

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

State of Arkansas

As Engrossed: H3/16/99

82nd General Assembly

# A Bill

Regular Session, 1999

HOUSE BILL 2030

By: Representatives Womack, M. Smith, Gipson, Glover, Bennett, Milligan, Bledsoe, Buchanan, L. Thomas, Duggar, Elliott, Files, White, Green, Haak, Hendren, Magnus, Parks, Rackley, Rodgers, R. Smith, Sheppard, Prater

## For An Act To Be Entitled

"AN ACT TO BE KNOWN AS THE 'CIVIL JUSTICE REFORM ACT OF 1999'; AND FOR OTHER PURPOSES."

## Subtitle

"AN ACT TO BE KNOWN AS THE 'CIVIL JUSTICE REFORM ACT OF 1999'."

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

SECTION 1. Arkansas Code 26-35-902 is amended to read as follows:

"26-35-902. Award of attorneys' fees - Disposition of residual funds.

(a) It is the public policy of this state that ~~circuit and chancery courts may~~, in meritorious litigation brought under Arkansas Constitution, Article 16, § 13, in which the court orders any ~~county, city, or town~~ governmental entity to refund or return to taxpayers moneys illegally exacted by the ~~county, city, or town~~ governmental entity, ~~apportion a reasonable part of the recovery of the class members to attorneys of record and order the return or refund of the balance~~ all exacted moneys shall be returned or refunded to the members of the class represented.

(b) If, after expiration of a reasonable period of time for the filing of claims for the illegally exacted moneys as ordered by the court, residual funds exist, said residual funds shall be deemed abandoned and escheat to the ~~county, city, or town~~ governmental entity which exacted same."

SECTION 2. Arkansas Code Title 16 is amended to add an additional

chapter to read as follows:

"Chapter 125. Civil Justice Reform Act of 1999.

Subchapter 1. General Provisions.

16-125-101. Short Title.

This chapter may be known and cited as the Civil Justice Reform Act of 1999.

Subchapter 2. Joint and severable liability abolished.

16-125-201. As used in this subchapter:

(1) 'Damages' means any and all economic or noneconomic loss whatsoever, including but not limited to, pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, any other theory of damages such as loss of earnings and earning capacity, loss of income, medical expenses and medical care, rehabilitation services, custodial care, burial costs, loss of use of property, costs of repair or replacement or of property, costs of obtaining substitute domestic services, loss of employment, loss of business or employment opportunities, and other objectively verifiable monetary losses. It does not include any punitive damages.

(2) 'Fault' means an act or omission of a person which is a proximate cause of injury or death to another person or persons, damages to property, tangible or intangible, or economic injury, including but not limited to, negligence, malpractice, strict liability, absolute liability or failure to warn. Fault shall not include any tort which results from an act or omission committed with a specific wrongful intent.

(3) 'Person' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any unincorporated association of persons.

16-125-202. In any action for personal injury, property damage, or wrongful death, the liability of each defendant for damages shall be severable

1 only and shall not be joint. Each defendant shall be liable only for the  
2 amount of damages allocated to that defendant in direct proportion to that  
3 defendant's percentage of fault, and a separate judgment shall be rendered  
4 against the defendant for that amount. To determine the amount of judgement  
5 to be entered against each defendant, the court, with regard to each  
6 defendant, shall multiply the total amount of damages recoverable by the  
7 plaintiff by the percentage of each defendant's fault, and that amount shall  
8 be the maximum recoverable against said defendant.

9  
10 16-125-203. (a) In assessing percentages of fault the trier of fact  
11 shall consider the fault of all persons who contributed to the alleged injury  
12 or death or damage to property, tangible or intangible, regardless of whether  
13 said person was, or could have been, named as a party to the suit. Negligence  
14 or fault of a nonparty shall be considered if the plaintiff entered into a  
15 settlement agreement with the nonparty or if the defending party gives notice  
16 within one hundred twenty (120) days of the date of trial that a nonparty was  
17 wholly or partially at fault. The notice shall be given by filing a pleading  
18 in the action designating such nonparty and setting forth such nonparty's name  
19 and last known address, or the best identification of such nonparty which is  
20 possible under the circumstances, together with a brief statement of the basis  
21 for believing such nonparty to be at fault.

22 (b) Nothing in this subchapter is meant to eliminate or diminish any  
23 defenses or immunities which currently exist, except as expressly stated  
24 herein. Assessment of percentages of fault of nonparties are used only as a  
25 vehicle for accurately determining the fault of named parties. Where fault is  
26 assessed against nonparties, findings of such fault shall not subject any  
27 nonparty to liability in this or any other action, or be introduced as  
28 evidence of liability in any action.

29  
30 16-125-204. Notwithstanding § 16-125-202, a party is responsible for  
31 the fault of another person, or for payment of the proportionate share of  
32 another person, if both the party and the other person were acting in concert  
33 or if the other person was acting as an agent or servant of the party. As  
34 used in this section, "acting in concert" means entering into a conscious  
35 agreement to pursue a common plan or design to commit an intentional tort and  
36 actively taking part in that intentional tort. Acting in concert does not

1 apply to any person whose conduct was negligent in any of its degrees rather  
2 than intentional. A person's conduct which provides substantial assistance to  
3 one committing an intentional tort does not constitute acting in concert if  
4 the person has not consciously agreed with the other to commit the intentional  
5 tort.

6  
7 16-125-205. The burden of alleging and proving fault shall be upon the  
8 person who seeks to establish such fault.

9  
10 16-125-206. (a) Nothing in this subchapter shall be construed to create  
11 a cause of action.

12 (b) Nothing in this subchapter shall be construed, in any way, to alter  
13 the immunity of any person.

14  
15 Subchapter 3. Double recoveries eliminated.

16  
17 16-125-301. As used in this subsection:

18 (1) 'Collateral source' means a benefit paid or payable to the claimant  
19 or on his behalf, under, from, or pursuant to:

20 (A) The United States Social Security Act;

21 (B) Any state or federal income replacement, disability, workers'  
22 compensation, or other act designed to provide partial or full wage or income  
23 replacement;

24 (C) Any accident, health or sickness, income or wage replacement  
25 insurance, income disability insurance, casualty or property insurance,  
26 including automobile accident and homeowners' insurance benefits, or any other  
27 insurance benefits, except life insurance benefits;

28 (D) Any contract or agreement of any group, organization,  
29 partnership, or incorporation to provide, pay for, or reimburse the cost of  
30 medical, hospital, dental, or other healthcare services or provide similar  
31 benefits;

32 (E) Any contractual or voluntary wage continuation plan, or  
33 payments made pursuant to such a plan, provided by an employer or otherwise,  
34 or any other system intended to provide wages during a period of disability;

35 (2) 'Claimant' means any person who brings a personal injury action,  
36 and if such an action is brought through or on behalf of an estate, the term

1 includes the claimant's decedent, or if such an action is brought through or  
2 on behalf of a minor, the term includes the claimant's parent or guardian.

3 (3) 'Damages' means economic losses paid or payable by collateral  
4 sources for wage loss, medical costs, rehabilitation costs, services, and  
5 other out-of-pocket costs incurred by or on behalf of a claimant for which  
6 that party is claiming recovery through a tort suit.

7  
8 16-125-302. (a) In all tort actions, regardless of the theory of  
9 liability under which they are brought, the court shall allow the admission  
10 into evidence of proof of collateral source payments which have already been  
11 made or which are substantially certain to be made to claimant as compensation  
12 for the same damages sought in the suit. Proof of such payments shall be  
13 considered by the trier of fact in arriving at the amount of any award, and  
14 shall be considered by the court in reviewing awards made for excessiveness.

15 (b) The trier of fact shall be informed of the tax implications of all  
16 damage awards. The trier of fact may hear evidence of the premiums personally  
17 paid by the claimant to obtain any collateral sources paid or payable.

18  
19 16-125-303. (a) If liability is found in any tort action, regardless of  
20 the theory of liability, then the trier of fact, in addition to other  
21 appropriate findings, shall make separate findings for each claimant  
22 specifying the amount of:

23 (1) any past damages for:

24 (A) medical and other costs of health care;

25 (B) other economic loss; and

26 (C) noneconomic loss.

27 (2) any future damages and the periods over which they will  
28 accrue, on an annual basis, for each of the following types of damages:

29 (A) medical and other costs of health care;

30 (B) other economic loss; and

31 (C) noneconomic loss.

32 (b) The calculation of all future medical care and other costs of  
33 health care and future noneconomic loss must reflect the costs and losses  
34 during the period of time the claimant will sustain those costs and losses.  
35 The calculation for other economic loss must be based on the losses during the  
36 period of time the claimant would have lived but for the injury upon which the

1 claim is based.

3 Subchapter 4. Punitive Damages.

5 16-125-401. The General Assembly finds and declares that:

6 (1) the specter of unlimited punitive damages encourages  
7 plaintiffs and defendants to try cases needlessly and frustrates early  
8 settlement, thereby delaying justice and impeding the swift award of  
9 compensatory damages to victims;

10 (2) reasonable and fair standards will promote predictability in  
11 the awards of punitive damages in a manner fully consistent with the objective  
12 of deterrence;

13 (3) private enterprise has been hampered unduly by the threat of  
14 unreasonable punitive damage awards, with the consumer paying the ultimate  
15 cost in higher prices and insurance costs;

16 (4) punitive damages are private punishments in the nature of  
17 fines awarded in civil cases;

18 (5) when warranted in egregious cases, punitive damages can  
19 provide an appropriate expression of public disapproval for conduct that is  
20 truly shocking;

21 (6) current procedures for the award of punitive damages do not  
22 properly protect those accused of serious wrongdoing nor provide sufficient  
23 guidance for the imposition of these penalties; and

24 (7) it is in the public interest to strike a balance between  
25 detering egregious misconduct and encouraging reasonable economic growth in a  
26 free enterprise system.

27  
28 16-125-402. As used in this subchapter:

29 (1) 'Clear and convincing evidence' means evidence which leaves no  
30 serious or substantial doubt about the correctness of the conclusions drawn  
31 from the evidence. It is more than a preponderance of evidence, but less than  
32 beyond a reasonable doubt;

33 (2) 'Compensatory damages' means damages intended to make good the loss  
34 of an injured party and no more. The term includes general and special  
35 damages and does not include nominal exemplary or punitive damages;

36 (3) 'Defendant' means any party against whom punitive damages are

1 sought;

2 (4) 'Malice' means either conduct which is specifically intended by the  
3 defendant to cause tangible or intangible serious injury to the plaintiff for  
4 conduct that is carried out by the defendant both with a flagrant indifference  
5 to the rights of the plaintiff and with a subjective awareness that such  
6 conduct will result in tangible or intangible serious injury;

7 (5) 'Nominal damages' are damages that are not designed to compensate a  
8 plaintiff and are less than five hundred dollars (\$500);

9 (6) 'Plaintiff' means any party claiming punitive damages; and

10 (7) 'Punitive damages' includes exemplary damages and means damages  
11 awarded against a party in a civil action because of aggravating circumstances  
12 in order to penalize and provide additional deterrence against a defendant to  
13 discourage similar conduct in the future. Punitive damages do not include  
14 compensatory damages or nominal damages.

15  
16 16-125-403. Pleading Punitive Damages - Pre-Suit Notice.

17 (a) An award of punitive damages must be specifically prayed for in the  
18 complaint:

19 (b) The plaintiff must specifically plead either;

20 (1) that at least thirty (30) days in advance of filing the  
21 complaint, that the plaintiff has given notice of seeking damages pursuant to  
22 this subchapter and that in good faith a reasonable settlement could not be  
23 reached; or

24 (2) that such thirty (30) day notice as required by this  
25 subchapter could not be given because of exigent circumstances.

26 (c) The plaintiff shall not specifically plead an amount of punitive  
27 damages, only that such damages are sought in the action.

28 (d) The prayer for punitive damages shall be stricken prior to trial by  
29 the court, unless the plaintiff presents prima facie evidence sufficient to  
30 sustain an award of punitive damages under this subchapter to the court at  
31 least thirty (30) days prior to trial.

32  
33 16-125-404. Procedure for Award of Punitive Damages.

34 (a) All actions tried before a jury involving punitive damages shall,  
35 if requested by any defendant, be conducted in a bifurcated trial before the  
36 same jury.

1       (b) In the first stage of a bifurcated trial, the jury shall determine  
2 liability for compensatory damages and the amount of compensatory damages or  
3 nominal damages.

4       (c) Punitive damages may be awarded only if compensatory damages have  
5 been awarded in the first stage of the trial. An award of nominal damages  
6 cannot support an award of punitive damages.

7       (d) In the second stage of a bifurcated trial, the jury shall determine  
8 if a defendant is liable for punitive damages.

9       (e) Where a jury decides that the defendant is liable for punitive  
10 damages, the court alone shall determine the amount of punitive damages.

11       (f) In all cases involving an award of punitive damages, the court, in  
12 determining the amount of punitive damages, shall include in its  
13 consideration:

14               (1) whether there is a reasonable relationship between the  
15 punitive damages award and the harm that has and may result from defendant's  
16 wrongful conduct;

17               (2) the degree of reprehensibility of the defendant's conduct, the  
18 duration of that conduct, the defendant's awareness thereof, any concealment,  
19 the existence and frequency of similar past conduct;

20               (3) the profitability to the defendant of the wrongful conduct  
21 and the desirability of removing that profit;

22               (4) the financial condition of the defendant;

23               (5) all the cost of litigation;

24               (6) the imposition of criminal or administrative sanctions on the  
25 defendant for its conduct, these to be taken in mitigation;

26               (7) the existence of other civil awards against the defendant,  
27 these also to be taken in mitigation;

28               (8) the effect on other potential claimants of a punitive damages  
29 award;

30               (9) the deterrent provided by compensatory damages in the case;  
31 and

32               (10) the potential of prior criminal and administrative penalties  
33 against the defendant for the same wrongful act.

34       (g) The amount of punitive damages shall be reduced pursuant to the  
35 contributory or comparative fault principles of the laws of this state. In  
36 any action in which there are two or more defendants, an award of punitive



1 damages must be specific as to a defendant, and each defendant is liable only  
2 for the amount of the award made against that defendant.

3  
4 16-125-405. Standard of Proof. Before a plaintiff may recover punitive  
5 damages in any civil action, that plaintiff must establish, by clear and  
6 convincing evidence, all of the facts that are relied upon to support the  
7 recovery of punitive damages. The plaintiff must establish that the  
8 defendant's action showed malice. This burden of proof may not be satisfied  
9 by proof of any degree of negligence including gross negligence.

10  
11 16-125-406. Guidelines for Awards. An award of punitive damages may not  
12 be made in the absence of an award of compensatory damages. An award of  
13 punitive damages shall not exceed an amount reasonably related to the goals of  
14 punishment and deterrence and reasonably proportionate to claimant's actual  
15 harm. It shall not in any event be more than two hundred thousand dollars  
16 (\$200,000) or four (4) times the amount of claimant's economic loss, whichever  
17 is greater.

18  
19 16-125-407. Availability of Punitive Damages. Nothing contained in  
20 this subchapter is to be construed as creating any claim for punitive damages  
21 which is not now present under the laws of the state of Arkansas.

22  
23 Subchapter 5. Product Liability.

24  
25 16-125-501. As used in this subchapter:

26  
27 (1) 'Claimant' means any person who brings a product liability action  
28 and, if such an action is brought through or on behalf of an estate, the term  
29 includes the claimant's decedent, or if such an action is brought through or  
30 on behalf of a minor, the term includes the claimant's parent or guardian;

31 (2) 'Clear and convincing evidence' means evidence which leaves no  
32 serious or substantial doubt about the correctness of the conclusions drawn  
33 from the evidence. It is more than a preponderance of evidence, but less than  
34 beyond a reasonable doubt;

35 (3) 'Commerce' means trade, traffic, commerce, or transportation: (A)  
36 within a state or between a place in a state and any place outside of a state;

1 (B) which affects trade, commerce, or transportation described in subdivision  
2 (1) (A);

3 (4) 'Concert of action' means the conscious and deliberate agreement  
4 to, acknowledgment of, and collaborative participation in wrongful conduct by  
5 two or more persons who do not have the relationship of master and servant,  
6 principal and agent, parent and subsidiary, affiliates, or employer and  
7 employee;

8 (5) 'Express warranty' means any positive, material statement,  
9 affirmation of fact, promise, or description relating to a product, including  
10 any sample or model of a product;

11 (6) 'Harm' means: (A) damage to property other than the product itself;  
12 (B) personal physical injury, illness, or death; (C) mental anguish or  
13 emotional harm; or (D) any loss of consortium or services or other loss  
14 deriving from any type of harm described in subdivision (6)(A), (6)(B) or  
15 (6)(C);

16 (7) 'Manufacturer' means: (A) any person who is engaged in a business  
17 to design, produce, make, fabricate, construct, or remanufacture any product,  
18 or component part of a product; or (B) any product seller not described in  
19 subdivision (7)(A), holding itself out as a manufacturer to the user of the  
20 product; except that any product seller who acts primarily as a wholesaler,  
21 distributor, or retailer of products may be a manufacturer with respect to a  
22 given product to the extent that such seller designs, produces, makes,  
23 fabricates, constructs, or remanufactures the product before its sale;

24 (8) 'Practical technological feasibility' means the technical and  
25 scientific knowledge relating to the safety of a product which is available,  
26 adequately demonstrated, and economically feasible for use by a product seller  
27 at the time of manufacture of a product;

28 (9) 'Person' means any individual, corporation, company, association,  
29 firm, partnership, society, joint stock company, or any other entity including  
30 any governmental entity or unincorporated association of persons;

31 (10) 'Preponderance of the evidence' is that measure or degree of proof  
32 which, by the weight, credit, and value of the aggregate evidence on either  
33 side, establishes that it is more probable than not that a fact occurred or  
34 did not occur;

35 (11) 'Product' means any thing possessing intrinsic value which is  
36 capable of delivery either as an assembled whole, as a component part or in

1 fungible lots and is produced for introduction into trade or commerce; but  
2 such term does not include human tissue, blood and blood products, or organs;

3 (12) (A) 'Product seller' means:

4 (i) a manufacturer;

5 (ii) a retailer; or

6 (iii) other persons who, in the course of a business  
7 conducted for that purpose, sells, distributes, leases, installs, prepares,  
8 packages, labels, markets, repairs, maintains, or otherwise is involved in  
9 placing a product in the stream of commerce;

10 (B) 'Product seller' does not mean:

11 (i) a seller of real property, unless that person is  
12 engaged in the sale of manufactured housing or in the mass production of  
13 dwellings;

14 (ii) a provider of professional services in any case in  
15 which the sale or use of a product is incidental to the transaction and the  
16 essence of the transaction is the furnishing of judgment, skill, or services;  
17 or

18 (iii) any person who:

19 (a) acts in only a financial capacity with respect to  
20 the sale of the product;

21 (b) is not a manufacturer, wholesaler, distributor, or  
22 retailer; and

23 (c) leases a product, without having a reasonable  
24 opportunity to inspect and discover defects in the product, under a lease  
25 arrangement in which the selection, possession, maintenance, and operation of  
26 the product are controlled by a person other than the lessor.

27 (13) 'retailer' means a person to whom a consumer product is delivered  
28 or sold for the purpose of sale or distribution by such person to a consumer;

29 (14) 'unavoidably dangerous' means that aspect of a product incapable,  
30 in light of the state of scientific and technological knowledge at the time of  
31 manufacture, of being made safe without seriously impairing the product's  
32 usefulness or desirability to the persons who use or consume the product.

33  
34 16-125-502. Effect on other law.

35 (a) Except as excluded under subsection (b), any civil action brought  
36 against a manufacturer or other product seller for harm caused by a product is

1 a product liability action and is governed by the provisions of this  
2 subchapter. This subchapter is intended to govern any civil action for harm  
3 caused by a product, including any action which before the effective date of  
4 this subchapter would have been based on any of the following theories:

5 (1) strict liability in tort;  
6 (2) negligence;  
7 (3) breach of express or implied warranty;  
8 (4) failure to discharge a duty to warn or instruct;  
9 (5) misrepresentation, concealment, or nondisclosure; or  
10 (6) any other theory that is the basis for an award of damages for  
11 harm caused by a product.

12 (b) A product liability action does not include any civil action  
13 against a manufacturer or seller for:

14 (1) Harm caused to a product itself;  
15 (2) Damage to property under a breach of warranty theory if  
16 prohibited by the Uniform Commercial Code;  
17 (3) Commercial loss, including incidental and consequential  
18 damages in a commercial setting; or  
19 (4) Commercial risks that are the subject of a contract between  
20 the manufacturer or a seller and a buyer. Suits described in subdivisions  
21 (1), (2), (3), and (4) shall be governed by the Uniform Commercial Code.

22 (c) In any product liability action, the product seller is not liable  
23 to a claimant for mental anguish or emotional harm in the absence of personal  
24 physical injury, illness, or death.

25  
26 16-125-503. Responsibility of product seller.

27 (a) (1) In any product liability action, a product seller is liable to a  
28 claimant if, and only if:

29 (A) the claimant establishes by a preponderance of the  
30 evidence that:

31 (i) the product was unreasonably unsafe in  
32 construction;  
33 (ii) the product was unreasonably unsafe in design;  
34 (iii) the product was unreasonably unsafe because the  
35 manufacturer failed to provide adequate warnings or instructions about a  
36 danger connected with the product or about the proper use of the product; or

1                   (iv) the product was unreasonably unsafe because the  
2 product did not conform to an express warranty made by the manufacturer with  
3 respect to the product; and

4                   (B) the claimant establishes by a preponderance of the  
5 evidence that:

6                   (i) the defendant was the manufacturer of the  
7 particular product unit that caused the claimant's harm; and

8                   (ii) that the unreasonably unsafe aspect of the  
9 product was the proximate cause of the harm complained of by the claimant.

10                  (2) A court may not submit a product liability action to the  
11 trier of fact unless the court has determined that sufficient evidence has  
12 been admitted to allow a reasonable person, by a preponderance of the  
13 evidence, to make the determinations described in subsection (a)(1).

14                  (3) In any product liability action, a product seller is not  
15 liable to a claimant if the aspect of the product alleged to have caused the  
16 claimant's harm complied in material respects, at the time of manufacture,  
17 with standards, conditions, or specifications established, adopted, or  
18 approved by a federal or state statute or by an agency of the federal or state  
19 government responsible for the design, formulation, labeling, packaging,  
20 performance, or approval of the product, unless there is clear and convincing  
21 evidence that the defendant intentionally and fraudulently withheld from or  
22 misrepresented to the agency information known to be material and relevant to  
23 the harm in question.

24                  (b) A product may be considered unreasonably unsafe in construction if,  
25 when the product left the control of the manufacturer, the product deviated in  
26 a material way:

27                   (1) from the design specifications or performance standards of the  
28 manufacturer; or

29                   (2) from otherwise identical units of the same product line.

30                  (c) (1) A product may be considered unreasonably unsafe in design if, at  
31 the time of the manufacture of the product:

32                   (A) The manufacturer knew or, in the exercise of reasonable  
33 care, should have known of the danger that caused the harm; and

34                   (B) an alternative design was within practical technological  
35 feasibility at the time of manufacture and would have provided:

36                   (i) equivalent or better safety with respect to

1 all hazards associated with use of the product; and

2 (ii) better safety with respect to the particular  
3 hazard which allegedly caused the harm of the claimant; and

4 (C) the alternative design would not have had any adverse  
5 effects on:

6 (i) the effectiveness with which the product  
7 performs its intended function; or

8 (ii) the desirability of the product to the person who  
9 uses or consumes it.

10 (2) In making a determination under subdivision (c)(1), the trier  
11 of fact may consider such factors as:

12 (A) the likelihood that the product would cause harm of the  
13 type alleged by the claimant, and the seriousness of that harm;

14 (B) any burdens on the manufacturer to adopt a product with  
15 a safer design that would have prevented that harm; and

16 (C) whether, at the time of manufacture, the design  
17 conformed with the generally accepted industry custom and practice for the  
18 design of the same or similar products.

19 (3) In any product liability action based upon an unreasonably  
20 unsafe design, the manufacturer is not liable for harm caused by:

21 (A) an unavoidably dangerous aspect of the product;

22 (B) an inherent characteristic of the product that would be  
23 recognized by the ordinary person who uses or consumes the product with the  
24 ordinary knowledge common to the community; or

25 (C) an aspect of the product that was, at the time of  
26 manufacture, in compliance in all material respects with standards or  
27 specifications established, adopted, or approved by a federal or state statute  
28 or by an agency of the federal or state government responsible for the design,  
29 formulation, packaging, performance, or approval of the product.

30 (d) (1) A product may be considered unreasonably unsafe because of the  
31 failure of the product seller to provide adequate warnings or instructions  
32 about a danger connected with the product or about the proper use of the  
33 product if:

34 (A) at the time of the manufacture of the product the  
35 manufacturer:

36 (i) knew or, in the exercise of reasonable care,

1 should have known about a danger connected with the product that caused the  
2 claimant's harm; and

3 (ii) failed to provide the warnings or instructions  
4 that a person exercising reasonable care would have provided with respect to  
5 the danger which caused the harm alleged by the claimant, given the likelihood  
6 that the product would cause harm of the type alleged by the claimant and  
7 given the seriousness of the harm, unless those warnings or instructions, if  
8 provided, would not have materially affected the conduct of the product user;  
9 or

10 (B) subject to subdivision (d) (3), the warnings or  
11 instructions pertaining to the product were not provided to the product user.

12 (2) (A) In any product liability action based upon the failure to  
13 provide adequate warnings or instructions, the manufacturer is not liable for:

14 (i) the failure to warn or instruct about a danger  
15 that is obvious;

16 (ii) product misuse; or

17 (iii) an alteration or modification of the product  
18 that does not constitute reasonably anticipated conduct on the part of the  
19 user of the product.

20 (B) As used in subdivision (d) (2), 'a danger that is  
21 obvious' means a danger, including a danger that is an inherent characteristic  
22 of a product, of which a reasonably prudent user or consumer of a product  
23 would have been aware without warning or instruction or that would be  
24 recognized by the original person who uses or consumes the product with the  
25 ordinary knowledge common to the community.

26 (C) As used in subdivision (d) (2), 'reasonably anticipated  
27 conduct' means the conduct which would be expected of a reasonably prudent  
28 person who is likely to use the product in the same or similar circumstances.

29 (3) A manufacturer is not liable for the failure to provide  
30 adequate warnings or instructions to the actual product user if:

31 (A) the manufacturer provided those warnings to a person  
32 who could reasonably have been expected to assure that action would be taken  
33 to avoid the harm or that the risk of the harm would be explained to the  
34 actual product user;

35 (B) the product involved is one that may legally be used  
36 only by or under the supervision of a class of experts, and the manufacturer

1 employed means reasonably calculated to make warnings or instructions  
2 available to the using or supervisory expert. As used in this subdivision  
3 (d), the expression 'means reasonably calculated to make warnings or  
4 instructions available' does not require actual, personal notice to the expert  
5 where such personal notice would be impossible or impracticable;

6 (C) the product was used in a work place, and warnings or  
7 instructions were provided to the employer of the claimant, because there was  
8 no practical and feasible means of transmitting them directly to the claimant;  
9 or

10 (D) the product was sold as a component or material to be  
11 incorporated into another product, warnings or instructions were provided to  
12 the manufacturer's immediate buyer, and the claimant was exposed to the  
13 component or material after it was incorporated or converted into another  
14 product.

15 (4) A warning, if provided, shall be deemed to be adequate if it  
16 is one that:

17 (A) a reasonably prudent person in the same or similar  
18 circumstances would have provided with respect to the danger; or

19 (B) conforms to the requirements of a federal or state  
20 statute or agency regulation or the conditions of the approval of a product by  
21 a federal or state agency that prescribes the form and language of the warning  
22 or instruction.

23 (e) (1) A product may be considered to be unreasonably unsafe because it  
24 did not conform to an express warranty if:

25 (A) the claimant, or a person acting on the claimant's  
26 behalf, reasonably relied on an express warranty made by the manufacturer  
27 about a material fact concerning the safety of the product;

28 (B) this express warranty proved to be untrue; and

29 (C) had the representation been true, the claimant would  
30 not have been harmed.

31 (2) As used in subsection (e), 'material fact' means any specific  
32 characteristic or quality of the product, but does not include a general  
33 opinion about, or praise of, the product or its quality.

34 (3) A product seller may be subject to liability under subsection  
35 (e) although it did not engage in negligent or fraudulent conduct in making  
36 the express warranty.



16-125-504. Responsibility of other product sellers.

(a) In any product liability action brought against a product seller other than a manufacturer, such a product seller is liable to a claimant, subject to subsections (b) and (c), if

(1) the claimant establishes by a preponderance of the evidence that the product was sold by the product seller and was the proximate cause of the harm complained of by the claimant; and

(2) the claimant establishes by a preponderance of the evidence that the product seller failed to exercise reasonable care with respect to the product.

(b) A court shall not submit any action referred to in subsection (a) to the trier of fact unless the court has determined that sufficient evidence has been admitted to allow a reasonable person, by a preponderance of the evidence, to make the determination described in subsection (a).

(c) (1) In determining whether a product seller is subject to liability under this subsection, the trier of fact may consider the effect of the conduct of the seller with respect to the design, construction, inspection, or condition of the product, and any failure of the seller to transmit adequate warnings or instructions about the dangers and proper use of the product.

(2) A product seller is not subject to liability under this subsection unless the seller had a reasonable opportunity to inspect the product in a manner which would have revealed the existence of the defective condition if the inspection were conducted with the exercise of reasonable care.

(3) A retailer, or other person as defined in § 16-125-502 (12)(A) is not subject to liability under this subsection if the retailer or such other person sells the product in its original retail container without alteration.

16-125-505. Concert of action.

In any product liability action, a product seller shall not be liable to the claimant on any theory of express or implied agreement among sellers, parallel behavior, or independent adherence to industry wide standards unless the claimant proves, by a preponderance of the evidence, that the seller engaged in 'concert of action.'

16-125-506. Subsequent remedial measures.

(a) In an action governed by this subchapter, evidence of any measure taken by a product seller after the occurrence of a claimant's harm which, if taken previously, would have made the harm less likely to occur is not admissible to prove liability.

(b) Evidence described in subsection (a) may be admitted when offered for:

(1) proving ownership, control, or feasibility of precautionary measures, if controverted; or

(2) impeachment.

16-125-507. Expert Opinion. In any action governed by this subchapter, expert technical, scientific, or medical opinion shall not be admitted unless such opinion on:

(1) has substantial support among persons who are professionally qualified in the relevant discipline; and

(2) is corroborated by other objective evidence which is consistent with generally accepted technical, medical or scientific principles.

16-125-508. Limitations on Actions.

(a) Except as provided by subsection (b), a claimant must commence a products liability action against a manufacturer or product seller within fifteen (15) years after the date of the sale of the equipment by the defendant.

(b) If a manufacturer or product seller expressly represents that the product has a useful safe life of longer than fifteen (15) years, a claimant must commence a product liability action against that manufacturer or product seller within the number of years so represented after the date of the sale of the equipment by that product seller.

(c) Subsection (a) and (b) do not reduce a limitations period that applies to a product liability action involving a product that accrues before the end of the limitations period under this section.

(d) This subchapter does not extend the limitations period within which

1 a product liability action involving products which may be commenced under any  
2 other law.

3  
4 Subchapter 6. Year 2000 Actions.

5  
6 16-125-601. As used in this subchapter:

7 (1) 'Financial Services Entity' means any of the following entities  
8 which are actively engaged in the delivery of financial services:

9 (A) Any bank, bank holding company, or any subsidiary or  
10 affiliate of a bank or bank holding company;

11 (B) Any trust company or any subsidiary thereof;

12 (C) Any savings and loan association, savings bank, thrift  
13 association or any subsidiary or affiliate thereof;

14 (D) Any credit union or any subsidiary thereof;

15 (E) Any insurance company or any subsidiary or affiliate thereof;  
16 or

17 (F) Any securities brokerage firm which is registered with and  
18 subject to the jurisdiction of the Securities and Exchange Commission or any  
19 subsidiary thereof.

20 (2) 'Government Entity' means the State of Arkansas or any agency,  
21 subdivision and instrumentality thereof, including but not limited to  
22 counties, cities, towns, improvement districts, school districts.

23 (3) 'Year 2000 Action' means a civil action commenced in any court for  
24 a cause of action arising out of a Year 2000 Failure but does not include an  
25 action to recover damages for personal injury (excluding emotional harm) or  
26 wrongful death.

27 (4) 'Year 2000 Failure' means a systems product failure caused by the  
28 inability of a computer system, program, or software's failure to accurately  
29 store, process, provide, or receive data containing any date after December  
30 31, 1999.

31 (5) 'Year 2000 Compliant' means with respect to an entity, that none of  
32 that entity's information technology systems or processes that materially  
33 affects the entity's capacity to perform its activities or deliver goods and  
34 services has a Year 2000 Failure.

35  
36 16-125-602. Applicability of subchapter.

1       (a) This subsection shall apply to any Year 2000 Action commenced on and  
2       after its effective date.

3       (b) This subsection shall not be construed to create any cause of action  
4       or remedy, nor constitute any waiver of sovereign immunity which does not now  
5       exist under the laws of the State of Arkansas.

6       (c) This subsection does not apply to a civil action brought for  
7       personal injury to the extent that the action is based on a physical injury to  
8       the plaintiff.

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10       16-125-603. Limitations on Year 2000 Actions.

11       (a) Exclusive Remedies. The remedies provided by this subchapter are  
12       the exclusive remedies available to a plaintiff in a Year 2000 Action, except  
13       for claims based upon either:

14               (1) a written agreement or other instrument in writing to which  
15               the plaintiff and such entity are parties; or

16               (2) a physical injury to the plaintiff.

17       (b) Required Relationship. (1) A Year 2000 Action may not be commenced  
18       against any person unless the plaintiff is in direct privity of contract with  
19       such person and the losses incurred by the plaintiff are directly related to a  
20       Year 2000 Failure affecting the performance under the contract.

21               (2) Government Entity. A Year 2000 Action, otherwise permitted  
22               by law, may not be commenced against a government entity unless the losses  
23               incurred by the plaintiff are directly related to a Year 2000 Failure which  
24               causes a direct and material economic loss to the plaintiff.

25       (c) Remediation Opportunity. A Year 2000 Action may not be commenced  
26       until the plaintiff has notified in writing all defendants describing the Year  
27       2000 Failure with particularity and the plaintiff has afforded the defendants  
28       a reasonable opportunity to remedy the Year 2000 Failure. In no event shall a  
29       reasonable opportunity to remedy a Year 2000 Failure consist of a period of  
30       less than thirty (30) days.

31       (d) Statute of Limitations. No Year 2000 Action shall be maintained  
32       unless commenced on or before January 1, 2001.

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34       16-125-604. Damages.

35       (a) Economic Loss. Any damages awarded in a Year 2000 Action shall be  
36       limited to the plaintiff's economic loss.

1       (b) Punitive Damages. No punitive damages may be awarded in a Year 2000  
2 Action.

3       (c) Good Faith Limitation. Damages may not be awarded in a Year 2000  
4 Action against any defendant which demonstrates that such entity exercised due  
5 diligence and reasonable care to prevent or remedy the Year 2000 Failure  
6 according to generally accepted standards of care.

7       (d) Safe Harbor. Any person who satisfies the requirements under  
8 either (d)(1) or (d)(2) shall be deemed to have exercised due diligence and  
9 reasonable care in accordance with the generally accepted standards of care:

10       (1) Reasonable efforts have been undertaken to implement all of  
11 the following procedures which are applicable to such person:

12               (A) Prepare an inventory of systems and devices used by such  
13 person that may experience a Year 2000 Failure;

14               (B) Identify critical systems necessary to conduct such  
15 person's business or governmental operations;

16               (C) Identify the potential for Year 2000 Failures  
17 associated with systems and devices used in such person's business or  
18 governmental operations;

19               (D) Prepare a remediation plan to reprogram, fix, repair,  
20 replace or otherwise remedy for electronic computing devices and systems to  
21 avert the potential for a Year 2000 Failure;

22               (E) Conduct tests on the critical systems and devices for  
23 Year 2000 Compliance;

24               (F) Implement with promptness remedial measures directed to  
25 any deficiencies identified through testing for Year 2000 compliance; and

26               (G) Develop contingency plans to address the possibility of  
27 Year 2000 Failures in its critical systems and devices.

28       (2) Substantial compliance with regulations issued by the state  
29 and federal regulatory agencies with jurisdiction over a financial services  
30 entity shall be presumed to satisfy the generally accepted standards of care."

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32       SECTION 3. This act shall apply to action commenced on or after the  
33 effective date of this act without regard to whether the harm at issue  
34 occurred before such date. This act shall not apply with respect to civil  
35 actions commenced before the effective date of this act.

1           SECTION 4. All provisions of this act of a general and permanent nature  
2 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
3 Revision Commission shall incorporate the same in the Code.  
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5           SECTION 5. If any provision of this act or the application thereof to  
6 any person or circumstance is held invalid, such invalidity shall not affect  
7 other provisions or applications of the act which can be given effect without  
8 the invalid provision or application, and to this end the provisions of this  
9 act are declared to be severable.  
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11           SECTION 6. All laws and parts of laws in conflict with this act are  
12 hereby repealed.

13                                   /s/ Womack, et al  
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