

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 HOUSE BILL 2160

By: McCullough

4
5
6 AS INTRODUCED

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

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

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

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

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

24 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, 2015.

8 |

9 | 55-1-5234 EK 12/23/14

10 |

11 |

12 |

13 |

14 |

15 |

16 |

17 |

18 |

19 |

20 |

21 |

22 |

23 |

24 |