

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003

# A Bill

HOUSE BILL 1263

4  
5 By: Representatives Hathorn, C. Taylor, Ledbetter, Verkamp, Childers, Thyer, Lamoureux  
6  
7

## For An Act To Be Entitled

8  
9 UNIFORM APPORTIONMENT OF TORT RESPONSIBILITY ACT.  
10

### Subtitle

11  
12 UNIFORM APPORTIONMENT OF TORT  
13 RESPONSIBILITY ACT.  
14  
15

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
17

18 SECTION 1. Short title. This act may be cited as the Uniform  
19 Apportionment of Tort Responsibility Act.  
20

21 SECTION 2. Definitions. In this act:

22 (1) "Contributory fault" includes contributory negligence, misuse of a  
23 product, unreasonable failure to avoid or mitigate harm, and assumption of  
24 risk unless the risk is expressly assumed in a legally enforceable release or  
25 similar agreement;

26 (2) "Person" means an individual, corporation, business trust, estate,  
27 trust, partnership, limited liability company, association, joint venture,  
28 government; governmental subdivision, agency, or instrumentality; public  
29 corporation, or any other legal or commercial entity;

30 (3) "Released person" means a person that would be liable for damages  
31 to a claimant for personal injury or harm to property if the person had not  
32 been discharged from liability under Section 8 or 9; and

33 (4) "Responsibility", with respect to a claim for damages for personal  
34 injury or harm to property, means the legal consequences of an act or  
35 omission that is the basis for liability or a defense in whole or in part.  
36



1           SECTION 3. Effect of contributory fault.

2           (a) Except as otherwise provided in subsection (b), in an action  
 3 seeking damages for personal injury, death, or harm to property, or on a  
 4 claim for which the claimant may be subject to a defense in whole or part  
 5 based on contributory fault, any contributory fault chargeable to the  
 6 claimant diminishes the amount that the claimant otherwise would be entitled  
 7 to recover as compensatory damages for the injury or harm by the percentage  
 8 of responsibility assigned to the claimant pursuant to Section 4.

9           (b) If the claimant’s contributory fault is equal to or greater than  
 10 the combined responsibility of all other parties and released persons whose  
 11 responsibility is determined to have caused personal injury to or harm to  
 12 property of the claimant, the claimant may not recover any damages.

13           (c) In a jury trial, the court shall instruct the jury regarding the  
 14 legal effect of its answers to interrogatories, made pursuant to Section 4,  
 15 on a claimant’s right to recover damages under subsection (b).

16  
 17           SECTION 4. Finding damages; Attribution of responsibility.

18           (a) In an action to recover damages for personal injury or harm to  
 19 property involving the responsibility of more than one party or a released  
 20 person, the court shall instruct the jury to answer special interrogatories  
 21 or, if there is no jury, make findings:

22                   (1) Stating the amount of damages that a claimant would be  
 23 entitled to recover if any contributory fault were disregarded;

24                   (2) Stating, as to each claim, the percentage of the total  
 25 responsibility of all the parties and released persons attributed to each  
 26 claimant, defendant, and released person that caused the injury or harm;

27                   (3) Regarding whether any of the parties or released persons  
 28 acted in concert or with an intent to cause personal injury or harm to  
 29 property; and

30                   (4) Regarding any other issue of fact fairly raised by the  
 31 evidence which is necessary to make a determination under Section 5 or enter  
 32 judgment under Section 6.

33           (b) In determining percentages of responsibility, the trier of fact  
 34 shall consider:

35                   (1) The nature of the conduct of each party and released person  
 36 determined to be responsible; and

1           (2) The extent of the causal relation between the conduct and  
 2 the damages claimed.

3           (c) The court shall determine the extent to which the responsibility  
 4 of one party, which is based on the act or omission of another party,  
 5 warrants that the parties be treated as a single party for the purpose of  
 6 submitting interrogatories to the jury or making findings under subsection  
 7 (a).

8  
 9           SECTION 5. Determining damage award; Reallocation of uncollectible  
 10 share.

11           (a) After the trier of fact has answered interrogatories or made  
 12 findings pursuant to Section 4, the court shall determine, in accordance with  
 13 the percentages of responsibility found, the monetary amount of any award of  
 14 damages to a claimant, the amount of the several share for which each party  
 15 found liable is responsible, and any amount attributable to a released  
 16 person.

17           (b) After the court has made its determinations pursuant to subsection  
 18 (a), a claimant, no later than thirty (30) days after entry of judgment, may  
 19 move the court to determine whether all or part of the amount of the several  
 20 share for which a party is liable will not be reasonably collectible. If the  
 21 court based on a preponderance of the evidence determines that the party's  
 22 share will not be reasonably collectible, the court shall make findings  
 23 reallocating the uncollectible share severally to the other parties,  
 24 including the claimant, and any released person. Reallocation must be made  
 25 in the proportion that each party's and released person's respective  
 26 percentage of responsibility bears to the total of the percentages of  
 27 responsibility attributed to the parties, including the claimant, and any  
 28 released person but not including the percentage being reallocated.

29           (c) A party whose liability is reallocated remains liable to a  
 30 claimant for any additional share of responsibility allocated to the  
 31 claimant. A party that discharges an additional share of responsibility  
 32 allocated to it pursuant to subsection (b) has a right of reimbursement from  
 33 the party from which the share was reallocated. Upon motion, the court in  
 34 the judgment entered under Section 6 shall declare the rights and obligations  
 35 resulting from the reallocation.

36           (d) Reallocation does not make a released person liable for any

1 reallocated share of responsibility unless the release or other agreement so  
 2 provides.

3 (e) If a motion for reallocation is made, any party may conduct  
 4 discovery regarding any issue relevant to the motion.

5  
 6 SECTION 6. Entering judgment. After determining an award of damages  
 7 to a claimant and the amount of the several share, including any reallocated  
 8 share, for which each party found liable is responsible, the court shall  
 9 enter judgment severally against each party adjudged liable, except in the  
 10 following situations:

11 (1) If two or more parties adjudged liable acted in concert or with an  
 12 intent to cause personal injury to, or harm to property of, the claimant, the  
 13 court shall enter judgment jointly and severally against the parties for  
 14 their joint share;

15 (2) If a party is adjudged liable for failing to prevent another party  
 16 from intentionally causing personal injury to, or harm to property of, the  
 17 claimant, the court shall enter judgment jointly and severally against the  
 18 parties for their combined shares of responsibility;

19 (3) If a party is adjudged liable for the act or omission of another  
 20 party under Section 4(c), the court shall enter judgment jointly and  
 21 severally against the parties for their joint share; and

22 (4) If a statute of this state, other than this act, so requires, the  
 23 court shall enter judgment jointly and severally or otherwise conform the  
 24 judgment to the statute.

25  
 26 SECTION 7. Right of contribution and indemnity; Third-party action.

27 (a) Except as otherwise provided in subsection (b), a party that is  
 28 jointly and severally liable with one or more other parties under this act  
 29 has a right of contribution from another party jointly liable for any amount  
 30 the party pays in excess of the several amount for which the party is  
 31 responsible. A party against which contribution is sought is not liable for  
 32 more than the monetary amount of the party's several share of responsibility  
 33 determined pursuant to Section 5.

34 (b) A party that is adjudged liable for the act or omission of another  
 35 party under Section 6(3) has a right of indemnification from the other party.

36 (c) A party that is subject to liability for injury to, or harm to

1 property of, a claimant under this act has a right:

2 (1) To join a person that is also subject to liability to the  
3 claimant for all or part of the same injury or harm if the claimant has not  
4 sued the person; and

5 (2) To seek contribution or indemnity, whichever is appropriate,  
6 from another person whose liability is not determined in the proceeding in  
7 which the party is adjudged liable if the other person is responsible for all  
8 or part of the claimant's injury or harm.

9 (d) A claim for contribution or indemnity may be asserted in the  
10 original action or in a separate action.

11

12 SECTION 8. Effect of release.

13 (a) A release, covenant not to sue, covenant not to execute a  
14 judgment, or similar agreement by a claimant and person subject to liability  
15 discharges the person from liability to the claimant to the extent provided  
16 in the agreement and from liability for contribution to any other person  
17 subject to liability to the claimant for the same injury or harm. The  
18 agreement does not discharge any other person subject to liability upon the  
19 same claim unless the agreement so provides.

20 (b) The amount of the claim of the releasing person under subsection  
21 (a) against other persons jointly and severally liable for the same injury or  
22 harm for which the released person would have been liable is reduced by the  
23 percentage of responsibility attributed to the released person pursuant to  
24 Section 4.

25 (c) A release, covenant not to sue, covenant not to execute a  
26 judgment, or similar agreement extinguishes any claim for contribution or  
27 indemnity that the released person would have had against another person that  
28 would have been jointly and severally liable with the released person.

29

30 SECTION 9. Reduction of workers' compensation lien and subrogation  
31 right; Notice and intervention.

32 (a) If an employer or workers' compensation insurer asserts a lien or  
33 right of subrogation under the "Workers' Compensation Law", Arkansas Code §§  
34 11-9-101 et seq., the employer or insurer is deemed to have had its  
35 obligation to the employee for the compensation benefits paid or payable  
36 discharged under Section 8 as if the employer or insurer had received a

1 release, covenant not to sue, or covenant not to execute a judgment from, or  
 2 entered a similar agreement with, the employee. In such a case, any  
 3 percentage of responsibility that the employer would have had for the  
 4 employee's injury, were the employer not immune under the workers'  
 5 compensation law, must be determined as that of a released person pursuant to  
 6 Section 4 and the lien or right of subrogation is reduced by the monetary  
 7 amount of the employer's percentage of responsibility, if any, in the  
 8 employee's action against the third party.

9 (b) A party asserting that an employer's or workers' compensation  
 10 insurer's lien or right of subrogation should be reduced under subsection (a)  
 11 because of the employer's fault shall give notice to the employer or workers'  
 12 compensation insurer. In that case, the employer or insurer may intervene in  
 13 the employee's action for personal injury.

14  
 15 SECTION 10. Uniformity of application and construction. In applying  
 16 and construing this Uniform Act, consideration must be given to the need to  
 17 promote uniformity of the law with respect to its subject matter among States  
 18 that enact it.

19  
 20 SECTION 11. Applicability. This act applies to actions originally  
 21 filed on or after its effective date.

22  
 23 SECTION 12. Repeals. The Uniform Contribution Among Tortfeasors Act,  
 24 Arkansas Code §§ 16-61-201 through 212, is repealed.

25  
 26 ~~16-61-201. "Joint tortfeasors" defined.~~

27 ~~For the purpose of this subchapter the term "joint tortfeasors" means~~  
 28 ~~two (2) or more persons jointly or severally liable in tort for the same~~  
 29 ~~injury to person or property, whether or not judgment has been recovered~~  
 30 ~~against all or some of them.~~

31  
 32 ~~16-61-202. Right of contribution—Accrual—Pro rata share.~~

33 ~~(1) The right of contribution exists among joint tortfeasors.~~

34 ~~(2) A joint tortfeasor is not entitled to a money judgment for~~  
 35 ~~contribution until he has by payment discharged the common liability or has~~  
 36 ~~paid more than his pro rata share thereof.~~

1           ~~(3) A joint tortfeasor who enters into a settlement with the injured~~  
 2 ~~person is not entitled to recover contribution from another joint tortfeasor~~  
 3 ~~whose liability to the injured person is not extinguished by the settlement.~~

4           ~~(4) When there is such a disproportion of fault among joint~~  
 5 ~~tortfeasors as to render inequitable an equal distribution among them of the~~  
 6 ~~common liability by contribution, the relative degrees of fault of the joint~~  
 7 ~~tortfeasors shall be considered in determining their pro rata shares solely~~  
 8 ~~for the purpose of determining their rights of contribution among themselves,~~  
 9 ~~each remaining severally liable to the injured person for the whole injury as~~  
 10 ~~at common law.~~

11  
 12           ~~16-61-203. Judgment against one tortfeasor.~~

13           ~~Nothing in this subchapter shall be construed to effect the several~~  
 14 ~~joint tortfeasors' common law liability to have judgment recovered and~~  
 15 ~~payment made from them individually by the injured person for the whole~~  
 16 ~~injury; but the recovery of a judgment by the injured person against one (1)~~  
 17 ~~joint tortfeasor does not discharge the other joint tortfeasor.~~

18  
 19           ~~16-61-204. Release—Effect on injured person's claim.~~

20           ~~A release by the injured person of one (1) joint tortfeasor, whether~~  
 21 ~~before or after judgment, does not discharge the other tortfeasors unless the~~  
 22 ~~release so provides; but reduces the claim against the other tortfeasors in~~  
 23 ~~the amount of the consideration paid for the release, or in any amount or~~  
 24 ~~proportion by which the release provides that the total claim shall be~~  
 25 ~~reduced, if greater than the consideration paid.~~

26  
 27           ~~16-61-205. Release—Effect on right of contribution.~~

28           ~~A release by the injured person of one (1) joint tortfeasor does not~~  
 29 ~~relieve him from liability to make contribution to another joint tortfeasor~~  
 30 ~~unless the release is given before the right of the other tortfeasor to~~  
 31 ~~secure a money judgment for contribution has accrued, and provides for a~~  
 32 ~~reduction, to the extent of the pro rata share of the released tortfeasor, of~~  
 33 ~~the injured person's damages recoverable against all the other tortfeasors.~~

34  
 35           ~~16-61-206. Indemnity.~~

36           ~~This subchapter does not impair any right of indemnity under existing~~

1 law.

2

3 ~~16-61-207. Third party practice—Amended complaints—Counterclaims~~  
 4 ~~and cross complaints—Motion practice.~~

5 ~~(1) Before answering, a defendant seeking contribution in a tort~~  
 6 ~~action may move ex parte or, after answering, on notice to the plaintiff, for~~  
 7 ~~leave as a third party plaintiff to serve a summons and complaint upon a~~  
 8 ~~person not a party to the action who is or may be liable as a joint~~  
 9 ~~tortfeasor to him or to the plaintiff for all or part of the plaintiff's~~  
 10 ~~claim against him. If the motion is granted and the summons and complaint are~~  
 11 ~~served, the person so served, hereinafter called the third party defendant,~~  
 12 ~~shall make his defense to the complaint of the plaintiff and to the third~~  
 13 ~~party complaint in the same manner as defenses are made by an original~~  
 14 ~~defendant to an original complaint. The third party defendant may assert any~~  
 15 ~~defenses which the third party plaintiff has to the plaintiff's claim. The~~  
 16 ~~plaintiff may amend his pleadings to assert against the third party defendant~~  
 17 ~~any claim which the plaintiff might have asserted against the third party~~  
 18 ~~defendant had he been joined originally as a defendant. The third party~~  
 19 ~~defendant is bound by the adjudication of the third party plaintiff's~~  
 20 ~~liability to the plaintiff as well as of his own liability to the plaintiff~~  
 21 ~~and to the third party plaintiff. A third party defendant may proceed under~~  
 22 ~~this section against any person not a party to the action who is or may be~~  
 23 ~~liable as a joint tortfeasor to him or to the third party plaintiff for all~~  
 24 ~~or part of the claim made in the action against the third party defendant.~~

25 ~~(2) When a counterclaim is asserted against a plaintiff he may cause a~~  
 26 ~~third party to be brought in under circumstances which under this section~~  
 27 ~~would entitle a defendant to do so.~~

28 ~~(3) A pleader may either (a) state as a cross claim against a coparty~~  
 29 ~~any claim that the coparty is or may be liable to the cross claimant for all~~  
 30 ~~or part of a claim asserted in the action against the cross claimant; or (b)~~  
 31 ~~move for judgment for contribution against any other joint judgment debtor,~~  
 32 ~~where in a single action a judgment has been entered against joint~~  
 33 ~~tortfeasors one (1) of whom has discharged the judgment by payment or has~~  
 34 ~~paid more than his pro rata share thereof. If relief can be obtained as~~  
 35 ~~provided in this subsection no independent action shall be maintained to~~  
 36 ~~enforce the claim for contribution.~~



1           ~~(4) The court may render such judgments, one (1) or more in number, as~~  
2 ~~may be suitable under the provisions of this subchapter.~~

3           ~~(5) As among joint tortfeasors against whom a judgment has been~~  
4 ~~entered in a single action, the provisions of § 16-61-202(4) apply only if~~  
5 ~~the issue of proportionate fault is litigated between them by cross-complaint~~  
6 ~~in that action.~~

7           ~~(6) In the event plaintiff or defendant fails to serve third parties~~  
8 ~~in such time and manner as may be required for third parties to be brought in~~  
9 ~~and for service on the same to have matured on the day set for the original~~  
10 ~~proceedings between the original parties, such failure shall not delay~~  
11 ~~prosecution of proceedings between the original parties or impair the~~  
12 ~~original defendant's right of contribution.~~

13  
14           ~~16-61-208. Constitutionality.~~

15           ~~If any provision of this subchapter, or the application thereof, to any~~  
16 ~~person or circumstances is held invalid, such invalidity shall not affect~~  
17 ~~other provisions or applications of the subchapter which can be given effect~~  
18 ~~without the invalid provision or application, and to this end the provisions~~  
19 ~~of this subchapter are declared to be severable.~~

20  
21           ~~16-61-209. Uniformity of interpretation.~~

22           ~~This subchapter shall be so interpreted and construed as to effectuate~~  
23 ~~its general purpose to make uniform the law of those states that enact it.~~

24  
25           ~~16-61-210. Short title.~~

26           ~~This subchapter may be cited as the "Uniform Contribution Among~~  
27 ~~Tortfeasors Act."~~

28  
29           ~~16-61-211. Repeal.~~

30           ~~All acts or parts of acts which are inconsistent with the provisions of~~  
31 ~~this subchapter are hereby repealed.~~

32  
33           ~~16-61-212. Emergency clause.~~

34           ~~Because the passage of this subchapter will invite parties litigant to~~  
35 ~~pursue dilatory tactics in the courts of this state until its effective date~~  
36 ~~in order that they may take advantage of its provisions, contrary to the~~

1 ~~public health, safety, and welfare, an emergency is hereby declared to exist~~  
2 ~~and this subchapter shall take effect and be in full force from and after its~~  
3 ~~passage and approval.~~

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36