To: Judiciary A

MISSISSIPPI LEGISLATURE

By: Representatives Formby, Cameron, Chism, Davis, Denny, Ellington, Fillingane, Ishee, Janus, Jennings, Ketchings, Lott, Martinson, Masterson, Montgomery (74th), Moore (60th), Reeves, Roberson, Robertson, Snowden

HOUSE BILL NO. 1409

AN ACT TO AMEND SECTION 11-1-63, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE MANUFACTURER OR SELLER OF A PRODUCT SHALL NOT BE LIABLE IN A PRODUCTS LIABILITY ACTION IF THE PRODUCT HAS NOT BEEN USED IN THE MANNER FOR WHICH IT WAS DESIGNED; 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:

SECTION 11-1-63. Subject to the provisions of Section 11-1-64, in any action for damages caused by a product except for commercial damage to the product itself:

(a) The manufacturer or seller 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 or seller:

(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 or seller 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 or seller, the manufacturer or seller 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 or
seller 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 or
seller 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 or product seller 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
or seller:

(i) The manufacturer or seller 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.

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

(ii) Subparagraph (i) shall not apply unless the seller has given prompt notice of the suit to the manufacturer within ninety (90) days of the service of the complaint against the seller.

(h) In any action for products liability, the manufacturer or seller shall not be liable if the product has not been used in the manner for which the product was designed.

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

SECTION 2. This act shall take effect and be in force from and after July 1, 2003.