

AMENDED IN ASSEMBLY JULY 24, 1997
AMENDED IN ASSEMBLY JUNE 19, 1997
AMENDED IN SENATE APRIL 16, 1997
AMENDED IN SENATE FEBRUARY 14, 1997

SENATE BILL

No. 67

Introduced by Senator Kopp

(Principal coauthor: Senator Thompson)

(Principal coauthor: Assembly Member Shelley)

(Coauthors: Senators Burton, Calderon, Lockyer, and Vasconcellos)

(Coauthors: Assembly Members Alquist, Aroner, Caldera, Keeley, Knox, Kuehl, Lempert, Mazzoni, Napolitano, Perata, 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.

Existing law also states that these provisions do not apply to actions brought by a public entity in specified cases to recover the value of benefits provided to individuals injured by a tobacco-related illness caused by the tortious conduct of a tobacco company, as specified.

This bill would revise these provisions. The bill would delete tobacco from the illustrative list of common consumer products and would also specify that the exemption described above does not exempt *the manufacture or sale of* tobacco products *by tobacco manufacturers* 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 *against tobacco manufacturers* by smokers or others, as specified, and that such claims shall be determined on their merits.

The bill also would make a related legislative declaration.

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 ~~(b) This section does not exempt tobacco products~~
15 ~~from product liability actions.~~

16 *(b) This section does not exempt the manufacture or*
17 *sale of tobacco products by tobacco manufacturers and*
18 *their successors in interest from product liability actions,*
19 *but does exempt the sale or distribution of tobacco*



1 *products by any other person, including, but not limited*
2 *to, retailers or distributors.*

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

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

13 (e) This section does not apply to, and never applied
14 to, an action brought by a public entity to recover the
15 value of benefits provided to individuals injured by a
16 tobacco-related illness caused by the tortious conduct of
17 a tobacco company or its successor in interest, including,
18 but not limited to, an action brought pursuant to Section
19 14124.71 of the Welfare and Institutions Code. In such an
20 action brought by a public entity, the fact that the injured
21 individual’s claim against the defendant may be barred
22 by a prior version of this section shall not be a defense.
23 This subdivision does not constitute a change in, but is
24 declaratory of, existing law relating to tobacco products.

25 (f) It is the intention of the Legislature in enacting the
26 amendments to subdivisions (a) and (b) of this section
27 adopted at the 1997–98 Regular Session to declare that
28 there exists no statutory bar to, or immunity from,
29 tobacco-related personal injury, wrongful death, or other
30 tort claims *against tobacco manufacturers and their*
31 *successors in interest* by California smokers or others who
32 have suffered or incurred injuries, damages, or costs
33 arising from the promotion, marketing, sale, or
34 consumption of tobacco products. It is also the intention
35 of the Legislature to clarify that such claims which were
36 or are brought shall be determined on their merits,
37 without the imposition of any claim of statutory bar or
38 categorical defense.

39 SEC. 2. The Legislature hereby finds and declares
40 that to the extent that the common law rules as to product



1 liability actions with respect to tobacco were superseded
2 by the version of Section 1714.45 of the Civil Code added
3 by Chapter 1498 of the Statutes of 1987, this act restores
4 those common law rules *with respect to the manufacture*
5 *or sale of tobacco products by tobacco manufacturers and*
6 *their successors in interest.*

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