

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1083

 Session of
1979

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AS RE-REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF REPRESENTATIVES, AS AMENDED, NOVEMBER 28, 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

1 is primarily responsible for manufacturing the final product
2 parted with its possession and control, or sold it, whichever
3 occurred last.

4 (b) Two-year statute of limitation.--Any product liability
5 action accruing during or prior to the twelfth year from the
6 time set forth in subsection (a), shall be brought within two
7 years after the date on which that action accrued. However, this
8 subsection shall be no NOT BE construed to alter any contrary <—
9 provision contained in Title 13 of Pa.C.S. (relating to uniform
10 commercial code).

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

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

23 (1) AN ACTION BASED SOLELY UPON ANY THEORY OR THEORIES <—
24 OF NEGLIGENCE.

25 ~~(1)~~ (2) An action based upon fraudulent <—
26 misrepresentation, fraudulent concealment or fraudulent
27 nondisclosure by the defendant.

28 ~~(2)~~ (3) An action based upon a negotiated contractual <—
29 obligation which provides for a different period of
30 limitation in which the action may be commenced. IF THE <—

1 CONTRACT PROVIDES FOR A SHORTER STATUTE OF REPOSE, THE
2 SHORTER TIME PERIOD SHALL BE PLAINLY DISCLOSED EITHER IN
3 WRITING OR ON THE PRODUCT, PROVIDED NO REDUCTION OR
4 LIMITATION OF THE PERIOD OF LIMITATION STATED IN SUBSECTION
5 (A) SHALL BE APPLICABLE TO CONSUMER GOODS AS DEFINED IN 13
6 PA.C.S. § 9109 (RELATING TO CLASSIFICATION OF GOODS;
7 "CONSUMER GOODS"; "EQUIPMENT"; "FARM PRODUCTS"; "INVENTORY").

8 ~~(3)~~ (4) An action for damages to the person caused by ←
9 the use of or exposure to any product or substance which
10 causes injury of a latent or incremental nature which was not
11 manifested or reasonably detectable prior to the expiration
12 of the period set out in subsection (a).

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

15 CHAPTER 83

16 PARTICULAR RIGHTS AND IMMUNITIES

17 * * *

18 SUBCHAPTER E

19 PRODUCT LIABILITY ACTIONS

20 Sec.

21 8351. Short title of subchapter.

22 8352. Definitions.

23 8353. Strict liability in tort.

24 8354. Permissible theories for product liability actions.

25 8355. Defense for product modification, alteration or
26 deterioration.

27 8356. Defense for product misuse.

28 8357. Liability for product design or formula.

29 8358. Failure to specify, instruct or warn.

30 8359. Government standards.

- 1 8360. State of the art.
- 2 8361. Inadmissibility of evidence of improvements.
- 3 8362. Evidence of collateral benefits.
- 4 8363. Punitive and exemplary damages.
- 5 8364. Comparative responsibility in product liability
- 6 actions.
- 7 8365. Bifurcated jury trial.

8 § 8351. Sort title of subchapter.

9 This subchapter shall be known and may be cited as the
10 "Product Liability Law."

11 § 8352. Definitions.

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

15 "Manufacturer." A seller of a product who manufactures the
16 finished product or any component substance or part thereof. The
17 term includes any seller who:

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

19 (2) creates and furnishes a manufacturer with
20 specifications for manufacturing the product when the
21 specifications are related to the alleged defect;

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

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

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

28 (6) IS THE ACTUAL IMPORTER OF THE PRODUCT, IF THE PARTY
29 INSTITUTING AN ACTION PURSUANT TO THIS ACT IS UNABLE TO
30 OBTAIN VALID IN PERSONAM JURISDICTION OVER A FOREIGN PRODUCT

←

1 MANUFACTURER.

2 A seller not otherwise a manufacturer shall not be deemed to be
3 a manufacturer merely because ~~be~~ HE places or has placed a ←
4 private label on a product, if the seller discloses the identity
5 of the actual manufacturer subsequent to the incident which is
6 the basis of the product liability action and the disclosure is
7 made within ~~60~~ 45 days after ~~suit is filed~~ SERVICE OF PROCESS IS ←
8 MADE ON THE DEFENDANT or after receiving a written request for
9 such disclosure, whichever shall first occur.

10 "Manufactures." Constructs, designs, fabricates, formulates,
11 installs, prepares, or assembles a product.

12 "Person." An individual, corporation, partnership, business
13 trust, unincorporated organization, association, professional
14 association or joint stock company.

15 "Product." Tangible personal property, including fixtures,
16 but not including real property or buildings.

17 "Product liability action" or "action." Any action brought
18 for or on account of personal injury, illness, disease,
19 disability, death or property damage caused by the manufacture,
20 construction, design, formula, installation, preparation,
21 assembly, testing, marketing, packaging, labeling, or sale of
22 any product or the failure to warn or protect against a danger
23 or hazard in the use, misuse or unintended use of any product,
24 or the failure to provide proper instructions for the use of any
25 product, including such an action brought under [the act of
26 April 6, 1953 (P.L.3, No.1), known as the "Uniform Commercial
27 Code."] Title 13 of Pa.C.S. (relating to uniform commercial
28 code).

29 "Seller." Any person, including a wholesaler, distributor or
30 retailer, who is engaged in the business of selling or leasing

1 such products for resale, use or consumption.

2 "User or consumer." A person who uses or consumes a product,
3 including bystanders or other persons who are harmed by a
4 product.

5 § 8353. Strict liability in tort.

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

9 (1) The product was manufactured in a defective
10 condition.

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

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

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

18 (b) Lack of care or contract not necessary.--The rule stated
19 in subsection (a) applies although:

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

22 (2) the user or consumer has not bought the product from
23 or entered into any contractual relation with the
24 manufacturer.

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

29 § 8354. Permissible theories for product liability actions.

30 (a) General rule.--Product liability actions shall be

1 brought only upon the theories of:

2 (1) Negligence.

3 (2) Breach of contract, including breach of warranty,
4 express or implied.

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

7 (4) Misrepresentation, concealment or nondisclosure,
8 whether fraudulent or negligent.

9 (5) In the case of a manufacturer, strict liability in
10 tort as defined in this subchapter, except as set forth in
11 ~~sections 8357 (relating to liability for product design or~~ <—
12 ~~formula) and~~ SECTION 8358 (relating to failure to specify, <—
13 instruct or warn).

14 (b) Action against seller.--No product liability action
15 based on the theory of strict liability in tort shall be
16 commenced or maintained against any seller of a product who is
17 not otherwise a manufacturer. This subsection shall not prevent
18 an action based upon any of the other theories of liability
19 listed in subsection (a) OF THIS SECTION from being brought <—
20 against a seller.

21 § 8355. Defense for product modification, alteration or
22 deterioration.

23 (a) General rule.--A defendant shall not be liable for ~~harm~~ <—
24 ~~that would not have occurred but for the fact that the product~~
25 ~~was altered or modified by a third party unless the plaintiff~~
26 INJURY OR DAMAGE CAUSED BY AN ALTERATION OR MODIFICATION THAT <—
27 WOULD NOT HAVE OCCURRED BUT FOR THE FACT THAT THE PRODUCT WAS
28 ALTERED OR MODIFIED BY A PERSON OTHER THAN THE DEFENDANT UNLESS
29 THE PLAINTIFF proves by a preponderance of the evidence that:

30 (1) the alteration or modification was in accordance

1 with the defendant's instructions or specifications;

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

4 (3) the alteration or modification was the result of
5 conduct that reasonably should have been anticipated by the
6 defendant.

7 (b) Definition.--For purposes of this section, "alteration
8 or modification" includes, but is not limited to, changes in the
9 design, formula, OR function, ~~or use~~ of the product from that ←
10 originally designed, tested or intended by the defendant, or
11 changes in or removal of any safety feature or deterioration
12 arising from unreasonable failure to observe routine care and
13 maintenance.

14 § 8356. Defense for product misuse.

15 ~~(a) General rule. In any product liability action, it shall~~ ←
16 ~~be a defense to the action if the defendant proves by a~~
17 ~~preponderance of the evidence that the injury or damages arose~~
18 ~~from misuse of the product by any person other than the~~
19 ~~defendant.~~

20 (A) PRODUCT MISUSE.--IN ANY PRODUCT LIABILITY ACTION, ←
21 EVIDENCE OF MISUSE OF THE PRODUCT BY PERSONS OTHER THAN THE
22 DEFENDANT SHALL BE ADMISSIBLE.

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

26 (1) Uses contrary to adequate recommendations,
27 specifications, instructions or warnings accompanying the
28 product or otherwise provided by the defendant, unless the
29 defendant knows, or is aware of facts from which a reasonable
30 person would infer, that there exist identifiable hazards

1 associated with a substantial pattern of use contrary to such
2 recommendations, specifications, instructions or warnings,
3 and fails, or has failed, to take reasonable precautions
4 against such hazards.

5 (2) Uses other than those for which persons of ordinary
6 skill and judgment (or in the case of prescription products,
7 practitioners of appropriate medical skill and judgment)
8 would normally and reasonably expect the product to be
9 suitable.

10 § 8357. Liability for product design or formula.

11 ~~(a) Liability limited. In any product liability action~~ ←
12 ~~based upon injury or damage claimed to have resulted from the~~
13 ~~defective design or formula of a product, the manufacturer shall~~
14 ~~not be held liable on the theory of strict liability in tort but~~
15 ~~may be held liable on the theory of negligence, contract,~~
16 ~~express warranty or misrepresentation.~~

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

25 (A) IN ANY PRODUCT LIABILITY ACTION BASED UPON INJURY OR ←
26 DAMAGE ALLEGED TO HAVE RESULTED FROM THE DEFECTIVE DESIGN OR
27 FORMULA OF A PRODUCT, THE MANUFACTURER RESPONSIBLE FOR THE
28 DESIGN OR FORMULA OF A PRODUCT SHALL NOT BE LIABLE UNLESS THE
29 PLAINTIFF PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE
30 UTILIZATION OF AN ALTERNATIVE DESIGN OR FORMULA WAS KNOWN OR

1 SHOULD HAVE BEEN KNOWN AND WAS READILY AVAILABLE TO THE
2 MANUFACTURER AT THE TIME THE PRODUCT WAS MANUFACTURED AND THAT
3 SUCH UTILIZATION WOULD HAVE PREVENTED THE INJURY OR DAMAGE OR
4 RESULTED IN LESS SEVERE INJURY OR DAMAGE.

5 ~~(e)~~ (B) Considerations in determination.--In determining in <—
6 accordance with subsection ~~(b)~~ (A) whether the product was <—
7 defective in design or formula, the trier of fact shall consider
8 whether an alternative design or formula should have been
9 utilized OR THE PRODUCT SHOULD HAVE BEEN WITHHELD FROM THE <—
10 MARKET, in light of the following:

11 (1) the ~~likelihood~~ PROBABILITY at the time of <—
12 ~~manufacturer~~ MANUFACTURE that the product would cause the <—
13 harm suffered by the user or consumer;

14 (2) the seriousness of that harm;

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

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

19 (5) the new or additional ~~hazards~~ OR INCREASED RISK OF <—
20 INJURY OR DAMAGE that may result from such an alternative
21 design or formula.

22 ~~(d)~~ (C) Safety or protective devices.--In any product <—
23 liability action in which a defect in the formulation or design
24 of a product is alleged, the manufacturer shall not be liable
25 for ~~any~~ THAT PORTION of the injury or damage which could have <—
26 been avoided or reduced by attachment to, inclusion in, or use
27 with the product of a safety or protective device or substance,
28 if the defendant proves by a preponderance of the evidence that:

29 (1) the attachment, inclusion, or use of such safety or
30 protective device or substance would have been inappropriate

1 to or incompatible with a function or manner of use to which
2 the product ~~reasonably was suited~~ DESIGN OR FORMULATION WAS ←
3 INTENDED BY THE MANUFACTURER; or

4 (2) such safety or protective device or substance was
5 offered or recommended by the manufacturer for purchase or
6 use by the user or consumer who was injured or damaged, or by
7 such person's employer, and such person or such person's
8 employer did not purchase or use such additional safety or
9 protective device or substance.

10 § 8358. Failure to specify, instruct or warn.

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

16 (b) Considerations in determination.--In determining whether
17 adequate specifications, instructions or warnings were provided,
18 the trier of fact shall consider THE following: ←

19 (1) The ~~likelihood~~ PROBABILITY at the time of ←
20 manufacture or sale that the product would cause the ~~harm~~ ←
21 INJURY OR DAMAGE suffered by the user or consumer. ←

22 (2) The seriousness of that ~~harm~~ INJURY OR DAMAGE. ←

23 (3) The defendant's ability, at the time of manufacture
24 or sale, REASONABLY to anticipate that the expected product ←
25 user or consumer would be aware of the product's risks and
26 the nature of the potential ~~harm~~ INJURY OR DAMAGE. ←

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

29 (c) Burden of proof.--In a product liability action based
30 upon a claimed failure to provide adequate specifications,

1 instructions or warnings, the plaintiff shall be required to
2 prove by a preponderance of the evidence that ~~if adequate~~ <—
3 ~~specifications, warnings or instructions had been provided, the~~
4 ~~user or consumer would not have suffered the harm.~~ THE FAILURE <—
5 TO PROVIDE ADEQUATE SPECIFICATIONS, WARNINGS OR INSTRUCTIONS WAS
6 THE PROXIMATE CAUSE OF THE INJURY OR DAMAGE.

7 § 8359. Government standards.

8 (a) Request for determination as to product.--A defendant
9 may by a motion request the court to determine whether the
10 injury-causing aspect of the product conformed to ~~an~~ A MANDATORY <—
11 administrative or ~~legislative~~ STATUTORY standard in ~~existence~~ <—
12 EFFECT at the time the defendant parted with possession and <—
13 control of the product, or sold it, whichever occurred last.

14 (b) Affirmative determination.--If the court makes the
15 determination referred to in subsection (a) in the affirmative,
16 it shall instruct the trier of fact to presume that the product
17 was not defective and that the defendant was not negligent. This
18 presumption may be rebutted by a preponderance of evidence
19 showing that:

20 (1) the standard was not developed as a result of AN <—
21 INDEPENDENT AND careful, thorough product testing and a
22 formal product safety evaluation BY THE GOVERNMENTAL AGENCY <—
23 RESPONSIBLE FOR PROMULGATING SUCH STANDARDS;

24 (2) consumer SAFETY interests were not considered in <—
25 formulating the standard; or

26 (3) the standard was not up to date in light of the
27 ~~technological and scientific~~ STATE OF THE ART knowledge <—
28 reasonably available TO THE DEFENDANT at the time of <—
29 promulgation thereof.

30 ~~(c) Request for determination as to defendant. A defendant <—~~

~~1 may by motion request the court to determine whether the injury
2 causing aspect of the product conformed to an administrative or
3 legislative standard with which the defendant was obligated to
4 comply at the time the defendant parted with possession and
5 control of the product, or sold it, whichever occurred last. If
6 the court makes such determination in the affirmative, it shall
7 be conclusively presumed that the product was not defective nor
8 the defendant negligent.~~

9 § 8360. State of the art.

10 In any product liability action, it shall be a rebuttable
11 presumption that the product was not defective nor the defendant
12 negligent if the defendant proves by a preponderance of the
13 evidence that the product conformed with generally recognized
14 and prevailing standards, designs or methods of testing or
15 manufacturing of the state of the art. For the purposes of this
16 section "state of the art" means the safety, technical,
17 mechanical and scientific knowledge in existence and reasonably
18 AVAILABLE AND feasible for use at the time of the manufacture of <—
19 the product.

20 § 8361. Inadmissibility of evidence of improvements.

21 In any product liability action, evidence of advancements or
22 changes in technical knowledge or techniques, in design, theory
23 or philosophy, or in manufacturing or testing techniques or of
24 any alteration, modification, improvement or change in or
25 discontinuance of the manufacture, construction, design,
26 formula, installation, preparation, assembly, testing,
27 marketing, packaging, labeling or sale of a product, whether
28 made by the defendant or any other party, which have been made,
29 learned or placed into common use subsequent to the time of the <—
30 design, testing and manufacturing of the product allegedly

1 ~~causing such injury, death or damage, shall not be admissible~~
2 ~~for any purpose.~~ THE PERSON WHO IS PRIMARILY RESPONSIBLE FOR <—
3 MANUFACTURING THE FINAL PRODUCT ALLEGEDLY CAUSING INJURY, DEATH
4 OR DAMAGE PARTED WITH ITS POSSESSION AND CONTROL, OR SOLD IT,
5 WHICHEVER OCCURRED LAST, SHALL NOT BE ADMISSIBLE FOR ANY PURPOSE
6 PROVIDED, HOWEVER, THAT THIS SECTION DOES NOT REQUIRE THE
7 EXCLUSION OF EVIDENCE OF SUBSEQUENT ADVANCEMENTS, ALTERATIONS,
8 MODIFICATIONS, IMPROVEMENTS OR CHANGES WHEN OFFERED FOR THE
9 PURPOSE OF CONTRADICTING A WITNESS OR OF IMPEACHING RELEVANT
10 TESTIMONY.

11 § 8362. Evidence of collateral benefits.

12 (a) General rule.--In any product liability action in which
13 compensatory damages are sought, the defendant shall be entitled
14 to the admission of evidence as to the nature and extent of any
15 public collateral benefits or services received or to be
16 received by the plaintiff. It shall be admissible for the
17 plaintiff to show that such collateral benefits or services
18 received or to be received are subrogatable. ~~Likewise, in any~~ <—
19 ~~product liability action resulting from a death, evidence as to~~
20 ~~the remarriage of a surviving spouse shall be admissible.~~

21 (b) Definition.--As used in this section "public collateral
22 benefits or services" mean those benefits or services that an
23 individual receives or is entitled to receive from social
24 security (except those benefits provided under Title XIX of the
25 Federal Social Security Act and except those medicare benefits
26 to which a person's entitlement depends upon use of his so-
27 called "lifetime reserve" of benefit days), workmen's
28 compensation, any State required temporary nonoccupational
29 disability and all other benefits (except the proceeds of life
30 insurance and except benefit programs not legislatively <—

1 STATUTORILY mandated) received by or ~~available to~~ RECOVERABLE BY <—
2 an individual from any government because of the injury.

3 § 8363. Punitive and exemplary damages.

4 ~~(a) General rule. In any product liability action no <—~~
5 ~~punitive or exemplary damages shall be awarded except upon a~~
6 ~~finding by the trier of fact that the defendant personally acted~~
7 ~~out of hatred or spite directed toward the plaintiff or~~
8 ~~knowingly acted in flagrant and gross disregard of public health~~
9 ~~and safety. Proof of gross negligence shall not create a~~
10 ~~presumption either rebuttable or conclusive that punitive or~~
11 ~~exemplary damages are awardable.~~

12 (A) GENERAL RULE.--IN ANY PRODUCT LIABILITY ACTION, NO <—
13 PUNITIVE OR EXEMPLARY DAMAGES SHALL BE AWARDED EXCEPT UPON A
14 FINDING BY THE TRIER OF FACT THAT THE DEFENDANT ACTED WITH A BAD
15 MOTIVE OR WITH RECKLESS INDIFFERENCE TO THE HEALTH AND SAFETY OF
16 THE USERS OR CONSUMERS. PROOF OF GROSS NEGLIGENCE SHALL NOT
17 CREATE A PRESUMPTION EITHER REBUTTABLE OR CONCLUSIVE THAT
18 PUNITIVE OR EXEMPLARY DAMAGES ARE AWARDABLE.

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

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

26 § 8364. Comparative responsibility in product liability
27 actions.

28 (a) General rule.--In any product liability action the
29 responsibility of the person suffering the ~~harm~~ INJURY OR <—
30 DAMAGE, as well as the responsibility of all others for causing

1 the ~~harm~~ INJURY OR DAMAGE, shall be compared by the trier of <—
2 fact. The responsibility of the person suffering the harm shall
3 not bar recovery for the ~~harm~~ INJURY OR DAMAGE sustained where <—
4 it was not greater than the TOTAL responsibility of ~~the party~~ <—
5 ALL PARTIES against whom recovery is sought. However, any <—
6 damages allowed shall be diminished in proportion to the amount
7 of responsibility attributable to the person recovering.

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

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

21 THE PLAINTIFF MAY RECOVER THE FULL AMOUNT OF THE ALLOWED <—
22 RECOVERY FROM ANY DEFENDANT AGAINST WHOM SUCH PLAINTIFF IS NOT
23 BARRED FROM RECOVERY. ANY DEFENDANT WHO IS SO COMPELLED TO PAY
24 MORE THAN HIS PERCENTAGE SHARE MAY SEEK CONTRIBUTION.

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

28 ~~§ 8365. Bifurcated jury trial.~~ <—

29 ~~The jury before whom any product liability action is tried~~
30 ~~shall ascertain their verdict as to liability. If the verdict is~~

~~1 against any defendant, after it is recorded and before the jury
2 is permitted to separate, the court shall proceed to receive
3 such additional evidence not previously received at the trial as
4 may be relevant and admissible on the question of damages and
5 shall permit such argument by counsel and deliver such charge as
6 may be just and proper in the circumstances. The jury shall then
7 retire and consider what damages shall be awarded and render
8 such verdict accordingly against any defendant found liable.~~

9 Section 3. All acts or parts of acts which are inconsistent
10 with the provision of this act are repealed to the extent of the
11 inconsistency.

12 SECTION 4. (A) THE INSURANCE COMMISSIONER, BY THE AUTHORITY ←
13 VESTED IN HIM BY LAW PURSUANT TO THE ACT OF JUNE 11, 1947
14 (P.L.538, NO.246), KNOWN AS "THE CASUALTY AND SURETY RATE
15 REGULATORY ACT," SECTIONS 213, 214 AND 216, ACT OF MAY 17, 1921
16 (P.L.789, NO.285), KNOWN AS "THE INSURANCE DEPARTMENT ACT OF ONE
17 THOUSAND NINE HUNDRED AND TWENTY-ONE," SHALL REQUIRE EVERY
18 INSURER TRANSACTING THE BUSINESS OF INSURANCE IN THIS
19 COMMONWEALTH TO REPORT ANY AND ALL INFORMATION THE COMMISSIONER
20 MAY DEEM RELEVANT TO THE FAITHFUL PERFORMANCE OF HIS DUTIES IN
21 DETERMINING THAT RATES FOR PRODUCT LIABILITY INSURANCE ARE
22 NEITHER EXCESSIVE, INADEQUATE NOR UNFAIRLY DISCRIMINATORY.

23 (B) THE COMMISSIONER SHALL FROM TIME TO TIME REVIEW ALL
24 PRODUCT LIABILITY RATE FILINGS TO DETERMINE THEIR COMPLIANCE
25 WITH THE PURPOSE OF THE ACT OF JUNE 11, 1947 (P.L.538, NO.246),
26 KNOWN AS "THE CASUALTY AND SURETY RATE REGULATORY ACT," AND
27 SHALL WITHIN ONE YEAR FOLLOWING THE EFFECTIVE DATE OF THIS ACT,
28 AND ANNUALLY THEREAFTER, REPORT HIS FINDINGS TO THE GENERAL
29 ASSEMBLY AND SHALL TAKE SUCH STEPS AS MAY BE APPROPRIATE TO
30 BRING ALL RATE FILINGS IN CONFORMITY WITH THE REQUIREMENTS OF

1 "THE CASUALTY AND SURETY RATE REGULATORY ACT."

2 (C) REPORTING REQUIREMENTS.

3 (1) EVERY INSURER AUTHORIZED TO TRANSACT BUSINESS IN THE
4 COMMONWEALTH AND PROVIDING PRODUCT LIABILITY INSURANCE SHALL
5 ON OR BEFORE MARCH 1 OF EACH YEAR FILE WITH THE INSURANCE
6 COMMISSIONER A REPORT UPON FORMS APPROVED BY THE COMMISSIONER
7 THE FOLLOWING INFORMATION PERTAINING TO PRODUCTS LIABILITY
8 EARNED PREMIUM EXPERIENCE FOR:

9 (I) BASIC LIMITS LIABILITY (25,000/50,000); BODILY
10 INJURY (5,000/25,000); PROPERTY DAMAGE PER OCCURRENCE/PER
11 ANNUAL AGGREGATE.

12 (II) EXCESS LIMITS.

13 (III) BODILY INJURY LIABILITY.

14 (IV) PROPERTY DAMAGE LIABILITY.

15 (V) PENNSYLVANIA.

16 (VI) COUNTRYWIDE.

17 (VII) BY CLASSIFICATION.

18 (VIII) EXPOSURE BASE PRIMARILY UNITS OF SALES,
19 RECEIPTS OR PAYROLL FOR EACH CLASSIFICATION.

20 (2) EVERY INSURER AUTHORIZED TO TRANSACT BUSINESS IN THE
21 COMMONWEALTH AND PROVIDING PRODUCT LIABILITY INSURANCE SHALL
22 ON OR BEFORE MARCH 1 OF EACH YEAR FILE WITH THE INSURANCE
23 COMMISSIONER A REPORT UPON FORMS APPROVED BY THE COMMISSIONER
24 THE FOLLOWING INFORMATION PERTAINING TO CLAIMS EXPERIENCE
25 FOR:

26 (I) BASIC LIMITS INCURRED CLAIMS.

27 (II) EXCESS LIMITS INCURRED CLAIMS BY LAYER.

28 (III) THE NUMBER OF PAID CLAIMS.

29 (IV) THE AMOUNT OF PAID CLAIMS.

30 (V) THE NUMBER OF OUTSTANDING CLAIMS.

- 1 (VI) THE DOLLAR AMOUNT OF OUTSTANDING CLAIMS.
- 2 (VII) THE DOLLARS OF INCURRED LOSSES EVALUATED AS OF
3 27, 39, 51, 63 AND 75 MONTHS.
- 4 (VIII) THE NUMBER OF INCURRED CLAIMS AS OF THE SAME
5 EVALUATION DATE AS OF CLAUSE (VII).
- 6 (IX) NUMBER BY SIZE OF INCURRED CLAIMS.
- 7 (X) NUMBER BY CLASSIFICATION.
- 8 (XI) NUMBER FOR PENNSYLVANIA.
- 9 (XII) NUMBER COUNTRYWIDE.
- 10 (XIII) PAID ALLOCATED LOSS ADJUSTMENT EXPENSES.
- 11 (XIV) OUTSTANDING ALLOCATED LOSS ADJUSTMENT

12 EXPENSES.

13 (3) THE COMMISSIONER SHALL MAKE REPORTS REQUIRED BY THIS
14 SECTION AVAILABLE TO THE PUBLIC.

15 (4) THERE SHALL BE NO LIABILITY ON THE PART OF AND NO
16 CAUSE OF ACTION OF ANY NATURE SHALL ARISE AGAINST ANY INSURER
17 REPORTING UNDER THIS SECTION OR ITS AGENTS OR EMPLOYEES, OR
18 THE COMMISSIONER OR THE EMPLOYEES OF THE INSURANCE
19 DEPARTMENT, FOR ANY ACTION TAKEN BY THEM PURSUANT TO THIS
20 SECTION.

21 (5) THE COMMISSIONER SHALL SUBMIT TO THE GOVERNOR AND
22 THE CHAIRMEN OF THE HOUSE AND SENATE INSURANCE COMMITTEES NO
23 LATER THAN 36 MONTHS FROM THE EFFECTIVE DATE OF THIS SECTION
24 A REPORT. THE REPORT SHALL EVALUATE THE INFORMATION REPORTED
25 BY INSURERS AS REQUIRED UNDER THE PROVISIONS OF PARAGRAPHS
26 (1) AND (2) AND SUCH RELEVANT DATA AS MAY BE NECESSARY TO
27 EVALUATE THE OPERATIONS OF THIS SECTION. THE REPORT MAY
28 INCLUDE RECOMMENDATIONS AT THE DISCRETION OF THE
29 COMMISSIONER.

30 Section 4- 5. This act shall take effect in 60 days and

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1 shall apply to all actions accruing after the effective date of
2 this act.