

March 18, 2009

S 679. UNIFORM APPORTIONMENT OF TORT RESPONSIBILITY. Filed 3/18/09. *TO ENACT THE UNIFORM APPORTIONMENT OF TORT RESPONSIBILITY ACT.*

To be summarized in tomorrow's *Daily Bulletin*.

Intro. by Brunstetter.

GS 1F

March 19, 2009

S 679. UNIFORM APPORTIONMENT OF TORT RESPONSIBILITY. Filed 3/18/09. *TO ENACT THE UNIFORM APPORTIONMENT OF TORT RESPONSIBILITY ACT.*

Enacts a new GS Chapter 1F to establish the Uniform Apportionment of Tort Responsibility Act. Defines *contributory fault* as contributory negligence, misuse of a product, unreasonable failure to avoid or mitigate harm, and assumption of risk unless the risk is expressly assumed in a legally enforceable release or similar agreement. Defines *released person* as a person that would be liable for damages if the person had not been discharged from liability under proposed GS 1F-35 (Effect of release) or GS 1F-40 (Reduction of worker's compensation lien and subrogation right).

Requires that in an action to recover damages for personal injury or harm to property involving the responsibility of more than one party or a released person, the jury must answer special interrogatories or the court must make specific findings as follows: (1) state the amount of damages that a claimant would be entitled to recover if any contributory fault was disregarded; (2) state, as to each claim, the percentage of total responsibility attributed to each claimant, defendant, and released person that caused the injury or harm; (3) whether any of the parties or released persons acted in concert or with intent to cause injury or harm to the claimant; and (4) any other issue of fact fairly raised by the evidence which is necessary to make a determination of the damage award or to enter or modify a judgment. Provides that the trier of fact consider the nature of the conduct and the extent of the causal relation between the conduct and the damages claimed when determining the percentages of responsibility. Allows the court to determine the extent to which the responsibility of one party, which is based on the conduct of another party, warrants that the parties be treated as a single party. (GS 1F-15).

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. (GS 1F-20 and GS 1F-25).

Creates a right of contribution from another party, if the parties are jointly and severally liable, for any amount the party pays in excess of the several amount for which the party is responsible. Creates a right of indemnification for any party that is adjudged liable for the act or omission of another party. Allows a party subject to liability to (1) join a person that is also subject to liability and (2) seek contribution or indemnity from another person whose liability is not

determined in the proceeding in which the party is adjudged liable if the other person is responsible for all or part of the claimant's injury or harm. A claim for contribution or indemnity may be asserted in the original action or in a separate action. (GS 1F-30).

Provides that a release, covenant not to sue, covenant not to execute a judgment, or similar agreement discharges the person, as well as any other person expressly provided for in the agreement, from liability and liability for contribution. Provides that if an employer or workers' compensation insurer asserts a lien or right of subrogation under GS 90-10.2, the employer is deemed to have had its obligation to the employee for the compensation benefits paid or payable discharged as if the employer or insurer received a release, covenant not to sue, covenant not to execute a judgment, or similar agreement with the employee. An employee that asserts that the lien or right of subrogation should be reduced because of the employer's fault must give notice to the employer or insurer so that they may intervene in the employee's action for personal injury.

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. Also makes conforming changes to GS 1B-2 (Pro rata shares of tort-feasors); GS 99B-1.1 (Strict liability; *contributory fault* related to products liability); GS 28A-18-2 (Death by wrongful act of another); GS 1A-1, Rule 7(a) (pleadings), and GS 1A-1, Rule 8(c) (affirmative defenses).

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

Intro. by Brunstetter.

GS 1F