

**Senate Bill No. 390**

(By Senator Carmichael)

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[Introduced February 27, 2013; referred to the Committee on the  
Judiciary.]

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A BILL to amend and reenact §55-7-24 of the Code of West Virginia,  
1931, as amended, relating to increasing the threshold of a  
defendant's liability in a tort action involving more than one  
defendant, from thirty percent at fault or less to sixty  
percent at fault or less, to qualify for several liability and  
not joint and several liability.

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

That §55-7-24 of the Code of West Virginia, 1931, as amended,  
be amended and reenacted to read as follows:

**ARTICLE 7. ACTIONS FOR INJURIES.**

**§55-7-24. Apportionment of damages.**

(a) In ~~any~~ a cause of action involving the tortious conduct of  
more than one defendant, the trial court shall:

(1) Instruct the jury to determine or, if there is no jury,

1 find, the total amount of damages sustained by the claimant and the  
2 proportionate fault of each of the parties in the litigation at the  
3 time the verdict is rendered; and

4 (2) Enter judgment against each defendant found to be liable  
5 on the basis of the rules of joint and several liability except  
6 that if ~~any~~ a defendant is ~~thirty~~ sixty percent or less at fault,  
7 then that defendant's liability ~~shall be~~ is several and not joint  
8 and he or she ~~shall be~~ is liable only for the damages attributable  
9 to him or her except as otherwise provided in this section.

10 (b) Notwithstanding subdivision (2), subsection (a) of this  
11 section, the rules of joint and several liability ~~shall~~ apply to:

12 (1) ~~Any~~ A party who acted with the intention of inflicting  
13 injury or damage;

14 (2) ~~Any~~ A party who acted in concert with another person as  
15 part of a common plan or design resulting in harm;

16 (3) ~~Any~~ A party who negligently or willfully caused the  
17 unlawful emission, disposal or spillage of a toxic or hazardous  
18 substance; or

19 (4) ~~Any~~ A party strictly liable for the manufacture and sale  
20 of a defective product.

21 (c) Notwithstanding subdivision (2), subsection (a) of this  
22 section, if a claimant through good faith efforts is unable to  
23 collect from a liable defendant, the claimant may, not later than  
24 six months after judgment becomes final through lapse of time for

1 appeal or through exhaustion of appeal, whichever occurs later,  
2 move for reallocation of any uncollectible amount among the other  
3 parties in the litigation at the time the verdict is rendered.

4 (1) Upon the filing of such a motion, the court shall  
5 determine whether all or part of a defendant's proportionate share  
6 of the verdict is uncollectible from that defendant and shall  
7 reallocate such uncollectible amount among the other parties in the  
8 litigation at the time the verdict is rendered, including a  
9 claimant at fault according to their percentages of fault:  
10 *Provided*, That the court ~~shall~~ may not reallocate to any defendant  
11 an uncollectible amount greater than that defendant's percentage of  
12 fault multiplied by such uncollectible amount.

13 (2) If ~~such~~ a motion is filed, the parties may conduct  
14 discovery on the issue of collectability prior to a hearing on ~~such~~  
15 the motion.

16 (3) Any order regarding ~~such~~ the motion shall be entered  
17 within one hundred twenty days after the date of filing ~~such a~~ the  
18 motion.

19 (4) A defendant's share of the obligation to a claimant may  
20 not be increased by reason of reallocation under this subsection  
21 if:

22 (A) The percentage of fault of that defendant is equal to or  
23 less than the claimant's percentage of fault; or

24 (B) The percentage of fault of that defendant is less than ten

1 percent.

2 (5) A party whose liability is reallocated is nonetheless  
3 subject to contribution and to any continuing liability to the  
4 claimant on the judgment.

5 (6) If any defendant's share of the obligation to a claimant  
6 is not increased by reason of the application of subdivision (4) of  
7 this subsection, the amount of that defendant's share of the  
8 reallocation ~~shall be~~ is considered uncollectible and shall be  
9 reallocated among all other parties who are not subject to  
10 subdivision (4) of this subsection, including the claimant, in the  
11 same manner as otherwise provided this subsection.

12 (d) Nothing in this section ~~may be construed to affect, impair~~  
13 ~~or abrogate~~ affects any right of indemnity or contribution arising  
14 out of ~~any~~ a contract or agreement or any right of indemnity  
15 otherwise provided by law.

16 (e) Nothing in this section creates or recognizes, either  
17 explicitly or impliedly, ~~any~~ a new or different cause of action not  
18 otherwise recognized by law.

19 (f) Nothing in this section ~~may be construed to affect, impair~~  
20 ~~or abrogate~~ affects the provisions of section seven, article  
21 twelve-a, chapter twenty-nine of this code or section nine, article  
22 seven-b of this chapter.

23 (g) This section applies only to causes of action that accrue  
24 on or after July 1, 2005.

NOTE: The purpose of this bill is to increase the threshold of a defendant's liability in a tort action involving more than one defendant, from thirty percent at fault or less to sixty percent at fault or less, to qualify for several liability and not joint and several liability.

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