

## **CHAPTER 28-01.3 PRODUCTS LIABILITY**

### **28-01.3-01. Definitions.**

As used in this chapter:

1. "Manufacturer" means a person or entity who designs, assembles, fabricates, produces, constructs, or otherwise prepares a product or a component part of a product prior to the sale of the product to a user or consumer. The term includes any seller of a product who is owned in whole or significant part by the manufacturer or who owns, in whole or significant part, the manufacturer.
2. "Product liability action" means any action brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories upon which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, or the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.
3. "Seller" means any individual or entity, including a manufacturer, wholesaler, distributor, or retailer, who is engaged in the business of selling or leasing any product for resale, use, or consumption.
4. "Unreasonably dangerous" means that the product is dangerous to an extent beyond which would be contemplated by the ordinary and prudent buyer, consumer, or user of that product in that community considering the product's characteristics, propensities, risks, dangers, and uses, together with any actual knowledge, training, or experience possessed by that particular buyer, user, or consumer.

### **28-01.3-02. Limitation on ad damnum clause.**

If a complaint filed in a products liability action prays for a recovery of money in an amount equal to or less than fifty thousand dollars, the amount must be stated. If a recovery of money in an amount greater than fifty thousand dollars is demanded, the pleading must state merely that recovery of reasonable damages in an amount greater than fifty thousand dollars is demanded. This action may be superseded by an amendment to the North Dakota Rules of Civil Procedure.

### **28-01.3-03. Alteration or modification of product is defense to action.**

No manufacturer or seller of a product may be held liable in any products liability action in which a substantial contributing cause of the injury, death, or damage to property was an alteration or modification of the product, which occurred subsequent to the sale by the manufacturer or seller to the initial user or consumer, and which changed the purpose, use, function, design, or intended use or manner of use of the product from that for which the product was originally designed, tested, or intended.

### **28-01.3-04. Liability of nonmanufacturing sellers.**

1. In any products liability action maintained against a seller of a product who did not manufacture the product, the seller shall upon answering or otherwise pleading file an affidavit certifying the correct identity of the manufacturer of the product allegedly causing the personal injury, death, or damage to property.
2. After the plaintiff has filed a complaint against the manufacturer and the manufacturer has or is required to have answered or otherwise pleaded, the court shall order the dismissal of the claim against the certifying seller, unless the plaintiff can show any of the following:
  - a. That the certifying seller exercised some significant control over the design or manufacture of the product, or provided instructions or warnings to the manufacturer relative to the alleged defect in the product which caused the personal injury, death, or damage to property.

- b. That the certifying seller had actual knowledge of the defect in the product which caused the personal injury, death, or damage to property.
  - c. That the certifying seller created the defect in the product which caused the personal injury, death, or damage to property.
3. The plaintiff may at any time prior to the beginning of the trial move to vacate the order of dismissal and reinstate the certifying seller if the plaintiff can show any of the following:
- a. That the applicable statute of limitation bars a product liability action against the manufacturer of the product allegedly causing the injury, death, or damage.
  - b. That the identity of the manufacturer given to the plaintiff by the certifying defendant was incorrect.

**28-01.3-05. Indemnity of seller.**

If a product liability action is commenced against a seller, and it is alleged that a product was defectively designed, contained defectively manufactured parts, had insufficient safety guards, or had inaccurate or insufficient warning; that such condition existed when the product left the control of the manufacturer; that the seller has not substantially altered the product; and that the defective condition or lack of safety guards or adequate warnings caused the injury or damage complained of; the manufacturer from whom the product was acquired by the seller must be required to assume the cost of defense of the action, and any liability that may be imposed on the seller. The obligation to assume the seller's cost of defense should also extend to an action in which the manufacturer and seller are ultimately found not liable.

**28-01.3-06. Determination of defective product.**

No product may be considered to have a defect or to be in a defective condition, unless at the time the product was sold by the manufacturer or other initial seller, there was a defect or defective condition in the product which made the product unreasonably dangerous to the user or consumer.

**28-01.3-07. Declaration of legislative findings and intent.**

- 1. The legislative assembly finds that products liability reforms enacted in 1979, 1987, and 1993 have provided a needed degree of certainty in the laws governing civil actions against product manufacturers and sellers.
- 2. In recent years it has become increasingly evident that there are still serious problems with the current civil justice system. As a result, there is an urgent need for additional legislation to establish clear and predictable rules with respect to certain matters relating to products liability actions.
- 3. The purpose of sections 28-01.3-08 and 28-01.3-09 is to clarify and improve the method of determining responsibility for the payment of damages in products liability litigation; to restore balance and predictability between the consumer and the manufacturer or seller in product liability litigation; to bring about a more fair and equitable resolution of controversies in products liability litigation; to reenact a statute of repose to provide a reasonable period of time for the commencement of products liability litigation after a manufacturer or seller has parted with possession of its product; to address problems that have been created by judicial interpretation of our previous enactments; to enact, with minor changes, several provisions of former chapter 28-01.1; and to simplify and provide an increased degree of certainty and predictability to our products liability laws.

**28-01.3-08. Statute of limitation and repose.**

- 1. Except as provided in subsections 4 and 5, there may be no recovery of damages in a products liability action unless the injury, death, or property damage occurs within ten years of the date of initial purchase for use or consumption, or within eleven years of the date of manufacture of a product.
- 2. This section applies to all persons, regardless of minority or other legal disability.

3. If a manufacturer, wholesaler, or retailer issues a recall of a product in any state or becomes aware of any defect in a product at any time and fails to take reasonable steps to warn users of the product defect, the provisions of subsection 1 do not bar a products liability action against the manufacturer or seller by a user of the product who is subsequently injured or damaged as a result of the defect.
4. An action to recover damages based on injury allegedly resulting from exposure to asbestos composed of chrysotile, amosite, crocidolite, tremolite, anthrophyllite, actinolite, or any combination thereof, must be commenced within three years after the injured person has been informed of discovery of the injury by competent medical authority and that the injury was caused by exposure to asbestos as described in this subsection, or within three years after the discovery of facts that would reasonably lead to the discovery, whichever is earlier. No action commenced under this subsection based on the doctrine of strict liability in tort may be commenced or maintained against any seller of a product that is alleged to contain or possess a defective condition unreasonably dangerous to the buyer, user, or consumer unless the seller is also the manufacturer of the product or the manufacturer of the part of the product claimed to be defective.
5. An action to recover damages based on injury to property allegedly resulting from the presence of products containing asbestos fibers of any type must be commenced within six years of the date upon which the owner of that property knew or should have known of facts giving rise to the cause of action.

**28-01.3-09. Rebuttable presumption against defects.**

There is a rebuttable presumption that a product is free from any defect or defective condition if the plans, designs, warnings, or instructions for the product or the methods and techniques of manufacturing, inspecting, and testing the product were in conformity with government standards established for that industry or if no government standards exist then with applicable industry standards, which were in existence at the time the plans, designs, warnings, or instructions for the product or the methods and techniques of manufacturing, inspecting, and testing the product were adopted.