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HOUSE BILL 1606

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State of Washington

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By Representatives Ryu, Ramel, Gregerson, Kloba, and Reed

Read first time 01/26/23. Referred to Committee on Consumer Protection & Business.

1 AN ACT Relating to increasing accountability for products sold on  
2 electronic commerce platforms; and amending RCW 7.72.010, 7.72.040,  
3 and 7.72.060.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 7.72.010 and 1991 c 189 s 3 are each amended to read  
6 as follows:

7 ~~((For the purposes of this chapter, unless the context clearly  
8 indicates to the contrary:))~~ The definitions in this section apply  
9 throughout this chapter unless the context clearly requires  
10 otherwise.

11 (1) ~~((Product seller.))~~ "Product seller" means any person or  
12 entity that is engaged in the business of selling products, whether  
13 the sale is for resale, or for use or consumption. The term includes  
14 a manufacturer, wholesaler, distributor, or retailer of the relevant  
15 product. The term also includes a party who is in the business of  
16 leasing or bailing such products. The term "product seller" does not  
17 include:

18 (a) A seller of real property, unless that person is engaged in  
19 the mass production and sale of standardized dwellings or is  
20 otherwise a product seller;

1 (b) A provider of professional services who utilizes or sells  
2 products within the legally authorized scope of the professional  
3 practice of the provider;

4 (c) A commercial seller of used products who resells a product  
5 after use by a consumer or other product user: PROVIDED, That when it  
6 is resold, the used product is in essentially the same condition as  
7 when it was acquired for resale;

8 (d) A finance lessor who is not otherwise a product seller. A  
9 "finance lessor" is one who acts in a financial capacity, who is not  
10 a manufacturer, wholesaler, distributor, or retailer, and who leases  
11 a product without having a reasonable opportunity to inspect and  
12 discover defects in the product, under a lease arrangement in which  
13 the selection, possession, maintenance, and operation of the product  
14 are controlled by a person other than the lessor; and

15 (e) A licensed pharmacist who dispenses a prescription product  
16 manufactured by a commercial manufacturer pursuant to a prescription  
17 issued by a licensed prescribing practitioner if the claim against  
18 the pharmacist is based upon strict liability in tort or the implied  
19 warranty provisions under the uniform commercial code, Title 62A RCW,  
20 and if the pharmacist complies with recordkeeping requirements  
21 pursuant to chapters 18.64, 69.41, and 69.50 RCW, and related  
22 administrative rules as provided in RCW 7.72.040. Nothing in this  
23 subsection (1)(e) affects a pharmacist's liability under RCW  
24 7.72.040(1).

25 (2) (~~Manufacturer.~~) "Manufacturer" includes a product seller  
26 who designs, produces, makes, fabricates, constructs, or  
27 remanufactures the relevant product or component part of a product  
28 before its sale to a user or consumer. The term also includes a  
29 product seller or entity not otherwise a manufacturer that holds  
30 itself out as a manufacturer.

31 A product seller acting primarily as a wholesaler, distributor,  
32 or retailer of a product may be a "manufacturer" but only to the  
33 extent that it designs, produces, makes, fabricates, constructs, or  
34 remanufactures the product for its sale. A product seller who  
35 performs minor assembly of a product in accordance with the  
36 instructions of the manufacturer shall not be deemed a manufacturer.  
37 A product seller that did not participate in the design of a product  
38 and that constructed the product in accordance with the design  
39 specifications of the claimant or another product seller shall not be  
40 deemed a manufacturer for the purposes of RCW 7.72.030(1)(a).

1 (3) (~~Product~~) "Product" means any object possessing intrinsic  
2 value, capable of delivery either as an assembled whole or as a  
3 component part or parts, and produced for introduction into trade or  
4 commerce. Human tissue and organs, including human blood and its  
5 components, are excluded from this term.

6 The "relevant product" under this chapter is that product or its  
7 component part or parts, which gave rise to the product liability  
8 claim.

9 (4) (~~Product liability claim~~) "Product liability claim"  
10 includes any claim or action brought for harm caused by the  
11 manufacture, production, making, construction, fabrication, design,  
12 formula, preparation, assembly, installation, testing, warnings,  
13 instructions, marketing, packaging, storage or labeling of the  
14 relevant product. It includes, but is not limited to, any claim or  
15 action previously based on: Strict liability in tort; negligence;  
16 breach of express or implied warranty; breach of, or failure to,  
17 discharge a duty to warn or instruct, whether negligent or innocent;  
18 misrepresentation, concealment, or nondisclosure, whether negligent  
19 or innocent; or other claim or action previously based on any other  
20 substantive legal theory except fraud, intentionally caused harm or a  
21 claim or action under the consumer protection act, chapter 19.86 RCW.

22 (5) (~~Claimant~~) "Claimant" means a person or entity asserting a  
23 product liability claim, including a wrongful death action, and, if  
24 the claim is asserted through or on behalf of an estate, the term  
25 includes claimant's decedent. "Claimant" includes any person or  
26 entity that suffers harm. A claim may be asserted under this chapter  
27 even though the claimant did not buy the product from, or enter into  
28 any contractual relationship with, the product seller.

29 (6) (~~Harm~~) "Harm" includes any damages recognized by the  
30 courts of this state: PROVIDED, That the term "harm" does not include  
31 direct or consequential economic loss under Title 62A RCW.

32 (7) "Electronic commerce platform" means an entity that operates  
33 an internet website, online catalog, or software application in which  
34 the entity contracts or enters into an agreement with one or more  
35 third parties to offer products for sale.

36 **Sec. 2.** RCW 7.72.040 and 1991 c 189 s 2 are each amended to read  
37 as follows:

38 (1) Except as provided in subsection (2) of this section, a  
39 product seller or electronic commerce platform, other than a

1 manufacturer, is liable to the claimant only if the claimant's harm  
2 was proximately caused by:

3 (a) The negligence of such product seller or electronic commerce  
4 platform; or

5 (b) Breach of an express warranty made by such product seller or  
6 electronic commerce platform; or

7 (c) The intentional misrepresentation of facts about the product  
8 by such product seller or electronic commerce platform or the  
9 intentional concealment of information about the product by such  
10 product seller or electronic commerce platform.

11 (2) A product seller or electronic commerce platform, other than  
12 a manufacturer, shall have the liability of a manufacturer to the  
13 claimant if:

14 (a) No solvent manufacturer who would be liable to the claimant  
15 is subject to service of process under the laws of the claimant's  
16 domicile or the state of Washington; or

17 (b) The court determines that it is highly probable that the  
18 claimant would be unable to enforce a judgment against any  
19 manufacturer; or

20 (c) The product seller or electronic commerce platform is a  
21 controlled subsidiary of a manufacturer, or the manufacturer is a  
22 controlled subsidiary of the product seller or electronic commerce  
23 platform; or

24 (d) The product seller or electronic commerce platform provided  
25 the plans or specifications for the manufacture or preparation of the  
26 product and such plans or specifications were a proximate cause of  
27 the defect in the product; or

28 (e) The product was marketed under a trade name or brand name of  
29 the product seller or electronic commerce platform.

30 (3) Subsection (2) of this section does not apply to a pharmacist  
31 who dispenses a prescription product in the form manufactured by a  
32 commercial manufacturer pursuant to a prescription issued by a  
33 licensed practitioner if the pharmacist complies with recordkeeping  
34 requirements pursuant to chapters 18.64, 69.41, and 69.50 RCW, and  
35 related administrative rules.

36 **Sec. 3.** RCW 7.72.060 and 1981 c 27 s 7 are each amended to read  
37 as follows:

38 (1) Useful safe life. (a) Except as provided in ((subsection  
39 ~~(1)~~)) (b) ((hereof)) of this subsection, a product seller or

1 electronic commerce platform shall not be subject to liability to a  
2 claimant for harm under this chapter if the product seller or  
3 electronic commerce platform proves by a preponderance of the  
4 evidence that the harm was caused after the product's "useful safe  
5 life" had expired.

6 "Useful safe life" begins at the time of delivery of the product  
7 and extends for the time during which the product would normally be  
8 likely to perform or be stored in a safe manner. For the purposes of  
9 this chapter, "time of delivery" means the time of delivery of a  
10 product to its first purchaser or lessee who was not engaged in the  
11 business of either selling such products or using them as component  
12 parts of another product to be sold. In the case of a product which  
13 has been remanufactured by a manufacturer, "time of delivery" means  
14 the time of delivery of the remanufactured product to its first  
15 purchaser or lessee who was not engaged in the business of either  
16 selling such products or using them as component parts of another  
17 product to be sold.

18 (b) A product seller or electronic commerce platform may be  
19 subject to liability for harm caused by a product used beyond its  
20 useful safe life, if:

21 (i) The product seller or electronic commerce platform has  
22 warranted that the product may be utilized safely for such longer  
23 period; or

24 (ii) The product seller or electronic commerce platform  
25 intentionally misrepresents facts about its product, or intentionally  
26 conceals information about it, and that conduct was a proximate cause  
27 of the claimant's harm; or

28 (iii) The harm was caused by exposure to a defective product,  
29 which exposure first occurred within the useful safe life of the  
30 product, even though the harm did not manifest itself until after the  
31 useful safe life had expired.

32 (2) Presumption regarding useful safe life. If the harm was  
33 caused more than (~~twelve~~) 12 years after the time of delivery, a  
34 presumption arises that the harm was caused after the useful safe  
35 life had expired. This presumption may only be rebutted by a  
36 preponderance of the evidence.

37 (3) Statute of limitation. Subject to the applicable provisions  
38 of chapter 4.16 RCW pertaining to the tolling and extension of any  
39 statute of limitation, no claim under this chapter may be brought  
40 more than three years from the time the claimant discovered or in the

1 exercise of due diligence should have discovered the harm and its  
2 cause.

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