

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2843 Session of
1986

INTRODUCED BY DeVERTER, GODSHALL, VROON, FLICK, BOWSER, JOHNSON,
FARGO, MERRY AND BLACK, OCTOBER 6, 1986

REFERRED TO COMMITTEE ON JUDICIARY, OCTOBER 6, 1986

AN ACT

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

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

6 Section 1. Chapter 83 of Title 42 of the Pennsylvania
7 Consolidated Statutes is amended by adding a subchapter to read:

8 CHAPTER 83

9 PARTICULAR RIGHTS AND IMMUNITIES

10 * * *

11 SUBCHAPTER F

12 NEGLIGENCE AND PRODUCT LIABILITY ACTIONS

13 Sec.

14 8361. Definitions.

15 8362. Negligence and product liability actions.

16 8363. Permissible theories for product liability actions.

17 8364. Strict liability in tort.

18 8365. Defense for product modification, alteration

1 or deterioration.

2 8366. Unknown hazard defense.

3 8367. Defense of adequate warning.

4 8368. State of the art.

5 8369. Evidence regarding proximate cause.

6 8370. Separate actions required.

7 8371. Certain theories prohibited.

8 8372. Verdict or judgment reduced by net collateral source
9 payments.

10 § 8361. Definitions.

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

14 "Net collateral source payments." Monetary benefits that an
15 individual receives or is entitled to receive from Social
16 Security (except those benefits provided under Title XIX of the
17 Social Security Act (Public Law 74-271, 42 U.S.C. Ch. 7, Subch.
18 XIX) and except those Medicare benefits to which a person's
19 entitlement depends upon the use of his so-called "lifetime
20 reserve" of benefit days), workers' compensation, any State-
21 required temporary nonoccupational disability and all benefits
22 (except the proceeds of life insurance and except benefit
23 programs, the premium for which has been paid for by the
24 individual) received by or recoverable by an individual from any
25 source because of injury or death, less the costs incurred by
26 the individual or the individual's employer in obtaining the
27 benefits.

28 "Person." An individual, corporation, partnership, business
29 trust, unincorporated organization, association, professional
30 association or joint-stock company.

1 "Product." Tangible personal property, including fixtures,
2 but not including real property or buildings.

3 "Product liability action" or "action." An action brought by
4 a user or consumer for or on account of personal injury,
5 illness, disease, disability, death or property damage caused by
6 the manufacture, construction, design, formula, installation,
7 preparation, assembly, testing, marketing, packaging, labeling
8 or sale of any produce or the failure to warn or protect against
9 a danger or hazard in the use, misuse or unintended use of any
10 product, or the failure to provide proper instructions for the
11 use of any product, including such an action brought under Title
12 13 (relating to commercial code).

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

16 § 8362. Negligence and product liability actions.

17 (a) General rule.--A party in a tort action in order to be
18 entitled to recover damages must establish negligence on the
19 part of the defendant.

20 (b) Exception.--A plaintiff in a products liability action
21 may in addition to a negligence theory proceed on the theory of
22 strict liability in tort and shall be entitled to recover
23 damages if strict liability is established in accordance with
24 the provisions of this subchapter.

25 (c) Abolition of doctrine of strict liability.--Except as
26 provided in subsection (b), the doctrine or theory of strict
27 liability in tort in this Commonwealth is abolished.

28 § 8363. Permissible theories for product liability actions.

29 Product liability actions shall be brought only upon the
30 theories of:

- 1 (1) Negligence.
- 2 (2) Breach of contract, including breach of warranty,
- 3 express or implied.
- 4 (3) Breach of, or failure to discharge, a duty to warn
- 5 or instruct, whether deliberate or negligent.
- 6 (4) Fraudulent misrepresentation, concealment or
- 7 nondisclosure.
- 8 (5) Strict liability in tort as set forth in this
- 9 subchapter.

10 § 8364. Strict liability in tort.

11 (a) General rule.--A defendant is subject to liability for

12 physical harm caused to the person or property of the user or

13 consumer only if all of the following conditions are met:

- 14 (1) The product was manufactured in a defective
- 15 condition.
- 16 (2) The product was expected to and did reach the user
- 17 or consumer without substantial change in the condition in
- 18 which it was manufactured.

19 (3) The defective condition was unreasonably dangerous

20 to the person or property of the user or consumer.

21 (4) The defective condition caused the harm sustained by

22 the person or property of the user or consumer.

23 (5) The manner in which the user or consumer used the

24 product was both reasonable and foreseeable.

25 (b) Defendant not guarantor.--In any action brought on the

26 theory of strict liability as set forth in subsection (a), the

27 trier of fact shall not be instructed that the defendant is the

28 guarantor of the safety of a particular product.

29 § 8365. Defense for product modification, alteration or

30 deterioration.

1 (a) General rule.--A defendant shall not be liable for that
2 portion of injury or damage which the defendant proves by a
3 preponderance of the evidence would not have occurred but for
4 the fact that the product was altered or modified by a person or
5 persons other than the defendant, unless the plaintiff then
6 proves by a preponderance of the evidence that:

7 (1) The alteration or modification was in accordance
8 with the defendant's instructions or specifications.

9 (2) The alteration or modification was made with the
10 express consent of the defendant.

11 (3) The alteration or modification should have
12 reasonably been anticipated by the defendant at the time the
13 produce was in his control.

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

21 § 8366. Unknown hazard defense.

22 A defendant shall not be liable for injury or damage caused
23 by a defective condition that existed at the time the product
24 was manufactured if:

25 (1) the defendant was unaware of the existence of the
26 defective condition; and

27 (2) the defendant through the use of reasonable
28 diligence could not have discovered the defect.

29 § 8367. Defense of adequate warning.

30 (a) General rule.--A defendant shall not be liable for

1 injury or damage caused by a condition if the existence and
2 nature of the condition were the subject of an adequate warning
3 that was readily apparent to a reasonable person.

4 (b) Duty to warn.--No duty to warn shall exist regarding
5 uses of a product that are both unreasonable and unforeseeable.
6 § 8368. State of the art.

7 (a) General rule.--In a product liability action, a
8 presumption shall be created that the product was not defective
9 nor the defendant negligent if the defendant proves by a
10 preponderance of the evidence that the product conformed with
11 the state of the art for the designs or methods of testing or
12 manufacturing of the product.

13 (b) Definition.--As used in this section the term "state of
14 the art" means the safety, technical, mechanical and scientific
15 knowledge in existence and reasonably feasible for use at the
16 time of the manufacture of the product.

17 § 8369. Evidence regarding proximate cause.

18 (a) Basis of testimony.--All expert testimony in product
19 liability actions presented on the issue of proximate cause
20 shall be based upon widely accepted, credible medical or
21 scientific facts and theories.

22 (b) Qualifications of expert.--Neither party may offer
23 expert testimony except through a witness whose expertise in
24 medicine or science is clearly established thorough testimony
25 showing that the witness by virtue of education and experience
26 is unquestionably an expert in a particular field.

27 § 8370. Separate actions required.

28 (a) General rule.--A plaintiff who commences a product
29 liability action may name only one defendant in his action. If a
30 plaintiff believes that more than one person is responsible for

1 the injury or damage, he shall commence a separate action
2 against each person or entity.

3 (b) Exception.--Subsection (a) does not apply where the
4 plaintiff alleges that multiple defendants acted in concert to
5 bring about the injury or damage.

6 § 8371. Certain theories prohibited.

7 Neither the concept of industry-wide liability nor the theory
8 of enterprise liability shall be used by the plaintiff in a
9 product liability action.

10 § 8372. Verdict or judgment reduced by net collateral source
11 payments.

12 (a) General rule.--In any products liability action where
13 the plaintiff obtains a verdict or judgment against the
14 defendant, the court shall reduce the verdict or judgment by the
15 amount of net collateral source payments received by the
16 plaintiff.

17 (b) Limitation.--The court shall not, regardless of the
18 amount of the collateral source payments, reduce a verdict or
19 judgment by more than 50%.

20 Section 2. All acts and parts of acts are repealed insofar
21 as they are inconsistent with this act.

22 Section 3. This act shall apply to cases where the cause of
23 action accrues on and after the effective date of this act.

24 Section 4. This act shall take effect in 60 days.