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# Issue brief

## What is joint and several liability?

### Why is legal reform needed?

An efficient civil legal system is essential for a thriving economy. It ensures that businesses and individuals have proper incentives to produce safe products and provide safe services, and that true victims are fully compensated. An inefficient civil legal system imposes excessive costs on society, including forgone production of goods and services. All of us shoulder the burden of an expensive and inefficient civil legal system through higher prices, lower wages, decreased returns on investments in capital and land, restricted access to health care and less innovation.

### What is the joint and several liability rule?

The common law rule holds that every defendant found liable in a personal injury lawsuit will be responsible for 100 percent of the damages awarded to a plaintiff, regardless of the percentage of liability assessed against the defendant. "Joint:" The defendants are liable together. "Several:" Several defendants may be pursued for the entire verdict. In other words, a defendant will be responsible for paying 100 percent of the judgment even it is found to be only 1 percent responsible for the happening of an accident. In the current system, which encourages a "lawsuit lottery," plaintiffs' lawyers go after defendants with "deep pockets" without regard to the relative degree of involvement by that defendant. Plaintiffs' lawyers also use this system to extract unfairly large settlements from defendants, who settle out of court rather than face the prospect of being responsible for the entire judgment.

### Why should joint and several liability rule be reformed?

The effect of joint and several liability is to convert lawsuits into searches for financially viable defendants. This causes defendants to settle out of court for fear of being found fully liable for substantial judgments. The application of the joint and several liability rule poses a serious problem for businesses and health-care professionals. The solvent party, or "deep pocket," often has to pay all, or a large part, of the damages awarded. Joint and several liability is not just a problem when other defendants are bankrupt. If one of the defendants settles with the plaintiff, and subsequent trial allocates damages to that defendant in excess of the settlement amount, the remaining defendants may be liable for the difference.

Businesses need to be treated fairly by not holding them responsible for harm they do not cause. This means that a defendant should only be required to pay the percentage of a judgment that matches their responsibility for any harm caused, as opposed to being held fully liable as they are under current law. Joint and several liability reform is an economic development tool that has no budgetary impact on the state. Further, difficult economic times increase the need to make sure that responsible business owners are not strapped with unnecessary hidden taxes like spiraling liability costs. Joint and several liability reform is about fairness. Percentage of fault equals percentage of financial responsibility.

### Have other states abolished or modified the joint and several liability rule?

Forty states have abolished or modified the joint and several liability rule.

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## **What is the legislative history of joint and several liability rule reform in Pennsylvania?**

In 2002, the Pennsylvania General Assembly passed and Gov. Mark Schweiker signed a law—the “Fair Share Act”—that would have provided significant and meaningful reform, and significantly improved Pennsylvania’s legal climate. The law was held to be unconstitutional on a procedural issue in its adoption. The Pennsylvania Supreme Court found in *DeWeese v. Weaver*, 880 A.2d 54 & 824 A.2d 364 (Pa. Cmwlth. 2005) that the law violated the single subject rule of the Pennsylvania Constitution. The same legislation passed the General Assembly in 2006, but Gov. Ed Rendell vetoed the bill.

## **What is the Fair Share Act?**

The act eliminates joint and several liability in the recovery of all damages—making damage awards proportional to responsibility for the injury or loss—except in cases when a defendant was: (1) been found liable for intentional fraud or tort; (2) held liable for environmental hazards; (3) been held civilly liable as a result of drunk driving; or (4) held more than 60 percent liable for the injury or loss. A defendant who was found more than 60 percent, but less than 100 percent, liable would still have maintained the right to take action against other defendants seeking compensation for contributory damages.