

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 2 Session of 2011

INTRODUCED BY CORMAN, FOLMER, SCARNATI, D. WHITE, BRUBAKER, VANCE, M. WHITE, SMUCKER, PIPPY, EICHELBERGER, MENSCH, RAFFERTY, WARD AND YAW, JANUARY 18, 2011

REFERRED TO JUDICIARY, JANUARY 18, 2011

AN ACT

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

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.

18 (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 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          (a.2) Apportionment of responsibility among certain  
11          nonparties and effect.--For purposes of apportioning liability  
12          only, the question of liability of any defendant or other person  
13          who has entered into a release with the plaintiff with respect  
14          to the action and who is not a party shall be transmitted to the  
15          trier of fact upon appropriate requests and proofs by any party.  
16          A 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          [(b) Recovery against joint defendant; contribution.--Where  
30 recovery is allowed against more than one defendant, each

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

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

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

18 (2) Except as set forth in paragraph (3), a defendant's  
19 liability shall be several and not joint, and the court shall  
20 enter a separate and several judgment in favor of the  
21 plaintiff and against each defendant for the apportioned  
22 amount of that defendant's liability.

23 (3) A defendant's liability in any of the following  
24 actions shall be joint and several, and the court shall enter  
25 a joint and several judgment in favor of the plaintiff and  
26 against the defendant for the total dollar amount awarded as  
27 damages:

28 (i) Intentional misrepresentation.

29 (ii) An intentional tort.

30 (iii) Where a defendant has been held liable for not

1 less than 60% of the total liability apportioned to all  
2 parties.

3 (iv) A release or threatened release of a hazardous  
4 substance under section 702 of the act of October 18,  
5 1988 (P.L.756, No.108), known as the Hazardous Sites  
6 Cleanup Act.

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

10 (4) Where a defendant has been held jointly and  
11 severally liable under this subsection and discharges by  
12 payment more than that defendant's proportionate share of the  
13 total liability, that defendant is entitled to recover  
14 contribution from defendants who have paid less than their  
15 proportionate share. Further, in any case, any defendant may  
16 recover from any other person all or a portion of the damages  
17 assessed that defendant pursuant to the terms of a  
18 contractual agreement.

19 (b.2) Apportionment of responsibility among certain  
20 nonparties and effect.--For purposes of apportioning liability  
21 only, the question of liability of any defendant or other person  
22 who has entered into a release with the plaintiff with respect  
23 to the action and who is not a party shall be transmitted to the  
24 trier of fact upon appropriate requests and proofs by any party.  
25 A person whose liability may be determined pursuant to this  
26 section does not include an employer to the extent that the  
27 employer is granted immunity from liability or suit pursuant to  
28 the act of June 2, 1915 (P.L.736, No.338), known as the Workers'  
29 Compensation Act. An attribution of responsibility to any person  
30 or entity as provided in this subsection shall not be admissible

1 or relied upon in any other action or proceeding for any  
2 purpose. Nothing in this section shall affect the admissibility  
3 or nonadmissibility of evidence regarding releases, settlements,  
4 offers to compromise or compromises as set forth in the  
5 Pennsylvania Rules of Evidence. Nothing in this section shall  
6 affect the rules of joinder of parties as set forth in the  
7 Pennsylvania Rules of Civil Procedure.]

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

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

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

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

21 (c) Downhill skiing.--

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

29 (2) The doctrine of voluntary assumption of risk as it  
30 applies to downhill skiing injuries and damages is not

1 modified by subsections (a) and [(b)] (a.1).

2 [(c.1) Savings provisions.--Nothing in this section shall be  
3 construed in any way to create, abolish or modify a cause of  
4 action or to limit a party's right to join another potentially  
5 responsible party.]

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

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

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

23 (1) Agencies and political subdivisions of this  
24 Commonwealth.

25 (2) Authorities created by political subdivisions.

26 (3) Private companies.

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

28 Section 2. Nothing in the amendment of 42 Pa.C.S § 7102 or  
29 in the act of June 19, 2002 (P.L.394, No.57), entitled "An act  
30 amending Title 42 (Judiciary and Judicial Procedure) of the

1 Pennsylvania Consolidated Statutes, providing for DNA testing of  
2 certain offenders; reestablishing the State DNA Data Base and  
3 the State DNA Data Bank; further providing for duties of the  
4 Pennsylvania State Police; imposing costs on certain offenders;  
5 reestablishing the DNA Detection Fund; further providing for the  
6 apportionment of liability and damages; imposing penalties; and  
7 making a repeal," shall be construed to diminish the immunity of  
8 an employer to the extent that the employer is granted immunity  
9 from liability or suit pursuant to the act of June 2, 1915  
10 (P.L.736, No.338), known as the Workers' Compensation Act.

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

14 Section 4. This act shall take effect immediately.