

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1129
Judiciary

(Delegate Kramer, *et al.*)

Maryland Contributory Negligence Act

This emergency 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, 2011. The bill does not expand, limit, or otherwise modify the affirmative defense of contributory negligence as it existed and was applicable on January 1, 2011.

Fiscal Summary

State Effect: None. The bill codifies current common law.

Local Effect: None. The bill codifies current common law.

Small Business Effect: None.

Analysis

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 Commissioner of Garrett County v Bell Atlantic*, 346 Md. 160 (1997).

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'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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), *The Daily Record*, Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2011
mlm/kdm

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