

Senate Engrossed

State of Arizona
Senate
Forty-fifth Legislature
First Regular Session
2001

CHAPTER 181

SENATE BILL 1408

AN ACT

AMENDING SECTION 12-2506, ARIZONA REVISED STATUTES; RELATING TO JOINT AND SEVERAL LIABILITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-2506, Arizona Revised Statutes, is amended to
3 read:

4 12-2506. Joint and several liability abolished; exception;
5 apportionment of degrees of fault; definitions

6 A. In an action for personal injury, property damage or wrongful
7 death, the liability of each defendant for damages is several only and is not
8 joint, except as otherwise provided in this section. Each defendant is
9 liable only for the amount of damages allocated to that defendant in direct
10 proportion to that defendant's percentage of fault, and a separate judgment
11 shall be entered against the defendant for that amount. To determine the
12 amount of judgment to be entered against each defendant, the trier of fact
13 shall multiply the total amount of damages recoverable by the plaintiff by
14 the percentage of each defendant's fault, and that amount is the maximum
15 recoverable against the defendant.

16 B. In assessing percentages of fault the trier of fact shall consider
17 the fault of all persons who contributed to the alleged injury, death or
18 damage to property, regardless of whether the person was, or could have been,
19 named as a party to the suit. Negligence or fault of a nonparty may be
20 considered if the plaintiff entered into a settlement agreement with the
21 nonparty or if the defending party gives notice before trial, in accordance
22 with requirements established by court rule, that a nonparty was wholly or
23 partially at fault. Assessments of percentages of fault for nonparties are
24 used only as a vehicle for accurately determining the fault of the named
25 parties. Assessment of fault against nonparties does not subject any
26 nonparty to liability in this or any other action, and it may not be
27 introduced as evidence of liability in any action.

28 C. The relative degree of fault of the claimant, and the relative
29 degrees of fault of all defendants and nonparties, shall be determined and
30 apportioned as a whole at one time by the trier of fact. If two or more
31 claimants have independent claims, a separate determination and apportionment
32 of the relative degrees of fault of the respective parties, and any
33 nonparties at fault, shall be made with respect to each of the independent
34 claims.

35 D. The liability of each defendant is several only and is not joint,
36 except that a party is responsible for the fault of another person, or for
37 payment of the proportionate share of another person, if ANY OF THE FOLLOWING
38 APPLIES:

- 39 1. Both the party and the other person were acting in concert or if.
40 2. The other person was acting as an agent or servant of the party.
41 3. THE PARTY'S LIABILITY FOR THE FAULT OF ANOTHER PERSON ARISES OUT
42 OF A DUTY CREATED BY THE FEDERAL EMPLOYERS' LIABILITY ACT, 45 UNITED STATES
43 CODE SECTION 51.

44 E. If a defendant is found jointly and severally liable pursuant to
45 subsection D, the defendant has the right to contribution pursuant to this

1 chapter. IN AN ACTION ARISING OUT OF A DUTY CREATED BY THE FEDERAL EMPLOYERS'
2 LIABILITY ACT (45 UNITED STATES CODE SECTION 51), A PERSON OR ENTITY, OTHER
3 THAN AN EMPLOYEE OF THE DEFENDANT, WHOSE NEGLIGENCE OR FAULT CAUSED OR
4 CONTRIBUTED TO THE PLAINTIFF'S INJURY OR DEATH SHALL CONTRIBUTE TO THE
5 DEFENDANT PURSUANT TO THIS CHAPTER. AN ACTION FOR CONTRIBUTION SHALL BE
6 ADJUDICATED AND DETERMINED BY THE SAME TRIER OF FACT THAT ADJUDICATES AND
7 DETERMINES THE ACTION FOR THE PLAINTIFF'S INJURY OR DEATH. THE TRIER OF FACT
8 SHALL ADJUDICATE AND DETERMINE AN ACTION FOR CONTRIBUTION AFTER THE COURT
9 ENTERS A JUDGMENT FOR THE PLAINTIFF'S INJURY OR DEATH. ON MOTION BEFORE THE
10 CONCLUSION OF THE TRIAL, THE PLAINTIFF IS ENTITLED TO AN AWARD AGAINST THE
11 DEFENDANT FOR ACTUAL EXPENSES THE PLAINTIFF INCURRED AS A DIRECT RESULT OF
12 THE DEFENDANT'S CLAIM FOR CONTRIBUTION. THE EXPENSES SHALL INCLUDE
13 REASONABLE ATTORNEY FEES AS DETERMINED BY THE COURT.

14 F. ~~As used in~~ FOR THE PURPOSES OF this section:

15 1. "Acting in concert" means entering into a conscious agreement to
16 pursue a common plan or design to commit an intentional tort and actively
17 taking part in that intentional tort. Acting in concert does not apply to
18 any person whose conduct was negligent in any of its degrees rather than
19 intentional. A person's conduct which THAT provides substantial assistance
20 to one committing an intentional tort does not constitute acting in concert
21 if the person has not consciously agreed with the other to commit the
22 intentional tort.

23 2. "Fault" means an actionable breach of legal duty, act or omission
24 proximately causing or contributing to injury or damages sustained by a
25 person seeking recovery, including negligence in all of its degrees,
26 contributory negligence, assumption of risk, strict liability, breach of
27 express or implied warranty of a product, products liability and misuse,
28 modification or abuse of a product.

29 Sec. 2. Nonseverability

30 If any language added by this act to section 12-2506, Arizona Revised
31 Statutes, is finally adjudicated invalid, all language added by this act is
32 void.

APPROVED BY THE GOVERNOR APRIL 21, 2001.

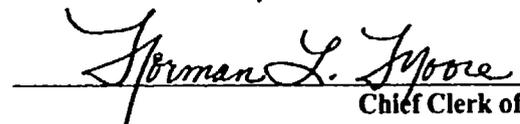
FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 23, 2001.

Passed the House April 16, 2001,

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting


Speaker of the House

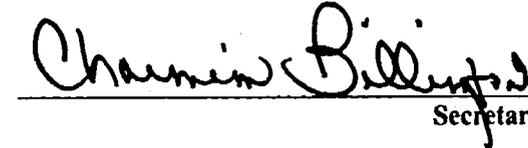

Chief Clerk of the House

Passed the Senate March 20, 2001,

by the following vote: 26 Ayes,

3 Nays, 1 Not Voting


President of the Senate

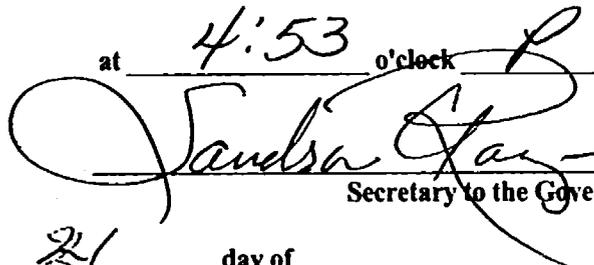

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

16 day of April, 2001,

at 4:53 o'clock P M.


Secretary to the Governor

Approved this 21 day of

April, 2001,

at 9:30 o'clock A M.

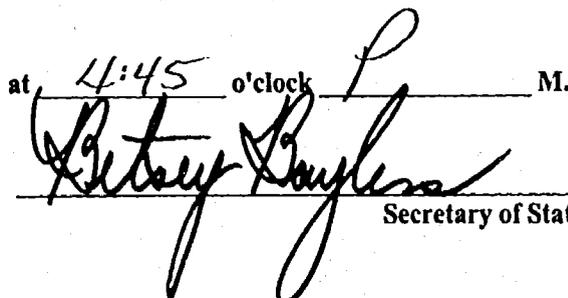

Governor of Arizona

S.B. 1408

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 23 day of April, 2001,

at 4:45 o'clock P M.

Secretary of State