

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

1 designed, manufactured, packaged, labeled, sold or
2 represented in relevant and material respects in
3 accordance with the terms of an approval, license or
4 similar determination of a government agency; or

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

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

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

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

27 (1) sold the product or service after the effective date
28 of an order of a government agency to remove the product or

1 service from the market to withdraw its approval or to
2 substantially alter its terms of approval in a manner that
3 would have avoided the claimant's alleged injury;

4 (2) intentionally and in violation of applicable
5 regulations withheld from or misrepresented to the government
6 agency information material to the approval or maintaining of
7 approval of the product or service and the information is
8 relevant to the harm which the claimant allegedly suffered;

9 or

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

13 (d) Construction.--Nothing in this section shall be
14 construed to:

15 (1) expand the authority of a State agency or agent of a
16 State agency to adopt or promulgate standards or regulations
17 where no such authority previously existed;

18 (2) reduce the scope of a limitation on liability based
19 on compliance with the rules or regulations of a government
20 agency applicable to a specific act, transaction, person or
21 industry; or

22 (3) affect the liability of a service provider based on
23 rates filed with and reviewed or approved by a government
24 agency.

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

28 "Clear and convincing evidence." A measure or degree of

1 proof that will produce in the mind of the trier of fact a firm
2 belief or conviction as to the allegations sought to be
3 established and which level of proof is greater than a mere
4 preponderance of the evidence, but less than proof beyond a
5 reasonable doubt.

6 "Government agency." The Commonwealth or the United States,
7 or an agency of either of them, or an entity vested with the
8 authority of the Commonwealth or the United States to issue
9 rules, regulations, orders or standards concerning the design,
10 manufacture, packaging, labeling or advertising of a product or
11 provision of a service.

12 "Manufacturer." A person that:

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

15 (2) Either:

16 (i) designs, manufactures or formulates the product
17 or component part of the product; or

18 (ii) has engaged another person to design,
19 manufacture or formulate the product or component part of
20 the product.

21 "Product." An object that:

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

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

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

27 (1) sells, distributes, rents, leases, prepares, blends,
28 packages, labels or otherwise is involved in placing a

1 product or service in the stream of commerce; or

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

4 "Service." An activity engaged in for another person for a
5 consideration which activity involves predominantly the
6 performance of a service as distinguished from manufacture or
7 sale of a product and that is regulated, approved or licensed by
8 a government agency. The term includes a financial service and
9 the provision of insurance.

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