

¹PRODUCTS LIABILITY ACT 1989

PART 1

Scope of the Act

1. This Act applies to the legal liability of manufactures, distributors and sellers for damage caused by a defective product manufactured or supplied by them.

PART 2

Definitions

Injury and damage

2. (1) This Act shall have effect for claims for damages and indemnification for bodily injury and loss of provider. This Act in the cases mentioned in subsection 2 of this section.

(2) This Act applies to property damage if according to its nature the property in question is normally intended for non-commercial utilization and primarily used accordingly by the claimant. This Act does not apply to damage to the defective product itself.

Product

3. (1) A product means any movable whether this has been manufactured, is a natural product or whether it has been used as a component part of another thing or attached to real property as a fixture. The rules applicable to products also apply to electricity.

(2) This Act does not apply to non-processed products from farming, animal husbandry, fishing or hunting.

Manufacturers, distributors and sellers

4. (1) A manufacturer is a person manufacturing a finished product, a component part or a primary product, a person manufacturing or gathering a natural product and a person who by putting his name, hallmark or other characteristic on a product sets himself up to be the manufacturer of that product.

(2) A manufacturer is also a person who as part of his business

¹ Act No. 371 of June 7, 1989. Author's translation

imports a product into the EEC for the purpose of resale, renting, leasing or other type of commercial activity.

(3) A distributor or seller is a person who places a product on the market without being the manufacturer.

(4) If for a product manufactured in the EEC the claimant cannot identify the manufacturer hereof, or for a product manufactured outside the EEC the claimant cannot identify the importer of such product into the EEC, any distributor or seller of such product shall be considered the manufacturer.

(5) The provision of subsection (4) of this section shall not be applicable if within a reasonable period of time the distributor or seller provides information as to the manufacturer's or importer's name and address or the supplier's name and address. A distributor or seller cannot refer the claimant to person domiciled outside the EEC.

Defect

5. (1) A product has a defect if it is not as safe as may reasonably be expected. On the evaluation hereof all things shall be taken into consideration, especially:

1. the marketing of the product,
2. the expected use of the product and
3. the time of placing the product on the market.

(2) A product is not considered defective solely because an improved product has been launched at a later date.

PART 3

Liability and damages

Liability

6. (1) A manufacturer shall indemnify a claimant for injury or damage caused by a defective product manufactured or supplied by the said manufacturer.

(2) It is for the claimant to prove the existence of the damage or injury, the existence of the defect and that such damage or injury is

caused by the defective product.

Exemption from liability

7. (1) The manufacturer shall not be liable if he proves:

1. that he not place the product on the market,
2. that he did not manufacture, make or gather the product and that he did not place the product on the market as part of commercial activities,
3. that the defect is caused by the product having to conform to mandatory statutory requirements, or
4. that with the scientific or technical knowledge available at the time when the product was placed on the market, it was not possible to discover the defect.

(2) A manufacturer shall not be liable if the presumption is that the defect causing the injury or damage did not exist at the time when the product was placed on the market.

(3) A manufacturer of a component part shall not be liable if he proves that the defect in a product is caused by the design of a product of which the component part forms a part or is caused by the directions made by the manufacturer of the ultimate product.

Property damage

8. (1) On the computation of damages in respect of property damage an amount of 4,000 Dkr will be deducted.

(2) The Minister of Justice may for the implementation of an EEC product liability directive change the amount stipulated in subsection (1) of this section.

Own responsibility

9. (1) The amount of damages may be reduced or the entitlement to damages may be forfeited if the claimant has himself negligently or knowingly contributed to the injury or damage.

(2) In respect of property damage a reduction arising out of own responsibility in the amount of damages shall be made after deduction of the amount stipulated in section 8.

PART 4

Distributor's or seller's liability

10. As regards product liability a distributor or seller shall be immediately liable to the claimant and any other distributors or sellers placed later in the chain of distribution.

PART 5

Joint liability and recourse

11. (1) If two or more persons are liable under this Act in respect of the same injury or damage, they shall be jointly liable.

(2) If two or more persons are liable as manufacturers in pursuance of section 4(1), the liability shall failing agreement to the contrary be divided between them considering the cause of the defect, the individual manufacturer's opportunity and possibility of controlling the product, existing liability insurance policies and circumstances as such.

(3) He who as a distributor, seller or manufacturer under section 4(2) or (4) has paid damages to a claimant or a subsequent distributor or seller shall be subrogated to the claimant's claim against previous links in the chain of production and distribution. The recourse claim may be forfeited or be reduced if the person resorting to recourse has knowingly or negligently contributed to the occurrence of the injury or damage or has increased the extent of such injury or damage.

PART 6

Other provisions

Indispensability of the Act

12. The provisions of this Act are mandatory and cannot by prior arrangement be dispensed with to the detriment of the claimant or the party who is subrogated to the claimant's claim.

Applicability of general indemnity rules

13. This Act does not restrict the claimant's entitlement to damages under the general rules of indemnity whether or not a contractual relationship exists or in pursuance of rules laid down in other rules of

law or in pursuance of other rules of law.

Limitation

14. (1) A claim for damages for bodily injury or property damage under this Products Liability Act or under the general rules of indemnity whether it is contract-based or not, cf. section 13, shall be brought within three years of the day when the claimant obtained or should have obtained knowledge of the injury or damage, the defect and the name and address of the manufacturer in question. With regard to suspension and prevention of the statute of limitations from running under the first clause of this subsection, the provisions of the second clause of section 2 and section 3 of Act No. 274 of December 22, 1908 shall be applicable.

(2) If a claim is not barred by the statute of limitations under the provisions for subsection 1 of this section, the claim will lapse 10 years after the day when the defective product was placed on the market by the manufacturer. With regard to prevention of the statute of limitations from running under the first clause of this subsection, the second clause of section 2 of Act No. 274 of December 22, 1908 shall be applicable. The provisions of clauses 1 and 2 shall not be applicable to claims for damages in respect of product liability under the general rules of indemnity of Danish law whether such claims are contractbased or not, cf. section 13.

Nuclear damage

15. This Act does not apply to damage covered by Act No.332 of June 19, 1974 on damages in connection with nuclear damage.

16. The Minister of Justice may fix rules for the completion of international agreements in respect of the choice of law in product liability cases.

PART 7

Commencement, etc.

17. (1) This Act shall come into force the day after insertion of an announcement to that effect in the Danish Official Gazette

(2) This Act shall not be applicable if a product causing injury or damage was placed on the market by the manufacturer prior to the day commencement of this Act.

18. This Act does not extend to the Faroe Islands and Greenland but may by Royal order come into force for these parts of the country with the deviations required by the special situation of the Faroe Islands and Greenland.