

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 525 Session of 2009

INTRODUCED BY TURZAI, BAKER, BARRAR, BEAR, BENNINGHOFF, BEYER, BOBACK, BOYD, BROOKS, CAUSER, CLYMER, COX, CREIGHTON, CUTLER, DENLINGER, ELLIS, EVERETT, FAIRCHILD, FLECK, GABIG, GABLER, GINGRICH, GODSHALL, GRELL, GROVE, HARRIS, HELM, HESS, HICKERNELL, HUTCHINSON, KAUFFMAN, M. KELLER, KILLION, KRIEGER, MAJOR, MARSHALL, MARSICO, MENSCH, METCALFE, MILLARD, MILLER, MILNE, MOUL, MUSTIO, OBERLANDER, O'NEILL, PERRY, PETRI, PHILLIPS, PICKETT, PYLE, QUIGLEY, QUINN, RAPP, REED, REESE, REICHLEY, ROAE, ROCK, ROHRER, ROSS, SAYLOR, SCHRODER, S. H. SMITH, SONNEY, STERN, STEVENSON, SWANGER, TALLMAN, VULAKOVICH AND WATSON, JUNE 22, 2009

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 22, 2009

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, repealing and adding
3 provisions relating to comparative negligence.

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

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7 Consolidated Statutes is repealed:

8 [§ 7102. Comparative negligence.

9 (a) General rule.--In all actions brought to recover damages
10 for negligence resulting in death or injury to person or
11 property, the fact that the plaintiff may have been guilty of
12 contributory negligence shall not bar a recovery by the
13 plaintiff or his legal representative where such negligence was
14 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

1 large numbers of nonresidents significantly contributing to
2 the economy of this Commonwealth. It is recognized that as in
3 some other sports, there are inherent risks in the sport of
4 downhill skiing.

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

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

11 "Defendant or defendants." Includes impleaded defendants.

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

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

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

20 (1) Agencies and political subdivisions of this
21 Commonwealth.

22 (2) Authorities created by political subdivisions.

23 (3) Private companies.

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

26 Section 2. Title 42 is amended by adding a section to read:

27 § 7102.1. Comparative negligence.

28 (a) General rule.--In all actions brought to recover damages
29 for negligence resulting in death or injury to person or
30 property, the fact that the plaintiff may have been guilty of

1 contributory negligence shall not bar a recovery by the
2 plaintiff or his legal representative where such negligence was
3 not greater than the causal negligence of the defendant or
4 defendants against whom recovery is sought, but any damages
5 sustained by the plaintiff shall be diminished in proportion to
6 the amount of negligence attributed to the plaintiff.

7 (b) Recovery against joint defendant; contribution.--

8 (1) Where recovery is allowed against more than one
9 person, including actions for strict liability, and where
10 liability is attributed to more than one defendant, each
11 defendant shall be liable for that proportion of the total
12 dollar amount awarded as damages in the ratio of the amount
13 of that defendant's liability to the amount of liability
14 attributed to all defendants and other persons to whom
15 liability is apportioned under subsection (c).

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

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

26 (i) Intentional misrepresentation.

27 (ii) An intentional tort.

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

1 (iv) A release or threatened release of a hazardous
2 substance under section 702 of the act of October 18,
3 1988 (P.L.756, No.108), known as the Hazardous Sites
4 Cleanup Act.

5 (v) A civil action in which a defendant has violated
6 section 497 of the act of April 12, 1951 (P.L.90, No.21),
7 known as the Liquor Code.

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

17 (c) Apportionment of responsibility among certain nonparties
18 and effect.--For purposes of apportioning liability only, the
19 question of liability of any defendant or other person who has
20 entered into a release with the plaintiff with respect to the
21 action and who is not a party shall be transmitted to the trier
22 of fact upon appropriate requests and proofs by any party. A
23 person whose liability may be determined under this section does
24 not include an employer to the extent that the employer is
25 granted immunity from liability or suit under the act of June 2,
26 1915 (P.L.736, No.338), known as the Workers' Compensation Act.
27 An attribution of responsibility to any person or entity as
28 provided in this subsection shall not be admissible or relied
29 upon in any other action or proceeding for any purpose. Nothing
30 in this section shall affect the admissibility or

1 nonadmissibility of evidence regarding releases, settlements,
2 offers to compromise or compromises as set forth in the
3 Pennsylvania Rules of Evidence. Nothing in this section shall
4 affect the rules of joinder of parties as set forth in the
5 Pennsylvania Rules of Civil Procedure.

6 (d) Off-road vehicle riding.--

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

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

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

19 (e) Downhill skiing.--

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

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

30 (f) Savings provisions.--Nothing in this section shall be

1 construed in any way to create, abolish or modify a cause of
2 action or to limit a party's right to join another potentially
3 responsible party.

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

7 "Defendant." Includes an impleaded defendant.

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

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

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

16 (1) Agencies and political subdivisions of this
17 Commonwealth.

18 (2) Authorities created by political subdivisions.

19 (3) Private companies.

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

21 Section 3. Nothing in the repeal or addition of 42 Pa.C.S. §
22 7102 or 7102.1 or under the act of June 19, 2002 (P.L.394,
23 No.57), entitled "An act amending Title 42 (Judiciary and
24 Judicial Procedure) of the Pennsylvania Consolidated Statutes,
25 providing for DNA testing of certain offenders; reestablishing
26 the State DNA Data Base and the State DNA Data Bank; further
27 providing for duties of the Pennsylvania State Police; imposing
28 costs on certain offenders; reestablishing the DNA Detection
29 Fund; further providing for the apportionment of liability and
30 damages; imposing penalties; and making a repeal," shall be

1 construed to diminish the immunity of an employer to the extent
2 that the employer is granted immunity from liability or suit
3 pursuant to the act of June 2, 1915 (P.L.736, No.338), known as
4 the Workers' Compensation Act.

5 Section 4. The repeal or addition of 42 Pa.C.S. §§ 7102 and
6 7102.1 shall apply to causes of action which accrue on or after
7 the effective date of this section.

8 Section 5. This act shall take effect immediately.