

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 984

Short Title: Comparative Fault.

(Public)

Sponsors: Representatives Payne; Flaherty and Luebke.

Referred to: Courts, Justice, Constitutional Amendments and Referenda.

April 19, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO ADOPT A COMPARATIVE FAULT SYSTEM.

3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 1 of the General Statutes is amended by adding a new
5 Article to read:

6 **"ARTICLE 43E.**

7 **"COMPARATIVE FAULT.**

8 **"§ 1-539.25. Comparative fault system established.**

9 (a) In an action based on fault seeking to recover damages for injury or death to a
10 person or harm to property, any contributory fault chargeable to the claimant, if less
11 than the fault or the combined fault of the party or parties against whom recovery is
12 sought, diminishes proportionately the amount awarded as compensatory damages for
13 an injury, death, or harm to property attributable to the claimant's contributory fault, but
14 does not bar recovery. This rule applies whether or not under prior law the claimant's
15 contributory fault constituted a defense or was disregarded under applicable legal
16 doctrine, such as 'last clear chance.' If the contributory fault chargeable to the claimant
17 is greater than or equal to the fault or combined fault of the party or parties against
18 whom recovery is sought, it shall constitute a complete bar to the claimant's recovery.
19 This Article shall not affect tort claims against State Departments and Agencies as
20 provided for in G.S. 143-291. This Article shall not apply in any action or proceeding
21 or claim in which the State defends a State employee pursuant to Articles 31A and 31B
22 of Chapter 143 of the General Statutes.

23 (b) 'Fault' includes acts or omissions that are in any measure negligent or that
24 constitute reckless, willful, or wanton conduct toward the person and property of the

1 actor or others, or that subject a person to strict tort liability. This term also includes
2 unreasonable assumption of risk not constituting an enforceable express consent and
3 unreasonable failure to avoid an injury or to mitigate damages. Legal requirements of
4 causal relation apply both to fault as the basis of liability and to contributory fault.

5 **"§ 1-539.26. Special verdict; judgment.**

6 (a) In all actions involving fault of more than one party to the action, including
7 third-party defendants, the court shall, unless otherwise agreed by all parties, instruct
8 the jury to answer special interrogatories or, if there is no jury, the court shall make
9 findings, indicating:

- 10 (1) The amount of damages each claimant would be entitled to recover if
11 contributory fault is disregarded; and
12 (2) The percentage of the total fault of all the parties to each claim that is
13 allocated to each claimant, defendant, and third-party defendant. For
14 this purpose, the court may determine that two or more persons are to
15 be treated as a single party.

16 (b) In determining the percentage of fault, the trier of fact shall consider both the
17 nature of the conduct of each party at fault and the extent of the causal relation between
18 the conduct and the damages claimed.

19 (c) The court shall determine the award of damages to each claimant in
20 accordance with the findings, subject to any reduction for amounts paid under release
21 agreements, and enter judgment against each party liable, on the basis of the rules of
22 joint-and-several liability."

23 Sec. 2. This act becomes effective October 1, 1991, and applies to causes of
24 action arising on and after that date.