

House Engrossed

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
First Regular Session  
2009

CHAPTER 123

# HOUSE BILL 2610

AN ACT

AMENDING SECTIONS 12-683, 12-686, 12-711, 12-712 AND 12-716, ARIZONA REVISED  
STATUTES; RELATING TO CIVIL ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-683, Arizona Revised Statutes, is amended to  
3 read:

4 12-683. Affirmative defenses

5 In any product liability action, a defendant shall not be liable if the  
6 defendant proves that any of the following ~~apply~~ APPLIES:

7 1. The defect in the product is alleged to result from inadequate  
8 design or fabrication, and if the plans or designs for the product or the  
9 methods and techniques of manufacturing, inspecting, testing and labeling the  
10 product conformed with the state of the art at the time the product was first  
11 sold by the defendant.

12 2. The proximate cause of the incident giving rise to the action was  
13 an alteration or modification of the product that was not reasonably  
14 foreseeable, made by a person other than the defendant and subsequent to the  
15 time the product was first sold by the defendant.

16 3. The proximate cause of the incident giving rise to the action was a  
17 use or consumption of the product that was for a purpose, in a manner or in  
18 an activity other than that which was reasonably foreseeable or was contrary  
19 to any express and adequate instructions or warnings appearing on or attached  
20 to the product or on its original container or wrapping, if the ~~injured~~  
21 ~~person~~ INTENDED CONSUMER knew or with the exercise of reasonable and diligent  
22 care should have known of such instructions or warnings.

23 4. The proximate cause of the incident or incidents giving rise to the  
24 action was the repeated consumption of a food product that is not defective  
25 and unreasonably dangerous if consumed in reasonable quantities.

26 Sec. 2. Section 12-686, Arizona Revised Statutes, is amended to read:

27 12-686. Inadmissible evidence; state of the art; modification

28 In any product liability action, the following shall not be admissible  
29 as direct evidence of a defect:

30 1. Evidence of advancements or changes in the state of the art  
31 subsequent to the time the product was first sold by the defendant.

32 2. Evidence of any change made in the WARNINGS, design or methods of  
33 manufacturing or testing the product or any similar product subsequent to the  
34 time the product was first sold by the defendant.

35 Sec. 3. Section 12-711, Arizona Revised Statutes, is amended to read:

36 12-711. Affirmative defense; limitation

37 In any civil action, the finder of fact may find the defendant not  
38 liable if the defendant proves that the claimant OR, IF THE CLAIMANT IS AN  
39 HEIR OR THE ESTATE OF A DECEASED PERSON, THE DECEDENT was under the influence  
40 of an intoxicating liquor or a drug and as a result of that influence the  
41 claimant OR DECEDENT was at least fifty per cent responsible for the accident  
42 or event that caused the claimant's OR DECEDENT'S harm.

1           Sec. 4. Section 12-712, Arizona Revised Statutes, is amended to read:  
2           12-712. Affirmative defense; limitation; criminal act

3           A. In any civil action, the finder of fact may find the defendant not  
4 liable if the defendant proves that the claimant OR, IF THE CLAIMANT IS AN  
5 HEIR OR THE ESTATE OF A DECEASED PERSON, THE DECEDENT was attempting to  
6 commit, committing or immediately fleeing from a felony criminal act and as a  
7 result of that act, attempted act or flight the claimant OR DECEDENT was at  
8 least fifty per cent responsible for the accident or event that caused the  
9 claimant's OR DECEDENT'S harm.

10           B. In any civil action, the finder of fact may find the defendant not  
11 liable if the defendant proves that the defendant did not act intentionally  
12 and that the claimant OR, IF THE CLAIMANT IS AN HEIR OR THE ESTATE OF A  
13 DECEASED PERSON, THE DECEDENT was attempting to commit, committing or  
14 immediately fleeing from a misdemeanor criminal act and as a result of that  
15 act, attempted act or flight the claimant OR DECEDENT was at least fifty per  
16 cent responsible for the accident or event that caused the claimant's OR  
17 DECEDENT'S harm.

18           Sec. 5. Section 12-716, Arizona Revised Statutes, is amended to read:  
19           12-716. Injury during criminal acts; civil actions;  
20                           presumptions; definitions

21           A. If the court finds by a preponderance of the evidence that a  
22 plaintiff is harmed while the plaintiff is attempting to commit, committing  
23 or fleeing after having committed or attempted to commit a felony criminal  
24 act OR IF A PERSON INTENTIONALLY OR KNOWINGLY CAUSED TEMPORARY BUT  
25 SUBSTANTIAL DISFIGUREMENT OR TEMPORARY BUT SUBSTANTIAL IMPAIRMENT OF ANY BODY  
26 ORGAN OR PART OR A FRACTURE OF ANY BODY PART OF ANOTHER PERSON, the following  
27 presumptions apply to any civil liability action or claim:

28           1. A victim or peace officer is presumed to be acting reasonably if  
29 the victim or peace officer threatens to use or uses physical force or deadly  
30 physical force OR A POLICE TOOL PRODUCT to either:

31           (a) Protect himself OR ANOTHER PERSON against another person's use or  
32 attempted use of physical force or deadly physical force.

33           (b) Effect an arrest or prevent or assist in preventing a plaintiff's  
34 escape.

35           2. This state or a political subdivision of this state is presumed to  
36 have reasonably hired and trained its peace officers to use physical force or  
37 deadly physical force if a peace officer threatens to use or uses physical  
38 force or deadly physical force to either:

39           (a) Protect himself OR ANOTHER PERSON against another person's use or  
40 attempted use of physical force or deadly physical force.

41           (b) Effect an arrest or prevent or assist in preventing a plaintiff's  
42 escape.

1           3. The police tool product that caused the physical harm ~~is~~ AND ANY  
2 ACCOMPANYING WARNING OR INSTRUCTION ARE presumed not to be defective and the  
3 manufacturer of police tools is presumed not to be negligent if, before the  
4 sale by the manufacturer, the product either:

5           (a) Conforms with the generally recognized state of the art applicable  
6 to the safety AND WARNINGS of the product at the time the product was  
7 designed, manufactured, packaged and labeled.

8           (b) Complies with any applicable code, standard, regulation or  
9 specification that is established, adopted, promulgated or approved by the  
10 United States or this state or any agency of the United States or this state.

11           B. IF A PARTY FILES A MOTION TO DISMISS OR A MOTION FOR SUMMARY  
12 JUDGMENT PURSUANT TO THIS SECTION AND THE COURT GRANTS THE MOTION, THE COURT  
13 SHALL AWARD THE MOVING PARTY COSTS AND ATTORNEY FEES.

14           ~~B.~~ C. For the purposes of this section: —

15           1. "COSTS" MEANS ALL COSTS THAT ARE REASONABLY INCURRED IN CONNECTION  
16 WITH THE MOTION, INCLUDING FILING FEES, RECORD PREPARATION AND DOCUMENT  
17 COPYING FEES, TIME AWAY FROM EMPLOYMENT, EXPERT WITNESS FEES, TRAVEL EXPENSES  
18 AND ANY OTHER COSTS THAT THE COURT DEEMS APPROPRIATE.

19           2. "PLAINTIFF" INCLUDES THE HEIR OR ESTATE OF A DECEASED PERSON WHO  
20 WAS ATTEMPTING TO COMMIT, COMMITTING OR FLEEING AFTER HAVING COMMITTED OR  
21 ATTEMPTING TO COMMIT A FELONY OR MISDEMEANOR CRIMINAL ACT OR WAS UNDER THE  
22 INFLUENCE OF AN INTOXICATING LIQUOR OR A DRUG.

23           3. "Police tool product" means any weapon, safety equipment or product  
24 that is used by law enforcement.

APPROVED BY THE GOVERNOR JULY 13, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.

Passed the House June 10, 2009

Passed the Senate June 22, 2009

by the following vote: 57 Ayes,

by the following vote: 29 Ayes,

1 Nays, 2 Not Voting

0 Nays, 1 Not Voting

[Signature]  
Speaker of the House

[Signature]  
President of the Senate

[Signature]  
Chief Clerk of the House

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

1st day of July, 2009

at 8:25 o'clock A. M.

[Signature]  
Secretary to the Governor

Approved this 13th day of

July 2009

at 8:42 o'clock A. M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 13 day of July, 2009

H.B. 2610

at 11:14 o'clock A. M.

[Signature]  
Secretary of State