

COMMITTEE SUBSTITUTE

FOR

# **H. B. 2002**

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

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

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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 predicated 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; allowing the assessment of a percentage of fault for failing to take reasonable precautionary measures that were available; 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; failure to take**  
**reasonable precautionary measures; 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: *Provided*, That where a plaintiff has settled  
28 with a party or nonparty before verdict, the plaintiff shall  
29 promptly inform all other persons against whom liability is  
30 asserted of the settlement and the amount of the settlement may  
31 not be disclosed unless joint liability is applicable;

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

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



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

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

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

59 Provided, That the plaintiff has been convicted of such felony,  
60 or if deceased, the jury makes a finding beyond a reasonable  
61 doubt that the decedent committed such felony.

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

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

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

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



