

By: Hamilton

To: Judiciary

SENATE BILL NO. 2703

1       AN ACT TO AMEND SECTION 11-7-13, MISSISSIPPI CODE OF 1972, TO  
2       PROVIDE THAT NO PARENT WHO HAS ABANDONED A CHILD SHALL BE AWARDED  
3       DAMAGES FOR WRONGFUL DEATH OF THAT CHILD; AND FOR RELATED  
4       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 shall be caused by  
9       any real, wrongful or negligent act or omission, or by such unsafe  
10      machinery, way or appliances as would, if death had not ensued,  
11      have entitled the party injured or damaged thereby to maintain an  
12      action and recover damages in respect thereof, or whenever the  
13      death of any person 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 for  
27      the benefit of all persons entitled under the law to recover, or

28 by widow for the death of her husband, or by the husband for the  
29 death of the wife, or by the parent for the death of a child, or  
30 in the name of a child, or in the name of a child for the death of  
31 a parent, or by a brother for the death of a sister, or by a  
32 sister for the death of a brother, or by a sister for the death of  
33 a sister, or a brother for the death of a brother, or all parties  
34 interested may join in the suit, and there shall be but one (1)  
35 suit for the same death which shall ensue for the benefit of all  
36 parties concerned, but the determination of such suit shall not  
37 bar another action unless it be decided on its merits. In such  
38 action the party or parties suing shall recover such damages  
39 allowable by law as the jury may determine to be just, taking into  
40 consideration all the damages of every kind to the decedent and  
41 all damages of every kind to any and all parties interested in the  
42 suit.

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

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

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

65 subject only to the payment of the debts or liabilities of the  
66 deceased for property damages, funeral, medical or other related  
67 expenses. All other damages recovered under the provisions of  
68 this section shall not be subject to the payment of the debts or  
69 liabilities of the deceased, except as hereinafter provided, and  
70 such damages shall be distributed as follows:

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

98 of the illegitimate child or children, and they shall have all the  
99 benefits, rights and remedies conferred by this section on  
100 legitimates, if the survivor has or establishes the right to  
101 inherit from the deceased under Section 91-1-15.

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

107 In no event shall any parent who has abandoned a child be  
108 awarded damages under the provisions of this section for the  
109 wrongful death of that child. For the purposes of this section,  
110 "abandonment" means having had no voluntary contact with the child  
111 for one (1) year.

112 SECTION 2. This act shall take effect and be in force from  
113 and after July 1, 2000.