



VOTE YES ON SENATE BILL 3148

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Senate Bill 3148 will level the playing field between plaintiffs and defendants with reference to joint and several liability.

In most tort cases, the contributory fault of the plaintiff is measured against the total fault of all others involved. The plaintiff is barred from recovering damages if the trier of fact finds that the fault of the plaintiff is more than 50% of the total proximate cause of the injury or damage for which recovery is sought. If the plaintiff is less than 50% at fault, recovery is reduced by the percentage of fault of the plaintiff. By measuring the plaintiff's fault against the total overall fault, the plaintiff's percentage of fault is minimized and is therefore more likely to remain under the 50% threshold, and will result in a lesser reduction of the recovery. Further, the court is required to instruct the jury that the plaintiff is barred from recovering damages if the plaintiff's fault exceeds 50% of the total proximate cause of the injury or damage. This instruction may result in a conscious reduction of the calculation by the jury in order to preserve the right to recover by the plaintiff, effectively nullifying the otherwise pure calculation by the jury of the facts relating to the percentage of fault.

A different analysis applies when calculating the relative fault of defendants. After payment of plaintiff's past and future medical bills, in most cases, any defendant found less than 25% at fault of the proximate cause of the injury or damage for which recovery is sought is only severally liable for its own percentage of the damages. Any defendant who is found 25% or greater at fault is jointly and severally liable for all damages and recovery against such defendants is not limited to their respective percentage of fault. The difference between the calculation of fault between defendants and plaintiffs is that each defendant's percentage of fault is calculated by measuring it against only parties in the case at the time the case is submitted to the trier of fact. By limiting the calculation to only remaining parties, and not all tortfeasors like the plaintiff's calculation, the remaining defendant's percentage of fault is maximized and is therefore more likely to exceed the 25% threshold. The result is that even a minimally liable defendant may be found to be jointly and severally liable for all damages because the fault of the other tortfeasors is not included in the calculation. Further, contrary to the plaintiff's calculation, the jury is not instructed as to the consequence of the calculation of the percentage of fault of defendants.

Senate Bill 3148 will apply the same rules to the calculation of fault for both plaintiffs and defendants. The calculation of fault for both plaintiffs and defendants will be based on percentage of the total proximate cause of the injury or damage. It will also eliminate the requirement that the court instruct the jury as to the consequences of any findings of fault as to plaintiffs or defendants. This will allow the jury to fulfill its function as to findings of fact without jury nullification by considering the legal effect of its fact findings, which is the court's function. The most important part of the bill is that it will eliminate the current inequities in the law and will apply the law equally to both plaintiffs and defendants.

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