

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

HOUSE BILL HB2548

By: Morgan

AS INTRODUCED

An Act relating to civil procedure; amending 12 O.S. 1991, Section 832, as amended by Section 1, Chapter 218, O.S.L. 1995 (12 O.S. Supp. 1999, Section 832), which relates to contribution among joint tort-feasors; modifying right of contribution; amending 23 O.S. 1991, Section 13, which relates to comparative negligence; setting maximum amount of liability of a defendant; providing that defendant is not entitled to contribution; providing scope of application to negligence actions; creating the Noneconomic Damage Awards Act; providing short title; defining terms; providing damage awards in personal injury actions; requiring special damages findings; providing for calculation of certain costs; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 1991, Section 832, as amended by Section 1, Chapter 218, O.S.L. 1995 (12 O.S. Supp. 1999, Section 832), is amended to read as follows:

Section 832. A. ~~When~~ Subject to the provisions of Section 13 of Title 23 of the Oklahoma Statutes, when two or more persons 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 except as provided in this section.

B. The right of contribution exists only in favor of a tort-feasor who has paid more than their pro rata share of the common liability, and the total recovery is limited to the amount paid by the tort-feasor in excess of their pro rata share. No tort-feasor

is compelled to make contribution beyond their pro rata share of the entire liability.

C. There is no right of contribution in favor of any tort-feasor who has intentionally caused or contributed to the injury or wrongful death.

D. A tort-feasor who enters into a settlement with a claimant is not entitled to recover contribution from another tort-feasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what was reasonable.

E. A liability insurer which by payment has discharged, in full or in part, the liability of a tort-feasor and has thereby discharged in full its obligation as insurer, is subrogated to the tort-feasor's right of contribution to the extent of the amount it has paid in excess of the tort-feasor's pro rata share of the common liability. This provision does not limit or impair any right of subrogation arising from any other relationship.

F. This act does not impair any right of indemnity under existing law. When one tort-feasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of the indemnity obligation.

G. This act shall not apply to breaches of trust or of other fiduciary obligation.

H. When a release, covenant not to sue, or a similar agreement is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

1. It does not discharge any other tort-feasor from liability for the injury or wrongful death unless the other tort-feasor is specifically named; but it reduces the claim against others to the extent of any amount stipulated by the release or the covenant, or

in the amount of the consideration paid for it, whichever is greater; and

2. It discharges the tort-feasor to whom it is given from all liability for contribution to any other tort-feasor.

SECTION 2. AMENDATORY 23 O.S. 1991, Section 13, is amended to read as follows:

Section 13. A. In all actions hereafter brought, whether arising before or after ~~the effective date of this act~~ July, 1, 1979, for negligence resulting in personal injuries or wrongful death, or injury to property, contributory negligence shall not bar a recovery, unless any negligence of the person so injured, damaged or killed, is of greater degree than any negligence of the person, firm or corporation causing such damage, or unless any negligence of the person so injured, damaged or killed, is of greater degree than the combined negligence of any persons, firms or corporations causing such damage.

B. Subject to subsection A of this section, the maximum amount for which a defendant may be liable to any person seeking recovery for negligence resulting in personal injuries, wrongful death, or injury to property, is that percentage equivalent to the percentage or proportion of fault attributable to that defendant, regardless of whether or not the person damaged, injured or killed is negligent to any degree.

C. A defendant subject to this section shall not be entitled to contribution from any other person.

D. Subsections B and C of this section shall apply to all negligence actions filed on or after November 1, 2000.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 81 of Title 23, unless there is created a duplication in numbering, reads as follows:

Sections 3 through 6 of this act shall be known and may be cited as the "Noneconomic Damage Awards Act".

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 82 of Title 23, unless there is created a duplication in numbering, reads as follows:

As used in the Noneconomic Damage Awards Act:

1. "Noneconomic damages" means subjective, nonpecuniary damages arising from pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, other nonpecuniary damages, and any other theory of damages such as fear of loss, illness, or injury; and

2. "Actual economic damages" means objectively verifiable pecuniary damages arising from medical expenses and medical care, rehabilitation services, custodial care, loss of earnings and earning capacity, loss of income, burial costs, loss of use of property, costs of repair or replacement of property, costs of obtaining substitute domestic services, loss of employment, loss of business or employment opportunities, and other objectively verifiable monetary losses.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 83 of Title 23, unless there is created a duplication in numbering, reads as follows:

In any personal injury action, the prevailing plaintiff may be awarded:

1. Compensation for actual economic damages suffered by the injured plaintiff; and

2. Compensation for the noneconomic damages suffered by the injured plaintiff not to exceed:

- a. Two Hundred Fifty Thousand Dollars (\$250,000.00), or
- b. the amount awarded in economic damages, whichever amount is greater.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 84 of Title 23, unless there is created a duplication in numbering, reads as follows:

A. If liability is found in a personal injury or wrongful death action, then the trier of fact, in addition to other appropriate findings, shall make separate findings for each claimant specifying the amount of:

1. Any past damages; and

2. Any future damages and the periods over which they will accrue, on an annual basis, for each of the following types of damages:

- a. medical and other costs of health care,
- b. other economic loss, and
- c. noneconomic loss.

B. The calculation of all future medical care and other costs of health care and future noneconomic loss must reflect the costs and losses during the period of time the claimant will sustain those costs and losses. The calculation for other economic loss must be based on the losses during the period of time the claimant would have lived but for the injury upon which the claim is based.

SECTION 7. This act shall become effective November 1, 2000.

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