
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 500 Session of
2011

INTRODUCED BY GREENLEAF, KASUNIC, KITCHEN, LEACH, ERICKSON,
FOLMER, COSTA, YAW, HUGHES, TARTAGLIONE, BOSCOLA, FERLO,
FONTANA, SOLOBAY, YUDICHAK, BLAKE, WILLIAMS, BREWSTER AND
DINNIMAN, FEBRUARY 11, 2011

REFERRED TO JUDICIARY, FEBRUARY 11, 2011

AN ACT

Amending Title 42 (Judiciary and Judicial Procedure) of the
Pennsylvania Consolidated Statutes, in civil actions and
proceedings, further providing for comparative negligence.

The General Assembly of the Commonwealth of Pennsylvania
hereby enacts as follows:

Section 1. Section 7102 of Title 42 of the Pennsylvania
Consolidated Statutes is repealed:

[§ 7102. Comparative negligence.

(a) General rule.--In all actions brought to recover damages
for negligence resulting in death or injury to person or
property, the fact that the plaintiff may have been guilty of
contributory negligence shall not bar a recovery by the
plaintiff or his legal representative where such negligence was
not greater than the causal negligence of the defendant or
defendants against whom recovery is sought, but any damages
sustained by the plaintiff shall be diminished in proportion to
the amount of negligence attributed to the plaintiff.

(b) Recovery against joint defendant; contribution.--Where recovery is allowed against more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of his causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed. The plaintiff may recover the full amount of the allowed recovery from any defendant against whom the plaintiff is not barred from recovery. Any defendant who is so compelled to pay more than his percentage share may seek contribution.

(b.3) Off-road vehicle riding.--

(1) Off-road vehicle riding area operators shall have no duty to protect riders from common, frequent, expected and nonnegligent risks inherent to the activity, including collisions with riders or objects.

(2) The doctrine of knowing voluntary assumption of risk shall apply to all actions to recover damages for negligence resulting in death or injury to person or property brought against any off-road vehicle riding area operator.

(3) Nothing in this subsection shall be construed in any way to abolish or modify a cause of action against a potentially responsible party other than an off-road vehicle riding area operator.

(c) Downhill skiing.--

(1) The General Assembly finds that the sport of downhill skiing is practiced by a large number of citizens of this Commonwealth and also attracts to this Commonwealth large numbers of nonresidents significantly contributing to the economy of this Commonwealth. It is recognized that as in some other sports, there are inherent risks in the sport of

downhill skiing.

(2) The doctrine of voluntary assumption of risk as it applies to downhill skiing injuries and damages is not modified by subsections (a) and (b).

(d) Definitions.--As used in this section the following words and phrases shall have the meanings given to them in this subsection:

"Defendant or defendants." Includes impleaded defendants.

"Off-road vehicle." A motorized vehicle that is used off-road for sport or recreation. The term includes snowmobiles, all-terrain vehicles, motorcycles and four-wheel drive vehicles.

"Off-road vehicle riding area." Any area or facility providing recreational activities for off-road vehicles.

"Off-road vehicle riding area operator." A person or organization owning or having operational responsibility for any off-road vehicle riding area. The term includes:

(1) Agencies and political subdivisions of this Commonwealth.

(2) Authorities created by political subdivisions.

(3) Private companies.

"Plaintiff." Includes counter claimants and cross-claimants.]

Section 2. Title 42 is amended by adding a section to read:
§ 7102.1. Comparative negligence.

(a) General rule.--

(1) In all actions brought to recover damages for negligence resulting in death or injury to person or property, the fact that the plaintiff may have been guilty of contributory negligence shall not bar a recovery by the plaintiff or his legal representative where such negligence

was not greater than 50%, but any damages sustained by the plaintiff shall be diminished in proportion to the amount of negligence attributed to the plaintiff.

(2) Where recovery is allowed against more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of his causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed. Except as provided in paragraph (3), the plaintiff may recover the full amount of the allowed recovery from any defendant from whom recovery is allowed. Any defendant who is so compelled to pay more than his percentage share may seek contribution.

(3) Joint liability is abolished as to any defendant whose percentage share of liability is less than the percentage share attributed to the plaintiff. The plaintiff may not recover damages from such a defendant in excess of that defendant's percentage share.

(b) Off-road vehicle riding.--

(1) Off-road vehicle riding area operators shall have no duty to protect riders from common, frequent, expected and nonnegligent risks inherent to the activity, including collisions with riders or objects.

(2) The doctrine of knowing voluntary assumption of risk shall apply to all actions to recover damages for negligence resulting in death or injury to person or property brought against any off-road vehicle riding area operator.

(3) Nothing in this subsection shall be construed in any way to abolish or modify a cause of action against a potentially responsible party other than an off-road vehicle

riding area operator.

(c) Downhill skiing.--

(1) The General Assembly finds that the sport of downhill skiing is practiced by a large number of citizens of this Commonwealth and also attracts to this Commonwealth large numbers of nonresidents significantly contributing to the economy of this Commonwealth. It is recognized that as in some other sports, there are inherent risks in the sport of downhill skiing.

(2) The doctrine of voluntary assumption of risk as it applies to downhill skiing injuries and damages is not modified by subsection (a).

(d) Savings provisions.--Nothing in this section shall be construed in any way to create, abolish or modify a cause of action or to limit a party's right to join another potentially responsible party.

(e) Definitions.--As used in this section the following words and phrases shall have the meanings given to them in this subsection:

"Defendant or defendants." Includes impleaded defendants.

"Off-road vehicle." A motorized vehicle that is used off road for sport or recreation. The term includes snowmobiles, all-terrain vehicles, motorcycles and four-wheel drive vehicles.

"Off-road vehicle riding area." Any area or facility providing recreational activities for off-road vehicles.

"Off-road vehicle riding area operator." A person or organization owning or having operational responsibility for any off-road vehicle riding area. The term includes:

(1) Agencies and political subdivisions of this Commonwealth.

(2) Authorities created by political subdivisions.

(3) Private companies.

"Plaintiff." Includes counter claimants and cross-claimants.

Section 3. Nothing in the repeal or addition of 42 Pa.C.S. § 7102 or 7102.1 shall be construed to diminish the immunity of an employer to the extent that the employer is granted immunity from liability or suit pursuant to the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act.

Section 4. The repeal or addition of 42 Pa.C.S. §§ 7102 and 7102.1 shall apply to causes of action which accrue on or after the effective date of this section.

Section 5. This act shall take effect immediately.