

HB4408



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB4408

Introduced 1/30/2012, by Rep. Michael J. Madigan

SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-1116

from Ch. 110, par. 2-1116

Amends the Code of Civil Procedure. Makes a technical change in a Section concerning limitation on recovery in tort actions.

LRB097 15400 AJO 60500 b

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by
5 changing Section 2-1116 as follows:

6 (735 ILCS 5/2-1116) (from Ch. 110, par. 2-1116)

7 (Text of Section WITH the changes made by P.A. 89-7, which
8 has been held unconstitutional)

9 Sec. 2-1116. Limitation on recovery in tort actions; fault.

10 (a) The ~~The~~ purpose of this Section is to allocate the
11 responsibility of bearing or paying damages in actions brought
12 on account of death, bodily injury, or physical damage to
13 property according to the proportionate fault of the persons
14 who proximately caused the damage.

15 (b) As used in this Section:

16 "Fault" means any act or omission that (i) is negligent,
17 willful and wanton, or reckless, is a breach of an express or
18 implied warranty, gives rise to strict liability in tort, or
19 gives rise to liability under the provisions of any State
20 statute, rule, or local ordinance and (ii) is a proximate cause
21 of death, bodily injury to person, or physical damage to
22 property for which recovery is sought.

23 "Contributory fault" means any fault on the part of the

1 plaintiff (including but not limited to negligence, assumption
2 of the risk, or willful and wanton misconduct) which is a
3 proximate cause of the death, bodily injury to person, or
4 physical damage to property for which recovery is sought.

5 "Tortfeasor" means any person, excluding the injured
6 person, whose fault is a proximate cause of the death, bodily
7 injury to person, or physical damage to property for which
8 recovery is sought, regardless of whether that person is the
9 plaintiff's employer, regardless of whether that person is
10 joined as a party to the action, and regardless of whether that
11 person may have settled with the plaintiff.

12 (c) In all actions on account of death, bodily injury or
13 physical damage to property in which recovery is predicated
14 upon fault, the contributory fault chargeable to the plaintiff
15 shall be compared with the fault of all tortfeasors whose fault
16 was a proximate cause of the death, injury, loss, or damage for
17 which recovery is sought. The plaintiff shall be barred from
18 recovering damages if the trier of fact finds that the
19 contributory fault on the part of the plaintiff is more than
20 50% of the proximate cause of the injury or damage for which
21 recovery is sought. The plaintiff shall not be barred from
22 recovering damages if the trier of fact finds that the
23 contributory fault on the part of the plaintiff is not more
24 than 50% of the proximate cause of the injury or damage for
25 which recovery is sought, but any economic or non-economic
26 damages allowed shall be diminished in the proportion to the

1 amount of fault attributable to the plaintiff.

2 (d) Nothing in this Section shall be construed to create a
3 cause of action.

4 (e) This amendatory Act of 1995 applies to causes of action
5 accruing on or after its effective date.

6 (Source: P.A. 89-7, eff. 3-9-95.)

7 (Text of Section WITHOUT the changes made by P.A. 89-7,
8 which has been held unconstitutional)

9 Sec. 2-1116. Limitation on recovery in tort actions.

10 In all actions on account of bodily injury or death or
11 physical damage to property, based on negligence, or product
12 liability based on strict tort liability, the plaintiff shall
13 be barred from recovering damages if the trier of fact finds
14 that the contributory fault on the part of the plaintiff is
15 more than 50% of the proximate cause of the injury or damage
16 for which recovery is sought. The plaintiff shall not be barred
17 from recovering damages if the trier of fact finds that the
18 contributory fault on the part of the plaintiff is not more
19 than 50% of the proximate cause of the injury or damage for
20 which recovery is sought, but any damages allowed shall be
21 diminished in the proportion to the amount of fault
22 attributable to the plaintiff.

23 (Source: P.A. 84-1431.)