

Liability for Damages Arising from Unsafe Products Act, B.E.2551 (2008)

Translation

BHUMIBOL ADULYADEJ REX.

Given on 13 February B.E.2551

Being the 63rd Year of the Present Reign.

His Majesty King Bhumibhol Adulyadej is pleased to announce as follows:

Whereas it is deemed proper to have a law on liability for damage arising from unsafe products;

This Act has some provisions related to limits placed on the rights and freedoms of persons, permitted based on Section 29 and Section 43 of the Constitution of the Kingdom of Thailand and the authority vested in the provisions of law;

His Majesty the King has provided this Act based on the recommendation and acceptance of the National Legislative Council as follows:

Section 1

This Act is hereby called "Liability for Damage Arising from Unsafe Products, B.E. 2551 (2008)"

Section 2

This Act shall be effective beginning one year after its publication in the Government Gazette.

Section 3

In the event a law for liability for damage sustained from unsafe products is in existence which provides greater protection to the damaged party than stipulated in this Act, that law shall be enforceable.

Section 4

In this Act,

"Product" means all assets produced or imported for sale, including agricultural products and electricity. The exception being products prescribed in the Ministerial Regulations.

"Agricultural products" means products arising from agricultural activities, such as farming, animal husbandry, aquatic livestock, silkworm cultivation, lac cultivation, and mushroom cultivation, but shall not include products arising through natural processes.

"Produce" means making, combining, adding, creating, assembling, inventing, converting, altering, modifying, screening, packaging, freezing, exposing to radiation, or any other similar act.

"Damaged party" means person sustaining damage arising from an unsafe product.

"Damage" means damage arising from an unsafe product, regardless of whether the damage is to life, body, health, hygiene, mental state, or assets. This shall not include damage to the unsafe product.

"Damage to mental state" means pain, suffering, fear, anxiety, sorrow, shame or other similar mental damage.

"Unsafe product" means products that cause or may cause damage, regardless of whether it was caused by negligence during the production process or the design process. No guidelines being given for storage, or warning, or information related to the product, or

guidelines being given but in an incorrect manner or vaguely so as to be improper when considering the condition of the product, including the normal method of use and storage for the product.

“Sell” means distributing, disposing, or exchanging for commercial benefit and includes leasing, lease purchasing, procuring, soliciting, and exhibiting as stated.

“Import” means bringing or ordering goods into the Kingdom for sale.

“Entrepreneur” means Producer or a party authorizing the production.

- (1) Importer
- (2) Seller of product who cannot identify his producer, party authorizing the production, or importer.
- (3) Party using a name, trade name, trademark, mark, message or other means which may be understood as being the producer, party authorizing the production, or importer.

Section 5

All entrepreneurs shall be jointly liable for damages occurring to the damaged party from an unsafe product sold to the consumer. This shall apply to intentional damages or damages arising from the negligence of the entrepreneurs.

Section 6

For the entrepreneurs to be liable according to Section 5, the damaged party or his prosecuting representative, based on Section 10, shall prove that the damaged party sustained damages from the product of the entrepreneurs, and the use or storage of the product was done in a normal manner. However, evidence shall not be required to the effect that the damages occurred from the Action of a particular entrepreneur.

Section 7

The entrepreneurs shall not be liable for damages arising from an unsafe product if it can be determined that

- (1) The product was not unsafe.
- (2) The damaged party had knowledge that the product was unsafe, or
- (3) The damages occurred from inappropriate use or storage of the product determined by the instructions for appropriate use and storage, warning, or product information accurately and clearly provided by the entrepreneurs.

Section 8

The party producing products by order of the party authorizing the production shall not be liable if evidence can be provided that the danger was caused by the design of the party authorizing the production or compliance to the instructions provided by the party authorizing the production, whereas the producing party had not expected such danger.

The producer of the product components shall not be liable if it can be proved that the danger of the products was caused by the design, assembly, instructions for usage and storage, and warning or product information by the party producing the product.

Section 9

Agreements entered into between the consumer and the entrepreneurs before the damages and the statement of the entrepreneur to disclaim or place limits on his liability for damages caused by the unsafe product cannot be asserted as a disclaimer or limit the entrepreneur’s liability.

Section 10

The Consumer Protection Committee, associations and foundations certified by the Consumer Protection Committee under consumer laws shall be authorized to file legal

proceedings for compensation in place of the damaged party under the stipulations related to filing of legal proceedings and prosecuting representation for legal proceedings, which shall be enforced with exceptions.

All fees shall be exempted for filing of legal proceedings in place of the damaged party under Paragraph One, with the exclusion of the final fee.

Section 11

The court shall be authorized to demand compensation for damages based on the following, in addition to compensation for violations of the Civil and Commercial Code:

- (1) Compensation for damage to mental health, as well as body, health, and hygiene of the damaged party. In the event the damaged party has died, the damage party's husband, wife, children, or descendants shall have rights to compensation for the damage occurring to mental health.
- (2) In the event the facts indicate that the entrepreneurs produced, imported, or sold the products, although aware that the products were unsafe, or that the entrepreneur was unaware, but committed gross negligence, or had awareness that the product was unsafe after production, yet imported or sold the unsafe product without taking appropriate action to prevent damages from occurring, the court shall be authorized to order the entrepreneur to pay punitive damages in addition to the amount of actual compensation stipulated by the court, which shall be based on the discretion of the court, but not to exceed twice the actual compensation. Consideration will be given to the following circumstances including the severity of the damage sustained by the damaged party, the entrepreneur's cognizance of the damages arising from the product, the time period in which the entrepreneur concealed the danger of the product, the actions taken by the entrepreneur after becoming aware that the product was unsafe, the benefits received by the entrepreneur, the financial status of the entrepreneur, efforts to alleviate the damages that occurred on the part of the entrepreneur, and the part the damaged party had in the damages that occurred.

Section 12

The right to demand compensation arising from unsafe products according to this Act will expire after 3 years counting from the date the damaged party became aware of the damages and became aware of the entrepreneurs responsible, or after 10 years counting from the date the product was sold

In the event the damages were to life, body, health, or hygiene by the accumulation of chemicals in the body of the damaged party, or in the event a period of time must pass before any symptoms appear, the damaged party or his prosecuting representative, according to Section 10, must demand his rights 3 years counting from the date that he became aware of the damages and the entrepreneurs responsible, but not to exceed 10 years counting from the date he became aware of the damages.

Section 13

In the event of negotiation for compensation between the entrepreneur and the damaged party or his prosecuting representative, according to Section 10, the prescription period ceases during the period of negotiation until either party terminates the negotiation.

Section 14

The stipulations to the Act shall not deprive the damaged party of his rights to demand compensation based on rights under other laws.

Section 15

Products sold to the consumer before this Act's enforcement shall not be governed under this Act.

Section 16

The Prime Minister shall abide by this Act and shall be authorized to prescribe Ministerial Regulations for compliance with this Act.

The Ministerial Regulations as stated shall be enforceable after its publication in the Government Gazette.

Countersigned by

General Surayud Julanond

Prime Minister

Remarks:

The reason of promulgating this Act is as follows:

As the products nowadays both manufactured within the country or by importation increasingly undergo scientific and hi-technical manufacturing process, detecting non-safety of the product is difficult for consumers. Such unsafe products, when being used, may be harmful to consumers' or other people's life, body, health, hygiene, mind or property. Filing a court case for compensation is currently complicated because the burden of proof according to the general principle of law is on the injured person to prove the willfulness or negligence of the manufacturer or importer due to the lack of the law protecting the consumers by implementing the provision of liability of the manufacturer or relevant persons. It is therefore appropriate to promulgate the Product Liability Law applying the strict liability. The result is that the injured persons have no burden to prove about the unsafe product and also are able to receive fair compensation.

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