

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 8.01-35.1 of the Code of Virginia, relating to effect of release or*
 3 *covenant not to sue.*

4
 5 Approved

[H 447]

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That § 8.01-35.1 of the Code of Virginia is amended and reenacted as follows:**

8 § 8.01-35.1. Effect of release or covenant not to sue in respect to liability and contribution.

9 A. When a release or a covenant not to sue is given in good faith to one of two or more persons
 10 liable in tort for the same injury, or the same property damage or the same wrongful death:

11 1. It shall not discharge any of the other tort-feasors from liability for the injury, property damage or
 12 wrongful death unless its terms so provide; but any amount recovered against the other tort-feasors or
 13 any one of them shall be reduced by any amount stipulated by the covenant or the release, or in the
 14 amount of the consideration paid for it, whichever is the greater. In determining the amount of
 15 consideration given for a covenant not to sue or release for a settlement which consists in whole or in
 16 part of future payment or payments, the court shall consider expert or other evidence as to the present
 17 value of the settlement consisting in whole or in part of future payment or payments. A release or
 18 covenant not to sue given pursuant to this section shall not be admitted into evidence in the trial of the
 19 matter but shall be considered by the court in determining the amount for which judgment shall be
 20 entered; and

21 2. It shall discharge the tort-feasor to whom it is given from all liability for contribution to any other
 22 tort-feasor.

23 B. A tort-feasor who enters into a release or covenant not to sue with a claimant is not entitled to
 24 recover by way of contribution from another tort-feasor whose liability for the injury, property damage
 25 or wrongful death is not extinguished by the release or covenant not to sue, nor in respect to any
 26 amount paid by the tort-feasor which is in excess of what was reasonable.

27 C. *For the purposes of this section, a covenant not to sue shall include any "high-low" agreement*
 28 *whereby a party seeking damages in tort agrees to accept as full satisfaction for any judgment no more*
 29 *than one sum certain and the party or parties from whom the damages are sought agree to pay no less*
 30 *than another sum certain regardless of whether any judgment rendered at trial is higher or lower than*
 31 *the respective sums certain set forth in the agreement and whereby such party provides notice to all of*
 32 *the other tort-feasors of the terms of such "high-low" agreement immediately after such agreement is*
 33 *reached.*

34 ~~C.~~ D. A release or covenant not to sue given pursuant to this section shall be subject to the
 35 provisions of §§ 8.01-55 and 8.01-424.

36 ~~D.~~ E. This section shall apply to all such covenants not to sue executed on or after July 1, 1979, and
 37 to all releases executed on or after July 1, 1980. This section shall also apply to all oral covenants not
 38 to sue and oral releases agreed to on or after July 1, 1989, provided that any cause of action affected
 39 thereby accrues on or after July 1, 1989. A release or covenant not to sue need not be in writing where
 40 parties to a pending action state in open court that they have agreed to enter into such release or
 41 covenant not to sue and have agreed further to subsequently memorialize the same in writing.

ENROLLED

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