

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 850 Session of
2007

INTRODUCED BY TURZAI, ARGALL, BAKER, BASTIAN, BENNINGHOFF, BOYD, CAPPELLI, CLYMER, CREIGHTON, CURRY, CUTLER, ELLIS, EVERETT, FAIRCHILD, FLECK, GABIG, GILLESPIE, GINGRICH, GODSHALL, GRELL, HARRIS, HERSHEY, HESS, HICKERNELL, HUTCHINSON, JAMES, KAUFFMAN, M. KELLER, KILLION, MACKERETH, MARSHALL, MARSICO, MCILHATTAN, MENSCH, METCALFE, MILLARD, R. MILLER, MOUL, MOYER, MURT, MUSTIO, NAILOR, O'NEILL, PAYNE, PERRY, PETRI, PHILLIPS, PICKETT, PYLE, QUIGLEY, QUINN, RAPP, REED, REICHLEY, ROHRER, ROSS, RUBLEY, SAYLOR, S. H. SMITH, SONNEY, STEIL, STERN, R. STEVENSON, TRUE, VEREB, VULAKOVICH AND WATSON, MARCH 21, 2007

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 21, 2007

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7 Consolidated Statutes is repealed: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

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

4 (b.1) Recovery against joint defendant; contribution.--

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

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

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

23 (i) Intentional misrepresentation.

24 (ii) An intentional tort.

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

28 (iv) A release or threatened release of a hazardous
29 substance under section 702 of the act of October 18,
30 1988 (P.L.756, No.108), known as the Hazardous Sites

Cleanup Act.

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

(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.

(b.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

1 affect the rules of joinder of parties as set forth in the
2 Pennsylvania Rules of Civil Procedure.

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

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

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

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

16 (c) Downhill skiing.--

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

24 (2) The doctrine of voluntary assumption of risk as it
25 applies to downhill skiing injuries and damages is not
26 modified by subsections (a) and (b.1).

27 (c.1) Savings provisions.--Nothing in this section shall be
28 construed in any way to create, abolish or modify a cause of
29 action or to limit a party's right to join another potentially
30 responsible party.

(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.--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 was 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.--

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 (c).

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 defendant has been held liable for not
22 less than 60% of the total liability apportioned to all
23 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.

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

10 (c) Apportionment of responsibility among certain nonparties
11 and effect.--For purposes of apportioning liability only, the
12 question of liability of any defendant or other person who has
13 entered into a release with the plaintiff with respect to the
14 action and who is not a party shall be transmitted to the trier
15 of fact upon appropriate requests and proofs by any party. A
16 person whose liability may be determined pursuant to this
17 section does not include an employer to the extent that the
18 employer is granted immunity from liability or suit pursuant to
19 the act of June 2, 1915 (P.L.736, No.338), known as the Workers'
20 Compensation Act. An attribution of responsibility to any person
21 or entity as provided in this subsection shall not be admissible
22 or relied upon in any other action or proceeding for any
23 purpose. Nothing in this section shall affect the admissibility
24 or nonadmissibility of evidence regarding releases, settlements,
25 offers to compromise or compromises as set forth in the
26 Pennsylvania Rules of Evidence. Nothing in this section shall
27 affect the rules of joinder of parties as set forth in the
28 Pennsylvania Rules of Civil Procedure.

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

30 (1) Off-road vehicle riding area operators shall have no

1 duty to protect riders from common, frequent, expected and
2 nonnegligent risks inherent to the activity, including
3 collisions with riders or objects.

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

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

12 (e) Downhill skiing.--

13 (1) The General Assembly finds that the sport of
14 downhill skiing is practiced by a large number of citizens of
15 this Commonwealth and also attracts to this Commonwealth
16 large numbers of nonresidents significantly contributing to
17 the economy of this Commonwealth. It is recognized that as in
18 some other sports, there are inherent risks in the sport of
19 downhill skiing.

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

23 (f) Savings provisions.--Nothing in this section shall be
24 construed in any way to create, abolish or modify a cause of
25 action or to limit a party's right to join another potentially
26 responsible party.

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

30 "Defendant." Includes an impleaded defendant.

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

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

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

9 (1) Agencies and political subdivisions of this
10 Commonwealth.

11 (2) Authorities created by political subdivisions.

12 (3) Private companies.

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

14 Section 3. Nothing in the repeal or addition of 42 Pa.C.S. §
15 7102 or 7102.1 or under the act of June 19, 2002 (P.L.394,
16 No.57), entitled "An act amending Title 42 (Judiciary and
17 Judicial Procedure) of the Pennsylvania Consolidated Statutes,
18 providing for DNA testing of certain offenders; reestablishing
19 the State DNA Data Base and the State DNA Data Bank; further
20 providing for duties of the Pennsylvania State Police; imposing
21 costs on certain offenders; reestablishing the DNA Detection
22 Fund; further providing for the apportionment of liability and
23 damages; imposing penalties; and making a repeal," shall be
24 construed to diminish the immunity of an employer to the extent
25 that the employer is granted immunity from liability or suit
26 pursuant to the act of June 2, 1915 (P.L.736, No.338), known as
27 the Workers' Compensation Act.

28 Section 4. The repeal or addition of 42 Pa.C.S. §§ 7102 and
29 7102.1 shall apply to causes of action which accrue on or after
30 the effective date of this section.

1 Section 5. This act shall take effect immediately.