

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE DRH11149-TG-5 (12/01)

Short Title: Tort Reform Act of 2011.

(Public)

Sponsors: Representatives Blust and Daughtry (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE TORT REFORM ACT OF 2011.

3 The General Assembly of North Carolina enacts:

4 SECTION 1. The General Statutes are amended by adding a new Chapter to read:

5 **Chapter 1F.**

6 **"Apportionment of Tort Responsibility."**

7 **"§ 1F-1. Short title."**

8 This Chapter may be cited as the North Carolina Apportionment of Tort Responsibility Act.

9 **"§ 1F-5. Definitions."**

10 The following definitions apply in this Chapter:

- 11 (1) Contributory fault. – Contributory negligence, misuse of a product,
12 unreasonable failure to avoid or mitigate harm, and assumption of risk unless
13 the risk is expressly assumed in a legally enforceable contract, release, or
14 other agreement.
- 15 (2) Intentional wrongful conduct. – Any intentional tort causing injury,
16 wrongful death, or harm to property.
- 17 (3) Nonpunitive damages. – Compensatory damages. Nonpunitive damages do
18 not include punitive damages, damages that have been trebled pursuant to
19 G.S. 75-16 or other statutes, interest, court costs, or attorneys' fees.
- 20 (4) Party. – A party to an action to which this Chapter applies at the time the
21 trier of fact makes the findings required under G.S. 1F-15.
- 22 (5) Person. – An individual, corporation, business trust, estate, trust, partnership,
23 limited liability company, association, joint venture, public corporation,
24 government, or governmental subdivision, agency, or instrumentality, or any
25 other legal or commercial entity.
- 26 (6) Property. – Real property or tangible personal property.
- 27 (7) Released person. – A person that would be liable for damages to a claimant
28 for personal injury, wrongful death, or harm to property if the person had not
29 been discharged from liability under G.S. 1F-35, 1F-40, or 1F-45. A
30 "released person" is not a "party" within the meaning of this Chapter.
- 31 (8) Responsibility. – With respect to a claim for damages for personal injury,
32 wrongful death, or harm to property, the legal consequences of an act or
33 omission that is the basis for liability or a defense in whole or in part.
- 34 (9) Willful or wanton conduct. – Willful or wanton conduct as defined in
35 G.S. 1D-5 causing injury, wrongful death, or harm to property.



"§ 1F-10. Effect of contributory fault.

(a) Except as otherwise provided in subsection (b) or (c) of this section, in an action seeking damages for personal injury, wrongful death, or harm to property based on negligence or on any other statutory or common-law claim grounded in tort which may be subject to a defense in whole or in part based on contributory fault, any contributory fault chargeable to the claimant or, in a wrongful death claim, the decedent, diminishes the amount that the claimant otherwise would be entitled to recover as compensatory damages for the personal injury, wrongful death, or harm to property by the percentage of responsibility assigned to the claimant or decedent pursuant to G.S. 1F-15.

(b) Except as otherwise provided in subsection (c) of this section, if the claimant's contributory fault or, in a wrongful death claim, the decedent's contributory fault, is equal to or greater than the combined responsibility of all other parties and released persons determined to have caused the personal injury, wrongful death, or harm to property giving rise to the claim, the claimant may not recover any damages.

(c) Any contributory fault chargeable to the claimant or, in a wrongful death claim, the decedent, shall not diminish the amount the claimant otherwise would be entitled to recover as damages against any party whose intentional wrongful conduct resulted in injury, wrongful death, or harm to property giving rise to the claim.

(d) A claimant, or in a wrongful death claim, the decedent, whose intentional wrongful conduct was a proximate cause of the injury, wrongful death, or harm to property for which the claimant is seeking damages shall not recover any damages from a party unless that party's intentional wrongful conduct also was a proximate cause of the injury, wrongful death, or harm to property giving rise to the claim.

(e) A claimant, or in a wrongful death claim, the decedent, whose willful or wanton conduct was a proximate cause of the injury, wrongful death, or harm to property for which the claimant is seeking damages shall not recover any damages from a party unless that party's intentional wrongful conduct or willful or wanton conduct also was a proximate cause of such injury, wrongful death, or harm to property.

(f) A claimant, or in a wrongful death claim, the decedent, whose violation of G.S. 20-138.1(a) (impaired driving) or G.S. 20-138.2(a) (operating a commercial vehicle after consuming alcohol) was a proximate cause of the injury, wrongful death, or harm to property giving rise to the claim, shall not recover any damages from a party unless that party's violation of G.S. 20-138.1(a), violation of G.S. 20-138.2(a), or intentional wrongful conduct was also a proximate cause of the injury, wrongful death, or harm to property giving rise to the claim.

(g) In a jury trial, the court shall instruct the jury regarding the legal effect of its findings, made pursuant to G.S. 1F-15, on a claimant's right to recover damages under subsection (b) of this section.

"§ 1F-15. Finding damages; attribution of responsibility.

(a) In an action to recover damages for personal injury, wrongful death, or harm to property requiring a determination of the responsibility of more than one party, released person, or, in a wrongful death claim, the decedent, the trier of fact shall make all of the following findings:

- (1) Stating the amount of damages that a claimant would be entitled to recover if any fault of the claimant, or in a wrongful death claim, the decedent, were disregarded.
- (2) Stating, as to each claim, the percentage of the total responsibility for causing the personal injury, wrongful death, or harm to property that is attributed to each party, released person, and, in a wrongful death claim, the decedent, with the total of all percentages being equal to one hundred percent (100%).

1 (3) Regarding any other issue of fact fairly raised by the evidence which is
2 necessary to make a determination under G.S. 1F-20 or enter judgment
3 under G.S. 1F-25.

4 (b) In determining percentages of responsibility, the trier of fact shall consider all of the
5 following:

6 (1) The nature of the conduct of each party, released person, and, in a wrongful
7 death claim, the decedent, determined to be responsible.

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

10 (3) Any failure to comply with a statutory safety requirement on the part of a
11 party, released person, and, in a wrongful death, claim, the decedent, if such
12 failure was a proximate cause of the personal injury, wrongful death, or
13 harm to property giving rise to the claim.

14 (4) The failure of a party, released person, and, in a wrongful death claim, the
15 decedent, who had the last clear chance to avoid the personal injury,
16 wrongful death, or harm to property giving rise to the claim.

17 (c) The court shall determine the extent to which the responsibility of one party or
18 released person, which is based on the act or omission of another party or released person,
19 warrants that the parties or released persons be treated as a single party for the purpose of
20 making findings under subsection (a) of this section.

21 (d) Nothing in this section shall alter any party's right to move for a separate trial of any
22 issue or claim pursuant to G.S. 1A-1, Rule 42(b).

23 **"§ 1F-20. Determining damage award.**

24 (a) Except as otherwise provided in subsection (b) of this section, after the trier of fact
25 has made findings pursuant to G.S. 1F-15, the court shall determine, in accordance with the
26 percentages of responsibility found, the monetary amount of any award of damages to a
27 claimant, the amount of the several share for which each party found responsible is liable, and
28 any amount attributable to a released person.

29 (b) The court may reassign any percentage of contributory fault attributed to a claimant,
30 or in a wrongful death claim, the decedent, under G.S. 1F-15(a)(2) to any party or released
31 person whose intentional wrongful conduct resulted in injury, wrongful death, or harm to
32 property giving rise to the claim, based upon the nature and extent of the intentional wrongful
33 conduct. If more than one party or released person is found to have committed intentional
34 wrongful conduct, and the court decides to reassign the percentage of contributory fault
35 pursuant to this section, the percentage of contributory fault shall be reassigned in the
36 proportion that each of their respective percentages of responsibility bears to the total of the
37 percentages of responsibility of all parties and released persons found to have committed
38 intentional wrongful conduct.

39 **"§ 1F-25. Entering judgment.**

40 (a) After determining an award of damages to a claimant and the amount of the several
41 share for which each party found liable is responsible, the court shall enter judgment severally
42 against each party adjudged liable, except in the following situations:

43 (1) If a party is adjudged liable for the act or omission of another party under
44 G.S. 1F-15(c), the court shall enter judgment jointly and severally against
45 those parties for their joint share.

46 (2) If any other statute of this State requires that liability be joint and several,
47 the court shall enter judgment accordingly.

48 **"§ 1F-30. Third-party action.**

49 (a) A party that is subject to liability for personal injury, wrongful death, or harm to
50 property under this Chapter has a right to the following:

1 (1) To join a person that is not a party to the action and that is also subject to
2 liability to the claimant for all or part of the same personal injury, wrongful
3 death, or harm to property.

4 (2) To prevent, by objecting, the voluntary dismissal of any party who is not a
5 released person.

6 (b) The provisions of Article 1 of Chapter 1B of the General Statutes shall not apply to
7 parties against whom judgment is entered severally and not jointly under this Chapter.

8 **"§ 1F-35. Effect of release.**

9 (a) A release, covenant not to sue, covenant not to execute a judgment, or similar
10 agreement by a claimant and person subject to liability discharges the person from liability to
11 the claimant to the extent provided in the agreement and from liability for contribution to any
12 other person subject to liability to the claimant for the same personal injury, wrongful death, or
13 harm to property. The agreement does not discharge any other person subject to liability upon
14 the same claim unless the agreement so provides. Neither the amount stipulated by the
15 agreement nor any consideration paid for it shall in any way affect any party's liability for the
16 same personal injury, wrongful death, or harm to property unless the agreement so provides.

17 (b) The amount of the claim of the releasing person under subsection (a) of this section
18 against other persons jointly and severally liable for the same personal injury, wrongful death,
19 or harm to property for which the released person would have been liable is reduced by the
20 amount of the total award corresponding to the percentage of responsibility attributed to the
21 released person pursuant to G.S. 1F-15.

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

26 **"§ 1F-40. Reduction of workers' compensation lien and subrogation right; notice and**
27 intervention.

28 (a) If an employer or workers' compensation insurer asserts a lien or right of
29 subrogation under G.S. 97-10.2, the employer or insurer is deemed to have had its obligation to
30 the employee for the compensation benefits paid or payable discharged under G.S. 1F-35 as if
31 the employer or insurer had received a release, covenant not to sue, or covenant not to execute
32 a judgment from, or entered a similar agreement with, the employee. In such a case, any
33 percentage of responsibility that the employer would have had for the employee's injury, were
34 the employer not immune under Article 1 of Chapter 97 of the General Statutes, must be
35 determined as that of a released person pursuant to G.S. 1F-15, and the lien or right of
36 subrogation is reduced by the monetary amount of the employer's percentage of responsibility,
37 if any, assigned by the trier of fact in the employee's action against the third party.

38 (b) A party asserting that an employer's or workers' compensation insurer's lien or right
39 of subrogation should be reduced under subsection (a) of this section because of the employer's
40 fault shall give notice to the employer or workers' compensation insurer. In that case, the
41 employer or insurer may intervene in the employee's action for personal injury.

42 (c) Nothing in this section is intended to diminish or increase the rights and obligations
43 under G.S. 97-10.2(j).

44 **"§ 1F-45. Reduction of State's lien and subrogation right; notice and intervention.**

45 (a) If the State asserts a lien or right of subrogation under G.S. 127A-110, the State is
46 deemed to have had its obligation to the guardsman for the compensation benefits paid or
47 payable discharged under G.S. 1F-35 as if the State had received a release, covenant not to sue,
48 or covenant not to execute a judgment from, or entered a similar agreement with, the
49 guardsman. In such a case, any percentage of responsibility of the State for the guardsman's
50 injury must be determined as that of a released person pursuant to G.S. 1F-15, and the lien or
51 right of subrogation is reduced by the monetary amount of the State's percentage of

1 responsibility, if any, assigned by the trier of fact in the guardsman's action against the third
2 party.

3 (b) A party asserting that the State's lien or right of subrogation should be reduced
4 under subsection (a) of this section because of the State's fault shall give notice to the State. In
5 that case, the State may intervene in the employee's action for personal injury.

6 **"§ 1F-50. No modification to existing law governing apportionment of damages resulting**
7 **from divisible injuries.**

8 Nothing in this Chapter shall alter the application of existing law governing apportionment
9 of damages in cases involving separate, distinct, and divisible injuries."

10 **SECTION 2.** G.S. 1-139 reads as rewritten:

11 **"§ 1-139. Burden of proof of contributory ~~negligence~~-fault.**

12 A party asserting the defense of contributory ~~negligence~~-fault as defined in G.S. 1F-5 has
13 the burden of proof of such defense."

14 **SECTION 3.** G.S. 1A-1, Rule 7(a), reads as rewritten:

15 "(a) Pleadings. – There shall be a complaint and an answer; a reply to a counterclaim
16 denominated as such; an answer to a crossclaim, if the answer contains a crossclaim; a
17 third-party complaint if a person who was not an original party is summoned under the
18 provisions of Rule 14; and a third-party answer, if a third-party complaint is served. ~~If the~~
19 ~~answer alleges contributory negligence, a party may serve a reply alleging last clear chance.~~ No
20 other pleading shall be allowed except that the court may order a reply to an answer or a
21 third-party answer."

22 **SECTION 4.** G.S. 1A-1, Rule 8(c), reads as rewritten:

23 "(c) Affirmative defenses. – In pleading to a preceding pleading, a party shall set forth
24 affirmatively accord and satisfaction, arbitration and award, assumption of risk expressly
25 assumed in a legally enforceable contract, release, or other agreement, contributory
26 ~~negligence~~-fault as defined in G.S. 1F-5, discharge in bankruptcy, duress, estoppel, failure of
27 consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res
28 judicata, statute of frauds, statute of limitations, truth in actions for defamation, usury, waiver,
29 and any other matter constituting an avoidance or affirmative defense. Such pleading shall
30 contain a short and plain statement of any matter constituting an avoidance or affirmative
31 defense sufficiently particular to give the court and the parties notice of the transactions,
32 occurrences, or series of transactions or occurrences, intended to be proved. When a party has
33 mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, on
34 terms, if justice so requires, shall treat the pleading as if there had been a proper designation."

35 **SECTION 5.** G.S. 1B-1 is amended by adding a new subsection to read:

36 "(j) This Article shall not apply to tort-feasors liable severally and not jointly for claims
37 that are subject to Chapter 1F of the General Statutes, or whose right to contribution is
38 extinguished pursuant to G.S. 1F-35(c)."

39 **SECTION 6.** G.S. 8-58.1 reads as rewritten:

40 **"§ 8-58.1. Injured party as witness when medical charges at issue; amount paid**
41 **presumptive evidence.**

42 (a) Whenever an issue of hospital, medical, dental, pharmaceutical, or funeral charges
43 arises in any civil proceeding, the injured party or his guardian, administrator, or executor is
44 competent to give evidence regarding the amount of such charges, provided that records or
45 copies of such charges accompany such testimony. ~~The testimony of such a person establishes~~
46 ~~a rebuttable presumption of the reasonableness of the amount of the charges.~~

47 (b) In any action to recover damages for personal injury or wrongful death, parties may
48 introduce evidence of past medical expenses as provided in G.S. 8C-1, Rule 414. The amount
49 actually paid for the medical treatment plus the amount of medical expenses not paid that is
50 necessary to discharge the liability to the provider of the services establishes a rebuttable
51 presumption that the amount is reasonable."

1 **SECTION 7.** Article 4 of Chapter 8C of the General Statutes is amended by adding
2 a new section to read:

3 **"Rule 414. Evidence of medical expenses.**

4 In any action to recover damages for personal injury or wrongful death, evidence offered to
5 prove past damages for medical expenses shall be limited to the amounts necessary to discharge
6 the liability incurred by or on behalf of the injured party. Nothing herein shall be construed to
7 limit the evidence admissible to prove the reasonable value of volunteer services provided to an
8 injured party."

9 **SECTION 8.** G.S. 20-135.2A(d) reads as rewritten:

10 **"§ 20-135.2A. Seat belt use mandatory.**

11 ...

12 (d) Evidence of failure to wear a seat belt shall not be admissible in any criminal or
13 civil, action, or proceeding except in an action based on a violation of this section or as
14 justification for the stop of a vehicle or detention of a vehicle operator and passengers."

15 **SECTION 9.** G.S. 20-137.1(d)(4) is repealed.

16 **SECTION 10.** G.S. 20-137.4(f) reads as rewritten:

17 **"§ 20-137.4. Unlawful use of a mobile phone.**

18 ...

19 (f) Penalty. – A violation of this section shall be a Class 2 misdemeanor and shall be
20 punishable by a fine of not less than one hundred dollars (\$100.00). No drivers license points or
21 insurance surcharge shall be assessed as a result of a violation of this section. Failure to comply
22 with the provisions of this section shall not constitute negligence per se or contributory
23 negligence by the operator in any action for the recovery of damages arising out of the
24 operation, ownership, or maintenance of a school bus."

25 **SECTION 11.** G.S. 20-171.9(c) is repealed.

26 **SECTION 12.** G.S. 28A-18-2 is amended by adding a new subsection to read:

27 "(e) The provisions of Chapter 1F of the General Statutes shall apply to actions for
28 damages under this section requiring a determination of the responsibility of more than one
29 party, released person, or the decedent for the death of the decedent."

30 **SECTION 13.** G.S. 99B-1.1 reads as rewritten:

31 **"§ 99B-1.1. Strict liability.~~liability; contributory fault.~~**

32 (a) There shall be no strict liability in tort in product liability actions.

33 (b) The provisions of Chapter 1F of the General Statutes shall apply to product liability
34 actions under this Chapter requiring a determination of the responsibility of more than one
35 party, released person, or, in a wrongful death action, the decedent, for the injury, wrongful
36 death, or harm to property giving rise to the cause of action."

37 **SECTION 14.** G.S. 99B-4 is repealed.

38 **SECTION 15.** G.S. 99C-4 reads as rewritten:

39 **"§ 99C-4. Competition.**

40 The ski area operator shall, prior to the beginning of a competition, allow each competitor a
41 reasonable visual inspection of the course or area where the competition is to be held. The
42 competitor shall be held to assume risk of all course conditions including, but not limited to,
43 weather and snow conditions, course construction or layout, and obstacles which a visual
44 inspection should have revealed. ~~No liability shall attach to a ski area operator for injury or~~
45 ~~death of any competitor proximately caused by such assumed risk."~~

46 **SECTION 16.** G.S. 143-291(a) reads as rewritten:

47 "(a) The North Carolina Industrial Commission is hereby constituted a court for the
48 purpose of hearing and passing upon tort claims against the State Board of Education, the
49 Board of Transportation, and all other departments, institutions and agencies of the State. The
50 Industrial Commission shall determine whether or not each individual claim arose as a result of
51 the negligence of any officer, employee, involuntary servant or agent of the State while acting

1 within the scope of his office, employment, service, agency or authority, under circumstances
2 where the State of North Carolina, if a private person, would be liable to the claimant in
3 accordance with the laws of North Carolina. If the Commission finds that there was negligence
4 on the part of an officer, employee, involuntary servant or agent of the State while acting within
5 the scope of his office, employment, service, agency or authority that was the proximate cause
6 of the injury ~~and that there was no contributory negligence on the part of the claimant or the~~
7 ~~person in whose behalf the claim is asserted~~, the Commission shall determine the amount of
8 damages that the claimant is entitled to be paid, including medical and other expenses, and by
9 appropriate order direct the payment of damages as provided in subsection (a1) of this section,
10 but in no event shall the amount of damages awarded exceed the amounts authorized in
11 G.S. 143-299.2 cumulatively to all claimants on account of injury and damage to any one
12 person arising out of a single occurrence. Community colleges and technical colleges shall be
13 deemed State agencies for purposes of this Article. The fact that a claim may be brought under
14 more than one Article under this Chapter shall not increase the foregoing maximum liability of
15 the State."

16 **SECTION 17.** G.S. 143-299.1 reads as rewritten:

17 "**§ 143-299.1. Contributory negligence fault a matter of defense; burden of proof.**

18 Contributory ~~negligence~~ fault as defined in G.S. 1F-5 on the part of the claimant or the
19 person in whose behalf the claim is asserted shall be deemed to be a matter of defense on the
20 part of the State department, institution or agency against which the claim is asserted, and such
21 State department, institution or agency shall have the burden of proving that contributory fault
22 on the part of the claimant or the person in whose behalf the claim is asserted ~~was guilty of~~
23 ~~contributory negligence.~~"

24 **SECTION 18.** Article 31 of Chapter 143 of the General Statutes is amended by
25 adding a new section to read:

26 "**§ 143-300.1B. Apportionment of tort responsibility applies to this Article.**

27 Subject to the provisions of G.S. 143-300.1A, the provisions of Chapter 1F of the General
28 Statutes shall apply to claims under this Article requiring a determination of the responsibility
29 of more than one party, released person, or, in a wrongful death action, the decedent, for the
30 injury, wrongful death, or harm to property giving rise to the cause of action."

31 **SECTION 19.** This act becomes effective January 1, 2012, and applies to actions
32 accruing on or after that date.