

# SENATE BILL NO. 1565

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR FITZWATER.

6776S.011

KRISTINA MARTIN, Secretary

## AN ACT

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

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Section A. Section 537.765, RSMo, is repealed and one new  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

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

6 2. Defendant may plead and prove the fault of the  
7 plaintiff **or any other person or entity** as an affirmative  
8 defense **in any product liability claim, including all strict**  
9 **liability claims.** Any fault chargeable to the plaintiff **or**  
10 **any other person or entity** shall diminish proportionately  
11 the amount awarded as compensatory damages but shall not bar  
12 recovery.

13 3. For purposes of this section, **the term "fault"** [is  
14 limited to:

15 (1) The failure to use the product as reasonably  
16 anticipated by the manufacturer;

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

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

19           (3) Use of the product with knowledge of a danger  
20 involved in such use with reasonable appreciation of the  
21 consequences and the voluntary and unreasonable exposure to  
22 said danger;

23           (4) Unreasonable failure to appreciate the danger  
24 involved in use of the product or the consequences thereof  
25 and the unreasonable exposure to said danger;

26           (5) The failure to undertake the precautions a  
27 reasonably careful user of the product would take to protect  
28 himself against dangers which he would reasonably appreciate  
29 under the same or similar circumstances; or

30           (6) The failure to mitigate damages] means any  
31 actionable breach of legal duty or act or omission  
32 proximately causing or contributing to cause in any way the  
33 accident or harm for which recovery of damages is sought,  
34 including negligence in all of its degrees, comparative  
35 negligence, assumption of risk, strict liability, breach of  
36 express or implied warranty of a product, products  
37 liability, and misuse, modification, or abuse of a product.

38           4. In a product liability claim, the liability of each  
39 defendant for damages is several only and is not joint.  
40 Each defendant is liable only for the amount of damages  
41 allocated to that defendant in direct proportion to that  
42 defendant's percentage of fault.

43           5. In assessing the percentages of fault, the trier of  
44 fact shall consider the fault of all persons or entities who  
45 contributed to the accident or harm, regardless of whether  
46 the person or entity was, or could have been, named as a  
47 party to the suit. The relative degree of fault of the  
48 plaintiff, and the relative degrees of fault of all

49 defendants and nonparties, shall be determined and  
50 apportioned as a whole at one time by the trier of fact.

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