WEST VIRGINIA LEGISLATURE

Regular Session, 2001

ENROLLED

SENATE BILL NO. 573

(By Senator Powell)

PASSED April 14, 2001

In Effect 90 days from Passage
ENROLLED

Senate Bill No. 573

(BY SENATOR ROWE)

[Passed April 14, 2001; in effect ninety days from passage.]

AN ACT to amend article ten, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen, relating to settlement of derivative parental claims for damages they personally have arising out of injury to their child or children; providing authority to settle derivative claims including the costs of medical care and other necessary expenses; providing that settlement of the derivative claim does not limit the right to seek damages on behalf of a minor child; requiring that a release of derivative claims be in writing; providing that a parent or guardian may revive a derivative claim previously settled with the repayment of consideration plus legal interest; and continuing current limitation period for bringing an action on behalf of a minor child.

Be it enacted by the Legislature of West Virginia:
§44-10-16. Settlement of derivative claims.

(a) Nothing contained in this article may limit the derivative rights of a parent or guardian to compromise and settle any claim they may personally have for damages arising out of injury to their minor child or ward for whom they are responsible. This authority to compromise and settle derivative claims includes, without limitation, the authority to compromise and settle claims for the costs of medical or other care for the child or ward attributable to the bodily injury.

(b) The separate settlement of a derivative claim by a parent or guardian does not limit any person, including the parent or guardian, from seeking damages for the minor child or ward.

(c) Any release or waiver of a right to bring a legal action to assert a derivative claim, made and executed prior to the commencement of a civil action, shall be in writing and shall be binding against the person who accepts valuable consideration in exchange for the release or waiver of right to bring the legal action: Provided, That in the event a parent or guardian fully repays the consideration received in exchange for a release or waiver of a right to bring a derivative claim or action to the appropriate entity within ninety days after the commencement of a civil action brought on behalf of the child or ward who was injured, the parent or guardian may fully assert the derivative claim in conjunction with the child or ward's claim: Provided, however, That if more than a year has elapsed since the payment of the consideration, full repayment shall include, in addition to the principal sum paid, legal interest on the principal sum calculated in...
accordance with section thirty-one, article six, chapter fifty-six of this code.

(d) Nothing contained in this section may be construed to reduce the limitation period for filing any civil action for damages arising out of the bodily injury of a minor child.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 1st Day of , 2001.

Governor
PRESENTED TO THE
GOVERNOR

Date: 4/30/01
Time: 3:00 pm