

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 388 Session of 2011

INTRODUCED BY BOYD, BOBACK, CALTAGIRONE, CLYMER, EVERETT, FLECK, GEIST, GINGRICH, GRELL, HENNESSEY, HESS, KAUFFMAN, KILLION, MICOZZIE, MILLER, MUSTIO, PICKETT, PYLE, SCHRODER, SONNEY, VULAKOVICH, WATSON AND YOUNGBLOOD, FEBRUARY 1, 2011

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 1, 2011

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.

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 § 8320.1. Liability rules applicable to product sellers.

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

14 (1) The product that allegedly caused the harm
 15 complained of by the plaintiff was sold by the product
 16 seller, the product seller failed to exercise reasonable care
 17 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 that allegedly caused the harm complained of
10 by the plaintiff.

11 (2) The product seller made an express warranty
12 applicable to the product that 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 that 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 that 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 that caused the harm complained

1 of by the plaintiff.

2 (5) The product seller engaged in intentional wrongdoing
3 that 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 under
13 subsection (a) but shall not be liable to a plaintiff for the
14 tortious act of another solely by reason of ownership of the
15 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 that
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 Section 2. This act shall apply to all actions instituted on
8 or after the effective date of this act.

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