

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2270/2dn
RPN:kg:km

September 13, 1999

As you will see, I made numerous style changes that are not intended to change the substance of the bill. I do have some questions about the bill, as drafted.

In subsection (2), paragraph (a), does the claimant's requirement to prove by a preponderance of the evidence apply only to the seller's or distributor's contractual assumption of the manufacturer's duties? Or does it also apply to whether the manufacturer would be liable but is not subject to service or judgment enforcement? As drafted, that burden of proof seems to apply to both. If the burden does apply to both, the language about the court determining that the claimant would be unable to enforce the judgment is confusing. Does the claimant have to prove by a preponderance of the evidence that a court determined that the claimant would be unable to enforce the judgment?

Also in that paragraph, how can a seller or distributor contractually assume the manufacturer's duty to manufacture a product? Don't they become manufacturer's themselves then, and thus become subject to subsection (1).

In subsection (2), paragraph (b), the court is required to dismiss the suit against the seller or distributor if the manufacturer submits to the jurisdiction of the court in which the suit is pending. If the suit is dismissed, there will be no suit pending. Is this language intended to provide that the manufacturer be substituted as the party in the action in place of the seller or distributor? If so, I would prefer to say that.

See my changes in subsection (3), paragraph (a). There are two levels of alcohol intoxication, .08 and .10, depending on the number of drunk driving convictions. I used .10. OK?

In subsection (3), paragraph (c), only the manufacturer is mentioned, not the seller or distributor. Is that correct, or should their liability also be reduced by the misuse, alternation or modification of a product?

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