



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3906

Introduced 12/11/2011, by Rep. Dwight Kay

SYNOPSIS AS INTRODUCED:

735 ILCS 5/Art. II Pt. 21 heading
735 ILCS 5/2-2101
735 ILCS 5/2-2102
735 ILCS 5/2-2103
735 ILCS 5/2-2104
735 ILCS 5/2-2105
735 ILCS 5/2-2106
735 ILCS 5/2-2106.5
735 ILCS 5/2-2107
735 ILCS 5/2-2108
735 ILCS 5/2-2109

Re-enacts and changes various provisions of the Code of Civil Procedure relating to product liability actions that were added by Public Act 89-7, which was held to be void in its entirety by the Illinois Supreme Court in *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997). Effective immediately.

LRB097 14141 AJO 58834 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Purpose.

5 (a) The General Assembly finds and declares that:

6 (1) "An Act to amend certain Acts in relation to civil
7 actions, which may be referred to as the Civil Justice
8 Reform Amendments of 1995", Public Act 89-7, approved March
9 9, 1995, added Part 21 to Article II of the Code of Civil
10 Procedure. Public Act 89-7 also contained other
11 provisions.

12 (2) In *Best v. Taylor Machine Works*, 179 Ill. 2d 367
13 (1997), the Illinois Supreme Court held that Public Act
14 89-7 was void in its entirety.

15 (3) The provisions of Public Act 89-7 adding Part 21 to
16 Article II of the Code of Civil Procedure are of vital
17 concern to the people of this State, and legislative action
18 concerning these provisions is necessary.

19 (b) It is the purpose of this Act to re-enact the
20 provisions of Public Act 89-7 adding Part 21 to Article II of
21 the Code of Civil Procedure. This Act is intended to remove any
22 questions as to the validity or content of those provisions.

23 (c) This Act is not intended to supersede any other Public
24 Act. The re-enacted material is shown as existing text (i.e.,

1 without striking or underscoring) except for the changes made
2 by this Act to Section 2-2109 of the Code of Civil Procedure,
3 which are shown with striking and underscoring.

4 Section 5. The Code of Civil Procedure is amended by
5 re-enacting the heading of Part 21 of Article II and Sections
6 2-2101, 2-2102, 2-2103, 2-2104, 2-2105, 2-2106, 2-2106.5,
7 2-2107, and 2-2108 and by re-enacting and changing Section
8 2-2109 as follows:

9 (735 ILCS 5/Art. II Pt. 21 heading)

10 PART 21. PRODUCT LIABILITY

11 (735 ILCS 5/2-2101)

12 Sec. 2-2101. Definitions. For purposes of this Part, the
13 terms listed have the following meanings:

14 "Clear and convincing evidence" means that measure or
15 degree of proof that will produce in the mind of the trier of
16 fact a high degree of certainty as to the truth of the
17 allegations sought to be established. This evidence requires a
18 greater degree of persuasion than is necessary to meet the
19 preponderance of the evidence standard.

20 "Harm" means (i) damage to property other than the product
21 itself; (ii) personal physical injury, illness, or death; (iii)
22 mental anguish or emotional harm to the extent recognized by
23 applicable law; (iv) any loss of consortium or services; or (v)

1 other loss deriving from any type of harm described in item
2 (i), (ii), (iii), or (iv).

3 "Manufacturer" means (i) any person who is engaged in a
4 business to design or formulate and to produce, create, make,
5 or construct any product or component part of a product; (ii) a
6 product seller with respect to all component parts of a product
7 or a component part of a product that is created or affected
8 when, before placing the product in the stream of commerce, the
9 product seller designs or formulates and produces, creates,
10 makes, or constructs an aspect of a product or a component part
11 of a product made by another; or (iii) any product seller not
12 described in (ii) that holds itself out as a manufacturer to
13 the user of the product.

14 "Product liability action" means a civil action brought on
15 any theory against a manufacturer or product seller for harm
16 caused by a product.

17 "Product seller" means a person who, in the course of a
18 business conducted for that purpose, sells, distributes,
19 leases, installs, prepares, blends, packages, labels, markets,
20 repairs, maintains, or otherwise is involved in placing a
21 product in the stream of commerce.

22 (Source: P.A. 89-7, eff. 3-9-95.)

23 (735 ILCS 5/2-2102)

24 Sec. 2-2102. Effect on other laws. Except as may be
25 provided by other laws, any civil action that conforms to the

1 definition of a product liability action as defined in Section
2 2-2101 of this Part shall be governed by the provisions of this
3 Part.

4 (Source: P.A. 89-7, eff. 3-9-95.)

5 (735 ILCS 5/2-2103)

6 Sec. 2-2103. Federal and State standards; presumption. In a
7 product liability action, a product or product component shall
8 be presumed to be reasonably safe if the aspect of the product
9 or product component that allegedly caused the harm was
10 specified or required, or if the aspect is specifically
11 exempted for particular applications or users, by a federal or
12 State statute or regulation promulgated by an agency of the
13 federal or State government responsible for the safety or use
14 of the product before the product was distributed into the
15 stream of commerce.

16 (Source: P.A. 89-7, eff. 3-9-95.)

17 (735 ILCS 5/2-2104)

18 Sec. 2-2104. No practical and feasible alternative design;
19 presumption. If the design of a product or product component
20 is in issue in a product liability action, the design shall be
21 presumed to be reasonably safe unless, at the time the product
22 left the control of the manufacturer, a practical and
23 technically feasible alternative design was available that
24 would have prevented the harm without significantly impairing

1 the usefulness, desirability, or marketability of the product.
2 An alternative design is practical and feasible if the
3 technical, medical, or scientific knowledge relating to safety
4 of the alternative design was, at the time the product left the
5 control of the manufacturer, available and developed for
6 commercial use and acceptable in the marketplace.

7 (Source: P.A. 89-7, eff. 3-9-95.)

8 (735 ILCS 5/2-2105)

9 Sec. 2-2105. Changes in design or warning;
10 inadmissibility. When measures are taken which, if taken
11 previously, would have made an event less likely to occur,
12 evidence of the subsequent measures is not admissible to prove
13 a defect in a product, negligence, or culpable conduct in
14 connection with the event. In a product liability action
15 brought under any theory or doctrine, if the feasibility of a
16 design change or change in warnings is not controverted, then a
17 subsequent design change or change in warnings shall not be
18 admissible into evidence. This rule does not require the
19 exclusion of evidence of subsequent measures when offered for
20 another purpose such as proving ownership, control, or
21 impeachment.

22 (Source: P.A. 89-7, eff. 3-9-95.)

23 (735 ILCS 5/2-2106)

24 Sec. 2-2106. Provision of written warnings to users of

1 product; nonliability.

2 (a) The warning, instructing, or labeling of a product or
3 specific product component shall be deemed to be adequate if
4 pamphlets, booklets, labels, or other written warnings were
5 provided that gave adequate notice to reasonably anticipated
6 users or knowledgeable intermediaries of the material risks of
7 injury, death, or property damage connected with the reasonably
8 anticipated use of the product and instructions as to the
9 reasonably anticipated uses, applications, or limitations of
10 the product anticipated by the defendant.

11 (b) In the defense of a product liability action, warnings,
12 instructions or labeling shall be deemed to be adequate if the
13 warnings, instructions or labels furnished with the product
14 were in conformity with the generally recognized standards in
15 the industry at the time the product was distributed into the
16 stream of commerce.

17 (c) Notwithstanding subsections (a) and (b), a defendant
18 shall not be liable for failure to warn of material risks that
19 were obvious to a reasonably prudent product user and material
20 risks that were a matter of common knowledge to persons in the
21 same position as or similar positions to that of the plaintiff
22 in a product liability action.

23 (d) In any product liability action brought against a
24 manufacturer or product seller for harm allegedly caused by a
25 failure to provide adequate warnings or instructions, a
26 defendant manufacturer or product seller shall not be liable

1 if, at the time the product left the control of the
2 manufacturer, the knowledge of the danger that caused the harm
3 was not reasonably available or obtainable in light of existing
4 scientific, technical, or medical information.

5 (Source: P.A. 89-7, eff. 3-9-95.)

6 (735 ILCS 5/2-2106.5)

7 Sec. 2-2106.5. Inherent characteristics of products;
8 nonliability. In a product liability action, a manufacturer or
9 product seller shall not be liable for harm allegedly caused by
10 a product if the alleged harm was caused by an inherent
11 characteristic of the product which is a generic aspect of the
12 product that cannot be eliminated without substantially
13 compromising the product's usefulness or desirability and
14 which is recognized by the ordinary person with the ordinary
15 knowledge common to the community.

16 (Source: P.A. 89-7, eff. 3-9-95.)

17 (735 ILCS 5/2-2107)

18 Sec. 2-2107. Punitive damages. In a product liability
19 action, punitive damages shall not be awarded against a
20 manufacturer or product seller if the conduct of the defendant
21 manufacturer, seller, or reseller that allegedly caused the
22 harm was approved by or was in compliance with standards set
23 forth in an applicable federal or State statute or in a
24 regulation or other administrative action promulgated by an

1 agency of the federal or State government responsible for the
2 safety or use of the product, which statute or regulation was
3 in effect at the time of the manufacturer's or product seller's
4 alleged misconduct, unless the plaintiff proves by clear and
5 convincing evidence that the manufacturer or product seller
6 intentionally withheld from or misrepresented to Congress, the
7 State legislature, or the relevant federal or State agency
8 material information relative to the safety or use of the
9 product that would or could have resulted in a changed decision
10 relative to the law, standard, or other administrative action.
11 (Source: P.A. 89-7, eff. 3-9-95.)

12 (735 ILCS 5/2-2108)

13 Sec. 2-2108. No cause of action created. Nothing in this
14 Part shall be construed to create a cause of action.
15 (Source: P.A. 89-7, eff. 3-9-95.)

16 (735 ILCS 5/2-2109)

17 Sec. 2-2109. This amendatory Act of the 97th General
18 Assembly ~~1995 adding Part 21 to the Code of Civil Procedure~~
19 applies to causes of action accruing on or after its effective
20 date.
21 (Source: P.A. 89-7, eff. 3-9-95.)

22 Section 99. Effective date. This Act takes effect upon
23 becoming law.