

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representative Young**

A Bill

HOUSE BILL 2053

For An Act To Be Entitled

"AN ACT RELATING TO PRODUCTS LIABILITY."

Subtitle

"AN ACT RELATING TO PRODUCTS LIABILITY."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DEFINITIONS. In this act:

(1) "Claimant" means a party seeking relief, including a plaintiff, counter-claimant, or cross-claimant.

(2) "Loss" includes court costs and other reasonable expenses, reasonable attorney fees, and any reasonable damages.

(3) "Manufacturing equipment" means equipment and machinery used in the manufacturing, processing, or fabrication of tangible personal property but does not include agricultural equipment or machinery.

(4) "Manufacturer" means a person who is a designer, formulator, constructor, rebuilder, fabricator, producer, compounder, processor, or assembler of any product or any component part thereof and who places the product or any component part thereof in the stream of commerce.

(5) "Products liability action" means any action against a manufacturer or seller for recovery of damages arising out of personal injury, death, or property damage allegedly caused by a defective product whether the action is based in strict tort liability, strict products liability, negligence, misrepresentation, breach of express or implied warranty, or any other theory or combination of theories. "Products liability action" does not include an action based on manufacturing defect or breach of an express warranty.

1 (6) "Safer alternative design" means a product design other than the
2 one actually used that in reasonable probability:

3 (a) would have prevented or significantly reduced the risk of the
4 claimant_s personal injury, property damage, or death without substantially
5 impairing the product_s utility;

6 (b) was economically and technologically feasible at the time the
7 product left the control of the manufacturer or seller by the application of
8 existing or reasonably achievable scientific knowledge.

9 (7) "Seller" means a person who is engaged in the business of
10 distributing or otherwise placing, for any commercial purpose, in the stream
11 of commerce for use or consumption of a product or any component part thereof.

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13 SECTION 2. MANUFACTURER_S DUTY TO INDEMNIFY. (a) A manufacturer
14 shall indemnify and hold harmless a seller against loss arising out of a
15 products liability action, except for any loss caused by the seller_s
16 negligence, intentional misconduct, or other act or omission, such as
17 negligently modifying or altering the product, for which the seller is
18 independently liable.

19 (b) Damages awarded by the trier of fact shall, on final judgment, be
20 deemed reasonable for purposes of this Act.

21 (c) For purposes of this act, a wholesale distributor or retail seller
22 who completely or partially assembles a product in accordance with the
23 manufacturer_s instructions shall be considered a seller.

24 (d) The duty to indemnify under this Act:

25 (1) applies without regard to the manner in which the action is
26 concluded; and

27 (2) is in addition to any duty to indemnify established by law,
28 contract, or otherwise.

29 (e) A seller eligible for indemnification under this act shall give
30 reasonable notice to the manufacturer of a product claimed in a petition or
31 complaint to be defective, unless the manufacturer has been served as a party
32 or otherwise has actual notice of the action.

33 (f) A seller is entitled to recover from the manufacturer court costs
34 and other reasonable expenses, reasonable attorney fees, and any reasonable
35 damages incurred by the seller to enforce the seller_s right to

1 indemnification under this Act.

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3 SECTION 3. INHERENTLY UNSAFE PRODUCTS.

4 In a products liability action, a manufacturer or seller shall not be
5 liable if:

6 (1) the product is inherently unsafe and the product is known to
7 be unsafe by the ordinary consumer who consumes the product with the ordinary
8 knowledge common to the community; and

9 (2) the product is a common consumer product intended for
10 personal consumption, such as sugar, castor oil, alcohol, tobacco, and butter,
11 as identified in Comment (i) to Section 402A of the Restatement (Second) of
12 Torts.

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14 SECTION 4. DESIGN DEFECTS. (a) In a products liability action in
15 which a claimant alleges a design defect, the burden is on the claimant to
16 prove by a preponderance of the evidence that:

17 (1) there was a safer alternative design; and

18 (2) the defect was a producing cause of the personal injury,
19 property damage, or death for which the claimant seeks recovery.

20 (b) This Act does not supersede or modify any statute, regulation, or
21 other law of this state or of the United States that relates to liability for,
22 or to relief in the form of, abatement of nuisance, civil penalties, cleanup
23 costs, cost recovery, an injunction, or restitution that arises from
24 contamination or pollution of the environment.

25 (c) This Act does not apply to a drug or device, as those terms are
26 defined in the federal Food, Drug and Cosmetic Act (21 U.S.C. Section 321).

27 (d) This Act is not declarative, by implication or otherwise, of the
28 common law with respect to any product and shall not be construed to restrict
29 the courts of this state in developing the common law with respect to any
30 product which is not subject to this Act.

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32 SECTION 5. FIREARMS AND AMMUNITION. (a) In a products liability
33 action brought against a manufacturer or seller of a firearm or ammunition
34 that alleges a design defect in the firearm or ammunition, the burden is on
35 the claimant to prove, in addition to any other elements that the claimant

1 must prove, that:

2 (1) the actual design of the firearm or ammunition was defective,
3 causing the firearm or ammunition not to function in a manner reasonably
4 expected by an ordinary consumer of firearms or ammunition; and

5 (2) the defective design was a producing cause of the personal
6 injury, property damage, or death.

7 (b) The claimant may not prove the existence of the defective design by
8 a comparison or weighing of the benefits of the firearm or ammunition against
9 the risk of personal injury, property damage, or death posed by its potential
10 to cause such injury, damage, or death when discharged.

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12 SECTION 6. PRODUCTS LIABILITY: MANUFACTURING EQUIPMENT.

13 (a) Except as provided by Subsection (b), a claimant must commence a
14 products liability action against a manufacturer or seller of manufacturing
15 equipment before the end of fifteen (15) years after the date of the sale of
16 the equipment by the defendant.

17 (b) If a manufacturer or seller expressly represents that the
18 manufacturing equipment has a useful safe life of longer than fifteen (15)
19 years, a claimant must commence a products liability action against that
20 manufacturer or seller of the equipment before the end of the number of years
21 represented after the date of the sale of the equipment by that seller.

22 (c) This Act does not reduce a limitations period that applies to a
23 products liability action involving manufacturing equipment that accrues
24 before the end of the limitations period under this Act.

25 (d) This Act does not extend the limitations period within which a
26 products liability action involving manufacturing equipment may be commenced
27 under any other law.

28 (e) This Act applies only to the sale and not to the lease of
29 manufacturing equipment.

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31 SECTION 7. This Act shall apply only to a cause of action commenced on
32 or after the effective date of this Act. A cause of action commenced before
33 the effective date of this Act is governed by the law in effect at the time
34 the action accrued, and that law is continued in effect for that purpose.

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1 SECTION 8. *This Act takes effect September 1, 1993.*

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3 SECTION 9. All provisions of this act of a general and permanent nature
4 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
5 Revision Commission shall incorporate the same in the Code.

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7 SECTION 10. If any provision of this act or the application thereof to
8 any person or circumstance is held invalid, such invalidity shall not affect
9 other provisions or applications of the act which can be given effect without
10 the invalid provision or application, and to this end the provisions of this
11 act are declared to be severable.

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13 SECTION 11. All laws and parts of laws in conflict with this act are
14 hereby repealed.

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/s/Dennis Young

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