

By: Representative Denny

To: Judiciary A

HOUSE BILL NO. 314

1 AN ACT TO AMEND SECTION 11-11-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE VENUE IN GENERAL CIVIL ACTIONS; TO AMEND SECTION
3 11-1-63, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A PRODUCT
4 SELLER OTHER THAN A MANUFACTURER SHALL NOT BE LIABLE FOR A LATENT
5 DEFECT IF THE SELLER IS A MERE CONDUIT WHO PURCHASED THE PRODUCT
6 FROM A REPUTABLE MANUFACTURER; TO AMEND SECTION 11-1-60,
7 MISSISSIPPI CODE OF 1972, TO PROVIDE LIMITATIONS ON NONECONOMIC
8 DAMAGES IN CIVIL ACTIONS; AND FOR RELATED PURPOSES.

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

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

12 11-11-3. Venue for civil actions of which the circuit court
13 has original jurisdiction shall be * * * in the county where the
14 first act or omission giving rise to the cause of action occurred.
15 Venue must be proper as to each and every defendant and each and
16 every plaintiff. Where multiple claims or causes of action are
17 combined in one (1) lawsuit, venue must be proper as to each
18 separate claim or cause of action. If the venue is improper as to
19 any claim or cause of action against any party, then the claims
20 involving that party that are not in the proper venue shall be
21 severed and transferred to the county where venue is proper as to
22 such claims or causes of action. If there is no proper venue for
23 a claim for any reason, including because the first act or
24 omission giving rise to a claim did not occur within a Mississippi
25 county, such claim shall be dismissed without prejudice.

26 * * *

27 **SECTION 2.** Section 11-1-63, Mississippi Code of 1972, is
28 amended as follows:

29 11-1-63. Subject to the provisions of Section 11-1-64, in
30 any action for damages caused by a product except for commercial
31 damage to the product itself:

32 (a) The manufacturer or seller of the product shall not
33 be liable if the claimant does not prove by the preponderance of
34 the evidence that at the time the product left the control of the
35 manufacturer or seller:

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

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

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

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

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

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

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

60 (c) (i) In any action alleging that a product is
61 defective because it failed to contain adequate warnings or

62 instructions pursuant to paragraph (a)(i)2 of this section, the
63 manufacturer or seller shall not be liable if the claimant does
64 not prove by the preponderance of the evidence that at the time
65 the product left the control of the manufacturer or seller, the
66 manufacturer or seller knew or in light of reasonably available
67 knowledge should have known about the danger that caused the
68 damage for which recovery is sought and that the ordinary user or
69 consumer would not realize its dangerous condition.

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

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

91 (e) In any action alleging that a product is defective
92 pursuant to paragraph (a)(i)2 of this section, the manufacturer or
93 seller shall not be liable if the danger posed by the product is
94 known or is open and obvious to the user or consumer of the

95 product, or should have been known or open and obvious to the user
96 or consumer of the product, taking into account the
97 characteristics of, and the ordinary knowledge common to, the
98 persons who ordinarily use or consume the product.

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

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

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

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

128 or the seller made an express factual representation about the
129 aspect of the product which caused the harm for which recovery of
130 damages is sought.

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

135 (h) In any action alleging that a product is defective
136 pursuant to paragraph (a) of this section, a product seller other
137 than a manufacturer shall not be liable for a latent defect if the
138 seller is a mere conduit who purchased the product from a
139 reputable manufacturer. It is the intent of this section to
140 insulate innocent sellers who are not actively negligent from
141 forum-driven lawsuits. A product seller shall not be considered
142 to have failed to exercise reasonable care with respect to a
143 product based upon an alleged failure to inspect the product if
144 there was no reasonable opportunity to inspect the product, or if
145 the inspection in the exercise of reasonable care would not have
146 revealed that the product was defective.

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

150 **SECTION 3.** Section 11-1-60, Mississippi Code of 1972, is
151 amended as follows:

152 11-1-60. (1) For the purposes of this section, the
153 following words and phrases shall have the meanings ascribed
154 herein unless the context clearly requires otherwise:

155 (a) "Noneconomic damages" means subjective,
156 nonpecuniary damages arising from death, pain, suffering,
157 inconvenience, mental anguish, worry, emotional distress, loss of
158 society and companionship, loss of consortium, bystander injury,
159 physical impairment, injury to reputation, humiliation,
160 embarrassment, * * * other nonpecuniary damages, and any other

161 theory of damages such as fear of loss, illness or injury. The
162 term "noneconomic damages" shall not include damages for
163 disfigurement, nor does it include punitive or exemplary damages.

164 (b) "Actual economic damages" means objectively
165 verifiable pecuniary damages arising from medical expenses and
166 medical care, rehabilitation services, custodial care,
167 disabilities, loss of earnings and earning capacity, loss of
168 income, burial costs, loss of use of property, costs of repair or
169 replacement of property, costs of obtaining substitute domestic
170 services, loss of employment, loss of business or employment
171 opportunities, and other objectively verifiable monetary losses.

172 * * *

173 (2) (a) In any civil action for injury if the trier of fact
174 finds the defendant liable, * * * the plaintiff shall not be
175 awarded more than the following for noneconomic damages:

176 (i) For claims for causes of action filed on or
177 after July 1, 2003, but before July 1, 2011, the sum of Five
178 Hundred Thousand Dollars (\$500,000.00);

179 (ii) For claims for causes of action filed on or
180 after July 1, 2011, but before July 1, 2017, the sum of Seven
181 Hundred Fifty Thousand Dollars (\$750,000.00);

182 (iii) For claims for causes of action filed on or
183 after July 1, 2017, the sum of One Million Dollars
184 (\$1,000,000.00).

185 * * *

186 (b) The jury shall not be advised of the limitations
187 imposed by this subsection (2) and the judge shall appropriately
188 reduce any award of noneconomic damages that exceeds the
189 applicable limitation.

190 * * *

191 (3) Nothing in this section shall be construed to impose a
192 limitation on damages for disfigurement or actual economic
193 damages.

194 (4) Whether an element of damages may or may not be
195 recovered in any action shall not be governed by the provisions of
196 this section, but shall be governed by applicable statutory or
197 common law.

198 **SECTION 4.** This act shall take effect and be in force from
199 and after July 1, 2004.