

LIABILITY REFORM ACT AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory S. Bell

House Sponsor: Ross I. Romero

LONG TITLE

General Description:

This bill specifies conditions for allocating fault to nonparties in a lawsuit.

Highlighted Provisions:

This bill:

- ▶ provides for a reasonable time to designate nonparties to whom fault may be allocated;
- ▶ requires that a party who makes a request to the court to allocate fault to nonparties to provide specific information about the nonparties; and
- ▶ allows the court to deny the request if specific provisions are not complied with.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

78-27-39, as last amended by Chapter 95, Laws of Utah 1999

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

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~~] may 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 and nonparties to whom fault is allocated, 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~~] 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~~] allocate 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 [~~whether joined as a party to the action or not and whose identity is known or unknown to the parties to the action, including a person immune from suit who contributed to the alleged injury~~] identified under Subsection 78-27-41(4) for whom there is a factual and legal basis to allocate fault. In the case of a motor vehicle accident involving an unidentified motor vehicle, the existence of the vehicle shall be proven by clear and convincing evidence which may consist solely of one person's testimony.

(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,

~~to any person immune from suit, and to any other person [whether joined as a party to the action or not and whose identity is known or unknown to the parties to the action, including a person immune from suit who contributed to the alleged injury]~~ identified under Subsection 78-27-41(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 78-27-41(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 [~~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. Section **78-27-41** is amended to read:

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~~] alleged to 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]~~ all defendants. 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) A party seeking to allocate fault shall identify in its answer those persons then known to that party who may be at fault and shall identify within a reasonable time any additional persons later discovered to have been at fault.]~~

(4) Fault may not be allocated to a non-party unless a party timely files a description of the factual and legal basis on which fault can be allocated and information identifying the non-party, to the extent known or reasonably available to the party, including name, address, telephone number and employer. The party shall file the description and identifying information in accordance with Rule 9, Utah Rules of Civil Procedure or as ordered by the court but in no event later than 90 days before trial as provided in Rule 9, Utah Rules of Civil Procedure.