

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

1 SB238
2
3
4

ENGROSSED

5
6
7 A BILL
8
9 AN ACT
10

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

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. This act shall be known and may be cited
3 as the Alabama Commercial Aviation Business Improvement Act of
4 2013.

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

policy and are rationally and reasonably related to the Legislature's objectives and regulatory scheme.

(b) The Legislature further finds that the commercial aviation aircraft manufacturing industry is one of the most heavily regulated industries in the United States and the world and that the Federal Aviation Administration of the United States and other airworthiness authorities impose upon the industry comprehensive, rigorous standards and requirements governing quality control, safety, and functionality, all of which are in the public interest. The Legislature finds that the classifications contained in this act that distinguish the unique, highly regulated commercial aviation aircraft manufacturing industry are rationally and reasonably related to the Legislature's regulatory scheme and are valid.

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

responsible for or could have prevented such injury, death, or damage.

(d) It is thus the legislative objective to provide for the abolishing of rights of action, with certain exceptions, against commercial aviation aircraft manufacturers that would have accrued after the passage of 12 years from delivery to the first purchaser or from replacing or adding a component part that is alleged to have been a proximate cause of an accident, and all such actions will be forever barred without relief to a claimant. Where causes of action accrue during the 12-year repose period, an action may be brought within two years of accrual even though such action may be filed beyond the 12-year period. This objective permits all injured, deceased, or damaged parties a period of two years to file suit on a cause of action accruing within the repose period, which would in certain circumstances permit the filing of an action up to 14 years after delivery or replacement.

(e) The legislative objective of abolishing potential liabilities of commercial aviation aircraft manufacturers after the passage of a sufficient period of time from the delivery of the aircraft to the first purchaser or from the replacement or addition of a component part that is alleged to have been a proximate cause of an accident is rationally and reasonably related to the permissible state objective of removing responsibility from, and preventing suit against, such highly regulated manufacturers who are the least likely to be responsible or at fault for defects,

deficiencies, and failures that cause injury, death, or damage long after their work is completed. The Legislature has deemed that, after a lapse of time of more than 12 years without incident, (1) the burden on the courts to adjudicate, (2) the complexities of proof with the obstacle of faded memories, (3) the unavailability of witnesses and lost evidence, (4) the opportunity for intervening factors such as acts or omissions of others involving inadequate maintenance, improper use, alterations, improvements, and other negligence, (5) changes in standards for design, manufacture, and assembly, (6) changes in regulations and codes, (7) and the burden on manufacturers who may have no control over the aircraft after their work is completed to disprove responsibility after acceptance and years of possession by other parties, all weigh more heavily in favor of repose or the abolishing of rights of action against manufacturers than in favor of allowing adjudication of the few, if any, meritorious claims that might have accrued thereafter.

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

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

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

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

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

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

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

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

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

(8) TYPE CERTIFICATE. A type certificate issued under Section 44704(a) of Title 49 of the United States Code

or any other predecessor federal statute, or another airworthiness authority.

Section 4. (a) All actions against a manufacturer in tort, contract, or otherwise for death or injury to person or damage to property arising out of an accident shall be commenced within two years next after a cause of action accrues, and not thereafter. Causes of action for wrongful death accrue upon the death of the testator or intestate.

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

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

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

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

(2) The accident occurred with respect to any new component, system, subassembly, or other part that replaced another component, system, subassembly, or other part originally in, or that was added to, the aircraft, and that is alleged to have been a proximate cause of an accident, after

1 the applicable repose period beginning on the date of
2 completion of the replacement or addition.

3 (c) If a cause of action accrues prior to the
4 expiration of the repose period, an action may be brought
5 within two years of accrual even though it extends beyond the
6 repose period.

7 (d) Subsection (b) does not apply to any of the
8 following circumstances:

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

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

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

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

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

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

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

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

(3) The convenience of the parties and witnesses.

(4) The interests of justice.

(d) If upon motion of any defendant it is shown that there exists a more appropriate forum outside this state, the

1 court must dismiss the action without prejudice. Dismissal may
2 be conditioned upon the defendant filing with the court a
3 consent (1) to submit to jurisdiction in the identified forum,
4 or (2) to waive any statute of limitations defense not already
5 existing if an action on the same cause of action is commenced
6 in the identified forum within 60 days of the dismissal.

7 (e) An order denying a motion to dismiss under this
8 section shall be immediately appealable, as a matter of right,
9 upon filing of a notice of appeal in accordance with the
10 Alabama Rules of Appellate Procedure.

11 Section 6. (a) In an action against a manufacturer
12 and one or more other defendants, including other
13 manufacturers, for death or injury to person or damage to
14 property arising out of an accident, the right of the
15 plaintiff to recover jointly and severally against such
16 defendants found liable is preserved.

17 (b) Notwithstanding subsection (a), in an action
18 arising out of such accident, if the respective or comparative
19 responsibility of tortfeasors is an issue, then the jury shall
20 return special verdicts, or in the absence of a jury the court
21 shall make special findings, allocating the percentage of
22 responsibility attributable to each defendant found to have
23 proximately caused the accident.

24 (c) Responsibility for the accident may be allocated
25 to a nonparty in an action under the procedure described in
26 subsection (b) if each of the following requirements are
27 satisfied:

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

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

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

(e) Regarding any joint tortfeasor, whether a party or nonparty in the action, who has settled with the plaintiff, a defendant is entitled to elect either informing the trier of fact of the terms of the pro tanto settlement and admitting

1 such settlement into evidence, or choosing a post-judgment
2 setoff by the trial court of the amount of such settlement
3 against the amount of the judgment in the manner permitted by
4 Alabama law.

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

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

10 Section 8. The provisions of this act are severable.
11 If any part of this act is declared invalid or
12 unconstitutional, that declaration shall not affect the part
13 which remains.

14 Section 9. This act shall become effective
15 immediately following its passage and approval by the
16 Governor, or its otherwise becoming law.

1

2

3 Senate

4 Read for the first time and referred to the Senate
5 committee on Judiciary.....

21-FEB-13

6

7 Read for the second time and placed on the calen-
8 dar 2 amendments.....

26-FEB-13

9

10 Read for the third time and passed as amended 28-FEB-13

11 Yeas 32
12 Nays 0

13

14

15 Patrick Harris
16 Secretary
17