

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



Senate
Office of the Secretary

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SENATE
S. No. 1795

RECEIVED BY. *ji*

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

Our people are excessively litigious. The 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.*

act.
Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO

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

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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 the 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 bought through or on behalf
10 of an estate, the term includes the claimant's decedent. If such an action is brought on behalf of a
11 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
15 produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegation
16 sought to be establish; it is the level of proof required to satisfy such standard is more than that
17 required under preponderance of the evidence, but less than that required for proof beyond a
18 reasonable doubt;

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

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

3 (G) "Economic loss" means any pecuniary loss resulting from harm, including the loss
4 of 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
8 property 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
13 product; or

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (2) The product seller failed to exercise reasonable care with respect to the
23 product;

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

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

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

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

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

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

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

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

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

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

25 SECTION 5. *Uniform Time Limitations on Liability.* -

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

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

5 (2) The cause of the harm.

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

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

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

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

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

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

24 (A) *General Rule.* - Damages may, to the extent permitted by applicable law, be
25 awarded against a defendant if the claimant establishes by clear and convincing evidence that
26 conduct carried out by the defendant with a conscious, flagrant indifference to the rights or safety

1 of others was the proximate cause of the harm that is the subject of the action in any product
2 liability action.

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

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

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

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

- 16 (a) The extent to which the defendant acted with actual malice;
- 17 (b) The likelihood that serious harm would arise from the conduct of
18 the defendant;
- 19 (c) The degree of the awareness of the defendant of that likelihood;
- 20 (d) The profitability of the misconduct to the defendant;
- 21 (e) The duration of the misconduct and any concurrent or subsequent
22 concealment of the conduct by the defendant;
- 23 (f) The attitude and conduct of the defendant upon the discovery of
24 the misconduct and whether the misconduct has terminated; and
- 25 (g) The financial condition of the defendant.

26 (3) *Requirements for Awarding Additional Amount.* - If the court awards an
27 additional amount pursuant to this subsection, the court shall state its

1 reasons for setting the amount of the additional amount in findings of fact
2 and conclusions of law.

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

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

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

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

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

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

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

Approved,