

HOUSE BILL 282

Introduced by Whalen, et al.

1/19	Introduced
1/20	Referred to Judiciary
1/20	First Reading
1/29	Hearing
2/05	Tabled in Committee

1 House BILL NO. 282  
 2 INTRODUCED BY Whalen  
 3 McCallister  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE  
 5 LAW RELATING TO JOINT AND SEVERAL LIABILITY IN CIVIL CASES;  
 6 PROVIDING THAT A PERSON WHOSE NEGLIGENCE IS DETERMINED TO BE  
 7 MORE THAN 10 PERCENT OF THE COMBINED NEGLIGENCE OF ALL  
 8 DEFENDANTS IS JOINTLY LIABLE; PROVIDING THAT LIABILITY FOR  
 9 NEGLIGENCE IS ATTRIBUTABLE ONLY AMONG PARTIES TO THE CIVIL  
 10 ACTION; AND AMENDING SECTION 27-1-703, MCA."

11  
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

14 "27-1-703. Multiple defendants -- determination of  
 15 liability. (1) Except as provided in subsections (2) and  
 16 (3), whenever the negligence of any party in any action is  
 17 an issue, each party against whom recovery may be allowed is  
 18 jointly and severally liable for the amount that may be  
 19 awarded to the claimant but has the right of contribution  
 20 from any other person whose negligence may have contributed  
 21 as a proximate cause to the injury complained of.

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

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

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

8 (4) On motion of any party against whom a claim is  
 9 asserted for negligence resulting in death or injury to  
 10 person or property, any other person whose negligence may  
 11 have contributed as a proximate cause to the injury  
 12 complained of may be joined as an additional party to the  
 13 action. For purposes of determining the percentage of  
 14 liability attributable to each party whose action  
 15 contributed to the injury complained of, the trier of fact  
 16 shall consider the negligence of the claimant, injured  
 17 person, defendants, and third-party defendants, ~~persons~~  
 18 ~~released from liability by the claimant, persons immune from~~  
 19 ~~liability to the claimant, and any other persons who have a~~  
 20 ~~defense against the claimant.~~ The trier of fact shall  
 21 apportion the percentage of negligence of the claimant and  
 22 all such persons defendants. However, in attributing  
 23 negligence among persons, the trier of fact may not consider  
 24 or determine any amount of negligence on the part of any  
 25 injured person's employer or coemployee to the extent that

1 such employer or coemployee has tort immunity under the  
2 Workers' Compensation Act or the Occupational Disease Act of  
3 this state, of any other state, or of the federal  
4 government. Contribution ~~shall~~ must be proportional to the  
5 liability of the parties against whom recovery is allowed.  
6 ~~Nothing-contained-in-this~~ This section ~~shall~~ does not make  
7 any party indispensable pursuant to Rule 19, Montana Rules  
8 of Civil Procedure.

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

-End-