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| joint; several liability; criminal offenses |          |           |           |            |

House Engrossed

State of Arizona

House of Representatives

Forty-eighth Legislature

Second Regular Session

2008

# HOUSE BILL 2660

## AN ACT

amending title 12, chapter 6, Arizona Revised Statutes, by adding article 17; amending [section 12-2506, Arizona Revised Statutes](#); relating to obscene and dangerous material.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 12, chapter 6, Arizona Revised Statutes, is amended by adding article 17, to read:

#### ARTICLE 17. DANGEROUS OR OBSCENE MATERIAL LIABILITY

##### 12-771. Dangerous or obscene material liability; terrorism; felony acts; definitions

A. A person is liable for damages if the person produces, publishes or distributes written, audio, video or digital material and all of the following apply:

1. The material is dangerous or obscene.
2. The person benefited from the production, publishing or distribution of the material.
3. The person knew, should have known or recklessly disregarded a significant risk that the material would substantially assist, encourage or result in another person committing terrorism or a felony offense.
4. The material was a cause in another person committing terrorism or a felony offense against a victim.

B. Notwithstanding sections 12-505 and 12-542, an action pursuant to this section shall be commenced within two years after the final disposition of the criminal proceedings.

C. The court shall award reasonable attorney fees and costs to a victim who prevails in an action pursuant to this section.

D. For the purposes of this section:

1. "Dangerous" means material that is found by clear and convincing evidence to incite or produce an imminent act of terrorism or a felony offense.
2. "Obscene" means material that:
  - (a) The average person, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest.
  - (b) The average person, applying contemporary community standards, would find that the material depicts or describes, in a patently offensive way, sexual conduct specifically defined by state law.
  - (c) Taken as a whole, lacks serious literary, artistic, political or scientific value.
3. "Terrorism" has the same meaning prescribed in section 13-2301.
4. "Victim" has the same meaning prescribed in section 8-382 or 13-4401.

Sec. 2. Section 12-2506, Arizona Revised Statutes, is amended to read:

##### 12-2506. Joint and several liability abolished; exception; apportionment of degrees of fault; definitions

A. In an action for personal injury, property damage or wrongful death, the liability of each defendant for damages is several only and is not joint, except as otherwise provided in this section. Each defendant is liable only for the amount of damages allocated to that defendant in direct proportion to that defendant's percentage of fault, and a separate judgment shall be entered against the defendant for that amount. To determine the amount of judgment to be entered against each defendant, the trier of fact shall multiply the total amount of damages recoverable by the plaintiff by the percentage of each defendant's fault, and that amount is the maximum recoverable against the defendant.

B. In assessing percentages of fault the trier of fact shall consider the fault of all persons who contributed to the alleged injury, death or damage to property, regardless of whether the person was, or could have been, named as a party to the suit. Negligence or fault of a nonparty may be considered if the plaintiff entered into a settlement agreement with the nonparty or if the defending party gives notice before trial, in accordance with requirements established by court rule, that a nonparty was wholly or partially at fault. Assessments of percentages of fault for nonparties are used only as a vehicle for accurately determining the fault of the named parties. Assessment of fault against nonparties does not subject any nonparty to liability in this or any other action, and it may not be introduced as evidence of liability in any action.

C. The relative degree of fault of the claimant, and the relative degrees of fault of all defendants and nonparties, shall be determined and apportioned as a whole at one time by the trier of fact. If two or more claimants have independent claims, a separate determination and apportionment of the relative degrees of fault of the respective parties, and any nonparties at fault, shall be made with respect to each of the independent claims.

D. The liability of each defendant is several only and is not joint, except that a party is responsible for the fault of another person, or for payment of the proportionate share of another person, if any of the following applies:

1. Both the party and the other person were acting in concert.
2. The other person was acting as an agent or servant of the party.
3. The party's liability for the fault of another person arises out of a duty created by the federal employers' liability act, ([45 United States Code section 51](#)).
4. The party produces, publishes or distributes written, audio, video or digital material pursuant to section 12-771.

E. If a defendant is found jointly and severally liable pursuant to subsection D, the defendant has the right to contribution pursuant to this chapter. In an action arising out of a duty created by the federal employers' liability act ([45 United States Code section 51](#)), a person or entity, other than an employee of the defendant, whose negligence or fault caused or contributed to the plaintiff's injury or death shall contribute to the defendant pursuant to this chapter. An action for contribution shall be adjudicated and determined by the same trier of fact that adjudicates and determines the action for the plaintiff's injury or death. The trier of fact shall adjudicate and determine an action for contribution after the court enters a judgment for the plaintiff's injury or death. On motion before the conclusion of the trial, the plaintiff is entitled to an award against the defendant for actual expenses the plaintiff incurred as a direct result of the defendant's claim for contribution. The expenses shall include reasonable attorney fees as determined by the court.

F. For the purposes of this section:

1. "Acting in concert" means entering into a conscious agreement to pursue a common plan or design to commit an intentional tort and actively taking part in that intentional tort. Acting in concert does not apply to any person whose conduct was negligent in any of its degrees rather than intentional. A person's conduct that provides substantial assistance to one committing an intentional tort does not constitute acting in concert if the person has not consciously agreed with the other to commit the intentional tort.
2. "Fault" means an actionable breach of legal duty, act or omission proximately causing or contributing to injury or damages sustained by a person seeking recovery, including negligence in all of its degrees, contributory negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability and misuse, modification or abuse of a product.