

**COMPARATIVE NEGLIGENCE ALLOCATION**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: John E. Swallow**

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

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

AMENDS:

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

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

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

Section 1. Section **78-27-38** is amended to read:

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

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

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

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

(4) (a) In determining the proportionate fault attributable to each defendant, the fact finder may, and when requested by a party shall, consider the conduct of any person who contributed to the alleged injury regardless of whether the person is a person immune from suit or a defendant in the action and may allocate fault to each person seeking recovery, to each defendant, and to any other person, including a person immune from suit who contributed to the alleged injury.

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

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

Section 2. Section **78-27-39** is amended to read:

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

(1) The trial court may, and when requested by any party shall, direct the jury, if any, to find separate special verdicts determining the total amount of damages sustained and the percentage or proportion of fault attributable to each person seeking recovery, to each defendant, and to any other person, including a person immune from suit who contributed to the alleged injury.

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

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

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

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

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

**Section 3. Effective date -- Retrospective operation.**

If approved by two-thirds of all the members elected to each house, this act takes effect on March 3, 1999, but has retrospective operation to March 3, 1998 for any actions for which:

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

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

(a) the United States Supreme Court;

(b) the Utah Supreme Court;

(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.

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**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**