

1 **H. B. 4616**

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3 (By Delegate Miley, Fleischauer, Barker and Ellem)
4 [Introduced February 20, 2012; referred to the
5 Committee on the Judiciary.]
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10 A BILL to amend and reenact §55-7A-2 of the Code of West Virginia,
11 1931, as amended, relating to increasing parental liability
12 for the willful, malicious or criminal acts of their juvenile
13 children; eliminating the limitation on actual damages to out-
14 of-pocket loss.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §55-7A-2 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

18 **ARTICLE 7A. LIABILITY OF PARENTS.**

19 **§55-7A-2. Parental liability for willful, malicious or criminal**
20 **acts of children.**

21 The custodial parent or parents of any minor child shall be
22 personally liable in an amount not to exceed ~~\$5,000~~ \$15,000 for
23 damages which are the proximate result of any one or a combination

1 of the following acts of the minor child:

2 (a) The malicious and willful injury to the person of another;

3 or

4 (b) The malicious and willful injury or damage to the property
5 of another, whether the property be real, personal or mixed; or

6 (c) The malicious and willful setting fire to a forest or
7 wooded area belonging to another; or

8 (d) The willful taking, stealing and carrying away of the
9 property of another, with the intent to permanently deprive the
10 owner of possession.

11 For purposes of this section, "custodial parent or parents"
12 shall mean the parent or parents with whom the minor child is
13 living, or a divorced or separated parent who does not have legal
14 custody but who is exercising supervisory control over the minor
15 child at the time of the minor child's act.

16 Persons entitled to recover damages under this article shall
17 include, but not be limited to, the State of West Virginia, any
18 municipal corporation, county commission and board of education, or
19 other political subdivision of this state, or any person or
20 organization of any kind or character. The action may be brought
21 in magistrate or another court of competent jurisdiction.
22 Recovery hereunder ~~shall be~~ is limited to the actual damages
23 suffered ~~based upon direct out-of-pocket loss,~~ taxable court costs,
24 and interest from date of judgment. The right of action and remedy

1 granted herein shall be in addition to and not exclusive of any
2 rights of action and remedies therefor against a parent or parents
3 for the tortious acts of his or her or their children heretofore
4 existing under the provisions of any law, statutory or otherwise,
5 or now so existing independently of the provisions of this article.

6 The provisions of this article shall be applicable to causes
7 of action arising on and after the effective date of reenactment of
8 this article. Causes of actions arising before the effective date
9 of reenactment of this article and proceedings thereon shall be
10 governed by the previously enacted provisions of this article in
11 force at the time the cause arose.

NOTE: The purpose of this bill is to increase the amount of parental liability for willful, malicious or criminal acts to children from \$5,000 to \$15,000, and to eliminate the limitation on actual damages to out-of-pocket loss.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.