

1 **SENATE FLOOR VERSION**

2 February 13, 2018

3 SENATE BILL NO. 1136

By: Daniels

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6 An Act relating to product liability; amending 23
7 O.S. 2011, Section 15, which relates to joint
8 tortfeasor liability; establishing several liability
9 for certain actions; defining terms; establishing
10 affirmative defense to certain actions; requiring
11 certain evidence to commence or maintain certain
12 action; specifying burden of proof; construing
13 provisions; providing for codification; and providing
14 an effective date.

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

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

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

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

1 C. The provisions of this section shall apply to all civil
2 actions based on fault and not arising out of contract that accrue
3 on or after November 1, 2011. The provisions of this section shall
4 apply to all product liability actions that accrue on or after
5 November 1, 2018.

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

9 A. As used in this section:

10 1. "Claimant" means a party seeking relief, including a
11 plaintiff, counterclaimant, or cross-claimant. Where the action
12 seeks to recover for damages to or for a deceased person, the term
13 "claimant" shall include the decedent as well as the party or
14 parties bringing the action seeking relief;

15 2. "Manufacturer" means a person, corporation or other legal
16 entity that is a designer, formulator, constructor, rebuilder,
17 fabricator, producer, compounder, processor, or assembler of any
18 product or any component part thereof and who places the product or
19 any component part thereof in the stream of commerce;

20 3. "Product liability action" means any civil action for
21 recovery of damages brought against a manufacturer or seller of a
22 product, regardless of the substantive legal theory or theories upon
23 which the action is brought, for or on account of personal injury,
24 death, or property damage allegedly caused by or resulting from the

1 manufacture, construction, design, formula, installation, assembly,
2 testing, packaging, labeling, or sale of any product, or the failure
3 to warn or protect against a danger or hazard in the use, misuse, or
4 unintended use of any product, or the failure to provide proper
5 instructions for the use of any product;

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

8 a. in reasonable probability would have prevented or
9 significantly reduced the risk of the personal injury,
10 property damage, or death without substantially
11 impairing the product's utility, and

12 b. was economically and technologically feasible at the
13 time the product left the control of the manufacturer
14 or seller by the application of existing or reasonably
15 achievable scientific knowledge; and

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

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

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

4 1. The seller actually exercised substantial control over some
5 aspect of the manufacture, construction, design, formula,
6 installation, assembly, testing, packaging, labeling, warnings and
7 instructions of the product that was a proximate cause of the
8 damages for which recovery is sought;

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

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

20 4. The seller made an express factual representation regarding
21 the product independent of any express warranty made by a
22 manufacturer regarding the product, such product failed to conform
23 to the seller's independent express warranty, the claimant relied on
24 the express factual representation, and the failure of the product

1 to conform to the seller's independent express warranty was a
2 proximate cause of the damages for which claimant seeks recovery;

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

6 6. Personal jurisdiction over the manufacturer cannot be
7 obtained in this state;

8 7. The manufacturer has been adjudicated bankrupt and a
9 judgment is not otherwise recoverable from the assets of the
10 manufacturer's bankruptcy estate; or

11 8. The seller had actual knowledge that the product contained a
12 defect at the time the seller placed the product into the stream of
13 commerce, and that known defect was a proximate cause of the damages
14 for which the claimant seeks recovery.

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

1 E. In a products liability action in which a claimant alleges a
2 design defect, the burden is on the claimant to prove by a
3 preponderance of the evidence that there was a safer alternative
4 design and that the design defect alleged by the claimant was a
5 proximate cause of the claimant's damages. This subsection shall
6 not be construed to restrict the courts of this state in developing
7 the common law with respect to any product which is not subject to
8 the provisions of this section.

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

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

13 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
14 February 13, 2018 - DO PASS
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