

1 SB238
2 149049-2
3 By Senators Ward and Figures
4 RFD: Judiciary
5 First Read: 21-FEB-13

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8 SYNOPSIS: This bill would apply to liability actions
9 against manufacturers of commercial aviation
10 aircraft having a seating capacity of 100 or more
11 passengers at the time of certification by the
12 Federal Aviation Administration and their component
13 parts, as defined as aircraft.

14 This bill would apply to matters arising
15 from accidents involving commercial aviation
16 aircraft and would provide for: (1) a two-year
17 statute of limitations and a 10-year statute of
18 repose with a savings clause; (2) application of
19 Alabama's standard forum non conveniens rules, but
20 recognizing deference given only to residents of
21 this state regarding choice of forum and providing
22 for the right to appeal an order denying a motion
23 to dismiss under forum non conveniens; and (3) the
24 right of contribution among joint tortfeasors,
25 while preserving the right of a prevailing
26 plaintiff to recover jointly and severally from
27 liable defendants.

1
2 A BILL
3 TO BE ENTITLED
4 AN ACT
5

6 To apply to civil actions against manufacturers of
7 commercial aviation aircraft and their component parts arising
8 out of or relating to accidents involving such aircraft; to
9 define commercial aviation aircraft, manufacturer, accident,
10 and related terms; to state certain legislative findings,
11 intent, and purpose; to establish a two-year statute of
12 limitations for all such actions; to establish a 10-year
13 statute of repose regarding such actions with a savings clause
14 and certain exceptions; to adopt Alabama's existing rules of
15 forum non conveniens, but recognizing deference to the choice
16 of forum only of a resident of this state and to add the right
17 to immediately appeal an order denying a forum non conveniens
18 motion to dismiss; to provide for the right of contribution
19 among joint tortfeasors regarding such actions, while
20 preserving the right of a prevailing plaintiff to recover
21 jointly and severally from liable defendants; and to provide
22 for severability and prospective application of this act.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. This act shall be known and may be cited
25 as the Alabama Commercial Aviation Business Improvement Act of
26 2013.

1 Section 2. (a) The Legislature finds that the
2 recruitment, establishment, development, and growth of the
3 commercial aviation aircraft manufacturing industry in the
4 State of Alabama is important to the economic health of the
5 state and its agencies and institutions and to the general
6 health, welfare, and prosperity of its citizens. The
7 Legislature finds that it is reasonable and important to the
8 national and international companies and businesses involved
9 in the commercial aviation aircraft manufacturing industry
10 locating or considering locating in the State of Alabama to
11 expect that civil liability actions against them, if any, will
12 be governed by tort principles generally accepted in other
13 jurisdictions outside this state that are home to such
14 companies and businesses, but which are consistent with the
15 Constitution of Alabama of Alabama of 1901, and this state's
16 public policy. The Legislature finds that the principles
17 addressed in this act, namely, the statute of limitations, the
18 statute of repose, forum non conveniens, and contribution
19 among tortfeasors, while incorporating concepts that are
20 generally accepted in state, federal, and international
21 jurisdictions outside this state, are treated in this act in a
22 manner not inconsistent with the provisions and requirements
23 of the Constitution of Alabama of 1901, and Alabama public
24 policy and are rationally and reasonably related to the
25 Legislature's objectives and regulatory scheme.

26 (b) The Legislature further finds that the
27 commercial aviation aircraft manufacturing industry is one of

1 the most heavily regulated industries in the United States and
2 the world and that the Federal Aviation Administration of the
3 United States imposes upon the industry comprehensive,
4 rigorous standards and requirements governing quality control,
5 safety, and functionality, all of which are in the public
6 interest. The Legislature finds that the classifications
7 contained in this act that distinguish the unique, highly
8 regulated commercial aviation aircraft manufacturing industry
9 are rationally and reasonably related to the Legislature's
10 regulatory scheme and are valid.

11 (c) This act bears a reasonable relationship to the
12 proposed legislative objective of limiting the period of
13 liability for commercial aviation aircraft manufacturers whose
14 work on the aircraft generally ends at the time of delivery to
15 the first purchaser or upon replacing or adding a component
16 part that is alleged to have been a proximate cause of an
17 accident. While protecting such manufacturers during a remote
18 period beginning long after the completion of their work, the
19 act imposes no unfair burden on the injured, deceased, or
20 damaged party because a party is still afforded an avenue of
21 legal redress from others who are more likely to have been
22 responsible for or could have prevented such injury, death, or
23 damage.

24 (d) It is thus the legislative objective to provide
25 for the abolishing of rights of action, with certain
26 exceptions, against commercial aviation aircraft manufacturers
27 that would have accrued after the passage of 10 years from

1 delivery to the first purchaser or from replacing or adding a
2 component part that is alleged to have been a proximate cause
3 of an accident, and all such actions will be forever barred
4 without relief to a claimant. Where causes of action accrue
5 during the 10-year repose period, an action may be brought
6 within two years of accrual even though such action may be
7 filed beyond the 10-year period. This objective permits all
8 injured, deceased, or damaged parties a period of two years to
9 file suit on a cause of action accruing within the repose
10 period, which would in certain circumstances permit the filing
11 of an action up to 12 years after delivery or replacement.

12 (e) The legislative objective of abolishing
13 potential liabilities of commercial aviation aircraft
14 manufacturers after the passage of a sufficient period of time
15 from the delivery of the aircraft to the first purchaser or
16 from the replacement or addition of a component part that is
17 alleged to have been a proximate cause of an accident is
18 rationally and reasonably related to the permissible state
19 objective of removing responsibility from, and preventing suit
20 against, such highly regulated manufacturers who are the least
21 likely to be responsible or at fault for defects,
22 deficiencies, and failures that cause injury, death, or damage
23 long after their work is completed. The Legislature has deemed
24 that, after a lapse of time of more than 10 years without
25 incident, (1) the burden on the courts to adjudicate, (2) the
26 complexities of proof with the obstacle of faded memories, (3)
27 the unavailability of witnesses and lost evidence, (4) the

1 opportunity for intervening factors such as acts or omissions
2 of others involving inadequate maintenance, improper use,
3 alterations, improvements, and other negligence, (5) changes
4 in standards for design, manufacture, and assembly, (6)
5 changes in regulations and codes, (7) and the burden on
6 manufacturers who may have no control over the aircraft after
7 their work is completed to disprove responsibility after
8 acceptance and years of possession by other parties, all weigh
9 more heavily in favor of repose or the abolishing of rights of
10 action against manufacturers than in favor of allowing
11 adjudication of the few, if any, meritorious claims that might
12 have accrued thereafter.

13 (f) The Legislature finds that the burden of tenuous
14 claims upon both the courts and the commercial aviation
15 aircraft manufacturing industry sufficiently vindicates the
16 denial of a right of action after the passage of a period of
17 10 years under the circumstances and with the exceptions
18 stated herein.

19 Section 3. For purposes of this act, the following
20 definitions shall apply:

21 (1) ACCIDENT. An incident resulting in personal
22 injury, death, or damage to property arising out of or
23 relating to commercial aviation aircraft.

24 (2) AIRCRAFT. The meaning given such term in Section
25 40102(6) of Title 49 of the United States Code.

1 (3) AIRWORTHINESS CERTIFICATE. An airworthiness
2 certificate issued under Section 44704(d) of Title 49 of the
3 United States Code or under any predecessor federal statute.

4 (4) COMMERCIAL AVIATION AIRCRAFT. Any aircraft for
5 which a type certificate or an airworthiness certificate has
6 been issued by the Administrator of the Federal Aviation
7 Administration of the United States, which, at the time such
8 certificate was originally issued, had a seating capacity of
9 100 or more passengers.

10 (5) DEFENDANT. Any defendant, counter-defendant,
11 cross-defendant, or third-party defendant named in an action
12 against a manufacturer arising out of an accident.

13 (6) MANUFACTURER. A manufacturer or assembler of
14 commercial aviation aircraft or of any new component, system,
15 subassembly, or other part of such aircraft, in its capacity
16 as a manufacturer or assembler.

17 (7) REPOSE PERIOD. Ten years with respect to
18 commercial aviation aircraft and the components, systems,
19 subassemblies, and other parts of such aircraft.

20 (8) TYPE CERTIFICATE. A type certificate issued
21 under Section 44704(a) of Title 49 of the United States Code
22 or any other predecessor federal statute.

23 Section 4. (a) All actions against a manufacturer in
24 tort, contract, or otherwise for death or injury to person or
25 damage to property arising out of an accident shall be
26 commenced within two years next after a cause of action

1 accrues, and not thereafter. Causes of action for wrongful
2 death accrue upon the death of the testator or intestate.

3 (b) Notwithstanding subsection (a), and except as
4 provided in subsections (c) and (d), no action for death or
5 injury to a person or damage to property arising out of an
6 accident may be brought against a manufacturer if any of the
7 following circumstances apply:

8 (1) The accident occurred after the applicable
9 repose period beginning on either:

10 a. The date of delivery of the aircraft to its first
11 purchaser or lessee, if delivered directly from the
12 manufacturer.

13 b. The date of first delivery of the aircraft to a
14 person engaged in the business of selling or leasing such
15 aircraft.

16 (2) The accident occurred with respect to any new
17 component, system, subassembly, or other part that replaced
18 another component, system, subassembly, or other part
19 originally in, or that was added to, the aircraft, and that is
20 alleged to have been a proximate cause of an accident, after
21 the applicable repose period beginning on the date of
22 completion of the replacement or addition.

23 (c) If a cause of action accrues prior to the
24 expiration of the repose period, an action may be brought
25 within two years of accrual even though it extends beyond the
26 repose period.

1 (d) Subsection (b) does not apply to any of the
2 following circumstances:

3 (1) The claimant pleads with specificity the facts
4 necessary to prove, and proves, that the manufacturer with
5 respect to a type certificate or airworthiness certificate
6 for, or obligations with respect to continuing airworthiness
7 of, an aircraft or a component, system, subassembly, or other
8 part of an aircraft knowingly misrepresented to the Federal
9 Aviation Administration, or concealed or withheld from the
10 Federal Aviation Administration, required information that is
11 material and relevant to the performance or the maintenance or
12 operation of such aircraft, or the component, system,
13 subassembly, or other part, that is causally related to the
14 harm that the claimant allegedly suffered.

15 (2) The person for whose injury or death the claim
16 is being made was not aboard the aircraft at the time of the
17 accident.

18 (3) An action is brought under a written warranty
19 enforceable under law but for the operation of this section.

20 Section 5. (a) If a claim under the common or
21 statutory law of another state, the United States, or a
22 foreign country or under international treaty for death or
23 injury to person or damage to property arises against a
24 manufacturer out of an accident that occurred outside this
25 state, such claim may be brought in the courts of this state
26 in any county in which jurisdiction of the defendant can be
27 legally obtained in the same manner in which jurisdiction

1 could have been obtained if the claim had arisen in this
2 state.

3 (b) The courts of this state shall apply the
4 doctrine of forum non conveniens in determining whether to
5 accept or decline to take jurisdiction of an action asserting
6 a claim arising out of an accident occurring outside this
7 state.

8 (c) In applying the doctrine of forum non
9 conveniens, the court shall take into account each of the
10 following considerations:

11 (1) The state in which the claimant resides, giving
12 deference to the claimant's choice of forum only if the
13 claimant is a resident of this state.

14 (2) The location where the acts or occurrences
15 giving rise to the action occurred.

16 (3) The convenience of the parties and witnesses.

17 (4) The interests of justice.

18 (d) If upon motion of any defendant it is shown that
19 there exists a more appropriate forum outside this state, the
20 court must dismiss the action without prejudice. Dismissal may
21 be conditioned upon the defendant filing with the court a
22 consent (1) to submit to jurisdiction in the identified forum,
23 or (2) to waive any statute of limitations defense not already
24 existing if an action on the same cause of action is commenced
25 in the identified forum within 60 days of the dismissal.

26 (e) An order denying a motion to dismiss under this
27 section shall be immediately appealable, as a matter of right,

1 upon filing of a notice of appeal in accordance with the
2 Alabama Rules of Appellate Procedure.

3 Section 6. (a) In an action against a manufacturer
4 and one or more other defendants, including other
5 manufacturers, for death or injury to person or damage to
6 property arising out of an accident, the right of the
7 plaintiff to recover jointly and severally against such
8 defendants found liable is preserved.

9 (b) Notwithstanding subsection (a), in an action
10 arising out of such accident, if the respective or comparative
11 responsibility of tortfeasors is an issue, then the jury shall
12 return special verdicts, or in the absence of a jury the court
13 shall make special findings, allocating the percentage of
14 responsibility attributable to each defendant found to have
15 proximately caused the accident.

16 (c) Responsibility for the accident may be allocated
17 to a nonparty in an action under the procedure described in
18 subsection (b) if each of the following requirements are
19 satisfied:

20 (1) A defendant affirmatively pleads the
21 responsibility of a nonparty as a proximate cause of the
22 accident, and, absent a showing of good cause, identifies the
23 nonparty, if known, or describes the nonparty as specifically
24 as practicable, either by motion or responsive pleading when
25 defenses are first presented or in accordance with the Alabama
26 Rules of Civil Procedure governing supplemental and amended
27 pleadings.

1 (2) The defendant proves at trial, by a
2 preponderance of the evidence, that the act or failure to act
3 of the nonparty was a proximate cause of the accident in whole
4 or in part.

5 (d) Regarding a party or nonparty joint tortfeasor
6 or tortfeasors who has not settled with the plaintiff and
7 whose comparative responsibility for the accident has been
8 determined under the procedure described in subsection (b) or
9 subsection (c), a defendant found liable and who has paid the
10 plaintiff an amount in excess of defendant's percentage of
11 comparative responsibility shall be entitled to recover
12 contribution in such excess amount from the joint tortfeasor
13 or tortfeasors according to the percentage of its
14 responsibility so determined. In such a circumstance,
15 contribution among joint tortfeasors is allowed.

16 (e) Regarding any joint tortfeasor, whether a party
17 or nonparty in the action, who has settled with the plaintiff,
18 a defendant is entitled to elect either informing the trier of
19 fact of the terms of the pro tanto settlement and admitting
20 such settlement into evidence, or choosing a post-judgment
21 setoff by the trial court of the amount of such settlement
22 against the amount of the judgment in the manner permitted by
23 Alabama law.

24 (f) This section does not apply to contract actions,
25 nor does it limit or abridge the contractual rights of a
26 party.

1 Section 7. This act shall apply to any action filed
2 after the effective date of this act.

3 Section 8. This act shall become effective
4 immediately following its passage and approval by the
5 Governor, or its otherwise becoming law.