

ASSEMBLY BILL NO. 9—ASSEMBLYMAN MARVEL

PREFILED JANUARY 27, 2003

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning tort actions.  
(BDR 3-134)

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 the fees of attorney in certain actions; extending the period of limitations for commencing an action for product liability; and providing other matters properly relating thereto.

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

9     2. In an action for damages for medical malpractice or dental  
10 malpractice ~~§~~ *where the alleged malpractice occurred on or after*  
11 *October 1, 2002, but before October 1, 2003*, the limitation on  
12 noneconomic damages set forth in subsection 1 does not apply in the  
13 following circumstances and types of cases:

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



\* A B 9 \*

1 (b) A case in which, following return of a verdict by the jury or  
2 a finding of damages in a bench trial, the court determines, by clear  
3 and convincing evidence admitted at trial, that an award in excess of  
4 \$350,000 for noneconomic damages is justified because of  
5 exceptional circumstances.

6 3. Except as otherwise provided in subsection 4, in an action  
7 for damages for medical malpractice or dental malpractice ~~§~~ *where*  
8 *the alleged malpractice occurred on or after October 1, 2002, but*  
9 *before October 1, 2003*, in the circumstances and types of cases  
10 described in subsections 1 and 2, the noneconomic damages  
11 awarded to each plaintiff from each defendant must not exceed the  
12 amount of money remaining under the professional liability  
13 insurance policy limit covering the defendant after subtracting the  
14 economic damages awarded to that plaintiff. Irrespective of the  
15 number of plaintiffs in the action, in no event may any single  
16 defendant be liable to the plaintiffs in the aggregate in excess of the  
17 professional liability insurance policy limit covering that defendant.

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

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

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

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

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

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

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

35 **Sec. 2.** Chapter 42 of NRS is hereby amended by adding  
36 thereto the provisions set forth as sections 3, 4 and 5 of this act.

37 **Sec. 3. 1. *In an action for damages for personal injury or***  
38 ***wrongful death in which the liability of the defendant is***  
39 ***established or admitted, the court shall, before the entry of***  
40 ***judgment, hold a separate hearing to determine if the plaintiff, as***  
41 ***the result of the personal injury or wrongful death, has received a***  
42 ***benefit from a collateral source. If the court determines that the***  
43 ***plaintiff has received a benefit from a collateral source, the court***  
44 ***shall reduce the amount of damages, if any, awarded in the action***  
45 ***by the amount of the benefit.***



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

6       (a) *A state or federal act;*

7       (b) *A policy of insurance;*

8       (c) *A contract or agreement of any group, organization,*  
9 *partnership or corporation; or*

10       (d) *Any other publicly or privately funded program,*  
11 *that provides benefits for sickness, physical injury, dental injury,*  
12 *emotional injury, disability, accidents, loss of earnings or workers'*  
13 *compensation.*

14       3. *A benefit from a collateral source does not include a*  
15 *benefit that is received by the plaintiff pursuant to subsection 2 to*  
16 *the extent that the provider of the benefit:*

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

18       (b) *Is subrogated to the rights of the plaintiff, if the right of*  
19 *subrogation is exercised by serving a notice of lien on the plaintiff*  
20 *before the settlement of or the entry of judgment in the action. The*  
21 *plaintiff shall provide notice of the commencement of the action to*  
22 *each provider of benefits that holds a lien provided by statute.*

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

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

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

28       (c) *Past loss of earnings;*

29       (d) *Future loss of earnings;*

30       (e) *Noneconomic damages; and*

31       (f) *Other damages.*

32       2. *Except as otherwise provided in this section and NRS*  
33 *41.035 and 41.503, in an action for damages for personal injury or*  
34 *wrongful death, a judgment for noneconomic damages must not*  
35 *exceed \$250,000.*

36       3. *If the action is tried before a jury, the court or a party to*  
37 *the action shall not instruct or otherwise advise the jury*  
38 *concerning the limitation on noneconomic damages set forth in*  
39 *subsection 2.*

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

42       (a) *Willful or reckless misconduct; or*

43       (b) *An act or omission that constitutes a felony.*



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

4       6. *As used in this section, "noneconomic damages" includes*  
5 *damages to compensate for pain, suffering, inconvenience,*  
6 *physical impairment, disfigurement and other nonpecuniary*  
7 *damages.*

8       **Sec. 5. 1.** *If the trier of fact in an action for damages for*  
9 *personal injury or wrongful death awards the plaintiff future*  
10 *economic damages, the defendant shall pay the award of future*  
11 *economic damages, at the election of the plaintiff:*

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

15       (b) *In an annuity or other appropriate financial instrument*  
16 *purchased by the defendant to provide periodic payments to the*  
17 *plaintiff. The court shall not reduce an award of future economic*  
18 *damages to its present value if the plaintiff elects to receive the*  
19 *award pursuant to this paragraph.*

20       2. *If the plaintiff elects to receive an award of future*  
21 *economic damages in an annuity or other appropriate financial*  
22 *instrument that provides periodic payments:*

23       (a) *The plaintiff shall select the provider of the annuity or*  
24 *other appropriate financial instrument.*

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

27       (c) *Each party, before the entry of judgment, shall submit to*  
28 *the court a plan specifying the person who is to be the recipient of*  
29 *the periodic payments, the schedule for the periodic payments and*  
30 *the amount of each periodic payment.*

31       (d) *After reviewing the plans, the court shall specify in its*  
32 *judgment:*

33       (1) *The provider of the annuity or other appropriate*  
34 *financial instrument;*

35       (2) *The duration of the period during which the periodic*  
36 *payments are to be received;*

37       (3) *The person who is to be the recipient of the periodic*  
38 *payments;*

39       (4) *The schedule for the periodic payments; and*

40       (5) *The amount of each periodic payment.*

41       (e) *The court shall ensure that the total amount of the periodic*  
42 *payments is equal to the total amount of the future economic*  
43 *damages awarded by the trier of fact and approved by the court.*

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



1 (g) Upon purchase of the annuity or other appropriate  
2 financial instrument by the defendant or the defendant's insurer,  
3 the plaintiff shall:

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

6 (2) Release forever the defendant and the defendant's  
7 insurer, if any, from any obligation to make periodic payments  
8 pursuant to the award.

9 3. If the plaintiff dies before the final periodic payment of the  
10 award is made:

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

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

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

19 **Sec. 6.** NRS 42.020 is hereby amended to read as follows:

20 42.020 1. ~~[Except as otherwise provided in subsection 2, in~~  
21 ~~any]~~ In an action for damages for *personal injury or wrongful*  
22 *death caused by* medical malpractice, the *court shall, in addition to*  
23 *any reduction in the amount of damages required pursuant to*  
24 *section 3 of this act, reduce the* amount of damages, if any, awarded  
25 in the ~~action [must be reduced]~~ by the amount of any prior payment  
26 made by or on behalf of the ~~[provider of health care against whom~~  
27 ~~the action is brought]~~ *defendant* to the injured person or to the  
28 claimant to meet reasonable expenses ~~[of]~~ *for* medical *treatment,*  
29 *care [;]* or custody, reasonable expenses for other essential goods or  
30 services, or reasonable living expenses.

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



1 ~~—3. If future economic damages are awarded in an action for~~  
2 ~~medical malpractice, the court may, at the request of the claimant,~~  
3 ~~order the award to be paid:~~  
4 ~~—(a) In a lump sum which has been reduced to its present value as~~  
5 ~~determined by the trier of fact and approved by the court; or~~  
6 ~~—(b) Subject to the provisions of subsections 5 and 6 and the~~  
7 ~~discretion of the court, in periodic payments either by an annuity~~  
8 ~~purchased to provide periodic payments or by other means if the~~  
9 ~~defendant posts an adequate bond or other security to ensure full~~  
10 ~~payment by periodic payments of the damages awarded by the~~  
11 ~~judgment.~~  
12 ~~As used in this subsection, “future economic damages” includes~~  
13 ~~damages for future medical treatment, care or custody, and loss of~~  
14 ~~future earnings.~~  
15 ~~—4. If the claimant receives periodic payments pursuant to~~  
16 ~~paragraph (b) of subsection 3, the award must not be reduced to its~~  
17 ~~present value. The amount of the periodic payments must be equal~~  
18 ~~to the total amount of all future damages awarded by the trier of fact~~  
19 ~~and approved by the court. The period for which the periodic~~  
20 ~~payments must be made must be determined by the trier of fact and~~  
21 ~~approved by the court. Before the entry of judgment, each party~~  
22 ~~shall submit to the court a plan specifying the recipient of the~~  
23 ~~payments, the amount of the payments and a schedule of periodic~~  
24 ~~payments for the award. Upon receipt and review of the plans, the~~  
25 ~~court shall specify in its judgment rendered in the action the~~  
26 ~~recipient of the payments, the amount of the payments and a~~  
27 ~~schedule of payments for the award.~~  
28 ~~—5. If an annuity is purchased pursuant to paragraph (b) of~~  
29 ~~subsection 3, the claimant shall select the provider of the annuity.~~  
30 ~~Upon purchase of the annuity, the claimant shall:~~  
31 ~~—(a) Execute a satisfaction of judgment or a stipulation for~~  
32 ~~dismissal of the claim with prejudice; and~~  
33 ~~—(b) Release forever the defendant and his insurer, if any, from~~  
34 ~~any obligation to make periodic payments pursuant to the award.~~  
35 ~~—6. If the defendant posts a bond or other security pursuant to~~  
36 ~~paragraph (b) of subsection 3, upon termination of the payment of~~  
37 ~~periodic payments of damages, the court shall order the return of the~~  
38 ~~bond or other security, or as much as remains, to the defendant.~~  
39 ~~—7.] As used in this section [:~~  
40 ~~—(a) “Benefit from a collateral source” means any money, service~~  
41 ~~or other benefit which is paid or provided or is reasonably likely to~~  
42 ~~be paid or provided to a claimant for personal injury or wrongful~~  
43 ~~death pursuant to:~~



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

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

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

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

11 ~~— (b) “Medical”~~, “*medical*” malpractice” has the meaning ascribed  
12 to it in NRS 41A.009.

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

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

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

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

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

22 *(d) Fifteen percent of the amount of recovery that exceeds*  
23 *\$600,000.*

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

27 *3. This section applies only to an action that is filed on or*  
28 *after October 1, 2003.*

29 *4. For the purposes of this section, “amount recovered”*  
30 *means the net sum recovered by the plaintiff after deducting any*  
31 *disbursements or costs incurred in connection with the action.*  
32 *Costs related to medical expenses incurred by the plaintiff and*  
33 *general and administrative expenses incurred by the attorney may*  
34 *not be deducted as disbursements or costs.*

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

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

38 *(a) Not later than 6 years after the date of the initial purchase*  
39 *of the product; or*

40 *(b) Not later than 10 years after the date of the manufacture of*  
41 *the product,*  
42 *whichever is later.*

43 *2. This section applies only to a cause of action that is filed as*  
44 *the result of an act, error or omission which allegedly occurred on*





1 *or after October 1, 2003 and which forms the basis for an action*  
2 *for product liability.*

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

9 **Sec. 9.** NRS 11.190 is hereby amended to read as follows:

10 11.190 Except as otherwise provided in NRS 125B.050 and  
11 217.007, *and section 8 of this act*, actions other than those for the  
12 recovery of real property, unless further limited by specific statute,  
13 may only be commenced as follows:

14 1. Within 6 years:

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

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

21 2. Within 4 years:

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

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

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

27 3. Within 3 years:

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

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

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

44 (d) Except as otherwise provided in NRS 112.230 and 166.170,  
45 an action for relief on the ground of fraud or mistake, but the cause





1 of action in such a case shall be deemed to accrue upon the  
2 discovery by the aggrieved party of the facts constituting the fraud  
3 or mistake.

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

9 4. Within 2 years:

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


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


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

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

21 (e) Except as otherwise provided in NRS 11.215, an action to  
22 recover damages for injuries to a person or for the death of a person  
23 caused by the wrongful act or neglect of another. The provisions of  
24 this paragraph relating to an action to recover damages for injuries  
25 to a person apply only to causes of action which accrue after March  
26 20, 1951.

27 5. Within 1 year:

28 (a) An action against an officer, or officer de facto to recover  
29 goods, wares, merchandise or other property seized by the officer in  
30 his official capacity  as tax collector, or to recover the price or  
31 value of goods, wares, merchandise or other personal property so  
32 seized, or for damages for the seizure, detention or sale of, or injury  
33 to, goods, wares, merchandise or other personal property seized, or  
34 for damages done to any person or property in making the seizure.

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

39 **Sec. 10.** The amendatory provisions of sections 3, 5 and 6 of  
40 this act apply only to an action that is filed on or after October 1,  
41 2003.

