



# CONSUMER ATTORNEYS

## AB 1182 (Stone): Online Marketplaces: Liability for Dangerous Products

**SUMMARY:** In order to protect the safety of California consumers, AB 1182 clarifies that the same longstanding product liability principles that make brick-and-mortar retailers responsible for the safety of the products they sell also apply to online marketplaces that are responsible for placing products into the stream of commerce in California.

**THE PROBLEM:** Online marketplaces are rapidly replacing brick and mortar retail stores as the source of goods for consumers, especially as a result of the COVID-19 pandemic that has forced so many businesses to close. Unfortunately, this shift in buying patterns is not only problematic for traditional retailers, but also dangerous for consumers.

Longstanding product liability principles ensure that when a dangerous or defective product injures a consumer, all businesses through which that product flowed in order to reach the consumer -- from the designer, to the manufacturer(s), to the distributor, to the retailer -- are held responsible for ensuring the safety of that product. Online retailers claim that these longstanding consumer protections do not apply to products they sell to consumers.

**BUYER BEWARE:** The problem is not hypothetical. A recent NBC News investigation found thousands of dangerous 18650 batteries listed on Amazon.com and Walmart's online marketplace. The batteries were also available, as of February 15<sup>th</sup>, on eBay. According to the Consumer Product Safety Commission these items can

cause “*serious injury or death...and are not intended for individual sale to consumers.*” If these batteries were bought at a corner market, those small business owners would be strictly liable. That has been the law applicable to them for half a century.

Amazon, eBay, and Etsy – three vast, multi-billion-dollar, world-spanning businesses – should have the same motivation to sell only safe products as the corner store.

***The Wall Street Journal*** after investigating Amazon offerings described the retailer as “**a minefield;**” littered with unsafe, illegal, and deceptively marketed products:

- 116 products were falsely listed as “FDA-approved” including four toys—the agency doesn’t approve toys.
- 98 eyelash growth serums that never undertook the drug-approval process.
- 43 listings for a pain reliever that lacked FDA labels warning against use on children under 2.
- 80 listings matched the description of infant sleeping wedges the FDA has warned can cause suffocation and Amazon said it banned.
- 52 listings were marketed as supplements containing illegally imported prescription drugs.
- 1,412 electronics listings falsely or unverifiably claiming to meet voluntary industry safety standards.



- musical toys with amounts of lead that exceed federal government standards.

These risks to consumers are not limited to one online retailer.

**THE SOLUTION:** AB 1182 simply applies the same law of product liability that is applicable even to the smallest corner store to online sellers that process payments and connect buyers to sellers – two of the things brick-and-mortar retailers do. The bill preserves all other existing exemptions including those for auctions or homemade goods. All of the defenses available to a brick-and-mortar store are under the bill identically available to online retailers.

By clarifying that online marketplaces, when they act like retailers, have the same liability for selling defective products as traditional retailers, AB 1182 will help level the playing field for all types of retailers and distributors and will help protect California consumers from dangerous and defective products.

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