

Amend **CSHB 4**, Article 5, as follows:

On page 41, line 11 through page 42, line 19 strike Sec. 82.009 and substitute a new Sec. 82.009 to read as follows:

Sec. 82.009. COMPLIANCE WITH GOVERNMENT STANDARDS.

(a) In a products liability action brought against a product manufacturer, distributor, or seller, there is a rebuttable presumption that the product manufacturer, distributor, or seller is not liable for any injury to a claimant caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer, distributor, or seller establishes that the product's formula, labeling, or design complied with mandatory safety standards or regulations adopted and promulgated by the federal government, or any agency of the federal government, that were applicable to the product at the time of manufacture, and that governed the particular product risk allegedly by the claimant to have caused harm. The claimant may rebut this presumption by establishing that:

(1) the mandatory federal safety standards or regulations applicable to the product were inadequate to protect the public from unreasonable risks of injury or damage;

(2) the manufacturer, before or after marketing the product, withheld from or misrepresented to the government or agency information that was material and relevant to the performance of the product and was causally related to the claimant's injury;

(3) Congress included a "savings" provision, intending to permit state common law to apply to the field being regulated;

(4) with respect to the manufacturer of a motor vehicle, or a component thereof, after the product was sold and before the alleged injury occurred, that the manufacturer failed to provide the federal government, or the governing agency of the federal government, with all incidents of which the manufacturer receives actual notice which involve fatalities or serious injuries which are alleged or proven to have been caused by a possible defect in such manufacturer's motor vehicle or motor vehicle equipment in the

United States, or in a foreign country when the possible defect is in a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States; or

(5) with respect to the manufacture of a tire, that the manufacturer failed to comply with the obligations set forth in the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act.

(b) In a products liability action brought against a product manufacturer, distributor or seller, there is a rebuttable presumption that the product manufacturer, distributor, or seller is not liable for any injury to a claimant allegedly caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer, distributor, or seller establishes that the product was subject to pre-market licensing or approval by the federal government or an agency of the federal government, that the manufacturer complied with all of the government's or agency's procedures and requirements with respect to pre-market licensing or approval, and that after full consideration of the product's risks and benefits the product was approved or licensed for sale by the government or agency. The claimant may rebut this presumption by establishing that:

(1) the standards or procedures used in the particular pre-market approval or licensing process were inadequate to protect the public from unreasonable risks of injury or damage;

(2) the manufacturer, before or after pre-market approval or licensing of the product, withheld from or misrepresented to the government or agency information that was material and relevant to the performance of the product and was causally related to the claimant's injury;

(3) the Congress included a "savings" provisions, intending to permit state common law to apply to the field being regulated; or

(4) with respect to the manufacturer of a drug or medical device, after the product was sold and before the alleged injury occurred, that the manufacturer failed to provide the federal government, or the governing agency of the federal

government, with all incidents of which the manufacturer receives actual notice which involve fatalities or serious injuries which are alleged or proved to have been caused by a possible defect in such manufacturer's product.

(c) The rebuttal presumption created in sections (a) and (b) does not exist if the claimant demonstrates that the product has been withdrawn from the market.

(d) The rebuttable presumption created in sections (a) and (b) does not exist if the claimant demonstrates that the product manufacture acted with gross neglect or malice.

(e) This section does not extend to manufacturing flaws or defects even though the product manufacturer has complied with all quality control and manufacturing practices mandated by the state or federal governments or agencies.