

ALLOCATION OF FAULT AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses allocation of fault.

Highlighted Provisions:

This bill:

- ▶ makes a defendant who negligently fails to protect another person from a specific risk of harm that results from an intentional tort jointly and severally liable with the intentional tortfeasor;
- ▶ addresses claims for contribution; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-5-818, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-5-820, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section **78B-5-818** is amended to read:



28 **78B-5-818. Allocation of fault.**

29 (1) The fault of a person seeking recovery may 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 and nonparties to whom
32 fault is allocated, exceeds the fault of the person seeking recovery [~~prior to~~] before any
33 reallocation of fault made under Subsection 78B-5-819(2).

34 (3) [~~No~~] Except as provided in Subsection (4), a defendant is not liable to any person
35 seeking recovery for any amount in excess of the proportion of fault attributed to that defendant
36 under Section 78B-5-819.

37 (4) A defendant who negligently fails to protect another person from the specific risk
38 of harm that results from an intentional tort is jointly and severally liable with the intentional
39 tortfeasor for the damages arising from the injury caused or contributed to by the intentional
40 tort.

41 [~~(4)~~] (5) (a) The fact finder may, and when requested by a party shall, allocate the
42 percentage or proportion of fault attributable to each person seeking recovery, to each
43 defendant, to any person immune from suit, and to any other person identified under
44 Subsection 78B-5-821(4) for whom there is a factual and legal basis to allocate fault. In the
45 case of a motor vehicle accident involving an unidentified motor vehicle, the existence of the
46 vehicle shall be proven by clear and convincing evidence which may consist solely of one
47 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 78B-5-820 is amended to read:

53 **78B-5-820. Amount of liability limited to proportion of fault -- Contribution.**

54 (1) Subject to Section 78B-5-818, the maximum amount for which a defendant may be
55 liable to any person seeking recovery is that percentage or proportion of the damages
56 equivalent to the percentage or proportion of fault attributed to that defendant.

57 (2) [~~A~~] Subject to Subsection (4), a defendant is not entitled to contribution from any
58 other person.

59 (3) A defendant or person seeking recovery may not bring a civil action against any
60 person immune from suit to recover damages resulting from the allocation of fault under
61 Section [78B-5-818](#).

62 (4) (a) A party having joint and several liability under Subsection [78B-5-818](#)(4) who
63 pays the liability is entitled to receive contribution from any party having the same joint and
64 several liability.

65 (b) Discharge of one party having joint and several liability by a person seeking
66 recovery does not affect the right under Section [78B-5-818](#) of a party having the same joint and
67 several liability to receive contribution from the party discharged.

Legislative Review Note
Office of Legislative Research and General Counsel