

60-3303. Useful safe life ten-year period of repose; evidence; latent disease exception; reviving certain causes of action. (a) (1) Except as provided in paragraph (2) of this subsection, a product seller shall not be subject to liability in a product liability claim if the product seller proves by a preponderance of the evidence that the harm was caused after the product's "useful safe life" had expired. "Useful safe life" begins at the time of delivery of the product and extends for the time during which the product would normally be likely to perform or be stored in a safe manner. For the purposes of this section, "time of delivery" means the time of delivery of a 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.

Examples of evidence that is especially probative in determining whether a product's useful safe life had expired include:

- (A) The amount of wear and tear to which the product had been subject;
- (B) the effect of deterioration from natural causes, and from climate and other conditions under which the product was used or stored;
- (C) the normal practices of the user, similar users and the product seller with respect to the circumstances, frequency and purposes of the product's use, and with respect to repairs, renewals and replacements;
- (D) any representations, instructions or warnings made by the product seller concerning proper maintenance, storage and use of the product or the expected useful safe life of the product; and
- (E) any modification or alteration of the product by a user or third party.

(2) A product seller may be subject to liability for harm caused by a product used beyond its useful safe life to the extent that the product seller has expressly warranted the product for a longer period.

(b) (1) In claims that involve harm caused more than 10 years after time of delivery, a presumption arises that the harm was caused after the useful safe life had expired. This presumption may only be rebutted by clear and convincing evidence.

(2) (A) If a product seller expressly warrants that its product can be utilized safely for a period longer than 10 years, the period of repose, after which the presumption created in paragraph (1) of this subsection arises, shall be extended according to that warranty or promise.

(B) The ten-year period of repose established in paragraph (1) of this subsection does not apply if the product seller intentionally misrepresents facts about its product, or fraudulently conceals information about it, and that conduct was a substantial cause of the claimant's harm.

(C) Nothing contained in this subsection shall affect the right of any person liable under a product liability claim to seek and obtain indemnity from any other person who is responsible for the harm which gave rise to the product liability claim.

(D) The ten-year period of repose established in paragraph (1) of this subsection shall not apply if the harm was caused by prolonged exposure to a defective product, or if the injury-causing aspect of the product that existed at the time of delivery was not discoverable by a reasonably prudent person until more than 10 years after the time of delivery, or if the harm caused within 10 years after the time of delivery, did not manifest itself until after that time.

(c) Except as provided in subsections (d) and (e), nothing contained in subsections (a) and (b) above shall modify the application of K.S.A. 60-513, and amendments thereto.

(d) (1) In a product liability claim against the product seller, the ten-year limitation, as defined in K.S.A. 60-513, and amendments thereto, shall not apply to the time to discover a disease which is latent caused by exposure to a harmful material, in which event the action shall be deemed to have accrued when the disease and such disease's cause have been made known to the person or at the point the person should have been aware of the disease and such disease's cause.

(2) The term "harmful material" means silicone gel breast implants, which were implanted prior to July 1, 1992; any chemical substances commonly known as asbestos, dioxins, or polychlorinated biphenyls, whether alone or as part of any product; or any substance which is determined to present an unreasonable risk of injury to health or the environment by the United States environmental protection agency pursuant to the federal toxic substances control act, 15 U.S.C. § 2601 *et seq.*, or the state of Kansas, and because of such risk is regulated by the state or the environmental protection agency.

(e) Upon the effective date of this act through July 1, 1991, the provisions of this subsection shall revive such causes of action for latent diseases caused by exposure to a harmful material for: (1) Any person whose cause of action had accrued, as defined in subsection (d) on or after March 3, 1987; or (2) any person who had an action pending in any court on March 3, 1989, and because of the judicial interpretation of the ten-year limitation contained in subsection (b) of K.S.A. 60-513, and amendments thereto, as applied to latent disease caused by exposure to a harmful material the: (A) Action was dismissed; (B) dismissal of the action was affirmed; or (C) action was subject to dismissal. The intent of this subsection is to revive causes of action for latent diseases caused by exposure to a harmful material which were barred by interpretation of K.S.A. 60-513, and amendments thereto, in effect prior to this enactment.

History: L. 1981, ch. 231, § 3; L. 1990, ch. 211, § 1; L. 1992, ch. 307, § 6; July 1.