

No. S266034

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

LISA NIEDERMEIER,
Plaintiff and Respondent,

v.

FCA US LLC,
Defendant and Appellant.

California Court of Appeal, Second District, Division One
Civil No. B293960
Appeal from Los Angeles County Superior Court
Case No. BC638010
Honorable Daniel Murphy

**EXHIBITS TO MOTION FOR JUDICIAL NOTICE
VOLUME 8 OF 9, Pages 2064-2358 of 2617**

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Attorneys for Petitioner LISA NIEDERMEIER

Memorandum

To: Allan Zarembeg
Governor's Office

Date: September 25, 1987

From: Office of the Secretary
(916) 323-9493
ATSS473-9493

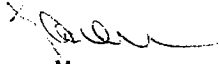
Subject: AB 2057 (Tanner)

Shirley has thoroughly reviewed AB 2057 as enrolled and would probably be delighted if it were vetoed. We do feel, however, absent the certification program, this is a good consumer bill.

The Department of Consumer Affairs submitted an analysis when the bill was in the Senate. After discussion with Shirley and Steve Blankenship, the Department was asked to add justification to the BAR certification program. This was not done by way of an analysis; however, the Department had many discussions with the author and interested parties. Amendments were taken to alleviate the manufacturers' concerns, but Tanner would not change the certification language.

According to the Caucus, private conversations with the manufacturers indicate they still don't like the bill, but feel the amendments weakened their opposition causing a neutral position. Also, they would probably like to have this issue finally put to rest. The longer it remains unresolved -- the more negative attention they receive from the media. We believe the manufacturers' arbitration programs have been fair and are encouraged by their volunteer efforts to mediate consumer complaints in an equitable manner.

Taking into consideration the above concerns, Agency is recommending signature on this bill. It would be a positive indication of the Administration's support of a program perceived by the consumer groups as needing some additional protection. We have attached both a sign message and a veto for the Governor's consideration.


Karen Morgan
5-0784

KLM:dj

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE-10

SIGN MESSAGE

AB-2057 (Tanner)

I have approved AB 2057 which provides additional consumer protection regarding the purchase of new vehicles.

This bill proposes several changes to the "Lemon Law" passed by the Legislature in 1982 which provide a dispute resolution mechanism for consumers to seek recompense for faulty and irreparable automobiles. This measure appropriately addresses several inadequacies in the restitution to consumers for their documented claims under the law. However, it includes provisions which would add to the cost of consumers by requiring an agency of the State to certify a dispute resolution program which may expand its oversight beyond the bounds of its primary mandate.

I am, therefore, asking the Department of Consumer Affairs to monitor this process for one year and report back to me by July 1989 with a recommendation as to the continuance of the certification program.



VETO MESSAGE

AB 2057 (Tanner)

To the Members of the California Assembly.

I am returning AB 2057 without my signature. This measure proposes to make a number of changes to the laws concerning defective automobiles. The bill would clarify the rights of buyers of "lemon" cars, expand the protections of our new car lemon law to include "demonstrators" and protect against the reselling of vehicles found to be fundamentally defective.

As worthwhile as these changes are, however, the bill also requires direct involvement by the state in the third-party dispute resolution programs offered by vehicle manufacturers. There appears to be little evidence to support the need for our intervention, especially to the degree mandated by this legislation. If problems develop with the operations of these non-governmental dispute resolution forums, existing laws are adequate to protect the interests of consumers.

Cordially,

George Deukmejian



ENROLLED BILL REPORT

Analyst: Gale Baker *me*
 Bus. Ph: 323-0399
 Home Ph:

AGENCY: STATE AND CONSUMER SERVICES AGENCY	BILL NUMBER: AB 2057
DEPARTMENT, BOARD OR COMMISSION: CONSUMER AFFAIRS	AUTHOR: Tanner

SUMMARY

- 1 Description
- BACKGROUND
- 2 History
- 3 Purpose
- 4 Sponsor
- 5 Current Practice
- 6 Implementation
- 7 Justification
- 8 Alternatives
- 9 Responsibility
- 10 Other Agencies
- 11 Future Impact
- 12 Termination
- FISCAL IMPACT ON STATE BUDGET
- 13 Budget
- 14 Future Budget
- 15 Other Agencies
- 16 Federal
- 17 Tax Impact
- 18 Governor's Budget
- 19 Continuous Appropriation
- 20 Assumptions
- 21 Deficiency Measure
- 22 Deficiency Resolution
- 23 Absorption of Costs
- 24 Personnel Changes
- 25 Organizational Changes
- 26 Funds Transfer
- 27 Tax Revenue
- 28 Other Fiscal
- SOCIO-ECONOMIC IMPACT
- 29 Rights Effect
- 30 Monetary
- 31 Consumer Choice
- 32 Competition
- 33 Employment
- 34 Economic Development
- INTERESTED PARTIES
- 35 Proponents
- 36 Opponents
- 37 Pro/Con Arguments
- RECOMMENDATION
- JUSTIFICATION
- 38 Support
- 39 Oppose
- 40 Neutral
- 41 No Position
- 42 If Amended

BILL SUMMARY

This bill would revise the new car lemon law and would require the Department of Consumer Affairs' Bureau of Automotive Repair to certify third party dispute resolution processes used for resolution of lemon law disputes. The Certification Program would be fully funded by fees paid by manufacturers and distributors based on the number of vehicles sold in California.)

Background

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

The buyer of a "lemon" may bring an action to enforce his or her rights under the lemon law. However, if the manufacturer has a qualified third party dispute resolution process (arbitration program) as defined in the lemon law, the buyer must first attempt to resolve the dispute by submitting it to the arbitration panel.

VOTE:	Assembly		Partisan		Senate		Partisan	
			R	D			R	D
Floor:	54-20	(concurrence)			Floor:	39-0		
Policy Committee:	6-1		56-22)		Policy Committee:	9-0		
Fiscal Committee:	18-5				Fiscal Committee:	9-0		PE-13

RECOMMENDATION TO GOVERNOR: SIGN *With message* VETO NO POSITION DEFER TO OTHER AGENCY

DEPARTMENT DIRECTOR: *Michael B. Talley* DATE: *9/22/87* AGENCY SECRETARY: *[Signature]* DATE: *9-25-87*

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If the manufacturer does not have an arbitration program, if the manufacturer fails to give timely notice to the buyer of the existence of the arbitration program, if the buyer is dissatisfied with the panel's decision, or if the manufacturer fails to promptly fulfill the terms of the arbitration decision, the buyer may sue for replacement or restitution.

Since the passage of the lemon law in 1982, consumers and consumer groups have complained that there are a number of ambiguities in the law and that the arbitration programs often are not meeting the requirements for qualification or rendering decisions which confer the rights and remedies in the lemon law. They complain that arbitration programs are ineffectual and/or render decisions which are biased toward the manufacturer.

In the 1985-86 Session, Assemblywoman Tanner, who authored the original lemon law, introduced AB 3611 as a clean-up measure to the lemon law to respond to these grievances. The bill was initially opposed by manufacturers, but the final amended version, which was substantially similar to this bill, was unopposed. AB 3611 failed in the Senate Appropriations Committee for reasons unrelated to the substance of the bill.

The Department of Consumer Affairs worked closely with Assemblywoman Tanner in drafting the original lemon law and since its enactment has been very involved in monitoring its impact. The department publishes a widely-distributed consumer information pamphlet ("Lemon Aid for New Car Buyers") and advises consumers with lemon law complaints. In 1985 the department conducted a comprehensive study of the impact and effectiveness of the lemon law. In its New Car Lemon Law Report and Questionnaire (September 1985), the department noted a number of ambiguities in the law and problems with the arbitration programs, and identified possible legislative responses to these concerns. A number of the department's suggestions were incorporated into AB 3611 and this bill.

For instance, the lemon law does not state whether it is the manufacturer or the buyer who is entitled to decide between a replacement or restitution. Manufacturers would prefer to replace a vehicle rather than make restitution, but a consumer frustrated with having been stuck with a "lemon" understandably may prefer restitution.

The present law also does not specify what costs are included when awarding restitution or replacement. Restitution or replacement awards under current practice often do not make the buyer "whole" (i.e., compensate him or her for expenses such as sales tax, license and registration fees, and towing or rental car costs).

The calculation of the offset for the buyer's use prior to discovering the defect is a major source of disagreement between



buyers and manufacturers. A frequent complaint is that manufacturers seek reimbursement equal to the offset for use of commercial rental cars, which would be excessive and unfair to the buyer.

Some buyers are being denied the remedies under the lemon law because their vehicle is a "demonstrator" or "dealer-owned" car, even though it was sold with a new car warranty.

The major grievance is that arbitration programs do not comply with the Federal Trade Commission's Rule 703, which sets forth minimum requirements for arbitration programs, or other requirements of the lemon law. Consumer groups complain that the FTC has failed to enforce Rule 703. FTC staff, however, state that the FTC does not have the authority to enforce Rule 703 unless a manufacturer has violated the federal Magnuson-Moss Consumer Warranty Act. (The Magnuson-Moss Act permits manufacturers to establish arbitration programs to resolve warranty disputes. If a manufacturer opts to use an arbitration program, the program must comply with the standards in Rule 703. The FTC states that a manufacturer who fails to comply with Rule 703 is not subject to FTC enforcement action unless the manufacturer also has violated the Magnuson-Moss Act.)

Specific Findings

AB 2057 would establish a state program for certifying third-party dispute resolution processes, specify requirements for certification, and allow courts to award treble damages to buyers of lemon cars under limited circumstances.

A. Certification

AB 2057 would require third party dispute resolution programs used for arbitration of lemon law cases to be certified by the Bureau of Automotive Repair (BAR). The BAR would be required to review the application for certification and conduct an onsite inspection to determine whether the program is in "substantial compliance" with the terms of this bill. If the program is not in substantial compliance, the BAR would deny certification and state in writing the reasons for the denial and the modifications necessary to obtain certification. The BAR would be required to make a final determination whether to certify a program within 90 days after receiving the application.

The BAR would be required to review the operations and performance of arbitration programs annually to determine whether the programs continue to be in substantial compliance with the certification standards. If a program is no longer in substantial compliance, the BAR would be required to issue a notice of decertification, stating the reasons for the proposed decertification and prescribing the modifications necessary to retain certification. The decertification would take effect 180 days after the notice is served, unless the BAR determines, after



a public hearing, that the modifications necessary to bring the program into compliance have been made.

The BAR would be required to make at least two onsite inspections per year, investigate complaints from consumers regarding arbitration programs, and analyze representative complaints against each arbitration program. The BAR would be required to establish methods to measure customer satisfaction and identify violations of this bill, including an annual random survey of customers of the programs and analysis of the results.

The BAR also would be required to submit a biennial report to the Legislature evaluating the effectiveness of this bill; make available to the public summaries of the statistics and other information supplied by arbitration programs; and publish educational materials regarding the purposes of this bill.

The New Motor Vehicle Board (NMVB) would administer the collection of fees, to be paid by manufacturers and distributors, to fully fund the certification program. The BAR would be required to determine the amount necessary to fund its responsibilities under this bill and report that amount annually to the NMVB.

Manufacturers and distributors would be assessed a fee, not to exceed \$1 per vehicle sold, leased or distributed in California during the previous calendar year, to be paid to the DMV to fund the certification program. Fees would be deposited into a newly-created certification account in the Automotive Repair Fund and would be available to the BAR upon appropriation by the Legislature.

B. Lemon Law Clean-Up Changes

Replacement/Restitution. The bill would give the buyer the option to elect restitution instead of replacement of a "lemon." The manufacturer would be required to reimburse sales or use tax, license and registration fees and incidental damages such as reasonable repair, towing or rental car costs incurred by the buyer. The manufacturer would be reimbursed by the Board of Equalization for the sales tax (but not by the DMV for the license and registration fees).

The replacement cost or restitution may be offset by the buyer's use before the buyer delivered the vehicle to the manufacturer for correction of the defect. The amount attributed to the buyer's use would be determined by dividing the number of miles travelled prior to the time the buyer first delivered the vehicle to the manufacturer by 120,000, multiplied by the price of the car. (According to the state Department of Transportation, 120,000 miles is the average life expectancy of an automobile ("The Cost of Owning and Operating an Automobile or Van," 1984).)

AE-16



Disciplinary Action. If a manufacturer fails to honor a decision of the arbitration panel, the BAR would be required to notify the Department of Motor Vehicles (DMV) for appropriate enforcement action. Under current law, the DMV has the authority to suspend or revoke the license of a dealer, manufacturer or distributor who has willfully violated the terms and conditions of any warranty responsibilities under the Consumer Warranty Act, which contains the New Car Lemon Law.

"Demonstrator" Vehicles. The bill includes within the protection of the lemon law dealer-owned vehicles and "demonstrator" vehicles sold with a manufacturer's new car warranty.

Resale of a "Lemon". The manufacturer may not re-sell or re-lease a "lemon" unless the defect has been corrected and is disclosed to the new buyer or lessee, and the manufacturer warrants that the vehicle will be free of that defect for one year. (This provision applies only to vehicles which are bought back by the manufacturer as "lemons" pursuant to the Lemon Law not those which are transferred back to the manufacturer for any other reason).

Assertion of "Lemon Presumption". The vehicle buyer may assert the "lemon presumption" in any civil action, including small claims court, or any other formal or informal proceeding.

Qualified Arbitration Program. The bill amends the definition of what constitutes a "qualified" third party dispute resolution process for lemon law disputes. Current law defines a "qualified third party dispute resolution process" as one which complies with the FTC requirements for informal dispute resolution procedures contained in the Commission's Rule 703; that renders decisions which are binding on the manufacturer if the buyer elects to accept the decision; that prescribes a reasonable time, not to exceed 30 days, within which the manufacturer must fulfill the terms of those decisions; and that annually provides to the DMV a report of its audit required by the Commission's Rule 703.

This bill would require dispute resolution programs to comply with the FTC's Rule 703 as those regulations read on January 1, 1987 and delete the requirement that manufacturers provide to the DMV a report of their audit (which none of them have done anyway). In addition, this bill would:

- o Require arbitrators to be instructed in and have copies of rules governing lemon law arbitration decisions (i.e., the FTC's Rule 703, Commercial Code provisions concerning the computation of damages, and the lemon law itself).
- o Require arbitration panels to "take into account" specified federal and state remedies in lemon law cases, and authorize arbitration panels to order any other equitable remedy appropriate under the circumstances of the case.

PE-17



- o Require the manufacturer to comply with an arbitration order for replacement or reimbursement.
- o Provide, at the request of the arbitrator or a majority of the arbitration panel, an independent inspection of the vehicle at no cost to the buyer.
- o Prohibit arbitrators deciding a dispute from being a party to the dispute, and prohibit anyone else (including an employee, agent or dealer for the manufacturer) from participating substantively in the merits of the dispute unless the buyer is allowed to participate also.

Treble Damages. This bill would authorize the court in a lemon law case to award treble damages to a "lemon" buyer if the manufacturer fails to rebut the "lemon presumption" and the manufacturer does not maintain an arbitration program which is in substantial compliance with the lemon law certification standards.

Complaint Mediation. Existing law gives the NMVB the authority to "arbitrate amicably or resolve" any honest difference of opinion or viewpoint between any member of the public and any new motor vehicle dealer or manufacturer. This bill would specifically give the NMVB the authority to mediate any such difference of opinion, including, by inference, a lemon law complaint.

In addition, the latest amendments to this bill incorporate the substance of AB 1367 (Tanner), which also would amend the New Car Lemon Law (the Department of Consumer Affairs prepared an enrolled bill report recommending signature of AB 1367 but the bill has since been placed on the inactive file), and is double-joined with AB 276 (Eaves) which, like AB 2057, amends the Revenue and Taxation Code.

The bill also appropriates \$25,334 to the Department of Motor Vehicles to computerize its billing system for collecting motor vehicles fees from automobile manufacturers under this bill. The appropriation is from the unappropriated surplus of the New Motor Vehicle Board Account in the Motor Vehicle Account. The New Motor Vehicle Board is not opposed to the appropriation as it will be repaid in the next fiscal year from fee revenues that will be collected beginning July 1, 1988. The DMV had requested this appropriation.

Fiscal Impact

This bill calls for a new state program, to be administered by the Bureau of Automotive Repair, and fully funded by fees paid by manufacturers and distributors when they renew their licenses.

A fiscal analysis is attached. The analysis projects expenditures of \$281,000 for Fiscal Year 1988-89 and thereafter and revenue of \$300,000 based on a \$.13-.16 assessment per vehicle sold, leased or distributed in the state. Four PYs (a Program Representative II, two Program Representatives I and one Office Technician (Typing) are projected). PE-18



Argument

Interested Parties

Proponents: Author (sponsor)
Cal-PIRG
Chrysler Motors
Consumers Union

Neutral: Automobile Importers of America
Department of Motor Vehicles
Ford Motor Company
General Motors
New Motor Vehicle Board
State Board of Equalization

Opponents: None known

Proponents argue that AB 2057 addresses various problems in the new car lemon law, enacted five years ago. For instance, under the lemon law, owners of "lemons" are required to use a "qualified" arbitration process before they may resort to the courts. However, the arbitration programs are either operated or sponsored by the manufacturers and they have not provided a fair and impartial process for consumers. In some cases, these panels have failed to maintain "qualified" programs and abide by provisions of the lemon law and the Federal Trade Commission's arbitration regulations. The panels often rely on experts supplied by manufacturers. Finally, while the panels frequently require one more repair attempt, they do not follow up to ensure that the vehicle has been satisfactorily repaired.

In addition, costs such as sales taxes, license and registration fees, and towing and rental car costs are not reimbursed, and the amount the manufacturer may deduct for the use of the vehicle from the replacement value is not specified and often results in deductions which are calculated to the advantage of the manufacturer and the detriment of the consumer.

Proponents argue that AB 2057 would help ensure that consumers get a fair and impartial hearing in the arbitration process. In sum, proponents argue that the bill contains the needed provisions to assure consumers stuck with "lemons" receive the compensation, rights and remedies to which they are entitled.

There is no known opposition to the bill in its present form, although some attorneys who represent consumers in lemon law cases have expressed concern with amendments which were negotiated with the automobile manufacturers to remove their opposition (such as an amendment which allows manufacturers to maintain certification if they are in "substantial" compliance with certification standards). However, while the department is sympathetic to their concerns, we note that the bill would not



have passed without the amendments and do not agree that the amendments will reduce existing protections.

The Bureau of Automotive Repair supports the concept of the portion of the bill giving it certification and decertification powers but has expressed concern that its power to decertify does not constitute enough of a "hold" on a potentially recalcitrant manufacturer. It would seem, however, that a threat to institute decertification proceedings, if communicated honestly and with valid reasons, ought to be enough to induce the manufacturer to make any needed changes. In addition, the DMV would be empowered to suspend or revoke the license of a manufacturer who repeatedly fails to honor the decision of an arbitration panel.

The Department of Consumer Affairs has recommended (but not received) a "support" position on this bill.

Recommendation

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

At present, there is no way for a buyer to determine whether an automobile manufacturer's arbitration program complies with the present legal requirements contained in FTC Rule 703 and the California lemon law. By providing for certification by a state agency, buyers will be reasonably assured that an arbitration panel is operating in compliance with the law. In addition, the bill provides a number of necessary clarifying and fine-tuning amendments to the lemon law.

NOTE: The concurrence vote on AB 2057 (September 10, 1987) was 56-22. Twelve Republicans voted for concurrence and all other Republicans voted against it. The Republican concurrence analysis recommended a "no" vote. The department believes that the caucus analysis (copy attached) presents only one side of the issue, and we would like to respond to the concerns raised therein.

First of all, the analysis does not acknowledge the serious problems with the current arbitration programs. As stated earlier under Background, the department conducted an extensive investigation of lemon law arbitration programs and found a number of problems with the way they are run. We believe that these problems need attention; consumer complaints to this department and other consumer protection agencies indicate a high level of dissatisfaction and a lack of faith in the present programs.

The lemon law gives consumers and manufacturers an alternative to court action to resolve lemon law problems. This is designed as much for the benefit of the manufacturer as the consumer; however, the analysis implies that this is to the consumer's and not the manufacturer's advantage. However, the lemon law provides - at the insistence of the manufacturers in negotiations on the original lemon law - that if the manufacturer

PE-20



has an arbitration program (and virtually all of them do), a consumer must submit the complaint to the arbitration panel prior to attempting to assert his or her rights in court.

Currently, these programs are not "overseen" by anyone. Their decisions are often biased in favor of the manufacturer. The arbitrators may not be trained in the rights and remedies of the lemon law (for instance, the Better Business Bureau, which handles lemon law cases for General Motors and most of the importers, has stated publicly that they purposely do not train their arbitrators in the lemon law), and their decisions often do not confer the rights and remedies in the lemon law. This practically negates the effectiveness of the lemon law and leaves the consumer with the unhappy choice of pursuing legal action (which few want or can afford) or with no recourse (i.e., taking a loss on the car).

Second, the analysis states that new car buyers will have to pay for the certification. While this is true (the manufacturers actually have to pay the assessment but it will probably be passed on to the consumer by way of a higher sticker price), the bill limits the amount assessed to not more than \$1.00 per vehicle. We believe this is an insignificant cost to help ensure that consumers will have fair recourse if the car they purchase turns out to be a lemon. In addition, the department's fiscal analysis indicates that a much lower fee (\$.13 - \$.16 per vehicle) will be adequate to fund the program (and in fact may result in a surplus which would be carried over to the next year).

Third, we disagree that the bill will create a bureaucracy. The Bureau of Automotive Repair's functions are limited under the bill, and ongoing certification functions would not require a great increase in PYs (our fiscal analysis indicates that four PYs will be needed to run the certification program).

Fourth, as to the treble damages provision, that provision has been significantly amended and the manufacturers are no longer opposed to it. The analysis states that the "triple (sic) damage provision is onerous." However, the manufacturers would not sign off on an onerous provision. The provision is very limited now. Recent amendments reduced the standard of compliance with certification standards to "substantial" compliance and made an award of treble damages discretionary with the court. Only in the most abusive circumstances by a manufacturer is that provision likely to be enforced, and only by those few consumers who have the financial capability to bring an action.

Fifth, we also question why this bill would create more legal costs for manufacturers. In keeping with the intent of the original lemon law, this bill is designed to reinforce viable alternatives that consumers and manufacturers can use to resolve complaints outside the court system. If anything, this bill is designed to decrease the possibility of court action by a dissatisfied consumer because it would improve the arbitration process.

PE-21



The fact is that very few consumers have the capacity or desire to be involved in legal action with a manufacturer. Also, there are very few consumer attorneys who are willing or able to represent consumers in lemon law cases. Legal recourse is an undesirable option for a consumer because the costs, frustration, delays and legal action are much more of a burden on the consumer than on the manufacturer.

Last, the reason the automobile manufacturers do not oppose the bill now is that the bill has been moderated to such an extent that they now consider it to be a reasonable approach (and far less onerous than the kinds of legislation they are confronting in several other states). In addition, it would be viewed as unresponsive to serious and prevalent complaints about defective new cars if they continued to oppose the bill after all of the concessions have been made.

In summary, the evidence is that the programs are not working according to the requirements in the law and there is no viable method to ascertain whether the programs meet certain required standards. Having poor quality programs that do not meet the standards bears heavily on a consumer who may be making payments on a new car, meanwhile not being able to use the car and having no alternate mode of transportation other than a rental car. One of the purposes of certification is to assure consumers that these programs meet the standards. These are programs which the law requires consumers to use prior to asserting their rights by private legal action. We therefore feel that consumers are entitled to assurance that the programs themselves are being conducted in conformance with the law.



**DEPARTMENT OF CONSUMER AFFAIRS
FISCAL ANALYSIS OF LEGISLATION**

DUE DATE: September 21, 1987
 Prepared by: Mary Howard
 Phone Number: 324-8041
 Approved by: *gc*

DATE ASSIGNED: September 11, 1987
 (Bill #) AB 2057
 (Author) Tanner
 Date Approved: 9/16/

FISCAL ANALYSIS AS INTRODUCED/AMENDED/ENROLLED September 4, 1987

(Short Title) BAR: Certification of Third Party Dispute Resolution Process

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

SUMMARY OF FISCAL IMPACT:

XX Minor fiscal impact. Can be absorbed within existing resources.
 No change from prior fiscal analysis of 6/8/87. See attached.
 (Date Approved)
 No fiscal impact.
 (Other:)

	<u>*1/1/88 - 6/30/88</u>	<u>1988 - 89</u>	<u>ONGOING</u>
EXPENDITURES	\$ <u> </u>	\$ <u>281,000</u>	\$ <u>281,000</u>
REVENUE	\$ <u> </u>	\$ <u>300,000</u>	\$ <u>300,000</u>
NET IMPACT	\$ <u> </u>	\$ <u>19,000</u>	\$ <u>19,000</u>

PROGRAM CONTACT: Shirley Stiles PHONE NUMBER: 366-5118 PE-23

PROGRAM CONCURS: YES NO X (If no, note differences as appropriate.)

* Bureau anticipates minor costs that will be absorbed within.
 The Bureau estimates expenditures of \$360,000 which includes estimated enforcement costs with increase revenue of \$460,000.

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DEPARTMENT OF CONSUMER AFFAIRS
Fiscal Analysis of Legislation
AB 2057 (Tanner)
Amended 9/4/87
Page 2

This amendment provides that \$25,334 be appropriated to reimburse the New Motor Vehicle Board for its expenses in implementing Section 9889.75 of the Business and Professions Code. This amount, plus interest, shall be repaid from the Certification Account in the Automotive Repair Fund. Although this money will come from the Automotive Repair Fund, it is a one-time appropriation and is to be paid back during the 1988/89 Fiscal Year. Also, the Fund will be reimbursed money through the fees collected by DMV from manufacturers, etc., for the sale of motor vehicles. These fees are established by the Bureau of Automotive Repair, and it estimates that enough revenue will be collected during 1988/89 to cover the \$25,334.

Therefore, this amendment does not change the fiscal impact to the Bureau.

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PE-24

**DEPARTMENT OF CONSUMER AFFAIRS
FISCAL ANALYSIS OF LEGISLATION**

DUE DATE: May 27, 1987

DATE ASSIGNED: May 27, 1987

Prepared by: Ernesto Hidalgo

(Bill #) AB 2057

Phone Number: 324-4338

(Author) Tanner

Approved by: [Signature]

Date Approved: 6/8/7

FISCAL ANALYSIS AS ~~INTRODUCED~~/~~AMENDED~~/~~ENROLLED~~ May 13, 1987

(Short Title) BAR: Certification of Third Party Dispute Resolution Process

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

SUMMARY OF FISCAL IMPACT:

- Minor fiscal impact. Can be absorbed within existing resources.
- No change from prior fiscal analysis of . See attached.
(Date Approved)
- No fiscal impact.
(Other:) Expenditures are projected as of 1/1/88 when the bill becomes effective. Revenue, however, is not collected until 7/1/88. The Bureau will absorb the first six months of expenditures within its existing resources.

	<u>*1/1/88-6/30/88</u>	<u>19 88 - 89</u>	<u>ONGOING</u>
EXPENDITURES	\$ <u> </u>	\$ <u>281,000</u>	\$ <u>281,000</u>
REVENUE	\$ <u> </u>	\$ <u>300,000</u>	\$ <u>300,000</u>
NET IMPACT	\$ <u> </u>	\$ <u>19,000</u>	\$ <u>19,000</u>

PROGRAM CONTACT: Ken Okimoto PHONE NUMBER: 360-5092

PROGRAM CLASSIFICATION: YES X NO (If no, note differences at PE-25)

BUREAU ANTICIPATES minor costs that will be absorbed within.

LEGISLATIVE INTENT SERVICE (800) 666-1917

DEPARTMENT OF CONSUMER AFFAIRS
Fiscal Analysis of Legislation
AB 2057 (Tanner), Amended May 13, 1987
Page #2

AB 2057 proposes to revise those provisions of the law related to warranties on new motor vehicles to require a manufacturer or its representative to replace the vehicles or make restitution if unable to conform the vehicle to the applicable express warranties after a reasonable number of attempts. It proposes that the Bureau of Automotive Repair (BAR) certify a third party dispute resolution process. This is similar, in most respects, to last years AB 3611 which enacted the Automobile Warranty Arbitration Program Certification Act (Lemon Law). A thorough review of AB 2057 reveals that the provisions are the same as those provided in AB 3611.

The analysis completed last year on AB 3611 (attached) projected that \$293,000 and 4 PYs would be needed on an ongoing basis and that the cost would be offset by an expected revenue of \$300,000 derived from an assessment of 13¢ per vehicle sold to be paid by the manufacturer which would be collected by DMV and disbursed to BAR. The Budget Office is projecting that the fiscal impact of AB 2057 will be similar to the costs projected in the analysis of AB 3611. However, revenue will not be collected until July 1, 1988 and the program is anticipated to commence January 1, 1988. The Bureau has projected that the costs during this six month span can be absorbed by existing resources.



SIGN MESSAGE

AB-2057 (Tanner)

I have approved AB 2057 which provides additional consumer protection regarding the purchase of new vehicles.

This bill proposes several changes to the "Lemon Law" passed by the Legislature in 1982 which provide a dispute resolution mechanism for consumers to seek recompense for faulty and irreparable automobiles. This measure appropriately addresses several inadequacies in the restitution to consumers for their documented claims under the law. However, it includes provisions which would add to the cost of consumers by requiring an agency of the State to certify a dispute resolution program which may expand its oversight beyond the bounds of its primary mandate.

I am, therefore, asking the Department of Consumer Affairs to monitor this process for one year and report back to me by July 1989 with a recommendation as to the continuance of the certification program.



VETO MESSAGE
AB 2057 (Tanner)

To the Members of the California Assembly.

I am returning AB 2057 without my signature. This measure proposes to make a number of changes to the laws concerning defective automobiles. The bill would clarify the rights of buyers of "lemon" cars, expand the protections of our new car lemon law to include "demonstrators" and protect against the reselling of vehicles found to be fundamentally defective.

As worthwhile as these changes are, however, the bill also requires direct involvement by the state in the third-party dispute resolution programs offered by vehicle manufacturers. There appears to be little evidence to support the need for our intervention, especially to the degree mandated by this legislation. If problems develop with the operations of these non-governmental dispute resolution forums, existing laws are adequate to protect the interests of consumers.

Cordially,

George Deukmejian



AE-29

ASSEMBLY COMMITTEE ON GOVERNMENT EFFICIENCY & CONSUMER PROTECTION
REPUBLICAN ANALYSIS

AB 2057 (Tanner) -- LEMON LAW - PART II

Version: 9/4/87

Vice Chairman: Larry Stirling

Recommendation: Oppose

Vote: 2/3 (Appropriation)

Summary: Requires Bureau of Auto Repair to "certify" arbitration panels created by the original "Lemon Law." Requires charge on new cars to pay for process. Also allows treble damages for any consumer who sues and wins against any auto manufacturer who does not have a "certified" arbitration panel; or treble damages for any consumer who proves that his arbitration panel willfully did not follow procedures laid out in this bill. Fiscal effect: Tax of up to \$1 per new car sold in state. Estimated revenue: up to \$300,000 a year.

Supported by CA Public Interest Research Group (CALPIRG) (Sponsor); Attorney General, Chrysler. Opposed by None on File (Auto Importers of America, FORD, GM are Neutral.) Governor's position: None on file.

Comments: The author claims the present voluntary "lemon law" process is not working. Her answer is to make it better by turning it over to the government -- that paragon of efficiency and consumer protection.

Today, if you have a "lemon," you can go to the manufacturer, who then convenes an arbitration panel. If the panel rules against you, you can still go to court. If the panel rules in your favor, the car company cannot appeal.

But the author is concerned that there is something inherently unfair about the manufacturer paying for the arbitration panel so she wants the government to "certify" that they are fair. (General Motors and virtually all the importers subcontract with the Better Business Bureau for arbitration.)

This bill will put the state in the business of "certifying" the procedures -- and new car buyers get to pay for this bureaucracy. The result could be the same problems we have with our legal system and our regulatory agencies -- endless litigation, lots of government employees and huge backlogs. Ironically this legislation comes at a time when the courts and the regulatory agencies are turning to voluntary arbitration to alleviate those problems.

In addition to creating a new bureaucracy, this bill also allows unsatisfied customers -- in certain circumstances -- to sue and collect triple damages (and attorney's fees). This is the section the auto companies originally objected to. But in the Senate, the author limited the awarding of triple damages, thus removing opposition from the auto companies. Nevertheless, the triple damage provision is onerous.

Auto company lobbyists admit that this law will cost the auto companies more money in legal and administrative expenses -- a cost that will be passed onto the consumer.

*No votes
opposed to
changes*

(800) 666-1917

LEGISLATIVE INTENT SERVICE



PE-30

But they are neutral because they think opposing this bill would be bad P.R.

Assembly Republican Floor Vote -- 6/22/87

(54-20) Ayes: Bradley, Felando, Frizzelle, Grisham,
Hansen, Kelley, Leonard, Leslie, Statham,
Stirling

Noes: (20) All Other Republicans

Senate Republican Floor Vote -- 9/8/87

(39-0) Ayes: All Republicans

Consultant: John Caldwell



LC	IR	PUC
BTH	LEGAL	DPA
EQ	OLGA	ED
FIN	RES	
F&A	SCS	
H&W	YAC	

TANNER

AUTHOR

DATE RECEIVED 9-16 1987

LAST DAY TO ACT 9-28 1987

9-28

ACTION OF GOVERNOR _____ 1987

STATE OF CALIFORNIA
LEGISLATURE
OFFICE OF THE CLERK
1500 FAYETTE STREET, SUITE 1000
SACRAMENTO, CALIFORNIA 95833
TELEPHONE (916) 227-3000

Assembly California Legislature



SALLY TANNER
ASSEMBLYWOMAN, SIXTIETH DISTRICT
CHAIRWOMAN
COMMITTEE ON ENVIRONMENTAL SAFETY & TOXIC MATERIALS

September 14, 1987

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

Dear Governor Deukmejian:

Assembly Bill 2057 is now before you for your consideration. I introduced the measure to address two problems that arose during the implementation of the original California "Lemon Law" which I authored in 1982.

First, the original legislation did not give adequate direction on the refunds that consumers should be given when they are sold automobiles so defective that they cannot be repaired after a reasonable number of attempts. Because of this, owners of "lemons" now do not receive a refund on sales tax and the unused portion of license and vehicle registration fees -- an amount that is often in excess of \$1,000 or more -- when an auto manufacturer buys back a defective product. AB 2057 establishes a reasonable method for fairly compensating "lemon" car owners.

Second, California's original "Lemon Law" allowed for the use of arbitration programs sponsored by auto manufacturers to settle "lemon" cases, but did not establish a means of ensuring that these programs were operated fairly and impartially. Because of this, even though most auto manufacturers offer such arbitration programs, many consumers do not view them as an impartial means of settling easily and fairly disputes concerning defective vehicles. AB 2057 establishes a program in the Bureau of Automotive Repair to certify that arbitration programs are operated in accordance with principles that protect the rights of both the auto manufacturer and the consumer.

COMMITTEES
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FIRE POLICE EMERGENCY
AND DISASTER SERVICES
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TOXICS, WASTE & TECHNOLOGY
SELECT COMMITTEE ON
LOW LEVEL NUCLEAR WASTE

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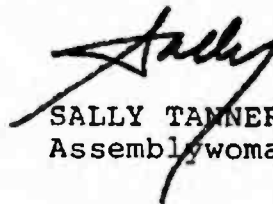
Honorable George Deukmejian
September 14, 1987
Page 2

AB 2057, in its enrolled version, has no known opposition. The measure is supported by Chrysler Corporation, the Attorney General, the California Public Interest Research Group, Consumers Union and Motor Voters. General Motors Corporation, Ford Motor Company, American Honda Motor Company and the Automobile Importers of America are all neutral on the bill. The support or neutrality of the auto manufacturers was achieved after amendments were made to the bill in the Senate Judiciary Committee.

Assembly Bill 2057, as it is before you, is a measure that updates consumer law in light of the past four years of experience in implementing the original California "Lemon Law". It accomplishes this by carefully balancing the rights of consumers against the rights and responsibilities of auto manufacturers. The bill is a moderate measure that moves this area of consumer law forward in a reasonable, but significant, manner.

I urge you to sign it into law.

Sincerely,



SALLY TANNER
Assemblywoman, 60th District

ST:acf

LEGISLATIVE INTENT SERVICE (800) 666-1917

9.15

ENROLLED BILL REPORT

Business, Transportation and Housing Agency

DEPARTMENT OF Motor Vehicles	AUTHOR Tanner	BILL NUMBER AB 2057
SUBJECT Warranties: New Motor Vehicles		9-17-87

SUMMARY: Requires the Bureau of Automotive Repair to establish a program for the certification of third party dispute resolution processes under the "lemon law"; requires funding of the program through an assessment of not more than \$1 for each vehicle sold, leased or distributed by manufacturers, distributors and their branches; provides an appropriation to offset DMV costs; specifies an operative date of July 1, 1988.

SPONSOR: The Author

IMPACT ASSESSMENT: Existing law provides that a manufacturer must make a reasonable effort to repair a motor vehicle when that vehicle is not in substantial conformity with applicable warranties. Under the current statutes, it is the buyers responsibility to notify the manufacturer directly when normal efforts to correct the defect through the dealer have failed. At that point, a dispute resolution process is initiated which is a prelude to any legal action to require replacement of refund.

Consumers have complained that the existing procedures, which are administered by the manufacturers, are subject to lengthy delays and are not conducted with impartiality.

This bill is meant to reduce the inequities purported to exist under the present system so that owners of seriously defective vehicles can achieve a fair and impartial ruling within a reasonable period of time. The proponents indicate that this would be achieved by requiring the Bureau of Automotive Repair (BAR) to both certify and decertify the arbitration programs and to perform a number of verification and reporting tasks in this regard.

The arbitration system would be funded by a fee of up to \$1 for each vehicle sold, leased or distributed by a manufacturer or distributor. The fee would be set by the renewal application process for manufacturers and distributors.

FISCAL STATEMENT: The Department would incur implementation costs of \$25,334; however the bill provides an appropriation mechanism to cover these costs. There is a delayed operative date of 7-1-88 in the bill; however, there is no mechanism to allow DMV to recoup the nearly \$7,000 in on-going costs which will be incurred annually thereafter. A detailed fiscal statement is attached.

SUPPORT AND OPPOSITION: Organizations formally supporting this measure are the California Public Interest Research Group; Consumers Union; Motor Voters; and the Attorney General.

RECOMMENDATION
VETO

Department <i>[Signature]</i>	Date 9-18-87	Agency <i>[Signature]</i>	Date 9-18-87
----------------------------------	------------------------	------------------------------	------------------------

LEGISLATIVE INTENT SERVICE (800) 666-1917

Opposition to the measure has been voiced by Ford Motor Co.; General Motors Corp; Chrysler Motors; and Automobile Importers of America.

VOTE COUNT: Assembly 54-20 Senate 39-0

ARGUMENTS PRO: This dispute resolution process may provide some increased protection for consumers who unwittingly purchase vehicles which later prove to be unrepairable.

ARGUMENTS CON: The introduction of arbitration to resolve consumer complaints regarding faulty vehicles removes from the manufacturer and distributor the responsibility of existing law. Although total consumer satisfaction with existing systems has not been obtained, introducing a third party certified by a governmental agency complicates the system and implies the question of governmental intervention in a market transaction. As it is presented, the system would remove the ability for the manufacturer and distributor and the consumer to negotiate a reasonable settlement by inserting a quasi government element.

The DMV would be forced to establish an accounting system which covers all manufacturers and distributors; however there does not appear to be any means by which the Department can monitor compliance or verify the payments. This would provide the opportunity for unscrupulous persons to misuse the system and underpay their fair share.

Manufacturers/distributors feel that the \$1 per vehicle fee required by this bill is unfair since they believe that the existing dispute resolution process is working well.

RECOMMENDATION: VETO

For further information please contact:

A. A. Pierce, Director
Day telephone: (916) 732-0250
Evening telephone: (916) 933-5057

For technical information please contact:

Gary Nishite, Chief
Program and Policy Administration
Day telephone: (916) 732-0623
Evening telephone: (916) 395-7519

Rebecca Ferguson
Legislative Liaison Officer
Day telephone: (916) 732-7574
Evening telephone: (916) 989-5030

SUGGESTED VETO MESSAGE

To Members of the California Assembly:

I am returning Assembly Bill No. 2057 without my signature.

While the intent of the bill is to enhance the arbitration process used by new vehicle buyers whose vehicles prove to be unrepairable, as drafted AB 2057 will not accomplish that intent. I am concerned that the bill merely establishes another level of governmental intervention without any appreciable benefit to the individuals who may need it the most.

There are no guarantees that intervention by the BAR in the dispute resolution process will achieve the desired results. For example, the BAR can only certify and decertify the arbitration groups. There is no method by which an individual may receive either restitution or review of a poor decision through BAR.

There would also be an overlapping in responsibilities between the Department of Motor Vehicles and BAR. While DMV is supposed to collect the fees from the manufacturers and distributors, it is unclear as to who would be responsible for monitoring compliance and verifying the accuracy of these payments.

I am convinced that these problems would create confusion for both the manufacturers/distributors and the consumer. While the arbitration process may need to be enhanced, I do not believe that this measure will provide the means necessary to accomplish this worthwhile goal.

Cordially,

George Deukmejian
Governor



DEPARTMENT
Finance

BILL NUMBER
AB 2057

AUTHOR
Tanner

AMENDMENT DATE
September 4, 1987

SUBJECT

AB 2057 requires the Bureau of Automotive Repair (BAR) to certify third party arbitration processes that require manufacturers to replace or provide restitution for defective vehicles. The New Motor Vehicle Board (NMVB) is required to administer the collection of fees to fund costs incurred by BAR from the certification activity. Fees would be deposited in the Certification Account of the Automotive Repair Fund out of which program costs would be funded. The bill is double joined with AB 276.

SUMMARY OF REASON FOR SIGNATURE

This bill improves remedies available to dissatisfied new car buyers under current law at nominal increases in costs to the State.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV SO	(Fiscal Impact by Fiscal Year)						Code Fund
		1987-88		1988-89		1989-90		
		FC		FC		FC		
0860/BOE	SO	S	\$0.5	S	\$1	S	\$1	001/GF
1149/Retail Sales and Use Taxes	RV	U	-73	U	-145	U	-145	001/GF
1150/BAR	SO	C	158	C	293	C	293	499/Cert. Acct.
1200/Mis. Fees	RV	U	150	U	300	U	300	499/Cert. Acct.
2740/NMVB	SO	A	25		--		--	044/MVA/STF
5300/DMV	RV		--	U	26		--	044/MVA/STF
1150/BAR	RV		--	U	-26		--	499/Cert. Acct.

Impact on State Appropriations Limit--Yes

ANALYSIS

A. Specific Findings

Under current law, the New Motor Vehicle Board (NMVB) in the Department of Motor Vehicles (DMV) is required to, among other things, hear and consider appeals by a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, from a decision arising from the department. Current law authorizes the NMVB to require those persons to pay a fee to DMV for the issuance or renewal of a license to do business.

(Continued)

RECOMMENDATION:

Sign the bill.

Department Director

Date

Richard Taylor

SEP 19 1987

Principal Analyst

Date

Program Budget Manager

Date

Governor's Office

(223) R. Baker

Wallis L. Clark

Position noted

RMBaker 9/14/87

Wallis L. Clark 9/14/87

Position approved

Position disapproved

by: date:

CJ:BW1/0064A/1045C

ENROLLED BILL REPORT

Form DF-44 (Rev 03/87) P11

AUTHOR	AMENDMENT DATE	BILL NUMBER
Tanner	September 4, 1987	AB 2057

ANALYSIS

A. Specific Findings (Continued)

AB 2057 requires every manufacturer of new motor vehicles, beginning July 1, 1988, to report sales or leases annually to the NMVB on forms prescribed by the NMVB. The bill requires the NMVB to administer the collection of fees to fund a new arbitration certification program and creates the Certification Account within the Automotive Repair Fund for deposit of those fees. The bill requires each applicant for a license to pay a fee determined by BAR, but not to exceed \$1 for each motor vehicle sold or leased.

Current law provides for an arbitration process for disputes between manufacturers and consumers of new cars purported to have manufacturing defects. Under current law the BAR in the Department of Consumer Affairs (DCA) is required to enforce and administer the Automotive Repair Act which regulates the automotive repair industry.

AB 2057 requires BAR to certify third party arbitration programs offered by auto manufacturers or other entities pursuant to current "lemon law". The lemon law provides a process for the resolution of disputes between the owner or leasee of a new motor vehicle and the manufacturer or distributor.

AB 2057 requires BAR to certify automobile warranty arbitration programs that substantially comply with criteria adopted by the bureau or decertify those programs which are not in substantial compliance, in accordance with specified regulations. The bill would require the bureau to monitor and inspect the programs on a regular basis to assure continued compliance.

Under current law, a manufacturer who is unable to service or repair goods, including motor vehicles, to conform to applicable express warranties after a reasonable number of attempts, as specified, is required to either replace the vehicle or reimburse the buyer.

AB 2057 provides that the buyer may elect restitution in lieu of replacement. The bill would require that when a vehicle is replaced or restitution is made by the manufacturer, the buyer may be required to reimburse the manufacturer for, or the manufacturer may reduce the amount of restitution by, an amount directly attributable to the use of the vehicle by the buyer.

(Continued)

CJ:BW2/0064A/1045C

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AUTHOR

AMENDMENT DATE

BILL NUMBER

Tanner

September 4, 1987

AB 2057

ANALYSIS

A. Specific Findings (Continued)

There are a number of bills related to this issue including the following:

- o AB 3611 (1986) contained language similar to this bill, including the requirements for reporting vehicles sold and collection of a fee in conjunction with issuance of renewal of the occupational license by DMV to fund a certification program.
- o AB 2050 is a current bill that would revise provisions relating to the manufacturer's replacement of, or restitution for, a vehicle including a requirement for the manufacturer to pay sales tax, license and registration fees on the replacement, or an equivalent amount in restitution. It would also provide for reimbursement from the State of the sales tax involved.
- o SB 71 is a current bill that would require a manufacturer to pay registration fees and sales tax on a replacement vehicle or to add an equivalent amount in restitution. It would also require the State to reimburse manufacturers for such sales or use tax.
- o SB 228 is a current bill that would extend warranty or service contracts on repairs, repaired parts, affected related parts or components which were repaired under the terms of a warranty or service contract.

B. Fiscal Analysis

According to DMV, the volume of vehicles replaced by manufacturers cannot be determined since manufacturers maintain this information in confidence. The DMV has attempted to estimate the fiscal impact of this bill based on the number of serious complaints received by DCA and NMVB. The DMV estimated approximately 242 vehicles will be replaced or restitution will be provided per year.

We have not been able to verify or disprove this estimate. We assume \$10,000 would be the average price per vehicle and a 6 percent sales tax will be paid.

Computation:

Manufacturer replacement or restitution	242
Sales tax per vehicle	x \$600
Potential Sales Tax Refund	<u>\$145,200</u>

On this basis, we estimate an annual \$145,000 revenue loss to the General Fund.

LEGISLATIVE INTENT SERVICE (800) 666-1977

BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

Tanner

September 4, 1987

AB 2057

ANALYSIS

B. Fiscal Analysis (Continued)

According to DMV, the NMVB would incur one-time initial costs of \$25,000 in 1987-88, for which the bill contains a \$25,000 appropriation from the Motor Vehicle Account, State Transportation Fund. This amount, plus interest at 10 percent per year for six months (\$1,250), is to be transferred from the Certification Account, a new account in the Automotive Repair Fund created by the bill, to the Motor Vehicle Account in 1988-99. Ongoing costs will be absorbed within existing resources.

According to the Board of Equalization, minor costs (less than \$1,000) would be incurred as a result of this bill. These costs can be absorbed within existing resources.

DCA and BAR staff estimate this bill's 1987-88 (half-year) costs at \$158,000 and 2 PYs, and annual costs thereafter at \$293,000 and 4 PYs. This provides for a program supervisor, one staff each in San Francisco and Los Angeles, and one clerical. Finance, however, has not had an opportunity to review specific workload information related to this proposed program. Therefore, we believe that any additional resources should be justified through the 1988-89 budgetary process.

Based on information provided by staff of DMV, DCA and BAR, we estimate that a fee of \$0.15 and \$0.13 per vehicle sold in 1987-88 and 1988-89, respectively, or \$300,000 annually will be required to fund the costs of this program.

CJ:BW4/0064A/1045C



Memorandum

To: Allan Zarembeg
Governor's Office

Date: September 25, 1987

From: Office of the Secretary
(916) 323-9493
ATSS473-9493

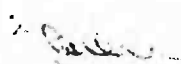
Subject: AB 2057 (Tanner)

Shirley has thoroughly reviewed AB 2057 as enrolled and would probably be delighted if it were vetoed. We do feel, however, absent the certification program, this is a good consumer bill.

The Department of Consumer Affairs submitted an analysis when the bill was in the Senate. After discussion with Shirley and Steve Blankenship, the Department was asked to add justification to the BAR certification program. This was not done by way of an analysis; however, the Department had many discussions with the author and interested parties. Amendments were taken to alleviate the manufacturers' concerns, but Tanner would not change the certification language.

According to the Caucus, private conversations with the manufacturers indicate they still don't like the bill, but feel the amendments weakened their opposition causing a neutral position. Also, they would probably like to have this issue finally put to rest. The longer it remains unresolved -- the more negative attention they receive from the media. We believe the manufacturers' arbitration programs have been fair and are encouraged by their volunteer efforts to mediate consumer complaints in an equitable manner.

Taking into consideration the above concerns, Agency is recommending signature on this bill. It would be a positive indication of the Administration's support of a program perceived by the consumer groups as needing some additional protection. We have attached both a sign message and a veto for the Governor's consideration.


Karen Morgan
5-0784

KLM:dj



SIGN MESSAGE

AB-2057 (Tanner)

I have approved AB 2057 which provides additional consumer protection regarding the purchase of new vehicles.

This bill proposes several changes to the "Lemon Law" passed by the Legislature in 1982 which provide a dispute resolution mechanism for consumers to seek recompense for faulty and irreparable automobiles. This measure appropriately addresses several inadequacies in the restitution to consumers for their documented claims under the law. However, it includes provisions which would add to the cost of consumers by requiring an agency of the State to certify a dispute resolution program which may expand its oversight beyond the bounds of its primary mandate.

I am, therefore, asking the Department of Consumer Affairs to monitor this process for one year and report back to me by July 1989 with a recommendation as to the continuance of the certification program.

LEGISLATIVE INTENT SERVICE (800) 666-1917



VETO MESSAGE
AB 2057 (Tanner)

To the Members of the California Assembly.

I am returning AB 2057 without my signature. This measure proposes to make a number of changes to the laws concerning defective automobiles. The bill would clarify the rights of buyers of "lemon" cars, expand the protections of our new car lemon law to include "demonstrators" and protect against the reselling of vehicles found to be fundamentally defective.

As worthwhile as these changes are, however, the bill also requires direct involvement by the state in the third-party dispute resolution programs offered by vehicle manufacturers. There appears to be little evidence to support the need for our intervention, especially to the degree mandated by this legislation. If problems develop with the operations of these non-governmental dispute resolution forums, existing laws are adequate to protect the interests of consumers.

Cordially,

George Deukmejian

ENROLLED BILL REPORT

Analyst: Gale Baker *me*
 Bus. Ph: 323-0399
 Home Ph:

AGENCY: STATE AND CONSUMER SERVICES AGENCY	BILL NUMBER: AB 2057
DEPARTMENT, BOARD OR COMMISSION: CONSUMER AFFAIRS	AUTHOR: Tanner

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

BILL SUMMARY

This bill would revise the new car lemon law and would require the Department of Consumer Affairs' Bureau of Automotive Repair to certify third party dispute resolution processes used for resolution of lemon law disputes. The Certification Program would be fully funded by fees paid by manufacturers and distributors based on the number of vehicles sold in California.)

Background

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

The buyer of a "lemon" may bring an action to enforce his or her rights under the lemon law. However, if the manufacturer has a qualified third party dispute resolution process (arbitration program) as defined in the lemon law, the buyer must first attempt to resolve the dispute by submitting it to the arbitration panel.

- FISCAL IMPACT ON STATE BUDGET**
- 13 Budget
 - 14 Future Budget
 - 15 Other Agencies
 - 16 Federal
 - 17 Tax Impact
 - 18 Governor's Budget
 - 19 Continuous Appropriation
 - 20 Assumptions
 - 21 Deficiency Measure
 - 22 Deficiency Resolution
 - 23 Absorption of Costs
 - 24 Personnel Changes
 - 25 Organizational Changes
 - 26 Funds Transfer
 - 27 Tax Revenue
 - 28 Other Fiscal
- SOCIO-ECONOMIC IMPACT**
- 29 Rights Effect
 - 30 Monetary
 - 31 Consumer Choice
 - 32 Competition
 - 33 Employment
 - 34 Economic Development

- INTERESTED PARTIES**
- 35 Proponents
 - 36 Opponents
 - 37 Pro/Con Arguments

- RECOMMENDATION JUSTIFICATION**
- 38 Support
 - 39 Oppose
 - 40 Neutral
 - 41 No Position
 - 42 If Amended

VOTE:	Assembly		Senate	
	Floor:	Partisan R D	Floor:	Partisan R D
Policy Committee:	54-20 (concurrence)		39-0	
Fiscal Committee:	6-1	56-22)	9-0	
	18-5		9-0	

RECOMMENDATION TO GOVERNOR: SIGN *with message* VETO NO POSITION DEFER TO OTHER AGENCY

DEPARTMENT DIRECTOR: *Richard H. Valley* DATE: *7/22/87* AGENCY SECRETARY: *[Signature]* DAT: *9*

LEGISLATIVE INTENT SERVICE (800) 666-1917

If the manufacturer does not have an arbitration program, if the manufacturer fails to give timely notice to the buyer of the existence of the arbitration program, if the buyer is dissatisfied with the panel's decision, or if the manufacturer fails to promptly fulfill the terms of the arbitration decision, the buyer may sue for replacement or restitution.

Since the passage of the lemon law in 1982, consumers and consumer groups have complained that there are a number of ambiguities in the law and that the arbitration programs often are not meeting the requirements for qualification or rendering decisions which confer the rights and remedies in the lemon law. They complain that arbitration programs are ineffectual and/or render decisions which are biased toward the manufacturer.

In the 1985-86 Session, Assemblywoman Tanner, who authored the original lemon law, introduced AB 3611 as a clean-up measure to the lemon law to respond to these grievances. The bill was initially opposed by manufacturers, but the final amended version, which was substantially similar to this bill, was unopposed. AB 3611 failed in the Senate Appropriations Committee for reasons unrelated to the substance of the bill.

The Department of Consumer Affairs worked closely with Assemblywoman Tanner in drafting the original lemon law and since its enactment has been very involved in monitoring its impact. The department publishes a widely-distributed consumer information pamphlet ("Lemon Aid for New Car Buyers") and advises consumers with lemon law complaints. In 1985 the department conducted a comprehensive study of the impact and effectiveness of the lemon law. In its New Car Lemon Law Report and Questionnaire (September 1985), the department noted a number of ambiguities in the law and problems with the arbitration programs, and identified possible legislative responses to these concerns. A number of the department's suggestions were incorporated into AB 3611 and this bill.

For instance, the lemon law does not state whether it is the manufacturer or the buyer who is entitled to decide between a replacement or restitution. Manufacturers would prefer to replace a vehicle rather than make restitution, but a consumer frustrated with having been stuck with a "lemon" understandably may prefer restitution.

The present law also does not specify what costs are included when awarding restitution or replacement. Restitution or replacement awards under current practice often do not make the buyer "whole" (i.e., compensate him or her for expenses such as sales tax, license and registration fees, and towing or rental car costs).

The calculation of the offset for the buyer's use prior to discovering the defect is a major source of disagreement between

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buyers and manufacturers. A frequent complaint is that manufacturers seek reimbursement equal to the offset for use of commercial rental cars, which would be excessive and unfair to the buyer.

Some buyers are being denied the remedies under the lemon law because their vehicle is a "demonstrator" or "dealer-owned" car, even though it was sold with a new car warranty.

The major grievance is that arbitration programs do not comply with the Federal Trade Commission's Rule 703, which sets forth minimum requirements for arbitration programs, or other requirements of the lemon law. Consumer groups complain that the FTC has failed to enforce Rule 703. FTC staff, however, state that the FTC does not have the authority to enforce Rule 703 unless a manufacturer has violated the federal Magnuson-Moss Consumer Warranty Act. (The Magnuson-Moss Act permits manufacturers to establish arbitration programs to resolve warranty disputes. If a manufacturer opts to use an arbitration program, the program must comply with the standards in Rule 703. The FTC states that a manufacturer who fails to comply with Rule 703 is not subject to FTC enforcement action unless the manufacturer also has violated the Magnuson-Moss Act.)

Specific Findings

AB 2057 would establish a state program for certifying third-party dispute resolution processes, specify requirements for certification, and allow courts to award treble damages to buyers of lemon cars under limited circumstances.

A. Certification

AB 2057 would require third party dispute resolution programs used for arbitration of lemon law cases to be certified by the Bureau of Automotive Repair (BAR). The BAR would be required to review the application for certification and conduct an onsite inspection to determine whether the program is in "substantial compliance" with the terms of this bill. If the program is not in substantial compliance, the BAR would deny certification and state in writing the reasons for the denial and the modifications necessary to obtain certification. The BAR would be required to make a final determination whether to certify a program within 90 days after receiving the application.

The BAR would be required to review the operations and performance of arbitration programs annually to determine whether the programs continue to be in substantial compliance with the certification standards. If a program is no longer in substantial compliance, the BAR would be required to issue a notice of decertification, stating the reasons for the proposed decertification and prescribing the modifications necessary to retain certification. The decertification would take effect 180 days after the notice is served, unless the BAR determines, after

a public hearing, that the modifications necessary to bring the program into compliance have been made.

The BAR would be required to make at least two onsite inspections per year, investigate complaints from consumers regarding arbitration programs, and analyze representative complaints against each arbitration program. The BAR would be required to establish methods to measure customer satisfaction and identify violations of this bill, including an annual random survey of customers of the programs and analysis of the results.

The BAR also would be required to submit a biennial report to the Legislature evaluating the effectiveness of this bill; make available to the public summaries of the statistics and other information supplied by arbitration programs; and publish educational materials regarding the purposes of this bill.

The New Motor Vehicle Board (NMVB) would administer the collection of fees, to be paid by manufacturers and distributors, to fully fund the certification program. The BAR would be required to determine the amount necessary to fund its responsibilities under this bill and report that amount annually to the NMVB.

Manufacturers and distributors would be assessed a fee, not to exceed \$1 per vehicle sold, leased or distributed in California during the previous calendar year, to be paid to the DMV to fund the certification program. Fees would be deposited into a newly-created certification account in the Automotive Repair Fund and would be available to the BAR upon appropriation by the Legislature.

B. Lemon Law Clean-Up Changes

Replacement/Restitution. The bill would give the buyer the option to elect restitution instead of replacement of a "lemon." The manufacturer would be required to reimburse sales or use tax, license and registration fees and incidental damages such as reasonable repair, towing or rental car costs incurred by the buyer. The manufacturer would be reimbursed by the Board of Equalization for the sales tax (but not by the DMV for the license and registration fees).

The replacement cost or restitution may be offset by the buyer's use before the buyer delivered the vehicle to the manufacturer for correction of the defect. The amount attributed to the buyer's use would be determined by dividing the number of miles travelled prior to the time the buyer first delivered the vehicle to the manufacturer by 120,000, multiplied by the price of the car. (According to the state Department of Transportation, 120,000 miles is the average life expectancy of an automobile ("The Cost of Owning and Operating an Automobile or Van," 1984).)

Disciplinary Action. If a manufacturer fails to honor a decision of the arbitration panel, the BAR would be required to notify the Department of Motor Vehicles (DMV) for appropriate enforcement action. Under current law, the DMV has the authority to suspend or revoke the license of a dealer, manufacturer or distributor who has willfully violated the terms and conditions of any warranty responsibilities under the Consumer Warranty Act, which contains the New Car Lemon Law.

"Demonstrator" Vehicles. The bill includes within the protection of the lemon law dealer-owned vehicles and "demonstrator" vehicles sold with a manufacturer's new car warranty.

Resale of a "Lemon". The manufacturer may not re-sell or re-lease a "lemon" unless the defect has been corrected and is disclosed to the new buyer or lessee, and the manufacturer warrants that the vehicle will be free of that defect for one year. (This provision applies only to vehicles which are bought back by the manufacturer as "lemons" pursuant to the Lemon Law not those which are transferred back to the manufacturer for any other reason).

Assertion of "Lemon Presumption". The vehicle buyer may assert the "lemon presumption" in any civil action, including small claims court, or any other formal or informal proceeding.

Qualified Arbitration Program. The bill amends the definition of what constitutes a "qualified" third party dispute resolution process for lemon law disputes. Current law defines a "qualified third party dispute resolution process" as one which complies with the FTC requirements for informal dispute resolution procedures contained in the Commission's Rule 703; that renders decisions which are binding on the manufacturer if the buyer elects to accept the decision; that prescribes a reasonable time, not to exceed 30 days, within which the manufacturer must fulfill the terms of those decisions; and that annually provides to the DMV a report of its audit required by the Commission's Rule 703.

This bill would require dispute resolution programs to comply with the FTC's Rule 703 as those regulations read on January 1, 1987 and delete the requirement that manufacturers provide to the DMV a report of their audit (which none of them have done anyway). In addition, this bill would:

- o Require arbitrators to be instructed in and have copies of rules governing lemon law arbitration decisions (i.e., the FTC's Rule 703, Commercial Code provisions concerning the computation of damages, and the lemon law itself).
- o Require arbitration panels to "take into account" specified federal and state remedies in lemon law cases, and authorize arbitration panels to order any other equitable remedy appropriate under the circumstances of the case.

- o Require the manufacturer to comply with an arbitration order for replacement or reimbursement.
- o Provide, at the request of the arbitrator or a majority of the arbitration panel, an independent inspection of the vehicle at no cost to the buyer.
- o Prohibit arbitrators deciding a dispute from being a party to the dispute, and prohibit anyone else (including an employee, agent or dealer for the manufacturer) from participating substantively in the merits of the dispute unless the buyer is allowed to participate also.

Treble Damages. This bill would authorize the court in a lemon law case to award treble damages to a "lemon" buyer if the manufacturer fails to rebut the "lemon presumption" and the manufacturer does not maintain an arbitration program which is in substantial compliance with the lemon law certification standards.

Complaint Mediation. Existing law gives the NMVB the authority to "arbitrate amicably or resolve" any honest difference of opinion or viewpoint between any member of the public and any new motor vehicle dealer or manufacturer. This bill would specifically give the NMVB the authority to mediate any such difference of opinion, including, by inference, a lemon law complaint.

In addition, the latest amendments to this bill incorporate the substance of AB 1367 (Tanner), which also would amend the New Car Lemon Law (the Department of Consumer Affairs prepared an enrolled bill report recommending signature of AB 1367 but the bill has since been placed on the inactive file), and is double-joined with AB 276 (Eaves) which, like AB 2057, amends the Revenue and Taxation Code.

The bill also appropriates \$25,334 to the Department of Motor Vehicles to computerize its billing system for collecting motor vehicles fees from automobile manufacturers under this bill. The appropriation is from the unappropriated surplus of the New Motor Vehicle Board Account in the Motor Vehicle Account. The New Motor Vehicle Board is not opposed to the appropriation as it will be repaid in the next fiscal year from fee revenues that will be collected beginning July 1, 1988. The DMV had requested this appropriation.

Fiscal Impact

This bill calls for a new state program, to be administered by the Bureau of Automotive Repair, and fully funded by fees paid by manufacturers and distributors when they renew their licenses.

A fiscal analysis is attached. The analysis projects expenditures of \$281,000 for Fiscal Year 1988-89 and thereafter and revenue of \$300,000 based on a \$.13-.16 assessment per vehicle sold, leased or distributed in the state. Four PYs (a Program Representative II, two Program Representatives I and one Office Technician (Typing) are projected).

Argument

Interested Parties

Proponents: Author (sponsor)
Cal-PIRG
Chrysler Motors
Consumers Union

Neutral: Automobile Importers of America
Department of Motor Vehicles
Ford Motor Company
General Motors
New Motor Vehicle Board
State Board of Equalization

Opponents: None known

Proponents argue that AB 2057 addresses various problems in the new car lemon law, enacted five years ago. For instance, under the lemon law, owners of "lemons" are required to use a "qualified" arbitration process before they may resort to the courts. However, the arbitration programs are either operated or sponsored by the manufacturers and they have not provided a fair and impartial process for consumers. In some cases, these panels have failed to maintain "qualified" programs and abide by provisions of the lemon law and the Federal Trade Commission's arbitration regulations. The panels often rely on experts supplied by manufacturers. Finally, while the panels frequently require one more repair attempt, they do not follow up to ensure that the vehicle has been satisfactorily repaired.

In addition, costs such as sales taxes, license and registration fees, and towing and rental car costs are not reimbursed, and the amount the manufacturer may deduct for the use of the vehicle from the replacement value is not specified and often results in deductions which are calculated to the advantage of the manufacturer and the detriment of the consumer.

Proponents argue that AB 2057 would help ensure that consumers get a fair and impartial hearing in the arbitration process. In sum, proponents argue that the bill contains the needed provisions to assure consumers stuck with "lemons" receive the compensation, rights and remedies to which they are entitled.

There is no known opposition to the bill in its present form, although some attorneys who represent consumers in lemon law cases have expressed concern with amendments which were negotiated with the automobile manufacturers to remove their opposition (such as an amendment which allows manufacturers to maintain certification if they are in "substantial" compliance with certification standards). However, while the department is sympathetic to their concerns, we note that the bill would not

have passed without the amendments and do not agree that the amendments will reduce existing protections.

The Bureau of Automotive Repair supports the concept of the portion of the bill giving it certification and decertification powers but has expressed concern that its power to decertify does not constitute enough of a "hold" on a potentially recalcitrant manufacturer. It would seem, however, that a threat to institute decertification proceedings, if communicated honestly and with valid reasons, ought to be enough to induce the manufacturer to make any needed changes. In addition, the DMV would be empowered to suspend or revoke the license of a manufacturer who repeatedly fails to honor the decision of an arbitration panel.

The Department of Consumer Affairs has recommended (but not received) a "support" position on this bill.

Recommendation

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

At present, there is no way for a buyer to determine whether an automobile manufacturer's arbitration program complies with the present legal requirements contained in FTC Rule 703 and the California lemon law. By providing for certification by a state agency, buyers will be reasonably assured that an arbitration panel is operating in compliance with the law. In addition, the bill provides a number of necessary clarifying and fine-tuning amendments to the lemon law.

NOTE: The concurrence vote on AB 2057 (September 10, 1987) was 56-22. Twelve Republicans voted for concurrence and all other Republicans voted against it. The Republican concurrence analysis recommended a "no" vote. The department believes that the caucus analysis (copy attached) presents only one side of the issue, and we would like to respond to the concerns raised therein.

First of all, the analysis does not acknowledge the serious problems with the current arbitration programs. As stated earlier under Background, the department conducted an extensive investigation of lemon law arbitration programs and found a number of problems with the way they are run. We believe that these problems need attention; consumer complaints to this department and other consumer protection agencies indicate a high level of dissatisfaction and a lack of faith in the present programs.

The lemon law gives consumers and manufacturers an alternative to court action to resolve lemon law problems. This is designed as much for the benefit of the manufacturer as the consumer; however, the analysis implies that this is to the consumer's and not the manufacturer's advantage. However, the lemon law provides - at the insistence of the manufacturers in negotiations on the original lemon law - that if the manufacturer

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has an arbitration program (and virtually all of them do), a consumer must submit the complaint to the arbitration panel prior to attempting to assert his or her rights in court.

Currently, these programs are not "overseen" by anyone. Their decisions are often biased in favor of the manufacturer. The arbitrators may not be trained in the rights and remedies of the lemon law (for instance, the Better Business Bureau, which handles lemon law cases for General Motors and most of the importers, has stated publicly that they purposely do not train their arbitrators in the lemon law), and their decisions often do not confer the rights and remedies in the lemon law. This practically negates the effectiveness of the lemon law and leaves the consumer with the unhappy choice of pursuing legal action (which few want or can afford) or with no recourse (i.e., taking a loss on the car).

Second, the analysis states that new car buyers will have to pay for the certification. While this is true (the manufacturers actually have to pay the assessment but it will probably be passed on to the consumer by way of a higher sticker price), the bill limits the amount assessed to not more than \$1.00 per vehicle. We believe this is an insignificant cost to help ensure that consumers will have fair recourse if the car they purchase turns out to be a lemon. In addition, the department's fiscal analysis indicates that a much lower fee (\$.13 - \$.16 per vehicle) will be adequate to fund the program (and in fact may result in a surplus which would be carried over to the next year).

Third, we disagree that the bill will create a bureaucracy. The Bureau of Automotive Repair's functions are limited under the bill, and ongoing certification functions would not require a great increase in PYs (our fiscal analysis indicates that four PYs will be needed to run the certification program).

Fourth, as to the treble damages provision, that provision has been significantly amended and the manufacturers are no longer opposed to it. The analysis states that the "triple (sic) damage provision is onerous." However, the manufacturers would not sign off on an onerous provision. The provision is very limited now. Recent amendments reduced the standard of compliance with certification standards to "substantial" compliance and made an award of treble damages discretionary with the court. Only in the most abusive circumstances by a manufacturer is that provision likely to be enforced, and only by those few consumers who have the financial capability to bring an action.

Fifth, we also question why this bill would create more legal costs for manufacturers. In keeping with the intent of the original lemon law, this bill is designed to reinforce viable alternatives that consumers and manufacturers can use to resolve complaints outside the court system. If anything, this bill is designed to decrease the possibility of court action by a dissatisfied consumer because it would improve the arbitration process.

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The fact is that very few consumers have the capacity or desire to be involved in legal action with a manufacturer. Also, there are very few consumer attorneys who are willing or able to represent consumers in lemon law cases. Legal recourse is an undesirable option for a consumer because the costs, frustration, delays and legal action are much more of a burden on the consumer than on the manufacturer.

Last, the reason the automobile manufacturers do not oppose the bill now is that the bill has been moderated to such an extent that they now consider it to be a reasonable approach (and far less onerous than the kinds of legislation they are confronting in several other states). In addition, it would be viewed as unresponsive to serious and prevalent complaints about defective new cars if they continued to oppose the bill after all of the concessions have been made.

In summary, the evidence is that the programs are not working according to the requirements in the law and there is no viable method to ascertain whether the programs meet certain required standards. Having poor quality programs that do not meet the standards bears heavily on a consumer who may be making payments on a new car, meanwhile not being able to use the car and having no alternate mode of transportation other than a rental car. One of the purposes of certification is to assure consumers that these programs meet the standards. These are programs which the law requires consumers to use prior to asserting their rights by private legal action. We therefore feel that consumers are entitled to assurance that the programs themselves are being conducted in conformance with the law.



**DEPARTMENT OF CONSUMER AFFAIRS
FISCAL ANALYSIS OF LEGISLATION**

DUE DATE: September 21, 1987

DATE ASSIGNED: September 11, 1987

Prepared by: Mary Howard

(Bill #) AB 2057

Phone Number: 324-8041

(Author) Tanner

Approved by: *[Signature]*

Date Approved: 9/16/

FISCAL ANALYSIS AS INTRODUCED/AMENDED/ENROLLED September 4, 1987

(Short Title) BAR: Certification of Third Party Dispute Resolution Process

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

SUMMARY OF FISCAL IMPACT:

XX Minor fiscal impact. Can be absorbed within existing resources.
No change from prior fiscal analysis of 6/8/87. See attached.
 (Date Approved)
 No fiscal impact.
 (Other:)

	<u>*1/1/88 - 6/30/88</u>	<u>1988 - 89</u>	<u>ONGOING</u>
EXPENDITURES	\$ <u> </u>	\$ <u>281,000</u>	\$ <u>281,000</u>
REVENUE	\$ <u> </u>	\$ <u>300,000</u>	\$ <u>300,000</u>
NET IMPACT	\$ <u> </u>	\$ <u>19,000</u>	\$ <u>19,000</u>

PROGRAM CONTACT: Shirley Stiles PHONE NUMBER: 366-5118

PROGRAM CONCURS: YES NO (If no, note differences as appropriate.)

* Bureau anticipates minor costs that will be absorbed within.

The Bureau estimates expenditures of \$360,000 which includes estimated enforcement with increase revenue of \$460,000.

DEPARTMENT OF CONSUMER AFFAIRS
Fiscal Analysis of Legislation
AB 2057 (Tanner)
Amended 9/4/87
Page 2

This amendment provides that \$25,334 be appropriated to reimburse the New Motor Vehicle Board for its expenses in implementing Section 9889.75 of the Business and Professions Code. This amount, plus interest, shall be repaid from the Certification Account in the Automotive Repair Fund. Although this money will come from the Automotive Repair Fund, it is a one-time appropriation and is to be paid back during the 1988/89 Fiscal Year. Also, the Fund will be reimbursed money through the fees collected by DMV from manufacturers, etc., for the sale of motor vehicles. These fees are established by the Bureau of Automotive Repair, and it estimates that enough revenue will be collected during 1988/89 to cover the \$25,334.

Therefore, this amendment does not change the fiscal impact to the Bureau.



**DEPARTMENT OF CONSUMER AFFAIRS
FISCAL ANALYSIS OF LEGISLATION**

DUPLICATE DATE: May 27, 1987

DATE ASSIGNED: May 27, 1987

Prepared by: Ernesto Hidalgo

(Bill #) AB 2057

Phone Number: 324-4338

(Author) Tanner

Approved by: [Signature]

Date Approved: 6/8/87

FISCAL ANALYSIS AS ~~INTRODUCED/AMENDED/ENROLLED~~ May 13, 1987

(Short Title) BAR: Certification of Third Party Dispute Resolution Process

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

SUMMARY OF FISCAL IMPACT:

- Minor fiscal impact. Can be absorbed within existing resources.
- No change from prior fiscal analysis of . See attached.
(Date Approved)
- No fiscal impact.
(Other:) Expenditures are projected as of 1/1/88 when the bill becomes effective. Revenue, however, is not collected until 7/1/88. The Bureau will absorb the first six months of expenditures within its existing resources.

	<u>*1/1/88-6/30/88</u>	<u>19 88 - 89</u>	<u>ONGOING</u>
EXPENDITURES	\$ <u> </u>	\$ <u>281,000</u>	\$ <u>281,000</u>
REVENUE	\$ <u> </u>	\$ <u>300,000</u>	\$ <u> </u>
NET IMPACT	\$ <u> </u>	\$ <u>19,000</u>	\$ <u>14,000</u>

PROGRAM CONTACT: Ken Okimoto PHONE NUMBER: 324-4342

IF... YES NO (If no, note differences)

...minor costs that will be absorbed within...

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FISCAL IMPACT - EXPENDITURES

		89	90	ONGOING
(1) Program Rep. II	e 2,744-	\$	\$ 17,256	\$ 33,456
(2) Program Rep. I	e 2,540-3,000		60,960	60,960
(3) Office Tech (Typing)	e 1,569-1,040		18,828	18,828
Subtotal:			(113,244)	(113,244)
SALARY SAVINGS	e 58	\$	\$ -5,662	\$ -5,662
RETIREMENT	e 15.45%		17,496	17,496
OASDI	e 7.15%		8,097	8,097
HEALTH	e \$158/mo.		7,584	7,584
DENTAL	e \$ 29.07/mo.		1,395	1,395
VISION CARE	e \$ 6.00/mo.		288	288
WORKERS COMPENSATION	e .0113-.0062		1,184	1,184
Rounding			374	374
TOTAL PERSONAL SERVICES			144,000	144,000
OPERATING EXPENSES			137,000	137,000
GENERAL EXPENSE		\$	\$ 41,857	\$ 41,857
PRINTING			5,357	5,357
COMMUNICATIONS			3,000	3,000
POSTAGE			3,000	3,000
TRAVEL			53,543	53,543
FACILITIES OPERATION			9,171	9,171
INVESTIGATIONS				
INSPECTIONS				
ATTORNEY GENERAL				
OAR				
CONS. & PROF. SVCS.				
DATA PROCESSING				
EQUIPMENT				5,937
PRO-RATA	e 4,699 per P.Y.		19,761	19,761
TRAINING			525	525
ROUNDING			-105	-105
TOTAL OPERATING EXPENSES			137,000	137,000
TOTAL EXPENDITURES			281,000	281,000

FISCAL IMPACT - REVENUE

REVENUE WILL INCREASE BECAUSE of charges to automotive manufacturers for each vehicle sold. Revenue will be deposited into the Automotive Repair Fund Certification Account.

		1988/89	1989/90	ONGOING
Fee - per vehicle sold	e 5.13-5.16	e 300,000	\$ 300,000	\$ 300,000

DEPARTMENT OF CONSUMER AFFAIRS
Fiscal Analysis of Legislation
AB 2057 (Wanner), Amended May 13, 1988
Page #2

AB 2057 proposes to revise those provisions of the law related to warranties on new motor vehicles to require a manufacturer or its representative to replace the vehicles or make restitution if unable to conform the vehicle to the applicable express warranties after a reasonable number of attempts. It proposes that the Bureau of Automotive Repair (BAR) certify a third party dispute resolution process. This is similar, in most respects, to last years AB 3611 which enacted the Automobile Warranty Arbitration Program Certification Act (Lemon Law). A thorough review of AB 2057 reveals that the provisions are the same as those provided in AB 3611.

The analysis completed last year on AB 3611 (attached) projected that \$293,000 and 4 PYs would be needed on an ongoing basis and that the cost would be offset by an expected revenue of \$300,000 derived from an assessment of 13¢ per vehicle sold to be paid by the manufacturer which would be collected by DMV and disbursed to BAR. The Budget Office is projecting that the fiscal impact of AB 2057 will be similar to the costs projected in the analysis of AB 3611. However, revenue will not be collected until July 1, 1988 and the program is anticipated to commence January 1, 1988. The Bureau has projected that the costs during this six month span can be absorbed by existing resources.



SIGN MESSAGE

AB-2057 (Tanner)

I have approved AB 2057 which provides additional consumer protection regarding the purchase of new vehicles.

This bill proposes several changes to the "Lemon Law" passed by the Legislature in 1982 which provide a dispute resolution mechanism for consumers to seek recompense for faulty and irreparable automobiles. This measure appropriately addresses several inadequacies in the restitution to consumers for their documented claims under the law. However, it includes provisions which would add to the cost of consumers by requiring an agency of the State to certify a dispute resolution program which may expand its oversight beyond the bounds of its primary mandate.

I am, therefore, asking the Department of Consumer Affairs to monitor this process for one year and report back to me by July 1989 with a recommendation as to the continuance of the certification program.

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VETO MESSAGE

AB 2057 (Tanner)

To the Members of the California Assembly.

I am returning AB 2057 without my signature. This measure proposes to make a number of changes to the laws concerning defective automobiles. The bill would clarify the rights of buyers of "lemon" cars, expand the protections of our new car lemon law to include "demonstrators" and protect against the reselling of vehicles found to be fundamentally defective.

As worthwhile as these changes are, however, the bill also requires direct involvement by the state in the third-party dispute resolution programs offered by vehicle manufacturers. There appears to be little evidence to support the need for our intervention, especially to the degree mandated by this legislation. If problems develop with the operations of these non-governmental dispute resolution forums, existing laws are adequate to protect the interests of consumers.

Cordially,

George Deukmejian

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ASSEMBLY COMMITTEE ON GOVERNMENT EFFICIENCY & CONSUMER PROTECTION
REPUBLICAN ANALYSIS

AB 2057 (Tanner) -- LEMON LAW - PART II

Version: 9/4/87

Vice Chairman: Larry Stirling

Recommendation: Oppose

Vote: 2/3 (Appropriation)

Summary: Requires Bureau of Auto Repair to "certify" arbitration panels created by the original "Lemon Law." Requires charge on new cars to pay for process. Also allows treble damages for any consumer who sues and wins against any auto manufacturer who does not have a "certified" arbitration panel; or treble damages for any consumer who proves that his arbitration panel willfully did not follow procedures laid out in this bill. Fiscal effect: Tax of up to \$1 per new car sold in state. Estimated revenue: up to \$300,000 a year.

Supported by CA Public Interest Research Group (CALPIRG) (Sponsor); Attorney General, Chrysler. Opposed by None on File (Auto Importers of America, FORD, GM are Neutral.) Governor's position: None on file.

Comments: The author claims the present voluntary "lemon law" process is not working. Her answer is to make it better by turning it over to the government -- that paragon of efficiency and consumer protection.

Today, if you have a "lemon," you can go to the manufacturer, who then convenes an arbitration panel. If the panel rules against you, you can still go to court. If the panel rules in your favor, the car company cannot appeal.

But the author is concerned that there is something inherently unfair about the manufacturer paying for the arbitration panel so she wants the government to "certify" that they are fair. (General Motors and virtually all the importers subcontract with the Better Business Bureau for arbitration.)

This bill will put the state in the business of "certifying" the procedures -- and new car buyers get to pay for this bureaucracy. The result could be the same problems we have with our legal system and our regulatory agencies -- endless litigation, lots of government employees and huge backlogs. Ironically this legislation comes at a time when the courts and the regulatory agencies are turning to voluntary arbitration to alleviate those problems.

In addition to creating a new bureaucracy, this bill also allows unsatisfied customers -- in certain circumstances -- to sue and collect triple damages (and attorney's fees). This is the section the auto companies originally objected to. But in the Senate, the author limited the awarding of triple damages, thus removing opposition from the auto companies. Nevertheless, the triple damage provision is onerous.

Auto company lobbyists admit that this law will cost the auto companies more money in legal and administrative expenses -- a cost that will be passed onto the consumer

*No votes
opposed to
changes*

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But they are neutral because they think opposing this bill
would be bad P.R.

Assembly Republican Floor Vote -- 6/22/87

(54-20) Ayes: Bradley, Felando, Frizzelle, Grisham,
Hansen, Kelley, Leonard, Leslie, Statham,
Stirling

Noes: (20) All Other Republicans

Senate Republican Floor Vote -- 9/8/87

(39-0) Ayes: All Republicans

Consultant: John Caldwell

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dispute resolution processes pursuant to regulations adopted by the New Motor Vehicle Board, as specified. The bill would prohibit the sale or lease of a motor vehicle transferred by a buyer or a lesser to a manufacturer for a nonconformity, except as specified.

The bill would, on July 1, 1988, create the Certification Account within the Automotive Repair Fund, to be funded by fees imposed on manufacturers and distributors and collected by the New Motor Vehicle Board, to be expended upon appropriation by the Legislature to pay the expenses of the bureau under the bill.

Existing law authorizes the award of court costs and attorney's fees to consumer who prevail in such actions, and would also require the award of civil penalties, including treble damages, against certain manufacturers. Existing law provides for the disposition of moneys in the Retail Sales Tax Fund.

This bill provides that \$25,334 be appropriated from deposited funds, as specified, in the Motor Vehicle Account in the State Transportation Fund to the New Motor Vehicle Board for the purpose of reimbursing the Department of Motor Vehicles.

This amount will be repaid, plus interest, from the certification account in the Automotive Repair Fund.

The purpose of this bill is to improve protections for vehicle purchasers under the existing lemon law.

Existing law provides that a manufacturer who is unable to service or repair consumer goods, including motor vehicles, so that they conform to the applicable warranties after a reasonable number of attempts, must either replace those goods or reimburse the buyer. In 1982, the law was amended by AB 1787 (Tanner), commonly referred to as the lemon law. Specifically, it:

- Defines "reasonable number of attempts" for new motor vehicles as either four or more repair attempts on the same major defect, or, more than 30 days out of service for service/repair of one or more major defects, within the first year or 12,000 miles of use.
- Requires a buyer to notify the manufacturer directly of a continuing defect and to use a dispute resolution program meeting specified minimum standards prior to asserting the "lemon presumption" in a legal action to obtain a vehicle replacement or refund.
- Defines the "lemon presumption" as the "reasonable number of attempts" in the paragraph above.
- This bill would amend and clarify the lemon law. It would establish a structure for certifying third-party dispute mechanisms, requirements for certification and provide for treble damages and attorney's fees to consumers who obtain a judgement against a manufacturer who does not have a certified lemon law arbitration program.

CONTINUED

LEGISLATIVE INTENT SERVICE (800) 666-1917

This bill would:

- a) Require the Bureau of Automotive Repair (BAR) to: certify the arbitration programs for resolution of vehicle warranty disputes as requested; annually recertify those programs or decertify as inspection warrants; notify the Department of Motor Vehicles (DMV) of the failure of a manufacturer, distributor, or their branches to comply with arbitration decisions; investigate consumer complaints regarding qualified programs; and, submit a biennial report to the Legislature evaluating the effectiveness of the program.
- b) Authorize BAR to charge fees to be collected by the New Motor Vehicle Board (NMVB) in the Department of Motor Vehicles (DMV), beginning July 1, 1988, from specified NMVB licensees, not to exceed \$1 (one dollar) for each new motor vehicle sold, leased, or distributed in California. The fees would be deposited into the Certification Account of the Automotive Repair Fund.
- c) Require motor vehicle manufacturers to replace defective vehicles or make restitution if the manufacturer were unable to service or repair the vehicles after a reasonable number of buyer requests. The buyer, however, would be free to take restitution in place of a replacement vehicle.
- d) Specify what would be included in the replacement and refund option.
 - In case of replacement, the new motor vehicle would be accompanied by all express and implied warranties. The manufacturer would pay for, or to, the buyer the amount of any sales or use tax, license and registration fees, and other official fees which the buyer would be obligated to pay in connection with the replacement, plus any incidental damages the buyer would be entitled to including reasonable repair, towing, and rental car costs.
 - In case of restitution, the manufacturer would pay the actual price paid including any charges for transportation and manufacturer-installed options, sales tax, license fees, and registration fees plus incidental damages. The amount directly attributable to use by the buyer would be determined as prescribed and could be subtracted from the total owed to the buyer.
- e) Clarify that the vehicle buyer could assert the "lemon presumption" in any civil action, small claims court action or other formal or informal proceeding.
- f) Set forth a qualified third party dispute resolution process and require compliance with the minimum requirements of the Federal Trade Commission (FTC) for informal dispute settlement procedures as defined on January 1, 1987.
- g) Amend the definition of a "new motor vehicle" which is covered by the lemon law to include dealer-owned vehicles and demonstrator vehicles.
- h) Prevent a vehicle repurchased by a manufacturer under the lemon law from being resold as a used car unless the nature of the car's problems were disclosed, the problems were corrected, and the manufacturer warranted that the vehicle is free of those problems for one year.

CONTINUED

- i) Require the Board of Equalization to reimburse the manufacturer in an amount equal to the sales tax paid for vehicles for which the manufacturer provided the specified refund to the buyer.
- j) Provide for awards of treble damages and reasonable attorney's fees and costs if the buyer were awarded a judgement and the manufacturer did not maintain a qualified third party dispute resolution process as established by this chapter, with specified exceptions.

The author worked with the Ford Motor Co., General Motors, and Honda, as well as Automobile Importers of America, to amend this bill to remove their opposition. These companies are now neutral.

Prior Legislation

AB 1787 (Tanner), Chapter 388, Statutes of 1982, passed the Senate 28-4.

AYES (28)—Senators Ayala, Beverly, Boatwright, Campbell, Carpenter, Davis, Dills, Ellis, Foran, Greene, Holmdahl, Johnson, Keene, Marks, Mello, Montoya, Nielsen, O'Keefe, Petris, Presley, Rains, Robbins, Roberti, Russell, Sieroty, Stiern, Vuich, and Watson.
NOES (4)—Senators Richardson, Schmitz, Seymour, and Speraw.

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

SUPPORT: (Verified 9/4/87)

Attorney General
Chrysler Corp.
Motor Voters
California Public Interest Research Group
Consumers Union

ARGUMENTS IN SUPPORT: The purpose of this bill, according to the author, is to strengthen the existing lemon law, to eliminate inequities that have occurred from that law's implementation and to ensure that owners of seriously defective new cars can obtain a fair, impartial and speedy hearing on their complaints.

The author and proponents state that since the effective date of the lemon law over four years ago, there have been numerous complaints from new car buyers concerning its implementation. While these complaints reflect continued dissatisfaction with the manufacturer's own resolution of disputes regarding defective new vehicles, they have also alleged that the dispute resolution programs financed by the manufacturers are not operated impartially. Consumers have complained of: long delays in obtaining a hearing (beyond the prescribed 40-60 day time limit); unequal access to the arbitration process; and unreasonable decisions that do not appear to exhibit knowledge of the lemon law's provisions or provide an adequate amount of reimbursement even when a refund decision is ordered.

CONTINU^{ED}

ASSEMBLY FLOOR VOTE:

Assembly Bill No. 2057 passed by the following vote:

AYES—84

Agnes	Eastin	Hughes	Roos
Arcis	Eaves	Isenberg	Roybal-Allard
Bene	Elder	Johnston	Sher
Bates	Farr	Katz	Spier
Bradley	Felando	Kelley	Statham
Bronzan	Floyd	Killea	Stading
Calderson	Franco	Kline	Tanzer
Campbell	Grisham	Leslie	Tucker
Chacon	Hannigan	Margolin	Vasconcellos
Clute	Hansen	Moore	Waters, Maxine
Condit	Harris	O'Connell	Waters, Norman
Connelly	Hauser	Peace	Mr. Speaker
Cortese	Hayden	Polanco	
Costa			

NOES—28

Allen	Ferguson	Jones	Mountjoy
Bader	Frazer	Lancaster	Nolan
Baker	Harvey	Lewis	Quackenbush
Brown, Dennis	Hill	Longshore	Wright
Chandler	Johnson	McClintock	Wyman

Bill ordered transmitted to the Senate.

RJG:lm 9/4/87 Senate Floor Analyses

STATE BOARD OF EQUALIZATION - LEGISLATIVE OFFICE

BILL ANALYSIS ACTION



Date: September 10, 1987

Bill No: Assembly Bill 2057 Date Amended: 9/4/87
Author: Tanner Tax: Sales and Use
Position: Neutral Related Bills: AB2050/SB71

- We have no interest in the bill in its present form and will not prepare an analysis.
- We are following the bill but have no comment on its present form.
- The current amendments do not affect our previous analysis.
- See Comments

COMMENTS:

The September 4, 1987 amendment incorporates certain provisions of Assembly Bill 276 in order to prevent this bill from chaptering out the amendments made by Assembly Bill 276 in the event that it is enacted prior to Assembly Bill 2057.

Please direct further inquiries to:  Margaret Shedd Boatwright
(322-3276) 

0321F



DEPARTMENT
Finance

BILL NUMBER
AB 2057

AUTHOR
Tanner

AMENDMENT DATE
September 4, 1987

SUBJECT

AB 2057 requires the Bureau of Automotive Repair (BAR) to certify third party arbitration processes that require manufacturers to replace or provide restitution for defective vehicles. The New Motor Vehicle Board (NMVB) is required to administer the collection of fees to fund costs incurred by BAR from the certification activity. Fees would be deposited in the Certification Account of the Automotive Repair Fund out of which program costs would be funded. The bill is double joined with AB 276.

SUMMARY OF REASON FOR SIGNATURE

This bill improves remedies available to dissatisfied new car buyers under current law at nominal increases in costs to the State.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV SO	(Fiscal Impact by Fiscal Year)						Code Fund
		(Dollars in Thousands)						
		FC	1987-88	FC	1988-89	FC	1989-90	
0860/BOE	SO	S	\$0.5	S	\$1	S	\$1	001/GF
1149/Retail Sales and Use Taxes	RV	U	-73	U	-145	U	-145	001/GF
1150/BAR	SO	C	158	C	293	C	293	499/Cert. Acct.
1200/Mis. Fees	RV	U	150	U	300	U	300	499/Cert. Acct.
2740/NMVB	SO	A	25		--		--	044/MVA/STF
5300/DMV	RV		--	U	26		--	044/MVA/STF
1150/BAR	RV		--	U	-26		--	499/Cert. Acct.

Impact on State Appropriations Limit--Yes

ANALYSIS

A. Specific Findings

Under current law, the New Motor Vehicle Board (NMVB) in the Department of Motor Vehicles (DMV) is required to, among other things, hear and consider appeals by a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, from a decision arising from the department. Current law authorizes the NMVB to require those persons to pay a fee to DMV for the issuance or renewal of a license to do business.

(Continued)

RECOMMENDATION:

Sign the bill.

Department Director Date

Original Signed By:
Richard Ray

SEP 19 1987

Principal Analyst Date

(223) R. Baker

RNBaker 9/16/87

Program Budget Manager Date

Wallis L. Clark

MH Wallis Clark 9/17/87

Date

Governor's Office

Position noted

Position approved

Position disapproved

by: date:

CJ:BW1/0064A/1045C

ENROLLED BILL REPORT

Form DF-44 (Rev 03/87)

LEGISLATIVE INTENT SERVICE (800) 666-1917



AUTHOR	AMENDMENT DATE	BILL NUMBER
Tanner	September 4, 1987	AB 2057

ANALYSIS

A. Specific Findings (Continued)

AB 2057 requires every manufacturer of new motor vehicles, beginning July 1, 1988, to report sales or leases annually to the NMVB on forms prescribed by the NMVB. The bill requires the NMVB to administer the collection of fees to fund a new arbitration certification program and creates the Certification Account within the Automotive Repair Fund for deposit of those fees. The bill requires each applicant for a license to pay a fee determined by BAR, but not to exceed \$1 for each motor vehicle sold or leased.

Current law provides for an arbitration process for disputes between manufacturers and consumers of new cars purported to have manufacturing defects. Under current law the BAR in the Department of Consumer Affairs (DCA) is required to enforce and administer the Automotive Repair Act which regulates the automotive repair industry.

AB 2057 requires BAR to certify third party arbitration programs offered by auto manufacturers or other entities pursuant to current "lemon law". The lemon law provides a process for the resolution of disputes between the owner or leasee of a new motor vehicle and the manufacturer or distributor.

AB 2057 requires BAR to certify automobile warranty arbitration programs that substantially comply with criteria adopted by the bureau or decertify those programs which are not in substantial compliance, in accordance with specified regulations. The bill would require the bureau to monitor and inspect the programs on a regular basis to assure continued compliance.

Under current law, a manufacturer who is unable to service or repair goods, including motor vehicles, to conform to applicable express warranties after a reasonable number of attempts, as specified, is required to either replace the vehicle or reimburse the buyer.

AB 2057 provides that the buyer may elect restitution in lieu of replacement. The bill would require that when a vehicle is replaced or restitution is made by the manufacturer, the buyer may be required to reimburse the manufacturer for, or the manufacturer may reduce the amount of restitution by, an amount directly attributable to the use of the vehicle by the buyer.

(Continued)

CJ:BW2/0064A/1045C



AUTHOR

AMENDMENT DATE

BILL NUMBER

Tanner

September 4, 1987

AB 2057

ANALYSIS

A. Specific Findings (Continued)

There are a number of bills related to this issue including the following:

- o AB 3611 (1986) contained language similar to this bill, including the requirements for reporting vehicles sold and collection of a fee in conjunction with issuance of renewal of the occupational license by DMV to fund a certification program.
- o AB 2050 is a current bill that would revise provisions relating to the manufacturer's replacement of, or restitution for, a vehicle including a requirement for the manufacturer to pay sales tax, license and registration fees on the replacement, or an equivalent amount in restitution. It would also provide for reimbursement from the State of the sales tax involved.
- o SB 71 is a current bill that would require a manufacturer to pay registration fees and sales tax on a replacement vehicle or to add an equivalent amount in restitution. It would also require the State to reimburse manufacturers for such sales or use tax.
- o SB 228 is a current bill that would extend warranty or service contracts on repairs, repaired parts, affected related parts or components which were repaired under the terms of a warranty or service contract.

B. Fiscal Analysis

According to DMV, the volume of vehicles replaced by manufacturers cannot be determined since manufacturers maintain this information in confidence. The DMV has attempted to estimate the fiscal impact of this bill based on the number of serious complaints received by DCA and MMVB. The DMV estimated approximately 242 vehicles will be replaced or restitution will be provided per year.

We have not been able to verify or disprove this estimate. We assume \$10,000 would be the average price per vehicle and a 6 percent sales tax will be paid.

Computation:

Manufacturer replacement or restitution	242
Sales tax per vehicle	x \$600
Potential Sales Tax Refund	<u>\$145,200</u>

On this basis, we estimate an annual \$145,000 revenue loss to the General Fund.

CJ:BW3/0064A/1045C

LEGISLATIVE INTENT SERVICE (800) 666-1917



AUTHOR

AMENDMENT DATE

BILL NUMBER

Tanner

September 4, 1987

AB 2057

ANALYSIS

B. Fiscal Analysis (Continued)

According to DMV, the NMVB would incur one-time initial costs of \$25,000 in 1987-88, for which the bill contains a \$25,000 appropriation from the Motor Vehicle Account, State Transportation Fund. This amount, plus interest at 10 percent per year for six months (\$1,250), is to be transferred from the Certification Account, a new account in the Automotive Repair Fund created by the bill, to the Motor Vehicle Account in 1988-99. Ongoing costs will be absorbed within existing resources.

According to the Board of Equalization, minor costs (less than \$1,000) would be incurred as a result of this bill. These costs can be absorbed within existing resources.

DCA and BAR staff estimate this bill's 1987-88 (half-year) costs at \$158,000 and 2 PYs, and annual costs thereafter at \$293,000 and 4 PYs. This provides for a program supervisor, one staff each in San Francisco and Los Angeles, and one clerical. Finance, however, has not had an opportunity to review specific workload information related to this proposed program. Therefore, we believe that any additional resources should be justified through the 1988-89 budgetary process.

Based on information provided by staff of DMV, DCA and BAR, we estimate that a fee of \$0.15 and \$0.13 per vehicle sold in 1987-88 and 1988-89, respectively, or \$300,000 annually will be required to fund the costs of this program.

CJ:BW4/0064A/1045C

LEGISLATIVE INTENT SERVICE (800) 666-1917



ANALYSIS OF ASSEMBLY BILL NO. 2057 (Tanner)
As Amended in Senate August 25, 1987
1987-88 Session

AB 2057 (Am. 8/25/87)

Fiscal Effect:

Cost: Up to \$158,000 in last half of 1987-88 increasing to \$293,000 annually thereafter to the Certification Account in the Automotive Repair Fund (created by this bill) to implement a dispute resolution certification program; beginning in 1988-89, costs would be fully offset by fees.

- Revenue:
1. Up to \$300,000 in fee revenues annually to the Certification Account beginning in 1988-89.
 2. Unknown revenue loss to the General Fund annually from sales tax reimbursements to vehicle manufacturers.

Analysis:

This bill requires the Bureau of Automotive Repair (BAR) to establish a program to certify third party dispute resolution processes for automobile warranty disputes. The certification program would become operative July 1, 1988 and would primarily involve vehicle manufacturers, distributors, and dealers. Moreover, the bill also would change current law pertaining to vehicle warranty procedures and restitution.



Specifically, the bill:

- Authorizes BAR to revoke or suspend any arbitration program if it does not meet specified standards and requires the bureau to (1) notify the Department of Motor Vehicles (DMV) of failures of manufacturers, distributors, or their branches to comply with arbitration decisions, and (2) provide the Legislature with a biennial report evaluating the effectiveness of the program.
- Authorizes BAR, effective July 1, 1988, to charge fees, up to \$1 per new motor vehicle sold, leased or distributed by manufacturers, distributors, or their branches to fund its program costs. These fees would be collected by the New Motor Vehicle Board (NMVB) in the Department of Motor Vehicles and deposited into the Certification Account created by this bill in the Automotive Repair Fund.
- Requires the State Board of Equalization (BOE) to reimburse the manufacturer of a new motor vehicle any sales tax returned to the buyer as part of restitution for a defective vehicle.

Fiscal Effect

We estimate that the BAR would incur program start-up costs of up to \$158,000 in 1987-88 (half-year) and increasing to \$293,000 annually thereafter. Beginning in 1988-89, program costs would be fully



offset by fees established by the bill. According to BAR, a 13 cent charge per vehicle would generate up to \$300,000 (13 cents times 2.3 million vehicles estimated to be sold in 1987). The bill, however, does not provide an appropriation to cover program start-up costs in the last half of 1987-88.

The NMVB would incur minor absorbable costs working with the DMV to collect the fees. Additionally, DMV would incur program start-up costs of \$25,000 in 1987-88, decreasing to \$7,000 annually thereafter. These costs could be absorbed by DMV.

The BOE would incur unknown, probably minor, absorbable costs to reimburse sales taxes to manufacturers in vehicle restitution settlements. Moreover, sales tax reimbursements would result in an unknown revenue loss to the General Fund.

83/s8



STATE BOARD OF EQUALIZATION - LEGISLATIVE OFFICE

BILL ANALYSIS ACTION

Date: August 27, 1987

Bill No: Assembly Bill 2057 Date Amended: 8/25/87

Author: Tanner Tax: Sales and Use

Position: Neutral Related Bills: AB2050/SB71

- We have no interest in the bill in its present form and will not prepare an analysis.
- We are following the bill but have no comment on its present form.
- The current amendments do not affect our previous analysis and we have no further comments.
- See Comments

COMMENTS:

Please direct further inquiries to:

HJ
gama
OSB
Margaret Shedd Boatwright
(322-3276) *OSB*

0321F



STATE BOARD OF EQUALIZATION - LEGISLATIVE OFFICE


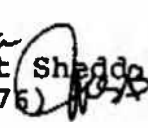
BILL ANALYSIS ACTION

Date: June 24, 1987

Bill No: Assembly Bill 2057 Date Amended: 6/11/87
Author: Tanner Tax: Sales and Use
Position: Neutral Related Bills: AB2050/SB71

- We have no interest in the bill in its present form and will not prepare an analysis.
- We are following the bill but have no comment on its present form.
- The current amendments do not affect our previous analysis and we have no further comments.
- See Comments

COMMENTS:

Please direct further inquiries to:  Margaret Shedd Boatwright
(322-3276) 

0321F



STATE BOARD OF EQUALIZATION - LEGISLATIVE OFFICE

BILL ANALYSIS ACTION

Date: May 26, 1987

Bill No: Assembly Bill 2057 Date Amended: 5/13/87
Author: Tanner Tax: Sales and Use
Position: Neutral Related Bills: AB2050/SB71

- We have no interest in the bill in its present form and will not prepare an analysis.
- We are following the bill but have no comment on its present form.
- The current amendments do not affect our previous analysis and we have no further comments.
- See Comments

COMMENTS:

Please direct further inquiries to: *gma* Margaret Shedd Boatwright
(322-3276) *Shedd*

0321F



25
AUG 20 1987
RM 87 022720
Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 2057
AS AMENDED IN SENATE AUGUST 17, 1987

JA
8/31
Cox

Amendment 1

On page 5, line 21, after "in" insert:

substantial

Amendment 2

On page 5, line 23, after "in" insert:

substantial

Amendment 3

On page 6, line 14, after "survey" insert:

by the bureau

Amendment 4

On page 7, strike out lines 27 to 29, inclusive,
and insert:

preceding calendar year, and shall

Amendment 5

On page 14, line 7, after "orders" insert:

, under the terms of this chapter,

Amendment 6

On page 14, strike out line 17 and insert:

(G) Takes into account, in rendering decisions,
all legal and equitable factors, including, but not
limited to, the written warranty, the

Amendment 7

On page 14, line 22, strike out "and this
chapter" and insert:

this chapter, and any other equitable considerations
appropriate in the circumstances

Amendment 8

On page 14, lines 34 and 35, strike out ", or an
employee, agent, or dealer for the manufacturer;"

LEGISLATIVE INTENT SERVICE (800) 666-1917



Amendment 9

On page 14, lines 37 and 38, strike out "in formal or informal discussions" and insert:

substantively in the merits of any dispute

Amendment 10

On page 14, line 39, strike out "equally" and insert:

also. Nothing in this paragraph prohibits any member of an arbitration board from deciding a dispute

Amendment 11

On page 14, strike out line 40, on page 15, strike out lines 1 to 12, inclusive, in line 13, strike out "(J)" and insert:

(I)

Amendment 12

On page 15, lines 36 and 37, strike out "as the result of a nonconformity" and insert:

pursuant to paragraph (2) of subdivision (d)

Amendment 13

On page 18, line 1, strike out the comma and insert:

and

Amendment 14

On page 18, line 2, after the second "and" insert:

may recover

- 0 -



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

DEPARTMENT Finance	AUTHOR Tanner	BILL NUMBER AB 2057
SPONSORED BY	RELATED BILLS AB 3611 (1986)	AMENDMENT DATE August 25, 1987

BILL SUMMARY

AB 2057 requires the Bureau of Automotive Repair (BAR) to certify third party arbitration processes that require manufacturers to replace or provide restitution for manufactured defective vehicles. The New Motor Vehicle Board (NMVB) is required to administer the collection of fees to fund costs incurred by BAR from the certification activity. Fees would be deposited in the Certification Account of the Automotive Repair Fund out of which program costs would be funded.

SUMMARY OF CHANGES

This version of the bill makes minor technical and wording changes from the previous analysis of the RN 87 016489 version which do not change our position.

SUMMARY OF COMMENTS

This bill improves remedies available to dissatisfied new car buyers under current law at nominal increases in costs to the State.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV SO	(Fiscal Impact by Fiscal Year)						Code Fund
		(Dollars in Thousands)						
		FC	1987-88	FC	1988-89	FC	1989-90	
0860/BOE	SO	S	\$0.5	S	\$1	S	\$1	001/GF
1149/Retail Sales and Use Taxes	RV	U	-73	U	-145	U	-145	001/GF
1150/BAR	SO	C	158	C	293	C	293	499/Cont. Acct.
1200/Mis. Fees	RV	U	150	U	300	U	300	499/Cont. Acct.
2740/DMV	SO	C	33	C	7	C	7	054/NMVB

Impact on State Appropriations Limit--Yes

POSITION:

Neutral

Department Director Date

Original Signed By:
Richard Ray

AUG 27 1987

Principal Analyst

Date

Program Budget Manager

Date

Governor's Office

Position noted

Position approved

Position disapproved

by: date:

CJ: BW1/0064A/1045C

BILL ANALYSIS

Form DF-43 (Rev 03/87 Buff)

LEGISLATIVE INTENT SERVICE (800) 666-1917

AUTHOR	AMENDMENT DATE	BILL NUMBER
Tanner	August 25, 1987	AB 2057

ANALYSIS

A. Specific Findings

Under current law, the New Motor Vehicle Board (NMVB) in the Department of Motor Vehicles (DMV) is required to, among other things, hear and consider appeals by a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, from a decision arising from the department. Current law authorizes the NMVB to require those persons to pay a fee to DMV for the issuance or renewal of a license to do business.

AB 2057 requires every manufacturer of new motor vehicles, beginning July 1, 1988, to report sales or leases annually to the NMVB on forms prescribed by the NMVB. The bill requires the NMVB to administer the collection of fees to fund the certification program and creates the Certification Account within the Automotive Repair Fund for deposit of those fees. The bill requires each applicant for a license to pay a fee determined by BAR, but not to exceed \$1 for each motor vehicle sold or leased.

Current law provides for an arbitration process for disputes between manufacturers and consumers of new cars purported to have manufacturing defects. Under current law the BAR in the Department of Consumer Affairs (DCA) is required to enforce and administer the Automotive Repair Act which regulates the automotive repair industry.

AB 2057 requires BAR to certify third party arbitration programs offered by auto manufacturers or other entities pursuant to current "lemon law". The lemon law provides a process for the resolution of disputes between the owner or leasee of a new motor vehicle and the manufacturer or distributor.

AB 2057 requires BAR to certify automobile warranty arbitration programs that substantially comply with criteria adopted by the bureau or decertify those programs which are not in substantial compliance, in accordance with specified regulations. The bill would require the bureau to monitor and inspect the programs on a regular basis to assure continued compliance.

Under current law, a manufacturer who is unable to service or repair goods, including motor vehicles, to conform to applicable express warranties after a reasonable number of attempts, as specified, is required to either replace the vehicle or reimburse the buyer.

AB 2057 provides that the buyer may elect restitution in lieu of replacement. The bill would require that when a vehicle is replaced or restitution is made by the manufacturer, the buyer may be required to reimburse the manufacturer, or the manufacturer may reduce the amount of restitution, by an amount directly attributable to the use of the vehicle by the buyer.

(Continued)



AUTHOR

AMENDMENT DATE

BILL NUMBER

Tanner

August 25, 1987

AB 2057

ANALYSIS

A. Specific Findings (Continued)

There are a number of bills related to this issue including the following:

- o AB 3611 (1986) contained language similar to this bill, including the requirements for reporting vehicles sold and collection of a fee in conjunction with issuance of renewal of the occupational license by DMV to fund a certification program.
- o AB 2050 is a current bill that would revise provisions relating to the manufacturer's replacement of, or restitution for, a vehicle including a requirement for the manufacturer to pay sales tax, license and registration fees on the replacement, or an equivalent amount in restitution. It would also provide for reimbursement from the State of the sales tax involved.
- o SB 71 is a current bill that would require a manufacturer to pay registration fees and sales tax on a replacement vehicle or to add an equivalent amount in restitution. It would also require the State to reimburse manufacturers for such sales or use tax.
- o SB 228 is a current bill that would extend warranty or service contracts on repairs, repaired parts, affected related parts or components which were repaired under the terms of a warranty or service contract.

B. Fiscal Analysis

According to DMV, the volume of vehicles replaced by manufacturers cannot be determined since manufacturers maintain this information in confidence. The DMV has attempted to estimate the fiscal impact of this bill based on the number of serious complaints received by DCA and NMVB. The DMV estimated approximately 242 vehicles will be replaced or restitution will be provided per year.

We have not been able to verify or disprove this estimate. We assume \$10,000 would be the average price per vehicle and a 6 percent sales tax will be paid.

Computation:

Manufacturer replacement or restitution	242
Sales tax per vehicle	x \$600
Potential Sales Tax Refund	<u>\$145,200</u>

On this basis, we estimate an annual \$145,000 revenue loss to the General Fund.



BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

Tanner

August 25, 1987

AB 2057

ANALYSIS

B. Fiscal Analysis (Continued)

According to DMV, the NMVB would incur one-time initial costs of \$33,000 in 1987-88, and ongoing costs of \$7,000 annually thereafter.

According to the Board of Equalization, minor costs (less than \$1,000) would be incurred as a result of this bill. These costs can be absorbed within existing resources.

DCA and BAR staff estimate this bill's 1987-88 (half-year) costs at \$158,000 and 2 PYs, and annual costs thereafter at \$293,000 and 4 PYs. This provides for a program supervisor, one staff each in San Francisco and Los Angeles, and one clerical. Finance, however, has not had an opportunity to review specific workload information related to this proposed program. Therefore, we believe that any additional resources should be justified through the 1988-89 budgetary process.

Based on information provided by staff of DMV, DCA and BAR, we estimate that a fee of \$0.15 and \$0.13 per vehicle sold in 1987-88 and 1988-89, respectively, or \$300,000 annually will be required to fund the costs of this program.

CJ:BW4/0064A/T045C

LEGISLATIVE INTENT SERVICE (800) 666-1917



MAY 19 1987
TBA

Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 2057
AS AMENDED IN ASSEMBLY MAY 13, 1987

AWM
6/2
COR

Amendment 1

On page 13, line 25, strike out "do" and insert:

be one that does

Amendment 2

On page 13, line 26, strike out "Comply" and

insert:

Complies

Amendment 3

On page 13, line 31, strike out "Render" and

insert:

Renderers

Amendment 4

On page 13, line 33, strike out "Prescribe" and

insert:

Prescribes

Amendment 5

On page 13, line 37, strike out "Provide" and

insert:

Provides

Amendment 6

On page 14, line 4, strike out "Require" and

insert:

Requires

Amendment 7

On page 14, line 10, strike out "Provide" and

insert:

Provides

Amendment 8

On page 14, line 15, strike out "Render" and

insert:

LEGISLATIVE INTENT SERVICE (800) 666-1917



Enders

Amendment 9

On page 14, line 31, strike out "Obtain and maintain" and insert:

Requires that no arbitrator deciding a dispute may be a party to the dispute, or an employee, agent, or dealer for the manufacturer; and that no other person, including an employee, agent, or dealer for the manufacturer, may be allowed to participate in formal or informal discussions unless the buyer is allowed to participate equally.

(I) Requires that in the case of an order for one further repair attempt, a hearing date shall be established no later than 30 days after the repair attempt has been made, to determine whether the manufacturer has corrected the nonconformity. The buyer and the manufacturer shall schedule an opportunity for the manufacturer to effect the ordered repair no later than 30 days after the order for the repair is served on the manufacturer and the buyer. If, at the hearing, it is determined that the manufacturer did not correct the nonconformity, the manufacturer shall be ordered to either replace the motor vehicle, if the buyer consents to this remedy, or to make restitution.

(J) Obtains and maintains

- 0 -



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

DEPARTMENT	AUTHOR	BILL NUMBER
Finance	Tanner	AB 2057
SPONSORED BY	RELATED BILLS	AMENDMENT DATE
	AB 3611 (1986)	RN 87 016489

BILL SUMMARY

AB 2057 requires the Bureau of Automotive Repair (BAR) to certify third party arbitration processes that require manufacturers to replace or provide restitution for manufactured defective vehicles. The New Motor Vehicle Board (NMVB) is required to administer the collection of fees to fund costs incurred by BAR from the certification activity. Fees would be deposited in the Certification Account of the Automotive Repair Fund out of which program costs would be funded.

SUMMARY OF CHANGES

This version of the bill makes the following minor changes from the previous analysis of May 13, 1987.

Strengthens the rules for arbitration and makes minor grammatical changes which do not change our position.

SUMMARY OF COMMENTS

This bill improves remedies available to dissatisfied new car buyers under current law at nominal increase in costs to the state.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV SO	(Fiscal Impact by Fiscal Year)			Code Fund
		(Dollars in Thousands)			
		FC 1986-87	FC 1987-88	FC 1988-89	
0860/Bd. of Equal 1149/Retail Sales and Use Taxes	SO	--	S \$0.5	S \$1	001/Gen.
1150/BAR	SO	--	U -\$73	U -\$145	001/Gen.
1200/Misc. Reg. Fees	RV	--	C 158	C 293	499/Cont. Acct.
2740/Motor Vehicles	SO	--	U 150	U 300	499/Cont. Acct.
		--	C 33	C 7	054/NMVB

Impact on State Appropriations Limit--Yes

POSITION: Neutral
 Department Director: _____ Date: _____
 Original Signed By: **Richard Ray** JUN 02 1987

Principal Analyst (223) R. Baker <i>R. Baker</i>	Date	Acting Prog. Budget Mgr. Date Wallis L. Clark <i>Wallis L. Clark 5/17</i>	Governor's Office Position noted Position approved Position disapproved by: _____ date: _____
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LEGISLATIVE INTENT SERVICE (800) 666-1917

BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DF-43

AUTHOR	AMENDMENT DATE	BILL NUMBER
Tanner	RN 87 016489	AB 2057

ANALYSIS

A. Specific Findings

Under current law, the New Motor Vehicle Board (NMVB) in the Department of Motor Vehicles (DMV) is required to, among other things, hear and consider appeals by a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, from a decision arising from the department. Current law authorizes the NMVB to require those persons to pay a fee to DMV for the issuance or renewal of a license to do business.

AB 2057 requires every manufacturer of new motor vehicles, beginning July 1, 1988, to report sales or leases annually to the NMVB on forms prescribed by the NMVB. The bill requires the NMVB to administer the collection of fees to fund the certification program and creates the Certification Account within the Automotive Repair Fund for deposit of those fees. The bill requires each applicant for a license to pay a fee determined by BAR, but not to exceed \$1 for each motor vehicle sold or leased.

Current law provides for an arbitration process for disputes between manufacturers and consumers of new cars purported to have manufacturing defects. Under current law the BAR in the Department of Consumer Affairs (DCA) is required to enforce and administer the Automotive Repair Act which regulates the automotive repair industry.

AB 2057 requires BAR to certify third party arbitration programs offered by auto manufacturers or other entities pursuant to current "lemon law". The lemon law provides a process for the resolution of disputes between the owner or leasee of a new motor vehicle and the manufacturer or distributor.

AB 2057 requires BAR to certify automobile warranty arbitration programs that substantially comply with criteria adopted by the bureau or decertify those programs which are not in substantial compliance, in accordance with specified regulations. The bill would require the bureau to monitor and inspect the programs on a regular basis to assure continued compliance.

Under current law, a manufacturer who is unable to service or repair goods, including motor vehicles, to conform to applicable express warranties after a reasonable number of attempts, as specified, is required to either replace the vehicle or reimburse the buyer.

AB 2057 provides that the buyer may elect restitution in lieu of replacement. The bill would require that when a vehicle is replaced or restitution is made by the manufacturer, the buyer may be required to reimburse the manufacturer, or the manufacturer may reduce the amount of restitution, by an amount directly attributable to the use of the vehicle by the buyer.

(Continued)

CJ:BW2/0064A/1045C



AUTHOR	AMENDMENT DATE	BILL NUMBER
Tanner	RN 87 016489	AB 2057

ANALYSIS

A. Specific Findings (Continued)

There are a number of bills related to this issue including the following:

- o AB 3611 (1986) contained language similar to this bill, including the requirements for reporting vehicles sold and collection of a fee in conjunction with issuance of renewal of the occupational license by DMV to fund a certification program.
- o AB 2050 is a current bill that would revise provisions relating to the manufacturer's replacement of, or restitution for, a vehicle including a requirement for the manufacturer to pay sales tax, license and registration fees on the replacement, or an equivalent amount in restitution. It would also provide for reimbursement from the State of the sales tax involved.
- o SB 71 is a current bill that would require a manufacturer to pay registration fees and sales tax on a replacement vehicle or to add an equivalent amount in restitution. It would also require the State to reimburse manufacturers for such sales or use tax.
- o SB 228 is a current bill that would extend warranty or service contracts on repairs, repaired parts, affected related parts or components which were repaired under the terms of a warranty or service contract.

B. Fiscal Analysis

According to DMV, the volume of vehicles replaced by manufacturers cannot be determined since manufacturers maintain this information in confidence. The DMV has attempted to estimate the fiscal impact of this bill based on the number of serious complaints received by DCA and NMVB. The DMV estimated approximately 242 vehicles will be replaced or restitution will be provided per year.

We have not been able to verify or disprove this estimate. We assume \$10,000 would be the average price per vehicle and a 6 percent sales tax will be paid.

Computation:

Manufacturer replacement or restitution	242
Sales tax per vehicle	x \$600
Potential Sales Tax Refund	<u>\$145,200</u>

On this basis, we estimate an annual \$145,000 revenue loss to the General Fund.



BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

Tanner

RN 87 016489

AB 2057

ANALYSIS

B. Fiscal Analysis (Continued)

According to DMV, the NMVB would incur one-time initial costs of \$33,000 in 1987-88, and ongoing costs of \$7,000 annually thereafter.

According to the Board of Equalization, minor costs (less than \$1,000) would be incurred as a result of this bill. These costs can be absorbed within existing resources.

DCA and BAR staff estimate this bill's 1987-88 (half-year) costs at \$158,000 and 2 PYs, and annual costs thereafter at \$293,000 and 4 PYs. This provides for a program supervisor, one staff each in San Francisco and Los Angeles, and one clerical. Finance, however, has not had an opportunity to review specific workload information related to this proposed program. Therefore, we believe that any additional resources should be justified through the 1988-89 budgetary process.

Based on information provided by staff of DMV, DCA and BAR, we estimate that a fee of \$0.15 and \$0.13 per vehicle sold in 1987-88 and 1988-89, respectively, or \$300,000 annually will be required to fund the costs of this program.

CJ:BW4/0064A/1045C



Legislative Analyst
May 30, 1987

ANALYSIS OF ASSEMBLY BILL NO. 2057 (Tanner)
As Amended in Assembly May 13, 1987 and
As Proposed to be Further Amended by LCR No. 016489
1987-88 Session

AB 2057 (Am. 5/13/87 & LCR No. 016489)

Fiscal Effect:

Cost: Up to \$158,000 in last half of 1987-88 increasing to \$293,000 annually thereafter to the Certification Account in the Automotive Repair Fund (created by this bill) for the Bureau of Automotive Repair to resolve automobile warranty disputes; costs after 1988-89 would be fully offset by fees.

- Revenue:
1. Up to \$300,000 in fee revenues annually to the Certification Account beginning in 1988-89.
 2. Unknown revenue loss to the General Fund annually from sales tax reimbursements to vehicle manufacturers.

Analysis:

This bill requires the Bureau of Automotive Repair (BAR) to establish a program for the resolution of automobile warranty disputes. The program would primarily involve vehicle manufacturers, distributors, and dealers. Moreover, the bill would also change current law pertaining to vehicle warranty procedures and restitution.



Specifically, the bill:

- Requires BAR to (1) certify the arbitration programs for resolution of vehicle warranty disputes, (2) authorizes the bureau to revoke or suspend any arbitration program if it does not meet specified standards, (3) notify the Department of Motor Vehicles (DMV) of failures of manufacturers, distributors, or their branches to comply with arbitration decisions, and (4) provide the Legislature with a biennial report evaluating the effectiveness of the program,
- Authorizes BAR, effective July 1, 1988, to charge fees, up to \$1 per new motor vehicle sold, leased or distributed by manufacturers, distributors, or their branches to fund its program costs. Such fees would be collected by the New Motor Vehicle Board (NMVB) in the Department of Motor Vehicles and deposited into the Certification Account created by this bill in the Automotive Repair Fund, and
- Requires the State Board of Equalization (BOE) to reimburse the manufacturer of a new motor vehicle any sales tax returned to the buyer as part of restitution for a defective vehicle.

Fiscal Effect

The BAR indicates it would incur program start-up costs up to \$158,000 in 1987-88 (half-year) and increasing to \$293,000 annually thereafter. Beginning



in 1988-89, program costs would be fully offset by fees established by the bill. According to BAR, a 13 cent charge per vehicle would generate up to \$300,000 (13 cents times 2.3 million vehicles estimated to be sold in 1987). The bill, however, does not provide an appropriation to cover program start-up costs in the last half of 1987-88.

The NMVB would incur minor absorbable costs working with the DMV to collect the fees. Additionally, DMV would incur program start-up costs of \$33,000 in 1987-88, decreasing to \$7,000 annually thereafter. These costs could be absorbed by DMV.

The BOE would incur unknown, probably minor, absorbable costs to reimburse sales taxes to manufacturers in vehicle restitution settlements. Moreover, sales tax reimbursements would result in an unknown revenue loss to the General Fund.

83/s8



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

DEPARTMENT Finance	AUTHOR Tanner	BILL NUMBER AB 2057
SPONSORED BY	RELATED BILLS	AMENDMENT DATE
	AB 3611 (1986)	May 13, 1987

BILL SUMMARY

AB 2057 requires the Bureau of Automotive Repair (BAR) to certify third party arbitration processes that require manufacturers to replace or provide restitution for manufactured defective vehicles. The New Motor Vehicle Board (NMVB) is required to administer the collection of fees to fund costs incurred by BAR from the certification activity. Fees would be deposited in the Certification Account of the Automotive Repair Fund out of which program costs would be funded.

SUMMARY OF COMMENTS

This bill improves remedies available to dissatisfied new car buyers under current law at nominal increase in costs to the state.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	LEVEL	(Fiscal Impact by Fiscal Year)			Code Fund
		(Dollars in Thousands)			
		FC 1986-87	FC 1987-88	FC 1988-89	
0860/Bd. of Equal	SO	--	S \$0.5	S \$1	001/Gen.
1149/Retail Sales and Use Taxes	CO	--	U -\$73	U -\$145	001/Gen.
1150/BAR	SO	--	C 158	C 293	499/Cont. Acct.
1200/Misc. Reg. Fees	RV	--	U 150	U 300	499/Cont. Acct.
2740/Motor Vehicles	SO	--	C 33	C 7	054/NMVB

Impact on State Appropriations Limit--Yes

ANALYSIS

A. Specific Findings

Under current law, the New Motor Vehicle Board (NMVB) in the Department of Motor Vehicles (DMV) is required to, among other things, hear and consider appeals by a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, from a decision arising from the department. Current law authorizes the NMVB to require those persons to pay a fee to DMV for the issuance or renewal of a license to do business.

(Continued)

POSITION: Neutral	Department Director Original Signed By: Richard Ray	Date MAY 29 1987
Principal Analyst (223) R. Baker	Date Acting Prog. Budget Mgr. Date Wallis L. Clark 5/29/87	Governor's Office Position noted Position approved Position disapproved by: date:
CJ:BW1/0064A/1045C		

BILL ANALYSIS

Form DF-43 (Rev 03/87 Buff)

LEGISLATIVE INTENT SERVICE (800) 666-1917



BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)		Form DF-43
AUTHOR	AMENDMENT DATE	BILL NUMBER
Tanner	May 13, 1987	AB 2057

ANALYSIS

A. Specific Findings (Continued)

AB 2057 requires every manufacturer of new motor vehicles, beginning July 1, 1988, to report sales or leases annually to the NMVB on forms prescribed by the NMVB. The bill requires the NMVB to administer the collection of fees to fund the certification program and creates the Certification Account within the Automotive Repair Fund for deposit of those fees. The bill requires each applicant for a license to pay a fee determined by BAR, but not to exceed \$1 for each motor vehicle sold or leased.

Current law provides for an arbitration process for disputes between manufacturers and consumers of new cars purported to have manufacturing defects. Under current law the BAR in the Department of Consumer Affairs (DCA) is required to enforce and administer the Automotive Repair Act which regulates the automotive repair industry.

AB 2057 requires BAR to certify third party arbitration programs offered by auto manufacturers or other entities pursuant to current "lemon law". The lemon law provides a process for the resolution of disputes between the owner or leasee of a new motor vehicle and the manufacturer or distributor.

AB 2057 requires BAR to certify automobile warranty arbitration programs that substantially comply with criteria adopted by the bureau or decertify those programs which are not in substantial compliance, in accordance with specified regulations. The bill would require the bureau to monitor and inspect the programs on a regular basis to assure continued compliance.

Under current law, a manufacturer who is unable to service or repair goods, including motor vehicles, to conform to applicable express warranties after a reasonable number of attempts, as specified, is required to either replace the vehicle or reimburse the buyer.

AB 2057 provides that the buyer may elect restitution in lieu of replacement. The bill would require that when a vehicle is replaced or restitution is made by the manufacturer, the buyer may be required to reimburse the manufacturer, or the manufacturer may reduce the amount of restitution, by an amount directly attributable to the use of the vehicle by the buyer.

(Continued)

CJ:BW2/0064A/1045C

LEGISLATIVE INTENT SERVICE (800) 666-1917



BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

Tanner

May 13, 1987

AB 2057

ANALYSIS

A. Specific Findings (Continued)

There are a number of bills related to this issue including the following:

- o AB 3611 (1986) contained language similar to this bill, including the requirements for reporting vehicles sold and collection of a fee in conjunction with issuance of renewal of the occupational license by DMV to fund a certification program.
- o AB 2050 is a current bill that would revise provisions relating to the manufacturer's replacement of, or restitution for, a vehicle including a requirement for the manufacturer to pay sales tax, license and registration fees on the replacement, or an equivalent amount in restitution. It would also provide for reimbursement from the State of the sales tax involved.
- o SB 71 is a current bill that would require a manufacturer to pay registration fees and sales tax on a replacement vehicle or to add an equivalent amount in restitution. It would also require the State to reimburse manufacturers for such sales or use tax.
- o SB 228 is a current bill that would extend warranty or service contracts on repairs, repaired parts, affected related parts or components which were repaired under the terms of a warranty or service contract.

B. Fiscal Analysis

According to DMV, the volume of vehicles replaced by manufacturers cannot be determined since manufacturers maintain this information in confidence. The DMV has attempted to estimate the fiscal impact of this bill based on the number of serious complaints received by DCA and NMVB. The DMV estimated approximately 242 vehicles will be replaced or restitution will be provided per year.

We have not been able to verify or disprove this estimate. We assume \$10,000 would be the average price per vehicle and a 6 percent sales tax will be paid.

Computation:

Manufacturer replacement or restitution	242
Sales tax per vehicle	x \$600
Potential Sales Tax Refund	\$145,200

On this basis, we estimate an annual \$145,000 revenue loss to the General Fund.



BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)		Form DF-43
AUTHOR	AMENDMENT DATE	BILL NUMBER
Tanner	May 13, 1987	AB 2057

ANALYSIS

B. Fiscal Analysis (Continued)

According to DMV, the MMVB would incur one-time initial costs of \$33,000 in 1987-88, and ongoing costs of \$7,000 annually thereafter.

According to the Board of Equalization, minor costs (less than \$1,000) would be incurred as a result of this bill. These costs can be absorbed within existing resources.

DCA and BAR staff estimate this bill's 1987-88 (half-year) costs at \$158,000 and 2 PYs, and annual costs thereafter at \$293,000 and 4 PYs. This provides for a program supervisor, one staff each in San Francisco and Los Angeles, and one clerical. Finance, however, has not had an opportunity to review specific workload information related to this proposed program. Therefore, we believe that any additional resources should be justified through the 1988-89 budgetary process.

Based on information provided by staff of DMV, DCA and BAR, we estimate that a fee of \$0.15 and \$0.13 per vehicle sold in 1987-88 and 1988-89, respectively, or \$300,000 annually will be required to fund the costs of this program.

CJ:BW4/0064A/1045C

LEGISLATIVE INTENT SERVICE (800) 666-1917



STATE BOARD OF EQUALIZATION - LEGISLATIVE OFFICE

BILL ANALYSIS ACTION

Date: May 11, 1987

Bill No: Assembly Bill 2057 Date Amended: 4/28/87

Author: Tanner Tax: Sales and Use

Position: Neutral Related Bills: AB2050/SB71

- We have no interest in the bill in its present form and will not prepare an analysis.
- We are following the bill but have no comment on its present form.
- The current amendments do not affect our previous analysis and we have no further comments.
- See Comments

COMMENTS:

Please direct further inquiries to:

AG ma-205 per
Margaret Shedd Boatwright
(322-3276) *MS*

0321F



Bill Number Assembly Bill 2057 Date March 6, 1987
Author Tanner Tax Sales and Use
Board Position _____ Related Bills AB2050/SB71

BILL SUMMARY:

This bill would add Section 1793.25 to the Civil Code to require the board to reimburse the manufacturer of a new motor vehicle for an amount equal to the sales tax which the manufacturer includes in making restitution to the buyer of the new motor vehicle upon receipt of satisfactory proof that the retailer of that motor vehicle has paid the sales tax to the state on the retail sale of that motor vehicle.

Section 1793.2 of the Civil Code would be amended to add paragraph (2) to subdivision (d) to provide that if the manufacturer or its representative in this state is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer is required, at the option of the buyer, either to replace the new motor vehicle or make restitution to the buyer. Any restitution made to the buyer can be reduced by that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

The bill would also add Chapter 20.5 to Division 3 of the Business and Professions Code to require the Bureau of Automotive Repair to establish a program for the certification of third party dispute resolution processes pursuant to regulations adopted by the New Motor Vehicle Board. It would also create the Certification Account within the Automotive Repair Fund, to be funded by fees imposed on manufacturers and distributors pursuant to the bill and collected by the New Motor Vehicle Board, to be expended upon appropriation by the Legislature to pay the expenses of the bureau under the bill.

ANALYSIS

In General

Existing law provides that the amount upon which tax is computed does not include the amount charged for merchandise returned by customers if the full sales price, including that portion designated as "sales tax" is refunded either in cash or credit and the customer, in order to obtain the refund or credit, is not required to purchase other property at a price greater than the amount charged for the property that is returned. Refund or credit of the entire amount is deemed to be given when the purchase price, less rehandling and restocking costs, is refunded or credited to the customer.



Existing law also provides that the amount upon which the tax is computed does not include the amount credited or refunded by the seller to the consumer on account of defects in merchandise sold to the consumer. If, however, defective merchandise is accepted as part payment for other merchandise and an additional allowance or credit is given on account of its defective condition, only the amount allowed or credited on account of defects may be excluded from taxable gross receipts. The amount allowed as the "trade in" value must be included in the measure of tax.

In addition, existing law provides that any overpayment of sales taxes must be refunded to the person who paid those taxes to the state.

BACKGROUND

A similar bill, AB 3611 of the 1985-86 session failed to pass the Legislature.

Effective January 1, 1983, the Legislature amended Section 1793.2 of the Civil Code to incorporate legislation commonly known as the California "Lemon Law". The law provides an arbitration process for disputes between manufacturers and consumers of new cars purported to have major manufacturing defects. If the mediator rules in favor of the consumer, the manufacturer is required by law to either replace the automobile or reimburse the purchase price less an amount attributable to use prior to the discovery of the defect.

This arbitration process raises sales and use tax questions as to the availability of the deduction for returned merchandise and/or defective merchandise. The dealer who sold the defective motor vehicle to the buyer may not be eligible for either of the deductions if the defective motor vehicle is returned to the manufacturer or some other dealer and the manufacturer or some other dealer replaces the motor vehicle or reimburses the buyer for the purchase price, assuming of course that the dealer and the manufacturer are separate legal entities.

COMMENTS

a. Enactment of this bill will result in insignificant administrative costs being incurred by the Board in notifying taxpayers and informing the board staff of the provisions of this bill.

Analysis Prepared by: *DH Jma* Darlene Hendrick 322-1637 April 3, 1987
 Contact: Margaret Shedd Boatwright 322-2376 0238K
MSB JD



STATE BOARD OF EQUALIZATION - LEGISLATIVE OFFICE

BILL ANALYSIS ACTION



Date: September 10, 1987

Bill No: Assembly Bill 2057 Date Amended: 9/4/87
Author: Tanner Tax: Sales and Use
Position: Neutral Related Bills: AB2050/SB71

- We have no interest in the bill in its present form and will not prepare an analysis.
- We are following the bill but have no comment on its present form.
- The current amendments do not affect our previous analysis.
- See Comments

COMMENTS:

The September 4, 1987 amendment incorporates certain provisions of Assembly Bill 276 in order to prevent this bill from chaptering out the amendments made by Assembly Bill 276 in the event that it is enacted prior to Assembly Bill 2057.

Please direct further inquiries to:  Margaret Shedd Boatwright
(322-3276) 

0321F

LIS - 21

BOE-1

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2157



BOARD OF EQUALIZATION
RECEIVED

State Board of Equalization
Department of Business Taxes

JAN 25 1988

OPERATIONS MEMO

LEGISLATIVE UNIT

No: 907
Date: January 8, 1988

SUBJECT: Reimbursement of Sales Tax Refunded Under the "Lemon Law"

GENERAL

Effective January 1, 1988, Assembly Bill 2057 (Chapter 1280, Statutes of 1987) amended Sections 1793.2, and 1794 and added Section 1793.25 to the Civil Code. These sections, commonly known as the California "Lemon Law", now require the Board to reimburse the manufacturer of a new motor vehicle for an amount equal to the sales tax which the manufacturer includes in making restitution to the buyer of a defective vehicle. Section 7102 of the Sales and Use Tax Law was amended to allow refunds pursuant to Section 1793.25.

BACKGROUND

The Lemon Law became effective January 1, 1983 and provides an arbitration process for disputes between manufacturers and consumers of new cars purported to have major manufacturing defects. If the mediator rules in favor of the consumer, the manufacturer is required by law either to replace the automobile or reimburse the consumer for the purchase price. The manufacturer may reduce the purchase price by an amount attributable to the value of the use made before the defect was discovered.

Prior to January 1, 1988, sales tax refunds paid by manufacturers as restitution to purchasers of defective vehicles were not reimbursable by the Board because refunds or replacements made under the arbitration process did not qualify as credits for returned merchandise. The law also required that the full selling price (less rehandling and restocking costs, but without any deduction for usage) be refunded in order to qualify for a returned merchandise credit.

PROVISIONS

For purposes of the Lemon Law, the term "manufacturer" means a new motor vehicle manufacturer, manufacturer branch, distributor, or distributor branch. "New motor vehicle" means a new passenger or commercial motor vehicle which is bought primarily for personal, family or household purposes. The term does not include a motorcycle, a motor home, or any vehicle with a gross weight over 10,000 pounds. Dealer owned vehicles, including demonstrators, are covered under the Lemon Law.

BOE-2

LEGISLATIVE INTENT SERVICE (800) 666-1917

Beginning January 1, 1988, the Board is authorized to reimburse manufacturers and distributors of new motor vehicles for the sales tax which they include in refunds to buyers pursuant to an arbitrator's decision. Satisfactory proof must be provided that the retailer of the motor vehicle (for which the manufacturer is making restitution) has reported and paid the sales tax on that motor vehicle.

When the buyer chooses to have a vehicle replaced, the new vehicle is considered a replacement under warranty and the tax liability is measured only by the amount the customer pays in excess of the credit received.

When the buyer chooses restitution, the manufacturer must pay an amount equal to the actual price paid or payable by the buyer, including any sales tax and any incidental damages to which the buyer is entitled. The manufacturer may deduct for usage of the defective vehicle and any amount charged for nonmanufacturer items installed by the dealer. These amounts must be deducted from the original vehicle selling price before calculating the sales tax refund.

The buyer is liable for use of the defective vehicle prior to the time the buyer first delivers the vehicle to the manufacturer, or to its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. The amount attributable to use by the buyer will be calculated by multiplying the total sales price of the motor vehicle by a fraction having as its denominator 120,000 and as its numerator the number of miles the vehicle was used by the buyer.

These newly-enacted Civil Code provisions in no way change the application of the sales and use tax to the gross receipts and the sales price from the sale, and the storage, use, or other consumption in this state, of tangible personal property pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

CLAIMS FOR REFUND

Manufacturers may file a claim for refund with the Board with respect to any amounts refunded to buyers after December 31, 1987. All claims should be forwarded to the Audit Review and Refund Unit for processing.

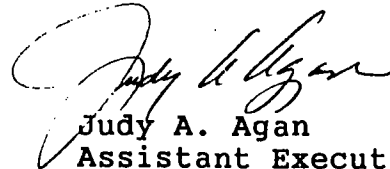


NOTICE MAILED

A special notice was mailed to all identified motor vehicle manufacturers and distributors explaining the provisions of Assembly Bill 2057 which affect the Sales and Use Tax Law (copy of notice attached). This law contains other provisions not related to the Sales and Use Tax Law. Inquiries related to other provisions of this law should be referred to the California State Bureau of Automotive Repair.

OBSOLESCENCE

This operations memo will become obsolete after its provisions are incorporated into the appropriate manuals, pamphlets, and the Business Taxes Law Guide.



Judy A. Agan
Assistant Executive Secretary
Business Taxes

Attachment
Distribution 1-D
0139W





STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

WILLIAM M. BENNETT
First District, Kentfield

CONWAY H. COLLIS
Second District, Los Angeles

ERNEST J. DRONENBURG, JR
Third District, San Diego

PAUL CARPENTER
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

DOUGLAS D. BELL
Executive Secretary

NOTICE TO MOTOR VEHICLE MANUFACTURERS AND DISTRIBUTORS

MANUFACTURERS MAY NOW RECEIVE
REIMBURSEMENT FOR CALIFORNIA SALES TAX
REFUNDED TO BUYERS OF DEFECTIVE VEHICLES

Assembly Bill 2057 (Chapter 1280, Statutes of 1987) amends Sections 1793.2, 1794, and adds Section 1793.25 to the Civil Code, effective January 1, 1988. These sections are commonly known as the California "Lemon Law".

The Lemon Law provides an arbitration process to resolve disputes between manufacturers and consumers of new cars which are purported to have major manufacturing defects. This law stipulates that if an arbitrator's judgment is in favor of the buyer, the manufacturer must replace the vehicle or make restitution. In the case of replacement, the new vehicle is considered a replacement under warranty and the tax liability is measured only by the amount the customer pays in excess of the credit received. In the case of restitution, the manufacturer must pay an amount equal to the actual price paid or payable by the buyer, including applicable sales tax. Previously, manufacturers were not entitled to reimbursement for the amount of California sales tax refunded to buyers.

Effective January 1, 1988, the State Board of Equalization is authorized to reimburse manufacturers and distributors of new motor vehicles for the sales tax which the manufacturer includes in making restitution to the buyer. For purposes of this law a "new motor vehicle" means a motor vehicle bought for personal, family, or household use; but does not include a motorcycle, motorhome or commercial vehicle over 10,000 pounds. Satisfactory proof must be provided that the retailer of the motor vehicle reported and paid the sales tax on the original sale of the motor vehicle.

When making restitution, the manufacturer may deduct an amount for the buyer's usage of the defective vehicle and any amount charged for nonmanufacturer items installed by the dealer. These amounts, as well as amounts exempt from tax in the original sale must be deducted from the original vehicle selling price before calculating the sales tax refund.

Claims for reimbursement of sales tax refunded to buyers under the Lemon Law should be directed to the California State Board of Equalization, Audit Review and Refund Unit, P.O. Box 942879, Sacramento, CA 94279-0001.

A list of Board of Equalization offices and their telephone numbers is included on the reverse side of this notice. If you have any questions about this newly-enacted legislation please contact them.

STATE BOARD OF EQUALIZATION

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12/87

BOE-5

2161

LEGISLATIVE INTENT SERVICE (800) 666-1917



CALIFORNIA STATE BOARD OF EQUALIZATION OFFICES

10-87

DISTRICT	MEMBER	OFFICE ADDRESS	AREA CODE	TELEPHONE NUMBER
First	William M. Bennett	1020 N Street, Sacramento 95814	916	445-4081
Second	Conway H. Coillis	901 Wilshire Blvd., Suite 210, Santa Monica 90401	213	451-5777
			From LA	213 852-502
Third	Ernest J. Dronenburg, Jr.	110 West C Street, Suite 1709, San Diego 92101	619	237-7844
Fourth	Paul Carpenter	4040 Paramount Blvd., Suite 103, Lakewood 90712	213	429-5422
EXECUTIVE SECRETARY				
	Douglas D. Bell	1020 N Street, Sacramento 95814	916	445-3956

SACRAMENTO HEADQUARTERS 1020 N Street, Sacramento 95814 916 445-6464

BUSINESS TAXES FIELD OFFICES

CALIFORNIA CITIES	OFFICE HOURS 8 5 UNLESS OTHERWISE LISTED BELOW	OFFICE ADDRESS	AREA CODE	TELEPHONE NUMBER
Arcadia		20 East Foothill Boulevard, 91006	818	350-6401
			From LA	213 681-6675
Arroyo Grande		1303 Grand Avenue, Suite 115, 93420	805	489-6293
Auburn	8-12 & 1-5 M thru F	550 High Street, Suite 3, 95603	916	885-8408
Bakersfield		525 18th Street, 93301	805	395-2880
Bishop	8-12 & 1-5 M thru F	407 West Line Street, 93514	619	872-3701
Chico	8-12 & 1-5 M thru F	8 Williamsburg Lane, 95926	916	895-5322
Covina		233 North Second Avenue, 91723	818	331-6401
			From LA	213 686-2990
Crescent City	8-12 & 1-5 M thru F	Suite 2, 1080 Mason Mall, 95531	707	464-2321
Culver City		3861 Sepulveda Blvd., 2nd Floor, 90230	213	313-7111
			From LA	213 879-0600
Downey		11229 Woodruff Avenue, 90241	213	803-3471
			From LA	213 773-3480
El Centro	8-12 & 1-5 M thru F	1699 West Main Street, Suite H, 92243	619	352-3431
Eureka	8-12 & 1-5 M thru F	1656 Union Street, 95501	707	445-6500
Fresno		2550 Mariposa Street, State Building, Rm. 2080, 93721	209	445-5285
Hayward		795 Fletcher Lane, 94544	415	881-3544
Hollywood		5110 Sunset Boulevard, 90027	213	663-8181
Lakewood		Suite 101, 4040 Paramount Blvd., 90712-4199	213	421-3295
			From LA	213 636-2466
Marysville		922 G Street, 95901	916	741-4301
Merced	8-12 & 1-5 M thru F	3191 M Street, Suite A, 95340	209	383-2831
Modesto		1020 15th Street, Suite E, 95354	209	576-6361
Nevada City	8-12 & 1-5 M thru F	301 Broad Street, 95959	916	265-4626
Oakland		1111 Jackson Street, 94607	415	464-0347
Ontario		320 West G Street, Suite 105, 91762	714	983-5969
Oroville	8-12 & 1-5 M thru F	2445 Oro Dam Boulevard, Suite 3A, 95966	916	538-2246
Palmdale	8-12 & 1-5 M thru F	37925 6th Street East, 93550	805	947-8911
Placerville	8-12 & 1-5 M thru F	344 Placerville Dr., Ste. 12, 95667	916	622-1101
Pleasant Hill		395 Civic Drive, Suite D, 94523	415	687-6962
Quincy	9-1 M thru F	546 Lawrence Street, 95971	916	283-1070
Rancho Mirage	8-12 & 1-5 M thru F	42-700 Bob Hope Dr., Suite 301, 92270	619	346-8096
Redding		391 Hemsted Drive, 96001	916	225-2725
Sacramento		1891 Alhambra Boulevard, 95816	916	739-4911
Salinas		21 West Laurel Drive, Suite 79, 93906	408	443-3008
San Bernardino		303 West Third Street, Suite 500, 92401	714	383-4701
San Diego		1350 Front Street, Room 5047, 92101	619	237-7731
San Francisco		350 McAllister Street, Room 2262, 94102	415	557-1877
San Jose		100 Paseo de San Antonio, Room 307, 95113	408	277-1231
San Marcos		365 So. Rancho Santa Fe Road, 92069	619	744-1330
San Mateo		177 Bovet Road, Suite 250, 94402	415	573-3578
San Rafael		7 Mt. Lassen Drive, Suite B136, 94903	415	472-1513
Santa Ana		28 Civic Center Plaza, Room 239, 92701	714	558-4051
Santa Barbara		411 East Canon Perdido Street, Room 11, 93101-1589	805	965-4535
Santa Cruz	8-12 & 1-5 M thru F	303 Water Street, Suite 6, 95062	408	458-4861
Santa Rosa		50 D Street, Room 215, 95404	707	576-2100
Sonora	8-12 & 1-5 M thru F	1194 N. Highway 49, 95370	209	532-6979
South Lake Tahoe	8-12 & 1-5 M thru F	2489 Lake Tahoe Boulevard, Suite 7, 95705	916	544-4816
Stockton		31 East Channel Street, Room 264, 95202	209	948-7720
Susanville	9-1 M thru F	63 North Roop Street, 96130	916	257-3429
Torrance		690 W. Knox Street, 90502-1307	213	516-4300
			From LA	213 770-4148
Ukiah	8-12 & 1-5 M thru F	620 Kings Court, Suite 110, 95482	707	463-4731
Vallejo		704 Tuolumne Street, 94950-4769	707	648-4065
Van Nuys		6150 Van Nuys Blvd., Room 205, 91401-3382	818	901-5293
Ventura		2590 East Main Street, Suite 101, 93003	805	654-4523
Visalia		111 South Johnson Street, Suite E, 93291	209	732-564
Woodland	8-12 & 1-5 M thru F	98 West Main Street, Suite 2, 95695	916	662-733
Yreka	8-12 & 1-5 M thru F	1217 South Main Street, 96097	916	842-7439
OUT-OF-STATE FIELD OFFICES				
Sacramento (Hqtrs.)		1820 14th Street, 95814	916	322-2010
Chicago, Illinois		150 North Wacker Drive, Room 1400, 60606	312	782-7253
New York, N.Y.		675 Third Avenue, Room 520, 10017	212	697-4680

BOE-6

LEGISLATIVE INTENT SERVICE (800) 666-1917

Bill Number Assembly Bill 2057 Date March 6, 1987
Author Tanner Tax Sales and Use
Board Position _____ Related Bills AB2050/SB71

BILL SUMMARY:

This bill would add Section 1793.25 to the Civil Code to require the board to reimburse the manufacturer of a new motor vehicle for an amount equal to the sales tax which the manufacturer includes in making restitution to the buyer of the new motor vehicle upon receipt of satisfactory proof that the retailer of that motor vehicle has paid the sales tax to the state on the retail sale of that motor vehicle.

Section 1793.2 of the Civil Code would be amended to add paragraph (2) to subdivision (d) to provide that if the manufacturer or its representative in this state is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer is required, at the option of the buyer, either to replace the new motor vehicle or make restitution to the buyer. Any restitution made to the buyer can be reduced by that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

The bill would also add Chapter 20.5 to Division 3 of the Business and Professions Code to require the Bureau of Automotive Repair to establish a program for the certification of third party dispute resolution processes pursuant to regulations adopted by the New Motor Vehicle Board. It would also create the Certification Account within the Automotive Repair Fund, to be funded by fees imposed on manufacturers and distributors pursuant to the bill and collected by the New Motor Vehicle Board, to be expended upon appropriation by the Legislature to pay the expenses of the bureau under the bill.

ANALYSIS

In General

Existing law provides that the amount upon which tax is computed does not include the amount charged for merchandise returned by customers if the full sales price, including that portion designated as "sales tax" is refunded either in cash or credit and the customer, in order to obtain the refund or credit, is not required to purchase other property at a price greater than the amount charged for the property that is returned. Refund or credit of the entire amount is deemed to be given when the purchase price, less rehandling and restocking costs, is refunded or credited to the customer.

BOE-7

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Existing law also provides that the amount upon which the tax is computed does not include the amount credited or refunded by the seller to the consumer on account of defects in merchandise sold to the consumer. If, however, defective merchandise is accepted as part payment for other merchandise and an additional allowance or credit is given on account of its defective condition, only the amount allowed or credited on account of defects may be excluded from taxable gross receipts. The amount allowed as the "trade in" value must be included in the measure of tax.

In addition, existing law provides that any overpayment of sales taxes must be refunded to the person who paid those taxes to the state.

BACKGROUND

A similar bill, AB 3611 of the 1985-86 session failed to pass the Legislature.

Effective January 1, 1983, the Legislature amended Section 1793.2 of the Civil Code to incorporate legislation commonly known as the California "Lemon Law". The law provides an arbitration process for disputes between manufacturers and consumers of new cars purported to have major manufacturing defects. If the mediator rules in favor of the consumer, the manufacturer is required by law to either replace the automobile or reimburse the purchase price less an amount attributable to use prior to the discovery of the defect.

This arbitration process raises sales and use tax questions as to the availability of the deduction for returned merchandise and/or defective merchandise. The dealer who sold the defective motor vehicle to the buyer may not be eligible for either of the deductions if the defective motor vehicle is returned to the manufacturer or some other dealer and the manufacturer or some other dealer replaces the motor vehicle or reimburses the buyer for the purchase price, assuming of course that the dealer and the manufacturer are separate legal entities.

COMMENTS

a. Enactment of this bill will result in insignificant administrative costs being incurred by the Board in notifying taxpayers and informing the board staff of the provisions of this bill.

BOE-8

Analysis Prepared by: *QH gma* Darlene Hendrick 322-1637
Contact: Margaret Shedd Boatwright 322-2376

April 3, 1987
0238K

MSB JD

LEGISLATIVE INTENT SERVICE (800) 666-1917



STATE BOARD OF EQUALIZATION - LEGISLATIVE OFFICE

BILL ANALYSIS ACTION

Date: September 10, 1987

Bill No: Assembly Bill 2057 Date Amended: 9/4/87

Author: Tanner Tax: Sales and Use

Position: Neutral Related Bills: AB2050/SB71

- We have no interest in the bill in its present form and will not prepare an analysis.
- We are following the bill but have no comment on its present form.
- The current amendments do not affect our previous analysis.
- See Comments

COMMENTS:

The September 4, 1987 amendment incorporates certain provisions of Assembly Bill 276 in order to prevent this bill from chaptering out the amendments made by Assembly Bill 276 in the event that it is enacted prior to Assembly Bill 2057.

Please direct further inquiries to: *MS* Margaret Shedd Boatwright
(322-3276) *MS*

0321F

BOE-9





1515 K STREET, SUITE 511
P.O. BOX 944255
SACRAMENTO 94244-2550
(916) 445-9555

September 17, 1987

Honorable George Deukmejian
Governor, State of California
State Capitol, First Floor
Sacramento, California 95814

Attn: Bob Williams

Dear Governor Deukmejian:

AB 2057 (Tanner) - Warranties: New Motor Vehicles

The Attorney General's Office urges you to sign AB 2057.

This bill addresses a number of problems which have developed under the "lemon law" regarding defective new cars.

Enacted in 1982, the lemon law basically provides that if a manufacturer is unable to fix a defective new motor vehicle, then the buyer is entitled to either a replacement or reimbursement. One of the major problems to date with the law is that the mechanisms established by many manufacturers for resolving customer disputes have not complied with the minimum statutory criteria for such procedures. Moreover, even where the statutory criteria have been met poor decisions are often rendered because arbitrators are not trained in warranty law or do not have authority to order independent, expert examination of the vehicle.

AB 2057 will make the third-party dispute resolution process a more effective procedure for resolving these cases by: (a) authorizing the Bureau of Automotive Repair to approve the particular approach selected by each manufacturer; (b) requiring arbitrators to be familiar with applicable warranty law; and (c) authorize arbitrators to obtain independent, expert inspection of the vehicle.

Additionally, the bill substantially strengthens other areas of the lemon law by: (a) permitting the buyer to request a refund of the purchase price instead of being required to accept a new vehicle from the manufacturer; (b) providing a specific formula for determining the buyer's liability for

Honorable George Deukmejian
September 17, 1987
Page 2

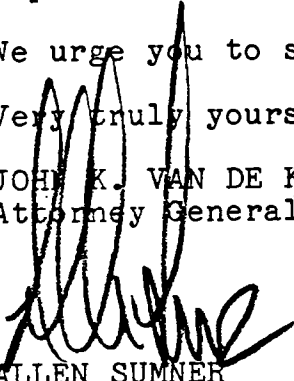
use of the vehicle prior to discovery of the defect; and
(c) providing potential treble damages, in the court's
discretion, in any action where the manufacturer breached
the warranty and failed to provide a qualified third-party
process for resolving the consumer's dispute. If there is
an arbitration program, there would be no penalties.

We have now had five years of experience with the lemon law.
AB 2057 address the major problems which have arisen to
date, giving consumers who purchase defective new cars
effective remedies against manufacturers who either will not
or can not comply with their warranties. The bill is
important to all of California's consumers.

We urge you to sign the measure.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General



ALLEN SUMNER
Senior Assistant Attorney General
(916) 324-5477

AS:er/ckm/lac



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WINIFRED SCHNEIDER
COMMITTEE SECRETARY

on

**ENVIRONMENTAL SAFETY AND
TOXIC MATERIALS**

STATE CAPITOL
(916) 445-0991

CHAIRWOMAN
SALLY TANNER

August 24, 1987

Honorable John Van de Kamp
Attorney General
1515 K Street, Suite 511
Sacramento, California 95814

Dear John:

I would like to express my appreciation for the immense amount of help that two members of your Los Angeles professional staff - Ms. Susan Giesberg and Mr. Ronald Reiter - are giving me on my AB 2057. The bill revamps the California "Lemon" law and gives purchasers of new automobiles specific rights of redress against auto manufacturers who sell them defective "lemons". It is in my view one of the more important consumer protection bills of this legislative session.

Needless to say, the bill has been controversial and was until recently strongly opposed by the auto manufacturers. Sue Giesberg and Ron Reiter have been invaluable in making suggestions, providing draft language, explaining the implications of the bill to the legislative committees and assisting in negotiations with both the supporters and opponents of the bill.

It is rare to find assistance on a bill that is as professional and competent as that which they have provided. Their assistance has helped me write a bill that is fair, tough and of significant help to the consumer. It has been a genuine pleasure to work with them.

Sincerely,



SALLY TANNER
Assemblywoman, 60th Assembly District

ST:amf

AG-3

LEGISLATIVE INTENT SERVICE (800) 666-1917



JOHN K. VAN DE KAMP
Attorney General

State of California
DEPARTMENT OF JUSTICE



3580 WILSHIRE BOULEVARD, ROOM 800
LOS ANGELES 90010
(213) 736-2304

BACKGROUND STATEMENT

AB 2057 (Tanner)
Warranties: New Motor Vehicles

Over the past two years, the Attorney General's Office has heard from hundreds of frustrated new car buyers who cannot get manufacturers to fix defects or replace or buy back "lemons."

Current law requires that a manufacturer honor its written warranties. If a manufacturer is unable to correct a defective new motor vehicle within a reasonable number of attempts, then the manufacturer must replace the vehicle or reimburse the buyer. A manufacturer may establish an arbitration procedure to resolve warranty disputes.

The Attorney General's Office has looked at each of the arbitration programs in California. In many cases, these programs are not fair and impartial. For example, employees of the manufacturer may be involved in the decision-making process. Arbitrators often are not instructed in California's warranty law and make decisions contrary to law. In addition, arbitrators have limited power to order an independent expert examination of a "lemon" vehicle and have to rely on the manufacturer's technical evaluation.

AB 2057 strengthens arbitration programs by incorporating into their framework safeguards to ensure a fair and impartial arbitration. The bill also permits the Bureau of Automotive Repair to certify that an arbitration program complies with statutory requirements.

Additionally, the bill allows a court in its discretion to impose a penalty on a manufacturer which fails to honor its warranty, fails to correct defects within a reasonable number of attempts, fails to replace or buy back a "lemon" vehicle, and requires a buyer to go to court to resolve the dispute. The penalty amount is limited to twice the amount of actual damages. But, no penalty can be awarded if the manufacturer maintains an arbitration program that substantially complies with statutory requirements.

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AG 4

-2-

California is not alone in trying to resolve this growing area of discontent with new motor vehicle warranty problems. Eight other states have already enacted far stronger "lemon" laws and have set up state-run arbitration programs. Four other states have statutes or pending legislation similar to AB 2057.

The Attorney General's Office urges your "aye" vote on AB 2057.

LEGISLATIVE INTENT SERVICE (800) 666-1917



A6-5

JOHN K. VAN DE KAMP
Attorney General

State of California
DEPARTMENT OF JUSTICE



1515 K STREET, SUITE 511
P.O. BOX 944255
SACRAMENTO 94244-2550
(916) 445-9555

July 13, 1987

Honorable Bill Lockyer
Chairman, Senate Judiciary
State Capitol, Room 2032
Sacramento, California 95814

Dear Senator Lockyer:

AB 2057 (Tanner) - Warranties: New Motor Vehicles

The Attorney General's Office urges you to support AB 2057, which will be heard by the Judiciary Committee on July 14.

This bill addresses a number of problems which have developed under the "lemon law" regarding defective new cars.

Enacted in 1982, the lemon law basically provides that if a manufacturer is unable to fix a defective new motor vehicle, then the buyer is entitled to either a replacement or reimbursement. One of the major problems to date with the law is that the mechanisms established by many manufacturers for resolving customer disputes have not complied with the minimum statutory criteria for such procedures. Moreover, even where the statutory criteria have been met poor decisions are often rendered because arbitrators are not trained in warranty law or do not have authority to order independent, expert examination of the vehicle.

AB 2057 will make the third-party dispute resolution process a more effective procedure for resolving these cases by: (a) authorizing the Bureau of Automotive Repair to approve the particular approach selected by each manufacturer; (b) requiring arbitrators to be familiar with applicable warranty law; and (c) authorize arbitrators to obtain independent, expert inspection of the vehicle.

Additionally, the bill substantially strengthens other areas of the lemon law by: (a) permitting the buyer to request a refund of the purchase price instead of being required to accept a new vehicle from the manufacturer; (b) providing a specific formula for determining the buyer's liability for use of the vehicle prior to discovery of the defect; and (c) providing treble damages in any action where the manufacturer breached the warranty and failed to provide a qualified third-party process for resolving the consumer's dispute.

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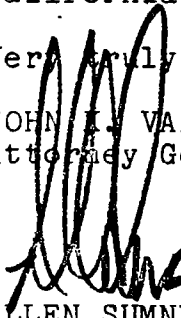
AG-6


2171

Honorable Bill Lockyer
Page 2

We have now had five years of experience with the lemon law. AB 2057 address the major problems which have arisen to date, giving consumers who purchase defective new cars effective remedies against manufacturers who either will not or can not comply with their warranties. The bill is important to all of California's consumers; we urge your support.

Very truly yours,


JOHN I. VAN DE KAMP
Attorney General


ALLEN SUMNER
Senior Assistant Attorney General
(916) 324-5477

AS:er/ckm

LEGISLATIVE INTENT SERVICE (800) 666-1917



AG-7

2172

DEPARTMENT OF JUSTICE
BILL ANALYSIS

DATE: July 9, 1987

BILL NO.: AB 2057

ANALYST: Ronald A. Reiter

AUTHOR: Tanner

BRANCH/SECTION: Consumer

DATE LAST AMENDED: 6-11-87

TELEPHONE: (213) 736-2159

I. CURRENT LAW

The Song-Beverly Consumer Warranty Act provides that, if the manufacturer is unable to conform goods to the standards of the manufacturer's express warranty within a reasonable number of service or repair attempts, the manufacturer must either replace the goods or reimburse the buyer for the purchase price less an amount attributable to the buyer's use of the product prior to the discovery of the nonconformity. Song-Beverly creates a presumption that a reasonable number of repair attempts of a motor vehicle have occurred if, within one year from delivery to the buyer or 12,000 miles, whichever occurs first, either the same problem has been subject to repair four or more times by the manufacturer or the vehicle is out of service for repair for a cumulative total of more than 30 days since delivery of the vehicle. A manufacturer is permitted, but not required, to establish a qualified third party dispute resolution process to arbitrate a buyer's claim that a vehicle does not conform to the manufacturer's express warranty. If the manufacturer establishes a qualified process, the buyer must submit his or her claim to the third party process to invoke the presumption regarding what is a reasonable number of repair attempts. The buyer may assert the presumption in court only if (a) a third party process does not exist, (b) the buyer is dissatisfied with the third party decision, or (c) the manufacturer neglects to promptly fulfill the terms of the third party's decision. These statutory provisions are popularly referred to as the "lemon law."

The lemon law establishes that a qualified third party dispute resolution process must (a) comply with minimum requirements established by the Federal Commission for informal dispute resolution procedures, (b) render decisions which are binding on the manufacturer if the buyer elects to accept the decision, and (c) prescribe a reasonable time not to exceed 30 days within which the manufacturer must fulfill the terms of the decision.

1.



II. CHANGE MADE BY BILL

This bill would authorize the Bureau of Automotive Repair to certify that the third party dispute resolution process complies with the minimum requirements established by Song-Beverly. The certification procedure would be funded from a \$1 fee for each new vehicle sold, leased, or distributed in this state.

The bill also expands and clarifies some of the provisions of the lemon law. For example, the bill would permit a buyer to elect reimbursement in lieu of replacement if a manufacturer is unable to conform a new vehicle to express warranty specifications. The bill establishes a formula for determining the buyer's obligation to the manufacturer for the use of a vehicle prior to discovery of the defect. The bill also provides for the reimbursement of sales tax, official fees, and incidental damages such as towing and rental car costs. The manufacturer would be able to recover the sales tax from the state.

In addition, modifications are made to the third party dispute resolution process. For example, arbitrators would receive copies of applicable warranty law and would be able to request an expert to provide a written report on the condition of a non-conforming motor vehicle at no cost to the buyer.

Significantly, the bill provides that a buyer may recover treble damages in a breach of warranty action against the manufacturer if the manufacturer fails to rebut the presumption that it did not repair the vehicle in a reasonable number of attempts and if the manufacturer either does not maintain a qualified third party process or its third party process willfully fails to comply with required procedures in the buyer's case.

III. ANALYSIS

The existing lemon law was supposed to provide new car buyers with an efficient and economical forum for the resolution of warranty disputes. The law, however, has not worked well.

Some third party resolution mechanisms established by manufacturers did not comply with minimum statutory criteria. Manufacturers, however, did not violate the law because they were not required to establish any third party dispute resolution processes; the third party procedure is entirely permissive. Even if statutory criteria were met, third party processes often have rendered decisions that were contrary to law because arbitrators are not trained in, and were not even provided copies of, applicable warranty



law. In addition, almost all cases involve technical disputes, and frequently the only expert testimony is provided by the manufacturer in its own behalf. Consumers are usually unable to afford any expert analysis and arbitrators usually have no power to order an independent expert examination of the vehicle.

Furthermore, apparently favorable results to a consumer often were costly and impractical. For example, if a third party process ruled that the manufacturer failed to correct defects, the manufacturer would not refund the purchase price but would attempt to replace the vehicle. The replacement vehicle would be a later model car, and the buyer would be required to pay the price increase between the new model and the originally purchased vehicle. In addition, the buyer would often be required to pay a substantial amount for the use of the non-conforming vehicle prior to the discovery of the defect. Consequently, a consumer might be unable to afford a successful arbitration result.

In recent years, some manufacturers have abandoned the use of third party dispute resolution processes. As a result, the availability of an efficient and economical alternative to court action in new vehicle warranty disputes has largely evaporated. Consequently, the intended salutary effects of the original lemon law have not occurred.

This bill provides some significant improvements to the third party resolution procedure and the substantive law determining the manufacturer's liability for its failure to meet its express warranties. If a buyer is successful in establishing that the manufacturer failed to conform a defective vehicle to express warranties within a reasonable number of attempts, the buyer can insist on a refund of the purchase price instead of a new vehicle. The bill more clearly specifies what must be done if the manufacturer replaces a vehicle and provides a description of items of cost which must be refunded to a buyer if a refund is ordered. In addition, the bill specifies a formula for determining the buyer's liability for vehicle use prior to the buyer's discovery of the nonconforming defect.

The bill, moreover, makes helpful procedural reforms. Arbitrators assigned to decide disputes must be provided with copies of, and instruction in, applicable warranty law. Also, arbitrators can request an inspection and written report on the condition of a nonconforming motor vehicle, at no cost to the buyer, by an automobile expert who is independent of the manufacturer. This report can be critically significant in many cases involving technical disputes. The certification process will remove proof



problems regarding whether a third party process meets statutory criteria.

One of the most significant aspects of the bill is the provision of an incentive to manufacturers to establish a voluntary qualified third party dispute resolution process. The bill provides for treble damages to a buyer who brings an action against a manufacturer which both breaches its warranty to the consumer and fails to provide a qualified third party process for the resolution of the consumer's dispute.

The Legislature could easily provide a treble damage remedy against manufacturers which sell defective vehicles, fail to fix them within a reasonable period of time, and fail to replace the vehicle or reimburse the purchaser for its purchase price. Given the importance of cars to our society and the substantial financial commitment Californians must make to purchase new cars, the failure of a manufacturer to honor its warranties within a reasonable number of repair attempts can easily be viewed as improper. Indeed, the conduct may be oppressive, especially considering the harm caused to new car purchasers from the inconvenience, aggravation, loss of time, possible loss of earnings, and physical hazard from possible safety defects.

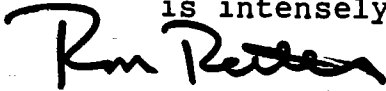
The bill, however, does not simply impose treble damages for the manufacturer's failure to meet its warranty obligation. The bill permits the manufacturer to escape the treble damage penalty for its failure to meet its warranty obligations by allowing the manufacturer to establish a qualified third party dispute resolution process. At the very least, this incentive has the laudable objectives of providing an efficient and economical forum for the new car buyer and diverting cases from congested court calendars to an alternative dispute resolution procedure.

The manufacturers contend that the treble damage remedy is unconstitutional because it forces the manufacturer to arbitrate disputes. However, the third party process is voluntary and a manufacturer which does not maintain a third party process is liable for treble damages if the buyer proves that the manufacturer breached its warranty notwithstanding a reasonable number of repair attempts to correct a nonconformity. Thus, the voluntary maintenance of a third party process is a way for manufacturers to escape treble damages for their breach of warranty. While the treble damage remedy will animate manufacturers to adopt a third party process, the remedy is not a penalty which would unconstitutionally coerce mandatory arbitration.



IV. RECOMMENDATION

A. The office should vigorously support this measure which is intensely opposed by motor vehicle manufacturers.



RONALD A. REITER
Deputy Attorney General

RAR:vh

cc: Andrea S. Ordin
Herschel T. Elkins



CALIFORNIA LEGISLATURE

**1987-88 REGULAR SESSION
1987-88 FIRST EXTRAORDINARY SESSION**

SUMMARY DIGEST

of

Statutes Enacted and Resolutions Adopted in 1987

and

1979-1987 Statutory Record

VOLUME ONE



DARRYL R. WHITE
Secretary of the Senate

Compiled by
BION M. GREGORY
Legislative Counsel

Ch. 1279 (AB 802) Killea. Transit: San Diego County.

(1) Under the Mills-Deddeh Transit Development Act, the San Diego Metropolitan Transit Development Board is created with specified duties and powers.

This bill would delete obsolete language and make a clarifying change in provisions relating to the board.

(2) Existing law assigns to the board responsibility for transportation planning and for the construction and operation of public transit systems and related transportation facilities and services in portions of San Diego County.

This bill would authorize the board to contract with the county and with cities in its area of jurisdiction to license or to regulate by ordinance any transportation services rendered within the unincorporated area of the county or within the limits of a contracting city, and would require the board to levy fees to recover the cost of licensing and regulating those services.

Ch. 1280 (AB 2057) Tanner. Warranties: new motor vehicles. 

(1) Existing law imposes various duties upon manufacturers making express warranties with respect to consumer goods, including the duty to replace the goods or reimburse the buyer, as specified, if the goods are not repaired to conform to those warranties after a reasonable number of attempts. Existing law also prohibits a buyer of such goods from asserting a presumption that a reasonable number of attempts have been made to conform a new motor vehicle, as specified, unless the buyer first resorts to a third party dispute resolution process, as defined, following notice that such a process is available.

This bill would revise the provisions relating to warranties on new motor vehicles to require the manufacturer or its representative to replace the vehicle or make restitution, as specified, if unable to conform the vehicle to the applicable express warranties after a reasonable number of attempts. The bill would, on July 1, 1988, revise the definitions of "motor vehicle," "new motor vehicle," and "qualified third-party dispute resolution process" and define the term "demonstrator" for these purposes, and require the Bureau of Automotive Repair to establish a program for the certification of third-party dispute resolution processes pursuant to regulations adopted by the New Motor Vehicle Board, as specified. The bill would prohibit the sale or lease of a motor vehicle transferred by a buyer or a lessee to a manufacturer for a nonconformity, as defined, except as specified. The bill would also make related changes.

The bill would, on July 1, 1988, create the Certification Account within the Automotive Repair Fund, to be funded by fees imposed on manufacturers and distributors pursuant to the bill and collected by the New Motor Vehicle Board, as specified, to be expended upon appropriation by the Legislature to pay the expenses of the bureau under the bill.

(2) Existing law authorizes the award of court costs and attorney's fees to a consumer who prevails in a warranty action.

This bill would require the award of court costs and attorney's fees to consumers who prevail in such actions, and would also authorize the award of civil penalties, as specified, against certain manufacturers. Existing law provides for the disposition of moneys in the Retail Sales Tax Fund.

This bill would provide for reimbursement from the Retail Sales Tax Fund to a manufacturer of a new motor vehicle for an amount equal to the sales tax involved when the manufacturer makes restitution to a buyer under the bill, thereby making an appropriation.

(3) The bill would appropriate \$25,334 from the Motor Vehicle Account in the State Transportation Fund to the New Motor Vehicle Board for reimbursement to the Department of Motor Vehicles for expenses incurred in carrying out provisions of the act, and would provide for the repayment of that amount, as specified.

(4) This bill would incorporate additional changes in Section 7102 of the Revenue and Taxation Code, proposed by AB 276, to be operative only if AB 276 and this bill are both chaptered and become effective January 1, 1987, and this bill is chaptered last.

Ch. 1281 (SB 512) Ellis. On-premises advertising displays.

Under existing law, with specified exceptions, no on-premises advertising displays, as defined, may be compelled to be removed or abated by any city or county ordinance

NOTE: Superior numbers appear as a separate section at the end of the digests.

ASSEMBLY BILL

No. 1381

Introduced by Assembly Member Speier

February 24, 1995

An act to amend Section 1793.25 of, and to repeal Section 1795.8 of, the Civil Code, and to amend Section 4453 of, and to add Sections 11713.10, 11713.11, and 11713.12 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1381, as introduced, Speier. Vehicles: Automotive Consumer Notification Act.

Existing provisions of the Civil Code, the Automotive Consumer Notification Act, require the seller of a vehicle to include a specified disclosure if that vehicle has been returned, or should have been returned, to the dealer or manufacturer, as specified, for failure to conform to warranties, as specified.

~~This bill would revise and recast the Automotive Consumer Notification Act within the provisions of the Vehicle Code. The bill would require the manufacturer to retitle specified defective vehicles in its name, request the Department of Motor Vehicles to inscribe the ownership certificate with a specified notation, affix a specified notice to the left doorframe of the vehicle, deliver a specified notice to the buyer of the vehicle, and obtain the buyer's acknowledgment. The bill would provide that it shall apply only to vehicles reacquired by a manufacturer on or after the effective date~~

LIS - 1a



of the act. The bill would make legislative findings and declarations. The bill would also make conforming changes.

By creating new infractions under the provisions of the Vehicle Code, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 1793.25 of the Civil Code is
2 amended to read:

3 1793.25. (a) Notwithstanding Part 1 (commencing
4 with Section 6001) of Division 2 of the Revenue and
5 Taxation Code, the State Board of Equalization shall
6 reimburse the manufacturer of a new motor vehicle for
7 an amount equal to the sales tax which the manufacturer
8 *pays to or for the buyer when providing a replacement*
9 *vehicle pursuant to subparagraph (A) of paragraph (2)*
10 *of subdivision (d) of Section 1793.2 or includes in making*
11 *restitution to the buyer pursuant to subparagraph (B) of*
12 *paragraph (2) of subdivision (d) of Section 1793.2, when*
13 *satisfactory proof is provided that the retailer of the*
14 *motor vehicle for which the manufacturer is making*
15 *restitution has reported and paid the sales tax on the gross*
16 *receipts from the sale of that motor vehicle and the*
17 *manufacturer provides satisfactory proof that it has*
18 *complied with the provisions of subdivision (b) of Section*
19 *11713.10 of the Vehicle Code. The State Board of*
20 *Equalization may adopt rules and regulations to carry*
21 *out, facilitate compliance with, or prevent circumvention*
22 *or evasion of, this section.*

23 (b) Nothing in this section shall in any way change the
24 application of the sales and use tax to the gross receipts

1 and the sales price from the sale, and the storage, use, or
2 other consumption, in this state or tangible personal
3 property pursuant to Part 1 (commencing with Section
4 6001) of Division 2 of the Revenue and Taxation Code.

5 (c) The manufacturer's claim for reimbursement and
6 the board's approval or denial of the claim shall be subject
7 to the provisions of Article 1 (commencing with Section
8 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue
9 and Taxation Code, except Sections 6902.1, 6903, 6907, and
10 6908 thereof, insofar as those provisions are not
11 inconsistent with this section.

12 SEC. 2. Section 1795.8 of the Civil Code is repealed.

13 1795.8. (a) The Legislature finds and declares that
14 the expansion of state warranty laws covering new and
15 used cars has given important and valuable protection to
16 consumers; that in states without this valuable warranty
17 protection used and irreparable motor vehicles are
18 inundating the marketplace; that other states have
19 addressed this problem by requiring notices on the titles
20 of these vehicles warning consumers that the motor
21 vehicles were repurchased by a dealer or manufacturer
22 because either the vehicle could not be repaired in a
23 reasonable length of time or the dealer or manufacturer
24 was not willing to repair the vehicle; that these notices
25 serve the interests of consumers who have a right to
26 information relevant to their buying decisions; and that
27 the disappearance of these notices upon the transfer of
28 title from another state to this state encourages the
29 transport of "lemons" to this state for sale to the drivers
30 of this state. Therefore, the Legislature hereby enacts the
31 Automotive Consumer Notification Act.

32 (b) For purposes of this section, "dealer" means any
33 person engaged in the business of selling, offering for sale,
34 or negotiating the retail sale of used motor vehicles or
35 selling motor vehicles as a broker or agent for another,
36 including the officers, agents, and employees of the
37 person and any combination or association of dealers.
38 "Dealer" does not include a bank or other financial
39 institution, or the state, its agencies, bureaus, boards,
40 commissions, authorities, or any of its political

1 subdivisions: A person shall be deemed to be engaged in
 2 the business of selling used motor vehicles if the person
 3 has sold more than four used motor vehicles in the
 4 preceding 12 months.

5 (e) Any person, including any dealer or manufacturer,
 6 selling a motor vehicle in this state that is known or should
 7 be known to have been required by law to be replaced or
 8 required by law to be accepted for restitution by a
 9 manufacturer due to the inability of the manufacturer to
 10 conform the vehicle to applicable warranties pursuant to
 11 subdivision (d) of Section 1793.2 or that is known or
 12 should be known to have been required by law to be
 13 replaced or required by law to be accepted for restitution
 14 by a dealer or manufacturer due to the inability of the
 15 dealer or manufacturer to conform the vehicle to
 16 warranties required by any other applicable law of this
 17 state, any other state, or federal law shall disclose that fact
 18 to the buyer in writing prior to the purchase and a dealer
 19 or manufacturer shall include as part of the titling
 20 documents of the vehicle the following disclosure
 21 statement set forth as a separate document and signed by
 22 the buyer:

23 "THIS MOTOR VEHICLE HAS BEEN RETURNED
 24 TO THE DEALER OR MANUFACTURER DUE TO A
 25 DEFECT IN THE VEHICLE PURSUANT TO
 26 CONSUMER WARRANTY LAWS."

27 (d) The disclosure requirement in subdivision (e) is
 28 cumulative with all other consumer notice requirements,
 29 and does not relieve any person, including any dealer or
 30 manufacturer, from complying with any other applicable
 31 law, including any requirement of subdivision (f) of
 32 Section 1793.22 or comparable automobile warranty laws
 33 in other states.

34 SEC. 3. Section 4453 of the Vehicle Code is amended
 35 to read:

36 4453. (a) The registration card shall contain upon its
 37 face, the date issued, the name and residence or business
 38 address of the owner and of the legal owner, if any, the
 39 registration number assigned to the vehicle, and a

1 description of the vehicle as complete as that required in
 2 the application for registration of the vehicle.

3 (b) A motor vehicle of a type included in this
 4 subdivision shall be identified as such on the face of the
 5 registration card, whenever the department is able to
 6 ascertain that fact, at the time application is made for
 7 initial registration or transfer of ownership of the vehicle.

8 (1) A motor vehicle rebuilt and restored to operation
 9 which was previously declared to be a total loss salvage
 10 vehicle because the cost of repairs exceeds the retail value
 11 of the vehicle.

12 (2) A motor vehicle rebuilt and restored to operation
 13 which was previously reported to be dismantled pursuant
 14 to Section 11520.

15 (3) A motor vehicle previously registered to a law
 16 enforcement agency and operated in law enforcement
 17 work.

18 (4) A motor vehicle formerly operated as a taxicab.

19 (5) A motor vehicle manufactured outside of the
 20 United States and not intended by the manufacturer for
 21 sale in the United States.

22 (6) A park trailer, as described in subdivision (b) of
 23 Section 18010 of the Health and Safety Code, which when
 24 moved upon the highway is required to be moved under
 25 a permit pursuant to Section 35780.

26 (7) A motor vehicle returned to a dealer or
 27 manufacturer pursuant to a consumer warranty law due
 28 to a defect, including vehicles with out-of-state titling
 29 documents that reflect a return, that has been reacquired
 30 under circumstances described in subdivision (b) of
 31 Section 11713.10, a vehicle with out-of-state titling
 32 documents reflecting a warranty return, or a vehicle that
 33 has been identified by an agency of another state as
 34 requiring a warranty return title notation, pursuant to the
 35 laws of that state. The notation made on the face of the
 36 registration and pursuant to this subdivision shall state
 37 "lemon buy back."

38 (c) The director may modify the form, arrangement,
 39 and information appearing on the face of the registration
 40 card, and may provide for standardization and

1 abbreviation of fictitious or firm names on the
2 registration card whenever the director finds that the
3 efficiency of the department will be promoted by so
4 doing, except that general delivery or post office box
5 numbers shall not be permitted as the address of the
6 registered owner unless there is no other address.

7 SEC. 4. Section 11713.10 is added to the Vehicle Code,
8 to read:

9 11713.10. (a) The Legislature finds and declares that
10 the expansion of state warranty laws covering new and
11 used cars has given important and valuable protection to
12 consumers; that in states without this valuable warranty
13 protection used and irreparable motor vehicles are
14 inundating the marketplace; that other states have
15 addressed this problem by requiring notices on the title
16 of these vehicles or other notice procedures to warn
17 consumers that the motor vehicles were repurchased by
18 a dealer or manufacturer because either the vehicle could
19 not be repaired in a reasonable length of time, a
20 reasonable number of repair attempts, or the dealer or
21 manufacturer was not willing to repair the vehicle; that
22 these notices serve the interests of consumers who have
23 a right to information relevant to their buying decisions;
24 and that the disappearance of these notices upon the
25 transfer of title from another state to this state encourages
26 the transport of "lemons" to this state for sale to the
27 drivers of this state. Therefore, the Legislature hereby
28 enacts the Automotive Consumer Notification Act.

29 (b) Any manufacturer who reacquires or assists a
30 dealer to reacquire a vehicle registered in this state, any
31 other state, or a federally administered district shall, prior
32 to any resale, lease, or transfer of the vehicle in this state,
33 cause the vehicle to be retitled in the name of the
34 manufacturer; request the department to inscribe the
35 ownership certificate with the notation "lemon buy
36 back"; and affix a notice to the left doorframe of the
37 vehicle in accordance with the provisions of Section
38 11713.12, in either of the following circumstances:

39 (1) The vehicle was required, pursuant to a court
40 order or a decision rendered through a third-party

1 dispute resolution process, to be replaced or accepted for
2 restitution by the manufacturer due to the inability of the
3 manufacturer to conform the vehicle to an express
4 warranty of the manufacturer.

5 (2) Within one year from delivery of a new vehicle to
6 the buyer or lessee or 12,000 miles on the odometer of the
7 vehicle, whichever occurs first, either (A) the vehicle was
8 the subject of four or more attempts by the manufacturer
9 or its agents to repair the same nonconformity or (B) the
10 vehicle was out of service by reason of repair of
11 nonconformities by the manufacturer or its agents for a
12 cumulative total of more than 30 calendar days since
13 delivery of the vehicle to the buyer.

14 (c) Any manufacturer who reacquires or assists a
15 dealer to reacquire a vehicle to resolve an express
16 warranty dispute between the buyer or lessee and the
17 manufacturer shall, prior to resale, execute and deliver to
18 the subsequent buyer a notice and obtain the buyer's
19 written acknowledgment of a notice, as prescribed by
20 Section 11713.11.

21 (d) Any dealer who knowingly purchases for resale a
22 vehicle that has been reacquired in order to resolve an
23 express warranty dispute between the last retail owner of
24 the reacquired vehicle and the vehicle's manufacturer
25 shall, prior to resale, execute and deliver to the
26 subsequent buyer a notice and obtain the buyer's written
27 acknowledgment of a notice, as prescribed by Section
28 11713.11.

29 (e) The disclosure requirements in subdivisions (c)
30 and (d) are in addition to all other consumer notice
31 requirements and do not relieve any person, including
32 any dealer or manufacturer, from complying with any
33 other applicable law, including any requirement of
34 subdivision (f) of Section 1793.22 of the Civil Code.

35 SEC. 5. Section 11713.11 is added to the Vehicle Code,
36 to read:

37 11713.11. (a) The notice required in subdivisions (c)
38 and (d) of Section 11713.10 shall disclose the following:

39 (1) Year, make, model, and vehicle identification
40 number of the vehicle.

1 (2) Whether the title to the vehicle has been inscribed
2 with the notation "lemon buy back."

3 (3) The nature of any nonconformity experienced by
4 the original buyer or lessee of the vehicle.

5 (4) Repairs, if any, made to the vehicle in an attempt
6 to correct any nonconformity experienced by the original
7 buyer or lessee.

8 (b) The notice shall be on a form 8 x 11 1/2 inches in
9 size; printed in no smaller than 10-point black type on a
10 white background. The form shall only contain the
11 following information prior to it being filled out by the
12 manufacturer or dealer:

13
14 **WARRANTY BUY BACK NOTICE**

15
16
17 (Check one or both, as applicable)

18 This vehicle was reacquired by the vehicle's
19 manufacturer in resolution of a warranty dispute
20 between the original owner/lessee and the
21 manufacturer.

22 The title to this vehicle has been permanently
23 branded with the notation "lemon buy back."

VIN	Year	Make	Model
-----	------	------	-------

1 Problem(s) Reported by 2 Original Owner 3 4 5 6 7 8 9 10 11 12	1 Repairs Made, if any, to 2 Correct Reported Problem(s) 3 4 5 6 7 8 9 10 11 12
---	--

13
14 _____ Date

15 Seller's Signature

16 _____ Date

17 Buyer's Signature

18 _____ Date

19 Co-Buyer's Signature (If applicable)

20
21 (c) A copy of the notice shall be provided to the buyer.
22 SEC. 6. Section 11713.12 is added to the Vehicle Code,
23 to read:

24 11713.12. (a) The notice required by subdivision (b)
25 of Section 11713.10 to be affixed by a manufacturer to the
26 left doorframe of a vehicle shall specify that title to the
27 vehicle has been inscribed with the notation "lemon buy
28 back."

29 (b) No person shall knowingly remove or alter any
30 notice affixed to a vehicle pursuant to subdivision (a),
31 whether or not licensed under this code.

32 SEC. 7. This act shall apply only to vehicles
33 reacquired by a manufacturer on or after the effective
34 date of this act.

35 SEC. 8. No reimbursement is required by this act
36 pursuant to Section 6 of Article XIII B of the California
37 Constitution because the only costs that may be incurred
38 by a local agency or school district will be incurred
39 because this act creates a new crime or infraction,
40 eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section
2 17556 of the Government Code, or changes the definition
3 of a crime within the meaning of Section 6 of Article
4 XIII B of the California Constitution.
5 Notwithstanding Section 17580 of the Government
6 Code, unless otherwise specified, the provisions of this act
7 shall become operative on the same date that the act
8 takes effect pursuant to the California Constitution.



AMENDED IN ASSEMBLY APRIL 5, 1995

CALIFORNIA LEGISLATURE—1995-96 REGULAR SESSION

ASSEMBLY BILL

No. 1381

Introduced by Assembly Member Speier

February 24, 1995

An act to amend Section 1793.25 of, and to repeal Section 1795.8 of, the Civil Code, and to amend Section 4453 of, and to add Sections 11713.10, 11713.11, and 11713.12 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1381, as amended, Speier. Vehicles: Automotive Consumer Notification Act.

Existing provisions of the Civil Code, the Automotive Consumer Notification Act, require the seller of a vehicle to include a specified disclosure if that vehicle has been returned, or should have been returned, to the dealer or manufacturer, as specified, for failure to conform to warranties, as specified.

This bill would revise and recast the Automotive Consumer Notification Act within the provisions of the Vehicle Code. The bill would require the manufacturer to retitle specified defective vehicles in its name, request the Department of Motor Vehicles to inscribe the ownership certificate with a specified notation, affix a specified *notice decal* to the left doorframe of the vehicle, deliver a specified notice to the ~~buyer~~ transferee of the vehicle, and obtain the ~~buyer's~~ transferee's acknowledgment. *The bill would provide for the*



recovery of damages and costs, including reasonable attorney's fees, by any person damaged by the failure of a manufacturer or dealer to comply with these requirements, as specified. The bill would provide that it shall apply only to vehicles reacquired by a manufacturer on or after the effective date of the act. The bill would make legislative findings and declarations. The bill would also make conforming changes.

By creating new infractions under the provisions of the Vehicle Code, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 1793.25 of the Civil Code is
2 amended to read:

3 1793.25. (a) Notwithstanding Part 1 (commencing
4 with Section 6001) of Division 2 of the Revenue and
5 Taxation Code, the State Board of Equalization shall
6 reimburse the manufacturer of a new motor vehicle for
7 an amount equal to the sales tax which the manufacturer
8 pays to or for the buyer when providing a replacement
9 vehicle pursuant to subparagraph (A) of paragraph (2)
10 of subdivision (d) of Section 1793.2 or includes in making
11 restitution to the buyer pursuant to subparagraph (B) of
12 paragraph (2) of subdivision (d) of Section 1793.2, when
13 satisfactory proof is provided that the retailer of the
14 motor vehicle for which the manufacturer is making
15 restitution has reported and paid the sales tax on the gross
16 receipts from the sale of that motor vehicle and the
17 manufacturer provides satisfactory proof that it has
18 complied with the provisions of subdivision (b) of Section

1 11713.10 of the Vehicle Code. The State Board of
2 Equalization may adopt rules and regulations to carry
3 out, facilitate compliance with, or prevent circumvention
4 or evasion of, this section.

5 (b) Nothing in this section shall in any way change the
6 application of the sales and use tax to the gross receipts
7 and the sales price from the sale, and the storage, use, or
8 other consumption, in this state or tangible personal
9 property pursuant to Part 1 (commencing with Section
10 6001) of Division 2 of the Revenue and Taxation Code.

11 (c) The manufacturer's claim for reimbursement and
12 the board's approval or denial of the claim shall be subject
13 to the provisions of Article 1 (commencing with Section
14 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue
15 and Taxation Code, except Sections 6902.1, 6903, 6907, and
16 6908 thereof, insofar as those provisions are not
17 inconsistent with this section.

18 SEC. 2. Section 1795.8 of the Civil Code is repealed.
19 SEC. 3. Section 4453 of the Vehicle Code is amended
20 to read:

21 4453. (a) The registration card shall contain upon its
22 face, the date issued, the name and residence or business
23 address of the owner and of the legal owner, if any, the
24 registration number assigned to the vehicle, and a
25 description of the vehicle as complete as that required in
26 the application for registration of the vehicle.

27 (b) A motor vehicle of a type included in this
28 subdivision shall be identified as such on the face of the
29 registration card, whenever the department is able to
30 ascertain that fact, at the time application is made for
31 initial registration or transfer of ownership of the vehicle.

32 (1) A motor vehicle rebuilt and restored to operation
33 which was previously declared to be a total loss salvage
34 vehicle because the cost of repairs exceeds the retail value
35 of the vehicle.

36 (2) A motor vehicle rebuilt and restored to operation
37 which was previously reported to be dismantled pursuant
38 to Section 11520.

1 (3) A motor vehicle previously registered to a law
2 enforcement agency and operated in law enforcement
3 work.

4 (4) A motor vehicle formerly operated as a taxicab.

5 (5) A motor vehicle manufactured outside of the
6 United States and not intended by the manufacturer for
7 sale in the United States.

8 (6) A park trailer, as described in subdivision (b) of
9 Section 18010 of the Health and Safety Code, which when
10 moved upon the highway is required to be moved under
11 a permit pursuant to Section 35780.

12 (7) A motor vehicle that has been reacquired under
13 circumstances described in subdivision (b) of Section
14 11713.10, a vehicle with out-of-state titling documents
15 reflecting a warranty return, or a vehicle that has been
16 identified by an agency of another state as requiring a
17 warranty return title notation, pursuant to the laws of that
18 state. The notation made on the face of the registration
19 and pursuant to this subdivision shall state "lemon buy
20 back."

21 (c) The director may modify the form, arrangement,
22 and information appearing on the face of the registration
23 card and may provide for standardization and
24 abbreviation of fictitious or firm names on the
25 registration card whenever the director finds that the
26 efficiency of the department will be promoted by so
27 doing, except that general delivery or post office box
28 numbers shall not be permitted as the address of the
29 registered owner unless there is no other address.

30 SEC. 4. Section 11713.10 is added to the Vehicle Code,
31 to read:

32 11713.10. (a) The Legislature finds and declares that
33 the expansion of state warranty laws covering new and
34 used cars has given important and valuable protection to
35 consumers; that in states without this valuable warranty
36 protection used and irreparable motor vehicles are
37 inundating the marketplace; that other states have
38 addressed this problem by requiring notices on the title
39 of these vehicles or other notice procedures to warn
40 consumers that the motor vehicles were repurchased by

1 a dealer or manufacturer because either the vehicle could
2 not be repaired in a reasonable length of time, a
3 reasonable number of repair attempts, or the dealer or
4 manufacturer was not willing to repair the vehicle; that
5 these notices serve the interests of consumers who have
6 a right to information relevant to their buying decisions;
7 and that the disappearance of these notices upon the
8 transfer of title from another state to this state encourages
9 the transport of "lemons" to this state for sale to the
10 drivers of this state. Therefore, the Legislature hereby
11 enacts the Automotive Consumer Notification Act.

12 (b) Any manufacturer who reacquires or assists a
13 dealer to reacquire a vehicle registered in this state, any
14 other state, or a federally administered district shall, prior
15 to any resale, lease, or transfer of the vehicle in this state,
16 cause the vehicle to be retitled in the name of the
17 manufacturer; request the department to inscribe the
18 ownership certificate with the notation "lemon buy
19 back"; and affix a ~~notice~~ *decal* to the left doorframe of the
20 vehicle in accordance with the provisions of Section
21 11713.12, in either of the following circumstances:

22 (1) The vehicle was required, pursuant to a court
23 order or a decision rendered through a third-party
24 dispute resolution process, to be replaced or accepted for
25 restitution by the manufacturer due to the inability of the
26 manufacturer to conform the vehicle to an express
27 warranty of the manufacturer.

28 (2) Within one year from delivery of a new vehicle to
29 the buyer or lessee or 12,000 miles on the odometer of the
30 vehicle, whichever occurs first, either (A) the vehicle was
31 the subject of four or more attempts by the manufacturer
32 or its agents to repair the same nonconformity or (B) the
33 vehicle was out of service by reason of repair of
34 nonconformities by the manufacturer or its agents for a
35 cumulative total of more than 30 calendar days since
36 delivery of the vehicle to the buyer.

37 (c) Any manufacturer who reacquires or assists a
38 dealer to reacquire a vehicle to resolve an express
39 warranty dispute between the buyer or lessee and the
40 manufacturer shall, prior to ~~resale~~ *sale, lease, or other*

1 transfer, execute and deliver to the subsequent buyer
2 transferee a notice and obtain the buyer's transferee's
3 written acknowledgment of a notice, as prescribed by
4 Section 11713.11.

5 (d) Any dealer who knowingly purchases for resale a
6 vehicle that has been reacquired in order to resolve an
7 express warranty dispute between the last retail owner of
8 the reacquired vehicle and the vehicle's manufacturer
9 shall, prior to resale sale, lease, or other transfer, execute
10 and deliver to the subsequent buyer transferee a notice
11 and obtain the buyer's transferee's written
12 acknowledgment of a notice, as prescribed by Section
13 11713.11.

14 (e) The disclosure requirements in subdivisions (c)
15 and (d) are in addition to all other consumer notice
16 requirements and do not relieve any person, including
17 any dealer or manufacturer, from complying with any
18 other applicable law, including any requirement of
19 subdivision (f) of Section 1793.22 of the Civil Code.

20 (f) (1) Any person damaged by the failure of a
21 manufacturer or dealer to comply with the provisions of
22 this section may bring an action for the recovery of
23 damages and other legal and equitable relief.

24 (2) If a buyer, lessee, or other transferee prevails in an
25 action under this section, that person shall recover as part
26 of the judgment a sum equal to the aggregate amount of
27 costs and expenses, including attorney's fees based on the
28 actual time expended, determined by the court to have
29 been reasonably incurred in litigating the matter.

30 (3) The remedies provided by this subdivision are
31 cumulative and shall not be construed as restricting any
32 remedy otherwise available.

33 SEC. 5. Section 11713.11 is added to the Vehicle Code,
34 to read:

35 11713.11. (a) The notice required in subdivisions (c)
36 and (d) of Section 11713.10 shall be prepared by the
37 manufacturer of the reacquired vehicle and shall disclose
38 the following:

39 (1) Year, make, model, and vehicle identification
40 number of the vehicle.

1 (2) Whether the title to the vehicle has been inscribed
2 with the notation "lemon buy back."

3 ~~(3) The nature of any nonconformity experienced by~~
4 (3) The nature of each nonconformity reported by the
5 original buyer or lessee of the vehicle.

6 (4) Repairs, if any, made to the vehicle in an attempt
7 to correct any nonconformity experienced each
8 nonconformity reported by the original buyer or lessee.

9 (b) The notice shall be on a form 8 x 11 1/2 x 11
10 inches in size; printed in no smaller than 10-point black
11 type on a white background. The form shall only contain
12 the following information prior to it being filled out by the
13 manufacturer or dealer:

14 WARRANTY BUY BACK NOTICE

15 (Check one or both, as applicable)

16 This vehicle was reacquired by the vehicle's
17 manufacturer in resolution of a warranty dispute
18 between the original owner/lessee and the
19 manufacturer.

20 The title to this vehicle has been permanently
21 branded with the notation "lemon buy back." The
22 nonconformity experienced by the original owner or
23 lessee has been corrected and the manufacturer warrants
24 for a one-year period that this vehicle is free of that
25 nonconformity.

26
27
28
29
30
31
32
33

VIN	Year	Make	Model
-----	------	------	-------



1	Problem(s) Reported by	Repairs Made, if any, to
2	Original Owner	Correct Reported Problem(s)
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		

14 _____

15 Seller's Signature _____ Date _____

16 _____

17 Buyer's Signature _____ Date _____

18 _____

19 Co/Buyer's Signature (If applicable) _____ Date _____

20 Signature of Manufacturer _____ Date _____

21 _____

22 Signature of Dealer _____ Date _____

23 _____

24 _____

25 _____

26 Signature of Buyer, Lessee, or other _____

27 Transferee _____ Date _____

28 _____

29 _____

31 (c) A copy of the notice shall be provided to the buyer,

32 lessee, or other transferee.

33 SEC. 6. Section 11713.12 is added to the Vehicle Code,

34 to read:

35 11713.12. (a) The notice decal required by

36 subdivision (b) of Section 11713.10 to be affixed by a

37 manufacturer to the left doorframe of a vehicle shall

38 specify that title to the vehicle has been inscribed with

39 the notation "lemon buy back." *The decal shall be issued*

1 to manufacturers by the department and affixed to the

2 vehicle in a manner prescribed by the department.

3 (b) No person shall knowingly remove or alter any

4 notice decal affixed to a vehicle pursuant to subdivision

5 (a), whether or not licensed under this code.

6 SEC. 7. This act shall apply only to vehicles

7 reacquired by a manufacturer on or after the effective

8 date of this act.

9 SEC. 8. No reimbursement is required by this act

10 pursuant to Section 6 of Article XIII B of the California

11 Constitution because the only costs that may be incurred

12 by a local agency or school district will be incurred

13 because this act creates a new crime or infraction,

14 eliminates a crime or infraction, or changes the penalty

15 for a crime or infraction, within the meaning of Section

16 17556 of the Government Code, or changes the definition

17 of a crime within the meaning of Section 6 of Article

18 XIII B of the California Constitution.

19 Notwithstanding Section 17580 of the Government

20 Code, unless otherwise specified, the provisions of this act

21 shall become operative on the same date that the act

22 takes effect pursuant to the California Constitution.



LIS - 1c

AMENDED IN ASSEMBLY APRIL 26, 1995

AMENDED IN ASSEMBLY APRIL 5, 1995

CALIFORNIA LEGISLATURE—1995-96 REGULAR SESSION

ASSEMBLY BILL

No. 1381

Introduced by Assembly Member Speier

February 24, 1995

An act to amend Section 1793.25 of, and to repeal Section 1795.8 of, the Civil Code, and to amend Section 4453 of, and to add Sections 11713.10, 11713.11, and 11713.12 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1381, as amended, Speier. Vehicles: Automotive Consumer Notification Act.

Existing provisions of the Civil Code, the Automotive Consumer Notification Act, require the seller of a vehicle to include a specified disclosure if that vehicle has been returned, or should have been returned, to the dealer or manufacturer, as specified, for failure to conform to warranties, as specified.

This bill would revise and recast the Automotive Consumer Notification Act within the provisions of the Vehicle Code. The bill would require the manufacturer to retitle specified defective vehicles in its name, request the Department of Motor Vehicles to inscribe the ownership certificate with a specified notation, affix a specified decal to the left doorframe of the vehicle, deliver a specified notice to the transferee of



the vehicle, and obtain the transferee's acknowledgment. The bill would provide ~~for the recovery of damages and costs, including reasonable attorney's fees, by that~~ any person damaged by the failure of a manufacturer or dealer to comply with these requirements, as specified, *shall have the same rights and remedies as those provided to a buyer of consumer goods by specified provisions relating to warranty.* The bill would provide that it shall apply only to vehicles reacquired by a manufacturer on or after the effective date of the act. The bill would make legislative findings and declarations. The bill would also make conforming changes.

By creating new infractions under the provisions of the Vehicle Code, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 1793.25 of the Civil Code is
 2 amended to read:
 3 1793.25. (a) Notwithstanding Part 1 (commencing
 4 with Section 6001) of Division 2 of the Revenue and
 5 Taxation Code, the State Board of Equalization shall
 6 reimburse the manufacturer of a new motor vehicle for
 7 an amount equal to the sales tax which the manufacturer
 8 pays to or for the buyer when providing a replacement
 9 vehicle pursuant to subparagraph (A) of paragraph (2)
 10 of subdivision (d) of Section 1793.2 or includes in making
 11 restitution to the buyer pursuant to subparagraph (B) of
 12 paragraph (2) of subdivision (d) of Section 1793.2, when
 13 satisfactory proof is provided that the retailer of the
 14 motor vehicle for which the manufacturer is making
 15 restitution has reported and paid the sales tax on the gross

1 receipts from the sale of that motor vehicle and the
 2 manufacturer provides satisfactory proof that it has
 3 complied with the provisions of subdivision (b) of Section
 4 11713.10 of the Vehicle Code. The State Board of
 5 Equalization may adopt rules and regulations to carry
 6 out, facilitate compliance with, or prevent circumvention
 7 or evasion of, this section.

8 (b) Nothing in this section shall in any way change the
 9 application of the sales and use tax to the gross receipts
 10 and the sales price from the sale, and the storage, use, or
 11 other consumption, in this state or tangible personal
 12 property pursuant to Part 1 (commencing with Section
 13 6001) of Division 2 of the Revenue and Taxation Code.

14 (c) The manufacturer's claim for reimbursement and
 15 the board's approval or denial of the claim shall be subject
 16 to the provisions of Article 1 (commencing with Section
 17 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue
 18 and Taxation Code, except Sections 6902.1, 6903, 6907, and
 19 6908 thereof, insofar as those provisions are not
 20 inconsistent with this section.

21 SEC. 2. Section 1795.8 of the Civil Code is repealed.

22 SEC. 3. Section 4453 of the Vehicle Code is amended
 23 to read:

24 4453. (a) The registration card shall contain upon its
 25 face, the date issued, the name and residence or business
 26 address of the owner and of the legal owner, if any, the
 27 registration number assigned to the vehicle, and a
 28 description of the vehicle as complete as that required in
 29 the application for registration of the vehicle.

30 (b) A motor vehicle of a type included in this
 31 subdivision shall be identified as such on the face of the
 32 registration card, whenever the department is able to
 33 ascertain that fact, at the time application is made for
 34 initial registration or transfer of ownership of the vehicle.

35 (1) A motor vehicle rebuilt and restored to operation
 36 which was previously declared to be a total loss salvage
 37 vehicle because the cost of repairs exceeds the retail value
 38 of the vehicle.

1 (2) A motor vehicle rebuilt and restored to operation
2 which was previously reported to be dismantled pursuant
3 to Section 11520.

4 (3) A motor vehicle previously registered to a law
5 enforcement agency and operated in law enforcement
6 work.

7 (4) A motor vehicle formerly operated as a taxicab.

8 (5) A motor vehicle manufactured outside of the
9 United States and not intended by the manufacturer for
10 sale in the United States.

11 (6) A park trailer, as described in subdivision (b) of
12 Section 18010 of the Health and Safety Code, which when
13 moved upon the highway is required to be moved under
14 a permit pursuant to Section 35780.

15 (7) A motor vehicle that has been reacquired under
16 circumstances described in subdivision (b) of Section
17 11713.10, a vehicle with out-of-state titling documents
18 reflecting a warranty return, or a vehicle that has been
19 identified by an agency of another state as requiring a
20 warranty return title notation, pursuant to the laws of that
21 state. The notation made on the face of the registration
22 and pursuant to this subdivision shall state "lemon buy
23 back."

24 (c) The director may modify the form, arrangement,
25 and information appearing on the face of the registration
26 card and may provide for standardization and
27 abbreviation of fictitious or firm names on the
28 registration card whenever the director finds that the
29 efficiency of the department will be promoted by so
30 doing, except that general delivery or post office box
31 numbers shall not be permitted as the address of the
32 registered owner unless there is no other address.

33 SEC. 4. Section 11713.10 is added to the Vehicle Code,
34 to read:

35 11713.10. (a) The Legislature finds and declares that
36 the expansion of state warranty laws covering new and
37 used cars has given important and valuable protection to
38 consumers; that in states without this valuable warranty
39 protection used and irreparable motor vehicles are
40 inundating the marketplace; that other states have

1 addressed this problem by requiring notices on the title
2 of these vehicles or other notice procedures to warn
3 consumers that the motor vehicles were repurchased by
4 a dealer or manufacturer because either the vehicle could
5 not be repaired in a reasonable length of time, a
6 reasonable number of repair attempts, or the dealer or
7 manufacturer was not willing to repair the vehicle; that
8 these notices serve the interests of consumers who have
9 a right to information relevant to their buying decisions;
10 and that the disappearance of these notices upon the
11 transfer of title from another state to this state encourages
12 the transport of "lemons" to this state for sale to the
13 drivers of this state. Therefore, the Legislature hereby
14 enacts the Automotive Consumer Notification Act.

15 (b) Any manufacturer who reacquires or assists a
16 dealer to reacquire a vehicle registered in this state, any
17 other state, or a federally administered district shall, prior
18 to any resale, lease, or transfer of the vehicle in this state,
19 cause the vehicle to be retitled in the name of the
20 manufacturer; request the department to inscribe the
21 ownership certificate with the notation "lemon buy
22 back"; and affix a decal to the left doorframe of the
23 vehicle in accordance with the provisions of Section
24 11713.12, in either any of the following circumstances:

25 (1) The vehicle was ~~required reacquired~~, pursuant to
26 a court order or a decision rendered through a third-party
27 ~~dispute resolution process; to be replaced or accepted for~~
28 ~~restitution by the manufacturer due to the inability of the~~
29 ~~manufacturer to conform the vehicle to an express~~
30 ~~warranty of the manufacturer.~~

31 ~~(2) Within one year from delivery of a new vehicle to~~
32 ~~the buyer or lessee or 12,000 miles on the odometer of the~~
33 ~~vehicle, whichever occurs first; either (A) the vehicle was~~
34 ~~the subject of four or more attempts by the manufacturer~~
35 ~~or its agents to repair the same nonconformity or (B) the~~
36 ~~vehicle was out of service by reason of repair of~~
37 ~~nonconformities by the manufacturer or its agents for a~~
38 ~~cumulative total of more than 30 calendar days since~~
39 ~~delivery of the vehicle to the buyer; dispute resolution~~
40 ~~process.~~



1 ~~(1)~~ *(2) The vehicle was reacquired within six months after*
2 *the buyer had made a written request to the*
3 *manufacturer for replacement or refund under the*
4 *provisions of Section 1793.2 of the Civil Code.*

5 *(3) The vehicle was reacquired during the pendency*
6 *of state-certified arbitration concerning the vehicle*
7 *requested by the buyer or within six months of the*
8 *conclusion of that arbitration proceeding.*

9 *(4) The vehicle was reacquired during the pendency*
10 *of litigation between the manufacturer and the buyer*
11 *alleging a cause of action under Section 1793.2 of the Civil*
12 *Code or within six months of the conclusion of that*
13 *litigation.*

14 (c) Any manufacturer who reacquires or assists a
15 dealer to reacquire a vehicle to resolve an express
16 warranty dispute between the buyer or lessee and the
17 manufacturer shall, prior to sale, lease, or other transfer,
18 execute and deliver to the subsequent transferee a notice
19 and obtain the transferee's written acknowledgment of a
20 notice, as prescribed by Section 11713.11.

21 (d) Any dealer who knowingly purchases for resale a
22 vehicle that has been reacquired in order to resolve an
23 express warranty dispute between the last retail owner of
24 the reacquired vehicle and the vehicle's manufacturer
25 shall, prior to sale, lease, or other transfer, execute and
26 deliver to the subsequent transferee a notice and obtain
27 the transferee's written acknowledgment of a notice, as
28 prescribed by Section 11713.11.

29 (e) The disclosure requirements in subdivisions (c)
30 and (d) are in addition to all other consumer notice
31 requirements and do not relieve any person, including
32 any dealer or manufacturer, from complying with any
33 other applicable law, including any requirement of
34 subdivision (f) of Section 1793.22 of the Civil Code.

35 ~~(f) (1) Any person damaged by the failure of a~~
36 ~~manufacturer or dealer to comply with the provisions of~~
37 ~~this section may bring an action for the recovery of~~
38 ~~damages and other legal and equitable relief.~~

39 ~~(2) If a buyer, lessee, or other transferee prevails in an~~
40 ~~action under this section, that~~

1 of the judgment a sum equal to the aggregate amount of
2 costs and expenses, including attorney's fees based on the
3 actual time expended, determined by the court to have
4 been reasonably incurred in litigating the matter.

5 ~~(3) The remedies provided by this subdivision are~~
6 ~~cumulative and shall not be construed as restricting any~~
7 ~~remedy otherwise available.~~

8 (f) Any buyer damaged by the failure of a
9 manufacturer or dealer to comply with this section shall
10 have the same rights and remedies provided by Section
11 1794 of the Civil Code.

12 SEC. 5. Section 11713.11 is added to the Vehicle Code,
13 to read:

14 11713.11. (a) The notice required in subdivisions (c)
15 and (d) of Section 11713.10 shall be prepared by the
16 manufacturer of the reacquired vehicle and shall disclose
17 the following:

18 (1) Year, make, model, and vehicle identification
19 number of the vehicle.

20 (2) Whether the title to the vehicle has been inscribed
21 with the notation "lemon buy back."

22 (3) The nature of each nonconformity reported by the
23 original buyer or lessee of the vehicle.

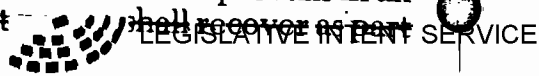
24 (4) Repairs, if any, made to the vehicle in an attempt
25 to correct each nonconformity reported by the original
26 buyer or lessee.

27 (b) The notice shall be on a form 8¹/₂ x 11 inches in
28 size; printed in no smaller than 10-point black type on a
29 white background. The form shall only contain the
30 following information prior to it being filled out by the
31 manufacturer:

32
33 WARRANTY BUY BACK NOTICE

34
35
36 (Check one or both, as applicable)

37
38 This vehicle was reacquired by the vehicle's
39 manufacturer in resolution of a warranty dispute



1 between the original owner/lessee and the
2 manufacturer.

3 The title to this vehicle has been permanently
4 branded with the notation "lemon buy back." The
5 nonconformity experienced by the original owner or
6 lessee has been corrected and the manufacturer warrants
7 for a one-year period that this vehicle is free of that
8 nonconformity.

VIN	Year	Make	Model
-----	------	------	-------

Problem(s) Reported by Original Owner	Repairs Made, if any, to Correct Reported Problem(s)
--	---

26 Signature of Manufacturer _____ Date _____

27 _____

28 Signature of Dealer _____ Date _____

29 _____

30 _____

31 _____

32 Signature of Buyer, Lessee, or other _____

33 Transferee _____ Date _____

34 _____

35 _____

37 (c) A copy of the notice shall be provided to the buyer,
38 lessee, or other transferee.

39 SEC. 6. Section 11713.12 is added to the Vehicle Code,
40 to read:

1 11713.12. (a) The decal required by subdivision (b)
2 of Section 11713.10 to be affixed by a manufacturer to the
3 left doorframe of a vehicle shall specify that title to the
4 vehicle has been inscribed with the notation "lemon buy
5 back." The decal shall be issued to manufacturers by the
6 department and affixed to the vehicle in a manner
7 prescribed by the department.

8 (b) No person shall knowingly remove or alter any
9 decal affixed to a vehicle pursuant to subdivision (a),
10 whether or not licensed under this code.

11 SEC. 7. This act shall apply only to vehicles
12 reacquired by a manufacturer on or after the effective
13 date of this act.

14 SEC. 8. No reimbursement is required by this act
15 pursuant to Section 6 of Article XIII B of the California
16 Constitution because the only costs that may be incurred
17 by a local agency or school district will be incurred
18 because this act creates a new crime or infraction,
19 eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section
21 17556 of the Government Code, or changes the definition
22 of a crime within the meaning of Section 6 of Article
23 XIII B of the California Constitution.

24 Notwithstanding Section 17580 of the Government
25 Code, unless otherwise specified, the provisions of this act
26 shall become operative on the same date that the act
27 takes effect pursuant to the California Constitution.



AMENDED IN SENATE JUNE 14, 1995
AMENDED IN ASSEMBLY APRIL 26, 1995
AMENDED IN ASSEMBLY APRIL 5, 1995

CALIFORNIA LEGISLATURE—1995-96 REGULAR SESSION

ASSEMBLY BILL

No. 1381

Introduced by Assembly Member Speier

February 24, 1995

An act to amend Section 1793.25 of, *to add Sections 1793.23 and 1793.24 to*, and to repeal Section 1795.8 of, the Civil Code, and to amend Section 4453 of, and to add ~~Sections 11713.10, 11713.11, and~~ *Section 11713.12* to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1381, as amended, Speier. Vehicles: Automotive Consumer Notification Act.

Existing provisions of the Civil Code, the Automotive Consumer Notification Act, require the seller of a vehicle to include a specified disclosure if that vehicle has been returned, or should have been returned, to the dealer or manufacturer, as specified, for failure to conform to warranties, as specified.

This bill would revise and recast the Automotive Consumer Notification Act ~~within the provisions of the Vehicle Code.~~ *The bill would to, among other things,* require the manufacturer to retitle specified defective vehicles in its name, request the Department of Motor Vehicles to inscribe



the ownership certificate with a specified notation, affix a specified decal to the left doorframe of the vehicle, deliver a specified notice to the transferee of the vehicle, and obtain the transferee's acknowledgment. ~~The bill would provide that any person damaged by the failure of a manufacturer or dealer to comply with these requirements, as specified, shall have the same rights and remedies as those provided to a buyer of consumer goods by specified provisions relating to warranty.~~ The bill would provide that it shall apply only to vehicles reacquired by a manufacturer on or after the effective date of the act. The bill would make legislative findings and declarations. The bill would also make conforming changes.

By creating a new ~~infractions~~ *infraction* under the provisions of the Vehicle Code, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. *Section 1793.23 is added to the Civil*
 2 *Code, to read:*

3 *1793.23. (a) The Legislature finds and declares all of*
 4 *the following:*

5 *(1) That the expansion of state warranty laws covering*
 6 *new and used cars has given important and valuable*
 7 *protection to consumers.*

8 *(2) That, in states without this valuable warranty*
 9 *protection, used and irreparable motor vehicles are*
 10 *being resold in the marketplace without notice to the*
 11 *subsequent purchaser.*

12 *(3) That other states have addressed this problem by*
 13 *requiring notices on the title of these vehicles or other*

1 *notice procedures to warn consumers that the motor*
 2 *vehicles were repurchased by a dealer or manufacturer*
 3 *because the vehicle could not be repaired in a reasonable*
 4 *length of time or a reasonable number of repair attempts*
 5 *or the dealer or manufacturer was not willing to repair*
 6 *the vehicle.*

7 *(4) That these notices serve the interests of consumers*
 8 *who have a right to information relevant to their buying*
 9 *decisions.*

10 *(5) That the disappearance of these notices upon the*
 11 *transfer of title from another state to this state encourages*
 12 *the transport of "lemons" to this state for sale to the*
 13 *drivers of this state.*

14 *(b) This section and Section 1793.24 shall be known,*
 15 *and may be cited as, the Automotive Consumer*
 16 *Notification Act.*

17 *(c) Any manufacturer who reacquires or assists a*
 18 *dealer or lienholder to reacquire a vehicle registered in*
 19 *this state, any other state, or a federally administered*
 20 *district shall, prior to any sale, lease, or transfer of the*
 21 *vehicle in this state, or prior to exporting the vehicle to*
 22 *another state for sale, lease or transfer if the vehicle was*
 23 *registered in this state immediately prior to it being*
 24 *reacquired, cause the vehicle to be retitled in the name*
 25 *of the manufacturer, request the Department of Motor*
 26 *Vehicles to inscribe the ownership certificate with the*
 27 *notation "lemon buy back," and affix a decal to the left*
 28 *doorframe of the vehicle in accordance with Section*
 29 *11713.12 of the Vehicle Code, in any of the following*
 30 *circumstances:*

31 *(1) The vehicle was reacquired after the buyer or*
 32 *lessee made a written request to the manufacturer to*
 33 *replace the vehicle or make a refund and the written*
 34 *request was made after either (A) the vehicle was the*
 35 *subject of four or more attempts by the manufacturer or*
 36 *its agents to repair the same nonconformity within one*
 37 *year from delivery of the new vehicle to the buyer or*
 38 *lessee or 12,000 miles on the odometer of the vehicle,*
 39 *whichever occurred first, or (B) the vehicle was out of*
 40 *service by reason of repair of nonconformities by the*

1 manufacturer or its agents for a cumulative total of more
2 than 30 calendar days since delivery of the vehicle to the
3 buyer or lessee and within one year from delivery of the
4 new vehicle to the buyer or lessee or 12,000 miles on the
5 odometer of the vehicle, whichever occurred first.

6 (2) The vehicle was reacquired during the pendency
7 of an arbitration proceeding between the manufacturer
8 and the buyer or lessee which alleged a cause of action
9 under subdivision (d) of Section 1793.2, or was reacquired
10 within six months of the dismissal or final adjudication of
11 that arbitration proceeding.

12 (3) The vehicle was reacquired during the pendency
13 of a law suit between the manufacturer and the buyer
14 which alleged a cause of action under subdivision (d) of
15 Section 1793.2, or was reacquired within six months of the
16 dismissal or final adjudication of that law suit.

17 (4) The vehicle was reacquired, pursuant to a court
18 order or a decision rendered through a third-party
19 dispute resolution process.

20 (d) Any manufacturer who reacquires or assists a
21 dealer or lienholder to reacquire a vehicle in order to
22 resolve an express warranty dispute between the buyer
23 or lessee and the manufacturer shall, prior to sale, lease,
24 or other transfer of the vehicle, execute and deliver to the
25 subsequent transferee a notice and obtain the transferee's
26 written acknowledgment of a notice, as prescribed by
27 Section 1793.24.

28 (e) Any dealer who knowingly purchases for resale a
29 vehicle that has been reacquired in order to resolve an
30 express warranty dispute between the last retail owner of
31 the reacquired vehicle and the vehicle's manufacturer
32 shall, prior to sale, lease, or other transfer, execute and
33 deliver to the subsequent transferee a notice and obtain
34 the transferee's written acknowledgment of a notice, as
35 prescribed by Section 1793.24.

36 (f) The disclosure requirements in subdivisions (d)
37 and (e) are in addition to all other consumer notice
38 requirements and do not relieve any person, including
39 any dealer or manufacturer, from complying with any

1 other applicable law, including any requirement of
2 subdivision (f) of Section 1793.22.

3 (g) For purposes of this section, "dealer" has the same
4 meaning as defined in Section 285 of the Vehicle Code.

5 SEC. 2. Section 1793.24 is added to the Civil Code, to
6 read:

7 1793.24. (a) The notice required in subdivisions (d)
8 and (e) of Section 1793.23 shall be prepared by the
9 manufacturer of the reacquired vehicle and shall disclose
10 all of the following:

11 (1) Year, make, model, and vehicle identification
12 number of the vehicle.

13 (2) Whether the title to the vehicle has been inscribed
14 with the notation "lemon buy back."

15 (3) The nature of each nonconformity reported by the
16 original buyer or lessee of the vehicle.

17 (4) Repairs, if any, made to the vehicle in an attempt
18 to correct each nonconformity reported by the original
19 buyer or lessee.

20 (b) The notice shall be on a form 8 1/2 x 11 inches in size
21 and printed in no smaller than 10-point black type on a
22 white background.

23 The form shall only contain the following information
24 prior to it being filled out by the manufacturer:

25
26 WARRANTY BUYBACK NOTICE

27
28 (Check one or both, as applicable)

29
30 This vehicle was reacquired by the vehicle's
31 manufacturer in resolution of a warranty dispute
32 between the original owner/lessee and the
33 manufacturer.

34 The title to this vehicle has been permanently
35 branded with the notation "lemon buyback." The
36 nonconformity experienced by the original owner or
37 lessee has been corrected and the manufacturer warrants
38 for a one-year period that this vehicle is free of that
39 nonconformity.



1	V.I.N.	Year	Make	Model
2				
3	Problem(s) Reported by Original Owner		Repairs Made, if any, to Correct Reported Problem(s)	
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17	Signature of Manufacturer		Date	
18	_____		_____	
19	Signature of Dealer(s)		Date	
20	_____		_____	
21	_____		_____	
22	_____		_____	
23	Signature of Retail Buyer or Lessee		Date	
24	_____		_____	
25	_____		_____	
26	_____		_____	
27	_____		_____	

28 (c) The manufacturer shall provide an executed copy
 29 of the notice to the manufacturer's transferee. Each
 30 transferee to whom the motor vehicle is transferred prior
 31 to its sale to a retail buyer or lessee shall be provided an
 32 executed copy of the notice by the previous transferor.

33 SEC. 3. Section 1793.25 of the Civil Code is amended
 34 to read:

35 1793.25. (a) Notwithstanding Part 1 (commencing
 36 with Section 6001) of Division 2 of the Revenue and
 37 Taxation Code, the State Board of Equalization shall
 38 reimburse the manufacturer of a new motor vehicle for
 39 an amount equal to the sales tax which the manufacturer
 40 pays to or for the buyer when providing a replacement

1 vehicle pursuant to subparagraph (A) of paragraph (2)
 2 of subdivision (d) of Section 1793.2 or includes in making
 3 restitution to the buyer pursuant to subparagraph (B) of
 4 paragraph (2) of subdivision (d) of Section 1793.2, when
 5 satisfactory proof is provided that the retailer of the
 6 motor vehicle for which the manufacturer is making
 7 restitution has reported and paid the sales tax on the gross
 8 receipts from the sale of that motor vehicle and the
 9 manufacturer provides satisfactory proof that it has
 10 complied with the provisions of subdivision (b) of Section
 11 11713.10 of the Vehicle Code *complied with subdivision*
 12 *(c) of Section 1793.23.* The State Board of Equalization
 13 may adopt rules and regulations to carry out, facilitate
 14 compliance with, or prevent circumvention or evasion of,
 15 this section.

16 (b) Nothing in this section shall in any way change the
 17 application of the sales and use tax to the gross receipts
 18 and the sales price from the sale, and the storage, use, or
 19 other consumption, in this state or tangible personal
 20 property pursuant to Part 1 (commencing with Section
 21 6001) of Division 2 of the Revenue and Taxation Code.

22 (c) The manufacturer's claim for reimbursement and
 23 the board's approval or denial of the claim shall be subject
 24 to the provisions of Article 1 (commencing with Section
 25 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue
 26 and Taxation Code, except Sections 6902.1, 6903, 6907, and
 27 6908 thereof, insofar as those provisions are not
 28 inconsistent with this section.

29 ~~SEC. 2.~~
 30 SEC. 4. Section 1795.8 of the Civil Code is repealed.

31 ~~SEC. 3.~~
 32 SEC. 5. Section 4453 of the Vehicle Code is amended
 33 to read:

34 4453. (a) The registration card shall contain upon its
 35 face, the date issued, the name and residence or business
 36 address of the owner and of the legal owner, if any, the
 37 registration number assigned to the vehicle, and a
 38 description of the vehicle as complete as that required in
 39 the application for registration of the vehicle.



1 (b) A motor vehicle of a type included in this
2 subdivision shall be identified as such on the face of the
3 registration card, whenever the department is able to
4 ascertain that fact, at the time application is made for
5 initial registration or transfer of ownership of the vehicle.

6 (1) A motor vehicle rebuilt and restored to operation
7 which was previously declared to be a total loss salvage
8 vehicle because the cost of repairs exceeds the retail value
9 of the vehicle.

10 (2) A motor vehicle rebuilt and restored to operation
11 which was previously reported to be dismantled pursuant
12 to Section 11520.

13 (3) A motor vehicle previously registered to a law
14 enforcement agency and operated in law enforcement
15 work.

16 (4) A motor vehicle formerly operated as a taxicab.

17 (5) A motor vehicle manufactured outside of the
18 United States and not intended by the manufacturer for
19 sale in the United States.

20 (6) A park trailer, as described in subdivision (b) of
21 Section 18010 of the Health and Safety Code, which when
22 moved upon the highway is required to be moved under
23 a permit pursuant to Section 35780.

24 (7) A motor vehicle that has been reacquired under
25 circumstances described in subdivision ~~(b)~~ of Section
26 ~~11713.10~~ (c) of Section 1793.23 of the Civil Code, a vehicle
27 with out-of-state titling documents reflecting a warranty
28 return, or a vehicle that has been identified by an agency
29 of another state as requiring a warranty return title
30 notation, pursuant to the laws of that state. The notation
31 made on the face of the registration and pursuant to this
32 subdivision shall state "lemon buy back."

33 (c) The director may modify the form, arrangement,
34 and information appearing on the face of the registration
35 card and may provide for standardization and
36 abbreviation of fictitious or firm names on the
37 registration card whenever the director finds that the
38 efficiency of the department will be promoted by so
39 doing, except that general delivery or post office box

1 numbers shall not be permitted as the address of the
2 registered owner unless there is no other address.

3 ~~SEC. 4. Section 11713.10 is added to the Vehicle Code;~~
4 ~~to read:~~

5 ~~11713.10. (a) The Legislature finds and declares that~~
6 ~~the expansion of state warranty laws covering new and~~
7 ~~used cars has given important and valuable protection to~~
8 ~~consumers; that in states without this valuable warranty~~
9 ~~protection used and irreparable motor vehicles are~~
10 ~~inundating the marketplace; that other states have~~
11 ~~addressed this problem by requiring notices on the title~~
12 ~~of these vehicles or other notice procedures to warn~~
13 ~~consumers that the motor vehicles were repurchased by~~
14 ~~a dealer or manufacturer because either the vehicle could~~
15 ~~not be repaired in a reasonable length of time, a~~
16 ~~reasonable number of repair attempts, or the dealer or~~
17 ~~manufacturer was not willing to repair the vehicle; that~~
18 ~~these notices serve the interests of consumers who have~~
19 ~~a right to information relevant to their buying decisions;~~
20 ~~and that the disappearance of these notices upon the~~
21 ~~transfer of title from another state to this state encourages~~
22 ~~the transport of "lemons" to this state for sale to the~~
23 ~~drivers of this state. Therefore, the Legislature hereby~~
24 ~~enacts the Automotive Consumer Notification Act.~~

25 ~~(b) Any manufacturer who reacquires or assists a~~
26 ~~dealer to reacquire a vehicle registered in this state, any~~
27 ~~other state, or a federally administered district shall, prior~~
28 ~~to any resale, lease, or transfer of the vehicle in this state,~~
29 ~~cause the vehicle to be retitled in the name of the~~
30 ~~manufacturer, request the department to inscribe the~~
31 ~~ownership certificate with the notation "lemon buy~~
32 ~~back"; and affix a decal to the left doorframe of the~~
33 ~~vehicle in accordance with the provisions of Section~~
34 ~~11713.12; in any of the following circumstances:~~

35 ~~(1) The vehicle was reacquired, pursuant to a court~~
36 ~~order or a decision rendered through a third-party~~
37 ~~dispute resolution process.~~

38 ~~(2) The vehicle was reacquired within six months after~~
39 ~~the buyer had made a written request to the~~



1 manufacturer for replacement or refund under the
2 provisions of Section 1793.2 of the Civil Code:

3 (3) The vehicle was reacquired during the pendency
4 of state/certified arbitration concerning the vehicle
5 requested by the buyer or within six months of the
6 conclusion of that arbitration proceeding.

7 (4) The vehicle was reacquired during the pendency
8 of litigation between the manufacturer and the buyer
9 alleging a cause of action under Section 1793.2 of the Civil
10 Code or within six months of the conclusion of that
11 litigation.

12 (e) Any manufacturer who reacquires or assists a
13 dealer to reacquire a vehicle to resolve an express
14 warranty dispute between the buyer or lessee and the
15 manufacturer shall, prior to sale, lease, or other transfer,
16 execute and deliver to the subsequent transferee a notice
17 and obtain the transferee's written acknowledgment of a
18 notice, as prescribed by Section 11713.11.

19 (d) Any dealer who knowingly purchases for resale a
20 vehicle that has been reacquired in order to resolve an
21 express warranty dispute between the last retail owner of
22 the reacquired vehicle and the vehicle's manufacturer
23 shall, prior to sale, lease, or other transfer, execute and
24 deliver to the subsequent transferee a notice and obtain
25 the transferee's written acknowledgment of a notice, as
26 prescribed by Section 11713.11.

27 (e) The disclosure requirements in subdivisions (c)
28 and (d) are in addition to all other consumer notice
29 requirements and do not relieve any person, including
30 any dealer or manufacturer, from complying with any
31 other applicable law, including any requirement of
32 subdivision (f) of Section 1793.22 of the Civil Code.

33 (f) Any buyer damaged by the failure of a
34 manufacturer or dealer to comply with this section shall
35 have the same rights and remedies provided by Section
36 1793 of the Civil Code.

37 SEC. 5. Section 11713.11 is added to the Vehicle Code,
38 to read:

39 11713.11. (a) The notice required in subdivisions (c)
40 and (d) of Section 11713.10 shall be prepared by the

1 manufacturer of the reacquired vehicle and shall disclose
2 the following:

3 (1) Year, make, model, and vehicle identification
4 number of the vehicle.

5 (2) Whether the title to the vehicle has been inscribed
6 with the notation "lemon buy back."

7 (3) The nature of each nonconformity reported by the
8 original buyer or lessee of the vehicle.

9 (4) Repairs, if any, made to the vehicle in an attempt
10 to correct each nonconformity reported by the original
11 buyer or lessee.

12 (b) The notice shall be on a form 8¹/₂ x 11 inches in
13 size; printed in no smaller than 10/point black type on a
14 white background. The form shall only contain the
15 following information prior to it being filled out by the
16 manufacturer:

17 WARRANTY BUY BACK NOTICE

18 (Check one or both, as applicable)

19 This vehicle was reacquired by the vehicle's
20 manufacturer in resolution of a warranty dispute
21 between the original owner/lessee and the
22 manufacturer.

23 The title to this vehicle has been permanently
24 branded with the notation "lemon buy back." The
25 nonconformity experienced by the original owner or
26 lessee has been corrected and the manufacturer warrants
27 for a one/year period that this vehicle is free of that
28 nonconformity.

VIN	Year	Make	Model
-----	------	------	-------



1	Problem(s) Reported by	Repairs Made, if any, to
2	Original Owner	Correct Reported Problem(s)
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		

14 Signature of Manufacturer _____ Date _____
 15 _____
 16 Signature of Dealer _____ Date _____
 17 _____
 18 _____
 19 _____
 20 Signature of Buyer, Lessee, or other
 21 Transferee _____ Date _____
 22 _____
 23 _____
 24 _____

25 ~~(c)~~ A copy of the notice shall be provided to the buyer,
26 lessee, or other transferee.

27 SEC. 6. Section 11713.12 is added to the Vehicle Code,
28 to read:

29 11713.12. (a) The decal required by subdivision ~~(b)~~
30 ~~of Section 11713.10~~ (c) of Section 1793.23 of the Civil Code
31 to be affixed by a manufacturer to the left doorframe of
32 a vehicle shall specify that title to the vehicle has been
33 inscribed with the notation "lemon buy back." The decal
34 shall be issued to manufacturers by the department and
35 affixed to the vehicle in a manner prescribed by the
36 department.

37 (b) No person shall knowingly remove or alter any
38 decal affixed to a vehicle pursuant to subdivision (a),
39 whether or not licensed under this code.

1 SEC. 7. This act shall apply only to vehicles
2 reacquired by a manufacturer on or after the effective
3 date of this act.

4 SEC. 8. No reimbursement is required by this act
5 pursuant to Section 6 of Article XIII B of the California
6 Constitution because the only costs that may be incurred
7 by a local agency or school district will be incurred
8 because this act creates a new crime or infraction,
9 eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section
11 17556 of the Government Code, or changes the definition
12 of a crime within the meaning of Section 6 of Article
13 XIII B of the California Constitution.

14 Notwithstanding Section 17580 of the Government
15 Code, unless otherwise specified, the provisions of this act
16 shall become operative on the same date that the act
17 takes effect pursuant to the California Constitution.



LIS - 1e

AMENDED IN SENATE JULY 3, 1995
AMENDED IN SENATE JUNE 14, 1995
AMENDED IN ASSEMBLY APRIL 26, 1995
AMENDED IN ASSEMBLY APRIL 5, 1995

CALIFORNIA LEGISLATURE—1995-96 REGULAR SESSION

ASSEMBLY BILL

No. 1381

Introduced by Assembly Member Speier

February 24, 1995

An act to amend Section 1793.25 of, to add Sections 1793.23 and 1793.24 to, and to repeal Section 1795.8 of, the Civil Code, and to amend Section 4453 of, and to add Section 11713.12 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1381, as amended, Speier. Vehicles: Automotive Consumer Notification Act.

Existing provisions of the Civil Code, the Automotive Consumer Notification Act, require the seller of a vehicle to include a specified disclosure if that vehicle has been returned, or should have been returned, to the dealer or manufacturer, as specified, for failure to conform to warranties, as specified.

This bill would revise and recast the Automotive Consumer Notification Act to, among other things, require the manufacturer to retitle specified defective vehicles in its name, request the Department of Motor Vehicles to inscribe



the ownership certificate with a specified notation, affix a specified decal to the left doorframe of the vehicle, deliver a specified notice to the transferee of the vehicle, and obtain the transferee's acknowledgment. The bill would provide that it shall apply only to vehicles reacquired by a manufacturer on or after the effective date of the act. The bill would make legislative findings and declarations. The bill would also make conforming changes.

By creating a new infraction under the provisions of the Vehicle Code, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 1793.23 is added to the Civil
2 Code, to read:

3 1793.23. (a) The Legislature finds and declares all of
4 the following:

5 (1) That the expansion of state warranty laws covering
6 new and used cars has given important and valuable
7 protection to consumers.

8 (2) That, in states without this valuable warranty
9 protection, used and irreparable motor vehicles are
10 being resold in the marketplace without notice to the
11 subsequent purchaser.

12 (3) That other states have addressed this problem by
13 requiring notices on the title of these vehicles or other
14 notice procedures to warn consumers that the motor
15 vehicles were repurchased by a dealer or manufacturer
16 because the vehicle could not be repaired in a reasonable
17 length of time or a reasonable number of repair attempts

1 or the dealer or manufacturer was not willing to repair
2 the vehicle.

3 (4) That these notices serve the interests of consumers
4 who have a right to information relevant to their buying
5 decisions.

6 (5) That the disappearance of these notices upon the
7 transfer of title from another state to this state encourages
8 the transport of "lemons" to this state for sale to the
9 drivers of this state.

10 (b) This section and Section 1793.24 shall be known,
11 and may be cited as, the Automotive Consumer
12 Notification Act.

13 ~~(c) Any manufacturer who reacquires or assists a~~
14 ~~dealer or lienholder to reacquire a vehicle registered in~~
15 ~~this state, any other state, or a federally administered~~
16 ~~district shall, prior to any sale, lease, or transfer of the~~
17 ~~vehicle in this state, or prior to exporting the vehicle to~~
18 ~~another state for sale, lease or transfer if the vehicle was~~
19 ~~registered in this state immediately prior to it being~~
20 ~~reacquired, cause the vehicle to be retitled in the name~~
21 ~~of the manufacturer, request the Department of Motor~~
22 ~~Vehicles to inscribe the ownership certificate with the~~
23 ~~notation "lemon buy back," and affix a decal to the left~~
24 ~~doorframe of the vehicle in accordance with Section~~
25 ~~11713.12 of the Vehicle Code, in any of the following~~
26 ~~circumstances:~~

27 ~~(1) The vehicle was reacquired after the buyer or~~
28 ~~lessee made a written request to the manufacturer to~~
29 ~~replace the vehicle or make a refund and the written~~
30 ~~request was made after either (A) the vehicle was the~~
31 ~~subject of four or more attempts by the manufacturer or~~
32 ~~its agents to repair the same nonconformity within one~~
33 ~~year from delivery of the new vehicle to the buyer or~~
34 ~~lessee or 12,000 miles on the odometer of the vehicle,~~
35 ~~whichever occurred first, or (B) the vehicle was out of~~
36 ~~service by reason of repair of nonconformities by the~~
37 ~~manufacturer or its agents for a cumulative total of more~~
38 ~~than 30 calendar days since delivery of the vehicle to the~~
39 ~~buyer or lessee and within one year from delivery of the~~



1 new vehicle to the buyer or lessee or 12,000 miles on the
2 odometer of the vehicle, whichever occurred first.

3 ~~(2) The vehicle was reacquired during the pendency~~
4 ~~of an arbitration proceeding between the manufacturer~~
5 ~~and the buyer or lessee which alleged a cause of action~~
6 ~~under subdivision (d) of Section 1793.2, or was reacquired~~
7 ~~within six months of the dismissal or final adjudication of~~
8 ~~that arbitration proceeding.~~

9 ~~(3) The vehicle was reacquired during the pendency~~
10 ~~of a law suit between the manufacturer and the buyer~~
11 ~~which alleged a cause of action under subdivision (d) of~~
12 ~~Section 1793.2, or was reacquired within six months of the~~
13 ~~dismissal or final adjudication of that law suit.~~

14 ~~(4) The vehicle was reacquired, pursuant to a court~~
15 ~~order or a decision rendered through a third-party~~
16 ~~dispute resolution process.~~

17 *(c) Any manufacturer who reacquires or assists a*
18 *dealer or lienholder to reacquire a motor vehicle*
19 *registered in this state, any other state, or a federally*
20 *administered district because the vehicle was required to*
21 *be replaced or accepted for restitution due to the*
22 *manufacturer's inability to conform the vehicle to*
23 *applicable warranties pursuant to subdivision (d) of*
24 *Section 1793.2 or any other applicable law of this state, any*
25 *other state, or federal law, shall, prior to any sale, lease,*
26 *or transfer of the vehicle in this state, or prior to exporting*
27 *the vehicle to another state for sale, lease, or transfer if the*
28 *vehicle was registered in this state and reacquired*
29 *pursuant to the provisions of subdivision (d) of Section*
30 *1793.2, cause the vehicle to be retitled in the name of the*
31 *manufacturer, request the Department of Motor*
32 *Vehicles to inscribe the ownership certificate with the*
33 *notation "factory buyback," and affix a decal to the*
34 *vehicle in accordance with Section 11713.12 of the*
35 *Vehicle Code.*

36 (d) Any manufacturer who reacquires or assists a
37 dealer or lienholder to reacquire a motor vehicle in order
38 to resolve an express warranty dispute between the buyer
39 or lessee and the manufacturer shall, prior to sale, lease,
40 or other transfer of the vehicle, execute and deliver to the

1 subsequent transferee a notice and obtain the transferee's
2 written acknowledgment of a notice, as prescribed by
3 Section 1793.24.

4 ~~(e) Any dealer who knowingly purchases for resale a~~
5 ~~vehicle that has been reacquired in order to resolve an~~

6 *(e) Any dealer who purchases for resale a motor*
7 *vehicle and has been given notice pursuant to subdivision*
8 *(c) of Section 1793.24 that the vehicle was reacquired in*
9 *order to resolve an express warranty dispute between the*
10 *last retail owner of the reacquired vehicle and the*
11 *vehicle's manufacturer shall, prior to sale, lease, or other*
12 *transfer, execute and deliver to the subsequent*
13 *transferee a notice and obtain the transferee's written*
14 *acknowledgment of a notice, as prescribed by Section*
15 *1793.24.*

16 (f) The disclosure requirements in subdivisions (d)
17 and (e) are in addition to all other consumer notice
18 requirements and do not relieve any person, including
19 any dealer or manufacturer, from complying with any
20 other applicable law, including any requirement of
21 subdivision (f) of Section 1793.22.

22 (g) For purposes of this section, "dealer" has the same
23 meaning as defined in Section 285 of the Vehicle Code.

24 SEC. 2. Section 1793.24 is added to the Civil Code, to
25 read:

26 1793.24. (a) The notice required in subdivisions (d)
27 and (e) of Section 1793.23 shall be prepared by the
28 manufacturer of the reacquired vehicle and shall disclose
29 all of the following:

30 (1) Year, make, model, and vehicle identification
31 number of the vehicle.

32 (2) Whether the title to the vehicle has been inscribed
33 with the notation "~~lemon buy back.~~" "factory buyback."

34 (3) The nature of each nonconformity reported by the
35 original buyer or lessee of the vehicle.

36 (4) Repairs, if any, made to the vehicle in an attempt
37 to correct each nonconformity reported by the original
38 buyer or lessee.



1 (b) The notice shall be on a form 8¹/₂ x 11 inches in size
2 and printed in no smaller than 10-point black type on a
3 white background.

4 The form shall only contain the following information
5 prior to it being filled out by the manufacturer:
6

7 WARRANTY BUYBACK NOTICE

8
9 (Check one or both, as applicable)

10 This vehicle was reacquired by the vehicle's
11 manufacturer in resolution of a warranty dispute
12 between the original owner/lessee and the
13 manufacturer.
14

15 The title to this vehicle has been permanently
16 branded with the notation "~~lemon~~ "factory buyback."
17 The nonconformity experienced by the original owner or
18 lessee has been corrected and the manufacturer warrants
19 for a one-year period that this vehicle is free of that
20 nonconformity.
21

22 V.I.N.	23 Year	24 Make	25 Model
-----------	---------	---------	----------

26 Problem(s) Reported by 27 Original Owner	28 Repairs Made, if any, to 29 Correct Reported Problem(s)
30	31
32	33
34	35
36	37

38 Signature of Manufacturer

Date

39
40 Signature of Dealer(s)

Date



1 _____
2 _____
3 _____
4 _____
5 Signature of Retail Buyer or Lessee Date
6 _____
7 _____
8 _____

9 (c) The manufacturer shall provide an executed copy
10 of the notice to the manufacturer's transferee. Each
11 transferee to whom the motor vehicle is transferred prior
12 to its sale to a retail buyer or lessee shall be provided an
13 executed copy of the notice by the previous transferor.

14 SEC. 3. Section 1793.25 of the Civil Code is amended
15 to read:

16 1793.25. (a) Notwithstanding Part 1 (commencing
17 with Section 6001) of Division 2 of the Revenue and
18 Taxation Code, the State Board of Equalization shall
19 reimburse the manufacturer of a new motor vehicle for
20 an amount equal to the sales tax which the manufacturer
21 pays to or for the buyer when providing a replacement
22 vehicle pursuant to subparagraph (A) of paragraph (2)
23 of subdivision (d) of Section 1793.2 or includes in making
24 restitution to the buyer pursuant to subparagraph (B) of
25 paragraph (2) of subdivision (d) of Section 1793.2, when
26 satisfactory proof is provided that the retailer of the
27 motor vehicle for which the manufacturer is making
28 restitution has reported and paid the sales tax on the gross
29 receipts from the sale of that motor vehicle and the
30 manufacturer provides satisfactory proof that it has
31 complied with subdivision (c) of Section 1793.23. The
32 State Board of Equalization may adopt rules and
33 regulations to carry out, facilitate compliance with, or
34 prevent circumvention or evasion of, this section.

35 (b) Nothing in this section shall in any way change the
36 application of the sales and use tax to the gross receipts
37 and the sales price from the sale, and the storage, use, or
38 other consumption, in this state or tangible personal
39 property pursuant to Part 1 (commencing with Section
40 6001) of Division 2 of the Revenue and Taxation Code.

1 (c) The manufacturer's claim for reimbursement and
2 the board's approval or denial of the claim shall be subject
3 to the provisions of Article 1 (commencing with Section
4 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue
5 and Taxation Code, except Sections 6902.1, 6903, 6907, and
6 6908 thereof, insofar as those provisions are not
7 inconsistent with this section.

8 SEC. 4. Section 1795.8 of the Civil Code is repealed.

9 SEC. 5. Section 4453 of the Vehicle Code is amended
10 to read:

11 4453. (a) The registration card shall contain upon its
12 face, the date issued, the name and residence or business
13 address of the owner and of the legal owner, if any, the
14 registration number assigned to the vehicle, and a
15 description of the vehicle as complete as that required in
16 the application for registration of the vehicle.

17 (b) A motor vehicle of a type included in this
18 subdivision shall be identified as such on the face of the
19 registration card, whenever the department is able to
20 ascertain that fact, at the time application is made for
21 initial registration or transfer of ownership of the vehicle.

22 (1) A motor vehicle rebuilt and restored to operation
23 which was previously declared to be a total loss salvage
24 vehicle because the cost of repairs exceeds the retail value
25 of the vehicle.

26 (2) A motor vehicle rebuilt and restored to operation
27 which was previously reported to be dismantled pursuant
28 to Section 11520.

29 (3) A motor vehicle previously registered to a law
30 enforcement agency and operated in law enforcement
31 work.

32 (4) A motor vehicle formerly operated as a taxicab.

33 (5) A motor vehicle manufactured outside of the
34 United States and not intended by the manufacturer for
35 sale in the United States.

36 (6) A park trailer, as described in subdivision (b) of
37 Section 18010 of the Health and Safety Code, which when
38 moved upon the highway is required to be moved under
39 a permit pursuant to Section 35780.

1 (7) A motor vehicle that has been reacquired under
2 circumstances described in subdivision (c) of Section
3 1793.23 of the Civil Code, a vehicle with out-of-state
4 titling documents reflecting a warranty return, or a
5 vehicle that has been identified by an agency of another
6 state as requiring a warranty return title notation,
7 pursuant to the laws of that state. The notation made on
8 the face of the registration and pursuant to this
9 subdivision shall state "~~lemon buy back.~~" "*factory*
10 *buyback.*"

11 (c) The director may modify the form, arrangement,
12 and information appearing on the face of the registration
13 card and may provide for standardization and
14 abbreviation of fictitious or firm names on the
15 registration card whenever the director finds that the
16 efficiency of the department will be promoted by so
17 doing, except that general delivery or post office box
18 numbers shall not be permitted as the address of the
19 registered owner unless there is no other address.

20 SEC. 6. Section 11713.12 is added to the Vehicle Code,
21 to read:

22 11713.12. (a) The decal required by subdivision (c)
23 of Section 1793.23 of the Civil Code ~~to be affixed by a~~
24 ~~manufacturer to the left doorframe of a vehicle shall~~
25 ~~specify that title to the vehicle has been inscribed with~~
26 ~~the notation "lemon buy back." The decal shall be issued~~
27 ~~to manufacturers by the department and to be affixed by~~
28 ~~a manufacturer to a motor vehicle, shall be affixed to the~~
29 ~~left front doorframe of the vehicle, or, if the vehicle does~~
30 ~~not have a left front doorframe, it shall be affixed in a~~
31 ~~location designated by the department. The decal shall~~
32 ~~specify that title to the motor vehicle has been inscribed~~
33 ~~with the notation "factory buyback" and shall be affixed~~
34 to the vehicle in a manner prescribed by the department.

35 (b) No person shall knowingly remove or alter any
36 decal affixed to a vehicle pursuant to subdivision (a),
37 whether or not licensed under this code.

38 SEC. 7. This act shall apply only to vehicles
39 reacquired by a manufacturer on or after the effective
40 date of this act.



1 SEC. 8. No reimbursement is required by this act
2 pursuant to Section 6 of Article XIII B of the California
3 Constitution because the only costs that may be incurred
4 by a local agency or school district will be incurred
5 because this act creates a new crime or infraction,
6 eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section
8 17556 of the Government Code, or changes the definition
9 of a crime within the meaning of Section 6 of Article
10 XIII B of the California Constitution.

11 Notwithstanding Section 17580 of the Government
12 Code, unless otherwise specified, the provisions of this act
13 shall become operative on the same date that the act
14 takes effect pursuant to the California Constitution.

15

16 CORRECTIONS

17 Text — Page 9.

18

19



SI - 1f

AMENDED IN SENATE JULY 15, 1995
AMENDED IN SENATE JULY 3, 1995
AMENDED IN SENATE JUNE 14, 1995
AMENDED IN ASSEMBLY APRIL 26, 1995
AMENDED IN ASSEMBLY APRIL 5, 1995

CALIFORNIA LEGISLATURE—1995-96 REGULAR SESSION

ASSEMBLY BILL

No. 1381

Introduced by Assembly Member Speier

February 24, 1995

An act to amend Section 1793.25 of, to add Sections 1793.23 and 1793.24 to, and to repeal Section 1795.8 of, the Civil Code, and to amend Section 4453 of, and to add Section 11713.12 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1381, as amended, Speier. Vehicles: Automotive Consumer Notification Act.

Existing provisions of the Civil Code, the Automotive Consumer Notification Act, require the seller of a vehicle to include a specified disclosure if that vehicle has been returned, or should have been returned, to the dealer or manufacturer, as specified, for failure to conform to warranties, as specified.

This bill would revise and recast the Automotive Consumer Notification Act to, among other things, require the manufacturer to retitle specified defective vehicles in its



name, request the Department of Motor Vehicles to inscribe the ownership certificate with a specified notation, affix a specified decal to the left doorframe of the vehicle, deliver a specified notice to the transferee of the vehicle *as prescribed*, and obtain the transferee's acknowledgment. The bill would provide that it shall apply only to vehicles reacquired by a manufacturer on or after the effective date of the act January 1, 1996. The bill would make legislative findings and declarations. The bill would also make conforming changes.

By creating a new infraction under the provisions of the Vehicle Code, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 1793.23 is added to the Civil
2 Code, to read:

3 1793.23. (a) The Legislature finds and declares all of
4 the following:

5 (1) That the expansion of state warranty laws covering
6 new and used cars has given important and valuable
7 protection to consumers.

8 (2) That, in states without this valuable warranty
9 protection, used and irreparable motor vehicles are
10 being resold in the marketplace without notice to the
11 subsequent purchaser.

12 (3) That other states have addressed this problem by
13 requiring notices on the title of these vehicles or other
14 notice procedures to warn consumers that the motor
15 vehicles were repurchased by a dealer or manufacturer
16 because the vehicle could not be repaired in a reasonable
17 length of time or a reasonable r



1 or the dealer or manufacturer was not willing to repair
2 the vehicle.

3 (4) That these notices serve the interests of consumers
4 who have a right to information relevant to their buying
5 decisions.

6 (5) That the disappearance of these notices upon the
7 transfer of title from another state to this state encourages
8 the transport of "lemons" to this state for sale to the
9 drivers of this state.

10 (b) This section and Section 1793.24 shall be known,
11 and may be cited as, the Automotive Consumer
12 Notification Act.

13 (c) Any manufacturer who reacquires or assists a
14 dealer or lienholder to reacquire a motor vehicle
15 registered in this state, any other state, or a federally
16 administered district because the vehicle was required to
17 be replaced or accepted for restitution due to the
18 manufacturer's inability to conform the vehicle to
19 applicable warranties pursuant to subdivision (d) of
20 Section 1793.2 or any other applicable law of this state, any
21 other state, or federal law, shall, prior to any sale, lease,
22 administered district shall, prior to any sale, lease, or
23 transfer of the vehicle in this state, or prior to exporting
24 the vehicle to another state for sale, lease, or transfer if the
25 vehicle was registered in this state and reacquired
26 pursuant to the provisions of subdivision (d) of Section
27 1793.2, cause the vehicle to be retitled in the name of the
28 manufacturer, request the Department of Motor
29 Vehicles to inscribe the ownership certificate with the
30 notation "factory buyback," and affix a decal to the
31 vehicle in accordance with Section 11713.12 of the
32 Vehicle Code *if the manufacturer knew or should have
33 known that the vehicle is required by law to be replaced,
34 accepted for restitution due to the failure of the
35 manufacturer to conform the vehicle to applicable
36 warranties pursuant to subdivision (d) of Section 1793.2,
37 or accepted for restitution by the manufacturer due to
38 the failure of the manufacturer to conform the vehicle to
39 warranties required by any other applicable law of the
40 state, any other state, or federal law.*

1 (d) Any manufacturer who reacquires or assists a
 2 dealer or lienholder to reacquire a motor vehicle ~~in order~~
 3 ~~to resolve an express warranty dispute between the buyer~~
 4 ~~or lessee and the manufacturer shall, prior to sale, lease,~~
 5 ~~in response to a request by the buyer or lessee that the~~
 6 ~~vehicle be either replaced or accepted for restitution~~
 7 ~~because the vehicle did not conform to express warranties~~
 8 ~~shall, prior to the sale, lease, or other transfer of the~~
 9 ~~vehicle, execute and deliver to the subsequent transferee~~
 10 a notice and obtain the transferee's written
 11 acknowledgment of a notice, as prescribed by Section
 12 1793.24.

13 ~~(e) Any dealer who purchases for resale a motor~~
 14 ~~vehicle and has been given notice pursuant to subdivision~~
 15 ~~(e) of Section 1793.24 that the vehicle was reacquired in~~
 16 ~~order to resolve an express warranty dispute between the~~
 17 ~~last retail owner of the reacquired vehicle and the~~
 18 ~~vehicle's manufacturer shall, prior to sale, lease, or other~~

19 (e) Any person, including any dealer, who acquires a
 20 motor vehicle for resale and knows or should have known
 21 that the vehicle was reacquired by the vehicle's
 22 manufacturer in response to a request by the last retail
 23 owner or lessee of the vehicle that it be replaced or
 24 accepted for restitution because the vehicle did not
 25 conform to express warranties shall, prior to the sale,
 26 lease, or other transfer, execute and deliver to the
 27 subsequent transferee a notice and obtain the transferee's
 28 written acknowledgment of a notice, as prescribed by
 29 Section 1793.24.

30 (f) Any person, including any manufacturer or dealer,
 31 who sells, leases, or transfers ownership of a motor vehicle
 32 when the vehicle's ownership certificate is inscribed with
 33 the notation "factory buyback" shall, prior to the sale,
 34 lease, or ownership transfer of the vehicle, provide the
 35 transferee with a disclosure statement signed by the
 36 transferee that states: "THIS VEHICLE WAS
 37 REPURCHASED BY THE VEHICLE'S
 38 MANUFACTURER DUE TO A DEFECT IN THE
 39 VEHICLE PURSUANT TO CONSUMER WARRANTY
 40 LAWS. THE TITLE TO THIS VEHICLE HAS BEEN

1 PERMANENTLY BRANDED WITH THE NOTATION
 2 'FACTORY BUYBACK'."

3 (g) The disclosure requirements in subdivisions (d)
 4 and ~~(e)~~ are in addition to, (e), and (f) are cumulative
 5 with all other consumer notice requirements and do not
 6 relieve any person, including any dealer or manufacturer,
 7 from complying with any other applicable law, including
 8 any requirement of subdivision (f) of Section 1793.22.

9 ~~(g) For purposes of this section, "dealer" has the same~~
 10 ~~meaning as defined in Section 285 of the Vehicle Code.~~

11 (h) For purposes of this section, "dealer" means any
 12 person engaged in the business of selling, offering for sale,
 13 or negotiating the retail sale of, a used motor vehicle or
 14 selling motor vehicles as a broker or agent for another,
 15 including the officers, agents, and employees of the
 16 person and any combination or association of dealers.

17 SEC. 2. Section 1793.24 is added to the Civil Code, to
 18 read:

19 1793.24. (a) The notice required in subdivisions (d)
 20 and (e) of Section 1793.23 shall be prepared by the
 21 manufacturer of the reacquired vehicle and shall disclose
 22 all of the following:

- 23 (1) Year, make, model, and vehicle identification
- 24 number of the vehicle.
- 25 (2) Whether the title to the vehicle has been inscribed
- 26 with the notation "factory buyback."
- 27 (3) The nature of each nonconformity reported by the
- 28 original buyer or lessee of the vehicle.
- 29 (4) Repairs, if any, made to the vehicle in an attempt
- 30 to correct each nonconformity reported by the original
- 31 buyer or lessee.

32 (b) The notice shall be on a form 8¹/₂ x 11 inches in size
 33 and printed in no smaller than 10-point black type on a
 34 white background.

35 The form shall only contain the following information
 36 prior to it being filled out by the manufacturer:
 37



WARRANTY BUYBACK NOTICE

(Check one or both, as applicable)

This vehicle was reacquired by the vehicle's manufacturer in resolution of a warranty dispute between the original owner/lessee and the manufacturer.

The title to this vehicle has been permanently branded with the notation "factory buyback." The nonconformity experienced by the original owner or lessee has been corrected and the manufacturer warrants for a one-year period that this vehicle is free of that nonconformity.

(Check One)

This vehicle was repurchased by the vehicle's manufacturer after the last retail owner or lessee requested its repurchase due to the problems(s) listed below.

THIS VEHICLE WAS REPURCHASED BY THE VEHICLES'S MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS. THE TITLE TO THIS VEHICLE HAS BEEN PERMANENTLY BRANDED WITH THE NOTATION "FACTORY BUYBACK." Under California law, the manufacturer must warrant to you, for a one year period, that the vehicle is free of the problem(s) listed below.

Table with 4 columns: V.I.N., Year, Make, Model

Table with 2 columns: Problem(s) Reported by Original Owner, Repairs Made, if any, to Correct Reported Problem(s)

Signature of Manufacturer Date
Signature of Dealer(s) Date
Signature of Retail Buyer or Lessee Date

(c) The manufacturer shall provide an executed copy of the notice to the manufacturer's transferee. Each transferee, including a dealer, to whom the motor vehicle is transferred prior to its sale to a retail buyer or lessee shall be provided an executed copy of the notice by the previous transferor.

SEC. 3. Section 1793.25 of the Civil Code is amended to read:

1793.25. (a) Notwithstanding Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, the State Board of Equalization shall reimburse the manufacturer of a new motor vehicle for an amount equal to the sales tax which the manufacturer pays to or for the buyer when providing a replacement vehicle pursuant to subparagraph (A) of paragraph (2) of subdivision (d) of Section 1793.2 or includes in making

1 restitution to the buyer pursuant to subparagraph (B) of
 2 paragraph (2) of subdivision (d) of Section 1793.2, when
 3 satisfactory proof is provided that the retailer of the
 4 motor vehicle for which the manufacturer is making
 5 restitution has reported and paid the sales tax on the gross
 6 receipts from the sale of that motor vehicle and the
 7 manufacturer provides satisfactory proof that it has
 8 complied with subdivision (c) of Section 1793.23. The
 9 State Board of Equalization may adopt rules and
 10 regulations to carry out, facilitate compliance with, or
 11 prevent circumvention or evasion of, this section.

12 (b) Nothing in this section shall in any way change the
 13 application of the sales and use tax to the gross receipts
 14 and the sales price from the sale, and the storage, use, or
 15 other consumption, in this state or tangible personal
 16 property pursuant to Part 1 (commencing with Section
 17 6001) of Division 2 of the Revenue and Taxation Code.

18 (c) The manufacturer's claim for reimbursement and
 19 the board's approval or denial of the claim shall be subject
 20 to the provisions of Article 1 (commencing with Section
 21 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue
 22 and Taxation Code, except Sections 6902.1, 6903, 6907, and
 23 6908 thereof, insofar as those provisions are not
 24 inconsistent with this section.

25 SEC. 4. Section 1795.8 of the Civil Code is repealed.

26 SEC. 5. Section 4453 of the Vehicle Code is amended
 27 to read:

28 4453. (a) The registration card shall contain upon its
 29 face, the date issued, the name and residence or business
 30 address of the owner and of the legal owner, if any, the
 31 registration number assigned to the vehicle, and a
 32 description of the vehicle as complete as that required in
 33 the application for registration of the vehicle.

34 (b) A motor vehicle of a type included in this
 35 subdivision shall be identified as such on the face of the
 36 registration card, whenever the department is able to
 37 ascertain that fact, at the time application is made for
 38 initial registration or transfer of ownership of the vehicle.

39 (1) A motor vehicle rebuilt and restored to operation
 40 which was previously declared to be a total loss salvage

1 vehicle because the cost of repairs exceeds the retail value
 2 of the vehicle.

3 (2) A motor vehicle rebuilt and restored to operation
 4 which was previously reported to be dismantled pursuant
 5 to Section 11520.

6 (3) A motor vehicle previously registered to a law
 7 enforcement agency and operated in law enforcement
 8 work.

9 (4) A motor vehicle formerly operated as a taxicab.

10 (5) A motor vehicle manufactured outside of the
 11 United States and not intended by the manufacturer for
 12 sale in the United States.

13 (6) A park trailer, as described in subdivision (b) of
 14 Section 18010 of the Health and Safety Code, which when
 15 moved upon the highway is required to be moved under
 16 a permit pursuant to Section 35780.

17 (7) A motor vehicle that has been reacquired under
 18 circumstances described in subdivision (c) of Section
 19 1793.23 of the Civil Code, a vehicle with out-of-state
 20 titling documents reflecting a warranty return, or a
 21 vehicle that has been identified by an agency of another
 22 state as requiring a warranty return title notation,
 23 pursuant to the laws of that state. The notation made on
 24 the face of the registration and pursuant to this
 25 subdivision shall state "factory buyback."

26 (c) The director may modify the form, arrangement,
 27 and information appearing on the face of the registration
 28 card and may provide for standardization and
 29 abbreviation of fictitious or firm names on the
 30 registration card whenever the director finds that the
 31 efficiency of the department will be promoted by so
 32 doing, except that general delivery or post office box
 33 numbers shall not be permitted as the address of the
 34 registered owner unless there is no other address.

35 SEC. 6. Section 11713.12 is added to the Vehicle Code,
 36 to read:

37 11713.12. (a) The decal required by subdivision (c)
 38 of Section 1793.23 of the Civil Code to be affixed by a
 39 manufacturer to a motor vehicle, shall be affixed to the
 40 left front doorframe of the vehicle, or, if the vehicle does



1 not have a left front doorframe, it shall be affixed in a
2 location designated by the department. The decal shall
3 specify that title to the motor vehicle has been inscribed
4 with the notation "factory buyback" and shall be affixed
5 to the vehicle in a manner prescribed by the department.

6 (b) No person shall knowingly remove or alter any
7 decal affixed to a vehicle pursuant to subdivision (a),
8 whether or not licensed under this code.

9 SEC. 7. This act shall apply only to vehicles
10 reacquired by a manufacturer on or after ~~the effective~~
11 ~~date of this act.~~ *January 1, 1996, and shall not affect any*
12 *proceeding relating to vehicles reacquired prior to*
13 *January 1, 1996.*

14 SEC. 8. No reimbursement is required by this act
15 pursuant to Section 6 of Article XIII B of the California
16 Constitution because the only costs that may be incurred
17 by a local agency or school district will be incurred
18 because this act creates a new crime or infraction,
19 eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section
21 17556 of the Government Code, or changes the definition
22 of a crime within the meaning of Section 6 of Article
23 XIII B of the California Constitution.

24 Notwithstanding Section 17580 of the Government
25 Code, unless otherwise specified, the provisions of this act
26 shall become operative on the same date that the act
27 takes effect pursuant to the California Constitution.



AMENDED IN SENATE JULY 23, 1995

AMENDED IN SENATE JULY 15, 1995

AMENDED IN SENATE JULY 3, 1995

AMENDED IN SENATE JUNE 14, 1995

AMENDED IN ASSEMBLY APRIL 26, 1995

AMENDED IN ASSEMBLY APRIL 5, 1995

CALIFORNIA LEGISLATURE—1995-96 REGULAR SESSION

ASSEMBLY BILL

No. 1381

Introduced by Assembly Member Speier

February 24, 1995

An act to amend Section 1793.25 of, to add Sections 1793.23 and 1793.24 to, and to repeal Section 1795.8 of, the Civil Code, and to amend Section 4453 of, and to add Section 11713.12 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1381, as amended, Speier. Vehicles: Automotive Consumer Notification Act.

Existing provisions of the Civil Code, the Automotive Consumer Notification Act, require the seller of a vehicle to include a specified disclosure if that vehicle has been returned, or should have been returned, to the dealer or manufacturer, as specified, for failure to conform to warranties, as specified.



This bill would revise and recast the Automotive Consumer Notification Act to, among other things, require the manufacturer to retitle specified defective vehicles in its name, request the Department of Motor Vehicles to inscribe the ownership certificate with a specified notation, affix a specified decal to the left doorframe of the vehicle, deliver a specified notice to the transferee of the vehicle as prescribed, and obtain the transferee's acknowledgment. The bill would provide that it shall apply only to vehicles reacquired by a manufacturer on or after January 1, 1996. The bill would make legislative findings and declarations. The bill would also make conforming changes.

By creating a new infraction under the provisions of the Vehicle Code, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 1793.23 is added to the Civil
2 Code, to read:

3 1793.23. (a) The Legislature finds and declares all of
4 the following:

5 (1) That the expansion of state warranty laws covering
6 new and used cars has given important and valuable
7 protection to consumers.

8 (2) That, in states without this valuable warranty
9 protection, used and irreparable motor vehicles are
10 being resold in the marketplace without notice to the
11 subsequent purchaser.

12 (3) That other states have addressed this problem by
13 requiring notices on the title of these vehicles or other
14 notice procedures to warn consumers that the motor

1 vehicles were repurchased by a dealer or manufacturer
2 because the vehicle could not be repaired in a reasonable
3 length of time or a reasonable number of repair attempts
4 or the dealer or manufacturer was not willing to repair
5 the vehicle.

6 (4) That these notices serve the interests of consumers
7 who have a right to information relevant to their buying
8 decisions.

9 (5) That the disappearance of these notices upon the
10 transfer of title from another state to this state encourages
11 the transport of "lemons" to this state for sale to the
12 drivers of this state.

13 (b) This section and Section 1793.24 shall be known,
14 and may be cited as, the Automotive Consumer
15 Notification Act.

16 (c) Any manufacturer who reacquires or assists a
17 dealer or lienholder to reacquire a motor vehicle
18 registered in this state, any other state, or a federally
19 administered district shall, prior to any sale, lease, or
20 transfer of the vehicle in this state, or prior to exporting
21 the vehicle to another state for sale, lease, or transfer if the
22 vehicle was registered in this state and reacquired
23 pursuant to the provisions of subdivision (d) of Section
24 1793.2, cause the vehicle to be retitled in the name of the
25 manufacturer, request the Department of Motor
26 Vehicles to inscribe the ownership certificate with the
27 notation "~~factory buyback,~~" "*Lemon Law Buyback,*" and
28 affix a decal to the vehicle in accordance with Section
29 11713.12 of the Vehicle Code if the manufacturer knew or
30 should have known that the vehicle is required by law to
31 be replaced, accepted for restitution due to the failure of
32 the manufacturer to conform the vehicle to applicable
33 warranties pursuant to subdivision (d) of Section 1793.2,
34 or accepted for restitution by the manufacturer due to
35 the failure of the manufacturer to conform the vehicle to
36 warranties required by any other applicable law of the
37 state, any other state, or federal law.

38 (d) Any manufacturer who reacquires or assists a
39 dealer or lienholder to reacquire a motor vehicle in
40 response to a request by the buyer or lessee that the
(800) 666-1917

1 vehicle be either replaced or accepted for restitution
2 because the vehicle did not conform to express warranties
3 shall, prior to the sale, lease, or other transfer of the
4 vehicle, execute and deliver to the subsequent transferee
5 a notice and obtain the transferee's written
6 acknowledgment of a notice, as prescribed by Section
7 1793.24.

8 (e) Any person, including any dealer, who acquires a
9 motor vehicle for resale and knows or should have known
10 that the vehicle was reacquired by the vehicle's
11 manufacturer in response to a request by the last retail
12 owner or lessee of the vehicle that it be replaced or
13 accepted for restitution because the vehicle did not
14 conform to express warranties shall, prior to the sale,
15 lease, or other transfer, execute and deliver to the
16 subsequent transferee a notice and obtain the transferee's
17 written acknowledgment of a notice, as prescribed by
18 Section 1793.24.

19 (f) Any person, including any manufacturer or dealer,
20 who sells, leases, or transfers ownership of a motor vehicle
21 when the vehicle's ownership certificate is inscribed with
22 the notation "~~factory buyback~~" "*Lemon Law Buyback*"
23 shall, prior to the sale, lease, or ownership transfer of the
24 vehicle, provide the transferee with a disclosure
25 statement signed by the transferee that states:

26
27 "THIS VEHICLE WAS REPURCHASED BY THE
28 VEHICLE'S MANUFACTURER DUE TO A DEFECT
29 IN THE VEHICLE PURSUANT TO CONSUMER
30 WARRANTY LAWS. THE TITLE TO THIS VEHICLE
31 HAS BEEN PERMANENTLY BRANDED WITH THE
32 NOTATION "~~FACTORY BUYBACK~~" "*LEMON LAW*
33 *BUYBACK*."

34
35 (g) The disclosure requirements in subdivisions (d),
36 (e), and (f) are cumulative with all other consumer
37 notice requirements and do not relieve any person,
38 including any dealer or manufacturer, from complying
39 with any other applicable law, including any requirement
40 of subdivision (f) of Section 1793.24.

1 (h) For purposes of this section, "dealer" means any
2 person engaged in the business of selling, offering for sale,
3 or negotiating the retail sale of, a used motor vehicle or
4 selling motor vehicles as a broker or agent for another,
5 including the officers, agents, and employees of the
6 person and any combination or association of dealers.

7 SEC. 2. Section 1793.24 is added to the Civil Code, to
8 read:

9 1793.24. (a) The notice required in subdivisions (d)
10 and (e) of Section 1793.23 shall be prepared by the
11 manufacturer of the reacquired vehicle and shall disclose
12 all of the following:

13 (1) Year, make, model, and vehicle identification
14 number of the vehicle.

15 (2) Whether the title to the vehicle has been inscribed
16 with the notation "factory buyback."

17 (3) The nature of each nonconformity reported by the
18 original buyer or lessee of the vehicle.

19 (4) Repairs, if any, made to the vehicle in an attempt
20 to correct each nonconformity reported by the original
21 buyer or lessee.

22 (b) The notice shall be on a form 8¹/₂ x 11 inches in size
23 and printed in no smaller than 10-point black type on a
24 white background.

25 The form shall only contain the following information
26 prior to it being filled out by the manufacturer:

27
28 WARRANTY BUYBACK NOTICE

29
30 (Check One)

31 This vehicle was repurchased by the vehicle's
32 manufacturer after the last retail owner or lessee
33 requested its repurchase due to the ~~problems(s)~~
34 *problem(s)* listed below.

35 THIS VEHICLE WAS REPURCHASED BY THE
36 ~~VEHICLE'S~~ *ITS* MANUFACTURER DUE TO A
37 DEFECT IN THE VEHICLE PURSUANT TO
38 CONSUMER WARRANTY LAWS. THE TITLE TO
39 THIS VEHICLE HAS BEEN PERMANENTLY
40 BRANDED WITH THE NOTATION "~~FACTORY~~



1 ~~BUYBACK.~~ "LEMON LAW BUYBACK." Under
2 California law, the manufacturer must warrant to you, for
3 a one year period, that the vehicle is free of the
4 problem(s) listed below.

V.I.N.	Year	Make	Model
--------	------	------	-------

Problem(s) Reported by Original Owner	Repairs Made, if any, to Correct Reported Problem(s)
---------------------------------------	--

Signature of Manufacturer _____ Date _____

Signature of Dealer(s) _____ Date _____

Signature of Retail Buyer or Lessee _____ Date _____

(c) The manufacturer shall provide an executed copy of the notice to the manufacturer's transferee. Each transferee, including a dealer, to whom the motor vehicle is transferred prior to its sale to a retail buyer or lessee shall be provided an executed copy of the notice by the previous transferor.

SEC. 3. Section 1793.25 of the Civil Code is amended to read:

1 1793.25. (a) Notwithstanding Part 1 (commencing
2 with Section 6001) of Division 2 of the Revenue and
3 Taxation Code, the State Board of Equalization shall
4 reimburse the manufacturer of a new motor vehicle for
5 an amount equal to the sales tax which the manufacturer
6 pays to or for the buyer when providing a replacement
7 vehicle pursuant to subparagraph (A) of paragraph (2)
8 of subdivision (d) of Section 1793.2 or includes in making
9 restitution to the buyer pursuant to subparagraph (B) of
10 paragraph (2) of subdivision (d) of Section 1793.2, when
11 satisfactory proof is provided that the retailer of the
12 motor vehicle for which the manufacturer is making
13 restitution has reported and paid the sales tax on the gross
14 receipts from the sale of that motor vehicle and the
15 manufacturer provides satisfactory proof that it has
16 complied with subdivision (c) of Section 1793.23. The
17 State Board of Equalization may adopt rules and
18 regulations to carry out, facilitate compliance with, or
19 prevent circumvention or evasion of, this section.

(b) Nothing in this section shall in any way change the application of the sales and use tax to the gross receipts and the sales price from the sale, and the storage, use, or other consumption, in this state or tangible personal property pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(c) The manufacturer's claim for reimbursement and the board's approval or denial of the claim shall be subject to the provisions of Article 1 (commencing with Section 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue and Taxation Code, except Sections 6902.1, 6903, 6907, and 6908 thereof, insofar as those provisions are not inconsistent with this section.

SEC. 4. Section 1795.8 of the Civil Code is repealed.

SEC. 5. Section 4453 of the Vehicle Code is amended to read:

4453. (a) The registration card shall contain upon its face, the date issued, the name and residence or business address of the owner and of the legal owner, if any, the registration number assigned to the vehicle, and a



1 description of the vehicle as complete as that required in
2 the application for registration of the vehicle.

3 (b) A motor vehicle of a type included in this
4 subdivision shall be identified as such on the face of the
5 registration card, whenever the department is able to
6 ascertain that fact, at the time application is made for
7 initial registration or transfer of ownership of the vehicle.

8 (1) A motor vehicle rebuilt and restored to operation
9 which was previously declared to be a total loss salvage
10 vehicle because the cost of repairs exceeds the retail value
11 of the vehicle.

12 (2) A motor vehicle rebuilt and restored to operation
13 which was previously reported to be dismantled pursuant
14 to Section 11520.

15 (3) A motor vehicle previously registered to a law
16 enforcement agency and operated in law enforcement
17 work.

18 (4) A motor vehicle formerly operated as a taxicab.

19 (5) A motor vehicle manufactured outside of the
20 United States and not intended by the manufacturer for
21 sale in the United States.

22 (6) A park trailer, as described in subdivision (b) of
23 Section 18010 of the Health and Safety Code, which when
24 moved upon the highway is required to be moved under
25 a permit pursuant to Section 35780.

26 (7) A motor vehicle that has been reacquired under
27 circumstances described in subdivision (c) of Section
28 1793.23 of the Civil Code, a vehicle with out-of-state
29 titling documents reflecting a warranty return, or a
30 vehicle that has been identified by an agency of another
31 state as requiring a warranty return title notation,
32 pursuant to the laws of that state. The notation made on
33 the face of the registration and pursuant to this
34 subdivision shall state "~~factory buyback~~." "*Lemon Law*
35 *Buyback*."

36 (c) The director may modify the form, arrangement,
37 and information appearing on the face of the registration
38 card and may provide for standardization and
39 abbreviation of fictitious or firm names on the
40 registration card whenever the director finds that

1 efficiency of the department will be promoted by so
2 doing, except that general delivery or post office box
3 numbers shall not be permitted as the address of the
4 registered owner unless there is no other address.

5 SEC. 6. Section 11713.12 is added to the Vehicle Code,
6 to read:

7 11713.12. (a) The decal required by subdivision (c)
8 of Section 1793.23 of the Civil Code to be affixed by a
9 manufacturer to a motor vehicle, shall be affixed to the
10 left front doorframe of the vehicle, or, if the vehicle does
11 not have a left front doorframe, it shall be affixed in a
12 location designated by the department. The decal shall
13 specify that title to the motor vehicle has been inscribed
14 with the notation "~~factory buyback~~" "*Lemon Law*
15 *Buyback*" and shall be affixed to the vehicle in a manner
16 prescribed by the department.

17 (b) No person shall knowingly remove or alter any
18 decal affixed to a vehicle pursuant to subdivision (a),
19 whether or not licensed under this code.

20 SEC. 7. This act shall apply only to vehicles
21 reacquired by a manufacturer on or after January 1, 1996,
22 and shall not affect any proceeding relating to vehicles
23 reacquired prior to January 1, 1996.

24 SEC. 8. No reimbursement is required by this act
25 pursuant to Section 6 of Article XIII B of the California
26 Constitution because the only costs that may be incurred
27 by a local agency or school district will be incurred
28 because this act creates a new crime or infraction,
29 eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section
31 17556 of the Government Code, or changes the definition
32 of a crime within the meaning of Section 6 of Article
33 XIII B of the California Constitution.

34 Notwithstanding Section 17580 of the Government
35 Code, unless otherwise specified, the provisions of this act
36 shall become operative on the same date that the act
37 takes effect pursuant to the California Constitution.

AMENDED IN SENATE AUGUST 21, 1995

AMENDED IN SENATE JULY 23, 1995

AMENDED IN SENATE JULY 15, 1995

AMENDED IN SENATE JULY 3, 1995

AMENDED IN SENATE JUNE 14, 1995

AMENDED IN ASSEMBLY APRIL 26, 1995

AMENDED IN ASSEMBLY APRIL 5, 1995

CALIFORNIA LEGISLATURE—1995-96 REGULAR SESSION

ASSEMBLY BILL

No. 1381

Introduced by Assembly Member Speier

February 24, 1995

An act to amend Section 1793.25 of, to add Sections 1793.23 and 1793.24 to, and to repeal Section 1795.8 of, the Civil Code, and to amend Section 4453 of, and to add Section 11713.12 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1381, as amended, Speier. Vehicles: Automotive Consumer Notification Act.

Existing provisions of the Civil Code, the Automotive Consumer Notification Act, require the seller of a vehicle to include a specified disclosure if that vehicle has been returned, or should have been returned, to the dealer or



manufacturer, as specified, for failure to conform to warranties, as specified.

This bill would revise and recast the Automotive Consumer Notification Act to, among other things, require the manufacturer to retitle specified defective vehicles in its name, request the Department of Motor Vehicles to inscribe the ownership certificate with a specified notation, affix a specified decal to the left doorframe of the vehicle, deliver a specified notice to the transferee of the vehicle as prescribed, and obtain the transferee's acknowledgment. The bill would provide that it shall apply only to vehicles reacquired by a manufacturer on or after January 1, 1996. The bill would make legislative findings and declarations. The bill would also make conforming changes.

By creating a new infraction under the provisions of the Vehicle Code, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 1793.23 is added to the Civil
2 Code, to read:

3 1793.23. (a) The Legislature finds and declares all of
4 the following:

5 (1) That the expansion of state warranty laws covering
6 new and used cars has given important and valuable
7 protection to consumers.

8 (2) That, in states without this valuable warranty
9 protection, used and irreparable motor vehicles are
10 being resold in the marketplace without notice to the
11 subsequent purchaser.

1 (3) That other states have addressed this problem by
2 requiring notices on the title of these vehicles or other
3 notice procedures to warn consumers that the motor
4 vehicles were repurchased by a dealer or manufacturer
5 because the vehicle could not be repaired in a reasonable
6 length of time or a reasonable number of repair attempts
7 or the dealer or manufacturer was not willing to repair
8 the vehicle.

9 (4) That these notices serve the interests of consumers
10 who have a right to information relevant to their buying
11 decisions.

12 (5) That the disappearance of these notices upon the
13 transfer of title from another state to this state encourages
14 the transport of "lemons" to this state for sale to the
15 drivers of this state.

16 (b) This section and Section 1793.24 shall be known,
17 and may be cited as, the Automotive Consumer
18 Notification Act.

19 (c) Any manufacturer who reacquires or assists a
20 dealer or lienholder to reacquire a motor vehicle
21 registered in this state, any other state, or a federally
22 administered district shall, prior to any sale, lease, or
23 transfer of the vehicle in this state, or prior to exporting
24 the vehicle to another state for sale, lease, or transfer if the
25 vehicle was registered in this state and reacquired
26 pursuant to the provisions of subdivision (d) of Section
27 1793.2, cause the vehicle to be retitled in the name of the
28 manufacturer, request the Department of Motor
29 Vehicles to inscribe the ownership certificate with the
30 notation "Lemon Law Buyback," and affix a decal to the
31 vehicle in accordance with Section 11713.12 of the
32 Vehicle Code if the manufacturer knew or should have
33 known that the vehicle is required by law to be replaced,
34 accepted for restitution due to the failure of the
35 manufacturer to conform the vehicle to applicable
36 warranties pursuant to subdivision (d) of Section 1793.2,
37 or accepted for restitution by the manufacturer due to
38 the failure of the manufacturer to conform the vehicle to
39 warranties required by any other applicable law of the
40 state, any other state, or federal law.



1 (d) Any manufacturer who reacquires or assists a
2 dealer or lienholder to reacquire a motor vehicle in
3 response to a request by the buyer or lessee that the
4 vehicle be either replaced or accepted for restitution
5 because the vehicle did not conform to express warranties
6 shall, prior to the sale, lease, or other transfer of the
7 vehicle, execute and deliver to the subsequent transferee
8 a notice and obtain the transferee's written
9 acknowledgment of a notice, as prescribed by Section
10 1793.24.

11 (e) Any person, including any dealer, who acquires a
12 motor vehicle for resale and knows or should have known
13 that the vehicle was reacquired by the vehicle's
14 manufacturer in response to a request by the last retail
15 owner or lessee of the vehicle that it be replaced or
16 accepted for restitution because the vehicle did not
17 conform to express warranties shall, prior to the sale,
18 lease, or other transfer, execute and deliver to the
19 subsequent transferee a notice and obtain the transferee's
20 written acknowledgment of a notice, as prescribed by
21 Section 1793.24.

22 (f) Any person, including any manufacturer or dealer,
23 who sells, leases, or transfers ownership of a motor vehicle
24 when the vehicle's ownership certificate is inscribed with
25 the notation "Lemon Law Buyback" shall, prior to the
26 sale, lease, or ownership transfer of the vehicle, provide
27 the transferee with a disclosure statement signed by the
28 transferee that states:

29
30 "THIS VEHICLE WAS REPURCHASED BY THE
31 ~~VEHICLE~~ ITS MANUFACTURER DUE TO A
32 DEFECT IN THE VEHICLE PURSUANT TO
33 CONSUMER WARRANTY LAWS. THE TITLE TO
34 THIS VEHICLE HAS BEEN PERMANENTLY
35 BRANDED WITH THE NOTATION 'LEMON LAW
36 BUYBACK'."

37
38 (g) The disclosure requirements in subdivisions (d),
39 (e), and (f) are cumulative with all other consumer
40 notice requirements and do not relieve any person,

1 including any dealer or manufacturer, from complying
2 with any other applicable law, including any requirement
3 of subdivision (f) of Section 1793.22.

4 (h) For purposes of this section, "dealer" means any
5 person engaged in the business of selling, offering for sale,
6 or negotiating the retail sale of, a used motor vehicle or
7 selling motor vehicles as a broker or agent for another,
8 including the officers, agents, and employees of the
9 person and any combination or association of dealers.

10 SEC. 2. Section 1793.24 is added to the Civil Code, to
11 read:

12 1793.24. (a) The notice required in subdivisions (d)
13 and (e) of Section 1793.23 shall be prepared by the
14 manufacturer of the reacquired vehicle and shall disclose
15 all of the following:

16 (1) Year, make, model, and vehicle identification
17 number of the vehicle.

18 (2) Whether the title to the vehicle has been inscribed
19 with the notation "~~factory buyback~~" "*Lemon Law*
20 *Buyback*."

21 (3) The nature of each nonconformity reported by the
22 original buyer or lessee of the vehicle.

23 (4) Repairs, if any, made to the vehicle in an attempt
24 to correct each nonconformity reported by the original
25 buyer or lessee.

26 (b) The notice shall be on a form 8¹/₂ x 11 inches in size
27 and printed in no smaller than 10-point black type on a
28 white background.

29 The form shall only contain the following information
30 prior to it being filled out by the manufacturer:

31
32 WARRANTY BUYBACK NOTICE

33
34 (Check One)

35 This vehicle was repurchased by the vehicle's
36 manufacturer after the last retail owner or lessee
37 requested its repurchase due to the problem(s) listed
38 below.

39 THIS VEHICLE WAS REPURCHASED BY ITS
40 MANUFACTURER DUE TO A DEFECT IN THE



1 VEHICLE PURSUANT TO CONSUMER WARRANTY
 2 LAWS. THE TITLE TO THIS VEHICLE HAS BEEN
 3 PERMANENTLY BRANDED WITH THE NOTATION
 4 "LEMON LAW BUYBACK." Under California law, the
 5 manufacturer must warrant to you, for a one year period,
 6 that the vehicle is free of the problem(s) listed below.

V.I.N.	Year	Make	Model
--------	------	------	-------

Problem(s) Reported by Original Owner	Repairs Made, if any, to Correct Reported Problem(s)
---------------------------------------	--

Signature of Manufacturer _____ Date _____

Signature of Dealer(s) _____ Date _____

Signature of Retail Buyer or Lessee _____ Date _____

35 (c) The manufacturer shall provide an executed copy
 36 of the notice to the manufacturer's transferee. Each
 37 transferee, including a dealer, to whom the motor vehicle
 38 is transferred prior to its sale to a retail buyer or lessee
 39 shall be provided an executed copy of the notice by the
 40 previous transferor.

1 SEC. 3. Section 1793.25 of the Civil Code is amended
 2 to read:

3 1793.25. (a) Notwithstanding Part 1 (commencing
 4 with Section 6001) of Division 2 of the Revenue and
 5 Taxation Code, the State Board of Equalization shall
 6 reimburse the manufacturer of a new motor vehicle for
 7 an amount equal to the sales tax which the manufacturer
 8 pays to or for the buyer when providing a replacement
 9 vehicle pursuant to subparagraph (A) of paragraph (2)
 10 of subdivision (d) of Section 1793.2 or includes in making
 11 restitution to the buyer pursuant to subparagraph (B) of
 12 paragraph (2) of subdivision (d) of Section 1793.2, when
 13 satisfactory proof is provided that the retailer of the
 14 motor vehicle for which the manufacturer is making
 15 restitution has reported and paid the sales tax on the gross
 16 receipts from the sale of that motor vehicle and the
 17 manufacturer provides satisfactory proof that it has
 18 complied with subdivision (c) of Section 1793.23. The
 19 State Board of Equalization may adopt rules and
 20 regulations to carry out, facilitate compliance with, or
 21 prevent circumvention or evasion of, this section.

22 (b) Nothing in this section shall in any way change the
 23 application of the sales and use tax to the gross receipts
 24 and the sales price from the sale, and the storage, use, or
 25 other consumption, in this state or tangible personal
 26 property pursuant to Part 1 (commencing with Section
 27 6001) of Division 2 of the Revenue and Taxation Code.

28 (c) The manufacturer's claim for reimbursement and
 29 the board's approval or denial of the claim shall be subject
 30 to the provisions of Article 1 (commencing with Section
 31 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue
 32 and Taxation Code, except Sections 6902.1, 6903, 6907, and
 33 6908 thereof, insofar as those provisions are not
 34 inconsistent with this section.

35 SEC. 4. Section 1795.8 of the Civil Code is repealed.

36 SEC. 5. Section 4453 of the Vehicle Code is amended
 37 to read:

38 4453. (a) The registration card shall contain upon its
 39 face, the date issued, the name and residence or business
 40 address of the owner and of the legal owner, if any, the



1 registration number assigned to the vehicle, and a
 2 description of the vehicle as complete as that required in
 3 the application for registration of the vehicle.

4 (b) A motor vehicle of a type included in this
 5 subdivision shall be identified as such on the face of the
 6 registration card, whenever the department is able to
 7 ascertain that fact, at the time application is made for
 8 initial registration or transfer of ownership of the vehicle.

9 (1) A motor vehicle rebuilt and restored to operation
 10 which was previously declared to be a total loss salvage
 11 vehicle because the cost of repairs exceeds the retail value
 12 of the vehicle.

13 (2) A motor vehicle rebuilt and restored to operation
 14 which was previously reported to be dismantled pursuant
 15 to Section 11520.

16 (3) A motor vehicle previously registered to a law
 17 enforcement agency and operated in law enforcement
 18 work.

19 (4) A motor vehicle formerly operated as a taxicab.

20 (5) A motor vehicle manufactured outside of the
 21 United States and not intended by the manufacturer for
 22 sale in the United States.

23 (6) A park trailer, as described in subdivision (b) of
 24 Section 18010 of the Health and Safety Code, which when
 25 moved upon the highway is required to be moved under
 26 a permit pursuant to Section 35780.

27 (7) A motor vehicle that has been reacquired under
 28 circumstances described in subdivision (c) of Section
 29 1793.23 of the Civil Code, a vehicle with out-of-state
 30 titling documents reflecting a warranty return, or a
 31 vehicle that has been identified by an agency of another
 32 state as requiring a warranty return title notation,
 33 pursuant to the laws of that state. The notation made on
 34 the face of the registration and pursuant to this
 35 subdivision shall state "Lemon Law Buyback."

36 (c) The director may modify the form, arrangement,
 37 and information appearing on the face of the registration
 38 card and may provide for standardization and
 39 abbreviation of fictitious or firm names on the
 40 registration card whenever the director finds that the



1 efficiency of the department will be promoted by so
 2 doing, except that general delivery or post office box
 3 numbers shall not be permitted as the address of the
 4 registered owner unless there is no other address.

5 SEC. 6. Section 11713.12 is added to the Vehicle Code,
 6 to read:

7 11713.12. (a) The decal required by subdivision (c)
 8 of Section 1793.23 of the Civil Code to be affixed by a
 9 manufacturer to a motor vehicle, shall be affixed to the
 10 left front doorframe of the vehicle, or, if the vehicle does
 11 not have a left front doorframe, it shall be affixed in a
 12 location designated by the department. The decal shall
 13 specify that title to the motor vehicle has been inscribed
 14 with the notation "Lemon Law Buyback" and shall be
 15 affixed to the vehicle in a manner prescribed by the
 16 department.

17 (b) No person shall knowingly remove or alter any
 18 decal affixed to a vehicle pursuant to subdivision (a),
 19 whether or not licensed under this code.

20 SEC. 7. This act shall apply only to vehicles
 21 reacquired by a manufacturer on or after January 1, 1996,
 22 and shall not affect any proceeding relating to vehicles
 23 reacquired prior to January 1, 1996.

24 SEC. 8. No reimbursement is required by this act
 25 pursuant to Section 6 of Article XIII B of the California
 26 Constitution because the only costs that may be incurred
 27 by a local agency or school district will be incurred
 28 because this act creates a new crime or infraction,
 29 eliminates a crime or infraction, or changes the penalty
 30 for a crime or infraction, within the meaning of Section
 31 17556 of the Government Code, or changes the definition
 32 of a crime within the meaning of Section 6 of Article
 33 XIII B of the California Constitution.

34 Notwithstanding Section 17580 of the Government
 35 Code, unless otherwise specified, the provisions of this act
 36 shall become operative on the same date that the act
 37 takes effect pursuant to the California Constitution.

Assembly Bill No. 1381

CHAPTER 503

An act to amend Section 1793.25 of, to add Sections 1793.23 and 1793.24 to, and to repeal Section 1795.8 of, the Civil Code, and to amend Section 4453 of, and to add Section 11713.12 to, the Vehicle Code, relating to vehicles.

[Approved by Governor October 3, 1995. Filed
with Secretary of State October 4, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1381, Speier. Vehicles: Automotive Consumer Notification Act.

Existing provisions of the Civil Code, the Automotive Consumer Notification Act, require the seller of a vehicle to include a specified disclosure if that vehicle has been returned, or should have been returned, to the dealer or manufacturer, as specified, for failure to conform to warranties, as specified.

This bill would revise and recast the Automotive Consumer Notification Act to, among other things, require the manufacturer to retitle specified defective vehicles in its name, request the Department of Motor Vehicles to inscribe the ownership certificate with a specified notation, affix a specified decal to the left doorframe of the vehicle, deliver a specified notice to the transferee of the vehicle as prescribed, and obtain the transferee's acknowledgment. The bill would provide that it shall apply only to vehicles reacquired by a manufacturer on or after January 1, 1996. The bill would make legislative findings and declarations. The bill would also make conforming changes.

By creating a new infraction under the provisions of the Vehicle Code, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 1793.23 is added to the Civil Code, to read:
1793.23. (a) The Legislature finds and declares all of the following:

LIS - 11



(1) That the expansion of state warranty laws covering new and used cars has given important and valuable protection to consumers.

(2) That, in states without this valuable warranty protection, used and irreparable motor vehicles are being resold in the marketplace without notice to the subsequent purchaser.

(3) That other states have addressed this problem by requiring notices on the title of these vehicles or other notice procedures to warn consumers that the motor vehicles were repurchased by a dealer or manufacturer because the vehicle could not be repaired in a reasonable length of time or a reasonable number of repair attempts or the dealer or manufacturer was not willing to repair the vehicle.

(4) That these notices serve the interests of consumers who have a right to information relevant to their buying decisions.

(5) That the disappearance of these notices upon the transfer of title from another state to this state encourages the transport of “lemons” to this state for sale to the drivers of this state.

(b) This section and Section 1793.24 shall be known, and may be cited as, the Automotive Consumer Notification Act.

(c) Any manufacturer who reacquires or assists a dealer or lienholder to reacquire a motor vehicle registered in this state, any other state, or a federally administered district shall, prior to any sale, lease, or transfer of the vehicle in this state, or prior to exporting the vehicle to another state for sale, lease, or transfer if the vehicle was registered in this state and reacquired pursuant to the provisions of subdivision (d) of Section 1793.2, cause the vehicle to be retitled in the name of the manufacturer, request the Department of Motor Vehicles to inscribe the ownership certificate with the notation “Lemon Law Buyback,” and affix a decal to the vehicle in accordance with Section 11713.12 of the Vehicle Code if the manufacturer knew or should have known that the vehicle is required by law to be replaced, accepted for restitution due to the failure of the manufacturer to conform the vehicle to applicable warranties pursuant to subdivision (d) of Section 1793.2, or accepted for restitution by the manufacturer due to the failure of the manufacturer to conform the vehicle to warranties required by any other applicable law of the state, any other state, or federal law.

(d) Any manufacturer who reacquires or assists a dealer or lienholder to reacquire a motor vehicle in response to a request by the buyer or lessee that the vehicle be either replaced or accepted for restitution because the vehicle did not conform to express warranties shall, prior to the sale, lease, or other transfer of the vehicle, execute and deliver to the subsequent transferee a notice and obtain the transferee’s written acknowledgment of a notice, as prescribed by Section 1793.24.

(e) Any person, including any dealer, who acquires a motor vehicle for resale and knows or should have known that the vehicle

was reacquired by the vehicle’s manufacturer in response to a request by the last retail owner or lessee of the vehicle that it be replaced or accepted for restitution because the vehicle did not conform to express warranties shall, prior to the sale, lease, or other transfer, execute and deliver to the subsequent transferee a notice and obtain the transferee’s written acknowledgment of a notice, as prescribed by Section 1793.24.

(f) Any person, including any manufacturer or dealer, who sells, leases, or transfers ownership of a motor vehicle when the vehicle’s ownership certificate is inscribed with the notation “Lemon Law Buyback” shall, prior to the sale, lease, or ownership transfer of the vehicle, provide the transferee with a disclosure statement signed by the transferee that states:

“THIS VEHICLE WAS REPURCHASED BY ITS MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS. THE TITLE TO THIS VEHICLE HAS BEEN PERMANENTLY BRANDED WITH THE NOTATION ‘LEMON LAW BUYBACK.’”

(g) The disclosure requirements in subdivisions (d), (e), and (f) are cumulative with all other consumer notice requirements and do not relieve any person, including any dealer or manufacturer, from complying with any other applicable law, including any requirement of subdivision (f) of Section 1793.22.

(h) For purposes of this section, “dealer” means any person engaged in the business of selling, offering for sale, or negotiating the retail sale of, a used motor vehicle or selling motor vehicles as a broker or agent for another, including the officers, agents, and employees of the person and any combination or association of dealers.

SEC. 2. Section 1793.24 is added to the Civil Code, to read:

1793.24. (a) The notice required in subdivisions (d) and (e) of Section 1793.23 shall be prepared by the manufacturer of the reacquired vehicle and shall disclose all of the following:

(1) Year, make, model, and vehicle identification number of the vehicle.

(2) Whether the title to the vehicle has been inscribed with the notation “Lemon Law Buyback.”

(3) The nature of each nonconformity reported by the original buyer or lessee of the vehicle.

(4) Repairs, if any, made to the vehicle in an attempt to correct each nonconformity reported by the original buyer or lessee.

(b) The notice shall be on a form 8¹/₂ x 11 inches in size and printed in no smaller than 10-point black type on a white background.

The form shall only contain the following information prior to it being filled out by the manufacturer:

(800) 666-1917



WARRANTY BUYBACK NOTICE

(Check One)

This vehicle was repurchased by the vehicle's manufacturer after the last retail owner or lessee requested its repurchase due to the problem(s) listed below.

THIS VEHICLE WAS REPURCHASED BY ITS MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS. THE TITLE TO THIS VEHICLE HAS BEEN PERMANENTLY BRANDED WITH THE NOTATION "LEMON LAW BUYBACK." Under California law, the manufacturer must warrant to you, for a one year period, that the vehicle is free of the problem(s) listed below.

V.I.N.	Year	Make	Model
--------	------	------	-------

Problem(s) Reported by Original Owner	Repairs Made, if any, to Correct Reported Problem(s)
---------------------------------------	--

Signature of Manufacturer _____ Date _____

Signature of Dealer(s) _____ Date _____

Signature of Retail Buyer or Lessee _____ Date _____

(c) The manufacturer shall provide an executed copy of the notice to the manufacturer's transferee. Each transferee, including a dealer, to whom the motor vehicle is transferred prior to its sale to a retail

buyer or lessee shall be provided an executed copy of the notice by the previous transferor.

SEC. 3. Section 1793.25 of the Civil Code is amended to read:

1793.25. (a) Notwithstanding Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, the State Board of Equalization shall reimburse the manufacturer of a new motor vehicle for an amount equal to the sales tax which the manufacturer pays to or for the buyer when providing a replacement vehicle pursuant to subparagraph (A) of paragraph (2) of subdivision (d) of Section 1793.2 or includes in making restitution to the buyer pursuant to subparagraph (B) of paragraph (2) of subdivision (d) of Section 1793.2, when satisfactory proof is provided that the retailer of the motor vehicle for which the manufacturer is making restitution has reported and paid the sales tax on the gross receipts from the sale of that motor vehicle and the manufacturer provides satisfactory proof that it has complied with subdivision (c) of Section 1793.23. The State Board of Equalization may adopt rules and regulations to carry out, facilitate compliance with, or prevent circumvention or evasion of, this section.

(b) Nothing in this section shall in any way change the application of the sales and use tax to the gross receipts and the sales price from the sale, and the storage, use, or other consumption, in this state or tangible personal property pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(c) The manufacturer's claim for reimbursement and the board's approval or denial of the claim shall be subject to the provisions of Article 1 (commencing with Section 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue and Taxation Code, except Sections 6902.1, 6903, 6907, and 6908 thereof, insofar as those provisions are not inconsistent with this section.

SEC. 4. Section 1795.8 of the Civil Code is repealed.

SEC. 5. Section 4453 of the Vehicle Code is amended to read:

4453. (a) The registration card shall contain upon its face, the date issued, the name and residence or business address of the owner and of the legal owner, if any, the registration number assigned to the vehicle, and a description of the vehicle as complete as that required in the application for registration of the vehicle.

(b) A motor vehicle of a type included in this subdivision shall be identified as such on the face of the registration card, whenever the department is able to ascertain that fact, at the time application is made for initial registration or transfer of ownership of the vehicle.

(1) A motor vehicle rebuilt and restored to operation which was previously declared to be a total loss salvage vehicle because the cost of repairs exceeds the retail value of the vehicle.

(2) A motor vehicle rebuilt and restored to operation which was previously reported to be dismantled pursuant to Section 11520.



(3) A motor vehicle previously registered to a law enforcement agency and operated in law enforcement work.

(4) A motor vehicle formerly operated as a taxicab.

(5) A motor vehicle manufactured outside of the United States and not intended by the manufacturer for sale in the United States.

(6) A park trailer, as described in subdivision (b) of Section 18010 of the Health and Safety Code, which when moved upon the highway is required to be moved under a permit pursuant to Section 35780.

(7) A motor vehicle that has been reacquired under circumstances described in subdivision (c) of Section 1793.23 of the Civil Code, a vehicle with out-of-state titling documents reflecting a warranty return, or a vehicle that has been identified by an agency of another state as requiring a warranty return title notation, pursuant to the laws of that state. The notation made on the face of the registration and pursuant to this subdivision shall state "Lemon Law Buyback."

(c) The director may modify the form, arrangement, and information appearing on the face of the registration card and may provide for standardization and abbreviation of fictitious or firm names on the registration card whenever the director finds that the efficiency of the department will be promoted by so doing, except that general delivery or post office box numbers shall not be permitted as the address of the registered owner unless there is no other address.

SEC. 6. Section 11713.12 is added to the Vehicle Code, to read:

11713.12. (a) The decal required by subdivision (c) of Section 1793.23 of the Civil Code to be affixed by a manufacturer to a motor vehicle, shall be affixed to the left front doorframe of the vehicle, or, if the vehicle does not have a left front doorframe, it shall be affixed in a location designated by the department. The decal shall specify that title to the motor vehicle has been inscribed with the notation "Lemon Law Buyback" and shall be affixed to the vehicle in a manner prescribed by the department.

(b) No person shall knowingly remove or alter any decal affixed to a vehicle pursuant to subdivision (a), whether or not licensed under this code.

SEC. 7. This act shall apply only to vehicles reacquired by a manufacturer on or after January 1, 1996, and shall not affect any proceeding relating to vehicles reacquired prior to January 1, 1996.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.



VOLUME 1
CALIFORNIA LEGISLATURE
AT SACRAMENTO

1995-96 REGULAR SESSION
1995-96 FIRST EXTRAORDINARY SESSION
1995-96 SECOND EXTRAORDINARY SESSION
1995-96 THIRD EXTRAORDINARY SESSION
1995-96 FOURTH EXTRAORDINARY SESSION

ASSEMBLY FINAL HISTORY

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

Assembly Convened December 5, 1994	
Recessed December 5, 1994	Reconvened January 4, 1995
Recessed April 6, 1995	Reconvened April 17, 1995
Recessed August 3, 1995	Reconvened August 21, 1995
Recessed September 15, 1995	Reconvened January 3, 1996
Recessed March 28, 1996	Reconvened April 8, 1996
Recessed July 19, 1996	Reconvened August 5, 1996
Adjourned Sine-Die November 30, 1996	
Legislative Days.....	264
Calendar Days.....	637

HON. CURT PRINGLE
Speaker

HON. FRED AGUIAR
Speaker pro Tempore

HON. JAMES E. ROGAN
Majority Floor Leader

HON. RICHARD KATZ
Minority Floor Leader

Compiled Under the Direction of
E. DOTSON WILSON
Chief Clerk

AMY DUARTE
History Clerk



A.B. No. 1381—Speier.

An act to amend Section 1793.25 of, to add Sections 1793.23 and 1793.24 to, and to repeal Section 1795.8 of, the Civil Code, and to amend Section 4453 of, and to add Section 11713.12 to, the Vehicle Code, relating to vehicles.

1995

- Feb. 24—Introduced. To print.
 Feb. 25—From printer. May be heard in committee March 27.
 Feb. 27—Read first time.
 Mar. 16—Referred to Com. on TRANS.
 April 5—From committee chair, with author's amendments: Amend, and re-refer to Com. on TRANS. Read second time and amended.
 April 17—Re-referred to Com. on TRANS.
 April 25—From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 14. Noes 0.) (April 17).
 April 26—Read second time and amended.
 May 2—Re-referred to Com. on APPR.
 May 18—From committee: Do pass. (Ayes 15. Noes 0.) (May 17).
 May 22—Read second time. To third reading.
 June 1—Read third time, passed, and to Senate. (Ayes 75. Noes 0. Page 1755.)
 June 5—In Senate. Read first time. To Com. on RLS. for assignment. Referred to Com. on JUD.
 June 14—From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
 June 19—In committee: Set, first hearing. Hearing canceled at the request of author.
 July 3—From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
 July 11—In committee: Hearing postponed by committee.
 July 13—Joint Rule 61 suspended.
 July 15—From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
 July 21—From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 7. Noes 0.).
 July 23—Read second time, amended, and re-referred to Com. on APPR.
 Aug. 21—From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on APPR.
 Aug. 24—From committee: Do pass. (Ayes 9. Noes 0.).
 Aug. 28—Read second time. To third reading.
 Sept. 1—Read third time, passed, and to Assembly. (Ayes 37. Noes 0. Page 2605.)
 Sept. 1—In Assembly. Concurrence in Senate amendments pending. Ordered to Special Consent Calendar.
 Sept. 5—From Special Consent Calendar. Ordered to unfinished business file.
 Sept. 15—Senate amendments concurred in. To enrollment. (Ayes 63. Noes 10. Page 3971.)
 Sept. 20—Enrolled and to the Governor at 2:30 p.m.
 Oct. 3—Approved by the Governor.
 Oct. 4—Chaptered by Secretary of State - Chapter 503, Statutes of 1995.



Date of Hearing: April 17, 1995

ASSEMBLY COMMITTEE ON TRANSPORTATION
RICHARD KATZ, Chair

AB 1381 (Speier) - As Amended: April 5, 1995

SUBJECT

Vehicles: Consumer Notification Act

DIGEST

Existing law:

- 1) Provides that if a manufacturer cannot repair a new vehicle after a "reasonable number of attempts" and the defect substantially impairs the vehicle's use, then the consumer is due either a refund of the purchase price or a replacement vehicle. [Song-Beverly Consumer Warranty Act]
- 2) Provides that if the defect cannot be repaired in four attempts within the first year or 12,000 miles, whichever occurs first, or if the vehicle is out of service for more than 30 days, the owner may sue for a refund or replacement vehicle. The manufacturer may submit the case to arbitration. [Tanner Consumer Protection Act -- the so-called "Lemon Law"]
- 3) Requires a dealer or manufacturer who sells a vehicle that was returned as required above to disclose that fact to a new buyer prior to purchase. The notice is to read: "THIS MOTOR VEHICLE HAS BEEN RETURNED TO THE DEALER OR MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS." The ownership title and DMV registration papers are to be "branded" with the legend: "WARNTY RET." [Automotive Consumer Notification Act]
- 4) Allows a manufacturer to request a sales tax refund for any vehicle bought back as required by law. The refund is not granted for "goodwill" buy-backs.

This bill:

- 1) Would revise and recast the Automotive Consumer Notification Act, moving it from the Civil Code to the Vehicle Code.
- 2) Would require the manufacturer to retitle buy-back vehicles in the name of the manufacturer and to request at that time that the Department of Motor Vehicles (DMV) inscribe on the ownership certificate the notation "lemon buy back," for those vehicles which were required to be repurchased pursuant to the lemon law or which met the thresholds for mandatory buy-back under the Lemon Law. [Other voluntary buy-backs are not included.]

- continued -



- 3) Would require the manufacturer to affix a notice to the left door frame of the vehicle specifying that title to the vehicle has been inscribed with the notation "lemon buy back." No person shall knowingly remove or alter the notice.
- 4) Would require any manufacturer or dealer, prior to reselling a vehicle which was returned to resolve an express warranty dispute, to execute and deliver to the subsequent buyer a notice informing the new buyer that the vehicle was reacquired in resolution of a warranty dispute, whether or not the DMV title has been branded with the notation "lemon buy back," what problems were reported by the original owner, and what repairs were made to correct these problems. This notice must be signed by the new buyer.
- 5) Applies to buy-backs of vehicles in other states with lemon laws which are resold in California.
- 6) Makes technical, clarifying amendments to provisions authorizing refunds of sales taxes on buy-backs.
- 7) Would apply only to vehicles reacquired by a manufacturer on or after the effective date of this act.

FISCAL EFFECT

Unknown.

COMMENTS

- 1) This bill is a follow up to an investigation, hearing and reports by the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development chaired by the bill's author. A 1994 committee report titled "Bitter Fruit" found:
 - a) That vehicle manufacturers and dealers have recycled cars and trucks in California without warning consumers they are buying "lemons" which were bought back from the original owners.
 - b) Manufacturers have circumvented disclosure law by re-acquiring problem vehicles prior to formal arbitration which would lead to DMV tagging of the vehicle as "warranty returned" -- enabling dealers to resell vehicles at higher prices.
 - c) Lemon vehicles are being laundered through auto actions because current law does not require the manufacturer or dealer to take title to a re-acquired vehicle.
 - d) Some manufacturers have requested reimbursement for sales taxes even though buy-back vehicles were "goodwill buy-backs", not returned under the state's Lemon Law, as is required for sales tax rebates.

- continued -



- e) None of the 21 vehicles bought back by manufacturers under the State of Washington's Lemon Law and subsequently resold in California were recorded with the DMV as "warranty returned."
- 2) It is not known how many vehicles are repurchased each year in California. It is estimated that 50,000 are repurchased by manufacturers nationwide each year.
- 3) Opponents claim that the bill weakens California's "Lemon Law", the limiting the branding of title to those vehicles ordered repurchased by a court or an arbitrator, excluding the majority of vehicles voluntarily repurchased by the manufacturer. Opponents state that recasting provisions in the Vehicle Code eliminates remedies for consumers including discretionary double damages for willful violations.

SUPPORT

California Motor Car Dealers Association (sponsor)

OPPOSITION

Center for Auto Safety
Motor Voters For a Safer Tomorrow

(800) 666-1917

LEGISLATIVE INTENT SERVICE



Date of Hearing: April 17, 1995

ASSEMBLY COMMITTEE ON TRANSPORTATION
RICHARD KATZ, Chair

AB 1381 (Speier) - As Amended: April 26, 1995

SUBJECT

Vehicles: Consumer Notification Act

DIGEST

Existing law:

- 1) Provides that if a manufacturer cannot repair a new vehicle after a "reasonable number of attempts" and the defect substantially impairs the vehicle's use, then the consumer is due either a refund of the purchase price or a replacement vehicle. [Song-Beverly Consumer Warranty Act]
- 2) Provides that if the defect cannot be repaired in four attempts within the first year or 12,000 miles, whichever occurs first, or if the vehicle is out of service for more than 30 days, the owner may sue for a refund or replacement vehicle. The manufacturer may submit the case to arbitration. [Tanner Consumer Protection Act -- the so-called "Lemon Law"]
- 3) Requires a dealer or manufacturer who sells a vehicle that was returned as required above to disclose that fact to a new buyer prior to purchase. The notice is to read: "THIS MOTOR VEHICLE HAS BEEN RETURNED TO THE DEALER OR MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS." The ownership title and DMV registration papers are to be "branded" with the legend: "WARNTY RET." [Automotive Consumer Notification Act]
- 4) Allows a manufacturer to request a sales tax refund for any vehicle bought back as required by law. The refund is not granted for "goodwill" buy-backs.

This bill:

- 1) Revises and recasts the Automotive Consumer Notification Act, moving it from the Civil Code to the Vehicle Code.
- 2) Requires the manufacturer to retitl e buy-back vehicles in the name of the manufacturer and to request at that time that the Department of Motor Vehicles (DMV) inscribe on the ownership certificate the notation "lemon buy back," for those vehicles which:
 - a) Were required to be repurchased pursuant to a court order or the decision rendered in a third party dispute resolution process.

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- b) Which were reacquired during or within six months after the conclusion of arbitration or litigation, or
 - c) Which were reacquired within six months after the buyer made a written request to the manufacturer for replacement or a refund.
- 3) Requires the manufacturer to affix a notice to the left door frame of the vehicle specifying that title to the vehicle has been inscribed with the notation "lemon buy back." No person shall knowingly remove or alter the notice.
 - 4) Requires any manufacturer or dealer, prior to reselling a vehicle which was returned to resolve an express warranty dispute, to execute and deliver to the subsequent buyer a notice informing the new buyer that the vehicle was reacquired in resolution of a warranty dispute, whether or not the DMV title has been branded with the notation "lemon buy back," what problems were reported by the original owner, and what repairs were made to correct these problems. This notice must be signed by the new buyer.
 - 5) Applies to buy-backs of vehicles in other states with lemon laws which are resold in California.
 - 6) Makes technical, clarifying amendments to provisions authorizing refunds of sales taxes on buy-backs.
 - 7) Applies only to vehicles reacquired by a manufacturer on or after the effective date of this act.
 - 8) Provides that any buyer damaged by the failure of a manufacturer or dealer to comply will have the same rights and remedies provided by the Civil Code, Section 1794.

FISCAL EFFECT

Unknown.

COMMENTS

- 1) This bill is a follow up to an investigation, hearing and reports by the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development chaired by the bill's author. A 1994 committee report titled "Bitter Fruit" found:
 - a) That vehicle manufacturers and dealers have recycled cars and trucks in California without warning consumers they are buying "lemons" which were bought back from the original owners.

- continued -



- b) Manufacturers have circumvented disclosure law by re-acquiring problem vehicles prior to formal arbitration which would lead to DMV tagging of the vehicle as "warranty returned" -- enabling dealers to resell vehicles at higher prices.
 - c) Lemon vehicles are being laundered through auto actions because current law does not require the manufacturer or dealer to take title to a re-acquired vehicle.
 - d) Some manufacturers have requested reimbursement for sales taxes even though buy-back vehicles were "goodwill buy-backs", not returned under the state's Lemon Law, as is required for sales tax rebates.
 - e) None of the 21 vehicles bought back by manufacturers under the State of Washington's Lemon Law and subsequently resold in California were recorded with the DMV as "warranty returned."
- 2) It is not known how many vehicles are repurchased each year in California. It is estimated that 50,000 are repurchased by manufacturers nationwide each year.

SUPPORT

California Motor Car Dealers Association (sponsor)

OPPOSITION

Center for Auto Safety
Motor Voters For a Safer Tomorrow



**ASSEMBLY TRANSPORTATION COMMITTEE
REPUBLICAN ANALYSIS**

AB 1381 (Speier) -- VEHICLES: AUTOMOTIVE CONSUMER NOTIFICATION ACT.
Version: 4/5/95 Vice-Chairman: Larry Bowler
Analyzed: 04/16/95 Vote: Majority
Recommendation: Oppose

SUMMARY: Revises and recasts the THE AUTOMOTIVE CONSUMER NOTIFICATION ACT from the Civil Code to the Vehicle Code. Requires the manufacturer to retitle specified defective vehicles in its name, request the Department of Motor Vehicles to inscribe the ownership certificate with "lemon buy back" notation, affix a "lemon buy back" decal to the left door frame of the vehicle, deliver a notice (THIS MOTOR VEHICLE HAS BEEN RETURNED TO THE DEALER OR MANUFACTURER DUE TO DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS) including what repairs are done to correct the problem to the transferee of the vehicle, and obtain the transferee's acknowledgment. The bill would provide for the recovery of damages and costs, including reasonable attorney's fees, by any person damaged by the failure of a manufacturer or dealer to comply with these requirements, as specified. The bill would provide that it shall apply only to vehicles re-acquired by a manufacturer on or after the effective date of the act. FISCAL EFFECT: Unknown.

TAX OR FEE INCREASE: None.

POTENTIAL EFFECTS: This measure appears to tighten up the lemon laws however, only vehicle ordered repurchased by a court or an arbitrator, excludes vehicles voluntarily repurchased by the manufacturer. Vehicle manufacturers have repurchase policies varying from "I don't like the paint" returns to "I'll see you in court" this penalizes the manufacturer who has a fairly liberal return policy and gives loop holes to the "hard ball" manufacturer. Also, it doesn't prevent out of state "returned vehicles" from being auctioned to unsuspecting California buyers. Takes there rights away by foreclosing remedies for consumers in pursuing discretionary double damages in the civil code for willful violations.

SUPPORT: California Motor Car Dealers Association (sponsor).
OPPOSITION: Center for Auto Safety, Motor Voters For a Safer Tomorrow.
GOVERNOR'S POSITION: Unknown.

COMMENTS:

- o There are problems with California's lemon law, however this bill does not solve the problems and in some areas diminishes the consumers rights over current law.

Assembly Republican Committee vote
Transportation -- 4/17/95
(> Ayes: >
Noes: >
Abs.: >
N.V.: >

Consultant: Chuck Storm

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LEGISLATIVE INTENT SERVICE





CALIFORNIA MOTOR CAR DEALERS ASSOCIATION

GOVERNMENT AFFAIRS OFFICE

915 L Street, Suite 1480, Sacramento, CA 95814
916/441-2599 • FAX 916/441-5612

April 12, 1995

The Honorable Richard Katz
Chairman, Assembly Transportation Committee
Room 4146
The State Capitol
Sacramento, CA 95814

Re: AB 1381 (Speier) Warranty Buyback Disclosure
Position: SUPPORT
Hearing: Monday April 17, 1995, Assy. Trans. Com.

Dear Richard:

The California Motor Car Dealers Association (CMCDA) is a statewide trade association that represents the interest of over 1400 franchised new car and truck dealer members. CMCDA members are primarily engaged in the retail sale of new and used motor vehicles, but also engage in automotive service, repair, and parts sales. We are writing today to register our support for AB 1381 which would revise and expand the Automotive Consumer Notification Act.

The Automotive Consumer Notification Act [Civil Code Section 1795.8], as presently worded, requires dealers and manufacturers to brand the title of "lemon" buybacks and disclose to the subsequent purchaser the fact that the vehicle was previously returned because of a defect. However, the "triggering language" presently contained in the Automotive Consumer Notification Act (*"any dealer or manufacturer, selling a motor vehicle in this state that is known or should be known to have been required by law to be replaced or required by law to be accepted for restitution by a manufacturer due to the inability of the manufacturer to conform the vehicle to applicable warranties"*) does not present a clear road map for those seeking guidance for compliance because the standard for determining what constitutes a "lemon" and when that fact "is known or should be known" is totally subjective. In the absence of an adjudication by a court or arbitrator, or some other "bright line" standard, reasonable minds may, and often do, differ on whether any particular vehicle has a nonconformity that substantially impairs its use, value, or safety and, what constitutes a "reasonable number of repair attempts".

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AB 1381 is intended to remove all of the ambiguities contained in the current Automotive Consumer Notification Act; provide clarity and predictability to present title branding requirements; and, broaden current buyback disclosure requirements by:

1. Repealing the current Automotive Consumer Notification Act and replacing it with a new one ("the New Act") which would be contained in the Vehicle Code Sections 11713.10, 11713.11, & 11713.12.

2. The New Act would:

A. "Lemon" Buybacks

Require a manufacturer, prior to offering a "lemon" for resale in California to retitle the vehicle in the manufacturer's name, brand the title with the notation "lemon buyback", and affix a notice to the vehicle's left doorframe.

For purposes of this requirement, a vehicle is considered a "lemon" if: (a) it was ordered to be bought back by a court or an arbitration panel; or, (b) it was bought back to resolve a warranty dispute and the vehicle had been, prior to the buyback, subjected to 4 repair attempts for the same problem within 1 year or 12,000 miles or had been in the shop 30 days or more.

B. Tax Refunds

Require manufacturers, as part of an application to get a tax refund from the Board of Equalization for a "lemon" buyback, to provide proof of title branding.

C. All Warranty Buybacks

1. Require any manufacturer who repurchases a vehicle from a retail purchaser, or provides "trade-assistance" for a dealer to repurchase a vehicle in order to resolve an express warranty dispute between the manufacturer and retail purchaser (whether or not the vehicle qualifies as a "lemon" under current law or was simply a "goodwill" buyback), to disclose and obtain the next buyer's signature on a disclosure form prescribed in the bill.

2. Require any dealer who knowingly purchases for resale a vehicle that was bought back in order to resolve an express warranty dispute between the last retail owner and the manufacturer, to disclose and obtain the next buyer's signature on a disclosure form prescribed in the bill.



The Honorable Richard Katz
April 12, 1995
Page 3

We urge your "Aye" vote on AB 1381 when it is heard before the Assembly Transportation Committee on Monday April 17, 1995. Should you or your staff have any questions or comments, please do not hesitate to give me a call.

Very truly yours,

Peter K. Welch
Director of Government
and Legal Affairs

PKW:la

cc: The Honorable Jackie Speier

Members of the Assembly Transportation Committee

✓ John Stevens/ Chuck Storm, Consultants to the Assy. Trans. Com.

Ralph Simoni, California Advocates, Inc.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



AP 4



MOTOR VOTERS

1500 West El Camino Avenue, Suite 419 • Sacramento, CA 95833-1945 • Tel: 916-920-5464 • Fax: 916-920-5465

April 12, 1995

Honorable Richard Katz
Chairman, Assembly Transportation Committee
Room 3146, State Capitol
Sacramento, CA 95814

Re: AB 1381 (Speier): **OPPOSE**

Dear Chairman Katz:

Motor Voters is a non-profit, non-partisan auto safety organization founded in Lemon Grove, California in 1979. Motor Voters is coordinating a national effort to curb illegal "lemon laundering" of defective, often grossly unsafe vehicles.

Motor Voters is opposed to AB 1381 (Speier) because it would weaken existing California law regarding the disclosure of lemon vehicles. It would create new loopholes and weaken private remedies available to victims of lemon laundering.


AB 1381 is quite similar to another measure, also written by the California Motor Car Dealers Association, which was vetoed by Governor Deukmejian in 1990. In his veto message, the Governor stated that "this bill would undermine the integrity of the records of the Department of Motor Vehicles by failing to identify all vehicles that were unable to be brought into conformity with warranty laws whether the manufacturer voluntarily complied or was forced to by a court or the arbitrator."

At the time, the DMV had initiated an investigation into lemon laundering by GM and 34 GM dealers. That case resulted in a \$330,000 settlement.

Currently, the DMV has a case pending against Chrysler for the same practice, involving 118 counts of alleged lemon laundering. Chrysler has already used the existence of this bill in an attempt to bolster its defense.

Consumer groups have met with the author and expressed our concerns. We will continue to work with the author and her staff. However, as the bill is written, we must oppose it.

Respectfully yours,


Rosemary Shahan
President

(800) 666-1917

LEGISLATIVE INTENT SERVICE



AP-5

ANALYSIS OF AB 1381

Existing law

Disclosure

Dealers or manufacturers must provide a specified disclosure regarding all vehicles repurchased pursuant to the Song-Beverly Warranty Act or a similar provision of another state.

Dealers or manufacturers must including with the titling documents a separate disclosure statement signed by the buyer stating:

"THIS VEHICLE HAS BEEN RETURNED TO THE DEALER OR MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS."

Branding

All vehicles subject to disclosure as lemons should also have their titles branded.

Private Remedies

Consumers who are victimized by lemon laundering have access to the same remedies as buyers of other consumer products, including discretionary double damages and attorneys' fees if the buyer can show that the failure to comply was willful.

Under AB 1381

Disclosure

Disclosure is also required. But if the vehicle does not meet the narrow, limited criteria for title branding, the implication is that the vehicle is not a lemon. This would be very misleading in the vast majority of cases.

Branding

Branding is limited to only those vehicles ordered repurchased by an arbitrator or court order, or that meet the narrow lemon law presumption. It excludes the vast majority of lemons, which are repurchased prior to a court order or arbitration decision. It also allows auto manufacturers to evade branding requirements by simply delaying repairs or buying back vehicles before the 4th repair or 30th day.

Improves terminology from "warranty ret." to "Lemon buy back," but requires branding on only a small percentage of lemons.

Remedies

Removes provisions from the Civil Code to the Vehicle Code, thereby eliminating remedies available to purchasers of all other consumer goods sold in the state, including Discretionary double damages for willful violations.

Allows victims of lemon laundering to simply get a refund and reasonable attorneys' fees.

LEGISLATIVE COUNCIL STAFF (800) 666-1917

VETO

SENATE RULES COMMITTEE

Office of
Senate Floor Analyses
1100 J Street, Suite 120
445-6614

Bill No. SB 2568
Author: Rosenthal (D)
Amended: 4/3/90
Vote Required: 2/3 - Urgency

Senate Floor Vote: 31-0, Pg. 5339, 4/19/90

Committee Votes:

COMMITTEE: INS/CRIMINALS/COMPS		
BILL NO.:		
DATE OF READING:		
SENATORS:	AYE	NO
Davis	✓	
Decker	✓	
Doolittle	✓	
Greene	✓	
Keene	✓	
Killea	✓	
Kopp	✓	
Leonard	✓	
Lockyer	✓	
Maloney	✓	
McCorquodale	✓	
Mello	✓	
Nielsen	✓	
Petris	✓	
Presiev	✓	
Robbins	✓	
Rosenthal	✓	
Royce	✓	
Russell	✓	
Sevmour	✓	
Torres	✓	
Vucich	✓	
TOTAL:	31	0

Senate Bill 2568—An act to amend Section 1795.8 of the Civil Code, relating to consumer warranties, and declaring the urgency thereof, to take effect immediately

Bill read third time.

Urgency clause read and adopted, bill passed, and order transmitted to the Assembly.

The roll was called, and the above measures on the Constitutional Calendar passed by the following vote:

AYES (31)—Senators Alquist, Bergeson, Beverly, Boatwright, Calderon, Davis, Dills, Doolittle, Cecil Green, Bill Greene, Greene, Hart, Keene, Killea, Kopp, Leonard, Lockyer, Maloney, McCorquodale, Mello, Nielsen, Petris, Presiev, Robbins, Rosenthal, Royce, Russell, Sevmour, Torres, and Vucich.
NOES (0)—None.

Assembly Floor Vote: 64-0, Pg. 7825, 5/30/90

SUBJECT: Motor Vehicle warranties: disclosure

SOURCE: California Automobile Dealers Association

DIGEST: This bill amends existing law which requires car dealers to disclose to buyers those vehicles offered for sale that have been designated as "lemons". (See analysis below for specifics.)

ANALYSIS: SB 788 (Rosenthal, Chapter 862 of 1989 which passed the Senate 32-2), was enacted to require used car dealers to disclose to prospective buyers of returned "lemon" vehicles the fact that the vehicle was returned due to the inability of the manufacturer to conform the vehicle to the terms of the warranty. It also requires disclosure statement on the title documents for the vehicle.

The disclosure is required on vehicles required by law to be replaced or accepted for restitution. However, in this state there is no law that requires vehicles to be replaced or accepted for restitution. These terms result from a court order or a decision by a qualified third-party dispute resolution process. In other states these terms may result from similar processes or the law; however, every state is different.

This bill clarifies the authority by which the "lemon" designation must be made for the purposes of the disclosure requirement as follows: 1) if the designation was made in California, it had to have been made pursuant to a court order or a decision rendered through a qualified third-party dispute resolution process, and 2) if the

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designation was made in another state or in a federally administered district, it had to have been made pursuant to the law of that jurisdiction.

This bill makes other technical wording changes to provide further clarification.

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

SUPPORT: (Verified 4/9/90)

California Automobile Dealers Association (source)

GOVERNOR'S VETO MESSAGE:

"I am returning Senate Bill No. 2568 without my signature.

"This bill would limit the transactions on which a manufacturer would be required to disclose that a vehicle was the subject of restitution or replacement to those that were the subject of a court order or a decision rendered through a third-party dispute resolution process.

"Under existing law, any persons including manufacturers who sell a motor vehicle that is known or should be known to have been required to be replaced or accepted for restitution due to the inability of the manufacturer to conform the vehicle to applicable warranties, is required to disclose that fact to the buyer in writing prior to the purchase. Beginning July 1, 1990, a dealer or manufacturer must also include as part of the titling documents of the vehicle a specified disclosure statement which will cause subsequently issued titling documents to reflect that the vehicle was the subject of such restitution or return. This information will then become a matter of the Department of Motor Vehicles' record for that vehicle.

"I am concerned that this bill would result in a disclosure requirement based on the level of dispute rather than the reliability of the vehicle. Apparently, this bill would exempt from disclosure those vehicles that are clearly a "lemon" because the manufacturer or seller did not dispute that the vehicle did not comply with the warranty.

"Moreover, this bill would undermine the integrity of the records of the Department of Motor Vehicles by failing to identify all vehicles that were unable to be brought into conformity with warranty laws whether the manufacturer voluntarily complied or was forced to by a court or arbitrator.

"I believe existing law is clear in setting an equal standard for all such vehicles to be re-sold to consumers of this state."

DLW:nf 6/20/90 Senate Floor Analyses



Bleaching Out the Lemon Laws

BY JEFF WUORIO

THE SHINY CAR SITTING ON the dealer's lot looks like a bargain: It's not brand-new, but it's close, with just a few thousand miles on the odometer and a DEMO sign on the windshield. The price clinches it—thousands less than the same model new.

Watch out: The car might be a mechanical basket case, a product of what's known as "lemon laundering."

Lemon laundering occurs when auto dealers knowingly sell defective used cars to consumers. Automobile watchdog groups and auto manufacturers also buy back defective cars from their owners, then auction them off, unrepaired, to unsuspecting dealers.

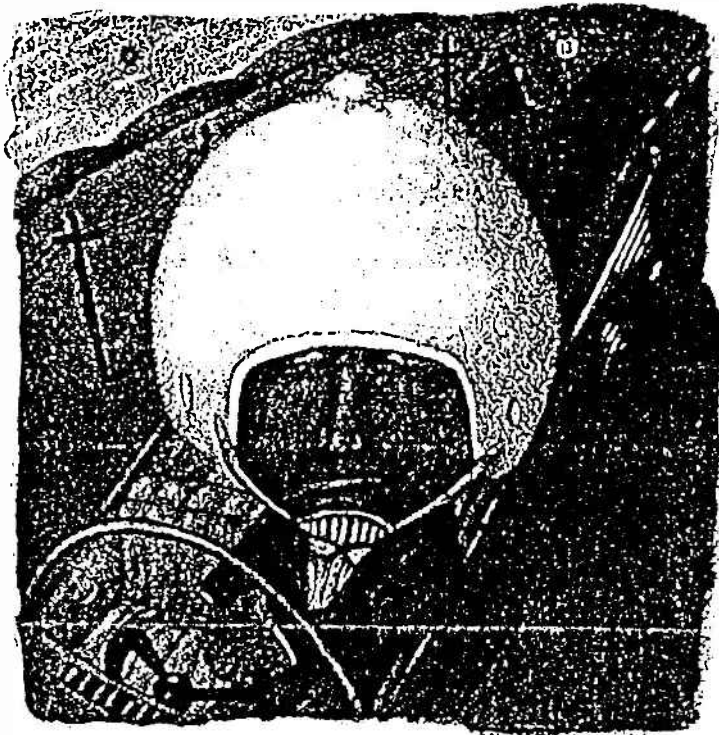
In 1990, Gayle and Gregory Penas of Mesa, Arizona, nearly crashed when the brakes failed on their 1989 Chevrolet Suburban. They had bought the car secondhand for \$22,000 from Biddulph Chevrolet in Santa Rosa, California, which had assured them that the car had been driven for a short time by a General Motors executive. In fact, the Penas discovered it had been repaired 22 times in its brief life and sued GM and the Biddulph dealership. Biddulph's attorney, Houston Tuel, says, "Biddulph's knowledge of the car's history was quite limited." The dealership and GM settled the case in 1991 for an undisclosed amount.

According to estimates derived from state reports of legal actions related to faulty cars posted by the Center for Auto Safety in Washington, D.C., car owners return more than 100,000 defective autos each year. Federal law mandates that dealers must fix these lemons (a term used to suggest the taste they leave owners) and/or disclose to the buyer the car's condition at point of sale—or scrap them if they prove to be irreparable.

However, both the Center for Auto Safety and Motor Voters, a Sacramento, California, group that has lobbied for consumer

car laws for 16 years, believe more dealers than ever before are selling these lemons. They base their conclusions on the rising number of cases filed by state attorneys general and departments of motor vehicles against automakers allegedly engaging in this practice. Says Rosemary Shahan, president of Motor Voters: "Lemon laundering is becoming rampant. Any time anybody investigates, they find hundreds of cases. And the cases that we know about are just the tip of the iceberg."

According to records from consumer-protection, motor-vehicle, and attorneys-general offices in New York, California, and Pennsylvania, one of the biggest culprits is Chrysler Corporation. In 1988, Robert



Abrams, then New York State attorney general, accused Chrysler of surreptitiously reselling lemons through dealerships to about 400 people statewide. Abrams said Chrysler provided neither the buyers nor the state Department of Motor Vehicles written notice of the cars' lemon histories. Admitting no guilt, Chrysler agreed to refund \$2 million in cash and offered extended service contracts to these individuals.

In 1989, the Pennsylvania Bureau of Consumer Protection fined Chrysler \$35,000 for laundering 170 defective vehi-

cles through state dealers. And late last year, the California Department of Motor Vehicles filed a complaint with the state Office of Administrative Hearings against Chrysler for selling 118 lemons without informing buyers about a variety of problems, including faulty steering.

Although the cars had been bought as lemons by dealers at auction, buyers were not informed of this until state officials stepped in. The case awaits a hearing in a state administrative law court. Karen Stewart, a spokeswoman for Chrysler, says: "Everyone who bought one of those vehicles knew exactly what it was. It is our policy to disclose to the purchaser the history of the vehicle and why it was repurchased."

In April 1994, GM paid \$330,000 to the California DMV consumer-protection fund after the DMV accused both the company and 34 GM dealers of trying to lemon-launder 51 cars in Northern California. GM spokesman Albert J. Thomas Jr. says the company has a 100 percent disclosure policy on all used cars and denies it engages in lemon laundering.

Consumers can't always rely on state authorities to protect them. To date, 35 states have enacted lemon-laundering laws. Both the Center for Auto Safety and Motor Voters, however, say manufacturers routinely transport lemons to more lenient states to circumvent these statutes. A 1994 California state study also found automakers often repurchase lemons just prior to legal action or arbitration and then resell them.

To spot a car that's been lemon-laundered, ask to see its service records from the dealer. If they're not available, don't buy the car. Shahan says buyers should allow at least 10,000 miles a year on a used car; anything less could mean odometer tampering. Also, if you live in one of the 35 states that require dealers to provide disclosure statements on a car's condition, ask to review those records as well. If you aren't fully confident about the condition of a car you want to buy or already own, conduct a title search at the local DMV office for the previous owner, as did the Penas.

Advisor
Smart Consumer

LEGISLATIVE INTENT SERVICE (800) 666-1917



1381

LAW OFFICES OF STEVEN B. SOLOMON

Attorney at Law

1290 Howard Avenue,
Suite 333
Burlingame, CA 94010

Tel.: (415) 692-7872

Fax: (415) 373-0279

BY FACSIMILE

The Honorable Richard Katz, Assemblyman
Chair, Assembly Transportation Committee
Capitol Building #3146
Sacramento, CA 95814

Re: COMMENTS ON ASSEMBLY BILL 1381

Dear Assemblyman Katz:

As a consumer protection attorney for over ten years' who primarily handles breach of warranty cases, I want to take this opportunity to comment upon AB 1381, which I understand is scheduled soon for hearing in the Assembly Transportation Committee.

A major concern is the bill's shift of the lemon resale law from the civil code, where the Song-Beverly Consumer Warranty Act resides, to the vehicle code. This effectively nullifies the breach of warranty remedies available to consumers to adjudicate violations for failing to disclose former lemons.

AB 1381's remedy provisions, at section 11713.10(f)(1)-(3), are not as sweeping as the remedies available under the Song-Beverly Act, and would hamstring accountability for failing to disclose known former lemons (e.g. no recovery for a civil penalty nor for incidental and consequential damages).

Indeed, comparing AB 1381 with existing resale lemon laws throughout the country, California would be curtailing the accountability of car makers and dealers for failing to disclose former lemons and endangering California drivers.

For example, two states make violation of their lemon resale law a crime (i.e. North Dakota - a misdemeanor and Utah - a felony for intentional concealment, removal, destruction or alteration of a disclosure statement or title-branded pink slip).

Four states mandate fines for violation of their lemon resale laws (i.e. Louisiana, New Jersey, South Carolina, and Utah - where the fine could range as high as \$10,000 per violation).

If we accept the Center For Auto Safety's estimate that consumers annually return over 100,000 defective vehicles, then why do the citizens of Utah enjoy significantly greater legislative protection against resold lemons than California citizens, when California proportionately has thousands more defective vehicles (Utah's share of total nationwide vehicle registrations in 1993 was 0.6% compared

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LEGISLATIVE INTENT SERVICE



AP-10

The Honorable Richard Katz
April 13, 1995
Page Two

to California's share of 10.1%, which comprises over 1.3 million new cars, vans and trucks)?

Furthermore, AB 1381 fails to account for resale of vehicles with serious safety defects. Are California citizens to be the guinea pigs for resale of cars, trucks and vans with systemic brake, steering and engine failures when five states expressly prohibit resale of former lemons with serious safety defects that could injure or kill their citizens (i.e. Minnesota, Ohio, Pennsylvania, Vermont, and Washington)?

AB 1381 does not make violation of the lemon resale law a bona fide unfair or deceptive trade practice as do eleven other states, so that those states' UDAP remedies are triggered. The disparity created by AB 1381 is illustrated by a senior citizen who is sold a lemon car is now entitled to up to a six times civil penalty for willful breach of warranty -- yet under AB 1381, that same senior could recover only the purchase price of a resold lemon car.

Most distressing is that AB 1381 would catapult California into the nationwide novelty of mandating that the lemon resale disclosure statement affixed to vehicles be a microscopic decal on the door frame. (Vehicle Code sec. 11713.12(a)). Perhaps car dealers could promote sale of former lemons by offering customers a free magnifying glass so they could read try to locate the decal disclosure statement?

Throughout the country only three states (i.e. Connecticut, Massachusetts and Vermont) mandate the size and/or location of posting of the resale lemon disclosure statement on the vehicle. These states' uniformly mandate that the notice be placed on the right front windshield furthest removed from the driver, so that the notice is visible to any prospective buyer.

Lastly, the most fundamental deficiency of AB 1381 is its restricted coverage of reacquired lemons. The bill covers only vehicles reacquired by manufacturers through court order or from a dispute program, or where the vehicle met the Song-Beverly Act legal presumption (i.e. four or more unsuccessful repairs or 30+ days in the shop during the first 12,000 miles/12 months' use).

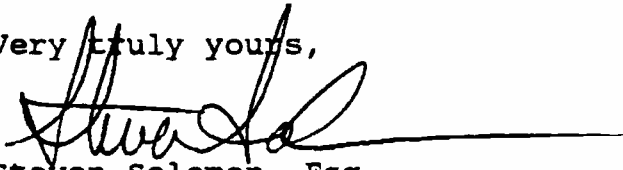
However, from my practice and those of other California lemon lawyers, the car makers replace or repurchase the vast majority of defective vehicles informally without resort to legal action or a dispute program. Yet these defective vehicles would be unprotected under AB 1381, and could be lawfully sold to California motorists without disclosure nor correction of their defects.



The Honorable Richard Katz
April 13, 1995
Page Three

While the 34 other states with lemon resale laws vary as to their coverage of reacquired lemons, a typical inclusive statute covers motor vehicles returned to a manufacturer, its agent or authorized dealer pursuant to the lemon law or a similar statute of another state.

I hope these comments prove helpful to your committee's review of AB 1381, and I appreciate the opportunity to provide some input.

Very truly yours,

Steven Solomon, Esq.

ss:bs

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PLEASE RETURN AS SOON AS POSSIBLE TO:
ASSEMBLY TRANSPORTATION COMMITTEE
ROOM 3132, STATE CAPITOL
Fax: 445-6392

April 17

BILL ANALYSIS WORK SHEET

MEASURE: AB 1633

AUTHOR: ASSEMBLYMEMBER OLBERG

1. Sponsor of the Bill - What person, organization or government entity, if any, requested introduction?

From Great Unified School District

2. Problem or deficiency in present law which the bill seeks to remedy:

School districts are prohibited from purchasing coach type buses. Outlying school district such as mine must travel extensive miles to participate in Co-curricular activities and/or field trips. School buses do not provide the comfort needed for these long trips.

3. Has a similar measure been before the Legislature either this session or previous session? If so, please identify the session, bill number, and disposition of the bill.

No

4. Known Support/Opposition - Please attach copies of letters from any group or governmental agency who has contacted you, indicating a position on the bill.

None

5. Hearing - Please indicate approximate amount of time necessary for hearing bill and the number of witnesses. (Please encourage witnesses to be brief.)

20 - 25 minutes 1 person

Maximum

6. Name and telephone number of person to contact if further information is needed:

Richard P. Fragale, Supr. (619) 372-5203

7. Please attach a copy of any background material which explains the bill or state where such material may be available (INCLUDING ANY POLICY AND FISCAL ANALYSES)

School districts are permitted to rent coach buses for trips.
PLEASE NOTE:

○ REQUESTS TO SCHEDULE A MEASURE FOR HEARING MUST BE RECEIVED BY 5:00 p.m. OF THE FRIDAY ONE WEEK PRIOR TO THE HEARING.

○ AMENDMENTS, IN LEGISLATIVE COUNSEL FORM, MUST BE RECEIVED BY THE COMMITTEE NO LATER THAN 5:00 p.m. ON THE MONDAY ONE WEEK PRIOR TO THE HEARING.

○ IN COMMITTEE, BILLS MAY BE PRESENTED BY THE AUTHOR ONLY.

AP-13

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RECEIVED

APR 17 1995

Assembly Transportation
Committee

SUSAN DIANE SMYSER
6250 North Calera
Azusa, California 91702
818-914-3680

April 17, 1995

The Honorable Richard Katz
State Capital
Sacramento, California
Via: Fax

Dear Mr. Katz:

Recently, I have reviewed a bill, AB 1381, which is presently before your committee. I sincerely hope that bill never leaves your committee. It is anti-consumer and anti-safety. It is also been created and supported by special interests who would rather attempt to change the law rather than suffer the consequences of their illegal and indecent acts.

It is extremely difficult for a California consumer to obtain satisfaction in an auto lemon case with our present law, please don't make it more unfair to the consumers by relaxing the registration of the branding policies and laws. If the car is a lemon, the next buyer has a right to know, whether the previous owner has won at litigation or has been lucky to get rid of the car without litigation or arbitration.

This is the subtle type of bill, that often slips by unnoticed, but in reality could mean the life or death of real people - the people who purchased cars unaware that there is a brake, steering, or stalling problem as well as anyone who might be on the road at the same time with such unwary owners- which probably includes just about all of us. Corporate responsibility for those who produce unsafe products and honesty to consumers are two things which should be encouraged in legislation. This bill does neither and prevents both.

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AV-14

Page Two
The Honorable Richard Katz
April 16, 1995

I sincerely urge you to defeat this bill, AB 1381.

Sincerely,

Susan Diane Smyser

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LEGISLATIVE INTENT SERVICE



AP-K

1381

Consumer Action

116 New Montgomery Street, Suite 233
San Francisco, CA 94105
(415) 777-9648

Southern California Office
523 West Sixth Street, Suite 1224
Los Angeles, CA 90014
(213) 624-8327

13 April 1995

Assemblyman Richard Katz, Chairman
Assembly Transportation Committee
Room 3146, State Capitol
Sacramento, California 95814

VIA FAX/916.324.6860

RE: Opposition to AB 1381 (Speier)

Dear Assemblyman Katz:

Consumer Action, a non-profit consumer education and information organization, finds that it cannot support AB 1381 (Speier) as currently amended and urges you to oppose this legislation when it comes before your committee on April 17, 1995. We originally anticipated that this legislation would serve to strengthen lemon buy-back provisions for cars and trucks while assuring that consumer's rights would be protected. As it currently stands, AB 1381 falls far short of these goals.

AB 1381, rather than strengthening the current lemon law, creates some huge loopholes for manufacturers and dealers which would entirely nullify the law in as many as 80% of all lemon cases. The only vehicles that would fall under the provisions of AB 1381 would be vehicles which are the subject of a court trial, where the arbitration process has ruled against the manufacturer or where the vehicle had a specified number of repair attempts in the first year. We are advised that legal research indicates that these vehicles represent only about 20% of the lemon cases in California.

As AB 1381 also repeals the civil penalties for cases brought by owners of recycled lemons, it serves to invite auto manufacturers to dump their out-of-state lemons in California without fear of legal action or accountability.

In short, and in fairness to the consumers of California, we cannot support AB 1381 as it currently stands as it would serve to seriously weaken, not strengthen, existing law.


We urge that you oppose AB 1381 when it comes before you for your consideration.

AP-10

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Assemblyman Richard Katz
April 13, 1995
Page Two

Sincerely,

Cher McIntyre
Associate Director of Advocacy

cc: Members, Assembly Transportation Committee
Assemblymember Jackie Speier

CLM/dt

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LEGISLATIVE INTENT SERVICE



AK 17

2253

WILLIAM M. KRIEG

Attorney at Law
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Fresno, CA 93721

Tel. (209) 441-7485
Fax. (209) 441-7488

April 12, 1995

Richard Katz
Chairman, Assly Transportation Committee
Room 3146, State Capital
Sacramento, CA 95814

RE: AB1381

Dear Mr. Katz:

After 20 years of general law practice, I now devote most of my practice to "Lemon Law" and deceptive business practices, primarily involving car dealers. I have received a continuing education from hundreds of good, hard working citizens who after months and years of frustration dealing with dealers and manufacturers are forced to turn to a lawyer for help. Some of my clients are the unfortunate buyers of cars previously bought back, exchanged, or returned to the manufacturer or dealer by a prior owner as defective. It is for these people that the serious and gaping loophole in AB1381 causes me concern.

Statistically, the vast majority of all lemons are bought back or exchanged prior to any consumer seeing a lawyer. Of that smaller percent forced into legal action, more than 90% are resolved prior to going to court. All of these lemons escape the notification requirements and title branding under AB1381. One may argue, as I suspect manufacturers will, that this provision encourages better treatment of lemon owners by encouraging manufacturers into early buy backs of lemons. What it in fact does is allow nearly the entire population of returned lemons, to be recycled on the market legally. This creates the worst possible scenario for consumers of recycled lemons.

To pass AB1381 in its present form would simply add thousands of recycled lemons to that population of unrecorded salvage, dismantled, damaged and "chopped" vehicles, already flooding the market for the unsuspecting.

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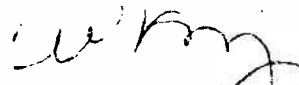
A4-17

The Lemon Law is an excellent inducement for manufacturers to buy back lemons. I have never had a manufacturer buy back a car which did not have a history of significant defects. They do so because of the likelihood of having a judge or jury require it. Manufacturers who are convinced that a vehicle does not qualify as a lemon simply do not pay money to settle cases. No lawyer familiar with the law willingly takes a case which he is not likely to win. This is not a significant problem affecting California consumers or business. The only significant problem will be adoption of a law which allows those 95% of all Lemons, which never see a court room, to be recycled to unsuspecting consumers.

Those who spend hard earned money on a recycled lemon and continue to pay a bank or finance company for a defective or dangerous vehicle to protect their good credit and then litigate, are the losers under AB1381. The grand beneficiaries are the dealers and manufacturers whose decision to buy back any potential lemon is eased by knowing it can be easily resold at full value, without disclosure.

I hope your committee will consider the entire life cycle of these defective vehicles in drafting legislation which will help rather than hinder the victims of the large secondary market in bad vehicles.

Sincerely,



WILLIAM M. KRIEG
Attorney at Law

WMK:neh

cc: Assembly to Transportation Committee

(800) 666-1917

LEGISLATIVE INTENT SERVICE



AP-19

Fell

CENTER FOR AUTO SAFETY

2001 S STREET, NW SUITE 410 WASHINGTON, DC 20009-1160 202-328-7700

April 13, 1995

VIA FAX AND FIRST-CLASS MAIL

Honorable Richard Katz
Chairman, Assembly Transportation Committee
Room 3146, State Capitol
Sacramento, CA 95814

RE: AB 1381, the Lemon Disclosure Bill

Dear Chairman Katz:

We write to you today to share our serious concerns about AB 1381, the lemon disclosure bill Assemblyperson Jackie Speier introduced earlier this month. The Center for Auto Safety is a non-profit consumer advocacy organization incorporated under the laws of the District of Columbia. We were founded in 1970 by Consumers Union and Ralph Nader. We work toward vehicle safety, environmental responsibility, and fair play in the automotive industry and car market.

AB 1381 creates such a narrow definition of a "lemon" for the purposes of the disclosure requirements that a significant percentage, if not a majority, of repurchased nonconforming vehicles can be recycled without any notice to the consumer. The bill demands title-branding only when the vehicle falls within the four repair/thirty day presumption of the current lemon law, or where a court or official process has required the manufacturer to repurchase or replace the vehicle.

Our experience shows that this definition misses a large chunk of the very worst lemons on the road. Manufacturers will settle disputes with their customers without waiting for an arbitration award or court decision when the manufacturer sees that it has a weak case, i.e., a vehicle that is very clearly a lemon. As the bill currently reads, these vehicles would not be covered by the branding requirements.

Moreover, the bill provides little in the way of deterrence for failure to comply with the mandates of the disclosure law. AB 1381 allows consumers to bring suit for damages suffered as a result of the manufacturer's failure to comply. However, the legislation limits private recovery to actual damages, costs and expenses, and attorney's fees. Although the bill purports not to foreclose additional private recourse under other California consumer protection laws, those laws impose additional burdens of proof on the consumer with only limited potential benefits. Others states' lemon disclosure laws provide for civil penalties in the range of double- and treble-damages for violations of those laws. These statutes create additional disincentives to unscrupulous

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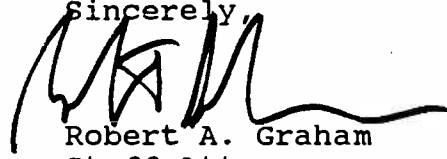
AV 10

Richard Katz
April 13, 1995
Page 2

manufacturers who, under AB 1381, are only disgorged of the benefits they derive from their wrongful conduct. An effective lemon disclosure bill should include just such civil penalty provisions.

In light of the foregoing, we cannot support AB 1381 as written. If you have any questions, please do not hesitate to contact us at 202-328-7700. We look forward to hearing from you.

Sincerely,



Robert A. Graham
Staff Attorney

cc: John Stevens
Rosemary Shahan

(800) 666-1917

LEGISLATIVE INTENT SERVICE



AP 21

PLEASE RETURN AS SOON AS POSSIBLE TO:
ASSEMBLY TRANSPORTATION COMMITTEE
ROOM 3132, STATE CAPITOL
Fax: 445-6392

BILL ANALYSIS WORK SHEET

MEASURE: AB 1381

AUTHOR: ASSEMBLYMEMBER SPEIER

1. **Sponsor of the Bill** - What person, organization or government entity, if any, requested introduction?

California Motor Car Dealers Association
and Assemblywoman Speier

2. **Problem or deficiency in present law which the bill seeks to remedy:**

Each year upwards of 3,000 to 5,000 Consumers buy low mileage vehicles from California Vehicle dealers. - these vehicles were previously bought back by the manufacturer due to customer dissatisfaction. Current law requires that under certain conditions the prior repurchase record of the vehicle must be disclosed to the consumer.

3. **Has a similar measure been before the Legislature either this session or previous session?** If so, please identify the session, bill number, and disposition of the bill.

NO

4. **Known Support/Opposition** - Please attach copies of letters from any group or governmental agency who has contacted you, indicating a position on the bill.

unknown, other than Car Dealers.

5. **Hearing** - Please indicate approximate amount of time necessary for hearing bill and the number of witnesses. (Please encourage witnesses to be brief.) 2 witnesses, 15 minutes

6. **Name and telephone number of person to contact if further information is needed:**

Richard Steffen, 445-8020; Peter Welch Car dealers. 441-2599

7. **Please attach a copy of any background material which explains the bill or state where such material may be available (INCLUDING ANY POLICY AND FISCAL ANALYSES).**

Attached

PLEASE NOTE:

- REQUESTS TO SCHEDULE A MEASURE FOR HEARING MUST BE RECEIVED BY 5:00 p.m. OF THE FRIDAY ONE WEEK PRIOR TO THE HEARING.
- AMENDMENTS, IN LEGISLATIVE COUNSEL FORM, MUST BE RECEIVED BY THE COMMITTEE NO LATER THAN 5:00 p.m. ON THE MONDAY ONE WEEK PRIOR TO THE HEARING.
- IN COMMITTEE, BILLS MAY BE PRESENTED BY THE AUTHOR ONLY.

AP 22

See attached for full explanation

WORKSHEET ON AB 1381(SPEIER)...THE LEMON BUYBACK BILL

2. THE PROBLEM:

Consumers unknowingly buy low mileage vehicles that were previously repurchased from the original owners by the manufacturer due to customer dissatisfaction. Some these cars and trucks, in cases documented by the DMV, did not perform well for the second buyers and, in some instances, the performance of these vehicles presented safety endangers to the owners(see LA Times article, attached).

Current law requires that the dealer disclose to the consumer that the vehicle was repurchased by the manufacturer if the vehicle were bought back under the state's Lemon Law--i.e., the manufacturer repurchased the vehicle because it could not be repaired after four attempts, or after 30 consecutive days or more in the shop during the first year of ownership, or 12,000 miles.

However, a majority of manufacturer buybacks appear to occur before the Lemon Law standards which lead to arbitration set in; therefore, there is some debate over whether the buyback status of these vehicles needs to be disclosed to the consumer, provided that the identified defects did not substantially affect the worth of the vehicle.

AB 3081 raises this policy question: Is it fair to the consumer that he or she not be told that the vehicle for sale was previously bought back by the manufacturer because of some mechanical problem?

Furthermore, car dealers complain that they are sometimes not aware that a vehicle which they may have purchased from another dealer was once bought back by the manufacturer due to problems.

The solution: AB 1381 proposes that the buyback status of any vehicle which had a warranty problem be disclosed to the next buyer. For those vehicles that are deemed " lemons " under the state's Lemon Law, another state's lemon law, or due to a court ordered buyback, the title must be branded as " lemon buy back " and the left door jamb must be branded with a " lemon buy back " decal, in addition to a written disclosure, signed by the manufacturer, dealer and buyer. All other warranty disputes involving a buyback vehicle would have to be disclosed to the buyer, but no branding would take place.

Additionally, the bill clearly disallows a sales tax refund to car manufacturers who buy back a vehicle, unless the vehicle was repurchased under the Lemon Law. Current law restricts refunds to lemon buybacks, however, the law is somewhat unclear on this point.

Background

The Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development investigated the problem of



undisclosed, " recycled lemons " last year. The committee held a hearing and produced a final report, Bitter Fruit, which is attached. The DMV has also accused General Motors and Chrysler of selling lemon vehicles without disclosure. GM, without admitting guilt, paid DMV \$330,000 last year while several GM dealers settled with DMV for penalties that totalled in excess of \$100,000. Chrysler and DMV appeared before an administrative law judge in February 1995--a decision should be forthcoming within the next four weeks.

Important

The attached letters from vehicle manufacturing associations to Frank Zolin, DMV, provide a candid look at why the issue of recycled lemons is of major concern to dealers, manufacturers, consumers and the DMV. There is strong support for the proverbial "Bright Line " legislation so that consumers will be informed and manufacturers and dealers will be clear on their responsibilities.

Amendments

The attached amendments are due back from Counsel on 4/5. The amendments address the concerns of consumer groups which wanted to be sure that the buyback measures, contained in the Vehicle Code, would provide for private right of action remedies--the amendments accomplish this. Also, the amendments make sure that the manufacturer signs the disclosure form.



■ **Consumers:** Chrysler would be unable to do business in California for 10 days. The auto maker denies any wrongdoing.

By DENISE GELLENE
TIMES STAFF WRITER

The California Department of Motor Vehicles is seeking to stop Chrysler Corp. from doing business in California for 10 days as punishment for allegedly selling used "lemons" to unsuspecting buyers.

However, a less-harsh settlement—possibly a fine or payments to alleged victims—is more likely. Chrysler says it did not violate any laws.

The DMV proposed the stiff penalty during a nine-day administrative hearing that ended Friday.

The proposed penalty against Chrysler would not necessarily prevent dealers from selling cars, said Bernard Lu, DMV's lead

Please see HEARING, D8

DMV Seeks Suspension in 'Lemon' Case



SATURDAY
MARCH 11, 1995

HEARING

Continued from D1

counsel, but it would probably prevent Chrysler from shipping cars into and within the state for the 10-day period, an expensive and confusing scenario. The auto maker could also be prevented from advertising, shipping parts or providing financing within the state. According to R.L. Polk, a market research firm, about 120,000 new Chrysler cars and trucks were registered in California in 1994.

Lu said Friday that despite its recommendation, the agency would prefer to reach a settlement with Chrysler in which owners of the used "lemons" would be compensated.

"The department prefers to help the consumer rather than to punish Chrysler," Lu said.

During the hearing in Sacramento, Chrysler denied the allegations against it, saying it provided paperwork to used-car dealers about the vehicles but that some dealers did not give that paperwork to consumers.

As previously reported, the DMV in August charged Chrysler with selling 118 used "lemons" without telling buyers that the cars had been repurchased from customers because of defects. The cars included Dodges, Jeeps, Chryslers and Plymouths sold through Northern California dealerships. The model years are 1989 to 1992.

The DMV says Chrysler violated

regulations requiring it to label the cars as "warranty returned" on title documents. The DMV also says the notices that Chrysler provided for used-car dealers to give to buyers were improperly worded.

The administrative hearing went forward when settlement attempts failed. According to a source familiar with the discussions, the DMV was seeking about \$1 million from Chrysler, including penalties and costs. Neither the agency nor the auto maker would comment on that figure.

On Friday, a Chrysler spokesman said: "Our position is that we are in full compliance. Chrysler is not willing to pay, in effect, damages when none have been experienced."

The hearing took place in Sacramento before Administrative Law Judge Keith Levy. At the conclusion of the hearing, Levy gave both sides 60 days to file written briefs. Levy has 30 days after that to make a decision.

The judge's decision then goes to DMV Director, Frank S. Zolin, who can accept, reject or modify it.

The case stems from a continuing DMV investigation. In April, General Motors paid \$330,000 to settle similar allegations involving 51 used cars. GM did not admit guilt in its settlement. The DMV disclosed that it is currently reviewing documents related to Ford cars said to be "lemons." The department would not say whether violations have been uncovered.

A new car is considered a "lem-

on" in California if it is in the shop more than 30 days during the first year of ownership or if a defect is uncorrected after four attempts.

There are no reliable figures on how many "lemons" are resold to consumers without notification.

Lu said the number of mislabeled "lemons" on the road in California is "in the thousands."

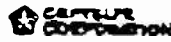
The Center for Auto Safety, a Washington-based consumer organization, estimates that 50,000 lemons are repurchased from customers each year, though it does not know how many are resold.

LEGISLATIVE INTENT SERVICE (800) 666-1917



AP-25

American Automobile Manufacturers Association



February 23, 1995

VIA FACSIMILE

Mr. Frank Zolin, Director
California Department of Motor Vehicles
2415 First Avenue
Sacramento, CA 95818

Dear Mr. Zolin:

Members of our Association have been advised by your legal department that the Department of Motor Vehicles (DMV) has decided to notify owners of approximately 10,000 vehicles throughout the State of California that their vehicles were repurchased by the manufacturers pursuant to the Consumer Warranty Law (Lemon Law) and that the titles should have been branded. The notice will advise these owners that their titles must be submitted to the DMV for branding. We believe this action is unwarranted and will cause significant hardship to the owners of these vehicles as well as automobile dealers and manufacturers throughout the State of California. We respectfully request that the DMV reconsider this action.

The 10,000 vehicles at issue have been repurchased by manufacturers in the State of California and ultimately resold to consumers. Manufacturers provide full disclosure of the reason for repurchase and any repairs that have been made. In many cases, the manufacturer repurchased the vehicle for reasons other than the Lemon Law and full disclosure of those reasons was given. In other cases, disclosure was made pursuant to the Lemon Law, notice was given to the DMV and the DMV itself failed to brand the titles. The DMV's wholesale, retroactive branding of these titles would cause a diminution in value to their owners in the tens of millions of dollars and will create unwarranted litigation, with no measurable benefit to the public. Further, the Lemon Law neither compels the DMV to take this action nor provides any basis for the Department to unilaterally change the status of 10,000 vehicles throughout the state. For these reasons, described in more detail below, we are asking that you reconsider your decision to carry out the retroactive branding of these titles.

1. Non-Lemon Vehicles. A substantial portion of the 10,000 vehicles targeted for branding were not repurchased pursuant to the Lemon Law and therefore should not be branded. The Lemon Law only applies to those vehicles that have been

HEADQUARTERS	DETROIT OFFICE
1401 N Street, N.W. Suite 900, Washington, D.C. 20005	7430 Second Avenue, Suite 300, Detroit, MI 48207
202-326-5500 FAX 202-326-5567	313-877-4311 FAX 313-877-5400

AP-26

LEGISLATIVE INTENT SERVICE (800) 666-1917

Mr. Frank Zolin

2/23/95

Page 2

repurchased because of a non-conformity that substantially impairs the use, value or safety of the vehicle and cannot be repaired after a reasonable number of attempts. Manufacturers and dealers often repurchase vehicles for customer satisfaction reasons well before they become non-conforming vehicles under the Lemon Law. For the DMV to mandate the branding of the titles of these vehicles whose owners were given full disclosure of their buy back status would wrongfully reduce the value of these vehicles and create a customer relations nightmare for dealers and manufacturers.

2. Non-Compliance by the DMV. Vehicle owners and their dealers should not be penalized for the DMV's non-compliance with its own laws. Since the Lemon Law was enacted in 1990, the DMV has failed to give guidance to the public on complying with the law and has not trained its own staff as to how to implement the branding requirements. DMV staff readily admit that there have been no procedures in place within the agency to brand these titles even where proper disclosures were received by the DMV that the vehicle in question was repurchased pursuant to the Lemon Law. By rebranding all vehicles repurchased and resold in the State of California, the DMV would be exceeding its legal authority as well as unfairly impairing the value of vehicles for which proper disclosure was made.

3. Pending Legislative Changes. In recognition of the many ambiguities in the present law and the lack of guidance from the DMV on title branding, legislation has been proposed, apparently supported by state legislator Jackie Spiers, that would repeal the existing title branding provision and replace it with one that provides a clear and meaningful disclosure and specifies when such disclosures should be made. The new disclosure provisions would recognize the distinction between customer satisfaction buy backs and those under the Lemon Law and would only require branding for the latter. The concept of this draft legislation appears to be supported by consumers, dealers and manufacturers. In light of the impending change in the law, the DMV should not take retroactive actions under the old requirements that the agency itself has never actually implemented.

4. Unwarranted Litigation. The net effect of the DMV's action would be to reduce suddenly the value of these 10,000 vehicles in the hands of unsuspecting owners, owners who have already received disclosure of the status of the vehicle. This action benefits neither consumers nor businesses. The real beneficiaries are those lawyers in California who gain access to the names and addresses of the owners of these vehicles only to file nuisance suits against manufacturers and dealers.

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LEGISLATIVE INTENT SERVICE



AP-27

Mr. Frank Zolin

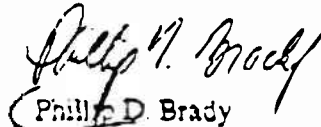
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Page 3

Dealers and manufacturers throughout the State of California have made a good faith effort to comply with the disclosure requirements of the California Lemon Law. The ambiguities in the law, coupled with the absence of guidance from the DMV and the DMV's own failure to brand titles, leave no justification for the DMV to take the harmful, punitive step of retroactively and arbitrarily branding the titles of these vehicles. On behalf of the American Automobile Manufacturers Association, we respectfully request that you rescind your decision to retroactively brand these vehicles and, instead, work with the industry and consumers to enact a prospective title branding requirement that will benefit and be understood by all the parties involved.

Thank you for your consideration.

Sincerely,



Phillip D. Brady

Vice President and General Counsel

PDB/srd

cc: Mr. William G. Brennan
Deputy Secretary
Business, Transportation & Housing Agency

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(800) 666-1917

LEGISLATIVE INTENT SERVICE



AP-29



March 13, 1995

Chairman
C. HUGHES
Land Rover

1st Vice Chairman
T. MCCARTHY
Nissan

2nd Vice Chairman
D. SMITH
Toyota

Secretary
D. MAZZA
Honda

Treasurer
F. SCHWAB
Porsche

Mr. Frank Zolin, Director
California Department of Motor Vehicles
2415 First Avenue
Sacramento, CA 95818



Dear Mr. Zolin:

BMW

Daewoo

Fiat

Honda

Honda

Isuzu

Kia

Land Rover

Mazda

Mitsubishi

Nissan

Peugeot

Porsche

Renault

Renault

Seat

Suzuki

Suzuki

Toyota

Volkswagen

Vaux

President
R. HUTCHINSON

The Association of International Automobile Manufacturers has been informed that the Department of Motor Vehicles is proposing to notify a large number of owners that their vehicles were repurchased pursuant to the California lemon law and that the titles of those vehicles should have been branded accordingly. After reviewing the recent correspondence between you and the American Automobile Manufacturers Association, we believe that the Department should reconsider the proposed action carefully.

AIAM member companies attempt to provide full disclosure concerning the repurchase of any vehicle. This includes vehicles that are repurchased for reasons other than non-conformities under the lemon law. However, our members' attempts to comply with the current provisions for disclosure under the California lemon law have been frustrated by the lack of guidance from the Department. The Department has not published meaningful regulations. We understand that the Department has also resisted providing practical guidance to manufacturers concerning how they may fulfill their statutory obligations and has even refused to provide such assistance when specifically requested to do so. Moreover, AIAM is informed that Department field staff has at times refused to accept title branding documentation and has otherwise frustrated manufacturers in their compliance efforts.

The extent of this problem was demonstrated during the oversight hearing in October 1994 before the Assembly Committee on Consumer Affairs, chaired by Assemblywoman Jacqueline Speier. At that hearing, representatives of a number of automobile companies pledged to work with the legislature to achieve a remedy to current problems in California law. Manufacturers intend to keep that commitment and intend to work cooperatively with the legislature to pass significant and meaningful legislation protective of both consumer and manufacturer interests.

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AP-29

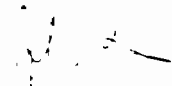
Mr. Frank Zolin, Director
March 14, 1995
Page Two

In our view it would be unwise for the Department at this time to attempt to brand titles of vehicles retroactively, especially when many of the vehicles may very well not have been repurchased pursuant to California or other states' lemon laws. Such action would be misleading to consumers, unjustifiably reduce their confidence in their vehicles, potentially slander various manufacturers and dealers, and foment unnecessary litigation.

The Department's interest in encouraging good faith compliance, and more importantly in ensuring that consumers obtain all appropriate disclosures to protect their interests, can best be furthered if the Department joins with the automobile industry and the legislature to enact an effective statute. Such legislation would standardize title branding requirements throughout the State and authorize the Department to publish regulations setting forth in express terms how title branding is to be accomplished.

AIAM would be happy to meet with you to discuss this issue and looks forward to working with the Department, the legislature and other interested parties to advance consumers' legitimate interests in this area.

Sincerely,



John T. Whatley
Assistant General Counsel

JTW:cdf

cc: Assemblywoman K. Jacqueline Speier
William G. Brennan

(800) 666-1917

LEGISLATIVE INTENT SERVICE



AP-30

Los Angeles Times

FRIDAY, OCTOBER 28, 1994

Resale of 'Lemons' as New Cars Criticized

By JERRY GILLAM
TIMES STAFF WRITER

SACRAMENTO—New cars that normally would be classified as "lemons" are being resold to unsuspecting buyers, and the head of the Assembly's Consumer Protection Committee wants the practice stopped.

"In brief, the manufacturers are packaging their lemons as peaches," said Assemblywoman Jackie Speier (D-Burlingame), the committee's chairwoman. "Only the fruit, in many cases, is rotten."

Speier and other committee members heard Thursday from disgruntled car buyers who complained about buying nearly new cars from dealers only to find out later, after a run of constant troubles ranging from squeaky doors to bad brakes, that the vehicles had a history of problems.

Although California has a so-called lemon law, Speier said there is a loophole.

Under state law, a new car is declared a lemon if it cannot be fixed after several attempts. The buyer is given a replacement. The car labeled a lemon can be resold by the manufacturer but only after it has been repaired and its title changed so that future buyers know it was a lemon.

But the problem, the committee was told, is that some manufacturers are buying back the faulty

autos before they are officially listed as lemons and reselling them without telling buyers about their history.

A woman told the committee that she bought a 1989 Chevrolet Suburban from a Santa Rosa dealer and that its brakes failed while pulling a 6,000-pound trailer down a mountainous Lake Tahoe road. Gayle Pena told the committee that she was led to believe that she was buying a like-new vehicle that had been driven by an executive.

She later found out that the vehicle had been repurchased from the original owner by the dealer after it had been in the shop at least 20 times for brake problems that could not be fixed.

"The dealer was willing to kill us for \$22,000 . . . put us in a casket for the sake of a sale," said Pena, who now lives out of state.

Pena said the Department of Motor Vehicles penalty for the dealer who sold her the truck was "a slap on the wrist" consisting of a small fine and having to close for two days, which has not been done yet.

Representatives of General Motors, Ford Motor Co. and Nissan North America Inc. were at the hearing and indicated that they would support full disclosure. They also urged passage of a uniform federal law to help iron out differences among lemon laws in various states.

"We believe in full and effective disclosure," said Ken Tough of General Motors. "We want the customer to make an informed decision."

A committee report recommended legislation to require the DMV to regulate the buyback procedures. The legislation, which Speier said she will introduce, would require the repair of all vehicles described as lemons before their resale and would require that records of the repairs be given to prospective buyers.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



AP-21

Att: Rosemary Shahan

SMS



MOTOR VOTERS

1500 West El Camino Avenue, Suite 419 • Sacramento, CA 95833-1945 • Tel: 916-920-5464 • Fax: 916-920-5465

April 19, 1995

Honorable Richard Katz
Chairman, Assembly Transportation Committee
Room 3146
State Capitol
Sacramento, CA 95814

Dear Chairman Katz:

On behalf of our members and California motorists, I wish to express our deep appreciation for your leadership in strengthening AB 1381 (Speier).

Thanks to your efforts, and the bi-partisan vote in your committee, AB 1381 was amended to restore the existing remedies available to consumers who are victims of illegal "lemon laundering." This preserves a civil deterrent against auto manufacturers who seek to dump seriously defective vehicles in California with impunity.

As you know, unsafe lemon vehicles endanger not only their drivers and passengers, but also all of us who share the road. As Assemblywoman Speier noted in her report "Bitter Fruit," the lemons resold in our state typically have major malfunctions such as failing brakes; faulty steering; and intermittent, unpredictable stalling. Thanks to your leadership on this issue, California's highways will be safer.

We continue to have concerns about closing the "lemon loopholes," and look forward to working with you and your staff to tighten the amendment on which vehicles are branded.

Thank you again for your strong pro-consumer, pro-safety support.

Respectfully yours,

Rosemary Shahan

Rosemary Shahan
President

LEGISLATIVE INTENT SERVICE (800) 666-1917



AP-36

WILLIAM M. KRIEG

Attorney at Law
1330 "L" Street, Ste. G
Fresno, CA 93721

Tel. (209) 441-7485
Fax. (209) 441-7488

RECEIVED

AK

Assembly Transportation
Committee

April 21, 1995

Honorable Richard Katz
Chairman, Assembly Transportation Committee
Room 3146, State Capital
Sacramento, CA 95814

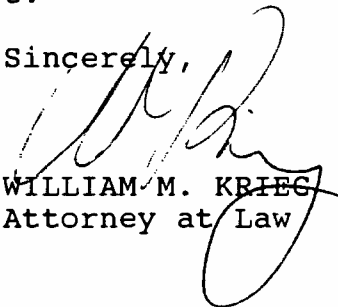
RE: AB1381

Dear Chairman Katz:

Last week I wrote a lengthy letter regarding my concerns with the auto dealer supported provisions of AB1381, which would effectively eliminate any claim or penalty for lemon laundering. I wish now to thank you for your reasoned and understanding approach to the impact that such anti-consumer legislation would have on the citizens of this State. With support such as yours, California will remain in the forefront protecting citizens and consumers from deceptive and predatory business practices, and not become a dumping ground for defective and dangerous recycled lemons.

Thank you for your support.

Sincerely,


WILLIAM M. KRIEG
Attorney at Law

WMK:ms

cc: Motor Voters

LEGISLATIVE INTENT SERVICE (800) 666-1917



AP-23

KEMNITZER, DICKINSON, ANDERSON
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*BRYAN KEMNITZER
MARK F ANDERSON
*NANCY BARRON
STEVEN J. KASSIRER
*A Professional Corporation

OF COUNSEL
ROGER DICKINSON

April 14, 1995

Assemblyman Richard Katz
Chairman, Assembly Transportation Committee
State Capitol, Room 3146
Sacramento, CA 95814

Re: AB 1381, the Recycled Lemon Bill

Dear Assemblyman Katz:

This law firm has represented consumers in Northern California in over 3,000 lemon law cases over the past 12 years. On behalf of ourselves and the California Lemon Law Lawyers, we would like to give you our views on AB 1381 (Speier), the lemon recycling bill.

We wish to work with the author and the committee to strengthen this bill.

Initially, we do not understand why the new language should be in the Vehicle Code. We believe it belongs in the Civil Code with the rest of the Song-Beverly Act because it is a consumer protection statute with its existing and known remedies.

In its current form, the bill has certain deficiencies in our view.

Which Vehicles Must be Title Branded?

One deficiency is that we believe that all repurchased lemon vehicles should have to be "branded" by the manufacturer so as to provide automatic warnings to potential buyers. As the bill stands, only about 20% of the repurchased lemon vehicles would have to be branded.¹

¹ We estimate that 80% of the vehicles repurchases are voluntary on the part of the manufacturer based on an informal request by the owner (including some of the worst lemons), in the mediation phase of the Better Business Bureau AUTO LINE proceedings, or in settlement of lemon law lawsuits. None of these vehicles' titles would have to be branded as the bill is now written.

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AP-34

This deficiency could be remedied by requiring that all vehicles which are repurchased should be subject to title branding.

A Civil Penalty Is Needed

Another deficiency with the bill is the lack of a civil penalty. If a buyer of a repurchased lemon is not given the required disclosure of its lemon history or if the manufacturer or dealer does not otherwise comply with the statute, the buyer should have the opportunity to prove the failure to comply was "willful" thus entitling him or her to up to two times damages.

The civil penalty currently is available for violations of Civil Code § 1795.8, the disclosure statute which would be stricken by AB 1381.

The civil penalty is important as a deterrent to violation of the statute. Otherwise, if a dealer or manufacturer fails to comply with the act, the worst that can happen to them in a civil suit is that they have to repurchase the vehicle and possibly pay the buyer's attorney fees. This is not a sufficient threat to their pocketbooks to ensure the manufacturers will be careful to comply with the law.

The civil penalty could be added by repeating the Civil Code § 1794(c)² or by incorporation of that section into proposed Vehicle 11713.10(f).

The Damages Provision

The bill would provide a remedy of "damages," but it fails to specify the measure of damages. Currently, the Song-Beverly Act, Civil Code § 1794 does so. Case law has elaborated on the measure of damages. There is no reason to write a new damage section and force judges to interpret what the Legislature intended by this new section. The same damages, including incidental and consequential damages available under Song-Beverly? Or some other measure? Simply incorporating by reference (or moving the whole bill to the Song-Beverly Act) is a far better approach.

² CC § 1794(c) is as follows: "If the buyer establishes that the failure to comply was willful, the judgment may include, in addition to the amounts recovered under subsection (a), a civil penalty which shall not exceed two times the actual amount of actual damages. This subdivision shall not apply [in class actions] or with respect to a claim based solely on a breach of an implied warranty."



Persons Who Must Disclose

The bill has a potentially serious problem which may just be a drafting error. It would require "dealers"³ to disclose the lemon history of the vehicle upon resale. The term "dealer" is defined in Vehicle Code §§ 285, 286 so as to exclude banks, insurance companies, finance companies (even captive finance companies such as GMAC, etc). The problem here is that companies other than dealers and individuals may and do purchase repurchased lemons at auto auctions or elsewhere and resell them. Under the bill, they would have no obligation to warn potential buyers about the history of the vehicles. Currently, all "persons" are required to make these disclosures. Civil Code § 1795.8(c).

"Knowingly" v Knew or Should Have Known

On p. 6, line 5 of the bill, it reads, "Any dealer who knowingly purchases for resale a vehicle that has been reacquired . . . shall . . . [make disclosure]." The word knowingly should be stricken because its presence will give defendants the opportunity argue that the plaintiff must prove the defendant's state of mind at the time it failed to make disclosure. The existing legal standard is "knew or should have known." These words should be substituted for "knowingly."

The Problem of Captive Finance Companies

In litigation, we have encountered the problem of a manufacturer arranging for its captive finance arm (GMAC, Ford Credit, Chrysler Credit, etc) to repurchase the a lemon vehicle and avoid the disclosure requirements on the theory those captives are not manufacturers. The term "or captive finance company" should be inserted in proposed Vehicle Code § 11713.10 (b), (c) & (d) after the word "manufacturer."

Additional Items

Proposed Vehicle Code § 11713.10 (d) refers to a warranty dispute between "the last retail owner" and the manufacturer as the trigger to place the vehicle under this bill. The phrase should read "any retail owner or lessee." This would provide coverage in case the vehicle had been repurchased as a lemon, resold to a second owner or lessee, repurchased by the dealer and resold to a new consumer. In other words, the disclosure rules should stay with the vehicle no matter how many times it was resold. Most lemons don't improve with age.

³ P. 6 of the bill, proposed subsection (d) of proposed Vehicle Code § 11713.10.

AV-760

We would like the opportunity to present our views at the hearing this Monday, April 17, 1995.

Thank you for your attention to this matter.

Sincerely,



Mark F. Anderson
Bryan Kemnitzer
Nancy Barron

cc: Mr John Stevens

LEGISLATIVE INTENT SERVICE 1 800 666 8917



Consumer Action

116 New Montgomery Street, Suite 233
San Francisco, CA 94105
(415) 777-9648

Southern California Office
523 West Sixth Street, Suite 1224
Los Angeles, CA 90014
(213) 624-8327

13 April 1995

Assemblyman Richard Katz, Chairman
Assembly Transportation Committee
Room 3146, State Capitol
Sacramento, California 95814

VIA FAX/916.324.6860

RE: Opposition to AB 1381 (Speier)

Dear Assemblyman Katz:

Consumer Action, a non-profit consumer education and information organization, finds that it cannot support AB 1381 (Speier) as currently amended and urges you to oppose this legislation when it comes before your committee on April 17, 1995. We originally anticipated that this legislation would serve to strengthen lemon buy-back provisions for cars and trucks while assuring that consumer's rights would be protected. As it currently stands, AB 1381 falls far short of these goals.

AB 1381, rather than strengthening the current lemon law, creates some huge loopholes for manufacturers and dealers which would entirely nullify the law in as many as 80% of all lemon cases. The only vehicles that would fall under the provisions of AB 1381 would be vehicles which are the subject of a court trial, where the arbitration process has ruled against the manufacturer or where the vehicle had a specified number of repair attempts in the first year. We are advised that legal research indicates that these vehicles represent only about 20% of the lemon cases in California.

As AB 1381 also repeals the civil penalties for cases brought by owners of recycled lemons, it serves to invite auto manufacturers to dump their out-of-state lemons in California without fear of legal action or accountability.

In short, and in fairness to the consumers of California, we cannot support AB 1381 as it currently stands as it would serve to seriously weaken, not strengthen, existing law.

We urge that you oppose AB 1381 when it comes before you for your consideration.



Call AB 1381
RK
ditto
not report
X

CONSUMER ALERT

Auto Industry Attempts to Dilute Lemon Bill

To: Honorable Members of the Assembly

From: Consumer Action, Consumers Union, Center for Auto Safety, Consumer Federation of America, and Motor Voters

Re: AB 1381 (Speier), Sponsored by California Motor Car Dealers Association. Passed Assembly 75-0. Passed Senate 36-0. Pulled from Consent in Assembly.

- ▶ **Auto companies are attempting again to weaken AB 1381. Consumer groups would strongly oppose any last-minute auto industry amendments to this bill.**
- ▶ As introduced, AB 1381 would have created loopholes allowing manufacturers to resell seriously defective lemon vehicles without notice to unsuspecting used car buyers, an illegal practice known as "lemon laundering." It also would have eliminated existing consumer remedies for victims of lemon laundering.
- ▶ The Assembly Transportation Committee voted without dissent, in a resounding bi-partisan vote, to close the loopholes and restore all existing remedies.
- ▶ Subsequently the author amended another bill, AB 1383 (Speier), to again eliminate the consumer remedies for victims of illegal lemon-laundering. That bill is strongly opposed by consumer groups, and is now a two-year bill.
- ▶ The DMV has settled a case against GM and 34 dealers for allegedly lemon-laundering, currently has a case pending against Chrysler, and has requested records from Ford and foreign auto manufacturers.

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AP-39

*Mc Attn: John
Stevens -
741-*

CONSUMER ALERT

To: Honorable Members of the Senate Appropriations Committee

From: Consumer Action, Consumers Union, the Center for Auto Safety, and Motor Voters

Re: AB 1381 (Speier), Sponsored by California Motor Car Dealers Association

Hearing before Senate Appropriations Committee set for August 21

▶ **As introduced, AB 1381 would have eliminated remedies (potential double damages) for consumer victims of illegal lemon laundering.**

▶ **The Assembly Transportation Committee voted without dissent, in a bi-partisan vote, to restore remedies.**

▶ **On July 28th the author amended another bill, AB 1383 (Speier), to again eliminate remedies for victims of illegal lemon laundering. That bill was taken off calendar in the Senate Judiciary Committee and is now a two-year bill.**

▶ **AB 1383 is opposed by consumer groups including Consumers Union, Consumer Action, the Center for Auto Safety, and Motor Voters, as well as the Consumer Attorneys of California.**

▶ **If AB 1381 is amended to again remove remedies for victims of lemon laundering, consumer groups would have to oppose it again.**

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LEGISLATIVE INTENT SERVICE



AP-40

Date of Hearing: May 17, 1995

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Curt Pringle, Chair

AB 1381 (Speier) - As Amended: April 26, 1995

Policy Committee: Transportation

Vote: 14-0

State Mandated Local Program: Yes

Reimbursable: No

SUBJECT

Vehicles: Automotive Consumer Notification Act.

This bill:

- 1) Revises and recasts the Automotive Consumer Notification Act, moving it from the Civil Code to the Vehicle Code.
- 2) Requires the manufacturer to re-title buy-back vehicles in the name of the manufacturer and to request at that time that the Department of Motor Vehicles (DMV) inscribe on the ownership certificate the notation "lemon buy back," for those vehicles as specified.
- 3) Requires the manufacturer to affix a notice to the left door frame of the vehicle specifying that title to the vehicle has been inscribed with the notation "lemon buy back." No person shall knowingly remove or alter the notice.
- 4) Requires any manufacturer or dealer, prior to reselling a vehicle which was returned to resolve an express warranty dispute, to execute and deliver to the subsequent buyer a notice informing the new buyer that the vehicle was re-acquired in resolution of a warranty dispute, whether or not the DMV title has been branded with the notation "lemon buy back," what problems were reported by the original owner, and what repairs were made to correct these problems. This notice must be signed by the new buyer.
- 5) Applies only to vehicles re-acquired by a manufacturer on or after the effective date of this act and makes other technical, clarifying amendments to provisions authorizing refunds of sales taxes on buy-backs.

FISCAL EFFECT

- 1) The DMV report first year costs of \$95,000 and ongoing costs of \$7,000 annually for the title branding provisions. These costs would be paid from the Motor Vehicle Account.
- 2) Unknown, probably minor, costs to local government for enforcement; crimes and infractions disclaimer.

- continued -

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COMMENTS

1) Existing law provides that if a manufacturer cannot repair a new vehicle after a "reasonable number of attempts" and the defect substantially impairs the vehicle's use, then the consumer is due either a refund of the purchase price or a replacement vehicle. Dealers or manufacturers who sell a vehicle that was returned because it was a "lemon" must disclose that fact, as specified, to a new buyer prior to purchase. Among other requirements, the ownership title and DMV registration papers are to be "branded" with the legend: "WARRANTY RET".

2) This bill is an attempt address situations where manufacturers and dealers have recycled cars and trucks in California without warning consumers they are buying "lemons" which were bought back from the original owners. Manufacturers have circumvented disclosure laws by re-acquiring problem vehicles prior to formal arbitration, thus avoiding DMV tagging the vehicle as "warranty returned". This misleads consumers and enables dealers to resell vehicles at higher prices.

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Update - 2

Costly

AB 1381

Date of Hearing: April 17, 1995

ASSEMBLY COMMITTEE ON TRANSPORTATION
RICHARD KATZ, Chair

AB 1381 (Speier) - As Amended: April 17, 1995

SUBJECT

Vehicles: Consumer Notification Act

DIGEST

Existing law:

- 1) Provides that if a manufacturer cannot repair a new vehicle after a "reasonable number of attempts" and the defect substantially impairs the vehicle's use, then the consumer is due either a refund of the purchase price or a replacement vehicle. [Song-Beverly Consumer Warranty Act]
- 2) Provides that if the defect cannot be repaired in four attempts within the first year or 12,000 miles, whichever occurs first, or if the vehicle is out of service for more than 30 days, the owner may sue for a refund or replacement vehicle. The manufacturer may submit the case to arbitration. [Tanner Consumer Protection Act -- the so-called "Lemon Law"]
- 3) Requires a dealer or manufacturer who sells a vehicle that was returned as required above to disclose that fact to a new buyer prior to purchase. The notice is to read: "THIS MOTOR VEHICLE HAS BEEN RETURNED TO THE DEALER OR MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS." The ownership title and DMV registration papers are to be "branded" with the legend: "WARNTY RET." [Automotive Consumer Notification Act]
- 4) Allows a manufacturer to request a sales tax refund for any vehicle bought back as required by law. The refund is not granted for "goodwill" buy-backs.

This bill:

- 1) Revises and recasts the Automotive Consumer Notification Act, moving it from the Civil Code to the Vehicle Code.
- 2) Requires the manufacturer to retitle buy-back vehicles in the name of the manufacturer and to request at that time that the Department of Motor Vehicles (DMV) inscribe on the ownership certificate the notation "lemon buy back," for those vehicles which:
 - a) Were required to be repurchased pursuant to a court order or the decision rendered in a third party dispute resolution process.

- continued -

AF-1



- b) Which were reacquired during or within six months after the conclusion of arbitration or litigation, or
 - c) Which were reacquired within six months after the buyer made a written request to the manufacturer for replacement or a refund.
- 3) Requires the manufacturer to affix a notice to the left door frame of the vehicle specifying that title to the vehicle has been inscribed with the notation "lemon buy back." No person shall knowingly remove or alter the notice.
 - 4) Requires any manufacturer or dealer, prior to reselling a vehicle which was returned to resolve an express warranty dispute, to execute and deliver to the subsequent buyer a notice informing the new buyer that the vehicle was reacquired in resolution of a warranty dispute, whether or not the DMV title has been branded with the notation "lemon buy back," what problems were reported by the original owner, and what repairs were made to correct these problems. This notice must be signed by the new buyer.
 - 5) Applies to buy-backs of vehicles in other states with lemon laws which are resold in California.
 - 6) Makes technical, clarifying amendments to provisions authorizing refunds of sales taxes on buy-backs.
 - 7) Applies only to vehicles reacquired by a manufacturer on or after the effective date of this act.
 - 8) Provides that any buyer damaged by the failure of a manufacturer or dealer to comply will have the same rights and remedies provided by the Civil Code, Section 1794.

FISCAL EFFECT

Unknown.

COMMENTS

- 1) This bill is a follow up to an investigation, hearing and reports by the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development chaired by the bill's author. A 1994 committee report titled "Bitter Fruit" found:
 - a) That vehicle manufacturers and dealers have recycled cars and trucks in California without warning consumers they are buying "lemons" which were bought back from the original owners.

- continued -

AF-2



- b) Manufacturers have circumvented disclosure law by re-acquiring problem vehicles prior to formal arbitration which would lead to DMV tagging of the vehicle as "warranty returned" -- enabling dealers to resell vehicles at higher prices.
 - c) Lemon vehicles are being laundered through auto actions because current law does not require the manufacturer or dealer to take title to a re-acquired vehicle.
 - d) Some manufacturers have requested reimbursement for sales taxes even though buy-back vehicles were "goodwill buy-backs", not returned under the state's Lemon Law, as is required for sales tax rebates.
 - e) None of the 21 vehicles bought back by manufacturers under the State of Washington's Lemon Law and subsequently resold in California were recorded with the DMV as "warranty returned."
- 2) It is not known how many vehicles are repurchased each year in California. It is estimated that 50,000 are repurchased by manufacturers nationwide each year.

SUPPORT

California Motor Car Dealers Association (sponsor)

OPPOSITION

Center for Auto Safety
Motor Voters For a Safer Tomorrow

Rich Milner
445-1616
4/17/95:atrans

AB 1381
Page 3

AF-3



DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: August 21, 1995
 POSITION: Neutral
 SPONSOR: California Motor Car Dealers Association

BILL NUMBER: AB 1381
 AUTHOR: J. Speier

BILL SUMMARY

This bill would revise and recast the Automotive Consumer Notification Act, moving it from the Civil Code to the Vehicle Code. Additionally, the bill would specify notification requirements for a re-acquired vehicle.

FISCAL SUMMARY

The Department of Motor Vehicles (DMV) indicates that implementation costs for the 1995-96 fiscal year will be approximately \$96,000 for EDP changes, form modifications, and additional workload associated with the change. On-going costs are estimated at \$7,000 yearly.

SUMMARY OF CHANGES

Amendments to this bill since our analysis of the July 23, 1995, version are technical and do not alter our position.

COMMENTS

The provisions in this bill attempt to protect subsequent buyers of vehicles returned to manufacturers as "lemons."

(800) 666-1917

LEGISLATIVE INTENT SERVICE



Analyst/Principal (075)	Date	Program Budget Manager	Date
G. Jerome	8/18/95	Wallis L. Clark	9/18/95
<i>[Signature]</i> Department Deputy Director		<i>[Signature]</i>	

AF-4

Governor's Office: By: Date: Position Noted _____
 Position Approved _____
 Position Disapproved _____

BILL ANALYSIS Form DE-43 (Rev 03/95 Buff)

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

J. Speier

August 21, 1995

AB 1381

ANALYSIS

A. Programmatic Analysis

This bill would:

- Repeal the Civil Code section that requires manufacturers or dealers to make a disclosure that the vehicle was previously returned due to a defect and instead create a section in the Vehicle Code addressing this issue.
- Require that the manufacturer warrant the returned vehicle for a one year period, free from the listed defect.
- Require a vehicle manufacturer or dealer to notify the DMV of a vehicle re-acquired due to a defect regardless of where the vehicle was originally sold.
- Require that re-acquired vehicles be re-titled in the name of the manufacturer.
- Require that a re-acquired vehicle be affixed a special decal to the left door frame and the title of any vehicle re-acquired be inscribed with the notation, "Lemon Law Buyback".
- Require that specified language be included on the Warranty Buy Back Notice.
- Require a notice, stating the vehicle was re-acquired in resolution of a warranty dispute, be signed by a potential buyer of a re-acquired vehicle prior to the sale.

B. Fiscal Analysis

The Department of Motor Vehicles (DMV) indicates that implementation costs for the 1995-96 fiscal year will be approximately \$96,000 for EDP changes, form modifications, and additional workload associated with the change. On-going costs are estimated at \$7,000 yearly.

The Board of Equalization has indicated that the bill would have no revenue or fiscal impact the department.

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year)							Fund Code
		PROP 98	FC 98	FC 1995-1996	FC 1996-1997	FC 1997-1998	(Dollars in Thousands)		
2740/DMV	SO		C	\$96	S	\$7	S	\$7	0044

Fund Code: 0044
 Title: Motor Vehicle Account, STF

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AF-5

1381
Attn: Tom Sheehy



MOTOR VOTERS

1500 West El Camino Avenue, Suite 419 • Sacramento, CA 95833-1945 • Tel: 916-920-5464 • Fax: 916-920-5465

May 15, 1995

→ Approp.
5/17

The Honorable Curt Pringle
Chairman, Assembly Appropriations Committee
Room 2114, State Capitol
Sacramento, CA 95814

RE: AB 1381 (Speier): OPPOSE

Dear Chairman Pringle:

Motor Voters is a non-partisan, non-profit auto safety organization founded in Lemon Grove, California in 1979.

Motor Voters urges your "no" vote on AB 1381 (Speier) as currently amended. Passage of the bill in its current form would encourage manufacturers to make California a dumping ground for seriously defective lemon vehicles. It would allow unscrupulous manufacturers and dealers to foist the worst lemons on consumers, under the guise they are supposedly "goodwill" buybacks. It also eliminates existing penalties for flagrantly fraudulent "lemon laundering."

California's Department of Motor Vehicles has an action pending against Chrysler for the illegal practice of reselling lemon vehicles without disclosure to unsuspecting used vehicle purchasers. The agency has also requested records from other manufacturers. Motor Voters is concerned that AB 1831 could undermine the DMV's enforcement authority in such cases.

While the bill contains a few positive elements, in its major provisions, AB 1381 is similar to another measure Governor Deukmejian vetoed in 1990. In his veto message, the Governor stated that the measure "would undermine the integrity of the records of the Department of Motor Vehicles by failing to identify all vehicles that were unable to be brought into conformity with warranty laws whether the manufacturer voluntarily complied or was forced to by a court or arbitrator."

In addition to potentially costing the state millions in fines, this bill would also add to the DMV's enforcement costs. AB 1381 is definitely not in the interest of consumers or of honest businesses, which have been playing by the rules and deserve the commensurate competitive advantage. Therefore, we urge that you please vote "no."

Respectfully,

Rosemary Shahan

Rosemary Shahan
President

Af-6

(800) 666-1917

LEGISLATIVE INTENT SERVICE



BUSINESS

MARCH 11, 1995

CCF

Los Angeles Times

DMV Seeks Suspension in 'Lemon' Case

■ **Consumers:** Chrysler would be unable to do business in California for 10 days. The auto maker denies any wrongdoing.

By DENISE GELLENE
TIMES STAFF WRITER

The California Department of Motor Vehicles is seeking to stop Chrysler Corp. from doing business in California for 10 days as punishment for allegedly selling used "lemons" to unsuspecting buyers.

However, a less-harsh settlement—possibly a fine or payments to alleged victims—is more likely. Chrysler says it did not violate any laws.

The DMV proposed the stiff penalty during a nine-day administrative hearing that ended Friday.

The proposed penalty against Chrysler would not necessarily prevent dealers from selling cars, said Bernard Lu, DMV's lead

Please see HEARING, D8

HEARING: DMV Seeks Chrysler Shutdown

Continued from D1

counsel, but it would probably prevent Chrysler from shipping cars into and within the state for the 10-day period, an expensive and confusing scenario. The auto maker could also be prevented from advertising, shipping parts or providing financing within the state. According to R.L. Polk, a market research firm, about 120,000 new Chrysler cars and trucks were registered in California in 1994.

Lu said Friday that despite its recommendation, the agency would prefer to reach a settlement with Chrysler in which owners of the used "lemons" would be compensated.

"The department prefers to help the consumer rather than to punish Chrysler," Lu said.

During the hearing in Sacramento, Chrysler denied the allegations against it, saying it provided paperwork to used-car dealers about the vehicles but that some dealers did not give that paperwork to consumers.

As previously reported, the DMV in August charged Chrysler with selling 118 used "lemons" without telling buyers that the cars had been repurchased from customers because of defects. The cars included Dodges, Jeeps, Chryslers and Plymouths sold through Northern California dealerships. The model years are 1989 to 1992.

The DMV says Chrysler violated regulations requiring it to label the cars as "warranty returned" on title documents. The DMV also says the notices that Chrysler provided for used-car dealers to give to buyers were improperly worded.

The administrative hearing went forward when settlement attempts failed. According to a source familiar with the discussions, the DMV was seeking about \$1 million from Chrysler, including penalties and costs. Neither the agency nor the auto maker would comment on that figure.

On Friday, a Chrysler spokesman said: "Our position is that we are in full compliance. Chrysler is not willing to pay, in effect, damages when none have been experienced."

The hearing took place in Sacramento before Administrative Law Judge Keith Levy. At the conclusion of the hearing, Levy gave both sides 60 days to file written briefs. Levy has 30 days after that to make a decision.

The judge's decision then goes to DMV Director Frank S. Zolin, who can accept, reject or modify it.

The case stems from a continuing DMV investigation. In April, General Motors paid \$330,000 to settle similar allegations involving 51 used cars. GM did not admit guilt in its settlement. The DMV disclosed that it is currently review-

ing documents related to Ford cars said to be "lemons." The department would not say whether violations have been uncovered.

A new car is considered a "lemon" in California if it is in the shop more than 30 days during the first year of ownership or if a defect is uncorrected after four attempts.

There are no reliable figures on how many "lemons" are resold to consumers without notification.

Lu said the number of mislabeled "lemons" on the road in California is "in the thousands."

The Center for Auto Safety, a Washington-based consumer organization, estimates that 50,000 "lemons" are repurchased from customers each year, though it does not know how many are resold.



NATIONAL ASSOCIATION OF ATTORNEYS GENERAL (NAAG)

RESOLD LEMONS MODEL LEGISLATION

DRAFT 11/1/91

PRODUCED BY NAAG WORKING GROUP ON RESOLD LEMONS

From NAAG Model Bill:

"Buyback vehicle" means a motor vehicle which has been replaced or repurchased by a manufacturer, its agent, or authorized dealer, as the result of a court judgment, a determination of the [New Motor Vehicle Arbitration] Board or a program, or any voluntary agreement entered into between a manufacturer, its agent or a dealer and a consumer that occurs before or after a dispute is submitted to a court, the Board or a program."*

From NAAG "Summary of provisions":

"If voluntary buybacks were not included in this definition, manufacturers would be able to avoid the disclosure requirements by entering into voluntary agreements with consumers to buy back or replace those vehicles which are the most seriously defective and would be most likely to be adjudicated as Lemons. Subsequent consumer purchasers would then have no knowledge of the 'Lemon' history of these vehicles."

"Some manufacturers may argue that the use of the phrase 'Defective Vehicle Buyback' is not fair or accurate because vehicles are also bought back on a 'goodwill' basis which are not defective. The working group is not convinced that vehicles which are free from any alleged defects are routinely repurchased by manufacturers and dealers. If there are goodwill repurchases, the numbers are not significant."*

* (Emphasis added.)

(800) 666-1917

LEGISLATIVE INTENT SERVICE



AF-8

STATE AND CONSUMER SERVICES AGENCY

BILL ANALYSIS

Department CONSUMER AFFAIRS	Author Speier	Bill Number AB 1381
Sponsor CA. Motor Car Dealers Ass'n.	Related Bills AB 1383	Amended Date 4/26/95
Subject Motor vehicles: warranty		

Bill Description:

Existing law:

- Known as the Automotive Consumer Notification Act, requires the seller of a motor vehicle to inform the buyer if the vehicle has been returned, or should have been returned, to the manufacturer for warranty problems or failure to comply with the warranty.
- Establishes the Arbitration Review Program (ARP) within the Department of Consumer Affairs (DCA).
- Provides that any person damaged by the failure of a motor vehicle may recover reasonable costs and damages.

This bill would:

- Recast the Automotive Consumer Notification Act in the Vehicle Code instead of the Civil Code.
- Require that a vehicle's registration card, published by the Department of Motor Vehicles (DMV), indicate if the vehicle has ever been reacquired by the manufacturer for warranty reasons.
- Require that any reacquired vehicle, including vehicles that are reacquired from out of state, be titled in the name of the manufacturer and a decal attesting to that fact be affixed to the left door frame.
- Require any manufacturer or dealer who attempts to sell a reacquired vehicle provide the potential buyer with a written notice specifying the history of the vehicle, including any type repairs made to rectify a consumer complaint.
- Provides that any person damaged by a motor vehicle warranty failure shall have the same rights and remedies available to other purchasers of consumer goods.

LEGISLATIVE INTENT SERVICE (800) 666-1917

FEE / / FISCAL / / REPORT / /
 DEPARTMENTS THAT MAY BE AFFECTED
 Department of Motor Vehicles, Arbitration Review Program

<u>STATE MANDATE</u> /X/		<u>GOVERNOR'S APPOINTMENT</u> / /	
DEPARTMENT DIRECTOR POSITION		AGENCY SECRETARY POSITION	
<input type="checkbox"/> S	<input type="checkbox"/> O	<input type="checkbox"/> S	<input type="checkbox"/> O
<input type="checkbox"/> SIA	<input type="checkbox"/> OUA	<input type="checkbox"/> SIA	<input type="checkbox"/> OUA
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		GOVERNOR'S OFFICE USE	
		POSITION APPROVD. <input type="checkbox"/>	
		POSITION DISAPP. <input type="checkbox"/>	
		POSITION NOTED <input type="checkbox"/>	

DEPARTMENT DIRECTOR DATE: Majori M. Zuck 5/22/95
 AGENCY SECRETARY DATE: Original signed by JOANNE BOVÉE MAY 23 1995 Assistant Secretary

AF-9

Background:

The ARP currently certifies arbitration programs that attempt to resolve disputes between consumers and manufacturers. There is no requirement for manufacturers to have a arbitration program. However, approximately 85% of new motor vehicle manufacturers participate in some sort of program.

It is estimated that approximately 50,000 vehicles were reacquired by manufacturers nationwide.

Specific Findings:

This bill would not impact the ARP since the ARP only certifies and monitors dispute resolution programs. This bill would expand the information that is provided to consumers by branding the title of the vehicle.

This bill would also limit the amount of damages recoverable by a plaintiff by specifying that a motor vehicle has the same warranty provisions as any other consumer good or product.

Fiscal Impact:

This bill would not have a fiscal impact on the Department of Consumer Affairs.

Support:

California Motor Car Dealers Association (sponsor)

Opposition:

Center for Auto Safety
Motor Voters

Arguments:

Pro: Supporters of this bill would argue that a more aggressive vehicle labeling and disclosure program can only benefit consumers.

Con: Opponents would argue that limiting the amount of damages that can be recovered by a person damaged by a warranty failure may deter consumers from filing a lawsuit against a wayward manufacturer or dealer.

Recommendation:

The Department of Consumer Affairs recommends NO POSITION on Assembly Bill 1381.

Prepared by: Kurt Heppler, Analyst Telephone: 324-4402

Traci Stevens, Deputy Director Telephone: 327-5196

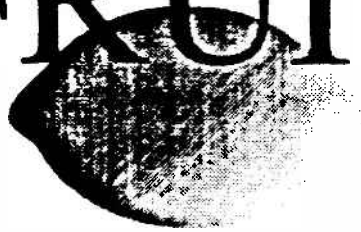


AF-10

BITTER

Final Report on How Consumers Unknowingly Buy Lemon Vehicles

FRUIT



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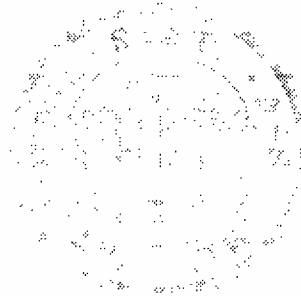


LIS - 7

November 30, 1994

CALIFORNIA LEGISLATURE
ASSEMBLY COMMITTEE ON
CONSUMER PROTECTION,
GOVERNMENTAL EFFICIENCY
AND ECONOMIC DEVELOPMENT

JACKIE SPEIER
CHAIR



LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE



P.O. Box 942849
Sacramento, CA 94249-0001
(916) 324-7440

INTRODUCTION

This report finds that vehicle manufacturers and dealers have recycled cars and trucks in California without warning consumers they are buying "lemons" which were bought back from the original owners by the manufacturers. In some cases, lemon defects continue to plague the second and third owners of these vehicles.

Manufacturers, dealers and consumers now agree that current vehicle disclosure law on the resale of manufacturer buy-back vehicles must be strengthened. Therefore, the task at hand is to devise a disclosure law that is enforceable, workable and protects consumers.

This task may be difficult. On October 24, 1994, when the first committee report was released on the buy-back issue, a General Motors (GM) spokesperson, reacting to the report, was quoted by the press as saying, "I don't know why we would tell you that the vehicle's been repaired if it's in good shape." I dare say that every car buyer, if asked, would want to know why a vehicle had been bought back by the manufacturer. In brief, every buy-back transaction should be disclosed.

The committee's first report was entitled, When Lemons Are Packaged As Peaches. This final report is named, Bitter Fruit, in recognition of consumers who have suffered the emotional and economic consequences of buying a product they probably would not have purchased if they had known the vehicle's past history. Unfortunately, for many consumers history was repeated.

The Department of Motor Vehicles (DMV) is to be commended for its investigative work and efforts to enforce current law regarding vehicle sales, or lemon resales. A special tribute is due Gayle Pena, a consumer who alerted the DMV to the unethical and illegal practices of manufacturers and dealers. Ms. Pena embodies the truism: one person can make a difference.

A special thanks is also due Richard Steffen, the committee's chief consultant, whose tireless efforts brought this report to fruition at the conclusion of the 1993-94 Legislative Session. Also, thanks is extended to Glenn Brank, a consultant with the Assembly Office of Research, who assisted in this report and Alvin Gress, Office of Legislative Counsel, who provided legal guidance.

State Assemblywoman Jackie Speier, Chair
November 30, 1994



MAJOR FINDINGS

1. Documents reveal that vehicle manufacturers have circumvented disclosure law by re-acquiring problem vehicles prior to formal arbitration proceedings which could lead to mandated branding of the vehicle's title as "warranty returned" -- the legal term for "lemon" vehicles. By avoiding the stigma of a branded title, manufacturers and dealers can resell these vehicles at higher prices than if the vehicles were described as former lemons.
2. Lemon vehicles may be laundered through auto auctions. While the disclosure papers on the vehicle's lemon history may accompany the vehicle upon sale at the auction, the new owner, a dealer or wholesaler, may not pass on the facts to the next buyer who may be an unsuspecting consumer, or even another dealer. The key element to the laundering equation is the fact that current law does not require the manufacturer or dealer to take title of a re-acquired vehicle. The name of the first buyer, the consumer, remains on the title until it is sold to another consumer. For example, a Los Banos couple won a \$150,000 settlement against a car manufacturer who bought back their lemon car in May, 1994. This couple was shocked to learn from the committee that on 11/22/94, they were still listed in DMV records as the registered owners of the vehicle, even though the car is in the legal possession of the manufacturer. The troubling bottom line is this: A consumer cannot rely on an examination of the vehicle's title to prove the vehicle was bought back by the manufacturer.
3. In 1991 the DMV obtained files from GM's Fremont corporate offices on 435 GM buy-back vehicles. Ultimately, 71 of these vehicles were included in a formal accusation by the DMV regarding violations of the "lemon law" by GM. The GM documents show a significant number of safety-related cases in which GM or its dealers made goodwill buy-backs without acknowledging the vehicles may have qualified as legal lemons. The documents reveal that vehicles were repurchased from the original owners only after repeated repairs failed to remedy faulty brakes, stalling engines and other problems that posed a safety hazard. Internal GM memos show that GM representatives urged goodwill repurchases when the number of repair attempts exceeded the limit set by California's lemon law.
4. The DMV was unable to provide the committee with an exact accounting of legally registered warranty returned vehicles on the road in California. DMV's data system shows there are 1.3 million branded titles in California, but this figure includes salvage vehicles, former police vehicles, and former taxis-- vehicle categories which require branding of the title.



5. Consumers who bought low-mileage vehicles from dealers and who are having lemon-type problems with their vehicles have frequently supplied the committee with their vehicle's identification number to determine if the vehicle has been branded. However, there is usually no evidence of a brand that would indicate the vehicle had been re-acquired by the manufacturer. Manufacturers have a history of avoiding the branding of a title with "warranty returned." In fact, five vehicles included in a DMV's investigation of GM are not branded, as of 11/22/94, even though the vehicles were included in DMV's accusation and have a history of mechanical problems which resulted in GM's buying back the vehicle.

6. While DMV was able to obtain a settlement of \$330,000 from GM and some \$97,000 from two other car dealers involved in the GM case, it has been able to do very little for the consumers who are stuck with laundered lemons, according to the consumers of record in these cases. These consumers had to retain private counsel to settle their cases. In a few instances GM has offered consumers cash payments in excess of what was paid for the vehicles. In two cases, consumers filed suit against GM and achieved out-of-court settlements approaching \$500,000.

7. The Board of Equalization reports that manufactures are attempting to obtain sales tax refunds improperly for goodwill buy-back vehicles. State law only allows refunds for vehicles repurchased under the lemon law, a legal transaction which leads to branding of the vehicle's title. Manufacturers make goodwill buy-backs, in some cases, to avoid branding of a vehicle's title.

8. From 10/17/88 to 6/3/94, none of the 21 vehicles bought back by manufacturers under the State of Washington's Lemon Law and subsequently shipped and resold in California have branded titles.

UPDATE

On 10/24/94, the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development released a report, When Lemons Are Packaged As Peaches, which found that vehicles bought back by the manufacturer from dissatisfied customers are often resold to consumers who are not informed about the vehicle's return history.

This final report, Bitter Fruit, provides more documentation on the problem of nondisclosure sales of buy-back vehicles. The report concludes with a list of legislative options that could be pursued in the next legislative session.

This report contains new information not detailed in the first report as the result of the following:

1) The committee held a hearing at the Capitol on 10/27/94 where several consumers gave graphic accounts of how they had been victimized by the purchase of a low-mileage vehicle which manufacturers had previously re-acquired from the original owners who experienced mechanical problems similar to those that



plagued the second owners. These "lemon" vehicles were resold without disclosure of prior problems, or the fact that the vehicle had been bought back by the manufacturer. One witness, Ms. Gayle Pena, said that she and her husband almost died when the vehicle's brakes failed on a trip over the Sierra Mountains.

2) Manufacturer representatives at the hearing agreed that vehicle manufacturers would support full disclosure of a vehicle's re-acquisition history to a prospective buyer, regardless of the reason, or reasons why the vehicle was bought back. Major manufacturers, foreign and domestic, were represented, except for Chrysler which declined to testify due to the fact that the Department of Motor Vehicles (DMV) has an accusation case pending against Chrysler for lemon law disclosure violations.

3) On 10/27/94 the committee had a subpoena for documents served on Frank Zolin, Director of DMV, for the purpose of obtaining DMV investigative files on General Motors Corp., which DMV had charged with violating the lemon law in 1993. GM ultimately settled with DMV by paying \$330,000 to DMV's Consumer Protection Fund. The settlement did not include an admission of guilt, nor did it contain a provision that would prevent DMV from releasing the documents. However, DMV asked that it be served with a subpoena since GM had indicated that it did not want the contents of the file released to other parties for review.

GM sought a temporary restraining order to enjoin DMV from complying with the subpoena. However, Sacramento Superior Court Judge Joe Gray ruled that GM had failed to show that DMV's compliance with the subpoena would violate GM's constitutional rights. Judge Gray stated that the court "must respect the ability of the Legislature to handle its own affairs." The committee obtained the GM files on November 17, 1994. This report, in part, contains information that was gleaned from DMV's GM files.

4) On 11/17/94, a Los Banos car dealer, included in DMV's GM investigation, agreed to pay DMV \$32,500 as a settlement; and on 11/21/94, a Santa Rosa car dealer, also implicated in DMV's investigation, agreed to a settlement of \$65,000. Both dealers also were required to pay for DMV's investigative costs and to shut down their sales operations for a specified period of time.

5) The committee has been investigating individual cases involving consumers who purchased low-mileage cars and trucks from dealers and who, for a variety of reasons, believe their vehicles were manufacturer buy-back "lemons." This report contains insights garnered from investigations of individual cases.



EXAMPLES OF LAUNDERED LEMON VICTIMIZATION

Case #1

The committee contacted the office of the State Attorney General of Washington for a list of vehicles that had been repurchased by manufacturers under Washington's lemon law and, subsequently, shipped for resale in California. The committee traced the sales of these vehicles and, when appropriate, turned the information over to the DMV for investigation. The following example is a matter currently under investigation.

The vehicle in question was re-acquired by the manufacturer from the consumer in January 1992. The state form used to identify the reason for buy-back indicates "serious safety defect...brakes pulsate and chatter."

The vehicle was subsequently sold at a California auto auction where a licensed dealer purchased it. The sale documents included a disclosure statement from the manufacturer stating that the vehicle was repurchased due to "brake shimmy" and that it was repaired by replacement of "both front brake rotors." The dealer signed a form which stated: "I (name) have purchased the above noted vehicle with full knowledge and understanding that it has been repurchased from the original owner as a result of a non-conformity and the applicable 'Lemon' Law. I agree to disclose this information to any subsequent owners." The dealer, in turn, resold the vehicle to another dealer who alleged to the committee that he was not told about the vehicle's lemon past, nor given any disclosure forms.

Within one week after the vehicle was sold by one dealer to another, a consumer from Huntington Beach purchased it. No lemon disclosure was given. Unfortunately, the vehicle developed "brake chatter" again and the second owner was confronted with the same problems that plagued the original owner.

The dealer who sold the vehicle to the consumer has been in contact with the committee. At this time, the consumer is driving a dealer's loaner car until the DMV investigation is completed.

Case #2

In October, 1994 a vehicle owned by a Ventura couple began to have engine problems and a power steering leak. This vehicle, purchased used from an Oxnard dealer in July, 1994 had been driven 2,000 miles by the new owners.

Several months ago, the original owners of the aforementioned vehicle had contacted the committee to complain about the length of the legal process--the lemon law--which eventually led to the manufacturer's replacement of their problem-plagued vehicle. The previous owners assumed their vehicle had been destroyed, since its record during the warranty period included replacement of four catalytic converters, two power steering pumps, and blown head gaskets and



pistons. But DMV informed the committee that the problem vehicle was now registered, without a "lemon" designation, to the couple in Ventura.

The new owners allege that at the time of sale, the dealer said that the manufacturer had bought the vehicle back from the original owners who were unhappy with the air conditioning and the monthly payments. The dealer had purchased the vehicle at an auto auction.

The DMV is investigating this case.

(Note on terminology: "Lemon" has a common usage that means "doesn't work." A "lemon" car is one that routinely doesn't work; and California's lemon law is designed to provide consumers with a recourse for unloading their "lemons." A buy-back vehicle can be a "lemon," or it could be a vehicle with a very minor cosmetic problem which the manufacturer consents to buy back to keep the consumer satisfied. To further complicate the language, the DMV types-- "brands" -- "WARRANTY RETURN" in the upper right corner of the vehicle title and on the vehicle's registration when that vehicle has been bought back by the manufacturer pursuant to the lemon law. There is no use of "lemon" on the title, nor the color "yellow.")

OVERVIEW OF EXISTING LAWS

Existing state law, The Song-Beverly Consumer Warranty Act, provides that if a manufacturer, or dealer cannot repair a new vehicle as required by the warranty after a "reasonable number of attempts," and the defect substantially impairs the vehicle's use, then the consumer is due a refund of the purchase price, or a replacement vehicle.

Existing state law, The Tanner Consumer Protection Act (lemon law), provides that if the defect on a vehicle cannot be repaired in four attempts within one year from delivery, or 12,000 miles, whichever occurs first, or the vehicle is out of service for more than 30 days, the owner may sue the manufacturer for a refund or replacement with a vehicle of equal value. The law also allows the automaker to reject the claim and submit the case for arbitration under programs certified by the Department of Consumer Affairs but administered by manufacturers.

The Automotive Consumer Notification Act requires a dealer or a manufacturer who sells a vehicle that is known to have been required by law to be replaced, or accepted for restitution to disclose that fact to the buyer in writing prior to purchase. The notice is to read: "THIS MOTOR VEHICLE HAS BEEN RETURNED TO THE DEALER OR MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAW."

The above law also requires the ownership title and registration to be "branded" with the legend: "WARNTY RET."



Finally, the law allows a manufacturer to request a sales tax refund for any vehicle that is bought-back under the state's lemon law. The refund is not granted for goodwill buy-backs.

The California Motor Car Dealer Association issued a "Dealer Alert" to its members on 5/17/93 regarding state law and buy-back vehicles. In part, the memo stressed: "Dealer liability exposure may be dramatically reduced by insisting that your franchiser exclusively handle buy-backs and by adoption of a policy not to purchase factory buy-backs for resale."

MANUFACTURER BUY BACK CASES

To circumvent the law, manufacturers allegedly buy back problem vehicles before they are legally designated as "lemons." The manufacturers contend that these pre-lemon buy-backs are done for customer goodwill purposes; i.e., the paint was not right, so a long-time customer was provided a replacement car.

On 4/29/93 the DMV filed separate accusations against the General Motors Corporation (GM) and 34 Northern California GM dealers alleging that the parties knowingly sold buy-back vehicles to customers without disclosing the repair history or the fact that the vehicles had been bought back. In some cases the buy-backs had been subject to extensive safety repair work (engine stalling, brake failure, etc.), according to the consumers. In fact, one unsuspecting buyer says that she had the brakes fail in her vehicle which, DMV later discovered, had a history of brake problems. Not one of these vehicles had been branded as "lemons."

GM settled the DMV accusation case by paying \$330,000 to the DMV's Consumer Protection Fund which pays for state investigations of complaints regarding the sale of vehicles. Thirty-one dealers also settled with DMV with payments averaging about \$8,500 each. One dealer is fighting the DMV in court while two other dealers settled with the DMV for payments in excess of \$97,000.

In the GM/DMV settlement, GM admits no guilt.

The DMV also filed an accusation case on 8/17/94 against Chrysler Corporation for allegedly selling 118 buy-back vehicles without proper disclosure. The case is still pending with a hearing date of 2/28/95. Chrysler dealers have not been charged.

Additionally, DMV is reviewing documents from Ford Motor Co. regarding resale of buy-back vehicles, but no charges have been filed to date.

The committee chair has asked all vehicle manufacturers to provide the committee with information on the number of buy-backs, reasons for the buy-backs, recalls, etc.. The manufacturers have declined repeatedly to provide any information. James Austin of The American Automobile Manufacturers Association, which represents Ford, Chrysler and GM, wrote in a 10/13/94 letter



to the committee chair that the requested information is "confidential, proprietary." Austin added that when vehicles are bought back, "the reason for repurchase is provided by each of the manufacturers." Therefore, the question is, who is the information disclosed to and when is it disclosed? One car dealer told the committee that disclosures occur at auto auctions where a short announcement is made, but often not heard.

The Washington-based Center for Auto Safety estimates that 50,000 "lemon" vehicles are bought back nationwide each year. There are no estimates on the number of these vehicles that are sold with, or without disclosure.

The Department of Consumer Affairs provided the committee with all available information on Lemon Law buy-backs through state-certified arbitration programs, 1991-1993. These figures are very misleading in that only select manufacturers have arbitration programs. Additionally, the manufacturers do not report the make and model of the buy-back vehicle, or the reason for its return. Finally, the figures do not include pre-arbitration negotiated settlements. The three-year total shows that out of 7,733 disputes there were 1,916 cases where the consumer received a replacement vehicle, or monetary restitution.

SALES TAX INFORMATION IDENTIFIES BUY-BACKS

The committee contacted the Board of Equalization (BOE) to determine the number of vehicles which manufacturers requested sales tax refunds as the result of a buy-back. BOE reported:

- *3,925 refund claims from 7/90 to 9/94
- *50 to 100 claims per month, on average
- *94% of the claims were from domestic manufacturers

The above figures only cover manufacturer requests, not dealer buy-backs; also leased vehicles, about 20% of the sales market, are not eligible for a sales tax refund.

Most significantly, BOE noted that "until recent action taken by DMV against one of the major domestic manufacturers, none of the manufacturers were branding DMV titles." In brief, manufacturers were not "lemonizing" their buy-backs.

Current law only provides for a sales tax refund for vehicles bought back under the state's lemon law. Therefore, manufacturers have been buying cars back and treating them as goodwill buys to avoid branding while applying for sales tax rebates under the lemon law. A recent BOE audit shows that one Northern California dealer, operating under the direction of the manufacturer, owes \$55,000 in sales taxes involving buy-back transactions.



Glenn A. Bystrom, deputy director of BOE's Sales and Use Tax Department, writes in a 10/21/94 letter to the committee that "Given the fact that branding of DMV titles has not been required, it is possible that lemon vehicles may have been resold to unsuspecting purchasers."

Bystrom adds, "It is also possible that some of the lemon law transactions which are claimed as lemon law vehicles by dealers and manufacturers are simply adjustments made for customer accommodations: that is, transactions are characterized as lemon law vehicles but in reality they are only characterized in this manner in order to take care of dissatisfied customers. If this is the case, there are transactions that, under the Sales and Use Tax Law, should be treated as a sale of a new vehicle. Since this treatment results in more sales tax when compared to the lemon law treatment, it probably means the State is currently losing sales tax revenues. As an example, while investigating the claims that we have received, our audit field staff has found that the majority of the transactions claimed do not qualify under the lemon law provisions. Some of the more common reasons these claims do not qualify are: the manufacturer charges the purchaser for usage in excess of allowable fees; the manufacturer fails to reimburse the purchaser for sales tax, documentation fee, or license fees; and the customer is not given the option of cash restitution versus vehicle replacement."

LEMON LAUNDERING

While DMV has difficulty keeping tabs on cars that are legally "lemonized" in California, it has little defense against those buy-backs which are imported here from other states. Current law requires the DMV to brand the registration and title if a vehicle is brought into California with a "brand" on it. But few if any titles come into California with the lemon brand.

The State of Washington is considered to have the most effective lemon law in the nation. In fact, 291 vehicles which were bought-back in Washington under its lemon law were subsequently shipped to other states for resale. From 10/17/88 to 6/3/94, 21 Washington "lemons" were exported to California. None of these cars has a lemon branded title, nor were any of the California owners contacted by the committee aware of their car's prior status.

Paul Corning, Washington's Lemon Law Administrator, says that he voluntarily sends a list of "lemons" to be exported to California to the State Attorney General's Consumer Law Division in Los Angeles which, in turn, sends a copy of the information to the DMV which apparently has not pursued these titles. Under Washington law, if a manufacturer of a buy-back vehicle is going to ship it out of state, rather than have it re-titled in Washington, it must identify the state of destination.



WHERE IS THE FEDERAL VEHICLE SAFETY AGENCY WHEN YOU NEED IT?

National Highway Traffic Safety Administration (NHTSA), the federal agency responsible for vehicle recalls, has initiated 1,300 safety recalls from 1988 through 1993. According to NHTSA, 75% of safety hazard recalls have been completed; i.e., the repairs have been made free of charge.

Most defect information comes from the public--12,000 defect calls are received annually on NHTSA's hotline. However, the complaint information cannot be passed on to the manufacturer unless the caller signs the complaint in writing and, apparently, few callers follow up with a written complaint.

NHTSA has only issued seven mandatory recalls over the past 18 years. Most recalls, therefore, are done voluntarily by the manufacturer.

NHTSA does not require manufacturers to provide it with warranty data; consequently, manufacturers do not have to share individual buy-back problems with NHTSA. The federal law does require manufacturers to share information when the defect communication involves more than one dealer or purchaser. But buy-backs are handled on an individual basis and, therefore, do not trigger reports to NHTSA. NHTSA does review service bulletins which manufacturers issue regarding common problems with specific vehicle equipment.

A NHTSA spokesperson informed the committee that it wants to see the safety problems involved in the DMV's investigation information involving the GM buy-backs. DMV said it cannot send that information to NHTSA, but rather, the consumer must undertake that responsibility.

DMV did contact NHTSA for a listing of consumer complaints for the vehicle models involved in the accusation against GM. Additionally, DMV asked for all service bulletins issued by manufacturers for these vehicles.

SAFETY PROBLEMS REVEALED IN GM CASE

The committee's review of the GM documents from the DMV accusation case reveals that engine stalling and hesitation complaints most frequently involved late-model Chevrolet Camaros. Brake problems occurred most frequently with Chevrolet Suburbans and other GM trucks. These findings are consistent with manufacturer service bulletins provided to the DMV by NHTSA. Specifically, at least two GM bulletins have been issued for stalling and/or hesitation in Camaros; and four advisories have been issued for brake problems on GM trucks.

A committee review of 51 lemon cases in the DMV accusation case against GM reveal the following:

--Six cases involving brake problems. According to DMV investigative reports, the original owner complaints, as documented by GM's own files, ranged from "had to use emergency brake to stop once" and "nearly in accident due to



brake failure" to "front brakes failed four times." The Modesto owner of a 1990 Suburban complained that the brake pedal faded in power. In this case the GM representative wrote a note on the vehicle, stating: "Repeat repairs to brakes for soft pedal. Owner concerned over safety of vehicle." The last sentence was highlighted with a yellow marker.

--Thirteen cases involved stalling and/or hesitation problems. One consumer complained the vehicle stalled on the freeway, almost causing an accident. A Fremont man stated that repeated stalling on freeways had made driving "very dangerous."

--Six cases involved steering or front-end problems. These cases included excessive tire wear. One consumer said a malfunctioning four-wheel-drive caused him to strike a tree.

--Twenty-two cases concerned transmission or rear-end defects. Consumers complained that vehicles were hard to drive.

(The cases cited above do not total 51 because some complaints involved non-safety defects such as peeling paint while other complaints involved more than one safety defect.)

--Information in the case files contradict the testimony of a GM official at the committee's October 27 hearing. Specifically, the GM representative said GM repurchased vehicles as a goodwill gesture, not to avoid branding as a lemon.

But in one case a San Mateo man complained that his 1988 Chevrolet Celebrity would stop running when he took his foot off the accelerator. The man stated, "After nine repairs and many near accidents, (dealer) said they do not know the cause, or how to fix it." This file contains a statement by a GM representative who warns that the vehicle should be bought back now to avoid arbitration and branding of the title as the excessive repairs on the vehicle qualify it for the lemon law. Specifically, the internal memo reads: "Avoid BBB (Better Business Bureau--GM's lemon arbitrator in California)--due to the #(number) of times in for stumble or stall on freeway."

The committee has written to the current owners of the lemon vehicles in the DMV accusation to determine to what extent GM and the DMV has assisted them in maintaining the safety of their vehicles.

LEMON LAUNDERING COVER-UP ALLEGED

Finally, the non-profit consumer group, Motor Voters, had alleged that GM is offering buy-back victims \$1,000 to have their vehicles properly titled as "warranty returned." In a statement released 10/17/94, Motor Voters contends that "lemon" designation would decrease the value of the vehicle while relieving GM of liability. Motor Voters provided the committee with a release form from GM that was to be signed by a California vehicle owner.



LEGISLATIVE PROPOSALS

1. Require the fact that a vehicle has been bought back by the manufacturer, or dealer be disclosed to any prospective buyer of that vehicle. All buy-backs--goodwill, lemons, etc.--should be disclosed. The disclosure should include every reason why the vehicle was re-acquired. Prospective buyers would have a right to review invoices regarding the repair work done on the buy-back vehicle. Buy-back vehicles should have their status included in any advertising promoting the sale of these specific vehicles. When displayed on a sales lot, the vehicle should be "labeled" with information indicating to a buyer that the vehicle has buy-back status. Buy-back status should also be included in the main sales contract. Required written disclosures should be standardized as specified in statute.
2. Require that any vehicle bought back by a manufacturer or dealer in California be "certified" by the DMV before it could be sold to another party. A copy of repair work to correct the lemon problems should also be submitted to DMV. This certification would establish a record of the vehicle and its status.
3. DMV should work with other states in developing a standardized buy-back certificate that would be recognized in all 50 states. Additionally, NHTSA should establish a national registry of buy-back vehicles.
4. Require DMV to provide NHTSA with any investigative information related to the operational safety of vehicles, including the reason for each and every buy-back by a manufacturer or dealer.
5. Establish penalties for intentional failure to disclose that a vehicle is a factory or dealer buy-back.



ASSEMBLY THIRD READING

AB 1381 (Speier) - As Amended: April 26, 1995

ASSEMBLY ACTIONS:

COMMITTEE TRANS. _____ VOTE 14-0 COMMITTEE APPR. _____ VOTE 15-0

DIGEST

Existing law:

- 1) Provides that if a manufacturer cannot repair a new vehicle after a "reasonable number of attempts" and the defect substantially impairs the vehicle's use, then the consumer is due either a refund of the purchase price or a replacement vehicle. [Song-Beverly Consumer Warranty Act]
- 2) Provides that if the defect cannot be repaired in four attempts within the first year or 12,000 miles, whichever occurs first, or if the vehicle is out of service for more than 30 days, the owner may sue for a refund or replacement vehicle. The manufacturer may submit the case to arbitration. [Tanner Consumer Protection Act, the so-called "Lemon Law"]
- 3) Requires a dealer or manufacturer who sells a vehicle that was returned as required above to disclose that fact to a new buyer prior to purchase. The notice is to read: "THIS MOTOR VEHICLE HAS BEEN RETURNED TO THE DEALER OR MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS." The ownership title and DMV registration papers are to be "branded" with the legend: "WARNTY RET." [Automotive Consumer Notification Act]

This bill:

- 1) Revises and recasts the Automotive Consumer Notification Act, moving it from the Civil Code to the Vehicle Code.
- 2) Requires the manufacturer to retitle buy-back vehicles in the name of the manufacturer and to request at that time that the Department of Motor Vehicles (DMV) inscribe on the ownership certificate the notation "lemon buy back," for those vehicles which:
 - a) Were required to be repurchased pursuant to a court order or the decision rendered in a third party dispute resolution process;
 - b) Which were reacquired during or within six months after the conclusion of arbitration or litigation; or
 - c) Which were reacquired within six months after the buyer made a written request to the manufacturer for replacement or a refund.
- 3) Requires the manufacturer to affix a notice to the left door frame of the vehicle specifying that title to the vehicle has been inscribed with the notation "lemon buy back." No person shall remove or alter the notice.

- continued -



- 4) Requires any manufacturer or dealer, prior to reselling a vehicle which was returned to resolve an express warranty dispute, to execute and deliver to the subsequent buyer a notice informing the new buyer that the vehicle was reacquired in resolution of a warranty dispute, whether or not the DMV title has been branded with the notation "lemon buy back," what problems were reported by the original owner, and what repairs were made to correct these problems. Requires the new buyer to sign notice.
- 5) Applies only to vehicles reacquired by a manufacturer on or after the effective date of this act, and applies to buy-backs of vehicles in other states with lemon laws which are resold in California.
- 6) Provides that any buyer damaged by the failure of a manufacturer or dealer to comply will have the same rights and remedies provided by the Civil Code Section 1794.

FISCAL EFFECT

Unknown

COMMENTS

This bill is a follow up to an investigation, hearing and reports by the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development chaired by the bill's author. A 1994 committee report titled "Bitter Fruit" found:

- 1) That vehicle manufacturers and dealers have recycled cars and trucks in California without warning consumers they are buying "lemons" which were bought back from the original owners.
- 2) Manufacturers have circumvented disclosure law by reacquiring problem vehicles prior to formal arbitration which would lead to DMV tagging of the vehicle as "warranty returned," enabling dealers to resell vehicles at higher prices.
- 3) Lemon vehicles are being laundered through auto actions because current law does not require the manufacturer or dealer to take title to a reacquired vehicle.

It is not known how many vehicles are repurchased each year in California. It is estimated that 50,000 are repurchased by manufacturers nationwide each year.

FN 015375

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AB 1381
Page 2

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE



DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: August 21, 1995
POSITION: Neutral
SPONSOR: California Motor Car Dealers Association

BILL NUMBER: AB 1381
AUTHOR: J. Speier

BILL SUMMARY

This bill would revise and recast the Automotive Consumer Notification Act, moving it from the Civil Code to the Vehicle Code. Additionally, the bill would specify notification requirements for a re-acquired vehicle.

FISCAL SUMMARY

The Department of Motor Vehicles (DMV) indicates that implementation costs for the 1995-96 fiscal year will be approximately \$96,000 for EDP changes, form modifications, and additional workload associated with the change. On-going costs are estimated at \$7,000 yearly.

SUMMARY OF CHANGES

Amendments to this bill since our analysis of the July 23, 1995, version are technical and do not alter our position.

COMMENTS

The provisions in this bill attempt to protect subsequent buyers of vehicles returned to manufacturers as "lemons."

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LEGISLATIVE INTENT SERVICE



Analyst/Principal (0751) G. Jerome	Date	Program Budget Manager Wallis L. Clark	Date
<i>James Jerome</i>	8/18/95	<i>Mark Hill for</i>	8/18/95
Department Deputy Director			Date

LIS - 9

Governor's Office:	By:	Date:	Position Noted _____
			Position Approved _____
			Position Disapproved _____

BILL ANALYSIS Form DE-43 (Rev 03/95 Buff)

ARC-1

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

J. Speier

August 21, 1995

AB 1381

ANALYSIS

A. Programmatic Analysis

This bill would:

- Repeal the Civil Code section that requires manufacturers or dealers to make a disclosure that the vehicle was previously returned due to a defect and instead create a section in the Vehicle Code addressing this issue.
- Require that the manufacturer warrant the returned vehicle for a one year period, free from the listed defect.
- Require a vehicle manufacturer or dealer to notify the DMV of a vehicle re-acquired due to a defect regardless of where the vehicle was originally sold.
- Require that re-acquired vehicles be re-titled in the name of the manufacturer.
- Require that a re-acquired vehicle be affixed a special decal to the left door frame and the title of any vehicle re-acquired be inscribed with the notation, "Lemon Law Buyback".
- Require that specified language be included on the Warranty Buy Back Notice.
- Require a notice, stating the vehicle was re-acquired in resolution of a warranty dispute, be signed by a potential buyer of a re-acquired vehicle prior to the sale.

B. Fiscal Analysis

The Department of Motor Vehicles (DMV) indicates that implementation costs for the 1995-96 fiscal year will be approximately \$96,000 for EDP changes, form modifications, and additional workload associated with the change. On-going costs are estimated at \$7,000 yearly.

The Board of Equalization has indicated that the bill would have no revenue or fiscal impact the department.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)								Fund Code
	LA	(Dollars in Thousands)								
	CO	PROP	1995-1996		1996-1997		1997-1998			
	RV	98	FC	FC	FC	FC	FC	FC	FC	
2740/DMV	SO		C	\$96	S	\$7	S	\$7	S	0044

Fund Code: Title
0044 Motor Vehicle Account, STF

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LEGISLATIVE INTENT SERVICE



ARC-2

SENATE JUDICIARY COMMITTEE
Charles M. Calderon, Chairman
1995-96 Regular Session

A
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1

AB 1381 (Speier)
As amended on July 3, 1995
Hearing date: July 11, 1995
Civil Code; Vehicle Code
GEH:cb

"LEMON LAW"
CONSUMER DISCLOSURE

HISTORY

Related Pending Legislation: SB 1383 (Speier)

Assembly Floor Vote: Not relevant

Assembly Committee on Transportation Vote: Not relevant

ANALYSIS REFLECTS AMENDMENTS TO BE OFFERED IN COMMITTEE

KEY ISSUES

1. SHOULD THE AUTOMOTIVE CONSUMER NOTIFICATION ACT BE REPEALED, AND THEN RE-ENACTED IN A SUBSTANTIALLY DIFFERENT FORM, AS DESCRIBED IN THE BELOW-LISTED "KEY ISSUES"?
2. SHOULD MANUFACTURERS HAVE THE FOLLOWING NEW AND MODIFIED NOTIFICATION OBLIGATIONS WITH REGARD TO VEHICLES THEY REPURCHASE PURSUANT TO THE LEMON LAW?

(more)



- A. TO RETITLE A REACQUIRED VEHICLE IN THE MANUFACTURER'S NAME?
 - B. TO REQUEST DMV TO BRAND THE OWNERSHIP CERTIFICATE OF A REACQUIRED VEHICLE WITH THE TERM "FACTORY BUYBACK?"
 - C. TO AFFIX A DECAL WITH THE TERM "FACTORY BUYBACK" TO A REACQUIRED VEHICLE'S LEFT DOORFRAME?
3. SHOULD THE CIRCUMSTANCES UNDER WHICH A WRITTEN NOTICE MUST BE

(more)

PROVIDED TO CONSUMERS PURCHASING A VEHICLE PREVIOUSLY REACQUIRED DUE TO A DEFECT BE SUBSTANTIALLY CHANGED IN THE FOLLOWING WAYS?

- A. SHOULD THE REQUIREMENT ONLY APPLY TO A MORE NARROWLY DEFINED SET OF "DEALERS" AND TO MANUFACTURERS INSTEAD OF APPLYING TO ALL "PERSONS" SELLING A MOTOR VEHICLE?"
- B. SHOULD CONSUMERS BE REQUIRED TO BE NOTIFIED THAT THE VEHICLE THEY ARE PURCHASING WAS REACQUIRED DUE TO A DEFECT ONLY IF IT WAS REACQUIRED PURSUANT TO AN "EXPRESS WARRANTY DISPUTE", INSTEAD OF TO ALL VEHICLES REQUIRED TO BE REACQUIRED AS A RESULT OF A BREACH OF ANY WARRANTY?
- C. SHOULD DEALERS BE REQUIRED TO PROVIDE WRITTEN NOTIFICATION ONLY IF THEY HAVE ACTUAL KNOWLEDGE THAT THE VEHICLE WAS REACQUIRED, INSTEAD OF IF THEY SHOULD HAVE KNOWN THAT IT WAS REQUIRED BY LAW TO BE REACQUIRED?
- D. SHOULD DEALERS ONLY BE REQUIRED TO PROVIDE WRITTEN NOTIFICATION IF THEY KNEW THAT THE VEHICLE WAS REACQUIRED AS A RESULT OF A DISPUTE WITH THE LAST RETAIL OWNER OF THE VEHICLE, INSTEAD OF IF THE VEHICLE HAD EVER BEEN REACQUIRED?
4. SHOULD THE REQUIRED CONTENTS OF THE CONSUMER NOTICE BE SUBSTANTIALLY CHANGED IN THE FOLLOWING WAYS?
- A. SHOULD THE NOTICE STATE THE VEHICLE IS A "FACTORY BUYBACK" DUE TO A "NONCONFORMITY" WHICH "HAS BEEN CORRECTED" INSTEAD OF STATING THAT IT "WAS RETURNED... DUE TO A DEFECT IN THE VEHICLE?"
- B. SHOULD THE NOTICE HAVE TWO DIFFERENT BOXES TO CHECK -- ONE FOR CARS BRANDED AS "FACTORY BUYBACKS", AND ONE FOR OTHER CARS RETURNED DUE TO A WARRANTY DISPUTE?

PURPOSE

The purpose of this bill is to make it easier for car dealers to comply with the requirements of the state's lemon disclosure laws.

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Under existing law, there are three different statutes which affect the obligations of car manufacturers and dealers regarding "lemons." This bill directly affects only one of those statutes, the Automotive Consumer Notification Act (Section 1795.8 of the Civil Code), but to understand that Act, one must understand the other two statutes.

The Song-Beverly Consumer Warranty Act (Section 1790 et. seq. of the Civil Code) governs a number of issues related to defective consumer products. Section 1793.2(d)(2) in this Act requires a motor vehicle manufacturer to promptly replace a new motor vehicle or make equivalent restitution, if the manufacturer or its representative "is unable to service or repair ... \the vehicle\ to conform to the applicable express warranties after a reasonable number of attempts."

The Tanner Consumer Protection Act (Section 1793.22) clarifies, and expands upon, the basic lemon buy-back requirement in the Song-Beverly Act. It defines "nonconformity" as a nonconformity which "substantially impairs the use, value, or safety of the new motor vehicle to the buyer or lessee. It also creates a rebuttable presumption that a reasonable number of attempts has been made to conform a new vehicle to express warranties if within 1 year or 12,000 miles: 1) the same nonconformity has been subject to repair four or more times; or 2) the vehicle has been out of service for repair of nonconformities for 30 days or more.

In addition to addressing lemon buy-back requirements, the Tanner Act also imposes a lemon disclosure requirement for subsequent purchasers of lemons. Section 1933.22(f) prohibits any person from selling, leasing or transferring a vehicle which has been transferred back to a manufacturer pursuant to the lemon buyback provisions of the Song-Beverly Act or a similar statute of any other state, unless: "the nature of the nonconformity is clearly and conspicuously disclosed to the prospective ... \transferee\, the nonconformity is corrected, and the manufacturer warrants to the new ... \transferee\ in writing for a period of one year that the motor vehicle is free of the nonconformity.

The Automotive Consumer Notification Act (Section 1795.8) expands upon the lemon disclosure provisions of the Tanner Act, imposing

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disclosure requirements which are "cumulative with all other consumer notice requirements", including the disclosure requirements in the Tanner Act.

This Act places disclosure obligations on any person, including any dealer or manufacturer, selling a motor vehicle that is known or should be known to have been required by law to be replaced or accepted for restitution pursuant to the Song-Beverly Act, or selling a motor vehicle that is known or should be known to have been required to be replaced or accepted for restitution due to the inability of the dealer or manufacturer to conform the vehicle to warranties required by any other applicable law of this, any other state, or federal law.

Persons selling such vehicles must disclose the fact that the vehicle was required to be returned to the buyer in writing prior to the purchase. A dealer or manufacturer is required "to include as part of the titling documents" of the vehicle the following disclosure statement set forth as a separate document and signed by the buyer:

"THIS MOTOR VEHICLE HAS BEEN RETURNED TO THE DEALER OR MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS."

This bill repeals Section 1798,5, which contains the entirety of the present Automotive Consumer Notification Act. The bill adds two new sections, to be placed in the Civil Code immediately after the Tanner Act, which together are to be called the Automotive Consumer Notification Act.

This proposed new Act is substantially different from the one it would replace. Each of the important differences is listed in the "key issues" section of this analysis (above); and each listed difference is described in more detail in bold type in each of the subsections of the "comment" section of this analysis (below).

The bill also makes some conforming changes to other sections of the Civil Code and Vehicle Code.

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COMMENT

1. Should the automotive consumer notification act be repealed, and then re-enacted in a substantially different form?

According to the sponsors of this bill, the California Motor Car Dealers Association, this bill is "intended to remove all of the ambiguities contained in the current Automotive Consumer Notification Act, provide clarity and predictability to present title branding requirements; and broaden current buyback disclosure requirements."

This bill has recently been amended to remove the provisions which were designed to clarify what car dealers and manufacturers believe is the main ambiguity in the lemon laws -- the definition of "nonconformity" and the definition of a "reasonable number of repair attempts." Toyota Motor Sales has written the committee to urge it to reinsert the bright line tests which were deleted from the bill.

A number of consumer groups, and individual consumers, oppose this bill. They take exception to the claim that it broadens or clarifies current disclosure requirements, and argue that it weakens and confuses what they believe are California's already inadequate disclosure laws. Motor Voter, the organization which sponsored the original Tanner Act, writes:

"Because any state with a lemon branding/disclosure statute in effect invites auto manufacturers to dump lemons in its borders, Motor Voters urges that California adopt language at least as strong as that recommended in the National Association of Attorneys' General (NAAG) model bill. Some states ... have gone beyond the NAAG bill to forbid lemons with a history of life-threatening safety defects from being resold within their

(more)



state. North Dakota forbids any lemons from being resold within their state. California should be moving in that direction, not backwards."

The specific issues of dispute between the proponents and opponents are discussed in the comments which follow.

2. Should manufacturers have the following new and MODIFIED notification obligations?

The car dealers believe that, under present law, they do not have enough information to know if a car they are selling was REACQUIRED as lemon. They therefore do not know if required disclosures should be made or not. The dealers believe that the new requirements imposed upon manufacturers by this bill will make it much easier for car dealers to fulfill their disclosure obligations, and that, as a result, consumers will be better informed.

a. Retitling vehicle in manufacturers' name

Under this bill, manufacturers would have a new obligation to retitle a reacquired vehicle in their name.

This appears to be a noncontroversial requirement which will help track lemons as they get transferred back to the manufacturer buy the buyer, and then get re-transferred from the manufacturer to dealers.

b. Branding title with "factory buyback".

Under this bill, the present obligation to "brand" the ownership certificate of a vehicle would be clarified in two ways: first, the obligation would be placed on manufacturers to request DMV to place the brand; and second, the brand must use the exact words "factory buyback."

The present statute does not specifically state that a lemon's ownership certificate must be "branded" with a label. It merely states that the manufacturer or dealer must include the required one-sentence disclosure statement

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"as part of the titling documents" on a separate sheet of paper. Evidently, in practice, this requirement has been implemented through branding ownership certificates with the term "warranty return."

The main controversy about this provision is the term "factory buyback." Consumer groups believe that it is "euphemistic." Motor Voters believe it is "fraudulently misleading" because it "could mean a vehicle was repurchased merely because the original owner failed to make payments, or because it had been a rental." They are concerned that "even the most dangerously defective vehicle, with bad brakes or faulty steering, would be deceptively characterized as merely a 'factory buyback.'"

Consumer groups prefer either the term "defective vehicle", which is recommended in the NAAG model bill, or the term required by the previous version of this bill, "lemon buyback."

Toyota raises concerns with the language that a manufacturer "request" DMV to brand the title. This language is not clear as to what happens if DMV does not brand the title, or delays in branding the title. Is there no remedy? Is the manufacturer prevented from transferring the vehicle unless there is a brand? Toyota is concerned about the latter interpretation because DMV's "infamous sophisticated" computer system ... is notoriously slow."

SHOULD A LESS EUPHEMISTIC BRANDING TERM BE REQUIRED?

SHOULD THE CONSEQUENCES OF DMV FAILURE TO BRAND, OR DELAY IN BRANDING, BE SPECIFIED?

c. Affixing decal on doorframe

Under this bill, manufacturers would have a new obligation to affix a decal with the term "factory buyback" to a reacquired vehicle's left doorframe.

Although this provision imposes a new notification requirement, consumer groups are unimpressed. They believe that a little sticker on the door jam is a meaningless warning, and that it will only be used against consumers by

(more)



claiming that they should have been on notice that their car was a lemon because it was affixed with the decal.

Toyota is concerned about manufacturers having "vicarious liability for third party tampering with decals." They argue that manufacturers have no control over the removal of the decals in the chain of commerce.

3. Should the circumstances under which a written notice must be provided to consumers be substantially changed?

a. Narrower set of sellers

Under this bill, the consumer notification requirement would only apply to a more narrowly defined set of "dealers" and to manufacturers, instead of applying to all "persons" selling a motor vehicle.

The Consumer Attorneys of California (CAOC) are concerned that this bill removes disclosure responsibilities from "persons" who are not manufacturer or dealers, arguing that no justification has been provided for this narrowing of existing law. They are specifically worried that lienholders who reacquire, and then resell vehicles would be exempted from the bill. The car dealers point out that, under the bill, a manufacturer who assists a lienholder in reacquiring a vehicle would be responsible for making the required disclosures.

Present law contains a definition of dealer which is broader than the Vehicle Code definition of dealer (VC Section 265) used in this bill. The Vehicle Code definition excludes "persons regularly employed as salespersons by vehicle dealers... while acting in the scope of their employment." By contrast, the present Act's definition expressly includes "officers, agents, and employees" of a car sales business.

SHOULD THE DISCLOSURE REQUIREMENTS APPLY TO ALL PERSONS, OR ALTERNATIVELY, SHOULD THE PRESENT DEFINITION OF "DEALER" BE RETAINED?

(more)



b. Limiting notification requirement to "express warranty disputes"

Under this bill, consumers would be required to be notified that the vehicle they are purchasing was reacquired due to a defect only if it was reacquired pursuant to an "express warranty dispute", instead of to all vehicles required to be reacquired as a result of a breach of any warranty?

The car dealers argue that under present law, only cars deemed to be lemons under the lemon buyback law, or similar laws, are subject to the disclosure requirements. They contend that this bill represents an important expansion of the notification requirement, because, in addition to requiring title branding and notice for lemon buybacks, it requires notice (but not title branding) for any vehicle reacquired pursuant to an "express warranty dispute."

Consumer groups disagree with the car dealers characterization of both present law and this bill. They point out that existing law requires notice and title branding for any car which is reacquired because of nonconformity to warranties under any law of the state. The opponents argue that this requirement in existing law is much broader than this bill's proposed requirement because the warranties do not have to be "express", and because there does not have to be a "dispute" about the warranties.

Consumers Union (CU) is concerned that "auto companies would claim that no 'dispute" existed if a consumer asks for a repurchase because of an obvious, serious safety defect and the auto company complied. CU also believes that vehicles reacquired pursuant to an implied warranty also should be disclosed to buyers. The applicable implied

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warranties under the Uniform Commercial Code would be the implied warranty of merchantability and the implied warranty of fitness for particular purpose.

The car dealers believe that these arguments are overly picky, and they assert that any car reacquired because of an allegation that it was defective would be covered by the term "express warranty dispute."

c. Actual knowledge versus "should have known"

Under this bill, dealers are required to provide written notification only if they have "actual knowledge" that the vehicle was reacquired, instead of if they "should have known" that it was required by law to be reacquired.

This is one of the most significant changes made by this bill. Car dealers argue that the "should have known" standard in presently law is unworkable and unfair. They argue that lemons are reacquired by manufacturers, not dealers, and that dealers have no way of knowing if a car they are selling was previously reacquired as a lemon, unless the manufacturer tells them. That is why the dealers have imposed new obligations on the manufacturer designed to retitle the car, request the brand, affix a decal, and prepare and sign the original copy of the consumer disclosure form.

CAOC argues that requiring disclosure only when the dealer has actual knowledge that the car was reacquired by the manufacturer is inconsistent with the basic principles of products liability law. Under California case law, all businesses, including retail sellers, in the chain of commerce of a product are held strictly liable for defects in the project, and for failures to warn about those defect, regardless of whether the business knew, of the defect or the failure to warn. The theory is that retailers are in a much better position than consumers to know about defects, and retailers profit from selling defective products, so it is fair to impose liability on them for damages caused by the defects.

Car dealers respond to this argument by pointing out that this bill does not relieve dealers of their strict

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liability for defects under common law, but the dealers miss the central point of the argument: If basic tort liability for defects and failures to warn does not require actual knowledge, why should the less onerous statutory disclosure law requires actual knowledge?

SHOULD THE BILL BE AMENDED TO REINSTATE LIABILITY FOR DEALERS WHO SHOULD HAVE KNOWN A CAR WAS A LEMON?

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d. "Last retail owner"

Under this bill, dealers are only required to provide written notification to consumers if they knew that the vehicle was reacquired as a result of a dispute with the last retail owner of the vehicle, instead of if the vehicle has ever been reacquired.

The car dealers have not provided any justification for this seemingly inappropriate limitation -- if a dealer has actual knowledge that a car was reacquired due to a warranty dispute, should the dealer be allowed to conceal that fact, just because the warranty dispute was with the original owner, not with the last retail owner?

SHOULD THE "LAST RETAIL OWNER" BE LIMITATION BE REMOVED?

4. Should the required contents of the consumer notice be substantially changed in the following ways?

a. Changes in wording

Under this bill, the consumer notice would be accomplished by filing out a statutory form. That form would state that the vehicle is a "factory buyback" due to a "nonconformity" which "has been corrected", instead of stating that the vehicle "was returned to the manufacturer or dealer due to a defect in the vehicle."

Consumer groups believe that the present warning clearly informs consumers that they are being a vehicle which was previously returned due to a defect.

Motor Voters argues that the legal term "nonconformity" is "confusing and carried far less import than 'defect.'" Consumers Union believes it is inappropriate to state on the disclosure form nonconformity has been corrected, because it minimizes the import of the fact that the car was returned because it was defective.

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b. Two different boxes

Under this bill, instead of consumer notice being accomplished by use of a single declarative sentence, the required statutory form would have two different boxes to check, with each box being described by a sentence. One of the boxes is for cars branded as "factory buybacks", and the other box is for other cars returned due to a warranty dispute.

Car dealers believe it is important for consumers to be aware of the distinction between cars that were required by the lemon buyback law to be reacquired, and cars which were reacquired voluntarily to resolve a warranty dispute -- so called "warranty buybacks."

Consumer groups believe this distinction further dilutes the effectiveness of the warning, and that it is misleading because dealers may voluntarily buyback the worst vehicles, because the defects are so obvious, and the manufacturers' liability is clear.

SHOULD THE REQUIRED DISCLOSURE IN PRESENT LAW BE
RETAINED, INSTEAD OF THIS BILL'S CONFUSING FORM?

Support: California Motor Car Dealers Association

Opposition: Center for Auto Safety; Motor Voters; Consumers Union;
Consumer Attorneys of California; Consumer Action; Consumer
Federation of America; 13 individuals (identifying themselves
as owners or previous owners of lemons)

Prior Legislation: SB 788 (1989) Chaptered
SB 2568 (1991) Vetoed
SB 1762 (1992) Chaptered

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SENATE JUDICIARY COMMITTEE
Charles M. Calderon, Chairman
1995-96 Regular Session

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AB 1381 (Speier)
As amended on July 15, 1995
Hearing date: July 18, 1995
Civil Code; Vehicle Code
GEH:cb

"LEMON LAW"
CONSUMER DISCLOSURE

HISTORY

Related Pending Legislation: SB 1383 (Speier)

Assembly Floor Vote: Not relevant

Assembly Committee on Transportation Vote: Not relevant

Prior Senate Judiciary Committee Action:

This bill was scheduled for hearing on July 11th. At the beginning of the hearing, the author offered a number of significant amendments to address many of the issues raised by opponents, and raised in the committee analysis. As a result of the amendments, the bill was placed out to print and back on file before testimony was taken. The amendments made the following changes:

- 1) Deleted the bill's cross-reference to the Vehicle Code definition of "dealer", and returned to a broader definition of "dealer", as in existing law.



- 2) Deleted the "actual knowledge" standard, and returned to a "should have known" standard, as in existing law;
- 3) Changed the trigger for the notice requirement from vehicles subject to an "express warranty dispute" to vehicles requested to be replaced because the vehicle did not conform to express warranties;
- 4) Returned the notice language for vehicles required to be replaced by the lemon law to the language required by existing law, with minor modifications.



- 5) Provided that the bill shall not affect any proceeding related to vehicles reacquired prior to January 1, 1996.

The amendments removed the opposition of the Consumer Attorneys of California, but did not remove the opposition of other groups. Certain auto manufacturers came into opposition after the amendments were proposed.

KEY ISSUES

1. SHOULD THE AUTOMOTIVE CONSUMER NOTIFICATION ACT BE REPEALED, AND THEN RE-ENACTED IN A DIFFERENT FORM, AS DESCRIBED IN THE BELOW-LISTED "KEY ISSUES"?
2. SHOULD MANUFACTURERS HAVE THE FOLLOWING NEW AND MODIFIED NOTIFICATION OBLIGATIONS WITH REGARD TO VEHICLES THEY REPURCHASE PURSUANT TO THE LEMON LAW?
 - A. TO PLACE THE TITLE TO A RETURNED VEHICLE IN THE MANUFACTURER'S NAME?
 - B. TO REQUEST DMV TO BRAND THE OWNERSHIP CERTIFICATE OF A RETURNED VEHICLE WITH THE TERM "FACTORY BUYBACK"?
 - C. TO AFFIX A DECAL WITH THE TERM "FACTORY BUYBACK" TO A RETURNED VEHICLE'S LEFT DOORFRAME?
3. SHOULD THE CIRCUMSTANCES UNDER WHICH A WRITTEN NOTICE MUST BE PROVIDED BE CHANGED IN THE FOLLOWING WAYS?
 - A. SHOULD DISCLOSURE REQUIREMENTS APPLY ONLY TO VEHICLES BREACHING EXPRESS WARRANTIES?
 - B. SHOULD DISCLOSURE REQUIREMENTS APPLY ONLY TO VEHICLES REQUESTED TO BE REACQUIRED?
 - C. SHOULD DISCLOSURE REQUIREMENTS APPLY ONLY TO VEHICLES RETURNED BY THE LAST RETAIL OWNER?
4. SHOULD THE REQUIRED CONTENTS OF THE CONSUMER NOTICE BE CHANGED

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SO THAT THERE ARE TWO DIFFERENT BOXES TO CHECK -- ONE FOR CARS
BRANDED AS "FACTORY BUYBACKS", AND ONE FOR OTHER CARS RETURNED
DUE TO A WARRANTY DISPUTE?

PURPOSE

The purpose of this bill is to make it easier for car dealers to
comply with the requirements of the state's lemon disclosure laws.



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Under existing law, there are three different statutes which affect the obligations of car manufacturers and dealers regarding "lemons".

This bill directly affects only one of those statutes, the Automotive Consumer Notification Act (Section 1795.8 of the Civil Code), but to understand that Act, one must understand the other two statutes.

The Song-Beverly Consumer Warranty Act (Section 1790 et. seq. of the Civil Code) governs a number of issues related to defective consumer products. Section 1793.2(d)(2) in this statute requires a motor vehicle manufacturer to promptly replace a new motor vehicle or make equivalent restitution, if the manufacturer or its representative "is unable to service or repair ... \the vehicle\ to conform to the applicable express warranties after a reasonable number of attempts."

The Tanner Consumer Protection Act (Section 1793.22) clarifies, and expands upon, the basic lemon buy-back requirement in the Song-Beverly Act. It defines "nonconformity" as a nonconformity which "substantially impairs the use, value, or safety of the new motor vehicle to the buyer or lessee." It also creates a rebuttable presumption that a reasonable number of attempts has been made to conform a new vehicle to express warranties if within 1 year or 12,000 miles: 1) the same nonconformity has been subject to repair four or more times; or 2) the vehicle has been out of service for repair of nonconformities for 30 days or more.

In addition to addressing lemon buy-back requirements, the Tanner Act also imposes a lemon disclosure requirement for subsequent purchasers of lemons. Section 1933.22(f) prohibits any person from selling, leasing or transferring a vehicle which has been transferred back to a manufacturer pursuant to the lemon buyback provisions of the Song-Beverly Act or a similar statute of any other state, unless: "the nature of the nonconformity is clearly and conspicuously disclosed to the prospective ... \transferee\, the nonconformity is corrected, and the manufacturer warrants to the new ... \transferee\ in writing for a period of one year that the motor vehicle is free of the nonconformity.

The Automotive Consumer Notification Act (Section 1795.8) expands upon the lemon disclosure provisions of the Tanner Act, imposing disclosure requirements which are "cumulative with all other

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consumer notice requirements", including the disclosure requirements in the Tanner Act.

This statute places disclosure obligations on any person, including any dealer or manufacturer, selling a motor vehicle that is known or should be known to have been returned pursuant to the Song-Beverly Act, or that is known or should be known to have been returned because of a breach of warranty pursuant to any other applicable law.

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Persons selling such vehicles must disclose in writing and prior to purchase the fact that the vehicle was required to be returned to the buyer. A dealer or manufacturer is required to "brand" the titling documents of the vehicle with the following disclosure statement set forth as a separate document and signed by the buyer:

"THIS MOTOR VEHICLE HAS BEEN RETURNED TO THE DEALER OR MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS."

This bill repeals Section 1798.5, which contains the entirety of the present Automotive Consumer Notification Act. The bill adds two new sections, to be placed in the Civil Code immediately after the Tanner Act, which together are to be called the Automotive Consumer Notification Act.

This proposed new Act is different from the one it would replace in the following ways:

- 1) Manufacturers would have a new obligation to place the title of a returned vehicle in their name.
- 2) The obligation to "brand" the ownership certificate of a vehicle would be changed in two ways:
 - a) The obligation would be placed on manufacturers to request DMV to place the brand;
 - b) The brand must use the exact words "factory buyback."
- 3) Manufacturers would have a new obligation to affix a decal with the term "factory buyback" to a reacquired vehicle's left doorframe.
- 4) Dealers would be required to notify consumers that the vehicle they are purchasing was returned due to a defect, only if:
 - a) The vehicle was reacquired by the vehicle's manufacturer in response to a request;
 - b) The request was made by the last retail owner;

(more)



- c) The request was made because the vehicle did not conform to express warranties.
- 5) Instead of consumer notice being accomplished by use of a single declarative sentence, the required statutory form would have two different boxes for the consumer to check, with each box being described by a sentence. One of the boxes is for vehicles branded as "factory buybacks", and the other box is for other vehicles reacquired after the last retail owner of the vehicle requested its repurchase.

COMMENT

1. Should the Automotive Consumer Notification Act be repealed, and then re-enacted in a substantially different form?

This bill is sponsored by the California Motor Car Dealers Association in order to "revise, reform, and expand" the lemon buyback disclosure requirements of present law. The car dealers believe that to make it easier for dealers to comply with the disclosure requirements, and that as a result, consumers will be better informed.

As it passed out of the Assembly, this bill was designed to clarify what car dealers and manufacturers believe is the main ambiguity in the lemon laws -- the definition of "nonconformity" and the definition of a "reasonable number of repair attempts." The Association of International Automobile Manufacturers (AIAM) opposes the bill because it opposes having additional obligations placed on manufacturers with regard to lemons unless a bright line test is adopted for determining what a lemon is.

A number of consumer groups, and individual consumers, oppose this bill. They take exception to the claim that it broadens or clarifies current disclosure requirements, and argue that it weakens and confuses what they believe are California's already inadequate disclosure laws. Motor Voter, the organization which sponsored the original Tanner Act, writes:

"Because any state with a lemon branding/disclosure statute in

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effect invites auto manufacturers to dump lemons in its borders, Motor Voters urges that California adopt language at least as strong as that recommended in the National Association of Attorneys' General (NAAG) model bill. Some states ... have gone beyond the NAAG bill to forbid lemons with a history of life-threatening safety defects from being resold within their state. North Dakota forbids any lemons from being resold within their state. California should be moving in that direction, not backwards."

The specific issues of dispute between the proponents and opponents are discussed in the comments which follow.

2. Should manufacturers have the following new and modified notification obligations?

The car dealers believe that, under present law, they do not have enough information to know if a car they are selling was reacquired as a lemon. They therefore do not know if required disclosures should be made or not. The dealers believe that the new requirements imposed upon manufacturers by this bill

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will make it much easier for car dealers to fulfill their disclosure obligations, and that, as a result, consumers will be better informed.

a. Placing title to the vehicle in manufacturers' name

The car dealers argue that this requirement will help track lemons as they get transferred back to the manufacturer buy the buyer, and then get re-transferred from the manufacturer to dealers. Automotive manufacturers indicate that they do not oppose this requirement.

b. Branding title with "factory buyback"

The present statute does not specifically state that a lemon's ownership certificate must be "branded" with a label indicating that the vehicle was returned to the manufacturer under the lemon buyback laws. The statute merely states that the manufacturer or dealer must include the one-sentence disclosure statement "as part of the titling documents" on a separate sheet of paper. Evidently, in practice, this requirement has been implemented through branding ownership certificates with the term "warranty return."

The main controversy about this provision is the term "factory buyback." Consumer groups believe that it is "euphemistic." Motor Voters believe it is "fraudulently misleading" because it "could mean a vehicle was repurchased merely because the original owner failed to make payments, or because it had been a rental." They are concerned that "even the most dangerously defective vehicle, with bad brakes or faulty steering, would be deceptively characterized as merely a 'factory buyback.'"

Consumer groups prefer either the term "defective vehicle", which is recommended in the NAAG model bill, or the term required by the previous version of this bill, "lemon buyback."

Toyota raises concerns with the language that a manufacturer "request" DMV to brand the title. This language is not clear as to how DMV is to go about the

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branding the title, and as to what happens if DMV does not brand the title or delays in branding the title. Is there no remedy if DMV does not brand the vehicle in a timely manner? Is the manufacturer prevented from transferring the vehicle unless there is a brand? Toyota is concerned about the latter interpretation because DMV's "infamous 'sophisticated' computer system ... is notoriously slow."

SHOULD A LESS EUPHEMISTIC BRANDING TERM BE REQUIRED?

SHOULD THE CONSEQUENCES OF DMV FAILURE TO BRAND, OR DELAY IN BRANDING, BE SPECIFIED?

c. Affixing decal on doorframe

Although this provision imposes a new notification requirement, consumer groups are unimpressed. They believe that a little sticker on the door jam is a meaningless warning, and that it will only be used against consumers by claiming that they should have been on notice that their car was a lemon because it was affixed with the decal.

AIAM argues that this requirement is "impractical," and that the bill should be amended to protect manufacturers from liability for removal of the decal, once the first repurchase has attested to its being on the car when purchased.

3. Should the circumstances under which a written notice must be provided be changed to apply to vehicles returned by the last retail customer because the vehicles did not conform to express warranties?

The car dealers argue that under present law, only cars deemed to be lemons under the lemon buyback law, or similar laws, are subject to the disclosure requirements. They contend that this bill represents an important expansion of the notification requirement, because, in addition to requiring title branding and notice for lemon buybacks, it requires notice (but not title branding) for any vehicle reacquired by the manufacturer after a request by the last retail owner because the vehicle did not conform to express warranties.

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Consumer groups disagree with the car dealers' characterization of the bill. They point out that existing law requires notice and title branding for any car which is reacquired because of nonconformity to warranties under any law of the state. The opponents argue that this requirement in existing law is much broader than this bill's proposed requirement for three reasons:

a. Under existing law, the warranties do not have to be "express".

Consumers Union (CU) argues that vehicles reacquired pursuant to an implied warranty also should be disclosed to buyers. The applicable implied warranties under the Uniform Commercial Code would be the implied warranty of merchantability and the implied warranty of fitness for particular purpose.

The car dealers respond by contending that implied warranties are rarely applied to automotive purchases, and that the express warranty limitation serves the purpose of creating a clear test.

b. Under existing law, there does not have to be a "request" that the vehicle be reacquired

Motor Voters argues that this provision "invites manufacturers to evade disclosure simply by requiring the lemon owner to sign a statement that the vehicle was 'voluntarily' repurchased by the manufacturer, who generously 'offered' to buy it back for 'customer satisfaction' purposes, as a condition of the buyback."

Car dealers point out that this provision was amended to cover all "requests" to address Motor Voters' concern about the previous language which covered warranty "disputes."

The car dealers believe that these arguments are overly picky, and they assert that any car reacquired because of an allegation that it was defective would be covered by the amended language.

c. Under existing law, there is no limitation that the car

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was returned by the "last retail owner".

Opponents believe that this limitation is illogical. If a dealer has actual knowledge that a car was reacquired due to an allegation of a breach of warranty, why should the dealer be allowed to conceal that fact, just because the return request was made by the vehicle's original owner, not with the last retail owner?

Car dealers argue that there is no way they can know that a car was returned at the request of prior owners.

4. Should the required contents of the consumer notice be changed by having two different boxes to check for different types of buybacks?

Car dealers believe it is important for consumers to be aware of the distinction between cars that were required by the lemon buyback law to be reacquired, and cars which were reacquired voluntarily to resolve a warranty dispute -- so called "warranty buybacks."

Consumer groups believe this distinction further dilutes the effectiveness of the warning, and that it is misleading because dealers may voluntarily buyback the worst vehicles, because the defects are so obvious, and the manufacturers' liability is clear.

Support: California Motor Car Dealers Association*

Opposition: Center for Auto Safety; Motor Voters*; Consumers Union*; Consumer Action*; Consumer Federation of America; Association of International Automobile Manufacturers*; Toyota Motor Sales, USA*; 35 individuals (most identify themselves as owners or previous owners of lemons)

*Position has been reconfirmed after review of July 15th amendments

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AB 1381 (Speier)
Page 14

Prior Legislation: SB 788 (1989) Chaptered
SB 2568 (1991) Vetoed
SB 1762 (1992) Chaptered

(more)



LEGISLATIVE INTENT SERVICE (800) 666-1917

SENATE COMMITTEE ON JUDICIARY
Charles M. Calderon, Chair

BACKGROUND INFORMATION REQUEST

Measure: AB 1381

Author : Assemblywoman Speier

1. Origin of the bill:

- a. Who is the source of the bill? What person, organization, or governmental entity requested introduction?
Assembly Consumer Protection, Governmental Efficiency & Economic Development Co
California Motor Car Dealers Assoc. (sponsor)
- b. Has a similar bill been before either this session or a previous session of the legislature? If so, please identify the session, bill number and disposition of the bill. NO
- c. Has there been an interim committee report on the bill? If so, please identify the report. Yes "Bitter Fruit" attached

2. What is the problem or deficiency in the present law which the bill seeks to remedy?

See attached

3. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committee staff.

Attached

4. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill.

5. If you plan substantive amendments to this bill prior to hearing, please explain briefly the substance of the amendments to be prepared.

attached

6. List the witnesses you plan to have testify.

Peter Welch, California Motor Car Dealers Association

RETURN THIS FORM TO: SENATE COMMITTEE ON JUDICIARY
Phone 445-5957

STAFF PERSON TO CONTACT: Richard Seffer

LEGISLATIVE INTENT SERVICE (800) 666-1917

WORKSHEET ON AB 1381(SPEIER)...THE LEMON BUYBACK BILL

2. THE PROBLEM:

Consumers unknowingly buy low mileage vehicles that were previously repurchased from the original owners by the manufacturer due to customer dissatisfaction. Some of these cars and trucks, in cases documented by the DMV and the Assembly Consumer Protection Committee, did not perform well for the second buyers and, in some instances, the performance of these vehicles presented safety dangers to the owners(see LA Times article, attached).

Current law requires that the dealer disclose to the consumer that the vehicle was repurchased by the manufacturer if the vehicle was bought back under the state's Lemon Law--i.e., the manufacturer repurchased the vehicle because it could not be repaired after four attempts, or after 30 consecutive days or more in the shop during the first year of ownership, or 12,000 miles.

However, a majority of manufacturer buybacks appear to occur before the Lemon Law standards which lead to arbitration set in; therefore, there is some debate over whether the buyback status of these vehicles needs to be disclosed to the consumer, provided that the identified defects did not substantially affect the worth of the vehicle.

AB 3081 raises this policy question: Is it fair to the consumer that he or she not be told that the vehicle for sale was previously bought back by the manufacturer because of some mechanical problem?

Furthermore, car dealers complain that they are sometimes not aware that a vehicle which they may have purchased from another dealer was once bought back by the manufacturer due to problems.

The solution: AB 1381 proposes that the buyback status of any vehicle which had a warranty problem be disclosed to the next buyer. For those vehicles that are deemed "lemons" under the state's Lemon Law, another state's lemon law, or due to a court ordered buyback, or are repurchased as a result of litigation, the title must be branded as "lemon buy back" and the left door jamb must be branded with a "lemon buy back" decal, in addition to the written disclosure, signed by the manufacturer, dealer and buyer. All other warranty disputes involving a buyback vehicle would have to be disclosed to the buyer, but no branding would take place.

Additionally, the bill clearly disallows a sales tax refund to car manufacturers who buy back a vehicle, unless the vehicle was repurchased under the Lemon Law. Current law restricts refunds to lemon buybacks, however, the law is somewhat unclear on this point.

Background



The Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development investigated the problem of undisclosed, " recycled lemons " last year. The committee held a hearing and produced a final report, Bitter Fruit, which is attached. The DMV has also accused General Motors and Chrysler of selling lemon vehicles without disclosure. GM, without admitting guilt, paid DMV \$330,000 last year while several GM dealers settled with DMV for penalties that totalled in excess of \$100,000. Chrysler and DMV appeared before an administrative law judge in February 1995--a decision should be forthcoming soon.

Important.

The attached letters from vehicle manufacturing associations to Frank Zolin, DMV, provide a candid look at why the issue of recycled lemons is of major concern to dealers, manufacturers, consumers and the DMV. There is strong support for the proverbial "Bright Line " legislation so that consumers will be informed and manufacturers and dealers will be clear on their responsibilities.

Amendments

The attached amendments are due back from Counsel on 6/14(9a.m.) . The amendments address the concerns of consumer groups which wanted to be sure that the buyback measures were recast in the Civil Code, as opposed to the Vehicle Code. The bill also provides for civil penalties--this provision was amended in on April 26 to remove the concerns of consumer groups.

The amendments also close two loopholes, as follows:

#3(c) " lienholder " is added to ensure that a buyback to assist a finance company such as GMAC would be covered--i.e., the 4/26 version of the bill was limited to dealers...

#3(c) branding provision is strengthened by specifying that a vehicle registered in this state which is repurchased and is to be branded, must be branded prior to exportation...the 4/26 version of the bill directed that branding occur prior to resale--obviously, a buyback car could be resold in another state where California law would not apply--this amendment closes this loophole...

#1793.24(c) ...amendment adds clarity regarding who gets a copy of the disclosure form...

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LEGISLATIVE INTENT SERVICE



PRINT YOUR CHARACTERS IN CAPITAL LETTERS USING BLACK OR BLUE INK-READ INSTRUCTIONS ON REVERSE SIDE.

DMV MICROGRAPHICS USE ONLY

NOTICE OF RELEASE OF LIABILITY
MAIL THIS FORM TO DMV

A. BUYER'S TRUE FULL NAME (LAST) (FIRST) (MIDDLE) B. IF DEALER, CHECK BELOW

C. BUYER'S ADDRESS D. ODOMETER READING

E. CITY STATE ZIP CODE F. DATE OF SALE

G. SELLER'S TRUE FULL NAME (LAST) (FIRST) (MIDDLE)

H. SELLER'S ADDRESS I. SELLING PRICE

J. CITY STATE ZIP CODE K. SELLER'S SIGNATURE

VEHICLE ID NUMBER YR MODEL MAKE PLATE NUMBER

XXXXXXXXXXXXXXXXXXXXXXXXXXXX 85 BUIC XXXXXXX

*Current law
example of a
branded title*

REG. 136A (REV. 12/94)

DO NOT DETACH UNTIL SOLD

STATE OF CALIFORNIA

CERTIFICATE OF TITLE

66293010412

AUTOMOBILE

*** WARRANTY RETURN ***

VEHICLE ID NUMBER XXXXXXXXXXXXXXXXXXXXXXXXXXXX YR MODEL MAKE 85 BUIC PLATE NUMBER XXXXXXX

BODY TYPE MODEL AX UNLADEN WEIGHT FUEL TRANSFER DATE FEES PAID REGISTRATION EXPIRATION DATE

CP G 01/04/93 \$9 04/28/93

YR 1ST SOLD CLASS YR MO EQUIPMT/TRUST NUMBER ISSUE DATE

85 DD YA 01/15/93

MOTORCYCLE ENGINE NUMBER

ODOMETER DATE 08/16/1994 ODOMETER READING 457653 MI

ACTUAL MILEAGE

REGISTERED OWNER(S)
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
439 TAURUS LANE
ORANGE PARK
FL 32073

I certify under penalty of perjury under the laws of the State of California, that the signature(s) below releases interest in the vehicle.

1a. DATE X SIGNATURE OF REGISTERED OWNER

1b. DATE X SIGNATURE OF REGISTERED OWNER

Federal and State law requires that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

The odometer now reads (no tenths), miles and to the best of my knowledge reflects the actual mileage unless one of the following statements is checked.

WARNING Odometer reading is not the actual mileage. Mileage exceeds the odometer mechanical limits.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATE TRANSFEROR SIGNATURE(S) DATE TRANSFEREE SIGNATURE(S)

PRINTED NAME OF AGENT SIGNING FOR A COMPANY

IMPORTANT READ CAREFULLY

Any change of Lienholder (holder of security interest) must be reported to the Department of Motor Vehicles within 10 days.

LIENHOLDER(S)

2. X
Signature releases interest in vehicle. (Company names must be countersigned)
Release Date

000014 CA 10848455
REG. 17.30 (REV. 12/94)

KEEP IN A SAFE PLACE - VOID IF ALTERED

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL (NAAG)

RESOLD LEMONS MODEL LEGISLATION

DRAFT 11/1/91

PRODUCED BY NAAG WORKING GROUP ON RESOLD LEMONS

From NAAG Model Bill:

"Buyback vehicle" means a motor vehicle which has been replaced or repurchased by a manufacturer, its agent, or authorized dealer, as the result of a court judgment, a determination of the [New Motor Vehicle Arbitration] Board or a program, or any voluntary agreement entered into between a manufacturer, its agent or a dealer and a consumer that occurs before or after a dispute is submitted to a court, the Board or a program."*

From NAAG "Summary of provisions":

"If voluntary buybacks were not included in this definition, manufacturers would be able to avoid the disclosure requirements by entering into voluntary agreements with consumers to buy back or replace those vehicles which are the most seriously defective and would be most likely to be adjudicated as Lemons. Subsequent consumer purchasers would then have no knowledge of the 'Lemon' history of these vehicles."

"Some manufacturers may argue that the use of the phrase 'Defective Vehicle Buyback' is not fair or accurate because vehicles are also bought back on a 'goodwill' basis which are not defective. The working group is not convinced that vehicles which are free from any alleged defects are routinely repurchased by manufacturers and dealers. If there are goodwill repurchases, the numbers are not significant."*

* (Emphasis added.)

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BJ-5



"TOP 10" CONSUMER COMPLAINT LIST *

1. Automobiles
2. Contest/Sweepstakes
3. Credit
4. Home Repair/Construction
5. Mail Order
6. Telemarketing
7. Retail Sales
8. Furniture
9. Landlord/Tenant
10. Subscriptions

* These results come from an informal 1993-94 nationwide survey conducted by the National Association of Attorneys General.



NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Adopted

**Winter Meeting
December 4-7, 1991
Fort Lauderdale, Florida**

RESOLUTION

MANDATORY DISCLOSURES IN THE RESALE OF LEMON VEHICLES

WHEREAS, at least 50,000 vehicles with serious safety defects or non-conformities are repurchased by manufacturers or dealers annually through arbitration, litigation or through settlements as a result of the various state lemon laws; and

WHEREAS, with an average purchase price of \$15,000 per automobile, lemon law buybacks represent a potential \$750 million loss; and

WHEREAS, many of those vehicles are subsequently resold at auction or by used car dealers and thus recycled back into the marketplace, back onto the streets, and back into repair shops; and

WHEREAS, many states do not have adequate legal protection for the unwitting consumer purchasers of lemon law "buyback" vehicles; and

WHEREAS, the fact that the vehicle is a manufacturer or dealer "buyback" vehicle is material to any subsequent sale of the vehicle;

NOW, THEREFORE, BE IT RESOLVED THAT THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL:

- 1) encourages the adoption of legislation or regulations in each state that:
 - a) provides for disclosure of the fact that a vehicle has been repurchased by a manufacturer or dealer for the protection of consumers; and
 - b) contains a disclosure provision which requires that notice be placed clearly and conspicuously on the vehicle, on the contract and on the title; and
 - c) requires that pertinent information on buyback vehicles be reported to and recorded by state motor vehicle departments; and



- d) requires state motor vehicle departments to carry forward all previous lemon law title brands or stamps on all new titles issued; and
 - e) provides for recovery of actual damages, exemplary damages and attorneys' fees, where appropriate, by consumers injured by violation of the statute; and
- 2) supports participation in a multistate database network which would allow the interstate tracing of vehicles with branded titles; and
 - 3) authorizes its Executive Director and General Counsel to make these views known to all interested parties.



BACKGROUND STATEMENT

In a recent letter to state Attorneys General, the Center for Auto Safety reported that 50,000 vehicles are repurchased annually as a result of lemon law arbitration or litigation. These figures do not include the vehicles which are returned to the automobile manufacturers through voluntary settlements in order to avoid potential arbitration or litigation. There have been numerous reported instances where these vehicles are then resold without disclosure to consumers.

Not all states have specific requirements regarding disclosure of a vehicle's lemon history and even fewer require that the vehicle's title be stamped or branded to indicate that it is a lemon law buyback. In those states where disclosures are required on the vehicle or the title, lemon vehicles can easily be transported to another state which has no such requirements and a new title can be obtained without the lemon disclosure. Even in the states where disclosure is required, there is currently no tracking system which could be used to determine if vehicles coming in from other states are lemon law buybacks.

For these reasons, it is believed that legislation which would establish uniform procedures among the states regarding disclosures, title branding and reporting of lemon law buybacks would be the most effective way to address this problem. The attached resolution supports mandatory disclosures in the resale of lemon vehicles in order that consumers will become more fully informed about the history of the used cars they purchase.

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NOTE

The attached prototype is draft legislation governing the resale of lemon law buyback vehicles for your review and consideration. This model resold lemons legislation, designed to mandate disclosure to consumers of a used car's lemon history, was prepared by an informal working group of assistant attorneys general listed below. What follows is a one page executive summary of the provisions of the prototype statute, followed by the prototype statute itself. Also attached is a more extensive analysis and commentary on the prototype law written by the working group. These materials are included for your information and can be used as a reference point for your own legislative initiatives.

The informal NAAG working group on resold lemons was comprised of Connecticut Assistant Attorney General Garry Desjardins, California Assistant Attorneys General Herschel Elkins and Susan Giesberg, Florida Lemon Law Arbitration Program Executive Director Phil Nowicki and Deputy Director Jan Smith, Illinois Assistant Attorney General Deborah Hagan, Indiana Assistant Attorneys General Steve Taterka and Joel Lyttle, Minnesota Mediator Bob Marcroft and Assistant Attorney General Tracey Smith, Missouri Assistant Attorney General Dan Doyle, New York Assistant Attorney General Sandy Mindell, Ohio Assistant Attorney General Ted Barrows, Tennessee Public Information Officer Leigh Ann Apple, Utah Assistant Attorney General Sheila Page and Consumer Information Coordinator Jo Brandt, Vermont Assistant Attorney General Jay Ashman, Virginia Assistant Attorneys General Ed Nolde and Frank Seales, Washington Lemon Law Administrator Richard Hubbard and NAAG Business Regulation Assistant Counsel Emmitt Carlton.



The Palm Beach Post

SUNDAY, JUNE 18, 1995

4 • 334 PAGE

DO YOU OWN A LEMON?

Despite a state law, few used-car buyers are told their cars' history.

By BETH REINHARD
Palm Beach Post Staff Writer

More than 3,000 drivers have unwittingly bought used cars that previous owners discarded under Florida's lemon law because of chronic problems.

State law requires manufacturers and dealers to provide disclosure forms warning the next buyer that the cars were returned and the reason why.

But a two-year investigation by state lemon law officials found that since mid-1992, only 6 percent of 3,400 buyers of resold lemons are known to have received the disclosure forms.

"It's a horrible track record," said Phil Nowicki, executive director of Florida's lemon law program.

The Florida Attorney General's Office, which is responsible for enforcing the 7-year-old lemon law, has never prosecuted a manufacturer or dealer for

reselling faulty cars to unsuspecting buyers, or imposed fines that could range from \$1,000 to \$10,000.



"I really bought a lemon?" asked Thomas Vinci of Boca Raton, when contacted by *The Palm Beach Post*. "They told me there was no problem with it at all."

"We bought that car for our daughter's 16th birthday," said Elizabeth Freedman of Parkland in Broward County, whose husband

works in the state attorney general's office — the agency that oversees the lemon law.

"They said it was just a trade in," said Philip Torocco of Cape Coral.

Please see LEMONS/6A



E.A. KENNEDY III/Staff Photographer

Allison Deem says her 1992 Mazda Protege would shift from third gear back into second on its own.

WHY BUY SECONDHAND LEMONS? GA



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What's next: Ways to help second owners of lemons

LEMONS

From 1A

Florida's lemon law program has ordered \$60 million in refunds for new vehicles for consumers since it was created in 1987. But the people who buy those lemons when they are resold are stuck with them.

"We've put a lot of energy into helping the first owner of a lemon," Nowicki said. "Now we have to figure out how to help the second owner."

Since mid-1992, when Florida began requiring disclosure forms, about 8,000 people have complained to either the state program or similar ones run by manufacturers that they had cars with persistent problems. The state estimates 3,400 of those were declared lemons and eventually resold as used cars — about 1,400 in Florida and 2,000 elsewhere.

The law requires dealers selling those cars to give buyers disclosure forms to sign and then send copies back to the state. Florida can't enforce that in other states, however.

But for the 3,400 resold lemons, the state has received only

200 forms.

Consumer advocates call the practice of reselling lemons without disclosure forms "lemon laundering" and say it happens nationwide. The Center for Auto Safety, a national consumer group, estimates 50,000 lemons are resold every year, usually without forms.

The center's executive director, Clarence Ditlow, said he believes manufacturers and dealers deliberately conceal a lemon's history because it would lower its resale value. The cars are sometimes showcased as demos or former executive cars.

"If they told the person the truth about the car, they'd have to knock \$3,000 or so off the price," he said. "That comes to \$150 million a year. . . . It comes down to economics, plain and simple."

The auto industry denies that it withholds disclosure forms from used-car buyers. Manufacturers say they are filling out the forms and transferring them with the cars. Used car dealers say they provide the forms to buyers.

"We have a thorough policy in place that requires disclosure of all reacquired vehicles, 100 percent of the time," said John Harmon,

spokesman for Ford Motor Co.

Nowicki, however, said his records show disclosure forms missing for cars of all makes.

A lemon may not go directly from manufacturer to used-car dealer. It may go to an auction, wholesale distributor or other dealer before it lands in the used-car lot, and Florida's law doesn't require manufacturers to track the form along the way.

"Somewhere the form is falling between the cracks, and there are many cracks," said F. Thomas Longerbeam, government affairs manager for the American Automobile Manufacturers Association in Tallahassee. "Is it the manufacturer, the dealer or the post office? I don't know."

Toyota Motor Sales sells all its Florida lemons through a Texas auction, said LaStanja Baker, dispute resolution manager. The auction sends Toyota a copy of the disclosure form with the signature of the buyer — usually a wholesale distributor. The company doesn't follow the form beyond that.

"That's the best we can do," Baker said.

And the next buyer?

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LEGISLATIVE INTENT SERVICE



Re-11

states, however.

But for the 3,400 resold lemons, the state has received only reacquired vehicles, 100 percent of the time," said John Harmon,

And the next buyer?

Several unknowing lemon owners, such as Vinci, Freedman and Torocco, said their cars are running fine. But others describe the same problems that previous owners reported.

Wilma Mislá of North Miami Beach said her 1991 Chevy makes a grinding noise when she brakes and leaks brake fluid. A West Palm Beach couple who owned the car before her also had brake problems and got their money back under the lemon law.

"I've been wondering why I was hearing these noises," said Mislá, a widow with two teenagers. "I could be risking my life and my kids' lives."

The state won't even consider a lemon-law complaint until the owner has tried at least four times to get the car fixed.

"There's no reason that the fifth time is the charm," said Ditlow, of the Center for Auto Safety. "You would think that on the fourth time, they took off the gloves and really tried to fix it."

Auto industry representatives said all lemons are repaired before they are resold. They also said the reported problem isn't always a defect, let alone a dangerous one.

"We've taken back cars because the owner didn't like the wind noise when the rear windows were rolled down," said Baker, of Toyota. "A lot of times the problem is just customer perception."

Tough to enforce

Florida's lemon law calls for a \$1,000 fine for failing to provide a disclosure form, but if that violation is considered an unfair and deceptive trade practice, the fine could be \$10,000 per offense.

Attorney General Bob Butterworth called the disclosure requirement a "lemon" because of

CERTIFICATE OF TITLE

STATE OF VERMONT DEPARTMENT OF MOTOR VEHICLES

VEHICLE IDENTIFICATION NO.		YEAR	MAKE	BODY TYPE	MODEL LINE	WEIGHT
		85	CHEV	20	CAN	
AZ. LEE	FUEL	NO. CYL.	NEW/USED	DATE PURCHASED		
	GAS	06	NEW	06/04/85		
DATE TITLED		TITLE NO.		ASSIGNMENT OF TITLE NO. VALIDATES THIS CERTIFICATE.		
06/20/86				6980		
NAME(S) & ADDRESS OF VEHICLE OWNER(S)						
BARRE, VT 05641						
FIRST LIENHOLDER NAME & ADDRESS				DATE OF 1 ST LIEN		
NORTHFIELD SAVINGS BK BOX 347 NORTHFIELD, VT 05663				01/09/86		
SECOND LIENHOLDER NAME & ADDRESS				DATE OF 2 ND LIEN		
RELEASE OF LIENS						
FIRST LIEN INTEREST IN THE ABOVE DESCRIBED VEHICLE IS HEREBY RELEASED		AUTHORIZED SIGNATURE		DATE		
		<i>[Signature]</i>		9-7-86		
SECOND LIEN INTEREST IN THE ABOVE DESCRIBED VEHICLE IS HEREBY RELEASED		AUTHORIZED SIGNATURE		DATE		

THIS VEHICLE WAS RETURNED PURSUANT TO LEMON LAW. DEFECT SUBSTANTIALLY IMPAIRS THE USE, MARKET VALUE, OR SAFETY. 9 V.S.A. CHAPTER 111

THIS CERTIFICATE IS PRIMA FIDE EVIDENCE OF OWNERSHIP, PLANNANT TO VERMONT STATUTES.

THIS VEHICLE DESCRIBED ABOVE IS SUBJECT TO THE LIENS ENUMERATED, IF ANY, BASED ON THE RECORDS ON FILE.

VOID IF ALTERED

PROTECTIONS VARY BY STATE

Florida has been unsuccessful in several attempts to require 'title branding,' which shows a vehicle has been returned under the lemon law. The branded title shown above is from Vermont. Florida does require that buyers receive a disclosure notice when they buy the resold lemons on used-car lots, but state officials believe 19 out of 20 buyers never see the paperwork.

THESE STATES BRAND TITLES: Alabama, California, Connecticut, Indiana, Iowa, Louisiana, New Jersey, New York, South Dakota, Utah, Vermont, Washington and Wisconsin.

THESE STATES REQUIRE DISCLOSURE FORMS ON ALL RESOLD LEMONS: Arkansas, Connecticut, Florida, Georgia, Indiana, Iowa, Maine, Maryland, New Jersey, New York, Utah, Vermont, Washington and Wisconsin.

Other states: Have lemon laws but do not require disclosure forms on every resold lemon-law vehicle.



The difficulty of enforcing it. Nowicki has met several times with Butterworth's staff to discuss the problems.

"We're not going to ignore this," Nowicki said. "We're going to do something that gets their attention."

But it's impossible for Florida to enforce disclosure requirements on most of its lemons because 60 percent are resold in other states.

That's a problem that needs to be addressed with national tracking of lemon-law cars, consumer advocates say. Two years ago, *Consumer Reports* documented that manufacturers resell lemons in states with less stringent disclosure requirements.

"If you have a weak lemon law, you will be a dumping ground," said Rosemary Shahan, president of Motors Voters, a safety group.

Lewis Goldfarb, assistant general counsel for Chrysler — one of the automakers cited by *Consumer Reports* — denies manufacturers try to skirt strong lemon law states.

"We simply sell cars where the market is," Goldfarb said.

Four states have penalized manufacturers or dealers for reselling lemons to unwitting buyers. California and Washington have fined General Motors a total of \$420,000, while Pennsylvania and New York have fined Chrysler more than \$2 million. California and Washington are also suing dealerships.

"Manufacturers will do what

'We have a thorough policy in place that requires disclosure of all reacquired vehicles, 100 percent of the time.'

**JOHN HARMON
Ford Motor Co.**

they can get away with," Ditlow said. "One they're caught, they tend to clean up their act."

'Title branding'

How can used-car buyers be protected? State officials and consumer advocates suggest stamping a warning on titles of cars declared lemons. But legislative proposals to require "title branding" in Florida have fizzled at least five times since 1988.

Under title branding laws, which have been enacted in 13 states, a car's title is stamped to say something like "Important: This vehicle was returned due to nonconformity pursuant to Chapter 681, Florida statutes."

When the car is resold, if a lemon-law disclosure form is not provided, the buyer or lender might notice the branded title.

"Title branding would do something about cars that are not fit to be on the road," said Rep. Al

Lawson. A title-branding bill that died this year.

This year's bill, cosponsored in the Senate by Robert Wexler, D-Boca Raton, made it farther than any previous measure — through one Senate committee and two House committees — before time ran out. But consumer advocates were pleased that, finally, car industry representatives had agreed to title branding.

The automobile lobby has historically opposed title branding, arguing that cars usually are fixed after they are returned under the lemon law and their titles should be clean. Furthermore, industry representatives point out that buyers who finance their cars never see the title — banks do.

Longerbeam, of the American Automobile Manufacturers Association, also questioned whether the cost of branding titles is worth it, since lemons are a small minority of the 1.2 million used cars sold by Florida dealers every year.

"You don't have a great, earth-shattering problem out there," Longerbeam said. "How much do you spend to protect that minority?"

But Nowicki and consumer advocates say title-branding and enforcement of disclosure requirements is worth it.

"As a matter of fairness," Nowicki said, "you should know what you're getting."

Staff librarian Michelle Quigley contributed to this report.

LEGISLATIVE INTENT SERVICE

WHO BUYS SECONDHAND LEMONS?

Using computer databases from the state lemon law program and current Florida vehicle registrations, *The Palm Beach Post* contacted a dozen people who bought used-cars whose original owners had returned the cars under the lemon law. Of those contacted, only one had been given a state-required form that disclosed the car's history. The *Post* did not tell the buyer of a car's specific defect listed in state records until the buyer described any problems. Several reported no problems.

'Just being nit-picky.'

ALLISON DEEM, 23

Secretary, Jupiter
Car: 1992 Mazda Protege

Deem bought a 1992 Mazda at Jupiter Dodge/Mazda four months ago. "I thought, 'Wow, what a cute little car!'" Deem said. "They made it sound like the former owner was just being nit-picky."

Hardly, responded the car's first owner, Josephine Graceffa of Tequesta. She had returned the car because of continual transmission problems.

"I was scared to pull out into traffic in that car," Graceffa said. "I don't see how they could have sold it to someone else."

The sales manager at Jupiter Dodge/Mazda, Reggie Levine, said he told Deem the car was a "buy-back," though Deem said he didn't explain it was bought back under the lemon law. Levine said he "wasn't aware of the disclosure form."

When she was contacted by *The Post*, Deem said she sometimes felt the car clunk into first gear or move from third back into second on its own.

After her car broke down on Dixie Highway two weeks ago, the dealership replaced her car with a 1995 model at no additional cost.

"I feel I deserved it because they sold me a car that wasn't dependable," Deem said. "They stabbed me in the back."

'I could be risking my life.'

WILMA MISLA, 38

Cosmetics Instructor, North Miami Beach
Car: 1991 Chevy Lumina

Misla said her 1991 Chevy makes a grinding noise when braking and leaks brake fluid. She didn't know that the West Palm Beach couple

who owned the car before her had recurring brake problems and received a full refund under the lemon law.

"I've been wondering why I was hearing these noises," said Misla, a widow and mother of two.

Joe Dotson, used-car sales manager at Kelly Chevrolet in Fort Lauderdale, said he never received a disclosure form when he bought Misla's car at the Florida Auto Auction of Orlando. A spokeswoman for the auction's owner, Manheim Auction in Atlanta, declined comment. (Note: The auction companies and *The Palm Beach Post* are owned by Cox Enterprises of Atlanta.)

'There wasn't anything wrong.'

GERMAN VEREMEYCHIK, 33

Jewelry maker, Boca Raton
Car: 1992 Mitsubishi Expo



Veremeychik

defects and got his money back under the lemon law. "The dealer said the car was a trade in and there wasn't anything wrong with it," Veremeychik said.

Veremeychik has noticed something that doesn't seem to work properly: his speedometer.

"It says I'm going 45, but I feel like I'm going faster," Veremeychik said. He has not taken it in for service.

As it turns out, his car was previously owned by a Tampa resident who reported a speedometer problem as well as other



THE LIFE CYCLE OF A LEMON

low
inspecting
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layer tend to
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1. Customer buys a new car from a dealer.

2. Car goes into the repair shop at least three times within first 18 months or 24,000 miles.

9. The manufacturer sells the car at auto auctions, to wholesalers or another dealer.

3. Owner contacts manufacturer, which makes another attempt to repair the problem.

8. The manufacturers say they make another attempt to repair the car.

10. The car ends up in a used car lot, where it is sold as a used car. Only 1 in 20 buyers ever sees the paperwork identifying the car as a lemon.

4. Car owner applies for arbitration under Florida's lemon law program or through the manufacturer's own program.

5. 75 percent of owners in state program and 2 percent in manufacturer's program receive refund of...

7. But somewhere after this point, the paperwork almost always disappears ... Along the way are several stops where everyone has a financial incentive not to disclose the previous problems with the car, which would lower its resale value.

6. The car is declared a "non-conforming vehicle" - that means a lemon. State law requires that disclosure form accompany the vehicle if it is resold. That way, a used-car buyer knows it was a lemon.

LATA INTERNATIONAL SERVICE

How Do You Know?

If you bought a used car that you suspect may have been returned under Florida's lemon law, obtain a 'resold vehicle reporting' form by calling (904) 488-4830 or writing to the Florida Attorney General, Lemon Law Section, The Capitol, Tallahassee, Fla., 32399-1050. After the office receives the form, it will notify you whether it has information about your car.

PROBLEMS, PROBLEMS

The 20 cars most likely to apply to Florida's lemon law program, and the most common reported defects. This is a weighted ranking that takes into consideration how common a particular model is in overall Florida registrations.

VEHICLE	MOST COMMON DEFECTS
1. Eagle Premier	Front-end noises
2. Volkswagen Passat	Power windows and locks
3. Jaguar XJS	Lights and warning devices
4. Mazda RX7	Stalls when air-conditioning is on
5. Hyundai Sonata	Air-conditioning, seat belt design
6. Mercury Capri	Convertible top leaks, charging system
7. Hyundai Scoupe	Transmission and clutch
8. Mercedes-Benz 400/420	Front end vibrates and shimmies
9. Dodge Ramcharger	Rear door leaks water
10. Volkswagen Jetta	Exhaust and emissions; sluggish
11. Pontiac Firebird	Water leaks, engine rages
12. Mazda Navajo	Front end vibrates, makes noise
13. Chevrolet Camaro	T-top/hatch leaks, rear axle
14. Chevrolet Corvette	Hard to start, oil leaks
15. Mazda 929	Engine and wind noises
16. Mercedes-Benz 500/560/600	Front end, steering wheel vibrates
17. Jaguar XJ6	Loses electrical power, stalls
18. Jeep Grand Wagoneer	Engine hesitates, runs rough
19. Dodge Ram Truck	Poor mileage, gas leaks
20. Volkswagen Cabriolet	Lacks power

How To Avoid Laundered Lemons

- Listen for terms such as 'repurchased,' 'reacquired' or 'bought back' that could signify a car was returned under a lemon law program.
- Contact the previous owner of the used car, who should be listed on the car's title at the dealer's office.
- Be wary of a used car with low mileage or designated as 'executive car' or 'demo' — there may be another reason for the low mileage.
- Watch out for a car that was shipped from another state; states' consumer laws don't cross boundaries.
- Ask for the car's repair orders.
- Buy cars with a warranty from the dealer or manufacturer, not those marked 'as is.'
- Read all documents before you sign them and get copies.

SOURCE: Consumer Reports, Motor Voter Press; Florida Attorney General's Office

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CALIFORNIA MOTOR CAR DEALERS ASSOCIATION

GOVERNMENT AFFAIRS OFFICE

915 L Street, Suite 1480, Sacramento, CA 95814
916/441-2599 • FAX 916/441-5612

May 15, 1995

The Honorable Curt Pringle
Chairman, Assembly Appropriations Committee
Room 2114
The State Capitol
Sacramento, CA 95814

Re: A.B. 1381 (Speier) Warranty Buyback Disclosure
Position: SUPPORT/SPONSOR
Hearing: Wednesday, May 17, 1995, Assy. Appropriations Comm.

Dear Curt:

The California Motor Car Dealers Association (CMCDA) is a statewide trade association that represents the interest of over 1400 franchised new car and truck dealer members. CMCDA members are primarily engaged in the retail sale of new and used motor vehicles, but also engage in automotive service, repair, and parts sales. We are writing today to register our support for A.B. 1381, which would revise and expand the Automotive Consumer Notification Act.

The Automotive Consumer Notification Act [Civil Code Section 1795.8], as presently worded, requires dealers and manufacturers to brand the title of "lemon" buybacks and disclose to the subsequent purchaser the fact that the vehicle was previously returned because of a defect. However, the "triggering language" presently contained in the Automotive Consumer Notification Act (*"any dealer or manufacturer, selling a motor vehicle in this state that is known or should be known to have been required by law to be replaced or required by law to be accepted for restitution by a manufacturer due to the inability of the manufacturer to conform the vehicle to applicable warranties"*) does not provide an objective standard for determining what constitutes a "lemon" or when that fact "is known or should be known." In the absence of an adjudication by a court or arbitrator, or some other "bright line" standard, reasonable minds may, and often do, differ on whether any particular vehicle has a nonconformity that substantially impairs its use, value, or safety and, what constitutes a "reasonable number of repair attempts".

LIS - 11b



May 15, 1995

Page 2

A.B. 1381 is intended to remove all of the ambiguities contained in the current Automotive Consumer Notification Act; provide clarity and predictability to present title branding requirements; and, broaden current buyback disclosure requirements. In addition, A.B. 1381 would require manufacturers to provide proof of title branding in order to obtain a tax refunds from the Board of Equalization for a "lemon" buyback.

We urge your "Aye" vote on A.B. 1381 when it is heard before the Assembly Appropriations Committee on Wednesday, May 17, 1995. Should you or your staff have any questions or comments, please do not hesitate to give me a call.

Very truly yours,

Peter K. Welch
Director of Government
and Legal Affairs

PKW:la

cc: The Honorable Jackie Speier
Members of the Assembly Appropriations Committee
Consultants to the Assembly Appropriations Committee
Ralph Simoni, California Advocates, Inc.

(800) 666-1917

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2353



MOTOR VOTERS

1500 West El Camino Avenue, Suite 419 • Sacramento, CA 95833-1945 • Tel: 916-920-5464 • Fax: 916-920-5465

June 12, 1995

Honorable Charles R. Calderon
Chairman, Senate Judiciary Committee
Room 4039
State Capitol
Sacramento, CA 95814

Re: AB 1381 (Speier), sponsored by California Motor Car Dealers Association:
OPPOSITION

Dear Senator Calderon:

Motor Voters is a non-profit, non-partisan auto safety organization founded in Lemon Grove, California in 1979. Motor Voters is coordinating a national effort to curb illegal "lemon laundering" of defective, often grossly unsafe vehicles.

Motor Voters is opposed to AB 1381 (Speier) because it would weaken existing California law regarding the disclosure of lemon vehicles. It would create new loopholes and weaken private remedies available to victims of lemon laundering.

AB 1381 is quite similar to another measure, also sponsored by the California Motor Car Dealers Association, which was vetoed by Governor Deukmejian in 1990. A copy of his veto message is attached.

At the time, the DMV had initiated an investigation into lemon laundering by GM and 34 GM dealers. That case resulted in GM's paying a \$330,000 settlement, and the DMV's suspending the licenses of several dealerships.

Currently, the DMV has a case pending against Chrysler for the same practice. Chrysler has already used the existence of this bill in an attempt to bolster its defense.

Manufacturers and dealers have repeatedly tried in other states to weaken disclosure laws, without success. Instead, the trend has been toward strengthening protections in this area. Currently, 37 states have enacted lemon disclosure laws. If California passes AB 1381, our state would become a dumping ground for lemons from states with stronger statutes.

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6-2

MOTOR VOTERS
AB 1381: OPPOSITION

Members of the Assembly Transportation Committee voted unanimously to close the loopholes and restore the penalties. However, the industry language, taken as author's amendments, does not accomplish those goals.

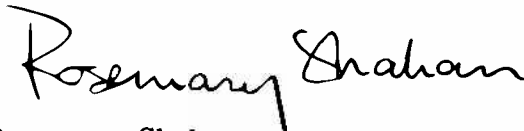
Proponents claim that the bill is good for consumers because it would require disclosure. However, disclosure is already required under existing law--for all lemon vehicles bought back under California's lemon law or a similar statute in another state.

Proponents also claim the bill is good for consumers because it would require branding on the lemon vehicles. However, the brand would not be on the windshield, as other states require. Instead, it would be on the door jam, where it is likely to go unnoticed. Thus, the branding would likely end up being used against unsophisticated used car buyers, to allow dealers the defense that the consumer should have known the vehicle was a lemon.

Finally, the bill eliminates existing penalties for fraud in lemon laundering cases.

Motor Voters strongly urges that the legislature not adopt this bill, which would allow criminal misconduct to go unpunished.

Respectfully,



Rosemary Shahan
President

(800) 666-1917

LEGISLATIVE INTENT SERVICE



CLARKSON & BOATMAN

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June 12, 1995

Honorable Charles M. Calderon
Chairperson, Senate Judiciary Committee
Room 4039, State Capitol
Sacramento, CA 95814

Re: AB 1381 and 1383.

Dear Senator Calderon:

I am disturbed to hear that the auto manufactures are, again, trying to water down California's Lemon Law through the two above-mentioned bills. The elimination of the currently available civil penalty is a frightening prospect in light of the arrogance and indifference with which my clients have met when attempting to negotiate repurchase or replacement of their lemons. To eliminate the civil penalty would simply encourage manufacturers to avoid their moral and legal obligations to purchasers of lemons, confident in the fact that, if the consumer has the persistence and resources to pursue their claims, the manufacturer will only be required to do later what it should have done earlier. I like to analogize to a burglar who, when caught, faces only the sanction of being required to return the property taken from the victim. Were this the only potential threat, the burglar would have no disincentive to stop his aberrant behavior. The same applies to auto manufacturers in the Lemon Law context.

By attempting to create a state-run arbitration program, the manufacturers are simply seeking an exemption from the provisons of the Song-Beverly Consumer Warranty Act. Automobiles are among the most expensive of "consumer products" currently covered by the Act. To remove vehicles from the perview of the Act would deal a large setback to consumers. Additionally, it appears that this is merely a springboard to later amending the bill to require this narrow class of wronged consumers to go through this arbitration process before seeking other available remedies.

Finally, AB 1381 is legislation in precisely the opposite direction that legislation is needed. There is an ongoing problem with the "laundering" of lemon vehicles and the refusal by manufacturers to

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Honorable Charles M. Calderon
June 12, 1995
Page 2

comply with disclosure requirements when a vehicle is repurchased from a complaining consumer. Weakening the existing provisions in this area would serve absolutely no useful purpose other than to encourage fraudulent behavior.

I urge you to oppose these two measures which will be coming before your committee in the next few weeks.

Yours very truly,



PHILIP R. CLARKSON

lgb





Consumer Federation of America

June 13, 1995

Honorable Charles M. Calderon
Chairman, Senate Judiciary Committee
California State Senate
PO Box 942848
Sacramento, CA 94248-0001

RE: AB 1381 (Speier): OPPOSE

Dear Chairman Calderon:

The Consumer Federation of America (CFA) is a non-profit association of some 240 pro-consumer groups, with a combined membership of 50 million, that was founded in 1968 to advance the consumer interest through advocacy and education.

CFA urges your opposition to AB 1381 (Speier), sponsored by the California Motor Car Dealers Association, which would create new loopholes for auto manufacturers and dealers who engage in illegal "lemon laundering" of seriously defective vehicles. It would also limit the remedies currently available to consumers under existing law when manufacturers and dealers engage in fraudulent acts.

All 50 states and the District of Columbia have enacted "lemon law" statutes requiring auto manufacturers to repurchase vehicles with major defects that the manufacturer is unable or unwilling to repair. The Center for Auto Safety estimates that over 50,000 vehicles are repurchased annually by manufacturers as a result of decisions in arbitration or legal settlements.

However, auto companies buy back the vast majority of lemons prior to a formal arbitration decision or court order. Such vehicles tend to be the most seriously defective ones, including vehicles with life-threatening safety defects such as faulty brakes or steering.

AB 1381 would narrow the universe of vehicles that have to be branded as lemons. It would limit disclosure to vehicles where an "express warranty dispute" exists, thus excluding defective vehicles repurchased by a voluntary agreement. CFA agrees with the National Association



STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **NIEDERMEIER v. FCA US**

Case Number: **S266034**

Lower Court Case Number: **B293960**

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2. My email address used to e-serve: **ctobisman@gmsr.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

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ADDITIONAL DOCUMENTS	Exhibits to Motion for Judicial Notice Volume 1 of 9
ADDITIONAL DOCUMENTS	Exhibits to Motion for Judicial Notice Volume 2 of 9
ADDITIONAL DOCUMENTS	Exhibits to Motion for Judicial Notice Volume 3 of 9
ADDITIONAL DOCUMENTS	Exhibits to Motion for Judicial Notice Volume 4 of 9
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BRIEF	Opening Brief on the Merits

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

6/1/2021

Date

/s/Chris Hsu

Signature

Tobisman, Cynthia (197983)

Last Name, First Name (PNum)

Greines Martin Stein & Richland LLP

Law Firm