

Introduced by Senator Huff

February 10, 2010

An act to amend Section 2715 of the Commercial Code, relating to commercial transactions.

LEGISLATIVE COUNSEL'S DIGEST

SB 1017, as introduced, Huff. Sale of goods: breach: damages.

Existing law governs commercial contracts for the sale of goods and specifies damages that a buyer is entitled to recover upon a seller's breach, including incidental and consequential damages. Consequential damages include any loss resulting from requirements and needs of which the seller had reason to know and that could not be prevented by the buyer through obtaining substitute goods, and injury to person or property proximately resulting from any breach of warranty.

This bill would provide that a seller is only liable for consequential damages to a buyer in an action for breach of warranty alleging that a product is defective if the seller is (1) the manufacturer of the product, (2) exercised substantial control over that aspect or aspects of the design, testing, manufacture, packaging, or labeling of the product, (3) altered or modified the product and that action was a substantial factor in causing the harm, or (4) had actual or constructive knowledge of the defect as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2715 of the Commercial Code is amended
- 2 to read:

1 2715. (1) Incidental damages resulting from the seller's breach
2 include expenses reasonably incurred in inspection, receipt,
3 transportation and care and custody of goods rightfully rejected,
4 any commercially reasonable charges, expenses or commissions
5 in connection with effecting cover, and any other reasonable
6 expense incident to the delay or other breach.

7 (2) Consequential damages resulting from the seller's breach
8 include

9 (a) Any loss resulting from general or particular requirements
10 and needs of which the seller at the time of contracting had reason
11 to know and which could not reasonably be prevented by cover or
12 otherwise; and

13 (b) Injury to person or property proximately resulting from any
14 breach of warranty.

15 (c) (i) *In any action by a buyer for breach of warranty alleging*
16 *that a product is defective, a seller other than the manufacturer*
17 *of that product shall not be liable for consequential damages under*
18 *this subdivision unless any of the following apply:*

19 (A) *The seller exercised substantial control over that aspect or*
20 *aspects of the design, testing, manufacture, packaging, or labeling*
21 *of the product that caused the harm for which recovery of*
22 *consequential damages is sought.*

23 (B) *The seller altered or modified the product, and the alteration*
24 *or modification was a substantial factor in causing the harm for*
25 *which recovery of consequential damages is sought.*

26 (C) *The seller had actual or constructive knowledge of the*
27 *defective condition of the product at the time the seller sold the*
28 *product to the buyer.*

29 (ii) *It is the intent of the Legislature in enacting this paragraph*
30 *(c) that a seller who is not actively negligent with respect to a*
31 *product, but is instead a mere conduit of the product, shall not be*
32 *liable for consequential damages under this subdivision (2).*