

By: Representative Robinson (84th)

To: Judiciary A

HOUSE BILL NO. 786

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

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

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

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



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

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

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

56 In an action brought pursuant to the provisions of this
57 section by the widow, husband, child, father, mother, sister or
58 brother of the deceased or unborn fetus, or by all interested
59 parties, such party or parties may recover as damages property
60 damages and funeral, medical or other related expenses incurred by



61 or for the deceased as a result of such wrongful or negligent act
62 or omission or breach of warranty, whether an estate has been
63 opened or not. Any amount, but only such an amount, as may be
64 recovered for property damage, funeral, medical or other related
65 expenses shall be subject only to the payment of the debts or
66 liabilities of the deceased for property damages, funeral, medical
67 or other related expenses. All other damages recovered under the
68 provisions of this section shall not be subject to the payment of
69 the debts or liabilities of the deceased, except as hereinafter
70 provided, and such damages shall be distributed as follows:

71 Damages for the injury and death of a married man shall be
72 equally distributed to his wife and children, and if he has no
73 children all shall go to his wife; damages for the injury and
74 death of a married woman shall be equally distributed to the
75 husband and children, and if she has no children all shall go to
76 the husband; and if the deceased has no husband or wife, the
77 damages shall be equally distributed to the children; if the
78 deceased has no husband, nor wife, nor children, the damages shall
79 be distributed equally to the father, mother, brothers and
80 sisters, or such of them as the deceased may have living at his or
81 her death. If the deceased have neither husband, nor wife, nor
82 children, nor father, nor mother, nor sister, nor brother, then
83 the damages shall go to the legal representative, subject to debts
84 and general distribution, and the fact that the deceased was
85 instantly killed shall not affect the right of the legal
86 representative to recover. All references in this section to
87 children shall include descendants of a deceased child, such
88 descendants to take the share of the deceased child by
89 representation. There shall not be, in any case, a distinction
90 between the kindred of the whole and half blood of equal degree.
91 The provisions of this section shall apply to illegitimate
92 children on account of the death of the mother and to the mother
93 on account of the death of an illegitimate child or children, and



94 they shall have all the benefits, rights and remedies conferred by
95 this section on legitimates. The provisions of this section shall
96 apply to illegitimate children on account of the death of the
97 natural father and to the natural father on account of the death
98 of the illegitimate child or children, and they shall have all the
99 benefits, rights and remedies conferred by this section on
100 legitimates, if the survivor has or establishes the right to
101 inherit from the deceased under Section 91-1-15.

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

107 **SECTION 2.** This act shall take effect and be in force from
108 and after July 1, 2002, and shall apply to causes of action filed
109 on or after that date.

