

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 735 Session of  
2005

INTRODUCED BY BOYD, TURZAI, METCALFE, CREIGHTON, YOUNGBLOOD,  
NAILOR, HENNESSEY, FAIRCHILD, GODSHALL, HERSHEY, S. MILLER,  
SCAVELLO, MUSTIO, E. Z. TAYLOR, CAPPELLI, TRUE, SCHRODER,  
GINGRICH, KILLION, LEH, R. MILLER, ROHRER, HARRIS,  
HUTCHINSON, CRAHALLA, PICKETT, CLYMER, BALDWIN, HICKERNELL,  
REICHLEY, O'NEILL, SAYLOR AND KAUFFMAN, MARCH 1, 2005

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 1, 2005

AN ACT

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

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 § 7104. Liability rules applicable to product sellers.

9 (a) General rule.--In a product liability action, a product  
10 seller other than a manufacturer shall not be liable for damages  
11 resulting in death, injury to person or property or economic  
12 loss unless the plaintiff establishes at least one of the  
13 following:

14 (1) The product which allegedly caused the harm  
15 complained of by the plaintiff was sold by the product  
16 seller, the product seller failed to exercise reasonable care

1 with respect to the product before placing the product in the  
2 stream of commerce and the failure to exercise reasonable  
3 care was a proximate cause of the harm complained of by the  
4 plaintiff. For purposes of this paragraph, a product seller  
5 shall not be considered to have failed to exercise reasonable  
6 care with respect to the product based upon an alleged  
7 failure to inspect a product where there was no reasonable  
8 opportunity to inspect the product in a manner which, in the  
9 exercise of reasonable care, would have revealed the aspect  
10 of the product which allegedly caused the harm complained of  
11 by the plaintiff.

12 (2) The product seller made an express warranty  
13 applicable to the product which allegedly caused the harm  
14 complained of by the plaintiff independent of an express  
15 warranty made by a manufacturer as to the same product, the  
16 product failed to conform to the seller's express warranty  
17 and the failure of the product to conform to the seller's  
18 express warranty caused the harm complained of by the  
19 plaintiff.

20 (3) The product seller, before placing the product in  
21 the stream of commerce, exercised significant control over  
22 the design, manufacture, packaging or labeling of the product  
23 related to the alleged defect in the product which caused the  
24 harm complained of by the plaintiff.

25 (4) The product seller, before placing the product in  
26 the stream of commerce, knew or reasonably should have known  
27 of the defect in the product which caused the harm complained  
28 of by the plaintiff or the product seller was in possession  
29 of facts from which a reasonable person would conclude that  
30 the product seller had or should have had knowledge of the

1 alleged defect in the product which caused the harm  
2 complained of by the plaintiff.

3 (5) The product seller engaged in intentional wrongdoing  
4 which was a proximate cause of the harm complained of by the  
5 plaintiff.

6 (6) The product seller, before placing the product in  
7 the stream of commerce, held itself out as the manufacturer  
8 to the user of the product, in which case the product seller  
9 shall be liable as though the product seller were the  
10 manufacturer of the product.

11 (b) Rental and leases.--Notwithstanding any other provision  
12 of law, a product seller who is engaged in the business of  
13 renting or leasing a product shall be subject to liability  
14 pursuant to subsection (a), but shall not be liable to a  
15 plaintiff for the tortious act of another solely by reason of  
16 ownership of the product.

17 (c) Certification of manufacturer identity.--

18 (1) In a product liability action against a product  
19 seller, the product seller may file an affidavit certifying  
20 the correct identity of the manufacturer of the product which  
21 allegedly caused the injury, death or damage.

22 (2) The product seller shall exercise due diligence in  
23 providing the plaintiff with the correct identity of the  
24 manufacturer.

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

28 "Manufacturer." A person who:

29 (1) Produced, created, made or constructed the product  
30 or component part of the product.

1        (2) Designed or formulated the product or component part  
2        of the product or engaged another person to design or  
3        formulate the product or component part of the product.

4        "Product seller." A person who, in the course of a business  
5        conducted for that purpose, sells, distributes, rents, leases,  
6        prepares, packages, labels or otherwise is involved in placing a  
7        product in the stream of commerce.

8        Section 2. This act shall apply to all actions instituted on  
9        or after the effective date of this act.

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