Council of the District of Columbia
COMMITTEE ON THE JUDICIARY
COMMITTEE REPORT
1350 Pennsylvania Avenue, NW, Washington, DC 20004

To: Members of the Council of the District of Columbia

From: Kenyan R. McDuffie, Chairperson
       Committee on Judiciary

Date: April 21, 2016

Subject: Bill 21-0004, the “Motor Vehicle Collision Recovery Act of 2016”

The Committee on the Judiciary, to which Bill 21-0004, the “Motor Vehicle Collision Recovery Act of 2016” was referred, reports favorably thereon and recommends approval by the Council of the District of Columbia.

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STATEMENT OF PURPOSE AND EFFECT

Bill 21-0004, the “Motor Vehicle Collision Recovery Act of 2016,” was introduced in Council Period 21 on January 6, 2015 by Councilmembers Mary Cheh, Charles Allen, Anita Bonds, Jack Evans, and David Grosso, and referred to the Committee on the Judiciary. This measure is substantially similar in substance and nature to Bill 20-0884, the “Bicycle and Motor Vehicle Collision Recovery Amendment Act of 2014,” introduced by Councilmembers Cheh, Grosso, and Tommy Wells in Council Period 20. Pursuant to Council of the District of Columbia Rule 418(c), the Committee on the Judiciary adopts the record in B20-0884. This legislation changes the District’s common law contributory negligence doctrine to a modified comparative negligence doctrine for pedestrians, bicyclists, and other non-motorized users involved in collisions with motor vehicles.

I. Negligence

Though thousands of motor vehicle accidents occur annually, few are the result of intentional conduct. Rather, accidents are often the result of negligence on the part of one or more parties. In simple terms, a party is negligent if they had a duty of care to another, they breached their duty of care, and the breach of care caused injury to the other person. Whether someone breached their duty of care is determined by considering if they “use[d] the same caution, attention or skill that a reasonable person would use under similar circumstances.” I-5 Standardized Civil Jury Instructions for the District of Columbia § 5.02.

Thus, in the case of an accident involving a motor vehicle, assuming, only, that the driver of the motor vehicle were driving with their eyes closed and that because their eyes were closed they hit another motor vehicle, pedestrian, or bicyclist, the driver would be negligent for failing to have exercised the standard of care that a reasonable person would when driving. However, accidents are generally not as simple as that fact pattern. Often there is an allegation that the injured party was also negligent in some way.

II. Contributory vs. Comparative Negligence

Across the country, there are two recognized doctrines which address negligence by a plaintiff in a negligence action; contributory and comparative negligence. Contributory negligence first found its footing in 19th century England in the case of Butterfield v. Forrester.2 “The contributory negligence rule provided that when the contributory negligence of the plaintiff, however slight, combined with the negligence of the defendant to cause injury to the plaintiff, plaintiff’s contributory negligence constituted a complete bar to any recovery from the negligent defendant.” William E. Westerbeke, In Praise of Arbitrariness: The Proposed 83.7% Rule of Modified Comparative Fault, 59 Kans. L. Rev. 991, 992 (2011). The District is one of five jurisdictions that continues to preclude recovery by a plaintiff if the defendant can prove that

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1 See Powell by & Through Ricks v. District of Columbia, 634 A.2d 403, (D.C. 1993) holding that “The elements of a common law action for negligence are (1) a duty of care owed by the defendant to the plaintiff, (2) a breach of that duty by the defendant, and (3) damage to the plaintiff, proximately caused by the breach of duty.
2 Fleming James, Jr., Contributory Negligence, 62 Yale L.J. 691 (1953).
the plaintiff was contributorily negligent.³⁴

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<tr>
<th>State</th>
<th>Contributory/Comparative</th>
<th>Authority</th>
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<tbody>
<tr>
<td>Alaska</td>
<td>Pure Comparative</td>
<td>Alaska Stat. § 09:17:060</td>
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<tr>
<td>Arkansas</td>
<td>Modified Comparative &lt;50%</td>
<td>Ark. Code Ann. §§ 16-64-122</td>
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<tr>
<td>California</td>
<td>Pure Comparative</td>
<td><em>Li v. Yellow Cab</em>, 532 P.2d 1226 (1975)</td>
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<tr>
<td>Delaware</td>
<td>Modified Comparative ≤50%</td>
<td>Del. Code Ann. Title 10 §§ 8132</td>
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<tr>
<td>Florida</td>
<td>Pure Comparative</td>
<td>Fla. Stat. Ann. § 768.81</td>
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<tr>
<td>Hawaii</td>
<td>Modified Comparative &lt;50%</td>
<td>Haw. Rev. Stat. § 663-31</td>
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<tr>
<td>Idaho</td>
<td>Modified Comparative &lt;50%</td>
<td>Idaho Code § 6-801</td>
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<td>Illinois</td>
<td>Modified Comparative &lt;50%</td>
<td>Ill. Comp. Stat. Ann. §§ 5/2-1116</td>
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<td>Indiana</td>
<td>Modified Comparative &lt;50%</td>
<td>Ind. Code Ann. §§ 24-51-2-5 – 34-51-2-8</td>
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<td>Iowa</td>
<td>Modified Comparative &lt;50%</td>
<td>Iowa Code Ann. §668.3</td>
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<tr>
<td>Kansas</td>
<td>Modified Comparative ≤50%</td>
<td>Kan. Stat. Ann. §§ 60-258(a)</td>
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<tr>
<td>Louisiana</td>
<td>Pure Comparative</td>
<td>La. Civ. Code § 2323</td>
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<tr>
<td>Maryland</td>
<td>Contributory</td>
<td>Board of County Comm't of Garrett County v. Bell Atlantic, 695 A.2d 171 (Md. 1997)</td>
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<tr>
<td>Massachusetts</td>
<td>Modified Comparative ≤50%</td>
<td>Mass. Gen. Laws Ann., Ch. 231, § 85</td>
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<tr>
<td>Michigan</td>
<td>Pure Comparative</td>
<td>Mich. Comp. Laws Service § 600.2959</td>
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³ The District of Columbia, Alabama, Maryland, North Carolina, and Virginia, are the only states in the country that continue to allow contributory negligence as a complete defense to a tort action.

⁴ Note that there is an exception for cases involving employees of common carriers seeking to recover against their employers, wherein a slight/gross negligence standard is used. See D.C. Official Code §35-302.
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<tr>
<th>State</th>
<th>Comparative Rule</th>
<th>Statute</th>
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<tr>
<td>Minnesota</td>
<td>Modified Comparative ≤50%</td>
<td>Minn. Stat. Ann. § 604.01</td>
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<tr>
<td>Mississippi</td>
<td>Pure Comparative</td>
<td>Miss. Code Ann. § 11-7-15</td>
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<tr>
<td>Missouri</td>
<td>Pure Comparative</td>
<td>Mo. Ann. Stat. § 537.765</td>
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<tr>
<td>Montana</td>
<td>Modified Comparative ≤50%</td>
<td>Mont. Code Ann. § 27-1-702</td>
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<tr>
<td>Nebraska</td>
<td>Modified Comparative &lt;50%</td>
<td>Neb. Rev. Stat. § 25-21, 185.09</td>
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<tr>
<td>New York</td>
<td>Pure Comparative</td>
<td>NY Civ. Prac. L&amp;R § 1411</td>
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<td>North Carolina</td>
<td>Contributory</td>
<td><em>Smith v. Fiber Controls Corp.</em>, 268 S.E.2d 504 (N.C. 1980)</td>
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<tr>
<td>North Dakota</td>
<td>Modified Comparative ≤50%</td>
<td>ND Cent. Code § 32-03-2-02</td>
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<td>Ohio</td>
<td>Modified Comparative ≤50%</td>
<td>Ohio Rev. Code Ann. § 2315.33</td>
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<td>Oregon</td>
<td>Modified Comparative ≤50%</td>
<td>Or. Rev. Stat. § 18.470(1)</td>
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<tr>
<td>Rhode Island</td>
<td>Pure Comparative</td>
<td>R.I. Gen. Laws § 9-20-4</td>
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<tr>
<td>South Carolina</td>
<td>Modified Comparative ≤50%</td>
<td><em>Nelson v. Concrete Supply Co.</em>, 399 S.E.2d 783 (1991)</td>
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<tr>
<td>Tennessee</td>
<td>Modified Comparative ≤50%</td>
<td><em>McIntyre v. Balentine</em>, 833 S.W.2d 252 (1992)</td>
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<tr>
<td>Utah</td>
<td>Modified Comparative ≤50%</td>
<td>Utah Code Ann. § 78-27-38</td>
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<tr>
<td>Vermont</td>
<td>Modified Comparative ≤50%</td>
<td>12 V.S.A. § 1036</td>
</tr>
<tr>
<td>West Virginia</td>
<td>Modified Comparative ≤50%</td>
<td><em>Bradley v. Appalachian Power Co.</em>, 256 S.E.2d 879 (1979)</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>Modified Comparative ≤50%</td>
<td>Wis. Stat. Ann. § 845.045</td>
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In fact, currently, in the District “the rule is simply that contributory negligence bars a plaintiff’s recovery,” *Wingfield v. Peoples’ Drug Store, Inc.*, 279 A.2d 685 (D.C. App. 1977). For example, if a plaintiff failed to exercise reasonable care, and that failure was also a proximate cause of their injury, the plaintiff is barred from recovering even if the defendant was at fault, and regardless of if the defendant was at fault to a greater degree than the plaintiff.

The Comparative fault doctrine, as a general rule, allows a plaintiff to recover damages despite being also at fault, but rather based on their proportional share of fault. There are two commonly used models of comparative fault, a pure comparative fault model and a modified comparative fault model. The pure comparative fault model, adopted by 14 states, allows a plaintiff to recover from a defendant in a proportion equal to their fault. In a pure comparative fault jurisdiction, if a jury found that a plaintiff was 20% at fault, and the defendant was 80% at fault, the plaintiff is entitled to collect 80% of the damages they suffered. A plaintiff can also recover a proportional amount of damages even if they were more at fault than the defendant.

Modified comparative fault jurisdictions also allow a plaintiffs to recover proportionally to their fault, however if they are more at fault than a prescribed percentage they are barred from recovery. There are thirty-one states that employ a modified comparative fault rule. The states typically either bar a plaintiff’s recovery if they are more at fault than the defendant, or if they are equally and/or more at fault than the defendant. Hypothetically, in a modified comparative fault jurisdiction that bars recovery by plaintiffs who are more at fault than the defendant, if a fact finder determined that the plaintiff was 51% at fault, they would be barred from recovering damages, however if they were equally at fault (50%) the plaintiff could be awarded 50% of the damages. In a state that bars recovery by those equally at fault or greater, a plaintiff would be barred from recovering even if they were equally at fault, but could recover if they were less at fault than the defendant (i.e. up to 49%).

III. Bicycles and Pedestrians in the District

Historically, District residents held an interest in the use of bicycles as an alternative to motorized transportation. As early as 1976, the Department of Transportation in the District (DDOT) formalized a Bicycle Master Plan that would create 16 miles of bicycle lanes, 17 miles of trails and 38 miles of signed bicycle routes but that was not realized.

Walking has also been a fundamental part of everyday travel in Washington, DC since the City’s initial design by Pierre L’Enfant in 1791. L’Enfant’s plan for the City was a walkable city; he envisioned grand avenues radiating from the core of the city. DDOT encourages the use of bicycling and walking due to the many benefits, including traffic relief and public transport congestion, as well as environmental, economic and health benefits.

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3 South Dakota is not included in this figure, though it does have a modified fault rule, it uses a slight negligence vs. gross negligence standard. S.D. Cod. Laws Ann., § 20-9-2.


5 District of Columbia Department of Transportation Report “District Pedestrian Master Plan.” (2009)
Growth in bicycle commuting rates have almost doubled in the District from 2009 to 2013,\textsuperscript{8} and national statistics show that bicycle commuting in the District is higher than most major cities in the United States.\textsuperscript{9} This is buttressed by national surveys that show students are increasingly walking or bicycling to school from 2007 to 2012, especially students who attend low-income schools.\textsuperscript{10}

IV. Need for a Change in the Current Law

Unfortunately, accidents between motor vehicles, bicyclists, and pedestrians continue to occur. According to DDOT, on average, 265 bicycle and 600 pedestrian crashes are reported to the Metropolitan Police Department each year in the District.\textsuperscript{11} The data is likely capturing just a fraction of the collisions, as historically collisions between bicyclists and motor vehicles have been underreported.\textsuperscript{12}

A collision between a motor vehicle and a pedestrian or bicyclist is a significant occurrence which exposes the pedestrian or bicyclist to the potential for serious injury. In 2014 DDOT noted “pedestrians and bicyclists are among our most vulnerable roadway users, and when involved in a crash with a motor vehicle, they suffer more serious injuries than vehicle occupants.”\textsuperscript{13} It follows that because bicyclists or pedestrians are more vulnerable during an accident, contributory negligence disproportionally affects their potential recovery.\textsuperscript{14} As more people choose to bike or walk to work, the number of accidents with bicyclists and pedestrians with motor vehicles will increase. According to DDOT’s report on bicycle ridership and injuries in Washington, DC, in 2004, there were only 239 cyclists’ injuries. In 2013, there were 483 such injuries, a doubling of injuries in about ten years.\textsuperscript{15}

Perhaps the most compelling reason for a jurisdiction to change from contributory negligence to comparative negligence, as it relates to collisions between motor vehicles and pedestrians, bicyclists, and non-motorized users, was articulated over 60 years ago by Mr. Ernest A. Turk, noting that:

“[t]he advent of the private automobile has also done much to complicate the situation, for the scales of justice do not hang evenly in the application of the doctrine [of contributory negligence] to the relationships of motorists and pedestrians. The scrambling of pedestrians, motor vehicles, streetcars, railroad trains and passengers in one pile of mechanized traffic,

\textsuperscript{9} U.S. Census Bureau. State and County Quickfacts, Online: http://factfinder.census.gov/servlet/DSTGeoSearchByListServlet?ds_name=dec_2000_SF3_U&lang=en&ts=93199688005, 2004
\textsuperscript{10} National Center for Safe Routes to School. “Trends in Walking or Bicycling to School.” www.saferoutesinfo.org
\textsuperscript{12} District Department of Transportation Report “District Bicycle Master Plan.” 11. (Apr. 2005)
\textsuperscript{13} Id.
\textsuperscript{14} It is also noted that in collisions between motorists, both of whom are required to have insurance, a party who is barred by contributory negligence may still be able to seek relief from their insurer.
\textsuperscript{15}
all in a hurry, presents an every-day occurrence. Under such a circumstance, accidents are inevitable for negligence will never die. All human beings, because of their imperfections, are what the law would style "negligent" at some time or another; the one today, the other tomorrow. Why then, if an accident results from the negligence of two or more persons, should the noxal consequences be distributed so unevenly? Why should the mutilated victim have to suffer the sorrows of pain, tears, and sleepless nights while his opponent, perhaps guilty of fault to a higher degree, is free to leave a court of justice bearing a certificate that he is not to be deemed a tort-feasor? To call such a result "harsh" is to use a mild expression, to say the least!16

In introducing this measure, Councilmember Cheh noted the difficulty that pedestrians and cyclists face in recovering damages when they are involved in collisions with motor vehicles. In fact, the difficulty is two-fold. Many pedestrians and bicyclists who might otherwise receive a settlement out of court but for the contributory rule, are denied recovery by Insurance companies who, in accordance with the current law, assert that the pedestrian or bicyclist was contributorily negligent. This results in pedestrians and bicyclists being in the difficult position of having to seek recovery through the Court for an amount that may be significant for the potential plaintiff, but not significant enough for an attorney to justify the costs of representing them. Moreover, at Court they face the same hurdle of potentially being barred recovery if the factfinder determines they were contributorily negligent.

Additionally, Courts in the District have previously noted the confusion for juries surrounding the contributory negligence scheme. See District of Columbia v. Huysman, 650 A.2d 1323, 1327 (D.C. 1994) (Ferren, J., concurring). This measure will remove that confusion but remains limited to actions involving collisions between motor vehicles and pedestrians, bicyclists, and other non-motorized users.

V. Committee Print

The Committee Print is largely unchanged from the measure as introduced. The introduced version of Bill 21-0004, the "Motor Vehicle Collision Recovery Act of 2016" was the result of discussions and compromise by many of the parties who participated in the hearing on the bill's predecessor, Bill 20-884 the "Bicycle and Motor Vehicle Collision Recovery Amendment Act of 2014," and the Committee took care to preserve the intent of the parties. The Committee Print provides that in the case of a collision between a motor vehicle and a pedestrian, bicyclist, or other non-motorized user of a public highway a new modified comparative negligence doctrine will apply. Specifically, a plaintiff's negligence will not bar recovery unless it is the proximate cause of the plaintiff's injury and the plaintiff's negligence is greater than the aggregated total amount of negligence of all of the defendant's that proximately caused the injury.


16 Ernest A. Turk, Comparative Negligence on the March, 28 Chi.-Kent. L. Rev. 189 (1950).
May 25, 1954 (68 Stat. 120; D.C. Official Code § 50-1301.02(4)), 18 DCMR § 9901.1, and section 2(8) of the Motor Vehicle Safety Responsibility Act of the District of Columbia, effective May 25, 1954 (68 Stat. 120; D.C. Official Code § 50-1301.02(8)) respectively. A new definition for “Non-motorized user” is added for clarity, to ensure that other similarly situated individuals receive the same ability to recover as pedestrians and bicyclists.

The Committee Print also makes clear that this limited change in the contributory negligence doctrine is not intended to, nor shall it change or affect the doctrine of joint and several liability or the last chance doctrine. Under established law in the District, each tortfeasor remains individually and jointly liable for all of the plaintiff’s injuries.\(^\text{17}\) One joint tortfeasor may be held liable for the entire amount of plaintiff’s damages regardless of his or her percentage of fault so long as she played a significant factor in causing the incident.\(^\text{18}\) The principle behind the doctrine is if two or more tortfeasors act negligently, the plaintiff should not be concerned with the solvency of one tortfeasor over the other. The plaintiff should be able to collect from all tortfeasors, and tortfeasors can bring indemnification claims against each other. This bill leaves that doctrine unchanged.

Moreover, the changes in the Committee Print are not intended to change or affect the last clear chance doctrine as it applies in cases where the negligence of a pedestrian, bicyclist, or other non-motorized user involved in a collision with a motor vehicle bars the plaintiff’s recovery.\(^\text{19}\) Thus a pedestrian or bicyclist who is more than 50% at fault in a collision with a motor vehicle and therefore barred by contributory negligence may still seek recovery under the last chance doctrine.

VI. Committee Recommendation

The Committee finds, based on the testimony, significant risk of injury, and national trend, that the District of Columbia law should institute a modified comparative negligence standard for bicyclists and pedestrians in the District. Therefore, the Committee recommends that the Council enacts Bill 21-0004, the “Motor Vehicle Collision Recovery Act of 2016.”


\(^{18}\) *Trial Lawyers Association of Metropolitan Washington, D.C. Testimony at Committee on the Judiciary and Public Safety Public Hearing* on September 29, 2014. 3.

\(^{19}\) To recover under the last clear chance doctrine, a plaintiff must prove by a preponderance of the evidence:

1. That the plaintiff was in a position of danger caused by the negligence of the plaintiff and defendant
2. That the plaintiff was oblivious to the danger, or unable to extricate himself from the position of danger
3. That the defendant was aware, or by exercise of reasonable care should have been aware of the plaintiff’s danger and his ability to extricate himself from it
4. That the defendant with the means available to him could have avoided injuring the plaintiff after becoming aware of the danger, but failed to do so. *See District of Columbia v. Huysman*, 650 A.2d 1323 (1994)
LEGISLATIVE HISTORY

July 14, 2014  Introduction of Bill 20-0884 by Council members Grosso, Cheh and Wells

July 14, 2014  Referral to Committee on Judiciary and Public Safety

July 25, 2014  Notice of Intent to Act on B20-0884 is published in the District of Columbia Register

September 12, 2014  Notice of Public Hearing is published in the District of Columbia Register

September 29, 2014  Public Hearing on B20-0884 is held.

January 6, 2015  Introduction of B21-0004 by Councilmembers Cheh, Bonds, Evans, Grosso and Allen at Legislative Meeting

January 6, 2015  Referral to Committee on the Judiciary

January 9, 2015  Notice of Intent to Act on B21-0004 is published in the District of Columbia Register.

April 21, 2016  Markup of B21-0004 by the Committee on the Judiciary.

POSITION OF THE EXECUTIVE

The Committee did not receive testimony or comments from the Executive.

ADVISORY NEIGHBORHOOD COMMISSION COMMENTS

The Committee did not receive testimony or comments from the Advisory Neighborhood Commissions.

WITNESS LIST AND HEARING RECORD

On September 29, 2014 the Committee on the Judiciary, chaired by Councilmember Tommy Wells, held a hearing on Bill B20-884, the “Bicycle and Motor Vehicle Collision Recovery Act of 2014.” A video recording of the hearing can be viewed at http://lims.dccouncil.us/Legislation/B200-0884. The following witness testified before the committee concerning Bill 20-0884.
Mr. Bilton supports the legislation. Mr. Bilton has worked as an attorney representing injured bicyclists. Mr. Bilton noted that bicyclists are often assigned fault, regardless of motorists’ negligence. Bicyclists also suffer the majority of the physical injuries. Contributory negligence causes bicyclists to suffer the financial burden of paying for those injuries themselves.

**Shane Farthing, Executive Director, Washington Area Bicyclist Association**

Mr. Farthing testified on behalf of the Washington Area Bicyclist Association, and their thousands of members and supporters, and the many bicyclist crash victims who have been harmed. Mr. Farthing testified that the doctrine of contributory negligence is an inequitable and outdated doctrine, adds unjustified legal vulnerability to pre-existing physical and contextual vulnerabilities, and limits bicyclists’ access to legal representation. Confusion of bicyclists’ laws also increases the likelihood of improper negligence findings against bicyclists. Mr. Farthing noted that 46 states do not apply the contributory negligence doctrine.

**Megan Kanagy, DC Bicycle Advisory Council Representative**

Ms. Kanagy, on behalf of the Bicycle Advisory Council testified in support of Bill 20-884 and the exemption of cyclists from the doctrine of contributory negligence. Ms. Kanagy state that too often cyclists are improperly ticketed for a collision. Ms. Kanagy opined that confusion surrounding the laws results in bicyclists’ claims being improperly denied. Ms. Kanagy thanked the Committee, on behalf of the over 300 cyclists who are involved in a collision each year, for its leadership on the issue.

**Ben Somberg**

Mr. Somberg supports the measure. Mr. Somberg testified that he recently learned that under the existing District laws, if he were seriously injured as a pedestrian, he may not have access to civil recourse because he could be deemed just slightly at fault for the accident.

**Tracy Loh, All Walks DC**

Ms. Loh testified as an individual and on behalf of the DC’s citywide pedestrian advocacy group, All Walks DC. Ms. Loh recounted how while riding her bicycle home on the first day of her job, she was struck by a minivan at the intersection of Connecticut Avenue and Fessenden Street; thrown 20 feet through the air off the bicycle; had her pelvis fractured in three places; and sprained her back. Ms. Loh indicated that the driver’s insurance company denied her claim. Because she was unable to recover, she was forced to continue commuting to work full-time in pain. Ms. Loh noted the significant financial hardship of physical therapy, and cost for transportation while Ms. Loh urged the committee to vote in favor of this bill, with an amendment to include pedestrians.

**Jessica Tunon, DC Pedestrian Advisory Council**

Ms. Tunon is the representative of the D.C. Pedestrian Advisory Council (PAC). Ms. Tunon testified that the mission of the PAC is to advise the Mayor, City Council and District agencies on pedestrian safety and accessibility issues, and recommended that the Committee amend the bill to include pedestrians. Ms. Tunon noted that the District is one of only five jurisdictions in the country that continues to adhere to contributory negligence standards. Ms. Tunon further testified that every year in the District, between 800 and 900 pedestrians are struck by cars, and more than 300 of them sustain serious injuries. Ms. Tunon opined that pedestrians are
no match for the combined weight and speed of a car, and pedestrian errors do not have the same inherent potential for danger and violence as driver errors. Ms. Tunon testified that it is only fair to weigh each party’s degree of responsibility and distribute compensation in proportion to the degree of fault.

Georgia Tobias, DC Pedestrian Advisory Council
Mr. Tobias testified in support of the measure. Mr. Tobias noted that the District must protect pedestrians from collisions with cars and other vehicles because a pedestrian will never win. Mr. Tobias also recounted a personal experience where he was struck by a vehicle.

Lawrence Anthony Richardson, State Farm Insurance
Submitted written testimony joining the DC Insurance Federation.

Noel Patterson, Allstate Insurance
Submitted written testimony, in agreement with the DC Insurance Federation.

Wayne E. McOwen, DC Insurance Federation
Mr. Wayne represents the District of Columbia Insurance Federation (DCIF), a state insurance trade association whose members provide property, casualty, life and health insurance products and services in the District. Mr. McOwen stated that walking, steering a bicycle, and driving a motorized vehicle safely are goals better achieved through education. Mr. McOwen testified that DCIF is willing to support initiatives to educate and encourage the continued progress toward safety, however DCIF believes the legislation carves out a special group – cyclists – for unique treatment. Mr. McOwen testified that the contributory negligence doctrine holds everyone to a standard of care and attention. If a driver, pedestrian, or bicyclist deviates from that standard, and that negligence is the proximate cause of injury to another, then they are potentially responsible for damages reasonably flowing from their actions. Mr. McOwen also noted that the doctrine of “last clear chance” allows a contributorily negligent plaintiff to recover if the defendant knew, or should have known, of the peril to the plaintiff and there was time and means to avoid the harm. Furthermore, Mr. McOwen noted that an accident does not always mean there was a lack of care. Any party asserting a claim has to persuade the fact finder that a negligent act occurred and was the proximate cause of the event.

Bruce Deming, Esq., Law Offices of Bruce S. Deming, Esq.
Mr. Deming testified that he is a practicing attorney in the District and also an avid cyclist. Mr. Deming stated that over 90% of his practice consists of representing cyclists in personal injury cases, and over the last 30 years he has represented hundreds of injured cyclists in cases in the District, Virginia, and Maryland and throughout the United States. Mr. Deming supports the measure and believes that the doctrine of contributory negligence is a harsh doctrine. Mr. Deming noted that 46 states have done away with the doctrine.

Jim Tageleri, Trial Lawyers Association
Mr. Tageleri testified on behalf of the Trial Lawyers Association in opposition to the legislation. Mr. Tageleri stated that the measure was unnecessary because the law already allows for a bicyclist to recover full compensation even when he or she commits a negligent act that does not substantially lead to the incident that caused the injuries. The law would create a special
class of victims, and lead to the abolition of joint and several liability. The focus should be on the education of roadway safety.

**Government Witnesses:**
None.

**IMPACT ON EXISTING LAW**

The doctrine of contributory negligence in the District is established by common law. Wingfield v. People's Drug Store, 379 A.2d 685 (D.C. 1994). Bill 21-0004 changes the District’s common law Contributory Negligence doctrine to a modified Comparative Negligence doctrine in the limited circumstance of pedestrians, bicyclists, and other non-motorized users involved in collisions with motor vehicles.

**FISCAL IMPACT**

On April 18, 2016 the Chief Financial Officer indicated that funds are sufficient in the FY2016 budget, and the proposed FY2017 through FY2020 budget and financial plan to implement this measure.

**SECTION-BY-SECTION ANALYSIS**

*Section 1* provides the long and short titles of the legislation.

*Section 2* defines the terms “motor vehicle,” “non-motorized user,” “pedestrian” and “public highway.”

*Section 3* changes the District’s common law Contributory Negligence doctrine to a modified Comparative Negligence doctrine in the limited circumstance of pedestrians, bicyclists, and other non-motorized users involved in collisions with motor vehicles. Ensures that the doctrine of joint and several liability and the last chance doctrine remain unchanged. And clarifies that the act does not reduce the legal protections provided to pedestrians and cyclists under section 3 of An Act to Enable the Blind and Physically Disabled to Participate Fully in the Social and Economic Life of the District.

*Section 4* states that if any provision of this act is held as invalid, than such invalidity shall invalidate the act in its entirety.

*Section 5* fiscal impact statement.

*Section 6* effective date.
COMMITTEE ACTION

On April 21, 2016, the Committee on the Judiciary held a markup to consider Bill 21-0004, the “Motor Vehicle and Collision Recovery Act of 2016”. The markup was called to order at 1:15pm. Chairperson Kenyan R. McDuffie recognized a quorum consisting of himself and Councilmembers Bonds and Cheh. Chairperson McDuffie, without objection, moved the Committee Print and Committee Report for Bill 21-0004 en bloc with leave for staff to make technical changes. Councilmember Cheh thanked Chairperson McDuffie for moving the measure, and noted that the measure is targeted and creates fairness for those bicyclists and pedestrians who are injured by cars. After the discussion, the Committee voted 3-0 to approve the Committee Report and the Committee Print with the members voting as follows:

YES: Chairperson McDuffie, and Councilmembers Bonds and Cheh

NO: None

ABSENT: Councilmembers Evans and May

LIST OF ATTACHMENTS

(A) Bill 21-0004, as introduced
(B) Bill 20-0884, as introduced
(C) Notice of Intent to Act, published in the District of Columbia Register
(D) Public Hearing Notice, published in the District of Columbia Register (B20-884)
(E) Public Hearing Agenda and Witness List (B20-884)
(F) Testimony (B20-884)
(G) Letters and Petitions Received
(H) Fiscal Impact Statement
(I) Legal Sufficiency
(J) Committee Print
Memorandum

To: Members of the Council
From: Nyasha Smith, Secretary to the Council
Date: January 14, 2015
Subject: Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Legislative Meeting on Tuesday, January 6, 2015. Copies are available in Room 10, the Legislative Services Division.


INTRODUCED BY: Councilmembers Cheh, Bonds, Evans, Grosso, and Allen

CO-SPONSORED BY: Councilmember Alexander

The Chairman is referring this legislation to the Committee on Judiciary.

Attachment

cc: General Counsel
    Budget Director
    Legislative Services
A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To limit the application of the doctrine of contributory negligence in cases of collisions between non-motorized users of public highways and motor vehicles.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this act may be cited as the “Motor Vehicle Collision Recovery Act of 2015”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Motor vehicle” shall have the same meaning as provided in section 2(4) of the Motor Vehicle Safety Responsibility Act of the District of Columbia, effective May 25, 1954 (68 Stat. 120; D.C. Official Code § 50-1301.02(4)).

(2) “Pedestrian” shall have the same meaning as provided in Chapter 9901 of Title 18 of the District of Columbia Municipal Regulations (18 DCMR 9901.1).
(3) “Public highway” shall have the same meaning as provided in section 2(8) of the Motor Vehicle Safety Responsibility Act of the District of Columbia, effective May 25, 1954 (68 Stat. 120; D.C. Official Code § 50-1301.02(8)).

Sec. 3. Contributory negligence limitation.

(a) Notwithstanding any other District law, the negligence of a pedestrian, bicyclist, or other non-motorized user of a public highway involved in a collision with a motor vehicle shall not bar or reduce the plaintiff’s recovery in any civil action unless:

(1) the plaintiff’s negligence is a proximate cause of the plaintiff’s injury; and

(2) the plaintiff’s negligence is greater than the aggregated total amount of negligence of all of the defendants that proximately caused the plaintiff’s injury.

(b) In no event shall this act change or affect the doctrine of joint and several liability.

(c) This act shall not reduce the legal protections provided to pedestrians and cyclists under section 3 of An Act to Enable the Blind and Otherwise Physically Disabled to Participate Fully in the Social and Economic Life of the District of Columbia, effective March 5, 1981 (86 Stat. 971; D.C. Official Code § 7-1004), or section 2(b) of the Child Helmet Safety Amendment Act of 2000, effective May 23, 2000 (D.C. Official Code § 50-1606).

Sec. 4. Nonseverability.

If any provision of this act is held invalid, such invalidity shall invalidate this act in its entirety, and the provisions of this act are declared to be nonseverable.

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).
Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.
ATTACHMENT

B
Memorandum

To: Members of the Council
From: Nyasha Smith, Secretary to the Council
Date: July 17, 2014
Subject: Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Legislative Meeting on Monday, July 14, 2014. Copies are available in Room 10, the Legislative Services Division.


INTRODUCED BY: Councilmembers Grosso, Cheh and Wells

The Chairman is referring this legislation to the Committee on Judiciary and Public Safety.

Attachment

cc: General Counsel
    Budget Director
    Legislative Services
A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Access to Justice for Bicyclists Act of 2012 to ensure fairness of recovery for injuries sustained by bicyclists in collisions with motor vehicles by adopting a comparative negligence defense standard I bicycle and motor vehicle collisions.

BE IT ENACTED BY THE COUNCIL FOR THE DISTRICT OF COLUMBIA, That this act may be cited as the “Bicycle and Motor Vehicle Collision Recovery Amendment Act of 2014”.

Sec. 2. Section 2 of the Access to Justice for Bicyclists Act of 2012, effective April 20, 2013 (D.C. Law 19-264; D.C. Official Code § 50-1621), is amended by adding a new subsection (c) to read as follows:

“(c) Any individual who, while riding a bicycle, is involved in a collision with a motor vehicle, shall have the total damages reduced in proportion to the relative degree of fault which is the proximate cause of the injury sustained in the collision.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).
Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.
ATTACHMENT

C
COUNCIL OF THE DISTRICT OF COLUMBIA
NOTICE OF INTENT TO ACT ON NEW
LEGISLATION

The Council of the District of Columbia hereby gives notice of its intention to consider the following legislative matters for final Council action in not less than 15 days. Referrals of legislation to various committees of the Council are listed below and are subject to change at the legislative meeting immediately following or coinciding with the date of introduction. It is also noted that legislation may be co-sponsored by other Councilmembers after its introduction.

Interested persons wishing to comment may do so in writing addressed to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, NW, Room 5, Washington, D.C. 20004. Copies of bills and proposed resolutions are available in the Legislative Services Division, 1350 Pennsylvania Avenue, NW, Room 10, Washington, D.C. 20004 Telephone: 724-8050 or online at www.dccouncil.us.

COUNCIL OF THE DISTRICT OF COLUMBIA PROPOSED
LEGISLATION

BILLS

B21-1  Pre-K Student Discipline Amendment Act of 2015
Intro. 1-6-15 by Councilmembers Grosso, Allen, Orange, Nadeau, Alexander, McDuffie, Cheh, Evans, Bonds, and Silverman, and Chairman Mendelson and referred to the Committee on Education

B21-2  Instant Runoff Voting Amendment Act of 2015
Intro. 1-6-15 by Councilmembers Grosso, Silverman, and Cheh and referred to the Committee on the Judiciary

B21-3  Rail Safety and Security Amendment Act of 2015
Intro. 1-6-15 by Councilmembers Cheh, Allen, and Grosso and referred to the Committee on the Judiciary

Intro. 1-6-15 by Councilmembers Cheh, Bonds, Evans, Grosso, and Allen and referred to the Committee on the Judiciary
<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Bill Title</th>
<th>Introductory Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>B21-5</td>
<td>Access to Emergency Epinephrine in Schools Act of 2015</td>
<td>Intro. 1-6-15 by Councilmembers Cheh, Grosso, and Alexander and referred to the Committee on Education with comments from the Committee on Health and Human Services</td>
</tr>
<tr>
<td>B21-6</td>
<td>Healthy Hearts of Babies Act of 2015</td>
<td>Intro. 1-6-15 by Councilmembers Alexander, Grosso, Allen, Evans, Bonds, and Cheh and referred to the Committee on Health and Human Services</td>
</tr>
<tr>
<td>B21-7</td>
<td>Behavioral Health Coordination of Care Amendment Act of 2015</td>
<td>Intro. 1-6-15 by Councilmembers Alexander and Grosso and referred to the Committee on Health and Human Services</td>
</tr>
<tr>
<td>B21-8</td>
<td>Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015</td>
<td>Intro. 1-6-15 by Councilmember Alexander and referred to the Committee on Health and Human Services</td>
</tr>
<tr>
<td>B21-9</td>
<td>Ruby Whitfield Way Designation Act of 2015</td>
<td>Intro. 1-6-15 by Councilmembers McDuffie and Allen and referred to the Committee of the Whole</td>
</tr>
<tr>
<td>B21-10</td>
<td>Fairness in Public Engagement During Sale of Public Lands Amendment Act of 2015</td>
<td>Intro. 1-6-15 by Councilmember McDuffie and referred to the Committee of the Whole</td>
</tr>
<tr>
<td>B21-11</td>
<td>The High Technology Investment Authority Establishment Act of 2015</td>
<td>Intro. 1-6-15 by Councilmembers McDuffie and Grosso and referred to the Committee of the Whole</td>
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<tr>
<td>Bill No.</td>
<td>Bill Title</td>
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<td>B21-12</td>
<td>Pennsylvania Avenue Development Act of 2015</td>
<td>Intro. 1-6-15 by Councilmember Evans and referred to the Committee of the Whole</td>
</tr>
<tr>
<td>B21-13</td>
<td>Disabled Veterans Homestead Exemption Act of 2015</td>
<td>Intro. 1-6-15 by Councilmember Evans and referred to the Committee on Finance and Revenue</td>
</tr>
<tr>
<td>B21-14</td>
<td>Council Contract Review Repeal Act of 2015</td>
<td>Intro. 1-6-15 by Councilmembers Evans, Silverman, Nadeau, Bonds, Grosso, Allen and Alexander and referred to the Committee of the Whole</td>
</tr>
<tr>
<td>B21-15</td>
<td>Small Business Incubator Act of 2015</td>
<td>Intro. 1-6-15 by Councilmembers Allen, Silverman, Grosso, Evans, Nadeau, McDuffie, Orange and Chairman Mendelson and referred to the Committee on Business, Consumer, and Regulatory Affairs</td>
</tr>
<tr>
<td>B21-16</td>
<td>Collaborative Reproduction Amendment Act of 2015</td>
<td>Intro. 1-6-15 by Councilmembers Allen, Grosso, Nadeau, Silverman, McDuffie, Evans, Alexander, Bonds, Cheh, Orange and Chairman Mendelson and referred to the Committee on the Judiciary</td>
</tr>
<tr>
<td>B21-17</td>
<td>Unemployment Profile Act of 2015</td>
<td>Intro. 1-6-15 by Councilmembers Orange and Nadeau and referred to the Committee on Business, Consumer, and Regulatory Affairs</td>
</tr>
<tr>
<td>B21-18</td>
<td>Reading Development and Third Grade Retention Act of 2015</td>
<td>Intro. 1-6-15 by Councilmember Orange and referred to the Committee on Education</td>
</tr>
</tbody>
</table>
B21-19  Thurgood Marshall-Marion Barry Early Education Learning Academy Act of 2015
Intro. 1-6-15 by Councilmember Orange and referred to the Committee on Education

B21-20  Access to Contraceptives Amendment Act of 2015
Intro. 1-6-15 by Chairman Mendelson and Councilmembers Grosso, Nadeau, McDuffie, Silverman, Evans, Allen, Alexander and Cheh and referred to the Committee on Health and Human Services

B21-21  Enhanced Penalties for Distracted Driving Amendment Act of 2015
Intro. 1-6-15 by Chairman Mendelson and Councilmembers Bonds, Allen and Nadeau and referred to the Committee on Transportation and the Environment

B21-22  Contractor Pay-to-Play Elimination Amendment Act of 2015
Intro. 1-6-15 by Chairman Mendelson and Councilmembers Grosso, Allen, Nadeau, Alexander and Cheh and referred to the Committee of the Whole

PROPOSED RESOLUTIONS

PR21-7  District of Columbia Water and Sewer Authority Board of Directors M. Jeffrey Miller Confirmation Resolution of 2014
Intro. 1-5-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment

PR21-8  District of Columbia Water and Sewer Authority Board of Directors Brian J. Hanlon Confirmation Resolution of 2014
Intro. 1-5-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment
| PR21-9       | Franklin School Surplus Declaration and Approval Resolution of 2014  
Intro. 1-5-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment |
| PR21-10     | Franklin School Disposition Approval Resolution of 2014  
Intro. 1-5-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole |
| PR21-11     | Police Complaints Board Kristin Murphy Confirmation Resolution of 2014  
Intro. 1-5-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary |
| PR21-12     | Board of Zoning Adjustment Kathryn Allen Confirmation Resolution of 2014  
Intro. 1-5-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole |
| PR21-13     | Director of the Office of Planning Ellen M. McCarthy Confirmation Resolution of 2014  
Intro. 1-5-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole |
| PR21-14     | Board of Optometry Tracy G. Hammond Confirmation Resolution of 2014  
Intro. 1-5-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health and Human Services |
| PR21-15     | Board of Accountancy Kayla Futch Confirmation Resolution of 2014  
Intro. 1-5-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs |
<table>
<thead>
<tr>
<th>PR21-16</th>
<th>Public Building Sign Prohibition Rules Approval Resolution of 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intro. 1-5-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment with comments from the Committee on Business, Consumer, and Regulatory Affairs.</td>
<td></td>
</tr>
<tr>
<td>PR21-17</td>
<td>Taxicab Vehicle License Quota Regulation Approval Resolution of 2014</td>
</tr>
<tr>
<td>Intro. 1-5-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment</td>
<td></td>
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</table>
ATTACHMENT D
COUNCILMEMBER TOMMY WELLS, CHAIRPERSON
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY
ANNOUNCES A PUBLIC HEARING ON

Bill 20-321, the “Human Rights Act Notice Requirement Amendment Act of 2013”
Bill 20-803, the “Human Rights Amendment Act of 2014”
and
Bill 20-884, the “Bicycle and Motor Vehicle Collision Recovery Amendment Act of 2014”

Monday, September 29, 2014
12:30 p.m.
John A. Wilson Building, Room 500
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Councilmember Tommy Wells, Chairperson of the Committee on the Judiciary and Public Safety, announces a public hearing on September 29, 2014, beginning at 12:30 p.m. in Room 500 of the John A. Wilson Building. The purpose of this public hearing is to receive testimony on Bills 20-321, 20-803, and 20-884.

Bill 20-321 would clarify that the notice requirement for claims against the District does not apply to claims alleging violations of the Human Rights Act. The bill may be viewed online at http://lims.dccouncil.us/Legislation/B20-0321.

Bill 20-803 would require the Director of the Office of Human Rights (OHR) have a demonstrated background in human rights law; require OHR’s annual report to include information on investigations and public hearings initiated by the Office; and repeal the exemption allowing religiously-affiliated educational institutions to discriminate based on sexual orientation. The bill may be viewed online at http://lims.dccouncil.us/Legislation/B20-0803.

Bill 20-884 would adopt a comparative negligence standard for damages recovery in bicycle and motor vehicles collisions. The bill may be viewed online at http://lims.dccouncil.us/Legislation/B20-0884.

The Committee invites the public to testify. Individuals and representatives of organizations who wish to testify should contact Nicole Goines at 724-7808 or ngoines@dccouncil.us, and furnish their name, address, telephone number, and organizational affiliation, if any, by 5 p.m. on Thursday, Sept. 25, 2014. Witnesses should bring 15 copies of their testimony. Testimony may be limited to 3 minutes. For those unable to testify at the public hearing, written statements are encouraged and will be made part of the official record. Written statements should be submitted by 5 p.m. on Thursday, Oct. 9, 2014 to Ms. Goines, Committee on the Judiciary and Public Safety, Room 109, 1350 Pennsylvania Ave., NW, Washington, D.C., 20004, or via email at ngoines@dccouncil.us.
ATTACHMENT E
COUNCIL OF THE DISTRICT OF COLUMBIA
Committee on the Judiciary and Public Safety
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004
Agenda

Councilmember Tommy Wells, Chairperson
Committee on the Judiciary and Public Safety

Announces a Public Hearing on


Monday, September 29, 2014
12:30 p.m., Room 500, John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

Agenda and Witness List

A. Call to Order and Opening Remarks

   Bill 20-803 “Human Rights Amendment Act of 2014”

   Public Witnesses
   1. Michael Sindram      DC Justice For All/ Disabled Veteran
   2. Bob Summersgill     ANC 3F07
   3. Richard J. Rosendall President, Gay and Lesbian Activists Alliance
   4. Larry Morris        General Counsel, Catholic University of America
   5. Melody Webb         Employment Justice Center
   6. Jason Zuckerman     MWELA
   7. Jenifer Klar        Public Witness
   8. Valencia Rainey     Metropolitan Washington Employment Lawyers
                          Association (MWELA)
   9. Jonathan Puth       MWELA

   Government Witness
   1. Mónica Palacio      Director, Office of Human Rights


   Public Witnesses
   1. Michael Sindram      DC Justice For All/ Disabled Veteran
   2. D. Cory Bilton       Associate, Mesirow & Associates, PLLC
   3. Shane Farthing       Executive Director, Washington Area Bicyclist
                          Association
   4. Megan Kanagy        DC Bicycle Advisory Council Representative
   5. Ben Somberg         Public Witness
6. Tracy Loh  
7. Jessica Tunon  
8. George Tobias  
9. Lawrence Anthony Richardson  
10. Noel Patterson  
11. Wayne E. McOwen  
12. Bruce Deming, Esq.  
13. Jim Tageleri  

D. Adjournment
ATTACHMENT

F
LEGISLATIVE FILING SHEET

DATE: October 10, 2014

1. ✔ SHORT TITLE OF MEASURE OR DOCUMENT

Bill 884, "Bicycle and Motor Vehicle Collision Recovery Amendment Act of 2014"

2. ✔ NAME/LOCATION ON V DRIVE: CP20>Wells>Hearing Records
   DISK ATTACHED

3. REFFERAL OF PROPOSED LEGISLATION

4. COMMITTEE REPORT

5. EMERGENCY LEGISLATION
   Circulated Statement of Reason and Effect of Emergency
   Emergency Declaration Resolution
   Emergency Legislation
   Temporary Legislation

6. CIRCULATED CEREMONIAL RESOLUTION
   **Please contact Information Systems Division for framed copy**

7. REPROGRAMMING REQUEST

8. AMENDMENT(S) Bill No. _______ / ______ PR No.

9. PUBLIC HEARING NOTICE

10. PUBLIC ROUNDTABLE NOTICE

11. PUBLIC OVERSIGHT HEARING/ PUBLIC OVERSIGHT ROUNDTABLE NOTICE

12. ✔ OTHER CORRESPONDENCE

Anne Phelps

FILED BY
Wells, Judiciary and Public Safety
CHAIRMAN, MEMBER OR COMMITTEE
Testimony of Cory Bilton
Associate at Mesirow & Associates, PLLC
Presented at the Hearing on Bill 20-884 on 9/29/14

My name is Cory Bilton. For the last four years, I have worked for a small personal injury law firm here in the District of Columbia, as both a law clerk and a new lawyer. In that time, I have worked on many cases involving injured bicyclists. What I commonly have seen in bicycle cases is that regardless of the motorists’ negligence, bicyclists’ are often assigned fault incorrectly. And even when they do share some percentage of the overall blame, bicyclists suffer 100% of the physical injuries. Under either scenario, the injured bicyclist faces the harsh bar presented by contributory negligence. Because of this, I’m here today to voice my personal support for Bill 20-884, adopting comparative negligence for bicycle and motor vehicle collisions.

Bicyclists are often incorrectly blamed for contributing to a collision. Many motorists, police officers, witnesses, attorneys, judges, and jurors seem to apply the rules of the road differently to bicyclists than they would to a motorist. For example, many motorists do not consider bicyclists to be equals on the roadway. This causes motorists to fail to watch for bicyclists, fail to give bicyclists space or use of the lane, encroach upon the bicycle lane, open doors into bicycle lanes after parallel parking, and generally fail to recognize that bicyclists have the right-of-way in many of the same circumstances a motorist would. Insinuating that bicyclists have a lower status, or no status, on the roadway leads bicyclists to be blamed in many situations where a credible argument could not be made against another motorist. Any blame that sticks, incorrectly or not, bars the bicyclist from recovering under contributory negligence.

Second, bicyclists suffer all of the physical injury in a collision with a motor vehicle. So even in situations where the bicyclist shares blame with the motorist for the collision, the bicyclist does not share the physical injury. The physical toll is incurred regardless of who pays for it, so our community as a whole saves nothing by barring some claims with contributory negligence. Since contributory negligence is archaic, not widely known, and does not align with many peoples’ notion of fairness, it can have little deterrent effect before a collision occurs. The main effect of contributory negligence is that it causes bicyclists to suffer both the injuries themselves and the financial burden of paying for those injuries.

For these reasons, adopting comparative negligence for bicycle and motor vehicle accidents would be an enormous improvement. Comparative negligence does not favor bicyclists, but it would allow some bicyclists to avoid some of the inequities of the current system we have in DC today. Thank you.
TESTIMONY OF THE WASHINGTON AREA BICYCLIST ASSOCIATION IN SUPPORT OF BILL 20-884, THE BICYCLE AND MOTOR VEHICLE COLLISION RECOVERY AMENDMENT ACT OF 2014

Thank you for the opportunity to testify today on behalf of the Washington Area Bicyclist Association, our thousands of members and supporters, and the many bicyclist crash victims who have been harmed by the continued recognition of contributory negligence in roadway crash cases in the District.

I. Contributory negligence is an inequitable and outdated doctrine.

This bill addresses the most significant legal injustice confronting bicyclists who have been injured in crashes on the District’s roadways.

The doctrine of contributory negligence, as applied to bicyclists and other vulnerable roadway users, operates to leave injured victims of roadway crashes without fair opportunity to pursue justice. It empowers the more protected party—with more ability to injure and less likelihood of being injured—to avoid compensating the more vulnerable party for injuries and damages sustained in a collision that, regardless of fault, cannot help but be unequal in consequence. It also frequently allows insurers—who in a fair system would mitigate roadway risks across the population, regardless of travel mode—to abdicate that critical economic role. Instead it provides incentive for them to reject claims and deny compensation to all involved, keeping in its coffers the funds that should rightly pay for victims’ medical treatment.

Contributory negligence has long outlived its usefulness, and it has already been eliminated in all but four states and the District. Thus, we truly appreciate this Committee’s willingness to consider correcting this inequity for those who travel the District’s roadways.

II. For bicyclists and vulnerable users, contributory negligence adds unjustified legal vulnerability to pre-existing physical and contextual vulnerabilities.

Inherent physical vulnerability places the burden of injury in roadway crashes disproportionately on bicyclists.

The justification for excepting bicyclists from this doctrine is based, quite simply, on vulnerability. Where the parties in a crash or a case are unequal in vulnerability, justice cannot be blind to the consequences of that inequality. Our public policy and our legal system must provide a level playing field for all parties, and not compound vulnerability upon vulnerability.

That bicyclists are vulnerable roadway users is a simple, physical reality. In a crash between a bicyclist and motorist, we know, in advance, who will be the more-injured victim. We know who will suffer the greater physical pain and endure injuries that can be life-altering. We also know who is more likely to be taken away in the ambulance, while the police interview the motorist and get the story of the crash from the party who generally will have sustained only nominal damages.
A crash between a motorist and a bicyclist is an inherently unequal interaction where the comparative physical vulnerability of the bicyclist means will result in an injured and unrepresented bicyclist facing non-trivial medical and property damages seeking to exact recovery from an uninjured motorist with nominal damages, if any, and the support of an insurance company seeking to protect the motorist's financial interest.

**Uncertainty in and misunderstanding of the urban bicycling environment increases the likelihood of improper negligence findings against bicyclists.**

Despite progress in infrastructure, enforcement, and other protections, the DC bicyclist still, on a daily basis, faces the conundrum of the angry motorist shouting at her to get off the street and the angry pedestrian shouting at her to get off the sidewalk.

Where there is dedicated space for bicyclists, it often operates in a confusing legal limbo, filled with “Follow Pedestrian Signals” signs here, “Use Crosswalks” signs there, and “Except Bikes” signs telling cyclists to ride against traffic. These pieces of bike infrastructure come with no user manual. The police are not trained on how to enforce the specific rules for each facility. The infractions listed on their ticket books were not written for these conditions.

Where there is no dedicated space for bicyclists, police still are not sufficiently trained in even the basics of bicycling laws. We have several reports from the Office of Police Complaints documenting bicycling enforcement concerns and detailing how MPD needs to improve its efforts to understand and apply bicycling laws. These reports demonstrate that MPD is not prepared to handle the volume and complexity of bicyclist roadway interactions properly, or to apply the rules of the road correctly for cyclists.

It is here, in this context of missing clarity and consistency, that bicycle crashes occur. And yet, knowing this is the system in which bicyclists operate, we maintain a doctrine that allows an insurer to deny every ounce of recovery to an injured bicyclist who is wrongly ticketed. With contributory negligence, a single misapplication of law or misunderstanding of the bicyclist’s duty of care allows insurers to deny all compensation to the crash victim. And so insurance claims adjusters, who live thousands of miles away and have no experience with DC’s complex transportation environment, read and interpret the police reports. They apply their own uninformed judgment to cases, and have refused compensation for such reasons as “the bike should have gotten farther out of the driver’s way” or “if the biker hadn’t been on that busy street he wouldn’t have been hit.”

To be clear, these common denial rationales are legally just dead wrong. Contributory negligence does not make them wrong. But contributory negligence makes them devastating, because it allows misunderstanding of the duty of the bicyclist-plaintiff to act as a complete shield for the motorist-defendant and, where the fact-finder is an auto insurance company, to take that shield for itself.

**Contributory negligence’s operation as a full economic bar to recovery limits bicyclist access to representation for subsequent appeal for justice.**

Once that initial decision-maker has determined that the injured bicyclist deserves no compensation, the cyclist then faces an uphill battle in seeking how to right the wrong. Many of these cases come to WABA through our bicyclist community engagement and our online crash tracker. I consistently see that cyclists who face an improper denial by an insurer are unable even to secure legal representation to
assist them in pursuing their rights through the court system. Plaintiffs’ lawyers generally are paid from a portion of the funds recovered on behalf of their injured clients. A predetermination that the bicyclist was negligent—which with contributory negligence is also a predetermination that the expected economic outcome of the case is zero—makes it infeasible for attorneys to take these cases.

So, the result tends to be that crash victims with injuries—sometimes severe or even debilitating ones—have no access to any venue except small claims court, where they must generally proceed pro se and where they can hope to receive no more that $5000 of their total damages, even if they manage to succeed in overcoming the odds, with the deck stacked against them.

III. Excepting vulnerable roadway users from contributory negligence leaves a more equitable, functional system of spreading and mitigating the risks of roadway harms.

This is the situation that we seek to avoid, by eliminating this doctrine that makes even the slightest mistake—whether by a victim, an enforcement officer, or a finder of fact—a complete bar to recovery.

It is important to note, however, that despite the incredible importance of this bill to bicyclists, it is far from a sweeping jurisprudential change.

- This bill does not change the definition of negligence or any of its components.
- It does not shift the burden among the parties. It is still the bicyclist who bears the burden of demonstrating the motorist’s duty, the motorist’s breach of that duty, and that the motorist caused the harm.
- It does not change what constitutes evidence of negligence in any given situation.

Simply put, forty-six states have designed and operated a better, fairer, more just system by avoiding contributory negligence. Many switched from a contributory negligence standard to a comparative standard via legislation, and the sky did not fall. The legal and insurance industries adapted, and vulnerable roadway users are better protected as a result.

We have the opportunity to take the same step here by passing this bill. This Committee, and the Council, should seize this opportunity to do so.

Thank you.
Testimony of: Megan Kanagy  
Representative for Chairman Mendelson  
District of Columbia Bicycle Advisory Council  

Before the Committee on the Judiciary & Public Safety  

Hearing on Bill 20-884, the “Bicycle and Motor Vehicle Collision Recovery Amendment Act of 2014”  

Date: September 29, 2014  

Good afternoon Chairman Wells and members of the committee. Thank you for the opportunity to testify on Bill 20-884, the “Bicycle and Motor Vehicle Collision Recovery Amendment Act of 2014”. My testimony represents the position of the Bicycle Advisory Council for the District of Columbia, which I will chair starting October 1st. The Bicycle Advisory Council was established by law, and its members are appointed by the D.C. Council to advise the Mayor and the District government on bicycling issues within the context of ensuring safe and convenient bicycling in our city.

The Bicycle Advisory Council supports Bill 20-884 and the exemption of cyclists from the doctrine of contributory negligence. Under the current law, if a party is found to be even 1% at fault in a collision, they can be denied the recovery of any damages. This particularly burdens cyclists for several reasons:
1. Cyclists, like other vulnerable roadway users, are likely to sustain injuries in a collision with a vehicle, while the driver may walk away unharmed. It's a simple matter of speed and mass. Because they are disproportionately injured and more likely to sustain damages in a collision, contributory negligence disproportionately burdens cyclists and other vulnerable users.

2. There remains confusion and misunderstanding among MPD officers and the general public regarding laws for cyclists. Too often cyclists are improperly ticketed at a collision, and thereby improperly assigned fault. Under the current doctrine of contributory negligence, even if the driver is found to be 99% responsible for the collision, the injured cyclists is prevented from recovering any damages, so errors or misapplication of bicycling laws are particularly harmful. I would like to mention that the BAC enjoys a longstanding relationship with MPD and we will continue to work together to better educate officers and the public on laws for cyclists.

3. This confusion and misunderstanding is further perpetuated by the insurance industry who considers claims based on the laws of the jurisdiction. That means that in DC, claims are denied where the damaged party is determined to be 1% at fault, regardless of whether the fault was due to an inaccurate accident report, misunderstanding of bicycling laws, or a legitimate offense.
Again, the BAC would like to express its support of the bill, which would provide cyclists the opportunity to fairly recover damages in the unfortunate event that they are struck by a vehicle. On behalf of the over 300 cyclists who are involved in a collision each year¹, we would like to thank this Committee for its leadership on this issue and ongoing efforts to make the District of Columbia a more bicycle-friendly city. Thank you.

Testimony of Ben Somberg

Council of the District of Columbia - Committee on the Judiciary and Public Safety
Hearing on B20-321 B20-803 and B20-884
Monday, September 29, 2014

Chairman Wells and members of the committee:

I recently learned something rather troubling. Under the existing DC laws, if I were seriously injured as a pedestrian I might not have access to civil recourse. That’s pretty scary.

Let’s say I was crossing a wide street, and I stepped off the curb a foot into the crosswalk a moment before the walk light had begun. Then, when I had almost finished crossing the street, in line with the walk signal, a car comes careening down the street toward me, going through a red light, and strikes me, severely injuring me. I’m out of work for weeks. Let’s say all of these facts are not in dispute, and that it is also not in dispute that the driver was texting, drunk and completely failed to see or heed the red signal.

Under the current law, I might not be able to get one penny of recourse at all, because I could be deemed very slightly at fault in the incident for having stepped into the crosswalk a moment early, even if that was not the cause, or at least the primary cause, of the collision later. This is, to make an understatement, not fair or just.

For that reason, I support Bill 20-884, the Bicycle and Motor Vehicle Collision Recovery Amendment Act of 2014, and I urge the council to move toward passing the bill. Thank you.

Ben Somberg
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202-658-8129
Dear Councilmember Grosso and Committee –

Thank you for the opportunity to testify on this very important topic. The issue of contributory negligence versus comparative fault has a special impact on pedestrians and bicyclists. I'm here to testify today from two perspectives — first as an individual and then on behalf of DC's citywide pedestrian advocacy group, All Walks DC.

I didn't know what contributory negligence was before December of 2008. On the first of that month, learned the hard way.

I was born and raised in DC and I've been getting around the city on foot and by bike my whole life. I got my first job at an office in the West End in 2008, and I felt very lucky to be getting my start in such rough economic times. While riding my bike home from my first day, I was hit by a minivan at the intersection of Connecticut Avenue and Fessenden Street. I was thrown over 20 feet through the air off my bicycle, and my pelvis was fractured in three places. My back was also sprained. These injuries were, without exaggeration, more painful than childbirth, and I am in a position to know.

The driver's insurance company denied my claim immediately. Because I had no way of knowing if I would ever be able to collect damages from him, I was forced to continue commuting to work full time in agony, since I had no sick leave accrued and I couldn't risk taking unpaid leave. Months of physical therapy, costs for taxis, not to mention my pain and suffering — I was on my own for all of it.

However, I'm one of the lucky ones. Not only did I survive the collision, my injuries racked up a large enough dollar total in medical bills that a lawyer was willing to take my case on spec and file a civil tort against the driver. I hope the members of this committee can appreciate how twisted that statement is, however. I should not have had to resort to civil court for justice, and wait over a year to find out if there would be any accounting between the driver and myself.

As a survivor, I beg the members of this committee to vote for this bill.

The contributory negligence standard puts all the power in the hands of insurance companies. This is uniquely harmful to pedestrians in particular, who do not have their own insurance companies to advocate for them. What about pedestrians who can't find a lawyer to take their case?

Walking is the lifeblood of the District of Columbia. Over 10% of us walk to work every day citywide. We walk to access transit and get to school. In some neighborhoods in DC, walking is the preferred mode for a majority of all trips! However, pedestrians are a uniquely vulnerable group of road users. This simple change to DC law can provide more protection to walkers at no cost to government. All Walks DC believes this change will provide concrete safety and quality of life benefits to DC residents. We therefore urge this committee to consider an amendment to this bill to include pedestrians, and to vote in favor of that amendment.
Testimony of

Jessica Tunon
At-Large Representative
District of Columbia Pedestrian Advisory Council

Before the
Committee on the Judiciary & Public Safety

Hearing on Bill 20-884, the “Bicycle and Motor Vehicle Collision Recovery Amendment Act of 2014”

September 29, 2014

Chairman Wells and members of the committee, thank you for the opportunity to testify on behalf of the D.C. Pedestrian Advisory Council (PAC). My name is Jessica Tunon, and I am an At-Large Representative on the PAC. The mission of the PAC is to advise the Mayor, City Council and District agencies on pedestrian safety and accessibility issues, and members of the PAC, who represent every Ward of the District, would like to recommend that the City Council amend the “Bicycle and Motor Vehicle Collision Recovery Amendment of 2014” to include pedestrians.

We would like to take this opportunity to thank Councilmember Grosso for introducing this bill and Councilmembers Cheh and Wells for co-introducing it. We would also like to thank the Washington Area Bicyclist Association for its advocacy for the bill and its willingness to support an amendment that includes pedestrians.
As others testifying will point out, the District is one of only five jurisdictions in the country that continues to adhere to contributory negligence. Under existing law, a pedestrian determined to be even one percent at fault can be denied compensation. Even if a driver is speeding or otherwise operating a vehicle negligently, the pedestrian may not receive damages if the pedestrian steps out of the crosswalk or makes another error that contributes, even slightly, to a crash. This seems unfair, and 46 states agree.

Every year in the District, between 800 and 900 pedestrians are struck by cars, and more than 300 of them sustain serious injuries. As DDOT observed in the DC FY2014 Highway Safety Performance Plan,¹ “Pedestrians and bicyclists are among our most vulnerable roadway users and when involved in a crash with a motor vehicle, they suffer more serious injuries than vehicle occupants.” This is not surprising when we consider that: (1) the average motor vehicle weighs about 20 times more than the average adult human being (4000 pounds² v. 200 pounds³); and (2) even when driven by a responsible driver at the legal speed limit, a moving motor vehicle’s speed may be 5-10 times the speed of a person walking. Simply put, the average pedestrian is no match for the combined weight and speed of a car, and pedestrian errors do not have the same inherent potential for danger and violence as driver errors. It seems only fair to weigh each party’s degree of responsibility and distribute compensation in proportion to the degree of fault.

¹ FY14 Highway Safety Performance Plan, page 52.
³ CDC FastStats (http://www.cdc.gov/nchs/fastats/body-measurements.htm).
The Pedestrian Advisory Council therefore requests that the District switch from the contributory negligence standard to the comparative negligence standard for bicyclists and pedestrians.

Again, thank you for considering this bill and the amendment that will provide pedestrians with a fair shot at receiving compensation in the unfortunate case they are struck by a car.
To Councilmember Smith,

Sirs, to invite me to the meeting on the bike lane with the pedestrian designs, I am asking you to consider this as the placement of the bicycle and motorized vehicle Act of 2014 to the Council. I am writing this letter in order to bring these things to your attention. I want to question you about this.

Mr. Smith,

[Signature]
Local Officials Urge Drivers, Pedestrians, and Cyclists To Look Out for Each Other
Street Smart Campaign Aims to Reduce Injuries and Deaths During Dark Fall Months

With Daylight Savings Time ending on November 3, school back in session, and Halloween around the corner, regional safety officials came together today to remind drivers, pedestrians, and cyclists to pay extra attention to one another on area roadways.

An hour less of daylight during evening commutes means reduced visibility, which typically leads to an increase in crashes involving pedestrians and cyclists during the darker autumn months. To reduce pedestrian and cyclist injuries and fatalities, the annual Street Smart public education campaign is encouraging area residents to be more alert. Last year, in November and December there were more than 400 crashes involving pedestrians in the Washington metro region.

Representatives from the Metropolitan Washington Council of Governments, as well as state and local officials from the District of Columbia, Maryland and Virginia, gathered today at Upper Senate Park in Washington, DC to kick off the fall Street Smart campaign. Special guest Gwendolyn Ward shared the story of her 15-year-old daughter, Christina Morris-Ward, who was struck by a car and killed one year ago this month while crossing the street in Germantown on her way to school in the dark. Also attending was the Roaring Bengal Marching Band from James Hubert Blake High School in Montgomery County, which played a mournful dirge in recognition of the 72 pedestrians and cyclists killed in the region last year.

As the band played, a bell tolled in recognition of each pedestrian killed in 2012. With each ringing of the bell, a single band member ceased playing his or her instrument and left the instrument on the ground. The song ended with a lone trumpeter playing amid a sea of abandoned instruments.

"We all have to work together to improve safety in our region particularly now that it's getting dark by the time many people are making their evening commutes," said Chuck Bean, Executive Director of the Metropolitan Washington Council of Governments. "Drivers, bicyclists, and pedestrians need to follow traffic laws, be aware of their surroundings, and avoid distractions, such as cell phones." Among other safety tips, the Street Smart campaign reminds drivers to be alert and yield to those on foot or on bicycles at intersections, and encourages pedestrians and cyclists to wear light colors or reflective clothing to be more visible.

Bean announced that law enforcement in the District of Columbia, suburban Maryland and Northern Virginia will conduct increased enforcement October 28 through November 24, ticketing drivers, cyclists and pedestrians who violate traffic safety laws.

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About the Street Smart Campaign & the National Capital Region Transportation Planning Board (TPB)
Sponsored by the Metropolitan Washington Council of Governments (MWCOG) and the National Capital Region Transportation Planning Board (TPB), the Street Smart public awareness and enforcement campaign is in its twelfth year. Its goal is to reduce pedestrian and cyclist injuries and deaths in the Washington metropolitan area. For more information about Street Smart, please visit BeStreetSmart.net and twitter.com/COGStreetSmart. The TPB is the regional transportation planning organization for the Washington region. It includes local governments, state transportation agencies, the Washington Metropolitan Area Transit Authority (WMATA) and members of the Maryland and Virginia General Assemblies.

District of Columbia • Town of Bladensburg • City of Bowie • City of Gaithersburg • Prince George's County • City of College Park • City of Greenbelt • City of Rockville • Montgomery County • City of Takoma Park • Frederick County • City of Frederick • City of Alexandria • Fairfax County • Loudoun County • Arlington County • City of Falls Church • Prince William County • City of Fairfax • City of Manassas • City of Manassas Park
New Campaign Warns Motorists, Pedestrians and Bicyclists to Exercise Caution

Dramatic Ads Offer Safety Tips, Promote Increased Traffic Safety Vigilance

Like millions of others in the area, most days Stephen Grasty walks several blocks a day—to work, to a Metro stop, to a friend’s house. Though he has had his share of close calls, he has never been hit by a car and he would like to keep it that way. Stephen’s face—symbolically blemished by a tire tread—will soon be appearing in the Metropolitan Washington Council of Government’s new public awareness safety campaign urging drivers, pedestrians and bicyclists to look out for each other.

The Street Smart campaign offers safety tips to prevent pedestrian and bicyclist deaths and injuries in the DC metro area. The campaign gets underway next week in the wake of recent pedestrian crashes that left a 71-year-old woman dead in the 1100 block of Florida Avenue and at least 13 other pedestrians killed in crashes in the Washington metropolitan region in 2013 to date.

“Most people do not stop to think how vulnerable pedestrians are on our streets and sidewalks,” said Mayor Vincent Gray. “But the reality is that we must protect pedestrians from cars and other vehicles, because when they collide with a pedestrian, the pedestrian never wins.”

The “tired faces” visuals call attention to the dangers confronting pedestrians and bicyclists with the larger-than-life faces of area residents on ads on buses and in transit shelters in the District, Virginia and Maryland. State and local officials want drivers to actively watch out for pedestrians and bicyclists, especially when turning. They also are reminding bicyclists to ride with traffic and stop at red lights and urging pedestrians to use crosswalks and wait for the walk signal before crossing the street.

In Q1, preliminary data indicates there were 3,035 crashes in the DC metropolitan region involving pedestrians and bicyclists, which resulted in 70 fatalities. These deaths accounted for 26.5 percent of all traffic fatalities in the Washington region.

During the Street Smart campaign, which runs through May 13, law enforcement officers in Maryland, the District of Columbia and northern Virginia will be watching for motorists, pedestrians and bicyclists who violate traffic safety laws. Drivers and cyclists who fail to stop for pedestrians in crosswalks, as well as pedestrians who jaywalk, can face fines that range from $40 to $500. Drivers also are subject to getting points on their driver records.

Information on the new campaign and the Street Smart public education program may be found at www.bestreetsmart.net.

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The driver of a vehicle shall STOP and give right-of-way to a pedestrian crossing the roadway within any marked crosswalk or unmarked crosswalk at an intersection. (50-2201.28 (a))

Whenever any vehicle is stopped at a marked crosswalk or at an unmarked crosswalk at any intersection to permit a pedestrian to cross the roadway, the driver of any vehicle approaching from the rear shall not overtake and pass the stopped vehicle. (2201.5)

The driver of a vehicle crossing a sidewalk or sidewalk area shall stop and yield right-of-way to any pedestrian and all other traffic using the sidewalk or sidewalk area. (2202.1)

In every event speed shall be controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the street or highway in compliance with legal requirements and the duty of all persons to use due care. (2204.4)

Right turns after coming to a complete stop and yielding right-of-way to pedestrians and other vehicles shall be allowed when facing red traffic control signals, except at locations listed in this section. (4013)

An operator shall, when operating a vehicle, give full time and attention to the operation of the vehicle. (2213.4)

No vehicle shall enter an intersection or marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle without obstructing the passage of other vehicles or pedestrians, not withstanding any traffic control signal indication to proceed. (2203.7)

No person shall stop, stand, or park a vehicle in any of the following places, except when necessary to avoid conflict with other traffic, in compliance with the law or at the direction of a police officer or traffic control device: a) within an intersection, b) on a crosswalk, and c) in any driveway, alley entrance, or other way when stopping, standing, or parking would obstruct the flow of pedestrian or other lawful traffic upon any sidewalk. (2405.1)

Laws for Motorists around Bicycles

No person shall open a door of a vehicle on the side where traffic is approaching unless it can be done without interfering with moving traffic or pedestrians and with safety to himself or herself and passengers. (2214.4)

The driver of a vehicle intending to turn to the left shall yield right-of-way to any vehicle approaching from the opposite direction which is so close as to constitute an immediate hazard. (2208.2)

The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left at a safe distance. (2202.2)

No person shall stop, stand, or park a vehicle in a bicycle lane, except when necessary to avoid conflict with other traffic, in compliance with the law, or at the direction of a police officer or traffic control device. (P-385)

Laws for Bicyclists

Every person riding a bicycle on a highway shall be subjects to all duties applicable to drivers of motor vehicles. (1201.1)

There shall be no prohibition against any person riding a bicycle upon a sidewalk within the District, so long as the rider does not create a hazard; provided, that no person shall ride a bicycle upon a sidewalk within the Central Business District. (1201.10)

Any person riding a bicycle upon a sidewalk shall yield the right-of-way to pedestrians and shall travel at a speed no greater than the posted speed limit of the adjacent roadway; provided that such speed is safe for the conditions of the sidewalk. (1201.10)

A person operating a bicycle shall comply with subsection 2201.1 of this title requiring drivers to be on the right half of the roadway and shall not operate on the left facing traffic coming from the opposite direction except when authorized by that section. (1201.2 (a))

No bicyclist shall suddenly leave a sidewalk and ride into the path of a vehicle which is so close that it is impossible for the driver to yield. (1201.13)

Each bicycle, when in use at night, shall be equipped with a white lamp on the front, visible from at least 500 feet and a red reflector on the rear (a rear red lamp my be used) (1201.3). (1204.2)

No person shall operate a bicycle except in obedience to the instructions of official traffic control signals, signs, and other control devices applicable to vehicles, unless otherwise directed by a police officer or other person authorized to direct and control traffic. (2101.15)
LAWs

Jump to a state's laws:

- District of Columbia
- Maryland
- Virginia

DISTRICT OF COLUMBIA

Laws for Pedestrians

- No pedestrian shall suddenly leave a curb, safety platform, safety zone, loading platform or other designated place of safety and walk or turn into the path of a vehicle which is so close that it is impossible for the driver to yield. (2303.2)

- No pedestrians shall start to cross the roadway in the direction of a "Don't Walk" signal. (2302.3)

- Between adjacent intersections controlled by traffic control signal devices or by police officers, pedestrians shall not cross the roadway at any place except in a crosswalk. (2304.1)

- Each person crossing the roadway at any point other than within a marked crosswalk, or within an unmarked crosswalk at an intersection, shall yield the right-of-way to all vehicles upon the roadway. (2304.2)

- Where sidewalks are provided, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway. (2305)

Laws for Motorists around Pedestrians

- A driver of any vehicle shall STOP and give right-of-way to a pedestrian who has begun crossing on the "Walk" signal to continue to the opposite sidewalk or safety island, whichever is nearest. (50-2201.28 (b))
2012-13 Street Smart Public Education Campaign

- Pre- and post-campaign evaluation survey
- Kickoff event and media tour
- Paid media (radio, out of home)
- Digital/Social Media
- Spanish PSA news network
- Outreach activities

Pedestrians don’t come with airbags.
Yield to pedestrians when turning.
DISTRICT OF COLUMBIA INSURANCE FEDERATION

P.O. Box 78160  Washington DC 20013

wmcowen@dcif.org  *  202.797.0757

Testimony of
District of Columbia Insurance Federation
Submitted to the
DC Council Committee on the Judiciary and Public Safety
Public Hearing Held

29 September 2014
20-884, the "Bicycle and Motor Vehicle Collision Recovery Amendment Act of 2014"
Good morning, Chairman Wells and members of the Committee on the Judiciary and Public Safety. My name is Wayne E. McOwen, and I represent the District of Columbia Insurance Federation (DCIF), a state insurance trade association whose members provide property, casualty, life and health insurance products and services in the District of Columbia. On behalf of the DCIF, I offer the following remarks for consideration:

The insurance industry applauds a number of legislative initiatives which, over the past several years, have encouraged cyclists, pedestrians and motorists to safely share the historic pathways that weave around and through the nation’s capital — an environment that swells daily with a workforce of resident and non-resident employees, and swells seasonally with tourists from around the world. But, enabling and maintaining a safe environment is not solely the responsibility of the law makers and the law enforcers. Walking, steering a bicycle, driving a motorized conveyance — all require attentiveness, courteous behavior, a respect for rules of the road and respect for the others that one encounters on those roads. These are goals achieved less by legislation, more by education. I appreciate the opportunity to say publicly, and for the record, that the DCIF is willing and eager to help to support initiatives to educate and encourage continued progress toward the safest coexistence among pedestrians, cyclists and motorists.

The initiative that is the subject of this Hearing is one which defers the issue of safety in favor of carving out one group — cyclists — for unique treatment. Choosing a mode of transportation that won’t pollute the environment is admirable. But even the strongest sense of environmental responsibility does nothing to increase safety and prevent injuries!

How many motorists run red lights? How many cyclists run red lights and take shortcuts? How many pedestrians jaywalk? Contributory negligence holds that if one contributes to an accident, there is a barrier to recovery. If the accident results in significant damage or death, is a 1% contribution any less significant?

It is true that the vast majority of states use comparative negligence — either on a modified basis where plaintiffs are barred if their negligence is equal or greater than the other party, or pure comparative, allowing them to recover even if they bear the majority of liability. Only AL, DC, MD, NC and VA still have contributory negligence, which bars
recovery for any contributory negligence. That sounds harsh, but it is important to look at the concept of negligence in general. In its purest form, the concept of negligence demands attention and care. Every driver, pedestrian and bicyclist is held to a standard of care and attention. If a driver, pedestrian, or bicyclist deviates from that standard, and that negligence is the proximate cause of injury to another, they are potentially responsible for damages reasonably flowing from their actions. The right to recover for those injuries, however, is not without check. If the fact finder (court or jury) determines the claimant was also negligent, and their negligence was a cause of the injury claimed, then they may not recover. Imposing liability on those that do not pay attention, or fail to exercise the caution and skill required of operators, serves as a deterrent to negligent behavior. Likewise, applying the same standard to claimants makes a level playing field and serves as a deterrent to negligent vehicle operation or bicycle riding.

People often point out the seemingly harsh nature of the bar to recovery where contributory negligence is proven. It must be pointed out that there exists a “safety valve” to the defense of contributory negligence. The doctrine of “last clear chance” allows a contributory negligent plaintiff to recover if the defendant knew, or should have known, of the peril of the plaintiff and there was time and means to avoid the harm to the plaintiff. In point of fact, WMATA v. Young outlines the doctrine. In that case, a jury awarded $925,000 to a bicyclist plaintiff that the jury found was contributory negligent.731 A.2d 389 (1999). The court allowed the verdict to stand.

Furthermore, per the common law of the District, the mere happening of an accident does not presume lack of care. Any party asserting a claim of fault has to persuade the fact finder that a negligent act occurred and was a proximate cause of the event. A judge would not allow a jury to determine an issue based on insufficient evidence. Judges frequently decline to instruct the jury on the issue of contributory negligence.

The current system ensures that negligent drivers, pedestrians, bicyclists are held accountable for their actions. The current system allows the District to balance the rights and responsibilities of all involved.

Thank you for the opportunity to provide testimony on this issue. I welcome your comments, questions regarding the above.
TESTIMONY OF BRUCE S. DEMING, ESQ.


September 29, 2014

Good afternoon members of the Committee. My name is Bruce Deming, and I am a practicing attorney in the District of Columbia. I am also an avid cyclist. Over 90% of my practice consists of representing cyclists in personal injury cases, and over the last 30 years I have represented hundreds of injured cyclists in cases in DC, Virginia, Maryland, and throughout the United States. I am grateful for the opportunity to appear before you today to support the enactment of B20-0884, the Bicycle and Motor Vehicle Collision Recovery Amendment Act of 2014. I would also like to publicly thank Councilmembers Gross, Cheh and Wells for introducing this important legislation.

The bill under consideration would replace the harsh, inflexible, and frankly - outdated - rule of contributory negligence, with the more modern, common sense approach embodied in the principles of comparative negligence.

Members of the Committee, the doctrine of contributory negligence is a harsh doctrine indeed. I know that to be true, not just from theoretical analysis, but from everyday experience. Known as the "1%" rule, this singular judicial doctrine, more than any other procedural or substantive rule of law, operates to deny compensation to injured cyclists, many of whom have suffered permanent, life altering injuries - and who don't deserve to have their claims for compensation denied.
Originating in the common law of England in 1819, the doctrine of "contrib" as we in the legal trade call it, was the law in many states in the 19th and early 20th centuries, until its overly harsh, putative effects were recognized. Today, **46 of the 50 states have done away with it** - instead employing one version or another of comparative negligence.

Today, the District of Columbia is one of only five remaining jurisdictions in the United States where contributory negligence remains on the books. The bill before you would change that, and at least as to tort claims involving injured cyclists, would being the law of the district on line with the overwhelming majority of other jurisdictions in the country.

I submit to you that the change is needed, and is consistent with sound judicial and public policy. Under the current law, if an injured cyclist is determined to have been somehow at fault - even to the minute degree of only "1%", that injured cyclist is barred from recovering a single penny in compensation. No matter the extent of his or her injuries, and no matter the extent or egregiousness of the conduct on the part of the other party, who may 99% at fault for causing the accident and the resulting harm to the cyclist. That is **not fair**. That is **not right**. That is **not just**.

No. The fair approach is to recognize that the world is not all black and white, not all good and bad. The common sense approach embodied in the law of **comparative negligence** simply allows the trier of fact - whether it be a judge or jury - to weigh the relative fault of both the driver and the cyclist, and make the call. And if the driver was primarily at fault but the cyclist's actions played some minor role in the event, then the trier of fact can reduce the injured party's award accordingly. Most importantly, the
weighing of the comparative fault of the parties will be based on the unique facts and circumstances of each case.

I think, that makes common sense. Forty six states agree. On behalf of the cycling community in the District of Columbia, I urge your support and swift passage of the bill that is before you.

I again thank you for the opportunity to speak today.

Sincerely,

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October 9, 2014

Council of the District of Columbia
Committee on the Judiciary and Public Safety
c/o Ms. Nicole Goins
Room 109
1350 Pennsylvania Avenue, N.W.
Washington, DC

Allstate appreciates the opportunity to provide written comment to the record in opposition to Bill B20-884, the "Bicycle and Motor Vehicle Collision Recovery Act of 2014".

All would agree that collisions between bicyclists and automobiles, collisions between bicyclists and pedestrians, and amongst fellow bicyclists are to be avoided. The recent additions of dedicated bicycle lanes as strategically deployed in the District are evidence of the need to provide the ability for cyclists, pedestrians and motorized transportation to safely coexist. Long existing regulations concerning the safe operation of bicycles further reinforce the need for orderly rules of operation for all manners of transportation. Motor vehicles and bicyclists alike are charged with the duty to safely operate their choice of transportation within the District. This duty forms the backbone of the concept of negligence, which, in turn, allows an injured party to seek compensation from an at fault party. The reciprocal duties owed between pedestrian and driver, between driver and cyclist, and between driver and driver permit the constant ebb and flow of all manners of traffic, conveyance and commerce within the District. Avoiding lapses in skill, judgment and attention is the number one way of avoiding injury to anyone – including one’s self – while on or in the roadway.

There are legal consequences to breaching the duty to drive a car or ride a bicycle properly. In every jurisdiction in the United States, a negligent driver or cyclist who causes injury is potentially liable to the injured party. Depending upon the circumstances and amount of negligence involved, a negligent plaintiff may be prohibited from recovering monetary damages for injury to themselves in every jurisdiction in the United States. The law of the District of Columbia, as well as that of neighboring Maryland and Virginia, does not require a fact finder (a judge or jury) to assign a percentage of fault for either the defendant or the plaintiff in a civil tort action. In these jurisdictions, the law requires a party who brings the suit to convince the fact finder the other party was in fact negligent and that party’s negligence was a proximate, or “legal”, cause of the injury claimed. If sufficient evidence is generated, a judge may permit a jury to consider whether the plaintiff was also negligent and whether that negligence was a proximate cause of the injury. Should a jury determine that the injury complained of was caused by the negligence of the plaintiff, then, unless the doctrine of "Last Clear Chance" is applicable, the plaintiff can’t recover. This is the defense of contributory negligence. Under this system, each

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1 This statement of course excludes certain statutory or common law immunities, or limitations on suit.
party is held fully responsible for their actions regardless of a determination of numerical fault percentage.

It is legally inaccurate to baldly assert that a plaintiff who is "a little at fault" cannot recover in a courtroom. The Superior Court bench has long been expertly applying the concepts of negligence and contributory negligence to the civil tort cases on the daily dockets. In order for the defense of contributory negligence to even be considered, a judge must find that sufficient evidence has been generated. It is legally insufficient to simply identify an act of negligence—a party asserting a claim of negligence must prove that it was a legal cause of the accident or harm claimed. Speculative or remote causation is disallowed.

This also brings us to the Doctrine of Last Clear Chance mentioned above. Under this doctrine, briefly stated, a plaintiff who is determined to be at fault may still recover if the defendant was in a position to observe the peril of the plaintiff and had the opportunity to avoid the harm. This has also long been the law of the District. Again, negligence is recognized by the law of the District as uniquely fact and situation specific. It is inaccurate to say that the mere proof of a single act of bad driving or operation will create or defeat monetary compensation.

In conclusion, it goes without saying the goal of protecting all operators and pedestrians within the District is of paramount importance. It is respectfully submitted that education, public awareness, and training of drivers and cyclists operating within the city are more immediate and effective ways to prevent careless driving or operation. Careful operation of cars, buses, trucks, and bicycles saves injury to others and one’s self. This bill is not aimed at changing irresponsible behaviors, but rather excusing them in certain instances.

Respectfully submitted,

[Signature]

L. Noel Patterson, Jr.
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY

Tommy Wells, Chair

Public Hearing on:
Bicycle and Motor Vehicle Collision Recovery Amendment Act of 2014
Monday September 29, 2014

Written Testimony on behalf of
The Trial Lawyers Association of Metropolitan Washington, D.C.

The Trial Lawyers Association of Metropolitan Washington, D.C. respectfully provides this written submission in opposition to the Bicycle and Motor Vehicle Collision Recovery Amendment Act of 2014. This bill should not become law for several reasons: (1) it is unnecessary because the present law allows a bicyclist to recover full compensation even when he or she commits a negligent act that does not substantially lead to the incident that caused injuries; (2) the law would inappropriately create a special class of victims and a special class of tortfeasors, which is contrary to the principle of equal and fair justice for all; (3) it will lead to the abolition of joint and several liability—a doctrine important to all District citizens, including bicyclists; (4) other laws have been enacted recently to protect bicyclists, and time is needed to evaluate the effects of those pieces of legislation; and (5) focus should instead be on roadway safety and the prevention of accidents, including those that involve bicyclists.

Proponents of the bill argue that the law is needed because claims are allegedly being denied by insurance companies and juries when bicyclists are nominally (or only slightly) negligent. The present law undermines this contention. In order for a motorist, or a bicyclist, or anyone else to be found contributorily negligent, a jury must conclude that the person’s negligence was a proximate cause of his or her own injuries. "Proximate cause" is clearly defined in the District as follows:

An injury or damage is proximately caused by an act, or a failure to act, whenever it appears from a preponderance of the evidence that the act or
failure to act played a substantial part in bringing about the injury or the damage. Moreover, it must be shown that the injury or damage was either a direct result or a reasonably probable consequence of the act or failure to act. (emphasis added) (D.C. Standardized Jury Instruction Section 5-12)

A bicyclist who has committed some insignificant (or nominal or slight) negligent act cannot be found contributorily negligent under existing law. Only one whose negligence is found to be a substantial factor in causing the action would have his or her claim barred. Consequently, the proposed legislation is unnecessary, as the present law provides the protection bicyclists seek.

The bill also inappropriately creates a special class of plaintiffs -- a practice that has significant constitutional infirmities. Specifically, the law aims to specially treat bicyclists over all other citizens of the District by exclusively assigning to them the applicability of the doctrine of comparative negligence. The assignment of the doctrine of comparative negligence would take place, however, only when the bicyclist is involved in an accident with a motorist. Moreover, should a bicyclist be at fault for cutting-off a motorist, forcing the motorist off the road and into a tree, killing the driver, the comparative negligence doctrine would not apply to the motorist (who may have been speeding). Under this Bill, the bicyclist who might be 75 percent at fault would be able to collect 25 percent of his/her damages whereas the motorist who is 25 percent at fault would be barred from collecting anything although he was killed in the accident. In a similarly contorted fashion, the bill creates a special class of tortfeasors -- motorists who are involved in accidents with bicyclists. Creating special classes under the law is contrary to the United States Constitution, which demands equal justice for all, and similarly offends fundamental principles of fairness. Would the Court of Appeals even allow such discrimination under the law? We think not, and more importantly, the D.C. Council should not seek to create such discriminatory laws.

Making the bill law would further lead to the abolition of the doctrine of joint and several liability. The loss of joint and several liability would place the most injured at risk of inadequate compensation and
would encourage negligent motorists to blame others for injuries they caused. A "joint tortfeasor is defined as one who acts in concert with another to cause an injury (or damages) to an injured person (the plaintiff). Under established law in the District of Columbia, each tortfeasor is individually and jointly liable for all of the plaintiff's injuries. One joint tortfeasor may be held liable for the entire amount of plaintiff's damages regardless of his or her percentage of fault so long as he or she played a significant factor in causing the incident. The principle behind the doctrine is that if two or more tortfeasors act negligently and substantially contribute to a plaintiff's injuries, the plaintiff -- the victim -- should not have to worry about the solvency of one tortfeasor over another. The plaintiff should be able to collect from one or all tortfeasors. The tortfeasors can then bring indemnification claims against each other, should it be necessary.

The doctrine of joint and several liability is beneficial for all citizens, including bicyclists, for many reasons:

A plaintiff may recover 100% of all damages awarded even if one joint tortfeasor is insolvent, immune from suit, or otherwise unavailable;

A plaintiff is protected when a defendant blames a phantom vehicle for causing the collision and the jury finds the phantom vehicle primarily responsible and the defendant only partially responsible for the incident;

A plaintiff is protected if a joint tortfeasor is found primarily at fault and has little or no insurance; and

A plaintiff who is seriously injured may recover against two defendants -- one of whom has $25,000 in liability insurance and is found to be 80% at fault and another defendant who has $1,000,000 who is found to be 20% at fault.

Here is an example. Assume a plaintiff is injured and a jury determines that the value of the plaintiff's damages total $1,000,000. Further, assume that the jury finds two parties (defendants) to be at fault -- Defendant A (who has automobile liability insurance with a policy limit of $25,000) is found to be 80% at fault and Defendant B (who has an insurance policy with a $1,000,000 policy limit) is determined to be 20% at fault. Should the proposed legislation take effect, the doctrine of joint and several liability will eventually be abolished. Without it, the plaintiff in
our hypothetical would collect $25,000 (the policy limit) from Defendant A's carrier and merely $200,000 (reflecting 20% of the total value of plaintiff's claims) from Defendant B's carrier, for a total of $225,000. Under the present law -- with joint and several liability -- the plaintiff would obtain full and fair compensation, totaling $1,000,000. Justice demands that innocent victims of carelessness be fully compensated under the law.

Proponents of the bill may suggest that discriminatorily applied comparative negligence laws can exist in harmony with the doctrine of joint and several liability. History and facts dictate otherwise. While comparative negligence has been adopted by 46 states, only 5 of them have been able to maintain an unadulterated doctrine of joint and several liability. The other 41 states have either completely abolished joint and several liability or dramatically limited the doctrine's applicability. Why does comparative negligence lead to the abolition of the doctrine of joint and several liability? Because where there is comparative negligence there is comparative fault.


Maryland has taken the tack of maintaining joint and several liability along with the doctrine of contributory negligence over instituting a comparative negligence law and abolishing the doctrine of joint and several liability. Further, the Maryland Court of Appeals rejected comparative negligence in 2013 (Coleman v. Soccer Association of Columbia, 69 A.3d 1 149).

Certain bicyclist advocates may suggest that the proposed bill is needed in some way since bicyclists are more at risk for injury on the road because they are less protected than motorists. The answer is not to create special classes of both tortfeasors and victims and to erode long-standing principles of justice that protect all citizens, including bicyclists. Instead, attention should be focused on traffic safety. In fact, we applaud the Council for doing exactly that -- addressing the need for safety. The Council has recently enacted two laws, identified below, to improve safety. Time will prove how effective those laws will be.
The Access to Justice for Bicyclist Act of 2012, found at D.C. Code § 50-1621, became effective on April 20, 2013. The law provides damages and attorney fees for bicyclists that are victims of assault or battery committed by a motorist. Specifically, the law states:

An individual who, while riding a bicycle, is the victim of an assault or battery by a motorist, and prevails in a civil action for such assault or battery, shall be entitled to:

(1) Statutory damages of $1,000 or actual damages, whichever is greater;
(2) Reasonable attorney's fees and costs; provided, that the total amount of damages is less than $10,000; and
(3) Any other relief available under the law.

The Bicycle Safety Amendment Act of 2013 became effective on December 13, This new law:

-- requires an applicant for a motor vehicle operator's permit to demonstrate knowledge of bicycle and pedestrian safety;
-- specifies that bicyclists can cross at intersections using pedestrian traffic control signals;
-- mandates contractors to provide a safe accommodation when blocking sidewalks or bicycle lanes;
-- adds "Failing to yield right-of-way to a person operating a bicycle" as a 3-point assessment against the driver's driving record;
-- adds "Colliding with a person operating a bicycle in the process of failing to yield right-of-way" as a 6-point assessment against the driver's driving record;
-- adds a $75 civil-infraction fine for the moving violation of "Failure to yield right-of-way to a person operating a bicycle;"
-- adds a $500 civil-infraction fine for the moving violation of colliding "with a person operating a bicycle;" and
requires bicyclists to be capable of making a warning noise, "either with a bell or mechanical device, or with his or her voice, audible for a distance of at least one hundred feet."

These laws were designed to reduce accidents and injuries involving bicyclists. We think they will. Time is needed to review their impact. We acknowledge that much more remains to be done to improve traffic safety, not just with respect to accidents that involve bicyclists, but all incidents. As examples, requiring bicyclists to wear helmets and to be better illuminated while riding on roads is crucial to safety. However, such steps should not threaten the ability of those with serious injuries to receive full compensation for the harm inflicted at no fault of their own.

Again, our association fully supports steps by the Council to improve safety for all citizens. We oppose laws that strip access to justice and treat people in a discriminatory fashion. The proposed bill does much more harm than good and will ultimately lead to further degradation of fundamental principles of fairness and justice. We appreciate your consideration of our position and urge you to oppose this bill.
September 29, 2014

Committee on the Judiciary and Public Safety
Council of the District of Columbia
1350 Pennsylvania Avenue NW
Washington, D.C. 20004

Re: Bicycle and Motor Vehicle Collision Recovery Amendment Act of 2014

Please accept these comments on behalf of the Coalition for Smarter Growth. The Coalition for Smarter Growth is the leading organization working locally in the Washington, D.C. metropolitan region dedicated to making the case for smart growth. Our mission is to advocate for walkable, inclusive, and transit-oriented communities, and the land use and transportation policies and investments needed to support those communities.

We are submitting comments in support of the Bicycle and Motor Vehicle Collision Recovery Amendment Act of 2014 and for Councilmember Grosso’s amendment to cover pedestrians in addition to cyclists with this bill. The District of Columbia’s continued use of contributory negligence presents major barriers for cyclists and pedestrians alike to recover damages in the event of a collision, and widespread misunderstanding and uneven enforcement of bicycle and pedestrian laws only compounds the problem.

According to a report by the National Complete Streets Coalition, 133 pedestrians were killed in D.C. between 2003 and 2012, representing 36.1% of all traffic-related fatalities during that time. In a crash between a motor vehicle and a pedestrian or cyclist, it is almost always the pedestrian or cyclist who is injured, and to a graver extent. Bicyclists and pedestrians are the least protected by the city’s infrastructure and enforcement officials, and thus need fair protection under the law because of their vulnerability compared to drivers.

For those on foot, construction sites lacking pedestrian accommodation, a lack of painted crosswalks where legal crosswalks exist, and a lack of sidewalks in some places are examples of situations where our infrastructure leaves pedestrians with little option but to take a risk. If struck by a car in these situations, a pedestrian could be construed as partially at fault by lawyers, jurors, or insurance agents, even though the odds were clearly stacked against them. Often this means that damages and insurance claims are awarded to injured pedestrians and cyclists only in the most egregious and clear instances, such as those involving a drunk driver.

Because pedestrians and cyclists taken together represent the most vulnerable users of our roadways, the Council should ensure fairness for their recovery in the event of a crash by applying comparative fault principles rather than contributory negligence. D.C. would be in good company: it would join the 46 states that have already moved beyond contributory negligence to comparative fault principles.
Please abolish the contributory-negligence principle for crashes involving pedestrians or cyclists in the District, and replace it with a more modern and appropriate comparative negligence system.

Thank you for your consideration.

Sincerely,

[Signature]

Kelly Blynn
Campaign Manager
Coalition for Smarter Growth
316 F St NE, Suite 200
Washington, D.C. 20002
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On Your Side

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Council of the District of Columbia
Councilmember Tommy Wells and Members of the Committee on the Judiciary and Public Safety
Room 109
1350 Pennsylvania Avenue, N.W.
Washington DC 20004

RE: Bill 20-884 - "Bicycle and Motor Vehicle Collision Recovery Act of 2014"

Nationwide Insurance appreciates the opportunity to comment on B20-884, "Bicycle and Motor Vehicle Collision Recovery Amendment Act of 2014", which was heard on September 29, 2014. Nationwide Insurance OPPOSES B20-884 and respectfully requests that the Council not take action on the bill.

In its introduced form, B20-884 creates an exception to the prevailing law of the District of Columbia regarding the allocation of fault in a motor vehicle accident. It provides that liability in traffic accidents involving bicyclists must be adjudged under a "comparative negligence" standard rather than the "contributory negligence" standard in use today in the District for all accidents, regardless of participants.

It has been the goal of jurisprudence in this country and in the District to apply the law equally as far as possible to those subject to it. From the initial pronouncements of the founding fathers to the conflagrations of the Civil War and the Civil Rights movement, the central idea has been to have one law for all, as far as is possible. To create a special category of plaintiff in cases of bicycle accidents runs counter to that great river of social thought. Regardless of the liability system, liability should be imposed under the same rules for all. Be it contributory negligence or the comparative ditto, a fair
system of jurisprudence militates that neither plaintiff nor defendant be placed under a different standard of liability just because of the vehicle they drove or rode.

At the hearing, members of the Committee recognized this fact and suggested that B20-884 be expanded to include all accidents, effectively overriding the doctrine of comparative negligence in the District. Nationwide agrees with the idea that a discussion of the liability standard should affect all parties, not just some. However, Nationwide also submits that while consistent treatment of the law is a good thing, it also has to be the right law.

Contributory negligence is a traditional doctrine of fairness that holds that when both parties are negligent, they should be barred from recovering damages from each other. Comparative negligence is a newer doctrine that allows recovery to a party who has partially been at fault.

Adoption of comparative fault would broaden the potential liability of such "deep pocket" defendants as the District Government and its transportation functions and to private employers as diverse as restaurants, hospitals, and construction companies. The desire of the proponents for greater payouts in compensation for injuries sustained cannot be satisfied from nothing. The higher costs to defend and to litigate cases under a comparative negligence system will eventually be reflected in insurance rates, as they always are. This will affect all insureds in the District, individual and business alike. Ironically, it will not affect bicyclists as they are not required to carry vehicle liability insurance in the District.

Before the Council decides to expand the debate to a wholesale conversion of contributory to comparative negligence, it may wish to examine the impact of the proposal on the residents and businesses of the District. There exist older, but still valid, studies that concluded that consumers in a comparative negligence state were subjected to an increasingly disparate cost differential as a direct result of the change in negligence system over their counterparts in a neighboring, contributory negligence state.

The Council should also consider the effect of such a change on the District's judicial system. The current contributory negligence system minimizes the filing of lawsuits and encourages settlement of claims before trial because most plaintiffs cannot recover if their conduct contributed to their injury. However, under pure comparative fault, a plaintiff who is 95% at fault can still recover 5% of any damages awarded. Thus, if comparative negligence is adopted, more lawsuits will be filed and the resulting backlog will impede the adjudication of genuine claims.

Should the Council decide to pursue comparative negligence, it will have to resolve the following issues:

- Should it adopt "pure" or "modified" comparative fault?
- If the latter, which kind of "modified" comparative fault should it adopt?
- Should joint and several liability be abolished or changed?
- What effect will this have on assumption of risk, and other court-made doctrines that relate to contributory negligence?
- Should the negligence of non-parties be considered?
- What is the effect of the plaintiffs settlement with one of multiple plaintiffs at fault?
• What is the effect on contributions among tortfeasors?

Answers to these questions can only be obtained by examining the experience in those state that have adopted comparative negligence, including the effect on the courts, level of litigation, insurance costs, and cost to individuals and business.

Nationwide Insurance recognizes that the choice between contributory negligence and comparative negligence is one of public policy. However, it suggests that the decision be made carefully, after the examination of the impact the decision can have on the residents and businesses of the District.

For these reasons, Nationwide respectfully requests that the Committee not act favorably on B20-884 in 2014. Should the Committee feel that the issue merits further inquiry, Nationwide suggests that it conduct fact-finding hearings before considering legislation in this area.

Respectfully,

Lars Kristiansen
Sr. Dir. Of Legislative Affairs
Nationwide Insurance

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¹ For example, An Analysis of the Relative Costs of the Adoption of Comparative negligence - A Paired State Study: Delaware and Maryland, (1989) by Professors Joseph K. Johnson of the University of North Carolina and William L. Ferguson of the University of Georgia
October 9th, 2014

Council of the District of Columbia
Committee on the Judiciary and Public Safety
c/o Ms. Nicole Goines
Room 109
1350 Pennsylvania Avenue, N.W.
Washington DC 20004

Dear Mr. Chairman and Members of the Committee

On behalf of the National Association of Mutual Insurance Companies I am writing to ask you to vote unfavorably on B20 – 884: Bicycle and Motor Vehicle Collision Recovery Amendment Act of 2014.

We are 1,400 property/casualty insurance companies serving more than 135 million auto, home and business policyholders, with more than $196 billion in premiums accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. We are the largest and most diverse property/casualty trade association in the country, with regional and local mutual insurance companies on main streets across America joining many of the country’s largest national insurers who also call NAMIC their home. More than 200,000 people are employed by NAMIC members.

As we understand the legislation, it would shift the contributory negligence standard currently in place in the District to a comparative negligence standard. Under a comparative negligence standard, a plaintiff may recover if his negligence is less than, greater than or equal to that of the defendants.

In short, a plaintiff may recover damages from the defendant if there is any demonstrable negligence at all on the part of that defendant. This standard may create a moral hazard in which the plaintiff is incentivized to file suit in hopes of getting a settlement or judgment, even if the plaintiff is primarily responsible.

This would be a dramatic shift in policy for the District, and would greatly change the landscape for the market going forward. We believe this legislation would negatively impact the insurance market, the business climate, and the number of lawsuits filed.
For these reasons, we ask you to vote unfavorably on B20-88 and maintain the contributory negligence standard. We believe contributory negligence is favored by so many jurisdictions because it creates an environment that is fair to businesses and consumers, and does not contribute to frivolous lawsuits in the court system.

If the Committee wants to pursue this change, which would put DC out of step with surrounding territories like Maryland and Virginia, NAMIC urges you to undertake the process very deliberatively. Changing such a fundamental aspect of tort law requires careful consideration because of interactions with myriad legal doctrines. We would ask you to delay a vote on B20-884 and undertake this issue fully in 2015; leaving time for all interested parties to respond to testimony at the last hearing, as well as to give the Council time to fully vet the concept of shifting the foundation of the legal climate.

If I can be of any assistance to the Committee as you consider this bill, please don’t hesitate to contact me.

Sincerely,

Erin Collins
Director – State Affairs – Mid-Atlantic
National Association of Mutual Insurance Companies
804.878.6473 Cell  www.namic.org

Where the future of insurance has its voice™
ATTACHMENT

G
WABA Response to DC Insurance Federation
Motor Vehicle Collision Recovery Act of 2015 (B21-0004)

Legislation (B21-0004) pending before the Judiciary and Public Safety Committee seeks to address the most significant legal injustice confronting bicyclists who have been injured in crashes on the District’s roadways. The following responses address economic concerns raised by the DC Insurance Federation.

_Insurance Industry Concern #1: Contributory Negligence Does Not Prevent Bicyclists From Recovering From Auto Insurers –_ Bicyclists claim that the contributory negligence standard frequently prevents them from recovering from the driver’s insurance company if the bicyclist was even the least bit negligent. However, this is a misstatement of DC law. Contributory negligence is defined as “unreasonable conduct that falls below the standard to which a plaintiff should conform for his own protection and which ultimately contributes to the injuries sustained.” See _Scooggins v. Jude_, 419 A.2d 999, 1004 (D.C. 1980).

_WABA Response:_ The industry correctly cites the law but ignores how it uses the doctrine as a weapon to deny claims. If a cyclist is arguably the slightest bit negligent – even if the fault of the driver is overwhelmingly greater – the cyclist’s claim is denied in its entirety - not reduced proportionately. From the standpoint of sound public policy and fundamental fairness, the doctrine of contributory negligence is flawed, which is precisely why it has been rejected by 46 states in favor of a more common sense approach. The use of the doctrine to deny claims has been well documented by cyclists in testimony before the Judiciary Committee, and by attorneys who routinely represent injured cyclists and see this common practice. As applied, contributory negligence makes the wrongful finding of fact a “knockout rule” and prevents access to the courts to remedy the wrong.

_Insurance Industry Concern #2: Contributory Negligence is the Regional Norm – In addition to the District, Maryland, Virginia and North Carolina all impose a contributory negligence standard on lawsuit plaintiffs. Loosening this standard would send a negative signal to businesses about the District’s legal and regulatory environment, which could have a profound, negative impact on economic development here._

_WABA Response:_ Contributory negligence may be a regional norm, but is not the national norm. Forty-six states have abandoned contributory negligence as an outdated, and fundamentally unfair legal doctrine. Suggesting that increased fairness to cyclists would have a “profound negative impact on economic development” is absurd.
Every major urban area in the country operates under varying forms of comparative negligence, including Chicago, Los Angeles, Atlanta, Dallas, Denver, Boston, and New York. None of these cities has reported negative impacts on economic development as a result, nor are they considering a return to the antiquated contributory negligence doctrine.

**Insurance Industry Concern #3: Impact on Auto Insurance** – Several studies have demonstrated that a move from contributory to comparative negligence results in auto insurance price increases. In DC, around one in five drivers is already uninsured. Economically disadvantaged people are most impacted by increases in auto insurance prices – they would be the most likely to drop coverage when it becomes unaffordable. Having more insured drivers benefits everyone.

**WABA Response:** What studies? We have not been able to find these studies, and the insurance industry has not cited them. A 2014 study sponsored by insure.com, however, shows that 43 of the 46 states that have comparative negligence enjoy insurance rates lower than DC’s. See http://www.insure.com/car-insurance/car-insurance-rates.html.

Neither can we find data to support the notion that a state’s insurance rates are tied to any one factor. While insurance rates go up everywhere over time, they do so in response to myriad demographic factors that have nothing to do with the state of negligence law. Furthermore, if contributory negligence were not a problem for bicyclists – as the industry claims – then why would abandoning it affect rates?

**Insurance Industry Concern #4: Impact on DC Business** – Large and small businesses that operate commercial vehicles would be directly impacted by this change, whether these vehicles are privately insured or self-insured.

**WABA Response:** This is simply an extension of the rate hike argument, premised on the assumption that rates would increase specifically due to abandoning contributory negligence. There is no data to support it. It is well-established that increases in insurance rates, when they occur, are affected by many factors, including changing demographics, and a host of other risk variables that have nothing to do with negligence law. Adopting a rational, tried-and-true legal doctrine that is the law in 46 states will not adversely affect the business community in DC.

**Insurance Industry Concern #5: Impact on DC Government** – The DC government owns and operates fleets of buses, trucks and other commercial vehicles – this change would be a direct hit to the government’s bottom line. Ultimately, these increased costs would be funded by DC taxpayers.

**WABA Response:** See above. There is no evidence that increasing fairness to vulnerable roadway users in accident cases would increase insurance rates, and hence DC
government overhead. There is no evidence that rejecting an antiquated legal doctrine in favor of a modern doctrine adopted in 46 states would adversely affect the DC budget.

**Insurance Industry Concern #6: No Evidence of a Problem** – At the Judiciary Committee hearing on B884 only one bicyclist who was in an accident with a motor vehicle testified. However, this witness stated that she ultimately recovered from the driver’s insurance company. Auto insurers settle and pay bicyclist claims all the time, and there has been no contrary indication from the Department of Insurance, Securities and Banking.

**WABA Response:** In addition to the individual cyclist who was able to take off work for the mid-day hearing, several plaintiffs attorneys spoke of their experiences with multiple clients, and WABA Executive Director Shane Farthing spoke on behalf of more than 5,000 members, including several dozen who have been injured and denied recovery explicitly due to the contributory negligence doctrine in the past two years.

**Insurance Industry Concern #7: More Education Is Needed** – The District is in flux regarding not only bicycle transportation, but our entire transportation network. We have 50 miles of bike lanes, and there is still a lot of confusion among bicyclists and motorists as to their proper use. In addition, there is a great deal of uncertainty about the soon-to-open streetcar line, and how it will impact road safety and traffic. Rather than an abrupt change to longstanding DC tort law, more education is needed for drivers, law enforcement, and bicyclists.

**WABA Response:** More education is needed, but better education won’t help injured cyclists who regularly have their claims denied by insurance companies in the District due to an outdated legal doctrine. Presently, WABA is the only entity offering bicycle education in DC—not the insurance industry. We are the District’s experts in bicycling conditions and representatives of the bicycling community. So while we appreciate the need for additional education—especially of enforcement officials—we are capable of assessing the greatest need of the bicycling community to improve fairness post-crash. In our considered view, passage of this bill is the greatest need.
WASHINGTON AREA BICYCLIST ASSOCIATION
2599 ONTARIO RD NW | WASHINGTON, DC 20009 | (202) 518-0524 | WABA.ORG
BRIEFING MEMORANDUM

DT: October 13, 2015
TO: Members of the Council of the District of Columbia & their Staff
FR: Greg Billing, Executive Director, Washington Area Bicyclist Association (WABA)
RE: Supporting the Motor Vehicle Collision Recovery Act of 2015 (B21-0004)

BRIEF ISSUE:

The District of Columbia recognizes contributory negligence as a complete defense to a tort claim. This makes recovery for damages suffered by cyclists injured in collisions with motor vehicles difficult and unpredictable. When combined with the uneven enforcement of bicycle laws and lack of understanding of bicycle laws among the general public (i.e. potential jurors)—both of which are well-documented—recovery becomes even more difficult and unpredictable.

The Council should change the contributory negligence doctrine to reduce the legal disadvantages faced by vulnerable roadway users by no longer precluding recovery for their injuries after crashes with motor vehicles.

LEGAL BACKGROUND:

Contributory negligence is a common law tort defense to a negligence action. A jurisdiction that recognizes contributory negligence as a complete defense to a negligence claim bars any recovery by the plaintiff if the finder of fact determines that the plaintiff contributed in any degree through her own negligence to the harm suffered.

Black’s Law Dictionary (7th Ed., 2000) defines the contributory negligence doctrine as “The principle that completely bars a plaintiff’s recovery if the damage suffered is partly the plaintiff’s own fault,” and states within the definition that “Most states have abolished this doctrine and have adopted instead a comparative-negligence scheme.” Currently, only four states (Alabama, North Carolina, Virginia, and Maryland) and the District of Columbia retain the contributory-negligence doctrine as law.

The current authority for contributory-negligence doctrine in the District’s common law is Wingfield v. Peoples’ Drug Store, Inc., 379 A. 2d 685, 687 (D.C. App. 1977), which states that “the District of Columbia does not recognize different degrees of contributory negligence. The rule is simply that contributory negligence bars a plaintiff’s recovery.” Following the citations back through time, it appears that contributory-negligence doctrine was simply accepted as a “general rule” of jurisprudence by the Court: “The only question here presented, as we see it, is whether contributory negligence is a valid defense to [a plaintiff’s] claim. As a general rule, contributory negligence is a good defense to an action based on negligence...” Karma Construction Co., Inc. v. King, 296 A. 2d 604, 605 (D.C. App. 1972) (emphasis added).

APPLICATION TO CYCLISTS IN THE DISTRICT:

The doctrine of contributory negligence is especially problematic where the plaintiff’s negligence is likely to be incorrectly presumed. This is the case for bicyclists; they are the most vulnerable users of the road,
yet the least understood by the public and enforcement officials and the least protected by infrastructure.

WABA works diligently to educate cyclists, police officers, and citizens on the proper application of bicycle laws, but misunderstandings and ignorance persist. In the District, improper presumption of bicyclist negligence is common when a traffic crash involves a cyclist. The District admits as much by producing the joint MPD-DDOT document entitled “Common Enforcement Errors Involving Bicyclists.” This wrongful presumption of fault has been documented by the Office of Police Complaints in several reports. See, e.g., Bicycle Safety and MPD Enforcement of the District’s Biking Laws Report and Recommendations of the Police Complaints Board to Mayor Vincent Gray, The Council of the District of Columbia, and Chief of Police Cathy Lanier. (Sept. 12, 2013), available at http://1.usa.gov/1VjEmKu.

The contributory-negligence doctrine serves to compound the effects of these misunderstandings and wrongful citations by essentially saying to cyclists: “Notwithstanding the fact that the District often errs in enforcement, the District will not allow you to recover damages where that error in enforcement can be used to support a finding of negligence.”

ADDITIONAL REAL-WORLD CONCERNS—INSURANCE DENIALS & ACCESS TO LEGAL REPRESENTATION:

When people discuss contributory negligence as a doctrine, they often do so in the context of the courtroom, with juries allocating fault among adverse parties. However, this is not how contributory negligence harms most cyclists. Most cases do not go to juries. Most injured cyclists seek redress after a crash through some form of insurance, and it is the duty of the insurance claims adjuster to apply the law of the jurisdiction. Therefore, contributory negligence allows insurers—people with no training on the operation of bicycling laws and facilities in DC, who are not residents of DC—to deny claims by simply asserting, without the protections of the court system, that the cyclist should have done something differently.

In one recent case from Northeast DC, a driver passed within inches of a bicyclist on a marked bike route in violation of the requirement that a driver pass with three feet of clearance. This cyclist had a claim rejected because he was in the road and did not pull over to yield to the vehicle—which is not his legal obligation. In another, a claim was denied because a cyclist used the pedestrian signal rather than the traffic light, as DC law allows and official DDOT signage at that location requires. Cases such as these are numerous. The insurers making decisions about whether an injured cyclist met her duty are provided no training on the specifics of urban biking in DC or local traffic regulations, and regularly exhibit that lack of understanding in their incorrect denial rationales. Because DC adheres to contributory negligence, this denial prevents the cyclist from recovering any costs from an accident, even when she was the victim.

The cyclist who seeks legal representation to fight for monetary recovery faces a related challenge. Because any small imperfection in one’s riding could bar all recovery, tort lawyers—who operate on a contingency basis, meaning they are paid a portion of what they recover—are frequently unable to represent the injured party, knowing that the contributory negligence doctrine makes the case an exceptionally difficult one to win. No roadway user follows the rules of the road perfectly all of the time. While it may be fair to take wrongdoing into account, it is fundamentally unfair to deny all recovery without regard to the extent or proportion of one party’s wrongdoing compared with the actions of the other parties involved.
CONCLUSION:

It is the responsibility of citizens to follow the law, but it is also the responsibility of lawmakers to ensure that laws accurately fit their jurisdiction’s reality. In the District, cyclists routinely face poor enforcement of protective provisions, misapplication of traffic regulations, and are improperly faulted for legal behavior.

This improper application of the law is compounded by the contributory negligence doctrine, which regularly prevents injured cyclists from recovering damages after a crash. The vast majority of jurisdictions in the United States have abolished contributory negligence as an outmoded, unfair, and too-blunt instrument for the allocation of recovery for negligence. To the extent that the District cares about quality of life, multi-modal transit, and the expansion of cycling as a viable lifestyle option for all of its residents, it should do the same.

Please abolish the contributory negligence doctrine as a bar to recovery for cyclists in the District.

Doing so will improve outcomes not only for those who find access to the legal system, but also to those whose claims are denied by insurers even when their fault is less that the others involved.

Quick Takeaways:

• In crashes between a bicyclist and a motor vehicle, the bicyclist is almost always the injured party—meaning any doctrine limiting recovery disproportionately burdens bicyclists.
• Contributory negligence is the law in DC. It says that anyone who was even the slightest bit negligent—even 1%—loses the right to any recovery. (100% elimination)
• 46 states have eliminated this outdated doctrine and replaced it with a fairer negligence standard, where being 1% at fault does not bar all recovery.
• There is precedent in DC law for exempting certain types of transportation users from contributory negligence. For example, it currently exists in certain railroad contexts.
• Normally, these cases don’t go to court. This is in part because the harshness of the contributory negligence standard keeps tort attorneys from accepting cases, due to the expected financial value of the case being zero.
• Most cases are handled by insurance adjusters, who lack understanding of or training in urban bicycling in the District, often do not live or work in the District, and who frequently deny claims for bicyclist behavior that is non-negligent and conforms to DC law.
October 23, 2015

Mayor Bowser, Deputy Mayors, DC Councilmembers, DC Chief of Police, DC Police District Commanders, Journalists:

Re: Bicycle Safety Initiative

I'm a Washington resident and walk to and from my office downtown. Over the past few years, bikers on the sidewalk have become an increasingly problematic safety issue that I encounter on my daily commute and as I make my way around the city.

While looking into laws that bicyclists must follow, a New York City cop told me, “A bicycle is a vehicle. Bicycles must stop at red lights and stop signs. They must go one way on a one-way street and only with the flow of the traffic. They must use a bike-lane if there is a bike lane. They don’t ride bikes on the sidewalk here.”

In major cities around the world, bicycles are not permitted on the sidewalk. Sidewalks, as the name implies, are for walking -- not dodging bicycles. Washington is a world-class city -- probably one of the most important cities in the world. So it's time to join the rest of the world. With the density of bikes in our area, it's time for Washington to remove bicycles from the sidewalks.

Some rules that other cities enforce that I would like to see Washington similarly take action to uphold:

1. Bicycles should not be permitted on sidewalks – anywhere.

2. Bicyclists should not ride through red lights or stop signs – or stop in crosswalks. (Alexandria, VA has a $91.00 fine for a bicyclist going through a red light.)

3. At night, bicycles should have front and rear lights.

4. If a bicyclist wants his/her bike on the sidewalk, they must walk alongside it.

5. Bicycles should ride one way – in the flow of traffic – on a one-way street.

If police officers would commit to watching out for bicyclists and remind bikers to stay on the street, a culture of bike etiquette would surely follow. Posting these rules around the city would be a great step toward safety for all.

Thanks for your service and consideration to make Washington a friendlier, enjoyable and safer place to live, work, and walk.

Warm regards,

Concerned Citizen

CC:
Mayor Bowser, Deputy Mayor Brenda Donald, Deputy Mayor Brian Kenner
Councilmembers: Kenyan McDuffie, Vincent Orange, Anita Bonds, David Grosso, Elissa Silverman, Brianne Nadeau, Jack Evans, Mary M. Cheh, Brandon T. Todd, Charles Allen, Yvette Alexander, LaRuby Mae
Chief of Police: Cathy L. Lanier
Commanders: Jeff Brown, Melvin Gresham, Jeffery Carroll, Wilfredo Manlapaz, William Fitzgerald, David Taylor, Vendette Parker
Media: John Solomon, David Keene, Martin Baron, Robert Thomson
December 7, 2015

VIA FIRST CLASS MAIL
The Honorable Kenyan McDuffie
1350 Pennsylvania Ave, NW, Suite 506
Washington, DC 20004

Re: The Motor Vehicle Collision Recovery Act of 2015 will provide our city's cyclists and pedestrians better access to the civil justice system

Dear Councilmember McDuffie,

My name is Daniel Singer, and I have lived, studied, and worked in the District of Columbia since 2007. Ever since I graduated from the George Washington University Law School in 2011, my work has focused on prosecuting serious injury and wrongful death cases in the District of Columbia, and I have worked on many cases involving injured bicyclists and pedestrians. What I have learned is that, all too often, these vulnerable road users are not afforded fair access to our civil justice system as a direct result of the so-called "contributory negligence" doctrine that still exists in the District of Columbia.

As you are aware, the "contributory negligence" doctrine essentially means that if someone is injured in an accident, but is determined by a civil jury to have "contributed" to the accident, then the injured person is entirely prohibited from obtaining any compensation for their medical bills or lost wages that result from the accident. It does not matter if the injured person has only contributed a very small amount to the accident. As long as he or she is determined to be even 1% responsible for the accident, then any monetary recovery from the civil justice system is absolutely prohibited. This is an extremely harsh, antiquated rule that has been passed down from old English common law, and it has long been repudiated by 46 out of the 51 jurisdictions throughout the country.¹

The severity of the contributory negligence rule makes it extremely difficult for vulnerable road users to obtain fair compensation when they are seriously injured by dangerous motorists. For example, in a recent case, our client was cycling along 14th Street, NW, when he was struck by an inattentive trash truck driver. Our client sustained a serious head injury that caused him to have permanent neurological deficits. While the truck driver was given a ticket by the responding police officer for speeding and failing to maintain a proper lookout, the insurance company for the employer of the truck driver tried to shirk responsibility for our client’s injuries. Shockingly, even though the insurance company conceded that it’s driver was negligent, they argued that they were confident that a civil jury would find that our client was at least 1% at fault, which would then result in the client being prohibited from recovering anything under the

¹ The only jurisdictions other than the District of Columbia that continue to follow this rule are Maryland, Virginia, Alabama, and North Carolina.
contributory negligence rule. Ultimately, in this case, our client eventually settled for a lesser amount because of the serious risk that she would get nothing on account of the jury possibly attributing a small portion of fault to the seriously injured cyclist.

Moreover, our city’s vulnerable road users often will not even be able to obtain representation from an attorney when they are injured by negligent motorists due to the harshness of the contributory negligence rule. Our firm and other lawyers in this practice area frequently decline cases involving injured cyclists or pedestrians because of the significant risk that a jury will find them even 1% “contributorily” negligent and effectively prohibit them from obtaining any compensation. As a result, given the volume of serious motor vehicle accidents in the District of Columbia, a huge number of injured cyclists and pedestrians are completely shut out of the civil justice system. To give you some context for the scope of the problem, in the year 2014 alone, there were 842 reported crashes between motor vehicles and bicyclists, and 1170 reported crashes between vehicles and pedestrians that resulted in property damage or bodily injury. It is unquestionable that a significant portion of the vulnerable road users injured in these accidents were not able to obtain representation as a direct result of the contributory negligence rule.

As a city, we need to do a better job to ensure that our bicyclists and pedestrians have access to civil justice and are allowed to obtain fair compensation for any medical bills and lost wages they incur as a result of negligent motorists. Adopting the “Motor Vehicle Collision Recovery Act of 2015” — and abolishing the antiquated contributory negligence rule — will enable us to make a significant stride in the right direction. Under the rubric outlined in the proposed bill, a vulnerable road user would be entitled to fair compensation for injuries sustained in a motor vehicle accident as long as he or she did not contribute more than 50% to the collision. This is smart public policy, as dangerous motorists will finally be held accountable when they carelessly injure a cyclist or pedestrian on one of our streets.

Should you have any questions or concerns about the proposed “Motor Vehicle Collision Recovery Act of 2015,” I would welcome the opportunity to speak with you more about this important issue. Thank you very much in advance for your time and consideration.

Very truly yours,

Daniel S. Singer
January 14, 2016

BY FIRST-CLASS MAIL AND EMAIL

The Honorable Kenyan McDuffie
1350 Pennsylvania Ave, NW, Suite 506
Washington, DC 20004


Dear Councilmember McDuffie,

My name is Bruce Deming, and as a personal injury attorney and member of the District of Columbia Bar, I have represented injured cyclists and pedestrians in the District of Columbia for the past thirty years. Indeed, my practice has evolved to the point where representing injured cyclists and pedestrians both in the District and throughout the U.S., is now 100% of my caseload. It is all that I do. As a life long bike commuter, competitive cyclist, and cycling advocate, I am writing on behalf of my injured clients - present and future - to urge that you make B21-0004 a strong legislative priority, and advance it for enactment by the Council at the earliest possible date.

For many years now, I have experienced first-hand the manner in which insurance carriers and adjusters routinely use the harsh and inflexible contributory negligence doctrine as a weapon to deny claims, and preclude compensation to countless cyclists and pedestrians who have suffered grievous bodily injuries at the hands of negligent motorists. In many cases the alleged "contributory negligence" on the part of the cyclist was slight in comparison to the overwhelming negligence of the motorist that caused the injury. And yet, because of the rigid inflexibility of the "contrib" doctrine, if an accident victim is even 1% at fault, their claim is barred in its entirety.

Insurance carriers get away with denying these claims, because they know that, faced with denied claims, most victims will simply give up - especially if they are unrepresented. They also know that in most instances, personal injury attorneys like myself will turn down these cases - and thereby deny injured people access to the civil justice system. That is not right, and it is not just, but it remains the legal reality in the District of Columbia.

Recently, I represented a young woman who was struck by an SUV while riding her bicycle across a painted crosswalk with the "Walk" signal. She was back boarded and transported via ambulance to Howard University Hospital. She suffered multiple fractured ribs,
incurred significant medical expenses, and incurred substantial lost wages and property damages. The driver of the car was issued a citation by the investigating MPD officer for failure to yield to a pedestrian in a crosswalk. Notwithstanding the insurance carrier's admission that their insured driver of the SUV was "probably negligent" in running her down in a crosswalk, it took the position that contributory negligence was a bar to her claim because she was also "negligent" by failing to anticipate the approach of the SUV.

This case - and it is only one of many - happened in 2015. Had the pending legislation been enacted last year, this case - and countless others like it - would have turned out differently. Every day that this bill remains pending in committee is another day that insurance companies deny these claims simply because the law allows them to get away with it. They deny these claims because they can.

The doctrine of contributory negligence is both old and outdated. Originating in the common law of England in 1819, the doctrine of "contrib" was the law in many states in the 19th and early 20th centuries, until its overly harsh, putative effects were recognized and discarded by legal scholars and state legislatures. Today, 46 of the 50 jurisdictions have rejected it -- but not the District of Columbia. Today, DC is one of only five remaining jurisdictions in the United States where contributory negligence remains on the books.1 The bill before you would change that, and at least as to tort claims involving injured cyclists, pedestrians, and other non-motorized users of public highways, would bring the law of the district in line with the overwhelming majority of other jurisdictions in the country. Enactment of this legislation is long overdue.

Opposition to the bill by the auto insurance industry is predictable. Arguing that the economic sky will fall if the bill passes, industry opponents assert that insurance rates will climb, government transportation costs will skyrocket, and businesses will be driven out. To date, however, the industry has presented not a shred of data to back up these alarmist assertions.

Bill opponents, for example, argue that unidentified "studies" show that auto rates have risen in states where contributory negligence has been abandoned. However, to date, I have not seen a single study to back that assertion up. Insurance rates routinely rise in jurisdictions throughout the country for all kinds of reasons, including population shifts, economic conditions, inflation rates, market forces, and countless demographic factors that are evaluated and sifted by insurance companies through complex pricing algorithms. To tease out the effect of a change in contributory negligence as a driving force (or even remotely significant factor) in any given state would require the most complex statistical analysis available. To the best of my knowledge, that research doesn't exist, and I am aware of no published study to that effect.

What has been published is straightforward data on how auto insurance rates compare on a state-by-state basis. Interestingly, based upon 2015 industry data, of the 46 states that have abandoned contributory negligence, every one of them enjoys auto rates that are lower than those

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1 The other four jurisdictions are Maryland, Virginia, North Carolina, and Alabama.
in the District of Columbia.\(^2\) I am not suggesting that rejecting contributory negligence will necessarily lower rates because of all the factors that affect them, but the data certainly does not suggest that abandoning "contrib" will drive rates higher either.

Ultimately, passage of the bill makes sense, and is consistent with sound public policy. Mayor Bowser's Vision Zero goals are an important step forward in achieving pedestrian and cyclist safety, and the Council is to be commended for its active consideration of increased fines for speeding, and other measures that will enhance the protection of drivers and cyclists alike.

In the broader context, while it is essential that we do everything possible to prevent injuries to our most vulnerable road users through Vision Zero initiatives, it is equally important that the laws of the District of Columbia laws provide fairness when the worst happens, and people are badly hurt. Passage of B21-0004 is fully consistent with Vision Zero objectives, and with the modern law of 46 states, and the time to move the bill forward is now. It is my sincere hope that your leadership on this issue as Chair of the Judiciary Committee will make it happen.

I am grateful for the opportunity to comment on this important issue, and thank you for your consideration.

Sincerely,

Bruce S. Deming, Esq.

 BSD/bsd
 cc: The Honorable Muriel Bowser, Mayor of the District of Columbia

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\(^2\) See http://www.insure.com/car-insurance/car-insurance-rates.html. The study compiled rates from six large insurance carriers in 10 zip codes in each state, and averaged rates for the 20 best-selling vehicles in the U.S., which last year represented about 40% of all vehicles sold.
FAIRNESS FOR BICYCLE CRASH VICTIMS

Only four states and the District of Columbia in the United States retain the antiquated and unfair contributory negligence standard.

Councilman McDuffie, please schedule a hearing on this bill. Thank you!

Name

David Leadbetter
Marley Rave
Adam Lock
Theresa Fleming
Bradley Green
Kristen Sutera
Tameka Jackson
Charmeke Ruppert
Andrey Panikov
Cal P. Henhouse
Sarah Dukit
Elizabeth Visz
Jason Leppig

In 2012, 564 crashes involving people riding bicycle in the District of Columbia and 458 people were injured. Many of those injured will receive little to no compensation to cover medical bills, lost wages and damages to their property. The system fails them at every level. The Bicycle and Motor Vehicle Collision Recovery Amendment Act of 2015 is a desperately needed change to DC’s antiquated and unfair negligence standard.

Often referred as the “one percent” rule, contributory negligence bars a plaintiff’s recovery if they are greater than one percent at fault for the damages. The majority of states have abolished the contributory negligence standard in favor for a more fair comparative negligence scheme.

The legislation has been referred to the DC Council Committee on Judiciary. It cannot move forward to become law without a Judiciary Committee hearing. Councilmember Kenyan McDuffie (Ward 5) is the Chair of the Judiciary Committee is the only person with the authority to schedule a hearing.
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Name

Alhaji SuAlley

Cly White

Jemine Simpson

Joseph Bemiie

Brandon Beatty

Brian Booda

Ramona Jackson

Brandon Peterson

Gustav Barker

Michael Broadway

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Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

As a DC resident, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays. My girlfriend has been struck twice in the past year and a half while commuting to work in the District. I am tired of cyclists being treated like they are expendable.

Thank you for your prompt attention to this matter,

Paul Basola
950 L'Enfant Plaza South SW Washington, DC 20016

2022875867
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

I've written before about my own inability to get any fairness out of the insurance company when I crashed because of the actions of a motorist who was trying to "teach me a lesson" in the rules of the road.

As a former DC resident, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

Thank you for your prompt attention to this matter,

Mr. Evan Wilder
1145 17th st nw washington, DC 20036

202-658-7879
Councilmember Kenyan McDuffie (Ward 5) DC Council
1350 Pennsylvania Ave NW #410 Washington, DC 20004

Dear Councilmember McDuffie,

As a DC resident and neighbor, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

I myself have been side-swiped 3 times and Jamie once by careless drivers while responsibly biking around downtown (2 cabs, 1 Metro bus, and 1 contractor’s truck), though fortunately uninjured in each case. I stopped biking with her to school and now leave 20 minutes earlier to walk the mile instead because it’s so unsafe to get from 2nd to 14th St through our neighborhood. You see it every day. Changing the contributory negligence law will slow drivers down if nothing else, and stop me from drowning in medical bills if one of us is ever seriously injured.

Thank you for your prompt attention to this matter, Angela (& Jamie)

Angela Robinson
152 Adams Street NW Washington, DC 20001
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

As a resident of Brookland and daily bike commuter, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

While I have the luxury of spending nearly half my commute on the off-road portion of the MBT trail and most of the remaining commute on roads with bike lanes, that’s not always the case and certainly not many bikers' experience.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

Thank you,

Joshua Sewell
3215 10th Street NE
Washington, DC 20017

2027443853
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

As a DC resident, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

As victims of crashes go, I am one of the fortunate ones. Almost a year ago, a driver ran a red light and broadsided me on my bicycle at the intersection of 15th and L NW. It was a clear case of driver fault, but if there had not been a witness there who was willing to stay, talk to the police, and refute the driver (who immediately claimed he had a green light), the police officer who took the report undoubtedly would have left the question of fault unanswered instead of giving the driver a failure to yield ticket. Without that witness, it would have been significantly more difficult for me to obtain any recovery for my injuries (multiple pelvic fractures, fractured elbow, among others, which kept me out of work for two months). Even with those fortunate circumstances, as the anniversary of the crash approaches in two days, I have yet to receive any compensation. I can only imagine how much more difficult it would be if I had been left with the uphill battle of proving both driver fault and non-negligence on my part.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

Thank you for your prompt attention to this matter,

Nathaniel Canfield
1511 Park Road NW, #23
Washington, DC 20010

703-946-5767
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

As a DC resident and a resident of Ward 5, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every day in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

I expect better from my Councilmember. I’ve spoken to you and to several members of your staff about this legislation, and it’s clear you don’t consider it to be a priority. As someone who was struck by a vehicle (in Ward 5 on Harewood Road), I’ve had hundreds of thousands of dollars of medical expenses. Surgeries and hospital care saved my life, rehab and physical therapy have allowed me to walk again. I'm a lucky one. In my case, there was a video showing my lack of fault. Not everyone has this kind of documentation, and one driver's voice against the voice of a person on a bike is often all an insurance company needs to deny coverage. Make this stop, here and now, so that people like me can get the medical treatment that will save our lives.

Thank you for your prompt attention to this matter,

Samantha Wetzel

Samantha Wetzel
2031 Hamlin st NE
Washington, DC 20018

202-550-7656
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

As a Ward 5 resident and lifelong DC voter, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

In the past two months, three close friends were riding to work and hit by cars. One has a fractured pelvis and faces months of recovery. Another fractured three ribs and sprained an ankle. The third sustained minor injuries, but now questions whether biking at all is worth it.

In each of these crashes, the driver was fully at fault. The first was doored, the second was right hooked, the third hit from behind. But despite clear blame, the drivers are fighting, and due to current law, there is a good chance my friends will not receive a penny to cover medical costs, loss of wages or property — simply because they were on a bike.

You can be a part of fixing this. And frankly, you must be a part of fixing this since it is your committee. I know you have your hands full on so many hard issues. Keep at those, really. But this one is easy. Please don’t stand in the way.

Thank you for your prompt attention to this matter,

Garrett Hennigan
1031 Newton St. NE
Washington, DC 20017

2023603715
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

As a DC resident and cyclist who experiences the carelessness and automobile operators on a daily basis, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

Thank you for your prompt attention to this matter,

Joshua Axelrod
1411 Monroe St NW
Washington, DC 20010

(802) 989-3433
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

As a DC resident, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays. I was one of these people, riding straight, with lights and reflective gear and a helmet - and was struck by someone making a left turn without signalling. Two years later, after a lengthy hospital stay, surgery, and all the interruption to work that it caused, I am still not recovered fully and probably never will be. I want to be taken into consideration when trying to get around my city.

Thank you for your prompt attention to this matter, Alice Goldfarb.

Alice Goldfarb
639 M Street NE
Washington, DC 20002

4134463861
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

As a DC resident who has been in a bicycle-car accident (I was hit by a car door and taken to Howard University Hospital with a concussion), I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

Thank you for your prompt attention to this matter.

Kind regards, Tara Varghese

Tara Varghese
811 4th St NW #504
Washington, DC 20001

7039398227
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

As a DC resident, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

A friend of mine was struck by a speeding driver while riding a bike, and as a result she has needed extensive reconstruction surgery to her jaw. She has had to pay out of pocket for surgeries to implant teeth, because her insurance company called this an elective cosmetic procedure. She is currently working with a lawyer to file a lawsuit for appropriate compensation, but the case is complicated by the district's outdated liability standard. While the police report assigns all blame to the driver who was speeding and drifted into the opposing lane of traffic, my friend wasn't wearing a helmet at the time if the accident. While a helmet isn't required by law and wouldn't have had any impact in the damage to her jaw, it may give a jury the impression that my friend had a share of the blame, disqualifying her claim for compensation. This new law may be too late to help my friend's situation (though I hope it can be written in a way that gives relief to people in her situation), but it's not too late to help the next victim who is just trying to get to work without crowding our roadways or relying on a delayed metro train or packed metro bus.

Thank you for your prompt attention to this matter,

Benjamin Poulos
70 I St. SE Apt. 414
Washington, DC 20003

2076497043
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

As a DC resident, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays. It’s happened to me, it’s happened to my girlfriend, and I’m sure I’ll be hit again.

As an active transportation enthusiast, I can’t tell you the number of people who shared horror stories after a crash with a car, but have no legal recourse. It’s ridiculous.

Thank you for your prompt attention to this matter, Paul Balmer

Paul Balmer
1852 Ingleside Ter NW
Washington, DC 20010

5039613523
Councilmember Kenyan McDuffie (Ward 5)  
DC Council  
1350 Pennsylvania Ave NW #410  
Washington, DC 20004  

Dear Councilmember McDuffie,

As a DC resident and cyclist who was recently injured on my daily commute, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

I was recently hit by a car that was driving on the wrong side of the road while biking home from work. I spent three weeks in the hospital with several spinal and rib fractures. Now I am faced with trying to recoup enormous medical costs from the driver's car insurance company. Contributory negligence makes this much more difficult, even though I was not at fault, by encouraging the insurance company to argue otherwise.

As you know, B21-0004 will increase fairness for vulnerable roadway users, like myself, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. I assure you, crash victims are not trying to get rich off of their injuries, we are simply trying to recover our costs. It is time for the District to remedy this issue and act to protect cyclists and pedestrians.

Thank you for your prompt attention to this matter,

Isabel Ricker  
1350 Clifton Street NW  
Washington, DC 20009
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

As a DC resident, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

As a driver and a cyclist, I witness egregious behavior by our roadway users every day. Unfortunately, it is our most vulnerable road users that suffer disproportionately for this.

Thank you for your prompt attention to this matter,

Nicole Donnelly Ward 6

Nicole Donnelly
749 3rd St SW
Washington, DC 20024
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

As a lifelong DC resident, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

I have been riding a bike, walking, and driving in this city my entire life (well, driving here for 15 years). I've been riding my bike to work every day for almost four years and I can tell you that EVERY RIDE involves some kind of near miss with a distracted driver, an angry driver, and/or a driver who simply wants to intimidate me because I am on a bicycle. I follow the traffic laws, I stop at red lights and stop signs, and I am a safe and responsible cyclist.

I am terrified that I will get into an accident, caused by a negligent driver, and will not be able to be compensated for medical bills, lost wages, or damage to my property. As a young woman who is struggling to live in her hometown, struggling to pay rent, and struggling to have the kind of life I want to have here, an accident could cause me to lose everything.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

Thank you for your prompt attention to this matter,

Liz Gossens
1123 K St NE Washington, DC 20002

202-494-8260
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

As a DC resident and daily bicycle commuter, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

I've been doored by a car here in DC, which rules that such accidents are completely the fault of the driver. Even then, I had to spend several months fighting to get compensated for my trip to the emergency room.

The driver of the car, out of the goodness of his heart, actually stepped in and paid for my medical treatment on his own, something he should not have had to do.

I was extremely lucky, but many other cyclists are not, which is why we need this bill.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

Thank you for your prompt attention to this matter,

Umair Irfan
1305 Euclid St. NW Washington, DC 20009
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

As a DC resident, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

To add further personalization to this letter, I was struck by a driver running a red light this summer at the intersection of 16th and U NW. I was luckily in that there were many witnesses and a police officer came and cited the driver. However, many are not as lucky as I to have it be such a clear cut case. Further, despite the citation, multiple witnesses, and the police report it still took 4.5 months of arguing with her insurance company about expenses and medical bills before there was a resolution that was at least somewhat satisfactory.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

Thank you for your prompt attention to this matter,

Cole Ingraham
3533 Hertford Place NW Washington, DC 20010
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

For me, this issue is personal. On October 9, 2015, I was hit by a car while riding my bike on 6th St. NW. The crash resulted in a broken leg, glass embedded in my arm and concussion. I had to be taken by ambulance to the trauma unit of MedStar Washington Hospital Center, where after numerous x-rays and exams, an MPD officer visited me to give me a ticket for failing to yield as I turned left of a green light.

Ostensibly this meant that the crash was my fault, even though the driver that hit me was likely driving in excess of the speed limit and admitted that she had a hard time seeing the intersection because of a bus that was in her line of sight.

Because of D.C.’s contributory negligence statute, I am not able to recover any sort of damages for my injuries. While I have health insurance, my out-of-pocket expenses have been significant and I’ve lost more than a week of wages because of the accident. My $1000 bike was also destroyed in the crash and I’m now without my main form of transportation.

As a Ward 5 voter and resident of Truxton Circle, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

Thank you for your prompt attention to this matter.

Sincerely, Lauren Ober

Lauren Ober
journalist
119 P St. NW Washington, DC 20001

3154304227
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

As a DC resident, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

As a lawyer, you know the importance of equal access to the court system—one of the last places where a citizen can hold another accountable when they have been harmed. Presently the contributory negligence law restricts vulnerable citizens access to due process. Rather than holding parties accountable for their actions, the law shields lawbreakers in favor of the interests of insurance companies.

Furthermore, the burden of proof lies with the victim to show that they did not even contribute 1% of negligence to continue with their claim. The victims are unfairly guilty until proven innocent. This should offend you not only on moral grounds, but also from a legal perspective.

On July 4, 2014 I was struck by a car that failed to yield to me and then took off. The hit-and-run left me with few legal options and I would hope that you consider changing the law to ensure that others do not have to suffer the same injustice.

Every week in the District, a person is struck by a vehicle while riding a bicycle or walking across the street. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

Thank you for your prompt attention to this matter,

Matthew Huisman
639 Morton Street NW Washington, DC 20010

512-658-6738
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

I live in Ward 1 (Mt Pleasant), work at Navy Yard, and enjoy bicycling around town as well as to work. This is important to me. Thank you for considering my thoughts.

As a DC resident, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

Thank you for your prompt attention to this matter,

Catherine Creese
1867 Newton St NW Washington, DC 20010
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

I live in DC, and I don't own a car (they're expensive). So I bike everywhere. Cars, being giant speedy chunks of metal own the road. So it'd be nice if you threw us exhaust-breathing, sometimes-run-over folks a bone. It's the least you can do.

Sincerely,

Pete Rodrigue
2000 Connecticut Ave NW apt 209 Washington, DC 20008

214-418-0832
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

It's important to treat vulnerable road users fairly, especially when they are injured by motor vehicles. Current DC law gets in the way of that by making it unnecessarily difficult to get help covering the costs of treatment for injuries.

Please schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council. The provisions in this will would take into account how much a cyclist or pedestrian is at fault before denying their ability to receive insurance payments.

This will bring us closer to a fair transportation system for all roadway users.

As a DC resident who votes in every local election, I appreciate you moving this issue ahead.

KM
1725 17th street nw #112 Washington, DC 20009
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

I am an avid bike commuter and love living in DC. However, if we are going to reach the city's sustainability goals for reduced vehicle transit, we need to make biking safer. Safety concerns are the primary concern and reason that people avoid commuting via bike.

As a DC resident and property owner, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

Thank you for your prompt attention to this matter,

Mya Sjogren
2219 13th St NW Washington, DC 20009

2024419979
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

Contributory negligence is outdated and unfair. It's embarrassing that the District is one of the last jurisdictions left using it.

As a DC resident, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

Thank you for your prompt attention to this matter,

Blair Bowie
5012 Lowell St NW Washington, DC 20016
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

As a DC resident, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

As someone who regularly bikes around D.C., in attempt to reduce my carbon footprint while still promoting and participating in all the amazing local businesses and events the city has to offer, the fact that the victim of this type of incident can be found at fault so easily is incredibly upsetting.

Thank you for your prompt attention to this matter.

Michael Jaja
1418 Belmont St NW Washington, DC 20009
Councilmember Kenyan McDuffie (Ward 5)  
DC Council  
1350 Pennsylvania Ave NW #410  
Washington, DC 20004

Dear Councilmember McDuffie,

As a DC resident, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

Recent research has found that motor vehicle crashes have significantly worse effects on groups of people with lower income and lower education levels - people who are already facing bigger challenges to succeed in the District. Our current contributory negligence practice stacks the deck against them in a whole different way. This needs to be addressed without further delay.


Thank you for your prompt attention to this matter,

Dave Salovesh  
107 6th Street NE Washington, DC 20002
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

As a DC resident, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

Come on!
make it happen!!

Bill @bardo

william stewart
1216 Bladensburg Rd NE Washington, DC 20002
Councilmember Kenyan McDuffie (Ward 5) DC Council
1350 Pennsylvania Ave NW #410 Washington, DC 20004

Dear Councilmember McDuffie,

As a DC resident, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

I bike every day in the city and have been hit twice while riding in the bike lane. Drivers turning right on red or looking for parking resulted in minor injuries to me, but it could have been worse. This is a serious issue that needs to be addressed immediately.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

Thank you for your prompt attention to this matter,

Shayna Tivona
2910 Georgia Ave NW Apt 302 Washington, DC 20001

5412923900
Councilmember Kenyan McDuffie (Ward 5)  
DC Council  
1350 Pennsylvania Ave NW #410  
Washington, DC 20004  

Dear Councilmember McDuffie,

As a DC resident, and occasional bike rider, I am writing to urge you to schedule a vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) in the Judiciary Committee.

I am reluctant to fully take advantage of the new opportunities to bike in our city due to the risks of crashes, let alone those that are uncompensated. Vulnerable roadway users face significant barriers to recovering from their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Just as I make efforts to obey the rules of the road when on a bicycle, I expect the same cautiousness from people operating motor vehicles, especially due to the extensive injuries motor vehicles can cause.

Thank you for your prompt attention to this matter,

Brett McBride  
1639 Monroe St, NW Washington, DC 20010  

202-250-6703
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

As a DC resident, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

It’s 2015, biking is clearly an integral part of the urban trend that is happening and our laws need to reflect that. Please help to bring biking into the transportation reality that it is by creating proper and fair regulations.

Thank you for your prompt attention to this matter,

Jacob Pohlman
2014 pierce mill rd NW Washington, DC 20010
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

As a Ward 5 resident, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council. I do not own a car, but I still carry an auto insurance policy to provide coverage in the event I may be hit by an automobile and need to cover damages. I am outraged that DC contributory negligence laws practically nullify my policy if I'm found to have even the slightest responsibility in an accident while on a bicycle. This wouldn't be the case if I were in an auto instead, and I want equal treatment under the law.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

Thank you for your prompt attention to this matter,

Nicolas Dollar
1029 PERRY ST NE UNIT 01 WASHINGTON, DC 20017

202-250-0549
Councilmember Kenyan McDuffie (Ward 5)
DC Council
1350 Pennsylvania Ave NW #410
Washington, DC 20004

Dear Councilmember McDuffie,

As a DC resident, I am writing to urge you to schedule a Judiciary Committee vote on the Motor Vehicle Collision Recovery Act of 2015 (B21-0004) so that it can be considered by the full Council.

As you know, this bill will increase fairness for vulnerable roadway users, who currently face significant barriers to recovering for their injuries after a crash with a motor vehicle, even when the driver bears a disproportionate amount of blame. Every week in the District, a person is struck by a vehicle while riding a bicycle. Often, their injuries are severe. These are real people with real bills to pay who cannot afford delays.

As a neighborhood resident who bikes every day back and forth across the city, and not only has to deal with unevenly paved streets and therefore spend time staring at the ground instead of the full road, I also have to deal with cars who are constantly unwilling to share the road. Just last week, a taxi cab came inches within my bike and body, even though I was in a crosswalk striped area and had the complete right of way and light. It was terrifying and unacceptable.

Many of your district residents bike, many of them children, and we all will benefit from safer streets.

Thank you for your prompt attention to this matter,

Analisa Freitas
1837 Kendall Street NE #1
Washington, DC 20002
ATTACHMENT
H
Government of the District of Columbia
Office of the Chief Financial Officer

Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO:       The Honorable Phil Mendelson
          Chairman, Council of the District of Columbia

FROM:    Jeffrey S. DeWitt
          Chief Financial Officer

DATE:    April 25, 2016


REFERENCE: Committee Print as shared with the Office of Revenue Analysis on April 6, 2016

Conclusion

Funds are sufficient in the fiscal year 2016 budget and the proposed fiscal year 2017 through fiscal year 2020 budget and financial plan to implement the bill.

Background

The bill limits the application of a contributory negligence defense in civil cases involving collisions between a motor vehicle and a pedestrian, or bicycle.\(^1\) Contributory negligence, in layman’s terms, mean that the person hurt in an accident contributed to the injury.

The bill limits the defendant’s use of a contributory negligence defense to situations where a plaintiff’s negligence is greater than the aggregated total amount of negligence of all defendants. The bill does not change the doctrine of joint and several liability or reduce legal protections provided to pedestrians and bicyclists under the law.\(^2\)

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\(^1\) Or other types of non-motorized vehicles or devices.

The Honorable Phil Mendelson

Financial Plan Impact

Funds are sufficient in the fiscal year 2016 budget and the proposed fiscal year 2017 through fiscal year 2020 budget and financial plan to implement the bill. There is no cost to limiting the application of a contributory negligence defense in civil cases.
MEMORANDUM

TO: Councilmember Kenyan McDuffie
FROM: Ellen A. Efros, General Counsel
DATE: April 21, 2016
RE: Legal Sufficiency Determination for Bill 21-4, the Motor Vehicle Collision Recovery Act of 2016

The measure is legally and technically sufficient for Council consideration.

In general, the District of Columbia is a "pure contributory negligence" jurisdiction. Bill 21-4 would provide for a limited departure from the common-law standard for injuries to pedestrians, bicyclists, or other non-motorized users of a public highway in motor-vehicle collisions if the plaintiff’s negligence was not:

1. The proximate cause of the plaintiff’s injury; and
2. Greater than the aggregate total amount of negligence of all of the defendants that proximately caused the plaintiff’s injury.

This act does not impact the doctrine of joint and several liability or the last clear chance doctrine and does not reduce existing legal protections provided to pedestrians and bicyclists.

I am available if you have any questions.
A BILL

B21-0004

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To limit the application of the doctrine of contributory negligence in cases of collisions between non-motorized users of public highways and motor vehicles.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Motor Vehicle Collision Recovery Act of 2016”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Motor vehicle” shall have the same meaning as provided in section 2(4) of the Motor Vehicle Safety Responsibility Act of the District of Columbia, effective May 25, 1954 (68 Stat. 120; D.C. Official Code § 50-1301.02(4)).

(2) “Non-motorized user” means an individual using a skateboard, non-motorized scooter, Segway, tricycle, and other similar non-powered transportation devices.

(3) “Pedestrian” shall have the same meaning as provided in 18 DCMR § 9901.1.

(4) “Public highway” shall have the same meaning as provided in section 2(8) of the Motor Vehicle Safety Responsibility Act of the District of Columbia, effective May 25, 1954 (68 Stat. 120; D.C. Official Code § 50-1301.02(9)).

Sec. 3. Contributory negligence limitation.
(a) The negligence of a pedestrian, bicyclist, or other non-motorized user of a public highway involved in a collision with a motor vehicle shall not bar the plaintiff's recovery in any civil action unless the plaintiff's negligence is:

(1) A proximate cause of the plaintiff's injury; and

(2) Greater than the aggregated total amount of negligence of all of the defendants that proximately caused the plaintiff's injury.

(b) Nothing in this act shall be construed to:

(1) Change or affect the doctrine of joint and several liability or the last clear chance doctrine; or

(2) Reduce the legal protections provided to pedestrians and cyclists under:

(A) Section 3 of An Act To enable the blind and the otherwise physically disabled to participate fully in the social and economic life of the District of Columbia, approved October 21, 1972 (86 Stat. 971; D.C. Official Code § 7-1004); or


Sec. 4. Non-severability.

If any provision of this act or its application to any person or circumstance is held to be unconstitutional, beyond the statutory authority of the Council, or otherwise invalid, then all provisions of this act shall be deemed invalid.

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975,

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.