

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 803 Session of 2011

INTRODUCED BY REED, AUMENT, BOBACK, BOYD, CLYMER, CUTLER, DENLINGER, EVERETT, FLECK, GEIST, GINGRICH, GRELL, HARHART, HARRIS, HORNAMAN, HUTCHINSON, M.K. KELLER, KILLION, KNOWLES, KORTZ, MARSHALL, MILLER, MILNE, MOUL, O'NEILL, PICKETT, PYLE, REICHLEY, SCAVELLO, SCHRODER, STERN AND TALLMAN, FEBRUARY 23, 2011

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 23, 2011

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in particular rights and
3 immunities, providing for liability rules applicable to
4 product sellers and manufacturers.

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 a section to read:

9 § 8340.2. Liability rules applicable to product sellers and
10 manufacturers.

11 (a) Innocent seller.--No product liability action based on
12 the doctrine of strict liability in tort shall be commenced or
13 maintained against any seller of a product which is alleged to
14 contain or possess a defective condition unreasonably dangerous
15 to the buyer, user or consumer unless the seller is also the
16 manufacturer of the product or the manufacturer of the part
17 thereof claimed to be defective giving rise to the product

1 liability action. Nothing under this subsection shall be
2 construed to limit any other action from being brought against
3 any seller of a product.

4 (b) Product misuse.--A product liability action may not be
5 commenced or maintained against a manufacturer or seller of a
6 product that caused injury, death or property damage if any of
7 the following apply:

8 (1) At the time the injury, death or property damage
9 occurred, the product was used in a manner or for a purpose
10 other than that which was intended and which could not
11 reasonably have been expected and the misuse of the product
12 was a cause of the injury, death or property damage.

13 (2) The manufacturer or seller of the product provided
14 warning or instruction that, if heeded, would have prevented
15 the injury, death or property damage.

16 (c) Presumptions.--The following presumptions shall apply to
17 product liability actions:

18 (1) In any product liability action, it shall be
19 rebuttably presumed that the product which caused the injury,
20 death or property damage was not defective and that the
21 manufacturer or seller of the product was not negligent if
22 any of the following applies:

23 (i) The product, prior to sale by the manufacturer,
24 conformed to the state of the art, as distinguished from
25 industry standards, applicable to the product in
26 existence at the time of sale.

27 (ii) The product complied with, at the time of sale
28 by the manufacturer, any applicable code, standard or
29 regulation adopted or promulgated by the United States or
30 the Commonwealth.

1 (2) Noncompliance with a government code, standard or
2 regulation existing and in effect at the time of sale of the
3 product by the manufacturer which contributed to the claim or
4 injury shall create a rebuttable presumption that the product
5 was defective or negligently manufactured.

6 (3) Ten years after a product is first sold for use or
7 consumption, it shall be rebuttably presumed that the product
8 was not defective and that the manufacturer or seller of the
9 product was not negligent and that all warnings and
10 instructions were proper and adequate.

11 (4) In a product liability action in which the court
12 determines by a preponderance of the evidence that the
13 necessary facts giving rise to a presumption have been
14 established, the court shall instruct the jury concerning the
15 presumption.

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

19 "Manufacturer." A person or entity who designs, assembles,
20 fabricates, produces, constructs or otherwise prepares a product
21 or a component part of a product prior to the sale of the
22 product to a user or consumer. The term includes any of the
23 following:

24 (1) A seller of a product who has actual knowledge of a
25 defect in the product.

26 (2) A seller of a product who creates and furnishes a
27 manufacturer with specifications relevant to the alleged
28 defect for producing the product.

29 (3) A seller of a product who otherwise exercises some
30 significant control over all or a portion of the

1 manufacturing process.

2 (4) A seller of a product who alters or modifies a
3 product in any significant manner after the product comes
4 into his possession and before it is sold to the ultimate
5 user or consumer.

6 (5) A seller of a product who is owned in whole or
7 significant part by the manufacturer or who owns, in whole or
8 significant part, the manufacturer. A seller not otherwise a
9 manufacturer shall not be deemed to be a manufacturer merely
10 because he places or has placed a private label on a product
11 if:

12 (i) He did not:

13 (A) otherwise specify how the product shall be
14 produced; or

15 (B) control, in some significant manner, the
16 manufacturing process of the product.

17 (ii) The seller discloses who the actual
18 manufacturer is.

19 "Product liability action." Any action brought against a
20 manufacturer or seller of a product, regardless of the
21 substantive legal theory or theories upon which the action is
22 brought, for or on account of personal injury, death or property
23 damage caused by or resulting from any of the following:

24 (1) The manufacture, construction, design, formula,
25 installation, preparation, assembly, testing, packaging,
26 labeling or sale of any product.

27 (2) The failure to warn or protect against a danger or
28 hazard in the use, misuse or unintended use of any product.

29 (3) The failure to provide proper instructions for the
30 use of any product.

1 "Seller." An individual or entity, including a manufacturer,
2 wholesaler, distributor or retailer, who is engaged in the
3 business of selling or leasing any product for resale, use or
4 consumption.

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

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