

E N G R O S S E D

COMMITTEE SUBSTITUTE

FOR

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

(Originating in the House Committee on the Judiciary)
[January 21, 2015]

A BILL 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 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 nonparties; establishing how to consider the fault of, and the amounts paid by, settling parties; providing for the use of special interrogatories; clarifying fault may be imputed to another person who was acting as an agent or servant of another; providing for the burden of proof and limitations; and defining terms.

Be it enacted by the Legislature of West Virginia:

A BILL 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 to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-13a. 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 a personal injury or death or damage to property, expressed as
- 4 a percentage. Fault shall be determined according to section
- 5 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 caused the damages
11 shall be allocated to each applicable person in direct proportion
12 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 “Agent” means a person who is authorized to act for another
3 through employment by contract or apparent authority.

4 “Compensatory damages” means money awarded to
5 compensate a plaintiff for economic and noneconomic loss.

6 “Damage” or “damages” means all claims under common
7 law or statutory and equitable causes of action for actual
8 damages, including economic and noneconomic damages, and
9 additional damages, including punitive damages, treble damages,
10 penalties, prejudgment interest, post-judgment interest,

11 attorney's fees, litigation costs, costs of court, and all other
12 damages of any kind.

13 "Defendant" means, for purposes of determining an
14 obligation to pay money to another under this chapter, any
15 person against whom a claim is asserted by a plaintiff including
16 a counter-defendant, cross-defendant or third-party defendant.

17 "Fault" means an act or omission of a person, which is a
18 proximate cause of injury or death to another person or persons,
19 damage to property, or economic injury, including, but not
20 limited to, negligence, malpractice, strict product liability,
21 absolute liability, liability under section two, article four, chapter
22 twenty-three of this code, or assumption of the risk.

23 "Plaintiff" means, for purposes of determining a right to
24 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 the defendant for that
7 amount. However, joint liability may be imposed on two or more
8 persons who consciously conspire and deliberately pursue a
9 common plan or design to commit a tortious act or omission.
10 Any person held jointly liable under this subsection shall have a
11 right of contribution from other defendants that acted in concert.

12 (b) To determine the amount of judgment to be entered
13 against each defendant, the court, with regard to each defendant,
14 shall multiply the total amount of compensatory damages
15 determined by the trier of fact by the percentage of each
16 defendant's fault and that amount shall be the maximum
17 recoverable against that defendant.

18 (c) The fault allocated under this section to an immune
19 defendant or a defendant whose liability is limited by law may
20 not be allocated to any other defendant.

21 (d) Notwithstanding any other provision of this section to the
22 contrary, a defendant that commits one or more of the followings
23 acts or omissions shall be jointly liable:

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

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

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

36 (e) This section does not apply to the following statutes:

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

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

39 (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. The fault shall include the fault
6 imputed or attributed to a person by operation of law, if any;

7 (2) Fault of a nonparty may be considered if the plaintiff
8 entered into a settlement agreement with the nonparty or if a
9 defending party gives notice no later than one hundred eighty
10 days before the date of trial that a nonparty was wholly or
11 partially at fault, but no later than sixty days before the joinder
12 deadline, if any, in the court's scheduling order. The notice shall
13 be given by filing a pleading or discovery response in the action
14 designating the nonparty and setting forth the nonparty's name
15 and last-known address, or the best identification of the nonparty
16 which is possible under the circumstances, together with a brief
17 statement of the basis for believing such nonparty to be at fault.
18 In order to allocate any or all fault to a nonparty and include the
19 named or unnamed nonparty on the verdict form for purposes of
20 apportioning damages, a defendant must prove at trial, by a

21 preponderance of the evidence, the fault of the nonparty in
22 causing the plaintiff's injuries;

23 (3) In all instances where a nonparty or a party who has
24 settled with the plaintiff before verdict is assessed a percentage
25 of fault, any recovery by a plaintiff shall be reduced in
26 proportion to the percentage of fault chargeable to such settling
27 party or nonparty and not by the amount of the nonparty or
28 party's settlement: *Provided*, That where a plaintiff has settled
29 with a party or nonparty before verdict, the plaintiff shall
30 promptly inform all other persons against whom liability is
31 asserted of the settlement and the amount of the settlement may
32 not be disclosed unless joint liability is applicable;

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

36 (5) Assessments of percentages of fault for nonparties are
37 used only as a vehicle for accurately determining the fault of
38 named parties and may not be introduced as evidence in any
39 subsequent action arising out of the same conduct, transaction,
40 or occurrence; and

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

49 (b) Imputed fault. – Nothing in this section may be construed
50 as precluding a person from being held responsible for the
51 portion of comparative fault assessed against another person who
52 was acting as an agent or servant of such person, or if the fault
53 of the other person is otherwise imputed or attributed to such
54 person by statute or common law.

55 (c) Plaintiff's involvement in felony criminal act. – In any
56 civil action, a defendant is not liable for damages that the
57 plaintiff suffers as a result of the negligence or gross negligence
58 of a defendant while the plaintiff is attempting to commit,
59 committing, or fleeing from the commission of a felony:
60 Provided, That the plaintiff has been convicted of such felony,

61 or if deceased, the jury makes a finding beyond a reasonable
62 doubt that the decedent committed such felony.

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

66 (e) *Limitations.* – Nothing in this section creates a cause of
67 action.

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

70 (g) *Severability.* – The provisions of this section are
71 severable from one another, so that if any provision of this
72 section is held void, the remaining provisions of this section
73 shall remain valid.

