

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 813 (Second Edition)

SHORT TITLE: Uniform Apportionment of Tort Responsibility.

SPONSOR(S): Representatives Glazier, Blust, Ross, and Stiller

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available (X)		
	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>
EXPENDITURES					
GENERAL FUND:					
Judicial Branch	Indeterminate fiscal impact, some costs anticipated				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch					
EFFECTIVE DATE: January 1, 2010					

BILL SUMMARY:

This bill would enact a new G.S. Chapter 1F to establish the Uniform Apportionment of Tort Responsibility Act:

Provides that, in an action seeking damages for personal injury or harm to property based on negligence or on any other claim for which the claimant may be subject to a defense in whole or part based on contributory fault, the claimant’s recovery is diminished by the percentage of responsibility assigned to the claimant pursuant to proposed GS 1F-15. Prohibits the claimant from recovering any damages if the contributory fault is greater than the combined responsibility of all parties and released persons that caused the injury or harm to the claimant. (GS 1F-10). Requires that, after the trier of fact has answered interrogatories or made findings, the court determine the monetary amount of any award of damages to the claimant, the amount of the several share for which each party found liable is responsible, and any amount attributable to a released person.

Allows a claimant to move the court to determine, no later than 90 days after the entry of judgment, whether all or part of the several share will not be reasonably collectible and request reallocation. If found by preponderance of the evidence that a share is uncollectible, the court may reallocate severally to the other parties based on the proportion that each party’s percentage of responsibility bears on the total of the percentages of responsibility, not including the percentage being reallocated. Provides for liability for certain parties after reallocation. Prohibits reallocation

from making a released person liable for any reallocated share unless the release or agreement so provides. Allows any party to conduct discovery regarding any issue relevant to a motion for reallocation.

Requires the court to enter the judgment severally against each party adjudged liable, except in specified circumstances where the court may enter a judgment jointly and severally against the parties, and allows for modification of the judgment if the damages are reallocated. Includes numerous provisions on contribution and indemnity.

Enacts new GS 143-300.1B to provide that in tort claims against state departments and agencies where liability is based upon acts or omissions that constitute contributory fault, the provisions of GS Chapter 1F apply. Makes conforming changes.

Effective for actions originally filed on or after January 1, 2010.

ASSUMPTIONS AND METHODOLOGY:

Judicial Branch

The proposed legislation represents a significant change from the concepts of contributory negligence as a bar to recovery and the release of one tortfeasor releasing all. These changes will involve training for judges, which will likely occur at a regularly scheduled conference.

The bill would also require the development and publication (hard copy and electronic) of new jury instructions. This would be the responsibility of a committee, with assistance from the UNC School of Government and a private software vendor. At this time, AOC cannot determine the magnitude of these costs, but there will be an impact on the courts.

The bill also adds a new reallocation procedure, which would require additional court time. This new procedure is not limited to cases involving joint and several liability, therefore it may involve cost shifting where there would normally be no liability. As an example, the estimated cost per day in court in terms of in-court personnel is \$955 for district court civil cases and \$1,481 for superior court civil cases.

Finally, this bill also would eliminate the separate lawsuit for contribution. Since each separate lawsuit is subject to court costs, this bill would therefore result in a reduction in revenue to the State General Fund from court costs.

SOURCES OF DATA: Administrative Office of the Courts

TECHNICAL CONSIDERATIONS:

- Under current law, if a jointly and severally defendant pays the entirety of a judgment, he can recover in a separate action from his co-defendants for contribution. Under the proposed legislation, this would instead be a motion in the cause in the original action. This has the potential to create confusion as the legislation does not clarify if the ruling on the motion results in a judgment against the co-defendant and in favor of the other defendant, nor does it establish the applicable time and date of entry of judgment, and thus, the

applicable interest rate calculation. This will raise issues with abstracting and posting payments to any judgments.

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