

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 851

Short Title: Statute of Repose/Products Liability. (Public)

Sponsors: Representatives Faison; Jackson, Sutton, and Wray.

Referred to: Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I.

March 30, 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, buyer or a lessee,~~ as defined in the Uniform Commercial  
18 Code, of the product involved, or who is a member or a guest of a member of the family of the  
19 ~~buyer, buyer or lessee,~~ a guest of the ~~buyer, buyer or lessee,~~ or an employee of the ~~buyer, buyer~~  
20 ~~or lessee~~ may bring a product liability action directly against the manufacturer of the product  
21 involved for breach of implied warranty; and the lack of privity of contract shall not be grounds  
22 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:



- 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. Product liability actions involving claims for disease are not governed  
29          by the provisions of subsections (d) and (e) of this section.
- 30          (g)   If the manufacturer or seller asserts that the statute of repose in subsections (d) or  
31          (e) of this section bars the product liability action, the manufacturer or seller shall have the  
32          burden of proving when the repose period began.
- 33          (h)   The statutes of limitation and repose for product liability actions shall be subject to  
34          the tolling provisions of G.S. 1-17 and G.S. 1-22."

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