



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 344 (Substitute S-4 as reported)

Sponsor: Senator Joel D. Gougeon

Committee: Economic Development, International Trade, and Regulatory Affairs

CONTENT

The bill would amend the Revised Judicature Act to do the following in regard to product liability actions:

- Provide that a manufacturer or seller would not be liable if a practical and technically feasible alternative production practice were not available, or if the product complied with standards in Federal and state law and standards, rules, and regulations promulgated by Federal and state agencies.
- Create a presumption that a manufacturer or seller was not liable, if the aspect of production that allegedly caused the injury complied with Federal or state standards.
- Allow the admission in evidence, for certain purposes, of subsequent changes in theory, knowledge, technique, or procedure.
- Provide that a manufacturer or seller would not be liable if the harm were caused by alteration or misuse of a product that was not reasonably foreseeable; if the user were aware of, and voluntarily exposed himself or herself to the risk; or if the alleged harm were caused by an inherent characteristic of the product.
- Specify that a manufacturer or seller would not be liable for failure to warn if the product were provided for use by a sophisticated user.
- Specify that a defendant would not be liable for failure to warn of risks that should have been obvious to a reasonably prudent product user or that were a matter of common knowledge.
- Limit damages for noneconomic loss except in instances of gross negligence.
- Redefine "product liability action" to include injuries or death resulting from the performance or sale of a product.

The bill would do the following in regard to all tort actions:

- Establish criteria for expert witnesses.
- Provide that a novel form of scientific evidence could be admitted if it had achieved general scientific acceptance among experts in the field.
- Provide that it would be an absolute defense if the person who was injured or killed had an impaired ability to function due to the influence of intoxicating alcohol or a controlled substance and were 50% or more the cause of the accident or event; and require a reduction of damages if the percentage were under 50%.
- Require a court to include the fault of someone who had entered into a settlement, when determining the percentage of fault in a personal injury claim involving multiple tort-feasors.
- Eliminate joint liability except in medical malpractice actions, and delete provisions requiring a court to allocate an uncollectible amount among other parties to an action.
- Specify a client's right to compensate an attorney on an hourly, fixed, or contingent fee basis; restrict compensation for an attorney on a contingency fee who failed to file a demand for

compensation with the allegedly liable party; specify procedures for a response and settlement offer from the allegedly liable party to a demand for compensation; and prohibit or restrict the use of contingent fee arrangements if the claimant had received a preretention or postretention offer.

In addition, the bill would limit malpractice actions against certified public accountants.

The bill would apply to actions filed after 90 days following the bill's effective date.

MCL 600.919 et al.

Legislative Analyst: L. Burghardt
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FISCAL IMPACT

Provisions in the bill concerning the allocation of fault among multiple tort-feasors and absolute defense would have an indeterminate impact on State and local units of government. The amount depends on the number of lawsuits in which a unit of government is one of multiple defendants. Highway negligence cases account for the majority of tort payments by the State. Annual payments have averaged \$15.7 million. The majority of cases against the Michigan Department of Transportation result from accidents in which more than one vehicle was involved.

The bill would have no fiscal impact on the courts.

Date Completed: 5-9-95

Fiscal Analyst: B. Bowerman
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.