

78B-5-819 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, to any person immune from suit, and to any other person identified under Subsection 78B-5-821(4) for whom there is a factual and legal basis to allocate fault.
- (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 and those identified under Subsection 78B-5-821(4) for whom there is a factual and legal basis to allocate fault in proportion to the percentage or proportion of fault initially attributed to each 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.

Renumbered and Amended by Chapter 3, 2008 General Session