

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 2** Session of
2011

INTRODUCED BY CORMAN, FOLMER, SCARNATI, D. WHITE, BRUBAKER,
VANCE, M. WHITE, SMUCKER, PIPPY, EICHELBERGER, MENSCH,
RAFFERTY, WARD, YAW, PICCOLA AND ROBBINS, JANUARY 18, 2011

REFERRED TO JUDICIARY, JANUARY 18, 2011

AN ACT

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, amending provisions relating to 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 amended to read:

§ 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.

(a.1) Recovery against joint defendant; contribution.--

(1) Where recovery is allowed against more than one person, including actions for strict liability, and where liability is attributed to 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 that defendant's liability to the amount of liability attributed to all defendants and other persons to whom liability is apportioned under subsection (a.2).

(2) Except as set forth in paragraph (3), a defendant's liability shall be several and not joint, and the court shall enter a separate and several judgment in favor of the plaintiff and against each defendant for the apportioned amount of that defendant's liability.

(3) A defendant's liability in any of the following actions shall be joint and several, and the court shall enter a joint and several judgment in favor of the plaintiff and against the defendant for the total dollar amount awarded as damages:

(i) Intentional misrepresentation.

(ii) An intentional tort.

(iii) Where a defendant has been held liable for not less than 60% of the total liability apportioned to all parties.

(iv) A release or threatened release of a hazardous substance under section 702 of the act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act.

(v) A civil action in which a defendant has violated section 497 of the act of April 12, 1951 (P.L.90, No.21),

known as the Liquor Code.

(4) Where a defendant has been held jointly and severally liable under this subsection and discharges by payment more than that defendant's proportionate share of the total liability, that defendant is entitled to recover contribution from defendants who have paid less than their proportionate share. Further, in any case, any defendant may recover from any other person all or a portion of the damages assessed that defendant pursuant to the terms of a contractual agreement.

(a.2) Apportionment of responsibility among certain nonparties and effect.--For purposes of apportioning liability only, the question of liability of any defendant or other person who has entered into a release with the plaintiff with respect to the action and who is not a party shall be transmitted to the trier of fact upon appropriate requests and proofs by any party. A person whose liability may be determined pursuant to this section does not include 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. An attribution of responsibility to any person or entity as provided in this subsection shall not be admissible or relied upon in any other action or proceeding for any purpose. Nothing in this section shall affect the admissibility or nonadmissibility of evidence regarding releases, settlements, offers to compromise or compromises as set forth in the Pennsylvania Rules of Evidence. Nothing in this section shall affect the rules of joinder of parties as set forth in the Pennsylvania Rules of Civil Procedure.

[(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 recover 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)] (a.1).

(c.2) 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.

(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 [against whom recovery is sought]." 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. Nothing in the amendment of 42 Pa.C.S § 7102 or in the act of June 19, 2002 (P.L.394, No.57), entitled "An act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for DNA testing of certain offenders; reestablishing the State DNA Data Base and

the State DNA Data Bank; further providing for duties of the Pennsylvania State Police; imposing costs on certain offenders; reestablishing the DNA Detection Fund; further providing for the apportionment of liability and damages; imposing penalties; and making a repeal," 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 3. The amendment of 42 Pa.C.S. § 7102 shall apply to causes of action which accrue on or after the effective date of this section.

Section 4. This act shall take effect immediately.