

**Representative Michael K. McKell** proposes the following substitute bill:

**ALLOCATION OF FAULT AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael K. McKell**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill addresses allocation of fault.

**Highlighted Provisions:**

This bill:

▶ clarifies that pecuniary damages for purposes of crime victims restitution excludes joint and several liability;

▶ modifies definition of fault; and

▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**77-38a-102**, as last amended by Laws of Utah 2017, Chapter 304

**78B-5-817**, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

**1st Sub. H.B. 359**



26 Section 1. Section 77-38a-102 is amended to read:

27 **77-38a-102. Definitions.**

28 As used in this chapter:

29 (1) "Conviction" includes a:

30 (a) judgment of guilt;

31 (b) a plea of guilty; or

32 (c) a plea of no contest.

33 (2) "Criminal activities" means:

34 (a) any misdemeanor or felony offense of which the defendant is convicted; or

35 (b) any other criminal conduct for which the defendant admits responsibility to the

36 sentencing court with or without an admission of committing the criminal conduct.

37 (3) "Department" means the Department of Corrections.

38 (4) "Diversion" means suspending criminal proceedings prior to conviction on the  
39 condition that a defendant agree to participate in a rehabilitation program, make restitution to  
40 the victim, or fulfill some other condition.

41 (5) "Party" means the prosecutor, defendant, or department involved in a prosecution.

42 (6) "Pecuniary damages" means all demonstrable economic injury, whether or not yet  
43 incurred, including those which a person could recover in a civil action arising out of the facts  
44 or events constituting the defendant's criminal activities and includes the fair market value of  
45 property taken, destroyed, broken, or otherwise harmed, and losses, including lost earnings,  
46 including those and other travel expenses reasonably incurred as a result of participation in  
47 criminal proceedings, and medical and other expenses, but excludes joint and several liability,  
48 punitive or exemplary damages, and pain and suffering.

49 (7) "Plea agreement" means an agreement entered between the prosecution and  
50 defendant setting forth the special terms and conditions and criminal charges upon which the  
51 defendant will enter a plea of guilty or no contest.

52 (8) "Plea disposition" means an agreement entered into between the prosecution and  
53 defendant including diversion, plea agreement, plea in abeyance agreement, or any agreement  
54 by which the defendant may enter a plea in any other jurisdiction or where charges are  
55 dismissed without a plea.

56 (9) "Plea in abeyance" means an order by a court, upon motion of the prosecution and

57 the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that  
58 time, entering judgment of conviction against him nor imposing sentence upon him on  
59 condition that he comply with specific conditions as set forth in a plea in abeyance agreement.

60 (10) "Plea in abeyance agreement" means an agreement entered into between the  
61 prosecution and the defendant setting forth the specific terms and conditions upon which,  
62 following acceptance of the agreement by the court, a plea may be held in abeyance.

63 (11) "Restitution" means full, partial, or nominal payment for pecuniary damages to a  
64 victim, including prejudgment interest, the accrual of interest from the time of sentencing,  
65 insured damages, reimbursement for payment of a reward, and payment for expenses to a  
66 governmental entity for extradition or transportation and as may be further defined by law.

67 (12) (a) "Reward" means a sum of money:

68 (i) offered to the public for information leading to the arrest and conviction of an  
69 offender; and

70 (ii) that has been paid to a person or persons who provide this information, except that  
71 the person receiving the payment may not be a codefendant, an accomplice, or a bounty hunter.

72 (b) "Reward" does not include any amount paid in excess of the sum offered to the  
73 public.

74 (13) "Screening" means the process used by a prosecuting attorney to terminate  
75 investigative action, proceed with prosecution, move to dismiss a prosecution that has been  
76 commenced, or cause a prosecution to be diverted.

77 (14) (a) "Victim" means any person or entity, including the Utah Office for Victims of  
78 Crime, who the court determines has suffered pecuniary damages as a result of the defendant's  
79 criminal activities.

80 (b) "Victim" may not include a codefendant or accomplice.

81 Section 2. Section **78B-5-817** is amended to read:

82 **78B-5-817. Definitions.**

83 As used in Sections [78B-5-817](#) through [78B-5-823](#):

84 (1) "Defendant" means a person, other than a person immune from suit as defined in  
85 Subsection (3), who is claimed to be liable because of fault to any person seeking recovery.

86 (2) (a) "Fault" means ~~any~~ an actionable breach of legal duty, act, or omission  
87 proximately causing or contributing to injury or damages sustained by a person seeking

88 recovery, including negligence in all its degrees, comparative negligence, assumption of risk,  
89 strict liability, breach of express or implied warranty of a product, products liability, and  
90 misuse, modification, or abuse of a product.

91 (b) "Fault" does not include an intentional tort.

92 (3) "Person immune from suit" means:

93 (a) an employer immune from suit under Title 34A, Chapter 2, Workers' Compensation  
94 Act, or Chapter 3, Utah Occupational Disease Act; and

95 (b) a governmental entity or governmental employee immune from suit pursuant to  
96 Title 63G, Chapter 7, Governmental Immunity Act of Utah.

97 (4) "Person seeking recovery" means any person seeking damages or reimbursement on  
98 its own behalf, or on behalf of another for whom it is authorized to act as legal representative.