

HB0359S01 compared with HB0359

~~{deleted text}~~ shows text that was in HB0359 but was deleted in HB0359S01.

Inserted text shows text that was not in HB0359 but was inserted into HB0359S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: _____

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;~~ 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:

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None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~{78B-5-818}~~77-38a-102, as ~~{renumbered and}~~last amended by Laws of Utah

~~{2008}~~2017, Chapter ~~{3}~~304

~~{78B-5-820}~~78B-5-817, 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 77-38a-102 is amended to read:

77-38a-102. Definitions.

As used in this chapter:

- (1) "Conviction" includes a:
 - (a) judgment of guilt;
 - (b) a plea of guilty; or
 - (c) a plea of no contest.
- (2) "Criminal activities" means:
 - (a) any misdemeanor or felony offense of which the defendant is convicted; or
 - (b) any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.
- (3) "Department" means the Department of Corrections.
- (4) "Diversion" means suspending criminal proceedings prior to conviction on the condition that a defendant agree to participate in a rehabilitation program, make restitution to the victim, or fulfill some other condition.
- (5) "Party" means the prosecutor, defendant, or department involved in a prosecution.
- (6) "Pecuniary damages" means all demonstrable economic injury, whether or not yet incurred, including those which a person could recover in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the fair market value of property taken, destroyed, broken, or otherwise harmed, and losses, including lost earnings, including those and other travel expenses reasonably incurred as a result of participation in

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criminal proceedings, and medical and other expenses, but excludes joint and several liability, punitive or exemplary damages, and pain and suffering.

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

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

(9) "Plea in abeyance" means an order by a court, upon motion of the prosecution and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering judgment of conviction against him nor imposing sentence upon him on condition that he comply with specific conditions as set forth in a plea in abeyance agreement.

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

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

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

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

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

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

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

(14) (a) "Victim" means any person or entity, including the Utah Office for Victims of

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Crime, who the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

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

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

78B-5-817. Definitions.

As used in Sections 78B-5-817 through 78B-5-823:

(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) (a) "Fault" means [any] an 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, breach of express or implied warranty of a product, products liability, and misuse, modification, or abuse of a product.

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

(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 63G, Chapter 7, 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 1. Section 78B-5-818 is amended to read:~~

~~Section 78B-5-818. Allocation of 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] before any reallocation of fault made under Subsection 78B-5-819(2).~~

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

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

~~—— [(4)] (5) (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 78B-5-821(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 **78B-5-820** is amended to read:~~

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

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

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

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

~~—— (4) (a) A party having joint and several liability under Subsection 78B-5-818(4) who pays the liability is entitled to receive contribution from any party having the same joint and several liability.~~

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

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~~Legislative Review Note~~

~~Office of Legislative Research and General Counsel~~