

1 SB184
2 128679-3
3 By Senators Brooks and Ward
4 RFD: Judiciary
5 First Read: 09-MAR-11

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To amend Sections 6-5-501 and 6-5-521 of the Code of
12 Alabama 1975, relating to products liability; to prohibit a
13 product liability action for relief against sellers that are
14 not manufacturers.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 6-5-501 and 6-5-521 of the Code
17 of Alabama 1975, are amended to read as follows:

18 "§6-5-501.

19 "The following definitions are applicable in this
20 division:

21 "(1) ORIGINAL SELLER. Any person, firm, corporation,
22 association, partnership, or other legal or business entity,
23 which in the course of business or as an incident to business,
24 sells or otherwise distributes a manufactured product (a)
25 prior to or (b) at the time the manufactured product is first
26 put to use by any person or business entity who did not
27 acquire the manufactured product for either resale or other

1 distribution in its unused condition or for incorporation as a
2 component part in a manufactured product which is to be sold
3 or otherwise distributed in its unused condition.

4 "(2) PRODUCT LIABILITY ACTION. Any action brought by
5 a natural person for personal injury, death, or property
6 damage caused by the manufacture, construction, design,
7 formula, preparation, assembly, installation, testing,
8 warnings, instructions, marketing, packaging, or labeling of a
9 manufactured product when such action is based upon (a)
10 negligence, (b) innocent or negligent misrepresentation, (c)
11 the manufacturer's liability doctrine, (d) the Alabama
12 extended manufacturer's liability doctrine, as it exists or is
13 hereafter construed or modified, (e) breach of any implied
14 warranty, or (f) breach of any oral express warranty and no
15 other. A product liability action does not include an action
16 for contribution or indemnity.

17 "a. No product liability action may be asserted or
18 may be provided a claim for relief against any distributor,
19 wholesaler, dealer, retailer, or seller of a product, or
20 against an individual or business entity using a product in
21 the production or delivery of its products or services
22 (collectively referred to as the distributor) unless any of
23 the following apply:

24 "1. The distributor is also the manufacturer or
25 assembler of the final product and such act is causally
26 related to the product's defective condition.

1 "2. The distributor exercised substantial control
2 over the design, testing, manufacture, packaging, or labeling
3 of the product and such act is causally related to the
4 product's condition.

5 "3. The distributor altered or modified the product,
6 and the alteration or modification was a substantial factor in
7 causing the harm for which recovery of damages is sought.

8 "4. It is the intent of this subsection to protect
9 distributors who are merely conduits of a product. This
10 subsection is not intended to protect distributors from
11 independent acts unrelated to the product design or
12 manufacture, such as independent acts of negligence,
13 wantonness, warranty violations, or fraud.

14 "b. Notwithstanding paragraph a., if a claimant is
15 unable, despite a good faith exercise of due diligence, to
16 identify the manufacturer of an allegedly defective and
17 unreasonably dangerous product, a product liability action may
18 be brought against a distributor, wholesaler, dealer,
19 retailer, or seller of a product, or against the individual or
20 business entity using a product in the production or delivery
21 of its products or services. The claimant shall provide an
22 affidavit certifying that the claimant, or the attorney
23 therefor, has in good in faith exercised due diligence and has
24 been unable to identify the manufacturer of the product in
25 question.

26 "c. In a product liability action brought pursuant
27 to paragraph b., against a distributor, wholesaler, dealer,

1 retailer, or seller of a product, or against the individual or
2 business entity using a product in the production or delivery
3 of its products or services, the party, upon answering or
4 otherwise pleading, may file an affidavit certifying the
5 correct identity of the manufacturer of the product that
6 allegedly caused the claimant's injury. Once the claimant has
7 received an affidavit, the claimant shall exercise due
8 diligence to file an action and obtain jurisdiction over the
9 manufacturer. Once the claimant has commenced an action
10 against the manufacturer, and the manufacturer has or is
11 required to have answered or otherwise pleaded, the claimant
12 shall voluntarily dismiss all claims against any distributor,
13 wholesaler, dealer, retailer, or seller of the product in
14 question, or against the individual or business entity using a
15 product in the production or delivery of its products or
16 services, unless the claimant can identify prima facie
17 evidence that the requirements of paragraph a. for maintaining
18 a product liability action against such a party are satisfied.

19 "(3) The definitions used herein are to be used for
20 purposes of this division and are not to be construed to
21 expand or limit the status of the common or statutory law
22 except as expressly modified by the provisions of this
23 division.

24 "§6-5-521.

25 "(a) A "product liability action" means any action
26 brought by a natural person for personal injury, death, or
27 property damage caused by the manufacture, construction,

1 design, formula, preparation, assembly, installation, testing,
2 warnings, instructions, marketing, packaging, or labeling of a
3 manufactured product when such action is based upon (1)
4 negligence, (2) innocent or negligent misrepresentation, (3)
5 the manufacturer's liability doctrine, (4) the Alabama
6 extended manufacturer's liability doctrine as it exists or is
7 hereafter construed or modified, (5) breach of any implied
8 warranty, or (6) breach of any oral express warranty and no
9 other. A product liability action does not include an action
10 for contribution or indemnity.

11 "(b) No product liability action may be asserted or
12 may be provided a claim for relief against any distributor,
13 wholesaler, dealer, retailer, or seller of a product, or
14 against an individual or business entity using a product in
15 the production or delivery of its products or services
16 (collectively referred to as the distributor) unless any of
17 the following apply:

18 "(1) The distributor is also the manufacturer or
19 assembler of the final product and such act is causally
20 related to the product's defective condition.

21 "(2) The distributor exercised substantial control
22 over the design, testing, manufacture, packaging, or labeling
23 of the product and such act is causally related to the
24 product's condition.

25 "(3) The distributor altered or modified the
26 product, and the alteration or modification was a substantial

1 factor in causing the harm for which recovery of damages is
2 sought.

3 "(4) It is the intent of this subsection to protect
4 distributors who are merely conduits of a product. This
5 subsection is not intended to protect distributors from
6 independent acts unrelated to the product design or
7 manufacture, such as independent acts of negligence,
8 wantonness, warranty violations, or fraud.

9 "(c) Notwithstanding subsection (b), if a claimant
10 is unable, despite a good faith exercise of due diligence, to
11 identify the manufacturer of an allegedly defective and
12 unreasonably dangerous product, a product liability action may
13 be brought against a distributor, wholesaler, dealer,
14 retailer, or seller of a product, or against the individual or
15 business entity using a product in the production or delivery
16 of its products or services. The claimant shall provide an
17 affidavit certifying that the claimant, or the attorney
18 therefor, has in good in faith exercised due diligence and has
19 been unable to identify the manufacturer of the product in
20 question.

21 "(d) In a product liability action brought pursuant
22 to subsection (c), against a distributor, wholesaler, dealer,
23 retailer, or seller of a product, or against the individual or
24 business entity using a product in the production or delivery
25 of its products or services, the party, upon answering or
26 otherwise pleading, may file an affidavit certifying the
27 correct identity of the manufacturer of the product that

1 allegedly caused the claimant's injury. Once the claimant has
2 received an affidavit, the claimant shall exercise due
3 diligence to file an action and obtain jurisdiction over the
4 manufacturer. Once the claimant has commenced an action
5 against the manufacturer, and the manufacturer has or is
6 required to have answered or otherwise pleaded, the claimant
7 shall voluntarily dismiss all claims against any distributor,
8 wholesaler, dealer, retailer, or seller of the product in
9 question, or against the individual or business entity using a
10 product in the production or delivery of its products or
11 services, unless the claimant can identify prima facie
12 evidence that the requirements of subsection (b) for
13 maintaining a product liability action against such a party
14 are satisfied.

15 "(b)(e) The definition used herein is to be used for
16 purposes of this division and is not to be construed to expand
17 or limit the status of the common or statutory law except as
18 expressly modified by the provisions of this division."

19 Section 2. This act shall apply only to civil
20 actions commenced or filed on or after the effective date of
21 the act.

22 Section 3. This act shall become effective
23 immediately following its passage and approval by the
24 Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 09-MAR-11

Read for the second time and placed on the calen-
dar with 1 substitute and..... 06-APR-11

Read for the third time and passed as amended 19-APR-11

Yeas 34
Nays 0

Patrick Harris
Secretary