

Senate Bill No. 38

(By Senator Palumbo)

[Introduced January 14, 2015; referred to the Committee on the Judiciary.]

A BILL to amend and reenact §55-7-24 of the Code of West Virginia, 1931, as amended, relating to apportionment of damages in causes of action involving tortious conduct; adopting several liability in tortious actions unless certain exceptions apply; increasing period for a motion for reallocation; removing certain limits on reallocation; and setting date after which accrual of a cause of action will use changes made to this section.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-24. Apportionment of damages.

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

(1) Instruct the jury to determine, or, if there is no jury, find, the total amount of damages 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 the rules of ~~joint~~
3 ~~and several~~ and not joint liability. ~~except that if any defendant is thirty percent or less at fault, then~~
4 ~~that defendant's liability shall be several and not joint and he or she shall be 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 party who acted with the intention of inflicting injury or damage;

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

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

13 (4) Any 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 is unable to collect from a liable defendant, the claimant may, not later than ~~six months~~
16 one year 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~~ the 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~~ the uncollectible amount among the other parties in the litigation at the time the
22 verdict is rendered, including a claimant at fault according to their percentages of fault: *Provided,*

1 That the court ~~shall~~ may not reallocate to any defendant an uncollectible amount greater than that
2 defendant's percentage of fault multiplied by ~~such~~ the uncollectible amount.

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

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

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

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

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

12 ~~(5) (4) A party whose liability is reallocated is nonetheless subject to contribution and to any~~
13 ~~continuing liability to the claimant on the judgment.~~

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

19 ~~(d) Nothing in This section may be construed to~~ does not affect, impair or abrogate any right
20 of indemnity or contribution arising out of any contract or agreement or any right of indemnity
21 otherwise provided by law.

22 ~~(e) Nothing in This section creates or recognizes~~ does not create or recognize, either

1 explicitly or impliedly, any new or different cause of action not otherwise recognized by law.

2 (f) ~~Nothing in~~ This section ~~may be construed to~~ does not affect, impair or abrogate the
3 provisions of section seven, article twelve-a, chapter twenty-nine of this code or section nine, article
4 seven-b of this chapter.

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

6 Provided, That the amendments to this section adopted during the 2015 regular legislative session
7 apply only to causes of action that accrue on or after July 1, 2015.

NOTE: The purpose of this bill is to adopt several liability with respect to tortious conduct and to increase the ability of reallocation.

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