

# SENATE BILL No. 279

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 33-1-1.5; IC 34-4-33-2.

**Synopsis:** Product liability. Repeals the comparative fault provisions of the product liability law. Applies the product liability law to a seller who is not the manufacturer of the product. Eliminates the need to prove in a product liability action based on a design defect or on a failure to provide adequate warnings that the manufacturer failed to exercise reasonable care.

**Effective:** July 1, 1998.

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January 7, 1998, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

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Introduced

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

## SENATE BILL No. 279

A BILL FOR AN ACT to amend the Indiana Code concerning civil law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 33-1-1.5-1, AS AMENDED BY P.L.278-1995,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 1998]: Sec. 1. This chapter governs all actions ~~brought by a~~  
4 ~~user or consumer against a manufacturer or seller for physical harm~~  
5 ~~caused by a product regardless of the substantive legal theory or~~  
6 ~~theories upon which the action is brought.~~ in which the theory of  
7 liability is strict liability in tort.  
8 SECTION 2. IC 33-1-1.5-3, AS AMENDED BY P.L.278-1995,  
9 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
10 JULY 1, 1998]: Sec. 3. (a) ~~Except as provided in subsection (c);~~ A  
11 person who sells, leases, or otherwise puts into the stream of commerce  
12 any product in a defective condition unreasonably dangerous to any  
13 user or consumer or to the user's or consumer's property is subject to  
14 liability for physical harm caused by that product to the user or  
15 consumer or to the user's or consumer's property if that user or  
16 consumer is in the class of persons that the seller should reasonably  
17 foresee as being subject to the harm caused by the defective condition,



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- 1 and if:
- 2 (1) the seller is engaged in the business of selling such a product;
- 3 and
- 4 (2) the product is expected to and does reach the user or consumer
- 5 without substantial alteration in the condition in which it is sold
- 6 by the person sought to be held liable under this chapter.
- 7 (b) The rule stated in subsection (a) applies although:
- 8 (1) the seller has exercised all reasonable care in the ~~manufacture~~
- 9 **and preparation, packaging, labeling, instructing for use, and**
- 10 **sale** of the product; and
- 11 (2) the user or consumer has not bought the product from or
- 12 entered into any contractual relation with the seller.
- 13 However, in any action based on an alleged design defect in the
- 14 product or based on an alleged failure to provide adequate warnings or
- 15 instructions regarding the use of the product, the party making the
- 16 claim must establish that the manufacturer or seller failed to exercise
- 17 reasonable care under the circumstances in designing the product or in
- 18 providing the warnings or instructions:
- 19 (c) A product liability action based on the doctrine of strict liability
- 20 in tort may not be commenced or maintained against any seller of a
- 21 product that is alleged to contain or possess a defective condition
- 22 unreasonably dangerous to the user or consumer unless the seller is a
- 23 manufacturer of the product or of the part of the product alleged to be
- 24 defective:
- 25 (d) Nothing in this chapter shall be construed to limit any other
- 26 action from being brought against any seller of a product. If a court is
- 27 unable to hold jurisdiction over a particular manufacturer of a product
- 28 or part of a product alleged to be defective, then that manufacturer's
- 29 principal distributor or seller over whom a court may hold jurisdiction
- 30 shall be considered, for the purposes of this section, the manufacturer
- 31 of the product.
- 32 SECTION 3. IC 34-4-33-2, AS AMENDED BY P.L.278-1995,
- 33 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 34 JULY 1, 1998]: Sec. 2. (a) As used in this chapter:
- 35 (1) "Fault" includes any act or omission that is negligent, willful,
- 36 wanton, reckless, or intentional toward the person or property of
- 37 others. The term also includes unreasonable assumption of risk
- 38 not constituting an enforceable express consent, incurred risk, and
- 39 unreasonable failure to avoid an injury or to mitigate damages.
- 40 (2) "Nonparty" means a person who caused or contributed to
- 41 cause the alleged injury, death, or damage to property but who has
- 42 not been joined in the action as a defendant.



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1 (b) For purposes of sections 4 and 5 of this chapter, a defendant may  
2 be treated along with another defendant as a single party where  
3 recovery is sought against that defendant not based upon the  
4 defendant's own alleged act or omission but upon the defendant's  
5 relationship to the other defendant.

6 (c) **This chapter does not apply in any manner to strict liability**  
7 **actions under IC 33-1-1.5 or to breach of warranty actions.**

8 SECTION 4. THE FOLLOWING ARE REPEALED [EFFECTIVE  
9 JULY 1, 1998]: IC 33-1-1.5-9; IC 33-1-1.5-10.

10 SECTION 5. [EFFECTIVE JULY 1, 1998] **IC 33-1-1.5-1,**  
11 **IC 33-1-1.5-3, and IC 34-4-33-2, all as amended by this act, and the**  
12 **repeal of IC 33-1-1.5-9 and IC 33-1-1.5-10 by this act, apply only**  
13 **to a cause of action that accrues after June 30, 1998.**

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