

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1455

Short Title: Uniform Apportionment of Tort Responsibility. (Public)

Sponsors: Representatives Blust; and Rhodes.

Referred to: Judiciary I.

April 21, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE UNIFORM APPORTIONMENT OF TORT
3 RESPONSIBILITY ACT.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. The General Statutes are amended by adding a new Chapter to
6 read:

7 "**Chapter 1F.**
8 "**Contributory Fault.**

9 "**§ 1F-1. Short title.**

10 This Chapter may be cited as the Uniform Apportionment of Tort Responsibility
11 Act.

12 "**§ 1F-5. Definitions.**

13 As used in this Chapter, the following definitions apply:

- 14 (1) 'Contributory fault' means contributory negligence, misuse of a
15 product, unreasonable failure to avoid or mitigate harm, and
16 assumption of risk unless the risk is expressly assumed in a legally
17 enforceable release or similar agreement.
- 18 (2) 'Person' means an individual, corporation, business trust, estate, trust,
19 partnership, limited liability company, association, joint venture,
20 public corporation, government, or governmental subdivision, agency,
21 or instrumentality, or any other legal or commercial entity.
- 22 (3) 'Released person' means a person that would be liable for damages to a
23 claimant for personal injury or harm to property if the person had not
24 been discharged from liability under G.S. 1F-35 or G.S. 1F-40.
- 25 (4) 'Responsibility' means, with respect to a claim for damages for
26 personal injury or harm to property, the legal consequences of an act or
27 omission that is the basis for liability or a defense in whole or in part.

28 "**§ 1F-10. Effect of contributory fault.**

1 (a) Except as otherwise provided in subsection (b) of this section, in an action
2 seeking damages for personal injury or harm to property based on negligence or on any
3 other claim for which the claimant may be subject to a defense in whole or part based
4 on contributory fault, any contributory fault chargeable to the claimant diminishes the
5 amount that the claimant otherwise would be entitled to recover as compensatory
6 damages for the injury or harm by the percentage of responsibility assigned to the
7 claimant pursuant to G.S. 1F-15.

8 (b) If the claimant's contributory fault is greater than the combined responsibility
9 of all other parties and released persons whose responsibility is determined to have
10 caused personal injury to or harm to property of the claimant, the claimant may not
11 recover any damages.

12 (c) In a jury trial, the court shall instruct the jury regarding the legal effect of its
13 answers to interrogatories, made pursuant to G.S. 1F-15, on a claimant's right to recover
14 damages under subsection (b) of this section.

15 **"§ 1F-15. Finding damages; attribution of responsibility.**

16 (a) In an action to recover damages for personal injury or harm to property
17 involving the responsibility of more than one party or a released person, the court shall
18 instruct the jury to answer special interrogatories or, if there is no jury, make all of the
19 following findings:

- 20 (1) Stating the amount of damages that a claimant would be entitled to
21 recover if any contributory fault were disregarded.
- 22 (2) Stating, as to each claim, the percentage of the total responsibility of
23 all the parties and released persons attributed to each claimant,
24 defendant, and released person that caused the injury or harm.
- 25 (3) Regarding whether any of the parties or released persons acted in
26 concert or with an intent to cause personal injury or harm to property.
- 27 (4) Regarding any other issue of fact fairly raised by the evidence which is
28 necessary to make a determination under G.S. 1F-20 or enter judgment
29 under G.S. 1F-25.

30 (b) In determining percentages of responsibility, the trier of fact shall consider
31 both:

- 32 (1) The nature of the conduct of each party and released person
33 determined to be responsible.
- 34 (2) The extent of the casual relation between the conduct and the damages
35 claimed.

36 (c) The court shall determine the extent to which the responsibility of one party,
37 which is based on the act or omission of another party, warrants that the parties be
38 treated as a single party for the purpose of submitting interrogatories to the jury or
39 making findings under subsection (a) of this section.

40 **"§ 1F-20. Determining damage award; reallocation of uncollectible share.**

41 (a) After the trier of fact has answered interrogatories or made findings pursuant
42 to G.S. 1F-15, the court shall determine, in accordance with the percentages of
43 responsibility found, the monetary amount of any award of damages to a claimant, the

1 amount of the several share for which each party found liable is responsible, and any
2 amount attributable to a released person.

3 (b) After the court has made its determinations pursuant to subsection (a) of this
4 section, a claimant, no later than 90 days after the entry of judgment for the plaintiff,
5 may move the court to determine whether all or part of the amount of the several share
6 for which a party is liable will not be reasonably collectible and request reallocation. If
7 the court based on a preponderance of the evidence determines that the party's share will
8 not be reasonably collectible, the court shall make findings reallocating the uncollectible
9 share severally to the other parties, including the claimant, and any released person.
10 Reallocation must be made in the proportion that each party's and released person's
11 respective percentage of responsibility bears to the total of the percentages of
12 responsibility attributed to the parties, including the claimant, and any released person
13 but not including the percentage being reallocated.

14 (c) A party whose liability is reallocated remains liable to a claimant for any
15 additional share of responsibility allocated to the claimant. A party that discharges an
16 additional share of responsibility allocated to it pursuant to subsection (b) of this section
17 has a right of reimbursement from the party from which the share was reallocated. Upon
18 motion, the court in the judgment entered under G.S. 1F-25 shall declare the rights and
19 obligations resulting from the reallocation, including any rights and obligations with
20 regard to subrogation or a secured position. If any party to whom reallocation has been
21 made holds a secured position with regard to the share reallocated, each party to whom
22 reallocation has been made has a proportionate share in the secured position. Any
23 amount recovered under this subsection from a party whose liability has been
24 reallocated must be distributed to each of the parties to whom the reallocation was made
25 in the same proportion as the original reallocation.

26 (d) Reallocation does not make a released person liable for any reallocated share
27 of responsibility unless the release or other agreement so provides.

28 (e) If a motion for reallocation is made, any party may conduct discovery
29 regarding any issue relevant to the motion.

30 **"§ 1F-25. Entering and modifying judgment.**

31 (a) After determining an award of damages to a claimant and the amount of the
32 several share, including any reallocated share, for which each party found liable is
33 responsible, the court shall enter judgment severally against each party adjudged liable,
34 except in the following situations:

35 (1) If two or more parties adjudged liable acted in concert or with an intent
36 to cause personal injury to, or harm to property of, the claimant, the
37 court shall enter judgment jointly and severally against the parties for
38 their joint share.

39 (2) If a party is adjudged liable for failing to prevent another party from
40 intentionally causing personal injury to, or harm to property of, the
41 claimant, the court shall enter judgment jointly and severally against
42 the parties for their combined shares of responsibility.

1 (3) If a party is adjudged liable for the act or omission of another party
2 under G.S. 1F-15(c), the court shall enter judgment jointly and
3 severally against the parties for their joint share.

4 (4) If a statute of this State, other than this Chapter, so requires, the court
5 shall enter judgment jointly and severally or otherwise conform the
6 judgment to the statute.

7 (b) If a court grants a motion for reallocation pursuant to G.S. 1F-20 after
8 judgment is entered, the court shall modify the judgment to declare the rights and
9 obligations resulting from the reallocation, including any rights and obligations with
10 regard to subrogation or a secured position.

11 **"§ 1F-30. Right of contribution and indemnity; third-party action.**

12 (a) Except as otherwise provided in subsection (b) of this section, a party that is
13 jointly and severally liable with one or more other parties under this Chapter has a right
14 of contribution from another party jointly liable for any amount the party pays in excess
15 of the several amount for which the party is responsible. A party against which
16 contribution is sought is not liable for more than the monetary amount of the party's
17 several share of responsibility determined pursuant to G.S. 1F-20.

18 (b) A party that is adjudged liable for the act or omission of another party under
19 G.S. 1F-25(a)(3) has a right of indemnification from the other party.

20 (c) A party that is subject to liability for injury to, or harm to property of, a
21 claimant under this Chapter has a right:

22 (1) To join a person that is also subject to liability to the claimant for all or
23 part of the same injury or harm if the claimant has not sued the person.

24 (2) To seek contribution or indemnity, whichever is appropriate, from
25 another person whose liability is not determined in the proceeding in
26 which the party is adjudged liable if the other person is responsible for
27 all or part of the claimant's injury or harm.

28 (d) A claim for contribution or indemnity may be asserted in the original action
29 or in a separate action.

30 **"§ 1F-35. Effect of release.**

31 (a) A release, covenant not to sue, covenant not to execute a judgment, or similar
32 agreement by a claimant and person subject to liability discharges the person from
33 liability to the claimant to the extent provided in the agreement and from liability for
34 contribution to any other person subject to liability to the claimant for the same injury or
35 harm. The agreement does not discharge any other person subject to liability upon the
36 same claim unless the agreement so provides.

37 (b) The amount of the claim of the releasing person under subsection (a) of this
38 section against other persons jointly and severally liable for the same injury or harm for
39 which the released person would have been liable is reduced by the percentage of
40 responsibility attributed to the released person pursuant to G.S. 1F-15.

41 (c) A release, covenant not to sue, covenant not to execute a judgment, or similar
42 agreement extinguishes any claim for contribution or indemnity that the released person
43 would have had against another person that would have been jointly and severally liable
44 with the released person.

1 **"§ 1F-40. Reduction of workers' compensation lien and subrogation right; notice**
2 **and intervention.**

3 (a) If an employer or workers' compensation insurer asserts a lien or right of
4 subrogation under G.S. 97-10.2, the employer or insurer is deemed to have had its
5 obligation to the employee for the compensation benefits paid or payable discharged
6 under G.S. 1F-35 as if the employer or insurer had received a release, covenant not to
7 sue, or covenant not to execute a judgment from, or entered a similar agreement with,
8 the employee. In such a case, any percentage of responsibility that the employer would
9 have had for the employee's injury, were the employer not immune under Article 1 of
10 Chapter 97 of the General Statutes, must be determined as that of a released person
11 pursuant to G.S. 1F-15 and the lien or right of subrogation is reduced by the monetary
12 amount of the employer's percentage of responsibility, if any, in the employee's action
13 against the third party.

14 (b) A party asserting that an employer's or workers' compensation insurer's lien
15 or right of subrogation should be reduced under subsection (a) of this section because of
16 the employer's fault shall give notice to the employer or workers' compensation insurer.
17 In that case, the employer or insurer may intervene in the employee's action for personal
18 injury.

19 **"§ 1F-45. Uniformity of application and construction.**

20 In applying and construing this Uniform Act, consideration must be given to the
21 need to promote uniformity of the law with respect to its subject matter among states
22 that enact it.

23 **"§ 1F-50. Severability clause.**

24 If any provision of this Chapter or its application to any person or circumstance is
25 held invalid, the invalidity does not affect other provisions or applications of this
26 Chapter that can be given effect without the invalid provision or application, and to this
27 end the provisions of this Chapter are severable."

28 **SECTION 2.** G.S. 1B-2 reads as rewritten:

29 **"§ 1B-2. Pro rata shares.**

30 In determining the pro rata shares of tort-feasors in the entire ~~liability~~liability, all of
31 the following apply:

32 (1) Their relative degree of fault shall not be ~~considered~~considered,
33 unless liability is based upon acts or omissions that constitute
34 contributory fault as defined in G.S. 1F-5, in which case the provisions
35 of Chapter 1F of the General Statutes shall be the basis for determining
36 the allocation of liability.

37 (2) If equity requires, the collective liability of some as a group shall
38 constitute a single ~~share~~; andshare.

39 (3) Principles of equity applicable to contribution generally shall apply."

40 **SECTION 3.** Article 31 of Chapter 143 of the General Statutes is amended
41 by adding a new section to read:

42 **"§ 143-300.1B. Contributory fault applies to this Article.**

1 Subject to the provisions of G.S. 143-300.1A, when liability under this Article is
2 based upon acts or omissions that constitute contributory fault as defined in G.S. 1F-5,
3 the provisions of Chapter 1F of the General Statutes shall apply."

4 **SECTION 4.** G.S. 99B-1.1 reads as rewritten:

5 **"§ 99B-1.1. Strict liability-liability; contributory fault.**

6 (a) There shall be no strict liability in tort in product liability actions.

7 (b) When liability is based upon acts or omissions that constitute contributory
8 fault as defined in G.S. 1F-5, the provisions of Chapter 1F of the General Statutes shall
9 apply to product liability actions under this Chapter."

10 **SECTION 5.** G.S. 28A-18-2 is amended by adding a new subsection to read:

11 "(e) When liability under this section is based upon acts or omissions that
12 constitute contributory fault as defined in G.S. 1F-5, the provisions of Chapter 1F of the
13 General Statutes shall apply to actions for damages under this section."

14 **SECTION 6.** G.S. 1A-1, Rule 7(a), reads as rewritten:

15 "(a) Pleadings. – There shall be a complaint and an answer; a reply to a
16 counterclaim denominated as such; an answer to a crossclaim, if the answer contains a
17 crossclaim; a third-party complaint if a person who was not an original party is
18 summoned under the provisions of Rule 14; and a third-party answer, if a third-party
19 complaint is served. ~~If the answer alleges contributory negligence, a party may serve a~~
20 ~~reply alleging last clear chance.~~ No other pleading shall be allowed except that the court
21 may order a reply to an answer or a third-party answer."

22 **SECTION 7.** G.S. 1A-1, Rule 8(c), reads as rewritten:

23 "(c) Affirmative defenses. – In pleading to a preceding pleading, a party shall set
24 forth affirmatively accord and satisfaction, arbitration and award, assumption of risk,
25 contributory ~~negligence, fault,~~ discharge in bankruptcy, duress, estoppel, failure of
26 consideration, fraud, illegality, injury by fellow servant, laches, license, payment,
27 release, res judicata, statute of frauds, statute of limitations, truth in actions for
28 defamation, usury, waiver, and any other matter constituting an avoidance or affirmative
29 defense. Such pleading shall contain a short and plain statement of any matter
30 constituting an avoidance or affirmative defense sufficiently particular to give the court
31 and the parties notice of the transactions, occurrences, or series of transactions or
32 occurrences, intended to be proved. When a party has mistakenly designated a defense
33 as a counterclaim or a counterclaim as a defense, the court, on terms, if justice so
34 requires, shall treat the pleading as if there had been a proper designation."

35 **SECTION 8.** This act becomes effective January 1, 2006, and applies to
36 actions originally filed on or after that date.