

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2850

BY DELEGATES SHOTT, O'NEAL, SOBONYA AND MOORE)

[Originating in 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 defining terms; and providing an effective date.

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; innocent seller.

1 (a) As used in this section:

2 (1) "Manufacturer" means a person who designs, assembles, fabricates, produces,
3 constructs or otherwise prepares a product or a component part of a product before the sale of
4 the product to a user or consumer.

5 (2) "Person" means a natural person, partnership, firm, association or corporation.

6 (3) "Product" means any tangible object, article or good, including attachments,
7 accessories and component parts.

8 (4) "Product liability action" means any civil action brought against a manufacturer or seller
9 of a product, based in whole or in part on the doctrine of strict liability in tort, for or on account of
10 personal injury, death or property damage caused by or resulting from:

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

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

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

16 (5) "Seller" means a wholesaler, distributor, retailer, or other individual or entity, other than
17 a manufacturer, that is regularly engaged in the selling of a product whether the sale is for resale

18 by the purchaser or is for use or consumption by the ultimate consumer. "Seller" includes a lessor
19 or bailor regularly engaged in the business of the lease or bailment of the product.

20 (b) No product liability action shall be maintained against a seller, unless:

21 (1) The seller had actual knowledge of the defect in the product that was a proximate
22 cause of the harm for which recovery is sought;

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

26 (3) The seller altered, modified or installed the product after the product left the possession
27 of the manufacturer and the alteration, modification or installation was:

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

30 (B) A proximate cause of the harm for which recovery is sought;

31 (4) The seller made an express warranty regarding the product that was independent of
32 any express warranty made by the manufacturer regarding the product, the product failed to
33 conform to that express warranty by the seller and that failure was a proximate cause of the harm
34 for which recovery is sought;

35 (5) The seller resold the product after the product's first sale for use or consumption and
36 the product was not in substantially the same condition as it was at the time the product left the
37 possession of the manufacturer and the changed condition of the product was a proximate cause
38 of the harm for which recovery is sought;

39 (6) The seller failed to exercise reasonable and product-appropriate care in assembling,
40 maintaining, storing, transporting or repairing the product and such failure was a proximate cause
41 of the harm for which recovery is sought;

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

45 (8) The seller is a controlled subsidiary of a manufacturer, or the manufacturer is a
46 controlled subsidiary of the seller;

47 (9) The seller repackages the product or has placed his or her own brand name or label
48 on the product: *Provided*, That this does not include a seller, who is not otherwise a manufacturer,
49 who:

50 (A) Did not exercise substantial control as described in subdivision (2) of this subsection;
51 and

52 (B) Discloses the identity of the actual manufacturer of the product;

53 (10) The manufacturer cannot be identified, despite a good-faith exercise of due diligence,
54 to identify the manufacturer of the product;

55 (11) The manufacturer is not subject to service of process under the laws of the state;

56 (12) The manufacturer is insolvent in that the manufacturer is unable to pay its debts as
57 they become due in the ordinary course of business: *Provided*, That a manufacturer who has
58 been judicially declared insolvent or is no longer in existence through dissolution is conclusively
59 presumed for the purposes of this subdivision to be insolvent; or

60 (13) The court determines by clear and convincing evidence that the party asserting the
61 product liability action would be unable to enforce a judgment against the product manufacturer.

62 (c) The provisions of this section apply to any civil action involving a product that was sold
63 on or after the effective date of this said Enrolled House Bill 2850.

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