

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1083

Session of
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REFERRED TO COMMITTEE ON BUSINESS AND COMMERCE, APRIL 25, 1979

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, adding provisions
3 relating to product liability actions.

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

6 Section 1. Subchapter B of Chapter 55 of Title 42, act of
7 November 25, 1970 (P.L.707, No.230), known as the Pennsylvania
8 Consolidated Statutes, is amended by adding a section to read:

9 § 5537. Product liability actions.

10 (a) General 12-year statute of repose.--No product liability
11 action, as defined in section 8352 (relating to definitions),
12 may be brought more than 12 years from the time the person who
13 is primarily responsible for manufacturing the final product
14 parted with its possession and control, or sold it, whichever

1 occurred last.

2 (b) Two-year statute of limitation.--Any product liability
3 action accruing during or prior to the twelfth year from the
4 time set forth in subsection (a), shall be brought within two
5 years after the date on which that action accrued. However, this
6 subsection shall be no construed to alter any contrary provision
7 contained in the act of April 6, 1953 (P.L.3, No.1), known as
8 the "Uniform Commercial Code,"

9 (c) Action for indemnity or contribution.--An action for
10 indemnity or contribution, other than an action arising out of a
11 written contract, shall be commenced within the period of time
12 set forth in this section, plus 180 days, unless extended by the
13 court, for good cause shown. An action for indemnity or
14 contribution may be commenced at the time the party seeking
15 indemnity or contribution is named a defendant in any action,
16 whether or not the party seeking indemnity or contribution has
17 come under a fixed obligation to pay damages in the product
18 liability action brought against it.

19 (d) Exceptions.--The limitation period provided in
20 subsection (a) shall not apply to:

21 (1) An action based upon fraudulent misrepresentation,
22 fraudulent concealment or fraudulent nondisclosure by the
23 defendant.

24 (2) An action based upon a negotiated contractual
25 obligation which provides for a different period of
26 limitation in which the action may be commenced.

27 (3) An action for damages to the person caused by the
28 use of or exposure to any product or substance which causes
29 injury of a latent or incremental nature which was not
30 manifested or reasonably detectable prior to the expiration

1 of the period set out in subsection (a).

2 Section 2. Chapter 83 of Title 42 is amended by adding a
3 subchapter to read:

4 CHAPTER 83

5 PARTICULAR RIGHTS AND IMMUNITIES

6 * * *

7 SUBCHAPTER E

8 PRODUCT LIABILITY ACTIONS

9 Sec.

10 8351. Short title of subchapter.

11 8352. Definitions.

12 8353. Strict liability in tort.

13 8354. Permissible theories for product liability actions.

14 8355. Defense for product modification, alteration or
15 deterioration.

16 8356. Defense for product misuse.

17 8357. Liability for product design or formula.

18 8358. Failure to specify, instruct or warn.

19 8359. Government standards.

20 8360. State of the art.

21 8361. Inadmissibility of evidence of improvements.

22 8362. Evidence of collateral benefits.

23 8363. Punitive and exemplary damages.

24 8364. Comparative responsibility in product liability
25 actions.

26 8365. Bifurcated jury trial.

27 § 8351. Sort title of subchapter.

28 This subchapter shall be known and may be cited as the
29 "Product Liability Law."

30 § 8352. Definitions.

1 The following words and phrases when used in this subchapter
2 shall have unless the context clearly indicates otherwise, the
3 meanings given to them in this section:

4 "Manufacturer." A seller of a product who manufactures the
5 finished product or any component substance or part thereof. The
6 term includes any seller who:

7 (1) has actual knowledge of a defect in a product;

8 (2) creates and furnishes a manufacturer with
9 specifications for manufacturing the product when the
10 specifications are related to the alleged defect;

11 (3) otherwise exercises some substantial control over
12 all or a portion of the manufacturing process;

13 (4) alters or modifies a product in a substantial way
14 before it is sold to a user or consumer; or

15 (5) is a business entity owned or controlled by the
16 manufacturer of the allegedly defective product.

17 A seller not otherwise a manufacturer shall not be deemed to be
18 a manufacturer merely because he places or has placed a private
19 label on a product, if the seller discloses the identity of the
20 actual manufacturer subsequent to the incident which is the
21 basis of the product liability action and the disclosure is made
22 within 60 days after suit is filed or after receiving a written
23 request for such disclosure, whichever shall first occur.

24 "Manufactures." Constructs, designs, fabricates, formulates,
25 installs, prepares, or assembles a product.

26 "Person." An individual, corporation, partnership, business
27 trust, unincorporated organization, association, professional
28 association or joint stock company.

29 "Product." Tangible personal property, including fixtures,
30 but not including real property or buildings.

1 "Product liability action" or "action." Any action brought
2 for or on account of personal injury, illness, disease,
3 disability, death or property damage caused by the manufacture,
4 construction, design, formula, installation, preparation,
5 assembly, testing, marketing, packaging, labeling, or sale of
6 any product or the failure to warn or protect against a danger
7 or hazard in the use, misuse or unintended use of any product,
8 or the failure to provide proper instructions for the use of any
9 product, including such an action brought under the act of April
10 6, 1953 (P.L.3, No.1), known as the "Uniform Commercial Code."

11 "Seller." Any person, including a wholesaler, distributor or
12 retailer, who is engaged in the business of selling or leasing
13 such products for resale, use or consumption.

14 "User or consumer." A person who uses or consumes a product,
15 including bystanders or other persons who are harmed by a
16 product.

17 § 8353. Strict liability in tort.

18 (a) General rule.--A manufacturer is subject to liability
19 for physical harm caused to the person or property of the user
20 or consumer only if all of the following conditions are met:

21 (1) The product was manufactured in a defective
22 condition.

23 (2) The product was expected to and did reach the user
24 or consumer without substantial change in the condition in
25 which it was manufactured.

26 (3) The defective condition was unreasonably dangerous
27 to the person or property of the user or consumer.

28 (4) The defective condition caused the harm sustained by
29 the person or property of the user or consumer.

30 (b) Lack of care or contract not necessary.--The rule stated

1 in subsection (a) applies although:

2 (1) the manufacturer has exercised all possible care in
3 the manufacture and sale of the product; and

4 (2) the user or consumer has not bought the product from
5 or entered into any contractual relation with the
6 manufacturer.

7 (c) Manufacturer not guarantor.--In any action brought on
8 the theory of strict liability as set forth in subsection (a),
9 the trier of fact shall not be instructed that the manufacturer
10 is the guarantor of the safety of the product.

11 § 8354. Permissible theories for product liability actions.

12 (a) General rule.--Product liability actions shall be
13 brought only upon the theories of:

14 (1) Negligence.

15 (2) Breach of contract, including breach of warranty,
16 express or implied.

17 (3) Breach of, or failure to discharge, a duty to warn
18 or instruct, whether deliberate or negligent.

19 (4) Misrepresentation, concealment or nondisclosure,
20 whether fraudulent or negligent.

21 (5) In the case of a manufacturer, strict liability in
22 tort as defined in this subchapter, except as set forth in
23 sections 8357 (relating to liability for product design or
24 formula) and 8358 (relating to failure to specify, instruct
25 or warn).

26 (b) Action against seller.--No product liability action
27 based on the theory of strict liability in tort shall be
28 commenced or maintained against any seller of a product who is
29 not otherwise a manufacturer. This subsection shall not prevent
30 an action based upon any of the other theories of liability

1 listed in subsection (a) from being brought against a seller.

2 § 8355. Defense for product modification, alteration or
3 deterioration.

4 (a) General rule.--A defendant shall not be liable for harm
5 that would not have occurred but for the fact that the product
6 was altered or modified by a third party unless the plaintiff
7 proves by a preponderance of the evidence that:

8 (1) the alteration or modification was in accordance
9 with the defendant's instructions or specifications;

10 (2) the alteration or modification was made with the
11 express consent of the defendant; or

12 (3) the alteration or modification was the result of
13 conduct that reasonably should have been anticipated by the
14 defendant.

15 (b) Definition.--For purposes of this section, "alteration
16 or modification" includes, but is not limited to, changes in the
17 design, formula, function, or use of the product from that
18 originally designed, tested or intended by the defendant, or
19 changes in or removal of any safety feature or deterioration
20 arising from unreasonable failure to observe routine care and
21 maintenance.

22 § 8356. Defense for product misuse.

23 (a) General rule.--In any product liability action, it shall
24 be a defense to the action if the defendant proves by a
25 preponderance of the evidence that the injury or damages arose
26 from misuse of the product by any person other than the
27 defendant.

28 (b) Definition.--For the purposes of this subsection (a),
29 misuse shall include, in addition to uses deemed to constitute
30 misuse under the law of this Commonwealth:

1 (1) Uses contrary to adequate recommendations,
2 specifications, instructions or warnings accompanying the
3 product or otherwise provided by the defendant, unless the
4 defendant knows, or is aware of facts from which a reasonable
5 person would infer, that there exist identifiable hazards
6 associated with a substantial pattern of use contrary to such
7 recommendations, specifications, instructions or warnings,
8 and fails, or has failed, to take reasonable precautions
9 against such hazards.

10 (2) Uses other than those for which persons of ordinary
11 skill and judgment (or in the case of prescription products,
12 practitioners of appropriate medical skill and judgment)
13 would normally and reasonably expect the product to be
14 suitable.

15 § 8357. Liability for product design or formula.

16 (a) Liability limited.--In any product liability action
17 based upon injury or damage claimed to have resulted from the
18 defective design or formula of a product, the manufacturer shall
19 not be held liable on the theory of strict liability in tort but
20 may be held liable on the theory of negligence, contract,
21 express warranty or misrepresentation.

22 (b) Alternative design or formula available.--In any such
23 product liability action based on negligence, the manufacturer
24 responsible for the design or formula of a product shall not be
25 liable unless the plaintiff proves by a preponderance of the
26 evidence that an alternative design or formula, the utilization
27 of which would have prevented the injury, or would have resulted
28 in less severe injury, was known and readily available to the
29 manufacturer at the time the product was designed or formulated.

30 (c) Considerations in determination.--In determining in

1 accordance with subsection (b) whether the product was defective
2 in design or formula, the trier of fact shall consider whether
3 an alternative design or formula should have been utilized, in
4 light of the following:

5 (1) the likelihood at the time of manufacturer that the
6 product would cause the harm suffered by the user or
7 consumer;

8 (2) the seriousness of that harm;

9 (3) the technological feasibility of manufacturing the
10 product in accordance with the alternative design or formula.

11 (4) the relative costs of producing, distributing and
12 selling such an alternative design or formula.

13 (5) the new or additional hazards that may result from
14 such an alternative design or formula.

15 (d) Safety or protective devices.--In any product liability
16 action in which a defect in the formulation or design of a
17 product is alleged, the manufacturer shall not be liable for any
18 of the injury or damage which could have been avoided or reduced
19 by attachment to, inclusion in, or use with the product of a
20 safety or protective device or substance, if the defendant
21 proves by a preponderance of the evidence that:

22 (1) the attachment, inclusion, or use of such safety or
23 protective device or substance would have been inappropriate
24 to or incompatible with a function or manner of use to which
25 the product reasonably was suited; or

26 (2) such safety or protective device or substance was
27 offered or recommended by the manufacturer for purchase or
28 use by the user or consumer who was injured or damaged, or by
29 such person's employer, and such person or such person's
30 employer did not purchase or use such additional safety or

1 protective device or substance.

2 § 8358. Failure to specify, instruct or warn.

3 (a) Liability limited.--In any product liability action
4 based upon an alleged failure to provide adequate
5 specifications, instructions or warnings, the manufacturer or
6 any other defendant shall not be held liable for failure to
7 specify, instruct or warn, except upon the theory of negligence.

8 (b) Considerations in determination.--In determining whether
9 adequate specifications, instructions or warnings were provided,
10 the trier of fact shall consider following:

11 (1) The likelihood at the time of manufacture or sale
12 that the product would cause the harm suffered by the user or
13 consumer.

14 (2) The seriousness of that harm.

15 (3) The defendant's ability, at the time of manufacture
16 or sale, to anticipate that the expected product user or
17 consumer would be aware of the product's risks and the nature
18 of the potential harm.

19 (4) The technological feasibility and cost of providing
20 specifications, warnings or instructions.

21 (c) Burden of proof.--In a product liability action based
22 upon a claimed failure to provide adequate specifications,
23 instructions or warnings, the plaintiff shall be required to
24 prove by a preponderance of the evidence that if adequate
25 specifications, warnings or instructions had been provided, the
26 user or consumer would not have suffered the harm.

27 § 8359. Government standards.

28 (a) Request for determination as to product.--A defendant
29 may by a motion request the court to determine whether the
30 injury-causing aspect of the product conformed to an

1 administrative or legislative standard in existence at the time
2 the defendant parted with possession and control of the product,
3 or sold it, whichever occurred last.

4 (b) Affirmative determination.--If the court makes the
5 determination referred to in subsection (a) in the affirmative,
6 it shall instruct the trier of fact to presume that the product
7 was not defective and that the defendant was not negligent. This
8 presumption may be rebutted by a preponderance of evidence
9 showing that:

10 (1) the standard was not developed as a result of
11 careful, thorough product testing and a formal product safety
12 evaluation;

13 (2) consumer interests were not considered in
14 formulating the standard; or

15 (3) the standard was not up to date in light of the
16 technological and scientific knowledge reasonably available
17 at the time of promulgation thereof.

18 (c) Request for determination as to defendant.--A defendant
19 may by motion request the court to determine whether the injury-
20 causing aspect of the product conformed to an administrative or
21 legislative standard with which the defendant was obligated to
22 comply at the time the defendant parted with possession and
23 control of the product, or sold it, whichever occurred last. If
24 the court makes such determination in the affirmative, it shall
25 be conclusively presumed that the product was not defective nor
26 the defendant negligent.

27 § 8360. State of the art.

28 In any product liability action, it shall be a rebuttable
29 presumption that the product was not defective nor the defendant
30 negligent if the defendant proves by a preponderance of the

1 evidence that the product conformed with generally recognized
2 and prevailing standards, designs or methods of testing or
3 manufacturing of the state of the art. For the purposes of this
4 section "state of the art" means the safety, technical,
5 mechanical and scientific knowledge in existence and reasonably
6 feasible for use at the time of the manufacture of the product.
7 § 8361. Inadmissibility of evidence of improvements.

8 In any product liability action, evidence of advancements or
9 changes in technical knowledge or techniques, in design, theory
10 or philosophy, or in manufacturing or testing techniques or of
11 any alteration, modification, improvement or change in or
12 discontinuance of the manufacture, construction, design,
13 formula, installation, preparation, assembly, testing,
14 marketing, packaging, labeling or sale of a product, whether
15 made by the defendant or any other party, which have been made,
16 learned or placed into common use subsequent to the time of the
17 design, testing and manufacturing of the product allegedly
18 causing such injury, death or damage, shall not be admissible
19 for any purpose.

20 § 8362. Evidence of collateral benefits.

21 (a) General rule.--In any product liability action in which
22 compensatory damages are sought, the defendant shall be entitled
23 to the admission of evidence as to the nature and extent of any
24 public collateral benefits or services received or to be
25 received by the plaintiff. It shall be admissible for the
26 plaintiff to show that such collateral benefits or services
27 received or to be received are subrogatable. Likewise, in any
28 product liability action resulting from a death, evidence as to
29 the remarriage of a surviving spouse shall be admissible.

30 (b) Definition.--As used in this section "public collateral

1 benefits or services" mean those benefits or services that an
2 individual receives or is entitled to receive from social
3 security (except those benefits provided under Title XIX of the
4 Federal Social Security Act and except those medicare benefits
5 to which a person's entitlement depends upon use of his so-
6 called "lifetime reserve" of benefit days), workmen's
7 compensation, any State required temporary nonoccupational
8 disability and all other benefits (except the proceeds of life
9 insurance and except benefit programs not legislatively
10 mandated) received by or available to an individual from any
11 government because of the injury.

12 § 8363. Punitive and exemplary damages.

13 (a) General rule.--In any product liability action no
14 punitive or exemplary damages shall be awarded except upon a
15 finding by the trier of fact that the defendant personally acted
16 out of hatred or spite directed toward the plaintiff or
17 knowingly acted in flagrant and gross disregard of public health
18 and safety. Proof of gross negligence shall not create a
19 presumption either rebuttable or conclusive that punitive or
20 exemplary damages are awardable.

21 (b) Evidence.--Punitive or exemplary damages shall be
22 awardable only if the plaintiff establishes all the elements of
23 the cause of action for punitive or exemplary damages by clear
24 and convincing evidence.

25 (c) Damages stated separately.--The trier of fact shall
26 separately state the amount of punitive or exemplary damages
27 awarded.

28 § 8364. Comparative responsibility in product liability
29 actions.

30 (a) General rule.--In any product liability action the

1 responsibility of the person suffering the harm, as well as the
2 responsibility of all others for causing the harm, shall be
3 compared by the trier of fact. The responsibility of the person
4 suffering the harm shall not bar recovery for the harm sustained
5 where it was not greater than the responsibility of the party
6 against whom recovery is sought. However, any damages allowed
7 shall be diminished in proportion to the amount of
8 responsibility attributable to the person recovering.

9 (b) Allocating damages and responsibility for each party.--
10 The court may, and when requested by any party shall, direct the
11 jury to find separate special verdicts determining the total
12 dollar amount of damages and the percentages of responsibility
13 attributable to each party. The court shall then reduce the
14 amount of such damages in proportion to the amount of
15 responsibility attributable to the person recovering.

16 (c) Proportional liability of multiple defendants.--Where
17 the recovery is allowed against more than one defendant, each
18 defendant shall be liable only for that proportion of the total
19 dollar amount awarded as damages in the ratio of his
20 responsibility to the amount of responsibility attributed to all
21 defendants against whom recovery is allowed.

22 (d) Responsibility defined.--As used in this section
23 "responsibility" means conduct which was a substantial factor in
24 bringing about the harm for which damages are sought.

25 § 8365. Bifurcated jury trial.

26 The jury before whom any product liability action is tried
27 shall ascertain their verdict as to liability. If the verdict is
28 against any defendant, after it is recorded and before the jury
29 is permitted to separate, the court shall proceed to receive
30 such additional evidence not previously received at the trial as

1 may be relevant and admissible on the question of damages and
2 shall permit such argument by counsel and deliver such charge as
3 may be just and proper in the circumstances. The jury shall then
4 retire and consider what damages shall be awarded and render
5 such verdict accordingly against any defendant found liable.

6 Section 3. All acts or parts of acts which are inconsistent
7 with the provision of this act are repealed to the extent of the
8 inconsistency.

9 Section 4. This act shall take effect in 60 days and shall
10 apply to all actions accruing after the effective date of this
11 act.