House Engrossed

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 67

HOUSE BILL 2220

AN ACT

AMENDING SECTIONS 12-681 AND 12-683, ARIZONA REVISED STATUTES; AMENDING TITLE 12, CHAPTER 6, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-688; RELATING TO PRODUCT LIABILITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 12-681, Arizona Revised Statutes, is amended to read:

12-681. Definitions

In this article, unless the context otherwise requires:

1. "DEFECTIVE AND UNREASONABLY DANGEROUS" DOES NOT INCLUDE A FOOD PRODUCT THAT IS OTHERWISE FIT FOR HUMAN CONSUMPTION AND NOURISHMENT.

2. "FOOD PRODUCT" MEANS ANY PRODUCT THAT IS GROWN, PREPARED, PROVIDED, SERVED OR SOLD AND THAT IS PRIMARILY INTENDED FOR HUMAN CONSUMPTION AND NOURISHMENT.

~~1.~~ 3. "Manufacturer" means a person or entity ~~who~~ THAT designs, assembles, fabricates, produces, constructs or otherwise prepares a product or component part of a product ~~prior to~~ BEFORE its sale to a user or consumer, including a seller owned in whole or significant part by the manufacturer or a seller owning the manufacturer in whole or significant part.

~~2.~~ 4. "Product" means the individual product or any component part of ~~such~~ THE product ~~which~~ THAT is the subject of a product liability action.

~~3.~~ 5. "Product liability action" means any action 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, formula, installation, preparation, assembly, testing, packaging, labeling, sale, use or consumption of any 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.~~ 6. "Product safety analysis or review" means any investigation, inquiry, review, evaluation or other means by which a person or entity seeks to determine, calculate, predict, estimate, evaluate or report the safety or health effects of the use of any of its products, systems, services or processes. Product safety analysis or review includes an analysis or review by a component manufacturer of the safety and health effects of component parts in end products. A product safety analysis or review may be conducted by employees of the person or entity or by consultants engaged specifically to perform the analysis or review.

~~5.~~ 7. "Reasonable remedial measures" means actions taken as a result of a product safety analysis or review and intended to improve the safety of products, systems, services or processes or to lessen the likelihood of a safety-related accident. These actions include:

(a) Modifications to the product, system, service or process.

(b) Changes in quality assurance procedures or policies.

(c) Modifications made to the design or method of manufacturing, to manufacturing equipment or to the testing of the product, system, service or process.

(d) Changes or additions to training programs or safety education programs.

(e) Personnel or human resources measures related to the product, system, service or process.

(f) The use or modification of warnings, notices or changes to owner manuals and related materials.

(g) The recall of products.

~~6.~~ 8. "Reasonably foreseeable alteration, modification, use or consumption" means an alteration, modification, use or consumption of the product ~~which~~ THAT would be expected of an ordinary and prudent purchaser, user or consumer and ~~which~~ THAT an ordinary and prudent manufacturer should have anticipated.

~~7.~~ 9. "Seller" means a person or entity, including a wholesaler, distributor, retailer or lessor, THAT IS engaged in the business of leasing any product or selling any product for resale, use or consumption.

~~8.~~ 10. "State of the art" means the technical, mechanical and scientific knowledge of manufacturing, designing, testing or labeling the same or similar products ~~which~~ THAT was in existence and reasonably feasible for use at the time of manufacture.

Sec. 2. Section 12-683, Arizona Revised Statutes, is amended to read:

12-683. Affirmative defenses

In any product liability action, a defendant shall not be liable if the defendant proves that any of the following apply:

1. The defect in the product is alleged to result from inadequate design or fabrication, and if the plans or designs for the product or the methods and techniques of manufacturing, inspecting, testing and labeling the product conformed with the state of the art at the time the product was first sold by the defendant.

2. The proximate cause of the incident giving rise to the action was an alteration or modification of the product ~~which~~ THAT was not reasonably foreseeable, made by a person other than the defendant and subsequent to the time the product was first sold by the defendant.

3. The proximate cause of the incident giving rise to the action was a use or consumption of the product ~~which~~ THAT was for a purpose, in a manner or in an activity other than that which was reasonably foreseeable or was contrary to any express and adequate instructions or warnings appearing on or attached to the product or on its original container or wrapping, if the injured person knew or with the exercise of reasonable and diligent care should have known of such instructions or warnings.

4. THE PROXIMATE CAUSE OF THE INCIDENT OR INCIDENTS GIVING RISE TO THE ACTION WAS THE REPEATED CONSUMPTION OF A FOOD PRODUCT THAT IS NOT DEFECTIVE AND UNREASONABLY DANGEROUS IF CONSUMED IN REASONABLE QUANTITIES.

1 Sec. 3. Title 12, chapter 6, article 9, Arizona Revised Statutes, is
2 amended by adding section 12-688, to read:
3 12-688. Duty to warn; food products
4 THERE IS NO DUTY TO WARN A PURCHASER, USER OR CONSUMER OR ANY OTHER
5 PERSON, REGARDLESS OF AGE, THAT THE CONSUMPTION OF A FOOD PRODUCT THAT IS NOT
6 DEFECTIVE AND UNREASONABLY DANGEROUS MAY CAUSE HEALTH PROBLEMS IF CONSUMED
7 EXCESSIVELY.

APPROVED BY THE GOVERNOR APRIL 8, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIIL 9, 2004.