

**SENATE BILL NO. 2379**

Introduced by

Senator Nething

Representative Wald

1 A BILL for an Act to create and enact a new section to chapter 32-03.2 of the North Dakota  
2 Century Code, relating to the assumption of risk; and to amend and reenact sections  
3 32-03.2-01 and 32-03.2-02 of the North Dakota Century Code, relating to modified comparative  
4 fault.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 32-03.2-01 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **32-03.2-01. Definition.** As used in this chapter, "fault" includes acts or omissions that  
9 are in any measure negligent or reckless towards the person or property of the actor or others,  
10 or that subject a person to tort liability or dram shop liability. The term also includes strict  
11 liability for product defect, breach of warranty, negligence ~~or assumption of risk~~, misuse of a  
12 product for which the defendant otherwise would be liable, and failure to exercise reasonable  
13 care to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both  
14 to fault as the basis for liability and to contributory fault.

15 **SECTION 2. AMENDMENT.** Section 32-03.2-02 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17 **32-03.2-02. Modified comparative fault.** Contributory fault does not bar recovery in  
18 an action by any person to recover damages for death or injury to person or property unless the  
19 fault was as great as the combined fault of all other persons who contribute to the injury, but  
20 any damages allowed must be diminished in proportion to the amount of contributing fault  
21 attributable to the person recovering. The court may, and when requested by any party, shall  
22 direct the jury to find separate special verdicts determining the amount of damages and the  
23 percentage of fault attributable to each person, whether or not a party, who contributed to the  
24 injury. The court shall then reduce the amount of such damages in proportion to the amount of

1 fault attributable to the person recovering. When two or more parties are found to have  
2 contributed to the injury, the liability of each party is several only, and is not joint, and each  
3 party is liable only for the amount of damages attributable to the percentage of fault of that  
4 party, except that any persons who act in concert in committing a tortious act or aid or  
5 encourage the act, or ratifies or adopts the act for their benefit, are jointly liable for all damages  
6 attributable to their combined percentage of fault. Under this section, fault includes negligence,  
7 malpractice, absolute liability, dram shop liability, failure to warn, reckless or willful conduct,  
8 ~~assumption of risk~~, misuse of product, failure to avoid injury, and product liability, including  
9 product liability involving negligence or strict liability or breach of warranty for product defect.

10 **SECTION 3.** A new section to chapter 32-03.2 of the North Dakota Century Code is  
11 created and enacted as follows:

12 **Assumption of risk - Bar to recovery.** Notwithstanding section 32-03.2-02, an  
13 individual is barred from recovery for injury if the defendant establishes that the individual had  
14 knowledge of facts constituting a dangerous condition, knew the condition was dangerous,  
15 appreciated the nature or extent of the danger, and voluntarily exposed himself or herself to the  
16 danger.