

HOUSE RESEARCH

Bill Summary

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Subject: Joint and Several Liability

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Overview

Joint and several liability is the concept in tort law that, where there are multiple defendants who are all liable, each one is responsible for all the plaintiff's damages if the other defendants cannot pay. The common law principle has been modified in Minnesota statutes and is further modified by this bill.

Section

1 Under current Minnesota Statutes, if a private defendant is 15 percent or less at fault, the defendant can be required to pay the portion of the plaintiff's damages that is up to four times the defendant's percentage of fault. (Example: Defendant A is 15 percent at fault; Defendant B is 80 percent at fault and bankrupt; Defendant A has to pay up to 60 percent of plaintiff's damages.) The rule does not apply in environmental torts, where a defendant would not be protected by this limit on liability but rather is always jointly liable for all the plaintiff's damages.

Also in current law, if the state or a local government unit is less than 35 percent at fault, it would pay a part of the plaintiff's damages not greater than twice the government's percentage of fault. (Using the first example above: City A is 15 percent at fault; Citizen B is 80 percent at fault and bankrupt; City pays up to 30 percent of plaintiff's damages.)

Current statutory law that affects joint and several liability (1) allows a plaintiff to recover only against a defendant who is more at fault than the plaintiff, and (2) requires that if one defendant cannot pay damages, those damages are reallocated between the plaintiff and other defendant(s). Also, case law requires calculation of the fault of parties involved in an incident who are not parties to the lawsuit. These provisions are not changed by the bill.

The bill retains current joint and several liability law for environmental torts. It then makes the following changes:

eliminates the separate damage limit for government defendants;

imposes joint and several liability for the whole award on (1) two or more persons who act in a common scheme or plan that causes injury or (2) a person who commits an intentional (as opposed to negligent) tort;

changes from 15 percent to 50 percent the threshold for making all other tort defendants jointly or severally liable for the whole award. A defendant who is responsible for 50 percent or less of the fault in a case would be liable only for the percentage of the plaintiff's damages that is equal to the defendant's percentage of fault (Again, looking at the first example above, Private Defendant/City Defendant A is 15 percent at fault; Defendant B is 80 percent at fault and bankrupt. Private Defendant/City Defendant A would pay 15 percent of plaintiff's damages.)

2 **Application.** Section 1 applies to claims from events that occur on or after August 1, 2001.