

SUPPORT HF1156/SF2080

THE DIGITAL FAIR REPAIR BILL

HF1156/SF2080 FAQs about Liability

Q. Are manufacturers liable for mistakes made by independent repair technicians?

- A. NO. Independent repair technicians are hired as agents of the legal owner, and the owner is responsible for their own mistakes.

Q. How do we know this is true?

- A. Independent technicians and mechanics have been repairing equipment on behalf of consumers for decades. Liability laws have not changed.
- B. Following the passage of Automotive Right to Repair, manufacturers did not find themselves subject to new or novel litigation.

Q. Manufacturers are often sued as the “Deep Pockets” regardless of their role. Does this change under Right to Repair?

- A. NO. Unless there is effective tort reform, manufacturers will continue to be embroiled in meritless torts because of their propensity to settle rather than defend. The incentive to litigate does not change even if the owner harms themselves and is clearly wrong.

Q. What happens when a used tractor is sold and the buyer is unaware of modifications made by the previous owner?

- A. Firstly --the private sale between buyer and seller is up to the transacting parties - not any previous owners, manufacturers, retailers or distributors.
- B. Secondly -- Used technology equipment is traded worldwide without difficulty using the standard of executing all manufacturer diagnostics. Any owner should be able to restore their firmware to the factory original at any time for this purpose.
- C. Many products also include a log file tracking changes -- so that problem determination and the status of patches and fixes can be ascertained by OEM (Original Equipment Manufacturer) and independent technicians alike.

Q. Who is responsible for accidents?

- A. The equipment owner is always responsible for their own negligence and errors. The OEM is only responsible for providing equipment that is safe to use, with or without regulatory requirements. Unsafe equipment should be removed from sale or recalled and repaired at the expense of the OEM.
- B. OEMs actively disclaim all responsibility for accidents and error of use, including the failure of the equipment itself to operate without error. These terms and conditions are set out in contracts that are highlighted in BOLD or CAPS typically titled Disclaimers or Limitations of Liability or Limitations of Warranty.

- C. Under the Uniform Commercial Code in MN Section 336 manufacturers are allowed to limit their liability for lost crops, lost profits, and even lost limbs. They remain responsible for acts of “Gross Negligence.”

Q. Who is responsible for illegal acts?

- A. The owner of the equipment.

Minnesota Case Law

[Rients v. International Harvester Co. 346 N.W.2d 359 \(1984\)](#)

Owner of used tractor (plaintiff) was injured after making modifications and repairs to axle. Court ruled in favor of the defendant, because the tractor was no longer substantially in the same condition as when the plaintiff bought it AND because the plaintiff abnormally modified the axle.

[Andren v. White-Rodgers Co. 465 N.W.2d 102 \(1991\)](#)

Plaintiff injured by a used space heater. Summary judgment was in favor of defendants. Although plaintiff was injured because of a defect, he voluntarily ignored an obvious risk by lighting a cigarette after smelling gas. The plaintiff showed that he was injured due to the defect, but that was not enough in itself.

Federal Law

- [Magnuson-Moss Act](#): establishes that most warranties are not voided by repair acts, with limited exceptions.
- [U.S. Copyright Office ruling, Oct. '18](#): repair act does not violate copyright law

Minnesota Statutory Authority

RESTATEMENT (THIRD) OF TORTS

[§ 8. LIABILITY OF COMMERCIAL SELLER OR DISTRIBUTOR OF DEFECTIVE USED PRODUCTS](#)

One engaged in the business of selling or otherwise distributing used products who sells or distributes a defective used product is subject to liability for harm to persons or property caused by the defect if the defect:

- (a) results from the seller's failure to exercise reasonable care; or
- (b) is a manufacturing defect under § 2(a) or a defect that may be inferred under § 3 and the seller's marketing of the product would cause a reasonable person in the position of the buyer to expect the used product to present no greater risk of defect than if the product were new; or
- (c) is a defect under § 2 or § 3 in a used product remanufactured by the seller or a predecessor in the commercial chain of distribution of the used product.

2018 MINNESOTA STATUTES

[544.41 PRODUCT LIABILITY; LIMIT ON LIABILITY OF NONMANUFACTURERS](#)

Subdivision 1. **Product liability; requirements.**

In any product liability action based in whole or in part on strict liability in tort commenced or maintained against a defendant other than the manufacturer, that party shall upon answering or otherwise pleading file an affidavit certifying the correct identity of the manufacturer of the product allegedly causing

injury, death or damage. The commencement of a product liability action based in whole or part on strict liability in tort against a certifying defendant shall toll the applicable statute of limitation relative to the defendant for purposes of asserting a strict liability in tort cause of action.

Subd. 2. Certifying defendant; dismissal of strict liability.

Once the plaintiff has filed a complaint against a manufacturer and the manufacturer has or is required to have answered or otherwise pleaded, the court shall order the dismissal of a strict liability in tort claim against the certifying defendant, provided the certifying defendant is not within the categories set forth in subdivision 3. (emphasis added) Due diligence shall be exercised by the certifying defendant in providing the plaintiff with the correct identity of the manufacturer and due diligence shall be exercised by the plaintiff in filing a lawsuit and obtaining jurisdiction over the manufacturer.

The plaintiff may at any time subsequent to dismissal move to vacate the order of dismissal and reinstate the certifying defendant, provided plaintiff can show one of the following:

(1) that the applicable statute of limitation bars the assertion of a strict liability in tort cause of action against the manufacturer of the product allegedly causing the injury, death or damage;

(2) that the identity of the manufacturer given to the plaintiff by the certifying defendant was incorrect. Once the correct identity of the manufacturer has been given by the certifying defendant the court shall again dismiss the certifying defendant;

(3) that the manufacturer no longer exists, cannot be subject to the jurisdiction of the courts of this state, or, despite due diligence, the manufacturer is not amenable to service of process;

(4) that the manufacturer is unable to satisfy any judgment as determined by the court; or

(5) that the court determines that the manufacturer would be unable to satisfy a reasonable settlement or other agreement with plaintiff.

Subd. 3. Dismissal order prohibited.

A court shall not enter a dismissal order relative to any certifying defendant even though full compliance with subdivision 1 has been made where the plaintiff can show one of the following:

(1) that the defendant has exercised some significant control over the design or manufacture of the product, or has provided instructions or warnings to the manufacturer relative to the alleged defect in the product which caused the injury, death or damage;

(2) that the defendant had actual knowledge of the defect in the product which caused the injury, death or damage; or

(3) that the defendant created the defect in the product which caused the injury, death or damage.

Subd. 4. Limiting constructing laws.

Nothing contained in subdivisions 1 to 3 shall be construed to create a cause of action in strict liability in tort or based on other legal theory, or to affect the right of any person to seek and obtain indemnity or contribution.

For more questions about HF1156/SF2080/SF1077 and the Digital Fair Repair Coalition, contact Shep Harris at sharris@fredlaw.com or 612-492-7849.