



House of Representatives *State of Utah*

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January 29, 1999

Mr. Speaker:

The Judiciary Committee reports a favorable recommendation on **H.B. 74**, COMPARATIVE NEGLIGENCE ALLOCATION, by Representative J. Swallow, with the following amendments:

1. Page 1, Line 10: After line 10 insert:
"78-27-37, as last amended by Chapter 240, Laws of Utah 1996"
2. Page 1, Line 12: After line 12 insert:
"78-27-41, as last amended by Chapter 221, Laws of Utah 1994"
3. Page 1, Line 13: After line 13 insert:
"Section 1. Section **78-27-37** is amended to read:
78-27-37. Definitions.
As used in Sections 78-27-37 through 78-27-43:
(1) "Defendant" means a person, other than a person immune from suit as defined in Subsection (3), who is claimed to be liable because of fault to any person seeking recovery.
(2) "Fault" means any actionable breach of legal duty, act, or omission proximately causing or contributing to injury or

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damages sustained by a person seeking recovery, including negligence in all its degrees, [~~contributory~~] comparative negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability, and misuse, modification, or abuse of a product.

(3) "Person immune from suit" means:

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

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

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

4. Page 1, Line 26: After "other person" insert "whether joined as a party to the action or not and whose identity is known or unknown to the parties to the action"

5. Page 2, Line 36: After "other person" insert "whether joined as a party to the action or not and whose identity is known or unknown to the parties to the action"

6. Page 2, Line 50: After line 50 insert:
"Section 4. Section **78-27-41** is amended to read:

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78-27-41. Joinder of defendants.

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

(2) A person immune from suit may not be named as a defendant, but fault may be allocated to a person immune from suit solely for the purpose of accurately determining the fault of the person seeking recovery and a defendant. A person immune from suit is not subject to any liability, based on the allocation of fault, in this or any other action.

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

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

(4) Any party to the litigation seeking to allocate fault to any other person must show that reasonable efforts have been made to identify, locate and bring that person within the jurisdiction of the court as a party to the litigation in accordance with the Utah Rules of Civil Procedure."

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7. Page 2, Line 52: Delete Line 52.
8. Page 2, Line 53: Delete "March 3, 1999, but" and insert "This act"

Renumber remaining sections accordingly.

Respectfully,

Glenn L. Way
Committee Vice Chair

Voting: 9-0-2

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