

Bill No. SB 2568

Barcode 043448

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Webster) recommended the following amendment:

Senate Amendment (with title amendment)

On page 1, line 19, through page 2, line 8, delete those lines

and insert:

768.1259 Liability of sellers; dismissal of action.--

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

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

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

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

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1 provided in this section.

2 (3) This section shall apply to any products 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 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, or installed the
13 product;

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

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

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

20 (f) The seller sold the product at a time when the
21 product was under a safety recall.

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

27 (a) The seller received, stored, displayed and sold
28 the product in a sealed container and had no reasonable
29 opportunity to inspect the product for defects;

30 (b) The seller had no knowledge or reason to know of a
31 defect or dangerous condition in the product;

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1 (c) The seller did not alter, modify, or install the
2 product;

3 (d) The seller did not provide the plans or
4 specifications for the manufacturer for preparation of the
5 product;

6 (e) The seller is not a subsidiary of the manufacturer
7 and the manufacturer is not a subsidiary of the seller;

8 (f) The seller sold the product before the expiration
9 date placed on the product or its package by the manufacturer;
10 and,

11 (g) The seller is aware of no fact or circumstance
12 upon which a verdict might be reached against him.

13 (6) The parties shall have 60 days in which to conduct
14 discovery on the issues raised in the motion and affidavit.
15 The court, for good cause shown, may extend the time for
16 discovery, and may enter a protective order pursuant to the
17 rules of civil procedure regarding the scope of discovery on
18 other issues.

19 (7) Any party may move for a hearing on a motion to
20 dismiss under this section. If the requirements of
21 subsections (3) and (4) are met, and no party comes forward at
22 such a hearing with evidence of facts that would render the
23 defendant seeking dismissal under the section liable on some
24 basis other than his status as a seller, the court shall
25 dismiss without prejudice the claim as to that defendant.

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

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

30 (b) The manufacturer is not subject to service of
31 process in any state in which the action could have been

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1 brought and service cannot be secured by a Florida long-arm
2 statute; or

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

4 Section 3. This act shall take effect July 1, 2005,
5 and applies to causes of action accruing on or after that
6 date.

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

10 And the title is amended as follows:

11 On page 1, lines 2 through 13, delete those lines

12
13 and insert:

14 An act relating to liability for products; creating s.
15 768.1259, F.S.; defining terms; providing that a seller may be
16 dismissed from an action for strict liability for harm caused
17 by a product; providing exceptions; providing procedures
18 related to dismissal; requiring an affidavit to accompany a
19 motion to dismiss; prescribing the contents of the affidavit;
20 providing for discovery and a hearing on the motion to
21 dismiss; providing conditions under which a seller may be held
22 liable as a manufacturer; providing an effective date.

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