

1 SB184
2 126936-2
3 By Senators Brooks and Ward
4 RFD: Judiciary
5 First Read: 09-MAR-11

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8 SYNOPSIS: This bill would prohibit a product liability
9 action for relief against sellers that are not
10 manufacturers.

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12 A BILL
13 TO BE ENTITLED
14 AN ACT

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

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Sections 6-5-201 and 6-5-521 of the Code
22 of Alabama 1975, are amended to read as follows:

23 "§6-5-501.

24 "The following definitions are applicable in this
25 division:

26 "(1) ORIGINAL SELLER. Any person, firm, corporation,
27 association, partnership, or other legal or business entity,

1 which in the course of business or as an incident to business,
2 sells or otherwise distributes a manufactured product (a)
3 prior to or (b) at the time the manufactured product is first
4 put to use by any person or business entity who did not
5 acquire the manufactured product for either resale or other
6 distribution in its unused condition or for incorporation as a
7 component part in a manufactured product which is to be sold
8 or otherwise distributed in its unused condition.

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

22 "a. No product liability action may be asserted or
23 may be provided a claim for relief against any distributor,
24 wholesaler, dealer, retailer, or seller of a product, or
25 against an individual or business entity using a product in
26 the production or delivery of its products or services

1 (collectively referred to as the distributor) unless any of
2 the following apply:

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

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

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

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

25 "c. In a product liability action brought pursuant
26 to paragraph b., against a distributor, wholesaler, dealer,
27 retailer, or seller of a product, or against the individual or

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

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

23 "§6-5-521.

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

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

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

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

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

24 "(3) The distributor altered or modified the
25 product, and the alteration or modification was a substantial
26 factor in causing the harm for which recovery of damages is
27 sought.

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

13 "(d) In a product liability action brought pursuant
14 to subsection (c), against a distributor, wholesaler, dealer,
15 retailer, or seller of a product, or against the individual or
16 business entity using a product in the production or delivery
17 of its products or services, the party, upon answering or
18 otherwise pleading, may file an affidavit certifying the
19 correct identity of the manufacturer of the product that
20 allegedly caused the claimant's injury. Once the claimant has
21 received an affidavit, the claimant shall exercise due
22 diligence to file an action and obtain jurisdiction over the
23 manufacturer. Once the claimant has commenced an action
24 against the manufacturer, and the manufacturer has or is
25 required to have answered or otherwise pleaded, the claimant
26 shall voluntarily dismiss all claims against any distributor,
27 wholesaler, dealer, retailer, or seller of the product in

1 question, or against the individual or business entity using a
2 product in the production or delivery of its products or
3 services, unless the claimant can identify prima facie
4 evidence that the requirements of subsection (b) for
5 maintaining a product liability action against such a party
6 are satisfied.

7 "~~(b)~~ (e) The definition used herein is to be used for
8 purposes of this division and is not to be construed to expand
9 or limit the status of the common or statutory law except as
10 expressly modified by the provisions of this division."

11 Section 2. This act shall apply only to civil
12 actions commenced or filed on or after the effective date of
13 the act.

14 Section 3. This act shall become effective
15 immediately following its passage and approval by the
16 Governor, or its otherwise becoming law.