

LEGISLATIVE BILL 665

Approved by the Governor April 5, 1978

Introduced by Banking, Commerce and Insurance Committee, DeCamp, 40, Chmn.; Schmit, 23; Duis, 39; Labedz, 5; Mills, 44; Murphy, 17; Goodrich, 20; Bereuter, 24; Reutzell, 15; Nichol, 48; Hasebroock, 18; Kahle, 37; Cope, 36; Savage, 10; Hefner, 19; Kremer, 34; Kelly, 35; Stoney, 4; Lamb, 43; Marvel, 33; George, 16; Keyes, 3; R. Maresh, 32; Rumery, 42; Venditte, 7; Clark, 47; Carsten, 2

AN ACT relating to product liability actions; to authorize such actions as prescribed; to define a term; to amend sections 25-702, 25-1151, and 27-407, Reissue Revised Statutes of Nebraska, 1943; to require reports as prescribed; to provide immunity; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. As used in sections 1 to 5 of this act, unless the context otherwise requires: Product liability action shall mean any action brought against a manufacturer, seller, or lessor of a product, regardless of the substantive legal theory or theories upon which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formulation, installation, preparation, assembly, testing, packaging, or labeling of any product, or the failure to warn or protect against a danger or hazard in the use, misuse, or intended use of any product, or the failure to provide proper instructions for the use of any product.

Sec. 2. (1) All product liability actions shall be commenced within four years next after the date on which the death, injury, or damage complained of occurs.

(2) Notwithstanding subsection (1) of this section or any other statutory provision to the contrary, any product liability action, except one governed by section 2-725, Uniform Commercial Code, shall be commenced within ten years after the date when the product which allegedly caused the personal injury, death, or damage was first sold or leased for use or consumption.

(3) The limitations contained in subsection (1) or (2) of this section shall not be applicable to

indemnity or contribution actions brought by a manufacturer or seller of a product against a person who is or may be liable to such manufacturer or seller for all or any portion of any judgment rendered against a manufacturer or seller.

(4) Notwithstanding the provisions of subsections (1) and (2) of this section, any cause of action or claim which any person may have on the effective date of this act may be brought not later than two years following such date.

Sec. 3. No product liability action based on the doctrine of strict liability in tort shall be commenced or maintained against any seller or lessor of a product which is alleged to contain or possess a defective condition unreasonably dangerous to the buyer, user, or consumer unless the seller or lessor is also the manufacturer of the product or the part thereof claimed to be defective.

Sec. 4. In any product liability action based upon negligent or defective design, testing, or labeling, proof establishing that such design, testing, or labeling was in conformity with the generally recognized and prevailing state of the art in the industry at the time the specific product involved in the action was first sold to any person not engaged in the business of selling such product shall be a defense. State of the art as used in this section shall be defined as the best technology reasonably available at the time.

Sec. 5. That section 25-702, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-702. The Except for product liability actions, the causes of action so united must affect all the parties to the action, and not require different places of trial.

Sec. 6. That section 25-1151, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1151. In all actions brought to recover damages for injuries to a person or to his property caused by the negligence or act or omission giving rise to strict liability in tort of another, the fact that the plaintiff may have been guilty of contributory negligence shall not bar a recovery when the contributory negligence of the plaintiff was slight and the negligence or act or omission giving rise to strict liability in tort of the

defendant was gross in comparison, but the contributory negligence of the plaintiff shall be considered by the jury in the mitigation of damages in proportion to the amount of contributory negligence attributable to the plaintiff; and all questions of negligence or act or omission giving rise to strict liability in tort and contributory negligence shall be for the jury.

Sec. 7. That section 27-407, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

27-407. When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment. Negligence or culpable conduct, as used in this rule, shall include, but not be limited to, the manufacture or sale of a defective product.

Sec. 8. Every insurance company doing business in this state which insures against product liability losses, unless otherwise provided by Chapter 44, shall make and file with the Department of Insurance, on or before April 1 of each year, a report for the year ending December 31 immediately preceding, upon a form to be prescribed and which may be furnished by the department, which form shall at least include the substance of the information as follows:

(1) The name of the insurance company;

(2) The kind or lines of insurance which the company writes and the states in which the company issues policies providing insurance against product liability losses;

(3) The amount of product liability insurance premium collected in Nebraska and nationwide beginning with calendar year 1978 on policies insuring only against product liability losses, on policies including insurance against product liability losses when the premium is divisible and identifiable and policies for excess coverage on product liability losses indicating the premium allocated to Nebraska and the total nationwide premium;

(4) The amount of product liability insurance premium not shown in response to subdivision (3) of this section for insurance which includes coverage for product liability when the premium is not divisible but is allocated for experience purposes, for Nebraska only and nationwide;

(5) Information for product liability insurance experience allocated to Nebraska and for product liability insurance experience nationwide showing (a) total amount of earned premiums; (b) total amount of incurred losses including all loss adjustment expense; (c) amount of incurred losses including all loss adjustment expense represented by reserves other than incurred but not reported reserves; and (d) amount of reserves represented by incurred but not reported reserves together with the formula used to develop such incurred but not reported reserves and the allocation thereof to each state; and

(6) For any claim, loss, or action for bodily injury, death or property damage allocated to Nebraska experience when there has been a final judgment, a settlement in any amount, or a final disposition not resulting in a loss payment on behalf of the insured, information as to (a) each claim file number; (b) description of type of product involved in each claim; (c) rating classification code for the product involved in each claim; (d) date of occurrence from which each claim arose; (e) state or other jurisdiction wherein each claim was adjudicated, settled, or other disposition made; (f) date legal action commenced, if filed; (g) date and amount of final judgment or settlement, if any, and the number of plaintiffs or claimants involved in the disposition of the judgment or settlement together with the amount received by each such party; (h) date and basis for final disposition of each claim if no final judgment or settlement; (i) brief description of the occurrence out of which the claim arose; (j) total number of all claims; (k) total number of all claims closed without payments; (l) total number of claims closed with payments as a result of final judgment and total amount paid thereon; (m) total number of claims closed with payment based on a settlement prior to final judgment, if any suit filed, and total amount paid thereon; (n) total number of claims closed with payment based on a settlement prior to final judgment, and total amount paid thereon; (o) total number of suits filed; (p) total number of final verdicts or final judgments for defendants; (q) total number of final verdicts or final judgments for plaintiffs; and (r) such other information as the Department of Insurance may require.

Sec. 9. The Department of Insurance shall make the reports required under section 8 of this act available to the public in a manner which shall not reveal the names of any manufacturer, distributor, seller or other person involved.

Sec. 10. There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer making a report under section 8 of this act or any of its agents or employees, or the Department of Insurance or any of its employees, for any report or action taken by them pursuant to section 8 of this act.

Sec. 11. That original sections 25-702, 25-1151, and 27-407, Reissue Revised Statutes of Nebraska, 1943, are repealed.