

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1237

Short Title: Comp. Fault-Apply to State Torts.

(Public)

Sponsors: Representatives Hall, S. Thompson, B. Ethridge, H. Hunter, Hardaway, Payne, Locks, Edwards, Jeralds, Stewart, Wicker, Blue, Watkins, Michaux, Barnes, Hackney, Holt, Dawkins, Cromer, Howard, Diamont, Buchanan, Flaherty, R. Hunter, Colton, N. Crawford, Greenwood, Nesbitt, Beall, Ramsey, Foster, Easterling, Cunningham, Barnhill, Stam, Stamey, Wiser, Kennedy, Burke, Fitch, Cooper; and Gist.

Referred to: Judiciary.

April 12, 1989

A BILL TO BE ENTITLED

AN ACT TO ADOPT A COMPARATIVE FAULT SYSTEM FOR STATE TORTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-300.1A. Comparative fault system for State Torts.

(a) In an action asserted under this Article, any contributory fault chargeable to the claimant, if less than the fault or the combined fault of the State and its employees, diminishes proportionately the amount awarded as compensatory damages for an injury, death, or harm to property attributable to the claimant's contributory fault, but does not bar recovery. This rule applies whether or not under prior law the claimant's contributory fault constituted a defense or was disregarded under applicable legal doctrine, such as last clear chance. If the contributory fault chargeable to the claimant is greater than or equal to the fault or combined fault of the State and its employees, it shall constitute a complete bar to the claimant's recovery.

(b) 'Fault' includes acts or omissions that are in any measure negligent or constitute reckless, willful or wanton conduct toward the person or property of the actor or others, or that subjects a person to strict tort liability. This term also includes unreasonable assumption of risk not constituting an enforceable express consent and

1 unreasonable failure to avoid an injury or to mitigate damages. Legal requirements of
2 causal relation apply both to fault as the basis of liability and to contributory fault."

3 Sec. 2. Chapter 143 of the General Statutes is amended by adding a new
4 section to read:

5 **"§143-300.1B. Special verdict; judgment.**

6 (a) In all claims asserted under this Article involving fault of more than one
7 party to the action, the Industrial Commission, shall make findings indicating:

8 (1) The amount of damages each claimant would be entitled to recover if
9 contributory fault is disregarded; and

10 (2) The percentage of the total fault of all the parties to each claim that is
11 allocated to each claimant or the State and its employees. For this
12 purpose the Industrial Commission may determine that two or more
13 persons are to be treated as a single party.

14 (b) In determining the percentage of fault, the Industrial Commission shall
15 consider both the nature of the conduct of each party at fault and the extent of the causal
16 relation between the conduct and the damages claimed.

17 (c) The Industrial Commission shall determine the award of damages to each
18 claimant in accordance with the findings, subject to any reduction for amounts paid
19 under release agreements, and render its decision."

20 Sec. 3. G.S. 143-299.1 is repealed.

21 Sec. 4. This act shall become effective October 1, 1989, and shall apply to
22 causes of action arising on and after that date.