SENATE DOCKET, NO. 85 FILED ON: 1/14/2011

SENATE . . . . . No. 840

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:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael J. Rodrigues	
	☐ *[District]*
	☐

SENATE DOCKET, NO. 85 FILED ON: 1/14/2011

SENATE . . . . . No. 840

By Mr. Rodrigues, a petition (accompanied by bill, Senate, No. 840) of Michael J. Rodrigues for legislation to reform the state's product liability system. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *3777* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act 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:

SECTION 1. Chapter 231 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding after section 85Z the following new section:-

Section 85AA. A product supplier shall not be liable in any product liability action for harm caused by failure to provide adequate warning or instruction, unless the plaintiff proves by a preponderance of the evidence that, at the time the product left the control of the supplier, and in light of the technical, medical, and scientific knowledge available at the time the product left the control of the supplier, the supplier knew or reasonably should have known of the danger that caused the plaintiff?s harm and failed to provide adequate warning or instruction concerning such danger.

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

For purposes of this section the term "product liability action" shall mean any action brought for, or on account of, death, personal injury or injury to property caused by a product which is claimed to be defectively designed, or for which it is claimed that an adequate warning

19 or 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
22 of the enactment. This section shall take effect upon enactment.

23 SECTION 2. Chapter 231B of the General Laws, as appearing in the 2008 Official
24 Edition, is 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
26 action, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make
27 findings indicating both (1) the total amount of each plaintiff's damages, and (2) the percentage
28 of the 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
31 consider both the nature of the conduct of each person at fault and the extent of the causal
32 relation between the conduct and the damages. (c) The court shall determine the award of
33 damages to each plaintiff in accordance with the findings under subsection (a), and shall enter
34 judgment against each party, including any third-party defendant, except that a person shall not
35 be required to pay non-economic damages in an amount greater than his or her percentage of
36 fault as found under subsection (a) (2). (d) The term "non-economic damages" means
37 subjective, non-monetary loss resulting from harm, including pain, suffering, inconvenience,
38 mental suffering, emotional distress, loss of society or companionship, loss of consortium, injury
39 to reputation, and humiliation. (e) This section shall not apply to actions for intentional torts, or
40 to judgments against two or more defendants who are found to have consciously acted in a
41 concerted effort.

42 SECTION 3. Chapter 260 of the General Laws, as appearing in the 2008 Official
43 Edition, is hereby amended by adding the following new section:-

44 Section 20A. (a) A products liability action shall not be commenced more than ten years
45 after the initial date of sale or lease of the product for use or consumption.

46 (b) The limitation provided for in subsection (a) shall not apply to the following
47 situations:

48 (1) where a manufacturer or seller of a product provides any express written warranty
49 that the product can be used for a period longer than ten years. In such case the limitation shall
50 be extended pursuant to the terms of the express written warranty.

51 (2) if the harm, caused within ten years after the time of delivery, did not manifest
52 itself until after that time.