

Senate Bill No. 289

(By Senators Carmichael, Jenkins and M. Hall)

[Introduced January 8, 2014; referred to the
Committee on the Judiciary.]

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10 A BILL to repeal §55-7-13 of the Code of West Virginia, 1931, as
11 amended; and to amend said code by adding thereto three new
12 sections, designated §55-7-13a, §55-7-13b and §55-7-13c, all
13 relating to comparative fault; abolishing joint liability;
14 providing that damages be allocated to a defendant held liable
15 in direct proportion to that defendant's percentage of fault;
16 providing for method of assessing fault of the parties;
17 providing exceptions; providing for severability; and defining
18 terms.

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

20 That §55-7-13 of the Code of West Virginia, 1931, as amended,
21 be repealed; and that said code be amended by adding thereto three
22 new sections, designated §55-7-13a, §55-7-13b and §55-7-13c, all to
23 read as follows:

1 **ARTICLE 7. ACTIONS FOR INJURIES.**

2 **§55-7-13a. Comparative fault standard established.**

3 (a) "Comparative fault" means the degree to which the fault of
4 a person was a proximate cause of an alleged personal injury or
5 death or damage to property, expressed as a percentage. Fault shall
6 be determined according to the provisions of section thirteen-c of
7 this article.

8 (b) In any action for damages, recovery shall be predicated
9 upon principles of comparative fault and the liability of each
10 person, including plaintiffs, defendants and nonparties who caused
11 the damages shall be allocated to each applicable person in direct
12 proportion to that person's percentage of fault.

13 (c) The total of the percentages of comparative fault
14 allocated by the trier of fact with respect to a particular
15 incident or injury must equal either zero percent or one hundred
16 percent.

17 (d) This section supercedes, invalidates and repeals all other
18 state laws that conflict with its provisions.

19 (e) This section applies to all causes of action arising on or
20 after the effective date of its enactment.

21 (f) The provisions of this section are severable from one
22 another, so that if any provision of this section is held void, the
23 remaining provisions of this section remain valid.

1 **§55-7-13b. Several liability.**

2 (a) In any action for damages, the liability of each defendant
3 for compensatory damages is several only and not joint. Each
4 defendant is liable only for the amount of compensatory damages
5 allocated to that defendant in direct proportion to that
6 defendant's percentage of fault and a separate judgment shall be
7 rendered against the defendant for that amount.

8 (b) To determine the amount of judgment to be entered against
9 each defendant, the court, with regard to each defendant, shall
10 multiply the total amount of all damages recoverable by the
11 plaintiff by the percentage of each defendant's fault and that
12 amount is the maximum recoverable against each defendant.

13 (c) A defendant's fault must be determined in accordance with
14 section thirteen-c of this article.

15 (d) This section supercedes, invalidates and repeals all other
16 state laws that conflict with its provisions.

17 (e) This section applies to all causes of action initiated on
18 or after the effective date of its enactment.

19 (f) The provisions of this section are severable from one
20 another, so that if any provision of this section is held void, the
21 remaining provisions of this section remain valid.

22 **§55-7-13c. Determination of fault of parties and nonparties;**
23 **imputed fault; plaintiff's failure to take**

1 **reasonable precautionary measures; plaintiff's**
2 **involvement in felony criminal act; fault of person**
3 **not a manufacturer; burden of proof; limitations;**
4 **conflicting laws repealed; applicability; and**
5 **severability.**

6 (a) *Determination of fault of parties and nonparties.* --

7 "Fault" means an act or omission of a person, which is a proximate
8 cause of injury or death to another person or persons, damage to
9 property, or economic injury, including, but not limited to,
10 negligence, malpractice, medical professional liability, strict
11 product liability, absolute liability, liability under section two,
12 article four, chapter twenty-three of this code or assumption of
13 the risk:

14 (1) In assessing percentages of fault, the trier of fact shall
15 consider the fault of all persons who contributed to the alleged
16 damages regardless of whether the person was or could have been
17 named as a party to the suit. The fault shall include the fault
18 imputed or attributed to a person by operation of law, if any;

19 (2) Fault of a nonparty may be considered if the plaintiff
20 entered into a settlement agreement with the nonparty or if a
21 defending party gives notice no later than sixty days before the
22 date of trial that a nonparty was wholly or partially at fault.

1 The notice shall be given by filing a pleading or discovery
2 response in the action designating the nonparty and setting forth
3 the nonparty's name and last-known address, or the best
4 identification of the nonparty which is possible under the
5 circumstances, together with a brief statement of the basis for
6 believing such nonparty to be at fault;

7 (3) In all instances where a nonparty is assessed a percentage
8 of fault, any recovery by a plaintiff shall be reduced in
9 proportion to the percentage of fault chargeable to the nonparty.
10 Where a plaintiff has settled with a party or nonparty before
11 verdict, that plaintiff's recovery will be reduced by the amount of
12 the settlement or in proportion to the percentage of fault assigned
13 to the settling party or nonparty, whichever is greater. The
14 plaintiff shall promptly and fully inform all other persons against
15 whom liability is asserted of the terms of any such settlement;

16 (4) This section is not meant to eliminate or diminish any
17 defenses or immunities, which exist as of the effective date of
18 this section, except as expressly noted in this section;

19 (5) Assessments of percentages of fault for nonparties are
20 used only as a vehicle for accurately determining the fault of
21 named parties. Where fault is assessed against nonparties, findings
22 of fault do not subject any nonparty to liability in that or any
23 other action, nor may they be introduced as evidence of liability

1 or for any other purpose in any other action; and

2 (6) In all actions involving fault of more than one person,
3 unless otherwise agreed by all parties to the action, the court
4 shall instruct the jury to answer special interrogatories or, if
5 there is no jury, shall make findings, indicating the percentage of
6 the total fault that is allocated to each party and nonparty
7 pursuant to the provisions of this article. For this purpose, the
8 court may determine that two or more persons are to be treated as
9 a single person.

10 (b) *Imputed fault.* -- Nothing in this section precludes a
11 person from being held responsible for the portion of comparative
12 fault assessed against another person who was acting as an agent or
13 servant of the person, or if the fault of the other person is
14 otherwise imputed or attributed to the person by statute or common
15 law.

16 (c) *Failure to take reasonable precautionary measures.* -- In
17 any civil action, the finder of fact may assess a percentage of
18 fault against a plaintiff who is injured as a proximate result of
19 that plaintiff's failure to take reasonable precautionary measures
20 that were available.

21 (d) *Plaintiff's involvement in felony criminal act.* -- In any
22 civil action, a defendant is not liable for damages that the
23 plaintiff suffers as a result of the negligence or gross negligence

1 of a defendant while the plaintiff is attempting to commit,
2 committing or fleeing from the commission of a felony criminal act.

3 (e) *Fault of a person not a manufacturer.* -- A person who is
4 not the manufacturer of a product but is merely in the chain of its
5 distribution, such as a seller, distributor or installer and who
6 did not alter, change or modify the product in a way that created
7 or contributed to the alleged defect, may not be assessed a
8 percentage of comparative fault under the theory of strict
9 liability for accidents, injuries or damages proximately caused, in
10 whole or in part, by the product.

11 (f) *Burden of proof.* -- The burden of alleging and proving
12 comparative fault is upon the person who seeks to establish the
13 fault.

14 (g) *Limitations.* -- This section does not create a cause of
15 action. Nothing in this section alters the immunity of any person
16 as established by statute or common law.

17 (h) *Inapplicability of this code section.* -- This code section
18 is not applicable where any of the following occurs:

19 (1) A defendant whose conduct constitutes driving a vehicle
20 under the influence of alcohol, a controlled substance, or any
21 other drug or any combination thereof, as described in section two,
22 article five, chapter seventeen-c of this code, is the proximate
23 cause of the damages suffered by the plaintiff;

1 (2) A defendant whose actions constitute criminal conduct is
2 the proximate cause of the damages suffered by the plaintiff; or

3 (3) A defendant whose conduct constitutes an illegal disposal
4 of hazardous waste, as described in section three, article
5 eighteen, chapter twenty-two of this code, is the proximate cause
6 of the damages suffered by the plaintiff.

7 (I) *Conflicting laws repealed.* -- This section supersedes,
8 invalidates and repeals all other state laws that conflict with its
9 provisions.

10 (j) *Applicability.* -- This section applies to all causes of
11 action arising on or after the effective date of its enactment.

12 (k) *Severability.* -- The provisions of this section are
13 severable from one another, so that if any provision of this
14 section is held void, the remaining provisions of this section
15 remain valid.

NOTE: The purpose of this bill is to abolish joint liability and establish the principle of comparative fault by which each defendant is liable for damages according to the percentage of fault attributed to each defendant. The bill provides exceptions. The bill provides a method of assessing fault of the parties. The bill also defines terms.

§55-7-13 is repealed.

§55-7-13a, §55-7-13b and §55-7-13-c are new; therefore, strike-throughs and underscoring have been omitted.