

H B

176

③ ob ③

"An Act relating to a comparative negligence method of determining damages; effective date."

### COMMITTEE REPORT

3/5/75

HOUSE

Mr. Speaker:

Date 4/7/75

The Committee on JUDICIARY has had HB 176

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(x) recommends it BE REPLACED WITH CS FOR HC 176 AND THAT

CS FOR HC 176 DO PASS

( ) "and" recommends it BE REFERRED TO THE \_\_\_\_\_

COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

<u>[Signature]</u>	_____	_____
<u>[Signature]</u>	_____	_____
<u>[Signature]</u>	_____	_____

Members NOT concurring in the Majority report:

<u>[Signature]</u>	recommends: <u>NO PASS</u>
_____	recommends:
_____	recommends:
_____	recommends:
_____	recommends:

[Signature] Chairman

Since 1949 Comp. negligence in Workmen's Comp AS 23.25  
More states have comp. negligence now in one form or another  
Admiralty law uses comp. negligence  
50% system

Original sponsor: Cowper Presently court & juries look for way out so not to  
bar plaintiff - Under contributory

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 176

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to a comparative negligence method of  
7 determining damages; and providing for an effective  
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

0 \* Section 1. AS 09.65 is amended by adding a new section to read:

1 Sec. 09.65.130. CONTRIBUTORY NEGLIGENCE NO BAR TO ACTION; MODIFIED  
2 COMPARATIVE NEGLIGENCE. (a) In any action to recover damages for death  
3 or for injury to persons or property in which contributory negligence  
4 may be asserted as a defense, contributory negligence shall not bar  
5 recovery if the negligence of the person seeking recovery was not greater  
6 than the negligence of the person or persons against whom recovery is  
7 sought, but any damages allowed shall be diminished in proportion to the  
8 amount of negligence attributable to the person seeking recovery.

9 (b) In an action to which (a) of this section applies the judge  
0 may, and when requested by any party shall instruct the jury that

1 (1) the claimant may not recover if his contributory negli-  
2 gence has contributed more to the injury than the negligence of the  
3 defendant or the combined negligence of multiple defendants;

4 (2) if the jury determines the claimant is entitled to  
5 recover, it shall return by general verdict the total amount of damages  
6 the claimant would be entitled to recover except for his contributory  
7 negligence;

8 (3) if the jury determines that a claimant is entitled to  
9 recover, it shall return a special verdict indicating the percentage of

1 p. - 2 def - ~~any~~ - preference for plaintiff  
 tort - civil wrong  
 Tortfeasor - commit a civil wrong against another  
 1. intentional - comparative doesn't apply  
 2. negligence - this bill  
 3. strict liability - product liability - no doubt apply

negligence attributable to each party.

(c) The percentage of negligence attributable to the claimant shall reduce the amount of his recovery by the proportionate amount of his negligence.

Sec. 09.65.140. MULTIPLE PARTIES. (a) Each defendant is jointly and severally liable for the entire amount of the judgment awarded the claimant. *all*  
*or any* - have on books now - stays the same

(b) Contribution among jointly liable defendants shall be as provided in AS 09.16. *Contribution among Joint Tortfeasors*

\* Sec. 2. AS 09.16.020 is amended to read:

Sec. 09.16.020. PRO RATA SHARES. In determining the pro rata shares of tortfeasors in the entire liability

- (1) their relative degrees of fault shall [NOT] be considered;
- (2) if equity requires, the collective liability of some as a group constitutes a single share; and
- (3) principles of equity applicable to contribution generally shall apply.

\* Sec. 3. This Act applies to causes of action accruing after the effective date of this Act.

\* Sec. 4. This Act takes effect immediately in accordance with AS 01.10.070(c).

*under existing law you divide by no. of defendants for liability  
 Under comp. liability figured on % negligence*

① Court solution 50% chance court won't rule on that question ③ Should court write law

② Questions unanswered  
 A. Solif How affects multiple parties  
 B. ~~...~~  
 I may will decide % of negligence  
 Matter of fact - judge }  
 " of law - judge } fuzzy in Calif law

62

House Judiciary Committee  
March 20, 1965

The meeting was called to order at 1:25 p.m. by Chairman Gardiner. All members were present except Mr. Brown and Mr. Specking.

CS HB 177 Security deposits

The proposed CS was approved and moved out of committee to pass by Mr. Bradley. There being no objection, it was so ordered.

HB 176 Comparative Negligence

Fred Estaugh of the American Insurance Association testified that the AIA is against the pure form as proposed in HB 176. They prefer the 49% type similar to Hawaii's statute.

Alan Compton testified that the Board of Governors of the Alaska Bar Association has endorsed the concept of comparative negligence, but not a particular form.

Present law: if the plaintiff was negligent to any degree, recovery is prohibited

Pure form: even if the plaintiff is 90% negligent, he may recover the remaining 10%

50% form: if equal fault, each recovers from other

49% form: if equal fault, no recovery for either must be less than 50% negligent to recover (plaintiff's negligence does not exceed combined negligence of defendants)

Possible addition to bill: with multiple defendants, each pays their percentage of negligence of damages

Rep. Cowper, sponsor of HB 176, stated that he would be satisfied with the 49% form. He felt the pure form would totally discourage litigation, would encourage settling out of court, and would get the injured party his money when he needed it. He did not favor the addition of apportionment of the damages

House Judiciary Committee  
April 7, 1975

The meeting was called to order at 1:22 p.m. by Chairman Gardiner. All members were present except Mr. Bradley.

Mr. Boetsch of Revenue testified that HB 211 was in effect a housekeeping bill that put all the remedies for different types of taxes into one section. The bill adds informal conference as a possible remedy but the option of a formal hearing remains. He stated that the Multi State Tax Commission can do audits on Alaska's behalf, acting as the state's agent. Mr. Parr raised the question of the Alaska citizen's right to privacy regarding his tax records and requested strict limitations on the Multi State Tax Commission. A 1972 Attorney General's opinion in the supplement (23.20.190) deals with the right to privacy. Mr. Messenger in the AG's office was requested to review the opinion and report to the committee.

Mr. Boetsch further stated that HB 211 would make the penalty for all delinquent taxes at 8%. The federal IRS is going to 9% in June. Other penalties listed in the bill are comparable to the IRS.

Regarding section 230 and the lack of control the state would have on information after it leaves Alaska, Mr. Boetsch stated that the clause "for the purpose of enforcing a tax" had been added to the bill to limit access. He stated that other states have similar procedures regarding confidentiality and that if they did not, Alaska would not have made reciprocal agreements with them. Mr. Brown stated that he would like to see a standard put in the bill to control the actions of the Commissioner of Revenue regarding confidential information.

HB 176 Comparative Negligence

Mr. Gardiner stated that the basic policy decision the committee must make concerns what form of the bill they wish -- pure, 50%, 49%. The committee considered the possibility of putting the material on joint tort feasons into a seperate bill but it was decided that since this relates so directly to multiple defendents in a comparative negligence case, that it should be included in this bill. It was agreed that degrees of fault would be considered, thus allocating percentages of negligence to the defendents. The committee agreed to reject pure negligence was potentially just as discriminatory as contributory negligence now is and opted for the 50% form. Mr. Brown moved CS HB 176 out of committee. There being no objection, it was so ordered.

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Sec. 09.65.130. CONTRIBUTORY NEGLIGENCE NO BAR TO ACTION: MODIFIED COMPARATIVE NEGLIGENCE. <sup>(a)</sup> ~~127~~ In any action to recover damages for injury to persons or property in which contributory negligence may be asserted as a defense, the contributory negligence of the plaintiff shall not bar a recovery if the negligence of the person seeking recovery was not greater than the negligence or gross negligence of the person or persons against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person seeking recovery.

*(b) This section applies to all causes of action accruing after the effective date of this Act.*

Sec. 09.65.140. JURY INSTRUCTIONS; VERDICTS. In such cases, the judge may, and when requested by any party shall instruct the jury that:

(1) The plaintiff may not recover if his contributory negligence has contributed more to the injury than the negligence of the defendant or the combined negligence of multiple defendants.

(2) If the jury determines the plaintiff is entitled to recover, it shall return by general verdict the total amount of damages the plaintiff would be entitled to recover except for his contributory negligence.

(3) If the jury determines that a party is entitled to recover, it shall return a special verdict indicating the percentage of negligence attributable to each party.

(4) The percentage of negligence attributable to the person seeking recovery shall reduce the amount of such recovery by the proportionate amount of such negligence.

Sec. 09.65.150. MULTIPLE PARTIES. (a) In a case in which there is more than one defendant, and the claimant's negligence does not exceed the total negligence of all defendants, contribution to the damages awarded to the claimant shall be in proportion to the percentage of negligence attributable to each defendant.

(b) Each defendant is jointly and severally liable for the entire amount of the judgment awarded the claimant, except that a defendant whose negligence is less than that of the claimant is liable to the

1 claimant only for that portion of the judgment which represents the  
2 percentage of negligence attributable to him.

3 Sec. 09.65.160. SETTLEMENTS; EFFECT ON REMAINING PARTIES. (a)

4 If an alleged joint tort-feasor pays an amount to a claimant in settlement,  
5 but is never joined as a party defendant, or having been joined, is  
6 dismissed or nonsuited after settlement with the claimant (for which reason  
7 the existence and amount of his negligence are not submitted to the jury),  
8 each defendant is entitled to deduct from the amount for which he is  
9 liable to the claimant a percentage of the amount of the settlement based  
10 on the relationship the defendant's own negligence bears to the total  
11 negligence of all defendants.

12 (b) If an alleged joint tort-feasor makes a settlement with a  
13 claimant but nevertheless is joined as a party defendant at the time of  
14 the submission of the case to the jury (so that the existence and amount  
15 of his negligence are submitted to the jury) and his percentage of neg-  
16 ligence is found by the jury, the settlement is a complete release of  
17 the portion of the judgment attributable to the percentage of negligence  
18 found on the part of that joint tort-feasor.

19 Sec. 09.65.170. SETOFFS. If the application of the rules contained  
20 in secs. 150 and 160 of this chapter results in two claimants being liable  
21 to each other in damages, the claimant who is liable for the greater  
22 amount is entitled to a credit toward his liability in the amount of  
23 damages owed him by the other claimant.

24 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.070 c

25  
26 \* Sec 3. AS 09.16 is amended.  
27  
28  
29

Hawaii  
Regular Session  
1969 New Laws 1. 2 543  
(Page 542 - In Blank)

HAWAII  
Regular Session  
Act 227, Laws 1969  
House Bill No. 857

AN ACT

RELATING TO TORT ACTIONS BASED ON NEGLIGENCE AND  
AMENDING CHAPTER 663 - HAWAII REVISED STATUTES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 663 of the Hawaii Revised Statutes is  
2 amended by adding a new Part to be appropriately designated and  
3 to read as follows:

4 Part-----Comparative Negligence

5 "Section 663 - Contributory negligence no bar; compara-  
6 tive negligence; findings of fact and special verdicts.

7 "(a) Contributory negligence shall not bar recovery  
8 in any action by any person or his legal representative to  
9 recover damages for negligence resulting in death or in injury  
10 to person or property, if such negligence was not as great  
11 as the negligence of the person against whom recovery is  
12 sought, but any damages allowed shall be diminished in propor-  
13 tion to the amount of negligence attributable to the person  
14 for whose injury, damage or death recovery is made.

15 "(b) In any action to which subsection (a) of this  
16 section applies, the court, in a nonjury trial, shall make  
17 findings of fact or, in a jury trial, the jury shall return  
18 a special verdict which shall state:

19 "(1) The amount of the damages which would

1           have been recoverable if there had been no contributory  
2           negligence; and

3                       "(2) The degree of negligence of each party,  
4                       expressed as a percentage.

5                       "(c) Upon the making of the finding of fact or the  
6           return of a special verdict, as is contemplated by subsection  
7           (b) above, the court shall reduce the amount of the verdict  
8           in proportion to the amount of negligence attributable to  
9           the person for whose injury, damage or death recovery is  
10          made, provided, however, that if the said proportion is equal  
11          to or greater than the negligence of the person against whom  
12          recovery is sought, then, in such event, the court will enter  
13          a judgment for the defendant."

14                      SECTION 2. The provisions of this Act shall not be  
15           retroactive and shall affect only those claims accruing after  
16           its effective date.

17                      SECTION 3. This Act shall take effect upon its approval.

Approved, July 14, 1969

AMERICAN INSURANCE ASSOCIATION

85 JOHN STREET  
NEW YORK, N. Y. 10038

Legislative Information Service

LAW MEMO 1272

THIS IS NOW LAW

HAWAII REGULAR SESSION 1969

H.B. 857

COMPARATIVE NEGLIGENCE -

Newly provides that contributory negligence shall not bar recovery in any action by any person or legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made.

Further provides that in any action to which the above applies, the court, in a non-jury trial, shall make findings of fact or, in a jury trial, the jury shall return a special verdict which shall state: (1) the amount of damages which would have been recoverable if there had been no contributory negligence; and (2) the degree of negligence of each party, expressed as a percentage.

Further provides that upon the making of the finding of fact or the return of a special verdict, as contemplated above, the court shall reduce the amount of the verdict in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made, provided however that if the said portion is equal to or greater than the negligence of the person against whom recovery is sought, then, in such event, the court will enter a judgment for the defendant.

Provides that the provisions hereof shall affect only those claims accruing the effective date hereof.

ACT 227

Effective July 14, 1969

AG:sgt  
9(d)

TEXT OF LAW ATTACHED

RECEIVED  
FEB 26 1970  
ROBERTSON, MONAGLE  
EASTAUGH & ANNIS

ACTIONS

507: 7-a

CHAPTER 507

ACTIONS

[New Sections]

- 507: 7-a Comparative Negligence.
- 507: 7-b Release or Covenant Not to Sue; Joint Tortfeasors.
- 507: 7-c Inadmissible Evidence; Post Verdict Procedure.
- 507: 8 Contributory Negligence as Defense [Repealed.]
- 507: 8-b Strict Liability and Implied Warranties Limited.
- 507: 14 Minors Contracts; Motor Vehicles [Repealed.]

507: 1 Partners.

[Repealed 1973, 378: 2, eff. Aug. 29, 1973, superseded by RSA 304-A: 18 et seq. (supp).]

507: 2 Cotenants.

ANNOTATIONS

Library references

Larceny: cotenant taking cotenancy property. 17 ALR3d 1394.

507: 7 False Checks, etc. Any person who makes, draws, utters or delivers any check, draft or order for the payment of money upon any bank or other depository, knowing that the maker or drawer has not sufficient funds in or credit with such bank or other depository for the payment thereof, and which is not paid in full upon presentation, shall be liable to the person injured thereby.

Source. 1917, 55: 1. PL 328: 12. RL Amendments—1971. Omitted provisions 384: 12. RSA 507: 7. 1971, 227: 5, eff. relating to arrest. Aug. 17, 1971.

507: 7-a [New] Comparative Negligence. Contributory negligence shall not bar recovery in an action by any plaintiff, or his legal representative, to recover damages for negligence resulting in death, personal injury, or property damage, if such negligence was not greater than the causal negligence of the defendant, but the damages awarded shall be diminished, by general verdict, in proportion to the amount of negligence attributed to the plaintiff; provided that where recovery is allowed against more than one defendant, each such defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of his causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed. The burden of proof as to the existence or amount of causal negligence alleged to be attributable to a party shall rest upon the party making such allegation. This section shall govern all actions arising out of injuries and other damages sustained on and after August 12, 1969, and none other.

Source. 1969, 225: 1, eff. Aug. 12, 1969. thereof the provision concerning the 1970, 35: 1, eff. May 4, 1970. burden of proof as to comparative negligence. Amendments—1970. Added at the end

## CHAPTER 787

AN ACT relating to tort actions; providing for a system of comparative negligence in lieu of the defenses of contributory negligence; providing that multiple defendants shall be severally liable and damages shall be apportioned in accordance with negligence of each defendant; and providing other matters properly relating thereto.

[Approved May 3, 1973]

*The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Chapter 41 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. *In any action to recover damages for injury to persons or property in which contributory negligence may be asserted as a defense, the contributory negligence of the plaintiff shall not bar a recovery if the negligence of the person seeking recovery was not greater than the negligence or gross negligence of the person or persons against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person seeking recovery.*

2. *In such cases, the judge may, and when requested by any party shall instruct the jury that:*

(a) *The plaintiff may not recover if his contributory negligence has contributed more to the injury than the negligence of the defendant or the combined negligence of multiple defendants.*

(b) *If the jury determines the plaintiff is entitled to recover, it shall return by general verdict the total amount of damages the plaintiff would be entitled to recover except for his contributory negligence.*

(c) *If the jury determines that a party is entitled to recover, it shall return a special verdict indicating the percentage of negligence attributable to each party.*

(d) *The percentage of negligence attributable to the person seeking recovery shall reduce the amount of such recovery by the proportionate amount of such negligence.*

3. *Where recovery is allowed against more than one defendant in such an action:*

(a) *The defendants are severally liable to the plaintiff.*

(b) *Each defendant's liability shall be in proportion to his negligence as determined by the jury, or judge if there is no jury. The jury or judge shall apportion the recoverable damages among the defendants in accordance with the negligence determined.*

AN ACT relating to justices of the peace in townships; and providing for the election of justices of the peace in townships.

*The People of the State of Nevada, do enact as follows:*

SECTION 1. NRS 4.020 and 4.021 are hereby amended to read as follows: 4.020 1. [There shall be elected by the people of the state having a population of more than 100 persons at the last preceding national United States Department of Commerce census a justice of the peace shall be elected by the people at the general state election in November of each year.]

2. There shall be one justice of the peace in each township of the state having a population of more than 100 persons at the last preceding national United States Department of Commerce census. The justice of the peace shall be elected by the people at the general state election to be held in each township at the election held every 4 years.

3. There shall be one justice of the peace in each township of the state, for which there shall be a general state election thereafter, the following number of justices of the peace shall be elected by the people at the general state election of the Bureau of the Commerce:

(a) *If the population is less than 100 persons,*

(b) *If the population is 100 or more persons,*

2. The term of office of a justice of the peace shall begin on the 1st Monday in January of each year.

[4.] 3. Justices of the peace shall be elected by the boards of county commissioners.

[5.] 4. The clerk of the board of county commissioners shall, 10 days after the election of a justice of the peace, certify under oath of office and qualification to the justice of the peace. The certificate shall be filed in the office of the justice of the peace of official character of such officer.

SEC. 2. The board of county commissioners shall, if there is a township of such population, appoint an additional justice of the peace in each township on or before January 1, 1975.

SEC. 3. Section 2 of this act shall be effective July 1, 1973. Section 1 of this act shall be effective July 1, 1975.

and Washington State University during the 1973-75 biennium under the provisions of RCW 66.08.180. If this section is not deleted, the University of Washington will receive \$300,000 less than anticipated, Washington State University will receive \$200,000 less than anticipated, and the Division of Health-Department of Social and Health Services will receive \$500,000 more than anticipated for alcoholism programs authorized by RCW 70.96.040.

Veto  
Message

Although the language of this section does not contain the word "appropriation," in the absence of any specific language to the contrary, the effect is an appropriation of \$500,000 for additional expenditures by the Division of Health. The Alcoholism Program of the Division of Health was funded at the level recommended in my proposed budget for the 1973-75 biennium, and I do not believe the Legislature intended to provide additional funds for that program.

With the exception of the items described above, the remainder of the bill is approved."

CHAPTER 138

[Engrossed Senate Bill No. 2045]

COMPARATIVE NEGLIGENCE--IMPUTED NEGLIGENCE

AN ACT Relating to civil procedure; creating a new chapter in Title 4 RCW; and declaring an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**NEW SECTION.** Section 1. Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages caused by negligence resulting in death or in injury to person or property, but any damages allowed shall be diminished in proportion to the percentage of negligence attributable to the party recovering.

**NEW SECTION.** Sec. 2. The negligence of one marital spouse shall not be imputed to the other spouse to the marriage so as to bar recovery in an action by the other spouse to the marriage, or his or her legal representative, to recover damages from a third party caused by negligence resulting in death or in injury to the person.

**NEW SECTION.** Sec. 3. This act takes effect as of 12:01 a.m. on April 1, 1974.

**NEW SECTION.** Sec. 4. If any provision of this act or the application thereof to any person or circumstance is held

unconstitutional, the remainder of this act and the application of such provisions to other persons or circumstances shall not be affected thereby, and it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional provision.

NEW SECTION. Sec. 5. Sections 1 through 4 of this act shall constitute a new chapter in Title 4 RCW.

Passed the Senate March 31, 1973.

Passed the House April 14, 1973.

Approved by the Governor April 23, 1973.

Filed in Office of Secretary of State April 24, 1973.

CHAPTER 139

[Engrossed Substitute Senate Bill No. 2800]

DEPARTMENT OF SOCIAL AND HEALTH

SERVICES BUDGET

AN ACT Adopting the budget for the department of social and health services and allied agencies; making appropriations and authorizing expenditures for the operations of the department and allied agencies for the fiscal biennium beginning July 1, 1973, and ending June 30, 1975; designating effective dates for certain appropriations; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. That a budget is hereby adopted for the department of social and health services and its allied agencies and subject to the provisions set forth in the following sections, the several amounts specified in the following sections, or so much thereof as shall be sufficient to accomplish the purposes designated, are hereby appropriated and authorized to be disbursed for salaries, wages and other expenses and for other specified purposes for the fiscal biennium beginning July 1, 1973, and ending June 30, 1975, except as otherwise provided, out of the several funds of the state hereinafter named.

NEW SECTION. Sec. 2. FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

General Fund Appropriation: PROVIDED, That

\$594,866,929 is from state funds and

\$6,541,168 is from private and local funds and

\$417,713,198 is from federal funds: PROVIDED,

That any proposal to expend moneys or man

years from an appropriated fund or account

in excess of appropriations provided by law, based

HAWAII  
Regular Session  
Act 227, Laws 1969  
House Bill No. 857

AN ACT

RELATING TO TORT ACTIONS BASED ON NEGLIGENCE AND  
AMENDING CHAPTER 663 - HAWAII REVISED STATUTES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 663 of the Hawaii Revised Statutes is  
2 amended by adding a new Part to be appropriately designated and  
3 to read as follows:

4 Part-----Comparative Negligence

5 "Section 663 - Contributory negligence no bar; compara-  
6 tive negligence; findings of fact and special verdicts.

7 "(a) Contributory negligence shall not bar recovery  
8 in any action by any person or his legal representative to  
9 recover damages for negligence resulting in death or in injury  
10 to person or property, if such negligence was not as great  
11 as the negligence of the person against whom recovery is  
12 sought, but any damages allowed shall be diminished in propor-  
13 tion to the amount of negligence attributable to the person  
14 for whose injury, damage or death recovery is made.

15 "(b) In any action to which subsection (a) of this  
16 section applies, the court, in a nonjury trial, shall make  
17 findings of fact or, in a jury trial, the jury shall return  
18 a special verdict which shall state:

19 "(1) The amount of the damages which would

1 have been recoverable if there had been no contributory  
2 negligence; and

3 "(2) The degree of negligence of each party,  
4 expressed as a percentage.

5 "(c) Upon the making of the finding of fact or the  
6 return of a special verdict, as is contemplated by subsection  
7 (b) above, the court shall reduce the amount of the verdict  
8 in proportion to the amount of negligence attributable to  
9 the person for whose injury, damage or death recovery is  
10 made, provided, however, that if the said proportion is equal  
11 to or greater than the negligence of the person against whom  
12 recovery is sought, then, in such event, the court will enter  
13 a judgment for the defendant."

14 SECTION 2. The provisions of this Act shall not be  
15 retroactive and shall affect only those claims accruing after  
16 its effective date.

17 SECTION 3. This Act shall take effect upon its approval.

Approved, July 14, 1969

AMERICAN INSURANCE ASSOCIATION

85 JOHN STREET  
NEW YORK, N. Y. 10038

Legislative Information Service

LAW MEMO 1272

RECEIVED

FEB 20 1970

ROBERTSON, MONTAGLE  
EASTAUGH & ANNIS

THIS IS NOW LAW

HAWAII REGULAR SESSION 1969

H.B. 857

COMPARATIVE NEGLIGENCE -

Newly provides that contributory negligence shall not bar recovery in any action by any person or legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made.

Further provides that in any action to which the above applies, the court, in a non-jury trial, shall make findings of fact or in a jury trial, the jury shall return a special verdict which shall state: (1) the amount of damages which would have been recoverable if there had been no contributory negligence; and (2) the degree of negligence of each party, expressed as a percentage.

Further provides that upon the making of the finding of fact or the return of a special verdict, as contemplated above, the court shall reduce the amount of the verdict in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made, provided however that if the said portion is equal to or greater than the negligence of the person against whom recovery is sought, then, in such event, the court will enter a judgment for the defendant.

Provides that the provisions hereof shall affect only those claims accruing the effective date hereof.

ACT 227

Effective July 14, 1969

AG:sgt  
9(a)

TEXT OF LAW ATTACHED

MODEL STATUTE COMPARATIVE NEGLIGENCE

1 Section 1. GENERAL RULES. (a) In all actions based on strict liability,  
2 negligence or recklessness, the fact the party bringing the action was  
3 at fault because that person was negligent or reckless or unreasonably and  
4 impliedly assumed the risk, shall not necessarily bar recovery; rather,  
5 the person's damages shall be diminished by the trier of fact in  
6 proportion to the amount of fault attributable to that person.

7 (b) The principles set forth in Subsection A shall also apply in  
8 actions for wrongful death with respect to the negligence of the plaintiff  
9 and his or her decedent.

10 (c) The principles set forth in Subsection A shall apply regardless  
11 of whether either party violated a criminal safety statute or had the  
12 last clear change to prevent the injury.

13 Section 2. PROCEDURAL RULES. (a) In any action to which this Act applies,  
14 the court in a non-jury trial shall make findings of fact, or in a  
15 jury trial, the jury shall answer special questions indicating:

16 (1) The amount of damages which the party bringing the action  
17 would be entitled to recover had that person not been at fault;

18 (2) The amount of the party's fault that had a bearing on  
19 that person's damages, expressed as a percentage.

20 The court shall then reduce the amount of such damages in proportion to  
21 the amount of fault attributable to the person recovering. The jury may,  
22 however, upon request of a party, be informed of the legal effect of  
23 their answers to the special questions.

24 (b) A court may make a limited reversal of a jury's verdict on the  
25 ground that its answer under (1) or (2) of subsection (a) was wholly  
26 unreasonable. The court may then determine a proper amount of damage  
27 or percentage of fault, utilizing the principles of additur and  
28 remittitur properly used in this state.

29 Section 3. MULTIPLE PARTIES. (a) This act in no way modifies the  
common-law principle that joint tortfeasors are jointly and severally  
liable for their torts.

(b) In all actions subject to this act, the trier of fact shall  
allocate fault on the basis of parties who are represented in court.

(c) In actions for contribution, damages shall be allocated on the basis of the relative fault of the parties to the contribution action.

Section 4 EFFECTIVE DATE. This act shall take effect \_\_\_\_\_, \_\_\_\_\_, and shall apply only to actions arising out of events which occur on or after that date.

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Joint tort-feasors by injured party will release all other tort-feasors who contributed to wrong. *Id.*

An innocent party is to be fully compensated by a joint tort-feasor for his loss. *Allstate Ins. Co. v. Clarke (Civ.App.1971) 471 S.W.2d 901, ref. n. r. e.*

#### 7. — Common liability, joint tort-feasors

Where bidder was under no obligation to indemnify owner, pursuant to indemnity provision of contract calling for bidder to undertake certain work on owner's utility lines and poles, for settlement made for injury to bidder's employee in course of job as result of separate acts of negligence of both owner and bidder, whether employee was contributorily negligent was immaterial and submission of special issues relating to contributory negligence of employee, although error, was harmless. *Bluebonnet Elec. Co-op., Inc. v. Universal Elec. Const. Co. (Civ.App.1971) 467 S.W.2d 567, ref. n. r. e.*

#### 15. Indemnity agreements

*McCann Const. Co. v. Joe Adams and Son (Civ.App.1970) 458 S.W.2d 477 [main volume] reversed on other grounds 475 S.W.2d 721.*

Generally, indemnity agreement will not protect indemnitee against consequences of his own negligence unless the obligation is expressed in unequivocal terms. *Joe Adams and Son v. McCann Const. Co. (Sup. 1971) 475 S.W.2d 721.*

Under oil well drilling contract providing that contractor would assume full liability for, and hold oil field leaseholder harmless, against all claims arising as result of accidents incident to drilling operation conducted by contractor, leaseholder was not indemnified for accidents arising out of its own negligence. *Coastal States Crude Gathering Co. v. Williams (Civ.App.1972) 476 S.W.2d 339, ref. n. r. e.*

General rule is that a contract of indemnity will not afford protection to the indemnitee against the consequences of his own negligence unless the contract clearly expresses such an obligation in unequivocal terms. *Ref-Chem Corp. v. El Paso Products Co. (Civ.App.1974) 506 S.W.2d 701.*

Contract providing indemnification for owner against claims asserted by contractor, its officers, agents, employees, or any member of the public, arising out of or in connection with the work, except for claims by a member of the public caused by the negligence of the owner without contributory negligence on the part of the contractor, provided indemnification for owner's own negligence, but only with respect to claims of the contractor, its agents and employees or where the claim arose out of the work being done by the contractor. *Id.*

#### 16. Products liability

Manufacturer of defective intracath needle which was found liable to patient injured thereby was not entitled to contribution from either the packager and distributor if intracath unit of which needle was

part or hospital in which patient was staying at time of injury, because both packager and hospital would be entitled to indemnification at common law against manufacturer which was solely liable for judgment and which had breached duty owed to packager and hospital. *Vergott v. Deseret Pharmaceutical Co. (C.A.1972) 463 F.2d 12.*

Where manufacturer sold dealer a truck with defectively designed cooling system and dealer materially and knowingly aggravated and contributed to condition by installing air conditioner which severely enhanced danger, both operating concurrently to cause accident, dealer could not recover indemnity from manufacturer but could recover contribution. *Ford Motor Co. v. Russell & Smith Ford Co. (Civ.App.1971) 474 S.W.2d 549.*

#### 17. Landlord and tenant

Where pipeline owner which held easement over oil field for its pipeline created potentially dangerous condition in not marking location of underground pipeline but no injury would have resulted therefrom in absence of active negligence of oil field leaseholder in having water pit dug in preparation for well drilling at place over pipeline whose location leaseholder either knew or should have known, resulting in rupturing of pipeline and resulting fire in which plaintiffs' decedent, as operator of bulldozer digging water pit, died, pipeline owner was entitled to common law indemnity from leaseholder. *Coastal States Crude Gathering Co. v. Williams (Civ.App. 1972) 476 S.W.2d 339, ref. n. r. e.*

#### 18. Contract provisions for contributions

Where indemnity contract between railroad and LP gas supplier provided that railroad was entitled to full indemnity if damages were caused by negligent acts or omissions of producer and that producer would share equally with the railroad in payment of loss if damages were caused by their joint or concurring negligence, and where neither was guilty of active negligence but they both, due to failure of each to act, were guilty of passive negligence which was joint and concurrent with sole cause not being attributable to either, railroad was entitled to contribution from producer for one-half of recovery by railroad employee against railroad in employee's action under Federal Employers' Liability Act (45 U.S.C.A. § 51 et seq.) against railroad for injuries sustained when he inhaled LP gas. *Atchison, T. & S. F. Ry. Co. v. Denton (Civ.App.1971) 475 S.W.2d 821, ref. n. r. e.*

#### 19. Contractors and subcontractors

*McCann Const. Co. v. Joe Adams and Son (Civ.App.1970) 458 S.W.2d 477 [main volume] reversed 475 S.W.2d 721.*

Provision in contract between general contractor and subcontractor whereby subcontractor would indemnify general contractor for any injuries sustained by parties through or on account of any act or in connection with the work of the subcontractor did not entitle general contractor to indemnification from subcontractor for

judgment entered against general contractor for injuries sustained by subcontractor's employees when concrete forms erected by general contractor before subcontractor began doing its work of pouring concrete collapsed solely by the fault of the general contractor. *Joe Adams & Son v. McCann Const. Co. (Sup.1971) 475 S.W.2d 721.*

#### 30. Release

Where it did not appear that owner or operator of automobile which ran over infant plaintiff, or hospital where plaintiff was treated by physician, were joint tort-feasors with physician, settlement with and release of parties other than physician did not require reduction of damages recoverable from physician. *Leong v. Wright (Civ.App.1972) 478 S.W.2d 839, ref. n. r. e.*

#### 38. Summary judgment

Evidence generated genuine issue of material fact whether trust agreement, which had been entered into between uninsured motorist carrier and its insured following automobile accident, which made insured trustee as to any recovery insured might make against uninsured motorist but which was silent as to insured being trustee as to any recovery he might make against joint tort-feasor, superseded trust agreement, which was contained in policy and which gave insurer right of reimbursement from any recovery against joint tort-feasor, precluding summary judgment for insurer, which had intervened in insured's suit against joint tort-feasor. *Allstate Ins. Co. v. Clarke (Civ.App.1971) 471 S.W.2d 901, ref. n. r. e.*

#### 40. Evidence

In action against leaseholder and drilling contractor for wrongful death of operator

of bulldozer whose blade struck and ruptured subterranean crude oil pipeline while digging water pit preparatory to well drilling operation for leaseholder, master drilling contract executed after date of accident by leaseholder and well drilling contractor which sought indemnity against leaseholder was properly excluded. *Coastal States Crude Gathering Co. v. Williams (Civ.App. 1972) 476 S.W.2d 339, ref. n. r. e.*

#### 40.5 Jury questions

Where there was no showing that field personnel of general contractor were authorized to agree to indemnity obligation or that indemnity clause printed on work orders prepared by equipment supplier had been subject of negotiations between general contractor and equipment supplier, and executive of general contractor testified that he had no knowledge of indemnity clause printed on face of work order signed by general contractor's field superintendent after job for which cranes had been hired and during which damage to bridge occurred and that general contractor considered work orders as nothing more than receipts given in field after accomplishment of work, determination of whether contract of indemnity existed should have been left to jury as matter of fact. *Haws & Garrett General Contractors, Inc. v. Gorbett Bros. Welding Co. (Sup.1972) 480 S.W.2d 607.*

#### 45. Judgment, in general

Where under "trust agreement" insured agreed to hold any recovery he made against uninsured motorist for benefit of uninsured motorist insurer, insurer was not, on theory of contribution, entitled to recover its payments out of judgment insured had obtained against joint tort-feasor. *Allstate Ins. Co. v. Clarke (Civ.App. 1971) 471 S.W.2d 901, ref. n. r. e.*

### Art. 2212a. Comparative negligence; contribution among joint tort-feasors

#### Modified comparative negligence

Section 1. Contributory negligence shall not bar recovery in an action by any person or party or the legal representative of any person or party to recover damages for negligence resulting in death or injury to persons or property if such negligence is not greater than the negligence of the person or party or persons or parties against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributed to the person or party recovering.

#### Contribution among joint tort-feasors

Sec. 2. (a) In this section:

(1) "Claimant" means any party seeking relief, whether he is a plaintiff, counterclaimant, or cross-claimant.

(2) "Defendant" includes any party from whom a claimant seeks relief.

(b) In a case in which there is more than one defendant, and the claimant's negligence does not exceed the total negligence of all defendants, contribution to the damages awarded to the claimant shall be in proportion to the percentage of negligence attributable to each defendant.

(c) Each defendant is jointly and severally liable for the entire amount of the judgment awarded the claimant, except that a defendant whose negligence is less than that of the claimant is liable to the claimant only for that portion of the judgment which represents the percentage of negligence attributable to him.

(d) If an alleged joint tort-feasor pays an amount to a claimant in settlement, but is never joined as a party defendant, or having been joined, is dismissed or nonsuited after settlement with the claimant (for which reason the existence and amount of his negligence are not submitted to the jury), each defendant is entitled to deduct from the amount for which he is liable to the claimant a percentage of the amount of the settlement based on the relationship the defendant's own negligence bears to the total negligence of all defendants.

(e) If an alleged joint tort-feasor makes a settlement with a claimant but nevertheless is joined as a party defendant at the time of the submission of the case to the jury (so that the existence and amount of his negligence are submitted to the jury) and his percentage of negligence is found by the jury, the settlement is a complete release of the portion of the judgment attributable to the percentage of negligence found on the part of that joint tort-feasor.

(f) If the application of the rules contained in Subsections (a) through (e) of this section results in two claimants being liable to each other in damages, the claimant who is liable for the greater amount is entitled to a credit toward his liability in the amount of damages owed him by the other claimant.

(g) All claims for contribution between named defendants in the primary suit shall be determined in the primary suit, except that a named defendant may proceed against a person not a party to the primary suit who has not effected a settlement with the claimant.

(h) This section prevails over Article 2212, Revised Civil Statutes of Texas, 1925, and all other laws to the extent of any conflict. Acts 1973, 63rd Leg., p. 41, ch. 28, §§ 1, 2, eff. Sept. 1, 1973.

Section 3 of the 1973 Act amended section 1 of article 6701b; §§ 4, 5 thereof provided:

"Sec. 4. Saving clause. This Act does not apply to any cause of action arising before its effective date.

"Sec. 5. Severability clause. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Comparative Laws:

STATE	CITATION
Arkansas	Ark.Stats. § 27-1730.2
Connecticut	Laws 1973, c. 623
Maine	14 M.R.S.A. § 166
Massachusetts	M.G.L.A. c. 231, § 85
Minnesota	M.S.A. § 604.01
Mississippi	Code 1912 § 1464
Nebraska	R.R.S. § 25-1161
New Hampshire	R.S.A. 607:7-a
New Jersey	N.J.S.A. 2A:15-5.1 to 2A:15-5.3
Oklahoma	23 Okl.St. Ann. §§ 11, 12
Rhode Island	Gen.Laws 1956, § 9-20-4

Comparative Laws:

STATE	CITATION
South Dakota	SDCL § 20-9-2
Vermont	12 V.S.A. § 1030
Washington	Laws 1973, c. 138(X)
Wisconsin	W.S.A. § 895.046

Law Review Commentaries

Automobile insurance rate changes under comparative negligence. Jerry D. Todd, 36 Texas Bar J. 1163 (1973).

Automobile reparations reform bills. John M. Lawrence III, 36 Texas Bar J. 1117 (1972).

Comparative negligence. Frank T. Abraham and Don H. Riddle, 25 Baylor L.Rev. 411 (1973).

Comparative negligence in Texas. 11 Houston L.Rev. 101 (1973).

Negligence law, no-fault, and jury trial. Leon Green and Allen E. Smith, 5 Texas L.Rev. 825 (1973).

Proposed modified comparative negligence statute. Frank T. Abraham, 35 Texas Bar J. 1114 (1972).

Library references

Contribution ⇄ 5(2).  
Negligence ⇄ 92.  
C.J.S. Contribution § 11.  
C.J.S. Negligence § 168(2).

Art. 2212b. Indemnity provisions in mineral agreements where negligence attributable to indemnitee

Section 1. The legislature finds that an inequity is fostered on certain contractors by the indemnity provisions contained in some agreements pertaining to wells for oil, gas, or water, or mines for other minerals. It is the intent of the legislature and the purpose of this Act to declare provisions for indemnity in certain agreements where there is negligence attributable to the indemnitee to be against the public policy of the State of Texas.

Sec. 2. Except as specified in Section 4 of this Act, a covenant, promise, agreement, or understanding contained in, collateral to, or affecting an agreement pertaining to a well for oil, gas, or water, or mine for any mineral, is void and unenforceable if it purports to indemnify the indemnitee against loss or liability for damages arising from either death or bodily injury to persons, or injury to property, or any other loss, damage, or expense arising from either death or bodily injury, injury to property, or loss, damage, or expense, which is caused by or results from the sole or concurrent negligence of the indemnitee, or an agent or employee of the indemnitee, or an independent contractor who is directly responsible to the indemnitee.

Sec. 3. The term "agreement pertaining to a well for oil, gas, or water, or mine for any mineral" as used in Section 2 of this Act, means any agreement or understanding, written or oral, concerning any operations related to drilling, deepening, reworking, repairing, improving, testing, treating, perforating, acidizing, logging, conditioning, altering, plugging, or otherwise rendering services in or in connection with any well drilled for the purpose of producing or disposing of oil, gas, or other minerals, or water, or designing, excavating, constructing, improving, or otherwise rendering services in or in connection with any mine shaft, drift, or other structure intended for use in the exploration for or production of any mineral, or an agreement to perform any portion of any such work or services or any act collateral thereto, including the furnishing or rental of equipment, incidental transportation, and other goods and services furnished in connection with any such service or operation.

Sec. 4. (a) The provisions of this Act do not apply to loss or liability for damages, or any other expenses, arising from

- (1) death or bodily injury to persons or injury to property resulting from radioactivity;
- (2) injury to property resulting from pollution; or
- (3) injury to property resulting from reservoir or underground damage.

(b) The provisions of this Act do not affect the validity of any insurance contract or any benefit conferred by the Workmen's Compensation Law of this state and do not deprive an owner of the surface estate of the right to secure an indemnity from any lessee, operator, contractor, or other person conducting operations for the exploration or production of minerals of the owner's land.

(c) The provisions of Section 2 of this Act shall not apply to any agreement providing for indemnity with respect to claims for personal injury or death to indemnitor's employees or agents, or the employees or agents of indemnitor's sub-contractors if the parties agree in writing that such indemnity obligation will be supported by available liability insurance coverage to be furnished by indemnitor; provided, however, that such indemnity obligation shall be only to the extent of the coverages and dollar limits of insurance agreed to be furnished; but in no event shall said insurance be required in an amount in excess of twelve times state basic limits for bodily injury, approved by the Board of Insurance Commissioners in accordance with Article 8.15 of the Texas Insurance Code.

Sam - Pure; Pro-Rata Dist of

Tom - 49%

Bob - Pure

Me -

40 plaintiff 30 def

30 def

Fred Estough

HB 176

American Insurance Co.  
Casualty + Surety carriers

Past bills based Mississippi statute  
Pure negligence

4 types

- Nov. 1, 1973
1. Pure Miss R.I. Wash
  2. 50% threshold 7 states equal negligence
  3. 49% not as great as defendant 11 states
  4. slight theory plaintiff must have less negligence than defendant

they favor 3 & 4 type  
favor Hawaii type

Compton

① present system  
plaintiff & defendant - negligent - if plaintiff negligent then no settlement

② Pure system  
90% negligent - can collect 10% from defendant only  
10% guilty

③ 50% Wisconsin if equal no ~~settlement~~ <sup>recovery</sup>  
if plaintiff 49% contributory then get 51% recovery of award

④ 49% system if equal then get 50% of damages  
then depends on extent of damages