

ASSEMBLY BILL

No. 1182

**Introduced by Assembly Member Stone
(Coauthors: Assembly Members Cunningham, Lorena Gonzalez,
and Wicks)**

February 18, 2021

An act to add Section 1714.46 to the Civil Code, relating to civil liability.

LEGISLATIVE COUNSEL'S DIGEST

AB 1182, as introduced, Stone. Product liability: products purchased online.

Existing law imposes strict liability upon persons who place a defective product on the market, including retailers engaged in the business of distributing goods to the public, for injuries caused by the product. Existing law exempts a manufacturer or seller from liability, except as provided, in any action for injury or death caused by a product, other than an action based on a manufacturing defect or breach of an express warranty, if 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 the product is a common consumer product intended for personal consumption, as specified.

This bill would, in any strict products liability action, make an electronic place that, by contract or other arrangement with one or more third parties, engages in specified acts strictly liable for all damages proximately caused by a defective product that is purchased or sold through the electronic place to the same extent as a retailer would be liable for selling the defective product in the retailer's physical store,

regardless of whether the electronic place ever takes physical possession of, or title to, the defective product.

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. The Legislature finds and declares all of the
2 following:

3 (a) Over the past 10 years, online sales of consumer goods have
4 increased from less than 5 percent of retail sales to more than 20
5 percent of all retail sales in the United States. During the
6 COVID-19 pandemic in 2020, online retail sales increased by 40
7 percent, accounted for more than \$830 billion in sales, and
8 represented 21 percent of total retail sales, up from 15.8 percent
9 in 2019 and 14.3 percent in 2018. In recognition that the percentage
10 of retail sales that are online is expected to continue to increase,
11 it is clear that online retailers play a substantial role in the
12 distribution of goods to consumers in the State of California,
13 whether or not they ever take physical possession of those goods.
14 Furthermore, when manufacturers of products sold online are
15 located in foreign countries, those manufacturers could be outside
16 of the jurisdiction of the courts of the State of California. Under
17 these circumstances, the consumer could be left with no recourse
18 for damages caused by defective products made by foreign
19 manufacturers unless the entity that sells goods through an
20 electronic place pursuant to contracts, agreements, or other
21 arrangement with third parties and distributed the product is subject
22 to liability for the defective product.

23 (b) Under existing law a manufacturer, seller of goods, or other
24 entity that is engaged in the business of distributing goods to the
25 public is strictly liable in tort if a product they manufacture, sell,
26 or distribute proves to have a defect that causes injury to a human
27 being.

28 (c) The purpose of that liability is to ensure that the costs of
29 injuries resulting from defective products are borne by the
30 manufacturers, sellers, and other entities that are engaged in the
31 business of distributing goods to the public, rather than by the
32 injured consumers.

1 (d) Under existing law, the elements of a strict liability action
2 are all of the following:

3 (1) The product was used in an intended or reasonably
4 foreseeable manner.

5 (2) The product was in a defective condition when it left the
6 defendant's possession.

7 (3) The defective product was the legal cause of the plaintiff's
8 injuries or damages.

9 (e) There is uncertainty how to apply strict product liability law
10 to products that are purchased or sold through an electronic place
11 pursuant to contracts, agreements, or other arrangements with third
12 parties. As a result, some injured consumers who purchase products
13 online are unable to obtain compensation for their injuries from
14 the entities that manufactured, distributed, or sold the products,
15 thereby defeating the compensatory purpose of strict liability law.

16 (f) Unless this uncertainty is addressed in favor of compensating
17 injured consumers, more and more companies will forego selling
18 products through physical stores where strict product liability
19 principles would require compensation. Instead, manufacturers,
20 distributors, and sellers will emphasize online sales of possibly
21 defective and injurious products through an electronic place
22 pursuant to contracts, agreements, or other arrangements with third
23 parties because strict products liability law is less settled regarding
24 such sales, thereby increasing the financial burdens on consumers,
25 public health systems, and private and public insurers who, alone
26 or in combination, will unjustly have to pay for the cost of treating
27 and healing injuries without contribution from those that actually
28 caused the harm or profited from the manufacture, sale, or
29 distribution of the defective product. Furthermore, the entity that
30 sells goods through an electronic place pursuant to contract,
31 agreements, or other arrangements with third parties may be the
32 only member of the enterprise reasonably available to the injured
33 consumer. In other cases the entity that sells goods through an
34 electronic place pursuant to contract, agreements, or other
35 arrangements with third parties may be in a position to exert
36 pressure on manufacturers to ensure that their products are safe.
37 In this way, strict liability of entities that sell goods through an
38 electronic place pursuant to contract, agreements, or other
39 arrangements with third parties serves as an incentive to safety
40 and the lack of such liability creates an increased risk of defective

1 products being sold to consumers. Strict liability on the
2 manufacturer, retailer, and entity that sells goods through an
3 electronic place pursuant to contract, agreements, or other
4 arrangements with third parties alike affords maximum protection
5 to the injured plaintiff and works no injustice to the electronic
6 retail marketplace or manufacturer as they can adjust the costs of
7 such protection between them in the course of their business
8 relationship.

9 SEC. 2. Section 1714.46 is added to the Civil Code, to read:

10 1714.46. (a) In any strict products liability action, an electronic
11 place that, by contract or other arrangement with one or more third
12 parties, does both of the following shall be strictly liable for all
13 damages proximately caused by a defective product that is
14 purchased or sold through the electronic place to the same extent
15 as a retailer would be liable for selling the defective product in the
16 retailer's physical store, regardless of whether the electronic place
17 ever takes physical possession of, or title to, the defective product:

18 (1) Transmits or otherwise communicates between a third party
19 and purchaser an offer for the sale or purchase of the defective
20 product that is accepted by the purchaser.

21 (2) Processes, collects, or administers the payment for the
22 purchase or sale of the defective product.

23 (b) This section shall not be construed to affect any of the
24 following:

25 (1) Existing law related to strict products liability other than to
26 clarify the law governing products that are purchased or sold
27 through an electronic place pursuant to contract or other
28 arrangements with third parties.

29 (2) Defenses to, and exemptions from, strict liability currently
30 available under California law, other than those changed by this
31 section, which remain available in transactions subject to this
32 section.

33 (3) State or federal health or safety laws that prohibit the sale,
34 offer for sale, or distribution of dangerous products.

35 (c) For purposes of this section, the following terms have the
36 following meanings:

37 (1) "Electronic place" includes, but is not limited to, an internet
38 website, online catalog, or software application.

- 1 (2) “Product” means a tangible good that is subject to strict
- 2 product liability law.

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