



27        (1) SHORT TITLE.—This section may be cited as the  
28 "Rational Use of a Product Act" and shall apply in any products  
29 liability action as defined in s. 768.81.

30        (2) DEFINITIONS.—As used in this section, the term:

31        (a) "Misuse" means the use of a product for a purpose or  
32 manner different from the purpose or manner for which the  
33 product was manufactured. Misuse includes, but is not limited  
34 to, a use that is:

35            1. Unintended by the seller;

36            2. Inconsistent with a specification or standard  
37 applicable to the product;

38            3. Contrary to an instruction or warning provided by the  
39 seller or other person possessing knowledge or training  
40 regarding the use or maintenance of the product; or

41            4. Determined to be improper by a federal or state agency.

42        (b) "Seller" means the manufacturer, wholesaler,  
43 distributor, or retailer of the relevant product.

44        (c) "Unreasonable misuse" means a type of misuse in which  
45 a product was used for a purpose or in a manner that was not  
46 reasonably foreseeable by the seller, or a reasonably prudent  
47 person would not have used the product in the same or similar  
48 manner or circumstances. The reasonableness of the conduct of a  
49 person who is a member of an occupation or profession with  
50 special training or experience in the use of the product shall  
51 be determined based on use of the product by a reasonably  
52 prudent member of that occupation or profession in the similar

53 circumstances.

54 (3) MISUSE OF A PRODUCT; AFFIRMATIVE DEFENSE.—

55 (a) A seller is not liable in a civil action for harm  
56 caused by unreasonable misuse of its product. Unreasonable  
57 misuse of a product is an affirmative defense.

58 (b) If paragraph (a) does not apply, the plaintiff's  
59 damages may be reduced to the extent any misuse contributed to  
60 the injury. The trier of fact may determine that the harm was  
61 caused solely by such misuse.

62 (4) MISUSE IN PRODUCT LIABILITY ACTIONS.—

63 (a) A misused product may be considered defective in  
64 design when the reasonably foreseeable risks of harm related to  
65 the misuse of the product could have been significantly reduced  
66 or avoided by an alternative design that:

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

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

72 3. Was available at the time of manufacture.

73 (b) A misused product may be considered defective because  
74 of inadequate instructions or warnings when the reasonably  
75 foreseeable risks of harm posed by a misuse of the product could  
76 have been significantly reduced or avoided by providing  
77 additional instructions or warnings regarding the dangers of the  
78 misuse at issue. A product is not defective if additional

79 instructions or warnings related to such misuse would have  
80 detracted from instructions or warnings intended to prevent more  
81 serious or likely hazards.

82 Section 2. Section 768.755, Florida Statutes, is created  
83 to read:

84 768.755 Damages recoverable for cost of medical or health  
85 care services; evidence of amount of damages; applicability.—

86 (1) In a personal injury or wrongful death action to which  
87 this part applies, damages for the cost of medical or health  
88 care services provided to a claimant shall be calculated as  
89 follows:

90 (a) If a claimant received and paid a health care provider  
91 for medical or health care services, and there is no outstanding  
92 balance for those services, the actual amount remitted to the  
93 provider is the maximum amount recoverable. Any difference  
94 between the amount originally billed by the provider and the  
95 actual amount remitted to the provider is not recoverable or  
96 admissible in evidence.

97 (b) If a claimant received medical or health care services  
98 that were paid by a government program or private health  
99 insurance for which there is no outstanding balance due to the  
100 provider other than a copayment or deductible owed by the  
101 claimant, the actual amount remitted to the provider by the  
102 government program or private health insurance, plus any  
103 copayment or deductible owed by the claimant, is the maximum  
104 amount recoverable. Any difference between the amount originally

105 billed by the provider and the sum of the actual amount remitted  
106 to the provider and the copayment or deductible owed by the  
107 claimant is not recoverable or admissible in evidence.

108 (c) If a health care provider provided medical or health  
109 care services to a claimant for which an outstanding balance is  
110 due to the health care provider, and for claims asserted for  
111 medical or health care services to be provided to the claimant  
112 in the future, the maximum amount recoverable is the amount  
113 accepted from Medicare in payment for such services by other  
114 health care providers in the same geographic area. This  
115 limitation also applies to any lien asserted for such services  
116 in the action, with the exception of liens identified in  
117 subsection (3).

118 (2) An individual contract between a health care provider  
119 and an authorized insurer offering health insurance, as defined  
120 in s. 624.603, or health maintenance organization, as defined in  
121 s. 641.19, is not subject to discovery or disclosure in an  
122 action under this part, and such information is not admissible  
123 in evidence in an action to which this part applies.

124 (3) Notwithstanding this section, if a Medicaid managed  
125 care plan, Medicare, or a payor regulated under the Florida  
126 Insurance Code covered or is covering the cost of a claimant's  
127 medical or health care services and has given notice of its  
128 intent to assert a lien or subrogate a claim for past medical  
129 expenses in the action, the amount of the lien or subrogation  
130 claim, in addition to the amount of a copayment or deductible

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131 paid or payable by the claimant, is the maximum amount  
132 recoverable and admissible into evidence with respect to the  
133 covered medical or health care services.

134 (4) This section applies only to those actions for  
135 personal injury or wrongful death to which this part applies  
136 arising on or after July 1, 2019, and has no other application  
137 or effect regarding compensation paid to providers of medical or  
138 health care services.

139 Section 3. Section 768.82, Florida Statutes, is created to  
140 read:

141 768.82 Limit on noneconomic damages.—In any civil action,  
142 damages for noneconomic losses to compensate for pain and  
143 suffering, inconvenience, physical impairment, mental anguish,  
144 disfigurement, loss of capacity for enjoyment of life, loss of  
145 consortium, loss of a decedent's companionship and protection,  
146 lost parental companionship, instruction and guidance, and other  
147 nonpecuniary damages may not exceed \$1 million. The jury shall  
148 not be informed of this limit.

149 Section 4. This act shall take effect July 1, 2019.