

Bill No. HB 1513, 1st Eng.

Barcode 760742

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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11 Senator Webster moved the following amendment:

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13 **Senate Amendment (with title amendment)**

14 Delete everything after the enacting clause

15  
16 and insert:

17 Section 1. Section 768.1259, Florida Statutes, is  
18 created to read:

19 768.1259 Liability of sellers; dismissal of action.--

20 (1) As used in this section, the term:

21 (a) "Seller" means a person who sells a product as a  
22 retailer, distributor, or wholesaler, or who otherwise  
23 transfers a product to another for compensation.

24 (b) "Sealed container" means a box, container,  
25 package, wrapping, encasement, or housing of any nature which  
26 covers a product so that it would be unreasonable to expect a  
27 seller to detect or discover the existence of a dangerous or  
28 defective condition in the product.

29 (2) A seller in an action for strict liability for  
30 harm caused by a product, whose liability is based solely on  
31 the status of a seller, may be dismissed from the action as

1 provided in this section.

2 (3) This section shall apply to any product liability  
3 claim in which another defendant, including the manufacturer,  
4 is properly before the court, and from whom total recovery may  
5 be had for the plaintiff's claim.

6 (4) In the absence of an express warranty to the  
7 contrary, a seller may be dismissed in circumstances where the  
8 seller acquires the product in a sealed container and sells  
9 the product in the same sealed container, unless:

10 (a) The seller had knowledge or reason to know of a  
11 defect or dangerous condition in the product;

12 (b) The seller altered, modified, installed, or failed  
13 to maintain the product in a manner that caused harm to the  
14 claimant;

15 (c) The seller provided the plans or specifications  
16 for the manufacturer for preparation of the product;

17 (d) The seller is a subsidiary of the manufacturer, or  
18 the manufacturer is a subsidiary of the seller;

19 (e) The seller sold the product after the expiration  
20 date placed on the product or its package by the manufacturer;

21 (f) The seller sold the product at a time when the  
22 product was under a safety recall; or

23 (g) The product was manufactured, in whole or in part,  
24 outside the United States.

25 (5) A defendant seller may move for dismissal under  
26 this section within the time for filing an answer or other  
27 responsive pleading unless permitted by the court at a later  
28 time for good cause shown. The motion shall be accompanied by  
29 an affidavit stating that:

30 (a) The product was manufactured, in whole or in part,  
31 in the United States;

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1       (b) The seller received, stored, displayed, and sold  
2 the product in a sealed container and had no reasonable  
3 opportunity to inspect the product for defects;

4       (c) The seller had no knowledge or reason to know of a  
5 defect or dangerous condition in the product;

6       (d) The seller did not alter, modify, install, or fail  
7 to maintain the product in a manner that caused harm to the  
8 claimant;

9       (e) The seller did not provide the plans or  
10 specifications for the manufacturer for preparation of the  
11 product;

12       (f) The seller is not a subsidiary of the manufacturer  
13 and the manufacturer is not a subsidiary of the seller;

14       (g) The seller sold the product before the expiration  
15 date placed on the product or its package by the manufacturer;  
16 and

17       (h) The seller is aware of no fact or circumstance  
18 upon which a verdict might be reached against him or her.

19       (6) The parties shall have 60 days in which to conduct  
20 discovery on the issues raised in the motion and affidavit.  
21 The court, for good cause shown, may extend the time for  
22 discovery, and may enter a protective order pursuant to the  
23 rules of civil procedure regarding the scope of discovery on  
24 other issues.

25       (7) Any party may move for a hearing on a motion to  
26 dismiss under this section. If the requirements of this  
27 section are met, and no party comes forward at such a hearing  
28 with evidence of facts that would render the defendant seeking  
29 dismissal under the section liable on some basis other than  
30 his or her status as a seller, the court shall dismiss without  
31 prejudice the claim as to that defendant.

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1       (8) Notwithstanding the provisions of this section, a  
2 product seller may be liable as a manufacturer if:

3           (a) The manufacturer has no identifiable agent,  
4 facility, or other presence in the United States;

5           (b) The manufacturer is not subject to service of  
6 process in any state in which the action could have been  
7 brought and service cannot be secured by a Florida long-arm  
8 statute; or

9           (c) The manufacturer is otherwise immune from suit.

10       (9) This section does not preclude claims for  
11 indemnification and contribution by a builder or manufacturer  
12 who is engaged in the business of construction and who obtains  
13 a product from a seller whereby such product is the subject of  
14 an action for strict liability for harm caused by the product.

15       Section 2. This act shall take effect July 1, 2005,  
16 and applies to causes of action accruing on or after that  
17 date.

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20 ===== T I T L E   A M E N D M E N T =====

21 And the title is amended as follows:

22           Delete everything before the enacting clause

23

24 and insert:

25           An act relating to liability for products; creating s.  
26 768.1259, F.S.; defining terms; providing that a seller of a  
27 product manufactured in the United States may be dismissed  
28 from an action for strict liability for harm caused by a  
29 product; providing exceptions; providing procedures related to  
30 dismissal; requiring an affidavit to accompany a motion to  
31 dismiss; prescribing the contents of the affidavit; providing

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1 for discovery and a hearing on the motion to dismiss;  
2 providing conditions under which a seller may be held liable  
3 as a manufacturer; authorizing certain claims for  
4 indemnification and contribution by builders; providing an  
5 effective date.

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