

LEGISLATIVE HISTORY CHECKLIST
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LAWS OF: 1987 CHAPTER: 325
NJSA: 2A:15-5.2 to 2A:15-5.4 (Liability actions—modify joint and several liability)
BILL NO: S2703
SPONSOR(S): Lesniak
DATE INTRODUCED: October 27, 1986
COMMITTEE: ASSEMBLY: Insurance
SENATE: Judiciary

AMENDED DURING PASSAGE: Yes Amendments during passage denoted by asterisks.

DATE OF PASSAGE: ASSEMBLY: December 4, 1986
SENATE: December 10, 1987

DATE OF APPROVAL: December 18, 1987

FOLLOWING ARE ATTACHED IF AVAILABLE:

SPONSORS STATEMENT: Yes
COMMITTEE STATEMENT: ASSEMBLY: No
SENATE: Yes
FISCAL NOTE: No
VETO MESSAGE: No
MESSAGE ON SIGNING: Yes

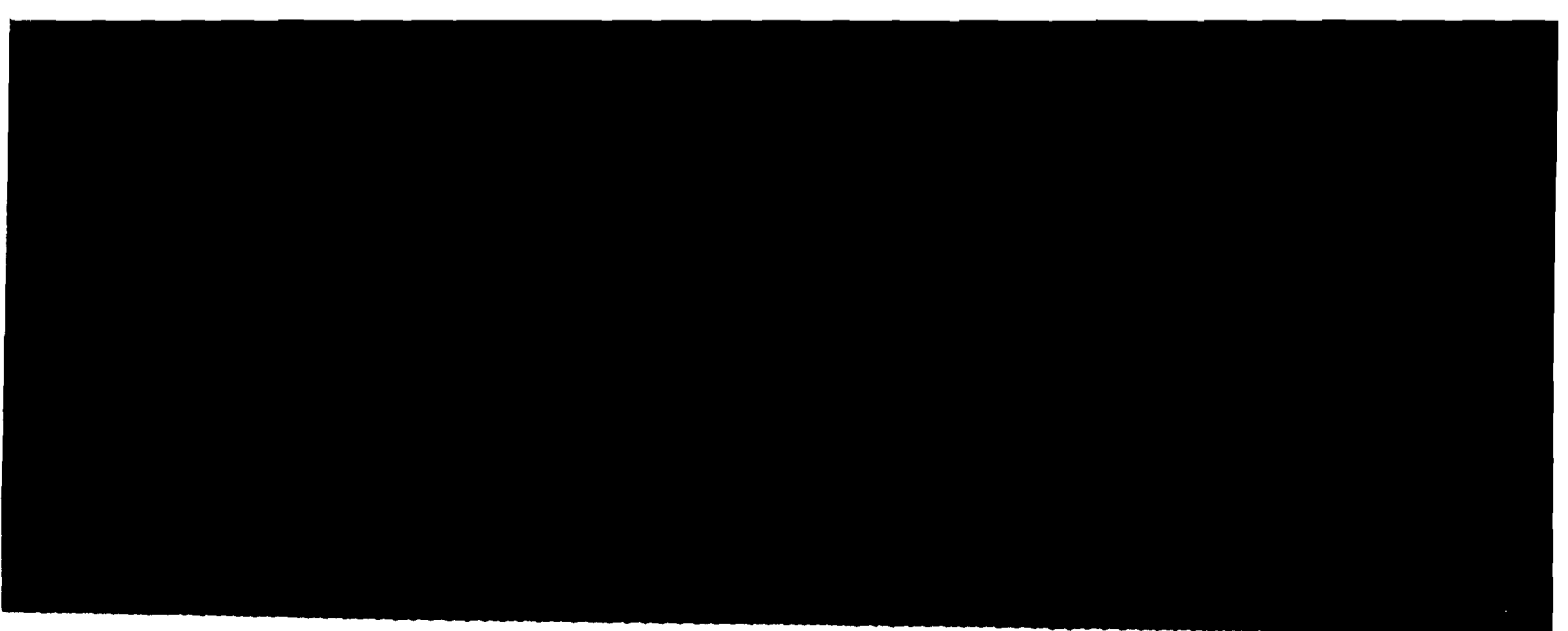
FOLLOWING WERE PRINTED:

REPORTS: No
HEARINGS: Yes

- 974.90 New Jersey. Legislature. Assembly. Insurance Committee.
I59 Public hearing on insurance problems being experienced by public entitie, held
1986 2-18-86, 2-25-86, 2-28-86, Freehold, Vineland, Parsippany-Troy Hills, 1986.
[see especially Vol. I – pp. 57-58, Vol. II – pp. 5-15, Vol. III – pp. 50)
- 974.90 New Jersey. County and Municipal government Study Commission.
M966 Local government liability insurance: a crisis. May, 1986, Trenton, 1986.
1986a

(continued)

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974.90 New Jersey. Legislature. Assembly. Insurance Committee.
159 Public hearing on professional, business and nonprofit organizations liability
1986b insurance, held 4-10-86. Clifton, 1986.

974.90 New Jersey. Legislature. Senate. Judiciary Committee.
159 Public hearing on liability insurance issue, held 7-28-86, and 7-30-86.
1986c Jersey City and Elizabeth, 1986.

974.90 New Jersey. Legislature. Senate. Labor, Industry and Professions Committee.
159 Public hearing on S1718, held 3-5-86, Trenton, 1986.
1986d [see especially pp. 21-23, 42]

See newspaper clippings – attached:

"Liability limits clean for negligence suits," 12-11-87, Star Ledger.

"Kean enacts liability relief for local governments," 12-19-87, Star Ledger.

"Comparative negligence... goes to Assembly," 9-12-87, Star Ledger.

"New liability laws make suits more difficult," 12-21-87, Philadelphia Inquirer.

"Panel approves insurance reforms," 9-2-87, Trenton Times.

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225 12-18-87 87
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SENATE, No. 2703

STATE OF NEW JERSEY

INTRODUCED OCTOBER 27, 1986

By Senator LESNIAK

Referred to Committee on Judiciary

AN ACT concerning joint and several liability and amending P. L.
1973, c. 146.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 2 of P. L. 1973, c. 146 (C. 2A:15-5.2) is amended to
2 read as follows:

3 2. In all negligence actions in which the question of liability is in
4 dispute, the trier of fact shall make the following as findings of
5 fact:

6 a. The amount of *economic and noneconomic* damages which
7 would be recoverable by the injured party regardless of any con-
8 sideration of negligence, that is, the full value of the injured
9 party's damages:

10 b. The extent, in the form of a percentage, of each party's
11 negligence. The percentage of negligence of each party shall be
12 based on 100% and the total of all percentages of negligence of all
13 the parties to a suit shall be 100%.

14 c. The judge shall mold the judgment from the finding of fact
15 made by the trier of fact.

1 2. Section 3 of P. L. 1973, c. 146 (C. 2A:15-5.3) is amended to
2 read as follows:

3 3. *Except as provided in subsection d. of this section, the* **[The]**
4 party so recovering may recover **[the full amount of the**
5 molded verdict from any party against whom such recovering
6 party is not barred from recovery. Any party who is so compelled
7 to pay more than such party's percentage share may seek con-
8 tribution from the other joint tortfeasors.] *as follows:*

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

Matter printed in italics thus is new matter.

Matter enclosed in asterisks of this bill was adopted as follows:

***--Senate committee amendments adopted October 30, 1986.**

9 a. The full amount of the damages from any party determined
10 by the trier of fact to be 60% or more responsible for the total
11 damages.

12 b. The full amount of economic damages plus the percentage of
13 noneconomic damages directly attributable to that party's negli-
14 gence from any party determined by the trier of fact to be more
15 than 20% but less than 60% responsible for the total damages.

16 c. Only that percentage of the damages directly attributable
17 to that party's negligence from any party determined by the trier
18 of fact to be 20% or less responsible for the total damages.

19 d. With regard to environmental tort actions, the party so re-
20 covering may recover the full amount of the damage award from
21 any party determined to be liable.

22 e. Any party who is compelled to pay more than his percentage
23 share may seek contribution from the other joint tortfeasors.

24 f. As used in this section:

25 (1) "Environmental tort action" means a civil action seeking
26 damages for personal injuries or death where the cause of the
27 damages is the negligent manufacture, use, disposal, handling,
28 storage or treatment of hazardous or toxic substances.

29 (2) "Noneconomic loss" means subjective, nonmonetary losses,
30 including, but not limited to, pain and suffering, inconvenience,
31 mental anguish, emotional distress, loss of society and companion-
32 ship, loss of consortium, and destruction of the parent-child rela-
33 tionship.

1 *3. Nothing in this act shall be construed to apply to any action
2 brought by the Department of Environmental Protection, or any
3 other governmental agency or entity pursuant to the environmental
4 laws of this State, including, but not limited, to the "Solid Waste
5 Management Act" P. L. 1970, c. 39; (C. 13:1E-1 et seq.); the
6 "Water Pollution Control Act" P. L. 1977, c. 74; (C. 58:10A-1
7 et seq.); the "Spill Compensation and Control Act" P. L. 1976,
8 c. 141 (C. 58:10-23.11 et seq.); the "Major Hazardous Waste
9 Facilities Siting Act" P. L. 1981, c. 279 (C. 13:1E-49 et seq.); the
10 "Sanitary Landfill Facility Closure and Contingency Fund Act"
11 P. L. 1981, c. 306 (C. 13:1E-100 et seq.); the "Environmental
12 Cleanup Responsibility Act" P. L. 1983, c. 330 (C. 13:1K-6 et
13 seq.); the "Air Pollution Control Act (1954)" P. L. 1954, c. 212
14 (C. 26:2C-1 et seq.); the "Toxic Catastrophe Prevention Act"
15 P. L. 1985, c. 403 (C. 13:1K-19 et seq.); the "Pesticide Control
16 Act of 1971" P. L. 1971, c. 176 (C. 13:1F-1 et seq.); and the
17 "Radiation Protection Act" P. L. 1958, c. 116 (C. 26:2D-1 et seq).*

1 ***[3.]*** *4.* This act shall take effect immediately and shall apply
2 to all causes of action arising on or after that date.

TORT LIABILITY AND MALPRACTICE

Modifies joint and several liability.

SENATE, No. 2703

STATE OF NEW JERSEY

INTRODUCED OCTOBER 27, 1986

By Senator LESNIAK

Referred to Committee on Judiciary

AN ACT concerning joint and several liability and amending P. L.
1973, c. 146.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 2 of P. L. 1973, c. 146 (C. 2A:15-5.2) is amended to
2 read as follows:

3 2. In all negligence actions in which the question of liability is in
4 dispute, the trier of fact shall make the following as findings of
5 fact:

6 a. The amount of *economic and noneconomic* damages which
7 would be recoverable by the injured party regardless of any con-
8 sideration of negligence, that is, the full value of the injured
9 party's damages;

10 b. The extent, in the form of a percentage, of each party's
11 negligence. The percentage of negligence of each party shall be
12 based on 100% and the total of all percentages of negligence of all
13 the parties to a suit shall be 100%.

14 c. The judge shall mold the judgment from the finding of fact
15 made by the trier of fact.

1 2. Section 3 of P. L. 1973, c. 146 (C. 2A:15-5.3) is amended to
2 read as follows:

3 3. *Except as provided in subsection d. of this section, the* **[The]**
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6 party is not barred from recovery. Any party who is so compelled
7 to pay more than such party's percentage share may seek con-
8 tribution from the other joint tortfeasors.] *as follows:*

EXPLANATION—Matter enclosed in bold-faced brackets **[thus]** in the above bill
is not enacted and is intended to be omitted in the law.
Matter printed in italics *thus* is new matter.

9 a. The full amount of the damages from any party determined
10 by the trier of fact to be 60% or more responsible for the total
11 damages.

12 b. The full amount of economic damages plus the percentage of
13 noneconomic damages directly attributable to that party's negli-
14 gence from any party determined by the trier of fact to be more
15 than 20% but less than 60% responsible for the total damages.

16 c. Only that percentage of the damages directly attributable
17 to that party's negligence from any party determined by the trier
18 of fact to be 20% or less responsible for the total damages.

19 d. With regard to environmental tort actions, the party so re-
20 covering may recover the full amount of the damage award from
21 any party determined to be liable.

22 e. Any party who is compelled to pay more than his percentage
23 share may seek contribution from the other joint tortfeasors.

24 f. As used in this section:

25 (1) "Environmental tort action" means a civil action seeking
26 damages for personal injuries or death where the cause of the
27 damages is the negligent manufacture, use, disposal, handling,
28 storage or treatment of hazardous or toxic substances.

29 (2) "Noneconomic loss" means subjective, nonmonetary losses,
30 including, but not limited to, pain and suffering, inconvenience,
31 mental anguish, emotional distress, loss of society and companion-
32 ship, loss of consortium, and destruction of the parent-child rela-
33 tionship.

1 3. This act shall take effect immediately and shall apply to all
2 causes of action arising on or after that date.

SPONSOR'S STATEMENT

The term "joint and several liability" means that if a plaintiff successfully sues a number of defendants in a suit for personal injury or wrongful death, the plaintiff may collect the total amount of the award from any defendant found liable. That defendant is then entitled to seek from the other defendants found liable their proportional shares of the award.

This bill modifies "joint and several liability" so that only a defendant determined to be 60% or more responsible for damages would be liable for the total amount of the award. A defendant found to be more than 20% but less than 60% responsible for the damages would be responsible for the total amount of any economic loss but only that percentage of the noneconomic loss directly attributable to his negligence. A defendant found to be 20% or

§ 2703 (1986)

less responsible for the damages would be liable only for the percentage of the award directly attributable to his negligence. This modification would not be applicable to cases involving environmental torts where a plaintiff could still recover the full award from any defendant found liable.

TORT LIABILITY AND MALPRACTICE

Modifies joint and several liability.

SENATE JUDICIARY COMMITTEE
STATEMENT TO
SENATE, No. 2703

STATE OF NEW JERSEY

DATED: OCTOBER 30, 1986

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2703.

The term "joint and several liability" means that if a plaintiff successfully sues a number of defendants in a suit for personal injury or wrongful death, the plaintiff may collect the total amount of the award from any defendant found liable. That defendant is then entitled to seek from the other defendants found liable their proportional shares of the award.

This bill modifies "joint and several liability" so that only a defendant determined to be 60% or more responsible for damages would be liable for the total amount of the award. A defendant found to be more than 20% but less than 60% responsible for the damages would be responsible for the total amount of any economic loss but only that percentage of the noneconomic loss directly attributable to his negligence. A defendant found to be 20% or less responsible for the damages would be liable only for the percentage of the award directly attributable to his negligence. This modification would not be applicable to cases involving environmental torts where a plaintiff could still recover the full award from any defendant found liable.

The amendments adopted clarify that the bill's provisions are not applicable to actions brought pursuant to New Jersey's environmental laws.



OFFICE OF THE GOVERNOR

NEWS RELEASE

CN-001

Contact: JOHN SAMERJAN
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TRENTON, N.J. 08625

Release: FRI., DEC. 18, 1987

Governor Thomas H. Kean today signed three bills reforming the State's liability insurance laws by protecting municipalities from paying an unfair share of damages in a liability suit, modifying the so-called "deep pockets" rule in civil litigation which allowed persons to be forced to pay a much larger share of damages than they were responsible for, and reducing the possibility of "double recoveries" in civil actions.

S-375/A-4467, sponsored by Senator William Gormley, R-Atlantic and Assemblyman Ralph Loveys, R-Morris, eliminates the applicability of joint and several liability to public entities, voluntary associations such as the New Jersey State Interscholastic Athletic Association, and any athletic conference operating under the jurisdiction of such associations.

Under current law, a public entity could be responsible for 100 percent of the damages in a liability action even if that public entity were held only one percent negligent.

This legislation specifies that a public entity or employee will not have to pay a percentage of an award greater than the percentage of negligence attributable to them.

Governor Kean, citing the skyrocketing costs of liability insurance for municipalities, called for this legislation in his Annual Message in January.

S-2703, sponsored by Senator Raymond Lesniak, D-Union, modifies the joint and several liability doctrine in civil litigation. Under the so-called deep pockets rule a defendant now can be required to pay 100 percent of the judgement even where their percentage of fault is far less.

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The major change in this legislation is when the defendant is found to be 20 or less percent negligent the plaintiff may recover only the percentage of damages directly attributable to the defendant's negligence.

S-2708, sponsored by Senator Carmen Orechio, D-Essex and Assemblyman Jack Rafferty, R-Mercer, reduces the possibility of a "double recovery" in a liability award by subtracting from that award amounts compensated by collateral sources. Collateral sources include such things as health insurance but not life insurance or workers compensation benefits.

All three bills are effective immediately.

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