

AB 240
JOINT AND SEVERAL LIABILITY

I. INTRODUCTION

AB 240 is designed to assure responsibility and fairness: when more than 1 person engage in unsafe conduct and as a result injure a Nevada citizen these persons are responsible for the Nevada citizen's harm and losses unless the Nevada citizen is partially responsible for the accident.

Joint liability is where the Nevada citizen is free of fault and two or more persons engage in unsafe conduct that causes injury to a fault free Nevada citizen. The wrongdoers are jointly responsible for the injuries. As between the wrongdoers, the responsibility for the injuries is shared. This is what the law calls joint and several liability because wrongdoer's liability is shared jointly as to the fault free Nevada citizen and the responsibility is shared severally as between the wrongdoers.

Several liability is where the Nevada citizen is partially responsible for the accident. This is known as comparative negligence because the wrongdoers and the Nevada citizen share in the responsibility for the injuries.

This bill is intended to assure that where the Nevada citizen is free of fault and two or more persons engage in unsafe conduct that causes injury to a fault free Nevada citizen. The wrongdoers are jointly responsible for the injuries. The bill is responsible because it holds wrongdoers to the harms and losses their unsafe conduct caused. The bill is fair because it assures that a fault free Nevada citizen is able to hold the wrongdoers accountable.

II. NEVADA'S HISTORY ON JOINT AND SEVERAL LIABILITY AND THE REASON FOR AB 240

NRS 41.141 is Nevada's statute governing comparative negligence and what happens when a Nevada citizen is found to engage to be comparatively negligent for his own injuries. Under NRS 41.141(1), when a Nevada citizen is partially responsible for his injuries, the Nevada law imposes several liability among injured Nevada citizen and the wrongdoers. There are certain exceptions where a wrongdoer can be fully responsible for injuries even where a Nevada citizen is partially responsible for the injuries. That section, NRS 41.141(5), is not at issue in this bill.

Nevada has long recognized that a fault free Nevada citizen may hold two or more wrongdoers whose unsafe conduct causes injury jointly liable. Buck by Buck This agreement has been reflected in the current version of NRS 41.141. Subsection 1 to NRS 41.141 currently provides:

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, 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.

Under Nevada law, it has been recognized that when a jury or judge finds the Nevada has no comparative negligence, then "comparative negligence" is not asserted as a defense. *Buck v.*

Greyhound Lines, Inc., 105 Nev. 756, 783 P.2d 437 (1989); *Stapp v. Hilton Hotels Corp.*, 108 Nev. 209, 211 n.3, 826 P.2d 954, 956 n.3 (1992) (recognizing NRS 41.141 when the injured party's comparative negligence is not an issue); *GES, Inc. v. Corbitt*, 117 Nev. 265, 269, 21 P.3d 11, 14 (2001) (noting that when a plaintiff is found to be comparatively negligent then NRS 41.141 presumes several liability.)

Recently, it has become clear that phrase "asserted as a defense" is unclear. Wrongdoers who clearly caused harm to a fault free Nevada citizen claim several liability simply because they "assert" comparative negligence as a defense and ask for several liability without regard to whether defense has any merit. Under this analysis, a jury can find a Nevada citizen to be fault free and can find the defense of comparative negligence to be without merit, but an irresponsible wrongdoer will try to claim that liability should not be jointly shared among the wrongdoers who caused harm.

Nevada policy has long recognized a policy that Nevada statutes should not be interpreted to foster absurd results. *Star Ins. Co. v. Neighbors*, 122 Nev. 773, 776, 138 P.3d 507, 510 (2006). It is an absurd result to suggest that a wrongdoer can avoid responsibility for his conduct by asserting a defense that has no merit.

III. AB 240

We are proposing changes to Nevada law to eliminate the risk of an absurd result. The amendment deals with NRS 41.141(1) and amends the provision to read:

1. In any action to recover damages for death or injury to persons or for injury to property in which a trier of fact finds comparative negligence on the part of the plaintiff, 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.

By removing the phrase "asserted as a defense" from NRS 41.141(1) and replacing it with the highlighted language, AB 240 will clarify that the liability is joint and several unless the trier of facts finds comparative negligence on the part of the injured party or the injured party's decedent.