

## 1 HOUSE BILL NO. 303

2 INTRODUCED BY A. NICASTRO

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING THE LAW REGARDING  
5 APPORTIONMENT; PROVIDING THAT A PARTY MAY ARGUE A NONPARTY IS THE SOLE CAUSE OF  
6 INJURIES WITHOUT SEEKING APPORTIONMENT; AND AMENDING SECTION 27-1-703, MCA."

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

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

11 **"27-1-703. (Temporary) Multiple defendants -- determination of liability.** (1) Except as provided in  
12 subsections (2) and (3), if the negligence of a party to an action is an issue, each party against whom recovery  
13 may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the  
14 right of contribution from any other person whose negligence may have contributed as a proximate cause to the  
15 injury complained of.

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

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

23 (4) On motion of a party against whom a claim is asserted for negligence resulting in death or  
24 injury to person or property, any other person whose negligence may have contributed as a proximate cause to  
25 the injury complained of may be joined as an additional party to the action. For purposes of determining the  
26 percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of  
27 fact shall consider the negligence of the claimant, injured person, defendants, and third-party defendants. The  
28 liability of persons released from liability by the claimant and persons with whom the claimant has settled must

1 also be considered by the trier of fact, as provided in subsection (6). The trier of fact shall apportion the  
2 percentage of negligence of all persons listed in this subsection. Nothing contained in this section makes any  
3 party indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.

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

9 (6) (a) In an any action ~~based on negligence, strict liability as provided in 27-1-719(1), or on a~~  
10 ~~breach of warranty, including but not limited to the provisions of 30-2-314, 30-2-315, or 30-11-215,~~ a defendant  
11 may assert as a defense that the damages of the claimant were caused ~~in full or in part~~ by a person with whom  
12 the claimant has settled or whom the claimant has released from liability and may seek apportionment by the  
13 finder of fact.

14 (b) In determining the percentage of liability attributable to persons who are parties to the action,  
15 the trier of fact shall consider the negligence of persons released from liability by the claimant or with whom the  
16 claimant has settled. A finding of negligence of a person with whom the claimant has settled or who has been  
17 released from liability by the claimant is not a presumptive or conclusive finding as to that person for purposes  
18 of a prior or subsequent action involving that person.

19 (c) Except for persons who have settled with or have been released by the claimant, ~~comparison~~  
20 apportionment of fault on a verdict form with any of the following persons is prohibited:

- 21 (i) a person who is immune from liability to the claimant;  
22 (ii) a person who is not subject to the jurisdiction of the court; or  
23 (iii) any other person who could have been, but was not, named as a third party.

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

28 (e) A defendant who alleges that a person released by the claimant or with whom the claimant has

1 settled is at fault in the matter has the burden of proving:

2 (i) the negligence of the person whom the claimant has released or with whom the claimant has  
3 settled;

4 (ii) any standard of care applicable to the person whom the claimant released or with whom the  
5 claimant settled; and

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

8 (f) A defendant alleging that a settled or released person is at fault in the matter shall affirmatively  
9 plead the settlement or release as a defense in the answer. A defendant who gains actual knowledge of a  
10 settled or released person after the filing of that defendant's answer may plead the defense of settlement or  
11 release with reasonable promptness, as determined by the trial court, in a manner that is consistent with:

12 (i) giving the defendant a reasonable opportunity to discover the existence of a settled or released  
13 person;

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

17 (iii) giving the claimant a reasonable opportunity to defend against the defense.

18 (g) If a defendant alleges that a settled or released person is at fault in the matter and seeks to  
19 apportion fault on the verdict form, the defendant shall notify each person who the defendant alleges caused  
20 the claimant's injuries, ~~in whole or in part~~. Notification must be made by mailing the defendant's answer to each  
21 settled or released person at the person's last-known address by certified mail, return receipt requested.

22 (7) This section applies to the apportionment of fault on a verdict form by the finder of fact. Nothing  
23 in this section prevents a party in a lawsuit from presenting evidence and arguing that a nonparty, regardless of  
24 the nonparty's status, was the sole cause of the claimant's injuries. (Terminates on occurrence of contingency--  
25 sec. 11(2), Ch. 429, L. 1997.)

26 **27-1-703. (Effective on occurrence of contingency) Multiple defendants -- determination of**  
27 **liability.** Each party against whom recovery may be allowed is jointly and severally liable for the amount that  
28 may be awarded to the claimant but has the right of contribution from any other person whose negligence may

1 have contributed as a proximate cause to the injury complained of."

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