

**Department of Legislative Services**  
Maryland General Assembly  
2013 Session

**FISCAL AND POLICY NOTE**

House Bill 1182  
Judiciary

(Delegates Dumais and Mitchell)

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**Courts - Commission to Study Maryland's Fault Allocation System**

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This bill requires that contributory negligence remain an affirmative defense that may be raised by a party being sued for damages for wrongful death, personal injury, or property damage. “Contributory negligence” is defined as the common law doctrine of contributory negligence according to its judicially determined meaning on January 1, 2013. The bill also requires that joint and several liability remain a basis for determining liability among multiple tortfeasors that may be raised by a party in an action relating to a claim for damages for wrongful death, personal injury, or property damage. “Joint and several liability” is defined as the common law rule of joint and several liability according to its judicially determined meaning on January 1, 2013. These provisions of the bill do not expand, limit, or otherwise modify the affirmative defense of contributory negligence or the rule of joint and several liability as they existed on January 1, 2013.

The bill also establishes the Commission to Study Maryland’s Fault Allocation System, staffed by the Governor’s Office.

The bill applies prospectively to causes of action arising on or after the bill’s June 1, 2013 effective date. The bill’s provisions terminate on June 30, 2014.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund expenditures to the extent that the Governor’s Office needs to employ contractual staff to assist with staffing the commission.

**Local Effect:** None.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** The commission must study Maryland's fault allocation system and the fault allocation systems used in other states and the District of Columbia and must make recommendations on several issues, including:

- whether contributory negligence should be retained as the common law of Maryland;
- whether contributory negligence should be codified in Maryland statute;
- whether comparative fault should be adopted and the form of comparative fault that should be adopted;
- if the adoption of comparative fault is recommended, the manner in which a plaintiff's fault should be compared to the fault of multiple defendants;
- potential changes to the rule on joint and several liability and the rules of contribution among joint tortfeasors;
- how to allocate fault between or among multiple tortfeasors and determine the extent of each tortfeasor's liability for damages;
- the effect of the adoption of comparative fault, if recommended, on specified causes of action; and
- the effect of modification or abolishment of the doctrine of contributory negligence on current Maryland statutes that provide for the application of the defense of contributory negligence.

Commission members may not receive compensation but are entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget.

The commission must report its findings and recommendations to the Governor and the General Assembly by December 1, 2013.

**Current Law:** Contributory negligence is conduct on the part of the injured party which falls below the standard to which the injured party should conform for self-protection, and is a legally contributing factor cause (along with the defendant's negligence) in bringing about the plaintiff's harm. Under Maryland law, contributory negligence on the part of a plaintiff bars recovery by the plaintiff. *See Board of County Commissioners of Garrett County v Bell Atlantic*, 346 Md. 160 (1997).

Under the doctrine of joint and several liability, if two or more defendants are found liable for a single and indivisible harm to the plaintiff, each defendant is liable to the

plaintiff for the entire harm. The plaintiff has the choice of collecting the entire judgment from one defendant or portions of the judgment from various defendants, so long as the plaintiff does not recover more than the amount of the judgment.

**Background:** Maryland is one of five jurisdictions, along with Virginia, Alabama, North Carolina, and the District of Columbia, that retains the doctrine of contributory negligence. Forty-six states follow the doctrine of comparative negligence, under which a plaintiff may recover damages, but a plaintiff's recovery can be reduced if the plaintiff was partially at fault.

In a letter dated November 8, 2010, the Chief Judge of the Court of Appeals asked the court's Standing Committee on Rules of Practice and Procedure to determine whether the court could replace the doctrine of contributory negligence with a form of comparative fault through the issuance of new rules or if the change would have to be made through a judicial decision. The request also called on the committee to study the judicial and economic consequences of such a change, as well as the impact of a change to comparative fault on related legal principles, such as joint and several liability.

In response, the Rules Committee submitted its report in April 2011 and did not recommend any changes to existing Maryland Rules. The report stated:

Respectfully, the Committee believes that the doctrines of contributory negligence, comparative fault, and at least some of the various associated doctrines and legal principles associated with those doctrines are matters of substantive law that do not fall within the ambit of practice, procedure or judicial administration. To the extent they are common law doctrines, they can be changed by judicial decision, as they have in several other States, but not, in the Committee's view, by Rule.

On April 20, 2012, approximately one year after the Rules Committee's report on contributory negligence and comparative fault, the Court of Appeals granted *certiorari* in *James K. Coleman v. Soccer Association of Columbia, et al.* (No. 9, September Term 2012), a case many believe presents the court with the issue of retaining or modifying the current contributory negligence standard versus switching to a comparative fault system.

The plaintiff in the case, James K. Coleman, was a 20-year-old assistant soccer coach for the Soccer Association of Columbia (SAC). In August 2008, Coleman was taking shots on goal while his team was practicing at a soccer field located on the property of a public school. While attempting to retrieve a ball from the goal, Coleman jumped up and grabbed the crossbar of the goal. Because the goal frame was unanchored, the goal tipped over and fell on top of Coleman, crushing his face. Coleman suffered a fractured orbit (bone structure area around the eyes) and required hospital treatment, including the

insertion of a titanium plate. While in the hospital, Mr. Coleman admitted that he had been smoking marijuana on the day of the accident.

The case was tried before a jury in the Circuit Court for Howard County. In October 2011, the jury found that SAC was negligent for failing to properly secure the goal frame, but declined to award damages to the plaintiff, because it also found that Mr. Coleman was negligent when he grabbed the crossbar. Mr. Coleman appealed to the Court of Special Appeals, but also filed a direct petition to the Court of Appeals. SAC filed a cross-appeal.

The Court of Appeals, in granting *certiorari*, stated that the issue was whether the court should ameliorate or repudiate the doctrine of contributory negligence and replace it with a comparative fault regime.

Oral arguments were held in front of the Court of Appeals on September 10, 2012, and lasted for nearly two hours. In an unusual step signaling the importance of the case, the court not only solicited oral arguments from the attorneys for the plaintiff and defendants, but also from those persons and organizations who submitted “friend of the court” briefs. Proponents of a change in negligence systems argued that the all-or-nothing approach of the contributory negligence doctrine is harsh, outdated, and can result in allowing people who have harmed others to escape liability. Opponents argued that a shift to a comparative fault system would increase lawsuits and liability against businesses, and make Maryland less competitive with neighboring states. Opponents also argued that the General Assembly, rather than the courts, is the appropriate venue for a change to comparative fault.

A decision in the *Coleman* case is pending.

**State Expenditures:** General fund expenditures may increase minimally to the extent that the Governor’s Office needs to employ contractual staff to assist with staffing the commission. The Governor’s Office advises that it does not have the expertise to staff the commission and does not know if contractual staff with pertinent expertise can be found or whether an outside entity, such as a university, would be willing to assist in staffing the commission.

The Governor’s Office also advises that it is unable to determine the fiscal impact of the bill associated with reimbursement of commission members for travel expenses, since it is unclear how many meetings the commission will need to conduct. However, given that the Governor’s Office is located in Annapolis, several members of the commission already have offices in Annapolis, and several members of the commission already receive reimbursement for travel to Annapolis, it is unlikely that the reimbursements associated with the commission will have a material impact on State finances.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Governor's Office, Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510