

By: Representative Chaney

To: Judiciary A

## HOUSE BILL NO. 642

1 AN ACT TO AMEND SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO  
2 RESTRICT JOINT AND SEVERAL LIABILITY; AND FOR RELATED PURPOSES.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

4 SECTION 1. Section 85-5-7, Mississippi Code of 1972, is  
5 amended as follows:

6 85-5-7. (1) As used in this section, "fault" means an act  
7 or omission of a person which is a proximate cause of injury or  
8 death to another person or persons, damages to property, tangible  
9 or intangible, or economic injury, including but not limited to  
10 negligence, malpractice, strict liability, absolute liability or  
11 failure to warn. "Fault" shall not include any tort which results  
12 from an act or omission committed with a specific wrongful intent.

13 (2) Except as may be otherwise provided in subsection (6) of  
14 this section, in any civil action based on fault, the liability of  
15 each defendant for damages shall be several only and shall not be  
16 joint; each defendant shall be liable only for the amount of  
17 damages allocated to that defendant in direct proportion to that  
18 defendant's percentage of fault, and a separate judgment shall be  
19 rendered against the defendant for that amount. To determine the  
20 amount of judgment to be entered against each defendant, the trier  
21 of fact shall determine the total damages and shall also determine  
22 the percentage of fault of each party and nonparty, irrespective  
23 of whether such nonparty could have been made a party to the  
24 action or alleged to be at fault, irrespective of whether such  
25 nonparty could have been made a party to the action. The court,  
26 with regard to each defendant, shall multiply the total amount of

27 damages by the percentage of each defendant's fault, and that  
28 amount shall be the maximum recoverable against that defendant.

29 (3) \* \* \* In assessing percentages of fault an employer and  
30 the employer's employee or a principal and the principal's agent  
31 shall be considered as one (1) defendant when the liability of  
32 such employer or principal has been caused by the wrongful or  
33 negligent act or omission of the employee or agent.

34 (4) Any defendant held jointly liable under this section  
35 shall have a right of contribution against fellow joint  
36 tort-feasors. A defendant shall be held responsible for  
37 contribution to other joint tort-feasors only for the percentage  
38 of fault assessed to such defendant.

39 (5) Nothing in this section shall eliminate or diminish any  
40 defenses or immunities which currently exist, except as expressly  
41 noted herein.

42 (6) Joint and several liability shall be imposed on all who  
43 consciously and deliberately pursue a common plan or design to  
44 commit a tortious act, or actively take part in it. Any person  
45 held jointly and severally liable under this section shall have a  
46 right of contribution from his fellow defendants acting in  
47 concert.

48 (7) In actions involving joint tort-feasors, the trier of  
49 fact shall determine the percentage of fault for each party  
50 alleged to be at fault.

51 (8) Nothing in this section shall be construed to create a  
52 cause of action. Nothing in this section shall be construed, in  
53 any way, to alter the immunity of any person.

54 SECTION 2. The provisions of this act are remedial in nature  
55 and shall be applied to all causes of action pending or filed on  
56 or after July 1, 1999, including matters on appeal.