

1184

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. SEMINERIO -- read once and referred to the
Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to limit-
ing liability of public entities

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 105 of the civil practice law and rules is amended
2 by adding a new subdivision (r-1) to read as follows:
3 (R-1) PUBLIC ENTITY. THE TERM "PUBLIC ENTITY" MEANS THE STATE, A COUN-
4 TY, CITY, TOWN, OR VILLAGE, A PUBLIC UNIVERSITY, BOARD OF EDUCATION,
5 COMMUNITY SCHOOL BOARD, BOARD OF COOPERATIVE EDUCATIONAL SERVICES, OR
6 SCHOOL DISTRICT, A FIRE DISTRICT, VOLUNTEER FIRE DEPARTMENT OR FIRE
7 COMPANY, A PUBLIC HOSPITAL, CLINIC, HEALTH CENTER, OR HOSPITALS CORPO-
8 RATION, A PUBLIC AUTHORITY, A PUBLIC BENEFIT CORPORATION, OR ANY OFFI-
9 CER, AGENT OR EMPLOYEE OF A PUBLIC ENTITY.
10 S 2. Section 1411 of the civil practice law and rules, as added by
11 chapter 69 of the laws of 1975, is amended to read as follows:
12 S 1411. Damages recoverable when contributory negligence or assumption
13 of risk is established. [In] (A) EXCEPT AS OTHERWISE PROVIDED IN THIS
14 SECTION, IN any action to recover damages for personal injury, injury to
15 property, or wrongful death, the culpable conduct attributable to the
16 claimant or to the decedent, including contributory negligence or
17 assumption of risk, shall not bar recovery, but the amount of damages
18 otherwise recoverable shall be diminished in the proportion which the
19 culpable conduct attributable to the claimant or decedent bears to the
20 culpable conduct which caused the damages.
21 (B) THERE SHALL BE NO RIGHT OF RECOVERY AGAINST A PUBLIC ENTITY WHEN
22 THE CULPABLE CONDUCT ATTRIBUTABLE TO THE CLAIMANT OR DECEDENT IS FOUND
23 TO BE FIFTY PERCENT OR MORE OF THE CULPABLE CONDUCT THAT CAUSED THE
24 DAMAGES.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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(C) THE PROVISIONS AND LIMITATIONS OF THIS SECTION SHALL APPLY TO ALL CLAIMS BROUGHT BY, OR ON BEHALF OF, THE CLAIMANT OR DECEDENT, ALL DERIVATIVE CLAIMS BY THE SPOUSE OR OTHER FAMILY MEMBERS OF SUCH CLAIMANT OR DECEDENT, AND ALL CLAIMS FOR CONTRIBUTION OR COMMON-LAW INDEMNIFICATION, WHETHER BROUGHT IN THE SAME, OR ANOTHER, ACTION.

S 3. Section 1601 of the civil practice law and rules, as added by chapter 682 of the laws of 1986 and subdivision 1 as amended by chapter 635 of the laws of 1996, is amended to read as follows:

S 1601. Limited liability of persons jointly liable. 1. Notwithstanding any other provision of law, AND EXCEPT AS PROVIDED IN THIS SECTION, when a verdict or decision in an action or claim for personal injury is determined in favor of a claimant in an action involving two or more tortfeasors jointly liable [or in a claim against the state] and the liability of a defendant is found to be fifty percent or less of the total liability assigned to all persons liable, the liability of such defendant to the claimant for non-economic loss shall not exceed that defendant's equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss; provided, however that the culpable conduct of any person not a party to the action shall not be considered in determining any equitable share herein if the claimant proves that with due diligence he or she was unable to obtain jurisdiction over such person in said action [(or in a claim against the state, in a court of this state)]; and further provided that the culpable conduct of any person shall not be considered in determining any equitable share herein to the extent that action against such person is barred because the claimant has not sustained a "grave injury" as defined in section eleven of the workers' compensation law.

2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A VERDICT OR DECISION IN AN ACTION OR CLAIM FOR PERSONAL INJURY, INJURY TO PROPERTY OR WRONGFUL DEATH, IS DETERMINED IN FAVOR OF A CLAIMANT IN AN ACTION INVOLVING TWO OR MORE TORTFEASORS, WHETHER OR NOT THEY ARE JOINED IN THE ACTION, THE LIABILITY OF A PUBLIC ENTITY TO THE CLAIMANT FOR ANY INJURY, LOSS OR DAMAGE SHALL NOT EXCEED THE PUBLIC ENTITY'S EQUITABLE SHARE DETERMINED IN ACCORDANCE WITH THE RELATIVE CULPABILITY OF EACH PERSON CAUSING OR CONTRIBUTING TO THE TOTAL LIABILITY.

3. Nothing in this section shall be construed to affect or impair any right of a tortfeasor under section 15-108 of the general obligations law.

S 4. Subdivision 6 of section 1602 of the civil practice law and rules, as added by chapter 682 of the laws of 1986, is amended to read as follows:

6. not apply to any person held liable by reason of his use, operation, or ownership of a motor vehicle or motorcycle, as those terms are defined respectively in sections three hundred eleven and one hundred twenty-five of the vehicle and traffic law; PROVIDED, HOWEVER, THAT THE LIMITATIONS SET FORTH IN THIS ARTICLE SHALL APPLY TO ANY PUBLIC ENTITY HELD LIABLE BY REASON OF ITS USE, OPERATION, OR OWNERSHIP OF A MOTOR VEHICLE OR MOTORCYCLE.

S 5. This act shall take effect immediately and shall apply to all actions and proceedings pending on or commenced on or after such effective date.