

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PRODUCT LIABILITY LAWS; MODIFYING SOME
5 SELLERS' LIABILITY FOR DEFECTIVE PRODUCTS IN SEALED CONTAINERS; ALLOWING SELLERS TO
6 ASSERT A STATE-OF-THE-ART DEFENSE; AND AMENDING SECTION 27-1-719, MCA."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9
10 **Section 1.** Section 27-1-719, MCA, is amended to read:

11 **"27-1-719. (Temporary) Liability of seller of product for physical harm to user or consumer. (1)**

12 As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

13 (2) A person who sells a product in a defective condition unreasonably dangerous to a user or
14 consumer or to the property of a user or consumer is liable for physical harm caused by the product to the
15 ultimate user or consumer or to the user's or consumer's property if:

16 (a) the seller is engaged in the business of selling the product; and

17 (b) the product is expected to and does reach the user or consumer without substantial change in the
18 condition in which it is sold.

19 (3) The provisions of subsection (2) apply even if:

20 (a) the seller exercised all possible care in the preparation and sale of the product; and

21 (b) the user or consumer did not buy the product from or enter into any contractual relation with the
22 seller.

23 (4) Unless it is demonstrated that the manufacturer is not subject to service of process in Montana, or
24 that the seller contractually assumed one of the manufacturer's duties to manufacture, design, or provide
25 warnings or instructions with respect to the product, subsection (2) does not apply to a seller other than a
26 manufacturer who sells a product that was in a defective condition unreasonably dangerous to a user or
27 consumer or to property of a user or consumer if:

28 (a) the defective condition existed at the time the product left the control of the manufacturer;

1 **(b) the seller received the product in a sealed container and sold the product in the same sealed**
2 **container; and**

3 **(c) the seller had no reason to believe a defective condition existed.**

4 **(5) (a) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.**

5 **(b) A seller may assert as an affirmative defense to a claim for relief based upon improper product**
6 **design or manufacture that the plans or designs for the product or the methods and techniques of**
7 **manufacturing, inspecting, testing, and labeling the product could not have been made safer by the adoption of**
8 **a reasonable alternative at the time the product was sold.**

9 ~~(5)(6)~~ Except as provided in this subsection, contributory negligence is not a defense to the liability of
10 a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively
11 manufactured or defectively designed product. A seller named as a defendant in an action based on strict
12 liability in tort for damages to person or property caused by a defectively designed or defectively manufactured
13 product may assert the following affirmative defenses against the user or consumer, the legal representative of
14 the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

15 (a) The user or consumer of the product discovered the defect or the defect was open and obvious
16 and the user or consumer unreasonably made use of the product and was injured by it.

17 (b) The product was unreasonably misused by the user or consumer and the misuse caused or
18 contributed to the injury.

19 ~~(6)(7)~~ The affirmative defenses referred to in ~~subsection~~ subsections (5) and (6) mitigate or bar
20 recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702.
21 (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

22 **27-1-719. (Effective on occurrence of contingency) Liability of seller of product for physical**
23 **harm to user or consumer.** (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

24 (2) A person who sells a product in a defective condition unreasonably dangerous to a user or
25 consumer or to the property of a user or consumer is liable for physical harm caused by the product to the
26 ultimate user or consumer or to the user's or consumer's property if:

27 (a) the seller is engaged in the business of selling the product; and

28 (b) the product is expected to and does reach the user or consumer without substantial change in the

1 condition in which it is sold.

2 (3) The provisions of subsection (2) apply even if:

3 (a) the seller exercised all possible care in the preparation and sale of the product; and

4 (b) the user or consumer did not buy the product from or enter into any contractual relation with the
5 seller.

6 (4) Unless it is demonstrated that the manufacturer is not subject to service of process in Montana, or
7 that the seller contractually assumed one of the manufacturer's duties to manufacture, design, or provide
8 warnings or instructions with respect to the product, subsection (2) does not apply to a seller other than a
9 manufacturer who sells a product that was in a defective condition unreasonably dangerous to a user or
10 consumer or to property of a user or consumer if:

11 (a) the defective condition existed at the time the product left the control of the manufacturer;

12 (b) the seller received the product in a sealed container and sold the product in the same sealed
13 container; and

14 (c) the seller had no reason to believe a defective condition existed.

15 (5) (a) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

16 (b) A seller may assert as an affirmative defense to a claim for relief based upon improper product
17 design or manufacture that the plans or designs for the product or the methods and techniques of
18 manufacturing, inspecting, testing, and labeling the product could not have been made safer by the adoption of
19 a reasonable alternative at the time the product was sold.

20 ~~(5)~~(6) Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for
21 personal injury or property damage caused by a defectively manufactured or defectively designed product. A
22 seller named as a defendant in an action based on strict liability in tort for damages to a person or property
23 caused by a defectively designed or defectively manufactured product may assert the following affirmative
24 defenses against the user or consumer, the legal representative of the user or consumer, or any person
25 claiming damages by reason of injury to the user or consumer:

26 (a) The user or consumer of the product discovered the defect or the defect was open and obvious
27 and the user or consumer unreasonably made use of the product and was injured by it.

28 (b) The product was unreasonably misused by the user or consumer and the misuse caused or

1 contributed to the injury.

2 ~~(6)~~(7) The affirmative defenses referred to in ~~subsection~~ subsections (5) and (6) mitigate or bar
3 recovery and must be applied in accordance with the principles of comparative fault set forth in 27-1-702 and
4 27-1-705."

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6 NEW SECTION. Section 2. Severability. If a part of [this act] is invalid, all valid parts that are
7 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
8 the part remains in effect in all valid applications that are severable from the invalid applications.

9 - END -