

HOUSE BILL No. 4831

May 24, 2007, Introduced by Reps. Clack, Hammel, Hammon, Vagnozzi, Miller, Constan, Johnson, Jackson, Hopgood, Polidori, Lemmons, Ebli, Cushingberry and Virgil Smith and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 2947 (MCL 600.2947), as amended by 1995 PA 249.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2947. (1) A manufacturer or seller is not liable in a
2 product liability action for harm caused by an alteration of the
3 product unless the alteration was reasonably foreseeable. Whether
4 there was an alteration of a product and whether an alteration was
5 reasonably foreseeable are legal issues to be resolved by the
6 court.

7 (2) A manufacturer or seller is not liable in a product
8 liability action for harm caused by misuse of a product unless the
9 misuse was reasonably foreseeable. Whether there was misuse of a

1 product and whether misuse was reasonably foreseeable are legal
2 issues to be resolved by the court.

3 (3) A manufacturer or seller is not liable in a product
4 liability action if the purchaser or user of the product was aware
5 that use of the product created an unreasonable risk of personal
6 injury and voluntarily exposed himself or herself to that risk and
7 the risk that he or she exposed himself or herself to was the
8 proximate cause of the injury. This subsection does not relieve a
9 manufacturer or seller from a duty to use reasonable care in a
10 product's production.

11 (4) Except to the extent a state or federal statute or
12 regulation requires a manufacturer to warn, a manufacturer or
13 seller is not liable in a product liability action for failure to
14 provide an adequate warning if the product is provided for use by a
15 sophisticated user. **THIS SUBSECTION DOES NOT APPLY IF THE**
16 **MANUFACTURER IS A MANUFACTURER OF A CHEMICAL WHO UNDERTAKES TO**
17 **MANAGE THE USE OF THE CHEMICAL FOR THE PURCHASER OR USER.**

18 (5) A manufacturer or seller is not liable in a product
19 liability action if the alleged harm was caused by an inherent
20 characteristic of the product that cannot be eliminated without
21 substantially compromising the product's usefulness or desirability
22 —and that is recognized by a person with the ordinary knowledge
23 common to the community.

24 (6) In a product liability action, a seller other than a
25 manufacturer is not liable for harm allegedly caused by the product
26 unless either of the following is true:

27 (a) The seller failed to exercise reasonable care, including

1 breach of any implied warranty, with respect to the product and
2 that failure was a proximate cause of the person's injuries.

3 (b) The seller made an express warranty as to the product, the
4 product failed to conform to the warranty, and the failure to
5 conform to the warranty was a proximate cause of the person's harm.