

By: Representative Fillingane

To: Judiciary A

HOUSE BILL NO. 878

1 AN ACT TO AMEND SECTION 11-7-13, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT IN A WRONGFUL DEATH ACTION DAMAGES AWARDED SHALL BE
3 DISTRIBUTED ACCORDING TO THE LAST WILL AND TESTAMENT OF THE
4 DECEASED IF A WILL EXISTS; AND FOR RELATED PURPOSES.

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

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

8 11-7-13. Whenever the death of any person or of any unborn
9 quick child shall be caused by any real, wrongful or negligent act
10 or omission, or by such unsafe machinery, way or appliances as
11 would, if death had not ensued, have entitled the party injured or
12 damaged thereby to maintain an action and recover damages in
13 respect thereof, or whenever the death of any person or of any
14 unborn quick child shall be caused by the breach of any warranty,
15 express or implied, of the purity or fitness of any foods, drugs,
16 medicines, beverages, tobacco or any and all other articles or
17 commodities intended for human consumption, as would, had the
18 death not ensued, have entitled the person injured or made ill or
19 damaged thereby, to maintain an action and recover damages in
20 respect thereof, and such deceased person shall have left a widow
21 or children or both, or husband or father or mother, or sister, or
22 brother, the person or corporation, or both that would have been
23 liable if death had not ensued, and the representatives of such
24 person shall be liable for damages, notwithstanding the death, and
25 the fact that death was instantaneous shall in no case affect the
26 right of recovery. The action for such damages may be brought in
27 the name of the personal representative of the deceased person or
28 unborn quick child for the benefit of all persons entitled under

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

112 **SECTION 2.** This act shall take effect and be in force from
113 and after July 1, 2005.