AN ACT

relating to responsibility for, and recovery of, damages in certain civil actions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 33, Civil Practice and Remedies Code, is amended to read as follows:

CHAPTER 33. PROPORTIONATE [~~COMPARATIVE~~] RESPONSIBILITY

SUBCHAPTER A. PROPORTIONATE [~~COMPARATIVE~~] RESPONSIBILITY

Sec. 33.001. PROPORTIONATE [~~COMPARATIVE~~] RESPONSIBILITY. [~~(a)~~] In an action to which this chapter applies [~~recover damages for negligence resulting in personal injury, property damage, or death or an action for products liability grounded in negligence~~], a claimant may not recover damages [~~only~~] if his percentage of responsibility is greater [~~less~~] than [~~or equal to~~] 50 percent.

[~~(b) In an action to recover damages for personal injury, property damage, or death in which at least one defendant is found liable on a basis of strict tort liability, strict products liability, or breach of warranty under Chapter 2, Business & Commerce Code, a claimant may recover damages only if his percentage of responsibility is less than 60 percent.~~

[~~(c) In an action in which a claimant seeks damages for harm other than personal injury, property damage, or death, arising out of any action grounded in negligence, including but not limited to negligence relating to any professional services rendered by an~~

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architect,--attorney,--certified--public--accountant,--real--estate broker-or-agent,-or-engineer-licensed-by-this-state,-a-claimant-may recover--damages--only--if-his-percentage-of-responsibility-is-less than-or-equal-to-50-percent.]

Sec. 33.002. APPLICABILITY. (a) Except as provided by Subsections (b) and (c), this chapter applies to any cause of action based on tort in which a defendant, settling person, or responsible third party is found responsible for a percentage of the harm for which relief is sought [This-chapter-does-not-apply-to a-claim-based-on-an-intentional--tort--or--a--claim--for--exemplary damages--included--in--an--action--to--which-this-chapter-otherwise applies].

(b) Notwithstanding Subsection (a), a defendant who, with the specific intent to do harm to others, acts in concert with another person to engage in the conduct described in the following sections of the Penal Code shall be jointly and severally liable with such other person for the damages legally recoverable by the claimant that were proximately caused by such conduct:

(1) Section 19.02 (murder);

(2) Section 19.03 (capital murder);

(3) Section 20.04 (aggravated kidnapping);

(4) Section 22.02 (aggravated assault);

(5) Section 22.011 (sexual assault);

(6) Section 22.021 (aggravated sexual assault);

(7) Section 22.04 (injury to child, elderly

individual, or disabled individual);

(8) Section 32.21 (forgery);

(9) Section 32.43 (commercial bribery);

(10) Section 32.45 (misapplication of fiduciary property or property of financial institution);

(11) Section 32.46 (securing execution of document by deception);

(12) Section 32.47 (fraudulent destruction, removal, or concealment of writing); or

(13) conduct described in Chapter 31 the punishment level for which is a felony of the third degree or higher.

(c) This chapter does not apply to:

(1) an action to collect workers' compensation benefits under the workers' compensation laws of this state (Subtitle A, Title 5, Labor Code) [~~(Article 8306 et seq., Vernon's Texas Civil Statutes)~~] or actions against an employer for exemplary damages arising out of the death of an employee; or

(2) a claim for exemplary damages included in an action to which this chapter otherwise applies [~~an action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) except as specifically provided in Section 17.50 of that Act; or~~

[~~(3) an action brought under Chapter 21, Insurance Code~~].

(d) Notwithstanding anything to the contrary stated in the

sections of the Penal Code listed in Subsection (b), that subsection shall not apply unless the claimant proves the defendant acted or failed to act with intent to do harm as defined in this section.

(e) For purposes of this section, a person acts with intent to do harm with respect to the nature of the person's conduct and the result of the person's conduct when it is the person's conscious effort or desire to engage in such conduct for the purpose of doing substantial harm to others.

(f) Nothing in this section shall require a submission to the jury of a question regarding conduct by any party absent sufficient evidence to support the submission.

(g) The jury shall not be made aware through voir dire, introduction into evidence, instruction, or any other means that the conduct to which Subsection (b) applies is defined by the Penal Code.

Sec. 33.003. DETERMINATION OF PERCENTAGE OF [~~COMPARATIVE~~] RESPONSIBILITY. The trier of fact, as to each cause of action asserted, shall determine the percentage of responsibility, stated in whole numbers, for the following persons with respect to each person's causing or contributing to cause in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these:

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(1) each claimant;

(2) each defendant; [and]

(3) each settling person; and

(4) each responsible third party who has been joined under Section 33.004.

Sec. 33.004. JOINDER OF RESPONSIBLE THIRD PARTIES. (a) Except as provided in Subsections (d) and (e), prior to the expiration of limitations on the claimant's claim for damages against the defendant and on timely motion made for that purpose, a defendant may seek to join a responsible third party who has not been sued by the claimant.

(b) Nothing in this section shall affect the third-party practice as previously recognized in the rules and statutes of this state with regard to the assertion by a defendant of rights to contribution or indemnity. Nothing in this section shall affect the filing of cross-claims or counterclaims.

(c) A seller eligible for indemnity under Section 82.002 shall not be joined as a responsible third party under this section unless there is alleged against the seller a claim for relief based on the seller's negligence, intentional misconduct, or other act or omission, such as negligently modifying or altering a product, for which the seller is independently liable to the claimant.

(d) A third party claim by a defendant under this section may be filed, even though the claimant's action against the responsible third party would be barred by limitations, if the

third party claim is filed on or before 30 days after the date the defendant's answer is required to be filed. This section shall not apply if the limitations period governing the claimant's action against the defendant joining the responsible third party is longer than the limitations period governing the claimant's action against the responsible third party.

(e) A claimant may join a responsible third party, even though such joinder would otherwise be barred by limitations, if the claimant seeks to join the responsible third party not later than 60 days after a third party claim is filed under Subsection (d).

SUBCHAPTER B. CONTRIBUTION

Sec. 33.011. DEFINITIONS. In this chapter:

(1) "Claimant" means a party seeking recovery of damages pursuant to the provisions of Section 33.001, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff seeking recovery of damages. In an action in which a party seeks recovery of damages for injury to another person, damage to the property of another person, death of another person, or other harm to another person, "claimant" includes both that other person and the party seeking recovery of damages pursuant to the provisions of Section 33.001.

(2) "Defendant" includes any party from whom a claimant seeks recovery of damages pursuant to the provisions of Section 33.001 at the time of the submission of the case to the

trier of fact.

(3) "Liable defendant" means a defendant against whom a judgment can be entered for at least a portion of the damages awarded to the claimant.

(4) "Percentage of responsibility" means that percentage, stated in whole numbers, attributed by the trier of fact to each claimant, each defendant, [or] each settling person, or each responsible third party with respect to causing or contributing to cause in any way, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity violative of the applicable legal standard, or by any combination of the foregoing, the personal injury, property damage, death, or other harm for which recovery of damages is sought.

(5) "Settling person" means a person who at the time of submission has paid or promised to pay money or anything of monetary value to a claimant at any time in consideration of potential liability pursuant to the provisions of Section 33.001 with respect to the personal injury, property damage, death, or other harm for which recovery of damages is sought.

(6)(A) "Responsible third party" means any person to whom all of the following apply:

(i) the court in which the action was filed could exercise jurisdiction over the person;

(ii) the person could have been, but was

[illegible] by the claimant; and

(iii) the person is or may be liable to the plaintiff for all or a part of the damages claimed against the named defendant or defendants.

(B) The term "responsible third party" does not include:

(i) the claimant's employer, if the employer maintained workers' compensation insurance coverage, as defined by Section 401.011(44), Labor Code, at the time of the act, event, or occurrence made the basis of the claimant's suit; or

(ii) a person or entity that is a debtor in bankruptcy proceedings or a person or entity against whom this claimant's claim has been discharged in bankruptcy, except to the extent that liability insurance or other source of third party funding may be available to pay claims asserted against the debtor.

(7) "Toxic tort" means a cause of action in tort or for breach of implied warranty under Chapter 2, Business & Commerce Code, for damages of any kind arising out of or caused by exposure to or the deposit, discharge, or release into the environment of hazardous chemicals, hazardous wastes, hazardous hydrocarbons, similarly harmful organic or mineral substances, hazardous radiation sources, and other similarly harmful substances, including torts arising out of exposure to such substances in the work place, but not including any "drug" as defined in Section 82.005(d)(2).

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Sec. 33.012. AMOUNT OF RECOVERY. (a) If the claimant is not barred from recovery under Section 33.001, the court shall reduce the amount of damages to be recovered by the claimant with respect to a cause of action by a percentage equal to the claimant's percentage of responsibility.

(b) If the claimant has settled with one or more persons, the court shall further reduce the amount of damages to be recovered by the claimant with respect to a cause of action by a credit equal to one of the following, as elected in accordance with Section 33.014:

(1) the sum of the dollar amounts of all settlements; or

(2) a dollar amount equal to the sum of the following percentages of damages found by the trier of fact:

(A) 5 percent of those damages up to $200,000;

(B) 10 percent of those damages from $200,001 to $400,000;

(C) 15 percent of those damages from $400,001 to $500,000; and

(D) 20 percent of those damages greater than $500,000.

(c) The amount of damages recoverable by the claimant may only be reduced once by the credit provided for in Subsection (b).

(d) This section shall not apply to benefits paid by or on behalf of an employer to an employee pursuant to workers'

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compensation insurance coverage, as defined in Section 401.011(44), Labor Code, in effect at the time of the act, event, or occurrence made the basis of claimant's suit.

Sec. 33.013. AMOUNT OF LIABILITY. (a) Except as provided in Subsections (b) and (c), a liable defendant is liable to a claimant only for the percentage of the damages found by the trier of fact equal to that defendant's percentage of responsibility with respect to the personal injury, property damage, death, or other harm for which the damages are allowed.

(b) Notwithstanding Subsection (a), each liable defendant is, in addition to his liability under Subsection (a), jointly and severally liable for the damages recoverable by the claimant under Section 33.012 with respect to a cause of action if[~~:~~

[~~(1)~~] the percentage of responsibility attributed to the defendant is greater than 50 [~~20~~] percent[~~;-and~~

[~~(2)--only-for-a-negligence-action-pursuant-to--Section 33.001(a)--or--(c),--the-percentage-of-responsibility-attributed-to the-defendant-is-greater--than--the--percentage--of--responsibility attributed-to-the-claimant~~].

(c) Notwithstanding Subsections [~~Subsection~~] (a) and (b), each liable defendant is, in addition to his liability under Subsection (a), jointly and severally liable for the damages recoverable by the claimant under Section 33.012 with respect to a cause of action if[~~:~~

[~~(1)--the-percentage-of-responsibility-is-attributed-to~~

~~the claimant and~~] the percentage of responsibility attributed to the defendant is equal to or greater than 15 [~~10~~] percent and:[~~;~~ or]

(1) [~~(2)~~] the claimant's personal injury, property damage, [or] death, or other harm is caused by the depositing, discharge, or release into the environment of any hazardous or harmful substance as described in Section 33.011(7) [~~Subdivision (3)~~]; or

(2) [~~(3)~~] the claimant's personal injury, property damage, [or] death, or other harm resulted from a [~~"~~]toxic tort.[~~" "Toxic tort" means a cause of action in tort or for breach of implied warranty under Chapter 2, Business & Commerce Code, arising out of exposure to hazardous chemicals, hazardous wastes, hazardous hydrocarbons, similarly harmful organic or mineral substances, hazardous radiation sources, and other similarly harmful substances (which usually, but need not necessarily, arise in the work place), but not including any "drug" as defined in Section 81.001(3), Civil Practice and Remedies Code.~~]

(d) This section does not create a cause of action.

Sec. 33.014. ELECTION OF CREDIT FOR SETTLEMENTS. [~~(a)~~] If a claimant has settled with one or more persons, an election must be made as to which dollar credit is to be applied under Section 33.012(b). This election shall be made by any defendant filing a written election before the issues of the action are submitted to the trier of fact and, when made, shall be binding on all

defendants. If no defendant makes this election or if conflicting elections are made, all defendants are considered to have elected subdivision (2) of Section 33.012(b).

Sec. 33.015. CONTRIBUTION. (a) If a defendant who is jointly and severally liable under Section 33.013 pays a percentage of the damages for which the defendant is jointly and severally liable greater than his percentage of responsibility, that defendant has a right of contribution for the overpayment against each other liable defendant to the extent that the other liable defendant has not paid the percentage of the damages found by the trier of fact equal to that other defendant's percentage of responsibility.

(b) As among themselves, each of the defendants who is jointly and severally liable under Section 33.013 is liable for the damages recoverable by the claimant under Section 33.012 in proportion to his respective percentage of responsibility. If a defendant who is jointly and severally liable pays a larger proportion of those damages than is required by his percentage of responsibility, that defendant has a right of contribution for the overpayment against each other defendant with whom he is jointly and severally liable under Section 33.013 to the extent that the other defendant has not paid the proportion of those damages required by that other defendant's percentage of responsibility.

(c) If for any reason a liable defendant does not pay or contribute the portion of the damages required by his percentage of

responsibility, the amount of the damages not paid or contributed by that defendant shall be paid or contributed by the remaining defendants who are jointly and severally liable for those damages. The additional amount to be paid or contributed by each of the defendants who is jointly and severally liable for those damages shall be in proportion to his respective percentage of responsibility.

(d) No defendant has a right of contribution against any settling person.

Sec. 33.016. CLAIM AGAINST CONTRIBUTION DEFENDANT. (a) In this section, "contribution defendant" means any defendant, counterdefendant, or third-party defendant from whom any party seeks contribution with respect to any portion of damages for which that party may be liable, but from whom the claimant seeks no relief at the time of submission.

(b) Each liable defendant is entitled to contribution from each person who is not a settling person and who is liable to the claimant for a percentage of responsibility but from whom the claimant seeks no relief at the time of submission. A party may assert this contribution right against any such person as a contribution defendant in the claimant's action.

(c) The trier of fact shall determine as a separate issue or finding of fact the percentage of responsibility with respect to each contribution defendant and these findings shall be solely for purposes of this section and Section 33.015 and not as a part of

the percentages of responsibility determined under Section 33.003. Only the percentage of responsibility of each defendant and contribution defendant shall be included in this determination.

(d) As among liable defendants, including each defendant who is jointly and severally liable under Section 33.013, each contribution defendant's percentage of responsibility is to be included for all purposes of Section 33.015. The amount to be contributed by each contribution defendant pursuant to Section 33.015 shall be in proportion to his respective percentage of responsibility relative to the sum of percentages of responsibility of all liable defendants and liable contribution defendants.

Sec. 33.017. PRESERVATION OF EXISTING RIGHTS OF INDEMNITY. Nothing in this chapter shall be construed to affect any rights of indemnity granted to a seller eligible for indemnity by Chapter 82, the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), or any other statute, nor shall it affect rights of indemnity granted by contract or at common law. To the extent of any conflict between this chapter and any right to indemnification granted by Section 82.002, the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), or any other statute, contract, or common law, those rights of indemnification shall prevail over the provisions of this chapter.

SECTION 2. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 95 to read as follows:

CHAPTER 95. PROPERTY OWNER'S LIABILITY FOR ACTS OF INDEPENDENT CONTRACTORS AND AMOUNT OF RECOVERY

Sec. 95.001. DEFINITIONS. In this chapter:

(1) "Claim" means a claim for damages caused by negligence, including a counterclaim, cross-claim, or third party claim.

(2) "Claimant" means a party making a claim subject to this chapter.

(3) "Property owner" means a person or entity that owns real property primarily used for commercial or business purposes.

Sec. 95.002. APPLICABILITY. This chapter applies only to a claim:

(1) against a property owner, contractor, or subcontractor for personal injury, death, or property damage to an owner, a contractor, or a subcontractor or an employee of a contractor or subcontractor; and

(2) that arises from the condition or use of an improvement to real property where the contractor or subcontractor constructs, repairs, renovates, or modifies the improvement.

Sec. 95.003. LIABILITY FOR ACTS OF INDEPENDENT CONTRACTORS. A property owner is not liable for personal injury, death, or property damage to a contractor, subcontractor, or an employee of a contractor or subcontractor who constructs, repairs, renovates, or modifies an improvement to real property, including persona-

injury, death, or property damage arising from the failure to provide a safe workplace unless:

(1) the property owner exercises or retains some control over the manner in which the work is performed, other than the right to order the work to start or stop or to inspect progress or receive reports; and

(2) the property owner had actual knowledge of the danger or condition resulting in the personal injury, death, or property damage and failed to adequately warn.

Sec. 95.004. EVIDENCE ADMISSIBLE. In the trial of a case against a contractor, subcontractor, or property owner for personal injury, property damage, or death to a contractor, a subcontractor, or an employee of a contractor or subcontractor that arises from the condition or use of an improvement to real property where the contractor or subcontractor constructs, repairs, renovates, or modifies the improvement, the trial judge, outside the presence of the jury, shall receive evidence of workers' compensation benefits paid and shall deduct the amount of the benefits from the damages awarded by the trier of fact. The deduction for workers' compensation benefits does not apply unless the workers' compensation carrier's subrogation rights have been waived.

SECTION 3. This Act takes effect September 1, 1995, and applies to all causes of action that accrue on or after that date. This Act applies to all causes of action that accrued before the effective date of this Act and on which suit is filed on or after

September 1, 1996. A cause of action that accrued before the effective date of this Act and on which suit is filed prior to September 1, 1996, is governed by the law in effect immediately prior to the effective date of this Act and that law is continued in effect for that purpose.

SECTION 4. Notwithstanding Section 3 of this Act, Chapter 66, Civil Practice and Remedies Code, as added by this Act, takes effect September 1, 1996, and applies only to a cause of action that accrues on or after that date.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

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S.B. No. 28

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 28 passed the Senate on March 1, 1995, by a viva-voce vote; and that the Senate concurred in House amendments on May 8, 1995, by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 28 passed the House, with amendments, on May 4, 1995, by a non-record vote.

Chief Clerk of the House

Approved:

5.18.95

Date

Governor

FILED IN THE OFFICE OF THE SECRETARY OF STATE

2:15 p.m. o'clock

MAY 18 1995

Secretary of State

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