

By: Representative Fillingane

To: Judiciary A

## HOUSE BILL NO. 432

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, 2006.