

REFERENCE TITLE: product liability; civil action; limitation

State of Arizona  
Senate  
Fifty-fifth Legislature  
Second Regular Session  
2022

# **SB 1092**

Introduced by  
Senator Leach

AN ACT

AMENDING SECTION 12-684, ARIZONA REVISED STATUTES; RELATING TO PRODUCT LIABILITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-684, Arizona Revised Statutes, is amended to  
3 read:

4 12-684. Liability for seller of product that is not the  
5 manufacturer; indemnification; tender of defense;  
6 execution

7 A. ~~In any A product liability action where the manufacturer refuses~~  
8 ~~to accept a tender of defense from the seller, the manufacturer shall~~  
9 ~~indemnify the seller for any judgment rendered against the seller and~~  
10 ~~shall also reimburse the seller for reasonable attorneys' fees and costs~~  
11 ~~incurred by the~~ MAY BE COMMENCED OR MAINTAINED AGAINST A seller in  
12 ~~defending such action, unless either paragraph 1 or 2 applies~~ THAT IS NOT  
13 ALSO A MANUFACTURER OF THE PRODUCT AT ISSUE ONLY IF ONE OR MORE OF THE  
14 FOLLOWING APPLY:

15 1. The seller had ACTUAL knowledge of the defect in the product.

16 2. The seller altered, modified or installed the product, and ~~such~~  
17 THE alteration, modification or installation was a substantial cause of  
18 the incident giving rise to the action, was not authorized or requested by  
19 the manufacturer and was not performed in compliance with the directions  
20 or specifications of the manufacturer.

21 3. THE SELLER PROVIDED THE PLANS OR SPECIFICATIONS FOR THE  
22 MANUFACTURE OR PREPARATION OF THE PRODUCT, THE PLANS OR SPECIFICATIONS  
23 WERE A SUBSTANTIAL CAUSE OF THE PRODUCT'S ALLEGED DEFECT AND THE PRODUCT  
24 WAS MANUFACTURED IN COMPLIANCE WITH AND ACCORDING TO THE SELLER'S PLANS OR  
25 SPECIFICATIONS.

26 4. THE SELLER RESOLD THE PRODUCT AFTER THE PRODUCT'S FIRST SALE FOR  
27 USE OR CONSUMPTION, THE PRODUCT WAS NOT IN SUBSTANTIALLY THE SAME  
28 CONDITION AS IT WAS AT THE TIME THE PRODUCT LEFT THE MANUFACTURER'S  
29 POSSESSION AND THE CHANGE IN THE PRODUCT'S CONDITION WAS KNOWN TO THE  
30 SELLER AND WAS A SUBSTANTIAL CAUSE OF THE INCIDENT GIVING RISE TO THE  
31 ACTION.

32 5. THE SELLER FAILED TO EXERCISE REASONABLE CARE IN ASSEMBLING,  
33 MAINTAINING OR REPAIRING THE PRODUCT AT ISSUE OR IN CONVEYING TO THE  
34 PRODUCT USER OR CONSUMER THE MANUFACTURER'S LABELS, WARNINGS OR  
35 INSTRUCTIONS AND THE FAILURE WAS A SUBSTANTIAL CAUSE OF THE INCIDENT  
36 GIVING RISE TO THE ACTION.

37 6. THE SELLER MADE AN EXPRESS WARRANTY REGARDING THE PRODUCT  
38 INDEPENDENT OF ANY EXPRESS WARRANTY MADE BY A MANUFACTURER REGARDING THE  
39 PRODUCT, THE PRODUCT FAILED TO CONFORM TO THE SELLER'S INDEPENDENT EXPRESS  
40 WARRANTY AND THE FAILURE OF THE PRODUCT TO CONFORM TO THE SELLER'S  
41 INDEPENDENT EXPRESS WARRANTY WAS A SUBSTANTIAL CAUSE OF THE INCIDENT  
42 GIVING RISE TO THE ACTION.

43 B. IN ANY PRODUCT LIABILITY ACTION THAT IS COMMENCED OR MAINTAINED  
44 AGAINST A SELLER THAT IS NOT ALSO A MANUFACTURER OF THE PRODUCT AT ISSUE  
45 WHERE THE MANUFACTURER REFUSES TO ACCEPT A TENDER OF DEFENSE FROM THE

1 SELLER, THE MANUFACTURER SHALL INDEMNIFY THE SELLER FOR ANY JUDGMENT  
2 RENDERED AGAINST THE SELLER AND SHALL ALSO REIMBURSE THE SELLER FOR  
3 REASONABLE ATTORNEY FEES AND COSTS INCURRED BY THE SELLER IN DEFENDING THE  
4 ACTION UNLESS SUBSECTION A OF THIS SECTION APPLIES.

5 ~~B.~~ C. If a judgment is rendered in favor of the plaintiff and a  
6 seller is granted indemnity against a manufacturer, the plaintiff shall  
7 first attempt to satisfy the judgment by levying execution ~~upon~~ ON the  
8 manufacturer in this state or in the state where the manufacturer's  
9 principal place of business is located and by making demand ~~upon~~ ON any  
10 liability insurance carrier of the manufacturer whose identity is known to  
11 THE plaintiff before attempting to collect the judgment from the seller or  
12 the seller's liability insurance carrier. The return of a writ of  
13 execution partially or wholly unsatisfied or the failure of the  
14 manufacturer's insurance carrier to pay the judgment ~~upon~~ ON demand ~~shall~~  
15 ~~be~~ IS deemed full compliance with the plaintiff's obligation to attempt to  
16 collect from the manufacturer.

17 ~~C.~~ D. In any product liability action the manufacturer of the  
18 product shall be indemnified by the seller of the product for any judgment  
19 rendered against the manufacturer and shall also reimburse the  
20 manufacturer for reasonable ~~attorneys'~~ ATTORNEY fees and costs incurred in  
21 defending ~~such~~ THE action, if the seller provided the plans or  
22 specifications for the manufacture or preparation of the product, ~~and such~~  
23 THE plans or specifications were a substantial cause of the product's  
24 alleged defect and ~~if~~ the product was manufactured in compliance with and  
25 according to the plans or specifications of the seller. If a judgment is  
26 rendered in favor of the plaintiff and a manufacturer is granted indemnity  
27 against a seller, the plaintiff shall first attempt to satisfy the  
28 judgment by levying execution ~~upon~~ ON the seller in this state or in the  
29 state where the seller's principal place of business is located and by  
30 making demand ~~upon~~ ON any liability insurance carrier of the seller whose  
31 identity is known to THE plaintiff before attempting to collect the  
32 judgment from the manufacturer or manufacturer's liability insurance  
33 carrier. The return of a writ of execution partially or wholly  
34 unsatisfied or the failure of the seller's insurance carrier to pay the  
35 judgment ~~upon~~ ON demand ~~shall be~~ IS deemed full compliance with the  
36 plaintiff's obligation to attempt to collect from the seller. ~~The~~  
37 ~~provisions of~~ This subsection ~~shall~~ DOES not apply if the manufacturer had  
38 knowledge or with the exercise of reasonable and diligent care should have  
39 had knowledge of the defect in the product.