ASSEMBLY, No. 3581

STATE OF NEW JERSEY

216th LEGISLATURE

INTRODUCED SEPTEMBER 11, 2014

Sponsored by:
Assemblyman MICHAEL PATRICK CARROLL
District 25 (Morris and Somerset)

SYNOPSIS

Establishes immunity from liability for manufacturers and sellers in certain product liability actions.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning immunity in certain product liability actions and amending P.L.1987, c.197.

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

1. Section 4 of P.L.1987, c.197 (C.2A:58C-4) is amended to read as follows:

4. In any product liability action the manufacturer or seller shall not be liable for harm caused by a failure to warn if the product contains an adequate warning or instruction or, in the case of dangers a manufacturer or seller discovers or reasonably should discover after the product leaves its control, if the manufacturer or seller provides an adequate warning or instruction. An adequate product warning or instruction is one that a reasonably prudent person in the same or similar circumstances would have provided with respect to the danger and that communicates adequate information on the dangers and safe use of the product, taking into account the characteristics of, and the ordinary knowledge common to, the persons by whom the product is intended to be used, or in the case of prescription drugs, taking into account the characteristics of, and the ordinary knowledge common to, the prescribing physician. If the warning or instruction given in connection with a drug or device or food or food additive has been approved or prescribed by the federal Food and Drug Administration under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040, 21 U.S.C. s. 301 et seq. or the "Public Health Service Act," 58 Stat. 682, 42 U.S.C. s. 201 et seq., **[**a rebuttable presumption shall arise that the warning or instruction is adequate**]** <u>the manufacturer or seller shall be immune from liability</u>. For purposes of this section, the terms "drug", "device", "food", and "food additive" have the meanings defined in the "Federal Food, Drug, and Cosmetic Act."
(cf: P.L.1987, c.197, s.4)

2. This act shall take effect immediately and shall apply prospectively to product liability actions instituted on or after the effective date of this act.

STATEMENT

This bill establishes immunity from liability for a manufacturer or seller for harm caused by a failure to warn, where a warning or instruction given in connection with a drug, device, food, or food

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 <u>thus</u> is new matter.

additive has been approved or prescribed by the federal Food and Drug Administration.

Under current law, a manufacturer or seller is not liable for harm caused by a failure to warn if the product contains an adequate warning or instruction, or if the manufacturer or seller provides an adequate warning or instruction for dangers a manufacturer or seller discovers or reasonably should discover after the product leaves its control. In a case in which a warning or instruction is given in connection with a drug, device, food, or food additive that has been approved or prescribed by the federal Food and Drug Administration, there is a rebuttable presumption that the warning or instruction is adequate.

A warning or instruction is adequate if it is one that a reasonably prudent person in the same or similar circumstances would have provided with respect to the danger and that communicates adequate information on the dangers and safe use of the product, taking into account the characteristics of, and the ordinary knowledge common to, the persons by whom the product is intended to be used, or in the case of prescription drugs, taking into account the characteristics of, and the ordinary knowledge common to, the prescribing physician.

In the view of the sponsor, the presumption in favor of a manufacturer or seller does not adequately protect a manufacturer or seller from unnecessarily expending resources in response to a failure to warn claim.

It is the sponsor’s belief that by establishing immunity from liability, rather than a presumption, for a failure to warn claim in which a warning or instruction was approved by the federal Food and Drug Administration, fewer claims will be filed and the unnecessary expenditure of resources by a manufacturer or seller will be better prevented.

The bill would take effect immediately and would apply prospectively to product liability claims filed after the effective date of the bill.