

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2002**

5 (By Delegates Wagner, Overington, A. Evans, Anderson, Waxman,
6 Shott, Kelly, E. Nelson, Folk, Espinosa and Mr. Speaker (Mr. Armstead))

7
8 (Originating in the House Committee on the Judiciary)

9 [January 21, 2015]

10
11 A BILL to repeal §55-7-13 and §55-7-24 of the Code of West Virginia, 1931, as amended; and to
12 amend said code by adding thereto four new sections, designated §55-7-13a, §55-7-13b,
13 §55-7-13c and §55-7-13d, all relating to predicating actions for damages upon principles of
14 comparative fault; establishing the comparative fault standard; abolishing joint liability and
15 implementing several liability; establishing how to consider the fault of nonparties;
16 establishing how to consider the fault of, and the amounts paid by, settling parties; providing
17 for the use of special interrogatories; clarifying fault may be imputed to another person who
18 was acting as an agent or servant of another; providing for the burden of proof and
19 limitations; and defining terms.

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

21 A BILL to repeal §55-7-13 and §55-7-24 of the Code of West Virginia, 1931, as amended;
22 and to amend said code by adding thereto four new sections, designated §55-7-13a, §55-7-13b,
23 §55-7-13c and §55-7-13d, all to read as follows:

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

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

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

6 (b) In any action based on tort or any other legal theory seeking damages for personal injury,
7 property damage, or wrongful death, recovery shall be predicated upon principles of comparative
8 fault and the liability of each person, including plaintiffs, defendants and nonparties who caused the
9 damages shall be allocated to each applicable person in direct proportion to that person's percentage
10 of fault.

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

13 **§55-7-13b. Definitions.**

14 As used in this article:

15 "Agent" means a person who is authorized to act for another through employment by contract
16 or apparent authority.

17 "Compensatory damages" means money awarded to compensate a plaintiff for economic and
18 noneconomic loss.

19 "Damage" or "damages" means all claims under common law or statutory and equitable
20 causes of action for actual damages, including economic and noneconomic damages, and additional
21 damages, including punitive damages, treble damages, penalties, prejudgment interest, post-
22 judgment interest, attorney's fees, litigation costs, costs of court, and all other damages of any kind.

1 "Defendant" means, for purposes of determining an obligation to pay money to another under
2 this chapter, any person against whom a claim is asserted by a plaintiff including a counter-
3 defendant, cross-defendant or third-party defendant.

4 "Fault" means an act or omission of a person, which is a proximate cause of injury or death
5 to another person or persons, damage to property, or economic injury, including, but not limited to,
6 negligence, malpractice, strict product liability, absolute liability, liability under section two, article
7 four, chapter twenty-three of this code, or assumption of the risk.

8 "Plaintiff" means, for purposes of determining a right to recover under this chapter, any
9 person asserting a claim.

10 **§55-7-13c. Liability to be several; amount of judgment; allocation of fault.**

11 (a) In any action for damages, the liability of each defendant for compensatory damages shall
12 be several only and may not be joint. Each defendant shall be liable only for the amount of
13 compensatory damages allocated to that defendant in direct proportion to that defendant's percentage
14 of fault and a separate judgment shall be rendered against the defendant for that amount. However,
15 joint liability may be imposed on two or more persons who consciously conspire and deliberately
16 pursue a common plan or design to commit a tortious act or omission. Any person held jointly liable
17 under this subsection shall have a right of contribution from other defendants that acted in concert.

18 (b) To determine the amount of judgment to be entered against each defendant, the court,
19 with regard to each defendant, shall multiply the total amount of compensatory damages determined
20 by the trier of fact by the percentage of each defendant's fault and that amount shall be the maximum
21 recoverable against that defendant.

22 (c) The fault allocated under this section to an immune defendant or a defendant whose

1 liability is limited by law may not be allocated to any other defendant.

2 (d) Notwithstanding any other provision of this section to the contrary, a defendant that
3 commits one or more of the followings acts or omissions shall be jointly liable:

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

8 (2) A defendant whose acts or omissions constitute criminal conduct which is a proximate
9 cause of the damages suffered by the plaintiff; or

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

13 (e) This section does not apply to the following statutes:

14 (1) Article twelve-a, chapter twenty-nine of this code;

15 (2) Chapter forty-six of this code; and

16 (3) Article seven-b, chapter fifty-five of this code.

17 **§55-7-13d. Determination of fault; imputed fault; plaintiff's involvement in felony criminal**
18 **act; burden of proof; limitations; applicability; severability.**

19 (a) *Determination of fault of parties and nonparties.*

20 (1) In assessing percentages of fault, the trier of fact shall consider the fault of all persons who
21 contributed to the alleged damages regardless of whether the person was or could have been named
22 as a party to the suit. The fault shall include the fault imputed or attributed to a person by operation

1 of law, if any;

2 (2) Fault of a nonparty may be considered if the plaintiff entered into a settlement agreement
3 with the nonparty or if a defending party gives notice no later than one hundred eighty days before
4 the date of trial that a nonparty was wholly or partially at fault, but no later than sixty days before the
5 joinder deadline, if any, in the court's scheduling order. The notice shall be given by filing a pleading
6 or discovery response in the action designating the nonparty and setting forth the nonparty's name and
7 last-known address, or the best identification of the nonparty which is possible under the
8 circumstances, together with a brief statement of the basis for believing such nonparty to be at fault.
9 In order to allocate any or all fault to a nonparty and include the named or unnamed nonparty on the
10 verdict form for purposes of apportioning damages, a defendant must prove at trial, by a
11 preponderance of the evidence, the fault of the nonparty in causing the plaintiff's injuries;

12 (3) In all instances where a nonparty or a party who has settled with the plaintiff before verdict
13 is assessed a percentage of fault, any recovery by a plaintiff shall be reduced in proportion to the
14 percentage of fault chargeable to such settling party or nonparty and not by the amount of the nonparty
15 or party's settlement: Provided, That where a plaintiff has settled with a party or nonparty before
16 verdict, the plaintiff shall promptly inform all other persons against whom liability is asserted of the
17 settlement and the amount of the settlement may not be disclosed unless joint liability is applicable;

18 (4) Nothing in this section is meant to eliminate or diminish any defenses or immunities,
19 which exist as of the effective date of this section, except as expressly noted herein;

20 (5) Assessments of percentages of fault for nonparties are used only as a vehicle for accurately
21 determining the fault of named parties and may not be introduced as evidence in any subsequent
22 action arising out of the same conduct, transaction, or occurrence; and

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

6 (b) Imputed fault. – Nothing in this section may be construed as precluding a person from
7 being held responsible for the portion of comparative fault assessed against another person who was
8 acting as an agent or servant of such person, or if the fault of the other person is otherwise imputed
9 or attributed to such person by statute or common law.

10 (c) Plaintiff's involvement in felony criminal act. – In any civil action, a defendant is not liable
11 for damages that the plaintiff suffers as a result of the negligence or gross negligence of a defendant
12 while the plaintiff is attempting to commit, committing, or fleeing from the commission of a felony:
13 Provided, That the plaintiff has been convicted of such felony, or if deceased, the jury makes a finding
14 beyond a reasonable doubt that the decedent committed such felony.

15 (d) Burden of proof. – The burden of alleging and proving comparative fault shall be upon the
16 person who seeks to establish such fault.

17 (e) Limitations. – Nothing in this section creates a cause of action.

18 (f) Applicability. – This section applies to all causes of action arising on or after the effective
19 date of its enactment.

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

