**South Carolina General Assembly**

123rd Session, 2019-2020

**H. 3758**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Hiott, Allison, Anderson, Bales, Ballentine, Bannister, Bennett, Blackwell, Bradley, Burns, Chellis, Chumley, Clemmons, B. Cox, Daning, Davis, Erickson, Felder, Finlay, Forrest, Forrester, Gagnon, Govan, Herbkersman, Hewitt, Hixon, Howard, Huggins, Kirby, Ligon, Loftis, Long, Mace, Martin, D.C. Moss, V.S. Moss, B. Newton, Sandifer, Simrill, G.R. Smith, Sottile, Spires, Stringer, Tallon, Thayer, Toole, Trantham, West, White, Willis, Wooten, Morgan, Taylor, Elliott, Bailey and Gilliam

Document Path: l:\council\bills\bh\7091ahb19.docx

Companion/Similar bill(s): 591

Introduced in the House on January 24, 2019

Currently residing in the House Committee on **Judiciary**

Summary: Tortfeasors Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/24/2019 House Introduced and read first time ([House Journal‑page 44](file:///h:\hj\20190124.docx))

1/24/2019 House Referred to Committee on **Judiciary** ([House Journal‑page 44](file:///h:\hj\20190124.docx))

1/29/2019 House Member(s) request name removed as sponsor: Atkinson

1/29/2019 House Member(s) request name added as sponsor: Morgan, Taylor, Elliott

1/29/2019 House Member(s) request name removed as sponsor: McCoy

1/29/2019 House Member(s) request name added as sponsor: Bailey

2/12/2019 House Member(s) request name removed as sponsor: G.M.Smith

4/9/2019 House Member(s) request name removed as sponsor: W.Newton

4/23/2019 House Member(s) request name removed as sponsor: Clary

1/29/2020 House Member(s) request name added as sponsor: Gilliam

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**VERSIONS OF THIS BILL**

[1/24/2019](file:///p:\pprever\2019-20\3758_20190124.docx)

**A** **BILL**

TO AMEND SECTIONS 15‑38‑15, 15‑38‑20, 15‑38‑40, AND 15‑38‑50, CODE OF LAWS OF SOUTH CAROLINA, 1976, ALL RELATING TO THE CONTRIBUTION AMONG TORTFEASORS ACT, ALL SO AS TO INCLUDE PERSONS OR ENTITIES INCLUDING DEFENDANTS AND NONPARTIES FOR PURPOSES OF ALLOCATION OF FAULT, AND TO MAKE CONFORMING CHANGES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 15‑38‑15 of the 1976 Code is amended to read:

“Section 15‑38‑15. (A) In an action to recover damages resulting from personal injury, wrongful death, or damage to property or to recover damages for economic loss or for noneconomic loss such as mental distress, loss of enjoyment, pain, suffering, loss of reputation, or loss of companionship resulting from tortious conduct, if indivisible damages are determined to be proximately caused by more than one ~~defendant~~ person or entity, joint and several liability does not apply to any defendant whose conduct is determined to be less than fifty percent of the total fault for the indivisible damages as compared with the total of: (i) the fault of all the ~~defendants~~ persons or entities, including defendants and nonparties, regardless of whether the person or entity was, or could have been named, as a party to the suit; and (ii) the fault (comparative negligence), if any, of plaintiff. A defendant whose conduct is determined to be less than fifty percent of the total fault shall only be liable for that percentage of the indivisible damages determined by the jury or trier of fact.

(B) Apportionment of percentages of fault among ~~defendants~~ all persons or entities, including plaintiffs, defendants, and nonparties, who proximately caused the damages is to be determined as specified in subsection (C).

(C) The jury, or the court if there is no jury, shall:

(1) specify the amount of damages;

(2) determine the percentage of fault, if any, of plaintiff and the amount of recoverable damages under applicable rules concerning ‘comparative negligence’; and

(3) upon a motion by ~~at least one~~ a defendant, where there is a verdict under items (1) and (2) above for damages against ~~two~~ one or more defendants for the same indivisible injury, death, or damage to property, specify in a separate verdict under the procedures described at subitem (b) below the percentage of liability ~~that~~ allocated to each person or entity whose fault proximately caused the indivisible injury, death, damage to property, or economic loss from tortious conduct, as determined by item (1) above, that is attributable to each ~~defendant~~ such person or entity, including defendants and nonparties, whose actions are a proximate cause of the indivisible injury, death, or damage to property. In determining the percentage attributable to each ~~defendant~~ person or entity and any fault of the plaintiff, as determined by item (2) above, will be included so that the total of the percentages of fault attributed to the plaintiff, ~~and to~~ the defendants, and any nonparty persons or entities must be one hundred percent. ~~In calculating the percentage of fault attributable to each defendant, inclusion of any percentage of fault of the plaintiff (as determined in item (2) above) shall not reduce the amount of plaintiff’s recoverable damages (as determined under item (2) above).~~

(a) For this purpose, the court may determine that two or more persons or entities are to be treated as a single party. Such treatment must be used where two or more defendants, persons, or entities acted in concert or where, by reason of agency, employment, or other legal relationship, a defendant, person, or entity is vicariously responsible for the conduct of another defendant, person, or entity.

(b) After the initial verdict awarding damages is entered and before the special verdict on percentages of liability is rendered, the parties shall be allowed oral argument, with the length of such argument subject to the discretion of the trial judge, on the determination of the percentage attributable to each defendant, person, or entity. However, no additional evidence shall be allowed.

(c)(1) Allocation of fault to a nonparty shall be considered under item (3) above if the plaintiff entered into a settlement agreement with the nonparty or if a defending party gives written notice no later than one hundred twenty days prior to the date of the trial that a nonparty was wholly or partially at fault for the plaintiff’s injury.

(2) The written notice shall be made by filing the action, setting forth the nonparty or parties’ names and last known address or addresses, or the best identification of a nonparty which is possible under the circumstances, together with a brief statement of the filer’s good faith belief that the nonparty or parties were at fault.

(3) Allocations of percentage of fault of nonparties shall be used only in the determination of the percentages of fault of named parties.

(4) Where fault is allocated to nonparties by the fact finder, those findings of fault shall not subject a nonparty to liability in the instant action nor may such findings be introduced as evidence of liability in any action.

(D) ~~A~~ Notwithstanding any other provisions of this section, a defendant shall retain the right to assert that another ~~potential tortfeasor~~ person or entity, whether or not a party~~,~~ to the action contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party.

(E) Notwithstanding the application of this section, setoff from any settlement received from any potential tortfeasor party or nonparty prior to the trial or prior to the verdict shall be applied in proportion to each defendant’s percentage of liability as determined pursuant to subsection (C).

(F) This section does not apply to a defendant whose conduct is determined to be wilful, wanton, reckless, grossly negligent, or intentional or conduct involving the use, sale, or possession of alcohol or the illegal or illicit use, sale, or possession of drugs.”

SECTION 2. Section 15‑38‑20(A) of the 1976 Code is amended to read:

“(A) Except as otherwise provided in this chapter, where two or more persons or entities become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.”

SECTION 3. Section 15‑38‑40(B) of the 1976 Code is amended to read:

“(B) Where a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action. Provided, however, contribution may not be enforced in the action until the issue of liability and resulting damages against the defendant or defendants named in the action is determined. Once the issue of liability has been resolved, subject to Section 15‑38‑20(B), a defendant has the right to seek contribution against any judgment defendant and other persons or entities who were not made parties to the action.”

SECTION 4. Section 15‑38‑50 of the 1976 Code is amended to read:

“Section 15‑38‑50. When a release or a covenant not to sue or not to enforce judgment is given in good faith by the plaintiff to one of two or more persons or entities liable in tort for the same injury or the same wrongful death:

(1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, or the percentage of fault attributable to that person or entity pursuant to Section 15‑38‑15(C), whichever is the greater; and

(2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.”

SECTION 5. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 6. This act takes effect upon approval by the Governor.

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