

*****Adopted*****

AMENDMENT No. 7 TO AMENDMENT No. 1 PROPOSED TO

House Bill NO. 2

By Senator(s) Robertson

1 **AMEND** by inserting the following sections after line 81 and
2 **renumbering any succeeding sections:**

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

5 11-1-63. In any action for damages caused by a product
6 except for commercial damage to the product itself:

7 (a) Subject to the provisions of Section 11-1-62 and
8 Section * of this act, the manufacturer or seller of the product
9 shall not be liable if the claimant does not prove by the
10 preponderance of the evidence that at the time the product left
11 the control of the manufacturer or seller:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

92 (g) (i) The manufacturer of a product who is found
93 liable for a defective product pursuant to paragraph (a) shall

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

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

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

114 SECTION *. (1) In any civil action alleging damages caused
115 by a product, a product seller other than a manufacturer shall not
116 be liable for a latent defect if the seller is a mere conduit who
117 purchased the product from a reputable manufacturer. It is the
118 intent of this section to insulate innocent sellers who are not
119 actively negligent from forum driven lawsuits.

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

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

FURTHER, AMEND the title to conform.