

**HB1367**



**97TH GENERAL ASSEMBLY**

**State of Illinois**

**2011 and 2012**

**HB1367**

Introduced 2/9/2011, 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 05681 AJO 45744 b

A BILL FOR

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

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

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

(735 ILCS 5/2-2105)

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

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

(735 ILCS 5/2-2106)

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.