SENATE BILL NO. 2494

AN ACT TO AMEND SECTION 11-7-13, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT NO PARENT WHO HAS ABANDONED A CHILD SHALL BE AWARDED DAMAGES FOR WRONGFUL DEATH OF THAT CHILD; 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 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 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 for the benefit of all persons entitled under the law 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
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 (l)
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 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.

In no event shall any parent who has abandoned a child be awarded damages under the provisions of this section for the wrongful death of that child. For the purposes of this section, "abandonment" means having had no voluntary contact with the child for one (1) year.

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