

Sponsor Statement

HB 13

By: Representative Norman Rokeberg

It is vitally important to Alaska commerce and business that a corporation, partnership or other entity that purchases assets from another company or business not be held legally responsible for the liabilities of the selling business, unless expressly agreed to by the purchasing company. However, the Alaska Supreme Court, in an interim ruling last year in [Savage Arms, Inc v. Western Auto Supply Co.](#), 18 P.3d 49 (Alaska 2001), held otherwise under the doctrine of successor liability as it relates to products liability, and remanded the case to trial consistent with its opinion.

Generally, when one company sells all its assets to another, the acquiring corporation or company is not liable for the debts and liabilities of the selling company. Contrary to this rule, the Alaska Supreme Court adopted two theories of successor liability in cases of products liability, “mere continuation” and “continuity of enterprise.” These theories are exceptions to the general rule, and allow a purchasing company to be held responsible for the product liabilities of the selling company, including those that may have been unknown at the time of the sale. While the “mere continuation” theory is a commonly recognized exception, the Supreme Court acknowledged that “continuity of enterprise” has been rejected by the *American Law Institute: Restatement (Third) of Torts*, and a vast majority of courts that have decided the issue.

The Supreme Court stated it was deciding the issue of successor liability because “...neither this court nor the Alaska state legislature has resolved the successor liability questions presented in this case...” We seek to respond to the invitation of the Supreme Court by filling the legislative void and declaring the law of Alaska on this subject.

HB 13 specifically addresses successor liability as it relates to products liability. The bill expressly rejects the continuity of enterprise exception adopted by the Supreme Court and adopts the generally recognized exceptions to the doctrine of successor liability as listed in the Restatement of Torts. Those four exceptions are: (1) the successor expressly assumed the liability; (2) the transfer was a fraudulent conveyance; (3) the transfer constituted a consolidation or merger; or (4) the transfer was a mere continuation of the predecessor.

This legislation will prevent inequities that will otherwise occur to the purchaser of assets who would be exposed to liabilities they did not anticipate and to sellers of assets who may receive less than fair market value if the purchaser must discount the purchase price to factor in unknown and unwanted liabilities.

Please join me in endorsing and passing [HB 13](#).

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