

2A: 15-5.1

LEGISLATIVE HISTORY CHECKLIST

(Negligence action--plaintiff may recover damage if less negligent than defendant)

NJSA 2A:15-5.1; 59:9-4

LAWS 1982

CHAPTER 191

Bill No. S215

Sponsor(s) Hurley and Dorsey

Date Introduced Pre-filed

Committee: Assembly Judiciary, Law, Public Safety & Defense

Senate Judiciary

Amended during passage Yes
according to Governor's recommendations:

~~No~~ Amendments denoted by asteris

Date of Passage: Assembly Nov. 29, 1982

Re-enacted 10-28-82

Senate May 24, 1982

Re-enacted 9-16-82

Date of approval Dec. 6, 1982

Following statements are attached if available:

Sponsor statement Yes ~~No~~

Committee Statement: Assembly Yes ~~No~~

Senate Yes ~~No~~

Fiscal Note Yes ~~No~~

Veto Message Yes ~~No~~

Message on signing Yes ~~No~~

Following were printed:

Reports Yes ~~No~~

Hearings Yes ~~No~~

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6/22/81

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SENATE, No. 215

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1982 SESSION

By Senators HURLEY and DORSEY

AN ACT to amend "An act providing for comparative negligence and the method for applying such comparative negligence by judges and juries," approved May 24, 1973 (P. L. 1973, c. 146) ****, and amending N. J. S. 59:9-4***.*

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 1 of P. L. 1973, c. 146 (C. 2A:15-5.1) is amended to
2 read as follows:

3 1. Contributory negligence shall not bar recovery in an action by
4 any person or his legal representative to recover damages for
5 negligence resulting in death or injury to person or property, if
6 such negligence was not greater than the negligence of the person
7 against whom recovery is sought **[, but any]** *or was not greater*
8 *than the combined negligence of the persons against whom recovery*
9 *is sought. Any damages sustained shall be diminished by the per-*
10 *centage sustained of negligence attributable to the person recover-*
11 *ing. ***[when the negligence of the person recovering is *equal to*
12 *or* less than the combined negligence of more than one party*
13 *against whom such recovery is **[sought]** *obtained**, then for*
14 *the purposes of **[contributory negligence]** * contribution**,*
15 *each such party shall pay his pro rata share of the recovery based*
16 *upon a proportion derived from the comparison of the percentage*
17 *of each such party's negligence to the total percentage of negligence*
18 *of all parties against whom recovery is *[sought]* *obtained*.]****

1 ***2. N. J. S. 59:9-4 is amended to read as follows:

2 59:9-4. Comparative negligence.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted May 10, 1982.

**—Assembly committee amendments adopted June 17, 1982.

***—Senate amendments adopted in accordance with Governor's recommendations October 25, 1982.

3 Contributory negligence shall not bar recovery in an action by any
4 party or his legal representative to recover damages to the extent
5 permitted under this act if such negligence was not greater than
6 the negligence of the party against whom recovery is sought[, but
7 any] *or was not greater than the combined negligence of the*
8 *persons against whom recovery is sought. Any damages sustained*
9 *shall be diminished by the percentage of negligence attributable to*
10 *the person recovering.*

11 In all negligence actions in which the question of liability is in
12 dispute, the trier of fact shall make the following as findings of
13 fact:

14 a. The amount of damages which would be recoverable by the
15 injured party regardless of any consideration of negligence, that
16 is, the full value of the injured party's damages to the extent
17 permitted under this act.

18 b. The extent, in the form of a percentage, of each party's negli-
19 gence. The percentage of negligence of each party shall be based
20 on 100% and the total of all percentages of negligence of all the
21 parties to a suit shall be 100%.

22 c. The judge shall mold the judgment from the findings of fact
23 made by the trier of fact in accordance with the provisions of this
24 act.***

1 ***[2.]*** ***3.*** This act shall take effect **[90 days after
2 enactment]** ** *immediately*** and shall apply to causes of action
3 arising on or after said date.

SENATE, No. 215

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1982 SESSION

By Senators HURLEY and DORSEY

AN ACT to amend "An act providing for comparative negligence and the method for applying such comparative negligence by judges and juries," approved May 24, 1973 (P. L. 1973, c. 146).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 1 of P. L. 1973, c. 146 (C. 2A:15-5.1) is amended to
2 read as follows:

3 1. Contributory negligence shall not bar recovery in an action by
4 any person or his legal representative to recover damages for
5 negligence resulting in death or injury to person or property, if
6 such negligence was not greater than the negligence of the person
7 against whom recovery is sought~~], but any]~~ *or was not greater*
8 *than the combined negligence of the persons against whom recovery*
9 *is sought. Any damages sustained shall be diminished by the per-*
10 *centage sustained of negligence attributable to the person recover-*
11 *ing. When the negligence of the person recovering is less than the*
12 *combined negligence of more than one party against whom such*
13 *recovery is sought, then for the purposes of contributory negligence,*
14 *each such party shall pay his pro-rata share of the recovery based*
15 *upon a proportion derived from the comparison of the percentage*
16 *of each such party's negligence to the total percentage of negligence*
17 *of all parties against whom recovery is sought.*

1 2. This act shall take effect 90 days after enactment and shall
2 apply to causes of action arising on or after said date.

STATEMENT

This bill provides that a plaintiff in a negligence action may recover damages in any case where he is less negligent than the defendant or defendants.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Presently, the comparative negligence law has been interpreted to bar a plaintiff's recovery where the percentage of his negligence in the cause of action is more than the percentage of negligence of any one or more codefendants. This bill would compare a plaintiff's negligence to the total percentage of negligence of all defendants.

The bill further provides that each defendant is responsible for his pro-rata share of the plaintiff's recovery.

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO

SENATE, No. 215

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 17, 1982

This bill would amend New Jersey's Comparative Negligence Act to permit a contributory negligent plaintiff to recover if the combined negligence of all parties against whom recovery is sought is equal to or greater than the negligence of the party seeking recovery.

As interpreted by the New Jersey Supreme Court in its 4-3 decision on *Van Horn v. William Blanchard Co.*, 88 N. J. 91 (1981), the Comparative Negligence Act presently provides that, for example, if a plaintiff is found to be 40% responsible for causing an accident and one defendant is found 30% negligent and another defendant 30% negligent, the plaintiff is barred from recovery. This bill would adopt the position taken by the dissenters in *Van Horn* and allow recovery in the described situation.

The Senate Committee and Assembly Committee amendments were technical and clarified language of the bill. The Assembly Committee amendments would also make the bill effective immediately.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 215

STATE OF NEW JERSEY

DATED: MAY 10, 1982

This bill would amend New Jersey's Comparative Negligence Act to permit a contributory negligent plaintiff to recover if the combined negligence of all parties against whom recovery is sought is equal to or greater than the negligence of the party seeking recovery.

As interpreted by the N. J. Supreme Court in its 4-3 decision in *Van Horn v. William Blanchard Co.* 88 N. J. 91 (1981), the Comparative Negligence Act presently provides that, for example, if a plaintiff is found to be 40% responsible for causing an accident and one defendant is found 30% negligent and another defendant 30% negligent, the plaintiff is barred from recovery. This bill would adopt the position taken by the dissenters in *Van Horn* and allow recovery in the described situation.

The committee amendments were technical and clarified the language of the bill.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

September 16, 1982

SENATE BILL NO. 215 (2nd OCR)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I herewith return Senate Bill No. 215 (2nd OCR) with my objections for reconsideration.

This bill provides that a plaintiff in a negligence action may recover damages in any case where his negligence is less than or equal to the combined negligence of multiple defendants, i.e. the aggregate approach to comparative negligence. It overturns the decision in Van Horn v. William Blanchard Company, 88 N.J. 91 (1981). In that case, the court, by a 4-3 split, interpreted New Jersey's comparative negligence act to permit the plaintiff to recover only from those defendants who were more negligent than himself, even if in the aggregate his negligence was less than the total percentage fault on the part of all the defendants, i.e. the individual approach.

I endorse this change in the comparative negligence law. I believe that the policy of allocating responsibility among all negligent parties in proportion to their relative fault is more fully achieved as to both plaintiff and defendants under the aggregate approach; and I do not believe that there will be any significant impact upon insurance rates from this change.

The bill as presently drafted, however, suffers from two flaws. First, the purpose of the last sentence of section 1 is unclear. It could be read to change the rules of contribution applicable to this type of case. Nonetheless, another section of the Comparative Negligence Act, dealing explicitly with contribution, remains unscathed by this bill. This must be clarified; otherwise, confusion leading to litigation is bound to result. I recommend deleting the sentence entirely and, at present, believe that retaining current contribution rules is wise. Although revision of contribution rules, as applied generally, might be a worthwhile area for study, that is beyond the scope of this veto. Since present rules are designed to ensure that victimized plaintiffs who are least able to bear the burden resulting from the insolvency of a defendant are treated fairly, I am content to leave those rules intact at this time.

Second, the bill does not amend the Comparative Negligence Statute found in the Tort Claims Act. There is no rational reason to retain the individual approach in that instance, while enacting the aggregate approach into law in all other cases. I believe this omission to be merely an oversight and thus have recommended that the appropriate section in the Tort Claims Act be amended to mirror the provision in this bill.

Accordingly, I herewith return Senate Bill No. 215 (2nd OCR) for reconsideration

and recommend that it be amended as follows:

Page 1, Section 1, Line 11: Delete "When the negligence of the person recovering is equal to or"

Page 1, Section 1, Lines 12-18: Delete in their entirety.

Page 1, after Line 18: Insert new section 2 as follows:

"2. N.J.S. 59:9-4 is amended to read as follows:

59:9-4 Contributory negligence

Contributory negligence shall not bar recovery in an action by any party or his legal representative to recover damages to the extent permitted under this act if such negligence was not greater than the negligence of the party against whom recovery is sought [, but any] or was not greater than the persons against whom recovery is sought. Any damages sustained shall be diminished by the percentage of negligence attributable to the person recovering.

In all negligence actions in which the question of liability is in dispute, the trier of fact shall make the following as findings of fact:

a. The amount of damages which would be recoverable by the injured party regardless of any consideration of negligence, that is, the full value of the injured party's damages to the extent permitted under this act.

b. The extent, in the form of a percentage, of each party's negligence. The percentage of negligence of each party shall be based on 100% and the total of all percentages of negligence of all the parties to a suit shall be 100%.

c. The judge shall mold the judgment from the findings of fact made by the trier of fact in accordance with the provisions of this act."

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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Page 1, Section 2, Line 1: Delete "2" insert "3".

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ W. Cary Edwards

Chief Counsel to the Governor