

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 515 Session of 2009

INTRODUCED BY REED, BEAR, BOYD, CAUSER, CLYMER, CREIGHTON,
DENLINGER, J. EVANS, EVERETT, FAIRCHILD, FLECK, GRELL,
HICKERNELL, HUTCHINSON, M. KELLER, KILLION, METCALFE,
MILLARD, MILLER, MOUL, MUSTIO, PICKETT, PYLE, ROCK, ROHRER,
SCAVELLO, SONNEY AND STERN, FEBRUARY 18, 2009

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 18, 2009

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 under this subsection shall be

1 construed to limit any other action from being brought against
2 any seller 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.