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## Torts; public utilities-recovery of damages

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# Torts

## Torts; public utilities—recovery of damages

NEV. REV. STAT. § 704.805 (amended).

SB 184 (Committee on Commerce and Labor); 1987 STAT. Ch 234

Existing law provides that any public utility<sup>1</sup> may bring a civil action<sup>2</sup> for recovery of the costs of investigation, expert witnesses, equipment, attorney's fees, and three times the amount of actual damages against any person<sup>3</sup> who willfully obtains, by prohibited conduct,<sup>4</sup> any service or product provided by the utility.<sup>5</sup> Chapter 234 limits the civil action only to services provided by a utility.<sup>6</sup> Furthermore, Chapter 234 provides that a utility may recover damages from any person who willfully or negligently injures or destroys property used in the actual production, distribution or delivery of the service provided by the utility.<sup>7</sup> The violator is liable for the cost

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1. See NEV. REV. STAT. §§ 704.020 (definition of public utility), 704.030 (persons not included within definition of public utility). Community Antenna Television Companies [hereinafter CATV] are no longer included within the definition of public utility. 1985 Nev. Stat. ch. 635, sec. 5, at 2049 (amending NEV. REV. STAT. § 704.020 1(e)). See NEV. REV. STAT. §§ 711.030 (definition of CATV company), 711.040 (definition of community antenna television system). Civil damages and criminal penalties available to CATV companies are regulated independently. See generally *id.* §§ 711.270, 711.280 (criminal penalties and civil damages for the unauthorized receipt or interception of the service of CATV companies).

2. Criminal penalties may also be imposed. See *id.* § 704.800.

3. *Id.* § 704.015 (definition of person).

4. Prohibited conduct includes: (1) Opening, breaking into, tapping or connecting with any pipe, flume, ditch, conduit, reservoir, wire, meter or other apparatus owned or used by another person; (2) bypassing any meter or other instrument used to register the quantity consumed or supplied; or (3) altering, disconnecting, removing, injuring or preventing the action of any meter or other instrument used to register the quantity consumed or supplied. *Id.* § 704.805 1.

5. *Id.* § 704.805 1. Damages recoverable include treble the amount of damages, plus all reasonable costs and expenses, including equipment costs, investigation costs, expert witness fees, and attorney fees. *Id.* A rebuttable presumption is established that the person obligated to pay for the service or product caused or had knowledge of the proscribed conduct if the person was the occupant of the premises that received the product, or had access to the delivery system of the product. *Id.* § 704.805 2. The rebuttable presumption only shifts the burden of going forward with the evidence and does not shift the burden of proof to the defendant. *Id.* § 704.805 3. See generally 1985 PAC. L.J. REV. NEV. LEGIS. 117-18 (discussion of 1985 Nev. Stat. ch. 369, sec. 1, at 1037 (enacting NEV. REV. STAT. § 704.805)).

6. 1987 Nev. Stat. ch. 234, sec. 1, at \_\_\_ (amending NEV. REV. STAT. § 704.805 1). See *supra* note 2.

7. 1987 Nev. Stat. ch. 234, sec. 1, at \_\_\_ (amending NEV. REV. STAT. § 704.805 4).

of repair or replacement of the property injured or destroyed, including the direct and indirect costs attributable to repair or replacement.<sup>8</sup>

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8. 1987 Nev. Stat. ch. 234, sec. 1, at \_\_\_ (amending NEV. REV. STAT. § 704.805 4). The value, if any, of salvage must be subtracted. *Id.* Direct and indirect costs attributable to repair or replacement include, but are not limited to, costs for: (1) labor; (2) materials; (3) supervision of employees; (4) supplies; (5) tools; (6) taxes; (7) transportation; (8) general and administrative expenses; (9) allocable benefits for employees; (10) allowances for meals; and (11) any other related expenses. 1987 Nev. Stat. ch. 234, sec. 1, at \_\_\_ (enacting NEV. REV. STAT. § 704.805 6).

### **Torts; comparative negligence—joint and several liability**

NEV. REV. STAT. § 41.141 (amended).

SB 511 (Committee on Judiciary); 1987 STAT. Ch 709

Existing law provides that in any action to recover damages for the death or injury to a person or for injury to property, contributory negligence may be asserted<sup>1</sup> as a defense.<sup>2</sup> The contributory negligence of the plaintiff does not bar recovery if that negligence was not greater than the negligence of the person against whom recovery is sought.<sup>3</sup> Under existing law, the judge may, or if requested, must, instruct the jury that the plaintiff may not recover if the plaintiff's

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1. The defense of contributory negligence and any other matter constituting an avoidance must be set forth affirmatively in the answer to the complaint. Nev. R. Civ. P. § 8(c).

2. NEV. REV. STAT. § 41.141 1 (amended by 1987 Nev. Stat. ch. 709, sec. 1, at \_\_\_). See *Young's Mach. Co. v. Long*, 100 Nev. 692, 693, 692 P.2d 24, 25 (1984) (actions in strict products liability are not the type of actions in which contributory negligence may be asserted as a defense). See also *Davies v. Butler*, 95 Nev. 763, 770, 602 P.2d 605, 610 (1979) (the Legislature also intended to leave willful and wanton misconduct outside the purview of the comparative negligence statute).

3. NEV. REV. STAT. § 41.141 1 (amended by 1987 Nev. Stat. ch. 709, sec. 1, at \_\_\_) (any allowable damages must be diminished in proportion to the negligence attributable to the plaintiff or the decedent). See *State v. Eaton*, 101 Nev. 705, 715, 710 P.2d 1370, 1377 (1985) (plaintiffs may recover only if their negligence does not exceed that of the defendant or defendants). See also *Moyer v. United States*, 593 F. Supp. 145, 146 (D. Nev. 1984) (plaintiff allowed a diminished recovery although responsible for 50% of the total negligence); *Turnbow v. Wasden*, 608 F. Supp. 237, 243 (D. Nev. 1985) (recovery barred where negligence of plaintiff contributed more to the injury than negligence of defendant).