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ENGROSSED
COMMITTEE SUBSTITUTE
FOR
H. B. 2002

(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.

_____ (a) For purposes of this article, "Comparative fault" means the degree to which the fault of a person was a proximate cause of a personal injury or death or damage to property, expressed as a percentage. Fault shall be determined according to section thirteen-c of this article.

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

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

§55-7-13b. Definitions.

_____ As used in this article:

_____ "Agent" means a person who is authorized to act for another through employment by contract or apparent authority.

"Compensatory damages" means money awarded to compensate a plaintiff for economic and noneconomic loss.

"Damage" or "damages" means all claims under common law or statutory and equitable causes of action for actual damages, including economic and noneconomic damages, and additional damages, including punitive damages, treble damages, penalties, prejudgment interest, post-judgment interest, attorney's fees, litigation costs, costs of court, and all other damages of any kind.

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

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

"Plaintiff" means, for purposes of determining a right to recover under this chapter, any person asserting a claim.

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

(a) In any action for damages, the liability of each defendant for compensatory damages shall be several only and may not be joint. Each defendant shall be liable only for the amount of compensatory damages allocated to that defendant in direct proportion to that defendant's percentage of fault and a separate judgment shall be rendered against the defendant for that amount. However, joint liability may be imposed on two or more persons who consciously conspire and deliberately pursue a common plan or design to commit a tortious act or omission. Any person held jointly liable under this subsection shall have a right of contribution from other defendants that acted in concert.

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

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

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

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

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

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

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

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

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

(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.

(a) *Determination of fault of parties and nonparties.* (1) In assessing percentages of fault, the trier of fact

shall consider the fault of all persons who contributed to the alleged damages regardless of whether the person was or could have been named as a party to the suit. The fault shall include the fault imputed or attributed to a person by operation of law, if any:

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

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

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

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

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

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

_____ (c) Plaintiff's involvement in felony criminal act. – In any civil action, a defendant is not liable for damages that the plaintiff suffers as a result of the negligence or gross negligence of a defendant while the plaintiff is attempting to commit, committing, or fleeing from the commission of a felony: Provided, That the plaintiff has been convicted of such felony, or if deceased, the jury makes a finding beyond a reasonable doubt that the decedent committed such felony.

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

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

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

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