

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1560

2009 HOUSE STANDING COMMITTEE MINUTES

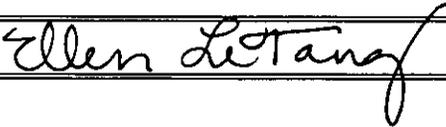
Bill/Resolution No. 1560

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 4, 2009

Recorder Job Number: 8642

Committee Clerk Signature 

Chairman Keiser: Opened the hearing on HB 1560 relating to the liability of nonmanufacturing sellers.

Jasper Schneider ~ Representative from District 21. Introduces the bill and Dennis Johnson.

Dennis Johnson ~ Licensed Attorney, MeKenzie County State's Attorney. See testimony

attachment.

Chairman Keiser: Could you explain on page two subsection three, the first part, what does that mean?

DJohnson: The statues of limitations are quite short, four years. Commercial products are four years and a law suit is brought three years and 10 months after the injury occurs. During discover, that product is manufactured in Mexico, at that point it's too late to sue that Mexican Company. At that point the plaintiff will come back in and ask the court to reinstate all other sellers the chain of distribution as part of the plaintiff in time. By the time you get into litigation, it may be too late to sue the manufacturer as you discover who it is. Under current law sellers and suppliers are let off the hook, only the manufacturer is held responsible.

Representative Nottestad: Has this type of legislation been passed in many other states.

DJohnson: It has.

Representative Nottestad: Would that legislation in other states hold over manufacturers?

DJohnson: I can't answer that.

Representative Nottestad: In this legislation in your estimation would cover domestic manufacturer and foreign manufacturer dealing to the retailer?

DJohnson: Yes.

Vice Chairman Kasper: On page two, lines 14 & 15, can you explain what that means.

DJohnson: It closes the door to local courts. If they don't have a store in North Dakota, there is no jurisdiction in North Dakota. The last two paragraphs only allow North Dakota courts to have jurisdiction over that foreign company or out of state company.

Representative Boe: Is there a risk in this, someone would wait until we didn't if recourse?

DJohnson: This would fix that.

Chairman Keiser: Could there be some unintended consequences of this legislation, that being retailers pull out of the state.

DJohnson: I see a bigger risk of selling bad products in North Dakota.

Chairman Keiser: Say the first two or three lawsuits come in, what would the retailers have to do?

DJohnson: They would have to take a closer look who is the supplier.

Chairman Keiser: It's more than just a relationship.

DJohnson: If you want to know who the target is in a product liability law suit, it is always the manufacturer.

Vice Chairman Kasper: Without this bill, North Dakota citizen could still sue the manufacturer, but they need to go where the manufacturer lives. This bill says that if we sue, they have to come to North Dakota.

DJohnson: That correct.

Vice Chairman Kasper: Could a retailer use this statute to sue a manufacturer?

DJohnson: Absolutely.

Representative Amerman: If I were a manufacturer in China, this new law, we could bring them here and make them answer. How do we make them come here?

DJohnson: That's puts the responsibility to the company that is importing in large quantities and does have a relationship with that manufacturer.

Representative Amerman: If I ordered on line direct from China and China has a relationship with New York, but I ordered direct from China, so you are saying, even though I had nothing to do with New York, I can bring them in?

DJohnson: No.

Representative N Johnson: I own a grocery store and sell a toy. Later it is defective and somebody was injured. I sue the grocery store or do they go back and sue everyone along the line?

DJohnson: The local court was sued so we can keep the case in the North Dakota courts.

Representative Boe: Under contract terms, sign away your rights in sue in North Dakota (inaudible).

DJohnson: Your contract is still going to hold, that agreement is where that jurisdiction will probably going to hold.

Vice Chairman Kasper: If a consumer who bought the product was harmed, the agreement would not apply to the consumer if that consumer brought the lawsuit because the consumer did not assign the agreement.

DJohnson: At that point it would not apply to the consumer because the consumer did sign that agreement. It is also a probable that North Dakota retailer will not sign that agreement as well.

Chairman Keiser: If we were to pass this and have the Interstate Commerce, does it take precedence, does the Federal government just say, it nice that you passed but it's interstate commerce and that doesn't fall under your jurisdiction.

DJohnson: That would be an extension to our long arm statue. Interstate commerce would have to say it's a federal issue; therefore it belongs in federal court. Judges would decide that one.

Chairman Keiser: Would it eventually make it to federal court?

DJohnson: It may or in federal court in North Dakota.

Mike Ames ~ Agri Industries, Inc. See testimony attachment.

Representative Clark: Wouldn't there be some responsibility on the crews that these threads were different?

Ames: We noticed right away. We are in a situation where we have an open hole and time is of the essence.

Chairman Keiser: How many suppliers do you have and what was your track record with this Mandan supplier?

Ames: We bought over 75% from them and spent 30 to 40 thousand dollars a month.

Chairman Keiser: Why didn't they support you on this one?

Ames: It blew me away. It was the decision of the local manager.

Representative Clark: Can you describe what was wrong with these threads.

Ames: It was our understanding it was got out of gage. They weren't cutting them deep enough.

Representative Amerman: Question for DJohnson, I work for Bobcat, which is a Korean company, it manufactured here in North Dakota, under current law we could go under

manufacturing. If Tucson, if they wanted to be cost effective, they want to manufacture in Korea, we can't go after Tucson now because it's manufactured in Korea?

DJohnson: You can go after but go after them through the Hate Convention which means a long, drawn out processes, maybe in Federal or Foreign Court.

Representative Clark: Obviously, when they are not properly put together, you would know that, what responsibility goes with person who is doing the installation?

DJohnson: North Dakota is a state where they have taken the law and makes it responsible for everyone for their share of the fault.

Representative Ruby: Why wouldn't the installer or contractor be able to be protect by the same law because he did everything right.

DJohnson: Because he had a contract for a good water well. He had that responsibility contractually and legally.

Representative Ruby: He assumed the liability of the work and the products he supplied.

DJohnson: This is a contract that has many paragraphs to make sure the city had a good well.

Representative Boe: What is the casing?

DJohnson: \$30,000, without the labor but the whole job, \$100,000.

Representative Clark: What would have happen at the point of discovery that threads were improper, who is responsible or in jeopardy?

DJohnson: Mr. Ames is because he has a hole now.

Representative Clark: Is the distributor at fault also?

DJohnson: The distributor did not manufacture that pipe, did not cut the pipes in the pipe and still has the legal responsibility.

Anyone here to testify in opposition to HB 1560.

Katie Aitchison~Bismarck-Mandan Chamber of Commerce. See testimony attachment.

Vice Chairman Kasper: If retail were to decide to stay in business, the insurance rates would be so high. Has the organization check the rates to what they would go to?

Aitchison: That was a board member's comment.

Representative Schneider: It seems you are presuming a lot. Have you check with other chamber of commerce in other states?

Aitchison: No, we have not.

Chairman Keiser: Is this a board or committee position?

Aitchison: Yes it is, it's the committee.

Representative Amerman: On the third paragraph, if this bill were to pass, every car dealership immediately liable and go awry.

Aitchison: I don't know.

Representative Schneider: You state large manufacturers would be safer pulling their business out of North Dakota versus facing potential lawsuits? Do you really think they will pull out?

Aitchison: Not immediately, but realistic notion.

Representative Nottestad: Has other states lost big retails business because of their legislation?

Aitchison: I don't know.

Vice Chairman Kasper: We currently have warranties and lemon laws, doesn't that protect against your concern.

Aitchison: It certainly may.

Representative Schneider: I'm sure your chains don't want to sell defective products. If this law were passed, do you think the chamber on the whole put more pressure on the federal government?

Aitchison: (inaudible)

Anyone here in neutral position?

Mike Rud~North Dakota Retailers Association. I would like some clarification into the law, does it mean to average retailer, not only the large retail.

Chairman Keiser: The intent of the law is for the plaintiff to be able to go after them if there is a defective product regardless of where it's manufactured.

Rud: So you are saying the retailer is becoming subject to any defect?

Chairman Keiser: Yes.

Representative Boe: The way I understand it that they would accept the liability along with the distribution of the product.

Chairman Keiser: Wholesalers and distributors are also brought in, not just the manufacturer of the defective product.

DJohnson: Paragraph two of the existing law basically states, says that it cannot obtain dismissal from a lawsuit. Only change to the statute is paragraph four is the dismissal would not be granted if the product is manufacturer in a foreign or the manufacturer is not subjected to North Dakota law. So the local retailer in North Dakota still has this law to allow that retailer to be dismissed from the lawsuit if it made in North Dakota or United States. If the defective part is made in the United States or out of the country, the North Dakota retailer is out.

Vice Chairman Kasper: I think the current law on section two, it clear that the retailer will be out of the lawsuit with the exception of A, B, C at the bottom of page one, was that not correct?

DJohnson: Yes, but if it's manufactured in a foreign country, those don't apply.

Representative Schneider: What would happen to this bill if it were passed, in subsection four, remove it, what would happen?

DJohnson: It basically provides the North Dakota retailer would not subject to the lawsuit.

Representative N Johnson: On the back page, line two, what does it mean to vacate the order of dismissal and reinstate?

DJohnson: If he would have brought a lawsuit and you don't know who the manufacturer, until you go deep into the lawsuit. At that point it is too late to bring that lawsuit, and then the North Dakota seller is still going to be responsible. Companies do wait until the eleventh hour and then the statute of limitations has expired. This law would take care of this problem.

Representative N Johnson: I just want to know "vacate the order".

DJohnson: That means the court grant an order of dismissal. Then the court has shown it's too late to bring a lawsuit against the manufacturer, the court will vacate that order and bring all those parties back into the lawsuit.

Vice Chairman Kasper: How would we change bill to allow for the manufacturer to be required to come to North Dakota?

DJohnson: Take paragraph four and take out the words seller and wholesaler.

Representative Boe: I heard other state have legislation like this, who has legislation closes to this?

DJohnson: I don't know.

Chairman Keiser: Closes the hearing on HB 1560.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1560

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 9, 2009

Recorder Job Number: 9005

Committee Clerk Signature

Ellen Letanof

Chairman Keiser: Opened the committee work session on HB 1560.

Katie Aitchinson~Bismarck-Mandan Chamber of Commerce. See testimony attachment.

Vice Chairman Kasper: On the first page, the court shall order of the dismissal of the claim against the certifying seller, which is current law, unless the plaintiff can show any of the following, a, b, & c. Our certifying seller in North Dakota is protected if they can show these points. What this bill is about is so our North Dakota people can get at the manufacturer out of state or nation. If the seller hasn't done any of these things, the seller would be exempt. We need a chain of events to go to the manufacturer. I don't know if there would be much increase to the liability cost to the sellers in North Dakota. The consumers and people who use these products seem to have no redress.

Chairman Keiser: What you just described is current law but if you look at the bill on page two, lines 9-15, the seller, retailer, or wholesaler, who would have been entitled to the dismissal in the previous section is not entitled to dismissal, now you are bringing them back in. That's what this bill does.

Vice Chairman Kasper: I agree with that however, I would think we still need this line of direct contact with the manufacture so that you have to keep a seller involved to get to the

manufacturer, but it would appear to me, if that seller could show us, the court would have good cause to dismiss.

Representative Schneider: That's right; it's not to go after the retailer. It does build in the necessary protection.

Representative Ruby: I perceive this different. To me this seems to be in a case where we cannot get at the manufacturer regardless and that's the problem right now and that would still be the problem if this bill passed, so it's pulling in those liability to the distributor, wholesaler and everyone involved because they cannot reach that out of country manufacturer. This is going after the companies, who cannot get to the insurance for the liability.

Vice Chairman Kasper: This is designed to give North Dakota court's jurisdiction as well.

Chairman Keiser: It still will go to Federal court.

Representative Schneider: It's still important to be heard in North Dakota first.

Chairman Keiser: At a great expense of all parties.

Vice Chairman Kasper: Right now that is expense to the end user if they get stuck and have no recourse.

Representative Clark: Is there any testimony to the loss in this case with the well driller.

Chairman Keiser: \$100,000.

Tyler the House Industry, Business and Labor intern reads Montana law.

Representative Boe: He indicated that he does his business in Montana that they have this law.

Tyler: Needs to put it in a contract.

Chairman Keiser: What are your wishes on HB 1560?

Representative Schneider: I think it would be beneficial to request from Jeff Weikam a synopsis what other states are doing. I would be curious is we removed the word seller on

page two, line nine and it would let you go after the wholesaler who have a better relationship with the manufacturer.

Chairman Keiser: We can certainly hold this.

Representative Vigesaa: Is this type of legislation been proposed before?

Chairman Keiser: Not that I can recall.

Representative Clark: There was a remedy in Williston available.

Chairman Keiser: It's a dilemma for the solution.

Representative Schneider: I agree with the thought of the committee could have been done better, but often times one person's mistake reveals a bigger issue at hand. The intent is to protecting the consumer.

Mike Rud-North Dakota Retail Association. I have the concern that the little guy could get stuck in this whole process. Section two give you a variance of staying out of the bill but look at the language in section four, the seller causes some concern for folks in our industry.

Vice Chairman Kasper: Are wholesalers considered little or big guys in North Dakota?

Rud: North Dakota Wholesalers would probably be considered little guys. With the small retailer, if you go out to Medora, all probably China, Mexico and those kinds of places. That is our fear, if we can't bring in those companies.

Vice Chairman Kasper: Under current law, we can't bring them in; it's an attempt to make the come to North Dakota to settle the dispute.

Representative Boe: Seems to me we talked about in their contract, you signed a waiver, for the court appearance, you could just put it in a contract.

Chairman Keiser: You can, but no one will sign it.

Rud: I think remove the seller would help this bill greatly.

Chairman Keiser: Closes the committee work session.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1560

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 11, 2009

Recorder Job Number: 9165

Committee Clerk Signature



Chairman Keiser: Opened the committee work session on HB 1560.

Chairman Keiser: What are the wishes of the committee?

Representative Clark: Moves a Do Not Pass.

Representative Boe: Second.

Vice Chairman Kasper: Wasn't their going to be an amendment on page two, line nine to take out the word seller.

Chairman Keiser: With draw the motion.

Representative Clark: Withdraws the motion.

Vice Chairman Kasper: Move an amendment page two, line nine take out the words "the seller or the".

Representative Vigesaa: Second.

Vice Chairman Kasper: I think this does protect the retailer of the North Dakota.

All in favor of the amendment, all aye's, no nays.

Representative Thorpe: Motions Do Pass as Amended.

Vice Chairman Kasper: Second.

Chairman Keiser: Further discussion.

Voting rolling was taken on HB 1560 for a Do Pass as Amended with 4 yeas, 8 nays, 1 absent for a fail.

Representative Ruby: Motions a Do Not Pass as Amended with 8 yeas, 4 nays, 1 absent with Representative Nottestad as the carrier.

February 11, 2009

VR
2/11/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1560

Page 2, line 9, remove "seller or the"

Renumber accordingly

Date: Feb 11 - 2009

Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1560

House House, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass As Amended

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	}		Representative Amerman	}	
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative N Johnson			Representative Schneider		
Representative Nottestad			Representative Thorpe		
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*All ayes, no nays
take out words "the seller or the"*

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1560

House House, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass As Amended

Motion Made By ~~Kasper~~ Thorpe Seconded By Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		✓	Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe		✓
Representative Clark		✓	Representative Gruchalla		✓
Representative N Johnson		✓	Representative Schneider	No	
Representative Nottestad		✓	Representative Thorpe	✓	
Representative Ruby		✓			
Representative Sukut	✓				
Representative Vigesaa		✓			

Total (Yes) 4 No 8

Absent 1

Floor Assignment Nottestad

If the vote is on an amendment, briefly indicate intent:

Date: Feb 11-2009
 Roll Call Vote # 3

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 1560

House House, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass As Amended

Motion Made By Ruby Seconded By Clark

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	1		Representative Amerman		1
Vice Chairman <u>Kasper</u>		1	Representative Boe	1	
Representative Clark	1		Representative Gruchalla	1	
Representative N Johnson	1		Representative Schneider		
Representative Nottestad	1		Representative Thorpe		1
Representative Ruby	1				
Representative Sukut		1			
Representative Vigesaa	1				

Total (Yes) 8 No 4

Absent 1

Floor Assignment Nottestad

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 12, 2009 4:04 p.m.

Module No: HR-28-2584
Carrier: Nottestad
Insert LC: 90547.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1560: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO NOT PASS (8 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1560 was
placed on the Sixth order on the calendar.

Page 2, line 9, remove "seller or the"

Renumber accordingly

2009 TESTIMONY

HB 1560

HB 1560

Statements in support of passage of the bill by:

Dennis Edward Johnson
P O Box 1260
Watford City, ND 58854

Thank you for allowing me to speak in support of HB 1560.

I am Dennis Edward Johnson from Watford City, ND. I am a licensed attorney and have practiced law in North Dakota for 28 years. I practice in a variety of areas of law including oil and gas, commercial law, litigation, and agricultural law. I am also McKenzie County State's Attorney.

I also own and am involved with management of several businesses; and, I am engaged in commercial farm and ranch activities.

I am here in support of HB 1560 as there is a disparity in the law concerning defective and bad products that is unfair and harms North Dakotans and North Dakota's economy.

The Primary Changes this bill addresses are a seller of a product would not escape liability if:

1. the product is made in a foreign country or
2. the manufacturer of the product can not be sued in North Dakota due to jurisdictional rulings of the Court.

Why are these changes important?

- Cost of seeking recovery prevents recovery
- North Dakotans and North Dakota companies are left without the ability to utilize their own courts when there is a defective product that causes personal or commercial injury
- Foreign companies and out of state manufacturers are offered protections for selling defective products that North Dakota companies are not
- The law as it currently written unjustifiably protects foreign manufacturers and sellers of products manufactured in foreign countries

There was a time when most products on the shelves of stores in North Dakota were manufactured in the United States and sold in “mom and pop” hardware stores. That is no longer the case.

Most products purchased in North Dakota now are manufactured out of state or overseas and are sold through chain stores. NAFTA and other treaties, costs of labor in the United States, and other associated costs have driven the manufacture of products out of the United States. Mexico, Taiwan, Vietnam, China, Bangladesh, and so on. Those countries offer cheap, nearly slave labor, and do not have the requirements to manufacture products to industry standards and consumer protection requirements.

During the last few years it is not uncommon to read reports in newspapers about toys, baby products, and other items manufactured in foreign countries that cause injuries to children and adults. From dangerous toys, lead painted toys, toys containing “date rape” drugs, (Please see sample clippings from the Bismarck Tribune attached)

The U.S. Consumer Product Safety Commission polices what it can – but that is just recalls products. They do not seek recovery for medical bills, permanent injury, or death caused by products. Seeking reimbursement for medical expenses not covered for by Blue Cross and also seeking recovery for Blue Cross for medical payments it made due to injuries suffered on account of a bad – defective – product rests solely upon the person who is injured or the family of the person who is killed by the defective product. Blue Cross can end up footing the entire bill for medical expenses caused by a defective product.

When a product is sold in North Dakota which injures a North Dakotan or causes financial harm to a North Dakota company, that

person or that company under current law is left with a law that offers very little real assistance to them to seek recovery for the losses.

The law as it currently written unjustifiably protects foreign manufacturers and sellers of products manufactured in foreign countries.

North Dakota law protects a foreign manufacturer which wholesales products that eventually come to companies in North Dakota to be sold. The law as it stands in situations such as that means that the North Dakotan or the North Dakota company must go to the country where the product was manufactured. That for all intents and purposes means that a North Dakotan or a North Dakota company can not rationally justify the expense to seek recovery from the foreign manufacturer. Even if the claim is large enough to justify the expense, collecting the recovery from a country overseas will be difficult at the best and more than likely impossible. Sue a company in Pakistan for the computer that was defective and caused a fire that burned your house down? – unlikely to be economically possible.

Everyone shops at Wal-Mart. But what does Wal-Mart manufacture in North Dakota? Nothing! Where does many of the Wal-Mart products that it sells come from? China? Vietnam? Mexico?

If you buy a foreign made product at Wal-Mart, and that product injures you or someone in your family, you are without remedy under North Dakota law. Under the current law in North Dakota, Wal-Mart is not going to be held responsible for selling a defective foreign manufactured product that causes injury.

This issue involves more than just consumer products. It also involves commercial businesses in North Dakota.

Let us use for an example this scenario.

That state of North Dakota puts out for bid a new furnace for the state capitol building. Low bid is accepted from a company in Fargo. The company in Fargo is awarded the bid. The Fargo company orders the furnace from its supplier in Minneapolis. The Supplier in Minneapolis orders the furnace from its supplier in New York. The supplier in New York orders the furnace from a company in Mexico.

The furnace ordered has components which are manufactured in China and Canada. The components are shipped to Mexico where the furnace is assembled or manufactured.

The company in Mexico ships the furnace directly to the state of North Dakota which hires a local service company that correctly installs the furnace.

The furnace is defective. The defect causes a fire. The capitol building burns down and the state loses its records, and is forced to utilize temporary head quarters and eventually build a new capitol building.

Under current law, the state would be unable to sue the Fargo Minneapolis or New York companies. It would be stuck having to sue the Mexican, Chinese or Canadian company and hope to collect from the company on foreign ground in a foreign court!

In fact under current law, it may have to sue the case out in New York or Mexico. The state could not even maintain the lawsuit in North Dakota courts under the current law.

The requested change in the law will protect North Dakota citizens and North Dakota companies from being left high and dry without a remedy when a defective product manufactured and imported and then sold in North Dakota causes consumer or commercial injury.

North Dakota citizens and North Dakota companies deserve better protection than what the current law allows.

Thank you for your time and consideration.


Dennis Edward Johnson

Language sought to be added to the current law:

4. The seller or the wholesale supplier or the importer of a product who would otherwise be entitled to dismissal from an action is not entitled to dismissal from an action if:
 - a. The product or a component alleged to be defective was manufactured in a foreign country; or
 - b. The manufacturer of the product is not subject to suit in this state due to the lack of personal or subject matter jurisdiction in this state.

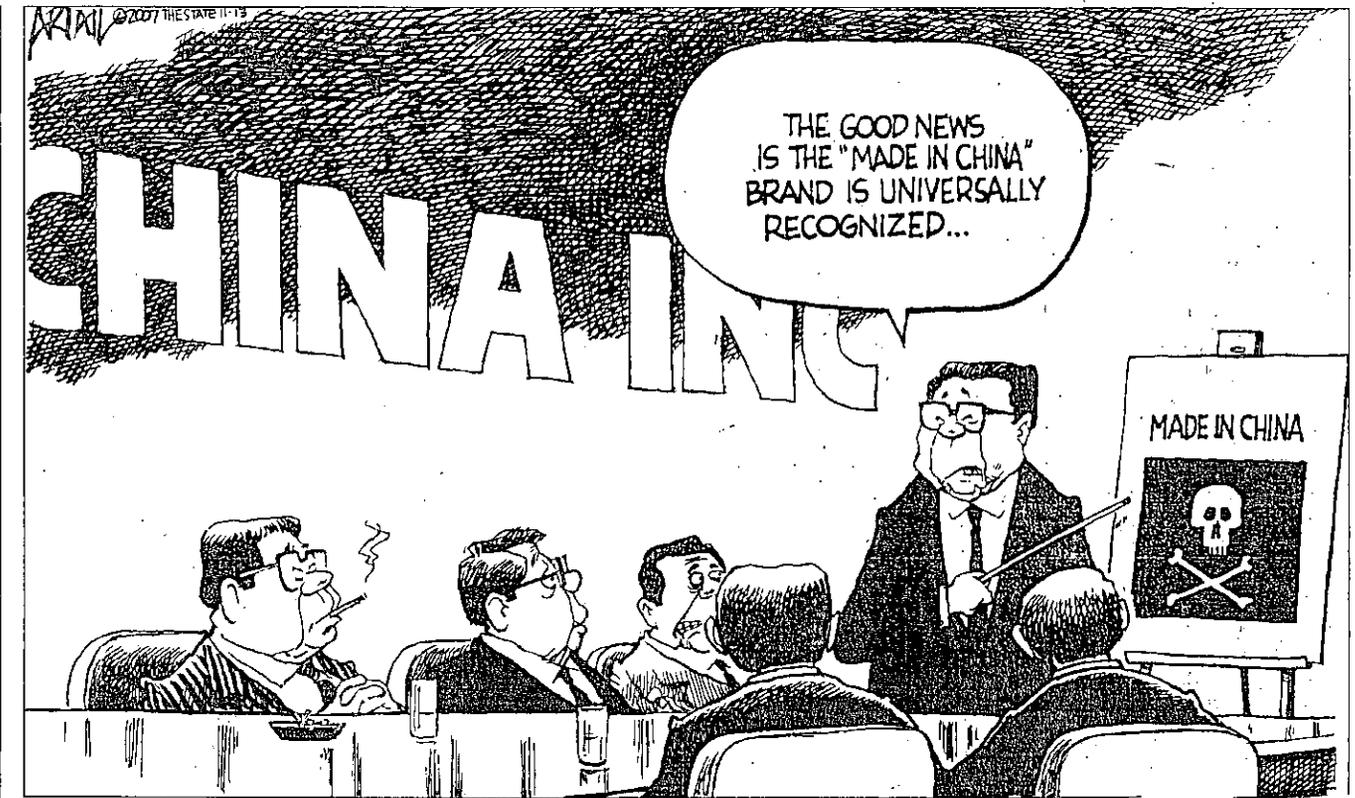
TUESDAY, NOVEMBER 20, 2007

Opinion

"Seeking to find and publish the truth, that the people of a great state might have a light by which to guide their destiny."

— Stella Mann,
Tribune publisher, 1939

ESTABLISHED IN 1873



By HOPE YEN
Associated Press Writer

WASHINGTON — Despite a record number of recalls this year, potentially dangerous toys remain on store shelves days before the start of the busy holiday shopping season, consumer groups warned Tuesday. Federal regulators, under fire for lax enforcement, urged shoppers to be vigilant.

The Consumer Product Safety Commission has worked closely with Mattel Inc. and other manufacturers on recalls of millions of toys tainted with lead and other products, yet two consumer investigations released Tuesday cited possible violations, including sales of toys with small parts that could pose a choking hazard.

"Why is it we are the ones that are getting this information out to parents, and not the government and not the toy companies?" asked Charles Margulis, of the Center for Environmental Health.

In CPSC's annual toy safety message, Nancy Nord, acting head of the CPSC, sought to reassure parents that the agency was doing all it can to remove unsafe toys. She noted the Chinese government recently had signed agreements to help prevent lead-painted toys from reaching

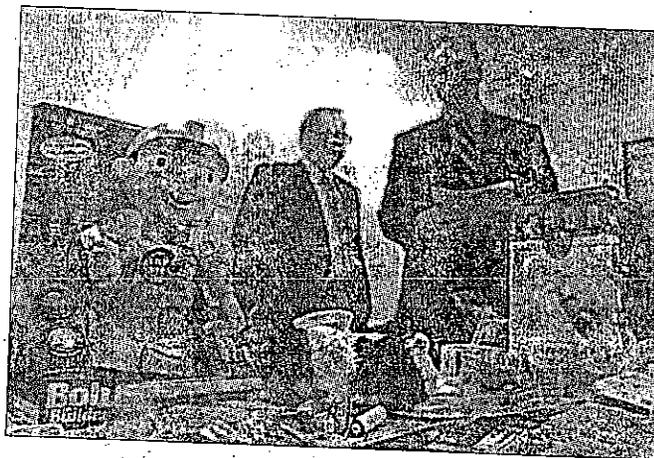
the U.S.

"Toys today are undergoing more inspection and more intense scrutiny than ever before," said Nord, citing CPSC's "daily commitment to keeping consumers safe 365 days a year."

Still, Nord, who was traveling Tuesday and could not be reached for comment, urged parents to read product warning labels carefully and sign up to receive direct e-mail notices of recalls at www.cpsc.gov. A CPSC spokeswoman, Julie Vallese, also sought to downplay the significance of the two consumer surveys, calling the outside reports "subjective" and "confusing."

Vallese left the door open to the possibility of several more CPSC recalls before year's end, declining to say if most dangerous toys had already been removed from store shelves given the recent spate of toy recalls. "When we find violations, we will announce them," she told the Associated Press.

Joan Lawrence, a vice president of the Toy Industry Association, said more recalls were probable given recent manufacturer retesting of products. "That's why it's so important for consumers to pay attention to recall notices," Lawrence said.



With a table of dangerous toys in the foreground, Rep. Chris Van Hollen, D-Md., right, and U.S. PIRG Consumer Program Director Ed Mierzwinski, left, conclude a news conference on Capitol Hill in Washington on Tuesday.

Safety agency urges vigilance

Toys containing 'date rape' drug pulled

WASHINGTON (AP) — Millions of Chinese-made toys for children have been pulled from shelves in North America and Australia after scientists found they contain a chemical that converts into a powerful "date rape" drug when ingested.

Two children in the U.S. and three in Australia were hospitalized after swallowing the beads.

In the United States, the toy goes by the name Aqua Dots, a highly popular holiday toy distributed by Toronto-based Spin Master Toys. They are called Bindeez in Australia, where

they were named toy of the year at an industry function earlier this year.

It could not immediately be learned whether Aqua Dots beads are made in the same factories as the Bindeez product. Both are sold by Australia-based Moose Enterprises.

The toy beads are sold in general merchandise stores and over the Internet for use in arts and crafts projects. They can be arranged into designs and fused together when sprayed with water.

Scientists say a chemical coating on the beads, when ingested, metabolizes into

the so-called date rape drug gamma hydroxy butyrate. When eaten, the compound — made from common and easily available ingredients — can induce unconsciousness, seizures, drowsiness, coma and death.

Naren Gunja from Australia's Poisons Information Center said the drug's effect on children was "quite serious ... and potentially life-threatening."

The recall was announced by the Consumer Product Safety Commission on Wednesday several hours after published reports about the recall in Australia.

Bismark Tribune 11/8/07

8A

WWW.BISMARCKTRIBUNE.COM

The Bismarck Tribune

www.bismarcktribune.com

EDITORIAL BOARD

Brian Kroshus	Publisher	John Irby	Editor
Ken Rogers	Managing editor	Steve Wallick	City editor
Libby Simes	Controller	Stephen Eastin	Opinion page editor

Toy recalls show need for careful shopping

All responsible parents should take the most seemingly innocuous toys off the shelf in the store, look at them suspiciously and try to imagine if there's any conceivable way the playthings could be harmful to their kids. But how could even the most diligent parent know that Aqua Dots were invisibly coated with a chemical that if swallowed by a child turned into a so-called date rape drug?

One clue of trouble waiting to happen should have been that the beads looked a lot like bright-colored candy.

It's the latest toy to be recalled, but probably not the last. Toys decorated with lead-based paint came off the shelves earlier.

We buy toys for young children because we want them to be delighted. Even more, we should want them to be free from harm. The overreaction would be to look for a label, and anything that says

"made in China" gets put back on the shelf. There might be thousands of items manufactured in China that are perfectly fine. What matters for shoppers is to exercise good judgment.

According to an Associated Press article, Sue Warfield, president of the American Speciality Toy Retailing Association, said the recalls could have long-lasting benefits if people decide to be smarter about their choices. "There's more to shopping than just picking something off the shelf," she said.

Without wishing to be the unreformed Ebenezer Scrooge, a pragmatic attitude toward the holiday season calls for good spending and gift-giving decisions. Maybe there are better gifts for kids than whatever this season's fad toys are.

It's reassuring that the recall process works more speedily now than in years past. Reportedly, there have been 10 recalls in the past month or so. Parents and other gift-givers can get online and get cautions or product notices.

The Web site of the U.S. Consumer Product Safety Commission (<http://www.cpsc.gov>) has one of the most comprehensive lists, including on the most recent, a football helmet chin strap that breaks.

Often a kid would benefit more by being given a parent's time and loving attention than every new toy that goes on sale. Many a closet and toy box are loaded with toys that provided short-term amusement but soon were boring.

HB 1560

Testimony in support of passage of the bill by:

Mike Ames
Agri Industries, Inc.
3105 2nd St W
Williston ND

Thank you for letting me be here and testify this morning.

My name is Mike Ames. I own and operate Agri Industries in Williston ND and do business in North Dakota and Montana. We design, sell and service irrigation equipment and drill water wells among other things.

I am here because North Dakota law caused me to lose \$100,000 or more when my company drilled a municipal water well in western North Dakota and I was sold defective pipe.

When my company got the bid to drill the water well, we called and ordered well casing from our usual supplier in Mandan. It was six inch steel casing of a quality required under the bid. The Mandan company called a company in Colorado to order the pipe. The Colorado company called a company we believe in Louisiana to order the pipe. The Louisiana company called a company in Houston Texas to order the pipe. The company in Houston Texas called another company, a Korean company with a registered agent in California. The Korean owned company then placed an order with their parent company in Korea ordering the pipe with the required industry standard threads.

The company in Korea manufactured the pipe and cut the threads on the pipe and shipped them to Houston Texas. From Houston the pipe was shipped directly to my place of business in Williston.

We drilled the well and cased it. After it was done there were problems with the well and it took a long time to figure it out but eventually we determined that the threads were not cut to a tolerance required and expected and the well leaked water at the threaded coupling joints. The threads were cut with a worn out machine is what we believe. This made the well unfit for a municipal water well.

We stood behind our contract and drilled another well, with new casing and plugged and abandoned the old well to state requirements.

We asked our supplier to stand behind the product it sold. It would not. Neither would the Colorado company, the Louisiana Company, nor the California company. We sued

them all thinking that someone must be willing to stand behind their product. Instead they were dismissed as they did not manufacture the pipe or cut the threads. I am pretty sure they all made money on the pipe that was sold to me, but none of them had to stand behind their product.

Our remedy was left to us to sue the Korean company, which we sued in North Dakota court. Now a \$100,000 is a lot of money, but when you figure if we had to sue the Korean company in Texas and hire Texas lawyers, and even if we won probably have to try and collect our money in Korea, it did not make business sense to bring the lawsuit in Texas.

We could have sued the Korean company in Korea but that would have been even more expensive and made less business sense.

The bottom line is my company was sold junk pipe manufactured in a foreign country and all of the sellers who made money on the junk pipe and manufacturer who made money on the junk pipe were not held to account for the junk that was sold my company.

The judge dismissed our case saying that the Korean company could not be held accountable in a North Dakota court because it did not set out to specifically sell the pipe in North Dakota. The Korean company was a large international company selling pipe all over the world. Last time I checked North Dakota is on the globe and part of the world. I don't blame the judge. The law is the problem.

The products liability law in North Dakota is unfair to North Dakota companies. I am a North Dakota company and my company stands behind its products. I believe it is only fair and right that everyone who sells a product should stand behind the products they sell.

The law needs to be changed.

Thank you.

Mike Ames, President
Agri Industries, Inc.



Katie Moore Aitchison
Bismarck-Mandan Chamber of Commerce
February 2, 2008

Testimony on House Bill 1560

Chairman Keiser and members of the Industry, Business and Labor committee, my name is Katie Moore Aitchison. I am here representing the Bismarck-Mandan Chamber of Commerce. We are here in opposition of House Bill 1560.

The mission of the Chamber is to advance the business environment and economic base of the Bismarck-Mandan area. After reading through House Bill 1560 and weighing the cost and benefit of this bill on businesses across the state, we feel this bill would not only devastate the economic base of the area, it would do so across the state.

Every car dealership that sells an imported car would immediately be liable if something goes awry. The corner markets across the state would assume liability for every foreign-made toy that is sold from the shelf. Even selling clothing will become an issue for liability. If the dress catches on fire, the seller may now be sued.

The Bismarck-Mandan area has seen significant growth over the last five years. That growth would not only come to a screeching halt with the passage of 1560, it would reverse the growth we have seen. Large national retailers would be safer pulling their businesses out of North Dakota verses facing the potential lawsuits and payouts that may occur if 1560 becomes a law.

And as the larger retailers leave much of the population would be right on the heels. It would change the quality of life for North Dakotans and devastate the economy that has been continually building over the past years.

Even if a retailer were to decide to stay in business, the insurance rates would be so high, it would not be economical to do so.

Though the heart of this bill may be intended to protect consumers, the unintended consequences are incalculable. The business community within Bismarck-Mandan strongly urges you to not pass 1560.

Thank you for your time. I stand for questions.

Katie Moore Aitchison
Bismarck-Mandan Chamber of Commerce
February 2, 2008

Answers from Testimony on House Bill 1560

Chairman Keiser and members of the Industry, Business and Labor committee, when standing in opposition of house bill 1560, a few questions were asked of me that I was unable to immediately answer. Below, please find answers to many of the questions.

- 1) I mentioned insurance rates going up within my testimony. I spoke with insurance representatives within our membership. One of our agents who focuses primarily on commercial insurance checked with a couple national brokers whom he works with frequently. He discovered that there is currently no liability insurance that would cover retailers in a situation such as this bill proposes.

Product liability insurance is designed for manufactures. General liability insurance tends to cover situations where a customer is injured in a place of business. I mentioned an increase in insurance costs. General liability insurance ranges from around \$450 upwards, depending on the size of the business and the type of business. If a retailer were able to get product liability insurance, the cost would be three to four times greater than that of general liability insurance.

The brokers spoken to did mention they have been writing a new form of insurance, product liability insurance for distributors. This type of insurance is designed for the distribution of a particular product. It runs a minimum of \$5,000 annually and can be as much as \$25,000 annually depending on the area and size of distribution, as well as the type of product. Again, this information comes from a commercial insurance agency and brokers who work nationally.

- 2) When asked about other states and how this type of legislation affected them, I was unable to respond because I had been unable to find other states that have this type of law in place. I spoke with American Tort Reform Association based out of Washington DC. This group has their finger on the pulse of liability legislation across the country. They in turn spoke with

the attorney for the National Association of Wholesalers. I have attached the information about the Illinois Product Liability Reform Act of 1997 which addresses this topic.

- 3) The question of lemon laws were brought up to cover car dealerships. After speaking with both attorneys and local automobile dealers, regarding this, I was informed that lemon laws deal with repetitive breaking of a particular part or function within a vehicle. The same piece would need to malfunction multiple times and have a specified number of visits to the dealership. After this point, the manufacturer is responsible in purchasing the vehicle back from the buyer. The dealership helps facilitate this, but is not responsible for it.
- 4) Automobile warranties were also questioned during the hearing. Warranties cover repair of a vehicle, but does not include personal damage. As the law stands now, manufactures are liable if the vehicle causes personal damage. An example of this is the Ford Explorers tipping over. The manufacturer recalled the vehicles and fixed the problem. The extent this proposed law would affect automobile dealers is questionable with the various other laws and protections there are regarding automobiles and insurance and liability.

from the acts for which this legislation provides rules of law. This provision makes clear that this Act does not apply to actions for damages resulting from releases into the environment, such as oil spills. The Act does apply to all product liability actions for harm, as defined in this title.

Section 102(d) makes it absolutely clear that civil actions for negligent entrustment or negligence in selling, leasing, or renting to an inappropriate party, are not subject to the Act, but are left to applicable State law. Specifically, the Act states: "A civil action for negligent entrustment, or any action brought under a theory of dramshop or third-party liability arising out of the sale or provision of alcohol products to intoxicated persons or minors, shall be subject to the provisions of this Act but shall be subject to any applicable State law." This language has the support of Mothers Against Drunk Driving (MADD).

Thus, the Act would not cover a gun dealer that knowingly sells a gun to a convicted felon or a "straw man" fronting for children or felons, or a bar owner that knowingly serves a drink to an obviously inebriated person, or a car rental agency that rents a car to a person who is obviously unfit to drive. These actions would not be covered by the Act, because they involve a claim that the product seller was negligent or reckless in selling to the purchaser. The action is not based on a product defect. Negligent entrustment actions would continue to be governed by State law.¹⁰⁶

Section 103—Liability rules applicable to product sellers, renters, and lessors

Section 103 is intended to bring legal fairness to product sellers and reduce costs to consumers. Currently, under the law in about twenty-nine states, product sellers who wholesale, sell, rent or lease a product are potentially liable for defects that they are neither aware of nor able to discover. They are drawn into the overwhelming majority of product liability cases. Product sellers, however, rarely pay the judgment, because in virtually all of the cases where any liability is present, the manufacturer is held responsible for the harm. Based on this showing, the seller receives contribution or indemnity from the manufacturer, and the manufacturer ultimately pays the damages.

This approach generates substantial, unnecessary legal costs, which are passed on to consumers in the form of higher prices. A more efficient approach would be for the claimant to sue the product seller only if the product seller is directly at fault.

Section 103 "recognize[s] the unfairness and illogic of imposing 'strict' liability upon retailers and wholesalers who neither participate in the design process for products they sell, nor create warnings or instructions for a product."¹⁰⁷ Following the lead of approximately twenty-one states,¹⁰⁸ Section 103 would hold prod-

¹⁰⁶ For additional commentary explaining that the Act does not cover actions for negligent entrustment, see Cong. Record, March 21, 1996, S2575-76.

¹⁰⁷ M. Stuart Madden, *The Vital Common Law: Its Role in a Statutory Age*, 18 U. Ark. Little Rock L.J. 555, 570 (1996).

¹⁰⁸ See Colo. Rev. Stat. § 13-21-402 (1987); Del. Code Ann. tit. 18 § 7001 (1989); Ga. Code Ann. § 51-1-11.1 (Supp. 1995); Idaho Code § 8-1407 (1990); 735 ILCS 5/2-821 (1992) (formerly Ill. Rev. Stat. ch. 110, § 2-821 (1989)); Iowa Code § 613.18 (Supp. 1995); Kan. Stat. Ann. § 60-3306 (1994);

uct sellers, such as wholesalers and retailers, liable only if they are directly at fault for a harm (e.g. misassembled the product or failed to convey appropriate warnings to customers), unless the manufacturer of the product is out of business or otherwise not available to respond in a lawsuit. State "product seller" reform legislation has worked well; some state laws have existed for almost two decades and none have been repealed.

Section 103 assures that product sellers are not needlessly brought into product liability lawsuits. It also promotes sound public policy by encouraging product sellers to select the safest products for sale and to deal with responsible manufacturers who will be available and have assets in the United States in case a lawsuit arises because a product is defective. Finally, Section 103 assures that an injured consumer will always have available an avenue for recovery.¹⁰⁹

The Act also provides relief for companies, such as car and truck rental firms, that rent or lease products. These companies are subject in ten states and the District of Columbia to liability for the tortious acts of their lessees and renters, even if the rental company is not negligent and there is no defect in the product.¹¹⁰ In this minority of states, a rental company can be held vicariously liable for the negligence of its customers simply because the company owns the product and has given permission for its use. Vicarious liability—liability without regard to fault—increases costs for rental customers nationwide and imposes an undue burden on interstate commerce.

Section 103 specifies when a product seller other than a manufacturer is responsible for harm caused by a product. Section 103(a)(1) provides that a product seller is only liable for harm proximately caused (A) by its own failure to exercise reasonable care with respect to the product, (B) by a product that fails to conform to an express warranty made by the product seller, or (C) the product seller's intentional wrongdoing. All three situations follow the rule that a product seller is responsible for the consequences of its own conduct.

Ky. Rev. Stat. Ann. § 411.340 (Michie/Bobbe-Merrill 1992); La. Rev. Stat. Ann. § 2800.53 (West 1991); Md. Cts. & Jud. Pro. Code Ann. § 6-311 (1982); Mich. Comp. Laws § 600.2947(6) (1996); Minn. Stat. § 544.41 (West 1988); Mo. Rev. Stat. § 537.762 (1988); Neb. Rev. Stat. § 25-21,181 (1995); N.C. Gen. Stat. § 99B-2 (1995); N.D. Cent. Code § 28-01.3-04 (Supp. 1995); N.J. Stat. Ann. § 2A:58C-9 (1995); Ohio Rev. Code Ann. § 2307.78 (Anderson 1991); S.D. Codified Laws § 20-9-9 (1995); Tenn. Code Ann. § 29-28-106 (Supp. 1995); Wash. Rev. Code § 7.72.040 (West 1992).

¹⁰⁹Two reasons have been advanced for holding product sellers liable as if they were manufacturers. First, it has been argued that the rule promotes safety and reduces the risk of harm, because product sellers will seek to avoid liability by pressuring manufacturers to make safe products. See, e.g., *Vandermark v. Ford Motor Co.*, 391 P.2d 168 (1964). This rationale, however, fails to recognize that manufacturers will feel the same, if not greater, pressure to make safe products if they are sued directly for harms caused by their own product defects. Second, it has been argued that the rule is fair because a product seller who is held liable for harm caused by a manufacturer's defect can seek indemnity, see, e.g., Ark. Stat. Ann. § 16-116-107, and thereby shift the cost of liability to the manufacturer who actually caused the harm. See, e.g., *Holes v. Monroe*, 544 P.2d 331 (8th Cir. 1978); *Litton Systems Inc. v. Shaw's Sales & Serv., Ltd.*, 579 P.2d 48 (Ariz. App. 1978). Data show that, in fact, product sellers account for less than five percent of product liability payments, because generally they are either dismissed or indemnified.

¹¹⁰See Cal. Veh. Code § 17150-51 (West 1971); Conn. Gen. Stat. Ann. § 14-154a (West 1987); D.C. Code Ann. § 40-408 (1990); Fla. Stat. Ann. § 324.021(9)(b) (Supp. 1994) (exempts leased vehicles); Idaho Code § 49-2417 (1994); Iowa Code § 321.493 (1985); Me. Rev. Stat. Ann. 29-A § 1652-53 (Supp. 1995); Mich. Comp. Laws Ann. § 257.401 (West Supp. 1995); Minn. Stat. § 170.54 (1988); N.Y. Veh. & Traf. § 388 (McKinney 1988); R.I. Gen. Laws § 31-39-6, 31-33-7 (1995).

Section 103(a)(2) provides that, except for breach of express warranty, a product seller will not be liable if there was no reasonable opportunity to inspect the product, or if the inspection, in the exercise of reasonable care, would not have revealed the aspect of the product which allegedly caused the claimant's harm. For example, a seller may not have had a reasonable opportunity to discover a product defect if the product was prepackaged or if the product never passed through the seller's hands (e.g., a person may have held title to the product, but never had possession of the product).

Section 103(b)(1) provides that a product seller shall be treated as the product manufacturer and shall be liable for the claimant's harm as if the product seller were the manufacturer if (A) the manufacturer is not subject to service of process under the laws of any state in which the action might have been brought by the claimant, or (B) the court determines that the claimant would be unable to enforce a judgment against the manufacturer. For example, a judgment would be unenforceable if the court finds that the manufacturer is bankrupt, insolvent, or otherwise unable to pay. A claimant may recover from the product seller for harms that were caused by the manufacturer if one of the two provisions applies, and if the claimant proves that the manufacturer would have been liable under state law.

To prevent the situation where a claimant may not become aware until after the statute of limitations has expired that the manufacturer lacks funds sufficient to satisfy the judgment, section 103(b)(2) provides that, for purposes of this subsection only, the statute of limitations applicable to claims asserting liability of a product seller as a manufacturer shall be tolled from the date of the filing of a complaint against the manufacturer to the date that judgment is entered against the manufacturer. Although section 103(b) departs from the notion of individual responsibility for harms, it ensures that a claimant can recover from the product seller if he or she is unable to recover from the manufacturer responsible for the harm.

Section 103(c)(1) provides that parties engaged in the business of renting or leasing products, other than a person excluded from the definition of "product seller" under section 101(13)(B), shall be subject to liability in a product liability action in a manner similar to product sellers under section 103(a).

Section 103(c)(1) also preempts state vicarious liability laws, which hold the owner of a product, such as a motor vehicle, liable for the negligence of a user of the product, regardless of whether the owner of the product was negligent.¹¹¹ The Act provides that any person engaged in the business of renting or leasing a product, including finance lessors, shall not be liable to a claimant for the tortious act of another solely by reason of ownership of the product.

Section 103(c)(2) provides that, for purposes of section 103(c)(1) and for determining the applicability of this title to any person subject to section 103(c)(1), the term "product liability action" means

¹¹¹ The Committee does not intend that section 103(c) preempt state minimum financial responsibility laws for motor vehicles. This subsection does not relieve the owner of any motor vehicle of responsibility to insure the vehicle to the amounts required under appropriate state law.

105th Congress
1st Session

SENATE

REPORT
105-32

**PRODUCT LIABILITY REFORM ACT OF
1997**

R E P O R T
OF THE
**COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION**
ON
S. 648
together with
MINORITY VIEWS



JUNE 19, 1997.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1997

fn 108

104 See Colo. Rev. Stat. § 13-21-402 (1987); Del. Code Ann. tit. 18 § 70-01 (1989); Ga. Code Ann. § 51-1-11.1 (Supp. 1995); Idaho Code § 6-1407 (1990); 735 ILCS 6/2-621 (1992) (formerly Ill. Rev. Stat. ch. 110, § 2-621 (1989)); Iowa Code § 613.18 (Supp. 1985); Kan. Stat. Ann. § 60-3306 (1994); Ky. Rev. Stat. Ann. § 411.340 (Michie/Bobbs-Merrill 1992); La. Rev. Stat. Ann. § 2800.53 (West 1991); Md. Cla. & Jud. Pro. Code Ann. § 5-311 (1982); Mich. Comp. Laws § 600.2847(6) (1996); Minn. Stat. § 544.41 (West 1988); Mo. Rev. Stat. § 537.762 (1988); Neb. Rev. Stat. § 25-21, 181 (1995); N.C. Gen. Stat. § 99B-2 (1995); N.D. Cent. Code § 28-01.3-04 (Supp. 1995); N.J. Stat. Ann. § 2A:58C-9 (1995); Ohio Rev. Code Ann. § 2307.78 (Anderson 1991); S.D. Codified Laws § 20-9-9 (1995); Tenn. Code Ann. § 29-28-106 (Supp. 1995); Wash. Rev. Code § 7.72.040 (West 1992).

Montana Code Annotated - 2007

[Previous Section](#) [MCA Contents](#) [Part Contents](#) [Search](#) [Help](#) [Next Section](#)

30-2-314. Implied warranty -- merchantability -- usage of trade. (1) Unless excluded or modified (30-2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as:

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (30-2-316) other implied warranties may arise from course of dealing or usage of trade.

History: En. Sec. 2-314, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-314.

Provided by Montana Legislative Services

HB 1560

Montana Code Annotated - 2007

[Previous Section](#) [MCA Contents](#) [Part Contents](#) [Search](#) [Help](#) [Next Section](#)

30-11-210. No implied warranty in mere contract of sale. Except as prescribed by this part, a mere contract of sale or agreement to sell does not imply a warranty.

History: En. Sec. 2371, Civ. C. 1895; re-en. Sec. 5104, Rev. C. 1907; re-en. Sec. 7607, R.C.M. 1921; Cal. Civ. C. Sec. 1764; Field Civ. C. Sec. 878; re-en. Sec. 7607, R.C.M. 1935; R.C.M. 1947, 74-310.

Provided by Montana Legislative Services

Montana Code Annotated - 2007

[Previous Section](#) [MCA Contents](#) [Part Contents](#) [Search](#) [Help](#) [Next Section](#)

30-2-315. Implied warranty -- fitness for particular purpose. Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

History: En. Sec. 2-315, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-315.

Provided by Montana Legislative Services

Montana Code Annotated - 2007

[Previous Section](#) [MCA Contents](#) [Part Contents](#) [Search](#) [Help](#) [Next Section](#)

30-2-317. Cumulation and conflict of warranties express or implied. Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

- (a) Exact or technical specifications displace an inconsistent sample or model or general language of description.
- (b) A sample from an existing bulk displaces inconsistent general language of description.
- (c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

History: En. Sec. 2-317, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-317.

Provided by Montana Legislative Services