

ASSEMBLY BILL NO. 240—ASSEMBLYMAN OHRENSCHALL

MARCH 12, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to civil actions.
(BDR 3-1021)

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 civil actions; revising provisions governing comparative negligence; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that in any action to recover damages for death or injury to persons or property where comparative negligence is asserted as a defense, the comparative negligence of the plaintiff or the plaintiff's decedent does not bar a recovery if that negligence was not greater than the negligence or gross negligence of the parties against whom recovery is sought. (NRS 41.141) This bill revises the applicability of that provision by making the provision applicable to actions in which comparative negligence is a bona fide issue, rather than actions in which comparative negligence is asserted as a defense.

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

Section 1. NRS 41.141 is hereby amended to read as follows:
41.141 1. In any action to recover damages for death or injury to persons or for injury to property in which comparative negligence is ~~asserted as a defense,~~ *a bona fide issue*, the comparative negligence of the plaintiff or the plaintiff's decedent does not bar a recovery if that negligence was not greater than the negligence or gross negligence of the parties to the action against whom recovery is sought. *Comparative negligence is not a bona fide issue if the trier of fact finds no comparative negligence on the part of the plaintiff or the plaintiff's decedent.*



2. In ~~those~~ cases ~~it~~ *in which comparative negligence is a bona fide issue*, the judge shall instruct the jury that:

(a) The plaintiff may not recover if the plaintiff's comparative negligence or that of the plaintiff's decedent is greater than the negligence of the defendant or the combined negligence of multiple defendants.

(b) If the jury determines the plaintiff is entitled to recover, it shall return:

(1) By general verdict the total amount of damages the plaintiff would be entitled to recover without regard to the plaintiff's comparative negligence; and

(2) A special verdict indicating the percentage of negligence attributable to each party remaining in the action.

3. If a defendant in such an action settles with the plaintiff before the entry of judgment, the comparative negligence of that defendant and the amount of the settlement must not thereafter be admitted into evidence nor considered by the jury. The judge shall deduct the amount of the settlement from the net sum otherwise recoverable by the plaintiff pursuant to the general and special verdicts.

4. Where recovery is allowed against more than one defendant in such an action, except as otherwise provided in subsection 5, each defendant is severally liable to the plaintiff only for that portion of the judgment which represents the percentage of negligence attributable to that defendant.

5. This section does not affect the joint and several liability, if any, of the defendants in an action based upon:

(a) Strict liability;

(b) An intentional tort;

(c) The emission, disposal or spillage of a toxic or hazardous substance;

(d) The concerted acts of the defendants; or

(e) An injury to any person or property resulting from a product which is manufactured, distributed, sold or used in this State.

6. As used in this section:

(a) "Concerted acts of the defendants" does not include negligent acts committed by providers of health care while working together to provide treatment to a patient.

(b) "Provider of health care" has the meaning ascribed to it in NRS 629.031.

