

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

1 SB184

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4 ENROLLED, An Act,

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

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

12 "§6-5-501.

13 "The following definitions are applicable in this  
14 division:

15 "(1) ORIGINAL SELLER. Any person, firm, corporation,  
16 association, partnership, or other legal or business entity,  
17 which in the course of business or as an incident to business,  
18 sells or otherwise distributes a manufactured product (a)  
19 prior to or (b) at the time the manufactured product is first  
20 put to use by any person or business entity who did not  
21 acquire the manufactured product for either resale or other  
22 distribution in its unused condition or for incorporation as a  
23 component part in a manufactured product which is to be sold  
24 or otherwise distributed in its unused condition.

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

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

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

24           "2. The distributor exercised substantial control  
25 over the design, testing, manufacture, packaging, or labeling

1 of the product and such act is causally related to the  
2 product's condition.

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

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

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

24 "c. In a product liability action brought pursuant  
25 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.

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

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

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

24           "(2) The distributor exercised substantial control  
25 over the design, testing, manufacture, packaging, or labeling

1 of the product and such act is causally related to the  
2 product's condition.

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

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

13 "(c) Notwithstanding subsection (b), if a claimant  
14 is 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.

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

22           "(e) The definition used herein is to be used for  
23 purposes of this division and is not to be construed to expand  
24 or limit the status of the common or statutory law except as  
25 expressly modified by the provisions of this division."



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

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

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB184

Senate 19-APR-11

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris  
Secretary

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House of Representatives  
Passed: 31-MAY-11

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By: Senator Brooks