ENGROSSED SENATE
BILL NO. 754

By: Johnson (Rob) of the Senate

and

McCullough of the House

An Act relating to product liability; creating the Rational Use of a Product Act; providing short title; limiting certain liability; providing for reduction of certain damages; 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.

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

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

1. "Misuse" means use of a product for a purpose or manner different from the purpose or manner for which the product was manufactured. Misuse includes, but is not limited to, uses:
   a. unintended by the seller,
   b. inconsistent with a specification or standard applicable to the product,
   c. contrary to an instruction or warning provided by the seller or other person possessing knowledge or training regarding use or maintenance of the product, or
   d. determined to be improper by a federal or state agency;

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

3. "Unreasonable misuse" means:
   a. a reasonable prudent person would not have used the product in the same or similar manner or circumstances, or
b. the product was used for a purpose or in a manner that was not reasonable foreseeable by the seller against whom liability is asserted.

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

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

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

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

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

3. Was available at the time of manufacture.

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

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

Passed the Senate the 27th day of February, 2013.

Presiding Officer of the Senate

Passed the House of Representatives the ___ day of ________, 2013.

Presiding Officer of the House of Representatives