

SECOND REGULAR SESSION

SENATE BILL NO. 893

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MUNZLINGER.

Read 1st time January 12, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5851S.011

AN ACT

To repeal section 537.765, RSMo, and to enact in lieu thereof one new section relating to products liability.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 537.765, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 537.765, to read as follows:

537.765. 1. Contributory fault, as a complete bar to plaintiff's recovery
2 in a products liability claim, is abolished. The doctrine of pure comparative fault
3 shall apply to products liability claims as provided in this section.

4 2. Defendant may plead and prove the fault of the plaintiff as an
5 affirmative defense. Any fault chargeable to the plaintiff shall diminish
6 proportionately the amount awarded as compensatory damages but shall not bar
7 recovery.

8 3. **The trier of fact may determine that the harm was caused**
9 **solely as a result of the plaintiff's fault. A defendant is not liable in a**
10 **civil action for harm caused solely as a result of the plaintiff's fault.**

11 4. For purposes of this section, "fault" **may include but is not limited**
12 **to:**

13 (1) The failure to use the product as reasonably anticipated by the
14 manufacturer;

15 (2) Use of the product for a purpose not intended by the manufacturer;

16 (3) **Use of the product in a manner inconsistent with a**
17 **specification or standard applicable to the product;**

18 (4) **Use of the product in a manner contrary to an instruction or**
19 **warning provided by the manufacturer or other person possessing**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 **knowledge or training regarding use or maintenance of the product;**

21 **(5) Use of the product in a manner determined to be improper by**
22 **a federal or state agency;**

23 **(6) Use of the product with knowledge of a danger involved in such use**
24 **with reasonable appreciation of the consequences and the voluntary and**
25 **unreasonable exposure to said danger;**

26 **[(4)] (7) Unreasonable failure to appreciate the danger involved in use**
27 **of the product or the consequences thereof and the unreasonable exposure to said**
28 **danger;**

29 **[(5)] (8) The failure to undertake the precautions a reasonably careful**
30 **user of the product would take to protect himself against dangers which he would**
31 **reasonably appreciate under the same or similar circumstances; or**

32 **[(6)] (9) The failure to mitigate damages.**

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Bill

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