

By: Representative Tullos

To: Judiciary A

HOUSE BILL NO. 549

1 AN ACT TO AMEND SECTION 71-3-71, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT AN EMPLOYER OR INSURER SHALL NOT BE REQUIRED TO
3 INTERVENE IN ANY ACTION AGAINST ANY OTHER PARTY AT LAW RESPONSIBLE
4 FOR THE INJURY OR DEATH OF AN EMPLOYEE, BUT IF THE EMPLOYER OR
5 INSURER FAILS TO JOIN, THEY SHALL NOT BE ENTITLED TO ANY REPAYMENT
6 OF THE AMOUNT THEY PAID AS COMPENSATION AND EXPENSES; TO PROVIDE
7 THAT IF AN EMPLOYER IS FOUND TO BE NEGLIGENT, THE SUBROGATION LIEN
8 SHALL BE REDUCED BY THE PERCENTAGE OF THE FAULT OF THE EMPLOYER;
9 TO AMEND SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO CONFORM TO
10 THE PRECEDING SECTION; AND FOR RELATED PURPOSES.

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

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

14 71-3-71. The acceptance of compensation benefits from or the
15 making of a claim for compensation against an employer or insurer
16 for the injury or death of an employee shall not affect the right
17 of the employee or his dependents to sue any other party at law
18 for such injury or death, but the employer or his insurer shall be
19 entitled to reasonable notice and opportunity to join in any such
20 action or may intervene therein. * * * An employer or insurer may
21 join in such action * * *; however, if such employer or insurer
22 does not join in such action, they shall not be entitled to



23 repayment of the amount paid by them as compensation and medical
24 expenses from the net proceeds of such action (after deducting the
25 reasonable costs of collection) as hereinafter provided. If an
26 employer is found to be negligent, the subrogation lien shall be
27 reduced by the percentage of the fault of the employer.

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

44 An employer or compensation insurer who shall have paid
45 compensation benefits under this chapter for the injury or death
46 of the employee shall have the right to maintain an action at law
47 against any other party responsible for such injury or death, in



the name of such injured employee or his beneficiaries, or in the name of such employer or insurer, or any or all of them. If reasonable notice and opportunity to be represented in such action by counsel shall have been given to the compensation beneficiary, all claims of such compensation beneficiary shall be determined in such action, as well as the claim of the employer or insurer. If recovery shall be had against such other party, by suit or otherwise, the compensation beneficiary shall be entitled to any amount recovered over and above the amount that the employer and insurer shall have paid or are liable for in compensation or other benefits, after deducting the reasonable costs of collection; however, if an employer is found to be negligent, the subrogation lien shall be reduced by the percentage of the fault of the employer.

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

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

In case of liability of the employer or insurer to make payment to the State Treasury under the Second Injury Fund provisions, if the injury or death creates a legal liability against a third party, the employer or insurer shall have a right of action against such third party for reimbursement of any sum so



73 paid into the State Treasury, which right may be enforced in the
74 action heretofore provided or by an independent action.

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

77 85-5-7. (1) As used in this section, "fault" means an act
78 or omission of a person which is a proximate cause of injury or
79 death to another person or persons, damages to property, tangible
80 or intangible, or economic injury, including, but not limited to,
81 negligence, malpractice, strict liability, absolute liability or
82 failure to warn. Except as otherwise provided in this subsection
83 (1), "fault" shall not include any tort which results from an act
84 or omission committed with a specific wrongful intent. For any
85 premises-liability action, as defined under Section 11-1-66.1(7),
86 alleging injury as a result of the willful, wanton or intentional
87 tortious conduct of a third party on commercial or other real
88 property in the State of Mississippi, "fault" shall include any
89 tort which results from an act or omission committed with a
90 specific wrongful intent.

91 (2) Except as otherwise provided in subsection (4) of this
92 section, in any civil action based on fault, the liability for
93 damages caused by two (2) or more persons shall be several only,
94 and not joint and several and a joint tortfeasor shall be liable
95 only for the amount of damages allocated to him in direct
96 proportion to his percentage of fault. In assessing percentages
97 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) Nothing in this section shall eliminate or diminish any defenses or immunities which currently exist, except as expressly noted herein.

(4) Except as otherwise provided in Section 71-3-71, 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. Except as otherwise provided in Section 71-3-71, any person held jointly and severally liable under this section shall have a right of contribution from his fellow defendants acting in concert.

(5) In actions involving joint tortfeasors, the trier of fact shall determine the percentage of fault for each party alleged to be at fault without regard to whether the joint tortfeasor is immune from damages. Fault allocated under this subsection to an immune tortfeasor or a tortfeasor whose liability is limited by law shall not be reallocated to any other tortfeasor; however, the subrogation lien shall be reduced by the percentage of an immune employer's negligence, as provided in Section 71-3-71.



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

124 **SECTION 3.** This act shall take effect and be in force from
125 and after July 1, 2025.

