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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2681 Session of  
2002

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INTRODUCED BY FRANKEL, MANN, STETLER, STURLA, TRICH, COY AND  
MICHLOVIC, JUNE 5, 2002

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REFERRED TO COMMITTEE ON JUDICIARY, JUNE 5, 2002

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AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, further providing for  
3 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 amended to read:

8 § 7102. Comparative negligence and apportionment of damages.

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  
15 defendants against whom recovery is sought, but any damages  
16 sustained by the plaintiff shall be diminished in proportion to  
17 the amount of negligence attributed to the plaintiff.

18 [(b) Recovery against joint defendant; contribution.--Where

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

10 (b) Determination of responsibility and apportionment of  
11 damages.--In all actions involving allegations of causal  
12 negligence against more than one defendant, and in actions  
13 alleging strict liability for products liability damage, the  
14 trier of fact shall determine the proportionate share of  
15 liability, if any, for each defendant. If more than one  
16 defendant is found liable, each liable defendant shall be liable  
17 for that portion of the total damages represented by that  
18 party's liability as a ratio of the liability attributable to  
19 all defendants, except as provided in subsection (b.1).

20 (b.1) Joint and several liability.--A defendant shall be  
21 jointly and severally liable for a plaintiff's damages when:

22 (1) the defendant's liability as determined by the trier  
23 of fact under subsection (b) exceeds 50%; or

24 (2) the trier of fact determines that the plaintiff's  
25 damages were caused by the willful misconduct of the  
26 defendant.

27 (b.2) Contribution.--A defendant who pays more than the  
28 defendant's proportionate share of damages under subsection  
29 (b.1) may seek contribution from defendants who have paid less  
30 than their proportionate share.

1 (c) Downhill skiing.--

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

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

12 (d) Limitation.--Nothing in this section shall affect the  
13 scope of liability for a release or a threatened release of a  
14 hazardous substance under section 702 of the act of October 18,  
15 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup  
16 Act.

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

20 "Defendant or defendants against whom recovery is sought."

21 Includes impleaded defendants.

22 "Plaintiff." Includes counterclaimants and cross-claimants.

23 Section 2. This act shall take effect in 60 days.