

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 18, 1974

By Assemblymen HAMILTON and LITTELL

(Without Reference)

AN ACT to amend and supplement the "New Jersey Tort Claims Act," approved June 1, 1972 (P. L. 1972, c. 45).

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

1 1. N. J. S. 59:9-1 is amended to read as follows:

2 59:9-1. Manner of trial. Tort claims [against a public entity or
3 employee acting within the scope of his employment] under this
4 act shall be heard by a judge sitting without a jury or a judge and
5 jury where appropriate demand therefor is made in accordance
6 with the rules governing the courts of the State of New Jersey.

1 2. N. J. S. 59:9-4 is amended to read as follows:

2 59:9-4. Comparative negligence. [a. In all actions brought
3 against a public entity or public employee under this act the fact
4 that the person injured may have been guilty of contributory
5 negligence shall not bar a recovery, but the damages, to the extent
6 permitted under this act, shall be diminished in proportion to the
7 amount of negligence attributable to the person injured.

8 b. In any action to which paragraph a. applies, the court shall
9 make findings of fact or the jury shall return a special verdict
10 which shall state:

11 (1) The amount of the damages incurred by each party irrespec-
12 tive of his negligence; and

13 (2) The percentage of negligence attributable to each of the
14 parties.

15 The court shall calculate the monetary damages in accordance
16 with the percentage of negligence attributable to each of the parties
17 and shall enter an appropriate judgment.]

18 *Contributory negligence shall not bar recovery in an action by*
19 *any party or his legal representative to recover damages to the*

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

20 extent permitted under this act if such negligence was not greater
 21 than the negligence of the party against whom recovery is sought,
 22 but any damages sustained shall be diminished by the percentage
 23 of negligence attributable to the person recovering.

24 In all negligence actions in which the question of liability is in
 25 dispute, the trier of fact shall make the following as findings of
 26 fact:

27 a. The amount of damages which would be recoverable by the
 28 injured party regardless of any consideration of negligence, that
 29 is, the full value of the injured party's damages to the extent per-
 30 mitted under this act.

31 b. The extent, in the form of a percentage, of each party's
 32 negligence. The percentage of negligence of each party shall be
 33 based on 100% and the total of all percentages of negligence of all
 34 the parties to a suit shall be 100%.

35 c. The judge shall mold the judgment from the findings of fact
 36 made by the trier of fact in accordance with the provisions of this
 37 act.

1 3. Nothing in the act to which this act is a supplement shall
 2 affect the right of the court, in accordance with the rules governing
 3 the courts, to review the amount of a verdict or judgment on its
 4 own initiative or in acting on a motion of a party for a new trial.

1 4. This act shall take effect immediately and shall apply to
 2 claims that accrue on or after its effective date and it shall also
 3 apply retroactively to those claims which have accrued since July 1,
 4 1972 and which have not been reduced to judgment.

STATEMENT

The New Jersey Tort Claims Act requires that all claims against a public entity or a public employee acting within the scope of his employment be heard by a judge sitting without a jury. On the other hand, the right of trial by jury is preserved for claims involving defendants other than public entities or public employees acting within the scope of their employment where appropriate demand for jury trial is made. Consequently, whenever a claim involves such multiple defendants, certain issues of the case are to be determined by a judge without a jury while other issues in the same case may be determined by the jury. This disparity of procedures presents a potential for inconsistent findings by the judge and jury and great confusion in seeking to hear and dispose of these cases involving such multiple defendants. It may be required that one case be divided into separate component parts

with separate trials. Cross claims for contribution and indemnification add to the difficulty.

The problem is further compounded by the comparative negligence law which requires the trier of the fact to determine the amount of damages in negligence actions and also to attribute degrees of negligence to each of the parties involved. In addition, the comparative negligence features of the Tort Claims Act are inconsistent with the general law providing for comparative negligence. Under the general law, if the negligence of the claimant exceeds the negligence of the person against whom recovery is sought, there will be no recovery. Under the Tort Claims Act it is possible for a claimant to recover even though he was negligent to a greater degree than the other party. These two distinct principles of law must be applied to determine whether a plaintiff will recover where multiple defendants are involved.

This bill would permit trial by jury of all issues where the appropriate jury demand is made. The comparative negligence provisions of the Tort Claims Act have been replaced by those of the general law.

Section 3 of the bill reiterates the existing right of a court to reduce excessive or increase inadequate verdicts and judgments as authorized by the Rules of Court.

There are presently pending before the courts a number of actions commenced under the Tort Claims Act which involve such multiple defendants. The bill is retroactive to include all actions which have accrued after the effective date of the Tort Claims Act (June 1, 1972) and which have not been reduced to judgment.