

1 ENGROSSED HOUSE
2 BILL NO. 3365

By: Echols, Turner and
McCullough of the House

3 and

4 Loveless of the Senate
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8 An Act relating to product liability; providing
9 certain rebuttable presumptions in product liability
10 actions; providing grounds for rebutting
11 presumptions; providing circumstances for which a
product liability action may be asserted; limiting
discovery; providing for liability under certain
circumstances; providing for codification; and
providing an effective date.

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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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SECTION 1. NEW LAW A new section of law to be codified

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in the Oklahoma Statutes as Section 57.2 of Title 76, unless there

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is created a duplication in numbering, reads as follows:

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A. In a product liability action brought against a product

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manufacturer or seller, there is a rebuttable presumption that the

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product manufacturer or seller is not liable for any injury to a

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claimant caused by some aspect of the formulation, labeling, or

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design of a product if the product manufacturer or seller

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establishes that the formula, labeling, or design for the product

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complied with or exceeded mandatory safety standards or regulations

1 adopted, promulgated, and required by the federal government, or an
2 agency of the federal government, that were applicable to the
3 product at the time of manufacture and that governed the product
4 risk that allegedly caused harm.

5 B. The claimant may rebut the presumption in subsection A of
6 this section by establishing that:

7 1. The mandatory federal safety standards or regulations
8 applicable to the product and asserted by the defendant as its basis
9 for rebuttable presumption were inadequate to protect the public
10 from unreasonable risks of injury or damage; or

11 2. The manufacturer, before or after marketing the product,
12 withheld or misrepresented information or material relevant to the
13 federal government's or agency's determination of adequacy of the
14 safety standards or regulations at issue in the action.

15 C. In a product liability action brought against a product
16 manufacturer or seller, there is a rebuttable presumption that the
17 product manufacturer or seller is not liable for any injury to a
18 claimant allegedly caused by some aspect of the formulation,
19 labeling, or design of a product if the product manufacturer or
20 seller establishes by a preponderance of the evidence that the
21 product was subject to premarket licensing or approval by the
22 federal government, or an agency of the federal government, that the
23 manufacturer complied with all of the government's or agency's
24 procedures and requirements with respect to premarket licensing or

1 approval, and that after full consideration of the product's risks
2 and benefits the product was approved or licensed for sale by the
3 government or agency. The claimant may rebut this presumption by
4 establishing that:

5 1. The standards or procedures used in the particular premarket
6 approval or licensing process were inadequate to protect the public
7 from unreasonable risks of injury or damage; or

8 2. The manufacturer, before or after premarket approval or
9 licensing of the product, withheld from or misrepresented to the
10 government or agency information that was material and relevant to
11 the performance of the product and was causally related to the
12 claimant's injury.

13 D. This section does not extend to manufacturing flaws or
14 defects even though the product manufacturer has complied with all
15 quality control and manufacturing practices mandated by the federal
16 government or an agency of the federal government, or if the product
17 becomes the subject of a recall, or is no longer marketed, pursuant
18 to any order, consent decree, or agreement between the manufacturer
19 and any federal agency.

20 E. No product liability action may be asserted against a
21 product seller other than the manufacturer, unless:

22 1. The product seller exercised substantial control over the
23 aspect of the design, testing, manufacture, packaging, or labeling
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1 of the product that caused the alleged harm for which recovery of
2 damages is sought; or

3 2. The product seller altered or modified the product, and the
4 alteration or modification was a substantial factor in causing the
5 harm for which recovery of damages is sought; or

6 3. The product seller made an express warranty as to such
7 product independent of any express warranty made by a manufacturer
8 as to such product, such product failed to conform to the product
9 seller's warranty, and the failure of such product to conform to the
10 warranty caused the harm complained of by the claimant; or

11 4. The claimant is unable, despite a good-faith exercise of due
12 diligence, to identify the manufacturer of the product; or

13 5. The manufacturer is not subject to service of process under
14 the laws of the state; or

15 6. The court determines that the claimant would be unable to
16 enforce a judgment against the manufacturer.

17 F. In a claim against a seller in a product liability action,
18 discovery shall initially be limited to issues related to subsection
19 E of this section.

20 G. A product seller other than a manufacturer is liable to a
21 claimant on the basis of negligence if the claimant establishes
22 that:

23 1. The product seller sold the product involved in such action;

24 2. The product seller did not exercise reasonable care:

- 1 a. in assembling, inspecting, or maintaining such
2 product, or
3 b. in passing on warnings or instructions from such
4 product's manufacturer about the dangers and proper
5 use of such product; and

6 3. Such failure to exercise reasonable care was a proximate
7 cause of the harm complained of by the claimant.

8 SECTION 2. This act shall become effective November 1, 2014.

9 Passed the House of Representatives the 12th day of March, 2014.

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11 _____
12 Presiding Officer of the House
of Representatives

13 Passed the Senate the ___ day of _____, 2014.

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Presiding Officer of the Senate