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HOUSE BILL 2613

87th GENERAL ASSEMBLY

State of Illinois

1991 and 1992

Introduced April 5, 1991, by Representative Giorgi

SYNOPSIS

(Ch. 110, par. 13-213)

Amends the Code of Civil Procedure. Provides that a cause of action based on a latent disease caused by exposure to harmful material does not accrue, for purposes of limitation periods, until the person knows or should know of the disease and its cause.

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A BILL FOR

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AN ACT to amend the Code of Civil Procedure by changing Section 13-213.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. The Code of Civil Procedure is amended by changing Section 13-213 as follows:

(Ch. 110, par. 13-213)

Sec. 13-213. Product liability.

(a) As used in this Section, the term:

(1) "alteration, modification or change" or "altered, modified, or changed" means an alteration, modification or change that was made in the original makeup characteristics, function or design of a product or in the original recommendations, instructions and warnings given with respect to a product including the failure properly to maintain and care for a product.

(2) "product" means any tangible object or goods distributed in commerce, including any service provided in connection with the product. Where the term "product unit" is used, it refers to a single item or unit of a product.

(3) "product liability action" means any action based on the doctrine of strict liability in tort brought against the seller of a product on account of personal injury, (including illness, disease, disability and death) or property, economic or other damage allegedly caused by or resulting from the manufacture, construction, preparation, assembly, installation, testing, makeup, characteristics, functions, design, formula, plan, recommendation, specification, prescription, advertising, sale, marketing, packaging, labeling, repair, maintenance or disposal of, or warning

or instruction regarding any product. This definition excludes actions brought by State or federal regulatory agencies pursuant to statute.

(4) "seller" means one who, in the course of a business conducted for the purpose, sells, distributes, leases, assembles, installs, produces, manufactures, fabricates, prepares, constructs, packages, labels, markets, repairs, maintains, or otherwise is involved in placing a product in the stream of commerce.

(b) Subject to the provisions of subsections (c) and (d) no product liability action based on the doctrine of strict liability in tort shall be commenced except within the applicable limitations period and, in any event, within 12 years from the date of first sale, lease or delivery of possession by a seller or 10 years from the date of first sale, lease or delivery of possession to its initial user, consumer, or other non-seller, whichever period expires earlier, of any product unit that is claimed to have injured or damaged the plaintiff, unless the defendant expressly has warranted or promised the product for a longer period and the action is brought within that period.

(c) No product liability action based on the doctrine of strict liability in tort to recover for injury or damage claimed to have resulted from an alteration, modification or change of the product unit subsequent to the date of first sale, lease or delivery of possession of the product unit to its initial user, consumer or other non-seller shall be limited or barred by subsection (b) hereof if:

(1) the action is brought against a seller making, authorizing, or furnishing materials for the accomplishment of such alteration, modification or change (or against a seller furnishing specifications or instructions for the accomplishment of such alteration, modification or change when the injury is claimed to have resulted from failure to provide adequate specifications

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or instructions), and

(2) the action commenced within the applicable limitation period and, in any event, within 10 years from the date such alteration, modification or change was made, unless defendant expressly has warranted or promised the product for a longer period and the action is brought within that period, and

(3) when the injury or damage is claimed to have resulted from an alteration, modification or change of a product unit, there is proof that such alteration, modification or change had the effect of introducing into the use of the product unit, by reason of defective materials or workmanship, a hazard not existing prior to such alteration, modification or change.

(d) Notwithstanding the provisions of subsection (b) and paragraph (2) of subsection (c) if the injury complained of occurs within any of the periods provided by subsection (b) and paragraph (2) of subsection (c), the plaintiff may bring an action within 2 years after the date on which the claimant knew, or through the use of reasonable diligence should have known, of the existence of the personal injury, death or property damage, but in no event shall such action be brought more than 8 years after the date on which such personal injury, death or property damage occurred. In any such case, if the person entitled to bring the action was, at the time the personal injury, death or property damage occurred, under the age of 18 years, or under a legal disability, then the period of limitations does not begin to run until the person attains the age of 18 years, or the disability is removed.

(e) Replacement of a component part of a product unit with a substitute part having the same formula or design as the original part shall not be deemed a sale, lease or delivery of possession or an alteration, modification or change for the purpose of permitting commencement of a product liability action based on the doctrine of strict

liability in tort to recover for injury or damage claimed to have resulted from the formula or design of such product unit or of the substitute part when such action would otherwise be barred according to the provisions of subsection (b) of this Section.

(f) Nothing in this Section shall be construed to create a cause of action or to affect the right of any person to seek and obtain indemnity or contribution.

(g) In a product liability claim against the product seller, no limitation shall apply to the time to discover a disease that is latent and caused by exposure to a harmful material, in which event the action shall be deemed to have accrued when the disease and the disease's cause have been made known to the person or at the point the person should have been aware of the disease and the disease's cause.

The term "harmful material" means any chemical substance commonly known as asbestos, dioxins, or polychlorinated biphenyls, whether alone or as part of any product, or any substance that is determined to present an unreasonable risk of injury to health or the environment by the United States Environment Protection Agency under the federal Toxic Substances Control Act, 15 U.S.C. Sec. 2601 et seq., or the State of Illinois, and because of such risk is regulated by the State or the Environmental Protection Agency.

Upon the effective date of this amendatory Act, the provisions of this subsection shall revive the causes of action for latent diseases caused by exposure to a harmful material for:

(1) any person whose cause of action had accrued, as defined in this subsection on or after March 3, 1987; or

(2) any person who had an action pending in any court on March 3, 1989, and because of the judicial interpretation of a limitation period contained in this Code, and amendments thereto, as applied to latent

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disease caused by exposure to a harmful material the:

(A) action was dismissed;

(B) dismissal of the action was affirmed; or

(C) action was subject to dismissal.

The intent of this subsection is to revive causes of action for latent diseases caused by exposure to a harmful material which were barred by interpretation of this Code and amendments thereto in effect before this enactment.

(h) ~~(g)~~ The provisions of this Section 13-213 of this Act apply to any cause of action accruing on or after January 1, 1979, involving any product which was in or entered the stream of commerce prior to, on, or after January 1, 1979.

(Source: P.A. 85-907; 86-1329.)