Act on Liability for Defective Products

Product Liability Act


Section 1

Liability

(1) In such case as a defect in a product causes a person's death, injury to his body or damage to his health, or damage to an item of property, the producer of the product has an obligation to compensate the injured person for the resulting damage. In case of damage to an item of property, this shall only apply if the damage was caused to an item of property other than the defective product and this other item of property is of a type ordinarily intended for private use or consumption and was used by the injured person mainly for his own private use or consumption.

(2) The producer's liability obligation is excluded if

1. he did not put the product into circulation,

2. under the circumstances it can be assumed that the defect which caused the damage did not exist at the time when the producer put the product into circulation,

3. the product was neither manufactured by him for sale or any other form of distribution for economic purpose nor manufactured or distributed by him in the course of his business,

4. the defect is due to compliance of the product with mandatory regulations at the time when the producer put the product into circulation or

5. the state of scientific and technical knowledge at the time when the producer put the product into circulation was not such as to enable the defect to be discovered.

(3) The obligation to pay damages of the producer of a component part is also excluded if the defect is attributable to the design of the product in which the component has been fitted or to the instructions given by the manufacturer of the product. The first sentence shall apply to the producer of a raw material mutatis mutandis.

(4) The injured person bears the burden of proving the defect, the damage and the causal relationship between defect and damage. If it is disputed whether the obligation to pay compensation is excluded pursuant to paragraph 2 or 3, the producer bears the burden of proof.

Section 2

Product
A product within the meaning of this Act is all movables, even though incorporated into another movable or into an immovable, as well as electricity.

Section 3
Defect
(1) A product has a defect when it does not provide the safety which one is entitled to expect, taking all circumstances into account, in particular
   a) its presentation,
   b) the use to which it could reasonably be expected that it would be put,
   c) the time when it was put into circulation.
(2) A product is not defective for the sole reason that a better product is subsequently put into circulation.

Section 4
Producer
(1) A producer within the meaning of this Act is a person who has produced the final product, a raw material or a component part. A producer is also anyone who by putting his name, trademark or other distinguishing feature on the product presents himself as its producer.
(2) A producer is also anyone who imports or takes into the area of application of the Agreement on the European Economic Area a product for sale, hire, leasing or any form of distribution with an economic purpose in the course of his business.
(3) Where the producer of the product cannot be identified, each supplier of the product shall be deemed to be its producer unless he informs the injured person within a month of his receipt of a demand to this effect of the identity of the producer or of the person who supplied him with the product. The same shall apply, in the case of an imported product, if this product does not indicate the identity of the person referred to in paragraph 2, even if the name of the producer is known.

Section 5
Two or more parties liable to pay damages
If two or more producers are liable to pay damages for the same damage, they shall be liable jointly and severally. In the relationship of the parties liable to pay damages, liability in damages as well as the extent of compensation to be paid depend, unless otherwise specified, on the circumstances, in particular to what extent the damage is caused mainly by one or the other party; in all other respects, Sections 421 to 425, Section 426 (1) second sentence and Section 426 (2) of the German Civil Code (Bürgerliches Gesetzbuch) shall apply.

Section 6
Reduced liability
(1) Where fault on the part of the injured person contributes to the occurrence of the damage, Section 254 of the German Civil Code shall apply; in case of damage to property, the fault of the person who exercises actual control over the item of property is deemed to be equal to the fault of the injured person.
(2) The liability of the producer shall not be reduced when the damage is caused both by a defect in the product and by the act or omission of a third party. Section 5 second sentence shall apply mutatis mutandis.

Section 7
Extent of liability for damages in the case of death
(1) In the case of death, compensation shall be made by reimbursing the costs of an attempted cure as well as the costs incurred by the pecuniary prejudice sustained by the deceased party as a result of the suspension or reduction of his earning capacity or the resultant increase in his needs for the duration of the disease. The party liable to pay
damages shall furthermore reimburse the funeral costs to the party who is responsible for defraying these expenses.

(2) If at the time of the injury, the deceased party maintained a relationship with a third party by virtue of which he was or was liable to come under the legal obligation to support this third party and if the third party was deprived of the right to maintenance as a result of the death, the party liable to pay damages shall indemnify the third party, guaranteeing maintenance to the extent to which the deceased party would have been liable for the length of lifespan he would probably have had. Liability for damages shall also be enforced if, at the time of injury, the third party had been conceived but not yet born.

(3) The party liable to pay damages shall make appropriate financial compensation to the surviving dependent who at the time of the injury was in a particularly close personal relationship with the deceased party for the emotional distress caused to the surviving dependent. A particularly close personal relationship shall be assumed when the surviving dependent was the spouse, the life partner, a parent or a child of the deceased party.

**Section 8**

**Extent of liability for damages in the case of bodily injury**

In the case of injury to a person's body or damage to his health, compensation shall be made by reimbursing the costs of the treatment as well as the costs incurred by the pecuniary prejudice sustained by the injured party as a result of the temporary or permanent suspension or reduction of his earning capacity or the resultant increase in his needs. Reasonable financial compensation can also be claimed when the damage is not of a pecuniary nature.

**Section 9**

**Compensation in the form of annuities**

(1) Compensation on account of the suspension or reduction of earning capacity and on account of increased need on the part of the injured party, as well as the compensation to be afforded a third party pursuant to section 7 (2), shall be paid in the future by means of an annuity.

(2) Section 843 (2) to (4) of the German Civil Code shall apply mutatis mutandis.

**Section 10**

**Maximum amount of compensation**

(1) In such case as personal injuries have been caused by a product or by identical products with the same defect, the party liable to pay damages shall be liable only up to a maximum amount of 85 million euros.

(2) Should the combined indemnification to be paid to several injured parties exceed the maximum amount specified in paragraph 1, then the individual compensation shall be reduced pro-rata to the maximum total given.

**Section 11**

**Self-participation in the case of damage to property**

In the case of damage to property, the injured party shall pay for damages up to an amount of 500 euros himself.

**Section 12**

**Limitation**

(1) A limitation period of three years from the day on which the party entitled to damages became aware, or should reasonably have become aware, of the damage, the defect and the identity of the party liable to pay damages shall apply to a claim pursuant to section 1.

(2) In such case as negotiations on the compensation for damage to be paid are pending between the party liable to pay damages and the party entitled to damages, the limitation period shall be suspended until the continuation of the negotiations is refused.

(3) In all other respects, the provisions of the German Civil Code on limitation shall apply mutatis mutandis.
Section 13
Expiry of claims
(1) The claim under Section 1 shall expire ten years from the time when the producer put into
circulation the product which caused the damage. This shall not apply if a legal dispute or
summary proceedings are pending on the claim.
(2) Paragraph 1 first sentence shall not apply to claims that have been declared final and
absolute or to claims based on other enforceable documents. The same shall apply to claims
that are the subject of an out-of-court settlement or were recognised by means of a
contractual declaration.

Section 14
Mandatory nature
The liability of the producers pursuant to this Act may not be excluded or limited in advance.
Any agreements to the contrary shall be null and void.

Section 15
Liability for medicinal products, liability pursuant to other legal provisions
(1) The provisions of the Product Liability Act shall not apply if, as a result of the
administration of a medicinal product intended for human use, which was distributed to the
consumer within the purview of the German Medicinal Products Act (Gesetz über den
Verkehr mit Arzneimitteln) and which is subject to compulsory marketing authorisation or is
exempted by ordinance from the need from a marketing authorisation, a person is killed, or
the body or the health of a person is damaged.
(2) Any liability on the basis of other provisions shall remain unaffected.

Section 16
Transitional provision
This Act shall not apply to products put into circulation before its entry into force.

Section 17
Issue of statutory instruments
The Federal Minister of Justice and Consumer Protection is authorised to amend the
amounts specified in Sections 10 and 11 by means of a statutory instrument or to order that
Section 10 cease to be in force if and insofar as this is required for the implementation of a
directive of the Council of the European Communities on the basis of Articles 16 (2) and 18
administrative provisions of the Member States concerning liability for defective products.

Section 18
Berlin clause
According to section 13 (1) of the Third Transitory Act (Drittes Überleitungsgesetz), the
present Act shall also be applicable in the state of Berlin. Statutory instruments adopted
under this Act shall also be applicable in the state of Berlin according to section 14 of the
Third Transitory Act.

Section 19
Entry into force
The present Act shall enter into force on 1 January 1990.