

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.

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

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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.

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, installed, or failed
16 to maintain the product in a manner that caused harm to the
17 claimant;

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 (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
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1 time for good cause shown. The motion shall be accompanied by
2 an affidavit stating that:

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

5 (b) The seller received, stored, displayed, and sold
6 the product in a sealed container and had no reasonable
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;

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

13 (e) The seller did not provide the plans or
14 specifications for the manufacturer for preparation of the
15 product;

16 (f) The seller is not a subsidiary of the manufacturer
17 and the manufacturer is not a subsidiary of the seller;

18 (g) The seller sold the product before the expiration
19 date placed on the product or its package by the manufacturer;
20 and

21 (h) The seller is aware of no fact or circumstance
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.
25 The court, for good cause shown, may extend the time for
26 discovery, and may enter a protective order pursuant to the
27 rules of civil procedure regarding the scope of discovery on
28 other issues.

29 (7) Any party may move for a hearing on a motion to
30 dismiss under this section. If the requirements of this
31 section are met, and no party comes forward at such a hearing

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
6 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.

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