

1 **§55-7-13a. Comparative fault standard established.**

2 (a) "Comparative fault" means the degree to which the fault of
3 a person was a proximate cause of an alleged personal injury or
4 death or damage to property, expressed as a percentage. Fault shall
5 be determined according to the provisions of section thirteen-c of
6 this article.

7 (b) In any action for damages, recovery shall be predicated
8 upon principles of comparative fault and the liability of each
9 person, including plaintiffs, defendants and nonparties who caused
10 the damages shall be allocated to each applicable person in direct
11 proportion to that person's percentage of fault.

12 (c) The total of the percentages of comparative fault
13 allocated by the trier of fact with respect to a particular
14 incident or injury must equal either zero percent or one hundred
15 percent.

16 (d) This section supercedes, invalidates and repeals all other
17 state laws that conflict with its provisions.

18 (e) This section applies to all causes of action arising on or
19 after the effective date of its enactment.

20 (f) The provisions of this section are severable from one
21 another, so that if any provision of this section is held void, the
22 remaining provisions of this section remain valid.

23 **§55-7-13b. Several liability.**

1 (a) In any action for damages, the liability of each defendant
2 for compensatory damages is several only and not joint. Each
3 defendant is liable only for the amount of compensatory damages
4 allocated to that defendant in direct proportion to that
5 defendant's percentage of fault and a separate judgment shall be
6 rendered against the defendant for that amount.

7 (b) To determine the amount of judgment to be entered against
8 each defendant, the court, with regard to each defendant, shall
9 multiply the total amount of all damages recoverable by the
10 plaintiff by the percentage of each defendant's fault and that
11 amount is the maximum recoverable against each defendant.

12 (c) A defendant's fault must be determined in accordance with
13 the provisions of section thirteen-c of this article.

14 (d) This section supercedes, invalidates and repeals all other
15 state laws that conflict with its provisions.

16 (e) This section applies to all causes of action initiated on
17 or after the effective date of its enactment.

18 (f) The provisions of this section are severable from one
19 another, so that if any provision of this section is held void, the
20 remaining provisions of this section remain valid.

21 **§55-7-13c. Determination of fault of parties and nonparties;**
22 **imputed fault; plaintiff's failure to take**
23 **reasonable precautionary measures; plaintiff's**

1 **involvement in felony criminal act; fault of person**
2 **not a manufacturer; burden of proof; limitations;**
3 **conflicting laws repealed; applicability; and**
4 **severability.**

5 (a) *Determination of fault of parties and nonparties.* --

6 "Fault" means an act or omission of a person, which is a proximate
7 cause of injury or death to another person or persons, damage to
8 property, or economic injury, including, but not limited to,
9 negligence, malpractice, medical professional liability, strict
10 product liability, absolute liability, liability under section two,
11 article four, chapter twenty-three of this code or assumption of
12 the risk:

13 (1) In assessing percentages of fault, the trier of fact shall
14 consider the fault of all persons who contributed to the alleged
15 damages regardless of whether the person was or could have been
16 named as a party to the suit. The fault shall include the fault
17 imputed or attributed to a person by operation of law, if any;

18 (2) Fault of a nonparty may be considered if the plaintiff
19 entered into a settlement agreement with the nonparty or if a
20 defending party gives notice no later than sixty days before the
21 date of trial that a nonparty was wholly or partially at fault.
22 The notice shall be given by filing a pleading or discovery

1 response in the action designating the nonparty and setting forth
2 the nonparty's name and last-known address, or the best
3 identification of the nonparty which is possible under the
4 circumstances, together with a brief statement of the basis for
5 believing such nonparty to be at fault;

6 (3) In all instances where a nonparty is assessed a percentage
7 of fault, any recovery by a plaintiff shall be reduced in
8 proportion to the percentage of fault chargeable to the nonparty.
9 Where a plaintiff has settled with a party or nonparty before
10 verdict, that plaintiff's recovery will be reduced by the amount of
11 the settlement or in proportion to the percentage of fault assigned
12 to the settling party or nonparty, whichever is greater. The
13 plaintiff shall promptly and fully inform all other persons against
14 whom liability is asserted of the terms of any such settlement;

15 (4) This section is not meant to eliminate or diminish any
16 defenses or immunities, which exist as of the effective date of
17 this section, except as expressly noted in this section;

18 (5) Assessments of percentages of fault for nonparties are
19 used only as a vehicle for accurately determining the fault of
20 named parties. Where fault is assessed against nonparties, findings
21 of fault do not subject any nonparty to liability in that or any
22 other action, or be introduced as evidence of liability or for any
23 other purpose in any other action; and

1 (6) In all actions involving fault of more than one person,
2 unless otherwise agreed by all parties to the action, the court
3 shall instruct the jury to answer special interrogatories or, if
4 there is no jury, shall make findings, indicating the percentage of
5 the total fault that is allocated to each party and nonparty
6 pursuant to the provisions of this article. For this purpose, the
7 court may determine that two or more persons are to be treated as
8 a single person.

9 (b) *Imputed fault.* -- Nothing in this section precludes a
10 person from being held responsible for the portion of comparative
11 fault assessed against another person who was acting as an agent or
12 servant of the person, or if the fault of the other person is
13 otherwise imputed or attributed to the person by statute or common
14 law.

15 (c) *Failure to take reasonable precautionary measures.* -- In
16 any civil action, the finder of fact may assess a percentage of
17 fault against a plaintiff who is injured as a proximate result of
18 that plaintiff's failure to take reasonable precautionary measures
19 that are available.

20 (d) *Plaintiff's involvement in felony criminal act.* -- In any
21 civil action, a defendant is not liable for damages that the
22 plaintiff suffers as a result of the negligence or gross negligence
23 of a defendant while the plaintiff is attempting to commit,

1 committing or fleeing from the commission of a felony criminal act.

2 (e) *Fault of a person not a manufacturer.* -- A person who is
3 not the manufacturer of a product but is merely in the chain of its
4 distribution, such as a seller, distributor or installer and who
5 did not alter, change or modify the product in a way that created
6 or contributed to the alleged defect, may not be assessed a
7 percentage of comparative fault under the theory of strict
8 liability for accidents, injuries or damages proximately caused, in
9 whole or in part, by the product.

10 (f) *Burden of proof.* -- The burden of alleging and proving
11 comparative fault is upon the person who seeks to establish the
12 fault.

13 (g) *Limitations.* -- This section does not create a cause of
14 action. Nothing in this section alters the immunity of any person
15 as established by statute or common law.

16 (h) *Inapplicability of this code section.* -- This code section
17 is not applicable where any of the following occurs:

18 (1) A defendant whose conduct constitutes driving a vehicle
19 under the influence of alcohol, a controlled substance, or any
20 other drug or any combination thereof, as described in section two,
21 article five, chapter seventeen-c of this code, is the proximate
22 cause of the damages suffered by the plaintiff;

23 (2) A defendant whose actions constitute criminal conduct is

1 the proximate cause of the damages suffered by the plaintiff; or

2 (3) A defendant whose conduct constitutes an illegal disposal
3 of hazardous waste, as described in section three, article
4 eighteen, chapter twenty-two of this code, is the proximate cause
5 of the damages suffered by the plaintiff.

6 (i) *Conflicting laws repealed.* -- This section supersedes,
7 invalidates and repeals all other state laws that conflict with its
8 provisions.

9 (j) *Applicability.* -- This section applies to all causes of
10 action arising on or after the effective date of its enactment.

11 (k) *Severability.* -- The provisions of this section are
12 severable from one another, so that if any provision of this
13 section is held void, the remaining provisions of this section
14 remain valid.

NOTE: The purpose of this bill is to abolish joint liability and establish the principle of comparative fault by which each defendant is liable for damages according to the percentage of fault attributed by a judge or jury. The bill also provides a method of assessing fault of the parties.

These sections are new; therefore, strike-throughs and underscoring have been omitted.