

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Commerce and Consumer Services Committee

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BILL: SB 2568

SPONSOR: Senators Webster and Clary

SUBJECT: Limitations on Liability for Products

DATE: April 11, 2005

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Siebert | Cooper         | CM        | <b>Favorable</b> |
| 2. | _____   | _____          | JU        | _____            |
| 3. | _____   | _____          | _____     | _____            |
| 4. | _____   | _____          | _____     | _____            |
| 5. | _____   | _____          | _____     | _____            |
| 6. | _____   | _____          | _____     | _____            |

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## I. Summary:

This bill limits the liability of a seller of a product unless the manufacturer of the product is not subject to personal jurisdiction in Florida.

This bill substantially amends section 768.1259 of the Florida Statutes.

## II. Present Situation:

### Products Liability Generally

Product liability refers to actions for injuries suffered as the result of a defective product. Product liability law originally required the plaintiff to show the defendant's negligence. Negligence, however, is difficult to prove in defective product cases. Typically, the manufacturer will have better access to inspection records and quality control information. Further, inspection and quality control may meet the "reasonable person" standard, since no manufacturing process is, or can be, made foolproof. A plaintiff may also have difficulty showing that the product was defective at all, or that the defect was present when the product left the manufacturer.

Courts have employed a number of devices to address defective product cases. First, courts have relied on the law of implied warranty, which imposes strict liability upon the seller of a product. Warranty theory, a mixture of tort and contract principles, requires the seller to produce a product free of injury-causing defects. However, implied warranty claims could only lie against the injured plaintiff's immediate seller because actions based on breach of warranty required privity, that is, a contractual relationship between the injured buyer and the seller.

Courts have also employed the doctrine of *res ipsa loquitur* to allow plaintiffs to reach the jury on the issue of product defect. The doctrine of *res ipsa loquitur* enables an injured party to reach the jury with nothing more than circumstantial evidence. Under the doctrine's most accepted formulation, the following conditions are necessary: (1) the event must be one that would not ordinarily occur without someone's negligence; (2) the accident must be caused by an agency or instrumentality within the defendant's exclusive control; and (3) the plaintiff must be without voluntary action or contribution in causing the accident.<sup>1</sup> The application of *res ipsa loquitur* to product liability cases was problematic, however, because the exclusive control requirement could never be met; the product was always out of the defendant's hands and often had passed through several other entities before reaching the plaintiff.

Courts eventually shed these theories and began to impose strict liability in tort on parties within the chain of distribution, including manufacturers, wholesalers, distributors, and retailers, among others. The imposition of strict liability in common law was justified by the judiciary through a number of rationales: (1) those who mass-produce consumer goods are best able to absorb the cost of injuries associated with those goods since they can pass those costs on to consumers; (2) placing liability on manufacturers without fault increases the incentive for manufacturers to produce safer products; (3) requiring the plaintiff to demonstrate the defendant's negligence in causing the defect imposes an intolerably high evidentiary burden; and (4) plaintiffs are typically incapable of protecting themselves against defective products and should not go uncompensated when injury they could neither have foreseen nor prevented actually occurs.<sup>2</sup>

### **Florida's Product Liability Law**

Under Florida's strict product liability law, manufacturers, distributors and sellers can be held liable for a plaintiff's injury if the product is in a condition that is unreasonably dangerous. A product is unreasonably dangerous if the product fails to perform as safely as an ordinary consumer would expect when used as intended or in a manner reasonably foreseeable by the manufacturer or if the risk of danger in the design of the product outweighs the benefits.

Currently, Florida law provides for a "government rules defense" to strict product liability by allowing a manufacturer or other entity in the chain of distribution to defend itself by introducing evidence that the product complied with government regulations.<sup>3</sup> The defense is only available if: (1) the government's rules are relevant to the event causing an actionable injury; (2) the rules were created to prevent the type of harm that occurred; and (3) compliance with those rules is required as a condition for selling the product.<sup>4</sup> The defense does not apply to drugs that are ordered off the market or seized by the United States Department of Agriculture Food and Drug Administration.<sup>5</sup>

The defense further provides that, in a product liability action, there is a rebuttable presumption that the product is not defective or unreasonably dangerous if, at the time of sale or delivery of

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<sup>1</sup> See generally *Prosser and Keeton on The Law of Torts*, § 39 at 244 (W. Keeton 5th ed. 1984).

<sup>2</sup> *Escola v. Coca-Cola Bottling Co.*, 150 P.2d 436, 440-43 (1944).

<sup>3</sup> Section 768.1256(1), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at (3).

the product, it complies with the relevant law.<sup>6</sup> However, the converse is also provided in the law. If it is demonstrated that the manufacturer or seller did not comply with relevant law, then a rebuttable presumption exists that the product is defective or unreasonably dangerous.<sup>7</sup>

Additionally, Florida law provides for a “state-of-the-art” defense for certain products liability claims. In an action brought against the manufacturer of a product based on a design defect, the trier of fact must consider the scientific and technical knowledge at the time of the manufacture.<sup>8</sup>

### **Florida’s Statute of Repose**

Florida law imposes a limitation on the time during which a cause of action can arise. Previously, manufacturers and retailers of products had almost unlimited exposure for alleged defective products, even if the product was well past its useful life. Now, an action related to an alleged defective product must be commenced within 12 years of the product’s specified expected useful life.<sup>9</sup> Under this statute, most products are conclusively presumed to have an expected useful life of 10 years or less.<sup>10</sup>

Certain products including aircraft, railroad equipment, elevators and escalators are not subject to this statute of repose.<sup>11</sup> Also, the repose period does not apply if the claimant was exposed or used the product within the repose period, but the injury did not manifest itself until after the repose period.<sup>12</sup> Also, the statute of repose is tolled for any periods during which a manufacturer has actual knowledge of a product’s defect as alleged by the claimant, yet takes affirmative steps to conceal the defect.<sup>13</sup>

### **Florida’s Wrongful Death Act**

Currently, Florida law provides a right of action when the death of a person is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person and that person would have been able to bring a cause of action if the death had not occurred.<sup>14</sup> The decedent’s personal representative may bring an action on behalf of the decedent’s survivors and estate.<sup>15</sup> Attorney’s fees and other expenses of litigation are to be paid by the personal representatives and deducted from the awards to the survivors and estate in proportion to the amounts awarded to each.<sup>16</sup> However, expense incurred for the benefit of a particular survivor, must be paid for out of his or her amount awarded.<sup>17</sup>

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<sup>6</sup> *Id.* at (1).

<sup>7</sup> *Id.* at (2).

<sup>8</sup> Section 768.1257, F.S.

<sup>9</sup> Section 95.031(1)(b), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Section 768.19, F.S.

<sup>15</sup> Section 768.20, F.S.

<sup>16</sup> Section 768.26, F.S.

<sup>17</sup> *Id.*

### III. Effect of Proposed Changes:

**Section 1** amends s. 768.1259, F.S., to provide a person may not commence or maintain a civil action against a seller of a product based on any legal theory that the product caused harm unless the seller:

- Manufactured, produced, or designed the product; or
- Altered, modified, assembled, or failed to maintain the product in that it caused harm to the claimant.

There is an exception if the manufacturer of the product is not subject to personal jurisdiction in Florida.

A seller is defined as a person who sells a product as a retailer, distributor, or wholesaler, or who otherwise transfers a product to another for compensation

**Section 2** provides an effective date of July 1, 2005.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. Other Constitutional Issues:

Section 21, Art. I, of the State Constitution, preserves a person's right to litigate in court. The Florida Supreme Court has provided that, where a right of access to the courts for redress for a particular injury has been provided by statutory or common law predating the 1968 Florida Constitution, the Legislature may not abolish a cause of action without providing a reasonable alternative, or overpowering public necessity for the abolishment is shown and there is no alternative method for meeting that public necessity.<sup>18</sup>

The Legislature may not unduly or unreasonably burden or restrict access. The Florida Constitution protects "only rights that existed at common law or by statute prior to the

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<sup>18</sup>*Kluger v. White*, 281 So.2d 1 (Fla. 1973)(the court invalidated a statute requiring a minimum of \$550 in property damages arising from an automobile accident before bringing an action); *Smith v. Department of Insurance*, 507 So.2d 1080 (Fla. 1987)(the court ruled that a section of Tort Reform and Insurance Act, which placed absolute, \$450,000 cap on damages that tort victim could recover for noneconomic losses, violated victim's constitutional right to access to courts).

enactment of the Declaration of Rights of the Florida Constitution.<sup>19</sup> In order to make a colorable claim of denial of access to courts, an aggrieved party must demonstrate that the Legislature has abolished a common-law right previously employed by the people of Florida and, if so, that it has provided a reasonable alternative for redress, unless there is an “overpowering public necessity” for eliminating the right and no alternative method exists.<sup>20</sup>

Here, the bill provides a person may not commence or maintain a civil action against a seller in a product liability action. However, the bill does provide exemptions if the seller manufactured, produced, or designed the product, or altered, modified, assembled, or failed to maintain the product in that it caused harm to the claimant. Additionally, there is another exemption if manufacturer of the product in not subject to personal jurisdiction in Florida. Also, a person may still file a claim against the manufacturer of the product. Therefore, there are still viable avenues for a person harmed by a defective product to seek relief.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If enacted, the bill is likely to have a negative impact on future plaintiffs and a positive impact on businesses. However, the exact impact cannot be determined at this time.

C. Government Sector Impact:

If the amount of future litigation is reduced as a result of this bill, there may be a savings in the administration of State Courts.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

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<sup>19</sup> *Id.*

<sup>20</sup> *Kluger* at 281 So.2d 1, 4.



## **VIII. Summary of Amendments:**

None.

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