WEST VIRGINIA CODE: §55-7-31

§55-7-31. Limitation on products liability actions; innocent seller.

(a) As used in this section:

(1) “Manufacturer” means a person who designs, assembles, fabricates, produces, constructs or otherwise prepares a product or a component part of a product before the sale of the product to a user or consumer.

(2) “Person” means a natural person, partnership, firm, association or corporation.

(3) “Product” means any tangible object, article or good, including attachments, accessories and component parts.

(4) “Product liability action” means any civil action brought against a manufacturer or seller of a product, based in whole or in part on the doctrine of strict liability in tort, for or on account of personal injury, death or property damage caused by or resulting from:

(A) The manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, marketing or sale of a product;

(B) The failure to warn or protect against a danger or hazard in the use, misuse or unintended use of a product; or

(C) The failure to provide proper instructions for the use of a product.

(5) “Seller” means a wholesaler, distributor, retailer, or other individual or entity, other than a manufacturer, that is regularly engaged in the selling of a product whether the sale is for resale by the purchaser or is for use or consumption by the ultimate consumer. “Seller” includes a lessor or bailor regularly engaged in the business of the lease or bailment of the product.

(b) No product liability action shall be maintained against a seller, unless:

(1) The seller had actual knowledge of the defect in the product that was a proximate cause of the harm for which recovery is sought;

(2) The seller exercised substantial control over the aspect of the manufacture, construction, design, formula, installation, preparation, assembly, testing, labeling, warnings or instructions of the product that was a proximate cause of the harm for which recovery is sought;

(3) The seller altered, modified or installed the product after the product left the possession

WV Legislature

of the manufacturer and the alteration, modification or installation was:

(A) Not authorized or requested by the manufacturer or not performed in compliance with the directions or specifications of the manufacturer; and

(B) A proximate cause of the harm for which recovery is sought;

(4) The seller made an express warranty regarding the product that was independent of any express warranty made by the manufacturer regarding the product, the product failed to conform to that express warranty by the seller and that failure was a proximate cause of the harm for which recovery is sought;

(5) The seller resold the product after the product's first sale for use or consumption and the product was not in substantially the same condition as it was at the time the product left the possession of the manufacturer and the changed condition of the product was a proximate cause of the harm for which recovery is sought;

(6) The seller failed to exercise reasonable and product-appropriate care in assembling, maintaining, storing, transporting or repairing the product and such failure was a proximate cause of the harm for which recovery is sought;

(7) The seller removed or failed to convey to the user or consumer of the product the manufacturer's labels, warnings or instructions and such failure was a proximate cause of the harm for which recovery is sought;

(8) The seller is a controlled subsidiary of a manufacturer, or the manufacturer is a controlled subsidiary of the seller;

(9) The seller repackages the product or has placed his or her own brand name or label on the product: Provided, That this does not include a seller, who is not otherwise a manufacturer, who:

(A) Did not exercise substantial control as described in subdivision (2) of this subsection; and

(B) Discloses the identity of the actual manufacturer of the product;

(10) The manufacturer cannot be identified, despite a good-faith exercise of due diligence, to identify the manufacturer of the product;

(11) The manufacturer is not subject to service of process under the laws of the state;

(12) The manufacturer is insolvent in that the manufacturer is unable to pay its debts as they become due in the ordinary course of business: Provided, That a manufacturer who has been judicially declared insolvent or is no longer in existence through dissolution is conclusively presumed for the purposes of this subdivision to be insolvent; or

WV Legislature

(13) The court determines by clear and convincing evidence that the party asserting the product liability action would be unable to enforce a judgment against the product manufacturer.

(c) The provisions of this section apply to any civil action involving a product that was sold on or after the effective date of this said Enrolled House Bill 2850.

WV Legislature