

By: Representative Howell

To: Judiciary A

## HOUSE BILL NO. 854

1 AN ACT TO CREATE THE SEPARATION OF POWERS ACT; TO CLARIFY  
2 THAT THE LEGISLATURE SHOULD PROVIDE THE COURTS WITH LAWS OF  
3 REFERENCE; TO PROVIDE FOR A STUDY COMMISSION; TO PROHIBIT THE  
4 CREATION OF RULES OF LAW ON A RETROACTIVE BASIS; AND FOR RELATED  
5 PURPOSES.

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

7 **SECTION 1.** This act shall be known and may be cited as the  
8 "Separation of Powers Act."

9 **SECTION 2.** (1) The Constitution of the State of Mississippi  
10 vests the Legislature with the sole authority to create laws in  
11 light of the public interest. The Constitution enabled courts to  
12 adjudicate cases by applying the laws enacted by the Legislature  
13 to the facts of those cases.

14 (2) After the Constitution of the State of Mississippi was  
15 adopted, the Legislature enacted laws to provide the courts with  
16 the authority to refer to the common law in adjudicating cases.  
17 The common law consisted of case holdings rendered by English  
18 courts prior to the Revolution of 1776 or by the territorial  
19 courts before the Legislature was empowered to create the laws of  
20 the state or common law principles existing at the time a  
21 territory became a state. The purpose was to permit the courts to  
22 continue to apply the common law that was in existence at the time  
23 of statehood and develop it in the interest of the public policy  
24 of the state unless it was abrogated or altered by the  
25 Legislature.

26 **SECTION 3.** An action or proceeding commenced before this act  
27 takes effect is not affected by this act but all actions or  
28 proceedings commenced after that date shall conform to this act.



29       **SECTION 4.** The Legislature shall appoint a commission to  
30 study which post-statehood common law causes of action are  
31 abrogated by this act and to make recommendations to the  
32 Legislature regarding those causes of action which the commission  
33 believes should be reincorporated in the law by way of statute.  
34 The commission shall be comprised of the following members:

35               (a) Five (5) members appointed by the Speaker of the  
36 House, one (1) from each congressional district and one (1) from  
37 the state at large; and

38               (b) Five (5) members appointed by the Lieutenant  
39 Governor, one (1) from each congressional district and one (1)  
40 from the state at large.

41       Historically, legislatures have had the right and duty to  
42 create and enact laws without any improper interference from the  
43 courts. The United States Constitution and state constitutions  
44 vest authority in the legislatures to make public policy because  
45 the legislative process involves public hearings at which all  
46 views are presented and debated. In contrast, courts only review  
47 the narrow arguments of the private parties before the court,  
48 which are necessarily restricted to the interests of those  
49 parties. Legislatures, not courts, are the appropriate forum for  
50 developing laws which involve broad policy issues, such as the  
51 creation of new legal causes of action.

52       **SECTION 5.** The judicial branch of this state shall not  
53 create rules of law on a retroactive basis, including rules of law  
54 that would apply to conduct that occurred prior to the time of the  
55 filing of a claim arising out of that conduct.

56       **SECTION 6.** This act shall take effect and be in force from  
57 and after July 1, 2002.

