

SUBJECT: Dollar-for-dollar credit against amount of recovery in most civil actions

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 5 ayes — Nixon, Rose, Madden, Martinez Fischer, Talton
0 nays
4 absent — P. King, Raymond, Strama, Woolley

SENATE VOTE: On final passage, April 13 — 30-0

WITNESSES: No public hearing

BACKGROUND: Civil Practice and Remedies Code, sec. 33.012, states that if a plaintiff settles with one or more defendants and goes to trial against any other defendant, then any amount the plaintiff is awarded against the defendant at trial must be reduced by a percentage equal to each settling party's percentage of responsibility. Defendants in health care liability claims may choose to have the amount they owe to the plaintiff reduced by either a percentage equal to each settling party's percentage of responsibility or by the total dollar sum of all settlements.

DIGEST: SB 890 would amend sec. 33.012 to change the amount that an award against a defendant could be reduced from a percentage credit based on a party's responsibility to a dollar-for-dollar credit based on the sum of all settlements. Defendants in health care liability cases still could choose their reduction method.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005. The bill would apply to all actions commenced on or after the effective date, or pending on the effective date and in which the trial or any new trial or retrial begins on or after the effective date. For actions commenced before the effective date, the former law would continue in effect for any trial, new trial, or retrial in progress on the effective date.

**SUPPORTERS
SAY:**

Requiring a dollar-for-dollar reduction of damage awards would be more fair. Plaintiffs are limited by law to only one full recovery, but under sec. 33.012 they are sometimes able to recover more than the amount authorized by the judge or jury. This could happen in a case where the plaintiff settled with defendant A and went to trial with defendant B, but the court found that defendant A was not responsible. The plaintiff would have collected from defendant A and would be entitled to a full recovery against defendant B because defendant A's responsibility was zero percent, so defendant B could not take a reduction. Requiring a dollar-for-dollar reduction would decrease the amount defendant B had to pay the plaintiff by the amount that defendant A already had paid. This could ensure that the plaintiff received only one recovery and no more.

Requiring dollar-for-dollar credits also would reduce litigation between co-defendants seeking to avoid having to pay part of the recovery to the plaintiff because the dollar-for-dollar system is straightforward and not capable of being abused or manipulated by any co-defendant.

**OPPONENTS
SAY:**

There is no reasonable basis for defendants in health care liability cases to have a choice between a dollar-for-dollar credit and a percentage credit. For the sake of fairness and consistency, all defendants should be subject to the dollar-for-dollar credit, with no type of defendant receiving special treatment.

NOTES:

The Senate-passed version would have applied the dollar-for-dollar credit to all defendants, including defendants in health care liability cases.