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SENATE
S. No. 1917

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.¹

miriam

MIRIAM DEFENSOR SANTIAGO

¹ This bill was originally filed during the Thirteenth Congress, First Regular Session

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S. No. 1917

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

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

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

5 SECTION 2. *Definitions of Terms.* -For purposes of this Act, the term:

6 (A) "Actual malice" means specific intent to cause serious physical injury, illness,
7 disease, death, or damage to property;

8 (B) "Claimant" means any person who brings an action covered by this title and any
9 person whose behalf such an action is brought; If such an action is brought through or on behalf
10 of an estate, the term includes the claimant's decedent. If such an action is brought or on behalf
11 of a minor or incompetent, the term includes the claimant's legal guardian.

12 (C) "Claimant's benefits" means the amount paid to an employee as worker's
13 compensation benefits;

14 (D) "Clear and convincing evidence" is that measure or degree of proof that will produce
15 in the mind of the trier of fact a firm belief or conviction as to the truth of the allegation sought
16 to be establish; it is the level of proof required to satisfy such standard is more than that required
17 under preponderance of the evidence, but less than that required for proof beyond a reasonable
18 doubt;

19 (E) "Commercial loss" means any loss or damage solely to a product itself, loss relating
20 to dispute over its value, or consequential economic loss;

1 (F) "Compensatory damages" means damages awarded for economic and noneconomic
2 loss;

3 (G) "Economic loss" means any pecuniary loss resulting from harm, including the loss of
4 earnings or other benefits related to employment, medical expense loss, replacement services
5 loss, loss due to death, burial costs, and loss of business or employment opportunities, to the
6 extent recovery for such loss is allowed under applicable laws;

7 (H) "Harm" means any physical injury, illness, disease, or death or damage to property
8 caused by a product. The term does not include commercial loss;

9 (I) "Manufacturer" means:

10 (1) Any person who is engaged in a business to produce, create, make, or
11 construct any product or component part of a product and who

12 (a) Designs or formulates the product or component part of the product; or

13 (b) Has engaged another person to design or formulate the product or
14 component part of the product.

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

21 (3) Any product seller not described in the preceding subparagraphs but who
22 holds himself, herself or itself out as a manufacturer to the user of the product.

23 (J) "Non-economic loss" means subjective, non-monetary loss resulting from harm,
24 including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and
25 companionship, loss of consortium, injury to reputation, and humiliation;

26 (K) "Person" means any individual, corporation, company, association, firm, partnership,
27 society, joint stock company, or any other entity, including any governmental entity;

1 (L) "Product liability action" means a civil action brought on any theory for harm caused
2 by a product.

3 (M) "Product seller" means a person who in the course of a business conducted for that
4 purpose

5 (1) Sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise
6 is involved in placing a product in the stream of commerce; or

7 (2) Installs, repairs, refurbishes, reconditions, or maintains the harm-causing
8 aspect of the product.

9 The term does not include a seller or lessor of real property; a provider of professional
10 services in any case in which the sale or use of a product is incidental to the transaction and the
11 essence of the transaction is the furnishing of judgment, skill, or services; any person who acts in
12 only a financial capacity with respect to the sale or a product; or leases a product under a lease
13 arrangement in which the lessor does not initially select the leased product and does not during
14 the lease term ordinarily control the daily operations and maintenance of the product.

15 SECTION 3. *Liability Rules Applicable to product Sellers and Manufacturers.* -

16 (A) *In General.* - In any product liability action, a product seller other than a
17 manufacturer shall be liable to a claimant only if the claimant establishes that -

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

20 (2) The product seller failed to exercise reasonable care with respect to the
21 product;

22 (3) The failure to exercise reasonable care was a direct and proximate cause of
23 harm to the claimant;

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

27 (5) The product failed to conform to the warranty;

1 (6) The failure of the product to conform to the warranty caused harm to the
2 claimant;

3 (7) The product seller engaged in intention wrongdoing, as determined under
4 applicable law; and such intentional wrongdoing was a direct and proximate cause of the
5 ham that is the subject of the complaint.

6 (B) *Reasonable Opportunity for Inspection.* - A product seller shall not be considered to
7 have failed to exercise reasonable care with respect to a product based upon an alleged failure to
8 inspect the product if failure occurred because there was no reasonable opportunity to inspect the
9 product; or if the inspection, in the exercise of reasonable care, would not have revealed the
10 aspect of the product which allegedly caused the claimant's harm.

11 (C) *Liability of Manufacturers.* *The manufacturer of the product that caused harm to the
12 claimant shall be liable subsidiarily. In the event that the product seller has no fault or that the
13 manufacturer's negligence is the direct and proximate cause of the harm done, the manufacturer
14 alone shall be held liable.

15 SECTION 4. *Defense Based on Claimants' Use of Intoxicating Alcohol or Drugs.* - In
16 any product liability action, it shall be a complete defense to such action if

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

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

21 SECTION 5. *Uniform Time Limitations on Liability*

22 (A) *In General.* - The product liability action may be filed not later than 2 years after the
23 date on which the claimant discovered or, in the exercise of reasonable care, should have
24 discovered -

25 (1) The harm that is the subject of the action; and

26 (2) The cause of the harm.

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

4 SECTION 6. *Alternative Dispute Resolution Procedure.* -

5 (A) *Service of Offer.* - A claimant or a defendant in a product liability action may not
6 later than 60 days after the service of the initial complaint; or the applicable deadline for a
7 responsive pleading; whichever is later, shall serve upon an adverse party an offer to proceed
8 pursuant to any voluntary, non-binding alternative dispute resolution procedure establish under
9 the rules of the court in which such action is maintained.

10 (B) *Written Notice of Acceptance or Rejection.* - Except as provided in paragraph (C), not
11 later than 10 days after the service of an offer to proceed under paragraph (A), an offeree shall
12 file a written notice of acceptance or rejection of the offer.

13 (C) *Extension.* - The court may, upon motion by an offeree made prior to the expiration
14 of the 10-day period specified in paragraph (B), extend the period for filling a written notice
15 under such subsection for a period of not more than 60 days after the date of expiration of the
16 period specified in paragraph (B). Discovery may be permitted during such period.

17 SECTION 7. *Uniform Standards for Award of Damages.* -

18 (A) *General Rule.* - Damages may, to the extent permitted by applicable law, be awarded
19 against a defendant if the claimant establishes by clear and convincing evidence that conduct
20 carried out by the defendant with a conscious, flagrant indifference to the rights or safety of
21 others was the proximate cause of the harm that is the subject of the action in any product
22 liability action.

23 (B) *Limitation on Amount.* - The amount of damages that may be awarded in an action
24 described in paragraph (A) may not exceed the greater of two (2) times the sum of the amount
25 awarded to the claimant for economic loss and non-economic loss.

26 (C) *Exception for Insufficient Award in Cases of Egregious Conduct.* -

1 (1) *Determination by Court.* - If the court makes a determination, after
2 considering each of the factors in subparagraph (2) below, that the award of damages is
3 insufficient to punish the egregious conduct of the defendant against whom the punitive
4 damages are to be awarded or to deter such conduct in the future, the court shall
5 determine the additional amount of damages against the defendant in a separate
6 proceeding in accordance with this paragraph.

7 (2) *Factors for Consideration.* - In any proceeding instituted pursuant to this Act,
8 the court shall consider -

9 (a) The extent to which the defendant acted with actual malice;

10 (b) The likelihood that serious harm would arise from the conduct of the
11 defendant;

12 (c) The degree of the awareness of the defendant of that likelihood;

13 (d) The profitability of the misconduct to the defendant;

14 (e) The duration of the misconduct and any concurrent *or* subsequent
15 concealment of the conduct by the defendant;

16 (f) The attitude and conduct of the defendant upon the discovery of the
17 misconduct and whether the misconduct has terminated;

18 (g) The financial condition of the defendant; and

19 (3) *Requirements for Awarding Additional Amount.* - If the court awards an
20 additional amount pursuant to this subsection, the court shall state its reasons for setting
21 the amount of the additional amount in findings of fact and conclusions of law.

22 SECTION 8. *Harm Resulting from Action of Employer or Co-employee.* - If, with respect
23 to a product liability action that is subject to this Act, the manufacturer or product seller attempts
24 to persuade the trier of fact that the harm to the claimant, which incidentally took place in the
25 workplace, was caused by the fault of the employer of the claimant or any co-employee of the
26 claimant, the issue of that fault shall be submitted to the trier of fact, but only after the
27 manufacturer or product seller has provided timely written notice to the insurer.

1 If the trier of fact finds by clear and convincing evidence that the harm to the claimant
2 that is the subject of the product liability action was caused by the fault of the employer or a co-
3 employer of the claimant -

4 (A) The court shall reduce by the amount of the claimant's benefits the damages awarded
5 against the manufacturer or product seller; and any corresponding insurer's subrogation lien; and

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

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

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

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

Approved,