

BILL TEXT:

STATE OF NEW YORK

6030

2005-2006 Regular Sessions

IN ASSEMBLY

March 3, 2005

Introduced by M. of A. REILICH, WIRTH, FINCH, ERRIGO -- Multi-Sponsored
by -- M. of A. KOLB -- read once and referred to the Committee on
Judiciary

AN ACT to amend the civil practice law and rules, in relation to prohib-
iting punitive damages in certain product liability actions

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. The civil practice law and rules is amended by adding a new
2 article 14-B to read as follows:

3 ARTICLE 14-B

4 PRODUCT LIABILITY ACTIONS

5 1414. Definitions.

6 1415. Drugs regulated or approved by the food and drug adminis-
7 tration.

8 § 1414. Definitions. In this article:

9 (a) "Product liability action" means an action brought for or on
10 account of personal injury or injury to property caused or resulting
11 from the manufacture, sale, use, construction, design, formula, develop-
12 ment of standards, preparation, processing, assembly, testing, listing,
13 certifying, warning, instructing, marketing, advertising, packaging or
14 labeling of any product; whether such action is based on: (1) strict or
15 absolute liability in tort; (2) negligence or gross negligence; (3)
16 breach of express or implied warranty; (4) failure to discharge a duty
17 to warn or instruct; or (5) any other theory that is the basis for an
18 award for damages for personal injury or injury to property caused by a
19 product.

20 (b) "Product" means any object possessing intrinsic value which is
21 capable of delivery either as an assembled whole or as a component part
22 and is produced for introduction into trade or commerce; but such term
23 does not include human tissue, blood and blood products, or organs.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (c) "Drug" and "medical device" shall have the meanings defined in the
 2 federal Food, Drug and Cosmetic Act, 21 U.S.C. § 301 et seq.

3 (d) "Labeling" means the written, printed, or graphic matter upon the
 4 immediate product or any of its containers or wrappers, or other writ-
 5 ten, printed, or graphic matter accompanying such product, including any
 6 warnings or instructions.

7 (e) "Manufacturer" means any person who is engaged in a business to
 8 design, produce, make, fabricate, construct, or remanufacture any prod-
 9 uct (or component part of a product). Any product seller who acts prima-
 10 rily as a wholesaler, distributor, or retailer of products may be a
 11 manufacturer with respect to a given product to the extent that such
 12 seller designs, produces, makes, fabricates, constructs, or remanufac-
 13 tures the product before its sale.

14 § 1415. Drugs regulated or approved by the food and drug adminis-
 15 tration. (a) In any product liability action, a manufacturer or seller
 16 of a drug or medical device shall not be subject to punitive damages if
 17 the drug or medical device that caused the plaintiff's harm was subject
 18 to pre-market approval or licensure by the federal food and drug admin-
 19 istration under the federal food, drug, and cosmetic act and was
 20 approved or licensed, or is generally recognized as safe and effective
 21 pursuant to conditions and applicable regulations, including packaging
 22 and labeling regulations, established by the food and drug adminis-
 23 tration.

24 (b) The prohibition on the award of punitive damages provided in
 25 subdivision (a) of this section shall not apply where the manufacturer
 26 or seller knowingly withheld or misrepresented information required to
 27 be submitted to the food and drug administration and such information
 28 was material and relevant to the harm in question.

29 § 2. This act shall take effect immediately and shall apply to all
 30 claims filed on or after such effective date.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
 MEMORANDUM IN SUPPORT OF LEGISLATION
 submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A6030**SPONSOR:** Reilich (MS)

TITLE OF BILL: An act to amend the civil practice law and rules, in relation to prohibiting punitive damages in certain product liability actions

PURPOSE OR GENERAL IDEA OF BILL:

This pertains to drugs regulated or approved by the food and drug administration. (a) In any product liability action, a manufacturer or seller of a drug or medical device shall not be subject to punitive damages if the drug or medical device that caused the plaintiff's harm was subject to pre-market approval or licensure by the federal food and drug administration under the federal food, drug, and cosmetic act and was approved or licensed, or is generally recognized as safe and effective pursuant to conditions and applicable regulations, including packaging and labeling regulations, established by the food and drug administration.

(b) The prohibition on the award of punitive damages provided in subdi-

RETRIEVE BILL

vision (a) of this section shall not apply where the manufacturer or seller knowingly withheld or misrepresented information required to be submitted to the food and drug administration and such information was material and relevant to the harm in question.

PRIOR LEGISLATIVE HISTORY:

A4476 of 2003/04
A.4754 of 1999/00
A.1824 of 2001/02

EFFECTIVE DATE:

Immediately and shall apply to all claims filed on or after its effective date.
