

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

841T0679

HOUSE STATE AFFAIRS ENGROSSED NO. **HB 1213** - 2/8/2012

Introduced by: Representatives Wick, Carson, Cronin, Hawley, Hoffman, Lucas, Lust, Moser, Novstrup (David), Perry, Rausch, Romkema, Tulson, Verchio, and Willadsen and Senators Gray, Hansen (Tom), Haverly, Heineman, Holien, Krebs, Nygaard, Olson (Russell), Peters, Putnam, Rave, and Schlekeway

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding liability for torts and
2 product identification requirements.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Terms used in §§ 20-9-9 to 20-9-10.1, inclusive, mean:

7 (1) "Claimant," any person, including a class of persons, who brings an action for or on
8 account of personal injury, death, or property damage caused by or resulting from the
9 manufacture, construction, design, formula, preparation, assembly, testing, service,
10 warning, instruction, marketing, packaging, or labeling of any product. If such an
11 action is brought through or on behalf of an estate, the term includes the claimant's
12 decedent. If such an action is brought through or on behalf of a minor, the term
13 includes the claimant's parent or guardian;



- 1 (2) "Harm,":
- 2 (a) Damage to property other than the product itself;
- 3 (b) Personal physical injury, illness, or death;
- 4 (c) Mental anguish or emotional harm; or
- 5 (d) Any loss of consortium, services, or other loss deriving from any type of harm
- 6 described in subsections (a), (b), or (c).
- 7 (3) "Manufacturer,":
- 8 (a) Any person engaged in a business to design, produce, make, fabricate,
- 9 construct, or remanufacture any product;
- 10 (b) Any product seller not described in subsection (a) holding oneself out as a
- 11 manufacturer to the user of the product; or
- 12 (c) Any product seller with respect to a given product to the extent that such seller
- 13 designs, produces, makes, fabricates, constructs, or remanufactures the product
- 14 before its sale;
- 15 (4) "Person," any individual, corporation, company, association, firm, partnership,
- 16 society, joint stock company, or any other entity including any government entity or
- 17 unincorporated association of persons;
- 18 (5) "Product," any object, substance, mixture, or raw material in a gaseous, liquid, or
- 19 solid state, possessing intrinsic value which is capable of delivery either as an
- 20 assembled whole or as a component part and is produced for introduction to trade or
- 21 commerce. However, the term does not include human tissue, blood and blood
- 22 products, or organs;
- 23 (6) "Product seller," a manufacturer, or a person who, in the course of business
- 24 conducted for that purpose, sells, distributes, leases, installs, prepares, packages,

1 labels, markets, repairs, maintains, or otherwise is involved in placing a product in
2 the stream of commerce; but such term does not include:

3 (a) A seller of real property, unless that person is engaged in the sale of
4 manufactured housing or in the mass production of dwellings;

5 (b) A provider of professional services in any case in which the sale or use of a
6 product is incidental to the transaction and the essence of the transaction is the
7 furnishing of judgment, skill, or services; or

8 (c) Any person who:

9 (i) Acts in only a financial capacity with respect to the sale of the product;

10 (ii) Is not a manufacturer, wholesaler, distributor, or retailer; and

11 (iii) Leases a product, without having a reasonable opportunity to inspect
12 and discover defect in the product, under a lease arrangement in which
13 the selection, possession, maintenance, and operation of the product are
14 controlled by a person other than the lessor.

15 Section 2. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 In any civil action against a manufacturer for harm caused by a product, irrespective of any
18 substantive theory underlying the claim, a manufacturer is not liable if the claimant fails to
19 prove by a preponderance of the evidence that the defendant was the manufacturer of the actual
20 product that was the cause of harm for which the claimant seeks to recover compensatory
21 damages. Proof that a product seller designed, formulated, produced, constructed, created,
22 assembled, or rebuilt the type of product in question is not proof that the product seller designed,
23 formulated, produced, constructed, created, assembled, or rebuilt the actual product at issue in
24 the action. No product seller may be held liable based on market share, enterprise, or industry-

1 wide liability in any action brought for or on account of harm caused by a product.