
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2661 Session of
2020

INTRODUCED BY PUSKARIC, JULY 8, 2020

REFERRED TO COMMITTEE ON JUDICIARY, JULY 8, 2020

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in particular rights and
3 immunities, providing for immunity for regulatory compliance.

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 § 8340.4. Immunity for regulatory compliance.

9 (a) Purpose.--The purpose of this section is to assure that
10 the Commonwealth's civil justice system is congruent with
11 applicable regulatory systems and that these two principal areas
12 of law do not work at cross purposes.

13 (b) Conditions for immunity.--A manufacturer or seller of a
14 product is not subject to liability as a matter of law for the
15 product if:

16 (1) Either of the following is satisfied:

17 (i) the product alleged to have caused the harm was
18 designed, manufactured, packaged, labeled, sold or
19 represented in relevant and material respects in

1 accordance with the terms of an approval, license or
2 similar determination of a government agency; or

3 (ii) the product was in compliance with a statute of
4 this Commonwealth or the United States, or a standard,
5 rule, regulation, order or other action of a government
6 agency pursuant to statutory authority, where the statute
7 or standard, rule, regulation, order or other action is
8 relevant to the event or risk allegedly causing the harm
9 and the product was in compliance at the time the product
10 left the control of the manufacturer or seller.

11 (2) (i) The act or transaction forming the basis of the
12 claim involves terms of service, contract provisions,
13 representations or other practices authorized by, or in
14 compliance with, the rules, regulations, standards or
15 orders of, or a statute administered by, a government
16 agency.

17 (ii) This paragraph shall not apply to a product
18 that departs from its intended design due to a flaw
19 created during the manufacturing process, even though the
20 product manufacturer or seller has complied with all
21 applicable Federal and State standards or regulations.

22 (c) Nonapplicability.--This section does not apply if the
23 claimant establishes that the manufacturer or seller at any time
24 before the event that allegedly caused the harm:

25 (1) sold the product or service after the effective date
26 of an order of a government agency to remove the product or
27 service from the market to withdraw its approval or to
28 substantially alter its terms of approval in a manner that
29 would have avoided the claimant's alleged injury;

30 (2) intentionally and in violation of applicable

1 regulations withheld from or misrepresented to the government
2 agency information material to the approval or maintaining of
3 approval of the product or service and the information is
4 relevant to the harm which the claimant allegedly suffered;
5 or

6 (3) made an illegal payment to an official or employee
7 of a government agency for the purpose of securing or
8 maintaining approval of the product or service.

9 (d) Construction.--Nothing in this section shall be
10 construed to:

11 (1) expand the authority of a State agency or agent of a
12 State agency to adopt or promulgate standards or regulations
13 where no such authority previously existed;

14 (2) reduce the scope of a limitation on liability based
15 on compliance with the rules or regulations of a government
16 agency applicable to a specific act, transaction, person or
17 industry; or

18 (3) affect the liability of a service provider based on
19 rates filed with and reviewed or approved by a government
20 agency.

21 (e) Definitions.--As used in this section, the following
22 words and phrases shall have the meanings given to them in this
23 subsection unless the context clearly indicates otherwise:

24 "Clear and convincing evidence." A measure or degree of
25 proof that will produce in the mind of the trier of fact a firm
26 belief or conviction as to the allegations sought to be
27 established and which level of proof is greater than a mere
28 preponderance of the evidence, but less than proof beyond a
29 reasonable doubt.

30 "Government agency." The Commonwealth or the United States,

1 or an agency of either of them, or an entity vested with the
2 authority of the Commonwealth or the United States to issue
3 rules, regulations, orders or standards concerning the design,
4 manufacture, packaging, labeling or advertising of a product or
5 provision of a service.

6 "Manufacturer." A person that:

7 (1) Is engaged in a business to produce, create, make or
8 construct a product or component part of a product.

9 (2) Either:

10 (i) designs, manufactures or formulates the product
11 or component part of the product; or

12 (ii) has engaged another person to design,
13 manufacture or formulate the product or component part of
14 the product.

15 "Product." An object that:

16 (1) Possesses intrinsic value, capable of delivery
17 either as an assembled whole or as a component part or parts.

18 (2) Is produced for introduction into trade or commerce.

19 "Seller." A person that in the course of a business
20 conducted for that purpose:

21 (1) sells, distributes, rents, leases, prepares, blends,
22 packages, labels or otherwise is involved in placing a
23 product or service in the stream of commerce; or

24 (2) installs, repairs, refurbishes, reconditions, or
25 maintains a product.

26 "Service." An activity engaged in for another person for a
27 consideration which activity involves predominantly the
28 performance of a service as distinguished from manufacture or
29 sale of a product and that is regulated, approved or licensed by
30 a government agency. The term includes a financial service and

1 the provision of insurance.

2 Section 2. This act shall take effect in 60 days.