

AN ACT

ENTITLED, An Act to limit liability from damages caused by certain aviation products.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. Terms used in this Act mean:

- (1) "Aviation product," any product or component designed, manufactured, fabricated, assembled, produced, or constructed for aviation purposes, including aircraft, parts produced primarily for use in aircraft, aviation navigation aids, aircraft instrumentation, aircraft testing products, aircraft components, aircraft support and maintenance products or components, aircraft materials production, aircraft materials testing, and aircraft safety products;
- (2) "Aviation product liability claim," includes any claim or action brought for harm caused by the manufacture, production, making, construction, fabrication, design, formula, preparation, assembly, installation, testing, warnings, instructions, marketing, packaging, storage, or labeling of the relevant aviation product. The term includes any action based on, strict liability in tort, negligence, breach of express or implied warranty, breach of, or failure to, discharge a duty to warn or instruct, whether negligent or innocent, misrepresentation, concealment, or nondisclosure, whether negligent or innocent, or under any other substantive legal theory;
- (3) "Harm," includes damage to property, personal physical injuries, illness, and death, mental anguish or emotional harm attendant to personal physical injuries, illness, or death. The term does not include direct or consequential economic loss;
- (4) "Manufacturer," includes an aviation product seller who designs, produces, creates, assembles, installs, makes, fabricates, constructs, or remanufactures the relevant product or component part of an aviation product before its sale to a user or consumer. The term

includes a product seller or entity not otherwise a manufacturer that holds itself out as a manufacturer, or that is owned in whole or in part by the manufacturer;

- (5) "Product seller," any person or entity that is engaged in the business of selling aviation products, whether the sale is for resale, or for use or consumption. The term includes a manufacturer, wholesaler, distributor, or retailer of the relevant aviation product; and
- (6) "Time of delivery," the time of delivery of an aviation product to its first purchaser or lessee who was not engaged in the business of either selling such products or using them as component parts of another product to be sold.

Section 2. Except as provided in section 4 of this Act, no aviation product seller is liable in an aviation product liability claim if the product seller proves by a preponderance of the evidence that the harm was caused after the aviation product's useful safe life had expired. Useful safe life begins at the time of delivery of the aviation product and extends for the time during which the product would normally perform.

Section 3. Factors to be considered in determining whether an aviation product's useful safe life has expired include:

- (1) The amount of wear and tear to which the aviation product had been subject;
- (2) The effect of deterioration from natural causes and from climate and other conditions under which the aviation product was used or stored;
- (3) The normal practices of the user, similar users, and the aviation product seller with respect to the circumstances, frequency, and purposes of the product's use, and with respect to repairs, renewals, and replacements;
- (4) Any representations, instructions, or warnings made by the aviation product seller concerning proper maintenance, storage, and use of the product or the expected useful safe life of the product; and

(5) Any modification or alteration of the aviation product by a user or third party.

Section 4. An aviation product seller may be subject to liability for harm caused by an aviation product used beyond the product's useful safe life to the extent that the aviation product seller has expressly warranted the aviation product for a longer period.

Section 5. The provisions of § 15-2-12.2 notwithstanding, any claim that involves harm caused more than ten years after the time of delivery is barred regardless of the date the defect or harm is discovered or the disability or minority of the person harmed.

Nothing contained in this section affects the right of any person liable under an aviation product liability claim to seek and obtain indemnity from any other person who is responsible for the harm which gave rise to the aviation product liability claim.

Section 6. If the injury-causing aspect of the aviation product was, at the time of manufacture, in compliance with legislative or administrative regulatory safety standards relating to design or performance, the aviation product is deemed not defective by reason of design or performance. If the standard addressed warnings or instructions, the aviation product is deemed not defective by reason of warnings or instructions.

Section 7. If the injury-causing aspect of the aviation product was not, at the time of manufacture, in compliance with legislative or administrative regulatory safety standards relating to design, performance, warnings, or instructions, no presumption exists and the burdens of proof applicable to nonaviation products liability actions apply.

Section 8. If the injury-causing aspect of the aviation product was, at the time of manufacture, in compliance with a mandatory government contract specification relating to design, this is an absolute defense and the aviation product is deemed not defective for that reason. If the specification related to warnings or instructions, the aviation product is deemed not defective for that reason.

Section 9. If the injury-causing aspect of the aviation product was not, at the time of manufacture,

in compliance with a mandatory government contract specification relating to design, or if the specification related to warnings or instructions that were not in compliance with a mandatory government contract specification relating to warnings or instruction, no presumption exists and the burdens of proof applicable to nonaviation products liability actions apply.

Section 10. In any aviation product liability claim, any duty on the part of the aviation product seller to warn or protect against a danger or hazard which could or did arise in the use or misuse of such aviation product and any duty to have properly instructed in the use of such aviation product, does not extend:

- (1) To any warning protecting against or instructing with regard to those safeguards, precautions, and actions which a reasonable user or consumer of the aviation product, with the training, experience, education, and any special knowledge the user or consumer did, should, or was required to possess, could and should have taken for such user or consumer or others, under all the facts and circumstances;
- (2) To any situation where the safeguards, precautions, and actions could or should have been taken by a reasonable user or consumer of the aviation product similarly situated exercising reasonable care, caution, and procedure; or
- (3) To any warnings protecting against or instructing with regard to dangers, hazards, or risks which are patent, open, or obvious and which should have been realized by a reasonable user or consumer of the aviation product.

Section 11. No provision contained within this Act abrogates or limits protections afforded aviation product manufacturers, sellers, or assemblers contained in §§ 20-9-10 to 20-9-11, inclusive.

Section 12. In an aviation product liability claim, the following evidence is not admissible for any purpose:

- (1) Evidence of any advancements or changes in technical or other knowledge or techniques;

in design theory or philosophy; in manufacturing or testing knowledge; in techniques or processes in labeling; or warning of risks or hazards; or, in instructions for the use of the aviation product, if the advancements or changes have been made, learned, or placed into common use subsequent to the time the aviation product in issue was designed, formulated, tested, manufactured, or sold by the manufacturer; and

- (2) Evidence of any changes made in the designing, planning, formulating, testing, preparing, manufacturing, packaging, warning, labeling, or instructing for use of, or with regard to, the aviation product in issue, or any similar product, which any change was made subsequent to the time the aviation product in issue was designed, formulated, tested, manufactured, or sold by the manufacturer.

This section does not require the exclusion of evidence of a subsequent measure if offered to impeach a witness for the manufacturer or seller of an aviation product who has expressly denied the feasibility of such a measure.

An Act to limit liability from damages caused by certain aviation products.

I certify that the attached Act originated in the

HOUSE as Bill No. 1233

Chief Clerk

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1233

File No. _____

Chapter No. _____

Received at this Executive Office this ____ day of _____ ,

20__ at _____ M.

By _____
for the Governor

The attached Act is hereby approved this _____ day of _____ , A.D., 20__

Governor

STATE OF SOUTH DAKOTA,
SS.
Office of the Secretary of State

Filed _____ , 20__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State