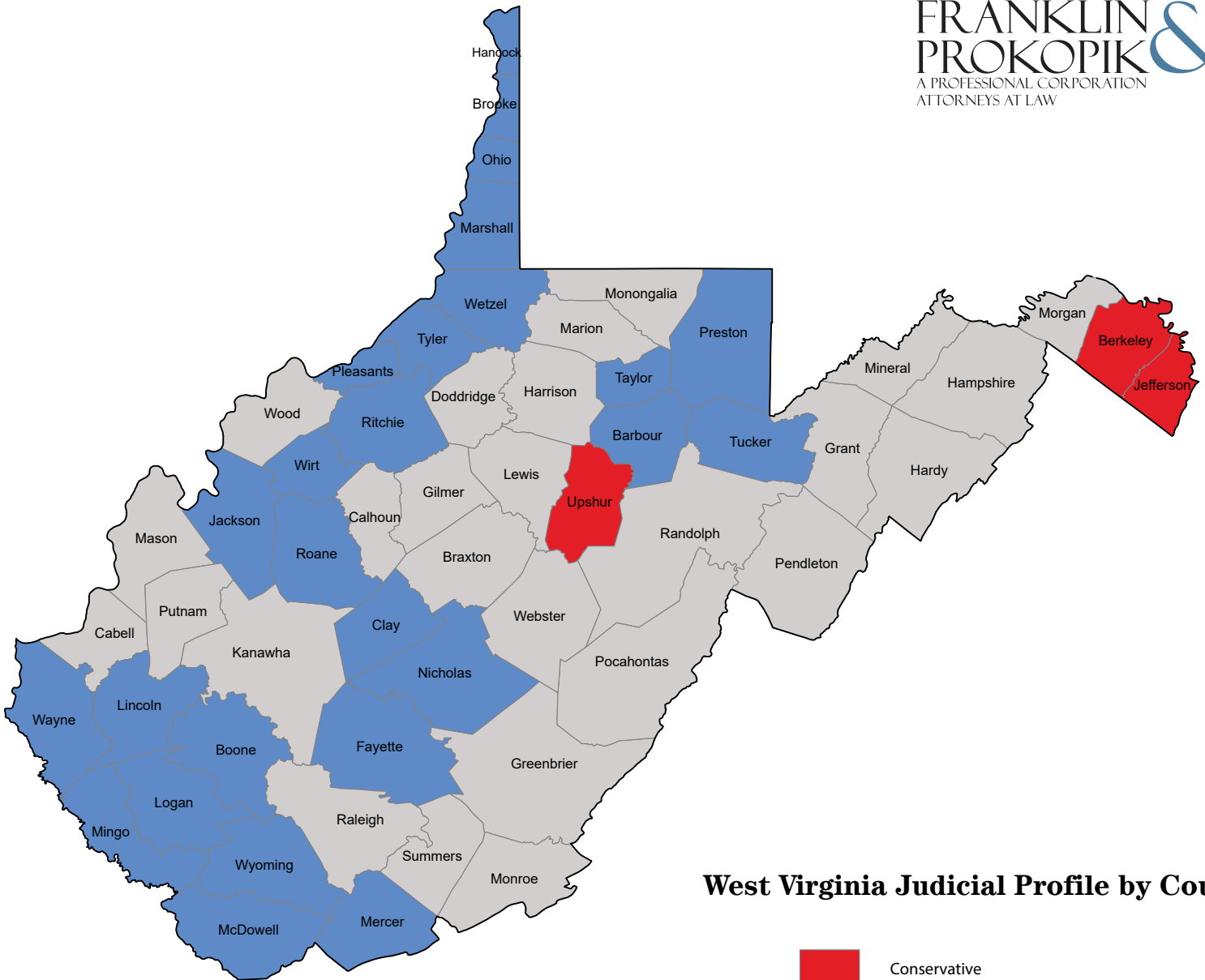





# West Virginia Tort Easy Reference

**FRANKLIN & PROKOPIK**  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW



**West Virginia Judicial Profile by County**

-  Conservative
-  Liberal
-  Moderate

**FRANKLIN & PROKOPIK'S "24 hour emergency hotline" for immediate accident response  
Call 1-877-752-0001**

- 1. Statute of Limitations** – Two years for negligence actions, malpractice actions, product liability actions, and wrongful death actions. Two years for negligence actions resulting in property damage. One year for defamation, false arrest, false imprisonment, abuse of process, malicious prosecution, libel, and bad faith. After filing the Complaint, the Plaintiff has one hundred twenty (120) days to effectuate service.
- 2. Answer** – Complaints must be answered within 20 days from the date of service; provided however, if a defendant files a notice of bona fide defense with the court before the expiration of the 20 day period, then an answer must be served within 30 days from the date of service. When service is made upon or accepted on behalf of a defendant through or by an agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of such defendant, the answer shall be served within 30 days after service of the Complaint.
- 3. Punitive Damages** – Plaintiff must prove by “clear and convincing evidence” that the damages suffered were the result the defendant’s conduct and that conduct was carried out with actual malice toward the plaintiff or a conscious, reckless and outrageous indifference to the health, safety and welfare of others. The amount of punitive damages that may be awarded in a civil action may not four times the amount of compensatory damages or \$500,000, whichever is greater
- 4. Contributory Negligence** – 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, and said damages shall be allocated to each applicable person in direct proportion to that person’s percentage of fault.
- 5. Assumption of the Risk** – This defense has been subsumed into the modified comparative negligence rule.
- 6. Dram Shop Act** – West Virginia recognizes Dram Shop actions.
- 7. Negligent Infliction of Emotional Distress** – West Virginia recognizes Negligent Infliction of Emotional Distress as an independent cause of action.
- 8. Collateral Source Rule** - The Collateral Source Rule is recognized in West Virginia.
- 9. Statutory Caps on Damages** – There is no statutory cap on economic damages. Generally, there is no statutory cap on non-economic damages in most actions; however, medical negligence actions are subject to a \$250,000.00 cap, which can be increased to \$500,000.00 if certain elements are met, and The West Virginia Governmental Tort Claims and Insurance Reform Act caps non-economic damages at \$500,000.00 for actions involving the State and its political subdivisions. Punitive damages are capped at four times the amount of compensatory damages or \$500,000, whichever is greater. Finally, Plaintiffs can recover in West Virginia for future medical monitoring without establishing a physical injury.
- 10. Mandatory Liability Coverage** – Minimum Automobile Liability Limits: \$25,000.00 Per Person; \$50,000.00 Per Occurrence, and \$25,000.00 Property Damage.
- 11. Personal Injury Protection** – This coverage is not recognized in West Virginia.
- 12. Uninsured and Underinsured Motorist Coverage** – Uninsured Motorist Coverage and Underinsured Motorist Coverage are mandatory in West Virginia; however, they are subject to the same minimum mandatory limits stated above.
- 13. Offer of Judgment** – Offers of Judgment are available in West Virginia.
- 14. Joint and Several Liability** – The State of West Virginia has abolished joint liability, and adopted several liability predicated on the amount of compensatory damages allocated to a defendant in direct proportion to that defendant’s percentage of fault. (See W.Va. Code § 55-7-13(c)). Joint and Several Liability still applies where a defendant whose conduct constitutes driving a vehicle under the influence of alcohol, a controlled substance, or any drug or combination thereof, which is a proximate cause of the damages suffered by the plaintiff; where a defendant whose acts or omissions constitute criminal conduct, which is a proximate cause of the damages suffered by the plaintiff; or where a defendant whose conduct constitutes an illegal disposal of hazardous waste, which is a proximate cause of the damages suffered by the plaintiff. If a plaintiff through good faith efforts is unable to collect from a liable defendant, the plaintiff may, not one year after judgment becomes final, move the court for the reallocation of any uncollectible amount among the other parties found to be liable. The court may not reallocate to any defendant an uncollectible amount greater than that defendant’s percentage of fault multiplied by the uncollectible amount, and there shall be no reallocation against a defendant whose percentage of fault is equal to or less than the plaintiff’s percentage of fault.
- 15. Seat Belt Rule** – The failure to wear a seatbelt is not admissible as comparative negligence or mitigation of damages. Medical damages can be reduced up to 5% if the court finds that the failure to wear a seat belt was a proximate cause of the injuries complained of.
- 16. Courts** – West Virginia’s Magistrate Courts (jury trial available and limited discovery) has jurisdiction over civil cases in which the financial amount in dispute is less than \$10,000.00. West Virginia’s Circuit Courts are general jurisdictional trial courts of record, and have jurisdiction over all civil claims in excess of \$2,500.00. The Supreme Court of Appeals of West Virginia is the highest court in the state, and is the court of last resort. There is no automatic right to an appeal by the Supreme Court of Appeals of West Virginia from Circuit Court decisions.
- 17. Death Cases** – West Virginia recognizes wrongful death actions brought by a personal representative. There are no caps on damages. (See Above).
- 18. Deliberate Intent** – Under certain circumstances, an employee may bring an action against his employer. Plaintiff must show that the employer acted with “a consciously, subjectively and deliberately formed intention to produce the specific result of injury or death to an employee.”
- 19. Statute of Repose** – West Virginia has a Statue of Repose that is applicable to real property improvements only. No action in contract or tort may be brought more than 10 years after the performance and furnishing of a service or construction in a real property improvement project.
- 20. West Virginia Consumer Credit & Protection Act** – The Act is a comprehensive attempt to extend protection to consumers and persons in the State who obtain credit in the State. Creditors who violate the Act are subject to civil liability, which includes both actual damages and civil penalties specified in the Act.

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