

F I N A L R E P O R T

PRODUCTS LIABILITY JOINT SUBCOMMITTEE

December, 1978

The Joint Subcommittee was created pursuant to Senate Concurrent Resolution 138 with the purpose of investigating "the need for legislation relating to civil liability for the manufacture, distribution and sale of products."

The Subcommittee, consisting of members of the Senate Standing Committees on Commerce, Labor and Industrial Relations and Judiciary, and the House Standing Committees on Commerce, Labor and Industrial Relations and Judiciary and Law Enforcement, is as follows:

Senator Berle E. Priebe, Co-chairperson
Representative Fred Koogler, Co-chairperson
Senator Stephen W. Bisenius
Senator Fred W. Nolting
Senator John S. Murray
Senator Earl M. Willits
Senator Edgar H. Holden
Representative Joyce Lonergan
Representative Emil S. Pavich
Representative Frank Crabb
Representative Carl V. Nielsen
Representative Douglas R. Smalley

This Subcommittee was authorized five meeting days and five meetings were held. Written and oral comments were received from representatives of the Iowa Insurance Department, the Iowa Manufacturers Association, the Iowa State Bar Association, the Insurance Services Office, the American Insurance Association, the Association of Trial Lawyers of Iowa, Employers Mutual Companies, and several Iowa manufacturing firms.

The Iowa State Bar Association tendered to the Subcommittee a check in the amount of five thousand dollars as a conditional grant to assist in the funding of a special study of the experience of Iowa manufacturers with products liability claims. The grant is conditioned on the creation of a special study commission and on the contribution of an equal amount by the Iowa Manufacturers Association. The check was placed in the custody of the Treasurer of State.

This Subcommittee reviewed additional materials relating to products liability, including relevant laws enacted in other states, the "Final Report" of the United States Interagency Task Force on Products Liability, the Insurance Services Office "Products Liability Closed Claims Survey", and proposals filed with

or considered by the Iowa Legislature or its committees during the Sixty-seventh General Assembly.

The information reviewed by this Subcommittee indicates that there is a widespread concern about the high cost or unavailability of product liability insurance. It also indicates, however, that there is a wide diversity of opinion respecting supposed causes and proposed remedies. Products liability related legislation has been enacted in approximately twenty states, ranging from single-section bills requiring insurers to report certain claims information to bills containing a variety of so-called "tort reforms". Various proposals are being considered by the Administration of President Jimmy Carter.

Some of the members of this Subcommittee are inclined to believe that legislation of some type may prove to be beneficial, at least in the long run. A bill draft, LSB 319S-H, was prepared for discussion purposes only. The various provisions of the draft, which were requested by one or more members of the Subcommittee for purposes of consideration by the entire Subcommittee, would effect products liability claims as follows: Require annual reporting of claims by insurers, permit joinders of insurers as parties in actions, prohibit statements in pleadings of the amount of damages claimed, establish as a defense the compliance of the manufacturer with the state-of-the-art, establish product alteration, misuse or deterioration as a defense, establish a presumption that a product is not defective if injury occurs at least eight years after sale, establish a statutory definition of duty to warn, restrict evidence of manufacturing knowledge and techniques to that available at time product is manufactured, establish a comparative fault system whereby an injured person may recover partial damages if he or she contributes to the injury, permit the introduction of evidence of collateral benefits received by the injured party, permit the trial court to enter a judgment providing for the payment of damages in installments, and eliminate the right of an employer to recover worker compensation payments in cases where injury results from a defective product. The draft was discussed, but no Subcommittee action was taken on the draft.

This Subcommittee submits no recommendations respecting product liability legislation.