

By: Representative Moak

To: Judiciary A

HOUSE BILL NO. 10

1 AN ACT TO AMEND SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO  
2 REVISE JOINT AND SEVERAL LIABILITY; TO PROVIDE THAT CERTAIN  
3 SUBROGATED CLAIMS SHALL BE REDUCED BY THE PERCENTAGE OF FAULT  
4 ATTRIBUTED TO AN EMPLOYER; AND FOR RELATED PURPOSES.

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

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

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

15 \* \* \*

16 (2) Except as otherwise provided in subsections (4) and  
17 (6) \* \* \* of this section, in any civil action based on fault, the  
18 liability for damages caused by two (2) or more persons shall be  
19 several only, and not joint and several and a joint tort-feasor  
20 shall be liable only for the amount of damages allocated to him in  
21 direct proportion to his percentage of fault. In assessing  
22 percentages of fault an employer and the employer's employee or a  
23 principal and the principal's agent shall be considered as one (1)  
24 defendant when the liability of such employer or principal has  
25 been caused by the wrongful or negligent act or omission of the  
26 employee or agent.

27 \* \* \*

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

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

37       (5) In actions involving joint tort-feasors, the trier of  
38 fact shall determine the percentage of fault for each party  
39 alleged to be at fault.

40       (6) In any claim where an employee pursues an action for  
41 injury or death, where said employee has received benefits  
42 pursuant to Section 71-3-1 et seq., and which the employer or  
43 carrier is entitled to reimbursement pursuant to Section 71-3-71  
44 and/or 71-3-15, the employer's subrogated claim shall be reduced  
45 by the percentage of fault attributable to the employer, its  
46 employees or agents which proximately caused the employee's  
47 alleged injury. This provision shall have no effect on the  
48 priority of payment otherwise set out in Section 71-3-71.

49       \* \* \*

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

53       **SECTION 2.** This act shall take effect and be in force from  
54 and after July 1, 2004, and shall apply to all causes of action  
55 filed on or after that date.