

By the Committee on Judiciary; and Senators Webster and Clary

590-2255-05

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A bill to be entitled  
An act relating to liability for products;  
creating s. 768.1259, F.S.; defining terms;  
providing that a seller of a product  
manufactured in the United States may be  
dismissed from an action for strict liability  
for harm caused by a product; providing  
exceptions; providing procedures related to  
dismissal; requiring an affidavit to accompany  
a motion to dismiss; prescribing the contents  
of the affidavit; providing for discovery and a  
hearing on the motion to dismiss; providing  
conditions under which a seller may be held  
liable as a manufacturer; providing an  
effective date.

Be It Enacted by the Legislature of the State of Florida:

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

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 which  
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.

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

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

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

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

15           (b) The seller altered, modified, or installed the  
16 product;

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

19           (d) The seller is a subsidiary of the manufacturer, or  
20 the manufacturer is a subsidiary of the seller;

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

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

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

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

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

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

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

8       (d) The seller did not alter, modify, or install the  
9 product;

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

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

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

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

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

26       (7) Any party may move for a hearing on a motion to  
27 dismiss under this section. If the requirements of this  
28 section are met, and no party comes forward at such a hearing  
29 with evidence of facts that would render the defendant seeking  
30 dismissal under the section liable on some basis other than

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1 his or her status as a seller, the court shall dismiss without  
2 prejudice the claim as to that defendant.

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

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

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

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

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

1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   Senate Bill 2568  
4 This committee substitute:  
5 -- Defines the term "sealed container";  
6 -- Limits a seller's immunity from liability to that of  
7     strict liability and requires that the seller bought and  
8     sold the product in the same sealed container;  
9 -- Expands instances in which a seller may still be liable,  
10    to include where the seller knew or had reason to know of  
11    a dangerous defect, the seller installed the product, the  
12    seller provided plans or specifications for manufacture  
13    of the product, the seller and the manufacturer are in a  
14    subsidiary relationship, the seller sold the product  
15    after its listed expiration date or after it was under a  
16    recall, or the product was manufactured at least  
17    partially outside of the United States;  
18 -- Requires the seller to attach an affidavit containing  
19    specific representations to a motion to dismiss;  
20 -- Provides for 60 days of discovery, extendable upon good  
21    cause, and provides for dismissal;  
22 -- Additionally specifies that the seller remains subject to  
23    liability where the manufacturer does not have an  
24    identifiable agent in the United States or is otherwise  
25    immune from suit; and  
26 -- Clarifies that the effective date applies to all causes  
27    of action accruing after that date.  
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