

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 813\*  
Committee Substitute Favorable 5/12/09  
Third Edition Engrossed 5/13/09

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 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 equal to or greater than the combined  
34 responsibility of all other parties and released persons whose responsibility is determined to



1 have caused personal injury to or harm to property of the claimant, the claimant may not  
2 recover any damages.

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

6 **"§ 1F-15. Finding damages; attribution of responsibility.**

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

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

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

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

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

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

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

23 (2) The extent of the causal relation between the conduct and the damages  
24 claimed.

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

29 **"§ 1F-20. Determining damage award; reallocation of uncollectible share.**

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

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

45 (b1) Notwithstanding the provisions of subsection (b) of this section, the several share  
46 for which a party is liable may not be increased by reallocation if the party's percentage of  
47 responsibility is less than the claimant's percentage of responsibility.

48 (c) A party whose liability is reallocated remains liable to a claimant for any additional  
49 share of responsibility allocated to the claimant. A party that discharges an additional share of  
50 responsibility allocated to it pursuant to subsection (b) of this section has a right of  
51 reimbursement from the party from which the share was reallocated. Upon motion, the court in

1 the judgment entered under G.S. 1F-25 shall declare the rights and obligations resulting from  
2 the reallocation, including any rights and obligations with regard to subrogation or a secured  
3 position. If any party to whom reallocation has been made holds a secured position with regard  
4 to the share reallocated, each party to whom reallocation has been made has a proportionate  
5 share in the secured position. Any amount recovered under this subsection from a party whose  
6 liability has been reallocated must be distributed to each of the parties to whom the reallocation  
7 was made in the same proportion as the original reallocation.

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

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

12 **"§ 1F-25. Entering and modifying judgment.**

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

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

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

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

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

31 **"§ 1F-30. Right of contribution and indemnity; third-party action.**

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

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

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

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

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

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

50 **"§ 1F-35. Effect of release.**

1        (a) A release, covenant not to sue, covenant not to execute a judgment, or similar  
2 agreement by a claimant and person subject to liability discharges the person from liability to  
3 the claimant to the extent provided in the agreement and from liability for contribution to any  
4 other person subject to liability to the claimant for the same injury or harm. The agreement  
5 does not discharge any other person subject to liability upon the same claim unless the  
6 agreement so provides.

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

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

15 **"§ 1F-40. Reduction of workers' compensation lien and subrogation right; notice and**  
16 **intervention.**

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

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

31 **"§ 1F-45. Uniformity of application and construction.**

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

34 **"§ 1F-50. Severability clause.**

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

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

40 **"§ 1B-2. Pro rata shares.**

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

- 43        (1) Their relative degree of fault shall not be ~~considered~~considered, unless  
44 liability is based upon acts or omissions that constitute contributory fault as  
45 defined in G.S. 1F-5, in which case the provisions of Chapter 1F of the  
46 General Statutes shall be the basis for determining the allocation of liability.
- 47        (2) If equity requires, the collective liability of some as a group shall constitute a  
48 single ~~share; and~~share.
- 49        (3) Principles of equity applicable to contribution ~~generally~~—shall  
50 apply-generally."

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

3 **"§ 143-300.1B. Contributory fault applies to this Article.**

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

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

8 **"§ 99B-1.1. Strict liability-liability; contributory fault.**

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

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

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

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

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

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

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

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

37           **SECTION 8.** This act becomes effective January 1, 2010, and applies to actions  
38 arising from acts or omissions occurring on or after that date.