

(Unofficial Translation)¹

The Product Liability Act B.E. 2551 (2008)²

BHUMIBOL ADULYADEJ, REX.,
Given on the 13rd day of February B.E 2551;
Being the 63rd Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to have a law on product liability;

This Act contains certain provisions that limit the rights and freedom of persons, which Sections 29 in conjunction with Section 43 of the Constitution of the Kingdom of Thailand allows such initiation by virtue of the statutory provisions.

Be it: therefore, enacted by His Majesty the King, by and with the advice and consent of the National Legislation Assembly as follows:

Section 1 This Act is called the “Product Liability Act B.E. 2551”

Section 2 This Act will come into force after one year from the date of publication in the Government Gazette.³

Section 3 In case that any law has a specific provision on product liability which provides greater protection to consumers than this Act, such law will be applied.

Section 4 In this Act,

“Products” means any kind of movable properties manufactured or imported for sale including agricultural products and electricity except the products specified in the Ministerial Regulations.

“Agricultural products” means the products from any agricultures for instance, farming, gardening, animal husbandry, aquaculture, silkworm breeding, scale insect breeding, mushroom breeding, except natural products.

¹ Translated by officials of the Consumer Protection Plan and Development Bureau, OCPB. Translation is for the convenience of those who are not familiar with Thai Language. For official purpose, only the Thai Text will be relevant.

² The exact Thai words are “the Liability to Damages caused by Unsafe Products”.

³ The Act was published in the Government Gazette on February 20, 2008, Volume 125 Chapter 36 Gor Page 17.

“Manufacture” means make, mix, cook, decorate, assemble, invent, transform , reshape, modify, select, repack, be frozen, or radiate, including other similar acts.

“The injured person” means a person who suffers damages from the unsafe product.

“Damage” means damages caused by unsafe products either damages to life, body, health, hygiene, mind or property, but not include damages to such unsafe product itself.

“Mental damage” means pain, torture, phobia, anxiety, sorrow, shame or other similar types of mental damages.

“Unsafe products” means products which cause or may cause damages either by its manufacture defect; or its design defect; or by having no instruction, preservation, warning message, or relevant information about the product; or having incorrect or unclear information with regard to its nature including its usual usage and preservation.

“Sell” means distribute, dispense, give or exchange for the business purpose and including rent, hire purchase, provide, propose, persuade or exhibit for such purpose.

“Import” means bring or order the products into the Kingdom for sale

“Entrepreneur” means

- (1) Manufacturer or hirer;
- (2) Importer;
- (3) Seller of goods whose manufacturer, hirer or importer cannot be identified;
- or
- (4) The person who uses the name, trade name, trade mark, mark, statement or the person who demonstrates in any manner which can be seen as the manufacturer, hirer or importer.

Section 5 Every entrepreneur shall be jointly liable to the injured person for the damages caused by the unsafe products which have been sold to the consumers no matter whether the damages are intentionally or negligently caused by the entrepreneur.

Section 6 In order to have an entrepreneur’s liability according to Section 5, the injured person or his/her representative as specified in Section 10 has to prove that he/she suffers from damages caused by the entrepreneur’s products and the usage

or preservation of such products is by its nature. It is, however, unnecessary to prove which entrepreneur causes such damage.

Section 7 An entrepreneur shall not be liable for damages caused by the unsafe products if he can prove that

- (1) Such products are not unsafe products;
- (2) The injured person has already been aware that the products are unsafe; or
- (3) The damages were caused by an incorrect usage or preservation when an entrepreneur has put the correct and clear usage, preservation, warning message or relevant information on the product.

Section 8 A manufacturer by the order of a hirer shall not be liable if he can prove that the product unsafety is caused by the hirer's design or by the instructions given by the hirer, which he does not and should not foresee of such unsafety.

A manufacturer of the component parts shall not be liable if he can prove that the product unsafety is caused by to the design, assembly, instruction, preservation, warning message or information provided by a manufacturer of such products.

Section 9 The entrepreneur's liability shall not be exempted or limited by a preceded agreement between consumers and the entrepreneur before damages occurred, or by the entrepreneur's notification or report.

For the purpose of this section, the definition of "consumers" is the same as mentioned in the Consumer Protection Act.

Section 10 The Consumer Protection Board, Associations and Foundations certified by the mentioned Board under the Consumer Protection Law are entitled to file a law-suit for damages fee on behalf of the injured person. The procedure for prosecution in this case will be governed by such law *mutatis mutandis*.

The fee for the law-suit and its procedure as in the first paragraph will be waived excluding the fee as decided by the Court.

Section 11 In addition to the compensation for tort as prescribed in the Civil and Commercial Code, the Court may reward a compensation for damages according to the following rules:

- (1) Compensation for mental damages resulting from the injured persons' bodily, or health or hygiene damages and in case of death of the injured persons, their husband, wife, parents or inheritor shall be entitled to receive the compensation for mental damages.

(2) If it is found that an entrepreneur has manufactured, imported or sold a product being aware that such product is unsafe, or not being aware because of his severe negligence or does not proceed with any appropriate action to prevent such damages after becoming aware, the Court may instruct the entrepreneur to pay more compensation as punitive compensation as the Court sees fit but no more than double of the actual amount regarding to other circumstances for instance, severity of damages the injured person suffered, an entrepreneur's knowledge of the product unsafety, the duration a producer conceals unsafety of the products, the action an entrepreneur takes after being aware of the unsafety of his product, an advantage gained by a producer, financial status of an entrepreneur, alleviation for the damages an entrepreneur has done, and also including damages where the injured person has been partly involved.

Section 12 The Claim for damages caused by unsafe products according to this Act is barred by prescription after three years from the day when the damage and the person bound to make compensation became known to the injured person or after ten years after the day of the sale of such product.

In case where damages occurred to life, body, health, or hygiene, resulting from an accumulation of the substance within the injured person's body or the case where time is taken before the symptom becomes apparent, the injured person or his/her representative as in Section 10 may exercise the right within three years from the date he/she is aware of such damage and of the identity of the person bound to be liable but not exceeding ten years from the date the injured person is aware of the damage.

Section 13 If there are negotiations on compensation between an entrepreneur and the injured person or his/her representative as in Section 10, the prescription period will be suspended until any party annuls the negotiations.

Section 14 Provisions of this Act shall not preclude the injured person's right to claim for damages by virtue of other legislations.

Section 15 Any products sold to consumers before the effective date of this Act shall not be governed by this Act.

Section 16 The Prime Minister shall be in charge of this Act and has the power to issue Ministerial Regulations for the purpose of this Act.

Such Ministerial Regulations shall come into force upon their publication in the Government Gazette.

Royal command assignee,

General (ret.) Surayud Chulanont

The 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 wilfulness 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 product unsafety and also are able to receive fair compensation.