## **Senator Gregory S. Bell** proposes the following substitute bill:

1	COMPARATIVE FAULT AMENDMENTS
2	2007 GENERAL SESSION
3	STATE OF UTAH
4	Chief Sponsor: Scott L Wyatt
5	Senate Sponsor: Gregory S. Bell
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7	LONG TITLE
8	General Description:
9	This bill expands the definition of "fault" to include intentional torts and allows for
10	joint and several liability.
11	Highlighted Provisions:
12	This bill:
13	<ul><li>expands the definition of fault to include intentional torts;</li></ul>
14	<ul> <li>provides that the fact finder may find an intentional tortfeasor jointly and severally</li> </ul>
15	liable with other intentional tortfeasors;
16	<ul> <li>allows an intentional tortfeasor to seek contribution from other intentional</li> </ul>
17	tortfeasors; and
18	<ul> <li>limits the injured person's recovery to one recovery of the total amount of damages</li> </ul>
19	from multiple defendants.
20	Monies Appropriated in this Bill:
21	None
22	Other Special Clauses:
23	None
24	<b>Utah Code Sections Affected:</b>
25	AMENDS:



<b>78-27-37</b> , as last amended by Chapter 102, Laws of Utah 2005
78-27-38, as last amended by Chapter 79, Laws of Utah 2005
<b>78-27-39</b> , as last amended by Chapter 79, Laws of Utah 2005
<b>78-27-40</b> , as last amended by Chapter 221, Laws of Utah 1994
Be it enacted by the Legislature of the state of Utah:
Section 1. Section <b>78-27-37</b> is amended to read:
<b>78-27-37.</b> Definitions.
As used in Section 78-27-37 through Section 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 damages sustained by a person seeking recovery, including
negligence in all its degrees, comparative negligence, assumption of risk, strict liability,
intentional torts 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 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 30d, Governmental Immunity Act of Utah.
(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.
Section 2. Section <b>78-27-38</b> is amended to read:
78-27-38. Comparative fault.
(1) The fault of a person seeking recovery 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, except as provided
   in Subsection (5).
  - (4) (a) The fact finder may, and when requested by a party shall, 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 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.
  - (5) An intentional tortfeasor defendant may be jointly and severally liable for that portion of fault attributed to the conduct of another intentional tortfeasor defendant if the fact finder determines:
    - (a) the defendant sought to be held jointly and severally liable acted intentionally;
  - (b) the conduct of the defendant sought to be held jointly and severally liable was intended to cause the resulting damage or injury; and
  - (c) the conduct of the defendant sought to be held jointly and severally liable was a substantial factor in causing the resulting damage or injury.
  - (6) Any joint and several liability under Subsection (5) shall be limited to compensatory damages.
  - (7) An intentional tortfeasor defendant held jointly and severally liable for all or part of the fault of another intentional tortfeasor defendant under this section may obtain contribution from another intentional tortfeasor defendant to the extent of sums paid to the person seeking recovery based on the joint and several liability derived from that intentional tortfeasor defendant. Contribution, except as provided under this Subsection (7), is not otherwise available. This provision does not foreclose an action for contribution from an unknown but later identified intentional tortfeasor defendant to whom fault was apportioned by the fact finder.

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intentional tort;

88	(8) A person seeking recovery from multiple defendants is entitled to only one recovery
89	of the total amount of damages awarded by the fact finder.
90	Section 3. Section <b>78-27-39</b> is amended to read:
91	78-27-39. Separate special verdicts on total damages and proportion of fault.
92	(1) The trial court may, and when requested by any party shall, direct the jury, if any, to
93	find separate special verdicts determining the total amount of damages sustained and the
94	percentage or proportion of fault attributable to each person seeking recovery, to each
95	defendant, to any person immune from suit, and to any other person identified under
96	Subsection 78-27-41(4) for whom there is a factual and legal basis to allocate fault. The total
97	amount of fault under this Subsection (1) shall equal 100%.
98	(2) (a) If the combined percentage or proportion of fault attributed to all persons
99	immune from suit is less than 40%, the trial court shall reduce that percentage or proportion of
100	fault to zero and reallocate that percentage or proportion of fault to the other parties and those
101	identified under Subsection 78-27-41(4) for whom there is a factual and legal basis to allocate
102	fault in proportion to the percentage or proportion of fault initially attributed to each by the fact
103	finder. After this reallocation, cumulative fault shall equal 100% with the persons immune
104	from suit being allocated no fault.
105	(b) If the combined percentage or proportion of fault attributed to all persons immune
106	from suit is 40% or more, that percentage or proportion of fault attributed to persons immune
107	from suit may not be reduced under Subsection (2)(a).
108	(c) (i) The jury may not be advised of the effect of any reallocation under Subsection
109	(2).
110	(ii) The jury may be advised that fault attributed to persons immune from suit may
111	reduce the award of the person seeking recovery.
112	(3) After apportionment of fault under Subsections (1) and (2), the trial court may, and
113	when requested by any party shall, instruct the jury as to the factors that may be used in
114	evaluating and apportioning fault between the persons determined to be at fault. Factors may
115	include:
116	(a) whether the actions of a person claimed to be liable because of fault were acts of
117	commission or omission, including the failure to protect another from the specific risk of an

119	(b) the differing levels of culpability among those who act intentionally or in concert
120	with one another;
121	(c) the degree of any relationship or link between the act or omission to act of a person
122	claimed to be liable because of fault and the intentional wrongdoing of another; or
123	(d) any other factor which reasonably supports an apportionment of fault.
124	[(3)] (4) A person immune from suit may not be held liable, based on the allocation of
125	fault, in this or any other action.
126	Section 4. Section <b>78-27-40</b> is amended to read:
127	78-27-40. Liability limited to proportion of direct or shared fault Contribution
128	(1) Subject to Section 78-27-38, the maximum amount for which a defendant may be
129	liable to any person seeking recovery is that percentage or proportion of the damages
130	equivalent to the percentage or proportion of fault attributed to that defendant.
131	(2) A defendant is not entitled to contribution from any other person, except as
132	provided by Section 78-27-38.
133	(3) A defendant or person seeking recovery may not bring a civil action against any
134	person immune from suit to recover damages resulting from the allocation of fault under
135	Section 78-27-38.

### H.B. 45 1st Sub. (Buff) - Comparative Fault Amendments

# **Fiscal Note**

2007 General Session State of Utah

### **State Impact**

Enactment of this bill will not require additional appropriations.

### Individual, Business and/or Local Impact

Enactment of this bill may result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

2/26/2007, 5:35:42 PM, Lead Analyst: Byrne, D.

Office of the Legislative Fiscal Analyst