

ASSEMBLY BILL NO. 404—COMMITTEE ON JUDICIARY

MARCH 27, 2023

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing civil actions against a provider of health care for professional negligence. (BDR 3-709)

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 for the increase of the limitation on the amount of noneconomic damages a plaintiff may recover in a civil action against a provider of health care for professional negligence; revising the statute of limitations for bringing an action against a provider of health care for injury or death based upon professional negligence, professional services rendered without consent or error or omission in practice; revising provisions which limit the amount of a contingent fee for which an attorney representing a plaintiff in a civil action against a provider of health care for professional negligence may contract for or collect; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law limits the amount of noneconomic damages that a plaintiff may recover in a civil action brought against a provider of health care for professional negligence to \$350,000, regardless of the number of plaintiffs, defendants or theories upon which liability may be based. (NRS 41A.035) **Section 2** of this bill requires that amount to be increased by \$80,000 on January 1 of each year beginning on January 1, 2024, and ending on January 1, 2028, when the amount reaches \$750,000. Beginning on January 1, 2029, **section 2** requires that amount to be increased on January 1 of each year by 2.1 percent. **Section 2** additionally requires the Nevada Supreme Court to annually publish on its Internet website the maximum amount of noneconomic damages that may be awarded to a plaintiff in an action for injury or death against a provider of health care based upon professional negligence in each year for the following 20 years.



\* A B 4 0 4 R 3 \*

Existing law requires an action for injury or death against a provider of health care based on professional negligence, professional services rendered without consent or error or omission in practice, to be commenced: (1) for an injury that occurred on or after October 1, 2002, not more than 3 years after the date of injury or 1 year after the plaintiff discovers or should have discovered the injury; and (2) if the injury occurred before October 1, 2002, not more than 4 years after the date of injury or 2 years after the plaintiff discovers or should have discovered the injury. (NRS 41A.097) **Section 3** of this bill requires such an action to be brought, for an injury that occurred on or after October 1, 2023, not more than 3 years after the date of injury or 2 years after the plaintiff discovers or should have discovered the injury.

Existing law limits the amount of a contingent fee that an attorney representing a plaintiff in a civil action against a provider of health care for professional negligence may contract for or collect to: (1) forty percent of the first \$50,000 recovered; (2) thirty-three and one-third percent of the next \$50,000 recovered; (3) twenty-five percent of the next \$500,000 recovered; and (4) fifteen percent of the amount of recovery that exceeds \$600,000. (NRS 7.095) **Section 3.5** of this bill eliminates that tier of amounts and instead limits the amount of a contingent fee that such an attorney may contract for or collect to 35 percent of the amount recovered.

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

**Section 1.** (Deleted by amendment.)

**Sec. 1.5.** (Deleted by amendment.)

**Sec. 2.** NRS 41A.035 is hereby amended to read as follows:

41A.035 **1.** In an action for injury or death against a provider of health care based upon professional negligence, the injured plaintiff may recover noneconomic damages, but the amount of noneconomic damages awarded in such an action must not exceed , \$350,000, regardless of the number of plaintiffs, defendants or theories upon which liability may be based.

**2.** *The maximum amount of noneconomic damages set forth in subsection 1 must be increased by \$80,000 on January 1 of each year beginning on January 1, 2024, and ending on January 1, 2028, when the amount reaches \$750,000.*

**3.** *Beginning on January 1, 2029, the maximum amount of noneconomic damages set forth in subsection 1, as adjusted by subsection 2, must be increased on January 1 of each year by 2.1 percent, rounded to the nearest dollar.*

**4.** *The Nevada Supreme Court shall, on or before January 1 of each year, publish on its Internet website the maximum 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 in each year for the following 20 years.*

**Sec. 2.5.** (Deleted by amendment.)



**Sec. 3.** NRS 41A.097 is hereby amended to read as follows:

41A.097 1. Except as otherwise provided in subsection ~~3.1~~ **4**, an action for injury or death against a provider of health care may not be commenced more than 4 years after the date of injury or 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for:

(a) Injury to or the wrongful death of a person occurring before October 1, 2002, based upon alleged professional negligence of the provider of health care;

(b) Injury to or the wrongful death of a person occurring before October 1, 2002, from professional services rendered without consent; or

(c) Injury to or the wrongful death of a person occurring before October 1, 2002, from error or omission in practice by the provider of health care.

2. Except as otherwise provided in subsection ~~3.1~~ **4**, an action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for:

(a) Injury to or the wrongful death of a person occurring on or after October 1, 2002 ~~3.1~~ **and before October 1, 2023**, based upon alleged professional negligence of the provider of health care;

(b) Injury to or the wrongful death of a person occurring on or after October 1, 2002 ~~3.1~~ **and before October 1, 2023**, from professional services rendered without consent; or

(c) Injury to or the wrongful death of a person occurring on or after October 1, 2002 ~~3.1~~ **and before October 1, 2023**, from error or omission in practice by the provider of health care.

*3. Except as otherwise provided in subsection 4, an action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for:*

*(a) Injury to or the wrongful death of a person occurring on or after October 1, 2023, based upon alleged professional negligence of the provider of health care;*

*(b) Injury to or the wrongful death of a person occurring on or after October 1, 2023, from professional services rendered without consent; or*

*(c) Injury to or the wrongful death of a person occurring on or after October 1, 2023, from error or omission in practice by the provider of health care.*



4. This time limitation is tolled for any period during which the provider of health care has concealed any act, error or omission upon which the action is based and which is known or through the use of reasonable diligence should have been known to the provider of health care.

~~[4.]~~ 5. For the purposes of this section, the parent, guardian or legal custodian of any minor child is responsible for exercising reasonable judgment in determining whether to prosecute any cause of action limited by subsection 1 ~~[1.]~~, 2 or ~~[2.]~~ 3. If the parent, guardian or custodian fails to commence an action on behalf of that child within the prescribed period of limitations, the child may not bring an action based on the same alleged injury against any provider of health care upon the removal of the child's disability, except that in the case of:

(a) Brain damage or birth defect, the period of limitation is extended until the child attains 10 years of age.

(b) Sterility, the period of limitation is extended until 2 years after the child discovers the injury.

**Sec. 3.5.** 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 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]~~ *35 percent of the amount 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. 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



1 outside the scope of services for which the provider of health care is  
2 licensed or services for which any restriction has been imposed by  
3 the applicable regulatory board or health care facility.

4 (b) “Provider of health care” means a physician licensed under  
5 chapter 630 or 633 of NRS, dentist, registered nurse, dispensing  
6 optician, optometrist, registered physical therapist, podiatric  
7 physician, licensed psychologist, chiropractic physician, doctor of  
8 Oriental medicine, holder of a license or a limited license issued  
9 under the provisions of chapter 653 of NRS, medical laboratory  
10 director or technician, licensed dietitian or a licensed hospital and its  
11 employees.

12 **Sec. 4.** (Deleted by amendment.)

13 **Sec. 5.** The amendatory provisions of section 3.5 of this act  
14 apply to a cause of action that accrues on or after October 1, 2023.

15 **Sec. 6.** (Deleted by amendment.)

