

SENATE BILL 283

IN THE SENATE

January 29, 1979	Introduced and referred to Committee on Judiciary.
February 19, 1979	Committee recommend bill, as amended.
Febraury 20, 1979	Printed and placed on members' desks.
February 21, 1979	Second reading, do pass.
February 22, 1979	Considered correctly engrossed.
February 23, 1979	Third reading, passed.

IN THE HOUSE

February 27, 1979	Introduced and referred to Committee on Judiciary.
March 19, 1979	Committee recommend bill, as amended, not concurred.
March 20, 1979	Report adopted.

IN THE SENATE

March 21, 1979	Returned from House, not concurred, as amended.
----------------	--

1 *Senate* BILL NO. *283* *Ludgerdal*
 2 INTRODUCED BY *Four Related Health Care*
 3 *McWilliams Hafferman Gray Daniel*
 4 *STUBBS* A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO PRODUCT
 5 LIABILITY; PROVIDING A STATUTE OF LIMITATIONS, AFFIRMATIVE *Dred*
 6 DEFENSES, AND LITIGATION PROCEDURES FOR PRODUCT LIABILITY
 7 SUITS."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Short title. [This act] may be cited as the
11 "Product Liability Act of 1979".

12 Section 2. Definitions. In [this act], unless the
13 context requires otherwise, the following definitions apply:

14 (1) "Manufacturer" means a person or entity who
 15 designs, assembles, fabricates, produces, constructs, or
 16 prepares a product or component part of a product prior to
 17 its sale to a user or consumer. The term includes a seller
 18 owned, in whole or significant part by the manufacturer or a
 19 seller owning the manufacturer in whole or significant part.

20 (2) "Product" means the individual product or any
21 component part of such product which is the subject of a
22 product liability suit.

23 (3) "Product liability suit" is a suit brought against
24 a manufacturer or seller of a product for damages for bodily
25 injury, death, or property damage caused by or resulting

1 from the manufacture, construction, design, formulation,
2 installation, preparation, assembly, testing, packaging,
3 labeling, sale, use, or consumption of a product, the
4 failure to warn or protect against a danger or hazard in the
5 use or misuse of the product, or the failure to provide
6 proper instructions for the use or consumption of any
7 product.

8 (4) "Reasonably foreseeable alteration, modification,
9 use, or consumption" means an alteration, modification, use,
10 or consumption of the product which is expected of an
11 ordinary and prudent purchaser, user, or consumer and which
12 should have been anticipated.

13 (5) "Seller" means a wholesaler, distributor,
14 retailer, or lessor engaged in the business of leasing any
15 product or selling any product for resale, use, or
16 consumption.

17 (6) "State of the art" means the technical,
18 mechanical, and scientific knowledge of manufacturing,
19 designing, testing, or labeling the same or similar products
20 which was in existence and reasonably feasible at the time
21 of manufacture.

22 Section 3. Affirmative defenses. (1) In any product
23 liability action, a defendant is not liable if the defendant
24 proves any of the following:

25 (a) The defect in the product resulted from inadequate

1 design or fabrication, and the plans or designs for the
2 product or the methods and techniques of manufacturing,
3 inspecting, testing, and labeling the product conformed to
4 the state of the art at the time the product was sold by the
5 defendant.

6 (b) The proximate cause of the incident giving rise to
7 the suit was an alteration or modification of the product
8 which was not reasonably foreseeable and was made by a
9 person other than the defendant subsequent to the time the
10 product was sold by the defendant.

11 (c) The proximate cause of the incident giving rise to
12 the suit was use or consumption of the product for a
13 purpose, manner, or activity other than that which was
14 reasonably foreseeable or contrary to any express and
15 adequate instructions or warnings appearing on or attached
16 to the product or on its original container or wrapping, if
17 the injured person knew or with the exercise of reasonable
18 and diligent care should have known of such instructions or
19 warnings.

20 (2) The defenses enumerated in this section are in
21 addition to and supplement any defenses available under the
22 common law.

23 Section 4. Application of comparative negligence law.
24 In any product liability action, the injured party's
25 contributory negligence is a defense to the extent stated in

1 the comparative negligence statutes of this state contained
2 in Title 27, chapter 1, part 7.

3 Section 5. Indemnification of seller -- tender of
4 defense. When, in any product liability action, the
5 manufacturer refuses to accept a tender of defense from the
6 seller, the manufacturer shall indemnify the seller for any
7 judgment rendered against the seller and shall also
8 reimburse the seller for reasonable attorneys' fees and
9 costs incurred by the seller in defending such action,
10 unless either of the following apply:

11 (1) The seller had knowledge of the defect in the
12 product.

13 (2) The seller altered, modified, or installed the
14 product, and such alteration, modification, or installation:

15 (a) was a substantial cause of the incident giving
16 rise to the suit; and

17 (b) was not authorized or requested by the
18 manufacturer or was not performed in compliance with the
19 directions or specifications of the manufacturer.

20 Section 6. Duty of prevailing plaintiff when seller
21 granted indemnity. (1) If a judgment is rendered in favor of
22 the plaintiff and a seller is granted indemnity against a
23 manufacturer, the plaintiff shall first attempt to satisfy
24 the judgment by levying execution upon the manufacturer in
25 this state or in the state where the manufacturer's

1 principal place of business is located and by making demand
2 upon any liability insurance carrier of the manufacturer
3 whose identity is known to plaintiff before attempting to
4 collect the judgment from the seller or the seller's
5 liability insurance carrier.

6 (2) The return of a writ of execution partially or
7 wholly unsatisfied or the failure of the manufacturer's
8 insurance carrier to pay the judgment upon demand
9 constitutes full compliance with the plaintiff's obligation
10 to attempt to collect from the manufacturer.

11 Section 7. Indemnification of manufacturer. (1) In any
12 product liability action, the seller of the product shall
13 indemnify the manufacturer for any judgment rendered against
14 the manufacturer and shall also reimburse the manufacturer
15 for reasonable attorneys' fees and costs incurred in
16 defending such action if:

17 (a) the seller provided the plans or specifications
18 for the manufacture or preparation of the product and such
19 plans or specifications were a substantial cause of the
20 product's alleged defect; and

21 (b) the product was manufactured in compliance with
22 and according to the plans or specifications of the seller.

23 (2) The provisions of subsection (1) do not apply if
24 the manufacturer had knowledge or with the exercise of
25 reasonable and diligent care should have had knowledge of

1 the defect in the product.

2 Section 8. Duty of prevailing plaintiff when
3 manufacturer granted indemnity. (1) When a judgment is
4 rendered in favor of the plaintiff and a manufacturer is
5 granted indemnity against a seller, the plaintiff shall
6 first attempt to satisfy the judgment by levying execution
7 upon the seller in this state or in the state where the
8 seller's principal place of business is located and by
9 making demand upon any liability insurance carrier of the
10 seller whose identity is known to plaintiff before
11 attempting to collect the judgment from the manufacturer or
12 manufacturer's liability insurance carrier.

13 (2) The return of a writ of execution partially or
14 wholly unsatisfied or the failure of the seller's insurance
15 carrier to pay the judgment upon demand constitutes full
16 compliance with the plaintiff's obligation to attempt to
17 collect from the seller.

18 Section 9. Contents of complaint -- amount of
19 recovery. In any product liability suit, no dollar amount
20 may be included in the complaint. The complaint shall ask
21 for reasonable damages.

22 Section 10. Evidence of state of the art -- industry
23 standards or postaccident modification. In any product
24 liability suit, the following are not admissible as direct
25 evidence of a defect:

SB 283

1 (1) evidence of advancements or changes in the state
2 of the art subsequent to the time the product was sold by
3 the defendant; or

4 (2) evidence of any change made in the design or
5 methods of manufacturing or testing the product or any
6 similar product subsequent to the time the product was sold
7 by the defendant.

8 Section 11. Limitation. A product liability suit as
9 defined in subsection (3) of [section 2] must be commenced
10 and prosecuted within 3 years from the time the action
11 accrues. No product liability suit may be commenced and
12 prosecuted more than 8 years after the product was sold for
13 use or consumption, unless the cause of action is based upon
14 the negligence of the manufacturer or seller or a breach of
15 an express warranty provided by the manufacturer or seller.

-End-

SENATE BILL NO. 283

INTRODUCED BY LOME, KOLSTAD, HAZELBAKER, THIESSEN,

MATHERS, UNDERDAL, McCALLUM, HAFFERMAN, STORY,

HIMSL, BOYLAN, ROSKIE, DOVER, STEPHENS

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO PRODUCTS LIABILITY; AND PROVIDING A STATUTE OF LIMITATIONS, AFFIRMATIVE DEFENSES, AND LITIGATION PROCEDURES FOR PRODUCT LIABILITY SUITS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [This act] may be cited as the "Product Liability Act of 1979."

Section 2. Definitions. In [this act] unless the context requires otherwise the following definitions apply:

(1) "Manufacturer" means a person or entity who designs, assembles, fabricates, produces, constructs or prepares a product or component part of a product prior to its sale to a user or consumer. The term includes a seller owned in whole or significant part by the manufacturer or a seller owning the manufacturer in whole or significant part.

(2) "Product" means the individual product or any component part of such product which is the subject of a product liability suit.

(3) "Product liability suit" is a suit brought against

a manufacturer or seller of a product for damages for bodily injury, death, or property damage caused by or resulting from the manufacture, construction, design, formulation, installation, preparation, assembly, testing, packaging, labeling, sale, use, or consumption of a product; the failure to warn or protect against a danger or hazard in the use or misuse of the product; or the failure to provide proper instructions for the use or consumption of any product.

(4) "Reasonably foreseeable alteration, modification, user, or consumption" means an alteration, modification, user, or consumption of the product which is expected of an ordinary and prudent purchaser, user, or consumer and which should have been anticipated.

(5) "Seller" means a wholesaler, distributor, retailer, or lessor engaged in the business of leasing any product or selling any product for resale, use, or consumption.

(6) "State of the art" means the technical, mechanical, and scientific knowledge of manufacturing, designing, testing, or labeling the same or similar products which was in existence and reasonably feasible at the time of manufacture.

Section 3. Affirmative defenses. (1) In any product liability action a defendant is not liable if the defendant

1 proves any of the following:

2 (a) The defect in the product resulted from inadequate
3 design or fabrication, and the plans or designs for the
4 product or the methods and techniques of manufacturing,
5 inspecting, testing, and labeling the product conformed to
6 the state of the art at the time the product was sold by the
7 defendant.

8 (b) The proximate cause of the incident giving rise to
9 the suit was an alteration or modification of the product
10 which was not reasonably foreseeable and was made by a
11 person other than the defendant subsequent to the time the
12 product was sold by the defendant.

13 (c) The proximate cause of the incident giving rise to
14 the suit was use or consumption of the product for a
15 purpose, manner, or activity other than that which was
16 reasonably foreseeable or contrary to any express and
17 adequate instructions or warnings appearing on or attached
18 to the product or on its original container or wrapping, if
19 the injured person knew or with the exercise of reasonable
20 and diligent care should have known of such instructions or
21 warnings.

22 (2) The defenses enumerated in this section are in
23 addition to and supplement any defenses available under the
24 common law.

25 Section 4. Application of comparative negligence laws.

1 in any product liability action, the injured party's
2 contributory negligence is a defense to the extent stated in
3 the comparative negligence statutes of this state contained
4 in Title 27, Chapter 1, part 7.

5 Section 5. Indemnification of seller or tender of
6 defenses. When in any product liability action, the
7 manufacturer refuses to accept a tender of defense from the
8 seller, the manufacturer shall indemnify the seller for any
9 judgment rendered against the seller and shall also
10 reimburse the seller for reasonable attorneys' fees and
11 costs incurred by the seller in defending such action,
12 unless either of the following apply:

13 (1) The seller had knowledge of the defect in the
14 product.

15 (2) The seller altered, modified, or installed the
16 product, and such alteration, modification, or installation
17 (a) was a substantial cause of the incident giving
18 rise to the suit; and

19 (b) was not authorized or requested by the
20 manufacturer or was not performed in compliance with the
21 directions or specifications of the manufacturer.

22 Section 6. Duty of prevailing plaintiff when seller
23 granted indemnity. (1) If a judgment is rendered in favor
24 of the plaintiff and a seller is granted indemnity against a
25 manufacturer, the plaintiff shall first attempt to satisfy

1 the judgment by levying execution upon the manufacturer in
 2 this state or in the state where the manufacturer's
 3 principal place of business is located and by making demand
 4 upon any liability insurance carrier of the manufacturer
 5 whose identity is known to plaintiff before attempting to
 6 collect the judgment from the seller or the seller's
 7 liability insurance carriers

8 (2) The return of a writ of execution partially or
 9 wholly unsatisfied or the failure of the manufacturer's
 10 insurance carrier to pay the judgment upon demand
 11 constitutes full compliance with the plaintiff's obligation
 12 to attempt to collect from the manufacturer.

13 Section 7. Indemnification of manufacturer. (1) In
 14 any product liability action the seller of the product
 15 shall indemnify the manufacturer for any judgment rendered
 16 against the manufacturer and shall also reimburse the
 17 manufacturer for reasonable attorneys' fees and costs
 18 incurred in defending such action if:

19 (a) the seller provided the plans or specifications
 20 for the manufacture or preparation of the product and such
 21 plans or specifications were a substantial cause of the
 22 product's alleged defects; and

23 (b) the product was manufactured in compliance with
 24 and according to the plans or specifications of the seller.

25 (2) The provisions of subsection (1) do not apply if

1 the manufacturer had knowledge or with the exercise of
 2 reasonable and diligent care should have had knowledge of
 3 the defect in the product.

4 Section 8. Buty of prevailing plaintiff when
 5 manufacturer granted indemnity. (1) When a judgment is
 6 rendered in favor of the plaintiff and a manufacturer is
 7 granted indemnity against a seller the plaintiff shall
 8 first attempt to satisfy the judgment by levying execution
 9 upon the seller in this state or in the state where the
 10 seller's principal place of business is located and by
 11 making demand upon any liability insurance carrier of the
 12 seller whose identity is known to plaintiff before
 13 attempting to collect the judgment from the manufacturer or
 14 manufacturer's liability insurance carrier.

15 (2) The return of a writ of execution partially or
 16 wholly unsatisfied or the failure of the seller's insurance
 17 carrier to pay the judgment upon demand constitutes full
 18 compliance with the plaintiff's obligation to attempt to
 19 collect from the seller.

20 Section 9. Contents of complaint. amount of
 21 recovery in any product liability suit no dollar amount
 22 may be included in the complaint. The complaint shall ask
 23 for reasonable damages.

24 Section 10. Evidence of state of the art. industry
 25 standards or postaccident modifications in any product

1 ~~liability suit; the following are not admissible as direct~~
2 ~~evidence of a defect:~~

3 ~~(1) evidence of advancements or changes in the state~~
4 ~~of the art subsequent to the time the product was sold by~~
5 ~~the defendant; or~~

6 ~~(2) evidence of any change made in the design or~~
7 ~~methods of manufacturing or testing the product or any~~
8 ~~similar product subsequent to the time the product was sold~~
9 ~~by the defendant.~~

10 Section 1. Limitation ~~FOR~~ ACTIONS INVOLVING PRODUCT
11 LIABILITY. ~~A product liability suit as defined in subsection~~
12 ~~(3) of section 2 must be commenced and prosecuted within 3~~
13 ~~years from the time the action accrues. No product liability~~
14 ~~suit may be commenced and prosecuted more than 8 years after~~
15 ~~the product was sold for use or consumption, unless the~~
16 ~~cause of action is based upon the negligence of the~~
17 ~~manufacturer or seller or a breach of an express warranty~~
18 ~~provided by the manufacturer or seller.~~

-End-