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S.278

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

Referred to Committee on Judiciary

Date: January 17, 2024

Subject: Court procedure; pleading and practice; comparative negligence

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

~~An act relating to contributory negligence in a civil action involving sexual
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*

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

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

§ 1036. COMPARATIVE NEGLIGENCE

(a) Contributory negligence shall not bar recovery in an action by any
plaintiff, or his or her any 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~~

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 V.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.

(b) 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.