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Effective: September 1, 2003

Vernon's Texas Statutes and Codes Annotated [Currentness](#)

Civil Practice and Remedies Code ([Refs & Annos](#))

Title 4. Liability in Tort

Chapter 82. Products Liability ([Refs & Annos](#))

→ § 82.003. Liability of Nonmanufacturing Sellers

(a) A seller that did not manufacture a product is not liable for harm caused to the claimant by that product unless the claimant proves:

(1) that the seller participated in the design of the product;

(2) that the seller altered or modified the product and the claimant's harm resulted from that alteration or modification;

(3) that the seller installed the product, or had the product installed, on another product and the claimant's harm resulted from the product's installation onto the assembled product;

(4) that:

(A) the seller exercised substantial control over the content of a warning or instruction that accompanied the product;

(B) the warning or instruction was inadequate; and

(C) the claimant's harm resulted from the inadequacy of the warning or instruction;

(5) that:

(A) the seller made an express factual representation about an aspect of the product;

(B) the representation was incorrect;

(C) the claimant relied on the representation in obtaining or using the product; and

(D) if the aspect of the product had been as represented, the claimant would not have been harmed by the product or would not have suffered the same degree of harm;

(6) that:

(A) the seller actually knew of a defect to the product at the time the seller supplied the product; and

(B) the claimant's harm resulted from the defect; or

(7) that the manufacturer of the product is:

(A) insolvent; or

(B) not subject to the jurisdiction of the court.

(b) This section does not apply to a manufacturer or seller whose liability in a products liability action is governed by Chapter 2301, Occupations Code. In the event of a conflict, Chapter 2301, Occupations Code, prevails over this section.

CREDIT(S)

Added by [Acts 2003, 78th Leg., ch. 204, § 5.02, eff. Sept. 1, 2003](#).

HISTORICAL AND STATUTORY NOTES

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Section 23.02(c), (d) of Acts 2003, 78th Leg., ch. 204 provides:

“(c) Articles 4, 5, and 8 of this Act apply to an action filed on or after July 1, 2003. An action filed before July 1, 2003, is governed by the law in effect immediately before the change in law made by Articles 4, 5, and 8, and that law is continued in effect for that purpose.

“(d) Except as otherwise provided in this section or by a specific provision in an article, this Act applies only to an action filed on or after the effective date [Sept. 1, 2003] of this Act. An action filed before the effective date of this Act, including an action filed before that date in which a party is joined or designated after that date, is governed by the law in effect immediately before the change in law made by this Act, and that law is continued in effect for that purpose.”

LAW REVIEW COMMENTARIES

A guide to House Bill 4 provisions that affect substantive pharmaceutical litigation issues. Michael R. Klatt and Elizabeth A. Cash, [46 S.Tex.L.Rev. 1137 \(Summer 2005\)](#).

Texas tort law--2003; It was a very ___ year. Michael D. Morrison, [56 Baylor L.Rev. 423 \(2004\)](#).

LIBRARY REFERENCES

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[Products Liability](#)  25.

Westlaw Topic No. 313A.

[C.J.S. Products Liability](#) § 40.

RESEARCH REFERENCES

2008 Electronic Update

Forms

[Texas Jurisprudence Pleading & Practice Forms 2d Ed § 202:69](#), Introductory COMMENTS.

Treatises and Practice Aids

[Krahmer, 12 Tex. Prac. Series § 25.51](#), Note on Warranties, Deceptive Trade Practice Act Claims, Strict Liability, and Negligence.

NOTES OF DECISIONS

Defect 1

Failure to adequately warn 2

1. Defect

Truck that was involved in roll-over accident was sold with a rear stabilizing bar, which was a sway control device, and, thus, there was no defect of which seller could have had actual knowledge, within the meaning of Texas statute imposing liability on nonmanufacturing sellers who actually knew of a defect to the product at the time the seller supplied the product. [Lott v. Dutchmen Mfg., Inc., E.D.Tex.2006, 422 F.Supp.2d 750](#), reconsideration denied [2006 WL 1207807](#). [Products Liability](#) 🔑 39

2. Failure to adequately warn

Automobile buyer's allegation that automobile dealership failed to give adequate warnings of vehicle's known dangers, and that such dangers were a producing cause of buyer's injuries, supported products liability claim against dealership under Texas law governing non-manufacturing distributors, and because there existed more than a theoretical possibility that automobile buyer could recover in products liability action, buyer's joinder of dealership as in-state defendant was not improper and remand of buyer's action was warranted; buyer's claim fell under exception to general protection of such distributors from products liability suits under Texas law. [Shields v. Bridgestone Firestone North American Tire, LLC, W.D.Tex.2005, 502 F.Supp.2d 497](#). [Products Liability](#) 🔑 37; [Removal Of Cases](#) 🔑 36; [Removal Of Cases](#) 🔑 102

V. T. C. A., Civil Practice & Remedies Code § 82.003, TX CIV PRAC & REM § 82.003
Current through the end of the 2007 Regular Session of the 80th Legislature

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