

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 HOUSE BILL 3365

By: Echols

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6 AS INTRODUCED

7 An Act relating to product liability; providing
8 certain rebuttable presumptions in production
9 liability actions; providing grounds for rebutting
10 presumptions; providing circumstances for which a
product liability action may be asserted; providing
for liability under certain circumstances; providing
for codification; and providing an effective date.

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

13 SECTION 1. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 57.2 of Title 76, unless there
15 is created a duplication in numbering, reads as follows:

16 A. In a product liability action brought against a product
17 manufacturer or seller, there is a rebuttable presumption that the
18 product manufacturer or seller is not liable for any injury to a
19 claimant caused by some aspect of the formulation, labeling, or
20 design of a product if the product manufacturer or seller
21 establishes that the formula, labeling, or design for the product
22 complied with mandatory safety standards or regulations adopted and
23 promulgated by the federal government, or an agency of the federal
24 government, that were applicable to the product at the time of

1 manufacture and that governed the product risk that allegedly caused
2 harm.

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

5 1. The mandatory federal safety standards or regulations
6 applicable to the product were inadequate to protect the public from
7 unreasonable risks of injury or damage; or

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

12 C. In a product liability action brought against a product
13 manufacturer or seller, there is a rebuttable presumption that the
14 product manufacturer or seller is not liable for any injury to a
15 claimant allegedly caused by some aspect of the formulation,
16 labeling, or design of a product if the product manufacturer or
17 seller establishes that the product was subject to premarket
18 licensing or approval by the federal government, or an agency of the
19 federal government, that the manufacturer complied with all of the
20 government's or agency's procedures and requirements with respect to
21 premarket licensing or approval, and that after full consideration
22 of the product's risks and benefits the product was approved or
23 licensed for sale by the government or agency. The claimant may
24 rebut this presumption by establishing that:

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

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

9 D. This section does not extend to manufacturing flaws or
10 defects even though the product manufacturer has complied with all
11 quality control and manufacturing practices mandated by the federal
12 government or an agency of the federal government.

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

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

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

22 3. The product seller made an express warranty as to such
23 product independent of any express warranty made by a manufacturer
24 as to such product, such product failed to conform to the product

1 seller's warranty, and the failure of such product to conform to the
2 warranty caused the harm complained of by the claimant;

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

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

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

9 F. A product seller other than a manufacturer is liable to a
10 claimant on the basis of negligence if the claimant establishes
11 that:

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

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

14 a. in assembling, inspecting, or maintaining such
15 product, or

16 b. in passing on warnings or instructions from such
17 product's manufacturer about the dangers and proper
18 use of such product; and

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

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

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