

## Senate Amendments to House Bill No. 352

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

### AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

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

benefits, rights and remedies conferred by this section on legitimates, if the survivor has or establishes the right to inherit from the deceased under Section 91-1-15.

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

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

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

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

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

(c) When done without any design to effect death by any person engaged in the commission of any felony other than rape, kidnapping, burglary, arson, robbery, sexual battery, unnatural intercourse with any child under the age of twelve (12), or nonconsensual unnatural intercourse with mankind, or felonious abuse and/or battery of a child in violation of subsection (2) of Section 97-5-39, or in any attempt to commit such felonies;

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

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

(a) Murder which is perpetrated by killing a peace officer or fireman while such officer or fireman is acting in his official capacity or by reason of an act performed in his official capacity, and with knowledge that the victim was a peace officer

or fireman. For purposes of this paragraph, the term "peace officer" means any state or federal law enforcement officer, including, but not limited to, a federal park ranger, the sheriff of or police officer of a city or town, a conservation officer, a parole officer, a judge, prosecuting attorney or any other court official, an agent of the Alcoholic Beverage Control Division of the State Tax Commission, an agent of the Bureau of Narcotics, personnel of the Mississippi Highway Patrol, and the employees of the Department of Corrections who are designated as peace officers by the Commissioner of Corrections pursuant to Section 47-5-54, and the superintendent and his deputies, guards, officers and other employees of the Mississippi State Penitentiary;

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

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

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

(e) When done with or without any design to effect death, by any person engaged in the commission of the crime of rape, burglary, kidnapping, arson, robbery, sexual battery, unnatural intercourse with any child under the age of twelve (12), or nonconsensual unnatural intercourse with mankind, or in any attempt to commit such felonies;

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

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

(h) Murder which is perpetrated by the killing of any elected official of a county, municipal, state or federal

government with knowledge that the victim was such public official.

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

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

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

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

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

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

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

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

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

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

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.

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John O. Gilbert  
Secretary of the Senate