

LEGISLATIVE HISTORY CHECKLIST
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(Products liability---exclusion---
from strict liability)

NJSA: 2A:58C-8

LAWS OF: 1995 CHAPTER: 141

BILL NO: S1495

SPONSOR(S): Cardinale and Kyrillos

DATE INTRODUCED: October 3, 1994

COMMITTEE: ASSEMBLY: Insurance
SENATE: Commerce

AMENDED DURING PASSAGE: Yes Amendments during passage
First reprint enacted denoted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: June 12, 1995
SENATE: December 15, 1994

DATE OF APPROVAL: June 29, 1995

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:
SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:
REPORTS: Yes
HEARINGS: No

See newspaper clippings--attached:
"Lawsuit reform now law," 6-30-95, Home News.
"Whitman signs lawsuit--reform laws," 6-30-95, Asbury Park Press.

974.90 Verniero, Peter.
L514 Report to the governor on the subject of tort reform.
1994a September 13, 1994. Office of the Governor, 1994.

→ on the internet:
www.njstatelib.org/cyberdesk/digidox/digidox2.htm

KBG:pp

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P.L.1995, CHAPTER 141, approved June 29, 1995
1994 Senate No. 1495 (First Reprint)

1 **AN ACT** concerning tort reform and liability relative to the
2 manufacture or sale of unreasonably unsafe products and
3 supplementing Title 2A of the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the
6 State of New Jersey:

7 1. As used in this act:

8 "Manufacturer" means (1) any person who designs, formulates,
9 produces, creates, makes, packages, labels or constructs any
10 product or component of a product; (2) a product seller with
11 respect to a given product to the extent the product seller
12 designs, formulates, produces, creates, makes, packages, labels or
13 constructs the product before its sale; (3) any product seller not
14 described in paragraph (2) which holds itself out as a
15 manufacturer to the user of the product; or (4) a United States
16 domestic sales subsidiary of a foreign manufacturer if the foreign
17 manufacturer has a controlling interest in the domestic sales
18 subsidiary.

19 "Product liability action" means any claim or action brought by
20 a claimant for harm caused by a product, irrespective of the
21 theory underlying the claim, except actions for harm caused by
22 breach of an express warranty.

23 "Product seller" means any person who, in the course of a
24 business conducted for that purpose: sells; distributes; leases;
25 installs; prepares or assembles a manufacturer's product
26 according to the manufacturer's plan, intention, design,
27 specifications or formulations; blends; packages; labels; markets;
28 repairs; maintains or otherwise is involved in placing a product in
29 the line of commerce. The term "product seller" does not
30 include:

31 (1) A seller of real property; or

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

36 (3) Any person who acts in only a financial capacity with
37 respect to the sale of a product.

38 2. a. In any product liability action against a product seller
39 ¹[where the manufacturer has not been named a defendant]¹, the
40 product seller may file an affidavit certifying the correct
41 identity of the manufacturer of the product which allegedly
42 caused the injury, death or damage.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:
¹ Senate SCM committee amendments adopted November 10, 1994.

1 b. Upon filing the affidavit pursuant to subsection a. of this
2 section, the product seller shall be relieved of all strict liability
3 claims, subject to the provisions set forth in subsection d. of this
4 section. Due diligence shall be exercised in providing the
5 plaintiff with the correct identity of the manufacturer or
6 manufacturers.

7 c. The product seller shall be ¹[strictly liable] subject to strict
8 liability¹ if ¹[the] :

9 (1) The¹ identity of the manufacturer given to the plaintiff by
10 the product seller was incorrect. Once the correct identity of the
11 manufacturer has been provided, the product seller shall
12 again be relieved of all strict liability claims, subject to
13 subsection d. of this section ¹; or

14 (2) The manufacturer has no known agents, facility, or other
15 presence within the United States; or

16 (3) The manufacturer has no attachable assets or has been
17 adjudicated bankrupt and a judgment is not otherwise recoverable
18 from the assets of the bankruptcy estate¹.

19 d. A product seller shall be liable if:

20 (1) The product seller has exercised some significant control
21 over the design, manufacture, packaging or labeling of the
22 product relative to the alleged defect in the product which
23 caused the injury, death or damage; or

24 (2) The product seller ¹[had actual knowledge] knew or should
25 have known¹ of the defect in the product which caused the injury,
26 death or damage or the plaintiff can affirmatively demonstrate
27 that the product seller was in possession of facts from which a
28 reasonable person would conclude that the product seller had or
29 should have had knowledge of the alleged defect in the product
30 which caused the injury, death or damage; or

31 (3) The product seller created the defect in the product which
32 caused the injury, death or damage.

33 e. The commencement of a product liability action based in
34 whole or in part on the doctrine of strict liability against a
35 product seller shall toll the applicable statute of limitations with
36 respect to manufacturers who have been identified pursuant to
37 the provisions of subsection a. of this section.

38 3. This act shall take effect immediately and shall apply to
39 causes of action which occur on or after the effective date of
40 this act.

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45 Provides exclusion from strict liability for product sellers in
46 product liability actions.

1 section. Due diligence shall be exercised in providing the
2 plaintiff with the correct identity of the manufacturer or
3 manufacturers.

4 c. The product seller shall be strictly liable if the identity of
5 the manufacturer given to the plaintiff by the product seller was
6 incorrect. Once the correct identity of the manufacturer has
7 been provided, the product seller shall again be relieved of all
8 strict liability claims, subject to subsection d. of this section.

9 d. A product seller shall be liable if:

10 (1) The product seller has exercised some significant control
11 over the design, manufacture, packaging or labeling of the
12 product relative to the alleged defect in the product which
13 caused the injury, death or damage; or

14 (2) The product seller had actual knowledge of the defect in
15 the product which caused the injury, death or damage or the
16 plaintiff can affirmatively demonstrate that the product seller
17 was in possession of facts from which a reasonable person would
18 conclude that the product seller had or should have had
19 knowledge of the alleged defect in the product which caused the
20 injury, death or damage; or

21 (3) The product seller created the defect in the product which
22 caused the injury, death or damage.

23 e. The commencement of a product liability action based in
24 whole or in part on the doctrine of strict liability against a
25 product seller shall toll the applicable statute of limitations with
26 respect to manufacturers who have been identified pursuant to
27 the provisions of subsection a. of this section.

28 3. This act shall take effect immediately and shall apply to
29 causes of action which occur on or after the effective date of
30 this act.

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33 STATEMENT

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35 This bill is intended to reduce the litigation costs borne by
36 innocent retailers in product liability actions. In these actions, it
37 is common for plaintiffs' attorneys to sue product sellers as well
38 as product manufacturers, even though the product sellers may
39 have had nothing to do with the product defect. The sellers are
40 named in suits in an attempt to find deep pockets. By limiting
41 the innocent product sellers' exposure to loss, it is anticipated
42 that insurance premiums and litigation costs will be reduced
43 commensurately.

44 It provides that if the manufacturer of the product alleged to
45 have caused the injury, death or damage has not been named as a
46 defendant in the action, the product seller may file an affidavit
47 certifying the correct identity of the manufacturer. Then, upon
48 the filing of the affidavit, the product seller would be relieved of
49 all strict liability claims against him. However, the product
50 seller would be liable if:

51 (1) the product seller exercised significant control over the
52 design, manufacture, packaging or labeling of the product
53 relative to the alleged defect in the product;

54 (2) the product seller had actual knowledge of the defect in

1 the product which caused the injury, death or damage, or the
2 plaintiff can affirmatively demonstrate that the product seller
3 was in possession of facts from which a reasonable person would
4 conclude that the product seller had or should have had that
5 knowledge; or

6 (3) the product seller created the defect.

7 The bill provides that the product seller may again be strictly
8 liable if the identity of the manufacturer given by the product
9 seller was incorrect.

10 The bill further provides that due diligence must be exercised
11 by the product seller in providing the plaintiff with the correct
12 identity of the manufacturer.

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17 Provides exclusion from strict liability for product sellers in
18 product liability actions.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

[FIRST REPRINT]
SENATE, No. 1495

STATE OF NEW JERSEY

DATED: MAY 11, 1995

The Assembly Insurance Committee reports favorably Senate, No. 1495(1R).

This bill provides that in a products liability action against a product seller, the product seller may file an affidavit certifying the correct identity of the manufacturer. Due diligence must be exercised by the product seller in providing the plaintiff with the correct identity of the manufacturer. Upon the filing of the affidavit, the product seller would be relieved of all strict liability claims against him. The product seller would again be subject to strict liability if:

- (1) The identity of the manufacturer given by the product seller was incorrect. Once the correct identity of the manufacturer has been provided, the product seller would again be relieved of all strict liability claims; or
- (2) The manufacturer has no known agents, facility or other presence within the United States; or
- (3) The manufacturer has no attachable assets or has been adjudicated bankrupt and a judgment is not otherwise recoverable from the assets of the bankruptcy estate.

Notwithstanding the foregoing, the product seller would be liable if he:

- (1) exercised significant control over the design, manufacture, packaging or labeling of the product relative to the alleged defect in the product;
- (2) knew or should have known of the defect in the product which caused the injury, death or damage, or the plaintiff can affirmatively demonstrate that the product seller was in possession of facts from which a reasonable person would conclude that the product seller had or should have had that knowledge; or
- (3) created the defect.

The bill provides that the statute of limitations in regard to a manufacturer identified by the product seller would toll with the commencement of a strict liability product action against the product seller.

The bill would take effect immediately and apply to causes of action which occur on or after that effective date.

This bill is identical to Assembly, No. 999(1R).

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 1495

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 10, 1994

The Senate Commerce Committee reports favorably and with committee amendments Senate, No. 1495.

This bill, as amended, provides that in a products liability action against a product seller, the product seller may file an affidavit certifying the correct identity of the manufacturer. Due diligence must be exercised by the product seller in providing the plaintiff with the correct identity of the manufacturer. Upon the filing of the affidavit, the product seller would be relieved of all strict liability claims against him. The product seller would again be subject to strict liability if:

(1) The identity of the manufacturer given by the product seller was incorrect. Once the correct identity of the manufacturer has been provided, the product seller would again be relieved of all strict liability claims; or

(2) The manufacturer has no known agents, facility or other presence within the United States; or

(3) The manufacturer has no attachable assets or has been adjudicated bankrupt and a judgment is not otherwise recoverable from the assets of the bankruptcy estate.

Notwithstanding the foregoing, the product seller would be liable if he:

(1) exercised significant control over the design, manufacture, packaging or labeling of the product relative to the alleged defect in the product;

(2) knew or should have known of the defect in the product which caused the injury, death or damage, or the plaintiff can affirmatively demonstrate that the product seller was in possession of facts from which a reasonable person would conclude that the product seller had or should have had that knowledge; or

(3) created the defect.

The bill provides that the statute of limitations in regard to a manufacturer identified by the product seller would toll with the commencement of a strict liability product action against the product seller.

The bill would take effect immediately and apply to causes of action which occur on or after that effective date.



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001 CARL GOLDEN
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TRENTON, N.J. 08625
Release: THURSDAY
JUNE 29, 1995

Governor Christie Whitman signed a package of five tort reform bills today that bring common sense and equity to the state's civil litigation system. The laws fulfill the Governor's 1994 promise to revamp the system and provide more access to the courts.

"The legislation enacted today strikes a fair balance between preserving a person's right to sue and controlling nuisance suits that drive up the cost of doing business in New Jersey" said Governor Whitman. "Both consumers and businesses will benefit from these reforms."

Sponsors of the following tort reform bills are Senators Joseph Kyrillos, Jr. (R-Monmouth) and Gerald Cardinale (R-Bergen):

1. Certificate of Merit - Senate Bill No. 1493

This bill establishes new procedures with regard to the filing of malpractice or other professional-negligence actions against certain certified professionals in which damages are sought for personal injuries, wrongful death, or property damage. That list includes accountants, architects, attorneys, dentists, engineers, physicians, chiropractors, podiatrists, and nurses and health care facilities.

The bill requires that within 60 days after a complaint has been filed, the plaintiff must provide the defendant with an affidavit from another professional supporting the claim that the care, knowledge or treatment provided by the defendant was not up to professional standards.

2. Joint-And-Several Liability - Senate Bill No. 1494

The bill provides that a defendant who is less than 60% responsible for the plaintiff's injury is liable only for that percent of the total award that corresponds to his or her percent of fault. A party that is 60% or more responsible is jointly and severally liable for the entire award.

The bill also modifies the "environmental exception." The bill provides that pure joint-and-several liability shall apply in environmental-tort cases, but only if the negligence or fault of the parties in the case cannot be apportioned.

3. Retail-Sellers' Liability - Senate Bill No. 1495

This bill immunizes product sellers from liability for injuries caused by manufacturer's defects in products that they have sold.

Carl Golden/Becky Taylor
Thursday - 6/29/95

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4. The Punitive Damages Act - Senate Bill No. 1496

The bill provides for a cap on punitive damages. A punitive-damage award may not exceed \$350,000 or five times compensatory damages, whichever is greater. In addition, there is an exclusion from the cap for the following causes of action: bias crimes, the Law Against Discrimination, AIDS testing disclosure, sexual abuse, and civil actions against defendants who were convicted of drunk-driving violations.

5. Health-Care Providers' Liability -- Medical Devices - Senate Bill No. 1497

This bill holds health-care providers responsible for defective medical devices that they provide, based only on their own negligence.

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