

By: Representatives Formby, Moore (60th)

To: Judiciary A

HOUSE BILL NO. 1441

1 AN ACT TO AMEND SECTION 11-1-63, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT THE MANUFACTURER OR SELLER OF A PRODUCT SHALL NOT BE  
3 LIABLE IN A PRODUCTS LIABILITY ACTION IF THE PRODUCT HAS NOT BEEN  
4 USED IN THE MANNER FOR WHICH IT WAS DESIGNED; AND FOR RELATED  
5 PURPOSES.

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

7 SECTION 1. Section 11-1-63, Mississippi Code of 1972, is  
8 amended as follows:

9 11-1-63. In any action for damages caused by a product  
10 except for commercial damage to the product itself:

11 (a) The manufacturer or seller of the product shall not  
12 be liable if the claimant does not prove by the preponderance of  
13 the evidence that at the time the product left the control of the  
14 manufacturer or seller:

15 (i) 1. The product was defective because it  
16 deviated in a material way from the manufacturer's specifications  
17 or from otherwise identical units manufactured to the same  
18 manufacturing specifications, or

19 2. The product was defective because it  
20 failed to contain adequate warnings or instructions, or

21 3. The product was designed in a defective  
22 manner, or

23 4. The product breached an express warranty  
24 or failed to conform to other express factual representations upon  
25 which the claimant justifiably relied in electing to use the  
26 product; and

27 (ii) The defective condition rendered the product  
28 unreasonably dangerous to the user or consumer; and

29                   (iii) The defective and unreasonably dangerous  
30 condition of the product proximately caused the damages for which  
31 recovery is sought.

32                   (b) A product is not defective in design or formulation  
33 if the harm for which the claimant seeks to recover compensatory  
34 damages was caused by an inherent characteristic of the product  
35 which is a generic aspect of the product that cannot be eliminated  
36 without substantially compromising the product's usefulness or  
37 desirability and which is recognized by the ordinary person with  
38 the ordinary knowledge common to the community.

39                   (c) (i) In any action alleging that a product is  
40 defective because it failed to contain adequate warnings or  
41 instructions pursuant to paragraph (a)(i)2 of this section, the  
42 manufacturer or seller shall not be liable if the claimant does  
43 not prove by the preponderance of the evidence that at the time  
44 the product left the control of the manufacturer or seller, the  
45 manufacturer or seller knew or in light of reasonably available  
46 knowledge should have known about the danger that caused the  
47 damage for which recovery is sought and that the ordinary user or  
48 consumer would not realize its dangerous condition.

49                   (ii) An adequate product warning or instruction is  
50 one that a reasonably prudent person in the same or similar  
51 circumstances would have provided with respect to the danger and  
52 that communicates sufficient information on the dangers and safe  
53 use of the product, taking into account the characteristics of,  
54 and the ordinary knowledge common to an ordinary consumer who  
55 purchases the product; or in the case of a prescription drug,  
56 medical device or other product that is intended to be used only  
57 under the supervision of a physician or other licensed  
58 professional person, taking into account the characteristics of,  
59 and the ordinary knowledge common to, a physician or other  
60 licensed professional who prescribes the drug, device or other  
61 product.

62           (d) In any action alleging that a product is defective  
63 pursuant to paragraph (a) of this section, the manufacturer or  
64 seller shall not be liable if the claimant (i) had knowledge of a  
65 condition of the product that was inconsistent with his safety;  
66 (ii) appreciated the danger in the condition; and (iii)  
67 deliberately and voluntarily chose to expose himself to the danger  
68 in such a manner to register assent on the continuance of the  
69 dangerous condition.

70           (e) In any action alleging that a product is defective  
71 pursuant to paragraph (a)(i)2 of this section, the manufacturer or  
72 seller shall not be liable if the danger posed by the product is  
73 known or is open and obvious to the user or consumer of the  
74 product, or should have been known or open and obvious to the user  
75 or consumer of the product, taking into account the  
76 characteristics of, and the ordinary knowledge common to, the  
77 persons who ordinarily use or consume the product.

78           (f) In any action alleging that a product is defective  
79 because of its design pursuant to paragraph (a)(i)3 of this  
80 section, the manufacturer or product seller shall not be liable if  
81 the claimant does not prove by the preponderance of the evidence  
82 that at the time the product left the control of the manufacturer  
83 or seller:

84                   (i) The manufacturer or seller knew, or in light  
85 of reasonably available knowledge or in the exercise of reasonable  
86 care should have known, about the danger that caused the damage  
87 for which recovery is sought; and

88                   (ii) The product failed to function as expected  
89 and there existed a feasible design alternative that would have to  
90 a reasonable probability prevented the harm. A feasible design  
91 alternative is a design that would have to a reasonable  
92 probability prevented the harm without impairing the utility,  
93 usefulness, practicality or desirability of the product to users  
94 or consumers.

95           (g) (i) The manufacturer of a product who is found  
96 liable for a defective product pursuant to subsection (a) shall  
97 indemnify a product seller for the costs of litigation, any  
98 reasonable expenses, reasonable attorney's fees and any damages  
99 awarded by the trier of fact unless the seller exercised  
100 substantial control over that aspect of the design, testing,  
101 manufacture, packaging or labeling of the product that caused the  
102 harm for which recovery of damages is sought; the seller altered  
103 or modified the product, and the alteration or modification was a  
104 substantial factor in causing the harm for which recovery of  
105 damages is sought; the seller had actual knowledge of the  
106 defective condition of the product at the time he supplied same;  
107 or the seller made an express factual representation about the  
108 aspect of the product which caused the harm for which recovery of  
109 damages is sought.

110           (ii) Subparagraph (i) shall not apply unless the  
111 seller has given prompt notice of the suit to the manufacturer  
112 within thirty (30) days of the filing of the complaint against the  
113 seller.

114           (h) In any action for products liability, the  
115 manufacturer or seller shall not be liable if the product has not  
116 been used in the manner for which the product was designed.

117           (i) Nothing in this section shall be construed to  
118 eliminate any common law defense to an action for damages caused  
119 by a product.

120           SECTION 2. This act shall take effect and be in force from  
121 and after July 1, 2001.