SENATE BILL NO. 2337

AN ACT TO AMEND SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO REVISE THE ASSESSMENT OF 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 and the damages addressed by this section do not include punitive damages.

(2) In any civil action based on fault, the liability for damages caused by two (2) or more persons shall be several only, and not joint and several, and each defendant shall be liable only for the amount of damages allocated to him in direct proportion to his percentage of fault, and a separate judgment shall be rendered against each defendant for that amount. To determine the amount of judgment to be entered against each defendant, the court, with regard to each defendant, shall multiply the total amount of damages recoverable by the plaintiff by the percentage of each defendant's fault and that amount shall be the maximum recoverable against said defendant. In assessing
percentages of fault an employer and the employer's employee or a
principal and the principal's agent shall be considered as one (1)
defendant when the liability of such employer or principal has
been caused by the wrongful or negligent act or omission of the
employee or agent.

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

* * *

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

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

* * *

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

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

(8) This section shall apply to any civil action pending or
filed on or after July 1, 2002.
SECTION 2. This act shall take effect and be in force from and after July 1, 2002.