

Senate Engrossed

product liability; civil action; limitation

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

SENATE BILL 1092

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 SELLER HAD ACTUAL KNOWLEDGE OF THE CHANGE IN THE
30 PRODUCT'S CONDITION AND THAT CHANGE WAS A SUBSTANTIAL CAUSE OF THE
31 INCIDENT GIVING RISE TO THE ACTION.

32 5. THE SELLER FAILED TO EXERCISE REASONABLE CARE:

33 (a) IN EITHER:

34 (i) ASSEMBLING, MAINTAINING OR REPAIRING THE PRODUCT AT ISSUE.

35 (ii) CONVEYING TO THE CONSUMER THE LABELS, WARNINGS OR INSTRUCTIONS
36 THAT WERE INTENDED TO BE PLACED ON OR DISTRIBUTED WITH THE PRODUCT AT
37 ISSUE THAT THE SELLER ACTUALLY RECEIVED BEFORE SELLING THE PRODUCT AT
38 ISSUE.

39 (b) AND THE ACT DESCRIBED IN ITEM (i) OR (ii) OF THIS SUBDIVISION
40 WAS A SUBSTANTIAL CAUSE OF THE INCIDENT GIVING RISE TO THE ACTION.

41 6. THE SELLER MADE AN EXPRESS WARRANTY REGARDING THE PRODUCT
42 INDEPENDENT OF ANY EXPRESS WARRANTY MADE BY A MANUFACTURER REGARDING THE
43 PRODUCT, THE PRODUCT FAILED TO CONFORM TO THE SELLER'S INDEPENDENT EXPRESS
44 WARRANTY AND THE FAILURE OF THE PRODUCT TO CONFORM TO THE SELLER'S

1 INDEPENDENT EXPRESS WARRANTY WAS A SUBSTANTIAL CAUSE OF THE INCIDENT
2 GIVING RISE TO THE ACTION.

3 B. IN ANY PRODUCT LIABILITY ACTION THAT IS COMMENCED OR MAINTAINED
4 AGAINST A SELLER THAT IS NOT ALSO A MANUFACTURER OF THE PRODUCT AT ISSUE
5 WHERE THE MANUFACTURER REFUSES TO ACCEPT A TENDER OF DEFENSE FROM THE
6 SELLER, THE MANUFACTURER SHALL REIMBURSE THE SELLER FOR REASONABLE
7 ATTORNEY FEES AND COSTS INCURRED BY THE SELLER IN DEFENDING THE ACTION
8 UNLESS SUBSECTION A OF THIS SECTION APPLIES.

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

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