

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

1 SB238

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4 ENROLLED, An Act,

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

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

18 (e) The legislative objective of abolishing
19 potential liabilities of commercial aviation aircraft
20 manufacturers after the passage of a sufficient period of time
21 from the delivery of the aircraft to the first purchaser or
22 from the replacement or addition of a component part that is
23 alleged to have been a proximate cause of an accident is
24 rationally and reasonably related to the permissible state
25 objective of removing responsibility from, and preventing suit

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

21 (f) The Legislature finds that the burden of tenuous
22 claims upon both the courts and the commercial aviation
23 aircraft manufacturing industry sufficiently vindicates the
24 denial of a right of action after the passage of a period of

1 12 years under the circumstances and with the exceptions
2 stated herein.

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

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

8 (2) AIRCRAFT. The meaning given such term in Section
9 40102(6) of Title 49 of the United States Code.

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

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

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

23 (6) MANUFACTURER. A manufacturer or assembler of
24 commercial aviation aircraft or of any new component, system,

1 subassembly, or other part of such aircraft, in its capacity
2 as a manufacturer or assembler.

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

6 (8) TYPE CERTIFICATE. A type certificate issued
7 under Section 44704(a) of Title 49 of the United States Code
8 or any other predecessor federal statute, or another
9 airworthiness authority.

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

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

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

23 a. The date of delivery of the aircraft to its first
24 purchaser or lessee, if delivered directly from the
25 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 the applicable repose period beginning on the date of completion of the replacement or addition.

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

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

(1) The claimant pleads with specificity the facts necessary to prove, and proves, that the manufacturer with respect to a type certificate or airworthiness certificate for, or obligations with respect to continuing airworthiness of, an aircraft or a component, system, subassembly, or other part of an aircraft knowingly misrepresented to the Federal Aviation Administration or other airworthiness authority, or concealed or withheld from the Federal Aviation Administration or other airworthiness authority, required information that is

1 material and relevant to the performance or the maintenance or
2 operation of such aircraft, or the component, system,
3 subassembly, or other part, that is causally related to the
4 harm that the claimant allegedly suffered.

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

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

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

20 (b) The courts of this state shall apply the
21 doctrine of *forum non conveniens* in determining whether to
22 accept or decline to take jurisdiction of an action asserting
23 a claim arising out of an accident occurring outside this
24 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 court must dismiss the action without prejudice. Dismissal may be conditioned upon the defendant filing with the court a consent (1) to submit to jurisdiction in the identified forum, or (2) to waive any statute of limitations defense not already existing if an action on the same cause of action is commenced in the identified forum within 60 days of the dismissal.

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

Section 6. (a) In an action against a manufacturer and one or more other defendants, including other manufacturers, for death or injury to person or damage to

1 property arising out of an accident, the right of the
2 plaintiff to recover jointly and severally against such
3 defendants found liable is preserved.

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

11 (c) Responsibility for the accident may be allocated
12 to a nonparty in an action under the procedure described in
13 subsection (b) if each of the following requirements are
14 satisfied:

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

23 (2) The defendant proves at trial, by a
24 preponderance of the evidence, that the act or failure to act

1 of the nonparty was a proximate cause of the accident in whole
2 or in part.

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

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

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

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

3 Section 8. The provisions of this act are severable.
4 If any part of this act is declared invalid or
5 unconstitutional, that declaration shall not affect the part
6 which remains.

7 Section 9. This act shall become effective
8 immediately following its passage and approval by the
9 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

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SB238

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Senate 28-FEB-13

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

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Patrick Harris
Secretary

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House of Representatives

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Amended and passed 14-MAR-13

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Senate concurred in House amendment 04-APR-13

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By: Senator Ward