

SENATE BILL NO. 367
INTRODUCED BY W. MCNUTT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO CIVIL LIABILITY; ELIMINATING JOINT AND SEVERAL LIABILITY AND PROVIDING FOR SEVERAL LIABILITY FOR MOST TORT ACTIONS; AMENDING SECTIONS 25-15-202, 27-1-706, 28-1-301, 28-1-302, 28-1-303, AND 28-11-311, MCA, AND SECTION 11, CHAPTER 429, LAWS OF 1997; REPEALING SECTIONS 27-1-703, 27-1-704, AND 27-1-705, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Several liability.** (1) As used in this section, the following definitions apply:

(a) (i) "Damages" means pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, loss of earnings and earning capacity, loss of income, medical expenses and medical care, rehabilitation services, custodial care, burial costs, loss of use of property, costs of repair or replacement of property, costs of obtaining substitute domestic services, loss of employment, loss of business or employment opportunities, any other objectively verifiable monetary losses, and any other theory of damages such as fear of loss or illness or injury.

(ii) Damages does not include punitive damages.

(b) (i) "Fault" means an act or omission of a person, which is a proximate cause of injury or death to another person or persons, damages to property, tangible or intangible, or economic injury, including but not limited to negligence, malpractice, strict liability, absolute liability, or failure to warn.

(ii) Fault may not include any tort that results from an act or omission committed with a specific wrongful intent.

(c) "Person" means any individual, corporation, company, association, firm, partnership, society, joint-stock company, or any other entity, including any governmental entity or unincorporated association of persons.

(2) Except as provided in subsection (4), in any action for personal injury, property damage, or wrongful death, the liability of each defendant for damages is several only and may not be joint. Each defendant is liable only for the amount of damages allocated to that defendant in direct proportion to that defendant's percentage of fault, and a separate judgment must be rendered against the defendant for that amount. To determine the

amount of judgment to be entered against each defendant, the court, with regard to each defendant, shall multiply the total amount of damages recoverable by the plaintiff by the percentage of each defendant's fault, and that amount is the maximum recoverable against the defendant.

(3) (a) In assessing percentages of fault, the trier of fact shall consider the fault of all persons who contributed to the alleged injury or death or damage to property, tangible or intangible, regardless of whether the person was or could have been named as a party to the suit. Negligence or fault of a nonparty may be considered if the plaintiff entered into a settlement agreement with the nonparty or if the defending party gives notice within 120 days prior to the date of trial that a nonparty was wholly or partially at fault. The notice must be given by filing a pleading in the action designating the nonparty and setting forth the nonparty's name and last-known address or the best identification of the nonparty that is possible under the circumstances, together with a brief statement of the basis for believing the nonparty to be at fault.

(b) This section is not meant to eliminate or diminish any defenses or immunities that currently exist, except as expressly noted in this section. Assessments of percentages of fault for nonparties are used only as a vehicle for accurately determining the fault of named parties. When fault is assessed against nonparties, findings of the nonparty's fault may not subject any nonparty to liability in the existing or any other action or be introduced as evidence of liability in any action.

(4) Joint liability must be imposed on all who consciously and deliberately pursue a common plan or design to commit a tortious act or actively take part in it. Any person held jointly liable under this subsection has a right of contribution from the person's fellow defendant acting in concert. A defendant may be held responsible only for the portion of fault assessed to those with whom the defendant acted in concert under this subsection.

(5) The burden of alleging and proving fault is upon the person who seeks to establish the fault.

(6) This section may not be construed to create a cause of action or in any way to alter the immunity of any person.

Section 2. Section 25-15-202, MCA, is amended to read:

"25-15-202. Effect of discharge -- right of contribution. ~~Except as provided in 27-1-703, the~~ The discharge of a joint debtor operates as a payment to the creditor equal to the proportionate interest of the debtor discharged, but the discharge of ~~such a joint~~ debtor does not prevent ~~his~~ codebtors from enforcing the right of contribution in case they are compelled to pay the whole of the debt."

Section 3. Section 27-1-706, MCA, is amended to read:

"27-1-706. (~~Effective on occurrence of contingency~~) Effect of a release or covenant not to sue.

A release or covenant not to sue given to one of two or more persons potentially liable in tort for the same injury, death, damage, or loss:

- (1) does not discharge any of the other persons from liability for the person's several pro rata share of liability unless the terms of the release or covenant provide for a discharge of liability;
- (2) reduces the aggregate claim against the other persons to the extent of any percentage of fault found by the trier of fact under ~~27-1-705~~ [section 1] to be attributable to the person to whom the release or covenant was given; and
- (3) discharges the person to whom it was given from all liability for contribution."

Section 4. Section 28-1-301, MCA, is amended to read:

~~"28-1-301. (Temporary) Types of obligations involving several persons. Except as provided in 27-1-703, an obligation imposed upon several persons or a right created in favor of several persons may be:~~

- ~~—— (1) joint;~~
- ~~—— (2) several; or~~
- ~~—— (3) joint and several. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)~~

28-1-301. (~~Effective on occurrence of contingency~~) Types of obligations involving several persons. Except as provided in ~~27-1-703 and 27-1-705~~ [section 1], an obligation imposed upon several persons or a right created in favor of several persons may be:

- (1) joint;
- (2) several; or
- (3) joint and several."

Section 5. Section 28-1-302, MCA, is amended to read:

"28-1-302. Joint obligations and covenants to be taken as joint and several. ~~Except as provided in 27-1-703, after March 1, 1895, all~~ All joint obligations and covenants ~~shall~~ must be taken and held to be joint and several obligations and covenants."

Section 6. Section 28-1-303, MCA, is amended to read:

"28-1-303. Right to contribution from joint debtors. ~~Except as provided in 27-1-703, a~~ A party to a joint or joint and several obligation who satisfies more than his that party's share of the claim against all may

require a proportionate contribution from all the parties joined with ~~him~~ that party."

Section 7. Section 28-11-311, MCA, is amended to read:

~~"28-11-311. (Temporary) Person indemnifying liable jointly and severally. Except as provided in 27-1-703, one who indemnifies another against an act to be done by the latter is liable jointly with the person indemnified and separately to every person injured by such act. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)~~

28-11-311. (Effective on occurrence of contingency) Person indemnifying liable jointly and severally. Except as may be otherwise provided in 27-1-703 and 27-1-705 [section 1], a person who indemnifies another person against an act to be done by the ~~latter~~ other person is liable jointly with the person indemnified and separately to every person injured by the act."

Section 8. Section 11, Chapter 429, Laws of 1997, is amended to read:

~~"Section 11. Contingent effective dates **Effective date.** (1) [This act] is effective on May 11, 1997, if ___ Bill No. ___ [LC1155] is not passed and approved July 1, 2003.~~

~~(2) If ___ Bill No. ___ [LC1155] is passed and approved and is invalidated or is found to be unconstitutional by the Montana supreme court, [this act] is effective on the day after the effective date of the invalidation or of the finding of unconstitutionality."~~

NEW SECTION. **Section 9. Repealer.** Sections 27-1-703, 27-1-704, and 27-1-705, MCA, are repealed.

NEW SECTION. **Section 10. Nonseverability.** It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

NEW SECTION. **Section 11. Effective date.** [This act] is effective July 1, 2003.

NEW SECTION. **Section 12. Applicability.** [This act] applies to causes of action that arise on or after [the effective date of this act].

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