

HOUSE BILL 551

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SB 618/98 - JPR

1999 Regular Session  
9r2111  
CF 9r1627

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By: **Delegates Montague and Grosfeld**  
Introduced and read first time: February 11, 1999  
Assigned to: Judiciary

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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 (1998 Replacement Volume)

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, 1999.