

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS15119-MH-61A (3/10)

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

Sponsors: Senators Brunstetter, Clodfelter, Hartsell, and Stein.

Referred to:

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

4 The General Assembly of North Carolina enacts:

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

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

8 "**§ 1F-1. Short title.**

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

10 "**§ 1F-5. Definitions.**

11 The following definitions apply in this Chapter:

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

26 "**§ 1F-10. Effect of contributory fault.**

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

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



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

4 **"§ 1F-15. Finding damages; attribution of responsibility.**

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

8 (1) Stating the amount of damages that a claimant would be entitled to recover if
9 any contributory fault were disregarded.

10 (2) Stating, as to each claim, the percentage of the total responsibility of all the
11 parties and released persons attributed to each claimant, defendant, and
12 released person that caused the injury or harm.

13 (3) Regarding whether any of the parties or released persons acted in concert or
14 with an intent to cause personal injury or harm to property.

15 (4) Regarding any other issue of fact fairly raised by the evidence which is
16 necessary to make a determination under G.S. 1F-20 or enter judgment
17 under G.S. 1F-25.

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

19 (1) The nature of the conduct of each party and released person determined to be
20 responsible.

21 (2) The extent of the causal relation between the conduct and the damages
22 claimed.

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

27 **"§ 1F-20. Determining damage award; reallocation of uncollectible share.**

28 (a) After the trier of fact has answered interrogatories or made findings pursuant to
29 G.S. 1F-15, the court shall determine, in accordance with the percentages of responsibility
30 found, the monetary amount of any award of damages to a claimant, the amount of the several
31 share for which each party found liable is responsible, and any amount attributable to a released
32 person.

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

43 (c) A party whose liability is reallocated remains liable to a claimant for any additional
44 share of responsibility allocated to the claimant. A party that discharges an additional share of
45 responsibility allocated to it pursuant to subsection (b) of this section has a right of
46 reimbursement from the party from which the share was reallocated. Upon motion, the court in
47 the judgment entered under G.S. 1F-25 shall declare the rights and obligations resulting from
48 the reallocation, including any rights and obligations with regard to subrogation or a secured
49 position. If any party to whom reallocation has been made holds a secured position with regard
50 to the share reallocated, each party to whom reallocation has been made has a proportionate
51 share in the secured position. Any amount recovered under this subsection from a party whose

1 liability has been reallocated must be distributed to each of the parties to whom the reallocation
2 was made in the same proportion as the original reallocation.

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

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

7 **"§ 1F-25. Entering and modifying judgment.**

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

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

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

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

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

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

29 **"§ 1F-30. Right of contribution and indemnity; third-party action.**

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

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

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

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

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

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

48 **"§ 1F-35. Effect of release.**

49 (a) A release, covenant not to sue, covenant not to execute a judgment, or similar
50 agreement by a claimant and person subject to liability discharges the person from liability to
51 the claimant to the extent provided in the agreement and from liability for contribution to any

1 other person subject to liability to the claimant for the same injury or harm. The agreement
2 does not discharge any other person subject to liability upon the same claim unless the
3 agreement so provides.

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

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

12 **"§ 1F-40. Reduction of workers' compensation lien and subrogation right; notice and**
13 **intervention.**

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

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

28 **"§ 1F-45. Uniformity of application and construction.**

29 In applying and construing this Chapter, consideration must be given to the need to promote
30 uniformity of the law with respect to its subject matter among states that enact it.

31 **"§ 1F-50. Severability clause.**

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

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

37 **"§ 1B-2. Pro rata shares.**

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

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

44 (2) If equity requires, the collective liability of some as a group shall constitute a
45 single ~~share~~share; and

46 (3) Principles of equity applicable to contribution ~~generally~~shall
47 apply generally."

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

50 **"§ 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 based
2 upon acts or omissions that constitute contributory fault as defined in G.S. 1F-5, the provisions
3 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 fault as
8 defined in G.S. 1F-5, the provisions of Chapter 1F of the General Statutes shall apply to
9 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 constitute
12 contributory fault as defined in G.S. 1F-5, the provisions of Chapter 1F of the General Statutes
13 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 counterclaim
16 denominated as such; an answer to a crossclaim, if the answer contains a crossclaim; a
17 third-party complaint if a person who was not an original party is summoned under the
18 provisions of Rule 14; and a third-party answer, if a third-party complaint is served. ~~If the~~
19 ~~answer alleges contributory negligence, a party may serve a reply alleging last clear chance.~~ No
20 other pleading shall be allowed except that the court may order a reply to an answer or a
21 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 forth
24 affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory
25 ~~negligence, fault,~~ discharge in bankruptcy, duress, estoppel, failure of consideration, fraud,
26 illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of
27 frauds, statute of limitations, truth in actions for defamation, usury, waiver, and any other
28 matter constituting an avoidance or affirmative defense. Such pleading shall contain a short and
29 plain statement of any matter constituting an avoidance or affirmative defense sufficiently
30 particular to give the court and the parties notice of the transactions, occurrences, or series of
31 transactions or occurrences, intended to be proved. When a party has mistakenly designated a
32 defense as a counterclaim or a counterclaim as a defense, the court, on terms, if justice so
33 requires, shall treat the pleading as if there had been a proper designation."

34 **SECTION 8.** This act becomes effective January 1, 2010, and applies to actions
35 originally filed on or after that date.