

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

SENATE BILL NO. 421

(By Senators Tomblin, Mr. President, and Sprouse Jr
By Request of the Executive)

PASSED April 9, 2005

In Effect 90 days from **Passage**

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Senate Bill No. 421

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-23, relating to the apportionment of damages in court actions involving the tortious conduct of more than one person; allowing for several liability for certain defendants; allowing for several liability subject to reallocation for certain defendants; and providing for several liability for defendants that are found to be less than thirty percent at fault under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §55-7-23, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-23. Apportionment of damages.

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

3 (1) Instruct the jury to determine, or, if there is no jury,
4 find, the total amount of damages sustained by the claim-
5 ant and the proportionate fault of each of the parties in the
6 litigation at the time the verdict is rendered; and

7 (2) Enter judgment against each defendant found to be
8 liable on the basis of the rules of joint and several liability,
9 except that if any defendant is thirty percent or less at
10 fault, then that defendant's liability shall be several and
11 not joint and he or she shall be liable only for the damages
12 attributable to him or her, except as otherwise provided in
13 this section.

14 (b) Notwithstanding subdivision (2), subsection (a) of
15 this section, the rules of joint and several liability shall
16 apply to:

17 (1) Any party who acted with the intention of inflicting
18 injury or damage;

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

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

24 (4) Any party strictly liable for the manufacture and sale
25 of a defective product.

26 (c) Notwithstanding subdivision (2), subsection (a) of
27 this section, if a claimant through good faith efforts is
28 unable to collect from a liable defendant, the claimant
29 may, not later than six months after judgment becomes
30 final through lapse of time for appeal or through exhaus-
31 tion of appeal, whichever occurs later, move for realloca-
32 tion of any uncollectible amount among the other parties
33 in the litigation at the time the verdict is rendered.

34 (1) Upon the filing of such a motion, the court shall
35 determine whether all or part of a defendant's proportion-
36 ate share of the verdict is uncollectible from that defen-
37 dant and shall reallocate such uncollectible amount among
38 the other parties in the litigation at the time the verdict is
39 rendered, including a claimant at fault according to their
40 percentages of fault: *Provided*, That the court shall not
41 reallocate to any defendant an uncollectible amount
42 greater than that defendant's percentage of fault multi-
43 plied by such uncollectible amount.

44 (2) If such a motion is filed, the parties may conduct
45 discovery on the issue of collectability prior to a hearing
46 on such motion.

47 (3) Any order regarding such motion shall be entered
48 within one hundred twenty days after the date of filing
49 such a motion.

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

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

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

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

60 (6) If any defendant's share of the obligation to a
61 claimant is not increased by reason of the application of
62 subdivision (4) of this subsection, the amount of that
63 defendant's share of the reallocation shall be considered
64 uncollectible and shall be reallocated among all other
65 parties who are not subject to subdivision four of this
66 subsection, including the claimant, in the same manner as
67 otherwise provided in this subsection.

68 (d) Nothing in this section may be construed to affect,
69 impair or abrogate any right of indemnity or contribution
70 arising out of any contract or agreement or any right of
71 indemnity otherwise provided by law.

72 (e) Nothing in this section creates or recognizes, either
73 explicitly or impliedly, any new or different cause of
74 action not otherwise recognized by law.

75 (f) Nothing in this section may be construed to affect,
76 impair or abrogate the provisions of section seven, article
77 twelve-a, chapter twenty-nine of this code or section nine,
78 article seven-b of this chapter.

79 (g) This section applies only to causes of action that
80 accrue on or after the first day of July, two thousand five.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Candy White
.....
Chairman Senate Committee

H. Robert Brown
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Barrett Phillips
.....
Clerk of the Senate

Bruce D. Snel
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *29th*
Day of *April* 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 29 2005

Time 9:30am