

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 302**

BY SENATORS FERNS, MULLINS AND TAKUBO

[Introduced January 15, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §55-7-30, all relating to product liability actions; limitation of product liability  
 3 action against seller other than the manufacturer of the product except in certain  
 4 circumstances; and defining terms.

*Be it enacted by the Legislature of West Virginia:*

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 section, designated §55-7-30, to read as follows:

**ARTICLE 7: ACTIONS FOR INJURIES.**

**§55-7-30. Limitation on products liability actions; definitions.**

1 (a) Except as otherwise provided in this section, no product liability action may be brought  
 2 or maintained against a seller other than a manufacturer of the product.

3 (b) The provisions of subsection (a) do not apply if:

4 (1) The seller exercised substantial control over the aspect of the manufacture,  
 5 construction, design, formula, installation, preparation, assembly, testing, labeling, warnings or  
 6 instructions of the product that was a proximate cause of the harm for which recovery is sought;

7 (2) The seller altered, modified or installed the product after the product left the possession  
 8 of the manufacturer and the alteration, modification or installation was:

9 (A) Not authorized or requested by the manufacturer or not performed in compliance with  
 10 the directions or specifications of the manufacturer; and

11 (B) A proximate cause of the harm for which recovery is sought.

12 (3) The seller resold the product after the product's first sale for use or consumption and  
 13 the product was not in substantially the same condition as it was at the time the product left the  
 14 possession of the manufacturer;

15 (4) The seller failed to exercise reasonable and product-appropriate care in assembling,  
 16 maintaining, storing, transporting or repairing the product;

17 (5) The seller removed or failed to convey to the user or consumer of the product the

18 manufacturer's labels, warnings or instructions and such failure was a proximate cause of the  
19 harm for which recovery is sought;

20 (6) The seller made an express warranty regarding the product that was independent of  
21 any express warranty made by the manufacturer regarding the product, the product failed to  
22 conform to that express warranty by the seller and that failure was a proximate cause of the harm  
23 for which recovery is sought;

24 (7) The manufacturer cannot be identified or the manufacturer is not subject to service of  
25 process under the laws of the state; or

26 (8) The manufacturer has been adjudicated to be insolvent.

27 (c) As used in this section:

28 (1) "Manufacturer" means a person who designs, assembles, fabricates, produces,  
29 constructs or otherwise prepares a product or a component part of a product before the sale of  
30 the product to a user or consumer. The term does not include a seller who is not otherwise a  
31 manufacturer merely because the seller repackages the product or has placed his or her own  
32 brand or label on the product if the seller:

33 (A) Did not exercise substantial control as described in paragraph (A) of subsection 2; and

34 (B) Discloses the identity of the actual manufacturer of the product.

35 (2) "Product liability action" means any civil action brought against a manufacturer or seller  
36 of a product, regardless of the substantive legal theory or theories upon which the action is  
37 brought, for or on account of personal injury, death or property damage caused by or resulting  
38 from:

39 (A) The manufacture, construction, design, formula, installation, preparation, assembly,  
40 testing, packaging, labeling, marketing or sale of a product;

41 (B) The failure to warn or protect against a danger or hazard in the use, misuse or  
42 unintended use of a product; or

43 (C) The failure to provide proper instructions for the use of a product.

44           ~~(3) “Seller” means a person, including, without limitation, a manufacturer, wholesaler,~~  
45 ~~distributor or retailer, who is engaged in the business of selling or leasing any product for resale,~~  
46 ~~use or consumption.~~

NOTE: This purpose of this bill is to limit products liability actions against a seller other than the manufacturer except in limited circumstances and to define terms.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.