

**Adopted
COMMITTEE AMENDMENT NO 1 PROPOSED TO**

House Bill No. 352

BY: Committee

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

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.

**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.