

By: Senator(s) Harkins, Blackwell, Gollott, Caughman, Michel, Clarke, Jackson (15th), Branning, Parks, Kirby, Carmichael, Seymour, Carter, Doty, Parker, Watson, Whaley, Wilemon, Moran, Hill, Browning, Massey, Hudson

To: Business and Financial Institutions

SENATE BILL NO. 2901
(As Sent to Governor)

1 AN ACT TO CREATE THE LANDOWNERS PROTECTION ACT; TO REGULATE
2 LIABILITY OF LANDOWNERS WHEN AN INVITEE IS INJURED ON THE
3 LANDOWNER'S PROPERTY; TO AMEND SECTION 85-5-7, MISSISSIPPI CODE OF
4 1972, TO REVISE THE DEFINITION OF "FAULT" REGARDING JOINT AND
5 SEVERAL LIABILITY; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** (1) This section shall be known and may be cited
8 as the "Landowners Protection Act."

9 (2) For any premises-liability actions brought under the
10 laws of the State of Mississippi, no person who owns, leases,
11 operates, maintains, or manages commercial or other real property
12 in the State of Mississippi and no director, officer, employee,
13 agent or independent contractor acting on behalf of any such
14 person shall be civilly liable to any invitee who is injured on
15 said property as the result of the willful, wanton or intentional
16 tortious conduct of any third party who is not a director,
17 officer, employee or agent of the person who owns, leases,
18 operates, maintains or manages such commercial or other real



19 property unless the injured party can prove by a preponderance of
20 the evidence that:

21 (a) The conduct of said third party occurred on the
22 property;

23 (b) The conduct of the person who owns, leases,
24 operates, maintains or manages the property actively and
25 affirmatively, with a degree of conscious decision-making,
26 impelled the conduct of said third party; and

27 (c) The third party's conduct proximately caused the
28 economic and noneconomic damages suffered by the injured party.

29 (3) For any civil actions brought under the laws of the
30 State of Mississippi for the purpose of alleging liability for the
31 injury of an invitee as described in subsection (2) of this
32 section, an atmosphere of violence shall only be established by
33 similar violent conduct:

34 (a) Which occurred three (3) or more times within three
35 (3) years before the third party act at issue;

36 (b) Which took place only on the commercial or other
37 real property where the acts of the third party occurred; and

38 (c) Which are based upon three (3) or more separate
39 events or incidents that resulted in three (3) or more
40 arraignments of an individual for a felony involving an act of
41 violence.

42 (4) For any civil actions brought under the laws of the
43 State of Mississippi for the purpose of alleging liability for the



44 injury of an invitee as described in subsection (2) of this
45 section, civil liability may not be based on the prior violent
46 nature of the third party whose acts or omissions proximately
47 caused the claimed injury or damage unless the person who owns,
48 leases, operates, maintains or manages the property has actual,
49 not constructive, knowledge of the prior violent nature of said
50 third party.

51 (5) If any provision of this section or its application to
52 any person or circumstance is held unconstitutional or otherwise
53 invalid, the remainder of this section or the application of the
54 provision to other persons or circumstances is not affected.

55 (6) Nothing in this section shall be construed to alter the
56 provisions of Section 97-3-15.

57 (7) For purposes of this section, "premises-liability
58 action" means a civil action based upon the duty owed to someone
59 injured on a landowner's premises as a result of conditions or
60 activities on the land.

61 **SECTION 2.** Section 85-5-7, Mississippi Code of 1972, is
62 amended as follows:

63 85-5-7. (1) As used in this section, "fault" means an act
64 or omission of a person which is a proximate cause of injury or
65 death to another person or persons, damages to property, tangible
66 or intangible, or economic injury, including, but not limited to,
67 negligence, malpractice, strict liability, absolute liability or
68 failure to warn. Except as otherwise provided in this subsection



69 (1), "fault" shall not include any tort which results from an act
70 or omission committed with a specific wrongful intent. For any
71 premises-liability action, as defined under Section 1(7) of this
72 act, alleging injury as a result of the willful, wanton or
73 intentional tortious conduct of a third party on commercial or
74 other real property in the State of Mississippi, "fault" shall
75 include any tort which results from an act or omission committed
76 with a specific wrongful intent.

77 (2) Except as otherwise provided in subsection (4) of this
78 section, in any civil action based on fault, the liability for
79 damages caused by two (2) or more persons shall be several only,
80 and not joint and several and a joint tortfeasor shall be liable
81 only for the amount of damages allocated to him in direct
82 proportion to his percentage of fault. In assessing percentages
83 of fault an employer and the employer's employee or a principal
84 and the principal's agent shall be considered as one (1) defendant
85 when the liability of such employer or principal has been caused
86 by the wrongful or negligent act or omission of the employee or
87 agent.

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

91 (4) Joint and several liability shall be imposed on all who
92 consciously and deliberately pursue a common plan or design to
93 commit a tortious act, or actively take part in it. Any person



94 held jointly and severally liable under this section shall have a
95 right of contribution from his fellow defendants acting in
96 concert.

97 (5) In actions involving joint tortfeasors, the trier of
98 fact shall determine the percentage of fault for each party
99 alleged to be at fault without regard to whether the joint
100 tortfeasor is immune from damages. Fault allocated under this
101 subsection to an immune tortfeasor or a tortfeasor whose liability
102 is limited by law shall not be reallocated to any other
103 tortfeasor.

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

107 **SECTION 3.** This act shall take effect and be in force from
108 and after July 1, 2019.

