

## 'Fair Share Act' Brings Proportional Fault to Pennsylvania, Dramatically Altering the Law of Joint and Several Liability

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**Publication Date: July 01, 2011**

Pennsylvania Gov. Tom Corbett signed Senate Bill No. 1131 (known as the "Fair Share Act") into law Tuesday, June 28, dramatically limiting defendants' exposure to joint and several liability in negligence cases.

Prior to enactment of the Fair Share Act,\* Pennsylvania law allowed a plaintiff in a negligence case involving multiple defendants to recover 100 percent of its damages from a single defendant, no matter that defendant's proportional liability. In other words, a defendant found to be 10 percent liable for causing plaintiff's harm nonetheless could be 100 percent responsible for plaintiff's damages. The single defendant, then, bore responsibility for seeking contribution from the other defendants in proportion to their liability. Aside from the obvious inequity of piling wildly disproportionate financial responsibility on a marginal defendant (particularly when the other more responsible defendants turned out to be judgment-proof), this regime also tended to create complex webs of litigation insofar as a defendant's claims for contribution would proceed apart from the plaintiff's lawsuit.??

Now, though, Pennsylvania joins approximately 40 other states in recognizing some form of proportional fault. Codified at 42 Pa. C.S. § 7102, the Fair Share Act provides that, with a few exceptions, defendants in a negligence case are responsible only for their proportionate share of liability:

(a.1)(1)Where recovery is allowed against more than one person, including actions for strict liability, and where liability is attributed to more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of that defendant's liability to the amount of liability attributed to all defendants and other persons to whom liability is apportioned....

(a.1)(2)...[A] defendant's liability shall be several and not joint, and the court shall enter a separate and several judgment against each defendant for the apportioned amount of that defendant's liability.

Accordingly, application of the Fair Share Act will now result in a defendant that is found to be 10 percent liable for causing plaintiff's harm, only being held responsible for 10 percent of plaintiff's damages. The plaintiff carries the obligation to recover damages from each of the defendants and bears the risk of a judgment-proof defendant.

Certain exceptions to this proportional paradigm are spelled out in section (a.1)(3) of the law itself. Most notably, a defendant found liable for 60 percent or more of the total liability is still jointly and severally liable and responsible for 100 percent of plaintiff's damages. Also, a defendant found liable for an intentional misrepresentation, an intentional tort, a violation of Pennsylvania's Liquor Code, or a violation of Pennsylvania's Hazardous Sites Cleanup Act, remains jointly and severally liable and responsible for 100 percent of plaintiff's damages.

Another possible exception is less clear but potentially vast. The Fair Share Act, by the language of section (a), applies "[i]n all actions brought to recover damages for negligence resulting in death or injury to person or property...." This language arguably excludes business torts where negligence produced purely economic harm rather than "death or injury to person or property." This possible exception bears watching, as it likely will be the subject of judicial interpretation.

The Fair Share Act is effective immediately and applies to "causes of action which accrue on or after" June 28, 2011.??

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\*?? Earlier attempts to bring proportional fault to Pennsylvania were vetoed or found to be unconstitutional for procedural reasons unrelated to the substance of the law (i.e., Pennsylvania's Constitution requires that bills be limited to a single subject, and the proportional-fault law enacted in 2002 was incorporated into a bill that also dealt with DNA sampling).

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