

By: Representative Robinson (84th)

To: Judiciary A

HOUSE BILL NO. 352  
(As Sent to Governor)

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; TO AMEND SECTIONS 97-3-19 AND 97-3-37, MISSISSIPPI CODE  
4 OF 1972, TO PROVIDE THAT THE KILLING OF AN UNBORN CHILD SHALL BE  
5 MURDER OR MANSLAUGHTER; TO PROVIDE EXCEPTIONS; AND FOR RELATED  
6 PURPOSES.

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

8 **SECTION 1.** Section 11-7-13, Mississippi Code of 1972, is  
9 amended as follows:

10 11-7-13. Whenever the death of any person or of any unborn  
11 quick child shall be caused by any real, wrongful or negligent act  
12 or omission, or by such unsafe machinery, way or appliances as  
13 would, if death had not ensued, have entitled the party injured or  
14 damaged thereby to maintain an action and recover damages in  
15 respect thereof, or whenever the death of any person or of any  
16 unborn quick child shall be caused by the breach of any warranty,  
17 express or implied, of the purity or fitness of any foods, drugs,  
18 medicines, beverages, tobacco or any and all other articles or  
19 commodities intended for human consumption, as would, had the  
20 death not ensued, have entitled the person injured or made ill or  
21 damaged thereby, to maintain an action and recover damages in  
22 respect thereof, and such deceased person shall have left a widow  
23 or children or both, or husband or father or mother, or sister, or  
24 brother, the person or corporation, or both that would have been  
25 liable if death had not ensued, and the representatives of such  
26 person shall be liable for damages, notwithstanding the death, and  
27 the fact that death was instantaneous shall in no case affect the  
28 right of recovery. The action for such damages may be brought in  
29 the name of the personal representative of the deceased person or

30 unborn quick child for the benefit of all persons entitled under  
31 the law to recover, or by widow for the death of her husband, or  
32 by the husband for the death of the wife, or by the parent for the  
33 death of a child or unborn quick child, or in the name of a child,  
34 or in the name of a child for the death of a parent, or by a  
35 brother for the death of a sister, or by a sister for the death of  
36 a brother, or by a sister for the death of a sister, or a brother  
37 for the death of a brother, or all parties interested may join in  
38 the suit, and there shall be but one (1) suit for the same death  
39 which shall ensue for the benefit of all parties concerned, but  
40 the determination of such suit shall not bar another action unless  
41 it be decided on its merits. Except as otherwise provided in  
42 Section 11-1-69, in such action the party or parties suing shall  
43 recover such damages allowable by law as the jury may determine to  
44 be just, taking into consideration all the damages of every kind  
45 to the decedent and all damages of every kind to any and all  
46 parties interested in the suit.

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

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

60 In an action brought pursuant to the provisions of this  
61 section by the widow, husband, child, father, mother, sister or  
62 brother of the deceased or unborn quick child, or by all

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

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

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

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

112 **SECTION 2.** Section 97-3-19, Mississippi Code of 1972, is  
113 amended as follows:

114 97-3-19. (1) The killing of a human being without the  
115 authority of law by any means or in any manner shall be murder in  
116 the following cases:

117 (a) When done with deliberate design to effect the  
118 death of the person killed, or of any human being;

119 (b) When done in the commission of an act eminently  
120 dangerous to others and evincing a depraved heart, regardless of  
121 human life, although without any premeditated design to effect the  
122 death of any particular individual;

123 (c) When done without any design to effect death by any  
124 person engaged in the commission of any felony other than rape,  
125 kidnapping, burglary, arson, robbery, sexual battery, unnatural  
126 intercourse with any child under the age of twelve (12), or  
127 nonconsensual unnatural intercourse with mankind, or felonious

128 abuse and/or battery of a child in violation of subsection (2) of  
129 Section 97-5-39, or in any attempt to commit such felonies;

130 (d) When done with deliberate design to effect the  
131 death of an unborn child.

132 (2) The killing of a human being without the authority of  
133 law by any means or in any manner shall be capital murder in the  
134 following cases:

135 (a) Murder which is perpetrated by killing a peace  
136 officer or fireman while such officer or fireman is acting in his  
137 official capacity or by reason of an act performed in his official  
138 capacity, and with knowledge that the victim was a peace officer  
139 or fireman. For purposes of this paragraph, the term "peace  
140 officer" means any state or federal law enforcement officer,  
141 including, but not limited to, a federal park ranger, the sheriff  
142 of or police officer of a city or town, a conservation officer, a  
143 parole officer, a judge, prosecuting attorney or any other court  
144 official, an agent of the Alcoholic Beverage Control Division of  
145 the State Tax Commission, an agent of the Bureau of Narcotics,  
146 personnel of the Mississippi Highway Patrol, and the employees of  
147 the Department of Corrections who are designated as peace officers  
148 by the Commissioner of Corrections pursuant to Section 47-5-54,  
149 and the superintendent and his deputies, guards, officers and  
150 other employees of the Mississippi State Penitentiary;

151 (b) Murder which is perpetrated by a person who is  
152 under sentence of life imprisonment;

153 (c) Murder which is perpetrated by use or detonation of  
154 a bomb or explosive device;

155 (d) Murder which is perpetrated by any person who has  
156 been offered or has received anything of value for committing the  
157 murder, and all parties to such a murder, are guilty as  
158 principals;

159 (e) When done with or without any design to effect  
160 death, by any person engaged in the commission of the crime of

161 rape, burglary, kidnapping, arson, robbery, sexual battery,  
162 unnatural intercourse with any child under the age of twelve (12),  
163 or nonconsensual unnatural intercourse with mankind, or in any  
164 attempt to commit such felonies;

165 (f) When done with or without any design to effect  
166 death, by any person engaged in the commission of the crime of  
167 felonious abuse and/or battery of a child in violation of  
168 subsection (2) of Section 97-5-39, or in any attempt to commit  
169 such felony;

170 (g) Murder which is perpetrated on educational property  
171 as defined in Section 97-37-17;

172 (h) Murder which is perpetrated by the killing of any  
173 elected official of a county, municipal, state or federal  
174 government with knowledge that the victim was such public  
175 official.

176 **SECTION 3.** Section 97-3-37, Mississippi Code of 1972, is  
177 amended as follows:

178 97-3-37. (1) The willful killing of an unborn \* \* \* child,  
179 by an injury to the mother of such child, which would be murder if  
180 it resulted in the death of the mother, shall be manslaughter.

181 (2) A person who intentionally injures a pregnant woman is  
182 guilty of a crime as follows:

183 (a) If the conduct results in a miscarriage or  
184 stillbirth by that individual, murder as defined in Section  
185 97-3-19.

186 (b) If the conduct results in great bodily harm to the  
187 embryo or fetus, a felony punishable by imprisonment for not more  
188 than twenty (20) years or a fine of not more than Five Thousand  
189 Dollars (\$5,000.00), or both.

190 (c) If the conduct results in serious or aggravated  
191 physical injury to the embryo or fetus, a misdemeanor punishable  
192 by imprisonment for not more than one (1) year or a fine of not  
193 more than One Thousand Dollars (\$1,000.00), or both.

194           (d) If the conduct results in physical injury to the  
195 embryo or fetus, a misdemeanor punishable by imprisonment for not  
196 more than ninety (90) days or a fine of not more than Five Hundred  
197 Dollars (\$500.00), or both.

198           (3) The provisions of this section shall not apply to an act  
199 committed by the mother of an unborn child, a medical procedure  
200 performed by a physician or other licensed medical professional at  
201 the request of a mother of an unborn child or the mother's legal  
202 guardian, or to the administration of lawfully prescribed  
203 medication.

204           (4) A person who negligently kills an unborn child, without  
205 evincing a depraved heart, and without any premeditated design to  
206 effect the death of the unborn child, shall be guilty of  
207 manslaughter.

208           **SECTION 4.** This act shall take effect and be in force from  
209 and after its passage, and shall apply to causes of action  
210 occurring on or after that date.