

Judiciary
Kudart, Chairperson
Rush
Murray

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SENATE FILE 255

By SMALL AND RAMSEY

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act adopting the uniform comparative fault Act in relation
2 to actions to recover damages for injury or death of per-
3 sons or harm to property.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Chapter 619, Code 1981, is amended by adding
2 sections 2 through 9 of this Act as a new division of that
3 chapter.

4 Sec. 2. NEW SECTION. EFFECT OF CONTRIBUTORY FAULT.

5 1. In an action based on fault and seeking to recover
6 damages for injury or death to person or harm to property,
7 any contributory fault chargeable to the claimant diminishes
8 proportionately the amount awarded as compensatory damages
9 for an injury attributable to the claimant's contributory
10 fault, but does not bar recovery. This rule applies whether
11 or not under prior law the claimant's contributory fault
12 constituted a defense or was disregarded under applicable
13 legal doctrines, such as last clear chance.

14 2. "Fault" includes acts or omissions that are in any
15 measure negligent or reckless toward the person or property
16 of the actor or others, or that subject a person to strict
17 tort liability. The term also includes breach of warranty,
18 unreasonable assumption of risk not constituting an enforceable
19 express consent, misuse of a product for which the defendant
20 otherwise would be liable, and unreasonable failure to avoid
21 an injury or to mitigate damages. Legal requirements of
22 causal relation apply both to fault as the basis for liability
23 and to contributory fault.

24 Sec. 3. NEW SECTION. APPORTIONMENT OF DAMAGES.

25 1. In all actions involving fault of more than one party
26 to the action, including third-party defendants and persons
27 who have been released under section 7 of this Act, the court,
28 unless otherwise agreed by all parties, shall instruct the
29 jury to answer special interrogatories or, if there is no
30 jury, shall make findings, indicating both of the following:

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

33 b. The percentage of the total fault of all of the parties
34 to each claim that is allocated to each claimant, defendant,
35 third-party defendant, and person who has been released from

1 liability under section 7 of this Act. For this purpose the
2 court may determine that two or more persons are to be treated
3 as a single party.

4 2. In determining the percentages of fault, the trier
5 of fact shall consider both the nature of the conduct of each
6 party at fault and the extent of the causal relation between
7 the conduct and the damages claimed.

8 3. The court shall determine the award of damages to each
9 claimant in accordance with the findings, subject to any
10 reduction under section 7 of this Act, and enter judgment
11 against each party liable on the basis of rules of joint and
12 several liability. For purposes of contribution under sections
13 5 and 6 of this Act, the court also shall determine and state
14 in the judgment each party's equitable share of the obligation
15 to each claimant in accordance with the respective percentages
16 of fault.

17 4. Upon motion made not later than one year after judgment
18 is entered, the court shall determine whether all or part
19 of a party's equitable share of the obligation is uncollectible
20 from that party, and shall reallocate any uncollectible amount
21 among the other parties, including a claimant at fault,
22 according to their respective percentages of fault. The party
23 whose liability is reallocated is nonetheless subject to
24 contribution and to any continuing liability to the claimant
25 on the judgment.

26 Sec. 4. NEW SECTION. SET-OFF. A claim and counterclaim
27 shall not be set off against each other, except by agreement
28 of both parties. On motion, however, the court, if it finds
29 that the obligation of either party is likely to be
30 uncollectible, may order that both parties make payment into
31 court for distribution. The court shall distribute the funds
32 received and declare obligations discharged as if the payment
33 into court by either party had been a payment to the other
34 party and any distribution of those funds back to the party
35 making payment had been a payment to him by the other party.

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

2 1. A right of contribution exists between or among two
3 or more persons who are jointly and severally liable upon
4 the same indivisible claim for the same injury, death, or
5 harm, whether or not judgment has been recovered against all
6 or any of them. It may be enforced either in the original
7 action or by a separate action brought for that purpose.
8 The basis for contribution is each person's equitable share
9 of the obligation, including the equitable share of a claimant
10 at fault, as determined in accordance with the provisions
11 of section 3 of this Act.

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

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

18 1. If the proportionate fault of the parties to a claim
19 for contribution has been established previously by the court,
20 as provided by section 3 of this Act, a party paying more
21 than his or her equitable share of the obligation, upon motion,
22 may recover judgment for contribution.

23 2. If the proportionate fault of the parties to the claim
24 for contribution has not been established by the court,
25 contribution may be enforced in a separate action, whether
26 or not a judgment has been rendered against either the person
27 seeking contribution or the person from whom contribution
28 is being sought.

29 3. If a judgment has been rendered, the action for
30 contribution must be commenced within one year after the
31 judgment becomes final. If a judgment has not been rendered,
32 the person bringing the action for contribution either must
33 have discharged by payment the common liability within the
34 period of the statute of limitations applicable to the
35 claimant's right of action against the person and commenced

1 the action for contribution within one year after payment,
 2 or must have agreed while action was pending to discharge
 3 the common liability and, within one year after the agreement,
 4 have paid the liability and commenced an action for
 5 contribution.

6 Sec. 7. NEW SECTION. EFFECT OF RELEASE. A release,
 7 covenant not to sue, or similar agreement entered into by
 8 a claimant and a person liable discharges that person from
 9 all liability for contribution, but it does not discharge
 10 any other persons liable upon the same claim unless it so
 11 provides. However, the claim of the releasing person against
 12 other persons is reduced by the amount of the released person's
 13 equitable share of the obligation, determined in accordance
 14 with the provisions of section 3 of this Act.

15 Sec. 8. NEW SECTION. UNIFORMITY OF APPLICATION AND
 16 CONSTRUCTION. Sections 2 through 7 of this Act shall be
 17 applied and construed so as to effectuate its general purpose
 18 to make uniform the law with respect to the subject of those
 19 sections among states enacting it.

20 Sec. 9. NEW SECTION. SHORT TITLE. Sections 2 through
 21 8 of this Act may be cited as the uniform comparative fault
 22 Act.

23 Sec. 10. Section 619.17, Code 1981, is amended to read
 24 as follows:

25 619.17 CONTRIBUTORY NEGLIGENCE--BURDEN. In all actions
 26 brought in the courts of this state to recover damages of
 27 a defendant in which contributory negligence of the plaintiff,
 28 actual or imputed, was heretofore a complete defense or bar
 29 to recovery, the plaintiff shall not hereafter, have the
 30 burden of pleading and proving his freedom from contributory
 31 negligence, and if the defendant relies upon ~~negligence of~~
 32 ~~the plaintiff as a complete defense or bar to plaintiff's~~
 33 recovery contributory fault of the plaintiff to diminish the
 34 amount to be awarded as compensatory damages, the defendant
 35 shall have the burden of pleading and proving negligence

1 contributory fault of the plaintiff, if any, and that it was
2 a proximate cause of the injury or damage. As used in this
3 section, ~~the-term~~ "plaintiff" ~~shall-include~~ includes a
4 defendant filing a counterclaim or cross-petition, and the
5 term "defendant" ~~shall-include~~ includes a plaintiff against
6 whom a counterclaim or cross-petition has been filed.

7 Sec. 11. This Act applies only to causes which accrue
8 on or after its effective date.

9 EXPLANATION

10 This bill would enact the uniform comparative fault Act
11 as promulgated by the conference of commissioners on uniform
12 state laws.

13 The bill would replace common law principles governing
14 actions for damages arising out of personal injury, death
15 or property damage and prohibiting recovery by a person who
16 is contributorily negligent or prohibiting contribution among
17 joint tortfeasors. Under the uniform Act, recovery of damages
18 would not be barred by contributory fault, but the amount
19 of damages would be reduced based upon the percentage of fault
20 attributable to the claimant, as determined by the jury.
21 Contribution between joint tortfeasors also would be permitted,
22 based upon the degree of fault.

23 The bill would take effect July 1 following enactment and
24 would apply to causes accruing on or after that date.

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