

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001

A Bill

HOUSE BILL 2490

4
5 By: Representative D. Elliott
6
7

For An Act To Be Entitled

8 THE CIVIL JUSTICE REFORM ACT OF 2001.
9

Subtitle

10 THE CIVIL JUSTICE REFORM ACT OF 2001.
11
12
13
14

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
16

17 SECTION 2. Arkansas Code Title 16 is amended to add an additional
18 chapter to read as follows:

19 Chapter 127 Civil Justice Reform Act of 2001

20
21 Subchapter 1 - General Provisions

22
23 16-127-101. Short Title.

24 This chapter may be known and cited as the Civil Justice Reform Act of
25 2001.

26
27 Subchapter 2 - Joint and several liability abolished

28
29 16-127-201. As used in this subchapter:

30 (1) "Damages" means any and all economic or noneconomic loss
31 whatsoever, including but not limited to, pain, suffering, inconvenience,
32 physical impairment, disfigurement, mental anguish, emotional distress, loss
33 of society and companionship, loss of consortium, injury to reputation,
34 humiliation, any other theory of damages such as loss of earnings and earning
35 capacity, loss of income, medical expenses and medical care, rehabilitation
36 services, custodial care, burial costs, loss of use of property, costs of

1 repair or replacement of property, costs of obtaining substitute domestic
2 services, loss of employment, loss of business or employment opportunities,
3 and other objectively verifiable monetary losses. It does not include any
4 punitive damages;

5 (2)(A) "Fault" means an act or omission of a person which is a
6 proximate cause of injury or death to another person or persons, damages to
7 property, tangible or intangible, or economic injury, including but not
8 limited to, negligence, malpractice, strict liability, absolute liability or
9 failure to warn;

10 (B) "Fault" shall not include any tort which results from an act
11 or omission committed with a specific wrongful intent; and

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

15
16 16-127-202. In any action for personal injury, property damage, or
17 wrongful death, the liability of each defendant for damages shall be several
18 only and shall not be joint. Each defendant shall be liable only for the
19 amount of damages allocated to that defendant in direct proportion to that
20 defendant's percentage of fault, and a separate judgment shall be rendered
21 against the defendant for that amount. To determine the amount of judgement
22 to be entered against each defendant, the court, with regard to each
23 defendant, shall multiply the total amount of damages recoverable by the
24 plaintiff by the percentage of each defendant's fault, and that amount shall
25 be the maximum recoverable against said defendant.

26
27 16-127-203. (a) In assessing percentages of fault the trier of fact
28 shall consider the fault of all persons who contributed to the alleged injury
29 or death or damage to property, tangible or intangible, regardless of whether
30 the person was, or could have been, named as a party to the suit. Negligence
31 or fault of a nonparty shall be considered if the plaintiff entered into a
32 settlement agreement with the nonparty.

33 (b) Nothing in this subchapter is meant to eliminate or diminish any
34 defenses or immunities which currently exist, except as expressly stated
35 herein. Assessment of percentages of fault of nonparties are used only as a
36 vehicle for accurately determining the fault of named parties. Where fault

1 is assessed against nonparties, findings of such fault shall not subject any
2 nonparty to liability in this or any other action, or be introduced as
3 evidence of liability in any action.

4
5 16-127-204. Notwithstanding § 16-127-202, a party is responsible for
6 the fault of another person, or for payment of the proportionate share of
7 another person, if both the party and the other person were acting in concert
8 or if the other person was acting as an agent or servant of the party. As
9 used in this section, "acting in concert" means entering into a conscious
10 agreement to pursue a common plan or design to commit an intentional tort and
11 actively taking part in that intentional tort. Acting in concert does not
12 apply to any person whose conduct was negligent in any of its degrees rather
13 than intentional. A person's conduct which provides substantial assistance
14 to one committing an intentional tort does not constitute acting in concert
15 if the person has not consciously agreed with the other to commit the
16 intentional tort.

17
18 16-127-205. The burden of alleging and proving fault shall be upon the
19 person who seeks to establish such fault.

20
21 16-127-206. (a) Nothing in this subchapter shall be construed to
22 create a cause of action.

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

25
26 Subchapter 3 - Double recoveries eliminated

27
28 16-127-301. As used in this subchapter:

29 (1) "Claimant" means any person who brings a personal injury action,
30 and if such an action is brought through or on behalf of an estate, the term
31 includes the claimant's decedent, or if such an action is brought through or
32 on behalf of a minor, the term includes the claimant's parent or guardian.

33 (2) "Collateral source" means a benefit paid or payable to the
34 claimant or on his behalf, under, from, or pursuant to:

- 35 (A) The United States Social Security Act;
- 36 (B) Any state or federal income replacement, disability,

1 workers' compensation, or other act designed to provide partial or full wage
2 or income replacement;

3 (C) Any accident, health or sickness, income or wage replacement
4 insurance, income disability insurance, casualty or property insurance,
5 including automobile accident and homeowners' insurance benefits, or any
6 other insurance benefits, except life insurance benefits;

7 (D) Any contract or agreement of any group, organization,
8 partnership, or corporation to provide, pay for, or reimburse the cost of
9 medical, hospital, dental, or other healthcare services or provide similar
10 benefits; or

11 (E) Any contractual or voluntary wage continuation plan, or
12 payments made pursuant to such a plan, provided by an employer or otherwise,
13 or any other system intended to provide funds for loss of wages during a
14 period of disability; and

15 (3) "Damages" means economic losses paid or payable by collateral
16 sources for wage loss, medical costs, rehabilitation costs, services, and
17 other out-of-pocket costs incurred by or on behalf of a claimant for which
18 that party is claiming recovery through a tort action.

19
20 16-127-302. (a) In all tort actions, regardless of the theory of
21 liability under which they are brought, the court shall allow the admission
22 into evidence of proof of collateral source payments which have already been
23 made or which are substantially certain to be made to the claimant as
24 compensation for the same damages sought in the suit. Proof of such payments
25 shall be considered by the trier of fact in arriving at the amount of any
26 award, and shall be considered by the court in reviewing awards made for
27 excessiveness.

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

32
33 16-127-303. (a) If liability is found in any tort action, regardless
34 of the theory of liability, then the trier of fact, in addition to other
35 appropriate findings, shall make separate findings for each claimant
36 specifying the amount of:

1 (1) Any past damages for:

2 (A) Medical and other costs of health care;

3 (B) Other economic loss; and

4 (C) Noneconomic loss; and

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

7 (A) Medical and other costs of health care;

8 (B) Other economic loss; and

9 (C) Noneconomic loss.

10 (b) The calculation of all future medical care and other costs of
11 health care and future noneconomic loss must reflect the costs and losses
12 during the period of time the claimant will sustain those costs and losses.
13 The calculation for other economic loss must be based on the losses during
14 the period of time the claimant would have lived but for the injury upon
15 which the claim is based.

16
17 Subchapter 4 - Punitive Damages

18
19 16-127-401. The General Assembly finds and declares that:

20 (1) The specter of unlimited punitive damages encourages plaintiffs
21 and defendants to try cases needlessly and frustrates early settlement,
22 thereby delaying justice and impeding the swift award of compensatory damages
23 to victims;

24 (2) Reasonable and fair standards will promote predictability in the
25 awards of punitive damages in a manner fully consistent with the objective of
26 deterrence;

27 (3) Private enterprise has been hampered unduly by the threat of
28 unreasonable punitive damage awards, with the consumer paying the ultimate
29 cost in higher prices and insurance costs;

30 (4) Punitive damages are private punishments in the nature of fines
31 awarded in civil cases;

32 (5) When warranted in egregious cases, punitive damages can provide an
33 appropriate expression of public disapproval for conduct that is truly
34 shocking;

35 (6) Current procedures for the award of punitive damages do not
36 properly protect those accused of serious wrongdoing nor provide sufficient

1 guidance for the imposition of these penalties; and

2 (7) It is in the public interest to strike a balance between deterring
3 egregious misconduct and encouraging reasonable economic growth in a free
4 enterprise system.

5
6 16-127-402. As used in this subchapter:

7 (1) "Clear and convincing evidence" means evidence which leaves no
8 serious or substantial doubt about the correctness of the conclusions drawn
9 from the evidence. It is more than a preponderance of evidence, but less
10 than beyond a reasonable doubt;

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

14 (3) "Defendant" means any party against whom punitive damages are
15 sought;

16 (4) "Malice" means either conduct which is specifically intended by
17 the defendant to cause tangible or intangible serious injury to the plaintiff
18 for conduct that is carried out by the defendant both with a flagrant
19 indifference to the rights of the plaintiff and with a subjective awareness
20 that such conduct will result in tangible or intangible serious injury;

21 (5) "Nominal damages" are damages that are not designed to compensate
22 a plaintiff and are less than five hundred dollars (\$500);

23 (6) "Plaintiff" means any party claiming punitive damages; and

24 (7) "Punitive damages" includes exemplary damages and means damages
25 awarded against a party in a civil action because of aggravating
26 circumstances in order to penalize and provide additional deterrence against
27 a defendant to discourage similar conduct in the future. Punitive damages do
28 not include compensatory damages or nominal damages.

29
30 16-127-403. Pleading Punitive Damages - Pre-Suit Notice.

31 (a) An award of punitive damages must be specifically prayed for in
32 the complaint.

33 (b) The plaintiff must specifically plead either;

34 (1) That at least thirty (30) days in advance of filing the
35 complaint, the plaintiff has given notice of seeking damages pursuant to this
36 subchapter and that in good faith a reasonable settlement could not be

1 reached; or

2 (2) That such thirty-day notice as required by this subchapter
3 could not be given because of exigent circumstances described in the
4 complaint.

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

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

11

12 16-127-404. Procedure for Award of Punitive Damages.

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

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

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

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

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

26 (f) In all cases involving an award of punitive damages, the court, in
27 determining the amount of punitive damages, shall include in its
28 consideration:

29 (1) Whether there is a reasonable relationship between the
30 punitive damages award and the harm that has and may result from defendant's
31 wrongful conduct;

32 (2) The degree of reprehensibility of the defendant's conduct,
33 the duration of that conduct, the defendant's awareness thereof, any
34 concealment, the existence and frequency of similar past conduct;

35 (3) The profitability to the defendant of the wrongful conduct
36 and the desirability of removing that profit;

1 (4) The financial condition of the defendant;

2 (5) All the cost of litigation;

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

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

7 (8) The effect on other potential claimants of a punitive
8 damages award;

9 (9) The deterrent provided by compensatory damages in the case;
10 and

11 (10) The potential of prior criminal and administrative
12 penalties against the defendant for the same wrongful act.

13 (g) The amount of punitive damages shall be reduced pursuant to the
14 contributory or comparative fault principles of the laws of this state. In
15 any action in which there are two or more defendants, an award of punitive
16 damages must be specific as to a defendant, and each defendant is liable only
17 for the amount of the award made against that defendant.

18

19 16-127-405. Standard of Proof.

20 Before a plaintiff may recover punitive damages in any civil action,
21 that plaintiff must establish, by clear and convincing evidence, all of the
22 facts that are relied upon to support the recovery of punitive damages. The
23 plaintiff must establish that the defendant's action showed malice. This
24 burden of proof may not be satisfied by proof of any degree of negligence
25 including gross negligence.

26

27 16-127-406. Guidelines for Awards.

28 An award of punitive damages may not be made in the absence of an award
29 of compensatory damages. An award of punitive damages shall not exceed an
30 amount reasonably related to the goals of punishment and deterrence and
31 reasonably proportionate to claimant's actual harm. It shall not in any
32 event be more than five hundred thousand dollars (\$500,000) or three (3)
33 times the amount of claimant's economic loss, whichever is greater.

34

35 16-127-407. Availability of Punitive Damages.

36 Nothing contained in this subchapter is to be construed as creating any

1 claim for punitive damages which is not now present under the laws of the
2 State of Arkansas.

3
4 Subchapter 5 - Product Liability

5
6 16-127-501. As used in this subchapter:

7 (1) "Claimant" means any person who brings a product liability action
8 and, if such an action is brought through or on behalf of an estate, the term
9 includes the claimant's decedent, or if such an action is brought through or
10 on behalf of a minor, the term includes the claimant's parent or guardian;

11 (2) "Clear and convincing evidence" means evidence which leaves no
12 serious or substantial doubt about the correctness of the conclusions drawn
13 from the evidence. It is more than a preponderance of evidence, but less
14 than beyond a reasonable doubt;

15 (3) "Commerce" means trade, traffic, commerce, or transportation:

16 (A) Within a state or between a place in a state and any place
17 outside of a state;

18 (B) Which affects trade, commerce, or transportation described
19 in subdivision (3)(A);

20 (4) "Concert of action" means the conscious and deliberate agreement
21 to, acknowledgment of, and collaborative participation in wrongful conduct by
22 two or more persons who do not have the relationship of master and servant,
23 principal and agent, parent and subsidiary, affiliates, or employer and
24 employee;

25 (5) "Express warranty" means any positive, material statement,
26 affirmation of fact, promise, or description relating to a product, including
27 any sample or model of a product;

28 (6) "Harm" means:

29 (A) Damage to property other than the product itself;

30 (B) Personal physical injury, illness, or death;

31 (C) Mental anguish or emotional harm; or

32 (D) Any loss of consortium or services or other loss deriving
33 from any type of harm described in subdivision (6)(A), (6)(B) or (6)(C);

34 (7) "Manufacturer" means:

35 (A) Any person who is engaged in a business to design, produce,
36 make, fabricate, construct, or remanufacture any product, or component part

1 of a product; or

2 (B) Any product seller not described in subdivision (7)(A),
 3 holding itself out as a manufacturer to the user of the product; except that
 4 any product seller who acts primarily as a wholesaler, distributor, or
 5 retailer of products may be a manufacturer with respect to a given product to
 6 the extent that such seller designs, produces, makes, fabricates, constructs,
 7 or remanufactures the product before its sale;

8 (8) "Person" means any individual, corporation, company, association,
 9 firm, partnership, society, joint stock company, or any other entity
 10 including any governmental entity or unincorporated association of persons;

11 (9) "Practical technological feasibility" means the technical and
 12 scientific knowledge relating to the safety of a product which is available,
 13 adequately demonstrated, and economically feasible for use by a product
 14 seller at the time of manufacture of a product;

15 (10) "Preponderance of the evidence" means that measure or degree of
 16 proof which, by the weight, credit, and value of the aggregate evidence on
 17 either side, establishes that it is more probable than not that a fact
 18 occurred or did not occur;

19 (11) "Product" means any thing possessing intrinsic value which is
 20 capable of delivery either as an assembled whole, as a component part or in
 21 fungible lots and is produced for introduction into trade or commerce; but
 22 such term does not include human tissue, blood and blood products, or organs;

23 (12)(A) "Product seller" means:

24 (i) A manufacturer;

25 (ii) A retailer; or

26 (iii) Other persons who, in the course of a business
 27 conducted for that purpose, sells, distributes, leases, installs, prepares,
 28 packages, labels, markets, repairs, maintains, or otherwise is involved in
 29 placing a product in the stream of commerce;

30 (B) "Product seller" does not mean:

31 (i) A seller of real property, unless that person is
 32 engaged in the sale of manufactured housing or in the mass production of
 33 dwellings;

34 (ii) A provider of professional services in any case in
 35 which the sale or use of a product is incidental to the transaction and the
 36 essence of the transaction is the furnishing of judgment, skill, or services;

1 or

2 (iii) Any person who:

3 (a) Acts in only a financial capacity with respect
4 to the sale of the product;

5 (b) Is not a manufacturer, wholesaler, distributor,
6 or retailer; and

7 (c) Leases a product, without having a reasonable
8 opportunity to inspect and discover defects in the product, under a lease
9 arrangement in which the selection, possession, maintenance, and operation of
10 the product are controlled by a person other than the lessor;

11 (13) "Retailer" means a person to whom a consumer product is delivered
12 or sold for the purpose of sale or distribution by such person to a consumer;
13 and

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

18
19 16-127-502. Effect on other law.

20 (a) Except as excluded under subsection (b), any civil action brought
21 against a manufacturer or other product seller for harm caused by a product
22 is a product liability action and is governed by the provisions of this
23 subchapter. This subchapter is intended to govern any civil action for harm
24 caused by a product, including any action which before the effective date of
25 this subchapter would have been based on any of the following theories:

26 (1) Strict liability in tort;

27 (2) Negligence;

28 (3) Breach of express or implied warranty;

29 (4) Failure to discharge a duty to warn or instruct;

30 (5) Misrepresentation, concealment, or nondisclosure; or

31 (6) Any other theory that is the basis for an award of damages
32 for harm caused by a product.

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

35 (1) Harm caused to a product itself;

36 (2) Damage to property under a breach of warranty theory if

1 prohibited by the Uniform Commercial Code;

2 (3) Commercial loss, including incidental and consequential
3 damages in a commercial setting; or

4 (4) Commercial risks that are the subject of a contract between
5 the manufacturer or a seller and a buyer. Suits described in subdivisions
6 (b)(1), (2), (3), and (4) shall be governed by the Uniform Commercial Code.

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

10
11 16-127-503. Responsibility of product seller.

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

14 (A) The claimant establishes by a preponderance of the
15 evidence that:

16 (i) The product was unreasonably unsafe in
17 construction;

18 (ii) The product was unreasonably unsafe in design;

19 (iii) The product was unreasonably unsafe because
20 the manufacturer failed to provide adequate warnings or instructions about a
21 danger connected with the product or about the proper use of the product; or

22 (iv) The product was unreasonably unsafe because the
23 product did not conform to an express warranty made by the manufacturer with
24 respect to the product; and

25 (B) The claimant establishes by a preponderance of the
26 evidence that:

27 (i) The defendant was the manufacturer of the
28 particular product unit that caused the claimant's harm; and

29 (ii) That the unreasonably unsafe aspect of the
30 product was the proximate cause of the harm complained of by the claimant.

31 (2) A court may not submit a product liability action to the
32 trier of fact unless the court has determined that sufficient evidence has
33 been admitted to allow a reasonable person, by a preponderance of the
34 evidence, to make the determinations described in subdivision (a)(1).

35 (3) In any product liability action, a product seller is not
36 liable to a claimant if the aspect of the product alleged to have caused the

1 claimant's harm complied in material respects, at the time of manufacture,
2 with standards, conditions, or specifications established, adopted, or
3 approved by a federal or state statute or by an agency of the federal or
4 state government responsible for the design, formulation, labeling,
5 packaging, performance, or approval of the product, unless there is clear and
6 convincing evidence that the defendant intentionally and fraudulently
7 withheld from or misrepresented to the agency information known to be
8 material and relevant to the harm in question.

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

12 (1) From the design specifications or performance standards of
13 the manufacturer; or

14 (2) From otherwise identical units of the same product line.

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

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

19 (B) An alternative design was within practical
20 technological feasibility at the time of manufacture and would have provided:

21 (i) Equivalent or better safety with respect to
22 all hazards associated with use of the product; and

23 (ii) Better safety with respect to the particular
24 hazard which allegedly caused the harm of the claimant; and

25 (C) The alternative design would not have had any adverse
26 effects on:

27 (i) The effectiveness with which the product
28 performs its intended function; or

29 (ii) The desirability of the product to the person
30 who uses or consumes it.

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

33 (A) The likelihood that the product would cause harm of
34 the type alleged by the claimant, and the seriousness of that harm;

35 (B) Any burdens on the manufacturer to adopt a product
36 with a safer design that would have prevented that harm; and

1 (C) Whether, at the time of manufacture, the design
2 conformed with the generally accepted industry custom and practice for the
3 design of the same or similar products.

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

6 (A) An unavoidably dangerous aspect of the product;

7 (B) An inherent characteristic of the product that would
8 be recognized by the ordinary person who uses or consumes the product with
9 the ordinary knowledge common to the community; or

10 (C) An aspect of the product that was, at the time of
11 manufacture, in compliance in all material respects with standards or
12 specifications established, adopted, or approved by a federal or state
13 statute or by an agency of the federal or state government responsible for
14 the design, formulation, packaging, performance, or approval of the product.

15 (d)(1) A product may be considered unreasonably unsafe because of the
16 failure of the product seller to provide adequate warnings or instructions
17 about a danger connected with the product or about the proper use of the
18 product if:

19 (A) At the time of the manufacture of the product the
20 manufacturer:

21 (i) Knew or, in the exercise of reasonable care,
22 should have known about a danger connected with the product that caused the
23 claimant's harm; and

24 (ii) Failed to provide the warnings or instructions
25 that a person exercising reasonable care would have provided with respect to
26 the danger which caused the harm alleged by the claimant, given the
27 likelihood that the product would cause harm of the type alleged by the
28 claimant and given the seriousness of the harm, unless those warnings or
29 instructions, if provided, would not have materially affected the conduct of
30 the product user; or

31 (B) Subject to subdivision (d)(3), the warnings or
32 instructions pertaining to the product were not provided to the product user.

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

36 (i) The failure to warn or instruct about a danger

1 that is obvious;

2 (ii) Product misuse; or

3 (iii) An alteration or modification of the product
4 that does not constitute reasonably anticipated conduct on the part of the
5 user of the product.

6 (B) As used in subdivision (d)(2), "a danger that is
7 obvious" means a danger, including a danger that is an inherent
8 characteristic of a product, of which a reasonably prudent user or consumer
9 of a product would have been aware without warning or instruction or that
10 would be recognized by the original person who uses or consumes the product
11 with the ordinary knowledge common to the community.

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

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

17 (A) The manufacturer provided those warnings to a person
18 who could reasonably have been expected to assure that action would be taken
19 to avoid the harm or that the risk of the harm would be explained to the
20 actual product user;

21 (B) The product involved is one that may legally be used
22 only by or under the supervision of a class of experts, and the manufacturer
23 employed means reasonably calculated to make warnings or instructions
24 available to the using or supervisory expert. As used in this subsection
25 (d), the expression "means reasonably calculated to make warnings or
26 instructions available" does not require actual, personal notice to the
27 expert where such personal notice would be impossible or impracticable;

28 (C) The product was used in a work place, and warnings or
29 instructions were provided to the employer of the claimant, because there was
30 no practical and feasible means of transmitting them directly to the
31 claimant; or

32 (D) The product was sold as a component or material to be
33 incorporated into another product, warnings or instructions were provided to
34 the manufacturer's immediate buyer, and the claimant was exposed to the
35 component or material after it was incorporated or converted into another
36 product.

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

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

5 (B) Conforms to the requirements of a federal or state
 6 statute or agency regulation or the conditions of the approval of a product
 7 by a federal or state agency that prescribes the form and language of the
 8 warning or instruction.

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

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

14 (B) This express warranty proved to be untrue; and

15 (C) Had the representation been true, the claimant would
 16 not have been harmed.

17 (2) As used in subsection (e), "material fact" means any
 18 specific characteristic or quality of the product, but does not include a
 19 general opinion about, or praise of, the product or its quality.

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

23
 24 16-127-504. Responsibility of other product sellers.

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

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

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

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

1 evidence, to make the determination described in subsection (a).

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

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

13 (3) A retailer, or other person as defined in § 16-127-502
14 (12)(A) is not subject to liability under this subchapter if the retailer or
15 such other person sells the product in its original retail container without
16 alteration.

17
18 16-127-505. Concert of action.

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

24
25 16-127-506. Subsequent remedial measures.

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

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

32 (1) Proving ownership, control, or feasibility of precautionary
33 measures, if controverted; or

34 (2) Impeachment.

35
36 16-127-507. Expert Opinion.

In an action governed by this subchapter, expert technical, scientific, or medical opinion shall not be admitted unless such opinion:

(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.

16-127-508. 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) Subsections (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 a product liability action involving products which may be commenced under any other law.