



## Senate Bill 465

### *Civil Actions – Motor Vehicle Accidents Involving Pedestrians or Nonmotorized Vehicles – Comparative Negligence*

MACo Position: **OPPOSE**

To: Judicial Proceedings Committee

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From: Leslie Knapp, Jr.

The Maryland Association of Counties (MACo) **OPPOSES** SB 465. The bill would create a new comparative fault standard in Maryland and upend the state's well-established and carefully balanced contributory negligence standard.

SB 465 would establish a comparative fault standard in civil actions involving a plaintiff who was a pedestrian or driving a nonmotorized vehicle, such as a bicycle, and a defendant who was driving a motor vehicle at the time of the accident. The bill is based on a recommendation from the Task Force to Study Bicycle Safety in Maryland.

The bill would upset Maryland's long-established and carefully constructed contributory negligence system – a system that has been reaffirmed by the Maryland General Assembly approximately 40 times since 1966. Maryland's adherence to a contributory negligence standard is a sensible public policy that promotes responsible citizen behavior and provides a clear legal standard for jury consideration.

Maryland's successful contributory negligence system is built around several critical statutory and case law "support structures." These supports are inextricably linked with contributory negligence principles and must be addressed as part of any move away from contributory negligence and toward comparative fault. They include: (1) joint and several liability; (2) the "last clear chance" exception; and (3) laws relating to seatbelts.

#### **Joint and Several Liability**

Under the doctrine of joint and several liability, a prevailing plaintiff can recover full damages from any defendant among a group of defendants, regardless of the individual defendant's share of the fault. It is then up to that individual defendant to recover from the other defendants in the group.

#### **"Last Clear Chance" Exception**

The "last clear chance" exception provides that a plaintiff who is negligent may still recover against a negligent defendant if the defendant had one last chance to avert both the defendant's and plaintiff's negligence. *Smiley v. Atkinson*, 12 Md. App. 543, 553.

#### **Seatbelt Laws**

Finally, § 22-412.3 (h) of the Transportation Article prohibits the introduction of evidence of a plaintiff's failure to wear a seatbelt, regardless of the effect on the plaintiff's injuries.

While creating a comparative fault system in Maryland for certain cases, SB 465 does not address these critical support structures and in fact explicitly states that the bill does not affect joint and several liability or the doctrine of "last clear chance." This leads to a creation of an unbalanced and ultimately unfair liability system that would surely impose new burdens on local governments. As the bill's fiscal note indicates, local governments would see a "potential significant increase in local expenditures for tort claims."

Maryland has considered and rejected moving to a comparative fault system numerous times. SB 465 is yet another proposal that does not address the related support structures that make contributory negligence work, but would instead lead to an unbalanced comparative fault system. Accordingly, MACo requests the Committee give SB 465 an **UNFAVORABLE** report.