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PENNSYLVANIA HOUSE OF REPRESENTATIVES TO INTRODUCE “FAIR SHARE ACT” MODIFYING JOINT AND SEVERAL LIABILITY

Under 42 Pa. C.S.A. §7102(b), a defendant assessed only 1% of liability in a civil action can be responsible for 100% of the damages awarded in a civil action.

The “Fair Share Act,” as proposed, will amend §7102 of the Pennsylvania Code of Judiciary and Judicial Procedure to eliminate joint and several liability in civil cases where a defendant is found to be less than 60% liable. The Fair Share Act would create a system of comparative negligence whereby each defendant would be responsible for the portion of the judgment assessed against that defendant. A defendant found to have been 60% or more at fault could still be held responsible for the entire verdict. Moreover, full joint and several liability would still apply in the case of the following exceptions:

- An intentional misrepresentation;
- An intentional tort;
- An action related to the release or threatened release of a hazardous substance under the Hazardous Site Cleanup Act; or
- An action brought under §497 of the Liquor Code.

Similar legislation was signed into law by Governor Mark Schweiker in 2002, but was later declared unconstitutional due to a procedural defect. The legislation passed the House and Senate in 2006 without the procedural defect, but was vetoed by Governor Rendell. Given the current makeup of the Pennsylvania House of Representatives and Senate, the Fair Share Act is expected to pass both legislative chambers and to be signed by Governor Tom Corbett.

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