

By: Representative Simpson

To: Judiciary A

HOUSE BILL NO. 910

1 AN ACT TO AMEND SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO
2 REVISE JOINT AND SEVERAL LIABILITY IN MEDICAL MALPRACTICE ACTIONS;
3 AND FOR RELATED PURPOSES.

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

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

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

14 (2) Except as may be otherwise provided in subsections (6)
15 and (9) of this section, in any civil action based on fault, the
16 liability for damages caused by two (2) or more persons shall be
17 joint and several only to the extent necessary for the person
18 suffering injury, death or loss to recover fifty percent (50%) of
19 his recoverable damages.

20 (3) Except as otherwise provided in subsections (2) and (6)
21 of this section, in any civil action based on fault, the liability
22 for damages caused by two (2) or more persons shall be several
23 only, and not joint and several and a joint tort-feasor shall be
24 liable only for the amount of damages allocated to him in direct
25 proportion to his percentage of fault. In assessing percentages
26 of fault an employer and the employer's employee or a principal
27 and the principal's agent shall be considered as one (1) defendant



28 when the liability of such employer or principal has been caused
29 by the wrongful or negligent act or omission of the employee or
30 agent.

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

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

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

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

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

51 (9) In all actions for malpractice against one or more
52 health care providers, as that term is defined in Section 11-1-59,
53 even when such malpractice actions are joined with other causes of
54 action and/or include one or more nonhealth care provider
55 defendants, the court shall enter judgment against each party
56 found to be liable on the basis of such party's percentage of
57 fault and not on the basis of the doctrine of joint and several
58 liability; provided, however, in no event shall the person
59 suffering injury, death or loss recover, by way of settlement and
60 judgment combined, an amount in excess of the total amount of



61 actual damages as determined by the trier of fact and as limited
62 by Section 11-1-59.

63 **SECTION 2.** This act shall take effect and be in force from
64 and after July 1, 2002.

