

ASSEMBLY BILL NO. 17—ASSEMBLYMAN MARVEL

PREFILED JANUARY 11, 2001

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning tort actions. (BDR 3-29)

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; requiring that damages awarded in certain actions be reduced by the amount of any benefit received from a collateral source; limiting the amount of noneconomic damages that may be awarded in certain actions; providing for periodic payments of future economic damages in certain actions; limiting attorney's fees in certain actions; extending the period of limitation for commencing an action 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:

Section 1. Chapter 42 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. 1. *In an action for damages for personal injury or wrongful death in which the liability of the defendant is established or admitted, the court shall, before the entry of judgment, hold a separate hearing to determine if the plaintiff, as the result of the personal injury or wrongful death, has received a benefit from a collateral source. If the court determines that the plaintiff has received a benefit from a collateral source, the court shall reduce the amount of damages, if any, awarded in the action by the amount of the benefit.*

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

- (a) A state or federal act;*
- (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, 2001, 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 set forth in subsection 2.

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

34 (a) Willful or reckless misconduct; or

35 (b) An act or omission which constitutes 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:**

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

46 (b) In an annuity or other appropriate financial instrument purchased
47 by the defendant to provide periodic payments to the plaintiff. The court
48 shall not reduce an award of future economic damages to its present

1 value if the plaintiff elects to receive the award pursuant to this
2 paragraph.

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

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

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

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

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

15 (1) The provider of the annuity or other appropriate financial
16 instrument;

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

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

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

21 (5) The amount of each periodic payment.

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

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

27 (g) Upon purchase of the annuity or other appropriate financial
28 instrument by the defendant or the defendant's insurer, the plaintiff
29 shall:

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

32 (2) Release forever the defendant and the defendant's insurer, if
33 any, from any obligation to make periodic payments pursuant to the
34 award.

35 3. If the plaintiff dies before the final periodic payment of the award
36 is made:

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

39 (b) The unpaid balance of the award for future expenses for medical
40 treatment, care or custody reverts to the defendant or the defendant's
41 insurer.

42 4. As used in this section, "future economic damages" includes,
43 without limitation, damages for loss of future earnings and for future
44 expenses for medical treatment, care or custody.

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

46 42.020 1. ~~[Except as otherwise provided in subsection 2, in any]~~ In
47 an action for damages for *personal injury or wrongful death* caused by
48 medical malpractice, the *court shall, in addition to any reduction in the*
49 *amount of damages required pursuant to section 2 of this act, reduce the*

1 amount of damages, if any, awarded in the action ~~[must be reduced]~~ by the
2 amount of any prior payment made by or on behalf of the ~~[provider of~~
3 ~~health care against whom the action is brought]~~ **defendant** to the injured
4 person or to the claimant to meet reasonable expenses ~~[of]~~ **for** medical
5 **treatment**, care ~~[]~~ **or custody, reasonable expenses for** other essential
6 goods or services, or reasonable living expenses.

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

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

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

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

26 ~~As used in this subsection, “future economic damages” includes damages~~
27 ~~for future medical treatment, care or custody, and loss of future earnings.~~

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

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

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

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

47 ~~—6.] 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” , “medical malpractice” has the meaning ascribed to it in NRS 41A.009.~~

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

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

(a) Forty percent of the first \$50,000 recovered;

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

(c) Twenty-five percent of the next \$500,000 recovered; and

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

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

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

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

1. An action for product liability must be commenced:

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

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

2. As used in this section, “product liability” means liability for damages because of personal injury, death, emotional harm, consequential economic damage or damage to property, including, without limitation, damages resulting from the loss of the use of property, caused by the manufacture, design, importation, distribution, packaging, labeling, lease or sale of a product.

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

11.190 Except as otherwise provided in NRS 125B.050 and 217.007, **and section 7 of this act**, actions other than those for the recovery of real

property, unless further limited by specific statute, may only be commenced as follows:

1. Within 6 years:

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

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

2. Within 4 years:

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

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

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

3. Within 3 years:

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

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

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

(d) Except as otherwise provided in NRS 112.230 and 166.170, an action for relief on the ground of fraud or mistake, but the cause of action in such a case shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the fraud or mistake.

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

4. Within 2 years:

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

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

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

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

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

10 5. Within 1 year:

11 (a) An action against an officer, or officer de facto , to recover goods,
12 wares, merchandise or other property seized by the officer in his official
13 capacity ~~§~~ as tax collector, or to recover the price or value of goods,
14 wares, merchandise or other personal property so seized, or for damages
15 for the seizure, detention or sale of, or injury to, goods, wares, merchandise
16 or other personal property seized, or for damages done to any person or
17 property in making the seizure.

18 (b) An action against an officer, or officer de facto , for money paid to
19 the officer under protest, or seized by the officer in his official capacity ~~§~~
20 as a collector of taxes, and which, it is claimed, ought to be refunded.

21 **Sec. 9.** 1. Sections 2 to 6, inclusive, of this act apply only to an
22 action that is filed on or after October 1, 2001.

23 2. Sections 7 and 8 of this act apply only to a cause of action that
24 accrues on or after October 1, 2001.

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