MISSISSIPPI LEGISLATURE REGULAR SESSION 2002

By: Senator(s) Kirby, Hewes, Gordon, Chaney, White (29th), Canon, King, Michel, Johnson (19th), Scoper, Robertson, Moffatt, Harvey, Nunnelee, Huggins, Mettetal, Minor, Stogner, Hamilton, Hyde-Smith, Ross, Carlton, Browning

To: Judiciary

SENATE BILL NO. 2339

AN ACT TO AMEND SECTION 11-1-63, MISSISSIPPI CODE OF 1972, TO REVISE PRODUCT LIABILITY OF A MANUFACTURER; TO ENACT SECTION 11-1-64, MISSISSIPPI CODE OF 1972, TO REVISE PRODUCT LIABILITY OF A PRODUCT SELLER; AND FOR RELATED PURPOSES.

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

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

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

(a) The manufacturer *** * *** of the product shall not be liable if the claimant does not prove by the preponderance of the evidence that at the time the product left the control of the manufacturer *** * ***:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. The following shall be codified as Section 11-1-64, Mississippi Code of 1972:

11-1-64. (1) In any civil action alleging damages caused by a defective product, a product seller other than a manufacturer shall be liable to a claimant only if the claimant establishes:

(a) The product that allegedly caused the harm that is the subject of the complaint was sold by the product seller;

(b) The product seller failed to exercise reasonable care with respect to the sale of the product; and

(c) The failure to exercise reasonable care was a proximate cause of the harm to the claimant.

(2) A product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect the product, if there was no reasonable opportunity to inspect the product; or the inspection, in the exercise of reasonable care, would not have revealed that the product was defective.

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

(4) If the application of this section, or of any portion of it, to any person or circumstance is held invalid, the invalidity shall not affect the application of this section to other persons or circumstances which can be given effect without the invalid provision or application.

(5) This section shall apply to any civil action pending or filed on or after July 1, 2002.

SECTION 3. This act shall take effect and be in force from and after July 1, 2002.