

By: Representative Robinson (84th)

To: Judiciary A

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 352

1 AN ACT TO AMEND SECTION 11-7-13, MISSISSIPPI CODE OF 1972, TO
2 INCLUDE THE DEATH OF AN UNBORN QUICK CHILD 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 quick child shall be caused by any real, wrongful or negligent act
9 or omission, or by such unsafe machinery, way or appliances as
10 would, 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 quick child 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 quick child for the benefit of all persons entitled under

28 the law to recover, or by widow for the death of her husband, or
29 by the husband for the death of the wife, or by the parent for the
30 death of a child or unborn quick child, or in the name of a child,
31 or in the name of a child for the death of a parent, or by a
32 brother for the death of a sister, or by a sister for the death of
33 a brother, or by a sister for the death of a sister, or a brother
34 for the death of a brother, or all parties interested may join in
35 the suit, and there shall be but one (1) suit for the same death
36 which shall ensue for the benefit of all parties concerned, but
37 the determination of such suit shall not bar another action unless
38 it be decided on its merits. Except as otherwise provided in
39 Section 10 of House Bill No. 19, 2002 Third Extraordinary Session,
40 in such action the party or parties suing shall recover such
41 damages allowable by law as the jury may determine to be just,
42 taking into consideration all the damages of every kind to the
43 decedent and all damages of every kind to any and all parties
44 interested in the 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 quick child, or by all

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

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

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

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

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