

# Emotions high on product liability bill

By Tim Richard  
staff writer

The big issue in Lansing this fall is thickly wrapped in legal jargon. Politically, however, emotions are bare.

The issue that the Legislature — particularly Senate Republicans — intends to attack is product liability: What does a user have to prove in order to collect damages from the maker of a defective product?

The Legislature's fall session is the latest chapter in a debate that raged most of the last year over medical malpractice, governmental liability and dramshop liability. But lawmakers shelved the product liability question until now.

THREE PARTIES dominate the debate:

- Manufacturers, who say their liability insurance premiums are leaping hundreds of percent or who find themselves uninsurable.

- Insurers, who say the market is in chaos and they can't calculate the odds of losses because courts are so generous with other people's money.

- Trial lawyers, who, in the words of attorney Paul Rosen, see a plot by "big business" to restrict "a burned child, a crippled factory worker or a blind machine operator victimized by product defects" a chance for compensation.

The issue is a populist one, as House Speaker Gary Owen, D-Ypsilanti, and the United Auto Workers have made clear. They see a class war going on. One UAW speaker went so far as to suggest Republicans were stirring up the issue to raise campaign money from business.

THE MAN guiding the reform bill through the Legislature is Sen. Richard Posthumus, R-Lowell.

Posthumus, 35, wears one hat as chairman of the Senate Commerce Committee. He wears another as the right-hand man of Senate Majority Leader John Engler of Mount Pleasant.

The young Republicans have an agenda: Economically, they seek to make Michigan competitive with other states by systematically improving the business climate. Politically, they intend to demonstrate that Republicans can move efficiently, through the committee process, and act on an agenda without protracted arguments settled by last-minute deals among a tiny handful of leaders.

As evidence, consider that Posthumus held public hearings on the reform bill between the primary election and the state political conventions, when most eyes were on electioneering. This week he is ready to "mark up" the bill in committee. Soon he will be ready to report it to the floor.

WHILE POLITICAL emotions are easy to describe, the legal issues are more difficult.

Take, for example, the question of a statute of limitations — the time limit in which one must file a claim for damages.

The reform bill (SB 435) would give manufacturers an "absolute defense" if the death or injury oc-

## Product liability proposals

The Michigan Senate, in a special session beginning this week, will start work on a product liability reform measure, senate bill 435. It would amend the Revised Judicature Act by giving manufacturers stronger courtroom defenses. Key features:

- The product would be presumed good if it complied with certain standards. Currently, this factor is merely admissible as evidence. The presumption could be rebutted only by "clear and convincing evidence."

- A statute of limitations is contemplated of 10 or 15 years. The death or injury resulting from using the product would have to occur within a decade after the manufacturer's last contact with it.

- A manufacturer fighting a lawsuit would have an "absolute defense" if the buyer had altered or modified the product.

- Jury awards for non-economic damages would be limited to \$225,000 except in cases of death, damage to reproductive organs or other serious bodily damage.

- Plaintiffs' attorneys' fees would be limited.

- "Expert witnesses" would have to meet standards — such as spending a substantial amount of time in active practice and not spending more than 25 percent of their time as "professional witnesses" in court cases.

## analysis

curred 10 or more years after the manufacturer or its representative last had contact with the product.

That makes sense to manufacturers, who say it's unfair for them to be held liable forever for old, worn products.

That makes sense to insurers, who need to set up reserve accounts for future losses.

But it's an abomination to attorneys who say that "mothers victimized by the drug DES and fathers suffering and dying from lung diseases caused by asbestos particles" might be unable to get just damages without a longer time limit.

OR TAKE the question of attorneys fees.

Manufacturers and insurers would like to limit attorneys' fees. They say fees that are one-third of the awarded damages give plaintiffs' attorneys an incentive to shoot for the moon with emotional pleas to emotional juries.

The reform bill would set a downward sliding scale on attorneys' fees: 40 percent for the first \$5,000, 35 percent for the next \$20,000, and so on down the line until a low point of 10 percent for amounts exceeding \$500,000.

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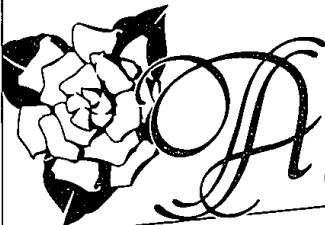
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Chilled Gazpacho .....	\$1.95
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The West End Salad is served with Hazelnut Dressing

### Intermezzo

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