

1 **Senate Bill No. 250**

2 (By Senators Palumbo and Jenkins)

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4 [Introduced January 8, 2014; referred to the Committee on the
5 Judiciary.]
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10 A BILL to amend and reenact §55-7-24 of the Code of West Virginia,
11 1931, as amended, relating to apportionment of damages in
12 causes of action involving tortious conduct; adopting several
13 liability in tortious actions unless certain exceptions apply;
14 increasing period for a motion for reallocation; removing
15 certain limits on reallocation; and setting a date after which
16 the accrual of a cause of action will use the changes made to
17 this section.

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

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

21 **ARTICLE 7. ACTIONS FOR INJURIES.**

22 **§55-7-24. Apportionment of damages.**

23 (a) In any cause of action involving the tortious conduct of

1 more than one defendant, the trial court shall:

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

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

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

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

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

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

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

24 (c) Notwithstanding subdivision (2), subsection (a) of this

1 section, if a claimant through good faith efforts is unable to
2 collect from a liable defendant, the claimant may, not later than
3 ~~six months~~ one year after judgment becomes final through lapse of
4 time for appeal or through exhaustion of appeal, whichever occurs
5 later, move for reallocation of any uncollectible amount among the
6 other parties in the litigation at the time the verdict is
7 rendered.

8 (1) Upon the filing of ~~such a~~ the motion, the court shall
9 determine whether all or part of a defendant's proportionate share
10 of the verdict is uncollectible from that defendant and shall
11 reallocate ~~such~~ the uncollectible amount among the other parties in
12 the litigation at the time the verdict is rendered, including a
13 claimant at fault according to their percentages of fault:
14 *Provided*, That the court ~~shall~~ may not reallocate to any defendant
15 an uncollectible amount greater than that defendant's percentage of
16 fault multiplied by ~~such~~ the uncollectible amount.

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

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

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

1 ~~if:~~

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

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

6 ~~(5) (4)~~ A party whose liability is reallocated is nonetheless
7 subject to contribution and to any continuing liability to the
8 claimant on the judgment.

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

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

20 ~~(e) Nothing in This section creates or recognizes~~ does not
21 create or recognize, either explicitly or impliedly, any new or
22 different cause of action not otherwise recognized by law.

23 ~~(f) Nothing in This section may be construed to~~ does not
24 ~~affect, impair or abrogate the provisions of section seven, article~~

1 twelve-a, chapter twenty-nine of this code or section nine, article
2 seven-b of this chapter.

3 (g) This section applies only to causes of action that accrue
4 on or after July 1, 2005: Provided, That the amendments to this
5 section adopted during the 2014 regular legislative session apply
6 only to causes of action that accrue on or after July 1, 2014.

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.