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 THE GENERAL ASSEMBLY OF PENNSYLVANIA
 

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# SENATE BILL

## No. 1078 Session of 2004

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INTRODUCED BY MOWERY, PICCOLA, WENGER, ARMSTRONG, BRIGHTBILL,  
 CONTI, CORMAN, DENT, EARLL, ERICKSON, GORDNER, LEMMOND,  
 MADIGAN, ORIE, PILEGGI, PIPPY, PUNT, RAFFERTY, ROBBINS,  
 SCARNATI, THOMPSON, TOMLINSON, WAUGH, D. WHITE, M. WHITE,  
 C. WILLIAMS, WONDERLING AND WOZNIAK, MARCH 25, 2004

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REFERRED TO JUDICIARY, MARCH 25, 2004  
 AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
 2 Pennsylvania Consolidated Statutes, reenacting provisions  
 3 relating to comparative negligence; and making a repeal.

4 The General Assembly of the Commonwealth of Pennsylvania  
 5 hereby enacts as follows:

6 Section 1. Section 7102(b) of Title 42 of the Pennsylvania  
 7 Consolidated Statutes is repealed and subsections (b.1), (b.2),  
 8 (c)(2), (c.1) and (d) are reenacted to read:  
 9 § 7102. Comparative negligence.

10 \* \* \*

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

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

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

8 (3) A defendant's liability in any of the following  
 9 actions shall be joint and several, and the court shall enter  
 10 a joint and several judgment in favor of the plaintiff and  
 11 against the defendant for the total dollar amount awarded as  
 12 damages:

13 (i) Intentional misrepresentation.

14 (ii) An intentional tort.

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

18 (iv) A release or threatened release of a hazardous  
 19 substance under section 702 of the act of October 18,  
 20 1988 (P.L.756, No.108), known as the Hazardous Sites

21 Cleanup Act.

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

25 (4) Where a defendant has been held jointly and  
26 severally liable under this subsection and discharges by  
27 payment more than that defendant's proportionate share of the  
28 total liability, that defendant is entitled to recover  
29 contribution from defendants who have paid less than their  
30 proportionate share. Further, in any case, any defendant may

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1 recover from any other person all or a portion of the damages  
2 assessed that defendant pursuant to the terms of a  
3 contractual agreement.

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

23 (c) Downhill skiing.--

24 \* \* \*

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

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

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1 responsible party.

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

5 "Defendant or defendants." Includes impleaded defendants.

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

7 Section 2. Nothing in the repeal of 42 Pa.C.S. § 7102(b), in  
8 the reenactment of 42 Pa.C.S. § 7102(b.1), (b.2), (c)(2), (c.1)  
9 and (d) or in the act of June 19, 2002 (P.L.394, No.57),  
10 entitled "An act amending Title 42 (Judiciary and Judicial  
11 Procedure) of the Pennsylvania Consolidated Statutes, providing  
12 for DNA testing of certain offenders; reestablishing the State  
13 DNA Data Base and the State DNA Data Bank; further providing for  
14 duties of the Pennsylvania State Police; imposing costs on  
15 certain offenders; reestablishing the DNA Detection Fund;  
16 further providing for the apportionment of liability and  
17 damages; imposing penalties; and making a repeal," shall be  
18 construed to diminish the immunity of an employer to the extent  
19 that the employer is granted immunity from liability or suit  
20 pursuant to the act of June 2, 1915 (P.L.736, No.338), known as  
21 the Workers' Compensation Act.

22 Section 3. The repeal of 42 Pa.C.S. § 7102(b) and the  
23 reenactment of 42 Pa.C.S. § 7102(b.1), (b.2), (c)(2), (c.1) and

24 (d) shall apply to causes of action which arise after August 18,  
25 2002.  
26 Section 4. This act shall take effect immediately.

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