

## **Chapter 1B.**

### **Contribution.**

#### Article 1.

#### Uniform Contribution among Tort-Feasors Act.

##### **§ 1B-1. Right to contribution.**

(a) Except as otherwise provided in this Article, where 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.

(b) The right of contribution exists only in favor of a tort-feasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tort-feasor is compelled to make contribution beyond his own 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 has not been extinguished nor in respect to any amount paid in a settlement which is in excess of what was reasonable.

(e) A liability insurer, who 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, succeeds 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 Article does not impair any right of indemnity under existing law. Where 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 his indemnity obligation.

(g) This Article shall not apply to breaches of trust or of other fiduciary obligation.

(h) The provisions of this Article shall apply to tort claims against the State. However, in such cases, the same rules governing liability and the limits of liability shall apply to the State and its agencies as in cases heard before the Industrial Commission. The State's share in such cases shall not exceed the pro rata share based upon the maximum amount of liability under the Tort Claims Act.

(i) The provisions of this Article shall apply to the injury or death of an employee of any common carrier by rail which is subject to the provisions of Chapter 2 of Title 45 of the United States Code (45 U.S.C. § 51 et seq.) or G.S. 62-242 where such injury or death is caused by the joint or concurring negligence of such common carrier by rail and any other person or persons. In any such instance, the following will apply:

- (1) Where liability is imposed or sought to be imposed only on such common carrier by rail, the railroad is entitled to contribution from any other such person or persons;
- (2) Where liability is imposed or sought to be imposed only on a person or persons other than a common carrier by rail, such other person or persons are entitled to contribution from the railroad;

- (3) Where liability is imposed or sought to be imposed on both a common carrier by rail and any other person or persons, damages shall be determined as provided in Chapter 2 of Title 45 of the United States Code (45 U.S.C. § 51 et seq.) or G.S. 62-242 whichever controls the claim. (1967, c. 847, s. 1; 1975, c. 587, s. 2; 1979, c. 620.)

**§ 1B-2. Pro rata shares.**

In determining the pro rata shares of tort-feasors in the entire liability

- (1) Their relative degree of fault shall not be considered;
- (2) If equity requires, the collective liability of some as a group shall constitute a single share; and
- (3) Principles of equity applicable to contribution generally shall apply. (1967, c. 847, s. 1.)

**§ 1B-3. Enforcement.**

(a) Whether or not judgment has been entered in an action against two or more tort-feasors for the same injury or wrongful death, contribution may be enforced by separate action.

(b) Where a judgment has been entered in an action against two or more tort-feasors 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.

(c) If there is a judgment for the injury or wrongful death against the tort-feasor seeking contribution, any separate action by him to enforce contribution must be commenced within one year after the judgment has become final by lapse of time for appeal or after final judgment is entered in the trial court in conformity with the decisions of the appellate court.

(d) If there is no judgment for the injury or wrongful death against the tort-feasor seeking contribution, his right of contribution is barred unless he has either

- (1) Discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against him and has commenced his action for contribution within one year after payment,
- (2) Agreed while action is pending against him to discharge the common liability and has within one year after the agreement paid the liability and commenced his action for contribution, or
- (3) While action is pending against him, joined the other tort-feasors as third-party defendants for the purpose of contribution.

(e) The recovery of judgment against one tort-feasor for the injury or wrongful death does not of itself discharge the other tort-feasors from liability to the claimant. The satisfaction of the judgment discharges the other tort-feasors from liability to the claimant for the same injury or wrongful death, but does not impair any right of contribution. Provided, however, that a consent judgment in a civil action brought on behalf of a minor, or other person under disability, for the sole purpose of obtaining court approval of a settlement between the injured minor or other person under disability and one of two or more tort-feasors, shall not be deemed to be a judgment as that term is used herein, but shall be treated as a release or covenant not to sue as those terms are used in G.S. 1B-4 unless the judgment shall specifically provide otherwise.

(f) The judgment of the court in determining the liability of the several defendants to the claimant for the same injury or wrongful death shall be binding as among such defendants in determining their right to contribution. (1967, c. 847, s. 1; 1973, c. 465, s. 1; 1975, c. 866, s. 5.)

**§ 1B-4. Release or covenant not to sue.**

When a release or a covenant not to sue or not to enforce judgment 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 of the other tort-feasors 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, whichever is the greater; and,
- (2) It discharges the tort-feasor to whom it is given from all liability for contribution to any other tort-feasor. (1967, c. 847, s. 1.)

**§ 1B-5. Uniformity of interpretation.**

This Article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it. (1967, c. 847, s. 1.)

**§ 1B-6. Short title.**

This Article may be cited as the Uniform Contribution among Tort-Feasors Act. (1967, c. 847, s. 1.)

Article 2.

Judgment against Joint Obligors or Joint Tort-Feasors.

**§ 1B-7. Payment of judgment by one of several.**

(a) In all cases in the courts of this State wherein judgment has been, or may hereafter be, rendered against two or more persons or corporations, who are jointly and severally liable for its payment either as joint obligors or joint tort-feasors, and the same has not been paid by all the judgment debtors by each paying his pro rata share thereof, if one or more of the judgment debtors shall pay the judgment creditor, either before or after execution has been issued, the full amount due on said judgment, and shall have entered on the judgment docket in the manner hereinafter set out a notation of the preservation of the right of contribution, such notation shall have the effect of preserving the lien of the judgment and of keeping the same in full force as against any judgment debtor who does not pay his pro rata share thereof to the extent of his liability thereunder in law and equity. Such judgment may be enforced by execution or otherwise in behalf of the judgment debtor or debtors who have so preserved the judgment.

(b) The entry on the judgment docket shall be made in the same manner as other cancellations of judgment, and shall recite that the same has been satisfied, released and discharged, together with all costs and interest, as to the paying judgment debtor, naming him, but that the lien of the judgment is preserved as to the other judgment debtors for the purpose of contribution. No entry of cancellation as to such other judgment debtors shall be made upon the judgment docket or judgment index by virtue of such payment.

(c) If the judgment debtors disagree as to their pro rata shares of the liability, on the grounds that any judgment debtor is insolvent or is a nonresident of the State and cannot be forced under the execution of the court to contribute to the payment of the judgment, or upon other grounds in law and equity, their shares may be determined upon motion in the cause and notice to all parties to the action. Issues of fact arising therein shall be tried by jury as in other civil actions. (1967, c. 847, s. 1.)

Article 3.

Cross Claims and Joinder of Third Parties for Contribution.

**§ 1B-8. Repealed by Session Laws 1969, c. 895, s. 19.**