

# SENATE BILL NO. 669

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHITE.

3740S.01I

ADRIANE D. CROUSE, Secretary

## AN ACT

To repeal sections 537.060 and 537.067, RSMo, and to enact in lieu thereof four new sections relating to civil actions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 537.060 and 537.067, RSMo, are  
2 repealed and four new sections enacted in lieu thereof, to be  
3 known as sections 537.059, 537.060, 537.067, and 537.767, to  
4 read as follows:

**537.059. In all actions in which there is any count  
2 alleging a tort to recover damages and in which any party  
3 contends that the damages were caused by the alleged fault  
4 of more than one person or entity, the trier of fact shall  
5 determine the amount of fault attributable to each person or  
6 entity, regardless of whether the person or entity is a  
7 party to the action, and regardless of whether the person or  
8 entity has settled or been released from liability. Fault  
9 of another person or entity may be alleged by any party to  
10 the tort action in any claim, counterclaim, cross-claim, or  
11 as an affirmative defense. Any determination by the trier  
12 of fact as to the amount of fault attributable to a person  
13 or entity not a party to the action at the time of trial  
14 shall not be binding against or otherwise affect the rights  
15 or liabilities of that person or entity.**

537.060. Defendants in a judgment founded on an action  
2 for the redress of a private wrong shall be subject to

**EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

3 contribution, and all other consequences of such judgment,  
4 in the same manner and to the same extent as defendants in a  
5 judgment in an action founded on contract. When an  
6 agreement by release, covenant not to sue or not to enforce  
7 a judgment is given in good faith to one of two or more  
8 persons liable in tort for the same injury or wrongful  
9 death, such agreement shall not discharge any of the other  
10 tort-feasors for the damage unless the terms of the  
11 agreement so provide[; however such agreement shall reduce  
12 the claim by the stipulated amount of the agreement, or in  
13 the amount of consideration paid, whichever is greater. The  
14 agreement shall discharge the tort-feasor to whom it is  
15 given from all liability for contribution or noncontractual  
16 indemnity to any other tort-feasor. The term  
17 "noncontractual indemnity" as used in this section refers to  
18 indemnity between joint tort-feasors culpably negligent,  
19 having no legal relationship to each other and does not  
20 include indemnity which comes about by reason of contract,  
21 or by reason of vicarious liability].

537.067. 1. In all tort actions for damages, if a  
2 defendant is found to bear fifty-one percent or more of  
3 fault, then such defendant shall be jointly and severally  
4 liable for the amount of the judgment rendered against the  
5 defendants **less the total of any stipulated amount in any**  
6 **release, covenant not to sue or not to enforce a judgment**  
7 **under any agreement with any other person or entity alleged**  
8 **to have been at fault pursuant to section 537.059, or any**  
9 **consideration paid by such person or entity, whichever is**  
10 **greater.** If a defendant is found to bear less than fifty-  
11 one percent of fault, then the defendant shall only be  
12 responsible for the percentage of the judgment for which the  
13 defendant is determined to be responsible by the trier of

14 fact; except that, a party is responsible for the fault of  
15 another defendant or for payment of the proportionate share  
16 of another defendant if any of the following applies:

17 (1) The other defendant was acting as an employee of  
18 the party;

19 (2) The party's liability for the fault of another  
20 person arises out of a duty created by the federal  
21 Employers' Liability Act, 45 U.S.C. Section 51.

22 2. The defendants shall only be severally liable for  
23 the percentage of punitive damages for which fault is  
24 attributed to such defendant by the trier of fact.

25 3. In all tort actions, no party may disclose to the  
26 trier of fact the impact of this section.

**537.767. 1. In any civil action for personal injury,  
2 death, or property damage caused by a product, regardless of  
3 the type of claims alleged or the theory of liability  
4 asserted, the plaintiff shall prove, among other elements,  
5 that the defendant designed, manufactured, sold, or leased  
6 the particular product the use of which is alleged to have  
7 caused the injury on which the claim is based, and not a  
8 similar or equivalent product. Designers, manufacturers,  
9 sellers, or lessors of products not identified as having  
10 been used, ingested, or encountered by an allegedly injured  
11 party shall not be held liable for any alleged injury. A  
12 person, firm, corporation, association, partnership, or  
13 other legal or business entity whose design is copied or  
14 otherwise used by a manufacturer without the designer's  
15 express authorization shall not be subject to liability for  
16 personal injury, death, or property damage caused by the  
17 manufacturer's product even if use of the design was  
18 foreseeable.**

19           2. This section shall not alter or affect any other  
20 provision of law, including those provisions that apply to  
21 successor entities, distributors, component manufacturers,  
22 or manufacturers who use component parts in assembling  
23 products for sale as complete units or those provisions that  
24 apply to the operation of a contract, including a licensing  
25 agreement.

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