

By: Representatives Brown (20th), Arnold,
Boyd, Byrd, Crawford, Taylor

To: Judiciary B

HOUSE BILL NO. 1338

1 AN ACT TO AMEND SECTION 11-7-13, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY THAT A CAUSE OF ACTION FOR WRONGFUL DEATH INCLUDES AN
3 UNBORN CHILD; AND FOR RELATED PURPOSES.

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

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

7 11-7-13. Whenever the death of any person or of any
8 unborn * * * child shall be caused by any real, wrongful or
9 negligent act or omission, or by such unsafe machinery, way or
10 appliances as would, if death had not ensued, have entitled the
11 party injured or damaged thereby to maintain an action and recover
12 damages in respect thereof, or whenever the death of any person or
13 of any unborn * * * child shall be caused by the breach of any
14 warranty, express or implied, of the purity or fitness of any
15 foods, drugs, medicines, beverages, tobacco or any and all other
16 articles or commodities intended for human consumption, as would,
17 had the death not ensued, have entitled the person injured or made
18 ill or damaged thereby, to maintain an action and recover damages



19 in respect thereof, and such deceased person shall have left a
20 widow or children or both, or husband or father or mother, or
21 sister, or brother, the person or corporation, or both that would
22 have been liable if death had not ensued, and the representatives
23 of such person shall be liable for damages, notwithstanding the
24 death, and the fact that death was instantaneous shall in no case
25 affect the right of recovery. The action for such damages may be
26 brought in the name of the personal representative of the deceased
27 person or unborn * * * child for the benefit of all persons
28 entitled under the law to recover, or by widow for the death of
29 her husband, or by the husband for the death of the wife, or by
30 the parent for the death of a child or unborn * * * child, or in
31 the name of a child, or in the name of a child for the death of a
32 parent, or by a brother for the death of a sister, or by a sister
33 for the death of a brother, or by a sister for the death of a
34 sister, or a brother for the death of a brother, or all parties
35 interested may join in the suit, and there shall be but one (1)
36 suit for the same death which shall ensue for the benefit of all
37 parties concerned, but the determination of such suit shall not
38 bar another action unless it be decided on its merits. Except as
39 otherwise provided in Section 11-1-69, in such action the party or
40 parties suing shall recover such damages allowable by law as the
41 jury may determine to be just, taking into consideration all the
42 damages of every kind to the decedent and all damages of every
43 kind to any and all parties interested in the suit.



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

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

57 In an action brought pursuant to the provisions of this
58 section by the widow, husband, child, father, mother, sister or
59 brother of the deceased or unborn * * * child, or by all
60 interested parties, such party or parties may recover as damages
61 property damages and funeral, medical or other related expenses
62 incurred by or for the deceased as a result of such wrongful or
63 negligent act or omission or breach of warranty, whether an estate
64 has been opened or not. Any amount, but only such an amount, as
65 may be recovered for property damage, funeral, medical or other
66 related expenses shall be subject only to the payment of the debts
67 or liabilities of the deceased for property damages, funeral,
68 medical or other related expenses. All other damages recovered



69 under the provisions of this section shall not be subject to the
70 payment of the debts or liabilities of the deceased, except as
71 hereinafter provided, and such damages shall be distributed as
72 follows:

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



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

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

109 The list of persons in this section who may bring a wrongful
110 death action is exclusive and only those persons shall be
111 considered interested parties who are entitled to bring an action
112 under this section.

113 A defendant in an action under this section is authorized
114 within ninety (90) days of filing an answer, to request that the
115 plaintiff initiate the process of determining heirs. Such
116 determination must be resolved before commencement of trial.

117 **SECTION 2.** This act shall take effect and be in force from
118 and after July 1, 2015.

