

## The Commonwealth of Massachusetts



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GOVERNOR

EXECUTIVE DEPARTMENT  
STATE HOUSE . BOSTON 02133

July 11, 1973

To the Honorable Senate and House of Representatives:

In accordance with the provisions of Article LVI of the Amendments to the Constitution, I am returning, herewith, House Bill No. 4935 entitled "AN ACT PROVIDING THAT LACK OF PRIVACY OF CONTRACT SHALL NOT BE A DEFENSE IN ACTIONS FOR BREACH OF WARRANTY OR NEGLIGENCE BROUGHT AGAINST A LESSORS OF GOODS AND ESTABLISHING A STATUTE OF LIMITATIONS FOR THE COMMENCEMENT OF SUCH ACTIONS."

Under our current law, lack of privity is not a defense in an action for breach of warranty or negligence brought against a manufacturer, seller, or supplier of goods. The legislation before me would make three changes in this provision of our Uniform Commercial Code. Of greatest significance is the inclusion of lessors of goods among those for whom lack of privity would not be a defense in such actions. Secondly, it inserts a statute of limitations of two years from the date of injury for actions brought under the section to manufacturers, sellers, suppliers, or lessors of goods.

The leasing of goods constitutes an ever-expanding portion of business activity in the state. I share your belief that the lessors of goods should be held liable in the same manner as manufacturers, sellers, and suppliers of goods are held responsible by G.L. c. 106 s. 2-318. I also believe that it is appropriate to insert a two year statute of limitations.

I am, however, not persuaded that the requirement of notice which is now part of the statute should be eliminated. I do not find a sufficiently compelling basis for allowing a suit to be brought nearly two years after the "injury" has occurred without also requiring that prior notice be given to the defendant. At the same time that we would allow an injured party to bring such a suit within two years after the injury, I believe it is also appropriate for us to require that the prospective defendant be given notice in order that he might investigate the circumstances and seek to ascertain the facts of the incident. I believe that the notice requirement currently in our statute should be retained.

I am also concerned that the bill in its present form might lead to dispute as to whether the two year statute of limitations is intended to apply to injuries which occurred prior to the effective date of the act since it indicates that "All actions under this section shall be commenced within two years next after the date the injury occurs". It is conceivable that this language could preclude an individual from initiating an action based upon an injury which occurred prior to the effective date of the act and over two years ago.

As a result, I am returning this bill with the recommendation that it be amended to retain the notice requirement which is in the existing statute and to clarify the ambiguity regarding the applicability of the statute of limitations.

I therefore recommend that the bill be amended as follows: -

By striking out all after the enacting clause and inserting in place thereof the following: -

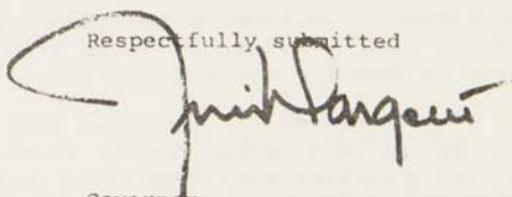
SECTION 1. Chapter 106 of the General Laws is hereby amended by striking out section 2-318, as amended by section 1 of chapter 670 of the acts of 1971, and inserting in place thereof the following section: -

Section 2-318, Lack of Privity in Actions Against a Manufacturer, Seller, Lessor or Supplier of Goods.

Lack of privity between plaintiff and defendant shall be no defense in any action brought against the manufacturer, seller, lessor, or supplier of goods to recover damages for breach of warranty, express or implies, or for negligence, although the plaintiff did not purchase the goods from the defendant if the plaintiff was a person whom the manufacturer, seller, lessor or supplier might reasonably have expected to use, consumer or be affected by the goods. The manufacturer, seller, lessor or supplier may not exclude or limit the operation of this section. All actions under this section shall be commenced within two years next after the date the injury occurs.

SECTION 2. Section 2-318 of chapter one hundred and six of the General Laws, as amended by section one of this act, shall apply to leases which are made and to injuries which occur after the effective date of this act.

Respectfully submitted



Governor  
Commonwealth of Massachusetts