

SECOND REGULAR SESSION

HOUSE BILL NO. 3104

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE OVERCAST.

6736H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 537.760 and 537.765, RSMo, and to enact in lieu thereof two new sections relating to products liability claims.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 537.760 and 537.765, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 537.760 and 537.765, to read as follows:

537.760. **1.** As used in sections 537.760 to 537.765, the term "products liability
2 claim" means a claim or portion of a claim in which the plaintiff seeks relief in the form of
3 damages on a theory that the defendant is strictly liable for such damages because:

4 (1) The defendant, wherever situated in the chain of commerce, transferred a product
5 in the course of his business; and

6 (2) The product was used in a manner reasonably anticipated; and

7 (3) Either or both of the following:

8 (a) The product was then in a defective condition unreasonably dangerous when put
9 to a reasonably anticipated use, and the plaintiff was damaged as a direct result of such
10 defective condition as existed when the product was sold; or

11 (b) The product was then unreasonably dangerous when put to a reasonably
12 anticipated use without knowledge of its characteristics, and the plaintiff was damaged as a
13 direct result of the product being sold without an adequate warning.

14 **2. A product may be in a defective condition under subdivision (3) of subsection**
15 **1 of this section if it:**

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

16 **(1) Contains a manufacturing defect because the product departs from its**
 17 **intended design even though all possible care was exercised in the preparation and**
 18 **marketing of the product; or**

19 **(2) Is defective by design because the foreseeable risks of harm posed by the**
 20 **product could have been significantly reduced or avoided by the adoption of a**
 21 **reasonable alternative design by the manufacturer or seller without substantially**
 22 **impairing the product's utility, the same alternative design was economically and**
 23 **technologically feasible at the time the product left the control of the manufacturer or**
 24 **seller by the application of existing or reasonably achievable scientific knowledge, and**
 25 **the omission of the alternative design renders the product not reasonably safe.**

537.765. 1. Contributory fault, as a complete bar to plaintiff's recovery in a products
 2 liability claim, is abolished. The doctrine of pure comparative fault shall apply to products
 3 liability claims as provided in this section.

4 2. Defendant may plead and prove the fault of the plaintiff **or any other person or**
 5 **entity as an affirmative defense in any products liability claim, including all strict liability**
 6 **claims.** Any fault chargeable to the plaintiff shall diminish proportionately the amount
 7 awarded as compensatory damages but shall not bar recovery.

8 3. For purposes of this section, "fault" ~~is limited to:~~

9 ~~(1) The failure to use the product as reasonably anticipated by the manufacturer;~~

10 ~~(2) Use of the product for a purpose not intended by the manufacturer;~~

11 ~~(3) Use of the product with knowledge of a danger involved in such use with~~
 12 ~~reasonable appreciation of the consequences and the voluntary and unreasonable exposure to~~
 13 ~~said danger;~~

14 ~~(4) Unreasonable failure to appreciate the danger involved in use of the product or the~~
 15 ~~consequences thereof and the unreasonable exposure to said danger;~~

16 ~~(5) The failure to undertake the precautions a reasonably careful user of the product~~
 17 ~~would take to protect himself against dangers which he would reasonably appreciate under~~
 18 ~~the same or similar circumstances; or~~

19 ~~(6) The failure to mitigate damages.]~~ **means any actionable breach of legal duty or**
 20 **act or omission proximately causing or contributing to cause in any way the accident or**
 21 **the harm for which recovery of damages is sought, including negligence in all of its**
 22 **degrees, comparative negligence, assumption of risk, strict liability, breach of express or**
 23 **implied warranty of a product, products liability and misuse, or modification or abuse**
 24 **of a product.**

25 4. In a products liability claim, the liability of each defendant for damages is
 26 several only and is not joint. Each defendant is liable only for the amount of damages
 27 allocated to that defendant in direct proportion to that defendant's percentage of fault.

28 **5. In assessing percentages of fault, the trier of fact shall consider the fault of all**
29 **persons or entities that contributed to the accident or harm, regardless of whether the**
30 **person or entity was, or could have been, named as a party to the suit. The relative**
31 **degree of fault of the plaintiff, and the relative degrees of fault of all defendants and**
32 **nonparties, shall be determined and apportioned as a whole at one time by the trier of**
33 **fact.**

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