

AMENDED IN SENATE APRIL 16, 1997
AMENDED IN SENATE FEBRUARY 14, 1997

SENATE BILL

No. 67

Introduced by Senator Kopp
(Principal coauthor: Senator Thompson)
(Coauthor: ~~Senator Vasconcellos~~)

(Coauthors: Senators Burton, Lockyer, and Vasconcellos)

(Coauthors: Assembly Members Alquist, Aroner, Caldera, Keeley, Knox, Kuehl, Lempert, Mazzoni, Napolitano, Perata, Shelley, Thomson, and Wayne)

December 11, 1996

An act to amend Section 1714.45 of the Civil Code, relating to product liability.

LEGISLATIVE COUNSEL'S DIGEST

SB 67, as amended, Kopp. Product liability actions: tobacco.

Existing law exempts a manufacturer or seller from liability in a product liability action if (1) the product is inherently unsafe and is known to be unsafe by the ordinary consumer, as specified, and (2) the product is a common consumer product intended for personal consumption, such as sugar, castor oil, alcohol, tobacco, and butter, as specified.

This bill would delete tobacco from that illustrative list of common consumer products and would also specify that the exemption described above does not exempt tobacco products from product liability actions. *This bill would also declare that there is no statutory bar to, or immunity from,*

tobacco-related personal injury, wrongful death, or other tort claims by smokers or others, as specified, and that such claims shall be determined on their merits.

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 1714.45 of the Civil Code is
2 amended to read:

3 1714.45. (a) In a product liability action, a
4 manufacturer or seller shall not be liable if both of the
5 following apply:

6 (1) The product is inherently unsafe and the product
7 is known to be unsafe by the ordinary consumer who
8 consumes the product with the ordinary knowledge
9 common to the community.

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

14 (3) This section does not exempt tobacco products
15 from product liability actions.

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

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

26 (d) *It is the intention of the Legislature in enacting the*
27 *amendments to this section adopted at the 1997–98*
28 *Regular Session to declare that there exists no statutory*
29 *bar to, or immunity from, tobacco-related personal*
30 *injury, wrongful death, or other tort claims by California*
31 *smokers or others who have suffered or incurred injuries,*
32 *damages, or costs arising from the promotion, marketing,*



1 *sale, or consumption of tobacco products. It is also the*
2 *intention of the Legislature to clarify that such claims*
3 *which were or are brought shall be determined on their*
4 *merits, without the imposition of any claim of statutory*
5 *bar or categorical defense.*

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