

SENATE, No. 771

STATE OF NEW JERSEY
212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:
Senator GERALD CARDINALE
District 39 (Bergen)

SYNOPSIS

Modifies the tort liability of product sellers.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning the tort liability of product sellers and
2 amending P.L.1995, c.141.

3

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

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7 1. Section 2 of P.L.1995, c.141 (C.2A:58C-9) is amended to
8 read as follows:

9 2. a. In any product liability action against a product seller, the
10 product seller may file an affidavit certifying the correct identity of
11 the manufacturer of the product which allegedly caused the injury,
12 death or damage.

13 b. [Upon filing the affidavit pursuant to subsection a. of this
14 section, the] A product seller shall be relieved of all strict liability
15 claims and all claims for breach of implied warranty of
16 merchantability, subject to the provisions set forth in subsection d.
17 of this section. [Due diligence shall be exercised in providing the
18 plaintiff with the correct identity of the manufacturer or
19 manufacturers.]

20 c. The product seller shall be subject to strict liability and breach
21 of implied warranty of merchantability if:

22 (1) [The identity of the manufacturer given to the plaintiff by the
23 product seller was incorrect. Once the correct identity of the
24 manufacturer has been provided, the product seller shall again be
25 relieved of all strict liability claims, subject to subsection d. of this
26 section; or] (~~Deleted by amendment, P.L. , c. .~~)

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

29 (3) The manufacturer has no attachable assets or has been
30 adjudicated bankrupt and a judgment is not otherwise recoverable
31 from the assets of the bankruptcy estate, except, with respect to this
32 paragraph, the product seller shall not be subject to strict liability or
33 breach of implied warranty of merchantability for more than five
34 years after acting as the product seller in regard to the plaintiff.

35 d. A product seller shall be liable if:

36 (1) The product seller has exercised some significant control
37 over the design, manufacture, packaging or labeling of the product
38 relative to the alleged defect in the product which caused the injury,
39 death or damage; or

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

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.

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1 that the product seller had or should have had knowledge of the

1 alleged defect in the product which caused the injury, death or
2 damage; or

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

5 e. The commencement of a product liability action based in
6 whole or in part on the doctrine of strict liability against a product
7 seller shall toll the applicable statute of limitations with respect to
8 manufacturers who have been identified pursuant to the provisions
9 of subsection a. of this section.

10 (cf: P.L.1995, c.141, s.2)

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12 2. This act shall take effect immediately.

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STATEMENT

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17 This bill modifies the current law concerning a product seller's
18 liability for product liability. Under current law, a product seller
19 becomes subject to strict liability or breach of implied warranty of
20 merchantability if the manufacturer of the product has no attachable
21 assets or has been adjudicated bankrupt and a judgment is not
22 otherwise recoverable from the assets of the bankruptcy estate.
23 This bill modifies that provision by providing that a product seller
24 in those circumstances shall not be so liable if more than five years
25 have passed since acting as a product seller in regard to the
26 plaintiff. Originally the provision was included because it was
27 argued that the product seller had insurance to cover the loss.
28 However, the product seller may not have such coverage or may
29 have recently purchased the business and faces product liability
30 claims only recently filed under the discovery rule with no record of
31 the previous owner's insurers. In addition, extensive product
32 liability claims which bankrupt manufacturers and remain not fully
33 paid will surely bankrupt product sellers which have fewer assets
34 and which had no responsibility for the damages.