

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

HOUSE BILL 1604

By: Enns

AS INTRODUCED

An Act relating to product liability; creating the Rational Use of a Product Act; providing short title; limiting liability for unreasonable misuse of a product; reducing damages in certain circumstances; defining terms; establishing factors determining defectiveness of product; stating exception; providing for codification; and providing an effective date.

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

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

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

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

A. A seller is not liable in a civil action for harm caused by 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 in a 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 reasonably 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 reasonably foreseeable by the seller against
3 whom liability is asserted.

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

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

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

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

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

21 3. Was available at the time of manufacture.

22 B. A misused product may be considered defective because of
23 inadequate instructions or warnings when the reasonably foreseeable
24 risks of harm posed by a reasonable misuse of the product could have

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

7 SECTION 4. This act shall become effective November 1, 2017.

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