

1                                   **LIABILITY REFORM ACT AMENDMENTS**

2                                   2005 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Sponsor: Gregory S. Bell**

5 

---

---

**LONG TITLE**

6 **General Description:**

7                   This bill limits the addition of parties to a lawsuit to within 90 days of the answer to a  
8 complaint.  
9

10 **Highlighted Provisions:**

11           This bill:

- 12           ▶ provides for a 90-day time period to add defendants to a lawsuit;  
13           ▶ requires that a party who makes a request to the court to add additional parties also  
14 provide specific information about the additional parties;  
15           ▶ allows the court to deny the request simply because it was not filed timely; and  
16           ▶ allows the court to permit filing after the 90-day period for good cause.

17 **Monies Appropriated in this Bill:**

18           None

19 **Other Special Clauses:**

20           None

21 **Utah Code Sections Affected:**

22 **AMENDS:**

23           **78-27-38**, as last amended by Chapter 95, Laws of Utah 1999

24           **78-27-41**, as last amended by Chapter 95, Laws of Utah 1999

25 

---

---

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

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



28 **78-27-38. Comparative negligence.**

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

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

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

35 (4) (a) In determining the proportionate fault attributable to each defendant, the fact  
36 finder may, and when requested by a party shall, in accordance with the provisions of Section  
37 78-27-41, consider the conduct of any person [~~who~~] alleged to have contributed to the alleged  
38 injury regardless of whether the person is a person immune from suit or a defendant in the  
39 action and may allocate fault to each person seeking recovery, to each defendant, and to any  
40 other person whether joined as a party to the action or not and whose identity is known or  
41 unknown to the parties to the action, including a person immune from suit who contributed to  
42 the alleged injury. In the case of a motor vehicle accident involving an unidentified motor  
43 vehicle, the existence of the vehicle shall be proven by clear and convincing evidence which  
44 may consist solely of one person's testimony.

45 (b) Any fault allocated to a person immune from suit is considered only to accurately  
46 determine the fault of the person seeking recovery and a defendant and may not subject the  
47 person immune from suit to any liability, based on the allocation of fault, in this or any other  
48 action.

49 Section 2. Section **78-27-41** is amended to read:

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

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

56 (2) A person immune from suit may not be named as a defendant, but fault may be  
57 allocated to a person immune from suit solely for the purpose of accurately determining the  
58 fault of the person seeking recovery and [~~a defendant~~] all defendants. A person immune from

59 suit is not subject to any liability, based on the allocation of fault, in this or any other action.

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

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

64 (4) A party seeking to allocate fault to another person shall:

65 (a) identify in its answer those persons then known to that party [~~who may be at fault~~  
66 ~~and shall identify within a reasonable time~~] to whom it intends to seek allocation of fault;

67 (b) identify in a supplemental pleading within 90 days after filing its answer any  
68 additional persons later discovered which that party alleges to have been at fault[-] and to  
69 whom it intends to seek allocation of fault; and

70 (c) include in the pleading in which the person is identified:

71 (i) all identifying information regarding that person known or reasonably available to  
72 the party, including but not limited to the full name, address, telephone number, and employer  
73 of the person to whom fault is sought to be allocated; and

74 (ii) a brief statement setting forth the good faith factual and legal basis for the  
75 requested allocation of fault to that person.

76 (5) In extraordinary cases the court, upon motion and for good cause shown, may  
77 permit the filing of a supplemental pleading after the expiration of the 90-day period.

78 (6) A party seeking to allocate fault to another person who fails to comply with the  
79 provisions of this section shall be denied the request to allocate fault to that person.

---

---

**Legislative Review Note**  
as of 12-7-04 8:42 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

**Interim Committee Note**  
as of 12-08-04 10:28 AM

The Judiciary Interim Committee recommended this bill.