

By: Senator(s) Kirby, Hewes, Gordon, Chaney, White (29th), Canon, King, Michel, Johnson (19th), Scoper, Robertson, Moffatt, Harvey, Nunnelee, Mettetal, Minor, Huggins, Hamilton, Stogner, Hyde-Smith, Browning, Ross, Carlton To: Judiciary

SENATE BILL NO. 2337

1 AN ACT TO AMEND SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE ASSESSMENT OF JOINT AND SEVERAL LIABILITY; AND FOR
3 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 and the damages addressed by this section do not include punitive
15 damages.

16 * * *

17 (2) * * * In any civil action based on fault, the liability
18 for damages caused by two (2) or more persons shall be several
19 only, and not joint and several, and each defendant shall be
20 liable only for the amount of damages allocated to him in direct
21 proportion to his percentage of fault, and a separate judgment
22 shall be rendered against each defendant for that amount. To
23 determine the amount of judgment to be entered against each
24 defendant, the court, with regard to each defendant, shall
25 multiply the total amount of damages recoverable by the plaintiff
26 by the percentage of each defendant's fault and that amount shall
27 be the maximum recoverable against said defendant. In assessing



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

33 (3) In assessing percentages of fault, the trier of fact
34 shall consider the fault of all persons who contributed to the
35 alleged injury or death or damage to property, tangible or
36 intangible, regardless of whether said person was or could have
37 been named as a party to suit. Negligence or fault of a nonparty
38 shall be considered even if such nonparty has settled or is immune
39 from liability.

40 * * *

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

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

50 * * *

51 (6) 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 (7) If the application of this section, or of any portion of
55 it, to any person or circumstance is held invalid, the invalidity
56 shall not affect the application of this section to other persons
57 or circumstances which can be given effect without the invalid
58 provision or application.

59 (8) This section shall apply to any civil action pending or
60 filed on or after July 1, 2002.



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

