

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 308 Session of
2007

INTRODUCED BY BOYD, CREIGHTON, GRELL, WATSON, FAIRCHILD,
REICHLEY, REED, GINGRICH, HICKERNELL, KAUFFMAN, TRUE,
HERSHEY, STERN, CLYMER, KILLION, R. MILLER, PICKETT, COX,
SAYLOR, EVERETT AND SCHRODER, FEBRUARY 7, 2007

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 7, 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 for actions against
4 health care providers.

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

7 Section 1. Title 42 of the Pennsylvania Consolidated
8 Statutes is amended by adding sections to read:

9 § 7104. Liability rules applicable to product sellers.

10 (a) General rule.--In a product liability action, a product
11 seller other than a manufacturer shall not be liable for damages
12 resulting in death, injury to person or property or economic
13 loss unless the plaintiff establishes at least one of the
14 following:

15 (1) The product which allegedly caused the harm
16 complained of by the plaintiff was sold by the product
17 seller, the product seller failed to exercise reasonable care
18 with respect to the product before placing the product in the

1 stream of commerce and the failure to exercise reasonable
2 care was a proximate cause of the harm complained of by the
3 plaintiff. For purposes of this paragraph, a product seller
4 shall not be considered to have failed to exercise reasonable
5 care with respect to the product based upon an alleged
6 failure to inspect a product where there was no reasonable
7 opportunity to inspect the product in a manner which, in the
8 exercise of reasonable care, would have revealed the aspect
9 of the product which allegedly caused the harm complained of
10 by the plaintiff.

11 (2) The product seller made an express warranty
12 applicable to the product which allegedly caused the harm
13 complained of by the plaintiff independent of an express
14 warranty made by a manufacturer as to the same product, the
15 product failed to conform to the seller's express warranty
16 and the failure of the product to conform to the seller's
17 express warranty caused the harm complained of by the
18 plaintiff.

19 (3) The product seller, before placing the product in
20 the stream of commerce, exercised significant control over
21 the design, manufacture, packaging or labeling of the product
22 related to the alleged defect in the product which caused the
23 harm complained of by the plaintiff.

24 (4) The product seller, before placing the product in
25 the stream of commerce, knew or reasonably should have known
26 of the defect in the product which caused the harm complained
27 of by the plaintiff or the product seller was in possession
28 of facts from which a reasonable person would conclude that
29 the product seller had or should have had knowledge of the
30 alleged defect in the product which caused the harm

1 complained of by the plaintiff.

2 (5) The product seller engaged in intentional wrongdoing
3 which was a proximate cause of the harm complained of by the
4 plaintiff.

5 (6) The product seller, before placing the product in
6 the stream of commerce, held itself out as the manufacturer
7 to the user of the product, in which case the product seller
8 shall be liable as though the product seller were the
9 manufacturer of the product.

10 (b) Rental and leases.--Notwithstanding any other provision
11 of law, a product seller who is engaged in the business of
12 renting or leasing a product shall be subject to liability
13 pursuant to subsection (a), but shall not be liable to a
14 plaintiff for the tortious act of another solely by reason of
15 ownership of the product.

16 (c) Certification of manufacturer identity.--

17 (1) In a product liability action against a product
18 seller, the product seller may file an affidavit certifying
19 the correct identity of the manufacturer of the product which
20 allegedly caused the injury, death or damage.

21 (2) The product seller shall exercise due diligence in
22 providing the plaintiff with the correct identity of the
23 manufacturer.

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

27 "Manufacturer." A person who:

28 (1) Produced, created, made or constructed the product
29 or component part of the product.

30 (2) Designed or formulated the product or component part

1 of the product or engaged another person to design or
2 formulate the product or component part of the product.

3 "Product seller." A person who, in the course of a business
4 conducted for that purpose, sells, distributes, rents, leases,
5 prepares, packages, labels or otherwise is involved in placing a
6 product in the stream of commerce.

7 § 7105. Actions against health care providers.

8 An action in law, either based in strict liability or
9 negligence, cannot be maintained against a health care provider
10 for claims arising out of the use or misuse of a defective
11 product, including, but not limited to, a medical device, unless
12 the plaintiff can prove that the health care provider possessed
13 knowledge or contributed to the defect. This prohibition extends
14 to all causes of action for medical malpractice, including, but
15 not limited to, direct negligence, informed consent, corporate
16 negligence or vicarious liability of a health care provider and
17 shall serve as a complete defense.

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

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