

SENATE BILL NO. 300—SENATOR ROBERSON

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions related to comparative negligence. (BDR 3-938)

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; limiting a defendant's liability to only the percentage of responsibility assigned to that defendant by a trier of fact in certain actions; requiring the trier of fact to determine the percentage of responsibility for a plaintiff's harm assigned to various parties in certain 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 recovery if that negligence was not greater than the negligence or gross negligence of the parties against whom recovery is sought. If the jury determines that the plaintiff is entitled to recover in such a case, existing law also requires the jury to return: (1) a general verdict with the total amount of damages the plaintiff would be entitled to recover notwithstanding the plaintiff's comparative negligence; and (2) a special verdict indicating the percentage of negligence assigned to each party remaining in the action. Existing law further requires that, in an action where a plaintiff may recover from more than one defendant, each defendant is severally liable to the plaintiff only for that portion of the judgment representing the percentage of negligence assigned to that defendant. Existing law also contains exceptions for certain causes of action where the doctrine of joint and several liability may apply. (NRS 41.141)

Section 2 of this bill: (1) removes the requirement for a jury to return both a general and a special verdict in an action to recover damages for death or injury to persons or property where comparative fault is asserted as a defense and a jury determines that a plaintiff is entitled to recover; and (2) repeals certain exceptions in such actions where the doctrine of joint and several liability may apply.



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Section 1 of this bill instead: (1) requires the trier of fact in an action to recover damages for death or injury to persons or property to determine the percentage of responsibility assigned to each plaintiff, defendant, any person who entered into a settlement agreement with a plaintiff and certain third parties; (2) provides that each defendant is only severally liable for the percentage of responsibility attributed to each defendant by the trier of fact; (3) requires the trier of fact to return a verdict indicating the total amount that a plaintiff is entitled to recover without considering the allocation of responsibility; (4) prohibits an assignment of a percentage of responsibility to a person who settled with a plaintiff or to certain third parties to be used against such party in another cause of action involving that party; and (5) limits the types of civil actions for which joint and several liability is not affected by the provisions of this act.

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. Except as otherwise provided in subsection 7, this section applies in any civil action to recover damages for death or injury to persons or for injury to property. If the plaintiff is not barred from recovery pursuant to NRS 41.141, each defendant is liable to the plaintiff for the amount of damages and losses severally only, and not jointly, for that portion of the judgment which represents the percentage of responsibility assigned to that defendant pursuant to subsection 2.

2. In a civil action described in subsection 1, the trier of fact shall determine the percentage of responsibility assigned to the following persons for causing the harm for which recovery is being sought:

(a) Each plaintiff;

(b) Each defendant;

(c) Any person who has entered into a settlement agreement with a plaintiff; and

(d) Any third party, including, without limitation, any person immune from suit, designated in accordance with the provisions of subsection 6.

3. If the trier of fact determines that a plaintiff is entitled to recover from one or more defendants, the trier of fact shall return a verdict indicating the total amount of the damages or losses of the plaintiff without regard to the allocation of responsibility.

4. The provisions of subsection 2 do not authorize the submission to the jury of a question relating to conduct by any person without sufficient evidence to support the submission.

5. An assignment of a percentage of responsibility for causing the harm for which recovery is sought to a person who



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1 *has entered into a settlement agreement with a plaintiff pursuant*
2 *to subsection 2 or to a third party in accordance with the*
3 *provisions of subsection 6:*

4 *(a) May only be used to determine the percentage of*
5 *responsibility assigned to the remaining named parties;*

6 *(b) Does not constitute a presumption or conclusive finding as*
7 *to such person relating to a prior or subsequent cause of action*
8 *involving that person; and*

9 *(c) Must not be introduced as evidence of liability in any other*
10 *action.*

11 *6. A percentage of responsibility relating to the harm caused*
12 *by a third party, including, without limitation, any person immune*
13 *from suit, may be assigned if a defendant gives notice that the*
14 *third party was wholly or partially responsible for the harm caused*
15 *to a plaintiff within 90 days before the commencement of the trial,*
16 *unless the court provides an extension of time. Notice must be*
17 *given by filing a pleading that must contain:*

18 *(a) The name and last known address, or the best*
19 *identification, of the third party; and*

20 *(b) A brief statement explaining the alleged fault of the third*
21 *party for the harm in the cause of action.*

22 *7. This section does not apply to:*

23 *(a) An action for death or injury against a provider of health*
24 *care based upon professional negligence;*

25 *(b) A claim for workers' compensation benefits under the*
26 *workers' compensation laws of this State; or*

27 *(c) Any action in which it is established by a preponderance of*
28 *the evidence that two or more persons knowingly and deliberately*
29 *pursued a common plan or design to commit a tortious act. This*
30 *paragraph does not apply to negligent acts committed by providers*
31 *of health care while working together to provide treatment to a*
32 *patient.*

33 *8. As used in this section:*

34 *(a) "Professional negligence" has the meaning ascribed to it*
35 *in NRS 41A.015.*

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

38 **Sec. 2.** NRS 41.141 is hereby amended to read as follows:

39 41.141 1. In any action to recover damages for death or
40 injury to persons or for injury to property in which comparative
41 ~~negligence~~ **fault** is asserted as a defense, the comparative
42 ~~negligence~~ **fault** of the plaintiff or the plaintiff's decedent does not
43 bar a recovery if that ~~negligence~~ **fault** was not greater than the
44 ~~negligence or gross negligence~~ **fault** of the parties to the action
45 against whom recovery is sought.



2. In those cases, the judge shall instruct the jury that ~~+~~
~~—(a) The~~ *the* plaintiff may not recover if the plaintiff's
comparative ~~[negligence]~~ *fault* or that of the plaintiff's decedent is
greater than the ~~[negligence]~~ *fault* of the defendant or the combined
~~[negligence]~~ *fault* 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.]~~ *verdict.*

