

By: Representative Chism

To: Judiciary A

HOUSE BILL NO. 759

1 AN ACT TO AMEND SECTION 11-7-15, MISSISSIPPI CODE OF 1972, TO
2 REVISE COMPARATIVE NEGLIGENCE; TO AMEND SECTION 85-5-7,
3 MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 11-7-15, Mississippi Code of 1972, is
6 amended as follows:

7 11-7-15. In all actions hereafter brought for personal
8 injuries or wrongful death, or injury to property in which
9 recovery is predicated upon fault, liability shall be determined
10 by comparing the fault chargeable to a claiming party with the
11 fault chargeable to the party or parties from whom the claimant
12 party seeks to recover damages.

13 (2) (a) If the fault chargeable to a party claiming damages
14 is of a lesser degree than the fault chargeable to the party or
15 parties from whom the claiming party seeks to recover damages,
16 then the claiming party is entitled to recover the amount of his
17 damages after they have been diminished in proportion to the
18 degree of his own fault.

19 (b) If the fault chargeable to a party claiming damages
20 is equal to or greater in degree than any fault chargeable to the
21 party or parties from whom the claiming party seeks to recover
22 damages, then the claiming party is not entitled to recover such
23 damages.

24 (3) The term "fault" as used in this section includes any
25 act, omission, conduct, risk assumed, breach of warranty or breach
26 of any legal duty which is a proximate cause of any damages
27 sustained by any party.

28 (4) In cases where the issue of comparative fault is
29 submitted to the jury by an interrogatory, counsel for the party
30 shall be permitted to argue to the jury the effect of an answer to
31 any interrogatory.

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

34 85-5-7. (1) As used in this section "fault" means an act or
35 omission of a person which is a proximate cause of injury or death
36 to another person or persons, damages to property, tangible or
37 intangible, or economic injury, including, but not limited to,
38 negligence, malpractice, strict liability, absolute liability or
39 failure to warn. "Fault" shall not include any tort which results
40 from an act or omission committed with a specific wrongful intent.

41 (2) Except as may be otherwise provided in subsections (6)
42 and (8) of this section, in any civil action based on fault, the
43 liability for damages caused by two (2) or more persons shall be
44 joint and several only to the extent necessary for the person
45 suffering injury, death or loss to recover fifty percent (50%) of
46 his recoverable damages.

47 (3) Except as otherwise provided in subsections (2), (6) and
48 (8) of this section, in any civil action based on fault, the
49 liability for damages caused by two (2) or more persons shall be
50 several only, and not joint and several and a joint tort-feasor
51 shall be liable only for the amount of damages allocated to him in
52 direct proportion to his percentage of fault. In assessing
53 percentages of fault an employer and the employer's employee or a
54 principal and the principal's agent shall be considered as one (1)
55 defendant when the liability of such employer or principal has
56 been caused by the wrongful or negligent act or omission of the
57 employee or agent.

58 (4) Any defendant held jointly liable under this section
59 shall have a right of contribution against fellow joint
60 tort-feasors. A defendant shall be held responsible for

61 contribution to other joint tort-feasors only for the percentage
62 of fault assessed to such defendant.

63 (5) Nothing in this section shall eliminate or diminish any
64 defenses or immunities which currently exist, except as expressly
65 noted herein.

66 (6) Joint and several liability shall be imposed on all who
67 consciously and deliberately pursue a common plan or design to
68 commit a tortious act, or actively take part in it. Any person
69 held jointly and severally liable under this section shall have a
70 right of contribution from his fellow defendants acting in
71 concert.

72 (7) In actions involving joint tort-feasors, the trier of
73 fact shall determine the percentage of fault for each party
74 alleged to be at fault.

75 (8) Except as provided in subsection (6) of this section and
76 Section 11-7-15, in any action involving joint tort-feasors, the
77 trier of fact shall determine the percentage of fault for each
78 joint tort-feasor, including named parties and absent
79 tort-feasors, without regard to whether the joint tort-feasor is
80 immune from damages. For noneconomic damages, a defendant's
81 liability shall be several only. For economic damages, for any
82 defendant whose fault is determined to be less than thirty percent
83 (30%), liability shall be several only and for any defendant whose
84 fault is determined to be thirty percent (30%) or more, liability
85 shall be joint and several only to the extent necessary for the
86 person suffering injury, death or loss to recover fifty percent
87 (50%) of his recoverable damages. Fault allocated under this
88 subsection to an immune tort-feasor or a tort-feasor whose
89 liability is limited by law shall not be reallocated to any other
90 tort-feasor.

91 (9) Nothing in this section shall be construed to create a
92 cause of action. Nothing in this section shall be construed, in
93 any way, to alter the immunity of any person.

94 **SECTION 3.** This act shall take effect and be in force from
95 and after July 1, 2004.