

SENATE BILL NO. 212

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PROCEDURAL SAFEGUARDS FOR JOINT AND SEVERAL LIABILITY DETERMINATIONS; AMENDING SECTION 27-1-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, on August 29, 1994, the Montana Supreme Court, in Newville v. State of Montana Department of Family Services, 883 P.2d 793, 51 St. Rptr. 758 (1994), struck down as unconstitutional part of section 27-1-703, MCA, limiting the common-law doctrine of joint and several liability; and

WHEREAS, the basis of the holding was that the statute lacked certain procedural safeguards; and

WHEREAS, the Legislature wishes to provide for procedural safeguards considered necessary by the Montana Supreme Court.

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 a 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 A party whose negligence is determined to be 50% 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 that party, 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

1 cause to the injury complained of may be joined as an additional party to the action. For purposes of
 2 determining the percentage of liability attributable to each party whose action contributed to the injury
 3 complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants,
 4 and third-party defendants, persons released from liability by the claimant, persons immune from liability
 5 to the claimant, and any other persons who have a defense against the claimant. The liability of nonparties,
 6 including persons released from liability by the claimant and persons immune from liability to the claimant,
 7 must also be considered by the trier of fact, as provided in subsection (6). The trier of fact shall apportion
 8 the percentage of negligence of all such persons listed in this subsection. However, in attributing negligence
 9 among persons, the trier of fact may not consider or determine any amount of negligence on the part of
 10 any injured person's employer or coemployee to the extent that ~~such~~ the employer or coemployee has tort
 11 immunity under the Workers' Compensation Act or the Occupational Disease Act of ~~this state~~ Montana,
 12 of any other state, or of the federal government. Contribution ~~shall~~ must be proportional to the liability of
 13 the parties against whom recovery is allowed. Nothing contained in this section ~~shall make~~ makes any party
 14 indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.

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

21 (6)(a) In an action based on negligence, a defendant may assert as a defense that the damages of
 22 the claimant were caused in full or in part by a nonparty, which may be referred to as a nonparty defense.

23 (b) In determining the percentage of liability attributable to persons who are parties to the action,
 24 the trier of fact shall consider the negligence of nonparties, including persons released from liability by the
 25 claimant and persons immune from liability to the claimant, if a nonparty defense is properly asserted in
 26 accordance with this subsection (6). A finding of negligence of a nonparty is not a presumptive or
 27 conclusive finding as to that nonparty for purposes of a prior or subsequent action involving that nonparty.

28 (c) The burden of proof as to a nonparty's liability is on the defendant or defendants who
 29 affirmatively plead the nonparty defense, but this subsection (6) does not relieve the claimant of the burden
 30 of proving that negligence on the part of the defendant or defendants contributed as a proximate cause to

1 the injury of the claimant or alter other proof requirements.

2 (d) A nonparty defense must be affirmatively pleaded as a part of the answer. A defendant who
3 gains actual knowledge of a nonparty defense after the filing of that defendant's answer may plead the
4 defense with reasonable promptness, as determined by the trial court, in a manner that is consistent with:

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6 (ii) giving the claimant a reasonable opportunity to defend against a nonparty defense; and

7 (iii) giving the claimant a reasonable opportunity, if appropriate, to add the nonparty as an
8 additional defendant to the action before the expiration of the period of limitation applicable to the claim.
9 However, this subsection (iii) does not extend the period of limitation or revive the action if the period of
10 limitation has expired."

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12 NEW SECTION. Section 2. Severability. If a part of [this act] is invalid, all valid parts that are
13 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
14 applications, the part remains in effect in all valid applications that are severable from the invalid
15 applications.

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17 NEW SECTION. Section 3. Applicability. [This act] applies to all claims for relief not reduced to
18 final judgment on [the effective date of this act].

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20 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

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29 **NEW SECTION. Section 2. Severability.** If a part of [this act] is invalid, all valid parts that are
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