**A** **BILL**

TO AMEND SECTION 15‑73‑10 OF THE 1976 CODE, RELATING TO LIABILITY OF A SELLER OF A DEFECTIVE PRODUCT, TO PROVIDE THAT NO PRODUCT LIABILITY ACTION, EXCEPT AN ACTION FOR BREACH OF EXPRESS WARRANTY, SHALL BE COMMENCED OR MAINTAINED AGAINST ANY SELLER WHEN THE PRODUCT WAS ACQUIRED AND SOLD BY THE SELLER IN A SEALED CONTAINER OR WHEN THE PRODUCT WAS ACQUIRED AND SOLD BY THE SELLER UNDER CIRCUMSTANCES IN WHICH THE SELLER WAS AFFORDED NO REASONABLE OPPORTUNITY TO INSPECT THE PRODUCT AND DISCOVER THE EXISTENCE OF THE CONDITION COMPLAINED OF, UNLESS THE SELLER DAMAGED OR MISHANDLED THE PRODUCT WHILE IN HIS POSSESSION, AND TO PROVIDE EXCEPTIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 15‑73‑10 of the 1976 Code is amended to read:

“Section 15‑73‑10. (1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm caused to the ultimate user or consumer, or to his property, if:

(a) the seller is engaged in the business of selling such a product~~,~~; and

(b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(2) ~~The rule stated in subsection (1) shall apply although~~

~~(a)~~ ~~The seller has exercised all possible care in the preparation and sale of his product, and~~

~~(b)~~ ~~The user or consumer has not bought the product from or entered into any contractual relation with the seller.~~ Notwithstanding subsection (1), no product liability action, except an action for breach of express warranty, shall be commenced or maintained against any seller when the product was acquired and sold by the seller in a sealed container or when the product was acquired and sold by the seller under circumstances in which the seller was afforded no reasonable opportunity to inspect the product in a manner that would have or should have, in the exercise of reasonable care, revealed the existence of the condition complained of, unless the seller damaged or mishandled the product while in his possession. The provisions of this subsection shall not apply if the manufacturer of the product is not subject to the jurisdiction of the courts of this State or if the manufacturer has been judicially declared insolvent.

(3) For purposes of this section:

(a) ‘Product liability action’ includes any action brought for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formulation, development of standards, preparation, processing, assembly, testing, listing, certifying, warning, instructing, marketing, selling, advertising, packaging, or labeling of any product.

(b) ‘Seller’ includes a retailer, wholesaler, or distributor and means any individual or entity engaged in the business of selling a product, whether the sale is for resale or for use or consumption. ‘Seller’ also includes a lessor or bailor engaged in the business of leasing or bailment of a product.”

SECTION 2. This act takes effect upon approval by the Governor.

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