

Amendment No. 881

Senate Amendment to Senate Bill No. 292	(BDR 3-954)
Proposed by: Senate Committee on Judiciary	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date
Adopted	<input type="checkbox"/>	Lost <input type="checkbox"/>	Adopted	<input type="checkbox"/>	Lost <input type="checkbox"/>
Concurred In	<input type="checkbox"/>	Not <input type="checkbox"/>	Concurred In	<input type="checkbox"/>	Not <input type="checkbox"/>
Receded	<input type="checkbox"/>	Not <input type="checkbox"/>	Receded	<input type="checkbox"/>	Not <input type="checkbox"/>

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

NCA/BAW



Date: 5/19/2015

S.B. No. 292—Revises provisions relating to certain civil actions involving negligence. (BDR 3-954)



SENATE BILL NO. 292—SENATOR ROBERSON

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to certain civil actions involving negligence. (BDR 3-954)

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; providing immunity from civil actions for a board of trustees of a school district or the governing body of a charter school under certain circumstances; revising the applicability of certain provisions of existing law pertaining to certain civil actions involving negligence; revising provisions governing the limitation on the amount of noneconomic damages that may be awarded in certain civil actions; ~~requiring a trier of fact to determine the percentage of responsibility for a plaintiff's harm assigned to various parties in certain civil actions;~~ making various other changes relating to certain actions involving negligence; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill provides that a board of trustees of a school district or the governing body of a charter school is not liable for any civil damages arising from any act or omission by a person employed by or volunteering at a school-based health center. Section 1 also defines "school-based health center" for such purposes.

Existing law defines "medical malpractice," "dental malpractice" and "professional negligence" and contains various provisions relating to civil actions involving claims of medical malpractice, dental malpractice and professional negligence. (Chapter 41A of NRS) This bill removes references in existing law to medical malpractice and dental malpractice and replaces those references with references to professional negligence. Section 1.5 of this bill also revises the definition of professional negligence to incorporate provisions of the previously used definition of medical malpractice.

Existing law defines the term "provider of healthcare" for the purposes of certain civil actions involving professional negligence. (NRS 41A.017) **Section 2** of this bill revises that definition to include certain other professionals who provide health care and to include clinics, surgery centers and other entities that employ physicians and other such persons.

Existing law limits the amount of noneconomic damages that may be awarded in an action for injury or death against a provider of health care based upon professional negligence. (NRS 41A.035) **Section 3** of this bill limits the total noneconomic damages that may be awarded in such an action to \$350,000, regardless of the number of plaintiffs, defendants or theories of liability.

~~Existing law provides that in an action for injury or death against a provider of health care based upon professional negligence, each defendant is liable to the plaintiff for certain damages severally only, and not jointly. (NRS 41A.045) Section 4 of this bill: (1) requires the trier of fact in an action for professional negligence to determine the percentage of responsibility assigned to each person; and (2) authorizes a defendant to present certain evidence to establish the percentage of responsibility of any party or nonparty to such an action.~~

Existing law establishes a rebuttable presumption in actions for negligence against providers of medical care that the personal injury or death was caused by negligence when certain injuries are sustained. (NRS 41A.100) **Section 9** of this bill provides that the rebuttable presumption does not apply in an action in which: (1) a plaintiff submits an affidavit or designates an expert witness to establish that a provider of health care deviated from the accepted standard of care; or (2) expert medical testimony is used to establish a claim of professional negligence.

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

Section 1. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The board of trustees of a school district or the governing body of a charter school that allows or establishes a school-based health center is not liable for any civil damages as a result of any act or omission by a person employed by or volunteering for or affiliated with a school-based health center or a sponsoring entity of the school-based health center.

2. As used in this section, "school-based health center" means a health center located on or in school grounds, property, buildings or any other school district facilities for the purpose of rendering care or services to any person.

~~Section 1.3.~~ **Sec. 1.3.** NRS 41A.003 is hereby amended to read as follows:

41A.003 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS ~~41A.004~~ **41A.007** to 41A.017, inclusive, have the meanings ascribed to them in those sections.

Sec. 1.5. NRS 41A.015 is hereby amended to read as follows:

41A.015 "Professional negligence" means ~~the negligent act or omission to act by~~ **the failure of** 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.~~ **to use the reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained and experienced providers of health care.**

Sec. 2. NRS 41A.017 is hereby amended to read as follows:

41A.017 "Provider of health care" means a physician licensed ~~under~~ **pursuant to** chapter 630 ~~or 633~~ **630.4** or 633 of NRS, **physician assistant**, dentist, licensed nurse, dispensing optician, optometrist, ~~practitioner of respiratory care,~~ registered physical therapist, ~~occupational therapist,~~ podiatric physician, licensed psychologist, ~~licensed marriage and family therapist, licensed clinical professional counselor, music therapist,~~ chiropractor, ~~athletic trainer, perfusionist,~~ doctor of Oriental medicine, ~~in any form,~~ medical laboratory director or technician, ~~pharmacist or~~ licensed dietitian or a licensed hospital, ~~clinic, surgery center for other entity,~~ **physicians' professional corporation or group practice that employs any such person** and its employees.

1 **Sec. 3.** NRS 41A.035 is hereby amended to read as follows:

2 41A.035 In an action for injury or death against a provider of health care
3 based upon professional negligence, the injured plaintiff may recover noneconomic
4 damages, but the amount of noneconomic damages awarded in such an action must
5 not exceed \$350,000 ~~+~~, *regardless of the number of plaintiffs, defendants or*
6 *theories upon which liability may be based.*

7 **Sec. 4.** ~~NRS 41A.045 is hereby amended to read as follows:~~

8 ~~41A.045 1. In an action for injury or death against a provider of health care~~
9 ~~based upon professional negligence, each defendant is liable to the plaintiff for~~
10 ~~economic damages and noneconomic damages severally only, and not jointly, for~~
11 ~~that portion of the judgment which represents the percentage of [negligence] fault~~
12 ~~attributable to the defendant.~~

13 ~~2. In an action described in subsection 1, the trier of fact shall determine~~
14 ~~the percentage of responsibility assigned to all persons relating to the harm~~
15 ~~caused for which recovery is being sought. The trier of fact shall consider the~~
16 ~~percentage of responsibility of any person who could have contributed to the~~
17 ~~alleged injury or death, regardless of whether the person was, or could have been,~~
18 ~~named as a party to the action. A determination of the percentage of~~
19 ~~responsibility for any nonparty.~~

20 ~~(a) May only be used as a vehicle for accurately determining the fault of the~~
21 ~~named parties;~~

22 ~~(b) Does not subject the nonparty to liability in the action or in any other~~
23 ~~actions; and~~

24 ~~(c) May be introduced as evidence of liability in any action.~~

25 ~~3. To establish the percentage of responsibility of any party or nonparty, a~~
26 ~~defendant may present to the trier of fact:~~

27 ~~(a) An affidavit produced pursuant to NRS 41A.071;~~

28 ~~(b) A report prepared by an expert pursuant to the Nevada Rules of Civil~~
29 ~~Procedure; and~~

30 ~~(c) Testimony of an expert designated by any party, at any time, pursuant to~~
31 ~~the Nevada Rules of Civil Procedure.~~

32 ~~4. This section is intended to abrogate joint and several liability of a provider~~
33 ~~of health care in an action for injury or death against the provider of health care~~
34 ~~based upon professional negligence. (Deleted by amendment.)~~

35 **Sec. 5.** NRS 41A.061 is hereby amended to read as follows:

36 41A.061 1. Upon the motion of any party or upon its own motion, unless
37 good cause is shown for the delay, the court shall, after due notice to the parties,
38 dismiss an action involving ~~medical malpractice or dental malpractice~~
39 *professional negligence* if the action is not brought to trial within ~~+~~

40 ~~(a) Three years after the date on which the action is filed, if the action is filed~~
41 ~~on or after October 1, 2002, but before October 1, 2005;~~

42 ~~(b) Two ~~2~~ 3 years after the date on which the action is filed. ~~+~~, if the action is~~
43 ~~filed on or after October 1, 2005.~~

44 2. Dismissal of an action pursuant to subsection 1 is a bar to the filing of
45 another action upon the same claim for relief against the same defendants.

46 3. Each district court shall adopt court rules to expedite the resolution of an
47 action involving ~~medical malpractice or dental malpractice~~ *professional*
48 *negligence.*

49 **Sec. 6.** NRS 41A.071 is hereby amended to read as follows:

50 41A.071 If an action for ~~medical malpractice or dental malpractice~~
51 *professional negligence* is filed in the district court, the district court shall dismiss
52 the action, without prejudice, if the action is filed without an affidavit ~~+~~ *supporting*
53 *that:*

- 1 *1. Supports* the allegations contained in the action ~~It~~ ;
- 2 *2. Is* submitted by a medical expert who practices or has practiced in an area
- 3 that is substantially similar to the type of practice engaged in at the time of the
- 4 alleged ~~malpractice~~ *professional negligence*;
- 5 *3. Identifies by name, or describes by conduct, each ~~alleged~~ provider of*
- 6 *health care ~~it~~ who is alleged to be negligent; and*
- 7 *4. ~~Complies with any written report required pursuant to Rule 16.1 of the~~*
- 8 *~~Nevada Rules of Civil Procedure.~~ Sets forth factually a specific act or acts of*
- 9 *~~alleged negligence separately as to each defendant in simple, concise and direct~~*
- 10 *~~terms.~~*

11 **Sec. 7.** NRS 41A.081 is hereby amended to read as follows:

12 41A.081 1. In an action for ~~medical malpractice or dental malpractice,~~

13 *professional negligence*, all the parties to the action, the insurers of the respective

14 parties and the attorneys of the respective parties shall attend and participate in a

15 settlement conference before a district judge, other than the judge assigned to the

16 action, to ascertain whether the action may be settled by the parties before trial.

17 2. The judge before whom the settlement conference is held:

18 (a) May, for good cause shown, waive the attendance of any party.

19 (b) Shall decide what information the parties may submit at the settlement

20 conference.

21 3. The judge shall notify the parties of the time and place of the settlement

22 conference.

23 4. The failure of any party, the party's insurer or the party's attorney to

24 participate in good faith in the settlement conference is grounds for sanctions,

25 including, without limitation, monetary sanctions, against the party or the party's

26 attorney, or both. The judges of the district courts shall liberally construe the

27 provisions of this subsection in favor of imposing sanctions in all appropriate

28 situations. It is the intent of the Legislature that the judges of the district courts

29 impose sanctions pursuant to this subsection in all appropriate situations to punish

30 for and deter conduct which is not undertaken in good faith because such conduct

31 overburdens limited judicial resources, hinders the timely resolution of meritorious

32 claims and increases the costs of engaging in business and providing professional

33 services to the public.

34 **Sec. 8.** NRS 41A.085 is hereby amended to read as follows:

35 41A.085 1. In an action for damages for ~~medical malpractice or dental~~

36 ~~malpractice~~ *professional negligence* in which the defendant is insured pursuant to

37 a policy of insurance covering the liability of the defendant for a breach of the

38 defendant's professional duty toward a patient:

39 (a) At any settlement conference, the judge may recommend that the action be

40 settled for the limits of the policy of insurance.

41 (b) If the judge makes the recommendation described in paragraph (a), the

42 defendant is entitled to obtain from independent counsel an opinion letter

43 explaining the rights of, obligations of and potential consequences to the defendant

44 with regard to the recommendation. The insurer shall pay the independent counsel

45 to provide the opinion letter described in this paragraph, except that the insurer is

46 not required to pay more than \$1,500 to the independent counsel to provide the

47 opinion letter.

48 2. The section does not:

49 (a) Prohibit the plaintiff from making any offer of settlement.

50 (b) Require an insurer to provide or pay for independent counsel for a

51 defendant except as expressly provided in this section.

1 **Sec. 9.** NRS 41A.100 is hereby amended to read as follows:

2 41A.100 1. Liability for personal injury or death is not imposed upon any
3 provider of ~~medical~~ **health** care based on alleged negligence in the performance
4 of that care unless evidence consisting of expert medical testimony, material from
5 recognized medical texts or treatises or the regulations of the licensed medical
6 facility wherein the alleged negligence occurred is presented to demonstrate the
7 alleged deviation from the accepted standard of care in the specific circumstances
8 of the case and to prove causation of the alleged personal injury or death, except
9 that such evidence is not required and a rebuttable presumption that the personal
10 injury or death was caused by negligence arises where evidence is presented that
11 the **provider of health care caused the** personal injury or death occurred in any one
12 or more of the following circumstances:

13 (a) A foreign substance other than medication or a prosthetic device was
14 unintentionally left within the body of a patient following surgery;

15 (b) An explosion or fire originating in a substance used in treatment occurred
16 in the course of treatment;

17 (c) An unintended burn caused by heat, radiation or chemicals was suffered in
18 the course of medical care;

19 (d) An injury was suffered during the course of treatment to a part of the body
20 not directly involved in the treatment or proximate thereto; or

21 (e) A surgical procedure was performed on the wrong patient or the wrong
22 organ, limb or part of a patient's body.

23 2. Expert medical testimony provided pursuant to subsection 1 may only be
24 given by a provider of ~~medical~~ **health** care who practices or has practiced in an
25 area that is substantially similar to the type of practice engaged in at the time of the
26 alleged negligence.

27 3. ~~As used in this section, "provider of medical care" means a physician,~~
28 ~~dentist, registered nurse or a licensed hospital as the employer of any such person.~~
29 **The rebuttable presumption pursuant to subsection 1 does not apply in an action**
30 **in which** ~~+~~

31 ~~(a) A~~ **a** ~~plaintiff submits an affidavit pursuant to NRS 41A.071, or otherwise~~
32 ~~designates an expert witness pursuant to the Nevada Rules of Civil Procedure,~~
33 ~~to establish that~~ **the specific provider of health care deviated from the**
34 ~~accepted standard of care for caused the alleged personal injury or death.~~

35 ~~(b) Expert medical testimony is used to establish a claim of negligence.~~

36 **4. Nothing in this section shall be construed to preclude any party to the**
37 **suit from designating and presenting expert testimony as to the legal or proximate**
38 **cause of any alleged personal injury or death.**

39 **Sec. 10.** NRS 3.029 is hereby amended to read as follows:

40 3.029 1. The Supreme Court shall provide by court rule for mandatory
41 appropriate training concerning the complex issues of ~~medical malpractice~~
42 litigation **alleging professional negligence** for each district judge to whom actions
43 involving ~~medical malpractice~~ **professional negligence** are assigned.

44 2. **As used in this section, "professional negligence" has the meaning**
45 **ascribed to it in NRS 41A.015.**

46 **Sec. 11.** The amendatory provisions of this act apply to a cause of action that
47 accrues on or after the effective date of this act.

48 **Sec. 12.** NRS 41A.004, 41A.009 and 41A.013 are hereby repealed.

49 **Sec. 13.** This act becomes effective upon passage and approval.

TEXT OF REPEALED SECTIONS

41A.004 “Dental malpractice” defined. “Dental malpractice” has the meaning ascribed to the term “malpractice” in NRS 631.075.

41A.009 “Medical malpractice” defined. “Medical malpractice” means the failure of a physician, hospital or employee of a hospital, in rendering services, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances.

41A.013 “Physician” defined. “Physician” means a person licensed pursuant to chapter 630 or 633 of NRS.