

1 ENGROSSED SENATE
2 BILL NO. 1136

By: Daniels of the Senate

3 and

4 Downing of the House

5
6 [product liability - joint tortfeasor liability -
7 affirmative defense - codification - effective date]
8

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

10 SECTION 1. AMENDATORY 23 O.S. 2011, Section 15, is
11 amended to read as follows:

12 Section 15. A. In any civil action based on fault and not
13 arising out of contract, or any product liability action as defined
14 in Section 2 of this act, the liability for damages caused by two or
15 more persons, corporations or legal entities shall be several only
16 and a joint tortfeasor shall be liable only for the amount of
17 damages allocated to that tortfeasor.

18 B. This section shall not apply to actions brought by or on
19 behalf of the state.

20 C. The provisions of this section shall apply to all civil
21 actions based on fault and not arising out of contract that accrue
22 on or after November 1, 2011. The provisions of this section shall
23 apply to all product liability actions that accrue on or after
24 November 1, 2018.

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 57.05 of Title 76, unless there
3 is created a duplication in numbering, reads as follows:

4 A. As used in this section:

5 1. "Claimant" means a party seeking relief, including a
6 plaintiff, counterclaimant, or cross-claimant. Where the action
7 seeks to recover for damages to or for a deceased person, the term
8 "claimant" shall include the decedent as well as the party or
9 parties bringing the action seeking relief;

10 2. "Manufacturer" means a person, corporation or other legal
11 entity that is a designer, formulator, constructor, rebuilder,
12 fabricator, producer, compounder, processor, or assembler of any
13 product or any component part thereof and who places the product or
14 any component part thereof in the stream of commerce;

15 3. "Product liability action" means any civil action for
16 recovery of damages brought against a manufacturer or seller of a
17 product, regardless of the substantive legal theory or theories upon
18 which the action is brought, for or on account of personal injury,
19 death, or property damage allegedly caused by or resulting from the
20 manufacture, construction, design, formula, installation, assembly,
21 testing, packaging, labeling, or sale of any product, or the failure
22 to warn or protect against a danger or hazard in the use, misuse, or
23 unintended use of any product, or the failure to provide proper
24 instructions for the use of any product;

1 4. "Safer alternative design" means a product design other than
2 the one actually used that:

3 a. in reasonable probability would have prevented or
4 significantly reduced the risk of the personal injury,
5 property damage, or death without substantially
6 impairing the product's utility, and

7 b. was economically and technologically feasible at the
8 time the product left the control of the manufacturer
9 or seller by the application of existing or reasonably
10 achievable scientific knowledge; and

11 5. "Seller" means a person, corporation or other legal entity
12 that is engaged in the business of distributing or otherwise
13 placing, for any commercial purpose, in the stream of commerce for
14 use or consumption a product or any component part thereof.

15 B. In any product liability action, the liability or fault of
16 any person, corporation, or other legal entity that was a proximate
17 or direct cause of the claimant's damages shall be an affirmative
18 defense that shall diminish the amount of the claimant's recovery in
19 proportion to each such entity's assessed liability or fault.

20 C. No product liability action shall be commenced or maintained
21 against a seller for harm caused to the claimant by the product
22 unless the claimant proves by a preponderance of evidence that:

23 1. The seller actually exercised substantial control over some
24 aspect of the manufacture, construction, design, formula,

1 installation, assembly, testing, packaging, labeling, warnings and
2 instructions of the product that was a proximate cause of the
3 damages for which recovery is sought;

4 2. The seller altered, modified or installed the product after
5 it left the manufacturer's possession, and the alteration,
6 modification or installation was not authorized or requested by the
7 manufacturer, was not performed in compliance with the directions or
8 specifications of the manufacturer, and was a direct cause of the
9 damages for which the claimant seeks recovery;

10 3. The seller failed to exercise reasonable care with regard to
11 the assembly, maintenance, service, or repair of the product at
12 issue, or in conveying to the claimant the manufacturer's labels,
13 warnings, or instructions, and such failure was a proximate cause of
14 the damages for which the claimant seeks recovery;

15 4. The seller made an express factual representation regarding
16 the product independent of any express warranty made by a
17 manufacturer regarding the product, such product failed to conform
18 to the seller's independent express warranty, the claimant relied on
19 the express factual representation, and the failure of the product
20 to conform to the seller's independent express warranty was a
21 proximate cause of the damages for which claimant seeks recovery;

22 5. The manufacturer cannot be identified, despite a good faith
23 exercise of due diligence to identify the manufacturer of the
24 product;

1 6. Personal jurisdiction over the manufacturer cannot be
2 obtained in this state; or

3 7. The seller had actual knowledge that the product contained a
4 defect at the time the seller placed the product into the stream of
5 commerce, and that known defect was a proximate cause of the damages
6 for which the claimant seeks recovery.

7 D. In any product liability action, it shall be an affirmative
8 defense barring recovery if the manufacturer or seller proves by a
9 preponderance of the evidence that the proximate cause of the
10 claimant's damages was a use or consumption of the product that was
11 for a purpose, in a manner, or in an activity other than that which
12 was reasonably foreseeable or was contrary to any express
13 instructions or warnings appearing on, accompanying, or attached to
14 the product or on its original container or wrapping, if the
15 intended consumer knew or with the exercise of reasonable and
16 diligent care should have known of such instructions or warnings.

17 E. In a products liability action in which a claimant alleges a
18 design defect, the burden is on the claimant to prove by a
19 preponderance of the evidence that there was a safer alternative
20 design and that the design defect alleged by the claimant was a
21 proximate cause of the claimant's damages. This subsection shall
22 not be construed to restrict the courts of this state in developing
23 the common law with respect to any product which is not subject to
24 the provisions of this section.

1 F. Nothing in this section shall be construed to preclude or
2 eliminate any common law affirmative defense to product liability
3 actions recognized by the courts of this state.

4 SECTION 3. This act shall become effective November 1, 2018.

5 Passed the Senate the 8th day of March, 2018.

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Presiding Officer of the Senate

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9 Passed the House of Representatives the ____ day of _____,

10 2018.

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Presiding Officer of the House
of Representatives

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