

1 **Senate Bill No. 104**

2 (By Senator Carmichael)

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4 [Introduced January 14, 2015; referred to the Committee on the Judiciary.]
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9 A BILL to amend and reenact §55-7-24 of the Code of West Virginia, 1931, as amended, relating
10 to increasing threshold of defendant’s liability in tort action involving more than one
11 defendant, from thirty percent at fault or less to sixty percent at fault or less, to qualify for
12 several liability and not joint and several liability.

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

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

16 **ARTICLE 7. ACTIONS FOR INJURIES.**

17 **§55-7-24. Apportionment of damages.**

18 (a) In ~~any~~ a cause of action involving the tortious conduct of more than one defendant, the
19 trial court shall:

20 (1) Instruct the jury to determine or, if there is no jury, find, the total amount of damages
21 sustained by the claimant and the proportionate fault of each of the parties in the litigation at the time

1 the verdict is rendered; and

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

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

8 (1) ~~Any A~~ party ~~who~~ that acted with the intention of inflicting injury or damage;

9 (2) ~~Any A~~ party ~~who~~ that acted in concert with another person as part of a common plan or
10 design resulting in harm;

11 (3) ~~Any A~~ party ~~who~~ that negligently or willfully caused the unlawful emission, disposal or
12 spillage of a toxic or hazardous substance; or

13 (4) ~~Any A~~ party strictly liable for the manufacture and sale of a defective product.

14 (c) Notwithstanding subdivision (2), subsection (a) of this section, if a claimant through good
15 faith ~~efforts~~ effort is unable to collect from a liable defendant, the claimant may, not later than six
16 months after judgment becomes final through lapse of time for appeal or through exhaustion of
17 appeal, whichever occurs later, move for reallocation of any uncollectible amount among the other
18 parties in the litigation at the time the verdict is rendered.

19 (1) Upon the filing of such a motion, the court shall determine whether all or part of a
20 defendant's proportionate share of the verdict is uncollectible from that defendant and shall
21 reallocate such uncollectible amount among the other parties in the litigation at the time the verdict

1 is rendered, including a claimant at fault according to their percentages of fault: *Provided*, That the
2 court ~~shall~~ may not reallocate to any defendant an uncollectible amount greater than that defendant's
3 percentage of fault multiplied by such uncollectible amount.

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

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

8 (4) A defendant's share of the obligation to a claimant may not be increased by reason of
9 reallocation under this subsection if:

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

12 (B) The percentage of fault of that defendant is less than ten percent.

13 (5) A party whose liability is reallocated is nonetheless subject to contribution and to any
14 continuing liability to the claimant on the judgment.

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

20 (d) Nothing in this section ~~may be construed to affect, impair or abrogate~~ affects any right
21 of indemnity or contribution arising out of ~~any~~ a contract or agreement or any right of indemnity

1 otherwise provided by law.

2 (e) Nothing in this section creates or recognizes, either explicitly or impliedly, ~~any~~ a new or
3 different cause of action not otherwise recognized by law.

4 (f) Nothing in this section ~~may be construed to affect, impair or abrogate~~ affects the
5 provisions of section seven, article twelve-a, chapter twenty-nine of this code or section nine, article
6 seven-b of this chapter.

7 (g) This section applies only to causes of action that accrue on or after July 1, 2005.

NOTE: The purpose of this bill is to increase the threshold of a defendant's liability in a tort action involving more than one defendant, from thirty percent at fault or less to sixty percent at fault or less, to qualify for several liability and not joint and several liability.

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