MISSISSIPPI LEGISLATURE
REGULAR SESSION 2001
By: Representative Robinson (84th)
To: Judiciary A

HOUSE BILL NO. 793

AN ACT TO AMEND SECTION 11-7-13, MISSISSIPPI CODE OF 1972, TO INCLUDE THE DEATH OF AN UNBORN FETUS IN THE WRONGFUL DEATH STATUTE; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 11-7-13, Mississippi Code of 1972, is amended as follows:

11-7-13. Whenever the death of any person or of any unborn fetus shall be caused by any real, wrongful or negligent act or omission, or by such unsafe machinery, way or appliances as would, if death had not ensued, have entitled the party injured or damaged thereby to maintain an action and recover damages in respect thereof, or whenever the death of any person or of any unborn fetus shall be caused by the breach of any warranty, express or implied, of the purity or fitness of any foods, drugs, medicines, beverages, tobacco or any and all other articles or commodities intended for human consumption, as would, had the death not ensued, have entitled the person injured or made ill or damaged thereby, to maintain an action and recover damages in respect thereof, and such deceased person shall have left a widow or children or both, or husband or father or mother, or sister, or brother, the person or corporation, or both that would have been liable if death had not ensued, and the representatives of such person shall be liable for damages, notwithstanding the death, and the fact that death was instantaneous shall in no case affect the right of recovery. The action for such damages may be brought in the name of the personal representative of the deceased person or unborn fetus for the benefit of all persons entitled under the law.

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to recover, or by widow for the death of her husband, or by the
husband for the death of the wife, or by the parent for the death
of a child or unborn fetus, or in the name of a child, or in the
name of a child for the death of a parent, or by a brother for the
death of a sister, or by a sister for the death of a brother, or
by a sister for the death of a sister, or a brother for the death
of a brother, or all parties interested may join in the suit, and
there shall be but one (1) suit for the same death which shall
ensue for the benefit of all parties concerned, but the
determination of such suit shall not bar another action unless it
be decided on its merits. In such action the party or parties
suing shall recover such damages allowable by law as the jury may
determine to be just, taking into consideration all the damages of
every kind to the decedent and all damages of every kind to any
and all parties interested in the suit.

This section shall apply to all personal injuries of servants
and employees received in the service or business of the master or
employer, where such injuries result in death, and to all deaths
caused by breach of warranty, either express or implied, of the
purity and fitness of foods, drugs, medicines, beverages, tobacco
or other articles or commodities intended for human consumption.

Any person entitled to bring a wrongful death action may
assert or maintain a claim for any breach of expressed warranty or
for any breach of implied warranty. A wrongful death action may
be maintained or asserted for strict liability in tort or for any
cause of action known to the law for which any person,
corporation, legal representative or entity would be liable for
damages if death had not ensued.

In an action brought pursuant to the provisions of this
section by the widow, husband, child, father, mother, sister or
brother of the deceased or unborn fetus, or by all interested
parties, such party or parties may recover as damages property
damages and funeral, medical or other related expenses incurred by
or for the deceased as a result of such wrongful or negligent act
or omission or breach of warranty, whether an estate has been
opened or not. Any amount, but only such an amount, as may be
recovered for property damage, funeral, medical or other related
expenses shall be subject only to the payment of the debts or
liabilities of the deceased for property damages, funeral, medical
or other related expenses. All other damages recovered under the
provisions of this section shall not be subject to the payment of
the debts or liabilities of the deceased, except as hereinafter
provided, and such damages shall be distributed as follows:

Damages for the injury and death of a married man shall be
equally distributed to his wife and children, and if he has no
children all shall go to his wife; damages for the injury and
death of a married woman shall be equally distributed to the
husband and children, and if she has no children all shall go to
the husband; and if the deceased has no husband or wife, the
damages shall be equally distributed to the children; if the
deceased has no husband, nor wife, nor children, the damages shall
be distributed equally to the father, mother, brothers and
sisters, or such of them as the deceased may have living at his or
her death. If the deceased have neither husband, nor wife, nor
children, nor father, nor mother, nor sister, nor brother, then
the damages shall go to the legal representative, subject to debts
and general distribution, and the fact that the deceased was
instantly killed shall not affect the right of the legal
representative to recover. All references in this section to
children shall include descendants of a deceased child, such
descendants to take the share of the deceased child by
representation. There shall not be, in any case, a distinction
between the kindred of the whole and half blood of equal degree.
The provisions of this section shall apply to illegitimate
children on account of the death of the mother and to the mother
on account of the death of an illegitimate child or children, and
they shall have all the benefits, rights and remedies conferred by
this section on legitimates. The provisions of this section shall
apply to illegitimate children on account of the death of the
natural father and to the natural father on account of the death
of the illegitimate child or children, and they shall have all the
benefits, rights and remedies conferred by this section on
legitimates, if the survivor has or establishes the right to
inherit from the deceased under Section 91-1-15.

Any rights which a blood parent or parents may have under
this section are hereby conferred upon and vested in an adopting
parent or adopting parents surviving their deceased adopted child,
just as if the child were theirs by the full blood and had been
born to the adopting parents in lawful wedlock.

SECTION 2. This act shall take effect and be in force from
and after July 1, 2001, and shall apply to causes of action filed
on or after that date.