

PROPOSED AMENDMENT

SENATE AMENDMENTS TO H.B. 2503

(Reference to House engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Title 12, chapter 6, article 9, Arizona Revised Statutes,
3 is amended by adding section 12-689, to read:

4 12-689. Exemption from punitive or exemplary damages:
5 application; definitions

6 A. A MANUFACTURER, SERVICE PROVIDER OR SELLER IS NOT LIABLE FOR
7 EXEMPLARY OR PUNITIVE DAMAGES IF ANY OF THE FOLLOWING APPLIES:

8 1. THE PRODUCT ALLEGED TO HAVE CAUSED THE HARM WAS DESIGNED,
9 MANUFACTURED, PACKAGED, LABELED, SOLD OR REPRESENTED IN RELEVANT AND MATERIAL
10 RESPECTS ACCORDING TO THE TERMS OF AN APPROVAL, CONDITIONAL APPROVAL,
11 CLEARANCE, LICENSE OR SIMILAR DETERMINATION OF A GOVERNMENT AGENCY.

12 2. THE PRODUCT, ACTIVITY OR SERVICE WAS IN COMPLIANCE WITH A STATUTE
13 OF THIS STATE OR THE UNITED STATES OR A STANDARD, RULE, REGULATION, ORDER OR
14 OTHER ACTION OF A GOVERNMENT AGENCY PURSUANT TO STATUTORY AUTHORITY, IF THE
15 STATUTE OR AGENCY ACTION IS RELEVANT TO THE EVENT OR RISK ALLEGEDLY CAUSING
16 THE HARM AND THE PRODUCT, ACTIVITY OR SERVICE WAS IN COMPLIANCE AT THE TIME
17 THE PRODUCT LEFT THE CONTROL OF THE MANUFACTURER OR SELLER.

18 3. THE ACT OR TRANSACTION FORMING THE BASIS OF THE CLAIM INVOLVES
19 TERMS OF SERVICE, CONTRACT PROVISIONS, REPRESENTATIONS OR OTHER PRACTICES
20 AUTHORIZED BY, OR IN COMPLIANCE WITH, THE RULES, REGULATIONS, STANDARDS OR
21 ORDERS OF, OR A STATUTE ADMINISTERED BY, A GOVERNMENT AGENCY.

22 B. THIS SECTION DOES NOT APPLY IF THE CLAIMANT ESTABLISHES THAT THE
23 MANUFACTURER, SERVICE PROVIDER OR SELLER, AT ANY TIME BEFORE THE ACTIVITY OR
24 EVENT THAT ALLEGEDLY CAUSED THE HARM, DID ANY OF THE FOLLOWING:

25 1. SOLD THE PRODUCT, ACTIVITY OR SERVICE AFTER THE EFFECTIVE DATE OF A
26 FINAL ORDER OF A GOVERNMENT AGENCY TO REMOVE THE PRODUCT FROM THE MARKET, TO
27 WITHDRAW ITS APPROVAL OF THE PRODUCT, ACTIVITY OR SERVICE OR TO SUBSTANTIALLY

1 ALTER ITS TERMS OF APPROVAL OF THE PRODUCT, ACTIVITY OR SERVICE IN A MANNER
2 THAT WOULD HAVE AVOIDED THE CLAIMANT'S ALLEGED INJURY. FOR THE PURPOSES OF
3 THIS PARAGRAPH AND PARAGRAPH 4 OF THIS SUBSECTION, A PRODUCT, ACTIVITY OR
4 SERVICE IS SOLD WHEN IT IS DELIVERED OR PROVIDED TO THE END USER, EVEN IF
5 PAYMENT IS NOT MADE UNTIL LATER.

6 2. INTENTIONALLY, AND IN VIOLATION OF APPLICABLE REGULATIONS AS
7 DETERMINED BY FINAL ACTION OF THE GOVERNMENT AGENCY, WITHHELD FROM OR
8 MISREPRESENTED TO THE GOVERNMENT AGENCY INFORMATION MATERIAL TO THE APPROVAL
9 OR MAINTAINING OF APPROVAL OF THE PRODUCT, ACTIVITY OR SERVICE, AND THE
10 INFORMATION IS RELEVANT TO THE HARM THAT THE CLAIMANT ALLEGEDLY SUFFERED.

11 3. MADE AN ILLEGAL PAYMENT TO AN OFFICIAL OR EMPLOYEE OF A GOVERNMENT
12 AGENCY FOR THE PURPOSE OF SECURING OR MAINTAINING APPROVAL OF THE PRODUCT,
13 ACTIVITY OR SERVICE.

14 4. AFTER THE PRODUCT WAS SOLD OR THE SERVICE WAS PROVIDED, A
15 GOVERNMENT AGENCY FOUND THAT THE MANUFACTURER, SERVICE PROVIDER OR SELLER
16 KNOWINGLY VIOLATED APPLICABLE REGULATIONS REQUIRING THE REPORTING TO THAT
17 GOVERNMENT AGENCY OF RISKS OF HARM AND THE UNREPORTED INFORMATION WAS
18 MATERIAL AND RELEVANT TO THE HARM THAT THE CLAIMANT ALLEGEDLY SUFFERED.

19 C. THIS SECTION SHALL NOT BE CONSTRUED TO DO ANY OF THE FOLLOWING:

20 1. EXPAND THE AUTHORITY OF ANY STATE AGENCY OR STATE AGENT TO ADOPT OR
21 PROMULGATE STANDARDS OR REGULATIONS WHERE NO SUCH AUTHORITY PREVIOUSLY
22 EXISTED.

23 2. REDUCE THE SCOPE OF ANY LIMITATION ON LIABILITY BASED ON COMPLIANCE
24 WITH THE RULES OR REGULATIONS OF A GOVERNMENT AGENCY APPLICABLE TO A SPECIFIC
25 ACT, TRANSACTION, PERSON OR INDUSTRY.

26 3. AFFECT THE LIABILITY OF A SERVICE PROVIDER BASED ON RATES FILED
27 WITH AND REVIEWED OR APPROVED BY A GOVERNMENT AGENCY.

28 D. FOR THE PURPOSES OF THIS SECTION:

29 1. "ACTIVITY" MEANS AN ACTION, PATTERN OF OPERATION OR PRACTICE THAT
30 IS REGULATED, APPROVED, LICENSED OR OTHERWISE REQUIRED BY A GOVERNMENT
31 AGENCY.

1 2. "GOVERNMENT AGENCY" MEANS THIS STATE OR THE UNITED STATES OR ANY
2 AGENCY OF THIS STATE OR THE UNITED STATES OR ANY ENTITY VESTED WITH THE
3 AUTHORITY OF THIS STATE OR THE UNITED STATES TO ISSUE RULES, REGULATIONS,
4 ORDERS OR STANDARDS CONCERNING THE DESIGN, MANUFACTURE, PACKAGING, LABELING
5 OR ADVERTISING OF A PRODUCT OR ACTIVITY OR THE PROVISION OF A SERVICE.

6 3. "MANUFACTURER" MEANS ANY PERSON WHO IS ENGAGED IN A BUSINESS TO
7 PRODUCE, CREATE, MAKE OR CONSTRUCT ANY PRODUCT OR COMPONENT PART OF A PRODUCT
8 AND WHO DOES EITHER OF THE FOLLOWING:

9 (a) DESIGNS, MANUFACTURES OR FORMULATES THE PRODUCT OR COMPONENT PART
10 OF THE PRODUCT.

11 (b) ENGAGES ANOTHER PERSON TO DESIGN, MANUFACTURE OR FORMULATE THE
12 PRODUCT OR COMPONENT PART OF THE PRODUCT.

13 4. "PRODUCT" MEANS ANY OBJECT POSSESSING INTRINSIC VALUE, CAPABLE OF
14 DELIVERY EITHER AS AN ASSEMBLED WHOLE OR AS A COMPONENT PART OR PARTS AND
15 PRODUCED FOR INTRODUCTION INTO TRADE OR COMMERCE.

16 5. "SELLER" MEANS A PERSON WHO IN THE COURSE OF A BUSINESS CONDUCTED
17 FOR THAT PURPOSE DOES EITHER OF THE FOLLOWING:

18 (a) SELLS, DISTRIBUTES, RENTS, LEASES, PREPARES, BLENDS, PACKAGES,
19 LABELS OR OTHERWISE IS INVOLVED IN PLACING A PRODUCT, ACTIVITY OR SERVICE IN
20 THE STREAM OF COMMERCE.

21 (b) INSTALLS, REPAIRS, REFURBISHES, RECONDITIONS OR MAINTAINS A
22 PRODUCT.

23 6. "SERVICE" MEANS ALL ACTIONS THAT ARE ENGAGED IN FOR OTHER PERSONS
24 FOR A CONSIDERATION, WHICH ACTIONS INVOLVE PREDOMINANTLY THE PERFORMANCE OF A
25 SERVICE AS DISTINGUISHED FROM MANUFACTURE OR SALE OF A PRODUCT AND THAT ARE
26 REGULATED, APPROVED OR LICENSED BY A GOVERNMENT AGENCY."

27 Amend title to conform

RICK MURPHY

3/8/12
9:32 AM
S: BB/CP/ly