

**Senate Bill No. 103**

(By Senators Carmichael and Mullins)

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[Introduced January 14, 2015; referred to the Committee on the Judiciary.]  
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9 A BILL to repeal §55-7-13 of the Code of West Virginia, 1931, as amended; and to amend said code  
10 by adding thereto three new sections, designated §55-7-13a, §55-7-13b and §55-7-13c, all  
11 relating to comparative fault; abolishing joint liability; providing that damages be allocated  
12 to defendant held liable in direct proportion to that defendant’s percentage of fault; providing  
13 for method of assessing fault of parties; providing exceptions; providing for severability; and  
14 defining terms.

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

16 That §55-7-13 of the Code of West Virginia, 1931, as amended, be repealed; and that said  
17 code be amended by adding thereto three new sections, designated §55-7-13a, §55-7-13b and  
18 §55-7-13c, all to read as follows:

19 **ARTICLE 7. ACTIONS FOR INJURIES.**

20 **§55-7-13a. Comparative fault standard established.**

21 (a) “Comparative fault” means the degree to which the fault of a person was a proximate

1 cause of an alleged personal injury or death or damage to property, expressed as a percentage. Fault  
2 shall be determined according to the provisions of section thirteen-c of this article.

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

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

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

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

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

15 **§55-7-13b. Several liability.**

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

20 (b) To determine the amount of judgment to be entered against each defendant, the court,  
21 with regard to each defendant, shall multiply the total amount of all damages recoverable by the

1 plaintiff by the percentage of each defendant's fault and that amount is the maximum recoverable  
2 against each defendant.

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

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

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

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

11 **§55-7-13c. Determination of fault of parties and nonparties; imputed fault; plaintiff's failure**  
12 **to take reasonable precautionary measures; plaintiff's involvement in felony**  
13 **criminal act; fault of person not a manufacturer; burden of proof; limitations;**  
14 **conflicting laws repealed; applicability; and severability.**

15 (a) *Determination of fault of parties and nonparties.* — "Fault" means an act or omission of  
16 a person, which is a proximate cause of injury or death to another person or persons, damage to  
17 property, or economic injury, including, but not limited to, negligence, malpractice, medical  
18 professional liability, strict product liability, absolute liability, liability under section two, article  
19 four, chapter twenty-three of this code or assumption of the risk:

20 (1) In assessing percentages of fault, the trier of fact shall consider the fault of all persons  
21 who contributed to the alleged damages regardless of whether the person was or could have been

1 named as a party to the suit. The fault shall include the fault imputed or attributed to a person by  
2 operation of law, if any;

3 (2) Fault of a nonparty may be considered if the plaintiff entered into a settlement agreement  
4 with the nonparty or if a defending party gives notice no later than sixty days before the date of trial  
5 that a nonparty was wholly or partially at fault. The notice shall be given by filing a pleading or  
6 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 (3) In all instances where a nonparty is assessed a percentage of fault, any recovery by a  
10 plaintiff shall be reduced in proportion to the percentage of fault chargeable to the nonparty. Where  
11 a plaintiff has settled with a party or nonparty before verdict, that plaintiff's recovery will be reduced  
12 by the amount of the settlement or in proportion to the percentage of fault assigned to the settling  
13 party or nonparty, whichever is greater. The plaintiff shall promptly and fully inform all other  
14 persons against whom liability is asserted of the terms of any such settlement;

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

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

21 (6) In all actions involving fault of more than one person, unless otherwise agreed by all

1 parties to the action, the court shall instruct the jury to answer special interrogatories or, if there is  
2 no jury, shall make findings, indicating the percentage of the total fault that is allocated to each party  
3 and nonparty pursuant to the provisions of this article. For this purpose, the court may determine  
4 that two or more persons are to be treated as a single person.

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

9 (c) *Failure to take reasonable precautionary measures.* — In any civil action, the finder of  
10 fact may assess a percentage of fault against a plaintiff who is injured as a proximate result of that  
11 plaintiff's failure to take reasonable precautionary measures that were available.

12 (d) *Plaintiff's involvement in felony criminal act.* -- In any civil action, a defendant is not  
13 liable for damages that the plaintiff suffers as a result of the negligence or gross negligence of a  
14 defendant while the plaintiff is attempting to commit, committing or fleeing from the commission  
15 of a felony criminal act.

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

21 (f) *Burden of proof.* — The burden of alleging and proving comparative fault is upon the

1 person who seeks to establish the fault.

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

4 (h) *Inapplicability of this code section.* — This code section is not applicable where any of  
5 the following occurs:

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

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

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

15 (i) *Conflicting laws repealed.* — This section supersedes, invalidates and repeals all other  
16 state laws that conflict with its provisions.

17 (j) *Applicability.* — This section applies to all causes of action arising on or after the effective  
18 date of its enactment.

19 (k) *Severability.* -- The provisions of this section are severable from one another, so that if  
20 any provision of this section is held void, the remaining provisions of this section 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.