

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 784

Session of  
1981

INTRODUCED BY GEKAS, FISHER, HAGER, HOWARD, SNYDER, SHAFFER,  
O'CONNELL, KUSSE, HESS, STAUFFER, HOPPER, KELLEY, MOORE,  
PRICE AND MANBECK, MAY 4, 1981

AS AMENDED ON SECOND CONSIDERATION, JUNE 30, 1981

## 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) User or consumer may bring action.--A user or consumer  
11 may bring a product liability action at any time, subject to  
12 subsection (c), where the action is based solely on one or more  
13 of the following:

14 (1) Any theory or theories of negligence.

15 (2) Fraudulent misrepresentation, fraudulent concealment  
16 or fraudulent nondisclosure by the defendant.

17 (3) A negotiated contractual obligation which contains a  
18 period of limitation different than that contained in

subsection (b). If, however, the negotiated contractual obligation provides for a period shorter than that set forth in subsection (b), such shorter period shall not be applicable to the rights of persons who are not parties to such negotiated contractual obligation. No reduction or limitation of the period set forth in subsection (b) shall be applicable to consumer goods as defined in ~~13 Pa.C.S. § 9109~~ ~~(relating to classification of goods: "consumer goods"; "equipment"; "farm products"; "inventory")~~. SUBSECTION (B)(1).

(4) To recover damages to the person caused by the use of or exposure to any product or substance which causes injury of a latent or incremental nature which was not manifest or reasonably detectable OR THE CAUSE OF THE INJURY WAS NOT KNOWN OR REASONABLY DETERMINABLE prior to the expiration of the period set out in subsection (b).

~~(b) General 12 year statute of repose. No product liability action, as defined in section 8363 (relating to definition), other than those set forth in subsection (a) 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.~~

~~(c) Two year statute of limitation. Any product liability action set forth in subsection (a) or accruing during or prior to the twelfth year from the time set forth in subsection (b), 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 (relating to commercial code).~~

(B) GENERAL STATUTE OF REPOSE.--

1           (1) NO PRODUCT LIABILITY ACTION, AS DEFINED IN SECTION  
2           8363 (RELATING TO DEFINITIONS), OTHER THAN THOSE SET FORTH IN  
3           SUBSECTION (A), ARISING OUT OF CONSUMER GOODS MAY BE BROUGHT  
4           MORE THAN 12 YEARS FROM THE TIME THE PERSON WHO IS PRIMARILY  
5           RESPONSIBLE FOR MANUFACTURING THE FINAL PRODUCT PARTED WITH  
6           ITS POSSESSION AND CONTROL, OR SOLD IT, WHICHEVER OCCURRED  
7           LAST.

8           (2) NO PRODUCT LIABILITY ACTION, AS DEFINED IN SECTION  
9           8363, OTHER THAN THOSE SET FORTH IN SUBSECTION (A), ARISING  
10          OUT OF NONCONSUMER GOODS MAY BE BROUGHT MORE THAN 30 YEARS  
11          FROM THE TIME THE PERSON WHO IS PRIMARILY RESPONSIBLE FOR  
12          MANUFACTURING THE FINAL PRODUCT PARTED WITH ITS POSSESSION  
13          AND CONTROL, OR SOLD IT, WHICHEVER OCCURRED LAST.

14          (3) AS USED IN THIS SUBSECTION THE FOLLOWING WORDS AND  
15          PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS  
16          PARAGRAPH:

17          "CONSUMER GOODS." ANY GOODS ORDINARILY USED OR PURCHASED  
18          FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES, EVEN IF USED OR  
19          PURCHASED FOR BUSINESS OR OTHER PURPOSES.

20          "NONCONSUMER GOODS." GOODS NOT ORDINARILY USED OR  
21          PURCHASED FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

22          (C) TWO-YEAR STATUTE OF LIMITATION.--

23          (1) ANY PRODUCT LIABILITY ACTION SET FORTH IN SUBSECTION  
24          (A) SHALL BE BROUGHT WITHIN TWO YEARS AFTER THE DATE ON WHICH  
25          THAT ACTION ACCRUED.

26          (2) ANY PRODUCT LIABILITY ACTION SET FORTH IN SUBSECTION  
27          (B) ACCRUING DURING OR PRIOR TO THE TIME LIMITS SET FORTH  
28          THEREIN SHALL BE BROUGHT WITHIN TWO YEARS AFTER THE DATE ON  
29          WHICH THAT ACTION ACCRUED.

30          (3) THIS SUBSECTION SHALL NOT BE CONSTRUED TO ALTER ANY

1 TIME LIMITS CONTAINED IN TITLE 13 (RELATING TO COMMERCIAL  
2 CODE).

3 (d) Action for indemnity or contribution.--An action for  
4 indemnity or contribution, other than an action arising out of a  
5 written contract, shall be commenced within the period of time  
6 set forth in this section, plus 180 days, unless extended by the  
7 court for good cause shown. An action for indemnity or  
8 contribution may be commenced at the time the party seeking  
9 indemnity or contribution is named a defendant in any action,  
10 whether or not the party seeking indemnity or contribution has  
11 come under a fixed obligation to pay damages in the product  
12 liability action brought against it.

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 F

19 PRODUCT LIABILITY ACTIONS

20 Sec.

21 ~~8361. Preamble.~~

<—

22 ~~8362~~ 8361. Short title of subchapter.

23 8362. SCOPE OF SUBCHAPTER.

<—

24 8363. Definitions.

25 8364. Strict liability in tort.

26 8365. Permissible theories for product liability actions.

27 8366. Defense for product modification, alteration or  
28 deterioration.

29 8367. Product misuse by persons other than defendant.

30 8368. Liability for product design or formula.

1 8369. Failure to specify, instruct or warn.

2 ~~8370. Mandatory government contract specifications.~~ <—

3 ~~8371~~ 8370. State of the art.

4 ~~8372~~ 8371. Inadmissibility of evidence of improvements. <—

5 ~~8373. Evidence of collateral benefits.~~ <—

6 ~~8374. Punitive and exemplary damages.~~

7 ~~8375. Comparative responsibility in product liability actions.~~

8 § 8361. SHORT TITLE OF SUBCHAPTER. <—

9 THIS SUBCHAPTER SHALL BE KNOWN AND MAY BE CITED AS THE  
10 "PRODUCT LIABILITY LAW."

11 ~~§ 8361. Preamble.~~ <—

12 § 8362. SCOPE OF SUBCHAPTER. <—

13 This ~~act~~ SUBCHAPTER sets forth standards for Pennsylvania <—  
14 product liability law. The principal purpose of the ~~act~~ <—  
15 SUBCHAPTER is to provide a fair balance of the interests of <—  
16 manufacturers and sellers of products, users and consumers of  
17 those products and the public at large. The fulfillment of this  
18 purpose should assist, first, to provide incentives for  
19 innovation, development and the manufacturing of safe products  
20 without threatening the economic stability of product  
21 manufacturers, thereby benefiting the general public, and,  
22 second, to assure that persons injured by unreasonably unsafe  
23 products will be compensated fairly for their injuries, and,  
24 third, to make product liability insurance more widely available  
25 and affordable, with greater stability in insurance costs and  
26 more predictability in insurance risks.

27 ~~§ 8362. Short title of subchapter.~~ <—

28 ~~This subchapter shall be known and may be cited as the~~  
29 ~~"Product Liability Law."~~

30 § 8363. Definitions.

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

4 "Manufacturer." A seller who manufactures the finished  
5 product, or any component substance or part thereof, which is  
6 proven to have caused injury to the user or consumer. The term  
7 includes any seller who:

8 (1) has knowledge of a defect in a product;

9 (2) creates and furnishes a manufacturer with  
10 specifications for manufacturing the product when the  
11 specifications are related to the alleged defect;

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

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

16 (5) is the ~~actual importer of~~ SELLER WHO LAST SOLD the <—  
17 product WITHIN THIS COMMONWEALTH if the party instituting an <—  
18 action pursuant to this subchapter is unable to obtain valid  
19 in personam jurisdiction WITHIN THIS COMMONWEALTH over a <—  
20 foreign product manufacturer;

21 (6) sells a product manufactured OR LAST SOLD by a <—  
22 person who ~~has been judicially declared insolvent or bankrupt~~ <—  
23 IS NOT FINANCIALLY RESPONSIBLE or who has no identifiable <—  
24 successor in interest; or

25 (7) does not disclose the identity of the actual  
26 manufacturer subsequent to the incident which is the basis of  
27 the product liability action within 60 days after receiving a  
28 written request for such disclosure, which written request  
29 shall provide the seller with all information in the  
30 requester's possession necessary to identify the actual

1 manufacturer.

2 "Manufactures." Constructs, designs, fabricates, formulates,  
3 installs, prepares or assembles a product.

4 "Person." An individual, corporation, partnership, business  
5 trust, unincorporated organization, association, professional  
6 association or joint stock company.

7 "Product." Tangible personal property, including fixtures,  
8 but not including real property or buildings.

9 "PRODUCT DESIGN OR FORMULA." WHEN USED IN SECTION 8368 <—  
10 (RELATING TO LIABILITY FOR PRODUCT DESIGN OR FORMULA), THE TERM  
11 SHALL NOT INCLUDE FOOD, DRUGS OR OTHER PRODUCTS INTENDED FOR  
12 INTIMATE BODILY USE.

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

23 "Seller." Any person, including a wholesaler, distributor or  
24 retailer, who is engaged in the business of selling or leasing  
25 ~~such~~ products for resale, use or consumption. <—

26 "User or consumer." A person who uses or consumes a product,  
27 including bystanders or other persons who are harmed by a  
28 product.

29 § 8364. Strict liability in tort.

30 (a) General rule.--A manufacturer is subject to liability

1 for physical harm caused to the person or property of the user  
2 or consumer only if all of the following conditions are met:

3 (1) The product was manufactured in a defective  
4 condition.

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

8 ~~(3) The defective condition was unreasonably dangerous~~ <—  
9 ~~to the person or property of the user or consumer.~~

10 (3) THE PRODUCT WAS DANGEROUS TO AN EXTENT BEYOND THAT <—  
11 WHICH WOULD BE CONTEMPLATED BY THE ORDINARY USER OR CONSUMER,  
12 WITH THE ORDINARY KNOWLEDGE COMMON TO THE COMMUNITY AS TO ITS  
13 CHARACTERISTICS.

14 (4) The defective condition caused the harm sustained by  
15 the person or property of the user ~~of~~ OR consumer. <—

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

18 (1) The manufacturer has exercised all possible care in  
19 the manufacture and sale of the product.

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

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

27 § 8365. Permissible theories for product liability actions.

28 (a) General rule.--Product liability actions shall be  
29 brought only upon the theories of:

30 (1) Negligence.



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

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

5           (4) Misrepresentation. ~~—concealment or nondisclosure,~~ <—  
6       ~~whether fraudulent or negligent.~~

7           (5) In the case of a manufacturer, strict liability in  
8       tort as defined in this subchapter, except as set forth in  
9       section 8369 (relating to failure to specify, instruct or  
10      warn).

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

17   § 8366. Defense for product modification, alteration or  
18       deterioration.

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

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

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

30           (3) the alteration or modification was the result of

conduct that reasonably should have been anticipated by the defendant.

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

§ 8367. Product misuse by persons other than defendant.

(a) General rule.--A defendant shall not be liable for that portion of injury or damage caused SOLELY by the UNFORESEEABLE misuse of a product by a person or persons other than such defendant.

(b) Definition.--For the purposes of subsection (a), misuse shall ~~include, in addition to uses deemed to constitute misuse~~ under the law of this Commonwealth: MEAN WHERE THE HARM RESULTED BECAUSE THE PRODUCT WAS MISHANDLED IN A WAY WHICH THE MANUFACTURER HAD NO REASON TO EXPECT.

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

~~(2) Uses other than those for which persons of ordinary skill and judgment (or in the case of prescription products,~~

~~practitioners of appropriate medical skill and judgment)~~  
~~would normally and reasonably expect the product to be~~  
~~suitable.~~

§ 8368. Liability for product design or formula.

(a) Liability limited.--In any product liability action based upon injury or damage alleged to have resulted from a defective design or formula, the manufacturer responsible for the design or formula of the product shall not be liable unless the plaintiff proves by a preponderance of the evidence that the

~~utilization of TECHNOLOGY FOR an alternative design or formula~~ <—  
~~was known or should have been known and was readily available to~~ <—  
~~the TO OR REASONABLY COULD HAVE BEEN DEVELOPED BY THE~~ <—  
manufacturer at the time the product was manufactured and that  
~~such utilization~~ THE UTILIZATION OF SUCH TECHNOLOGY would have <—  
~~prevented~~ BEEN A SUBSTANTIAL FACTOR IN PREVENTING the injury or <—  
~~damage. or resulted in less severe injury or damage.~~ <—

(b) Considerations in determination.--In determining in accordance with subsection (a) whether the product was defective in design or formula, the trier of fact shall ~~decide whether an~~ <—  
~~alternative design or formula should have been utilized or the~~  
~~product should have been withheld from the market after~~  
~~considering~~ CONSIDER all relevant facts in evidence, including, <—  
but not limited to, the following:

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

(2) The seriousness of that harm.

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

(4) The relative costs of producing, distributing and

1 selling such an alternative design or formula.

2 (5) The new or additional or increased risk of injury or  
3 damage that may result from such an alternative design or  
4 formula.

5 (c) Safety or protective devices.--In any product liability  
6 action in which a defect in the formulation or design of a  
7 product is alleged, the manufacturer shall not be liable for  
8 that portion of the injury or damage which could have been  
9 avoided by attachment to, inclusion in, or use with the product  
10 of a safety or protective device or substance, if the defendant  
11 proves by a preponderance of the evidence that the attachment,  
12 inclusion or use of such safety or protective device or  
13 substance would have been ~~inappropriate to or~~ incompatible with <—  
14 ~~a~~ THE PRINCIPAL function or manner of use to which the product <—  
15 reasonably was suited.

16 § 8369. Failure to specify, instruct or warn.

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

23 ~~(b) Considerations in determination. In determining whether~~ <—  
24 ~~the defendant was negligent in failing to provide adequate~~  
25 ~~specifications, instructions or warnings the trier of fact shall~~  
26 ~~consider the following:~~

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

30 ~~(2) The seriousness of that injury or damage.~~

~~(3) The defendant's ability, at the time of manufacture or sale, reasonably to anticipate that the expected product user or consumer would be aware of the product's risks and the nature of the potential injury or damage.~~

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

~~(e) (B) Burden of proof.--In a product liability action based upon a claimed negligent failure to provide adequate specifications, instructions or warnings, the plaintiff shall be required to prove by a preponderance of the evidence that the failure to provide adequate specifications, warnings or instructions was the A proximate cause of the injury or damage.~~

~~§ 8370. Mandatory government contract specifications.~~

~~(a) Noncompliance. When the injury causing aspect of the product was not, at the time of manufacture, in compliance with a mandatory government contract specification under which such product was manufactured, the product shall be deemed defective in accordance with section 8364(a)(1) (relating to strict liability in tort).~~

~~(b) Defense. When the injury causing aspect of the product was, at the time of manufacture, in compliance with a mandatory government contract specification, under which such product was manufactured this shall be a defense and the product shall be deemed not defective.~~

~~§ 8371~~ 8370. State of the art.

In any product liability action, ~~a presumption shall be created~~ AS SET FORTH IN SECTION 8365 (RELATING TO PERMISSIBLE THEORIES FOR PRODUCT LIABILITY ACTIONS), IT SHALL BE ADMISSIBLE AND THE TRIER OF FACT SHALL BE INSTRUCTED TO CONSIDER that the product was not defective ~~nor the defendant negligent~~ if the

1 defendant proves by a preponderance of the evidence that the  
2 product conformed with the state of the art for the designs ~~or~~ <—  
3 ~~methods of testing~~ or manufacturing of the product. For the  
4 purposes of this section "state of the art" means the safety,  
5 technical, mechanical and scientific knowledge in existence and  
6 reasonably ~~feasible~~ AVAILABLE for use at the time of the <—  
7 manufacture of the product OR REASONABLY COULD HAVE BEEN <—  
8 DEVELOPED BY THE MANUFACTURER AT THE TIME THE PRODUCT WAS  
9 MANUFACTURED.

10 § ~~8372~~ 8371. Inadmissibility of evidence of improvements. <—

11 In any product liability action, evidence of advancements or  
12 changes in technical knowledge or techniques, in design, theory  
13 or philosophy, or in manufacturing or testing techniques or of  
14 any alteration, modification, improvement or change in or  
15 discontinuance of the manufacture, construction, design,  
16 formula, installation, preparation, assembly, testing,  
17 marketing, packaging, labeling or sale of a product, whether  
18 made by the defendant or any other party, which have been made,  
19 learned or placed into common use subsequent to the time the  
20 person who is primarily responsible for manufacturing the final  
21 product allegedly causing injury, death or damage parted with  
22 its possession and control, or sold it, whichever occurred last,  
23 shall not be admissible for any purpose: ~~Provided, however, That~~ <—  
24 ~~this~~. THIS section does not require the exclusion of evidence of <—  
25 subsequent advancements, alterations, modifications,  
26 improvements or changes when offered for the purpose of  
27 contradicting a witness, ~~or~~ of impeaching relevant testimony OR <—  
28 TO PROVE ANY OF THOSE ELEMENTS LISTED IN SECTION 8368(B)  
29 (RELATING TO LIABILITY FOR PRODUCT DESIGN OR FORMULA).

30 § ~~8373. Evidence of collateral benefits.~~ <—

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

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

20       ~~§ 8374. Punitive and exemplary damages.~~

21       ~~(a) General rule. In any product liability action, no~~  
22       ~~punitive or exemplary damages shall be awarded except upon a~~  
23       ~~finding by the trier of fact that the defendant acted with a bad~~  
24       ~~motive or with reckless indifference to the health and safety of~~  
25       ~~the users or consumers.~~

26       ~~(b) Evidence. Punitive or exemplary damages shall be~~  
27       ~~awardable only if the plaintiff establishes all the elements of~~  
28       ~~the cause of action for punitive or exemplary damages by clear~~  
29       ~~and convincing evidence.~~

30       ~~(c) Damages stated separately. The trier of fact shall~~

~~separately state the amount of punitive or exemplary damages awarded.~~

~~§ 8375. Comparative responsibility in product liability actions.~~

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

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

~~(c) Proportional liability of multiple defendants. Where the recovery is allowed against more than one defendant, each defendant shall be liable for the proportion of the total dollar amount awarded as damages in the ratio of his responsibility to the amount of responsibility attributed to all defendants against whom recovery is allowed. The plaintiff may recover the full amount of the allowed recovery from any defendant against whom such plaintiff is not barred from recovery. Any defendant who is so compelled to pay more than his percentage share may~~

<—



1 ~~seek contribution.~~

2 ~~(d) Responsibility defined. As used in this section~~  
3 ~~"responsibility" means conduct which was a substantial factor in~~  
4 ~~bringing about the harm for which damages are sought.~~

5 Section 3. All acts or parts of acts which are inconsistent  
6 with the provisions of this act are repealed to the extent of  
7 the inconsistency.

8 Section 4. (a) Every insurer writing product liability  
9 insurance in this State COMMONWEALTH shall, on or before May 1 <—  
10 of each year, report the following information to the INSURANCE <—  
11 Commissioner of Insurance+: <—

12 (1) All states in which the reporting insurer is writing  
13 product liability insurance.

14 (2) The following information, by state and territory of  
15 the United States, relative to product liability policies  
16 written by the insurer:

17 (i) Direct premiums written.

18 (ii) Direct premiums earned.

19 (iii) Dividends paid or credited to policyholders on  
20 direct business.

21 (iv) Direct losses paid less salvage.

22 (v) Direct losses incurred.

23 (vi) Direct losses unpaid.

24 (3) The following information relative to the company's  
25 overall product liability insurance line:

26 (i) Premiums earned during the year.

27 (ii) Total premiums in force as of the end of the  
28 year.

29 (iii) Reinsurance in force in authorized and  
30 unauthorized companies.

(iv) Net premiums in force as of the end of the year.

(v) Total reserves for unearned premiums.

(vi) Premiums written, including premiums on direct business, reinsurance assumed, reinsurance ceded and net premiums written.

(4) The following information relative to the insurer's losses and expenses on product liability insurance written:

(i) Net losses incurred during the current year and the ratio of those losses to premiums earned.

(ii) Net losses unpaid excluding losses adjustment expenses.

(iii) Unpaid loss adjustment expenses.

(5) The following information relative to premiums, losses, expenses and net income and ratios to earned premiums:

(i) Total expenses incurred, including loss adjustment, commission and brokerage, other acquisition, field supervision and collection, general expenses and taxes, licenses and fees.

(ii) Net investment gain or loss and other income.

(iii) Net income before Federal and foreign income taxes.

(6) The following information as to product liability premiums, loss payments, loss expenses and number of claims:

(i) Premiums earned.

(ii) Loss payments.

(iii) Allocated loss expense payments.

(iv) Unallocated loss expense payments.

(v) Number of claims outstanding.

(vi) Losses unpaid.

(vii) Loss expense unpaid.

(viii) Total losses and loss expenses incurred.

(ix) Ratio of total losses and loss expense incurred  
to premiums earned.

(7) Total amounts for product liability incurred, and  
losses and loss expenses as of the end of the calendar year  
beginning with 1980.

(8) Incurred loss and loss expense ratio for each year  
beginning in 1980.

(b) The information required by subsection (a) shall include  
the product liability portion of any insurance policy for which  
the premiums for product liability coverage are separately  
determined and all indivisible premium policies for which at  
least one-half of the premium is for product liability coverage.

(c) The commissioner shall prescribe the manner and form of  
reporting the information required by this section which may  
include the adoption of any reporting system approved by the  
National Association of Insurance Commissioners if such  
reporting system substantially fulfills the reporting  
requirements of this section; ~~provided that the~~. THE

commissioner may prescribe by regulation the reporting of such  
other pertinent data as the commissioner deems necessary.

(d) The commissioner, within 90 days after the deadline for  
depositing the reports in his office, shall present to the  
General Assembly a summary of the report.

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

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