

*****Withdrawn*****

AMENDMENT No. 8 PROPOSED TO

House Bill NO. 11

By Representative(s) Snowden

1 **AMEND** by striking lines 121 through 249 and inserting the
2 following in lieu thereof:

3 **SECTION 7.** The following shall be codified as Section
4 11-1-64, Mississippi Code of 1972:

5 11-1-64. (1) In any civil action alleging damages caused by
6 a product, a product seller other than a manufacturer shall not be
7 liable for a latent defect if the seller is a mere conduit who
8 purchased the product from a reputable manufacturer. It is the
9 intent of this section to insulate innocent sellers who are not
10 actively negligent from forum-driven lawsuits.

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

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

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

22 11-1-63. In any action for damages caused by a product
23 except for commercial damage to the product itself:

24 (a) Subject to the provisions of Section 11-1-64, the
25 manufacturer or seller of the product shall not be liable if the
26 claimant does not prove by the preponderance of the evidence that
27 at the time the product left the control of the manufacturer or
28 seller:

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

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

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

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

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

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

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

53 (c) (i) In any action alleging that a product is
54 defective because it failed to contain adequate warnings or
55 instructions pursuant to paragraph (a)(i)2 of this section, the
56 manufacturer or seller shall not be liable if the claimant does
57 not prove by the preponderance of the evidence that at the time
58 the product left the control of the manufacturer or seller, the

59 manufacturer or seller knew or in light of reasonably available
60 knowledge should have known about the danger that caused the
61 damage for which recovery is sought and that the ordinary user or
62 consumer would not realize its dangerous condition.

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

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

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

92 (f) In any action alleging that a product is defective
93 because of its design pursuant to paragraph (a)(i)3 of this

94 section, the manufacturer or product seller shall not be liable if
95 the claimant does not prove by the preponderance of the evidence
96 that at the time the product left the control of the manufacturer
97 or seller:

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

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

109 (g) (i) The manufacturer of a product who is found
110 liable for a defective product pursuant to paragraph (a) shall
111 indemnify a product seller for the costs of litigation, any
112 reasonable expenses, reasonable attorney's fees and any damages
113 awarded by the trier of fact unless the seller exercised
114 substantial control over that aspect of the design, testing,
115 manufacture, packaging or labeling of the product that caused the
116 harm for which recovery of damages is sought; the seller altered
117 or modified the product, and the alteration or modification was a
118 substantial factor in causing the harm for which recovery of
119 damages is sought; the seller had actual knowledge of the
120 defective condition of the product at the time he supplied same;
121 or the seller made an express factual representation about the
122 aspect of the product which caused the harm for which recovery of
123 damages is sought.

124 (ii) Subparagraph (i) shall not apply unless the
125 seller has given prompt notice of the suit to the manufacturer
126 within thirty (30) days of the filing of the complaint against the
127 seller.

128 (h) Nothing in this section shall be construed to

129 eliminate any common law defense to an action for damages caused
130 by a product.

131 **AMEND FURTHER** by renumbering succeeding sections.

132 **AMEND FURTHER**, the title, by deleting the language beginning
133 on line 5 after the semicolon through the semicolon on line 6 and
134 inserting the following in lieu thereof: "TO CREATE NEW SECTION
135 11-1-64, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A PRODUCT
136 SELLER OTHER THAN A MANUFACTURER SHALL NOT BE LIABLE FOR A LATENT
137 DEFECT IF THE SELLER IS A MERE CONDUIT WHO PURCHASED THE PRODUCT
138 FROM A REPUTABLE MANUFACTURER; TO AMEND SECTION 11-1-63,
139 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO;"