;

22 (2) The duration of the period during which the periodic payments
23 are to be received;

24 (3) The person who is to be the recipient of the periodic payments;

25 (4) The schedule for the periodic payments; and

26 (5) The amount of each periodic payment.

27 (e) The court shall ensure that the total amount of the periodic
28 payments is equal to the total amount of the future economic damages
29 awarded by the trier of fact and approved by the court.

30 (f) The defendant or the defendant's insurer shall fund the annuity or
31 other appropriate financial instrument in full.

32 (g) Upon purchase of the annuity or other appropriate financial
33 instrument by the defendant or the defendant's insurer, the plaintiff
34 shall:

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

37 (2) Release forever the defendant and the defendant's insurer, if
38 any, from any obligation to make periodic payments pursuant to the
39 award.

40 3. If the plaintiff dies before the final periodic payment of the award
41 is made:

42 (a) The unpaid balance of the award for loss of future earnings
43 reverts to the estate of the plaintiff; and

1 *(b) The unpaid balance of the award for future expenses for medical*
2 *treatment, care or custody reverts to the defendant or the defendant's*
3 *insurer.*

4 *4. As used in this section, "future economic damages" includes*
5 *damages for loss of future earnings and for future expenses for medical*
6 *treatment, care or custody.*

7 **Sec. 5.** NRS 42.020 is hereby amended to read as follows:

8 42.020 1. ~~[Except as otherwise provided in subsection 2, in any]~~ In
9 *an* action for damages for *personal injury or wrongful death caused by*
10 medical malpractice, the *court shall, in addition to any reduction of*
11 *damages required by section 2 of this act, reduce the* amount of damages,
12 if any, awarded in the action ~~[must be reduced]~~ by the amount of any prior
13 payment made by or on behalf of the ~~[provider of health care against~~
14 ~~whom the action is brought]~~ *defendant* to the injured person or to the
15 claimant to meet reasonable expenses ~~[of]~~ *for* medical *treatment, care [.]*
16 *or custody, reasonable expenses for* other essential goods or services , or
17 reasonable living expenses.

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

31 ~~—3.— If future economic damages are awarded in an action for medical~~
32 ~~malpractice, the award must be paid, at the election of the claimant:~~

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

35 ~~—(b) Subject to the provisions of subsection 5, by an annuity purchased to~~
36 ~~provide periodic payments.~~

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

39 ~~—4.— If the claimant elects to receive periodic payments pursuant to~~
40 ~~paragraph (b) of subsection 3, the award must not be reduced to its present~~
41 ~~value. The amount of the periodic payments must be equal to the total~~
42 ~~amount of all future damages awarded by the trier of fact and approved by~~
43 ~~the court. The period for which the periodic payments must be made must~~

1 be determined by the trier of fact and approved by the court. Before the
2 entry of judgment, each party shall submit to the court a plan specifying
3 the recipient of the payments, the amount of the payments and a schedule
4 of periodic payments for the award. Upon receipt and review of the plans,
5 the court shall specify in its judgment rendered in the action the recipient
6 of the payments, the amount of the payments and a schedule of payments
7 for the award.

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

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

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

15 ~~—6.† As used in this section ‡:~~

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

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

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

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

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

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

30 **Sec. 6.** Chapter 7 of NRS is hereby amended by adding thereto a new
31 section to read as follows:

32 ***1. An attorney shall not contract for or collect a fee contingent on***
33 ***the amount of recovery for representing a person seeking damages in***
34 ***connection with an action in tort in excess of the following limits:***

35 ***(a) Forty percent of the first \$50,000 recovered.***

36 ***(b) Thirty-three and one-third percent of the next \$50,000 recovered.***

37 ***(c) Twenty-five percent of the next \$500,000 recovered.***

38 ***(d) Fifteen percent of the amount of recovery that exceeds \$600,000.***

39 ***2. The limitations set forth in subsection 1 apply to all forms of***
40 ***recovery, including, but not limited to, settlement, arbitration or***
41 ***judgment.***

1 **3. For the purposes of this section, “recovered” means the net sum**
2 **recovered by the plaintiff after deducting any disbursements or costs**
3 **incurred in connection with the prosecution or settlement of the claim.**
4 **Costs of medical care incurred by the plaintiff and general and**
5 **administrative expenses incurred by the office of the attorney are not**
6 **deductible disbursements or costs.**

7 **Sec. 7.** Chapter 11 of NRS is hereby amended by adding thereto a
8 new section to read as follows:

9 **1. An action for product liability must be commenced:**

10 **(a) Within 6 years after the date of the initial purchase of the product;**
11 **or**

12 **(b) Within 10 years after the date of the manufacture of the product,**
13 **whichever is later.**

14 **2. As used in this section, “product liability” means liability for**
15 **damages because of personal injury, death, emotional harm,**
16 **consequential economic damage or damage to property, including**
17 **damages resulting from the loss of use of property, arising out of the**
18 **manufacture, design, importation, distribution, packaging, labeling,**
19 **lease or sale of a product.**

20 **Sec. 8.** NRS 11.190 is hereby amended to read as follows:

21 11.190 Except as otherwise provided in NRS 125B.050 and 217.007,
22 **and section 7 of this act**, actions other than those for the recovery of real
23 property, unless further limited by specific statute, may only be
24 commenced as follows:

25 1. Within 6 years:

26 (a) An action upon a judgment or decree of any court of the United
27 States, or of any state or territory within the United States, or the renewal
28 thereof.

29 (b) An action upon a contract, obligation or liability founded upon an
30 instrument in writing, except those mentioned in the preceding sections of
31 this chapter.

32 2. Within 4 years:

33 (a) An action on an open account for goods, wares and merchandise
34 sold and delivered.

35 (b) An action for any article charged on an account in a store.

36 (c) An action upon a contract, obligation or liability not founded upon
37 an instrument in writing.

38 3. Within 3 years:

39 (a) An action upon a liability created by statute, other than a penalty or
40 forfeiture.

1 (b) An action for waste or trespass of real property, but when the waste
2 or trespass is committed by means of underground works upon any mining
3 claim, the cause of action shall be deemed to accrue upon the discovery by
4 the aggrieved party of the facts constituting the waste or trespass.

5 (c) An action for taking, detaining or injuring personal property,
6 including actions for specific recovery thereof, but in all cases where the
7 subject of the action is a domestic animal usually included in the term
8 "livestock," which has a recorded mark or brand upon it at the time of its
9 loss, and which strays or is stolen from the true owner without his fault, the
10 statute does not begin to run against an action for the recovery of the
11 animal until the owner has actual knowledge of such facts as would put a
12 reasonable person upon inquiry as to the possession thereof by the
13 defendant.

14 (d) Except as otherwise provided in NRS 112.230, an action for relief
15 on the ground of fraud or mistake, but the cause of action in such a case
16 shall be deemed to accrue upon the discovery by the aggrieved party of the
17 facts constituting the fraud or mistake.

18 (e) An action pursuant to NRS 40.750 for damages sustained by a
19 financial institution because of its reliance on certain fraudulent conduct of
20 a borrower, but the cause of action in such a case shall be deemed to
21 accrue upon the discovery by the financial institution of the facts
22 constituting the concealment or false statement.

23 4. Within 2 years:

24 (a) An action against a sheriff, coroner or constable upon liability
25 incurred by acting in his official capacity and in virtue of his office, or by
26 the omission of an official duty, including the nonpayment of money
27 collected upon an execution.

28 (b) An action upon a statute for a penalty or forfeiture, where the action
29 is given to a person or the state, or both, except when the statute imposing
30 it prescribes a different limitation.

31 (c) An action for libel, slander, assault, battery, false imprisonment or
32 seduction.

33 (d) An action against a sheriff or other officer for the escape of a
34 prisoner arrested or imprisoned on civil process.

35 (e) Except as otherwise provided in NRS 11.215, an action to recover
36 damages for injuries to a person or for the death of a person caused by the
37 wrongful act or neglect of another. The provisions of this paragraph
38 relating to an action to recover damages for injuries to a person apply only
39 to causes of action which accrue after March 20, 1951.

40 5. Within 1 year:

- 1 (a) An action against an officer, or officer de facto , to recover goods,
2 wares, merchandise or other property seized by the officer in his official
3 capacity ~~H~~ as tax collector, or to recover the price or value of goods,
4 wares, merchandise or other personal property so seized, or for damages
5 for the seizure, detention or sale of, or injury to, goods, wares,
6 merchandise or other personal property seized, or for damages done to any
7 person or property in making the seizure.
8 (b) An action against an officer, or officer de facto , for money paid to
9 the officer under protest, or seized by the officer in his official capacity ~~H~~
10 as a collector of taxes, and which, it is claimed, ought to be refunded.

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