

1 **Senate Bill No. 587**

2 (By Senators Palumbo, Jenkins, McCabe, Prezioso and Stollings)

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4 [Introduced March 21, 2013; referred to the Committee on the
5 Judiciary.]
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10 A BILL to amend and reenact §55-7-24 of the Code of West Virginia,
11 1931, as amended, relating to apportionment of damages in
12 causes of action involving tortious conduct; adopting several
13 liability in tortious actions unless certain exceptions apply;
14 increasing period for a motion for reallocation; removing
15 certain limits on reallocation; and setting a date after which
16 the accrual of a cause of action will use the changes made to
17 this section.

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

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

21 **ARTICLE 7. ACTIONS FOR INJURIES.**

22 **§55-7-24. Apportionment of damages.**

23 (a) In any cause of action involving the tortious conduct of

1 more than one defendant, the trial court shall:

2 (1) Instruct the jury to determine, or, if there is no jury,
3 find, the total amount of damages sustained by the claimant and the
4 proportionate fault of each of the parties in the litigation at the
5 time the verdict is rendered; and

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

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

15 (1) Any party who acted with the intention of inflicting
16 injury or damage;

17 (2) Any party who acted in concert with another person as part
18 of a common plan or design resulting in harm;

19 (3) Any party who negligently or willfully caused the unlawful
20 emission, disposal or spillage of a toxic or hazardous substance;
21 or

22 (4) Any party strictly liable for the manufacture and sale of
23 a defective product.

24 (c) Notwithstanding subdivision (2), subsection (a) of this

1 section, if a claimant through good faith efforts is unable to
2 collect from a liable defendant, the claimant may, not later than
3 ~~six months~~ one year after judgment becomes final through lapse of
4 time for appeal or through exhaustion of appeal, whichever occurs
5 later, move for reallocation of any uncollectible amount among the
6 other parties in the litigation at the time the verdict is
7 rendered.

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

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

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

23 ~~(4) A defendant's share of the obligation to a claimant may~~
24 ~~not be increased by reason of reallocation under this subsection~~

1 ~~if:~~

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

4 ~~(B) The percentage of fault of that defendant is less than ten~~
5 ~~percent.~~

6 ~~(5) (4)~~ A party whose liability is reallocated is nonetheless
7 subject to contribution and to any continuing liability to the
8 claimant on the judgment.

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

16 (d) ~~Nothing in This section may be construed to~~ does not
17 affect, impair or abrogate any right of indemnity or contribution
18 arising out of any contract or agreement or any right of indemnity
19 otherwise provided by law.

20 (e) ~~Nothing in This section creates or recognizes~~ does not
21 create or recognize, either explicitly or impliedly, any new or
22 different cause of action not otherwise recognized by law.

23 (f) ~~Nothing in This section may be construed to~~ does not
24 affect, impair or abrogate the provisions of section seven, article

1 twelve-a, chapter twenty-nine of this code or section nine, article
2 seven-b of this chapter.

3 (g) This section applies only to causes of action that accrue
4 on or after July 1, 2005: Provided, That the amendments to this
5 section adopted during the 2013 regular legislative session apply
6 only to causes of action that accrue on or after July 1, 2013.

NOTE: The purpose of this bill is to adopt several liability with respect to tortious conduct and to increase the ability of reallocation.

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