

HOUSE BILL No. 1593

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-6-2-45; IC 34-20; IC 34-51-2-1.

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 that the manufacturer failed to exercise reasonable care in a product liability action based on a design defect or on a failure to provide adequate warnings.

Effective: July 1, 1999.

Dvorak

January 21, 1999, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

HOUSE BILL No. 1593

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 34-6-2-45 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 45. (a) "Fault", for
3 purposes of IC 34-20, means an act or omission that is negligent,
4 willful, wanton, reckless, or intentional toward the person or property
5 of others. The term includes the following:
6 (1) Unreasonable failure to avoid an injury or to mitigate
7 damages.
8 (2) A finding under IC 34-20-2 (or IC 33-1-1.5-3 before its
9 repeal) that a person is subject to liability for physical harm
10 caused by a product, notwithstanding the lack of negligence or
11 willful, wanton, or reckless conduct by the manufacturer or seller.
12 (b) "Fault", for purposes of IC 34-51-2, includes any act or omission
13 that is negligent, willful, wanton, reckless, or intentional toward the
14 person or property of others. The term also includes unreasonable
15 assumption of risk not constituting an enforceable express consent,
16 incurred risk, and unreasonable failure to avoid an injury or to mitigate
17 damages.

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1 SECTION 2. IC 34-20-1-1 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. This article governs
 3 all actions ~~that are:~~

- 4 (1) ~~brought by a user or consumer;~~
 5 (2) ~~against a manufacturer or seller; and~~
 6 (3) ~~for physical harm caused by a product;~~

7 ~~regardless of the substantive legal theory or theories upon which the~~
 8 ~~action is brought. **in which the theory of liability is strict liability in**~~
 9 ~~**tort.**~~

10 SECTION 3. IC 34-20-2-1 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. ~~Except as provided~~
 12 ~~in section 3 of this chapter,~~ A person who sells, leases, or otherwise
 13 puts into the stream of commerce any product in a defective condition
 14 unreasonably dangerous to any user or consumer or to the user's or
 15 consumer's property is subject to liability for physical harm caused by
 16 that product to the user or consumer or to the user's or consumer's
 17 property if:

- 18 (1) that user or consumer is in the class of persons that the seller
 19 should reasonably foresee as being subject to the harm caused by
 20 the defective condition;
 21 (2) the seller is engaged in the business of selling the product; and
 22 (3) the product is expected to and does reach the user or consumer
 23 without substantial alteration in the condition in which the
 24 product is sold by the person sought to be held liable under this
 25 article.

26 SECTION 4. IC 34-20-2-2 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. The rule stated in
 28 section 1 of this chapter applies although:

- 29 (1) the seller has exercised all reasonable care in the ~~manufacture~~
 30 ~~and preparation, **packaging, labeling, instructing for use, and**~~
 31 ~~**sale**~~ of the product; and
 32 (2) the user or consumer has not bought the product from or
 33 entered into any contractual relation with the seller.

34 ~~However, in an action based on an alleged design defect in the product~~
 35 ~~or based on an alleged failure to provide adequate warnings or~~
 36 ~~instructions regarding the use of the product, the party making the~~
 37 ~~claim must establish that the manufacturer or seller failed to exercise~~
 38 ~~reasonable care under the circumstances in designing the product or in~~
 39 ~~providing the warnings or instructions.~~

40 SECTION 5. IC 34-51-2-1 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) This chapter
 42 governs any action based on fault that is brought to recover damages

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1 for injury or death to a person or harm to property, except as provided
2 in subsection (b).

3 (b) This chapter does not apply to ~~an action:~~ **the following:**

4 (1) **An action** brought against a qualified health care provider
5 under IC 16-9.5 (before its repeal), IC 27-12 (before its repeal),
6 or IC 34-18 for medical malpractice. ~~or~~

7 (2) **An action** that accrued before January 1, 1985.

8 (3) **A strict liability action under IC 34-20-2.**

9 (4) **A breach of warranty action.**

10 SECTION 6. THE FOLLOWING ARE REPEALED [EFFECTIVE
11 JULY 1, 1999]: IC 34-20-1-2; IC 34-20-2-3; IC 34-20-2-4; IC 34-20-7;
12 IC 34-20-8.

13 SECTION 7. [EFFECTIVE JULY 1, 1999] **IC 34-6-2-45,**
14 **IC 34-20-1-1, IC 34-20-2-1, IC 34-20-2-2, and IC 34-51-2-1, all as**
15 **amended by this act, and the repeal of IC 34-20-1-2, IC 34-20-2-3,**
16 **IC 34-20-2-4, IC 34-20-7, and IC 34-20-8 by this act, apply only to**
17 **a cause of action that accrues after June 30, 1999.**

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