

JUL 29 2016

No. S229762

**IN THE SUPREME COURT
STATE OF CALIFORNIA**

Deputy

McMILLIN ALBANY, LLC, et al.,
Petitioners
vs.

SUPERIOR COURT OF KERN COUNTY
Respondent

CARL & SANDRA VAN TASSEL, et al.,
Real Parties in Interest

After Decision By The Court of Appeal,
Fifth Appellate District, Case No. F069370

Kern County Superior Court Case No. S-1500-CV-279141
Honorable David R. Lampe, Presiding Judge, Dept. 11

**EXHIBITS TO CALIFORNIA BUILDING INDUSTRY
ASSOCIATION, BUILDING INDUSTRY LEGAL DEFENSE
FOUNDATION AND CALIFORNIA INFILL FEDERATION'S
REQUEST FOR JUDICIAL NOTICE
VOLUME 1 – EXHIBIT 1: BATES NOS. 000001-000300**

Attorneys for Proposed Amici Curiae
California Building Industry Association, Building Industry Legal
Defense Foundation, and California Infill Federation

KATHLEEN F. CARPENTER, Bar No. 124932
AMY R. GOWAN, Bar No. 283311
Donahue Fitzgerald LLP
1646 N. California Blvd., Suite 250, Walnut Creek, CA 94596
Telephone: (925) 746-7770 Fax: (925) 746-7776
kcarpenter@donahue.com | agowan@donahue.com

No. S229762

IN THE SUPREME COURT
STATE OF CALIFORNIA

McMILLIN ALBANY, LLC, et al.,
Petitioners
vs.

SUPERIOR COURT OF KERN COUNTY
Respondent

CARL & SANDRA VAN TASSEL, et al.,
Real Parties in Interest

After Decision By The Court of Appeal,
Fifth Appellate District, Case No. F069370

Kern County Superior Court Case No. S-1500-CV-279141
Honorable David R. Lampe, Presiding Judge, Dept. 11

EXHIBITS TO CALIFORNIA BUILDING INDUSTRY
ASSOCIATION, BUILDING INDUSTRY LEGAL DEFENSE
FOUNDATION AND CALIFORNIA INFILL FEDERATION'S
REQUEST FOR JUDICIAL NOTICE
VOLUME 1 – EXHIBIT 1: BATES NOS. 000001-000300

Attorneys for Proposed Amici Curiae
California Building Industry Association, Building Industry Legal
Defense Foundation, and California Infill Federation

KATHLEEN F. CARPENTER, Bar No. 124932
AMY R. GOWAN, Bar No. 283311
Donahue Fitzgerald LLP
1646 N. California Blvd., Suite 250, Walnut Creek, CA 94596
Telephone: (925) 746-7770 Fax: (925) 746-7776
kcarpenter@donahue.com | agowan@donahue.com

Exhibit 1

Introduced by Senator Johannessen

February 23, 2001

An act to amend Section 44011 of, and to add Section 44017.4 to, the Health and Safety Code, and to amend Sections 4000.1, 4153, and 5004 of, and to add Section 258 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 800, as introduced, Johannessen. Vehicles.

(1) Existing law requires all motor vehicles powered by internal combustion engines that are registered within an area designated for program coverage, as specified, to obtain, biennially, a certificate of compliance or noncompliance, except for certain vehicles, including, prior to January 1, 2003, a motor vehicle manufactured prior to the 1974 model-year and, on and after January 1, 2003, a motor vehicle that is 30 or more model-years old.

This bill would revise that exception to apply to any motor vehicle manufactured prior to the 1975 model-year.

(2) Existing law requires the Department of Motor Vehicles, with certain exceptions, upon initial registration, and upon transfer of ownership and registration, of prescribed motor vehicles, and upon registration of a motor vehicle previously registered outside the state, as specified, to require a valid certificate of compliance or a certificate of noncompliance, as specified. Existing law exempts from this requirement, prior to January 1, 2003, the transfer of ownership or registration of a motor vehicle that was manufactured prior to the 1974 model-year and, on and after January 1, 2003, the transfer of ownership or registration of a motor vehicle that is 30 or more model-years old.

This bill would revise that exception to apply to a motor vehicle that was manufactured prior to the 1975 model-year.



(3) Existing law requires an applicant for the registration of a specially constructed vehicle or remanufactured vehicle to include prescribed information in the registration application.

This bill would require the department, upon initial registration of any specially constructed vehicle that is a passenger vehicle or pickup truck that has a specified certificate, to record the model-year of that vehicle, as stated in the certificate.

The bill would require a passenger vehicle or pickup truck that is a specially constructed vehicle to be inspected by stations authorized to perform referee functions, as prescribed. Upon completion of the inspection, the referee would be required to affix the tamper resistant label to the vehicle and issue a certificate that establishes the vehicle model-year and emission control system application.

(4) Existing law permits owners of vehicles that are operated or moved primarily for the purpose of historical exhibition or similar purpose to be issued special identification plates. This provision applies to a motor vehicle with an engine of 16 or more cylinders that was manufactured prior to 1965, a motor vehicle manufactured in the year 1922 or prior thereto, and a vehicle manufactured after 1922 that is at least 25 years old and of historic interest.

This bill would revise that provision to apply to a motor vehicle manufactured prior to 1975 that meets the definition of a collector motor vehicle, and a motor vehicle manufactured in the year 1922 or prior thereto. The bill would define a collector motor vehicle to be a vehicle manufactured prior to 1975 that is not used by the owner as a primary source of transportation and is used primarily for purposes of display at events or to obtain necessary repairs and maintenance. The bill would also revise the exception described in (1) above to apply to collector motor vehicles.

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 44011 of the Health and Safety Code is
- 2 amended to read:
- 3 44011. (a) All motor vehicles powered by internal
- 4 combustion engines that are registered within an area designated
- 5 for program coverage shall be required biennially to obtain a



1 certificate of compliance or noncompliance, except for all of the
2 following:

3 (1) Every motorcycle, and every diesel-powered vehicle, until
4 the department, pursuant to Section 44012, implements test
5 procedures applicable to motorcycles or to diesel-powered
6 vehicles, or both.

7 (2) Any motor vehicle that has been issued a certificate of
8 compliance or noncompliance or a repair cost waiver upon a
9 change of ownership or initial registration in this state during the
10 preceding six months.

11 (3) ~~(A) Prior to January 1, 2003, any~~ Any motor vehicle
12 manufactured prior to the 1974 model-year.

13 ~~(B) Beginning January 1, 2003, any motor vehicle that is 30 or~~
14 ~~more model-years old 1975 model-year.~~

15 (4) (A) Any motor vehicle four or less model-years old.

16 (B) The department, by regulation, may increase the
17 exemption provided by this paragraph to include any motor
18 vehicle up to six or less model-years old.

19 (C) Any motor vehicle excepted by this paragraph shall be
20 subject to testing and to certification requirements as determined
21 by the department, if any of the following apply:

22 (i) The department determines through remote sensing
23 activities or other means that there is a substantial probability that
24 the vehicle has a tampered emission control system or would fail
25 for other cause a smog check test as specified in Section 44012.

26 (ii) The vehicle was previously registered outside this state and
27 is undergoing initial registration in this state.

28 (iii) The vehicle is being registered as a specially constructed
29 vehicle.

30 (iv) The vehicle has been selected for testing pursuant to
31 Section 44014.7 or any other provision of this chapter authorizing
32 out-of-cycle testing.

33 (5) In addition to the vehicles exempted pursuant to paragraph
34 (4), any motor vehicle or class of motor vehicles exempted
35 pursuant to subdivision (b) of Section 44024.5. It is the intent of
36 the Legislature that the department, pursuant to the authority
37 granted by this paragraph, exempt at least 15 percent of the lowest
38 emitting motor vehicles from the biennial smog check inspection.

39 (6) Any motor vehicle that the department determines would
40 present prohibitive inspection or repair problems.



1 (7) Any vehicle registered to the owner of a fleet licensed
2 pursuant to Section 44020 if the vehicle is garaged exclusively
3 outside the area included in program coverage, and is not primarily
4 operated inside the area included in program coverage.

5 (8) *A collector motor vehicle as defined in Section 258 of*
6 *Vehicle Code.*

7 (b) Vehicles designated for program coverage in enhanced
8 areas shall be required to obtain inspections from appropriate
9 smog check stations operating in enhanced areas.

10 SEC. 2. Section 44017.4 is added to the Health and Safety
11 Code, to read:

12 44017.4. Upon initial registration with the Department of
13 Motor Vehicles, a passenger vehicle or pickup truck that is a
14 specially constructed vehicle, as defined in Section 580 of the
15 Vehicle Code, shall be inspected by stations authorized to perform
16 referee functions. This inspection shall be for the purposes of
17 determining the vehicle model-year and emission control system
18 application. In determining the model-year, the referee shall
19 compare the vehicle to vehicles of the era that the vehicle most
20 closely resembles. The referee shall assign the 1960-model-year
21 to any specially constructed vehicle that does not sufficiently
22 resemble a previously manufactured vehicle. The referee shall
23 require only those emission control systems that are applicable to
24 the established model-year and that the vehicle reasonably
25 accommodates of those systems, in its present form. Upon
26 completion of the inspection, the referee shall affix the tamper
27 resistant label to the vehicle and issue a certificate that establishes
28 the vehicle model-year and emission control system application.

29 SEC. 3. Section 258 is added to the Vehicle Code, to read:

30 258. (a) A collector motor vehicle is a vehicle which was
31 manufactured prior to 1975 and meets both of the following
32 conditions:

33 (1) The vehicle is not used by the owner as a primary source of
34 transportation.

35 (2) The vehicle is used primarily for purposes of display at
36 events such as collector shows, exhibitions and parades, or to
37 obtain necessary repairs and maintenance.

38 (b) The department shall require one of the following
39 documents to be submitted by the registered owner as evidence
40 that the vehicle meets the requirements of subdivision (a).



1 (1) A written statement or policy from an insurance company
2 clearly indicating that the motor vehicle has been insured with that
3 company as a collector motor vehicle.

4 (2) A declaration, signed by the registered owner under penalty
5 of perjury, that the vehicle is a collector motor vehicle meeting the
6 conditions specified in subdivision (a).

7 SEC. 4. Section 4000.1 of the Vehicle Code is amended to
8 read:

9 4000.1. (a) Except as otherwise provided in subdivision (b),
10 (c), or (d) of this section, or subdivision (b) of Section 43654 of
11 the Health and Safety Code, the department shall require upon
12 initial registration, and upon transfer of ownership and
13 registration, of any motor vehicle subject to Part 5 (commencing
14 with Section 43000) of Division 26 of the Health and Safety Code,
15 and upon registration of a motor vehicle previously registered
16 outside this state which is subject to those provisions of the Health
17 and Safety Code, a valid certificate of compliance or a certificate
18 of noncompliance, as appropriate, issued in accordance with
19 Section 44015 of the Health and Safety Code.

20 (b) With respect to new vehicles certified pursuant to Chapter
21 2 (commencing with Section 43100) of Part 5 of Division 26 of the
22 Health and Safety Code, the department shall accept a statement
23 completed pursuant to subdivision (b) of Section 24007 in lieu of
24 the certificate of compliance.

25 (c) For purposes of determining the validity of a certificate of
26 compliance or noncompliance submitted in compliance with the
27 requirements of this section, the definitions of new and used motor
28 vehicle contained in Chapter 2 (commencing with Section 39010)
29 of Part 1 of Division 26 of the Health and Safety Code shall
30 control.

31 (d) Subdivision (a) does not apply to a transfer of ownership
32 and registration under any of the following circumstances:

33 (1) In any district in which biennial certification is required and
34 a valid certificate was issued in connection with the most recent
35 renewal of registration of the vehicle, and the transfer occurred not
36 more than 60 days following the date by which that renewal of
37 registration was required.

38 (2) The transferor is either the parent, grandparent, sibling,
39 child, grandchild, or spouse of the transferee.



1 (3) A vehicle registered to a sole proprietorship is transferred
2 to the proprietor as owner.

3 (4) The transfer is between companies whose principal
4 business is leasing vehicles, if there is no change in the lessee or
5 operator of the vehicle or between the lessor and the person who
6 has been, for at least one year, the lessee's operator of the vehicle.

7 (5) The transfer is between the lessor and lessee of the vehicle,
8 if there is no change in the lessee or operator of the vehicle.

9 (6) ~~Prior to January 1, 2003, the~~ *The* motor vehicle was
10 manufactured prior to the ~~1974 model year.~~

11 (7) ~~Beginning January 1, 2003, the motor vehicle is 30 or more~~
12 ~~model-years old~~ *1975 model-year.*

13 (e) The State Air Resources Board, under Part 5 (commencing
14 with Section 43000) of Division 26 of the Health and Safety Code,
15 may exempt designated classifications of motor vehicles from
16 subdivision (a) as it deems necessary, and shall notify the
17 department of that action.

18 (f) Subdivision (a) does not apply to a motor vehicle when an
19 additional individual is added as a registered owner of the vehicle.

20 SEC. 5. Section 4153 of the Vehicle Code is amended to read:

21 4153. (a) If the vehicle to be registered is a specially
22 constructed or remanufactured vehicle, the application shall also
23 state that fact and contain additional information as may
24 reasonably be required by the department to enable it properly to
25 register the vehicle.

26 (b) *Upon initial registration of any specially constructed*
27 *vehicle that is a passenger vehicle or pickup truck that has a*
28 *certificate issued pursuant to Section 44017.4 of the Health and*
29 *Safety Code, the department shall record the model-year of the*
30 *vehicle, as stated in the certificate.*

31 SEC. 6. Section 5004 of the Vehicle Code is amended to read:

32 5004. (a) ~~Notwithstanding any other provision of this code,~~
33 ~~any~~ *Any* owner of a vehicle described in paragraph (1); ~~or (2); or~~
34 ~~(3)~~ which is operated or moved over the highway primarily for the
35 purpose of historical exhibition or other similar purpose shall,
36 upon application in the manner and at the time prescribed by the
37 department, be issued special identification plates for the vehicle:

38 (1) A motor vehicle ~~with an engine of 16 or more cylinders~~
39 ~~manufactured prior to 1965~~ *1975 which meets the definition of a*
40 *collector motor vehicle as specified in Section 258.*



1 (2) A motor vehicle manufactured in the year 1922 or prior
2 thereto.

3 ~~(3) A vehicle which was manufactured after 1922, is at least 25~~
4 ~~years old, and is of historic interest.~~

5 (b) The special identification plates assigned to motor vehicles
6 with an engine of 16 or more cylinders manufactured prior to 1965
7 and to any motor vehicle manufactured in the year 1922 and prior
8 thereto *described in paragraph (2) of subdivision (a)* shall run all
9 in a separate numerical series, commencing with "Horseless
10 Carriage No. 1".

11 (c) The special identification plates assigned to vehicles
12 specified in paragraph (3) of subdivision (a) shall run in a separate
13 numerical series, commencing with "Historical Vehicle No. 1".
14 1."

15 (d) Each series of plates *described in subdivisions (b) and (c)*
16 shall have different and distinguishing colors.

17 ~~(e)~~

18 (e) A fee of twenty-five dollars (\$25) shall be charged for the
19 initial issuance of the special identification plates *specified in*
20 *subdivisions (b) and (c)*. ~~Such~~ The plates shall be permanent and
21 shall not be required to be replaced. If ~~such~~ those special
22 identification plates become damaged or unserviceable in any
23 manner, replacement for the plates may be obtained from the
24 department upon proper application and upon payment of ~~such~~ the
25 fee as is provided for in Section 9265.

26 ~~(d)~~

27 (f) All funds received by the department in payment for ~~such~~
28 ~~those~~ identification plates or the replacement thereof shall be
29 deposited in the California Environmental License Plate Fund.

30 ~~(e)~~

31 (g) These vehicles shall not be exempt from the equipment
32 provisions of Sections 26709, 27150, and 27600.

33 ~~(f) As used in this section, a vehicle is of historic interest if it~~
34 ~~is collected, restored, maintained, and operated by a collector or~~
35 ~~hobbyist principally for purposes of exhibition and historic vehicle~~
36 ~~club activities.~~

0



AMENDED IN SENATE APRIL 5, 2001

SENATE BILL

No. 800

Introduced by Senator Johannessen

February 23, 2001

An act to amend Section 44011 of, and to add Section 44017.4 to, the Health and Safety Code, and to amend Sections 4000.1, 4153, and Section 5004 of, and to add Section 258 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 800, as amended, Johannessen. Vehicles.

(1) Existing law requires all motor vehicles powered by internal combustion engines that are registered within an area designated for program coverage, as specified, to obtain, biennially, a certificate of compliance or noncompliance, except for certain vehicles, including, prior to January 1, 2003, a motor vehicle manufactured prior to the 1974 model year and, on and after January 1, 2003, a motor vehicle that is 30 or more model years old.

This bill would revise that exception to apply to any motor vehicle manufactured prior to the 1975 model year include collector motor vehicles, as defined below, within the listing of exceptions.

(2) Existing law requires the Department of Motor Vehicles, with certain exceptions, upon initial registration, and upon transfer of ownership and registration, of prescribed motor vehicles, and upon registration of a motor vehicle previously registered outside the state, as specified, to require a valid certificate of compliance or a certificate of noncompliance, as specified. Existing law exempts from this requirement, prior to January 1, 2003, the transfer of ownership or registration of a motor vehicle that was manufactured prior to the 1974

98

LIS - 1b

LEGISLATIVE INTENT SERVICE (800) 666-1917



~~model year and, on and after January 1, 2003, the transfer of ownership or registration of a motor vehicle that is 30 or more model years old.~~

~~This bill would revise that exception to apply to a motor vehicle that was manufactured prior to the 1975 model year.~~

~~(3) Existing law requires an applicant for the registration of a specially constructed vehicle or remanufactured vehicle to include prescribed information in the registration application.~~

~~This bill would require the department, upon initial registration of any specially constructed vehicle that is a passenger vehicle or pickup truck that has a specified certificate, to record the model year of that vehicle, as stated in the certificate.~~

~~The bill would require a passenger vehicle or pickup truck that is a specially constructed vehicle to be inspected by stations authorized to perform referee functions, as prescribed. Upon completion of the inspection, the referee would be required to affix the tamper resistant label to the vehicle and issue a certificate that establishes the vehicle model year and emission control system application.~~

~~(4) Existing law permits owners of vehicles that are operated or moved primarily for the purpose of historical exhibition or similar purpose to be issued special identification plates. This provision applies to a motor vehicle with an engine of 16 or more cylinders that was manufactured prior to 1965, a motor vehicle manufactured in the year 1922 or prior thereto, and a vehicle manufactured after 1922 that is at least 25 years old and of historic interest.~~

~~This bill would revise that provision to apply to a motor vehicle manufactured prior to 1975 that is 25 or more model years old and meets the definition of a collector motor vehicle, and a motor vehicle manufactured in the year 1922 or prior thereto. The bill would define a collector motor vehicle to be a vehicle manufactured prior to 1975 that is 25 or more model years old and is not used by the owner as a primary source of transportation and is used primarily for purposes of display at events or to obtain necessary repairs and maintenance. The bill would also revise the exception described in (1) above to apply to collector motor vehicles.~~

~~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 44011 of the Health and Safety Code is
2 amended to read:
- 3 44011. (a) All motor vehicles powered by internal
4 combustion engines that are registered within an area designated
5 for program coverage shall be required biennially to obtain a
6 certificate of compliance or noncompliance, except for all of the
7 following:
- 8 (1) Every motorcycle, and every diesel-powered vehicle, until
9 the department, pursuant to Section 44012, implements test
10 procedures applicable to motorcycles or to diesel-powered
11 vehicles, or both.
- 12 (2) Any motor vehicle that has been issued a certificate of
13 compliance or noncompliance or a repair cost waiver upon a
14 change of ownership or initial registration in this state during the
15 preceding six months.
- 16 ~~(3) Any motor vehicle manufactured prior to the 1975~~
17 ~~model-year.~~
- 18 (3) (A) *Prior to January 1, 2003, any motor vehicle*
19 *manufactured prior to the 1974 model-year.*
- 20 (B) *Beginning on January 1, 2003, any motor vehicle that is 30*
21 *or more model-years old.*
- 22 (4) (A) Any motor vehicle four or less model-years old.
- 23 (B) The department, by regulation, may increase the
24 exemption provided by this paragraph to include any motor
25 vehicle up to six or less model-years old.
- 26 (C) Any motor vehicle excepted by this paragraph shall be
27 subject to testing and to certification requirements as determined
28 by the department, if any of the following apply:
- 29 (i) The department determines through remote sensing
30 activities or other means that there is a substantial probability that
31 the vehicle has a tampered emission control system or would fail
32 for other cause a smog check test as specified in Section 44012.
- 33 (ii) The vehicle was previously registered outside this state and
34 is undergoing initial registration in this state.
- 35 (iii) The vehicle is being registered as a specially constructed
36 vehicle.



1 (iv) The vehicle has been selected for testing pursuant to
2 Section 44014.7 or any other provision of this chapter authorizing
3 out-of-cycle testing.

4 (5) In addition to the vehicles exempted pursuant to paragraph
5 (4), any motor vehicle or class of motor vehicles exempted
6 pursuant to subdivision (b) of Section 44024.5. It is the intent of
7 the Legislature that the department, pursuant to the authority
8 granted by this paragraph, exempt at least 15 percent of the lowest
9 emitting motor vehicles from the biennial smog check inspection.

10 (6) Any motor vehicle that the department determines would
11 present prohibitive inspection or repair problems.

12 (7) Any vehicle registered to the owner of a fleet licensed
13 pursuant to Section 44020 if the vehicle is garaged exclusively
14 outside the area included in program coverage, and is not primarily
15 operated inside the area included in program coverage.

16 (8) A collector motor vehicle as defined in Section 258 of the
17 Vehicle Code.

18 (b) Vehicles designated for program coverage in enhanced
19 areas shall be required to obtain inspections from appropriate
20 smog check stations operating in enhanced areas.

21 ~~SEC. 2.—Section 44017.4 is added to the Health and Safety~~
22 ~~Code, to read:~~

23 ~~44017.4.—Upon initial registration with the Department of~~
24 ~~Motor Vehicles, a passenger vehicle or pickup truck that is a~~
25 ~~specially constructed vehicle, as defined in Section 580 of the~~
26 ~~Vehicle Code, shall be inspected by stations authorized to perform~~
27 ~~referee functions. This inspection shall be for the purposes of~~
28 ~~determining the vehicle model year and emission control system~~
29 ~~application. In determining the model year, the referee shall~~
30 ~~compare the vehicle to vehicles of the era that the vehicle most~~
31 ~~closely resembles. The referee shall assign the 1960 model year to~~
32 ~~any specially constructed vehicle that does not sufficiently~~
33 ~~resemble a previously manufactured vehicle. The referee shall~~
34 ~~require only those emission control systems that are applicable to~~
35 ~~the established model year and that the vehicle reasonably~~
36 ~~accommodates of those systems, in its present form. Upon~~
37 ~~completion of the inspection, the referee shall affix the tamper~~
38 ~~resistant label to the vehicle and issue a certificate that establishes~~
39 ~~the vehicle model year and emission control system application.~~

40 ~~SEC. 3.—~~

1 SEC. 2. Section 258 is added to the Vehicle Code, to read:
 2 258. (a) A collector motor vehicle is a vehicle which was
 3 manufactured prior to 1975 that is 25 or more model-years old and
 4 meets both of the following conditions:

5 (1) The vehicle is not used by the owner as a primary source of
 6 transportation.

7 (2) The vehicle is used primarily for purposes of display at
 8 events such as collector shows, exhibitions and parades, or to
 9 obtain necessary repairs and maintenance.

10 (b) The department shall require one of the following
 11 documents to be submitted by the registered owner as evidence
 12 that the vehicle meets the requirements of subdivision (a).

13 (1) A written statement or policy from an insurance company
 14 clearly indicating that the motor vehicle has been insured with that
 15 company as a collector motor vehicle.

16 (2) A declaration, signed by the registered owner under penalty
 17 of perjury, that the vehicle is a collector motor vehicle meeting the
 18 conditions specified in subdivision (a).

19 SEC. 4. ~~Section 4000.1 of the Vehicle Code is amended to~~
 20 ~~read:~~

21 ~~4000.1. (a) Except as otherwise provided in subdivision (b);~~
 22 ~~(c), or (d) of this section, or subdivision (b) of Section 43654 of~~
 23 ~~the Health and Safety Code, the department shall require upon~~
 24 ~~initial registration, and upon transfer of ownership and~~
 25 ~~registration, of any motor vehicle subject to Part 5 (commencing~~
 26 ~~with Section 43000) of Division 26 of the Health and Safety Code,~~
 27 ~~and upon registration of a motor vehicle previously registered~~
 28 ~~outside this state which is subject to those provisions of the Health~~
 29 ~~and Safety Code, a valid certificate of compliance or a certificate~~
 30 ~~of noncompliance, as appropriate, issued in accordance with~~
 31 ~~Section 44015 of the Health and Safety Code.~~

32 ~~(b) With respect to new vehicles certified pursuant to Chapter~~
 33 ~~2 (commencing with Section 43100) of Part 5 of Division 26 of the~~
 34 ~~Health and Safety Code, the department shall accept a statement~~
 35 ~~completed pursuant to subdivision (b) of Section 24007 in lieu of~~
 36 ~~the certificate of compliance.~~

37 ~~(c) For purposes of determining the validity of a certificate of~~
 38 ~~compliance or noncompliance submitted in compliance with the~~
 39 ~~requirements of this section, the definitions of new and used motor~~
 40 ~~vehicle contained in Chapter 2 (commencing with Section 39010)~~



1 of Part 1 of Division 26 of the Health and Safety Code shall
2 control.

3 (d) Subdivision (a) does not apply to a transfer of ownership
4 and registration under any of the following circumstances:

5 (1) In any district in which biennial certification is required and
6 a valid certificate was issued in connection with the most recent
7 renewal of registration of the vehicle, and the transfer occurred not
8 more than 60 days following the date by which that renewal of
9 registration was required.

10 (2) The transferor is either the parent, grandparent, sibling,
11 child, grandchild, or spouse of the transferee.

12 (3) A vehicle registered to a sole proprietorship is transferred
13 to the proprietor as owner.

14 (4) The transfer is between companies whose principal
15 business is leasing vehicles, if there is no change in the lessee or
16 operator of the vehicle or between the lessor and the person who
17 has been, for at least one year, the lessee's operator of the vehicle.

18 (5) The transfer is between the lessor and lessee of the vehicle,
19 if there is no change in the lessee or operator of the vehicle.

20 (6) The motor vehicle was manufactured prior to the 1975
21 model year.

22 (e) The State Air Resources Board, under Part 5 (commencing
23 with Section 43000) of Division 26 of the Health and Safety Code,
24 may exempt designated classifications of motor vehicles from
25 subdivision (a) as it deems necessary, and shall notify the
26 department of that action.

27 (f) Subdivision (a) does not apply to a motor vehicle when an
28 additional individual is added as a registered owner of the vehicle.

29 SEC. 5.— Section 4153 of the Vehicle Code is amended to read:

30 4153. (a) If the vehicle to be registered is a specially
31 constructed or remanufactured vehicle, the application shall also
32 state that fact and contain additional information as may
33 reasonably be required by the department to enable it properly to
34 register the vehicle.

35 (b) Upon initial registration of any specially constructed
36 vehicle that is a passenger vehicle or pickup truck that has a
37 certificate issued pursuant to Section 44017.4 of the Health and
38 Safety Code, the department shall record the model year of the
39 vehicle, as stated in the certificate.

40 SEC. 6.—



1 SEC. 3. Section 5004 of the Vehicle Code is amended to read:
2 5004. (a) Any owner of a vehicle described in paragraph (1)
3 or (2) which is operated or moved over the highway primarily for
4 the purpose of historical exhibition or other similar purpose shall,
5 upon application in the manner and at the time prescribed by the
6 department, be issued special identification plates for the vehicle:

7 (1) A motor vehicle ~~manufactured prior to 1975 which meets~~
8 ~~the definition of a that is 25 or more model-years old and meets~~
9 ~~the definition of a~~ collector motor vehicle as specified in Section
10 258.

11 (2) A motor vehicle manufactured in the year 1922 or prior
12 thereto.

13 (b) The special identification plates assigned to motor vehicles
14 described in paragraph (2) of subdivision (a) shall run all in a
15 separate numerical series, commencing with "Horseless Carriage
16 No. 1."

17 (c) The special identification plates assigned to vehicles
18 specified in paragraph (3) of subdivision (a) shall run in a separate
19 numerical series, commencing with "Historical Vehicle No. 1."

20 (d) Each series of plates described in subdivisions (b) and (c)
21 shall have different and distinguishing colors.

22 (e) A fee of twenty-five dollars (\$25) shall be charged for the
23 initial issuance of the special identification plates specified in
24 subdivisions (b) and (c). The plates shall be permanent and shall
25 not be required to be replaced. If those special identification plates
26 become damaged or unserviceable in any manner, replacement for
27 the plates may be obtained from the department upon proper
28 application and upon payment of the fee provided for in Section
29 9265.

30 (f) All funds received by the department in payment for those
31 identification plates or the replacement thereof shall be deposited
32 in the California Environmental License Plate Fund.

33 (g) These vehicles shall not be exempt from the equipment
34 provisions of Sections 26709, 27150, and 27600.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



AMENDED IN SENATE APRIL 25, 2001

AMENDED IN SENATE APRIL 5, 2001

SENATE BILL

No. 800

Introduced by Senator Johannessen

February 23, 2001

An act to amend Section 44011 of the Health and Safety Code, to amend Section 10753.5 of the Revenue and Taxation Code, and to amend Section 5004 of, and to add Section 258 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 800, as amended, Johannessen. Vehicles.

(1) Existing law requires all motor vehicles powered by internal combustion engines that are registered within an area designated for program coverage, as specified, to obtain, biennially, a certificate of compliance or noncompliance, except for certain vehicles.

This bill would include collector motor vehicles, as defined below, within the listing of exceptions.

(2) Existing law permits owners of vehicles that are operated or moved primarily for the purpose of historical exhibition or similar purpose to be issued special identification plates. This provision applies to a motor vehicle with an engine of 16 or more cylinders that was manufactured prior to 1965, a motor vehicle manufactured in the year 1922 or prior thereto, and a vehicle manufactured after 1922 that is at least 25 years old and of historic interest.

This bill would revise that provision to apply to a motor vehicle that is 25 or more model-years old and meets the definition of a collector motor vehicle, and a motor vehicle manufactured in the year 1922 or



prior thereto. The bill would define a collector motor vehicle to be a vehicle that is 25 or more model-years old and is not used by the owner as a primary source of transportation and is used primarily for purposes of display at events or to obtain necessary repairs and maintenance.

(3) *The Vehicle License Fee Law establishes an annual license fee for any vehicle subject to registration in the state, with certain exceptions, in the amount of 2% of the market value as determined by the Department of Motor Vehicles. However, existing law provides that the annual amount of the license fee for the vehicles described in (2) above is \$2.*

This bill would exclude collector motor vehicles, as defined by the bill, from the provision that limits the vehicles license fee to \$2.00 annually.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII of the California Constitution, and thus would require for passage the approval of 2/3 of the membership of each house of the Legislature.

Vote: majority 2/3. 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 44011 of the Health and Safety Code is
- 2 amended to read:
- 3 44011. (a) All motor vehicles powered by internal
- 4 combustion engines that are registered within an area designated
- 5 for program coverage shall be required biennially to obtain a
- 6 certificate of compliance or noncompliance, except for all of the
- 7 following:
- 8 (1) Every motorcycle, and every diesel-powered vehicle, until
- 9 the department, pursuant to Section 44012, implements test
- 10 procedures applicable to motorcycles or to diesel-powered
- 11 vehicles, or both.
- 12 (2) Any motor vehicle that has been issued a certificate of
- 13 compliance or noncompliance or a repair cost waiver upon a
- 14 change of ownership or initial registration in this state during the
- 15 preceding six months.
- 16 (3) (A) Prior to January 1, 2003, any motor vehicle
- 17 manufactured prior to the 1974 model-year.



- 1 (B) Beginning on January 1, 2003, any motor vehicle that is 30
2 or more model-years old.
- 3 (4) (A) Any motor vehicle four or less model-years old.
- 4 (B) The department, by regulation, may increase the
5 exemption provided by this paragraph to include any motor
6 vehicle up to six or less model-years old.
- 7 (C) Any motor vehicle excepted by this paragraph shall be
8 subject to testing and to certification requirements as determined
9 by the department, if any of the following apply:
- 10 (i) The department determines through remote sensing
11 activities or other means that there is a substantial probability that
12 the vehicle has a tampered emission control system or would fail
13 for other cause a smog check test as specified in Section 44012.
- 14 (ii) The vehicle was previously registered outside this state and
15 is undergoing initial registration in this state.
- 16 (iii) The vehicle is being registered as a specially constructed
17 vehicle.
- 18 (iv) The vehicle has been selected for testing pursuant to
19 Section 44014.7 or any other provision of this chapter authorizing
20 out-of-cycle testing.
- 21 (5) In addition to the vehicles exempted pursuant to paragraph
22 (4), any motor vehicle or class of motor vehicles exempted
23 pursuant to subdivision (b) of Section 44024.5. It is the intent of
24 the Legislature that the department, pursuant to the authority
25 granted by this paragraph, exempt at least 15 percent of the lowest
26 emitting motor vehicles from the biennial smog check inspection.
- 27 (6) Any motor vehicle that the department determines would
28 present prohibitive inspection or repair problems.
- 29 (7) Any vehicle registered to the owner of a fleet licensed
30 pursuant to Section 44020 if the vehicle is garaged exclusively
31 outside the area included in program coverage, and is not primarily
32 operated inside the area included in program coverage.
- 33 (8) A collector motor vehicle as defined in Section 258 of the
34 Vehicle Code.
- 35 (b) Vehicles designated for program coverage in enhanced
36 areas shall be required to obtain inspections from appropriate
37 smog check stations operating in enhanced areas.
- 38 SEC. 2. *Section 10753.5 of the Revenue and Taxation Code is*
39 *amended to read:*



1 10753.5. Notwithstanding any other provisions of this part,
 2 the annual amount of the license fee for a vehicle described in
 3 Section 5004 of the Vehicle Code, *excluding a collector motor*
 4 *vehicle as defined in Section 258 of the Vehicle Code*, shall be two
 5 dollars (\$2).

6 *SEC. 3.* Section 258 is added to the Vehicle Code, to read:

7 258. (a) A collector motor vehicle is a vehicle that is 25 or
 8 more model-years old and meets both of the following conditions:

9 (1) The vehicle is not used by the owner as a primary source of
 10 transportation.

11 (2) The vehicle is used primarily for purposes of display at
 12 events such as collector shows, exhibitions and parades, or to
 13 obtain necessary repairs and maintenance.

14 ~~(b) The department shall require one of the following~~
 15 ~~documents to be submitted by the registered owner as evidence~~
 16 ~~that the vehicle meets the requirements of subdivision (a).~~

17 (1) ~~A written statement or policy from an insurance company~~
 18 ~~clearly indicating that the motor vehicle has been insured with that~~
 19 ~~company as a collector motor vehicle.~~

20 (2) ~~A declaration, signed by the registered owner under penalty~~
 21 ~~of perjury, that the vehicle is a collector motor vehicle meeting the~~
 22 ~~conditions specified in subdivision (a).~~

23 (b) *The department shall require the registered owner to submit*
 24 *a written statement or policy from an insurance company clearly*
 25 *indicating that the motor vehicle has been insured with that*
 26 *company as a collector motor vehicle as evidence that the vehicle*
 27 *meets the requirements of subdivision (a).*

28 ~~SEC. 3.~~

29 *SEC. 4.* Section 5004 of the Vehicle Code is amended to read:

30 5004. (a) Any owner of a vehicle described in paragraph (1)
 31 or (2) ~~which that~~ is operated or moved over the highway primarily
 32 for the purpose of historical exhibition or other similar purpose
 33 shall, upon application in the manner and at the time prescribed by
 34 the department, be issued special identification plates for the
 35 vehicle:

36 (1) A motor vehicle that is 25 or more model-years old and
 37 meets the definition of a collector motor vehicle as specified in
 38 Section 258.

39 (2) A motor vehicle manufactured in the year 1922 or prior
 40 thereto.



1 (b) *The special identification plates assigned to motor vehicles*
2 *described in paragraph (1) of subdivision (a) shall run in a*
3 *separate numerical series, commencing with "Historical Vehicle*
4 *No. 1."*

5 (c) The special identification plates assigned to motor vehicles
6 described in paragraph (2) of subdivision (a) shall run all in a
7 separate numerical series, commencing with "Horseless Carriage
8 No. 1."

9 ~~(e) The special identification plates assigned to vehicles~~
10 ~~specified in paragraph (3) of subdivision (a) shall run in a separate~~
11 ~~numerical series, commencing with "Historical Vehicle No. 1."~~

12 (d) Each series of plates described in subdivisions (b) and (c)
13 shall have different and distinguishing colors.

14 (e) A fee of twenty-five dollars (\$25) shall be charged for the
15 initial issuance of the special identification plates specified in
16 subdivisions (b) and (c). The plates shall be permanent and shall
17 not be required to be replaced. If those special identification plates
18 become damaged or unserviceable in any manner, replacement for
19 the plates may be obtained from the department upon proper
20 application and upon payment of the fee provided for in Section
21 9265.

22 (f) All funds received by the department in payment for those
23 identification plates or the replacement thereof shall be deposited
24 in the California Environmental License Plate Fund.

25 (g) These vehicles shall not be exempt from the equipment
26 provisions of Sections 26709, 27150, and 27600.



AMENDED IN SENATE MAY 21, 2001
AMENDED IN SENATE APRIL 25, 2001
AMENDED IN SENATE APRIL 5, 2001

SENATE BILL

No. 800

Introduced by Senator Johannessen

February 23, 2001

An act to amend Section 44011 of the Health and Safety Code, to amend ~~Section 10753.5 of the Revenue and Taxation Code~~, and to amend Section 5004 of, and to add Section 258 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 800, as amended, Johannessen. Vehicles.

(1) Existing law requires all motor vehicles powered by internal combustion engines that are registered within an area designated for program coverage, as specified, to obtain, biennially, a certificate of compliance or noncompliance, except for certain vehicles.

This bill would include collector motor vehicles, as defined below, within the listing of exceptions.

(2) Existing law permits owners of vehicles that are operated or moved primarily for the purpose of historical exhibition or similar purpose to be issued special identification plates. This provision applies to a motor vehicle with an engine of 16 or more cylinders that was manufactured prior to 1965, a motor vehicle manufactured in the year 1922 or prior thereto, and a vehicle manufactured after 1922 that is at least 25 years old and of historic interest.

This bill would revise that provision to apply to a motor vehicle that is 25 or more model-years old and meets the definition of a collector

96

(800) 666-1917

LEGISLATIVE INTENT SERVICE



LIS - 1d

motor vehicle, and a motor vehicle manufactured in the year 1922 or prior thereto. The bill would define a collector motor vehicle to be a vehicle that is 25 or more model-years old and is not used by the owner as a primary source of transportation and is used primarily for purposes of display at events or to obtain necessary repairs and maintenance.

~~(3) The Vehicle License Fee Law establishes an annual license fee for any vehicle subject to registration in the state, with certain exceptions, in the amount of 2% of the market value as determined by the Department of Motor Vehicles. However, existing law provides that the annual amount of the license fee for the vehicles described in (2) above is \$2.~~

~~This bill would exclude collector motor vehicles, as defined by the bill, from the provision that limits the vehicles license fee to \$2.00 annually.~~

~~This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII of the California Constitution, and thus would require for passage the approval of 2/3 of the membership of each house of the Legislature.~~

~~Vote: 2/3 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 44011 of the Health and Safety Code is
- 2 amended to read:
- 3 44011. (a) All motor vehicles powered by internal
- 4 combustion engines that are registered within an area designated
- 5 for program coverage shall be required biennially to obtain a
- 6 certificate of compliance or noncompliance, except for all of the
- 7 following:
- 8 (1) Every motorcycle, and every diesel-powered vehicle, until
- 9 the department, pursuant to Section 44012, implements test
- 10 procedures applicable to motorcycles or to diesel-powered
- 11 vehicles, or both.
- 12 (2) Any motor vehicle that has been issued a certificate of
- 13 compliance or noncompliance or a repair cost waiver upon a
- 14 change of ownership or initial registration in this state during the
- 15 preceding six months.
- 16 (3) (A) Prior to January 1, 2003, any motor vehicle
- 17 manufactured prior to the 1974 model-year.



1 (B) Beginning on January 1, 2003, any motor vehicle that is 30
2 or more model-years old.

3 (4) (A) Any motor vehicle four or less model-years old.

4 (B) The department, by regulation, may increase the
5 exemption provided by this paragraph to include any motor
6 vehicle up to six or less model-years old.

7 (C) Any motor vehicle excepted by this paragraph shall be
8 subject to testing and to certification requirements as determined
9 by the department, if any of the following apply:

10 (i) The department determines through remote sensing
11 activities or other means that there is a substantial probability that
12 the vehicle has a tampered emission control system or would fail
13 for other cause a smog check test as specified in Section 44012.

14 (ii) The vehicle was previously registered outside this state and
15 is undergoing initial registration in this state.

16 (iii) The vehicle is being registered as a specially constructed
17 vehicle.

18 (iv) The vehicle has been selected for testing pursuant to
19 Section 44014.7 or any other provision of this chapter authorizing
20 out-of-cycle testing.

21 (5) In addition to the vehicles exempted pursuant to paragraph
22 (4), any motor vehicle or class of motor vehicles exempted
23 pursuant to subdivision (b) of Section 44024.5. It is the intent of
24 the Legislature that the department, pursuant to the authority
25 granted by this paragraph, exempt at least 15 percent of the lowest
26 emitting motor vehicles from the biennial smog check inspection.

27 (6) Any motor vehicle that the department determines would
28 present prohibitive inspection or repair problems.

29 (7) Any vehicle registered to the owner of a fleet licensed
30 pursuant to Section 44020 if the vehicle is garaged exclusively
31 outside the area included in program coverage, and is not primarily
32 operated inside the area included in program coverage.

33 (8) A collector motor vehicle as defined in Section 258 of the
34 Vehicle Code.

35 (b) Vehicles designated for program coverage in enhanced
36 areas shall be required to obtain inspections from appropriate
37 smog check stations operating in enhanced areas.

38 ~~SEC. 2. Section 10753.5 of the Revenue and Taxation Code~~
39 ~~is amended to read:~~

LEGISLATIVE INTENT SERVICE (800) 666-1917



1 ~~10753.5. Notwithstanding any other provisions of this part,~~
2 ~~the annual amount of the license fee for a vehicle described in~~
3 ~~Section 5004 of the Vehicle Code, excluding a collector motor~~
4 ~~vehicle as defined in Section 258 of the Vehicle Code, shall be two~~
5 ~~dollars (\$2).~~

6 ~~SEC. 3.—~~

7 SEC. 2. Section 258 is added to the Vehicle Code, to read:

8 258. (a) A collector motor vehicle is a vehicle that is 25 or
9 more model-years old and meets both of the following conditions:

10 (1) The vehicle is not used by the owner as a primary source of
11 transportation.

12 (2) The vehicle is used primarily for purposes of display at
13 events such as collector shows, exhibitions and parades, or to
14 obtain necessary repairs and maintenance.

15 (b) The department shall require the registered owner to submit
16 a written statement or policy from an insurance company clearly
17 indicating that the motor vehicle has been insured with that
18 company as a collector motor vehicle as evidence that the vehicle
19 meets the requirements of subdivision (a).

20 ~~SEC. 4.—~~

21 SEC. 3. Section 5004 of the Vehicle Code is amended to read:

22 5004. (a) Any owner of a vehicle described in paragraph (1)
23 or (2) that is operated or moved over the highway primarily for the
24 purpose of historical exhibition or other similar purpose shall,
25 upon application in the manner and at the time prescribed by the
26 department, be issued special identification plates for the vehicle:

27 (1) A motor vehicle that is 25 or more model-years old and
28 meets the definition of a collector motor vehicle as specified in
29 Section 258.

30 (2) A motor vehicle manufactured in the year 1922 or prior
31 thereto.

32 (b) The special identification plates assigned to motor vehicles
33 described in paragraph (1) of subdivision (a) shall run in a separate
34 numerical series, commencing with "Historical Vehicle No. 1."

35 (c) The special identification plates assigned to motor vehicles
36 described in paragraph (2) of subdivision (a) shall run all in a
37 separate numerical series, commencing with "Horseless Carriage
38 No. 1."

39 (d) Each series of plates described in subdivisions (b) and (c)
40 shall have different and distinguishing colors.



1 (e) A fee of twenty-five dollars (\$25) shall be charged for the
2 initial issuance of the special identification plates specified in
3 subdivisions (b) and (c). The plates shall be permanent and shall
4 not be required to be replaced. If those special identification plates
5 become damaged or unserviceable in any manner, replacement for
6 the plates may be obtained from the department upon proper
7 application and upon payment of the fee provided for in Section
8 9265.

9 (f) All funds received by the department in payment for those
10 identification plates or the replacement thereof shall be deposited
11 in the California Environmental License Plate Fund.

12 (g) These vehicles shall not be exempt from the equipment
13 provisions of Sections 26709, 27150, and 27600.



AMENDED IN ASSEMBLY AUGUST 12, 2002

AMENDED IN SENATE MAY 21, 2001

AMENDED IN SENATE APRIL 25, 2001

AMENDED IN SENATE APRIL 5, 2001

SENATE BILL

No. 800

Introduced by Senator Johannessen

February 23, 2001

~~An act to amend Section 44011 of the Health and Safety Code, and to amend Section 5004 of, and to add Section 258 to, the Vehicle Code, relating to vehicles. An act relating to state government.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 800, as amended, Johannessen. ~~Vehicles-State government.~~

~~(1) Existing law requires all motor vehicles powered by internal combustion engines that are registered within an area designated for program coverage, as specified, to obtain, biennially, a certificate of compliance or noncompliance, except for certain vehicles.~~

~~This bill would include collector motor vehicles, as defined below, within the listing of exceptions:~~

~~(2) Existing law permits owners of vehicles that are operated or moved primarily for the purpose of historical exhibition or similar purpose to be issued special identification plates. This provision applies to a motor vehicle with an engine of 16 or more cylinders that was manufactured prior to 1965, a motor vehicle manufactured in the year 1922 or prior thereto, and a vehicle manufactured after 1922 that is at least 25 years old and of historic interest.~~

95

LIS - 1e

SB 800 LEG. HIST. 000025

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE



This bill would revise that provision to apply to a motor vehicle that is ~~25 or more model years old and meets the definition of a collector motor vehicle, and a motor vehicle manufactured in the year 1922 or prior thereto.~~ The bill would define a collector motor vehicle to be a vehicle that is 25 or more model years old and is not used by the owner as a primary source of transportation and is used primarily for purposes of display at events or to obtain necessary repairs and maintenance.

This bill would declare the intent of the Legislature to provide adequate funding for the operation of state government.

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

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

1 ~~SECTION 1. Section 44011 of the Health and Safety Code is~~
2 ~~SECTION 1. It is the intent of the Legislature to provide~~
3 ~~adequate funding for the operation of state government.~~

4 ~~amended to read:~~

5 ~~44011. (a) All motor vehicles powered by internal~~
6 ~~combustion engines that are registered within an area designated~~
7 ~~for program coverage shall be required biennially to obtain a~~
8 ~~certificate of compliance or noncompliance, except for all of the~~
9 ~~following:~~

10 ~~(1) Every motorcycle, and every diesel-powered vehicle, until~~
11 ~~the department, pursuant to Section 44012, implements test~~
12 ~~procedures applicable to motorcycles or to diesel-powered~~
13 ~~vehicles, or both.~~

14 ~~(2) Any motor vehicle that has been issued a certificate of~~
15 ~~compliance or noncompliance or a repair cost waiver upon a~~
16 ~~change of ownership or initial registration in this state during the~~
17 ~~preceding six months.~~

18 ~~(3) (A) Prior to January 1, 2003, any motor vehicle~~
19 ~~manufactured prior to the 1974 model year.~~

20 ~~(B) Beginning on January 1, 2003, any motor vehicle that is 30~~
21 ~~or more model years old.~~

22 ~~(4) (A) Any motor vehicle four or less model years old.~~

23 ~~(B) The department, by regulation, may increase the~~
24 ~~exemption provided by this paragraph to include any motor~~
25 ~~vehicle up to six or less model years old.~~



1 ~~(C) Any motor vehicle excepted by this paragraph shall be~~
2 ~~subject to testing and to certification requirements as determined~~
3 ~~by the department, if any of the following apply:~~

4 ~~(i) The department determines through remote sensing~~
5 ~~activities or other means that there is a substantial probability that~~
6 ~~the vehicle has a tampered emission control system or would fail~~
7 ~~for other cause a smog check test as specified in Section 44012.~~

8 ~~(ii) The vehicle was previously registered outside this state and~~
9 ~~is undergoing initial registration in this state.~~

10 ~~(iii) The vehicle is being registered as a specially constructed~~
11 ~~vehicle.~~

12 ~~(iv) The vehicle has been selected for testing pursuant to~~
13 ~~Section 44014.7 or any other provision of this chapter authorizing~~
14 ~~out of cycle testing.~~

15 ~~(5) In addition to the vehicles exempted pursuant to paragraph~~
16 ~~(4), any motor vehicle or class of motor vehicles exempted~~
17 ~~pursuant to subdivision (b) of Section 44024.5. It is the intent of~~
18 ~~the Legislature that the department, pursuant to the authority~~
19 ~~granted by this paragraph, exempt at least 15 percent of the lowest~~
20 ~~emitting motor vehicles from the biennial smog check inspection.~~

21 ~~(6) Any motor vehicle that the department determines would~~
22 ~~present prohibitive inspection or repair problems.~~

23 ~~(7) Any vehicle registered to the owner of a fleet licensed~~
24 ~~pursuant to Section 44020 if the vehicle is garaged exclusively~~
25 ~~outside the area included in program coverage, and is not primarily~~
26 ~~operated inside the area included in program coverage.~~

27 ~~(8) A collector motor vehicle as defined in Section 258 of the~~
28 ~~Vehicle Code.~~

29 ~~(b) Vehicles designated for program coverage in enhanced~~
30 ~~areas shall be required to obtain inspections from appropriate~~
31 ~~smog check stations operating in enhanced areas.~~

32 ~~SEC. 2. Section 258 is added to the Vehicle Code, to read:~~

33 ~~258. (a) A collector motor vehicle is a vehicle that is 25 or~~
34 ~~more model years old and meets both of the following conditions:~~

35 ~~(1) The vehicle is not used by the owner as a primary source of~~
36 ~~transportation.~~

37 ~~(2) The vehicle is used primarily for purposes of display at~~
38 ~~events such as collector shows, exhibitions and parades, or to~~
39 ~~obtain necessary repairs and maintenance.~~



1 (b) The department shall require the registered owner to submit
2 a written statement or policy from an insurance company clearly
3 indicating that the motor vehicle has been insured with that
4 company as a collector motor vehicle as evidence that the vehicle
5 meets the requirements of subdivision (a).

6 SEC. 3. Section 5004 of the Vehicle Code is amended to read:

7 5004. (a) Any owner of a vehicle described in paragraph (1)
8 or (2) that is operated or moved over the highway primarily for the
9 purpose of historical exhibition or other similar purpose shall,
10 upon application in the manner and at the time prescribed by the
11 department, be issued special identification plates for the vehicle:

12 (1) A motor vehicle that is 25 or more model years old and
13 meets the definition of a collector motor vehicle as specified in
14 Section 258.

15 (2) A motor vehicle manufactured in the year 1922 or prior
16 thereto.

17 (b) The special identification plates assigned to motor vehicles
18 described in paragraph (1) of subdivision (a) shall run in a separate
19 numerical series, commencing with "Historical Vehicle No. 1."

20 (c) The special identification plates assigned to motor vehicles
21 described in paragraph (2) of subdivision (a) shall run all in a
22 separate numerical series, commencing with "Horseless Carriage
23 No. 1."

24 (d) Each series of plates described in subdivisions (b) and (c)
25 shall have different and distinguishing colors.

26 (e) A fee of twenty five dollars (\$25) shall be charged for the
27 initial issuance of the special identification plates specified in
28 subdivisions (b) and (c). The plates shall be permanent and shall
29 not be required to be replaced. If those special identification plates
30 become damaged or unserviceable in any manner, replacement for
31 the plates may be obtained from the department upon proper
32 application and upon payment of the fee provided for in Section
33 9265.

34 (f) All funds received by the department in payment for those
35 identification plates or the replacement thereof shall be deposited
36 in the California Environmental License Plate Fund.

37 (g) These vehicles shall not be exempt from the equipment
38 provisions of Sections 26709, 27150, and 27600.

0



AMENDED IN ASSEMBLY AUGUST 15, 2002

AMENDED IN ASSEMBLY AUGUST 12, 2002

AMENDED IN SENATE MAY 21, 2001

AMENDED IN SENATE APRIL 25, 2001

AMENDED IN SENATE APRIL 5, 2001

SENATE BILL

No. 800

Introduced by Senator ~~Johannessen~~ *Romero*

February 23, 2001

~~An act relating to state government. An act to amend Section 340 of the Code of Civil Procedure, relating to statute of limitations.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 800, as amended, ~~Johannessen~~ *Romero*. ~~State government Statute of limitations.~~

Existing law prescribes a one-year time period for the commencement of an action based upon an action upon a statute for a penalty or forfeiture, if the action is given to an individual or to an individual and the state.

The bill would make a clarifying change to that provision. The bill would also make technical changes.

~~This bill would declare the intent of the Legislature to provide adequate funding for the operation of state government.~~

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

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE



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

1 ~~SECTION 1. It is the intent of the Legislature to provide~~
2 ~~adequate funding for the operation of state government.~~

3 SECTION 1. Section 340 of the Code of Civil Procedure is
4 amended to read:

5 340. Within one year:

6 (1)

7 (a) An action upon a statute for a penalty or forfeiture, ~~when~~
8 if the action is given available to an individual, or to an individual
9 and the state, except ~~when~~ if the statute imposing it prescribes a
10 different limitation.

11 (2)

12 (b) An action upon a statute for a forfeiture or penalty to the
13 people of this state.

14 (3)

15 (c) Any of the following:

16 (1) An action for libel, slander, assault, battery, false
17 imprisonment, or the seduction of a person below the age of legal
18 consent, ~~or.~~

19 (2) An action for injury to or for the death of one caused by the
20 wrongful act or neglect of another, ~~or.~~

21 (3) An action by a depositor against a bank for the payment of
22 a forged or raised check, or a check that bears a forged or
23 unauthorized endorsement, ~~or.~~

24 (4) An action against any person who boards or feeds an animal
25 or fowl or who engages in the practice of veterinary medicine as
26 defined in Section 4826 of the Business and Professions Code, for
27 ~~such~~ that person's neglect resulting in injury or death to an animal
28 or fowl in the course of boarding or feeding ~~such~~ that animal or
29 fowl or in the course of the practice of veterinary medicine on ~~such~~
30 that animal or fowl.

31 (4)

32 (d) An action against an officer to recover damages for the
33 seizure of any property for a statutory forfeiture to the state, or for
34 the detention of, or injury to property so seized, or for damages
35 done to any person in making ~~any such~~ this seizure.

36 (5)

37 (e) An action by a good faith improver for relief under Chapter
38 10 (commencing with Section 871.1) of Title 10 ~~of Part 2 of the~~

- 1 ~~Code of Civil Procedure~~. The time begins to run from the date
- 2 upon which the good faith improver discovers that the good faith
- 3 improver is not the owner of the land upon which the
- 4 improvements have been made.

AMENDED IN ASSEMBLY AUGUST 25, 2002

AMENDED IN ASSEMBLY AUGUST 15, 2002

AMENDED IN ASSEMBLY AUGUST 12, 2002

AMENDED IN SENATE MAY 21, 2001

AMENDED IN SENATE APRIL 25, 2001

AMENDED IN SENATE APRIL 5, 2001

SENATE BILL

No. 800

**Introduced by Senator Romero Burton and Assembly Member
Wesson**

*(Principal coauthors: Senators Dunn, Escutia, Romero, and
Torkelson)*

*(Principal coauthors: Assembly Members Calderon, Corbett, and
Steinberg)*

*(Coauthors: Assembly Members Aaroner, Cardoza, Chan, Chavez,
Firebaugh, Florez, Goldberg, Jackson, Kehoe, Koretz, Longville,
Lowenthal, Oropeza, Shelley, Wayne, and Wiggins)*

February 23, 2001

~~An act to amend Section 340 of the Code of Civil Procedure, relating to statute of limitations; to add Section 664.8 to the Code of Civil Procedure, and to add Part 1.1 (commencing with Section 17100) to Division 13 of the Health and Safety Code, relating to construction defects.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 800, as amended, Romero Burton. ~~Statute of limitations~~
Liability: construction defects.

93

LIS - 1g

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE



Existing law provides for stipulated judgments in construction defect actions, as defined.

This bill would define "construction defect" for these purposes.

The bill would also specify the rights and requirements of a homeowner to bring an action for construction defects, including applicable standards for home construction, the statute of limitations, the burden of proof, the damages recoverable, a detailed prelitigation procedure, and the obligations of the homeowner. The bill would also set forth specified findings and declarations of the Legislature regarding construction defects.

~~Existing law prescribes a one-year time period for the commencement of an action based upon an action upon a statute for a penalty or forfeiture, if the action is given to an individual or to an individual and the state.~~

~~The bill would make a clarifying change to that provision. The bill would also make technical changes.~~

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 340 of the Code of Civil Procedure is~~
 2 *SECTION 1. The Legislature finds and declares, as follows:*
 3 *(a) The California system for the administration of civil justice*
 4 *is one of the fairest in the world, but certain procedures and*
 5 *standards should be amended to ensure fairness to all parties.*
 6 *(b) The prompt and fair resolution of construction defect claims*
 7 *is in the interest of consumers, homeowners, and the builders of*
 8 *homes, and is vital to the state's continuing growth and vitality.*
 9 *However, under current procedures and standards, homeowners*
 10 *and builders alike are not afforded the opportunity for quick and*
 11 *fair resolution of claims. Both need clear standards and*
 12 *mechanisms for the prompt resolution of claims.*
 13 *(c) It is the intent of the Legislature that this act improve the*
 14 *procedures for the administration of civil justice, including*
 15 *standards and procedures for early disposition of construction*
 16 *defects.*
 17 *(d) Because the provisions of this act involve the resolution of*
 18 *competing considerations, dealing with the problems facing both*
 19 *plaintiffs and defendants, the Legislature finds that the provisions*



1 of this act are not severable. Rather it is the intent of the Legislature
2 that if, for any reason, any provision of this act is determined to be
3 void or otherwise inoperative, then no provision of this act shall
4 have any effect.

5 SEC. 2. Section 664.8 is added to the Code of Civil Procedure,
6 to read:

7 664.8. "Construction defect" means a defect in design,
8 materials, or workmanship that occurs during the original
9 construction of the improvement or in connection with any
10 warranty repair work, and in the case of a common interest
11 development, includes construction or repair work in all common
12 areas.

13 SEC. 3. Part 1.1 (commencing with Section 17100) is added
14 to Division 13 of the Health and Safety Code, to read:

15

16 PART 1.1. REQUIREMENTS FOR ACTIONS FOR
17 CONSTRUCTION DEFECTS

18

19

20 CHAPTER 1. DEFINITIONS

21

22 17100. For purposes of this part:

23 (a) "Structure" means any residential dwelling, other
24 building, or improvement located upon a lot or within a common
25 area.

26 (b) "Designed moisture barrier" means an installed moisture
27 barrier specified in the plans and specifications, contract
28 documents, or manufacturer's recommendations.

29 (c) "Actual moisture barrier" means any component or
30 material, actually installed, that serves to any degree as a barrier
31 against moisture, whether or not intended as such.

32 (d) "Unintended water" means water that passes beyond,
33 around, or through a component or the material that is designed
34 to prevent that passage.

35 (e) "Close of escrow" means the date of the close of escrow
36 between the builder and the original homeowner. With respect to
37 claims by an association, as defined in subdivision (a) of Section
38 1351 of the Civil Code, "close of escrow" means the date of
39 substantial completion, as defined in Section 337.15 of the Code
40 of Civil Procedure, or the date the builder relinquishes control over



1 the association's ability to decide whether to initiate a claim under
 2 this part, whichever is later.
 3 (f) "Claimant" or "homeowner" includes the individual
 4 owners of single-family homes, individual unit owners of attached
 5 dwellings and, in the case of a common interest development, any
 6 association as defined in subdivision (a) of Section 1351 of the
 7 Civil Code.

8
 9 CHAPTER 2. ACTIONABLE DEFECTS

10
 11 17110. In any action seeking recovery of damages arising out
 12 of, or related to deficiencies in, the residential construction,
 13 design, specifications, surveying, planning, supervision, testing,
 14 or observation of construction, a builder, and to the extent set forth
 15 in Chapter 4 (commencing with Section 17130), a subcontractor,
 16 material supplier, or design professional, shall be liable for, and
 17 the claimant's claims or causes of action shall be limited to
 18 violation of, the following standards, except as specifically set
 19 forth in this part:

- 20 (a) With respect to water intrusion:
- 21 (1) A door may not allow unintended water to pass beyond,
 22 around, or through the door or its designed or actual moisture
 23 barriers, if any.
- 24 (2) Windows, patio doors, deck doors, and their systems may
 25 not allow water to pass beyond, around, or through the window,
 26 patio door, or deck door or its designed or actual moisture
 27 barriers, including, without limitation, internal barriers within the
 28 systems themselves. Windows, patio doors, deck doors, and their
 29 systems may not allow excessive condensation to enter the
 30 structure and cause damage to another component. For purposes
 31 of this paragraph, "systems" include, without limitation,
 32 windows, window assemblies, framing, substrate, flashings, and
 33 trim, if any.
- 34 (3) Roofs, roofing systems, chimney caps, and ventilation
 35 components may not allow water to enter the structure or to pass
 36 beyond, around, or through the designed or actual moisture
 37 barriers, including, without limitation, internal barriers located
 38 within the systems themselves. For purposes of this paragraph,
 39 "systems" include, without limitation, framing, substrate, and
 40 sheathing, if any.

1 (4) Decks, deck systems, balconies, balcony systems, exterior
2 stairs, and stair systems may not allow water to pass into the
3 adjacent structure. Decks, deck systems, balconies, balcony
4 systems, exterior stairs, and stair systems may not allow
5 unintended water to pass within the systems themselves and cause
6 damage to the systems. For purposes of this paragraph, "systems"
7 include, without limitation, framing, substrate, flashing, and
8 sheathing, if any.

9 (5) Foundation systems and slabs may not allow water or vapor
10 to enter into the structure so as to cause damage to another
11 building component or limit the installation of the type of flooring
12 materials typically used for the particular application.

13 (6) Hardscape, including paths and patios, irrigation systems,
14 landscaping systems, and drainage systems, that are installed as
15 part of the original construction, may not be installed in such a way
16 as to cause water or soil erosion to enter into or come in contact
17 with the structure so as to cause damage to another building
18 component.

19 (7) Stucco, exterior siding, exterior walls, including, without
20 limitation, exterior framing, and other exterior wall finishes and
21 fixtures and the systems of those components and fixtures,
22 including, but not limited to, pot shelves, horizontal surfaces,
23 columns, and plant-ons, shall be installed in such a way so as not
24 to allow unintended water to pass into the structure or to pass
25 beyond, around, or through the designed or actual moisture
26 barriers of the system, including any internal barriers located
27 within the system itself. Stucco, exterior siding, and exterior walls
28 may not allow excessive condensation to enter the structure and
29 cause damage to another component. For purposes of this
30 paragraph, "systems" include, without limitation, framing,
31 substrate, flashings, trim, wall assemblies, and internal wall
32 cavities, if any.

33 (8) Retaining and site walls and their associated drainage
34 systems may not allow unintended water to pass beyond, around,
35 or through its designed or actual moisture barriers including,
36 without limitation, any internal barriers, so as to cause damage.
37 This standard does not apply to those portions of any wall or
38 drainage system that are designed to have water flow beyond,
39 around, or through them. The retaining walls and site walls, and



1 their drainage systems, may only allow water to flow beyond,
2 around, or through the areas designated by design.

3 (9) The lines and components of the plumbing system, sewer
4 system, and utility systems may not leak.

5 (10) Shower and bath enclosures may not leak water into the
6 interior of walls, flooring systems, or the interior of other
7 components.

8 (11) Ceramic tile and tile countertops may not allow water
9 intrusion into the interior of walls, flooring systems, or other
10 components so as to cause damage.

11 (b) With respect to structural stability:

12 (1) Foundations, load bearing components, and slabs, may not
13 contain significant cracks or significant vertical displacement or
14 cause the structure to be structurally unsafe.

15 (2) Foundations, load bearing components, and slabs, and
16 underlying soils shall be constructed so as to materially comply
17 with the design criteria set by applicable government building
18 codes, regulations, and ordinances for chemical deterioration or
19 corrosion resistance in effect at the time of original construction.

20 (3) A structure shall be constructed so as to materially comply
21 with the design criteria for earthquake and wind load resistance,
22 as set forth in the applicable government building codes,
23 regulations, and ordinances in effect at the time of original
24 construction.

25 (c) With respect to soil:

26 Soils and engineered retaining walls may not cause, in whole or
27 in part, damage to the structure built upon the soil or engineered
28 retaining wall or cause, in whole or in part, the structure to be
29 structurally unsafe. Soils may not cause, in whole or in part, the
30 land upon which no structure is built to become unusable for the
31 purpose represented or intended at the time of original sale by the
32 builder.

33 (d) With respect to fire protection:

34 (1) A structure shall be constructed so as to materially comply
35 with the design criteria of the applicable government building
36 codes, regulations, and ordinances for fire protection of the
37 occupants in effect at the time of the original construction.

38 (2) Fireplaces, chimneys, chimney structures, and chimney
39 termination caps shall be constructed and installed in such a way



1 so as not to cause an unreasonable risk of fire outside the fireplace
2 enclosure or chimney.

3 (3) Electrical and mechanical systems shall be constructed and
4 installed in such a way so as not to cause an unreasonable risk of
5 fire.

6 (e) With respect to plumbing:

7 Plumbing and sewer systems shall be installed to operate
8 properly and may not materially impair the use of the structure by
9 its inhabitants. However, no action may be brought for a violation
10 of this subdivision more than four years after close of escrow.

11 (f) With respect to electrical systems:

12 Electrical systems shall operate properly and may not
13 materially impair the use of the structure by its inhabitants.
14 However, no action may be brought pursuant to this subdivision
15 more than four years from close of escrow.

16 (g) With respect to other areas of construction:

17 (1) Exterior pathways, driveways, hardscape, sidewalls,
18 sidewalks, and patios installed by the original builder may not
19 contain cracks that display significant vertical displacement or
20 that are excessive. However, no action may be brought upon a
21 violation of this paragraph more than four years from close of
22 escrow.

23 (2) Stucco, exterior siding, and other exterior wall finishes and
24 fixtures, including, but not limited to, pot shelves, horizontal
25 surfaces, columns, and plant-ons, may not contain significant
26 cracks or separations.

27 (3) (A) To the extent not otherwise covered by these standards,
28 manufactured products, including, but not limited to, windows,
29 doors, roofs, plumbing products and fixtures, fireplaces, electrical
30 fixtures, HVAC units, countertops, cabinets, paint, and appliances
31 shall be installed so as not to interfere with the products' useful
32 life, if any.

33 (B) For purposes of this paragraph, "useful life" means a
34 representation of how long a product is warranted or represented,
35 through its limited warranty or any written representations, to last
36 by its manufacturer, including recommended or required
37 maintenance. If there is no representation by a manufacturer, a
38 builder shall install manufactured products so as not to interfere
39 with the product's utility.



1 (C) For purposes of this paragraph, "manufactured product"
2 means a product that is completely manufactured offsite.

3 (D) If no useful life representation is made, or if the
4 representation is less than one year, the period shall be no less than
5 one year. If a manufactured product is damaged as a result of a
6 violation of these standards, damage to the product is a
7 recoverable element of damages. This subparagraph does not limit
8 recovery if there has been damage to another building component
9 caused by a manufactured product during the manufactured
10 product's useful life.

11 (E) This paragraph does not apply in any action filed solely
12 against a product manufacturer.

13 (4) Heating, if any, shall be installed so as to be capable of
14 maintaining a room temperature of 70 degrees Fahrenheit at a
15 point three feet above the floor in any living space. Living space
16 air conditioning, if any, shall be provided in a manner consistent
17 with the size and efficiency design criteria specified in Title 24 of
18 the California Code of Regulations or its successor.

19 (5) Attached structures shall be constructed to "meet"
20 interunit noise transmission standards set by the applicable
21 government building codes, ordinances, or regulations in effect at
22 the time of the original construction. If there is no applicable code,
23 ordinance, or regulation, this paragraph does not apply. However,
24 no action may be brought pursuant to this paragraph more than
25 one year from the original occupancy of the adjacent unit.

26 (6) Irrigation systems and drainage shall operate properly so
27 as not to damage landscaping or other external improvements.
28 However, no action may be brought pursuant to this paragraph
29 more than one year from close of escrow.

30 (7) Untreated wood posts may not be installed in contact with
31 soil so as to cause unreasonable decay to the wood based upon the
32 finish grade at the time of original construction. However, no
33 action may be brought pursuant to this paragraph more than two
34 years from close of escrow.

35 (8) Untreated steel fences and adjacent components shall be
36 installed so as to prevent unreasonable corrosion. However, no
37 action may be brought pursuant to this paragraph more than four
38 years from close of escrow.

39 (9) Paint and stains shall be applied in such a manner so as not
40 to cause deterioration of the building surfaces for the length of

1 time specified by the paint or stain manufacturers'
2 representations, if any. However, no action may be brought
3 pursuant to this paragraph more than five years from close of
4 escrow.

5 (10) Roofing materials shall be installed so as to avoid
6 materials falling from the roof.

7 (11) The landscaping systems shall be installed in such a
8 manner so as to survive for not less than one year. However, no
9 action may be brought pursuant to this paragraph more than two
10 years from close of escrow.

11 (12) Ceramic tile and tile backing shall be installed in such a
12 manner that the tile does not detach.

13 (13) Dryer ducts shall be installed and terminated pursuant to
14 manufacturer installation requirements. However, no action may
15 be brought pursuant to this paragraph more than two years from
16 close of escrow.

17 (14) Structures shall be constructed in such a manner so as not
18 to impair the occupants' safety because they contain public health
19 hazards as determined by a duly authorized public health official
20 or health agency, governmental entity having jurisdiction. This
21 paragraph does not limit recovery for any damages caused by a
22 violation of any other paragraph of this section on the grounds that
23 the damages do not constitute a health hazard.

24 17111. The standards set forth in this chapter are intended to
25 address every function or component of a structure. To the extent
26 that a function or component of a structure is not addressed by
27 these standards, it shall be actionable if it causes damage.

28
29 CHAPTER 3. OBLIGATIONS
30

31 17120. A builder shall provide a homebuyer with a minimum
32 one-year express written limited warranty covering the fit and
33 finish of the following building components. Except as otherwise
34 provided by the standards specified in Chapter 2 (commencing
35 with Section 17110), this warranty shall cover the fit and finish of
36 cabinets, mirrors, flooring, interior and exterior walls, counter
37 tops, paint finishes, and trim, but shall not apply to damage to
38 those components caused by defects in other components governed
39 by the other provisions of this part. Any fit and finish matters
40 covered by this warranty are not subject to the provisions of this



1 part. If a builder fails to provide the express warranty required by
2 this section, the warranty for these items shall be for a period of
3 one year.

4 17121. A builder may, but is not required to, offer greater
5 protection or protection for longer time periods in its express
6 contract with the homeowner than that set forth in this chapter. A
7 builder may not limit the application of this chapter or lower its
8 protection through the express contract with the homeowner. This
9 type of express contract constitutes an "enhanced protection
10 agreement."

11 17122. If a builder offers an enhanced protection agreement,
12 the builder may choose to be subject to its own express contractual
13 provisions in place of the provisions set forth in this chapter. If an
14 enhanced protection agreement is in place, this chapter no longer
15 applies other than to set forth minimum provisions by which to
16 judge the enforceability of the particular provisions of the
17 enhanced protection agreement.

18 17123. If a builder offers an enhanced protection agreement
19 in place of the provisions set forth in this chapter, the election to
20 do so shall be made in writing with the homeowner no later than
21 the close of escrow. The builder shall provide the homeowner with
22 a complete copy of this chapter and advise the homeowner that the
23 builder has elected not to be subject to its provisions. If any
24 provision of an enhanced protection agreement is later found to be
25 unenforceable as not meeting the minimum standards of this
26 chapter, a builder may use this chapter in lieu of those provisions
27 found to be unenforceable.

28 17124. If a builder has elected to use an enhanced protection
29 agreement, and a homeowner disputes that the particular
30 provision or time periods of the enhanced protection agreement
31 are not greater than, or equal to, the provisions of this chapter as
32 they apply to the particular deficiency alleged by the homeowner,
33 the homeowner may seek to enforce the application of the
34 standards set forth in this chapter as to those claimed deficiencies.
35 If a homeowner seeks to enforce a particular standard in lieu of a
36 provision of the enhanced protection agreement, the homeowner
37 shall give the builder written notice of that intent at the time the
38 homeowner files a notice of claim pursuant to Chapter 4
39 (commencing with Section 17130).



1 17125. If a homeowner seeks to enforce this chapter in lieu of
2 the enhanced protection agreement in a subsequent litigation or
3 other legal action, the builder shall have the right to have the
4 matter bifurcated, and to have an immediately binding
5 determination of his or her responsive pleading within 60 days
6 after the filing, but in no event after the commencement of
7 discovery, as to the application of either this chapter or the
8 enhanced protection agreement as to the deficiencies claimed by
9 the homeowner. If the builder fails to seek that determination in the
10 time frame specified, the builder waives the right to do so and the
11 standards set forth in this part shall apply. As to any nonoriginal
12 homeowner, that homeowner shall be deemed in privity for
13 purposes of an enhanced protection agreement only to the extent
14 that the builder has recorded the enhanced protection agreement
15 on title or provided actual notice to the nonoriginal homeowner of
16 the enhanced protection agreement. If the enhanced protection
17 agreement is not recorded on title or no actual notice has been
18 provided, the standards set forth in this part apply to any
19 nonoriginal homeowners' claims.

20 17126. A builder's election to use an enhanced protection
21 agreement addresses only the issues set forth in this chapter and
22 does not constitute an election to use or not use the provisions of
23 Chapter 4 (commencing with Section 17130). The decision to use
24 or not use Chapter 4 (commencing with Section 17130) is
25 governed by the provisions of that chapter.

26 17127. A homeowner is obligated to follow all reasonable
27 maintenance obligations and schedules communicated in writing
28 to the homeowner by the builder and product manufacturers, as
29 well as commonly accepted maintenance practices. A failure by a
30 homeowner to follow these obligations, schedules, and practices
31 may subject the homeowner to the affirmative defenses contained
32 in Section 17164.

33

34 CHAPTER 4. PRELITIGATION PROCEDURE

35

36 17130. Prior to filing an action against any party alleged to
37 have contributed to a violation of the standards set forth in this
38 part, the claimant shall initiate the following prelitigation
39 procedures:



1 (a) The claimant or his or her legal representative shall provide
2 written notice via certified mail, overnight mail, or personal
3 delivery to the builder, in the manner prescribed in this section, of
4 the claimant's claim that the construction of his or her residence
5 violates any of the standards set forth in this part. That notice shall
6 provide the claimant's name, address, and preferred method of
7 contact, and shall state that the claimant alleges a violation
8 pursuant to this part against the builder, and shall describe the
9 claim in reasonable detail sufficient to determine the nature and
10 location, to the extent known, of the claimed violation. In the case
11 of a group of homeowners or an association, the notice may
12 identify the claimants solely by address or other description
13 sufficient to apprise the builder of the locations of the subject
14 residences. That document shall have the same force and effect as
15 a notice of commencement of a legal proceeding.

16 (b) The notice requirements of this section do not preclude a
17 homeowner from seeking redress through any applicable normal
18 customer service procedure as set forth in any contractual,
19 warranty, or other builder-generated document; and, if a
20 homeowner seeks to do so, that request shall not be deemed to
21 satisfy the notice requirements of this section.

22 17131. For purposes of this chapter, "builder" means a
23 builder, developer, or original seller and applies to the sale of new
24 residential units on and after January 1, 2003.

25 17132. A builder shall do all of the following:

26 (a) Within 20 days of a written request by a homeowner or his
27 or her representative, the builder shall provide copies of all
28 relevant plans, specifications, mass or rough grading plans, final
29 soils reports, Department of Real Estate public reports, and
30 available engineering calculations, that pertain to a homeowner's
31 residence specifically or as part of a larger development tract. The
32 request shall be honored if it states that it is made relative to
33 structural, fire safety, or soils provisions of this part. However, a
34 builder is not obligated to provide a copying service, and
35 reasonable copying costs shall be borne by the requesting party.
36 A builder may require that the documents be copied onsite by the
37 requesting party, except that the homeowner may, at his or her
38 option, use his or her own copying service, which may include an
39 offsite copy facility that is bonded and insured. If a builder can
40 show that the builder maintained the documents, but that they later



1 *became unavailable due to loss or destruction that was not the*
2 *fault of the builder, the builder may be excused from the*
3 *requirements of this subdivision, in which case the builder shall act*
4 *with reasonable diligence to assist the homeowner in obtaining*
5 *those documents from any applicable government authority or*
6 *from the source that generated the document. However, in that*
7 *case, the time limits specified by this section do not apply.*

8 *(b) At the expense of the homeowner, who may opt to use an*
9 *offsite copy facility that is bonded and insured, the builder shall*
10 *provide to the homeowner or his or her legal representative copies*
11 *of all maintenance and preventative maintenance*
12 *recommendations that pertain to his or her residence within 20*
13 *days of service of a written request for those documents. Those*
14 *documents shall also be provided to the homeowner in conjunction*
15 *with the initial sale of the residence.*

16 *(c) At the expense of the homeowner, who may opt to use an*
17 *offsite copy facility that is bonded and insured, a builder shall*
18 *provide to the homeowner or his or her legal representative copies*
19 *of all manufactured products maintenance, preventive*
20 *maintenance, and limited warranty information within 20 days of*
21 *a written request for those documents. These documents shall also*
22 *be provided to the homeowner in conjunction with the initial sale*
23 *of the residence.*

24 *(d) At the expense of the homeowner, who may opt to use an*
25 *offsite copy facility that is bonded and insured, a builder shall*
26 *provide to the homeowner or his or her legal representative copies*
27 *of all of the builder's limited contractual warranties in accordance*
28 *with this part in effect at the time of the original sale of the*
29 *residence within 20 days of a written request for those documents.*
30 *Those documents shall also be provided to the homeowner in*
31 *conjunction with the initial sale of the residence.*

32 *(e) A builder shall maintain the name and address of an agent*
33 *for notice pursuant to this chapter with the Secretary of State or,*
34 *alternatively, elect to use a third party for that notice if the builder*
35 *has notified the homeowner in writing of the third party's name and*
36 *address, to whom claims and requests for information under this*
37 *section may be mailed. The name and address of the agent for*
38 *notice or third party shall be included with the original sales*
39 *documentation and shall be initialed and acknowledged by the*
40 *purchaser and the builder's sales representative.*



1 This subdivision applies to instances in which a builder
2 contracts with a third party to accept claims and act on the
3 builder's behalf. A builder shall give actual notice to the
4 homeowner that the builder has made such an election, and shall
5 include the name and address of the third party.

6 (f) A builder shall record on title a notice of the existence of
7 these procedures and a notice that these procedures impact the
8 legal rights of the homeowner. This information shall also be
9 included with the original sales documentation and shall be
10 initialed and acknowledged by the purchaser and the builder's
11 sales representative.

12 (g) A builder shall provide with the original sales
13 documentation, a written copy of this part which shall be initialed
14 and acknowledged by the purchaser and the builder's sales
15 representative.

16 (h) As to any documents provided in conjunction with the
17 original sale, the builder shall instruct the original purchaser to
18 provide those documents to any subsequent purchaser.

19 (i) Any builder who fails to comply with any of these
20 requirements within the time specified is not entitled to the
21 protection of this chapter, and the homeowner is released from the
22 requirements of this chapter and may proceed with the filing of an
23 action, in which case the remaining chapters of this part shall
24 continue to apply to the action.

25 17133. A builder or his or her representative shall
26 acknowledge, in writing, receipt of the notice of the claim within
27 seven days after receipt of the notice of the claim. If the notice of
28 the claim is served by the claimant's legal representative, or if the
29 builder receives a written representation letter from a
30 homeowner's attorney, the builder shall include the attorney in all
31 subsequent substantive communications, including, without
32 limitation, all written communications occurring pursuant to this
33 chapter, and all substantive and statutorially procedural
34 communications, including all written communications, following
35 the commencement of any subsequent complaint or other legal
36 action, except that if the builder has retained or involved legal
37 counsel to assist the builder in this process, all communications by
38 the builder's counsel shall only be with the claimant's legal
39 representative, if any.



1 17134. (a) This chapter establishes a nonadversarial
2 procedure, including the remedies available under this chapter
3 which, if the procedure does not resolve the dispute between the
4 parties, may result in a subsequent action to enforce the other
5 chapters of this part. A builder may attempt to commence a
6 nonadversarial procedure or remedies other than those set forth in
7 this chapter, but may not, in addition to its own nonadversarial
8 procedure, require adherence to the procedure and remedies set
9 forth in this chapter, regardless of whether the builder's own
10 alternative nonadversarial procedure or remedies are successful
11 in resolving the dispute or ultimately deemed enforceable.

12 (b) Nothing in this chapter is intended to affect existing
13 statutory or decisional law pertaining to the applicability,
14 viability, or enforceability of alternative dispute resolution
15 methods, alternative remedies, or contractual arbitration, judicial
16 reference, or similar procedures requiring a binding resolution to
17 enforce the other chapters of this part or any other disputes
18 between homeowners and builders. Regardless of which
19 nonadversarial procedure a builder elects to follow, a builder may
20 attempt to enforce contractual provisions requiring contractual
21 arbitration, judicial reference, or a similar procedure after a
22 nonadversarial procedure has been completed.

23 17135. If a builder fails to acknowledge receipt of the notice
24 of a claim within the time specified, elects not to go through the
25 process set forth in this chapter, or fails to request an inspection
26 within the time specified, or at the conclusion or cessation of an
27 alternative nonadversarial proceeding, this chapter does not
28 apply and the homeowner is released from the requirements of this
29 chapter and may proceed with the filing of an action. However, the
30 requirements set forth in Section 17130 shall continue to apply to
31 the action.

32 17136. (a) If a builder elects to inspect the claimed unmet
33 standards, the builder shall complete the initial inspection and
34 testing within 14 days after acknowledgement of receipt of the
35 notice of the claim, at a mutually convenient date and time. If the
36 homeowner has retained legal representation, the inspection shall
37 be scheduled with the legal representative's office at a mutually
38 convenient date and time, unless the legal representative is
39 unavailable during the relevant time periods. All costs of builder
40 inspection and testing, including any damage caused by the



1 builder inspection, shall be borne by the builder. The builder shall
2 also provide written proof that the builder has liability insurance
3 to cover any damages or injuries occurring during inspection and
4 testing. The builder shall restore the property to its pretesting
5 condition within 48 hours of the testing. The builder shall, upon
6 request, allow the inspections to be observed and electronically
7 recorded, videotaped, or photographed by the claimant or his or
8 her legal representative.

9 (b) Nothing that occurs during a builder's or claimant's
10 inspection or testing may be used or introduced as evidence to
11 support a spoliation defense by any potential party in any
12 subsequent litigation.

13 (c) If a builder deems a second inspection or testing reasonably
14 necessary, and specifies the reasons therefor in writing within
15 three days following the initial inspection, the builder may conduct
16 a second inspection or testing. A second inspection or testing shall
17 be completed within 20 business days of the initial inspection or
18 testing. All requirements concerning the initial inspection or
19 testing shall also apply to the second inspection or testing.

20 (d) If the builder fails to inspect or test the property within the
21 time specified, the claimant is released from the requirements of
22 this section and may proceed with the filing of an action. However,
23 the other chapters of this part still apply to the action.

24 (e) If a builder intends to hold a subcontractor, design
25 professional, or material supplier, including an insurance carrier,
26 warranty company, or service company, responsible for its
27 contribution to the unmet standard, the builder shall provide
28 notice to that person or entity sufficiently in advance to allow them
29 to attend the inspection of any alleged unmet standard and to
30 participate in the repair process. The claimant and his or her legal
31 representative, if any, shall be advised in a reasonable time prior
32 to the inspection as to the identity of all persons or entities invited
33 to attend.

34 17137. Within 20 days of the initial or, if requested, second
35 inspection or testing, the builder may offer in writing to repair the
36 violation. The offer to repair shall also compensate the homeowner
37 for all applicable damages recoverable under Section 17164,
38 within the timeframe for the repair set forth in this chapter. Any
39 such offer shall be accompanied by a detailed, specific,
40 step-by-step statement identifying the particular violation that is



1 being repaired, explaining the nature, scope, and location of the
 2 repair, and setting a reasonable completion date for the repair. The
 3 offer shall also include the names, addresses, telephone numbers,
 4 and license numbers of the contractors whom the builder intends
 5 to have perform the repair. Those contractors shall be fully insured
 6 for, and shall be responsible for, all damages or injuries that they
 7 may cause to occur during the repair, and evidence of that
 8 insurance shall be provided to the homeowner upon request. Upon
 9 written request by the homeowner or his or her legal
 10 representative, and within the timeframes set forth in this chapter,
 11 the builder shall also provide any available technical
 12 documentation, including, without limitation, plans and
 13 specifications, pertaining to the claimed violation within the
 14 particular home or development tract. The offer shall also advise
 15 the homeowner in writing of his or her right to request up to three
 16 additional contractors from which to select to do the repair
 17 pursuant to this chapter.

18 17138. Upon receipt of the offer to repair and the
 19 accompanying cash offer, the homeowner shall have 20 days to
 20 authorize the builder to proceed with the repair. The homeowner
 21 may alternatively request, at the homeowner's sole option and
 22 discretion, that the builder provide the names, addresses,
 23 telephone numbers, and license numbers for up to three alternative
 24 contractors who are not owned or controlled by the builder and
 25 who regularly conduct business in the county where the structure
 26 is located. If the homeowner so elects, the builder is entitled to an
 27 additional noninvasive inspection, to occur at a mutually
 28 convenient date and time within 10 days of the election, so as to
 29 permit the other proposed contractors to review the proposed site
 30 of the repair. Within five days of those inspections, the builder shall
 31 present a choice of contractors to the homeowner who shall select
 32 the contractor within 10 days of the presentation.

33 17140. The offer to repair shall also be accompanied by an
 34 offer to mediate the dispute if the homeowner so chooses. The
 35 mediation shall be limited to a four-hour mediation, except as
 36 otherwise mutually agreed before a nonaffiliated mediator
 37 selected and paid for by the builder. At the homeowner's sole
 38 option, the homeowner may agree to split the cost of the mediator,
 39 and if he or she does so, the mediator shall be selected jointly. The
 40 mediator shall have sufficient availability such that the mediation



1 occurs within 15 days after the request to mediate is received and
2 occurs at a mutually convenient location within the county where
3 the action is pending. If a builder has made an offer to repair a
4 violation, and the mediation has failed to resolve the dispute, the
5 homeowner shall allow the repair to be performed either by the
6 builder, its contractor, or the selected contractor.

7 17141. If the builder fails to make an offer to repair or
8 otherwise strictly comply with this chapter within the times
9 specified, the claimant is released from the requirements of this
10 chapter and may proceed with the filing of an action. If the
11 contractor performing the repair does not complete the repair in
12 the time or manner specified, the claimant may file an action. If this
13 occurs, the standards set forth in the other chapters of this part
14 shall continue to apply to that action.

15 17142. (a) In the event that a resolution under this chapter
16 involves a repair by the builder, the builder shall make an
17 appointment with the claimant, make all appropriate
18 arrangements to effectuate a repair of the claimed unmet
19 standards, and compensate the homeowner for all damages
20 resulting therefrom free of charge to the claimant. The repair shall
21 be scheduled through the claimant's legal representative, if any,
22 unless he or she is unavailable during the relevant time periods.
23 The repair shall be commenced on a mutually convenient date
24 within 14 days of acceptance or, if an alternative contractor is
25 selected by the homeowner, within 14 days of the selection, or, if
26 a mediation occurs, within seven days of the mediation, or within
27 five days after a permit is obtained if one is required. The builder
28 shall act with reasonable diligence in obtaining any such permit.
29 The repair, once commenced, shall continue diligently without
30 unreasonable or inexcusable delay or interruption, until
31 completed within the time period specified in the repair plan. This
32 diligence shall be measured in relation to the nature and scope of
33 the repair.

34 (b) Every effort shall be made to complete the repair within 120
35 days from commencement, subject to the nature of the repair or
36 some unforeseen event not caused by the builder or the contractor
37 performing the repair.

38 17143. The builder shall, upon request, allow the repair to be
39 observed and electronically recorded, videotaped, or
40 photographed by the claimant or his or her legal representative.



1 Nothing that occurs during the repair process may be used or
2 introduced as evidence to support a spoliation defense by any
3 potential party in any subsequent litigation.

4 17144. The builder shall provide the homeowner or his or her
5 legal representative, upon request, with copies of all
6 correspondence, photographs, and other materials pertaining or
7 relating in any manner to the repairs.

8 17145. If the builder elects to repair some, but not all of, the
9 claimed unmet standards, the builder shall, at the same time it
10 makes its offer, set forth with particularity in writing the reasons,
11 and the support for those reasons, for not repairing all claimed
12 unmet standards.

13 17146. If the builder fails to complete the repair within the
14 time specified in the repair plan, the claimant is released from the
15 requirements of this chapter and may proceed with the filing of an
16 action. If this occurs, the other chapters of this part continue to
17 apply to the action.

18 17147. The builder may not obtain a release or waiver of any
19 kind in exchange for the repair work mandated by this chapter. At
20 the conclusion of the repair, the claimant may proceed with filing
21 an action for violation of the applicable standard or for a claim of
22 inadequate repair, or both, including all applicable damages
23 available under Section 17164.

24 17148. If the applicable statute of limitations has otherwise
25 run during this process, the time period for filing a complaint or
26 other legal remedies for violation of any provision of this part, or
27 for a claim of inadequate repair, is extended from the time of the
28 original claim by the claimant to 100 days after the repair is
29 completed, whether or not the particular violation is the one being
30 repaired. If the builder fails to acknowledge the claim within the
31 time specified, elects not to go through this statutory process, or
32 fails to request an inspection within the time specified, the time
33 period for filing a complaint or other legal remedies for violation
34 of any provision of this part is extended from the time of the
35 original claim by the claimant to 45 days after the time for
36 responding to the notice of claim has expired. If the builder elects
37 to attempt to enforce its own nonadversarial procedure in lieu of
38 the procedure set forth in this chapter, the time period for filing a
39 complaint or other legal remedies for violation of any provision of
40 this part is extended from the time of the original claim by the



1 claimant to 100 days after either the completion of the builder's
2 alternative nonadversarial procedure, or 100 days after the
3 builder's alternative nonadversarial procedure is deemed
4 unenforceable, whichever is later.

5 17149. If the builder has invoked this chapter and completed
6 a repair, prior to filing an action, if there has been no previous
7 mediation between the parties, the homeowner or his or her legal
8 representative shall request mediation in writing. The mediation
9 shall be limited to four hours, except as otherwise mutually agreed
10 before a nonaffiliated mediator selected and paid for by the
11 builder. At the homeowner's sole option, the homeowner may agree
12 to split the cost of the mediator and if he or she does so, the
13 mediator shall be selected jointly. The mediator shall have
14 sufficient availability such that the mediation will occur within 15
15 days after the request for mediation is received and shall occur at
16 a mutually convenient location within the county where the action
17 is pending. In the event that a mediation is used at this point, any
18 applicable statutes of limitations shall be tolled until the mediation
19 is completed.

20 17450. (a) Nothing in this chapter prohibits the builder from
21 making only a cash offer and no repair. In this situation, the
22 homeowner is free to accept the offer, or he or she may reject the
23 offer and proceed with the filing of an action. If the latter occurs,
24 the provisions of the other chapters of this part shall continue to
25 apply to the action.

26 (b) The builder may obtain a reasonable release in exchange
27 for the cash payment. The builder may negotiate the terms and
28 conditions of any reasonable release in terms of scope and
29 consideration in conjunction with a cash payment under this
30 chapter.

31 17151. (a) The time periods and all other requirements in this
32 chapter are to be strictly construed, and, unless extended by the
33 mutual agreement of the parties in accordance with this chapter,
34 shall govern the rights and obligations under this part. If a builder
35 fails to act in accordance with this section within the timeframes
36 mandated, unless extended by the mutual agreement of the parties
37 as evidenced by a postclaim written confirmation by the affected
38 homeowner demonstrating that he or she has knowingly and
39 voluntarily extended the statutory timeframe, the claimant may
40 proceed with filing an action and may exercise other remedies



1 outside of this part, with the exception that the other chapters of
2 this part continue to apply to the dispute.

3 (b) If the claimant does not conform with the requirements of
4 this chapter, the builder may bring a motion to stay any subsequent
5 court action or other proceeding until the requirements of this
6 chapter have been satisfied. The court, in its discretion, may award
7 the prevailing party on such a motion, his or her attorney's fees and
8 costs in bringing or opposing the motion.

9 17152. If a claim combines causes of action or damages not
10 covered by this part, including, without limitation, personal
11 injuries, class actions, other statutory remedies, or fraud-based
12 claims, the claimed unmet standards shall be administered
13 according to this part, although evidence of the property in its
14 unrepaired condition may be introduced to support the respective
15 elements of any such cause of action. As to any fraud-based claim,
16 if the fact that the property has been repaired under this chapter
17 is deemed admissible, the trier of fact shall be informed that the
18 repair was not voluntarily accepted by the homeowner. As to any
19 class action claims that address solely the incorporation of a
20 defective component into a residence, the named and unnamed
21 class members need not comply with this chapter.

22 17153. Subsequently discovered claims of unmet standards
23 shall be administered separately under this chapter, unless
24 otherwise agreed to by the parties. However, if the subsequently
25 discovered claim is for a violation of the same standard as that
26 which has already been initiated and not resolved under this
27 chapter and occurs, in the case of a detached single-family
28 residence, in the same home, or in the case of an attached project,
29 in the same building, the claimant need not reinitiate this process
30 as to the same standard.

31 17154. If any enforcement of these standards is commenced,
32 the fact that a repair effort was made may be introduced to the trier
33 of fact. However, the claimant may use the condition of the
34 property prior to the repair as the basis for contending that the
35 repair work was inappropriate, inadequate, or incomplete, or that
36 the violation still exists. The claimant need not show that the repair
37 work resulted in further damage nor that damage has continued to
38 occur as a result of the violation.

39 17155. Evidence of both parties' conduct during this process
40 may be introduced during a subsequent enforcement action, if any,



1 with the exception of any agreed-upon mediation. Any repair
2 efforts undertaken by the builder, and any cash offers made, may
3 not be considered settlement communications or offers of
4 settlement and are not inadmissible in evidence on such a basis.

5 17156. To the extent that provisions of this chapter are
6 enforced and those provisions are substantially similar to
7 provisions in Section 1375 of the Civil Code, but an action is
8 subsequently commenced under Section 1375 of the Civil Code,
9 the parties are excused from performing the substantially similar
10 requirements under Section 1375 of the Civil Code.

11 17157. Each and every provision of the other chapters of this
12 part apply to subcontractors, material suppliers, and design
13 professionals to the extent that the subcontractors, material
14 suppliers, and design professionals caused, in whole or in part, a
15 violation of a particular standard as the result of a negligent act
16 or omission or a breach of contract. In addition to the affirmative
17 defenses set forth in Section 17166, a subcontractor, material
18 supplier, design professional, or other entity may also offer
19 common law and contractual defenses as applicable to any
20 claimed violation of a standard. All actions by any party to enforce
21 an express contract, or any provision thereof, is preserved. Nothing
22 in this part modifies the law pertaining to joint and several liability
23 for subcontractors, material suppliers, and design professionals
24 that contribute to any specific violation of this part. However, this
25 section does not apply to any subcontractor, material supplier, or
26 design professional if strict liability would apply.

27 17158. Nothing in this part shall be interpreted to eliminate
28 or abrogate the requirement to comply with Section 411.35 of the
29 Code of Civil Procedure or to affect the liability of design
30 professionals, including architects and architectural firms, for
31 claims and damages not covered by this part.

32 17159. This part applies only to residences sold on or after
33 January 1, 2003.

34
35 CHAPTER 5. PROCEDURE

36
37 17160. Unless a shorter limitations period is set forth in this
38 part, no action may be brought to recover under this part more than
39 10 years after substantial completion, as defined in Section 337.15
40 of the Code of Civil Procedure. With the exception of subdivisions



1 (c) and (e) of Section 337.15 of the Code of Civil Procedure, no
 2 other provisions of Sections 337.1 and 337.15 of the Code of Civil
 3 Procedure apply to actions under this part. Repairs made pursuant
 4 to Chapter 4 (commencing with Section 17130), with the exception
 5 of the tolling provision contained in Section 17148, do not extend
 6 the period for filing an action, or restart the time limitations
 7 contained in subdivisions (a) and (b) of Section 7091 of the
 8 Business and Professions Code. If a builder arranges for a
 9 contractor to perform a repair pursuant to Chapter 4 (commencing
 10 with Section 17130), as to the builder the time period for
 11 calculating the statute of limitation in subdivisions (a) and (b) of
 12 Section 7019 of the Business and Professions Code shall pertain
 13 to the substantial completion of the original construction and not
 14 to the date of repairs under this part. The time limitations
 15 established by this part do not apply to any action by a claimant
 16 for a contract or express contractual provision. Causes of action
 17 and damages to which this chapter does not apply are not limited
 18 by this section.

19 17161. In order to make a claim for violation of the standards
 20 set forth in Chapter 2 (commencing with Section 17110), a
 21 homeowner need only demonstrate, in accordance with the
 22 applicable evidentiary standard, that the home does not meet the
 23 applicable standard, subject to the affirmative defenses set forth
 24 in Section 17166. No further showing of causation or damages is
 25 required to prove a violation of a standard set forth in Chapter 2
 26 (commencing with Section 17110), provided that the violation
 27 arises out of, pertains to, or is related to, the original construction.

28 17162. No other cause of action for a claim covered by this
 29 part or for damages recoverable under Section 17164 is allowed.
 30 However, in addition to the rights under this part, this part does not
 31 apply to any action by a claimant to enforce a contract or express
 32 contractual provision, or any action for fraud, personal injury, or
 33 violation of a statute. However, damages awarded for the items set
 34 forth in Section 17164 in such other cause of action shall be
 35 reduced by the amounts recovered pursuant to Section 17164 for
 36 violation of the standards set forth in this part.

37 17163. As to any claims involving a detached single-family
 38 home, the homeowner's right to the reasonable value of repairing
 39 any nonconformity is limited to the repair costs, or the diminution
 40 in current value of the home caused by the nonconformity,



1 *whichever is less, subject to the personal use exception as*
2 *developed under common law.*

3 *17164. If a claim for damages is made under this part, the*
4 *homeowner is only entitled to damages for the reasonable value of*
5 *repairing any violation of the standards set forth in this part, the*
6 *reasonable cost of repairing any damages caused by the repair*
7 *efforts, the reasonable cost of repairing and rectifying any*
8 *damages resulting from the failure of the home to meet the*
9 *standards, the reasonable cost of removing and replacing any*
10 *improper repair by the builder, reasonable relocation and storage*
11 *expenses, lost business income if the home was used as a principal*
12 *place of a business licensed to be operated from the home,*
13 *reasonable investigative costs for each established violation, and*
14 *all other costs or fees recoverable by contract or statute.*

15 *17165. The provisions, standards, rights, and obligations set*
16 *forth in this part are binding upon all original purchasers and their*
17 *successors-in-interest. For purposes of this part, associations and*
18 *others having the rights set forth in Section 383 of the Code of Civil*
19 *Procedure shall be considered to be original purchasers and shall*
20 *have standing to enforce the provisions, standards, rights, and*
21 *obligations set forth in this part.*

22 *17166. A builder, under the principles of comparative fault*
23 *pertaining to affirmative defenses, may be excused, in whole or in*
24 *part, from any obligation, damage, loss, or liability if the builder*
25 *can demonstrate any of the following affirmative defenses in*
26 *response to a claimed violation:*

27 *(a) To the extent it is caused by an unforeseen act of nature*
28 *which caused the structure not to meet the standard. For purposes*
29 *of this section an "unforeseen act of nature" means a weather*
30 *condition, earthquake, or manmade event such as war, terrorism,*
31 *or vandalism, in excess of the design criteria expressed by the*
32 *applicable building codes, regulations, and ordinances in effect at*
33 *the time of original construction.*

34 *(b) To the extent it is caused by a homeowner's unreasonable*
35 *failure to minimize or prevent those damages in a timely manner,*
36 *including the failure of the homeowner to allow reasonable and*
37 *timely access for inspections and repairs under this part. This*
38 *includes the failure to give timely notice to the builder after*
39 *discovery of a violation, but does not include damages due to the*



1 *untimely or inadequate response of a builder to the homeowner's*
2 *claim.*

3 *(c) To the extent it is caused by the homeowner or his or her*
4 *agent, employee, subcontractor, independent contractor, or*
5 *consultant by virtue of their failure to follow the builder's or*
6 *manufacturer's recommendations, or commonly accepted*
7 *homeowner maintenance obligations. In order to rely upon this*
8 *defense as it relates to a builder's recommended maintenance*
9 *schedule, the builder shall show that the homeowner had written*
10 *notice of these schedules and recommendations and that the*
11 *recommendations and schedules were reasonable at the time they*
12 *were issued.*

13 *(d) To the extent it is caused by the homeowner or his or her*
14 *agent's alterations, ordinary wear and tear, misuse, abuse, or*
15 *neglect, or by the structure's use for something other than its*
16 *intended purpose.*

17 *amended to read:*

18 ~~340. Within one year:~~

19 ~~(a) An action upon a statute for a penalty or forfeiture, if the~~
20 ~~action is available to an individual, or to an individual and the state,~~
21 ~~except if the statute imposing it prescribes a different limitation.~~

22 ~~(b) An action upon a statute for a forfeiture or penalty to the~~
23 ~~people of this state.~~

24 ~~(c) Any of the following:~~

25 ~~(1) An action for libel, slander, assault, battery, false~~
26 ~~imprisonment, or the seduction of a person below the age of legal~~
27 ~~consent.~~

28 ~~(2) An action for injury to or for the death of one caused by the~~
29 ~~wrongful act or neglect of another.~~

30 ~~(3) An action by a depositor against a bank for the payment of~~
31 ~~a forged or raised check, or a check that bears a forged or~~
32 ~~unauthorized endorsement.~~

33 ~~(4) An action against any person who boards or feeds an animal~~
34 ~~or fowl or who engages in the practice of veterinary medicine as~~
35 ~~defined in Section 4826 of the Business and Professions Code, for~~
36 ~~that person's neglect resulting in injury or death to an animal or~~
37 ~~fowl in the course of boarding or feeding that animal or fowl or in~~
38 ~~the course of the practice of veterinary medicine on that animal or~~
39 ~~fowl.~~



1 ~~(d) An action against an officer to recover damages for the~~
2 ~~seizure of any property for a statutory forfeiture to the state, or for~~
3 ~~the detention of, or injury to property so seized, or for damages~~
4 ~~done to any person in making this seizure.~~

5 ~~(e) An action by a good faith improver for relief under Chapter~~
6 ~~10 (commencing with Section 871.1) of Title 10. The time begins~~
7 ~~to run from the date upon which the good faith improver discovers~~
8 ~~that the good faith improver is not the owner of the land upon~~
9 ~~which the improvements have been made.~~



AMENDED IN ASSEMBLY AUGUST 26, 2002
AMENDED IN ASSEMBLY AUGUST 25, 2002
AMENDED IN ASSEMBLY AUGUST 15, 2002
AMENDED IN ASSEMBLY AUGUST 12, 2002
AMENDED IN SENATE MAY 21, 2001
AMENDED IN SENATE APRIL 25, 2001
AMENDED IN SENATE APRIL 5, 2001

SENATE BILL

No. 800

**Introduced by Senator Burton and Assembly Member Wesson
(Principal coauthors: Senators Dunn, Escutia, Romero, and
Torlakson)**

(Principal coauthors: Assembly Members Calderon, Corbett, *Dutra*,
and Steinberg)

(Coauthors: Assembly Members ~~Aaroner~~, ~~Aroner~~, ~~Alquist~~,
~~Canciamilla~~, ~~Cardoza~~, ~~Chan~~, ~~Chavez~~, ~~Chu~~, ~~Cohn~~, ~~Diaz~~, ~~Firebaugh~~,
~~Florez~~, ~~Frommer~~, ~~Goldberg~~, ~~Jackson~~, ~~Kehoe~~, ~~Keeley~~, ~~Koretz~~,
~~Longville~~, ~~Lowenthal~~, ~~Oropeza~~, ~~Shelley~~, ~~Wayne~~, and ~~Wiggins~~)
Lowenthal, Nakano, Negrete McLeod, Oropeza, Papan, Pavley,
Reyes, Salinas, Shelley, Vargas, Wayne, and Wiggins)

February 23, 2001

An act to add Section 43.99 to the Civil Code, to add Section 664.8 to the Code of Civil Procedure, and to add Part 1.1 (commencing with Section 17100) to Division 13 of the Health and Safety Code, relating to construction defects.



LEGISLATIVE COUNSEL'S DIGEST

SB 800, as amended, Burton. Liability: construction defects.

Existing law provides for stipulated judgments in construction defect actions, as defined.

This bill would define "construction defect" for these purposes.

The bill would also specify the rights and requirements of a homeowner to bring an action for construction defects, including applicable standards for home construction, the statute of limitations, the burden of proof, the damages recoverable, a detailed prelitigation procedure, and the obligations of the homeowner.

This bill would also provide that there is no personal monetary liability on the part of any person who is under contract with an applicant for a residential building permit to check the plans and specifications provided with the application in order to determine compliance with all applicable requirements imposed pursuant to the State Housing Law or any rules or regulations adopted pursuant to that law, or to inspect a work of improvement to determine compliance with these plans and specifications. The bill would also set forth specified findings and declarations of the Legislature regarding construction defects.

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

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

- 1 SECTION 1. The Legislature finds and declares, as follows:
- 2 (a) The California system for the administration of civil justice
- 3 is one of the fairest in the world, but certain procedures and
- 4 standards should be amended to ensure fairness to all parties.
- 5 (b) The prompt and fair resolution of construction defect
- 6 claims is in the interest of consumers, homeowners, and the
- 7 builders of homes, and is vital to the state's continuing growth and
- 8 vitality. However, under current procedures and standards,
- 9 homeowners and builders alike are not afforded the opportunity
- 10 for quick and fair resolution of claims. Both need clear standards
- 11 and mechanisms for the prompt resolution of claims.
- 12 (c) It is the intent of the Legislature that this act improve the
- 13 procedures for the administration of civil justice, including
- 14 standards and procedures for early disposition of construction
- 15 defects.



1 (d) Because the provisions of this act involve the resolution of
 2 competing considerations, dealing with the problems facing both
 3 plaintiffs and defendants, the Legislature finds that the provisions
 4 of this act are not severable. Rather it is the intent of the Legislature
 5 that if, for any reason, any provision of this act is determined to be
 6 void or otherwise inoperative, then no provision of this act shall
 7 have any effect.

8 *SEC. 1.5. Section 43.99 is added to the Civil Code, to read:*

9 *43.99. (a) There is no personal monetary liability on the part*
 10 *of any person who is under contract with an applicant for a*
 11 *residential building permit to check the plans and specifications*
 12 *provided with the application in order to determine compliance*
 13 *with all applicable requirements imposed pursuant to the State*
 14 *Housing Law (Part 1.5 (commencing with Section 17910) of*
 15 *Division 13 of the Health and Safety Code) or any rules or*
 16 *regulations adopted pursuant to that law, or to inspect a work of*
 17 *improvement to determine compliance with these plans and*
 18 *specifications if one of the following applies:*

19 *(1) The person has completed not less than two years of*
 20 *verifiable experience in the appropriate field and has obtained*
 21 *certification from a recognized state, national, or international*
 22 *association pursuant to Sections 18949.28 and 18949.29 of the*
 23 *Health and Safety Code, as determined by the local building code*
 24 *agency with respect to those persons who perform construction*
 25 *inspection and plans examiner services for the local agency from*
 26 *whom the applicant is seeking the residential building permit.*

27 *(2) The person is a registered professional engineer, licensed*
 28 *surveyor, or licensed architect rendering construction inspection*
 29 *services or plans examination services within the scope of his or*
 30 *her registration or licensure.*

31 *(b) This section may not be construed to relieve from, or lessen*
 32 *the responsibility of any person who owns, operates, or controls*
 33 *any residential building for any damages to persons or property*
 34 *caused by construction or design defects.*

35 *(c) Nothing in this section, as it relates to construction*
 36 *inspectors or plans examiners, may be construed to alter the*
 37 *requirements for licensure, or the jurisdiction, authority, or scope*
 38 *of practice, of architects pursuant to Chapter 3 (commencing with*
 39 *Section 5500) of Division 3 of the Business and Professions Code,*
 40 *professional engineers pursuant to Chapter 7 (commencing with*



1 *Section 6700) of Division 3 of the Business and Professions Code,*
 2 *or land surveyors pursuant to Chapter 15 (commencing with*
 3 *Section 8700) of Division 3 of the Business and Professions Code.*
 4 *(d) Nothing in this section may be construed to alter the*
 5 *immunity of employees of the Department of Housing and*
 6 *Community Development under the Tort Claims Act (Div. 3.6*
 7 *(commencing with Sec. 810), Title J, Gov. C.) when acting*
 8 *pursuant to Section 17965 of the Health and Safety Code.*

9 SEC. 2. Section 664.8 is added to the Code of Civil Procedure,
 10 to read:

11 664.8. "Construction defect" means a defect in design,
 12 materials, or workmanship that occurs during the original
 13 construction of the improvement or in connection with any
 14 warranty repair work, and in the case of a common interest
 15 development, includes construction or repair work in all common
 16 areas.

17 SEC. 3. Part 1.1 (commencing with Section 17100) is added
 18 to Division 13 of the Health and Safety Code, to read:

19
 20 PART 1.1. REQUIREMENTS FOR ACTIONS FOR
 21 CONSTRUCTION DEFECTS

22
 23
 24 CHAPTER 1. DEFINITIONS

25
 26 17100. For purposes of this part:
 27 (a) "Structure" means any residential dwelling, other
 28 building, or improvement located upon a lot or within a common
 29 area.
 30 (b) "Designed moisture barrier" means an installed moisture
 31 barrier specified in the plans and specifications, contract
 32 documents, or manufacturer's recommendations.
 33 (c) "Actual moisture barrier" means any component or
 34 material, actually installed, that serves to any degree as a barrier
 35 against moisture, whether or not intended as such.
 36 (d) "Unintended water" means water that passes beyond,
 37 around, or through a component or the material that is designed to
 38 prevent that passage.
 39 (e) "Close of escrow" means the date of the close of escrow
 40 between the builder and the original homeowner. With respect to

1 claims by an association, as defined in subdivision (a) of Section
 2 1351 of the Civil Code, "close of escrow" means the date of
 3 substantial completion, as defined in Section 337.15 of the Code
 4 of Civil Procedure, or the date the builder relinquishes control over
 5 the association's ability to decide whether to initiate a claim under
 6 this part, whichever is later.

7 (f) "Claimant" or "homeowner" includes the individual
 8 owners of single-family homes, individual unit owners of attached
 9 dwellings and, in the case of a common interest development, any
 10 association as defined in subdivision (a) of Section 1351 of the
 11 Civil Code.

12
 13 CHAPTER 2. ACTIONABLE DEFECTS
 14

15 17110. In any action seeking recovery of damages arising out
 16 of, or related to deficiencies in, the residential construction,
 17 design, specifications, surveying, planning, supervision, testing,
 18 or observation of construction, a builder, and to the extent set forth
 19 in Chapter 4 (commencing with Section 17130), a subcontractor,
 20 material supplier, *individual product manufacturer*, or design
 21 professional, shall be liable for, and the claimant's claims or causes
 22 of action shall be limited to violation of, the following standards,
 23 except as specifically set forth in this part:

24 (a) With respect to water intrusion:

25 (1) A door may not allow unintended water to pass beyond,
 26 around, or through the door or its designed or actual moisture
 27 barriers, if any.

28 (2) Windows, patio doors, deck doors, and their systems may
 29 not allow water to pass beyond, around, or through the window,
 30 patio door, or deck door or its designed or actual moisture barriers,
 31 including, without limitation, internal barriers within the systems
 32 themselves. *For purposes of this paragraph, "systems" include,*
 33 *without limitation, windows, window assemblies, framing,*
 34 *substrate, flashings, and trim, if any.*

35 (3) Windows, patio doors, deck doors, and their systems may
 36 not allow excessive condensation to enter the structure and cause
 37 damage to another component. For purposes of this paragraph,
 38 "systems" include, without limitation, windows, window
 39 assemblies, framing, substrate, flashings, and trim, if any.

40 (3)



1 (4) Roofs, roofing systems, chimney caps, and ventilation
2 components may not allow water to enter the structure or to pass
3 beyond, around, or through the designed or actual moisture
4 barriers, including, without limitation, internal barriers located
5 within the systems themselves. For purposes of this paragraph,
6 "systems" include, without limitation, framing, substrate, and
7 sheathing, if any.

8 ~~(4)~~

9 (5) Decks, deck systems, balconies, balcony systems, exterior
10 stairs, and stair systems may not allow water to pass into the
11 adjacent structure. ~~Decks, deck systems, balconies, balcony~~
12 ~~systems, exterior stairs, and stair systems may not allow~~
13 ~~unintended water to pass within the systems themselves and cause~~
14 ~~damage to the systems.~~ For purposes of this paragraph, "systems"
15 include, without limitation, framing, substrate, flashing, and
16 sheathing, if any.

17 ~~(5)~~

18 (6) *Decks, deck systems, balconies, balcony systems, exterior*
19 *stairs, and stair systems may not allow unintended water to pass*
20 *within the systems themselves and cause damage to the systems.*
21 *For purposes of this paragraph, "systems" include, without*
22 *limitation, framing, substrate, flashing, and sheathing, if any.*

23 (7) Foundation systems and slabs may not allow water or vapor
24 to enter into the structure so as to cause damage to another building
25 component or limit the installation of the type of flooring materials
26 typically used for the particular application.

27 ~~(6)~~

28 (8) *Foundation systems and slabs may not allow water or vapor*
29 *to enter into the structure so as to limit the installation of the type*
30 *of flooring materials typically used for the particular application.*

31 (9) Hardscape, including paths and patios, irrigation systems,
32 landscaping systems, and drainage systems, that are installed as
33 part of the original construction, may not be installed in such a way
34 as to cause water or soil erosion to enter into or come in contact
35 with the structure so as to cause damage to another building
36 component.

37 ~~(7)~~

38 (10) Stucco, exterior siding, exterior walls, including, without
39 limitation, exterior framing, and other exterior wall finishes and
40 fixtures and the systems of those components and fixtures;



1 including, but not limited to, pot shelves, horizontal surfaces,
 2 columns, and plant-ons, shall be installed in such a way so as not
 3 to allow unintended water to pass into the structure or to pass
 4 beyond, around, or through the designed or actual moisture
 5 barriers of the system, including any internal barriers located
 6 within the system itself. ~~Stucco, exterior siding, and exterior walls~~
 7 ~~may not allow excessive condensation to enter the structure and~~
 8 ~~cause damage to another component.~~ For purposes of this
 9 paragraph, "systems" include, without limitation, framing,
 10 substrate, flashings, trim, wall assemblies, and internal wall
 11 cavities, if any.

12 ~~(8)~~
 13 *(11) Stucco, exterior siding, and exterior walls may not allow*
 14 *excessive condensation to enter the structure and cause damage to*
 15 *another component. For purposes of this paragraph, 'systems'*
 16 *include, without limitation, framing, substrate, flashings, trim,*
 17 *wall assemblies, and internal wall cavities, if any.*

18 *(12) Retaining and site walls and their associated drainage*
 19 *systems may not allow unintended water to pass beyond, around,*
 20 *or through its designed or actual moisture barriers including,*
 21 *without limitation, any internal barriers, so as to cause damage.*
 22 *This standard does not apply to those portions of any wall or*
 23 *drainage system that are designed to have water flow beyond,*
 24 *around, or through them. ~~The retaining walls and site walls, and~~*
 25 *~~their drainage systems, may only allow water to flow beyond,~~*
 26 *~~around, or through the areas designated by design.~~*

27 ~~(9)~~
 28 *(13) Retaining walls and site walls, and their associated*
 29 *drainage systems, may only allow water to flow beyond, around,*
 30 *or through the areas designated by design.*

31 *(14) The lines and components of the plumbing system, sewer*
 32 *system, and utility systems may not leak.*

33 ~~(10)~~
 34 *(15) Plumbing lines, sewer lines, and utility lines may not*
 35 *corrode so as to impede the useful life of the systems.*

36 *(16) Sewer systems shall be installed in such a way as to allow*
 37 *the designated amount of sewage to flow through the system.*
 38 *Shower and bath enclosures may not leak water into the interior of*
 39 *walls, flooring systems, or the interior of other components.*

40 ~~(11)~~



1 (17) Ceramic tile and tile countertops may not allow water
2 intrusion into the interior of walls, flooring systems, or other
3 components so as to cause damage.

4 (b) With respect to structural stability:

5 (1) Foundations, load bearing components, and slabs, may not
6 contain significant cracks or significant vertical displacement or
7 cause the structure to be structurally unsafe.

8 (2) Foundations, load bearing components, and slabs, and
9 underlying soils shall be constructed so as to materially comply
10 with the design criteria set by applicable government building
11 codes, regulations, and ordinances for chemical deterioration or
12 corrosion resistance in effect at the time of original construction.

13 (3) A structure shall be constructed so as to materially comply
14 with the design criteria for earthquake and wind load resistance,
15 as set forth in the applicable government building codes,
16 regulations, and ordinances in effect at the time of original
17 construction.

18 (c) With respect to soil:

19 *Soils*

20 (1) *Soils* and engineered retaining walls may not cause, in
21 whole or in part, damage to the structure built upon the soil or
22 engineered retaining wall or cause, in whole or in part, the
23 structure to be structurally unsafe.

24 (2) *Soils and engineered retaining walls may not cause, in*
25 *whole or in part, the structure to be structurally unsafe.*

26 (3) *Soils may not cause, in whole or in part, the land upon*
27 *which no structure is built to become unusable for the purpose*
28 *represented or intended at the time of original sale by the builder*
29 *or for the purpose for which that land is commonly used.*

30 (d) With respect to fire protection:

31 (1) A structure shall be constructed so as to materially comply
32 with the design criteria of the applicable government building
33 codes, regulations, and ordinances for fire protection of the
34 occupants in effect at the time of the original construction.

35 (2) Fireplaces, chimneys, chimney structures, and chimney
36 termination caps shall be constructed and installed in such a way
37 so as not to cause an unreasonable risk of fire outside the fireplace
38 enclosure or chimney.



1 (3) Electrical and mechanical systems shall be constructed and
2 installed in such a way so as not to cause an unreasonable risk of
3 fire.

4 (e) With respect to plumbing:

5 Plumbing and sewer systems shall be installed to operate
6 properly and may not materially impair the use of the structure by
7 its inhabitants. However, no action may be brought for a violation
8 of this subdivision more than four years after close of escrow.

9 (f) With respect to electrical systems:

10 Electrical systems shall operate properly and may not materially
11 impair the use of the structure by its inhabitants. However, no
12 action may be brought pursuant to this subdivision more than four
13 years from close of escrow.

14 (g) With respect to other areas of construction:

15 (1) Exterior pathways, driveways, hardscape, sidewalls,
16 sidewalks, and patios installed by the original builder may not
17 contain cracks that display significant vertical displacement or that
18 are excessive. However, no action may be brought upon a violation
19 of this paragraph more than four years from close of escrow.

20 (2) Stucco, exterior siding, and other exterior wall finishes and
21 fixtures, including, but not limited to, pot shelves, horizontal
22 surfaces, columns, and plant-ons, may not contain significant
23 cracks or separations.

24 (3) (A) To the extent not otherwise covered by these standards,
25 manufactured products, including, but not limited to, windows,
26 doors, roofs, plumbing products and fixtures, fireplaces, electrical
27 fixtures, HVAC units, countertops, cabinets, paint, and appliances
28 shall be installed so as not to interfere with the products' useful
29 life, if any.

30 (B) For purposes of this paragraph, "useful life" means a
31 representation of how long a product is warranted or represented,
32 through its limited warranty or any written representations, to last
33 by its manufacturer, including recommended or required
34 maintenance. If there is no representation by a manufacturer, a
35 builder shall install manufactured products so as not to interfere
36 with the product's utility.

37 (C) For purposes of this paragraph, "manufactured product"
38 means a product that is completely manufactured offsite.

39 (D) If no useful life representation is made, or if the
40 representation is less than one year, the period shall be no less than



1 one year. If a manufactured product is damaged as a result of a
2 violation of these standards, damage to the product is a recoverable
3 element of damages. This subparagraph does not limit recovery if
4 there has been damage to another building component caused by
5 a manufactured product during the manufactured product's useful
6 life.

7 (E) This paragraph does not apply in any action filed ~~solely~~
8 ~~against a product manufacturer~~ *seeking recovery solely for a*
9 *defect in a manufactured product located within or adjacent to a*
10 *structure.*

11 (4) Heating, if any, shall be installed so as to be capable of
12 maintaining a room temperature of 70 degrees Fahrenheit at a
13 point three feet above the floor in any living space. Living space
14 air conditioning, if any, shall be provided in a manner consistent
15 with the size and efficiency design criteria specified in Title 24 of
16 the California Code of Regulations or its successor.

17 (5) *Living space air conditioning, if any, shall be provided in*
18 *a manner consistent with the size and efficiency design criteria*
19 *specified in Title 24 of the California Code of Regulations or its*
20 *successor.*

21 (6) Attached structures shall be constructed to "meet"
22 interunit noise transmission standards set by the applicable
23 government building codes, ordinances, or regulations in effect at
24 the time of the original construction. If there is no applicable code,
25 ordinance, or regulation, this paragraph does not apply. However,
26 no action may be brought pursuant to this paragraph more than one
27 year from the original occupancy of the adjacent unit.

28 ~~(6)~~

29 (7) Irrigation systems and drainage shall operate properly so as
30 not to damage landscaping or other external improvements.
31 However, no action may be brought pursuant to this paragraph
32 more than one year from close of escrow.

33 ~~(7)~~

34 (8) Untreated wood posts may not be installed in contact with
35 soil so as to cause unreasonable decay to the wood based upon the
36 finish grade at the time of original construction. However, no
37 action may be brought pursuant to this paragraph more than two
38 years from close of escrow.

39 ~~(8)~~



1 (9) Untreated steel fences and adjacent components shall be
2 installed so as to prevent unreasonable corrosion. However, no
3 action may be brought pursuant to this paragraph more than four
4 years from close of escrow.

5 ~~(9)~~

6 (10) Paint and stains shall be applied in such a manner so as not
7 to cause deterioration of the building surfaces for the length of time
8 specified by the paint or stain manufacturers' representations, if
9 any. However, no action may be brought pursuant to this paragraph
10 more than five years from close of escrow.

11 ~~(10)~~

12 (11) Roofing materials shall be installed so as to avoid
13 materials falling from the roof.

14 ~~(11)~~

15 (12) The landscaping systems shall be installed in such a
16 manner so as to survive for not less than one year. However, no
17 action may be brought pursuant to this paragraph more than two
18 years from close of escrow.

19 ~~(12)~~

20 (13) Ceramic tile and tile backing shall be installed in such a
21 manner that the tile does not detach.

22 ~~(13)~~

23 (14) Dryer ducts shall be installed and terminated pursuant to
24 manufacturer installation requirements. However, no action may
25 be brought pursuant to this paragraph more than two years from
26 close of escrow.

27 ~~(14)~~

28 (15) Structures shall be constructed in such a manner so as not
29 to impair the occupants' safety because they contain public health
30 hazards as determined by a duly authorized public health official
31 or health agency, governmental entity having jurisdiction. This
32 paragraph does not limit recovery for any damages caused by a
33 violation of any other paragraph of this section on the grounds that
34 the damages do not constitute a health hazard.

35 17111. The standards set forth in this chapter are intended to
36 address every function or component of a structure. To the extent
37 that a function or component of a structure is not addressed by
38 these standards, it shall be actionable if it causes damage.

39

LEGISLATIVE INTENT SERVICE (800) 666-1917



CHAPTER 3. OBLIGATIONS

1
2
3 17120. A builder shall provide a homebuyer with a minimum
4 one-year express written limited warranty covering the fit and
5 finish of the following building components. Except as otherwise
6 provided by the standards specified in Chapter 2 (commencing
7 with Section 17110), this warranty shall cover the fit and finish of
8 cabinets, mirrors, flooring, interior and exterior walls, counter
9 tops, paint finishes, and trim, but shall not apply to damage to those
10 components caused by defects in other components governed by
11 the other provisions of this part. Any fit and finish matters covered
12 by this warranty are not subject to the provisions of this part. If a
13 builder fails to provide the express warranty required by this
14 section, the warranty for these items shall be for a period of one
15 year.

16 17121. A builder may, but is not required to, offer greater
17 protection or protection for longer time periods in its express
18 contract with the homeowner than that set forth in this chapter. A
19 builder may not limit the application of this chapter or lower its
20 protection through the express contract with the homeowner. This
21 type of express contract constitutes an "enhanced protection
22 agreement."

23 17122. If a builder offers an enhanced protection agreement,
24 the builder may choose to be subject to its own express contractual
25 provisions in place of the provisions set forth in this chapter. If an
26 enhanced protection agreement is in place, this chapter no longer
27 applies other than to set forth minimum provisions by which to
28 judge the enforceability of the particular provisions of the
29 enhanced protection agreement.

30 17123. If a builder offers an enhanced protection agreement
31 in place of the provisions set forth in this chapter, the election to
32 do so shall be made in writing with the homeowner no later than
33 the close of escrow. The builder shall provide the homeowner with
34 a complete copy of this chapter and advise the homeowner that the
35 builder has elected not to be subject to its provisions. If any
36 provision of an enhanced protection agreement is later found to be
37 unenforceable as not meeting the minimum standards of this
38 chapter, a builder may use this chapter in lieu of those provisions
39 found to be unenforceable.



1 17124. If a builder has elected to use an enhanced protection
2 agreement, and a homeowner disputes that the particular provision
3 or time periods of the enhanced protection agreement are not
4 greater than, or equal to, the provisions of this chapter as they
5 apply to the particular deficiency alleged by the homeowner, the
6 homeowner may seek to enforce the application of the standards
7 set forth in this chapter as to those claimed deficiencies. If a
8 homeowner seeks to enforce a particular standard in lieu of a
9 provision of the enhanced protection agreement, the homeowner
10 shall give the builder written notice of that intent at the time the
11 homeowner files a notice of claim pursuant to Chapter 4
12 (commencing with Section 17130).

13 17125. If a homeowner seeks to enforce this chapter in lieu of
14 the enhanced protection agreement in a subsequent litigation or
15 other legal action, the builder shall have the right to have the matter
16 bifurcated, and to have an immediately binding determination of
17 his or her responsive pleading within 60 days after the filing, but
18 in no event after the commencement of discovery, as to the
19 application of either this chapter or the enhanced protection
20 agreement as to the deficiencies claimed by the homeowner. If the
21 builder fails to seek that determination in the time frame specified,
22 the builder waives the right to do so and the standards set forth in
23 this part shall apply. As to any nonoriginal homeowner, that
24 homeowner shall be deemed in privity for purposes of an enhanced
25 protection agreement only to the extent that the builder has
26 recorded the enhanced protection agreement on title or provided
27 actual notice to the nonoriginal homeowner of the enhanced
28 protection agreement. If the enhanced protection agreement is not
29 recorded on title or no actual notice has been provided, the
30 standards set forth in this part apply to any nonoriginal
31 homeowners' claims.

32 17126. A builder's election to use an enhanced protection
33 agreement addresses only the issues set forth in this chapter and
34 does not constitute an election to use or not use the provisions of
35 Chapter 4 (commencing with Section 17130). The decision to use
36 or not use Chapter 4 (commencing with Section 17130) is
37 governed by the provisions of that chapter.

38 17127. A homeowner is obligated to follow all reasonable
39 maintenance obligations and schedules communicated in writing
40 to the homeowner by the builder and product manufacturers, as

1 well as commonly accepted maintenance practices. A failure by a
2 homeowner to follow these obligations, schedules, and practices
3 may subject the homeowner to the affirmative defenses contained
4 in Section 17164.

5
6 CHAPTER 4. PRELITIGATION PROCEDURE
7

8 17130. Prior to filing an action against any party alleged to
9 have contributed to a violation of the standards set forth in this part,
10 the claimant shall initiate the following prelitigation procedures:

11 (a) The claimant or his or her legal representative shall provide
12 written notice via certified mail, overnight mail, or personal
13 delivery to the builder, in the manner prescribed in this section, of
14 the claimant's claim that the construction of his or her residence
15 violates any of the standards set forth in this part. That notice shall
16 provide the claimant's name, address, and preferred method of
17 contact, and shall state that the claimant alleges a violation
18 pursuant to this part against the builder, and shall describe the
19 claim in reasonable detail sufficient to determine the nature and
20 location, to the extent known, of the claimed violation. In the case
21 of a group of homeowners or an association, the notice may
22 identify the claimants solely by address or other description
23 sufficient to apprise the builder of the locations of the subject
24 residences. That document shall have the same force and effect as
25 a notice of commencement of a legal proceeding.

26 (b) The notice requirements of this section do not preclude a
27 homeowner from seeking redress through any applicable normal
28 customer service procedure as set forth in any contractual,
29 warranty, or other builder-generated document; and, if a
30 homeowner seeks to do so, that request shall not be deemed to
31 satisfy the notice requirements of this section.

32 17131. For purposes of this chapter, "builder" means a
33 builder, developer, or original seller and applies to the sale of new
34 residential units on and after January 1, 2003.

35 17132. A builder shall do all of the following:

36 (a) Within 20 days of a written request by a homeowner or his
37 or her representative, the builder shall provide copies of all
38 relevant plans, specifications, mass or rough grading plans, final
39 soils reports, Department of Real Estate public reports, and
40 available engineering calculations, that pertain to a homeowner's

LEGISLATIVE INTENT SERVICE (800) 666-1917



1 residence specifically or as part of a larger development tract. The
2 request shall be honored if it states that it is made relative to
3 structural, fire safety, or soils provisions of this part. However, a
4 builder is not obligated to provide a copying service, and
5 reasonable copying costs shall be borne by the requesting party. A
6 builder may require that the documents be copied onsite by the
7 requesting party, except that the homeowner may, at his or her
8 option, use his or her own copying service, which may include an
9 offsite copy facility that is bonded and insured. If a builder can
10 show that the builder maintained the documents, but that they later
11 became unavailable due to loss or destruction that was not the fault
12 of the builder, the builder may be excused from the requirements
13 of this subdivision, in which case the builder shall act with
14 reasonable diligence to assist the homeowner in obtaining those
15 documents from any applicable government authority or from the
16 source that generated the document. However, in that case, the
17 time limits specified by this section do not apply.

18 (b) At the expense of the homeowner, who may opt to use an
19 offsite copy facility that is bonded and insured, the builder shall
20 provide to the homeowner or his or her legal representative copies
21 of all maintenance and preventative maintenance
22 recommendations that pertain to his or her residence within 20
23 days of service of a written request for those documents. Those
24 documents shall also be provided to the homeowner in conjunction
25 with the initial sale of the residence.

26 (c) At the expense of the homeowner, who may opt to use an
27 offsite copy facility that is bonded and insured, a builder shall
28 provide to the homeowner or his or her legal representative copies
29 of all manufactured products maintenance, preventive
30 maintenance, and limited warranty information within 20 days of
31 a written request for those documents. These documents shall also
32 be provided to the homeowner in conjunction with the initial sale
33 of the residence.

34 (d) At the expense of the homeowner, who may opt to use an
35 offsite copy facility that is bonded and insured, a builder shall
36 provide to the homeowner or his or her legal representative copies
37 of all of the builder's limited contractual warranties in accordance
38 with this part in effect at the time of the original sale of the
39 residence within 20 days of a written request for those documents.



1 Those documents shall also be provided to the homeowner in
2 conjunction with the initial sale of the residence.

3 (e) A builder shall maintain the name and address of an agent
4 for notice pursuant to this chapter with the Secretary of State or,
5 alternatively, elect to use a third party for that notice if the builder
6 has notified the homeowner in writing of the third party's name
7 and address, to whom claims and requests for information under
8 this section may be mailed. The name and address of the agent for
9 notice or third party shall be included with the original sales
10 documentation and shall be initialed and acknowledged by the
11 purchaser and the builder's sales representative.

12 This subdivision applies to instances in which a builder
13 contracts with a third party to accept claims and act on the builder's
14 behalf. A builder shall give actual notice to the homeowner that the
15 builder has made such an election, and shall include the name and
16 address of the third party.

17 (f) A builder shall record on title a notice of the existence of
18 these procedures and a notice that these procedures impact the
19 legal rights of the homeowner. This information shall also be
20 included with the original sales documentation and shall be
21 initialed and acknowledged by the purchaser and the builder's
22 sales representative.

23 (g) A builder shall provide with the original sales
24 documentation, a written copy of this part which shall be initialed
25 and acknowledged by the purchaser and the builder's sales
26 representative.

27 (h) As to any documents provided in conjunction with the
28 original sale, the builder shall instruct the original purchaser to
29 provide those documents to any subsequent purchaser.

30 (i) Any builder who fails to comply with any of these
31 requirements within the time specified is not entitled to the
32 protection of this chapter, and the homeowner is released from the
33 requirements of this chapter and may proceed with the filing of an
34 action, in which case the remaining chapters of this part shall
35 continue to apply to the action.

36 17133. A builder or his or her representative shall
37 acknowledge, in writing, receipt of the notice of the claim within
38 seven days after receipt of the notice of the claim. If the notice of
39 the claim is served by the claimant's legal representative, or if the
40 builder receives a written representation letter from a



1 homeowner's attorney, the builder shall include the attorney in all
2 subsequent substantive communications, including, without
3 limitation, all written communications occurring pursuant to this
4 chapter, and all substantive and statutorially procedural
5 communications, including all written communications,
6 following the commencement of any subsequent complaint or
7 other legal action, except that if the builder has retained or
8 involved legal counsel to assist the builder in this process, all
9 communications by the builder's counsel shall only be with the
10 claimant's legal representative, if any.

11 17134. (a) This chapter establishes a nonadversarial
12 procedure, including the remedies available under this chapter
13 which, if the procedure does not resolve the dispute between the
14 parties, may result in a subsequent action to enforce the other
15 chapters of this part. A builder may attempt to commence a
16 nonadversarial procedure or remedies other than those set forth in
17 this chapter, but may not, in addition to its own nonadversarial
18 procedure, require adherence to the procedure and remedies set
19 forth in this chapter, regardless of whether the builder's own
20 alternative nonadversarial procedure or remedies are successful in
21 resolving the dispute or ultimately deemed enforceable.

22 *At the time the sales agreement is executed, the builder shall*
23 *notify the homeowner whether the builder intends to engage in the*
24 *non-adversarial procedure of this section or attempt to enforce*
25 *alternative contractual procedures or remedies. If the builder*
26 *elects to use alternative contractual procedures or remedies in lieu*
27 *of this section, the election is binding, regardless of whether the*
28 *builder's alternative contractual procedures or remedies are*
29 *successful in resolving the ultimate dispute or are ultimately*
30 *deemed enforceable. If an alternative procedure or remedy*
31 *includes a right to repair and is deemed unenforceable, nothing in*
32 *this section shall affect the enforcement of contractual rights to*
33 *repair that are severable, otherwise enforceable, and no different*
34 *in any respect from the right to repair contained in this section.*

35 (b) Nothing in this chapter is intended to affect existing
36 statutory or decisional law pertaining to the applicability, viability,
37 or enforceability of alternative dispute resolution methods,
38 alternative remedies, or contractual arbitration, judicial reference,
39 or similar procedures requiring a binding resolution to enforce the
40 other chapters of this part or any other disputes between



1 homeowners and builders. ~~Regardless of which nonadversarial~~
2 ~~procedure a builder elects to follow, a builder may attempt to~~
3 ~~enforce contractual provisions requiring contractual arbitration,~~
4 ~~judicial reference, or a similar procedure after a nonadversarial~~
5 ~~procedure has been completed.~~

6 17135. If a builder fails to acknowledge receipt of the notice
7 of a claim within the time specified, elects not to go through the
8 process set forth in this chapter, or fails to request an inspection
9 within the time specified, or at the conclusion or cessation of an
10 alternative nonadversarial proceeding, this chapter does not apply
11 and the homeowner is released from the requirements of this
12 chapter and may proceed with the filing of an action. However, the
13 requirements set forth in Section 17130 shall continue to apply to
14 the action.

15 17136. (a) If a builder elects to inspect the claimed unmet
16 standards, the builder shall complete the initial inspection and
17 testing within 14 days after acknowledgement of receipt of the
18 notice of the claim, at a mutually convenient date and time. If the
19 homeowner has retained legal representation, the inspection shall
20 be scheduled with the legal representative's office at a mutually
21 convenient date and time, unless the legal representative is
22 unavailable during the relevant time periods. All costs of builder
23 inspection and testing, including any damage caused by the builder
24 inspection, shall be borne by the builder. The builder shall also
25 provide written proof that the builder has liability insurance to
26 cover any damages or injuries occurring during inspection and
27 testing. The builder shall restore the property to its pretesting
28 condition within 48 hours of the testing. The builder shall, upon
29 request, allow the inspections to be observed and electronically
30 recorded, videotaped, or photographed by the claimant or his or
31 her legal representative.

32 (b) Nothing that occurs during a builder's or claimant's
33 inspection or testing may be used or introduced as evidence to
34 support a spoliation defense by any potential party in any
35 subsequent litigation.

36 (c) If a builder deems a second inspection or testing reasonably
37 necessary, and specifies the reasons therefor in writing within
38 three days following the initial inspection, the builder may conduct
39 a second inspection or testing. A second inspection or testing shall
40 be completed within 20 business days of the initial inspection or



1 testing. All requirements concerning the initial inspection or
2 testing shall also apply to the second inspection or testing.

3 (d) If the builder fails to inspect or test the property within the
4 time specified, the claimant is released from the requirements of
5 this section and may proceed with the filing of an action. However,
6 the other chapters of this part still apply to the action.

7 (e) If a builder intends to hold a subcontractor, design
8 professional, or material supplier, including an insurance carrier,
9 warranty company, or service company, responsible for its
10 contribution to the unmet standard, the builder shall provide notice
11 to that person or entity sufficiently in advance to allow them to
12 attend the inspection of any alleged unmet standard and to
13 participate in the repair process. The claimant and his or her legal
14 representative, if any, shall be advised in a reasonable time prior
15 to the inspection as to the identity of all persons or entities invited
16 to attend.

17 17137. Within 20 days of the initial or, if requested, second
18 inspection or testing, the builder may offer in writing to repair the
19 violation. The offer to repair shall also compensate the homeowner
20 for all applicable damages recoverable under Section 17164,
21 within the timeframe for the repair set forth in this chapter. Any
22 such offer shall be accompanied by a detailed, specific,
23 step-by-step statement identifying the particular violation that is
24 being repaired, explaining the nature, scope, and location of the
25 repair, and setting a reasonable completion date for the repair. The
26 offer shall also include the names, addresses, telephone numbers,
27 and license numbers of the contractors whom the builder intends
28 to have perform the repair. Those contractors shall be fully insured
29 for, and shall be responsible for, all damages or injuries that they
30 may cause to occur during the repair, and evidence of that
31 insurance shall be provided to the homeowner upon request. Upon
32 written request by the homeowner or his or her legal
33 representative, and within the timeframes set forth in this chapter,
34 the builder shall also provide any available technical
35 documentation, including, without limitation, plans and
36 specifications, pertaining to the claimed violation within the
37 particular home or development tract. The offer shall also advise
38 the homeowner in writing of his or her right to request up to three
39 additional contractors from which to select to do the repair
40 pursuant to this chapter.



1 17138. Upon receipt of the offer to repair and the
2 accompanying cash offer, the homeowner shall have 20 days to
3 authorize the builder to proceed with the repair. The homeowner
4 may alternatively request, at the homeowner's sole option and
5 discretion, that the builder provide the names, addresses,
6 telephone numbers, and license numbers for up to three alternative
7 contractors who are not owned or *financially* controlled by the
8 builder and who regularly conduct business in the county where
9 the structure is located. If the homeowner so elects, the builder is
10 entitled to an additional noninvasive inspection, to occur at a
11 mutually convenient date and time within 10 days of the election,
12 so as to permit the other proposed contractors to review the
13 proposed site of the repair. Within five days of those inspections,
14 the builder shall present a choice of contractors to the homeowner
15 who shall select the contractor within 10 days of the presentation.

16 17140. The offer to repair shall also be accompanied by an
17 offer to mediate the dispute if the homeowner so chooses. The
18 mediation shall be limited to a four-hour mediation, except as
19 otherwise mutually agreed before a nonaffiliated mediator
20 selected and paid for by the builder. At the homeowner's sole
21 option, the homeowner may agree to split the cost of the mediator,
22 and if he or she does so, the mediator shall be selected jointly. The
23 mediator shall have sufficient availability such that the mediation
24 occurs within 15 days after the request to mediate is received and
25 occurs at a mutually convenient location within the county where
26 the action is pending. If a builder has made an offer to repair a
27 violation, and the mediation has failed to resolve the dispute, the
28 homeowner shall allow the repair to be performed either by the
29 builder, its contractor, or the selected contractor.

30 17141. If the builder fails to make an offer to repair or
31 otherwise strictly comply with this chapter within the times
32 specified, the claimant is released from the requirements of this
33 chapter and may proceed with the filing of an action. If the
34 contractor performing the repair does not complete the repair in
35 the time or manner specified, the claimant may file an action. If
36 this occurs, the standards set forth in the other chapters of this part
37 shall continue to apply to that action.

38 17142. (a) In the event that a resolution under this chapter
39 involves a repair by the builder, the builder shall make an
40 appointment with the claimant, make all appropriate arrangements



1 to effectuate a repair of the claimed unmet standards, and
2 compensate the homeowner for all damages resulting therefrom
3 free of charge to the claimant. The repair shall be scheduled
4 through the claimant's legal representative, if any, unless he or she
5 is unavailable during the relevant time periods. The repair shall be
6 commenced on a mutually convenient date within 14 days of
7 acceptance or, if an alternative contractor is selected by the
8 homeowner, within 14 days of the selection, or, if a mediation
9 occurs, within seven days of the mediation, or within five days
10 after a permit is obtained if one is required. The builder shall act
11 with reasonable diligence in obtaining any such permit. ~~The repair,~~
12 ~~once commenced, shall continue diligently without unreasonable~~
13 ~~or inexcusable delay or interruption, until completed within the~~
14 ~~time period specified in the repair plan. This diligence shall be~~
15 ~~measured in relation to the nature and scope of the repair.~~

16 (b) *The builder shall ensure that work done on the repairs is*
17 *done with the utmost diligence, and that the repairs are completed*
18 *as soon as reasonably possible, subject to the nature of the repair*
19 *or some unforeseen event not caused by the builder or the*
20 *contractor performing the repair. Every effort shall be made to*
21 *complete the repair within 120 days from commencement, subject*
22 *to the nature of the repair or some unforeseen event not caused by*
23 *the builder or the contractor performing the repair. days.*

24 17143. The builder shall, upon request, allow the repair to be
25 observed and electronically recorded, videotaped, or
26 photographed by the claimant or his or her legal representative.
27 Nothing that occurs during the repair process may be used or
28 introduced as evidence to support a spoliation defense by any
29 potential party in any subsequent litigation.

30 17144. The builder shall provide the homeowner or his or her
31 legal representative, upon request, with copies of all
32 correspondence, photographs, and other materials pertaining or
33 relating in any manner to the repairs.

34 17145. If the builder elects to repair some, but not all of, the
35 claimed unmet standards, the builder shall, at the same time it
36 makes its offer, set forth with particularity in writing the reasons,
37 and the support for those reasons, for not repairing all claimed
38 unmet standards.

39 17146. If the builder fails to complete the repair within the
40 time specified in the repair plan, the claimant is released from the



1 requirements of this chapter and may proceed with the filing of an
2 action. If this occurs, the other chapters of this part continue to
3 apply to the action.

4 17147. The builder may not obtain a release or waiver of any
5 kind in exchange for the repair work mandated by this chapter. At
6 the conclusion of the repair, the claimant may proceed with filing
7 an action for violation of the applicable standard or for a claim of
8 inadequate repair, or both, including all applicable damages
9 available under Section 17164.

10 17148. If the applicable statute of limitations has otherwise
11 run during this process, the time period for filing a complaint or
12 other legal remedies for violation of any provision of this part, or
13 for a claim of inadequate repair, is extended from the time of the
14 original claim by the claimant to 100 days after the repair is
15 completed, whether or not the particular violation is the one being
16 repaired. If the builder fails to acknowledge the claim within the
17 time specified, elects not to go through this statutory process, or
18 fails to request an inspection within the time specified, the time
19 period for filing a complaint or other legal remedies for violation
20 of any provision of this part is extended from the time of the
21 original claim by the claimant to 45 days after the time for
22 responding to the notice of claim has expired. If the builder elects
23 to attempt to enforce its own nonadversarial procedure in lieu of
24 the procedure set forth in this chapter, the time period for filing a
25 complaint or other legal remedies for violation of any provision of
26 this part is extended from the time of the original claim by the
27 claimant to 100 days after either the completion of the builder's
28 alternative nonadversarial procedure, or 100 days after the
29 builder's alternative nonadversarial procedure is deemed
30 unenforceable, whichever is later.

31 17149. If the builder has invoked this chapter and completed
32 a repair, prior to filing an action, if there has been no previous
33 mediation between the parties, the homeowner or his or her legal
34 representative shall request mediation in writing. The mediation
35 shall be limited to four hours, except as otherwise mutually agreed
36 before a nonaffiliated mediator selected and paid for by the
37 builder. At the homeowner's sole option, the homeowner may
38 agree to split the cost of the mediator and if he or she does so, the
39 mediator shall be selected jointly. The mediator shall have
40 sufficient availability such that the mediation will occur within 15



1 days after the request for mediation is received and shall occur at
 2 a mutually convenient location within the county where the action
 3 is pending. In the event that a mediation is used at this point, any
 4 applicable statutes of limitations shall be tolled ~~until the mediation~~
 5 ~~is completed.~~ *from the date of the request to mediate until the next*
 6 *court day after the mediation is completed, or the 100-day period,*
 7 *whichever is later.*

8 ~~17450.~~
 9 17150. (a) Nothing in this chapter prohibits the builder from
 10 making only a cash offer and no repair. In this situation, the
 11 homeowner is free to accept the offer, or he or she may reject the
 12 offer and proceed with the filing of an action. If the latter occurs,
 13 the provisions of the other chapters of this part shall continue to
 14 apply to the action.

15 (b) The builder may obtain a reasonable release in exchange for
 16 the cash payment. The builder may negotiate the terms and
 17 conditions of any reasonable release in terms of scope and
 18 consideration in conjunction with a cash payment under this
 19 chapter.

20 17151. (a) The time periods and all other requirements in this
 21 chapter are to be strictly construed, and, unless extended by the
 22 mutual agreement of the parties in accordance with this chapter,
 23 shall govern the rights and obligations under this part. If a builder
 24 fails to act in accordance with this section within the timeframes
 25 mandated, unless extended by the mutual agreement of the parties
 26 as evidenced by a postclaim written confirmation by the affected
 27 homeowner demonstrating that he or she has knowingly and
 28 voluntarily extended the statutory timeframe, the claimant may
 29 proceed with filing an action and may exercise other remedies
 30 outside of this part, with the exception that the other chapters of
 31 this part continue to apply to the dispute.

32 (b) If the claimant does not conform with the requirements of
 33 this chapter, the builder may bring a motion to stay any subsequent
 34 court action or other proceeding until the requirements of this
 35 chapter have been satisfied. The court, in its discretion, may award
 36 the prevailing party on such a motion, his or her attorney's fees and
 37 costs in bringing or opposing the motion.

38 17152. If a claim combines causes of action or damages not
 39 covered by this part, including, without limitation, personal
 40 injuries, class actions, other statutory remedies, or fraud-based

LEGISLATIVE INTENT SERVICE (800) 666-1917



1 claims, the claimed unmet standards shall be administered
2 according to this part, although evidence of the property in its
3 unrepaired condition may be introduced to support the respective
4 elements of any such cause of action. As to any fraud-based claim,
5 if the fact that the property has been repaired under this chapter is
6 deemed admissible, the trier of fact shall be informed that the
7 repair was not voluntarily accepted by the homeowner. As to any
8 class action claims that address solely the incorporation of a
9 defective component into a residence, the named and unnamed
10 class members need not comply with this chapter.

11 17153. Subsequently discovered claims of unmet standards
12 shall be administered separately under this chapter, unless
13 otherwise agreed to by the parties. However, *in the case of a*
14 *detached single family residence, in the same home, if the*
15 *subsequently discovered claim is for a violation of the same*
16 *standard as that which has already been initiated and not resolved*
17 *under this chapter and occurs, in the case of a detached*
18 *single family residence, in the same home, or in the case of an*
19 *attached project, in the same building, the claimant need not*
20 *reinitiate this process as to the same standard which has already*
21 *been initiated by the same claimant and the subject of the action*
22 *is between the builder and the claimant, the claimant need not*
23 *reinitiate the process as to the same standard. In the case of an*
24 *attached project, if the subsequently discovered claim is for a*
25 *violation of the same standard for a connected component system*
26 *in the same building as has already been initiated by the same*
27 *claimant, and the subject of an action is between the builder and*
28 *the claimant, the claimant need not reinitiate this process as that*
29 *standard.*

30 17154. If any enforcement of these standards is commenced,
31 the fact that a repair effort was made may be introduced to the trier
32 of fact. However, the claimant may use the condition of the
33 property prior to the repair as the basis for contending that the
34 repair work was inappropriate, inadequate, or incomplete, or that
35 the violation still exists. The claimant need not show that the repair
36 work resulted in further damage nor that damage has continued to
37 occur as a result of the violation.

38 17155. Evidence of both parties' conduct during this process
39 may be introduced during a subsequent enforcement action, if any,
40 with the exception of any agreed-upon mediation. Any repair



1 efforts undertaken by the builder, and any cash offers made, may
2 not be considered settlement communications or offers of
3 settlement and are not inadmissible in evidence on such a basis.

4 17156. To the extent that provisions of this chapter are
5 enforced and those provisions are substantially similar to
6 provisions in Section 1375 of the Civil Code, but an action is
7 subsequently commenced under Section 1375 of the Civil Code,
8 the parties are excused from performing the substantially similar
9 requirements under Section 1375 of the Civil Code.

10 17157. Each and every provision of the other chapters of this
11 part apply to subcontractors, material suppliers, *individual*
12 *product manufacturers*, and design professionals to the extent that
13 the subcontractors, material suppliers, and design professionals
14 caused, in whole or in part, a violation of a particular standard as
15 the result of a negligent act or omission or a breach of contract. In
16 addition to the affirmative defenses set forth in Section 17166, a
17 subcontractor, material supplier, design professional, or other
18 entity may also offer common law and contractual defenses as
19 applicable to any claimed violation of a standard. All actions by
20 ~~any party~~ *a claimant or builder* to enforce an express contract, or
21 any provision thereof, *against a subcontractor, material supplier,*
22 *individual product manufacturer, or design professional* is
23 preserved. Nothing in this part modifies the law pertaining to joint
24 and several liability for subcontractors, material suppliers, and
25 design professionals that contribute to any specific violation of this
26 part. However, this section does not apply to any subcontractor,
27 material supplier, or design professional if strict liability would
28 apply.

29 17158. Nothing in this part shall be interpreted to eliminate or
30 abrogate the requirement to comply with Section 411.35 of the
31 Code of Civil Procedure or to affect the liability of design
32 professionals, including architects and architectural firms, for
33 claims and damages not covered by this part.

34 17159. This part applies only to residences *originally* sold on
35 or after January 1, 2003.

36
37 CHAPTER 5. PROCEDURE

38
39 17160. Unless a shorter limitations period is set forth in this
40 part, no action may be brought to recover under this part more than

(800) 666-1917

LEGISLATIVE INTENT SERVICE



1 10 years after substantial completion, as defined in Section 337.15
2 of the Code of Civil Procedure. With the exception of subdivisions
3 (c) and (e) of Section 337.15 of the Code of Civil Procedure, no
4 other provisions of Sections 337.1 and 337.15 of the Code of Civil
5 Procedure apply to actions under this part. Repairs made pursuant
6 to Chapter 4 (commencing with Section 17130), with the
7 exception of the tolling provision contained in Section 17148, do
8 not extend the period for filing an action, or restart the time
9 limitations contained in subdivisions (a) and (b) of Section 7091
10 of the Business and Professions Code. If a builder arranges for a
11 contractor to perform a repair pursuant to Chapter 4 (commencing
12 with Section 17130), as to the builder the time period for
13 calculating the statute of limitation in subdivisions (a) and (b) of
14 Section 7019 of the Business and Professions Code shall pertain
15 to the substantial completion of the original construction and not
16 to the date of repairs under this part. The time limitations
17 established by this part do not apply to any action by a claimant for
18 a contract or express contractual provision. Causes of action and
19 damages to which this chapter does not apply are not limited by
20 this section.

21 17161. In order to make a claim for violation of the standards
22 set forth in Chapter 2 (commencing with Section 17110), a
23 homeowner need only demonstrate, in accordance with the
24 applicable evidentiary standard, that the home does not meet the
25 applicable standard, subject to the affirmative defenses set forth in
26 Section 17166. No further showing of causation or damages is
27 required to *prove meet the burden of proof regarding* a violation
28 of a standard set forth in Chapter 2 (commencing with Section
29 17110), provided that the violation arises out of, pertains to, or is
30 related to, the original construction.

31 17162. No other cause of action for a claim covered by this
32 part or for damages recoverable under Section 17164 is allowed.
33 However, in addition to the rights under this part, this part does not
34 apply to any action by a claimant to enforce a contract or express
35 contractual provision, or any action for fraud, personal injury, or
36 violation of a statute. However, damages awarded for the items set
37 forth in Section 17164 in such other cause of action shall be
38 reduced by the amounts recovered pursuant to Section 17164 for
39 violation of the standards set forth in this part.



1 17163. As to any claims involving a detached single-family
2 home, the homeowner's right to the reasonable value of repairing
3 any nonconformity is limited to the repair costs, or the diminution
4 in current value of the home caused by the nonconformity,
5 whichever is less, subject to the personal use exception as
6 developed under common law.

7 17164. If a claim for damages is made under this part, the
8 homeowner is only entitled to damages for the reasonable value of
9 repairing any violation of the standards set forth in this part, the
10 reasonable cost of repairing any damages caused by the repair
11 efforts, the reasonable cost of repairing and rectifying any
12 damages resulting from the failure of the home to meet the
13 standards, the reasonable cost of removing and replacing any
14 improper repair by the builder, reasonable relocation and storage
15 expenses, lost business income if the home was used as a principal
16 place of a business licensed to be operated from the home,
17 reasonable investigative costs for each established violation, and
18 all other costs or fees recoverable by contract or statute.

19 17165. The provisions, standards, rights, and obligations set
20 forth in this part are binding upon all original purchasers and their
21 successors-in-interest. For purposes of this part, associations and
22 others having the rights set forth in Section 383 of the Code of Civil
23 Procedure shall be considered to be original purchasers and shall
24 have standing to enforce the provisions, standards, rights, and
25 obligations set forth in this part.

26 17166. A builder, under the principles of comparative fault
27 pertaining to affirmative defenses, may be excused, in whole or in
28 part, from any obligation, damage, loss, or liability if the builder
29 can demonstrate any of the following affirmative defenses in
30 response to a claimed violation:

31 (a) To the extent it is caused by an unforeseen act of nature
32 which caused the structure not to meet the standard. For purposes
33 of this section an "unforeseen act of nature" means a weather
34 condition, earthquake, or manmade event such as war, terrorism,
35 or vandalism, in excess of the design criteria expressed by the
36 applicable building codes, regulations, and ordinances in effect at
37 the time of original construction.

38 (b) To the extent it is caused by a homeowner's unreasonable
39 failure to minimize or prevent those damages in a timely manner,
40 including the failure of the homeowner to allow reasonable and

LEGISLATIVE INTENT SERVICE (800) 666-1917



1 timely access for inspections and repairs under this part. This
2 includes the failure to give timely notice to the builder after
3 discovery of a violation, but does not include damages due to the
4 untimely or inadequate response of a builder to the homeowner's
5 claim.

6 (c) To the extent it is caused by the homeowner or his or her
7 agent, employee, subcontractor, independent contractor, or
8 consultant by virtue of their failure to follow the builder's or
9 manufacturer's recommendations, or commonly accepted
10 homeowner maintenance obligations. In order to rely upon this
11 defense as it relates to a builder's recommended maintenance
12 schedule, the builder shall show that the homeowner had written
13 notice of these schedules and recommendations and that the
14 recommendations and schedules were reasonable at the time they
15 were issued.

16 (d) To the extent it is caused by the homeowner or his or her
17 agent's or an independent third party's alterations, ordinary wear
18 and tear, misuse, abuse, or neglect, or by the structure's use for
19 something other than its intended purpose.

20 (e) *To the extent that the time period for filing actions bars the*
21 *claimed violation.*

22 (f) *As to a particular violation for which the builder has*
23 *obtained a valid release.*

24 (g) *To the extent that the builder's repair was successful in*
25 *correcting the particular violation of the applicable standard.*

26 (h) *As to any causes of action to which this statute does not*
27 *apply, all applicable affirmative defenses are preserved.*



AMENDED IN ASSEMBLY AUGUST 28, 2002
AMENDED IN ASSEMBLY AUGUST 26, 2002
AMENDED IN ASSEMBLY AUGUST 25, 2002
AMENDED IN ASSEMBLY AUGUST 15, 2002
AMENDED IN ASSEMBLY AUGUST 12, 2002
AMENDED IN SENATE MAY 21, 2001
AMENDED IN SENATE APRIL 25, 2001
AMENDED IN SENATE APRIL 5, 2001

SENATE BILL

No. 800

**Introduced by Senator Burton and Assembly Member Wesson
(Principal coauthors: Senators Dunn, Escutia, Romero, and
Torlakson)**

(Principal coauthors: Assembly Members Calderon, Corbett, Dutra,
and Steinberg)

(Coauthors: Assembly Members Aroner, Alquist, Canciamilla,
Cardoza, *Cedillo*, Chan, Chavez, Chu, Cohn, Diaz, Firebaugh,
Florez, Frommer, Goldberg, Jackson, ~~Kehoe~~, ~~Keeley~~, *Keeley*, *Kehoe*,
Koretz, Longville, Lowenthal, Nakano, Negrete McLeod, Oropeza,
Papan, Pavley, Reyes, Salinas, Shelley, Vargas, Wayne, and Wiggins)

February 23, 2001

An act to add Section 43.99 to the Civil Code, to add Section 664.8
to the Code of Civil Procedure, and to add Part 1.1 (commencing with
Section 17100) to Division 13 of the Health and Safety Code, relating,
and to add Title 7 (commencing with Section 895) to Part 2 of Division
2 of, the Civil Code, relating to construction defects.

91

LIS - li



LEGISLATIVE COUNSEL'S DIGEST

SB 800, as amended, Burton. Liability: construction defects.

Existing law provides for stipulated judgments in construction defect actions, as defined.

This bill would define "construction defect" for these purposes.

The bill would also specify the rights and requirements of a homeowner to bring an action for construction defects, including applicable standards for home construction, the statute of limitations, the burden of proof, the damages recoverable, a detailed prelitigation procedure, and the obligations of the homeowner.

This bill would also provide that there is no personal monetary liability on the part of, *and no cause of action for damages shall arise against*, any person, *in any of the specified categories*, who is under contract with an applicant for a residential building permit to ~~check~~ *provide independent quality review* of the plans and specifications provided with the application in order to determine compliance with all applicable requirements imposed pursuant to the State Housing Law or any rules or regulations adopted pursuant to that law, or to inspect a work of improvement to determine compliance with these plans and specifications, *except as specified*. The bill would also set forth specified findings and declarations of the Legislature regarding construction defects.

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

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

- 1 SECTION 1. The Legislature finds and declares, as follows:
- 2 (a) The California system for the administration of civil justice
- 3 is one of the fairest in the world, but certain procedures and
- 4 standards should be amended to ensure fairness to all parties.
- 5 (b) The prompt and fair resolution of construction defect
- 6 claims is in the interest of consumers, homeowners, and the
- 7 builders of homes, and is vital to the state's continuing growth and
- 8 vitality. However, under current procedures and standards,
- 9 homeowners and builders alike are not afforded the opportunity
- 10 for quick and fair resolution of claims. Both need clear standards
- 11 and mechanisms for the prompt resolution of claims.
- 12 (c) It is the intent of the Legislature that this act improve the
- 13 procedures for the administration of civil justice, including

1 standards and procedures for early disposition of construction
2 defects.

3 ~~(d) Because the provisions of this act involve the resolution of~~
4 ~~competing considerations, dealing with the problems facing both~~
5 ~~plaintiffs and defendants, the Legislature finds that the provisions~~
6 ~~of this act are not severable. Rather it is the intent of the Legislature~~
7 ~~that if, for any reason, any provision of this act is determined to be~~
8 ~~void or otherwise inoperative, then no provision of this act shall~~
9 ~~have any effect.~~

10 SEC. 1.5. Section 43.99 is added to the Civil Code, to read:

11 43.99. ~~(a) There is no personal monetary liability on the part~~
12 ~~of any person who is under contract with an applicant for a~~
13 ~~residential building permit to check the plans and specifications~~
14 ~~provided with the application in order to determine compliance~~
15 ~~with all applicable requirements imposed pursuant to the State~~
16 ~~Housing Law (Part 1.5 (commencing with Section 17910) of~~
17 ~~Division 13 of the Health and Safety Code) or any rules or~~
18 ~~regulations adopted pursuant to that law, or to inspect a work of~~
19 ~~improvement to determine compliance with these plans and~~
20 ~~specifications if one of the following applies:~~

21 ~~(1) The person has completed not less than two years of~~
22 ~~verifiable experience in the appropriate field and has obtained~~
23 ~~certification from a recognized state, national, or international~~
24 ~~association pursuant to Sections 18949.28 and 18949.29 of the~~
25 ~~Health and Safety Code, as determined by the local building code~~
26 ~~agency with respect to those persons who perform construction~~
27 ~~inspection and plans examiner services for the local agency from~~
28 ~~whom the applicant is seeking the residential building permit.~~

29 ~~(2) The person is a registered professional engineer, licensed~~
30 ~~surveyor, or licensed architect rendering construction inspection~~
31 ~~services or plans examination services within the scope of his or~~
32 ~~her registration or licensure.~~

33 ~~(b) This section may not be construed to relieve from, or lessen~~
34 ~~the responsibility of any person who owns, operates, or controls~~
35 ~~any residential building for any damages to persons or property~~
36 ~~caused by construction or design defects.~~

37 ~~(c) Nothing in this section, as it relates to construction~~
38 ~~inspectors or plans examiners, may be construed to alter the~~
39 ~~requirements for licensure, or the jurisdiction, authority, or scope~~
40 ~~of practice, of architects pursuant to Chapter 3 (commencing with~~



1 Section 5500) of Division 3 of the Business and Professions Code,
 2 professional engineers pursuant to Chapter 7 (commencing with
 3 Section 6700) of Division 3 of the Business and Professions Code,
 4 or land surveyors pursuant to Chapter 15 (commencing with
 5 Section 8700) of Division 3 of the Business and Professions Code.
 6 (d) Nothing in this section may be construed to alter the
 7 immunity of employees of the Department of Housing and
 8 Community Development under the Tort Claims Act (Div. 3.6
 9 (commencing with Sec. 810), Title 1, Gov. C.) when acting
 10 pursuant to Section 17965 of the Health and Safety Code.

11 SEC. 2. Section 664.8 is added to the Code of Civil Procedure,
 12 to read:

13 664.8. "Construction defect" means a defect in design,
 14 materials, or workmanship that occurs during the original
 15 construction of the improvement or in connection with any
 16 warranty repair work, and in the case of a common interest
 17 development, includes construction or repair work in all common
 18 areas.

19 SEC. 3. Part 1.1 (commencing with Section 17100) is added
 20 to Division 13 of the Health and Safety Code, to read:

21 PART 1.1. REQUIREMENTS FOR ACTIONS FOR
 22 CONSTRUCTION DEFECTS

23
 24
 25 CHAPTER 1. DEFINITIONS

26 17100. For purposes of this part:

27 SEC. 1.5. Section 43.99 is added to the Civil Code, to read:

28 43.99. (a) There shall be no monetary liability on the part of,
 29 and no cause of action for damages shall arise against, any person
 30 or other legal entity that is under contract with an applicant for a
 31 residential building permit to provide independent quality review
 32 of the plans and specifications provided with the application in
 33 order to determine compliance with all applicable requirements
 34 imposed pursuant to the State Housing Law (Part 1.5
 35 (commencing with Section 17910) of Division 13 of the Health and
 36 Safety Code), or any rules or regulations adopted pursuant to that
 37 law, or under contract with that applicant to provide independent
 38 quality review of the work of improvement to determine
 39
 40

LEGISLATIVE INTENT SERVICE (800) 666-1917



1 compliance with these plans and specifications, if the person or
2 other legal entity meets the requirements of this section and one of
3 the following applies:

4 (1) The person, or a person employed by any other legal entity,
5 performing the work as described in this subdivision, has
6 completed not less than five years of verifiable experience in the
7 appropriate field and has obtained certification as a building
8 inspector, combination inspector, or combination dwelling
9 inspector from the International Conference of Building Officials
10 (ICBO) and has successfully passed the technical written
11 examination promulgated by ICBO for those certification
12 categories.

13 (2) The person, or a person employed by any other legal entity,
14 performing the work as described in this subdivision, has
15 completed not less than five years of verifiable experience in the
16 appropriate field and is a registered professional engineer,
17 licensed general contractor, or a licensed architect rendering
18 independent quality review of the work of improvement or plan
19 examination services within the scope of his or her registration or
20 licensure.

21 (3) The immunity provided under this section does not apply to
22 any action initiated by the applicant who retained the qualified
23 person.

24 (4) A "qualified person" for purposes of this section means a
25 person holding a valid certification as one of those inspectors.

26 (b) Except for qualified persons, this section shall not relieve
27 from, excuse, or lessen in any manner, the responsibility or liability
28 of any person, company, contractor, builder, developer, architect,
29 engineer, designer, or other individual or entity who develops,
30 improves, owns, operates, or manages any residential building for
31 any damages to persons or property caused by construction or
32 design defects. The fact that an inspection by a qualified person
33 has taken place may not be introduced as evidence in a
34 construction defect action, including any reports or other items
35 generated by the qualified person. This subdivision shall not apply
36 in any action initiated by the applicant who retained the qualified
37 person.

38 (c) Nothing in this section, as it relates to construction
39 inspectors or plans examiners, shall be construed to alter the
40 requirements for licensure, or the jurisdiction, authority, or scope



1 of practice, of architects pursuant to Chapter 3 (commencing with
2 Section 5500) of Division 3 of the Business and Professions Code,
3 professional engineers pursuant to Chapter 7 (commencing with
4 Section 6700) of Division 3 of the Business and Professions Code,
5 or general contractors pursuant to Chapter 9 (commencing with
6 Section 7000) of Division 3 of the Business and Professions Code.

7 (d) Nothing in this section shall be construed to alter the
8 immunity of employees of the Department of Housing and
9 Community Development under the Tort Claims Act (Division 3.6
10 (commencing with Section 810) of Title 1 of the Government Code)
11 when acting pursuant to Section 17965 of the Health and Safety
12 Code.

13 (e) The qualifying person shall engage in no other
14 construction, design, planning, supervision, or activities of any
15 kind on the work of improvement, nor provide quality review
16 services for any other party on the work of improvement.

17 (f) The qualifying person, or other legal entity, shall maintain
18 professional errors and omissions insurance coverage in an
19 amount not less than two million dollars (\$2,000,000).

20 (g) The immunity provided by subdivision (a) does not move to
21 the benefit of the qualified person for damages caused to the
22 applicant caused solely by the negligence or willful misconduct of
23 the qualified person resulting from the provision of services under
24 contract with the applicant.

25 (a) "Structure" means any residential dwelling, other
26 building, or improvement located upon a lot or within a common
27 area.

28 (b) "Designed moisture barrier" means an installed moisture
29 barrier specified in the plans and specifications, contract
30 documents, or manufacturer's recommendations.

31 (c) "Actual moisture barrier" means any component or
32 material, actually installed, that serves to any degree as a barrier
33 against moisture, whether or not intended as such.

34 (d) "Unintended water" means water that passes beyond,
35 around, or through a component or the material that is designed to
36 prevent that passage.

37 (e) "Close of escrow" means the date of the close of escrow
38 between the builder and the original homeowner. With respect to
39 claims by an association, as defined in subdivision (a) of Section
40 1351 of the Civil Code, "close of escrow" means the date of



1 substantial completion, as defined in Section 337.15 of the Code
2 of Civil Procedure, or the date the builder relinquishes control over
3 the association's ability to decide whether to initiate a claim under
4 ~~this part title~~, whichever is later.

5 (f) "Claimant" or "homeowner" includes the individual
6 owners of single-family homes, individual unit owners of attached
7 dwellings and, in the case of a common interest development, any
8 association as defined in subdivision (a) of Section 1351 of the
9 Civil Code.

10
11 CHAPTER 2. ACTIONABLE DEFECTS
12

13 ~~47110.~~

14 896. In any action seeking recovery of damages arising out of,
15 or related to deficiencies in, the residential construction, design,
16 specifications, surveying, planning, supervision, testing, or
17 observation of construction, a builder, and to the extent set forth
18 in Chapter 4 (commencing with Section ~~47130~~ 910), a
19 subcontractor, material supplier, individual product manufacturer,
20 or design professional, shall, *except as specifically set forth in this*
21 *title*, be liable for, and the claimant's claims or causes of action
22 shall be limited to violation of, the following standards, except as
23 specifically set forth in ~~this part title~~. *This title applies to original*
24 *construction intended to be sold as an individual dwelling unit.*
25 *This title does not apply to condominium conversions.*

26 (a) With respect to water ~~intrusion~~ issues:

27 (1) A door ~~may~~ shall not allow unintended water to pass
28 beyond, around, or through the door or its designed or actual
29 moisture barriers, if any.

30 (2) Windows, patio doors, deck doors, and their systems ~~may~~
31 shall not allow water to pass beyond, around, or through the
32 window, patio door, or deck door or its designed or actual moisture
33 barriers, including, without limitation, internal barriers within the
34 systems themselves. For purposes of this paragraph, "systems"
35 include, without limitation, windows, window assemblies,
36 framing, substrate, flashings, and trim, if any.

37 (3) Windows, patio doors, deck doors, and their systems ~~may~~
38 shall not allow excessive condensation to enter the structure and
39 cause damage to another component. For purposes of this



- 1 paragraph, "systems" include, without limitation, windows,
2 window assemblies, framing, substrate, flashings, and trim, if any.
- 3 (4) Roofs, roofing systems, chimney caps, and ventilation
4 components ~~may~~ *shall* not allow water to enter the structure or to
5 pass beyond, around, or through the designed or actual moisture
6 barriers, including, without limitation, internal barriers located
7 within the systems themselves. For purposes of this paragraph,
8 "systems" include, without limitation, framing, substrate, and
9 sheathing, if any.
- 10 (5) Decks, deck systems, balconies, balcony systems, exterior
11 stairs, and stair systems ~~may~~ *shall* not allow water to pass into the
12 adjacent structure. For purposes of this paragraph, "systems"
13 include, without limitation, framing, substrate, flashing, and
14 sheathing, if any.
- 15 (6) Decks, deck systems, balconies, balcony systems, exterior
16 stairs, and stair systems ~~may~~ *shall* not allow unintended water to
17 pass within the systems themselves and cause damage to the
18 systems. For purposes of this paragraph, "systems" include,
19 without limitation, framing, substrate, flashing, and sheathing, if
20 any.
- 21 (7) Foundation systems and slabs ~~may~~ *shall* not allow water or
22 vapor to enter into the structure so as to cause damage to another
23 building component or limit the installation of the type of flooring
24 materials typically used for the particular application.
- 25 (8) Foundation systems and slabs ~~may~~ *shall* not allow water or
26 vapor to enter into the structure so as to limit the installation of the
27 type of flooring materials typically used for the particular
28 application.
- 29 (9) Hardscape, including paths and patios, irrigation systems,
30 landscaping systems, and drainage systems, that are installed as
31 part of the original construction, ~~may~~ *shall* not be installed in such
32 a way as to cause water or soil erosion to enter into or come in
33 contact with the structure so as to cause damage to another building
34 component.
- 35 (10) Stucco, exterior siding, exterior walls, including, without
36 limitation, exterior framing, and other exterior wall finishes and
37 fixtures and the systems of those components and fixtures,
38 including, but not limited to, pot shelves, horizontal surfaces,
39 columns, and plant-ons, shall be installed in such a way so as not
40 to allow unintended water to pass into the structure or to pass



1 beyond, around, or through the designed or actual moisture
2 barriers of the system, including any internal barriers located
3 within the system itself. For purposes of this paragraph,
4 "systems" include, without limitation, framing, substrate,
5 flashings, trim, wall assemblies, and internal wall cavities, if any.

6 (11) Stucco, exterior siding, and exterior walls ~~may~~ shall not
7 allow excessive condensation to enter the structure and cause
8 damage to another component. For purposes of this paragraph,
9 'systems' include, without limitation, framing, substrate,
10 flashings, trim, wall assemblies, and internal wall cavities, if any.

11 (12) Retaining and site walls and their associated drainage
12 systems ~~may~~ shall not allow unintended water to pass beyond,
13 around, or through its designed or actual moisture barriers
14 including, without limitation, any internal barriers, so as to cause
15 damage. This standard does not apply to those portions of any wall
16 or drainage system that are designed to have water flow beyond,
17 around, or through them.

18 (13) Retaining walls and site walls, and their associated
19 drainage systems, ~~may~~ shall only allow water to flow beyond,
20 around, or through the areas designated by design.

21 (14) The lines and components of the plumbing system, sewer
22 system, and utility systems ~~may~~ shall not leak.

23 (15) Plumbing lines, sewer lines, and utility lines ~~may~~ shall not
24 corrode so as to impede the useful life of the systems.

25 (16) Sewer systems shall be installed in such a way as to allow
26 the designated amount of sewage to flow through the system.
27 Shower and bath enclosures ~~may~~ shall not leak water into the
28 interior of walls, flooring systems, or the interior of other
29 components.

30 (17) Ceramic tile and tile countertops ~~may~~ shall not allow
31 water ~~intrusion~~ into the interior of walls, flooring systems, or other
32 components so as to cause damage.

33 (b) With respect to structural stability issues:

34 (1) Foundations, load bearing components, and slabs, ~~may~~
35 shall not contain significant cracks or significant vertical
36 displacement or cause the structure to be structurally unsafe.

37 (2) Foundations, load bearing components, and slabs, and
38 underlying soils shall be constructed so as to materially comply
39 with the design criteria set by applicable government building



1 codes, regulations, and ordinances for chemical deterioration or
2 corrosion resistance in effect at the time of original construction.

3 (3) A structure shall be constructed so as to materially comply
4 with the design criteria for earthquake and wind load resistance,
5 as set forth in the applicable government building codes,
6 regulations, and ordinances in effect at the time of original
7 construction.

8 (c) With respect to soil:

9 (1) Soils and engineered retaining walls ~~may~~ *shall* not cause,
10 in whole or in part, damage to the structure built upon the soil or
11 engineered retaining wall or cause, in whole or in part, the
12 structure to be structurally unsafe.

13 (2) Soils and engineered retaining walls ~~may~~ *shall* not cause,
14 in whole or in part, the structure to be structurally unsafe.

15 (3) Soils ~~may~~ *shall* not cause, in whole or in part, the land upon
16 which no structure is built to become unusable for the purpose
17 represented at the time of original sale by the builder or for the
18 purpose for which that land is commonly used.

19 (d) With respect to fire protection:

20 (1) A structure shall be constructed so as to materially comply
21 with the design criteria of the applicable government building
22 codes, regulations, and ordinances for fire protection of the
23 occupants in effect at the time of the original construction.

24 (2) Fireplaces, chimneys, chimney structures, and chimney
25 termination caps shall be constructed and installed in such a way
26 so as not to cause an unreasonable risk of fire outside the fireplace
27 enclosure or chimney.

28 (3) Electrical and mechanical systems shall be constructed and
29 installed in such a way so as not to cause an unreasonable risk of
30 fire.

31 (e) With respect to plumbing *and sewers*:

32 Plumbing and sewer systems shall be installed to operate
33 properly and ~~may~~ *shall* not materially impair the use of the
34 structure by its inhabitants. However, no action may be brought for
35 a violation of this subdivision more than four years after close of
36 escrow.

37 (f) With respect to electrical systems:

38 Electrical systems shall operate properly and ~~may~~ *shall* not
39 materially impair the use of the structure by its inhabitants.



1 However, no action ~~may~~ *shall* be brought pursuant to this
2 subdivision more than four years from close of escrow.

3 (g) With respect to other areas of construction:

4 (1) Exterior pathways, driveways, hardscape, sidewalls,
5 sidewalks, and patios installed by the original builder ~~may~~ *shall*
6 not contain cracks that display significant vertical displacement or
7 that are excessive. However, no action ~~may~~ *shall* be brought upon
8 a violation of this paragraph more than four years from close of
9 escrow.

10 (2) Stucco, exterior siding, and other exterior wall finishes and
11 fixtures, including, but not limited to, pot shelves, horizontal
12 surfaces, columns, and plant-ons, ~~may~~ *shall* not contain
13 significant cracks or separations.

14 (3) (A) To the extent not otherwise covered by these standards,
15 manufactured products, including, but not limited to, windows,
16 doors, roofs, plumbing products and fixtures, fireplaces, electrical
17 fixtures, HVAC units, countertops, cabinets, paint, and appliances
18 shall be installed so as not to interfere with the products' useful
19 life, if any.

20 (B) For purposes of this paragraph, "useful life" means a
21 representation of how long a product is warranted or represented,
22 through its limited warranty or any written representations, to last
23 by its manufacturer, including recommended or required
24 maintenance. If there is no representation by a manufacturer, a
25 builder shall install manufactured products so as not to interfere
26 with the product's utility.

27 (C) For purposes of this paragraph, "manufactured product"
28 means a product that is completely manufactured offsite.

29 (D) If no useful life representation is made, or if the
30 representation is less than one year, the period shall be no less than
31 one year. If a manufactured product is damaged as a result of a
32 violation of these standards, damage to the product is a recoverable
33 element of damages. This subparagraph does not limit recovery if
34 there has been damage to another building component caused by
35 a manufactured product during the manufactured product's useful
36 life.

37 (E) This paragraph does not apply in any action seeking
38 recovery solely for a defect in a manufactured product located
39 within or adjacent to a structure.



1 (4) Heating, if any, shall be installed so as to be capable of
2 maintaining a room temperature of 70 degrees Fahrenheit at a
3 point three feet above the floor in any ~~living space~~. Living space
4 ~~air conditioning, if any, shall be provided in a manner consistent~~
5 ~~with the size and efficiency design criteria specified in Title 24 of~~
6 ~~the California Code of Regulations or its successor.~~

7 (5) Living space air conditioning, if any, shall be provided in
8 a manner consistent with the size and efficiency design criteria
9 specified in Title 24 of the California Code of Regulations or its
10 successor.

11 (6) Attached structures shall be constructed to “~~meet~~ *comply*
12 *with*” interunit noise transmission standards set by the applicable
13 government building codes, ordinances, or regulations in effect at
14 the time of the original construction. If there is no applicable code,
15 ordinance, or regulation, this paragraph does not apply. However,
16 no action ~~may~~ *shall* be brought pursuant to this paragraph more
17 than one year from the original occupancy of the adjacent unit.

18 (7) Irrigation systems and drainage shall operate properly so as
19 not to damage landscaping or other external improvements.
20 However, no action ~~may~~ *shall* be brought pursuant to this
21 paragraph more than one year from close of escrow.

22 (8) Untreated wood posts ~~may~~ *shall* not be installed in contact
23 with soil so as to cause unreasonable decay to the wood based upon
24 the finish grade at the time of original construction. However, no
25 action ~~may~~ *shall* be brought pursuant to this paragraph more than
26 two years from close of escrow.

27 (9) Untreated steel fences and adjacent components shall be
28 installed so as to prevent unreasonable corrosion. However, no
29 action ~~may~~ *shall* be brought pursuant to this paragraph more than
30 four years from close of escrow.

31 (10) Paint and stains shall be applied in such a manner so as not
32 to cause deterioration of the building surfaces for the length of time
33 specified by the paint or stain manufacturers’ representations, if
34 any. However, no action ~~may~~ *shall* be brought pursuant to this
35 paragraph more than five years from close of escrow.

36 (11) Roofing materials shall be installed so as to avoid
37 materials falling from the roof.

38 (12) The landscaping systems shall be installed in such a
39 manner so as to survive for not less than one year. However, no

1 action ~~may~~ shall be brought pursuant to this paragraph more than
2 two years from close of escrow.

3 (13) Ceramic tile and tile backing shall be installed in such a
4 manner that the tile does not detach.

5 (14) Dryer ducts shall be installed and terminated pursuant to
6 manufacturer installation requirements. However, no action ~~may~~
7 shall be brought pursuant to this paragraph more than two years
8 from close of escrow.

9 (15) Structures shall be constructed in such a manner so as not
10 to impair the occupants' safety because they contain public health
11 hazards as determined by a duly authorized public health official
12 ~~or health agency official, health agency, or, governmental entity~~
13 having jurisdiction. This paragraph does not limit recovery for any
14 damages caused by a violation of any other paragraph of this
15 section on the grounds that the damages do not constitute a health
16 hazard.

17 ~~17111.~~

18 897. The standards set forth in this chapter are intended to
19 address every function or component of a structure. To the extent
20 that a function or component of a structure is not addressed by
21 these standards, it shall be actionable if it causes damage.

22
23 CHAPTER 3. OBLIGATIONS
24

25 ~~17120.—A~~

26 900. *As to fit and finish items, a builder shall provide a*
27 *homebuyer with a minimum one-year express written limited*
28 *warranty covering the fit and finish of the following building*
29 *components. Except as otherwise provided by the standards*
30 *specified in Chapter 2 (commencing with Section ~~17110~~ 896),*
31 *this warranty shall cover the fit and finish of cabinets, mirrors,*
32 *flooring, interior and exterior walls, counter tops, paint finishes,*
33 *and trim, but shall not apply to damage to those components*
34 *caused by defects in other components governed by the other*
35 *provisions of this part title. Any fit and finish matters covered by*
36 *this warranty are not subject to the provisions of this part title. If*
37 *a builder fails to provide the express warranty required by this*
38 *section, the warranty for these items shall be for a period of one*
39 *year.*

40 ~~17121.~~



1 901. A builder may, but is not required to, offer greater
2 protection or protection for longer time periods in its express
3 contract with the homeowner than that set forth in ~~this chapter~~
4 *Chapter 2 (commencing with Section 896)*. A builder may not limit
5 the application of ~~this chapter~~ *Chapter 2 (commencing with*
6 *Section 896)* or lower its protection through the express contract
7 with the homeowner. This type of express contract constitutes an
8 “enhanced protection agreement.”

9 ~~17122.~~

10 902. If a builder offers an enhanced protection agreement, the
11 builder may choose to be subject to its own express contractual
12 provisions in place of the provisions set forth in ~~this chapter~~
13 *Chapter 2 (commencing with Section 896)*. If an enhanced
14 protection agreement is in place, ~~this chapter~~ *Chapter 2*
15 *(commencing with Section 896)* no longer applies other than to set
16 forth minimum provisions by which to judge the enforceability of
17 the particular provisions of the enhanced protection agreement.

18 ~~17123.~~

19 903. If a builder offers an enhanced protection agreement in
20 place of the provisions set forth in ~~this chapter~~ *Chapter 2*
21 *(commencing with Section 896)*, the election to do so shall be made
22 in writing with the homeowner no later than the close of escrow.
23 The builder shall provide the homeowner with a complete copy of
24 ~~this chapter~~ *Chapter 2 (commencing with Section 896)* and advise
25 the homeowner that the builder has elected not to be subject to its
26 provisions. If any provision of an enhanced protection agreement
27 is later found to be unenforceable as not meeting the minimum
28 standards of ~~this chapter~~ *Chapter 2 (commencing with Section*
29 *896)*, a builder may use this chapter in lieu of those provisions
30 found to be unenforceable.

31 ~~17124.~~

32 904. If a builder has elected to use an enhanced protection
33 agreement, and a homeowner disputes that the particular provision
34 or time periods of the enhanced protection agreement are not
35 greater than, or equal to, the provisions of ~~this chapter~~ *Chapter 2*
36 *(commencing with Section 896)* as they apply to the particular
37 deficiency alleged by the homeowner, the homeowner may seek
38 to enforce the application of the standards set forth in this chapter
39 as to those claimed deficiencies. If a homeowner seeks to enforce
40 a particular standard in lieu of a provision of the enhanced



1 protection agreement, the homeowner shall give the builder
2 written notice of that intent at the time the homeowner files a
3 notice of claim pursuant to Chapter 4 (commencing with Section
4 ~~17130~~ 910).

5 ~~17125.—If a homeowner seeks to enforce this chapter in lieu of~~
6 ~~905. If a homeowner seeks to enforce Chapter 2 (commencing~~
7 ~~with Section 896) in lieu of the enhanced protection agreement in~~
8 ~~a subsequent litigation or other legal action, the builder shall have~~
9 ~~the right to have the matter bifurcated, and to have an immediately~~
10 ~~binding determination of his or her responsive pleading within 60~~
11 ~~days after the filing, but in no event after the commencement of~~
12 ~~discovery, as to the application of either this chapter Chapter 2~~
13 ~~(commencing with Section 896) or the enhanced protection~~
14 ~~agreement as to the deficiencies claimed by the homeowner. If the~~
15 ~~builder fails to seek that determination in the time frame specified,~~
16 ~~the builder waives the right to do so and the standards set forth in~~
17 ~~this part title shall apply. As to any nonoriginal homeowner, that~~
18 ~~homeowner shall be deemed in privity for purposes of an enhanced~~
19 ~~protection agreement only to the extent that the builder has~~
20 ~~recorded the enhanced protection agreement on title or provided~~
21 ~~actual notice to the nonoriginal homeowner of the enhanced~~
22 ~~protection agreement. If the enhanced protection agreement is not~~
23 ~~recorded on title or no actual notice has been provided, the~~
24 ~~standards set forth in this part title apply to any nonoriginal~~
25 ~~homeowners' claims.~~

26 ~~17126.~~

27 906. A builder's election to use an enhanced protection
28 agreement addresses only the issues set forth in ~~this chapter~~
29 ~~Chapter 2 (commencing with Section 896) and does not constitute~~
30 ~~an election to use or not use the provisions of Chapter 4~~
31 ~~(commencing with Section ~~17130~~ 910). The decision to use or not~~
32 ~~use Chapter 4 (commencing with Section ~~17130~~ 910) is governed~~
33 ~~by the provisions of that chapter.~~

34 ~~17127.~~

35 907. A homeowner is obligated to follow all reasonable
36 maintenance obligations and schedules communicated in writing
37 to the homeowner by the builder and product manufacturers, as
38 well as commonly accepted maintenance practices. A failure by a
39 homeowner to follow these obligations, schedules, and practices

LEGISLATIVE INTENT SERVICE (800) 666-1917



1 may subject the homeowner to the affirmative defenses contained
2 in Section ~~17164~~. 944.

3
4 CHAPTER 4. PRELITIGATION PROCEDURE

5
6 ~~17130.~~

7 910. Prior to filing an action against any party alleged to have
8 contributed to a violation of the standards set forth in this ~~part~~ *title*,
9 the claimant shall initiate the following prelitigation procedures:

10 (a) The claimant or his or her legal representative shall provide
11 written notice via certified mail, overnight mail, or personal
12 delivery to the builder, in the manner prescribed in this section, of
13 the claimant's claim that the construction of his or her residence
14 violates any of the standards set forth in this part. That notice shall
15 provide the claimant's name, address, and preferred method of
16 contact, and shall state that the claimant alleges a violation
17 pursuant to this part against the builder, and shall describe the
18 claim in reasonable detail sufficient to determine the nature and
19 location, to the extent known, of the claimed violation. In the case
20 of a group of homeowners or an association, the notice may
21 identify the claimants solely by address or other description
22 sufficient to apprise the builder of the locations of the subject
23 residences. That document shall have the same force and effect as
24 a notice of commencement of a legal proceeding.

25 (b) The notice requirements of this section do not preclude a
26 homeowner from seeking redress through any applicable normal
27 customer service procedure as set forth in any contractual,
28 warranty, or other builder-generated document; and, if a
29 homeowner seeks to do so, that request shall ~~not be deemed to~~
30 satisfy the notice requirements of this section.

31 ~~17131. For purposes of this chapter,~~

32 911. For purposes of this *title*, "builder" means a builder,
33 developer, or original seller and applies to the sale of new
34 residential units on and after January 1, 2003.

35 ~~17132.~~

36 912. A builder shall do all of the following:

37 (a) Within ~~20~~ 30 days of a written request by a homeowner or
38 his or her *legal* representative, the builder shall provide copies of
39 all relevant plans, specifications, mass or rough grading plans,
40 final soils reports, Department of Real Estate public reports, and

LEGISLATIVE INTENT SERVICE (800) 666-1917



1 available engineering calculations, that pertain to a homeowner's
2 residence specifically or as part of a larger development tract. The
3 request shall be honored if it states that it is made relative to
4 structural, fire safety, or soils provisions of this ~~part title~~.
5 However, a builder is not obligated to provide a copying service,
6 and reasonable copying costs shall be borne by the requesting
7 party. A builder may require that the documents be copied onsite
8 by the requesting party, except that the homeowner may, at his or
9 her option, use his or her own copying service, which may include
10 an offsite copy facility that is bonded and insured. If a builder can
11 show that the builder maintained the documents, but that they later
12 became unavailable due to loss or destruction that was not the fault
13 of the builder, the builder may be excused from the requirements
14 of this subdivision, in which case the builder shall act with
15 reasonable diligence to assist the homeowner in obtaining those
16 documents from any applicable government authority or from the
17 source that generated the document. However, in that case, the
18 time limits specified by this section do not apply.

19 (b) At the expense of the homeowner, who may opt to use an
20 offsite copy facility that is bonded and insured, the builder shall
21 provide to the homeowner or his or her legal representative copies
22 of all maintenance and preventative maintenance
23 recommendations that pertain to his or her residence within ~~20~~ 30
24 days of service of a written request for those documents. Those
25 documents shall also be provided to the homeowner in conjunction
26 with the initial sale of the residence.

27 (c) At the expense of the homeowner, who may opt to use an
28 offsite copy facility that is bonded and insured, a builder shall
29 provide to the homeowner or his or her legal representative copies
30 of all manufactured products maintenance, preventive
31 maintenance, and limited warranty information within ~~20~~ 30 days
32 of a written request for those documents. These documents shall
33 also be provided to the homeowner in conjunction with the initial
34 sale of the residence.

35 (d) At the expense of the homeowner, who may opt to use an
36 offsite copy facility that is bonded and insured, a builder shall
37 provide to the homeowner or his or her legal representative copies
38 of all of the builder's limited contractual warranties in accordance
39 with this part in effect at the time of the original sale of the
40 residence within ~~20~~ 30 days of a written request for those



1 documents. Those documents shall also be provided to the
2 homeowner in conjunction with the initial sale of the residence.

3 (e) A builder shall maintain the name and address of an agent
4 for notice pursuant to this chapter with the Secretary of State or,
5 alternatively, elect to use a third party for that notice if the builder
6 has notified the homeowner in writing of the third party's name
7 and address, to whom claims and requests for information under
8 this section may be mailed. The name and address of the agent for
9 notice or third party shall be included with the original sales
10 documentation and shall be initialed and acknowledged by the
11 purchaser and the builder's sales representative.

12 This subdivision applies to instances in which a builder
13 contracts with a third party to accept claims and act on the builder's
14 behalf. A builder shall give actual notice to the homeowner that the
15 builder has made such an election, and shall include the name and
16 address of the third party.

17 (f) A builder shall record on title a notice of the existence of
18 these procedures and a notice that these procedures impact the
19 legal rights of the homeowner. This information shall also be
20 included with the original sales documentation and shall be
21 initialed and acknowledged by the purchaser and the builder's
22 sales representative.

23 (g) A builder shall provide with the original sales
24 documentation, a written copy of this part which shall be initialed
25 and acknowledged by the purchaser and the builder's sales
26 representative.

27 (h) As to any documents provided in conjunction with the
28 original sale, the builder shall instruct the original purchaser to
29 provide those documents to any subsequent purchaser.

30 (i) Any builder who fails to comply with any of these
31 requirements within the time specified is not entitled to the
32 protection of this chapter, and the homeowner is released from the
33 requirements of this chapter and may proceed with the filing of an
34 action, in which case the remaining chapters of this part shall
35 continue to apply to the action.

36 ~~47133.~~

37 913. A builder or his or her representative shall acknowledge,
38 in writing, receipt of the notice of the claim within ~~seven~~ 14 days
39 after receipt of the notice of the claim. If the notice of the claim is
40 served by the claimant's legal representative, or if the builder

(800) 666-1917

LEGISLATIVE INTENT SERVICE



1 receives a written representation letter from a homeowner's
 2 attorney, the builder shall include the attorney in all subsequent
 3 substantive communications, including, without limitation, all
 4 written communications occurring pursuant to this chapter, and all
 5 substantive and ~~statutorially~~ procedural communications,
 6 including all written communications, following the
 7 commencement of any subsequent complaint or other legal action,
 8 except that if the builder has retained or involved legal counsel to
 9 assist the builder in this process, all communications by the
 10 builder's counsel shall only be with the claimant's legal
 11 representative, if any.

12 ~~17134.~~

13 914. (a) This chapter establishes a nonadversarial procedure,
 14 including the remedies available under this chapter which, if the
 15 procedure does not resolve the dispute between the parties, may
 16 result in a subsequent action to enforce the other chapters of this
 17 ~~part title~~. A builder may attempt to commence a nonadversarial
 18 ~~procedure or remedies contractual provision~~ other than those set
 19 forth in this chapter, but may not, in addition to its own
 20 nonadversarial procedure, require adherence to the
 21 ~~nonadversarial procedure contractual provision~~ and remedies set
 22 forth in this chapter, regardless of whether the builder's own
 23 alternative nonadversarial ~~procedure or remedies are contractual~~
 24 ~~provision is~~ successful in resolving the dispute or ultimately
 25 deemed enforceable.

26 At the time the sales agreement is executed, the builder shall
 27 notify the homeowner whether the builder intends to engage in the
 28 non-adversarial procedure of this section or attempt to enforce
 29 alternative ~~contractual procedures or remedies nonadversarial~~
 30 ~~contractual provisions~~. If the builder elects to use alternative
 31 ~~contractual procedures or remedies nonadversarial contractual~~
 32 ~~provisions~~ in lieu of this section ~~chapter~~, the election is binding,
 33 regardless of whether the builder's alternative ~~contractual~~
 34 ~~procedures or remedies nonadversarial contractual provisions~~ are
 35 successful in resolving the ultimate dispute or are ultimately
 36 deemed enforceable. ~~If an alternative procedure or remedy~~
 37 ~~includes a right to repair and is deemed unenforceable, nothing in~~
 38 ~~this section shall affect the enforcement of contractual rights to~~
 39 ~~repair that are severable, otherwise enforceable, and no different~~
 40 ~~in any respect from the right to repair contained in this section.~~

1 (b) Nothing in this chapter is intended to affect existing
2 statutory or decisional law pertaining to the applicability, viability,
3 or enforceability of alternative dispute resolution methods,
4 alternative remedies, or contractual arbitration, judicial reference,
5 or similar procedures requiring a binding resolution to enforce the
6 other chapters of this ~~part~~ title or any other disputes between
7 homeowners and builders. *Nothing in this chapter is intended to*
8 *affect the applicability, viability, or enforceability, if any, of*
9 *contractual arbitration or judicial reference after a*
10 *nonadversarial procedure or provision has been completed.*

11 ~~17135.~~

12 915. If a builder fails to acknowledge receipt of the notice of
13 a claim within the time specified, elects not to go through the
14 process set forth in this chapter, or fails to request an inspection
15 within the time specified, or at the conclusion or cessation of an
16 alternative nonadversarial proceeding, this chapter does not apply
17 and the homeowner is released from the requirements of this
18 chapter and may proceed with the filing of an action. However, the
19 requirements set forth in Section 17130 shall continue to apply to
20 standards set forth in the other chapters of this title shall continue
21 to apply to the action.

22 ~~17136.~~

23 916. (a) If a builder elects to inspect the claimed unmet
24 standards, the builder shall complete the initial inspection and
25 testing within 14 days after acknowledgement of receipt of the
26 notice of the claim, at a mutually convenient date and time. If the
27 homeowner has retained legal representation, the inspection shall
28 be scheduled with the legal representative's office at a mutually
29 convenient date and time, unless the legal representative is
30 unavailable during the relevant time periods. All costs of builder
31 inspection and testing, including any damage caused by the builder
32 inspection, shall be borne by the builder. The builder shall also
33 provide written proof that the builder has liability insurance to
34 cover any damages or injuries occurring during inspection and
35 testing. The builder shall restore the property to its pretesting
36 condition within 48 hours of the testing. The builder shall, upon
37 request, allow the inspections to be observed and electronically
38 recorded, videotaped, or photographed by the claimant or his or
39 her legal representative.



1 (b) Nothing that occurs during a builder's or claimant's
2 inspection or testing may be used or introduced as evidence to
3 support a spoliation defense by any potential party in any
4 subsequent litigation.

5 (c) If a builder deems a second inspection or testing reasonably
6 necessary, and specifies the reasons therefor in writing within
7 three days following the initial inspection, the builder may conduct
8 a second inspection or testing. A second inspection or testing shall
9 be completed within ~~20 business~~ 40 days of the initial inspection
10 or testing. All requirements concerning the initial inspection or
11 testing shall also apply to the second inspection or testing.

12 (d) If the builder fails to inspect or test the property within the
13 time specified, the claimant is released from the requirements of
14 this section and may proceed with the filing of an action. However,
15 *the standards set forth in the other chapters of this part still title*
16 *shall continue to apply to the action.*

17 (e) If a builder intends to hold a subcontractor, design
18 professional, or material supplier, including an insurance carrier,
19 warranty company, or service company, responsible for its
20 contribution to the unmet standard, the builder shall provide notice
21 to that person or entity sufficiently in advance to allow them to
22 attend the inspection of any alleged unmet standard and to
23 participate in the repair process. The claimant and his or her legal
24 representative, if any, shall be advised in a reasonable time prior
25 to the inspection as to the identity of all persons or entities invited
26 to attend.

27 ~~17137. Within 20~~

28 917. *Within 30* days of the initial or, if requested, second
29 inspection or testing, the builder may offer in writing to repair the
30 violation. The offer to repair shall also compensate the homeowner
31 for all applicable damages recoverable under Section ~~17164, 944,~~
32 within the timeframe for the repair set forth in this chapter. Any
33 such offer shall be accompanied by a detailed, specific,
34 step-by-step statement identifying the particular violation that is
35 being repaired, explaining the nature, scope, and location of the
36 repair, and setting a reasonable completion date for the repair. The
37 offer shall also include the names, addresses, telephone numbers,
38 and license numbers of the contractors whom the builder intends
39 to have perform the repair. Those contractors shall be fully insured
40 for, and shall be responsible for, all damages or injuries that they



1 may cause to occur during the repair, and evidence of that
 2 insurance shall be provided to the homeowner upon request. Upon
 3 written request by the homeowner or his or her legal
 4 representative, and within the timeframes set forth in this chapter,
 5 the builder shall also provide any available technical
 6 documentation, including, without limitation, plans and
 7 specifications, pertaining to the claimed violation within the
 8 particular home or development tract. The offer shall also advise
 9 the homeowner in writing of his or her right to request up to three
 10 additional contractors from which to select to do the repair
 11 pursuant to this chapter.

12 ~~17138. Upon receipt of the offer to repair and the~~
 13 ~~accompanying cash offer, the homeowner shall have 20 days to~~

14 *918. Upon receipt of the offer to repair, the homeowner shall*
 15 *have 30 days to authorize the builder to proceed with the repair.*
 16 The homeowner may alternatively request, at the homeowner's
 17 sole option and discretion, that the builder provide the names,
 18 addresses, telephone numbers, and license numbers for up to three
 19 alternative contractors who are not owned or financially controlled
 20 by the builder and who regularly conduct business in the county
 21 where the structure is located. If the homeowner so elects, the
 22 builder is entitled to an additional noninvasive inspection, to occur
 23 at a mutually convenient date and time within ~~10~~ 20 days of the
 24 election, so as to permit the other proposed contractors to review
 25 the proposed site of the repair. ~~Within five days of these~~
 26 ~~inspections, the builder shall present a choice of contractors to the~~
 27 ~~homeowner who shall select the contractor within 10 days of the~~
 28 ~~presentation.~~

29 ~~17140. 35 days after the request of the homeowner for~~
 30 ~~alternative contractors, the builder shall present the homeowner~~
 31 ~~with a choice of contractors. Within 20 days after that~~
 32 ~~presentation, the homeowner shall authorize the builder or one of~~
 33 ~~the alternative contractors to perform the repair.~~

34 *919.* The offer to repair shall also be accompanied by an offer
 35 to mediate the dispute if the homeowner so chooses. The mediation
 36 shall be limited to a four-hour mediation, except as otherwise
 37 mutually agreed before a nonaffiliated mediator selected and paid
 38 for by the builder. At the homeowner's sole option, the homeowner
 39 may agree to split the cost of the mediator, and if he or she does
 40 so, the mediator shall be selected jointly. The mediator shall have



1 sufficient availability such that the mediation occurs within 15
2 days after the request to mediate is received and occurs at a
3 mutually convenient location within the county where the action
4 is pending. If a builder has made an offer to repair a violation, and
5 the mediation has failed to resolve the dispute, the homeowner
6 shall allow the repair to be performed either by the builder, its
7 contractor, or the selected contractor.

8 ~~+7141.~~

9 920. If the builder fails to make an offer to repair or otherwise
10 strictly comply with this chapter within the times specified, the
11 claimant is released from the requirements of this chapter and may
12 proceed with the filing of an action. If the contractor performing
13 the repair does not complete the repair in the time or manner
14 specified, the claimant may file an action. If this occurs, the
15 standards set forth in the other chapters of this part shall continue
16 to apply to ~~that~~ *the* action.

17 ~~+7142.~~

18 921. (a) In the event that a resolution under this chapter
19 involves a repair by the builder, the builder shall make an
20 appointment with the claimant, make all appropriate arrangements
21 to effectuate a repair of the claimed unmet standards, and
22 compensate the homeowner for all damages resulting therefrom
23 free of charge to the claimant. The repair shall be scheduled
24 through the claimant's legal representative, if any, unless he or she
25 is unavailable during the relevant time periods. The repair shall be
26 commenced on a mutually convenient date within 14 days of
27 acceptance or, if an alternative contractor is selected by the
28 homeowner, within 14 days of the selection, or, if a mediation
29 occurs, within seven days of the mediation, or within five days
30 after a permit is obtained if one is required. The builder shall act
31 with reasonable diligence in obtaining any such permit.

32 (b) The builder shall ensure that work done on the repairs is
33 done with the utmost diligence, and that the repairs are completed
34 as soon as reasonably possible, subject to the nature of the repair
35 or some unforeseen event not caused by the builder or the
36 contractor performing the repair. Every effort shall be made to
37 complete the repair within 120 days.

38 ~~+7143.~~

39 922. The builder shall, upon request, allow the repair to be
40 observed and electronically recorded, videotaped, or



1 photographed by the claimant or his or her legal representative.
2 Nothing that occurs during the repair process may be used or
3 introduced as evidence to support a spoliation defense by any
4 potential party in any subsequent litigation.

5 ~~17144.~~

6 923. The builder shall provide the homeowner or his or her
7 legal representative, upon request, with copies of all
8 correspondence, photographs, and other materials pertaining or
9 relating in any manner to the repairs.

10 ~~17145.~~

11 924. If the builder elects to repair some, but not all of, the
12 claimed unmet standards, the builder shall, at the same time it
13 makes its offer, set forth with particularity in writing the reasons,
14 and the support for those reasons, for not repairing all claimed
15 unmet standards.

16 ~~17146.~~

17 925. If the builder fails to complete the repair within the time
18 specified in the repair plan, the claimant is released from the
19 requirements of this chapter and may proceed with the filing of an
20 action. If this occurs, the *standards set forth in the other chapters*
21 *of this part title shall* continue to apply to the action.

22 ~~17147.~~

23 926. The builder may not obtain a release or waiver of any
24 kind in exchange for the repair work mandated by this chapter. At
25 the conclusion of the repair, the claimant may proceed with filing
26 an action for violation of the applicable standard or for a claim of
27 inadequate repair, or both, including all applicable damages
28 available under Section 17164.

29 ~~17148.~~

30 927. If the applicable statute of limitations has otherwise run
31 during this process, the time period for filing a complaint or other
32 legal remedies for violation of any provision of this *part title*, or
33 for a claim of inadequate repair, is extended from the time of the
34 original claim by the claimant to 100 days after the repair is
35 completed, whether or not the particular violation is the one being
36 repaired. If the builder fails to acknowledge the claim within the
37 time specified, elects not to go through this statutory process, or
38 fails to request an inspection within the time specified, the time
39 period for filing a complaint or other legal remedies for violation
40 of any provision of this *part title* is extended from the time of the

1 original claim by the claimant to 45 days after the time for
 2 responding to the notice of claim has expired. If the builder elects
 3 to attempt to enforce its own nonadversarial procedure in lieu of
 4 the procedure set forth in this chapter, the time period for filing a
 5 complaint or other legal remedies for violation of any provision of
 6 this part is extended from the time of the original claim by the
 7 claimant to 100 days after either the completion of the builder's
 8 alternative nonadversarial procedure, or 100 days after the
 9 builder's alternative nonadversarial procedure is deemed
 10 unenforceable, whichever is later.

11 ~~17149.~~

12 928. If the builder has invoked this chapter and completed a
 13 repair, prior to filing an action, if there has been no previous
 14 mediation between the parties, the homeowner or his or her legal
 15 representative shall request mediation in writing. The mediation
 16 shall be limited to four hours, except as otherwise mutually agreed
 17 before a nonaffiliated mediator selected and paid for by the
 18 builder. At the homeowner's sole option, the homeowner may
 19 agree to split the cost of the mediator and if he or she does so, the
 20 mediator shall be selected jointly. The mediator shall have
 21 sufficient availability such that the mediation will occur within 15
 22 days after the request for mediation is received and shall occur at
 23 a mutually convenient location within the county where the action
 24 is pending. In the event that a mediation is used at this point, any
 25 applicable statutes of limitations shall be tolled from the date of the
 26 request to mediate until the next court day after the mediation is
 27 completed, or the 100-day period, whichever is later.

28 ~~17150.~~

29 929. (a) Nothing in this chapter prohibits the builder from
 30 making only a cash offer and no repair. In this situation, the
 31 homeowner is free to accept the offer, or he or she may reject the
 32 offer and proceed with the filing of an action. If the latter occurs,
 33 ~~the provisions of the other chapters of this part~~ *standards of the*
 34 *other chapters of this title shall continue to apply to the action.*

35 (b) The builder may obtain a reasonable release in exchange for
 36 the cash payment. The builder may negotiate the terms and
 37 conditions of any reasonable release in terms of scope and
 38 consideration in conjunction with a cash payment under this
 39 chapter.

40 ~~17151.~~



1 930. (a) The time periods and all other requirements in this
2 chapter are to be strictly construed, and, unless extended by the
3 mutual agreement of the parties in accordance with this chapter,
4 shall govern the rights and obligations under this ~~part title~~. If a
5 builder fails to act in accordance with this section within the
6 timeframes mandated, unless extended by the mutual agreement
7 of the parties as evidenced by a postclaim written confirmation by
8 the affected homeowner demonstrating that he or she has
9 knowingly and voluntarily extended the statutory timeframe, the
10 claimant may ~~proceed with filing an action and may exercise other~~
11 ~~remedies outside of this part, with the exception that the other~~
12 ~~chapters of this part continue to apply to the dispute.~~ *proceed with*
13 *filing an action. If this occurs, the standards of the other chapters*
14 *of this title shall continue to apply to the action.*

15 (b) If the claimant does not conform with the requirements of
16 this chapter, the builder may bring a motion to stay any subsequent
17 court action or other proceeding until the requirements of this
18 chapter have been satisfied. The court, in its discretion, may award
19 the prevailing party on such a motion, his or her attorney's fees and
20 costs in bringing or opposing the motion.

21 ~~17152.~~

22 931. If a claim combines causes of action or damages not
23 covered by this part, including, without limitation, personal
24 injuries, class actions, other statutory remedies, or fraud-based
25 claims, the claimed unmet standards shall be administered
26 according to this part, although evidence of the property in its
27 unrepaired condition may be introduced to support the respective
28 elements of any such cause of action. As to any fraud-based claim,
29 if the fact that the property has been repaired under this chapter is
30 deemed admissible, the trier of fact shall be informed that the
31 repair was not voluntarily accepted by the homeowner. As to any
32 class action claims that address solely the incorporation of a
33 defective component into a residence, the named and unnamed
34 class members need not comply with this chapter.

35 ~~17153.~~

36 932. Subsequently discovered claims of unmet standards
37 shall be administered separately under this chapter, unless
38 otherwise agreed to by the parties. However, in the case of a
39 detached single family residence, in the same home, if the
40 subsequently discovered claim is for a violation of the same



1 standard as that which has already been initiated by the same
 2 claimant and the subject of ~~the action is between the builder and~~
 3 ~~the claimant~~ a currently pending action, the claimant need not
 4 reinitiate the process as to the same standard. In the case of an
 5 attached project, if the subsequently discovered claim is for a
 6 violation of the same standard for a connected component system
 7 in the same building as has already been initiated by the same
 8 claimant, and the subject of an action is between the builder and
 9 the claimant, the claimant need not reinitiate this process as to that
 10 standard.

11 ~~17154.~~

12 933. If any enforcement of these standards is commenced, the
 13 fact that a repair effort was made may be introduced to the trier of
 14 fact. However, the claimant may use the condition of the property
 15 prior to the repair as the basis for contending that the repair work
 16 was inappropriate, inadequate, or incomplete, or that the violation
 17 still exists. The claimant need not show that the repair work
 18 resulted in further damage nor that damage has continued to occur
 19 as a result of the violation.

20 ~~17155.~~

21 934. Evidence of both parties' conduct during this process
 22 may be introduced during a subsequent enforcement action, if any,
 23 with the exception of any ~~agreed-upon~~ mediation. Any repair
 24 efforts undertaken by the builder, ~~and any cash offers made,~~ may
 25 not be considered settlement communications or offers of
 26 settlement and are not inadmissible in evidence on such a basis.

27 ~~17156.~~

28 935. To the extent that provisions of this chapter are enforced
 29 and those provisions are substantially similar to provisions in
 30 Section 1375 of the Civil Code, but an action is subsequently
 31 commenced under Section 1375 of the Civil Code, the parties are
 32 excused from performing the substantially similar requirements
 33 under Section 1375 of the Civil Code.

34 ~~17157.~~

35 936. Each and every provision of the other chapters of this
 36 ~~part~~ title apply to subcontractors, material suppliers, individual
 37 product manufacturers, and design professionals to the extent that
 38 the subcontractors, material suppliers, and design professionals
 39 caused, in whole or in part, a violation of a particular standard as
 40 the result of a negligent act or omission or a breach of contract. In



1 addition to the affirmative defenses set forth in Section 17166, a
 2 subcontractor, material supplier, design professional, or other
 3 entity may also offer common law and contractual defenses as
 4 applicable to any claimed violation of a standard. All actions by
 5 a claimant or builder to enforce an express contract, or any
 6 provision thereof, against a subcontractor, material supplier,
 7 individual product manufacturer, or design professional is
 8 preserved. Nothing in this ~~part title~~ modifies the law pertaining to
 9 joint and several liability for subcontractors, material suppliers,
 10 and design professionals that contribute to any specific violation
 11 of this ~~part title~~. However, this section does not apply to any
 12 subcontractor, material supplier, or design professional ~~if to which~~
 13 strict liability would apply.

14 ~~17158.— Nothing in this part~~

15 ~~937. Nothing in this title shall be interpreted to eliminate or~~
 16 ~~abrogate the requirement to comply with Section 411.35 of the~~
 17 ~~Code of Civil Procedure or to affect the liability of design~~
 18 ~~professionals, including architects and architectural firms, for~~
 19 ~~claims and damages not covered by this part title.~~

20 ~~17159.— This part~~

21 ~~938. This title applies only to residences originally sold on or~~
 22 ~~after January 1, 2003.~~

23
 24 CHAPTER 5. PROCEDURE

25
 26 ~~17160.— Unless a shorter limitations period is set forth in this~~
 27 ~~part, no action may be brought to recover under this part more than~~
 28 ~~10 years after substantial completion, as defined in Section 337.15~~
 29 ~~of the Code of Civil Procedure. With the exception of subdivisions~~
 30 ~~(e) and (e) of Section 337.15 of the Code of Civil Procedure, no~~
 31 ~~other provisions of Sections 337.1 and 337.15 of the Code of Civil~~
 32 ~~Procedure apply to actions under this part. Repairs made pursuant~~
 33 ~~to Chapter 4 (commencing with Section 17130), with the~~
 34 ~~exception of the tolling provision contained in Section 17148, do~~
 35 ~~not extend the period for filing an action, or restart the time~~
 36 ~~limitations contained in subdivisions (a) and (b) of Section 7091~~
 37 ~~of the Business and Professions Code. If a builder arranges for a~~
 38 ~~contractor to perform a repair pursuant to Chapter 4 (commencing~~
 39 ~~with Section 17130), as to the builder the time period for~~
 40 ~~calculating the statute of limitation in subdivisions (a) and (b) of~~

1 Section 7019 of the Business and Professions Code shall pertain
2 to the substantial completion of the original construction and not
3 to the date of repairs under this part. The time limitations
4 established by this part do not apply to any action by a claimant for
5 a contract or express contractual provision. Causes of action and
6 damages to which this chapter does not apply are not limited by
7 this section.

8 ~~17161.~~

9 (a) Unless a shorter time period is specifically set forth in this
10 title no action may be brought to recover under this section more
11 than 10 years after substantial completion of the improvement but
12 not later than the date of recordation of a valid notice of
13 completion.

14 (b) As used in this section, "action" includes an action for
15 indemnity brought against a person arising out of that person's
16 performance or furnishing of services or materials referred to in
17 this section, except that a cross-complaint for indemnity may be
18 filed pursuant to subdivision (b) of Section 428.20 of the Code of
19 Civil Procedure in an action which has been brought within the
20 time period set forth in subdivision (a).

21 (c) The limitation prescribed by this section shall not be
22 asserted by way of defense by any person in actual possession or
23 the control, as owner, tenant or otherwise, of such an improvement,
24 at the time any deficiency in the improvement constitutes the
25 proximate cause for which it is proposed to make a claim or bring
26 an action.

27 (d) Sections 337.15 and 337.1 of the Code of Civil Procedure
28 shall not apply to actions under this section.

29 (e) Existing statutory and decisional law regarding tolling of
30 the statute of limitations shall apply to the time periods for filing
31 an action or making a claim under this act, except that repairs
32 made pursuant to Chapter 4 (commencing with Section 910, with
33 the exception of the tolling provision contained in Section 927 do
34 not extend the period for filing an action, or restart the time
35 limitations contained in subdivisions (a) or (b) of 7091 of the
36 Business and Professions Code. If a builder arranges for a
37 contractor to perform a repair pursuant to Chapter 4 (commencing
38 with Section 910), as to the builder the time period for calculating
39 the statute of limitation in subdivisions (a) or (b) of Section 7091
40 of the Business and Professions Code shall pertain to the



1 *substantial completion of the original construction and not to the*
 2 *date of repairs under this title. The time limitations established by*
 3 *this title do not apply to any action by a claimant for a contract or*
 4 *express contractual provision. Causes of action and damages to*
 5 *which this chapter does not apply are not limited by this section.*
 6 In order to make a claim for violation of the standards set forth in
 7 Chapter 2 (commencing with Section ~~17110~~ 896), a homeowner
 8 need only demonstrate, in accordance with the applicable
 9 evidentiary standard, that the home does not meet the applicable
 10 standard, subject to the affirmative defenses set forth in Section
 11 ~~17166~~ 945.5. No further showing of causation or damages is
 12 required to meet the burden of proof regarding a violation of a
 13 standard set forth in Chapter 2 (commencing with Section ~~17110~~
 14 896), provided that the violation arises out of, pertains to, or is
 15 related to, the original construction.

16 ~~17162.— No~~

17 942. *Except as provided in this section, no other cause of*
 18 *action for a claim covered by this part or for damages recoverable*
 19 *under Section 17164 title or for damages recoverable under*
 20 *Section 944 is allowed. However, in addition to the rights under*
 21 *this part, this part does not* *In addition to the rights under this title,*
 22 *this title does not apply to any action by a claimant to enforce a*
 23 *contract or express contractual provision, or any action for fraud,*
 24 *personal injury, or violation of a statute. However, damages*
 25 *Damages awarded for the items set forth in Section 17164 944 in*
 26 *such other cause of action shall be reduced by the amounts*
 27 *recovered pursuant to Section 17164 944 for violation of the*
 28 *standards set forth in this part title.*

29 ~~17163.—~~

30 As to any claims involving a detached single-family home, the
 31 homeowner's right to the reasonable value of repairing any
 32 nonconformity is limited to the repair costs, or the diminution in
 33 current value of the home caused by the nonconformity, whichever
 34 is less, subject to the personal use exception as developed under
 35 common law.

36 ~~17164.—~~

37 944. If a claim for damages is made under this part title, the
 38 homeowner is only entitled to damages for the reasonable value of
 39 repairing any violation of the standards set forth in this part title,
 40 the reasonable cost of repairing any damages caused by the repair

(800) 666-1917

LEGISLATIVE INTENT SERVICE



1 efforts, the reasonable cost of repairing and rectifying any
2 damages resulting from the failure of the home to meet the
3 standards, the reasonable cost of removing and replacing any
4 improper repair by the builder, reasonable relocation and storage
5 expenses, lost business income if the home was used as a principal
6 place of a business licensed to be operated from the home,
7 reasonable investigative costs for each established violation, and
8 all other costs or fees recoverable by contract or statute.

9 ~~17165.~~

10 945. The provisions, standards, rights, and obligations set
11 forth in this ~~part title~~ are binding upon all original purchasers and
12 their successors-in-interest. For purposes of this ~~part title~~,
13 associations and others having the rights set forth in Section 383
14 of the Code of Civil Procedure shall be considered to be original
15 purchasers and shall have standing to enforce the provisions,
16 standards, rights, and obligations set forth in this ~~part title~~.

17 ~~17166.~~

18 945.5. A builder, under the principles of comparative fault
19 pertaining to affirmative defenses, may be excused, in whole or in
20 part, from any obligation, damage, loss, or liability if the builder
21 can demonstrate any of the following affirmative defenses in
22 response to a claimed violation:

23 (a) To the extent it is caused by an unforeseen act of nature
24 which caused the structure not to meet the standard. For purposes
25 of this section an "unforeseen act of nature" means a weather
26 condition, earthquake, or manmade event such as war, terrorism,
27 or vandalism, in excess of the design criteria expressed by the
28 applicable building codes, regulations, and ordinances in effect at
29 the time of original construction.

30 (b) To the extent it is caused by a homeowner's unreasonable
31 failure to minimize or prevent those damages in a timely manner,
32 including the failure of the homeowner to allow reasonable and
33 timely access for inspections and repairs under this ~~part title~~. This
34 includes the failure to give timely notice to the builder after
35 discovery of a violation, but does not include damages due to the
36 untimely or inadequate response of a builder to the homeowner's
37 claim.

38 (c) To the extent it is caused by the homeowner or his or her
39 agent, employee, subcontractor, independent contractor, or
40 consultant by virtue of their failure to follow the builder's or



1 manufacturer's recommendations, or commonly accepted
2 homeowner maintenance obligations. In order to rely upon this
3 defense as it relates to a builder's recommended maintenance
4 schedule, the builder shall show that the homeowner had written
5 notice of these schedules and recommendations and that the
6 recommendations and schedules were reasonable at the time they
7 were issued.

8 (d) To the extent it is caused by the homeowner or his or her
9 agent's or an independent third party's alterations, ordinary wear
10 and tear, misuse, abuse, or neglect, or by the structure's use for
11 something other than its intended purpose.

12 (e) To the extent that the time period for filing actions bars the
13 claimed violation.

14 (f) As to a particular violation for which the builder has
15 obtained a valid release.

16 (g) To the extent that the builder's repair was successful in
17 correcting the particular violation of the applicable standard.

18 (h) As to any causes of action to which this statute does not
19 apply, all applicable affirmative defenses are preserved.

Senate Bill No. 800

CHAPTER 722

An act to add Section 43.99 to, and to add Title 7 (commencing with Section 895) to Part 2 of Division 2 of, the Civil Code, relating to construction defects.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 800, Burton. Liability: construction defects.

Existing law provides for stipulated judgments in construction defect actions, as defined.

The bill would specify the rights and requirements of a homeowner to bring an action for construction defects, including applicable standards for home construction, the statute of limitations, the burden of proof, the damages recoverable, a detailed prelitigation procedure, and the obligations of the homeowner.

This bill would also provide that there is no personal monetary liability on the part of, and no cause of action for damages shall arise against, any person, in any of the specified categories, who is under contract with an applicant for a residential building permit to provide independent quality review of the plans and specifications provided with the application in order to determine compliance with all applicable requirements imposed pursuant to the State Housing Law or any rules or regulations adopted pursuant to that law, or to inspect a work of improvement to determine compliance with these plans and specifications, except as specified. The bill would also set forth specified findings and declarations of the Legislature regarding construction defects.

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

SECTION 1. The Legislature finds and declares, as follows:

(a) The California system for the administration of civil justice is one of the fairest in the world, but certain procedures and standards should be amended to ensure fairness to all parties.

(b) The prompt and fair resolution of construction defect claims is in the interest of consumers, homeowners, and the builders of homes, and is vital to the state's continuing growth and vitality. However, under current procedures and standards, homeowners and builders alike are not



afforded the opportunity for quick and fair resolution of claims. Both need clear standards and mechanisms for the prompt resolution of claims.

(c) It is the intent of the Legislature that this act improve the procedures for the administration of civil justice, including standards and procedures for early disposition of construction defects.

SEC. 2. Section 43.99 is added to the Civil Code, to read:

43.99. (a) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person or other legal entity that is under contract with an applicant for a residential building permit to provide independent quality review of the plans and specifications provided with the application in order to determine compliance with all applicable requirements imposed pursuant to the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code), or any rules or regulations adopted pursuant to that law, or under contract with that applicant to provide independent quality review of the work of improvement to determine compliance with these plans and specifications, if the person or other legal entity meets the requirements of this section and one of the following applies:

(1) The person, or a person employed by any other legal entity, performing the work as described in this subdivision, has completed not less than five years of verifiable experience in the appropriate field and has obtained certification as a building inspector, combination inspector, or combination dwelling inspector from the International Conference of Building Officials (ICBO) and has successfully passed the technical written examination promulgated by ICBO for those certification categories.

(2) The person, or a person employed by any other legal entity, performing the work as described in this subdivision, has completed not less than five years of verifiable experience in the appropriate field and is a registered professional engineer, licensed general contractor, or a licensed architect rendering independent quality review of the work of improvement or plan examination services within the scope of his or her registration or licensure.

(3) The immunity provided under this section does not apply to any action initiated by the applicant who retained the qualified person.

(4) A "qualified person" for purposes of this section means a person holding a valid certification as one of those inspectors.

(b) Except for qualified persons, this section shall not relieve from, excuse, or lessen in any manner, the responsibility or liability of any person, company, contractor, builder, developer, architect, engineer, designer, or other individual or entity who develops, improves, owns,



operates, or manages any residential building for any damages to persons or property caused by construction or design defects. The fact that an inspection by a qualified person has taken place may not be introduced as evidence in a construction defect action, including any reports or other items generated by the qualified person. This subdivision shall not apply in any action initiated by the applicant who retained the qualified person.

(c) Nothing in this section, as it relates to construction inspectors or plans examiners, shall be construed to alter the requirements for licensure, or the jurisdiction, authority, or scope of practice, of architects pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, professional engineers pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or general contractors pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

(d) Nothing in this section shall be construed to alter the immunity of employees of the Department of Housing and Community Development under the Tort Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code) when acting pursuant to Section 17965 of the Health and Safety Code.

(e) The qualifying person shall engage in no other construction, design, planning, supervision, or activities of any kind on the work of improvement, nor provide quality review services for any other party on the work of improvement.

(f) The qualifying person, or other legal entity, shall maintain professional errors and omissions insurance coverage in an amount not less than two million dollars (\$2,000,000).

(g) The immunity provided by subdivision (a) does not inure to the benefit of the qualified person for damages caused to the applicant solely by the negligence or willful misconduct of the qualified person resulting from the provision of services under the contract with the applicant.

SEC. 3. Title 7 (commencing with Section 895) is added to Part 2 of Division 2 of the Civil Code, to read:

TITLE 7. REQUIREMENTS FOR ACTIONS FOR CONSTRUCTION DEFECTS

CHAPTER 1. DEFINITIONS

895. (a) "Structure" means any residential dwelling, other building, or improvement located upon a lot or within a common area.



(b) "Designed moisture barrier" means an installed moisture barrier specified in the plans and specifications, contract documents, or manufacturer's recommendations.

(c) "Actual moisture barrier" means any component or material, actually installed, that serves to any degree as a barrier against moisture, whether or not intended as such.

(d) "Unintended water" means water that passes beyond, around, or through a component or the material that is designed to prevent that passage.

(e) "Close of escrow" means the date of the close of escrow between the builder and the original homeowner. With respect to claims by an association, as defined in subdivision (a) of Section 1351, "close of escrow" means the date of substantial completion, as defined in Section 337.15 of the Code of Civil Procedure, or the date the builder relinquishes control over the association's ability to decide whether to initiate a claim under this title, whichever is later.

(f) "Claimant" or "homeowner" includes the individual owners of single-family homes, individual unit owners of attached dwellings and, in the case of a common interest development, any association as defined in subdivision (a) of Section 1351.

CHAPTER 2. ACTIONABLE DEFECTS

896. In any action seeking recovery of damages arising out of, or related to deficiencies in, the residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction, a builder, and to the extent set forth in Chapter 4 (commencing with Section 910), a subcontractor, material supplier, individual product manufacturer, or design professional, shall, except as specifically set forth in this title, be liable for, and the claimant's claims or causes of action shall be limited to violation of, the following standards, except as specifically set forth in this title. This title applies to original construction intended to be sold as an individual dwelling unit. As to condominium conversions, this title does not apply to or does not supersede any other statutory or common law.

(a) With respect to water issues:

(1) A door shall not allow unintended water to pass beyond, around, or through the door or its designed or actual moisture barriers, if any.

(2) Windows, patio doors, deck doors, and their systems shall not allow water to pass beyond, around, or through the window, patio door, or deck door or its designed or actual moisture barriers, including, without limitation, internal barriers within the systems themselves. For purposes of this paragraph, "systems" include, without limitation,



windows, window assemblies, framing, substrate, flashings, and trim, if any.

(3) Windows, patio doors, deck doors, and their systems shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, "systems" include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.

(4) Roofs, roofing systems, chimney caps, and ventilation components shall not allow water to enter the structure or to pass beyond, around, or through the designed or actual moisture barriers, including, without limitation, internal barriers located within the systems themselves. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, and sheathing, if any.

(5) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow water to pass into the adjacent structure. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashing, and sheathing, if any.

(6) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow unintended water to pass within the systems themselves and cause damage to the systems. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashing, and sheathing, if any.

(7) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to cause damage to another building component.

(8) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to limit the installation of the type of flooring materials typically used for the particular application.

(9) Hardscape, including paths and patios, irrigation systems, landscaping systems, and drainage systems, that are installed as part of the original construction, shall not be installed in such a way as to cause water or soil erosion to enter into or come in contact with the structure so as to cause damage to another building component.

(10) Stucco, exterior siding, exterior walls, including, without limitation, exterior framing, and other exterior wall finishes and fixtures and the systems of those components and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall be installed in such a way so as not to allow unintended water to pass into the structure or to pass beyond, around, or through the designed or actual moisture barriers of the system, including any internal barriers located within the system itself. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.



(11) Stucco, exterior siding, and exterior walls shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.

(12) Retaining and site walls and their associated drainage systems shall not allow unintended water to pass beyond, around, or through its designed or actual moisture barriers including, without limitation, any internal barriers, so as to cause damage. This standard does not apply to those portions of any wall or drainage system that are designed to have water flow beyond, around, or through them.

(13) Retaining walls and site walls, and their associated drainage systems, shall only allow water to flow beyond, around, or through the areas designated by design.

(14) The lines and components of the plumbing system, sewer system, and utility systems shall not leak.

(15) Plumbing lines, sewer lines, and utility lines shall not corrode so as to impede the useful life of the systems.

(16) Sewer systems shall be installed in such a way as to allow the designated amount of sewage to flow through the system.

(17) Shower and bath enclosures shall not leak water into the interior of walls, flooring systems, or the interior of other components.

(18) Ceramic tile and tile countertops shall not allow water into the interior of walls, flooring systems, or other components so as to cause damage.

(b) With respect to structural issues:

(1) Foundations, load bearing components, and slabs, shall not contain significant cracks or significant vertical displacement.

(2) Foundations, load bearing components, and slabs shall not cause the structure, in whole or in part, to be structurally unsafe.

(3) Foundations, load bearing components, and slabs, and underlying soils shall be constructed so as to materially comply with the design criteria set by applicable government building codes, regulations, and ordinances for chemical deterioration or corrosion resistance in effect at the time of original construction.

(4) A structure shall be constructed so as to materially comply with the design criteria for earthquake and wind load resistance, as set forth in the applicable government building codes, regulations, and ordinances in effect at the time of original construction.

(c) With respect to soil issues:

(1) Soils and engineered retaining walls shall not cause, in whole or in part, damage to the structure built upon the soil or engineered retaining wall.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



(2) Soils and engineered retaining walls shall not cause, in whole or in part, the structure to be structurally unsafe.

(3) Soils shall not cause, in whole or in part, the land upon which no structure is built to become unusable for the purpose represented at the time of original sale by the builder or for the purpose for which that land is commonly used.

(d) With respect to fire protection issues:

(1) A structure shall be constructed so as to materially comply with the design criteria of the applicable government building codes, regulations, and ordinances for fire protection of the occupants in effect at the time of the original construction.

(2) Fireplaces, chimneys, chimney structures, and chimney termination caps shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire outside the fireplace enclosure or chimney.

(3) Electrical and mechanical systems shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire.

(e) With respect to plumbing and sewer issues:

Plumbing and sewer systems shall be installed to operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action may be brought for a violation of this subdivision more than four years after close of escrow.

(f) With respect to electrical system issues:

Electrical systems shall operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action shall be brought pursuant to this subdivision more than four years from close of escrow.

(g) With respect to issues regarding other areas of construction:

(1) Exterior pathways, driveways, hardscape, sidewalls, sidewalks, and patios installed by the original builder shall not contain cracks that display significant vertical displacement or that are excessive. However, no action shall be brought upon a violation of this paragraph more than four years from close of escrow.

(2) Stucco, exterior siding, and other exterior wall finishes and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall not contain significant cracks or separations.

(3) (A) To the extent not otherwise covered by these standards, manufactured products, including, but not limited to, windows, doors, roofs, plumbing products and fixtures, fireplaces, electrical fixtures, HVAC units, countertops, cabinets, paint, and appliances shall be installed so as not to interfere with the products' useful life, if any.



(B) For purposes of this paragraph, "useful life" means a representation of how long a product is warranted or represented, through its limited warranty or any written representations, to last by its manufacturer, including recommended or required maintenance. If there is no representation by a manufacturer, a builder shall install manufactured products so as not to interfere with the product's utility.

(C) For purposes of this paragraph, "manufactured product" means a product that is completely manufactured offsite.

(D) If no useful life representation is made, or if the representation is less than one year, the period shall be no less than one year. If a manufactured product is damaged as a result of a violation of these standards, damage to the product is a recoverable element of damages. This subparagraph does not limit recovery if there has been damage to another building component caused by a manufactured product during the manufactured product's useful life.

(E) This title does not apply in any action seeking recovery solely for a defect in a manufactured product located within or adjacent to a structure.

(4) Heating, if any, shall be installed so as to be capable of maintaining a room temperature of 70 degrees Fahrenheit at a point three feet above the floor in any living space.

(5) Living space air-conditioning, if any, shall be provided in a manner consistent with the size and efficiency design criteria specified in Title 24 of the California Code of Regulations or its successor.

(6) Attached structures shall be constructed to comply with interunit noise transmission standards set by the applicable government building codes, ordinances, or regulations in effect at the time of the original construction. If there is no applicable code, ordinance, or regulation, this paragraph does not apply. However, no action shall be brought pursuant to this paragraph more than one year from the original occupancy of the adjacent unit.

(7) Irrigation systems and drainage shall operate properly so as not to damage landscaping or other external improvements. However, no action shall be brought pursuant to this paragraph more than one year from close of escrow.

(8) Untreated wood posts shall not be installed in contact with soil so as to cause unreasonable decay to the wood based upon the finish grade at the time of original construction. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.

(9) Untreated steel fences and adjacent components shall be installed so as to prevent unreasonable corrosion. However, no action shall be brought pursuant to this paragraph more than four years from close of escrow.



(10) Paint and stains shall be applied in such a manner so as not to cause deterioration of the building surfaces for the length of time specified by the paint or stain manufacturers' representations, if any. However, no action shall be brought pursuant to this paragraph more than five years from close of escrow.

(11) Roofing materials shall be installed so as to avoid materials falling from the roof.

(12) The landscaping systems shall be installed in such a manner so as to survive for not less than one year. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.

(13) Ceramic tile and tile backing shall be installed in such a manner that the tile does not detach.

(14) Dryer ducts shall be installed and terminated pursuant to manufacturer installation requirements. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.

(15) Structures shall be constructed in such a manner so as not to impair the occupants' safety because they contain public health hazards as determined by a duly authorized public health official, health agency, or governmental entity having jurisdiction. This paragraph does not limit recovery for any damages caused by a violation of any other paragraph of this section on the grounds that the damages do not constitute a health hazard.

897. The standards set forth in this chapter are intended to address every function or component of a structure. To the extent that a function or component of a structure is not addressed by these standards, it shall be actionable if it causes damage.

CHAPTER 3. OBLIGATIONS

900. As to fit and finish items, a builder shall provide a homebuyer with a minimum one-year express written limited warranty covering the fit and finish of the following building components. Except as otherwise provided by the standards specified in Chapter 2 (commencing with Section 896), this warranty shall cover the fit and finish of cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes, and trim, but shall not apply to damage to those components caused by defects in other components governed by the other provisions of this title. Any fit and finish matters covered by this warranty are not subject to the provisions of this title. If a builder fails to provide the express warranty required by this section, the warranty for these items shall be for a period of one year.



901. A builder may, but is not required to, offer greater protection or protection for longer time periods in its express contract with the homeowner than that set forth in Chapter 2 (commencing with Section 896). A builder may not limit the application of Chapter 2 (commencing with Section 896) or lower its protection through the express contract with the homeowner. This type of express contract constitutes an "enhanced protection agreement."

902. If a builder offers an enhanced protection agreement, the builder may choose to be subject to its own express contractual provisions in place of the provisions set forth in Chapter 2 (commencing with Section 896). If an enhanced protection agreement is in place, Chapter 2 (commencing with Section 896) no longer applies other than to set forth minimum provisions by which to judge the enforceability of the particular provisions of the enhanced protection agreement.

903. If a builder offers an enhanced protection agreement in place of the provisions set forth in Chapter 2 (commencing with Section 896), the election to do so shall be made in writing with the homeowner no later than the close of escrow. The builder shall provide the homeowner with a complete copy of Chapter 2 (commencing with Section 896) and advise the homeowner that the builder has elected not to be subject to its provisions. If any provision of an enhanced protection agreement is later found to be unenforceable as not meeting the minimum standards of Chapter 2 (commencing with Section 896), a builder may use this chapter in lieu of those provisions found to be unenforceable.

904. If a builder has elected to use an enhanced protection agreement, and a homeowner disputes that the particular provision or time periods of the enhanced protection agreement are not greater than, or equal to, the provisions of Chapter 2 (commencing with Section 896) as they apply to the particular deficiency alleged by the homeowner, the homeowner may seek to enforce the application of the standards set forth in this chapter as to those claimed deficiencies. If a homeowner seeks to enforce a particular standard in lieu of a provision of the enhanced protection agreement, the homeowner shall give the builder written notice of that intent at the time the homeowner files a notice of claim pursuant to Chapter 4 (commencing with Section 910).

905. If a homeowner seeks to enforce Chapter 2 (commencing with Section 896), in lieu of the enhanced protection agreement in a subsequent litigation or other legal action, the builder shall have the right to have the matter bifurcated, and to have an immediately binding determination of his or her responsive pleading within 60 days after the filing of that pleading, but in no event after the commencement of discovery, as to the application of either Chapter 2 (commencing with Section 896) or the enhanced protection agreement as to the deficiencies



claimed by the homeowner. If the builder fails to seek that determination in the timeframe specified, the builder waives the right to do so and the standards set forth in this title shall apply. As to any nonoriginal homeowner, that homeowner shall be deemed in privity for purposes of an enhanced protection agreement only to the extent that the builder has recorded the enhanced protection agreement on title or provided actual notice to the nonoriginal homeowner of the enhanced protection agreement. If the enhanced protection agreement is not recorded on title or no actual notice has been provided, the standards set forth in this title apply to any nonoriginal homeowners' claims.

906. A builder's election to use an enhanced protection agreement addresses only the issues set forth in Chapter 2 (commencing with Section 896) and does not constitute an election to use or not use the provisions of Chapter 4 (commencing with Section 910). The decision to use or not use Chapter 4 (commencing with Section 910) is governed by the provisions of that chapter.

907. A homeowner is obligated to follow all reasonable maintenance obligations and schedules communicated in writing to the homeowner by the builder and product manufacturers, as well as commonly accepted maintenance practices. A failure by a homeowner to follow these obligations, schedules, and practices may subject the homeowner to the affirmative defenses contained in Section 944.

CHAPTER 4. PRELITIGATION PROCEDURE

910. Prior to filing an action against any party alleged to have contributed to a violation of the standards set forth in Chapter 2 (commencing with Section 896), the claimant shall initiate the following prelitigation procedures:

(a) The claimant or his or her legal representative shall provide written notice via certified mail, overnight mail, or personal delivery to the builder, in the manner prescribed in this section, of the claimant's claim that the construction of his or her residence violates any of the standards set forth in Chapter 2 (commencing with Section 896). That notice shall provide the claimant's name, address, and preferred method of contact, and shall state that the claimant alleges a violation pursuant to this part against the builder, and shall describe the claim in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation. In the case of a group of homeowners or an association, the notice may identify the claimants solely by address or other description sufficient to apprise the builder of the locations of the subject residences. That document shall have the same force and effect as a notice of commencement of a legal proceeding.



(b) The notice requirements of this section do not preclude a homeowner from seeking redress through any applicable normal customer service procedure as set forth in any contractual, warranty, or other builder-generated document; and, if a homeowner seeks to do so, that request shall not satisfy the notice requirements of this section.

911. For purposes of this title, "builder" means a builder, developer, or original seller and applies to the sale of new residential units on and after January 1, 2003.

912. A builder shall do all of the following:

(a) Within 30 days of a written request by a homeowner or his or her legal representative, the builder shall provide copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations, that pertain to a homeowner's residence specifically or as part of a larger development tract. The request shall be honored if it states that it is made relative to structural, fire safety, or soils provisions of this title. However, a builder is not obligated to provide a copying service, and reasonable copying costs shall be borne by the requesting party. A builder may require that the documents be copied onsite by the requesting party, except that the homeowner may, at his or her option, use his or her own copying service, which may include an offsite copy facility that is bonded and insured. If a builder can show that the builder maintained the documents, but that they later became unavailable due to loss or destruction that was not the fault of the builder, the builder may be excused from the requirements of this subdivision, in which case the builder shall act with reasonable diligence to assist the homeowner in obtaining those documents from any applicable government authority or from the source that generated the document. However, in that case, the time limits specified by this section do not apply.

(b) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, the builder shall provide to the homeowner or his or her legal representative copies of all maintenance and preventative maintenance recommendations that pertain to his or her residence within 30 days of service of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(c) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all manufactured products maintenance, preventive maintenance, and limited warranty information within 30 days of a written request for those documents. These documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(d) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all of the builder's limited contractual warranties in accordance with this part in effect at the time of the original sale of the residence within 30 days of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(e) A builder shall maintain the name and address of an agent for notice pursuant to this chapter with the Secretary of State or, alternatively, elect to use a third party for that notice if the builder has notified the homeowner in writing of the third party's name and address, to whom claims and requests for information under this section may be mailed. The name and address of the agent for notice or third party shall be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative.

This subdivision applies to instances in which a builder contracts with a third party to accept claims and act on the builder's behalf. A builder shall give actual notice to the homeowner that the builder has made such an election, and shall include the name and address of the third party.

(f) A builder shall record on title a notice of the existence of these procedures and a notice that these procedures impact the legal rights of the homeowner. This information shall also be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative.

(g) A builder shall provide with the original sales documentation, a written copy of this part which shall be initialed and acknowledged by the purchaser and the builder's sales representative.

(h) As to any documents provided in conjunction with the original sale, the builder shall instruct the original purchaser to provide those documents to any subsequent purchaser.

(i) Any builder who fails to comply with any of these requirements within the time specified is not entitled to the protection of this chapter, and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action, in which case the remaining chapters of this part shall continue to apply to the action.

913. A builder or his or her representative shall acknowledge, in writing, receipt of the notice of the claim within 14 days after receipt of the notice of the claim. If the notice of the claim is served by the claimant's legal representative, or if the builder receives a written representation letter from a homeowner's attorney, the builder shall include the attorney in all subsequent substantive communications, including, without limitation, all written communications occurring

LEGISLATIVE INTENT SERVICE (800) 666-1917



pursuant to this chapter, and all substantive and procedural communications, including all written communications, following the commencement of any subsequent complaint or other legal action, except that if the builder has retained or involved legal counsel to assist the builder in this process, all communications by the builder's counsel shall only be with the claimant's legal representative, if any.

914. (a) This chapter establishes a nonadversarial procedure, including the remedies available under this chapter which, if the procedure does not resolve the dispute between the parties, may result in a subsequent action to enforce the other chapters of this title. A builder may attempt to commence nonadversarial contractual provisions other than the nonadversarial procedures and remedies set forth in this chapter, but may not, in addition to its own nonadversarial contractual provisions, require adherence to the nonadversarial procedures and remedies set forth in this chapter, regardless of whether the builder's own alternative nonadversarial contractual provisions are successful in resolving the dispute or ultimately deemed enforceable.

At the time the sales agreement is executed, the builder shall notify the homeowner whether the builder intends to engage in the nonadversarial procedure of this section or attempt to enforce alternative nonadversarial contractual provisions. If the builder elects to use alternative nonadversarial contractual provisions in lieu of this chapter, the election is binding, regardless of whether the builder's alternative nonadversarial contractual provisions are successful in resolving the ultimate dispute or are ultimately deemed enforceable.

(b) Nothing in this title is intended to affect existing statutory or decisional law pertaining to the applicability, viability, or enforceability of alternative dispute resolution methods, alternative remedies, or contractual arbitration, judicial reference, or similar procedures requiring a binding resolution to enforce the other chapters of this title or any other disputes between homeowners and builders. Nothing in this title is intended to affect the applicability, viability, or enforceability, if any, of contractual arbitration or judicial reference after a nonadversarial procedure or provision has been completed.

915. If a builder fails to acknowledge receipt of the notice of a claim within the time specified, elects not to go through the process set forth in this chapter, or fails to request an inspection within the time specified, or at the conclusion or cessation of an alternative nonadversarial proceeding, this chapter does not apply and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.



916. (a) If a builder elects to inspect the claimed unmet standards, the builder shall complete the initial inspection and testing within 14 days after acknowledgment of receipt of the notice of the claim, at a mutually convenient date and time. If the homeowner has retained legal representation, the inspection shall be scheduled with the legal representative's office at a mutually convenient date and time, unless the legal representative is unavailable during the relevant time periods. All costs of builder inspection and testing, including any damage caused by the builder inspection, shall be borne by the builder. The builder shall also provide written proof that the builder has liability insurance to cover any damages or injuries occurring during inspection and testing. The builder shall restore the property to its pretesting condition within 48 hours of the testing. The builder shall, upon request, allow the inspections to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative.

(b) Nothing that occurs during a builder's or claimant's inspection or testing may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.

(c) If a builder deems a second inspection or testing reasonably necessary, and specifies the reasons therefor in writing within three days following the initial inspection, the builder may conduct a second inspection or testing. A second inspection or testing shall be completed within 40 days of the initial inspection or testing. All requirements concerning the initial inspection or testing shall also apply to the second inspection or testing.

(d) If the builder fails to inspect or test the property within the time specified, the claimant is released from the requirements of this section and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.

(e) If a builder intends to hold a subcontractor, design professional, individual product manufacturer, or material supplier, including an insurance carrier, warranty company, or service company, responsible for its contribution to the unmet standard, the builder shall provide notice to that person or entity sufficiently in advance to allow them to attend the initial, or if requested, second inspection of any alleged unmet standard and to participate in the repair process. The claimant and his or her legal representative, if any, shall be advised in a reasonable time prior to the inspection as to the identity of all persons or entities invited to attend. This subdivision shall not apply to the builder's insurance company. Except with respect to any claims involving a repair actually conducted under this chapter, nothing in this subdivision shall be construed to relieve a subcontractor, design professional, individual



product manufacturer, or material supplier of any liability under an action brought by a claimant.

917. Within 30 days of the initial or, if requested, second inspection or testing, the builder may offer in writing to repair the violation. The offer to repair shall also compensate the homeowner for all applicable damages recoverable under Section 944, within the timeframe for the repair set forth in this chapter. Any such offer shall be accompanied by a detailed, specific, step-by-step statement identifying the particular violation that is being repaired, explaining the nature, scope, and location of the repair, and setting a reasonable completion date for the repair. The offer shall also include the names, addresses, telephone numbers, and license numbers of the contractors whom the builder intends to have perform the repair. Those contractors shall be fully insured for, and shall be responsible for, all damages or injuries that they may cause to occur during the repair, and evidence of that insurance shall be provided to the homeowner upon request. Upon written request by the homeowner or his or her legal representative, and within the timeframes set forth in this chapter, the builder shall also provide any available technical documentation, including, without limitation, plans and specifications, pertaining to the claimed violation within the particular home or development tract. The offer shall also advise the homeowner in writing of his or her right to request up to three additional contractors from which to select to do the repair pursuant to this chapter.

918. Upon receipt of the offer to repair, the homeowner shall have 30 days to authorize the builder to proceed with the repair. The homeowner may alternatively request, at the homeowner's sole option and discretion, that the builder provide the names, addresses, telephone numbers, and license numbers for up to three alternative contractors who are not owned or financially controlled by the builder and who regularly conduct business in the county where the structure is located. If the homeowner so elects, the builder is entitled to an additional noninvasive inspection, to occur at a mutually convenient date and time within 20 days of the election, so as to permit the other proposed contractors to review the proposed site of the repair. Within 35 days after the request of the homeowner for alternative contractors, the builder shall present the homeowner with a choice of contractors. Within 20 days after that presentation, the homeowner shall authorize the builder or one of the alternative contractors to perform the repair.

919. The offer to repair shall also be accompanied by an offer to mediate the dispute if the homeowner so chooses. The mediation shall be limited to a four-hour mediation, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost

of the mediator, and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation occurs within 15 days after the request to mediate is received and occurs at a mutually convenient location within the county where the action is pending. If a builder has made an offer to repair a violation, and the mediation has failed to resolve the dispute, the homeowner shall allow the repair to be performed either by the builder, its contractor, or the selected contractor.

920. If the builder fails to make an offer to repair or otherwise strictly comply with this chapter within the times specified, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If the contractor performing the repair does not complete the repair in the time or manner specified, the claimant may file an action. If this occurs, the standards set forth in the other chapters of this part shall continue to apply to the action.

921. (a) In the event that a resolution under this chapter involves a repair by the builder, the builder shall make an appointment with the claimant, make all appropriate arrangements to effectuate a repair of the claimed unmet standards, and compensate the homeowner for all damages resulting therefrom free of charge to the claimant. The repair shall be scheduled through the claimant's legal representative, if any, unless he or she is unavailable during the relevant time periods. The repair shall be commenced on a mutually convenient date within 14 days of acceptance or, if an alternative contractor is selected by the homeowner, within 14 days of the selection, or, if a mediation occurs, within seven days of the mediation, or within five days after a permit is obtained if one is required. The builder shall act with reasonable diligence in obtaining any such permit.

(b) The builder shall ensure that work done on the repairs is done with the utmost diligence, and that the repairs are completed as soon as reasonably possible, subject to the nature of the repair or some unforeseen event not caused by the builder or the contractor performing the repair. Every effort shall be made to complete the repair within 120 days.

922. The builder shall, upon request, allow the repair to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative. Nothing that occurs during the repair process may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.

923. The builder shall provide the homeowner or his or her legal representative, upon request, with copies of all correspondence, photographs, and other materials pertaining or relating in any manner to the repairs.



924. If the builder elects to repair some, but not all of, the claimed unmet standards, the builder shall, at the same time it makes its offer, set forth with particularity in writing the reasons, and the support for those reasons, for not repairing all claimed unmet standards.

925. If the builder fails to complete the repair within the time specified in the repair plan, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If this occurs, the standards set forth in the other chapters of this title shall continue to apply to the action.

926. The builder may not obtain a release or waiver of any kind in exchange for the repair work mandated by this chapter. At the conclusion of the repair, the claimant may proceed with filing an action for violation of the applicable standard or for a claim of inadequate repair, or both, including all applicable damages available under Section 944.

927. If the applicable statute of limitations has otherwise run during this process, the time period for filing a complaint or other legal remedies for violation of any provision of this title, or for a claim of inadequate repair, is extended from the time of the original claim by the claimant to 100 days after the repair is completed, whether or not the particular violation is the one being repaired. If the builder fails to acknowledge the claim within the time specified, elects not to go through this statutory process, or fails to request an inspection within the time specified, the time period for filing a complaint or other legal remedies for violation of any provision of this title is extended from the time of the original claim by the claimant to 45 days after the time for responding to the notice of claim has expired. If the builder elects to attempt to enforce its own nonadversarial procedure in lieu of the procedure set forth in this chapter, the time period for filing a complaint or other legal remedies for violation of any provision of this part is extended from the time of the original claim by the claimant to 100 days after either the completion of the builder's alternative nonadversarial procedure, or 100 days after the builder's alternative nonadversarial procedure is deemed unenforceable, whichever is later.

928. If the builder has invoked this chapter and completed a repair, prior to filing an action, if there has been no previous mediation between the parties, the homeowner or his or her legal representative shall request mediation in writing. The mediation shall be limited to four hours, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation will occur within 15 days after the request for mediation is received and shall occur at a mutually



convenient location within the county where the action is pending. In the event that a mediation is used at this point, any applicable statutes of limitations shall be tolled from the date of the request to mediate until the next court day after the mediation is completed, or the 100-day period, whichever is later.

929. (a) Nothing in this chapter prohibits the builder from making only a cash offer and no repair. In this situation, the homeowner is free to accept the offer, or he or she may reject the offer and proceed with the filing of an action. If the latter occurs, the standards of the other chapters of this title shall continue to apply to the action.

(b) The builder may obtain a reasonable release in exchange for the cash payment. The builder may negotiate the terms and conditions of any reasonable release in terms of scope and consideration in conjunction with a cash payment under this chapter.

930. (a) The time periods and all other requirements in this chapter are to be strictly construed, and, unless extended by the mutual agreement of the parties in accordance with this chapter, shall govern the rights and obligations under this title. If a builder fails to act in accordance with this section within the timeframes mandated, unless extended by the mutual agreement of the parties as evidenced by a postclaim written confirmation by the affected homeowner demonstrating that he or she has knowingly and voluntarily extended the statutory timeframe, the claimant may proceed with filing an action. If this occurs, the standards of the other chapters of this title shall continue to apply to the action.

(b) If the claimant does not conform with the requirements of this chapter, the builder may bring a motion to stay any subsequent court action or other proceeding until the requirements of this chapter have been satisfied. The court, in its discretion, may award the prevailing party on such a motion, his or her attorney's fees and costs in bringing or opposing the motion.

931. If a claim combines causes of action or damages not covered by this part, including, without limitation, personal injuries, class actions, other statutory remedies, or fraud-based claims, the claimed unmet standards shall be administered according to this part, although evidence of the property in its unrepaired condition may be introduced to support the respective elements of any such cause of action. As to any fraud-based claim, if the fact that the property has been repaired under this chapter is deemed admissible, the trier of fact shall be informed that the repair was not voluntarily accepted by the homeowner. As to any class action claims that address solely the incorporation of a defective component into a residence, the named and unnamed class members need not comply with this chapter.



932. Subsequently discovered claims of unmet standards shall be administered separately under this chapter, unless otherwise agreed to by the parties. However, in the case of a detached single family residence, in the same home, if the subsequently discovered claim is for a violation of the same standard as that which has already been initiated by the same claimant and the subject of a currently pending action, the claimant need not reinitiate the process as to the same standard. In the case of an attached project, if the subsequently discovered claim is for a violation of the same standard for a connected component system in the same building as has already been initiated by the same claimant, and the subject of a currently pending action, the claimant need not reinitiate this process as to that standard.

933. If any enforcement of these standards is commenced, the fact that a repair effort was made may be introduced to the trier of fact. However, the claimant may use the condition of the property prior to the repair as the basis for contending that the repair work was inappropriate, inadequate, or incomplete, or that the violation still exists. The claimant need not show that the repair work resulted in further damage nor that damage has continued to occur as a result of the violation.

934. Evidence of both parties' conduct during this process may be introduced during a subsequent enforcement action, if any, with the exception of any mediation. Any repair efforts undertaken by the builder, shall not be considered settlement communications or offers of settlement and are not inadmissible in evidence on such a basis.

935. To the extent that provisions of this chapter are enforced and those provisions are substantially similar to provisions in Section 1375 of the Civil Code, but an action is subsequently commenced under Section 1375 of the Civil Code, the parties are excused from performing the substantially similar requirements under Section 1375 of the Civil Code.

936. Each and every provision of the other chapters of this title apply to subcontractors, material suppliers, individual product manufacturers, and design professionals to the extent that the subcontractors, material suppliers, individual product manufacturers, and design professionals caused, in whole or in part, a violation of a particular standard as the result of a negligent act or omission or a breach of contract. In addition to the affirmative defenses set forth in Section 945.5, a subcontractor, material supplier, design professional, individual product manufacturer, or other entity may also offer common law and contractual defenses as applicable to any claimed violation of a standard. All actions by a claimant or builder to enforce an express contract, or any provision thereof, against a subcontractor, material supplier, individual product manufacturer, or design professional is preserved. Nothing in this title

modifies the law pertaining to joint and several liability for subcontractors, material suppliers, individual product manufacturer, and design professionals that contribute to any specific violation of this title. However, this section does not apply to any subcontractor; material supplier, individual product manufacturer, or design professional to which strict liability would apply.

937. Nothing in this title shall be interpreted to eliminate or abrogate the requirement to comply with Section 411.35 of the Code of Civil Procedure or to affect the liability of design professionals, including architects and architectural firms, for claims and damages not covered by this title.

938. This title applies only to residences originally sold on or after January 1, 2003.

CHAPTER 5. PROCEDURE

941. (a) Except as specifically set forth in this title, no action may be brought to recover under this title more than 10 years after substantial completion of the improvement but not later than the date of recordation of a valid notice of completion.

(b) As used in this section, "action" includes an action for indemnity brought against a person arising out of that person's performance or furnishing of services or materials referred to in this title, except that a cross-complaint for indemnity may be filed pursuant to subdivision (b) of Section 428.10 of the Code of Civil Procedure in an action which has been brought within the time period set forth in subdivision (a).

(c) The limitation prescribed by this section shall not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement, at the time any deficiency in the improvement constitutes the proximate cause for which it is proposed to make a claim or bring an action.

(d) Sections 337.15 and 337.1 of the Code of Civil Procedure shall not apply to actions under this title.

(e) Existing statutory and decisional law regarding tolling of the statute of limitations shall apply to the time periods for filing an action or making a claim under this title, except that repairs made pursuant to Chapter 4 (commencing with Section 910), with the exception of the tolling provision contained in Section 927, do not extend the period for filing an action, or restart the time limitations contained in subdivisions (a) or (b) if 7091 of the Business and Professions Code. If a builder arranges for a contractor to perform a repair pursuant to Chapter 4 (commencing with Section 910), as to the builder the time period for calculating the statute of limitation in subdivisions (a) or (b) if Section



7091 of the Business and Professions Code shall pertain to the substantial completion of the original construction and not to the date of repairs under this title. The time limitations established by this title do not apply to any action by a claimant for a contract or express contractual provision. Causes of action and damages to which this chapter does not apply are not limited by this section. In order to make a claim for violation of the standards set forth in Chapter 2 (commencing with Section 896), a homeowner need only demonstrate, in accordance with the applicable evidentiary standard, that the home does not meet the applicable standard, subject to the affirmative defenses set forth in Section 945.5. No further showing of causation or damages is required to meet the burden of proof regarding a violation of a standard set forth in Chapter 2 (commencing with Section 896), provided that the violation arises out of, pertains to, or is related to, the original construction.

942. (a) Except as provided in this title, no other cause of action for a claim covered by this title or for damages recoverable under Section 944 is allowed. In addition to the rights under this title, this title does not apply to any action by a claimant to enforce a contract or express contractual provision, or any action for fraud, personal injury, or violation of a statute. Damages awarded for the items set forth in Section 944 in such other cause of action shall be reduced by the amounts recovered pursuant to Section 944 for violation of the standards set forth in this title.

(b) As to any claims involving a detached single-family home, the homeowner's right to the reasonable value of repairing any nonconformity is limited to the repair costs, or the diminution in current value of the home caused by the nonconformity, whichever is less, subject to the personal use exception as developed under common law.

944. If a claim for damages is made under this title, the homeowner is only entitled to damages for the reasonable value of repairing any violation of the standards set forth in this title, the reasonable cost of repairing any damages caused by the repair efforts, the reasonable cost of repairing and rectifying any damages resulting from the failure of the home to meet the standards, the reasonable cost of removing and replacing any improper repair by the builder, reasonable relocation and storage expenses, lost business income if the home was used as a principal place of a business licensed to be operated from the home, reasonable investigative costs for each established violation, and all other costs or fees recoverable by contract or statute.

945. The provisions, standards, rights, and obligations set forth in this title are binding upon all original purchasers and their successors-in-interest. For purposes of this title, associations and others having the rights set forth in Section 383 of the Code of Civil Procedure

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE



shall be considered to be original purchasers and shall have standing to enforce the provisions, standards, rights, and obligations set forth in this title.

945.5. A builder, under the principles of comparative fault pertaining to affirmative defenses, may be excused, in whole or in part, from any obligation, damage, loss, or liability if the builder can demonstrate any of the following affirmative defenses in response to a claimed violation:

(a) To the extent it is caused by an unforeseen act of nature which caused the structure not to meet the standard. For purposes of this section an “unforeseen act of nature” means a weather condition, earthquake, or manmade event such as war, terrorism, or vandalism, in excess of the design criteria expressed by the applicable building codes, regulations, and ordinances in effect at the time of original construction.

(b) To the extent it is caused by a homeowner’s unreasonable failure to minimize or prevent those damages in a timely manner, including the failure of the homeowner to allow reasonable and timely access for inspections and repairs under this title. This includes the failure to give timely notice to the builder after discovery of a violation, but does not include damages due to the untimely or inadequate response of a builder to the homeowner’s claim.

(c) To the extent it is caused by the homeowner or his or her agent, employee, subcontractor, independent contractor, or consultant by virtue of their failure to follow the builder’s or manufacturer’s recommendations, or commonly accepted homeowner maintenance obligations. In order to rely upon this defense as it relates to a builder’s recommended maintenance schedule, the builder shall show that the homeowner had written notice of these schedules and recommendations and that the recommendations and schedules were reasonable at the time they were issued.

(d) To the extent it is caused by the homeowner or his or her agent’s or an independent third party’s alterations, ordinary wear and tear, misuse, abuse, or neglect, or by the structure’s use for something other than its intended purpose.

(e) To the extent that the time period for filing actions bars the claimed violation.

(f) As to a particular violation for which the builder has obtained a valid release.

(g) To the extent that the builder’s repair was successful in correcting the particular violation of the applicable standard.

LEGISLATIVE INTENT SERVICE (800) 666-1917



(h) As to any causes of action to which this statute does not apply, all applicable affirmative defenses are preserved.

VOLUME 1
CALIFORNIA LEGISLATURE
AT SACRAMENTO
2001-02 REGULAR SESSION

SENATE FINAL HISTORY

SHOWING ACTIONS TAKEN IN THIS SESSION ON ALL SENATE BILLS
CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT,
AND SENATE RESOLUTIONS

CONVENED DECEMBER 4, 2000
ADJOURNED SINE DIE NOVEMBER 30, 2002

DAYS IN SESSION 262
CALENDAR DAYS 727

LIEUTENANT GOVERNOR
President of the Senate

SENATOR JOHN L. BURTON
President pro Tempore

Compiled Under the Direction of
GREGORY SCHMIDT
Secretary of the Senate

By
DAVID H. KNEALE, ESQ.
History Clerk

LIS - 2

SB 800 LEG. HIST. 000142

LEGISLATIVE INTENT SERVICE (800) 666-1917



S.B. No. 799—Karnette (Coauthor: Senator Polanco).

An act to add and repeal Section 1473.5 of the Penal Code, relating to battered women's syndrome.

2001

- Feb. 23—Introduced. To Com. on RLS. for assignment. To print.
 Feb. 25—From print. May be acted upon on or after March 27.
 Feb. 26—Read first time.
 Mar. 12—To Com. on PUB. S.
 Mar. 13—Set for hearing April 17.
 April 17—Set, first hearing. Failed passage in committee. (Ayes 3. Noes 0. Page 658.)
 Reconsideration granted.
 April 18—Set for hearing April 24.
 April 25—From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 4. Noes 1. Page 762.) Re-referred to Com. on APPR.
 May 7—Set for hearing May 14.
 May 14—Placed on APPR. suspense file.
 May 25—Set for hearing May 31.
 May 31—From committee: Do pass. (Ayes 7. Noes 3. Page 1396.) Read second time.
 To third reading.
 June 4—Read third time. Passed. (Ayes 25. Noes 11. Page 1344.) To Assembly.
 June 5—In Assembly. Read first time. Held at Desk.
 June 11—To Com. on PUB. S.
 June 18—From committee with author's amendments. Read second time. Amended.
 Re-referred to committee.
 June 26—Set, first hearing. Hearing canceled at the request of author.
 July 11—From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 5. Noes 1.) Re-referred to Com. on APPR.
 Aug. 22—Placed on APPR. suspense file.
 Aug. 30—Joint Rule 61(a) (10) & (11) suspended.
 Sept. 6—From committee: Do pass. (Ayes 14. Noes 6.) Read second time. To third reading.
 Sept. 10—Read third time. Amended. To third reading.
 Sept. 12—Read third time. Passed. (Ayes 53. Noes 21. Page 3734.) To Senate.
 Sept. 12—In Senate. To unfinished business.
 Sept. 13—Senate concurs in Assembly amendments. (Ayes 24. Noes 11. Page 2916.)
 To enrollment.
 Sept. 24—Enrolled. To Governor at 11 a.m.
 Oct. 12—Approved by Governor.
 Oct. 13—Chaptered by Secretary of State. Chapter 858, Statutes of 2001.

S.B. No. 800—Burton and Assembly Member Wesson (Principal coauthors: Senators Dunn, Escutia, Romero, and Torlakson) (Principal coauthors: Assembly Members Calderon, Corbett, Dutra, and Steinberg) (Coauthors: Assembly Members Aroner, Alquist, Canciamilla, Cardoza, Cedillo, Chan, Chavez, Chu, Cohn, Diaz, Firebaugh, Florez, Frommer, Goldberg, Jackson, Keeley, Kehoe, Koretz, Longville, Lowenthal, Nakano, Negrete McLeod, Oropeza, Papan, Pavley, Reyes, Salinas, Shelley, Vargas, Wayne, and Wiggins)

An act to add Section 43.99 to, and to add Title 7 (commencing with Section 895) to Part 2 of Division 2 of, the Civil Code, relating to construction defects.

2001

- Feb. 23—Introduced. To Com. on RLS. for assignment. To print.
 Feb. 25—From print. May be acted upon on or after March 27.
 Feb. 26—Read first time.
 Mar. 12—To Com. on TRANS.
 Mar. 21—Set for hearing April 3.
 Mar. 27—Set, first hearing. Hearing canceled at the request of author. Set for hearing April 17.
 April 5—From committee with author's amendments. Read second time. Amended.



- Re-referred to committee.
- April 24—From committee: Do pass as amended, but first amend, and re-refer to Com. on APPR. (Ayes 13. Noes 0. Page 661.)
- April 25—Read second time. Amended. Re-referred to Com. on APPR.
- May 7—Set for hearing May 14.
- May 14—From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
- May 15—Read second time. To third reading.
- May 21—Read third time. Amended. To second reading.
- May 22—Read second time. To third reading.
- May 23—To Special Consent Calendar.
- May 29—Read third time. Passed. (Ayes 39. Noes 0. Page 1249.) To Assembly.
- May 29—In Assembly. Read first time. Held at Desk.
- June 7—To Com. on TRANS.
- June 19—From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 15. Noes 0.) Re-referred to Com. on APPR.
- June 27—Placed on APPR. suspense file.
- Aug. 30—Joint Rule 61(a) (10) & (11) suspended.
- Sept. 6—Set, second hearing. Held in committee and under submission.
- 2002**
- Aug. 12—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
- Aug. 14—From committee: Do pass. (Ayes 16. Noes 7.)
- Aug. 15—Read second time. To third reading.
- Aug. 15—Read third time. Amended. Re-referred to Coms. on JUD. and APPR. pursuant to Assembly Rule 77.2.
- Aug. 25—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
- Aug. 26—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
- Aug. 27—From committee: Do pass as amended. (Ayes 12. Noes 0.)
- Aug. 28—Read second time. Amended. To second reading. Read second time. To third reading. Read third time. Amended. To third reading.
- Aug. 29—Read third time. Passed. (Ayes 80. Noes 0. Page 8444.) To Senate.
- Aug. 29—In Senate. To unfinished business. Action deferred pursuant to Senate Rule 29.10. Question referred to Com. on RLS. From committee: Be re-referred to Com. on JUD. pursuant to Senate Rule 29.10. (Ayes 3. Noes 0.) Re-referred to Com. on JUD.
- Aug. 30—From committee: That the Assembly amendments be concurred in. (Ayes 5. Noes 1. Page 6077.)
- Aug. 31—Senate concurs in Assembly amendments. (Ayes 33. Noes 0. Page 6086.) To enrollment.
- Sept. 10—Enrolled. To Governor at 1 p.m.
- Sept. 20—Approved by Governor.
- Sept. 20—Chaptered by Secretary of State. Chapter 722, Statutes of 2002.



SENATE TRANSPORTATION COMMITTEE
SENATOR KEVIN MURRAY, CHAIRMAN

BILL NO: SB 800
AUTHOR:
VERSION: 2/23/01
FISCAL: YES

Analysis by: Randall Henry

- Check w/ DMV re

- Collector Motor Vehicle

SUBJECT:

Vehicles.

*- New deposit
dyno
- What Sec 5004 - Heston's value*

DESCRIPTION:

>

- Exempt from Smog law

ANALYSIS:

1) Existing law requires all motor vehicles powered by internal combustion engines that are registered within an area designated for program coverage to obtain, biennially, a certificate of compliance or noncompliance, except for certain vehicles, including, prior to January 1, 2003, a motor vehicle manufactured prior to the 1974-model year and, on and after January 1, 2003, a motor vehicle that is 30 or more model-years old.

This bill would revise that exception to apply to any motor vehicle manufactured prior to the 1975 model-year.

2) Existing law requires the Department of Motor Vehicles, with certain exceptions, upon initial registration, and upon transfer of ownership and registration, of prescribed motor vehicles, and upon registration of a motor vehicle previously registered outside the state to require a valid certificate of compliance or a certificate of noncompliance. Existing law exempts from this requirement, prior to January 1, 2003, the transfer of ownership or registration of a motor vehicle that was manufactured prior to the 1974 model-year and, on and after January 1, 2003, the transfer of ownership or registration of a motor vehicle that is 30 or model-years old.

This bill would revise that exception to apply to a motor vehicle that was manufactured prior to the 1975 model-year.

3) Existing law requires an applicant for the registration of a specially constructed vehicle or remanufactured vehicle to include prescribed information in the registration application.

This bill would require the department, upon initial registration of any specially constructed vehicle that is a passenger vehicle or pickup truck that has a specified certificate, to record the model-year of that vehicle, as stated in the certificate.

This bill would require a passenger vehicle or pickup truck that is a specially constructed vehicle to be inspected by stations authorized to perform referee functions. Upon

LEGISLATIVE INTENT SERVICE (800) 666-1917

completion of the inspection, the referee would be required to affix the tamper resistant label to the vehicle and issue a certificate that establishes the vehicle model-year and emission control system application.

4) Existing law permits owners of vehicles that are operated or moved primarily for the purpose of historical exhibition or similar purpose to be issued special identification plates. This provision applies to a motor vehicle with an engine of 16 or more cylinders that was manufactured prior to 1965, a motor vehicle manufactured in the year 1922 or prior, and a vehicle manufactured after 1922 that is at least 25 years old and of historic interest.

This bill would revise this provision to apply to a motor vehicle manufactured prior to 1975 that meets the definition of a collector motor vehicle, and a motor vehicle manufactured in the year 1922 or prior. This bill would define a collector motor vehicle to be a vehicle manufactured prior to 1975 that is not used by the owner as a primary source of transportation and is used primarily for purposes of display at events or to obtain necessary repairs and maintenance.

This bill would exempt collector motor vehicles from the biennial inspection program.

COMMENTS:

1. This bill would make the following changes in current law:

- Delete the exemption from smog inspection for all vehicles 30 years and older, which is scheduled to take effect in 2003. This bill would provide that all vehicles manufactured prior to 1975 would be exempt from this requirement.
- Modify the way the vehicle model-year is determined for a "specially constructed vehicle" for smog inspection purposes.
- Create a new motor vehicle classification, "collector motor vehicle."

30-year exemption

2. All vehicles, with specified exceptions, are required to participate in the vehicle inspection and maintenance program and obtain a smog check certificate or certificate of non-compliance biennially, upon change-of-ownership, or upon the registration of a vehicle previously registered in another state.

In 1997, the Legislature enacted Senate Bill 42, (Ch. 801, Kopp), which exempted from the biennial and change-of-ownership vehicle inspection requirements vehicles manufactured before the 1974 model year and beginning in 2003, all 30-year old vehicles on a rolling basis. Prior to the enactment of this measure, all 1966 and older models were exempt from the requirements of the Smog Check II program.

Supporters of this exemption contended that these older vehicles had a "relatively minimal impact on vehicle emissions and air quality. Such vehicles constitute a small portion of the vehicle fleet and many are considered classic cars by their owners and others. They are generally well-maintained and infrequently operated. Other older

LEGISLATIVE INTENT SERVICE (800) 666-1917



vehicles not considered classic vehicles also are relatively few in number and are driven fewer miles than the average for vehicles in the state.”

In a recent report evaluating the Smog Check II program, the State Air Resources Board noted that “(a)lthough the Enhanced I/M program is producing substantial benefits, the reductions achieved fall short of the SIP target for three primary reasons: (1) legislative changes weakened the Enhanced I/M program; (2) the more rigorous program elements are being phased in over a longer timeframe; and (3) the 1994 SIP target assumed additional communities outside urbanized areas and heavy-duty gasoline trucks would be subject to Enhanced I/M.”

The report further noted that:

Older cars continue to contribute a disproportionate amount of emissions, despite their relatively low numbers and use. The current exemption of pre-1974 models becomes a rolling 30-year exemption in 2003 - institutionalizing the loss in emission benefits. One option would be to freeze the exemption for 1973 and older models. As time passes, these older vehicles would remain in the inspection program, however, no vehicle currently exempt would have its exemption status changed. Over time, as pre-1974 vehicles represent an ever smaller part of the fleet through retirement, the impact of exempting these vehicles would be negligible.

The measure closely mirrors this recommendation by the State Air Resources Board. Current law, however, provides that “any motor vehicle manufactured prior to the 1974 model-year” is exempt from the inspection requirement. This bill would provide that any motor vehicle manufactured prior to the “1975” model-year be exempt.

Specially constructed vehicles

3. A “specially constructed vehicle” is defined as “a vehicle which is built for private use, not for resale, and is not constructed by a licensed manufacturer or remanufacturer. A specially constructed vehicle may be built from (1) a kit; (2) new or used, or a combination of new and used; or (3) a vehicle reported for dismantling. . . which, when reconstructed, does not resemble the original make of the vehicle dismantled. A specially constructed vehicle is not a vehicle which has been repaired or restored to its original design by replacing parts.” (Vehicle Code Sec. 580)

The author contends that when these vehicles are presented to the Department of Motor Vehicles for the initial vehicle registration, it is sometimes difficult for department personnel to identify the precise model-year to identify the precise model-year for smog inspection purposes because of the use of unassociated engine parts and the special nature of these vehicles. If the department is unable to determine a specific model-year for the vehicle, the engine is designated as a current year engine, subjecting the vehicle to more stringent smog inspection requirements.

This provision would authorize Bureau of Automotive Repair technicians, specially trained smog inspection state referees, to make the engine model-year determination for these vehicles. “In determining the engine model-year, the referee shall compare the

LEGISLATIVE INTENT SERVICE (800) 666-1917



engine to engines of the year that the engine most closely resembles. The referee shall assign the 1960-model-year to the engine in any specially constructed vehicle that does not sufficiently resemble a previously manufactured engine. The referee shall require only those emission control systems that are applicable to the established engine model-year and that the engine reasonably accommodates in its present form."

It would appear this proposed change would better ensure a more accurate identification of the engine model-year of these vehicles and eliminate the difficulties and inconveniences that these vehicle owners have sometime encountered regarding complying with the requirements of the Smog Check II program.

Collector motor vehicles

3. This bill would create a new motor vehicle classification, "collector motor vehicle," and define these vehicles as a vehicle that is: (1) manufactured prior to 1975; (2) not used by the owner as a primary source of transportation; and (3) used primarily for purposes of display at events such as collector shows, exhibitions and parades, or to obtain necessary repairs and maintenance. The registered owner would be required to provide one of the following document as evidence the vehicle meets these requirements: (1) a written statement or policy from an insurance company; or (2) a declaration signed by the owner under penalty of perjury.

Assembly Votes:

- Floor: >
- Appr: >
- Trans: >

*No definition
The department
indicates
there is a*

POSITIONS: (Communicated to the Committee before noon on Wednesday,

>)

SUPPORT: >

OPPOSED: >

*penalty - played
with*

*Helpful
to have
definition*

*Clarify
8004
not many not
26 years - really
historic vehicles
1976
a lot
flexion*

*Can apply for
Helpful to
have
definition*

*1975
convert
insulation
shown
how
good*

LEGISLATIVE INTENT SERVICE (800) 666-1917



SENATE TRANSPORTATION COMMITTEE
SENATOR KEVIN MURRAY, CHAIRMAN

Analysis by: Randall Henry

BILL NO: SB 800
AUTHOR: JOHANNESSEN
VERSION: 4/5/01
FISCAL: YES

SUBJECT:

Collector motor vehicles.

DESCRIPTION:

This bill would create a new motor vehicle classification, "collector motor vehicle."

ANALYSIS:

Existing law permits owners of vehicles that are operated or moved primarily for the purpose of historical exhibition or similar purpose to be issued special identification plates. This provision applies to a motor vehicle with an engine of 16 or more cylinders that was manufactured prior to 1965, a motor vehicle manufactured in the year 1922 or prior, and a vehicle manufactured after 1922 that is at least 25 years old and of historic interest.

This bill would:

- Define a vehicle that is 25 or more model-years and is not used by the owner as a primary source of transportation and is used primarily for purposes of display at events as a "collector motor vehicle."
- Exempt collector motor vehicles from the biennial smog inspection program.
- Provide that these vehicles pay an annual Vehicle License Fee of \$2.00.

COMMENTS:

1. The author indicates the purpose of this measure is "to create a special category for older cars that are not being used as daily transportation but for displays at fairs and exhibitions, and it specifies these vehicles are exempt from smog inspection."
2. Existing law defines a "(vehicle) collector" as "the owner of one or more vehicles (of historic value) or of one or more special interest vehicles, who collects, purchases, acquires, trades, or disposes of such vehicle, or parts thereof, for his or her own use, in order to preserve, restore, and maintain such vehicle for hobby or historical purposes."
3. This bill would create a new motor vehicle classification, "collector motor vehicle," and define these vehicles as a motor vehicle that is: (1) 25 or more model-years old; (2) not used by the owner as a primary source of transportation; and (3) used primarily for

LEGISLATIVE INTENT SERVICE (800) 666-1917



purposes of display at events such as collector shows, exhibitions and parades, or to obtain necessary repairs and maintenance.

4. The registered owner of a collector motor vehicle would be required to provide one of the following documents as evidence the vehicle meets the above requirements:

- (1) a written statement or policy from an insurance company; or
- (2) a declaration signed by the owner under penalty of perjury.

5. In addition, the bill would:

- Exempt these vehicles from smog inspection requirements.
- Provide that these vehicles pay an annual Vehicle License Fee of \$2.00. (Revenue and Taxation Code Sec. 10753.5)

6. There is currently no precise statutory definition of this vehicle classification, and in light of the number of these vehicles, this definitional clarity is probably warranted. The Committee, however, may wish to consider the following policy issues:

- Will the documentation that is required to be submitted by the vehicle owner authoritatively confirm that a particular vehicle is a "collector motor vehicle"?
- Will there be vehicle owners who inaccurately contend their vehicles are "collector motor vehicles" in order to enjoy the \$2.00 Vehicle License Fee and the exemption from smog inspection?
- Regarding the exemption from the smog inspection requirement, should the bill be changed to reflect Health and Safety Code Sec. 44011, which provides that "(b)eginning January 1, 2003, any motor vehicle that is 30 or more model years old" is exempt from biennial smog inspection.

POSITIONS: (Communicated to the Committee before noon on Wednesday, 4/11/01)

SUPPORT/OPPOSED: None received.

4/12/01





FAX TRANSMISSION COVER SHEET

PLEASE NOTE: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the address below via the U. S. Postal Service. Thank you.

LEGISLATIVE INTENT SERVICE (800) 666-1917



DATE: 5/21/2001 TIME: 2:35:50 PM # OF PAGES 4

TO: Randall Henry TITLE: _____

ORGANIZATION: Senate Trans.

LOCATION: _____

FAX: 445-2209 PHONE: _____

FROM: Tom Weibel

Legislative Office
2415 First Avenue
Sacramento CA 95818
Mail Station F-118
FAX: (916) 457-7582 Phone: (916) 657-6518

COMMENTS:
As promised.

SP1-1

LIS - 4

FILED
ENDORSED

99 MAR 22 PM 4:20

SACRAMENTO COURTS
DEPT. #54

1 FRANK L. ROWLEY (#114142)
2 JAMES J. GRACE (#119226)
3 ROWLEY, GRACE & ARTZ
4 P.O. Box 7
5 Loomis, California 95650
6 (916) 652-7235

7 Attorney for Plaintiff,
8 FRANK L. ROWLEY.

*GEORGE MELICHAMBE,
4619 HAZELWOOD AVE,
SACRAMENTO, CA, 95821*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SACRAMENTO

11 FRANK L. ROWLEY,

12 Plaintiff,

13 vs.

14 STATE OF CALIFORNIA, etc.,

15 Defendants.

CASE NO. 98AM 08234
LIMITED CIVIL CASE

ORDER ON PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND ON
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT
DATE: March 2, 1999
TIME: 9:00 a.m.
DEPT: 54

16 The motions of Plaintiff and Defendant for summary judgment/summary
17 adjudication came on regularly for hearing by the court at the time and date set forth above.
18 Plaintiff appeared through its counsel, FRANK L. ROWLEY and JAMES J. GRACE OF
19 ROWLEY, GRACE & ARTZ; Defendant appeared through its counsel, KRISTIN M.
20 ENGSTROM of the Office of the Attorney General.

21 The Court, having considered the respective motions and the oppositions
22 thereto, and other documents in support of and in opposition to the motions, having heard
23 the arguments of counsel, and being fully advised in the matter, finds as follows:

24 1. Plaintiff's motion for summary judgment is granted, defendant's motion for
25 summary judgment/summary adjudication is denied.

26 2. Revenue & Taxation Code section 10753.5 provides that the annual
27 amount of the license fee for a vehicle "described" in Section 5004 of the Vehicle Code shall
28 be two dollars.

COPY

LEGISLATIVE INTENT SERVICE (800) 666-1917



SP1-2

FRANK L. ROWLEY, GRACE & ARTZ
P.O. BOX 7, LOOMIS, CA 95650-0007 (916) 652-7235

P.O. BOX 7, Loomis, CA 95650-0007 (916) 652-7215

LEGISLATIVE INTENT SERVICE (800) 666-1917



1 3. Vehicle Code Section 5004 states that vehicles described in paragraphs 1,
 2 2, or 3, which are operated or moved over the highway primarily for the purpose of
 3 historical exhibition or other similar purpose shall, "upon application" be issued special
 4 plates. It is undisputed that the vehicle at issue in this case is described in subsection 3.
 5 The State argues that the vehicle can only be described in Section 5004 if it includes the
 6 special plate. However, there is nothing in section 5004 which requires that such special
 7 plates be applied for. It is obvious that an owner can choose not to apply for the special
 8 plates, yet their vehicle could still be described in Section 5004, as set forth in Revenue &
 9 Taxation Code Section 10753.5. Furthermore, it is undisputed that the vehicle is of historic
 10 interest as set forth in Section 5004(f).

11 4. The State's argument that it is entitled to deference is rejected, since it is
 12 the Court which interprets statutes.

13 5. The State's argument that the motion should be denied based on the
 14 ground that plaintiff did not supply evidence to support his contentions during discovery is
 15 denied. The Court has reviewed the discovery served by defendant and the discovery
 16 responses served by the plaintiff and does not find that on its face plaintiff was attempting
 17 to "hide the ball".

18 6. Finally, the State argues that the plaintiff did not exhaust his administrative
 19 remedies. However, it is undisputed that plaintiff submitted a claim for a refund.
 20 Presumably, the State made whatever investigation it felt was appropriate before denying
 21 the claim. If more evidence or facts were required, they could have been requested by the
 22 State prior to denial of the claim.

23 ///

24 ///

25 ///

26 ///

27 ///

SP1-3

7. Plaintiff is the prevailing party and shall recover costs.

SO ORDERED

Dated:

MAR 22 1999

JOE S. GRAY

JOE S. GRAY
JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM

Dated: March 9, 1999

Kristin M. Engstrom
KRISTIN M. ENGSTROM,
Deputy Attorney General

P.O. BOX 7, LOOMIS 95650-0007 (916) 652-7235

LEGISLATIVE INTENT SERVICE (800) 666-1917



SP1 - 4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
28

SENATE FLOOR AMENDMENTS COMMITTEE ANALYSIS

Bill No: SB 800
Author: Johannessen
RN: >
Set: 1
Submitted by: Johannessen

SUBJECT OF BILL: Collector motor vehicles.

Subject of Amendments: Vehicle License Fee for collector motor vehicles.

Amendments are: Technical / Substantive / Re-write Bill / New Bill
(*underline applicable description*)

Were these amendments discussed in committee? Yes
If yes, were they defeated? No

Likely opposition to amendments? No
If yes, from whom?

Purpose of Amendments: Limit the Vehicle License Fee for collector motor vehicles to \$2.00.

ANALYSIS: This amendment would result in collector motor vehicles being assessed a Vehicle License Fee of \$2.00.

By: Senate Transportation Committee, Randall Henry
Date: 5/21/01

**** END ****

(Upon completion, delete all instructions typed in italics, file your analysis ASAP to laptops and provide 70 copies of the analysis to David Wilkening, Room 3189, Phone: 445-8540 or 445-6614)

(800) 666-1917

LEGISLATIVE INTENT SERVICE



MEMBERS

MCCLINTOCK
E CHAIRMAN
ESL BRULTE
JIM COSTA
JOSEPH DUNN
LIZ FIGUEROA
BETTY KARNETTE
DICK MONTEITH
BILL MORROW
DON PERATA
JACK SCOTT
NELL SOTO
JACKIE SPEIER
TOM TORLAKSON



California Legislature

SENATE COMMITTEE ON TRANSPORTATION

KEVIN MURRAY
CHAIRMAN

STEVEN J. SCHNAIDT
STAFF DIRECTOR

RANDALL HENRY
PRINCIPAL CONSULTANT

SHIRLEY G. SMAAGE
ASSISTANT

ROOM 2209
STATE CAPITOL
SACRAMENTO, CA 95814
TEL (916) 445-3182
FAX (916) 445-2209

MEMORANDUM

April 18, 2001

TO: Legislative Counsel
FROM: Randall Henry (445-3182)
RE: Committee amendments—SB 800 (Johannessen)

Please draft the following amendments:

- Page 5, delete lines 16-18.
- Clarify that, despite Revenue & Taxation Sec. 10753.5, "collector motor vehicles" pay a full amount of the license fee. (Sec. 10753.5 provides "the annual amount of the license fee for a vehicle described in Section 5004 of the Vehicle Code shall be two dollars (\$2).")

DEADLINE: FRIDAY, APRIL 20, 2001

(Please return all materials to Room 2209)

LEGISLATIVE INTENT SERVICE (800) 666-1917



SP1 - 6

REVENUE AND TAXATION CODE
Section 10753.5

10753.5. Notwithstanding any other provisions of this part, the annual amount of the license fee for a vehicle described in Section 5004 of the Vehicle Code shall be two dollars (\$2).

(Added by Stats. 1971, Ch. 1448.)
Last Affected Bill - ()

 LEGISLATIVE INTENT SERVICE (800) 666-1917

To: Randal
From: Dohring

SB 800 was drafted to create a special category for older cars that are not being used as daily transportation but for displays at fairs and exhibitions. This distinction makes it clear that they fall under the exemptions as provided for under Section 44011 of the Health and Safety Code Subsection (C) (5)-(8).
If you need any further information please call.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



MEMBERS

TOM MCCLINTOCK
CHAIRMAN
J. L. BRULTE
COSTA
JOSEPH DUNN
LIZ FIGUEROA
BETTY KARNETTE
DICK MONTEITH
BILL MORROW
DON PERATA
JACK SCOTT
NELL SOTO
JACKIE SPEIER
TOM TORLAKSON

California Legislature

SENATE COMMITTEE ON TRANSPORTATION

KEVIN MURRAY
CHAIRMAN

STEVEN J. SCHNAIDT
STAFF DIRECTOR

RANDALL HENRY
PRINCIPAL CONSULTANT

SHIRLEY G. SMAAGE
ASSISTANT

ROOM 2209
STATE CAPITOL
SACRAMENTO, CA 95814
TEL (916) 445-3182
FAX (916) 445-2208



MEMORANDUM

April 18, 2001

TO: Legislative Counsel

FROM: Randall Henry (445-3182)

RE: Committee amendments—SB 800 (Johannessen)

Please draft the following amendments:

- Page 5, delete lines 16-18.
- Clarify that, despite Revenue & Taxation Sec. 10753.5, "collector motor vehicles" pay a full amount of the license fee. (Sec. 10753.5 provides "the annual amount of the license fee for a vehicle described in Section 5004 of the Vehicle Code shall be two dollars (\$2).")

DEADLINE: FRIDAY, APRIL 20, 2001

(Please return all materials to Room 2209)

(800) 666-1917

LEGISLATIVE INTENT SERVICE



SP1-9

MEMBERS

TOM MCCLINTOCK
VICE CHAIRMAN
JAMES L. BRULTE
JIM COSTA
JOSEPH DUNN
FIGUEROA
ITY KARNETTE
DICK MONTEITH
BILL MORROW
DON PERATA
JACK SCOTT
NELL SOTO
JACKIE SPEIER
TOM TORLAKSON

California Legislature

SENATE COMMITTEE ON TRANSPORTATION

KEVIN MURRAY
CHAIRMAN

STEVEN J. SCHNAIDT
STAFF DIRECTOR

RANDALL HENRY
PRINCIPAL CONSULTANT

SHIRLEY G. SMAAGE
ASSISTANT

ROOM 2209
STATE CAPITOL
SACRAMENTO, CA 95814
TEL (916) 445-3182
FAX (916) 445-2209



MEMO TO:

Senator Johannessen - Rm 5061

RE:

SB 800

FROM:

Senate Transportation Committee

The above measure, authored by you, has been referred to this committee. We would like to hear your bill in a timely manner and to meet your needs the best we can.

The staff must prepare an up-to-date analysis before the committee can hear your measure. Please fill out and return the attached page as soon as possible -- but no later than 2 weeks before the desired hearing date. Every attempt will be made to accommodate your requested hearing date, as long as it is consistent with the committee agenda and subject matter.

AMENDMENT DEADLINE. No bill will be heard by the committee unless a current bill analysis is available to the public 2 working days prior to the hearing. To enable staff to meet this requirement:

8 copies of amendments (7 + signed original), in Legislative Counsel form, must be received in the committee office by Noon of the Monday one week prior to the scheduled hearing date.

Bills for which amendments are submitted later than this deadline will be taken off calendar.

Purely technical amendments, as determined by the Chairman, will be accepted as author's amendments during the committee hearing, if they have been submitted to committee staff for review before the beginning of the hearing.

We thank you for your cooperation.

The committee consultant assigned to your measure is:

_____ Steve Schnaidt

_____ ✓ Randall Henry

LEGISLATIVE INTENT SERVICE (800) 666-1917



RETAIN THIS PAGE FOR YOUR RECORDS

SR1 - 10

RETURN THIS FORM TO: SENATE TRANSPORTATION COMMITTEE - ROOM 2209
Phone 445-3182

2001 HEARING DATES

February	6	
	20	2/23 - Last day to introduce bills.
March	6	
	20	
April	3	4/5 - Easter recess begins.
	17	4/27 - Deadline: Senate fiscal bills.
May	1	5/11 - Deadline: Senate non-fiscal bills.
	15	5/25 - Last day policy committees meet prior to 6/11.
June	19	
July	3	7/13 - Last day policy committees to meet and report bills 7/20 - Summer Recess begins.

LEGISLATIVE INTENT SERVICE (800) 666-1917

Regular meeting time and room: 1:30 p.m., Room 3191

MEASURE: SB 800

CONTACT PERSON: BILL JOHNSON

PHONE: 916 806-4326

HEARING DATE PREFERRED: 3 APR 01
(Subject to committee scheduling needs -- however,
every attempt will be made to accommodate your request.)

*** PLEASE ATTACH ALL RELEVANT INFORMATION REGARDING THE MEASURE:**

- Reason for bill TO CREATE DEFINITION FOR CLASSIC CARS.
- Support ACCC
- Background
- Sponsor/Opposition ASSOC. CA. CAR CLUBS

1/11/01
SP1-11

1. On page 5 strike lines 16-18 removing the signing of a declaration that the vehicle is a collector vehicle.

2. Amend section 5004 to ensure that these collector vehicles not be included with historical vehicles thereby ensuring that they pay appropriate registration fees.



LEGISLATIVE INTENT SERVICE (800) 666-1917

MEMBERS

TOM MCCLINTOCK
CHAIRMAN
L. BRULTE
JUSTA
JOSEPH DUNN
JZ FIGUEROA
BETTY KARNETTE
DICK MONTEITH
BILL MORROW
DON PERATA
JACK SCOTT
NELL SOTO
JACKIE SPIER
TOM TORLAKSON

California Legislature

SENATE COMMITTEE ON TRANSPORTATION

KEVIN MURRAY
CHAIRMAN

STEVEN J SCHNAIDT
STAFF DIRECTOR

RANDALL HENRY
PRINCIPAL CONSULTANT

SHIRLEY G. SMAAGE
ASSISTANT

ROOM 2209
STATE CAPITOL
SACRAMENTO, CA 95814
TEL (916) 445-3182
FAX (916) 445-2209



MEMORANDUM

April 3, 2001

TO: Legislative Counsel
FROM: Randall Henry (445-3182)
RE: SB 1100 (Johannessen)—Committee amendments

Please draft the following amendment:

- Page 3, lines 13-14, should read:

(3) Paragraph (1) does not apply to dealers who sell vehicles on a wholesale basis only and who deal with less than 50 vehicles subject to registration in a one-year period.

DEADLINE: Thursday, April 5, 2001, Noon (SURE)

Please deliver all materials to Room 2209

LEGISLATIVE INTENT SERVICE (800) 666-1917



SP1 - 13

MEMBERS

- MCCLINTOCK
- CHAIRMAN
- JAMES L. BRAULTE
- JOHN COSTA
- JOSEPH DUNN
- LIZ FIGUEROA
- BETTY KARNETTE
- DICK MONTEITH
- BILL MORROW
- DON PERATA
- JACK SCOTT
- NELL SOTO
- JACKIE SPEER
- TOM TORLAKSON

California Legislature

SENATE COMMITTEE ON TRANSPORTATION

KEVIN MURRAY
CHAIRMAN

STEVEN J. SCHNAIDT
STAFF DIRECTOR

RANDALL HENRY
PRINCIPAL CONSULTANT

SHIRLEY G. SMAAGE
ASSISTANT

ROOM 2209
STATE CAPITOL
SACRAMENTO, CA 95814
TEL. (916) 445-3182
FAX (916) 445-2209



DATE: 4/6/2001

TO: "Wild" Bill Carter

NO. OF PAGES: 7
(including this page)

AT: 457-7582

FROM: RANDALL

See Comments

If you have not received all pages in this transmission, please contact the Senate Transportation Committee at (916) 445-3182.

(it's better than "Bell Tree Ped")

*Bill - Give me a call when
you can re contact
recordments on SB 800
"25 or more Model-years old" =
Collector?*

LEGISLATIVE INTENT SERVICE (800) 666-1917



From SP1 - 14

Display 2001-2002 Bill Text - IN
BILL NUMBER: SB 800

BILL

44011. (a) All motor vehicles are registered within an area designated by the department and are required biennially to obtain a certificate of title, except for all of the following:

(1) Every motorcycle, and every motor vehicle, pursuant to Section 44020, to motorcycles or to diesel-powered

(2) Any motor vehicle that has noncompliance or a repair cost waiver registration in this state during

(3) Any motor vehicle manufactured prior to the 1975 model-year-

(3) (A) Prior to January 1, 2003, any motor vehicle manufactured prior to the 1974 model-year.

(B) Beginning on January 1, 2003, any motor vehicle that is 30 or more model-years old.

(4) (A) Any motor vehicle four or less model-years old.

(B) The department, by regulation, may increase the exemption provided by this paragraph to include any motor vehicle up to six or less model-years old.

(C) Any motor vehicle excepted by this paragraph shall be subject to testing and to certification requirements as determined by the department, if any of the following apply:

(i) The department determines through remote sensing activities or other means that there is a substantial probability that the vehicle has a tampered emission control system or would fail for other cause a smog check test as specified in Section 44012.

(ii) The vehicle was previously registered outside this state and is undergoing initial registration in this state.

(iii) The vehicle is being registered as a specially constructed vehicle.

(iv) The vehicle has been selected for testing pursuant to Section 44014.7 or any other provision of this chapter authorizing out-of-cycle testing.

(5) In addition to the vehicles exempted pursuant to paragraph (4), any motor vehicle or class of motor vehicles exempted pursuant to subdivision (b) of Section 44024.5. It is the intent of the Legislature that the department, pursuant to the authority granted by this paragraph, exempt at least 15 percent of the lowest emitting motor vehicles from the biennial smog check inspection.

(6) Any motor vehicle that the department determines would present prohibitive inspection or repair problems.

(7) Any vehicle registered to the owner of a fleet licensed pursuant to Section 44020 if the vehicle is garaged exclusively outside the area included in program coverage, and is not primarily operated inside the area included in program coverage.

(8) A collector motor vehicle as defined in Section 258 of the Vehicle Code.

(b) Vehicles designated for program coverage in enhanced areas shall be required to obtain inspections from appropriate smog check stations operating in enhanced areas.

SEE: 27 Section 44017.4 is added to the Health and Safety

The "1975" year model was used because catalytic converters were used in '75 and later models

LEGISLATIVE INTENT SERVICE (800) 666-1917



Display 2001-2002 Bill Text - INFORMATION
BILL NUMBER: SB 800

BILL TEXT

Code, to read:

44817-4. Upon initial registration of a passenger vehicle constructed vehicle, as defined, shall be inspected by state functions. This inspection shall determine the vehicle model-year and determine the model-year of vehicles of the era that the referee shall assign the 1961 constructed vehicle that does not manufactured vehicle. The referee shall determine the control systems that are applicable and that the vehicle reasonable in its present form. Upon completion shall affix the tamper resistant certificate that establishes control system application.

Again - the catalytic converter issue arises, but that's an air-quality matter.

or
er
ing
in
to
sly
sh

SEC. 3.

SEC. 2. Section 258 is added to the Vehicle Code, to read:

258. (a) A collector motor vehicle is a vehicle which was manufactured prior to 1975 that is 25 or more model-years old and meets both of the following conditions:

- (1) The vehicle is not used by the owner as a primary source of transportation.
 - (2) The vehicle is used primarily for purposes of display at events such as collector shows, exhibitions and parades, or to obtain necessary repairs and maintenance.
- (b) The department shall require one of the following documents to be submitted by the registered owner as evidence that the vehicle meets the requirements of subdivision (a).

- (1) A written statement or policy from an insurance company clearly indicating that the motor vehicle has been insured with that company as a collector motor vehicle.
- (2) A declaration, signed by the registered owner under penalty of perjury, that the vehicle is a collector motor vehicle meeting the conditions specified in subdivision (a).

SEC. 4. Section 4800-1 of the Vehicle Code is amended to read:

4800-1. (a) Except as otherwise provided in subdivision (b), (c), or (d) of this section, or subdivision (b) of Section 43654 of the Health and Safety Code, the department shall require upon initial registration, and upon transfer of ownership and registration, of any motor vehicle subject to Part 5 (commencing with Section 43889) of Division 26 of the Health and Safety Code, and upon registration of a motor vehicle previously registered outside this state which is subject to these provisions of the Health and Safety Code, a valid certificate of compliance or a certificate of noncompliance, as appropriate, issued in accordance with Section 44915 of the Health and Safety Code.

LEGISLATIVE INTENT SERVICE (800) 666-1917



Display 2001-2002 Bill Text - INFORMATION
BILL NUMBER: SB 900

BILL TEXT

SEC. 5:

SEC. 3. Section 5004 of the Vehicle Code is amended to read:

5004. (a) Any owner of a vehicle described in paragraph (1) or (2) which is operated or moved over the highway primarily for the purpose of historical exhibition or other similar purpose shall, upon application in the manner and at the time prescribed by the department, be issued special identification plates for the vehicle:

(1) A motor vehicle manufactured prior to 1975 which meets the definition of a that is 25 or more model-years old and meets the definition of a collector motor vehicle as specified in Section 258.

(2) A motor vehicle manufactured in the year 1922 or prior thereto.

(b) The special identification plates as in paragraph (2) of subdivision (a) shall run in series, commencing with "Horseless Carriage

(c) The special identification plates as in paragraph (3) of subdivision (a) shall run in series, commencing with "Historical Vehicle No. 1.

(d) Each series of plates described in subdivision (b) and (c) shall be of different and distinguishing colors.

(e) A fee of twenty-five dollars (\$25) shall be required for the issuance of the special identification plates described in subdivision (b) and (c). The plates shall be permanent and shall not be replaced. If those special identification plates become unserviceable in any manner, replacement for the department upon proper application and payment of the fee for in Section 9265.

(f) All funds received by the department for the issuance of special identification plates or the replacement thereof shall be deposited in the California Environmental License Plate Fund.

(g) These vehicles shall not be exempt from the equipment provisions of Sections 26709, 27150, and 27600.

Again - the catalytic converter issue arises but that's an air quality matter

(800) 666-1917

LEGISLATIVE INTENT SERVICE



SENATE TRANSPORTATION COMMITTEE
SENATOR BETTY KARNETTE, CHAIR

BILL NO: SB 1811
AUTHOR: JOHANNESSEN
VERSION: 5/8/2000
FISCAL: YES

Analysis by: Randall Henry

SUBJECT:

Vehicles.

DESCRIPTION:

This bill would make changes in the Smog Check II program regarding "specially constructed vehicles" and certain vehicles that are scheduled to be exempt from the program.

ANALYSIS:

1) Existing law requires an applicant for the vehicle registration of a specially constructed vehicle or remanufactured vehicle to include prescribed information in the registration application.

This bill would require a passenger vehicle or pickup truck that is a specially constructed vehicle to be inspected by smog inspection stations authorized to perform referee functions. Upon completion of the inspection, the referee would be required to affix the tamper resistant label to the vehicle and issue a certificate that establishes the vehicle model-year and emission control system application.

2) Existing law requires all motor vehicles to comply with requirements of the vehicle inspection and maintenance program on a biennial basis, and vehicles upon initial registration, upon transfer of ownership and registration, and upon registration of a motor vehicle previously registered outside the state. Certain vehicles are exempt from this requirement, including motor vehicles manufactured prior to the 1974 model-year (until January 1, 2003), and motor vehicles that are 30 or more model-years old after January 1, 2003.

This bill would revise this exemption to apply to motor vehicles manufactured prior to the 1975 model-year.

3) Existing law defines a "specially constructed vehicle" to mean a vehicle that is built for private use not for resale, that is not constructed by a licensed manufacturer or remanufacturer.

This bill would revise the definition by deleting the restriction that the vehicle not be subject to resale.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



BACKGROUND:

Federal law requires the states that do not meet the specified health-based federal air quality standards to implement vehicle inspection and maintenance programs.

Current law provides for two versions of the vehicle inspection program ("Smog Check II") in California: (1) Enhanced Program—required in urbanized areas of the state classified as serious, severe or extreme nonattainment areas for ozone, or moderate or serious nonattainment for carbon monoxide (the San Joaquin Valley, San Diego County, the Sacramento Region, Ventura County, and the South Coast); and (2) Basic Program—required in the other areas of the state where a program was in existence prior to certain legislative changes enacted in 1994.

All vehicles, with specified exceptions, are required to participate in the vehicle inspection and maintenance program and obtain a smog check certificate or certificate of non-compliance biennially, upon change-of-ownership, or upon the registration of a vehicle previously registered in another state.

In 1997, the Legislature enacted Senate Bill 42 (Ch. 801, Kopp), which exempted from the biennial and change-of-ownership vehicle inspection requirements vehicles manufactured before the 1974 model year and beginning in 2003, all 30-year old vehicles on a rolling basis. Prior to the enactment of this measure, all 1966 and older models were exempt from the requirements of Smog Check II.

COMMENTS:

1. This bill would make two changes to the Smog Check II program:
 - Modify the way the vehicle model-year is determined for a "specially constructed vehicle" for smog inspection purposes.
 - Delete the exemption from smog inspection for all vehicles 30 years and older, which is scheduled to take effect in 2003. The bill would provide that all vehicles manufactured prior to 1975 would be exempt from this requirement.

Specially constructed vehicles

2. A "specially constructed vehicle" is defined as "a vehicle which is built for private use, not for resale, and is not constructed by a licensed manufacturer or remanufacturer. A specially constructed vehicle may be built from (1) a kit; (2) new or used, or a combination of new and used, parts; or (3) a vehicle reported for dismantling. . . which, when reconstructed, does not resemble the original make of the vehicle dismantled. A specially constructed vehicle is not a vehicle which has been repaired or restored to its original design by replacing parts."

3. The supporters of the measure contend that when these vehicles are presented to the Department of Motor Vehicle for the initial registration it is sometimes difficult to identify, because of the use of unassociated engine parts and the special nature of these

vehicles, the precise model-year for smog inspection purposes. If the department is unable to determine a specific model-year, it designates the engine as a current year engine, thus subjecting the vehicle to more stringent smog inspection requirements. This bill would authorize Bureau of Automotive Repair officials, who are specially trained in this area, to make this determination. It would appear that the changes proposed by this bill would better ensure the identification of the appropriate model-year for these vehicles and eliminate the difficulties that these vehicle owners have sometimes encountered regarding complying with the requirements of the Smog Check II program.

30-year exemption

4. When enacted, supporters of this exemption contended that these older vehicles had "relatively minimal impact on vehicle emissions and air quality. Such vehicles constitute a small portion of the vehicle fleet and many are considered classic cars by their owners and others. They are generally well-maintained and infrequently operated. Other older vehicles not considered classic vehicles also are relatively few in number and are driven fewer miles than the average for vehicles in the state."

In a recent report evaluating the Smog Check II program, the State Air Resources Board noted that "(a)lthough the Enhanced I/M program is producing substantial benefits, the reductions achieved fall short of the SIP target for three primary reasons: (1) legislative changes weakened the Enhanced I/M program; (2) the more rigorous program elements are being phased in over a longer timeframe; and (3) the 1994 SIP target assumed additional communities outside urbanized areas and heavy-duty gasoline trucks would be subject to Enhanced I/M."

The report further noted that:

Older cars continue to contribute a disproportionate amount of emissions, despite their relatively low numbers and use. The current exemption of pre-1974 models becomes a rolling 30-year exemption in 2003 – institutionalizing the loss in emission benefits. One option would be to freeze the exemption for 1973 and older models. As time passes, these older vehicles would remain in the inspection program, however, no vehicle currently exempt would have its exemption status changed. Over time, as pre-1974 vehicles represent an ever smaller part of the fleet through retirement, the impact of exempting these vehicles would become negligible.

5. The measure closely mirrors this recommendation by the State Air Resources Board. Current law, however, provides that "any motor vehicle manufactured prior to the 1974 model-year" is exempt from the inspection requirement. This bill would provide that any motor vehicle manufactured prior to the "1975" model-year be exempt. Should this bill more precisely reflect the model-year exemption in existing law ("1974")?

6. The author indicates that the most recent amendments to the bill include an amendment to Vehicle Code Sec. 580. The author did not intend to make this amendment, and he indicates that he will request the adoption of an author's amendment at the committee hearing to delete this change.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



2011 SB1 - 20

POSITIONS: (Communicated to the Committee before noon on Wednesday,
5/3/00)

SUPPORT/OPPOSED: None received.

5/8/00

LEGISLATIVE INTENT SERVICE (800) 666-1917



SP1 - 21

SENATE JUDICIARY COMMITTEE

Martha M. Escutia, Chair

2001-2002 Regular Session

SB 800	S
Senator Burton and Assembly Member Wesson	B
As Amended August 28, 2002	
Hearing Date: August 29, 2002	8
Civil Code, Civil Procedure Code, Health and Safety Code	0
MTY:cjt	0

SUBJECT

Construction Defects

DESCRIPTION

This bill would 1) provide for detailed and specific liability standards for newly constructed housing, 2) create a pre-trial process that includes a builder's right to repair an alleged defect, and 3) provide third-party inspectors with immunity from liability.

BACKGROUND

This bill would make major changes to the substance and process of the law governing construction defects. It is the product of extended negotiations between various interested parties. Among other things, the bill seeks to respond to concerns expressed by builders and insurers over the costs associated with construction defect litigation, as well as concerns expressed by homeowners and their advocates over the effects of a recent Supreme Court decision that held that defects must cause actual damage prior to being actionable in tort [*Aas v. Superior Court*, (2000) 24 Cal. 4th 627].

CHANGES TO EXISTING LAW

Existing law provides that a construction defect action may be brought against any person who develops real property or performs or furnishes the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to real property. [Code of Civil Procedure Sections 337.1 and 337.15.] In addition to rights of action under tort, construction defects may also be subject to actions under contract, implied warranty, and fraud.



Existing law provides that an action based on latent defects (defects not apparent from a reasonable inspection) in construction must be brought within 4 years of discovery of the defect (if the action is based on breach of contract or warranty), but in no event may such an action be brought more than 10 years after the date of substantial completion of the development or improvement. [Code of Civil Procedure Sections 337 and 337.15.]

Existing law, as set forth in the California Supreme Court decision *Aas v. Superior Court*, (2000) 24 Cal. 4th 627, provides that builders may not be held liable in negligence for construction defects unless those defects have caused death, bodily injury, or property damage.

This bill would provide that any action against a builder, subcontractor, individual product manufacturer, or design professional, seeking recovery of damages arising out of, or related to deficiencies in, residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction shall be governed by detailed standards set forth in the bill relating to the various functions and components of the building.

This bill would provide for a ten-year statute of limitations for construction defect actions, with certain limited exceptions and tolling periods under certain circumstances.

This bill would require builders to provide homeowners with a minimum one-year express warranty covering the fit and finish of certain building components. The bill would also allow builders to provide homeowners with express warranties that offer greater protections than the standards set forth in the bill.

This bill would establish a mandatory procedure prior to the filing of a construction defect lawsuit. This procedure would provide the builder with a right to attempt a repair of the defect prior to litigation, inspections and exchanges of documentation under certain circumstances, and mediation at various points, all pursuant to various timeframes set forth in the bill. The bill would provide that if the builder fails to follow any of the procedures, the homeowner is entitled to proceed with the filing of an action.

This bill would set forth statutory affirmative defenses, under the principles of comparative fault, for a) unforseen acts of nature in excess of the design criteria expressed by the applicable building codes, b) a homeowner's unreasonable failure to minimize or prevent damages, c) a homeowner's, or his/her agent or employee, failure to follow recommended or commonly accepted maintenance obligations, d) defects caused by the alterations, ordinary wear and tear, misuse, abuse, or neglect, e) defects barred by the statute of limitations, f) defects subject to a valid release, and g) the extent that a builder's repair was successful in correcting the defect.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



COMMENT

1. Need for the bill

The analysis of the Assembly Judiciary Committee analysis states that:

. . . this bill represents groundbreaking reform for construction defect litigation. As many prior bill analyses on this subject have noted, the problem of construction defects and associated litigation have vexed the Legislature for a number of years, with substantial consequences for the development of safe and affordable housing. This bill reflects extensive and serious negotiations between builder groups, insurers and the Consumer Attorneys of California, with the substantial assistance of key legislative leaders over the past year, leading to consensus on ways to resolve these issues.

The bill seeks to respond to concerns expressed by a number of parties. The bill responds to concerns from homeowners and the Consumer Attorneys of California over the consequences of *Aas v. Superior Court*, (2000) 24 Cal. 4th 627, which held that defects must cause actual damage or personal injury prior to being actionable in tort. The bill also responds to concerns expressed by builders, subcontractors, and insurers over the costs of construction defect litigation their impact on housing costs in the state.

2. Explanation of bill's standards

This bill would set detailed standards in areas including, but not limited to, water intrusion, structural stability, soils, fire protection, plumbing, and electrical systems. Except in certain specified circumstances, the bill would provide that these standards govern any action seeking recovery of damages arising out of or related to construction defects. The bill would provide that any function or component not specifically addressed by the standards shall be actionable if it causes damage. As a result, the bill would preserve homeowners' ability to recover for defects that cause damage that are not otherwise covered by the standards.

In addition, except where explicitly specified otherwise, liability would accrue under the standards regardless of whether the violation of the standard had resulted in actual damage or injury. As a result, the standards would essentially overrule the *Aas* decision and, for most defects, eliminate that decision's holding that construction defects must cause actual damage or injury prior to being actionable. Also, as noted by the Assembly Judiciary Committee analysis: "Rather than requiring resort to contentions about the



significance of technical deviations from building codes, the bill specifies the standards that building systems and components must meet."

In addition, the standards are a statutory "floor" for construction defect standards. The bill explicitly authorizes builders to offer greater protections in contract, and provides for a mechanism to resolve disputes that may arise over whether contractual provisions are in violation of the standards. With regard to other contractual provisions, such as contractual arbitration or other forms of alternative dispute resolution, the bill seeks to have no effect on existing law.

Finally, the standards are intended to apply to subcontractors, material suppliers, individual product manufacturers and design professionals to the extent that they cause, in whole or in part, a violation of a particular standard as a result of their negligent acts or omissions, or breach of contract. As a result, the bill does not modify current law pertaining to joint and several liability for subcontractors and design professionals that contribute to any specific violation of the construction defect standards set out in the bill.

3. Overview of pre-litigation process and builder's right to repair

The bill establishes a mandatory process prior to the filing of a construction defect action. The major component of this process is the builder's absolute right to attempt a repair prior to a homeowner filing an action in court. Builders, insurers, and other business groups are hopeful that this right to repair will reduce litigation.

The process begins with the homeowner submitting a written claim for alleged violations of the liability standards. The builder must acknowledge the claim within 14 days of receipt of the notice, and if the builder wishes to conduct an inspection it must be completed within 14 days of the acknowledgement. Within three days of the first inspection, the builder may request a second inspection, which must be conducted within 40 days.

Within 30 days of the last inspection, the builder may offer to repair some, all, or none of the violations. This offer to repair must set forth a detailed statement of the work to be done, set a reasonable completion date, and must also compensate the homeowner for all applicable damages recoverable. Also, the offer must be accompanied by an offer to mediate the dispute if the homeowner so chooses.

This offer to repair must be accepted by the homeowner within 30 days of receipt, except that a homeowner may object to the contractor designated to conduct the repair. If the homeowner objects, the builder has 35 days to provide the homeowner with three alternative contractors. Also, if the

(800) 666-1917

LEGISLATIVE INTENT SERVICE



homeowner objects, the builder is entitled to an additional non-invasive inspection within 20 days.

Once the repair is agreed to by the homeowner, the bill provides that repairs must commence within 14 days, with certain limited exceptions. The bill provides that "every effort shall be made to complete the repair within 120 days."

Finally, the bill provides that if no repair offer is made, or if the builder otherwise fails to strictly comply with the process, the homeowner may proceed with the filing of an action.

4. Bill would provide for immunity for third-party inspectors

The bill would provide immunity from liability to third-party inspectors that provide, under contract to an applicant for a residential building permit, an "independent quality review" of residential plans and specifications or compliance with those plans and specifications. This immunity would apply to any person except the person who retains the inspector. A third-party inspector would be required to meet certain minimum experience requirements to qualify for the immunity, and would also be required to maintain two million dollars in liability insurance.

Supporters of this immunity argue that independent inspections are a useful tool in improving the quality of residential construction. Supporters also argue that there is currently a severe shortage of qualified individuals willing to conduct inspections because of the risk of liability. Immunity from liability, supporters argue, will significantly increase the pool of available inspectors.

Some might argue that the broad immunity granted by the bill will reduce the incentives for inspectors to conduct rigorous inspections. For example, even gross misconduct on the part of an inspector which fails to prevent a significant injury would not be actionable.

Supporters point out that an injured party would still be entitled to recover against the builder and other responsible parties, and that the benefits of increased inspections outweigh the policy consequences of immunity. However, inspector immunity would probably reduce a homeowner's ability to obtain full recovery as other responsible parties seek to shift as much responsibility as possible to the immune inspector.



5. Bill's interaction with "Calderon process" could use further study

Existing law, contained in Civil Code Section 1375, provides for a mandatory pre-trial process for construction defect actions involving attached housing. [This process is commonly referred to as the "Calderon process," after its original author, and was substantially amended by AB 1700 of 2001 (Steinberg).] The Calderon process is a minimum six-month process involving extensive information exchanges and alternative dispute resolution sessions.

This bill creates an additional pre-trial process that, even without a repair offer, can last, at the builder's sole option, at least 101 days. The bill provides that to the extent that its provisions are "substantially similar" to the procedures in the Calderon process, compliance with that process is excused.

In the near future, interested parties may want to consider giving further attention to the interaction between this bill's process and the Calderon process. This bill's provisions create considerable risk of uncertainty and litigation over what portions of the Calderon process are "substantially similar" to the procedures created by this bill.

Support: California Building Industry Association (CBIA); Consumer Attorneys of California (CAOC); Personal Insurance Federation of California (PIFC); Consulting Engineers and Land Surveyors of California (CELSOC); California Nurses Association (CNA); Congress of California Seniors

Opposition: None Known

HISTORY

Source: Authors

Related Pending Legislation: None Known

Prior Legislation: AB 1700 of 2001 (Steinberg) made significant changes to the Calderon process.

Prior Vote: This bill was recently amended to address the issue of construction defects. After those amendments, the language passed the Assembly Judiciary Committee 12-0 and the Assembly Floor 73-0.





August 30, 2002

SENATE FLOOR ALERT

HOME OWNERSHIP ADVANCEMENT FOUNDATION (HOAF) SUPPORTS SB 800 (BURTON) – CONSTRUCTION DEFECT REFORM

The Home Ownership Advancement Foundation (HOAF), representing ten of California's largest and most active homebuilders, strongly supports SB 800. This bill makes monumental changes to the current liability scheme for construction defect claims. These long sought changes will encourage homebuilders to once again enter the marketplace to build condominiums. It will also encourage insurers to reenter the marketplace and once again offer insurance to builders and subcontractors. This bill also covers single family homes.

SB 800 has many important features that benefit both homebuilders and homeowners:

- Defines in statute how a home should perform through functionality standards. This provides homeowners and homebuilders with clear standards of how the major components of a home should perform
- SB 800 shortens the statute of limitations for several components of a home shorter than 10 years realistically reflecting how long those components can be expected to meet the standards
- Requires notice to a homebuilder of any alleged breach of the functionality standard with an opportunity to inspect and discuss with homeowners their concerns
- Provides an absolute right of the homebuilder to repair an alleged violation of a functionality standard
- Specifies timelines for inspections and repairs to take place
- Requires mediation prior to litigation if a homeowner is dissatisfied with a repair
- Specifies Affirmative Defenses in statute
- Limits liability of subcontractors to the particular functionality standard at issue. This means a landscaping contractor could not be named in a lawsuit over a defective roof.

SB 800 is a major step forward in overhauling the liability laws that have plagued homebuilders for so long. It concludes many years of a bi-partisan reform effort. Please vote Yes on SB 800 (Burton). Please contact Ed Manning if you have any questions at (916) 448-2162.

Research Consultants & Advocates
1115 11th Street, Suite 100
Sacramento, California 95814
TEL. 916/448-2162 • FAX 916/448-0577

LIS-6

SP2 - 1

SB 800 LEG. HIST. 000178

(800) 666-1917

LEGISLATIVE INTENT SERVICE



California Building Industry Association

FLOOR ALERT

TO: All Senate Members

RE: SB 800 (Burton)

POSITION: SUPPORT

SB 800 represents a consensus developed over months of negotiations between the Consumer Attorneys of California, the California Building Industry Association and insurance industry representatives.

The bill contains much needed reform to the construction dispute resolution system in California. This bill will, for the first time, clearly define a "defect" and give homebuilders the right to repair problems when they arise in a home. SB 800 also helps consumers by addressing the concerns raised in the dissenting opinion of Justice George in the *Aas* decision.

California is suffering from a critical housing shortage and that shortage is most severe in the attached, for-sale sector. Builders are unable to obtain liability insurance for the construction of condominiums due to excessive litigation.

This bill will reduce the need for litigation and bring greater predictability, which is necessary if insurers are to return to the market.

CBIA urges an Aye vote on this important measure.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



SP2 - 2

BILL NUMBER: SB 800 AMENDED
BILL TEXT

- AMENDED IN ASSEMBLY AUGUST 28, 2002
- AMENDED IN ASSEMBLY AUGUST 28, 2002
- AMENDED IN ASSEMBLY AUGUST 26, 2002
- AMENDED IN ASSEMBLY AUGUST 25, 2002
- AMENDED IN ASSEMBLY AUGUST 15, 2002
- AMENDED IN ASSEMBLY AUGUST 12, 2002
- AMENDED IN SENATE MAY 21, 2001
- AMENDED IN SENATE APRIL 25, 2001
- AMENDED IN SENATE APRIL 5, 2001

INTRODUCED BY Senator Burton and Assembly Member Wesson
 (Principal coauthors: Senators Dunn, Escutia, Romero, and Torlakson)
 (Principal coauthors: Assembly Members Calderon, Corbett, Dutra, and Steinberg)
 (Coauthors: Assembly Members Aroner, Alquist, Canciamilla, Cardoza, Cedillo, Chan, Chavez, Chu, Cohn, Diaz, Firebaugh, Florez, Frommer, Goldberg, Jackson, Keeley, Kehoe, Koretz, Longville, Lowenthal, Nakano, Negrete McLeod, Oropeza, Papan, Pavley, Reyes, Salinas, Shelley, Vargas, Wayne, and Wiggins)

FEBRUARY 23, 2001

An act to add Section 43.99 to , and to add Title 7 (commencing with Section 895) to Part 2 of Division 2 of, the Civil Code, relating to construction defects.

LEGISLATIVE COUNSEL'S DIGEST

SB 800, as amended, Burton. Liability: construction defects. Existing law provides for stipulated judgments in construction defect actions, as defined.
~~This bill would define "construction defect" for these purposes.~~

The bill would ~~also~~ specify the rights and requirements of a homeowner to bring an action for construction defects, including applicable standards for home construction, the statute of limitations, the burden of proof, the damages recoverable, a detailed prelitigation procedure, and the obligations of the homeowner.

This bill would also provide that there is no personal monetary liability on the part of, and no cause of action for damages shall arise against, any person, in any of the specified categories, who is under contract with an applicant for a residential building permit to provide independent quality review of the plans and specifications provided with the application in order to determine compliance with all applicable requirements imposed pursuant to the State Housing Law or any rules or regulations adopted pursuant to that law, or to inspect a work of improvement to determine compliance with these plans and specifications, except as specified. The bill would also set forth specified findings and declarations of the Legislature regarding construction defects.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

~~SECTION 1. The Legislature finds and declares, as follows:~~

(800) 666-1917

LEGISLATIVE INTENT SERVICE



SP2 - 3

SENATE RULES COMMITTEE

SB 800

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 445-6614 Fax: (916) 327-4478

THIRD READING

Bill No: SB 800
Author: Johannessen (R)
Amended: 4/25/01
Vote: 27

SENATE TRANSPORTATION COMMITTEE: 13-0, 4/17/01
AYES: Murray, McClintock, Brulte, Costa, Dunn, Figueroa, Karnette,
Monteith, Perata, Romero, Scott, Soto, Torlakson

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Collector motor vehicles

SOURCE: Author

DIGEST: This bill creates a new motor vehicle classification, "collector motor vehicle."

ANALYSIS: Existing law permits owners of vehicles that are operated or moved primarily for the purpose of historical exhibition or similar purpose to be issued special identification plates. This provision applies to a motor vehicle with an engine of 16 or more cylinders that was manufactured prior to 1965, a motor vehicle manufactured in the year 1922 or prior, and a vehicle manufactured after 1922 that is at least 25 years old and of historic interest.

This bill:

1. Defines a vehicle that is 25 or more model-years and is not used by the owner as a primary source of transportation and is used primarily for purposes of display at events as a "collector motor vehicle."

LIS - 7a

CONTINUED

SB 800 LEG. HIST. 000181

LEGISLATIVE INTENT SERVICE (800) 666-1917



2. Exempts collector motor vehicles from the biennial smog inspection program.
3. Provides that these vehicles pay an annual vehicle license fee of \$2.

According to the author, the purpose of this measure is "to create a special category for older cars that are not being used as daily transportation but for displays at fairs and exhibitions, and it specifies these vehicles are exempt from smog inspection."

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

SUPPORT: (Verified 5/14/01)

Association of California Car Clubs

RJG:kb 5/14/01 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****

(800) 666-1917

LEGISLATIVE INTENT SERVICE



SENATE RULES COMMITTEE

SB 800

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

THIRD READING

Bill No: SB 800
Author: Johannessen (R)
Amended: 5/21/01
Vote: 21

SENATE TRANSPORTATION COMMITTEE: 13-0, 4/17/01
AYES: Murray, McClintock, Brulte, Costa, Dunn, Figueroa, Karnette,
Monteith, Perata, Romero, Scott, Soto, Torlakson

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Collector motor vehicles

SOURCE: Author

DIGEST: This bill creates a new motor vehicle classification, "collector motor vehicle".

Senate Floor Amendments of 5/21/01 remove the provision which would have excluded collector motor vehicles from the provision that limits the vehicle license fee to \$2.00 annually.

ANALYSIS: Existing law permits owners of vehicles that are operated or moved primarily for the purpose of historical exhibition or similar purpose to be issued special identification plates. This provision applies to a motor vehicle with an engine of 16 or more cylinders that was manufactured prior to 1965, a motor vehicle manufactured in the year 1922 or prior, and a vehicle manufactured after 1922 that is at least 25 years old and of historic interest.

LEGISLATIVE INTENT SERVICE (800) 666-1917



This bill:

1. Defines a vehicle that is 25 or more model-years and is not used by the owner as a primary source of transportation and is used primarily for purposes of display at events as a "collector motor vehicle."
2. Exempts collector motor vehicles from the biennial smog inspection program.

According to the author, the purpose of this measure is "to create a special category for older cars that are not being used as daily transportation but for displays at fairs and exhibitions, and it specifies these vehicles are exempt from smog inspection."

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

SUPPORT: (Verified 5/22/01)

Association of California Car Clubs

RJG:kb 6/15/01 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****



SENATE FLOOR AMENDMENTS COMMITTEE ANALYSIS

Bill No: SB 800
Author: Johannessen
RN: 0114253
Set: 1
Submitted by: Johannessen

SUBJECT OF BILL: Collector motor vehicles.

Subject of Amendments: Vehicle License Fee for collector motor vehicles.

Amendments are: Technical / Substantive / Re-write Bill / New Bill

Were these amendments discussed in committee? Yes
If yes, were they defeated? No

Likely opposition to amendments? No
If yes, from whom?

Purpose of Amendments: Limit the Vehicle License Fee for collector motor vehicles to \$2.00.

ANALYSIS: This amendment would result in collector motor vehicles being assessed a Vehicle License Fee of \$2.00, clarifying that the bill is in compliance with the court decision in *Rowley v Department of Motor Vehicles*.

By: Senate Transportation Committee, Randall Henry
Date: 5/21/01

**** END ****

LIS - 8

SFA - 1

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE



46791

05/21/01 12:17 PM
RN0114253 PAGE 1
Substantive

ORIGINAL COPY

AMENDMENTS TO SENATE BILL NO. 800
AS AMENDED IN SENATE APRIL 25, 2001

John J. Johamessen
Johamessen
File Item # 44

Amendment 1

In lines 1 and 2 of the title, strike out "to amend
Section 10753.5 of the Revenue and Taxation Code,"

Amendment 2

On page 3, strike out lines 38 and 39, on page 4, strike
out lines 1 to 5, inclusive, in line 6, strike out "SEC. 3." and
insert:

SEC. 2.

Amendment 3

On page 4, line 29, strike out "SEC. 4." and insert:

SEC. 3.

- 0 -

LEGISLATIVE INTENT SERVICE (800) 666-1917

L43



SFA-2

K. Johannessen

May 21, 2001

SB 800

ANALYSIS

A. Programmatic Analysis

Current law provides for DMV to administer an "historic vehicle" program.

This bill would create an additional "collector vehicle" program. The chart below compares and contrasts the provisions of these programs.

	Current Law	Collector (proposed program)	Historic (current program)
Vehicle Age	>=25 years old	>=25 years old	>=25 years old
Vehicle License Fee (VLF)	Purchase price * 2% * 15%. (i.e., \$150 for a \$50,000 vehicle)	\$2 (because SB 800 would add collector vehicles to Vehicle Code Sec. 5004 and, hence, Sec. 10753.5 of the Revenue & Taxation Code)	\$2
Smog Requirement	Exempt if manufactured prior to 1974 model year**.	Exempt.	Exempt if manufactured prior to 1974 model year**.
Driving Limits	No limit.	(1) For display at events. (2) For necessary repairs and maintenance. (3) Not used as primary transportation.	(1) For historical exhibition. (2) Not used as primary transportation.
Special 'Historic' License Plates	Not issued.	Optional	Optional
Plate Fee/Replacement	Included in initial registration fee. \$7 replacement	\$25 new (permanent). \$7 replacement.	\$25 new (permanent). \$7 replacement.
Definition	N/A	Owner provides a document from insurance company stating that the vehicle has "collector" status.	Subjective, according to the owner's opinion.

** Beginning January 1, 2003, any vehicle that is 30+ model years old is exempt from smog requirements, unless the vehicle registration is transferred.

Discussion:

Compared to current law:

- The collector vehicle program would allow collector vehicles to pay a reduced (\$2) VLF, while non-collector vehicles pay the regular VLF according to the vehicle's purchase price and subsequent depreciation.
- Under the proposed collector vehicle program, all such vehicles (25 years and older) would be exempted from smog requirements, while under current law, only those vehicles manufactured prior to 1974 (28 years old, until January 1, 2003 and then 30 years old) would be exempt (see below).
- The collector vehicle program would require that those vehicles be driven on a limited basis only.

SFA - 4

LEGISLATIVE INTENT SERVICE (800) 666-1917

K. Johannessen

May 21, 2001

SB 800

In comparison to the existing historic vehicle program, the new "collector vehicle" program would provide substantially the same program requirements and benefits with the following major exceptions:

- Owners of "collector" vehicles would be required to obtain insurance company documentation that the vehicle is insured as a "collector" vehicle and that it is not driven routinely.
- "Collector" vehicles would be exempted from existing smog certification requirements as follows:

Exempt from SMOG?	Collector Vehicles	Historical Vehicles	All Vehicles
After January 1, 2002	25+ years old	25+ years old	28+ years old (manufactured pre-1974)
After January 1, 2003	25+ years old	30+ years old	30+ years old

Thus, without this bill, a vehicle that (1) was manufactured in 1975 and (2) could potentially qualify for "collector" status would be subject to smog requirements because the vehicle was manufactured after 1974. "Collector" status, however, would exempt this vehicle because it is over 25 years old.

Presumably, this exemption from smog certification is based on the limited number of miles that a "collector" vehicle would be driven. However, a vehicle with "historic" status that is 25 years old (a 1976 model year) would still be subject to smog requirements. Further, all other ordinary vehicles are required to meet the current biennial smog requirements irrespective of the number of miles driven. Therefore, it is not clear why "collector" vehicles should be treated differently for this requirement. Also, the state receives significant federal funds that could be jeopardized if the requirements of the smog certification program are lessened.

We are also concerned that unscrupulous persons would attempt to use the "collector" status to avoid smog requirements and still drive the vehicles regularly. Nothing in this bill would require "collector" cars to display the specified license plate, therefore, enforcement agencies (e.g., the California Highway Patrol) could not easily identify a "collector" vehicle exceeding the restricted usage limitation when in operation.

B. Fiscal Analysis

Since insurance companies use various forms, it may take DMV personnel extra time to verify these documents (submitted by insurance companies to support the owner's claim of the "collector vehicle" status) at the counter. However, it is not anticipated that a large number of persons will avail themselves of this program; therefore, these costs should not be significant.

This bill would also have fiscal effects on (1) the General Fund and (2) local governments. DMV reports that:

1. In 2001, there are 1,069,000 registered vehicles that are 25+ years old (i.e., first registered in or before 1976).
2. Of these "older" vehicles, 19,955 are registered with "historic" status.
3. The VLF is based on 2 percent of a vehicle's new sales price, depreciated to a minimum of 15 percent of that amount (once the vehicle has reached nine years of age).
4. Under current law, the vehicle registrant pays only 32.5% of the VLF due to local governments. The General Fund contributes 67.5%. For example, in 1999 the average owner paid \$109 as his or her portion of the total VLF (i.e., \$335), and the General Fund contributed a subsidy of \$226.

LEGISLATIVE INTENT SERVICE (800) 666-1917



K. Johannessen

May 21, 2001

SB 800

The DMV does not have an estimate of how many vehicle owners will apply for collector status. The following assumptions are made for analysis purposes:

- Assume the average VLF for collector vehicles would be \$15, based on a new sales price in 1977 of \$5,000 (\$5,000 * 2 percent * 15 percent). This amount would be split—\$5 to the VLF and \$10 from the General Fund.
- Assume 20,000 vehicles from the general, not historic, vehicle population (about the same number as apply for "historic" status) will apply for and receive "collector" status.

(1) General Fund (VLF offset) expenditures will decrease (from \$10 per vehicle to 67.5 percent of \$2 or \$1.35) by \$173,000 annually.

(2) VLF fees will be decreased (from \$5 to \$0.65) by about \$87,000 annually.

(3) Both of these amounts would otherwise be paid to local governments for a total annual loss to local governments of approximately \$260,000 annually.

While the above calculations assume an average annual VLF based on a \$5,000 depreciated vehicle value, in certain circumstances, a used vehicle could have a significantly greater value and, therefore, higher VLF fees. For example, a "collector" status 1976 Chevrolet Corvette could be sold today as a used car for well over \$100,000. At a sales price of \$100,000, the VLF fees would be \$2,000 for the first year of licensure by the new owner. However, should that owner claim the "collector" status for the vehicle, as this bill would provide, the VLF fee would become \$2; a savings for the person who can afford to buy a \$100,000 vehicle (that would be subject to restricted usage) of \$1,998. We do not have data on the frequency of such transactions and, therefore, cannot determine what the impact these kinds of unusual value transactions would have on the VLF and General Fund. Since the VLF is a form of property tax, we see no policy rationale for exempting well-to-do persons engaging in collecting from the normal rates.

Code/Department Agency or Revenue Type	SO		(Fiscal Impact by Fiscal Year)						Fund Code
	LA	CO	PROP			FC			
	RV	98	FC	2001-2002	FC	2002-2003	FC	2003-2004	
2740/DMV	SO	No	S	\$122	S	\$7	S	\$7	0044
1136/MV Lic Fees	RV	No	L	-\$44	L	-\$87	L	-\$87	0064
9100/Tax Relief	LA	No	M	-\$87	M	-\$173	M	-\$173	0001

Fund Code	Title
0001	General Fund
0044	Motor Vehicle Account, STF
0064	Motor Vehicle License Fee Account, TTF

LEGISLATIVE INTENT SERVICE (800) 666-1917



Date of Hearing: June 18, 2001

ASSEMBLY COMMITTEE ON TRANSPORTATION

John Dutra, Chair

SB 800 (Johannessen) – As Amended: May 21, 2001

SENATE VOTE: 39-0

SUBJECT: Collector motor vehicles

SUMMARY: Establishes the classification of collector motor vehicle. Specifically, this bill:

- 1) Defines as a "collector motor vehicle" a vehicle that is: 25 or more model-years old; not used by the owner as a primary source of transportation; and used primarily for purposes of display at events.
- 2) Requires the registered owner of a collector vehicle to submit to the Department of Motor Vehicles (DMV) a written statement or policy from an insurance company indicating the vehicle is insured as a collector vehicle.
- 3) Exempts collector motor vehicles from the biennial smog inspection program.
- 4) Requires DMV to issue special identification plates for collector motor vehicles.

EXISTING LAW:

- 1) Exempts motor vehicles manufactured prior to 1974 from Smog Check requirements. Effective 2003, this exemption will apply to all vehicles 30 years or older.
- 2) Requires DMV to issue special identification plates to various categories of vehicles that are of historic interest.

FISCAL EFFECT: Unknown

COMMENTS: According to the author, the purpose of this measure is "to create a special category for older cars that are not being used as daily transportation but for displays at fairs and exhibitions, and it specifies these vehicles are exempt from smog inspection."

Opponents argue that the Smog Check program is falling short of its emission reduction goals and that weakening it could trigger federal sanctions against highway funding. They do not believe that requiring insurance companies to verify that vehicles are insured as collector vehicles will assure that they are not being used for regular transportation purposes. Accordingly, they fear that the bill will encourage the proliferation of cars being labeled as collector cars in order to evade Smog Check inspections.

In this regard, it should be noted that effective January 1, 2003, when Smog Check exemptions apply to all vehicles that are 30 years or older, this bill will essentially create a five year window for vehicles classified as collector motor vehicles, (i.e., vehicles that meet the bill's 25-year age threshold but do not meet the universal 30-year age threshold for Smog Check exemption).



Although the Air Resources Board estimates that by 2003 there will be 400,000 vehicles between 25 and 30 years old, they are unable to provide an estimate as to how many of those might be considered or treated as collector vehicles. The actual number is likely to be extremely small.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California Car Clubs

Opposition

California Air Pollution Control Officers Association
Sacramento Metropolitan Air Quality Management District

Analysis Prepared by: Howard Posner / TRANS. / (916) 319-2093

LEGISLATIVE INTENT SERVICE (800) 666-1917



MAY 24 2001

May 17, 2001

Dear Senator *Quira*

I am writing to express my concerns about SB 1170 and SB 800. Both bills target the VINTAGE AUTOMOBILE, which is currently granted an exemption by the current smog laws. It is my belief the current laws are fair because they recognize the infinitesimal impact these vehicles have on air quality.

I am submitting the following facts for your consideration before you cast your vote:

- 1.) California's current emissions testing exemption recognizes the minimal impact of vehicles 30 years and older on air quality.
- 2.) Vehicles 30 years and older constitute less than 3% of the over 23 million vehicles in California.
- 3.) 3% of 23 million vehicles is a poor source from which to look for emissions reduction.
- 4.) Vehicles 30 years and older are operated only during fair weather and rarely for more than 2000 miles per year. They are show cars and many are transported on trailers to events and only run long enough to move them from the trailer to the parking area.
- 5.) Vintage vehicles are meticulously maintained which further reduces their impact.

In conclusion, forcing new smog regulations on the vintage automobile would reap virtually no advancement in air quality. They are not equipped with modern smog devices but rather the forerunner to current smog equipment, if any. Therefore the owners would be forced, at great expense, to heavily modify their engines. For those autos in which it is not possible or if the owner can not afford the modifications, the automobile can not be registered. These autos would be scrapped and turned into a pollution credit. The pollution credit would be sold to industrial polluters thus allowing them to continue their polluting ways.

The loss of vintage autos will not change our air quality, but will change our culture. These autos are a part of American history that needs to be preserved. What would a Fourth of July parade be without a vintage auto? What would a homecoming queen ride in? Our children deserve to experience the history of the vintage auto. I want to pass on to my grandchildren, the joy of experiencing the history of the vintage automobile first hand. What we gain from removing these autos from our society is minimal. What we lose is a piece of our history.

Respectfully submitted,

Donald K. Czapkay

U S A	Donald K. Czapkay
OOO	1468 Elsie Ct.
	Santa Rosa, CA 95401

LEGISLATIVE INTENT SERVICE (800) 666-1917



LIS - 10

AP - 1

SB 800 LEG. HIST. 000193



3232 Western Drive
Cameron Park, CA 95682-9206
(530) 676-4323 (530) 676-0325 FAX
www.capcoa.org

JUN 13 2001

PRESIDENT
Barbara A. Lee
Northern Sonoma APCD

PRESIDENT ELECT
Barry Wallerstein
South Coast AQMD

PAST PRESIDENT
Larry F. Greene
Yolo-Solano AQMD

SECRETARY/CHIEF
FINANCIAL OFFICER
Charles Fryxell
Mojave Desert AQMD

VICE PRESIDENTS
Robert W. Carr
San Luis Obispo APCD
Norman D. Covell
Sacramento Metro AQMD
David Crow
San Joaquin Valley APCD

Nen Garvey
by Area AQMD

Harry Krug
Colusa County APCD

Jon Morgan
El Dorado County APCD

Douglas Quetin
Monterey Bay Unified APCD

Richard Sommerville
San Diego County APCD

EXEC. DIRECTOR
Stewart J. Wilson
director@capcoa.org

June 6, 2001

The Honorable John Dutra, Chair
Assembly Transportation Committee
1020 N Street, Room 112
Sacramento, California 95814

Dear Assembly Member Dutra:

The California Air Pollution Control Officers Association (CAPCOA) **OPPOSES** Senate Bill 800 (Johannessen). This bill would define a new class of vehicles, "collector vehicles", and exempt them from the Smog Check program. We understand that the bill will be heard in the Assembly Transportation Committee shortly.

California's Smog Check program offers an equitable and cost-effective way to reduce emissions from the single greatest source of our air quality problem, our cars and trucks. Unfortunately, the program continues to fall dramatically short of its emission reduction goals. Further weakening of the program exposes Californians to dirtier air. Furthermore, it may also trigger the Federal Clean Air Act provisions requiring the withholding of huge amounts of Federal transportation funds.

SB 800 would weaken the Smog Check program still further. Currently state law says that all vehicles manufactured prior to the 1974 model year are exempt from Smog Check. State law also says that in 2003, all vehicles 30 years old will be exempt from the program. SB 800 would exempt collector vehicles 25 years and older from the program. CAPCOA can not support this additional exemption. Older vehicles have higher emission rates than new cars, even when in the Smog Check program. If they are exempted, their emissions will go even higher.

We appreciate the recent amendment to the bill to eliminate "self-certification" as a collector vehicle by the owner. However, simply requiring an insurance company statement to that effect remains problematic. Such a statement will not ensure that the vehicle is not being used for regular transportation. This bill will encourage the proliferation of cars claimed to be collector cars, which would not otherwise pass their Smog Checks.

The Smog Check program provides a equitable method of discouraging tampering with emissions equipment and fixing malfunctioning emissions control equipment. Even vehicles that are operated infrequently can have significant evaporative emissions, especially without inspections of gas caps and hoses.

Vehicles older than 30 years are already exempted from inspections. It is not appropriate, and there is no need, to further weaken the Smog Check program. We urge your "No" vote on SB 800.

Sincerely,

Barbara A. Lee
President

cc: Senator Johannessen

LEGISLATIVE INTENT SERVICE (800) 666-1917



AP-2

SACRAMENTO METROPOLITAN



JUN 12 2001

Norm Covell
AIR POLLUTION CONTROL OFFICER

June 11, 2001

The Honorable John Dutra, Chair
Assembly Committee on Transportation
1020 N Street, Room 112
Sacramento, California 95814

Dear Assemblymember Dutra:

The Sacramento Metropolitan Air Quality Management District **OPPOSES** Senate Bill 800 (Johannessen). This bill would define a new class of vehicles, "collector vehicles", and exempt them from the Smog Check program. We understand that the bill will be heard in the Assembly Transportation Committee on June 18, 2001.

California's Smog Check program offers an equitable and cost-effective way to reduce emissions from the single greatest source of our air quality problem, our cars and trucks. Unfortunately, the program continues to fall dramatically short of its emission reduction goals. Further weakening of the program exposes Californians to dirtier air. Furthermore, it may also trigger the Federal Clean Air Act provisions requiring the withholding of huge amounts of Federal transportation funds.

SB 800 would weaken the Smog Check program still further. Currently, state law says that all vehicles manufactured prior to the 1974 model year are exempt from Smog Check. State law also says that in 2003, all vehicles 30 years old will be exempt from the program. SB 800 would exempt collector vehicles 25 years and older from the program. CAPCOA can not support this additional exemption. Older vehicles have higher emission rates than new cars, even when in the Smog Check program. If they are exempted, their emissions will go even higher.

We appreciate the recent amendment to the bill to eliminate "self-certification" as a collector vehicle by the owner. However, simply requiring an insurance company statement to that effect remains problematic. Such a statement will not ensure that the vehicle is not being used for regular transportation. This bill will encourage the proliferation of cars claimed to be collector cars, which would not otherwise pass their Smog Checks.

The Smog Check program provides an equitable method of discouraging tampering with emissions equipment and fixing malfunctioning emissions control equipment. Even vehicles that are operated infrequently can have significant evaporative emissions, especially without inspections of gas caps and hoses.

Vehicles older than 30 years are already exempted from inspections. It is not appropriate, and there is no need, to further weaken the Smog Check program. We urge your "No" vote on SB 800.

Sincerely,

Norm Covell
Air Pollution Control Officer

cc: Senator Johannessen
Members, Assembly Transportation Committee

777 12th Street, 3rd Floor ■ Sacramento, CA 95814-1908
916/874-4800 ■ 916/874-4899 fax
www.airquality.org

AP - 3

06/12/2001 TUE 12:00 [TX/RX NO 6756] 002
SB 800 LEG. HIST. 000195

LEGISLATIVE INTENT SERVICE (800) 666-1917





3232 Western Drive
Cameron Park, CA 95682-9206
(530) 676-4323 (530) 676-0325 FAX
www.capcoa.org

May 11, 2001

The Honorable Deirdre Alpert, Chair
Senate Appropriations Committee
State Capitol, Room 2206
Sacramento, California 95814

Dear Senator Alpert:

The California Air Pollution Control Officers Association (CAPCOA) **OPPOSES** Senate Bill 800 (Johannessen). This bill would define a new class of vehicles, "collector vehicles", and exempt them from the Smog Check program. We understand that the bill will be heard in the Senate Appropriations Committee on May 16, 2001.

California's Smog Check program offers an equitable and cost-effective way to reduce emissions from the single greatest source of our air quality problem, our cars and trucks. Unfortunately, the program continues to fall dramatically short of its emission reduction goals. Further weakening of the program exposes Californians to dirtier air. Furthermore, it may also trigger the Federal Clean Air Act provisions requiring the withholding of huge amounts of Federal transportation funds.

SB 800 would weaken the Smog Check program still further. Currently state law says that all vehicles manufactured prior to the 1974 model year are exempt from Smog Check. State law also says that in 2003, all vehicles 30 years old will be exempt from the program. SB 800 would exempt collector vehicles 25 years and older from the program. CAPCOA can not support this additional exemption. Older vehicles have higher emission rates than new cars, even when in the Smog Check program. If they are exempted, their emissions will go even higher.

We appreciate the recent amendment to the bill to eliminate "self-certification" as a collector vehicle by the owner. However, simply requiring an insurance company statement to that effect remains problematic. Such a statement will not ensure that the vehicle is not being used for regular transportation. This bill will encourage the proliferation of cars claimed to be collector cars, which would not otherwise pass their Smog Checks.

The Smog Check program provides a equitable method of discouraging tampering with emissions equipment and fixing malfunctioning emissions control equipment. Even vehicles that are operated infrequently can have significant evaporative emissions, especially without inspections of gas caps and hoses.

Vehicles older than 30 years are already exempted from inspections. It is not appropriate, and there is no need, to further weaken the Smog Check program. We urge your "No" vote on SB 800.

Sincerely,

Barbara A. Lee
President

cc: Senator Johannessen
Members, Senate Appropriations Committee
CAPCOA Legislative Committee

LEGISLATIVE INTENT SERVICE (800) 666-1917



AP - 4

PRESIDENT
Barbara A. Lee
Northern Sonoma APCD

PRESIDENT ELECT
Barry Wallerstein
South Coast AQMD

PAST PRESIDENT
Larry F. Greene
Yolo-Solano AQMD

SECRETARY/CHIEF
FINANCIAL OFFICER
Charles Fryxell
Mojave Desert AQMD

VICE PRESIDENTS
Robert W. Carr
San Luis Obispo APCD

Norman D. Covell
Sacramento Metro AQMD

David Crow
San Joaquin Valley APCD

Ellen Garvey
Bay Area AQMD

Harry Krug
Colusa County APCD

Jon Morgan
El Dorado County APCD

Douglas Quetin
Monterey Bay Unified APCD

Richard Sommerville
San Diego County APCD

EXEC. DIRECTOR
Stewart J. Wilson
director@capcoa.org

SB 800 (JOHANNESSEN)
VEHICLES:

Version: 5/21/01 Last Amended
Vote: Majority
Support

Vice-Chair: Rod Pacheco
Tax or Fee Increase: No
Exempts collector motor vehicles, as defined, from the Smog Check Program.

Policy Question

Should the Legislature define, in statute, collector motor vehicles and exempt them from the biennial smog inspection program?

Summary

- Exempts collector motor vehicles from biennial smog inspections.
- Defines a collector motor vehicle as a vehicle that is 25 or more model-years old and meets both of the following conditions:
 - The vehicle is not used by the owner as a primary source of transportation.
 - The vehicle is used primarily for purposes of display at events such as collector shows, exhibitions and parades, or to obtain necessary repairs and maintenance.
- Requires the owner of a collector motor vehicle to submit a written statement or policy from an insurance company that indicates that the collector vehicle has been insured as such and is used for primarily display purposes.
- Revises the provisions of law that permit historical vehicles to be issued special license plates to apply to vehicles that:
 - are 25 or more model-years old and meets the definition of a collector motor vehicle or
 - were manufactured in the year 1922 or before.

Support

None on File.

Opposition

None on File.

Arguments In Support of the Bill

- Collector vehicles represent a very small portion of the vehicles operated in this state and generally, are rarely driven. Therefore, they should be exempt from Smog Check.
- Adding this definition of collector motor vehicles to the Vehicle Code will increase the number of vehicles that are subject to the \$2 vehicle license fee (VLF) in lieu of the normal VLF and will be a tax break to those vehicle owners.

Arguments In Opposition to the Bill

- In order to achieve the highest air quality possible, ALL vehicles should be subject to smog inspections.
- Allowing more vehicles to pay the \$2 VLF in lieu of the normal VLF robs local governments of precious revenues.

Fiscal Effect

Unknown.

Comments

- Existing law requires, with certain exemptions, all motor vehicles powered by internal combustion engines that are registered within an area designated for program coverage, as specified, to obtain, biennially, a certificate of compliance or noncompliance. Vehicles currently exempt include, among others, motorcycles, vehicles manufactured prior to the 1974 model-year and vehicles four or less model-years old.
- Existing law permits any owner of a vehicle that is driven on a highway primarily for the purpose of historical exhibition or other similar purpose to be issued special identification plates for the vehicle if the vehicle:
 - is a motor vehicle with an engine of 16 or more cylinders manufactured prior to 1965, or
 - is a motor vehicle manufactured in the year

Senate Republican Floor Votes (39-0) 5/29/01

Ayes: All Republicans Except
Noes: None
Abs./NV: Morrow

Assembly Republican Transportation Votes (0-0) 6/18/01

Ayes: None
Noes: None
Abs./NV: None

Assembly Republican Votes (0-0) 1/1/01

Ayes: None
Noes: None
Abs./NV: None

Assembly Republican Votes (0-0) 1/1/01

Ayes: None
Noes: None
Abs./NV: None

Assembly Republican Bill Analysis

SB 800 (Johannessen)

- 1922 or before, or
- is a vehicle which was manufactured after 1922, is at least 25 years old, and is of historic interest.
3. Existing law sets the annual VLF amount for a vehicle that is described in Section 5004 (historical vehicles) of the Vehicle Code at \$2.
 4. This bill defines collector motor vehicles and exempts them from Smog Check Program requirements. The vehicles covered in this new designation are a very small part of the vehicle fleet in this state. As such, they contribute a very minor portion of the pollution caused by motor vehicles.
 5. Vehicles that are eligible to be issued historic vehicle special interest license plates under Section 5004 of the Vehicle Code pay a \$2 VLF

in lieu of the VLF otherwise required by existing law. A recent court case (Rowley v. State of California Department of Motor Vehicles) brought against the DMV by the owner of a vehicle of historic interest found that a vehicle owner that qualifies for a historic vehicle plate, but does not apply for one of these special plates still qualifies for the \$2 in lieu VLF fee. As a result of this decision, all vehicles that qualify for the special plates qualify for the \$2 in lieu VLF fee. This bill adds the definition of collector vehicles to Section 5004 of the Vehicle Code and therefore entitles the owners of the vehicles to pay the \$2 in lieu VLF, regardless of whether they are issued historic vehicle plates.

Policy Consultant: Cory Salzillo 6/12/01
Fiscal Consultant:

LEGISLATIVE INTENT SERVICE (800) 666-1917



Date of Hearing: August 26, 2002

ASSEMBLY COMMITTEE ON JUDICIARY
Ellen M. Corbett, Chair
SB 800 (Burton) – As Amended: August 25, 2002

As Proposed to Be Amended

SENATE VOTE: Not relevant.

SUBJECT: CONSTRUCTION DEFECTS LIABILITY AND PROCEDURE

KEY ISSUE: SHOULD CONSTRUCTION DEFECTS BE DEFINED BY SPECIFIC STANDARDS AND BUILDERS BE GIVEN AN OPPORTUNITY TO REPAIR ALLEGED VIOLATIONS BEFORE A HOMEOWNER MAY FILE A CIVIL ACTION IN ORDER TO PROMOTE SAFE AND AFFORDABLE HOUSING?

SYNOPSIS

This bill, the consensus product resulting from nearly a year of intense negotiations among the interested parties, proposes two significant reforms in the area of construction defect litigation. First, the bill would establish definitions of construction defects for the first time, in order to provide a measure of certainty and protection for homeowners, builders, subcontractors, design professionals and insurers. Secondly, the bill requires that claimants alleging a defect give builders notice of the claim, following which the builder would have an absolute right to repair before the homeowner could sue for violation of these standards. If the builder failed to acknowledge the claim within the time specified, elected not to go through the statutory process, failed to request an inspection within the time specified, or declined to make the offer to repair, or if the repair is inadequate, the homeowner is relieved from any further pre-litigation process.

SUMMARY: reforms construction defect law in order to promote safe and affordable residential housing for California. Specifically, this bill:

- 1) Defines construction defects to ensure performance with specified standards.
- 2) Requires claimants to provide notice to builders regarding alleged violations.
- 3) Gives builders an absolute right to repair alleged defects before a claimant may sue.
- 4) Preserves the right of homeowners to pursue remedies if the repair is not made or is inadequate.

EXISTING LAW:

- 1) Provides that a construction defect action may be brought against any person who develops real property or performs or furnishes the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to real property. (Code of Civil Procedure sections 337.1 and 337.15.)

(800) 666-1917

LEGISLATIVE INTENT SERVICE



- 2) Provides that an action based on latent defects (defects not apparent from a reasonable inspection) in construction must be brought within 4 years of discovery of the defect (if the action is based on breach of contract or warranty), but in no event may such an action be brought more than 10 years after the date of substantial completion of the development or improvement. (Code of Civil Procedure sections 337 and 337.15. See, e.g., *FNB Mortgage Corp. v. Pacific General Group* (1999) 76 Cal.App.4th 1116; *Liptak v. Diane Apartments, Inc.* (1980) 109 Cal.App.3d 762.)
- 3) Provides that builders may not be held liable in negligence for construction defects unless those defects have caused death, bodily injury, or property damage. *Aas v. Superior Court*, (2000) 24 Cal. 4th 627.)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: According to the author, this bill represents groundbreaking reform for construction defect litigation. As many prior bill analyses on this subject have noted, the problem of construction defects and associated litigation have vexed the Legislature for a number of years, with substantial consequences for the development of safe and affordable housing. This bill reflects extensive and serious negotiations between builder groups, insurers and the Consumer Attorneys of California, with the substantial assistance of key legislative leaders over the past year, leading to consensus on ways to resolve these issues.

Definition of Construction Defect. A principal feature of the bill is the codification of construction defects. For the first time, California law would provide a uniform set of standards for the performance of residential building components and systems. Rather than requiring resort to contentions about the significance of technical deviations from building codes, the bill specifies the standards that building systems and components must meet. Significantly, these standards effectively end the debate over the controversial decision in the *Aas* case to the effect that homeowners may not recover for construction defects unless and until those defects have caused death, bodily injury, or property damage, no matter how imminent those threats may be. Moreover, unlike some existing warranty programs, these standards cover all major systems for a substantial period, and are enforceable by subsequent purchasers, not just the original buyer.

Optional Enhanced Protections. The bill provides a floor, but not a ceiling, for the performance of residential structures. In addition to the foregoing minimum standards, the bill provides that a builder may, but is not required to, offer greater protection or longer time periods in its express contract with the homeowners. If a builder offers an Enhanced Protection Agreement, the builder may choose to be subject to its own express contractual provisions in place of the provisions set forth in this Section.

Time Periods for Filing Actions. The bill specifies one, two and four-year periods for the filing of claims for alleged violations of certain standards. Unless a shorter period is specified, no action may be brought to recover for alleged violations more than 10 years after substantial completion, as defined in CCP Section 337.15(g)(2). These time limitations do not apply to any action by a claimant for a contract or express contractual provision.

Right to Repair. In a significant departure from existing law, the bill imposes a procedure that a homeowner must follow before bringing suit against a builder. In summary, the homeowner must send a written notice to the builder setting out the nature of the claim. The builder must

(800) 666-1917

LEGISLATIVE INTENT SERVICE



acknowledge the claim in writing. The builder may then elect to conduct inspection and testing of the alleged defect within a specified period, and must provide certain documentation to the homeowner on request regarding building plans and specifications. Most importantly, the builder may then offer to repair the alleged violation within a prescribed period. Such an offer to repair must also compensate the homeowner for all applicable damages recoverable. Upon receipt of the offer to repair, the homeowner has a prescribed period in which to authorize the builder to proceed with the repair. The offer to repair must also be accompanied by an offer to mediate the dispute if the homeowner so chooses.

The homeowner is relieved from any further pre-litigation process if the builder fails to acknowledge the claim within the time specified, elects to not go through this statutory process, fails to request an inspection within the time specified, fails to make the offer to repair or otherwise strictly comply with the obligations of the statute within the times specified, or if the contractor performing the repair does not complete the repair in the time or manner specified.

Subcontractors and Design Professionals. This act is intended to apply to subcontractors and design professionals to the extent that the subcontractors, material suppliers, individual product manufacturers and design professionals caused, in whole or in part, a violation of a particular standard as a result of its negligent act or omission or a breach of contract. These persons may assert the affirmative defenses to liability set forth in the bill, as well as common law and contractual defenses as applicable. The bill does not modify current law pertaining to joint and several liability for subcontractors and design professionals that contribute to any specific violation of the construction defect standards set out in the bill.

Prior Related Legislation. AB 1700 (Steinberg), Ch. 824, Stats. 2001, substantially reformed the pre-litigation dispute resolution process for construction defect actions involving common interest developments.

REGISTERED SUPPORT / OPPOSITION:

Support

California Building Industry Association
California Nurses Association
Congress of California Seniors
Consumer Attorneys of California
Consumer Federation of California

Opposition

None received

Analysis Prepared by: Kevin G. Baker/ JUD. / (916) 319-2334

LEGISLATIVE INTENT SERVICE (800) 666-1917



FILE COPY

Date of Hearing: August 27, 2002

ASSEMBLY COMMITTEE ON JUDICIARY

Ellen M. Corbett, Chair

SB 800 (Burton and Wesson) – As Amended: August 26, 2002

SENATE VOTE: Not relevant.SUBJECT: CONSTRUCTION DEFECTS LIABILITY AND PROCEDUREKEY ISSUE: SHOULD CONSTRUCTION DEFECTS BE DEFINED BY SPECIFIC STANDARDS AND BUILDERS BE GIVEN AN OPPORTUNITY TO REPAIR ALLEGED VIOLATIONS BEFORE A HOMEOWNER MAY FILE A CIVIL ACTION IN ORDER TO PROMOTE SAFE AND AFFORDABLE HOUSING?

SYNOPSIS

This bill, the consensus product resulting from nearly a year of intense negotiations among the interested parties, proposes two significant reforms in the area of construction defect litigation. First, the bill would establish definitions of construction defects for the first time, in order to provide a measure of certainty and protection for homeowners, builders, subcontractors, design professionals and insurers. Secondly, the bill requires that claimants alleging a defect give builders notice of the claim, following which the builder would have an absolute right to repair before the homeowner could sue for violation of these standards. If the builder failed to acknowledge the claim within the time specified, elected not to go through the statutory process, failed to request an inspection within the time specified, or declined to make the offer to repair, or if the repair is inadequate, the homeowner is relieved from any further pre-litigation process.

SUMMARY: reforms construction defect law in order to promote safe and affordable residential housing for California. Specifically, this bill:

- 1) Defines construction defects to ensure performance with specified standards.
- 2) Requires claimants to provide notice to builders regarding alleged violations.
- 3) Gives builders an absolute right to repair alleged defects before a claimant may sue.
- 4) Preserves the right of homeowners to pursue remedies if the repair is not made or is inadequate.

EXISTING LAW:

- 1) Provides that a construction defect action may be brought against any person who develops real property or performs or furnishes the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to real property. (Code of Civil Procedure sections 337.1 and 337.15.)
- 2) Provides that an action based on latent defects (defects not apparent from a reasonable inspection) in construction must be brought within 4 years of discovery of the defect (if the

LEGISLATIVE INTENT SERVICE (800) 666-1917



action is based on breach of contract or warranty), but in no event may such an action be brought more than 10 years after the date of substantial completion of the development or improvement. (Code of Civil Procedure sections 337 and 337.15. *See, e.g., FNB Mortgage Corp. v. Pacific General Group* (1999) 76 Cal.App.4th 1116; *Liptak v. Diane Apartments, Inc.* (1980) 109 Cal.App.3d 762.)

- 3) Provides that builders may not be held liable in negligence for construction defects unless those defects have caused death, bodily injury, or property damage. *Aas v. Superior Court*, (2000) 24 Cal. 4th 627.)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: According to the author, this bill represents groundbreaking reform for construction defect litigation. As many prior bill analyses on this subject have noted, the problem of construction defects and associated litigation have vexed the Legislature for a number of years, with substantial consequences for the development of safe and affordable housing. This bill reflects extensive and serious negotiations between builder groups, insurers and the Consumer Attorneys of California, with the substantial assistance of key legislative leaders over the past year, leading to consensus on ways to resolve these issues.

Definition of Construction Defect. A principal feature of the bill is the codification of construction defects. For the first time, California law would provide a uniform set of standards for the performance of residential building components and systems. Rather than requiring resort to contentions about the significance of technical deviations from building codes, the bill specifies the standards that building systems and components must meet. Significantly, these standards effectively end the debate over the controversial decision in the *Aas* case to the effect that homeowners may not recover for construction defects unless and until those defects have caused death, bodily injury, or property damage, no matter how imminent those threats may be. Moreover, unlike some existing warranty programs, these standards cover all major systems for a substantial period, and are enforceable by subsequent purchasers, not just the original buyer. The bill sets out these standards in detail, organized under non-substantive headings for the benefit of the reader.

Optional Enhanced Protections. The bill provides a floor, but not a ceiling, for the performance of residential structures. In addition to the foregoing minimum standards, the bill provides that a builder may, but is not required to, offer greater protection or longer time periods in its express contract with the homeowners. If a builder offers an Enhanced Protection Agreement, the builder may choose to be subject to its own express contractual provisions.

Time Periods for Filing Actions. The bill specifies one, two and four-year periods for the filing of claims for alleged violations of certain standards. Unless a shorter period is specified, no action may be brought to recover for alleged violations more than 10 years after substantial completion, as defined in CCP Section 337.15(g)(2). These time limitations do not apply to any action by a claimant for a contract or express contractual provision.

Right to Repair. In a significant departure from existing law, the bill imposes a procedure that a homeowner must follow before bringing suit against a builder. In summary, the homeowner must send a written notice to the builder setting out the nature of the claim. The builder must acknowledge the claim in writing. The builder may then elect to conduct inspection and testing

(800) 666-1917

LEGISLATIVE INTENT SERVICE



of the alleged defect within a specified period, and must provide certain documentation to the homeowner on request regarding building plans and specifications. Most importantly, the builder may then offer to repair the alleged violation within a prescribed period. Such an offer to repair must also compensate the homeowner for all applicable damages recoverable. Upon receipt of the offer to repair, the homeowner has a prescribed period in which to authorize the builder to proceed with the repair. The offer to repair must also be accompanied by an offer to mediate the dispute if the homeowner so chooses.

The homeowner is relieved from any further pre-litigation process if the builder fails to acknowledge the claim within the time specified, elects to not go through this statutory process, fails to request an inspection within the time specified, fails to make the offer to repair or otherwise strictly comply with the obligations of the statute within the times specified, or if the contractor performing the repair does not complete the repair in the time or manner specified.

Subcontractors and Design Professionals. This act is intended to apply to subcontractors and design professionals to the extent that the subcontractors, material suppliers, individual product manufacturers and design professionals caused, in whole or in part, a violation of a particular standard as a result of its negligent act or omission or a breach of contract. These persons may assert the affirmative defenses to liability set forth in the bill, as well as common law and contractual defenses as applicable. The bill does not modify current law pertaining to joint and several liability for subcontractors and design professionals that contribute to any specific violation of the construction defect standards set out in the bill.

Author's Technical Amendments. The author proposes to take technical and clarifying amendments in the event there are chaptering out, typographical or other matters requiring correction.

Prior Related Legislation. AB 1700 (Steinberg), Ch. 824, Stats. 2001, substantially reformed the pre-litigation dispute resolution process for construction defect actions involving common interest developments.

REGISTERED SUPPORT / OPPOSITION:

Support

California Building Industry Association
California Nurses Association
Congress of California Seniors
Consumer Attorneys of California
Consumer Federation of California

Opposition

None received

Analysis Prepared by: Kevin G. Baker/ JUD. / (916) 319-2334



Personal Insurance Federation of California

California's Personal Lines Trade Association
REPRESENTING THE LEADING AUTOMOBILE AND HOMEOWNERS INSURERS
Progressive • State Farm • Farmers • 21st Century Insurance Group • SAFECO

FLOOR ALERT

Date: August 28, 2002

To: Members of the California State Assembly

From: Dan C. Dunmoyer, President
G. Diane Colborn, Vice-President of Legislative and Regulatory Affairs
Michael A. Gunning, Senior Legislative Advocate

Re: SB 800 (Burton and Wesson): Construction Dispute Resolution
Assembly Third Reading File
PIFC Position: Support

STAFF
 Dan Dunmoyer
 President
 Diane Colborn
 Vice President of Legislative
 & Regulatory Affairs
 Michael Gunning
 Senior Legislative Advocate
 Jerry Davies
 Director of Communications

The Personal Insurance Federation of California (PIFC), which represents insurers who provide construction dispute resolution insurance to subcontractors throughout the state of California, supports SB 800 co-authored by Senator Burton and Assemblyman Wesson.

SB 800, among other things, provides for the right of a homebuilder to repair any alleged defects raised by the homeowner. This right to repair is provided as long as the homebuilder responds in a timely manner (120 days) to the homeowner's request for repairs. SB 800 also provides a number of definitions regarding construction defects and actionable items regarding the construction of residential property. Finally, SB 800 makes changes to the statute of limitation of various construction defects if a homebuilder complies with the obligations contained within SB 800.

PIFC supports SB 800, as it will bring some degree of predictability to the dispute resolution process for new construction that occurs after January 1, 2003. It is our hope that as a result of this measure there is less need to litigate construction defects and greater likelihood for homebuilders to respond to consumer complaints. It is also our hope that when a general contractor immediately addresses a homeowner's request, protracted and expensive litigation can be avoided by all parties.

Although SB 800 makes positive changes to California's construction dispute resolution process, PIFC has concerns that the problems surrounding the insuring of subcontractors is inadequately addressed by this measure. This concern is great because PIFC members have historically provided construction dispute resolution insurance for numerous subcontractors. This type of coverage has all but dried up in California as a result of California's complex, costly, and cumbersome litigation process. As a result of the fact that SB 800 does not adequately address these challenges, this measure may fail to provide the sufficient certainty and clarity for subcontractor insurers to want to assume greater risk in the construction dispute resolution process. For this reason, one of the goals of this measure -- to make insurance more available and affordable -- may not be achieved for subcontractors.

PIFC supports SB 800 because it is a positive step towards improving the construction dispute resolution process. We are committed to continue to work with all parties to further expand new reforms in this area to provide affordable insurance to subcontractors and affordable housing to California consumers. For this reason, we urge your support of SB 800. If you have any questions regarding our position, please contact Dan Dunmoyer at (916) 442-6646.

cc: Senator Burton, Author
 Assemblyman Wesson, Author
 Ann Richardson, Deputy Legislative Secretary, Governor's Office
 Kevin Baker, Assembly Judiciary Committee
 Mark Redmond, Assembly Republican Caucus

44Dec02-176.doc

LEGISLATIVE INTENT SERVICE (800) 666-1917



PERSONAL INSURANCE FEDERATION OF CALIFORNIA

980 Ninth Street, #2030
Sacramento, California 95814
Phone - (916) 442-6646 Fax - (916) 446-9548

FAX COVER SHEET

DATE: 8/28/02
TO: Kevin Baker - Asm. Judiciary

FROM: Dan Dunmoyer Diane Colborn
Jerry Davies Michael Gunning
Marie Mendisco

- Urgent - Please deliver ASAP
- Your comments please
- Please call me upon receipt of this fax
- Per our discussion
- Per your request
- FYI

MESSAGE

Support SB 800

Pages (including cover sheet): 2
In Case of Transmission Error, Contact: Gwen, Jenny, Julie, Louise

The information contained in this facsimile transmission is confidential, and may be legally privileged, legally protected attorney work-product, or may be inside information. The information is intended only for the use of the recipients(s) named above. If you have received this information in error, please immediately notify us by telephone to arrange for return of all documents. Any unauthorized disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited and may be unlawful.

2.Fax Cover (Generic)

AP2 - 2

LEGISLATIVE INTENT SERVICE (800) 666-1917



-----Original Message-----

From: GloPow@aol.com [mailto:GloPow@aol.com]
Sent: Sunday, August 25, 2002 4:33 PM
To: Drew.Liebert@ASM.CA.GOV; ltratten@caoc.org
Subject: SB 688(Burton) and SB 800(Burton)

Drew Liebert:

Please list the Congress of California Seniors in support of SB
688(Burton) and
SB 800 (Burton). Thank you.

Bill Powers, Legislative Director



LEGISLATIVE INTENT SERVICE (800) 666-1917

AP2 - 3

Kim, Saskia

From: Fischer, Cindy
Sent: Monday, August 26, 2002 9:38 AM
To: Kim, Saskia
Subject: FW: support for SB 688 and SB 800

-----Original Message-----

From: Liebert, Drew
Sent: Sunday, August 25, 2002 10:43 PM
To: Fischer, Cindy
Subject: FW: support for SB 688 and SB 800

Drew Liebert, Chief Counsel
Assembly Judiciary Committee
1020 "N" Street, Room 104
Sacramento, CA 95814
916.319.2334 (phone)
916.319.2188 (fax)
drew.liebert@asm.ca.gov

-----Original Message-----

From: Rosemary Shahan [<mailto:autosafety@earthlink.net>]
Sent: Sunday, August 25, 2002 8:46 PM
To: Drew.Liebert@ASM.CA.GOV
Cc: NANCYP@caoc.org; Itratten@caoc.org
Subject: support for SB 688 and SB 800

The Consumer Federation of California supports SB 688 (construction defects) and SB 800 (statute of limitations). Consumers for Auto Reliability and Safety (CARS) supports SB 800. Please contact me at 530-759-9440 if you have any questions about our positions on these measures. Thank you.

Rosemary Shahan
Legislative Director
Consumer Federation of California

Rosemary Shahan
President
Consumers for Auto Reliability and Safety (CARS)

LEGISLATIVE INTENT SERVICE (800) 666-1917



AP2 - 4

926 J Street, Suite 523
Sacramento, CA 95814
Phone: 530-759-9440
On the Web: <http://www.carconsumers.com/>



LEGISLATIVE INTENT SERVICE (800) 666-1917

Kim, Saskia

From: Fischer, Cindy
Sent: Monday, August 26, 2002 9:38 AM
To: Kim, Saskia
Subject: FW: CNA support for SB 688, SB 800

-----Original Message-----

From: Liebert, Drew
Sent: Monday, August 26, 2002 9:36 AM
To: Fischer, Cindy
Subject: FW: CNA support for SB 688, SB 800

Drew Liebert, Chief Counsel
Assembly Judiciary Committee
1020 "N" Street, Room 104
Sacramento, CA 95814
916.319.2334 (phone)
916.319.2188 (fax)
drew.liebert@asm.ca.gov

-----Original Message-----

From: Sara Nichols [mailto:snichols@calnurses.org]
Sent: Monday, August 26, 2002 9:18 AM
To: Liebert, Drew
Subject: CNA support for SB 688, SB 800

Drew,

I tried to do this last night, but my computer schitzed out. CNA supports the construction defect and statute of limitations/summary judgment bills.

Sara Nichols
CNA

LEGISLATIVE INTENT SERVICE (800) 666-1917



AP2 - 6

8/26/02

SB 800 LEG. HIST. 000210

SAN FRANCISCO

Daily Journal

Wednesday, August 28, 2002

Official Newspaper of the
San Francisco Superior Court and
United States Northern District Court

LEGISLATIVE INTENT SERVICE (800) 666-1917



AP2 - 7

AUG 28 '02 11:03 FROM:

TORTS

Lawmakers Hammer Out Deal on Defects In Construction

■ Plaintiffs attorneys and their foes edge toward final agreement on a bill regulating suits against home builders.

By Linda Rapaport
Daily Journal Staff Writer

SACRAMENTO — California's trial lawyers have agreed to limits on construction defect suits in exchange for restoring a consumer's ability to sue builders for flaws that have not yet caused injury or damages.

The compromise was worked out quietly in negotiations with builders and insurers over the last eight months, but details remained in flux even as lawmakers ablylight Tuesday evening to get the bill through a committee and to the Assembly floor for a vote before the session ends Saturday.

The Democratic leadership — Sen. John Ion, D-San Francisco, and Assembly House speaker Herb Wesson, D-Los Angeles — agreed to carry the bill, SB600, putting the full force of the majority party behind it.

The measure ran into problems last week when the Consumer Attorneys of California attempted to include unrelated reforms of summary judgment procedures and extensions on the statute of limitations for personal injury claims.

But once those were shaken off into another bill, SB688, the details of the construction litigation reforms were sent to the printers. SB688 was approved by the Assembly Judiciary Committee late Tuesday.

Several lawmakers, including Assembly members Dario Frommer, D-Los Angeles, and Darrell Steinberg, D-Sacramento, have written to moderate Democrats seeking their approval of both measures and asking them to indicate in writing where they stand.

The plaintiffs lawyers have tried for two years to abrogate a state Supreme Court decision, *Aas v. Superior Court*, 24 Cal.4th 627 (2000), that blocks negligence suits against developers unless defects have actually caused death, injury or property damage.

Under *Aas*, a homeowner who discovers a fire wall is missing, for example, must wait until a fire burns past the missing wall or injures the family before he can sue to force the builder to construct the wall. In the meantime, he must disclose the defect to any potential homebuyer, or pay it at his own cost.

The California Chamber of Commerce
See DEFECTS, Page 5

■ DEFECTS: Burton Throws Support to Bill

Continued From Page 1
opposed previous attempts to address the problem. Legislation controlling the proposals would lead to more litigation and higher insurance costs for builders.

With home prices skyrocketing, leaving many residents unable to afford to buy homes, lawmakers are under increasing pressure this year to address housing shortages. They hope reducing litigation over home construction will attract insurers who have left the market and increase the supply of affordable homes.

Representatives of the California Building Industry Association and the California Chamber of Commerce could not be reached for comment on the measure.

"We've been trying to put closure on this thing for the past months with meetings lasting seven or eight hours," said Robert Cartwright, Jr., president of the CAOC. "What the builders really wanted was a clear definition of what a defect was. And they wanted the absolute right to repair the defect. We eventually conceded it's in the consumer's interest to have it repaired."

Plaintiffs lawyers were reluctant

to give builders another chance to repair a defect because they don't offer doing it as a builder's obligation. Cartwright said.

Under the latest version of the bill, homeowners do not have to sue the original builder to sue a contractor. The bill could be removed by another builder through the bidding process, Cartwright said.

If the homeowner still insists with the repair, the bill would allow a mediation process with the builder and if the dispute remains unresolved, could sue.

Defect is narrowly defined in the bill; that a homeowner, for example, could not sue a builder for nails shorter than they are supposed to be if their length does not cause serious problems in the construction, Cartwright said.

The bill defines statutes of limitation for future claims for various defects, from water intrusion and fire protection to plumbing and electrical systems. For example, a claim of a plumbing defect must be brought within four years of the close of escrow, but a landscaping defect claim cannot be made past two years after the close of escrow.

LEGISLATIVE INTENT SERVICE (800) 666-1917



AP2 8

CONFLICT NOTIFICATION

August 28, 2002



S.B. 800

The above measure, introduced by Senator Burton, which was set for hearing in the

Assembly Judiciary Committee

appears to be in conflict with

A.B. 1701 - Steinberg

A.B. 2870 - Harman

S.B. 355 - Escutia

The enactment of these measures in their present form may give rise to a serious legal problem which possibly can be avoided by appropriate amendments.

We urge you to consult our Corrections Section at Corrections.Section@lc.ca.gov or 916-445-0430 at your earliest convenience.

LEGISLATIVE INTENT SERVICE (800) 666-1917



AP2 - 9

CONFLICT NOTIFICATION

August 27, 2002



S.B. 800

The above measure, introduced by Senator Burton, which was set for hearing in the

Assembly Judiciary Committee

appears to be in conflict with

A.B. 1701 - Steinberg

S.B. 355 - Escutia

S.B. 688 - Burton

The enactment of these measures in their present form may give rise to a serious legal problem which possibly can be avoided by appropriate amendments.

We urge you to consult our Corrections Section at Corrections.Section@lc.ca.gov or 916-445-0430 at your earliest convenience.

LEGISLATIVE INTENT SERVICE (800) 666-1917



CONFLICT NOTIFICATION

August 25, 2002



S.B. 800

The above measure, introduced by Senator Romero, which was set for hearing in the

Assembly Judiciary Committee

appears to be in conflict with

S.B. 1698 - Romero

The enactment of these measures in their present form may give rise to a serious legal problem which possibly can be avoided by appropriate amendments.

We urge you to consult our Corrections Section at Corrections.Section@lc.ca.gov or 916-445-0430 at your earliest convenience.

LEGISLATIVE INTENT SERVICE (800) 686-1917



AP2 - 11

Date of Hearing: June 27, 2001

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Carole Migden, Chairwoman

SB 800 (Johannessen) -- As Amended: May 21, 2001

Policy Committee: Transportation

Vote: 15-0

Urgency: No

State Mandated Local Program: No

Reimbursable:

SUMMARY

This bill exempts, from Smog Check requirements, vehicles classified as "collector motor vehicles." Specifically, this bill:

- 1) Defines a collector motor vehicle as a vehicle 25 or more model years old, not used by the owner as a primary source of transportation, and used primarily for display purposes at events.
- 2) Requires the owner to submit, to the DMV, a written statement or policy from an insurance company indicating the vehicle is insured as a collector vehicle.
- 3) Requires the DMV to issue special identification plates to any collector motor vehicle owner who applies for the plates.

FISCAL EFFECT

- 1) Potentially moderate revenue loss to the Bureau of Automotive Repair (BAR) resulting from collector vehicle owners, with cars between 25 and 30 years old, no longer having to pay the biennial certificate of compliance fee. If only 2% (or 8,000) of the estimated 400,000 motor vehicles in California that are 25-30 years old become classified as collector vehicles, the revenue loss would be \$33,000 in FY 2001-02 and \$66,000 annually thereafter. (Vehicle Inspection Repair Fund.)
- 2) Minor costs, about \$120,000 in FY 2001-02 and less than \$10,000 annually thereafter, to the DMV to process, review and verify written statements or insurance policies provided to the department by owners seeking collector motor vehicle status. (Motor Vehicle Account (MVA).)
- 3) Minor costs, in the range of \$50,000 annually, to the DMV to process applications for special identification plates for collector vehicles; these costs are covered by fees imposed on applicants by the department. (MVA.)
- 4) Moderate ongoing vehicle license fee (VLF) revenue loss, about \$310,000 in FY 2001-02 and \$640,000 annually thereafter, to the extent these 8,000 vehicles are subject to the \$2 VLF for collector vehicles instead of being subject to a projected average annual VLF of \$80. (GF)

LEGISLATIVE INTENT SERVICE (800) 666-1917



COMMENTS

Rationale. The author wishes to exempt collector motor vehicles from Smog Check requirements, including the requirement to obtain a biennial certificate of compliance. Under existing law, effective January 1, 2003, any motor vehicle at least 30 years old is exempt from Smog Check requirements. This bill effectively changes that threshold to 25 years old but only if the vehicle is classified as a collector vehicle.

Analysis Prepared by: Steve Archibald / APPR. / (916) 319-2081

Assembly Appropriations - Committee Analysis

Author: Johannessen Amended: 05/21/2001 Measure: SB 800

Policy Committee: *AZZ Trans.* Votes: 15-0

Urgency: NO

Hearing Date: 06/27/2001

Consent: NO

Staff Comments By:

Reimbursable:

STEVE ARCHIBALD

LEGISLATIVE INTENT SERVICE (800) 666-1917



LIS - 14

AF - 1

K. Johannessen

May 21, 2001

SB 800

ANALYSIS

A. Programmatic Analysis

Current law provides for DMV to administer an "historic vehicle" program.

This bill would create an additional "collector vehicle" program. The chart below compares and contrasts the provisions of these programs.

	Current Law	Collector (proposed program)	Historic (current program)
Vehicle Age	>=25 years old	>=25 years old	>=25 years old
Vehicle License Fee (VLF)--	Purchase price * 2% * 15%. (i.e., \$150 for a \$50,000 vehicle)	\$2 (because SB 800 would add collector vehicles to Vehicle Code Sec. 5004 and, hence, Sec. 10753.5 of the Revenue & Taxation Code)	\$2
Smog Requirement	Exempt if manufactured prior to 1974 model year**.	Exempt.	Exempt if manufactured prior to 1974 model year**.
Driving Limits	No limit.	(1) For display at events. (2) For necessary repairs and maintenance. (3) Not used as primary transportation.	(1) For historical exhibition. (2) Not used as primary transportation.
Special 'Historic' License Plates	Not issued.	Optional	Optional
Plate Fee/Replacement	Included in initial registration fee. \$7 replacement	\$25 new (permanent). \$7 replacement.	\$25 new (permanent). \$7 replacement.
Definition	N/A	Owner provides a document from insurance company stating that the vehicle has "collector" status.	Subjective, according to the owner's opinion.

** Beginning January 1, 2003, any vehicle that is 30+ model years old is exempt from smog requirements, unless the vehicle registration is transferred.

Discussion:

Compared to current law:

- The collector vehicle program would allow collector vehicles to pay a reduced (\$2) VLF, while non-collector vehicles pay the regular VLF according to the vehicle's purchase price and subsequent depreciation.
- Under the proposed collector vehicle program, all such vehicles (25 years and older) would be exempted from smog requirements, while under current law, only those vehicles manufactured prior to 1974 (28 years old, until January 1, 2003 and then 30 years old) would be exempt (see below).
- The collector vehicle program would require that those vehicles be driven on a limited basis only.

LEGISLATIVE INTENT SERVICE (800) 666-1917



K. Johannessen

May 21, 2001

SB 800

In comparison to the existing historic vehicle program, the new "collector vehicle" program would provide substantially the same program requirements and benefits with the following major exceptions:

- Owners of "collector" vehicles would be required to obtain insurance company documentation that the vehicle is insured as a "collector" vehicle and that it is not driven routinely.
- "Collector" vehicles would be exempted from existing smog certification requirements as follows:

Exempt from SMOG?	Collector Vehicles	Historical Vehicles	All Vehicles
After January 1, 2002	25+ years old	25+ years old	28+ years old (manufactured pre-1974)
After January 1, 2003	25+ years old	30+ years old	30+ years old

Thus, without this bill, a vehicle that (1) was manufactured in 1975 and (2) could potentially qualify for "collector" status would be subject to smog requirements because the vehicle was manufactured after 1974. "Collector" status, however, would exempt this vehicle because it is over 25 years old.

Presumably, this exemption from smog certification is based on the limited number of miles that a "collector" vehicle would be driven. However, a vehicle with "historic" status that is 25 years old (a 1976 model year) would still be subject to smog requirements. Further, all other ordinary vehicles are required to meet the current biennial smog requirements irrespective of the number of miles driven. Therefore, it is not clear why "collector" vehicles should be treated differently for this requirement. Also, the state receives significant federal funds that could be jeopardized if the requirements of the smog certification program are lessened.

We are also concerned that unscrupulous persons would attempt to use the "collector" status to avoid smog requirements and still drive the vehicles regularly. Nothing in this bill would require "collector" cars to display the specified license plate, therefore, enforcement agencies (e.g., the California Highway Patrol) could not easily identify a "collector" vehicle exceeding the restricted usage limitation when in operation.

B. Fiscal Analysis

Since insurance companies use various forms, it may take DMV personnel extra time to verify these documents (submitted by insurance companies to support the owner's claim of the "collector vehicle" status) at the counter. However, it is not anticipated that a large number of persons will avail themselves of this program; therefore, these costs should not be significant.

This bill would also have fiscal effects on (1) the General Fund and (2) local governments. DMV reports that:

1. In 2001, there are 1,069,000 registered vehicles that are 25+ years old (i.e., first registered in or before 1976).
2. Of these "older" vehicles, 19,955 are registered with "historic" status.
3. The VLF is based on 2 percent of a vehicle's new sales price, depreciated to a minimum of 15 percent of that amount (once the vehicle has reached nine years of age).
4. Under current law, the vehicle registrant pays only 32.5% of the VLF due to local governments. The General Fund contributes 67.5%. For example, in 1999 the average owner paid \$109 as his or her portion of the total VLF (i.e., \$335), and the General Fund contributed a subsidy of \$226.

LEGISLATIVE INTENT SERVICE (800) 666-1917



K. Johannessen

May 21, 2001

SB 800

The DMV does not have an estimate of how many vehicle owners will apply for collector status. The following assumptions are made for analysis purposes:

- Assume the average VLF for collector vehicles would be \$15, based on a new sales price in 1977 of \$5,000 (\$5,000 * 2 percent * 15 percent). This amount would be split—\$5 to the VLF and \$10 from the General Fund.
- Assume 20,000 vehicles from the general, not historic, vehicle population (about the same number as apply for "historic" status) will apply for and receive "collector" status.

(1) General Fund (VLF offset) expenditures will decrease (from \$10 per vehicle to 67.5 percent of \$2 or \$1.35) by \$173,000 annually.

(2) VLF fees will be decreased (from \$5 to \$0.65) by about \$87,000 annually.

(3) Both of these amounts would otherwise be paid to local governments for a total annual loss to local governments of approximately \$260,000 annually.

While the above calculations assume an average annual VLF based on a \$5,000 depreciated vehicle value, in certain circumstances, a used vehicle could have a significantly greater value and, therefore, higher VLF fees. For example, a "collector" status 1976 Chevrolet Corvette could be sold today as a used car for well over \$100,000. At a sales price of \$100,000, the VLF fees would be \$2,000 for the first year of licensure by the new owner. However, should that owner claim the "collector" status for the vehicle, as this bill would provide, the VLF fee would become \$2; a savings for the person who can afford to buy a \$100,000 vehicle (that would be subject to restricted usage) of \$1,998. We do not have data on the frequency of such transactions and, therefore, cannot determine what the impact these kinds of unusual value transactions would have on the VLF and General Fund. Since the VLF is a form of property tax, we see no policy rationale for exempting well-to-do persons engaging in collecting from the normal rates.

LEGISLATIVE INTENT SERVICE (800) 666-1917

Code/Department Agency or Revenue Type	SO		(Fiscal Impact by Fiscal Year)						Fund Code
	LA	CO	PROP			FC			
	RV	98	FC	2001-2002	FC	2002-2003	FC	2003-2004	
2740/DMV	SO	No	S	\$122	S	\$7	S	\$7	0044
1136/MV Lic Fees	RV	No	L	-\$44	L	-\$87	L	-\$87	0064
9100/Tax Relief	LA	No	M	-\$87	M	-\$173	M	-\$173	0001
<u>Fund Code</u>	<u>Title</u>								
0001	General Fund								
0044	Motor Vehicle Account, STF								
0064	Motor Vehicle License Fee Account, TTF								

SENATE THIRD READING
SB 800 (Johannessen)
As Amended May 21, 2001
Majority vote

SENATE VOTE: 39-0

TRANSPORTATION 15-0 APPROPRIATIONS >

Ayes: Dutra, Rod Pacheco, Bates,
Firebaugh, Havice, Hollingsworth,
Kehoe, La Suer, Leach, Leslie, Liu,
Mountjoy, Nakano, Strom-Martin,
Vargas

Ayes: >

Nays: >

SUMMARY: Establishes the classification of collector motor vehicle. Specifically, this bill:

- 1) Defines as a "collector motor vehicle" a vehicle that is: 25 or more model-years old; not used by the owner as a primary source of transportation; and used primarily for purposes of display at events.
- 2) Requires the registered owner of a collector vehicle to submit to the Department of Motor Vehicles (DMV) a written statement or policy from an insurance company indicating the vehicle is insured as a collector vehicle.
- 3) Exempts collector motor vehicles from the biennial smog inspection program.
- 4) Requires DMV to issue special identification plates for collector motor vehicles.

EXISTING LAW:

- 1) Exempts motor vehicles manufactured prior to 1974 from Smog Check requirements. Effective 2003, this exemption will apply to all vehicles 30 years or older.
- 2) Requires DMV to issue special identification plates to various categories of vehicles that are of historic interest.

FISCAL EFFECT: Unknown

COMMENTS: According to the author, the purpose of this measure is "to create a special category for older cars that are not being used as daily transportation but for displays at fairs and exhibitions, and it specifies these vehicles are exempt from smog inspection."

Opponents argue that the Smog Check program is falling short of its emission reduction goals and that weakening it could trigger federal sanctions against highway funding. They do not believe that requiring insurance companies to verify that vehicles are insured as collector vehicles will assure that they are not being used for regular transportation purposes.



Accordingly, they fear that the bill will encourage the proliferation of cars being labeled as collector cars in order to evade Smog Check inspections.

In this regard, it should be noted that effective January 1, 2003, when Smog Check exemptions apply to all vehicles that are 30 years or older, this bill will essentially create a five year window for vehicles classified as collector motor vehicles, (i.e., vehicles that meet the bill's 25-year age threshold but do not meet the universal 30-year age threshold for Smog Check exemption). Although the Air Resources Board estimates that by 2003 there will be 400,000 vehicles between 25 and 30 years old, they are unable to provide an estimate as to how many of those might be considered or treated as collector vehicles. The actual number is likely to be extremely small.

Analysis Prepared by: Howard Posner / TRANS. / (916) 319-2093

FN:

LEGISLATIVE INTENT SERVICE (800) 666-1917



SENATE THIRD READING
SB 800 (Burton and Wesson)
As Amended August 28, 2002
Majority vote

SENATE VOTE: Vote not relevant

JUDICIARY 12-0

Ayes: Corbett, Harman, Bates, Dutra,
Jackson, Longville, Robert Pacheco,
Shelley, Steinberg, Vargas, Wayne,
Aroner

SUMMARY: Reforms construction defect law in order to promote safe and affordable residential housing for California. Specifically, this bill:

- 1) Defines construction defects to ensure performance with specified standards.
- 2) Requires claimants to provide notice to builders regarding alleged violations.
- 3) Gives builders an absolute right to repair alleged defects before a claimant may sue.
- 4) Preserves the right of homeowners to pursue remedies if the repair is not made or is inadequate.

EXISTING LAW:

- 1) Provides that a construction defect action may be brought against any person who develops real property or performs or furnishes the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to real property.
- 2) Provides that an action based on latent defects (defects not apparent from a reasonable inspection) in construction must be brought within 4 years of discovery of the defect (if the action is based on breach of contract or warranty), but in no event may such an action be brought more than 10 years after the date of substantial completion of the development or improvement.
- 3) Provides that builders may not be held liable in negligence for construction defects unless those defects have caused death, bodily injury, or property damage. (*Aas v. Superior Court*, (2000) 24 Cal. 4th 627.)

FISCAL EFFECT: None

COMMENTS: According to the authors, this consensus bill represents groundbreaking reform for construction defect litigation. The problem of construction defects and associated litigation have vexed the Legislature for a number of years, with substantial consequences for the development of safe and affordable housing. This bill reflects extensive and serious negotiations



between builder groups, insurers and the Consumer Attorneys of California, with the substantial assistance of Assemblymember Darrell Steinberg and key legislative leaders and Committee staff over the past year, leading to an unusually broad and powerful consensus on ways to resolve these issues.

A principal feature of the bill is the codification of construction defects. For the first time, California law would provide a uniform set of standards for the performance of residential building components and systems. Rather than requiring resort to contentions about the significance of technical deviations from building codes, the bill specifies the standards that building systems and components must meet. Significantly, these standards effectively end the debate over the controversial decision in the *Aas* case to the effect that homeowners may not recover for construction defects unless and until those defects have caused death, bodily injury, or property damage, no matter how imminent those threats may be. Moreover, unlike some existing warranty programs, these standards cover all major systems for a substantial period, and are enforceable by subsequent purchasers, not just the original buyer. The bill sets out these standards in detail, organized under non-substantive headings for the benefit of the reader.

The bill provides a floor, but not a ceiling, for the performance of residential structures. In addition to the foregoing minimum standards, the bill provides that a builder may, but is not required to, offer greater protection or longer time periods in its express contract with the homeowners. If a builder offers an Enhanced Protection Agreement, the builder may choose to be subject to its own express contractual provisions.

The bill specifies one, two and four-year periods for the filing of claims for alleged violations of certain standards. Unless a shorter period is specified, no action may be brought to recover for alleged violations more than 10 years after substantial completion, as defined in Civil Code of Procedure Section 337.15(g)(2). These time limitations do not apply to any action by a claimant for a contract or express contractual provision.

In a significant departure from existing law, the bill imposes a procedure that a homeowner must follow before bringing suit against a builder. In summary, the homeowner must send a written notice to the builder setting out the nature of the claim. The builder must acknowledge the claim in writing. The builder may then elect to conduct inspection and testing of the alleged defect within a specified period, and must provide certain documentation to the homeowner on request regarding building plans and specifications. Most importantly, the builder may then offer to repair the alleged violation within a prescribed period. Such an offer to repair must also compensate the homeowner for all applicable damages recoverable. Upon receipt of the offer to repair, the homeowner has a prescribed period in which to authorize the builder to proceed with the repair. The offer to repair must also be accompanied by an offer to mediate the dispute if the homeowner so chooses.

The homeowner is relieved from any further pre-litigation process if the builder fails to acknowledge the claim within the time specified, elects to not go through this statutory process, fails to request an inspection within the time specified, fails to make the offer to repair or otherwise strictly comply with the obligations of the statute within the times specified, or if the contractor performing the repair does not complete the repair in the time or manner specified.

This act is intended to apply to subcontractors and design professionals to the extent that the subcontractors, material suppliers, individual product manufacturers and design professionals



caused, in whole or in part, a violation of a particular standard as a result of its negligent act or omission or a breach of contract. These persons may assert the affirmative defenses to liability set forth in the bill, as well as common law and contractual defenses as applicable. The bill does not modify current law pertaining to joint and several liability for subcontractors and design professionals that contribute to any specific violation of the construction defect standards set out in the bill.

Analysis Prepared by: , Kevin G. Baker/ JUD. / (916) 319-2334

FN: 0007685

LEGISLATIVE INTENT SERVICE (800) 666-1917



SB 800 (BURTON)
CIVIL ACTIONS.

Version: 8/25/02 As Proposed to be Amended
Vote: Majority
OPPOSE***

Vice-Chair: Tom Harman
Tax or Fee Increase: No

Extends time for notice of motion for summary judgment from 28 to 90 days before hearing and statute of limitations in personal injury and wrongful death actions from 1 to 2 years, and applies to 9/11/01 victims.

NOTE: TREAT THIS ANALYSIS AS SB 688 (BURTON) UNTIL EITHER IT IS SUBSEQUENTLY SHIFTED INTO THE SB 688 SHELL OR OTHER SUBSEQUENT ACTION IS TAKEN AS LEG COUNSEL SENT BACK THE REVISED LANGUAGE ON THIS BILL AS SB 688 AND THE LANGUAGE FOR SB 688 AS SB 800.

NOTE: This was one of the bills used to negate Republican Opposition to the waiver of Joint Rule 61 -- in the specific case of SB 1698 (Romero), a spot bill on statute of limitations.

Policy Question

1. Should the long standing statute of limitations for personal injury and wrongful death actions be doubled and even applied retroactively to the long range detriment of business and consumers and to the otherwise benefit of the plaintiff bar lobby?
2. Should changes be made to the procedure for motions for summary judgment that include, among other things, that the time period for notice to respondents be more than triple to the current time allowed, also to the detriment of litigants and courts but to the benefit of the plaintiff bar lobby?

Summary

1. This bill: (1) Extends the statute of limitations in personal injury and wrongful death actions from one to two years and applies the change retroactively to victims of the September 11th terrorist attacks; (2) Increases the time for notice

of a motion for summary judgment from 28 days before the hearing on the motion to 90 days. (3) Allows an ex parte motion for continuance of the hearing on a motion for summary judgment in order to allow more time for discovery; 4) Mandates that the motion for summary judgment be denied if the moving party unreasonably fails to allow the discovery to be conducted after such a motion for continuance is granted; 5) Requires a reviewing court to allow the parties to submit supplemental briefs before affirming an order granting summary judgment on a ground not relied upon by the trial court; and 6) makes legislative findings to endorse the above changes, but in the last provision of the findings states that because the provisions of this act involve the resolution of competing considerations, dealing with problems facing both plaintiffs and defendants, the Legislature would find that the provisions of this act are not severable. The provision concludes that rather, it would be the intent of the Legislature that if, for any reason, any provision of this act is determined to be void or otherwise inoperative, then no provision of this act shall have any effect.

Support

Consumer Attorneys of California (Sponsor) [See Comment #2 for potential other support].

Opposition

California Employment Law Council; Personal Insurance Federation of California (Not verified); [See Comment #2 for potential other opposition].

Arguments In Support of the Bill

1. The author and proponent state their general points of support in the legislative declarations and findings which include: (1) The California system for the administration of justice is one

LEGISLATIVE INTENT SERVICE (800) 666-1917



Senate Republican Floor Votes (22-12) 5/28/02 NOT RELEVANT AS LATER AMENDED

Ayes: None
Noes: All Republicans, except

Abs. / NV: Johnson, McPherson

Assembly Republican Judiciary Votes (0-0) 8/26/02

Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican Votes (0-0) 1/1/01

Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican Votes (0-0) 1/1/01

Ayes: None
Noes: None
Abs. / NV: None

of the fairest in the world, but certain procedures and standards should be amended to ensure fairness to all parties; (2) Provides that many personal injury and wrongful death actions would be resolved without need to resort to litigation if California's statute of limitations permitted such actions be extended to two years, as is provided in other states; (3) Declares that California residents who are victims of the terrorist actions of September 11, 2001 must prematurely choose between litigation and federal remedies, in contrast with states that allow longer time to pursue their choice of remedies; and (4) Declares that summary judgment is a drastic procedure and should only be granted when an action is without merit and both sides have a fair opportunity to address the merits of an action; or when an action lacks a triable issue of fact.

2. Proponents assert the following breakdown of the statute of limitations laws for personal injury actions in the United States: 1) 7 states have at least a 4-year statute; 2) 16 states and the District of Columbia have a 3-year statute; 3) 23 states have a 2-year statute; and 4 states (which includes California) have a one-year statute.
3. Proponents contend that California victims (family survivors of wrongful death) of the September 11th terrorist attacks have less than one month left to decide whether to bring an action against the airline or otherwise accept the compensation offered by the federal Restitution Fund where the full extent of damage they have suffered has not yet been fully determined. The retroactive extension to two years would be in keeping with the majority of other states that allow more than one year for their residents to make such election after more time to weigh the adequacy of compensation offered by the federal Restitution Fund versus an action against the airline. **HOWEVER** it could be argued that the plaintiff bar handling such claims on a 40 percent contingency fee has had up to a year to pursue civil discovery against the airlines and this would get such attorneys more time to leverage the airline for a higher settlement fee than they might otherwise get from their clients accepting the federal Restitution fund to those who would be truly entitled to a recovery.
4. Proponents argue that the 76 days added to the length of time between the filing of a motion for a summary judgment and until the hearing on the motion would give them enough time to conduct discovery that includes depositions and follow up interrogatories that they claim would otherwise be impractical within the current 14 day response time from a notice for motion filed within 28 days prior to the hearing. **HOWEVER** the other side to this argument includes that (1) Motions for summary judgment are common enough to not be a

surprise to the plaintiff's counsel who likely is conducting a wide ranging discovery that anticipates such motion for a period well before the 28 day timeframe that includes depositions and follow-up interrogatories. Second, the plaintiff's counsel could ask and be granted a continuance by reasonable demonstrating that he or she needs more time to respond to the motion for summary judgement. Third, as Judicial Council contends, such a change could unnecessarily protract trial court delay reduction program enacted at the end of the 1980's because there was too much litigation game playing on such motions and other procedures that delayed justice for the party litigants (as long as five years on the average in civil case resolution in Los Angeles County in the mid 1980s.

5. Consumer attorneys contend that the plaintiff's counsel should have the right to brief the appellate court on the grounds that the appellate court might decide for a summary judgment motion when they bring it up on appeal on other grounds than those that the appellate court uses to grant a defendant's motion for summary judgment. **HOWEVER**, as opponents to SB 476 (Escutla) have pointed out, the language of this proposed change would allow supplemental briefing even if the issue had been argued below, but was not relied upon by the trial court in its decision. In such cases the appellate court would have, as part of the record, the briefing below, and that no supplemental briefing is necessary. It then would come down to whether it was necessary to take more precious time and cost at the appellate court for the litigants as well as the appellate court to allow the plaintiff's counsel to argue their unsuccessful points again or fish for new ones.

Arguments In Opposition to the Bill

1. At a time when California's economy is slumping and the state budget is in its worst post Great Depression and World War II crisis, the twin attacks on business (as well as local and state government agency targets) to double the statute of limitations and triple discovery game-playing on summary judgment motions could only further exacerbate any growth in business, any restraint on consumer price increases to cover added liability, and any budding encouragement to otherwise stimulate new private sector jobs. The real beneficiaries, no matter how they attempt to dress up or exploit the California 9/11 victims, are the contingency fee attorneys who would expect to line their pockets with their 40 percent or greater contingency fee cut through such added settlement leverage tools and otherwise added expense to their clients,

LEGISLATIVE INTENT SERVICE (800) 666-1917



- business defendants and the courts to play out their further costly and protracted litigation scenarios.
2. Personal Insurance Federation of California on August 16th, 2002, recently addressed the two major changes now sought by the plaintiff bar lobby stating the following points under the following bolded headings: "[1] Revisions to the procedure for summary judgment motions that will severely impede the ability of parties to bring summary judgment motions and have unmeritorious cases dismissed prior to trial. Characterized as a 'simple 90-day notice requirement,' the effect of the proposed changes is to so constrain the time period in which a defendant would have to conduct discovery and prepare a summary judgment motion, that the practical effect would be to all but eliminate the option of summary judgment. Summary judgments are infrequently granted under the current rules, which were clarified by a unanimous California Supreme Court decision written by the late Justice Stanley Mosk last year. This issue was debated last year in the Senate in SB 476, but has sat in the Assembly for over a year without any action or debate until now, at the eleventh hour, when new amendments are being proposed as a 'done deal' prior to any policy committee hearing or analysis. [2] Doubling of the time period within which to file a lawsuit for personal injury from the current one year to two years. This change will have a major impact on the tort litigation system, significantly increase the number of lawsuits filed, give personal injury attorneys a longer time to build up damages, inflate claims management costs, and increase insurance fraud. Statutes of limitations serve the important public policy of encouraging prompt resolution of disputes, while memories are fresh, witnesses are still available, and issues of causation and damages can more readily be determined. Doubling the statute of limitations will lead to more stale claims being litigated, prolonging of the claims settlement process, and an increase in the number of fraudulent claims. Absolutely no showing has been made that the current statute of limitations is inadequate. This is a major change to the tort system which has not been analyzed or heard in any policy committee and has not even been in print in any bill this year.
 3. The California Employment Council (CELC) opposed the expanded time between filing a summary judgment notice and hearing. CELC asserts that: "The timing restrictions are very onerous and are inconsistent with the notion that summary judgments should be used to quickly rid the system of nonmeritorious cases. SB 800 created a very narrow time window in which the motion can be brought, pushes way out the time to resolution to (at the

- earliest) 210 days after an action is served (90 plus 120), and ironically SB 800 creates potential discovery disputes that under the bill would become severely sanctionable..., because the motion very often would have to be filed before a discovery cutoff had passed. Existing law guarantees parties have ample time to oppose such motions by providing that the court 'SHALL' deny motion or grant a continuance upon a party's showing that further discovery is needed (CCP 437c(h))."
4. The Law Offices of Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP also emphasize that lengthening the notice "will unduly restrict the time for discovery preceding a motion for summary judgment [bold emphasis added]. That will make summary judgment motions harder to bring, lead to more unnecessary trials and drive up the settlement value of otherwise frivolous litigation. ... The current 28-day notice is much longer than other major states (Florida (18 days), Texas (14 days), Federal Rules (10 days)).
 5. Judicial Council has expressed serious concern with the 90-day notice period for summary judgment motions. Judicial Council contends: "The proposed increase of the notice period in CCP section 437c(a) from 28 to 90 days would pose serious problems for effective case management and timely disposition of civil cases. ... A purpose of the amendments appears to be to decrease the frequency and impact of summary judgment motions. However, the proposal may have unintended consequences. The result of extending the length of the summary judgment motion process may be to proliferate the number of ancillary disputes over discovery, the right to file supplemental papers, requests for continuances of hearings and trial dates."
 6. The forerunner bill, SB 1698 (Romero) to which the language has been placed into this bill, a spot bill almost up to the day of its scheduled hearing in the last policy committee of the second house of the Legislature. As noted in the Senate Republican Whip analysis at the earlier but still late stage in the legislative process of that bill -- for action on the Senate Floor -- "...Legislators should not be asked to vote on a bill by this stage in the process that will become something totally different. This is a total abuse of power, and begs the question, what is the point of having rules any way?" (Emphasis added.)

Fiscal Effect

Unknown.

Comments

1. **EXISTING LAW.** Current statutory law: (1) Limits to one year the time for commencing an

LEGISLATIVE INTENT SERVICE (800) 666-1917



Assembly Republican Bill Analysis

SB 800 (Burton)

action for personal injury or wrongful death. (Code of Civil Procedure section 340.) (2) Sets forth the standards and procedures for an action to be resolved through summary judgment, without trial, if the action has no merit or if there is no defense to the action. (Code of Civil Procedure section 437c.) (3) Provides that notice of a motion for summary judgment shall be served on all other parties to the action at least 28 days before the time appointed for hearing, with the time increased by specified amounts when notice is by specified methods. (Code of Civil Procedure section 437c (a).) (4) Provides that opposition to a motion for summary judgment must be filed not less than 14 days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise, and that any reply to the opposition must be served and filed not less than 5 days before the hearing, unless the court for good cause orders otherwise. (Code of Civil Procedure section 437c (b).) (5) Provides that if it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication or both that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion or order a continuance to permit discovery. (Code of Civil Procedure section 437c (h).) (6) Provides that a summary judgment is an appealable judgment, and sets forth procedures for appellate review. (Code of Civil Procedure section 437c, subdivision (l).) (7) Provides that a defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if he or she has shown that one or more elements of the cause of action cannot be established, or that there is a complete defense to that action.

2. **Potential supporters of this measure may likely include the following groups that endorsed the somewhat similar summary judgment reform in SB 476 (Escutia):** Association of California Life and Health Insurance Companies; California Conference Board of the Amalgamated Transit Union; California Conference of Machinists; California

Employment Lawyers Association; California Teamsters Public Affairs Council; Consumer Attorneys of California; Hotel Employees, Restaurant Employees International Union; Engineers and Scientists of California; Older Women's League of California; Region 8 States Council of the United Food & Commercial Workers; and numerous individual letters.

3. **Potential opposition of this measure may likely include the following groups that opposed somewhat similar summary judgment reform in SB 476 (Escutia):** Agouron Pharmaceuticals, Inc.; Alliance of American Insurers; Alliance of Automobile Manufacturers; American International Group; Association of California Insurance Companies; BP Amoco; Baxter Healthcare Corporation; California Association of Health Facilities; California Chamber of Commerce; California Employment Law Council; California Grocers Association; California Manufacturers and Technology Association; California Retailers Association; Californians Allied for Patient Protection; Consulting Engineers and Land Surveyors of California; Chevron Corporation; Civil Justice Association of California; Citizens Against Lawsuit Abuse; Corio; Cubic Corporation; Del Monte Foods; The Dentists Insurance Company; Doctors' Company; IITLA Capital Corporation; Kaiser Permanente; Motion Picture Association of America; National Association of Independent Insurers; Pacific Bell; Personal Insurance Federation; Pharmaceutical Research and Manufacturers of America; PlastiColor Molded Products, Inc.; Orange County Citizens Against Lawsuit Abuse; Professional Liability Insurers; Robinson; State Farm Insurance Companies; and W D Machine & Engineering.

4. **Senator John Burton and Assembly Member Herb Wesson replace Senator Romero as the lead authors.**

Policy Consultant: Mark Redmond 8/26/02
Fiscal Consultant:

LEGISLATIVE INTENT SERVICE (800) 666-1917



SB 800 (Johannessen)

Support

File Item #

Senate Transportation: 13-0

(AYE: McClintock, Brulte, Monteith; ABS: Morrow)

Senate Appropriations: (Senate Rule 28.8)

Vote requirement: 21

Version Date: 5/21/01

Quick Summary

Creates a new motor vehicle designation for collector motor vehicles, and exempts these vehicles from biennial smog inspection.

Fiscal Effect

MINOR STATE COSTS. Less than \$100,000 for system upgrades for the DMV to reclassify all historical vehicles and horseless carriages, not just those who apply for special license plates, as vehicles requiring a \$2 annual fee, instead of an annual VLF fee.

Fiscal Consultant: Alex Alanis

Digest

Defines a vehicle that is 25 or more model-years old and is not used as a primary source of transportation but is instead used for purposes of display at events as a "collector motor vehicle."

Requires owners of collector vehicles to submit a written statement or policy from an insurance agent indicating that the vehicle is primarily a display vehicle.

Exempts collector motor vehicles, as defines, from the biennial smog inspection program.

Background

Existing law permits owners of vehicles that are operated or moved primarily for the purpose of historical exhibition or similar reasons, to be issued special identification plates.

LEGISLATIVE INTENT SERVICE (800) 666-1917



ARC - 5

This provision in law applies to motor vehicles with engines of 16 or more cylinders that were manufactured prior to 1965, motor vehicles manufactured in the year 1922 or prior, and vehicles of historical interest that were manufactured at least 25 years ago.

These display vehicles are exempted from paying VLF and are instead eligible to pay a \$2 in lieu VLF.

Rowley vs. DMV

A recent court case brought against the DMV by the owner of a vehicle of historic interest found that a vehicle owner that qualifies for either a horseless carriage plate or a historic vehicle plate, but does not apply for one of these special plates still qualifies for the \$2 in lieu VLF fee.

As a result of this decision, all vehicles that qualify for the special plates qualify for the \$2 in lieu VLF fee.

Analysis

The collector vehicles that would be affected by this bill comprise a small fraction of the vehicle fleet and are considered classic cars. SB 800 provides a specific classification for these vehicles that are used primarily for display and not for transportation, exempting them from biennial smog inspection.

In addition, the definition of a collector vehicle is added to VC 5004, which provides the requirements for eligibility to pay the \$2 in lieu VLF.

Transportation Committee amendments that would have specifically precluded these vehicles from the \$2 in lieu VLF, have been removed from the bill.

Support & Opposition Received

None received

Consultant: *Edward Morley*

Whip Comments

Current law allows for historic vehicles to pay a \$2 registration fee rather than the full vehicle license fee. Cars meeting the definition of 'historic vehicle' are allowed to display special 'historic' license plates.

A recent court ruling stated that in order to qualify for the simple \$2 registration fee, the vehicle need only qualify as an historic vehicle – it need not



display the historic plates. DMV has long contended that in order to qualify for the \$2 fee, these vehicles must first have the plates.

This bill seeks to exempt 'collector' cars from biennial smog inspection requirements. It also sought to broaden the definition of 'collector vehicle' to allow collector cars to display historic license plates. Because of the recent court ruling, this bill will thus allow collector cars to pay only the \$2 registration fee and **NOT** the full VLF.

Passing this bill means passing on a significant tax break to owners of collector vehicles.



LEGISLATIVE INTENT SERVICE (800) 666-1917

ARC - 7

SENATE RULES COMMITTEE

SB 800

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

UNFINISHED BUSINESS

Bill No: SB 800
Author: Burton (D) and Wesson (D) et al
Amended: 8/28/02
Vote: 21

SENATE VOTES NOT RELEVANT

ASSEMBLY FLOOR: Not available

SUBJECT: Liability: construction defects

SOURCE: Author

DIGEST: Assembly Amendments delete the Senate version of this bill relating to collector motor vehicles.

The bill now specifies the rights and requirements of a homeowner to bring an action for construction defects, including applicable standards for home construction, the statute of limitations, the burden of proof, the damages recoverable, a detailed prelitigation procedure, and the obligations of the homeowner.

This bill also provides that there is no personal monetary liability on the part of, and no cause of action for damages shall arise against, any person, in any of the specified categories, who is under contract with an applicant for a residential building permit to provide independent quality review of the plans and specifications provided with the application in order to determine compliance with all applicable requirements imposed pursuant to the State Housing Law or any rules or regulations adopted pursuant to that law, or to inspect a work of improvement to determine compliance with these plans and specifications, except as specified.



Senate Floor Amendments of 5/21/01 remove the provision which would have excluded collector motor vehicles from the provision that limits the vehicle license fee to \$2.00 annually.

ANALYSIS: Existing law:

1. Provides that a construction defect action may be brought against any person who develops real property or performs or furnishes the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to real property.
2. Provides that an action based on latent defects (defects not apparent from a reasonable inspection) in construction must be brought within four years of discovery of the defect (if the action is based on breach of contract or warranty), but in no event may such an action be brought more than ten years after the date of substantial completion of the development or improvement.
3. Provides that builders may not be held liable in negligence for construction defects unless those defects have caused death, bodily injury, or property damage. (Aas v. Superior Court, (2000) 24 Cal. 4th 627.)

This bill reforms construction defect law in order to promote safe and affordable residential housing for California. Specifically, this bill:

1. Defines construction defects to ensure performance with specified standards.
2. Requires claimants to provide notice to builders regarding alleged violations.
3. Gives builders an absolute right to repair alleged defects before a claimant may sue.
4. Preserves the right of homeowners to pursue remedies if the repair is not made or is inadequate.



Comments

According to the authors, this consensus bill represents groundbreaking reform for construction defect litigation. The problem of construction defects and associated litigation have vexed the Legislature for a number of years, with substantial consequences for the development of safe and affordable housing. This bill reflects extensive and serious negotiations between builder groups, insurers and the Consumer Attorneys of California, with the substantial assistance of Assemblymember Darrell Steinberg and key legislative leaders and committee staff over the past year, leading to an unusually broad and powerful consensus on ways to resolve these issues.

A principal feature of the bill is the codification of construction defects. For the first time, California law would provide a uniform set of standards for the performance of residential building components and systems. Rather than requiring resort to contentions about the significance of technical deviations from building codes, the bill specifies the standards that building systems and components must meet. Significantly, these standards effectively end the debate over the controversial decision in the Aas case to the effect that homeowners may not recover for construction defects unless and until those defects have caused death, bodily injury, or property damage, no matter how imminent those threats may be. Moreover, unlike some existing warranty programs, these standards cover all major systems for a substantial period, and are enforceable by subsequent purchasers, not just the original buyer. The bill sets out these standards in detail, organized under non-substantive headings for the benefit of the reader.

The bill provides a floor, but not a ceiling, for the performance of residential structures. In addition to the foregoing minimum standards, the bill provides that a builder may, but is not required to, offer greater protection or longer time periods in its express contract with the homeowners. If a builder offers an Enhanced Protection Agreement, the builder may choose to be subject to its own express contractual provisions.

The bill specifies one, two- and four-year periods for the filing of claims for alleged violations of certain standards. Unless a shorter period is specified, no action may be brought to recover for alleged violations more than 10 years after substantial completion, as defined in Civil Code of Procedure Section 337.15(g)(2). These time limitations do not apply to any action by a claimant for a contract or express contractual provision.



In a significant departure from existing law, the bill imposes a procedure that a homeowner must follow before bringing suit against a builder. In summary, the homeowner must send a written notice to the builder setting out the nature of the claim. The builder must acknowledge the claim in writing. The builder may then elect to conduct inspection and testing of the alleged defect within a specified period, and must provide certain documentation to the homeowner on request regarding building plans and specifications. Most importantly, the builder may then offer to repair the alleged violation within a prescribed period. Such an offer to repair must also compensate the homeowner for all applicable damages recoverable. Upon receipt of the offer to repair, the homeowner has a prescribed period in which to authorize the builder to proceed with the repair. The offer to repair must also be accompanied by an offer to mediate the dispute if the homeowner so chooses.

The homeowner is relieved from any further pre-litigation process if the builder fails to acknowledge the claim within the time specified, elects to not go through this statutory process, fails to request an inspection within the time specified, fails to make the offer to repair or otherwise strictly comply with the obligations of the statute within the times specified, or if the contractor performing the repair does not complete the repair in the time or manner specified.

This act is intended to apply to subcontractors and design professionals to the extent that the subcontractors, material suppliers, individual product manufacturers and design professionals caused, in whole or in part, a violation of a particular standard as a result of its negligent act or omission or a breach of contract. These persons may assert the affirmative defenses to liability set forth in the bill, as well as common law and contractual defenses as applicable. The bill does not modify current law pertaining to joint and several liability for subcontractors and design professionals that contribute to any specific violation of the construction defect standards set out in the bill.

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

SUPPORT: (Verified 8/29/02)

Consumer Attorneys of California
Home Ownership Advancement Foundation

LEGISLATIVE INTENT SERVICE (800) 666-1917



CONTINUED

Personal Insurance Federation of California
California Building Industry Association

RJG:kb 8/29/02 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****

LEGISLATIVE INTENT SERVICE (800) 666-1917



SB 800 (Burton)

File Item # 34

None

Assembly Floor: 80-0

(AYE: All Republicans)

Senate Judiciary: 5-1

(AYE: Haynes, NO: Ackerman)

Vote requirement: 21

Version Date: 8/28/02

Quick Summary

Sets detailed and specific liability standards for newly constructed housing, 2) establishes a pre-trial process that includes a builder's right to repair an alleged defect, and 3) grants third-party inspectors with immunity from liability.

Digest

Assembly amendments:

Apply to all original home construction the following provisions:

Governs any action against a builder, subcontractor, individual product manufacturer, or design professional, seeking recovery of damages arising out of, or related to deficiencies in, residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction.

Sets a ten-year statute of limitations for construction defect actions, with certain limited exceptions and tolling periods under certain circumstances.

Renders meaningless the court's opinion in Aas v. Superior Court, 24 Cal. 4th 627 (2000), which upheld the longstanding principle that a person can sue in tort if, and only if, he has suffered damages.

Require a builder shall provide a homebuyer with a minimum one-year express written limited warranty covering the fit and finish certain building components.

Requires certain procedures be followed before filing a construction defect lawsuit. This procedure would provide the builder with a right to attempt a repair of the defect prior to litigation, inspections and exchanges of

documentation under certain circumstances, and mediation at various points, all pursuant to various timeframes set forth in the bill. The bill would provide that if the builder fails to follow any of the procedures, the homeowner is entitled to proceed with the filing of an action.

Establishes the statutory affirmative defenses, under the principles of comparative fault, for a) unforeseen acts of nature in excess of the design criteria expressed by the applicable building codes, b) a homeowner's unreasonable failure to minimize or prevent damages, c) a homeowner's, or his/her agent or employee, failure to follow recommended or commonly accepted maintenance obligations, d) defects caused by the alterations, ordinary wear and tear, misuse, abuse, or neglect, e) defects barred by the statute of limitations, f) defects subject to a valid release, and g) the extent that a builder's repair was successful in correcting the defect.

State the rights and requirements of a homeowner to bring an action for construction defects, including applicable standards for home construction, the statute of limitations, the burden of proof, the damages recoverable, a detailed prelitigation procedure, and the obligations of the homeowner.

Declare that there is no personal monetary liability on the part of any person who is under contract with an applicant for a residential building permit to check the plans and specifications provided with the application in order to determine compliance with all applicable requirements imposed pursuant to the State Housing Law or any rules or regulations adopted pursuant to that law, or to inspect a work of improvement to determine compliance with these plans and specifications.

Require, at the time the sales agreement is executed, that the builder notify the homeowner whether the builder intends to engage in the non-adversarial procedure of this section or attempt to enforce alternative contractual procedures or remedies. If the builder elects to use alternative contractual procedures or remedies in lieu of this section, the election is binding, regardless of whether the builder's alternative contractual procedures or remedies are successful in resolving the ultimate dispute or are ultimately deemed enforceable. If an alternative procedure or remedy includes a right to repair and is deemed unenforceable, nothing in this section shall affect the enforcement of contractual rights to repair that are severable, otherwise enforceable, and no different in any respect from the right to repair contained in this section.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



Define "construction defect" for these purposes as a defect in design, materials, or workmanship that occurs during the original construction of the improvement or in connection with any warranty repair work, and in the case of a common interest development, includes construction or repair work in all common areas.

Background

In 1995, the Legislature enacted SB 1029 (Calderon). That bill set up a 90-day pre-litigation procedure for resolving construction defect claims prior to court action. (Civ. Sec. 1375 [b][2]). That process, referred to as the Calderon process, affects allegations of construction or design defects in common interest developments of 20 units or more. Many believe that this legislation did not have a substantial effect on the time expended in resolving construction defect disputes.

The construction dispute provisions are the result of protracted negotiations among attorneys, contractors, subcontractors and their insurers. All appear to agree that the present process is broken.

This bill proposes a new hybrid form of facilitated dispute resolution that deviates from core practice elements of mediation in general and is likely to significantly drive-up defense costs during the pre-litigation process.

Analysis

This bill would make major changes to the substance and process of the law governing construction defects. It is the product of extended negotiations between various interested parties. Among other things, the bill seeks to respond to concerns expressed by builders and insurers over the costs associated with construction defect litigation, as well as concerns expressed by homeowners and their advocates over the effects of a recent Supreme Court decision that held that defects must cause actual damage prior to being actionable in tort. Aas v. Superior Court, 24 Cal. 4th 627 (2000).

The Personal Insurance Federation argues that this bill will bring some degree of predictability to the dispute resolution process for new construction that occurs after January 1, 2003. Also it may reduce litigation.

Support & Opposition Received

Support: California Building Industry Association, Personal Insurance Federation, California Nurses Association, Congress of California Seniors, Consumer Attorneys of California, Consumer Federation of California.

Opposition: None received.

Whip Comments

From the perspective of homeowners, it reduces the statute of limitations for various housing components below the 4-year limit for patent defects (defects apparent from a reasonable inspection), pursuant to existing statutory law.

May have some unintended consequences of unnecessarily extending the pre-litigation process that could otherwise be costly to builders, homeowners, subcontractors, and insurers.

From the perspective of builders, subcontractors and insurers, it appears to remove some of the limited immunity from actions for construction defect provided by the recent state supreme court ruling in *Aas v. Superior Court* (2000).



PK



CRUZ M. BUSTAMANTE
Lieutenant Governor
State of California

September 9, 2002

The Honorable Gray Davis
Governor, State of California
State Capitol, First Floor
Sacramento, CA 95814

Dear Governor Davis:

I write to **REQUEST YOUR SIGNATURE** on **SB 800 (Burton, Wesson)**, which would simplify the process of resolving construction defect claims.

This compromise, involving builders, insurance companies and consumer attorneys, will provide homebuyers with a new level of protection, while simplifying and expediting the legal process for builders.

As California continues to grow, the need for reliable order in our building industry becomes increasingly important. SB 800 represents an important step towards accomplishing this goal.

I respectfully request that you sign SB 800 into law.

Sincerely,

CRUZ M. BUSTAMANTE
Lieutenant Governor

cc: The Honorable John Burton
The Honorable Herb Wesson
Mr. Michael D. Pattinson, President, California Building Industry Association
Mr. Robert E. Cartwright, Jr., President, Consumer Attorneys of California

CMB/KM:ms

LEGISLATIVE INTENT SERVICE (800) 666-1917





THE CITY OF SAN DIEGO

September 19, 2002

Governor Gray Davis
State Capitol Building
Sacramento, CA 95814

RE: SB 800 (Burton): Construction Defects – REQUEST SIGNATURE

Dear Governor Davis:

The city of San Diego supports SB 800 (Burton) and requests your signature on the legislation. If enacted, this bill would aid in alleviating California's housing crisis by substantially improving existing construction defect law.

San Diego is one of the least affordable housing markets in California, and the state is home to 18 of the 25 least affordable housing markets in the nation. The lack of affordable housing, in particular attached housing, can be partially attributed to the rise in construction defect litigation.

SB 800 gives home builders the right to repair problems, defines in law the standards of quality that home buyers can expect, and introduces alternatives to litigation that will reduce costs and solve problems more quickly.

San Diego has been seeking legislation such as SB 800 for the past several years. The City's efforts toward smart growth and solving our housing crisis rely on the construction of more attached housing. Construction defect litigation reform is critical for that construction to occur.

Again, the city of San Diego supports SB 800 and requests your signature. If you have any questions or comments regarding the City's position, please contact me at 619.533.3990 or BEidson@sandiego.gov.

Sincerely,

J Brent Eidson
Deputy Director

cc: Honorable John Burton
Chris Kahn, Sloat Higgins Jensen & Associates
Gail Goldberg, Planning Department Director

Governmental Relations

1200 Third Avenue, Suite 224 • San Diego, CA 92101
Tel (619) 533-3990 Fax (619) 234-2915

(800) 666-1917

LEGISLATIVE INTENT SERVICE



A - 6





RIVERSIDE CEMENT

Post Office Box 51479 • Ontario, California 91761-0079 • Ph. 909.635.1800 • www.txi.com

September 16, 2002

The Honorable Gray Davis, Governor
State of California
State Capitol Building
Sacramento, CA 95814

RE: SB 800 (Burton) - REQUEST FOR SIGNATURE - Liability: Construction Defects

Dear Governor Davis:

On behalf of TXI Riverside Cement, I respectfully request your approval of the above-referenced legislation.

SB 800 would make changes to the law governing construction defects. Specifically, this bill would provide for detailed and specific liability standards for newly constructed housing, creates a pre-trial process that includes a builder's right to repair an alleged defect.

We believe that great change is needed in the laws governing construction defects. As California's population continues to grow, the state's need for affordable, available housing will increase rapidly. Improving the laws regarding construction defects will provide needed protection to consumers, homeowners and home builders.

We support SB 800 and believe the bill takes a positive step toward providing protection to all parties involved in home building. Additionally, we are of the opinion that further reform is needed to provide additional remedies for other types of construction. We hope to see legislation in the coming session that will address the construction industry as a whole.

Regards,

Frank T. Sheets, III
Community & Government Affairs Manager

cc: Senator John Burton, President Pro Tempore

(800) 666-1917

LEGISLATIVE INTENT SERVICE



A-7



401 B Street, Suite 800
San Diego, CA 92101-4231
(619) 595-5300
Fax (619) 595-5305
www.sandag.org

September 13, 2002
Honorable Gray Davis
Governor
State Capitol Building
Sacramento, CA 95814

RE: SB 800 (BURTON) - REQUEST SIGNATURE

Dear Governor Davis:

The San Diego Association of Governments (SANDAG) urges you to sign SB 800 (Burton), which would aid in alleviating California's housing crisis by substantially improving existing construction defect law.

California is currently home to 18 of the 25 least affordable housing markets in the nation. The lack of affordable housing, in particular attached housing, can be partially attributed to the rise in construction defect litigation.

SB 800 gives home builders the right to repair problems, defines in law the standards of quality that home buyers can expect, and introduces alternatives to litigation that will reduce costs and solve problems more quickly.

SANDAG believes this is a constructive approach that is consistent with the policies of our Board of Directors. Our smart growth efforts and solving our housing crisis depend to a great extent on the construction of more attached housing. Construction defect litigation reform is one of SANDAG's top legislative priorities.

A diverse coalition of interests, including the California Building Association, Consumer Attorneys of California and the Personal Insurance Federation has come together to support this historic reform. This coalition recognizes that encouraging new condominium construction is key to providing affordable homes for our residents and stimulating the State's economy.

For these reasons, SANDAG urges your signature on SB 800.

Sincerely,

Gary L. Gallegos
GARY L. GALLEGOS
Executive Director

cc: Hon. John Burton
Bob Wilson

GG/RD/jdk

MEMBER AGENCIES

- Cities of
- Carlsbad
- Chula Vista
- Coronado
- Del Mar
- El Cajon
- Encinitas
- Escondido
- Imperial Beach
- La Mesa
- Lemon Grove
- National City
- Oceanside
- Poway
- San Diego
- San Marcos
- Santee
- Solana Beach
- Vista
- and
- County of San Diego

ADVISORY MEMBERS

- California Department of Transportation
- Metropolitan Transit Development Board
- North San Diego County Transit Development Board
- United States Department of Defense
- San Diego Unified Port District
- San Diego County Water Authority
- Baja California/Mexico

(800) 666-1917

LEGISLATIVE INTENT SERVICE





PK
Concrete Contractors Association, Inc.

For the Betterment of the Concrete Industry

P.O. Box 5547, Napa, California 94581
Telephone: (707) 224-0222

September 13, 2002

The Honorable Gray Davis, Governor
State of California
State Capitol Building
Sacramento, CA 95814

RE: SB 800 (Burton) - REQUEST FOR SIGNATURE - Liability: Construction Defects

Dear Governor Davis:

On behalf of the California Concrete Contractors Association, I respectfully request your approval of the above-referenced legislation.

SB 800 would make changes to the law governing construction defects. Specifically, this bill would provide for detailed and specific liability standards for newly constructed housing, creates a pre-trial process that includes a builder's right to repair an alleged defect.

We believe that great change is needed in the laws governing construction defects. As California's population continues to grow, the state's need for affordable, available housing will increase rapidly. Improving the laws regarding construction defects will provide needed protection to consumers, homeowners and home builders.

We support SB 800 and believe the bill takes a positive step toward providing protection to all parties involved in home building. Additionally, we are of the opinion that further reform is needed to provide additional remedies for other types of construction. We hope to see legislation in the coming session that will address the construction industry as a whole.

Regards,

A handwritten signature in black ink, appearing to read "M.F. Clemmer".

M.F. Clemmer
Executive Director

cc: Senator John Burton, President Pro Tempore

LEGISLATIVE INTENT SERVICE (800) 666-1917





Better Cities - A Better Life

PIC
League of California Cities

www.cacities.org

September 11, 2002

Governor Gray Davis
State of California
State Capitol
Sacramento, CA 95814

Attn: Legislative Secretary

RE: **SB 800 (Burton) Construction Defect Reform**
REQUEST FOR SIGNATURE

Dear Governor Davis:

On behalf of the League of California Cities, I respectfully request that you sign **SB 800 (Burton)**

SB 800 contains a series of significant reforms to the construction defect issue. Due to significant litigation and high insurance premiums, the controversial construction defect issue has limited the construction of attached condominiums over the past decade. This bill enacts detailed and specific standards for newly constructed housing, creates a pre-trial process that includes a builder's right to repair defects, and provides third-party inspectors with immunity from liability.

The League has long supported a consensus-based resolution to these issues. The passage of this measure will hopefully increase the production of condominiums, a form of housing which offers the desirable combination of affordability, homeownership, and higher densities.

For these reasons, the League of California Cities respectfully requests that you **SIGN SB 800 (Burton)**.

Sincerely,

Daniel Carrigg
Legislative Representative

cc: Senator John Burton
Mike Gotch, Legislative Secretary, Governor's Office
Tim Coyle, Legislative Director, CBIA

LEGISLATIVE INTENT SERVICE (800) 666-1917



A - 10



1225 8th Street, Suite 415
Sacramento, CA 95814
Voice: 916.442.0753 x14
Facsimile: 916.442.7968

Christine Minnehan
Legislative Advocate
cminnehan@housingadvocates.org

17 September 2002

The Honorable Gray Davis
Governor of the State of California
State Capitol
Sacramento, California 95814

Re: Support for SB 800

Dear Governor Davis:

On behalf of our clients, we urge you to sign SB 800

The bill would provide liability standards for newly constructed housing, create a pre-trial process that includes a builder's right to repair an alleged defect, and provide third-party inspectors with immunity from liability.

We urge your signature on SB 800.

Sincerely,

Christine Minnehan

cc: Senator John Burton

LEGISLATIVE INTENT SERVICE (800) 666-1917



**California
Rural
Legal
Assistance
Foundation**

1225 8th Street, Suite 425
Sacramento, CA 95814
Voice: 916.446.9241
Fax: 916.442.7886
www.housingadvocates.org

Marc Brown
Legislative Advocate
mbrown@housingadvocates.org

17 September 2002

The Honorable Gray Davis
Governor of the State of California
State Capitol
Sacramento, California 95814

Re: Support for SB 800

Dear Governor Davis:

On behalf of our clients, we urge you to sign SB 800

The bill would provide liability standards for newly constructed housing, create a pre-trial process that includes a builder's right to repair an alleged defect, and provide third-party inspectors with immunity from liability.

We urge your signature on SB 800.

Sincerely,


Marc Brown

cc: Senator John Burton

LEGISLATIVE INTENT SERVICE (800) 666-1917



PK



CALIFORNIA CEMENT PROMOTION COUNCIL

DAVID F. HOLMAN, P.E.
263 West El Pintado Road • Danville, CA 94526
Tel/Fax: 925-838-0701 • e-mail: dfholman@earthlink.net

September 13, 2002

The Honorable Gray Davis, Governor
State of California
State Capitol Building
Sacramento, CA 95814

RE: SB 800 (Burton) - REQUEST FOR SIGNATURE - Liability: Construction Defects

Dear Governor Davis:

On behalf of the California Cement Promotion Council, I respectfully request your approval of the above-referenced legislation.

SB 800 would make changes to the law governing construction defects. Specifically, this bill would provide for detailed and specific liability standards for newly constructed housing, creates a pre-trial process that includes a builder's right to repair an alleged defect.

We believe that great change is needed in the laws governing construction defects. As California's population continues to grow, the state's need for affordable, available housing will increase rapidly. Improving the laws regarding construction defects will provide needed protection to consumers, homeowners and home builders.

We support SB 800 and believe the bill takes a positive step toward providing protection to all parties involved in home building. Additionally, we are of the opinion that further reform is needed to provide additional remedies for other types of construction. We hope to see legislation in the coming session that will address the construction industry as a whole.

Regards,

David F. Holman
David F. Holman, P.E.
Executive Director

cc: Senator John Burton, President Pro Tempore

MEMBER COMPANIES

California Portland Cement Co.
Cemex
Hanson Permanente Cement

Lehigh Southwest Cement Co.
Mitsubishi Cement Corporation
National Cement Company

Nevada Cement Company
RMC Pacific Materials, Inc.
TXI Riverside Cement

A - 13

(800) 666-1917

LEGISLATIVE INTENT SERVICE



HOME OWNERSHIP ADVANCEMENT FOUNDATION

A Council of the California Building Industry Association

PK

September 4, 2002

The Honorable Gray Davis
Governor of California
State Capitol
Sacramento, CA 95814

Re: Request for Signature of SB 800 (Burton), Construction Dispute Resolution

Dear Governor Davis:

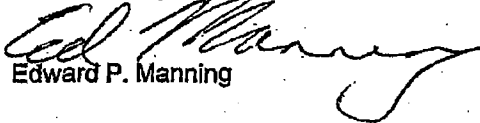
The Home Ownership Advancement Foundation (HOAF), representing ten of California's largest and most active homebuilders (KB Home, Signature Properties, Lennar, Standard Pacific, Shea Homes, Centex, O'Brien Homes, Ponderosa Homes, Shapell and Greenbriar) respectfully requests that you sign SB 800. HOAF members participated actively over the last two years in efforts to reform the flawed construction defect liability laws. This bill makes monumental changes to the current construction defect liability scheme. These long sought changes will encourage homebuilders to once again enter the marketplace to build condominiums. It will also encourage insurers to reenter the marketplace and once again offer insurance to builders and subcontractors. This bill also applies this liability reform to single family homes that are now experiencing a marked increase in construction defect litigation.

SB 800 has many important features that benefit both homebuilders and homeowners:

- Defines in statute how a home should perform through functionality standards. This provides homeowners and homebuilders with clear standards of how the major components of a home should perform.
- Shortens the statute of limitations to less than 10 years for several functionality standards realistically reflecting how long those components can be expected to meet their standard.
- Requires a homebuilder be notified of any alleged breach of the functionality standard with an opportunity to inspect and discuss with the homeowner their concerns.
- Provides an absolute right of the homebuilder to repair an alleged violation of a functionality standard.
- Specifies timelines for inspections and repairs to take place.
- Requires mediation prior to litigation if a homeowner is dissatisfied with a repair.
- Specifies Affirmative Defenses to liability in statute.
- Limits liability of subcontractors to the particular functionality standard at issue. This means a landscaping contractor could not be named in a lawsuit over a defective roof.

SB 800 is a major step forward in overhauling the liability laws that have plagued homebuilders for so long. It concludes many years of a bi-partisan reform effort. Please sign SB 800 (Burton) into law.

Sincerely,


Edward P. Manning

cc: Senator Burton

LEGISLATIVE INTENT SERVICE (800) 666-1917



A - 14



September 9, 2002

The Honorable Gray Davis
State of California
1st floor State Capitol Building
Sacramento, CA 95814

Dear Governor Davis:

I write on behalf of the Silicon Valley Manufacturing Group to express our support for SB 800 (Burton), a bill that reforms the way construction defects are resolved in California.

As you know, the Silicon Valley Manufacturing Group is a public policy trade organization formed 23 years ago by David Packard of Hewlett Packard. Today, the Manufacturing Group represents 190 of Silicon Valley's most respected employers who collectively provide 275,000 jobs—one out of four in the private sector.

The Manufacturing Group strongly supports SB 800. As you know SB 800 is the long-awaited result of negotiations between California's trial attorneys and homebuilders. Specifically, the bill grants builders the right to repair defects before a homeowner can file suit. If the homeowner is dissatisfied with the repair, or the builder refuses to make the repair, the homeowner retains the right to sue for the cost of repairing the defect. The bill also defines construction defect by describing the standards to which components of a home—its roofs, windows, foundations, etcetera—are expected to perform.

We believe SB 800 will result in consumers getting their homes fixed quickly, without having to resort to expensive and lengthy litigation. By reducing the number of suits filed, the bill removes one of the major obstacles to the construction of attached homes by creating a more predictable environment for builders and insurance companies.

Bottom line, we believe this bill is a major win for consumers. It will expand protections for existing homeowner while increasing the construction of more affordable homes for would-be homeowners—particularly those in high cost areas such as ours.

For these reasons, we respectfully urge you to sign SB 800.

Sincerely,

Carl Guardino
President & CEO

224 Airport Parkway, Suite 620
San José, California 95110
(408)501-SVMG (7864) Fax (408)501-7861
<http://www.svmg.org>

CARL GUARDINO
President & CEO

BOARD OF DIRECTORS
JAMES N. WOODY, M.D., Ph.D
Chair

Roche Pharmaceuticals

AART J. DE GEUS

Vice Chair

Synopsis

HELEN WILMOT

Secretary/Treasurer

Ethicon

CRAIG R. BARRETT

Inel Corporation

SUSAN BLACK

Mid-Peninsula Bank

ROBERT CARET

San José State University

WILLIAM T. COLEMAN III

BEA Systems, Inc.

MRC GREENWOOD

University of California, Santa Cruz

ADAM R. GREGORY

Bank of America

BRIAN HALLA

National Semiconductor

BEATRIZ INFANTE

Aspect Communications

DAVID KLINGER

Lockheed Martin

JOE NATOLI

San José Mercury News

DEBORAH NEFF

Becton Dickinson

JOE NEMETH

IBM Corporation

KO NISHIMURA

Soletron Corporation

LEN PERHAM

Clear Logic

ARTHUR L. ROBERTS

United Defense LP

ROBERT SHOFFNER

GTIBANK

GORDON R. SMITH

Pacific Gas & Electric Company

JOHN STEWART

General Dynamics Electronics Systems

JOYCE M. TAYLOR

Pacific Bell

BOB WAYMAN

Hewlett-Packard Company

KENNETH WILCOX

Silicon Valley Bank

DAVID WRIGHT

Legato Systems

JOANN ZIMMERMAN

Kaiser Permanente

Working Council Chair

ANDREA LEIDERMAN

Kaiser Permanente

Founded in 1977 by

DAVID PACKARD

(800) 666-1917

LEGISLATIVE INTENT SERVICE



A - 15

sep-09-02 04:29P Silicon Valley Mfg Group 408 501 7861 P.01

Heim, Noack, Kelly & Spahn

GOVERNMENTAL RELATIONS

Ralph A. Heim
Russell W. Noack
Anne Kelly
Leslie S. Spahn
John Caldwell
Erin I. O'Keefe

TO: The Honorable Gray Davis, Governor, State of California
The Honorable John Burton, President Pro Tem, California State Senate
The Honorable Herb Wesson, Speaker, California State Assembly
The Honorable Darrell Steinberg

FROM: Ralph Heim, Russell Noack, Anne Kelly, Les Spahn, John Caldwell and
Erin O'Keefe

RE: SB 800 (Burton and Wesson) – **SUPPORT**
Request for Signature

On behalf of our client, the American Insurance Association, we respectfully request your signature on SB 800 authored by Senator Burton and Assemblymember Wesson relating to construction disputes.

The American Insurance Association represents more than 400 major insurance companies that provide all lines of property and casualty insurance and write more than \$87 billion annually in premiums. In particular, AIA represents insurers who provide construction liability insurance to developers, general contractors and subcontractors.

SB 800 ensures that a homebuilder has an opportunity to repair any alleged defect in the home prior to the homeowner commencing legal action. This addresses one of the major concerns raised by builders – they often do not know about the alleged defect until they are noticed about impending litigation. This offers them the opportunity to “make it right.” This also gives the consumer what they want and need – a house that works with unnecessary litigation and delays. The bill further protects consumers by ensuring that the builder must respond to the homeowner’s concerns in an appropriate amount of time.

AIA believes that SB 800 will bring some degree of predictability to the dispute resolution process for new construction. AIA hopes that the processes outlined in SB 800 will solve the homeowner’s problems without the need for costly litigation.

SB 800 is a strong consumer bill but it does not address many of the problems insurers face in writing this line of insurance. In particular, this measure does not address the problems faced by contractors, including subcontractors, and their insurance carriers. Thus, the bill may not provide the predictability that insurers require before taking on greater risk and writing more insurance in this area. We appreciate the commitments of legislative leaders, particularly Assemblymember Steinberg, in working on these issues next year. If you have any questions regarding our position, please feel free to contact us.

1121 L Street, Suite 100
Sacramento, CA 95814
Tel. (916) 442-4584
Fax (916) 441-4925
Email: general@hnks.com

LEGISLATIVE INTENT SERVICE (800) 666-1917



A - 16



September 3, 2002

PK

Honorable Gray Davis
Governor, State of California
State Capitol
Sacramento, California 95814

RE: SB 800 (Burton) – Request for Signature

Dear Governor Davis:

California homebuilders, represented by the California Building Industry Association (CBIA), request your signature on SB 800 (Burton), a construction dispute resolution reform measure recently approved by the Legislature.

SB 800 creates a new process for resolving disputes involving homeowners and homebuilders over problems that may arise as a result of home construction. SB 800 replaces California's current "sue first" process with one that calls for repairs to be made by the homebuilder. Under the SB 800 reform, not only will problems be fixed but the number of lawsuits will decline, lowering insurance costs and attracting builders of affordable condominiums and townhomes back into California housing markets.

SB 800 includes the following key features:

- a definition of what constitutes a construction defect;
- a right of homebuilders to repair problems or defects;
- means to mediate disputes that may arise; and
- guaranteed protection for homeowners to take their grievances to court if they can't be resolved otherwise.

Indeed, SB 800 represents landmark reform and the cessation of a decade-long conflict between homebuilders and trial lawyers over the problem of construction dispute litigation. After months of negotiations that began earlier this year, SB 800 emerged late in the legislative session as a consensus measure – supported by homebuilders, consumer attorneys and the insurance industry – that was unanimously approved in the Assembly or the Senate just last week. CBIA respectfully requests that you sign SB 800.

Sincerely,

Kimberley Dellinger
Legislative Advocate

cc: Honorable John Burton
Ann Richardson, Office of the Governor

California Building Industry Association
1215 K Street
Suite 1200
Sacramento, CA 95814
916/443-7933
fax 916/443-1960
www.cbia.org

2002 OFFICERS
President
MICHAEL D. PATTINSON
Barratt American, Inc.
Carlsbad
Vice President
HARRY C. ELLIOTT III
Elliott Homes, Inc.
Folsom
Treasurer/Secretary
SHERMAN D. HARMER
Urban Development Group
San Diego
Chief Executive Officer
ROBERT RIVINIUS, CAE
Sacramento

MEMBER ASSOCIATIONS
Building Industry Association of Central California Modesto
Building Industry Association of the Delta Stockton
Building Industry Association of Kern County Bakersfield
Home Builders Association of Central Coast San Luis Obispo
Home Builders Association of Northern California San Ramon
Home Builders Association of Redwood Coast Eureka
Building Industry Association of San Diego County San Diego
Building Industry Association of San Joaquin Valley Fresno
Building Industry Association of Southern California Diamond Bar
Building Industry Association of Superior California Sacramento
Building Industry Association of Kings Counties Visalia

LEGISLATIVE INTENT SERVICE (800) 666-1917





CONGRESS OF CALIFORNIA SENIORS

September 6, 2002

Honorable Gray Davis, Governor
State of California
State Capitol Building
Sacramento, CA 95814

Re: SB 800 (Burton/Wesson) - Support

Dear Governor Davis:

On behalf of the Congress of California Seniors, I urge you to sign SB 800 into law. This construction defects bill is the result of lengthy negotiations and enjoys strong bipartisan support. SB 800 passed on a 33-0 vote in the Senate and an 80-0 vote in the Assembly.

SB 800 serves consumers by ensuring that they can recover complete damages for construction defects. The bill specifically defines construction defects so that homeowners can recover for many defects that were barred by the California Supreme Court's As decision. Now homeowners will not have to wait for the house to burn down before they can get a defective electrical system repaired.

Second, the bill requires homeowners to comply with a new pre-litigation procedure that gives builders an opportunity to repair defects before a lawsuit is filed. If the defects are not repaired to the homeowner's satisfaction, the homeowner can go to court and retains all his legal rights. We hope you will sign this landmark legislation on construction defects.

Sincerely,

William Powers
Legislative Director

WP:ef

cc: Senator Burton
Assemblymember Wesson



PK

August 30, 2002

SENATE FLOOR ALERT

HOME OWNERSHIP ADVANCEMENT FOUNDATION (HOAF) SUPPORTS

SB 800 (BURTON) – CONSTRUCTION DEFECT REFORM

The Home Ownership Advancement Foundation (HOAF), representing ten of California's largest and most active homebuilders, strongly supports SB 800. This bill makes monumental changes to the current liability scheme for construction defect claims. These long sought changes will encourage homebuilders to once again enter the marketplace to build condominiums. It will also encourage insurers to reenter the marketplace and once again offer insurance to builders and subcontractors. This bill also covers single family homes.

SB 800 has many important features that benefit both homebuilders and homeowners:

- Defines in statute how a home should perform through functionality standards. This provides homeowners and homebuilders with clear standards of how the major components of a home should perform
- SB 800 shortens the statute of limitations for several components of a home shorter than 10 years realistically reflecting how long those components can be expected to meet the standards
- Requires notice to a homebuilder of any alleged breach of the functionality standard with an opportunity to inspect and discuss with homeowners their concerns
- Provides an absolute right of the homebuilder to repair an alleged violation of a functionality standard
- Specifies timelines for inspections and repairs to take place
- Requires mediation prior to litigation if a homeowner is dissatisfied with a repair
- Specifies Affirmative Defenses in statute
- Limits liability of subcontractors to the particular functionality standard at issue. This means a landscaping contractor could not be named in a lawsuit over a defective roof.

SB 800 is a major step forward in overhauling the liability laws that have plagued homebuilders for so long. It concludes many years of a bi-partisan reform effort. Please vote Yes on SB 800 (Burton). Please contact Ed Manning if you have any questions at (916) 448-2162.

Research Consultants & Advocates
1115 11th Street, Suite 100
Sacramento, California 95814
TEL 916/448-2162 • FAX 916/448-0577

A - 19

LEGISLATIVE INTENT SERVICE (800) 666-1917



Personal Insurance Federation of California

California's Personal Lines Trade Association
 REPRESENTING THE LEADING AUTOMOBILE AND HOMEOWNERS INSURERS
 Progressive • State Farm • Farmers • 21st Century Insurance Group • SAFECO

FLOOR ALERT

Date: August 28, 2002
To: Members of the California State Assembly
From: Dan C. Dunmoyer, President
 G. Diane Colborn, Vice-President of Legislative and Regulatory Affairs
 Michael A. Gunning, Senior Legislative Advocate
Re: SB 800 (Burton and Wesson): Construction Dispute Resolution
 Assembly Third Reading File
PIFC Position: Support

STAFF

Dan Dunmoyer
 President
 Diane Colborn
 Vice President of Legislative
 & Regulatory Affairs
 Michael Gunning
 Senior Legislative Advocate
 Jerry Davies
 Director of Communications

The Personal Insurance Federation of California (PIFC), which represents insurers who provide construction dispute resolution insurance to subcontractors throughout the state of California, supports SB 800 co-authored by Senator Burton and Assemblyman Wesson.

SB 800, among other things, provides for the right of a homebuilder to repair any alleged defects raised by the homeowner. This right to repair is provided as long as the homebuilder responds in a timely manner (20 days) to the homeowner's request for repairs. SB 800 also provides a number of definitions regarding construction defects and actionable items regarding the construction of residential property. Finally, SB 800 makes changes to the statute of limitation of various construction defects if a homebuilder complies with the obligations contained within SB 800.

PIFC supports SB 800, as it will bring some degree of predictability to the dispute resolution process for new construction that occurs after January 1, 2003. It is our hope that as a result of this measure there is less need to litigate construction defects and greater likelihood for homebuilders to respond to consumer complaints. It is also our hope that when a general contractor immediately addresses a homeowner's request, protracted and expensive litigation can be avoided by all parties.

Although SB 800 makes positive changes to California's construction dispute resolution process, PIFC has concerns that the problems surrounding the insuring of subcontractors is inadequately addressed by this measure. This concern is great because PIFC members have historically provided construction dispute resolution insurance for numerous subcontractors. This type of coverage has all but dried up in California as a result of California's complex, costly, and cumbersome litigation process. As a result of the fact that SB 800 does not adequately address these challenges, this measure may fail to provide the sufficient certainty and clarity for subcontractor insurers to want to assume greater risk in the construction dispute resolution process. For this reason, one of the goals of this measure – to make insurance more available and affordable – may not be achieved for subcontractors.

PIFC supports SB 800 because it is a positive step towards improving the construction dispute resolution process. We are committed to continue to work with all parties to further expand new reforms in this area to provide affordable insurance to subcontractors and affordable housing to California consumers. For this reason, we urge your support of SB 800. If you have any questions regarding our position, please contact Dan Dunmoyer at (916) 442-6646.

cc: Senator Burton, Author
 Assemblyman Wesson, Author
 Ann Richardson, Deputy Legislative Secretary, Governor's Office
 Kevin Baker, Assembly Judiciary Committee
 Mark Redmond, Assembly Republican Caucus

LEGISLATIVE INTENT SERVICE (800) 666-1917



CRUZ M. BUSTAMANTE
Lieutenant Governor
State of California

August 28, 2002

The Honorable John Burton
The Honorable Herb Wesson
State Capitol
Sacramento, CA 95814

Dear Senator Burton and Speaker Wesson:

I am writing to express my **SUPPORT** for your **Senate Bill 800**, to simplify the process of resolving construction defect claims.

This compromise, involving builders, insurance companies and consumer attorneys, will provide homebuyers with a new level of protection, while simplifying and expediting the legal process for builders.

As California continues to grow, the need for reliable order in our building industry becomes increasingly important. SB 800 represents an important step towards accomplishing this goal.

I look forward to working with you to ensure passage of this legislation.

Sincerely,

CRUZ M. BUSTAMANTE
Lieutenant Governor

cc: Michael D. Pattinson, President, California Building Industry Association
Robert E. Cartwright, Jr., President, Consumer Attorneys of California

CMB/KM:ms



PK

California Building Industry Association

FLOOR ALERT

TO: All Senate Members

RE: SB 800 (Burton)

POSITION: SUPPORT

SB 800 represents a consensus developed over months of negotiations between the Consumer Attorneys of California, the California Building Industry Association and insurance industry representatives.

The bill contains much needed reform to the construction dispute resolution system in California. This bill will, for the first time, clearly define a "defect" and give homebuilders the right to repair problems when they arise in a home. SB 800 also helps consumers by addressing the concerns raised in the dissenting opinion of Justice George in the *Aas* decision.

California is suffering from a critical housing shortage and that shortage is most severe in the attached, for-sale sector. Builders are unable to obtain liability insurance for the construction of condominiums due to excessive litigation.

This bill will reduce the need for litigation and bring greater predictability, which is necessary if insurers are to return to the market.

CBIA urges an Aye vote on this important measure.

LEGISLATIVE INTENT SERVICE (800) 666-1917



BAY AREA COUNCIL

PK

200 Pine Street, Suite 800
San Francisco, CA 94104
(415) 981-6608
Fax (415) 981-6408
<http://www.bayareacouncil.org>

August 29, 2002

EXECUTIVE COMMITTEE

Chairman
ROBERT T. PARRY
President & CEO
Federal Reserve Bank of
San Francisco

ANDREW BALL
President
Webcor Builders

SUSAN E. BLACK
President, Community Banking Group
Greater Bay Bancorp

STEVEN A. BORD
Chairman, President & CEO
Siliconix Inc.

REGINA LIANG CHUN
Market President
Middle Market Treasury Management
Bank of America

ROBERT L. DUNNY
Vice President
A.T. Kearney, Inc.

JAY T. HARRIS
Past Chairman

RICHARD A. KASHINOW
President
Tyco Ventures

DAVID M. LAWRENCE, M.D.
Chairman & CEO
Kaiser Foundation Health Plan, Inc.

PETER A. MCGOWAN
President &
Managing General Partner
Sun Partners Client

ALEXANDER R. MEHRAN
President & CEO
Sunet Development Company

LENNY MENDONCA
Director
McKinsey & Company, Inc.

HAROLD M. MESSNER, JR.
Chairman, President & CEO
Robert Half International Inc.

DAVID J. O'HEILLY
Chairman & CEO
Chenierefracta Corporation

NELSON C. RISING
President & CEO
Calibus Development Corporation

T. GARY ROGERS
Chairman & CEO
Dreyer's Grand Ice Cream, Inc.

STEPHEN C. SCHOTT
Managing Partner, Oakland A's
President, Clifton/Howard Homes

GORDON R. SMITH
President & CEO
Pacifi Gas and Electric Company

G. CRAIG SULLIVAN
Chairman & CEO
The Clune Company

JEREMIAH J. SULLIVAN
Chairman & CEO
Macy's West

LORA K. WATTS
President
Parkit Hall

ROBERT D. WORTH
Region President
San Francisco Bay Area
Wells Fargo & Company

IN OTHER
SUNNR WRIGHT McPEAK
President & CEO
Bay Area Council

Founded in 1943,
the Bay Area Council
is a business-sponsored
regional public policy organization
which promotes economic prosperity
and quality of life in the Bay Area.

California State Assembly
State Capitol
Sacramento, CA 95814

Dear Assembly Members:

The Bay Area Council, in partnership with the Job-Center Housing Coalition, urge you to support SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered affordable housing market.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It's been 15 years since California built the number of affordable condominiums and townhomes it needs, with construction over the last eight years dropping off dramatically - down 84 percent since 1994.

SB 800 is a real breakthrough opportunity from which both homeowners and homebuyers can benefit. SB 800 will reduce the need for lawsuits to resolve disputes with the particular goal of quickly addressing and fixing on the spot any problems that may arise in a new home. A reduction in litigation will translate into lower insurance costs and, thereby, into more affordable housing, specifically condominiums and townhomes which have been the target of class-action lawsuits.

Among other things, SB 800 will:

- Define construction defects.
- Create a right of homebuilders to repair problems.
- Insure that any "life safety" problems occurring in a home are properly addressed.
- Curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

SB 800 is the right approach for a decades-old problem and will lead to an increase in the supply of affordable housing. We urge your support for SB 800.

Sincerely,

Robert T. Parry

Robert T. Parry
Chairman

Sunne Wright McPeak

Sunne Wright McPeak
President and CEO

LEGISLATIVE INTENT SERVICE (800) 666-1917



August 29, 2002



American Farmland Trust

California State Assembly
State Capitol
Sacramento, CA 95814

Dear Assembly Member:

As a member of the Job-Center Housing Coalition, I am writing to urge you to support SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It's been 15 years since California built the number of affordable condominiums and townhomes it needs, with construction over the last eight years dropping off dramatically - down 84 percent since 1994.

SB 800 represents a breakthrough and a real opportunity for both homeowners and homebuyers to benefit. By ensuring problems that may arise in a new home are addressed quickly and with the goal of fixing those problems on the spot, SB 800 will reduce the need for lawsuits to resolve disputes. A reduction in litigation will translate into lower insurance costs and, thereby, more affordable housing, particularly condominiums and townhomes which have been the target of class-action lawsuits.

Among other things, SB 800 will

- define construction defects;
- create a right of homebuilders to repair problems;
- insure that any "life safety" problems occurring in a home are properly addressed; and
- curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

SB 800 is the right approach to dealing with a decades-old problem and helping to increase the supply of affordable housing. I urge your support for SB 800.

Sincerely,



JULIA BERRY
CA Legislative Manager

CALIFORNIA - DAVIS OFFICE
260 Russell Boulevard • Suite D • Davis, California 95616
Tel: (530) 753-1073 • Fax: (530) 753-1120
www.farmland.org

National Office 1200 18th Street, NW Suite 200 Washington, D.C. 20036 Tel: (202) 331-7300 Fax: (202) 699-8339

LEGISLATIVE INTENT SERVICE (800) 666-1917



A - 24



EMERALD PLAZA

402 West Broadway, Suite 1000
San Diego, California 92101-3585
Tel 619.544.1300

www.sdchamber.org

August 29, 2002

RE: SB 800 (Burton) - SUPPORT

Dear Senator:

In May of this year, the average price of a home in San Diego County was \$467,000 and in June, the median price was \$329,000. As a member of the Job-Center Housing Coalition, I am writing to urge you to support Senate Bill 800 (Burton), which among other things defines construction defects, creates a right of homebuilders to repair problems and curbs frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It has been 15 years since California built the number of affordable condominiums and townhomes it needs, with construction over the last eight years dropping off dramatically, down 84 percent since 1994.

Senate Bill 800 represents a breakthrough and a real opportunity for both homeowners and homebuyers to benefit. By ensuring problems that may arise in a new home are addressed quickly and with the goal of fixing those problems, Senate Bill 800 will reduce the need for lawsuits to resolve disputes. A reduction in litigation will translate into lower insurance costs and, thereby, more affordable housing, particularly condominiums and townhomes which have been the target of class-action lawsuits. In May of this year, the average price of a home in San Diego County was \$467,00 and in June, the median price was \$329,00. Senate Bill 800 is the first step to dealing with a decades-old problem and helping to increase the supply of affordable housing.

For these reasons the San Diego Regional Chamber of Commerce supports Senate Bill 800 and respectfully urges you to do the same.

Sincerely,

A handwritten signature in black ink that reads "Mitch Mitchell".

Eugene Mitchell
Vice President, Public Policy

LEGISLATIVE INTENT SERVICE (800) 666-1917



A - 25



**ORANGE COUNTY
BUSINESS COUNCIL**

2 Park Plaza, Suite 100 • Irvine, California 92614-5904
phone: 949.476.2242 • fax: 949.476.9240 • [url:www.ocbc.org](http://www.ocbc.org)

EXECUTIVE COMMITTEE

CHAIRMAN

Bill Bess
Disneyland Resort

CHAIRPERSON ELECT

Christina Thomas Tate, Esq.
Atanasi, Phelps & Phillips, LLP

IMMEDIATE PAST CHAIRMAN

Peter Case
Merrill Lynch

TREASURER

W. James Rowley
Grass & Young

**VICE CHAIRMAN,
ECONOMIC DEVELOPMENT**

Robert Steere
R&H Consulting

**VICE CHAIRMAN,
EVENTS**

Frank Spink
The Gas Company

**VICE CHAIRMAN,
PUBLIC AFFAIRS**

Bob Behr
R&P Consulting Group, Inc.

**VICE CHAIRMAN,
SPECIAL PROJECTS**

J. Robert Fink II
Fluor Corporation

**VICE CHAIRMAN,
STRATEGIC PLANNING**

Virginia Benz
The Robert Meyer Corporation

**VICE CHAIRMAN,
WORKFORCE DEVELOPMENT**

Richard D. Stephens
The Boeing Company

EXECUTIVE STAFF

PRESIDENT & CEO

Stan Ofelle

**EXECUTIVE VICE PRESIDENT,
PUBLIC AFFAIRS**

Julie Puentes

**VICE PRESIDENT,
DEVELOPMENT &
INVESTOR RELATIONS**

Mike Hoopes

**VICE PRESIDENT,
ECONOMIC &
WORKFORCE DEVELOPMENT**

Paul Corza, Jr.

**VICE PRESIDENT,
FINANCE & ADMINISTRATION**

Danielle Perette

August 29, 2002

Members of the Assembly
State Capitol
Sacramento, CA 95814

Re: SB 800 (Burton) – SUPPORT

Dear Assembly Member:

As a member of the Job-Center Housing Coalition, the Orange County Business Council (OCBC/Business Council) urges your support of SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. SB 800 represents a breakthrough on this threat to affordable homeownership in California. By ensuring that new-home construction problems are addressed quickly and responsively, SB 800 will shorten wait times for repairs and reduce the need for lawsuits to resolve disputes. A reduction in litigation will translate into fewer hassles for homeowners and homebuilders, lower insurance costs all the way around, and more affordable housing.

Among other things, SB 800 will

- Define construction defects;
- Ensure that homebuilders have the opportunity to repair problems;
- Ensure that any "life safety" problems occurring in a home are properly addressed; and
- Curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

SB 800 is the right approach to this issue. Again, we urge your support. Thank you for your consideration.

Sincerely,

Stan Ofelle
President & CEO

Julie Puentes
Executive V.P. Public Affairs

LEGISLATIVE INTENT SERVICE (800) 666-1917



August 29, 2002



Senator Richard Alarcón
State Capitol
Sacramento, CA 95814

Dear Senator Alarcón:

As a member of the Job-Center Housing Coalition, the Valley Industry and Commerce Association (VICA) is writing to urge you to support SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It's been 15 years since California built the number of affordable condominiums and townhomes it needs, with construction over the last eight years dropping off dramatically – down 84 percent since 1994.

SB 800 represents a breakthrough and a real opportunity for both homeowners and homebuyers to benefit. By ensuring problems that may arise in a new home are addressed quickly and with the goal of fixing those problems on the spot, SB 800 will reduce the need for lawsuits to resolve disputes. A reduction in litigation will translate into lower insurance costs and, thereby, more affordable housing, particularly condominiums and townhomes which have been the target of class-action lawsuits.

Among other things, SB 800 will

- define construction defects;
- create a right of homebuilders to repair problems;
- insure that any "life safety" problems occurring in a home are properly addressed; and
- curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

SB 800 is the right approach to dealing with a decades-old problem and helping to increase the supply of affordable housing. VICA urges your support for SB 800.

Sincerely,


Fred Gaines
VICA Chairman of the Board


Brad Rosenheim
VICA Land Use Co-Chairman

VENTURA AFFORDABLE HOMES, INC.

128 S. California Street, Suite C, Ventura CA 93001
(805)643-8269 • fax (805)643-5823

August 29, 2002

The Honorable Hannah-Beth Jackson
State Assemblymember
Sacramento, Ca.

Dear Hannah-Beth:

As a member of the Job-Center Housing Coalition, I am writing to urge you to support SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It's been 15 years since California built the number of affordable condominiums and townhomes it needs, with construction over the last eight years dropping off dramatically – down 84 percent since 1994.

SB 800 represents a breakthrough and a real opportunity for both homeowners and homebuyers to benefit. By ensuring problems that may arise in a new home are addressed quickly and with the goal of fixing those problems on the spot, SB 800 will reduce the need for lawsuits to resolve disputes. A reduction in litigation will translate into lower insurance costs and, thereby, more affordable housing, particularly condominiums and townhomes which have been the target of class-action lawsuits.

Among other things, SB 800 will

- define construction defects;
- create a right of homebuilders to repair problems;
- insure that any "life safety" problems occurring in a home are properly addressed; and
- curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

SB 800 is the right approach to dealing with a decades-old problem and helping to increase the supply of affordable housing. I urge your support for SB 800.

Sincerely,


Lynn L. Jacobs
President

LEGISLATIVE INTENT SERVICE (800) 666-1917



A - 28

CONSUMERS FIRST INC.

Nexus between Consumers & Commerce

August 29, 2002

Dear Assembly Member:

As a member of the Job-Center Housing Coalition, I am writing to urge you to support SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It's been 15 years since California built the number of affordable condominiums and townhomes it needs, with construction over the last eight years dropping off dramatically - down 84 percent since 1994.

SB 800 represents a breakthrough and a real opportunity for both homeowners and homebuyers to benefit. By ensuring problems that may arise in a new home are addressed quickly and with the goal of fixing those problems on the spot, SB 800 will reduce the need for lawsuits to resolve disputes. A reduction in litigation will translate into lower insurance costs and, thereby, more affordable housing, particularly condominiums and townhomes which have been the target of class-action lawsuits.

Among other things, SB 800 will

- define construction defects;
- create a right of homebuilders to repair problems;
- insure that any "life safety" problems occurring in a home are properly addressed; and
- curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

SB 800 is the right approach to dealing with a decades-old problem and helping to increase the supply of affordable housing. I urge your support for SB 800.

Sincerely,


Jim Conran
President

P.O. BOX 2346 ■ Orinda, CA 94563 ■ 925.253.1937 ■ 925.253.1359 (Fax)

A - 29

LEGISLATIVE INTENT SERVICE (800) 666-1917



**AMERICAN ASSOCIATION OF
BUSINESS PERSONS WITH DISABILITIES**

Ira Schoenholtz
President

August 29, 2002

Dear Assembly Member:

As a member of the Job-Center Housing Coalition, I am writing to urge you to support SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It's been 15 years since California built the number of affordable condominiums and townhomes it needs, with construction over the last eight years dropping off dramatically - down 84 percent since 1994.

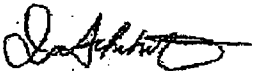
SB 800 represents a breakthrough and a real opportunity for both homeowners and homebuyers to benefit. By ensuring problems that may arise in a new home are addressed quickly and with the goal of fixing those problems on the spot, SB 800 will reduce the need for lawsuits to resolve disputes. A reduction in litigation will translate into lower insurance costs and, thereby, more affordable housing, particularly condominiums and townhomes which have been the target of class-action lawsuits.

Among other things, SB 800 will

- define construction defects;
- create a right of homebuilders to repair problems;
- insure that any "life safety" problems occurring in a home are properly addressed; and
- curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

SB 800 is the right approach to dealing with a decades-old problem and helping to increase the supply of affordable housing. I urge your support for SB 800.

Sincerely,



Ira Schoenholtz
President

LEGISLATIVE INTENT SERVICE (800) 666-1917



The **San Diego Group**

Political Strategies & Public Affairs

Phone: (619) 299-VOTE (8663)
Fax: (619) 299-2835
Email: SanDiegoGroup@aol.com
Campaigns: 619
P.O. Box 374591 - San Diego, CA 92137

John Paul Wainio
Director

August 29, 2002

Dear Senator:

As a member of the Job-Center Housing Coalition, I am writing to urge you to support SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It's been 15 years since California built the number of affordable condominiums and townhomes it needs, with construction over the last eight years dropping off dramatically -- down 84 percent since 1994.

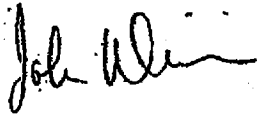
SB 800 represents a breakthrough and a real opportunity for both homeowners and homebuyers to benefit. By ensuring problems that may arise in a new home are addressed quickly and with the goal of fixing those problems on the spot, SB 800 will reduce the need for lawsuits to resolve disputes. A reduction in litigation will translate into lower insurance costs and, thereby, more affordable housing, particularly condominiums and townhomes which have been the target of class-action lawsuits.

Among other things, SB 800 will

- define construction defects;
- create a right of homebuilders to repair problems;
- insure that any "life safety" problems occurring in a home are properly addressed; and
- curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

SB 800 is the right approach to dealing with a decades-old problem and helping to increase the supply of affordable housing. I urge your support for SB 800.

Sincerely,



John Wainio

LEGISLATIVE INTENT SERVICE (800) 666-1917



A - 31



Consumers Coalition of California

(a non-profit corporation)

August 28, 2002

The Honorable Senator Debra Bowen
Members of the California State Senate
Sacramento, California

Dear Debra:

Consumers Coalition of California (CCC) is writing to ask you to support the Senate Bill 800 (Burton), "The right to Repair." As we both come from a part of California which has accommodated condos and townhouses, namely Redondo Beach, we are both aware of the development of the area.

Unfortunately, due to the cost of liability insurance, and the eagerness of some attorneys to initiate suits over repairs, the cost of affordable housing no longer exists in the beach areas. CCC sees this as disservice for those in need of housing.

Even the present low interest rates on new home ownership cannot mitigate the problems incurred in a lawsuit. Not only is it time consuming to enter into litigation, it is costly to both parties. The homeowner does not get repairs, until more extensive damage is done by the delays. The builder has no opportunity to repair the problems which may ensue, but the cost to the homeowner and the builder, the time wasted in fighting, can lead to permanent and more expensive repairs, costing the builder and his insurance company unnecessary expense.

It is time to return to common sense, and CCC thanks Senator Burton for the awareness of the problem, and fervently hopes the bill will pass.

Sincerely,

Virginia
Virginia Jarrow, President

LEGISLATIVE INTENT SERVICE (800) 666-1917



P.O. Box 5276 ♣ Torrance, CA 90510 ♣ Tel: 310/214-3494 or 512/918-1025

TOTAL P.02 A - 32



THE TOWBES GROUP, INC.

ASSET MANAGEMENT
CONSTRUCTION

August 29, 2002

**VIA FACSIMILE
916/442-3510**

The Honorable Brandon Castillo
California State Assembly
State Capitol
Sacramento, CA 95814

RE: SUPPORT SB 800 (Burton)

Dear Assembly Member Castillo:

As a member of the Job-Center Housing Coalition, I am writing to urge you to support SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It's been 15 years since California built the number of affordable condominiums and town homes it needs, with construction over the last eight years dropping off dramatically - down 84 percent since 1994.

SB 800 represents a breakthrough and a real opportunity for both homeowners and homebuyers to benefit. By ensuring problems that may arise in a new home are addressed quickly and with the goal of fixing those problems on the spot, SB 800 will reduce the need for lawsuits to resolve disputes. A reduction in litigation will translate into lower insurance costs and, thereby, more affordable housing, particularly condominiums and town homes which have been the target of class-action lawsuits.

Among other things, SB 800 will

- define construction defects;
- create a right of homebuilders to repair problems;
- insure that any "life safety" problems occurring in a home are properly addressed; and
- curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

SB 800 is the right approach to dealing with a decades-old problem and helping to increase the supply of affordable housing. I urge your support for SB 800.

Sincerely,

MICHAEL TOWBES

/bjr

LEGISLATIVE INTENT SERVICE (800) 666-1917





Commercial/Residential
Construction
Project Management
CALIC# 613860

Dear Assembly Member:

As a member of the Job-Center Housing Coalition, I am writing to urge you to support SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It's been 15 years since California built the number of affordable condominiums and townhomes it needs, with construction over the last eight years dropping off dramatically - down 84 percent since 1994.

SB 800 represents a breakthrough and a real opportunity for both homeowners and homebuyers to benefit. By ensuring problems that may arise in a new home are addressed quickly and with the goal of fixing those problems on the spot, SB 800 will reduce the need for lawsuits to resolve disputes. A reduction in litigation will translate into lower insurance costs and, thereby, more affordable housing, particularly condominiums and townhomes which have been the target of class-action lawsuits.

Among other things, SB 800 will

- define construction defects;
- create a right of homebuilders to repair problems;
- insure that any "life safety" problems occurring in a home are properly addressed; and
- curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

SB 800 is the right approach to dealing with a decades-old problem and helping to increase the supply of affordable housing. I urge your support for SB 800.

Sincerely,


Gary Politte
President
CGC Builders Inc.

3248 Roblar Avenue
Santa Ynez, CA 93460
phone (805) 693/0132
fax (805) 693/0182

LEGISLATIVE INTENT SERVICE (800) 666-1917



A - 34



Home Builders Association

OF THE CENTRAL COAST

providing quality housing and communities

August 29, 2002

RE: SB 800 (Burton)

Dear Assembly Member:

As a member of the Job-Center Housing Coalition, I am writing to urge you to support SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It's been 15 years since California built the number of affordable condominiums and townhomes it needs, with construction over the last eight years dropping off dramatically – down 84 percent since 1994.

SB 800 represents a breakthrough and a real opportunity for both homeowners and homebuyers to benefit. By ensuring problems that may arise in a new home are addressed quickly and with the goal of fixing those problems on the spot, SB 800 will reduce the need for lawsuits to resolve disputes. A reduction in litigation will translate into lower insurance costs and, thereby, more affordable housing, particularly condominiums and townhomes which have been the target of class-action lawsuits.

Among other things, SB 800 will

- define construction defects;
- create a right of homebuilders to repair problems;
- insure that any "life safety" problems occurring in a home are properly addressed; and
- curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

SB 800 is the right approach to dealing with a decades-old problem and helping to increase the supply of affordable housing. I urge your support for SB 800.

Sincerely,


Jennifer Phillip
Executive Director

P. O. Box 13010 805-546-0418 : voice
2078 Parker Street, Suite 210 805-546-0339 : fax
San Luis Obispo, California 93406-3010 www.hbacc.org : Internet

(800) 666-1917

LEGISLATIVE INTENT SERVICE



A - 35

**JAMES S. DONEGAN, SR.
ATTORNEY-AT-LAW**

JAMES S. DONEGAN, SR., Attorney
NANCY P. MONROE, Paralegal

1337-B BROAD STREET
SAN LUIS OBISPO, CALIFORNIA 93401-3000

805-783-2770 • 800-479-7773
Facsimile 805-783-2779
www.ford-donegan.com

August 29, 2002.

Honorable Abel Maldonado
California State Assembly
State Capitol, Room 4015
Sacramento, CA 95814

Via Facsimile (916) 319-2133

Re: SUPPORT SB 800 (Burton)

Dear Mr. Maldonado:

As a member of the Job-Center Housing Coalition, I am writing to urge you to support SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It has been 15 years since California built the number of affordable condominiums and town homes it needs, with construction over the last eight years dropping off dramatically — down 84 percent since 1994.

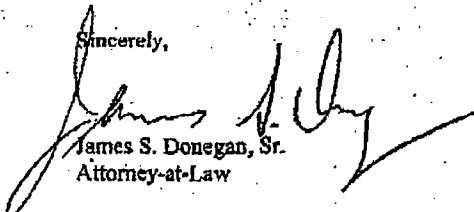
SB 800 represents a breakthrough and a real opportunity for both homeowners and homebuyers to benefit. By ensuring problems that may arise in a new home are addressed quickly and with the goal of fixing those problems on the spot, SB 800 will reduce the need for lawsuits to resolve disputes. A reduction in litigation will translate into lower insurance costs and, thereby, more affordable housing, particularly condominiums and town homes which have been the target of class-action lawsuits.

Among other things, SB 800 will

- Define construction defects;
- Create a right of homebuilders to repair problems;
- Insure that any "life safety" problems occurring in a home are properly addressed; and
- Curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

SB 800 is the right approach to dealing with a decades-old problem and helping to increase the supply of affordable housing. I urge your support for SB 800.

Sincerely,


James S. Donegan, Sr.
Attorney-at-Law

LEGISLATIVE INTENT SERVICE (800) 666-1917



A - 36

Sep. 22, 2002

Housing defect legislation made law

Lawmakers say the measure will help boost construction of affordable homes throughout the state

By Andrew LaMar, CONTRA COSTA TIMES

SACRAMENTO - Gov. Gray Davis has signed landmark legislation reforming housing defect laws that advocates say will spur much-needed construction of condominiums, town homes and other affordable housing.

But while lawmakers and proponents applauded the move, they said it represents only part of what needs to be done to combat California's housing crunch and provide enough affordable homes for communities across the state.

"This is a major step forward, but we're far from solving the problem," said state Sen. Tom Torlakson, D-Antioch. The next step is reorganizing local governments to better plan for housing, he said.

On Friday, the Davis administration announced the housing defects measure was one of seven housing bills the governor has signed. Another is Torlakson's SB423, which requires \$100 million of the \$2.1 billion housing bond on the November ballot to be used to encourage local agencies to balance housing and jobs in their areas and provide more affordable homes.

Torlakson's job-housing balance incentives, enacted in 2000, lost funding last year when the governor made budget cuts. The housing bond must be approved by a majority of statewide voters to take effect.

AB800, though, drew the most attention of the housing bills. Home builders, consumer attorneys and lawmakers hammered out the measure in the final weeks of this year's legislative session after a decade of similar talks had failed.

For years, home developers have complained about the high cost of building insurance produced by an uncertain legal environment. The law did not define a housing defect, and as a result, that often prompted homeowners to sue first, before seeking builder assistance.

That threat sent insurance rates skyrocketing for builders, said Tim Coyle, the senior vice president of the California Building Industry Association. Currently, insurance can run as high as \$20,000 per unit for a developer, and that's a cost passed on to the consumer.

"We literally can't insure some types of housing in California, such as condominiums and town homes," Coyle said.

AB800, by state Sen. John Burton, D-San Francisco, defines what constitutes a housing defect, gives the builder the right to repair it before a claim goes to court and allows consumers to sue for prospective damage, instead of waiting for the damage to actually occur, as current law requires.

According to the building industry association, California's condominium construction has dropped by 84 percent over the past seven years, even as the need for it has grown in regions like the Bay Area, where population density is high and housing prices exorbitant.

If building insurance rates drop as expected, the East Bay will see a broader variety of housing choices and an influx of condominiums, Coyle predicted.

"I'm confident it will lead to the building of thousands of additional affordable housing units that would not otherwise exist," said Assemblyman Darrell Steinberg, D-Sacramento, who helped write the bill.

The other housing bills Davis signed included:

- AB2787 by Assemblywoman Dion Aroner, D-Berkeley. The bill requires the state to develop a model ordinance that could be adopted by local governments that would spell out a "universal design" for housing to be built for the elderly and disabled.

- SB372 by state Sen. Joe Dunn, D-Santa Ana. The bill sets up a program to make loans to assisted housing developments, which offer rental assistance to tenants.

- AB1891 by Assemblyman Manny Diaz, D-San Jose. The bill sets the standards for local housing trust funds to receive matching funds from the \$2.1 billion housing bond, if it is passed.

Andrew LaMar covers state government. Reach him at 916-441-2101 or alamar@cctimes.com.

LEGISLATIVE INTENT SERVICE (800) 666-1917



SB 800

2002 CHAPTER 22

AUTHOR Burton

DATE RECEIVED September 10, 02

LAST DAY TO ACT September 30, 02

LC	BTH	CAL-EPA	FIN	F&A	HMSA	DIR	LEGAL	OPR	RES	SCS	YAC	OCJP	PUC	DPA	T&C	OSE

VETO RECEIPT _____ INITIALS _____

AUTHOR PHONE: _____

DATE: 9/20 TIME: 5:11p

CALL LOCATION: Cap Office

CONTACT: Linba

ACTION OF GOVERNOR Sept 20 2002

<input checked="" type="checkbox"/> SIGN	<input type="checkbox"/> SIGN W/MSG.	<input type="checkbox"/> VETO	<input type="checkbox"/> RED./DEL.
------------------------------------------	--------------------------------------	-------------------------------	------------------------------------

LEG. COUNSEL:	<u>S</u>	<u>L</u>
FLUMM:	<u>Y</u>	<u>N</u>
ORDER:	_____	_____
	_____	_____
	_____	_____
	_____	_____



LEGISLATIVE INTENT SERVICE (800) 666-1917

SB 800 LEG. HIST. 000277

ENROLLED BILL MEMORANDUM TO GOVERNOR

222

BILL NO: SB 800 AUTHOR: Burton/Wesson DATE: 9/19/02 DATE DUE: 9/30/02

SENATE: 39-0 ASSEMBLY: 80-0 CONCURRENCE: 33-0

REVIEWED BY: RECOMMENDATION: Sign Veto

SUMMARY: For homes built after the bill's effective date, SB 800 sets out new procedures and standards affecting the resolution of disputes about construction defects between builders and homeowners (single-family homes and condominiums). The bill requires homeowners alleging construction industry defects to allow the builder to fix them before the homeowner may proceed to sue the builder. If later a suit is brought, the builder will be held to various performance standards rather than the requirements of building codes in determining liability and compensation. For any performance standards not set out in the bill, the legislation provides that the standard established in *Aas v. Superior Court* (24 Cal. 4th 627) will control. In the *Aas* case, the court held that one could collect damages in tort only after actual damages had been suffered. The bill also provides that certain qualified inspectors working for builders will be immune from liability to any party other than the builder.

SPONSOR: Authors

SUPPORT: Business, Transportation and Housing Agency
Department of Housing and Community Development
California Housing Finance Agency
State and Consumer Services Agency
Department of Consumer Affairs
Consumer Attorneys of California
League of California Cities
Chamber of Commerce
California Building Industry Association
Western Center on Law and Poverty
American Insurance Association

OPPOSITION: None received.

FISCAL IMPACT: No fiscal impact.

ARGUMENTS IN SUPPORT: The bill is likely to reduce expensive litigation by providing for a pre-trial system of allowing builders to fix defects before homeowners may sue. The bill may bring some insurers back into the market to provide liability coverage to builders of homes and condominiums. If insurers return to the marketplace or reduce the cost of coverage, this will encourage the development of condominiums which are frequently a source of affordable housing.

ARGUMENTS IN OPPOSITION: The bill will be confusing because construction must still meet building codes but builders will be held liable for defects that fail to meet various performance standards. The performance standards would more often be a lower standard than the building code but could, in some instances, be tougher. The bill contains many vague terms that will either require legislative clarification or resolution by litigation. The bill's broad immunity to third-party inspectors will reduce incentives for inspectors to conduct rigorous inspections.

LEGISLATIVE INTENT SERVICE (800) 666-1917





Pacific Coast Roofing Corporation

September 19, 2002

The Honorable Gray Davis
Governor of California
State Capitol
Sacramento, CA 95814

RE: SB 800 (Burton) – Request for Signature

Dear Governor Davis:

Pacific Coast Roofing Corp. requests your signature on SB 800 by Senator Burton, dealing with construction dispute resolution reform.

SB 800 creates a new process for resolving disputes involving homeowners and homebuilders over problems that may arise as a result of home construction. SB 800 replaces California's current "sue first" process with one that calls for repairs to be made by the homebuilder. Under SB 800, not only will problems be fixed, but the number of lawsuits will decline, lowering insurance costs and attracting builders of affordable housing stock (condominiums and townhomes) back into California housing markets.

SB 800 includes the following key features:

- Definition of what constitutes a construction defect.
- Right of homebuilders to repair problems or defects.
- Means to mediate disputes that may arise.
- Guaranteed protection for homeowners to take their grievances to court if they cannot be resolved otherwise.

SB 800 represents landmark reform between the trial lawyers, homebuilders and the insurance industry. For these reasons Pacific Coast Roofing Corp. requests that you sign SB 800.

Sincerely,

Brian Owen
General Manager

Corporate Office

21616 Golden Triangle Rd., Santa Clarita, CA 91350
(661) 254-3322 - (800) 443-3830 - (661)286-1418 fax

San Diego - (619) 234-7663
Santa Barbara - (805) 692-9870
Inland Empire - (909) 222-2283

C39 State License # 303097

SB 800 LEG. HIST. 000279

LEGISLATIVE INTENT SERVICE (800) 666-1917



722

September 16, 2002

The Honorable Gray Davis
Governor of California
State Capitol
Sacramento, Ca 95814

RE: SB (Burton)- Request For Signature

Dear Governor Davis,

Eberhard Roofing requests your signature on SB 800 by Senator Burton, dealing with construction dispute resolution reform.

SB 800 creates a new process for resolving disputes involving homeowners and homebuilders over problems that may arise as a result of home construction. SB 800 replaces California's current "sue first" process with one that calls for repairs to be made by the homebuilder. Under SB 800, not only will problems be fixed, but the number of lawsuits will decline, lowering insurance costs and attracting builders of affordable housing stock (condominiums and townhomes) back to California housing markets.

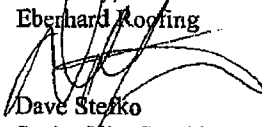
SB 800 includes the following key features:

- Definition of what constitutes a construction defect.**
- Right of homebuilders to repair problems or defects.**
- Means to mediate disputes that may arise.**
- Guaranteed protection for homeowners to take their grievances to court if they cannot be resolved otherwise.**

SB 800 represents landmark reform between the trial lawyers, homebuilders and the insurance industry.

The construction industry and the consumers in the State of California have suffered great losses due to "sue first" ask questions later from the trial lawyers. I am sure the lawyers will be making a full court press to stop this legislation. Please do not let that happen by signing SB 800.

Sincerely,
Eberhard Roofing



Dave Stefko
Senior Vice President

DS/ls

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE - 4

Complete Roofing
& Waterproofing

Eberhard
Excellence since 1945

License No. 329087

15220 Raymer Street, Van Nuys, CA 91405-1016
818-782-4604 818-782-5099 fax www.eberhardco.com

SB 800 LEG. HIST. 000280



722

401 B Street, Suite 800
San Diego, CA 92101-4231
(619) 595-5300
Fax (619) 595-5305
www.sandag.org

September 13, 2002

Honorable Gray Davis
Governor
State Capitol Building
Sacramento, CA 95814

RE: SB 800 (BURTON) – REQUEST SIGNATURE

Dear Governor Davis:

The San Diego Association of Governments (SANDAG) urges you to sign SB 800 (Burton), which would aid in alleviating California's housing crisis by substantially improving existing construction defect law.

California is currently home to 18 of the 25 least affordable housing markets in the nation. The lack of affordable housing, in particular attached housing, can be partially attributed to the rise in construction defect litigation.

SB 800 gives home builders the right to repair problems, defines in law the standards of quality that home buyers can expect, and introduces alternatives to litigation that will reduce costs and solve problems more quickly.

SANDAG believes this is a constructive approach that is consistent with the policies of our Board of Directors. Our smart growth efforts and solving our housing crisis depend to a great extent on the construction of more attached housing. Construction defect litigation reform is one of SANDAG's top legislative priorities.

A diverse coalition of interests, including the California Building Association, Consumer Attorneys of California and the Personal Insurance Federation has come together to support this historic reform. This coalition recognizes that encouraging new condominium construction is key to providing affordable homes for our residents and stimulating the State's economy.

For these reasons, SANDAG urges your signature on SB 800.

Sincerely,

Gary L. Gallegos
GARY L. GALLEGOS
Executive Director

cc: Hon. John Burton
Bob Wilson

GG/RD/jdk

LEGISLATIVE INTENT SERVICE (800) 666-1917



MEMBER AGENCIES

- Cities of
- Carlsbad
- Chula Vista
- Coronado
- Del Mar
- El Cajon
- Encinitas
- Escondido
- Imperial Beach
- La Mesa
- Lemon Grove
- National City
- Oceanside
- Poway
- San Diego
- San Marcos
- Santee
- Solana Beach
- Vista
- and
- County of San Diego

ADVISORY MEMBERS

- California Department of Transportation
- Metropolitan Transit Development Board
- North San Diego County Transit Development Board
- United States Department of Defense
- San Diego Unified Port District
- San Diego County Water Authority
- Baja California/Mexico

PE - 5

722



September 16, 2002

The Honorable Gray Davis
Governor of California
State Capitol
Sacramento, CA 95814

RE: SB 800 (Burton) – Request for Signature

Dear Governor Davis:

The Lawson Roofing Co., Inc. requests your signature on SB 800 by Senator Burton, dealing with construction dispute resolution reform.

SB 800 creates a new process for resolving disputes involving homeowners and homebuilders over problems that may arise as a result of home construction. SB 800 replaces California's current "sue first" process with one that calls for repairs to be made by the homebuilder. Under SB 800, not only will problems be fixed, but the number of lawsuits will decline, lowering insurance costs and attracting builders of affordable housing stock (condominiums and townhomes) back into California housing markets.

SB 800 includes the following key features:

- Definition of what constitutes a construction defect.
- Right of homebuilders to repair problems or defects.
- Means to mediate disputes that may arise.
- Guaranteed protection for homeowners to take their grievances to court if they cannot be resolved otherwise.

SB 800 represents landmark reform between the trial lawyers, homebuilders and the insurance industry. For these reasons The Lawson Roofing Co., Inc. requests that you sign SB 800.

Sincerely,

Richard J. Lawson
Sr. Vice President

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE - 6

722

California
Rural
Legal
Assistance
Foundation

17 September 2002

The Honorable Gray Davis
Governor of the State of California
State Capitol
Sacramento, California 95814

1225 8th Street, Suite 425
Sacramento, CA 95814
Voice: 916.446.9241
Fax: 916.442.7966
www.housingadvocates.org

Marc Brown
Legislative Advocate
mbrown@housingadvocates.org

Re: Support for SB 800


Dear Governor Davis:

On behalf of our clients, we urge you to sign SB 800

The bill would provide liability standards for newly constructed housing, create a pre-trial process that includes a builder's right to repair an alleged defect, and provide third-party inspectors with immunity from liability.

We urge your signature on SB 800.

Sincerely,



Marc Brown

cc: Senator John Burton

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE - 7



Concrete Contractors Association, Inc. ⁷²²

For the Betterment of the Concrete Industry

P.O. Box 5547, Napa, California 94581
Telephone: (707) 224-0222

September 13, 2002

The Honorable Gray Davis, Governor
State of California
State Capitol Building
Sacramento, CA 95814

RE: SB 800 (Burton) - REQUEST FOR SIGNATURE - Liability: Construction Defects

Dear Governor Davis:

On behalf of the California Concrete Contractors Association, I respectfully request your approval of the above-referenced legislation.

SB 800 would make changes to the law governing construction defects. Specifically, this bill would provide for detailed and specific liability standards for newly constructed housing, creates a pre-trial process that includes a builder's right to repair an alleged defect.

We believe that great change is needed in the laws governing construction defects. As California's population continues to grow, the state's need for affordable, available housing will increase rapidly. Improving the laws regarding construction defects will provide needed protection to consumers, homeowners and home builders.

We support SB 800 and believe the bill takes a positive step toward providing protection to all parties involved in home building. Additionally, we are of the opinion that further reform is needed to provide additional remedies for other types of construction. We hope to see legislation in the coming session that will address the construction industry as a whole.

Regards,

A handwritten signature in black ink, appearing to read "M.F. Clemmer".

M.F. Clemmer
Executive Director

cc: Senator John Burton, President Pro Tempore

(800) 666-1917

LEGISLATIVE INTENT SERVICE



PE - 8

722



CALIFORNIA CEMENT PROMOTION COUNCIL

DAVID F. HOLMAN, P.E.
263 West El Pintado Road • Danville, CA 94526
Tel/Fax: 925-838-0701 • e-mail: dfholman@earthlink.net

September 13, 2002

The Honorable Gray Davis, Governor
State of California
State Capitol Building
Sacramento, CA 95814

RE: **SB 800 (Burton) - REQUEST FOR SIGNATURE - Liability: Construction Defects**

Dear Governor Davis:

On behalf of the California Cement Promotion Council, I respectfully request your approval of the above-referenced legislation.

SB 800 would make changes to the law governing construction defects. Specifically, this bill would provide for detailed and specific liability standards for newly constructed housing, creates a pre-trial process that includes a builder's right to repair an alleged defect.

We believe that great change is needed in the laws governing construction defects. As California's population continues to grow, the state's need for affordable, available housing will increase rapidly. Improving the laws regarding construction defects will provide needed protection to consumers, homeowners and home builders.

We support SB 800 and believe the bill takes a positive step toward providing protection to all parties involved in home building. Additionally, we are of the opinion that further reform is needed to provide additional remedies for other types of construction. We hope to see legislation in the coming session that will address the construction industry as a whole.

Regards,


David F. Holman, P.E.
Executive Director

cc: Senator John Burton, President Pro Tempore

LEGISLATIVE INTENT SERVICE (800) 666-1917



MEMBER COMPANIES

California Portland Cement Co.
Cemex
Hanson Permanente Cement

Lehigh Southwest Cement Co.
Mitsubishi Cement Corporation
National Cement Company

Nevada Cement Company
RMC Pacific Materials, Inc.
TXI Riverside Cement

PE - 9

SB 800 LEG. HIST. 000285



RIVERSIDE CEMENT

Post Office Box 51479 • Ontario, California 91761-0079 • Ph. 909.635.1800 • www.txi.com

722

September 16, 2002

The Honorable Gray Davis, Governor
State of California
State Capitol Building
Sacramento, CA 95814

RE: SB 800 (Burton) - REQUEST FOR SIGNATURE - Liability: Construction Defects

Dear Governor Davis:

On behalf of TXI Riverside Cement, I respectfully request your approval of the above-referenced legislation.

SB 800 would make changes to the law governing construction defects. Specifically, this bill would provide for detailed and specific liability standards for newly constructed housing, creates a pre-trial process that includes a builder's right to repair an alleged defect.

We believe that great change is needed in the laws governing construction defects. As California's population continues to grow, the state's need for affordable, available housing will increase rapidly. Improving the laws regarding construction defects will provide needed protection to consumers, homeowners and home builders.

We support SB 800 and believe the bill takes a positive step toward providing protection to all parties involved in home building. Additionally, we are of the opinion that further reform is needed to provide additional remedies for other types of construction. We hope to see legislation in the coming session that will address the construction industry as a whole.

Regards,

Frank T. Sheets, III
Community & Government Affairs Manager

cc: Senator John Burton, President Pro Tempore

LEGISLATIVE INTENT SERVICE (800) 666-1917



LE ledford enterprises

public affairs/strategic imaging for the business community

September 19, 2002

The Honorable Gray Davis
Governor, State of California
State Capitol
Sacramento, CA 95814

RE: SB 800 (Burton) – SUPPORT

Dear Governor Davis:

I am writing to express my support for **SB 800 (Burton)**. As a businessperson and local citizen to the region of San Diego, I believe that this legislation is important to California and our region in particular. The challenges that potential homeowners and homebuyers encounter in San Diego must be addressed.

In May of 2002, the average price of a home in San Diego County was \$467,000 and in June, the median price was \$329,000. **SB 800 (Burton)** gives homebuilders the right to protect themselves against frivolous claims while upholding a consumer's right to sue a builder who has failed to meet satisfactory standards. While previous efforts have failed in reforming construction disputes, **SB 800 (Burton)** will be advantageous to both homeowners and homebuyers alike. This unique bill will attack construction disputes as they arise, fixing disputes and problems quickly and fairly. The reduction in litigation expected as a result of this bill will translate into lower insurance costs and therefore, **more affordable housing**.

The housing situation in San Diego desperately needs all the help it can get. For this and the reasons stated above, your support for **SB (800) Burton** is respectfully requested.

Sincerely,



Richard S. Ledford
President
Ledford Enterprises Inc.

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE - 11



CALIFORNIA
NURSES
ASSOCIATION

722

Shaping Tomorrow's Health Care
www.calnurse.org

September 19, 2002

The Honorable Gray Davis
Governor of California
State Capitol, First Floor
Sacramento, California 95814

SB 800 (Burton and Wesson) Support: Request for Signature

Dear Governor Davis:

The 44,000 members of the California Nurses Association ask for your signature on SB 800 (Burton and Wesson). This bill represents groundbreaking reform for construction defect litigation. The problem of construction defects and associated litigation have vexed the Legislature for a number of years with substantial consequences for the development of safe and affordable housing. This bill reflects extensive and serious negotiations between builder groups, insurers and the Consumer Attorneys of California, with the substantial assistance of key legislative leaders over the past year, leading to consensus on ways to resolve these issues.

The bill seeks to respond to concerns expressed by a number of parties from homeowners and the Consumer Attorneys of California over the consequences of Aas v. Superior Court, (2000) 24 Cal. 4th 627, which held that defects must cause actual damage or personal injury prior to being actionable in tort. The bill also responds to concerns expressed by builders, subcontractors, and insurers over the costs of construction defect litigation and their impact on housing costs in the state.

The bill establishes a mandatory process prior to the filing of a construction defect action. The major component of this process is the builder's absolute right to attempt a repair prior to a homeowner filing an action in court. Builders, insurers, and other business groups are hopeful that this right to repair will reduce litigation. If the builder fails to comply with the process, the homeowner may proceed with the filing of an action.

The bill would provide immunity from liability to third-party inspectors that provide, under contract to an applicant for a residential building permit, an "independent quality review." Of residential plans and specifications or compliance with those plans and specifications. Independent inspections are useful tools in improving the quality of residential construction. Detailed construction standards that are set in the bill govern any action seeking recovery of damages arising out of or related to construction defects. Rather than

LEGISLATIVE INTENT SERVICE (800) 666-1917



CNA OAKLAND
HEADQUARTERS
2000 Franklin St, Ste 300
Oakland, CA 94612
(510) 273-2200
Fax: (510) 663-1625

CNA SACRAMENTO
1107 9th Street, Ste 900
Sacramento, CA 95814
(916) 446-5021
Fax: (916) 446-6319

CNA SAN JOSE
101 Race Street
San Jose, CA 95126
(408) 920-0290
Fax: (408) 920-0362

CNA FRESNO
125 E. Barstow, Ste 112
Fresno, CA 93710
(559) 248-1948
Fax: (559) 248-1940

CNA SANTA MONICA
425 West Broadway, Ste 111
Glendale, CA 91204
(818) 240-1900
Fax: (818) 240-8336

CNA SAN DIEGO - 12
3160 Camino del Rio South
San Diego, CA 92108
(619) 516-4917
Fax: (619) 516-4922

Governor Davis
9/19/02
Page Two.

requiring resort to contentions about the significance of technical deviations from building codes, the bill specifies the standards that building systems and components must meet setting a statutory "floor" for construction defect standards.

We join the Consumer Attorneys of California and Congress of California Seniors in asking for your signature on this legislation that establishes important building standards including those for low cost housing and protections for California consumers.

Sincerely,



Kay McVay RN
President

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE - 13



City of San Luis Obispo

OFFICE OF THE CITY COUNCIL
990 Palm Street ■ San Luis Obispo, CA 93401-3249 ■ 805/781-7119

September 17, 2002

Hon. Gray Davis
Governor, State of California
State Capitol
Sacramento, CA 95814

Re: **Request for Signature, SB 800 (Burton)**

Dear Governor Davis:

On behalf of the City Council for the City of San Luis Obispo, I urge your signature on SB 800, regarding construction defect reform. This bill would enact detailed and specific standards for newly constructed housing, would create a pre-trial process that would include a builder's right to repair defects, and would provide third-party inspectors with immunity from liability.

The passage of this measure will hopefully increase the production of condominiums, a form of housing which offers the desirable combination of affordability, homeownership, and higher densities.

We urge your support of SB 800.

Sincerely,

Allen K. Settle
Mayor

c: Senator Jack O'Connell
Assemblyman Abel Maldonado
City Council
City Administrator
Community Development Director
League of California Cities
Dave Mullinax

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE - 14

RMC PACIFIC MATERIALS



6601 KOLL CENTER PARKWAY
P.O. BOX 5252
PLEASANTON, CALIFORNIA 94566
(925) 426-8787
FAX (925) 426-2225
www.rmcpacific.com

September 23, 2002

The Honorable Gray Davis, Governor
State of California
State Capitol Building
Sacramento, CA 95814

RE: SB 800 (Burton) REQUEST FOR SIGNATURE – Liability Construction Defects

Dear Governor Davis:

On behalf of RMC PACIFIC MATERIALS, I respectfully request your approval of the above referenced legislation.

SB 800 would make changes to the law governing construction defects. Specifically, this bill would provide for detailed and specific liability standards for newly constructed housing, creates a pre-trial process that includes a builder's right to repair an alleged defect.

We believe that great change is needed in the laws governing construction defects. As California's population continues to grow, the state's need for affordable, available housing will increase rapidly. Improving the laws regarding construction defects will provide needed protection to consumers, homeowners and homebuilders.

We support SB 800 and believe the bill takes a positive step toward providing protection to all parties involved in home building. Additionally, we are of the opinion that further reform is needed to provide additional remedies for other types of construction. We hope to see legislation in the coming session that will address the construction industry as a whole.

Regards,

Eric F. Woodhouse
President

EFW/nlm

Cc: Senator John Burton, President Pro Tempore

LEGISLATIVE INTENT SERVICE (800) 666-1917





722

THE CITY OF SAN DIEGO

September 19, 2002

Governor Gray Davis
State Capitol Building
Sacramento, CA 95814

RE: SB 800 (Burton): Construction Defects – REQUEST SIGNATURE

Dear Governor Davis:

The city of San Diego supports SB 800 (Burton) and requests your signature on the legislation. If enacted, this bill would aid in alleviating California's housing crisis by substantially improving existing construction defect law.

San Diego is one of the least affordable housing markets in California, and the state is home to 18 of the 25 least affordable housing markets in the nation. The lack of affordable housing, in particular attached housing, can be partially attributed to the rise in construction defect litigation.

SB 800 gives home builders the right to repair problems, defines in law the standards of quality that home buyers can expect, and introduces alternatives to litigation that will reduce costs and solve problems more quickly.

San Diego has been seeking legislation such as SB 800 for the past several years. The City's efforts toward smart growth and solving our housing crisis rely on the construction of more attached housing. Construction defect litigation reform is critical for that construction to occur.

Again, the city of San Diego supports SB 800 and requests your signature. If you have any questions or comments regarding the City's position, please contact me at 619.533.3990 or BEidson@sandiego.gov.

Sincerely,

J Brent Eidson
Deputy Director

cc: Honorable John Burton
Chris Kahn, Sloat Higgins Jensen & Associates
Gail Goldberg, Planning Department Director

Governmental Relations

1200 Third Avenue, Suite 224 • San Diego, CA 92101
Tel (619) 533-3990 Fax (619) 234-2915

PE - 16

LEGISLATIVE INTENT SERVICE (800) 666-1917





Window & Door Manufacturers Association
1400 E. Touhy Avenue, Suite 470
Des Plaines, Illinois 60018-3337

Phone 847.299.5200
Fax 847.299.1286
E-mail admin@wdma.com

www.wdma.com

722
September 18, 2002

Dear Governor Davis:

We are writing to you regarding SB 800 (Burton). Our associations have major concerns about this bill's negative impact on important parts of the building industry. Important interest groups within the building industry did not participate in the crafting of this bill. The actual impact of this legislation may have the opposite effect of its sponsors' intent.

The undersigned include the Window & Door Manufacturers Association and the American Architectural Manufacturers Association, industry associations which represent window and door manufacturers nationwide. Some of the provisions of SB 800 are of great concern to us and to many other leading manufacturers of building products.

Our associations' success depends, in part, upon increasing the supply of affordable housing and reducing the volume of construction defect litigation. Therefore, we share the sponsors' goal. For the reasons discussed below, however, we believe that the bill will have the opposite effect of its sponsors' intent--it will increase the costs of windows and doors in California and, ultimately, the cost of homes. Additionally, due to the vagueness of many of its provisions, we fear that the bill will increase the volume of litigation.

The provisions of the bill do not reflect a consensus within the building industry. The building groups that participated in negotiations which led to this bill were representatives of the home builders only and not representatives of other important segments of the industry that are involved in the home-building process--the subcontractors, suppliers, and manufacturers.

We have a number of concerns with SB 800. One major concern pertains to the "standards" contained in "Chapter 2. Actionable Defects," particularly those pertaining to doors and windows in Sections 896(a)(1), (2), and (3). For example, Section 896(a)(2), provides that a window system is defective if it allows "water to pass beyond, around, or through the window." This provision makes no exception for a window system which is designed in a way to allow water to harmlessly drain outside of the home. This could, potentially, make a window manufacturer liable for every one of its windows installed in California. Moreover, the "standards" set forth in SB 800 make no distinction between the performance of a window or door and the performance of an *installed* window or door. This could make window and door manufacturers responsible for installation defects even when the manufacturers are not involved in the product selection or installation process which is usually the case. All of this would result in a significant cost to California homeowners.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



WDMA
Window & Door Manufacturers Association
SB 800 LEG. HIST. 000293

Section 896 also does not take into account that windows and doors are designed and manufactured to specific performance levels. These products are rated and classified for particular uses. Different product applications require different levels of product performance. Windows and doors are rated by independent certification agencies to insure they meet their specific design specifications. Selecting the appropriate product for the application (which usually is not done by the manufacturer) is crucial. SB 800 ignores all of this and replaces the well-tested, long-standing industry standards with costly, broadly worded and virtually unattainable state-mandated performance standards.

By ignoring the fact that windows and doors are designed and manufactured to specific performance levels and holding manufacturers potentially responsible for the selection and assembly of products, SB 800 would force window and door manufacturers to sell in California only the most costly products with the highest performance levels. For example, windows designed for use in a climate such as Palm Desert would not be suitable in a home in Mendocino. Similarly, the performance level of windows designed for use in a climate such as Mendocino would not be needed in (and would add additional expenses to) a home in Palm Desert. Homeowners in California should not be required to pay for products which have performance levels not needed in their circumstances.


Our associations strongly believe that California law should contain specific statements of expected performance criteria for windows and doors (*i.e.*, the products should meet or exceed the applicable level of performance set forth in industry standards or in the manufacturer's warranty, if greater). The bill should also define the scope of the separate responsibilities of builders, manufacturers, installers, etc. (*i.e.*, product manufacturers should be not responsible for product selection and product installation unless they are directly involved in the process).

We understand that significant players in the construction defect litigation process were part of an agreement that is contained in SB 800. Unfortunately, significant segments of the industry were not--resulting in a bill that protects the economic interests of the builders at the expense of the manufacturers, subcontractors, suppliers and, ultimately, the California consumer.

We would appreciate the opportunity to meet with you to further discuss our concerns. Should you choose to sign SB 800, we urge you to consider the need for legislation next year to address these concerns.

Respectfully,


AMERICAN ARCHITECTURAL
MANUFACTURERS ASSOCIATION


WINDOW & DOOR MANUFACTURERS
ASSOCIATION

LEGISLATIVE INTENT SERVICE (800) 666-1917



STEFFES, FOLEY & LARDNER INC.

Lobby Group Address

1215 K Street, Suite 1920
Sacramento, CA 95814
TEL (916) 444-6034
FAX (916) 441-6559
WEB: www.cal-lobby.com

722

Attention: Ann Richardson
Re: SB 800 (Burton)—Opposed

Dear Ann,

The attached letter is a response from the Window & Door Manufacturers Association regarding SB 800 (Burton). They would like to discuss their concerns with you in person if you are available to do so. Let me know what you think. Thanks for taking the time to read this over. I really appreciate it!

Best,

Mary Gonsalves 9/19/02

Mary Gonsalves
916-444-6034

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE - 19

222

CONSUMER ATTORNEYS OF CALIFORNIA

Robert E. Cartwright, Jr. President	Bruce M. Brusavich President-Elect	Donald C. Green Chief Legislative Advocate	Nancy Drabble Senior Legislative Counsel	Nancy Peverini Legislative Counsel	Lea-Ann Tratten Legal Counsel
----------------------------------------	---------------------------------------	-----------------------------------------------	---------------------------------------------	---------------------------------------	----------------------------------

September 8, 2002

Governor Gray Davis
State Capitol, First Floor
Sacramento, CA 95814

Dear Governor Davis:

Consumer Attorneys of California are pleased to support SB 800, which is awaiting your signature. This major construction defects bill, jointly authored by Senator Burton and Speaker Wesson, is the result of months of hard work and compromise. In its final form, it will give consumers the ability to recover for defects before they cause death or injury, and it will give builders the right to repair defects before a lawsuit is filed.

SB 800 passed the Assembly 80-0 and the Senate 33-0. This remarkable vote only came after intense negotiations led by Assembly Member Darrell Steinberg, whose persistence and patience kept the parties at the table. Senator Martha Escutia, Senator Joe Dunn, and Senator Tom Torlakson also played critical roles in the success of the talks.

We are particularly pleased that consumers will get relief from the California Supreme Court's Aas decision, which held that homeowners could not recover for a defects until the damage occurred. Since Aas, homeowners with missing firewalls or defective electrical systems could not hold the developer accountable until the house burned down. With the new definition of construction defects in SB 800, homeowners will not have to wait for a catastrophe before they can get their homes repaired.

Developers said that they wanted a right to repair defective construction, and with this bill, they have that right. Under specific deadlines, a developer has the opportunity to come into a home and attempt to fix the shoddy construction and pay any other damages. Homeowners will be very pleased if builders step up to the plate and take responsibility for their work and fix it. If the shoddy construction is not repaired to the homeowner's satisfaction, the homeowner can go to court.

Legislative Department

PE - 20

980 9th Street, Suite 200, Sacramento, CA 95814-2721 • (916) 442-6902 • FAX (916) 442-7734
info@caoc.org • http://www.caoc.com



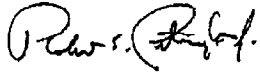
SB 800 LEG. HIST. 000296 •

LEGISLATIVE INTENT SERVICE (800) 666-1917



Consumer Attorneys of California was very pleased to participate in the lengthy negotiations that led to this landmark legislation. We hope that you will sign SB 800.

Sincerely,



Rob Cartwright, Jr.
President



LEGISLATIVE INTENT SERVICE (800) 666-1917



CALIFORNIA NURSES ASSOCIATION

Shaping Tomorrow's Health Care

www.calnurse.org

September 19, 2002

The Honorable Gray Davis
Governor of California
State Capitol, First Floor
Sacramento, California 95814

SB 800 (Burton and Wesson) Support: Request for Signature

Dear Governor Davis:

The 44,000 members of the California Nurses Association ask for your signature on SB 800 (Burton and Wesson). This bill represents groundbreaking reform for construction defect litigation. The problem of construction defects and associated litigation have vexed the Legislature for a number of years with substantial consequences for the development of safe and affordable housing. This bill reflects extensive and serious negotiations between builder groups, insurers and the Consumer Attorneys of California, with the substantial assistance of key legislative leaders over the past year, leading to consensus on ways to resolve these issues.

The bill seeks to respond to concerns expressed by a number of parties from homeowners and the Consumer Attorneys of California over the consequences of Aas v. Superior Court, (2000) 24 Cal. 4th 627, which held that defects must cause actual damage or personal injury prior to being actionable in tort. The bill also responds to concerns expressed by builders, subcontractors, and insurers over the costs of construction defect litigation and their impact on housing costs in the state.

The bill establishes a mandatory process prior to the filing of a construction defect action. The major component of this process is the builder's absolute right to attempt a repair prior to a homeowner filing an action in court. Builders, insurers, and other business groups are hopeful that this right to repair will reduce litigation. If the builder fails to comply with the process, the homeowner may proceed with the filing of an action.

The bill would provide immunity from liability to third-party inspectors that provide, under contract to an applicant for a residential building permit, an "independent quality review." Of residential plans and specifications or compliance with those plans and specifications. Independent inspections are useful tools in improving the quality of residential construction. Detailed construction standards that are set in the bill govern any action seeking recovery of damages arising out of or related to construction defects. Rather than

- CNA OAKLAND HEADQUARTERS
CNA SACRAMENTO
CNA SAN JOSE
CNA FRESNO
CNA SANTA MONICA
CNA SAN DIEGO

LEGISLATIVE INTENT SERVICE (800) 666-1917

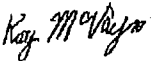


Governor Davis
9/19/02
Page Two.

requiring resort to contentions about the significance of technical deviations from building codes, the bill specifies the standards that building systems and components must meet setting a statutory "floor" for construction defect standards.

We join the Consumer Attorneys of California and Congress of California Seniors in asking for your signature on this legislation that establishes important building standards including those for low cost housing and protections for California consumers.

Sincerely,



Kay McVay RN
President

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE - 23

Board Directors

- SBC Pacific Bell
* John Osborne, *Chairman*
- San Diego Magazine
* Kevin Leap, *Vice-Chair*
- Communications
* Joe Gabaldon, *Secretary*
- San Diego Union-Tribune
* Chris Jannewein, *Treasurer*
- BioFilm, Inc.
Dan Wray
- City of San Marcos
Rick Gittings
- City of Vista
* Kevin Ham
- Coldwell Banker Comm'l, No Co Properties
Joseph McDermott
- County of San Diego
* Supervisor Bill Horn
- CSU San Marcos
Dr. Alex Gonzalez
- DDH Enterprise, Inc.
Chuck Rabal
- Luce, Forward, Hamilton & Scripps LLP
Phil Jelsma
- Management Consultant
John Todd
- Mountain Meadow Mushroom Inc.
Bob Crouch
- Nation Smith Hermes Diamond
Paul Nation
- North County Times
* Dick High
- Rancho Santa Fe National Bank
Mike Cavatalo
- RDO Technology Group
Arthur Manetta
- San Diego Gas & Electric
* Laura McDonald
- San Diego Regional EDC
Bill Carney
- Sony Electronics Inc.
Mike Rothmiller
- Stewart Title of California Inc
Brad Roppe
- Tri City Medical Center
* Dr. Arthur Gonzalez
- Watkins Manufacturing Corp.
Sandra Shuda
- (W)right On Communications
Julie Wright
* Executive Committee

Council Members/Advisors

- Congressman Darrell Issa
- Senator Bill Morrow
- Barbara Warden
- Building Industry Association
- City of San Diego
- Community National Bank
- Co of SD Trade & Business Development
- EDOO Waste & Recycling
- Fallbrook Chamber of Commerce
- Lee J. Zajicek, Financial Consultant
- Manpower Temporary Services
- MCB Camp Pendleton
- McCain Traffic Supply
- Ne-Mo's Bakery, Inc.
- North County Chamber Association
- North SD Co Association of Realtors
- Palomar College
- PennySaver
- SANDAG
- San Diego Chargers
- SD North Convention & Visitors Bureau
- San Diego Regional Technology Alliance
- San Diego Workforce Partnership
- San Diego World Trade Center
- San Marcos EDC
- SeaToShiningSea.com
- Southwest Community Bank
- Unifrin Direct Auto Insurance
- Wells Fargo Bank

Updated Aug 28, 2002

7100

**North County
Economic
Development
Council**

September 16, 2002

Governor Gray Davis
State Capitol Building
Sacramento, CA 95814

RE: SB 800 (Burton) - Request Signature

Dear Governor Davis:

The North County Economic Development Council urges you to sign SB 800 (Burton) which would help alleviate California's housing crisis by substantially improving existing construction defect law. In the process of providing much needed housing, this bill will improve the California economy at a time when it needs it most.

New condominium projects, traditionally the entry-level homebuyer's entrée into the realm of home-ownership, have become rare in California's increasingly litigious climate. Homebuilders cannot afford to build them due to the high cost of, or lack of availability of, construction defect insurance. And buyers cannot afford to buy them at the inflated prices brought on by a tight market and increased costs.

SB 800 gives homebuilders the right to repair problems, defines the standards of quality homebuyers can expect, and provides alternatives to litigation that will reduce those costs and solve problems more quickly.

Smart Growth in San Diego County depends on more attached housing being built. This bill will help alleviate the housing crisis in our county by allowing workers who are now commuting from outlying areas to find homes closer to their work, thus alleviating traffic congestion in the process.

For all of these reasons, we join many other organizations in urging you to approve SB 800.

Sincerely,

Pat Partin
Patricia L. Partin
Interim President/CEO

Cc: Hon. John Burton

8 Viper Way, Suite A, Vista, CA 92081-7854
Phone: 760-598-9311 · Fax: 760-598-9325
Email: ncedc@nctimes.net

LEGISLATIVE INTENT SERVICE (800) 666-1917

