

TWELFTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

PUBLIC LAW NO. 12-26

FIRST REGULAR SESSION, 2000

**SENATE BILL
NO. 12-4**

AN ACT

To adopt the Uniform Comparative Fault Act; and for other purposes.

**BE IT ENACTED BY THE TWELFTH NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:**

Section 1. Findings and Purpose. This act may be cited as the “Uniform Comparative Fault Act.”

Section 2. Findings. The harsh all-or-nothing rule of contributory negligence at common law which is the rule of the CNMI has not been properly ameliorated by the several exceptions also developed at common law. Whether the general rule or an exception applies, one party or the other is always treated unfairly. This has been widely recognized and the Federal Government and two-thirds of the States have adopted some form of comparative fault. The Legislature finds that the rule of contributory negligence is simply too harsh and unfair in its implementation. Rather than retaining a legal doctrine that has been rejected by the majority of American jurisdictions, the legislature finds that it is in the best interest of the people to apportion damages on the basis of an individual’s degree of fault.

Section 3. Effect of Contributory Fault.

(a) In an action based on fault seeking to recover damages for injury or death to person or harm to property, any contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for an injury attributable to the claimant’s contributory fault, but does not bar recovery.

This rule applies whether or not under prior law the claimant's contributory fault constituted a defense or was disregarded under applicable legal doctrines, such as last clear chance.

(b) "Fault" includes acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach of warranty, unreasonable assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and contributory to fault.

Section 4. Apportionment of Damages.

(a) In all actions involving fault of more than one party to the action, including third-party defendants and persons who have been released under Section 8 of this Act, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating:

(1) the amount of damages each claimant would be entitled to recover if contributory fault is disregarded; and

(2) the percentage of the total fault of all the parties to each claim that is allocated to each claimant, defendant, third-party defendant, and person who has been released from liability under Section 8 of this Act. For this purpose the court may determine that two or more persons are to be treated as a single party.

(b) In determining the percentage of fault, the trier of fact shall consider both the nature of the conduct of each party at fault and the extent of the causal relation between the conduct and the damages claimed.

(c) The court shall determine the award of damages to each claimant in accordance with the findings, subject to any reduction under Section 8 of this Act, and enter judgment against each party liable on the basis of rules of joint-and-several liability. For purposes of contribution under Sections 6 and 7 of this Act, the court

also shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault.

(d) Upon motion made not later than one year after judgement is entered, the court shall determine whether all or part of a party's equitable share of the obligation is uncollectible from that party, and shall reallocate any uncollectible amount among the other parties, including a claimant at fault, according to their respective percentages of fault. The party whose liability is reallocated is nonetheless subject to contribution and to any continuing liability to the claimant on the judgment.

Section 5. Set-Off. A claim and counterclaim shall not be set off against each other, except by agreement of both parties. On motion, however, the court, if it finds that the obligation of either party is likely to be uncollectible, may order that both parties make payment into court for distribution. The court shall distribute the funds received and declare obligations discharged as if the payment into court by either party had been a payment to the other party and any distribution of those funds back to the party making payment had been a payment to him by the other party.

Section 6. Right of Contribution.

(a) A right of contribution exists between or among two or more persons who are jointly and severally liable upon the same indivisible claim for the same injury, death, or harm, whether or not judgment has been recovered against all or any of them. It may be enforced either in the original action or by a separate action brought for that purpose. The basis for contribution is each person's equitable share of the obligation, including the equitable share of a claimant at fault, as determined in accordance with the provisions of Section 4 of this Act.

(b) Contribution is available to a person who enters into a settlement with a claimant only (1) if the liability of the person against whom contribution is sought has been extinguished and (2) to the extent that the amount paid in settlement was reasonable.

Section 7. Enforcement of Contribution.

(a) If the proportionate fault of the parties to a claim for contribution has been established previously by the court, as provided by Section 4 of this Act, a party paying more than his equitable share of the obligation, upon motion, may recover judgment for contribution.

(b) If the proportionate fault of the parties to the claim for contribution has not been established by the court, contribution may be enforced in a separate action, whether or not a judgment has been rendered against either the person seeking contribution or the person from whom contribution is being sought.

(c) If a judgment has been rendered, the action for contribution must be commenced within one year after the judgment becomes final. If no judgment has been rendered, the person bringing the action for contribution either must have (1) discharged by payment the common liability within the period of the statute of limitations applicable to the claimant's right of action against him and commenced the action for contribution within one year after payment, or (2) agreed while action was pending to discharge the common liability and, within one year after the agreement, have paid the liability and commenced an action for contribution.

Section 8. Effect of Release. A release, covenant not to sue, or similar agreement entered into by a claimant and a persona liable discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides. However, the claim of the releasing person against other persons is reduced by the amount of the released person's equitable share of the obligation, determined in accordance with the provisions of Section 4 of this Act.

Section 9. Uniformity of Application and Construction. This Act shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this Act among jurisdictions enacting it.

Section 10. Prospective Effect. This Act applies to all causes of action accruing after its effective date.

Section 11. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent

jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 12. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability civil or criminal, which shall already be in existence at the date this Act becomes effective.

Section 13. Effective Date. This Act shall take effect upon its approval by the Governor, or upon its becoming law without such approval.

CERTIFIED BY:

ATTESTED BY:

/s/ Paul A. Manglona
PAUL A. MANGLONA
President of the Senate

/s/ Joaquin G. Adriano
JOAQUIN G. ADRIANO
Senate Legislative Secretary

Approved this 19th day of October, 2000

/s/ Pedro P. Tenorio
PEDRO P. TENORIO
Governor
Commonwealth of the Northern Mariana Islands