

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 7

BY SENATORS LEONHARDT, CARMICHAEL, ASHLEY, STOLLINGS,

TRUMP AND BLAIR, *original sponsors*

[Passed February 24, 2016; in effect 90 days from passage]

1 AN ACT to amend and reenact §55-7-13d of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §55-7B-5 of said code, all relating to comparative fault; providing
3 one hundred eighty days after service of process for defendant to give notice of nonparties
4 wholly or partially at fault; providing that a plaintiff's recovery only be reduced in proportion
5 to the percentage of fault assigned to settling parties or nonparties and not the amount of
6 any settlement taking place before the verdict; providing when plaintiff's criminal conduct
7 bars recovery; prohibiting recovery in civil actions when damages are suffered as a result
8 of the commission, attempted commission, or immediate flight from the commission or
9 attempted commission of a felony; requiring commission, attempted commission, or
10 immediate flight from the commission or attempted commission of a felony be proximate
11 cause of injury; providing that the burden of proof for establishing a criminal conduct
12 defense is upon the person asserting such defense; providing that a court shall dismiss
13 an action upon determination that, as a matter of law, the felonious conduct upon which
14 there was a conviction, guilty plea or plea of no contest was a proximate cause of injury;
15 defining damages; providing for stay of civil action in which criminal conduct defense is
16 asserted during pendency, including appeals, of criminal action; establishing that the 2016
17 amendments apply to all causes of action accruing on or after the effective date of those
18 amendments; prohibiting civil action under Medical Professional Liability Act related to
19 prescription or dispensation of controlled substances when person's damages are a
20 proximate result of the commission of a felony, a violent crime that is a misdemeanor, or
21 violation of any law related to controlled substances; and providing exception if health care
22 provider that prescribes or dispenses controlled substances in violation of law proximately
23 causing injury.

Be it enacted by the Legislature of West Virginia:

1 That §55-7-13d of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; and that §55-7B-5 of said code be amended and reenacted, all to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-13d. Determination of fault; imputed fault; when plaintiff's criminal conduct bars recovery; burden of proof; damages; stay of action; limitations; applicability; severability.

1 (a) *Determination of fault of parties and nonparties.* —

2 (1) In assessing percentages of fault, the trier of fact shall consider the fault of all persons
3 who contributed to the alleged damages regardless of whether the person was or could have
4 been named as a party to the suit;

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

12 (3) In all instances where a nonparty is assessed a percentage of fault, any recovery by a
13 plaintiff shall be reduced in proportion to the percentage of fault chargeable to such nonparty.
14 Where a plaintiff has settled with a party or nonparty before verdict, that plaintiff's recovery will be
15 reduced in proportion to the percentage of fault assigned to the settling party or nonparty, rather
16 than by the amount of the nonparty's or party's settlement;

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

19 (5) Assessments of percentages of fault for nonparties are used only as a vehicle for
20 accurately determining the fault of named parties. Where fault is assessed against nonparties,
21 findings of such fault do not subject any nonparty to liability in that or any other action, or may not
22 be introduced as evidence of liability or for any other purpose in any other action; and

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

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

34 (c) *When plaintiff's criminal conduct bars recovery.* — In any civil action, a person or
35 person's legal representative who asserts a claim for damages may not recover if:

36 (1) Such damages arise out of the person's commission, attempted commission, or
37 immediate flight from the commission or attempted commission of a felony; and (2) That the
38 person's damages were suffered as a proximate result of the commission, attempted commission,
39 or immediate flight from the commission or attempted commission of a felony.

40 (d) *Burden of proof.* — The burden of alleging and proving comparative fault shall be upon
41 the person who seeks to establish such fault. The burden of alleging and proving the defense set
42 forth in subsection (c) of this section shall be upon the person who seeks to assert such defense:
43 *Provided,* That in any civil action in which a person has been convicted or pleaded guilty or no
44 contest to a felony, the claim shall be dismissed if the court determines as a matter of law that the
45 person's damages were suffered as a proximate result of the felonious conduct to which the
46 person pleaded guilty or no contest, or upon which the person was convicted.

47 (e) *Damages.* — For purposes of this section, "damages" includes all damages which
48 may be recoverable for personal injury, death, or loss of or damage to property, including those
49 recoverable in a wrongful death action.

50 (f) *Stay of action.* — Any civil action in which the defense set forth in subsection (c) of this
51 section is asserted shall be stayed by the court on the motion of the defendant during the
52 pendency of any criminal action which forms the basis of the defense, including appeals, unless
53 the court finds that a conviction in the criminal action would not constitute a valid defense under
54 said subsection.

55 (g) *Limitations.* — Nothing in this section creates a cause of action. Nothing in this section
56 alters, in any way, the immunity of any person as established by statute or common law.

57 (h) *Applicability.* — This section applies to all causes of action arising or accruing on or
58 after the effective date of its enactment. The amendments to this section enacted during the 2016
59 regular session of the Legislature shall apply to all causes of action accruing on or after the
60 effective date of those amendments.

61 (i) *Severability.* — The provisions of this section are severable from one another, so that
62 if any provision of this section is held void, the remaining provisions of this section shall remain
63 valid.

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-5. Health care actions; complaint; specific amount of damages not to be stated; limitation on bad faith claims; filing of first party bad faith claims; when plaintiff's criminal conduct bars recovery.

1 (a) In any medical professional liability action against a health care provider no specific
2 dollar amount or figure may be included in the complaint, but the complaint may include a
3 statement reciting that the minimum jurisdictional amount established for filing the action is
4 satisfied. However, any party defendant may at any time request a written statement setting forth
5 the nature and amount of damages being sought. The request shall be served upon the plaintiff
6 who shall serve a responsive statement as to the damages sought within thirty days thereafter. If
7 no response is served within the thirty days, the party defendant requesting the statement may
8 petition the court in which the action is pending to order the plaintiff to serve a responsive
9 statement.

10 (b) Notwithstanding any other provision of law, absent privity of contract, no plaintiff who
11 files a medical professional liability action against a health care provider may file an independent
12 cause of action against any insurer of the health care provider alleging the insurer has violated
13 the provisions of subdivision (9), section four, article eleven, chapter thirty-three of this code.
14 Insofar as the provisions of section three of said article prohibit the conduct defined in subdivision
15 (9), section four of said article, no plaintiff who files a medical professional liability action against
16 a health care provider may file an independent cause of action against any insurer of the health
17 care provider alleging the insurer has violated the provisions of section three of said article.

18 (c) No health care provider may file a cause of action against his or her insurer alleging
19 the insurer has violated the provisions of subdivision (9), section four, article eleven, chapter thirty-
20 three of this code until the jury has rendered a verdict in the underlying medical professional
21 liability action or the case has otherwise been dismissed, resolved or disposed of.

22 (d) No action related to the prescription or dispensation of controlled substances may be
23 maintained against a health care provider pursuant to this article by or on behalf of a person
24 whose damages arise as a proximate result of a violation of the Uniform Controlled Substances
25 Act, as set forth in chapter sixty-a of this code, the commission of a felony, a violent crime which
26 is a misdemeanor, or any other state or federal law related to controlled substances: *Provided,*
27 That an action may be maintained pursuant to this article if the plaintiff alleges and proves by a
28 preponderance of the evidence that the health care provider dispensed or prescribed a controlled
29 substance or substances in violation of state or federal law, and that such prescription or
30 dispensation in violation of state or federal law was a proximate cause of the injury or death.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2016.

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Governor