

## Innocent Seller Protection

### SB 1092

Senate Bill 1092 protects retailers and other businesses from unfair product liability lawsuits while maintaining the right of the consumer to sue other parties in a product's chain of distribution.

With certain exceptions Senate Bill 1092 would protect the seller of a product from the unfair financial burden of expensive attorney's fees and the time required for litigation; simply to prove their lack of liability.

- Product liability lawsuits can cause innocent product sellers to rack up substantial unnecessary legal defense costs while diverting their attention away from running their businesses.
- Current Arizona product liability law unfairly exposes every party in a product's chain of distribution to liability, even retailers and distributors who had no involvement whatsoever in the design or manufacture of the item at issue and took no action that contributed to a plaintiff's injuries. *See* A.R.S. §12-681(9).
- Under Arizona law, even sellers of used goods can currently be sued and held strictly liable for problems with the design or manufacture of a product. *See Jordan v. Sunnyslope Appliance Propane & Plumbing Supplies Co.*, 135 Ariz. 309 (Ariz. Ct. App. 1983).
- Personal injury plaintiffs frequently exploit this opportunity by naming every seller who touched the product during its distribution. Plaintiffs do this to force lawsuits to be heard in particular local courts deemed more favorable, and to bring additional deep pockets or insurance policies into the case.
- In product liability lawsuits, the real dispute is usually between injured claimants and the manufacturer that designed and constructed the product. Eliminating liability for sellers if they had no involvement except to sell the product streamlines the litigation and reduces the burden on Arizona courts by moving most product liability lawsuits to federal court.
- The proposed legislation will allow product liability lawsuits to proceed against sellers only when circumstances are present that indicate that the seller may have actively contributed to an accident, such as:
  - altering the product in a manner unauthorized by the manufacturer,
  - reselling a used product that has been substantially modified,
  - performing an improper repair or assembly, or
  - making an express warranty independent of those provided by the manufacturer.

In these situations, a plaintiff may have legitimate reason to bring a claim against a product seller.

- The limited protection current Arizona statute provides to innocent sellers – the right to receive indemnity from the manufacturer – comes too late. This approach requires small businesses to foot the bill up front for expensive attorney fees and litigation costs. And even if the manufacturer steps up and accepts a seller’s tender of defense, that seller still must suffer the distraction of involvement in the discovery and trial phases of the lawsuit and the manufacturer is stuck paying unnecessary legal expenses incurred on behalf of a defendant that should not be involved in the case.
- The bill retains existing indemnity requirements for product sellers and manufacturers to ensure that any inconsistent judicial rulings do not leave either of these parties exposed to liability that should lie with the other.
- Many other states have recognized the problematic nature of allowing plaintiffs to sue retailers and product sellers who did nothing to create or contribute to a product’s alleged danger. In 2017, West Virginia became the most recent state to enact legislation providing innocent sellers with strong protection against abusive product lawsuits. At least nineteen other state legislatures have also enacted statutory shields for retailers and dealerships. Arizona should join them.

**Nineteen States with similar law:**

Alabama	New Jersey
Colorado	North Carolina
Delaware	North Dakota
Idaho	Ohio
Kansas	Oklahoma
Kentucky	Tennessee
Maryland	Texas
Minnesota	Washington
Mississippi	West Virginia
Missouri	

**State references:** Alabama (Ala. Code §6-5-521); Colorado (C.R.S. §13-21-402); Delaware (18 Del. C. §7001); Idaho (I.C. §6-1402); Iowa ([Iowa Code Ann. § 613.18](#)); Kansas (K.S.A. §60-3306); Kentucky (K.R.S. §411.340); Maryland (MD Code, Courts and Judicial Proceedings, §5-405); Minnesota (M.S.A. §544.41); Mississippi (M.C.A. §11-1-63(h)); Missouri (A.M.S. §537.762); New Jersey (N.J.S.A. 2A:58C-9); North Carolina (N.C.G.S.A. §99B-2); North Dakota (N.D.C.C. §28-01.3-04); Ohio (Ohio Rev. Code Ann. § 2307.78); Oklahoma (O.S. §76-57.2(E) – (G)); Tennessee (T.S.A. §29-28-106); Texas (Tex. Civ. Prac. & Rem. Code Ann. §82.003); ; Washington (R.C.W.A. §7.72.040(2)); West Virginia (W.V.C. §55-7-31).