

BILL TEXT:

STATE OF NEW YORK

4073

2005-2006 Regular Sessions

IN ASSEMBLY

February 8, 2005

Introduced by M. of A. SEMINERIO -- read once and referred to the
Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to limit-
ing liability of public entities

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Section 105 of the civil practice law and rules is amended
2 by adding a new subdivision (r-1) to read as follows:

3 (r-1) Public entity. The term "public entity" means the state, a coun-
4 ty, city, town, or village, a public university, board of education,
5 community school board, board of cooperative educational services, or
6 school district, a fire district, volunteer fire department or fire
7 company, a public hospital, clinic, health center, or hospitals corpo-
8 ration, a public authority, a public benefit corporation, or any offi-
9 cer, agent or employee of a public entity.

10 § 2. Section 1411 of the civil practice law and rules, as added by
11 chapter 69 of the laws of 1975, is amended to read as follows:

12 § 1411. Damages recoverable when contributory negligence or assumption
13 of risk is established. [~~is~~] (a) Except as otherwise provided in this
14 section, in any action to recover damages for personal injury, injury to
15 property, or wrongful death, the culpable conduct attributable to the
16 claimant or to the decedent, including contributory negligence or
17 assumption of risk, shall not bar recovery, but the amount of damages
18 otherwise recoverable shall be diminished in the proportion which the
19 culpable conduct attributable to the claimant or decedent bears to the
20 culpable conduct which caused the damages.

21 (b) There shall be no right of recovery against a public entity when
22 the culpable conduct attributable to the claimant or decedent is found
23 to be fifty percent or more of the culpable conduct that caused the
24 damages.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[~~-~~] is old law to be omitted.

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1 (c) The provisions and limitations of this section shall apply to all
2 claims brought by, or on behalf of, the claimant or decedent, all deriv-
3 ative claims by the spouse or other family members of such claimant or
4 decedent, and all claims for contribution or common-law indemnification,
5 whether brought in the same, or another, action.

6 § 3. Section 1601 of the civil practice law and rules, as added by
7 chapter 682 of the laws of 1986 and subdivision 1 as amended by chapter
8 635 of the laws of 1996, is amended to read as follows:

9 § 1601. Limited liability of persons jointly liable. 1. Notwith-
10 standing any other provision of law, and except as provided in this
11 section, when a verdict or decision in an action or claim for personal
12 injury is determined in favor of a claimant in an action involving two
13 or more tortfeasors jointly liable [~~or in a claim against the state~~] and
14 the liability of a defendant is found to be fifty percent or less of the
15 total liability assigned to all persons liable, the liability of such
16 defendant to the claimant for non-economic loss shall not exceed that
17 defendant's equitable share determined in accordance with the relative
18 culpability of each person causing or contributing to the total liabil-
19 ity for non-economic loss; provided, however that the culpable conduct
20 of any person not a party to the action shall not be considered in
21 determining any equitable share herein if the claimant proves that with
22 due diligence he or she was unable to obtain jurisdiction over such
23 person in said action [~~(or in a claim against the state, in a court of~~
24 ~~this state)~~]; and further provided that the culpable conduct of any
25 person shall not be considered in determining any equitable share herein
26 to the extent that action against such person is barred because the
27 claimant has not sustained a "grave injury" as defined in section eleven
28 of the workers' compensation law.

29 2. Notwithstanding any other provision of law, when a verdict or deci-
30 sion in an action or claim for personal injury, injury to property or
31 wrongful death, is determined in favor of a claimant in an action
32 involving two or more tortfeasors, whether or not they are joined in the
33 action, the liability of a public entity to the claimant for any injury,
34 loss or damage shall not exceed the public entity's equitable share
35 determined in accordance with the relative culpability of each person
36 causing or contributing to the total liability.

37 3. Nothing in this section shall be construed to affect or impair any
38 right of a tortfeasor under section 15-108 of the general obligations
39 law.

40 § 4. Subdivision 6 of section 1602 of the civil practice law and
41 rules, as added by chapter 682 of the laws of 1986, is amended to read
42 as follows:

43 6. not apply to any person held liable by reason of his use, opera-
44 tion, or ownership of a motor vehicle or motorcycle, as those terms are
45 defined respectively in sections three hundred eleven and one hundred
46 twenty-five of the vehicle and traffic law; provided, however, that the
47 limitations set forth in this article shall apply to any public entity
48 held liable by reason of its use, operation, or ownership of a motor
49 vehicle or motorcycle.

50 § 5. This act shall take effect immediately and shall apply to all
51 actions and proceedings pending on or commenced on or after such effec-
52 tive date.

SPONSORS MEMO:

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)

BILL NUMBER: A4073

SPONSOR: Seminerio

TITLE OF BILL: An act to amend the civil practice law and rules, in relation to limiting liability of public entities

PURPOSE: This bill seeks to control the burgeoning costs of personal injury suits against public entities by barring recovery against a public entity by a plaintiff whose culpability is fifty percent or more of the culpable conduct that caused the damages; and limiting the amount payable by a public entity to its own proportional share of culpability.

SUMMARY OF PROVISIONS: This bill amends CPLR ? to bar recovery of damages from a public entity, defined to include the state, counties, cities, public authorities and certain others, for any injury if the claimant's own culpability was fifty percent or more of all culpability assigned. Under existing law the claimant's culpability proportionately reduces, but does not bar recovery of damages. In addition, this bill amends CPLR ? to limit the recovery of damages from a public entity for economic and non-economic loss to such entity's equitable share of liability. Under existing law, joint-and-several liability has been partially abolished, but only to the extent that a defendant that was no more than 50 percent culpable for the injury is only responsible for its equitable share of liability for non-economic loss. CPLR § 1602 provides several exceptions to the current joint and several liability law. This bill also amends CPLR ?(6) so that public entities would be liable only for their equitable share of damages in tort actions involving the use or operation of a motor vehicle or motorcycle.

JUSTIFICATION: Spiraling tort costs continue to have a grave impact on New York City's taxpaying public. This crisis, which led to a series of reforms in 1985 and 1986, has not lessened. Indeed, the measures adopted then have failed even to slow down the ominous growth in tort spending by New York City (the "City") and other public entities. In 1987, the first full year following enactment of such reform, the City's personal injury pay-out was \$116 million; in FY '98 the City paid approximately \$358 million, a staggering figure that represents a dramatic increase of \$70 million over the \$288 million paid in FY '97. The upward spiral continued, in FY '99, the City paid out \$374 million, in FY '00, the City paid out \$425 million and in FY '01, the City paid out \$574 million. These extraordinary increases are primarily attributable not to a greater number of cases against the City, but to exorbitant jury awards.

New York City is not the only "deep-pocket" affected by untenable jury verdicts. As the authors of a 27-state study conclude, "the size of the plaintiff's award is related most closely to litigant status rather than the type of trial, the areas of tort law, the length of time to disposition, or the locale. Knowing that the defendant is a corporation, insurance company, or governmental entity rather than an individual is the best predictor of the amount of the award."

Nevertheless, the burden on New York City residents is especially heavy. It has been estimated that the average annual cost to a New York City taxpayer is ten times that of the cost per taxpayer in the City of Denver. Moreover, that comparison does not even include the cost of verdicts against other governmental entities, such as the Transit Authority.

In FY '02, the City paid out \$484.7 million for tort claims. While a slight reduction from FY '01, the City's liability rose again in FY '03 to \$557.9 million. Tort claims cost more than twice the City's non-capi-

tal funding for the Department of Parks and more than twice the City's funding for its libraries. Indeed, the City's pay-out for FY '02 could have paid the salaries and benefits of almost 10,000 new police officers, firefighters or teachers.

This bill amends the comparative negligence statute (§ 1411) to bar recovery against a public entity by anyone whose own culpability was at least 50 percent responsible for the injury. Furthermore, it amends the modified joint-and-several liability statute (?), which was enacted in 1986 to provide that, instead of having to pay the entire judgment, with certain exceptions, a defendant found not more than 50 percent culpable would have to pay its proportional share only of non-economic loss. The bill would limit the amount payable by a public entity for both economic and non-economic loss to its own proportional share of liability, regardless of degree. Both proposals strike squarely at the deep-pocket abuse, without affecting a litigant's right to recover from other defendants as before.

Thus, for example, in *Colicchio v. City of New York*, the City was found to be 5% at fault for a vehicle accident which occurred when a taxi crossed over the 86th Street transverse. The jury found the taxi driver to be 95% at fault. The jury awarded the plaintiff \$6 million in damages, split evenly between pain and suffering and economic damages. While the City was only responsible for 5% (\$150,000) of the pain and suffering award, the City was liable to the plaintiff for the entire \$3 million economic damages, instead of its proportionate share of \$150,000.

Finally, the City and especially the Transit Authority confront a unique and unfair liability problem by virtue of their ownership and operation of large fleets of different types of vehicles. Except for fire and police vehicles, CPLR § 1602(6) excludes accidents involving publicly owned or operated vehicles such as buses and ambulances from the modified joint-and-several rule. Thus, a defendant, regardless of the degree of fault, is responsible for both the economic and non-economic damages if the defendant is liable because of his or her use or ownership of a motor vehicle. For example, in *Davis v. City of New York*, where a car swerved to avoid a sanitation truck and plowed into three plaintiffs on the sidewalk, the City was liable for the entire damage award. In *Davis*, the co-defendant, the operator of the car, admitted that he was under the influence of cocaine, heroin and methadone at the time of the accident. He, in fact, pleaded guilty to assault and served two years in jail. The jury awarded the plaintiffs over \$17 million. Even though the City was found 23% liable and codefendant was found 77% liable, the City was responsible to the plaintiff for the entire verdict. This bill corrects this type of inequity by exempting publicly owned or operated vehicles from the subdivision (6) exclusion.

FISCAL IMPLICATIONS: New York City estimates that the savings to the City attributable to the measures set forth in this bill would be as follows:

TORT REFORM			
Projected Savings			
(\$'s in millions)			
	FY '04	FY '05	FY '06
Abolition of J&S Liability	\$15	\$15	\$15
Modification of Comparative Neg.	\$ 6	\$ 6	\$ 6
Total	\$21	\$21	\$21

EFFECTIVE DATE: This act shall take effect immediately and shall apply to all actions and proceedings pending on or commenced on or after such effective date.

