

## [Tort Reform Battle in PA](#)

May 23, 2011 by [Sean Wajert](#)

We have posted from time to time on the important issue of [tort reform](#), and the need for it in many [jurisdictions](#).

Now in our home state, the Pennsylvania's General Assembly is currently considering tort reform of the joint and several liability rules. The Pennsylvania Comparative Negligence Act, 42 Pa.C.S.A. § 7102, establishes that a civil litigant may recover damages provided his negligence is not greater than the negligence of the defendants. The Act permits the plaintiff to recover damages as long as the negligence of the plaintiff is not greater than the causal negligence of the defendants. Thus, Pennsylvania employs the 51% rule. With respect to the liability of defendants, the Act mandates a form of joint and several liability under which a plaintiff is allowed to recover damages from multiple defendants collectively or from each defendant individually. Currently, when the case involves more than one defendant, each defendant found to be at least 1% negligent is responsible for the entire verdict. The plaintiff can collect from one defendant and force that defendant to try to go against the others for recovery.

These kinds of rules obviously affect how lawsuits are defended, tried and settled. Plaintiffs have an incentive to name a defendant with minimal liability but sufficient assets in an attempt to essentially extort settlement proceeds under the 1% rule. The right of recovery against the co-defendant is often worthless, especially in settings like the asbestos mass tort. Of course the minimally liable defendant may incur large litigation costs before being able to settle the claim at that inflated amount.

The Pennsylvania House of Representatives passed [HB 1](#) in April. The bill is similar to the "Fair Share" Law enacted in the state in 2004 but later found unconstitutional on narrow procedural grounds. It is also similar to fair share legislation passed in 2006 but vetoed by then-Governor Rendell. HB 1 would replace joint and several liability with proportional liability. Each defendant who is less than 60% negligent would be responsible only for his share of a verdict resulting from his negligence, i.e., his "fair share". Joint and several liability would continue to apply to any tortfeasor who is more than 60% liable.

After passage, HB 1 was sent to the Pennsylvania Senate for consideration as [SB 2](#). It is now before the Senate Judiciary Committee for consideration. There is also consideration of a much watered-down version of "fair share" legislation that would apply proportional liability to a defendant only if the plaintiff's negligence in causing his own injuries exceeds the liability of the defendant. [Hearings](#) on these bills were held by the Judiciary Committee earlier this month.

More info on this battle can be found at [PDI](#), which supports the reform. Not surprisingly, the Pennsylvania Association for Justice, formerly the Pennsylvania Trial lawyers Association, opposes SB 2.

Several states have abolished the rule of joint and several liability, and several others have enacted reform efforts which contain a threshold of liability which a defendant must meet prior to the imposition of joint and several liability.