

AMENDMENTS TO LB933

Introduced by Hallstrom, 1.

1 1. Insert the following new sections:

2 **Section 1.** For purposes of sections 1 to 4 of this act:

3 (1) Conduct refers to acts of commission and omission;

4 (2)(a) Ethylene oxide exposure action means a civil action seeking
5 damages for personal injury caused by the exposure of an individual to
6 ethylene oxide.

7 (b) Ethylene oxide exposure action does not include any claim
8 covered by the Nebraska Workers' Compensation Act; and

9 (3) Health care business means a person engaged in business in the
10 health care industry, including the manufacturing, sale and distribution,
11 sterilization, storage, and transportation of medical devices.

12 **Sec. 2.** A health care business shall not be liable for damages in
13 an ethylene oxide exposure action unless the plaintiff proves by clear
14 and convincing evidence that:

15 (1) The conduct of the health care business giving rise to the
16 action was not in substantial compliance with relevant federal laws and
17 regulations;

18 (2) At the time of such conduct, the health care business was not
19 making reasonable efforts, in light of all the circumstances, to maintain
20 substantial compliance with such federal laws and regulations;

21 (3) Such conduct amounted to gross negligence or willful misconduct;
22 and

23 (4) Such conduct directly and proximately resulted in the
24 plaintiff's exposure to ethylene oxide and directly and proximately
25 caused personal injury to the plaintiff.

26 **Sec. 3.** (1) In any ethylene oxide exposure action, the plaintiff
27 shall plead with particularity:

1 (a) Each element of the plaintiff's claim; and
2 (b) Each alleged act or omission constituting gross negligence or
3 willful misconduct that resulted in personal injury caused by exposure to
4 ethylene oxide.

5 (2) In any ethylene oxide exposure action, the plaintiff shall file
6 with the complaint a statement of specific information as to the nature
7 and amount of each element of damages claimed and the factual basis for
8 the damages calculation.

9 (3) In any ethylene oxide exposure action in which a claim is
10 asserted on which the plaintiff may prevail only on proof that the
11 defendant acted with a particular state of mind, there shall be filed
12 with the complaint, with respect to each element of that claim, a
13 statement of the facts giving rise to a strong inference that the
14 defendant acted with the required state of mind.

15 **Sec. 4.** (1) Sections 1 to 4 of this act constitute an exclusive
16 cause of action for ethylene oxide exposure actions.

17 (2) A plaintiff may prevail in an ethylene oxide exposure action
18 only in accordance with the requirements of sections 1 to 4 of this act.

19 2. Renumber the remaining sections and correct internal references
20 accordingly.