

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, YAW, PICCOLA AND ROBBINS, 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.

1 (a.1) Recovery against joint defendant; contribution.--

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

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

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

20 (i) Intentional misrepresentation.

21 (ii) An intentional tort.

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

25 (iv) A release or threatened release of a hazardous
26 substance under section 702 of the act of October 18,
27 1988 (P.L.756, No.108), known as the Hazardous Sites
28 Cleanup Act.

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

1 known as the Liquor Code.

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

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

30 [(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 recover 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.3) Off-road vehicle riding.--

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

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

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

23 (c) Downhill skiing.--

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

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

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

8 (d) Definitions.--As used in this section the following
9 words and phrases shall have the meanings given to them in this
10 subsection:

11 "Defendant or defendants [against whom recovery is sought]."
12 Includes impleaded defendants.

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

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

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

21 (1) Agencies and political subdivisions of this
22 Commonwealth.

23 (2) Authorities created by political subdivisions.

24 (3) Private companies.

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

26 Section 2. Nothing in the amendment of 42 Pa.C.S § 7102 or
27 in the act of June 19, 2002 (P.L.394, No.57), entitled "An act
28 amending Title 42 (Judiciary and Judicial Procedure) of the
29 Pennsylvania Consolidated Statutes, providing for DNA testing of
30 certain offenders; reestablishing the State DNA Data Base and

1 the State DNA Data Bank; further providing for duties of the
2 Pennsylvania State Police; imposing costs on certain offenders;
3 reestablishing the DNA Detection Fund; further providing for the
4 apportionment of liability and damages; imposing penalties; and
5 making a repeal," shall be construed to diminish the immunity of
6 an 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 3. The amendment of 42 Pa.C.S. § 7102 shall apply to
10 causes of action which accrue on or after the effective date of
11 this section.

12 Section 4. This act shall take effect immediately.