

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 58

BY SENATOR FERNS

[Introduced February 8, 2017; 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 §55-7-31, relating to product liability actions; limiting product liability action
 3 against seller other than the manufacturer of the product except in certain circumstances;
 4 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 §55-7-31, to read as follows:

ARTICLE 7: ACTIONS FOR INJURIES.

§55-7-31. 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 and the changed condition of the product was a proximate cause
 15 of the harm for which recovery is sought;

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

18 (5) The seller removed or failed to convey to the user or consumer of the product the
19 manufacturer's labels, warnings or instructions and such failure was a proximate cause of the
20 harm for which recovery is sought;

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

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

27 (8) The manufacturer has been adjudicated to be insolvent and a judgment is not
28 otherwise recoverable from the assets of the manufacturer's estate.

29 (c) As used in this section:

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

35 (A) Did not exercise substantial control as described in subdivision (1), subsection (b) of
36 this section; and

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

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

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

- 44 (B) The failure to warn or protect against a danger or hazard in the use, misuse or
45 unintended use of a product; or
- 46 (C) The failure to provide proper instructions for the use of a product.
- 47 (3) "Seller" means a person, including, without limitation, a manufacturer, wholesaler,
48 distributor or retailer, who is engaged in the business of selling or leasing any product for resale,
49 use or consumption.

NOTE: The 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.