

Assembly Bill No. 1603

CHAPTER 25

An act to amend Section 1714.45 of the Civil Code, relating to liability, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 12, 1997. Filed with
Secretary of State June 12, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1603, Bustamante. Liability: common consumer products.

Existing law provides that in a product liability action, a manufacturer or seller is not liable if the product is a common consumer product intended for personal consumption, such as, among other things, tobacco, is inherently unsafe, and is known to be unsafe by the ordinary consumer, as specified.

This bill would provide that the above provision does not apply to an action brought by a public entity to recover the value of benefits provided to individuals injured by a tobacco-related illness caused by the tortious conduct of a tobacco company or its successor in interest. The bill would also provide that the barring of an injured individual's claim by the above provision shall not constitute a defense to an action brought by a public entity. The bill would state that it does not constitute a change in, but is declaratory of, existing law.

The bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. The Legislature hereby finds and declares both of the following:

(a) That the Attorney General of the State of California has not joined the 22 other state attorneys general who have filed civil actions against tobacco companies to recover the tobacco-related costs incurred by their states because the Attorney General asserts that a clarification of Section 1714.45 of the Civil Code is necessary before such a civil action can be filed.

(b) That, although there is a difference of opinion over whether any clarification of Section 1714.45 is necessary, the Legislature recognizes that the filing of such a civil action would be facilitated by a clarification of the law relating to tobacco products.

SEC. 2. Section 1714.45 of the Civil Code is amended to read:

1714.45. (a) In a product liability action, a manufacturer or seller shall not be liable if:

(1) The product is inherently unsafe and the product is known to be unsafe by the ordinary consumer who consumes the product with the ordinary knowledge common to the community; and

(2) The product is a common consumer product intended for personal consumption, such as sugar, castor oil, alcohol, tobacco, and butter, as identified in comment i to Section 402A of the Restatement (Second) of Torts.

(b) For purposes of this section, the term “product liability action” means any action for injury or death caused by a product, except that the term does not include an action based on a manufacturing defect or breach of an express warranty.

(c) This section is intended to be declarative of and does not alter or amend existing California law, including *Cronin v. J.B.E. Olson Corp.*, (1972) 8 Cal. 3d 121, and shall apply to all product liability actions pending on, or commenced after, January 1, 1988.

(d) This section does not apply to, and never applied to, an action brought by a public entity to recover the value of benefits provided to individuals injured by a tobacco-related illness caused by the tortious conduct of a tobacco company or its successor in interest, including, but not limited to, an action brought pursuant to Section 14124.71 of the Welfare and Institutions Code. In such an action brought by a public entity, the fact that the injured individual’s claim against the defendant may be barred by this section shall not be a defense. This subdivision does not constitute a change in, but is declaratory of, existing law relating to tobacco products.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that California files a civil action similar to the civil actions filed by 22 other states and recovers tobacco-related costs incurred by the state at the earliest possible time, it is necessary that this act take effect immediately.

