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**DID YOU KNOW?** Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

## Product Safety Analysis Incentive Act

### Summary

This Act provides an incentive for manufacturers to conduct product safety analyses by prohibiting the use of such an analysis by a plaintiff to prove negligence or to prove that a product was defective or unreasonably dangerous. By conducting product safety analyses, manufacturers will be better able to deliver safe products to the marketplace.

### Model Legislation

**Section 1. {Short Title}** This Act shall be known and cited as the Product Safety Analysis Incentives Act.

**Section 2. {Definitions}** The following words, as used in this Act, shall have the meaning set forth below:

A. MANUFACTURER means a person or entity that designs, assembles, fabricates, produces, constructs, or otherwise prepares a product or component part of a product prior to its sale to a user or consumer, including a seller owned in whole or significant part by the manufacturer or seller owning the manufacturer in whole or significant part.

B. PRODUCT means the individual product or any component part of such product, which is the subject of a product liability action.

C. PRODUCT LIABILITY ACTION means any action, under any legal theory, brought against a manufacturer or seller of a product for damages for emotional harm, bodily injury, death or property damage, direct economic loss or indirect economic loss caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, sale, use or consumption of any product, the failure to warn or protect against a danger or hazard in the use or misuse of the product or the failure to provide proper instructions for the use or consumption of any product.

D. PRODUCT SAFETY ANALYSIS OR REVIEW means any investigation, inquiry, review, evaluation or other means by which a manufacturer seeks to determine, calculate, predict, estimate, evaluate or report the safety or health effects of the use of any of its products, systems, services or processes. Product safety analysis or review includes an analysis or review by a component manufacturer of the safety and health effects of component parts in end products. A product safety analysis or review may be conducted by employees of the manufacturer or by consultants engaged specifically to perform the analysis or review.

E. REASONABLE REMEDIAL MEASURES means actions taken as a result of a product safety analysis or review that are intended to improve the safety of products, systems, services or processes or to lessen the likelihood of a safety-related event. These actions include:

1. Modifications to the product, system, service or process.
2. Changes in quality assurance procedures or policies.
3. Modifications made to the design or method of manufacturing, to manufacturing equipment or to the testing of the product, system, service or process.
4. Changes or additions to training programs or safety education programs.
5. Personnel or human resources measures related to the product, system, service or process.
6. The use or modification of warnings, including post-sale warnings, notices or changes to owner manuals and related materials.
7. The recall of products.

F. REASONABLY FORESEEABLE ALTERATION, MODIFICATION, USE OR CONSUMPTION means an alteration, modification, use or consumption of the which would be expected of an ordinary and prudent purchaser, user or consumer and which an ordinary and prudent manufacturer should have anticipated.

G. SELLER means a manufacturer, including a wholesaler, distributor, retailer or lessor, engaged in the business of leasing any product or selling any product for resale, use or consumption.

H. STATE OF THE ART means the technical, mechanical and scientific knowledge of manufacturing, designing, testing, or labeling the same or similar products which was in existence and reasonably feasible, practical and commercially desirable for use at the time of manufacture.

### Section 3. {Evidentiary limitations, including consideration of reasonable remedial measures.}

If a manufacturer conducts a product safety analysis or review, the following shall apply to a product liability action brought against the manufacturer:

1. The plaintiff may not use the manufacturer's product safety analysis or review or consideration of reasonable remedial measures to prove negligence, that the product was defective or unreasonably dangerous, or other culpable conduct in a product liability action. The plaintiff may use the product safety analysis review or consider the use of reasonable remedial measure if offered to impeach a witness for the manufacturer who expressly denies the feasibility of remedial measure or safety improvement.

2. This subsection does not prevent a plaintiff in a product liability action from proving negligence that the product was defective or unreasonably dangerous, or other culpable conduct by other independent evidence or sources, even if such evidence or sources are mentioned or included in a manufacturer's product safety analysis or review or reasonable remedial measures.

3. The plaintiff may not use a manufacturer's product safety analysis or consideration or implementation of remedial measures to prove conduct that would subject the manufacturer to punitive or exemplary damages.

4. The existence and contents of a manufacturer's product safety analysis or review or implementation of remedial measures, if relevant, are discoverable and subject to disclosure in a product liability action unless otherwise privileged. A portion of a manufacturer's product safety analysis or review may be designated and maintained as confidential and protected from public disclosure pursuant to applicable rules of civil procedures if the portion involves trade secrets as defined in [insert appropriate state statute], proprietary material or competitively sensitive information. Any dispute as to confidentiality shall be determined by a court following an in camera review of the portion of the manufacturer's product safety analysis or review.

**Section 4. {Severability Clause}**

**Section 5. {Repealer Clause}**

**Section 6. {Effective Date}**

**About Us and ALEC EXPOSED.** The Center for Media and Democracy reports on corporate spin and government propaganda. We are located in Madison, Wisconsin, and publish [www.PRWatch.org](http://www.PRWatch.org), [www.SourceWatch.org](http://www.SourceWatch.org), and now [www.ALECExposed.org](http://www.ALECExposed.org). For more information contact: [editor@prwatch.org](mailto:editor@prwatch.org) or 608-260-9713.

*ALEC's Sourcebook of American State Legislation 1996*

## ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda-underwritten by global corporations—includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

## ALEC's Corporate Board

—in recent past or present

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  - Verizon
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  - Wal-Mart Stores, Inc.
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  - Altria Client Services, Inc.
  - American Bail Coalition
  - State Farm Insurance
- For more on these corporations, search at [www.SourceWatch.org](http://www.SourceWatch.org).

## Center for Media and Democracy's quick summary

This bill applies when an injured consumer is attempting to prove a corporation's liability for manufacturing a defective product. It provides that a consumer may not use a manufacturer's product safety analysis or review to prove negligence, making it more difficult for consumers to prove their case about products the corporation knew to be unsafe or dangerous but did not cure before the product killed or injured the consumer.