

HOUSE No. 3777

The Commonwealth of Massachusetts

PRESENTED BY:

Michael J. Rodrigues

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to reforming the state's product liability system.

PETITION OF:

NAME:

Michael J. Rodrigues

DISTRICT/ADDRESS:

8th Bristol

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO REFORMING THE STATE'S PRODUCT LIABILITY SYSTEM.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 231 of the General Laws, as appearing in the 2008 Official
2 Edition, is hereby amended by adding after section 85Z the following new section:-
3 Section 85AA. A product supplier shall not be liable in any product liability action for harm
4 caused by failure to provide adequate warning or instruction, unless the plaintiff proves by a
5 preponderance of the evidence that, at the time the product left the control of the supplier, and in
6 light of the technical, medical, and scientific knowledge available at the time the product left the
7 control of the supplier, the supplier knew or reasonably should have known of the danger that
8 caused the plaintiff's harm and failed to provide adequate warning or instruction concerning such
9 danger.

10 A product supplier shall not be liable in any product liability action for harm caused by the
11 design or formulation of a product, unless the plaintiff proves by a preponderance of the
12 evidence that, at the time the product left the control of the supplier, an alternative design or
13 formulation was commercially and technically feasible that would have prevented the harm for
14 which the claimant seeks to recover compensatory damages without substantially impairing the
15 utility of the product.

16 For purposes of this section the term "product liability action" shall mean any action brought for,
17 or on account of, death, personal injury or injury to property caused by a product which is
18 claimed to be defectively designed, or for which it is claimed that an adequate warning or
19 instruction was not provided, irrespective of whether such action is based on negligence, strict
20 liability, breach of warranty, or any other legal theory.

21 This section applies to all causes of action pending on or commenced on or after the date of the
22 enactment. This section shall take effect upon enactment.

23 SECTION 2. Chapter 231B of the General Laws, as appearing in the 2008 Official Edition, is
24 hereby amended by adding the following new section:-

25 Section 5. (a) In any civil action, the court, unless otherwise agreed by all parties to the action,
26 shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings
27 indicating both (1) the total amount of each plaintiff's damages, and (2) the percentage of the
28 total fault of all persons that contributed to the plaintiff's damages, including any plaintiff,
29 defendant or other person not named as a party to the action.

30 (b) In determining the percentages of fault under subsection (a), the trier of fact shall consider
31 both the nature of the conduct of each person at fault and the extent of the causal relation
32 between the conduct and the damages. (c) The court shall determine the award of damages to
33 each plaintiff in accordance with the findings under subsection (a), and shall enter judgment
34 against each party, including any third-party defendant, except that a person shall not be required
35 to pay non-economic damages in an amount greater than his or her percentage of fault as found
36 under subsection (a) (2). (d) The term “non-economic damages” means subjective, non-
37 monetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering,
38 emotional distress, loss of society or companionship, loss of consortium, injury to reputation, and
39 humiliation. (e) This section shall not apply to actions for intentional torts, or to judgments
40 against two or more defendants who are found to have consciously acted in a concerted effort.
41 SECTION 3. Chapter 260 of the General Laws, as appearing in the 2008 Official Edition, is
42 hereby amended by adding the following new section:-
43 Section 20A. (a) A products liability action shall not be commenced more than ten years after
44 the initial date of sale or lease of the product for use or consumption.
45 (b) The limitation provided for in subsection (a) shall not apply to the following situations:
46 (1) where a manufacturer or seller of a product provides any express written warranty that the
47 product can be used for a period longer than ten years. In such case the limitation shall be
48 extended pursuant to the terms of the express written warranty.
49 (2) if the harm, caused within ten years after the time of delivery, did not manifest itself until
50 after that time.