**South Carolina General Assembly**

124th Session, 2021-2022

**H. 5276**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. M.M. Smith

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Introduced in the House on April 21, 2022

Currently residing in the House Committee on **Judiciary**

Summary: Torts - Apportionment of Fault

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

4/21/2022 House Introduced and read first time ([House Journal‑page 49](file:///h:\hj\20220421.docx))

4/21/2022 House Referred to Committee on **Judiciary** ([House Journal‑page 49](file:///h:\hj\20220421.docx))

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**VERSIONS OF THIS BILL**

[4/21/2022](file:///p:\pprever\2021-22\5276_20220421.docx)

**A** **BILL**

TO AMEND SECTION 15‑38‑10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SHORT TITLE OF THE CHAPTER, SO AS TO REVISE THE TITLE TO REFLECT THE PROVISIONS OF THE ACT AND ENTITLE IT THE “APPORTIONMENT OF FAULT ACT”; TO AMEND SECTION 15‑38‑15, RELATING TO LIABILITY OF DEFENDANTS AND APPORTIONMENT OF DAMAGES FOR ECONOMIC OR NONECONOMIC LOSSES, SO AS TO APPORTION LIABILITY ON THE BASIS OF FAULT AND MAKE CONFORMING CHANGES; AND TO REPEAL SECTIONS 15‑38‑20, 15‑38‑30, 15‑38‑40, 15‑38‑50, AND 15‑38‑65 ALL RELATING TO THE VARIOUS PROVISIONS OF THE SOUTH CAROLINA CONTRIBUTION AMONG TORTFEASORS ACT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 15‑38‑10 of the 1976 Code is amended to read:

“Section 15‑38‑10. This chapter may be cited as the ~~Uniform Contribution Among Tortfeasors~~ ‘Apportionment of Fault Act’.”

SECTION 2. Section 15‑38‑15 of the 1976 Code is amended to read:

“Section 15‑38‑15. (A) In an action to recover damages resulting from personal injury, wrongful death, or damage to property or to recover damages for economic loss or for noneconomic loss such as mental distress, loss of enjoyment, pain, suffering, loss of reputation, or loss of companionship resulting from tortious conduct, the court shall enter judgment against each party liable on the basis of such party’s percentage of fault and not on the basis of the doctrine of joint and several liability ~~if indivisible damages are determined to be proximately caused by more than one defendant, joint and several liability does not apply to any defendant whose conduct is determined to be less than fifty percent of the total fault for the indivisible damages as compared with the total of: (i) the fault of all the defendants; and (ii) the fault (comparative negligence), if any, of plaintiff. A defendant whose conduct is determined to be less than fifty percent of the total fault shall only be liable for that percentage of the indivisible damages determined by the jury or trier of fact~~.

~~(B)~~ ~~Apportionment of percentages of fault among defendants is to be determined as specified in subsection (C).~~

~~(C)~~ ~~The jury, or the court if there is no jury, shall:~~

~~(1)~~ ~~specify the amount of damages;~~

~~(2)~~ ~~determine the percentage of fault, if any, of plaintiff and the amount of recoverable damages under applicable rules concerning ‘comparative negligence’; and~~

~~(3)~~ ~~upon a motion by at least one defendant, where there is a verdict under items (1) and (2) above for damages against two or more defendants for the same indivisible injury, death, or damage to property, specify in a separate verdict under the procedures described at subitem (b) below the percentage of liability that proximately caused the indivisible injury, death, damage to property, or economic loss from tortious conduct, as determined by item (1) above, that is attributable to each defendant whose actions are a proximate cause of the indivisible injury, death, or damage to property. In determining the percentage attributable to each defendant, any fault of the plaintiff, as determined by item (2) above, will be included so that the total of the percentages of fault attributed to the plaintiff and to the defendants must be one hundred percent. In calculating the percentage of fault attributable to each defendant, inclusion of any percentage of fault of the plaintiff (as determined in item (2) above) shall not reduce the amount of plaintiff’s recoverable damages (as determined under item (2) above).~~

~~(a)~~ ~~For this purpose, the court may determine that two or more persons are to be treated as a single party. Such treatment must be used where two or more defendants acted in concert or where, by reason of agency, employment, or other legal relationship, a defendant is vicariously responsible for the conduct of another defendant.~~

~~(b)~~ ~~After the initial verdict awarding damages is entered and before the special verdict on percentages of liability is rendered, the parties shall be allowed oral argument, with the length of such argument subject to the discretion of the trial judge, on the determination of the percentage attributable to each defendant. However, no additional evidence shall be allowed.~~

~~(D)~~ ~~A defendant shall retain the right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party.~~

~~(E)~~ ~~Notwithstanding the application of this section, setoff from any settlement received from any potential tortfeasor prior to the verdict shall be applied in proportion to each defendant’s percentage of liability as determined pursuant to subsection (C).~~

~~(F)~~ ~~This section does not apply to a defendant whose conduct is determined to be wilful, wanton, reckless, grossly negligent, or intentional or conduct involving the use, sale, or possession of alcohol or the illegal or illicit use, sale, or possession of drugs.~~

(B) In order to allocate any or all fault to a nonparty, a defendant must affirmatively plead the fault of a nonparty and, absent a showing of good cause, identify the nonparty, if known, or describe the nonparty as specifically as practicable, either by motion or in the initial responsive pleading when defenses are first presented, subject to amendment any time before trial in accordance with the South Carolina Rules of Civil Procedure.

(C) In order to allocate any or all fault to a nonparty and include the named or unnamed nonparty on the verdict form for purposes of apportioning damages, a defendant must prove at trial, by a preponderance of the evidence, the fault of the nonparty in causing the plaintiff’s injuries.”

SECTION 3. Sections 15‑38‑20, 15‑38‑30, 15‑38‑40, 15‑38‑50, and 15‑38‑65 of the 1976 Code are repealed.

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 5. This act takes effect upon approval by the Governor.

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