

By: Representatives Smith (39th), Moore (60th), Cameron, Eakes, Rotenberry, Jennings, Chism, Nicholson, Lott, Davis, Formby, Robinson (84th), Robertson, Guice, Wells-Smith

To: Judiciary A

HOUSE BILL NO. 1494

1 AN ACT TO AMEND SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE ASSESSMENT OF JOINT AND SEVERAL LIABILITY; AND FOR  
3 RELATED PURPOSES.

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

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

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

16 \* \* \*

17 (2) \* \* \* In any civil action based on fault, the liability  
18 for damages caused by two (2) or more persons shall be several  
19 only, and not joint and several, and each defendant shall be  
20 liable only for the amount of damages allocated to him in direct  
21 proportion to his percentage of fault, and a separate judgment  
22 shall be rendered against each defendant for that amount. To  
23 determine the amount of judgment to be entered against each  
24 defendant, the court, with regard to each defendant, shall  
25 multiply the total amount of damages recoverable by the plaintiff  
26 by the percentage of each defendant's fault and that amount shall  
27 be the maximum recoverable against said defendant. In assessing



28 percentages of fault an employer and the employer's employee or a  
29 principal and the principal's agent shall be considered as one (1)  
30 defendant when the liability of such employer or principal has  
31 been caused by the wrongful or negligent act or omission of the  
32 employee or agent.

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

40 \* \* \*

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

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

50 \* \* \*

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

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

59 (8) This section shall apply to any civil action pending or  
60 filed on or after July 1, 2002.



61           **SECTION 2.** This act shall take effect and be in force from  
62 and after July 1, 2002.

