

E N R O L L E D

COMMITTEE SUBSTITUTE

for

H. B. 2002

(BY DELEGATE(S) WAGNER, OVERINGTON, A. EVANS,
ANDERSON, WAXMAN, SHOTT, KELLY, E. NELSON, FOLK, ESPINOSA
AND MR. SPEAKER (MR. ARMSTEAD))

[Passed February 24, 2015; in effect ninety days from passage.]

AN ACT to repeal §55-7-13 and §55-7-24 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto four new sections, designated §55-7-13a, §55-7-13b, §55-7-13c and §55-7-13d, all generally relating to predicating actions for damages upon principles of comparative fault; establishing the comparative fault standard; abolishing joint liability and implementing several liability; establishing how to consider the fault of parties and nonparties to a civil action; establishing how to consider the fault of, and the amounts paid by, settling parties; establishing how to reallocate any portion of a

judgment a plaintiff is unable to collect; providing for the use of special interrogatories; establishing certain exceptions to several liability; clarifying fault may be imputed to another person who was acting as an agent or servant of another; establishing limits on liability where a plaintiff is involved in a felony criminal act; providing for the burden of proof and limitations; and defining terms.

Be it enacted by the Legislature of West Virginia:

That §55-7-13 and §55-7-24 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto four new sections, designated §55-7-13a, §55-7-13b, §55-7-13c and §55-7-13d, all to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-13a. Modified comparative fault standard established.

1 (a) For purposes of this article, “comparative fault” means
2 the degree to which the fault of a person was a proximate cause
3 of an alleged personal injury or death or damage to property,
4 expressed as a percentage. Fault shall be determined according
5 to section thirteen-c of this article.

6 (b) In any action based on tort or any other legal theory
7 seeking damages for personal injury, property damage, or
8 wrongful death, recovery shall be predicated upon principles of
9 comparative fault and the liability of each person, including
10 plaintiffs, defendants and nonparties who proximately caused the
11 damages, shall be allocated to each applicable person in direct
12 proportion to that person’s percentage of fault.

13 (c) The total of the percentages of comparative fault
14 allocated by the trier of fact with respect to a particular incident
15 or injury must equal either zero percent or one hundred percent.

§55-7-13b. Definitions.

1 As used in this article:

2 “Compensatory damages” means damages awarded to
3 compensate a plaintiff for economic and noneconomic loss.

4 “Defendant” means, for purposes of determining an
5 obligation to pay damages to another under this chapter, any
6 person against whom a claim is asserted including a counter-
7 claim defendant, cross-claim defendant or third-party defendant.

8 “Fault” means an act or omission of a person, which is a
9 proximate cause of injury or death to another person or persons,
10 damage to property, or economic injury, including, but not
11 limited to, negligence, malpractice, strict product liability,
12 absolute liability, liability under section two, article four, chapter
13 twenty-three of this code or assumption of the risk.

14 “Plaintiff” means, for purposes of determining a right to
15 recover under this chapter, any person asserting a claim.

**§55-7-13c. Liability to be several; amount of judgment; allocation
of fault.**

1 (a) In any action for damages, the liability of each defendant
2 for compensatory damages shall be several only and may not be
3 joint. Each defendant shall be liable only for the amount of
4 compensatory damages allocated to that defendant in direct
5 proportion to that defendant’s percentage of fault, and a separate
6 judgment shall be rendered against each defendant for his or her
7 share of that amount. However, joint liability may be imposed on
8 two or more defendants who consciously conspire and
9 deliberately pursue a common plan or design to commit a
10 tortious act or omission. Any person held jointly liable under this
11 section shall have a right of contribution from other defendants
12 that acted in concert.

13 (b) To determine the amount of judgment to be entered
14 against each defendant, the court, with regard to each defendant,
15 shall multiply the total amount of compensatory damages
16 recoverable by the plaintiff by the percentage of each
17 defendant's fault and, subject to subsection (d) of this section,
18 that amount shall be the maximum recoverable against that
19 defendant.

20 (c) Any fault chargeable to the plaintiff shall not bar
21 recovery by the plaintiff unless the plaintiff's fault is greater than
22 the combined fault of all other persons responsible for the total
23 amount of damages, if any, to be awarded. If the plaintiff's fault
24 is less than the combined fault of all other persons, the plaintiff's
25 recovery shall be reduced in proportion to the plaintiff's degree
26 of fault.

27 (d) Notwithstanding subsection (b) of this section, if a
28 plaintiff through good faith efforts is unable to collect from a
29 liable defendant, the plaintiff may, not later than one year after
30 judgment becomes final through lapse of time for appeal or
31 through exhaustion of appeal, whichever occurs later, move for
32 reallocation of any uncollectible amount among the other parties
33 found to be liable.

34 (1) Upon the filing of the motion, the court shall determine
35 whether all or part of a defendant's proportionate share of the
36 verdict is uncollectible from that defendant and shall reallocate
37 the uncollectible amount among the other parties found to be
38 liable, including a plaintiff at fault, according to their
39 percentages at fault: *Provided*, That the court may not reallocate
40 to any defendant an uncollectible amount greater than that
41 defendant's percentage of fault multiplied by the uncollectible
42 amount: *Provided, however*, That there shall be no reallocation
43 against a defendant whose percentage of fault is equal to or less
44 than the plaintiff's percentage of fault.

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

47 (e) A party whose liability is reallocated under subsection
48 (d) of this section is nonetheless subject to contribution and to
49 any continuing liability to the plaintiff on the judgment.

50 (f) This section does not affect, impair or abrogate any right
51 of indemnity or contribution arising out of any contract or
52 agreement or any right of indemnity otherwise provided by law.

53 (g) The fault allocated under this section to an immune
54 defendant or a defendant whose liability is limited by law may
55 not be allocated to any other defendant.

56 (h) Notwithstanding any other provision of this section to the
57 contrary, a defendant that commits one or more of the followings
58 acts or omissions shall be jointly and severally liable:

59 (1) A defendant whose conduct constitutes driving a vehicle
60 under the influence of alcohol, a controlled substance, or any
61 other drug or any combination thereof, as described in section
62 two, article five, chapter seventeen-c of this code, which is a
63 proximate cause of the damages suffered by the plaintiff;

64 (2) A defendant whose acts or omissions constitute criminal
65 conduct which is a proximate cause of the damages suffered by
66 the plaintiff; or

67 (3) A defendant whose conduct constitutes an illegal
68 disposal of hazardous waste, as described in section three, article
69 eighteen, chapter twenty-two of this code, which conduct is a
70 proximate cause of the damages suffered by the plaintiff.

71 (i) This section does not apply to the following statutes:

72 (1) Article twelve-a, chapter twenty-nine of this code;

73 (2) Chapter forty-six of this code; and

74 (3) Article seven-b, chapter fifty-five of this code.

§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
3 consider the fault of all persons who contributed to the alleged
4 damages regardless of whether the person was or could have
5 been named as a party to the suit.

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

16 (3) In all instances where a nonparty is assessed a percentage
17 of fault, any recovery by a plaintiff shall be reduced in
18 proportion to the percentage of fault chargeable to such
19 nonparty. Where a plaintiff has settled with a party or nonparty
20 before verdict, that plaintiff's recovery will be reduced in
21 proportion to the percentage of fault assigned to the settling
22 party or nonparty.

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

26 (5) Assessments of percentages of fault for nonparties are
27 used only as a vehicle for accurately determining the fault of

28 named parties. Where fault is assessed against nonparties,
29 findings of such fault do not subject any nonparty to liability in
30 that or any other action, or may not be introduced as evidence of
31 liability or for any other purpose in any other action; and

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

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

49 (c) *Plaintiff's involvement in felony criminal act.* – In any
50 civil action, a defendant is not liable for damages that the
51 plaintiff suffers as a result of the negligence or gross negligence
52 of a defendant if such damages arise out of the plaintiff's
53 commission, attempt to commit or fleeing from the commission
54 of a felony criminal act: *Provided*, That the plaintiff has been
55 convicted of such felony, or if deceased, the jury makes a finding
56 that the decedent committed such felony.

57 (d) *Burden of proof.* – The burden of alleging and proving
58 comparative fault shall be upon the person who seeks to
59 establish such fault.

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

63 (f) *Applicability.* – This section applies to all causes of
64 action arising or accruing on or after the effective date of its
65 enactment.

66 (g) *Severability.* – The provisions of this section are
67 severable from one another, so that if any provision of this
68 section is held void, the remaining provisions of this section
69 shall remain valid.

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2015.

Governor

