

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

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2901

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) No person who owns, leases, operates, maintains, or
10 manages commercial or other real property in the State of
11 Mississippi and no director, officer, employee, agent or
12 independent contractor acting on behalf of any such person shall
13 be civilly liable to any invitee who is injured on said property
14 as the result of the acts of negligence or gross negligence or the
15 willful, wanton or intentional conduct of any third party who is
16 not a director, officer, employee or agent of the person who owns,
17 leases, operates, maintains or manages such commercial or other
18 real property unless the injured party can prove by a
19 preponderance of the evidence that:

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

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

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

28 (3) An atmosphere of violence shall only be established by
29 similar, violent conduct:

30 (a) Which occurred within three (3) years before the
31 third party act at issue and resulted in a felony conviction; and

32 (b) Took place only on the commercial or other real
33 property where the acts of the third party occurred.

34 (4) Civil liability may not be based on the prior violent
35 nature of the third party whose acts or omissions proximately
36 caused the claimed injury or damage.

37 (5) If any provision of this section or its application to
38 any person or circumstance is held unconstitutional or otherwise
39 invalid, the remainder of this section or the application of the
40 provision to other persons or circumstances is not affected.

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

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



45 85-5-7. (1) As used in this section, "fault" means an act
46 or omission of a person which is a proximate cause of injury or
47 death to another person or persons, damages to property, tangible
48 or intangible, or economic injury, including, but not limited to,
49 negligence, malpractice, strict liability, absolute liability or
50 failure to warn. "Fault" shall * * * include any tort which
51 results from an act or omission committed with a specific wrongful
52 intent.

53 (2) Except as otherwise provided in subsection (4) of this
54 section, in any civil action based on fault, the liability for
55 damages caused by two (2) or more persons shall be several only,
56 and not joint and several and a joint tortfeasor shall be liable
57 only for the amount of damages allocated to him in direct
58 proportion to his percentage of fault. In assessing percentages
59 of fault an employer and the employer's employee or a principal
60 and the principal's agent shall be considered as one (1) defendant
61 when the liability of such employer or principal has been caused
62 by the wrongful or negligent act or omission of the employee or
63 agent.

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

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



70 held jointly and severally liable under this section shall have a
71 right of contribution from his fellow defendants acting in
72 concert.

73 (5) In actions involving joint tortfeasors, the trier of
74 fact shall determine the percentage of fault for each party
75 alleged to be at fault without regard to whether the joint
76 tortfeasor is immune from damages. Fault allocated under this
77 subsection to an immune tortfeasor or a tortfeasor whose liability
78 is limited by law shall not be reallocated to any other
79 tortfeasor.

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

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