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.


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

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

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

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

(c) The purpose of that liability is to ensure that the costs of injuries resulting from defective products are borne by the manufacturers, sellers, and other entities that are engaged in the business of distributing goods to the public, rather than by the injured consumers.
(d) Under existing law, the elements of a strict liability action are all of the following:

1. The product was used in an intended or reasonably foreseeable manner.
2. The product was in a defective condition when it left the defendant’s possession.
3. The defective product was the legal cause of the plaintiff’s injuries or damages.

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

(f) Unless this uncertainty is addressed in favor of compensating injured consumers, more and more companies will forego selling products through physical stores where strict product liability principles would require compensation. Instead, manufacturers, distributors, and sellers will emphasize online sales of possibly defective and injurious products through an electronic place pursuant to contracts, agreements, or other arrangements with third parties because strict products liability law is less settled regarding such sales, thereby increasing the financial burdens on consumers, public health systems, and private and public insurers who, alone or in combination, will unjustly have to pay for the cost of treating and healing injuries without contribution from those that actually caused the harm or profited from the manufacture, sale, or distribution of the defective product. Furthermore, the entity that sells goods through an electronic place pursuant to contract, agreements, or other arrangements with third parties may be the only member of the enterprise reasonably available to the injured consumer. In other cases the entity that sells goods through an electronic place pursuant to contract, agreements, or other arrangements with third parties may be in a position to exert pressure on manufacturers to ensure that their products are safe. In this way, strict liability of entities that sell goods through an electronic place pursuant to contract, agreements, or other arrangements with third parties serves as an incentive to safety and the lack of such liability creates an increased risk of defective
products being sold to consumers. Strict liability on the
manufacturer, retailer, and entity that sells goods through an
electronic place pursuant to contract, agreements, or other
arrangements with third parties alike affords maximum protection
to the injured plaintiff and works no injustice to the electronic
retail marketplace or manufacturer as they can adjust the costs of
such protection between them in the course of their business
relationship.

SEC. 2. Section 1714.46 is added to the Civil Code, to read:
1714.46. (a) In any strict products liability action, an electronic
place that, by contract or other arrangement with one or more third
parties, does both of the following shall be 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:
(1) Transmits or otherwise communicates between a third party
and purchaser an offer for the sale or purchase of the defective
product that is accepted by the purchaser.
(2) Processes, collects, or administers the payment for the
purchase or sale of the defective product.
(b) This section shall not be construed to affect any of the
following:
(1) Existing law related to strict products liability other than to
clarify the law governing products that are purchased or sold
through an electronic place pursuant to contract or other
arrangements with third parties.
(2) Defenses to, and exemptions from, strict liability currently
available under California law, other than those changed by this
section, which remain available in transactions subject to this
section.
(3) State or federal health or safety laws that prohibit the sale,
offer for sale, or distribution of dangerous products.
(c) For purposes of this section, the following terms have the
following meanings:
(1) “Electronic place” includes, but is not limited to, an internet
website, online catalog, or software application.
(2) “Product” means a tangible good that is subject to strict product liability law.