

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1131 Session of
2011

INTRODUCED BY GREENLEAF AND CORMAN, JUNE 13, 2011

AS AMENDED ON THIRD CONSIDERATION, JUNE 20, 2011

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in general provisions
3 relating to civil actions and proceedings, amending
4 provisions relating to comparative negligence.

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

7 Section 1. Section 7102 of Title 42 of the Pennsylvania
8 Consolidated Statutes is amended to read:

9 § 7102. Comparative negligence.

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

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

1 (1) Where recovery is allowed against more than one
2 person, including actions for strict liability, and where
3 liability is attributed to more than one defendant, each
4 defendant shall be liable for that proportion of the total
5 dollar amount awarded as damages in the ratio of the amount
6 of that defendant's liability to the amount of liability
7 attributed to all defendants and other persons to whom
8 liability is apportioned under subsection (a.2).

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

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

19 (i) Intentional misrepresentation.

20 (ii) An intentional tort.

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

24 (iv) A release or threatened release of a hazardous
25 substance under section 702 of the act of October 18,
26 1988 (P.L.756, No.108), known as the Hazardous Sites
27 Cleanup Act.

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

~~(vi) In the case of economic damages.~~

~~(vii) In a case where a minor has a beneficial
interest.~~

(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

1 Pennsylvania Rules of Civil Procedure.

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

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

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

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

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

25 (c) Downhill skiing.--

26 (1) The General Assembly finds that the sport of
27 downhill skiing is practiced by a large number of citizens of
28 this Commonwealth and also attracts to this Commonwealth
29 large numbers of nonresidents significantly contributing to
30 the economy of this Commonwealth. It is recognized that as in

1 some other sports, there are inherent risks in the sport of
2 downhill skiing.

3 (2) The doctrine of voluntary assumption of risk as it
4 applies to downhill skiing injuries and damages is not
5 modified by subsections (a) and [(b)] (a.1).

6 (c.2) Savings provisions.--Nothing in this section shall be
7 construed in any way to create, abolish or modify a cause of
8 action or to limit a party's right to join another potentially
9 responsible party.

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

13 "Defendant or defendants [against whom recovery is sought]."
14 Includes impleaded defendants.

15 ~~"Economic damages." Objectively verifiable monetary losses,~~ ←
16 ~~including medical expenses, loss of earnings, burial costs, loss~~
17 ~~of use of property, costs of repair or replacement, costs of~~
18 ~~obtaining substitute domestic services, loss of employment and~~
19 ~~loss of business or employment opportunities.~~

20 ~~"Minor." A person under 18 years of age.~~

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

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

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

29 (1) Agencies and political subdivisions of this
30 Commonwealth.

1 (2) Authorities created by political subdivisions.

2 (3) Private companies.

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

4 Section 2. Nothing in the amendment of 42 Pa.C.S § 7102 or
5 in the act of June 19, 2002 (P.L.394, No.57), entitled "An act
6 amending Title 42 (Judiciary and Judicial Procedure) of the
7 Pennsylvania Consolidated Statutes, providing for DNA testing of
8 certain offenders; reestablishing the State DNA Data Base and
9 the State DNA Data Bank; further providing for duties of the
10 Pennsylvania State Police; imposing costs on certain offenders;
11 reestablishing the DNA Detection Fund; further providing for the
12 apportionment of liability and damages; imposing penalties; and
13 making a repeal," shall be construed to diminish the immunity of
14 an employer to the extent that the employer is granted immunity
15 from liability or suit pursuant to the act of June 2, 1915
16 (P.L.736, No.338), known as the Workers' Compensation Act.

17 Section 3. The amendment of 42 Pa.C.S. § 7102 shall apply to
18 causes of action which accrue on or after the effective date of
19 this section.

20 Section 4. This act shall take effect immediately.