
By: Delegates Genn and Montague

Introduced and read first time: February 2, 1996

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Comparative Negligence Act**

3 FOR the purpose of establishing comparative negligence as the method for awarding
4 damages in certain causes of action; establishing a method for apportioning the
5 award of damages in certain causes of action; eliminating assumption of risk as a
6 defense in certain causes of actions; eliminating joint and several liability in certain
7 causes of action; providing for reallocation of any uncollectible amount of a
8 judgment under certain circumstances; placing the burden of proof on the person
9 alleging negligence; making certain provisions concerning releases; providing for the
10 application of this Act; making the provisions of this Act nonseverable; and
11 generally relating to establishing comparative fault as a method of awarding
12 damages in certain causes of action.

13 BY adding to

14 Article - Courts and Judicial Proceedings
15 Section 11-2A-01 through 11-2A-05, inclusive, to be under the new subtitle
16 "Subtitle 2A. Maryland Comparative Negligence Act"
17 Annotated Code of Maryland
18 (1995 Replacement Volume and 1995 Supplement)

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

21 **Article - Courts and Judicial Proceedings**

22 SUBTITLE 2A. MARYLAND COMPARATIVE NEGLIGENCE ACT.

23 11-2A-01.

24 (A) IN AN ACTION BASED ON NEGLIGENCE WHERE RECOVERY FOR DAMAGES
25 RESULTING FROM DEATH, INJURY TO PERSON, OR HARM TO PROPERTY IS SOUGHT:

26 (1) CONTRIBUTORY NEGLIGENCE OF THE PLAINTIFF MAY BAR
27 RECOVERY IF THE CONTRIBUTORY NEGLIGENCE WAS GREATER THAN THE
28 COMBINED NEGLIGENCE OF THE PERSONS AGAINST WHOM RECOVERY IS SOUGHT;
29 AND

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1 (2) DAMAGES SHALL BE DIMINISHED IN PROPORTION TO THE
2 PERCENTAGE OF CONTRIBUTORY NEGLIGENCE ATTRIBUTABLE TO THE PERSON
3 RECOVERING.

4 (B) THE DEFENSE OF ASSUMPTION OF RISK MAY NOT BE USED IN ANY
5 ACTION BASED ON NEGLIGENCE.

6 (C) THIS SUBTITLE DOES NOT APPLY TO ACTIONS IN STRICT TORT LIABILITY
7 OR BREACH OF WARRANTY.

8 11-2A-02.

9 (A) IN DETERMINING THE AMOUNT THAT THE PLAINTIFF'S DAMAGES ARE TO
10 BE DIMINISHED, THE NEGLIGENCE OF EACH PLAINTIFF OR IN A WRONGFUL DEATH
11 ACTION, THE NEGLIGENCE OF THE DECEDENT, SHALL BE COMPARED TO THE TOTAL
12 NEGLIGENCE OF:

13 (1) ALL PERSONS AGAINST WHOM RECOVERY IS SOUGHT; AND

14 (2) ALL PERSONS WITH WHOM THE PLAINTIFF HAS ENTERED INTO A
15 RELEASE, COVENANT NOT TO SUE, SETTLEMENT, OR SIMILAR AGREEMENT.

16 (B) THE COMBINED TOTAL OF THE PLAINTIFF'S NEGLIGENCE OR IN A
17 WRONGFUL DEATH ACTION, THE DECEDENT'S NEGLIGENCE, AND ALL OF THE
18 NEGLIGENCE OF THE PERSONS UNDER SUBSECTION (A)(2) OF THIS SECTION SHALL
19 EQUAL 100%.

20 (C) THE DETERMINATION OF THE TRIER OF FACT UNDER SUBSECTION (B) OF
21 THIS SECTION AND A DETERMINATION OF THE AMOUNT OF DAMAGES EACH
22 PLAINTIFF WOULD BE ENTITLED TO RECOVER IF CONTRIBUTORY NEGLIGENCE IS
23 DISREGARDED SHALL BE BY SPECIAL INTERROGATORIES OR SPECIFIC FINDING OF
24 FACT.

25 (D) (1) THE BURDEN OF ALLEGING AND PROVING NEGLIGENCE THAT
26 SERVES TO DIMINISH A PLAINTIFF'S DAMAGES OR BAR RECOVERY UNDER THIS
27 SECTION IS ON THE PERSON WHO SEEKS TO ESTABLISH THE NEGLIGENCE.

28 (2) THE PLAINTIFF IS PRESUMED TO HAVE EXERCISED DUE CARE.

29 11-2A-03.

30 (A) EXCEPT AS PROVIDED IN SUBSECTIONS (B), (C), AND (D) OF THIS SECTION,
31 THE LIABILITY OF EACH DEFENDANT SHALL BE SEVERAL ONLY AND LIMITED TO
32 THAT AMOUNT OF DAMAGES ALLOCATED TO EACH DEFENDANT IN DIRECT
33 PROPORTION TO THE PERCENTAGE OF NEGLIGENCE ATTRIBUTED TO THE
34 DEFENDANT UNDER § 11-2A-02 OF THIS SUBTITLE.

35 (B) (1) IF THE ENTIRE JUDGMENT AGAINST ALL DEFENDANTS IS NOT
36 SATISFIED WITHIN 30 DAYS AFTER THE ENTRY OF A FINAL JUDGMENT, ON MOTION
37 OF PLAINTIFF THE COURT SHALL HOLD THE DEFENDANTS JOINTLY AND
38 SEVERALLY LIABLE FOR THE UNPAID BALANCE OF THE TOTAL JUDGMENT.

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1 (2) A SINGLE DEFENDANT'S LIABILITY MAY NOT EXCEED TWO AND
2 ONE-HALF TIMES THE PERCENTAGE OF NEGLIGENCE FOUND BY THE TRIER OF
3 FACT.

4 (C) JOINT AND SEVERAL LIABILITY SHALL BE IMPOSED ON ANY PERSON WHO
5 CONSCIOUSLY AND DELIBERATELY PURSUES OR ACTIVELY TAKES PART IN A
6 COMMON PLAN OR DESIGN TO COMMIT A TORTIOUS ACT.

7 (D) FOR CASES UNDER THIS SUBTITLE, A PERSON WHO IS LIABLE SOLELY ON
8 A VICARIOUS BASIS FOR THE NEGLIGENCE OF ANOTHER PERSON, SHALL BE
9 JOINTLY AND SEVERALLY LIABLE WITH THAT PERSON.

10 11-2A-04.

11 %A RELEASE, COVENANT NOT TO SUE, OR SIMILAR AGREEMENT ENTERED INTO
12 BY A PLAINTIFF AND ANOTHER PERSON:

13 (1) DISCHARGES THAT PERSON FROM ALL LIABILITY FOR
14 CONTRIBUTION; BUT

15 (2) DOES NOT DISCHARGE ANY OTHER PERSON LIABLE ON THE SAME
16 CLAIM UNLESS THE RELEASE, COVENANT, OR AGREEMENT EXPRESSLY PROVIDES A
17 DISCHARGE.

18 11-2A-05.

19 THIS SUBTITLE MAY BE CITED AS "THE MARYLAND COMPARATIVE
20 NEGLIGENCE ACT".

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

24 SECTION 3. AND BE IT FURTHER ENACTED, That, notwithstanding the
25 provisions of Article 1, § 23 of the Annotated Code of Maryland, the provisions of this
26 Act are not severable, and if any provision of this Act or the application thereof to any
27 person or circumstance is held invalid for any reason in a court of competent jurisdiction,
28 no other provision or application of this Act may be given effect.

29 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 1996.