



March 11, 2025

Representative Robert E. Craven, Sr.
Chair, House Judiciary Committee
Rhode Island State House
Providence, RI 02903

Re: House 5910 – An Act Relating To Courts And Civil Procedure – Procedure Generally –
Decisions, Special Findings, And Assessment of Damages

Dear Chair Craven:

This statement in opposition to H.5910 is submitted by the American Property Casualty Insurance Association (APCIA).¹ H.5910 would undo the state's longstanding existing comparative negligence standard to allow recoveries for injured individuals who have assumed the risk of injury and/or death.

Rhode Island is one of twelve states that follows a pure comparative fault standard (R.I.G.L. Sec. 9-20-4). This means that a party suffering any damages can potentially seek compensation, even if they are deemed to be largely at fault. In other states, for example, one party's negligence can completely bar recovery. Rhode Island's system can create circumstances where a primarily at-fault party can recover from someone lesser at fault (even if the primarily at-fault party is 99% at fault).²

H.5910 would undo long-standing case law that appropriately balances comparative negligence with assumption of risk. Currently, assumption of risk is an affirmative defense that absolves a defendant of liability. See, e.g., *Loffredo v. Merrimack Mutual Fire Ins. Co.*, 669 A.2d 1162 (R.I. 1996). It is subjected to an extremely high bar, the subjective standard, meaning the defendant has to prove that the plaintiff specifically knew and understood they were assuming the risk, regardless of whether it would be obvious to a reasonable person.

Meanwhile, contributory negligence is governed by an objective standard. That means courts assess whether a "reasonable man of ordinary prudence"³ exercised due care or would find the "danger or defect was open and obvious" under Section 9-20-4. That's a much lower bar and also removes a safe harbor, exposing parties to liability even if they are deemed a 1% cause of harm.

¹ Representing nearly 65% of the U.S. property casualty insurance market, APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe. Several APCIA members are located in Rhode Island and many more do business here. Together, APCIA members write almost 68.5% of the commercial insurance sold in the state.

² <https://www.mwl-law.com/wp-content/uploads/2018/02/CONTRIBUTORY-NEGLIGENCE-COMPARATIVE-FAULT-LAWS-CHART-00220743x9EBBF.pdf>

³ *Soucy v. Martin*, 402 A.2d 1167 (1979) <https://law.justia.com/cases/rhode-island/supreme-court/1979/402-a-2d-1167.html>

Taken together, H.5910 removes a tough-to-achieve, but fair defense that rightfully absolves defendants of liability. If defendants can prove the plaintiff themselves knew and understood the risk they disclaimed, then they should remain free from liability. Under H.5910, even if the assumption of risk was obvious and any reasonable person would have understood it, a defendant can still be forced to pay damages under comparative negligence, eliminating the efficacy of many basic disclaimers such as one might sign to use a gym or skating rink, or see on the back of a baseball ticket.

From an insurance perspective this would increase liability exposure risks in some situations, perhaps significantly, and since premium is tied to risk, increased risk generally means increased premium. In other words, high costs. This bill is one of several before the committee today that in ways both subtle and overt seek to reduce or limit the defenses available to a defendant in a civil action while tilting both the playing field and the potential size of a judgement more firmly in favor of the plaintiff. This is their sole purpose, but in that focus, they lose sight of the larger picture and the potential negative impact on Rhode Island's economy.

APCIA respectfully request that H.5910 be held for further study.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jon Schreiber', with a stylized flourish at the end.

Jonathan Schreiber
Associate Vice President, State Government Relations
American Property Casualty Insurance Association
Jonathan.schreiber@apci.org
(202) 828-7121