SENATE BILL NO. 2303

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

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

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

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

(2) Except as may be otherwise provided in subsection (6) of this section, in any civil action based on fault, the liability of each defendant for damages shall be several only and shall not be joint; each defendant shall be liable only for the amount of damages allocated to that defendant in direct proportion to that defendant's percentage of fault, and a separate judgment shall be rendered against the defendant for that amount. To determine the amount of judgment to be entered against each defendant, the trier of fact shall determine the total damages and shall also determine the percentage of fault of each party and nonparty, irrespective of whether such nonparty could have been made a party to the action or alleged to be at fault, irrespective of whether such nonparty could have been made a party to the action. The court, with regard to each defendant, shall multiply the total amount of...
ST: Tort reform; revise joint and several liability.

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

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

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

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

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

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

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

SECTION 2. The provisions of this act are remedial in nature
48 and shall be applied to all causes of action pending or filed on
49 or after July 1, 2002, including matters on appeal.

SECTION 3. This act shall take effect and be in force from
50 and after July 1, 2002.