

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

2

SENATE BILL 882
Judiciary I Committee Substitute Adopted 5/5/09

Short Title: Statute of Repose/Products Liability.

(Public)

Sponsors:

Referred to:

March 26, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY AND REFORM THE STATUTES OF LIMITATION AND REPOSE
3 IN PRODUCT LIABILITY ACTIONS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 1-50 reads as rewritten:

6 "**§ 1-50. Six years.**

7 (a) Within six years an action –

8 ...

9 ~~(6) No action for the recovery of damages for personal injury, death or damage~~
10 ~~to property based upon or arising out of any alleged defect or any failure in~~
11 ~~relation to a product shall be brought more than six years after the date of~~
12 ~~initial purchase for use or consumption.~~

13"

14 **SECTION 2.** G.S. 99B-2 reads as rewritten:

15 "**§ 99B-2. Seller's opportunity to inspect; privity requirements for warranty claims.**

16 ...

17 (b) A claimant who is a buyer, or a lessee as defined in the ~~Uniform Commercial Code,~~
18 G.S. 25-2A-103(1)(n), of the product involved, or who is a member or a guest of a member of
19 the family of the ~~buyer, buyer or lessee,~~ a guest of the ~~buyer, buyer or lessee,~~ or an employee of
20 the ~~buyer, buyer or lessee~~ may bring a product liability action directly against the manufacturer
21 of the product involved for breach of implied warranty; and the lack of privity of contract shall
22 not be grounds for the dismissal of such action."

23 **SECTION 3.** Chapter 99B of the General Statutes is amended by adding a new
24 section to read:

25 "**§ 99B-7. Limitation of actions; statute of repose.**

26 (a) The purpose of this section is to define in a single statute the time limits for
27 commencing product liability actions, to protect the citizens, manufacturers, and sellers of
28 North Carolina, and to reaffirm that the statute of repose for product liability actions does not
29 apply to diseases.

30 (b) All product liability actions, except those for wrongful death, shall be commenced
31 within three years of the date on which the property damage or injury complained of occurs.

32 (c) All product liability actions for wrongful death under G.S. 28A-18-2 shall be
33 commenced within two years of the date of death, so long as the decedent's claim would not
34 have been barred on the date of death by the provisions of subsections (d) and (e) of this
35 section.

36 (d) Except as provided in subsection (f) of this section, all product liability actions
37 against manufacturers shall be commenced as follows:



* S B 8 2 - V - 2 *

- 1 (1) For products manufactured in North Carolina, within six years after the date
2 the product that allegedly caused the property damage, injury, or death was
3 first sold or leased for use or consumption.
- 4 (2) For products manufactured outside North Carolina, within the time allowed
5 by the applicable statute of repose, if any, of the state or country where the
6 product was manufactured, but in no event less than six years after the date
7 the product that allegedly caused the property damage, injury, or death was
8 first sold or leased for use or consumption. If the state or country where the
9 product was manufactured does not have an applicable statute of repose,
10 then the only limitations upon the commencement of a product liability
11 action shall be as set forth in subsections (b) and (c) of this section.
- 12 (e) Except as provided in subsection (f) of this section, all product liability actions
13 against sellers shall be commenced as follows:
- 14 (1) For products sold or leased by the defendant seller in North Carolina, within
15 six years after the date the product that allegedly caused the property
16 damage, injury, or death was first sold or leased for use or consumption.
- 17 (2) For products sold or leased by the defendant seller outside North Carolina,
18 within the time allowed by the applicable statute of repose, if any, of the
19 state or country where the seller sold or leased the product, but in no event
20 less than six years after the date the product that allegedly caused the
21 property damage, injury, or death was first sold or leased for use or
22 consumption. If the state or country where the seller sold or leased the
23 product does not have an applicable statute of repose, then the only
24 limitations upon the commencement of a product liability action shall be as
25 set forth in subsections (b) and (c) of this section.
- 26 (f) In all product liability actions in which a disease allegedly resulted from exposure to
27 or use of the product, the date of injury under subsection (b) of this section shall be the date of
28 diagnosis of the disease. Subsections (d) and (e) of this section shall not apply to product
29 liability actions involving claims for disease allegedly resulting from exposure to or use of the
30 product.
- 31 (g) If the manufacturer or seller asserts that the statute of repose in subsection (d) or (e)
32 of this section bars the product liability action, the manufacturer or seller shall have the burden
33 of proving when the repose period began.
- 34 (h) The statutes of limitation and repose for product liability actions shall be subject to
35 the tolling provisions of G.S. 1-17 and G.S. 1-22."

36 **SECTION 4.** This act becomes effective October 1, 2009, and applies to causes of
37 action that accrue on or after that date.