

# THAI PRODUCT LIABILITY LAW: PREPARATION FOR ENTREPRENEURS

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## บทคัดย่อ

กฎหมายว่าด้วยความรับผิดในผลิตภัณฑ์ได้มีผลบังคับใช้เมื่อเร็วๆ นี้ภายใต้ชื่อของพระราชบัญญัติความรับผิดต่อความเสียหายที่เกิดขึ้นจากสินค้าที่ไม่ปลอดภัย พ.ร.บ. ฉบับดังกล่าวมุ่งหมายที่จะคุ้มครองผู้บริโภคให้มากขึ้นโดยการนำหลักความรับผิดโดยเคร่งครัดและค่าเสียหายเชิงลงโทษมาบังคับใช้กับผู้ประกอบการที่ไม่สามารถปฏิบัติตามมาตรฐานการผลิตสินค้า บทความนี้มีจุดประสงค์ที่จะทำให้ผู้ประกอบการได้ตระหนักถึงความสำคัญของกฎหมายความรับผิดในผลิตภัณฑ์โดยการอธิบายถึงหลักการของกฎหมายโดยย่อ รวมไปถึงการยกตัวอย่างคดีที่เกิดขึ้นในประเทศสหรัฐอเมริกาและประเทศญี่ปุ่นในฐานะประเทศต้นแบบ รวมทั้งคำแนะนำเกี่ยวกับการเตรียมพร้อมและกลยุทธ์ที่เหมาะสมสำหรับผู้ประกอบการในการรับมือกับกฎหมายความรับผิดในผลิตภัณฑ์อีกด้วย

## Abstract

Product Liability Law has recently been enforced in Thailand in the form of the Liability for Damages Arising from Unsafe Product Act. The act aims to enhance the protection of consumers' rights by imposing strict liability and punitive damages on entrepreneurs who do not meet sufficient standards of product manufacturing. This paper aims to increase awareness of entrepreneurs about the importance of this enhanced protection by describing the Thai product liability law in brief, and including examples of the laws from the U.S.A and Japan as the models. Proper business preparation and strategies for entrepreneurs in dealing with the product liability law are also suggested in this paper.

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## INTRODUCTION

On 20 February 2009, Thailand's long awaited product liability legislation, the so-called “**Liability for Damages Arising from Unsafe Products Act, B.E. 2551**” came into full force and effect. This legislation has significant influence for business entrepreneurs in Thailand. It is important to state that the Act has the potential to be one of the most influential current laws in Thailand. Currently, the manufacturing process of many imported and local goods is becoming far more complicated than ever. Therefore, the consumer faces more difficulties in inspecting goods for defects. Consequently, it is not fair if the risk of damage from using defective products totally falls on consumers because it is difficult for them to find out who is responsible for such damage, especially in a developing country such as Thailand, where the bargaining power of consumers is very low.

This new law comes into force to strengthen community confidence in the current state of consumer protection law in Thailand. It enjoys wide spread popular support, both within government circles and in the community at large. It has been supplemented by complementary legislation introducing new and simplified court procedures for consumer claim cases, deliberately designed to facilitate the initiation and resolution of consumer claims. In particular, this law extends tort law by applying the doctrine of “**Strict Liability**” which means that every entrepreneur is liable if a product is defective, **even if the manufacturer was not negligent in making that product defective.**

This new law is a major challenge for Thai

entrepreneurs. More broadly, most businesses supplying products to or in Thailand will be affected. The impact is especially significant in some industrial sectors, for example, the automobile, food and pharmaceutical sectors. Businessmen need to be familiar with the content of the new law. Diligent and responsible management must improve their practices to ensure that their organizations are adequately prepared for this new law because the adverse impact of product liability claims upon any organization can be severe for those who neglect to be well-prepared.

Additionally, damage to brand and reputation, dislocation and loss of market share, and management down time need to be taken into consideration, in addition to awards for damages and legal expenses that must be paid when liability judgments are rendered against a business. Other forms of damage can be even more serious, in particular domestic business with foreign units and foreign business entrepreneurs operating in Thailand should realize that local claims made under the new law may have international implications as well as ramifications for related companies outside of Thailand. They need to understand that, whilst in broad terms the new law is based on comparable laws in other jurisdictions, the Act also contains features that are unique and distinctive to Thailand.

In particular, some defenses which can be normally found in the laws of other jurisdictions have been excluded from the Act. For example, there is no defense based on the absence of defect at the time of supply. Moreover, any supplier can be jointly liable with other suppliers in the supply chain, even though a product may have been free of defect at the time it left the possession of

that particular supplier. The absence of this defense has the potential to encourage “defendant shopping.” Plaintiffs will be inclined to pursue claims against high profile, big name, defendants, including Thai subsidiaries of international corporations.

## **RECENT PRODUCT LIABILITY LAW IN THAILAND**

This law contains 16 sections which are effective beginning February 20, 2009. Any “product,” including agricultural products and electricity sold after the enforcing date is affected by this law, **but not including “service”**. (Office of the Council of State, 2008)

### **A. Unsafe Products**

Similar to product liability doctrine in the U.S.A., the Product Liability Act makes a distinction between three different categories of unsafe or defective products:

1. *Unsafe products from a defect in production*

This first category typically arises when there is an unintended irregularity in an otherwise safe manufacturing process. Because this sort of claim turns on a single or limited number of allegedly flawed products, rather than an entire line of products, this type of claims is usually more straightforward.

2. *Unsafe products resulting from a defect in design*

This is often much more contentious and controversial because it can affect an entire line of products and because of the type of

decisions it requires courts to make. Design defect claims require a court to determine if there were hazards lurking in a product’s engineering or scientific conception and, if so, whether such hazards rise to the level of a “defect.” Defect claims typically require highly technical evidence. Further, because there are hazards in any human activity, they also involve difficult judgment calls about what can reasonably be expected from a design.

3. *Products which are unsafe because of insufficient warnings of danger or lack of instructions for safe use.*

The third category turns on information provided about the product. This category has two separate obligations: first, a duty to warn; and second, a duty to provide proper instructions. It is also an area where business operators can reduce their exposure. Although these three categories often overlap with each other, they differ in terms of the decisions they require courts to make and the risks they create.

### **B. Entrepreneur**

The Product Liability Act provides for joint and several liabilities for the category of “entrepreneur,” which covers:

1. Producer (Manufacturer) or a party authorizing the production (outsourcer).
2. Importer
3. Seller of a product who cannot identify his producer, party authorizing the production, or importer
4. Party using a name, trade name, trade mark, mark, message or other means which may be understood as being the producer, party authorizing the production, or

importer.

### **C. Burden of Proof**

For the entrepreneurs to be liable, the damaged party (plaintiff) shall prove that:

(1) the damaged party sustained damages from the product of the entrepreneur(s) and

(2) the use or storage of the product was done in a normal manner.

**\*\*However, evidence shall not be required showing that the damages occurred from the action of a particular entrepreneur.**

### **D. Defenses**

The entrepreneurs shall not be liable if they can prove that:

1. The product was not unsafe. (The product was safe.)

2. The damaged party had knowledge that the product was unsafe, or

3. The damage occurred because of inappropriate use or storage of the product as determined by the instructions for appropriate use and storage or warning included with the product. (if the product information is accurately and clearly provided by the entrepreneurs).

4. The party producing products by order of the party authorizing the production shall not be liable if evidence can be provided that the danger was caused by the design of the party authorizing the production or compliance with the instructions provided by the party authorizing the production, whereas the producing party had not expected such danger.

5. The producer of the product components shall not be liable if it can be proved

that the danger of the products was caused by the design, assembly, instruction for use and storage, or the warning or product information provided by the party producing the product.

However, any agreements entered into between the consumer and the entrepreneurs before the damages and the statement of the entrepreneur to disclaim or place limits on his liability for damages caused by the unsafe product **cannot** be asserted as a disclaimer or limit the entrepreneur's liability.

### **E. Awardable Damages**

1. Compensation for violations of the Civil and Commercial Code.

2. Compensation for damages to mental health, emotional distress damages and, if a damaged party dies, certain relatives and heirs of the damaged party can also recover emotional distress damages.

3. Punitive damages can also be awarded if the entrepreneurs knew the products were unsafe, failed to discover the products were unsafe because of gross negligence, or failed to take proper action to prevent damage after learning that the products were unsafe. Punitive damages are limited to twice the actual amount of damages under this Act.

### **F. Prescription Period**

The right to demand compensation arising from unsafe products will expire after:

1. 3 years counting from the date the damaged party became aware of the damages and became aware of the entrepreneurs responsible or 10 years counting from the date the product was sold.

2. In the event the damages were to life, body, health, or hygiene by the accumulation of chemicals in the body or in the event a period of time must pass before any symptoms appear, 3 years counting from the date that the damaged party became aware of the damages and the entrepreneurs responsible, but not exceed by 10 years counting from the date he became aware of the damages.

## **LANDMARK PRODUCT LIABILITY CASES**

Because the Liability for Damages Arising from Unsafe Products Act, B.E. 2551 was enforced on February 20, 2009, there are no major court decisions based on the act in Thailand to-date. However, since Thailand's Unsafe Product Act adopts similar legal concepts to the **U.S.A.** and **Japan's** Product Liability Law (Suppanit, 2006) which have enforced their PL laws since 1944 and 1994, respectively, precedent court decisions in PL law from these two jurisdictions are good models for analogical comparison to the Thai PL act. (Tanitkul, 2010) The following case illustrate:

### **A. Manufacturing defect**

*Escola v. Coca Cola Bottling Co.*, (1944) While Ms. Escola was picking up a coca cola bottle to keep in the fridge, it exploded. Ms. Escola's hand was seriously injured and she lost the ability to use that hand forever. In this case, the facts show that the coca cola bottle was over-carbonated, the coca cola company was liable for the body injury of Ms. Escola under doc-

trine of strict liability.

*The case of National television burned down office (Trial Court of Osaka, 1990)* The plaintiff plugged in a National TV (manufactured by the defendant's company, Matsushita) on the ground floor which was plaintiff's construction office. The maid testified that she saw smoke drifting from the back of the TV. The judge then inferred that the fire must have originated from the TV which was negligently manufactured. The judge reasoned that the TV shall be deemed defective because the witness could see smoke and flames erupting from the TV, although the plaintiff normally used the TV by leaving it plugged in and turning on standby mode. Moreover, the facts showed that, since the plaintiff had bought the TV 8 months prior to the fire incident, the plaintiff had never touched any inner parts of the TV nor let anyone fix it, therefore, it could be inferred that there was a close relationship between the product defect and the damage incurred at the time the defendant sold the product on the market.

### **B. Defective (insufficient) warning**

*Nowak v. Faberge USA, Inc.*, (1994) The plaintiff was using a hair spray which is operated by a flammable alcoholic pressure process. The spray bottle was labeled with a warning that stated "No Piercing" and "No use near fire or flame." The plaintiff tried to use the spray, but the valve did not work. Then, she used a can opener to pierce the spray can. Immediately, white smoke spouted and flowed to a flaming gas stove. It caught on fire and burned the body of the plaintiff. In this case, the producers were

strictly liable to the plaintiff because they did not put sufficient warnings. They should have also put the warning label “Flammable” on the product.

*Liebeck v. McDonald’s Restaurant (also known as McDonald’s hot coffee, 1992)* Stella Liebeck, a 79-year-old woman from Albuquerque, New Mexico, ordered a 49c cup of coffee from the drive-through window of a local McDonald’s restaurant. Liebeck was in the passenger seat of her Ford Probe, and her grandson parked the car so that she could add cream and sugar to her coffee. She placed the coffee cup between her knees and pulled the far side of the lid toward her to remove it. In the process, she spilled the entire cup of coffee on her lap. Liebeck was wearing cotton sweatpants; they absorbed the coffee and held it against her skin as she sat in the puddle of hot liquid for over 90 seconds, scalding her legs. Liebeck was taken to the hospital for serious injury. The court granted 640,000 USD (including punitive damages) for damages due to insufficient warning.

*Case of medical device which causes an infant death (Trial court of Tokyo, March 20, 2003)* Infant A. was born at December 8, 2003 with respiratory problems. His parents, afterwards noticed the condition, took him to hospital B., incorporated by Y1. Infant A. was cured by bronchial expansion surgery. After he was brought back to the patient room, doctor C. connected ‘the tube’ to infant A.’s bronchia. The special tube was imported from overseas by company Y2. The tube was then connected with a gas pipe, another special medical device manufactured by company Y3. Because the diameter of the tube was too narrow, part of the shank of

the pipe obstructed the air path of the tube causing infant A.’s death on December 24, 2000, from lack of oxygen. Infant A.’s parent sued Y1 on claim of tort and breach of contract, and sued Y2 and Y3 on claim of product liability and tort. The court held that the special tube manufactured by defendant Y2 was defective because Y2 did not provide sufficient and evident warning. The pipe manufactured by Y3 was held liable because of insufficient warnings as well.

### C. Design Defect

*Richard Grimshaw v. Ford Motor Company (1981)*. Ford Motor Company produced a small, low-cost and fuel-saving car for sale in the U.S. The Division of Production and Design designed a new car series called the “Ford Pinto” in which the fuel tank was located in the rear of the car instead of installing it toward the middle of the body of the car. By installing it in such a location, the company could save U.S. \$ 12.50. Testing found that if the car was struck from behind, the probability that the fuel tank might sink and be ignited and burn drivers and passengers was very high. But the company did not change anything. An incident occurred to Mr. Richard when he drove his Ford Pinto on the highway, and the engine stopped with no cause. While the car was parked, another car, driven by a drunk driver, hit Mr. Richard’s car in the rear. The collision sank and ignited the fuel tank. Mr. Richard was burnt to death and his son received serious injuries. The court held that the defendant (Ford Motor Company) had evil intention because the defendant did not care about human life but only the private commercial interest of the com-



pany.

*Greenman v. Yuba Power Products, Inc. (1963)* The plaintiff, Greenman, wanted a Shopsmith (a combination power tool that could be used as a saw, drill, and wood lathe) after having seen the tool demonstrated by a retailer and having studied a brochure prepared by the manufacturer. The plaintiff's wife bought him one for Christmas. More than a year later, a piece of wood flew out of the lathe attachment of the Shopsmith while the plaintiff was using it, inflicting serious injuries on him. About ten and a half months later, the plaintiff sued both the retailer and the manufacturer for breach of warranties and negligence. The court held that a manufacturer is strictly liable in tort with regard to an article it places on the market, knowing that it is to be used, without inspection for defects. The manufacturer was held strictly liable in tort for the harm caused by its unsafe product.

Case of mold removal solution in aerosol spray can (Trial court of Tokyo, March 28, 1991) The plaintiff bought a spray can of mold removal solution in 1988, manufactured by Johnson & Johnson Company. When the plaintiff used such spray to remove mold in his bathroom, he immediately suffered from asthma and almost suffocated. Plaintiff then brought the case to the court. The trial court of Tokyo held that severe breathing distress that the plaintiff suffered soon after spraying the solution showed that defendant's product directly caused damage to the plaintiff. The defendant should have designed the spray can to prevent the solution from spreading into the air. If this design had been implemented, the plaintiff could have avoided damage that might incur from using defendant's product. The

court ruled in favor of the plaintiff for 700,000 yen.

## **RECOMMENDATION FOR ENTREPRENEURS**

Many entrepreneurs, perceive that, the strategies for managing strict liability arising from this Unsafe Product Act are similar to the strategies they normally apply to general risk arising from business operation and administration. Such risks include risk assessment, risk management and risk communication. These risk strategies can be implemented by various practical measures in order to limit exposure to liability. (Tanitkul, 2010)

There are various activities that an entrepreneur can engage in to minimize the damages that may arise from unsafe products. These well-planned activities can also maximize the benefits for an entrepreneur both legally and financially.

### **A. General activities to prevent damage**

1. Defining a concrete policy and tangible target for creating safe products; including prioritizing of activities which are related to product safety measures, to make them accordable with and in concert with the priorities of other activities
2. Establishing a committee for product safety and a collaborator of product safety who are sufficiently empowered and assume a concrete role in handling product safety issues within organizations
3. Specifying and assessing of risk arising from production of unsafe product by:
  - Gathering reports and statistics con-

cerning quantity or category of damages arising from the unsafe products of the organization

- Surveillance of and inspecting reports relating to defects of products which are submitted by distributors, customers, government agencies, et cetera

- Applying methodologies of analysis to hazard and risk assessments in order to be capable of prompt and immediate actions indicating a risk which may occur anytime

- Monitoring technological, legal and social changes in order to predict any upcoming risks

4. Reducing risks that may arise from the manufacture of unsafe products by:

- Designing, manufacturing and marketing products to meet (or exceed) the safety standards which are imposed by law and society

- Supervising the producers who produce component parts of the products, the one who produces raw materials or who produces the machinery that enables them to operate the production process to ensure that they meet the appropriate standards.

5. Transferring risks that may arise from unsafe manufacture of products by:

- Indicating the routes and details regarding the distribution of products from the origin of production until the end of it, including identifying manufacturers who are responsible for producing component parts of the products, importers, outsourcers, etc. in order to be capable of finding the one who is liable or jointly liable for damages

- Specifying, in the contracts made with producers of components parts, importers, outsourcers, etc. as the case may be, the reservations or limitations on liability arising from unsafe products

- Securing third party insurance for any damage that may arise from unsafe products. The scope of coverage, limitation of compensation, premium rate and other factors of the policy of such insurance should be optimal for the entrepreneurs.

6. Mitigating and preventing risks arising from manufacturing of unsafe products by:

- Establishing networks of cooperation, which are a continuous and stable system, among groups of industries and other relevant institutions such as automobile institutions (in the case of automobile related businesses) and other associations or consumer groups

- Founding a counseling center and a center for dispute resolution on product safety; gathering experts who are impartial and well-recognized by all concerned parties for providing fruitful opinions relating to unsafe products, both in court and outside court

- Establishing a fund to remunerate any damage arising from unsafe product

- Setting up a system of product recall which can be beneficial to society and business. The basis of the system should include suitable advance planning, coordination with all relevant sectors in a systematic way and determination of a valid and sustainable product recall process. Having an effective product recall process can fully or partially prevent or diminish any damages arising from unsafe products, while creating the least expense to entrepreneurs.

## **B. Recommend activities for specific departments in the organizations for prevention and mitigation of risks arising from unsafe products:**

1. Department of Research and Development



- To design each product, they should apply product safety standards which are equivalent or superior to the ones used by general industries or by other business competitors

- For the purpose of correct and timely product traceability, they should prepare and collect necessary evidence in order to illustrate the design process and any alterations of design.

- During the production process, if a request to alter the product design or to operate the production process in a way that is different from the original design is filed, close supervision and deliberate consideration before granting approval should be carefully practiced.

## 2. Department of Purchasing

- Selecting only component manufacturers and raw material manufacturers who can meet certain safety standards and recording the details of such a selection process in documentary forms

- Monitoring the financial security and insurance status of all component manufacturers and raw material manufacturers

- Informing component manufacturers and raw material manufacturers about details related to the design of component parts and raw materials

- Collecting documents which contains details about any alterations in the design made by component manufacturers and raw material manufacturers, including any failures to comply with the agreed upon designs

## 3. Department of Maintenance and Production

- Applying qualified and standardized administration and safety systems for the production process which are suitable for

the organization

- Preparing action plans for systematic and continuous maintenance of equipment and factories

- Providing manuals and instructions which contain clear details and are consistent with the design and the whole system of operation. These documents should be regularly updated in order to be suitable for the working conditions in each period of time. Such manuals and instructions should be easily accessible by all personnel.

## 4. Department of sales and marketing

- Providing correct information regarding product safety, limitations and possible harm to consumers

- Applying profitable market strategies which do not distort the understanding of consumers

- Showing correct information regarding the origins of products

## 5. Department of Customer Service and Relations

- In order that every relevant party can obtain correct and precise information, when petitions or notifications about product defects have been raised, accurate coordination with consumers and other departments in the organization should be promptly implemented.

- When defective products have been safely fixed and returned to consumers, information on how to safely use the products should be provided to the consumers.

## 6. Department of Legal Affairs

- Cooperating with all parties affiliated with the assessment of risks arising from unsafe products, including setting policies and guidance cooperatively for each department with the purpose of systematically preventing and directly handling any prob-

lems that may arise from unsafe products

- Providing knowledge to the organization about the importance of liability problems arising from unsafe products
  - Reviewing the contracts that are made with other entrepreneurs whether or not those contracts create unsafe product-related risks to the organization, including preparing contractual agreements which can prevent the organization from unnecessary risks or deal with anticipated problems that may arise from unsafe products
  - Checking necessary documents, storing them in complete format and always keeping them ready to use when product liability cases have been raised
  - Participating in dispute resolutions
7. Department of Human Resources
- Recruiting staff who are qualified enough to be able to work at the level required while adhering to regulations and safety standards
  - Training the staff to be knowledgeable, skillful, and to act consistent with the business and legal goals of the organization
  - Evaluating the staff and offering rewards to those who can work in accordance with the targets of the organization

### **C. Product Liability Insurance**

Product liability insurance is another choice for entrepreneurs for the mitigation and reduction of risks that may arise from product defects. Entrepreneurs will be protected from liability arising from the manufacture or sale of products, food, medicines or other goods which are placed in the stream of commerce. The manufacturer's or seller's liability incurred from losses or injuries to a buyer, user or bystander caused

by a defect or malfunction of the product including a defective design or a failure to warn are covered. In case that this kind of insurance becomes a part of a commercial general liability policy, it is occasionally called products-completed operations insurance. The premium rates on such policies depend on the type of product, volume of sales, and the role of the insured in the process. (Boob, 2010)

## **CONCLUSION**

Thailand's new Products Liability Law improves recovery options for consumers of defective products by changing the standard of liability from negligence to strict liability. Moreover, it provides more flexible approaches that allow more individuals to recover damages for their injuries.

Product Liability insurance, product quality control and product tracking procedures can be a proactive program for entrepreneurs after undertaking an active consideration of what initiatives can be taken to ensure that product liability risk is reduced. This can be achieved in a positive and constructive manner. Moreover, cautious and adequate preparation can form part of an overall quality review. They can serve as a useful occasion and catalyst for conducting an assessment of how existing operations in general can be improved.

Every entrepreneur has to sufficiently and effectively perform their higher responsibilities, by improving their management to adopt a positive and proactive approach to the issue of product liability law in general, instead of acting defensively and reactively and doing nothing with the hope that the new

law will not affect their business.

Moreover, “good faith” is a general principle of law which every individual should bear in mind when he/she wants to exercise his/her rights. It is also a fundamental of civil law because true justice cannot be successfully administered without action in good faith from all relevant parties. However, with regard to law, since good faith is what enables persons to live their life in a way that does not cause damage to others, consciousness of living in good faith is a key factor for the creation of a utopian society. For entrepreneurs, although the ultimate goal of doing business is profit maximization, entrepreneurs should not overlook their own social responsibility. Because any activities from entrepreneurs can greatly affect society, doing business ‘in good faith’ practices such as trustworthy production, honest sales, truthful advertising are essential for gaining true and sustainable profit.

Finally, it is no exaggeration to say that the “Law” involves everyone, from womb to tomb, as the old proverb; “Ignorantia legis neminem excusat” (Ignorance of the law excuses no one).

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## **Appendix**

### **Liability for Damages Arising from Unsafe Products Act 2551 B.E.**

[Government Gazette (Council of State version), book 125, chapter 36 kor,  
February 20, 2008. English version retrieved from <http://www.thailaws.com/>.]

#### **BHUMIBOLADULYADEJ REX.**

Given on 13 February 2551 B.E.  
Being the 63<sup>rd</sup> Year of the Present Reign

His Majesty King Bhumibhol Adulyadej is pleased to announce as follows:

Whereas it is deemed proper to have a law on liability for damage arising from unsafe products.

This Act has some provisions related to limits placed on the rights and freedoms of persons, permitted based on section 29 and 43 of the Constitution of the Kingdom of Thailand and the authority vested in the provisions of law.

His Majesty the King has provided this Act based on the recommendation and acceptance of the National Legislative Council as follows:

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

Section 2: This Act shall be effective beginning one year after its publication in the Government Gazette.

Section 3: In the event a law for liability for damage sustained from unsafe products is in existence which provides greater protection to the damaged party than stipulated in this Act, that law shall be enforceable.

Section 4: In this Act,

“Product” means all movable properties produced or imported for sale, including agricultural products and electricity. The exception being products prescribed in the Ministerial Regulations.

“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 through natural processes.

“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 person sustaining damage arising from an unsafe product.

“Damage” means damage arising from an unsafe product, regardless of whether the damage is to life, body, health, hygiene, mental state, or assets. This shall not include damage to the unsafe product.

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

“Unsafe product” means products that cause or may cause damage, regardless of whether it was caused by negligence during the production process or the design process. No guidelines being given for storage, or warning, or information related to the product, or guidelines being given but in an incorrect manner or vaguely so as to be improper when considering the condition of the product, including the normal method of use and storage for the product.

“Sell” means distributing, disposing, or exchanging for commercial benefit and includes leasing, lease purchasing, procuring, soliciting, and exhibiting as stated.

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

“Entrepreneur” means

1. Producer or a party authorizing the production.
2. Importer
3. Seller of product who cannot identify his producer, party authorizing 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 authorizing the production, or importer.

Section 5: All entrepreneurs shall be jointly liable for damages occurring to the damaged party from an unsafe product sold to the consumer. This shall apply to intentional damages or damages arising from the negligence of the entrepreneurs.

Section 6: For the entrepreneurs to be liable according to section 5, the damaged party or his prosecuting representative, based on section 10, shall prove that the damaged party sustained damages from the product of the entrepreneurs, and the use or storage of the product was done in a normal manner. However, evidence shall not be required to the effect that the damages occurred from the Action of a particular entrepreneur.

Section 7: The entrepreneurs shall not be liable for damages arising from an unsafe product if it can be determined that

1. The product was not unsafe.
2. The damaged party had knowledge that the product was unsafe, or
3. The damages occurred from inappropriate use or storage of the product determined by the instructions for appropriate use and storage, warning, or product information accurately and clearly provided by the entrepreneurs.

Section 8: The party producing products by order of the party authorizing the production shall not be liable if evidence can be provided that the danger was caused by the design of the party authorizing the production or compliance to the instructions provided by the party authorizing the production, whereas the producing party had not expected such danger.

The producer of the product components shall not be liable if it can be proved that the danger of the products was caused by the design, assembly, instructions for usage and

storage, and warning or product information by the party producing the product.

Section 9: Agreements entered into between the consumer and the entrepreneurs before the damages and the statement of the entrepreneur to disclaim or place limits on his liability for damages caused by the unsafe product cannot be asserted as a disclaimer or limit the entrepreneur's liability.

Section 10: The Consumer Protection Committee, associations and foundations certified by the Consumer Protection Committee under consumer laws shall be authorized to file legal proceedings for compensation in place of the damaged party under the stipulations related to filing of legal proceedings and prosecuting representation for legal proceedings, which shall be enforced with exceptions.

All fees shall be exempted for filing of legal proceedings in place of the damaged party under Paragraph One, with the exclusion of the final fee.

Section 11: The court shall be authorized to demand compensation for damages based on the following, in addition to compensation for violations of the Civil and Commercial Code:

1. Compensation for damage to mental health, as well as body, health, and hygiene of the damaged party. In the event the damaged party has died, the damage party's husband, wife, children, or descendants shall have rights to compensation for the damage occurring to mental health.

2. In the event the facts indicate that the entrepreneurs produced, imported, or sold the products, although aware that the products were unsafe, or that the entrepreneur was unaware, but committed gross negligence, or had awareness that the product was unsafe after production, yet imported or sold the unsafe product without taking appropriate action to prevent damages from occurring, the court shall be authorized to order the entrepreneur to pay punitive damages in addition to the amount of actual compensation stipulated by the court, which shall be based on the discretion of the court, but not to exceed twice the actual compensation. Consideration will be given to the following circumstances including the severity of the damage sustained by the damaged party, the entrepreneur's cognizance of the damages arising from the product, the time period in which the entrepreneur concealed the danger of the product, the actions taken by the entrepreneur after becoming aware that the product was unsafe, the benefits received by the entrepreneur, the financial status of the entrepreneur, efforts to alleviate the damages that occurred on the part of the entrepreneur, and the part the damaged party had in the damages that occurred.

Section 12: The right to demand compensation arising from unsafe products according to this Act will expire after 3 years counting from the date the damaged party became aware of the damages and became aware of the entrepreneurs responsible, or after 10 years counting from the date the product was sold

In the event the damages were to life, body, health, or hygiene by the accumulation of chemicals in the body of the damaged party, or in the event a period of time must pass before any symptoms appear, the damaged party or his prosecuting representative, ac-



according to section 10, must demand his rights 3 years counting from the date that he became aware of the damages and the entrepreneurs responsible, but not to exceed 10 years counting from the date he became aware of the damages.

Section 13: In the event of negotiation for compensation between the entrepreneur and the damaged party or his prosecuting representative, according to section 10, the prescription period ceases during the period of negotiation until either party terminates the negotiation.

Section 14: The stipulations to the Act shall not deprive the damaged party of his rights to demand compensation based on rights under other laws.

Section 15: Products sold to the consumer before this Act's enforcement shall not be governed under this Act.

Section 16: The Prime Minister shall abide by this Act and shall be authorized to prescribe Ministerial Regulations for compliance with this Act.

The Ministerial Regulations as stated shall be enforceable after its publication in the Government Gazette.

*Countersigner*

*General Surayud Julianond*

*Prime Minister*

**Remarks:**

The reason for promulgating this Act are as follows:

As products nowadays, both manufactured within the country or by importation increasingly undergo scientific and hi-technical manufacturing processes, detecting non-safety of products is difficult for consumers. Such unsafe products, when being used, harmful to consumers' or other people's life, body, health, hygiene, mind or property. Filing a court case for compensation is currently complicated because the burden of proof according to the general principle of law is on the injured person to prove the willfulness or negligence of the manufacturer or importer, due to the lack of the law protecting the consumers by implementing the provision of liability of the manufacturer or relevant persons. It is, therefore appropriate to promulgate the Product Liability Law applying strict liability. The result is that injured persons have no burden to prove about the unsafe product and also are able to receive fair compensation.