

Übersetzung durch Eileen Flügel.

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Stand: Die Übersetzung berücksichtigt die Änderung(en) des Gesetzes durch Artikel 5 des Gesetzes vom 17. Juli 2017 (BGBl. I S. 2421)

Version information: The translation includes the amendment(s) to the Act by Article 5 of the Act of 17 July 2017 (Federal Law Gazette [Bundesgesetzblatt] I p. 2421)

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Act on Liability for Defective Products

(Produkthaftungsgesetz – ProdhaftG)

Product Liability Act of 15 December 1989 (Federal Law Gazette I, p. 2198), last amended by Article 5 of the Act of 17 July 2017 (Federal Law Gazette [Bundesgesetzblatt] I p. 2421)

Section 1

Liability

(1) In such case as a defect in a product causes a person's death, injury to his or her body or damage to his or her 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 only applies 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 und was used by the injured person mainly for his or her own private use or consumption.

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

1. the producer 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 the producer for sale or any other form of distribution for economic purpose nor manufactured or distributed by the producer in the course of his or her professional activity,
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. Sentence 1 applies accordingly to the producer of a raw material.

(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 under subsection (2) or (3), the producer bears the burden of proof.

Section 2

Product

A product within the meaning of this Act is any movable, even if 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 or her name, trademark or other distinguishing feature on the product presents himself or herself 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 or her business.

(3) Where the producer of the product cannot be identified, each supplier of the product is deemed to be its producer unless he or she informs the injured person within a month of his or her receipt of a demand to this effect of the identity of the producer or of the person who supplied him or her with the product. The same applies in the case of an imported product if this product does not indicate the identity of the person referred to in subsection (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 are 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 cases, sections 421 to 425, section 426 (1) sentence 2 and section 426 (2) of the German Civil Code (*Bürgerliches Gesetzbuch*) 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 applies; 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 is not 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 sentence 2 applies accordingly.

Section 7

Extent of liability for damages in the case of death

(1) In the case of death, compensation must be made by reimbursing the costs of an attempted cure as well as the costs incurred by the pecuniary disadvantage sustained by the deceased party as a result of the suspension or reduction of his or her earning capacity or the resultant increase in his or her needs for the duration of the illness. The party liable to pay damages must 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 or she 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 must indemnify the third party, guaranteeing maintenance to the extent to which the deceased party would have been liable for the length of lifespan he or she would probably have had. Liability for damages also arises if, at the time of injury, the third party had been conceived but not yet born.

(3) The party liable to pay damages must 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 is 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 or her health, compensation must be made of the costs of the treatment as well as the costs incurred by the pecuniary disadvantage sustained by the injured party as a result of the temporary or permanent suspension or reduction of his or her earning capacity or the increase in his or her needs as a result of the injury. Reasonable financial compensation may 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 under section 7 (2), must be paid in the future by means of an annuity.

(2) Section 843 (2) to (4) of the German Civil Code applies accordingly.

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 is 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 subsection (1), then the individual compensation is 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 must pay for damages up to an amount of 500 euros himself or herself.

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 applies to a claim under 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 is suspended until the continuation of the negotiations is refused.

(3) In all other cases, the provisions of the German Civil Code on limitation apply accordingly.

Section 13

Expiry of claims

(1) The claim under section 1 expires ten years from the time when the producer put into circulation the product which caused the damage. This does not apply if a legal dispute or summary proceedings are pending on the claim.

(2) Subsection (1) sentence 1 does not apply to claims that have been declared final and absolute or to claims based on other enforceable documents. The same applies 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 under this Act may not be excluded or limited in advance. Any agreements to the contrary are null and void.

Section 15

Liability for medicinal products, liability under other legal provisions

(1) The provisions of the Product Liability Act are not applicable 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 remains unaffected.

Section 16

Transitional provision

This Act does 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 (2) of the Council Directive of 25 July 1985 on the approximation of the laws, regulations and 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 is also applicable in *Land* Berlin. Statutory instruments adopted under this Act are also applicable in the *Land* Berlin according to section 14 of the Third Transitory Act.

Section 19

Entry into force

The present Act enters into force on 1 January 1990.