

NORTH CAROLINA GENERAL ASSEMBLY
1979 SESSION

CHAPTER 654
SENATE BILL 189

AN ACT RELATING TO CIVIL ACTIONS FOR DAMAGES FOR PERSONAL INJURY,
DEATH OR DAMAGE TO PROPERTY RESULTING FROM THE USE OF
PRODUCTS.

The General Assembly of North Carolina enacts:

Section 1. A new Chapter 99B of the General Statutes is enacted, entitled "Products Liability", to read as follows:

**"Chapter 99B.
"Products Liability.**

"§ 99B-1. Definitions. — When used in this Chapter, unless the context otherwise requires:

- (1) 'Product liability action' includes any action brought for or on account of personal injury, death or property damage caused by or resulting from the manufacture, construction, design, formulation, development of standards, preparation, processing, assembly, testing, listing, certifying, warning, instructing, marketing, selling, advertising, packaging or labeling of any product.
- (2) 'Manufacturer' means a person or entity who designs, assembles, fabricates, produces, constructs or otherwise prepares a product or component part of a product prior to its sale to a user or consumer, including a seller owned in whole or significant part by the manufacturer or a seller owning the manufacturer in whole or significant part.
- (3) 'Seller' includes a retailer, wholesaler, or distributor, and means any individual or entity engaged in the business of selling a product, whether such sale is for resale or for use or consumption. 'Seller' also includes a lessor or bailor engaged in the business of leasing or bailment of a product.
- (4) 'Claimant' means a person or other entity asserting a claim and, if said claim is asserted on behalf of an estate, an incompetent or a minor, 'claimant' includes plaintiff's decedent, guardian or guardian ad litem.

"§ 99B-2. Liability of seller. — (a) No product liability action, except an action for breach of express warranty, shall be commenced or maintained against any seller when the product was acquired and sold by the seller in a sealed container or when the product was acquired and sold by the seller under circumstances in which the seller was afforded no reasonable opportunity to inspect the product in such a manner that would have or should have, in the exercise of reasonable care, revealed the existence of the condition complained of, unless the seller damaged or mishandled the product while in his possession; provided, that the provisions of this section shall not apply if the manufacturer of the product is not subject to the jurisdiction of the courts of this State or if such manufacturer has been judicially declared insolvent.

(b) A claimant who is a buyer, as defined in the Uniform Commercial Code, of the product involved, or who is a member or a guest of a member of the family of the buyer, a guest of the buyer, or an employee of the buyer not covered by workmen's compensation insurance may bring a product liability action directly against the manufacturer of the product

involved for breach of implied warranty; and the lack of privity of contract shall not be grounds for the dismissal of such action.

"§ 99B-3. Alteration or modification of the product. — (a) No manufacturer or seller of a product shall be held liable in any product liability action where a proximate cause of the personal injury, death or damage to property was either an alteration or modification of the product by a party other than the manufacturer or seller, which alteration or modification occurred after the product left the control of such manufacturer or such seller unless:

- (1) the alteration or modification was in accordance with the instructions or specifications of such manufacturer or such seller; or
- (2) the alteration or modification was made with the express consent of such manufacturer or such seller.

(b) For the purposes of this section, alteration or modification includes changes in the design, formula, function, or use of the product from that originally designed, tested, or intended by the manufacturer. It includes failure to observe routine care and maintenance, but does not include ordinary wear and tear.

"§ 99B-4. Injured parties' knowledge or reasonable care. — No manufacturer or seller shall be held liable in any product liability action if:

- (1) the use of the product giving rise to the product liability action was contrary to any express and adequate instructions or warnings delivered with, appearing on, or attached to the product or on its original container or wrapping, if the user knew or with the exercise of reasonable and diligent care should have known of such instructions or warnings; provided, that in the case of prescription drugs or devices the adequacy of the warning by the manufacturer shall be determined by the prescribing information made available by the manufacturer to the health care practitioner; or
- (2) the user discovered a defect or unreasonably dangerous condition of the product and was aware of the danger, and nevertheless proceeded unreasonably to make use of the product and was injured by or caused injury with that product; or
- (3) the claimant failed to exercise reasonable care under the circumstances in his use of the product, and such failure was a proximate cause of the occurrence that caused injury or damage to the claimant."

Sec. 2. G.S. 1-50 is amended by adding a new subsection to read:

"(6) No action for the recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than six years after the date of initial purchase for use or consumption."

Sec. 3. The following amendments are hereby made to General Statutes Chapter 1:

a. G.S. 1-15(b) is repealed.

b. G.S. 1-52 is amended by adding a new subsection to read:

"(16) Unless otherwise provided by statute, for personal injury or physical damage to claimant's property, the cause of action, except in causes of actions referred to in G.S. 1-15(c), shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. Provided that no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action."

c. G.S. 1-53(4) is hereby rewritten to read as follows:

"(4) Actions for damages on account of the death of a person caused by the wrongful act, neglect or fault of another under G.S. 28A-18-2; the cause of action shall not accrue until the date of death. Provided that, whenever the

decendent would have been barred, had he lived, from bringing an action for bodily harm because of the provisions of G.S. 1-15(c) or G.S. 1-52(16), no action for his death may be brought."

Sec. 4. G.S. 1A-1, Rule 8(a)(2), as found in the 1977 Cumulative Supplement to Volume 1A, is amended in line 4 by inserting before the word, "wherein" the following:

"and in all actions against product manufacturers, wholesalers or retailers for recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product,".

Sec. 5. If any provision of this act or the application thereof to any person or circumstances is held invalid by any court of competent jurisdiction, the invalidity shall not affect other provisions or application that can be given effect without the invalid provision or application; and to this end the provisions of this act are severable.

Sec. 6. The provisions of this act shall not be construed to amend or repeal the provisions of G.S. 1-17.

Sec. 7. This act shall not affect pending litigation.

Sec. 8. This act shall become effective October 1, 1979.

In the General Assembly read three times and ratified, this the 28th day of May, 1979.