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

Sponsors:

Referred to:

March 26, 2009

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 contract, release or
15 other agreement.
- 16 (2) Intentional wrongful conduct. – Any intentional tort, or willful and wanton
17 conduct as defined in G.S. 1D-5, causing injury, wrongful death or harm to
18 property.
- 19 (3) Party. – A party to an action to which this Chapter applies at the time the
20 trier of fact makes the findings required under G.S. 1F-15.
- 21 (4) Person. – An individual, corporation, business trust, estate, trust, partnership,
22 limited liability company, association, joint venture, public corporation,
23 government, or governmental subdivision, agency, or instrumentality, or any
24 other legal or commercial entity.
- 25 (5) Property. – Real property or tangible personal property.
- 26 (6) Released person. – A person that would be liable for damages to a claimant
27 for personal injury, wrongful death or harm to property if the person had not
28 been discharged from liability under G.S. 1F-35, 1F-40, or 1F-45. A
29 "released person" is not a "party" within the meaning of this Chapter.
- 30 (7) Responsibility. – With respect to a claim for damages for personal injury,
31 wrongful death or harm to property, the legal consequences of an act or
32 omission that is the basis for liability or a defense in whole or in part.

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

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

(b) Except as otherwise provided in subsection (c) of this section, if the claimant's contributory fault or, in a wrongful death claim, the decedent's contributory fault, is equal to or greater than the combined responsibility of all other parties and released persons determined to have caused the personal injury, wrongful death or harm to property giving rise to the claim, the claimant may not recover any damages.

(c) Any contributory fault chargeable to the claimant or, in a wrongful death claim, the decedent, shall not diminish the amount the claimant otherwise would be entitled to recover as damages against any party whose intentional wrongful conduct resulted in injury, wrongful death, or harm to property giving rise to the claim.

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

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

(a) In an action to recover damages for personal injury, wrongful death or harm to property requiring a determination of the responsibility of more than one party, released person, or, in a wrongful death claim, the decedent, the trier of fact shall make all of the following findings:

- (1) Stating the amount of damages that a claimant would be entitled to recover if any contributory fault were disregarded.
- (2) Stating, as to each claim, the percentage of the total responsibility for causing the personal injury, wrongful death, or harm to property that is attributed to each party, released person, and, in a wrongful death claim, the decedent, with the total of all percentages being equal to one hundred percent (100%).
- (3) Regarding any other issue of fact fairly raised by the evidence which is necessary to make a determination under G.S. 1F-20 or enter judgment under G.S. 1F-25.

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

- (1) The nature of the conduct of each party, released person, and, in a wrongful death claim, the decedent, determined to be responsible.
- (2) The extent of the causal relation between the conduct and the damages claimed.

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

(d) Nothing in this section shall alter any party's right to move for a separate trial of any issue or claim pursuant to G.S. 1A-1, Rule 42(b).

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

(a) Except as otherwise provided in subsection (b) of this section, after the trier of fact has made findings pursuant to G.S. 1F-15, the court shall determine, in accordance with the

1 percentages of responsibility found, the monetary amount of any award of damages to a
2 claimant, the amount of the several share for which each party found responsible is liable, and
3 any amount attributable to a released person.

4 (b) The court shall reassign any percentage of contributory fault attributed to a claimant
5 under G.S. 1F-15(a)(2) to any party or released person whose intentional wrongful conduct
6 resulted in injury, wrongful death, or harm to property giving rise to the claim. If more than one
7 party or released person is found to have committed intentional wrongful conduct, the
8 claimant's percentage of contributory fault shall be reassigned in the proportion that each of
9 their respective percentages of responsibility bears to the total of the percentages of
10 responsibility of all parties and released persons found to have committed intentional wrongful
11 conduct.

12 (c) No later than 180 days after the claimant is entitled to execute upon a judgment
13 entered in its favor, the claimant may move the court to determine whether all or part of the
14 amount of the several share of non-punitive damages for which a party is liable will not be
15 reasonably collectible and request reallocation. If the court based on a preponderance of the
16 evidence determines that all or part of the party's share will not be reasonably collectible, the
17 court shall make findings reallocating the uncollectible portion of the party's share severally to
18 the remaining parties, including the claimant, or, in a wrongful death claim, the decedent, and
19 any released person. Reallocation must be made in the proportion that each party's, decedent's
20 and released person's respective percentage of responsibility bears to the total of the
21 percentages of responsibility, exclusive of the percentage of the party whose share is being
22 reallocated. The portion of a party's several share of non-punitive damages that is uncollectible
23 shall be determined by subtracting all amounts collected from that party from the total amount
24 of non-punitive damages for which that party is liable.

25 (d) Notwithstanding the provisions of subsection (c) of this section, the several share
26 for which a party is liable may not be increased through reallocation if the party's percentage of
27 responsibility is less than the claimant's percentage of responsibility, or in a wrongful death
28 claim, the decedent's percentage of responsibility. In addition, the several share for which a
29 party is liable may not be increased through reallocation by an amount exceeding 100% of the
30 party's original share.

31 (e) A party whose liability is reallocated remains liable to a claimant for any additional
32 share of responsibility allocated to the claimant and for any additional share of responsibility
33 that is allocated to another party but not discharged by that party. A party that discharges an
34 additional share of responsibility allocated to it pursuant to subsection (c) of this section has a
35 right of reimbursement from the party whose share it has discharged, and in the enforcement of
36 such right of reimbursement, shall be entitled to preserve and enforce the plaintiff's lien of
37 judgment against the party whose share it has discharged, in the same manner provided for the
38 enforcement of a right of contribution pursuant to G.S. 1B-7. Upon motion, the court in the
39 judgment entered under G.S. 1F-25 shall declare the rights and obligations resulting from the
40 reallocation, including any rights and obligations with regard to subrogation or reimbursement.
41 Any amount recovered under this subsection from a party whose liability has been reallocated
42 must be distributed to each of the parties to whom the reallocation was made in the same
43 proportion as the original reallocation.

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

46 (g) If a motion for reallocation is made, any party may conduct discovery regarding any
47 issue relevant to the motion.

48 **"§ 1F-25. Entering and modifying judgment.**

49 (a) After determining an award of damages to a claimant and the amount of the several
50 share, including any reallocated share, for which each party found liable is responsible, the

1 court shall enter judgment severally against each party adjudged liable, except in the following
2 situations:

3 (1) If a party is adjudged liable for failing to prevent another party from
4 intentionally causing the personal injury, wrongful death or harm to property
5 giving rise to the claim, the court shall enter judgment jointly and severally
6 against those parties for their combined shares of responsibility.

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

10 (3) A party that commits intentional wrongful conduct is jointly and severally
11 liable for any indivisible injury legally caused by the tortious conduct,
12 regardless of the percentage of responsibility attributed to any party under
13 1F-15.

14 (4) If any other statute of this State requires that liability be joint and several,
15 the court shall enter judgment accordingly.

16 (b) If a court grants a motion for reallocation pursuant to G.S. 1F-20 after judgment is
17 entered, the court shall modify the judgment to declare the rights and obligations resulting from
18 the reallocation, including any rights and obligations with regard to subrogation or
19 reimbursement.

20 **"§ 1F-30. Right of contribution and indemnity; third-party action.**

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

27 (b) A party that is adjudged liable for the act or omission of another party under
28 G.S. 1F-25(a)(2) has a right of indemnification from the other party.

29 (c) There is no right of contribution against any party liable for negligent conduct in
30 favor of any party liable for intentional wrongful conduct causing personal injury, wrongful
31 death or harm to property giving rise to the claim.

32 (d) A party that is subject to liability for personal injury, wrongful death, or harm to
33 property under this Chapter has a right:

34 (1) To join a person that is not a party to the action and that is also subject to
35 liability to the claimant for all or part of the same personal injury, wrongful
36 death or harm to property.

37 (2) To seek contribution or indemnity, whichever is appropriate, from another
38 person whose liability is not determined in the proceeding in which the party
39 is adjudged liable if the other person is responsible for all or part of the same
40 personal injury, wrongful death or harm to property and has not been
41 discharged from liability to the claimant under G.S. 1F-35(a).

42 (e) A claim for contribution or indemnity may be asserted in the original action or in a
43 separate action.

44 (f) The provisions of Article 1, Chapter 1B of the General Statutes shall not apply to
45 claims subject to this Chapter.

46 **"§ 1F-35. Effect of release.**

47 (a) A release, covenant not to sue, covenant not to execute a judgment, or similar
48 agreement by a claimant and person subject to liability discharges the person from liability to
49 the claimant to the extent provided in the agreement and from liability for contribution to any
50 other person subject to liability to the claimant for the same personal injury, wrongful death or
51 harm to property. The agreement does not discharge any other person subject to liability upon

1 the same claim unless the agreement so provides. Neither the amount stipulated by the
2 agreement nor any consideration paid for it shall in any way affect any party's liability for the
3 same personal injury, wrongful death or harm to property unless the 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 personal injury, wrongful death
6 or harm to property for which the released person would have been liable is reduced by the
7 amount of the total award corresponding to the percentage of responsibility attributed to the
8 released person pursuant to G.S. 1F-15.

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

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

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

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

29 (c) Nothing in this section is intended to diminish or increase the rights and obligations
30 under G.S. 97-10.2(j).

31 **"§ 1F-45. Reduction of State's lien and subrogation right; notice and intervention.**

32 (a) If the State asserts a lien or right of subrogation under G.S. 127A-110, the State is
33 deemed to have had its obligation to the guardsman for the compensation benefits paid or
34 payable discharged under G.S. 1F-35 as if the State had received a release, covenant not to sue,
35 or covenant not to execute a judgment from, or entered a similar agreement with, the
36 guardsman. In such a case, any percentage of responsibility of the State for the guardsman's
37 injury must be determined as that of a released person pursuant to G.S. 1F-15, and the lien or
38 right of subrogation is reduced by the monetary amount of the State's percentage of
39 responsibility, if any, assigned by the trier of fact in the guardsman's action against the third
40 party.

41 (b) A party asserting that the State's lien or right of subrogation should be reduced
42 under subsection (a) of this section because of the State's fault shall give notice to the State. In
43 that case, the State may intervene in the employee's action for personal injury.

44 **"§ 1F-50. No modification to existing law governing apportionment of damages resulting**
45 **from divisible injuries.**

46 Nothing in this Chapter shall alter the application of existing law governing apportionment
47 of damages in cases involving separate, distinct and divisible injuries."

48 SECTION 2. G.S. 1-139 reads as rewritten:

49 **"§ 1-139. Burden of proof of contributory ~~negligence~~-fault.**

50 A party asserting the defense of contributory ~~negligence~~-fault as defined in G.S. 1F-5 has
51 the burden of proof of such defense."

1 **SECTION 3.** G.S. 1A-1, Rule 7(a), reads as rewritten:

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

9 **SECTION 4.** G.S. 1A-1, Rule 8(c), reads as rewritten:

10 "(c) Affirmative defenses. – In pleading to a preceding pleading, a party shall set forth
11 affirmatively accord and satisfaction, arbitration and award, assumption of risk expressly
12 assumed in a legally enforceable contract, release or other agreement, contributory
13 ~~negligence, fault as defined in G.S. 1F-5~~, discharge in bankruptcy, duress, estoppel, failure of
14 consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res
15 judicata, statute of frauds, statute of limitations, truth in actions for defamation, usury, waiver,
16 and any other matter constituting an avoidance or affirmative defense. Such pleading shall
17 contain a short and plain statement of any matter constituting an avoidance or affirmative
18 defense sufficiently particular to give the court and the parties notice of the transactions,
19 occurrences, or series of transactions or occurrences, intended to be proved. When a party has
20 mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, on
21 terms, if justice so requires, shall treat the pleading as if there had been a proper designation."

22 **SECTION 5.** G.S. 1B-1 is amended by adding a new subsection to read:

23 "(j) This Article shall not apply to tort-feasors liable for claims that are subject to
24 Chapter 1F of the General Statutes."

25 **SECTION 6.** G.S. 8-58.1 reads as rewritten:

26 "**§ 8-58.1. Injured party as witness when medical charges at issue.**

27 (a) Whenever an issue of hospital, medical, dental, pharmaceutical, or funeral charges
28 arises in any civil proceeding, the injured party or his—the injured party's guardian,
29 administrator, or executor is competent to give evidence regarding the amount of such charges,
30 provided that records or copies of such charges accompany such testimony. ~~The testimony of~~
31 ~~such a person establishes a rebuttable presumption of the reasonableness of the amount of the~~
32 charges.

33 (b) In any action to recover damages for personal injury or wrongful death, parties may
34 introduce evidence of past medical expenses as provided in G.S. 8C-1, Rule 414. The amount
35 actually paid for the medical treatment plus the amount or estimate of the amount of medical
36 expenses not paid that is necessary to discharge the liability to the provider of the services
37 establishes a rebuttable presumption that the amount is reasonable."

38 **SECTION 7.** Article 4 of Chapter 8C of the General Statutes is amended by adding
39 a new section to read:

40 "**Rule 414. Evidence of past medical expenses.**

41 In any action to recover damages for personal injury or wrongful death, evidence of past
42 medical expenses may include:

43 (1) The bills submitted by the provider of medical services.

44 (2) The amount actually paid for the medical services.

45 (3) The amount or estimate of the amount that is necessary to discharge the
46 liability to the provider of medical services.

47 No evidence of collateral sources shall be made known to the jury in presenting evidence of
48 past medical expenses, except that the claimant may introduce evidence of the source and of
49 any obligation to reimburse that source for payment of medical expenses.

50 Nothing herein shall be construed to limit the evidence admissible to prove the reasonable
51 value of volunteer services provided to an injured party."

1 **SECTION 8.** G.S. 20-135.2A(b) reads as rewritten:

2 "(d) Evidence of failure to wear a seat belt shall not be admissible in any criminal-~~or~~
3 ~~civil~~ trial, action, or proceeding except in an action based on a violation of this section or as
4 justification for the stop of a vehicle or detention of a vehicle operator and passengers."

5 **SECTION 9.** G.S. 28A-18-2 is amended by adding a new subsection to read:

6 "(e) The provisions of Chapter 1F of the General Statutes shall apply to actions for
7 damages under this section requiring a determination of the responsibility of more than one
8 party, released person, or the decedent for the death of the decedent."

9 **SECTION 10.** G.S. 99B-1.1 reads as rewritten:

10 "**§ 99B-1.1. Strict liability-liability; contributory fault.**

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

12 (b) The provisions of Chapter 1F of the General Statutes shall apply to product liability
13 actions under this Chapter requiring a determination of the responsibility of more than one
14 party, released person, or, in a wrongful death action, the decedent, for the injury, wrongful
15 death, or harm to property giving rise to the cause of action."

16 **SECTION 11.** G.S. 99B-4 is repealed in its entirety.

17 **SECTION 12.** G.S. 99C-4 reads as rewritten:

18 "**§ 99C-4. Competition.**

19 The ski area operator shall, prior to the beginning of a competition, allow each competitor a
20 reasonable visual inspection of the course or area where the competition is to be held. The
21 competitor shall be held to assume risk of all course conditions including, but not limited to,
22 weather and snow conditions, course construction or layout, and obstacles which a visual
23 inspection should have revealed. ~~No liability shall attach to a ski area operator for injury or~~
24 ~~death of any competitor proximately caused by such assumed risk.~~"

25 **SECTION 13.** G.S. 143-291(a) reads as rewritten:

26 "(a) The North Carolina Industrial Commission is hereby constituted a court for the
27 purpose of hearing and passing upon tort claims against the State Board of Education, the
28 Board of Transportation, and all other departments, institutions and agencies of the State. The
29 Industrial Commission shall determine whether or not each individual claim arose as a result of
30 the negligence of any officer, employee, involuntary servant or agent of the State while acting
31 within the scope of his office, employment, service, agency or authority, under circumstances
32 where the State of North Carolina, if a private person, would be liable to the claimant in
33 accordance with the laws of North Carolina. If the Commission finds that there was negligence
34 on the part of an officer, employee, involuntary servant or agent of the State while acting within
35 the scope of his office, employment, service, agency or authority that was the proximate cause
36 of the injury ~~and that there was no contributory negligence on the part of the claimant or the~~
37 ~~person in whose behalf the claim is asserted,~~ the Commission shall determine the amount of
38 damages that the claimant is entitled to be paid, including medical and other expenses, and by
39 appropriate order direct the payment of damages as provided in subsection (a1) of this section,
40 but in no event shall the amount of damages awarded exceed the amounts authorized in
41 G.S. 143-299.2 cumulatively to all claimants on account of injury and damage to any one
42 person arising out of a single occurrence. Community colleges and technical colleges shall be
43 deemed State agencies for purposes of this Article. The fact that a claim may be brought under
44 more than one Article under this Chapter shall not increase the foregoing maximum liability of
45 the State."

46 **SECTION 14.** G.S. 143-299.1 reads as rewritten:

47 "**§ 143-299.1. Contributory negligence-fault a matter of defense; burden of proof.**

48 Contributory ~~negligence-fault~~ as defined in G.S. 1F-5 on the part of the claimant or
49 the person in whose behalf the claim is asserted shall be deemed to be a matter of defense on
50 the part of the State department, institution or agency against which the claim is asserted, and
51 such State department, institution or agency shall have the burden of proving ~~that~~ contributory

1 fault on the part of the claimant or the person in whose behalf the claim is asserted ~~was guilty~~
2 ~~of contributory negligence.~~"

3 **SECTION 15.** Article 31 of Chapter 143 of the General Statutes is amended by
4 adding a new section to read:

5 **"§ 143-300.1B. Apportionment of tort responsibility applies to this Article.**

6 Subject to the provisions of G.S. 143-300.1A, the provisions of Chapter 1F of the General
7 Statutes shall apply to claims under this Article requiring a determination of the responsibility
8 of more than one party, released person, or, in a wrongful death action, the decedent, for the
9 injury, wrongful death, or harm to property giving rise to the cause of action."

10 **SECTION 16.** This act becomes effective January 1, 2012, and applies to actions
11 accruing on or after that date.