

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1083

Session of
1979

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AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JANUARY 28, 1980

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, adding provisions
3 relating to product liability actions.

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

6 Section 1. Subchapter B of Chapter 55 of Title 42, act of
7 November 25, 1970 (P.L.707, No.230), known as the Pennsylvania
8 Consolidated Statutes, is amended by adding a section to read:
9 § 5537. Product liability actions.

10 ~~(a) General 12 year statute of repose. No product liability~~ <—
11 ~~action, as defined in section 8352 (relating to definitions),~~
12 ~~may be brought more than 12 years from the time the person who~~

~~is primarily responsible for manufacturing the final product
parted with its possession and control, or sold it, whichever
occurred last.~~

~~(b) Two year statute of limitation. Any product liability
action accruing during or prior to the twelfth year from the
time set forth in subsection (a), shall be brought within two
years after the date on which that action accrued. However, this
subsection shall not be construed to alter any contrary
provision contained in Title 13 of Pa.C.S. (relating to uniform
commercial code).~~

(A) USEFUL SAFE LIFE.--A MANUFACTURER AS DEFINED IN SECTION <—
8352 (RELATING TO DEFINITIONS) MAY BE LIABLE FOR HARM CAUSED BY
THE MANUFACTURER'S PRODUCT DURING THE USEFUL SAFE LIFE OF THAT
PRODUCT. A MANUFACTURER SHALL NOT BE LIABLE FOR INJURIES OR
DAMAGES CAUSED BY A PRODUCT BEYOND ITS USEFUL SAFE LIFE UNLESS
THE MANUFACTURER HAS EXPRESSLY WARRANTED A LONGER USEFUL SAFE
LIFE PERIOD DURING WHICH SUCH INJURIES OR DAMAGES OCCURRED.
"USEFUL SAFE LIFE" REFERS TO THE TIME DURING WHICH THE PRODUCT
REASONABLY CAN BE EXPECTED TO PERFORM IN A SAFE MANNER. IN
DETERMINING WHETHER A PRODUCT'S USEFUL SAFE LIFE HAS EXPIRED,
THE TRIER OF FACT MAY CONSIDER:

(1) THE EFFECT ON THE PRODUCT OF WEAR AND TEAR OR
DETERIORATION FROM NATURAL CAUSES.

(2) THE EFFECT OF CLIMATIC AND OTHER LOCAL CONDITIONS IN
WHICH THE PRODUCT WAS USED.

(3) THE POLICY OF THE USER AND SIMILAR USERS AS TO
REPAIRS, RENEWALS AND REPLACEMENTS.

(4) REPRESENTATIONS, INSTRUCTIONS AND WARNINGS MADE BY
THE PRODUCT SELLER ABOUT THE PRODUCT'S USEFUL SAFE LIFE.

(5) ANY MODIFICATION OR ALTERATION OF THE PRODUCT BY A

1 USER OR THIRD PARTY.

2 (B) STATUTES OF REPOSE.--

3 (1) A CLAIMANT ENTITLED TO COMPENSATION UNDER THE ACT OF
4 JUNE 2, 1915 (P.L.736, NO.338), KNOWN AS "THE PENNSYLVANIA
5 WORKMEN'S COMPENSATION ACT," MAY BRING A PRODUCT LIABILITY
6 ACTION AGAINST A MANUFACTURER UNDER THIS SUBCHAPTER FOR HARM
7 THAT OCCURS WITHIN 25 YEARS AFTER DELIVERY OF THE COMPLETED
8 PRODUCT TO ITS FIRST PURCHASER OR LESSEE WHO WAS NOT ENGAGED
9 IN THE BUSINESS OF SELLING PRODUCTS OF THAT TYPE. FOR A
10 PRODUCT LIABILITY CLAIM INVOLVING HARM WHICH OCCURRED MORE
11 THAN 25 YEARS AFTER DELIVERY OF THE COMPLETED PRODUCT TO ITS
12 FIRST PURCHASER OR LESSEE WHO WAS NOT ENGAGED IN THE BUSINESS
13 OF SELLING PRODUCTS OF THAT TYPE, THE PRESUMPTION IS THAT THE
14 PRODUCT HAS BEEN UTILIZED BEYOND ITS USEFUL SAFE LIFE AS
15 ESTABLISHED IN SUBSECTION (A). SUCH PRESUMPTION MAY BE
16 REBUTTED BY A PREPONDERANCE OF THE EVIDENCE. FOR THE PURPOSES
17 OF THIS TITLE, A SELF-EMPLOYED INDIVIDUAL BRINGING A PRODUCT
18 LIABILITY ACTION FOR HARM CAUSED BY PRODUCT USE WHILE SUCH
19 INDIVIDUAL WAS ENGAGED WITHIN THE SCOPE OF HIS EMPLOYMENT
20 SHALL BE DEEMED TO BE A CLAIMANT UNDER THIS SUBSECTION.

21 (2) FOR PRODUCT LIABILITY ACTIONS NOT INCLUDED IN
22 PARAGRAPH (1) THAT INVOLVE HARM OCCURRING MORE THAN 12 YEARS
23 AFTER DELIVERY OF THE COMPLETED PRODUCT TO ITS FIRST
24 PURCHASER OR LESSEE WHO WAS NOT IN THE BUSINESS OF SELLING
25 PRODUCTS OF THAT TYPE, THE PRESUMPTION IS THAT THE PRODUCT
26 HAS BEEN UTILIZED BEYOND ITS USEFUL SAFE LIFE AS ESTABLISHED
27 IN SUBSECTION (A). SUCH PRESUMPTION MAY BE REBUTTED BY A
28 PREPONDERANCE OF THE EVIDENCE.

29 (c) Action for indemnity or contribution.--An action for
30 indemnity or contribution, other than an action arising out of a

1 written contract, shall be commenced within the period of time
2 set forth in this section, plus 180 days, unless extended by the
3 court, for good cause shown. An action for indemnity or
4 contribution may be commenced at the time the party seeking
5 indemnity or contribution is named a defendant in any action,
6 whether or not the party seeking indemnity or contribution has
7 come under a fixed obligation to pay damages in the product
8 liability action brought against it.

9 (d) Exceptions.--The limitation period provided in
10 subsection (a) (B) shall not apply to:

11 (1) An action based solely upon any theory or theories
12 of negligence.

13 (2) An action based upon fraudulent misrepresentation,
14 fraudulent concealment or fraudulent nondisclosure by the
15 defendant.

16 (3) An action based upon a negotiated contractual
17 obligation which provides for a different period of
18 limitation in which the action may be commenced. HOWEVER, IF
19 THE NEGOTIATED CONTRACTUAL OBLIGATION PROVIDES FOR A SHORTER
20 PERIOD OF LIMITATION, SUCH SHORTER PERIOD SHALL NOT BE
21 APPLICABLE TO THE RIGHTS OF PERSONS WHO WERE NOT PARTIES TO
22 SUCH NEGOTIATED CONTRACTUAL OBLIGATION. If the contract
23 provides for a shorter statute of repose, the shorter time
24 period shall be plainly disclosed either in writing or on the
25 product, provided no reduction or limitation of the period of
26 limitation stated in subsection (a) shall be applicable to
27 consumer goods as defined in 13 Pa.C.S. § 9109 (relating to
28 classification of goods; "consumer goods"; "equipment"; "farm
29 products"; "inventory").

30 (4) An action for damages to the person caused by the

1 use of or exposure to any product or substance which causes
2 injury of a latent or incremental nature which was not
3 manifested or reasonably detectable prior to the expiration
4 of the period set out in subsection (a) (B). AS USED IN THIS <—
5 PARAGRAPH, "INJURY OF A LATENT OR INCREMENTAL NATURE" SHALL
6 INCLUDE BUT NOT BE LIMITED TO, INJURY CAUSED BY USE OF OR
7 EXPOSURE TO TOXIC OR HAZARDOUS SUBSTANCES, RADIOACTIVE
8 MATERIALS, IONIZING RADIATION, ANY MATERIALS USED IN THE
9 GENERATION OF NUCLEAR ENERGY OR POWER, ANY CONTROLLED
10 SUBSTANCE, NARCOTIC, OR NEW DRUG AS DEFINED BY THE ACT OF
11 APRIL 14, 1972 (P.L.233, NO.64), KNOWN AS "THE CONTROLLED
12 SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT," OR ANY OTHER DRUG.

13 Section 2. Chapter 83 of Title 42 is amended by adding a
14 subchapter to read:

15 CHAPTER 83

16 PARTICULAR RIGHTS AND IMMUNITIES

17 * * *

18 SUBCHAPTER E

19 PRODUCT LIABILITY ACTIONS

20 Sec.

21 8351. Short title of subchapter.

22 8352. Definitions.

23 8353. Strict liability in tort.

24 8354. Permissible theories for product liability actions.

25 8355. Defense for product modification, alteration or
26 deterioration.

27 8356. Defense for product misuse.

28 8357. Liability for product design or formula.

29 8358. Failure to specify, instruct or warn.

30 8359. Government standards.

1 8360. State of the art.

2 8361. Inadmissibility of evidence of improvements.

3 8362. Evidence of collateral benefits.

4 8363. Punitive and exemplary damages.

5 8364. Comparative responsibility in product liability
6 actions.

7 § 8351. Short title of subchapter.

8 This subchapter shall be known and may be cited as the
9 "Product Liability Law."

10 § 8352. Definitions.

11 The following words and phrases when used in this subchapter
12 shall have, unless the context clearly indicates otherwise, the
13 meanings given to them in this section:

14 "Manufacturer." A seller of a product who manufactures the
15 finished product or any component substance or part thereof. The
16 term includes any seller who:

17 (1) has actual knowledge of a defect in a product;

18 (2) creates and furnishes a manufacturer with
19 specifications for manufacturing the product when the
20 specifications are related to the alleged defect;

21 (3) otherwise exercises some substantial control over
22 all or a portion of the manufacturing process;

23 (4) alters or modifies a product in a substantial way
24 before it is sold to a user or consumer;

25 (5) is a business entity owned or controlled by the
26 manufacturer of the allegedly defective product;

27 (6) is the actual importer of the product, if the party
28 instituting an action pursuant to this subchapter is unable
29 to obtain valid in personam jurisdiction over a foreign
30 product manufacturer; or

1 (7) SELLS A PRODUCT MANUFACTURED BY A PERSON WHO HAS <—
2 BEEN JUDICIALLY DECLARED INSOLVENT OR BANKRUPT OR WHO HAS NO
3 IDENTIFIABLE SUCCESSOR IN INTEREST.

4 A seller not otherwise a manufacturer shall ~~not~~ be deemed to be <—
5 a manufacturer ~~merely because he places or has placed a private~~ <—
6 ~~label on a product, if~~ UNLESS the seller discloses the identity <—
7 of the actual manufacturer subsequent to the incident which is
8 the basis of the product liability action and the disclosure is
9 made within 45 days after service of process is made on the
10 defendant or after receiving a written request for such
11 disclosure, whichever shall first occur.

12 "Manufactures." Constructs, designs, fabricates, formulates,
13 installs, prepares or assembles a product.

14 "Person." An individual, corporation, partnership, business
15 trust, unincorporated organization, association, professional
16 association or joint stock company.

17 "Product." Tangible personal property, including fixtures,
18 but not including real property or buildings.

19 "Product liability action" or "action." Any action brought
20 for or on account of personal injury, illness, disease,
21 disability, death or property damage caused by the manufacture,
22 construction, design, formula, installation, preparation,
23 assembly, testing, marketing, packaging, labeling or sale of any
24 product or the failure to warn or protect against a danger or
25 hazard in the use, misuse or unintended use of any product, or
26 the failure to provide proper instructions for the use of any
27 product, including such an action brought under Title 13
28 (relating to commercial code).

29 "Seller." Any person, including a wholesaler, distributor or
30 retailer, who is engaged in the business of selling or leasing

1 such products for resale, use or consumption.

2 "User or consumer." A person who uses or consumes a product,
3 including bystanders or other persons who are harmed by a
4 product.

5 § 8353. Strict liability in tort.

6 (a) General rule.--A manufacturer is subject to liability
7 for physical harm caused to the person or property of the user
8 or consumer only if all of the following conditions are met:

9 (1) The product was manufactured in a defective
10 condition.

11 (2) The product was expected to and did reach the user
12 or consumer without substantial change in the condition in
13 which it was manufactured.

14 (3) The defective condition was unreasonably dangerous
15 to the person or property of the user or consumer.

16 (4) The defective condition caused the harm sustained by
17 the person or property of the user or consumer.

18 (b) Lack of care or contract not necessary.--The rule stated
19 in subsection (a) applies although:

20 (1) the manufacturer has exercised all possible care in
21 the manufacture and sale of the product; and

22 (2) the user or consumer has not bought the product from
23 or entered into any contractual relation with the
24 manufacturer.

25 (c) Manufacturer not guarantor.--In any action brought on
26 the theory of strict liability as set forth in subsection (a),
27 the trier of fact shall not be instructed that the manufacturer
28 is the guarantor of the safety of the product.

29 § 8354. Permissible theories for product liability actions.

30 (a) General rule.--Product liability actions shall be

1 brought only upon the theories of:

2 (1) Negligence.

3 (2) Breach of contract, including breach of warranty,
4 express or implied.

5 (3) Breach of, or failure to discharge, a duty to warn
6 or instruct, whether deliberate or negligent.

7 (4) Misrepresentation, concealment or nondisclosure,
8 whether fraudulent or negligent.

9 (5) In the case of a manufacturer, strict liability in
10 tort as defined in this subchapter, except as set forth in
11 section 8358 (relating to failure to specify, instruct or
12 warn).

13 (b) Action against seller.--No product liability action
14 based on the theory of strict liability in tort shall be
15 commenced or maintained against any seller of a product who is
16 not otherwise a manufacturer. This subsection shall not prevent
17 an action based upon any of the other theories of liability
18 listed in subsection (a) from being brought against a seller.

19 § 8355. Defense for product modification, alteration or
20 deterioration.

21 (a) General rule.--A defendant shall not be liable for THAT <—
22 PORTION OF injury or damage caused by an alteration or
23 modification that would not have occurred but for the fact that
24 the product was altered or modified by a person other than the
25 defendant unless the plaintiff proves by a preponderance of the
26 evidence that:

27 (1) the alteration or modification was in accordance
28 with the defendant's instructions or specifications;

29 (2) the alteration or modification was made with the
30 express consent of the defendant; or

1 (3) the alteration or modification was the result of
2 conduct that reasonably should have been anticipated by the
3 defendant.

4 (b) Definition.--For purposes of this section, "alteration
5 or modification" includes, but is not limited to, changes in the
6 design, formula or function of the product from that originally
7 designed, tested or intended by the defendant, or changes in or
8 removal of any safety feature or deterioration arising from
9 unreasonable failure to observe routine care and maintenance.

10 § 8356. Defense for product misuse.

11 (a) Product misuse.--In any product liability action,
12 evidence of misuse of the product by persons other than the
13 defendant shall be admissible.

14 (b) Definition.--For the purposes of this subsection (a),
15 misuse shall include, in addition to uses deemed to constitute
16 misuse under the law of this Commonwealth:

17 (1) Uses contrary to adequate recommendations,
18 specifications, instructions or warnings accompanying the
19 product or otherwise provided by the defendant, unless the
20 defendant knows, or is aware of facts from which a reasonable
21 person would infer, that there exist identifiable hazards
22 associated with a substantial pattern of use contrary to such
23 recommendations, specifications, instructions or warnings,
24 and fails, or has failed, to take reasonable precautions
25 against such hazards.

26 (2) Uses other than those for which persons of ordinary
27 skill and judgment (or in the case of prescription products,
28 practitioners of appropriate medical skill and judgment)
29 would normally and reasonably expect the product to be
30 suitable.

1 § 8357. Liability for product design or formula.

2 (a) Liability limited.--In any product liability action
3 based upon injury or damage alleged to have resulted from the
4 defective design or formula of a product, the manufacturer
5 responsible for the design or formula of a product shall not be
6 liable unless the plaintiff proves by a preponderance of the
7 evidence that the utilization of an alternative design or
8 formula was known or should have been known and was readily
9 available to the manufacturer at the time the product was
10 manufactured and that such utilization would have prevented the
11 injury or damage or resulted in less severe injury or damage.

12 (b) Considerations in determination.--In determining in
13 accordance with subsection (a) whether the product was defective
14 in design or formula, the trier of fact shall consider whether
15 an alternative design or formula should have been utilized or
16 the product should have been withheld from the market in light
17 of the following:

18 (1) The probability at the time of manufacture that the
19 product would cause the harm suffered by the user or
20 consumer.

21 (2) The seriousness of that harm.

22 (3) The technological feasibility of manufacturing the
23 product in accordance with the alternative design or formula.

24 (4) The relative costs of producing, distributing and
25 selling such an alternative design or formula.

26 (5) The new or additional or increased risk of injury or
27 damage that may result from such an alternative design or
28 formula.

29 (c) Safety or protective devices.--In any product liability
30 action in which a defect in the formulation or design of a

1 product is alleged, the manufacturer shall not be liable for
2 that portion of the injury or damage which could have been
3 avoided or reduced by attachment to, inclusion in, or use with
4 the product of a safety or protective device or substance, if
5 the defendant proves by a preponderance of the evidence that:

6 (1) the attachment, inclusion or use of such safety or
7 protective device or substance would have been inappropriate
8 to or incompatible with a function or manner of use to which
9 the product ~~design or formulation was intended by the~~ <—
10 ~~manufacturer~~ REASONABLY WAS SUITED; or <—

11 (2) such safety or protective device or substance was
12 offered or recommended by the manufacturer for purchase or
13 use by the user or consumer who was injured or damaged, or by
14 such person's employer, and such person or such person's
15 employer did not purchase or use such additional safety or
16 protective device or substance.

17 § 8358. Failure to specify, instruct or warn.

18 (a) Liability limited.--In any product liability action
19 based upon an alleged failure to provide adequate
20 specifications, instructions or warnings, the manufacturer or
21 any other defendant shall not be held liable for failure to
22 specify, instruct or warn, except upon the theory of negligence.

23 (b) Considerations in determination.--In determining whether
24 adequate specifications, instructions or warnings were provided,
25 the trier of fact shall consider the following:

26 (1) The probability at the time of manufacture or sale
27 that the product would cause the injury or damage suffered by
28 the user or consumer.

29 (2) The seriousness of that injury or damage.

30 (3) The defendant's ability, at the time of manufacture

1 or sale, reasonably to anticipate that the expected product
2 user or consumer would be aware of the product's risks and
3 the nature of the potential injury or damage.

4 (4) The technological feasibility and cost of providing
5 specifications, warnings or instructions.

6 (c) Burden of proof.--In a product liability action based
7 upon a claimed failure to provide adequate specifications,
8 instructions or warnings, the plaintiff shall be required to
9 prove by a preponderance of the evidence that the failure to
10 provide adequate specifications, warnings or instructions was
11 the proximate cause of the injury or damage.

12 § 8359. Government standards.

13 (a) Request for determination as to product.--A defendant
14 may by a motion request the court to determine whether the
15 injury-causing aspect of the product conformed to a mandatory
16 administrative or statutory standard in effect at the time the
17 defendant parted with possession and control of the product, or
18 sold it, whichever occurred last.

19 (b) Affirmative determination.--If the court makes the
20 determination referred to in subsection (a) in the affirmative,
21 it shall instruct the trier of fact to presume that the product
22 was not defective and that the defendant was not negligent. This
23 presumption may be rebutted by a preponderance of evidence
24 showing that:

25 (1) the standard was not developed as a result of an
26 independent and careful, thorough product testing and a
27 formal product safety evaluation by the governmental agency
28 responsible for promulgating such standards;

29 (2) consumer safety interests were not considered in
30 formulating the standard; or

1 (3) the standard was not up to date in light of the
2 state of the art knowledge reasonably available to the
3 defendant at the time of promulgation thereof.

4 § 8360. State of the art.

5 In any product liability action, it shall be a rebuttable
6 presumption that the product was not defective nor the defendant
7 negligent if the defendant proves by a preponderance of the
8 evidence that the product conformed with generally recognized
9 and prevailing standards, designs or methods of testing or
10 manufacturing of the state of the art. For the purposes of this
11 section "state of the art" means the safety, technical,
12 mechanical and scientific knowledge in existence and reasonably
13 ~~available and~~ feasible for use at the time of the manufacture of <—
14 the product.

15 § 8361. Inadmissibility of evidence of improvements.

16 In any product liability action, evidence of advancements or
17 changes in technical knowledge or techniques, in design, theory
18 or philosophy, or in manufacturing or testing techniques or of
19 any alteration, modification, improvement or change in or
20 discontinuance of the manufacture, construction, design,
21 formula, installation, preparation, assembly, testing,
22 marketing, packaging, labeling or sale of a product, whether
23 made by the defendant or any other party, which have been made,
24 learned or placed into common use subsequent to the time the
25 person who is primarily responsible for manufacturing the final
26 product allegedly causing injury, death or damage parted with
27 its possession and control, or sold it, whichever occurred last,
28 shall not be admissible for any purpose: Provided, however, That
29 this section does not require the exclusion of evidence of
30 subsequent advancements, alterations, modifications,

1 improvements or changes when offered for the purpose of
2 contradicting a witness or of impeaching relevant testimony.
3 § 8362. Evidence of collateral benefits.

4 (a) General rule.--In any product liability action in which
5 compensatory damages are sought, the defendant shall be entitled
6 to the admission of evidence as to the nature and extent of any
7 public collateral benefits or services received or to be
8 received by the plaintiff. It shall be admissible for the
9 plaintiff to show that such collateral benefits or services
10 received or to be received are subrogatable.

11 (b) Definition.--As used in this section "public collateral
12 benefits or services" mean those benefits or services that an
13 individual receives or is entitled to receive from social
14 security (except those benefits provided under Title XIX of the
15 Federal Social Security Act and except those medicare benefits
16 to which a person's entitlement depends upon use of his so-
17 called "lifetime reserve" of benefit days), workmen's
18 compensation, any State required temporary nonoccupational
19 disability and all other benefits (except the proceeds of life
20 insurance and except benefit programs not statutorily mandated)
21 received by or recoverable by an individual from any government
22 because of the injury.

23 § 8363. Punitive and exemplary damages.

24 (a) General rule.--In any product liability action, no
25 punitive or exemplary damages shall be awarded except upon a
26 finding by the trier of fact that the defendant acted with a bad
27 motive or with reckless indifference to the health and safety of
28 the users or consumers. ~~Proof of gross negligence shall not~~
29 ~~create a presumption either rebuttable or conclusive that~~
30 ~~punitive or exemplary damages are awardable.~~

<—

1 (b) Evidence.--Punitive or exemplary damages shall be
2 awardable only if the plaintiff establishes all the elements of
3 the cause of action for punitive or exemplary damages by clear
4 and convincing evidence.

5 (c) Damages stated separately.--The trier of fact shall
6 separately state the amount of punitive or exemplary damages
7 awarded.

8 § 8364. Comparative responsibility in product liability
9 actions.

10 (a) General rule.--In any product liability action the
11 responsibility of the person suffering the injury or damage, as
12 well as the responsibility of all others for causing the injury
13 or damage, shall be compared by the trier of fact. The
14 responsibility of the person suffering the harm shall not bar
15 recovery for the injury or damage sustained where it was not
16 greater than the total responsibility of all parties against
17 whom recovery is sought. However, any damages allowed shall be
18 diminished in proportion to the amount of responsibility
19 attributable to the person recovering.

20 (b) Allocating damages and responsibility for each party.--
21 The court may, and when requested by any party shall, direct the
22 jury to find separate special verdicts determining the total
23 dollar amount of damages and the percentages of responsibility
24 attributable to each party. The court shall then reduce the
25 amount of such damages in proportion to the amount of
26 responsibility attributable to the person recovering.

27 (c) Proportional liability of multiple defendants.--Where
28 the recovery is allowed against more than one defendant, each
29 defendant shall be liable for that proportion of the total
30 dollar amount awarded as damages in the ratio of his

1 responsibility to the amount of responsibility attributed to all
2 defendants against whom recovery is allowed. The plaintiff may
3 recover the full amount of the allowed recovery from any
4 defendant against whom such plaintiff is not barred from
5 recovery. Any defendant who is so compelled to pay more than his
6 percentage share may seek contribution.

7 (d) Responsibility defined.--As used in this section
8 "responsibility" means conduct which was a substantial factor in
9 bringing about the harm for which damages are sought.

10 Section 3. All acts or parts of acts which are inconsistent
11 with the provisions of this act are repealed to the extent of
12 the inconsistency.

13 Section 4. (a) Insurance Commissioner to require reports.--
14 The Insurance Commissioner, by the authority vested in him by
15 law pursuant to the act of June 11, 1947 (P.L.538, No.246),
16 known as "The Casualty and Surety Rate Regulatory Act," and
17 sections 213, 214 and 216, act of May 17, 1921 (P.L.789,
18 No.285), known as "The Insurance Department Act of one thousand
19 nine hundred and twenty-one," shall require every insurer
20 transacting the business of insurance in this Commonwealth to
21 report any and all information the commissioner may deem
22 relevant to the faithful performance of his duties in
23 determining that rates for product liability insurance are
24 neither excessive, inadequate nor unfairly discriminatory.

25 (b) Insurance Commissioner to review rates.--The
26 commissioner shall from time to time review all product
27 liability rate filings to determine their compliance with the
28 purpose of the act of June 11, 1947 (P.L.538, No.246), known as
29 "The Casualty and Surety Rate Regulatory Act," and shall within
30 one year following the effective date of this act, and annually

1 thereafter, report his findings to the General Assembly and
2 shall take such steps as may be appropriate to bring all rate
3 filings in conformity with the requirements of "The Casualty and
4 Surety Rate Regulatory Act."

5 (c) Reporting requirements.--

6 (1) Every insurer authorized to transact business in
7 this Commonwealth and providing product liability insurance
8 shall on or before March 1 of each year file with the
9 Insurance Commissioner a report upon forms approved by the
10 commissioner the following information pertaining to product
11 liability earned premium experience for:

12 (i) Basic limits liability (25,000/50,000); Bodily
13 injury (5,000/25,000); Property damage per occurrence/per
14 annual aggregate.

15 (ii) Excess limits.

16 (iii) Bodily injury liability.

17 (iv) Property damage liability.

18 (v) Pennsylvania.

19 (vi) Countrywide.

20 (vii) By classification.

21 (viii) Exposure base primarily units of sales,
22 receipts or payroll for each classification.

23 (2) Every insurer authorized to transact business in
24 this Commonwealth and providing product liability insurance
25 shall on or before March 1 of each year file with the
26 Insurance Commissioner a report upon forms approved by the
27 commissioner the following information pertaining to claims
28 experience for:

29 (i) Basic limits incurred claims.

30 (ii) Excess limits incurred claims by layer.

(iii) The number of paid claims.
(iv) The amount of paid claims.
(v) The number of outstanding claims.
(vi) The dollar amount of outstanding claims.
(vii) The dollars of incurred losses evaluated as of
27, 39, 51, 63 and 75 months.
(viii) The number of incurred claims as of the same
evaluation date as of subparagraph (vii).
(ix) Number by size of incurred claims.
(x) Number by classification.
(xi) Number for Pennsylvania.
(xii) Number countrywide.
(xiii) Paid allocated loss adjustment expenses.
(xiv) Outstanding allocated loss adjustment
expenses.

(XV) WHETHER OR NOT THE COMPANY SETS RESERVES FOR
PRODUCT LIABILITY INSURANCE CLAIMS FILED AND THE ANNUAL
EARNINGS OF EACH SUCH RESERVE BY PROPERTY AND CASUALTY
CATEGORY FOR THE PAST FIVE YEARS AND EACH YEAR
THEREAFTER.

(XVI) WHETHER OR NOT THE COMPANY SETS RESERVES FOR
ANY CLAIMS FOR PRODUCT LIABILITY LOSSES WHICH HAVE BEEN
INCURRED BUT NOT REPORTED AND THE ANNUAL EARNINGS OF SUCH
RESERVES FOR THE PAST FIVE YEARS AND EACH YEAR
THEREAFTER.

(XVII) ALL RESERVES ESTABLISHED IN CONNECTION WITH
EACH PROPERTY AND CASUALTY LINE OR TYPE OF INSURANCE.

(3) The commissioner shall make reports required by this
section available to the public.

(4) There shall be no liability on the part of and no

1 cause of action of any nature shall arise against any insurer
2 reporting under this section or its agents or employees, or
3 the commissioner or the employees of the Insurance
4 Department, for any action taken by them pursuant to this
5 section.

6 (5) The commissioner shall submit to the Governor and
7 the Chairmen of the House and Senate Insurance Committees no
8 later than 36 months from the effective date of this section
9 a report. The report shall evaluate the information reported
10 by insurers as required under the provisions of paragraphs
11 (1) and (2) and such relevant data as may be necessary to
12 evaluate the operations of this section. The report may
13 include recommendations at the discretion of the
14 commissioner.

15 (D) THE INSURANCE COMMISSIONER IS HEREBY DIRECTED TO <—
16 DISAPPROVE ANY PRODUCT LIABILITY RATE FILING MADE BY ANY INSURER
17 OR RATING ORGANIZATION FOR A PERIOD OF THREE YEARS FROM THE
18 EFFECTIVE DATE OF THIS ACT, EXCEPT:

19 (1) UPON THE WRITTEN CONSENT OF THE INSURED STATING HIS
20 REASONS THEREFOR, FILED WITH AND APPROVED BY THE COMMISSIONER
21 A RATE IN EXCESS OF THAT PROVIDED BY A FILING OTHERWISE
22 APPLICABLE MAY BE USED ON ANY SPECIFIC RISK. THE RATE SHALL
23 BECOME EFFECTIVE WHEN SUCH CONSENT IS FILED AND SHALL BE
24 DEEMED TO MEET THE REQUIREMENTS OF THIS ACT UNTIL SUCH TIME
25 AS THE COMMISSIONER REVIEWS THE FILING AND SO LONG THEREAFTER
26 AS THE FILING REMAINS IN EFFECT.

27 (2) A FILING PROVIDING DECREASED RATES FOR ALL OR
28 CERTAIN CLASSES AND CATEGORIES OF RISKS.

29 Section 5. This act shall take effect in 60 days and shall
30 apply to all actions accruing after the effective date of this

1 act.