

AN ACT

To authorize the Republic of Palau to bring a direct legal action for recovery of damages for the costs and expenses incurred or as may be incurred for the health care needs of the People of Palau caused by an inherently harmful or defective product.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIL ERA KELULAU DO ENACT AS FOLLOWS:

1 Section 1. Legislative Findings. The Olbil Era Kelulau finds that it is in the
2 national interest of the people of the Republic of Palau that the national government be
3 authorized to recover monies which it has spent or will be obligated to spend in the future
4 for the health care costs incurred by the people of the Republic as the result of an
5 inherently harmful or defective product.

6 Section 2. Definitions. The following definitions are to be used in interpreting this
7 Act: (a) “Inherently harmful” means any product that causes injury when used or
8 consumed in its intended manner or in a manner that is reasonably foreseeable, as proven
9 through empirical, scientific, or statistical evidence.

10 (b) “Manufacturer” means any person or entity engaged in the process of designing,
11 fabricating, assembling, producing, constructing or otherwise preparing a product,
12 including packaging or labeling of such product, with the intended purpose of selling the
13 product for gain or profit. “Manufacturer” includes any wholly-owned or majority-owned
14 subsidiary engaged in the manufacture or distribution of an inherently harmful or
15 defective product and/or components of an inherently harmful or defective product, and
16 any distributor or marketer of such product which is under the de facto direction or
17 control of the actual manufacturer, regardless of the ownership of the distributor or
18 marketer.

19 Section 3. Direct action. The Republic of Palau may bring a direct legal action
20 against any manufacturer of any product to recover money which the Republic has spent,
21 appropriated, or will be obligated to spend in the future, for the health care needs of the
22 people

1 of the Republic; provided that such needs, in whole or in part, are the result of, or
2 otherwise arise from, the use or consumption of such manufacturer's product in a manner
3 which was, or should have been, reasonably foreseen by the manufacturer. Any action
4 brought under this Act shall be independent of any private rights or causes of action of an
5 injured individual and shall not be subject to any defense of contributory negligence,
6 assumption of risk, or similar defense which the manufacturer might otherwise be entitled
7 to assert against such an individual based on the conduct, acts, omissions, or pre-existing
8 condition of the individual.

9 Section 4. Evidence. In any action brought pursuant to this Act wherein a
10 manufacturer is, or manufacturers of substantially similar products are, shown to have
11 produced an inherently harmful or defective product with the knowledge, either actual or
12 reasonably imputed, that such product was to be used, consumed, or sold in the Republic of
13 Palau, causation of damages may be established through the use of statistical analysis. In
14 any action brought pursuant to this Act wherein an inherently harmful or defective
15 product is shown to have caused damage in the Republic of Palau, liability for such
16 damages may be assessed in proportion to the market share of the respective manufacturer
17 or manufacturers in the inherently harmful or defective product either (a) as of the time
18 such damages accrued, if such time may be reliably determined; or (b) as averaged over the
19 period in which the damages accrued, if a discrete moment of accrual cannot be reliably
20 determined.

21 Section 5. Statute of limitations. Any action brought pursuant to this Act shall be
22 commenced within four years of the latest of the following events: (a) the last date on which
23 health care was provided to treat injury or illness arising in whole or in part from the use
24 or consumption of an inherently harmful or defective product in a reasonably foreseeable
25 manner; (b) the date on which payment became due for health care which was provided to
26 treat injury or illness arising in whole or in part from the use or consumption of an
27 inherently harmful or defective product in a reasonably foreseeable manner; or (c) the date
28 on which the Minister of Health of the Republic of Palau or his designee shall have certified

1 that a product should be deemed inherently harmful or defective based on the then-current
2 state of knowledge of the product and its effects.

3 Section 6. Retroactivity. This Act shall have retroactive effect. Causes of action
4 may be brought by the Republic to recover for damages which were caused prior to the
5 effective date of this Act.

6 Section 7. Effective date. This Act shall take effect upon its approval by the
7 President, or upon its becoming law without such approval, except as otherwise provided
8 by law.

PASSED: July 13,1999

Approved this 3rd day of August,1999.

/s/
Kuniwo Nakamura
President, Republic of Palau