

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 500 Session of 2011

INTRODUCED BY GREENLEAF, KASUNIC, KITCHEN, LEACH, ERICKSON,  
FOLMER, COSTA, YAW, HUGHES, TARTAGLIONE, BOSCOLA, FERLO,  
FONTANA, SOLOBAY, YUDICHAK, BLAKE, WILLIAMS, BREWSTER AND  
DINNIMAN, FEBRUARY 11, 2011

REFERRED TO JUDICIARY, FEBRUARY 11, 2011

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, in civil actions and  
3 proceedings, further providing for 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7 Consolidated Statutes is repealed: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  
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.

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

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

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

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

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

24 (c) Downhill skiing.--

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

(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." 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. Title 42 is amended by adding a section to read:

§ 7102.1. Comparative negligence.

(a) General rule.--

(1) 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

1 was not greater than 50%, but any damages sustained by the  
2 plaintiff shall be diminished in proportion to the amount of  
3 negligence attributed to the plaintiff.

4 (2) Where recovery is allowed against more than one  
5 defendant, each defendant shall be liable for that proportion  
6 of the total dollar amount awarded as damages in the ratio of  
7 the amount of his causal negligence to the amount of causal  
8 negligence attributed to all defendants against whom recovery  
9 is allowed. Except as provided in paragraph (3), the  
10 plaintiff may recover the full amount of the allowed recovery  
11 from any defendant from whom recovery is allowed. Any  
12 defendant who is so compelled to pay more than his percentage  
13 share may seek contribution.

14 (3) Joint liability is abolished as to any defendant  
15 whose percentage share of liability is less than the  
16 percentage share attributed to the plaintiff. The plaintiff  
17 may not recover damages from such a defendant in excess of  
18 that defendant's percentage share.

19 (b) Off-road vehicle riding.--

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

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

28 (3) Nothing in this subsection shall be construed in any  
29 way to abolish or modify a cause of action against a  
30 potentially responsible party other than an off-road vehicle

1 riding area operator.

2 (c) Downhill skiing.--

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

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

13 (d) Savings provisions.--Nothing in this section shall be  
14 construed in any way to create, abolish or modify a cause of  
15 action or to limit a party's right to join another potentially  
16 responsible party.

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

20 "Defendant or defendants." Includes impleaded defendants.

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 3. Nothing in the repeal or addition of 42 Pa.C.S. §  
5 7102 or 7102.1 shall be construed to diminish the immunity of an  
6 employer to the extent that the employer is granted immunity  
7 from liability or suit pursuant to the act of June 2, 1915  
8 (P.L.736, No.338), known as the Workers' Compensation Act.

9           Section 4. The repeal or addition of 42 Pa.C.S. §§ 7102 and  
10 7102.1 shall apply to causes of action which accrue on or after  
11 the effective date of this section.

12          Section 5. This act shall take effect immediately.