

By: Haggerty

H.B. No. 3354

A BILL TO BE ENTITLED

AN ACT

relating to the liability of a manufacturer or seller of a non-consumer safety product.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 82, Civil Practice and Remedies Code, is amended by adding Section 82.009 to read as follows:

Sec. 82.009. NON-CONSUMER SAFETY PRODUCTS - COMPLIANCE WITH GOVERNMENT STANDARDS.

(a) In a product liability action brought against a designer, manufacturer or distributor of a non-consumer safety product, where such product is required to be manufactured pursuant to laws, rules, regulations, standards, controls, criterion, guidelines or prohibitions promulgated by the federal or state government or an agency of the federal or state government and such laws, rules, regulations, standards, controls, criterion, guidelines or prohibitions have resulted from specific and stringent testing, evaluation and analysis processes and procedures developed to determine the product's performance under conditions to which the product is expected to be subject, the manufacturer or distributor is not liable for any injury to a claimant caused by some aspect of the product unless the product failed to comply with laws, rules, regulations, standards, controls, criterion, guidelines or prohibitions promulgated by the federal or state government or an agency of the federal or state

1 government at the time of manufacture or sale and such failure was a
2 producing cause of the claimant's injury.

3 (b) Subsection (a) does not apply to a designer,
4 manufacturer, or distributor if the claimant proves by clear and
5 convincing evidence that:

6 (1) the designer, manufacturer or distributor had
7 actual knowledge that the non-consumer safety product did not
8 comply with the applicable federal or state laws, rules,
9 regulations, standards, controls, criterion, guidelines or
10 prohibitions governing the design, manufacture or distribution of
11 the product including specifications for designing manufacturing,
12 engineering, fabricating, testing, using, packaging, or labeling
13 of the product; and

14 (2) the designer, manufacturer or distributor's
15 non-compliance was the sole proximate cause of the claimant's
16 injuries.

17 (c) Evidence offered by expert testimony or otherwise that a
18 non-consumer safety product should have been designed,
19 manufactured or distributed in accordance with federal or state
20 laws, rules, regulations, standards, controls, criterion,
21 guidelines or prohibitions other than that in effect at the time the
22 product was designed, manufactured, or distributed may not be used
23 for the purpose of proving that the product:

24 (1) was not state of the art;

25 (2) was defective; or

26 (3) failed.

27 (d) This section does not affect the liability of a

1 manufacturer or distributor with respect to claims founded on
2 breach of contract or breach of warranty.

3 (e) For purposes of this section, a "safety product"
4 includes any product, feature or device that is designed and used
5 with the reasonable expectation of reducing a person's exposure to
6 injury when using or when coming into contact with the safety
7 product, feature or device.

8 SECTION 2. The change in the law made by this Act applies to
9 an action commenced on or after the effective date. The law in
10 effect immediately prior to the effective date of this Act applies
11 to an action commenced prior to the effective date of this Act and
12 is continued for that purpose.

13 SECTION 3. This Act takes effect immediately if it receives
14 a vote of two-thirds of all the members elected to each house, as
15 provided by Section 39, Article III, Texas Constitution. If this
16 Act does not receive the vote necessary for immediate effect, this
17 Act takes effect on the 91st day after the last day of the
18 legislative session.