

By: Representative Robinson (84th)

To: Judiciary A

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 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, 2004, and shall apply to causes of action
111 occurring on or after that date.