

## **CHAPTER 28-01.4 AVIATION MANUFACTURER PRODUCTS LIABILITY**

### **28-01.4-01. Definitions.** As used in this chapter:

1. "Aircraft" means general aviation light craft that is powered and intended to fly above the ground; is designed to carry one person or more, but with a maximum seating capacity of fewer than twenty passengers; and weighs less than twelve thousand five hundred pounds [5669.9 kilograms].
2. "Aircraft component" means a manufactured part or assembly intended for use in the construction, replacement, or repair of an aircraft. The term includes any complete aircraft subsystem, including the aircraft engine, that carries its own manufacturer's warranty or services provided separately from the warranty of the manufacturer of the aircraft.
3. "Aviation manufacturer" means a manufacturer of aircraft or aircraft components who has its place of manufacture and place of production of aircraft or aircraft components located within this state. The term includes a manufacturer located in this state who imports raw materials, components, and aircraft subassemblies from outside the state for manufacturing purposes. The term also includes a person who modifies, maintains, alters, repairs, or installs aircraft components in aircraft in accordance with federal aviation administration regulations and holds a repair station certificate issued by the federal aviation administration.
4. "State-of-the-art product" means an aircraft or aircraft component manufactured by utilizing the most recent scientific, mechanical, and technological developments at the time of manufacture.

### **28-01.4-02. Compliance with federal standards - Presumptions and defenses.**

1. There is a disputable presumption that a product is free from any defect or defective condition if the product was in compliance with:
  - a. Government standards established for that product; or
  - b. If no government standards exist, applicable industry standards that were in existence at the time of manufacture.
2. An aviation manufacturer or a seller of aircraft or aircraft components may utilize the presumption provided by subsection 1 if the manufacture, design, formulation, inspection, testing, packaging, labeling, or warning complied with:
  - a. Federal aviation administration or department of transportation regulations that relate to the safety or establish safety standards for the aircraft or aircraft component and which existed at the time the aircraft or aircraft component was produced;
  - b. Any premarket approval or certification by the federal aviation administration or any other federal agency; and
  - c. Applicable industry standards that were in existence at the time the plans, designs, warnings, or instructions for the aircraft or aircraft component or the methods and techniques of manufacturing, inspecting, and testing the product were adopted.
3. The presumption under subsection 1 is not available if the plaintiff proves by clear and convincing evidence that the aviation manufacturer or product seller knowingly

and in violation of applicable agency regulations made misrepresentations, made illegal payments to an official for the purpose of securing approval, committed fraud, or concealed evidence.

4. There is an absolute defense to any product liability action brought against an aviation manufacturer when a claimant, in violation of federal aviation administration regulations, has used alcohol or illicit drugs while operating or using an aircraft or aircraft component.
5. This chapter does not affect the authority of the federal aviation administration or any other federal agency with regard to the regulation of aircraft and aircraft components.

**28-01.4-03. State-of-the-art defense.** An aviation manufacturer or seller of aircraft or aircraft components may not be held liable for any personal injury, death, or damage to property sustained as a result of an alleged defect in a state-of-the-art product. An aircraft or aircraft component is presumed to be a state-of-the-art product if the plaintiff cannot show by a preponderance of the evidence that a safer aircraft or aircraft component was on the market at the time of manufacture. No evidence of subsequent design or modification of an aircraft or aircraft component is admissible to prove that an aircraft or aircraft component is not a state-of-the-art product. The state-of-the-art comparisons must be made to products with similar-intended utility. The trier of the fact shall consider the defense that the designer's choice averted greater peril for a large subclass of intended users and shall consider the economic viability of the component or product.

**28-01.4-04. Useful safe life - Statute of repose - Statute of limitation.**

1. An aviation manufacturer may not be held liable in a product liability action if the defendant establishes that the harm was caused after the period of useful safe life of the aircraft or aircraft component had expired. The useful safe life of an aircraft or aircraft component may be measured in units of time or in other units that accurately gauge the useful safe life of a product.
2. In a claim for relief that involves injury more than ten years after the date of first delivery of the aircraft or aircraft component to the first user, purchaser, or lessee, a disputable presumption arises that the harm was caused after the useful safe life had expired. The presumption may only be rebutted by clear and convincing evidence. If the aviation manufacturer or seller expressly warrants that its product can be utilized safely for a period longer than ten years, the period of repose is extended according to the warranty or promise.
3. With respect to any aircraft component that replaced another product originally in, or which was added to, the aircraft, and which is alleged to have caused the claimant's damages, no claim for damages may be made after the useful safe life of the component, the period stated in the warranty, or ten years after manufacture of the component, whichever is later.
4. A product liability action may not be brought more than two years after the time the claimant discovered, or in the exercise of due diligence should have discovered, the harm and cause of the action.