

Adopted Rejected

COMMITTEE REPORT

YES:	10
NO:	2

MR. SPEAKER:

*Your Committee on Judiciary, to which was referred House Bill 1118, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 34-4-33-5, AS AMENDED BY P.L.278-1995,
- 4 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 5 JULY 1, 1998]: Sec. 5. (a) In an action based on fault that is brought
- 6 against one (1) defendant or two (2) or more defendants who may be
- 7 treated as a single party, and that is tried to a jury, the court, unless all
- 8 the parties agree otherwise, shall instruct the jury to determine its
- 9 verdict in the following manner:
- 10 (1) The jury shall determine the percentage of fault of the
- 11 claimant, of the defendant, and of any person who is a nonparty.
- 12 The jury ~~may not~~ **shall** be informed of any immunity defense that
- 13 is available to a nonparty. In assessing percentage of fault, the
- 14 jury shall consider the fault of all persons who caused or
- 15 contributed to cause the alleged injury, death, or damage to
- 16 property, tangible or intangible, regardless of whether the person

1 was or could have been named as a party. The percentage of
2 fault of parties to the action may total less than one hundred
3 percent (100%) if the jury finds that fault contributing to cause
4 the claimant's loss has also come from a nonparty or nonparties.

5 (2) If the percentage of fault of the claimant is greater than fifty
6 percent (50%) of the total fault involved in the incident which
7 caused the claimant's death, injury, or property damage, the jury
8 shall return a verdict for the defendant and no further
9 deliberation of the jury is required.

10 (3) If the percentage of fault of the claimant is not greater than
11 fifty percent (50%) of the total fault, the jury then shall
12 determine the total amount of damages the claimant would be
13 entitled to recover if contributory fault were disregarded.

14 (4) The jury next shall multiply the percentage of fault of the
15 defendant by the amount of damages determined under
16 subdivision (3) and shall then enter a verdict for the claimant in
17 the amount of the product of that multiplication.

18 (b) In an action based on fault that is brought against two (2) or
19 more defendants, and that is tried to a jury, the court, unless all the
20 parties agree otherwise, shall instruct the jury to determine its verdict
21 in the following manner:

22 (1) The jury shall determine the percentage of fault of the
23 claimant, of the defendants, and of any person who is a nonparty.
24 The jury ~~may not~~ **shall** be informed of any immunity defense that
25 might be available to a nonparty. In assessing percentage of
26 fault, the jury shall consider the fault of all persons who caused
27 or contributed to cause the alleged injury, death, or damage to
28 property, tangible or intangible, regardless of whether the person
29 was or could have been named as a party. The percentage of
30 fault of parties to the action may total less than one hundred
31 percent (100%) if the jury finds that fault contributing to cause
32 the claimant's loss has also come from a nonparty or nonparties.

33 (2) If the percentage of fault of the claimant is greater than fifty
34 percent (50%) of the total fault involved in the incident which
35 caused the claimant's death, injury, or property damage, the jury
36 shall return a verdict for the defendants and no further
37 deliberation of the jury is required.

38 (3) If the percentage of fault of the claimant is not greater than

1 fifty percent (50%) of the total fault, the jury shall then
2 determine the total amount of damages the claimant would be
3 entitled to recover if contributory fault were disregarded.
4 (4) The jury next shall multiply the percentage of fault of each
5 defendant by the amount of damages determined under
6 subdivision (3) and shall enter a verdict against each such
7 defendant (and such other defendants as are liable with the
8 defendant by reason of their relationship to such defendant) in
9 the amount of the product of the multiplication of each
10 defendant's percentage of fault times the amount of damages as
11 determined under subdivision (3).
12 (c) In an action based on fault that is tried by the court without a
13 jury, the court shall make its award of damages according to the
14 principles specified in subsections (a) and (b) for juries.
15 (d) In the case of an intentional tort, the plaintiff may recover one
16 hundred percent (100%) of the compensatory damages in a civil action
17 for intentional tort from a defendant who was convicted after a
18 prosecution based on the same evidence."
19 Renumber all SECTIONS consecutively.
 (Reference is to HB 1118 as introduced.)

and when so amended that said bill do pass.

Representative Villalpando