

HOUSE BILL 1182

D3

3lr2862

By: **Delegates Dumais and Mitchell**

Introduced and read first time: February 8, 2013

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Commission to Study Maryland’s Fault Allocation System**

3 FOR the purpose of establishing that the common law doctrines of contributory
4 negligence and joint and several liability, as they existed on a certain date, shall
5 remain the law of this State for certain purposes; establishing the Commission
6 to Study Maryland’s Fault Allocation System; providing for the composition,
7 chair, and staffing of the Commission; prohibiting a member of the Commission
8 from receiving certain compensation, but authorizing the reimbursement of
9 certain expenses; requiring the Commission to study and make
10 recommendations regarding certain matters; requiring the Commission to
11 reports its findings and recommendations to certain public officials on or before
12 a certain date; defining certain terms; providing for the application of this Act;
13 providing for the termination of this Act; and generally relating to certain
14 common law doctrines and the establishment of a Commission to Study
15 Maryland’s Fault Allocation System.

16 BY adding to

17 Article – Courts and Judicial Proceedings

18 Section 11–2A–01 to be under the new subtitle “Subtitle 2A. Maryland Fault
19 Allocation Act”

20 Annotated Code of Maryland

21 (2006 Replacement Volume and 2012 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article – Courts and Judicial Proceedings**

25 **SUBTITLE 2A. MARYLAND FAULT ALLOCATION ACT.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **11-2A-01.**

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
3 MEANINGS INDICATED.

4 (2) "CONTRIBUTORY NEGLIGENCE" MEANS THE COMMON LAW
5 DOCTRINE OF CONTRIBUTORY NEGLIGENCE, WHICH RETAINS ITS JUDICIALLY
6 DETERMINED MEANING AS IT EXISTED IN THIS STATE ON JANUARY 1, 2013.

7 (3) "JOINT AND SEVERAL LIABILITY" MEANS THE COMMON LAW
8 RULE OF JOINT AND SEVERAL LIABILITY, WHICH RETAINS ITS JUDICIALLY
9 DETERMINED MEANING AS IT EXISTED IN THIS STATE ON JANUARY 1, 2013.

10 (B) CONTRIBUTORY NEGLIGENCE SHALL REMAIN AN AFFIRMATIVE
11 DEFENSE THAT MAY BE RAISED BY A PARTY AGAINST WHOM A CLAIM IS MADE
12 FOR DAMAGES FOR WRONGFUL DEATH, PERSONAL INJURY, OR PROPERTY
13 DAMAGE.

14 (C) JOINT AND SEVERAL LIABILITY SHALL REMAIN A BASIS FOR
15 DETERMINING LIABILITY AMONG MULTIPLE TORTFEASORS THAT MAY BE
16 RAISED BY A PARTY IN AN ACTION RELATING TO A CLAIM FOR DAMAGES FOR
17 WRONGFUL DEATH, PERSONAL INJURY, OR PROPERTY DAMAGE.

18 SECTION 2. AND BE IT FURTHER ENACTED, That:

19 (a) There is a Commission to Study Maryland's Fault Allocation System.

20 (b) The Commission consists of the following members:

21 (1) two members of the Senate of Maryland, appointed by the
22 President of the Senate;

23 (2) two members of the House of Delegates, appointed by the Speaker
24 of the House;

25 (3) the following members, appointed by the Governor, in consultation
26 with the President of the Senate and the Speaker of the House of Delegates:

27 (i) one representative of the Maryland Association of Counties;

28 (ii) one representative of the Maryland Association for Justice;

29 (iii) one representative of the Maryland Defense Council;

30 (iv) one representative of the Maryland State Bar Association;

1 (v) one member of the faculty of the University of Baltimore
2 School of Law;

3 (vi) one member of the faculty of the University of Maryland
4 Francis King Carey School of Law;

5 (vii) one retired federal or State jurist; and

6 (viii) one representative of the Maryland Chamber of Commerce;
7 and

8 (4) the State Treasurer, or the Treasurer's designee.

9 (c) The Governor, in consultation with the President of the Senate and the
10 Speaker of the House of Delegates, shall designate the chair of the Commission.

11 (d) The Office of the Governor shall provide staff for the Commission.

12 (e) A member of the Commission:

13 (1) may not receive compensation as a member of the Commission; but

14 (2) is entitled to reimbursement for expenses under the Standard
15 State Travel Regulations, as provided in the State budget.

16 (f) The Commission shall:

17 (1) study Maryland's fault allocation system and the fault allocation
18 systems used in other states and the District of Columbia; and

19 (2) make recommendations regarding:

20 (i) whether to retain contributory negligence as the common
21 law of Maryland;

22 (ii) whether to codify contributory negligence as statutory law of
23 Maryland;

24 (iii) whether to adopt comparative fault and, if so, whether the
25 form of comparative fault should be pure or modified;

26 (iv) if the adoption of comparative fault is recommended, the
27 manner in which the plaintiff's fault should be compared to the fault of multiple
28 defendants;

1 (v) whether joint and several liability should be preserved,
2 modified, or abolished, in light of any recommendation concerning comparative fault,
3 and in what manner, if any, the rules of contribution among joint tortfeasors should be
4 changed;

5 (vi) how special verdicts should be handled;

6 (vii) the application of fault doctrines to strict products liability
7 in light of any recommendation concerning comparative fault;

8 (viii) whether to retain the rule of last clear chance;

9 (ix) whether to retain the affirmative defense of assumption of
10 risk;

11 (x) how to allocate fault between or among multiple tortfeasors
12 and determine the extent of each tortfeasor's liability for damages;

13 (xi) the effect of releases, setoffs, and counterclaims;

14 (xii) rights of contribution and indemnity if joint and several
15 liability is abolished or limited;

16 (xiii) if the adoption of comparative fault is recommended:

17 1. the effect on worker's compensation subrogation
18 claims for amounts paid by a worker's employer or the employer's worker's
19 compensation insurer; and

20 2. the impact on other categories of claims, including
21 claims for loss of consortium, uninsured or underinsured motorist coverage,
22 professional malpractice, crash-worthiness, and punitive damages against multiple
23 tortfeasors; and

24 (xiv) the effect of modification or abolishment of the doctrine of
25 contributory negligence on current Maryland statutes that provide for the application
26 of the defense of contributory negligence.

27 (g) On or before December 1, 2013, the Commission shall report its findings
28 and recommendations to the Governor and, in accordance with § 2-1246 of the State
29 Government Article, the General Assembly.

30 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act does
31 not expand, limit, or otherwise modify the affirmative defense of contributory
32 negligence or the rule of joint and several liability as either existed on January 1,
33 2013.

1 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall be
2 construed to apply only prospectively and may not be applied or interpreted to have
3 any effect on or application to any cause of action arising before the effective date of
4 this Act.

5 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 June 1, 2013. It shall remain effective for a period of 1 year and 1 month and, at the
7 end of June 30, 2014, with no further action required by the General Assembly, this
8 Act shall be abrogated and of no further force and effect.