

# VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

## CHAPTER 443

*An Act to amend and reenact § 8.01-35.1 of the Code of Virginia, relating to the effect of covenants not to sue.*

[H 1797]

Approved March 19, 2007

**Be it enacted by the General Assembly of Virginia:**

**1. That § 8.01-35.1 of the Code of Virginia is amended and reenacted as follows:**

§ 8.01-35.1. Effect of release or covenant not to sue in respect to liability and contribution.

A. When a release or a covenant not to sue is given in good faith to one of two or more persons liable ~~in tort~~ for the same injury, ~~or the same property damage to a person or property~~, or the same wrongful death:

1. It shall not discharge any ~~of the other tort-feasors~~ *person* from liability for the injury, property damage or wrongful death unless its terms so provide; but any amount recovered against the other ~~tort-feasors~~ *person* or any one of them shall be reduced by any amount stipulated by the covenant or the release, or in the amount of the consideration paid for it, whichever is the greater. In determining the amount of consideration given for a covenant not to sue or release for a settlement which consists in whole or in part of future payment or payments, the court shall consider expert or other evidence as to the present value of the settlement consisting in whole or in part of future payment or payments. A release or covenant not to sue given pursuant to this section shall not be admitted into evidence in the trial of the matter but shall be considered by the court in determining the amount for which judgment shall be entered; and

2. It shall discharge the ~~tort-feasor~~ *person* to whom it is given from all liability for contribution to any other ~~tort-feasor~~ *person* ~~liable for the same injury to person or property or the same wrongful death.~~

B. A ~~tort-feasor~~ *person* who enters into a release or covenant not to sue with a claimant is not entitled to recover by way of contribution from another ~~tort-feasor~~ *person* whose liability for the injury, property damage or wrongful death is not extinguished by the release or covenant not to sue, nor in respect to any amount paid by the ~~tort-feasor~~ *person* which is in excess of what was reasonable.

C. For the purposes of this section, a covenant not to sue shall include any "high-low" agreement whereby a party seeking damages ~~in tort for injury to a person or property, or for wrongful death~~, agrees to accept as full satisfaction for any judgment no more than one sum certain and the party or parties from whom the damages are sought agree to pay no less than another sum certain regardless of whether any judgment rendered at trial is higher or lower than the respective sums certain set forth in the agreement and whereby such party provides notice to all of the other ~~tort-feasors~~ *parties* of the terms of such "high-low" agreement immediately after such agreement is reached.

D. A release or covenant not to sue given pursuant to this section shall be subject to the provisions of §§ 8.01-55 and 8.01-424.

E. This section shall apply to all such covenants not to sue executed on or after July 1, 1979, and to all releases executed on or after July 1, 1980. This section shall also apply to all oral covenants not to sue and oral releases agreed to on or after July 1, 1989, provided that any cause of action affected thereby accrues on or after July 1, 1989. A release or covenant not to sue need not be in writing where parties to a pending action state in open court that they have agreed to enter into such release or covenant not to sue and have agreed further to subsequently memorialize the same in writing.