

SENATE BILL NO. 51

INTRODUCED BY B. BROWN, THAYER, THOMAS, J. BROWN, IVERSON

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE  
ON LIABILITY ISSUES

IN THE SENATE

JANUARY 6, 1987                   INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

JANUARY 8, 1987                   ON MOTION BY CHIEF SPONSOR, SENATOR  
THAYER AND REPRESENTATIVES THOMAS,  
J. BROWN, AND IVERSON ADDED  
AS SPONSORS.

FEBRUARY 14, 1987                 COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 16, 1987                 PRINTING REPORT.

FEBRUARY 17, 1987                 SECOND READING, DO PASS.

FEBRUARY 18, 1987                 ENGROSSING REPORT.

FEBRUARY 19, 1987                 THIRD READING, PASSED.  
AYES, 49; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1987                 INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

MARCH 20, 1987                    COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

MARCH 26, 1987                    ON MOTION, CONSIDERATION PASSED  
FOR THE DAY.

MARCH 27, 1987                    SECOND READING, CONCURRED IN AS  
AMENDED.

MARCH 30, 1987

THIRD READING, CONCURRED IN.  
AYES, 85; NOES, 13.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1987

RECEIVED FROM HOUSE.

ON MOTION, CONSIDERATION PASSED  
FOR THE DAY.

APRIL 4, 1987

ON MOTION, CONSIDERATION PASSED  
FOR THE DAY.

APRIL 6, 1987

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 7, 1987

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

1                                    SENATE    BILL NO.    51  
 2    INTRODUCED BY B. BROWN  
 3                                    BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE  
 4                                    ON LIABILITY ISSUES

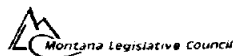
6    A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE  
 7    LAWS RELATING TO LIABILITY; SUBSTITUTING THE DOCTRINE OF  
 8    COMPARATIVE FAULT FOR THE DOCTRINE OF COMPARATIVE  
 9    NEGLIGENCE; ELIMINATING JOINT LIABILITY; PROVIDING FOR THE  
 10   APPORTIONMENT OF FAULT AMONG JOINT TORTFEASORS; AND AMENDING  
 11   SECTIONS 27-1-702 AND 27-1-703, MCA."

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

14        Section 1. Section 27-1-702, MCA, is amended to read:  
 15        "27-1-702. Comparative negligence fault -- extent to  
 16        which contributory negligence fault bars recovery in action  
 17        for damages. (1) Contributory negligence fault shall not bar  
 18        recovery in an action by any person or his legal  
 19        representative to recover damages for negligence--resulting  
 20        in death or injury to person or property if such negligence  
 21        contributory fault was not greater than the negligence fault  
 22        of the person or the combined fault of all persons against  
 23        whom recovery is sought, but any damages allowed shall be  
 24        diminished in the proportion to the amount of negligence  
 25        fault attributable to the person recovering or for whose

1    death or injury to person or property recovery is made.  
 2                                    (2) "Fault" includes acts or omissions that are in any  
 3    measure wrongful, unlawful, negligent, or reckless or that  
 4    subject a person to strict tort liability. The term also  
 5    includes:  
 6                                    (a) breach of warranty;  
 7                                    (b) assumption of risk;  
 8                                    (c) misuse of a product; and  
 9                                    (d) failure to avoid or mitigate an injury, including  
 10   failure to use safety devices."

11        Section 2. Section 27-1-703, MCA, is amended to read:  
 12        "27-1-703. Multiple defendants ~~jointly--and--severally~~  
 13        ~~liable-----right-of-contribution -- apportionment of fault.~~  
 14        ~~{1}--Whenever--the--negligence--of--any--party--in--any--action--is--an~~  
 15        ~~issue--each--party--against--whom--recovery--may--be--allowed--is~~  
 16        ~~jointly--and--severally--liable--for--the--amount--that--may--be~~  
 17        ~~awarded--to--the--claimant--but--has--the--right--of--contribution~~  
 18        ~~from--any--other--person--whose--negligence--may--have--contributed~~  
 19        ~~as--a--proximate--cause--to--the--injury--complained--of--~~  
 20        ~~{2}--On--motion--of--any--party--against--whom--a--claim--is~~  
 21        ~~asserted--for--negligence--resulting--in--death--or--injury--to~~  
 22        ~~person--or--property--any--other--person--whose--negligence--may~~  
 23        ~~have--contributed--as--a--proximate--cause--to--the--injury~~  
 24        ~~complained--of--may--be--joined--as--an--additional--party--to--the~~  
 25        ~~action--Whenever--more--than--one--person--is--found--to--have~~



1 contributed-as-a-proximate-cause-to--the--injury--complained  
 2 of--the--trier--of--fact--shall--apportion--the--degree--of--fault  
 3 among--such--persons--Contribution--shall--be--proportional--to  
 4 the--negligence--of--the--parties--against--whom--recovery--is  
 5 allowed--Nothing--contained--in--this--section--shall--make--any  
 6 party--indispensable--pursuant--to--Rule--19--M.R.Civ.P.

7 (3)--If--for--any--reason--all--or--part--of--the--contribution  
 8 from--a--party--liable--for--contribution--cannot--be--obtained,  
 9 each--of--the--other--parties--against--whom--recovery--is--allowed  
 10 is--liable--to--contribute--a--proportional--part--of--the--unpaid  
 11 portion--of--the--noncontributing--party's--share--and--may--obtain  
 12 judgment--in--a--pending--or--subsequent--action--for--contribution  
 13 from--the--noncontributing--party.

14 (1) In an action involving the fault of more than one  
 15 person, the trier of fact shall determine the percentage of  
 16 fault attributable to each person whose actions contributed  
 17 to the damages. Such persons may include but need not be  
 18 limited to the claimant, injured person, defendants,  
 19 third-party defendants, persons released from liability by  
 20 the claimant, persons immune from liability to the claimant,  
 21 and any other persons who have a defense against the  
 22 claimant.

23 (2) Judgment must be entered against each defendant in  
 24 an amount representing his proportionate share of the  
 25 claimant's total damages unless the defendant:

1 (a) has been released by the claimant;  
 2 (b) is immune from liability to the claimant; or  
 3 (c) has prevailed against the claimant on any other  
 4 individual defense.  
 5 (3) The liability of a defendant is several only,  
 6 except that one defendant may be responsible for the fault  
 7 of another if both acted in concert in contributing to the  
 8 claimant's damages or if one defendant acted as an agent of  
 9 the other."

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

## SENATE BILL NO. 51

INTRODUCED BY B. BROWN, THAYER, THOMAS, J. BROWN, IVERSON

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

## ON LIABILITY ISSUES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO LIABILITY; ~~SUBSTITUTING THE DOCTRINE OF COMPARATIVE FAULT FOR THE DOCTRINE OF COMPARATIVE NEGLIGENCE; ELIMINATING JOINT LIABILITY; PROVIDING FOR THE APPORTIONMENT OF FAULT AMONG JOINT TORTFEASORS IN CERTAIN CASES; AND AMENDING SECTIONS 27-1-702 AND 27-1-703, MCA.~~"

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

Section 1. Section 27-1-702, MCA, is amended to read:

"27-1-702. Comparative negligence ~~fault~~ NEGLIGENCE -- extent to which contributory negligence ~~fault~~ NEGLIGENCE bars recovery in action for damages. ~~{1}~~ Contributory negligence ~~fault~~ NEGLIGENCE shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in NEGLIGENCE RESULTING IN death or injury to person or property if such negligence contributory-fault NEGLIGENCE was not greater than the negligence ~~fault~~ NEGLIGENCE of the person or the combined ~~fault~~ NEGLIGENCE of all persons against whom recovery is sought, but any damages allowed shall be diminished in the

proportion to the amount of negligence ~~fault~~ NEGLIGENCE attributable to the person recovering ~~or-for-whose-death-or-injury-to-person-or-property-recovery-is-made.~~

~~{2}--"Fault"--includes-acts-or-omissions-that-are-in-any-measure--wrongfully--unlawfully-negligent,--or-reckless--or--that-subject-a-person-to-strict-tort--liability,--The--term--also--includes:~~

~~{a)--breach-of-warranty;~~~~{b)--assumption-of-risk;~~~~{c)--misuse-of-a-product,--and~~~~{d)--failure--to-avoid-or-mitigate-an-injury,--including-failure-to-use-safety-devices."~~

Section 2. Section 27-1-703, MCA, is amended to read:

"27-1-703. Multiple defendants jointly-and-severally liable---right-of-contribution ---apportionment--of--fault -- DETERMINATION OF LIABILITY. ~~{1}~~ 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}--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~~

1 have---contributed--as--a--proximate--cause--to--the--injury  
 2 complained-of-may-be-joined-as-an-additional--party--to--the  
 3 action;--Whenever--more--than--one--person--is-found-to-have  
 4 contributed-as-a-proximate-cause-to--the--injury--complained  
 5 of;--the--trier--of--fact--shall--apportion--the--degree--of--fault  
 6 among-such-persons;--Contribution-shall--be--proportional--to  
 7 the--negligence--of--the--parties--against--whom-recovery-is  
 8 allowed;--Nothing-contained-in-this-section--shall--make--any  
 9 party-indispensable-pursuant-to-Rule-197-MrR-Civ-P;

10 (3)--If--for-any-reason-all-or-part-of-the-contribution  
 11 from-a-party-liable-for--contribution--cannot--be--obtained;  
 12 each--of--the--other--parties-against-whom-recovery-is-allowed  
 13 is-liable-to-contribute-a-proportional-part--of--the--unpaid  
 14 portion--of--the--noncontributing-party's-share-and-may-obtain  
 15 judgment-in-a-pending-or-subsequent-action-for--contribution  
 16 from-the-noncontributing-party;

17 (1)--In--an-action-involving-the-fault-of-more-than-one  
 18 person;--the-trier-of-fact--shall--determine--the--percentage--of  
 19 fault--attributable-to-each-person-whose-actions-contributed  
 20 to-the-damages;--Such-persons-may-include--but--need--not--be  
 21 limited--to--the--claimant;--injured--person;--defendants;  
 22 third-party-defendants;--persons-released-from--liability--by  
 23 the-claimant;--persons-immune-from-liability-to-the-claimant;  
 24 and--any--other--persons--who--have--a--defense--against--the  
 25 claimant;

1 (2)--Judgment-must-be-entered-against-each-defendant-in  
 2 an--amount--representing--his--proportionate--share--of--the  
 3 claimant's-total-damages-unless-the-defendant;  
 4 (a)--has-been-released-by-the-claimant;  
 5 (b)--is-immune-from-liability-to-the-claimant;--or  
 6 (c)--has--prevailed--against--the-claimant-on-any-other  
 7 individual-defense;

8 (3)--The-liability-of--a--defendant--is--several--only;  
 9 except--that--one-defendant-may-be-responsible-for-the-fault  
 10 of-another-if-both-acted-in-concert-in-contributing--to--the  
 11 claimant's--damages-or-if-one-defendant-acted-as-an-agent-of  
 12 the-other; (1) EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND  
 13 (3), WHENEVER THE NEGLIGENCE OF ANY PARTY IN ANY ACTION IS  
 14 AN ISSUE, EACH PARTY AGAINST WHOM RECOVERY MAY BE ALLOWED IS  
 15 JOINTLY AND SEVERALLY LIABLE FOR THE AMOUNT THAT MAY BE  
 16 AWARDED TO THE CLAIMANT BUT HAS THE RIGHT OF CONTRIBUTION  
 17 FROM ANY OTHER PERSON WHOSE NEGLIGENCE MAY HAVE CONTRIBUTED  
 18 AS A PROXIMATE CAUSE TO THE INJURY COMPLAINED OF.

19 (2) ANY PARTY WHOSE NEGLIGENCE IS DETERMINED TO BE 25%  
 20 OR LESS OF THE COMBINED NEGLIGENCE OF ALL PERSONS DESCRIBED  
 21 IN SUBSECTION (4) IS SEVERALLY LIABLE ONLY AND IS  
 22 RESPONSIBLE ONLY FOR THE AMOUNT OF NEGLIGENCE ATTRIBUTABLE  
 23 TO HIM, EXCEPT AS PROVIDED IN SUBSECTION (3). THE REMAINING  
 24 PARTIES ARE JOINTLY AND SEVERALLY LIABLE FOR THE TOTAL LESS  
 25 THE AMOUNT ATTRIBUTABLE TO THE CLAIMANT.

1       (3) A PARTY MAY BE JOINTLY LIABLE FOR ALL DAMAGES  
 2 CAUSED BY THE NEGLIGENCE OF ANOTHER IF BOTH ACTED IN CONCERT  
 3 IN CONTRIBUTING TO THE CLAIMANT'S DAMAGES OR IF ONE PARTY  
 4 ACTED AS AN AGENT OF THE OTHER.

5       (4) ON MOTION OF ANY PARTY AGAINST WHOM A CLAIM IS  
 6 ASSERTED FOR NEGLIGENCE RESULTING IN DEATH OR INJURY TO  
 7 PERSON OR PROPERTY, ANY OTHER PERSON WHOSE NEGLIGENCE MAY  
 8 HAVE CONTRIBUTED AS A PROXIMATE CAUSE TO THE INJURY  
 9 COMPLAINED OF MAY BE JOINED AS AN ADDITIONAL PARTY TO THE  
 10 ACTION. FOR PURPOSES OF DETERMINING THE PERCENTAGE OF  
 11 LIABILITY ATTRIBUTABLE TO EACH PARTY WHOSE ACTION  
 12 CONTRIBUTED TO THE INJURY COMPLAINED OF, THE TRIER OF FACT  
 13 SHALL CONSIDER THE NEGLIGENCE OF THE CLAIMANT, INJURED  
 14 PERSON, DEFENDANTS, THIRD-PARTY DEFENDANTS, PERSONS RELEASED  
 15 FROM LIABILITY BY THE CLAIMANT, PERSONS IMMUNE FROM  
 16 LIABILITY TO THE CLAIMANT, AND ANY OTHER PERSONS WHO HAVE A  
 17 DEFENSE AGAINST THE CLAIMANT. THE TRIER OF FACT SHALL  
 18 APPORTION THE PERCENTAGE OF NEGLIGENCE OF ALL SUCH PERSONS.  
 19 HOWEVER, IN ATTRIBUTING NEGLIGENCE AMONG PERSONS, THE TRIER  
 20 OF FACT MAY NOT CONSIDER OR DETERMINE ANY AMOUNT OF  
 21 NEGLIGENCE ON THE PART OF ANY INJURED PERSON'S EMPLOYER OR  
 22 COEMPLOYEE TO THE EXTENT THAT SUCH EMPLOYER OR COEMPLOYEE  
 23 HAS TORT IMMUNITY UNDER THE WORKERS' COMPENSATION ACT OR THE  
 24 OCCUPATIONAL DISEASE ACT OF THIS STATE, OF ANY OTHER STATE,  
 25 OR OF THE FEDERAL GOVERNMENT. CONTRIBUTION SHALL BE

1       PROPORTIONAL TO THE LIABILITY OF THE PARTIES AGAINST WHOM  
 2 RECOVERY IS ALLOWED. NOTHING CONTAINED IN THIS SECTION  
 3 SHALL MAKE ANY PARTY INDISPENSABLE PURSUANT TO RULE 19,  
 4 MONTANA RULES OF CIVIL PROCEDURE.

5       (5) IF FOR ANY REASON ALL OR PART OF THE CONTRIBUTION  
 6 FROM A PARTY LIABLE FOR CONTRIBUTION CANNOT BE OBTAINED,  
 7 EACH OF THE OTHER PARTIES SHALL CONTRIBUTE A PROPORTIONAL  
 8 PART OF THE UNPAID PORTION OF THE NONCONTRIBUTING PARTY'S  
 9 SHARE AND MAY OBTAIN JUDGMENT IN A PENDING OR SUBSEQUENT  
 10 ACTION FOR CONTRIBUTION FROM THE NONCONTRIBUTING PARTY. A  
 11 PARTY FOUND TO BE 25% OR LESS NEGLIGENT FOR THE INJURY  
 12 COMPLAINED OF IS LIABLE FOR CONTRIBUTION UNDER THIS SECTION  
 13 ONLY UP TO THE PERCENTAGE OF NEGLIGENCE ATTRIBUTED TO HIM."

14       NEW SECTION. SECTION 3. SEVERABILITY. IF A PART OF  
 15 THIS ACT IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM  
 16 THE INVALID PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS  
 17 INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS  
 18 IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM  
 19 THE INVALID APPLICATIONS.

-End-

## 1 SENATE BILL NO. 51

2 INTRODUCED BY B. BROWN, THAYER, THOMAS, J. BROWN, IVERSON

3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

4 ON LIABILITY ISSUES

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE  
7 LAWS RELATING TO LIABILITY; ~~SUBSTITUTING THE DOCTRINE OF~~  
8 ~~COMPARATIVE FAULT FOR THE DOCTRINE OF COMPARATIVE~~  
9 ~~NEGLIGENCE; ELIMINATING JOINT LIABILITY; PROVIDING FOR THE~~  
10 ~~APPORTIONMENT OF FAULT AMONG JOINT TORTFASORS~~ IN CERTAIN  
11 CASES; AND AMENDING SECTIONS 27-1-702 AND 27-1-703, MCA."

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

13 Section 1. Section 27-1-702, MCA, is amended to read:

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15 extent to which contributory negligence fault NEGLIGENCE  
16 bars recovery in action for damages. ~~{1}~~ Contributory  
17 negligence fault NEGLIGENCE shall not bar recovery in an  
18 action by any person or his legal representative to recover  
19 damages for negligence resulting in NEGLIGENCE RESULTING IN  
20 death or injury to person or property if such negligence  
21 contributory--fault NEGLIGENCE was not greater than the  
22 negligence fault NEGLIGENCE of the person or the combined  
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24 sought, but any damages allowed shall be diminished in the  
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1 proportion to the amount of negligence fault NEGLIGENCE  
2 attributable to the person recovering or-for-whose-death-or  
3 injury-to-person-or-property-recovery-is-made.

4 ~~{2}--"Fault" includes acts or omissions that are in any~~  
5 ~~measure--wrongful,--unlawful, negligent, or reckless--or that~~  
6 ~~subject a person to strict tort liability;--The term also~~  
7 includes:

8 {a}--breach of warranty;9 {b}--assumption of risk;10 {c}--misuse of a product; and11 {d}--failure to avoid or mitigate an injury, including  
12 failure to use safety devices;"

13 Section 2. Section 27-1-703, MCA, is amended to read:

14 "27-1-703. Multiple defendants jointly and severally  
15 liable----right of contribution ----apportionment--of--fault  
16 -- DETERMINATION OF LIABILITY. ~~{1}~~ Whenever the negligence  
17 of any party in any action is an issue, each party against  
18 whom recovery may be allowed is jointly and severally liable  
19 for the amount that may be awarded to the claimant but has  
20 the right of contribution from any other person whose  
21 negligence may have contributed as a proximate cause to the  
22 injury complained of.

23 ~~{2}~~ On motion of any party against whom a claim is  
24 asserted for negligence resulting in death or injury to  
25 person or property, any other person whose negligence may



1 have---contributed---as---a---proximate---cause---to---the---injury  
 2 complained-of-may-be-joined-as-an-additional---party---to---the  
 3 action---Whenever---more---than---one---person---is-found-to-have  
 4 contributed-as-a-proximate-cause-to-the-injury-complained  
 5 of,-the-trier-of-fact-shall-apportion-the-degree-of-fault  
 6 among-such-persons,-Contribution-shall-be-proportional--to  
 7 the-negligence-of-the-parties-against-whom-recovery-is  
 8 allowed,-Nothing-contained-in-this-section-shall-make-any  
 9 party-indispensable-pursuant-to-Rule-19,-M.R.Civ.P.-

10 (3)--If--for-any-reason-all-or-part-of-the-contribution  
 11 from-a-party-liable-for--contribution--cannot--be--obtained,  
 12 each--of--the-other-parties-against-whom-recovery-is-allowed  
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17 (1)--In--an-action-involving-the-fault-of-more-than-one  
 18 person,-the-trier-of-fact-shall-determine-the-percentage--of  
 19 fault--attributable-to-each-person-whose-actions-contributed  
 20 to-the-damages,-Such-persons-may-include--but--need--not--be  
 21 limited---to---the--claimant,-injured-person,-defendants,  
 22 third-party-defendants,-persons-released-from-liability--by  
 23 the-claimant,-persons-immune-from-liability-to-the-claimant,  
 24 and-any-other--persons--who--have--a--defense--against-the  
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 2 an--amount--representing--his--proportionate--share--of--the  
 3 claimant's-total-damages-unless-the-defendant:

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 13 SHALL CONSIDER THE NEGLIGENCE OF THE CLAIMANT, INJURED  
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 20 OF FACT MAY NOT CONSIDER OR DETERMINE ANY AMOUNT OF  
 21 NEGLIGENCE ON THE PART OF ANY INJURED PERSON'S EMPLOYER OR  
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4 ON LIABILITY ISSUES

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9 ~~NEGLIGENCE; ELIMINATING JOINT LIABILITY; PROVIDING FOR THE~~  
10 ~~APPORTIONMENT OF FAULT AMONG JOINT TORTFEASORS IN CERTAIN~~  
11 ~~CASES; AND AMENDING SECTIONS 27-1-702 AND 27-1-703, MCA; AND~~  
12 ~~PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION."~~

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

15 Section 1. Section 27-1-702, MCA, is amended to read:

16 "27-1-702. Comparative negligence ~~fault~~ NEGLIGENCE --  
17 extent to which contributory negligence ~~fault~~ NEGLIGENCE  
18 bars recovery in action for damages. ~~{1}~~ Contributory  
19 negligence ~~fault~~ NEGLIGENCE shall not bar recovery in an  
20 action by any person or his legal representative to recover  
21 damages for negligence resulting in NEGLIGENCE RESULTING IN  
22 contributory fault NEGLIGENCE was not greater than the  
23 negligence ~~fault~~ NEGLIGENCE of the person or the combined  
24 fault NEGLIGENCE of all persons against whom recovery is

1 sought, but any damages allowed shall be diminished in the  
2 proportion to the amount of negligence ~~fault~~ NEGLIGENCE  
3 attributable to the person recovering ~~or for whose death or~~  
4 ~~injury to person or property recovery is made.~~

5 ~~{2} "Fault" includes acts or omissions that are in any~~  
6 ~~measure wrongful, unlawfully negligent, or reckless or that~~  
7 ~~subject a person to strict tort liability. The term also~~  
8 ~~includes:~~

9 ~~{a} breach of warranty;~~10 ~~{b} assumption of risk;~~11 ~~{c} misuse of a product; and~~

12 ~~{d} failure to avoid or mitigate an injury, including~~  
13 ~~failure to use safety devices."~~

14 Section 2. Section 27-1-703, MCA, is amended to read:

15 "27-1-703. Multiple defendants jointly and severally  
16 liable --- right of contribution --- apportionment of fault  
17 --- DETERMINATION OF LIABILITY. ~~{1}~~ Whenever the negligence  
18 of any party in any action is an issue, each party against  
19 whom recovery may be allowed is jointly and severally liable  
20 for the amount that may be awarded to the claimant but has  
21 the right of contribution from any other person whose  
22 negligence may have contributed as a proximate cause to the  
23 injury complained of.

24 ~~{2} On motion of any party against whom a claim is~~  
25 ~~asserted for negligence resulting in death or injury to~~

1 person or property, any other person whose negligence may  
 2 have contributed as a proximate cause to the injury  
 3 complained of may be joined as an additional party to the  
 4 action. Whenever more than one person is found to have  
 5 contributed as a proximate cause to the injury complained  
 6 of, the trier of fact shall apportion the degree of fault  
 7 among such persons. Contribution shall be proportional to  
 8 the negligence of the parties against whom recovery is  
 9 allowed. Nothing contained in this section shall make any  
 10 party indispensable pursuant to Rule 19, M.R. Civ.P.

11 (3) 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 against whom recovery is allowed  
 14 is liable to contribute a proportional part of the unpaid  
 15 portion of the noncontributing party's share and may obtain  
 16 judgment in a pending or subsequent action for contribution  
 17 from the noncontributing party.

18 (1) In an action involving the fault of more than one  
 19 person, the trier of fact shall determine the percentage of  
 20 fault attributable to each person whose actions contributed  
 21 to the damages. Such persons may include but need not be  
 22 limited to the claimant, injured person, defendants,  
 23 third party defendants, persons released from liability by  
 24 the claimant, persons immune from liability to the claimant,  
 25 and any other persons who have a defense against the

1 claimant.

2 (2) Judgment must be entered against each defendant in  
 3 an amount representing his proportionate share of the  
 4 claimant's total damages unless the defendant:

5 (a) has been released by the claimant;

6 (b) is immune from liability to the claimant; or

7 (c) has prevailed against the claimant on any other  
 8 individual defense.

9 (3) The liability of a defendant is several only,  
 10 except that one defendant may be responsible for the fault  
 11 of another if both acted in concert in contributing to the  
 12 claimant's damages or if one defendant acted as an agent of  
 13 the other. (1) EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND  
 14 (3), WHENEVER THE NEGLIGENCE OF ANY PARTY IN ANY ACTION IS  
 15 AN ISSUE, EACH PARTY AGAINST WHOM RECOVERY MAY BE ALLOWED IS  
 16 JOINTLY AND SEVERALLY LIABLE FOR THE AMOUNT THAT MAY BE  
 17 AWARDED TO THE CLAIMANT BUT HAS THE RIGHT OF CONTRIBUTION  
 18 FROM ANY OTHER PERSON WHOSE NEGLIGENCE MAY HAVE CONTRIBUTED  
 19 AS A PROXIMATE CAUSE TO THE INJURY COMPLAINED OF.

20 (2) ANY PARTY WHOSE NEGLIGENCE IS DETERMINED TO BE 25%  
 21 50% OR LESS OF THE COMBINED NEGLIGENCE OF ALL PERSONS  
 22 DESCRIBED IN SUBSECTION (4) IS SEVERALLY LIABLE ONLY AND IS  
 23 RESPONSIBLE ONLY FOR THE AMOUNT OF NEGLIGENCE ATTRIBUTABLE  
 24 TO HIM, EXCEPT AS PROVIDED IN SUBSECTION (3). THE REMAINING  
 25 PARTIES ARE JOINTLY AND SEVERALLY LIABLE FOR THE TOTAL LESS

1 THE AMOUNT ATTRIBUTABLE TO THE CLAIMANT.  
2 (3) A PARTY MAY BE JOINTLY LIABLE FOR ALL DAMAGES  
3 CAUSED BY THE NEGLIGENCE OF ANOTHER IF BOTH ACTED IN CONCERT  
4 IN CONTRIBUTING TO THE CLAIMANT'S DAMAGES OR IF ONE PARTY  
5 ACTED AS AN AGENT OF THE OTHER.  
6 (4) ON MOTION OF ANY PARTY AGAINST WHOM A CLAIM IS  
7 ASSERTED FOR NEGLIGENCE RESULTING IN DEATH OR INJURY TO  
8 PERSON OR PROPERTY, ANY OTHER PERSON WHOSE NEGLIGENCE MAY  
9 HAVE CONTRIBUTED AS A PROXIMATE CAUSE TO THE INJURY  
10 COMPLAINED OF MAY BE JOINED AS AN ADDITIONAL PARTY TO THE  
11 ACTION. FOR PURPOSES OF DETERMINING THE PERCENTAGE OF  
12 LIABILITY ATTRIBUTABLE TO EACH PARTY WHOSE ACTION  
13 CONTRIBUTED TO THE INJURY COMPLAINED OF, THE TRIER OF FACT  
14 SHALL CONSIDER THE NEGLIGENCE OF THE CLAIMANT, INJURED  
15 PERSON, DEFENDANTS, THIRD-PARTY DEFENDANTS, PERSONS RELEASED  
16 FROM LIABILITY BY THE CLAIMANT, PERSONS IMMUNE FROM  
17 LIABILITY TO THE CLAIMANT, AND ANY OTHER PERSONS WHO HAVE A  
18 DEFENSE AGAINST THE CLAIMANT. THE TRIER OF FACT SHALL  
19 APPORTION THE PERCENTAGE OF NEGLIGENCE OF ALL SUCH PERSONS.  
20 HOWEVER, IN ATTRIBUTING NEGLIGENCE AMONG PERSONS, THE TRIER  
21 OF FACT MAY NOT CONSIDER OR DETERMINE ANY AMOUNT OF  
22 NEGLIGENCE ON THE PART OF ANY INJURED PERSON'S EMPLOYER OR  
23 COEMPLOYEE TO THE EXTENT THAT SUCH EMPLOYER OR COEMPLOYEE  
24 HAS TORT IMMUNITY UNDER THE WORKERS' COMPENSATION ACT OR THE  
25 OCCUPATIONAL DISEASE ACT OF THIS STATE, OF ANY OTHER STATE,

1 OR OF THE FEDERAL GOVERNMENT. CONTRIBUTION SHALL BE  
2 PROPORTIONAL TO THE LIABILITY OF THE PARTIES AGAINST WHOM  
3 RECOVERY IS ALLOWED. NOTHING CONTAINED IN THIS SECTION  
4 SHALL MAKE ANY PARTY INDISPENSABLE PURSUANT TO RULE 19,  
5 MONTANA RULES OF CIVIL PROCEDURE.  
6 (5) IF FOR ANY REASON ALL OR PART OF THE CONTRIBUTION  
7 FROM A PARTY LIABLE FOR CONTRIBUTION CANNOT BE OBTAINED,  
8 EACH OF THE OTHER PARTIES SHALL CONTRIBUTE A PROPORTIONAL  
9 PART OF THE UNPAID PORTION OF THE NONCONTRIBUTING PARTY'S  
10 SHARE AND MAY OBTAIN JUDGMENT IN A PENDING OR SUBSEQUENT  
11 ACTION FOR CONTRIBUTION FROM THE NONCONTRIBUTING PARTY. A  
12 PARTY FOUND TO BE ~~25~~ 50% OR LESS NEGLIGENT FOR THE INJURY  
13 COMPLAINED OF IS LIABLE FOR CONTRIBUTION UNDER THIS SECTION  
14 ONLY UP TO THE PERCENTAGE OF NEGLIGENCE ATTRIBUTED TO HIM."  
15 NEW SECTION. SECTION 3. SEVERABILITY. IF A PART OF  
16 THIS ACT IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM  
17 THE INVALID PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS  
18 INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS  
19 IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM  
20 THE INVALID APPLICATIONS.  
21 NEW SECTION. SECTION 4. EFFECTIVE DATE --  
22 APPLICABILITY. (1) THIS ACT IS EFFECTIVE JULY 1, 1987.  
23 (2) THIS ACT APPLIES TO CAUSES OF ACTIONS ARISING ON  
24 OR AFTER JULY 1, 1987.

-End-

STANDING COMMITTEE REPORT

HOUSE

MARCH 20, 19 87

Mr. Speaker: We, the committee on JUDICIARY report SENATE BILL NO. 51

- do pass, do not pass, be concurred in, be not concurred in, as amended, statement of intent attached

Signature of Earl L. ... Chairman

Amendments to SB 51 Blue Third Reading copy

- 1. Title, lines 10 and 11. Following: "FORFEASORS" on line 10 Strike: remainder of line 10 through "CASES" on line 11
2. Title, line 11, following ";". Strike: "AND" FOLLOWING: "MCA" Insert: "; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION"
3. Pages 4 and 5. Following: "other-" on page 4, line 12 Strike: remainder of line 12 through line 4 on page 5 Insert: "(1) In an action involving the negligence of more than one person, the trier of fact shall determine the percentage of negligence attributable to each person whose actions contributed to the damages. Such persons may include but need not be limited to 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. (2) Judgment must be entered against each defendant in an amount representing his proportionate share of the claimant's total damages unless the defendant: (a) has been released by the claimant; (b) is immune from liability to the claimant; or (c) has prevailed against the claimant on any other individual defense. (3) The liability of a defendant is several only, except that one defendant may be responsible for the fault of another if both acted in concert in contributing to the claimant's damages or if one defendant acted as an agent of the other."

Handwritten initials: TP

THIRD reading copy (BLUE color)

REP. MERCER WILL CARRY THE BILL!

Handwritten initials: TP

JUDICIARY COMMITTEE MARCH 20, 1987 PAGE TWO

SENATE BILL AMENDMENTS NO. 51

4. Page 6, lines 5 through 13. Strike: lines 5 through 13 in their entirety

5. Page 6. Following: line 19 Insert: "NEW SECTION. Section 4. Effective date -- applicability. (1) This act is effective July 1, 1987. (2) This act applies to causes of actions arising on or after July 1, 1987."

# COMMITTEE OF THE WHOLE AMENDMENT

(67)

## HOUSE

3-26-87  
DATE

11:15  
TIME

MR. CHAIRMAN: I MOVE TO AMEND SB 51

*PASSED*

3rd reading copy ( blue ) as follows:  
Color

AMENDING THE HOUSE JUDICIARY STANDING COMMITTEE REPORT DATED 3-20-87, WHICH AMENDED SB 51.

1) Amending Instructions No. 1, 3, and 4  
Strip Instructions No. 1, 3, and 4 in their entirety

2) Page 4, line 19 (of the bill).  
Strike: " 25% "  
Insert: "50%"

3) Page 6, line 11 (of the bill).  
Strike: " 25% "  
Insert: "50%"

ADOPT

REJECT

*TR*

3261115T.CW

*P. Rapp-Svrcek*

Rep. Rapp-Svrcek