

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H.B. 811
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10375-NB-146

Short Title: Abolish Contributory Negligence.

(Public)

Sponsors: Representative Longest.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ABOLISH CONTRIBUTORY NEGLIGENCE AND ESTABLISH MODIFIED
3 COMPARATIVE NEGLIGENCE BY ALLOWING RECOVERY IF THE PLAINTIFF'S
4 CONTRIBUTORY NEGLIGENCE IS LESS THAN OR EQUAL TO THE DEFENDANT'S
5 NEGLIGENCE.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.(a)** G.S. 1B-2 reads as rewritten:

8 "**§ 1B-2. Pro rata shares.**

9 In determining the pro rata shares of tort-feasors in the entire liability

10 (1) Their relative degree of fault shall ~~not~~ be considered;

11 (2) If equity requires, the collective liability of some as a group shall constitute a
12 single share; and

13 (3) Principles of equity applicable to contribution generally shall apply."

14 **SECTION 1.(b)** G.S. 1-139 is repealed.

15 **SECTION 1.(c)** Article 15 of Chapter 1 of the General Statutes is amended by adding
16 a new section to read:

17 "**§ 1-139.1. Recovery based upon comparing negligence.**

18 Contributory negligence shall not bar recovery in any action by any person or legal
19 representative to recover damages for negligence resulting in death or injury to person or property
20 if the contributory negligence was equal to or less than the negligence which must be established
21 in order to recover from the party against whom recovery is sought."

22 **SECTION 2.(a)** 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, ~~contributory~~
25 ~~negligence~~, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality,
26 injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute
27 of limitations, truth in actions for defamation, usury, waiver, and any other matter constituting
28 an avoidance or affirmative defense. Such pleading shall contain a short and plain statement of
29 any matter constituting an avoidance or affirmative defense sufficiently particular to give the
30 court and the parties notice of the transactions, occurrences, or series of transactions or
31 occurrences, intended to be proved. When a party has mistakenly designated a defense as a
32 counterclaim or a counterclaim as a defense, the court, on terms, if justice so requires, shall treat
33 the pleading as if there had been a proper designation."

34 **SECTION 2.(b)** G.S. 20-11(l) reads as rewritten:

35 "(l) Violations. – It is unlawful for the holder of a limited learner's permit, a temporary
36 permit, or a limited provisional license to drive a motor vehicle in violation of the restrictions



1 that apply to the permit or license. Failure to comply with a restriction concerning the time of
2 driving or the presence of a supervising driver in the vehicle constitutes operating a motor vehicle
3 without a license. Failure to comply with the restriction regarding the use of a mobile telephone
4 while operating a motor vehicle is an infraction punishable by a fine of twenty-five dollars
5 (\$25.00). Failure to comply with any other restriction, including seating and passenger
6 limitations, is an infraction punishable by a monetary penalty as provided in G.S. 20-176. Failure
7 to comply with the provisions of subsections (e) and (g) of this section shall not constitute
8 negligence per se or contributory negligence by the driver or passenger in any action for the
9 recovery of damages arising out of the operation, ownership or maintenance of a motor vehicle.
10 Any evidence of failure to comply with the provisions of subdivisions (1), (2), (3), (4), and (5)
11 of subsection (e) of this section shall not be admissible in any criminal or civil trial, action, or
12 proceeding except in an action based on a violation of this section. No drivers license points or
13 insurance surcharge shall be assessed for failure to comply with seating and occupancy
14 limitations in subsection (e) of this section. No drivers license points or insurance surcharge shall
15 be assessed for failure to comply with subsection (e) or (g) of this section regarding the use of a
16 mobile telephone while operating a motor vehicle."

17 **SECTION 2.(c)** G.S. 20-126(c) reads as rewritten:

18 "(c) No person shall operate a motorcycle upon the streets or highways of this State unless
19 such motorcycle is equipped with a rearview mirror so mounted as to provide the operator with
20 a clear, undistorted and unobstructed view of at least 200 feet to the rear of the motorcycle. No
21 motorcycle shall be registered in this State after January 1, 1968, unless such motorcycle is
22 equipped with a rearview mirror as described in this section. Violation of the provisions of this
23 subsection shall not be considered negligence per se or contributory negligence per se in any civil
24 action."

25 **SECTION 2.(d)** G.S. 20-137.1(d) reads as rewritten:

26 "(d) A violation of this section shall have all of the following consequences:

- 27 (1) Two drivers license points shall be assessed pursuant to G.S. 20-16.
- 28 (2) No insurance points shall be assessed.
- 29 (3) The violation shall not constitute negligence per se or contributory negligence
30 per se.
- 31 (4) The violation shall not be evidence of negligence or contributory negligence."

32 **SECTION 2.(e)** G.S. 20-137.4(f) reads as rewritten:

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

39 **SECTION 2.(f)** G.S. 20-137.4A(c) reads as rewritten:

40 "(c) Penalty. – A violation of this section while operating a school bus, as defined in
41 G.S. 20-137.4(a)(4), shall be a Class 2 misdemeanor and shall be punishable by a fine of not less
42 than one hundred dollars (\$100.00). Any other violation of this section shall be an infraction and
43 shall be punishable by a fine of one hundred dollars (\$100.00) and the costs of court.

44 No drivers license points or insurance surcharge shall be assessed as a result of a violation of
45 this section. Failure to comply with the provisions of this section shall not constitute negligence
46 per se or contributory negligence per se by the operator in any action for the recovery of damages
47 arising out of the operation, ownership, or maintenance of a vehicle."

48 **SECTION 2.(g)** G.S. 20-140.4(b) reads as rewritten:

49 "(b) Violation of any provision of this section shall not be considered negligence per se or
50 contributory negligence per se in any civil action."

51 **SECTION 2.(h)** G.S. 20-141(n) reads as rewritten:

1 "(n) Notwithstanding any other provision contained in G.S. 20-141 or any other statute or
2 law of this State, the failure of a motorist to stop his vehicle within the radius of its headlights or
3 the range of his vision shall not be held ~~negligence per se or contributory negligence per se.~~"

4 **SECTION 2.(i)** G.S. 20-158(d) reads as rewritten:

5 "(d) No failure to stop as required by the provisions of this section shall be considered
6 ~~negligence or contributory negligence per se~~ in any action at law for injury to person or property,
7 but the facts relating to such failure to stop may be considered with the other facts in the case in
8 determining whether a party was guilty of ~~negligence or contributory negligence.~~"

9 **SECTION 2.(j)** G.S. 20-158.1 reads as rewritten:

10 **"§ 20-158.1. Erection of "yield right-of-way" signs.**

11 The Department of Transportation, with reference to State highways, and cities and towns
12 with reference to highways and streets under their jurisdiction, are authorized to designate
13 main-traveled or through highways and streets by erecting at the entrance thereto from
14 intersecting highways or streets, signs notifying drivers of vehicles to yield the right-of-way to
15 drivers of vehicles approaching the intersection on the main-traveled or through highway.
16 Notwithstanding any other provisions of this Chapter, except G.S. 20-156, whenever any such
17 yield right-of-way signs have been so erected, it shall be unlawful for the driver of any vehicle
18 to enter or cross such main-traveled or through highway or street unless he shall first slow down
19 and yield right-of-way to any vehicle in movement on the main-traveled or through highway or
20 street which is approaching so as to arrive at the intersection at approximately the same time as
21 the vehicle entering the main-traveled or through highway or street. No failure to so yield the
22 right-of-way shall be considered ~~negligence or contributory negligence per se~~ in any action at
23 law for injury to person or property, but the facts relating to such failure to yield the right-of-way
24 may be considered with the other facts in the case in determining whether either party in such
25 action was guilty of ~~negligence or contributory negligence.~~"

26 **SECTION 2.(k)** G.S. 20-175.3 reads as rewritten:

27 **"§ 20-175.3. Rights and privileges of blind persons without white cane or guide dog.**

28 Nothing contained in this Part shall be construed to deprive any blind or partially blind person
29 not carrying a cane white in color or white tipped with red, or being accompanied by a guide dog,
30 of any of the rights and privileges conferred by law upon pedestrians crossing streets and
31 highways, nor shall the failure of such blind or partially blind person to carry a cane white in
32 color or white tipped with red, or to be accompanied by a guide dog, upon the streets, roads,
33 highways or sidewalks of this State, be held to constitute or be evidence of ~~contributory~~
34 negligence by virtue of this Part."

35 **SECTION 2.(l)** G.S. 95-229.12 reads as rewritten:

36 **"§ 95-229.12. Application.**

37 Nothing in this Article shall relieve any person from complying with any safety rule,
38 regulation, or statute not imposed by this Article. A violation of this Article shall not constitute
39 ~~negligence or contributory negligence~~, nor give rise to any cause of action based upon injury to
40 persons or property. An action may be brought by an owner or operator of a high-voltage line to
41 recover the cost of precautionary safety arrangements or for damage to its facilities. Nothing
42 contained in this Article shall be construed to alter, amend, restrict, or limit the liability of any
43 person for violation of that person's duty under law; nor shall any person be relieved from liability
44 as a result of violations of standards under existing law where such violations of existing
45 standards of care are found to be a cause of damage to property, personal injury, or death."

46 **SECTION 2.(m)** G.S. 113-291.8(c) reads as rewritten:

47 "(c) Failure to wear hunter orange material in violation of this section shall not constitute
48 ~~negligence per se or contributory negligence per se.~~negligence."

49 **SECTION 2.(n)** G.S. 143-291(a) reads as rewritten:

50 "(a) The North Carolina Industrial Commission is hereby constituted a court for the
51 purpose of hearing and passing upon tort claims against the State Board of Education, the Board

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

21 **SECTION 2.(o)** G.S. 143-299.1 reads as rewritten:

22 "**§ 143-299.1. Contributory negligence-Negligence a matter of defense; burden of proof.**

23 ~~Contributory~~ Any negligence on the part of the claimant or the person in whose behalf the
 24 claim is asserted shall be deemed to be a matter of defense on the part of the State department,
 25 institution or agency-agency, department, or institution against which the claim is asserted, and
 26 such State department, institution or agency shall have the burden of proving that the claimant or
 27 the person in whose behalf the claim is asserted was guilty of contributory negligence-negligence
 28 that was equal to or less than the negligence which must be established in order to prevail against
 29 the State agency, department, or institution against which the claim is asserted."

30 **SECTION 2.(p)** G.S. 143-300.1A reads as rewritten:

31 "**§ 143-300.1A. Claims arising from certain smallpox vaccinations of State employees.**

32 The North Carolina Industrial Commission shall have jurisdiction to hear and determine
 33 claims in accordance with the procedures set forth in this Article made against the State by a
 34 person who is permanently or temporarily living in the home of a State employee who receives
 35 in employment vaccination against smallpox incident to the Administration of Smallpox
 36 Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L.
 37 No. 107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. § 233(p)) when the person contracts an
 38 infection with smallpox or an infection with vaccinia or has any adverse medical reaction due to
 39 the vaccination received by the employee. A person covered by this section shall be entitled to
 40 recover from the State damages incurred by the person that are directly attributable to the
 41 vaccination of the employee under this section. No showing of negligence is required under this
 42 section. The provisions of G.S. 143-299.1 shall not apply to claims made under this section, ~~and~~
 43 ~~contributory negligence is not a defense for claims under this section.~~ Damages awarded under
 44 this section shall be paid in accordance with G.S. 143-291(a1) and shall be subject to the same
 45 limits as those which apply to tort claims under this Article."

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

47 "(a) Pleadings. – There shall be a complaint and an answer; a reply to a counterclaim
 48 denominated as such; an answer to a crossclaim, if the answer contains a crossclaim; a third-party
 49 complaint if a person who was not an original party is summoned under the provisions of Rule
 50 14; and a third-party answer, if a third-party complaint is served. ~~If the answer alleges~~

1 ~~contributory negligence, a party may serve a reply alleging last clear chance.~~ No other pleading
2 shall be allowed except that the court may order a reply to an answer or a third-party answer."

3 **SECTION 4.** G.S. 90-95.5 reads as rewritten:

4 "**§ 90-95.5. Civil liability – employing a minor to commit a drug offense.**

5 A person 21 years of age or older, who hires, employs, or intentionally uses a person under
6 18 years of age to commit a violation of G.S. 90-95 is liable in a civil action for damages for drug
7 addiction proximately caused by the violation. The ~~doctrines~~ doctrine of contributory negligence
8 ~~and~~ assumption of risk ~~are~~ is no defense to liability under this section."

9 **SECTION 5.** This act becomes effective on October 1, 2023, and applies to claims
10 arising on or after that date.