

59:9-3.1

4/14/88

LEGISLATIVE HISTORY CHECKLIST

NJSA: 59:9-3.1 (Government liability-- eliminate joint & several)

LAWS OF: 1987 CHAPTER: 324

Bill No: S375

Sponsor(s): Gormley

Date Introduced: Pre-filed

Committee: Assembly: Insurance

Senate: Judiciary

Amended during passage: Yes Amendments during passage denoted by asterisks.

Date of Passage: Assembly: November 30, 1987

Senate: December 4, 1987

Date of Approval: December 18, 1987

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: Yes

Hearings: Yes

For hearings, reports and newspaper clippings-- see Legislative History of L. 1987, c. 325.

Assembly  
Senate  
Fiscal Note  
Veto Message  
Message on Signing  
Reports  
Hearings

324

87

12-18-87

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SENATE, No. 375

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Senator GORMLEY

AN ACT concerning claims against public entities and public employees, *\*\*amending and\*\** supplementing Title 59 of the New Jersey Statutes and *\*\*[repealing N. J. S. 59:9-3]\*\** *\*\*and supplementing P. L. 1979, c. 172 (C. 18A:11-3 et seq.)\*\**.

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

1 1. Notwithstanding the provisions of P. L. 1952, c. 335 (C.  
2 2A:53A-1 et seq.), P. L. 1973, c. 146 (C. 2A:15-5.1 et seq.) or any  
3 other law to the contrary, in any case where a public entity or  
4 public employee acting within the scope of his employment is deter-  
5 mined to be a tortfeasor in any cause of action along with one or  
6 more other tortfeasors, the public entity or public employee **\*[shall**  
7 **not be jointly and severally liable with the other tortfeasors and]\***  
8 shall be liable for no more than that percentage share of the  
9 damages which is equal to the percentage of the negligence attrib-  
10 utable to that public entity or public employee and only to the  
11 extent authorized by N. J. S. 59:9-2 and N. J. S. 59:9-4.

1 2. **\*[N. J. S. 59:9-3 is repealed.]\*** \*N. J. S. 59:9-3 is amended  
2 to read as follows:

3 59:9-3. Contribution by a public entity or public employee with  
4 a joint tortfeasor. Notwithstanding any other law, in any case  
5 where a public entity or public employee acting within the scope of  
6 his employment is determined to be a joint tortfeasor**[:**

7 a. **The]** *the* public entity or public employee shall be required to  
8 contribute to a joint tortfeasor only to the extent of the recovery  
9 provided for under this act**[:**

**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 or stars has been adopted as follows:

\*—Senate committee amendments adopted June 5, 1986.

\*\*—Senate amendments adopted October 30, 1986.

10 b. Any payment received by the injured party on account of a  
 11 settlement or a judgment paid by an alleged tortfeasor shall be  
 12 reduced pro tanto from the injured party's judgment against any  
 13 other tortfeasor].\*

1 *\*\*3. Notwithstanding the provisions of P. L. 1952, c. 335 (C.*  
 2 *2A:53A-1 et seq.), P. L. 1973, c. 146 (C. 2A:15-5.1 et seq.) or any*  
 3 *other law to the contrary, in any case where a voluntary associa-*  
 4 *tion as provided by P. L. 1979, c. 172 (C. 18A:11-3 et seq.), any*  
 5 *athletic conference operating under the jurisdiction of that associa-*  
 6 *tion or any employee of the association or conference acting within*  
 7 *the scope of his employment is determined to be a tortfeasor in*  
 8 *any cause of action along with one or more other tortfeasors, the*  
 9 *association, conference or employee shall be liable for no more*  
 10 *than that percentage share of the damages which is equal to the*  
 11 *percentage of the negligence attributable to that association, con-*  
 12 *ference or employee. In any case where the voluntary association,*  
 13 *conference or employee is determined to be a joint tortfeasor, the*  
 14 *voluntary association, conference or employee shall be required to*  
 15 *contribute to a joint tortfeasor only to the extent of the recovery*  
 16 *provided for under this section.\*\**

1 *\*\*[3.]\*\* \*\*4.\*\** This act shall take effect immediately and be  
 2 applicable to all acts or omissions occurring on or after the effec-  
 3 tive date.

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#### TORT LIABILITY AND MEDICAL MALPRACTICE

Provides that public entities and employees shall be liable in actions involving multiple defendants for only that percentage of liability attributable to the public entity or employee.

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**SENATE, No. 375**

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**STATE OF NEW JERSEY**

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PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Senator GORMLEY

AN ACT concerning claims against public entities and public employees, supplementing Title 59 of the New Jersey Statutes and repealing N. J. S. 59:9-3.

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

1 1. Notwithstanding the provisions of P. L. 1952, c. 335 (C.  
2 2A:53A-1 et seq.), P. L. 1973, c. 146 (C. 2A:15-5.1 et seq.) or any  
3 other law to the contrary, in any case where a public entity or  
4 public employee acting within the scope of his employment is deter-  
5 mined to be a tortfeasor in any cause of action along with one or  
6 more other tortfeasors, the public entity or public employee shall  
7 not be jointly and severally liable with the other tortfeasors and  
8 shall be liable for no more than that percentage share of the  
9 damages which is equal to the percentage of the negligence attrib-  
10 utable to that public entity or public employee and only to the  
11 extent authorized by N. J. S. 59:9-2 and N. J. S. 59:9-4.

1 2. N. J. S. 59:9-3 is repealed.

1 3. This act shall take effect immediately and be applicable to all  
2 acts or omissions occurring on or after the effective date.

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STATEMENT

This bill changes current law and provides that where a public entity or public employee acting within the scope of his employment is a tortfeasor in any cause of action along with other tortfeasors, the public entity or public employee shall not be jointly and severally liable with the other tortfeasors. This bill provides that the public entity or public employee shall be liable for no more

than that percentage share of damages which is equal to the percentage share of negligence attributable to that public entity or public employee.

Current law would allow a plaintiff in a multiple defendant lawsuit to collect all the damages from the public entity or public employee and force the public entity or public employee to seek contribution from the other defendants. Often times, however, the other defendants have insufficient assets or insurance and the public entity or public employee ultimately bears a disproportionate share of the damages in relation to the negligence attributable to it.

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ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

**SENATE, No. 375**

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**STATE OF NEW JERSEY**

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DATED: SEPTEMBER 1, 1987

This bill eliminates joint and several liability for public entities, public employees, and certain school athletic conferences. It provides that any party in a civil action who is entitled to recover against a public entity or athletic conference would be able to recover only the percentage of the amount of the judgment which is directly attributable to the negligence of the public entity or conference.

At present, public entities or athletic conferences which are named in civil suits as one of several defendants may be required to pay a portion of the judgment which is greater than their degree of negligence. Under the doctrine of joint and several liability, if any of the parties who are deemed to be at fault in an accident do not have sufficient insurance or sufficient assets to pay their share of the judgment (as determined by their degree of negligence), the payment of the judgment is apportioned in accordance with the various defendants' ability to pay. This sometimes results in the defendants with the most assets (sometimes called "deep pockets") being required to contribute to recoveries in a manner which is completely out of proportion to their degree of negligence.

Municipalities and other public entities have complained that they are being named as defendants in increasing numbers of civil suits, particularly in automobile accidents, because they are known to have the ability to pay large judgments. Aside from having to pay a share of the judgments which may exceed their degree of negligence, these public bodies also have to undertake the expense of defending the suits. They have alleged that the doctrine of joint and several liability has been abused by plaintiffs who attempt to gain larger recoveries than would otherwise be available to them by naming defendants which have the ability to pay large judgments, notwithstanding that their degree of negligence may be small.

SENATE JUDICIARY COMMITTEE  
STATEMENT TO  
**SENATE, No. 375**  

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**STATE OF NEW JERSEY**  

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DATED: JUNE 5, 1986

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 375.

Current law permits a successful plaintiff in a tort action involving multiple defendants to collect the total amount of damages from one defendant even though other defendants were found to liable. The defendant from whom the damages is collected may then seek contribution from the other defendants for each defendant's share of the damages. In tort law, this is known as "joint and several liability."

This bill would modify "joint and several liability" in cases when a public entity or public employee acting within the scope of his employment is a defendant. In those cases, the bill provides that the public entity or public employee would not be jointly and severally liable but rather that the public entity or employee would only be liable for that percentage share of negligence attributable to that public entity or employee.

As originally drafted, the bill would have repealed N. J. S. 59:9-3 which sets forth the right of other defendants to seek contribution from a public entity or employee. Subsection a. of 59:9-3 states that a public entity or employee shall be liable for contribution only to the extent of recovery provided under the Tort Claims Act. Subsection b. would permit a plaintiff to recover from a public entity or employee the total amount of a judgment less the amount recovered from other defendants who have settled prior to judgment. The Attorney General's Office suggested that instead of repealing 59:9-3, that only subsection b. be deleted and that subsection a. be retained. The committee amendments embody that suggestion.

The committee amendments also delete certain language from the body of the bill which the committee felt could have been interpreted as eliminating rather than modifying the liability of public entities and employees.



# 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.



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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