

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 385**

BY SENATOR TRUMP

[Introduced January 25, 2016;

Referred to the Committee on the Judiciary.]



1 A BILL to amend and reenact §55-7-13d of the Code of West Virginia, 1931, as amended, relating  
2 to predicating actions for damages upon principles of comparative fault; and expanding  
3 deadline by which defendant must give notice that nonparty was wholly or partially at fault.

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

1 That §55-7-13d of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

**ARTICLE 7. ACTIONS FOR INJURIES.**

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

1 (a) *Determination of fault of parties and nonparties.* —

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

5 (2) Fault of a nonparty shall be considered if the plaintiff entered into a settlement  
6 agreement with the nonparty or if a defending party gives notice no later than ~~one hundred eight~~  
7 one hundred eighty days after service of process upon said defendant that a nonparty was wholly  
8 or partially at fault. Notice shall be filed with the court and served upon all parties to the action  
9 designating the nonparty and setting forth the nonparty's name and last-known address, or the  
10 best identification of the nonparty which is possible under the circumstances, together with a brief  
11 statement of the basis for believing such nonparty to be at fault;

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

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

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

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

27 (b) *Imputed fault.* — Nothing in this section may be construed as precluding a person from  
28 being held liable for the portion of comparative fault assessed against another person who was  
29 acting as an agent or servant of such person, or if the fault of the other person is otherwise imputed  
30 or attributed to such person by statute or common law. In any action where any party seeks to  
31 impute fault to another, the court shall instruct the jury to answer special interrogatories or, if there  
32 is no jury, shall make findings, on the issue of imputed fault.

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

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

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

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

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

NOTE: The purpose of this bill is to allow defendants in actions for damages one hundred eighty days, as opposed to one hundred eight days, following service of process to identify the nonparties who may be wholly or partially at fault.

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