

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

# HOUSE BILL

## No. 1212

Session of  
1977

---

INTRODUCED BY ENGLEHART, PRATT, DORR, FREIND, PARKER, DeWEESE  
AND HASKELL, JUNE 6, 1977

---

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 6, 1977

---

AN ACT

1 Creating a Product Liability Act, fixing time limitation  
2 remedies and defenses, fixing certain attorneys fees and  
3 repealing certain laws.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the "Product  
8 Liability Act."

9 Section 2. Time limitations on actions.

10 No action for the recovery of damages or for contribution or  
11 indemnity for damages for personal injury, death or damage to  
12 real or personal property, including any action based upon  
13 implied warranties, arising out of an alleged design,  
14 inspection, testing or manufacturing defect, or any other  
15 alleged defect of whatsoever kind or nature in a product, or  
16 arising out of any alleged failure to warn regarding a product,  
17 or arising out of any alleged failure to properly instruct in  
18 the use of a product shall be commenced more than six years

1 after the date the product was first purchased for use or  
2 consumption. The above described time limitations shall not be  
3 extended, renewed or otherwise altered by any resale or other  
4 transfer of the product subsequent to the first purchase for use  
5 or consumption.

6 Section 3. Defense for alteration or modification of product  
7 subsequent to manufacture or sale.

8 No manufacturer or seller of a product shall be liable for  
9 damages because of personal injury, death or property damage  
10 sustained by reason of an alleged defect in a product, or an  
11 alleged failure to warn or protect against a danger or hazard in  
12 a use or misuse of such product, or an alleged failure to  
13 properly instruct in the use of such product, where a cause of  
14 the injury, death or damage was any alteration or modification  
15 of such product, which was made subsequent to the manufacture or  
16 sale by the manufacturer or seller against whom claim is made or  
17 suit is brought and which in any way altered, modified or  
18 changed the purpose, use, function, design or manner of use of  
19 the product from that originally designed, tested or intended by  
20 the manufacturer, or the purpose, use, function, design or  
21 manner of use or intended use for which such product was  
22 originally designed, tested or manufactured.

23 Section 4. Defense for compliance with government standards.

24 No manufacturer or seller of any product shall be liable in  
25 any action for damages for personal injury, death or property  
26 damage alleged to have been caused by an alleged defect in the  
27 design, inspection, testing, manufacture or labeling of such  
28 product, or for the failure to warn or protect against a danger  
29 or hazard in the use or misuse of such product, or for the  
30 failure to instruct in the use of such product if, at the time

1 of the design manufacture thereof, there were Federal or State  
2 statutes or administrative regulations prescribing standards for  
3 such design, inspection, testing, manufacture, labeling, warning  
4 or instructions, which standards were applicable to such product  
5 at the time of its design and manufacture, except upon proper  
6 proof by the plaintiff that such injury, death or property  
7 damage was caused by a failure on the part of such manufacture  
8 to comply with such Federal or State statutes or administrative  
9 regulations.

10 Section 5. Duty to warn and defense for voluntary exposure to  
11 risk.

12 In any action for damages for personal injury, death or  
13 property damage as described in section 2:

14 (1) Any duty on the part of the manufacturer or seller  
15 of the product to warn or protect against a danger or hazard  
16 which could or did arise in the use or misuse of such  
17 product, and any duty to have properly instructed in the use  
18 of such product, shall not extend to those safeguards,  
19 precautions and actions which a person reasonably could and  
20 should take for himself or herself and for others,  
21 considering his or her activity at the time in question, his  
22 or her training, experience, education and any special  
23 knowledge he or she does, should or was required to possess,  
24 and shall not extend to situations where said safeguards,  
25 precautions and actions would or should have been taken by  
26 such a person similarly situated exercising reasonable care,  
27 caution and procedure.

28 (2) The manufacturer or seller of the product shall not  
29 be liable to any person for any injury, death or property  
30 damage caused by an alleged defect in such product, or by a

1 failure to warn or protect against a danger or hazard which  
2 could or did arise in the use or misuse of such product, or  
3 by a failure to properly instruct in the use of such product,  
4 where the injured or deceased party or the user of the  
5 product was aware or should reasonably have been aware that  
6 there was a risk or danger of some type of harm or injury to  
7 him or her, and he or she proceeded to voluntarily expose  
8 himself or herself to it.

9 Section 6. Defense for compliance with state of the art;

10 liability for unreasonably dangerous products.

11 In any action for damages for personal injury, death or  
12 property damage allegedly caused by a defect in a product:

13 (1) A product shall be considered to have a defect or be  
14 in a defective condition only if, at the time the product was  
15 sold by the manufacturer or other seller, there was a defect  
16 or defective condition in the product which made the product  
17 unreasonably dangerous to the user or consumer. The test for  
18 whether any defect or defective condition was "unreasonably  
19 dangerous" shall be whether or not the product as sold was  
20 dangerous to an extent beyond that which would be  
21 contemplated by the ordinary and reasonable buyer, consumer  
22 or user who purchases such a product, assuming the ordinary  
23 knowledge of the community, or of similar buyers, users or  
24 consumers, as to its characteristics, propensities, risks,  
25 dangers and proper and improper use, as well as any special  
26 knowledge, training or experience possessed by the particular  
27 buyer, user or consumer or which he or she was required to  
28 possess.

29 (2) It shall be rebuttably presumed that such product  
30 was free from any alleged defect where the allegedly

1 defective plan or design, or methods, standards and  
2 techniques of manufacturing, inspecting and testing, were in  
3 conformity with the generally recognized and prevailing  
4 standards and practices in the industry in existence at the  
5 time the applicable plan or design and methods, standards and  
6 techniques of manufacturing, inspecting and testing were  
7 prepared and used.

8 (3) No manufacturer or seller of a product shall be  
9 liable to any person for any injury, death or property damage  
10 caused by the plan or design of the manufacture, inspection  
11 or testing of a product where the plan, design, methods,  
12 standards and techniques of manufacturing, inspecting and  
13 testing were prepared and used in conformity with the  
14 generally recognized and prevailing state of the art in  
15 existence at the time such plan, design, methods, standards  
16 and techniques were prepared or used.

17 Section 7. Evidence of post-manufacture changes in state of the  
18 art or the product inadmissible.

19 In any civil action against a manufacturer or seller of a  
20 product for damages for personal injury, death or property  
21 damage allegedly caused by a defect in such product, or by an  
22 alleged failure to warn or protect against any danger or hazard  
23 which may arise in the use or misuse of such product, or by an  
24 alleged failure to properly instruct in the use of such product,  
25 the following evidence shall not be admissible for any purpose:

26 (1) Evidence of any advancements or changes in technical  
27 or other knowledge or techniques, in design theory, knowledge  
28 or philosophy, in labeling, in warnings or instructions for  
29 use of such product, in testing procedures, or in  
30 manufacturing knowledge, techniques or processes, which such

1        advancements or changes have been made or learned, became  
2        available, or were placed into use subsequent to the design  
3        or manufacture of the product allegedly causing such injury,  
4        death or damage.

5            (2) Evidence of any changes made in the design, testing,  
6        inspecting, manufacture, warnings, labeling or instructions  
7        for use of the product, or in or for any similar product,  
8        which such change or changes was or were made or placed into  
9        use subsequent to the design or manufacture of the allegedly  
10       defective product.

11 Section 8. Evidence of collateral benefits.

12        (a) In any action as described in section 2, in which  
13        compensatory damages are sought, evidence of the nature and  
14        extent of any collateral benefits or services from any source  
15        received or to be received by the party seeking compensation  
16        shall be admissible for consideration by the trier of facts.  
17        Such collateral benefits and services shall include, but not be  
18        limited to:

19            (1) Evidence of any reimbursement or indemnification or  
20        services received by or paid for the benefit of any party for  
21        damages, disability, loss of wages or profits, medical,  
22        hospital and rehabilitation expenses or other damages, costs  
23        or expenses arising out of the personal injury, death or  
24        property damage.

25            (2) Evidence of services provided by a health  
26        maintenance organization to treat any such injury.

27            (3) Evidence of voluntary payments of wages and other  
28        voluntary payments to a party which were made by a party's  
29        employer or others while he or she was not working as a  
30        result of such personal injury, or which were paid to the

1        decedent's surviving spouse.

2            (4) Evidence of any unemployment compensation received  
3        by a party making a claim for such personal injury, during  
4        such period of time as the party contended he or she was  
5        unable to work, or did not work, or sustained a loss of wages  
6        or profits, as a result of such personal injury.

7        (b) In any action for personal injury or death, where such  
8        action is tried to a jury, the jury shall be advised and  
9        instructed by the court that the party making the claim for  
10       damages for personal injury will not be required to pay any  
11       State or Federal income taxes on any monetary verdict which may  
12       be rendered by the jury in favor of such party.

13       Section 9. Pecuniary and nonpecuniary damages.

14       All pecuniary and nonpecuniary losses and damages must be  
15       proven by the plaintiff by clear and convincing evidence in  
16       order to be recoverable. All pecuniary losses and damages, past  
17       and future, shall be recoverable without limitation as to dollar  
18       amounts. All nonpecuniary losses and damages shall be  
19       recoverable without limitation as to dollar amount but there  
20       shall be a presumption that reasonable nonpecuniary damages  
21       shall not exceed 300% of an amount equal to pecuniary damages  
22       after past and future wage losses and property damage amounts  
23       have been excluded. The trier of fact may in extraordinary  
24       circumstances award nonpecuniary damages in excess of the  
25       amounts permitted by the above presumption and such  
26       extraordinary circumstances may include:

27            (1) death or permanent total disability; or

28            (2) injury which in whole or in part consists of  
29        cosmetic disfigurement which is permanent, irreparable and  
30        severe.

1 Section 10. Punitive damages prohibited.

2 In any action described in section 2, there shall not be any  
3 award of exemplary or punitive damages.

4 Section 11. Installment judgments.

5 (a) In every action in which a judgment is entered for money  
6 damages equalling or exceeding the sum of \$25,000 for future,  
7 anticipated damages of any nature whatsoever arising from  
8 personal injury, sickness, disease or death, the courts of  
9 general jurisdiction of this State shall, subject to subsection  
10 (f), enter a judgment ordering that such future money damages be  
11 paid by periodic payments.

12 (b) (1) "Periodic payments." The payment or delivery of  
13 money or other property to a judgment creditor at regular  
14 intervals.

15 (2) The judgment ordering periodic payments shall  
16 specify the recipient or recipients of each payment, the size  
17 of each payment, the interval between payments, and the  
18 number of payments, and shall contain reasonable provisions,  
19 if necessary, to make reasonably certain, under the  
20 particular circumstances, that funds are and will be  
21 available to enable the judgment debtor to make all periodic  
22 payments. Any periodic payment upon becoming due and payable  
23 shall constitute a separate judgment upon which execution may  
24 issue.

25 (3) The specifications in subsection (b)(2) may provide  
26 that the recipient, size, interval between, or number of  
27 payments shall be subject to modification or termination on  
28 the basis of a contingency or contingencies specified in the  
29 judgment ordering periodic payments, provided that in any  
30 event such payments shall terminate upon the death of the



1 judgment creditor.

2 (4) A judgment ordering periodic payments shall provide  
3 that upon termination of payments to a judgment creditor all  
4 unused and unassigned funds shall revert to the judgment  
5 debtor or others as their interests may appear. "Assigned"  
6 funds are any funds which the judgment for periodic payments  
7 orders paid only upon termination of the periodic payments to  
8 a recipient.

9 (c) (1) When an action described in subsection (a) is tried  
10 by a court without a jury and the liability of the defendant  
11 has been established, the court after considering the  
12 evidence shall enter written findings of fact setting forth  
13 the damage sustained by the plaintiff. In arriving at its  
14 findings the court shall not consider evidence establishing  
15 the present value of future damages.

16 (2) The findings of fact shall state separately the  
17 amounts of damages segregated according to the type of loss  
18 sustained. The damages shall be further segregated into past  
19 and future damages.

20 (d) (1) When an action described in subsection (a) is tried  
21 to a jury and the liability of the defendant has been  
22 established, the jury shall render a money damage verdict on  
23 special verdict forms provided by the court. In arriving at  
24 its verdict the jury shall not consider evidence establishing  
25 the present value of future damages.

26 (2) The special verdict form submitted to the jury shall  
27 require the jury to state separately the amount of damages  
28 segregated according to the type of loss sustained. The  
29 special verdict form shall further require the jury to  
30 segregate the damages into past and future damages.

1 (e) (1) Upon entry of the damage verdict as provided in  
2 subsection (d) or the findings of fact as provided in  
3 subsection (c), the court shall provide each party with a  
4 copy and shall order the parties to prepare a plan of  
5 periodic payments which, subject to subsection (f)(3) will  
6 grant the judgment creditor an installment recovery  
7 substantially equal to the recovery established in the damage  
8 verdict of findings of fact.

9 (2) The parties shall submit periodic payment plans to  
10 the court within 20 days of receipt of a copy of the damage  
11 verdict or findings of fact.

12 (3) If any party fails to comply with subsection (e)(2):

13 (i) the court may adopt any submitted plan as the  
14 periodic payments judgment; and

15 (ii) that party failing to submit a plan may not  
16 challenge on appeal the adequacy of the periodic payments  
17 plan adopted in the judgment.

18 (4) The court shall consider the submitted plans in  
19 arriving at a periodic payments judgment. However, the court  
20 shall not be required to adopt a submitted plan unless such  
21 plan has been approved by all parties to the action.

22 (5) The plan adopted as a periodic payments judgment  
23 shall, subject to subsection (f)(3), grant the plaintiff an  
24 installment recovery substantially equal to the future damage  
25 recovery established by the damage verdict of findings of  
26 fact.

27 (f) The periodic payments judgment shall provide that:

28 (1) Past damages shall be paid in a lump sum within 20  
29 days of entry of judgment unless the parties agree to and the  
30 court approved as being equitable a plan which provides for

1 the installment payment of these damages.

2 (2) "Costs." All taxable costs shall be paid in a lump  
3 sum.

4 (3) The fees of attorneys representing the plaintiff  
5 shall be subtracted from the recovery of the plaintiff before  
6 the periodic payment recovery is computed. Such fees shall be  
7 paid in a lump sum within 20 days of entry of judgment unless  
8 the attorney and the plaintiff agree to, and the court  
9 approves as being equitable, a plan which provides for the  
10 installment payment of such fees.

11 (g) This section shall apply to all court approved  
12 settlements and compromises arising from actions described in  
13 subsection (a).

14 (h) A court may award a lump sum judgment in an action  
15 described in subsection (a) only if all parties to the action  
16 agree. In that event, the court shall reopen the case for the  
17 purpose of taking testimony and make a finding as to the present  
18 value of future damages, and shall reduce such portion of the  
19 award as relates to future damages to the amount of such finding  
20 of present value.

21 (i) After a judgment providing for periodic payments the  
22 court may, on the petition of any party making or receiving  
23 payments under the judgment, revise or alter the recipient,  
24 size, interval between or number of payments specified in the  
25 original judgment, provided that the total of such payments  
26 shall not exceed the amount of the original judgment which is  
27 unpaid.

28 Section 12. Attorney fees.

29 When a plaintiff is represented by an attorney in the  
30 prosecution of a claim, the plaintiff's attorney's fees from any

1 award made from the first \$50,000 may not exceed 33 1/3%, from  
2 the next \$100,000 attorney's fees may not exceed 25%, and  
3 attorney's fees may not exceed 20% on the balance of any award.

4 Section 13. Repealer.

5 All acts or parts of acts which are inconsistent with the  
6 provisions of this act are repealed to the extent of the  
7 inconsistency.

8 Section 14. Effective date.

9 This act shall take effect in 60 days and shall apply to all  
10 causes of actions arising on or after the effective date of this  
11 act.