
By: **Senators Van Hollen, Kelley, and Boozer**
Introduced and read first time: February 6, 1998
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Comparative Negligence Act**

3 FOR the purpose of prohibiting contributory negligence from barring recovery in
4 certain actions; providing that the burden of alleging and proving contributory
5 negligence is on the person who seeks to establish the contributory negligence;
6 requiring the trier of fact to make certain determinations by special
7 interrogatories or specific findings of fact; providing for the reduction of an
8 award of damages under certain circumstances; establishing that in certain
9 actions, the liability of each defendant for damages shall be several only under
10 certain circumstances; requiring the court to reallocate a party's share of the
11 damages under certain circumstances; providing for the effect of certain
12 agreements entered into by the plaintiff and another person; providing for the
13 application of this Act; making the provisions of this Act nonseverable; and
14 generally relating to comparative negligence and joint and several liability.

15 BY adding to

16 Article - Courts and Judicial Proceedings
17 Section 11-2A-01 through 11-2A-07, inclusive, to be under the new subtitle
18 "Subtitle 2A. Maryland Comparative Negligence Act"
19 Annotated Code of Maryland
20 (1995 Replacement Volume and 1997 Supplement)

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

23 **Article - Courts and Judicial Proceedings**

24 **SUBTITLE 2A. MARYLAND COMPARATIVE NEGLIGENCE ACT.**

25 11-2A-01.

26 IN THIS SUBTITLE, "NEGLIGENCE" MEANS NEGLIGENCE THAT WAS A LEGAL
27 CAUSE OF INJURY.

1 11-2A-02.

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

4 11-2A-03.

5 (A) CONTRIBUTORY NEGLIGENCE OF THE PLAINTIFF OR, IN A WRONGFUL
6 DEATH ACTION, THE DECEDENT, DOES NOT BAR RECOVERY IN AN ACTION FOR
7 DAMAGES DUE TO NEGLIGENCE RESULTING IN DEATH OR INJURY TO PERSON OR
8 PROPERTY IF THE CONTRIBUTORY NEGLIGENCE IS LESS THAN THE COMBINED
9 NEGLIGENCE OF THE PERSONS AGAINST WHOM RECOVERY IS SOUGHT AND ALL
10 PERSONS WITH WHOM THE PLAINTIFF HAS ENTERED INTO A RELEASE, COVENANT
11 NOT TO SUE, SETTLEMENT, OR SIMILAR AGREEMENT.

12 (B) THE COMBINED NEGLIGENCE OF THE PLAINTIFF OR, IN A WRONGFUL
13 DEATH ACTION, THE DECEDENT, AND OF THE PERSONS AGAINST WHOM RECOVERY
14 IS SOUGHT AND ALL PERSONS WITH WHOM THE PLAINTIFF HAS ENTERED INTO A
15 RELEASE, COVENANT NOT TO SUE, SETTLEMENT, OR SIMILAR AGREEMENT SHALL
16 EQUAL 100 PERCENT.

17 (C) THE BURDEN OF ALLEGING AND PROVING CONTRIBUTORY NEGLIGENCE
18 IS ON THE PERSON WHO SEEKS TO ESTABLISH THE CONTRIBUTORY NEGLIGENCE.

19 (D) IF THE TRIER OF FACT DETERMINES THAT THE PLAINTIFF OR, IN A
20 WRONGFUL DEATH ACTION, THE DECEDENT, IS CONTRIBUTORILY NEGLIGENT, THE
21 TRIER OF FACT SHALL, BY SPECIAL INTERROGATORIES OR SPECIFIC FINDINGS OF
22 FACT, DETERMINE THE PERCENTAGE OF NEGLIGENCE ATTRIBUTABLE TO EACH
23 PARTY AND EACH PERSON WITH WHOM THE PLAINTIFF HAS ENTERED INTO A
24 RELEASE, COVENANT NOT TO SUE, SETTLEMENT, OR SIMILAR AGREEMENT.

25 11-2A-04.

26 (A) IF A CLAIM IS NOT BARRED BY CONTRIBUTORY NEGLIGENCE, THE TRIER
27 OF FACT SHALL DISREGARD ANY CONTRIBUTORY NEGLIGENCE IN DETERMINING
28 DAMAGES.

29 (B) THE COURT SHALL REDUCE THE DAMAGES DETERMINED BY THE TRIER
30 OF FACT BY THE PERCENTAGE OF NEGLIGENCE ATTRIBUTABLE TO THE PLAINTIFF
31 OR, IN A WRONGFUL DEATH ACTION, THE DECEDENT, AS DETERMINED BY THE TRIER
32 OF FACT UNDER § 11-2A-03 OF THIS SUBTITLE.

33 (C) IF THE TRIER OF FACT DETERMINES UNDER § 11-2A-03 OF THIS SUBTITLE
34 THAT A PERSON WHO ENTERED INTO A RELEASE, COVENANT NOT TO SUE,
35 SETTLEMENT, OR SIMILAR AGREEMENT WAS NEGLIGENT, THE COURT SHALL
36 FURTHER REDUCE THE DAMAGES BY THE GREATER OF:

37 (1) THE CONSIDERATION PAID FOR THE RELEASE, COVENANT NOT TO
38 SUE, SETTLEMENT, OR SIMILAR AGREEMENT; OR

1 (2) THE PERCENTAGE OF NEGLIGENCE ATTRIBUTABLE TO THAT
2 PERSON.

3 11-2A-05.

4 (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IN ANY ACTION FOR
5 DAMAGES DUE TO NEGLIGENCE RESULTING IN DEATH OR INJURY TO PERSON OR
6 PROPERTY, IN WHICH THE PLAINTIFF OR DECEDENT IS DETERMINED TO BE
7 CONTRIBUTORILY NEGLIGENT, THE LIABILITY OF EACH DEFENDANT FOR DAMAGES
8 SHALL BE SEVERAL ONLY AND LIMITED TO THE AMOUNT OF DAMAGES ALLOCATED
9 TO EACH DEFENDANT IN THE PROPORTION THAT EACH DEFENDANT'S PERCENTAGE
10 OF NEGLIGENCE BEARS TO THE TOTAL PERCENTAGE OF NEGLIGENCE ATTRIBUTED
11 TO ALL THE DEFENDANTS UNDER § 11-2A-03 OF THIS SUBTITLE.

12 (B) ON MOTION MADE NOT EARLIER THAN 45 DAYS AFTER FINAL JUDGMENT
13 IS ENTERED, THE COURT SHALL:

14 (1) DETERMINE WHETHER ALL OR PART OF A PARTY'S SHARE OF THE
15 DAMAGES IS COLLECTIBLE FROM THAT PARTY; AND

16 (2) REALLOCATE ANY UNCOLLECTIBLE AMOUNT AMONG THE
17 PLAINTIFF OR DECEDENT AND ALL OTHER PARTIES WHOSE NEGLIGENCE WAS
18 DETERMINED BY THE TRIER OF FACT TO BE GREATER THAN THE NEGLIGENCE OF
19 THE PLAINTIFF OR DECEDENT, ACCORDING TO THEIR SHARES OF FAULT IN
20 COMPARISON TO ONE ANOTHER.

21 (C) ANY PERSON WHO CONSCIOUSLY AND DELIBERATELY PURSUES OR
22 ACTIVELY TAKES PART IN A COMMON PLAN OR DESIGN TO COMMIT A TORT SHALL BE
23 JOINTLY AND SEVERALLY LIABLE FOR DAMAGES.

24 (D) A PERSON WHO IS VICARIOUSLY LIABLE FOR THE NEGLIGENCE OF
25 ANOTHER PERSON SHALL BE JOINTLY AND SEVERALLY LIABLE FOR THAT PERSON'S
26 DAMAGES.

27 (E) THIS SECTION MAY NOT BE CONSTRUED TO AFFECT THE JOINT AND
28 SEVERAL LIABILITY OF THE DEFENDANTS IN ANY ACTION IN WHICH THE PLAINTIFF
29 OR DECEDENT IS NOT DETERMINED BY THE TRIER OF FACT TO BE CONTRIBUTORILY
30 NEGLIGENT.

31 11-2A-06.

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

34 (1) DISCHARGES THAT PERSON FROM ALL LIABILITY FOR
35 CONTRIBUTION; BUT

36 (2) DOES NOT DISCHARGE ANY OTHER PERSON LIABLE FOR THE SAME
37 CLAIM UNLESS THE RELEASE, COVENANT, OR AGREEMENT EXPRESSLY PROVIDES A
38 DISCHARGE.

1 11-2A-07.

2 THIS SUBTITLE MAY BE CITED AS "THE MARYLAND COMPARATIVE NEGLIGENCE
3 ACT".

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

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

12 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 1998.