

TITLE 6
ACTIONS IN PARTICULAR CASES

CHAPTER 14
PRODUCT LIABILITY

6-1401. SCOPE. The previous existing applicable law of this state on product liability is modified only to the extent set forth in this act.

[(6-1401) 6-1301, added 1980, ch. 225, sec. 1, p. 499; am. and re-desig. 2005, ch. 25, sec. 3, p. 83.]

6-1402. DEFINITIONS. (1) "Product seller" means any person or entity that is engaged in the business of selling products, whether the sale is for resale, or for use or consumption. The term includes a manufacturer, wholesaler, distributor, or retailer of the relevant product. The term also includes a party who is in the business of leasing or bailing such products. The term "product seller" does not include:

(a) A provider of professional services who utilizes or sells products within the legally authorized scope of its professional practice. A nonprofessional provider of services is not included unless the sale or use of a product is the principal part of the transaction, and the essence of the relationship between the seller and purchaser is not the furnishing of judgment, skill, or services;

(b) A commercial seller of used products who resells a product after use by a consumer or other product user, provided the used product is in essentially the same condition as when it was acquired for resale; and

(c) A finance lessor who is not otherwise a product seller. A "finance lessor" is one who acts in a financial capacity, who is not a manufacturer, wholesaler, distributor, or retailer, and who leases a product without having a reasonable opportunity to inspect and discover defects in the product, under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor.

(2) "Manufacturer" includes a product seller who designs, produces, makes, fabricates, constructs, or remanufactures the relevant product or component part of a product before its sale to a user or consumer. It includes a product seller or entity not otherwise a manufacturer that holds itself out as a manufacturer. A product seller acting primarily as a wholesaler, distributor, or retailer of a product may be a "manufacturer" but only to the extent that it designs, produces, makes, fabricates, constructs, or remanufactures the product before its sale.

(3) "Product" means any object possessing intrinsic value, capable of delivery either as an assembled whole or as a component part or parts, and produced for introduction into trade or commerce. Human tissue and organs, including human blood and its components, are excluded from this term. The "relevant product" under this chapter is that product, or its component part or parts, which gave rise to the product liability claim.

(4) "Claimant" means a person or entity asserting a product liability claim, including a wrongful death action, and, if the claim is asserted through or on behalf of an estate, the term includes claimant's decedent. "Claimant" includes any person or entity that suffers harm.

(5) "Reasonably anticipated conduct" means the conduct which would be expected of an ordinary reasonably prudent person who is likely to use the product in the same or similar circumstances.

[(6-1402) 6-1302, added 1980, ch. 225, sec. 1, p. 499; am. and re-desig. 2005, ch. 25, sec. 4, p. 83.]

6-1403. LENGTH OF TIME PRODUCT SELLERS ARE SUBJECT TO LIABILITY. (1) Useful safe life.

(a) Except as provided in subsection (1) (b) hereof, a product seller shall not be subject to liability to a claimant for harm under this chapter if the product seller proves by a preponderance of the evidence that the harm was caused after the product's "useful safe life" had expired.

"Useful safe life" begins at the time of delivery of the product and extends for the time during which the product would normally be likely to perform or be stored in a safe manner. For the purposes of this chapter, "time of delivery" means the time of delivery of a product to its first purchaser or lessee who was not engaged in the business of either selling such products or using them as component parts of another product to be sold.

(b) A product seller may be subject to liability for harm caused by a product used beyond its useful safe life to the extent that the product seller has expressly warranted the product for a longer period.

(2) Statute of repose.

(a) Generally. In claims that involve harm caused more than ten (10) years after time of delivery, a presumption arises that the harm was caused after the useful safe life had expired. This presumption may only be rebutted by clear and convincing evidence.

(b) Limitations on statute of repose.

1. If a product seller expressly warrants that its product can be utilized safely for a period longer than ten (10) years, the period of repose, after which the presumption created in subsection (2) (a) hereof arises, shall be extended according to that warranty or promise.

2. The ten (10) year period of repose established in subsection (2) (a) hereof does not apply if the product seller intentionally misrepresents facts about its product, or fraudulently conceals information about it, and that conduct was a substantial cause of the claimant's harm.

3. Nothing contained in subsection (2) of this section shall affect the right of any person found liable under this chapter to seek and obtain contribution or indemnity from any other person who is responsible for harm under this chapter.

4. The ten (10) year period of repose established in subsection (2) (a) hereof shall not apply if the harm was caused by prolonged exposure to a defective product, or if the injury-causing aspect of the product that existed at the time of delivery was not discoverable by an ordinary reasonably prudent person until more than ten (10) years after the time of delivery, or if the harm, caused within ten (10) years after the time of delivery, did not manifest itself until after that time.

(3) Statute of limitation. No claim under this chapter may be brought more than two (2) years from the time the cause of action accrued as defined in section 5-219, Idaho Code.

[(6-1403) 6-1303, added 1980, ch. 225, sec. 1, p. 500; am. and re-desig. 2005, ch. 25, sec. 5, p. 84.]

6-1404. COMPARATIVE RESPONSIBILITY. Comparative responsibility shall not bar recovery in an action by any person or his legal representative to recover damages for product liability resulting in death or injury to person or property, if such responsibility was not as great as the responsibility of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of responsibility attributable to the person recovering.

[(6-1404) 6-1304, added 1980, ch. 225, sec. 1, p. 501; am. and re-desig. 2005, ch. 25, sec. 6, p. 85.]

6-1405. CONDUCT AFFECTING COMPARATIVE RESPONSIBILITY. (1) Failure to discover a defective condition.

(a) Claimant's failure to inspect. A claimant is not required to have inspected the product for a defective condition. Failure to have done so does not render the claimant responsible for the harm caused or reduce the claimant's damages.

(b) Claimant's failure to observe an obvious defective condition. When the product seller proves by a preponderance of the evidence that the claimant, while using the product, was injured by a defective condition that would have been obvious to an ordinary reasonably prudent person, the claimant's damages shall be subject to reduction.

(c) A nonclaimant's failure to inspect for defects or to observe an obvious defective condition. A nonclaimant's failure to inspect for a defective condition or to observe a defective condition that would have been obvious to an ordinary reasonably prudent person, shall not reduce claimant's damages.

(2) Use of a product with a known defective condition.

(a) By a claimant. When the product seller proves, by a preponderance of the evidence, that the claimant knew about the product's defective condition, and voluntarily used the product or voluntarily assumed the risk of harm from the product, the claimant's damages shall be subject to reduction to the extent that the claimant did not act as an ordinary reasonably prudent person under the circumstances.

(b) By a nonclaimant product user. If the product seller proves by a preponderance of the evidence that a product user, other than the claimant, knew about a product's defective condition, but voluntarily and unreasonably used or stored the product and thereby proximately caused claimant's harm, the claimant's damages shall be subject to apportionment.

(3) Misuse of a product.

(a) "Misuse" occurs when the product user does not act in a manner that would be expected of an ordinary reasonably prudent person who is likely to use the product in the same or similar circumstances.

(b) When the product seller proves, by a preponderance of the evidence, that product misuse by a claimant, or by a party other than the claimant or the product seller has proximately caused the claimant's harm, the claimant's damages shall be subject to reduction or apportionment to the extent that the misuse was a proximate cause of the harm.

(4) Alteration or modification of a product.

(a) "Alteration or modification" occurs when a person or entity other than the product seller changes the design, construction, or formula of the product, or changes or removes warnings or instructions that accompanied or were displayed on the product. "Alteration or modification" of a product includes the failure to observe routine care and maintenance, but does not include ordinary wear and tear.

(b) When the product seller proves, by a preponderance of the evidence, that an alteration or modification of the product by the claimant, or by a party other than the claimant or the product seller has proximately caused the claimant's harm, the claimant's damages shall be subject to reduction or apportionment to the extent that the alteration or modification was a proximate cause of the harm.

This subsection shall not be applicable if:

1. The alteration or modification was in accord with the product seller's instructions or specifications;
2. The alteration or modification was made with the express or implied consent of the product seller; or
3. The alteration or modification was reasonably anticipated conduct, and the product was defective because of the product seller's failure to provide adequate warnings or instructions with respect to the alteration or modification.

[(6-1405) 6-1305, added 1980, ch. 225, sec. 1, p. 501; am. and re-desig. 2005, ch. 25, sec. 7, p. 85.]

6-1406. RELEVANCE OF INDUSTRY CUSTOM, SAFETY OR PERFORMANCE STANDARDS, AND TECHNOLOGICAL FEASIBILITY. (1) Evidence of changes in (a) a product's design, (b) warnings or instructions concerning the product, (c) technological feasibility, (d) "state of the art," or (e) the custom of the product seller's industry or business, occurring after the product was manufactured and delivered to its first purchaser or lessee who was not engaged in the business of either selling such products or using them as component parts of another product to be sold, is not admissible for the purpose of proving that the product was defective in design or that a warning or instruction should have accompanied the product at the time of manufacture. The provisions of this section shall not relieve the product seller of any duty to warn of known defects discovered after the product was designed and manufactured.

(2) If the court finds outside the presence of a jury that the probative value of such evidence substantially outweighs its prejudicial effect and that there is no other proof available, this evidence may be admitted for other relevant purposes, including but not limited to proving ownership or control, or impeachment.

(3) For purposes of this section, "custom" refers to the practices followed by an ordinary product seller in the product seller's industry or business.

(4) For purposes of this section, "technological feasibility" means the technological, mechanical and scientific knowledge relating to product safety that was reasonably feasible for use, in light of economic practicality, at the time of manufacture.

[(6-1406) 6-1306, added 1980, ch. 225, sec. 1, p. 502; am. and re-desig. 2005, ch. 25, sec. 8, p. 86.]

6-1407. INDIVIDUAL RIGHTS AND RESPONSIBILITIES OF PRODUCT SELLERS OTHER THAN MANUFACTURERS. (1) In the absence of express warranties to the

contrary, product sellers other than manufacturers shall not be subject to liability in circumstances where they do not have a reasonable opportunity to inspect the product in a manner which would or should, in the exercise of reasonable care, reveal the existence of the defective condition which is in issue; or where the product seller acquires the product in a sealed package or container and sells the product in the same sealed package or container. The liability limitation of this subsection shall not apply if:

(a) The product seller had knowledge or reason to know of the defect in the product;

(b) The product seller altered, modified, or installed the product, and such alteration, modification or installation was a substantial proximate cause of the incident giving rise to the action, was not authorized or requested by the manufacturer and was not performed in compliance with the directions or specifications of the manufacturer;

(c) The product seller provided the plans or specifications for the manufacture or preparation of the product and such plans or specifications were a substantial cause of the product's alleged defect.

(d) The product seller is a wholly-owned subsidiary of the manufacturer, or the manufacturer is a wholly-owned subsidiary of the product seller.

(e) The product seller sold the product after the expiration date placed on the product or its package by the manufacturer.

(2) In an action where the liability limitation of subsection (1) applies, any manufacturer who refuses to accept a tender of defense from the product seller, shall indemnify the product seller for reasonable attorney's fees and costs incurred by the product seller in defending such action.

(3) In any product liability action, the manufacturer of the product shall be indemnified by the product seller of the product for any judgment rendered against the manufacturer and shall also be reimbursed for reasonable attorney's fees and costs incurred in defending such action:

(a) If the product seller provided the plans or specifications for the manufacture or preparation of the product;

(b) If such plans or specifications were a substantial cause of the product's alleged defect; and

(c) If the product was manufactured in compliance with and according to the plans or specifications of the seller.

The provisions of this subsection shall not apply if the manufacturer had knowledge or with the exercise of reasonable and diligent care should have had knowledge of the defect in the product.

(4) A product seller, other than a manufacturer, is also subject to the liability of manufacturer if:

(a) The manufacturer is not subject to service of process under the laws of the claimant's domicile; or

(b) The manufacturer has been judicially declared insolvent in that the manufacturer is unable to pay its debts as they become due in the ordinary course of business; or

(c) The court outside the presence of a jury determines that it is highly probable that the claimant would be unable to enforce a judgment against the product manufacturer.

[(6-1407) 6-1307, added 1980, ch. 225, sec. 1, p. 503; am. and re-desig. 2005, ch. 25, sec. 9, p. 87.]

6-1408. CONTENTS OF COMPLAINT -- AMOUNT OF RECOVERY. In any product liability action no dollar amount or figure shall be included in the complaint. The complaint shall pray for such damages as are reasonable in the premises. The complaint shall include a statement reciting that the jurisdictional amount established for filing the action is satisfied.

[(6-1408) 6-1308, added 1980, ch. 225, sec. 1, p. 504; am. and re-desig. 2005, ch. 25, sec. 10, p. 88.]

6-1409. SHORT TITLE. This act shall be known and may be cited as the "Idaho Product Liability Reform Act."

[(6-1409) 6-1309, added 1980, ch. 225, sec. 1, p. 504; am. and re-desig. 2005, ch. 25, sec. 11, p. 88.]

6-1410. PRODUCTS LIABILITY -- DEFECTIVENESS OF FIREARMS OR AMMUNITION. (1) In a products liability action, no firearm or ammunition shall be deemed defective in design on the basis that the benefits of the product do not outweigh the risk of injury posed by its potential to cause serious injury, damage, or death when discharged.

(2) For purposes of this section:

(a) The potential of a firearm or ammunition to cause serious injury, damage, or death when discharged does not make the product defective in design.

(b) Injuries or damages resulting from the discharge of a firearm or ammunition are not proximately caused by its potential to cause serious injury, damage, or death, but are proximately caused by the actual discharge of the product.

(3) The provisions of this section shall not affect a products liability cause of action based upon the improper selection of design alternatives.

[6-1410, added 1986, ch. 216, sec. 1, p. 553.]