

Act on Liability for Damage Arising from Unsafe Goods

B.E. 2551

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 has been graciously pleased to proclaim that

Whereas it is deemed expedient to enact the law governing liability for damage arising from unsafe goods;

This Act contains certain provisions regarding the restrictions of personal rights and freedoms, which, under Section 29 together with Section 43 of the Constitution of the Kingdom of Thailand, can be done by virtue of the provisions of law.

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

Section 1. This Act shall be called the “Act on Liability for Damage Arising from Unsafe Goods B.E. 2551”.

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

Section 3. If any law contains specific provisions regarding liability for damage arising from unsafe goods, which provides protection to the injured person more than that specified in this Act, such law shall apply.

Section 4. In this Act:

“goods” means all kinds of movable properties produced or imported for sale and agricultural produce, including electric current, except for the goods specified in the Ministerial Regulations.

“agricultural produce” means the produce arising from various agriculture such as rice farming, farming, gardening, raising of animals, raising of aquatic animals, raising of silkworms, raising of lac insects, growing of mushrooms, but excluding produce from nature.

“produce” means to make, mix, cook, decorate, assemble, invent, transform, transfigure, modify, select, distribute in containers, freeze or radiate as well as any similar acts.

This English translation was prepared by Chandler and Thong-ek Law Offices Limited. Although care was taken to render the translation as reliable as possible, it does not carry any legal authority. Only the original text in Thai has legal force.

“injured person” means a person who has suffered damage from unsafe goods.

“damage” means the damage arising from unsafe goods whether to life, body, health, mind or property, excluding damage to the unsafe goods themselves.

“mental damage” means pain, suffering, fear, worry, sadness, shame or other similar mental damage.

“unsafe goods” means goods which cause or may cause damage, whether owing to the defect of production or the design or for which procedure for use and maintenance, caution or information related to the goods has not been available or has been available but is not correct or not appropriately clear, taking into account the nature of the goods, including the manner of regular use and maintenance of the goods as may be expected.

“sell” means to sell, dispose, distribute or exchange for commercial purposes and shall include to grant lease, grant hire-purchase, provide as well as to offer, persuade or present for such purposes.

“import” means to bring or order goods into the Kingdom for sale.

“operator” means

- (1) producer or production employer;
- (2) importer;
- (3) person who sells goods of which the producer, production employer or importer cannot be identified.
- (4) person who uses a name, tradename, trademark, mark or statement or presents in any manner which causes an understanding that he is the producer, production employer or importer.

Section 5. All operators must jointly be liable to the injured person for the damage arising from unsafe goods that have been sold to the consumer, whether or not such damage is caused by willful act or negligence of the operators.

Section 6. In order to hold the operator liable under Section 5, the injured person or the person entitled to file a lawsuit on his behalf under Section 10 must prove that the injured person has suffered damage from the goods of the operator and such goods were used or maintained in a regular manner, without having to prove which operator has caused the damage.

Section 7. The operator shall not be liable for the damage arising from unsafe goods if he can prove that:

- (1) Such goods are not unsafe goods;

- (2) The injured person knew that such goods were unsafe goods; or
- (3) Such damage is caused by incorrect use or maintenance of such goods according to the procedure for use and maintenance, caution or information related to the goods correctly and clearly specified by the operator.

Section 8. A producer who produces goods as per the order of the employer shall not be liable if he can prove that the unsafety of the goods is caused by the design of the employer or by compliance with the order of the employer, and the producer does not and should not foresee the unsafety.

A producer of components of goods shall not be liable if he can prove that the unsafety of the goods is caused by the design or assembly or formulation of the procedure for use and maintenance, caution or giving of information related to the goods by the producer of such goods.

Section 9. Any agreement between the consumer and the operator made in advance before the occurrence of the damage and any announcement or notice of the operator to exempt or limit the liability of the operator for damage arising from unsafe goods may not be raised as an exemption or limitation of liability.

For the purposes of this Section, the consumer shall mean the same as “consumer” defined in the law governing consumer protection.

Section 10. The Consumer Protection Board, associations and foundations recognized by the Consumer Protection Board under the law governing consumer protection shall have the power to file a lawsuit to claim damages on behalf of the injured person, whereby the provisions regarding filing of lawsuit and proceeding with the case on other person’s behalf under the said law shall apply *mutatis mutandis*.

The filing of lawsuit and proceeding with the case on the injured person’s behalf under the first paragraph shall be exempt from all costs and fees but excluding the liability for costs and fees at the final stage.

Section 11. Apart from compensation for wrongful acts prescribed in the Civil and Commercial Code, the Court also has the power to fix compensation for the damage in accordance with the following criteria:

- (1) The injured person is entitled to damages for mental damage which may arise from damage to the injured person’s body or health. Moreover, in the case of death of the injured person, the husband, wife, parents or descendants of such person shall be entitled to damages for their mental damage.
- (2) If it is found that the operator has produced, imported or sold goods with the knowledge that such goods are unsafe goods or has not known the same because of gross negligence or when he knows that the goods are unsafe after the production, importation or sale of such goods and fails to take appropriate steps to prevent damage, the Court shall have the power to order that the operator pay compensation

for punishment purposes in addition to the actual compensation that the Court can fix as the Court may deem appropriate, but not exceeding two times the actual compensation, taking into account circumstances such as the degree of damage suffered by the injured person, knowledge of the operator of the unsafety of the goods, period of time that the operator conceals the unsafety of the goods, action of the operator after learning that the goods are unsafe, benefit received by the operator, financial condition of the operator, relief of the damage by the operator as well as the extent of participation of the injured person in causing the damage.

Section 12. The right of claim damages arising from unsafe goods under this Act shall be precluded by prescription after the expiration of three years from the date on which the injured person knows of the damage and the identity of the operator to be liable or after the expiration of ten years after the date on which such goods were sold.

In the case of damage to life, body or health as a result of a substance accumulated in the body of the injured person or where it takes time for the symptom to appear, the injured person or the person entitled to file a lawsuit on his behalf under Section 10 must exercise the claim within three years from the date of knowledge of the damage and the identity of the operator to be liable, but not exceeding ten years from the date of knowledge of the damage.

Section 13. If there are negotiations on damages payable between the operator and the injured person or the person entitled to file a lawsuit on his behalf under Section 10, the prescription shall remain interrupted during that period until any party terminates the negotiations.

Section 14. The provisions of this Act shall not deprive the right of the injured person to claim damages by virtue of other laws.

Section 15. Any goods sold to a consumer before the effective date of this Act shall not be subject to this Act.

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

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

Countersigned by

General Surayud Chulanont

Prime Minister

(Ref: Government Gazette, Volume 125, Part 36 Kor, Dated 20 February B.E. 2551(2008))

Notes: The reasons for the promulgation of this Act are as follows: Whereas goods at present, whether produced locally or imported, involve production process that uses increasingly advanced scientific knowledge and technology. It is difficult for consumers to find out that goods are not safe. When consumers use unsafe goods, they may cause danger to their or other persons' lives, bodies, health, minds or properties. However, at present filing a lawsuit to claim damages is complicated, because the burden of proof on the willfulness or negligence in the commission of offense by the producer or importer lies with the injured person under the general principle of law because there is no law providing protection for the consumer suffering damage from goods, with specific provisions on duties and responsibilities for damage assumed by the producer or persons concerned. It is therefore appropriate to have a law on liability for damage arising from unsafe goods, based on the doctrine of strict liability. Accordingly, the injured person needs not prove the unsafety of goods and will be entitled to fair compensation. It is therefore necessary to enact this Act.

CHANDLER and THONG-EK