
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2123 Session of
1995

INTRODUCED BY FARGO, CLARK, TRELLO, FAIRCHILD, STISH, PESCI,
EGOLF, HERSHEY, TRUE, LYNCH, SCHRODER, STERN, S. H. SMITH,
WAUGH, TULLI, ROHRER, BROWN, DEMPSEY, SCHULER, READSHAW,
VANCE, NAILOR, E. Z. TAYLOR, TRAVAGLIO, GAMBLE, SAYLOR,
SEMMELE, MERRY, FLICK, GEIST, BIRMELIN, CLYMER AND GODSHALL,
OCTOBER 23, 1995

REFERRED TO COMMITTEE ON JUDICIARY, OCTOBER 23, 1995

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, abolishing joint and
3 several liability.

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

6 Section 1. Section 7102(b) of Title 42 of the Pennsylvania
7 Consolidated Statutes is amended to read:

8 § 7102. Comparative negligence.

9 * * *

10 (b) Recovery against joint defendant[; contribution].--Where
11 recovery is allowed against more than one defendant, each
12 defendant shall be liable for that proportion of the total
13 dollar amount awarded as damages in the ratio of the amount of
14 his causal negligence to the amount of causal negligence
15 attributed to all defendants against whom recovery is allowed.
16 [The plaintiff may recover the full amount of the allowed

1 recovery from any defendant against whom the plaintiff is not
2 barred from recovery. Any defendant who is so compelled to pay
3 more than his percentage share may seek contribution.]

4 (1) The liability of each defendant for damages shall be
5 several only and shall not be joint. Each defendant shall be
6 liable only for the amount of damages allocated to that
7 defendant in direct proportion to that defendant's percentage
8 of fault, and a separate judgment shall be rendered against
9 the defendant for that amount. To determine the amount of
10 judgment to be entered against each defendant, the court,
11 with regard to each defendant, shall multiply the total
12 amount of damages recoverable by the plaintiff by the
13 percentage of each defendant's fault, and that amount shall
14 be the maximum recoverable against that defendant.

15 (2) In assessing percentages of fault the trier of fact
16 shall consider the fault of all persons who contributed to
17 the death or injury to person or property, regardless of
18 whether the person was, or could have been, named as a party
19 to the action, except that negligence or fault of a nonparty
20 may be considered only if the plaintiff entered into a
21 settlement agreement with the nonparty or if the defending
22 party gives notice as prescribed by general rule that a
23 nonparty was wholly or partially at fault. The notice shall
24 include the nonparty's name and last-known address, or the
25 best identification of the nonparty which is possible under
26 the circumstances, together with a brief statement of the
27 basis for believing the nonparty to be at fault.

28 (3) Nothing in this subsection is meant to eliminate or
29 diminish any defenses or immunities which currently exist,
30 except as expressly noted herein. Assessments of percentages

1 of fault for nonparties are used only as a vehicle for
2 accurately determining the fault of named parties. Where
3 fault is assessed against nonparties, the findings of fault
4 shall not subject any nonparty to liability in the action or
5 any other action, or be introduced as evidence of liability
6 in any action.

7 (4) Joint liability shall be imposed on all who
8 consciously and deliberately pursue a common plan or design
9 to commit a tortious act, or actively take part in it. Any
10 person held jointly liable under this subsection shall have a
11 right of contribution from his fellow defendants acting in
12 concert. A defendant shall be held responsible only for the
13 portion of fault assessed to those with whom he acted in
14 concert under this subsection.

15 (5) The burden of alleging and proving fault shall be
16 upon the person who seeks to establish the fault.

17 (6) Nothing in this subsection shall be construed to
18 create a cause of action. Nothing in this subsection shall be
19 construed, in any way, to alter the immunity of any person.

20 * * *

21 Section 2. Subchapter B of Chapter 83 of Title 42 is
22 repealed.

23 Section 3. The provisions of this act are severable. If any
24 provision of this act or its application to any person or
25 circumstance is held invalid, the invalidity shall not affect
26 other provisions or applications of this act which can be given
27 effect without the invalid provision or application.

28 Section 4. This act shall apply to all pending actions in
29 which a verdict has not been rendered on the effective date of
30 this act.

1 Section 5. This act shall take effect in 60 days.