

Senator Gregory S. Bell proposes the following substitute bill:

**LIABILITY REFORM ACT AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Gregory S. Bell**

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**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

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

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

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

29 (1) The fault of a person seeking recovery [~~shall~~] may not alone bar recovery by that  
30 person.

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

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

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

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

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

53 **78-27-39. Separate special verdicts on total damages and proportion of fault.**

54 (1) The trial court may, and when requested by any party shall, direct the jury, if any, to  
55 find separate special verdicts determining the total amount of damages sustained and the  
56 percentage or proportion of fault attributable to each person seeking recovery, to each

57 defendant, to any person immune from suit, and to any other person [~~whether joined as a party~~  
58 ~~to the action or not and whose identity is known or unknown to the parties to the action,~~  
59 ~~including a person immune from suit who contributed to the alleged injury~~] identified under  
60 Subsection 78-27-41(4) for whom there is a factual and legal basis to allocate fault.

61 (2) (a) If the combined percentage or proportion of fault attributed to all persons  
62 immune from suit is less than 40%, the trial court shall reduce that percentage or proportion of  
63 fault to zero and reallocate that percentage or proportion of fault to the other parties and those  
64 identified under Subsection 78-27-41(4) for whom there is a factual and legal basis to allocate  
65 fault in proportion to the percentage or proportion of fault initially attributed to each [party] by  
66 the fact finder. After this reallocation, cumulative fault shall equal 100% with the persons  
67 immune from suit being allocated no fault.

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

71 (c) (i) The jury may not be advised of the effect of any reallocation under Subsection  
72 (2).

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

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

77 Section 3. Section **78-27-41** is amended to read:

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

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

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

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

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

92 [~~(4) A party seeking to allocate fault shall identify in its answer those persons then  
93 known to that party who may be at fault and shall identify within a reasonable time any  
94 additional persons later discovered to have been at fault.~~]

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

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**Fiscal Note**  
**Bill Number SB0010s01**

**Liability Reform Act Amendments**

*04-Feb-05*

*12:33 PM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

Provisions of this bill could increase or lower the cost of litigation, depending on the circumstances of the case involved.

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**Office of the Legislative Fiscal Analyst**