

CHAPTER 5

S.B. No. 4

AN ACT

relating to products liability.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 82 to read as follows:

CHAPTER 82. PRODUCTS LIABILITY

Sec. 82.001. *DEFINITIONS. In this chapter:*

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

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

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

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

Sec. 82.002. *MANUFACTURER'S DUTY TO INDEMNIFY. (a) A manufacturer shall indemnify and hold harmless a seller against loss arising out of a products liability action, except for any loss caused by the seller's negligence, intentional misconduct, or other act or omission, such as negligently modifying or altering the product, for which the seller is independently liable.*

(b) For purposes of this section, "loss" includes court costs and other reasonable expenses, reasonable attorney fees, and any reasonable damages.

(c) Damages awarded by the trier of fact shall, on final judgment, be deemed reasonable for purposes of this section.

(d) For purposes of this section, a wholesale distributor or retail seller who completely or partially assembles a product in accordance with the manufacturer's instructions shall be considered a seller.

(e) The duty to indemnify under this section:

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

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

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

(g) A seller is entitled to recover from the manufacturer court costs and other reasonable expenses, reasonable attorney fees, and any reasonable damages incurred by the seller to enforce the seller's right to indemnification under this section.

Sec. 82.004. *INHERENTLY UNSAFE PRODUCTS. (a) In a products liability action, a manufacturer or seller shall not be liable if:*

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

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

(b) For purposes of this section, the term “products liability action” does not include an action based on manufacturing defect or breach of an express warranty.

Sec. 82.005. **DESIGN DEFECTS.** (a) In a products liability action in which a claimant alleges a design defect, the burden is on the claimant to prove by a preponderance of the evidence that:

(1) there was a safer alternative design; and

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

(b) In this section, “safer alternative design” means a product design other than the one actually used that in reasonable probability:

(1) would have prevented or significantly reduced the risk of the claimant’s personal injury, property damage, or death without substantially impairing the product’s utility; and

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

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

(d) This section does not apply to:

(1) a cause of action based on a toxic or environmental tort as defined by Sections 33.013(c)(2) and (3); or

(2) a drug or device, as those terms are defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321).

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

Sec. 82.006. **FIREARMS AND AMMUNITION.** (a) In a products liability action brought against a manufacturer or seller of a firearm or ammunition that alleges a design defect in the firearm or ammunition, the burden is on the claimant to prove, in addition to any other elements that the claimant must prove, that:

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

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

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

SECTION 2. Subchapter A, Chapter 16, Civil Practice and Remedies Code, is amended by adding Section 16.012 to read as follows:

Sec. 16.012. **PRODUCTS LIABILITY: MANUFACTURING EQUIPMENT.** (a) In this section:

(1) “Claimant,” “products liability action,” “seller,” and “manufacturer” have the meanings assigned by Section 82.001.

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

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

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

(d) This section does not reduce a limitations period that applies to a products liability action involving manufacturing equipment that accrues before the end of the limitations period under this section.

(e) This section does not extend the limitations period within which a products liability action involving manufacturing equipment may be commenced under any other law.

(f) This section applies only to the sale and not to the lease of manufacturing equipment.

SECTION 3. (a) Sections 82.002 through 82.004, Civil Practice and Remedies Code, as added by this Act, apply only to a cause of action commenced on or after the effective date of this Act. A cause of action commenced before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for that purpose.

(b) Sections 16.012, 82.005, and 82.006, Civil Practice and Remedies Code, as added by this Act, apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for that purpose.

(c) Section 82.001, Civil Practice and Remedies Code, as added by this Act, takes effect on the effective date of this Act.

SECTION 4. This Act takes effect September 1, 1993.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on January 28, 1993, by a viva-voce vote; Senate concurred in House amendments on February 24, 1993, by a viva-voce vote; passed the House, with amendments, on February 23, 1993, by a non-record vote.

Approved March 4, 1993.

Effective Sept. 1, 1993.