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House BILL NO. 571

INTRODUCED BY *Deaudry* *Clas Hillard*

*Kathleen Dennis* *Berghorn* ORR *Wood* *Slater*

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE EFFECT OF A RELEASE OR COVENANT NOT TO SUE; REVISING THE PRINCIPLES GOVERNING LIABILITY AND THE DETERMINATION OF LIABILITY WHEN MULTIPLE PERSONS ARE AT FAULT; AMENDING SECTIONS 27-1-702 AND 27-1-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

*Goebel Estrada* *Holder* *Rahop*

WHEREAS, the Montana Supreme Court, in Plumb v. District Court, 927 P.2d 1011, 53 St. Rep. 1187 (1996), recently declared unconstitutional portions of Montana's comparative negligence statute because it failed to provide an opportunity for a nonparty to defend oneself, and it required the plaintiff to act in a dual capacity by requiring that the plaintiff represent nonparties; and

WHEREAS, the Montana Supreme Court also recognized in Plumb that parties who settle represent the single exception for fair apportionment of liability under third-party practice rules; and

WHEREAS, the Montana Supreme Court has recognized that the Legislature may alter tort causes of action to promote legitimate state interests; and

WHEREAS, the Legislature believes that the policy of the state is that claimants, defendants, and other potentially liable persons should be held responsible to the extent of individual fault; and

WHEREAS, the Legislature has retained joint and several liability, but modified it because of that policy; and

WHEREAS, the current system of modified joint and several liability must permit a consideration of the fault attributable to parties who settle or are released for the modified system to be operative; and

WHEREAS, the Legislature believes that a claimant who enters into a settlement or covenant not to sue does so because the claimant has made a considered judgment that the agreement is in the claimant's best interests; and

WHEREAS, the Legislature intends that the liability of persons who settle or are released and who may share in the responsibility for a tort cause of action be considered by the trier of fact and apportioned a percentage of damages according to their negligence; and

WHEREAS, the Legislature believes that the percent credit rule, rather than the dollar credit rule, more accurately reflects the basis for comparative negligence, which apportions liability according to the

1 percentage of individual negligence.

2           THEREFORE, the Legislature finds it appropriate to pass legislation addressing the concerns raised  
3 by the Montana Supreme Court and to accomplish the Legislature's objectives of allocating liability on the  
4 basis of individual negligence, encouraging fair settlements that accurately reflect potential liability, and  
5 permitting the allocation of a percentage of liability to persons who settle or are released and are found to  
6 be partially or wholly responsible.

7

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

9

10           NEW SECTION. **Section 1. Release -- covenant not to sue.** A release or covenant not to sue given  
11 to one of two or more persons liable in tort for the same injury, death, damage, or loss:

12           (1) does not discharge any other tortfeasor from liability for that tortfeasor's several pro rata share  
13 of liability for the injury, death, damage, or loss unless the release or covenant not to sue provides  
14 otherwise;

15           (2) reduces the aggregate claim against the other tortfeasors to the extent of any percentage of  
16 fault attributed by the trier of fact under 27-1-703(6) to the tortfeasor to whom the release or covenant  
17 is given;

18           (3) discharges the tortfeasor to whom it is given from all liability for contribution.

19

20           **Section 2.** Section 27-1-702, MCA, is amended to read:

21           "**27-1-702. Comparative negligence -- extent to which contributory negligence bars recovery in**  
22 **action for damages.** Contributory negligence ~~shall~~ does not bar recovery in an action by ~~any~~ a person or  
23 ~~his~~ the person's legal representative to recover damages for negligence resulting in death or injury to the  
24 person or property if ~~such~~ the contributory negligence was not greater than the negligence of the person  
25 or the combined negligence of all persons against whom recovery is sought, but any damages allowed ~~shall~~  
26 must be diminished in the proportion to the ~~amount~~ percentage of negligence attributable to the person  
27 recovering."

28

29           **Section 3.** Section 27-1-703, MCA, is amended to read:

30           "**27-1-703. Multiple defendants -- determination of liability.** (1) Except as provided in subsections

1 (2) and (3), ~~whenever~~ if the negligence of a party ~~in any~~ to an action is an issue, each party against whom  
 2 recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant  
 3 but has the right of contribution from any other person whose negligence may have contributed as a  
 4 proximate cause to the injury complained of.

5 (2) A party whose negligence is determined to be 50% or less of the combined negligence of all  
 6 persons described in subsection (4) is severally liable only and is responsible only for the ~~amount~~  
 7 percentage of negligence attributable to that party, except as provided in subsection (3). The remaining  
 8 parties are jointly and severally liable for the total less the ~~amount~~ percentage attributable to the claimant  
 9 and to any person with whom the claimant has settled or who the plaintiff has released from liability.

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

12 (4) On motion of ~~any~~ a party against whom a claim is asserted for negligence resulting in death  
 13 or injury to person or property, any other person whose negligence may have contributed as a proximate  
 14 cause to the injury complained of may be joined as an additional party to the action. For purposes of  
 15 determining the percentage of liability attributable to each party whose action contributed to the injury  
 16 complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants,  
 17 and third-party defendants. The liability of ~~nonparties, including~~ persons released from liability by the  
 18 claimant ~~and persons immune from liability to~~ and persons with whom the claimant, has settled must also  
 19 be considered by the trier of fact, as provided in subsection (6). The trier of fact shall apportion the  
 20 percentage of negligence of all persons listed in this subsection. ~~Contribution must be proportional to the~~  
 21 ~~liability of the parties against whom recovery is allowed.~~ Nothing contained in this section makes any party  
 22 indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.

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

28 (6) (a) In an action based on negligence, a defendant may assert as a defense that the damages  
 29 of the claimant were caused in full or in part by a ~~nonparty, which may be referred to as a nonparty~~ defense  
 30 person with whom the claimant has settled or who the claimant has released from liability.

1           (b) In determining the percentage of liability attributable to persons who are parties to the action,  
 2 the trier of fact shall consider the negligence of ~~nonparties, including~~ persons released from liability by the  
 3 claimant ~~and persons immune from liability to the claimant, if a nonparty defense is properly asserted in~~  
 4 ~~accordance with this subsection (6) or with whom the claimant has settled.~~ A finding of negligence of a  
 5 ~~nonparty person with whom the claimant has settled or who has been released from liability by the claimant~~  
 6 is not a presumptive or conclusive finding as to that ~~nonparty person~~ for purposes of a prior or subsequent  
 7 action involving that ~~nonparty person~~.

8           (c) Except for persons who have settled with or have been released by the claimant, comparison  
 9 of fault with any of the following persons is prohibited:

10           (i) a person who is immune from liability to the claimant;

11           (ii) a person who is not subject to the jurisdiction of the court; or

12           (iii) any other person who could have been, but was not, named as a third party.

13           (d) A release of settlement entered into by a claimant constitutes an assumption of the liability, if  
 14 any, allocated to the settled or released person. The claim of the releasing or settling claimant against other  
 15 persons is reduced by the percentage of the released or settled person's equitable share of the obligation,  
 16 as determined under subsection (4).

17           ~~(e)~~(e) ~~The burden of proof as to a nonparty's liability is on the defendant or defendants who~~  
 18 ~~affirmatively plead the nonparty defense, but this subsection (6) does not relieve the claimant of the burden~~  
 19 ~~of proving that negligence on the part of the defendant or defendants contributed as a proximate cause to~~  
 20 ~~the injury of the claimant or alter other proof requirements. A defendant who alleges that a person released~~  
 21 ~~by the claimant or with whom the claimant has settled is at fault in the matter has the burden of proving:~~

22           (i) the negligence of the person who the claimant has released or with whom the claimant has  
 23 settled;

24           (ii) any standard of care applicable to the person who the claimant released or with whom the  
 25 claimant settled; and

26           (iii) that the negligence of the person whom the claimant has released or with whom the claimant  
 27 has settled was a contributing cause under the law applicable to the matter.

28           ~~(d)~~(f) ~~A nonparty defense must be~~ defendant alleging that a settled or released person is at fault  
 29 in the matter shall affirmatively pleaded as a part of plead the settlement or release as a defense in the  
 30 answer. A defendant who gains actual knowledge of a nonparty defense settled or released person after

1 the filing of that defendant's answer may plead the defense of settlement or release with reasonable  
2 promptness, as determined by the trial court, in a manner that is consistent with:

3 (i) giving the defendant a reasonable opportunity to discover the existence of a ~~nonparty defense~~  
4 settled or released person;

5 (ii) giving the settled or released person an opportunity to intervene in the action to defend against  
6 claims affirmatively asserted, including the opportunity to be represented by an attorney, present a defense,  
7 participate in discovery, cross-examine witnesses, and appear as a witness of either party; and

8 ~~((i)(iii))~~ giving the claimant a reasonable opportunity to defend against a ~~nonparty~~ the defense; and

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

13 ~~(e)(g)~~ If a defendant ~~asserts a nonparty defense~~ alleges that a settled or released person is at fault  
14 in the matter, the defendant shall notify each ~~nonparty~~ person who the defendant alleges caused the  
15 claimant's injuries, in whole or in part. Notification must be made by mailing the defendant's answer to  
16 each ~~nonparty~~ settled or released person at the ~~nonparty's~~ person's last-known address by certified mail,  
17 return receipt requested."

18

19 NEW SECTION. Section 4. Applicability. [This act] applies to causes of action that arise on or  
20 after [the effective date of this act].

21

22 NEW SECTION. Section 5. Nonseverability. It is the intent of the legislature that each part of [this  
23 act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all  
24 other parts are invalid.

25

26 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

27

-END-

House BILL NO. 571

INTRODUCED BY

*Beaudry*  
*Kathleen Dennis, Deborah ORR, Wood, Slater, [unclear], [unclear], [unclear]*  
*Clare Holbrook*  
*Gregory Estrada, Bishop, [unclear]*

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE EFFECT OF A RELEASE OR COVENANT NOT TO SUE; REVISING THE PRINCIPLES GOVERNING LIABILITY AND THE DETERMINATION OF LIABILITY WHEN MULTIPLE PERSONS ARE AT FAULT; AMENDING SECTIONS 27-1-702 AND 27-1-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the Montana Supreme Court, in Plumb v. District Court, 927 P.2d 1011, 53 St. Rep. 1187 (1996), recently declared unconstitutional portions of Montana's comparative negligence statute because it failed to provide an opportunity for a nonparty to defend oneself, and it required the plaintiff to act in a dual capacity by requiring that the plaintiff represent nonparties; and

WHEREAS, the Montana Supreme Court also recognized in Plumb that parties who settle represent the single exception for fair apportionment of liability under third-party practice rules; and

WHEREAS, the Montana Supreme Court has recognized that the Legislature may alter tort causes of action to promote legitimate state interests; and

WHEREAS, the Legislature believes that the policy of the state is that claimants, defendants, and other potentially liable persons should be held responsible to the extent of individual fault; and

WHEREAS, the Legislature has retained joint and several liability, but modified it because of that policy; and

WHEREAS, the current system of modified joint and several liability must permit a consideration of the fault attributable to parties who settle or are released for the modified system to be operative; and

WHEREAS, the Legislature believes that a claimant who enters into a settlement or covenant not to sue does so because the claimant has made a considered judgment that the agreement is in the claimant's best interests; and

WHEREAS, the Legislature intends that the liability of persons who settle or are released and who may share in the responsibility for a tort cause of action be considered by the trier of fact and apportioned a percentage of damages according to their negligence; and

WHEREAS, the Legislature believes that the percent credit rule, rather than the dollar credit rule, more accurately reflects the basis for comparative negligence, which apportions liability according to the

1 percentage of individual negligence.

2           THEREFORE, the Legislature finds it appropriate to pass legislation addressing the concerns raised  
3 by the Montana Supreme Court and to accomplish the Legislature's objectives of allocating liability on the  
4 basis of individual negligence, encouraging fair settlements that accurately reflect potential liability, and  
5 permitting the allocation of a percentage of liability to persons who settle or are released and are found to  
6 be partially or wholly responsible.

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11 to one of two or more persons liable in tort for the same injury, death, damage, or loss:

12           (1) does not discharge any other tortfeasor from liability for that tortfeasor's several pro rata share  
13 of liability for the injury, death, damage, or loss unless the release or covenant not to sue provides  
14 otherwise;

15           (2) reduces the aggregate claim against the other tortfeasors to the extent of any percentage of  
16 fault attributed by the trier of fact under 27-1-703(6) to the tortfeasor to whom the release or covenant  
17 is given;

18           (3) discharges the tortfeasor to whom it is given from all liability for contribution.

19

20           **Section 2.** Section 27-1-702, MCA, is amended to read:

21           "**27-1-702. Comparative negligence -- extent to which contributory negligence bars recovery in**  
22 **action for damages.** Contributory negligence ~~shall~~ does not bar recovery in an action by ~~any~~ a person or  
23 ~~his~~ the person's legal representative to recover damages for negligence resulting in death or injury to the  
24 person or property if ~~such~~ the contributory negligence was not greater than the negligence of the person  
25 or the combined negligence of all persons against whom recovery is sought, but any damages allowed ~~shall~~  
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29           **Section 3.** Section 27-1-703, MCA, is amended to read:

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1 (2) and (3), ~~whenever~~ if the negligence of a party ~~in any~~ to an action is an issue, each party against whom  
2 recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant  
3 but has the right of contribution from any other person whose negligence may have contributed as a  
4 proximate cause to the injury complained of.

5 (2) A party whose negligence is determined to be 50% or less of the combined negligence of all  
6 persons described in subsection (4) is severally liable only and is responsible only for the ~~amount~~  
7 percentage of negligence attributable to that party, except as provided in subsection (3). The remaining  
8 parties are jointly and severally liable for the total less the ~~amount~~ percentage attributable to the claimant  
9 and to any person with whom the claimant has settled or who the plaintiff has released from liability.

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

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15 determining the percentage of liability attributable to each party whose action contributed to the injury  
16 complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants,  
17 and third-party defendants. The liability of ~~nonparties, including~~ persons released from liability by the  
18 claimant ~~and persons immune from liability to~~ and persons with whom the claimant, has settled must also  
19 be considered by the trier of fact, as provided in subsection (6). The trier of fact shall apportion the  
20 percentage of negligence of all persons listed in this subsection. ~~Contribution must be proportional to the~~  
21 ~~liability of the parties against whom recovery is allowed.~~ Nothing contained in this section makes any party  
22 indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.

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

28 (6) (a) In an action based on negligence, a defendant may assert as a defense that the damages  
29 of the claimant were caused in full or in part by a ~~nonparty, which may be referred to as a nonparty~~ defense  
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1 (b) In determining the percentage of liability attributable to persons who are parties to the action,  
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 6 is not a presumptive or conclusive finding as to that ~~nonparty person~~ for purposes of a prior or subsequent  
 7 action involving that ~~nonparty person~~.

8 (c) Except for persons who have settled with or have been released by the claimant, comparison  
 9 of fault with any of the following persons is prohibited:

10 (i) a person who is immune from liability to the claimant;

11 (ii) a person who is not subject to the jurisdiction of the court; or

12 (iii) any other person who could have been, but was not, named as a third party.

13 (d) A release of settlement entered into by a claimant constitutes an assumption of the liability, if  
 14 any, allocated to the settled or released person. The claim of the releasing or settling claimant against other  
 15 persons is reduced by the percentage of the released or settled person's equitable share of the obligation,  
 16 as determined under subsection (4).

17 ~~(e)~~ (e) The burden of proof as to a nonparty's liability is on the defendant or defendants who  
 18 affirmatively plead the nonparty defense, but this subsection (6) does not relieve the claimant of the burden  
 19 of proving that negligence on the part of the defendant or defendants contributed as a proximate cause to  
 20 the injury of the claimant or alter other proof requirements. A defendant who alleges that a person released  
 21 by the claimant or with whom the claimant has settled is at fault in the matter has the burden of proving:

22 (i) the negligence of the person who the claimant has released or with whom the claimant has  
 23 settled;

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 25 claimant settled; and

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 29 in the matter shall affirmatively pleaded as a part of plead the settlement or release as a defense in the  
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1 the filing of that defendant's answer may plead the defense of settlement or release with reasonable  
2 promptness, as determined by the trial court, in a manner that is consistent with:

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4 settled or released person;

5 (ii) giving the settled or released person an opportunity to intervene in the action to defend against  
6 claims affirmatively asserted, including the opportunity to be represented by an attorney, present a defense,  
7 participate in discovery, cross-examine witnesses, and appear as a witness of either party; and

8 ~~((i)(iii))~~ giving the claimant a reasonable opportunity to defend against ~~a nonparty~~ the defense; and

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

13 ~~(e)(g)~~ If a defendant ~~asserts a nonparty defense~~ alleges that a settled or released person is at fault  
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15 claimant's injuries, in whole or in part. Notification must be made by mailing the defendant's answer to  
16 each ~~nonparty~~ settled or released person at the ~~nonparty's~~ person's last-known address by certified mail,  
17 return receipt requested."

18  
19 NEW SECTION. Section 4. Applicability. [This act] applies to causes of action that arise on or  
20 after [the effective date of this act].

21  
22 NEW SECTION. Section 5. Nonseverability. It is the intent of the legislature that each part of [this  
23 act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all  
24 other parts are invalid.

25  
26 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

27 -END-

House BILL NO. 571

INTRODUCED BY

*Beaudry* *Clark Hill*  
*Kathleen Dennis* *Berenson* *ORR* *Wood* *Stetson* *Stevens*

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE EFFECT OF A RELEASE OR COVENANT NOT TO SUE; REVISING THE PRINCIPLES GOVERNING LIABILITY AND THE DETERMINATION OF LIABILITY WHEN MULTIPLE PERSONS ARE AT FAULT; AMENDING SECTIONS 27-1-702 AND 27-1-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

*Goebel* *Estrella* *McIntire* *Rushop* *Heldens* *TV*

WHEREAS, the Montana Supreme Court, in Plumb v. District Court, 927 P.2d 1011, 53 St. Rep. 1187 (1996), recently declared unconstitutional portions of Montana's comparative negligence statute because it failed to provide an opportunity for a nonparty to defend oneself, and it required the plaintiff to act in a dual capacity by requiring that the plaintiff represent nonparties; and

WHEREAS, the Montana Supreme Court also recognized in Plumb that parties who settle represent the single exception for fair apportionment of liability under third-party practice rules; and

WHEREAS, the Montana Supreme Court has recognized that the Legislature may alter tort causes of action to promote legitimate state interests; and

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.**

House BILL NO. 571

INTRODUCED BY Laundry Clark Holberg

Kathleen Jensen Deborah Orr Mark Elter

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE EFFECT OF A RELEASE OR COVENANT  
NOT TO SUE; REVISING THE PRINCIPLES GOVERNING LIABILITY AND THE DETERMINATION OF LIABILITY  
WHEN MULTIPLE PERSONS ARE AT FAULT; AMENDING SECTIONS 27-1-702 AND 27-1-703, MCA; AND  
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WHEREAS, the Montana Supreme Court, in Plumb v. District Court, 927 P.2d 1011, 53 St. Rep.  
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## 1 HOUSE BILL NO. 571

2 INTRODUCED BY BEAUDRY, MILLS, CLARK, HIBBARD, BITNEY, KOTTEL, DENNY, BERGMAN, ORR,  
3 MOOD, SLITER, MCGEE, GRIMES, ANDERSON, TASH, SMITH, KEATING, GROSFIELD, ESTRADA,  
4 MCNUTT, HOLDEN, BISHOP, CRIPPEN

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE EFFECT OF A RELEASE OR COVENANT  
7 NOT TO SUE; REVISING THE PRINCIPLES GOVERNING LIABILITY AND THE DETERMINATION OF LIABILITY  
8 WHEN MULTIPLE PERSONS ARE AT FAULT; AMENDING SECTIONS 27-1-702 AND 27-1-703, MCA; AND  
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13 because it failed to provide an opportunity for a nonparty to defend oneself, and it required the plaintiff to  
14 act in a dual capacity by requiring that the plaintiff represent nonparties; and

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17 WHEREAS, the Montana Supreme Court has recognized that the Legislature may alter tort causes  
18 of action to promote legitimate state interests; and

19 WHEREAS, the Legislature believes that the policy of the state is that claimants, defendants, and  
20 other potentially liable persons should be held responsible to the extent of individual fault; and

21 WHEREAS, the Legislature has retained joint and several liability, but modified it because of that  
22 policy; and

23 WHEREAS, the current system of modified joint and several liability must permit a consideration of  
24 the fault attributable to parties who settle or are released for the modified system to be operative; and

25 WHEREAS, the Legislature believes that a claimant who enters into a settlement or covenant not  
26 to sue does so because the claimant has made a considered judgment that the agreement is in the  
27 claimant's best interests; and

28 WHEREAS, the Legislature intends that the liability of persons who settle or are released and who  
29 may share in the responsibility for a tort cause of action be considered by the trier of fact and apportioned  
30 a percentage of damages according to their negligence; and

1           WHEREAS, the Legislature believes that the percent credit rule, rather than the dollar credit rule,  
2 more accurately reflects the basis for comparative negligence, which apportions liability according to the  
3 percentage of individual negligence.

4           THEREFORE, the Legislature finds it appropriate to pass legislation addressing the concerns raised  
5 by the Montana Supreme Court and to accomplish the Legislature's objectives of allocating liability on the  
6 basis of individual negligence, encouraging fair settlements that accurately reflect potential liability, and  
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8 be partially or wholly responsible.

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

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12           **NEW SECTION. Section 1. Release -- covenant not to sue.** A release or covenant not to sue given  
13 to one of two or more persons liable in tort for the same injury, death, damage, or loss:

14           (1) does not discharge any other tortfeasor from liability for that tortfeasor's several pro rata share  
15 of liability for the injury, death, damage, or loss unless the release or covenant not to sue provides  
16 otherwise;

17           (2) reduces the aggregate claim against the other tortfeasors to the extent of any percentage of  
18 fault attributed by the trier of fact under 27-1-703(6) to the tortfeasor to whom the release or covenant  
19 is given;

20           (3) discharges the tortfeasor to whom it is given from all liability for contribution.

21

22           **Section 2.** Section 27-1-702, MCA, is amended to read:

23           **"27-1-702. Comparative negligence -- extent to which contributory negligence bars recovery in**  
24 **action for damages.** Contributory negligence ~~shall~~ does not bar recovery in an action by ~~any~~ a person or  
25 ~~his~~ the person's legal representative to recover damages for negligence resulting in death or injury to the  
26 person or property if ~~such~~ the contributory negligence was not greater than the negligence of the person  
27 or the combined negligence of all persons against whom recovery is sought, but any damages allowed ~~shall~~  
28 must be diminished in the proportion to the ~~amount~~ percentage of negligence attributable to the person  
29 recovering."  
30

1           **Section 3.** Section 27-1-703, MCA, is amended to read:

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

7           (2) A party whose negligence is determined to be 50% or less of the combined negligence of all  
8 persons described in subsection (4) is severally liable only and is responsible only for the ~~amount~~  
9 percentage of negligence attributable to that party, except as provided in subsection (3). The remaining  
10 parties are jointly and severally liable for the total less the ~~amount~~ percentage attributable to the claimant  
11 and to any person with whom the claimant has settled or who the plaintiff has released from liability.

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

14           (4) On motion of ~~any~~ a party against whom a claim is asserted for negligence resulting in death  
15 or injury to person or property, any other person whose negligence may have contributed as a proximate  
16 cause to the injury complained of may be joined as an additional party to the action. For purposes of  
17 determining the percentage of liability attributable to each party whose action contributed to the injury  
18 complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants,  
19 and third-party defendants. The liability of ~~nonparties, including~~ persons released from liability by the  
20 claimant ~~and persons immune from liability to~~ and persons with whom the claimant, has settled must also  
21 be considered by the trier of fact, as provided in subsection (6). The trier of fact shall apportion the  
22 percentage of negligence of all persons listed in this subsection. ~~Contribution must be proportional to the~~  
23 ~~liability of the parties against whom recovery is allowed.~~ Nothing contained in this section makes any party  
24 indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.

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

30           (6) (a) In an action based on negligence, a defendant may assert as a defense that the damages

1 of the claimant were caused in full or in part by a ~~nonparty, which may be referred to as a nonparty defense~~  
 2 person with whom the claimant has settled or who the claimant has released from liability.

3 (b) In determining the percentage of liability attributable to persons who are parties to the action,  
 4 the trier of fact shall consider the negligence of ~~nonparties, including persons released from liability by the~~  
 5 ~~claimant and persons immune from liability to the claimant, if a nonparty defense is properly asserted in~~  
 6 ~~accordance with this subsection (6) or with whom the claimant has settled.~~ A finding of negligence of a  
 7 nonparty person with whom the claimant has settled or who has been released from liability by the claimant  
 8 is not a presumptive or conclusive finding as to that nonparty person for purposes of a prior or subsequent  
 9 action involving that nonparty person.

10 (c) Except for persons who have settled with or have been released by the claimant, comparison  
 11 of fault with any of the following persons is prohibited:

12 (i) a person who is immune from liability to the claimant;

13 (ii) a person who is not subject to the jurisdiction of the court; or

14 (iii) any other person who could have been, but was not, named as a third party.

15 (d) A release of settlement entered into by a claimant constitutes an assumption of the liability, if  
 16 any, allocated to the settled or released person. The claim of the releasing or settling claimant against other  
 17 persons is reduced by the percentage of the released or settled person's equitable share of the obligation,  
 18 as determined under subsection (4).

19 ~~(e)~~ (e) ~~The burden of proof as to a nonparty's liability is on the defendant or defendants who~~  
 20 ~~affirmatively plead the nonparty defense, but this subsection (6) does not relieve the claimant of the burden~~  
 21 ~~of proving that negligence on the part of the defendant or defendants contributed as a proximate cause to~~  
 22 ~~the injury of the claimant or alter other proof requirements. A defendant who alleges that a person released~~  
 23 ~~by the claimant or with whom the claimant has settled is at fault in the matter has the burden of proving:~~

24 (i) the negligence of the person who the claimant has released or with whom the claimant has  
 25 settled;

26 (ii) any standard of care applicable to the person who the claimant released or with whom the  
 27 claimant settled; and

28 (iii) that the negligence of the person whom the claimant has released or with whom the claimant  
 29 has settled was a contributing cause under the law applicable to the matter.

30 ~~(f)~~ (f) ~~A nonparty defense must be~~ defendant alleging that a settled or released person is at fault



1 ~~in the matter shall affirmatively pleaded as a part of~~ plead the settlement or release as a defense in the  
 2 answer. A defendant who gains actual knowledge of a ~~nonparty defense~~ settled or released person after  
 3 the filing of that defendant's answer may plead the defense of settlement or release with reasonable  
 4 promptness, as determined by the trial court, in a manner that is consistent with:

5 (i) giving the defendant a reasonable opportunity to discover the existence of a ~~nonparty defense~~  
 6 settled or released person;

7 (ii) giving the settled or released person an opportunity to intervene in the action to defend against  
 8 claims affirmatively asserted, including the opportunity to be represented by an attorney, present a defense,  
 9 participate in discovery, cross-examine witnesses, and appear as a witness of either party; and

10 ~~(iii)(iii)~~ giving the claimant a reasonable opportunity to defend against a ~~nonparty~~ the defense; ~~and~~  
 11 ~~(iii)~~ giving the claimant a reasonable opportunity, if appropriate, to add the ~~nonparty~~ as an additional  
 12 defendant to the action before the expiration of the period of limitation applicable to the claim. However,  
 13 this subsection ~~(iii)~~ does not extend the period of limitation or revive the action if the period of limitation  
 14 has expired.

15 ~~(e)(g)~~ If a defendant ~~asserts a nonparty defense~~ alleges that a settled or released person is at fault  
 16 in the matter, the defendant shall notify each ~~nonparty~~ person who the defendant alleges caused the  
 17 claimant's injuries, in whole or in part. Notification must be made by mailing the defendant's answer to  
 18 each ~~nonparty~~ settled or released person at the ~~nonparty's~~ person's last-known address by certified mail,  
 19 return receipt requested."

21 NEW SECTION. Section 4. Applicability. [This act] applies to causes of action that arise on or  
 22 after [the effective date of this act].

24 NEW SECTION. Section 5. Nonseverability. It is the intent of the legislature that each part of [this  
 25 act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all  
 26 other parts are invalid.

28 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

29 -END-