

By: Representative Baria

To: Insurance; Judiciary A

HOUSE BILL NO. 856

1 AN ACT TO AMEND SECTION 71-3-71, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE WORKERS' COMPENSATION LAW TO PROVIDE FOR THE DEDUCTION  
3 OF ANY PERCENTAGE FAULT ATTRIBUTABLE TO THE EMPLOYER FROM THE NET  
4 PROCEEDS OF AN ACTION BY THE EMPLOYEE OR HIS DEPENDENTS AGAINST A  
5 THIRD PARTY; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 71-3-71, Mississippi Code of 1972, is  
8 amended as follows:

9 71-3-71. The acceptance of compensation benefits from or the  
10 making of a claim for compensation against an employer or insurer  
11 for the injury or death of an employee shall not affect the right  
12 of the employee or his dependents to sue any other party at law  
13 for such injury or death, but the employer or his insurer shall be  
14 entitled to reasonable notice and opportunity to join in any such  
15 action or may intervene therein. If such employer or insurer join  
16 in such action, they shall be entitled to repayment of the amount  
17 paid by them as compensation and medical expenses from the net  
18 proceeds of such action (after deducting the reasonable costs of  
19 collection, and deduction of any percentage of fault attributable



20 to the employer for the proximate cause of the injuries and  
21 damages to the employee pursuant to Section 85-5-7) as hereinafter  
22 provided.

23       The commencement of an action by an employee or his  
24 dependents (or legal representative) against a third party for  
25 damages by reason of the injury, or the adjustment of any such  
26 claim, shall not affect the right of the injured employee or his  
27 dependents (or legal representative) to recover compensation, but  
28 any amount recovered by the injured employee or his dependents (or  
29 legal representative) from a third party shall be applied as  
30 follows: reasonable costs of collection as approved and allowed  
31 by the court in which such action is pending, deduction of any  
32 percentage of fault attributable to the employer for the proximate  
33 cause of the injuries and damages to the employee to be fixed by  
34 the court, or by the commission of this state in case of  
35 settlement without suit, shall be deducted; the remainder, or so  
36 much thereof as is necessary, shall be used to discharge the legal  
37 liability of the employer or insurer; and any excess shall belong  
38 to the injured employee or his dependents. The employee or his  
39 dependents bringing suit against the third party must notify the  
40 employer or carrier within fifteen (15) days of the filing of such  
41 suit.

42       An employer or compensation insurer who shall have paid  
43 compensation benefits under this chapter for the injury or death  
44 of the employee shall have the right to maintain an action at law



45 against any other party responsible for such injury or death, in  
46 the name of such injured employee or his beneficiaries, or in the  
47 name of such employer or insurer, or any or all of them. If  
48 reasonable notice and opportunity to be represented in such action  
49 by counsel shall have been given to the compensation beneficiary,  
50 all claims of such compensation beneficiary shall be determined in  
51 such action, as well as the claim of the employer or insurer. If  
52 recovery shall be had against such other party, by suit or  
53 otherwise, the compensation beneficiary shall be entitled to any  
54 amount recovered over and above the amount that the employer and  
55 insurer shall have paid or are liable for in compensation or other  
56 benefits, after deducting the reasonable costs of collection.

57 In case of settlement of any action before the trial thereof,  
58 such settlement shall be subject to the approval of the court  
59 wherein such action is pending, and settlement before an action is  
60 brought shall be subject to the approval of the commission.

61 Distribution of the portion belonging to the dependents shall be  
62 made among such dependents in the manner provided in this chapter.

63 In case of liability of the employer or insurer to make  
64 payment to the State Treasury under the Second Injury Fund  
65 provisions, if the injury or death creates a legal liability  
66 against a third party, the employer or insurer shall have a right  
67 of action against such third party for reimbursement of any sum so  
68 paid into the State Treasury, which right may be enforced in the  
69 action heretofore provided or by an independent action.



70           **SECTION 2.** This act shall take effect and be in force from  
71 and after July 1, 2018.

