

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

HOUSE BILL 2503

AN ACT

AMENDING TITLE 12, CHAPTER 6, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-689; RELATING TO PRODUCT LIABILITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

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 COMPLIED WITH ALL STATUTES OF THIS
13 STATE OR THE UNITED STATES OR STANDARDS, RULES, REGULATIONS, ORDERS OR OTHER
14 ACTIONS OF A GOVERNMENT AGENCY PURSUANT TO STATUTORY AUTHORITY THAT ARE
15 RELEVANT AND MATERIAL TO THE EVENT OR RISK ALLEGEDLY CAUSING THE HARM AND THE
16 PRODUCT, ACTIVITY OR SERVICE COMPLIED AT THE TIME THE PRODUCT LEFT THE
17 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
28 ALTER ITS TERMS OF APPROVAL OF THE PRODUCT, ACTIVITY OR SERVICE IN A MANNER
29 THAT WOULD HAVE AVOIDED THE CLAIMANT'S ALLEGED INJURY. FOR THE PURPOSES OF
30 THIS PARAGRAPH AND PARAGRAPH 4 OF THIS SUBSECTION, A PRODUCT, ACTIVITY OR
31 SERVICE IS SOLD WHEN IT IS DELIVERED OR PROVIDED TO THE END USER, EVEN IF
32 PAYMENT IS NOT MADE UNTIL LATER.

33 2. INTENTIONALLY, AND IN VIOLATION OF APPLICABLE REGULATIONS AS
34 DETERMINED BY FINAL ACTION OF THE GOVERNMENT AGENCY, WITHHELD FROM OR
35 MISREPRESENTED TO THE GOVERNMENT AGENCY INFORMATION MATERIAL TO THE APPROVAL
36 OR MAINTAINING OF APPROVAL OF THE PRODUCT, ACTIVITY OR SERVICE, AND THE
37 INFORMATION IS RELEVANT TO THE HARM THAT THE CLAIMANT ALLEGEDLY SUFFERED.

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

41 4. AFTER THE PRODUCT WAS SOLD OR THE SERVICE WAS PROVIDED, A
42 GOVERNMENT AGENCY FOUND THAT THE MANUFACTURER, SERVICE PROVIDER OR SELLER
43 KNOWINGLY VIOLATED APPLICABLE REGULATIONS REQUIRING THE REPORTING TO THAT
44 GOVERNMENT AGENCY OF RISKS OF HARM AND THE UNREPORTED INFORMATION WAS
45 MATERIAL AND RELEVANT TO THE HARM THAT THE CLAIMANT ALLEGEDLY SUFFERED.

1 C. THIS SECTION SHALL NOT BE CONSTRUED TO DO ANY OF THE FOLLOWING:
2 1. EXPAND THE AUTHORITY OF ANY STATE AGENCY OR STATE AGENT TO ADOPT OR
3 PROMULGATE STANDARDS OR REGULATIONS WHERE NO SUCH AUTHORITY PREVIOUSLY
4 EXISTED.
5 2. REDUCE THE SCOPE OF ANY LIMITATION ON LIABILITY BASED ON COMPLIANCE
6 WITH THE RULES OR REGULATIONS OF A GOVERNMENT AGENCY APPLICABLE TO A SPECIFIC
7 ACT, TRANSACTION, PERSON OR INDUSTRY.
8 3. AFFECT THE LIABILITY OF A SERVICE PROVIDER BASED ON RATES FILED
9 WITH AND REVIEWED OR APPROVED BY A GOVERNMENT AGENCY.
10 D. FOR THE PURPOSES OF THIS SECTION:
11 1. "ACTIVITY" MEANS AN ACTION, PATTERN OF OPERATION OR PRACTICE THAT
12 IS REGULATED, APPROVED, LICENSED OR OTHERWISE REQUIRED BY A GOVERNMENT
13 AGENCY.
14 2. "GOVERNMENT AGENCY" MEANS THIS STATE OR THE UNITED STATES OR ANY
15 AGENCY OF THIS STATE OR THE UNITED STATES OR ANY ENTITY VESTED WITH THE
16 AUTHORITY OF THIS STATE OR THE UNITED STATES TO ISSUE RULES, REGULATIONS,
17 ORDERS OR STANDARDS CONCERNING THE DESIGN, MANUFACTURE, PACKAGING, LABELING
18 OR ADVERTISING OF A PRODUCT OR ACTIVITY OR THE PROVISION OF A SERVICE.
19 3. "MANUFACTURER" MEANS ANY PERSON WHO IS ENGAGED IN A BUSINESS TO
20 PRODUCE, CREATE, MAKE OR CONSTRUCT ANY PRODUCT OR COMPONENT PART OF A PRODUCT
21 AND WHO DOES EITHER OF THE FOLLOWING:
22 (a) DESIGNS, MANUFACTURES OR FORMULATES THE PRODUCT OR COMPONENT PART
23 OF THE PRODUCT.
24 (b) ENGAGES ANOTHER PERSON TO DESIGN, MANUFACTURE OR FORMULATE THE
25 PRODUCT OR COMPONENT PART OF THE PRODUCT.
26 4. "PRODUCT" MEANS ANY OBJECT POSSESSING INTRINSIC VALUE, CAPABLE OF
27 DELIVERY EITHER AS AN ASSEMBLED WHOLE OR AS A COMPONENT PART OR PARTS AND
28 PRODUCED FOR INTRODUCTION INTO TRADE OR COMMERCE.
29 5. "SELLER" MEANS A PERSON WHO IN THE COURSE OF A BUSINESS CONDUCTED
30 FOR THAT PURPOSE DOES EITHER OF THE FOLLOWING:
31 (a) SELLS, DISTRIBUTES, RENTS, LEASES, PREPARES, BLENDS, PACKAGES,
32 LABELS OR OTHERWISE IS INVOLVED IN PLACING A PRODUCT, ACTIVITY OR SERVICE IN
33 THE STREAM OF COMMERCE.
34 (b) INSTALLS, REPAIRS, REFURBISHES, RECONDITIONS OR MAINTAINS A
35 PRODUCT.
36 6. "SERVICE" MEANS ALL ACTIONS THAT ARE ENGAGED IN FOR OTHER PERSONS
37 FOR A CONSIDERATION, WHICH ACTIONS INVOLVE PREDOMINANTLY THE PERFORMANCE OF A
38 SERVICE AS DISTINGUISHED FROM MANUFACTURE OR SALE OF A PRODUCT AND THAT ARE
39 REGULATED, APPROVED OR LICENSED BY A GOVERNMENT AGENCY.