

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**

A Bill

HOUSE BILL 1397

4 **By: Representatives D. Wood and Young**

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For An Act To Be Entitled

8 *"AN ACT TO REQUIRE THAT MOTOR VEHICLES WHOSE TITLES ARE*
9 *DESIGNATED AS 'DAMAGED' OR 'PREVIOUS DAMAGE' PURSUANT TO*
10 *ACT 614 OF 1993 BE INCLUDED IN THE SCOPE OF THE ARKANSAS*
11 *PRODUCTS LIABILITY ACT, HEREIN ENACTED; AND FOR OTHER*
12 *PURPOSES."*

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Subtitle

15 *"AN ACT TO REQUIRE DESIGNATED 'DAMAGED' OR 'PREVIOUS*
16 *DAMAGE' VEHICLES BE INCLUDED IN THE SCOPE OF THE ARKANSAS*
17 *PRODUCTS LIABILITY ACT."*

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

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21 *SECTION 1. DEFINITIONS. In this act:*

22 *(1) "Damaged Vehicle" means a motor vehicle which has an Arkansas*
23 *certificate of title marked or designated as "Damaged" or "Previous Damage"*
24 *under the provisions of Act 614 of 1993.*

25 *(2) "Claimant" means a party seeking relief, including a plaintiff,*
26 *counter-claimant, or cross-claimant.*

27 *(3) "Loss" includes court costs and other reasonable expenses,*
28 *reasonable attorney fees, and any reasonable damages.*

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

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

1 (6) "Products liability action" means any action against a manufacturer
2 or seller for recovery of damages arising out of personal injury, death, or
3 property damage allegedly caused by a defective product or a damaged vehicle
4 whether the action is based in strict tort liability, strict products
5 liability, negligence, misrepresentation, breach of express or implied
6 warranty, or any other theory or combination of theories.

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

9 (A) would have prevented or significantly reduced the risk of the
10 claimant_s personal injury, property damage, or death without substantially
11 impairing the product_s utility;

12 (B) was economically and technologically feasible at the time the
13 product left the control of the manufacturer or seller by the application of
14 existing or reasonably achievable scientific knowledge.

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

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19 SECTION 2. MANUFACTURER_S DUTY TO INDEMNIFY.

20 (a) A manufacturer shall indemnify and hold harmless a seller against
21 loss arising out of a products liability action, except for any loss caused by
22 the seller_s negligence, intentional misconduct, or other act or omission,
23 such as negligently modifying or altering the product, for which the seller is
24 independently liable.

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

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

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

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

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

35 (e) A seller eligible for indemnification under this act shall give

1 reasonable notice to the manufacturer of a product claimed in a petition or
2 complaint to be defective, unless the manufacturer has been served as a party
3 or otherwise has actual notice of the action.

4 (f) A seller is entitled to recover from the manufacturer court costs
5 and other reasonable expenses, reasonable attorney fees, and any reasonable
6 damages incurred by the seller to enforce the seller_s right to
7 indemnification under this Act.

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9 SECTION 3. INHERENTLY UNSAFE PRODUCTS.

10 In a products liability action, a manufacturer or seller shall not be
11 liable if:

12 (1) the product is inherently unsafe and the product is known to
13 be unsafe by the ordinary consumer who consumes the product with the ordinary
14 knowledge common to the community; and

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

19 (3) the product is a damaged vehicle, and the claimed liability
20 is for failure of the repaired previous damage.

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22 SECTION 4. DESIGN DEFECTS.

23 (a) In a products liability action in which a claimant alleges a design
24 defect, the burden is on the claimant to prove by a preponderance of the
25 evidence that:

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

27 (2) the defect was a proximate cause of the personal injury,
28 property damage, or death for which the claimant seeks recovery.

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

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

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

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6 SECTION 5. FIREARMS AND AMMUNITION. (a) In a products liability
7 action brought against a manufacturer or seller of a firearm or ammunition
8 that alleges a design defect in the firearm or ammunition, the burden is on
9 the claimant to prove, in addition to any other elements that the claimant
10 must prove, that:

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

14 (2) the defective design was a proximate cause of the personal
15 injury, property damage, or death.

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

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21 SECTION 6. PRODUCTS LIABILITY: MANUFACTURING EQUIPMENT.

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

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

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

34 (d) This Act does not extend the limitations period within which a
35 products liability action involving manufacturing equipment may be commenced

1 under any other law.

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

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

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

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

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16 SECTION 10. If any provisions of this act or the application thereof to
17 any person or circumstance is held invalid, the invalidity shall not affect
18 other provisions or applications of the act which can be given effect without
19 the invalid provisions or application, and to this end the provisions of this
20 act are declared to be severable.

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

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/s/Doug Wood, et al

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As Engrossed: 2/9/93 2/15/93 4/5/93

HB 1397

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