

1 S.278

2 Introduced by Senators Vyhovsky, Sears, Clarkson, Gulick, Hardy, Perchlik,  
3 Watson, White and Wrenner

4 Referred to Committee on Judiciary

5 Date: January 17, 2024

6 Subject: Court procedure; pleading and practice; comparative negligence

7 Statement of purpose of bill as introduced: This bill proposes to bar  
8 contributory negligence as a defense to limit a plaintiff's recovery  
9 in an action to recover damages from a defendant who allegedly sexually  
10 assaulted the plaintiff.

11 ~~An act relating to contributory negligence in a civil action involving sexual~~  
12 ~~assault.~~

*An act relating to prohibiting a comparative negligence defense in an  
action for a negligence claim relating to a sexual act or sexual conduct*

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 ~~Sec. 1, 12 V.S.A. § 1036 is amended to read:~~

15 § 1036. COMPARATIVE NEGLIGENCE

16 (a) Contributory negligence shall not bar recovery in an action by any  
17 plaintiff, or his or her ~~any~~ plaintiff's legal representative, to recover damages  
18 for negligence resulting in death, personal injury, or property damage, if the  
19 negligence was not greater than the causal total negligence of the defendant or  
20 ~~defendants, but the damage shall be diminished by general verdict in~~

1 ~~proportion to the amount of negligence attributed to the plaintiff. Where~~  
2 recovery is allowed against more than one defendant, each defendant shall be  
3 liable for that proportion of the total dollar amount awarded as damages in the  
4 ratio of the amount of ~~his or her~~ the defendant's causal negligence to the  
5 amount of causal negligence attributed to all defendants against whom  
6 recovery is allowed.

7 (b)(1) Contributory negligence shall be prohibited as a defense to limit a  
8 plaintiff's recovery for damages in an action against a defendant who allegedly  
9 sexually assaulted the plaintiff.

10 (2) This section shall not be construed to prohibit a defendant from  
11 raising the issue of consent to the sexual act.

12 Sec. 2. EFFECTIVE DATE

13 ~~This act shall take effect on July 1, 2024.~~

~~Sec. 1. 12 U.S.A. § 1036 is amended to read:~~

~~§ 1036. COMPARATIVE NEGLIGENCE~~

~~(a) *Contributory Comparative negligence shall not bar recovery in an action by any plaintiff, or his or her the plaintiff's legal representative, to recover damages for negligence resulting in death, personal injury, or property damage, if the negligence was not greater than the causal total negligence of the defendant or defendants, but the damage shall be diminished by general verdict in proportion to the amount of negligence attributed to the plaintiff. Where recovery is allowed against more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of his or her the defendant's causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed.*~~

~~(a) Comparative negligence shall be prohibited as a defense to limit a plaintiff's recovery for damages in an action for a negligence claim relating to a sexual act as defined in 13 V.S.A. § 3251 or sexual conduct as defined in 13 V.S.A. § 2821.~~

*Sec. 2. EFFECTIVE DATE*

~~*This act shall take effect on passage.*~~

*Sec. 1. 12 V.S.A. § 1036 is amended to read:*

*§ 1036. CONTRIBUTORY AND COMPARATIVE NEGLIGENCE*

*(a) Contributory negligence shall not bar recovery in an action by any plaintiff, or his or her the plaintiff's legal representative, to recover damages for negligence resulting in death, personal injury, or property damage, if the negligence was not greater than the causal total negligence of the defendant or defendants, but the damage shall be diminished by general verdict in proportion to the amount of negligence attributed to the plaintiff. Where recovery is allowed against more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of his or her the defendant's causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed.*

*(b) Contributory and comparative negligence shall be prohibited as a defense to limit a plaintiff's recovery for damages in an action for a negligence claim relating to a sexual act as defined in 13 V.S.A. § 3251 or sexual conduct as defined in 13 V.S.A. § 2821.*

*Sec. 2. EFFECTIVE DATE*

*This act shall take effect on passage.*