
By: Delegates Montague, Grosfeld, Menes, E. Burns, Turner, R. Baker

Introduced and read first time: January 31, 1997

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; prohibiting the rule of contributory negligence
5 from barring recovery in certain causes of action; providing for reallocation of any
6 uncollectible amount of a judgment under certain circumstances; placing the burden
7 of proof on the person alleging negligence; making certain provisions concerning
8 releases; providing for the application of this Act; making the provisions of this Act
9 nonseverable; eliminating joint and several liability in certain causes of action; and
10 generally relating to establishing comparative fault as a method of awarding
11 damages in certain causes of action.

12 BY adding to

13 Article - Courts and Judicial Proceedings
14 Section 11-2A-01 through 11-2A-06, inclusive, to be under the new subtitle
15 "Subtitle 2A. Maryland Comparative Negligence Act"
16 Annotated Code of Maryland
17 (1995 Replacement Volume and 1996 Supplement)

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

20 **Article - Courts and Judicial Proceedings**

21 SUBTITLE 2A. MARYLAND COMPARATIVE NEGLIGENCE ACT.

22 11-2A-01.

23 THIS SUBTITLE DOES NOT APPLY TO ACTIONS IN STRICT TORT LIABILITY OR
24 BREACH OF WARRANTY.

25 11-2A-02.

26 (A) CONTRIBUTORY NEGLIGENCE SHALL NOT BAR RECOVERY IN AN ACTION
27 BY ANY PERSON OR THAT PERSON'S LEGAL REPRESENTATIVE TO RECOVER
28 DAMAGES FOR NEGLIGENCE RESULTING IN DEATH OR INJURY TO PERSON OR
29 PROPERTY, IF THE NEGLIGENCE WAS LESS THAN THE NEGLIGENCE OF THE PERSON

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1 AGAINST WHOM RECOVERY IS SOUGHT OR WAS LESS THAN THE COMBINED
2 NEGLIGENCE OF THE PERSONS AGAINST WHOM RECOVERY IS SOUGHT.

3 (B) ANY DAMAGES SUSTAINED SHALL BE DIMINISHED BY THE PERCENTAGE
4 SUSTAINED OF NEGLIGENCE ATTRIBUTABLE TO THE PERSON RECOVERING.

5 11-2A-03.

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

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

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

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

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

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

25 11-2A-04

26 (A) EXCEPT AS PROVIDED IN SUBSECTIONS (B), (C), (D), AND (E) OF THIS
27 SECTION, THE LIABILITY OF EACH DEFENDANT SHALL BE SEVERAL ONLY AND
28 LIMITED TO THAT AMOUNT OF DAMAGES ALLOCATED TO EACH DEFENDANT IN
29 DIRECT PROPORTION TO THE PERCENTAGE OF NEGLIGENCE ATTRIBUTED TO THE
30 DEFENDANT UNDER § 11-2A-03 OF THIS SUBTITLE.

31 (B) (1) ON MOTION MADE NOT LATER THAN 2 YEARS AFTER FINAL
32 JUDGMENT IS ENTERED, THE COURT SHALL:

33 (I) DETERMINE WHETHER ALL OR PART OF A PARTY'S
34 EQUITABLE SHARE OF THE OBLIGATION IS COLLECTIBLE FROM THAT PARTY; AND

35 (II) REALLOCATE ANY UNCOLLECTIBLE AMOUNT AMONG THE
36 OTHER LIABLE PARTIES, INCLUDING THE PLAINTIFF IF ADJUDGED TO HAVE BEEN
37 CONTRIBUTORILY NEGLIGENT, ACCORDING TO THEIR RESPECTIVE PERCENTAGES
38 OF FAULT.

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1 (2) A PARTY SHALL NOT BE REALLOCATED AN AMOUNT GREATER
2 THAN DOUBLE THE ORIGINAL PERCENTAGE OF FAULT ATTRIBUTED BY THE
3 FINDER OF FACT.

4 (3) THE PARTY WHOSE SHARE IS REALLOCATED SHALL REMAIN
5 SUBJECT TO ANY CONTINUING LIABILITY TO THE CLAIMANT ON THE JUDGMENT.

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

9 (D) JOINT AND SEVERAL LIABILITY SHALL BE IMPOSED ON ANY PERSON
10 DETERMINED TO HAVE COMMITTED AN ENVIRONMENTAL TORT IN WHICH
11 DAMAGES FOR PERSONAL INJURIES OR DEATH ARE SOUGHT AND WHERE THE
12 CAUSE OF THE DAMAGES IS THE NEGLIGENT MANUFACTURE, USE, DISPOSAL,
13 HANDLING, STORAGE, OR TREATMENT OF HAZARDOUS OR TOXIC SUBSTANCES.

14 (E) FOR CASES UNDER THIS SUBTITLE, A PERSON WHO IS LIABLE SOLELY ON
15 THE VICARIOUS BASIS FOR THE NEGLIGENCE OF ANOTHER PERSON SHALL BE
16 JOINTLY AND SEVERALLY LIABLE WITH THAT PERSON.

17 11-2A-05.

18 A RELEASE, COVENANT NOT TO SUE, OR SIMILAR AGREEMENT ENTERED INTO
19 BY A PLAINTIFF AND ANOTHER PERSON:

20 (1) DISCHARGES THAT PERSON FROM ALL LIABILITY FOR
21 CONTRIBUTION; BUT

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

25 11-2A-06.

26 THIS SUBTITLE MAY BE CITED AS "THE MARYLAND COMPARATIVE
27 NEGLIGENCE ACT".

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

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

36 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
37 October 1, 1997.