

ASSEMBLY BILL NO. 495—COMMITTEE ON JUDICIARY

MARCH 23, 2009

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions governing professional negligence. (BDR 3-978)

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 professional negligence; revising the limitation on the amount of noneconomic damages that may be awarded in certain actions based on professional negligence; revising the statute of limitations in such actions; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

- 1 Existing law provides for a limitation of \$350,000 in noneconomic damages in
2 actions based on professional negligence. (NRS 41A.035) **Section 1** of this bill
3 provides for an exception to the limitation on noneconomic damages if the
4 defendant’s conduct is determined to constitute gross negligence.
5 **Section 5** of this bill increases the period of the statute of limitations for an
6 action for injury or death against a provider of health care from not more than 3
7 years after the date of injury or 1 year after the plaintiff discovers or should have
8 discovered the injury to not more than 4 years after the date of injury or 2 years
9 after the plaintiff discovers or should have discovered the injury. (NRS 41A.097)

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

- 1 **Section 1.** NRS 41A.035 is hereby amended to read as
2 follows:
3 41A.035 ~~Ha~~
4 ***1. Except as otherwise provided in subsection 2, in*** an action
5 for injury or death against a provider of health care based upon
6 professional negligence, the injured plaintiff may recover



1 noneconomic damages, but the amount of noneconomic damages
2 awarded in such an action must not exceed \$350,000.

3 *2. In an action for damages based upon professional*
4 *negligence, the limitation on noneconomic damages set forth in*
5 *subsection 1 does not apply if the conduct of the defendant is*
6 *determined to constitute gross negligence.*

7 *3. For the purposes of this section, "gross negligence" means*
8 *failure to exercise the required degree of care, skill or knowledge*
9 *that amounts to:*

10 *(a) A conscious indifference to the consequences which may*
11 *result from the gross negligence; and*

12 *(b) A disregard for and indifference to the safety and welfare*
13 *of the patient.*

14 **Sec. 2.** (Deleted by amendment.)

15 **Sec. 3.** (Deleted by amendment.)

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

17 **Sec. 5.** NRS 41A.097 is hereby amended to read as follows:

18 41A.097 1. Except as otherwise provided in subsection 3, an
19 action for injury or death against a provider of health care may not
20 be commenced more than 4 years after the date of injury or 2 years
21 after the plaintiff discovers or through the use of reasonable
22 diligence should have discovered the injury, whichever occurs first,
23 for:

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

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

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

33 2. Except as otherwise provided in subsection 3, an action for
34 injury or death against a provider of health care may not be
35 commenced more than ~~[3]~~ 4 years after the date of injury or ~~[1-year]~~
36 *2 years* after the plaintiff discovers or through the use of reasonable
37 diligence should have discovered the injury, whichever occurs first,
38 for:

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

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



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

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

8 4. For the purposes of this section, the parent, guardian or legal
9 custodian of any minor child is responsible for exercising reasonable
10 judgment in determining whether to prosecute any cause of action
11 limited by subsection 1 or 2. If the parent, guardian or custodian
12 fails to commence an action on behalf of that child within the
13 prescribed period of limitations, the child may not bring an action
14 based on the same alleged injury against any provider of health care
15 upon the removal of his disability, except that in the case of:

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

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

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

21 **Sec. 7.** (Deleted by amendment.)

22 **Sec. 8.** (Deleted by amendment.)

