

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE - PROCEDURE IN PARTICULAR
ACTIONS

Introduced By: Senator Joshua Miller

Date Introduced: February 01, 2017

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. Chapter 10-6 of the General Laws entitled "Contribution Among Joint
Tortfeasors" is hereby repealed in its entirety.

~~CHAPTER 10-6~~

~~Contribution Among Joint Tortfeasors~~

~~10-6-1. Short title.~~

~~This chapter may be cited as the "Uniform Contribution Among Tortfeasors Act".~~

~~10-6-2. "Joint tortfeasors" defined.~~

~~For the purposes of this chapter, the term "joint tortfeasors" means two (2) or more
persons jointly or severally liable in tort for the same injury to person or property, whether or not
judgment has been recovered against all or some of them; provided, however, that a master and
servant or principal and agent shall be considered a single tortfeasor.~~

~~10-6-3. Right of contribution declared.~~

~~The right of contribution exists among joint tortfeasors; provided however, that when
there is a disproportion of fault among joint tortfeasors, the relative degree of fault of the joint
tortfeasors shall be considered in determining their pro rata shares.~~

~~10-6-4. Payment as prerequisite -- Limitation of actions.~~

~~A joint tortfeasor is not entitled to a final money judgment for contribution until he or she
has by payment discharged the common liability or has paid more than his or her pro rata share of~~

1 ~~the final money judgment. Actions for contribution shall be commenced not later than one year~~
2 ~~next after the first payment made by a joint tortfeasor which has discharged the common liability~~
3 ~~or is more than his or her pro rata share thereof.~~

4 **10-6-5. Separate settlement with injured person.**

5 ~~A joint tortfeasor who enters into a settlement with the injured person is not entitled to~~
6 ~~recover contribution from another joint tortfeasor whose liability to the injured person is not~~
7 ~~extinguished by the settlement.~~

8 **10-6-6. Effect of judgment against one tortfeasor.**

9 ~~The recovery of a judgment by the injured person against one joint tortfeasor does not~~
10 ~~discharge the other joint tortfeasors.~~

11 **10-6-7. Effect of release of one tortfeasor on liability of others.**

12 ~~A release by the injured person of one joint tortfeasor, whether before or after judgment,~~
13 ~~does not discharge the other tortfeasors unless the release so provides; but reduces the claim~~
14 ~~against the other tortfeasors in the amount of the consideration paid for the release, or in any~~
15 ~~amount or proportion by which the release provides that the total claim shall be reduced, if~~
16 ~~greater than the consideration paid.~~

17 ~~However, in circumstances where there are twenty five (25) or more deaths from a~~
18 ~~single occurrence, then a release by the injured person of one joint tortfeasor given as part of a~~
19 ~~judicially approved good faith settlement, whether before or after judgment, does not discharge~~
20 ~~the other tortfeasors unless the release so provides but reduces the claim against the other~~
21 ~~tortfeasors in the amount of the consideration paid for the release.~~

22 **10-6-8. Liability to contribution of tortfeasor released by injured person.**

23 ~~A release by the injured person of one joint tortfeasor does not relieve him or her from~~
24 ~~liability to make contribution to another joint tortfeasor unless the release is given before the right~~
25 ~~of the other tortfeasor to secure a money judgment for contribution has accrued, and provides for~~
26 ~~a reduction, to the extent of the pro rata share of the released tortfeasor, of the injured person's~~
27 ~~damages recoverable against all the other tortfeasors.~~

28 ~~However, in circumstances where there are twenty five (25) or more deaths from a~~
29 ~~single occurrence, a release by the injured person of one joint tortfeasor given as part of a~~
30 ~~judicially approved good faith settlement does not relieve him or her from liability to make~~
31 ~~contribution to another joint tortfeasor unless the release is given before the right of the other~~
32 ~~tortfeasor to secure a money judgment for contribution has accrued, and provides for a reduction~~
33 ~~to the extent of the amount of the consideration paid for the release.~~

34 **10-6-9. Right of indemnity preserved.**

~~This chapter does not impair any right of indemnity under existing law.~~

10-6-10. Uniformity of construction.

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

10-6-11. Severability.

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

SECTION 2. Title 10 of the General Laws entitled "COURTS AND CIVIL PROCEDURE-PROCEDURE IN PARTICULAR ACTIONS" is hereby amended by adding thereto the following chapter:

CHAPTER 6.1

APPORTIONMENT OF TORT RESPONSIBILITY ACT

10-6.1-1. Short title.

This chapter shall be known and may be cited as the "Apportionment of Tort Responsibility Act."

10-6.1-2. Definitions.

In this chapter:

(1) "Contributory fault" means and includes comparative negligence, misuse of a product, and unreasonable failure to avoid or mitigate harm.

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

(3) "Released person" means a person that would be liable for damages to a claimant for personal injury or harm to property if the person had not been discharged from liability under §10-6.1-8.

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

10-6.1-3. Effect of contributory fault.

In an action seeking damages for personal injury or harm to property based on negligence
or on any other claim for which the claimant may be subject to a defense in whole or part based

1 on contributory fault, any contributory fault chargeable to the claimant diminishes the amount
2 that the claimant otherwise would be entitled to recover as compensatory damages for the injury
3 or harm by the percentage of responsibility assigned to the claimant pursuant to §10-6.1-4.

4 **10-6.1-4. Finding damages – Attribution of responsibility.**

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

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

10 (2) Stating the percentage of the total responsibility of all the parties and released persons
11 attributed to each claimant, defendant and released person that caused the injury or harm;

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

14 (4) Regarding any other issue of fact fairly raised by the evidence which is necessary to
15 make a determination under §10-6.1-5 or enter judgment under §10-6.1-6.

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

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

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

20 (c) The court shall determine the extent to which the responsibility of one party, which is
21 based on the act or omission of another party, warrants that the parties be treated as a single party
22 for the purpose of submitting interrogatories to the jury or making findings under subsection (a)
23 of this section.

24 **10-6.1-5. Determining damage award – Reallocation of uncollectible share.**

25 (a) After the trier of fact has answered interrogatories or made findings pursuant to §10-
26 6.1-4, the court shall determine, in accordance with the percentages of responsibility found, the
27 monetary amount of any award of damages to a claimant, the amount of the several share for
28 which each party found liable is responsible, and any amount attributable to a released person.

29 (b) After the court has made its determinations pursuant to subsection (a) of this section,
30 any party, no later than ninety (90) days after the entry of judgment for the plaintiff, may move
31 the court to determine whether all or part of the amount of the several share for which a party is
32 liable will not be reasonably collectible and request reallocation. If the court based on a
33 preponderance of the evidence determines that the party's share will not be reasonably collectible,
34 the court shall make findings reallocating the uncollectible share severally to the other parties,

1 including the claimant, and any released person. Reallocation must be made in the proportion that
2 each party's and released person's respective percentage of responsibility bears to the total of the
3 percentages of responsibility attributed to the parties, including the claimant, and any released
4 person but not including the percentage being reallocated.

5 (c) A party whose liability is reallocated remains liable to a claimant for any additional
6 share of responsibility allocated to the claimant. A party that discharges an additional share of
7 responsibility allocated to it pursuant to subsection (b) of this section has a right of
8 reimbursement from the party from which the share was reallocated. Upon motion, the court in
9 the judgment entered under §10-6.1-6 shall declare the rights and obligations resulting from the
10 reallocation, including any rights and obligations with regard to subrogation or a secured position.
11 If any party to whom reallocation has been made holds a secured position with regard to the share
12 reallocated, each party to whom reallocation has been made has a proportionate share in the
13 secured position. Any amount recovered under this subsection from a party whose liability has
14 been reallocated must be distributed to each of the parties to whom the reallocation was made in
15 the same proportion as the original reallocation.

16 (d) Reallocation does not make a released person liable for any reallocated share of
17 responsibility unless the release or other agreement so provides.

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

20 **10-6.1-6. Entering and modifying judgment.**

21 (a) After determining an award of damages to a claimant and the amount of the several
22 share, including any reallocated share, for which each party found liable is responsible, the court
23 shall enter judgment severally against each party adjudged liable, except in the following
24 situations:

25 (1) If two (2) or more parties adjudged liable acted in concert or with an intent to cause
26 personal injury to, or harm to property of, the claimant, the court shall enter judgment jointly and
27 severally against the parties for their joint share.

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

31 (3) If a party is adjudged liable for the act or omission of another party under §10-6.1-
32 4(c), the court shall enter judgment jointly and severally against the parties for their joint share.

33 (4) If another general law so requires, the court shall enter judgment jointly and severally
34 or otherwise conform the judgment to such statute.

1 (b) If a court grants a motion for reallocation pursuant to §10-6.1-5 after judgment is
2 entered, the court shall modify the judgment to declare the rights and obligations resulting from
3 the reallocation, including any rights and obligations with regard to subrogation or a secured
4 position.

5 **10-6.1-7. Right of contribution and indemnity – Third party action.**

6 (a) Except as otherwise provided in subsection (b) of this section, a party that is jointly
7 and severally liable with one or more other parties under this chapter has a right of contribution
8 from another party jointly liable for any amount the party pays in excess of the several amount for
9 which the party is responsible. A party against which contribution is sought is not liable for more
10 than the monetary amount of the party's several share of responsibility determined pursuant to
11 §10-6.1-5.

12 (b) A party that is adjudged liable for the act or omission of another party under §10-6.1-
13 6 has a right of indemnification from the other party.

14 (c) A party that is subject to liability for injury to, or harm to property of, a claimant
15 under this chapter has a right:

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

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

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

23 **10-6.1-8. Effect of release.**

24 (a) A release, covenant not to sue, covenant not to execute a judgment, or similar
25 agreement by a claimant and person subject to liability discharges the person from liability to the
26 claimant to the extent provided in the agreement and from liability for contribution to any other
27 person subject to liability to the claimant for the same injury or harm. The agreement does not
28 discharge any other person subject to liability upon the same claim unless the agreement so
29 provides.

30 (b) The amount of the claim of the releasing person under subsection (a) of this section
31 against other persons jointly and severally liable for the same injury or harm for which the
32 released person would have been liable is reduced by the percentage of responsibility attributed to
33 the released person pursuant to §10-6.1-4.

34 (c) A release, covenant not to sue, covenant not to execute a judgment or similar

1 agreement extinguishes any claim for contribution or indemnity that the released person would
2 have had against another person that would have been jointly and severally liable with the
3 released person.

4 **10-6.1-9. Severability clause.**

5 If any provision of this chapter or its application to any person or circumstance is held
6 invalid, the invalidity does not affect other provisions or applications of this chapter which can be
7 given effect without the invalid provision or application, and to this end the provisions of this
8 chapter are severable.

9 SECTION 3. This act shall take effect upon passage and apply to actions filed on or after
10 its effective date.

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LC000720
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO COURTS AND CIVIL PROCEDURE - PROCEDURE IN PARTICULAR
ACTIONS

1 This act would repeal the law regarding contributions among joint tortfeasors and replace
2 it with the Apportionment of Tort Responsibility Act, in order to provide a uniform and
3 comprehensive system for the apportionment of tort responsibility.

4 This act would take effect upon passage and apply to actions filed on or after its effective
5 date.

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