

THE GENERAL ASSEMBLY OF PENNSYLVANIA

# HOUSE BILL

No. 470 Session of  
2007

INTRODUCED BY REED, BASTIAN, BOYD, CAPPELLI, CAUSER, COX,  
CREIGHTON, DENLINGER, FAIRCHILD, FLECK, GILLESPIE, GINGRICH,  
GRELL, HICKERNELL, HORNAMAN, KILLION, KOTIK, McILHATTAN,  
METCALFE, MILLARD, MUSTIO, PEIFER, REICHLEY, SCAVELLO AND  
TURZAI, MARCH 6, 2007

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 6, 2007

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, providing for liability  
3 rules applicable to product sellers and manufacturers.

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

6 Section 1. Title 42 of the Pennsylvania Consolidated  
7 Statutes is amended by adding a section to read:

8 § 8340.2. Liability rules applicable to product sellers and  
9 manufacturers.

10 (a) Innocent seller.--No product liability action based on  
11 the doctrine of strict liability in tort shall be commenced or  
12 maintained against any seller of a product which is alleged to  
13 contain or possess a defective condition unreasonably dangerous  
14 to the buyer, user or consumer unless the seller is also the  
15 manufacturer of the product or the manufacturer of the part  
16 thereof claimed to be defective giving rise to the product  
17 liability action. Nothing in this subsection shall be construed

1 to limit any other action from being brought against any seller  
2 of a product.

3 (b) Product misuse.--A product liability action may not be  
4 commenced or maintained against a manufacturer or seller of a  
5 product that caused injury, death or property damage if any of  
6 the following apply:

7 (1) At the time the injury, death or property damage  
8 occurred, the product was used in a manner or for a purpose  
9 other than that which was intended and which could not  
10 reasonably have been expected and the misuse of the product  
11 was a cause of the injury, death or property damage.

12 (2) The manufacturer or seller of the product provided  
13 warning or instruction that, if heeded, would have prevented  
14 the injury, death or property damage.

15 (c) Presumptions.--The following presumptions shall apply to  
16 product liability actions:

17 (1) In any product liability action, it shall be  
18 rebuttably presumed that the product which caused the injury,  
19 death or property damage was not defective and that the  
20 manufacturer or seller of the product was not negligent if  
21 any of the following applies:

22 (i) The product, prior to sale by the manufacturer,  
23 conformed to the state of the art, as distinguished from  
24 industry standards, applicable to the product in  
25 existence at the time of sale.

26 (ii) The product complied with, at the time of sale  
27 by the manufacturer, any applicable code, standard or  
28 regulation adopted or promulgated by the United States or  
29 the Commonwealth.

30 (2) Noncompliance with a government code, standard or

1 regulation existing and in effect at the time of sale of the  
2 product by the manufacturer which contributed to the claim or  
3 injury shall create a rebuttable presumption that the product  
4 was defective or negligently manufactured.

5 (3) Ten years after a product is first sold for use or  
6 consumption, it shall be rebuttably presumed that the product  
7 was not defective and that the manufacturer or seller of the  
8 product was not negligent and that all warnings and  
9 instructions were proper and adequate.

10 (4) In a product liability action in which the court  
11 determines by a preponderance of the evidence that the  
12 necessary facts giving rise to a presumption have been  
13 established, the court shall instruct the jury concerning the  
14 presumption.

15 (d) Definitions.--As used in this section, the following  
16 words and phrases shall have the meanings given to them in this  
17 subsection:

18 "Manufacturer." A person or entity who designs, assembles,  
19 fabricates, produces, constructs or otherwise prepares a product  
20 or a component part of a product prior to the sale of the  
21 product to a user or consumer. The term includes any of the  
22 following:

23 (1) A seller of a product who has actual knowledge of a  
24 defect in the product.

25 (2) A seller of a product who creates and furnishes a  
26 manufacturer with specifications relevant to the alleged  
27 defect for producing the product.

28 (3) A seller of a product who otherwise exercises some  
29 significant control over all or a portion of the  
30 manufacturing process.

1       (4) A seller of a product who alters or modifies a  
2       product in any significant manner after the product comes  
3       into his possession and before it is sold to the ultimate  
4       user or consumer.

5       (5) A seller of a product who is owned in whole or  
6       significant part by the manufacturer or who owns, in whole or  
7       significant part, the manufacturer. A seller not otherwise a  
8       manufacturer shall not be deemed to be a manufacturer merely  
9       because he places or has placed a private label on a product  
10      if:

11           (i) He did not:

12               (A) otherwise specify how the product shall be  
13               produced; or

14               (B) control, in some significant manner, the  
15               manufacturing process of the product.

16           (ii) The seller discloses who the actual  
17           manufacturer is.

18       "Product liability action." Any action brought against a  
19       manufacturer or seller of a product, regardless of the  
20       substantive legal theory or theories upon which the action is  
21       brought, for or on account of personal injury, death or property  
22       damage caused by or resulting from any of the following:

23           (1) The manufacture, construction, design, formula,  
24           installation, preparation, assembly, testing, packaging,  
25           labeling or sale of any product.

26           (2) The failure to warn or protect against a danger or  
27           hazard in the use, misuse or unintended use of any product.

28           (3) The failure to provide proper instructions for the  
29           use of any product.

30       "Seller." An individual or entity, including a manufacturer,

1 wholesaler, distributor or retailer, who is engaged in the  
2 business of selling or leasing any product for resale, use or  
3 consumption.

4       Section 2. This act shall apply to all actions instituted on  
5 or after the effective date of this section.

6       Section 3. This act shall take effect in 60 days.