

HOUSE BILL 346

Introduced by Toole, et al.

1/22	Introduced
1/22	Referred to Judiciary
1/23	First Reading
1/31	Hearing
2/06	Tabled in Committee
2/19	Committee Report--Bill Passed as Amended
2/25	2nd Reading Do Pass Motion Failed

1 *House* BILL NO. *346*
 2 INTRODUCED BY *John Doherty* *Member*
 3 *Smith*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE RIGHT OF
 5 CONTRIBUTION AMONG MULTIPLE DEFENDANTS WHO ARE JOINTLY AND
 6 SEVERALLY LIABLE IN CIVIL ACTIONS; REDUCING THE PERCENTAGE
 7 OF LIABILITY NECESSARY TO BE SEVERALLY LIABLE ONLY;
 8 REQUIRING A POTENTIALLY LIABLE PARTY TO BE JOINED IN AN
 9 ACTION IN ORDER TO APPORTION LIABILITY TO THAT PARTY;
 10 AMENDING SECTION 27-1-703, MCA; AND PROVIDING AN
 11 APPLICABILITY DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 **Section 1.** Section 27-1-703, MCA, is amended to read:

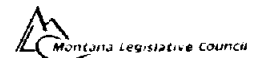
15 "27-1-703. Multiple defendants -- determination of
 16 liability. (1) Except as provided in subsections (2) and
 17 (3), whenever the negligence of any party in any action is
 18 an issue, each party against whom recovery may be allowed is
 19 jointly and severally liable for the amount that may be
 20 awarded to the claimant but has the right of contribution
 21 from any other person whose negligence may have contributed
 22 as a proximate cause to the injury complained of.

23 (2) Any party whose negligence is determined to be 50%
 24 10% or less of the combined negligence of all persons
 25 described in subsection (4) is severally liable only and is

1 responsible only for the amount of negligence attributable
 2 to him, except as provided in subsection (3). The remaining
 3 parties are jointly and severally liable for the total less
 4 the amount attributable to the claimant.

5 (3) A party may be jointly liable for all damages
 6 caused by the negligence of another if both acted in concert
 7 in contributing to the claimant's damages or if one party
 8 acted as an agent of the other.

9 (4) On motion of any party against whom a claim is
 10 asserted for negligence resulting in death or injury to
 11 person or property, any other person whose negligence may
 12 have contributed as a proximate cause to the injury
 13 complained of may be joined as an additional party to the
 14 action. ~~For purposes of determining the percentage of~~
 15 ~~liability attributable to each party whose action~~
 16 ~~contributed to the injury complained of, the trier of fact~~
 17 ~~shall consider the negligence of the claimant, injured~~
 18 ~~person, defendants, third-party defendants, persons released~~
 19 ~~from liability by the claimant, persons immune from~~
 20 ~~liability to the claimant, and any other persons who have a~~
 21 ~~defense against the claimant. The trier of fact shall may~~
 22 ~~apportion the percentage of negligence of only among the~~
 23 ~~parties joined and found to have contributed as a proximate~~
 24 ~~cause to the injury complained of all such persons. However,~~
 25 ~~in attributing negligence among persons, the trier of fact~~



1 may not consider or determine any amount of negligence on
2 the part of any injured person's employer or coemployee to
3 the extent that such employer or coemployee has tort
4 immunity under the Workers' Compensation Act or the
5 Occupational Disease Act of this state, of any other state,
6 or of the federal government. Contribution shall be
7 proportional to the liability of the parties against whom
8 recovery is allowed. Nothing contained in this section shall
9 make any party indispensable pursuant to Rule 19, Montana
10 Rules of Civil Procedure.

11 (5) If for any reason all or part of the contribution
12 from a party liable for contribution cannot be obtained,
13 each of the other parties shall contribute a proportional
14 part of the unpaid portion of the noncontributing party's
15 share and may obtain judgment in a pending or subsequent
16 action for contribution from the noncontributing party. A
17 party found to be 50% 10% or less negligent for the injury
18 complained of is liable for contribution under this section
19 only up to the percentage of negligence attributed to him."

20 NEW SECTION. Section 2. Applicability. [This act]
21 applies to causes of action arising on or after October 1,
22 1991.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 346

INTRODUCED BY TOOLE, DOHERTY, MEASURE, DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE RIGHT OF CONTRIBUTION AMONG MULTIPLE DEFENDANTS WHO ARE JOINTLY AND SEVERALLY LIABLE IN CIVIL ACTIONS; REDUCING THE PERCENTAGE OF LIABILITY NECESSARY TO BE SEVERALLY LIABLE ONLY; REQUIRING A POTENTIALLY LIABLE PARTY TO BE JOINED IN AN ACTION IN ORDER TO APPORTION LIABILITY TO THAT PARTY; AMENDING SECTION 27-1-703, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 27-1-703, MCA, is amended to read:

"27-1-703. Multiple defendants -- determination of liability. (1) Except as provided in subsections (2) and (3), whenever the negligence of any party in any action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

(2) Any party whose negligence is determined to be 50% ±0% 30% or less of the combined negligence of all persons described in subsection (4) is severally liable only and is

responsible only for the amount of negligence attributable to him, except as provided in subsection (3). The remaining parties are jointly and severally liable for the total less the amount attributable to the claimant.

(3) A party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other.

(4) On motion of any party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. For purposes of determining the percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants, third-party defendants, persons released from liability by the claimant, persons immune from liability to the claimant, and any other persons who have a defense against the claimant; FOR PURPOSES OF DETERMINING THE PERCENTAGE OF LIABILITY ATTRIBUTABLE TO EACH PARTY WHOSE ACTION CONTRIBUTED TO THE INJURY COMPLAINED OF, THE TRIER OF FACT SHALL CONSIDER THE NEGLIGENCE OF THE CLAIMANT, INJURED PERSON, DEFENDANTS, THIRD-PARTY DEFENDANTS, PERSONS RELEASED

SECOND READING
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1 FROM LIABILITY BY THE CLAIMANT, PERSONS IMMUNE FROM
 2 LIABILITY TO THE CLAIMANT, AND ANY OTHER PERSONS WHO HAVE A
 3 DEFENSE AGAINST THE CLAIMANT. The trier of fact shall ~~may~~
 4 SHALL apportion the percentage of negligence of ~~only among~~
 5 ~~the parties joined and found to have contributed as a~~
 6 ~~proximate cause to the injury complained of all such~~
 7 ~~persons. However, in attributing negligence among persons,~~
 8 ~~the trier of fact may not consider or determine any amount~~
 9 ~~of negligence on the part of any injured person's employer~~
 10 ~~or coemployee to the extent that such employer or coemployee~~
 11 ~~has tort immunity under the Workers' Compensation Act or the~~
 12 ~~Occupational Disease Act of this state, of any other state,~~
 13 ~~or of the federal government.~~ ALL SUCH PERSONS. HOWEVER, IN
 14 ATTRIBUTING NEGLIGENCE AMONG PERSONS, THE TRIER OF FACT MAY
 15 NOT CONSIDER OR DETERMINE ANY AMOUNT OF NEGLIGENCE ON THE
 16 PART OF ANY INJURED PERSON'S EMPLOYER OR COEMPLOYEE TO THE
 17 EXTENT THAT SUCH EMPLOYER OR COEMPLOYEE HAS TORT IMMUNITY
 18 UNDER THE WORKERS' COMPENSATION ACT OR THE OCCUPATIONAL
 19 DISEASE ACT OF THIS STATE, OF ANY OTHER STATE, OR OF THE
 20 FEDERAL GOVERNMENT. Contribution shall be proportional to
 21 the liability of the parties against whom recovery is
 22 allowed. Nothing contained in this section shall make any
 23 party indispensable pursuant to Rule 19, Montana Rules of
 24 Civil Procedure.

25 (5) If for any reason all or part of the contribution

1 from a party liable for contribution cannot be obtained,
 2 each of the other parties shall contribute a proportional
 3 part of the unpaid portion of the noncontributing party's
 4 share and may obtain judgment in a pending or subsequent
 5 action for contribution from the noncontributing party. A
 6 party found to be 50% ~~10%~~ 30% or less negligent for the
 7 injury complained of is liable for contribution under this
 8 section only up to the percentage of negligence attributed
 9 to him."

10 NEW SECTION. Section 2. Applicability. [This act]
 11 applies to causes of action arising on or after October 1,
 12 1991.

-End-