

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   2nd Session of the 54th Legislature (2014)

4 COMMITTEE SUBSTITUTE  
5 FOR ENGROSSED  
6 SENATE BILL NO. 754

By: Johnson (Rob) and Brecheen  
of the Senate

and

McCullough of the House

11                                   COMMITTEE SUBSTITUTE

12                   An Act relating to product liability; creating the  
13                   Rational Use of a Product Act; providing short title;  
14                   limiting certain liability; providing for reduction  
15                   of certain damages; defining terms; establishing  
16                   factors determining defectiveness of product; stating  
17                   exception; providing for codification; and providing  
18                   an effective date.

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

19                   SECTION 1.           NEW LAW           A new section of law to be codified  
20                   in the Oklahoma Statutes as Section 45 of Title 76, unless there is  
21                   created a duplication in numbering, to read as follows:

22                   This act shall be known and may be cited as the "Rational Use of  
23                   a Product Act".

1 SECTION 2. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 45.1 of Title 76, unless there  
3 is created a duplication in numbering, to read as follows:

4 A. A seller is not liable in a civil action for harm caused by  
5 unreasonable misuse of its product.

6 B. If a defendant does not qualify for an affirmative defense  
7 under subsection A of this section, the claimant's damages shall be  
8 reduced to the extent any unreasonable misuse contributed to the  
9 injury. The trier of fact may determine that the harm was caused  
10 solely as a result of such misuse.

11 C. As used in the Rational Use of a Product Act:

12 1. "Misuse" means use of a product for a purpose or manner  
13 different from the purpose or manner for which the product was  
14 manufactured. Misuse includes, but is not limited to, uses:

- 15 a. unintended by the seller,
- 16 b. inconsistent with a specification or standard  
17 applicable to the product,
- 18 c. contrary to an instruction or warning provided by the  
19 seller or other person possessing knowledge or  
20 training regarding use or maintenance of the product,  
21 or
- 22 d. determined to be improper by a federal or state  
23 agency;

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UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

1 2. "Seller" means the manufacturer, wholesaler, distributor, or  
2 retailer of the relevant product; and

3 3. "Unreasonable misuse" means:

4 a. a reasonably prudent person would not have used the  
5 product in the same or similar manner or  
6 circumstances, or

7 b. the product was used for a purpose or in a manner that  
8 was not reasonably foreseeable by the seller against  
9 whom liability is asserted.

10 For purposes of subparagraph a of paragraph 3 of this  
11 subsection, the reasonableness of the conduct of a person who is a  
12 member of a profession with special training or experience in the  
13 use of a product shall be determined based upon a reasonably prudent  
14 member of that profession in the same or similar manner or  
15 circumstances.

16 SECTION 3. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 45.2 of Title 76, unless there  
18 is created a duplication in numbering, to read as follows:

19 A. A misused product may be considered defective in design when  
20 the foreseeable risks of harm related to a reasonable misuse of the  
21 product could have been significantly reduced or avoided by the  
22 adoption of an alternative design that:

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1 1. Would not have resulted in an unreasonable increase in the  
2 cost of designing and manufacturing the product for its intended  
3 use;

4 2. Would not have reduced the efficiency, utility, or safety of  
5 the product for its intended use; and

6 3. Was available at the time of manufacture.

7 B. A misused product may be considered defective because of  
8 inadequate instructions or warnings when the reasonably foreseeable  
9 risks of harm posed by a reasonable misuse of the product could have  
10 been significantly reduced or avoided by providing additional  
11 instructions or warnings regarding the dangers of the misuse at  
12 issue. A product is not defective if additional instructions or  
13 warnings related to such misuse would have detracted from  
14 instructions or warnings intended to prevent more serious or likely  
15 hazards.

16 SECTION 4. This act shall become effective November 1, 2014.

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18 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/06/2014 - DO  
19 PASS, As Amended.

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