CS for SB 2568

1	A bill to be entitled
2	An act relating to liability for products;
3	creating s. 768.1259, F.S.; defining terms;
4	providing that a seller of a product
5	manufactured in the United States may be
6	dismissed from an action for strict liability
7	for harm caused by a product; providing
8	exceptions; providing procedures related to
9	dismissal; requiring an affidavit to accompany
10	a motion to dismiss; prescribing the contents
11	of the affidavit; providing for discovery and a
12	hearing on the motion to dismiss; providing
13	conditions under which a seller may be held
14	liable as a manufacturer; authorizing certain
15	claims for indemnification and contribution by
16	builders; providing an effective date.
17	
18	Be It Enacted by the Legislature of the State of Florida:
19	
20	Section 1. Section 768.1259, Florida Statutes, is
21	created to read:
22	768.1259 Liability of sellers; dismissal of action
23	(1) As used in this section, the term:
24	(a) "Seller" means a person who sells a product as a
25	retailer, distributor, or wholesaler, or who otherwise
26	transfers a product to another for compensation.
27	(b) "Sealed container" means a box, container,
28	package, wrapping, encasement, or housing of any nature which
29	covers a product so that it would be unreasonable to expect a
30	seller to detect or discover the existence of a dangerous or
31	defective condition in the product.

CODING: Words stricken are deletions; words <u>underlined</u> are additions.

1(2) A seller in an action for strict liability for1harm caused by a product, whose liability is based solely on3the status of a seller, may be dismissed from the action as9provided in this section.3(3) This section shall apply to any product liability6claim in which another defendant, including the manufacturer,7is properly before the court, and from whom total recovery may8be had for the plaintiff's claim.9(4) In the absence of an express warranty to the10contrary, a seller may be dismissed in circumstances where the11seller acquires the product in a sealed container and sells12the product in the same sealed container, unless:13(a) The seller had knowledge or reason to know of a14defect or dangerous condition in the product;15(b) The seller altered, modified, installed, or failed16to maintain the product in a manner that caused harm to the17claimant;18(c) The seller provided the plans or specifications19for the manufacturer for preparation of the product;20(d) The seller sold the product after the expiration21date placed on the product or its package by the manufacturer;22(f) The seller sold the product at a time when the23product was under a safety recall; or24(f) The product was manufactured, in whole or in part,25outside the United States.26(5) A defendant seller may move for dismissal under29	7	
3the status of a seller, may be dismissed from the action as3provided in this section.5(3) This section shall apply to any product liability6claim in which another defendant, including the manufacturer.7is properly before the court, and from whom total recovery may8be had for the plaintiff's claim.9(4) In the absence of an express warranty to the10contrary, a seller may be dismissed in circumstances where the11seller acquires the product in a sealed container and sells12the product in the same sealed container, unless:13(a) The seller had knowledge or reason to know of a14defect or dangerous condition in the product;15(b) The seller altered, modified, installed, or failed16to maintain the product in a manner that caused harm to the17claimant;18(c) The seller provided the plans or specifications19for the manufacturer for preparation of the product;20(d) The seller sold the product after the expiration21date placed on the product or its package by the manufacturer;22(f) The seller sold the product at a time when the23if) The product was manufactured, in whole or in part,24outside the United States.25if) A defendant seller may move for dismissal under26this section within the time for filing an answer or other24responsive pleading unless permitted by the court at a later		
Provided in this section.5(3) This section shall apply to any product liability6claim in which another defendant, including the manufacturer,7is properly before the court, and from whom total recovery may8be had for the plaintiff's claim.9(4) In the absence of an express warranty to the10contrary, a seller may be dismissed in circumstances where the11seller acquires the product in a sealed container and sells12the product in the same sealed container, unless:13(a) The seller had knowledge or reason to know of a14defect or dangerous condition in the product;15(b) The seller altered, modified, installed, or failed16to maintain the product in a manner that caused harm to the17claimant;18(c) The seller provided the plans or specifications19for the manufacturer for preparation of the product;20(d) The seller sold the product after the expiration21date placed on the product or its package by the manufacturer;22(e) The seller sold the product at a time when the23product was under a safety recall; or24(f) The product was manufactured, in whole or in part,25Outside the United States.26(f) A defendant seller may move for dismissal under27this section within the time for filing an answer or other28responsive pleading unless permitted by the court at a later		
 (3) This section shall apply to any product liability (3) This section shall apply to any product liability claim in which another defendant, including the manufacturer, is properly before the court, and from whom total recovery may be had for the plaintiff's claim. (4) In the absence of an express warranty to the contrary, a seller may be dismissed in circumstances where the seller acquires the product in a sealed container and sells the product in the same sealed container, unless: (a) The seller had knowledge or reason to know of a defect or dangerous condition in the product: (b) The seller altered, modified, installed, or failed to maintain the product in a manner that caused harm to the claimant: (c) The seller provided the plans or specifications for the manufacturer for preparation of the product; (d) The seller is a subsidiary of the seller; (e) The seller sold the product after the expiration date placed on the product or its package by the manufacturer; (f) The seller sold the product at a time when the product was under a safety recall; or (c) The product was manufactured, in whole or in part, outside the United States. (f) A defendant seller may move for dismissal under this section within the time for filing an answer or other 	3	<u>the status of a seller, may be dismissed from the action as</u>
6 claim in which another defendant, including the manufacturer, is properly before the court, and from whom total recovery may be had for the plaintiff's claim. 9 (4) In the absence of an express warranty to the contrary, a seller may be dismissed in circumstances where the seller acquires the product in a sealed container and sells the product in the same sealed container, unless: 13 (a) The seller had knowledge or reason to know of a defect or dangerous condition in the product; 15 (b) The seller altered, modified, installed, or failed to maintain the product in a manner that caused harm to the claimant; 18 (c) The seller provided the plans or specifications for the manufacturer for preparation of the product; 20 (d) The seller is a subsidiary of the manufacturer, or the manufacturer is a subsidiary of the seller; 21 (e) The seller sold the product after the expiration date placed on the product or its package by the manufacturer; 24 (f) The seller sold the product at a time when the product was under a safety recall; or 26 (q) The product was manufactured, in whole or in part, outside the United States. 28 (5) A defendant seller may move for dismissal under this section within the time for filing an answer or other	4	provided in this section.
7is properly before the court, and from whom total recovery may8be had for the plaintiff's claim.9(4) In the absence of an express warranty to the10contrary, a seller may be dismissed in circumstances where the11seller acquires the product in a sealed container and sells12the product in the same sealed container, unless:13(a) The seller had knowledge or reason to know of a14defect or dangerous condition in the product:15(b) The seller altered, modified, installed, or failed16to maintain the product in a manner that caused harm to the17claimant:18(c) The seller provided the plans or specifications19for the manufacturer for preparation of the product:20(d) The seller is a subsidiary of the seller:21(e) The seller sold the product after the expiration23date placed on the product or its package by the manufacturer:24(f) The seller sold the product at a time when the25product was under a safety recall: or26(g) The product was manufactured, in whole or in part,27outside the United States.28(5) A defendant seller may move for dismissal under29this section within the time for filing an answer or other30responsive pleading unless permitted by the court at a later	5	(3) This section shall apply to any product liability
8be had for the plaintiff's claim.9(4) In the absence of an express warranty to the10contrary, a seller may be dismissed in circumstances where the11seller acquires the product in a sealed container and sells12the product in the same sealed container, unless:13(a) The seller had knowledge or reason to know of a14defect or dangerous condition in the product;15(b) The seller altered, modified, installed, or failed16to maintain the product in a manner that caused harm to the17claimant;18(c) The seller provided the plans or specifications19for the manufacturer for preparation of the product;20(d) The seller is a subsidiary of the seller;21(e) The seller sold the product after the expiration23date placed on the product or its package by the manufacturer;24(f) The seller sold the product at a time when the25product was under a safety recall; or26(q) The product was manufactured, in whole or in part,27outside the United States.28(5) A defendant seller may move for dismissal under29this section within the time for filing an answer or other30responsive pleading unless permitted by the court at a later	6	claim in which another defendant, including the manufacturer,
 (4) In the absence of an express warranty to the contrary, a seller may be dismissed in circumstances where the seller acquires the product in a sealed container and sells the product in the same sealed container, unless: (a) The seller had knowledge or reason to know of a defect or dangerous condition in the product; (b) The seller altered, modified, installed, or failed to maintain the product in a manner that caused harm to the claimant; (c) The seller provided the plans or specifications for the manufacturer for preparation of the product; (d) The seller is a subsidiary of the manufacturer, or the manufacturer is a subsidiary of the seller; (e) The seller sold the product after the expiration date placed on the product or its package by the manufacturer; (f) The seller sold the product at a time when the product was under a safety recall; or (q) The product was manufactured, in whole or in part, outside the United States. (5) A defendant seller may move for dismissal under this section within the time for filing an answer or other 	7	is properly before the court, and from whom total recovery may
10contrary, a seller may be dismissed in circumstances where the11seller acquires the product in a sealed container and sells12the product in the same sealed container, unless:13(a) The seller had knowledge or reason to know of a14defect or dangerous condition in the product:15(b) The seller altered, modified, installed, or failed16to maintain the product in a manner that caused harm to the17claimant:18(c) The seller provided the plans or specifications19for the manufacturer for preparation of the product;20(d) The seller is a subsidiary of the manufacturer, or21the manufacturer is a subsidiary of the seller;22(e) The seller sold the product after the expiration23date placed on the product or its package by the manufacturer;24(f) The seller sold the product at a time when the25product was under a safety recall; or26(g) The product was manufactured, in whole or in part,27outside the United States.28(5) A defendant seller may move for dismissal under29this section within the time for filing an answer or other30responsive pleading unless permitted by the court at a later	8	be had for the plaintiff's claim.
11seller acquires the product in a sealed container and sells12the product in the same sealed container, unless:13(a) The seller had knowledge or reason to know of a14defect or dangerous condition in the product;15(b) The seller altered, modified, installed, or failed16to maintain the product in a manner that caused harm to the17claimant;18(c) The seller provided the plans or specifications19for the manufacturer for preparation of the product;20(d) The seller is a subsidiary of the manufacturer, or21the manufacturer is a subsidiary of the seller;22(e) The seller sold the product after the expiration23date placed on the product or its package by the manufacturer;24(f) The seller sold the product at a time when the25product was under a safety recall; or26(q) The product was manufactured, in whole or in part,27outside the United States.28(5) A defendant seller may move for dismissal under29this section within the time for filing an answer or other30responsive pleading unless permitted by the court at a later	9	(4) In the absence of an express warranty to the
12the product in the same sealed container, unless:13(a) The seller had knowledge or reason to know of a14defect or dangerous condition in the product;15(b) The seller altered, modified, installed, or failed16to maintain the product in a manner that caused harm to the17claimant;18(c) The seller provided the plans or specifications19for the manufacturer for preparation of the product;20(d) The seller is a subsidiary of the manufacturer, or21the manufacturer is a subsidiary of the seller;22(e) The seller sold the product after the expiration23date placed on the product or its package by the manufacturer;24(f) The seller sold the product at a time when the25product was under a safety recall; or26(q) The product was manufactured, in whole or in part,27outside the United States.28(5) A defendant seller may move for dismissal under29this section within the time for filing an answer or other30responsive pleading unless permitted by the court at a later	10	contrary, a seller may be dismissed in circumstances where the
13(a) The seller had knowledge or reason to know of a14defect or dangerous condition in the product;15(b) The seller altered, modified, installed, or failed16to maintain the product in a manner that caused harm to the17claimant;18(c) The seller provided the plans or specifications19for the manufacturer for preparation of the product;20(d) The seller is a subsidiary of the manufacturer, or21the manufacturer is a subsidiary of the seller;22(e) The seller sold the product after the expiration23date placed on the product or its package by the manufacturer;24(f) The seller sold the product at a time when the25product was under a safety recall; or26(g) The product was manufactured, in whole or in part,27outside the United States.28(5) A defendant seller may move for dismissal under29this section within the time for filing an answer or other30responsive pleading unless permitted by the court at a later	11	seller acquires the product in a sealed container and sells
14defect or dangerous condition in the product;15(b) The seller altered, modified, installed, or failed16to maintain the product in a manner that caused harm to the17claimant;18(c) The seller provided the plans or specifications19for the manufacturer for preparation of the product;20(d) The seller is a subsidiary of the manufacturer, or21the manufacturer is a subsidiary of the seller;22(e) The seller sold the product after the expiration23date placed on the product or its package by the manufacturer;24(f) The seller sold the product at a time when the25product was under a safety recall; or26(g) The product was manufactured, in whole or in part,27outside the United States.28(5) A defendant seller may move for dismissal under29this section within the time for filing an answer or other30responsive pleading unless permitted by the court at a later	12	the product in the same sealed container, unless:
15(b) The seller altered, modified, installed, or failed16to maintain the product in a manner that caused harm to the17claimant;18(c) The seller provided the plans or specifications19for the manufacturer for preparation of the product;20(d) The seller is a subsidiary of the manufacturer, or21the manufacturer is a subsidiary of the seller;22(e) The seller sold the product after the expiration23date placed on the product or its package by the manufacturer;24(f) The seller sold the product at a time when the25product was under a safety recall; or26(g) The product was manufactured, in whole or in part,27outside the United States.28(5) A defendant seller may move for dismissal under29this section within the time for filing an answer or other30responsive pleading unless permitted by the court at a later	13	(a) The seller had knowledge or reason to know of a
 to maintain the product in a manner that caused harm to the claimant: (c) The seller provided the plans or specifications for the manufacturer for preparation of the product; (d) The seller is a subsidiary of the manufacturer, or the manufacturer is a subsidiary of the seller; (e) The seller sold the product after the expiration date placed on the product or its package by the manufacturer; (f) The seller sold the product at a time when the product was under a safety recall; or (q) The product was manufactured, in whole or in part, outside the United States. (5) A defendant seller may move for dismissal under this section within the time for filing an answer or other responsive pleading unless permitted by the court at a later 	14	defect or dangerous condition in the product;
17claimant;18(c) The seller provided the plans or specifications19for the manufacturer for preparation of the product;20(d) The seller is a subsidiary of the manufacturer, or21the manufacturer is a subsidiary of the seller;22(e) The seller sold the product after the expiration23date placed on the product or its package by the manufacturer;24(f) The seller sold the product at a time when the25product was under a safety recall; or26(q) The product was manufactured, in whole or in part,27outside the United States.28(5) A defendant seller may move for dismissal under29this section within the time for filing an answer or other30responsive pleading unless permitted by the court at a later	15	(b) The seller altered, modified, installed, or failed
 18 (c) The seller provided the plans or specifications 19 for the manufacturer for preparation of the product; 20 (d) The seller is a subsidiary of the manufacturer, or 21 the manufacturer is a subsidiary of the seller; 22 (e) The seller sold the product after the expiration 23 date placed on the product or its package by the manufacturer; 24 (f) The seller sold the product at a time when the 25 product was under a safety recall; or 26 (q) The product was manufactured, in whole or in part, 27 outside the United States. 28 (5) A defendant seller may move for dismissal under 29 this section within the time for filing an answer or other 30 responsive pleading unless permitted by the court at a later 	16	to maintain the product in a manner that caused harm to the
 for the manufacturer for preparation of the product; (d) The seller is a subsidiary of the manufacturer, or the manufacturer is a subsidiary of the seller; (e) The seller sold the product after the expiration date placed on the product or its package by the manufacturer; (f) The seller sold the product at a time when the product was under a safety recall; or (q) The product was manufactured, in whole or in part, outside the United States. (5) A defendant seller may move for dismissal under this section within the time for filing an answer or other responsive pleading unless permitted by the court at a later 	17	<u>claimant;</u>
 (d) The seller is a subsidiary of the manufacturer, or the manufacturer is a subsidiary of the seller; (e) The seller sold the product after the expiration date placed on the product or its package by the manufacturer; (f) The seller sold the product at a time when the product was under a safety recall; or (g) The product was manufactured, in whole or in part, outside the United States. (5) A defendant seller may move for dismissal under this section within the time for filing an answer or other responsive pleading unless permitted by the court at a later 	18	(c) The seller provided the plans or specifications
 the manufacturer is a subsidiary of the seller; (e) The seller sold the product after the expiration date placed on the product or its package by the manufacturer; (f) The seller sold the product at a time when the product was under a safety recall; or (q) The product was manufactured, in whole or in part, outside the United States. (5) A defendant seller may move for dismissal under this section within the time for filing an answer or other responsive pleading unless permitted by the court at a later 	19	for the manufacturer for preparation of the product;
 (e) The seller sold the product after the expiration date placed on the product or its package by the manufacturer; (f) The seller sold the product at a time when the product was under a safety recall; or (q) The product was manufactured, in whole or in part, outside the United States. (5) A defendant seller may move for dismissal under this section within the time for filing an answer or other responsive pleading unless permitted by the court at a later 	20	(d) The seller is a subsidiary of the manufacturer, or
23 date placed on the product or its package by the manufacturer; 24 (f) The seller sold the product at a time when the 25 product was under a safety recall; or 26 (q) The product was manufactured, in whole or in part, 27 outside the United States. 28 (5) A defendant seller may move for dismissal under 29 this section within the time for filing an answer or other 30 responsive pleading unless permitted by the court at a later	21	the manufacturer is a subsidiary of the seller;
 (f) The seller sold the product at a time when the product was under a safety recall; or (q) The product was manufactured, in whole or in part, outside the United States. (5) A defendant seller may move for dismissal under this section within the time for filing an answer or other responsive pleading unless permitted by the court at a later 	22	(e) The seller sold the product after the expiration
25 product was under a safety recall; or 26 (g) The product was manufactured, in whole or in part, 27 outside the United States. 28 (5) A defendant seller may move for dismissal under 29 this section within the time for filing an answer or other 30 responsive pleading unless permitted by the court at a later	23	date placed on the product or its package by the manufacturer;
 26 (g) The product was manufactured, in whole or in part, 27 outside the United States. 28 (5) A defendant seller may move for dismissal under 29 this section within the time for filing an answer or other 30 responsive pleading unless permitted by the court at a later 	24	(f) The seller sold the product at a time when the
27 <u>outside the United States.</u> 28 (5) A defendant seller may move for dismissal under 29 this section within the time for filing an answer or other 30 responsive pleading unless permitted by the court at a later	25	product was under a safety recall; or
 28 (5) A defendant seller may move for dismissal under 29 this section within the time for filing an answer or other 30 responsive pleading unless permitted by the court at a later 	26	(g) The product was manufactured, in whole or in part,
29 <u>this section within the time for filing an answer or other</u> 30 <u>responsive pleading unless permitted by the court at a later</u>	27	outside the United States.
30 responsive pleading unless permitted by the court at a later	28	(5) A defendant seller may move for dismissal under
	29	this section within the time for filing an answer or other
31	30	responsive pleading unless permitted by the court at a later
	31	

2

CS for SB 2568

time for good cause shown. The motion shall be accompanied by 1 2 an affidavit stating that: 3 (a) The product was manufactured, in whole or in part, in the United States; 4 5 (b) The seller received, stored, displayed, and sold the product in a sealed container and had no reasonable б 7 opportunity to inspect the product for defects; 8 (c) The seller had no knowledge or reason to know of a 9 defect or dangerous condition in the product; (d) The seller did not alter, modify, install, or fail 10 to maintain the product in a manner that caused harm to the 11 12 claimant; 13 (e) The seller did not provide the plans or specifications for the manufacturer for preparation of the 14 15 <u>product;</u> (f) The seller is not a subsidiary of the manufacturer 16 and the manufacturer is not a subsidiary of the seller; 17 18 (q) The seller sold the product before the expiration 19 date placed on the product or its package by the manufacturer; 20 and (h) The seller is aware of no fact or circumstance 21 22 upon which a verdict might be reached against him or her. 23 (6) The parties shall have 60 days in which to conduct 24 discovery on the issues raised in the motion and affidavit. The court, for good cause shown, may extend the time for 25 discovery, and may enter a protective order pursuant to the 26 rules of civil procedure regarding the scope of discovery on 27 2.8 other issues. 29 (7) Any party may move for a hearing on a motion to dismiss under this section. If the requirements of this 30 section are met, and no party comes forward at such a hearing 31

CODING: Words stricken are deletions; words underlined are additions.

CS for SB 2568

1	with evidence of facts that would render the defendant seeking
2	dismissal under the section liable on some basis other than
3	his or her status as a seller, the court shall dismiss without
4	prejudice the claim as to that defendant.
5	(8) Notwithstanding the provisions of this section, a
б	product seller may be liable as a manufacturer if:
7	(a) The manufacturer has no identifiable agent,
8	facility, or other presence in the United States;
9	(b) The manufacturer is not subject to service of
10	process in any state in which the action could have been
11	brought and service cannot be secured by a Florida long-arm
12	statute; or
13	(c) The manufacturer is otherwise immune from suit.
14	(9) This section does not preclude claims for
15	indemnification and contribution by a builder or manufacturer
16	who is engaged in the business of construction and who obtains
17	a product from a seller whereby such product is the subject of
18	an action for strict liability for harm caused by the product.
19	Section 2. This act shall take effect July 1, 2005,
20	and applies to causes of action accruing on or after that
21	date.
22	
23	
24	
25	
26	
27	
28	
29	
30	
31	