AMENDED IN ASSEMBLY JUNE 8, 2020

AMENDED IN ASSEMBLY MAY 4, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL No. 3262

Introduced by Assembly Member Mark Stone
(~~Coauthor:~~ *Coauthors:* Assembly ~~Member~~ *Members* Gonzalez *and Wicks*)

February 21, 2020

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

LEGISLATIVE COUNSEL'S DIGEST

AB 3262, as amended, Mark Stone. Product liability: electronic marketplaces.

Existing law requires that a manufacturer or seller not be held liable in a product liability action 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 require a marketplace, as defined, that is an electronic place or internet website to be held strictly liable, subject to certain exceptions, for all damages proximately caused by defective products to the same extent as a retailer that is not an electronic place or internet website.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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 15 percent of all retail sales in the United States. In recognition that the percentage of retail sales that are online is expected to continue to increase and that over $600 billion in online sales occurred in 2019 in the United States, increasing dramatically during the COVID-19 pandemic, it is clear that online marketplaces play a substantial role in getting products to consumers in the State of California.

~~(a)~~

(b) Under existing law a manufacturer, supplier, or seller of goods is strictly liable in tort if a product the company places on the market, knowing that it is to be used without inspection for defects by the consumer who purchased it, proves to have a defect that causes injury to a human being.

~~(b)~~

(c) The purpose of that liability is to ensure that the costs of injuries resulting from defective products are borne by the manufacturers, suppliers, or sellers that put the products on the market rather than by the injured persons who are powerless to inspect the product and protect themselves before purchase.

~~(c)~~

(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.

~~(d)~~

(e) There is uncertainty as to how to apply strict product liability law to online marketplaces having a relationship with their customers beyond simply operating as a conduit between willing sellers of products and willing buyers. As a result, some injured consumers who purchase products through online marketplaces

are unable to obtain compensation for their injuries from those that manufactured, supplied, or sold the products, thereby defeating the compensatory purpose of strict liability law.

~~(e)~~

(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, suppliers, and sellers will emphasize online marketplace sales of possibly defective and injurious products 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.

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

1714.46. (a) Except as provided in subdivision (b), a marketplace, as defined in Section 1749.7 that is an electronic place or internet website shall be strictly liable for all damages proximately caused by defective products to the same extent as a retailer that is not an electronic place or internet website. This liability shall apply whether or not the electronic place or internet website marketplace had physical possession of the defective product that caused the injury or took title to the defective product that caused the injury.

(b) A marketplace that is an electronic place or internet website shall not be liable as described in subdivision (a) if ~~it demonstrates by a preponderance of the evidence that either~~ *any* of the following conditions are met:

(1) The defective product that caused the injury was *preowned or used and was* prominently described or prominently advertised on the ~~electronic place or internet website~~ marketplace as preowned or used.

(2) The marketplace ~~that is an electronic place or internet website~~ did not receive compensation or payment from the consumer for the ~~defective~~ product ~~that caused the injury~~ whether by receiving a payment from the consumer or by receiving a share of compensation or payment ~~obtained~~ from the consumer by the ~~manufacturer, supplier, or seller~~ *vendor* for the defective product that caused the injury.

(3) The sale or transaction of the product occurred by auction as recognized in Tauber-Arons Auctioneers Co. v. Superior Court (1980) 101 Cal.App.3d 268.

(c) As used in this section, “vendor” means the manufacturer, distributor, or supplier of the product but does not include a marketplace.

(d) This section does not limit the provisions of existing law that make manufacturers, distributors, and sellers of consumer products strictly liable for the safety of those products and prohibit the sale of products that violate state and federal health and safety laws.

O