

Liability for Damage Arising from Unsafe Goods Act

B.E. 2551

Bhumibol Adulyadej Rex.

Given on 13 February B.E. 2551

Being the 63rd year of the Present Reign

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that

It is deemed expedient to have a law on liability for damage arising from unsafe goods.

This Act contains certain provisions in relation to the restriction of rights and freedoms of persons, in respect of which section 29 in conjunction with Section 43 of the Constitution of the Kingdom of Thailand so permit by the virtue of law.

Be it, therefore, enacted by The King, by and with the advice and consent of the National Legislative Assembly as follows:

Section 1 This Act is hereby called “Liability for Damage Arising from Unsafe Goods B.E. 2551”.

Section 2 This Act shall come into force after the expiration of one year from the date of its publication in the Government Gazette.

Section 3 In the case where a law has specifically prescribed the liability for damage arising from unsafe goods which provides greater protection to the damaged party than stipulated in this act, that law shall apply.

Section 4 In this Act,

“Goods” means all movable properties which is produced or imported for sale, including agricultural products and shall include electricity, except goods prescribed in the Ministerial Regulation.

“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 from the nature.

“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 the person sustaining the damage arising from unsafe goods.

“Damage” means damage arising from unsafe goods, whether the damage is to life, body, health, hygiene, mental health or property. This shall not include damage to the unsafe goods.

“Damage to mental health” means pain, suffering, fear, anxiety, sorrow, shame or other similar mental damage.

“Unsafe goods” means goods that cause or may cause Damage, whether due to cause of negligence during the production process or the design process or to lack of information on instruction, storage, warning or on goods itself or an information is given but incorrect or unclear. Shall be taken into account the condition of goods, including the normal and expected method of use and storage of the product.

“To sell” means selling, distributing, disposing or exchanging for commercial benefit, and shall include hiring, hire-purchasing, procuring, soliciting, and exhibiting for this purpose.

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

“Entrepreneur” refers to

1. Producer or a party hiring for the production
2. Importer
3. Seller of goods who cannot identify producer, party

hiring for the production, or importer.

4. Party using a name, trade name, trademark, mark, message or other means which may be understood as being the producer, party hiring for the production or importer.

Section 5 All entrepreneurs shall be jointly liable for damages occurring to the Damaged Party from Unsafe goods and that goods have been sold to the consumer whether the Damage was caused by intention or by negligence or not.

Section 6 For the entrepreneurs to be liable according to Section 5, the Damaged party or the prosecuting representative, according to Section 10, must prove that the Damaged party sustained a Damage from the goods of the entrepreneurs, and the use or the storage of the goods was done in a normal manner without having to prove that the Damage was caused by the action of which particular Entrepreneur.

Section 7 The entrepreneurs shall not be liable for Damages arising from Unsafe goods if the entrepreneurs can prove that

1. The goods were not unsafe.
2. The Damaged party had knowledge that the goods were unsafe, or
3. The damages occurred from an inappropriate use or storage of the goods according to instructions, storage, warning, or goods information correctly and clearly provided by the entrepreneurs.

Section 8 The party producing goods by order of the party hiring for the production shall not be liable if the party producing goods by order can prove that the danger was caused by the design of the party hiring for the production or by a compliance with the instructions from the

party hiring for the production, and that the producer did not foresee and should not have foreseen the danger.

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

Section 9 Agreements entered into between the consumer and the entrepreneurs before the occurrence of damages and the statement of the entrepreneurs to disclaim or limit the liability for damages caused by the unsafe goods cannot be asserted as an exception or a limitation to the liability.

For the benefit of this Section, the “consumer” shall have the same definition as “consumer” under the law concerning Consumer Protection.

Section 10 The Consumer Protection Board, and associations and foundations accredited by the Consumer Protection Board under the law concerning consumer protection shall have the right to file legal proceedings for compensation in place of the Damaged party. The provision concerning the filing of legal proceedings and litigation in place of consumer in said law shall apply *mutatis mutandis*.

The filing of legal proceedings and litigation in place of the Damaged party under Paragraph One shall be exempted from all fees but not including the fee in final instance.

Section 11 Apart from damages from tort, the court may also award compensation for damage under as follows:

1. Compensation for Damage to mental health, resulting from damage to body, health, and hygiene of the Damaged party. And if the Damaged party has died, the Damaged party’s husband, wife, parents, or descendants shall be entitled to compensation for the Damage to mental health.

2. In the case where the fact appears that the entrepreneurs has produced, imported, or sold the goods, knowing that the goods were unsafe, or not knowing by gross negligence, or knowing that the goods were unsafe after the production, importation or sale but didn't take any appropriate action to prevent the damage, the court may order the Entrepreneur to pay punitive damages in addition to the amount of actual damages stipulated by the court as the court deems fit, but not exceed twice the actual damages. Circumstances shall be taken into account such as the severity

of the damage sustained by the Damaged party, the fact that the entrepreneur was aware of the danger of the goods, the time period in which the Entrepreneur concealed the danger of the goods, the actions taken by the Entrepreneur after becoming aware that the goods were unsafe, the benefits received by the Entrepreneur, the financial status of the Entrepreneur, the fact that the entrepreneur has alleviated the damages, and including the part of the Damaged party contributing to damages.

Section 12 The right to demand damages arising from unsafe goods according to this Act shall be precluded by prescription after the expiration of three years from the date the Damaged party became aware of the damages and became aware of the entrepreneurs to be liable, or after the expiration of ten years from the date the goods were sold.

In the case where the damages was to life, body, health or hygiene by the accumulation of chemicals in the body of the Damaged party, or in the case where it needs a period of time so that any symptoms appear, the Damaged party or prosecuting representative, under Section 10, must exercise the right within three years, from the date the Damaged party became aware of the damage and became aware of the entrepreneurs to be liable, and not exceeding 10 years after the date the Damaged party became aware of the damages.

Section 13 In the event of negotiation for damages between the Entrepreneur and the Damaged party, or his prosecuting representative, according to section 10, the prescription period shall be suspended during the period of negotiation until either party terminates the negotiation.

Section 14 The provision of this Act shall not deprive the Damaged party of his rights to demand compensation based on rights under other laws.

Section 15 Goods sold to the consumer before this Act comes into force shall not be governed under this Act.

Section 16 The Prime Minister shall have charge and control of the execution of this Act and shall have authority to issue Ministerial Regulations in the execution of this Act.

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

Countersigner

General Surayud Chulanont

Prime Minister

Remarks: - The reason for the enactment of this Act is that the goods in the present day, whether produced in the country or imported, possess a production process that requires a higher level of scientific and technological knowledge. It is difficult for consumers to verify whether the goods are safe or not. When consumers use unsafe goods, it may cause danger to lives, body, health, hygiene, mental health, or property of consumer or others. However, at present, the filing of legal proceedings for damages is complicated, due to the fact that the damaged party must bear the burden of proof on the intention or negligence of wrongdoing of the producer or importer under the general principle of law, since there is not any law that protects consumer who has sustained damage arising from goods directly prescribing liability to the damage of the producer or related person. It is therefore expedient to enact the law on Liability for Damage Arising from Unsafe goods, by bringing in the principle of strict liability, resulting in the damaged party not having to prove the danger of the goods, as well as receiving fair compensation, thus the necessity of this Act.