

By: Representative Robinson (84th)

To: Judiciary A

HOUSE BILL NO. 546

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. Except as otherwise provided in Section  
39 10 of House Bill No. 19, 2002 Third Extraordinary Session, in such  
40 action the party or parties suing shall recover such damages  
41 allowable by law as the jury may determine to be just, taking into  
42 consideration all the damages of every kind to the decedent and  
43 all damages of every kind to any and all parties interested in the  
44 suit.

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

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

58 In an action brought pursuant to the provisions of this  
59 section by the widow, husband, child, father, mother, sister or  
60 brother of the deceased or unborn fetus, or by all interested



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

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



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

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

109 **SECTION 2.** This act shall take effect and be in force from  
110 and after July 1, 2003, and shall apply to causes of action  
111 occurring on or after that date.

