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Multiple Defendants Tort Damage Liability.

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51 Multiple Defendants Tort Damage Liability: Initiative Statute

Official Title and Summary Prepared by the Attorney General

MULTIPLE DEFENDANTS TORT DAMAGE LIABILITY: INITIATIVE STATUTE. Under existing law, tort damages awarded a plaintiff in court against multiple defendants may all be collected from one defendant. A defendant paying all the damages may seek equitable reimbursement from other defendants. Under this amendment, this rule continues to apply to "economic damages," defined as objectively verifiable monetary losses, including medical expenses, earnings loss, and others specified: however, for "non-economic damages," defined as subjective, non-monetary losses, including pain, suffering, and others specified, each defendant's responsibility to pay plaintiff's damages would be limited in direct proportion to that defendant's percentage of fault. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: Under current law, governments often pay non-economic damages that exceed their shares of fault. Approval of this measure would result in substantial savings to state and local governments. Savings could amount to several millions of dollars in any one year, although they would vary significantly from year to year.

Analysis by the Legislative Analyst

Background

When someone is injured or killed, or suffers property damage, the injured party (or his or her survivors) may try to make the person (or business or government) who is responsible for the loss pay damages. When a lawsuit is filed, the courts decide what the damages are, who caused them, and how much the responsible party should pay. If the court finds that the injured party was partly responsible for the injury, the responsibility of the other party is reduced accordingly.

In some cases, the court decides that more than one other party is responsible for the loss. In such cases, *all* of the other parties causing the loss are responsible for paying the damages, and the injured party can collect the damages from any of them. If the other responsible parties are not able to pay their shares, a party whose relative fault is, for example, 25 percent may have to pay 100 percent of the damages awarded by the court.

These damages could be for two types of losses: "economic" and "non-economic." Economic losses are damages such as lost wages and medical costs. Non-economic losses are damages such as pain and suffering or injury to one's reputation.

Proposal

This measure changes the rules governing who must pay for *non-economic damages.* It limits the liability of each responsible party in a lawsuit to that portion of non-economic damages that is equal to the responsible party's share of fault. The courts still could require one person to pay the *full* cost of *economic damages, if* the other re[illegible]sible parties are not able to pay their shares.

Fiscal Effect

Under current law, governments often have to pay non-economic damages that exceed their shares of fault. Thus, approval of this measure would result in substantial savings to the state and local governments. The savings could amount to several millions of dollars in any one year, although they would vary significantly from year to year.

Voter ~~B~~Turnout. Just one of the changes California is making!

Karen Alarcon, San Martin

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure amends and adds sections to the Civil Code; therefore, existing sections proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. This shall be known as the "Fair Responsibility Act of 1986."

SECTION 2. Section 1431 of the Civil Code is amended to read:

~~1431.~~ *§1431 Joint Liability*

An obligation imposed upon several persons, or a right created in favor of several persons, is presumed to be joint, and not several, *except as provided in Section 1431.2, and* except in the special cases mentioned in the ~~Title~~ *title* on the ~~Interpretation~~ *interpretation* of ~~Contracts~~ *contracts*. This presumption, in the case of a right, can be overcome only by express words to the contrary.

SECTION 3. Section 1431.1 is added to the Civil Code to read:

§1431.1 Findings and Declaration of Purpose

The People of the State of California find and declare as follows:

a) The legal doctrine of joint and several liability, also known as "the deep pocket rule", has resulted in a system of inequity and injustice that has threatened financial bankruptcy of local governments, other public agencies, private individuals and businesses and has resulted in higher prices for goods and services to the public and in higher taxes to the taxpayers.

b) Some governmental and private defendants are perceived to have substantial financial resources or insurance coverage and have thus been included in lawsuits even though there was little or no basis for finding them at fault. Under joint and several liability, if they are found to share even a fraction of the fault, they often are held financially liable for all the damage. The People—taxpayers and consumers alike—ultimately pay for these lawsuits in the form of higher taxes, higher prices and higher insurance premiums.

c) Local governments have been forced to curtail some essential police, fire and other protections because of the soaring costs of lawsuits and insurance premiums.

Therefore, the People of the State of California declare that to remedy these inequities, defendants in tort actions shall be held financially liable in closer proportion to their degree of fault. To treat them differently is unfair and inequitable.

The People of the State of California further declare that reforms in the liability laws in tort actions are necessary and proper to avoid catastrophic economic consequences for state and local governmental bodies as well as private individuals and businesses.

SECTION 4. Section 1431.2 is added to the Civil Code to read:

§1431.2 Several Liability for Non-economic Damages

(a) In any action for personal injury, property damage, or wrongful death, based upon principles of comparative fault, the liability of each defendant for non-economic damages shall be several only and shall not be joint. Each defendant shall be liable only for the amount of non-economic damages allocated to that defendant in direct proportion to that defendant's percentage of fault, and a separate judgment shall be rendered against that defendant for that amount.

(b) (1) For purposes of this section, the term "economic damages" means objectively verifiable monetary losses including medical expenses, loss of earnings, burial costs, loss of use of property, costs of repair or replacement, costs of obtaining substitute domestic services, loss of employment and loss of business or employment opportunities.

(2) For the purposes of this section, the term "non-economic damages" means subjective, non-monetary losses including, but not limited to, pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation.

SECTION 5. Section 1431.3 is added to the Civil Code to read:

§1431.3 Nothing contained in this measure is intended, in any way, to alter the law of immunity.

SECTION 6. Section 1431.4 is added to the Civil Code to read:

§1431.4 Amendment or Repeal of Measure.

This measure may be amended or repealed by either of the procedures set forth in this section. If any portion of subsection (a) is declared invalid, then subsection (b) shall be the exclusive means of amending or repealing this measure.

(a) This measure may be amended to further its purposes by statute, passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring and signed by the Governor, if at least 20 days prior to passage in each house the bill in its final form has been delivered to the Secretary of State for distribution to the news media.

(b) This measure may be amended or repealed by a statute that becomes effective only when approved by the electors.

SECTION 7. Section 1431.5 is added to the Civil Code to read:

§1431.5 Severability.

If any provision of this measure, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this measure to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this end the provisions of this measure are severable.

51 Multiple Defendants Tort Damage Liability: Initiative Statute

Argument in Favor of Proposition 51

Nothing is more unfair than forcing someone—be it a city, a county or the state, a school, a business firm or a person—to pay for damages that are someone else's fault.

That's what California's "deep pocket" law is doing—at a cost of tens of millions of dollars annually. And that's why we need Proposition 51—the Fair Responsibility Act.

Regardless of whether it is a city, county or private enterprise that is hit with huge "deep pocket" court awards or out-of-court settlements, the *TAXPAYER AND CONSUMER ULTIMATELY PAY THE COSTS* through high taxes, increased costs of goods and services, and reduced governmental services.

How does the "deep pocket" law work? Here's an illustration:

A drunk driver speeds through a red light, hits another car, injures a passenger. The drunk driver has no assets or insurance.

The injured passenger's trial lawyer sues the driver *AND THE CITY* because the city has a very "deep pocket"—the city treasury or insurance. He claims the stop light was faulty.

The jury finds the drunk driver 95% at fault, the city only 5%. It awards the injured passenger $500,000 in economic damages (medical costs, lost earnings, property damage) and $1,000,000 in non-economic damages (emotional distress, pain and suffering, etc.).

Because the driver can't pay anything, THE CITY PAYS IT ALL—$1,500,000.

THAT'S THE "DEEP POCKET" LAW AND IT'S UNFAIR!

Under Proposition 51, the city could still pay all the victim's economic damages but only its 5% portion of the non-economic. Total: $550,000—that's $950,000 less!

Everyone agrees the injured passenger should be reimbursed. But there are *TWO VICTIMS*—the *ACCIDENT VICTIM* and the *TAXPAYER* who foots the bill.

Proposition 51 is a *GOOD COMPROMISE*—it takes care of both victims!

With the passage of Proposition 51:

- Liability insurance, now virtually impossible to obtain, would again be available to cities and counties.
- Private sector liability insurance premiums could drop 10% to 15%.
- The glut of lawsuits with dubious merit would be significantly reduced.

Every California county—and virtually all its cities—are *IN FAVOR OF PROPOSITION 51.*

One of the largest coalitions of school, governmental, law enforcement, small and large business, professional, labor and non-profit organizations in history urges you to *VOTE YES ON PROPOSITION 51.*

This initiative proposition was put on the ballot by hundreds of thousands of voters because repeated attempts in the Legislature to reform the unfair "deep pocket" law were thwarted by the intense lobbying of the California Trial Lawyers Association.

The trial lawyers' organization last year was the *LARGEST GIVER* of *SPECIAL INTEREST CAMPAIGN MONEY* to state legislators and is the major organized opposition to the Fair Responsibility Act.

Under the present "deep pocket" law:

- The party most at fault often doesn't pay—*THAT'S NOT FAIR!*
- You—the taxpayer and consumer—ultimately pay the "deep pocket" awards and settlements—*THAT'S NOT FAIR!*

Under Proposition 51:

- Victims and taxpayers alike are protected—*THAT'S FAIR!*

Don't let 5,400 trial lawyers hold 26 million Californians hostage. *VOTE YES ON PROPOSITION 51!*

RICHARD SIMPSON
California Taxpayers' Association

DONNETTA SPINK
President, California State Parent-Teacher Association

ELWIN E. (TED) COOKE
President, California Police Chiefs Association

Rebuttal to Argument in Favor of Proposition 51

Proposition 51 will *NOT* lower taxes, will *NOT* lower insurance rates and will *NOT* make insurance more available.

Proposition 51 is a fraud promoted by the insurance industry, chemical manufacturers, and local government officials.

Insurance companies back Proposition 51 because they want to increase their profits—they don't want to pay the claims they owe.

Toxic chemical producers back Proposition 51 because they want to increase their profits—they don't want to be held responsible for the cancer their toxic waste dumps cause.

Local government officials back Proposition 51 because they don't want to do the job we taxpayers elected them to do—protecting the people by maintaining efficient police and fire services and safe roads.

Proposition 51 will NOT reduce taxes. This insurance company windfall won't go to you.

If Proposition 51 passes, *our welfare rolls will increase.* People who must spend their life in a wheelchair or on a respirator will NOT be compensated by those who caused their injuries—they will be forced to go on welfare.

The insurance crisis is caused by a greedy insurance industry that is exempted from federal antitrust laws. There is no rate competition and thus no need to pass savings on to us.

Ralph Nader says,

> "The insurance industry is using its current massive premium gouging and arbitrary cancellations as a political battering ram to further bloat profits."

When was the last time your insurance company lowered your rates? NO on Proposition 51—Protect your rights.

PAT CODY
DES Action

JAMES E. VERMEULEN
Founder and Executive Director
Asbestos Victims of America

Argument Against Proposition 51

If you or a member of your family is paralyzed for life by a drunk driver California law now protects your right to full and fair compensation for your injuries. This initiative removes that protection.

Proposition 51 is an attempt by big insurance companies to avoid paying victims for the injuries they suffer. *Passage of this initiative does nothing to guarantee that your insurance rates will be lower or that insurance will be more available than it is today.*

Our present system of justice has developed over hundreds of years to achieve the twin goals of (*one*) full compensation if you are injured because of someone else's fault and (*two*) encouraging safe and responsible practices and products. Every day, juries made up of taxpayers and consumers just like you carry out these goals. They decide who is at fault and put the responsibility where it belongs: not on innocent victims, but on drunk drivers, manufacturers of dangerous products or toxic waste and unsafe roads and highways. Where juries have been clearly wrong, appellate courts have overturned the jury awards.

But insurance companies never tell you that.

The current system works and it's fair: Those who caused the injuries pay the victims. Though juries assign a percentage of fault to those responsible, it is the involvement of everyone found guilty that caused the accident to occur. It is *not* fair to make innocent victims—who are not at fault—bear the cost, while the guilty walk away.

The insurance companies want the present system scrapped. Insurance companies have manufactured a crisis by refusing to issue policies, even in cases where they have no claims and no losses. They point to large jury awards as the root of the problem. You should know that juries give nothing—not one dollar—in 50% of the medical malpractice and product liability cases they hear.

But the insurance companies never tell you that either.

Insurance companies refuse to promise that insurance rates will be lower or policies more available if this initiative passes. In fact, Kansas and Ohio have measures similar to this proposition, yet they are also faced with insurance "crises." Proposition 51 solves *nothing*. The only guarantee it offers is that you lose your legal rights to full and fair compensation.

The battle over Proposition 51 is more than a mud fight between insurance companies and lawyers. Every Californian has a stake in assuring that businesses and local governments behave in a safe, responsible manner, and that innocent people who are injured by dangerous products or unsafe conditions are fully and fairly compensated. These values should not be sacrificed in favor of insurance industry profits.

Don't be fooled by slick ads. Don't be tricked by big corporations into voting away your legal rights. If you want to assure your access to justice and your ability to be compensated when injured by reckless and unethical behavior, join us in voting NO on Proposition 51 on June 3rd.

DON'T GIVE AWAY YOUR RIGHTS. VOTE NO!

HARRY M. SNYDER
Regional Director, California Consumers Union of U.S., Inc.

Rebuttal to Argument Against Proposition 51

California *TAXPAYERS ARE THE VICTIMS* of the unfair "deep pocket" law—*TRIAL LAWYERS ARE THE REAL BENEFICIARIES.*

PROPOSITION 51 PROTECTS BOTH INJURED VICTIMS AND TAXPAYERS.

- Injured victims will be FULLY COMPENSATED for *ALL* actual damages—present and future—medical bills, lost earnings and property damage. *VICTIMS' FAMILIES WILL NOT SUFFER FINANCIAL LOSS.*

Under Proposition 51:

- Liability insurance, now virtually impossible to obtain, could again be made available to cities and counties.
- Private sector commercial liability insurance premiums could drop 10–15%, according to D. Michael Enfield, managing director of the world's largest insurance brokerage.

IT'S A FAIR COMPROMISE. That's why one of the largest coalitions ever is supporting Proposition 51, including:

County Supervisors Association of California
League of California Cities
California Taxpayers' Association
California State PTA
California Chamber of Commerce
California Police Chiefs Association
California Community College Trustees
California Peace Officers Association
California School Boards Association
California State Sheriffs' Association
Consumer Alert
California Medical Association
Service Employees International Union, Joint Council #2
California Manufacturers Association
California Farm Bureau Federation
National Federation of Independent Business
California Dental Association
California District Attorneys Association
California Women for Agriculture
Zoological Society/San Diego
California Association of Recreation and Park Districts
Sierra Ski Areas Association
California Defense Counsel
Association for California Tort Reform
California Hospital Association
Associated General Contractors
California Restaurant Association
California Institute of Architects
Association of California School Administrators
Western United States Lifesaving Association
California Association of 4WD Clubs
All 58 COUNTIES, virtually EVERY CITY, and MANY MORE ORGANIZATIONS
(Legal limits prohibit a complete list.)

KIRK WEST
President, California Chamber of Commerce

PAT RUSSELL
President, League of California Cities
President, Los Angeles City Council

LESLIE BROWN
President, County Supervisors Association of California
Supervisor, Kings County