

1 **ENROLLED**

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

9 [Passed February 24, 2015; in effect ninety days from passage.]
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11 AN ACT 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 generally relating to predicated actions for damages upon
14 principles of comparative fault; establishing the comparative fault standard; abolishing joint
15 liability and implementing several liability; establishing how to consider the fault of parties
16 and nonparties to a civil action; establishing how to consider the fault of, and the amounts
17 paid by, settling parties; establishing how to reallocate any portion of a judgment a plaintiff
18 is unable to collect; providing for the use of special interrogatories; establishing certain
19 exceptions to several liability; clarifying fault may be imputed to another person who was
20 acting as an agent or servant of another; establishing limits on liability where a plaintiff is
21 involved in a felony criminal act; providing for the burden of proof and limitations; and
22 defining terms.

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

1 That §55-7-13 and §55-7-24 of the Code of West Virginia, 1931, as amended, be repealed;
2 and that said code be amended by adding thereto four new sections, designated §55-7-13a, §55-7-
3 13b, §55-7-13c and §55-7-13d, all to read as follows:

4 **ARTICLE 7. ACTIONS FOR INJURIES.**

5 **§55-7-13a. Modified comparative fault standard established.**

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

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

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

16 **§55-7-13b. Definitions.**

17 As used in this article:

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

20 "Defendant" means, for purposes of determining an obligation to pay damages to another
21 under this chapter, any person against whom a claim is asserted including a counter-claim defendant,
22 cross-claim defendant or third-party defendant.

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

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

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

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

16 (b) To determine the amount of judgment to be entered against each defendant, the court,
17 with regard to each defendant, shall multiply the total amount of compensatory damages recoverable
18 by the plaintiff by the percentage of each defendant's fault and, subject to subsection (d) of this
19 section, that amount shall be the maximum recoverable against that defendant.

20 (c) Any fault chargeable to the plaintiff shall not bar recovery by the plaintiff unless the
21 plaintiff's fault is greater than the combined fault of all other persons responsible for the total
22 amount of damages, if any, to be awarded. If the plaintiff's fault is less than the combined fault of

1 all other persons, the plaintiff's recovery shall be reduced in proportion to the plaintiff's degree of
2 fault.

3 (d) Notwithstanding subsection (b) of this section, if a plaintiff through good faith efforts is
4 unable to collect from a liable defendant, the plaintiff may, not later than one year after judgment
5 becomes final through lapse of time for appeal or through exhaustion of appeal, whichever occurs
6 later, move for reallocation of any uncollectible amount among the other parties found to be liable.

7 (1) Upon the filing of the motion, the court shall determine whether all or part of a
8 defendant's proportionate share of the verdict is uncollectible from that defendant and shall reallocate
9 the uncollectible amount among the other parties found to be liable, including a plaintiff at fault,
10 according to their percentages at fault: *Provided*, That the court may not reallocate to any defendant
11 an uncollectible amount greater than that defendant's percentage of fault multiplied by the
12 uncollectible amount: *Provided, however,*, That there shall be no reallocation against a defendant
13 whose percentage of fault is equal to or less than the plaintiff's percentage of fault.

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

16 (e) A party whose liability is reallocated under subsection (d) of this section is nonetheless
17 subject to contribution and to any continuing liability to the plaintiff on the judgment.

18 (f) This section does not affect, impair or abrogate any right of indemnity or contribution
19 arising out of any contract or agreement or any right of indemnity otherwise provided by law.

20 (g) The fault allocated under this section to an immune defendant or a defendant whose
21 liability is limited by law may not be allocated to any other defendant.

22 (h) Notwithstanding any other provision of this section to the contrary, a defendant that

1 commits one or more of the followings acts or omissions shall be jointly and severally liable:

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

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

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

11 (i) This section does not apply to the following statutes:

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

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

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

15 **§55-7-13d. Determination of fault; imputed fault; plaintiff’s involvement in felony criminal**
16 **act; burden of proof; limitations; applicability; severability.**

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

18 (1) In assessing percentages of fault, the trier of fact shall consider the fault of all persons
19 who contributed to the alleged damages regardless of whether the person was or could have been
20 named as a party to the suit.

21 (2) Fault of a nonparty shall be considered if the plaintiff entered into a settlement agreement
22 with the nonparty or if a defending party gives notice no later than one hundred-eight days after

1 service of process upon said defendant that a nonparty was wholly or partially at fault. Notice shall
2 be filed with the court and served upon all parties to the action designating the nonparty and setting
3 forth the nonparty's name and last-known address, or the best identification of the nonparty which
4 is possible under the circumstances, together with a brief statement of the basis for believing such
5 nonparty to be at fault;

6 (3) In all instances where a nonparty is assessed a percentage of fault, any recovery by a
7 plaintiff shall be reduced in proportion to the percentage of fault chargeable to such nonparty. Where
8 a plaintiff has settled with a party or nonparty before verdict, that plaintiff's recovery will be reduced
9 in proportion to the percentage of fault assigned to the settling party or nonparty.

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

12 (5) Assessments of percentages of fault for nonparties are used only as a vehicle for
13 accurately determining the fault of named parties. Where fault is assessed against nonparties,
14 findings of such fault do not subject any nonparty to liability in that or any other action, or may not
15 be introduced as evidence of liability or for any other purpose in any other action; and

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

21 (b) *Imputed fault.* – Nothing in this section may be construed as precluding a person from
22 being held liable for the portion of comparative fault assessed against another person who was acting

1 as an agent or servant of such person, or if the fault of the other person is otherwise imputed or
2 attributed to such person by statute or common law. In any action where any party seeks to impute
3 fault to another, the court shall instruct the jury to answer special interrogatories or, if there is no
4 jury, shall make findings, on the issue of imputed fault.

5 (c) *Plaintiff's involvement in felony criminal act.* – In any civil action, a defendant is not
6 liable for damages that the plaintiff suffers as a result of the negligence or gross negligence of a
7 defendant if such damages arise out of the plaintiff's commission, attempt to commit or fleeing from
8 the commission of a felony criminal act: *Provided*, That the plaintiff has been convicted of such
9 felony, or if deceased, the jury makes a finding that the decedent committed such felony.

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

12 (e) *Limitations.* – Nothing in this section creates a cause of action. Nothing in this section
13 alters, in any way, the immunity of any person as established by statute or common law.

14 (f) *Applicability.* – This section applies to all causes of action arising or accruing on or after
15 the effective date of its enactment.

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