

**CHAPTER 1293**  
**COMPARATIVE NEGLIGENCE**  
*H.F. 2487*

**AN ACT** relating to liability in tort by establishing comparative fault as the basis for liability in relation to claims for damages arising from injury to or death of a person or harm to property and modifying the liability of governmental entities.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. NEW SECTION. 668.1 FAULT DEFINED.

1. As used in this chapter, "fault" means one or more acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach of warranty, unreasonable assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages.

2. The legal requirements of cause in fact and proximate cause apply both to fault as the basis for liability and to contributory fault.

Sec. 2. NEW SECTION. 668.2 PARTY DEFINED. As used in this chapter, unless otherwise required, "party" means any of the following:

1. A claimant.
2. A person named as defendant.
3. A person who has been released pursuant to section 668.7.
4. A third-party defendant.

Sec. 3. NEW SECTION. 668.3 COMPARATIVE FAULT—EFFECT.

1. Contributory fault shall not bar recovery in an action by a claimant to recover damages for fault resulting in death or in injury to person or property unless the claimant bears a greater percentage of fault than the combined percentage of fault attributed to the defendants, third-party defendants and persons who have been released pursuant to section 668.7, but any damages allowed shall be diminished in proportion to the amount of fault attributable to the claimant.

2. In the trial of a claim involving the fault of more than one party to the claim, including third-party defendants and persons who have been released pursuant to section 668.7, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating all of the following:

a. The amount of damages each claimant will be entitled to recover if contributory fault is disregarded.

b. The percentage of the total fault allocated to each claimant, defendant, third-party defendant, and person who has been released from liability under section 668.7. For this purpose the court may determine that two or more persons are to be treated as a single party.

3. In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party and the extent of the causal relation between the conduct and the damages claimed.

4. The court shall determine the amount of damages payable to each claimant by each other party, if any, in accordance with the findings of the court or jury.

5. If the claim is tried to a jury, the court shall give instructions and permit evidence and argument with respect to the effects of the answers to be returned to the interrogatories submitted under this section.

6. In an action brought under this chapter and tried to a jury, the court shall not discharge the jury until the court has determined that the verdict or verdicts are consistent with the total damages and percentages of fault, and if inconsistencies exist the court shall do all of the following:

- a. Inform the jury of the inconsistencies.
- b. Order the jury to resume deliberations to correct the inconsistencies.
- c. Instruct the jury that it is at liberty to change any portion or portions of the verdicts to correct the inconsistencies.

Sec. 4. NEW SECTION. 668.4 JOINT AND SEVERAL LIABILITY. In actions brought under this chapter, the rule of joint and several liability shall not apply to defendants who are found to bear less than fifty percent of the total fault assigned to all parties.

Sec. 5. NEW SECTION. 668.5 RIGHT OF CONTRIBUTION.

1. A right of contribution exists between or among two or more persons who are liable upon the same indivisible claim for the same injury, death, or harm, whether or not judgment has been recovered against all or any of them. It may be enforced either in the original action or by a separate action brought for that purpose. The basis for contribution is each person's equitable share of the obligations, including the share of fault of a claimant, as determined in accordance with section 668.3.

2. Contribution is available to a person who enters into a settlement with the claimant only if the liability of the person against whom contribution is sought has been extinguished and only to the extent that the amount paid in settlement was reasonable.

Sec. 6. NEW SECTION. 668.6 ENFORCEMENT OF CONTRIBUTION.

1. If the percentages of fault of each of the parties to a claim for contribution have been established previously by the court as provided in section 668.3, a party paying more than the party's percentage share of damages may recover judgment for contribution upon motion to the court or in a separate action.

2. If the percentages of fault of each of the parties to a claim for contribution have not been established by the court, contribution may be enforced in a separate action, whether or not a judgment has been rendered against either the person seeking contribution or the person from whom contribution is sought.

3. If a judgment has been rendered, an action for contribution must be commenced within one year after the judgment becomes final. If a judgment has not been rendered, a claim for contribution is enforceable only upon satisfaction of one of the following sets of conditions:

- a. The person bringing the action for contribution must have discharged the liability of the person from whom contribution is sought by payment made within the period of the statute of limitations applicable to the claimant's right of action and must have commenced the action for contribution within one year after the date of that payment.

- b. The person seeking contribution must have agreed while the action of the claimant was pending to discharge the liability of the person from whom contribution is sought and within one year after the date of the agreement must have discharged that liability and commenced the action for contribution.

Sec. 7. NEW SECTION. 668.7 EFFECT OF RELEASE. A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides. However, the claim of the releasing person against other persons is reduced by the amount of the released person's equitable share of the obligation, as determined in section 668.3, subsection 4.

Sec. 8. NEW SECTION. 668.8 TOLLING OF STATUTE. The filing of a petition under this chapter tolls the statute of limitations for the commencement of an action against all parties who may be assessed any percentage of fault under this chapter.

Sec. 9. NEW SECTION. 668.9 INSURANCE PRACTICE. It shall be an unfair trade practice, as defined in chapter 507B, if an insurer assigns a percentage of fault to a claimant, for the purpose of reducing a settlement, when there exists no reasonable evidence upon which the assigned percentage of fault could be based. The prohibitions and sanctions of chapter 507B shall apply to violations of this section.

Sec. 10. NEW SECTION. 668.10 GOVERNMENTAL EXEMPTIONS. In any action brought pursuant to this chapter, the state or a municipality shall not be assigned a percentage of fault for any of the following:

1. The failure to place, erect, or install a stop sign, traffic control device, or other regulatory sign as defined in the uniform manual for traffic control devices adopted pursuant to section 321.252. However, once a regulatory device has been placed, created or installed, the state or municipality may be assigned a percentage of fault for its failure to maintain the device.

2. The failure to remove natural or unnatural accumulations of snow or ice, or to place sand, salt, or other abrasive material on a highway, road, or street if the state or municipality establishes that it has complied with its policy or level of service for snow and ice removal or placing sand, salt or other abrasive material on its highways, roads, or streets.

3. For contribution unless the party claiming contribution has given the state or municipality notice of the claim pursuant to sections 25A.13 and 613A.5.

Sec. 11. The supreme court shall submit in the manner provided in section 602.4202 changes in the rules of procedure for courts which are necessitated by the enactment of this chapter.

Sec. 12. Section 613.3, Code Supplement 1983, is repealed.

Sec. 13. Section 619.17, Code 1983, is amended to read as follows:

619.17 CONTRIBUTORY NEGLIGENCE FAULT – BURDEN. In all actions brought in the courts of this state to recover damages of a defendant in which contributory negligence of the plaintiff, actual or imputed, was heretofore a complete defense or bar to recovery, the A plaintiff shall ~~does~~ not hereafter, have the burden of pleading and proving his the plaintiff's freedom from contributory negligence, and if the fault. If a defendant relies upon negligence of the plaintiff as a complete defense or bar to plaintiff's recovery contributory fault of a plaintiff to diminish the amount to be awarded as compensatory damages, the defendant shall have has the burden of pleading and proving negligence fault of the plaintiff, if any, and that it was a proximate cause of the injury or damage. As used in this section, the term "plaintiff" shall include includes a defendant filing a counterclaim or cross-petition, and the term "defendant" shall include includes a plaintiff against whom a counterclaim or cross-petition has been filed.

Sec. 14. The commissioner of insurance shall study and report to the legislative council and the senate committee on judiciary and the house committee on judiciary and law enforcement by January 15, 1985, on the issue of insurance practices developed in response to the

adoption of comparative fault in the state of Iowa. The report shall include proposals for legislative action and an explanation of the steps taken by the department of insurance to alleviate existing or potential problems in insurance practice under comparative fault.

Sec. 15. This Act, except for section 4, applies to all cases filed on or after July 1, 1984. Section 4 of this Act applies to all cases tried on or after July 1, 1984.

Approved May 17, 1984

---

## CHAPTER 1294

### SCHOOL ASBESTOS REMOVAL OR ENCAPSULATION

*H.F. 2516*

**AN ACT** to provide funding for the removal or encapsulation of asbestos by school districts.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. NEW SECTION. 279.43 OPTIONAL FUNDING OF ASBESTOS REMOVAL OR ENCAPSULATION.

1. The board of directors may pay the actual cost of removal or encapsulation of asbestos existing in its school buildings from any funds in the general fund of the district, funds received from the schoolhouse tax authorized under section 278.1, subsection 7, or funds from the tax levy certified under section 297.5.

2. The board of directors may also submit a proposal to the qualified electors of the school district at a regular school election held in September, 1984 or at a special election held not later than February 15, 1985, to authorize an additional tax levy to pay the actual cost of an asbestos removal or encapsulation project.

3. The election proposal shall include the following two parts:

a. Shall a tax levy be certified for not more than three consecutive years to pay the actual costs of the asbestos removal or encapsulation project?

b. If a tax levy is authorized by the electorate, which of the following tax methods shall be used to pay for the project:

(1) A property tax sufficient to pay the actual costs of the project.

(2) A combination of an enrichment property tax and a school district income surtax certified and levied as provided in sections 442.14 through 442.20.

c. If a property tax levy is selected under paragraph "b", subparagraph (1), the levy shall be certified for not more than three consecutive years commencing not later than March 15, 1985 and ending not later than March 15, 1987.

d. If a combination of an enrichment property tax and a school district income surtax is selected, the amount of tax revenue raised shall not exceed the actual cost of the removal or encapsulation of the asbestos or the maximum amount which may be raised by the levy of the combination of the taxes for the three school years beginning July 1, 1985 and ending July 1, 1987 as determined under section 442.14, subsections 3 and 4, whichever amount is less.