

**AMENDMENTS TO
UNIFORM APPORTIONMENT OF
TORT RESPONSIBILITY ACT ***

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-TWELFTH YEAR
WASHINGTON, D.C.

AUGUST 1–7, 2003

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**DRAFTING COMMITTEE TO AMEND
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**AMENDMENTS TO
UNIFORM APPORTIONMENT OF TORT RESPONSIBILITY ACT**

SECTION 1. SHORT TITLE. This [Act] may be cited as the Uniform Apportionment of Tort Responsibility Act.

SECTION 2. DEFINITIONS. In this [Act]:

(1) “Contributory fault” includes contributory negligence, misuse of a product, unreasonable failure to avoid or mitigate harm, and assumption of risk unless the risk is expressly assumed in a legally enforceable release or similar agreement.

(2) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(3) “Released person” means a person that would be liable for damages to a claimant for personal injury or harm to property if the person had not been discharged from liability under Section 8 [or 9].

(4) “Responsibility”, with respect to a claim for damages for personal injury or harm to property, means the legal consequences of an act or omission that is the basis for liability or a defense in whole or in part.

SECTION 3. EFFECT OF CONTRIBUTORY FAULT.

(a) Except as otherwise provided in subsection (b), in an action seeking damages for personal injury or harm to property based on negligence ~~or strict liability~~, or on a any other claim

for which the claimant may be subject to a defense in whole or part based on contributory fault, any contributory fault chargeable to the claimant diminishes the amount that the claimant otherwise would be entitled to recover as compensatory damages for the injury or harm by the percentage of responsibility assigned to the claimant pursuant to Section 4.

(b) If the claimant's contributory fault is [equal to or] greater than the combined responsibility of all other parties and released persons whose responsibility is determined to have caused personal injury to or harm to property of the claimant, the claimant may not recover any damages.

(c) In a jury trial, the court shall instruct the jury regarding the legal effect of its answers to interrogatories, made pursuant to Section 4, on a claimant's right to recover damages under subsection (b).

SECTION 4. FINDING DAMAGES; ATTRIBUTION OF RESPONSIBILITY.

(a) In an action to recover damages for personal injury or harm to property involving the responsibility of more than one party or a released person, the court shall instruct the jury to answer special interrogatories or, if there is no jury, make findings:

(1) stating the amount of damages that a claimant would be entitled to recover if any contributory fault were disregarded;

(2) stating, as to each claim, the percentage of the total responsibility of all the parties and released persons attributed to each claimant, defendant, and released person that caused the injury or harm;

(3) regarding whether any of the parties or released persons acted in concert or with

an intent to cause personal injury or harm to property; and

(4) regarding any other issue of fact fairly raised by the evidence which is necessary to make a determination under Section 5 or enter judgment under Section 6.

(b) In determining percentages of responsibility, the trier of fact shall consider:

(1) the nature of the conduct of each party and released person determined to be responsible; and

(2) the extent of the causal relation between the conduct and the damages claimed.

(c) The court shall determine the extent to which the responsibility of one party, which is based on the act or omission of another party, warrants that the parties be treated as a single party for the purpose of submitting interrogatories to the jury or making findings under subsection (a).

SECTION 5. DETERMINING DAMAGE AWARD; REALLOCATION OF UNCOLLECTIBLE SHARE.

(a) After the trier of fact has answered interrogatories or made findings pursuant to Section 4, the court shall determine, in accordance with the percentages of responsibility found, the monetary amount of any award of damages to a claimant, the amount of the several share for which each party found liable is responsible, and any amount attributable to a released person.

(b) After the court has made its determinations pursuant to subsection (a), a claimant, no later than [the time permitted for filing a motion for new trial] [90 days from the entry of judgment for the plaintiff], may move the court to determine whether all or part of the amount of the several share for which a party is liable will not be reasonably collectible and request reallocation. If the court based on a preponderance of the evidence determines that the party's

share will not be reasonably collectible, the court shall make findings reallocating the uncollectible share severally to the other parties, including the claimant, and any released person. Reallocation must be made in the proportion that each party's and released person's respective percentage of responsibility bears to the total of the percentages of responsibility attributed to the parties, including the claimant, and any released person but not including the percentage being reallocated.

(c) A party whose liability is reallocated remains liable to a claimant for any additional share of responsibility allocated to the claimant. A party that discharges an additional share of responsibility allocated to it pursuant to subsection (b) has a right of reimbursement from the party from which the share was reallocated. Upon motion, the court in the judgment entered under Section 6 shall declare the rights and obligations resulting from the reallocation, including any rights and obligations with regard to subrogation or a secured position. If any party to whom reallocation has been made holds a secured position with regard to the share reallocated, each party to whom reallocation has been made has a proportionate share in the secured position. Any amount recovered under this subsection from a party whose liability has been reallocated shall be distributed to each of the parties to whom the reallocation was made in the same proportion as the original reallocation.

(d) Reallocation does not make a released person liable for any reallocated share of responsibility unless the release or other agreement so provides.

(e) If a motion for reallocation is made, any party may conduct discovery regarding any issue relevant to the motion.

SECTION 6. ENTERING JUDGMENT. After determining an award of damages to a claimant and the amount of the several share, including any reallocated share, for which each party found liable is responsible, the court shall enter judgment severally against each party adjudged liable, except in the following situations:

(1) If two or more parties adjudged liable acted in concert or with an intent to cause personal injury to, or harm to property of, the claimant, the court shall enter judgment jointly and severally against the parties for their joint share.

(2) If a party is adjudged liable for failing to prevent another party from intentionally causing personal injury to, or harm to property of, the claimant, the court shall enter judgment jointly and severally against the parties for their combined shares of responsibility.

(3) If a party is adjudged liable for the act or omission of another party under Section 4(c), the court shall enter judgment jointly and severally against the parties for their joint share.

(4) If a statute of this State, other than this [Act], so requires, the court shall enter judgment jointly and severally or otherwise conform the judgment to the statute.

SECTION 7. RIGHT OF CONTRIBUTION AND INDEMNITY; THIRD-PARTY ACTION.

(a) Except as otherwise provided in subsection (b), a party that is jointly and severally liable with one or more other parties under this [Act] has a right of contribution from another party jointly liable for any amount the party pays in excess of the several amount for which the party is responsible. A party against which contribution is sought is not liable for more than the monetary amount of the party's several share of responsibility determined pursuant to Section 5.

(b) A party that is adjudged liable for the act or omission of another party under Section 6(3) has a right of indemnification from the other party.

(c) A party that is subject to liability for injury to, or harm to property of, a claimant under this [Act] has a right:

(1) to join a person that is also subject to liability to the claimant for all or part of the same injury or harm if the claimant has not sued the person; and

(2) to seek contribution or indemnity, whichever is appropriate, from another person whose liability is not determined in the proceeding in which the party is adjudged liable if the other person is responsible for all or part of the claimant's injury or harm.

(d) A claim for contribution or indemnity may be asserted in the original action or in a separate action.

SECTION 8. EFFECT OF RELEASE.

(a) A release, covenant not to sue, covenant not to execute a judgment, or similar agreement by a claimant and person subject to liability discharges the person from liability to the claimant to the extent provided in the agreement and from liability for contribution to any other person subject to liability to the claimant for the same injury or harm. The agreement does not discharge any other person subject to liability upon the same claim unless the agreement so provides.

(b) The amount of the claim of the releasing person under subsection (a) against other persons jointly and severally liable for the same injury or harm for which the released person would have been liable is reduced by the percentage of responsibility attributed to the released

person pursuant to Section 4.

(c) A release, covenant not to sue, covenant not to execute a judgment, or similar agreement extinguishes any claim for contribution or indemnity that the released person would have had against another person that would have been jointly and severally liable with the released person.

[SECTION 9. REDUCTION OF WORKERS' COMPENSATION LIEN AND SUBROGATION RIGHT; NOTICE AND INTERVENTION.]

(a) If an employer or workers' compensation insurer asserts a lien or right of subrogation under [insert citation to workers' compensation statute that provides for an employer's or workers' compensation insurer's lien or right of subrogation for compensation benefits paid or payable to an employee when the employee has a tort action for personal injury against a third party], the employer or insurer is deemed to have had its obligation to the employee for the compensation benefits paid or payable discharged under Section 8 as if the employer or insurer had received a release, covenant not to sue, or covenant not to execute a judgment from, or entered a similar agreement with, the employee. In such a case, any percentage of responsibility that the employer would have had for the employee's injury, were the employer not immune under the workers' compensation law, must be determined as that of a released person pursuant to Section 4 and the lien or right of subrogation is reduced by the monetary amount of the employer's percentage of responsibility, if any, in the employee's action against the third party.

(b) A party asserting that an employer's or workers' compensation insurer's lien or right of subrogation should be reduced under subsection (a) because of the employer's fault shall give

notice to the employer or workers' compensation insurer. In that case, the employer or insurer may intervene in the employee's action for personal injury.]

SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

SECTION 11. SEVERABILITY CLAUSE. If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 12. APPLICABILITY. This [Act] applies to actions originally filed on or after its effective date.

SECTION 13. EFFECTIVE DATE. This [Act] takes effect on

SECTION 14. REPEALS. The following acts and parts of acts are repealed:

(1)

(2)

(3)