

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

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SENATE
S. B. No. 1253

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

Our people are excessively litigious. The civil justice system is overcrowded, sluggish, and excessively costly and the costs of lawsuits, both direct and indirect, are inflicting serious and unnecessary injury on individuals.

There is a need to restore rationality, certainty, and fairness to the civil justice system in order to protect the public against excessive, arbitrary, and uncertain damage awards and to reduce the volume, costs, and delay of litigation.

While the State might be able to fully and effectively respond to this problem, due to its magnitude, efforts can be made to at least mitigate this predicament.

This bill seeks to establish certain legal principles of product liability in order to help reduce costs of litigation by providing a mechanism for the speedy disposition of product-liability cases and a fair balance among the interests of product users, manufacturers, and product sellers.

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO

THIRTEENTH CONGRESS OF THE REPUBLIC)
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SENATE **1253**
S. B. No. _____

Introduced by Senator Miriam Defensor Santiago

AN ACT
ESTABLISHING LEGAL STANDARDS AND PROCEDURES FOR PRODUCT
LIABILITY LITIGATION AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled,

SECTION 1. *Short Title.* This Act shall be known as the "Product Liability Act"

SECTION 2. *Definitions.* For purposes of this title--

(1) ACTUAL MALICE- means specific intent to cause serious physical injury, illness, disease, death, or damage to property.

(2) CLAIMANT- means any person who brings an action covered by this title and any person on whose behalf such an action is brought. If such an action is brought through or on behalf of an estate, the term includes the claimant's decedent. If such an action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(3) CLAIMANT'S BENEFITS- means the amount paid to an employee as workers' compensation benefits.

(4) CLEAR AND CONVINCING EVIDENCE- is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. The level of proof required to satisfy such standard is more than that required under preponderance of the evidence, but less than that required for proof beyond a reasonable doubt.

(5) COMMERCIAL LOSS- means any loss or damage solely to a product itself, loss relating to a dispute over its value, or consequential economic loss

(6) COMPENSATORY DAMAGES- means damages awarded for economic and non-economic loss.

(7) ECONOMIC LOSS- means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable laws.

(8) HARM- means any physical injury, illness, disease, or death or damage to property caused by a product. The term does not include commercial loss.

(9) MANUFACTURER- means--

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who (i) designs or formulates the product (or component part of the product), or (ii) has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes or constructs and designs, or formulates, or has engaged another person to design or formulate, an aspect of the product (or component part of the product) made by another person;

or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the user of the product.

(10) NON-ECONOMIC LOSS- means subjective, non-monetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation.

(11) PERSON- means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(12) PRODUCT LIABILITY ACTION- The term 'product liability action' means a civil action brought on any theory for harm caused by a product.

(13) PRODUCT SELLER-

(A) IN GENERAL- The term 'product seller' means a person who in the course of a business conducted for that purpose--

(i) sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce; or

(ii) installs, repairs, refurbishes, reconditions, or maintains the harm-causing aspect of the product.

(B) EXCLUSION- The term 'product seller' does not include--

(i) a seller or lessor of real property;

(ii) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgement, skill, or services;

or

(iii) any person who--

(I) acts in only a financial capacity with respect to the sale of a product; or

(II) leases a product under a lease arrangement in which the lessor does not initially select the leased product and does not during the lease term ordinarily control the daily operations and maintenance of the product.

SECTION 3. *Liability Rules Applicable to Product Sellers and Manufacturers*

(1) IN GENERAL- In any product liability action, a product seller other than a manufacturer shall be liable to a claimant only if the claimant establishes--

(A) that--

(i) the product that allegedly caused the harm that is the subject of the complaint was sold, rented, or leased by the product seller;

(ii) the product seller failed to exercise reasonable care with respect to the product; and

(iii) the failure to exercise reasonable care was a direct and proximate cause of harm to the claimant;

(B) that--

(i) the product seller made an express warranty applicable to the product that allegedly caused the harm that is the subject of the complaint, independent of any express warranty made by a manufacturer as to the same product;

(ii) the product failed to conform to the warranty; and

(iii) the failure of the product to conform to the warranty caused harm to the claimant; or

(C) that--

(i) the product seller engaged in intentional wrongdoing, as determined under applicable law;

and

(ii) such intentional wrongdoing was a direct and proximate cause of the harm that is the subject of the complaint.

(2) REASONABLE OPPORTUNITY FOR INSPECTION- a product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect the product--

(A) if the failure occurred because there was no reasonable opportunity to inspect the product; or

(B) if the inspection, in the exercise of reasonable care, would not have revealed the aspect of the product which allegedly caused the claimant's harm.

(3) LIABILITY OF MANUFACTURERS - the manufacturer of the product that caused harm to the claimant shall be liable subsidiarily. In the event that the product seller has no fault or that the manufacturer's negligence is the direct and proximate cause of the harm done, the manufacturer alone shall be held liable.

SECTION 4. *Defense Based on Claimants' Use of Intoxicating Alcohol or Drugs*

(1) GENERAL RULE- In any product liability action, it shall be a complete defense to such action if--

(A) the claimant was intoxicated or was under the influence of intoxicating alcohol or any drug when the accident or other event which resulted in such claimant's harm occurred; and

(B) the claimant, as a result of the influence of the alcohol or drug, was more than 50 percent responsible for such accident or other event.

SECTION 5. *Uniform Time Limitations on Liability*

STATUTE OF LIMITATIONS-

(A) IN GENERAL- product liability action may be filed not later than 2 years after the date on which the claimant discovered or, in the exercise of reasonable care, should have discovered--

(a) the harm that is the subject of the action; and

(b) the cause of the harm.

(B) EXCEPTION- A person with a legal disability (as determined under applicable law) may file a product liability action not later than 2 years after the date on which the person ceases to have the legal disability.

SECTION 6. *Alternative Dispute Resolution Procedure*

(1) SERVICE OF OFFER- A claimant or a defendant in a product liability action may, not later than 60 days after the service of-- (1) the initial complaint; or (2) the applicable deadline for a responsive pleading; whichever is later, shall serve upon an adverse party an offer to proceed pursuant to any voluntary, non-binding alternative dispute resolution procedure established under the rules of the court in which such action is maintained.

(2) WRITTEN NOTICE OF ACCEPTANCE OR REJECTION- Except as provided in subsection (3), not later than 10 days after the service of an offer to proceed under subsection (1), an offeree shall file a written notice of acceptance or rejection of the offer.

(3) EXTENSION- The court may, upon motion by an offeree made prior to the expiration of the 10-day period specified in subsection (2), extend the period for filing a written notice under such subsection for a period of not more than 60 days after the date of expiration of the period specified in subsection (2). Discovery may be permitted during such period.

SECTION 7. *Uniform Standards for Award of Damages*

(1) GENERAL RULE- damages may, to the extent permitted by applicable law, be awarded against a defendant if the claimant establishes by clear and convincing evidence that conduct carried out by the defendant with a conscious, flagrant indifference to the rights or safety of others was the proximate cause of the harm that is the subject of the action in any product liability action.

(2) LIMITATION ON AMOUNT-

(A) IN GENERAL- The amount of damages that may be awarded in an action described in subsection (1) may not exceed the greater of two (2) times the sum of the amount awarded to the claimant for economic loss and non-economic loss

(3) EXCEPTION FOR INSUFFICIENT AWARD IN CASES OF EGREGIOUS CONDUCT-

(A) DETERMINATION BY COURT- If the court makes a determination, after considering each of the factors in subparagraph (B), that the award of damages is insufficient to punish the egregious conduct of the defendant against whom the punitive damages are to be awarded or to deter such conduct in the future, the court shall determine the additional amount of damages (referred to in this paragraph as the "additional amount") against the defendant in a separate proceeding in accordance with this paragraph.

(B) FACTORS FOR CONSIDERATION- In any proceeding under paragraph (A), the court shall consider--

(i) the extent to which the defendant acted with actual malice;

(ii) the likelihood that serious harm would arise from the conduct of the defendant;

(iii) the degree of the awareness of the defendant of that likelihood;

(iv) the profitability of the misconduct to the defendant;

(v) the duration of the misconduct and any concurrent or subsequent concealment of the conduct by the defendant;

(vi) the attitude and conduct of the defendant upon the discovery of the misconduct and whether the misconduct has terminated;

(vii) the financial condition of the defendant; and

(C) REQUIREMENTS FOR AWARDED ADDITIONAL AMOUNT- If the court awards an additional amount pursuant to this subsection, the court shall state its reasons for setting the amount of the additional amount in findings of fact and conclusions of law.

SECTION 8. *Harm Resulting from Action of Employer or Co-employee*

(A) IN GENERAL- If, with respect to a product liability action that is subject to this Act, the manufacturer or product seller attempts to persuade the trier of fact that

the harm to the claimant, which incidentally took place in the workplace, was caused by the fault of the employer of the claimant or any co-employee of the claimant, the issue of that fault shall be submitted to the trier of fact, but only after the manufacturer or product seller has provided timely written notice to the insurer.

(B) REDUCTION OF DAMAGES- If the trier of fact finds by clear and convincing evidence that the harm to the claimant that is the subject of the product liability action was caused by the fault of the employer or a co-employee of the claimant--

(i) the court shall reduce by the amount of the claimant's benefits--

(I) the damages awarded against the manufacturer or product seller; and

(II) any corresponding insurer's subrogation lien; and

(ii) the manufacturer or product seller shall have no further right by way of contribution or otherwise against the employer.

SECTION 9. *Separability Clause* - If any provision or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SECTION 10. *Repealing Clause* - Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with the provision of this Act is hereby repealed, modified or amended accordingly.

SECTION 11. *Effectivity Clause* - This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved.

EC
03 August 1998