

No. S274625

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

EVERARDO RODRIGUEZ and JUDITH V. ARELLANO,

Plaintiffs and Appellants,

v.

FCA US, LLC,

Defendant and Respondent.

California Court of Appeal, Fourth District, Division Two, Civil No. E073766
Appeal from Riverside County Superior Court
Case No. RIC1807727
Honorable Jackson Lucky, Judge Presiding

**EXHIBITS IN SUPPORT OF
MOTION FOR JUDICIAL NOTICE
Volume 6 of 6 / Pages 1169 to 1389 of 1389**

ROSNER, BARRY & BABBITT, LLP
Hallen D. Rosner, SBN 109740
hal@rbblawgroup.com
Arlyn L. Escalante, SBN 272645
arlyn@rbblawgroup.com
10085 Carroll Canyon Road, Ste. 100
San Diego, California 92131
(858) 348-1005 / F: (858) 348-1150

KNIGHT LAW GROUP, LLP
Roger R. Kirnos, SBN 283163
rogerk@knightlaw.com
10250 Constellation Blvd, Ste 2500
Los Angeles, California 90067
(310) 552-2250 / F: (310) 552-7973

GREINES, MARTIN, STEIN & RICHLAND LLP
*Cynthia E. Tobisman, SBN 197983
ctobisman@gmsr.com
Joseph V. Bui, SBN 293256
jbui@gmsr.com
5900 Wilshire Boulevard, 12th Floor
Los Angeles, California 90036
(310) 859-7811 / Fax (310) 276-5261

Attorneys for Petitioners
EVERARDO RODRIGUEZ and JUDITH V. ARELLANO

MJN/1169

ASSEMBLY BILL

No. 4513

Introduced by Assembly Member Tanner

February 19, 1988

An act to amend Section 1793.2 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 4513, as introduced, Tanner. Warranties: new motor vehicles.

Existing law relating to warranties on new motor vehicles requires the manufacturer or its representative to replace the vehicle or make restitution, as specified, if unable to conform the vehicle to the applicable express warranties after a reasonable number of attempts.

The bill would revise the definition of "motor vehicle" for these and related purposes to include the chassis and that portion of a motorhome devoted to its propulsion.

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

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

- 1 SECTION 1. Section 1793.2 of the Civil Code is
- 2 amended to read:
- 3 1793.2. (a) Every manufacturer of consumer goods
- 4 sold in this state and for which the manufacturer has
- 5 made an express warranty shall:
- 6 (1) Maintain in this state sufficient service and repair
- 7 facilities reasonably close to all areas where its consumer
- 8 goods are sold to carry out the terms of such warranties
- 9 or designate and authorize in this state as service and
- 10 repair facilities independent repair or service facilities

1 reasonably close to all areas where its consumer goods are
2 sold to carry out the terms of such warranties.

3 As a means of complying with this paragraph, a
4 manufacturer may enter into warranty service contracts
5 with independent service and repair facilities. The
6 warranty service contracts may provide for a fixed
7 schedule of rates to be charged for warranty service or
8 warranty repair work; however, the rates fixed by such
9 contracts shall be in conformity with the requirements of
10 subdivision (c) of Section 1793.3. The rates established
11 pursuant to subdivision (c) of Section 1793.3, between the
12 manufacturer and the independent service and repair
13 facility, shall not preclude a good faith discount which is
14 reasonably related to reduced credit and general
15 overhead cost factors arising from the manufacturer's
16 payment of warranty charges direct to the independent
17 service and repair facility. The warranty service contracts
18 authorized by this paragraph shall not be executed to
19 cover a period of time in excess of one year, and may be
20 renewed only by a separate, new contract or letter of
21 agreement between the manufacturer and the
22 independent service and repair facility.

23 (2) In the event of a failure to comply with paragraph
24 (1) of this subdivision, be subject to Section 1793.5.

25 (3) Make available to authorized service and repair
26 facilities sufficient service literature and replacement
27 parts to effect repairs during the express warranty
28 period.

29 (b) Where such service and repair facilities are
30 maintained in this state and service or repair of the goods
31 is necessary because they do not conform with the
32 applicable express warranties, service and repair shall be
33 commenced within a reasonable time by the
34 manufacturer or its representative in this state. Unless
35 the buyer agrees in writing to the contrary, the goods
36 shall be serviced or repaired so as to conform to the
37 applicable warranties within 30 days. Delay caused by
38 conditions beyond the control of the manufacturer or his
39 representatives shall serve to extend this 30-day
40 requirement. Where delay arises, conforming goods shall

1 be tendered as soon as possible following termination of
2 the condition giving rise to the delay.

3 (c) The buyer shall deliver nonconforming goods to
4 the manufacturer's service and repair facility within this
5 state, unless, due to reasons of size and weight, or method
6 of attachment, or method of installation, or nature of the
7 nonconformity, delivery cannot reasonably be
8 accomplished. If the buyer cannot return the
9 nonconforming goods for any of these reasons, he or she
10 shall notify the manufacturer or its nearest service and
11 repair facility within the state. Written notice of
12 nonconformity to the manufacturer or its service and
13 repair facility shall constitute return of the goods for
14 purposes of this section. Upon receipt of such notice of
15 nonconformity the manufacturer shall, at its option,
16 service or repair the goods at the buyer's residence, or
17 pick up the goods for service and repair, or arrange for
18 transporting the goods to its service and repair facility.
19 All reasonable costs of transporting the goods when a
20 buyer cannot return them for any of the above reasons
21 shall be at the manufacturer's expense. The reasonable
22 costs of transporting nonconforming goods after delivery
23 to the service and repair facility until return of the goods
24 to the buyer shall be at the manufacturer's expense.

25 (d) (1) Except as provided in paragraph (2), if the
26 manufacturer or its representative in this state does not
27 service or repair the goods to conform to the applicable
28 express warranties after a reasonable number of
29 attempts, the manufacturer shall either replace the goods
30 or reimburse the buyer in an amount equal to the
31 purchase price paid by the buyer, less that amount
32 directly attributable to use by the buyer prior to the
33 discovery of the nonconformity.

34 (2) If the manufacturer or its representative in this
35 state is unable to service or repair a new motor vehicle,
36 as that term is defined in subparagraph (B) of paragraph
37 (4) of subdivision (e), to conform to the applicable
38 express warranties after a reasonable number of
39 attempts, the manufacturer shall either promptly replace
40 the new motor vehicle in accordance with subparagraph



1 (A) or promptly make restitution to the buyer in
2 accordance with subparagraph (B). However, the buyer
3 shall be free to elect restitution in lieu of replacement,
4 and in no event shall the buyer be required by the
5 manufacturer to accept a replacement vehicle.

6 (A) In the case of replacement, the manufacturer shall
7 replace the buyer's vehicle with a new motor vehicle
8 substantially identical to the vehicle replaced. The
9 replacement vehicle shall be accompanied by all express
10 and implied warranties that normally accompany new
11 motor vehicles of that specific kind. The manufacturer
12 also shall pay for, or to, the buyer the amount of any sales
13 or use tax, license fees, registration fees, and other official
14 fees which the buyer is obligated to pay in connection
15 with the replacement, plus any incidental damages to
16 which the buyer is entitled under Section 1794, including,
17 but not limited to, reasonable repair, towing, and rental
18 car costs actually incurred by the buyer.

19 (B) In the case of restitution, the manufacturer shall
20 make restitution in an amount equal to the actual price
21 paid or payable by the buyer, including any charges for
22 transportation and manufacturer-installed options, but
23 excluding nonmanufacturer items installed by a dealer or
24 the buyer, and including any collateral charges such as
25 sales tax, license fees, registration fees, and other official
26 fees, plus any incidental damages to which the buyer is
27 entitled under Section 1794, including, but not limited to,
28 reasonable repair, towing, and rental car costs actually
29 incurred by the buyer.

30 (C) When the manufacturer replaces the new motor
31 vehicle pursuant to subparagraph (A), the buyer shall
32 only be liable to pay the manufacturer an amount directly
33 attributable to use by the buyer of the replaced vehicle
34 prior to the time the buyer first delivered the vehicle to
35 the manufacturer or distributor, or its authorized service
36 and repair facility for correction of the problem that gave
37 rise to the nonconformity. When restitution is made
38 pursuant to subparagraph (B), the amount to be paid by
39 the manufacturer to the buyer may be reduced by the
40 manufacturer by that amount directly attributable to use

1 by the buyer prior to the time the buyer first delivered
2 the vehicle to the manufacturer or distributor, or its
3 authorized service and repair facility for correction of the
4 problem that gave rise to the nonconformity. The
5 amount directly attributable to use by the buyer shall be
6 determined by multiplying the actual price of the new
7 motor vehicle paid or payable by the buyer, including
8 any charges for transportation and
9 manufacturer-installed options, by a fraction having as its
10 denominator 120,000 and having as its numerator the
11 number of miles traveled by the new motor vehicle prior
12 to the time the buyer first delivered the vehicle to the
13 manufacturer or distributor, or its authorized service and
14 repair facility for correction of the problem that gave rise
15 to the nonconformity. Nothing in this paragraph shall in
16 any way limit the rights or remedies available to the
17 buyer under any other law.

18 (e) (1) It shall be presumed that a reasonable number
19 of attempts have been made to conform a new motor
20 vehicle to the applicable express warranties if, within one
21 year from delivery to the buyer or 12,000 miles on the
22 odometer of the vehicle, whichever occurs first, either

23 (A) the same nonconformity has been subject to repair
24 four or more times by the manufacturer or its agents and
25 the buyer has at least once directly notified the
26 manufacturer of the need for the repair of the
27 nonconformity, or (B) the vehicle is out of service by
28 reason of repair of nonconformities by the manufacturer
29 or its agents for a cumulative total of more than 30
30 calendar days since delivery of the vehicle to the buyer.
31 The 30-day limit shall be extended only if repairs cannot
32 be performed due to conditions beyond the control of the
33 manufacturer or its agents. The buyer shall be required
34 to directly notify the manufacturer pursuant to
35 subparagraph (A) only if the manufacturer has clearly
36 and conspicuously disclosed to the buyer, with the
37 warranty or the owner's manual, the provisions of this
38 subdivision and that of subdivision (d), including the
39 requirement that the buyer must notify the
40 manufacturer directly pursuant to subparagraph (A).

1 This presumption shall be a rebuttable presumption
2 affecting the burden of proof, and it may be asserted by
3 the buyer in any civil action, including an action in small
4 claims court, or other formal or informal proceeding.

5 (2) If a qualified third party dispute resolution process
6 exists, and the buyer receives timely notification in
7 writing of the availability of a third party process with a
8 description of its operation and effect, the presumption
9 in paragraph (1) may not be asserted by the buyer until
10 after the buyer has initially resorted to the third party
11 process as required in paragraph (3). Notification of the
12 availability of the third party process is not timely if the
13 buyer suffers any prejudice resulting from any delay in
14 giving the notification. If a qualified third party dispute
15 resolution process does not exist, or if the buyer is
16 dissatisfied with the third party decision, or if the
17 manufacturer or its agent neglects to promptly fulfill the
18 terms of such third party decision after the decision is
19 accepted by the buyer, the buyer may assert the
20 presumption provided in paragraph (1) in an action to
21 enforce the buyer's rights under subdivision (d). The
22 findings and decision of the third party shall be
23 admissible in evidence in the action without further
24 foundation. Any period of limitation of actions under any
25 federal or California laws with respect to any person shall
26 be extended for a period equal to the number of days
27 between the date a complaint is filed with a third party
28 dispute resolution process and the date of its decision or
29 the date before which the manufacturer or its agent is
30 required by the decision to fulfill its terms if the decision
31 is accepted by the buyer, whichever occurs later.

32 (3) A qualified third party dispute resolution process
33 shall be one that does all of the following:

34 (A) Complies with the minimum requirements of the
35 Federal Trade Commission for informal dispute
36 settlement procedures as set forth in Part 703 of Title 16
37 of the Code of Federal Regulations, as those regulations
38 read on January 1, 1987.

39 (B) Renders decisions which are binding on the
40 manufacturer if the buyer elects to accept the decision.

1 (C) Prescribes a reasonable time, not to exceed 30
2 days after the decision is accepted by the buyer, within
3 which the manufacturer or its agent must fulfill the terms
4 of its decisions.

5 (D) Provides arbitrators who are assigned to decide
6 disputes with copies of, and instruction in, the provisions
7 of the Federal Trade Commission's regulations in Part
8 703 of Title 16 of the Code of Federal Regulations as those
9 regulations read on January 1, 1987, Division 2
10 (commencing with Section 2101) of the Commercial
11 Code, and this chapter.

12 (E) Requires the manufacturer, when the process
13 orders, under the terms of this chapter, either that the
14 nonconforming motor vehicle be replaced if the buyer
15 consents to this remedy or that restitution be made to the
16 buyer, to replace the motor vehicle or make restitution
17 in accordance with paragraph (2) of subdivision (d).

18 (F) Provides, at the request of the arbitrator or a
19 majority of the arbitration panel, for an inspection and
20 written report on the condition of a nonconforming
21 motor vehicle, at no cost to the buyer, by an automobile
22 expert who is independent of the manufacturer.

23 (G) Takes into account, in rendering decisions, all
24 legal and equitable factors, including, but not limited to,
25 the written warranty, the rights and remedies conferred
26 in regulations of the Federal Trade Commission
27 contained in Part 703 of Title 16 of the Code of Federal
28 Regulations as those regulations read on January 1, 1987,
29 Division 2 (commencing with Section 2101) of the
30 Commercial Code, this chapter, and any other equitable
31 considerations appropriate in the circumstances. Nothing
32 in this chapter requires that, to be certified as a qualified
33 third-party dispute resolution process pursuant to this
34 section, decisions of the process must consider or provide
35 remedies in the form of awards of punitive damages or
36 multiple damages, under subdivision (c) of Section 1794,
37 or of attorney's fees under subdivision (d) of Section 1794,
38 or of consequential damages other than as provided in
39 subdivisions (a) and (b) of Section 1794, including, but
40 not limited to, reasonable repair, towing and rental car

costs actually incurred by the buyer. (H) Requires that no arbitrator deciding a dispute may be a party to the dispute and that no other person, including an employee, agent, or dealer for the manufacturer, may be allowed to participate substantively in the merits of any dispute with the arbitrator unless the buyer is allowed to participate also. Nothing in this paragraph prohibits any member of an arbitration board from deciding a dispute.

(I) Obtains and maintains certification by the Bureau of Automotive Repair pursuant to Chapter 20.5 (commencing with Section 9889.70) of Division 3 of the Business and Professions Code.

(4) For the purposes of subdivision (d) and this subdivision the following terms have the following meanings:

(A) "Nonconformity" means a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle to the buyer or lessee.

(B) "New motor vehicle" means a new motor vehicle which is used or bought for use primarily for personal, family, or household purposes. "New motor vehicle" includes a *motorhome* or a dealer-owned vehicle and a "demonstrator" or other motor vehicle sold with a manufacturer's new car warranty but does not include a motorcycle; a ~~motorhome~~, or a motor vehicle which is not registered under the Vehicle Code because it is to be operated or used exclusively off the highways. A "demonstrator" is a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type.

(C) "*Motorhome*" means the chassis and that portion of the *motorhome* devoted to its propulsion, but does not apply to any portion designed, used, or maintained primarily as a mobile dwelling.

(5) No person shall sell or lease a motor vehicle transferred by a buyer or lessee to a manufacturer pursuant to paragraph (2) of subdivision (d) unless the nature of the nonconformity experienced by the original

1 buyer or lessee is clearly and conspicuously disclosed, the
2 nonconformity is corrected, and the manufacturer
3 warrants to the new buyer or lessee in writing for a
4 period of one year that the motor vehicle is free of that
5 nonconformity.

AMENDED IN ASSEMBLY APRIL 20, 1988

CALIFORNIA LEGISLATURE—1987-88 REGULAR SESSION

ASSEMBLY BILL

No. 4513

Introduced by Assembly Member Tanner

February 19, 1988

An act to amend Section 1793.2 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 4513, as amended, Tanner. Warranties: new motor vehicles.

Existing law relating to warranties on new motor vehicles requires the manufacturer or its representative to replace the vehicle or make restitution, as specified, if unable to conform the vehicle to the applicable express warranties after a reasonable number of attempts.

The bill would revise the definition of "motor vehicle" for these and related purposes to include the chassis, *chassis cab*, and that portion of a motorhome devoted to its propulsion. *The bill would, also, define "motorhome" for these purposes to mean a vehicular unit built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab, or van, which becomes an integral part of the completed vehicle, designed for human habitation for recreational or emergency occupancy.*

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



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

1 SECTION 1. Section 1793.2 of the Civil Code is
2 amended to read:

3 1793.2. (a) Every manufacturer of consumer goods
4 sold in this state and for which the manufacturer has
5 made an express warranty shall:

6 (1) Maintain in this state sufficient service and repair
7 facilities reasonably close to all areas where its consumer
8 goods are sold to carry out the terms of such warranties
9 or designate and authorize in this state as service and
10 repair facilities independent repair or service facilities
11 reasonably close to all areas where its consumer goods are
12 sold to carry out the terms of such warranties.

13 As a means of complying with this paragraph, a
14 manufacturer may enter into warranty service contracts
15 with independent service and repair facilities. The
16 warranty service contracts may provide for a fixed
17 schedule of rates to be charged for warranty service or
18 warranty repair work, however, the rates fixed by such
19 contracts shall be in conformity with the requirements of
20 subdivision (c) of Section 1793.3. The rates established
21 pursuant to subdivision (c) of Section 1793.3, between the
22 manufacturer and the independent service and repair
23 facility, shall not preclude a good faith discount which is
24 reasonably related to reduced credit and general
25 overhead cost factors arising from the manufacturer's
26 payment of warranty charges direct to the independent
27 service and repair facility. The warranty service contracts
28 authorized by this paragraph shall not be executed to
29 cover a period of time in excess of one year, and may be
30 renewed only by a separate, new contract or letter of
31 agreement between the manufacturer and the
32 independent service and repair facility.

33 (2) In the event of a failure to comply with paragraph
34 (1) of this subdivision, be subject to Section 1793.5.

35 (3) Make available to authorized service and repair
36 facilities sufficient service literature and replacement
37 parts to effect repairs during the express warranty
38 period.

1 (b) Where such service and repair facilities are
2 maintained in this state and service or repair of the goods
3 is necessary because they do not conform with the
4 applicable express warranties, service and repair shall be
5 commenced within a reasonable time by the
6 manufacturer or its representative in this state. Unless
7 the buyer agrees in writing to the contrary, the goods
8 shall be serviced or repaired so as to conform to the
9 applicable warranties within 30 days. Delay caused by
10 conditions beyond the control of the manufacturer or his
11 representatives shall serve to extend this 30-day
12 requirement. Where delay arises, conforming goods shall
13 be tendered as soon as possible following termination of
14 the condition giving rise to the delay.

15 (c) The buyer shall deliver nonconforming goods to
16 the manufacturer's service and repair facility within this
17 state, unless, due to reasons of size and weight, or method
18 of attachment, or method of installation, or nature of the
19 nonconformity, delivery cannot reasonably be
20 accomplished. If the buyer cannot return the
21 nonconforming goods for any of these reasons, he or she
22 shall notify the manufacturer or its nearest service and
23 repair facility within the state. Written notice of
24 nonconformity to the manufacturer or its service and
25 repair facility shall constitute return of the goods for
26 purposes of this section. Upon receipt of such notice of
27 nonconformity the manufacturer shall, at its option,
28 service or repair the goods at the buyer's residence, or
29 pick up the goods for service and repair, or arrange for
30 transporting the goods to its service and repair facility.
31 All reasonable costs of transporting the goods when a
32 buyer cannot return them for any of the above reasons
33 shall be at the manufacturer's expense. The reasonable
34 costs of transporting nonconforming goods after delivery
35 to the service and repair facility until return of the goods
36 to the buyer shall be at the manufacturer's expense.

37 (d) (1) Except as provided in paragraph (2), if the
38 manufacturer or its representative in this state does not
39 service or repair the goods to conform to the applicable
40 express warranties after a reasonable number of

1 attempts, the manufacturer shall either replace the goods
2 or reimburse the buyer in an amount equal to the
3 purchase price paid by the buyer, less that amount
4 directly attributable to use by the buyer prior to the
5 discovery of the nonconformity.

6 (2) If the manufacturer or its representative in this
7 state is unable to service or repair a new motor vehicle,
8 as that term is defined in subparagraph (B) of paragraph
9 (4) of subdivision (e), to conform to the applicable
10 express warranties after a reasonable number of
11 attempts, the manufacturer shall either promptly replace
12 the new motor vehicle in accordance with subparagraph
13 (A) or promptly make restitution to the buyer in
14 accordance with subparagraph (B). However, the buyer
15 shall be free to elect restitution in lieu of replacement,
16 and in no event shall the buyer be required by the
17 manufacturer to accept a replacement vehicle.

18 (A) In the case of replacement, the manufacturer shall
19 replace the buyer's vehicle with a new motor vehicle
20 substantially identical to the vehicle replaced. The
21 replacement vehicle shall be accompanied by all express
22 and implied warranties that normally accompany new
23 motor vehicles of that specific kind. The manufacturer
24 also shall pay for, or to, the buyer the amount of any sales
25 or use tax, license fees, registration fees, and other official
26 fees which the buyer is obligated to pay in connection
27 with the replacement, plus any incidental damages to
28 which the buyer is entitled under Section 1794, including,
29 but not limited to, reasonable repair, towing, and rental
30 car costs actually incurred by the buyer.

31 (B) In the case of restitution, the manufacturer shall
32 make restitution in an amount equal to the actual price
33 paid or payable by the buyer, including any charges for
34 transportation and manufacturer-installed options, but
35 excluding nonmanufacturer items installed by a dealer or
36 the buyer, and including any collateral charges such as
37 sales tax, license fees, registration fees, and other official
38 fees, plus any incidental damages to which the buyer is
39 entitled under Section 1794, including, but not limited to,
40 reasonable repair, towing, and rental car costs actually

1 incurred by the buyer.

2 (C) When the manufacturer replaces the new motor
3 vehicle pursuant to subparagraph (A), the buyer shall
4 only be liable to pay the manufacturer an amount directly
5 attributable to use by the buyer of the replaced vehicle
6 prior to the time the buyer first delivered the vehicle to
7 the manufacturer or distributor, or its authorized service
8 and repair facility for correction of the problem that gave
9 rise to the nonconformity. When restitution is made
10 pursuant to subparagraph (B), the amount to be paid by
11 the manufacturer to the buyer may be reduced by the
12 manufacturer by that amount directly attributable to use
13 by the buyer prior to the time the buyer first delivered
14 the vehicle to the manufacturer or distributor, or its
15 authorized service and repair facility for correction of the
16 problem that gave rise to the nonconformity. The
17 amount directly attributable to use by the buyer shall be
18 determined by multiplying the actual price of the new
19 motor vehicle paid or payable by the buyer, including
20 any charges for transportation and
21 manufacturer-installed options, by a fraction having as its
22 denominator 120,000 and having as its numerator the
23 number of miles traveled by the new motor vehicle prior
24 to the time the buyer first delivered the vehicle to the
25 manufacturer or distributor, or its authorized service and
26 repair facility for correction of the problem that gave rise
27 to the nonconformity. Nothing in this paragraph shall in
28 any way limit the rights or remedies available to the
29 buyer under any other law.

30 (e) (1) It shall be presumed that a reasonable number
31 of attempts have been made to conform a new motor
32 vehicle to the applicable express warranties if, within one
33 year from delivery to the buyer or 12,000 miles on the
34 odometer of the vehicle, whichever occurs first, either
35 (A) the same nonconformity has been subject to repair
36 four or more times by the manufacturer or its agents and
37 the buyer has at least once directly notified the
38 manufacturer of the need for the repair of the
39 nonconformity, or (B) the vehicle is out of service by
40 reason of repair of nonconformities by the manufacturer

1 or its agents for a cumulative total of more than 30
 2 calendar days since delivery of the vehicle to the buyer.
 3 The 30-day limit shall be extended only if repairs cannot
 4 be performed due to conditions beyond the control of the
 5 manufacturer or its agents. The buyer shall be required
 6 to directly notify the manufacturer pursuant to
 7 subparagraph (A) only if the manufacturer has clearly
 8 and conspicuously disclosed to the buyer, with the
 9 warranty or the owner's manual, the provisions of this
 10 subdivision and that of subdivision (d), including the
 11 requirement that the buyer must notify the
 12 manufacturer directly pursuant to subparagraph (A).
 13 This presumption shall be a rebuttable presumption
 14 affecting the burden of proof, and it may be asserted by
 15 the buyer in any civil action, including an action in small
 16 claims court, or other formal or informal proceeding.
 17 (2) If a qualified third party dispute resolution process
 18 exists, and the buyer receives timely notification in
 19 writing of the availability of a third party process with a
 20 description of its operation and effect, the presumption
 21 in paragraph (1) may not be asserted by the buyer until
 22 after the buyer has initially resorted to the third party
 23 process as required in paragraph (3). Notification of the
 24 availability of the third party process is not timely if the
 25 buyer suffers any prejudice resulting from any delay in
 26 giving the notification. If a qualified third party dispute
 27 resolution process does not exist, or if the buyer is
 28 dissatisfied with the third party decision, or if the
 29 manufacturer or its agent neglects to promptly fulfill the
 30 terms of such third party decision after the decision is
 31 accepted by the buyer, the buyer may assert the
 32 presumption provided in paragraph (1) in an action to
 33 enforce the buyer's rights under subdivision (d). The
 34 findings and decision of the third party shall be
 35 admissible in evidence in the action without further
 36 foundation. Any period of limitation of actions under any
 37 federal or California laws with respect to any person shall
 38 be extended for a period equal to the number of days
 39 between the date a complaint is filed with a third party
 40 dispute resolution process and the date of its decision or

1 the date before which the manufacturer or its agent is
 2 required by the decision to fulfill its terms if the decision
 3 is accepted by the buyer, whichever occurs later.

4 (3) A qualified third party dispute resolution process
 5 shall be one that does all of the following:

6 (A) Complies with the minimum requirements of the
 7 Federal Trade Commission for informal dispute
 8 settlement procedures as set forth in Part 703 of Title 16
 9 of the Code of Federal Regulations, as those regulations
 10 read on January 1, 1987.

11 (B) Renders decisions which are binding on the
 12 manufacturer if the buyer elects to accept the decision.

13 (C) Prescribes a reasonable time, not to exceed 30
 14 days after the decision is accepted by the buyer, within
 15 which the manufacturer or its agent must fulfill the terms
 16 of its decisions.

17 (D) Provides arbitrators who are assigned to decide
 18 disputes with copies of, and instruction in, the provisions
 19 of the Federal Trade Commission's regulations in Part
 20 703 of Title 16 of the Code of Federal Regulations as those
 21 regulations read on January 1, 1987, Division 2
 22 (commencing with Section 2101) of the Commercial
 23 Code, and this chapter.

24 (E) Requires the manufacturer, when the process
 25 orders, under the terms of this chapter, either that the
 26 nonconforming motor vehicle be replaced if the buyer
 27 consents to this remedy or that restitution be made to the
 28 buyer, to replace the motor vehicle or make restitution
 29 in accordance with paragraph (2) of subdivision (d).

30 (F) Provides, at the request of the arbitrator or a
 31 majority of the arbitration panel, for an inspection and
 32 written report on the condition of a nonconforming
 33 motor vehicle, at no cost to the buyer, by an automobile
 34 expert who is independent of the manufacturer.

35 (G) Takes into account, in rendering decisions, all
 36 legal and equitable factors, including, but not limited to,
 37 the written warranty, the rights and remedies conferred
 38 in regulations of the Federal Trade Commission
 39 contained in Part 703 of Title 16 of the Code of Federal
 40 Regulations as those regulations read on January 1, 1987,

1 Division 2 (commencing with Section 2101) of the
 2 Commercial Code, this chapter, and any other equitable
 3 considerations appropriate in the circumstances. Nothing
 4 in this chapter requires that, to be certified as a qualified
 5 third-party dispute resolution process pursuant to this
 6 section, decisions of the process must consider or provide
 7 remedies in the form of awards of punitive damages or
 8 multiple damages, under subdivision (c) of Section 1794,
 9 or of attorney's fees under subdivision (d) of Section 1794,
 10 or of consequential damages other than as provided in
 11 subdivisions (a) and (b) of Section 1794, including, but
 12 not limited to, reasonable repair, towing, and rental car
 13 costs actually incurred by the buyer.

14 (H) Requires that no arbitrator deciding a dispute
 15 may be a party to the dispute and that no other person,
 16 including an employee, agent, or dealer for the
 17 manufacturer, may be allowed to participate
 18 substantively in the merits of any dispute with the
 19 arbitrator unless the buyer is allowed to participate also.
 20 Nothing in this paragraph prohibits any member of an
 21 arbitration board from deciding a dispute.

22 (I) Obtains and maintains certification by the Bureau
 23 of Automotive Repair pursuant to Chapter 20.5
 24 (commencing with Section 9889.70) of Division 3 of the
 25 Business and Professions Code.

26 (4) For the purposes of subdivision (d) and this
 27 subdivision the following terms have the following
 28 meanings:

29 (A) "Nonconformity" means a nonconformity which
 30 substantially impairs the use, value, or safety of the new
 31 motor vehicle to the buyer or lessee.

32 (B) "New motor vehicle" means a new motor vehicle
 33 which is used or bought for use primarily for personal,
 34 family, or household purposes. "New motor vehicle"
 35 includes a motorhome or the chassis, chassis cab, and that
 36 portion of a motorhome devoted to its propulsion, but
 37 does not include any portion designed, used, or
 38 maintained primarily for human habitation, a
 39 dealer-owned vehicle and a "demonstrator" or other
 40 motor vehicle sold with a manufacturer's new car

1 warranty but does not include a motorcycle or a motor
 2 vehicle which is not registered under the Vehicle Code
 3 because it is to be operated or used exclusively off the
 4 highways. A "demonstrator" is a vehicle assigned by a
 5 dealer for the purpose of demonstrating qualities and
 6 characteristics common to vehicles of the same or similar
 7 model and type.

8 ~~(C) "Motorhome" means the chassis and that portion~~
 9 ~~of the motorhome devoted to its propulsion, but does not~~
 10 ~~apply to any portion designed, used, or maintained~~
 11 ~~primarily as a mobile dwelling.~~

12 (C) "Motorhome" means a vehicular unit built on, or
 13 permanently attached to, a self-propelled motor vehicle
 14 chassis, chassis cab, or van, which becomes an integral
 15 part of the completed vehicle, designed for human
 16 habitation for recreational or emergency occupancy.

17 (5) No person shall sell or lease a motor vehicle
 18 transferred by a buyer or lessee to a manufacturer
 19 pursuant to paragraph (2) of subdivision (d) unless the
 20 nature of the nonconformity experienced by the original
 21 buyer or lessee is clearly and conspicuously disclosed, the
 22 nonconformity is corrected, and the manufacturer
 23 warrants to the new buyer or lessee in writing for a
 24 period of one year that the motor vehicle is free of that
 25 nonconformity.



Assembly Bill No. 4513

CHAPTER 697

An act to amend Section 1793.2 of the Civil Code, relating to warranties.

[Approved by Governor August 29, 1988. Filed with
Secretary of State August 29, 1988.]

LEGISLATIVE COUNSEL'S DIGEST

AB 4513, Tanner. Warranties: new motor vehicles.

Existing law relating to warranties on new motor vehicles requires the manufacturer or its representative to replace the vehicle or make restitution, as specified, if unable to conform the vehicle to the applicable express warranties after a reasonable number of attempts.

The bill would revise the definition of "motor vehicle" for these and related purposes to include the chassis, chassis cab, and that portion of a motorhome devoted to its propulsion. The bill would, also, define "motorhome" for these purposes to mean a vehicular unit built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab, or van, which becomes an integral part of the completed vehicle, designed for human habitation for recreational or emergency occupancy.

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

SECTION 1. Section 1793.2 of the Civil Code is amended to read:

1793.2. (a) Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall:

(1) Maintain in this state sufficient service and repair facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of such warranties or designate and authorize in this state as service and repair facilities independent repair or service facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of such warranties.

As a means of complying with this paragraph, a manufacturer may enter into warranty service contracts with independent service and repair facilities. The warranty service contracts may provide for a fixed schedule of rates to be charged for warranty service or warranty repair work, however, the rates fixed by such contracts shall be in conformity with the requirements of subdivision (c) of Section 1793.3. The rates established pursuant to subdivision (c) of Section 1793.3, between the manufacturer and the independent service and repair facility, shall not preclude a good faith discount which is reasonably related to reduced credit and general overhead cost factors arising from the manufacturer's payment of warranty

charges direct to the independent service and repair facility. The warranty service contracts authorized by this paragraph shall not be executed to cover a period of time in excess of one year, and may be renewed only by a separate, new contract or letter of agreement between the manufacturer and the independent service and repair facility.

(2) In the event of a failure to comply with paragraph (1) of this subdivision, be subject to Section 1793.5.

(3) Make available to authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period.

(b) Where such service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not conform with the applicable express warranties, service and repair shall be commenced within a reasonable time by the manufacturer or its representative in this state. Unless the buyer agrees in writing to the contrary, the goods shall be serviced or repaired so as to conform to the applicable warranties within 30 days. Delay caused by conditions beyond the control of the manufacturer or his representatives shall serve to extend this 30-day requirement. Where delay arises, conforming goods shall be tendered as soon as possible following termination of the condition giving rise to the delay.

(c) The buyer shall deliver nonconforming goods to the manufacturer's service and repair facility within this state, unless, due to reasons of size and weight, or method of attachment, or method of installation, or nature of the nonconformity, delivery cannot reasonably be accomplished. If the buyer cannot return the nonconforming goods for any of these reasons, he or she shall notify the manufacturer or its nearest service and repair facility within the state. Written notice of nonconformity to the manufacturer or its service and repair facility shall constitute return of the goods for purposes of this section. Upon receipt of such notice of nonconformity the manufacturer shall, at its option, service or repair the goods at the buyer's residence, or pick up the goods for service and repair, or arrange for transporting the goods to its service and repair facility. All reasonable costs of transporting the goods when a buyer cannot return them for any of the above reasons shall be at the manufacturer's expense. The reasonable costs of transporting nonconforming goods after delivery to the service and repair facility until return of the goods to the buyer shall be at the manufacturer's expense.

(d) (1) Except as provided in paragraph (2), if the manufacturer or its representative in this state does not service or repair the goods to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the

buyer prior to the discovery of the nonconformity.

(2) If the manufacturer or its representative in this state is unable to service or repair a new motor vehicle, as that term is defined in subparagraph (B) of paragraph (4) of subdivision (e), to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle in accordance with subparagraph (A) or promptly make restitution to the buyer in accordance with subparagraph (B). However, the buyer shall be free to elect restitution in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle.

(A) In the case of replacement, the manufacturer shall replace the buyer's vehicle with a new motor vehicle substantially identical to the vehicle replaced. The replacement vehicle shall be accompanied by all express and implied warranties that normally accompany new motor vehicles of that specific kind. The manufacturer also shall pay for, or to, the buyer the amount of any sales or use tax, license fees, registration fees, and other official fees which the buyer is obligated to pay in connection with the replacement, plus any incidental damages to which the buyer is entitled under Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

(B) In the case of restitution, the manufacturer shall make restitution in an amount equal to the actual price paid or payable by the buyer, including any charges for transportation and manufacturer-installed options, but excluding nonmanufacturer items installed by a dealer or the buyer, and including any collateral charges such as sales tax, license fees, registration fees, and other official fees, plus any incidental damages to which the buyer is entitled under Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

(C) When the manufacturer replaces the new motor vehicle pursuant to subparagraph (A), the buyer shall only be liable to pay the manufacturer an amount directly attributable to use by the buyer of the replaced vehicle prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. When restitution is made pursuant to subparagraph (B), the amount to be paid by the manufacturer to the buyer may be reduced by the manufacturer by that amount directly attributable to use by the buyer prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. The amount directly attributable to use by the buyer shall be determined by multiplying the actual price of the new motor vehicle paid or payable by the buyer, including any charges for transportation and manufacturer-installed options, by a fraction having as its

denominator 120,000 and having as its numerator the number of miles traveled by the new motor vehicle prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. Nothing in this paragraph shall in any way limit the rights or remedies available to the buyer under any other law.

(e) (1) It shall be presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within one year from delivery to the buyer or 12,000 miles on the odometer of the vehicle, whichever occurs first, either (A) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for the repair of the nonconformity, or (B) the vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery of the vehicle to the buyer. The 30-day limit shall be extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer or its agents. The buyer shall be required to directly notify the manufacturer pursuant to subparagraph (A) only if the manufacturer has clearly and conspicuously disclosed to the buyer, with the warranty or the owner's manual, the provisions of this subdivision and that of subdivision (d), including the requirement that the buyer must notify the manufacturer directly pursuant to subparagraph (A). This presumption shall be a rebuttable presumption affecting the burden of proof, and it may be asserted by the buyer in any civil action, including an action in small claims court, or other formal or informal proceeding.

(2) If a qualified third party dispute resolution process exists, and the buyer receives timely notification in writing of the availability of a third party process with a description of its operation and effect, the presumption in paragraph (1) may not be asserted by the buyer until after the buyer has initially resorted to the third party process as required in paragraph (3). Notification of the availability of the third party process is not timely if the buyer suffers any prejudice resulting from any delay in giving the notification. If a qualified third party dispute resolution process does not exist, or if the buyer is dissatisfied with the third party decision, or if the manufacturer or its agent neglects to promptly fulfill the terms of such third party decision after the decision is accepted by the buyer, the buyer may assert the presumption provided in paragraph (1) in an action to enforce the buyer's rights under subdivision (d). The findings and decision of the third party shall be admissible in evidence in the action without further foundation. Any period of limitation of actions under any federal or California laws with respect to any person shall be extended for a period equal to the number of days between the

date a complaint is filed with a third party dispute resolution process and the date of its decision or the date before which the manufacturer or its agent is required by the decision to fulfill its terms if the decision is accepted by the buyer, whichever occurs later.

(3) A qualified third party dispute resolution process shall be one that does all of the following:

(A) Complies with the minimum requirements of the Federal Trade Commission for informal dispute settlement procedures as set forth in Part 703 of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1987.

(B) Renders decisions which are binding on the manufacturer if the buyer elects to accept the decision.

(C) Prescribes a reasonable time, not to exceed 30 days after the decision is accepted by the buyer, within which the manufacturer or its agent must fulfill the terms of its decisions.

(D) Provides arbitrators who are assigned to decide disputes with copies of, and instruction in, the provisions of the Federal Trade Commission's regulations in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1, 1987, Division 2 (commencing with Section 2101) of the Commercial Code, and this chapter.

(E) Requires the manufacturer, when the process orders, under the terms of this chapter, either that the nonconforming motor vehicle be replaced if the buyer consents to this remedy or that restitution be made to the buyer, to replace the motor vehicle or make restitution in accordance with paragraph (2) of subdivision (d).

(F) Provides, at the request of the arbitrator or a majority of the arbitration panel, for an inspection and written report on the condition of a nonconforming motor vehicle, at no cost to the buyer, by an automobile expert who is independent of the manufacturer.

(G) Takes into account, in rendering decisions, all legal and equitable factors, including, but not limited to, the written warranty, the rights and remedies conferred in regulations of the Federal Trade Commission contained in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1, 1987, Division 2 (commencing with Section 2101) of the Commercial Code, this chapter, and any other equitable considerations appropriate in the circumstances. Nothing in this chapter requires that, to be certified as a qualified third-party dispute resolution process pursuant to this section, decisions of the process must consider or provide remedies in the form of awards of punitive damages or multiple damages, under subdivision (c) of Section 1794, or of attorney's fees under subdivision (d) of Section 1794, or of consequential damages other than as provided in subdivisions (a) and (b) of Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

— 0 —

(H) Requires that no arbitrator deciding a dispute may be a party to the dispute and that no other person, including an employee, agent, or dealer for the manufacturer, may be allowed to participate substantively in the merits of any dispute with the arbitrator unless the buyer is allowed to participate also. Nothing in this paragraph prohibits any member of an arbitration board from deciding a dispute.

(I) Obtains and maintains certification by the Bureau of Automotive Repair pursuant to Chapter 20.5 (commencing with Section 9889.70) of Division 3 of the Business and Professions Code.

(4) For the purposes of subdivision (d) and this subdivision the following terms have the following meanings:

(A) "Nonconformity" means a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle to the buyer or lessee.

(B) "New motor vehicle" means a new motor vehicle which is used or bought for use primarily for personal, family, or household purposes. "New motor vehicle" includes the chassis, chassis cab, and that portion of a motorhome devoted to its propulsion, but does not include any portion designed, used, or maintained primarily for human habitation, a dealer-owned vehicle and a "demonstrator" or other motor vehicle sold with a manufacturer's new car warranty but does not include a motorcycle or a motor vehicle which is not registered under the Vehicle Code because it is to be operated or used exclusively off the highways. A "demonstrator" is a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type.

(C) "Motorhome" means a vehicular unit built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab, or van, which becomes an integral part of the completed vehicle, designed for human habitation for recreational or emergency occupancy.

(5) No person shall sell or lease a motor vehicle transferred by a buyer or lessee to a manufacturer pursuant to paragraph (2) of subdivision (d) unless the nature of the nonconformity experienced by the original buyer or lessee is clearly and conspicuously disclosed, the nonconformity is corrected, and the manufacturer warrants to the new buyer or lessee in writing for a period of one year that the motor vehicle is free of that nonconformity.

0



VOLUME 2
CALIFORNIA LEGISLATURE
AT SACRAMENTO
1987-88 REGULAR SESSION
1987-88 FIRST EXTRAORDINARY SESSION

ASSEMBLY FINAL HISTORY

SYNOPSIS OF
ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT,
JOINT, AND HOUSE RESOLUTIONS

Assembly Convened December 1, 1986
Recessed December 3, 1986
Recessed April 9, 1987
Recessed July 16, 1987
Recessed September 11, 1987
Recessed March 24, 1988
Recessed June 30, 1988
Reconvened January 5, 1987
Reconvened April 20, 1987
Reconvened August 17, 1987
Reconvened January 4, 1988
Reconvened April 4, 1988
Reconvened August 1, 1988
Adjourned September 1, 1988
Adjourned Sine Die November 30, 1988
Legislative Days..... 246

HON. WILLIE L. BROWN JR.
Speaker

HON. MIKE ROOS
Speaker pro Tempore

HON. PHILLIP ISENBERG
Assistant Speaker pro Tempore

HON. THOMAS HANNIGAN
Majority Floor Leader

HON. PAT NOLAN
Minority Floor Leader

Compiled Under the Direction of
R. BRIAN KIDNEY
Chief Clerk

GUNVOR ENGLE
History Clerk

52-AFH-1247

LEGISLATIVE INTENT SERVICE 1987-88 1017

MJN/1184

A.B. No. 4512—Tanner.

An act to add Article 6.5 (commencing with Section 66758) to Chapter 1 of Title 7.3 of the Government Code, relating to solid waste.

1988

- Feb. 19—Introduced. To print.
- Feb. 22—Read first time.
- Feb. 29—From printer. May be heard in committee March 30.
- Mar. 7—Referred to Com. on NAT. RES.
- Nov. 30—From committee without further action.

✓ A.B. No. 4513—Tanner.

An act to amend Section 1793.2 of the Civil Code, relating to warranties.

1988

- Feb. 19—Introduced. To print.
- Feb. 22—Read first time.
- Feb. 26—From printer. May be heard in committee March 27.
- Mar. 3—Referred to Com. on C.E. & CON.PRO.
- April 19—From committee: Amend, and do pass as amended, and re-refer to Com. on W. & M. with recommendation: To Consent Calendar, (Ayes 9. Noes 0.) (April 12).
- April 20—Read second time and amended.
- April 21—Re-referred to Com. on W. & M.
- May 26—From committee: Do pass. To Consent Calendar. (May 25).
- May 27—Read second time. To Consent Calendar.
- June 1—Read third time, passed, and to Senate. (Ayes 78. Noes 0. Page 7912.)
- June 2—In Senate. Read first time. To Com. on HLS. for assignment.
- June 16—Referred to Com. on JUD.
- June 29—From committee: Do pass, and re-refer to Com. on APPR. with recommendation: To Consent Calendar. Re-referred. (Ayes 8. Noes 0.)
- Aug. 1—From committee: Be placed on second reading. file pursuant to Senate Rule 28.8.
- Aug. 2—Read second time. To third reading.
- Aug. 11—Read third time, passed, and to Assembly. (Ayes 37. Noes 0. Page 7430.)
- Aug. 15—In Assembly. To enrollment.
- Aug. 18—Enrolled and to the Governor at 12 m.
- Aug. 29—Approved by the Governor.
- Aug. 29—Chaptered by Secretary of State - Chapter 697, Statutes of 1988.

A.B. No. 4514—Vasconcellos.

An act to amend Sections 926.15 and 926.16 of the Government Code, relating to Medi-Cal.

1988

- Feb. 19—Introduced. To print.
- Feb. 22—Read first time.
- Feb. 29—From printer. May be heard in committee March 30.
- Mar. 7—Referred to Com. on HEALTH.
- Nov. 30—From committee without further action.

Date of Hearing: April 12, 1988

AB 4513

ASSEMBLY COMMITTEE ON GOVERNMENTAL EFFICIENCY AND CONSUMER PROTECTION
STAN STATHAM, Chairman

AB 4513 (Tanner) - As Introduced: February 19, 1988

ASSEMBLY ACTIONS:

COMMITTEE _____ VOTE _____ COMMITTEE _____ VOTE _____

Ayes:

Ayes:

Nays:

Nays:

SUBJECT

Warranties: new motor vehicles.

DIGEST

Current law, known as the "Lemon Law", requires the manufacturer of a new motor vehicle or its representative to replace the vehicle or make restitution if unable to conform the vehicle to the applicable express warranties after a reasonable number of attempts.

This bill would extend the provisions of this law to include the chassis and that portion of a motorhome devoted to its propulsion. It specifically excludes that portion of a motorhome designed or used primarily as a mobile dwelling.

FISCAL EFFECT

Undetermined.

COMMENTS

Currently the vehicular portion of a motor home is not covered by the so-called "Lemon Law." This bill, which is based upon an equivalent provision in New York law, would extend the provisions of the "Lemon Law" to the chassis and drive train of motorhomes.

An analysis prepared by the Attorney General's office notes that the term "motorhome" is not defined anywhere in statute; the bill does provide a limited definition, but only for purposes of applying the Lemon Law.

- continued -

AB 4513

3

MJN/1186

LEGISLATIVE INTENT SERVICE (500) 688-1517

The Attorney General's analysis also notes it is difficult to separate the chassis and engine portion from the "living" portion of a motorhome, and equally difficult to take the product apart and return it to the manufacturer in the event a refund is ordered. Distinguishing the chassis and drive train from the "living" section of a motorhome therefore may not be practical in reality.

Support

None reported to committee.

Opposition

None reported to committee.

LEGISLATIVE INTENT SERVICE
(800) 688-1917

LEGISLATIVE INTENT SERVICE
(800) 688-1917

LEGISLATIVE INTENT SERVICE
(800) 688-1917

LEGISLATIVE INTENT SERVICE
(800) 688-1917



Larry Doyle
324-7440
ageconpro

DEPARTMENT OF JUSTICE

BILL ANALYSIS

BILL NO. AB4513 AUTHOR HERSCHEL T. ELKINS
BILL AUTHOR: TANNER SECTION/BRANCH CONSUMER LAW
DATE LAST AMENDED: _____ TELEPHONE: (213) 736-2097
ATSS 677-2097

I. SUMMARY OF BILL AND EXISTING LAW

The Song-Beverly Consumer Warranties Act provides certain consumer protections to the purchasers of automobiles. That portion of the Act is commonly referred to as the "Lemon Law". Presently, the Lemon Law does not apply to motorhomes. This bill would remove the exemption in regard to motorhomes in respect to the chassis and the portion of the motor home devoted to its propulsion.

II. BACKGROUND INFORMATION

Consumers have long complained about defects in new motor vehicles. Complaints have also been made in regard to the chassis and propulsion portions of non-passenger cars or trucks - for example, motorcoaches. This is an effort to correct that gap.

III. IMPACT OF BILL

The term "motorhome" is not defined. A "mobilehome" used to be considered a vehicle but legislation regarding it has been moved from the Vehicle Code to the Health and Safety Code. That is because a mobilehome is more like an actual home. Mobilehomes are not self-propelled. Although the term "motorhome" is not defined, I assume it means the form of mobilehome which is self-propelled and is similar to "trailer coach". The statute retains the exemption for the portion of the motorhome designed for use primarily as a mobile dwelling.

IV. RECOMMENDATION

PS - The remedy for motor vehicle defects which cannot be corrected within a reasonable period of time include replacement. It is very difficult to separate the chassis and engine portion from the rest of the vehicle. It is also difficult to take the product apart and return it to the manufacturer in the event a refund is ordered. Although most of these "motorhomes" are manufactured by major automobile manufacturers, some are not and the procedure for establishing arbitration mechanisms which meet the new

Analysis AB4513
n 9, 1988
e 2

standards should be explored further. The author might also wish to define "motorhome". Since we do not have as much experience in examining motorhomes as vehicles, we do not have a great deal of expertise to offer. We will study it further.

HTE:bjh

bc: Sue Giesberg
Ron Reiter

LEGISLATIVE INTENT SERVICE (800) 688-1917

LEGISLATIVE INTENT SERVICE (800) 688-1917

AP-2

MJN/1189

WAYS AND MEANS COMMITTEE ANALYSIS

Author: Tanner

Amended: 04/20/88

Bill No.: AB 4513

Policy Committee: Governmental Efficiency and Consumer
Affairs

Vote: 09-00

Urgency: No

Hearing Date: 05/25/88

State Mandated Local Program: No

Staff Comments By:

Disclaimed:

Allan Lind *ALL*

Summary

This bill would include motorhomes under provisions of the "lemon law".

Fiscal

Minor, absorbable costs.

AL:tcn

LEGISLATIVE CREDIT SERVICE (504) 455-1411

AB 4513 (Tanner)
4/21/88

ASSEMBLY COMMITTEE ON GOVERNMENTAL EFFICIENCY & CONSUMER PROTECTION
REPUBLICAN ANALYSIS

AB 4513 (Tanner) -- WARRANTIES: MOTORHOMES
Version: 4/ /88 Chairman: Stan Statham
Recommendation: Support Vote: Majority

Summary: Revises the definition of "motor vehicle" relating to warranties on motorhomes to include the chassis and that portion of a motorhome devoted to its propulsion.
Fiscal effect: Unknown.

Supported: Unknown. Opposed: Unknown. Governor's position: Unknown

Comments: The measure was amended in committee to define "motorhome" and to separate the chassis and engine portion from the "living" portion of a motorhome.

The author indicates the purpose of the bill is to address concerns that the vehicular portion of a motorhome is not covered by the "lemon law". The bill extends the "lemon Law" coverage to the chassis and drive train of motorhomes. In addition, she points out that the bill is based on an equivalent provision in New York law.

Assembly Republican Committee Vote:
G.E. & C.P. -- 4/12/88 -- DO PASS/AMENDED/CONSENT
(9-0) Ayes: Frazee, Grisham, Harvey, Statham
Consultant: Wess Larson

LEGISLATIVE INTENT SERVICE (800) 888-1817



6

Arc-1

MJN/1191

Honorable Sally Tanner
Member of the Assembly
State Capitol, Room 4146
Sacramento, CA 95814

DEPARTMENT
Finance

AUTHOR
Tanner

BILL NUMBER
AB 4513

SPONSORED BY

RELATED BILLS

AMENDMENT DATE
April 20, 1988

BILL SUMMARY

WARRANTIES: NEW MOTOR VEHICLES

This bill would include motorhomes under provisions of existing law relating to warranties on new motor vehicles.

FISCAL SUMMARY--STATE LEVEL

		(Fiscal Impact by Fiscal Year)						
Code/Department	LA	(Dollars in Thousands)						
Agency or Revenue	CO					Code		
Type	RV	FC	1987-88	FC	1988-89	FC	1989-90	Fund
2740 - DMV	SO	-	-	-	-	-	-	-

Impact on State Appropriations Limit--No

ANALYSIS

A. Specific Findings

Current law relating to warranties on new motor vehicles requires the manufacturer or its representative to replace the vehicle or make restitution if unable to conform the vehicle to the applicable express warranties after a reasonable number of attempts (so-called "Lemon Law").

This bill would include motorhomes under the provisions of the "Lemon Law", providing owners of such vehicles the same protection currently afforded motor vehicles.

B. Fiscal Analysis

The bill would have no State fiscal impact.

POSITION:

Department Director

Date

Neutral

fiscally

Principal Analyst

Date

Program Budget Manager

Date

Governor's Office

(751) J. Dong

5/13/88

(700) Susanne Morgan

5/13/88

Position noted

Position approved

Position disapproved
by: date:

FR:2179F

ARC-2

MJN/1192

ASSEMBLY

AB 4513 (Tanner)
5/26/88

ASSEMBLY COMMITTEE ON GOVERNMENTAL EFFICIENCY & CONSUMER PROTECTION
REPUBLICAN ANALYSIS

AB 4513 (Tanner) -- WARRANTIES: MOTORHOMES

Version: 4/20/88

Chairman: Stan Statham

Recommendation: Support

Vote: Majority

Summary: Revises the definition of "motor vehicle" relating to warranties on motorhomes to include the chassis and that portion of a motorhome devoted to its propulsion.

Fiscal effect: None.

Supported: Unknown. Opposed: Unknown. Governor's position: Unknown

Comments: The measure was amended in committee to define "motorhome" and to separate the chassis and engine portion from the "living" portion of a motorhome.

The author indicates the purpose of the bill is to address concerns that the vehicular portion of a motorhome is not covered by the "lemon law". The bill extends the "lemon Law" coverage to the chassis and drive train of motorhomes. In addition, she points out that the bill is based on an equivalent provision in New York law.

Assembly Republican Committee Vote:

G.E. & C.P. -- 4/12/88 -- DO PASS/AMENDED/CONSENT
(9-0) Ayes: Frazee, Grisham, Harvey, Statham

Ways & Means -- 5/25/88 -- DO PASS/CONSENT
(22-0) Ayes: All Other Republicans

Abs.: Ferguson

Consultant: Wess Larson

LEGISLATIVE INTENT SERVICE (RUC) 090-1917

ARC-3

MJN/1193

SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1987-88 Regular Session

AB 4513 (Tanner)
As amended April 20
Hearing date: June 28, 1988
Civil Code
TDT

A
B

4
5
1
3

WARRANTIES: NEW MOTOR VEHICLES

HISTORY

Source: Author
Prior Legislation: None
Support: Unknown
Opposition: No known
Assembly Floor Vote: Ayes 76 - Noes 0

KEY ISSUE

SHOULD EXISTING "LEMON LAW" PROVISIONS BE EXTENDED TO THE
VEHICULAR PORTIONS OF MOTORHOMES?

PURPOSE

Existing law relating to warranties on new motor vehicles requires the manufacturer or its representative to replace the vehicle or make restitution, as specified, if unable to conform the vehicle to the applicable express warranties after a reasonable number of attempts.

The bill would revise the definition of "motor vehicle" for these and related purposes to include the chassis, chassis cab, and that portion of a motorhome devoted to its propulsion. The bill would, also, define "motorhome" for these purposes to mean a vehicular unit built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab, or van, which becomes an integral part of the completed vehicle, designed for human habitation for recreational or emergency occupancy.

The purpose of this bill is to provide motor vehicle warranty protection to purchasers of motor homes.

(More)

7

LEGISLATIVE INTENT SERVICE (909) 960-1917

COMMENT

1. Necessity for legislation

California currently has an extensive statutory scheme to protect motor vehicle purchasers who purchase defective motor vehicles, however the current statutory definition of motor vehicle does not include motor homes. This bill would add motorhomes to the lemon law statute.

2. Definition of motorhome

According to the Attorney General there is currently no statutory definition of motorhome. This bill would, solely for purposes of applying the lemon law, adopt a statutory definition modeled after a definition used in New York. The definition of new motor vehicle would include the "chassis, chassis cab and that portion of a motorhome devoted to its propulsion, but would not include any portion designed, used, or maintained primarily for human habitation.

3. Definition may be difficult to implement

According to the Attorney General, it may be difficult to separate the chassis and engine portion from the living portion of a motorhome and equally difficult to take the product apart and return it to the manufacturer if a refund is ordered under the lemon law provisions. Consequently, practical implementation of the bill may be difficult but is apparently not impossible.

(800) 833-1817

LEGISLATIVE INTENT SERVICE



SENATE COMMITTEE ON JUDICIARY

BACKGROUND INFORMATION

JUN 16 1988

AB 4513

1. Source

- (a) What group, organization, governmental agency, or other person, if any, requested the introduction of the bill? Please list the requestor's telephone number or, if unavailable, his address.

The author.

- (b) Which groups, organizations, or governmental agencies have contacted you in support of, or in opposition to, your bill?

- (c) If a similar bill has been introduced at a previous session of the Legislature, what was its number and the year of its introduction?

2. Purpose

What problem or deficiency under existing law does the bill seek to remedy?

The vehicular portion of a motorhome is not now covered by the "lemon" law. The bill extends "lemon" law coverage to the chassis and drive train of motorhomes.

If you have any further background information or material relating to the bill, please enclose a copy of it or state where the information or material is available.

The bill is based on an equivalent provision in New York law (see attached).

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2187 AS SOON AS POSSIBLE. THE COMMITTEE STAFF CANNOT SET THE BILL FOR A HEARING UNTIL THIS FORM HAS BEEN RETURNED.

8.

SP-1

MJN/1196

LEGISLATIVE INTENT SERVICE (800) 656-1817

§ 198-a

GENERAL BUSINESS LAW

§ 198-a. Warranties

(a) As used in this section:

(1) "Consumer" means the purchaser, other than for purposes of resale or the lessee of a motor vehicle normally used for personal, family, or household purposes and subject to a manufacturer's express warranty, any person to whom such motor vehicle is transferred during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty;

(2) "Motor vehicle" means a motor vehicle excluding motorcycles and off-road vehicles, which is sold and registered in this state; provided, however, that with respect to motor homes, that portion of the motor home devoted to its propulsion including its chassis shall be deemed a motor vehicle, while that portion of a motor home designed, used or maintained primarily as a mobile dwelling shall not be deemed a motor vehicle for purposes of this section; and

(3) "Manufacturer's express warranty" or "warranty" means the written warranty, so labeled, of the manufacturer of a new automobile, including any terms or conditions precedent to the enforcement of obligations under that warranty.

(4) "Mileage deduction formula" means the mileage which is in excess of twelve thousand miles times the purchase price, or the lease price if applicable, of the vehicle divided by one hundred thousand miles.

(5) "Lessee" means any consumer who leases a motor vehicle pursuant to a written lease agreement which provides that the lessee is responsible for repairs to such motor vehicle.

(6) "Lease price" means the aggregate of:

- (i) the lessor's actual purchase cost;
- (ii) the freight cost, if applicable;
- (iii) the cost for accessories, if applicable;
- (iv) any fee paid to another to obtain the lease; and
- (v) an amount equal to five percent of the lessor's actual purchase cost as prescribed in subparagraph (i) of this paragraph.

(7) "Service fees" means the portion of a lease payment attributable to:

- (i) an amount for earned interest calculated on the rental payments previously paid to the lessor for the leased vehicle at an annual rate equal to two points above the prime rate in effect on the date of the execution of the lease; and

- (ii) any insurance or other costs expended by the lessor for the benefit of the lessee.

(8) "Capitalized cost" means the aggregate deposit and rental payments previously paid to the lessor for the leased vehicle less service fees.

(b) If a new motor vehicle does not conform to all express warranties during the first eighteen thousand miles of operation or during the period of two years following the date of original delivery of the motor vehicle to such consumer, whichever is the earlier date, the consumer shall during such period report the nonconformity, defect or condition to the manufacturer, its agent or its authorized dealer. If the notification is received by the manufacturer's agent or authorized dealer, the agent or dealer shall within seven days forward written notice thereof to the manufacturer by certified mail, return receipt requested. The manufacturer, its agent or its authorized dealer shall correct said nonconformity, defect or condition at no

SP 2

Legislative Analyst
May 16, 1988

ANALYSIS OF ASSEMBLY BILL NO. 4513 (Tanner)
As Amended in Assembly April 20, 1988
1987-88 Session

AB 4513 (Am. 4/20/88)

Fiscal Effect:

Cost: Minimal, absorbable annual costs beginning in 1988-89 to the Certification Account in the Automotive Repair Fund for increased complaint handling workload.

Revenue: None.

Analysis:

This bill expands the definition of new motor vehicle, as defined under the "Lemon Law," to include the engine and chassis of a motorhome. Currently, a new motor vehicle is defined as a new vehicle bought for personal use and sold with a manufacturer's new car warranty. The current definition excludes motorcycles, motorhomes and vehicles which are used off the highways.

Under the "Lemon Law," a manufacturer is required to refund or replace a new motor vehicle (1) under specified conditions and (2) after the consumer has submitted a complaint regarding the new vehicle to a third party dispute resolution program, if one is provided by the manufacturer and certified by the Bureau of Automotive Repair.

The bill also defines motorhome as a vehicle built on a self-propelled motor vehicle chassis which is part of the complete vehicle that is designed for recreational or emergency occupancy.

Fiscal Effect

As part of the third party dispute resolution certification program under the "Lemon Law," the bureau mediates and investigates consumer complaints regarding the dispute resolution process. The bureau indicates that there would be minimal, absorbable annual costs beginning in 1988-89 to the Certification Account in the Automotive Repair Fund for an increase in complaint handling workload from including motorhomes in the "Lemon Law."

82/s8

LEGISLATIVE INTENT SERVICE (800) 666-1917

Honorable Sally Tanner
Member of the Assembly
State Capitol, Room 4146
Sacramento, CA 95814

DEPARTMENT	AUTHOR	BILL NUMBER
Finance	Tanner	AB 4513
SPONSORED BY	RELATED BILLS	AMENDMENT DATE
		April 20, 1988

BILL SUMMARY

WARRANTIES: NEW MOTOR VEHICLES

This bill would include motorhomes under provisions of existing law relating to warranties on new motor vehicles.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year)						Code Fund
		(Dollars in thousands)						
		FC	1987-88	FC	1988-89	FC	1989-90	
2740 - DMV	SO	-	-	-	None	-	-	-

Impact on State Appropriations Limit--No

ANALYSIS

A. Specific Findings

Current law relating to warranties on new motor vehicles requires the manufacturer or its representative to replace the vehicle or make restitution if unable to conform the vehicle to the applicable express warranties after a reasonable number of attempts (so-called "Lemon Law").

This bill would include motorhomes under the provisions of the "Lemon Law", providing owners of such vehicles the same protection currently afforded motor vehicles.

B. Fiscal Analysis

The bill would have no State fiscal impact.

POSITION: Neutral fiscally
Department Director: 10 Nancy Sweet
Date: 5/16/88

Principal Analyst	Date	Program Budget Manager	Date	Governor's Office
(751) J. Hong	5/13/88	(700) Susanne Morgan	5/13/88	Position noted
Robert E. Dean		Carl Rogers		Position approved
				Position disapproved
				by: data:

FR:2179F

MJN/1200

LEGISLATIVE INTENT SERVICE (800) 666-1917

2.8'B

A) * Clarification and/or author's amendments -- No effect on 28.8 recommendation.

Bill #	Author	LAD & C	C	A	Chairman Approves		Assembly Floor Vote	Comments
					Yes	No		
AB3498	Speier	✓						
AB3552	Moore	✓						
AB3607	WATERS, N.	✓						
AB3616	Hansen	✓						
AB3736	Jones	✓						
AB3833	Comm. on U7.	✓						
AB3940	WATERS, N.	✓						
AB4006	WATERS, N.	✓	✓					See attached
AB4016	Elante	✓						
AB4070	Farr	✓						
AB4172	Kelley	✓						
AB4274	Bane	✓						
AB4417	Stirling	✓						
AB4532	WATERS, N.	✓						
AB4513	Tanner	✓						
AB4579	Moore	✓						

116

56-2

LEGISLATIVE INTENT SERVICE (800) 696-1917

CONSENT

<p>SENATE RULES COMMITTEE</p> <p>Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614</p>	<p>Bill No. AB 4513</p> <p>Author: Tanner (D)</p> <p>Amended: 4/20/88 in Assembly</p> <p>Vote Required: Majority</p>
---	--

Committee Votes:

Senate Floor Vote:

Assembly Floor Vote: 76-0, Pg. 7912, 6/1/88

(Passed Assembly on Consent)

SUBJECT: Warranties: new motor vehicles

SOURCE: Author

DIGEST: This bill provides that existing "lemon law" provisions be extended to the vehicular portions of motorhomes.

ANALYSIS: Existing law relating to warranties on new motor vehicles requires the manufacturer or its representative to replace the vehicle or make restitution, as specified, if unable to conform the vehicle to the applicable express warranties after a reasonable number of attempts.

The bill would revise the definition of "motor vehicle" for these and related purposes to include the chassis, chassis cab, and that portion of a motorhome devoted to its propulsion. The bill would, also, define "motorhome" for these purposes to mean a vehicular unit built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab, or van, which becomes an integral part of the completed vehicle, designed for human habitation for recreational or emergency occupancy.

The purpose of this bill is to provide motor vehicle warranty protection to purchasers of motor homes.

California currently has an extensive statutory scheme to protect motor vehicle purchasers who purchase defective motor vehicles, however the current statutory definition of motor vehicle does not include motor homes. This bill would add motorhomes to the lemon law statute.

|| a

CONTINUED

MJN/1202

1988 (000) 000-1017

FISCAL EFFECT: Appropriation: No Fiscal Committee: Yes Local: No

SUPPORT: (Verified)

Attorney General

OPPOSITION: (Verified)

ARGUMENTS IN SUPPORT: According to the Attorney General there is currently no statutory definition of motorhome. This bill would, solely for purposes of applying the lemon law, adopt a statutory definition modeled after a definition used in New York. The definition of new motor vehicle would include the "chassis, chassis cab and that portion of a motorhome devoted to its propulsion; but would not include any portion designed, used, or maintained primarily for human habitation.

According to the Attorney General, it may be difficult to separate the chassis and engine portion from the living portion of a motorhome and equally difficult to take the product apart and return it to the manufacturer if a refund is ordered under the lemon law provisions. Consequently, practical implementation of the bill may be difficult but is apparently not impossible.

ARGUMENTS IN OPPOSITION:

RJG:nf 7/6/88 Senate Floor Analyses

LEGISLATIVE INTENT SERVICE (500) 688-1917

THIRD READING

<p>SENATE RULES COMMITTEE</p> <p>Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614</p>	<p>Bill No. AB 4513</p> <p>Author: Tanner (D)</p> <p>Amended: 4/20/88 in Assembly</p> <p>Vote Required: Majority</p>
---	--

Committee Votes:

Senate Floor Vote: page 7430, 8/11/88

COMMITTEE: JUDICIARY		
BILL NO.:	AB 4513	
DATE OF HEARING:	11-21-88	
SENATORS:	AYE	NO
Doolittle		
Keene	✓	
Marks	✓	
Petris	✓	
Presley	✓	
Richardson	✓	
Roberti	✓	
Torres	✓	
Watson	✓	
Davis (VC)	✓	
Lockyer (CH)	✓	
UNA:	8/0	

PLACED
ON FILE
PURSUANT
TO SENATE
RULE 28.8

Assembly Bill 4513—An act to amend Section 1793.2 of the Civil Code, relating to warranties.

Bill read third time.

Roll Call

The roll was called and the bill was passed by the following vote:
AYES (37)—Senators Alquist, Ayala, Bergeson, Beverl Boatwright, Campbell, Craven, Davis, Deddeh, Dills, Ell Garamendi, Cecil Green, Bill Greene, Leroy Greene, Hart, Keen Lockyer, Maddy, Marks, McCorquodale, Mello, Montoya, Morgan, Nielsen, Petris, Presley, Robbins, Roberti, Rogers, Rosenthal, Royce Russell, Seymour, Torres, Vuich, and Watson.

NOES (0)—None.

Bill ordered transmitted to the Assembly.

Assembly Floor Vote: 76-0, Pg. 7912, 6/1/88

(Passed Assembly on Consent)

SUBJECT: Warranties: new motor vehicles

SOURCE: Author

DIGEST: This bill provides that existing "lemon law" provisions be extended to the vehicular portions of motorhomes.

ANALYSIS: Existing law relating to warranties on new motor vehicles requires the manufacturer or its representative to replace the vehicle or make restitution, as specified, if unable to conform the vehicle to the applicable express warranties after a reasonable number of attempts.

The bill would revise the definition of "motor vehicle" for these and related purposes to include the chassis, chassis cab, and that portion of a motorhome devoted to its propulsion. The bill would, also, define "motorhome" for these purposes to mean a vehicular unit built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab, or van, which becomes an integral part of the completed vehicle, designed for human habitation for recreational or emergency occupancy.

The purpose of this bill is to provide motor vehicle warranty protection to purchasers of motor homes.

California currently has an extensive statutory scheme to protect motor vehicle purchasers who purchase defective motor vehicles, however the current statutory definition of motor vehicle does not include motor homes. This bill would add motorhomes to the lemon law statute.

04424

CONTINUED

MJN/1204

FISCAL EFFECT: Appropriation: No Fiscal Committee: Yes Local: No

SUPPORT: (Verified 8/2/88)

Attorney General

ARGUMENTS IN SUPPORT: According to the Attorney General there is currently no statutory definition of motorhome. This bill would, solely for purposes of applying the lemon law, adopt a statutory definition modeled after a definition used in New York. The definition of new motor vehicle would include the "chassis, chassis cab and that portion of a motorhome devoted to its propulsion, but would not include any portion designed, used, or maintained primarily for human habitation.

According to the Attorney General, it may be difficult to separate the chassis and engine portion from the living portion of a motorhome and equally difficult to take the product apart and return it to the manufacturer if a refund is ordered under the lemon law provisions. Consequently, practical implementation of the bill may be difficult but is apparently not impossible.

RJC:inf 8/2/88 Senate Floor Analyses

LEGISLATIVE INTENT SERVICE (800) 688-1917

04425

MJN/1205

Honorable Sally Tanner
Member of the Assembly
State Capitol, Room 4146
Sacramento, CA 95814

DEPARTMENT	AUTHOR	BILL NUMBER
Finance	Tanner	AB 4513
SPONSORED BY	RELATED BILLS	AMENDMENT DATE
		April 20, 1988

BILL SUMMARY

WARRANTIES: NEW MOTOR VEHICLES

This bill would include motorhomes under provisions of existing law relating to warranties on new motor vehicles.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year) (Dollars in Thousands)						Code Fund
		FC	1987-88	FC	1988-89	FC	1989-90	
2740 - DMV	SO	-	-	-	None	-	-	-

Impact on State Appropriations Limit--No

ANALYSIS

A. Specific Findings

Current law relating to warranties on new motor vehicles requires the manufacturer or its representative to replace the vehicle or make restitution if unable to conform the vehicle to the applicable express warranties after a reasonable number of attempts (so-called "Lemon Law").

This bill would include motorhomes under the provisions of the "Lemon Law", providing owners of such vehicles the same protection currently afforded motor vehicles.

B. Fiscal Analysis

The bill would have no State fiscal impact.

POSITION:

Department Director

Date

Neutral

fiscally

10

SFA-1

Principal Analyst Date

Program Budget Manager Date

Governor's Office

(751) J. Dong 5/13/88

(700) Susanne Morgan

Position noted

Position approved

Position disapproved
by: date:

FR:2179F

MJN/1206

SACRAMENTO ADDRESS
STATE CAPITOL
P.O. BOX 942848
SACRAMENTO, CA 94249-0001
(916) 445-7783

DISTRICT OFFICE ADDRESS
1100 VALLEY BOULEVARD
SUITE 106
EL MONTE, CA 91731
(818) 442-9100



Assembly California Legislature

SALLY TANNER

ASSEMBLYWOMAN, SIXTIETH DISTRICT

CHAIRWOMAN

COMMITTEE ON ENVIRONMENTAL SAFETY & TOXIC MATERIALS

COMMITTEES

ENVIRONMENTAL SAFETY &
TOXIC MATERIALS

GOVERNMENTAL ORGANIZATION

LABOR & EMPLOYMENT

WATER, PARKS & WILDLIFE

SUBCOMMITTEES

ARTS & ATHLETICS

MEMBER

JOINT COMMITTEE ON
FIRE, POLICE, EMERGENCY
AND DISASTER SERVICES

SELECT COMMITTEE ON
LOW LEVEL NUCLEAR WASTE

GOVERNOR'S TASK FORCE ON
TOXICS, WASTE & TECHNOLOGY

August 23, 1988

Honorable George Deukmejian
Governor, State of California
State Capitol
Sacramento, CA 95814

Dear Governor Deukmejian:

Assembly Bill 4513 is now before you for your consideration. The measure broadens the applicability of the California "Lemon Law" by including the vehicular portion of motorhomes under that law.

The "Lemon Law" now allows only buyers of new automobiles and pickups used primarily for personal, family and household purposes to make use of the consumer rights embodied in the "Lemon Law". Motorhomes are not included.

Motorhomes used for recreational purposes are, of course, growing in popularity. Senior citizens, especially, often invest substantial amounts of retirement funds in the purchase of motorhomes which they hope to use to enjoy their golden years. In some of these, mechanical defects in the manufacture of the chassis, motor and drive line affect the safety and usefulness of the vehicle in the same manner as in other "lemon" vehicles.

Assembly Bill 4513 does not include those aspects of a motorhome under the "Lemon Law" which are not related to its performance as a vehicle. For example, a malfunctioning appliance or a defective item of furniture is not covered by the bill.

Assembly Bill 4513 has no opposition. It has not received any no votes in its passage through the Legislature. It passed the Assembly 76-0 and the Senate 37-0.

I urge you to sign AB 4513 into law.

Sincerely,

Sally Tanner
SALLY TANNER

Assemblywoman, 60th District

ST:acf

13

A-1

MJN/1207

LEGISLATIVE INTENT SERVICE (800) 966-1817

AB 4513 - SENATE APPROPRIATIONS STATEMENT

AB 4513 BRINGS THE VEHICULAR PORTION OF A MOTORHOME UNDER THE CONSUMER PROTECTION PROVISIONS OF THE CALIFORNIA "LEMON LAW". THE ONLY COSTS THE BILL WOULD IMPOSE ON THE BUREAU OF AUTOMOTIVE REPAIR WOULD BE TO RESPOND TO CONSUMER COMPLAINTS. AS THE LEGISLATIVE ANALYST'S ANALYSIS POINTS OUT, THESE COSTS ARE MINIMAL AND ABSORBABLE, AND IN ANY CASE WOULD BE COVERED BY REVENUES FROM AUTO AND MOTORHOME MANUFACTURERS WHO PAY FEES TO SUPPORT THE BUREAU'S "LEMON LAW" PROGRAM.

I ASK FOR YOUR "AYE" VOTE.

8/1/88

LEGISLATIVE COUNCIL SERVICE (800) 956-1517



On Consent

AB 4513 - COMMITTEE STATEMENT

THE CALIFORNIA "LEMON LAW" REQUIRES THAT MOTOR VEHICLE MANUFACTURERS BUY BACK OR REPLACE PERSONAL AUTOMOBILES OR PICKUPS IF THEY HAVE DEFECTS THAT CANNOT BE REPAIRED AFTER A REASONABLE NUMBER OF ATTEMPTS. AT PRESENT, MOTORHOMES ARE NOT COVERED BY THE "LEMON LAW".

AB 4513 WOULD BRING MOTORHOME BUYERS UNDER THE CONSUMER PROTECTION PROVISIONS OF THE "LEMON LAW" IF THE MOTORHOME IS SOLD WITH A MANUFACTURER'S WARRANTY AND THE DEFECTS WHICH CANNOT BE REPAIRED ARE IN THE CHASSIS, THE ENGINE OR THE DRIVE LINE.

I INTRODUCED THIS BILL BECAUSE OF SEVERAL COMPLAINTS WHICH HAVE BEEN SENT TO ME BY MOTORHOME BUYERS, PRIMARILY SENIORS, WHO HAVE EXPERIENCED MAJOR PROBLEMS WITH THEIR VEHICLES. OTHER LEGISLATORS ALSO HAVE FORWARDED COMPLAINTS TO ME ABOUT MOTORHOME LEMONS.

THERE IS NO KNOWN OPPOSITION TO THE BILL.

6/28/88

(800) 866-1917

LEGISLATIVE INTENT SERVICE



A-3

MJN/1209

AB 4513 - COMMITTEE STATEMENT

THE CALIFORNIA "LEMON LAW" REQUIRES THAT MOTOR VEHICLE MANUFACTURERS BUY BACK OR REPLACE PERSONAL AUTOMOBILES OR PICKUPS IF THEY HAVE DEFECTS THAT CANNOT BE REPAIRED AFTER A REASONABLE NUMBER OF ATTEMPTS. AT PRESENT, MOTORHOMES ARE NOT COVERED BY THE "LEMON LAW".

AB 4513 WOULD BRING MOTORHOME BUYERS UNDER THE CONSUMER PROTECTION PROVISIONS OF THE "LEMON LAW" IF THE MOTORHOME IS SOLD WITH A MANUFACTURER'S WARRANTY AND THE DEFECTS WHICH CANNOT BE REPAIRED ARE IN THE CHASSIS, THE ENGINE OR THE DRIVE LINE.

I INTRODUCED THIS BILL BECAUSE OF SEVERAL COMPLAINTS WHICH HAVE BEEN SENT TO ME BY MOTORHOME BUYERS, PRIMARILY SENIORS, WHO HAVE EXPERIENCED MAJOR PROBLEMS WITH THEIR VEHICLES. OTHER LEGISLATORS ALSO HAVE FORWARDED COMPLAINTS TO ME ABOUT MOTORHOME LEMONS.

~~THE COMMITTEE ANALYSIS POINTS OUT THAT THE BILL NEEDS A DEFINITION OF "MOTORHOME". THE RECREATIONAL VEHICLE PARK OCCUPANCY LAW IN THE CIVIL CODE CONTAINS A DEFINITION WHICH I WOULD LIKE TO INCORPORATE INTO THIS BILL AS AN AUTHOR'S AMENDMENT.~~

THERE IS NO KNOWN OPPOSITION TO THE BILL.

4/12/88

6-10

A-4

MJN/1210

LEGISLATIVE INTENT SERVICE (800) 950-1917

AB 4513 - WAYS & MEANS COMMITTEE STATEMENT

AB 4513 BRINGS THE VEHICULAR PORTION OF A MOTORHOME UNDER THE CONSUMER PROTECTION PROVISION OF THE CALIFORNIA "LEMON LAW". THE ONLY COSTS THE BILL WOULD IMPOSE ON THE BUREAU OF AUTOMOTIVE REPAIR WOULD BE TO RESPOND TO CONSUMER COMPLAINTS. AS THE FISCAL COMMITTEE ANALYSIS POINTS OUT, THESE COSTS ARE ABSORBABLE.

I ASK FOR YOUR "AYE" VOTE.

5/25/88

(800) 698-1917

LEGISLATIVE INTENT SERVICE



A-5

MJN/1211

JACK I. HORTON
ANN MACKEY
CHIEF DEPUTIES

JAMES L. ASHFORD
JERRY L. BASSETT
STANLEY M. LOUIMORE
JOHN T. STUDEBAKER
JIMMIE WING

DAVID D. ALVES
JOHN A. CORZINE
C. DAVID DIKERSON
ROBERT CULLEN DUFFY
ROBERT D. GRONKE
SHERWIN C. MACKENZIE, JR.
TRACY O. POWELL II
MARQUETTE ROTH
PRINCIPAL DEPUTIES

3021 STATE CAPITOL
SACRAMENTO, CA 95814
(916) 448-3057

8011 STATE BUILDING
107 SOUTH BROADWAY
LOS ANGELES, CA 90012
(213) 620-2650

Legislative Counsel of California

BION M. GREGORY

Sacramento, California
August 22, 1988

Honorable George Deukmejian
Governor of California
Sacramento, CA 95814

Assembly Bill No. 4513

Dear Governor Deukmejian:

Pursuant to your request, we have reviewed the
above-numbered bill authored by Assembly Member Tanner
and, in our opinion, the title and form are sufficient and
the bill, if chaptered, will be constitutional. The digest
on the printed bill as adopted correctly reflects the views
of this office.

Very truly yours,

Bion M. Gregory
Legislative Counsel

John A. Corzine
By
John A. Corzine
Principal Deputy

JAC:wld

Two copies to Honorable Sally Tanner,
pursuant to Joint Rule 34.

GERALD ROSS ADAMS
MARTIN L. ANDERSON
PAUL ANTILA
DANA S. APPLING
CHARLES C. ARBOL
RANEESE P. BEUSIE
DIANE S. BOYER
AMELIA I. BUDD
EILEEN J. BUXTON
HENRY J. CONTRERAS
BEN E. DALE
JEFFREY A. DELAND
CUNTOH J. DEWITT
FRANCIS S. DORRIS
MAUREEN S. DUNN
LAWRENCE J. DURLAN
SHARON D. FISHER
JOHN FOSSETTE
HARVEY J. FOSTER
CLAY FULLER
ALVIN D. GRESS
BALDEV S. HEIR
THOMAS R. HEUER
MICHAEL J. KERSTEN
L. DOUGLAS KIRNEY
S. LYNNE KLEIN
VICTOR KOZIELSKI
EVE B. KROTHGEN
DIANA G. LIH
ROMULO I. LOPEZ
JAMES A. MARGALA
FRANCISCO A. MARTIN
PETER MELNOR
ROBERT G. MILLER
JOHN A. MOGER
VENNE L. OLIVER
EUGENE L. PAINE
MICHAEL B. SALTERIO
MARY SHAW
WILLIAM K. STARK
MARK FRANKLIN TERRY
JEFF THOM
MICHAEL H. UPSON
RICHARD B. WEISBERG
DANIEL A. WEITZMAN
THOMAS D. WHELAN
JANA T. WITTGROVE
DEBRA J. ZIDICH
CHRISTOPHER ZIRKLE
DEPUTIES

(500) 990-1917

LEGISLATIVE COUNSEL SERVICE



SACRAMENTO ADDRESS
STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0001
(916) 445-7783

DISTRICT OFFICE ADDRESS
11100 VALLEY BOULEVARD
SUITE 106
EL MONTE, CA 91731
(818) 442-9100



Assembly California Legislature

SALLY TANNER

ASSEMBLYWOMAN, SIXTIETH DISTRICT

CHAIRWOMAN

COMMITTEE ON ENVIRONMENTAL SAFETY & TOXIC MATERIALS

COMMITTEES:

ENVIRONMENTAL SAFETY &
TOXIC MATERIALS

GOVERNMENTAL ORGANIZATION

LABOR & EMPLOYMENT

WATER, PARKS & WILDLIFE

SUBCOMMITTEES:

ARTS & ATHLETICS

MEMBER:

JOINT COMMITTEE ON
FIRE, POLICE, EMERGENCY
AND DISASTER SERVICES

SELECT COMMITTEE ON
LOW LEVEL NUCLEAR WASTE

GOVERNOR'S TASK FORCE ON
TOXICS, WASTE & TECHNOLOGY

August 23, 1988

Honorable George Deukmejian
Governor, State of California
State Capitol
Sacramento, CA 95814

Dear Governor Deukmejian:

Assembly Bill 4513 is now before you for your consideration. The measure broadens the applicability of the California "Lemon Law" by including the vehicular portion of motorhomes under that law.

The "Lemon Law" now allows only buyers of new automobiles and pickups used primarily for personal, family and household purposes to make use of the consumer rights embodied in the "Lemon Law". Motorhomes are not included.

Motorhomes used for recreational purposes are, of course, growing in popularity. Senior citizens, especially, often invest substantial amounts of retirement funds in the purchase of motorhomes which they hope to use to enjoy their golden years. In some of these, mechanical defects in the manufacture of the chassis, motor and drive line affect the safety and usefulness of the vehicle in the same manner as in other "lemon" vehicles.

Assembly Bill 4513 does not include those aspects of a motorhome under the "Lemon Law" which are not related to its performance as a vehicle. For example, a malfunctioning appliance or a defective item of furniture is not covered by the bill.

Assembly Bill 4513 has no opposition. It has not received any no votes in its passage through the Legislature. It passed the Assembly 76-0 and the Senate 37-0.

I urge you to sign AB 4513 into law.

Sincerely,

Sally Tanner
SALLY TANNER
Assemblywoman, 60th District

ST:acf

(800) 668-1917

LEGISLATIVE INTENT SERVICE



MJN/1213

ENROLLED BILL REPORT

Analyst: Gale Baker
Bus. Ph: 322-4292
Home Ph:

AGENCY: STATE AND CONSUMER SERVICES AGENCY	BILL NUMBER: AB 4513 As Amended 4/20/88
DEPARTMENT, BOARD OR COMMISSION: CONSUMER AFFAIRS	AUTHOR: Tanner

SUMMARY

1 Description

BACKGROUND

- 2 History
- 3 Purpose
- 4 Sponsor
- 5 Current Practice
- 6 Implementation
- 7 Justification
- 8 Alternatives
- 9 Responsibility
- 10 Other Agencies
- 11 Future Impact
- 12 Termination

Bill Summary

This bill would include within the definition of a "new motor vehicle" under the New Car Lemon Law the chassis, chassis cab, and drive components of a motorhome.

Background

Under the New Car Lemon Law (Chapter 388, Statutes of 1982), a manufacturer who is unable to service or repair a new motor vehicle with a major defect after a reasonable number of attempts must either replace the vehicle or reimburse the buyer. A "reasonable number of attempts" is either four or more repair attempts on the same major defect or more than 30 days out of service within the first year or 12,000 miles of use. A new motor vehicle that meets this test is presumed to be a "lemon."

The buyer or lessor of a "lemon" may sue to enforce his or her right to a replacement or refund. However, if the manufacturer has a qualified arbitration program (one that meets the criteria of the Lemon Law), the buyer or lessor must first try to resolve the dispute by submitting it to the arbitration panel. If the manufacturer does not have a qualified arbitration program, if the buyer is not satisfied with the panel's decision, or if the manufacturer fails to promptly fulfill the terms of the arbitration decision, the buyer may sue for replacement or restitution.

Existing law (AB 2057, Chapter 1280, Statutes of 1987) requires the Bureau of Automotive Repair (BAR) to certify Lemon Law arbitration programs. New motor vehicle manufacturers are not required to offer a Lemon Law arbitration program, but those who do (and virtually all of them do) are required to meet various criteria. The Bureau of Automotive Repair determines whether they meet this criteria and certifies those who do.

The BAR is also required under current law to investigate complaints from consumers who are having a problem with a manufacturer's arbitration program.

VOTE:	Assembly	Partisan R D	Senate	Partisan R D
Floor:	76-0		37-0	
Policy Committee:	9-0		8-0	
Fiscal Committee:	22-0		28-8	Pg. 3

RECOMMENDATION TO GOVERNOR:

SIGN a VETO

NO POSITION

DEFER TO OTHER AGENCY

DEPARTMENT DIRECTOR:

DATE:

AGENCY SECRETARY:

DATE:

MJN/1214

Specific Findings

The New Car Lemon Law defines a "new motor vehicle" as a vehicle that is bought or used primarily for personal, family or household purposes. The term includes dealer-owned vehicles, demonstrator vehicles, and other motor vehicles sold with a manufacturer's new car warranty, but excludes motorhomes, motorcycles and off-road vehicles.

This bill would include the chassis, chassis cab and drive components of new motorhomes within the definition of "new motor vehicle" and thus include those portions of new motorhomes within the coverage of the New Car Lemon Law.

As stated under Background, the BAR is required under current law to certify arbitration programs of motor vehicle manufacturers and to investigate complaints from consumers regarding a manufacturer's arbitration program. The BAR's certification program is supported by fees from motor vehicle manufacturers. If this bill is enacted, the BAR will also be required to certify arbitration programs of motorhome manufacturers and to investigate complaints from consumers regarding a motorhome manufacturer's arbitration program. However, since its certification program is self-supporting, the BAR estimates that this bill will only result in minor, absorbable costs.

Fiscal Impact

The attached fiscal analysis estimates that minor, absorbable costs to the BAR will result from this bill.

Argument

Interested Parties

Proponents: Author (sponsor)

Opponents: None known

The purpose of this bill is to provide purchasers and lessors of new motorhomes with the same protection that is afforded to purchasers and lessors of new motor vehicles under the Lemon Law.

The Department of Consumer Affairs has no position on this bill. However, the department has been heavily involved in prior Lemon Law legislation, including last year's AB 2057, which established the certification program with the BAR, and we support including motorhomes under the Lemon Law.

Recommendation

The Department of Consumer Affairs recommends that this bill be SIGNED.

pg 4

LEGISLATIVE INTENT SERVICE (800) 666-1917



DEPARTMENT OF CONSUMER AFFAIRS
FISCAL ANALYSIS OF LEGISLATION

618

DUE DATE: May 23, 1988 DATE ASSIGNED: May 13, 1988
Prepared by: Mary Howard (Bill #) AB 4513
Phone Number: 324-8041 (Author) Tanner
Approved by: [Signature] Date Approved _____

FISCAL ANALYSIS AS ~~INTRODUCED~~/AMENDED/~~ENROLLED~~ April 20, 1988

(Short Title) WARRANTIES: NEW MOTOR VEHICLES

Analysis and fiscal assumptions (& justification for identified expenditures):

SEE ATTACHED

SUMMARY OF FISCAL IMPACT:

XX Minor fiscal impact. Can be absorbed within existing resources.
_____ No change from prior fiscal analysis of _____. See attached.
(Date Approved) _____
_____ No fiscal impact.
_____ (Other:) _____

	<u>19</u> _____	<u>19</u> _____	<u>ONGOING</u>
EXPENDITURES	\$ _____	\$ _____	\$ _____
REVENUE	\$ _____	\$ _____	\$ _____

PROGRAM CONTACT: DAVID McCARTY PHONE NUMBER: 366-5118
PROGRAM CONCURS: YES XX NO _____ (If no, note differences as appropriate.)

DEPARTMENT OF CONSUMER AFFAIRS
Fiscal Analysis of Legislation
AB 4513 (Tanner), Amended 4/20/88
Page 2

Under existing law, motorhomes are excluded from the definition of a "new motor vehicle". AB 4513, as amended, changes the definition of a "new motor vehicle" to now include the chassis, chassis cab, and that portion of a motorhome devoted to its propulsion, but does not include any portion designed, used, or maintained primarily for human habitation.

This bill would now qualify owners of new motorhomes to have their disputes regarding warranty issues resolved through a third-party dispute resolution process.

The bureau estimates that the population of new motorhomes will be 8,123 in FY 1988/89 and that 104 new motorhomes will result in dispute arbitration. Of the 104 arbitrations, the bureau estimates that only 2% will result in complaints to the bureau. Therefore, only 2 additional complaints should result annually from including motorhomes in the third party dispute resolution process and the cost can be absorbed within existing resources.

(500) 666-1917

LEGISLATIVE INTENT SERVICE



Page 6

MJN/1217

DEPARTMENT
Finance

BILL NUMBER
AB 4513

AUTHOR
Tanner

AMENDMENT DATE
April 20, 1988

SUBJECT

WARRANTIES: NEW MOTOR VEHICLES

This bill would include motorhomes under provisions of existing law relating to warranties on new motor vehicles.

SUMMARY OF REASONS FOR SIGNATURE

Would provide additional consumer protection for purchasers of motorhomes.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year) (Dollars in Thousands)			Code Fund
		FC 1988-89	FC 1989-90	FC 1990-91	
2740 - DMV	SO	- - - - -	None - - - - -	- - - - -	

Impact on State Appropriations Limit--No

ANALYSIS

A. Specific Findings

Current law relating to warranties on new motor vehicles requires the manufacturer or its representative to replace the vehicle or make restitution if unable to conform the vehicle to the applicable express warranties after a reasonable number of attempts (so-called "Lemon Law").

This bill would include motorhomes under the provisions of the "Lemon Law", providing owners of such vehicles the same protection currently afforded motor vehicles.

B. Fiscal Analysis

The bill would have no State fiscal impact.

RECOMMENDATION:

Sign the bill

Department Director

Date

Nancy Sweet 8/18/88

Principal Analyst
(751) J. Dong

Date
8/17/88

Program Budget Manager
(700) Susanne Morgan

Date

Governor's Office

Position noted

Position approved

Position disapproved

by: date:

FR:2567F

MJN/1218

OFFICE OF THE GOVERNOR
Sacramento, CA 95814
Kevin Brett, Press Secretary
Tom Beermann, Assistant Press Secretary
916/445-4571 8/30/88

RELEASE: Immediate

618

Governor George Deukmejian has signed the following bills:

AB 2693 Speier, D-South San Francisco. Expands the partial sales tax exemption for certain nonprofit youth organizations to include youth soccer organizations and Pop Warner Football.

AB 2700 Killea, D-San Diego. Provides that analogs of controlled substances be prescribed in the same manner as the controlled substances themselves.

AB 2822 Duplissea, R-San Carlos. Expands the list of nonprofit youth organizations which are eligible for sales and use tax exemptions.

AB 3455 La Follette, R-Northridge. Prohibits cities and counties from establishing any permit, license or inspection fee in excess of the actual cost of issuing a non emergency medical transportation vehicle permit, license, or inspection.

AB 3702 Farr, D-Carmel. Specifies the criteria regional development corporations must make when making a direct loan to a farmer, farm corporation or obtaining a loan from the Department of Commerce.

AB 3772 Leslie, R-Carmichael. Authorizes the executive director of the Office of Small Business to determine the necessary reserve under an urban development or rural development corporation guarantee.

AB 3997 Stirling, R-San Diego. Conforms statutory law to an appellate court decision which held that the current statute regarding denial of eligibility for work release programs was unconstitutional.

✓ AB 4513 Tanner, D-El Monte. Includes within the definition of a "new motor vehicle" under the New Car Lemon Law the chassis, chassis cab, and drive components of a motorhome.

AB 4522 Wright, R-Simi Valley. Revises the compensation of superior court reporters and the number, compensation, and classification of commissioners and other municipal court personnel in Santa Barbara County.

SB 354 Craven, R-Oceanside. Requires the Contractors State License Board to report to the Governor and Legislature by February 15, 1989 on the need for licensing interior designers. Urgency.

SB 507 Rosenthal, D-Los Angeles. Authorizes the State Energy Resources Conservation and Development Commission to assist California energy technology and energy conservation firms to export technologies, products and services to international markets.

xxx SB 960 McCorquodale, D-San Jose. Expands the partial sales tax exemption for certain nonprofit youth organizations to include the Special Olympics, Inc.

SB 1736 Kopp, I-San Francisco. Codifies a current Board of Equalization interpretation of Proposition 58 (1986) and AB 47.

LEGISLATIVE INTENT SERVICE (500) 998-1917



15

MJN/1219

CURRENT BILL STATUS

MEASURE : A.B. No. 1848
AUTHOR(S) : Davis.
TOPIC : Warranties: motor vehicle manufacturers.
+LAST AMENDED DATE : 07/02/1998

TYPE OF BILL :
Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Non-Fiscal
Non-Tax Levy

LAST HIST. ACT. DATE: 08/24/1998
LAST HIST. ACTION : Chaptered by Secretary of State - Chapter 352,
Statutes of 1998.

TITLE : An act to amend Section 1793.22 of the Civil Code,
relating to warranties.

COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 1848
AUTHOR : Davis
TOPIC : Warranties: motor vehicle manufacturers.

TYPE OF BILL :

Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Non-Fiscal
Non-Tax Levy

BILL HISTORY

1998

Aug. 24 Chaptered by Secretary of State - Chapter 352, Statutes of 1998.
Aug. 24 Approved by the Governor.
Aug. 10 Enrolled and to the Governor at 1:45 p.m.
Aug. 6 Senate amendments concurred in. To enrollment. (Ayes 61. Noes 12. Page 8212.)
Aug. 3 In Assembly. Concurrence in Senate amendments pending. May be considered on or after August 5 pursuant to Assembly Rule 77.
Aug. 3 Read third time, passed, and to Assembly. (Ayes 28. Noes 2. Page 5708.)
July 6 Read second time. To third reading.
July 2 Read third time, amended. To second reading.
June 11 Read second time, amended, and to third reading.
June 10 From committee: Amend, and do pass as amended. (Ayes 7. Noes 0.).
May 19 Referred to Com. on JUD.
May 11 In Senate. Read first time. To Com. on RLS. for assignment.
May 11 Read third time, passed, and to Senate. (Ayes 63. Noes 11. Page 6699.)
May 7 Read third time, amended, and returned to third reading.
Mar. 18 Read second time. To third reading.
Mar. 17 From committee: Do pass. (Ayes 12. Noes 1.) (March 17).
Mar. 2 Referred to Com. on C.P., G.E. & E.D.
Feb. 13 From printer. May be heard in committee March 15.
Feb. 12 Read first time. To print.

Assembly Bill No. 1848

CHAPTER 352

An act to amend Section 1793.22 of the Civil Code, relating to warranties.

[Approved by Governor August 24, 1998. Filed with
Secretary of State August 24, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1848, Davis. Warranties: motor vehicle manufacturers.

Under the existing Tanner Consumer Protection Act, it is presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if within one year from delivery to the buyer or 12,000 miles on the odometer of the vehicle, whichever comes first, either (1) the same nonconformity, as defined, has been subject to repair 4 or more times by the manufacturer or its agents and the buyer has at least once provided a specified notice to the manufacturer or (2) the vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a prescribed period. Existing law defines a new motor vehicle for purposes of this provision and another specified provision of existing law regarding express warranty repair or service to mean a new motor vehicle that is used or bought for use primarily for personal, family, or household purposes.

This bill would revise that definition of a new motor vehicle to include a new motor vehicle bought or used for business and personal, family, or household purposes by a person, including a legal entity, to which no more than 5 motor vehicles are registered in this state.

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

SECTION 1. Section 1793.22 of the Civil Code is amended to read:

1793.22. (a) This section shall be known and may be cited as the Tanner Consumer Protection Act.

(b) It shall be presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within one year from delivery to the buyer or 12,000 miles on the odometer of the vehicle, whichever occurs first, either (1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for the

repair of the nonconformity or (2) the vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery of the vehicle to the buyer. The 30-day limit shall be extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer or its agents. The buyer shall be required to directly notify the manufacturer pursuant to paragraph (1) only if the manufacturer has clearly and conspicuously disclosed to the buyer, with the warranty or the owner's manual, the provisions of this section and that of subdivision (d) of Section 1793.2, including the requirement that the buyer must notify the manufacturer directly pursuant to paragraph (1). This presumption shall be a rebuttable presumption affecting the burden of proof, and it may be asserted by the buyer in any civil action, including an action in small claims court, or other formal or informal proceeding.

(c) If a qualified third-party dispute resolution process exists, and the buyer receives timely notification in writing of the availability of that qualified third-party dispute resolution process with a description of its operation and effect, the presumption in subdivision (b) may not be asserted by the buyer until after the buyer has initially resorted to the qualified third-party dispute resolution process as required in subdivision (d). Notification of the availability of the qualified third-party dispute resolution process is not timely if the buyer suffers any prejudice resulting from any delay in giving the notification. If a qualified third-party dispute resolution process does not exist, or if the buyer is dissatisfied with that third-party decision, or if the manufacturer or its agent neglects to promptly fulfill the terms of the qualified third-party dispute resolution process decision after the decision is accepted by the buyer, the buyer may assert the presumption provided in subdivision (b) in an action to enforce the buyer's rights under subdivision (d) of Section 1793.2. The findings and decision of a qualified third-party dispute resolution process shall be admissible in evidence in the action without further foundation. Any period of limitation of actions under any federal or California laws with respect to any person shall be extended for a period equal to the number of days between the date a complaint is filed with a third-party dispute resolution process and the date of its decision or the date before which the manufacturer or its agent is required by the decision to fulfill its terms if the decision is accepted by the buyer, whichever occurs later.

(d) A qualified third-party dispute resolution process shall be one that does all of the following:

(1) Complies with the minimum requirements of the Federal Trade Commission for informal dispute settlement procedures as set forth in Part 703 of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1987.

(2) Renders decisions which are binding on the manufacturer if the buyer elects to accept the decision.

(3) Prescribes a reasonable time, not to exceed 30 days after the decision is accepted by the buyer, within which the manufacturer or its agent must fulfill the terms of its decisions.

(4) Provides arbitrators who are assigned to decide disputes with copies of, and instruction in, the provisions of the Federal Trade Commission's regulations in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1, 1987, Division 2 (commencing with Section 2101) of the Commercial Code, and this chapter.

(5) Requires the manufacturer, when the process orders, under the terms of this chapter, either that the nonconforming motor vehicle be replaced if the buyer consents to this remedy or that restitution be made to the buyer, to replace the motor vehicle or make restitution in accordance with paragraph (2) of subdivision (d) of Section 1793.2.

(6) Provides, at the request of the arbitrator or a majority of the arbitration panel, for an inspection and written report on the condition of a nonconforming motor vehicle, at no cost to the buyer, by an automobile expert who is independent of the manufacturer.

(7) Takes into account, in rendering decisions, all legal and equitable factors, including, but not limited to, the written warranty, the rights and remedies conferred in regulations of the Federal Trade Commission contained in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1, 1987, Division 2 (commencing with Section 2101) of the Commercial Code, this chapter, and any other equitable considerations appropriate in the circumstances. Nothing in this chapter requires that, to be certified as a qualified third-party dispute resolution process pursuant to this section, decisions of the process must consider or provide remedies in the form of awards of punitive damages or multiple damages, under subdivision (c) of Section 1794, or of attorneys' fees under subdivision (d) of Section 1794, or of consequential damages other than as provided in subdivisions (a) and (b) of Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

(8) Requires that no arbitrator deciding a dispute may be a party to the dispute and that no other person, including an employee, agent, or dealer for the manufacturer, may be allowed to participate substantively in the merits of any dispute with the arbitrator unless the buyer is allowed to participate also. Nothing in this subdivision prohibits any member of an arbitration board from deciding a dispute.

(9) Obtains and maintains certification by the Department of Consumer Affairs pursuant to Chapter 9 (commencing with Section 472) of Division 1 of the Business and Professions Code.

(e) For the purposes of subdivision (d) of Section 1793.2 and this section, the following terms have the following meanings:

(1) “Nonconformity” means a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle to the buyer or lessee.

(2) “New motor vehicle” means a new motor vehicle that is used or bought for use primarily for personal, family, or household purposes. “New motor vehicle” also means a new motor vehicle that is bought or used for business and personal, family, or household purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity, to which not more than five motor vehicles are registered in this state. “New motor vehicle” includes the chassis, chassis cab, and that portion of a motor home devoted to its propulsion, but does not include any portion designed, used, or maintained primarily for human habitation, a dealer-owned vehicle and a “demonstrator” or other motor vehicle sold with a manufacturer’s new car warranty but does not include a motorcycle or a motor vehicle which is not registered under the Vehicle Code because it is to be operated or used exclusively off the highways. A demonstrator is a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type.

(3) “Motor home” means a vehicular unit built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab, or van, which becomes an integral part of the completed vehicle, designed for human habitation for recreational or emergency occupancy.

(f) (1) Except as provided in paragraph (2), no person shall sell, either at wholesale or retail, lease, or transfer a motor vehicle transferred by a buyer or lessee to a manufacturer pursuant to paragraph (2) of subdivision (d) of Section 1793.2 or a similar statute of any other state, unless the nature of the nonconformity experienced by the original buyer or lessee is clearly and conspicuously disclosed to the prospective buyer, lessee, or transferee, the nonconformity is corrected, and the manufacturer warrants to the new buyer, lessee, or transferee in writing for a period of one year that the motor vehicle is free of that nonconformity.

(2) Except for the requirement that the nature of the nonconformity be disclosed to the transferee, paragraph (1) does not apply to the transfer of a motor vehicle to an educational institution if the purpose of the transfer is to make the motor vehicle available for use in automotive repair courses.

O

Assembly Bill No. 1848

Passed the Assembly August 6, 1998

Chief Clerk of the Assembly

Passed the Senate August 3, 1998

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1998, at ____ o'clock ____M.

Private Secretary of the Governor

└

CHAPTER _____

An act to amend Section 1793.22 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1848, Davis. Warranties: motor vehicle manufacturers.

Under the existing Tanner Consumer Protection Act, it is presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if within one year from delivery to the buyer or 12,000 miles on the odometer of the vehicle, whichever comes first, either (1) the same nonconformity, as defined, has been subject to repair 4 or more times by the manufacturer or its agents and the buyer has at least once provided a specified notice to the manufacturer or (2) the vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a prescribed period. Existing law defines a new motor vehicle for purposes of this provision and another specified provision of existing law regarding express warranty repair or service to mean a new motor vehicle that is used or bought for use primarily for personal, family, or household purposes.

This bill would revise that definition of a new motor vehicle to include a new motor vehicle bought or used for business and personal, family, or household purposes by a person, including a legal entity, to which no more than 5 motor vehicles are registered in this state.

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

SECTION 1. Section 1793.22 of the Civil Code is amended to read:

1793.22. (a) This section shall be known and may be cited as the Tanner Consumer Protection Act.

(b) It shall be presumed that a reasonable number of attempts have been made to conform a new motor

vehicle to the applicable express warranties if, within one year from delivery to the buyer or 12,000 miles on the odometer of the vehicle, whichever occurs first, either (1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for the repair of the nonconformity or (2) the vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery of the vehicle to the buyer. The 30-day limit shall be extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer or its agents. The buyer shall be required to directly notify the manufacturer pursuant to paragraph (1) only if the manufacturer has clearly and conspicuously disclosed to the buyer, with the warranty or the owner's manual, the provisions of this section and that of subdivision (d) of Section 1793.2, including the requirement that the buyer must notify the manufacturer directly pursuant to paragraph (1). This presumption shall be a rebuttable presumption affecting the burden of proof, and it may be asserted by the buyer in any civil action, including an action in small claims court, or other formal or informal proceeding.

(c) If a qualified third-party dispute resolution process exists, and the buyer receives timely notification in writing of the availability of that qualified third-party dispute resolution process with a description of its operation and effect, the presumption in subdivision (b) may not be asserted by the buyer until after the buyer has initially resorted to the qualified third-party dispute resolution process as required in subdivision (d). Notification of the availability of the qualified third-party dispute resolution process is not timely if the buyer suffers any prejudice resulting from any delay in giving the notification. If a qualified third-party dispute resolution process does not exist, or if the buyer is dissatisfied with that third-party decision, or if the manufacturer or its agent neglects to promptly fulfill the terms of the



qualified third-party dispute resolution process decision after the decision is accepted by the buyer, the buyer may assert the presumption provided in subdivision (b) in an action to enforce the buyer's rights under subdivision (d) of Section 1793.2. The findings and decision of a qualified third-party dispute resolution process shall be admissible in evidence in the action without further foundation. Any period of limitation of actions under any federal or California laws with respect to any person shall be extended for a period equal to the number of days between the date a complaint is filed with a third-party dispute resolution process and the date of its decision or the date before which the manufacturer or its agent is required by the decision to fulfill its terms if the decision is accepted by the buyer, whichever occurs later.

(d) A qualified third-party dispute resolution process shall be one that does all of the following:

(1) Complies with the minimum requirements of the Federal Trade Commission for informal dispute settlement procedures as set forth in Part 703 of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1987.

(2) Renders decisions which are binding on the manufacturer if the buyer elects to accept the decision.

(3) Prescribes a reasonable time, not to exceed 30 days after the decision is accepted by the buyer, within which the manufacturer or its agent must fulfill the terms of its decisions.

(4) Provides arbitrators who are assigned to decide disputes with copies of, and instruction in, the provisions of the Federal Trade Commission's regulations in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1, 1987, Division 2 (commencing with Section 2101) of the Commercial Code, and this chapter.

(5) Requires the manufacturer, when the process orders, under the terms of this chapter, either that the nonconforming motor vehicle be replaced if the buyer consents to this remedy or that restitution be made to the buyer, to replace the motor vehicle or make restitution

in accordance with paragraph (2) of subdivision (d) of Section 1793.2.

(6) Provides, at the request of the arbitrator or a majority of the arbitration panel, for an inspection and written report on the condition of a nonconforming motor vehicle, at no cost to the buyer, by an automobile expert who is independent of the manufacturer.

(7) Takes into account, in rendering decisions, all legal and equitable factors, including, but not limited to, the written warranty, the rights and remedies conferred in regulations of the Federal Trade Commission contained in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1, 1987, Division 2 (commencing with Section 2101) of the Commercial Code, this chapter, and any other equitable considerations appropriate in the circumstances. Nothing in this chapter requires that, to be certified as a qualified third-party dispute resolution process pursuant to this section, decisions of the process must consider or provide remedies in the form of awards of punitive damages or multiple damages, under subdivision (c) of Section 1794, or of attorneys' fees under subdivision (d) of Section 1794, or of consequential damages other than as provided in subdivisions (a) and (b) of Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

(8) Requires that no arbitrator deciding a dispute may be a party to the dispute and that no other person, including an employee, agent, or dealer for the manufacturer, may be allowed to participate substantively in the merits of any dispute with the arbitrator unless the buyer is allowed to participate also. Nothing in this subdivision prohibits any member of an arbitration board from deciding a dispute.

(9) Obtains and maintains certification by the Department of Consumer Affairs pursuant to Chapter 9 (commencing with Section 472) of Division 1 of the Business and Professions Code.

(e) For the purposes of subdivision (d) of Section 1793.2 and this section, the following terms have the following meanings:

(1) “Nonconformity” means a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle to the buyer or lessee.

(2) “New motor vehicle” means a new motor vehicle that is used or bought for use primarily for personal, family, or household purposes. “New motor vehicle” also means a new motor vehicle that is bought or used for business and personal, family, or household purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity, to which not more than five motor vehicles are registered in this state. “New motor vehicle” includes the chassis, chassis cab, and that portion of a motor home devoted to its propulsion, but does not include any portion designed, used, or maintained primarily for human habitation, a dealer-owned vehicle and a “demonstrator” or other motor vehicle sold with a manufacturer’s new car warranty but does not include a motorcycle or a motor vehicle which is not registered under the Vehicle Code because it is to be operated or used exclusively off the highways. A demonstrator is a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type.

(3) “Motor home” means a vehicular unit built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab, or van, which becomes an integral part of the completed vehicle, designed for human habitation for recreational or emergency occupancy.

(f) (1) Except as provided in paragraph (2), no person shall sell, either at wholesale or retail, lease, or transfer a motor vehicle transferred by a buyer or lessee to a manufacturer pursuant to paragraph (2) of subdivision (d) of Section 1793.2 or a similar statute of any other state, unless the nature of the nonconformity experienced by the original buyer or lessee is clearly and conspicuously disclosed to the prospective buyer, lessee,

or transferee, the nonconformity is corrected, and the manufacturer warrants to the new buyer, lessee, or transferee in writing for a period of one year that the motor vehicle is free of that nonconformity.

(2) Except for the requirement that the nature of the nonconformity be disclosed to the transferee, paragraph (1) does not apply to the transfer of a motor vehicle to an educational institution if the purpose of the transfer is to make the motor vehicle available for use in automotive repair courses.



Approved _____, 1998

Governor



AMENDED IN SENATE JULY 2, 1998
AMENDED IN SENATE JUNE 11, 1998
AMENDED IN ASSEMBLY MAY 7, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1848

**Introduced by Assembly Member Davis
(Coauthor: Assembly Member Figueroa)**

February 12, 1998

An act to amend Section 1793.22 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1848, as amended, Davis. Warranties: motor vehicle manufacturers.

Under the existing Tanner Consumer Protection Act, it is presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if within one year from delivery to the buyer or 12,000 miles on the odometer of the vehicle, whichever comes first, either (1) the same nonconformity, as defined, has been subject to repair 4 or more times by the manufacturer or its agents and the buyer has at least once provided a specified notice to the manufacturer or (2) the vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a prescribed period. Existing law defines a new motor vehicle for purposes of this provision and another specified provision of existing law

regarding express warranty repair or service to mean a new motor vehicle that is used or bought for use primarily for personal, family, or household purposes.

This bill would revise that definition of a new motor vehicle to include a new motor vehicle bought or used for business and personal, family, or household purposes by a person, including a legal entity, to which no more than 5 motor vehicles are registered in this state. ~~It would also provide that the definition of a new motor vehicle does not include a vehicle that is used for the transport of property above a manufacturer's gross vehicle weight rating, except a motor home.~~

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. Section 1793.22 of the Civil Code is
2 amended to read:
3 1793.22. (a) This section shall be known and may be
4 cited as the Tanner Consumer Protection Act.
5 (b) It shall be presumed that a reasonable number of
6 attempts have been made to conform a new motor
7 vehicle to the applicable express warranties if, within one
8 year from delivery to the buyer or 12,000 miles on the
9 odometer of the vehicle, whichever occurs first, either
10 (1) the same nonconformity has been subject to repair
11 four or more times by the manufacturer or its agents and
12 the buyer has at least once directly notified the
13 manufacturer of the need for the repair of the
14 nonconformity or (2) the vehicle is out of service by
15 reason of repair of nonconformities by the manufacturer
16 or its agents for a cumulative total of more than 30
17 calendar days since delivery of the vehicle to the buyer.
18 The 30-day limit shall be extended only if repairs cannot
19 be performed due to conditions beyond the control of the
20 manufacturer or its agents. The buyer shall be required
21 to directly notify the manufacturer pursuant to
22 paragraph (1) only if the manufacturer has clearly and
23 conspicuously disclosed to the buyer, with the warranty

1 or the owner's manual, the provisions of this section and
2 that of subdivision (d) of Section 1793.2, including the
3 requirement that the buyer must notify the
4 manufacturer directly pursuant to paragraph (1). This
5 presumption shall be a rebuttable presumption affecting
6 the burden of proof, and it may be asserted by the buyer
7 in any civil action, including an action in small claims
8 court, or other formal or informal proceeding.

9 (c) If a qualified third-party dispute resolution process
10 exists, and the buyer receives timely notification in
11 writing of the availability of that qualified third-party
12 dispute resolution process with a description of its
13 operation and effect, the presumption in subdivision (b)
14 may not be asserted by the buyer until after the buyer has
15 initially resorted to the qualified third-party dispute
16 resolution process as required in subdivision (d).
17 Notification of the availability of the qualified third-party
18 dispute resolution process is not timely if the buyer suffers
19 any prejudice resulting from any delay in giving the
20 notification. If a qualified third-party dispute resolution
21 process does not exist, or if the buyer is dissatisfied with
22 that third-party decision, or if the manufacturer or its
23 agent neglects to promptly fulfill the terms of the
24 qualified third-party dispute resolution process decision
25 after the decision is accepted by the buyer, the buyer may
26 assert the presumption provided in subdivision (b) in an
27 action to enforce the buyer's rights under subdivision (d)
28 of Section 1793.2. The findings and decision of a qualified
29 third-party dispute resolution process shall be admissible
30 in evidence in the action without further foundation. Any
31 period of limitation of actions under any federal or
32 California laws with respect to any person shall be
33 extended for a period equal to the number of days
34 between the date a complaint is filed with a third-party
35 dispute resolution process and the date of its decision or
36 the date before which the manufacturer or its agent is
37 required by the decision to fulfill its terms if the decision
38 is accepted by the buyer, whichever occurs later.

39 (d) A qualified third-party dispute resolution process
40 shall be one that does all of the following:

1 (1) Complies with the minimum requirements of the
2 Federal Trade Commission for informal dispute
3 settlement procedures as set forth in Part 703 of Title 16
4 of the Code of Federal Regulations, as those regulations
5 read on January 1, 1987.

6 (2) Renders decisions which are binding on the
7 manufacturer if the buyer elects to accept the decision.

8 (3) Prescribes a reasonable time, not to exceed 30 days
9 after the decision is accepted by the buyer, within which
10 the manufacturer or its agent must fulfill the terms of its
11 decisions.

12 (4) Provides arbitrators who are assigned to decide
13 disputes with copies of, and instruction in, the provisions
14 of the Federal Trade Commission's regulations in Part 703
15 of Title 16 of the Code of Federal Regulations as those
16 regulations read on January 1, 1987, Division 2
17 (commencing with Section 2101) of the Commercial
18 Code, and this chapter.

19 (5) Requires the manufacturer, when the process
20 orders, under the terms of this chapter, either that the
21 nonconforming motor vehicle be replaced if the buyer
22 consents to this remedy or that restitution be made to the
23 buyer, to replace the motor vehicle or make restitution
24 in accordance with paragraph (2) of subdivision (d) of
25 Section 1793.2.

26 (6) Provides, at the request of the arbitrator or a
27 majority of the arbitration panel, for an inspection and
28 written report on the condition of a nonconforming
29 motor vehicle, at no cost to the buyer, by an automobile
30 expert who is independent of the manufacturer.

31 (7) Takes into account, in rendering decisions, all legal
32 and equitable factors, including, but not limited to, the
33 written warranty, the rights and remedies conferred in
34 regulations of the Federal Trade Commission contained
35 in Part 703 of Title 16 of the Code of Federal Regulations
36 as those regulations read on January 1, 1987, Division 2
37 (commencing with Section 2101) of the Commercial
38 Code, this chapter, and any other equitable
39 considerations appropriate in the circumstances. Nothing
40 in this chapter requires that, to be certified as a qualified

1 third-party dispute resolution process pursuant to this
2 section, decisions of the process must consider or provide
3 remedies in the form of awards of punitive damages or
4 multiple damages, under subdivision (c) of Section 1794,
5 or of attorneys' fees under subdivision (d) of Section 1794,
6 or of consequential damages other than as provided in
7 subdivisions (a) and (b) of Section 1794, including, but
8 not limited to, reasonable repair, towing, and rental car
9 costs actually incurred by the buyer.

10 (8) Requires that no arbitrator deciding a dispute may
11 be a party to the dispute and that no other person,
12 including an employee, agent, or dealer for the
13 manufacturer, may be allowed to participate
14 substantively in the merits of any dispute with the
15 arbitrator unless the buyer is allowed to participate also.
16 Nothing in this subdivision prohibits any member of an
17 arbitration board from deciding a dispute.

18 (9) Obtains and maintains certification by the
19 Department of Consumer Affairs pursuant to Chapter 9
20 (commencing with Section 472) of Division 1 of the
21 Business and Professions Code.

22 (e) For the purposes of subdivision (d) of Section
23 1793.2 and this section, the following terms have the
24 following meanings:

25 (1) "Nonconformity" means a nonconformity which
26 substantially impairs the use, value, or safety of the new
27 motor vehicle to the buyer or lessee.

28 (2) "New motor vehicle" means a new motor vehicle
29 that is used or bought for use primarily for personal,
30 family, or household purposes. "New motor vehicle" also
31 means a new motor vehicle that is bought or used for
32 business and personal, family, or household purposes by
33 a person, including a partnership, limited liability
34 company, corporation, association, or any other legal
35 entity, to which not more than five motor vehicles are
36 registered in this state. "New motor vehicle" includes the
37 chassis, chassis cab, and that portion of a motor home
38 devoted to its propulsion, but does not include any
39 portion designed, used, or maintained primarily for
40 human habitation, a dealer-owned vehicle and a

1 "demonstrator" or other motor vehicle sold with a
2 manufacturer's new car warranty but does not include a
3 motorcycle or a motor vehicle which is not registered
4 under the Vehicle Code because it is to be operated or
5 ~~used exclusively off the highways. "New motor vehicle"~~
6 ~~does not include a vehicle that is used for the transport of~~
7 ~~property above a manufacturer's gross vehicle weight~~
8 ~~rating, except a motor home. A "demonstrator" is a used~~
9 ~~exclusively off the highways. A demonstrator is a vehicle~~
10 assigned by a dealer for the purpose of demonstrating
11 qualities and characteristics common to vehicles of the
12 same or similar model and type.

13 (3) "Motor home" means a vehicular unit built on, or
14 permanently attached to, a self-propelled motor vehicle
15 chassis, chassis cab, or van, which becomes an integral
16 part of the completed vehicle, designed for human
17 habitation for recreational or emergency occupancy.

18 (f) (1) Except as provided in paragraph (2), no
19 person shall sell, either at wholesale or retail, lease, or
20 transfer a motor vehicle transferred by a buyer or lessee
21 to a manufacturer pursuant to paragraph (2) of
22 subdivision (d) of Section 1793.2 or a similar statute of any
23 other state, unless the nature of the nonconformity
24 experienced by the original buyer or lessee is clearly and
25 conspicuously disclosed to the prospective buyer, lessee,
26 or transferee, the nonconformity is corrected, and the
27 manufacturer warrants to the new buyer, lessee, or
28 transferee in writing for a period of one year that the
29 motor vehicle is free of that nonconformity.

30 (2) Except for the requirement that the nature of the
31 nonconformity be disclosed to the transferee, paragraph
32 (1) does not apply to the transfer of a motor vehicle to an
33 educational institution if the purpose of the transfer is to
34 make the motor vehicle available for use in automotive
35 repair courses.

O

AMENDED IN SENATE JUNE 11, 1998

AMENDED IN ASSEMBLY MAY 7, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1848

Introduced by Assembly Member Davis
(Coauthor: Assembly Member Figueroa)

February 12, 1998

An act to amend Section 1793.22 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1848, as amended, Davis. Warranties: motor vehicle manufacturers.

Under the existing Tanner Consumer Protection Act, it is presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if within one year from delivery to the buyer or 12,000 miles on the odometer of the vehicle, whichever comes first, either (1) the same nonconformity, as defined, has been subject to repair 4 or more times by the manufacturer or its agents and the buyer has at least once provided a specified notice to the manufacturer or (2) the vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a prescribed period. Existing law defines a new motor vehicle for purposes of this provision and another specified provision of existing law regarding express warranty repair or service to mean a new

motor vehicle that is used or bought for use primarily for personal, family, or household purposes.

This bill would revise that definition of a new motor vehicle to include a new motor vehicle bought or used for business and personal, family, or household purposes by a person, including a legal entity, to which no more than 5 motor vehicles are registered in this state. It would also provide that the definition of a new motor vehicle does not include a vehicle that is used for the transport of property above a manufacturer's gross vehicle weight rating, *except a motor home*.

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. Section 1793.22 of the Civil Code is
2 amended to read:
3 1793.22. (a) This section shall be known and may be
4 cited as the Tanner Consumer Protection Act.
5 (b) It shall be presumed that a reasonable number of
6 attempts have been made to conform a new motor
7 vehicle to the applicable express warranties if, within one
8 year from delivery to the buyer or 12,000 miles on the
9 odometer of the vehicle, whichever occurs first, either
10 (1) the same nonconformity has been subject to repair
11 four or more times by the manufacturer or its agents and
12 the buyer has at least once directly notified the
13 manufacturer of the need for the repair of the
14 nonconformity or (2) the vehicle is out of service by
15 reason of repair of nonconformities by the manufacturer
16 or its agents for a cumulative total of more than 30
17 calendar days since delivery of the vehicle to the buyer.
18 The 30-day limit shall be extended only if repairs cannot
19 be performed due to conditions beyond the control of the
20 manufacturer or its agents. The buyer shall be required
21 to directly notify the manufacturer pursuant to
22 paragraph (1) only if the manufacturer has clearly and
23 conspicuously disclosed to the buyer, with the warranty
24 or the owner's manual, the provisions of this section and

1 that of subdivision (d) of Section 1793.2, including the
2 requirement that the buyer must notify the
3 manufacturer directly pursuant to paragraph (1). This
4 presumption shall be a rebuttable presumption affecting
5 the burden of proof, and it may be asserted by the buyer
6 in any civil action, including an action in small claims
7 court, or other formal or informal proceeding.

8 (c) If a qualified third-party dispute resolution process
9 exists, and the buyer receives timely notification in
10 writing of the availability of that qualified third-party
11 dispute resolution process with a description of its
12 operation and effect, the presumption in subdivision (b)
13 may not be asserted by the buyer until after the buyer has
14 initially resorted to the qualified third-party dispute
15 resolution process as required in subdivision (d).
16 Notification of the availability of the qualified third-party
17 dispute resolution process is not timely if the buyer suffers
18 any prejudice resulting from any delay in giving the
19 notification. If a qualified third-party dispute resolution
20 process does not exist, or if the buyer is dissatisfied with
21 that third-party decision, or if the manufacturer or its
22 agent neglects to promptly fulfill the terms of the
23 qualified third-party dispute resolution process decision
24 after the decision is accepted by the buyer, the buyer may
25 assert the presumption provided in subdivision (b) in an
26 action to enforce the buyer's rights under subdivision (d)
27 of Section 1793.2. The findings and decision of a qualified
28 third-party dispute resolution process shall be admissible
29 in evidence in the action without further foundation. Any
30 period of limitation of actions under any federal or
31 California laws with respect to any person shall be
32 extended for a period equal to the number of days
33 between the date a complaint is filed with a third-party
34 dispute resolution process and the date of its decision or
35 the date before which the manufacturer or its agent is
36 required by the decision to fulfill its terms if the decision
37 is accepted by the buyer, whichever occurs later.

38 (d) A qualified third-party dispute resolution process
39 shall be one that does all of the following:

1 (1) Complies with the minimum requirements of the
2 Federal Trade Commission for informal dispute
3 settlement procedures as set forth in Part 703 of Title 16
4 of the Code of Federal Regulations, as those regulations
5 read on January 1, 1987.

6 (2) Renders decisions which are binding on the
7 manufacturer if the buyer elects to accept the decision.

8 (3) Prescribes a reasonable time, not to exceed 30 days
9 after the decision is accepted by the buyer, within which
10 the manufacturer or its agent must fulfill the terms of its
11 decisions.

12 (4) Provides arbitrators who are assigned to decide
13 disputes with copies of, and instruction in, the provisions
14 of the Federal Trade Commission's regulations in Part 703
15 of Title 16 of the Code of Federal Regulations as those
16 regulations read on January 1, 1987, Division 2
17 (commencing with Section 2101) of the Commercial
18 Code, and this chapter.

19 (5) Requires the manufacturer, when the process
20 orders, under the terms of this chapter, either that the
21 nonconforming motor vehicle be replaced if the buyer
22 consents to this remedy or that restitution be made to the
23 buyer, to replace the motor vehicle or make restitution
24 in accordance with paragraph (2) of subdivision (d) of
25 Section 1793.2.

26 (6) Provides, at the request of the arbitrator or a
27 majority of the arbitration panel, for an inspection and
28 written report on the condition of a nonconforming
29 motor vehicle, at no cost to the buyer, by an automobile
30 expert who is independent of the manufacturer.

31 (7) Takes into account, in rendering decisions, all legal
32 and equitable factors, including, but not limited to, the
33 written warranty, the rights and remedies conferred in
34 regulations of the Federal Trade Commission contained
35 in Part 703 of Title 16 of the Code of Federal Regulations
36 as those regulations read on January 1, 1987, Division 2
37 (commencing with Section 2101) of the Commercial
38 Code, this chapter, and any other equitable
39 considerations appropriate in the circumstances. Nothing
40 in this chapter requires that, to be certified as a qualified

1 third-party dispute resolution process pursuant to this
2 section, decisions of the process must consider or provide
3 remedies in the form of awards of punitive damages or
4 multiple damages, under subdivision (c) of Section 1794,
5 or of attorneys' fees under subdivision (d) of Section 1794,
6 or of consequential damages other than as provided in
7 subdivisions (a) and (b) of Section 1794, including, but
8 not limited to, reasonable repair, towing, and rental car
9 costs actually incurred by the buyer.

10 (8) Requires that no arbitrator deciding a dispute may
11 be a party to the dispute and that no other person,
12 including an employee, agent, or dealer for the
13 manufacturer, may be allowed to participate
14 substantively in the merits of any dispute with the
15 arbitrator unless the buyer is allowed to participate also.
16 Nothing in this subdivision prohibits any member of an
17 arbitration board from deciding a dispute.

18 (9) Obtains and maintains certification by the
19 Department of Consumer Affairs pursuant to Chapter 9
20 (commencing with Section 472) of Division 1 of the
21 Business and Professions Code.

22 (e) For the purposes of subdivision (d) of Section
23 1793.2 and this section, the following terms have the
24 following meanings:

25 (1) "Nonconformity" means a nonconformity which
26 substantially impairs the use, value, or safety of the new
27 motor vehicle to the buyer or lessee.

28 (2) "New motor vehicle" means a new motor vehicle
29 that is used or bought for use primarily for personal,
30 family, or household purposes. "New motor vehicle" also
31 means a new motor vehicle that is bought or used for
32 business and personal, family, or household purposes by
33 a person, including a partnership, limited liability
34 company, corporation, association, or any other legal
35 entity, to which not more than five motor vehicles are
36 registered in this state. "New motor vehicle" includes the
37 chassis, chassis cab, and that portion of a motor home
38 devoted to its propulsion, but does not include any
39 portion designed, used, or maintained primarily for
40 human habitation, a dealer-owned vehicle and a

1 "demonstrator" or other motor vehicle sold with a
2 manufacturer's new car warranty but does not include a
3 motorcycle or a motor vehicle which is not registered
4 under the Vehicle Code because it is to be operated or
5 used exclusively off the highways. "New motor vehicle"
6 does not include a vehicle that is used for the transport of
7 property above a manufacturer's gross vehicle weight
8 rating, *except a motor home*. A "demonstrator" is a
9 vehicle assigned by a dealer for the purpose of
10 demonstrating qualities and characteristics common to
11 vehicles of the same or similar model and type.

12 (3) "Motor home" means a vehicular unit built on, or
13 permanently attached to, a self-propelled motor vehicle
14 chassis, chassis cab, or van, which becomes an integral
15 part of the completed vehicle, designed for human
16 habitation for recreational or emergency occupancy.

17 (f) (1) Except as provided in paragraph (2), no
18 person shall sell, either at wholesale or retail, lease, or
19 transfer a motor vehicle transferred by a buyer or lessee
20 to a manufacturer pursuant to paragraph (2) of
21 subdivision (d) of Section 1793.2 or a similar statute of any
22 other state, unless the nature of the nonconformity
23 experienced by the original buyer or lessee is clearly and
24 conspicuously disclosed to the prospective buyer, lessee,
25 or transferee, the nonconformity is corrected, and the
26 manufacturer warrants to the new buyer, lessee, or
27 transferee in writing for a period of one year that the
28 motor vehicle is free of that nonconformity.

29 (2) Except for the requirement that the nature of the
30 nonconformity be disclosed to the transferee, paragraph
31 (1) does not apply to the transfer of a motor vehicle to an
32 educational institution if the purpose of the transfer is to
33 make the motor vehicle available for use in automotive
34 repair courses.

O

AMENDED IN ASSEMBLY MAY 7, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1848

Introduced by Assembly Member Davis

February 12, 1998

An act to amend Section 1793.22 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1848, as amended, Davis. Warranties: motor vehicle manufacturers.

Under the existing Tanner Consumer Protection Act, it is presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if within one year from delivery to the buyer or 12,000 miles on the odometer of the vehicle, whichever comes first, either (1) the same nonconformity, as defined, has been subject to repair 4 or more times by the manufacturer or its agents and the buyer has at least once provided a specified notice to the manufacturer or (2) the vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a prescribed period. Existing law defines a new motor vehicle for purposes of this provision and another specified provision of existing law regarding express warranty repair or service to mean a new motor vehicle that is used or bought for use primarily for personal, family, or household purposes.

This bill would revise that definition of a new motor vehicle to include a new motor vehicle bought or used for business and personal, family, or household purposes by a person, including a legal entity, to which no more than 5 motor vehicles are registered in this state. *It would also provide that the definition of a new motor vehicle does not include a vehicle that is used for the transport of property above a manufacturer's gross vehicle weight rating.*

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. Section 1793.22 of the Civil Code is
2 amended to read:
3 1793.22. (a) This section shall be known and may be
4 cited as the Tanner Consumer Protection Act.
5 (b) It shall be presumed that a reasonable number of
6 attempts have been made to conform a new motor
7 vehicle to the applicable express warranties if, within one
8 year from delivery to the buyer or 12,000 miles on the
9 odometer of the vehicle, whichever occurs first, either
10 (1) the same nonconformity has been subject to repair
11 four or more times by the manufacturer or its agents and
12 the buyer has at least once directly notified the
13 manufacturer of the need for the repair of the
14 nonconformity or (2) the vehicle is out of service by
15 reason of repair of nonconformities by the manufacturer
16 or its agents for a cumulative total of more than 30
17 calendar days since delivery of the vehicle to the buyer.
18 The 30-day limit shall be extended only if repairs cannot
19 be performed due to conditions beyond the control of the
20 manufacturer or its agents. The buyer shall be required
21 to directly notify the manufacturer pursuant to
22 paragraph (1) only if the manufacturer has clearly and
23 conspicuously disclosed to the buyer, with the warranty
24 or the owner's manual, the provisions of this section and
25 that of subdivision (d) of Section 1793.2, including the
26 requirement that the buyer must notify the
27 manufacturer directly pursuant to paragraph (1). This

1 presumption shall be a rebuttable presumption affecting
2 the burden of proof, and it may be asserted by the buyer
3 in any civil action, including an action in small claims
4 court, or other formal or informal proceeding.

5 (c) If a qualified third-party dispute resolution process
6 exists, and the buyer receives timely notification in
7 writing of the availability of that qualified third-party
8 dispute resolution process with a description of its
9 operation and effect, the presumption in subdivision (b)
10 may not be asserted by the buyer until after the buyer has
11 initially resorted to the qualified third-party dispute
12 resolution process as required in subdivision (d).
13 Notification of the availability of the qualified third-party
14 dispute resolution process is not timely if the buyer suffers
15 any prejudice resulting from any delay in giving the
16 notification. If a qualified third-party dispute resolution
17 process does not exist, or if the buyer is dissatisfied with
18 that third-party decision, or if the manufacturer or its
19 agent neglects to promptly fulfill the terms of the
20 qualified third-party dispute resolution process decision
21 after the decision is accepted by the buyer, the buyer may
22 assert the presumption provided in subdivision (b) in an
23 action to enforce the buyer's rights under subdivision (d)
24 of Section 1793.2. The findings and decision of a qualified
25 third-party dispute resolution process shall be admissible
26 in evidence in the action without further foundation. Any
27 period of limitation of actions under any federal or
28 California laws with respect to any person shall be
29 extended for a period equal to the number of days
30 between the date a complaint is filed with a third-party
31 dispute resolution process and the date of its decision or
32 the date before which the manufacturer or its agent is
33 required by the decision to fulfill its terms if the decision
34 is accepted by the buyer, whichever occurs later.

35 (d) A qualified third-party dispute resolution process
36 shall be one that does all of the following:

37 (1) Complies with the minimum requirements of the
38 Federal Trade Commission for informal dispute
39 settlement procedures as set forth in Part 703 of Title 16

1 of the Code of Federal Regulations, as those regulations
2 read on January 1, 1987.

3 (2) Renders decisions which are binding on the
4 manufacturer if the buyer elects to accept the decision.

5 (3) Prescribes a reasonable time, not to exceed 30 days
6 after the decision is accepted by the buyer, within which
7 the manufacturer or its agent must fulfill the terms of its
8 decisions.

9 (4) Provides arbitrators who are assigned to decide
10 disputes with copies of, and instruction in, the provisions
11 of the Federal Trade Commission's regulations in Part 703
12 of Title 16 of the Code of Federal Regulations as those
13 regulations read on January 1, 1987, Division 2
14 (commencing with Section 2101) of the Commercial
15 Code, and this chapter.

16 (5) Requires the manufacturer, when the process
17 orders, under the terms of this chapter, either that the
18 nonconforming motor vehicle be replaced if the buyer
19 consents to this remedy or that restitution be made to the
20 buyer, to replace the motor vehicle or make restitution
21 in accordance with paragraph (2) of subdivision (d) of
22 Section 1793.2.

23 (6) Provides, at the request of the arbitrator or a
24 majority of the arbitration panel, for an inspection and
25 written report on the condition of a nonconforming
26 motor vehicle, at no cost to the buyer, by an automobile
27 expert who is independent of the manufacturer.

28 (7) Takes into account, in rendering decisions, all legal
29 and equitable factors, including, but not limited to, the
30 written warranty, the rights and remedies conferred in
31 regulations of the Federal Trade Commission contained
32 in Part 703 of Title 16 of the Code of Federal Regulations
33 as those regulations read on January 1, 1987, Division 2
34 (commencing with Section 2101) of the Commercial
35 Code, this chapter, and any other equitable
36 considerations appropriate in the circumstances. Nothing
37 in this chapter requires that, to be certified as a qualified
38 third-party dispute resolution process pursuant to this
39 section, decisions of the process must consider or provide
40 remedies in the form of awards of punitive damages or

1 multiple damages, under subdivision (c) of Section 1794,
2 or of attorneys' fees under subdivision (d) of Section 1794,
3 or of consequential damages other than as provided in
4 subdivisions (a) and (b) of Section 1794, including, but
5 not limited to, reasonable repair, towing, and rental car
6 costs actually incurred by the buyer.

7 (8) Requires that no arbitrator deciding a dispute may
8 be a party to the dispute and that no other person,
9 including an employee, agent, or dealer for the
10 manufacturer, may be allowed to participate
11 substantively in the merits of any dispute with the
12 arbitrator unless the buyer is allowed to participate also.
13 Nothing in this subdivision prohibits any member of an
14 arbitration board from deciding a dispute.

15 (9) Obtains and maintains certification by the
16 Department of Consumer Affairs pursuant to Chapter 9
17 (commencing with Section 472) of Division 1 of the
18 Business and Professions Code.

19 (e) For the purposes of subdivision (d) of Section
20 1793.2 and this section, the following terms have the
21 following meanings:

22 (1) "Nonconformity" means a nonconformity which
23 substantially impairs the use, value, or safety of the new
24 motor vehicle to the buyer or lessee.

25 (2) "New motor vehicle" means a new motor vehicle
26 that is used or bought for use primarily for personal,
27 family, or household purposes. "New motor vehicle" also
28 means a new motor vehicle that is bought or used for
29 business *and personal, family, or household* purposes by
30 a person, including a partnership, limited liability
31 company, corporation, association, or any other legal
32 entity, to which not more than five motor vehicles are
33 registered in this state. "New motor vehicle" includes the
34 chassis, chassis cab, and that portion of a motor home
35 devoted to its propulsion, but does not include any
36 portion designed, used, or maintained primarily for
37 human habitation, a dealer-owned vehicle and a
38 "demonstrator" or other motor vehicle sold with a
39 manufacturer's new car warranty but does not include a
40 motorcycle or a motor vehicle which is not registered

1 under the Vehicle Code because it is to be operated or
2 used exclusively off the highways. *"New motor vehicle"*
3 *does not include a vehicle that is used for the transport of*
4 *property above a manufacturer's gross vehicle weight*
5 *rating.* A "demonstrator" is a vehicle assigned by a dealer
6 for the purpose of demonstrating qualities and
7 characteristics common to vehicles of the same or similar
8 model and type.

9 (3) "Motor home" means a vehicular unit built on, or
10 permanently attached to, a self-propelled motor vehicle
11 chassis, chassis cab, or van, which becomes an integral
12 part of the completed vehicle, designed for human
13 habitation for recreational or emergency occupancy.

14 (f) (1) Except as provided in paragraph (2), no
15 person shall sell, either at wholesale or retail, lease, or
16 transfer a motor vehicle transferred by a buyer or lessee
17 to a manufacturer pursuant to paragraph (2) of
18 subdivision (d) of Section 1793.2 or a similar statute of any
19 other state, unless the nature of the nonconformity
20 experienced by the original buyer or lessee is clearly and
21 conspicuously disclosed to the prospective buyer, lessee,
22 or transferee, the nonconformity is corrected, and the
23 manufacturer warrants to the new buyer, lessee, or
24 transferee in writing for a period of one year that the
25 motor vehicle is free of that nonconformity.

26 (2) Except for the requirement that the nature of the
27 nonconformity be disclosed to the transferee, paragraph
28 (1) does not apply to the transfer of a motor vehicle to an
29 educational institution if the purpose of the transfer is to
30 make the motor vehicle available for use in automotive
31 repair courses.

O

ASSEMBLY BILL

No. 1848

Introduced by Assembly Member Davis

February 12, 1998

An act to amend Section 1793.22 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1848, as introduced, Davis. Warranties: motor vehicle manufacturers.

Under the existing Tanner Consumer Protection Act, it is presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if within one year from delivery to the buyer or 12,000 miles on the odometer of the vehicle, whichever comes first, either (1) the same nonconformity, as defined, has been subject to repair 4 or more times by the manufacturer or its agents and the buyer has at least once provided a specified notice to the manufacturer or (2) the vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a prescribed period. Existing law defines a new motor vehicle for purposes of this provision and another specified provision of existing law regarding express warranty repair or service to mean a new motor vehicle that is used or bought for use primarily for personal, family, or household purposes.

This bill would revise that definition of a new motor vehicle to include a new motor vehicle bought or used for business

purposes by a person, including a legal entity, to which no more than 5 motor vehicles are registered in this state.

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. Section 1793.22 of the Civil Code is
2 amended to read:
3 1793.22. (a) This section shall be known and may be
4 cited as the Tanner Consumer Protection Act.
5 (b) It shall be presumed that a reasonable number of
6 attempts have been made to conform a new motor
7 vehicle to the applicable express warranties if, within one
8 year from delivery to the buyer or 12,000 miles on the
9 odometer of the vehicle, whichever occurs first, either
10 (1) the same nonconformity has been subject to repair
11 four or more times by the manufacturer or its agents and
12 the buyer has at least once directly notified the
13 manufacturer of the need for the repair of the
14 nonconformity or (2) the vehicle is out of service by
15 reason of repair of nonconformities by the manufacturer
16 or its agents for a cumulative total of more than 30
17 calendar days since delivery of the vehicle to the buyer.
18 The 30-day limit shall be extended only if repairs cannot
19 be performed due to conditions beyond the control of the
20 manufacturer or its agents. The buyer shall be required
21 to directly notify the manufacturer pursuant to
22 paragraph (1) only if the manufacturer has clearly and
23 conspicuously disclosed to the buyer, with the warranty
24 or the owner's manual, the provisions of this section and
25 that of subdivision (d) of Section 1793.2, including the
26 requirement that the buyer must notify the
27 manufacturer directly pursuant to paragraph (1). This
28 presumption shall be a rebuttable presumption affecting
29 the burden of proof, and it may be asserted by the buyer
30 in any civil action, including an action in small claims
31 court, or other formal or informal proceeding.
32 (c) If a qualified third-party dispute resolution process
33 exists, and the buyer receives timely notification in

1 writing of the availability of that qualified third-party
2 dispute resolution process with a description of its
3 operation and effect, the presumption in subdivision (b)
4 may not be asserted by the buyer until after the buyer has
5 initially resorted to the qualified third-party dispute
6 resolution process as required in subdivision (d).
7 Notification of the availability of the qualified third-party
8 dispute resolution process is not timely if the buyer suffers
9 any prejudice resulting from any delay in giving the
10 notification. If a qualified third-party dispute resolution
11 process does not exist, or if the buyer is dissatisfied with
12 that third-party decision, or if the manufacturer or its
13 agent neglects to promptly fulfill the terms of the
14 qualified third-party dispute resolution process decision
15 after the decision is accepted by the buyer, the buyer may
16 assert the presumption provided in subdivision (b) in an
17 action to enforce the buyer's rights under subdivision (d)
18 of Section 1793.2. The findings and decision of a qualified
19 third-party dispute resolution process shall be admissible
20 in evidence in the action without further foundation. Any
21 period of limitation of actions under any federal or
22 California laws with respect to any person shall be
23 extended for a period equal to the number of days
24 between the date a complaint is filed with a third-party
25 dispute resolution process and the date of its decision or
26 the date before which the manufacturer or its agent is
27 required by the decision to fulfill its terms if the decision
28 is accepted by the buyer, whichever occurs later.

29 (d) A qualified third-party dispute resolution process
30 shall be one that does all of the following:

31 (1) Complies with the minimum requirements of the
32 Federal Trade Commission for informal dispute
33 settlement procedures as set forth in Part 703 of Title 16
34 of the Code of Federal Regulations, as those regulations
35 read on January 1, 1987.

36 (2) Renders decisions which are binding on the
37 manufacturer if the buyer elects to accept the decision.

38 (3) Prescribes a reasonable time, not to exceed 30 days
39 after the decision is accepted by the buyer, within which

1 the manufacturer or its agent must fulfill the terms of its
2 decisions.

3 (4) Provides arbitrators who are assigned to decide
4 disputes with copies of, and instruction in, the provisions
5 of the Federal Trade Commission's regulations in Part 703
6 of Title 16 of the Code of Federal Regulations as those
7 regulations read on January 1, 1987, Division 2
8 (commencing with Section 2101) of the Commercial
9 Code, and this chapter.

10 (5) Requires the manufacturer, when the process
11 orders, under the terms of this chapter, either that the
12 nonconforming motor vehicle be replaced if the buyer
13 consents to this remedy or that restitution be made to the
14 buyer, to replace the motor vehicle or make restitution
15 in accordance with paragraph (2) of subdivision (d) of
16 Section 1793.2.

17 (6) Provides, at the request of the arbitrator or a
18 majority of the arbitration panel, for an inspection and
19 written report on the condition of a nonconforming
20 motor vehicle, at no cost to the buyer, by an automobile
21 expert who is independent of the manufacturer.

22 (7) Takes into account, in rendering decisions, all legal
23 and equitable factors, including, but not limited to, the
24 written warranty, the rights and remedies conferred in
25 regulations of the Federal Trade Commission contained
26 in Part 703 of Title 16 of the Code of Federal Regulations
27 as those regulations read on January 1, 1987, Division 2
28 (commencing with Section 2101) of the Commercial
29 Code, this chapter, and any other equitable
30 considerations appropriate in the circumstances. Nothing
31 in this chapter requires that, to be certified as a qualified
32 third-party dispute resolution process pursuant to this
33 section, decisions of the process must consider or provide
34 remedies in the form of awards of punitive damages or
35 multiple damages, under subdivision (c) of Section 1794,
36 or of attorneys' fees under subdivision (d) of Section 1794,
37 or of consequential damages other than as provided in
38 subdivisions (a) and (b) of Section 1794, including, but
39 not limited to, reasonable repair, towing, and rental car
40 costs actually incurred by the buyer.

1 (8) Requires that no arbitrator deciding a dispute may
2 be a party to the dispute and that no other person,
3 including an employee, agent, or dealer for the
4 manufacturer, may be allowed to participate
5 substantively in the merits of any dispute with the
6 arbitrator unless the buyer is allowed to participate also.
7 Nothing in this subdivision prohibits any member of an
8 arbitration board from deciding a dispute.

9 (9) Obtains and maintains certification by the
10 Department of Consumer Affairs pursuant to Chapter 9
11 (commencing with Section 472) of Division 1 of the
12 Business and Professions Code.

13 (e) For the purposes of subdivision (d) of Section
14 1793.2 and this section, the following terms have the
15 following meanings:

16 (1) "Nonconformity" means a nonconformity which
17 substantially impairs the use, value, or safety of the new
18 motor vehicle to the buyer or lessee.

19 (2) "New motor vehicle" means a new motor vehicle
20 ~~which~~ *that* is used or bought for use primarily for
21 personal, family, or household purposes. *"New motor*
22 *vehicle" also means a new motor vehicle that is bought or*
23 *used for business purposes by a person, including a*
24 *partnership, limited liability company, corporation,*
25 *association, or any other legal entity, to which not more*
26 *than five motor vehicles are registered in this state.* "New
27 motor vehicle" includes the chassis, chassis cab, and that
28 portion of a motor home devoted to its propulsion, but
29 does not include any portion designed, used, or
30 maintained primarily for human habitation, a
31 dealer-owned vehicle and a "demonstrator" or other
32 motor vehicle sold with a manufacturer's new car
33 warranty but does not include a motorcycle or a motor
34 vehicle which is not registered under the Vehicle Code
35 because it is to be operated or used exclusively off the
36 highways. A "demonstrator" is a vehicle assigned by a
37 dealer for the purpose of demonstrating qualities and
38 characteristics common to vehicles of the same or similar
39 model and type.

1 (3) "Motor home" means a vehicular unit built on, or
2 permanently attached to, a self-propelled motor vehicle
3 chassis, chassis cab, or van, which becomes an integral
4 part of the completed vehicle, designed for human
5 habitation for recreational or emergency occupancy.

6 (f) (1) Except as provided in paragraph (2), no
7 person shall sell, either at wholesale or retail, lease, or
8 transfer a motor vehicle transferred by a buyer or lessee
9 to a manufacturer pursuant to paragraph (2) of
10 subdivision (d) of Section 1793.2 or a similar statute of any
11 other state, unless the nature of the nonconformity
12 experienced by the original buyer or lessee is clearly and
13 conspicuously disclosed to the prospective buyer, lessee,
14 or transferee, the nonconformity is corrected, and the
15 manufacturer warrants to the new buyer, lessee, or
16 transferee in writing for a period of one year that the
17 motor vehicle is free of that nonconformity.

18 (2) Except for the requirement that the nature of the
19 nonconformity be disclosed to the transferee, paragraph
20 (1) does not apply to the transfer of a motor vehicle to an
21 educational institution if the purpose of the transfer is to
22 make the motor vehicle available for use in automotive
23 repair courses.

O

AB 1848
Page 1

CONCURRENCE IN SENATE AMENDMENTS
AB 1848 (Davis)
As Amended July 2, 1998
Majority vote

ASSEMBLY: 63-11 (May 11, 1998) SENATE: 28-2 (August 3, 1998)

Original Committee Reference: CONPRO

SUMMARY : Includes small business vehicles in the "lemon law" by redefining "new motor vehicle" for purposes of the lemon law to include a new motor vehicle that is "bought or used for business and personal, family, or household purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity, to which not more than five motor vehicles are registered in this state."

The Senate amendments delete a provision stating that a "new motor vehicle" does not include a vehicle used to transport property above the manufacturers gross vehicle weight rating.

EXISTING LAW :

- 1) Defines "new motor vehicle" for lemon law purposes as one which is bought for use primarily for personal, family or household purposes.
- 2) States that the period within which a new motor vehicle may be presumed to be out of conformity with its express warranty (i.e., lemon), if the circumstances detailed in #3 below are met, is within the first 12 months after delivery to the buyer or the vehicle's first 12,000 miles, whichever occurs first.
- 3) States that a new motor vehicle may be presumed to be a lemon if, during the time period specified in #2 above:
 - a) The same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for repair of the nonconformity; or
 - b) The vehicle is out of service by reason of repair of nonconformities for a total of more than 30 days since delivery of the vehicle, as specified.
- 4) Defines what constitutes a "qualified third-party dispute resolution process" (QDRP), including stating that a QDRP must meet specified Federal Trade Commission (FTC) minimum requirements, specified timelines for decisions, requirements for arbitrators, consumers and manufacturers, due process considerations, and certification procedures with the California Department of Consumer Affairs, as specified.
- 5) States that QDRP decisions are binding on the manufacturer if

AB 1848
Page 2

the buyer elects to accept the decision, and that QDRP must "take into account" specified information, including the conditions of the written warranty, the rights and remedies in relevant FIC regulations, and any other "equitable considerations appropriate in the circumstances."

- 6) States that if a qualified dispute resolution process exists, then the consumer may not assert that he or she has a lemon until after the consumer has initially resorted to the dispute resolution process. This provision does not apply if the buyer is dissatisfied with the decision of the dispute resolution process, or if the manufacturer neglects to fulfill the terms of the dispute resolution decision.

AS PASSED BY THE ASSEMBLY , this bill redefined "new motor vehicle" for purposes of the Tanner Consumer Protection Act (i.e., lemon law) to include a new motor vehicle that is "bought or used for business and personal, family, or household purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity, to which not more than five motor vehicles are registered in this state." Additionally stated that a "new motor vehicle" does not include a vehicle used to transport property above the manufacturers gross vehicle weight rating.

FISCAL EFFECT : None

COMMENTS :

- 1) This bill includes small business vehicles purchased under the auspices of California's lemon law. Currently, small businesses are not included under the lemon law; only vehicles used primarily for personal, family or household purposes. The author believes that small businesses should be afforded the same protections as individual consumers. Additionally, the author argues that opening up the arbitration process to small businesses could reduce lemon law litigation. Finally, the author indicates that businesses with more than five vehicles have sufficient market strength that they do not necessarily need lemon law presumptions.

- 2) Under current law, auto manufacturers have regularly denied the claims and queries of vehicles registered to or used by businesses. Small businesses are usually not eligible for the arbitration programs that auto manufacturers have; the goal of these programs is to satisfy the consumer prior to the filing of a lemon law action.

If barred from arbitration by the auto manufacturer, the small business is left only one avenue of recourse, to sue the auto manufacturer. However, this is an expensive and time-consuming proposition, and given the current definition of "new motor vehicle" in the Tanner Consumer Protection Act, it is unlikely that the small business will be victorious. This bill is aimed at bringing these individuals into the lemon law fold.

AB 1848
Page 3

Entities which would be covered include partnerships, limited liability companies, associations, corporations and any other legal entity.

- 3) The Senate amendments relate to the issue of abusing a vehicle by overloading it and then claiming a vehicle is a lemon. The author, consumer groups, and auto manufacturers all agreed that current law's prohibition against abuse of vehicle is sufficient to deny such claims, thereby making language previously included in the bill unnecessary.

Analysis prepared by : Robert Herrell / aconpro / (916) 319-2889

040939

FN

BILL ANALYSIS

SENATE RULES COMMITTEE AB 1848
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

THIRD READING

Bill No: AB 1848
Author: Davis (D)
Amended: 7/2/98 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE : 7-0, 6/9/98
AYES: Burton, Leslie, Lockyer, O'Connell, Sher, Wright,
Schiff
NOT VOTING: Calderon, Haynes

ASSEMBLY FLOOR : 63-11, 5/11/98 - See last page for vote

SUBJECT : Motor vehicle warranties: Lemon Law

SOURCE : Author

DIGEST : This bill expands the definition of new motor vehicle under the Tanner Consumer Protection Act, a.k.a. the Lemon Law, to include a new motor vehicle that is used for both personal transportation and by a business with fewer than five vehicles. Current law covers vehicles which are strictly for personal use. The definition of a new motor vehicle would not include a vehicle that is used for the transport of property above a manufacturer's gross vehicle weight rating.

Senate floor Amendments of July 1, 1998, removed redundant language.

ANALYSIS : Existing law defines "new motor vehicle" as a "new motor vehicle which is used or bought for use primarily for personal, family, or household purposes."

This bill expands the definition of "new motor vehicle" to include a new motor vehicle that is "used or bought for business and personal, family, or household purposes by a person, including a partnership, limited liability company, association, and any other legal entity, who has no more than five motor vehicles registered in this state to that person."

This bill provides that the definition of a new motor vehicle does not include a vehicle that is used for the transport of property above a manufacturer's gross vehicle weight rating, except a motor home.

Background

The Tanner Consumer Protection Act, a.k.a. the Lemon Law, was conceived to aid new car consumers in enforcing the terms and conditions of express warranty contracts. The Lemon Law created a presumption under the Song-Beverly Warranty Act, that a vehicle failed to conform to its express warranty if it was out of service for a total of 30 days, or if the same mechanical failure required repair four times, within one year of purchase or the odometer reading 12,000, whichever occurs first. Nonconforming vehicles may be returned to the manufacturer for refund or replacement.

Related Legislation

SB 289 (Calderon), pending in Assembly Consumer Protection, Governmental Efficiency and Economic Development Committee, expands the definition of a new motor vehicle under the Lemon Law to include new motor vehicles used for business persons by persons with fewer than five registered vehicles.

FISCAL EFFECT : Appropriation: No fiscal Com.: No local: No

SUPPORT : (Verified 7/6/98)

California District Attorneys Association
California Attorney General's Office
Consumer Attorneys of California
Consumers for Auto Reliability and Safety
Consumers Union
USD Center for Public Interest Law
Granite Excavation and Demolition, Inc.

ARGUMENTS IN SUPPORT : Currently, small businesses are not included under the Lemon Law; only vehicles used primarily for personal, family or household purposes are included. The author's office states that small businesses should be afforded the same protections as individual consumers. Additionally, the author's office asserts that businesses with more than five vehicles have sufficient market strength that they do not necessarily need Lemon Law presumptions. Businesses with five or fewer vehicles represent the vast majority of small businesses integral to California's economy.

ASSEMBLY FLOOR :

AYES: Aguilar, Alby, Alquist, Aroner, Ashburn, Baca, Battin, Bordonaro, Bowen, Bowler, Brewer, Brown, Bustamante, Campbell, Cardenas, Cardoza, Cunneen, Davis, Ducheny, Escutia, Figueroa, Frussetta, Gallegos, Gidsmith, Havice, Hertzberg, Honda, House, Kaloogian, Kaeley, Knox, Kuehl, Kuykendall, Leach, Lempert, Machado, Martinez, Mazzoni, Migden, Miller, Morrissey, Napolitano, Oller, Ortiz, Pacheco, Perata, Poochigian, Prenter, Runner, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thomson, Torlakson, Vincent, Washington, Hayne, Wildman, Woods, Wright, Villaralga
NOES: Ackerman, Baldwin, Baugh, Firestone, Graniund,

4/18/22, 9:10 PM

AB 1848 Assembly Bill - Bill Analysis

Leonard, Margett, McClintock, Morrow, Olberg, Thompson
NOT VOTING: Cedillo, Floyd, Murray, Papan, Pringle,
Richter

RJG:cm 7/6/98 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
**** END ****

BILL ANALYSIS

SENATE RULES COMMITTEE AB 1848
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

THIRD READING

Bill No: AB 1848
Author: Davis (D)
Amended: 6/11/98 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE : 7-0, 6/9/98

AYES: Burton, Leslie, Lockyer, O'Connell, Sher, Wright,
Schiff

NOT VOTING: Calderon, Haynes

ASSEMBLY FLOOR : 63-11, 5/11/98 ~ See last page for vote

SUBJECT : Motor vehicle warranties: Lemon Law

SOURCE : Author

DIGEST : This bill expands the definition of new motor vehicle under the Tanner Consumer Protection Act, a.k.a. the Lemon Law, to include a new motor vehicle that is used for both personal transportation and by a business with fewer than five vehicles. Current law covers vehicles which are strictly for personal use. The definition of a new motor vehicle would not include a vehicle that is used for the transport of property above a manufacturer's gross vehicle weight rating.

ANALYSIS : Existing law defines "new motor vehicle" as a "new motor vehicle which is used or bought for use primarily for personal, family, or household purposes."

This bill expands the definition of "new motor vehicle" to include a new motor vehicle that is "used or bought for

business and personal, family, or household purposes by a person, including a partnership, limited liability company, association, and any other legal entity, who has no more than five motor vehicles registered in this state to that person."

This bill provides that the definition of a new motor vehicle does not include a vehicle that is used for the transport of property above a manufacturer's gross vehicle weight rating, except a motor home.

Background

The Tanner Consumer Protection Act, a.k.a. the Lemon Law, was conceived to aid new car consumers in enforcing the terms and conditions of express warranty contracts. The Lemon Law created a presumption under the Song-Beverly Warranty Act, that a vehicle failed to conform to its express warranty if it was out of service for a total of 30 days, or if the same mechanical failure required repair four times, within one year of purchase or the odometer reading 12,000, whichever occurs first. Nonconforming vehicles may be returned to the manufacturer for refund or replacement.

Related Legislation

SB 289 (Calderon), pending in Assembly Consumer Protection, Governmental Efficiency and Economic Development Committee, expands the definition of a new motor vehicle under the Lemon Law to include new motor vehicles used for business persons by persons with fewer than five registered vehicles.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No
Local: No

SUPPORT : (Verified 6/15/98)

California District Attorneys Association
California Attorney General's Office
Consumer Attorneys of California
USD Center for Public Interest Law
Granite Excavation and Demolition, Inc.

ARGUMENTS IN SUPPORT : Currently, small businesses are not included under the Lemon Law; only vehicles used primarily for personal, family or household purposes are included. The author's office states that small businesses should be afforded the same protections as individual

consumers. Additionally, the author's office asserts that businesses with more than five vehicles have sufficient market strength that they do not necessarily need Lemon Law presumptions. Businesses with five or fewer vehicles represent the vast majority of small businesses integral to California's economy.

ASSEMBLY FLOOR :

AYES: Aguilar, Alby, Alquist, Aroner, Ashburn, Baca, Battin, Bordonaro, Bowen, Bowler, Brewer, Brown, Bustamante, Campbell, Cardenas, Cardoza, Cunneen, Davis, Ducheny, Escutis, Figueroa, Frusetta, Gallegos, Goldsmith, Havice, Hertzberg, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Kuykendall, Leach, Lempert, Machado, Martinez, Mazzoni, Migden, Miller, Morrissey, Napolitano, Oller, Ortiz, Pacheco, Perata, Poochigian, Prenter, Runner, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thomson, Torlakson, Vincent, Washington, Wayne, Wildman, Woods, Wright, Villarrealgosa

NOES: Ackerman, Baldwin, Baugh, Firestone, Granlund, Leonard, Margett, McClintock, Morrow, Olberg, Thompson
NOT VOTING: Cedillo, Floyd, Murray, Papan, Pringle, Richter

4/18/22, 9:11 PM

AB 1848 Assembly Bill - Bill Analysis

RJC:cm 6/15/98 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
**** END ****

BILL ANALYSIS

SENATE RULES COMMITTEE AB 1848
Office of Senate Floor Analysis
1828 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

THIRD READING

Bill No: AB 1848
Author: Davis (D)
Amended: 6/11/98 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE : 7-8, 6/9/98
AYES: Burton, Leslie, Lockyer, O'Connell, Sher, Wright,
Schiff
NOT VOTING: Calderon, Haynes

ASSEMBLY FLOOR : 63-11, 5/11/98 - See last page for vote

SUBJECT : Motor vehicle warranties: Lemon Law

SOURCE : Author

DIGEST : This bill expands the definition of new motor vehicle under the Tanner Consumer Protection Act, a.k.a. the Lemon Law, to include a new motor vehicle that is used for both personal transportation and by a business with fewer than five vehicles. Current law covers vehicles which are strictly for personal use. The definition of a new motor vehicle would not include a vehicle that is used for the transport of property above a manufacturer's gross vehicle weight rating.

ANALYSIS : Existing law defines "new motor vehicle" as a "new motor vehicle which is used or bought for use primarily for personal, family, or household purposes."

This bill expands the definition of "new motor vehicle" to include a new motor vehicle that is "used or bought for

business and personal, family, or household purposes by a person, including a partnership, limited liability company, association, and any other legal entity, who has no more than five motor vehicles registered in this state to that person."

This bill provides that the definition of a new motor vehicle does not include a vehicle that is used for the transport of property above a manufacturer's gross vehicle weight rating, except a motor home.

Background

The Tanner Consumer Protection Act, a.k.a. the Lemon Law, was conceived to aid new car consumers in enforcing the terms and conditions of express warranty contracts. The Lemon Law created a presumption under the Song-Beverly Warranty Act, that a vehicle failed to conform to its express warranty if it was out of service for a total of 30 days, or if the same mechanical failure required repair four times, within one year of purchase or the odometer reading 12,000, whichever occurs first. Nonconforming vehicles may be returned to the manufacturer for refund or replacement.

Related Legislation

SB 289 (Calderon), pending in Assembly Consumer Protection, Governmental Efficiency and Economic Development Committee, expands the definition of a new motor vehicle under the Lemon Law to include new motor vehicles used for business purposes by persons with fewer than five registered vehicles.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No
Local: No

SUPPORT : (Verified 6/11/98)

California District Attorneys Association
California Attorney General's Office
Consumer Attorneys of California
Consumers for Auto Reliability and Safety
Consumers Union
USD Center for Public Interest Law
Granite Excavation and Demolition, Inc.
California Public Interest Research Group

ARGUMENTS IN SUPPORT : Currently, small businesses are not included under the Lemon Law; only vehicles used

primarily for personal, family or household purposes are included. The author's office states that small businesses should be afforded the same protections as individual consumers. Additionally, the author's office asserts that businesses with more than five vehicles have sufficient market strength that they do not necessarily need Lemon Law presumptions. Businesses with five or fewer vehicles represent the vast majority of small businesses integral to California's economy.

ASSEMBLY FLOOR :
AYES: Aguilar, Alby, Alquist, Aroner, Ashburn, Baca, Batin, Bordonaro, Bowen, Bowler, Brewer, Brown, Bustamante, Campbell, Cardenas, Cardoza, Cunneen, Davis, Ducheney, Escutia, Figueroa, Frusetta, Gallegos, Goldsmith, Havice, Hertzberg, Honda, House, Kaloogian, Kaeley, Knox, Kuehl, Kuykendall, Leach, Lempert, Machado, Martinez, Mazzoni, Migden, Miller, Morrissey, Napolitano, Oller, Ortiz, Pacheco, Perata, Poochigian, Prenter, Runner, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thomson, Torlakson, Vincent, Washington, Wayne, Wildman, Woods, Wright, Villanigosa
NOES: Ackerman, Baldwin, Baugh, Firestone, Granlund, Leonard, Margett, McClintock, Morrow, Olberg, Thompson
NOT VOTING: Cedillo, Floyd, Murray, Papan, Pringle,

4/18/22, 9:11 PM

AB 1848 Assembly Bill - Bill Analysis

Richter

RJG:cm 6/11/98 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
**** END ****

-

BILL ANALYSIS

SENATE JUDICIARY COMMITTEE
Adam B. Schiff, Chairman
1997-98 Regular Session

AB 1848	A
Assemblymember Davis	B
As Amended May 7, 1998	
Hearing Date: June 9, 1998	1
Civil Code	8
DLM:cjt	4
	8

SUBJECT

Motor Vehicle Warrantees: Lemon Law

DESCRIPTION

This bill would expand the definition of new motor vehicle under the Tanner Consumer Protection Act, a.k.a. the Lemon Law, to include a new motor vehicle that is used for both personal transportation and by a business with fewer than five vehicles. Current law covers vehicles which are strictly for personal use. The definition of a new motor vehicle would not include a vehicle that is used for the transport of property above a manufacturer's gross vehicle weight rating.

(This analysis reflects amendments to be presented to committee.)

BACKGROUND

The Tanner Consumer Protection Act, a.k.a. the Lemon Law, was conceived to aid new car consumers in enforcing the terms and conditions of express warranty contracts. The Lemon Law created a presumption under the Song-Beverly Warranty Act, that a vehicle failed to conform to its express warranty if it was out of service for a total of 30 days, or if the same mechanical failure required repair four times, within one year of purchase or the odometer reading 12,000 miles, whichever occurs first. Nonconforming vehicles may be returned to the manufacturer for refund or replacement.

CHANGES TO EXISTING LAW

Existing law defines "new motor vehicle" as a "new motor vehicle which is used or bought for use primarily for personal, family, or household purposes."

This bill would expand the definition of "new motor vehicle" to include a new motor vehicle that is "used or bought for business and personal, family, or household purposes by a person, including a partnership, limited liability company, association, and any other legal entity, who has no more than five motor vehicles registered in this state to that person."

The bill would provide that the definition of a new motor vehicle does not include a vehicle that is used for the transport of property above a manufacturer's gross vehicle weight rating.

COMMENT1. Statement of need for bill

Currently, small businesses are not included under the lemon law; only vehicles used primarily for personal, family or household purposes are included. The author believes that small businesses should be afforded the same protections as individual consumers. Additionally, the author asserts that businesses with more than five vehicles have sufficient market strength that they do not necessarily need lemon law presumptions. Businesses with five or fewer vehicles represent the vast majority of small businesses integral to California's economy.

2. Amendments remove opposition:a. Limiting coverage to joint family and business vehicles

According to supporters, 26 states have lemon laws that cover vehicles purchased for business use, some with narrowly drawn exceptions. They note that even Michigan, the home state of the industry, applies its lemon law to include commercial buyers who purchase less than 10 new motor vehicles per year. In response, the manufacturers note that lemon laws were

specifically created to assist consumers, not businesses. Business vehicles receive different treatment than vehicles used for personal, family, or household use. Such vehicles are driven more frequently, loaded more heavily, and are generally not maintained in the same way as personal-use vehicles. As a result, this differing treatment could lead to defects caused by the usage of the vehicles, as opposed to manufacturing defects.

The bill was amended to address the above-stated concerns of automobile manufacturers. Where the bill originally would have extended the lemon presumption to all business fleets of five vehicles or less, it has been narrowed to cover only those vehicles which are used for both personal and business transportation.

b. Proposed amendment to be presented in committee would clarify that "weight limit" language does not

cover motorhomes

The author has agreed to amend the bill to clarify that the language which states that "the definition of a new motor vehicle does not include a vehicle that is used for the transport of property above a

manufacturer's gross vehicle weight rating" does not include motorhomes.

The intention of the language was to address situations where, for instance, a business worktruck is consistently overloaded. The amendment comes in response to concerns unique to the manufacturing process of motorhomes, which are also covered under the lemon law.

In motorhome manufacturing, there is often a two-part construction process, where one manufacturer will build the chassis, and another company will build the coach (home) aspect of the vehicle, and place it upon the chassis. The opposition was based upon the concern that some motorhome coaches exceed the weight limit for the chassis recommended by the manufacturer, creating a non-conforming vehicle which would not be

subject to the lemon law under the current language. The author has agreed to amend the bill to clarify that this section of the bill does not include motorhomes. As a result of this amendment, there is no longer any opposition to the bill.

3. Related competing legislation

SB 289 (Calderon) pending in Assembly C.P., G.E. & E.D Committee, was heard in this committee April 1, 1997 and passed on a 6-1 vote. SB 289 would expand the definition of new motor vehicle under the lemon law to include new motor vehicles used for business purposes by persons with fewer than five registered vehicles. This is a broader class of coverage than that proposed in this bill (vehicles used for both business and personal travel.) In addition to this provision, as passed by this committee SB 289 would make the following changes to law:

extend the number of miles and the period of time during which an automobile may be presumed to be a lemon from the current 12 months/12,000 miles to 24 months/24,000 miles;

create a new category of nonconformity for "safety defects," defined as a "nonconformity that is likely to cause death or bodily injury if the motor vehicle is operated for ordinary purposes," and reduce the number of repair attempts which qualify a new motor vehicle as a lemon from four to two in the case of safety defects;

require auto manufacturers who have arbitration as part of their warranty dispute resolution process to allow consumers to fully participate in any arbitration hearing;

require manufacturers to clearly state in all print advertising and written sales promotional material if they do not provide a certified arbitration program.

4. Chaptering out amendments are needed

Both SB 289 and AB 1848 would amend Civil Code section 1793.22. Amendments will be needed in order to avoid chaptering out in the event each bill is passed and

signed.

Support: California District Attorneys Association; California Attorney General's Office; Consumer Attorneys of California; Consumers for Auto Reliability and Safety; Consumers Union; USD Center for Public Interest Law; Granite Excavation and Demolition, Inc.; California Public Interest Research Group (CalPIRG); Toyota Motor Sales, USA

Opposition: None known

HISTORY

Source: Author

Related Pending Legislation: SB 289 (Calderon) pending in Assembly C.P., G.E. & E.D Committee

Prior Legislation: None Known

Prior Votes: Assembly C.P., G.E. & E.D. (12-1) Assembly Floor (63-11)

AB 1848
Page 1

ASSEMBLY THIRD READING
AB 1848 (Davis)
As Amended May 7, 1998
Majority vote

CONSUMER PROTECTION 12-1

Ayes: Davis, Runner, Alquist,
Cedillo, Figueroa, Frusetta,
Machado, Morrissey, Torlakson,
Stron-Martin, Takasugi, Wildman

Nays: Firestone

SUMMARY : Redefines "new motor vehicle" for purposes of the Tanner Consumer Protection Act (lemon law) to include a new motor vehicle that is "bought or used for business and personal, family, or household purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity, to which not more than five motor vehicles are registered in this state." Additionally states that a "new motor vehicle" does not include a vehicle used to transport property above the manufacturers gross vehicle weight rating.

EXISTING LAW :

- 1) Defines "new motor vehicle" for lemon law purposes as one which is bought for use primarily for personal, family or household purposes.
- 2) States that the period within which a new motor vehicle may be presumed to be out of conformity with its express warranty (lemon), if the circumstances detailed in #3 below are met, is within the first 12 months after delivery to the buyer or the vehicle's first 12,000 miles, whichever occurs first.
- 3) States that a new motor vehicle may be presumed to be a lemon if, during the time period specified in #2 above:
 - a) The same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for repair of the nonconformity; or
 - b) The vehicle is out of service by reason of repair of nonconformities for a total of more than 30 days since delivery of the vehicle, as specified.
- 4) Defines what constitutes a "qualified third-party dispute resolution process" (QDRP), including stating that a QDRP must meet specified Federal Trade Commission minimum requirements, specified timelines for decisions, requirements for

AB 1848
Page 2

arbitrators, consumers and manufacturers, due process considerations, and certification procedures with the California Department of Consumer Affairs, as specified.

- 5) States that QDRP decisions are binding on the manufacturer if the buyer elects to accept the decision, and that QDRP must "take into account" specified information, including the conditions of the written warranty, the rights and remedies in relevant Federal Trade Commission regulations, and any other "equitable considerations appropriate in the circumstances."
- 6) States that if a qualified dispute resolution process exists, then the consumer may not assert that he or she has a lemon until after the consumer has initially resorted to the dispute resolution process. This provision does not apply if the buyer is dissatisfied with the decision of the dispute resolution process, or if the manufacturer neglects to fulfill the terms of the dispute resolution decision.

FISCAL EFFECT : None

COMMENTS :

1) The author's intention with this bill is to simply include small business vehicle purchases under the auspices of California's lemon law. Currently, small businesses are not included under the lemon law; only vehicles used primarily for personal, family or household purposes. The author believes that small businesses should be afforded the same protections as individual consumers. Additionally, the author argues that opening up the arbitration process to small businesses could reduce lemon law litigation. Finally, the author indicates that businesses with more than five vehicles have sufficient market strength that they do not necessarily need lemon law presumptions. Businesses with five or fewer vehicles represent the vast majority of small businesses integral to California's economy.

2) Under current law, auto manufacturers have regularly denied the claims and queries of vehicles registered to or used by businesses. Small businesses are usually not eligible for the arbitration programs that auto manufacturers have; the goal of these programs is to satisfy the consumer prior to the filing of a lemon law action.

If barred from arbitration by the auto manufacturer, the small business is left only one avenue of recourse, to sue the auto manufacturer. However, this is an expensive and time-consuming proposition, and given the current definition of "new motor vehicle" in the Tanner Consumer Protection Act, it is unlikely that the small business will be victorious. This bill is aimed at bringing these individuals into the lemon law fold.

AB 1848
Page 3

4/18/22, 9:12 PM

AB 1848 Assembly Bill - Bill Analysis

Entities which would be covered include partnerships, limited liability companies, associations, corporations and any other legal entity.

- 3) The May 7 amendments to the bill are the result of negotiations between the author's office and the automobile manufacturers. The amendments directly respond to concerns raised by the manufacturers.

Analysis prepared by: : Robert Herrell / aconpro / (916) 319-2889

038124

FN

BILL ANALYSIS

AB 1848
Page 1

ASSEMBLY THIRD READING
AB 1848 (Davis)
As Introduced February 12, 1998
Majority vote

CONSUMER PROTECTION 12-1

Ayes: Davis, Runner, Alquist,
Cedillo, Figueroa, Frusetta,
Machado, Morrissey, Torlakson,
Strom-Martin, Takasugi, Wildman

Nays: Firestone

SUMMARY : Redefines "new motor vehicle" for purposes of the Tanner Consumer Protection Act (lemon law) to include a new motor vehicle that is "bought or used for business purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity, to which not more than five motor vehicles are registered in this state."

EXISTING LAW :

- 1) Defines new motor vehicle as one which is bought for use primarily for personal, family or household purposes.
- 2) States that the period within which a new motor vehicle may be presumed to be out of conformity with its express warranty (lemon), if the circumstances detailed in #3 below are met, is within the first 12 months after delivery to the buyer or the vehicle's first 12,000 miles, whichever occurs first.
- 3) States that a new motor vehicle may be presumed to be a lemon if, during the time period specified in #2 above:
 - a) The same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for repair of the nonconformity; or
 - b) The vehicle is out of service by reason of repair of nonconformities for a total of more than 30 days since delivery of the vehicle, as specified.
- 4) Defines what constitutes a "qualified third-party dispute resolution process" (QDRP), including stating that a QDRP must meet specified Federal Trade Commission minimum requirements, specified timelines for decisions, requirements for arbitrators, consumers and manufacturers, due process considerations, and certification procedures with the California Department of Consumer Affairs, as specified.
- 5) States that QDRP decisions are binding on the manufacturer if the buyer elects to accept the decision, and that QDRP must "take into account" specified information, including the conditions of the written warranty, the rights and remedies in

AB 1848
Page 2

relevant Federal Trade Commission regulations, and any other "equitable considerations appropriate in the circumstances."

- 6) States that if a qualified dispute resolution process exists, then the consumer may not assert that he or she has a lemon until after the consumer has initially resorted to the dispute resolution process. This provision does not apply if the buyer is dissatisfied with the decision of the dispute resolution process, or if the manufacturer neglects to fulfill the terms of the dispute resolution decision.

FISCAL EFFECT : None

COMMENTS :

- 1) The author's intention with this bill is to simply include small business vehicle purchases under the auspices of California's lemon law. Currently, small businesses are not included under the lemon law; only vehicles used primarily for personal, family or household purposes. The author believes that small businesses should be afforded the same protections as individual consumers. Additionally, the author argues that opening up the arbitration process to small businesses could reduce lemon law litigation. Finally, the author indicates that businesses with more than five vehicles have sufficient market strength that they do not necessarily need lemon law presumptions. Businesses with five or fewer vehicles represent the vast majority of small businesses integral to California's economy.
- 2) Under current law, auto manufacturers have regularly denied the claims and queries of vehicles registered to or used by businesses. Small businesses are usually not eligible for the arbitration programs that auto manufacturers have; the goal of these programs is to satisfy the consumer prior to the filing of a lemon law action.

If barred from arbitration by the auto manufacturer, the small business is left only one avenue of recourse, to sue the auto manufacturer. However, this is an expensive and time-consuming proposition, and given the current definition of "new motor vehicle" in the Tanner Consumer Protection Act, it is unlikely that the small business will be victorious. This bill is aimed at bringing these individuals into the lemon law fold.

Entities which would be covered include partnerships, limited liability companies, associations, corporations and any other legal entity.

Analysis prepared by : Robert Herrell / sconpro / (916) 319-2089

B37615

FN

BILL ANALYSIS

AB 1848
Page 1

Date of Hearing: March 17, 1998

ASSEMBLY COMMITTEE ON CONSUMER PROTECTION,
GOVERNMENTAL EFFICIENCY, AND ECONOMIC DEVELOPMENT
Susan Davis, Chair

AB 1848 (Davis) - As Introduced: February 12, 1998

SUBJECT : Expands California's "Lemon Law" to include vehicles purchased by small businesses.

SUMMARY : Specifically, this bill redefines "new motor vehicle" for purposes of the Tanner Consumer Protection Act (Lemon law) to include a new motor vehicle that is "bought or used for business purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity, to which not more than five motor vehicles are registered in this state."

EXISTING LAW :

- 1) Defines new motor vehicle as one which is bought for use primarily for personal , family , or household purposes .
- 2) States that the period within which a new motor vehicle may be presumed to be out of conformity with its express warranty (Lemon), if the circumstances detailed in #3 below are met, is within the first 12 months after delivery to the buyer or the vehicle's first 12,000 miles, whichever occurs first.
- 3) States that a new motor vehicle may be presumed to be out of conformity with its express warranty provisions (a.k.a. a Lemon) if, during the time period specified in #2 above:
 - a) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for repair of the nonconformity, or
 - b) the vehicle is out of service by reason of repair of nonconformities for a total of more than 30 days since delivery of the vehicle, as specified.
- 4) Defines what constitutes a "qualified third-party dispute resolution process" (QDRP), including stating that a QDRP must meet specified Federal Trade Commission minimum requirements, specified timelines for decisions, requirements for arbitrators, consumers, and manufacturers, requirements for process considerations, and certification procedures with the California Department of Consumer Affairs, in addition to other specified requirements.
- 5) States that QDRP decisions are binding on the manufacturer if the buyer elects to accept the decision, and that the QDRP must " take into account " specified information, including the conditions of the written warranty, the rights and remedies in

AB 1848
Page 2

relevant Federal Trade Commission regulations, and any other "equitable considerations appropriate in the circumstances".

AB 1848
Page 3

- 6) States that if a qualified dispute resolution process exists, then the consumer may not assert that he or she has a lemon until after the consumer has initially resorted to the dispute resolution process. This provision does not apply if the buyer is dissatisfied with the decision of the dispute resolution process, or if the manufacturer neglects to fulfill the terms of the dispute resolution decision.

- 7) Does not state that a manufacturer without a QDRP must disclose that fact in specified sales and promotional literature.

FISCAL EFFECT : This bill is keyed as nonfiscal and will not be sent to the Assembly Appropriations Committee.

COMMENTS :

1) Intent of Measure

The author's intention with AB 1848 is to simply include small business vehicle purchases under the auspices of California's lemon law. Currently, small businesses are not included under the lemon law; only vehicles used primarily for personal, family, or household purposes. The author believes that small businesses should be afforded the same protections as individual consumers. Additionally, the author argues that opening up the arbitration process to small businesses could reduce lemon law litigation. Finally, the author indicates that businesses with more than 5 vehicles have sufficient market strength that they do not necessarily need lemon law presumptions. Businesses with 5 or fewer vehicles represent the vast majority of small businesses integral to California's economy.

2) What Happens Now When a Small Business has a Lemon ?

Under current law, auto manufacturers have regularly denied the claims and queries of vehicles registered to or used by businesses. Small businesses are usually not eligible for the arbitration programs that auto manufacturers have; the goal of these programs is to satisfy the consumer prior to the filing of a lemon law action.

If barred from arbitration by the auto manufacturer, the small business is left only one avenue of recourse - to sue the auto manufacturer. However, this is an expensive and time-consuming proposition, and given the current definition of "new motor vehicle" in the Tanner Consumer Protection Act, it is unlikely that the small business will be victorious. AB 1848 is aimed at bring these individuals into the lemon law fold.

Entities which would be covered include partnerships, limited liability companies, associations, corporations, and any other legal entity.

3) Related Legislation

AB 1848
Page 4

There are other lemon law-related bills at various stages of the legislative process. The most prominent of these is SB 289 (Calderon), currently located at this committee. SB 289, which failed passage at this committee in 1997, includes the provisions of AB 1848 as well as other changes which generally expand the scope of California's lemon law.

Additionally, AB 2277 (Kuykendall), awaiting assignment at the Assembly Rules Committee, expands existing motor home coverage under the lemon law. Senator Calderon has also introduced SB 1773, awaiting hearing at the Senate Judiciary Committee. SB 1773 currently contains a nonsubstantive change to the Tanner Consumer Protection Act.

REGISTERED SUPPORT / OPPOSITION :

Support

Center for Public Interest Law, University of San Diego
Consumer Attorneys of California
Consumers for Auto Reliability and Safety
Consumers Union
Granite Excavation & Demolition Inc.
Donald J. O'Mara, Santa Clarita, CA

Opposition

None on file

Analysis prepared by : Robert Herrell / aconpro / (916) 319-2889

CURRENT BILL STATUS

MEASURE : S.B. No. 1718
AUTHOR(S) : Sher and Assembly Members Davis and Shelley (Coauthors:
Senators Chesbro, Karnette, and Murray) (Coauthors:
Assembly Members Alquist, Bock, and Kuehl).
TOPIC : Warranties: new motor vehicles.
+LAST AMENDED DATE : 08/30/2000

TYPE OF BILL :
Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Non-Fiscal
Non-Tax Levy

LAST HIST. ACT. DATE: 09/26/2000
LAST HIST. ACTION : Chaptered by Secretary of State. Chapter 679,
Statutes of 2000.

TITLE : An act to amend Section 1793.22 of the Civil Code,
relating to warranties.

COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 1718
 AUTHOR : Sher
 TOPIC : Warranties: new motor vehicles.

TYPE OF BILL :

Inactive
 Non-Urgency
 Non-Appropriations
 Majority Vote Required
 Non-State-Mandated Local Program
 Non-Fiscal
 Non-Tax Levy

BILL HISTORY

~~2000~~
 Sept. 26 Chaptered by Secretary of State. Chapter 679, Statutes of ~~2000~~.
 Sept. 24 Approved by Governor.
 Sept. 19 Enrolled. To Governor at 11 a.m.
 Aug. 31 In Senate. Senate concurs in Assembly amendments. (Ayes 24. Noes 7. Page 6497.) To enrollment.
 Aug. 31 Read third time. Passed. (Ayes 44. Noes 26. Page 8885.) To Senate.
 Aug. 30 Reconsideration granted. Read third time. Amended. To third reading.
 Aug. 28 Read third time. Refused passage. (Ayes 36. Noes 26. Page 8508.) Motion to reconsider on next legislative day made by Assembly Member Shelley.
 Aug. 25 Read third time. Amended. To third reading.
 Aug. 9 Read second time. To third reading.
 Aug. 8 From committee: Do pass. (Ayes 5. Noes 0.)
 Aug. 7 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
 July 6 Joint Rule 61(b)(12) suspended.
 July 3 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
 June 20 Set, first hearing. Failed passage in committee. Reconsideration granted.
 May 26 To Com. on C.P., G.E. & E.D.
 May 16 In Assembly. Read first time. Held at Desk.
 May 16 Read third time. Passed. (Ayes 26. Noes 8. Page 4536.) To Assembly.
 May 11 Read second time. To third reading.
 May 10 From committee: Do pass. (Ayes 6. Noes 2. Page 4490.)
 May 4 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
 May 1 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
 Apr. 25 Hearing postponed by committee. Set for hearing May 9.
 Apr. 13 Set for hearing May 2.
 Mar. 28 Testimony taken. Hearing postponed by committee.
 Mar. 14 Set for hearing March 28.
 Mar. 9 To Com. on JUD.
 Feb. 24 From print. May be acted upon on or after March 25.
 Feb. 23 Introduced. Read first time. To Com. on RLS. for assignment. To print.

Senate Bill No. 1718

CHAPTER 679

An act to amend Section 1793.22 of the Civil Code, relating to warranties.

[Approved by Governor September 24, 2000. Filed
with Secretary of State September 26, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1718, Sher. Warranties: new motor vehicles.

Existing law requires every manufacturer of consumer goods sold in this state, including motor vehicles, to maintain sufficient service and repair facilities to carry out the terms of its express warranties. Existing law further provides that if a manufacturer or its representative is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the vehicle or make restitution to the buyer, at the buyer's option. Existing law provides that it is rebuttably presumed that a reasonable number of attempts to conform a new motor vehicle to its warranty have been made if, within 18 months of delivery or 18,000 miles, whichever is first, (1) the same nonconformity has been subject to repair at least 4 times by the manufacturer or its agents and the manufacturer has been directly informed of the need for the repair at least once, or (2) the vehicle has been out of service because of repairs to nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery to the buyer.

The bill would additionally provide for the establishment of the presumption when a nonconformity that results in a condition likely to cause death or serious bodily injury if the vehicle is driven, has been subject to repair 2 or more times by the manufacturer or its agents and the buyer or lessee has at least once directly notified the manufacturer of the need for the repair. This bill would also make other related changes.

Existing law defines a new motor vehicle for the purposes of the above provisions to mean (1) a new motor vehicle used or bought primarily for personal, family, or household purposes or (2) a new motor vehicle used primarily for business and personal, family, or household purposes by a person or organization, as specified, to which not more than 5 vehicles are registered in this state.

This bill would revise the 2nd definition to include only a new motor vehicle with a gross vehicle weight under 10,000 pounds bought or used primarily for business purposes, as specified.

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

SECTION 1. Section 1793.22 of the Civil Code is amended to read:

1793.22. (a) This section shall be known and may be cited as the Tanner Consumer Protection Act.

(b) It shall be presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within 18 months from delivery to the buyer or 18,000 miles on the odometer of the vehicle, whichever occurs first, one or more of the following occurs:

(1) The same nonconformity results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven and the nonconformity has been subject to repair two or more times by the manufacturer or its agents, and the buyer or lessee has at least once directly notified the manufacturer of the need for the repair of the nonconformity.

(2) The same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for the repair of the nonconformity.

(3) The vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery of the vehicle to the buyer. The 30-day limit shall be extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer or its agents. The buyer shall be required to directly notify the manufacturer pursuant to paragraphs (1) and (2) only if the manufacturer has clearly and conspicuously disclosed to the buyer, with the warranty or the owner's manual, the provisions of this section and that of subdivision (d) of Section 1793.2, including the requirement that the buyer must notify the manufacturer directly pursuant to paragraphs (1) and (2). The notification, if required, shall be sent to the address, if any, specified clearly and conspicuously by the manufacturer in the warranty or owner's manual. This presumption shall be a rebuttable presumption affecting the burden of proof, and it may be asserted by the buyer in any civil action, including an action in small claims court, or other formal or informal proceeding.

(c) If a qualified third-party dispute resolution process exists, and the buyer receives timely notification in writing of the availability of that qualified third-party dispute resolution process with a description of its operation and effect, the presumption in subdivision (b) may not be asserted by the buyer until after the buyer has initially resorted to the qualified third-party dispute resolution process as required in subdivision (d). Notification of the availability of the qualified third-party dispute resolution process is not timely if the

buyer suffers any prejudice resulting from any delay in giving the notification. If a qualified third-party dispute resolution process does not exist, or if the buyer is dissatisfied with that third-party decision, or if the manufacturer or its agent neglects to promptly fulfill the terms of the qualified third-party dispute resolution process decision after the decision is accepted by the buyer, the buyer may assert the presumption provided in subdivision (b) in an action to enforce the buyer's rights under subdivision (d) of Section 1793.2. The findings and decision of a qualified third-party dispute resolution process shall be admissible in evidence in the action without further foundation. Any period of limitation of actions under any federal or California laws with respect to any person shall be extended for a period equal to the number of days between the date a complaint is filed with a third-party dispute resolution process and the date of its decision or the date before which the manufacturer or its agent is required by the decision to fulfill its terms if the decision is accepted by the buyer, whichever occurs later.

(d) A qualified third-party dispute resolution process shall be one that does all of the following:

(1) Complies with the minimum requirements of the Federal Trade Commission for informal dispute settlement procedures as set forth in Part 703 of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1987.

(2) Renders decisions which are binding on the manufacturer if the buyer elects to accept the decision.

(3) Prescribes a reasonable time, not to exceed 30 days after the decision is accepted by the buyer, within which the manufacturer or its agent must fulfill the terms of its decisions.

(4) Provides arbitrators who are assigned to decide disputes with copies of, and instruction in, the provisions of the Federal Trade Commission's regulations in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1, 1987, Division 2 (commencing with Section 2101) of the Commercial Code, and this chapter.

(5) Requires the manufacturer, when the process orders, under the terms of this chapter, either that the nonconforming motor vehicle be replaced if the buyer consents to this remedy or that restitution be made to the buyer, to replace the motor vehicle or make restitution in accordance with paragraph (2) of subdivision (d) of Section 1793.2.

(6) Provides, at the request of the arbitrator or a majority of the arbitration panel, for an inspection and written report on the condition of a nonconforming motor vehicle, at no cost to the buyer, by an automobile expert who is independent of the manufacturer.

(7) Takes into account, in rendering decisions, all legal and equitable factors, including, but not limited to, the written warranty, the rights and remedies conferred in regulations of the Federal Trade

Commission contained in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1, 1987, Division 2 (commencing with Section 2101) of the Commercial Code, this chapter, and any other equitable considerations appropriate in the circumstances. Nothing in this chapter requires that, to be certified as a qualified third-party dispute resolution process pursuant to this section, decisions of the process must consider or provide remedies in the form of awards of punitive damages or multiple damages, under subdivision (c) of Section 1794, or of attorneys' fees under subdivision (d) of Section 1794, or of consequential damages other than as provided in subdivisions (a) and (b) of Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

(8) Requires that no arbitrator deciding a dispute may be a party to the dispute and that no other person, including an employee, agent, or dealer for the manufacturer, may be allowed to participate substantively in the merits of any dispute with the arbitrator unless the buyer is allowed to participate also. Nothing in this subdivision prohibits any member of an arbitration board from deciding a dispute.

(9) Obtains and maintains certification by the Department of Consumer Affairs pursuant to Chapter 9 (commencing with Section 472) of Division 1 of the Business and Professions Code.

(e) For the purposes of subdivision (d) of Section 1793.2 and this section, the following terms have the following meanings:

(1) "Nonconformity" means a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle to the buyer or lessee.

(2) "New motor vehicle" means a new motor vehicle that is bought or used primarily for personal, family, or household purposes. "New motor vehicle" also means a new motor vehicle with a gross vehicle weight under 10,000 pounds that is bought or used primarily for business purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity, to which not more than five motor vehicles are registered in this state. "New motor vehicle" includes the chassis, chassis cab, and that portion of a motor home devoted to its propulsion, but does not include any portion designed, used, or maintained primarily for human habitation, a dealer-owned vehicle and a "demonstrator" or other motor vehicle sold with a manufacturer's new car warranty but does not include a motorcycle or a motor vehicle which is not registered under the Vehicle Code because it is to be operated or used exclusively off the highways. A demonstrator is a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type.

(3) “Motor home” means a vehicular unit built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab, or van, which becomes an integral part of the completed vehicle, designed for human habitation for recreational or emergency occupancy.

(f) (1) Except as provided in paragraph (2), no person shall sell, either at wholesale or retail, lease, or transfer a motor vehicle transferred by a buyer or lessee to a manufacturer pursuant to paragraph (2) of subdivision (d) of Section 1793.2 or a similar statute of any other state, unless the nature of the nonconformity experienced by the original buyer or lessee is clearly and conspicuously disclosed to the prospective buyer, lessee, or transferee, the nonconformity is corrected, and the manufacturer warrants to the new buyer, lessee, or transferee in writing for a period of one year that the motor vehicle is free of that nonconformity.

(2) Except for the requirement that the nature of the nonconformity be disclosed to the transferee, paragraph (1) does not apply to the transfer of a motor vehicle to an educational institution if the purpose of the transfer is to make the motor vehicle available for use in automotive repair courses.

O



Senate Bill No. 1718

Passed the Senate August 31, 2000

Secretary of the Senate

Passed the Assembly August 31, 2000

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2000, at _____ o'clock ____M.

Private Secretary of the Governor

└

CHAPTER _____

An act to amend Section 1793.22 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

SB 1718, Sher. Warranties: new motor vehicles.

Existing law requires every manufacturer of consumer goods sold in this state, including motor vehicles, to maintain sufficient service and repair facilities to carry out the terms of its express warranties. Existing law further provides that if a manufacturer or its representative is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the vehicle or make restitution to the buyer, at the buyer's option. Existing law provides that it is rebuttably presumed that a reasonable number of attempts to conform a new motor vehicle to its warranty have been made if, within 18 months of delivery or 18,000 miles, whichever is first, (1) the same nonconformity has been subject to repair at least 4 times by the manufacturer or its agents and the manufacturer has been directly informed of the need for the repair at least once, or (2) the vehicle has been out of service because of repairs to nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery to the buyer.

The bill would additionally provide for the establishment of the presumption when a nonconformity that results in a condition likely to cause death or serious bodily injury if the vehicle is driven, has been subject to repair 2 or more times by the manufacturer or its agents and the buyer or lessee has at least once directly notified the manufacturer of the need for the repair. This bill would also make other related changes.

Existing law defines a new motor vehicle for the purposes of the above provisions to mean (1) a new motor vehicle used or bought primarily for personal, family, or

household purposes or (2) a new motor vehicle used primarily for business and personal, family, or household purposes by a person or organization, as specified, to which not more than 5 vehicles are registered in this state.

This bill would revise the 2nd definition to include only a new motor vehicle with a gross vehicle weight under 10,000 pounds bought or used primarily for business purposes, as specified.

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

SECTION 1. Section 1793.22 of the Civil Code is amended to read:

1793.22. (a) This section shall be known and may be cited as the Tanner Consumer Protection Act.

(b) It shall be presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within 18 months from delivery to the buyer or 18,000 miles on the odometer of the vehicle, whichever occurs first, one or more of the following occurs:

(1) The same nonconformity results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven and the nonconformity has been subject to repair two or more times by the manufacturer or its agents, and the buyer or lessee has at least once directly notified the manufacturer of the need for the repair of the nonconformity.

(2) The same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for the repair of the nonconformity.

(3) The vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery of the vehicle to the buyer. The 30-day limit shall be extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer or its agents. The buyer shall be required to directly notify the

manufacturer pursuant to paragraphs (1) and (2) only if the manufacturer has clearly and conspicuously disclosed to the buyer, with the warranty or the owner's manual, the provisions of this section and that of subdivision (d) of Section 1793.2, including the requirement that the buyer must notify the manufacturer directly pursuant to paragraphs (1) and (2). The notification, if required, shall be sent to the address, if any, specified clearly and conspicuously by the manufacturer in the warranty or owner's manual. This presumption shall be a rebuttable presumption affecting the burden of proof, and it may be asserted by the buyer in any civil action, including an action in small claims court, or other formal or informal proceeding.

(c) If a qualified third-party dispute resolution process exists, and the buyer receives timely notification in writing of the availability of that qualified third-party dispute resolution process with a description of its operation and effect, the presumption in subdivision (b) may not be asserted by the buyer until after the buyer has initially resorted to the qualified third-party dispute resolution process as required in subdivision (d). Notification of the availability of the qualified third-party dispute resolution process is not timely if the buyer suffers any prejudice resulting from any delay in giving the notification. If a qualified third-party dispute resolution process does not exist, or if the buyer is dissatisfied with that third-party decision, or if the manufacturer or its agent neglects to promptly fulfill the terms of the qualified third-party dispute resolution process decision after the decision is accepted by the buyer, the buyer may assert the presumption provided in subdivision (b) in an action to enforce the buyer's rights under subdivision (d) of Section 1793.2. The findings and decision of a qualified third-party dispute resolution process shall be admissible in evidence in the action without further foundation. Any period of limitation of actions under any federal or California laws with respect to any person shall be extended for a period equal to the number of days between the date a complaint is filed with a third-party

dispute resolution process and the date of its decision or the date before which the manufacturer or its agent is required by the decision to fulfill its terms if the decision is accepted by the buyer, whichever occurs later.

(d) A qualified third-party dispute resolution process shall be one that does all of the following:

(1) Complies with the minimum requirements of the Federal Trade Commission for informal dispute settlement procedures as set forth in Part 703 of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1987.

(2) Renders decisions which are binding on the manufacturer if the buyer elects to accept the decision.

(3) Prescribes a reasonable time, not to exceed 30 days after the decision is accepted by the buyer, within which the manufacturer or its agent must fulfill the terms of its decisions.

(4) Provides arbitrators who are assigned to decide disputes with copies of, and instruction in, the provisions of the Federal Trade Commission's regulations in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1, 1987, Division 2 (commencing with Section 2101) of the Commercial Code, and this chapter.

(5) Requires the manufacturer, when the process orders, under the terms of this chapter, either that the nonconforming motor vehicle be replaced if the buyer consents to this remedy or that restitution be made to the buyer, to replace the motor vehicle or make restitution in accordance with paragraph (2) of subdivision (d) of Section 1793.2.

(6) Provides, at the request of the arbitrator or a majority of the arbitration panel, for an inspection and written report on the condition of a nonconforming motor vehicle, at no cost to the buyer, by an automobile expert who is independent of the manufacturer.

(7) Takes into account, in rendering decisions, all legal and equitable factors, including, but not limited to, the written warranty, the rights and remedies conferred in regulations of the Federal Trade Commission contained

in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1, 1987, Division 2 (commencing with Section 2101) of the Commercial Code, this chapter, and any other equitable considerations appropriate in the circumstances. Nothing in this chapter requires that, to be certified as a qualified third-party dispute resolution process pursuant to this section, decisions of the process must consider or provide remedies in the form of awards of punitive damages or multiple damages, under subdivision (c) of Section 1794, or of attorneys' fees under subdivision (d) of Section 1794, or of consequential damages other than as provided in subdivisions (a) and (b) of Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

(8) Requires that no arbitrator deciding a dispute may be a party to the dispute and that no other person, including an employee, agent, or dealer for the manufacturer, may be allowed to participate substantively in the merits of any dispute with the arbitrator unless the buyer is allowed to participate also. Nothing in this subdivision prohibits any member of an arbitration board from deciding a dispute.

(9) Obtains and maintains certification by the Department of Consumer Affairs pursuant to Chapter 9 (commencing with Section 472) of Division 1 of the Business and Professions Code.

(e) For the purposes of subdivision (d) of Section 1793.2 and this section, the following terms have the following meanings:

(1) "Nonconformity" means a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle to the buyer or lessee.

(2) "New motor vehicle" means a new motor vehicle that is bought or used primarily for personal, family, or household purposes. "New motor vehicle" also means a new motor vehicle with a gross vehicle weight under 10,000 pounds that is bought or used primarily for business purposes by a person, including a partnership, limited liability company, corporation, association, or any other

legal entity, to which not more than five motor vehicles are registered in this state. "New motor vehicle" includes the chassis, chassis cab, and that portion of a motor home devoted to its propulsion, but does not include any portion designed, used, or maintained primarily for human habitation, a dealer-owned vehicle and a "demonstrator" or other motor vehicle sold with a manufacturer's new car warranty but does not include a motorcycle or a motor vehicle which is not registered under the Vehicle Code because it is to be operated or used exclusively off the highways. A demonstrator is a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type.

(3) "Motor home" means a vehicular unit built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab, or van, which becomes an integral part of the completed vehicle, designed for human habitation for recreational or emergency occupancy.

(f) (1) Except as provided in paragraph (2), no person shall sell, either at wholesale or retail, lease, or transfer a motor vehicle transferred by a buyer or lessee to a manufacturer pursuant to paragraph (2) of subdivision (d) of Section 1793.2 or a similar statute of any other state, unless the nature of the nonconformity experienced by the original buyer or lessee is clearly and conspicuously disclosed to the prospective buyer, lessee, or transferee, the nonconformity is corrected, and the manufacturer warrants to the new buyer, lessee, or transferee in writing for a period of one year that the motor vehicle is free of that nonconformity.

(2) Except for the requirement that the nature of the nonconformity be disclosed to the transferee, paragraph (1) does not apply to the transfer of a motor vehicle to an educational institution if the purpose of the transfer is to make the motor vehicle available for use in automotive repair courses.

Approved _____, 2000

Governor

└

AMENDED IN ASSEMBLY AUGUST 30, 2000

AMENDED IN ASSEMBLY AUGUST 25, 2000

AMENDED IN ASSEMBLY AUGUST 7, 2000

AMENDED IN ASSEMBLY JUNE 29, 2000

AMENDED IN SENATE MAY 4, 2000

AMENDED IN SENATE MAY 1, 2000

SENATE BILL**No. 1718**

Introduced by Senator Sher and Assembly Members Davis
and Shelley

(Coauthors: Senators Chesbro, Karnette, and Murray)

(Coauthors: Assembly Members Alquist, Bock, and Kuehl)

February 23, 2000

An act to amend Section 1793.22 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

SB 1718, as amended, Sher. Warranties: new motor vehicles.

Existing law requires every manufacturer of consumer goods sold in this state, including motor vehicles, to maintain sufficient service and repair facilities to carry out the terms of its express warranties. Existing law further provides that if a manufacturer or its representative is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the vehicle or

make restitution to the buyer, at the buyer's option. Existing law provides that it is rebuttably presumed that a reasonable number of attempts to conform a new motor vehicle to its warranty have been made if, within 18 months of delivery or 18,000 miles, whichever is first, (1) the same nonconformity has been subject to repair at least 4 times by the manufacturer or its agents and the manufacturer has been directly informed of the need for the repair at least once, or (2) the vehicle has been out of service because of repairs to nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery to the buyer.

The bill would additionally provide for the establishment of the presumption when a nonconformity that results in a condition likely to cause death or serious bodily injury if the vehicle is driven has been subject to repair 2 or more times by the manufacturer or its agents and the buyer or lessee has at least once directly notified the manufacturer of the need for the repair. This bill would also make other related changes.

Existing law defines a new motor vehicle for the purposes of the above provisions to mean (1) a new motor vehicle used or bought primarily for personal, family, or household purposes or (2) a new motor vehicle used primarily for business and personal, family, or household purposes by a person or organization, as specified, to which not more than 5 vehicles are registered in this state.

This bill would revise the 2nd definition to include only a new motor vehicle with a gross vehicle weight under 10,000 pounds bought or used primarily for business purposes, as specified.

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. Section 1793.22 of the Civil Code is
2 amended to read:

3 1793.22. (a) This section shall be known and may be
4 cited as the Tanner Consumer Protection Act.

5 (b) It shall be presumed that a reasonable number of
6 attempts have been made to conform a new motor

1 vehicle to the applicable express warranties if, within 18
2 months from delivery to the buyer or 18,000 miles on the
3 odometer of the vehicle, whichever occurs first, one or
4 more of the following occurs:

5 (1) The same nonconformity results in a condition that
6 is likely to cause death or serious bodily injury if the
7 vehicle is driven and the nonconformity has been subject
8 to repair two or more times by the manufacturer or its
9 agents, and the buyer or lessee has at least once directly
10 notified the manufacturer of the need for the repair of the
11 nonconformity.

12 (2) The same nonconformity has been subject to
13 repair four or more times by the manufacturer or its
14 agents and the buyer has at least once directly notified the
15 manufacturer of the need for the repair of the
16 nonconformity.

17 (3) The vehicle is out of service by reason of repair of
18 nonconformities by the manufacturer or its agents for a
19 cumulative total of more than 30 calendar days since
20 delivery of the vehicle to the buyer. The 30-day limit shall
21 be extended only if repairs cannot be performed due to
22 conditions beyond the control of the manufacturer or its
23 agents. The buyer shall be required to directly notify the
24 manufacturer pursuant to paragraphs (1) and (2) only if
25 the manufacturer has clearly and conspicuously disclosed
26 to the buyer, with the warranty or the owner's manual,
27 the provisions of this section and that of subdivision (d)
28 of Section 1793.2, including the requirement that the
29 buyer must notify the manufacturer directly pursuant to
30 paragraphs (1) and (2). *The notification, if required,*
31 *shall be sent to the address, if any, specified clearly and*
32 *conspicuously by the manufacturer in the warranty or*
33 *owner's manual.* This presumption shall be a rebuttable
34 presumption affecting the burden of proof, and it may be
35 asserted by the buyer in any civil action, including an
36 action in small claims court, or other formal or informal
37 proceeding.

38 (c) If a qualified third-party dispute resolution process
39 exists, and the buyer receives timely notification in
40 writing of the availability of that qualified third-party

1 dispute resolution process with a description of its
2 operation and effect, the presumption in subdivision (b)
3 may not be asserted by the buyer until after the buyer has
4 initially resorted to the qualified third-party dispute
5 resolution process as required in subdivision (d).
6 Notification of the availability of the qualified third-party
7 dispute resolution process is not timely if the buyer suffers
8 any prejudice resulting from any delay in giving the
9 notification. If a qualified third-party dispute resolution
10 process does not exist, or if the buyer is dissatisfied with
11 that third-party decision, or if the manufacturer or its
12 agent neglects to promptly fulfill the terms of the
13 qualified third-party dispute resolution process decision
14 after the decision is accepted by the buyer, the buyer may
15 assert the presumption provided in subdivision (b) in an
16 action to enforce the buyer's rights under subdivision (d)
17 of Section 1793.2. The findings and decision of a qualified
18 third-party dispute resolution process shall be admissible
19 in evidence in the action without further foundation. Any
20 period of limitation of actions under any federal or
21 California laws with respect to any person shall be
22 extended for a period equal to the number of days
23 between the date a complaint is filed with a third-party
24 dispute resolution process and the date of its decision or
25 the date before which the manufacturer or its agent is
26 required by the decision to fulfill its terms if the decision
27 is accepted by the buyer, whichever occurs later.

28 (d) A qualified third-party dispute resolution process
29 shall be one that does all of the following:

30 (1) Complies with the minimum requirements of the
31 Federal Trade Commission for informal dispute
32 settlement procedures as set forth in Part 703 of Title 16
33 of the Code of Federal Regulations, as those regulations
34 read on January 1, 1987.

35 (2) Renders decisions which are binding on the
36 manufacturer if the buyer elects to accept the decision.

37 (3) Prescribes a reasonable time, not to exceed 30 days
38 after the decision is accepted by the buyer, within which
39 the manufacturer or its agent must fulfill the terms of its
40 decisions.

1 (4) Provides arbitrators who are assigned to decide
2 disputes with copies of, and instruction in, the provisions
3 of the Federal Trade Commission's regulations in Part 703
4 of Title 16 of the Code of Federal Regulations as those
5 regulations read on January 1, 1987, Division 2
6 (commencing with Section 2101) of the Commercial
7 Code, and this chapter.

8 (5) Requires the manufacturer, when the process
9 orders, under the terms of this chapter, either that the
10 nonconforming motor vehicle be replaced if the buyer
11 consents to this remedy or that restitution be made to the
12 buyer, to replace the motor vehicle or make restitution
13 in accordance with paragraph (2) of subdivision (d) of
14 Section 1793.2.

15 (6) Provides, at the request of the arbitrator or a
16 majority of the arbitration panel, for an inspection and
17 written report on the condition of a nonconforming
18 motor vehicle, at no cost to the buyer, by an automobile
19 expert who is independent of the manufacturer.

20 (7) Takes into account, in rendering decisions, all legal
21 and equitable factors, including, but not limited to, the
22 written warranty, the rights and remedies conferred in
23 regulations of the Federal Trade Commission contained
24 in Part 703 of Title 16 of the Code of Federal Regulations
25 as those regulations read on January 1, 1987, Division 2
26 (commencing with Section 2101) of the Commercial
27 Code, this chapter, and any other equitable
28 considerations appropriate in the circumstances. Nothing
29 in this chapter requires that, to be certified as a qualified
30 third-party dispute resolution process pursuant to this
31 section, decisions of the process must consider or provide
32 remedies in the form of awards of punitive damages or
33 multiple damages, under subdivision (c) of Section 1794,
34 or of attorneys' fees under subdivision (d) of Section 1794,
35 or of consequential damages other than as provided in
36 subdivisions (a) and (b) of Section 1794, including, but
37 not limited to, reasonable repair, towing, and rental car
38 costs actually incurred by the buyer.

39 (8) Requires that no arbitrator deciding a dispute may
40 be a party to the dispute and that no other person,

1 including an employee, agent, or dealer for the
2 manufacturer, may be allowed to participate
3 substantively in the merits of any dispute with the
4 arbitrator unless the buyer is allowed to participate also.
5 Nothing in this subdivision prohibits any member of an
6 arbitration board from deciding a dispute.

7 (9) Obtains and maintains certification by the
8 Department of Consumer Affairs pursuant to Chapter 9
9 (commencing with Section 472) of Division 1 of the
10 Business and Professions Code.

11 (e) For the purposes of subdivision (d) of Section
12 1793.2 and this section, the following terms have the
13 following meanings:

14 (1) "Nonconformity" means a nonconformity which
15 substantially impairs the use, value, or safety of the new
16 motor vehicle to the buyer or lessee.

17 (2) "New motor vehicle" means a new motor vehicle
18 that is bought or used primarily for personal, family, or
19 household purposes. "New motor vehicle" also means a
20 new motor vehicle with a gross vehicle weight under
21 10,000 pounds that is bought or used primarily for business
22 purposes by a person, including a partnership, limited
23 liability company, corporation, association, or any other
24 legal entity, to which not more than five motor vehicles
25 are registered in this state. "New motor vehicle" includes
26 the chassis, chassis cab, and that portion of a motor home
27 devoted to its propulsion, but does not include any
28 portion designed, used, or maintained primarily for
29 human habitation, a dealer-owned vehicle and a
30 "demonstrator" or other motor vehicle sold with a
31 manufacturer's new car warranty but does not include a
32 motorcycle or a motor vehicle which is not registered
33 under the Vehicle Code because it is to be operated or
34 used exclusively off the highways. A demonstrator is a
35 vehicle assigned by a dealer for the purpose of
36 demonstrating qualities and characteristics common to
37 vehicles of the same or similar model and type.

38 (3) "Motor home" means a vehicular unit built on, or
39 permanently attached to, a self-propelled motor vehicle
40 chassis, chassis cab, or van, which becomes an integral

1 part of the completed vehicle, designed for human
2 habitation for recreational or emergency occupancy.

3 (f) (1) Except as provided in paragraph (2), no
4 person shall sell, either at wholesale or retail, lease, or
5 transfer a motor vehicle transferred by a buyer or lessee
6 to a manufacturer pursuant to paragraph (2) of
7 subdivision (d) of Section 1793.2 or a similar statute of any
8 other state, unless the nature of the nonconformity
9 experienced by the original buyer or lessee is clearly and
10 conspicuously disclosed to the prospective buyer, lessee,
11 or transferee, the nonconformity is corrected, and the
12 manufacturer warrants to the new buyer, lessee, or
13 transferee in writing for a period of one year that the
14 motor vehicle is free of that nonconformity.

15 (2) Except for the requirement that the nature of the
16 nonconformity be disclosed to the transferee, paragraph
17 (1) does not apply to the transfer of a motor vehicle to an
18 educational institution if the purpose of the transfer is to
19 make the motor vehicle available for use in automotive
20 repair courses.

O

AMENDED IN ASSEMBLY AUGUST 25, 2000

AMENDED IN ASSEMBLY AUGUST 7, 2000

AMENDED IN ASSEMBLY JUNE 29, 2000

AMENDED IN SENATE MAY 4, 2000

AMENDED IN SENATE MAY 1, 2000

SENATE BILL

No. 1718

**Introduced by Senator Sher and Assembly Members Davis
and Shelley**

~~(Principal coauthor: Assembly Member Shelley)~~

(Coauthors: Senators Chesbro, Karnette, and Murray)

(Coauthors: Assembly Members Alquist, Bock, and Kuehl)

February 23, 2000

An act to amend Section 1793.22 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

SB 1718, as amended, Sher. Warranties: new motor vehicles.

Existing law requires every manufacturer of consumer goods sold in this state, including motor vehicles, to maintain sufficient service and repair facilities to carry out the terms of its express warranties. Existing law further provides that if a manufacturer or its representative is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the vehicle or

make restitution to the buyer, at the buyer's option. Existing law provides that it is rebuttably presumed that a reasonable number of attempts to conform a new motor vehicle to its warranty have been made if, within 18 months of delivery or 18,000 miles, whichever is first, (1) the same nonconformity has been subject to repair at least 4 times by the manufacturer or its agents and the manufacturer has been directly informed of the need for the repair at least once, or (2) the vehicle has been out of service because of repairs to nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery to the buyer.

The bill would additionally provide for the establishment of the presumption when a nonconformity that results in a condition likely to cause death or serious bodily injury if the vehicle is driven has been subject to repair 2 or more times by the manufacturer or its agents and the buyer or lessee has at least once directly notified the manufacturer of the need for the repair. This bill would also make other related changes.

Existing law defines a new motor vehicle for the purposes of the above provisions to mean (1) a new motor vehicle used or bought—(1) primarily for personal, family, or household purposes or (2) *a new motor vehicle used primarily* for business and personal, family, or household purposes by a person or organization, as specified, to which not more than 5 vehicles are registered in this state.

This bill would revise the 2nd definition to include only a new motor vehicle *with a gross vehicle weight under 10,000 pounds* bought or used primarily for business purposes, as specified.

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. Section 1793.22 of the Civil Code is
2 amended to read:

3 1793.22. (a) This section shall be known and may be
4 cited as the Tanner Consumer Protection Act.

5 (b) It shall be presumed that a reasonable number of
6 attempts have been made to conform a new motor

1 vehicle to the applicable express warranties if, within 18
2 months from delivery to the buyer or 18,000 miles on the
3 odometer of the vehicle, whichever occurs first, one or
4 more of the following occurs:

5 (1) The same nonconformity results in a condition that
6 is likely to cause death or serious bodily injury if the
7 vehicle is driven and the nonconformity has been subject
8 to repair two or more times by the manufacturer or its
9 agents, and the buyer or lessee has at least once directly
10 notified the manufacturer of the need for the repair of the
11 nonconformity.

12 (2) The same nonconformity has been subject to
13 repair four or more times by the manufacturer or its
14 agents and the buyer has at least once directly notified the
15 manufacturer of the need for the repair of the
16 nonconformity.

17 (3) The vehicle is out of service by reason of repair of
18 nonconformities by the manufacturer or its agents for a
19 cumulative total of more than 30 calendar days since
20 delivery of the vehicle to the buyer. The 30-day limit shall
21 be extended only if repairs cannot be performed due to
22 conditions beyond the control of the manufacturer or its
23 agents. The buyer shall be required to directly notify the
24 manufacturer pursuant to paragraphs (1) and (2) only if
25 the manufacturer has clearly and conspicuously disclosed
26 to the buyer, with the warranty or the owner's manual,
27 the provisions of this section and that of subdivision (d)
28 of Section 1793.2, including the requirement that the
29 buyer must notify the manufacturer directly pursuant to
30 paragraphs (1) and (2). This presumption shall be a
31 rebuttable presumption affecting the burden of proof,
32 and it may be asserted by the buyer in any civil action,
33 including an action in small claims court, or other formal
34 or informal proceeding.

35 (c) If a qualified third-party dispute resolution process
36 exists, and the buyer receives timely notification in
37 writing of the availability of that qualified third-party
38 dispute resolution process with a description of its
39 operation and effect, the presumption in subdivision (b)
40 may not be asserted by the buyer until after the buyer has

1 initially resorted to the qualified third-party dispute
2 resolution process as required in subdivision (d).
3 Notification of the availability of the qualified third-party
4 dispute resolution process is not timely if the buyer suffers
5 any prejudice resulting from any delay in giving the
6 notification. If a qualified third-party dispute resolution
7 process does not exist, or if the buyer is dissatisfied with
8 that third-party decision, or if the manufacturer or its
9 agent neglects to promptly fulfill the terms of the
10 qualified third-party dispute resolution process decision
11 after the decision is accepted by the buyer, the buyer may
12 assert the presumption provided in subdivision (b) in an
13 action to enforce the buyer's rights under subdivision (d)
14 of Section 1793.2. The findings and decision of a qualified
15 third-party dispute resolution process shall be admissible
16 in evidence in the action without further foundation. Any
17 period of limitation of actions under any federal or
18 California laws with respect to any person shall be
19 extended for a period equal to the number of days
20 between the date a complaint is filed with a third-party
21 dispute resolution process and the date of its decision or
22 the date before which the manufacturer or its agent is
23 required by the decision to fulfill its terms if the decision
24 is accepted by the buyer, whichever occurs later.

25 (d) A qualified third-party dispute resolution process
26 shall be one that does all of the following:

27 (1) Complies with the minimum requirements of the
28 Federal Trade Commission for informal dispute
29 settlement procedures as set forth in Part 703 of Title 16
30 of the Code of Federal Regulations, as those regulations
31 read on January 1, 1987.

32 (2) Renders decisions which are binding on the
33 manufacturer if the buyer elects to accept the decision.

34 (3) Prescribes a reasonable time, not to exceed 30 days
35 after the decision is accepted by the buyer, within which
36 the manufacturer or its agent must fulfill the terms of its
37 decisions.

38 (4) Provides arbitrators who are assigned to decide
39 disputes with copies of, and instruction in, the provisions
40 of the Federal Trade Commission's regulations in Part 703

1 of Title 16 of the Code of Federal Regulations as those
2 regulations read on January 1, 1987, Division 2
3 (commencing with Section 2101) of the Commercial
4 Code, and this chapter.

5 (5) Requires the manufacturer, when the process
6 orders, under the terms of this chapter, either that the
7 nonconforming motor vehicle be replaced if the buyer
8 consents to this remedy or that restitution be made to the
9 buyer, to replace the motor vehicle or make restitution
10 in accordance with paragraph (2) of subdivision (d) of
11 Section 1793.2.

12 (6) Provides, at the request of the arbitrator or a
13 majority of the arbitration panel, for an inspection and
14 written report on the condition of a nonconforming
15 motor vehicle, at no cost to the buyer, by an automobile
16 expert who is independent of the manufacturer.

17 (7) Takes into account, in rendering decisions, all legal
18 and equitable factors, including, but not limited to, the
19 written warranty, the rights and remedies conferred in
20 regulations of the Federal Trade Commission contained
21 in Part 703 of Title 16 of the Code of Federal Regulations
22 as those regulations read on January 1, 1987, Division 2
23 (commencing with Section 2101) of the Commercial
24 Code, this chapter, and any other equitable
25 considerations appropriate in the circumstances. Nothing
26 in this chapter requires that, to be certified as a qualified
27 third-party dispute resolution process pursuant to this
28 section, decisions of the process must consider or provide
29 remedies in the form of awards of punitive damages or
30 multiple damages, under subdivision (c) of Section 1794,
31 or of attorneys' fees under subdivision (d) of Section 1794,
32 or of consequential damages other than as provided in
33 subdivisions (a) and (b) of Section 1794, including, but
34 not limited to, reasonable repair, towing, and rental car
35 costs actually incurred by the buyer.

36 (8) Requires that no arbitrator deciding a dispute may
37 be a party to the dispute and that no other person,
38 including an employee, agent, or dealer for the
39 manufacturer, may be allowed to participate
40 substantively in the merits of any dispute with the

1 arbitrator unless the buyer is allowed to participate also.
2 Nothing in this subdivision prohibits any member of an
3 arbitration board from deciding a dispute.

4 (9) Obtains and maintains certification by the
5 Department of Consumer Affairs pursuant to Chapter 9
6 (commencing with Section 472) of Division 1 of the
7 Business and Professions Code.

8 (e) For the purposes of subdivision (d) of Section
9 1793.2 and this section, the following terms have the
10 following meanings:

11 (1) "Nonconformity" means a nonconformity which
12 substantially impairs the use, value, or safety of the new
13 motor vehicle to the buyer or lessee.

14 (2) "New motor vehicle" means a new motor vehicle
15 that is bought or used primarily for personal, family, or
16 household purposes. "New motor vehicle" also means a
17 new motor vehicle *with a gross vehicle weight under*
18 *10,000 pounds* that is bought or used primarily for business
19 purposes by a person, including a partnership, limited
20 liability company, corporation, association, or any other
21 legal entity, to which not more than five motor vehicles
22 are registered in this state. "New motor vehicle" includes
23 the chassis, chassis cab, and that portion of a motor home
24 devoted to its propulsion, but does not include any
25 portion designed, used, or maintained primarily for
26 human habitation, a dealer-owned vehicle and a
27 "demonstrator" or other motor vehicle sold with a
28 manufacturer's new car warranty but does not include a
29 motorcycle or a motor vehicle which is not registered
30 under the Vehicle Code because it is to be operated or
31 used exclusively off the highways. A demonstrator is a
32 vehicle assigned by a dealer for the purpose of
33 demonstrating qualities and characteristics common to
34 vehicles of the same or similar model and type.

35 (3) "Motor home" means a vehicular unit built on, or
36 permanently attached to, a self-propelled motor vehicle
37 chassis, chassis cab, or van, which becomes an integral
38 part of the completed vehicle, designed for human
39 habitation for recreational or emergency occupancy.

1 (f) (1) Except as provided in paragraph (2), no
2 person shall sell, either at wholesale or retail, lease, or
3 transfer a motor vehicle transferred by a buyer or lessee
4 to a manufacturer pursuant to paragraph (2) of
5 subdivision (d) of Section 1793.2 or a similar statute of any
6 other state, unless the nature of the nonconformity
7 experienced by the original buyer or lessee is clearly and
8 conspicuously disclosed to the prospective buyer, lessee,
9 or transferee, the nonconformity is corrected, and the
10 manufacturer warrants to the new buyer, lessee, or
11 transferee in writing for a period of one year that the
12 motor vehicle is free of that nonconformity.
13 (2) Except for the requirement that the nature of the
14 nonconformity be disclosed to the transferee, paragraph
15 (1) does not apply to the transfer of a motor vehicle to an
16 educational institution if the purpose of the transfer is to
17 make the motor vehicle available for use in automotive
18 repair courses.

O

AMENDED IN ASSEMBLY AUGUST 7, 2000

AMENDED IN ASSEMBLY JUNE 29, 2000

AMENDED IN SENATE MAY 4, 2000

AMENDED IN SENATE MAY 1, 2000

SENATE BILL

No. 1718

Introduced by Senator Sher
(Principal coauthor: Assembly Member Shelley)

February 23, 2000

An act to amend Section 1793.22 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

SB 1718, as amended, Sher. Warranties: new motor vehicles.

Existing law requires every manufacturer of consumer goods sold in this state, including motor vehicles, to maintain sufficient service and repair facilities to carry out the terms of its express warranties. Existing law further provides that if a manufacturer or its representative is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the vehicle or make restitution to the buyer, at the buyer's option. Existing law provides that it is rebuttably presumed that a reasonable number of attempts to conform a new motor vehicle to its warranty have been made if, within 18 months of delivery or 18,000 miles, whichever is first, (1) the same nonconformity

has been subject to repair at least 4 times by the manufacturer or its agents and the manufacturer has been directly informed of the need for the repair at least once, or (2) the vehicle has been out of service because of repairs to nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery to the buyer.

The bill would additionally provide for the establishment of the presumption when a nonconformity that results in a condition likely to cause death or serious bodily injury if the vehicle is driven has been subject to repair 2 or more times by the manufacturer or its agents and the buyer or lessee has at least once directly notified the manufacturer of the need for the repair. This bill would also make other related changes.

Existing law defines a new motor vehicle for the purposes of the above provisions to mean a new motor vehicle used or bought (1) primarily for personal, family, or household purposes or (2) for business and personal, family, or household purposes by a person or organization, as specified, to which not more than 5 vehicles are registered in this state.

This bill would revise the 2nd definition to include only a new motor vehicle bought or used primarily for business purposes, as specified.

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.—Section 1793.22 of the Civil Code is~~
- 2 *SECTION 1. Section 1793.22 of the Civil Code is*
- 3 *amended to read:*
- 4 1793.22. (a) This section shall be known and may be
- 5 cited as the Tanner Consumer Protection Act.
- 6 (b) It shall be presumed that a reasonable number of
- 7 attempts have been made to conform a new motor
- 8 vehicle to the applicable express warranties if, within 18
- 9 months from delivery to the buyer or 18,000 miles on the
- 10 odometer of the vehicle, whichever occurs first, ~~either~~
- 11 ~~(1) the one or more of the following occurs:~~
- 12 *(1) The same nonconformity results in a condition that*
- 13 *is likely to cause death or serious bodily injury if the*

1 *vehicle is driven and the nonconformity has been subject*
2 *to repair two or more times by the manufacturer or its*
3 *agents, and the buyer or lessee has at least once directly*
4 *notified the manufacturer of the need for the repair of the*
5 *nonconformity.*

6 (2) *The same nonconformity has been subject to*
7 *repair four or more times by the manufacturer or its*
8 *agents and the buyer has at least once directly notified the*
9 *manufacturer of the need for the repair of the*
10 *nonconformity or (2) the.*

11 (3) *The vehicle is out of service by reason of repair of*
12 *nonconformities by the manufacturer or its agents for a*
13 *cumulative total of more than 30 calendar days since*
14 *delivery of the vehicle to the buyer. The 30-day limit shall*
15 *be extended only if repairs cannot be performed due to*
16 *conditions beyond the control of the manufacturer or its*
17 *agents. The buyer shall be required to directly notify the*
18 *manufacturer pursuant to ~~paragraph (1)~~ paragraphs (1)*
19 *and (2) only if the manufacturer has clearly and*
20 *conspicuously disclosed to the buyer, with the warranty*
21 *or the owner's manual, the provisions of this section and*
22 *that of subdivision (d) of Section 1793.2, including the*
23 *requirement that the buyer must notify the*
24 *manufacturer directly pursuant to ~~paragraph (1)~~*
25 *paragraphs (1) and (2). This presumption shall be a*
26 *rebuttable presumption affecting the burden of proof,*
27 *and it may be asserted by the buyer in any civil action,*
28 *including an action in small claims court, or other formal*
29 *or informal proceeding.*

30 (c) *If a qualified third-party dispute resolution process*
31 *exists, and the buyer receives timely notification in*
32 *writing of the availability of that qualified third-party*
33 *dispute resolution process with a description of its*
34 *operation and effect, the presumption in subdivision (b)*
35 *may not be asserted by the buyer until after the buyer has*
36 *initially resorted to the qualified third-party dispute*
37 *resolution process as required in subdivision (d).*
38 *Notification of the availability of the qualified third-party*
39 *dispute resolution process is not timely if the buyer suffers*
40 *any prejudice resulting from any delay in giving the*

1 notification. If a qualified third-party dispute resolution
2 process does not exist, or if the buyer is dissatisfied with
3 that third-party decision, or if the manufacturer or its
4 agent neglects to promptly fulfill the terms of the
5 qualified third-party dispute resolution process decision
6 after the decision is accepted by the buyer, the buyer may
7 assert the presumption provided in subdivision (b) in an
8 action to enforce the buyer's rights under subdivision (d)
9 of Section 1793.2. The findings and decision of a qualified
10 third-party dispute resolution process shall be admissible
11 in evidence in the action without further foundation. Any
12 period of limitation of actions under any federal or
13 California laws with respect to any person shall be
14 extended for a period equal to the number of days
15 between the date a complaint is filed with a third-party
16 dispute resolution process and the date of its decision or
17 the date before which the manufacturer or its agent is
18 required by the decision to fulfill its terms if the decision
19 is accepted by the buyer, whichever occurs later.

20 (d) A qualified third-party dispute resolution process
21 shall be one that does all of the following:

22 (1) Complies with the minimum requirements of the
23 Federal Trade Commission for informal dispute
24 settlement procedures as set forth in Part 703 of Title 16
25 of the Code of Federal Regulations, as those regulations
26 read on January 1, 1987.

27 (2) Renders decisions which are binding on the
28 manufacturer if the buyer elects to accept the decision.

29 (3) Prescribes a reasonable time, not to exceed 30 days
30 after the decision is accepted by the buyer, within which
31 the manufacturer or its agent must fulfill the terms of its
32 decisions.

33 (4) Provides arbitrators who are assigned to decide
34 disputes with copies of, and instruction in, the provisions
35 of the Federal Trade Commission's regulations in Part 703
36 of Title 16 of the Code of Federal Regulations as those
37 regulations read on January 1, 1987, Division 2
38 (commencing with Section 2101) of the Commercial
39 Code, and this chapter.

1 (5) Requires the manufacturer, when the process
2 orders, under the terms of this chapter, either that the
3 nonconforming motor vehicle be replaced if the buyer
4 consents to this remedy or that restitution be made to the
5 buyer, to replace the motor vehicle or make restitution
6 in accordance with paragraph (2) of subdivision (d) of
7 Section 1793.2.

8 (6) Provides, at the request of the arbitrator or a
9 majority of the arbitration panel, for an inspection and
10 written report on the condition of a nonconforming
11 motor vehicle, at no cost to the buyer, by an automobile
12 expert who is independent of the manufacturer.

13 (7) Takes into account, in rendering decisions, all legal
14 and equitable factors, including, but not limited to, the
15 written warranty, the rights and remedies conferred in
16 regulations of the Federal Trade Commission contained
17 in Part 703 of Title 16 of the Code of Federal Regulations
18 as those regulations read on January 1, 1987, Division 2
19 (commencing with Section 2101) of the Commercial
20 Code, this chapter, and any other equitable
21 considerations appropriate in the circumstances. Nothing
22 in this chapter requires that, to be certified as a qualified
23 third-party dispute resolution process pursuant to this
24 section, decisions of the process must consider or provide
25 remedies in the form of awards of punitive damages or
26 multiple damages, under subdivision (c) of Section 1794,
27 or of attorneys' fees under subdivision (d) of Section 1794,
28 or of consequential damages other than as provided in
29 subdivisions (a) and (b) of Section 1794, including, but
30 not limited to, reasonable repair, towing, and rental car
31 costs actually incurred by the buyer.

32 (8) Requires that no arbitrator deciding a dispute may
33 be a party to the dispute and that no other person,
34 including an employee, agent, or dealer for the
35 manufacturer, may be allowed to participate
36 substantively in the merits of any dispute with the
37 arbitrator unless the buyer is allowed to participate also.
38 Nothing in this subdivision prohibits any member of an
39 arbitration board from deciding a dispute.

1 (9) Obtains and maintains certification by the
2 Department of Consumer Affairs pursuant to Chapter 9
3 (commencing with Section 472) of Division 1 of the
4 Business and Professions Code.

5 (e) For the purposes of subdivision (d) of Section
6 1793.2 and this section, the following terms have the
7 following meanings:

8 (1) "Nonconformity" means a nonconformity which
9 substantially impairs the use, value, or safety of the new
10 motor vehicle to the buyer or lessee.

11 (2) "New motor vehicle" means a new motor vehicle
12 that is ~~used or~~ bought ~~for use or used~~ primarily for
13 personal, family, or household purposes. "New motor
14 vehicle" also means a new motor vehicle that is bought or
15 used *primarily* for business ~~and personal, family, or~~
16 ~~household~~ purposes by a person, including a partnership,
17 limited liability company, corporation, association, or any
18 other legal entity, to which not more than five motor
19 vehicles are registered in this state. "New motor vehicle"
20 includes the chassis, chassis cab, and that portion of a
21 motor home devoted to its propulsion, but does not
22 include any portion designed, used, or maintained
23 primarily for human habitation, a dealer-owned vehicle
24 and a "demonstrator" or other motor vehicle sold with a
25 manufacturer's new car warranty but does not include a
26 motorcycle or a motor vehicle which is not registered
27 under the Vehicle Code because it is to be operated or
28 used exclusively off the highways. A demonstrator is a
29 vehicle assigned by a dealer for the purpose of
30 demonstrating qualities and characteristics common to
31 vehicles of the same or similar model and type.

32 (3) "Motor home" means a vehicular unit built on, or
33 permanently attached to, a self-propelled motor vehicle
34 chassis, chassis cab, or van, which becomes an integral
35 part of the completed vehicle, designed for human
36 habitation for recreational or emergency occupancy.

37 (f) (1) Except as provided in paragraph (2), no
38 person shall sell, either at wholesale or retail, lease, or
39 transfer a motor vehicle transferred by a buyer or lessee
40 to a manufacturer pursuant to paragraph (2) of

1 subdivision (d) of Section 1793.2 or a similar statute of any
2 other state, unless the nature of the nonconformity
3 experienced by the original buyer or lessee is clearly and
4 conspicuously disclosed to the prospective buyer, lessee,
5 or transferee, the nonconformity is corrected, and the
6 manufacturer warrants to the new buyer, lessee, or
7 transferee in writing for a period of one year that the
8 motor vehicle is free of that nonconformity.

9 (2) Except for the requirement that the nature of the
10 nonconformity be disclosed to the transferee, paragraph
11 (1) does not apply to the transfer of a motor vehicle to an
12 educational institution if the purpose of the transfer is to
13 make the motor vehicle available for use in automotive
14 repair courses.

15 ~~amended to read:~~

16 ~~1793.22. (a) This section shall be known and may be~~
17 ~~cited as the Tanner Consumer Protection Act.~~

18 ~~(b) It shall be presumed that a reasonable number of~~
19 ~~attempts have been made to conform a new motor~~
20 ~~vehicle to the applicable express warranties if, within 18~~
21 ~~months from delivery to the buyer or 18,000 miles on the~~
22 ~~odometer of the vehicle, whichever occurs first, either of~~
23 ~~the following occurs:~~

24 ~~(1) The same nonconformity has been subject to~~
25 ~~repair four or more times by the manufacturer or its~~
26 ~~agents and the buyer has at least once directly notified the~~
27 ~~manufacturer of the need for the repair of the~~
28 ~~nonconformity.~~

29 ~~(2) The vehicle is out of service by reason of repair of~~
30 ~~nonconformities by the manufacturer or its agents for a~~
31 ~~cumulative total of more than 30 calendar days since~~
32 ~~delivery of the vehicle to the buyer. The 30-day limit shall~~
33 ~~be extended only if repairs cannot be performed due to~~
34 ~~conditions beyond the control of the manufacturer or its~~
35 ~~agents.~~

36 ~~The buyer shall be required to directly notify the~~
37 ~~manufacturer pursuant to paragraph (1) only if the~~
38 ~~manufacturer has clearly and conspicuously disclosed to~~
39 ~~the buyer, with the warranty or the owner's manual, the~~
40 ~~provisions of this section and that of subdivision (d) of~~

1 ~~Section 1793.2, including the requirement that the buyer~~
2 ~~must notify the manufacturer directly pursuant to~~
3 ~~paragraph (1). This presumption shall be a rebuttable~~
4 ~~presumption affecting the burden of proof, and it may be~~
5 ~~asserted by the buyer in any civil action, including an~~
6 ~~action in small claims court, or other formal or informal~~
7 ~~proceeding.~~

8 ~~(e) If a qualified third-party dispute resolution process~~
9 ~~exists, and the buyer receives timely notification in~~
10 ~~writing of the availability of that qualified third-party~~
11 ~~dispute resolution process with a description of its~~
12 ~~operation and effect, the presumption in subdivision (b)~~
13 ~~may not be asserted by the buyer until after the buyer has~~
14 ~~initially resorted to the qualified third-party dispute~~
15 ~~resolution process as required in subdivision (d).~~
16 ~~Notification of the availability of the qualified third-party~~
17 ~~dispute resolution process is not timely if the buyer suffers~~
18 ~~any prejudice resulting from any delay in giving the~~
19 ~~notification. If a qualified third-party dispute resolution~~
20 ~~process does not exist, or if the buyer is dissatisfied with~~
21 ~~that third-party decision, or if the manufacturer or its~~
22 ~~agent neglects to promptly fulfill the terms of the~~
23 ~~qualified third-party dispute resolution process decision~~
24 ~~after the decision is accepted by the buyer, the buyer may~~
25 ~~assert the presumption provided in subdivision (b) in an~~
26 ~~action to enforce the buyer's rights under subdivision (d)~~
27 ~~of Section 1793.2. The findings and decision of a qualified~~
28 ~~third-party dispute resolution process shall be admissible~~
29 ~~in evidence in the action without further foundation. Any~~
30 ~~period of limitation of actions under any federal or~~
31 ~~California laws with respect to any person shall be~~
32 ~~extended for a period equal to the number of days~~
33 ~~between the date a complaint is filed with a third-party~~
34 ~~dispute resolution process and the date of its decision or~~
35 ~~the date before which the manufacturer or its agent is~~
36 ~~required by the decision to fulfill its terms if the decision~~
37 ~~is accepted by the buyer, whichever occurs later.~~

38 ~~(d) A qualified third-party dispute resolution process~~
39 ~~shall be one that does all of the following:~~

- 1 ~~(1) Complies with the minimum requirements of the~~
2 ~~Federal Trade Commission for informal dispute~~
3 ~~settlement procedures as set forth in Part 703 of Title 16~~
4 ~~of the Code of Federal Regulations, as those regulations~~
5 ~~read on January 1, 1987.~~
- 6 ~~(2) Renders decisions which are binding on the~~
7 ~~manufacturer if the buyer elects to accept the decision.~~
- 8 ~~(3) Prescribes a reasonable time, not to exceed 30 days~~
9 ~~after the decision is accepted by the buyer, within which~~
10 ~~the manufacturer or its agent must fulfill the terms of its~~
11 ~~decisions.~~
- 12 ~~(4) Provides arbitrators who are assigned to decide~~
13 ~~disputes with copies of, and instruction in, the provisions~~
14 ~~of the Federal Trade Commission's regulations in Part 703~~
15 ~~of Title 16 of the Code of Federal Regulations as those~~
16 ~~regulations read on January 1, 1987, Division 2~~
17 ~~(commencing with Section 2101) of the Commercial~~
18 ~~Code, and this chapter.~~
- 19 ~~(5) Requires the manufacturer, when the process~~
20 ~~orders, under the terms of this chapter, either that the~~
21 ~~nonconforming motor vehicle be replaced if the buyer~~
22 ~~consents to this remedy or that restitution be made to the~~
23 ~~buyer, to replace the motor vehicle or make restitution~~
24 ~~in accordance with paragraph (2) of subdivision (d) of~~
25 ~~Section 1793.2.~~
- 26 ~~(6) Provides, at the request of the arbitrator or a~~
27 ~~majority of the arbitration panel, for an inspection and~~
28 ~~written report on the condition of a nonconforming~~
29 ~~motor vehicle, at no cost to the buyer, by an automobile~~
30 ~~expert who is independent of the manufacturer.~~
- 31 ~~(7) Takes into account, in rendering decisions, all legal~~
32 ~~and equitable factors, including, but not limited to, the~~
33 ~~written warranty, the rights and remedies conferred in~~
34 ~~regulations of the Federal Trade Commission contained~~
35 ~~in Part 703 of Title 16 of the Code of Federal Regulations~~
36 ~~as those regulations read on January 1, 1987, Division 2~~
37 ~~(commencing with Section 2101) of the Commercial~~
38 ~~Code, this chapter, and any other equitable~~
39 ~~considerations appropriate in the circumstances. Nothing~~
40 ~~in this chapter requires that, to be certified as a qualified~~

~~1 third-party dispute resolution process pursuant to this
2 section, decisions of the process must consider or provide
3 remedies in the form of awards of punitive damages or
4 multiple damages, under subdivision (c) of Section 1794,
5 or of attorneys' fees under subdivision (d) of Section 1794,
6 or of consequential damages other than as provided in
7 subdivisions (a) and (b) of Section 1794, including, but
8 not limited to, reasonable repair, towing, and rental car
9 costs actually incurred by the buyer.~~

~~10 (8) Requires that no arbitrator deciding a dispute may
11 be a party to the dispute and that no other person,
12 including an employee, agent, or dealer for the
13 manufacturer, may be allowed to participate
14 substantively in the merits of any dispute with the
15 arbitrator unless the buyer is allowed to participate also.
16 Nothing in this subdivision prohibits any member of an
17 arbitration board from deciding a dispute.~~

~~18 (9) Obtains and maintains certification by the
19 Department of Consumer Affairs pursuant to Chapter 9
20 (commencing with Section 472) of Division 1 of the
21 Business and Professions Code.~~

~~22 (e) For the purposes of subdivision (d) of Section
23 1793.2 and this section, the following terms have the
24 following meanings:~~

~~25 (1) "Nonconformity" means a noneonformity which
26 substantially impairs the use, value, or safety of the new
27 motor vehicle to the buyer or lessee.~~

~~28 (2) "New motor vehicle" means a new motor vehicle
29 that is bought or used primarily for personal, family, or
30 household purposes. "New motor vehicle" also means a
31 new motor vehicle that is bought or used primarily for
32 business purposes by a person, including a partnership,
33 limited liability company, corporation, association, or any
34 other legal entity, to which not more than five motor
35 vehicles are registered in this state. "New motor vehicle"
36 includes the chassis, chassis cab, and that portion of a
37 motor home devoted to its propulsion, but does not
38 include any portion designed, used, or maintained
39 primarily for human habitation, a dealer-owned vehicle
40 and a "demonstrator" or other motor vehicle sold with a~~

1 ~~manufacturer's new car warranty but does not include a~~
2 ~~motorcycle or a motor vehicle which is not registered~~
3 ~~under the Vehicle Code because it is to be operated or~~
4 ~~used exclusively off the highways. A demonstrator is a~~
5 ~~vehicle assigned by a dealer for the purpose of~~
6 ~~demonstrating qualities and characteristics common to~~
7 ~~vehicles of the same or similar model and type.~~

8 (3) "Motor home" means a vehicular unit built on, or
9 permanently attached to, a self-propelled motor vehicle
10 chassis, chassis cab, or van, which becomes an integral
11 part of the completed vehicle, designed for human
12 habitation for recreational or emergency occupancy.

13 (f) (1) ~~Except as provided in paragraph (2), no~~
14 ~~person shall sell, either at wholesale or retail, lease, or~~
15 ~~transfer a motor vehicle transferred by a buyer or lessee~~
16 ~~to a manufacturer pursuant to paragraph (2) of~~
17 ~~subdivision (d) of Section 1793.2 or a similar statute of any~~
18 ~~other state, unless the nature of the nonconformity~~
19 ~~experienced by the original buyer or lessee is clearly and~~
20 ~~conspicuously disclosed to the prospective buyer, lessee,~~
21 ~~or transferee, the nonconformity is corrected, and the~~
22 ~~manufacturer warrants to the new buyer, lessee, or~~
23 ~~transferee in writing for a period of one year that the~~
24 ~~motor vehicle is free of that nonconformity.~~

25 (2) ~~Except for the requirement that the nature of the~~
26 ~~nonconformity be disclosed to the transferee, paragraph~~
27 ~~(1) does not apply to the transfer of a motor vehicle to an~~
28 ~~educational institution if the purpose of the transfer is to~~
29 ~~make the motor vehicle available for use in automotive~~
30 ~~repair courses.~~

AMENDED IN ASSEMBLY JUNE 29, 2000

AMENDED IN SENATE MAY 4, 2000

AMENDED IN SENATE MAY 1, 2000

SENATE BILL

No. 1718

Introduced by Senator Sher
(Principal coauthor: Assembly Member Shelley)

February 23, 2000

An act to amend Section 1793.22 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

SB 1718, as amended, Sher. Warranties: new motor vehicles.

Existing law requires every manufacturer of consumer goods sold in this state, including motor vehicles, to maintain sufficient service and repair facilities to carry out the terms of its express warranties. Existing law further provides that if a manufacturer or its representative is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the vehicle or make restitution to the buyer, at the buyer's option. Existing law provides that it is rebuttably presumed that a reasonable number of attempts to conform a new motor vehicle to its warranty have been made if, within 18 months of delivery or 18,000 miles, whichever is first, (1) the same nonconformity has been subject to repair at least 4 times by the manufacturer or its agents and the manufacturer has been directly informed

of the need for the repair at least once, or (2) the vehicle has been out of service because of repairs to nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery to the buyer.

~~The bill would additionally provide for the establishment of the presumption when a nonconformity that results in a condition likely to cause death or serious bodily injury if the vehicle is driven has been subject to repair 2 or more times by the manufacturer or its agents and the buyer or lessee has at least once directly notified the manufacturer of the need for the repair. This bill would also make other related changes.~~

Existing law defines a new motor vehicle for the purposes of the above provisions to mean a new motor vehicle used or bought (1) primarily for personal, family, or household purposes or (2) for business and personal, family, or household purposes by a person or organization, as specified, to which not more than 5 vehicles are registered in this state.

This bill would revise the 2nd definition to include only a new motor vehicle bought or used primarily for business purposes, as specified.

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. Section 1793.22 of the Civil Code is
2 amended to read:
3 1793.22. (a) This section shall be known and may be
4 cited as the Tanner Consumer Protection Act.
5 (b) It shall be presumed that a reasonable number of
6 attempts have been made to conform a new motor
7 vehicle to the applicable express warranties if, within 18
8 months from delivery to the buyer or 18,000 miles on the
9 odometer of the vehicle, whichever occurs first, ~~one or~~
10 ~~more of the following occurs:~~
11 ~~(1) The same nonconformity results in a condition that~~
12 ~~is likely to cause death or serious bodily injury if the~~
13 ~~vehicle is driven and the nonconformity has been subject~~
14 ~~to repair two or more times by the manufacturer or its~~
15 ~~agents, and the buyer or lessee has at least once directly~~

1 ~~notified the manufacturer of the need for the repair of the~~
2 ~~nonconformity.~~

3 ~~(2) either of the following occurs:~~

4 (1) The same nonconformity has been subject to
5 repair four or more times by the manufacturer or its
6 agents and the buyer has at least once directly notified the
7 manufacturer of the need for the repair of the
8 nonconformity.

9 ~~(3)~~

10 (2) The vehicle is out of service by reason of repair of
11 nonconformities by the manufacturer or its agents for a
12 cumulative total of more than 30 calendar days since
13 delivery of the vehicle to the buyer. The 30-day limit shall
14 be extended only if repairs cannot be performed due to
15 conditions beyond the control of the manufacturer or its
16 agents.

17 The buyer shall be required to directly notify the
18 manufacturer pursuant to ~~paragraphs (1) and (2)~~
19 *paragraph (1)* only if the manufacturer has clearly and
20 conspicuously disclosed to the buyer, with the warranty
21 or the owner's manual, the provisions of this section and
22 that of subdivision (d) of Section 1793.2, including the
23 requirement that the buyer must notify the
24 manufacturer directly pursuant to ~~paragraphs (1) and~~
25 ~~(2) paragraph (1)~~. This presumption shall be a rebuttable
26 presumption affecting the burden of proof, and it may be
27 asserted by the buyer in any civil action, including an
28 action in small claims court, or other formal or informal
29 proceeding.

30 (c) If a qualified third-party dispute resolution process
31 exists, and the buyer receives timely notification in
32 writing of the availability of that qualified third-party
33 dispute resolution process with a description of its
34 operation and effect, the presumption in subdivision (b)
35 may not be asserted by the buyer until after the buyer has
36 initially resorted to the qualified third-party dispute
37 resolution process as required in subdivision (d).
38 Notification of the availability of the qualified third-party
39 dispute resolution process is not timely if the buyer suffers
40 any prejudice resulting from any delay in giving the

1 notification. If a qualified third-party dispute resolution
2 process does not exist, or if the buyer is dissatisfied with
3 that third-party decision, or if the manufacturer or its
4 agent neglects to promptly fulfill the terms of the
5 qualified third-party dispute resolution process decision
6 after the decision is accepted by the buyer, the buyer may
7 assert the presumption provided in subdivision (b) in an
8 action to enforce the buyer's rights under subdivision (d)
9 of Section 1793.2. The findings and decision of a qualified
10 third-party dispute resolution process shall be admissible
11 in evidence in the action without further foundation. Any
12 period of limitation of actions under any federal or
13 California laws with respect to any person shall be
14 extended for a period equal to the number of days
15 between the date a complaint is filed with a third-party
16 dispute resolution process and the date of its decision or
17 the date before which the manufacturer or its agent is
18 required by the decision to fulfill its terms if the decision
19 is accepted by the buyer, whichever occurs later.

20 (d) A qualified third-party dispute resolution process
21 shall be one that does all of the following:

22 (1) Complies with the minimum requirements of the
23 Federal Trade Commission for informal dispute
24 settlement procedures as set forth in Part 703 of Title 16
25 of the Code of Federal Regulations, as those regulations
26 read on January 1, 1987.

27 (2) Renders decisions which are binding on the
28 manufacturer if the buyer elects to accept the decision.

29 (3) Prescribes a reasonable time, not to exceed 30 days
30 after the decision is accepted by the buyer, within which
31 the manufacturer or its agent must fulfill the terms of its
32 decisions.

33 (4) Provides arbitrators who are assigned to decide
34 disputes with copies of, and instruction in, the provisions
35 of the Federal Trade Commission's regulations in Part 703
36 of Title 16 of the Code of Federal Regulations as those
37 regulations read on January 1, 1987, Division 2
38 (commencing with Section 2101) of the Commercial
39 Code, and this chapter.

1 (5) Requires the manufacturer, when the process
2 orders, under the terms of this chapter, either that the
3 nonconforming motor vehicle be replaced if the buyer
4 consents to this remedy or that restitution be made to the
5 buyer, to replace the motor vehicle or make restitution
6 in accordance with paragraph (2) of subdivision (d) of
7 Section 1793.2.

8 (6) Provides, at the request of the arbitrator or a
9 majority of the arbitration panel, for an inspection and
10 written report on the condition of a nonconforming
11 motor vehicle, at no cost to the buyer, by an automobile
12 expert who is independent of the manufacturer.

13 (7) Takes into account, in rendering decisions, all legal
14 and equitable factors, including, but not limited to, the
15 written warranty, the rights and remedies conferred in
16 regulations of the Federal Trade Commission contained
17 in Part 703 of Title 16 of the Code of Federal Regulations
18 as those regulations read on January 1, 1987, Division 2
19 (commencing with Section 2101) of the Commercial
20 Code, this chapter, and any other equitable
21 considerations appropriate in the circumstances. Nothing
22 in this chapter requires that, to be certified as a qualified
23 third-party dispute resolution process pursuant to this
24 section, decisions of the process must consider or provide
25 remedies in the form of awards of punitive damages or
26 multiple damages, under subdivision (c) of Section 1794,
27 or of attorneys' fees under subdivision (d) of Section 1794,
28 or of consequential damages other than as provided in
29 subdivisions (a) and (b) of Section 1794, including, but
30 not limited to, reasonable repair, towing, and rental car
31 costs actually incurred by the buyer.

32 (8) Requires that no arbitrator deciding a dispute may
33 be a party to the dispute and that no other person,
34 including an employee, agent, or dealer for the
35 manufacturer, may be allowed to participate
36 substantively in the merits of any dispute with the
37 arbitrator unless the buyer is allowed to participate also.
38 Nothing in this subdivision prohibits any member of an
39 arbitration board from deciding a dispute.

1 (9) Obtains and maintains certification by the
2 Department of Consumer Affairs pursuant to Chapter 9
3 (commencing with Section 472) of Division 1 of the
4 Business and Professions Code.

5 (e) For the purposes of subdivision (d) of Section
6 1793.2 and this section, the following terms have the
7 following meanings:

8 (1) "Nonconformity" means a nonconformity which
9 substantially impairs the use, value, or safety of the new
10 motor vehicle to the buyer or lessee.

11 (2) "New motor vehicle" means a new motor vehicle
12 that is bought or used primarily for personal, family, or
13 household purposes. "New motor vehicle" also means a
14 new motor vehicle that is bought or used primarily for
15 business purposes by a person, including a partnership,
16 limited liability company, corporation, association, or any
17 other legal entity, to which not more than five motor
18 vehicles are registered in this state. "New motor vehicle"
19 includes the chassis, chassis cab, and that portion of a
20 motor home devoted to its propulsion, but does not
21 include any portion designed, used, or maintained
22 primarily for human habitation, a dealer-owned vehicle
23 and a "demonstrator" or other motor vehicle sold with a
24 manufacturer's new car warranty but does not include a
25 motorcycle or a motor vehicle which is not registered
26 under the Vehicle Code because it is to be operated or
27 used exclusively off the highways. A demonstrator is a
28 vehicle assigned by a dealer for the purpose of
29 demonstrating qualities and characteristics common to
30 vehicles of the same or similar model and type.

31 (3) "Motor home" means a vehicular unit built on, or
32 permanently attached to, a self-propelled motor vehicle
33 chassis, chassis cab, or van, which becomes an integral
34 part of the completed vehicle, designed for human
35 habitation for recreational or emergency occupancy.

36 (f) (1) Except as provided in paragraph (2), no
37 person shall sell, either at wholesale or retail, lease, or
38 transfer a motor vehicle transferred by a buyer or lessee
39 to a manufacturer pursuant to paragraph (2) of
40 subdivision (d) of Section 1793.2 or a similar statute of any

1 other state, unless the nature of the nonconformity
2 experienced by the original buyer or lessee is clearly and
3 conspicuously disclosed to the prospective buyer, lessee,
4 or transferee, the nonconformity is corrected, and the
5 manufacturer warrants to the new buyer, lessee, or
6 transferee in writing for a period of one year that the
7 motor vehicle is free of that nonconformity.

8 (2) Except for the requirement that the nature of the
9 nonconformity be disclosed to the transferee, paragraph
10 (1) does not apply to the transfer of a motor vehicle to an
11 educational institution if the purpose of the transfer is to
12 make the motor vehicle available for use in automotive
13 repair courses.

O



AMENDED IN SENATE MAY 4, 2000

AMENDED IN SENATE MAY 1, 2000

SENATE BILL

No. 1718

Introduced by Senator Sher

February 23, 2000

An act to amend Section 1793.22 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

SB 1718, as amended, Sher. Warranties: new motor vehicles.

Existing law requires every manufacturer of consumer goods sold in this state, including motor vehicles, to maintain sufficient service and repair facilities to carry out the terms of its express warranties. Existing law further provides that if a manufacturer or its representative is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the vehicle or make restitution to the buyer, at the buyer's option. Existing law provides that it is rebuttably presumed that a reasonable number of attempts to conform a new motor vehicle to its warranty have been made if, within 18 months of delivery or 18,000 miles, whichever is first, (1) the same nonconformity has been subject to repair at least 4 times by the manufacturer or its agents and the manufacturer has been directly informed of the need for the repair at least once, or (2) the vehicle has been out of service because of repairs to nonconformities by

the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery to the buyer.

The bill would additionally provide for the establishment of the presumption when a nonconformity that results in a condition likely to cause death or serious bodily injury if the vehicle is driven has been subject to repair 2 or more times by the manufacturer or its agents and the buyer or lessee has at least once directly notified the manufacturer of the need for the repair. ~~It also would revise the circumstances giving rise to the presumption stated in (1) above to require that the nonconformity substantially impair the use or value of a new motor vehicle.~~ This bill would also make other related changes.

Existing law defines a new motor vehicle for the purposes of the above provisions to mean a new motor vehicle used or bought (1) primarily for personal, family, or household purposes or (2) for business and personal, family, or household purposes by a person or organization, as specified, to which not more than 5 vehicles are registered in this state.

This bill would revise the 2nd definition to include only a new motor vehicle bought or used primarily for business purposes, as specified.

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. Section 1793.22 of the Civil Code is
- 2 amended to read:
- 3 1793.22. (a) This section shall be known and may be
- 4 cited as the Tanner Consumer Protection Act.
- 5 (b) It shall be presumed that a reasonable number of
- 6 attempts have been made to conform a new motor
- 7 vehicle to the applicable express warranties if, within 18
- 8 months from delivery to the buyer or 18,000 miles on the
- 9 odometer of the vehicle, whichever occurs first, one or
- 10 more of the following occurs:
- 11 (1) The same nonconformity results in a condition that
- 12 is likely to cause death or serious bodily injury if the
- 13 vehicle is driven and the nonconformity has been subject

1 to repair two or more times by the manufacturer or its
2 agents, and the buyer or lessee has at least once directly
3 notified the manufacturer of the need for the repair of the
4 nonconformity.

5 (2) The same nonconformity ~~that substantially impairs~~
6 ~~the use or value of the new motor vehicle to the buyer or~~
7 ~~the lessee~~ has been subject to repair four or more times
8 by the manufacturer or its agents and the buyer has at
9 least once directly notified the manufacturer of the need
10 for the repair of the nonconformity.

11 (3) The vehicle is out of service by reason of repair of
12 nonconformities by the manufacturer or its agents for a
13 cumulative total of more than 30 calendar days since
14 delivery of the vehicle to the buyer. The 30-day limit shall
15 be extended only if repairs cannot be performed due to
16 conditions beyond the control of the manufacturer or its
17 agents.

18 The buyer shall be required to directly notify the
19 manufacturer pursuant to paragraphs (1) and (2) only if
20 the manufacturer has clearly and conspicuously disclosed
21 to the buyer, with the warranty or the owner's manual,
22 the provisions of this section and that of subdivision (d)
23 of Section 1793.2, including the requirement that the
24 buyer must notify the manufacturer directly pursuant to
25 paragraphs (1) and (2). This presumption shall be a
26 rebuttable presumption affecting the burden of proof,
27 and it may be asserted by the buyer in any civil action,
28 including an action in small claims court, or other formal
29 or informal proceeding.

30 (c) If a qualified third-party dispute resolution process
31 exists, and the buyer receives timely notification in
32 writing of the availability of that qualified third-party
33 dispute resolution process with a description of its
34 operation and effect, the presumption in subdivision (b)
35 may not be asserted by the buyer until after the buyer has
36 initially resorted to the qualified third-party dispute
37 resolution process as required in subdivision (d).
38 Notification of the availability of the qualified third-party
39 dispute resolution process is not timely if the buyer suffers
40 any prejudice resulting from any delay in giving the

1 notification. If a qualified third-party dispute resolution
2 process does not exist, or if the buyer is dissatisfied with
3 that third-party decision, or if the manufacturer or its
4 agent neglects to promptly fulfill the terms of the
5 qualified third-party dispute resolution process decision
6 after the decision is accepted by the buyer, the buyer may
7 assert the presumption provided in subdivision (b) in an
8 action to enforce the buyer's rights under subdivision (d)
9 of Section 1793.2. The findings and decision of a qualified
10 third-party dispute resolution process shall be admissible
11 in evidence in the action without further foundation. Any
12 period of limitation of actions under any federal or
13 California laws with respect to any person shall be
14 extended for a period equal to the number of days
15 between the date a complaint is filed with a third-party
16 dispute resolution process and the date of its decision or
17 the date before which the manufacturer or its agent is
18 required by the decision to fulfill its terms if the decision
19 is accepted by the buyer, whichever occurs later.

20 (d) A qualified third-party dispute resolution process
21 shall be one that does all of the following:

22 (1) Complies with the minimum requirements of the
23 Federal Trade Commission for informal dispute
24 settlement procedures as set forth in Part 703 of Title 16
25 of the Code of Federal Regulations, as those regulations
26 read on January 1, 1987.

27 (2) Renders decisions which are binding on the
28 manufacturer if the buyer elects to accept the decision.

29 (3) Prescribes a reasonable time, not to exceed 30 days
30 after the decision is accepted by the buyer, within which
31 the manufacturer or its agent must fulfill the terms of its
32 decisions.

33 (4) Provides arbitrators who are assigned to decide
34 disputes with copies of, and instruction in, the provisions
35 of the Federal Trade Commission's regulations in Part 703
36 of Title 16 of the Code of Federal Regulations as those
37 regulations read on January 1, 1987, Division 2
38 (commencing with Section 2101) of the Commercial
39 Code, and this chapter.

1 (5) Requires the manufacturer, when the process
2 orders, under the terms of this chapter, either that the
3 nonconforming motor vehicle be replaced if the buyer
4 consents to this remedy or that restitution be made to the
5 buyer, to replace the motor vehicle or make restitution
6 in accordance with paragraph (2) of subdivision (d) of
7 Section 1793.2.

8 (6) Provides, at the request of the arbitrator or a
9 majority of the arbitration panel, for an inspection and
10 written report on the condition of a nonconforming
11 motor vehicle, at no cost to the buyer, by an automobile
12 expert who is independent of the manufacturer.

13 (7) Takes into account, in rendering decisions, all legal
14 and equitable factors, including, but not limited to, the
15 written warranty, the rights and remedies conferred in
16 regulations of the Federal Trade Commission contained
17 in Part 703 of Title 16 of the Code of Federal Regulations
18 as those regulations read on January 1, 1987, Division 2
19 (commencing with Section 2101) of the Commercial
20 Code, this chapter, and any other equitable
21 considerations appropriate in the circumstances. Nothing
22 in this chapter requires that, to be certified as a qualified
23 third-party dispute resolution process pursuant to this
24 section, decisions of the process must consider or provide
25 remedies in the form of awards of punitive damages or
26 multiple damages, under subdivision (c) of Section 1794,
27 or of attorneys' fees under subdivision (d) of Section 1794,
28 or of consequential damages other than as provided in
29 subdivisions (a) and (b) of Section 1794, including, but
30 not limited to, reasonable repair, towing, and rental car
31 costs actually incurred by the buyer.

32 (8) Requires that no arbitrator deciding a dispute may
33 be a party to the dispute and that no other person,
34 including an employee, agent, or dealer for the
35 manufacturer, may be allowed to participate
36 substantively in the merits of any dispute with the
37 arbitrator unless the buyer is allowed to participate also.
38 Nothing in this subdivision prohibits any member of an
39 arbitration board from deciding a dispute.

1 (9) Obtains and maintains certification by the
2 Department of Consumer Affairs pursuant to Chapter 9
3 (commencing with Section 472) of Division 1 of the
4 Business and Professions Code.

5 (e) For the purposes of subdivision (d) of Section
6 1793.2 and this section, the following terms have the
7 following meanings:

8 (1) "Nonconformity" means a nonconformity which
9 substantially impairs the use, value, or safety of the new
10 motor vehicle to the buyer or lessee.

11 (2) "New motor vehicle" means a new motor vehicle
12 that is bought or used primarily for personal, family, or
13 household purposes. "New motor vehicle" also means a
14 new motor vehicle that is bought or used primarily for
15 business purposes by a person, including a partnership,
16 limited liability company, corporation, association, or any
17 other legal entity, to which not more than five motor
18 vehicles are registered in this state. "New motor vehicle"
19 includes the chassis, chassis cab, and that portion of a
20 motor home devoted to its propulsion, but does not
21 include any portion designed, used, or maintained
22 primarily for human habitation, a dealer-owned vehicle
23 and a "demonstrator" or other motor vehicle sold with a
24 manufacturer's new car warranty but does not include a
25 motorcycle or a motor vehicle which is not registered
26 under the Vehicle Code because it is to be operated or
27 used exclusively off the highways. A demonstrator is a
28 vehicle assigned by a dealer for the purpose of
29 demonstrating qualities and characteristics common to
30 vehicles of the same or similar model and type.

31 (3) "Motor home" means a vehicular unit built on, or
32 permanently attached to, a self-propelled motor vehicle
33 chassis, chassis cab, or van, which becomes an integral
34 part of the completed vehicle, designed for human
35 habitation for recreational or emergency occupancy.

36 (f) (1) Except as provided in paragraph (2), no
37 person shall sell, either at wholesale or retail, lease, or
38 transfer a motor vehicle transferred by a buyer or lessee
39 to a manufacturer pursuant to paragraph (2) of
40 subdivision (d) of Section 1793.2 or a similar statute of any

1 other state, unless the nature of the nonconformity
2 experienced by the original buyer or lessee is clearly and
3 conspicuously disclosed to the prospective buyer, lessee,
4 or transferee, the nonconformity is corrected, and the
5 manufacturer warrants to the new buyer, lessee, or
6 transferee in writing for a period of one year that the
7 motor vehicle is free of that nonconformity.

8 (2) Except for the requirement that the nature of the
9 nonconformity be disclosed to the transferee, paragraph
10 (1) does not apply to the transfer of a motor vehicle to an
11 educational institution if the purpose of the transfer is to
12 make the motor vehicle available for use in automotive
13 repair courses.

O



AMENDED IN SENATE MAY 1, 2000

SENATE BILL

No. 1718

Introduced by Senator Sher

February 23, 2000

An act to amend Section 1793.22 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

SB 1718, as amended, Sher. Warranties: new motor vehicles.

Existing law requires every manufacturer of consumer goods sold in this state, including motor vehicles, to maintain sufficient service and repair facilities to carry out the terms of its express warranties. Existing law further provides that if a manufacturer or its representative is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the vehicle or make restitution to the buyer, at the buyer's option. Existing law provides that it is rebuttably presumed that a reasonable number of attempts to conform a new motor vehicle to its warranty have been made if, within 18 months of delivery or 18,000 miles, whichever is first, (1) the same nonconformity has been subject to repair at least 4 times by the manufacturer or its agents and the manufacturer has been directly informed of the need for the repair at least once, or (2) the vehicle has been out of service because of repairs to nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery to the buyer.

The bill would additionally provide for the establishment of the presumption when a nonconformity ~~that substantially impairs the safety of the vehicle~~ *results in a condition likely to cause death or serious bodily injury if the vehicle is driven* has been subject to repair 2 or more times by the manufacturer or its agents and the buyer *or lessee* has at least once directly notified the manufacturer of the need for the repair. It also would revise the circumstances giving rise to the presumption stated in (1) above to require that the nonconformity substantially impair the use or value of a new motor vehicle. This bill would also make other related changes.

Existing law defines a new motor vehicle for the purposes of the above provisions to mean a new motor vehicle used or bought (1) primarily for personal, family, or household purposes or (2) for business and personal, family, or household purposes by a person or organization, as specified, to which not more than 5 vehicles are registered in this state.

This bill would revise the 2nd definition to include only a new motor vehicle bought or used *primarily* for business purposes, as specified.

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. Section 1793.22 of the Civil Code is
- 2 amended to read:
- 3 1793.22. (a) This section shall be known and may be
- 4 cited as the Tanner Consumer Protection Act.
- 5 (b) It shall be presumed that a reasonable number of
- 6 attempts have been made to conform a new motor
- 7 vehicle to the applicable express warranties if, within 18
- 8 months from delivery to the buyer or 18,000 miles on the
- 9 odometer of the vehicle, whichever occurs first, one or
- 10 more of the following ~~occur~~ *occurs*:
- 11 (1) The same nonconformity ~~that substantially impairs~~
- 12 ~~the safety of the new motor vehicle to the buyer or the~~
- 13 ~~lessee results in a condition that is likely to cause death or~~
- 14 *serious bodily injury if the vehicle is driven and the*

1 *nonconformity* has been subject to repair two or more
2 times by the manufacturer or its agents, and the buyer *or*
3 *lessee* has at least once directly notified the manufacturer
4 of the need for the repair of the nonconformity.

5 (2) The same nonconformity that substantially impairs
6 the use or value of the new motor vehicle to the buyer or
7 the lessee has been subject to repair four or more times
8 by the manufacturer or its agents and the buyer has at
9 least once directly notified the manufacturer of the need
10 for the repair of the nonconformity.

11 (3) The vehicle is out of service by reason of repair of
12 nonconformities by the manufacturer or its agents for a
13 cumulative total of more than 30 calendar days since
14 delivery of the vehicle to the buyer. The 30-day limit shall
15 be extended only if repairs cannot be performed due to
16 conditions beyond the control of the manufacturer or its
17 agents.

18 The buyer shall be required to directly notify the
19 manufacturer pursuant to paragraphs (1) and (2) only if
20 the manufacturer has clearly and conspicuously disclosed
21 to the buyer, with the warranty or the owner's manual,
22 the provisions of this section and that of subdivision (d)
23 of Section 1793.2, including the requirement that the
24 buyer must notify the manufacturer directly pursuant to
25 paragraphs (1) and (2). This presumption shall be a
26 rebuttable presumption affecting the burden of proof,
27 and it may be asserted by the buyer in any civil action,
28 including an action in small claims court, or other formal
29 or informal proceeding.

30 (c) If a qualified third-party dispute resolution process
31 exists, and the buyer receives timely notification in
32 writing of the availability of that qualified third-party
33 dispute resolution process with a description of its
34 operation and effect, the presumption in subdivision (b)
35 may not be asserted by the buyer until after the buyer has
36 initially resorted to the qualified third-party dispute
37 resolution process as required in subdivision (d).
38 Notification of the availability of the qualified third-party
39 dispute resolution process is not timely if the buyer suffers
40 any prejudice resulting from any delay in giving the

1 notification. If a qualified third-party dispute resolution
2 process does not exist, or if the buyer is dissatisfied with
3 that third-party decision, or if the manufacturer or its
4 agent neglects to promptly fulfill the terms of the
5 qualified third-party dispute resolution process decision
6 after the decision is accepted by the buyer, the buyer may
7 assert the presumption provided in subdivision (b) in an
8 action to enforce the buyer's rights under subdivision (d)
9 of Section 1793.2. The findings and decision of a qualified
10 third-party dispute resolution process shall be admissible
11 in evidence in the action without further foundation. Any
12 period of limitation of actions under any federal or
13 California laws with respect to any person shall be
14 extended for a period equal to the number of days
15 between the date a complaint is filed with a third-party
16 dispute resolution process and the date of its decision or
17 the date before which the manufacturer or its agent is
18 required by the decision to fulfill its terms if the decision
19 is accepted by the buyer, whichever occurs later.

20 (d) A qualified third-party dispute resolution process
21 shall be one that does all of the following:

22 (1) Complies with the minimum requirements of the
23 Federal Trade Commission for informal dispute
24 settlement procedures as set forth in Part 703 of Title 16
25 of the Code of Federal Regulations, as those regulations
26 read on January 1, 1987.

27 (2) Renders decisions which are binding on the
28 manufacturer if the buyer elects to accept the decision.

29 (3) Prescribes a reasonable time, not to exceed 30 days
30 after the decision is accepted by the buyer, within which
31 the manufacturer or its agent must fulfill the terms of its
32 decisions.

33 (4) Provides arbitrators who are assigned to decide
34 disputes with copies of, and instruction in, the provisions
35 of the Federal Trade Commission's regulations in Part 703
36 of Title 16 of the Code of Federal Regulations as those
37 regulations read on January 1, 1987, Division 2
38 (commencing with Section 2101) of the Commercial
39 Code, and this chapter.

1 (5) Requires the manufacturer, when the process
2 orders, under the terms of this chapter, either that the
3 nonconforming motor vehicle be replaced if the buyer
4 consents to this remedy or that restitution be made to the
5 buyer, to replace the motor vehicle or make restitution
6 in accordance with paragraph (2) of subdivision (d) of
7 Section 1793.2.

8 (6) Provides, at the request of the arbitrator or a
9 majority of the arbitration panel, for an inspection and
10 written report on the condition of a nonconforming
11 motor vehicle, at no cost to the buyer, by an automobile
12 expert who is independent of the manufacturer.

13 (7) Takes into account, in rendering decisions, all legal
14 and equitable factors, including, but not limited to, the
15 written warranty, the rights and remedies conferred in
16 regulations of the Federal Trade Commission contained
17 in Part 703 of Title 16 of the Code of Federal Regulations
18 as those regulations read on January 1, 1987, Division 2
19 (commencing with Section 2101) of the Commercial
20 Code, this chapter, and any other equitable
21 considerations appropriate in the circumstances. Nothing
22 in this chapter requires that, to be certified as a qualified
23 third-party dispute resolution process pursuant to this
24 section, decisions of the process must consider or provide
25 remedies in the form of awards of punitive damages or
26 multiple damages, under subdivision (c) of Section 1794,
27 or of attorneys' fees under subdivision (d) of Section 1794,
28 or of consequential damages other than as provided in
29 subdivisions (a) and (b) of Section 1794, including, but
30 not limited to, reasonable repair, towing, and rental car
31 costs actually incurred by the buyer.

32 (8) Requires that no arbitrator deciding a dispute may
33 be a party to the dispute and that no other person,
34 including an employee, agent, or dealer for the
35 manufacturer, may be allowed to participate
36 substantively in the merits of any dispute with the
37 arbitrator unless the buyer is allowed to participate also.
38 Nothing in this subdivision prohibits any member of an
39 arbitration board from deciding a dispute.

1 (9) Obtains and maintains certification by the
2 Department of Consumer Affairs pursuant to Chapter 9
3 (commencing with Section 472) of Division 1 of the
4 Business and Professions Code.

5 (e) For the purposes of subdivision (d) of Section
6 1793.2 and this section, the following terms have the
7 following meanings:

8 (1) "Nonconformity" means a nonconformity which
9 substantially impairs the use, value, or safety of the new
10 motor vehicle to the buyer or lessee.

11 (2) "New motor vehicle" means a new motor vehicle
12 that is bought or used ~~for use~~ primarily for personal,
13 family, or household purposes. "New motor vehicle" also
14 means a new motor vehicle that is bought or used
15 *primarily* for business purposes by a person, including a
16 partnership, limited liability company, corporation,
17 association, or any other legal entity, to which not more
18 than five motor vehicles are registered in this state. "New
19 motor vehicle" includes the chassis, chassis cab, and that
20 portion of a motor home devoted to its propulsion, but
21 does not include any portion designed, used, or
22 maintained primarily for human habitation, a
23 dealer-owned vehicle and a "demonstrator" or other
24 motor vehicle sold with a manufacturer's new car
25 warranty but does not include a motorcycle or a motor
26 vehicle which is not registered under the Vehicle Code
27 because it is to be operated or used exclusively off the
28 highways. A demonstrator is a vehicle assigned by a
29 dealer for the purpose of demonstrating qualities and
30 characteristics common to vehicles of the same or similar
31 model and type.

32 (3) "Motor home" means a vehicular unit built on, or
33 permanently attached to, a self-propelled motor vehicle
34 chassis, chassis cab, or van, which becomes an integral
35 part of the completed vehicle, designed for human
36 habitation for recreational or emergency occupancy.

37 (f) (1) Except as provided in paragraph (2), no
38 person shall sell, either at wholesale or retail, lease, or
39 transfer a motor vehicle transferred by a buyer or lessee
40 to a manufacturer pursuant to paragraph (2) of

1 subdivision (d) of Section 1793.2 or a similar statute of any
2 other state, unless the nature of the nonconformity
3 experienced by the original buyer or lessee is clearly and
4 conspicuously disclosed to the prospective buyer, lessee,
5 or transferee, the nonconformity is corrected, and the
6 manufacturer warrants to the new buyer, lessee, or
7 transferee in writing for a period of one year that the
8 motor vehicle is free of that nonconformity.

9 (2) Except for the requirement that the nature of the
10 nonconformity be disclosed to the transferee, paragraph
11 (1) does not apply to the transfer of a motor vehicle to an
12 educational institution if the purpose of the transfer is to
13 make the motor vehicle available for use in automotive
14 repair courses.

O

Introduced by Senator Sher

February 23, 2000

An act to amend Section 1793.22 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

SB 1718, as introduced, Sher. Warranties: new motor vehicles.

Existing law requires every manufacturer of consumer goods sold in this state, including motor vehicles, to maintain sufficient service and repair facilities to carry out the terms of its express warranties. Existing law further provides that if a manufacturer or its representative is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the vehicle or make restitution to the buyer, at the buyer's option. Existing law provides that it is rebuttably presumed that a reasonable number of attempts to conform a new motor vehicle to its warranty have been made if, within 18 months of delivery or 18,000 miles, whichever is first, (1) the same nonconformity has been subject to repair at least 4 times by the manufacturer or its agents and the manufacturer has been directly informed of the need for the repair at least once, or (2) the vehicle has been out of service because of repairs to nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery to the buyer.

The bill would additionally provide for the establishment of the presumption when a nonconformity that substantially

impairs the safety of the vehicle has been subject to repair 2 or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for the repair. It also would revise the circumstances giving rise to the presumption stated in (1) above to require that the nonconformity substantially impair the use or value of a new motor vehicle. This bill would also make other related changes.

Existing law defines a new motor vehicle for the purposes of the above provisions to mean a new motor vehicle used or bought (1) primarily for personal, family, or household purposes or (2) for business and personal, family, or household purposes by a person or organization, as specified, to which not more than 5 vehicles are registered in this state.

This bill would revise the 2nd definition to include only a new motor vehicle bought or used for business purposes, as specified.

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. Section 1793.22 of the Civil Code is
2 amended to read:

3 1793.22. (a) This section shall be known and may be
4 cited as the Tanner Consumer Protection Act.

5 (b) It shall be presumed that a reasonable number of
6 attempts have been made to conform a new motor
7 vehicle to the applicable express warranties if, within 18
8 months from delivery to the buyer or 18,000 miles on the
9 odometer of the vehicle, whichever occurs first, ~~either~~
10 ~~(1) the one or more of the following occur:~~

11 (1) *The same nonconformity that substantially impairs*
12 *the safety of the new motor vehicle to the buyer or the*
13 *lessee has been subject to repair two or more times by the*
14 *manufacturer or its agents and the buyer has at least once*
15 *directly notified the manufacturer of the need for the*
16 *repair of the nonconformity.*

17 (2) *The same nonconformity that substantially impairs*
18 *the use or value of the new motor vehicle to the buyer or*

1 *the lessee* has been subject to repair four or more times
2 by the manufacturer or its agents and the buyer has at
3 least once directly notified the manufacturer of the need
4 for the repair of the nonconformity ~~or (2) the~~.

5 (3) *The* vehicle is out of service by reason of repair of
6 nonconformities by the manufacturer or its agents for a
7 cumulative total of more than 30 calendar days since
8 delivery of the vehicle to the buyer. The 30-day limit shall
9 be extended only if repairs cannot be performed due to
10 conditions beyond the control of the manufacturer or its
11 agents. ~~The~~

12 *The* buyer shall be required to directly notify the
13 manufacturer pursuant to ~~paragraph~~ *paragraphs* (1) and
14 (2) only if the manufacturer has clearly and
15 conspicuously disclosed to the buyer, with the warranty
16 or the owner's manual, the provisions of this section and
17 that of subdivision (d) of Section 1793.2, including the
18 requirement that the buyer must notify the
19 manufacturer directly pursuant to ~~paragraph~~ *paragraphs*
20 (1) and (2). This presumption shall be a rebuttable
21 presumption affecting the burden of proof, and it may be
22 asserted by the buyer in any civil action, including an
23 action in small claims court, or other formal or informal
24 proceeding.

25 (c) If a qualified third-party dispute resolution process
26 exists, and the buyer receives timely notification in
27 writing of the availability of that qualified third-party
28 dispute resolution process with a description of its
29 operation and effect, the presumption in subdivision (b)
30 may not be asserted by the buyer until after the buyer has
31 initially resorted to the qualified third-party dispute
32 resolution process as required in subdivision (d).
33 Notification of the availability of the qualified third-party
34 dispute resolution process is not timely if the buyer suffers
35 any prejudice resulting from any delay in giving the
36 notification. If a qualified third-party dispute resolution
37 process does not exist, or if the buyer is dissatisfied with
38 that third-party decision, or if the manufacturer or its
39 agent neglects to promptly fulfill the terms of the
40 qualified third-party dispute resolution process decision

1 after the decision is accepted by the buyer, the buyer may
2 assert the presumption provided in subdivision (b) in an
3 action to enforce the buyer's rights under subdivision (d)
4 of Section 1793.2. The findings and decision of a qualified
5 third-party dispute resolution process shall be admissible
6 in evidence in the action without further foundation. Any
7 period of limitation of actions under any federal or
8 California laws with respect to any person shall be
9 extended for a period equal to the number of days
10 between the date a complaint is filed with a third-party
11 dispute resolution process and the date of its decision or
12 the date before which the manufacturer or its agent is
13 required by the decision to fulfill its terms if the decision
14 is accepted by the buyer, whichever occurs later.

15 (d) A qualified third-party dispute resolution process
16 shall be one that does all of the following:

17 (1) Complies with the minimum requirements of the
18 Federal Trade Commission for informal dispute
19 settlement procedures as set forth in Part 703 of Title 16
20 of the Code of Federal Regulations, as those regulations
21 read on January 1, 1987.

22 (2) Renders decisions which are binding on the
23 manufacturer if the buyer elects to accept the decision.

24 (3) Prescribes a reasonable time, not to exceed 30 days
25 after the decision is accepted by the buyer, within which
26 the manufacturer or its agent must fulfill the terms of its
27 decisions.

28 (4) Provides arbitrators who are assigned to decide
29 disputes with copies of, and instruction in, the provisions
30 of the Federal Trade Commission's regulations in Part 703
31 of Title 16 of the Code of Federal Regulations as those
32 regulations read on January 1, 1987, Division 2
33 (commencing with Section 2101) of the Commercial
34 Code, and this chapter.

35 (5) Requires the manufacturer, when the process
36 orders, under the terms of this chapter, either that the
37 nonconforming motor vehicle be replaced if the buyer
38 consents to this remedy or that restitution be made to the
39 buyer, to replace the motor vehicle or make restitution

1 in accordance with paragraph (2) of subdivision (d) of
2 Section 1793.2.

3 (6) Provides, at the request of the arbitrator or a
4 majority of the arbitration panel, for an inspection and
5 written report on the condition of a nonconforming
6 motor vehicle, at no cost to the buyer, by an automobile
7 expert who is independent of the manufacturer.

8 (7) Takes into account, in rendering decisions, all legal
9 and equitable factors, including, but not limited to, the
10 written warranty, the rights and remedies conferred in
11 regulations of the Federal Trade Commission contained
12 in Part 703 of Title 16 of the Code of Federal Regulations
13 as those regulations read on January 1, 1987, Division 2
14 (commencing with Section 2101) of the Commercial
15 Code, this chapter, and any other equitable
16 considerations appropriate in the circumstances. Nothing
17 in this chapter requires that, to be certified as a qualified
18 third-party dispute resolution process pursuant to this
19 section, decisions of the process must consider or provide
20 remedies in the form of awards of punitive damages or
21 multiple damages, under subdivision (c) of Section 1794,
22 or of attorneys' fees under subdivision (d) of Section 1794,
23 or of consequential damages other than as provided in
24 subdivisions (a) and (b) of Section 1794, including, but
25 not limited to, reasonable repair, towing, and rental car
26 costs actually incurred by the buyer.

27 (8) Requires that no arbitrator deciding a dispute may
28 be a party to the dispute and that no other person,
29 including an employee, agent, or dealer for the
30 manufacturer, may be allowed to participate
31 substantively in the merits of any dispute with the
32 arbitrator unless the buyer is allowed to participate also.
33 Nothing in this subdivision prohibits any member of an
34 arbitration board from deciding a dispute.

35 (9) Obtains and maintains certification by the
36 Department of Consumer Affairs pursuant to Chapter 9
37 (commencing with Section 472) of Division 1 of the
38 Business and Professions Code.

1 (e) For the purposes of subdivision (d) of Section
2 1793.2 and this section, the following terms have the
3 following meanings:

4 (1) "Nonconformity" means a nonconformity which
5 substantially impairs the use, value, or safety of the new
6 motor vehicle to the buyer or lessee.

7 (2) "New motor vehicle" means a new motor vehicle
8 that is ~~used or~~ bought *or used* for use primarily for
9 personal, family, or household purposes. "New motor
10 vehicle" also means a new motor vehicle that is bought or
11 used for business ~~and personal, family, or household~~
12 purposes by a person, including a partnership, limited
13 liability company, corporation, association, or any other
14 legal entity, to which not more than five motor vehicles
15 are registered in this state. "New motor vehicle" includes
16 the chassis, chassis cab, and that portion of a motor home
17 devoted to its propulsion, but does not include any
18 portion designed, used, or maintained primarily for
19 human habitation, a dealer-owned vehicle and a
20 "demonstrator" or other motor vehicle sold with a
21 manufacturer's new car warranty but does not include a
22 motorcycle or a motor vehicle which is not registered
23 under the Vehicle Code because it is to be operated or
24 used exclusively off the highways. A demonstrator is a
25 vehicle assigned by a dealer for the purpose of
26 demonstrating qualities and characteristics common to
27 vehicles of the same or similar model and type.

28 (3) "Motor home" means a vehicular unit built on, or
29 permanently attached to, a self-propelled motor vehicle
30 chassis, chassis cab, or van, which becomes an integral
31 part of the completed vehicle, designed for human
32 habitation for recreational or emergency occupancy.

33 (f) (1) Except as provided in paragraph (2), no
34 person shall sell, either at wholesale or retail, lease, or
35 transfer a motor vehicle transferred by a buyer or lessee
36 to a manufacturer pursuant to paragraph (2) of
37 subdivision (d) of Section 1793.2 or a similar statute of any
38 other state, unless the nature of the nonconformity
39 experienced by the original buyer or lessee is clearly and
40 conspicuously disclosed to the prospective buyer, lessee,

1 or transferee, the nonconformity is corrected, and the
2 manufacturer warrants to the new buyer, lessee, or
3 transferee in writing for a period of one year that the
4 motor vehicle is free of that nonconformity.

5 (2) Except for the requirement that the nature of the
6 nonconformity be disclosed to the transferee, paragraph
7 (1) does not apply to the transfer of a motor vehicle to an
8 educational institution if the purpose of the transfer is to
9 make the motor vehicle available for use in automotive
10 repair courses.

O



SB 1718

Page 1

SENATE THIRD READING
SB 1718 (Sher)
As Amended August 30, 2000
Majority vote

SENATE VOTE :26-8

CONSUMER PROTECTION

5-8

Ayes: Davis, Correa, Lempert,
Machado, Wesson

SUMMARY : Expands the provisions of the lemon law to include new motor vehicles with safety defects and vehicles used primarily for business purposes. Specifically, this bill :

- 1) Allows consumers to assert the protections of the lemon law if the same problem with the vehicle is "likely to cause death or serious bodily injury if the vehicle is driven" and the vehicle has been subject to repair two or more times by the manufacturer or its agents, with the consumer at least once directly notifying the manufacturer of the need to repair the problem.
- 2) Includes within the scope of the lemon law new motor vehicles bought or used primarily for business purposes weighing less than 10,000 pounds.
- 3) Modifies the current notification process from the consumer to an automobile manufacturer to state that the notification must be sent "to the address, if any, specified clearly and conspicuously by the [auto] manufacturer in the warranty or owner's manual."

EXISTING LAW :

- 1) Defines a new motor vehicle as one that is bought for use primarily for personal, family, or household purposes or for dual use purposes (i.e., business and personal, family, or household). Up to five dual use vehicles per registered owner may assert the protection of the lemon law if the vehicle fits the definition specified below.
- 2) States that the period within which a new motor vehicle may be

SB 1718

Page 2

presumed to be out of conformity with its express warranty (a lemon), if the circumstances detailed in #3 below are met, is within the first 18 months after delivery to the buyer or the vehicle's first 18,000 miles, whichever occurs first.

- 3) States that a new motor vehicle may be presumed to be a lemon if, during the time period specified in #2 above:
 - a) The same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for repair of the nonconformity; or,
 - b) The vehicle is out of service by reason of repair of nonconformities for a total of more than 30 days since delivery of the vehicle, as specified.

FISCAL EFFECT : None

COMMENTS : According to the sponsor, Consumers for Auto Reliability and Safety (CARS), this bill will close a "dangerous lemon loophole" by allowing vehicles primarily used for business purposes to gain the protections of the lemon law. The sponsor notes that currently only personal use vehicles or dual use vehicles (i.e., personal and business use) are provided protection by the lemon law. CARS asserts that some manufacturers "exploit the business use 'lemon loophole'" to evade state laws aimed at protecting consumers from "lemon laundering" (i.e., the undisclosed resale of defective automobiles to unsuspecting consumers). This bill will close that loophole.

One major provision of the bill adds a lower threshold of two repair attempts for vehicles that are likely to cause death or serious bodily injury if driven by the consumer. Currently, the standard for asserting the lemon law's protections is four repair attempts for the same problem or more than 30 days out of service within the first 18 months or 18,000 miles, whichever comes first. The sponsor notes that this provision will "improve vehicle safety by reducing the number of times consumers must experience a serious, potentially life-threatening safety problem before they gain the benefit" of the lemon law. In order to assert the lemon law's protections, consumers must still notify the manufacturer of the need for repair prior to asserting the presumption that a vehicle is a lemon.

SB 1718

Page 3

Representatives of most domestic and foreign automobile manufacturers oppose the bill because they believe the two-repair standard for safety-impaired vehicles doesn't provide sufficient opportunity for an auto manufacturer to fix a problem that cannot be repaired at a dealership. They also believe that the expansion of the lemon law for up to five purely business vehicles is premature, as 1998 legislation increasing the scope of the lemon law from personal use to dual use has yet to be fully evaluated.

Supporters, primarily comprised of consumer groups, attorneys and automobile clubs, counter that it is not only unfair but downright dangerous for consumers to have to get their new car with a safety defect fixed four times before they can assert that the vehicle is a lemon. They note that at least 12 other states (i.e., Arkansas, Connecticut, Georgia, Hawaii, Iowa, Maryland, Minnesota, Ohio, Texas, Virginia, Washington, and West Virginia) allow auto manufacturers only one or two failed repair attempts before the consumer can assert the vehicle is a lemon.

4/18/22, 9:24 PM

SB 1718 Senate Bill - Bill Analysis

The August 25 amendments add a gross vehicle weight cap of 10,000 pounds to the business use provisions of the bill, and add joint authors and coauthors.

The August 30 author's amendments modify the lemon law notification process to require that consumers send written notification to the manufacturer's address as specified in their warranty or owner's manual. These amendments remove the prior opposition of two automobile manufacturers, and have been agreed to by the sponsor.

Analysis Prepared by : Robert Herrell / CONPRO / (916) 319-2889

FN: 0007140

BILL ANALYSIS

SENATE RULES COMMITTEE	SB 1718
Office of Senate Floor Analyses	
1828 N Street, Suite 524	
(916) 445-6614	Fax: (916)
327-4478	

UNFINISHED BUSINESS

Bill No: SB 1718
Author: Sher (D)
Amended: 8/30/00
Vote: 21

PRIOR VOTES NOT RELEVANT

SUBJECT : Warranties: new motor vehicles
SOURCE : Author

DIGEST : The bill provides for the establishment of the presumption when a nonconformity in an automobile that results in a condition likely to cause death or serious bodily injury if the vehicle is driven has been subject to repair two or more times by the manufacturer or its agents and the buyer or lessee has at least once directly notified the manufacturer of the need for the repair. This bill also makes other related changes.

This bill revises the definition of a new motor vehicle to include only a new motor vehicle with a gross vehicle weight under 10,000 pounds bought or used primarily for business purposes, as specified.

ANALYSIS : ASSEMBLY AMENDMENTS :

1. Add co-author.

CONTINUED

SB 1718
Page

2

2. Amend the definition of a new motor vehicle.
3. Make related clarifying changes to the bill.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No
Local: No

DLM:jk 8/31/00 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

**** END ****

SB 1718
Page 1

SENATE THIRD READING
SB 1718 (Sher)
As Amended August 25, 2000
Majority vote

SENATE VOTE :26-8

CONSUMER PROTECTION 5-8

Ayes: Davis, Correa, Lempert,
Machado, Wesson

SUMMARY : Expands the provisions of the lemon law to include new motor vehicles with safety defects and vehicles used primarily for business purposes. Specifically, this bill :

- 1) Allows consumers to assert the protections of the lemon law if the same problem with the vehicle is "likely to cause death or serious bodily injury if the vehicle is driven" and the vehicle has been subject to repair two or more times by the manufacturer or its agents, with the consumer at least once directly notifying the manufacturer of the need to repair the problem.
- 2) Includes within the scope of the lemon law new motor vehicles bought or used primarily for business purposes weighing less than 10,000 pounds.

EXISTING LAW :

- 1) Defines a new motor vehicle as one that is bought for use primarily for personal, family, or household purposes or for dual use purposes (i.e., business and personal, family, or household). Up to five dual use vehicles per registered owner may assert the protection of the lemon law if the vehicle fits the definition specified below.
- 2) States that the period within which a new motor vehicle may be presumed to be out of conformity with its express warranty (a lemon), if the circumstances detailed in #3 below are met, is within the first 18 months after delivery to the buyer or the vehicle's first 18,000 miles, whichever occurs first.

SB 1718
Page 2

- 3) States that a new motor vehicle may be presumed to be a lemon if, during the time period specified in #2 above:

- a) The same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for repair of the nonconformity; or,
- b) The vehicle is out of service by reason of repair of nonconformities for a total of more than 30 days since delivery of the vehicle, as specified.

FISCAL EFFECT : None

COMMENTS :

- 1) According to the sponsor, Consumers for Auto Reliability and Safety (CARS), this bill will close a "dangerous lemon loophole" by allowing vehicles primarily used for business purposes to gain the protections of the lemon law. The sponsor notes that currently only personal use vehicles or dual use vehicles (i.e., personal and business use) are provided protection by the lemon law. CARS asserts that some manufacturers "exploit the business use 'lemon loophole'" to evade state laws aimed at protecting consumers from "lemon laundering" (i.e., the undisclosed resale of defective automobiles to unsuspecting consumers). This bill will close that loophole.
- 2) One major provision of the bill adds a lower threshold of two repair attempts for vehicles that are likely to cause death or serious bodily injury if driven by the consumer. Currently, the standard for asserting the lemon law's protections is four repair attempts for the same problem or more than 30 days out of service within the first 18 months or 18,000 miles, whichever comes first. The sponsor notes that this provision will "improve vehicle safety by reducing the number of times consumers must experience a serious, potentially life-threatening safety problem before they gain the benefit" of the lemon law. In order to assert the lemon law's protections, consumers must still notify the manufacturer of the need for repair prior to asserting the presumption that a vehicle is a lemon.
- 3) Representatives of most domestic and foreign automobile

SB 1718
Page 3

manufacturers oppose the bill because they believe the two-repair standard for safety-impaired vehicles doesn't provide sufficient opportunity for an auto manufacturer to fix a problem that cannot be repaired at a dealership. They also believe that the expansion of the lemon law for up to five purely business vehicles is premature, as 1998 legislation increasing the scope of the lemon law from personal use to dual use has yet to be fully evaluated.

- 4) Supporters, primarily comprised of consumer groups, attorneys and automobile clubs, counter that it is not only unfair but downright dangerous for consumers to have to get their new car with a safety defect fixed four times before they can assert that the vehicle is a lemon. They note that at least 12 other states (i.e., Arkansas, Connecticut, Georgia, Hawaii, Iowa, Maryland, Minnesota, Ohio, Texas, Virginia, Washington, and West Virginia) allow auto manufacturers only one or two failed repair attempts before the consumer can assert the vehicle is a lemon.

4/18/22, 9:25 PM

SB 1718 Senate Bill - Bill Analysis

5)The August 25 amendments add a gross vehicle weight cap of 10,000 pounds to the business use provisions of the bill, and add joint authors and coauthors.

Analysis Prepared by_: Robert Herrell / C.P., G.E. & E.D. / (916) 319-2089

FN: 0006344

SB 1718
Page 1

SENATE THIRD READING
SB 1718 (Sher)
As Amended August 7, 2000
Majority vote

SENATE VOTE :26-8 _

CONSUMER PROTECTION 5-0

Ayes: Davis, Correa, Lempert, Machado, Wesson			
--	--	--	--

SUMMARY : Expands the provisions of the Tanner Consumer Protection Act (lemon law) to include new motor vehicles with safety defects and vehicles used primarily for business. Specifically, this bill :

- 1) Allows consumers to assert the protections of the lemon law if the same problem with the vehicle is "likely to cause death or serious bodily injury if the vehicle is driven" and the vehicle has been subject to repair two or more times by the manufacturer or its agents, with the consumer at least once directly notifying the manufacturer of the need to repair the problem.
- 2) Includes new motor vehicles bought or used primarily for business purposes within the scope of the lemon law, as specified.

EXISTING LAW :

- 1) Defines a new motor vehicle as one which is bought for use primarily for personal, family, or household purposes or for dual use purposes (i.e., business and personal, family, or household). Up to five dual use vehicles per registered owner may assert the protection of the lemon law if the vehicle fits the definition specified below.
- 2) States that the period within which a new motor vehicle may be presumed to be out of conformity with its express warranty (a lemon), if the circumstances detailed in #3 below are met, is within the first 18 months after delivery to the buyer or the vehicle's first 18,000 miles, whichever occurs first.
- 3) States that a new motor vehicle may be presumed to be a lemon if, during the time period specified in #2 above:

SB 1718
Page 2

- a) The same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for repair of the nonconformity; or,
- b) The vehicle is out of service by reason of repair of nonconformities for a total of more than 30 days since delivery of the vehicle, as specified.

FISCAL EFFECT : None

COMMENTS :

- 1) According to the sponsor, Consumers for Auto Reliability and Safety (CARS), this bill will close a "dangerous lemon loophole" by allowing vehicles primarily used for business purposes to gain the protections of the lemon law. The sponsor notes that currently only personal use vehicles or dual use vehicles (i.e., personal and business use) are provided protection by the lemon law. CARS asserts that some manufacturers "exploit the business use 'lemon loophole'" to evade state laws aimed at protecting consumers from "lemon laundering" (i.e., the undisclosed resale of defective automobiles to unsuspecting consumers). This bill will close that loophole and "improve protection for individuals and small businesses who are at a major disadvantage in negotiating with giant multi-national corporations."
- 2) The other major provision of this bill adds a lower threshold of two repair attempts for vehicles that are likely to cause death or serious bodily injury if driven by the consumer. Currently, the standard for asserting the lemon law's protections is four repair attempts for the same problem or more than 30 days out of service within the first 18 months or 18,000 miles, whichever comes first. The sponsor notes that this provision will "improve vehicle safety by reducing the number of times consumers must experience a serious, potentially life-threatening safety problem before they gain the benefit" of the lemon law. In order to assert the lemon law's protections, consumers must still notify the manufacturer of the need for repair prior to asserting the presumption that a vehicle is a lemon.
- 3) Representatives of all domestic and most major foreign automobile manufacturers oppose this bill for the following reasons:

SB 1718
Page 3

- a) The two-repair standard for safety-impaired vehicles doesn't provide sufficient opportunity for an auto manufacturer to fix a problem that cannot be repaired at a dealership. Therefore, the car companies have suggested amendments giving the manufacturer 15 days after receiving notice from the consumer to fix the vehicle once and for all; and,
- b) The expansion of the lemon law for up to five purely business vehicles is premature, as 1998 legislation increasing the scope of the lemon law from personal use to dual use has yet to be evaluated. Manufacturers believe this provision should be deleted, thereby reverting back to current law last amended in 1998.
- 4) Supporters, primarily comprised of consumer groups, attorneys and automobile clubs, counter that it is not only unfair but downright dangerous for consumers to have to get their new car with a safety defect fixed four times before they can assert that the vehicle is a lemon. They note that at least 12 other states (i.e., Arkansas,

4/18/22, 9:25 PM

SB 1718 Senate Bill - Bill Analysis

Connecticut, Georgia, Hawaii, Iowa, Maryland, Minnesota, Ohio, Texas, Virginia, Washington, and West Virginia) allow auto manufacturers only one or two failed repair attempts before the consumer can assert the vehicle is a lemon

Analysis Prepared by : Robert Herrell / C.P., G.E. & E.D. / (916)
319-2089

FN: 0005720

SB 1718

Page 1

Date of Hearing: August 8, 2000

ASSEMBLY COMMITTEE ON CONSUMER PROTECTION, GOVERNMENTAL
EFFICIENCY, AND ECONOMIC DEVELOPMENT

Susan Davis, Chair

SB 1718 (Sher) - As Amended: August 7, 2000

SENATE VOTE : 26-8SUBJECT : Lemon Law: Safety Defects and Business Use
Expansion.

Date of Hearing: June 20, 2000

SUMMARY : Expands the provisions of the lemon law (Tanner
Consumer Protection Act) to include new motor vehicles with
safety defects and vehicles used primarily for business.
Specifically, this bill :1)Allows consumers to assert the protections of the lemon law if
the same problem with the vehicle is "likely to cause death or
serious bodily injury if the vehicle is driven" and the
vehicle has been subject to repair two or more times by the
manufacturer or its agents, with the consumer at least once
directly notifying the manufacturer of the need to repair the
problem.2)Includes new motor vehicles bought or used primarily for
business purposes within the scope of the lemon law, as
specified.EXISTING LAW1)Defines a new motor vehicle as one which is bought for use
primarily for personal, family, or household purposes or for
dual use purposes (business and personal, family, or
household). Up to five dual use vehicles per registered owner
may assert the protection of the lemon law if the vehicle fits
the definition specified below.1)States that the period within which a new motor vehicle may be
presumed to be out of conformity with its express warranty (a
lemon), if the circumstances detailed in #3 below are met, is
within the first 18 months after delivery to the buyer or the
vehicle's first 18,000 miles, whichever occurs first.SB 1718

Page 2

1)States that a new motor vehicle may be presumed to be a lemon
if, during the time period specified in #2 above:

- a) the same nonconformity has been subject to repair four
or more times by the manufacturer or its agents and the
buyer has at least once directly notified the manufacturer
of the need for repair of the nonconformity, or
- b) the vehicle is out of service by reason of repair of
nonconformities for a total of more than 30 days since
delivery of the vehicle, as specified.

1)Defines what constitutes a "qualified third-party dispute
resolution process" (QDRP), including stating that a QDRP
must meet specified Federal Trade Commission minimum
requirements, specified timelines for decisions, requirements
for arbitrators, consumers, and manufacturers, requirements
for process considerations, and certification procedures with
the California Department of Consumer Affairs, in addition to
other specified requirements.1)States that QDRP decisions are binding on the manufacturer if
the buyer elects to accept the decision, and that the QDRP
must "take into account" specified information, including the
conditions of the written warranty, the rights and remedies in
relevant Federal Trade Commission regulations, and any other
"equitable considerations appropriate in the circumstances."1)States that if a qualified dispute resolution process exists,
then the consumer may not assert that he or she has a lemon
until after the consumer has initially resorted to the dispute
resolution process. This provision does not apply if the
buyer is dissatisfied with the decision of the dispute
resolution process, or if the manufacturer neglects to fulfill
the terms of the dispute resolution decision.1)Does not state that a manufacturer without a QDRP must
disclose that fact in specified sales and promotional
literature.FISCAL EFFECT : No state costs. This bill is keyed as nonfiscal
and will not be referred to the Assembly Appropriations
Committee.COMMENTS :SB 1718

Page 3

1)Intent of Bill

According to the sponsor, Consumers for Auto Reliability and
Safety (CARS), SB 1718 will close a "dangerous lemon loophole"
by allowing vehicles primarily used for business purposes to
gain the protections of the lemon law. The sponsor notes that
currently only personal use vehicles or dual use vehicles
(personal and business use) are provided protection by the
lemon law. CARS asserts that some manufacturers "exploit the
business use 'lemon loophole'" to evade state laws aimed at
protecting consumers from "lemon laundering" - the undisclosed
resale of defective automobiles to unsuspecting consumers. SB
1718 will close that loophole and "improve protection for
individuals and small businesses who are at a major
disadvantage in negotiating with giant multi-national
corporations."

The other major provision of the bill adds a lower threshold
of two repair attempts for vehicles that are likely to cause
death or serious bodily injury if driven by the consumer.

Currently, the standard for asserting the lemon law's protections is four repair attempts for the same problem or more than 30 days out of service within the first 18 months or 18,000 miles, whichever comes first. The sponsor notes that this provision will "improve vehicle safety by reducing the number of times consumers must experience a serious, potentially life-threatening safety problem before they gain the benefit" of the lemon law. In order to assert the lemon law's protections, consumers must still notify the manufacturer of the need for repair prior to asserting the presumption that a vehicle is a lemon.

SB 1718
Page 4

1) Opponents Assert the Presumption that the Bill is Premature and Problematic

Representatives of all domestic and most major foreign automobile manufacturers oppose SB 1718 for the following reasons:

The two-repair standard for safety-impaired vehicles doesn't provide sufficient opportunity for an auto manufacturer to fix a problem that cannot be repaired at a dealership. Therefore, the car companies have suggested amendments giving the manufacturer 15 days after receiving notice from the consumer to fix the vehicle once and for all.

The expansion of the lemon law for up to five purely business vehicles is premature, as 1998 legislation increasing the scope of the lemon law from personal use to dual use has yet to be evaluated. Manufacturers believe this provision should be deleted, thereby reverting back to current law last amended in 1998.

California's lemon law already creates "more consumer litigation against automakers" than any other state's lemon law, so additional changes are unwarranted and will only lead to additional litigation.

1) Supporters Counter and Assert the Presumption that Auto Manufacturers are Singing the Same Old Anti-Consumer Tune

Supporters, primarily comprised of consumer groups, attorneys and automobile clubs, counter that it is not only unfair but downright dangerous for consumers to have to get their new car with a safety defect fixed four times before they can assert that the vehicle is a lemon. They note that at least 12 other states (Arkansas, Connecticut, Georgia, Hawaii, Iowa, Maryland, Minnesota, Ohio, Texas, Virginia, Washington, and West Virginia) allow auto manufacturers only one or two failed repair attempts before the consumer can assert the vehicle is a lemon. It should be noted that 8 of these 12 states use one repair attempt as the standard. Supporters also note that the manufacturers lack of confidence in their own dealers and proposed 15-day amendment is troubling, since a 1989 California Court of appeals decision found that factory authorized dealers are the manufacturers agents for purposes of making warranty repairs (Ibrahim v. Ford Motor Co. (1989)

SB 1718
Page 5

214 Cal.App.3d 878, 889).

Supporters also note that many states have not found the arguments of auto manufacturers against business lemon law coverage very persuasive, though the exact number of states with straight business use lemon law coverage was not provided to the committee. Michigan, for example, the home of the auto industry, allows up to 10 commercial use vehicles to be covered by their lemon law.

Finally, supporters note that the auto manufacturers have never supported either the establishment or the expansion of the lemon law, so their intransigence is not surprising now.

1) Net Content of Bill Remains Unchanged from Previous Hearing

This bill was previously heard by the committee on June 28, 2000, where it failed to receive the requisite five votes needed for passage. Subsequently the bill was amended on June 29, 2000, to eliminate the safety defect provisions. The bill was amended on August 7, 2000, to reinsert those provisions, thus the current version of the bill is exactly the same as the version heard by the committee on June 28, 2000.

The author and sponsor should explain to the committee the rationale for these changes.

1) Prior Legislation

AB 1848 (Davis), Chapter 352, Statutes of 1998, expanded the lemon law to include up to five vehicles per registered owner used for both business and personal purposes.

AB 1290 (Davis), Chapter 448, Statutes of 1999, expanded the lemon law presumption period from 12 months or 12,000 miles, whichever occurs first, to 18 months or 18,000 miles, whichever occurs first.

REGISTERED SUPPORT / OPPOSITION :

Support

Consumers for Auto Reliability and Safety (CARS) (sponsor)
Advocates for Highway and Auto Safety
Office of the Attorney General

SB 1718
Page 6

Automobile Club of Southern California
Burrows Brothers Company
California Labor Federation, AFL-CIO
California Professional Firefighters
California Public Interest Research Group (CalPIRG)
California Small Business Association
California State Automobile Association
Citizens for Reliable and Safe Highways (CRASH)
Congress of California Seniors
Consumer Action
Consumer Attorneys of California
Consumer Federation of California
Consumers First
Consumers Union
Center for Public Interest Law, University of San Diego
Contra Costa County Entrepreneurs Association
Emergency Nurses Association
International Association of Lemon Law Administrators
Kids in Cars
Personal Insurance Federation of California
Trauma Foundation
2 individuals

Opposition

Alliance of Automobile Manufacturers (BMW, DaimlerChrysler,
Fiat, Ford, G.M., Isuzu, Mazda, Mitsubishi, Nissan, Porsche,
Toyota, Volkswagen, Volvo)
General Motors
Honda North America, Inc.
Nissan

Analysis Prepared by : Robert Herrell / C.P., G.E. & E.D. /
(916) 319-2089

SB 1718

Page 1

Date of Hearing: June 20, 2000

ASSEMBLY COMMITTEE ON CONSUMER PROTECTION, GOVERNMENTAL
EFFICIENCY, AND ECONOMIC DEVELOPMENT

Susan Davis, Chair

SB 1718 (Sher) - As Amended: May 4, 2000

SENATE VOTE : 26-8SUBJECT : Lemon Law: Safety Defects and Business Use Expansion.SUMMARY : Expands the provisions of the lemon law (Tanner
Consumer Protection Act) to include new motor vehicles with
safety defects and vehicles used primarily for business.
Specifically, this bill :

1) Allows consumers to assert the protections of the lemon law if the same problem with the vehicle is "likely to cause death or serious bodily injury if the vehicle is driven" and the vehicle has been subject to repair two or more times by the manufacturer or its agents, with the consumer at least once directly notifying the manufacturer of the need to repair the problem.

2) Includes new motor vehicles bought or used primarily for business purposes within the scope of the lemon law, as specified.

EXISTING LAW

1) Defines a new motor vehicle as one which is bought for use primarily for personal, family, or household purposes or for dual use purposes (business and personal, family, or household). Up to five dual use vehicles per registered owner may assert the protection of the lemon law if the vehicle fits the definition specified below.

1) States that the period within which a new motor vehicle may be presumed to be out of conformity with its express warranty (a lemon), if the circumstances detailed in #3 below are met, is within the first 18 months after delivery to the buyer or the vehicle's first 18,000 miles, whichever occurs first.

1) States that a new motor vehicle may be presumed to be a lemon if, during the time period specified in #2 above:

SB 1718

Page 2

- a) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for repair of the nonconformity, or
- b) the vehicle is out of service by reason of repair of nonconformities for a total of more than 30 days since delivery of the vehicle, as specified.

1) Defines what constitutes a "qualified third-party dispute resolution process" (QDRP), including stating that a QDRP must meet specified Federal Trade Commission minimum requirements, specified timelines for decisions, requirements for arbitrators, consumers, and manufacturers, requirements for process considerations, and certification procedures with the California Department of Consumer Affairs, in addition to other specified requirements.

1) States that QDRP decisions are binding on the manufacturer if the buyer elects to accept the decision, and that the QDRP must "take into account" specified information, including the conditions of the written warranty, the rights and remedies in relevant Federal Trade Commission regulations, and any other "equitable considerations appropriate in the circumstances."

1) States that if a qualified dispute resolution process exists, then the consumer may not assert that he or she has a lemon until after the consumer has initially resorted to the dispute resolution process. This provision does not apply if the buyer is dissatisfied with the decision of the dispute resolution process, or if the manufacturer neglects to fulfill the terms of the dispute resolution decision.

1) Does not state that a manufacturer without a QDRP must disclose that fact in specified sales and promotional literature.

FISCAL EFFECT : No state costs. This bill is keyed as nonfiscal and will not be referred to the Assembly Appropriations Committee.

COMMENTS :1) Intent of BillSB 1718

Page 3

According to the sponsor, Consumers for Auto Reliability and Safety (CARS), SB 1718 will close a "dangerous lemon loophole" by allowing vehicles primarily used for business purposes to gain the protections of the lemon law. The sponsor notes that currently only personal use vehicles or dual use vehicles (personal and business use) are provided protection by the lemon law. CARS asserts that some manufacturers "exploit the business use 'lemon loophole'" to evade state laws aimed at protecting consumers from "lemon laundering" - the undisclosed resale or defective automobiles to unsuspecting consumers. SB 1718 will close that loophole and "improve protection for individuals and small businesses who are at a major disadvantage in negotiating with giant multi-national corporations."

The other major provision of the bill adds a lower threshold of two repair attempts for vehicles that are likely to cause death or serious bodily injury if driven by the consumer. Currently, the standard for asserting the lemon law's protections is four repair attempts for the same problem or

more than 30 days out of service within the first 18 months or 18,000 miles, whichever comes first. The sponsor notes that this provision will "improve vehicle safety by reducing the number of times consumers must experience a serious, potentially life-threatening safety problem before they gain the benefit" of the lemon law. In order to assert the lemon law's protections, consumers must still notify the manufacturer of the need for repair prior to asserting the presumption that a vehicle is a lemon.

SB 1718
Page 4

2)Opponents Assert the Presumption that the Bill is Premature and Problematic

Representatives of all domestic and most major foreign automobile manufacturers oppose SB 1718 for the following reasons:

The two-repair standard for safety-impaired vehicles doesn't provide sufficient opportunity for an auto manufacturer to fix a problem that cannot be repaired at a dealership. Therefore, the car companies have suggested amendments giving the manufacturer 15 days after receiving notice from the consumer to fix the vehicle once and for all.

The expansion of the lemon law for up to five purely business vehicles is premature, as 1998 legislation increasing the scope of the lemon law from personal use to dual use has yet to be evaluated. Manufacturers believe this provision should be deleted, thereby reverting back to current law last amended in 1998.

California's lemon law already creates "more consumer litigation against automakers" than any other state's lemon law, so additional changes are unwarranted and will only lead to additional litigation.

3)Supporters Counter and Assert the Presumption that Auto Manufacturers are Singing the Same Old Anti-Consumer Tune

Supporters, primarily comprised of consumer groups, attorneys and automobile clubs, counter that it is not only unfair but downright dangerous for consumers to have to get their new car with a safety defect fixed four times before they can assert that the vehicle is a lemon. They note that at least 12 other states (Arkansas, Connecticut, Georgia, Hawaii, Iowa, Maryland, Minnesota, Ohio, Texas, Virginia, Washington, and West Virginia) allow auto manufacturers only one or two failed repair attempts before the consumer can assert the vehicle is a lemon. It should be noted that 8 of these 12 states use one repair attempt as the standard. Supporters also note that the manufacturers lack of confidence in their own dealers and suggested 15-day amendment is troubling, since a 1989 California Court of appeals decision found that factory authorized dealers are the manufacturers agents for purposes of making warranty repairs (Ibrahim v. Ford Motor Co. (1989)

SB 1718
Page 5

214 Cal.App.3d 878, 889).

Supporters also note that many states have not found the arguments of auto manufacturers against business lemon law coverage very persuasive, though the exact number of states with straight business use lemon law coverage was not provided to the committee. Michigan, for example, the home of the auto industry, allows up to 10 commercial use vehicles to be covered by their lemon law.

Finally, supporters note that the auto manufacturers have never supported either the establishment or the expansion of the lemon law, so their intransigence is not surprising now.

4)Prior Legislation

AB 1848 (Davis), Chapter 352, Statutes of 1998, expanded the lemon law to include up to five vehicles per registered owner used for both business and personal purposes.

AB 1290 (Davis), Chapter 440, Statutes of 1999, expanded the lemon law presumption period from 12 months or 12,000 miles, whichever occurs first, to 18 months or 18,000 miles, whichever occurs first.

REGISTERED SUPPORT / OPPOSITION :

Support

Consumers for Auto Reliability and Safety (CARS) (sponsor)
Advocates for Highway and Auto Safety
Office of the Attorney General
Automobile Club of Southern California
California State Automobile Association
Consumer Attorneys of California
Consumer Federation of California
Consumers Union
Center for Public Interest Law, University of San Diego
2 individuals

Opposition

Alliance of Automobile Manufacturers (BMW, DaimlerChrysler, Fiat, Ford, G.M., Isuzu, Mazda, Mitsubishi, Nissan, Porsche, Toyota, Volkswagen, Volvo)

General Motors
Honda North America, Inc.
Nissan

Analysis Prepared by : Robert Herrell / C.P., G.E. & E.D. /
(916) 319-2889

BILL ANALYSIS

SENATE RULES COMMITTEE	SB 1718
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614 Fax: (916)	
327-4478	

THIRD READING

Bill No: SB 1718
 Author: Sher (D)
 Amended: 5/4/00
 Vote: 21

SENATE JUDICIARY COMMITTEE : 6-2, 5/9/00
 AYES: Burton, Escutia, Morrow, O'Connell, Sher, Schiff
 NOES: Haynes, Wright
 NOT VOTING: Peace

SUBJECT : Motor Vehicle Warranties: Lemon Law
SOURCE : Consumers for Auto Reliability and Safety

DIGEST : This bill would: (1) reduce the number of repair attempts necessary to qualify a new motor vehicle as a presumptive lemon under the "Lemon Law" from four to two where the same nonconformity results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven; and (2) include new motor vehicles used primarily for business purposes by persons with fewer than five registered vehicles under the lemon law protections.

ANALYSIS : Existing law provides that if the manufacturer of a new motor vehicle is unable to service or repair the vehicle to conform to the applicable express warranties after a "reasonable number of attempts," the manufacturer must either promptly replace the vehicle or refund its purchase price. (Civil Code Section 1793.2(d)(2). All further references are to the Civil Code unless otherwise noted.)

CONTINUED

SB 1718
 Page

2

Existing law, known as the Lemon Law, clarifies what is meant by a "reasonable number of attempts" to repair a new motor vehicle. It creates a rebuttable presumption that the buyer or lessee is entitled to a refund or replacement if all of the following exist:

- 1.The manufacturer or its agent has made four or more attempts to repair the same problem, or the vehicle has been out of service more than 30 calendar days while being repaired by the manufacturer or its agent for any number of nonconformities.
- 2.The four repair attempts or 30 days out of service have occurred within 18 months of the vehicle's delivery to the buyer or 18,000 miles on the odometer of the vehicle, whichever occurs first.
- 3.The problem "substantially impairs" the vehicle's use, value or safety.
- 4.If required by the warranty material or by the owner's manual, the buyer has directly notified the manufacturer about the problem at least once.

This bill would provide that the rebuttable presumption under the Lemon Law applies when the same nonconformity results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven and the nonconformity has been subject to repair two or more times by the manufacturer or its agents.

Existing law applies the rebuttable presumption under the Lemon Law to a "new motor vehicle" which is defined as a new motor vehicle that is either: (a) used or bought for use primarily for personal, family, or household purposes, or (b) bought or used for business and personal, family, or household purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity to which not more than five motor vehicles are registered in this state.

This bill would modify the scope of the second prong of the Lemon Law presumption to apply it to new cars bought or

SB 1718
 Page

3

used primarily for business purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity to which not more than five motor vehicles are registered in this state.

The Lemon Law was enacted in 1982 and was conceived to aid new car consumers in enforcing the terms and conditions of express warranty contracts. California was the first state to introduce such legislation and the second state to enact a Lemon Law.

Under California's Song-Beverly Consumer Warranty Act, a new motor vehicle which is sold or leased with a written express warranty may, under certain circumstances, be returned to the manufacturer for a refund or a replacement, if the vehicle has a nonconformity that cannot be repaired after a "reasonable number" of attempts. The Tanner Consumer Protection Act, known as the Lemon Law, clarifies what is meant by a "reasonable number" of repair attempts, and creates a rebuttable presumption that the buyer or lessee is entitled to a refund or replacement in specified

instances.

In 1998, the Legislature amended the Lemon Law to expand the definition of "new motor vehicle" to include not only vehicles used purely by individuals, but also vehicles that were used for business and personal use. (AB 1848 (Davis) Statutes of 1998, Chapter 352.) AB 1848 originally attempted to extend the Lemon Law to business-only vehicles, but was amended to the dual-use provision to remove opposition from the manufacturers. This bill would extend the Lemon Law protection to businesses that have no more than five vehicles registered in the state.

Prior Legislation

AB 1848 (Davis), Chapter 352, Statutes of 1998, passed the Senate 28-2 (Noes: Haynes, Knight).

FISCAL EFFECT : Appropriation: No Fiscal Com.: No Local: No

SUPPORT : (Verified 5/11/00)

SB 1718
Page

4

Consumers for Auto Reliability and Safety (source)
Consumer Action
Consumer Attorneys of California
Consumer Federation of California
Consumers Union

OPPOSITION : (Verified 5/11/00)

Alliance of Automobile Manufacturers
Honda

ARGUMENTS IN SUPPORT : The sponsor of the bill, Consumers for Auto Reliability and Safety, state that SB 1718 will improve protection for self-employed entrepreneurs and small business owners, enhance motor vehicle safety, and enable more lemon owners to use the auto manufacturers' dispute resolution programs. The sponsor contends that this bill will alleviate two major flaws in existing law that adversely impact individual consumers and small business owners, as well as the public safety.

The supporters of this bill argue that the existing dual-use definition (business and personal use vehicles) perpetuates an arbitrary exclusion, protecting someone who uses a vehicle 99.9 percent of the time for business use, but not someone who uses it 100 percent for business. The supporters argue that the distinction simply does not make sense.

Supporters contend that the dual-use provision, based on an unspecified degree of usage, has a disparate adverse effect upon the self-employed and is not good public policy. They argue that business users make the same car payments, are provided the same warranties and bear the same burden as consumers not to misuse or abuse their vehicles. Yet, when defects arise in business-use vehicles that are not the fault of the owner, the remedies available to business users are significantly impaired. For example, by allowing small businesses to qualify under the Lemon Law, these businesses will be able to use the manufacturer's arbitration programs, rather than litigation being their only option to resolve disputes. Supporters argue that this change in law will lead to less litigation, not more.

SB 1718
Page

5

ARGUMENTS IN OPPOSITION : The opponents of the bill (i.e., manufacturers) state that the Lemon Law was intended to protect individuals who do not have the same bargaining power as businesses, and argue that the proposed change would be an unnecessary and unjustified expansion of liability.

Opponents argue that expanding the law to include business vehicles is problematic because these vehicles are subject to far more loads and stresses and do not undergo the same treatment as personal vehicles. This argument ignores, however, that the law already does apply to dual-use vehicles, including business uses. To the extent that these vehicles are being abused and protected by the Lemon Law, that issue already exists today. Nevertheless, a manufacturer can always argue that an alleged defect was caused by "unauthorized or unreasonable use" by a small business which precludes application of the Lemon Law provisions. _

RJG:sl 5/11/00 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

BILL ANALYSIS

SENATE JUDICIARY COMMITTEE
Adam B. Schiff, Chairman
1999-2000 Regular Session

SB 1718	5
Senator Sher	8
As Amended May 4, 2000	
Hearing Date: May 9, 2000	1
Civil Code	7
JMR	1
	8

SUBJECT

Motor Vehicle Warranties: Lemon Law

DESCRIPTION

This bill would: (1) reduce the number of repair attempts necessary to qualify a new motor vehicle as a presumptive lemon under the "Lemon Law" from four to two where the same nonconformity results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven; and (2) include new motor vehicles used solely for business purposes by persons with fewer than five registered vehicles under the lemon law protections.

BACKGROUND

This bill was previously heard in Committee on March 28, 2000, and was put over to address concerns raised by the opposition as to the meaning of "safety." As introduced, the bill would have provided the benefits of the Lemon Law after two failed attempts to fix a problem that substantially impaired the safety of the vehicle. The opponents argued that the use of a "safety standard" would be subjected to very broad interpretation and abuse.

Instead of the using "safety" as a standard, the bill has been amended to reduce the number of repair attempts necessary to qualify a vehicle as a presumptive lemon from four to two where the same nonconformity results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven.

(more)

SB 1718 (Sher)
Page 2

While this amendment apparently addresses the oppositions' concern regarding the meaning of "safety," the manufacturers nevertheless continue to oppose the bill, arguing that bill would make it very difficult for them to attempt a repair before the buyback requirement is triggered. Opponents' now want an amendment to allow them at least 15 days to attempt a repair after notice from the consumer. Supporters vehemently oppose any such amendment, claiming it would completely undermine the protections of the bill and existing law. (See further discussion under Comment 2.)

The Lemon Law was enacted in 1982 and was conceived to aid new car consumers in enforcing the terms and conditions of express warranty contracts. California was the first state to introduce such legislation and the second state to enact a Lemon Law.

Under California's Song-Beverly Consumer Warranty Act, a new motor vehicle which is sold or leased with a written express warranty may, under certain circumstances, be returned to the manufacturer for a refund or a replacement, if the vehicle has a nonconformity that cannot be repaired after a "reasonable number" of attempts. The Tanner Consumer Protection Act, known as the Lemon Law, clarifies what is meant by a "reasonable number" of repair attempts, and creates a rebuttable presumption that the buyer or lessee is entitled to a refund or replacement in specified instances.

CHANGES TO EXISTING LAW

1. Existing law provides that if the manufacturer of a new motor vehicle is unable to service or repair the vehicle to conform to the applicable express warranties after a "reasonable number of attempts," the manufacturer must either promptly replace the vehicle or refund its purchase price. (Civil Code Section 1793.2(d)(2). All further references are to the Civil Code unless otherwise noted.)

Existing law, known as the Lemon Law, clarifies what is meant by a "reasonable number of attempts" to repair a new motor vehicle. It creates a rebuttable presumption

SB 1718 (Sher)
Page 3

- that the buyer or lessee is entitled to a refund or replacement if all of the following exist:
- a. The manufacturer or its agent has made four or more attempts to repair the same problem, or the vehicle has been out of service more than 30 calendar days while being repaired by the manufacturer or its agent for any number of nonconformities; and
 - b. The four repair attempts or 30 days out of service have occurred within 18 months of the vehicle's delivery to the buyer or 18,000 miles on the odometer of the vehicle, whichever occurs first; and
 - c. The problem "substantially impairs" the vehicle's use, value or safety; and
 - d. If required by the warranty material or by the owner's manual, the buyer has directly notified the manufacturer about the problem at least once. (Section 1793.22.)

This bill would provide that the rebuttable presumption under the Lemon Law applies when the same nonconformity results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven and the

nonconformity has been subject to repair two or more times by the manufacturer of its agents. (The "four or more" rule would continue to apply in cases of nonconformities which impair a car's use, value or safety.)

2. Existing law applies the rebuttable presumption under the Lemon Law to a "new motor vehicle" which is defined as a new motor vehicle that is either: (a) used or bought for use primarily for personal, family, or household purposes, or (b) bought or used for business and personal, family, or household purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity to which not more than five motor vehicles are registered in this state.

This bill would modify the scope of the second prong of the Lemon Law presumption to apply it to new cars bought or used for business purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity to which not more than five motor vehicles are registered in this state.

SB 1718 (Sher)
Page 4

COMMENT

1. Stated need for legislation

The sponsor of the bill, Consumers for Auto Reliability and Safety, state that SB 1718 will improve protection for self-employed entrepreneurs and small business owners, enhance motor vehicle safety, and enable more lemon owners to use the auto manufacturers' dispute resolution programs. The sponsor contends that SB 1718 will alleviate two major flaws in existing law that adversely impact individual consumers and small business owners, as well as the public safety.

2. Reducing the number of repair attempts triggering the Lemon Law from four to two for problems that are likely to cause death or serious bodily injury

As set forth above, instead of the using "safety" as a standard, the bill has been amended to reduce the number of repair attempts necessary to qualify a vehicle as a presumptive lemon from four to two where the same nonconformity results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven. The supporters believe that the bill will promote consumer safety by lowering the number of necessary repair attempts in these potentially dangerous situations.

While this amendment apparently addresses the oppositions' concern regarding the meaning of "safety," the manufacturers continue to oppose the bill, arguing that bill would make it very difficult for them to attempt a repair before the buyback requirement is triggered. Opponents' seek an amendment to allow the manufacturer at least 15 days after notice from the consumer to attempt a repair. The manufacturers argue that they may be able to repair a nonconformity that cannot be repaired at a dealership, and that the manufacturer may have more incentive to do so.

Supporters oppose any such amendment, claiming it would undermine protection under existing law which allows a maximum of 30 days to attempt repairs before a vehicle is

SB 1718 (Sher)
Page 5

presumed to be a lemon, whereas this bill would allow an indefinite number of days for a repair attempt (i.e., at least 15 days).

In addition, supporters argue that the manufacturers are attempting to overturn a 1989 California Court of Appeals decision that found that factory authorized dealers are the manufacturers' agents for purposes of making warranty repairs. (See, *Ibrahim v. Ford Motor Co.* (1989) 214 Cal.App.3d 878, 889, holding that the provisions of Song-Severly "treat the manufacturer and its 'representative[s] in this state' [citation] or 'agents' [citation] as a single entity, the repair efforts of both being aggregated for the purpose of calculating whether 'the same nonconformity has been subject to repair four or more times.'" *Krotin v. Porsche Cars of North America, Inc.* (1995) 38 Cal.App.4th 294.)

Supporters contend that the opponents' proposed amendment would essentially obliterate these decisions and foster the legal fiction that a manufacturer is not responsible for the acts and omissions of the authorized representatives that it designates to act on its behalf. Supports assert that if the manufacturers lack confidence in their dealers' ability to repair problems correctly, they should invest in the necessary diagnostic equipment and adequate training for their dealers' automotive technicians so they know how to fix defects right the first time, before their customers are seriously injured or killed.

3. Expanding the Lemon Law protections to vehicles that are used by small businesses

In 1998, the Legislature amended the Lemon Law to expand the definition of "new motor vehicle" to include not only vehicles used purely by individuals, but also vehicles that were used for business and personal use. (AB 1848 (Davis) Stats. 1998, Ch. 352.) AB 1848 originally attempted to extend the Lemon Law to business-only vehicles, but was amended to the dual-use provision to remove opposition from the manufacturers. This bill would extend the Lemon Law protection to businesses that have no more than five vehicles registered in the state.

SB 1718 (Sher)

The supporters of this bill argue that the existing dual-use definition (business and personal use vehicles) perpetuates an arbitrary exclusion, protecting someone who uses a vehicle 99.9 percent of the time for business use, but not someone who uses it 100 percent for business. The supporters argue that the distinction simply does not make sense.

Supporters contend that the dual-use provision, based on an unspecified degree of usage, has a disparate adverse effect upon the self-employed and is not good public policy. They argue that business users make the same car payments, are provided the same warranties and bear the same burden as consumers not to misuse or abuse their vehicles. Yet, when defects arise in business-use vehicles that are not the fault of the owner, the remedies available to business users are significantly impaired. For example, by allowing small businesses to qualify under the Lemon Law, these business will be able to use the manufacturer's arbitration programs, rather than litigation being their only option to resolve disputes. Supporters argue that this change in law will lead to less litigation, not more.

The opponents of the bill (i.e., manufacturers) state that the Lemon Law was intended to protect individuals who do not have the same bargaining power as businesses, and argue that the proposed change would be an unnecessary and unjustified expansion of liability.

In response, the supporters point out that the bill would apply only to small businesses that own not more than five vehicles in the state. The supporters argue that these small businesses do not have the bargaining power or resources to withstand drawn-out disputes with manufacturers over vehicle defects. When their vehicles have substantial defects or are out of operation, their livelihoods and their ability to stay in business are adversely impacted.

Opponents argue that expanding the law to include business vehicles is problematic because these vehicles are subject to far more loads and stresses and do not undergo the same treatment as personal vehicles. This argument ignores, however, that the law already does

SB 1718 (Sher)
Page 7

apply to dual-use vehicles, including business uses. To the extent that these vehicles are being abused and protected by the Lemon Law, that issue already exists today. Nevertheless, a manufacturer can always argue that an alleged defect was caused by "unauthorized or unreasonable use" by a small business which precludes application of the Lemon Law provisions. (Section 1794.3.)

SHOULD THE LEMON LAW PROTECT SMALL BUSINESS OWNERS?

Support: Consumer Action; Consumer Attorneys of California; Consumer Federation of California; Consumers Union; CRASH; and various individuals

Opposition: Alliance of Automobile Manufacturers; Honda North America, Inc.

HISTORY

Source: Consumers for Auto Reliability and Safety

Related Pending Legislation: None Known

Prior Legislation: AB 1848 (Davis), Stats. 1998, Ch. 352;

SB 289 (Calderon), failed passage in Assembly C.P., G.E. & E.D.


[Home](#)
[Bill Information](#)
[California Law](#)
[Publications](#)
[Other Resources](#)
[My Subscriptions](#)
[My Favorites](#)

SB-234 Consumer warranties: members of the Armed Forces. (2007-2008)

Date	Action
07/27/07	Chaptered by Secretary of State. Chapter 151, Statutes of 2007.
07/27/07	Approved by Governor.
07/19/07	Enrolled. To Governor at 10:30 a.m.
07/16/07	Senate concurs in Assembly amendments. (Ayes 36. Noes 0. Page 1837.) To enrollment.
07/11/07	To Special Consent Calendar.
07/09/07	In Senate. To unfinished business.
07/09/07	Read third time. Passed. (Ayes 76. Noes 0. Page 2434.) To Senate.
07/03/07	Read second time. To Consent Calendar.
07/02/07	From committee: Do pass. To Consent Calendar. (Ayes 9. Noes 0.)
06/12/07	From committee: Do pass, but first be re-referred to Com. on V. A. with recommendation: To Consent Calendar. (Ayes 9. Noes 0.) Re-referred to Com. on V. A.
06/05/07	From committee with author's amendments. Read second time. Amended. Re-referred to Com. on B. & P.
05/17/07	To Coms. on B. & P. and V. A.
04/16/07	In Assembly. Read first time. Held at Desk.
04/16/07	Read third time. Passed. (Ayes 36. Noes 0. Page 562.) To Assembly.
04/12/07	To Special Consent Calendar.
04/10/07	Read second time. Amended. To third reading.
04/09/07	From committee: Do pass as amended. (Ayes 5. Noes 0. Page 412.)
03/14/07	Set for hearing March 27.
02/22/07	To Com. on JUD.
02/15/07	From print. May be acted upon on or after March 17.
02/14/07	Introduced. Read first time. To Com. on RLS. for assignment. To print.


SB-234 Consumer warranties: members of the Armed Forces. (2007-2008)

Senate: 1st Cmt 2nd 3rd Pass Pass Chp

Assembly: 1st Cmt 2nd Pass

Bill Status	
Measure:	SB-234
Lead Authors:	Corbett (S)
Principal Coauthors:	-
Coauthors:	-
Topic:	Consumer warranties: members of the Armed Forces.
31st Day in Print:	03/17/07
Title:	An act to amend Section 1791 of, and to add Section 1795.8 to, the Civil Code, relating to consumer warranties.
House Location:	Secretary of State
Chaptered Date:	07/27/07
Last Amended Date:	06/05/07

Type of Measure	
Inactive Bill - Chaptered	
Majority Vote Required	
Non-Appropriation	
Non-Fiscal Committee	
Non-State-Mandated Local Program	
Non-Urgency	
Non-Tax Levy	

Last 5 History Actions	
Date	Action
07/27/07	Chaptered by Secretary of State. Chapter 151, Statutes of 2007.
07/27/07	Approved by Governor.
07/19/07	Enrolled. To Governor at 10:30 a.m.
07/16/07	Senate concurs in Assembly amendments. (Ayes 36. Noes 0. Page 1837.) To enrollment.
07/11/07	To Special Consent Calendar.


[Home](#)
[Bill Information](#)
[California Law](#)
[Publications](#)
[Other Resources](#)
[My Subscriptions](#)
[My Favorites](#)

SB-234 Consumer warranties: members of the Armed Forces. (2007-2008)

Bill Votes	
Date	07/16/07
Result	(PASS)
Location	Senate Floor
Ayes Count	36
Noes Count	0
NVR Count	4
Motion	Special Consent #13 SB234 Corbett
Ayes	Aanestad, Ackerman, Alquist, Ashburn, Battin, Cedillo, Cogdill, Corbett, Correa, Cox, Ducheny, Dutton, Florez, Hollingsworth, Kehoe, Kuehl, Lowenthal, Machado, Maldonado, Margett, McClintock, Migden, Negrete McLeod, Oropeza, Padilla, Perata, Ridley-Thomas, Romero, Runner, Scott, Simitian, Steinberg, Torlakson, Wiggins, Wyland, Yee
Noes	
NVR	Calderon, Denham, Harman, Vincent

Bill Votes	
Date	07/09/07
Result	(PASS)
Location	Assembly Floor
Ayes Count	76
Noes Count	0
NVR Count	4
Motion	SB 234 Corbett Consent Calendar Second Day Regular Session
Ayes	Adams, Aghazarian, Anderson, Arambula, Bass, Beall, Benoit, Berg, Berryhill, Blakeslee, Brownley, Caballero, Charles Calderon, Carter, Cook, Coto, Davis, De La Torre, De Leon, DeSaulnier, DeVore, Duvall, Dymally, Emmerson, Eng, Evans, Feuer, Fuentes, Fuller, Gaines, Galgiani, Garcia, Garrick, Hancock, Hayashi, Hernandez, Horton, Houston, Huff, Huffman, Jeffries, Jones, Karmette, Keene, Krekorian, La Malfa, Laird, Leno, Lieber, Lieu, Ma, Maze, Mendoza, Mullin, Nakanishi, Nava, Niello, Parra, Plescia, Portantino, Price, Richardson, Sharon Runner, Ruskin, Salas, Saldana, Silva, Smyth, Solorio, Soto, Spitzer, Strickland, Tran, Walters, Wolk, Nunez
Noes	
NVR	Levine, Swanson, Torrico, Villines

Bill Votes	
Date	06/26/07
Result	(PASS)
Location	Asm Veterans Affairs
Ayes Count	9
Noes Count	0
NVR Count	0
Motion	Do pass, to Consent Calendar.
Ayes	Beall, Carter, Cook, DeVore, Lieu, Sharon Runner, Salas, Saldana, Wolk
Noes	
NVR	

Bill Votes	
Date	06/12/07
Result	(PASS)
Location	Asm Business and Professions
Ayes Count	9
Noes Count	0
NVR Count	1
Motion	Do pass and be re-referred to the Committee on Veterans Affairs to Consent Calendar.
Ayes	Carter, Emmerson, Eng, Hayashi, Hernandez, Horton, Maze, Price, Torrico
Noes	
NVR	Bass

Bill Votes	
Date	04/16/07
Result	(PASS)

Location	Senate Floor
Ayes Count	36
Noes Count	0
NVR Count	4
Motion	Special Consent # 1 SB234 Corbett
Ayes	Ackerman, Alquist, Ashburn, Battin, Calderon, Cedillo, Cogdill, Corbett, Correa, Denham, Ducheny, Dutton, Florez, Harman, Hollingsworth, Kuehl, Lowenthal, Machado, Maldonado, Margett, McClintock, Migden, Negrete McLeod, Oropeza, Padilla, Perata, Ridley-Thomas, Romero, Runner, Scott, Simitian, Steinberg, Torlakson, Wiggins, Wyland, Yee
Noes	
NVR	Aanestad, Cox, Kehoe, Vincent
Bill Votes	
Date	03/27/07
Result	(PASS)
Location	Sen Judiciary
Ayes Count	5
Noes Count	0
NVR Count	0
Motion	Do pass as amended.
Ayes	Ackerman, Corbett, Harman, Kuehl, Steinberg
Noes	
NVR	

SENATE RULES COMMITTEE

SB 234

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 234

Author: Corbett (D)

Amended: 6/5/07

Vote: 21

SENATE JUDICIARY COMMITTEE: 5-0, 3/27/07

AYES: Corbett, Harman, Ackerman, Kuehl, Steinberg

SENATE FLOOR: 36-0, 4/16/07

AYES: Ackerman, Alquist, Ashburn, Battin, Calderon, Cedillo, Cogdill, Corbett, Correa, Denham, Ducheny, Dutton, Florez, Harman, Hollingsworth, Kuehl, Lowenthal, Machado, Maldonado, Margett, McClintock, Migden, Negrete McLeod, Oropeza, Padilla, Perata, Ridley-Thomas, Romero, Runner, Scott, Simitian, Steinberg, Torlakson, Wiggins, Wyland, Yee

NO VOTE RECORDED: Aanestad, Cox, Kehoe, Vincent

ASSEMBLY FLOOR: 76-0, 7/9/07 - See last page for vote

SUBJECT: Motor vehicle consumer warranties: members of the Armed Forces

SOURCE: Consumers for Auto Reliability and Safety

DIGEST: This bill provides that California's "Lemon Law" cover a motor vehicle purchased by a member of the Armed Forces in the United States with a manufacturer's express warranty regardless of the state of purchase or registration, if both of the following apply: (1) the member purchased the motor vehicle, as defined, from a manufacturer who sells vehicles in California, and (2) the member was stationed in or a resident of California at

CONTINUED

MJN/1365

the time he or she purchased the vehicle or at the time he or she filed an action pursuant to California's Lemon Law.

This bill defines "Member of the Armed Forces" for purposes of California's Lemon Law as a person on full-time active duty in the Army, Navy, Marine Corps, Air Force, National Guard, or Coast Guard, and provides that full-time active duty also include active military service at a designated military service school.

Assembly Amendments made technical/clarifying changes.

ANALYSIS: Existing law, the Song-Beverly Consumer Warranty Act, establishes a number of protections for new and used motor vehicles covered by a manufacturer's express warranty. [Civil Code Section 1780 et seq.]

Existing case law holds that Song-Beverly only applies to a motor vehicle sold in California, even if the buyer is a resident of California, the manufacturer sells such vehicles in California, and its authorized repair facilities in California failed to repair the vehicle after a reasonable number of attempts. [Cummins, Inc. v. Superior Court of Riverside County (2005) 36 Cal.4th 478.]

Existing case law holds that a used motor vehicle sold or leased with a balance of the manufacturer's original warranty is a "new motor vehicle" for purposes of California's Lemon Law. [Jensen v. BMW of North America, Inc. (1995) 35 Cal.App.4th 112.]

This bill provides that California's "Lemon Law" cover a motor vehicle purchased by a member of the Armed Forces in the United States with a manufacturer's express warranty from the manufacturer regardless of the state of purchase or registration, if both of the following apply: (1) the member purchased the motor vehicle, as defined, from a manufacturer, or from an agent or representative of that manufacturer, who sells vehicles in California and (2) the member was stationed in or a resident of California at the time he or she purchased the vehicle or at the time he or she filed an action pursuant to California's Lemon Law.

Existing law defines "express warranty" as a written statement arising out of a sale to the consumer of a consumer good pursuant to which the manufacturer, distributor, or retailer undertakes to preserve or maintain the

utility or performance of the consumer good or provide compensation if there is a failure in utility or performance. [Civil Code Section 1791.2.]

Existing law defines, among other things, “consumer goods,” “buyer,” “distributor,” “independent repair or service facility” and “manufacturer.” (Civil Code Section 1791.)

This bill, for purposes of the Lemon Law, defines “Member of the Armed Services” to mean a person on full-time active duty in the Army, Navy, Marine Corps, Air Force, National Guard, or Coast Guard and provides that full-time active duty also include active military service at a designated military service school designated by law s the Adjutant General of the Military Department concerned.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 4/10/07)

Consumers for Auto Reliability and Safety (source)

Consumer Action

Consumer Attorneys of California

Consumer Federation of California

Navy Federal Credit Union

Major General Lehnert – Commanding General of Marine Corps Installation
West, Camp Pendleton, California

California State Commanders Veterans Council

Charles S. Cooper – Major General, USAF, Retired

Steve Lynch – Lt. Col., USAF, Retired

ARGUMENTS IN SUPPORT: The author’s office and sponsor state, “Existing law requires car buyers to purchase their vehicles in California in order to benefit from the protections under California’s auto lemon law. In some cases, that results in service members and their families suffering major hardships when they are saddled with unsafe and/or inoperable vehicles, purchased in another state. This can cause our troops additional stress, loss of income, lack of transportation, and other financial and service-related hardships and can distract them from their important mission of protecting our nation.

“Due to varying provisions of state lemon laws, in some cases, troops may lack protection under the lemon laws of ANY state.

“In one case, a Lieutenant testified live from Iraq, while on deployment from a base in Southern California, the auto manufacturers acknowledged his new truck was a lemon, and told him that if he were protected by California’s lemon law the manufacturer would promptly repurchase the lemon, but since he lacked that protection, they refused to buy it back. Eventually, that case was resolved, but he lieutenant had to accept a large deduction and took a hefty loss, instead of obtaining a complete refund. (Testimony was delivered live via telephone, before the Joint Committee on Boards, Commissions, and Consumer Protection, held May 23, 2006.) In addition, the manufacturer has attempted to have the vehicle retitled as a VOLUNTARY BUYBACK, as opposed to a lemon law buyback. This could mean that some unsuspecting consumer may get saddled with a lemon.”

Proponents assert that this bill is narrowly tailored to protect a particularly vulnerable population, Armed Forces members stationed in or residents of California who are subject to deployment on short notice, and who do not have any choice of where they are stationed or deployed.

ASSEMBLY FLOOR:

AYES: Adams, Aghazarian, Anderson, Arambula, Bass, Beall, Benoit, Berg, Berryhill, Blakeslee, Brownley, Caballero, Charles Calderon, Carter, Cook, Coto, Davis, De La Torre, De Leon, DeSaulnier, DeVore, Duvall, Dymally, Emmerson, Eng, Evans, Feuer, Fuentes, Fuller, Gaines, Galgiani, Garcia, Garrick, Hancock, Hayashi, Hernandez, Horton, Houston, Huff, Huffman, Jeffries, Jones, Karnette, Keene, Krekorian, La Malfa, Laird, Leno, Lieber, Lieu, Ma, Maze, Mendoza, Mullin, Nakanishi, Nava, Niello, Parra, Plescia, Portantino, Price, Richardson, Sharon Runner, Ruskin, Salas, Saldana, Silva, Smyth, Solorio, Soto, Spitzer, Strickland, Tran, Walters, Wolk, Nunez

NO VOTE RECORDED: Levine, Swanson, Torrico, Villines

RJG:cm 7/11/07 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

Date of Hearing: June 26, 2007

ASSEMBLY COMMITTEE ON VETERANS AFFAIRS

Mary Salas, Chair

SB 234 (Corbett) – As Amended: June 5, 2007

SENATE VOTE: 36-0

SUBJECT: Consumer warranties: Members of the Armed Forces.

SUMMARY: Provides that California's "Lemon Law" applies to any motor vehicle purchased by a Member of the Armed Forces, regardless of the state in which the motor vehicle is purchased or registered, if specified conditions are met. Specifically, this bill:

1. Provides that California's "Lemon Law" applies to the purchase of any motor vehicle in the United States purchased by a member of the Armed Forces, regardless of the state in which the motor vehicle is purchased or registered, if:
2. The member of the Armed Forces purchases a motor vehicle with a manufacturer's express warranty from a manufacturer who sells motor vehicles in California, or from a representative of that manufacturer; and,
3. The member of the Armed Forces was stationed in or was a resident of California at the time he or she purchased the motor vehicle or at the time he or she filed an action pursuant to California's "Lemon Law."
4. Defines "Member of the Armed Forces" as a person on full time, active duty in the Army, Navy, Marine Corps, Air Force, National Guard, or Coast Guard, and active military service at a military school designated by law or the Adjutant General of the specific Military Department.

EXISTING LAW :

1. Establishes under the Song-Beverly Consumer Warranty Act, a number of protections for new and used motor vehicles covered by a manufacturer's express warranty.
2. Requires that every manufacturer of consumer goods sold in this state with a manufacturer's express warranty must maintain sufficient service and repair facilities, as specified.
3. Provides that, with certain exceptions, after a reasonable number of attempts, the manufacturer or its representative must either promptly replace the vehicle or promptly make restitution to the buyer, as specified. The buyer has the option to elect restitution in lieu of replacement.
4. Under the Tanner Consumer Protection Act ("Lemon Law"), generally requires a manufacturer to replace or refund the purchase price of a new vehicle which experiences multiple instances of mechanical difficulties within 18 months or 18,000 miles of purchase, whichever comes first.

5. Provided that it shall be presumed that a reasonable number of repair attempts have been made if, within 18 months from delivery to the buyer or 18,000 miles, whichever occurs first, one or more of the following occurs:
- a. The same nonconformity as defined, results in a condition likely to cause death or serious bodily injury if the vehicle is driven and the nonconformity has been subject to two or more repair attempts by the manufacturer or its agents and the buyer or the lessee has directly notified the manufacturer of the nonconformity;
 - b. The same nonconformity has been subject to four or more repair attempts and the buyer has directly notified the manufacturer of the nonconformity; or,
 - c. The vehicle has been out of service for more than 30 calendar days.

FISCAL EFFECT: Unknown

COMMENTS: California's Lemon Law (Song-Beverly Consumer Warranty and Tanner Consumer Protection Acts) provides consumers certain rights and remedies when they find that a new or used vehicle with a manufacturer's express warranty that they have purchased does not conform to the applicable express warranties despite a reasonable number of repair attempts. The California Supreme Court held that the "Lemon Law" only applies to motor vehicles purchased in California [Cummins, Inc. v. Superior Court of Riverside County (2005) 36 Cal.4th 478]. In other words, a member of the Armed Forces stationed in or a resident of California who purchased a "lemon" in another state cannot avail him or herself of California's Lemon Law.

A number of reports have discussed the personal, emotional, and financial problems associated with "lemon" motor vehicles members of the Armed Forces face when they are already in the stressful situation of being in the Armed Forces, and potentially deployed at any time. Among the reports, a 2000 financial readiness curriculum states "the most frequent categories of [service members'] complaints are new and used car sales."

According to the author, because California law requires car buyers to purchase their vehicles in California in order to benefit from the protections under California's auto lemon law, some service members and their families suffer major hardships when a car they purchased in another state is unsafe and/or inoperable. The author asserts that this situation burdens our troops and their families with additional stress, loss of income, lack of transportation, and other financial and service-related hardships that can distract troops from their important mission of protecting our nation. Furthermore, the author notes that "due to varying provisions of state lemon laws, in some cases, troops may lack protection under the lemon laws of ANY state." The author argues that, by enabling military personnel to avail themselves of the protections of California law regardless of what state a vehicle is purchased in, this bill will reduce the stress and financial hardship experienced by members of the armed services when they have a "lemon" motor vehicle.

Consumers for Auto Reliability and Safety (CARS) sponsors this bill and maintains that "it will close a 'lemon loophole' that plagues those who are serving our nation, and who deserve at least the same level of protection afforded their civilian counterparts who have purchased vehicles in the state." CARS cites a report issued by the United States Marine Corps in August of 2000 as

demonstrating the need for this bill; the report indicated "We found widespread agreement that when Marines have pressing financial problems, their performance in the field can be significantly compromised, even to the point of endangering themselves, their unit, and the mission itself? Buying cars cause more problems than any other single factor."

REGISTERED SUPPORT / OPPOSITION:

Support

Consumers for Auto Reliability and Safety (sponsor)
California State Commanders Veterans Council
Consumer Attorneys of California
Consumer Federation of California
M. R. Lehnert, Major General, United States Marine Corps
Navy Federal Credit Union

Opposition

None on file.

Analysis Prepared by: Eric Worthen / V. A. / (916) 319-3550

Date of Hearing: June 12, 2007

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Mike Eng, Chair

SB 234 (Corbett) – As Amended: June 5, 2007

SENATE VOTE: 36-0

SUBJECT: Consumer warranties: Members of the Armed Forces.

SUMMARY: Provides that California's "Lemon Law" applies to any motor vehicle purchased by a Member of the Armed Forces, regardless of the state in which the motor vehicle is purchased or registered, if specified conditions are met. Specifically, this bill:

- 1) Provides that California's "Lemon Law" applies to the purchase of any motor vehicle in the United States by a member of the Armed Forces, regardless of the state in which the motor vehicle is purchased or registered, so long as the following apply:
 - a) The member of the Armed Forces purchases a motor vehicle with a manufacturer's express warranty from a manufacturer who sells motor vehicles in California, or from a representative of that manufacturer; and,
 - b) The member of the Armed Forces was stationed in or a resident of California at the time he or she purchased the motor vehicle or at the time he or she filed an action pursuant to California's "Lemon Law."
- 2) Defines "Member of the Armed Forces" as a person on full-time active duty in the Army, Navy, Marine Corps, Air Force, National Guard, or Coast Guard and active military service at a military school designated by law or the Adjutant General of the Military Department concerned.

EXISTING LAW:

- 1) Establishes, under the Song-Beverly Consumer Warranty Act, a number of protections for new and used motor vehicles covered by a manufacturer's express warranty.
- 2) Requires that every manufacturer of consumer goods sold in this state with a manufacturer's express warranty must maintain sufficient service and repair facilities, as specified.
- 3) Provides that, with certain exceptions, after a reasonable number of repair attempts, the manufacturer or its representative must either promptly replace the vehicle or promptly make restitution to the buyer, as specified. The buyer has the option to elect restitution in lieu of replacement.
- 4) Generally requires, under the Tanner Consumer Protection Act ("Lemon Law"), a manufacturer to replace or refund the purchase price of a new vehicle which experiences multiple instances of mechanical difficulties within 18 months or 18,000 miles of purchase, whichever comes first.

- 5) Provides that it shall be presumed that a reasonable number of repair attempts have been made if, within 18 months from delivery to the buyer or 18,000 miles, whichever occurs first, one or more of the following occurs:
- a) The same nonconformity, as defined, results in a condition likely to cause death or serious bodily injury if the vehicle is driven and the nonconformity has been subject to two or more repair attempts by the manufacturer or its agents and the buyer or lessee has directly notified the manufacturer of the nonconformity;
 - b) The same nonconformity has been subject to four or more repair attempts and the buyer has directly notified the manufacturer of the nonconformity; or,
 - c) The vehicle has been out of service for more than 30 calendar days.

FISCAL EFFECT: Unknown. This bill is keyed non-fiscal.

COMMENTS:

Background. California's Lemon Law (Song-Beverly Consumer Warranty and Tanner Consumer Protection Acts) provides consumers certain rights and remedies when they find that a new or used vehicle with a manufacturer's express warranty that they have purchased does not conform to the applicable express warranties despite a reasonable number of repair attempts. The California Supreme Court held that the "Lemon Law" only applies to motor vehicles purchased in California [Cummins, Inc. v. Superior Court of Riverside County (2005) 36 Cal.4th 478]. In other words, a member of the Armed Forces stationed in or a resident of California who purchased a "lemon" in another state cannot avail him or herself of California's Lemon Law.

A number of reports have discussed the personal, emotional, and financial problems associated with "lemon" motor vehicles members of the Armed Forces face when they are already in the stressful situation of being in the Armed Forces, and potentially deployed at any time. Among the reports, a 2000 financial readiness curriculum states "the most frequent categories of [service members'] complaints are new and used car sales." In one example, Navy Lieutenant Kindig, a resident of Arkansas, purchased a new 2004 Dodge Dakota from DaimlerChrysler in Washington State, which overheated frequently. He attempted numerous repairs both in and out of California without success, and the vehicle became inoperable. While he was deployed in Iraq as a medic, his wife was unable to use the vehicle for the family business, which resulted in loss of needed income and family stress. An attorney working pro bono eventually obtained a settlement for Lieutenant Kindig; however, the settlement did not comport with California's Lemon Law.

Purpose of this bill. According to the author, because California law requires car buyers to purchase their vehicles in California in order to benefit from the protections under California's auto lemon law, some service members and their families suffer major hardships when a car they purchased in another state is unsafe and/or inoperable. The author asserts that this situation burdens our troops and their families with additional stress, loss of income, lack of transportation, and other financial and service-related hardships that can distract troops from their important mission of protecting our nation. Furthermore, the author notes that "due to varying provisions of state lemon laws, in some cases, troops may lack protection under the lemon laws of ANY state." The author argues that, by enabling military personnel to avail themselves of the protections of California law regardless of what state a vehicle is purchased in,

this bill will reduce the stress and financial hardship experienced by members of the armed services when they have a "lemon" motor vehicle.

Support. Consumers for Auto Reliability and Safety (CARS) sponsors this bill and maintains that "it will close a 'lemon loophole' that plagues those who are serving our nation, and who deserve at least the same level of protection afforded their civilian counterparts who have purchased vehicles in the state." CARS cites a report issued by the United States Marine Corps in August of 2000 as demonstrating the need for this bill; the report indicated "We found widespread agreement that when Marines have pressing financial problems, their performance in the field can be significantly compromised, even to the point of endangering themselves, their unit, and the mission itself....Buying cars cause more problems than any other single factor."

Related legislation. SB 1848 (Figueroa) of 2006 was nearly identical to this bill and also would have provided that California's "Lemon Law" applies to any motor vehicle purchased by a Member of the Armed Forces, regardless of the state in which the motor vehicle is purchased or registered. SB 1848 was held in the Assembly Rules Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Consumers for Auto Reliability and Safety (sponsor)
California State Commanders Veterans Council
Consumer Attorneys of California
Consumer Federation of California
M. R. Lehnert, Major General, United States Marine Corps
Navy Federal Credit Union

Opposition

None on file.

Analysis Prepared by: Pablo Garza / B. & P. / (916) 319-3301

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: SB 234

Author: Corbett (D)

Amended: 4/10/07

Vote: 21

SENATE JUDICIARY COMMITTEE: 5-0, 3/27/07

AYES: Corbett, Harman, Ackerman, Kuehl, Steinberg

SUBJECT: Motor vehicle consumer warranties: members of the Armed Forces

SOURCE: Consumers for Auto Reliability and Safety

DIGEST: This bill provides that California's "Lemon Law" cover a motor vehicle purchased by a member of the Armed Forces in the United States with a manufacturer's express warranty regardless of the state of purchase or registration, if both of the following apply: (1) the member purchased the motor vehicle, as defined, from a manufacturer who sells vehicles in California, and (2) the member was stationed in or a resident of California at the time he or she purchased the vehicle or at the time he or she filed an action pursuant to California's Lemon Law.

This bill defines "Member of the Armed Forces" for purposes of California's Lemon Law as a person on full-time active duty in the Army, Navy, Marine Corps, Air Force, National Guard, or Coast Guard, and provides that full-time active duty also include active military service at a designated military service school.

ANALYSIS: Existing law, the Song-Beverly Consumer Warranty Act, establishes a number of protections for new and used motor vehicles covered by a manufacturer's express warranty. [Civil Code Section 1780 et seq.]

CONTINUED

MJN/1375

Existing case law holds that Song-Beverly only applies to a motor vehicle sold in California, even if the buyer is a resident of California, the manufacturer sells such vehicles in California, and its authorized repair facilities in California failed to repair the vehicle after a reasonable number of attempts. [Cummins, Inc. v. Superior Court of Riverside County (2005) 36 Cal.4th 478.]

Existing case law holds that a used motor vehicle sold or leased with a balance of the manufacturer's original warranty is a "new motor vehicle" for purposes of California's Lemon Law. [Jensen v. BMW of North America, Inc. (1995) 35 Cal.App.4th 112.]

This bill provides that California's "Lemon Law" cover a motor vehicle purchased by a member of the Armed Forces in the United States with a manufacturer's express warranty regardless of the state of purchase or registration, if both of the following apply: (1) the member purchased the motor vehicle, as defined, from a manufacturer, or from an agent or representative of that manufacturer, who sells vehicles in California and (2) the member was stationed in or a resident of California at the time he or she purchased the vehicle or at the time he or she filed an action pursuant to California's Lemon Law.

Existing law defines "express warranty" as a written statement arising out of a sale to the consumer of a consumer good pursuant to which the manufacturer, distributor, or retailer undertakes to preserve or maintain the utility or performance of the consumer good or provide compensation if there is a failure in utility or performance. [Civil Code Section 1791.2.]

Existing law defines, among other things, "consumer goods," "buyer," "distributor," "independent repair or service facility" and "manufacturer." (Civil Code Section 1791.)

This bill, for purposes of the Lemon Law, defines "Member of the Armed Services" to mean a person on full-time active duty in the Army, Navy, Marine Corps, Air Force, National Guard, or Coast Guard and provides that full-time active duty also include active military service at a designated military service school.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 4/10/07)

Consumers for Auto Reliability and Safety (source)
Consumer Action
Consumer Attorneys of California
Consumer Federation of California
Navy Federal Credit Union
Major General Lehnert – Commanding General of Marine Corps Installation
West, Camp Pendleton, California
California State Commanders Veterans Council
Charles S. Cooper – Major General, USAF, Retired
Steve Lynch – Lt. Col., USAF, Retired

ARGUMENTS IN SUPPORT: The author’s office and sponsor state,
“Existing law requires car buyers to purchase their vehicles in California in order to benefit from the protections under California’s auto lemon law. In some cases, that results in service members and their families suffering major hardships when they are saddled with unsafe and/or inoperable vehicles, purchased in another state. This can cause our troops additional stress, loss of income, lack of transportation, and other financial and service-related hardships and can distract them from their important mission of protecting our nation.

“Due to varying provisions of state lemon laws, in some cases, troops may lack protection under the lemon laws of ANY state.

“In one case, a Lieutenant testified live from Iraq, while on deployment from a base in Southern California, the auto manufacturers acknowledged his new truck was a lemon, and told him that if he were protected by California’s lemon law the manufacturer would promptly repurchase the lemon, but since he lacked that protection, they refused to buy it back. Eventually, that case was resolved, but he lieutenant had to accept a large deduction and took a hefty loss, instead of obtaining a complete refund. (Testimony was delivered live via telephone, before the Joint Committee on Boards, Commissions, and Consumer Protection, held May 23, 2006.) In addition, the manufacturer has attempted to have the vehicle retitled as a VOLUNTARY BUYBACK, as opposed to a lemon law buyback. This could mean that some unsuspecting consumer may get saddled with a lemon.”

Proponents assert that this bill is narrowly tailored to protect a particularly vulnerable population, Armed Forces members stationed in or residents of California who are subject to deployment on short notice, and who do not have any choice of where they are stationed or deployed.

RJG:cm 4/9/07 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****

SENATE JUDICIARY COMMITTEE
Senator Ellen M. Corbett, Chair
2007-2008 Regular Session

SB 234	S
Senator Corbett	B
As Introduced	
Hearing Date: March 27, 2007	2
Civil Code	3
CS/ADM	4

SUBJECT

Motor Vehicle Consumer Warranties: Members of the Armed Forces

DESCRIPTION

This bill would provide that California's "Lemon Law" would cover a motor vehicle purchased by a member of the Armed Forces in the United States with a manufacturer's express warranty regardless of the state of purchase or registration, if both of the following apply: 1) the member purchased the motor vehicle, as defined, from a manufacturer who sells vehicles in California; and 2) the member was stationed in or a resident of California at the time he or she purchased the vehicle or at the time he or she filed an action pursuant to California's Lemon Law.

This bill would define "Member of the Armed Forces" for purposes of California's Lemon Law as a person on full-time active duty in the Army, Navy, Marine Corps, Air Force, National Guard, or Coast Guard; and would provide that full-time active duty would also include active military service at a designated military service school.

(This analysis reflects author's amendments to be offered in committee.)

BACKGROUND

California's Lemon Law [Song-Beverly Consumer Warranty and Tanner Consumer Protection Acts] provides consumers certain rights and remedies when they find that a new or used vehicle with a manufacturer's express warranty they have purchased does not conform to the applicable express warranties despite a reasonable number of repair attempts. The California Supreme Court held that the Lemon Law only applies to motor vehicles purchased in California. [*Cummins, Inc. v. Superior Court of Riverside County* (2005) 36 Cal.4th 478.] This means that a member of the Armed Forces stationed

(more)

MJN/1379

in or a resident of California who purchased a “lemon” in another state cannot avail him or herself of California’s Lemon Law.

A number of reports have discussed the personal, emotional, and financial problems associated with “lemon” motor vehicles members of the Armed Forces face when they are already in the stressful situation of being in the Armed Forces, and potentially deployed at any time. Among the reports, a 2000 financial readiness curriculum states “the most frequent categories of [service members’] complaints are new and used car sales....” As an example, Navy Lieutenant Kindig, a resident of Arkansas, purchased a new 2004 Dodge Dakota from DaimlerChrysler in Washington State, which overheated frequently. He attempted numerous repairs both in and out of California to no avail, and the vehicle became inoperable. While he was deployed in Iraq as a medic, his wife was unable to use the vehicle for the family business, which resulted in loss of needed income and family stress. An attorney working pro bono eventually obtained a settlement for Lieutenant Kindig, which did not comport with California’s Lemon Law. DaimlerChrysler thereafter asked Washington State to retitle the vehicle as a “VOLUNTARY BUYBACK, meaning a customer satisfaction return. This is a regular transfer and should NOT be branded in any way as a lemon law buyback.”

This bill is intended to rectify situations such as those of Lieutenant Kindig’s by providing members of the Armed Forces stationed in or residents of California the same relief under the Lemon Law provided to those who purchased their vehicle in California.

CHANGES TO EXISTING LAW

1. Existing law, the Song-Beverly Consumer Warranty Act, establishes a number of protections for new and used motor vehicles covered by a manufacturer’s express warranty. [Civil Code (CC) Section 1790 et seq.]

Existing case law holds that Song-Beverly only applies to a motor vehicle sold in California, even if the buyer is a resident of California, the manufacturer sells such vehicles in California, and its authorized repair facilities in California failed to repair the vehicle after a reasonable number of attempts. [*Cummins, Inc. v. Superior Court of Riverside County* (2005) 36 Cal.4th 478.]

Existing case law holds that a used motor vehicle sold or leased with a balance of the manufacturer’s original warranty is a “new motor vehicle” for purposes of California’s Lemon Law. [*Jensen v. BMW of North America, Inc.* (1995) 35 Cal.App.4th 112.]

Existing law requires, as specified, that every manufacturer of consumer goods sold in this state with a manufacturer’s express warranty must

maintain sufficient service and repair facilities, as specified. [CC Section 1793.2(a)-(e).]

Existing law provides that, except as provided, after a reasonable number of repair attempts, the manufacturer or its representative must either promptly replace the vehicle or promptly make restitution to the buyer, as specified. The buyer has the option to elect restitution in lieu of replacement. [CC Section 1793.2(d).]

Existing law, the Tanner Consumer Protection Act (“Lemon Law”), generally requires a manufacturer to replace or refund the purchase price of a new vehicle which experiences multiple instances of mechanical difficulties within 18 months or 18,000 miles of purchase, whichever comes first. [CC Section 1793.22.]

Existing law provides that it shall be presumed that a reasonable number of repair attempts have been made if, within 18 months from delivery to the buyer or 18,000 miles, whichever occurs first, one or more of the following occurs: 1) the same nonconformity, as defined, results in a condition likely to cause death or serious bodily injury if the vehicle is driven and the nonconformity has been subject to two or more repair attempts by the manufacturer or its agents and the buyer or lessee has directly notified the manufacturer of the nonconformity; 2) the same nonconformity has been subject to four or more repair attempts and the buyer has directly notified the manufacturer of the nonconformity; or 3) the vehicle has been out of service for more than 30 calendar days. [CC Section 1793.22(b).]

Existing law defines “nonconformity” to mean a nonconformity which substantially impairs the use, value, or safety of the vehicle to the buyer or lessee. [CC Section 1793.22(e).]

Existing law, as specified, allows for the recovery of damages as well as other legal and equitable relief in addition to the replace-or-reimburse remedy. [CC Section 1794 et seq.] When the buyer establishes that the breach was willful, the judgment may include, in addition to damages, a civil penalty not exceeding two times the amount of actual damages as well as costs, expenses and attorney’s fees. [Section 1794 (c)-(d).] Existing law also provides manufacturers with the option of establishing a third party dispute resolution process to address disputes over the enforcement of express warranties, which, if followed, could change the nature of the damages recoverable. [Section 1793.22(c).]

Existing federal law, the Magnuson Moss Act, applies to sales of warranted consumer goods intended for use as personal, family and household purposes. [15 U.S.C. Section 2301 et seq.] The legislative history indicates

that the purpose of the Act is to make warranties on consumer products more readily understood and enforceable and to provide the Federal Trade Commission with means to better protect consumers. [*Davis v. Southern Energy Homes, Inc.* (2002) 305 F.3d 1268.] However, it is a remedial statute, designed to protect the purchasers of consumer goods from deceptive warranty practices. [*Miller v. Willow Creek Homes, Inc.* (2001) 249 F.3d 629.]

This bill would provide that California's "Lemon Law" would cover a motor vehicle purchased by a member of the Armed Forces in the United States with a manufacturer's express warranty regardless of the state of purchase or registration, if both of the following apply: 1) the member purchased the motor vehicle, as defined, from a manufacturer who sells vehicles in California, and 2) the member was stationed in or a resident of California at the time he or she purchased the vehicle or at the time he or she filed an action pursuant to California's Lemon Law.

2. Existing law defines "express warranty" as a written statement arising out of a sale to the consumer of a consumer good pursuant to which the manufacturer, distributor, or retailer undertakes to preserve or maintain the utility or performance of the consumer good or provide compensation if there is a failure in utility or performance. [CC Section 1791.2.]

Existing law defines, among other things, "consumer goods," "buyer," "distributor," "independent repair or service facility" and "manufacturer." [CC Section 1791.]

This bill would, for purposes of the Lemon Law, define "Member of the Armed Services" to mean a person on full-time active duty in the Army, Navy, Marine Corps, Air Force, National Guard, or Coast Guard; and would provide that full-time active duty would also include active military service at a designated military service school.

COMMENT

1. Stated need for the bill

The author and sponsor write:

Existing law requires car buyers to purchase their vehicles in California in order to benefit from the protections under California's auto lemon law. In some cases, that results in service members and their families suffering major hardships when they are saddled with unsafe and/or inoperable vehicles, purchased in another state. This can cause our troops additional stress, loss of income, lack of transportation, and other financial and service-related hardships and can distract them from their important

mission of protecting our nation.

Due to varying provisions of state lemon laws, in some cases, troops may lack protection under the lemon laws of ANY state.

In one case, a Lieutenant testified live from Iraq, while on deployment from a base in Southern California, the auto manufacturers acknowledged his new truck was a lemon, and told him that if he were protected by California's lemon law the manufacturer would promptly repurchase the lemon, but since he lacked that protection, they refused to buy it back. Eventually, that case was resolved, but the lieutenant had to accept a large deduction and took a hefty loss, instead of obtaining a complete refund. (Testimony was delivered live via telephone, before the Joint Committee on Boards, Commissions, and Consumer Protection, held May 23, 2006.) In addition, the manufacturer has attempted to have the vehicle retitled as a VOLUNTARY BUYBACK, as opposed to a lemon law buyback. This could mean that some unsuspecting consumer may get saddled with a lemon.

2. Extending Lemon Law to vehicles purchased in the United States, rather than solely in California, by Armed Forces members

The basic requirement of California's Lemon Law is that the motor vehicle be purchased or sold *in California* with a manufacturer's express warranty. The California Supreme Court held that the Lemon Law does not apply to vehicles sold outside of California, even if the buyer is a resident of California, the manufacturer sells such vehicles in California, and its authorized repair facilities in California failed to repair the vehicle after a reasonable number of attempts. [*Cummins, Inc. v. Superior Court* (2005) 36 Cal.4th 478.] In arriving at this decision, the Court relied solely on a strict interpretation of the statute, as written, and found that had the Legislature intended for the Lemon Law to apply to purchases made outside of the state, it would have drafted it as such. [*Id.* at 494.] Other courts have arrived at a similar conclusion. [See, e.g. *California State Electronics Ass'n v. Zeos* (1996) 41 Cal.App. 4th 1270 (court found that goods sold by mail order from an out-of-state manufacturer were not "sold" in California under Song-Beverly); *Davis v. Newmar Corp.* (2006) 136 Cal.App.4th 275; *Barabino v. Dan Gamel, Inc.* (2006) (citation omitted).]

Each court addressing the issue of whether the product must be purchased in California for a consumer to seek the protections of Song-Beverly has rested its decision on strict statutory interpretation, leaving it to the California Legislature to decide whether the law should be changed to allow out-of-state purchases to come within the statute.

The provisions of California's Lemon Law requiring that the product be purchased in California thus limits the reach and territorial scope of the law. Several states that have modeled their lemon laws after California's require that the vehicle be registered in the state, yet do not require that the vehicle be purchased in the state. Some states merely require that the person seeking lemon law protection be a resident of the state and some do not specify any registration or purchase requirement. However, a majority of the states generally have an either/or option.

This bill would allow a member of the Armed Forces on full-time active duty to invoke the protections of Song-Beverly regardless of the state where the vehicle was purchased. The bill would address the situation where a member of the Armed Forces purchased a lemon motor vehicle outside of California and is now a state resident or is stationed in California (not by choice). Instead of subjecting him or her and their family to the frustration of dealing with the manufacturer (or dealer) from another state, and the possibility of having to undergo major expenses and stress accompanying those circumstances, SB 234 would enable those military personnel to seek the protections of California law. Proponents note that to avail themselves of the protections, the Armed Forces member would still have to satisfy California's Lemon Law requirements. (*See Comment 6.*)

3. Extending California's Lemon Law protections to Armed Forces members stationed or residing in California would be in the best interests of the both the state and the Armed Forces members

Proponents assert that this bill is narrowly tailored to protect a particularly vulnerable population, Armed Forces members stationed in or residents of California who are subject to deployment on short notice, and who do not have any choice of where they are stationed or deployed. Several reports and a 2005 hearing of the Assembly Banking and Finance Committee have noted that car sales related issues are the number one problem military legal assistance officials deal with for Armed Forces members. This means that a member saddled with a lemon faces numerous obstacles at a time when they and their families are at their most vulnerable, such as when they have been deployed or are about to be deployed and their family is relying on the vehicle for transportation, work, or other family needs.

In addition, proponents note that, if an Armed Forces member has a lemon vehicle being used in California, it exposes all on California's roadways to potential dangers.

4. California currently extends other protections to Armed Forces members

The Military and Veterans Code provides a number of protections to military personnel, including, among other things: relief from motor vehicle lease contracts (with installment payments over a period of time at least as long as active duty service), waiver of a number of fees and charges, and exemption from certain taxes, jury duty and other obligations.

5. Protections of California Lemon Law extended to Armed Forces members, but available only if member complies with the Lemon Law requirements

California's Lemon Law provides certain rights and remedies to purchasers of new and used motor vehicles purchased in California. This bill would extend those same rights and remedies to an Armed Forces member stationed in or a resident of California who purchased their vehicle in another state as long as the vehicle manufacturer sells the vehicle line in California and the Armed Forces member is stationed in or a resident of California at the time of purchase or at the time of filing an action under California's Lemon Law.

Among the protections of California's Lemon Law are the "Lemon Law" presumptions. California law presumes that a vehicle is a lemon if the following criteria are met within 18 months of delivery to the buyer or lessee or 18,000 miles on the vehicle's odometer, whichever comes first:

- 1) The manufacturer or its agents have made four or more attempts to repair the same warranty problem, or the vehicle has been out of service for more than 30 days (not necessarily all at the same time) while being repaired for any number of warranty problems; or
- 2) The manufacturer or its agents have made two or more attempts to repair a warranty problem that results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven; and
- 3) The problems covered by the warranty, substantially reduce the vehicle's use, value, or safety to the consumer and are not caused by abuse of the vehicle; and
- 4) If required by the warranty materials or by the owner's manual, the consumer has directly notified the manufacturer about the problem(s), preferably in writing. The notice must be sent to the address shown in the warranty or owner's manual. If these criteria are met, the Lemon Law presumes the buyer or lessee is entitled to a replacement vehicle or a refund of the purchase price. However, the manufacturer may show that the criteria have not been met (for example, because the problems are minor) and therefore, the buyer or lessee is not entitled to a replacement vehicle or refund. [CC Section 1793.22 (b).]

SB 234 would not alter the requirements for the presumptions that a member of the Armed Forces must show in order to seek the protections of California's Lemon Law.

Proponents assert that they do not intend to extend any protections beyond those currently provided in California's Lemon Law to members of the Armed Forces stationed in or residents of California. Author's amendments to be offered in committee (*see* Comment 9) would assure that Armed Forces members stationed in or residents of California who purchased a vehicle in another state would be required to comply with California's Lemon Law provisions. This would include, among other things, making the required reasonable number of repair attempts – two or more if the vehicle is unsafe, otherwise four or more; direct notice to the manufacturer; and submitting a dispute to arbitration under some circumstances.

6. This bill would not be undue burden on vehicle manufacturers or their agents who sell vehicles in this state as they offer the same express warranty regardless of where the vehicle is purchased or leased in the United States

Generally, vehicle manufacturers offer “national” express warranties that apply regardless of where a consumer purchases the vehicle. Thus, a car purchased out-of-state may have its warranty work performed in California, and vice-versa. Given that this bill would only apply to vehicles of a vehicle line a manufacturer sells in California, for which the manufacturer must already comply with California's Lemon Law (if the vehicle was purchased in California), the author and sponsor assert that it would not cause an undue burden to manufacturers, or their agents, to comply with California's Lemon Law if the vehicle was purchased in another state by an Armed Services member currently stationed in or a resident of California.

7. For tax and other reasons, Armed Forces members stationed in or residents of California should not be required to register their vehicles in California

The question has been raised as to whether Armed Forces members stationed in or residents of California should be required to register their vehicle in California to be able to take advantage of the Lemon Law. Armed Forces members often are residents of other states, and choose to remain so for a number of reasons, whether personal, financial, or otherwise. The author and sponsor contend that the bill should not include a registration requirement because military sources say that a vehicle registration requirement could have significant adverse tax consequences for an Armed Forces member. Military sources state that the state California Franchise Tax Board, in evaluating whether to levy state income taxes, considers a number of factors, including where a person's vehicle is registered.

Military sources also say that an additional issue and expense for an Armed Forces member who gets stationed in California is the substantial use tax that is levied on out-of-state vehicles that are re-registered in California.

For these reasons, the author and sponsor assert that vehicle registration in California should not be a requirement of the bill.

8. Requirement for Armed Forces member to make at least one repair attempt in California would not be good public policy

Representatives from vehicle manufacturers have suggested that SB 234 should require an Armed Forces member to make a least one repair attempt of a lemon vehicle in California. Proponents question the need for that suggestion. First, under the bill, a motor vehicle purchased by an Armed Forces member in another state would be subject to California's Lemon Law requirements, including a reasonable number of repair attempts -- two or more if the vehicle is unsafe, otherwise four or more. (Under the Lemon Law, an unsafe vehicle is one that is likely to cause death or serious bodily injury if driven.) Thus, unless the requisite number of attempts has already been made outside the state, then the Armed Forces member, to comply with California law, will be attempting at least one repair in California. However, if the Armed Forces member has already done the requisite number of repairs outside of California, then a requirement of at least one attempt in California would force a further hardship on the family. Second, if the member were required to make an additional repair attempt in California where the defect is a safety defect, this would pose additional risk to the family and a public safety risk to all those on California's roads.

9. Author's amendments

A. On page 4, line 20 after the word "1795.8." insert:

Notwithstanding any other provision of law,

B. On page 4, line 21 strike out "new or used"

C. On page 4, line 21-22 strike out "with a manufacturer's express warranty"

D. On page 4, line 22 before the word "by" insert:

as defined in Section 1793.22 (e)(2)

E. One page 4, line 25 strike out "new or used"

F. One page 4, line 26 after the word “vehicle” insert:

as defined in Section 1793.22 (e)(2)

G. On page 4, line 27 after the word “state” insert:

or from an agent or representative of that manufacturer

Support: Consumer Action; Consumer Attorneys of California; Consumer Federation of California; Navy Federal Credit Union; Major General Lehnert – Commanding General of Marine Corps Installation West, Camp Pendleton, CA; California State Commanders Veterans Council; Charles S. Cooper – Major General, USAF, Retired; Steve Lynch – Lt. Col., USAF, Retired

Opposition: None Known

HISTORY

Source: Consumers for Auto Reliability and Safety (CARS)

Related Pending Legislation: None Known

Prior Legislation: SB 1848 (Figueroa of 2006), very similar to this bill, would have permitted a member of the armed forces, as defined, who was stationed in or a resident of CA at the time he or she purchased a motor vehicle from a manufacturer who sold consumer goods in CA or when he or she filed an action under CA’s lemon law, to exercise his or rights under CA’s lemon law of in which state the vehicle was purchased or registered. The bill would have also required that a reasonable number of repair attempts would have included repair attempts in another state. (This bill was held in Assembly Rules Committee.)

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On October 11, 2022, I served the foregoing document described as:
EXHIBITS IN SUPPORT OF MOTION FOR JUDICIAL NOTICE on the parties in this action by serving:

Lisa Perrochet, Esq.
lperrochet@horvitzlevy.com

John A. Taylor, Jr.
jtaylor@horvitzlevy.com
Shane H. McKenzie, Esq.
smckenzie@horvitzlevy.com

HORVITZ & LEVY LLP
3601 West Olive Avenue, 8th Floor
Burbank, CA 91505-4618

David L. Brandon, Esq.
dbrandon@clarkhill.com

CLARK HILL LLP
555 S. Flower, 24th Floor
Los Angeles, CA 90071

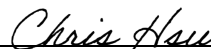
Georges A. Haddad, Esq.
ghaddad@clarkhill.com
CLARK HILL LLP
One Embarcadero Center, Suite 400
San Francisco, CA 94111

Attorneys for Defendant and Respondent FCA US, LLC

I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system. Participants in the case who are not registered TrueFiling users will be served by mail or by other means permitted by the court rules.

Executed on October 11, 2022, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Chris Hsu

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **RODRIGUEZ v. FCA**
US

Case Number: **S274625**

Lower Court Case Number: **E073766**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **ctobisman@gmsr.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	Petitioners' Opening Brief on the Merits
REQUEST FOR JUDICIAL NOTICE	Petitioners' Motion for Judicial Notice
ADDITIONAL DOCUMENTS	Exhibits in Support of Motion for Judicial Notice Volume 1
ADDITIONAL DOCUMENTS	Exhibits in Support of Motion for Judicial Notice Volume 2
ADDITIONAL DOCUMENTS	Exhibits in Support of Motion for Judicial Notice Volume 3
ADDITIONAL DOCUMENTS	Exhibits in Support of Motion for Judicial Notice Volume 4
ADDITIONAL DOCUMENTS	Exhibits in Support of Motion for Judicial Notice Volume 5
ADDITIONAL DOCUMENTS	Exhibits in Support of Motion for Judicial Notice Volume 6

Service Recipients:

Person Served	Email Address	Type	Date / Time
Georges Haddad Clark Hill LLP	ghaddad@clarkhill.com	e-Serve	10/11/2022 6:21:11 PM
Joseph Bui Greines, Martin, Stein & Richland LLP 293256	jbui@gmsr.com	e-Serve	10/11/2022 6:21:11 PM
Mark Skanes RoseWaldorf LLP 322072	mskanes@rosewaldorf.com	e-Serve	10/11/2022 6:21:11 PM
Sharon Arkin The Arkin Law Firm 154858	sarkin@arkinlawfirm.com	e-Serve	10/11/2022 6:21:11 PM
Cynthia Tobisman Greines Martin Stein & Richland, LLP 197983	ctobisman@gmsr.com	e-Serve	10/11/2022 6:21:11 PM
Payam Shahian Strategic Legal Practices, A Professional Corporation 228406	lwageman@slpattorney.com	e-Serve	10/11/2022 6:21:11 PM
David Brandon Clark Hill LLP 105505	dbrandon@clarkhill.com	e-Serve	10/11/2022 6:21:11 PM
Radomir Kirnos	rogerk@knightlaw.com	e-	10/11/2022

Knight Law Group LLP 283163		Serve	6:21:11 PM
Joseph Kaufman Joseph A. Kaufman & Associates, Inc. 228319	joe@lemonlawaid.com	e-Serve	10/11/2022 6:21:11 PM
Pro Per Attorney Nationwide Legal, LLC 135514	sfcourt@nationwideasap.com	e-Serve	10/11/2022 6:21:11 PM
Martin Anderson Anderson Law Firm 178422	firm@andersonlaw.net	e-Serve	10/11/2022 6:21:11 PM
Arlyn Escalante Rosner, Barry & Babbitt, LLP 272645	arlyn@rbblawgroup.com	e-Serve	10/11/2022 6:21:11 PM
Shane Mckenzie Horvitz & Levy, LLP 228978	smckenzie@horvitzlevy.com	e-Serve	10/11/2022 6:21:11 PM
Hallen Rosner Rosner, Barry & Babbitt, LLP 109740	hal@rbblawgroup.com	e-Serve	10/11/2022 6:21:11 PM
Julian Senior SJL Law. P.C 219098	admin@sjllegal.com	e-Serve	10/11/2022 6:21:11 PM
Lisa Perrochet Horvitz & Levy 132858	lperrochet@horvitzlevy.com	e-Serve	10/11/2022 6:21:11 PM
Rebecca Nieto Greines Martin Stein & Richland LLP	rnieto@gmsr.com	e-Serve	10/11/2022 6:21:11 PM
Richard Wirtz Wirtz Law APC 137812	rwirtz@wirtzlaw.com	e-Serve	10/11/2022 6:21:11 PM
Daniel Lebel Consumer Law Practice of Daniel T. LeBel 246169	danlebel@consumerlawpractice.com	e-Serve	10/11/2022 6:21:11 PM
Chris Hsu Greines Martin Stein & Richland LLP	chsu@gmsr.com	e-Serve	10/11/2022 6:21:11 PM
Martin Anderson Anderson Law	martin@andersonlaw.net	e-Serve	10/11/2022 6:21:11 PM
Payam Shahian Strategic Legal Practices, APC 228406	pshahian@slpattorney.com	e-Serve	10/11/2022 6:21:11 PM
Joseph Kaufman Lemon Law Aid, Inc.	dulce@lemonlawaid.com	e-Serve	10/11/2022 6:21:11 PM
John Taylor, Jr. Horvitz & Levy LLP 129333	jtaylor@horvitzlevy.com	e-Serve	10/11/2022 6:21:11 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

10/11/2022

Date

/s/Chris Hsu

Signature

Tobisman, Cynthia (197983)

Last Name, First Name (PNum)

Greines Martin Stein & Richland LLP

Law Firm