

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.

