



## **LEGISLATIVE BRIEF: COMPARATIVE FAULT**

### **Background**

Currently a bill is being considered that would change our state legal system from contributory negligence to comparative fault. H813 (Uniform Apportionment of Tort Responsibility) is sponsored by Reps. Rick Glazier, John Blust, Deborah Ross and Bonner Stiller (who has since resigned) and passed the House last summer.

If enacted in its current form, H813 would dramatically increase the number of personal injury and other tort lawsuits filed in North Carolina. Current law bars a plaintiff from recovering any damages if the plaintiff is partially at fault for his own injury. Under the proposed legislation, a plaintiff could sue for damages from a defendant even if the plaintiff caused up to 50 percent of his own harm. Counties may also be asked to pay for damages for which they are not responsible. If a county is a defendant in a case in which there are other defendants who are unable to pay their share of the damages awarded by a jury, the court could reassign their damages to the county. This would further increase the potential exposure for counties and further tie up our court system, lengthening the time a lawsuit takes to resolve.

If the comparative fault bill becomes law, it would cost the counties additional money in increased exposure to liability, increased insurance premiums, and increased demand for additional court facilities. In the four years after Delaware changed from contributory negligence to a comparative fault system, insurance premiums increased 18.6 percent while insurance rates increased only 9.2 percent in a comparable contributory negligence state over the same four-year period. Changing to comparative fault also increased the number of claims.

In North Carolina during the 2008-09 fiscal year, 29,908 civil lawsuits were filed in Civil Superior Courts and 239,400 civil lawsuits were filed in District Courts. Any increase in these numbers will tax our current court facilities and cause increased budgetary demands. In many states with comparative fault, the extra burden upon the court system is relieved by passing other measures such as ending joint and several liability, or passing caps on tort damages. The bill under consideration by the Legislature does not end joint and several liability and does not create any caps on damages. Plaintiff attorneys argue that the current contributory negligence system is inherently unfair, because a plaintiff somewhat at fault cannot recover money for his damages. The comparative fault bill may shift the balance of fairness too far in the opposite direction.

### **Outlook for 2010**

The bill passed the House in 2009 and is eligible during the 2010 short session. It currently resides in a Senate Judiciary I subcommittee. If this bill is brought forward, we may be asking you to contact your legislators to inform them of this issue and urge them not to support passage of H813 in its current form.