

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.

State of Arkansas

83rd General Assembly

Regular Session, 2001

A Bill

SENATE BILL 449

By: Senators Fitch, Brown, Bisbee, Wilkinson, Hunter, Horn, Whitaker, B. Johnson, Baker

For An Act To Be Entitled

THE CIVIL JUSTICE REFORM ACT OF 2001

Subtitle

THE CIVIL JUSTICE REFORM ACT OF 2001

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

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

Chapter 127 Civil Justice Reform Act of 2001

Subchapter 1 - General Provisions

16-127-101. Short Title.

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

Subchapter 2 - Joint and several liability abolished

16-127-201. 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 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)(A) "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;

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

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

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

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

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

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

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

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

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

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

Subchapter 3 - Double recoveries eliminated

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

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

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

(A) The United States Social Security Act;

(B) Any state or federal income replacement, disability, workers'

compensation, or other act designed to provide partial or full wage or income replacement;

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

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

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

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

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

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

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

(1) Any past damages for:

1 (A) Medical and other costs of health care;
 2 (B) Other economic loss; and
 3 (C) Noneconomic loss; and
 4 (2) Any future damages and the periods over which they will
 5 accrue, on an annual basis, for each of the following types of damages:

6 (A) Medical and other costs of health care;
 7 (B) Other economic loss; and
 8 (C) Noneconomic loss.

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

15 16 Subchapter 4 - Punitive Damages

17
18 16-127-401. The General Assembly finds and declares that:

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

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

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

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

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

34 (6) Current procedures for the award of punitive damages do not
 35 properly protect those accused of serious wrongdoing nor provide sufficient
 36 guidance for the imposition of these penalties; and

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

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

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

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

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

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

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

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

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

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

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

(b) The plaintiff must specifically plead either;

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

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

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

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

10
11 16-127-404. Procedure for Award of Punitive Damages.

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

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

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

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

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

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

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

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

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

36 (4) The financial condition of the defendant;

1 (5) All the cost of litigation;

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

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

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

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

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

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

17
18 16-127-405. Standard of Proof.

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

25
26 16-127-406. Guidelines for Awards.

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

33
34 16-127-407. Availability of Punitive Damages.

35 Nothing contained in this subchapter is to be construed as creating any
36 claim for punitive damages which is not now present under the laws of the

1 State of Arkansas.

3 Subchapter 5 - Product Liability

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

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

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

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

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

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

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

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

27 (6) "Harm" means:

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

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

30 (C) Mental anguish or emotional harm; or

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

33 (7) "Manufacturer" means:

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

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

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

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

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

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

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

(i) A manufacturer;

(ii) A retailer; or

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

(B) "Product seller" does not mean:

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

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

(iii) Any person who:

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

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

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

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

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

16-127-502. Effect on other law.

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

(1) Strict liability in tort;

(2) Negligence;

(3) Breach of express or implied warranty;

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

(5) Misrepresentation, concealment, or nondisclosure; or

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

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

(1) Harm caused to a product itself;

(2) Damage to property under a breach of warranty theory if prohibited by the Uniform Commercial Code;

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

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

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

16-127-503. Responsibility of product seller.

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

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

(i) The product was unreasonably unsafe in construction;

(ii) The product was unreasonably unsafe in design;

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

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

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

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

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

(2) A court may not submit a product liability action 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 determinations described in subdivision (a)(1).

(3) In any product liability action, a product seller is not liable to a claimant if the aspect of the product alleged to have caused the claimant's harm complied in material respects, at the time of manufacture,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (C) Whether, at the time of manufacture, the design

conformed with the generally accepted industry custom and practice for the design of the same or similar products.

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

(A) An unavoidably dangerous aspect of the product;

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

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

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

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

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

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

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

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

(i) The failure to warn or instruct about a danger that is obvious;

(ii) Product misuse; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (C) Had the representation been true, the claimant would
 14 not have been harmed.

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

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

21
 22 16-127-504. Responsibility of other product sellers.

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

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

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

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

36 (c)(1) In determining whether a product seller is subject to liability

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

16-127-505. 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".

16-127-506. 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.

16-127-507. Expert Opinion.

In any 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

1 qualified in the relevant discipline; and

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

5
6 16-127-508. Limitations on Actions.

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

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

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

19 (d) This subchapter does not extend the limitations period within which
20 a product liability action involving products which may be commenced under any
21 other law.