

# State of South Dakota

EIGHTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2011

437S0636

## HOUSE BILL NO. 1233

Introduced by: The Committee on State Affairs at the request of the Office of the Governor

1 FOR AN ACT ENTITLED, An Act to limit liability from damages caused by certain aviation  
2 products.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Aviation product," any product or component designed, manufactured, fabricated,  
6 assembled, produced, or constructed for aviation purposes, including aircraft, parts  
7 produced primarily for use in aircraft, aviation navigation aids, aircraft  
8 instrumentation, aircraft testing products, aircraft components, aircraft support and  
9 maintenance products or components, aircraft materials production, aircraft materials  
10 testing, and aircraft safety products;

11 (2) "Aviation product liability claim," includes any claim or action brought for harm  
12 caused by the manufacture, production, making, construction, fabrication, design,  
13 formula, preparation, assembly, installation, testing, warnings, instructions,  
14 marketing, packaging, storage, or labeling of the relevant aviation product. The term  
15 includes any action based on, strict liability in tort, negligence, breach of express or



1 implied warranty, breach of, or failure to, discharge a duty to warn or instruct,  
2 whether negligent or innocent, misrepresentation, concealment, or nondisclosure,  
3 whether negligent or innocent, or under any other substantive legal theory;

4 (3) "Harm," includes damage to property, personal physical injuries, illness, and death,  
5 mental anguish or emotional harm attendant to personal physical injuries, illness, or  
6 death. The term does not include direct or consequential economic loss;

7 (4) "Manufacturer," includes an aviation product seller who designs, produces, creates,  
8 assembles, installs, makes, fabricates, constructs, or remanufactures the relevant  
9 product or component part of an aviation product before its sale to a user or  
10 consumer. The term includes a product seller or entity not otherwise a manufacturer  
11 that holds itself out as a manufacturer, or that is owned in whole or in part by the  
12 manufacturer;

13 (5) "Product seller," any person or entity that is engaged in the business of selling  
14 aviation products, whether the sale is for resale, or for use or consumption. The term  
15 includes a manufacturer, wholesaler, distributor, or retailer of the relevant aviation  
16 product; and

17 (6) "Time of delivery," the time of delivery of an aviation product to its first purchaser  
18 or lessee who was not engaged in the business of either selling such products or using  
19 them as component parts of another product to be sold.

20 Section 2. Except as provided in section 4 of this Act, no aviation product seller is liable in  
21 an aviation product liability claim if the product seller proves by a preponderance of the  
22 evidence that the harm was caused after the aviation product's useful safe life had expired.  
23 Useful safe life begins at the time of delivery of the aviation product and extends for the time  
24 during which the product would normally perform.

1 Section 3. Factors to be considered in determining whether an aviation product's useful safe  
2 life has expired include:

- 3 (1) The amount of wear and tear to which the aviation product had been subject;
- 4 (2) The effect of deterioration from natural causes and from climate and other conditions  
5 under which the aviation product was used or stored;
- 6 (3) The normal practices of the user, similar users, and the aviation product seller with  
7 respect to the circumstances, frequency, and purposes of the product's use, and with  
8 respect to repairs, renewals, and replacements;
- 9 (4) Any representations, instructions, or warnings made by the aviation product seller  
10 concerning proper maintenance, storage, and use of the product or the expected  
11 useful safe life of the product; and
- 12 (5) Any modification or alteration of the aviation product by a user or third party.

13 Section 4. An aviation product seller may be subject to liability for harm caused by an  
14 aviation product used beyond the product's useful safe life to the extent that the aviation product  
15 seller has expressly warranted the aviation product for a longer period.

16 Section 5. The provisions of § 15-2-12.2 notwithstanding, any claim that involves harm  
17 caused more than ten years after the time of delivery is barred regardless of the date the defect  
18 or harm is discovered or the disability or minority of the person harmed.

19 Nothing contained in this section affects the right of any person liable under an aviation  
20 product liability claim to seek and obtain indemnity from any other person who is responsible  
21 for the harm which gave rise to the aviation product liability claim.

22 Section 6. If the injury-causing aspect of the aviation product was, at the time of  
23 manufacture, in compliance with legislative or administrative regulatory safety standards  
24 relating to design or performance, the aviation product is deemed not defective by reason of

1 design or performance. If the standard addressed warnings or instructions, the aviation product  
2 is deemed not defective by reason of warnings or instructions.

3 Section 7. If the injury-causing aspect of the aviation product was not, at the time of  
4 manufacture, in compliance with legislative or administrative regulatory safety standards  
5 relating to design, performance, warnings, or instructions, no presumption exists and the  
6 burdens of proof applicable to nonaviation products liability actions apply.

7 Section 8. If the injury-causing aspect of the aviation product was, at the time of  
8 manufacture, in compliance with a mandatory government contract specification relating to  
9 design, this is an absolute defense and the aviation product is deemed not defective for that  
10 reason. If the specification related to warnings or instructions, the aviation product is deemed  
11 not defective for that reason.

12 Section 9. If the injury-causing aspect of the aviation product was not, at the time of  
13 manufacture, in compliance with a mandatory government contract specification relating to  
14 design, or if the specification related to warnings or instructions that were not in compliance  
15 with a mandatory government contract specification relating to warnings or instruction, no  
16 presumption exists and the burdens of proof applicable to nonaviation products liability actions  
17 apply.

18 Section 10. In any aviation product liability claim, any duty on the part of the aviation  
19 product seller to warn or protect against a danger or hazard which could or did arise in the use  
20 or misuse of such aviation product and any duty to have properly instructed in the use of such  
21 aviation product, does not extend:

- 22 (1) To any warning protecting against or instructing with regard to those safeguards,  
23 precautions, and actions which a reasonable user or consumer of the aviation product,  
24 with the training, experience, education, and any special knowledge the user or

1 consumer did, should, or was required to possess, could and should have taken for  
2 such user or consumer or others, under all the facts and circumstances;

3 (2) To any situation where the safeguards, precautions, and actions could or should have  
4 been taken by a reasonable user or consumer of the aviation product similarly  
5 situated exercising reasonable care, caution, and procedure; or

6 (3) To any warnings protecting against or instructing with regard to dangers, hazards, or  
7 risks which are patent, open, or obvious and which should have been realized by a  
8 reasonable user or consumer of the aviation product.

9 Section 11. No provision contained within this Act abrogates or limits protections afforded  
10 aviation product manufacturers, sellers, or assemblers contained in §§ 20-9-10 to 20-9-11,  
11 inclusive.

12 Section 12. In an aviation product liability claim, the following evidence is not admissible  
13 for any purpose:

14 (1) Evidence of any advancements or changes in technical or other knowledge or  
15 techniques; in design theory or philosophy; in manufacturing or testing knowledge;  
16 in techniques or processes in labeling; or warning of risks or hazards; or, in  
17 instructions for the use of the aviation product, if the advancements or changes have  
18 been made, learned, or placed into common use subsequent to the time the aviation  
19 product in issue was designed, formulated, tested, manufactured, or sold by the  
20 manufacturer; and

21 (2) Evidence of any changes made in the designing, planning, formulating, testing,  
22 preparing, manufacturing, packaging, warning, labeling, or instructing for use of, or  
23 with regard to, the aviation product in issue, or any similar product, which any  
24 change was made subsequent to the time the aviation product in issue was designed,

1           formulated, tested, manufactured, or sold by the manufacturer.

2           This section does not require the exclusion of evidence of a subsequent measure if offered  
3           to impeach a witness for the manufacturer or seller of an aviation product who has expressly  
4           denied the feasibility of such a measure.