

2016 -- S 2364

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE - PROCEDURE IN PARTICULAR
ACTIONS

Introduced By: Senator Joshua Miller

Date Introduced: February 10, 2016

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 10-6 of the General Laws entitled "Contribution Among Joint
2 Tortfeasors" is hereby repealed in its entirety.

3 ~~CHAPTER 10-6~~

4 ~~Contribution Among Joint Tortfeasors~~

5 ~~**10-6-1. Short title.** -- This chapter may be cited as the "Uniform Contribution Among~~
6 ~~Tortfeasors Act".~~

7 ~~**10-6-2. "Joint tortfeasors" defined.** -- For the purposes of this chapter, the term "joint~~
8 ~~tortfeasors" means two (2) or more persons jointly or severally liable in tort for the same injury to~~
9 ~~person or property, whether or not judgment has been recovered against all or some of them;~~
10 ~~provided, however, that a master and servant or principal and agent shall be considered a single~~
11 ~~tortfeasor.~~

12 ~~**10-6-3. Right of contribution declared.** -- The right of contribution exists among joint~~
13 ~~tortfeasors; provided however, that when there is a disproportion of fault among joint tortfeasors,~~
14 ~~the relative degree of fault of the joint tortfeasors shall be considered in determining their pro rata~~
15 ~~shares.~~

16 ~~**10-6-4. Payment as prerequisite -- Limitation of actions.** -- A joint tortfeasor is not~~
17 ~~entitled to a final money judgment for contribution until he or she has by payment discharged the~~
18 ~~common liability or has paid more than his or her pro rata share of the final money judgment.~~

1 ~~Actions for contribution shall be commenced not later than one year next after the first payment~~
2 ~~made by a joint tortfeasor which has discharged the common liability or is more than his or her~~
3 ~~pro rata share thereof.~~

4 ~~**10-6-5. Separate settlement with injured person.** -- A joint tortfeasor who enters into a~~
5 ~~settlement with the injured person is not entitled to recover contribution from another joint~~
6 ~~tortfeasor whose liability to the injured person is not extinguished by the settlement.~~

7 ~~**10-6-6. Effect of judgment against one tortfeasor.** -- The recovery of a judgment by the~~
8 ~~injured person against one joint tortfeasor does not discharge the other joint tortfeasors.~~

9 ~~**10-6-7. Effect of release of one tortfeasor on liability of others.** -- A release by the~~
10 ~~injured person of one joint tortfeasor, whether before or after judgment, does not discharge the~~
11 ~~other tortfeasors unless the release so provides; but reduces the claim against the other tortfeasors~~
12 ~~in the amount of the consideration paid for the release, or in any amount or proportion by which~~
13 ~~the release provides that the total claim shall be reduced, if greater than the consideration paid.~~

14 ~~However, in circumstances where there are twenty five (25) or more deaths from a~~
15 ~~single occurrence, then a release by the injured person of one joint tortfeasor given as part of a~~
16 ~~judicially approved good faith settlement, whether before or after judgment, does not discharge~~
17 ~~the other tortfeasors unless the release so provides but reduces the claim against the other~~
18 ~~tortfeasors in the amount of the consideration paid for the release.~~

19 ~~**10-6-8. Liability to contribution of tortfeasor released by injured person.** -- A release~~
20 ~~by the injured person of one joint tortfeasor does not relieve him or her from liability to make~~
21 ~~contribution to another joint tortfeasor unless the release is given before the right of the other~~
22 ~~tortfeasor to secure a money judgment for contribution has accrued, and provides for a reduction,~~
23 ~~to the extent of the pro rata share of the released tortfeasor, of the injured person's damages~~
24 ~~recoverable against all the other tortfeasors.~~

25 ~~However, in circumstances where there are twenty five (25) or more deaths from a~~
26 ~~single occurrence, a release by the injured person of one joint tortfeasor given as part of a~~
27 ~~judicially approved good faith settlement does not relieve him or her from liability to make~~
28 ~~contribution to another joint tortfeasor unless the release is given before the right of the other~~
29 ~~tortfeasor to secure a money judgment for contribution has accrued, and provides for a reduction~~
30 ~~to the extent of the amount of the consideration paid for the release.~~

31 ~~**10-6-9. Right of indemnity preserved.** -- This chapter does not impair any right of~~
32 ~~indemnity under existing law.~~

33 ~~**10-6-10. Uniformity of construction.** -- This chapter shall be so interpreted and~~
34 ~~construed as to effectuate its general purpose to make uniform the law of those states that enact it.~~

1 ~~**10-6-11. Severability.** -- If any provision of this chapter or the application thereof to any~~
2 ~~person or circumstances is held invalid, such invalidity shall not affect other provisions or~~
3 ~~applications of the chapter which can be given effect without the invalid provision or application,~~
4 ~~and to this end the provisions of this chapter are declared to be severable.~~

5 SECTION 2. Title 10 of the General Laws entitled "COURTS AND CIVIL
6 PROCEDURE-PROCEDURE IN PARTICULAR ACTIONS" is hereby amended by adding
7 thereto the following chapter:

8 CHAPTER 6.1

9 APPORTIONMENT OF TORT RESPONSIBILITY ACT

10 **10-6.1-1. Short title.** -- This chapter shall be known and may be cited as the
11 "Apportionment of Tort Responsibility Act."

12 **10-6.1-2. Definitions.** -- In this chapter:

13 (1) "Contributory fault" means and includes comparative negligence, misuse of a
14 product, and unreasonable failure to avoid or mitigate harm.

15 (2) "Person" means an individual, corporation, business trust, estate, trust,
16 partnership, limited liability company, association, joint venture, public corporation,
17 government, governmental subdivision, agency, or instrumentality, or any other legal or
18 commercial entity.

19 (3) "Released person" means a person that would be liable for damages to a
20 claimant for personal injury or harm to property if the person had not been discharged
21 from liability under §10-6.1-8.

22 (4) "Responsibility", with respect to a claim for damages for personal injury or
23 harm to property, means the legal consequences of an act or omission that is the basis for
24 liability or a defense in whole or in part.

25 **10-6.1-3. Effect of contributory fault.** -- In an action seeking damages for personal
26 injury or harm to property based on negligence or on any other claim for which the claimant may
27 be subject to a defense in whole or part based on contributory fault, any contributory fault
28 chargeable to the claimant diminishes the amount that the claimant otherwise would be entitled to
29 recover as compensatory damages for the injury or harm by the percentage of responsibility
30 assigned to the claimant pursuant to §10-6.1-4.

31 **10-6.1-4. Finding damages -- Attribution of responsibility.** -- (a) In an action to recover
32 damages for personal injury or harm to property involving the responsibility of more than one
33 party or a released person, the court shall instruct the jury to answer special interrogatories or, if
34 there is no jury, make findings:

1 (1) Stating the amount of damages that a claimant would be entitled to recover if any
2 contributory fault were disregarded;

3 (2) Stating the percentage of the total responsibility of all the parties and released persons
4 attributed to each claimant, defendant and released person that caused the injury or harm;

5 (3) Regarding whether any of the parties or released persons acted in concert or with an
6 intent to cause personal injury or harm to property; and

7 (4) Regarding any other issue of fact fairly raised by the evidence which is necessary to
8 make a determination under §10-6.1-5 or enter judgment under §10-6.1-6.

9 (b) In determining percentages of responsibility, the trier of fact shall consider:

10 (1) The nature of the conduct of each party and released person determined to be
11 responsible; and

12 (2) The extent of the causal relation between the conduct and the damages claimed.

13 (c) The court shall determine the extent to which the responsibility of one party, which is
14 based on the act or omission of another party, warrants that the parties be treated as a single party
15 for the purpose of submitting interrogatories to the jury or making findings under subsection (a)
16 of this section.

17 **10-6.1-5. Determining damage award – Reallocation of uncollectible share. – (a)**
18 After the trier of fact has answered interrogatories or made findings pursuant to §10-6.1-4, the
19 court shall determine, in accordance with the percentages of responsibility found, the monetary
20 amount of any award of damages to a claimant, the amount of the several share for which each
21 party found liable is responsible, and any amount attributable to a released person.

22 (b) After the court has made its determinations pursuant to subsection (a) of this section,
23 any party, no later than ninety (90) days after the entry of judgment for the plaintiff, may move
24 the court to determine whether all or part of the amount of the several share for which a party is
25 liable will not be reasonably collectible and request reallocation. If the court based on a
26 preponderance of the evidence determines that the party's share will not be reasonably collectible,
27 the court shall make findings reallocating the uncollectible share severally to the other parties,
28 including the claimant, and any released person. Reallocation must be made in the proportion that
29 each party's and released person's respective percentage of responsibility bears to the total of the
30 percentages of responsibility attributed to the parties, including the claimant, and any released
31 person but not including the percentage being reallocated.

32 (c) A party whose liability is reallocated remains liable to a claimant for any additional
33 share of responsibility allocated to the claimant. A party that discharges an additional share of
34 responsibility allocated to it pursuant to subsection (b) of this section has a right of

1 reimbursement from the party from which the share was reallocated. Upon motion, the court in
2 the judgment entered under §10-6.1-6 shall declare the rights and obligations resulting from the
3 reallocation, including any rights and obligations with regard to subrogation or a secured position.
4 If any party to whom reallocation has been made holds a secured position with regard to the share
5 reallocated, each party to whom reallocation has been made has a proportionate share in the
6 secured position. Any amount recovered under this subsection from a party whose liability has
7 been reallocated must be distributed to each of the parties to whom the reallocation was made in
8 the same proportion as the original reallocation.

9 (d) Reallocation does not make a released person liable for any reallocated share of
10 responsibility unless the release or other agreement so provides.

11 (e) If a motion for reallocation is made, any party may conduct discovery regarding any
12 issue relevant to the motion.

13 **10-6.1-6. Entering and modifying judgment.** – (a) After determining an award of
14 damages to a claimant and the amount of the several share, including any reallocated share, for
15 which each party found liable is responsible, the court shall enter judgment severally against each
16 party adjudged liable, except in the following situations:

17 (1) If two (2) or more parties adjudged liable acted in concert or with an intent to cause
18 personal injury to, or harm to property of, the claimant, the court shall enter judgment jointly and
19 severally against the parties for their joint share.

20 (2) If a party is adjudged liable for failing to prevent another party from intentionally
21 causing personal injury to, or harm to property of, the claimant, the court shall enter judgment
22 jointly and severally against the parties for their combined shares of responsibility.

23 (3) If a party is adjudged liable for the act or omission of another party under §10-6.1-
24 4(c), the court shall enter judgment jointly and severally against the parties for their joint share.

25 (4) If another general law so requires, the court shall enter judgment jointly and severally
26 or otherwise conform the judgment to such statute.

27 (b) If a court grants a motion for reallocation pursuant to §10-6.1-5 after judgment is
28 entered, the court shall modify the judgment to declare the rights and obligations resulting from
29 the reallocation, including any rights and obligations with regard to subrogation or a secured
30 position.

31 **10-6.1-7. Right of contribution and indemnity – Third party action.** – (a) Except as
32 otherwise provided in subsection (b) of this section, a party that is jointly and severally liable
33 with one or more other parties under this chapter has a right of contribution from another party
34 jointly liable for any amount the party pays in excess of the several amount for which the party is

1 responsible. A party against which contribution is sought is not liable for more than the monetary
2 amount of the party's several share of responsibility determined pursuant to §10-6.1-5.

3 (b) A party that is adjudged liable for the act or omission of another party under §10-6.1-
4 6 has a right of indemnification from the other party.

5 (c) A party that is subject to liability for injury to, or harm to property of, a claimant
6 under this chapter has a right:

7 (1) To join a person that is also subject to liability to the claimant for all or part of the
8 same injury or harm if the claimant has not sued the person; and

9 (2) To seek contribution or indemnity, whichever is appropriate, from another person
10 whose liability is not determined in the proceeding in which the party is adjudged liable if the
11 other person is responsible for all or part of the claimant's injury or harm.

12 (d) A claim for contribution or indemnity may be asserted in the original action or in a
13 separate action.

14 **10-6.1-8. Effect of release.** – (a) A release, covenant not to sue, covenant not to execute
15 a judgment, or similar agreement by a claimant and person subject to liability discharges the
16 person from liability to the claimant to the extent provided in the agreement and from liability for
17 contribution to any other person subject to liability to the claimant for the same injury or harm.
18 The agreement does not discharge any other person subject to liability upon the same claim
19 unless the agreement so provides.

20 (b) The amount of the claim of the releasing person under subsection (a) of this section
21 against other persons jointly and severally liable for the same injury or harm for which the
22 released person would have been liable is reduced by the percentage of responsibility attributed to
23 the released person pursuant to §10-6.1-4.

24 (c) A release, covenant not to sue, covenant not to execute a judgment or similar
25 agreement extinguishes any claim for contribution or indemnity that the released person would
26 have had against another person that would have been jointly and severally liable with the
27 released person.

28 **10-6.1-9. Severability clause.** – If any provision of this chapter or its application to any
29 person or circumstance is held invalid, the invalidity does not affect other provisions or
30 applications of this chapter which can be given effect without the invalid provision or application,
31 and to this end the provisions of this chapter are severable.

1 SECTION 3. This act shall take effect upon passage and apply to actions filed on or after
2 its effective date.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO COURTS AND CIVIL PROCEDURE - PROCEDURE IN PARTICULAR
ACTIONS

1 This act would repeal the law regarding contributions among joint tortfeasors and replace
2 it with the Apportionment of Tort Responsibility Act, in order to provide a uniform and
3 comprehensive system for the apportionment of tort responsibility.

4 This act would take effect upon passage and apply to actions filed on or after its effective
5 date.

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