# Product Liability (March 2012)

In an effort to create uniformity and stability in the area of product liability law and to help ensure that individuals injured by unreasonably unsafe products receive reasonable compensation for injuries and to help stabilize product liability insurance rates, the U. S. Department of Commerce drafted the **Model Uniform Product Liability Act** (MUPLA). 44 FR 62714. The MUPLA addresses such product liability issues as the basic standards of responsibility for manufacturers and product sellers; guidelines for unavoidable dangerous aspects of products; requirements for notice of possible claims; standards concerning comparative responsibility; the treatment of failure to discover defective conditions, use of a product with a known defective condition, misuse of product, and alteration or modification of products; sanctions for bringing frivolous claims and defenses; the applicability of arbitration; and damages. Id. The MUPLA was offered for the voluntary use by the The MUPLA also addresses issues of the admissibility of certain evidence and the creation of certain presumptions. Under Section 107 of the MUPLA, evidence of changes in a product’s design, warnings or instructions concerning the product, technological feasibility, "state of the art", or custom of the seller’s industry or business, occurring after the product was manufactured, is not admissible for the purpose of proving that the product was defective. 44 FR 62714. Additionally, evidence of custom in the industry or the product seller’s compliance or non-compliance with non-governmental safety or performance standards, existing at the time of manufacture, may be considered by the trier of fact in determining whether or not the product was defective. Id. A few states have statutorily adopted this principle and many states, as well as the federal government, have created rules of evidence pertaining to the admissibility of such remedial evidence. See USCS Fed Rules Evid R 407. Additionally, in CO, IN, KY and ND, there is a rebuttable presumption that a Pursuant to Section 108 of the MUPLA, an allegedly defective product will be deemed not defective if the injury causing aspect of the product complied with legislative or administrative regulatory safety standards relating to design or performance, unless the claimant proves by a preponderance of evidence that a reasonably prudent product seller would have taken additional precautions. 44 FR 62714. In accordance with this section, many states have adopted rebuttable presumptions that a product is not defective if the manufacturer was compliant with state or federal government regulations at the time the product was sold. Additionally, in NJ and TX, in products liability actions for failure to provide adequate warnings or information in connection with pharmaceutical products (and food in NJ), there is a rebuttable presumption that the defendant is The MUPLA also establishes the length of time product sellers should be subject to liability. Under Section 110, a product seller should not be subject to liability for injuries if the seller proves by a preponderance of the evidence that the harm was caused after the product’s “useful safe life” had expired. 44 FR 62714. Section 110 also contains a statute of repose, under which a presumption arises that the harm was caused after the useful life had expired if the claim is brought more than ten years after the delivery of the product allegedly causing the harm. Id. A few states, including CT, ID, KS, MN, TN, and WA, have adopted useful safe life provisions and may mirror the MUPLA. However, some states’ useful life provisions may be beyond the time limit established by the statute of repose or may be the sole determining factor. Many states have adopted statutes of repose; however, in most jurisdictions enacting these statutes, they have been challenged on constitutional grounds. While some states have upheld the constitutionality of their statutes, courts in a number of states. including AL. AZ. FL. OH. NH. ND. RI have held that at least some portion of
The MUPLA has a statute of limitations of two years, which would bar all claims brought more than two years from the time the claimant discovered or should have discovered the harm and the cause thereof. 44 FR 62714. Many state legislatures have enacted statutes of limitations specifically for product liability claims, which can range from 1 to 6 years. Some jurisdictions do not have statutes of limitations specifically for product liability actions; and therefore general tort and civil

In some states, product liability law is developed through case law and certain provisions of the Uniform Commercial Code address product liability actions for breaches of implied and express warranties as an alternative to product liability claims established in tort law based on theories of negligence and/or strict liability. States may also have certain rules of civil procedure or rules of evidence that specifically address product liability claims.

This survey links to state provisions addressing product liability actions, including statutes of limitations, admissibility of product modifications, indemnity of sellers, and statutes of repose.

*Please see the next tab for analytical data and citations*