- 1 HB617
- 2 151210-1
- 3 By Representatives Williams (J), Greer and Henry

4 RFD: Commerce and Small Business

5 First Read: 16-APR-13

151210-1:n:04/03/2013:LLR/th LRS2013-1697 1 2 3 4 5 6 7 Under existing law, a product liability 8 SYNOPSIS: 9 action means any action brought by a natural person 10 for personal injury, death, or property damage 11 caused by the manufacture, construction, design, 12 formula, preparation, assembly, installation, 13 testing, warnings, instructions, marketing, 14 packaging, or labeling of a manufactured product when such action is based upon negligence, innocent 15 or negligent misrepresentation, the manufacturer's 16 17 liability doctrine, the Alabama extended 18 manufacturer's liability doctrine as it exists or 19 is hereafter construed or modified, breach of any implied warranty, or breach of any oral express 20 21 warranty and no other. A product liability action 22 does not include an action for contribution or 23 indemnity. 24 This bill would prohibit a product liability

action for relief against the manufacturers of a
 product unless the manufacturer was the
 manufacturer of the specific product.

1	
2	A BILL
3	TO BE ENTITLED
4	AN ACT
5	
б	To amend Section 6-5-521 of the Code of Alabama
7	1975, relating to product liability; to prohibit a product
8	liability action for relief against the manufacturers of a
9	product unless the manufacturer was the manufacturer of the
10	specific product.
11	BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
12	Section 1. Section 6-5-521 of the Code of Alabama
13	1975, is amended to read as follows:
14	"§6-5-521.
15	"(a) A "product liability action" means any action
16	<u>all actions</u> brought by <u>, or on behalf of,</u> a natural person for
17	personal injury, death, or property damage caused by the
18	manufacture, construction, design, formula, preparation,
19	assembly, installation, testing, warnings, instructions,
20	marketing, packaging, or labeling of a manufactured product $_{m L}$
21	when such action is based upon (1) negligence, (2) innocent or
22	negligent misrepresentation, (3) the manufacturer's liability
23	doctrine, (4) the Alabama extended manufacturer's liability
24	doctrine as it exists or is hereafter construed or modified,
25	(5) breach of any implied warranty, or (6) breach of any oral
26	express warranty and no other irrespective of the legal theory

<u>underlying the claim</u>. A product liability action does not
 include an action for contribution or indemnity.

3 "(b) Subsection (a) establishes the sole and
4 exclusive remedy for personal injury, death, or property
5 damage caused by the manufacture, construction, design,
6 formula, preparation, assembly, installation, testing,
7 warnings, instructions, marketing, packaging, or labeling of a
8 manufactured product.

"(c) No action may be asserted, and no person may be 9 provided a claim for relief, against any manufacturer in a 10 product liability action unless that manufacturer was the 11 12 manufacturer of the specific product, the manufacture, construction, design, formula, preparation, assembly, 13 installation, testing, warnings, instructions, marketing, 14 packaging, or labeling of which caused the personal injury, 15 death, or property damage for which the claimant seeks a 16 remedv. It is the intent of this subsection that a 17 manufacturer not be subject to liability under subsection (a) 18 in an action arising from an injury caused by a product that 19 it did not manufacture. This subsection is not intended to 20 21 alter any other principle of liability law, including those 22 that apply to component parts, or the operation of contracts, including licensing agreements. 23

24 "(b)(d) No product liability action may be asserted
25 or and no person may be provided a claim for relief against
26 any distributor, wholesaler, dealer, retailer, or seller of a
27 product, or against an individual or business entity using a

product in the production or delivery of its products or services (collectively referred to as the distributor) unless any of the following apply:

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

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

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

15 "(4) It is the intent of this subsection to protect 16 distributors who are merely conduits of a product. This 17 subsection is not intended to protect distributors from 18 independent acts unrelated to the product design or 19 manufacture, such as independent acts of negligence, 20 wantonness, warranty violations, or fraud.

21 "(c)(e) Notwithstanding subsection (b) (d), if a
22 claimant is unable, despite a good faith exercise of due
23 diligence, to identify the manufacturer of an allegedly
24 defective and unreasonably dangerous product, a product
25 liability action may be brought against a distributor,
26 wholesaler, dealer, retailer, or seller of a product, or
27 against the individual or business entity using a product in

Page 4

the production or delivery of its products or services. The claimant shall provide an affidavit certifying that the claimant, or the attorney therefor, has in good faith exercised due diligence and has been unable to identify the manufacturer of the product in question.

6 "(d)(f) In a product liability action brought 7 pursuant to subsection (c) (e), against a distributor, wholesaler, dealer, retailer, or seller of a product, or 8 against the individual or business entity using a product in 9 10 the production or delivery of its products or services, the party, upon answering or otherwise pleading, may file an 11 12 affidavit certifying the correct identity of the manufacturer of the product that allegedly caused the claimant's injury. 13 14 Once the claimant has received an affidavit, the claimant 15 shall exercise due diligence to file an action and obtain jurisdiction over the manufacturer. Once the claimant has 16 17 commenced an action against the manufacturer, and the manufacturer has or is required to have answered or otherwise 18 pleaded, the claimant shall voluntarily dismiss all claims 19 against any distributor, wholesaler, dealer, retailer, or 20 21 seller of the product in question, or against the individual 22 or business entity using a product in the production or 23 delivery of its products or services, unless the claimant can 24 identify prima facie evidence that the requirements of subsection (b) (d) for maintaining a product liability action 25 26 against such a party are satisfied.

1 "(e)(g) The definition used herein is to be used for 2 purposes of this division and is not to be construed to expand 3 or limit the status of the common or statutory law except as 4 expressly modified by the provisions of this division."

5 Section 2. This act shall become effective on the 6 first day of the third month following its passage and 7 approval by the Governor, or its otherwise becoming law.