

1 **SENATE FLOOR VERSION**

2 February 5, 2013

3 SENATE BILL NO. 754

By: Johnson (Rob) of the Senate

4 and

5 McCullough of the House

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7  
8 An Act relating to product liability; creating the  
9 Rational Use of a Product Act; providing short title;  
10 limiting certain liability; providing for reduction  
11 of certain damages; defining terms; establishing  
factors determining defectiveness of product; stating  
exception; providing for codification; and providing  
an effective date.

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

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

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

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

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

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

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

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

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

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

21 3. "Unreasonable misuse" means:

- 22 a. a reasonable prudent person would not have used the  
23 product in the same or similar manner or  
24 circumstances, or

1           b.    the product was used for a purpose or in a manner that  
2                    was not reasonable foreseeable by the seller against  
3                    whom liability is asserted.

4           For purposes of subparagraph a of paragraph 3 of this  
5 subsection, the reasonableness of the conduct of a person who is a  
6 member of a profession with special training or experience in the  
7 use of a product shall be determined based upon a reasonably prudent  
8 member of that profession in the same or similar manner or  
9 circumstances.

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

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

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

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

22           3.   Was available at the time of manufacture.

23          B.   A misused product may be considered defective because of  
24 inadequate instructions or warnings when the reasonably foreseeable

1 risks of harm posed by a reasonable misuse of the product could have  
2 been significantly reduced or avoided by providing additional  
3 instructions or warnings regarding the dangers of the misuse at  
4 issue. A product is not defective if additional instructions or  
5 warnings related to such misuse would have detracted from  
6 instruction or warnings intended to prevent more serious or likely  
7 hazards.

8 SECTION 4. This act shall become effective November 1, 2013.

9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-5-13 - DO PASS,  
10 As Coauthored.

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