

By: Representatives Smith (39th), Moore (60th), Cameron, Eakes, Rotenberry, Jennings, Chism, Nicholson, Lott, Davis, Formby, Robinson (84th), Robertson, Guice, Wells-Smith

To: Judiciary A

HOUSE BILL NO. 1496

1 AN ACT TO AMEND SECTION 11-1-63, MISSISSIPPI CODE OF 1972, TO
2 REVISE PRODUCT LIABILITY OF A MANUFACTURER; TO ENACT SECTION
3 11-1-64, MISSISSIPPI CODE OF 1972, TO REVISE PRODUCT LIABILITY OF
4 A PRODUCT SELLER; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 11-1-63, Mississippi Code of 1972, is
7 amended as follows:

8 11-1-63. In any action for damages caused by a product
9 except for commercial damage to the product itself:

10 (a) The manufacturer * * * of the product shall not be
11 liable if the claimant does not prove by the preponderance of the
12 evidence that at the time the product left the control of the
13 manufacturer * * *:

14 (i) 1. The product was defective because it
15 deviated in a material way from the manufacturer's specifications
16 or from otherwise identical units manufactured to the same
17 manufacturing specifications, or

18 2. The product was defective because it
19 failed to contain adequate warnings or instructions, or

20 3. The product was designed in a defective
21 manner, or

22 4. The product breached an express warranty
23 or failed to conform to other express factual representations upon
24 which the claimant justifiably relied in electing to use the
25 product; and

26 (ii) The defective condition rendered the product
27 unreasonably dangerous to the user or consumer; and



28 (iii) The defective and unreasonably dangerous
29 condition of the product proximately caused the damages for which
30 recovery is sought.

31 (b) A product is not defective in design or formulation
32 if the harm for which the claimant seeks to recover compensatory
33 damages was caused by an inherent characteristic of the product
34 which is a generic aspect of the product that cannot be eliminated
35 without substantially compromising the product's usefulness or
36 desirability and which is recognized by the ordinary person with
37 the ordinary knowledge common to the community.

38 (c) (i) In any action alleging that a product is
39 defective because it failed to contain adequate warnings or
40 instructions pursuant to paragraph (a)(i)2 of this section, the
41 manufacturer * * * shall not be liable if the claimant does not
42 prove by the preponderance of the evidence that at the time the
43 product left the control of the manufacturer * * *, the
44 manufacturer * * * knew or in light of reasonably available
45 knowledge should have known about the danger that caused the
46 damage for which recovery is sought and that the ordinary user or
47 consumer would not realize its dangerous condition.

48 (ii) An adequate product warning or instruction is
49 one that a reasonably prudent person in the same or similar
50 circumstances would have provided with respect to the danger and
51 that communicates sufficient information on the dangers and safe
52 use of the product, taking into account the characteristics of,
53 and the ordinary knowledge common to an ordinary consumer who
54 purchases the product; or in the case of a prescription drug,
55 medical device or other product that is intended to be used only
56 under the supervision of a physician or other licensed
57 professional person, taking into account the characteristics of,
58 and the ordinary knowledge common to, a physician or other
59 licensed professional who prescribes the drug, device or other
60 product.



61 (d) In any action alleging that a product is defective
62 pursuant to paragraph (a) of this section, the manufacturer * * *
63 shall not be liable if the claimant (i) had knowledge of a
64 condition of the product that was inconsistent with his safety;
65 (ii) appreciated the danger in the condition; and (iii)
66 deliberately and voluntarily chose to expose himself to the danger
67 in such a manner to register assent on the continuance of the
68 dangerous condition.

69 (e) In any action alleging that a product is defective
70 pursuant to paragraph (a)(i)2 of this section, the
71 manufacturer * * * shall not be liable if the danger posed by the
72 product is known or is open and obvious to the user or consumer of
73 the product, or should have been known or open and obvious to the
74 user or consumer of the product, taking into account the
75 characteristics of, and the ordinary knowledge common to, the
76 persons who ordinarily use or consume the product.

77 (f) In any action alleging that a product is defective
78 because of its design pursuant to paragraph (a)(i)3 of this
79 section, the manufacturer * * * shall not be liable if the
80 claimant does not prove by the preponderance of the evidence that
81 at the time the product left the control of the
82 manufacturer * * *:

83 (i) The manufacturer * * * knew, or in light of
84 reasonably available knowledge or in the exercise of reasonable
85 care should have known, about the danger that caused the damage
86 for which recovery is sought; and

87 (ii) The product failed to function as expected
88 and there existed a feasible design alternative that would have to
89 a reasonable probability prevented the harm. A feasible design
90 alternative is a design that would have to a reasonable
91 probability prevented the harm without impairing the utility,
92 usefulness, practicality or desirability of the product to users
93 or consumers.



94 * * *

95 (g) Nothing in this section shall be construed to
96 eliminate any common law defense to an action for damages caused
97 by a product.

98 **SECTION 2.** The following shall be codified as Section
99 11-1-64, Mississippi Code of 1972:

100 11-1-64. (1) In any civil action alleging damages caused by
101 a defective product, a product seller other than a manufacturer
102 shall be liable to a claimant only if the claimant establishes:

103 (a) The product that allegedly caused the harm that is
104 the subject of the complaint was sold by the product seller;

105 (b) The product seller failed to exercise reasonable
106 care with respect to the sale of the product; and

107 (c) The failure to exercise reasonable care was a
108 proximate cause of the harm to the claimant.

109 (2) A product seller shall not be considered to have failed
110 to exercise reasonable care with respect to a product based upon
111 an alleged failure to inspect the product, if there was no
112 reasonable opportunity to inspect the product; or the inspection,
113 in the exercise of reasonable care, would not have revealed that
114 the product was defective.

115 (3) Nothing in this section shall be construed to eliminate
116 any common law defense to an action for damages caused by a
117 product.

118 (4) If the application of this section, or of any portion of
119 it, to any person or circumstance is held invalid, the invalidity
120 shall not affect the application of this section to other persons
121 or circumstances which can be given effect without the invalid
122 provision or application.

123 (5) This section shall apply to any civil action pending or
124 filed on or after July 1, 2002.

125 **SECTION 3.** This act shall take effect and be in force from
126 and after July 1, 2002.

