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CHAPTER 73.

SELLERS OF DEFECTIVE PRODUCTS

**SECTION 15‑73‑10.** Liability of seller for defective product.

(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm caused to the ultimate user or consumer, or to his property, if

(a) The seller is engaged in the business of selling such a product, and

(b) It is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(2) The rule stated in subsection (1) shall apply although

(a) The seller has exercised all possible care in the preparation and sale of his product, and

(b) The user or consumer has not bought the product from or entered into any contractual relation with the seller.

**SECTION 15‑73‑20.** Situation in which recovery shall be barred.

If the user or consumer discovers the defect and is aware of the danger, and nevertheless proceeds unreasonably to make use of the product and is injured by it, he is barred from recovery.

**SECTION 15‑73‑30.** Intent of chapter.

Comments to Section 402A of the Restatement of Torts, Second, are incorporated herein by reference thereto as the legislative intent of this chapter.

**SECTION 15‑73‑40.** Actions involving firearms or ammunition; basis for determining design defect; elements to be proved by plaintiff.

(A) In a products liability action involving firearms or ammunition, whether a firearm or ammunition shell is defective in design must not be based on a comparison or weighing of the benefits of the product against the risk of injury, damage, or death posed by its potential to cause that injury, damage, or death when discharged.

(B) In a products liability action brought against a firearm or ammunition manufacturer, importer, distributor, or retailer that alleges a design defect, the burden is on the plaintiff to prove, in addition to any other elements required to be proved that:

(1) the actual design of the firearm or ammunition was defective, causing it not to function in a manner reasonably expected by an ordinary consumer of firearms or ammunition; and

(2) any defective design was the proximate cause of the injury, damage, or death.