

ASSEMBLY BILL NO. 347—ASSEMBLYMEN MARVEL,
HARDY, MABEY AND GANSERT

MARCH 15, 2007

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning tort actions.
(BDR 3-707)

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 for damages for personal injury or wrongful death be reduced in certain circumstances; 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 attorneys in certain actions; extending the period of limitations for commencing an action for product liability; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law provides that the noneconomic damages awarded in an action for
2 injury or wrongful death against a provider of health care based upon professional
3 negligence must not exceed \$350,000. (NRS 41A.035) **Section 1** of this bill
4 provides that noneconomic damages awarded in an action for injury or wrongful
5 death based upon medical or dental malpractice must not exceed \$350,000. **Section**
6 **5** of this bill limits judgments for noneconomic damages in certain personal injury
7 and wrongful death actions to \$250,000. **Section 5** also requires the trier of fact in
8 an action for personal injury or wrongful death to itemize, in the verdict, the award
9 of damages for certain types of damages.

10 Existing law allows the parties in an action for damages for personal injury or
11 death against a provider of health care based upon professional negligence to
12 introduce evidence relating to certain sources of collateral benefits payable to the
13 claimant. Existing law further provides that the source of collateral benefits in such
14 a case may not recover any amount against the plaintiff or be subrogated to the
15 rights of the plaintiff against the defendant. (NRS 42.021) **Section 3** of this bill
16 requires a court in an action for damages for personal injury or wrongful death to
17 determine if a plaintiff has received benefits from certain collateral sources and, if



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the court so finds, the court must reduce the amount of any damages awarded by the amount of the collateral benefits received. **Section 6** of this bill allows the parties to introduce certain evidence relating to collateral sources. (NRS 42.021)

Section 4 of this bill provides that in an action for damages for personal injury or wrongful death, the court is required to reduce the amount of damages awarded by the amount of any prior payment made by the defendant to the injured person or the claimant to meet reasonable expenses for medical treatment, care or custody, reasonable expenses for other essential goods or services or reasonable living expenses.

Existing law limits the fees which an attorney may contract for or collect when the fees are contingent on the amount of recovery in an action for injury or death against a provider of health care based upon professional negligence. (NRS 7.095)

Section 7 of this bill extends such limitations on the fees which an attorney may contract for or collect when the fees are contingent on the amount of recovery to any action in tort.

Existing law provides for limitations on the filing of certain actions. (Chapter 11 of NRS) **Section 8** of this bill provides that an action for products liability must be commenced not later than 6 years after the date of the initial purchase of the product or not later than 10 years after the date of manufacture of the product, whichever is later.

Sections 6 and 7 of this bill were proposed by an initiative petition and approved by the voters at the 2004 General Election and therefore are not subject to legislative amendment or repeal until after November 23, 2007. Thus, **section 11** of this bill provides that the bill becomes effective on November 24, 2007, the first day that those statutes may be amended.

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

Section 1. NRS 41A.035 is hereby amended to read as follows:

41A.035 In an action for injury or death against a provider of health care based upon professional negligence, *medical malpractice or dental malpractice*, the injured plaintiff may recover noneconomic damages, but the amount of noneconomic damages awarded in such an action must not exceed \$350,000.

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

Sec. 3. 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, "benefit from a collateral source" means any money, service or other benefit that is paid, provided or*



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1 *reimbursed, or is reasonably likely to be paid, provided or*
2 *reimbursed, to the plaintiff for the personal injury or wrongful*
3 *death pursuant to:*

4 (a) *A state or federal act;*

5 (b) *A policy of insurance;*

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

8 (d) *Any other publicly or privately funded program,*

9 *↳ that provides benefits for sickness, physical injury, dental*
10 *injury, emotional injury, disability, accidents, loss of earnings or*
11 *workers' compensation.*

12 **Sec. 4.** *In an action for damages for personal injury or*
13 *wrongful death, the court shall, in addition to any reduction in the*
14 *amount of damages required pursuant to section 3 of this act,*
15 *reduce the amount of damages, if any, awarded in the action by*
16 *the amount of any prior payment made by or on behalf of the*
17 *defendant to the injured person or to the claimant to meet*
18 *reasonable expenses for medical treatment, care or custody,*
19 *reasonable expenses for other essential goods or services*
20 *or reasonable living expenses.*

21 **Sec. 5. 1.** *In an action for damages for personal injury or*
22 *wrongful death, the trier of fact shall itemize, in the verdict, the*
23 *award of damages to reflect the monetary amount intended for:*

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

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

26 (c) *Past loss of earnings;*

27 (d) *Future loss of earnings;*

28 (e) *Noneconomic damages; and*

29 (f) *Other damages.*

30 2. *Except as otherwise provided in this section and NRS*
31 *41.035, 41.503 and 41A.035, in an action for damages for*
32 *personal injury or wrongful death, a judgment for noneconomic*
33 *damages must not exceed \$250,000.*

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

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

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

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

41 5. *The provisions of this section do not apply to an act, error*
42 *or omission occurring on or after November 24, 2007, that*
43 *allegedly caused the personal injury or wrongful death.*

44 6. *As used in this section, "noneconomic damages" includes,*
45 *without limitation, damages to compensate for pain, suffering,*



1 *inconvenience, physical impairment, disfigurement and other*
2 *nonpecuniary damages.*

3 **Sec. 6.** NRS 42.021 is hereby amended to read as follows:

4 42.021 1. In an action for *personal* injury or *wrongful* death ,
5 ~~[against a provider of health care based upon professional~~
6 ~~negligence.]~~ if the defendant so elects, the defendant may introduce
7 evidence of any amount payable as a benefit to the plaintiff as a
8 result of the injury or death pursuant to ~~[the United States Social~~
9 ~~Security Act, any] :~~

10 (a) A state or federal ~~[income disability or worker's~~
11 ~~compensation act, any health, sickness or income disability~~
12 ~~insurance, accident insurance that provides health benefits or~~
13 ~~income disability coverage, and any] act;~~

14 (b) *A policy of insurance;*

15 (c) A contract or agreement of any group, organization,
16 partnership or corporation ~~[to provide, pay for or reimburse the cost~~
17 ~~of medical, hospital, dental or other health care services.] ; or~~

18 (d) *Any other publicly or privately funded program,*
19 *↳ that provides benefits for sickness, physical injury, dental*
20 *injury, emotional injury, disability, accidents, loss of earnings or*
21 *workers' compensation.*

22 2. If the defendant elects to introduce ~~[such evidence,]~~
23 *evidence pursuant to subsection 1,* the plaintiff may introduce
24 evidence of any amount that the plaintiff has paid or contributed to
25 secure his right to any insurance benefits concerning which the
26 defendant has introduced evidence.

27 ~~[2.]~~ 3. A source of collateral benefits introduced pursuant to
28 subsection 1 may not:

29 (a) Recover any amount against the plaintiff; or

30 (b) Be subrogated to the rights of the plaintiff against a
31 defendant.

32 ~~[3.]~~ 4. In an action for *personal* injury or *wrongful* death ,
33 ~~[against a provider of health care based upon professional~~
34 ~~negligence.]~~ a district court shall, at the request of either party, enter
35 a judgment ordering that money damages or its equivalent for future
36 damages of the judgment creditor be paid in whole or in part by
37 periodic payments rather than by a lump-sum payment if the award
38 equals or exceeds \$50,000 in future damages.

39 ~~[4.]~~ 5. In entering a judgment ordering the payment of future
40 damages by periodic payments pursuant to subsection ~~[3.]~~ 4, the
41 court shall make a specific finding as to the dollar amount of
42 periodic payments that will compensate the judgment creditor for
43 such future damages. As a condition to authorizing periodic
44 payments of future damages, the court shall require a judgment
45 debtor who is not adequately insured to post security adequate to



1 assure full payment of such damages awarded by the judgment.
2 Upon termination of periodic payments of future damages, the court
3 shall order the return of this security, or so much as remains, to the
4 judgment debtor.

5 ~~[5-]~~ 6. A judgment ordering the payment of future damages by
6 periodic payments entered pursuant to subsection ~~[3]~~ 4 must specify
7 the recipient or recipients of the payments, the dollar amount of the
8 payments, the interval between payments, and the number of
9 payments or the period of time over which payments will be made.
10 Such payments must only be subject to modification in the event of
11 the death of the judgment creditor. Money damages awarded for loss
12 of future earnings must not be reduced or payments terminated by
13 reason of the death of the judgment creditor, but must be paid to
14 persons to whom the judgment creditor owed a duty of support, as
15 provided by law, immediately before his death. In such cases, the
16 court that rendered the original judgment may, upon petition of any
17 party in interest, modify the judgment to award and apportion the
18 unpaid future damages in accordance with this subsection.

19 ~~[6-]~~ 7. If the court finds that the judgment debtor has exhibited
20 a continuing pattern of failing to make the periodic payments as
21 specified pursuant to subsection ~~[5-]~~ 6, the court shall find the
22 judgment debtor in contempt of court and, in addition to the
23 required periodic payments, shall order the judgment debtor to pay
24 the judgment creditor all damages caused by the failure to make
25 such periodic payments, including, but not limited to, court costs
26 and attorney's fees.

27 ~~[7-]~~ 8. Following the occurrence or expiration of all
28 obligations specified in the periodic payment judgment, any
29 obligation of the judgment debtor to make further payments ceases
30 and any security given pursuant to subsection ~~[4]~~ 5 reverts to the
31 judgment debtor.

32 ~~[8-]~~ 9. As used in this section:

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

36 (b) "Periodic payments" means the payment of money or
37 delivery of other property to the judgment creditor at regular
38 intervals.

39 ~~[(c) "Professional negligence" means a negligent act or omission~~
40 ~~to act by a provider of health care in the rendering of professional~~
41 ~~services, which act or omission is the proximate cause of a personal~~
42 ~~injury or wrongful death. The term does not include services that are~~
43 ~~outside the scope of services for which the provider of health care is~~
44 ~~licensed or services for which any restriction has been imposed by~~
45 ~~the applicable regulatory board or health care facility.~~



~~—(d) “Provider of health care” means a physician licensed under chapter 630 or 633 of NRS, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital and its employees.]~~

Sec. 7. NRS 7.095 is hereby amended to read as follows:

7.095 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 ~~[for injury or death against a provider of health care based upon professional negligence]~~ **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. *The provisions of this section apply only to an action that is filed on or after November 24, 2007.*

4. 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.

~~[4.—As used in this section:~~

~~—(a) “Professional negligence” means a negligent act or omission to act by a provider of health care in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death. The term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility.~~

~~—(b) “Provider of health care” means a physician licensed under chapter 630 or 633 of NRS, dentist, registered nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital and its employees.]~~



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

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

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

6 ***(b) Not later than 10 years after the date of the manufacture of***
7 ***the product,***

8 ***↪ whichever is later.***

9 ***2. The provisions of this section apply only to a cause of***
10 ***action that is filed as the result of an act, error or omission which***
11 ***allegedly occurred on or after November 24, 2007, and which***
12 ***forms the basis for an action for product liability.***

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

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

20 11.190 Except as otherwise provided in NRS 125B.050 and
21 217.007, ***and section 8 of this act,*** actions other than those for the
22 recovery of real property, unless further limited by specific statute,
23 may only be commenced as follows:

24 1. Within 6 years:

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

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

31 2. Within 4 years:

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

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

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

37 (d) An action against a person alleged to have committed a
38 deceptive trade practice in violation of NRS 598.0903 to 598.0999,
39 inclusive, but the cause of action shall be deemed to accrue when
40 the aggrieved party discovers, or by the exercise of due diligence
41 should have discovered, the facts constituting the deceptive trade
42 practice.

43 3. Within 3 years:

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



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(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.

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

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

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

5. Within 1 year:

(a) An action against an officer, or officer de facto to recover goods, wares, merchandise or other property seized by the officer in



1 his official capacity, as tax collector, or to recover the price or value
2 of goods, wares, merchandise or other personal property so seized,
3 or for damages for the seizure, detention or sale of, or injury to,
4 goods, wares, merchandise or other personal property seized, or for
5 damages done to any person or property in making the seizure.

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

10 **Sec. 10.** The amendatory provisions of this act apply only to
11 an action that is filed on or after November 24, 2007.

12 **Sec. 11.** This act becomes effective on November 24, 2007.

