

SENATE BILL NO. 431—COMMITTEE ON JUDICIARY

MARCH 27, 2017

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to civil actions. (BDR 3-1066)

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; 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 a recovery if that negligence was not greater than the negligence or gross negligence of the parties against whom recovery is sought. (NRS 41.141) This bill revises the applicability of that provision by making it applicable to actions in certain circumstances in which the trier of fact finds comparative negligence rather than actions in which comparative negligence is asserted as a defense. This bill also requires a judge to give certain jury instructions when: (1) comparative negligence is an affirmative defense; and (2) the judge has determined at the close of the defendant’s case in chief that comparative negligence remains a question of fact.

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

Section 1. NRS 41.141 is hereby amended to read as follows: 41.141 1. In any action to recover damages for death or injury to persons or for injury to property in which *the trier of fact finds* comparative negligence ~~is asserted as a defense,~~ *on the part of the plaintiff or the plaintiff’s decedent,* 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



1 gross negligence of the parties to the action against whom recovery
2 is sought.

3 2. In those cases **H** *in which comparative negligence is an*
4 *affirmative defense and the judge has determined at the close of*
5 *the defendant's case in chief that comparative negligence remains*
6 *as a question of fact*, the judge shall instruct the jury that:

7 (a) The plaintiff may not recover if the plaintiff's comparative
8 negligence or that of the plaintiff's decedent is greater than the
9 negligence of the defendant or the combined negligence of multiple
10 defendants.

11 (b) If the jury determines the plaintiff is entitled to recover, it
12 shall return:

13 (1) By general verdict the total amount of damages the
14 plaintiff would be entitled to recover without regard to the plaintiff's
15 comparative negligence; and

16 (2) A special verdict indicating the percentage of negligence
17 attributable to each party remaining in the action.

18 3. If a defendant in such an action settles with the plaintiff
19 before the entry of judgment, the comparative negligence of that
20 defendant and the amount of the settlement must not thereafter be
21 admitted into evidence nor considered by the jury. The judge shall
22 deduct the amount of the settlement from the net sum otherwise
23 recoverable by the plaintiff pursuant to the general and special
24 verdicts.

25 4. Where recovery is allowed against more than one defendant
26 in such an action, except as otherwise provided in subsection 5, each
27 defendant is severally liable to the plaintiff only for that portion of
28 the judgment which represents the percentage of negligence
29 attributable to that defendant.

30 5. This section does not affect the joint and several liability, if
31 any, of the defendants in an action based upon:

32 (a) Strict liability;

33 (b) An intentional tort;

34 (c) The emission, disposal or spillage of a toxic or hazardous
35 substance;

36 (d) The concerted acts of the defendants; or

37 (e) An injury to any person or property resulting from a product
38 which is manufactured, distributed, sold or used in this State.

39 6. As used in this section:

40 (a) "Concerted acts of the defendants" does not include
41 negligent acts committed by providers of health care while working
42 together to provide treatment to a patient.



1 (b) "Provider of health care" has the meaning ascribed to it in
2 NRS 629.031.

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