

Mr. Chairmen, Members of the Committees:

As I'm sure you're aware, recent events have given today's hearing a particular timeliness.

*received*  
We ~~also get~~ the results of a study conducted by two professors at the University of Pennsylvania's Wharton School. They found that product liability costs had increased by *five billion dollars* in Pennsylvania over the past three years--a significant drain on the state's economy.

This month, *Forbes* magazine ran a cover story headlined "The Litigation Scandal." It said that the liability system was out of control. It said that the rest of the economy was being held to ransom.

And just six days ago, ABC's 20-20 news program devoted a major segment of the show to the product liability crisis. ABC came to the same conclusion: Our product liability system is crippling the economy. It's driving safe, useful products off the market. It's stifling innovation.

The ABC report made many of the same points and cited several of the same cases that Senator Madigan and I had planned to discuss this morning. So with the committees' permission, we'll relinquish some of our allotted time in order to show you the report in its entirety.

[Videotape]

ABC was looking at the product liability crisis from a national perspective. I would ask the committees to keep in mind throughout today's hearing that *the crisis is at its peak in Pennsylvania*.

The Commonwealth Foundation recently reported that more product liability cases were filed in federal courts in Pennsylvania last year than in

any other state. The number of million-dollar awards has increased in Pennsylvania by more than 1500% since 1983.

One of this country's most distinguished legal scholars, Professor James Henderson of Cornell University, will be joining us later this morning to explain why Pennsylvania has become a breeding ground for product liability lawsuits. He'll confirm what I'm telling you now:

*Pennsylvania's product liability law encourages people to sue. It's confusing, extreme and unfair. It's the worst of its kind in the nation.*

Bear in mind, too, that it's entirely case law--law that was created in a lot of different courtrooms. The General Assembly has never had its say on this issue. We've never put a product liability statute on the books.

It's time we did.

In April, Senator Madigan and I introduced the Pennsylvania Product Liability Act as identical bills in the House and Senate. House Bill 916 is the measure being discussed here today. It has 67 co-sponsors, drawn from both sides of the aisle, and it awaits action in the Judiciary Committee.

You've each received a detailed commentary on the bill, and we'll be addressing specific provisions later in the hearing. In the few moments left to me, I'd like to share some general thoughts on the intent of the legislation and anticipate some of the arguments that may be raised against it.

You'll hear today from people who've been injured while using a product. When they relate the circumstances of those injuries, ask yourself this question: If House Bill 916 had been law when the injury occurred, would it have prevented the person from going to court and recovering damages?

In those highly publicized cases that we're all familiar with--cases involving products like the Ford Pinto--the answer to that question is an emphatic no.

*If a supplier puts a defective product on the market, he'll be legally accountable for any injury that the product causes. That's the law in Pennsylvania today, and it will still be the law when House Bill 916 is enacted.*

The opponents of this legislation will try to characterize it as a "big business" bill. But ask yourself this: When a lawsuit without the slightest validity can still generate hundreds of thousands of dollars in legal expenses, *who is most at risk*--the corporate giant or the neighborhood merchant?

Large corporations can absorb the costs of a ~~frivolous~~ lawsuit. *on the fringe* The owner of the corner hardware store may not be able to. Even if he wins, a lawsuit can put him out of business.

That's precisely why the most active and vocal support for this legislation comes from *small* businesses. They know what's at stake. They know who's been hurt the most by our current law.

When you hear today from those who'd like to leave the current law just as it is, you'll be asked to think about the rights of consumers. Senator Madigan and I agree with that. This is a consumer issue.

It's a consumer issue because it involves product safety. And it's *also* a consumer issue because safe products are being pulled off the shelves. It's a consumer issue because new products aren't being developed. It's a consumer issue because all of us are paying unnecessarily higher prices for a great many of the things we buy.

The heart of this issue is the need for fairness. Fairness for the consumer who is harmed by a flawed product. And fairness as well for those who are being harmed by flaws in our product liability law.

Senator Madigan and I believe you'll find that fairness in the legislation now before you.

You'll find, too, that House Bill 916 for the most part achieves its purpose within existing boundaries. It isn't a wholesale reworking of our liability system. In some areas, we're simply affirming or clarifying current law; elsewhere, we're making specific, narrow changes that will bring Pennsylvania back into the legal mainstream.

House Bill 916 is a *reasonable* measure. Senator Madigan and I hope that it can be addressed today, and in the days ahead, in a reasonable way.

We've already had lengthy discussions with organizations and with colleagues who have questions or concerns about this bill. We'll continue

to have those discussions. We'll continue to look for ways to improve the legislation.

And we would ask the Judiciary Committee in turn to act promptly on the bill so that we continue this discussion on the floor of the House.

One final point: It has been eight years since the full House last had an opportunity to air this issue.

In those eight years, we've voted to spend billions of dollars on economic development. Yet we've done nothing to correct a law that's *costing* us billions--a law that's a major impediment to economic growth. A law that's hurting businesses and consumers and workers alike.

In those same eight years, dozens of states have reformed their liability laws. The changes that we've proposed are precisely what those states have already adopted.

Product liability is a major area of public policy. Everyone in this room realizes, I think, that sooner or later the General Assembly will have to come to grips with this issue.

This isn't simply a decision we've deferred--it's a responsibility we've allowed to slip away from us. And the longer it takes for us to reclaim it, the greater the price we'll have paid.

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THE PENNSYLVANIA PRODUCT LIABILITY ACT:  
A BRIEF SUMMARY

Over the past 20 years, Pennsylvania's courts have firmly established the doctrine of strict liability in product liability cases. Strict liability means that manufacturers and other suppliers of a defective product are legally responsible for any harm caused by that product regardless of whether the supplier was negligent.

The proposed Pennsylvania Product Liability Act adheres to the doctrine of strict liability and reinforces a person's right to be justly compensated for an injury that is caused by a defective product. Existing case law is the basis for much of the legislation, which also clarifies and corrects certain case-law rules that have come to be regarded as confusing, extreme or unfair. The key provisions of the legislation are outlined below.

- The Basic Rule -

The supplier of a product--that is, the person who manufactures, sells or distributes the product--will not be held liable for an injury caused by that product unless there is a defect in the product that makes it unreasonably dangerous. A product is defective only if:

- There was a flaw in the design of the product; or if
- The product deviated from the design (e.g., a part was missing); or if
- The product failed to carry necessary instructions or warnings; or if

--The product's supplier made a specific claim about the product (e.g., he said that it could be safely operated in a certain way), and the consumer sustained an injury because he relied on that claim.

- Protection for Distributors and Retailers -

If an injured person sues a non-manufacturing supplier of a product--typically a distributor or retailer, who very seldom has any control over how a product is made--it must be shown that there was some active involvement on the supplier's part with regard to the injury-causing defect. The supplier will be held liable for the injury only if:

--The supplier had a substantial role in the design, the testing, the packaging or the labeling of the part or aspect of the product that is defective; or if he was substantially responsible for providing instructions or warnings about that part or aspect of the product; or if

--The supplier altered or modified the product in a way that caused the injury or helped to cause it; or if

--Before he sold the product, the supplier knew about the defect that caused the injury; or if

--The supplier made a specific claim about the product, and the consumer sustained an injury because he relied on that claim.

There are two important exceptions to the provisions outlined above. A non-manufacturing supplier will be held liable for an injury caused by a defective product if every other supplier of the product is beyond the jurisdiction of Pennsylvania's courts, or if all of those suppliers are bankrupt.

- Product Design -

In a product liability suit, the design of the product will not be found defective if:

--When the product was manufactured, there was no safer design available (i.e., the product's design was "state-of-the-art"); or if

--The injury was caused by an inherent or unavoidably unsafe aspect of the product. (A motorcycle, for example, can never be as safe as a car; if it had the same crash-protection features, it would no longer be an open-air vehicle. Similarly, some vaccines can have serious side-effects--but the risk of those side-effects cannot be eliminated without rendering the vaccines ineffective.)

- Warnings and Instructions -

A product will not be found to be defective on the grounds that its warnings or instructions were inadequate if:

--The supplier provided the warnings or instructions that a reasonable person would have provided, under the same circumstances; or if

--The information in question was generally known (i.e., to the sorts of consumers that would use the product), or was known to the injured person; or if

--The information in question was not known to the supplier and could not have been known to him, given the technical, scientific or medical knowledge available at the time; or if

--The supplier provided the warnings or instructions required under federal/state laws or regulations.

- Alteration or Misuse of Products -

If a person sustains an injury because a product has been altered or misused, the supplier will not be held liable for the injury unless:

--The alteration or misuse of the product was reasonably foreseeable by the supplier; and

--There were practical, effective measures that the supplier could have taken to prevent or control the product's alteration or misuse; and

--The supplier failed to take those measures.

(As an example: A supplier can certainly foresee that careless people will sometimes dive into the shallow end of a swimming pool, but he has few, if any, practical or effective measures available to him that would prevent such an occurrence.)

- Common Products With Generally Known Risks -

Suppliers of certain common consumer products that present inherent, generally known risks will not be liable in a product liability lawsuit unless the injury was caused by a manufacturing defect in the product.

(The inherent risks associated with, for example, a bottle of whiskey are well known. A bottle of whiskey is not defective--that is, unreasonably dangerous--because it can cause intoxication; it would be defective if was contaminated with some toxic substance.)

- Product Improvements -

In a product liability suit, if the supplier has made improvements to the product--improvements that would have made the injury less likely to occur--those improvements may not be admitted as evidence in an effort to show that the product was defective without them.

(In adopting this rule for negligence cases, the Pennsylvania Supreme Court noted that this sort of evidence "punishes a prudent and well-meaning defendant who guards against the recurrence of an accident he had no reason to anticipate...." Such evidence, the Court further explained, does not "prove that the defendant had been negligent before the accident happened, and it is calculated to distract the minds of the jury from the real issue....")

- FDA-Approved Products -

Punitive damages may not be awarded in a product liability suit if the product is approved, licensed or recognized as safe and effective by the federal Food and Drug Administration.

(Punitive damages are meant to punish behavior that is prompted by evil motives and verges on the criminal. A supplier who complies with the FDA's stringent requirements and procedures simply cannot have possessed the culpable state of mind necessary to justify punitive damages.)



- Comparative Responsibility -

If the plaintiff in a product liability suit is partly responsible for his own injury, the amount of his award will be reduced proportionately. If the plaintiff is found to have been primarily responsible for his own injury, he is barred from recovery.

The existing doctrine of voluntary assumption of risk remains available as a separate defense in cases involving activities--such as downhill skiing--with known or inherent risks.

- Statute of Repose -

A product liability lawsuit must be brought within 15 years of the date when the product was sold.

(This provision addresses a significant issue in product liability suits: As time passes, evidence and witnesses are less easily located--and it becomes increasingly difficult to determine who was responsible for an injury.)

KEY PROVISIONS OF THE PROPOSED PENNSYLVANIA PRODUCT LIABILITY ACT:

-- The injured party in a product liability lawsuit must prove that his injury was caused by a defect in the product.

-- Retailers and distributors who had no role in creating a defect in a product will not be held liable for an injury caused by the product.

-- A product's design cannot be considered defective on the basis of an inherent or unavoidably unsafe aspect of the product (example: the sharp edge of a kitchen knife or other cutting utensil.)

-- A product's warnings or instructions will be considered adequate if they provide the information that a reasonably prudent person would provide under the same circumstances.

-- If a person's sustains an injury because a product has been altered or misused, the manufacturer will not be held responsible unless the manufacturer could have foreseen and prevented alteration or misuse.

-- If the injured party in a product liability suit is partly responsible for the injury, the amount of the award will be reduced proportionately. And if the party is primarily responsible, there will be no award.

-- A product liability lawsuit must be initiated within 15 years of the date when the product was sold.

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