WEST VIRGINIA CODE CHAPTER 55 ARTICLE 7

WV Legislature

§55-7-1. Seduction.

An action for seduction may be maintained, without any allegation of proof of the loss of the service of the female by reason of the defendant's wrongful act.

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§55-7-2. Insulting words.

All words which, from their usual construction and common acceptation, are construed as insults and tend to violence and breach of the peace, shall be actionable. No demurrer shall preclude a jury from passing thereon.

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§55-7-3. Unlawful seizure or attachment.

If the property be distrained for any rent not due, or attached for any rent not accruing, or taken under any attachment sued out without good cause, the owner of such property may, in an action against the party suing out the warrant of distress or attachment, recover damages for the wrongful seizure, and also, if the property be sold, for the sale thereof.

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§55-7-4. Action of replevin abolished.

No action of replevin shall be hereafter brought.

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§55-7-5. Action for death by wrongful act.

Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action to recover damages in respect thereof, then, and in every such case, the person who, or the corporation which, would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to murder in the first or second degree, or manslaughter. No action, however, shall be maintained by the personal representative of one who, not an infant, after injury, has compromised for such injury and accepted satisfaction therefor previous to his death. Any right of action which may hereafter accrue by reason of such injury done to the person of another shall survive the death of the wrongdoer, and may be enforced against the executor or administrator, either by reviving against such personal representative a suit which may have been brought against the wrongdoer himself in his lifetime, or by bringing an original suit against his personal representative after his death, whether or not the death of the wrongdoer occurred before or after the death of the injured party.

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§55-7-6. By whom action for wrongful death to be brought; amount and distribution of damages; period of limitation.

(a) Every such action shall be brought by and in the name of the personal representative of such deceased person who has been duly appointed in this state, or in any other state, territory or district of the United States, or in any foreign country, and the amount recovered in every such action shall be recovered by said personal representative and be distributed in accordance herewith. If the personal representative was duly appointed in another state, territory or district of the United States, or in any foreign country, such personal representative shall, at the time of filing of the complaint, post bond with a corporate surety thereon authorized to do business in this state, in the sum of $100, conditioned that such personal representative shall pay all costs adjudged against him or her and that he or she shall comply with the provisions of this section. The circuit court may increase or decrease the amount of said bond, for good cause.

(b) In every such action for wrongful death, the jury, or in a case tried without a jury, the court, may award such damages as to it may seem fair and just, and, may direct in what proportions the damages shall be distributed to the surviving spouse and children, including adopted children and stepchildren, brothers, sisters, parents and any persons who were financially dependent upon the decedent at the time of his or her death or would otherwise be equitably entitled to share in such distribution after making provision for those expenditures, if any, specified in subdivision (2), subsection (c) of this section. If there are no such survivors, then the damages shall be distributed in accordance with the decedent's will or, if there is no will, in accordance with the laws of descent and distribution as set forth in chapter forty-two of this code. If the jury renders only a general verdict on damages and does not provide for the distribution thereof, the court shall distribute the damages in accordance with the provisions of this subsection.

(c) (1) The verdict of the jury shall include, but may not be limited to, damages for the following: (A) Sorrow, mental anguish, and solace which may include society, companionship, comfort, guidance, kindly offices and advice of the decedent; (B) compensation for reasonably expected loss of (i) income of the decedent, and (ii) services, protection, care and assistance provided by the decedent; (C) expenses for the care, treatment and hospitalization of the decedent incident to the injury resulting in death; and (D) reasonable funeral expenses.

(2) In its verdict the jury shall set forth separately the amount of damages, if any, awarded by it for reasonable funeral, hospital, medical and said other expenses incurred as a result of the wrongful act, neglect or default of the defendant or defendants which resulted in death, and any such amount recovered for such expenses shall be so expended by the personal representative.

(d) Every such action shall be commenced within two years after the death of such deceased person, subject to the provisions of section eighteen, article two, chapter fifty-five. The provisions of this section shall not apply to actions brought for the death of any person

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occurring prior to July 1, 1988.

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§55-7-7. Compromise of claim for death by wrongful act.

The personal representative of the deceased may compromise any claim to damages arising under section five of this article before or after action brought. What is received by the personal representative under the compromise shall be treated as if recovered by him in an action under the section last mentioned. When the judge acts in vacation, he shall return all the papers in the case, and orders made therein, to the clerk's office of such court. The clerk shall file the papers in his office as soon as received, and forthwith enter the order in the order book on the law side of the court. Such orders, and all the proceedings in vacation, shall have the same force and effect as if made or had in term. Upon approval of the compromise, the court shall apportion and distribute such damages, or the compromise agreed upon, after making provisions for those expenditures, if any, specified in subdivision (2), subsection (c), section six of this article, in the same manner as in the cases tried without a jury.

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§55-7-8. Personal injury action where injuries result in death.

Where an action is brought by a person injured for damage caused by the wrongful act, neglect or default of any person or corporation, and the person injured dies as a result thereof, the action shall not abate by reason of his or her death but, his or her death being suggested, it may be revived in the name of his or her personal representative, and the complaint shall be amended so as to conform to an action under sections five and six of this article, and the case proceeded with as if the action had been brought under said sections. Additionally a separate and distinct cause of action may be brought, and if brought, shall be joined in the same proceeding for damages incurred between the time of injury and death where not otherwise provided for in said sections five and six. In either case there shall be but one recovery for each element of damages: Provided, That nothing in this section shall be construed in derogation of the provisions of section twelve of this article.

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§55-7-8a. Actions which survive; limitations; law governing such actions.

(a) In addition to the causes of action which survive at common law, causes of action for injuries to property, real or personal, injuries to the person and not resulting in death, deceit or fraud, or any violations of §46A-1-101 et. seq. of this code, also survive; and such actions may be brought notwithstanding the death of the person entitled to recover or the death of the person liable.

(b) If any action is begun during the lifetime of the injured party, and within the period of time permissible under the applicable statute of limitations as provided by §55-2-1 *et seq*. of this code and §55-2A-1 *et seq*. of this code, (either against the wrongdoer or his or her personal representative), and the injured party dies pending the action it may be revived in favor of the personal representative of the injured party and prosecuted to judgment and execution against the wrongdoer or personal representative.

(c) If the injured party dies before having begun an action and it is not at the time of his or her death barred by the applicable statute of limitations under the provisions of §55-2-1 *et seq*. of this code and §55-2A-1 *et seq*. of this code the action may be begun by the personal representative of the injured party against the wrongdoer or personal representative and prosecuted to judgment and execution against the wrongdoer or his or her personal representative. Any action shall be instituted within the same period of time that would have been applicable had the injured party not died.

(d) If an action mentioned in the subsections (a), (b) and/or (c) of this section have been begun against the wrongdoer and he or she dies during the pendency thereof, it may be revived against the personal representative of the wrongdoer and prosecuted to judgment and execution.

(e) The applicable provisions of §56-8-1 *et seq*. of this code govern the actions hereinabove mentioned, with reference to their abatement, revival, discontinuance, reinstatement, and substitution of parties.

(f) Nothing contained in this section shall be construed to extend the time within which an action for any other tort shall be brought, nor to give the right to assign a claim for a tort not otherwise assignable.

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§55-7-9. Violation of statutes.

Any person injured by the violation of any statute may recover from the offender such damages as he may sustain by reason of the violation, although a penalty or forfeiture for such violation be thereby imposed, unless the same be expressly mentioned to be in lieu of such damages.

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§55-7-10. Trespass abolished; trespass on the case to lie in lieu thereof.

The action of trespass is abolished. In all cases in which an action of trespass could have been maintained an action of trespass on the case shall lie.

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§55-7-11. Suits against unincorporated common carriers.

Where common carriers are not incorporated, any one or more of them may be sued by his or their name or names only, to recover damages for loss of, or injury to, any parcel, package, or person; and such suit shall not abate for the want of joining any of the coproprietors, or copartners.

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§55-7-11a. Settlement, release or statement within twenty days after personal injury; disavowal; certain expressions of sympathy inadmissible as evidence.

(a) If a person sustains a personal injury, no person shall within twenty days from the date of the personal injury while the injured person is either: (i) An inpatient in any hospital; or (ii) partially or totally unable to engage in his or her usual trade, profession or occupation:

(1) Negotiate or attempt to negotiate a settlement of any claim for such personal injury with or for and on behalf of the injured person;

(2) Obtain or attempt to obtain from the injured person a partial or general release of liability for such injury; or

(3) Obtain or attempt to obtain any statement, either written or oral, from the injured person for use in negotiating a settlement or obtaining a partial or general release of liability with respect to the personal injury: Provided, That nothing herein shall prohibit a person acting or intending to act for and on behalf of the injured person from obtaining any statement, oral or written, from an injured person upon the express request of the injured person.

Nothing herein shall prevent a person who may be liable for damages on account of the personal injury from making an advance payment of all or any part of his or her liability for the damages; any sum paid during the twenty days by a person liable for damages on account of the personal injury is allowed as full credit against any damages which may be finally determined to be due an injured person.

Any settlement, release of liability or statement entered into, obtained or made in violation of this section may be disavowed by the injured person at any time within one hundred eighty days from the date of the personal injury by executing a written statement of disavowal and thereupon forwarding a copy of the same to the person violating this section, in which event the settlement, release or statement may not be admissible in evidence for any purpose in any court or other proceeding relating to the personal injury, if any consideration paid for the settlement of or the general release of liability for the personal injury, at the time of the forwarding of the copy of the written statement of disavowal, is repaid or returned to the person who paid the consideration.

(b) (1) No statement, affirmation, gesture or conduct of a healthcare provider who provided healthcare services to a patient, expressing apology, sympathy, commiseration, condolence, compassion or a general sense of benevolence, to the patient, a relative of the patient or a representative of the patient and which relate to the discomfort, pain, suffering, injury or death of the patient shall be admissible as evidence of an admission of liability or as evidence of an admission against interest in any civil action brought under the provisions of article seven-b, chapter fifty-five of this code, or in any arbitration, mediation or other alternative dispute resolution proceeding related to such civil action.

(2) Terms not otherwise defined in this section have the meanings assigned to them in article

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seven-b, chapter fifty-five of this code. For purposes of this section, unless the context otherwise requires, "relative" means a spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half-brother, half-sister or spouse's parents. The term includes said relationships that are created as a result of adoption. In addition, "relative" includes any person who has a family-type relationship with a patient.

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§55-7-12. Liability of one joint tort-feasor not affected by release to, or accord and satisfaction with, another.

A release to, or an accord and satisfaction with, one or more joint trespassers, or tort-feasors, shall not inure to the benefit of another such trespasser, or tort-feasor, and shall be no bar to an action or suit against such other joint trespasser, or tort-feasor, for the same cause of action to which the release or accord and satisfaction relates.

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§55-7-13.

Repealed.

Acts, 2015 Reg. Sess., Ch. 59.

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§55-7-13a. Modified comparative fault standard established.

(a) For purposes of this article, "comparative fault" means the degree to which the fault of a person was a proximate cause of an alleged personal injury or death or damage to property, expressed as a percentage. Fault shall be determined according to section thirteen-c of this article.

(b) In any action based on tort or any other legal theory seeking damages for personal injury, property damage, or wrongful death, recovery shall be predicated upon principles of comparative fault and the liability of each person, including plaintiffs, defendants and nonparties who proximately caused the damages, shall be allocated to each applicable person in direct proportion to that person's percentage of fault.

(c) The total of the percentages of comparative fault allocated by the trier of fact with respect to a particular incident or injury must equal either zero percent or one hundred percent.

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§55-7-13b. Definitions.

As used in this article:

"Compensatory damages" means damages awarded to compensate a plaintiff for economic and noneconomic loss.

"Defendant" means, for purposes of determining an obligation to pay damages to another under this chapter, any person against whom a claim is asserted including a counter-claim defendant, cross-claim defendant or third-party defendant.

"Fault" means an act or omission of a person, which is a proximate cause of injury or death to another person or persons, damage to property, or economic injury, including, but not limited to, negligence, malpractice, strict product liability, absolute liability, liability under section two, article four, chapter twenty-three of this code or assumption of the risk.

"Plaintiff" means, for purposes of determining a right to recover under this chapter, any person asserting a claim.

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§55-7-13c. Liability to be several; amount of judgment; allocation of fault.

(a) In any action for damages, the liability of each defendant for compensatory damages shall be several only and may not be joint. Each defendant shall be liable only for the amount of compensatory damages allocated to that defendant in direct proportion to that defendant's percentage of fault, and a separate judgment shall be rendered against each defendant for his or her share of that amount. However, joint liability may be imposed on two or more defendants who consciously conspire and deliberately pursue a common plan or design to commit a tortious act or omission. Any person held jointly liable under this section shall have a right of contribution from other defendants that acted in concert.

(b) To determine the amount of judgment to be entered against each defendant, the court, with regard to each defendant, shall multiply the total amount of compensatory damages recoverable by the plaintiff by the percentage of each defendant's fault and, subject to subsection (d) of this section, that amount shall be the maximum recoverable against that defendant.

(c) Any fault chargeable to the plaintiff shall not bar recovery by the plaintiff unless the plaintiff's fault is greater than the combined fault of all other persons responsible for the total amount of damages, if any, to be awarded. If the plaintiff's fault is less than the combined fault of all other persons, the plaintiff's recovery shall be reduced in proportion to the plaintiff's degree of fault.

(d) Notwithstanding subsection (b) of this section, if a plaintiff through good faith efforts is unable to collect from a liable defendant, the plaintiff may, not later than one year after judgment becomes final through lapse of time for appeal or through exhaustion of appeal, whichever occurs later, move for reallocation of any uncollectible amount among the other parties found to be liable.

(1) Upon the filing of the motion, the court shall determine whether all or part of a defendant's proportionate share of the verdict is uncollectible from that defendant and shall reallocate the uncollectible amount among the other parties found to be liable, including a plaintiff at fault, according to their percentages at fault: Provided, That the court may not reallocate to any defendant an uncollectible amount greater than that defendant's percentage of fault multiplied by the uncollectible amount: Provided, however,, That there shall be no reallocation against a defendant whose percentage of fault is equal to or less than the plaintiff's percentage of fault.

(2)If the motion is filed, the parties may conduct discovery on the issue of collectibility prior to a hearing on the motion.

(e) A party whose liability is reallocated under subsection (d) of this section is nonetheless subject to contribution and to any continuing liability to the plaintiff on the judgment.

(f) This section does not affect, impair or abrogate any right of indemnity or contribution

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arising out of any contract or agreement or any right of indemnity otherwise provided by law.

(g) The fault allocated under this section to an immune defendant or a defendant whose liability is limited by law may not be allocated to any other defendant.

(h) Notwithstanding any other provision of this section to the contrary, a defendant that commits one or more of the followings acts or omissions shall be jointly and severally liable:

(1) A defendant whose conduct constitutes driving a vehicle under the influence of alcohol, a controlled substance, or any other drug or any combination thereof, as described in section two, article five, chapter seventeen-c of this code, which is a proximate cause of the damages suffered by the plaintiff;

(2) A defendant whose acts or omissions constitute criminal conduct which is a proximate cause of the damages suffered by the plaintiff; or

(3) A defendant whose conduct constitutes an illegal disposal of hazardous waste, as described in section three, article eighteen, chapter twenty-two of this code, which conduct is a proximate cause of the damages suffered by the plaintiff.

(i) This section does not apply to the following statutes:

(1) Article twelve-a, chapter twenty-nine of this code;

(2) Chapter forty-six of this code; and

(3) Article seven-b, chapter fifty-five of this code.

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§55-7-13d. Determination of fault; imputed fault; when plaintiff's criminal conduct bars recovery; burden of proof; damages; stay of action; limitations; applicability; severability.

(a) *Determination of fault of parties and nonparties. —*

(1) In assessing percentages of fault, the trier of fact shall consider the fault of all persons who contributed to the alleged damages regardless of whether the person was or could have been named as a party to the suit;

(2) Fault of a nonparty shall be considered if the plaintiff entered into a settlement agreement with the nonparty or if a defending party gives notice no later than one hundred eighty days after service of process upon said defendant that a nonparty was wholly or partially at fault. Notice shall be filed with the court and served upon all parties to the action designating the nonparty and setting forth the nonparty's name and last known address, or the best identification of the nonparty which is possible under the circumstances, together with a brief statement of the basis for believing such nonparty to be at fault;

(3) In all instances where a nonparty is assessed a percentage of fault, any recovery by a plaintiff shall be reduced in proportion to the percentage of fault chargeable to such nonparty. Where a plaintiff has settled with a party or nonparty before verdict, that plaintiff's recovery will be reduced in proportion to the percentage of fault assigned to the settling party or nonparty, rather than by the amount of the nonparty's or party's settlement;

(4) Nothing in this section is meant to eliminate or diminish any defenses or immunities, which exist as of the effective date of this section, except as expressly noted herein;

(5) Assessments of percentages of fault for nonparties are used only as a vehicle for accurately determining the fault of named parties. Where fault is assessed against nonparties, findings of such fault do not subject any nonparty to liability in that or any other action, or may not be introduced as evidence of liability or for any other purpose in any other action; and

(6) In all actions involving fault of more than one person, unless otherwise agreed by all parties to the action, the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating the percentage of the total fault that is allocated to each party and nonparty pursuant to this article. For this purpose, the court may determine that two or more persons are to be treated as a single person.

(b) *Imputed fault. —* Nothing in this section may be construed as precluding a person from being held liable for the portion of comparative fault assessed against another person who was acting as an agent or servant of such person, or if the fault of the other person is otherwise imputed or attributed to such person by statute or common law. In any action

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where any party seeks to impute fault to another, the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, on the issue of imputed fault.

(c) *When plaintiff's criminal conduct bars recovery.* — In any civil action, a person or person's legal representative who asserts a claim for damages may not recover if:

(1) Such damages arise out of the person's commission, attempted commission, or immediate flight from the commission or attempted commission of a felony; and

(2) That the person's damages were suffered as a proximate result of the commission, attempted commission, or immediate flight from the commission or attempted commission of a felony.

(d) *Burden of proof.* — The burden of alleging and proving comparative fault shall be upon the person who seeks to establish such fault. The burden of alleging and proving the defense set forth in subsection (c) of this section shall be upon the person who seeks to assert such defense: *Provided*, That in any civil action in which a person has been convicted or pleaded guilty or no contest to a felony, the claim shall be dismissed if the court determines as a matter of law that the person's damages were suffered as a proximate result of the felonious conduct to which the person pleaded guilty or no contest, or upon which the person was convicted.

(e) *Damages.* — For purposes of this section, "damages" includes all damages which may be recoverable for personal injury, death, or loss of or damage to property, including those recoverable in a wrongful death action.

(f) *Stay of action.* — Any civil action in which the defense set forth in subsection (c) of this section is asserted shall be stayed by the court on the motion of the defendant during the pendency of any criminal action which forms the basis of the defense, including appeals, unless the court finds that a conviction in the criminal action would not constitute a valid defense under said subsection.

(g) *Limitations.* — Nothing in this section creates a cause of action. Nothing in this section alters, in any way, the immunity of any person as established by statute or common law.

(h) *Applicability.* — This section applies to all causes of action arising or accruing on or after the effective date of its enactment. The amendments to this section enacted during the 2016 regular session of the Legislature shall apply to all causes of action accruing on or after the effective date of those amendments.

(i) *Severability.* — The provisions of this section are severable from one another, so that if any provision of this section is held void, the remaining provisions of this section shall remain valid.

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§55-7-14. Liability of visual or sound broadcasting stations for defamatory statements.

The owner, licensee or operator of a visual or sound radio broadcasting station or network of stations, and the agents or employees of any such owner, licensee or operator, shall not be liable for any damages for any defamatory statement published or uttered in or as a part of a visual or sound radio broadcast, by one other than such owner, licensee or operator, or agent or employee thereof, unless it shall be alleged and proved by the complaining party, that such owner, licensee, operator or such agent or employee, has failed to exercise due care to prevent the publication or utterance of such statement in such broadcast.

In no event, however, shall any owner, licensee or operator or the agents or employees of any such owner, licensee or operator of such a station or network of stations be held liable for any damages for any defamatory statement uttered over the facilities of such station or network by any legally qualified candidate for public office.

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§55-7-15. Aid to victim of accident, emergency, or disaster; immunity from civil liability, definitions.

(a) A person, including, without limitation, trained, licensed, or certified professionals, or an entity who in good faith renders or provides emergency care, or assistance at the scene of an accident, emergency, or disaster, voluntarily and without remuneration, may not be liable for any civil damages as the result of any act or omission at the scene in rendering, or providing emergency care or assistance.

(b) For purposes of this section, the term "emergency" means any instance where a person suffers from a medical condition requiring immediate treatment due to natural causes, accident, or crime.

(c) For purposes of this section, "disaster" has the same meaning as that term is defined in §15-5-2 of this code.

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§55-7-16. Immunity from liability for ski patrol rendering emergency care.

(a) A member in good standing of a national ski patrol system who, without compensation, provides emergency aid or assistance to an injured or ill person at the scene of a ski resort rescue operation, outdoor emergency rescue operation or while otherwise performing ski patrol or while transporting an injured or ill person to a place for transfer to an available emergency medical center or hospital as the result of being on ski patrol, may not be held liable for civil damages for any alleged act or omission which is claimed to have occurred during the rendering of the emergency aid or assistance. The limitation of liability established by the provisions of this section apply to acts or omissions rendered in good faith.

(b) For the purposes of this section, a national ski patrol system is a national organization whose members are volunteers and do not receive compensation and are required to obtain training in safety and emergency medical treatment.

(c) For purposes of this section, the term "compensation" does not include access to a recreational facility, complimentary lift tickets, food, lodging or other gifts or discounts that may be offered or accessible to a person.

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§55-7-17. Aid by trained emergency services personnel; entities, immunity from civil liability; definitions.

(a) A person trained in a qualified program of emergency services or an entity, who voluntarily and in good faith renders or provides advice, assistance, equipment, or materials at the scene of an actual or threatened accident, emergency, or disaster, and receives no remuneration for rendering or providing the advice, assistance, equipment, or materials is not liable for any civil damages as the result of any act or omission at the scene in rendering or providing advice, assistance, equipment, or materials: *Provided*, That the exemption from liability for civil damages of this section shall be extended to any person who receives reimbursement for out-of-pocket expenses incurred in rendering or providing the advice, assistance, equipment, or materials or compensation from his or her regular employer for the time period during which he or she was actually engaged in rendering or providing advice, assistance, equipment, or materials, but is not extended to that person or an entity who by his, or her, or its act or omission caused or contributed to the cause of the actual or threatened accident, emergency, or disaster.

(b) For purposes of this section, the term "emergency" includes, without limitation, any instance where a person suffers from a medical condition requiring immediate treatment due to natural causes, accident, or crime.

(c) For purposes of this section, the term "disaster" has the same meaning as that term is defined in §15-5-2 of this code and temporally includes the imminent threat of disaster as well as its occurrence.

(d) For purposes of this section, the term “emergency services” means any mine rescue response services, hazardous substance response services, chemical substance and materials response services, hazardous waste response services and further has the meaning as the term is defined in §15-5-2 of the code.

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§55-7-18. Limiting liability of home care service providers, daycare centers and residential care facilities disclosing certain employment information.

When a residential care facility required to be registered, licensed or certified under the laws of the state, a licensed day care center, or an agency providing services in the home to children or incapacitated adults is asked to provide an employment reference with respect to a named individual who provided services to children or incapacitated adults for compensation, no person shall be liable for disclosing information related to the named individual's employment history, including a subjective assessment of whether the named individual is suited to provide services to children or incapacitated adults, unless it is alleged and proven that the information disclosed was false and disclosed with knowledge that the information was false.

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§55-7-18a. Employer immunity from liability; disclosure of information regarding former employees.

(a) Any employer or his or her designated agent who discloses job-related information that may be reasonably considered adverse about a former or current employee to a prospective employer of the former or current employee is presumed to be acting in good faith and is immune from civil liability for the disclosure or its consequences: Provided, That the disclosure of such information pursuant to this subsection shall be in writing and a copy of any such disclosure shall be provided to the former or current employee at the time of disclosure.

(b) For the purposes of this section, the presumption of good faith is rebutted upon a showing, by a preponderance of the evidence, that the information disclosed was:

(1) Knowingly false;

(2) Disclosed with reckless disregard for the truth;

(3) Deliberately misleading;

(4) Rendered with malicious purpose toward the former or current employee; or

(5) Disclosed in violation of a nondisclosure agreement or applicable law.

(c) For purposes of this section, "job-related information" means information concerning a person's education, training, experience, qualifications, conduct and job performance which is offered for the purpose of providing criteria to evaluate the person's suitability for employment.

(d) If an employer disclosed job-related information to a prospective employer of a former or current employee that was false or misleading, and if the current or former employee requests, then the employer shall give corrected information to every person or entity that is in the employer's records as having received the original information, with a copy thereof to the former or current employee.

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§55-7-19. Liability of health care providers who render services at school athletic events; limiting liability; exceptions.

Any person licensed by, or certified or registered in, this state or another state to provide health care or professional health care services: (1) Who is in attendance at an athletic event sponsored by a public or private elementary or secondary school; and (2) who gratuitously and in good faith agrees to render emergency care or treatment to any participant during the event in connection with an emergency arising during or as the result of the event, without objection of the participant, may not be held liable for any civil damages as a result of the care or treatment, or as a result of any act or failure to act in providing or arranging further medical treatment.

(b) The limitation of liability established by the provisions of this section does not apply to acts or omissions constituting gross negligence or willful misconduct. For purposes of this section, the term “athletic event” includes scheduled practices for any athletic event.

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§55-7-20. Limiting civil liability of nonprofits for arranging passage on excursion trains.

Any not for profit corporation for which one of its purposes is to arrange for persons or groups of persons to take excursions through, on, at or near places of scenic, historic or educational interest using trains, trackage or other related equipment and facilities of a regulated common carrier or governmental entity, shall not be liable for personal injury, wrongful death or property damage arising from the acts or omissions of the regulated common carrier or governmental entity so long as the role of the not for profit is limited to arranging for persons or groups of persons to participate in the excursion and providing tour information regarding the scenic, historic or educational qualities of the excursion area.

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§55-7-21. Creating presumption of good faith for court-appointed licensed psychologists and psychiatrists conducting a child custody evaluation; method for assigning court and legal fees.

(a) A licensed psychologist or licensed psychiatrist who has been appointed by a court to conduct a child custody evaluation in a judicial proceeding shall be presumed to be acting in good faith if the evaluation has been conducted consistent with standards established by the American psychological association's guidelines for child custody evaluations in divorce proceedings.

(b) No complaint to a licensing or accrediting entity against a court-appointed licensed psychologist or psychiatrist relating to a child custody evaluation shall be considered if it is filed anonymously and does not include the full name, address and telephone number of the complainant.

(c) Any action filed against a licensed psychologist or licensed psychiatrist alleging tortious conduct related to evidence provided while acting as a court-appointed expert in a child custody matter shall contain a recitation of a specific allegation of breaches of American psychological association's guidelines for child custody evaluations in divorce proceedings. Failure to specifically plead such violations shall be cause for dismissal of the action.

(d) Any licensed psychologist or licensed psychiatrist who is named in a civil action as a defendant because of his or her performance of a child custody evaluation while acting as a court-appointed expert and who prevails due to a finding that he or she acted consistently with the American psychological association's guidelines shall be entitled to reimbursement of all reasonable costs and attorneys fees expended.

WV Legislature

§55-7-22. Civil relief for persons resisting certain criminal activities.

(a) A lawful occupant within a home or other place of residence is justified in using reasonable and proportionate force, including deadly force, against an intruder or attacker to prevent a forcible entry into the home or residence or to terminate the intruder's or attacker's unlawful entry if the occupant reasonably apprehends that the intruder or attacker may kill or inflict serious bodily harm upon the occupant or others in the home or residence or if the occupant reasonably believes that the intruder or attacker intends to commit a felony in the home or residence and the occupant reasonably believes deadly force is necessary.

(b) A lawful occupant within a home or other place of residence does not have a duty to retreat from an intruder or attacker in the circumstances described in subsection (a) of this section.

(c) A person not engaged in unlawful activity who is attacked in any place he or she has a legal right to be outside of his or her home or residence may use reasonable and proportionate force against an intruder or attacker: Provided, That such person may use deadly force against an intruder or attacker in a place that is not his or her residence without a duty to retreat if the person reasonably believes that he or she or another is in imminent danger of death or serious bodily harm from which he or she or another can only be saved by the use of deadly force against the intruder or attacker.

(d) The justified use of reasonable and proportionate force under this section shall constitute a full and complete defense to any civil action brought by an intruder or attacker against a person using such force.

(e) The full and complete civil defense created by the provisions of this section is not available to a person who:

(1) Is attempting to commit, committing or escaping from the commission of a felony;

(2) Initially provokes the use of force against himself herself or another with the intent to use such force as an excuse to inflict bodily harm upon the assailant; or

(3) Otherwise initially provokes the use of force against himself herself or another, unless he or she withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

(f) The provisions of this section do not apply to the creation of a hazardous or dangerous condition on or in any real or personal property designed to prevent criminal conduct or cause injury to a person engaging in criminal conduct.

(g) Nothing in this section shall authorize or justify a person to resist or obstruct a law-enforcement officer acting in the course of his or her duty.

WV Legislature

§55-7-23. Prescription drugs and medical devices; limiting health care providers' liability exposure.

(a) No health care provider, as defined in section two, article seven-b of this chapter, is liable to a patient or third party for injuries sustained as a result of the ingestion of a prescription drug or use of a medical device that was prescribed or used by the health care provider in accordance with instructions approved by the U. S. Food and Drug Administration regarding the dosage and administration of the drug, the indications for which the drug should be taken or device should be used, and the contraindications against taking the drug or using the device: Provided, That the provisions of this section do not apply if: (1) The health care provider had actual knowledge that the drug or device was inherently unsafe for the purpose for which it was prescribed or used; or (2) a manufacturer of the drug or device publicly announces changes in the dosage or administration of the drug or changes in contraindications against taking the drug or using the device and the health care provider fails to follow the publicly announced changes and the failure proximately caused or contributed to the plaintiff's injuries or damages.

(b) A health care provider with prescriptive authority is not liable to a patient or third party for declining to prescribe, or declining to continue to prescribe, any controlled substance to a patient which the health care provider with prescriptive authority is treating if the health care provider with prescriptive authority in the exercise of reasonable prudent judgment believes the patient is misusing the controlled substance in an abusive manner or unlawfully diverting a controlled substance legally prescribed for their use.

(c) The provisions of this section are not intended to create a new cause of action.

WV Legislature

§55-7-24.

Repealed.

Acts, 2015 Reg. Sess., Ch. 59.

WV Legislature

§55-7-25. Personal injury and wrongful death actions; complaint; specific amount of damages not to be stated.

In any action to recover damages for personal injury or wrongful death, no specific dollar amount or figure relating to damages being sought may be included in the complaint. However, the complaint may include a statement reciting that the amount in controversy satisfies the minimum jurisdictional amount established for filing the action. Further, and pursuant to the West Virginia Rules of Civil Procedure pertaining to discovery, any party defendant may at any time request a written statement setting forth the nature and amount of damages sought. The request shall be served upon the plaintiff who shall serve a responsive statement as to the nature and amount of damages sought within thirty days thereafter. If no response is served within thirty days after receipt of service by the plaintiff, the party defendant requesting the statement may petition the court in which the action is pending to order the plaintiff to serve a responsive statement upon the requesting party defendant. This section applies only to complaints filed on or after July 1, 2008.

WV Legislature

§55-7-26. First responders who use forced entry in response to 911 call; limited immunity from civil and criminal liability.

(a) "First responder" includes: law-enforcement officers, firefighters, emergency medical services personnel and others that respond to calls for emergency medical assistance.

(b) Neither a first responder nor his or her supervisor, agency, employer or supervising entity is liable for any civil damages or criminal liability resulting from a forcible entry of a home, business or other structure if the first responder:

(1) Is responding to a documented 911 call for emergency medical assistance;

(2) Has made reasonable efforts to summon an occupant of the home, business, or structure by knocking or otherwise notifying the occupant(s) of his or her presence;

(3) Has not received a response from an occupant within a reasonable period of time; and

(4) Has a good faith belief that it is necessary to make a forcible entry for the purposes of rendering emergency medical assistance or preventing imminent bodily harm.

(c) Nothing in this section shall affect the standard of care a first responder must employ when rendering aid after gaining entry.

WV Legislature

§55-7-27. Liability of possessor of real property for harm to a trespasser.

(a) A possessor of real property, including an owner, lessee or other lawful occupant, owes no duty of care to a trespasser except in those circumstances where a common-law right-of-action existed as of the effective date of this section, including the duty to refrain from willfully or wantonly causing the trespasser injury.

(b) A possessor of real property may use justifiable force to repel a criminal trespasser as provided by section twenty-two of this article.

(c) This section does not increase the liability of any possessor of real property and does not affect any immunities from or defenses to liability established by another section of this code or available at common law to which a possessor of real property may be entitled.

(d) The Legislature intends to codify and preserve the common law in West Virginia on the duties owed to trespassers by possessors of real property as of the effective date of this section.

WV Legislature

§55-7-28. Limiting civil liability of a possessor of real property for injuries caused by open and obvious hazards.

(a) A possessor of real property, including an owner, lessee or other lawful occupant, owes no duty of care to protect others against dangers that are open, obvious, reasonably apparent or as well known to the person injured as they are to the owner or occupant, and shall not be held liable for civil damages for any injuries sustained as a result of such dangers.

(b) Nothing in this section creates, recognizes or ratifies a claim or cause of action of any kind.

(c) It is the intent and policy of the Legislature that this section reinstates and codifies the open and obvious hazard doctrine in actions seeking to assert liability against an owner, lessee or other lawful occupant of real property to its status prior to the decision of the West Virginia Supreme Court of Appeals in the matter of Hersh v. E-T Enterprises, Limited Partnership, 232 W. Va. 305 (2013). In its application of the doctrine, the court as a matter of law shall appropriately apply the doctrine considering the nature and severity, or lack thereof, of violations of any statute relating to a cause of action.

WV Legislature

§55-7-29. Limitations on punitive damages.

(a) An award of punitive damages may only occur in a civil action against a defendant if a plaintiff establishes by clear and convincing evidence that the damages suffered were the result of the conduct that was carried out by the defendant with actual malice toward the plaintiff or a conscious, reckless and outrageous indifference to the health, safety and welfare of others.

(b) Any civil action tried before a jury involving punitive damages may, upon request of any defendant, be conducted in a bifurcated trial in accordance with the following guidelines:

(1) In the first stage of a bifurcated trial, the jury shall determine liability for compensatory damages and the amount of compensatory damages, if any.

(2) If the jury finds during the first stage of a bifurcated trial that a defendant is liable for compensatory damages, then the court shall determine whether sufficient evidence exists to proceed with a consideration of punitive damages.

(3) If the court finds that sufficient evidence exists to proceed with a consideration of punitive damages, the same jury shall determine if a defendant is liable for punitive damages in the second stage of a bifurcated trial and may award such damages.

(4) If the jury returns an award for punitive damages that exceeds the amounts allowed under subsection (c) of this section, the court shall reduce any such award to comply with the limitations set forth therein.

(c) The amount of punitive damages that may be awarded in a civil action may not exceed the greater of four times the amount of compensatory damages or $500,000, whichever is greater.

WV Legislature

§55-7-30. Adequate pharmaceutical warnings; limiting civil liability for manufacturers or sellers who provide warning to a learned intermediary.

(a) A manufacturer or seller of a prescription drug or medical device may not be held liable in a product liability action for a claim based upon inadequate warning or instruction unless the claimant proves, among other elements, that:

(1) The manufacturer or seller of a prescription drug or medical device acted unreasonably in failing to provide reasonable instructions or warnings regarding foreseeable risks of harm to prescribing or other health care providers who are in a position to reduce the risks of harm in accordance with the instructions or warnings; and

(2) Failure to provide reasonable instructions or warnings was a proximate cause of harm.

(b) It is the intention of the Legislature in enacting this section to adopt and allow the development of a learned intermediary doctrine as a defense in cases based upon claims of inadequate warning or instruction for prescription drugs or medical devices.

WV Legislature

§55-7-31. Limitation on products liability actions; innocent seller.

(a) As used in this section:

(1) "Manufacturer" means a person who designs, assembles, fabricates, produces, constructs or otherwise prepares a product or a component part of a product before the sale of the product to a user or consumer.

(2) "Person" means a natural person, partnership, firm, association or corporation.

(3) "Product" means any tangible object, article or good, including attachments, accessories and component parts.

(4) "Product liability action" means any civil action brought against a manufacturer or seller of a product, based in whole or in part on the doctrine of strict liability in tort, for or on account of personal injury, death or property damage caused by or resulting from:

(A) The manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, marketing or sale of a product;

(B) The failure to warn or protect against a danger or hazard in the use, misuse or unintended use of a product; or

(C) The failure to provide proper instructions for the use of a product.

(5) "Seller" means a wholesaler, distributor, retailer, or other individual or entity, other than a manufacturer, that is regularly engaged in the selling of a product whether the sale is for resale by the purchaser or is for use or consumption by the ultimate consumer. "Seller" includes a lessor or bailor regularly engaged in the business of the lease or bailment of the product.

(b) No product liability action shall be maintained against a seller, unless:

(1) The seller had actual knowledge of the defect in the product that was a proximate cause of the harm for which recovery is sought;

(2) The seller exercised substantial control over the aspect of the manufacture, construction, design, formula, installation, preparation, assembly, testing, labeling, warnings or instructions of the product that was a proximate cause of the harm for which recovery is sought;

(3) The seller altered, modified or installed the product after the product left the possession of the manufacturer and the alteration, modification or installation was:

(A) Not authorized or requested by the manufacturer or not performed in compliance with

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the directions or specifications of the manufacturer; and

(B) A proximate cause of the harm for which recovery is sought;

(4) The seller made an express warranty regarding the product that was independent of any express warranty made by the manufacturer regarding the product, the product failed to conform to that express warranty by the seller and that failure was a proximate cause of the harm for which recovery is sought;

(5) The seller resold the product after the product's first sale for use or consumption and the product was not in substantially the same condition as it was at the time the product left the possession of the manufacturer and the changed condition of the product was a proximate cause of the harm for which recovery is sought;

(6) The seller failed to exercise reasonable and product-appropriate care in assembling, maintaining, storing, transporting or repairing the product and such failure was a proximate cause of the harm for which recovery is sought;

(7) The seller removed or failed to convey to the user or consumer of the product the manufacturer's labels, warnings or instructions and such failure was a proximate cause of the harm for which recovery is sought;

(8) The seller is a controlled subsidiary of a manufacturer, or the manufacturer is a controlled subsidiary of the seller;

(9) The seller repackages the product or has placed his or her own brand name or label on the product: Provided, That this does not include a seller, who is not otherwise a manufacturer, who:

(A) Did not exercise substantial control as described in subdivision (2) of this subsection; and

(B) Discloses the identity of the actual manufacturer of the product;

(10) The manufacturer cannot be identified, despite a good-faith exercise of due diligence, to identify the manufacturer of the product;

(11) The manufacturer is not subject to service of process under the laws of the state;

(12) The manufacturer is insolvent in that the manufacturer is unable to pay its debts as they become due in the ordinary course of business: Provided, That a manufacturer who has been judicially declared insolvent or is no longer in existence through dissolution is conclusively presumed for the purposes of this subdivision to be insolvent; or

(13) The court determines by clear and convincing evidence that the party asserting the product liability action would be unable to enforce a judgment against the product manufacturer.

WV Legislature

(c) The provisions of this section apply to any civil action involving a product that was sold on or after the effective date of this said Enrolled House Bill 2850.

WV Legislature

§55-7-32. Liability for employee negligence in actions involving commercial motor vehicles.

(a) As used in this section:

"Commercial motor vehicle" means as defined in §17E-1-3(7) (A), (B), and (D) of this code, and also includes a truck tractor, road tractor, trailer, semitrailer, and pole trailer as defined in §17A-1-1 of this code. For purposes of this section, "commercial motor vehicle" does not include a vehicle serving as a common carrier of passengers, a commercial motor vehicle as defined in §17E-1-3(7)(C) of this code, a school bus as defined in §17E-1-3(33) of this code, or other vehicle that is primarily engaged in transporting passengers.

"Employer defendant" means (A) the owner of a commercial motor vehicle; (B) the employer of the person operating a commercial motor vehicle; or (C) any other person or entity that owns, leases, rents, or otherwise holds or exercises legal control over a commercial motor vehicle or operator of a commercial motor vehicle.

"Operation" means driving, operating, or being in physical control of a commercial motor vehicle in any place open to the general public for purposes of vehicular traffic.

(b) In any civil action for personal injury or wrongful death involving the operation of a commercial motor vehicle requiring a commercial driver’s license, the maximum amount recoverable by each person injured or killed against the employer defendant of a commercial motor vehicle as compensatory damages for noneconomic loss may not exceed $5 million for each occurrence, regardless of the number of claims or theories of liability.

(c) The limitation on noneconomic damages contained in subsection (b) of this section is not available to any employer defendant that does not have commercial motor vehicle insurance in the aggregate amount of at least $3 million for each occurrence covering the personal injury that is the subject of the action.

(d) This section does not apply if the civil action involving a commercial motor vehicle arises from an incident for which an operator or driver is found to have:

(1) At the time of the incident, operated a commercial motor vehicle with an alcohol concentration of .04 or more as defined in §17E-1-14 of this code;

(2) Following the incident, refused to submit to testing required under §17E-1-15 of this code;

(3) At the time of the incident, operated a commercial motor vehicle under the influence of any controlled substance, other drug, or inhalant substance;

(4) At the time of the incident, operated a commercial motor vehicle in excess of the hours of operation established under state or federal regulations;

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(5) At the time of the incident, operated a commercial motor vehicle in willful or wanton disregard for the safety of persons or property;

(6) At the time of the incident, operated a commercial motor vehicle loaded in excess of the maximum gross vehicle weight rating established under state or federal regulations, not including when an operator or driver is legally operating the vehicle according to permit issued under §17C-17-11 of this code; or

(7) At the time of the incident, operated a commercial motor vehicle while engaging in one or more of the acts that constitute distracted driving as set forth in §17C-14-15(e) of this code.

(e) On January 1, 2026, and in each year thereafter, the limitation on compensatory damages for noneconomic loss contained in subsection (b) of this section shall increase to account for inflation by an amount equal to the Consumer Price Index published by the United States Department of Labor, not to exceed 150 percent of the amounts specified in said subsection.

(f) This section shall be effective on July 1, 2024, and shall only apply to causes of action arising after the effective date.

WV Legislature