

By: Representative Upshaw

To: Insurance; Judiciary A

HOUSE BILL NO. 564

1 AN ACT TO AMEND SECTION 71-3-71, MISSISSIPPI CODE OF 1972, TO
2 REDUCE THE AMOUNT THAT AN EMPLOYER MAY RECEIVE FROM A THIRD PARTY
3 FOR DAMAGES BASED ON THE EMPLOYER'S PERCENTAGE OF FAULT; AND FOR
4 RELATED PURPOSES.

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

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

8 71-3-71. The acceptance of compensation benefits from or the
9 making of a claim for compensation against an employer or insurer
10 for the injury or death of an employee shall not affect the right
11 of the employee or his dependents to sue any other party at law
12 for such injury or death, but the employer or his insurer shall be
13 entitled to reasonable notice and opportunity to join in any such
14 action or may intervene therein. If such employer or insurer join
15 in such action, they shall be entitled to repayment of the amount
16 paid by them as compensation and medical expenses from the net
17 proceeds of such action (after deducting the reasonable costs of
18 collection) as hereinafter provided.

19 The commencement of an action by an employee or his
20 dependents (or legal representative) against a third party for
21 damages by reason of the injury, or the adjustment of any such
22 claim, shall not affect the right of the injured employee or his
23 dependents (or legal representative) to recover compensation, but
24 any amount recovered by the injured employee or his dependents (or
25 legal representative) from a third party shall be applied as
26 follows: reasonable costs of collection as approved and allowed
27 by the court in which such action is pending, or by the commission
28 of this state in case of settlement without suit, shall be

29 deducted; the remainder, or so much thereof as is necessary, shall
30 be used to discharge the legal liability of the employer or
31 insurer after a reduction is made in such legal liability based
32 upon the employer's percentage of fault; and any excess shall
33 belong to the injured employee or his dependents. The employee or
34 his dependents bringing suit against the third party must notify
35 the employer or carrier within fifteen (15) days of the filing of
36 such suit.

37 An employer or compensation insurer who shall have paid
38 compensation benefits under this chapter for the injury or death
39 of the employee shall have the right to maintain an action at law
40 against any other party responsible for such injury or death, in
41 the name of such injured employee or his beneficiaries, or in the
42 name of such employer or insurer, or any or all of them. If
43 reasonable notice and opportunity to be represented in such action
44 by counsel shall have been given to the compensation beneficiary,
45 all claims of such compensation beneficiary shall be determined in
46 such action, as well as the claim of the employer or insurer. If
47 recovery shall be had against such other party, by suit or
48 otherwise, the compensation beneficiary shall be entitled to any
49 amount recovered over and above the amount that the employer and
50 insurer shall have paid or are liable for in compensation or other
51 benefits, after deducting the reasonable costs of collection and
52 the amount necessary to discharge the legal liability of the
53 employer or insurer after a reduction is made in such legal
54 liability based upon the employer's percentage of fault.

55 In case of settlement of any action before the trial thereof,
56 such settlement shall be subject to the approval of the court
57 wherein such action is pending, and settlement before an action is
58 brought shall be subject to the approval of the commission.
59 Distribution of the portion belonging to the dependents shall be
60 made among such dependents in the manner provided in this chapter.

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

68 **SECTION 2.** This act shall take effect and be in force from
69 and after July 1, 2005.