

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1236

Short Title: Comp. Fault-Not Apply to State Torts.

(Public)

Sponsors: Representatives S. Thompson, Hall, 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 AND MAKE IT INAPPLICABLE TO STATE TORTS.

The General Assembly of North Carolina enacts:

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

“ARTICLE 43E.

“COMPARATIVE FAULT.

“§ 1-539.25. Comparative fault system established.

(a) In an action based on fault seeking to recover damages for injury or death to person or harm to property, any contributory fault chargeable to the claimant, if less than the fault or the combined fault of the party or parties against whom recovery is sought, 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 party or parties against whom recovery is sought, it shall constitute a complete bar to the claimant's recovery.

1 (b) 'Fault' includes acts or omissions that are in any measure negligent or
2 constitute reckless, willful or wanton conduct toward the person or property of the actor
3 or others, or that subjects a person to strict tort liability. This term also includes
4 unreasonable assumption of risk not constituting an enforceable express consent and
5 unreasonable failure to avoid an injury or to mitigate damages. Legal requirements of
6 causal relation apply both to fault as the basis of liability and to contributory fault.

7 **"§ 1-539.26. Special verdict; judgment.**

8 (a) In all actions involving fault of more than one party to the action, including
9 third-party defendants, the court, unless otherwise agreed by all parties, shall instruct
10 the jury to answer special interrogatories or, if there is no jury, shall make findings
11 indicating:

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

14 (2) The percentage of the total fault of all the parties to each claim that is
15 allocated to each claimant, defendant, and third-party defendant. For
16 this purpose the court may determine that two or more persons are to
17 be treated as a single party.

18 (b) In determining the percentage of fault, the trier of fact shall consider both the
19 nature of the conduct of each party at fault and the extent of the causal relation between
20 the conduct and the damages claimed.

21 (c) The court shall determine the award of damages to each claimant in
22 accordance with the findings, subject to any reduction for amounts paid under release
23 agreements, and enter judgment against each party liable on the basis of the rules of
24 joint-and-several liability. For purposes of contribution the court also shall determine
25 and state in the judgment each party's equitable share of the obligation to each claimant
26 in accordance with the respective percentages of fault."

27 Sec. 2. G.S. 1B-2 reads as rewritten:

28 **"§ 1B-2. Pro rata shares.**

29 In determining the pro rata shares of tort-feasors in the entire liability

30 (1) Their relative degree of fault shall not be considered; however, if
31 liability is based upon acts or omissions that constitute fault as defined
32 in G.S. 1-539.25, their relative degree of fault determined as provided
33 in G.S. 1-539.26 shall be the basis for allocation.

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

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

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

39 **"§ 143-300.1A. Comparative fault not applicable.**

40 The provisions of Article 43E of Chapter 1 of the General Statutes shall not
41 apply to claims asserted under this Article."

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