

Senate Bill No. 67

Passed the Senate August 28, 1997

Secretary of the Senate

Passed the Assembly August 25, 1997

Chief Clerk of the Assembly

This bill was received by the Governor this ____ day
of _____, 1997, at ____ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

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

LEGISLATIVE COUNSEL'S DIGEST

SB 67, 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 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 would also provide that these provisions shall not be construed to grant immunity to tobacco industry research organizations.

The bill also would make a related legislative declaration.

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

SECTION 1. 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 both of the following apply:

(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.

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

(b) This section does not exempt the manufacture or sale of tobacco products by tobacco manufacturers and their successors in interest from product liability actions, but does exempt the sale or distribution of tobacco products by any other person, including, but not limited to, retailers or distributors.

(c) 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.

(d) 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.

(e) 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 a prior version of 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.



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

(g) This section shall not be construed to grant immunity to a tobacco industry research organization.

SEC. 2. The Legislature hereby finds and declares that to the extent that the common law rules as to product liability actions with respect to tobacco were superseded by the version of Section 1714.45 of the Civil Code added by Chapter 1498 of the Statutes of 1987, this act restores those common law rules with respect to the manufacture or sale of tobacco products by tobacco manufacturers and their successors in interest.



Approved _____, 1997

Governor

