

1 **COMPARATIVE NEGLIGENCE ALLOCATION**

2 1999 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: John E. Swallow**

5 AN ACT RELATING TO THE JUDICIAL CODE; ALLOWING THE ALLOCATION OF
6 FAULT IN A NEGLIGENCE ACTION TO BE ATTRIBUTED TO ALL PERSONS WHO
7 CONTRIBUTED TO THE INJURY, EVEN THOSE IMMUNE FROM SUIT; AND PROVIDING
8 AN EARLY EFFECTIVE DATE WITH RETROSPECTIVE OPERATION.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

10a **h 78-27-37, as last amended by Chapter 240, Laws of Utah 1996 h**

11 **78-27-38, as last amended by Chapter 221, Laws of Utah 1994**

12 **78-27-39, as last amended by Chapter 221, Laws of Utah 1994**

12a **h 78-27-41, as last amended by Chapter 221, Laws of Utah 1994 h**

13 *Be it enacted by the Legislature of the state of Utah:*

13a **h Section 1. Section 78-27-37 is amended to read:**

13b **78-27-37. Definitions.**

13c **As used in Sections 78-27-37 through 78-27-43:**

13d **(1) "Defendant" means a person, other than a person immune from suit as defined in**
13e **Subsection (3), who is claimed to be liable because of fault to any person seeking recovery.**

13f **(2) "Fault" means any actionable breach of legal duty, act, or omission proximately causing**
13g **or contributing to injury or damages sustained by a person seeking recovery, including negligence in**
13h **all its degrees, [~~contributory~~] COMPARATIVE negligence, assumption of risk, strict liability, breach of**
13i **express or implied warranty of a product, products liability, and misuse, modification, or abuse of a**
13j **product.**

13k **(3) "Person immune from suit" means:**

13l **(a) an employer immune from suit under Title [~~35A~~] 34A, Chapter 2, Workers' Compensation**
13m **Act, or Chapter 3, Utah Occupational Disease Act; and**

13n **(b) a governmental entity or governmental employee immune from suit pursuant to Title 63,**
13o **Chapter 30, Governmental Immunity Act.**

13p **(4) "Person seeking recovery" means any person seeking damages or reimbursement on its**
13q **own behalf, or on behalf of another for whom it is authorized to act as legal representative. h**

14 Section **h [~~1~~] 2. h Section 78-27-38 is amended to read:**

15 **78-27-38. Comparative negligence.**

16 (1) The fault of a person seeking recovery shall not alone bar recovery by that person.

17 (2) A person seeking recovery may recover from any defendant or group of defendants
18 whose fault, combined with the fault of persons immune from suit, exceeds the fault of the person
19 seeking recovery prior to any reallocation of fault made under Subsection 78-27-39(2).

20 (3) No defendant is liable to any person seeking recovery for any amount in excess of the
21 proportion of fault attributed to that defendant under Section 78-27-39.

22 (4) (a) In determining the proportionate fault attributable to each defendant, the fact finder
23 may, and when requested by a party shall, consider the conduct of any person who contributed to
24 the alleged injury regardless of whether the person is a person immune from suit or a defendant
25 in the action and may allocate fault to each person seeking recovery, to each defendant, and to any
26 other person **h** WHETHER JOINED AS A PARTY TO THE ACTION OR NOT AND WHOSE IDENTITY IS
26a KNOWN OR UNKNOWN TO THE PARTIES TO THE ACTION **h** , including a person immune from suit
26b who contributed to the alleged injury.

27 (b) Any fault allocated to a person immune from suit is considered only to accurately

28 determine the fault of the person seeking recovery and a defendant and may not subject the person
 29 immune from suit to any liability, based on the allocation of fault, in this or any other action.

30 Section ~~h [2.] 3.~~ Section **78-27-39** is amended to read:

31 **78-27-39. Separate special verdicts on total damages and proportion of fault.**

32 (1) The trial court may, and when requested by any party shall, direct the jury, if any, to
 33 find separate special verdicts determining the total amount of damages sustained and the
 34 percentage or proportion of fault attributable to each person seeking recovery, to each defendant,
 35 and to any other person ~~h~~ **WHETHER JOINED AS A PARTY TO THE ACTION OR NOT AND WHOSE**
 35a **IDENTITY IS KNOWN OR UNKNOWN TO THE PARTIES TO THE ACTION** ~~h~~ , including a person
 35b immune from suit who contributed to the alleged
 36 injury.

37 (2) (a) If the combined percentage or proportion of fault attributed to all persons immune
 38 from suit is less than 40%, the trial court shall reduce that percentage or proportion of fault to zero
 39 and reallocate that percentage or proportion of fault to the other parties in proportion to the
 40 percentage or proportion of fault initially attributed to each party by the fact finder. After this
 41 reallocation, cumulative fault shall equal 100% with the persons immune from suit being allocated
 42 no fault.

43 (b) If the combined percentage or proportion of fault attributed to all persons immune from
 44 suit is 40% or more, that percentage or proportion of fault attributed to persons immune from suit
 45 may not be reduced under Subsection (2)(a).

46 (c) (i) The jury may not be advised of the effect of any reallocation under Subsection (2).

47 (ii) The jury may be advised that fault attributed to persons immune from suit may reduce
 48 the award of the person seeking recovery.

49 (3) A person immune from suit may not be held liable, based on the allocation of fault, in
 50 this or any other action.

50a ~~h~~ Section 4. Section **78-27-41** is amended to read:

50b **78-27-41. Joinder of defendants.**

50c (1) A person seeking recovery, or any defendant who is a party to the litigation, may join as a
 50d defendant, in accordance with the Utah Rules of Civil Procedure, any person other than a person
 50e immune from suit who may have caused or contributed to the injury or damage for which recovery is
 50f sought, for the purpose of having determined their respective proportions of fault.

50g (2) A person immune from suit may not be named as a defendant, but fault may be allocated
 50h to a person immune from suit solely for the purpose of accurately determining the fault of the ~~h~~

50i ~~h~~ person seeking recovery and a defendant. A person immune from suit is not subject to any
50j liability, based on the allocation of fault, in this or any other action.

50k (3) (a) A person immune from suit may intervene as a party under Rule 24, Utah Rules of Civil
50l Procedure, regardless of whether or not money damages are sought.

50m (b) A person immune from suit who intervenes in an action may not be held liable for any
50n fault allocated to that person under Section 78-27-38.

50o (4) ANY PARTY TO THE LITIGATION SEEKING TO ALLOCATE FAULT TO ANY OTHER
50p PERSON MUST SHOW THAT REASONABLE EFFORTS HAVE BEEN MADE TO IDENTIFY, LOCATE
50q AND BRING THAT PERSON WITHIN THE JURISDICTION OF THE COURT AS A PARTY TO THE
50r LITIGATION IN ACCORDANCE WITH THE UTAH RULES OF CIVIL PROCEDURE. ~~h~~

51 Section ~~h~~ [3.] 5. ~~h~~ Effective date -- Retrospective operation.

52 ~~h~~ [If approved by two-thirds of all the members elected to each house, this act takes effect on
53 March 3, 1999, but] THIS ACT ~~h~~ has retrospective operation to March 3, 1998 for any actions for
53a which:

54 (1) retrospective operation does not enlarge, eliminate, or destroy a vested right; and

55 (2) a final unappealable judgment or order has not been issued as of the effective date, by:

56 (a) the United States Supreme Court;

57 (b) the Utah Supreme Court;

58 (c) the Utah Court of Appeals;

- 59 (d) the United States Circuit Court of Appeals;
60 (e) the United States District Court; or
61 (f) the Utah district court.

Legislative Review Note
as of 1-18-99 5:58 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel