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SUMMARY OF HEARINGS ON PRODUCT LIABILITY BEFORE  
THE CONSUMER SUBCOMMITTEE, COMMITTEE ON  
COMMERCE, SCIENCE, AND TRANSPORTATION,  
UNITED STATES SENATE

MARCH 9, 1982

Senator Kasten, Chairman, believes federal legislation is needed to bring uniformity and certainty to product liability law. He set forth three goals for such legislation: (1) reduce transaction costs; (2) encourage manufacture and sale of safe products; and (3) provide clear guidelines for the rights and liabilities of all parties. His questioning of witnesses indicated particular concern for the disproportionate burden placed on small businesses and for the disincentives in current laws for the development of new and improved products.

Senator Glenn supports federal legislation in the area of product liability. Although he stressed the need for and his willingness to compromise, he offered the following principles for any such legislation: (1) it should provide incentives to improve safety; (2) individuals should be responsible for their own negligence in the use of products; (3) a product's safety should be judged by concepts of safety in existence at the time of the product's manufacture; and (4) the government's role should be limited to establishing the rules of product liability and providing a forum for the resolution of disputes.

Congressman Shumway supports federal product liability legislation. He is concerned about the evolution of product liability law from a compensation system based on fault to an insurance system for all harm caused by products, without regard for the age of the product or the acts of claimants or others.

Victor Schwartz, on behalf of the Product Liability Alliance, emphasized the need for federal legislation to override conflicting state laws. The existing inconsistencies prevent insurance companies and others from predicting risks and so increase insurance rates and transaction costs. Furthermore, the interstate nature of product distribution justifies federal presence in a traditional area of state control. Although he did not address specific provisions in the draft bill (staff draft number 2), he expressed general support, particularly for the draft's recognition that product liability should not be a compensation system.

Professor Jerry Phillips, University of Tennessee School of Law, stated that neither federal nor state legislative action was necessary or desirable in the area of product liability. For the most part, decisions in this area have been reasonable and sound, and statutes would prevent the continued growth and development of product liability law. He noted that the draft bill protected the manufacturer and seller at the expense of the consumer, and he suggested that the real problem is in the area of rate setting by insurance companies.

Professor James Henderson, Boston University School of Law, stated that federal legislation is needed to solve the problem of inconsistent standards in the area of product liability. He found fault in emerging standards of strict liability for product design and warnings, and with excessive transaction costs caused by the current hodge-podge of state laws.

Robert Taft, Jr., General Counsel for the Special Committee for Workplace Product Liability Reform, and Arthur Rosen, President of McKeon Machinery Sales, Inc., urged the passage of federal legislation. They noted the particularly unfair results of current product liability law for workplace injuries because of interaction with workmen's compensation statutes. Although the negligence of an employer may directly cause injury to an employee, recovery against the employer is limited while recovery against the non-negligent product manufacturer is not. Furthermore, the at-fault employer may have a subrogation lien on the employee's recovery from the manufacturer. Except for wanting a shorter statute of repose, they supported the draft bill.

Louise Trubek, Executive Director of the Center for Public Representation, testified that the present system of product liability is seriously flawed because most injured persons are unable to gain access to the adjudicatory process. The draft bill fails to address this problem. She also objected to the pre-emptive aspect of the bill, arguing that local governments should be allowed to seek alternative means to protect their citizens from defective products. Federal action should be limited to the creation of minimum standards of care in the manufacture of products.

Robert Butler, Vice-Chairman of the National Association of Manufacturer's Product Liability and Employee Compensations System Committee and Chairman of the Product Liability Task Force, and William Rumble, President of G.F. Goodman and Son, Inc., expressed the support of NAM for federal product

liability legislation to replace state laws. In particular, NAM objects to the growing tendency of courts to allow recovery by a negligent user from a non-negligent manufacturer. Butler set forth a set of principles generally consistent with the draft bill. Rumble emphasized the problems currently faced by small businesses. Even if not found liable, the costs of defending against product liability claims impair the ability of manufacturers to develop new products.

Barbara Pequet, Legislative Director, National Consumers League, testified that although NCL could support federal legislation to solidify manufacturer responsibility and create strong standards for safety, the draft bill is objectionable because it undermines consumer rights and consumer safety. She suggested that Congress should instead investigate (1) methods to improve design and manufacturing standards, and (2) liability insurance ratemaking procedures.

Sidney Wolfe, M.D., Director, and Allen Greenberg, Staff Associate, Public Citizen Health Research Group, argued that the anti-consumer aspects of the draft bill are particularly objectionable when viewed in conjunction with relaxation of other forms of regulation of corporate behavior (i.e., decreased enforcement activity by FDA, OSHA and similar agencies). To the extent that a product liability problem exists, they stated that the fault is not in tort law but in liability insurance ratemaking procedures. The applicable tort law as developed by state courts is generally fair and should not be overridden by federal legislation.

Delores Wallgren, Vice President of DES Action, did not address the general question of the need for federal product liability legislation. She focused on and objected to the draft bill's requirement that in order to recover damages an injured person must identify the manufacturer of the specific product that caused the injury.

Professor John Fleming, University of California, Boalt Hall School of Law, on behalf of the Industrial Liability Council of the California Manufacturer's Association, criticized some states for imposing strict liability for product design. If a system of compensation for all injuries is desired, it should not be created by the courts. He supported federal legislation and the draft bill as a proper balancing of conflicting public interests.

MARCH 12, 1982

Secretary Baldrige identified several underlying issues: (1) inconsistent liability standards among states; (2) conflicts between state liability standards and federal regulatory requirements; (3) new liability doctrines in some state courts which affect design, manufacture, and marketing throughout the nation; and (4) tension between state and federal sovereignty. Although noting arguments in favor of federal legislation, the Secretary only committed the Administration to work with Congress toward a balanced analysis of the issues.

C. Thomas Bendorf, on behalf of the Association of Trial Lawyers of America, disputed the premise that there is a major crisis in product liability, and he opposed any federal legislation that would override state common law.

James Sales, of the law firm of Fulbright and Jaworski, criticized some state courts for the imposition of strict liability for product design and the elimination of contributory fault as a defense. He emphasized that the problems in product liability law are not subject to correction by the individual states.

James Mack, Public Affairs Director, National Machine Tool Builders Association, and Emmert McCarthy, Vice President, Dreis and Krump Manufacturing Company. It is the position of NMTBA that the current pattern of laws adversely affects interstate commerce without promoting safety or technological innovations. The true beneficiary currently is the attorney who receives a disproportionate share of product liability payments. Federal action is needed to create uniformity and predictability, which will reduce transaction costs. A particular area of concern is the workplace. Any new law must interact with workmen's compensation laws to encourage safety in the workplace, contrary to current law.

David Sloane, National Association of Wholesalers - Distributors, and Peter Voss, Jr., President, Voss Equipment, Incorporated. NAW supports federal legislation. Current law in some states was criticized for placing strict liability on distributors even though such companies, unlike manufacturers, are not in a position to improve the safety of a product.

Herbert Goetz, on behalf of the National Product Liability Council, stated that the most severe problem faced by many small manufacturers is product liability. Claims based upon very old products or products altered by others have increased. The increased transaction costs do not improve productivity or product safety. NPLC supports federal legislation to address this problem.

David Greenberg, Legislative Director, Consumer Federation of America, testified that there is no fundamental crisis in the product liability field which justifies federal intervention. Furthermore, the draft bill is objectionable because its main thrust is to limit the rights of consumers. He noted that already the vast majority of people injured by products receive no compensation. Any legislative proposal should be aimed at improving product safety and insurance ratemaking procedures.

John McKeon, Business Roundtable, described how uncertainty in existing product liability laws is detrimental to business and discourages product improvement. The Business Roundtable supports federal legislation as the best means for addressing this problem.

Ernest Sevier, Chairman-Elect of the Section of Tort and Insurance Practice of the American Bar Association. The ABA opposes federal legislation. The states are the correct place for any necessary changes in product liability law. Federal action will not result in uniformity because individual state courts will provide varying interpretations of any federal statute.

George Keeley, Counsel to the National Association of Wholesalers-Distributors, emphasized that there does exist a product liability problem, and that the burden is especially heavy on small businesses. The involvement of distributors in product liability cases is unfair when there is no allegation of fault and the product passed unchanged through the hands of the distributor. Their involvement increases transaction costs, benefiting only attorneys, but rarely does resolution of the case involve payment by a distributor. He supported the draft bill.

JUNE 30, 1982

Victor Schwartz, on behalf of the Product Liability Alliance, presented an overview of S. 2631. He expressed support for its basic principles and appreciation for the efforts of the drafters in dealing with many controversial issues. Some members of the Alliance have objections to portions of the bill, for example its failure to overrule Sindell, but he deferred specific criticism to further testimony by Alliance members.

Martin Connor, on behalf of the National Electrical Manufacturers Association, gave a summary of the history behind S. 2631 beginning with the White House Conference on Product Liability in March 1976. As a result of this long process of public participation, S. 2631 emerged as a fair and sensible reform of product liability laws. NEMA strongly supports the bill.

C. Thomas Bendorf, on behalf of the Association of Trial Lawyers of America, testified in opposition to any federal legislation which pre-empts state product liability law. He alleged that there is no crisis in product liability and that proponents of Federal legislation have intentionally cited inaccurate statistics regarding transaction costs to support their arguments, for example continuing to claim that for each 66 cents received by product liability claimants legal fees for plaintiffs and defendants total 77 cents even after this figure was refuted by Mr. Bendorf. Mr Bendorf also provided statistics showing that product liability losses have not justified large rate increase by insurers. He stated that enactment of S. 2631 would protect producers of defective products at the expense of injured individuals.

Jay Angoff, on behalf of Public Citizen's Congress Watch, testified in opposition to any federal product liability legislation. He argued that the flexibility of the common law is preferable to the rigidity of a statute. Further, no single statute can deal effectively with all the issues and factual situations involved in product liability cases. The result would be more, rather than less, confusion. He testified that no justification for a federal statute has been provided that withstands scrutiny. Mr. Angoff also objected to the substantive provisions of S. 2631 as too protective of business interests. He criticized 18 separate provisions as pro-defendant, with special emphasis on the proposed negligence standard of liability for design cases.

James Henderson Jr., Professor of Law at Boston University School of Law, testified that there is a serious product liability problem primarily caused by the inability of courts to construct sensible standards for design and warning cases. Federal legislation to create uniform standards is needed, and he supports S. 2631 as a sensible response. He did offer several criticisms, such as suggesting that the Sindell issue should be left to the states, but he emphasized that the problems were minor.

Joseph Page, Professor of Law at the Georgetown University Law Center, described S. 2631 as unworkable and undesirable. After noting that the federalization of an area of law traditionally reserved for the states violates a fundamental policy of the Administration, he criticized the bill for addressing only one factor identified by the Interagency Task Force as contributing to the alleged product liability crisis, uncertainties in tort liability rules, while ignoring the other two factors identified, overly subjective insurance ratemaking and dangerous products. Furthermore, S. 2631 will not even eliminate legal uncertainties. He urged that the bill be carefully rethought and reworked.



William Ford, Chairman, Executive Committee of the Coalition for Uniform Product Liability Law, endorsed federal legislation to resolve the product liability problem and offered general support for S. 2631. In appendices to his testimony, Mr. Ford gave a history and description of the product liability problem, arguments in favor of a federal solution, and detailed comments on S. 2631. In the body of his testimony, he addressed four major concerns with the bill. First, he urged a ten year statute of repose applicable to all products with limited exception for latent defects, cumulative exposures, and fraud. Second, the section on punitive damages should provide limitations on the amount that may be awarded in a single action and in the aggregate for a particular product. Third, S. 2631 should create defenses or presumptions in favor of manufacturers whose products comply with government contract specifications or safety regulations. Fourth, the bill should overturn Sindell.

Herbert Goetz, on behalf of the National Product Liability Council, testified that there is a critical need for federal legislation to provide a uniform and predictable product liability law. He stated that he is impressed with many features of S. 2631, but he limited his comments to the need for a more protective statute of repose. Neither the 25 year period for capital goods nor the 10 year rebuttable presumption in the bill would sufficiently reduce transaction costs or increase certainty. He suggested a 10 year limitation or a rebuttable presumption with a 15 year bar. Exceptions could be made for compelling cases, such as those involving fraud.

David Greenberg, on behalf of the Consumer Federation of America, testified that although the product liability crisis represented a legitimate concern of manufacturers and insurers, the solution was not federal preemption of state product liability law. He stated that the evidence casts doubt on the connection between tort law and the increased cost of product liability insurance. Although the goal of S. 2631 to reduce transaction costs and uncertainty by imposing national standards is legitimate, the bill would in fact probably increase uncertainty at least for the short-term. Any insurance cost reductions would result from a shifting of the burden for the costs of product failure to the injured party.

Charles Babcock, on behalf of the National Association of Manufacturers, testified in favor of Federal legislation and supported most of the provisions in S.2631. He urged rejection of the Sindell concept of industry-wide liability and adoption of protections for manufacturers whose products comply with government contract specifications or safety regulations. The statute of repose should also be reduced to 15 years and the rebuttable presumption eliminated. Several

other more minor amendments, generally returning to language contained in earlier drafts of the bill, were also suggested.

Delby Humphrey, on behalf of the Sporting Goods Manufacturers Association, testified in support of federal legislation in the area of product liability. He described the difficulties faced by his company and football helmet manufacturers as a result of current product liability laws, and he argued that foreign competitors will replace American manufacturers if changes in product liability law do not occur soon. He endorsed the standards of liability contained in S.2631, but expressed disappointment that the statute of repose is limited to capital goods.

Maria Dennison, Director of Washington Operations, Sporting Goods Manufacturers Association, testified in support of S.2631 as a good faith effort to provide an equitable solution to the product liability crisis. This crisis has threatened the existence of many sporting goods manufacturers and could cause the removal of football from high schools.

JULY 1, 1982

Sheila Birnbaum, Professor of Law at New York University School of Law, limited her remarks to the standard of liability for defectively designed products. She argued that the existing inequities in design defect litigation arise from the failure of the courts to acknowledge that such cases must be grounded in negligence. She felt that the most important feature of S.2631 was the adoption of a negligence standard for design cases.

Ralph Millet, Chairman of the Automobile Importers of America, testified in support of a federal product liability law. He also supported many of the provisions in S.2631, in particular the adoption of a negligence standard for product design cases and product sellers, the prohibition against collateral estoppel, and the use of a "reckless disregard" test for the award of punitive damages. His only objection was the failure of the bill to include a provision making compliance with federal product standards or specifications a presumption of reasonable design and warnings.

John Eppel, Assistant General Counsel of Ford Motor Company, Chairman of the Product Liability Alliance Subcommittee on Government Standards, and a member of the Lawyers Advisory Committee for the Business Roundtable's Product Liability Task Force, testified that the need for federal product liability legislation is critical and that S.2631 is an excellent effort to meet this need. Nevertheless, he expressed concern about the omission from the bill of any provision

relating to the role of government safety standards in litigation. Without such a provision, creating at least a prima facie defense for compliance with government standards, the goals of predictability and uniformity would be substantially undermined.

William Loft, on behalf of the National Machine Tool Builder's Association, described the product liability problem as it applies to his industry and claimed that product liability law has worked against domestic companies in the international marketplace. He expressed strong support for S.2631, recommending only a shorter, but unspecified, statute of repose, inclusion of specific limits for punitive damages, and protection for contractors complying with government specifications.

David Owen, Professor of Law at the University of South Carolina, addressed only the topic of punitive damages. He stated that federal legislation was needed to overturn the random character of existing law. The standards for punitive damages contained in S.2631 should reduce the number of improper punitive awards, but he suggested shifting of the entire punitive damages issue to the judge and adoption of limits on the amount of punitive damages that could be awarded.

Marianna Smith, Associate Dean and Professor of Law at Washington College of Law, The American University, testified that contrary to much of the previous testimony the product liability laws of the various states have more in common than differences and that for the most part the cases have reached reasonable and sound decisions. Therefore, statutory change was not necessary and would probably work against the goal of uniformity. She opposed all product liability legislation.

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## POSITION OF THE PLAYERS

### PROPONENTS

The Product Liability Alliance - a coalition of over 200 corporate and trade association participants, including small, medium and large manufacturers, wholesalers, retailers, insurance brokers, and law firms. (Complete membership list attached).

### OPPONENTS

Association of Trial Lawyers of America - a national association representing over 40,000 plaintiffs' lawyers.

#### Consumer Groups

National Consumers League - a national membership organization that acts as an advocate for consumers;

Center for Public Representation - a Wisconsin public interest group assisting consumers, the elderly, handicapped persons, and children;

Health Research Group - a public interest group founded by Ralph Nader;

Consumer Federation of America - federation of 200 national, state and local consumer groups, labor unions, farm organizations, rural cooperatives and credit unions.

### REEVALUATING POSITION

American Bar Association - opposed federal product liability legislation in 1981 resolution by House of Delegates. As of June 1982, three Sections (Public Contract Law; Corporation, Banking and Business Law; and Litigation) have adopted resolutions calling upon ABA to withdraw opposition to federal product liability legislation.

MEMBERSHIP

A C & S Inc

A E Robins

A L C O A

A S A R C O Inc

Aetna Life & Casualty

Alexander & Alexander

Alliance of American Insurers

Alliance of Metal Working Industries

American Business Conference

American Hardware Manufacturers Association

American Hoechst Corporation

American Insurance Association

American International Group

American Machine Tool Distributors Association

American Mining Congress

American Petroleum Institute

American Supply Association

American Surgical Trade Association

American Textile Machinery Association

American Traffic Services Association

Asbestos Compensation Coalition  
Associated Equipment Distributors  
Association of General Merchandise Chains  
Atlantic Richfield  
Automotive Service Industry Association  
Bendix Corporation  
Black & Decker Company  
Business Roundtable  
Carrier Corporation  
Chainsaw Manufacturers Association  
Chamber of Commerce of the United States  
Chemical Manufacturers Association  
Construction Industry Manufacturers Association  
Colt Industries Inc  
Commercial Union Insurance Co  
Crum & Forster Insurance Companies  
Eaton Corp  
E I Dupont de Nemours Company  
Electronic Industries Association  
Eli Lilly Corporation  
Emerson Electric

F M C Corporation

Farm & Industrial Equipment Institute

Fike Metal

Firestone Tire & Rubber Co

Ford Motor Company

Foundry Equipment Manufacturers Association

General Electric

General Motors Corporation

Geosource

Goodyear

Gould Pumps, Inc.

Grumman Allied Industries

Gulf & Western Industries Inc.

Harris Corporation

Hartford Insurance Group

Health Industry Manufacturers Association

Household International

I C I Americas Inc

Independent Insurance Agents of America

Insurance Co of North America

International Association of Amusement Parks & Attractions

International Harvester Co

International Snowmobile Industry Association



I T T Corporation

Johnson & Johnson

Kenper Group

Litton Industries

Man-Made Fiber Producers Association

Manufacturers Association of Jamestown Area

Manufacturing Agents National Association

Material Handling Institute

Merck & Co Inc

Mobil Oil Corporation

Monsanto Co

Motor Vehicle Manufacturers Association

Motorcycle Industry Council

National Association of Casualty & Surety Agents

National Association of Chain Manufacturers

National Association of Furniture Manufacturers

National Association of Independent Insurers

National Association of Insurance Brokers

National Association of Manufacturers

National Association of Margarine Manufacturers

National Association of Wholesaler-Distributors

National Electrical Manufacturers Association

National Federation of Independent Business

National Fertilizer Solutions Association  
National Insulation Contractors Association  
National Legal Center for Public Interest  
National Machine Tool Builders Association  
National Marine Manufacturers Association  
National Retail Merchants Association  
National Solid Wastes Management Association  
National Spa & Pool Institute  
National Sporting Goods Association  
National Tool Die & Precision Association  
National Truck Equipment Association  
National Wholesale Druggists' Association  
Neece Cator & Associates  
P P G Industries  
Pharmaceutical Manufacturers Association  
Philip Morris  
Proprietary Association  
Pulp & Paper Machinery Manufacturers  
Reinsurance Association of America  
Risk & Insurance Management Society Inc  
Rohm & Haas  
Rubber Manufacturing Association  
Special Committee for Workplace Product Liability Reform  
Scientific Apparatus Makers Association

Sears Roebuck & Co.

Sheet Metal & Air Conditioning Contractors National Association

Small Business Legislative Council

Society of the Plastics Industry

Sporting Goods Manufacturers Association

Squibb Corporation

Sun Company

Textron

3M Company

Toyota Motor Sales USA Inc

Truck Trailer Mfg Assn

U B A Inc

Union Camp Corp

Union Carbide

United States Steel Corp

Venners & Company

Woodworking Machinery Manufacturers of America

American Apparel Manufacturers Association  
American Bureau of Shipping  
American Gear Manufacturers Association  
American National Standards Institute, Inc.  
Boat Owner's Association of the United States  
General Aviation Manufacturers Association  
Man-Made Fiber Producers Association, Inc.  
Maryland Association of Wholesaler-Distributors  
National Electrical Contractors Association  
National Industrial Distributors Association  
National Paint & Coatings Association  
Outdoor Power Equipment Institute  
Packaging Machinery Manufacturers Institute  
Pulp & Paper Machinery Manufacturers Association  
Ski Industries America  
Steel Tank Institute  
The Adhesive & Sealant Council, Inc.  
Walton and Associates

Adhesive and Sealant Council  
Alston Miller & Gains  
American Association of Exporters and Importers  
American Fishing Tackle Mfg. Association  
American Meat Institute  
American Textile Mfg. Institute  
American Wood Preservers Association  
Anderson, Kill, Baker, & Olick  
Burson Marsteller  
Cleary, Gottlieb, Steen & Hamilton  
Collier, Shannon, Rill & Scott  
Covington & Burling  
Crowell & Moring  
Epperson, Goodpaster & Johnson  
Fluid Controls Institute Inc.  
Gas Appliicance Mfg. Association  
Goetze Niemer Company  
GM Corporation  
Halfpenny, Hahn & Roche  
Hughes, Hubbard & Reed  
Industrial Heating Equipment Association  
Kaye, Scholer

Leighton, Conklin, Lemov  
LeBoeuf, Lamb, Leiby & MacKae  
Mills & Stockbridge  
National Association of Food Equipment Management  
O'Neill & Haase  
Oliver Machinery Company  
Preston Thorgrimson  
Recreation Vehicle Industry  
Roger, Hodge, Hills  
Santarelli & Gimer  
Skadden, Arps, Slate, Mergher  
Steptoe & Johnson  
Synthetic Organic Chemical Mfg.  
The Proprietary Association  
Tile Contractors Association of America  
Toyota Motor Sales USA Inc.  
Truck Trailer Mfg. Association  
United Pesticide Formulation  
Weil, Gotshal & Manages  
Zuckert, Scoutt & Rasenberger

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# Business, Consumers Split Over Liability Bill

Business and consumer groups are sharply divided over proposed legislation that would limit business liability for damages caused by defective products.

Business representatives argue that they are being seriously hurt by high liability insurance premiums, demands for large cash awards, legal costs, differing state laws and the uncertainty of whether a product now thought safe later may be deemed otherwise. Also, some firms say they are being sued even when their element of a product is not dangerous or when the user alters the product.

But consumer advocates and trial lawyers contend that the bill (S 2631) pending in the Senate Commerce Committee unfairly limits the rights of people to sue for damages when they are injured by defective products. The panel's Consumer Subcommittee held hearings June 30 and July 1.

The measure "would make it more difficult and in some cases impossible to sue for injuries," Jay Angoff, of Public Citizen's Congress Watch, a consumer advocacy lobbying group, said.

However, the bill's sponsor, Subcommittee Chairman Robert W. Kasten Jr., R-Wis., said it would "pinpoint responsibility" for harm caused by products.

"I believe it brings uniformity and predictability into the process. We're not limiting anybody," he said.

His proposal would pre-empt state product liability laws and bar certain claims after a specified time period following the initial sale of the product.

The measure before the subcommittee includes two alternative time limits, one of which would not be in the final bill. One would bar claims relating to unsafe design or failure to adequately warn users of possible dangers 25 years after the initial sale of capital goods, which are items or equipment used by business. The other sets a 10-year limit for suits on all products, after which a claimant would have to rebut a presumption that the product was not unreasonably dangerous.

The time limits would not apply to cases involving fraud, injury due to prolonged exposure to the product or injury that becomes apparent only after the time limit has passed.

The bill also establishes procedures for bringing suits when a plaintiff does not know which manufacturer was responsible for a product, such as in a 1980 California case involving the drug DES (diethylstilbesterol) that caused cancer in the daughters of some women who took it to prevent miscarriages.

Consumer advocates criticized the procedures as burdensome and said they effectively killed any chance of filing such suits.

Kasten said the committee may be able to mark up the bill within a few weeks and he does not envision trouble with full Senate approval. However, the bill's future in the House is uncertain because the Energy and Commerce Committee, which has jurisdiction there, is tied up with other legislation.

—By Judy Sarasohn

## Support, Opposition

Last year, consumer advocates joined business groups to support a bill making it easier for businesses to obtain product liability insurance. The 1981 act (PL 97-45) generally pre-empted state laws that restricted the formation of business groups for self-insurance. (1981 Almanac p. 573)

That bill, however, did not address the touchy issues of defining what is a suitable cause for suit and who might be liable for any damages, as the Kasten bill does.

Arguing in support of the bill, businesses and insurers say the current system of torts — legal wrongs or injuries for which a person is entitled to compensation — needs revision. Tort law has been developed mostly by states on a case-by-case basis.

They contend that the tort system and diverse state laws have created an environment of legal uncertainty, making the practice of insuring for product liability increasingly risky.

"[P]roduct liability problems are being exacerbated by inconsistent state legislation and totally unpredictable case law decisions. This has created irrational and unnecessary

*"I believe it brings uniformity and predictability into the process. We're not limiting anybody."*

— Sen. Robert W. Kasten Jr., R-Wis.



impacts on legal and production costs which are passed on to people who buy products," said Victor Schwartz, spokesman for the Product Liability Alliance.

The alliance, which backs the bill, represents more than 200 businesses and trade associations, including the National Association of Manufacturers, Business Roundtable, U.S. Chamber of Commerce and the National Association of Wholesaler-Distributors.

Another business group, the Coalition for Uniform Product Liability Law, represents more than 100 manufacturers, including Colt Industries, Datapoint Corp., and Tampax Inc. The coalition generally supports the approach of S 2631 but believes the time limit for suits should be shorter and the exceptions should be limited.

Opponents include the Consumer Federation of America, Congress Watch and the Association of Trial Lawyers



of America. Angoff of Congress Watch argued against enacting a federal statute, saying that "common law or court law can change as time and technology change."

### Provisions

As introduced, S 2631 would:

- Pre-empt state product liability law.
- Provide that no one may recover for any loss or damage caused by a product except to the extent that the loss or damage constitutes harm. The bill defines "harm" to include physical injury, illness or death; or mental anguish of the claimant caused by his physical injury or illness.
- Provide that a manufacturer would be liable if the claimant establishes that the product is unreasonably dangerous in construction, in design, because of failure to provide adequate warnings or instructions, or because the product did not conform to an express warranty.

The claimant must show that the product was manufactured by the defendant. If the claimant is unable to prove that, the action may still be tried if he proves that he made every reasonable effort to establish the identity of the manufacturer and brought action against every manufacturer that could have produced the product.

- Provide that a product is unreasonably dangerous in construction if it deviates from the design specifications or performance standards of the manufacturers, or from units of the same product line, and if the deviation caused harm.

• Provide that a product is unreasonably dangerous in design if at the time of its manufacture, a reasonably prudent manufacturer in the same or similar circumstances would not have used the design. A product would not be unreasonably dangerous in design unless the manufacturer knew or should have known about the danger and a means to eliminate the danger was practical.

• Provide that a product is not unreasonably dangerous in design if the harm was caused by an unavoidably dangerous aspect of the product. Rabies vaccine, for example, has risks that cannot be eliminated without impairing its benefits.

• Provide that a product is unreasonably dangerous if the manufacturer failed to provide adequate warnings or instructions about a danger that could occur without them. A product would not be unreasonably dangerous if post-manufacture warnings or instructions were issued to a person, including an employer, who could reasonably have been expected to take action to avoid the harm or to explain the risk to the actual user of the product.

A product would not be unreasonably dangerous if it lacked warnings or instructions regarding obvious dangers or if the user altered the product in a way that could not be reasonably anticipated.

• Provide that the seller of a product would be liable for harm in the same manner as the manufacturer if the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

• Provide that a seller of a harmful product is liable if the claimant shows that the seller failed to exercise reasonable care with respect to the product.

• Provide that if a manufacturer or seller proves that misuse of a product by a person other than themselves has caused the harm, the claimant's damages would be reduced to the extent the misuse was a cause of the harm.

• Provide that evidence of corrective measures taken after harm has occurred would not be admissible in court to prove the seller's liability.

ing bonds with civil rights, consumer, and aging groups that it hopes to have at its side in future battles.

The Food & Beverage Trades Dept. has among its affiliates the Service Employees International Union; the National Union of Hospital & Health Care Employees, which is a division of the Retail, Wholesale & Department Store Union; and the United Food & Commercial Workers Union, with a total of 1.6 million members. Each of the three unions has organized some of Beverly's workers, and they will be working together in the future to organize at Beverly and elsewhere, say FBTD insiders. "We will not have individual unions played off one against the other, and this is a signal," says one FBTD source.

**'Sole concern.'** Flemming, who has had little to do with unions in the past, insists that he will not be carrying labor's message inside the board if elected, but rather will speak for aged patients, who he says are a longtime concern. "It was the labor movement that asked me to do this, and I take them at their word that my sole concern is that of patients," says the 76-year-old Flemming. The unions, however, feel that his presence will help them in unspecified ways. "We think that patient care and employee concerns are interrelated," says Robert F. Harbrant, president of the AFL-CIO department.

Harbrant notes that Beverly's California facilities received 13 "imminent danger" government citations for safety and health violations from 1977 to 1980,

### Beverly is fighting the AFL-CIO's attempt to place a labor nominee on its board

a high number. Beverly's Banks says his company acknowledged the violations without accepting blame when it bought out a California chain.

The battle reflects efforts by unions to seek new ways to organize workers in the health-care industry, one of the largest unorganized worker groups in the country. "Obviously, we hope to prove our power to the company and get organizing benefits out of this," concedes a union source. He says that unions increasingly will aim at corporate headquarters of chain operations rather than individual units to organize workers. The FBTD is also challenging the February purchase of 18% of Beverly's stock by Hospital Corp. of America, a move that the labor organization says represents "growing health-care oligopoly."

**Tooth and nail.** Labor has occasionally used corporate strategies to pressure management to recognize or bargain with unions, most notably in the case of the Amalgamated Clothing & Textile Workers' successful campaign to force

the resignations of outside board members of J. P. Stevens & Co. But it is rare for labor and management to engage in a tooth-and-nail proxy battle to place a nominee on the board.

Still, a civil rights advocate and lawyer in Washington who has watched Flemming for years thinks that even if he is elected, he will not be a tiger for unions and that it might have been wiser for Beverly to acquiesce, and thus defuse the issue. Says this lawyer: "If I were Beverly, I would have welcomed him, and then either ignored him or co-opted him." ■

## LAW

### A liability patchwork Congress may replace

Congress is moving to preempt the patchwork of state product liability laws that has prompted a growing number of costly suits against manufacturers and suppliers. Three years ago the Commerce Dept. drafted a model statute that it hoped the states would adopt. But business failed to lobby for the model law, and no states have enacted it. Now business is pushing Congress to act.

An alliance between Senator Robert W. Kasten Jr. (R-Wis.) and Representative Henry A. Waxman (D-Calif.), both chairmen of subcommittees that originate liability legislation, makes enactment of the law, only recently dismissed as farfetched, a real possibility. "If these guys can agree on a bill with business' backing, you'll get a law," predicts Victor E. Schwartz, former chairman of a task force that developed the uniform product liability act for Commerce.

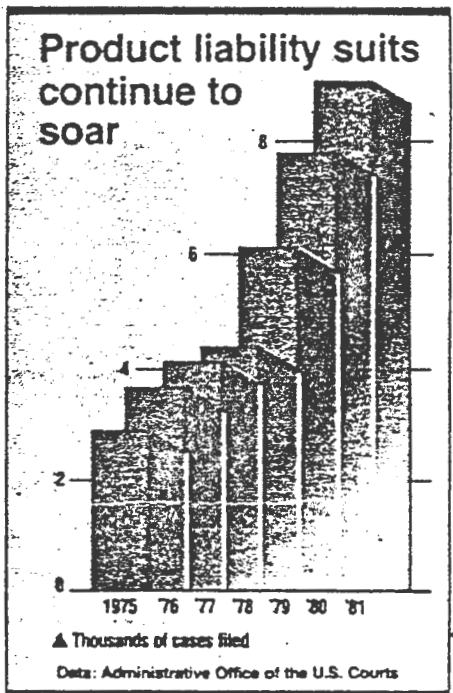
Business, once wary of a federal solution, now solidly supports it. Companies hope a uniform statute will cut back the steadily rising number of suits in federal courts (chart) and an even larger number in state courts, which do not keep comparable statistics. As proof of the consensus for change, Schwartz points to a lobbying group, the Product Liability Alliance, recently formed to back federalization. Among its 180 members are some of the largest U. S. companies and trade associations.

**Finding fault.** Rather than expand federal court jurisdiction, the law would merely establish rules for state courts to follow. It would also create federal standards stating who is responsible, and under what circumstances, when a worker or consumer is injured by a product. Kasten is worried that product liability law is being transformed into a system that pays injured persons regardless of fault.

The two legislators are still far apart on some issues that go to the heart of cutting down on lawsuits. For example, Kasten would impose a 25-year "statute of repose" for capital goods, which means that legal action could not be brought for injuries caused by older machines. Waxman opposes any statute of repose.

**States' rights.** A more fundamental disagreement—lessening chances of any legislation this year—is whether a manufacturer must be individually identified in a suit. Waxman agrees with a 1980 California Supreme Court decision giving plaintiffs the right to sue all manufacturers of the same product according to their market share. The decision came in a case in which a woman was unable to name the company that sold her mother diethylstilbestrol (DES)—a drug that the woman alleged had later caused her to develop vaginal cancer. On May 11, the New York Court of Appeals handed down a similar ruling in another DES case. Under Kasten's bill, the plaintiffs would not have been able to collect.

The position of the Reagan Administration, which remains split over legislation that would preempt states' rights, is not known. But some lawyers and consumer groups strongly object. Richard



F. Gerry, president of the Association of Trial Lawyers of America, says that shifting "the burden of injuries from the manufacturers or distributors of defective products to the victims of those defects must outrage the conscience of all right-thinking persons." A lawyer for Ralph Nader's Congress Watch called the Kasten bill "an industry wish list," vowing his organization will "fight it to the death." ■

## Federal Standards, Please

THE ADMINISTRATION, enamored with its recently articulated concept of New Federalism, is sitting on the fence when it comes to work currently in progress to produce an eminently sensible reform bill establishing a federal legal standard for product liability.

It should stop listening to the siren song of its ideologues and the trial lawyers, who falsely masquerade as supporters of consumer groups, and pay more attention to the Republican Party's traditional constituents, the business community.

Manufacturers, whose products are in many cases produced as well as distributed interstate, urgently want the kind of reform being proposed by Rep. Henry Waxman, a liberal Democrat from California, and Sen. Robert Kasten, a conservative Republican from Wisconsin.

The two legislators are proposing, for the first time, a federal standard to decide who is responsible and under what circumstances when consumers and workers are injured by the products they use and very possibly abuse.

Action on the state level has led to sharply differing rules on fundamental issues of product liability law, ranging from the most liberal, in states like California, to such southern states as Alabama.

A historic case in point was the decision in California to allow daughters who contracted cancer because their mothers took the drug DES while pregnant to sue the companies producing the drug even if they cannot prove which company's product was used by the mother. The ramifications of such a decision, which makes manufacturers liable according to their market share, have yet to be fully felt. But this is not the issue that most worries the legislators.

They are more concerned that research and development in new processes and innovation in new products is being inhibited under present conditions. Companies, feeling vulnerable and uncertain of their liability, simply are not prepared to take a chance on improving their products if they are to be sued for not having thought of those improvements for use in their products earlier.

Uniform federal standards would bring predictability and stability to the product liability process and help stabilize product liability insurance rates. Consumers would know their rights and manufacturers and distributors would know the rules, says Victor E. Schwartz, former chairman of the Federal Interagency Task Force on Product Liability. This will encourage research and innovation in manufacturing, expedite the reparations process and reduce legal costs.

It would also draw some of the fire of European Community negotiators, who contend that varying product liability laws in the United States are a particularly difficult non-tariff barrier for their exporters to overcome.

European companies, not to mention Japanese ones, are severely inhibited from test marketing their products in the United States, the way things stand today. But there is, it is only fair to point out, no uniformity when it comes to liability rules in various European countries.

The counter-argument for reform of liability insurance practices, as presented in the May issue of the American Bar Association's quarterly news magazine, *The Brief*, is a largely legalistic one.

Professor James D. Ghiardi of Marquette University Law School contends that federal pre-emption of state laws would prompt a nationwide constitutional challenge in the courts. Another difficulty arises, he points out, if state courts have jurisdiction over federal law, a problem that would not be resolved until the Supreme Court considered each and every provision.

He contends that federal legislation is unwarranted and unwise and would create an absolute legal morass for American business and consumers. This is why the American Bar Association's Tort and Insurance Practice Section division opposes and has testified against such changes.

REP. WAXMAN AND SEN. KASTEN have a number of issues to sort out between themselves before they can come up with a joint reform bill that could stand a good chance of passage. They must decide, for example, how many years back to set the limit on liability for capital equipment.

The senator would like to open up the DES case again, which Rep. Waxman believes to be tempting fate as far as new legislation is concerned.

Both legislators favor letting distributors of products off the hook unless the manufacturer cannot be reached, as in the case of an overseas manufacturer exporting to the U.S. market.

Whatever the reservations the legal community might have — and nobody can doubt that they have an ax to grind — the Congress should be commended for tackling the issue and we can only hope that they are successful. There is little doubt that the issue is one that should be handled on a federal level.

## White House to Study Product Liability

By LEAH R. YOUNG  
Journal of Commerce Staff

WASHINGTON — Nervous White House aides have axed an endorsement of federal product liability legislation, but Commerce Secretary Malcolm Baldrige will chair a cabinet-level review of the need for federal law in this area of traditional state jurisdiction.

There are strong indications that Secretary Baldrige is confident that he can persuade his cabinet colleagues of the need for federal legislation because of its impact on interstate commerce.

"We believe the president will support a federal liability law. It's just a matter of getting it thought through," Sen. Bob Kasten, R-Wis., told this newspaper following testimony by Secretary Baldrige.

Sen. Kasten chairs the Senate Commerce subcommittee that has been formulating a federal product liability law to provide a national standard of responsibility for injury when consumers or workers use or abuse products.

Sources indicate that presidential counselor Edward Meese III objected to an administration endorsement of the Kasten attempts to formulate national product liability law at the same time that the administration is embarked on a major project to return federal powers to the states.

The presentation of the problem to a cabinet level council would be required before specific legislation were endorsed, and therefore going directly to a council seemed prudent, sources explain.

The administration wants to balance the serious problem for business of trying to deal with court interpretations of liability in 50 states for products manufactured and sold in interstate commerce with its "enormous sensitivity" to federalism, one source indicated.

At the same time, administration sources point out that where other legislation is dismissed out of hand, this proposal is going to the cabinet to be reviewed in a council under the

direction of Secretary Baldrige, an avowed supporter of product liability reform.

Secretary Baldrige indicated last May that the administration would seek solutions to the legal problems involving product liability.

He said at that time that product liability problems were affecting both the nation's productivity and its ability to compete with exports.

On Friday, Secretary Baldrige told the Commerce consumer subcommittee that the administration is committed to dismantling federal apparatus that "impinges on state sovereignty except where outweighed by pressing national needs."

While not endorsing any legislation, he said he is "prepared to commit the administration to working with this committee and others in Congress toward a balanced analysis of the issue."

Secretary Baldrige outlined the problems as he perceives them. "One is inconsistent liability standards among the states. Another is conflicts between state liability standards and federal regulatory requirements."

A third area of concern, he said, "is the development of expansive new liability doctrines by some state courts which affect product design, manufacture, and marketing throughout the nation."

But along with solving the problems, the secretary warned, "any federal legislation must also pay appropriate deference to state sovereignty and the traditions of common law, respecting the legal rights and obligations of both consumers and producers."

As usual in any product liability discussion, trial lawyers and consumer groups were lined up against legislation Friday, while business groups all pleaded for relief.

Insurance groups have deliberately stayed out of the picture, preferring that product liability be looked upon as a legal problem, not an insurance problem.

Insurers back the legislation because it is in the interest of their

business clients, one insurance lobbyist explained.

But, David I. Greenberg of the Consumer Federation of America tried to bring the insurance industry back to the fore.

He told Sen. Kasten that after hearing the woes of businessmen trying to deal with demands from 50 state courts, "I'm convinced that all participants here are victims. The wrongdoers are in the insurance industry."

A quick retort came from David P. Sloane of the National Association of Wholesaler-Distributors. The recent "explosion" in product liability cases does not indicate an insurance problem but "a grave legal problem out there."

Official representatives of the legal profession are somewhat split.

with the Association of Trial Lawyers of America opposed to any product liability law, and the American Bar Association objecting to federal law but not state actions.

ABA representative Ernest Y. Sevier refused comment on specifics of the subcommittee's draft bill that would establish a 25-year time limit on liability for business capital goods, but none for consumer products or pharmaceuticals.

The subcommittee staff's draft bill would also require consumers to prove there was a design defect or inadequate warning of danger, unsafe construction, or breach of warranty, before collecting for injury.

"We oppose any proposal that denies the right to go to court," Thomas Bendorf of the trial lawyers told Sen. Kasten.

## Change Urged In Product Liability Law

By Caroline E. Mayer  
Washington Post Staff Writer

In California, a young woman who has developed cancer because her mother took the drug DES during pregnancy can successfully sue for damages from a drug company even if she can't pinpoint the company that made the drug taken by her mother.

In practically every other state in the country, however, state laws would not permit the same woman to sue because she could not cite the specific drug company.

Similarly, in California and New York, if a manufacturer redesigned a lawn mower to prevent the blade from cutting a user's foot, that change could be used against the company as proof that the company knew its older products were unsafe.

Again, in every other state, improving a product's design cannot be used as evidence of guilt in product liability suits involving older machines that lack the new safety features.

This hodgepodge of product liability rules—made by state courts and legislatures—has prodded hundreds of business groups to press Congress to undertake a massive overhaul of the product liability laws now on the books.

As the Reagan administration is

trying to return much of the government's operations to the states, business executives and many members of Congress are calling for federal legislation to pre-empt state laws and set uniform product liability rules for all courts.

Otherwise, they charge, businesses will become increasingly reluctant to create new products that could be susceptible to a wide variety of different court challenges in every state in the country.

"Federal legislation pre-empting state law and setting forth nationwide rules of liability would bring greater predictability and stability to the litigation process and to product liability insurance rates," which have been escalating rapidly over the past few years, said Victor E. Schwartz, who represents more than 150 business and trade associations seeking reform of state tort laws that allow citizens to sue for damages incurred.

However, consumer groups have sharply denounced the campaign for federal legislation, arguing that the proposed changes are designed to protect manufacturers from the growing number of product liability suits by limiting a consumer's rights to sue for damages created by unsafe products.

Legislation being drafted in Congress should be called "a manufacturers' liability exemption bill" because it "threatens to take away consumers' rights" by restricting their rights to sue in many instances, charged Barbara K. Pequet, legislative director for the National Consumers League.

This dispute between business

and consumers over product liability has been building quietly over the past few years. But yesterday the controversy broke into the open during the first of what promises to be many congressional hearings on the issue.

Although legislation has yet to be formally introduced in the Senate and is not expected to be approved this year, a standing-room-only crowd packed a Senate hearing—attended by only one senator—to catch the opening salvos on a federal product liability law.

During the past six years, Congress has debated product liability issues repeatedly. Just last year, it passed a law to make it easier for owners of small businesses to afford increasingly expensive product liability insurance. But congressional sources who have participated in previous hearings said that yesterday's session represented the beginning of the most serious attempt to revise the nation's tort laws.

Leading the current effort is Sen. Robert Kasten (R-Wis.), whose staff has been developing draft legislation. "We need to take responsibility and take it now," he said. Otherwise, existing state rulings—even though not universal—will discourage development of new and safer products, and will "fence out" new, small companies that won't be able to afford insurance to offer new products, Kasten said.

The administration is expected to support Kasten's effort.

Lawyers, on the other hand, are expected to join consumers in opposing any federal law, arguing that the current state laws are adequate.

## Consensus Sought on Product Liability

By LEAH R. YOUNG  
Journal of Commerce Staff

WASHINGTON — Sen. Bob Kasten, R-Wis., convened the first Senate hearings on draft legislation for product liability law reform with the idea that he will work toward a consensus that could develop a bill that can pass both houses of Congress.

He indicated in his hearing Tuesday that there is interest in the House Commerce Committee as well as on the Senate side especially on the part of Chairman Joh Dingell, D-Mich., Rep. Henry Waxman, D-Calif., and Rep. James T. Broyhill, R-N.C.

But testimony on his staff's second attempt to draft equitable legislation was divided as ever. Business groups are firmly in support of a national standard delimiting who has responsibility and when for consumer and worker injuries from use or abuse of manufactured products and drugs.

Consumer groups, on the other hand, want no legislation. They are that the courts have been expanding consumer rights to recover from injuries, and that is the way their spokesmen like it.

Barb Pequet, legislative director of the National Consumers League, told Sen. Kasten that her group could possibly support federal legislation, but only if the federal law provided higher levels of compensation for consumers.

Both sides, of course, have their academic experts.

University of California at Berkeley law Professor John Fleming, speaking on behalf of the Industrial Liability Council of the California Manufacturers Association, characterized the consumer view as "whenever there is an injury there should be a remedy."

This may be true, he said, but such a vast compensation system regardless of fault is "beyond the capacity of the tort law."

Likewise, Boston University law Professor James A. Henderson Jr. argued that courts cannot "construct sensible consistent standards" for deciding when a manufacturing design is faulty or what is the appropriate duty to warn of possible injury.

"What is required are legislatively enacted, uniform standards to fill this void." Professor Henderson argues.

But, University of Tennessee law professor Jerry Phillips insists that "statutory regulation has the undesirable effect of freezing and rigidifying the law thus preventing" growth and development.

"I am opposed to product liability legislation, either at the state or at the federal level," he told the Senate Commerce Consumer Subcommittee.

But the divergence in state court interpretations is making it impossible for manufacturers to know their responsibilities, retorts Victor E. Schwartz, who represents the Product Liability Alliance, a group of 150 business and trade associations.

Mr. Schwartz, who is a former law professor who headed the Commerce Department's study of product liability, notes that some courts require warnings of even the most obvious misuse of a product, while others say such instructions diminish the impact of more serious warnings.

Similarly, he points out that 48 states prohibit the use as evidence of newly developed safety components in cases involving old designs. But, New York and California admit this evidence.

Thus, Mr. Schwartz says, product sellers dealing in all states cannot ignore the New York and California courts and therefore are reluctant to bring out new models with improved safety components.

Sidney Wolfe and Allen Greenberg of Public Citizens Health Research Group, an organization with ties to Ralph Nader, charged that the staff's draft product liability reform bill is "disastrous anti-consumer legislation."

The staff draft sets a 25-year limit on liability for business capital goods, but does not cut off liability claims for either consumer goods or pharmaceuticals.

The legislation would allow meeting the requirements of federal safety standards to be a defense in product liability lawsuits.

Consumers would have to prove that products were either unsafe in design, in construction or because of inadequate warnings, or unsafe because the product did not fulfill its warranties.

But manufacturers would not be responsible if products are unavoidably unsafe in light of the scientific and technical knowledge available at the time of manufacture.

Manufacturers would be responsible for the damage they cause, but not

for damage resulting from employer alterations to machinery.

In rejecting the bill, Dr. Wolfe argued that letting the marketplace work should mean "making industry pay all the costs of doing business."

"At the present time," he said, "only a small fraction of those injured or killed as a result of dangerous products or chemicals even attempt to use the courts as a way to get compensated for their damages."

## Balt. Sun. Bill - 3/10/82 Businesses note rise in product liability suits

Washington (AP)—The growing number of lawsuits accusing businesses of liability for dangerous products is becoming an increasing burden for the companies, business groups told a congressional panel yesterday.

Victor E. Schwartz of the Product Liability Alliance told a Senate Commerce subcommittee that the variety of rulings from state to state makes it expensive for companies to pay for product liability insurance. The insurance cost can prevent some from entering an industry, he said.

In one Maryland case, a manufacturer of a commercial laundry dryer was found liable when someone tried to dry a huge hot air balloon in the machine, Mr. Schwartz said. "The dryer simply was not made for that purpose and it disintegrated, injuring plaintiff," he told the panel.

He said products usually are distributed nationally and "it is almost impossible for states, either through case law or statute, to address the product liability problem in a meaningful way."

Subcommittee Chairman Bob Kasten (R-Wis.) is preparing a bill to establish national standards on product liability law. He described the area as a "crazy quilt" of varying precedents in different jurisdictions that cause manufacturers many problems in trying to produce a product for the entire nation.

Mr. Schwartz, whose organization represents manufacturers, wholesalers and insurers, said a single federal product liability law would allow everyone to know what their obligations are in designing, manufacturing and selling products.

Opposition came from the National Consumers League, the Health Research Group and DES Action.

"Manufacturers are being told they don't have to worry about safety because they won't be held completely liable for consumer injuries caused by their products," said Barb Pequet of the consumer group.

She said the draft of a Kasten bill would reduce manufacturers' incentives to produce safer products.



# Product Liability Score Card

By Jerry Geisel  
Washington Editor

State	Status of Legislation				Defenses*						Remarks
	Tort reforms enacted	Bill pending	Cleared house	Cleared senate	S/R	State of the art	Failure to warn	Standards	Alteration	Sellers' exclusion	
Ala.	1979				X						Establishes a 10-year limitation on filing suits.
Alaska											No action reported.
Ariz.	1978				X	X	X	X	X	X	Bill also prohibits asking for specific damages in a suit.
Ark.	1979										New legislation expected.
Calif.		X		X					P		Tough trade show.
Calo.	1977				X	X		X		X	Second state to pass major reform legislation.
Conn.	1979				X				X		Clearly resembles model Comparative bill.
Del.?											Cloudy outlook in state.
Fla.	<del>1978</del>										*-- declared unconstitutional by Fla. state ct 1980
Ga.	1978				X				X	X	Establishes a 10-year limitation on filing suits.
Hawaii		X			P		P	P	P		Commerce Dept. model bill introduced.
Idaho	1980				X					X	Establishes a 10-year limitation on filing suits.
Ill.	1978				X						Bill establishes 10- and 12-year limitations on filing suits.
Ind.	1978				X	X	X	X	X	X	Establishes a 10-year limitation on filing suits.
Iowa											Cloudy outlook.
Kan.	1981				X			X	X	X	Resembles Commerce Dept. model bill.
Ky.	1978				X	X	X	X	X	X	One of the most comprehensive bills passed.
La.											No chance of action.
Maine											No action.
Md.											No action.
Mass.?		X			P	P	P	P	P		No chance of passage.
Mich.	1978										Award could be reduced if plaintiff helps defendant.
Minn.	1978									X	Law prohibits asking for specific damages in a p/l suit.
Miss.											Bill died in committee.
Mo.											Bill died on committee.
Mont.											No action until 1983.
Neb.	1978				X	X	X		X	X	Establishes a 10-year limitation on filing suits.
Nev.											No information available.
N.H.	1978				X				X		Establishes a 10-year limitation on filing suits.
N.J.					P	P	P	P	P		Four chances of getting p/l legislation passed.
N.M.											No information available.
N.Y.		P	X		P				P		No action reported.
N.C.?	1979				X		X		X	X	Establishes a 6-year limitation on filing suits.
N.D.	1979				X			X	X	X	Establishes a 10- and 11-year limitations on filing suits.
Ohio											Bill to be introduced in fall.
Okla.		X			P				P		Uncertain outcome.
Ore.	1977				X				X		Third state to pass p/l legislation. 8-year o/t.
Pa.		X		X	P				P		Possible chance of action.
R.I.	1978				X				X		Establishes a 10-year limitation on filing suits.
S.C.											No information available.
S.D.	1978, 1978				X				X	X	Establishes a 6-year limitation on filing suits.
Tenn.	1978				X	X	X	X	X	X	Establishes a 10-year limitation on filing suits.
Tex.											Legislators died after major tests.
Utah	1977				X	X	X	X	X		First state to pass reform legislation.
Vt.											No information available.
Va.?											No action expected in near future.
Wash.	1981				X			X	X		Similar to Commerce Dept. model bill.
W. Va.											Bill died in committee.
Wis.		X			P	P	P	P	P		More than 20 bills introduced.
Wyo.?											No information available.

Business Insurance's Product Liability Score Card summarizes efforts to enact tort reform in state legislatures. The first section details the status of tort reform legislation in the state; the second section indicates what tort reform proposals are included in the legislation. When a bill is pending, the tort reforms are indicated: P.

\*The tort reform elements checked are: a statute of repose, which limits suits to certain time periods after a product was first sold or manufactured; allowing a defense that a product met the state of the art at the

time it was manufactured; elimination or restriction of a failure to warn claim; allowing a defense that a product met government standards or specifications; allowing a defense if the product were altered or modified; and reducing retailers', wholesalers' or distributors' exposure to strict liability suits.

†These states do not permit product liability suits on the basis of strict liability.

‡Some legal experts contend Delaware does allow suits based on strict liability.

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# Product Liability Score Card

By Jerry Geisel  
Washington Editor

State	Status of Legislation				Defenses*						Remarks
	Tort reforms enacted	Bill pending	Cleared house	Cleared senate	S/R	State of the art	Failure to warn	Standards	Alteration	Sellers' exclusion	
Ala.	1978				X						Establishes a 10-year limitation on filing suits.
Alaska											No action reported.
Ariz.	1978				X	X	X	X	X	X	Bill also prohibits suing for specific damages in a suit.
Ark.	1979										New legislation expected.
Calif.		X		X					P		Tough limits aimed.
Colo.	1977				X	X		X		X	Second state to pass major reform legislation.
Conn.	1979				X				X		Clearly resembles model Consumer Bill.
Del. <sup>2</sup>											Clearly outline in state.
Fla.	-1978-				X-- declared unconstitutional by Fla. state ct 1980						Legislation 10-year limitation on filing suits.
Ga.	1978				X				X	X	Establishes a 10-year limitation on filing suits.
Hawaii		X			P		P	P	P		Consumer Dept. model bill introduced.
Idaho	1980				X					X	Establishes a 10-year limitation on filing suits.
Ill.	1978				X						Bill establishes 10- and 15-year limitations on filing suits.
Ind.	1978				X	X	X	X	X	X	Establishes a 10-year limitation on filing suits.
Iowa											Clearer actions.
Kan.	1981				X			X	X	X	Resembles Consumer Dept. model bill.
Ky.	1978				X	X	X	X	X	X	One of the more comprehensive bills passed.
La.											No change of action.
Maine											No action.
Md.											No action.
Mass. <sup>1</sup>		X			P	P	P	P	P		No change of action.
Mich.	1978										Award could be reduced if plaintiff were negligent.
Minn.	1978									X	Law prohibits suing for specific damages in a p/l suit.
Miss.											Bill died in committee.
Mo.											Bill died in state court.
Mont.											No action until 1983.
Neb.	1978				X	X	X		X	X	Establishes a 10-year limitation on filing suits.
Nev.											No information available.
N.H.	1978				X				X		Establishes a 10-year limitation on filing suits.
N.J.					P	P	P	P	P		Four changes of pending p/l legislation passed.
N.M.											No information available.
N.Y.		P	X		P				P		No action reported.
N.C. <sup>1</sup>	1979				X		X		X	X	Establishes a 6-year limitation on filing suits.
N.D.	1979				X			X	X	X	Establishes a 10- and 11-year limitation on filing suits.
Ohio											Bill to be introduced in fall.
Okla.		X			P				P		Overseas market.
Ore.	1977				X				X		Third state to pass p/l legislation. 6-year s.r.
Pa.		X		X	P				P		Positive change of action.
R.I.	1978				X				X		Establishes a 10-year limitation on filing suits.
S.C.											No information available.
S.D.	1979, 1978				X				X	X	Establishes a 6-year limitation on filing suits.
Tenn.	1978				X	X	X	X	X	X	Establishes a 10-year limitation on filing suits.
Tex.											Legislation died after upper limits.
Utah	1977				X	X	X	X	X		First state to pass reform legislation.
Vt.											No information available.
Va. <sup>1</sup>											No action expected in near future.
Wash.	1981				X			X	X		Similar to Consumer Dept. model bill.
W. Va.											Bill died in committee.
Wis.		X			P	P	P	P	P		More than 30 bills introduced.
Wyo. <sup>1</sup>											No information available.

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time it was manufactured; elimination or restriction of a failure to warn claim; allowing a defense that a product met government standards or specifications; allowing a defense if the product were altered or modified, and reducing retailers', wholesalers or distributors' exposure to strict liability suits.

<sup>1</sup>These states do not permit product liability suits on the basis of strict liability.

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