

Search

ABOUT MEMBERS EVENTS & MEETINGS
NEWS

DID YOU KNOW? Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

Product Liability Act

Summary

The Product Liability Act adopts defenses to absolute liability, including defenses based upon misuse or alteration, state of the art at time of manufacture, compliance with government standards, inherent characteristics known to the ordinary person, unavoidably dangerous products, and provision of a warning to an appropriate third party. The Act limits the liability of nonmanufacturing sellers and prohibits enterprise liability by requiring the plaintiff to prove that the particular product that caused the plaintiff's harm was produced by the defendant manufacturer. The Act contains standards for admission of expert testimony and evidence of subsequent remedial measures.

The model bill includes many commonly enacted provisions, such as the provision limiting the liability of product sellers, and some provisions enacted in one or a few states, such as the provision limiting liability when the injured person was intoxicated or under the influence of an illegal drug. Each provision in this model bill is drafted so that it can be combined with both the definition section and the section defining the bill's effect on other laws to create a product liability bill. The model bill does not contain either a statute of limitations or a statute of repose. These are addressed in ALEC's model Statute of Limitation Reduction Act and model Ten Year Statute of Repose Act, which are included in this Source Book.

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Title.} This Act shall be known and may be cited as the Product Liability Act.

Section 2. {Definitions.} The following shall have the meaning set forth below, unless the context clearly requires otherwise:

(A) "Claimant" means any person who brings a product liability action, and if such an action is brought through or on behalf of an estate, the term includes the claimant's decedent, or if such an action is brought through or on behalf of a minor, the term includes the claimant's parent or guardian.

(B) "Design" means the intended or known physical and material characteristics of a product and shall include any intended or known formulation or content of the product and the usual result of the intended manufacturing or other process used to produce the product.

(C) "Harm" means:

(1) damage to property other than the product itself;

(2) personal physical injury, illness, or death;

(3) mental anguish or emotional harm; or

(4) any loss of consortium or services or other loss deriving from any type of harm described in Subsections (1), (2), or (3).

(D) "Manufacturer" means:

(1) any person who is engaged in a business to design, produce, make, fabricate, construct, or remanufacture any product (or component part of a product); or

(2) any product seller not described in Subsection (1) holding itself out as a manufacturer to the user of the product; except that any product seller who acts primarily as a wholesaler, distributor, or retailer of products may be a manufacturer with respect to a given product to the extent that such seller designs, produces, makes, fabricates, constructs, or remanufactures the product before its sale.

(E) "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity including any government entity or unincorporated association of persons.

(F) "Product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state, possessing intrinsic value which is capable of delivery either as an assembled whole or as a component part and is produced for introduction to trade or commerce; but such term does not include human tissue, blood and blood products, or organs.

(G) "Product seller" means:

(1) a manufacturer; or

ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda-underwritten by global corporations--includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

ALEC's Corporate Board

--in recent past or present

- AT&T Services, Inc.
- centerpoint360
- UPS
- Bayer Corporation
- GlaxoSmithKline
- Energy Future Holdings
- Johnson & Johnson
- Coca-Cola Company
- PhRMA
- Kraft Foods, Inc.
- Coca-Cola Co.
- Pfizer Inc.
- Reed Elsevier, Inc.
- DIAGEO
- Peabody Energy
- Intuit, Inc.
- Koch Industries, Inc.
- ExxonMobil
- Verizon
- Reynolds American Inc.
- Wal-Mart Stores, Inc.
- Salt River Project
- Altria Client Services, Inc.
- American Bail Coalition
- State Farm Insurance

For more on these corporations, search at www.SourceWatch.org.

(2) a person who, in the course of business conducted for that purpose, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or otherwise is involved in placing a product in the stream of commerce; but such term does not include:

(a) a seller of real property, unless that person is engaged in the sale of manufactured housing or in the mass production of dwellings;

(b) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(c) any person who:

(i) acts in only a financial capacity with respect to the sale of the product;

(ii) is not a manufacturer, wholesaler, distributor, or retailer; and

(iii) leases a product, without having a reasonable opportunity to inspect and discover defects in the product, under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor.

Section 3. {Effect on other laws.}

(A) Except as excluded under subsection (B), any civil action brought against a manufacturer or product seller for harm caused by a product is a product liability action and is governed by the provisions of the Act. This Act is intended to govern any civil action for harm caused by a product, including any action which before the effective date of the Act would have been based on any of the following theories:

(1) strict liability in tort;

(2) negligence;

(3) breach of express, implied, or statutorily established warranty;

(4) failure to discharge a duty to warn or instruct;

(5) misrepresentation, concealment, or nondisclosure; or

(6) any other common law theory or theory established by statute that is the basis for an award of damages for harm caused by a product.

(B) A product liability action does not include any civil action against a manufacturer or seller for:

(1) harm caused to a product itself;

(2) damage to property under a breach of warranty theory if prohibited by the Uniform Commercial Code;

(3) commercial loss, including incidental and consequential damages in commercial setting; or

(4) commercial risks that are the subject of a contract between the manufacturer or a seller and a buyer. Suits described in Subsections (1), (2), (3), and (4) shall be governed by the Uniform Commercial Code.

(C) In any product liability action, the product seller is not liable to a claimant for mental anguish or emotional harm in the absence of proof of related and contemporaneous personal physical injury, illness, or death.

Section 4. {Standards of liability.} In any product liability action, a manufacturer shall be liable to a claimant if and only if the claimant establishes by a preponderance of the evidence that:

(A) the product was unreasonably dangerous:

(1) in construction;

(2) because the product did not conform to an express warranty with respect to the product made by the manufacturer or product seller;

(3) in design; or

(4) because the manufacturer failed to provide adequate warnings or instructions;

(B) the defendant was the manufacturer of the particular product unit that caused the claimant's harm; and

(C) the unreasonably dangerous aspect of the product was the proximate cause of the harm complained of by the claimant.

Section 5. {Government standards.} In any product liability action, a manufacturer shall not be liable to a claimant if the aspect of the product alleged to have caused the claimant's harm complied in material respects, at the time of manufacture, with standards, conditions, or specifications established, adopted, or approved by a federal or state statute or by an agency of the federal or state government responsible for the design formulation, labeling, packaging, performance, or approval of the product, unless the claimant proves by clear and convincing evidence that the defendant intentionally and fraudulently withheld from or

misrepresented to the agency information known to be material and relevant to the harm in question.

Exposed

By the Center for
Media and Democracy
www.prwatch.org

Section 6. {Defectless products.} In any product liability action, a manufacturer shall not be liable for harm caused by an inherent characteristic of the product that would be recognized by the ordinary person who uses or consumes the product with the ordinary knowledge common to the community.

Section 7. {Misuse and modification.} In any product liability action, a manufacturer shall not be liable for harm caused by product misuse, alteration, or modification. Misuse, alteration, or modification shall include but is not limited to:

- (1) any use, alteration, or modification contrary to or inconsistent with a manufacturer's warnings or instruction; or
- (2) any use, alteration, or modification involving a risk of harm which was known or should have been known by the ordinary person who uses or consumes the product.

Section 8. {Construction defects.} In any product liability action, a product may be unreasonably dangerous because it is defective in manufacture or construction only if the claimant proves by a preponderance of the evidence that, when the product left the control of the manufacturer, it deviated in a material way from the established design specifications, formula, or performance standards of the manufacturer, or from the clear majority of otherwise identical units manufactured to the same design specifications, formula, or performance standards.

Section 9. {Express warranty.}

(A) In any product liability action, a product may be unreasonably dangerous because it did not conform to an express warranty only if the claimant proves by a preponderance of the evidence that:

- (1) the claimant (or a person acting on the claimant's behalf) reasonably relied on an express warranty made by the manufacturer about a material fact concerning the safety of the product;
- (2) this express warranty proved to be untrue; and
- (3) had the representation been true, the claimant would not have been harmed.

(B) "Express warranty" means any material, positive statement, affirmation of fact, promise, or description relating to a product, including any sample or model of a product.

(C) "Material fact" means any specific characteristic or quality of the product, but does not include a general opinion about, or praise of, the product or its quality.

(D) A manufacturer may be subject to liability under this section although it did not engage in negligent or fraudulent conduct in making the express warranty.

Section 10. {Knowledge of danger.} In any product liability action based upon defective design, a manufacturer shall not be liable unless the claimant proves by a preponderance of the evidence that, at the time the product left the manufacturer's control, the manufacturer knew or, in light of then existing scientific and technical knowledge, reasonably should have known of the danger that caused the claimant's harm.

Section 11. {Feasible alternative design.} In any product liability action based upon defective design, a manufacturer shall not be liable unless the claimant proves by a preponderance of the evidence that, at the time the product left the manufacturer's control, there existed a practical and technically feasible alternative design or formulation that would have prevented the harm without significantly impairing the usefulness or desirability of the product to the group of persons who are the intended users of the product.

Section 12. {Unavoidably unsafe products.} On any product liability action, a manufacturer is not liable to the claimant for harm caused by an unavoidably unsafe aspect of a drug, biological, or medical device unless the claimant proves by a preponderance of the evidence that:

(A) At the time the product left the manufacturer's control, the manufacturer knew or, in light of then existing and reasonably available scientific and technical knowledge, reasonably should have known of the danger that caused the claimant's harm; and

(B) The manufacturer failed to provide adequate warnings or instructions. An aspect of a product shall be considered unavoidably unsafe unless the danger could have been eliminated by use of an existing, practical, and technically feasible alternative design or formulation that would have prevented the harm without significantly impairing the usefulness or desirability of the product to the group of persons who are the intended users of the product. An adequate warning is either:

- (1) one that a reasonably prudent person in the same or similar circumstances would have provided with respect to the danger; or
- (2) one that conforms to the requirements of a federal or state statute or agency regulation or the conditions of the approval of a product by a federal or state agency that prescribes the form or language of the warning or instruction.

Section 13. {Assumption of the risk.}

(A) In any tort action, a defendant shall not be liable if the injured person assumed the risk of injury or harm to property. Assumption of the risk shall mean that the injured

person:

(1) knew of and appreciated the risk; and

(2) voluntarily exposed himself or herself to the danger that proximately caused the injury or damage.

(B) The elements of assumption of the risk may be inferred, as a matter of either fact or law, from circumstantial evidence that the injured person must have known and appreciated the risk and voluntarily encountered it.

Section 14. {Warnings.}

(A) In any product liability action, a manufacturer shall not be liable for harm caused by a failure to warn if the product contains an adequate warning or instruction. An adequate warning is either:

(1) one that a reasonably prudent person in the same or similar circumstances would have provided with respect to the danger; or

(2) one that conforms to the requirements of a federal or state statute or agency regulation or the conditions of the approval of a product by a federal or state agency that prescribes the form or language of the warning or instruction.

(B) In any product liability action based on the failure to provide adequate warnings or instructions, the manufacturer shall not be liable for failure to warn or instruct about:

(1) a danger that is an open and obvious risk or that is a matter of common knowledge;

(2) a product misuse, alteration or modification, which means:

(a) any use, alteration or modification contrary to or inconsistent with a manufacturer's warnings or instruction; or

(b) any use, alteration, or modification involving any risk of harm which was known or should have been known by the ordinary person who uses or consumes the product.

Section 15. {Warnings to third parties.} In any product liability action based on the failure to provide adequate warnings or instructions, the manufacturer shall not be liable if:

(A) The product was used in a workplace, and the manufacturer provided warnings or instructions to the employer of the claimant, because there was no practical and feasible means of transmitting them directly to the claimant;

(B) The product was sold as a component or material to be incorporated into another product, and the manufacturer provided warnings or instructions to the manufacturer's immediate buyer, and the claimant was exposed to the component or material after it was incorporated or converted into another product; or

(C) The product was one that may legally be used or dispensed only by or under the supervision of a class of experts and the manufacturer employed means reasonably calculated to make warnings or instructions available to the using or supervising expert. As used in this subsection, "means reasonably calculated to make warnings or instructions available" does not require actual, personal notice to the expert where such personal notice would be impossible or impracticable.

Section 16. {Liability of product sellers.}

(A) A product seller shall be liable for harm to the claimant caused by a product as if the product seller were the manufacturer of the product if:

(1) the manufacturer is not subject to service of process under the laws of the state; or

(2) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

(B) A product seller other than a manufacturer is liable to a claimant for the failure of the product involved in such action to conform to a warranty made with respect to such product if the claimant establishes by a preponderance of the evidence that:

(1) the product seller sold such product;

(2) the product seller made an express warranty as to such product independent of any express warranty made by a manufacturer as to such product;

(3) such product failed to conform to the product seller's warranty; and

(4) the failure of such product to conform to such warranty caused the harm complained of by the claimant.

(C) A product seller other than a manufacturer is liable to a claimant on the basis of negligence if the claimant establishes by a preponderance of the evidence that:

(1) the product seller sold the product involved in such action;

(2) the product seller did not exercise reasonable care:

(a) in assembling, inspecting, or maintaining such product; or

(b) in passing on warnings or instructions from such product's manufacturer about

the dangers and proper use of such product;

(3) such failure to exercise reasonable care was a proximate cause of the harm complained of by the claimant.

Section 17. {Alcohol and drug defense.} In any product liability action a manufacturer shall not be liable if:

(A) The claimant was under the influence of intoxicating alcohol or any non-over-the-counter drug which has not been prescribed by a physician for use by the claimant; and

(B) The claimant as a result of the influence of the alcohol or drug was more than 50 percent at fault for such claimant's harm.

Section 18. {Subsequent remedial measures.}

(A) In any product liability action, evidence of any measure taken by a manufacturer after the occurrence of a claimant's harm which, if taken previously, would have made the harm less likely to occur is not admissible to prove liability.

(B) Evidence described in Subsection (A) may be admitted only if necessary:

(1) to prove ownership, control, or feasibility of precautionary measures, if these issues are controverted; or

(2) for impeachment.

Section 19. {Expert opinion.} In any product liability action, expert technical, scientific, or medical opinion shall not be admitted unless:

(A) The expert is professionally qualified in the relevant discipline; and

(B) Such opinion is corroborated by other objective evidence which is consistent with generally accepted technical, medical, or scientific principles.

Section 20. {Concert of action.} In any product liability action, a manufacturer or product seller shall not be liable to the claimant on any theory of express or implied agreement among sellers, parallel behavior, or independent adherence to industrywide standards unless the claimant proves, by a preponderance of the evidence, that the seller engaged in "concert of action." "Concert of action" means the conscious and deliberate agreement to, acknowledgment of, and collaborative participation in wrongful conduct by two or more persons who do not have the relationship of master and servant, principal and agent, parent and subsidiary, affiliates, or employer and employee.

Section 21. {Severability clause.}

Section 22. {Repealer clause.}

Section 23. {Effective date.}

Were your laws repealed?

ALEC's Sourcebook of American State Legislation 1995

About Us and ALEC EXPOSED. The Center for Media and Democracy reports on corporate spin and government propaganda. We are located in Madison, Wisconsin, and publish www.PRWatch.org, www.SourceWatch.org, and now www.ALECexposed.org. For more information contact: editor@prwatch.org or 608-260-9713.

Center for Media and Democracy's quick summary:

Like the "Regulatory Compliance Congruity with Liability Act" in the ALEC EXPOSED documents, this bill makes it far easier for product manufacturers to escape liability for producing defective or dangerous products that injure or kill American consumers. It provides corporations with a variety of defenses and mitigating factors, and sets the bar much higher for consumers to prove wrongdoing.

Wisconsin Governor Scott Walker incorporated many elements of this Act into 2011 Wisconsin Act 2 (see Sec. 895.047)