

By: Representative Blackmon

To: Judiciary A

HOUSE BILL NO. 1091

1 AN ACT TO AMEND SECTION 11-7-13, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY THAT A WRONGFUL DEATH ACTION CAN BE BROUGHT OUTSIDE OF AN
3 ESTATE; 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 unborn
8 quick child shall be caused by any real, wrongful or negligent act
9 or omission, or by such unsafe machinery, way or appliances as
10 would, if death had not ensued, have entitled the party injured or
11 damaged thereby to maintain an action and recover damages in
12 respect thereof, or whenever the death of any person or of any
13 unborn quick child shall be caused by the breach of any warranty,
14 express or implied, of the purity or fitness of any foods, drugs,
15 medicines, beverages, tobacco or any and all other articles or
16 commodities intended for human consumption, as would, had the
17 death not ensued, have entitled the person injured or made ill or
18 damaged thereby, to maintain an action and recover damages in



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



69 an amount, as may be recovered for property damage, funeral,
70 medical or other related expenses shall be subject only to the
71 payment of the debts or liabilities of the deceased for property
72 damages, funeral, medical or other related expenses. All other
73 damages recovered under the provisions of this section shall not
74 be subject to the payment of the debts or liabilities of the
75 deceased, except as hereinafter provided, and such damages shall
76 be distributed as follows:

77 Damages for the injury and death of a married man shall be
78 equally distributed to his wife and children, and if he has no
79 children all shall go to his wife; damages for the injury and
80 death of a married woman shall be equally distributed to the
81 husband and children, and if she has no children all shall go to
82 the husband; and if the deceased has no husband or wife, the
83 damages shall be equally distributed to the children; if the
84 deceased has no husband, nor wife, nor children, the damages shall
85 be distributed equally to the father, mother, brothers and
86 sisters, or such of them as the deceased may have living at his or
87 her death. If the deceased have neither husband, nor wife, nor
88 children, nor father, nor mother, nor sister, nor brother, then
89 the damages shall go to the legal representative, subject to debts
90 and general distribution, and the fact that the deceased was
91 instantly killed shall not affect the right of the legal
92 representative to recover. All references in this section to
93 children shall include descendants of a deceased child, such



94 descendants to take the share of the deceased child by
95 representation. There shall not be, in any case, a distinction
96 between the kindred of the whole and half blood of equal degree.
97 The provisions of this section shall apply to illegitimate
98 children on account of the death of the mother and to the mother
99 on account of the death of an illegitimate child or children, and
100 they shall have all the benefits, rights and remedies conferred by
101 this section on legitimates. The provisions of this section shall
102 apply to illegitimate children on account of the death of the
103 natural father and to the natural father on account of the death
104 of the illegitimate child or children, and they shall have all the
105 benefits, rights and remedies conferred by this section on
106 legitimates, if the survivor has or establishes the right to
107 inherit from the deceased under Section 91-1-15.

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

113 The list of persons in this section who may bring a wrongful
114 death action is exclusive and only those persons shall be
115 considered interested parties who are entitled to bring an action
116 under this section.

117 A defendant in an action under this section is authorized
118 within ninety (90) days of filing an answer, to request that the



119 plaintiff initiate the process of determining heirs. Such
120 determination must be resolved before commencement of trial.

121 **SECTION 2.** This act shall take effect and be in force from
122 and after July 1, 2018.

