

1 **PROPOSED REVISIONS BY JIM McKAY**

2 (deleted text overstruck in ~~red~~; inserted material underscored in blue)

3 [To Accompany Letter to Drafting Committee Dated Feb. 4, 2002]

4 **UNIFORM APPORTIONMENT OF TORT RESPONSIBILITY ACT**

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

7 **SECTION 2. DEFINITIONS.** In this [Act]:

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

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

14 (3) "Released person" means a person that would be liable for damages to a claimant for
15 personal injury or harm to property if the person had not been discharged from liability under
16 Section ~~9~~ 8 ~~for 10~~.

17 (4) "Responsibility" means the legal consequences of an act or omission that ~~imposes~~ is
18 the basis for imposing liability for, or ~~creates~~ the creation of a defense in whole or part; to, a
19 claim for damages for personal injury or harm to property.

20 **SECTION 3. APPLICABILITY; EFFECT OF CONTRIBUTORY FAULT.**

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

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

5 ~~**[Alternative A]**~~

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

9 ~~**[Alternative B]**~~

10 ~~—— [(b) If the claimant's contributory fault is [equal to or] greater than 50 percent of the total~~
11 ~~responsibility of all other persons whose responsibility is determined to have caused personal~~
12 ~~injury or harm to property, the claimant may not recover any damages.]~~

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

15 **SECTION 4. APPORTIONMENT OF DAMAGES.**

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

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

21 (2) as to each claim, the percentage of the total responsibility of all the parties,
22 including any released person, and of all nonparties that caused the injury or harm, allocated to

1 each claimant, defendant, and released person that caused the injury or harm.

2 (b) In determining percentages of responsibility, the trier of fact shall consider both the
3 nature of the conduct of each party and released person responsible and the extent of the causal
4 relation between the conduct and the damages claimed. However, this subsection does not
5 diminish the claimant's burden of proving that the injury or harm was foreseeable.

6 (c) In submitting interrogatories to the jury or making findings under subsection (a), the
7 court shall determine whether two or more persons are to be treated as a single person, as in cases
8 involving issues of vicarious or similar responsibility.

9 (d) The court shall submit special interrogatories to the jury or, if there is no jury, make
10 findings regarding whether any of the parties acted in concert or with an intent to cause personal
11 injury or harm to property and any other issues of fact fairly raised by the evidence and which
12 must be determined to enter judgment under Section 5.

13 **SECTION 5. DETERMINING DAMAGES; ENTERING JUDGMENT.** After the trier
14 of fact has made findings pursuant to Section 4, the court shall determine the award of damages
15 to a claimant in accordance with the percentage of responsibility found and enter judgment for
16 that amount severally against each party adjudged liable, except in the following situations:

17 (1) If two or more parties adjudged liable acted in concert or with an intent to cause
18 personal injury or harm to property, the court shall enter judgment jointly and severally against
19 ~~the~~ those parties.

20 (2) If a party who is the owner or manager of a residential property is adjudged liable for
21 failing to prevent a third party from intentionally causing personal injury or harm to property, the
22 court shall enter judgment jointly and severally against that party and the third party for their

1 combined percentages of responsibility.

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

4 ~~[[4]] If two or more parties are adjudged liable to a claimant and the claimant is not~~
5 ~~found responsible for any of the damages, the court shall enter judgment jointly and severally for~~
6 ~~their combined percentages of responsibility.]~~

7 ~~[[5]] If each of two or more parties is adjudged liable to a claimant in a percentage of~~
8 ~~responsibility that is [equal to or] greater than that of the claimant, the court shall enter judgment~~
9 ~~jointly and severally against those parties.]~~

10 ~~[[6]) If two or more parties are adjudged liable to a claimant, the court shall enter~~
11 ~~judgment jointly and severally against the parties for their combined percentages of responsibility~~
12 ~~with regard to the damages for economic loss caused by the parties.]~~

13 ~~[[7]] If two or more parties are adjudged liable to a claimant, the court shall enter~~
14 ~~judgment jointly and severally for their combined percentages of responsibility with regard to the~~
15 ~~parties whose percentage of responsibility [equals or] exceeds [20] percent.]~~

16 **SECTION 6. SATISFACTION OF JUDGMENT; ~~REALLOCATION OF~~**
17 **~~UNCOLLECTIBLE SHARE.~~**

18 ~~(a) Except as otherwise provided in subsection (b) or unless~~ Unless judgment is entered
19 awarding damages under the rules of joint and several liability in Section 5, a judgment creditor
20 may satisfy the judgment against each judgment debtor only on the basis of several liability.

21 ~~———— (b) Not later than [one year] after a judgment is final and subject to execution, a claimant~~
22 ~~may move the court in the original action to determine whether all or part of the amount for~~

1 ~~which one or more judgment debtors are severally liability is not reasonably collectible. If the~~
2 ~~court determines based on a preponderance of the evidence that all or part of a judgment debtor's~~
3 ~~share is not reasonably collectible, the court shall amend the judgment to reallocate the~~
4 ~~uncollectible share severally to the other parties to the judgment, including a claimant and~~
5 ~~released person at fault, and authorize the claimant to satisfy the judgment from the judgment~~
6 ~~debtors to which the uncollectible share has been reallocated to the extent of the amount~~
7 ~~reallocated to them. Reallocation shall be made among the parties to the judgment in the~~
8 ~~proportion that each party's respective percentage of responsibility bears to the total of the~~
9 ~~percentages of responsibility assigned to the parties, including the claimant and any released~~
10 ~~person but not including the percentage being reallocated.~~

11 ~~(c) A judgment debtor whose liability is reallocated remains liable to a claimant for any~~
12 ~~additional share of responsibility allocated to the claimant. A judgment debtor to which an~~
13 ~~additional share of responsibility has been allocated and that discharges that share has a right of~~
14 ~~reimbursement from the judgment debtor from which the share was reallocated. Upon motion,~~
15 ~~the court shall declare such rights and obligations in the amended judgment. [Reallocation does~~
16 ~~not make a released person liable for any reallocated share of responsibility unless the release or~~
17 ~~other agreement so provides.]~~

18 ~~(d) A claimant may not seek reallocation more than once.~~

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

21 ~~[(f) A claimant's right to seek reallocation may not be exercised, directly or indirectly, by~~
22 ~~a person who is subrogated to the claimant's cause of action for personal injury or harm to~~

property.]

~~**SECTION 7. SET OFF.** A claim or counterclaim under this [Act] may not be set off against the other except by agreement of the parties. However, on motion, if the court finds that the obligation of either a judgment against a party is likely to be uncollectible, in whole or part, the court may order that both the parties to make payment into the court for distribution. The court shall distribute the money received and declare obligations discharged as if the payment into the court by either one party had been were a payment to the another party and any return of those funds money to the party making payment had been were a payment to that party by the other party.~~

SECTION 8 7. RIGHT OF CONTRIBUTION. A party that is jointly and severally liable with one or more other parties under this [Act] may recover contribution from another party for any amount the party paid 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 percentage assigned pursuant Section 4. A claim for contribution may be asserted in the original action or in a separate action.

SECTION 9 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.

1 (b) The amount of the claim of the releasing person under subsection (a) against other
2 persons jointly and severally liable for the same injury or harm for which the released person
3 would have been liable must be reduced by the percentage of responsibility assigned to the
4 released person pursuant to Section 4.

5 [(c) Any claim of contribution that a released person would have had against another
6 person who would have been jointly and severally liable with the released party is extinguished
7 by the release.]

8 ~~**SECTION 10. REDUCTION OF WORKERS' COMPENSATION LIEN AND**~~
9 ~~**SUBROGATION RIGHT; NOTICE AND INTERVENTION.**~~

10 ~~(a) If an employer or workers' compensation insurer asserts a lien or right of subrogation~~
11 ~~under [insert citation to workers' compensation statute that provides for an employer's or~~
12 ~~workers' compensation insurer's lien or right of subrogation for compensation benefits paid or~~
13 ~~payable to an employee when the employee has a tort action for personal injury against a third~~
14 ~~party], the employer or insurer is deemed to have had its obligation to the employee for the~~
15 ~~compensation benefits paid or payable discharged under Section 9 as if the employer or insurer~~
16 ~~had received a release, covenant not to sue, or covenant not to execute a judgment from, or~~
17 ~~entered a similar agreement with, the employee. In such case, any percentage of responsibility~~
18 ~~that the employer would have had for the employee's injury, were the employer not immune~~
19 ~~under the workers' compensation law, must be determined as that of a released person pursuant~~
20 ~~to Section 4 and the lien or subrogation right is reduced by the monetary amount of the~~
21 ~~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 subrogation right should be reduced under subsection (a) because of the employer's fault shall give notice to the employer or workers' compensation insurer, in which case the employer or insurer may intervene in the employee's action for personal injury.]~~

SECTION ~~11~~ 9. 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 ~~12~~ 10. 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 ~~13~~ 11. APPLICABILITY. This [Act] applies to actions [filed on or] accruing after its effective date.

SECTION ~~14~~ 12. EFFECTIVE DATE. This [Act] takes effect on

SECTION ~~15~~ 13. REPEALS. The following acts and parts of acts are repealed:

(1)

(2)

(3)