

1 (1ST EXTRAORDINARY SESSION)
ENGROSSED SENATE
2 BILL NO. 13X

By: Bingman, Sykes, Jolley and
Shortey of the Senate

3
4 and

5 Shannon and Stiles of the
House

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7 An Act relating to products liability; repealing 76
8 O.S. 2011, Sections 57 and 58, which relate to
product liability and subsequent measures;
9 prohibiting certain liability for manufacturer or
seller of certain products; establishing affirmative
10 defense; establishing requirements for applicability
of affirmative defense; defining term; prohibiting
11 admissibility of certain evidence; stating exception;
providing for codification; and declaring an
12 emergency.

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

15 SECTION 1. REPEALER 76 O.S. 2011, Sections 57 and 58, is
16 hereby repealed.

17 SECTION 2. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 57.1 of Title 76, unless there
19 is created a duplication in numbering, reads as follows:

20 A. In a product liability action, a manufacturer or seller
21 shall not be liable if the product is inherently unsafe and known to
22 be unsafe by the ordinary consumer who consumes the product with the
23 ordinary knowledge common to the community.

1 B. The claim that a product is inherently unsafe shall be an
2 affirmative defense and shall be pled in accordance with the
3 requirements of the Oklahoma Pleading Code. In order for the
4 defense to apply, all of the following shall be shown:

5 1. The product was a common consumer product intended for
6 personal consumption;

7 2. The product's utility outweighs the risk created by its use;

8 3. The risk posed by the product was one known by the ordinary
9 consumer who consumes the product with the ordinary knowledge common
10 to the community;

11 4. The product was properly prepared and reached the consumer
12 without substantial change in its condition; and

13 5. Adequate warning of the risk posed by the product was given
14 by the manufacturer or seller.

15 C. For purposes of this section, the term "product liability
16 action" does not include an action based on manufacturing defect or
17 breach of warranty.

18 SECTION 3. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 58.1 of Title 76, unless there
20 is created a duplication in numbering, reads as follows:

21 When, after an injury or harm allegedly caused by an event,
22 measures are taken that, if taken previously, would have made the
23 injury or harm less likely to occur, evidence of the subsequent
24 measures is not admissible to prove negligence, culpable conduct, a

1 defect in a product, a defect in a product's design, or a need for a
2 warning or instruction. This rule does not require the exclusion of
3 evidence of subsequent measures when offered for another purpose,
4 such as proving ownership, control, or feasibility of precautionary
5 measures, if controverted, or impeachment.

6 SECTION 4. It being immediately necessary for the preservation
7 of the public peace, health and safety, an emergency is hereby
8 declared to exist, by reason whereof this act shall take effect and
9 be in full force from and after its passage and approval.

10 Passed the Senate the 5th day of September, 2013.

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Presiding Officer of the Senate

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14 Passed the House of Representatives the ____ day of _____,
15 2013.

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Presiding Officer of the House
of Representatives

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