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 9 OF 9, Pages 2359-2617 of 2617

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Attorneys for Petitioner LISA NIEDERMEIER

of Attorneys General (NAAG) Working Group on Lemon Resales, which noted that it is essential to require disclosure and branding of ALL voluntary buy backs. Otherwise,

> "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."
>
> --National Association of Attorneys General Working Group on Lemon Resales

While manufacturers and dealers claim that a significant percentage of vehicles they repurchase are "goodwill" buy backs, rather than truly defective vehicles, that is a smokescreen. CFA agrees with the NAAG Working Group's conclusion that "If there are goodwill repurchases, the numbers are not significant."

AB 1381 would also drastically weaken existing remedies for fraud and eliminate penalties designed to deter fraudulent acts perpetrated upon elderly or disabled consumers.

Thirty-seven states have adopted lemon branding/disclosure statutes. Unlike other states' statutes which require the brand to be conspicuously placed on the windshield, AB 1381 would allow manufacturers to obscure the brand on California lemons by placing it on the door jam. This could work to the disadvantage of less-sophisticated used car buyers who fail to notice the "lemon" brand.

If AB 1381 were enacted, it would serve as an open invitation for irresponsible auto manufacturers to dump lemons in California. It could also undermine the enforcement authority of the California Department of Motor Vehicles, which has a current action pending against Chrysler and has requested records from a number of other manufacturers.

California's motorists deserve protection from the illegal practice of lemon laundering. However, passage of AB 1381 would weaken current law and reverse a trend for states to adopt stronger statutes. Therefore, the Consumer Federation of America urges that you oppose AB 1381.

Sincerely,

Jack Gillis
Director of Public Affairs

AB 1381
AB 1383

Toni-Diane Donnet

ATTORNEY AT LAW

June 14, 1995

Honorable Charles M. Calderon
Chairman of Senate
Judicial Committee
California State Senate
P.O. Box 942848
Sacramento, CA 94248

RE: AB 1381 and AB 1383

Honorable Charles M. Calderon:

I am an attorney practicing in San Diego, California for the past nine and one-half years in the area of consumer litigation.

I am concerned with the import of the bills now to be voted upon and the diminished effect theses bills have upon consumers. I ask for you to vote against them and invite you to call my office to discuss my personal experience with the automobile and dealerships who are requesting passage of these measures.

AB 1183

It is difficulty, at best, for consumers to "go against" a manufacturer and request a buy-back after experiencing a prolonged period of dissatisfaction, inconvenience and numerous repairs for defects in their automobile. To place a New Jersey style arbitration in this state is to intimidate the already harmed consumer, who is living with the defective car. A review of the New Jersey arbitration statistics will establish it failures and why it should not be instituted into California's Song-Beverly Act. California's state-certified programs are imminently more successful as they stand.

Further, the willful provisions of the Act are only implemented when the Act is ignored. What message are you sending by removing such a provision? The basis of the Act at its inception was to protect consumers and equalize their rights. California's law, as stated, does what it purports to do. The fact that a manufacturer is only susceptible to double damages if the Act is ignored and consumer rights set aside is an **Incentive** to follow the law, nothing else.

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Further, by implicating the Consumer Legal Remedies Act at Civil Code 1781 into the Song-Beverly Act, you are creating future litigation for an overlap in burden's of proof. The Song-Beverly Act's wilful provisions are not beyond a preponderance of the evidence as required under the Consumer Legal Remedies Act, whose purpose is to protect consumers from deceptive practices or fraud; while the Song-Beverly Act deals with warranty litigation and requires a lesser burden of proof for a consumer to obtain his or her rights.

If an arbitration program is to be implemented in this state, fashion it after a successful model, like Washington State. The hearings are informal and consumer success is now at sixty-four percent. Not a single decision has ever been overturned on appeal.

AB 1381

The proposed amendments under this bill are a disgrace! I have personally represented four consumers this year in undisclosed buy-backs. It is a deceptive practice, a fraud and a deceit by the dealers and manufacturers involved **if** the buy-back is not disclosed.

Do we fail to tell someone of an accident because it occurred over six months ago? Doesn't the state of California believe that disclosure of **known** facts is germane to the sale of consumer goods in this state?

Are consumers who call and receive a buy-back as a result of negotiations going to have exempt buy-backs under this act because there is no writing? Should a manufacturer and/or a dealer have a lesser standard in this state than literally ever seller of consumer goods or real estate?

If a buy-back occurs it must be disclosed. I am currently representing someone with a falsified buy-back through General Motors. The truck's brakes failed and two people were taken to the hospital. Rather than disclosing numerous defects which were germane to the buy-back, General Motors and its dealership told my client a faulty air conditioner was the basis of the buy-back. Why should such practices be protected?

Accountability is the basis for the disclosure requirements as they are presently written. Keep them as they are and **do not change the law!!** If Song-Beverly was created to protect consumer interests, then think of the consumers now....they need your protection.

I would be glad to speak to you any time regarding these matters and my experience in consumer litigation with local dealerships and manufacturers.

Sincerely,

TONI-DIANE DONNET

CONSUMER ATTORNEYS OF CALIFORNIA

Representing consumers since 1962

Donald C. Green
Chief Legislative Advocate
Bob Wilson
Legislative Advocate
Frank Murphy
Legislative Advocate

Wayne McClean
President
Mary E. Alexander
President-Elect

Nancy Drabble
Legislative Counsel
Nancy Peverini
Associate Legislative Counsel
Lea-Ann Tratten
Legal Analyst

June 20, 1995

Assemblymember Jackie Speier
State Capitol, Room 4140
Sacramento, CA 94249-0001

RE: AB 1381 (Speier) OPPOSE UNLESS AMENDED

Dear Assemblymember Speier:

The Consumer Attorneys Of California has reviewed AB 1381, which is scheduled to be heard before the Senate Judiciary Committee on June 27, 1995. Unfortunately, we must oppose the bill unless it is substantively amended.

AB 1381 revises and recasts the Automotive Consumer Notification Act which requires vehicle manufacturers to notify consumers by branding "lemon" vehicles. CAOC agrees that consumers must be protected against dealers who repurchase lemons and fail to notify consumers about the fact they are buying a lemon. However, as currently written, the bill takes steps backwards in protecting those consumers.

We must oppose AB 1381 unless the following amendments are made to the bill:

The branding requirements must be modified to ensure adequate consumer awareness of lemons.

We urge amendments to two of the main provisions under the branding section detailed in Section One. The first requires branding when:

> "(1) The vehicle was reacquired after the buyer or lessee made a written request to the manufacturer to replace the vehicle or make a refund and the written request was made after either (A) the vehicle was the subject of four or more attempts by the manufacturer or its agents to repair the same nonconformity within one year from delivery of the new vehicle to the buyer or lessee of 12,000 miles on the odometer of the vehicle, whichever occurred first, or (B) the vehicle was out of service by reason of repair of non-conformities by the manufacturer or its agents for a

cumulative total of more than 30 calendar days since delivery of the vehicle to the buyer or lessee and within one year from delivery of the new vehicle to the buyer or lessee or 12,000 miles on the odometer of the vehicle, whichever occurred less. (Page 3, lines 31-page 4, line 5 of the June 14 version)

Specifically, we request (1) the deletion of the written request requirement and (2) that the requirements set out in (A) and (B) be modified so that consumers could more easily meet the burden. First, many consumers, especially the more unsophisticated and less educated consumers, do not make written demands to manufacturers. Most consumers are not sophisticated enough to know they can not trust manufacturers and that they must get everything in writing.

Second, the requirements set out in (A) and (B) are too stringent; this is a major step back from current law. Consumers have the right to know that their car is a lemon buyback whether or not it meets those specific requirements. The language was taken from existing law which gives consumers a presumption of a lemon; however, CAOC members estimate only about 20% of consumers who own lemons actually end up being able to assert the presumption. However, that does not necessarily mean the vehicle is not a lemon. The rest of the vehicles are still replaced or bought back as lemons.

For example, under current Civil Code Section 1793.2(d), if the manufacturer or its representative does not service or repair the goods to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer must replace or reimburse. This section, the heart of the lemon buy back law, sets out other situations wherein the manufacturer must buy back or replace; the presumption standards are different.

The second section which we oppose requires branding when a dealer knowingly purchases for resale a vehicle that has been reacquired in order to resolve an express warranty dispute. (Page 4, lines 28-35 of the June 14 version) This is a step back from current law which requires that the dealer "knew or should have known" before he or she is responsible for branding the vehicle.

We also would like to point out our concern with the six month provision found on page 4, line 15, but we understand from your Chief of Staff that the provision will be amended out.

We request an amendment stating that the chapter's remedies are cumulative.

Although the bill contains language stating that the disclosure requirements are in addition to other notice requirements, it is not clear that the remedies are cumulative. We request the addition of language, identical to that found in Civil Code Section 1790.4 which states:

> The remedies provided by this chapter are cumulative and shall not be construed as restricting any remedy that is otherwise available.

This language clarifies that other remedies, such as those for fraud, are available.

The bill should include captive finance companies.

Our members have encountered problems of manufacturers arranging for their captive finance arms (GMAC, Ford Credit, Chrysler Credit, etc.) to repurchase lemon vehicles and avoid disclosure requirements. We recommend amendments which makes it clear that finance companies owned or controlled by manufacturers should be considered agents of the manufacturers.

Specifically, we request the addition of a new definition to Civil Code Section 1791 (v):

> (v) "Captive finance company" means any corporation owned or controlled by a manufacturer which is engaged in the business of extending credit to buyers or lessees of motor vehicles.

Conforming changes should be made at page 3, line 17, subsection (c) and at page 4, line 20, subsection (d) after "Any manufacturer" add "or captive fiance company." Similarly, changes should be made at page 6, line 28, subsection (c),after "manufacturer" add "captive finance company." The same should be done wherever "manufacturer" appears on pp. 6-7 of the new Civil Code Section 1793.25.

If you or a member of your staff would like to discuss this issue further, please feel free to contact me or one of our legislative representatives in Sacramento.

Sincerely,

Wayne McClean

Wayne McClean
President

cc: Senate Judiciary Committee

AB 1383

Consumer Action

116 New Montgomery Street, Suite 233
San Francisco, CA 94105
(415) 777-9648

Southern California Office
523 West Sixth Street, Suite 1105
Los Angeles, CA 90014
(213) 624-4631

20 June 1995

Honorable Charles M. Calderon
Chairman, Senate Judiciary Committee
Room 4039, State Capitol
Sacramento, California 95814

RE: AB 1381 and AB 1383 (Speier)

Dear Senator Calderon:

Consumer Action, a non-profit consumer education and advocacy organization, strongly urges that you ***oppose*** AB 1381 and AB 1383, both of which would severely weaken existing consumer protections under California's Lemon Law.

Californians need a stronger lemon law, not a weaker one. Auto sales and repair complaints consistently top the list of complaints California consumers register with the Department of Consumer Affairs and on our Consumer Action statewide consumer hotline. All too often, auto manufacturers and dealers continue to evade responsibility for defective products. This causes great hardship for vehicle owners, who rely upon their cars and trucks daily in order to function in our auto-dependent society.

AB 1381, sponsored by the California Motor Car Dealers Association, would create loopholes for the most seriously defective lemon vehicles. It would permit manufacturers to deceptively portray lemons as "goodwill" buybacks. It can only be assumed that the dealers would have us all believe that the only reason people would have for returning a car was because they didn't like the colour. This is suspect at best and disingenuous at its worst. According to the National Association of Attorneys General, it is imperative to include "voluntary" repurchases among vehicles that are branded as lemons. Otherwise, "manufacturers would be able to avoid any 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."

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AB 1381 would also eliminate existing penalties for fraud when lemons are resold without disclosure. Passage of AB 1381 would undermine the DMV's enforcement authority, a particular concern since the agency has a case pending against Chrysler.

AB 1383 would exempt auto manufacturers from the penalties courts may award consumers under the Song-Beverly Consumer Warranty Act. This would be a giant step backward. It would remove any clout consumers have when manufacturers willfully fail to honor their warranty obligations. Even with an arbitration program in place, civil penalties are necessary as a deterrent to discourage egregious behaviour such as tampering with vehicles, refusal to inspect a vehicle, or refusal to even attempt a repair. Ford demands that consumers sign a waiver of their legal rights before they will agree to repair a vehicle still under warranty; the dealer indicates that they are instructed to do this by the manufacturers to avoid legal action. (See enclosure) Manufacturers wishing to avoid a civil penalty simply have to honor their warranty.

While the existing lemon law is far from perfect, it does provide consumers far greater protection that they would receive under AB 1381 and AB 1383.

For the reasons stated above, we urge that you vote ***no*** when these measures come before you for a vote.

Thank you for your consideration.

Sincerely,

Cher McIntyre
Associate Director of Advocacy

cc: Members, Senate Judiciary Committee

Enclosure (1)

CLM/dt

CENTER FOR AUTO SAFETY
2001 S STREET, NW SUITE 410 WASHINGTON, DC 20009-1160 202-328-7700

July 5, 1995

VIA FAX AND FIRST-CLASS MAIL

Gordon Hart
c/o The Honorable Charles M. Calderon
Chairman, Senate Judiciary Committee
Room 4039, State Capitol
Sacramento, CA 95814
Fax No. 916-327-8755

Dear Mr. Hart:

It has come to our attention that some amendments to AB 1381, Assemblyperson Jacqueline Speier's lemon-labelling bill, have recently been proposed. We would like to take this opportunity to make our views on the changes known to you. Specifically, we have comments on two aspects of the proposed amendments: (1) the substitution of the phrase "factory buyback" for the term "lemon buyback;" and (2) the new and narrower language defining the scope of the labelling requirement. The following addresses each concern in turn.

First, the designation "factory buyback" is euphemistic. Moreover, manufacturers and dealers can use the new label to resell lemons at higher prices to unwary consumers. The term does not carry with it the import necessary to place the consumer on guard to the defect in the vehicle. The proposed language will make used lemons more acceptable to used car buyers, and thus works at cross purposes with the legislation. The reason labelling is necessary is to warn consumers that the vehicle is unsafe and unreliable. The phrase "lemon buyback" does precisely that. It denotes that the vehicle suffers from at least one problem which the manufacturer has been unable to cure. "Factory buyback," on the other hand, is so opaque as to be meaningless to a buyer. The proposed substitution would thus serve to defeat the statutory purpose.

Second, the new language proposed for § 1(c) of the bill, while less cumbersome than the current wording, exempts from the purview of the labelling requirement most of the very worst lemon vehicles. The new § 1(c) limits the requirement to those vehicles that were "required to be replaced or accepted for restitution due to the manufacturer's inability to conform the vehicle to applicable warranties . . . ." As we read this passage, it appears that only vehicles repurchased pursuant to an arbitration decree or court order would fall under this section. The proposed amendment misses the worst lemons, cars the manufacturer buys back because the vehicle is so clearly defective that the manufacturer does not want to waste the time and expense of disputing the consumer's right to compensation. As we have pointed out earlier, the current

AB 1381 is too narrow in scope. The limitation contained in the amendment, however, would strip the bill of even the modest protections it affords consumers as it now reads. We cannot overstate the dangers of further backsliding in this regard.

In light of the foregoing, we strongly urge you to consider in your analysis the extent to which the proposed amendments to AB 1381 would disserve the interests of the citizens of California. To illustrate just how big is the consumer protection gap between AB 1381 and similar laws in other states, witness Ohio's lemon resale statute. Not only does Ohio demand title branding, but it also absolutely bars the resale of vehicles within the state repurchased by the manufacturer as "safety lemons," i.e., those cars with one unsuccessful repair of a defect relating to the basic safety of the vehicle.

If you have any questions in this matter, please do not hesitate to contact either Clarence Ditlow, our Executive Director, or me at 202-328-7700. We look forward to hearing from you.

Sincerely,

Robert A. Graham
Staff Attorney

SB 1381
SB 1383

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July 5, 1995

CHARLES M. CALDERON, CHAIR
Senate Judiciary Committee
State Capitol, Room 4039
Sacramento, California 95814

RE: Lemon Law Amendments (SB 1381 and 1383 to be heard on July 11, 1995)

Dear Mr. Calderon,

I understand that you will be voting on these amendments soon. I believe that the civil penalty provision of the Song-Beverly Act is the encouragement that the automobile manufacturers need in order to take seriously their obligations. As you may know this penalty can be up to two times the amount of the consumers damages which include the out-of-pocket expenses. I think that Detroit would like to see an end to this encouragement so it can be business as usual as it was in the 70's.

I think this will not help consumers but it will allow the car manufacturers to ignore consumers who have problems with lemon cars.

Very truly yours,

Lawrence J. Hutchens

P.S. I have included a copy of a recent case which shows what the car manufacturers are sometimes like when they deal with new car buyers.

COMMERCIAL LAW

Leased Demonstrator With Full Manufacturer's New-Car Warranty Qualifies as New Motor Vehicle.

Cite as 95 Daily Journal D.A.R. 6751

LISA A. JENSEN,
Plaintiff and Appellant,
v.
BMW OF NORTH AMERICA, INC.,
Defendant and Appellant.

No. C018430
(Super. Ct. No. S-2256)
California Court of Appeal
Third Appellate District
(Placer)
Filed May 26, 1995

APPEAL from a judgment of the Superior Court of Placer County. J. Richard Couzens, Judge. Affirmed in part and reversed and remanded with directions in part.

Kemnitzer, Dickinson, Anderson & Barron, and Mark F. Anderson, for Plaintiff and Appellant.

Taylor & Hodges, and Berta Peterson-Smith, as Amici Curiae on behalf of Plaintiff and Appellant.

Lewis, D'Amato, Brisbois & Bisgaard, and Claudia J. Robinson and Henry D. Nanjo, for Defendant and Appellant.

Robert W. Beck and Kristine J. Exton, as Amici Curiae on behalf of Defendant and Appellant.

Lisa Jensen sued BMW of North America, Inc., for willful violation of the Song-Beverly Consumer Warranty Act (Civ. Code, § 1790 et seq.)[1/] and the Magnuson-Moss Warranty Act (15 U.S.C. § 2301 et seq.). She alleged the low mileage 1988 BMW she leased in 1989 was subject to the manufacturer's new car warranty, but BMW refused to replace the vehicle or refund her money when it could not repair defects in the braking system.

The jury returned a verdict in favor of Jensen and awarded her $29,351 in damages. It also imposed a $58,702 civil penalty against BMW. The court denied BMW's motions for judgment notwithstanding the verdict and for new trial. Plaintiff and defendant appeal.

The principal issue in BMW's appeal is whether Jensen's vehicle is a "new motor vehicle" within the meaning of section 1793.22, subdivision (e)(2). BMW also argues the court committed instructional error and supplied the jury with a defective special verdict form, Jensen's attorney committed misconduct by referring to the "Lemon Law" in examination and argument, the civil penalty authorized in section 1794, subdivision (c), is subject to a one-year limitations period, and there is insufficient evidence to support the verdict and civil penalty.

In her appeal, Jensen contends section 1794, subdivision (d), authorizes an award of expert witness fees in addition to costs. We agree and remand the case for further proceedings related to that award. We affirm the judgment in all other respects.

FACTUAL BACKGROUND

In response to a newspaper ad for BMW demonstrators, Jensen leased a 1988 BMW 528e from Stevens Creek BMW Motorsport in Santa Clara in January 1989. The odometer read 7,565 miles at the time of the lease. The salesman told Jensen the car had been used as a demonstrator for the dealership. He also said she would get the 36,000-mile warranty on top of the miles already on the car, and gave her the warranty booklet. The dealer wrote "factory demo" on the credit application.

Unknown to Jensen, Stevens Creek BMW obtained the car at the Atlanta Auto Auction the month before. It had been owned by the BMW Leasing Corporation and registered in New Jersey.

The brake problem surfaced a few weeks after Jensen took delivery of the car. She was traveling between 55 and 60 miles per hour on a Bay Area freeway when the car in front of her braked suddenly. Jensen hit her brakes, and the steering wheel began to shake. She felt like "the tires were going to fall off the car."

Jensen took the car to Stevens Creek BMW for repair on March 20, 1989. The dealership was unable to locate the problem and made no repairs.

The brake shimmy recurred after Jensen moved to Auburn later in the spring of 1989. She took the car to Roseville BMW for brake repairs on five occasions between July 1989 and January 1991. During that period, the dealership replaced brake system rotors, brake pads, and other brake parts. The brake shimmy disappeared after each repair, but showed up intermittently after a few thousand miles. At trial, Chris Hearty, the service manager for Roseville BMW, acknowledged he was unable to solve the brake problem.

Jensen stopped driving the car in August 1991. She told Rolf Hanggi, BMW's district service manager, she wanted her money back or a different car. Jensen met with BMW representatives at Roseville BMW in October, November, and December 1991 to discuss the various options. Roseville BMW loaned Jensen a model 325i on a temporary basis.

At the third and final meeting in December 1991, Jensen presented a letter requesting refund of her original down payment, lease payments and other fees, or replacement of the car with credit for the original down payment and lease payments. She preferred a refund, but Hearty and Hanggi refused to discuss that option.

Instead, BMW promised to get Jensen another car under a trade assistance program. However, BMW's proposed $2,000 contribution to trade assistance did not cover the payoff on Jensen's 528e. Jensen doubted she could qualify for the same lease due to recent changes in her financial condition. Hanggi assured Jensen her credit-worthiness was not an issue. Two days later Hanggi said she failed to qualify for a lease on a 325i. He offered to change the brake pads and discs again, and replace all four tires on the 528e. Jensen refused BMW's offer. Roseville BMW picked up the loaner, and Jensen returned her car to storage. She filed suit against BMW in April 1992.

At trial, BMW introduced evidence the brake shimmy was caused by Jensen's abusive driving style and her failure to maintain the vehicle. However, no one told Jensen there was a problem with her driving style or maintenance practices when she took her car to Roseville BMW for repair. Jensen produced a BMW technical service bulletin, dated October 1990, which alerted dealers about brake problems like those found in her car.

DISCUSSION

I

The Song-Beverly Consumer Warranty Act

The Song-Beverly Consumer Warranty Act (the Act) represents the Legislature's response to the increasing exploitation of express warranties in product advertising. (See Comments, *Toward an End to Consumer Frustration – Making the Song-Beverly Consumer Warranty Act Work* (1974) 14 Santa Clara L.Rev. 575, 580.) If a manufacturer elects to provide an express warranty for consumer goods such as motor vehicles, the Act protects buyers in a number of ways.

The warranty must set forth its terms in "readily understood language, which shall clearly identify the party making such express warranties, . . ." (§ 1793.1, subd. (a)(1).) The manufacturer is required to maintain service and repair facilities in California. (§ 1793.2, subd. (a).) Moreover, "[i]f 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 shall either promptly replace the new motor vehicle . . . or promptly make restitution to the buyer . . . ." (§ 1793.2, subd. (d)(2).)

A buyer of consumer goods who is damaged by the manufacturer's failure to comply with the Act may bring an action to recover damages. If the buyer proves the violation was willful, "the judgment may include, in addition to [damages], a civil penalty which shall not exceed two times the amount of actual damages." (§ 1794, subd. (c).)

II

BMW's Appeal

A. Jensen's BMW Was a "New Motor Vehicle."

Section 1793.22, subdivision (e)(2), defines a "new motor vehicle" as "a new motor vehicle which is used or bought for use primarily for personal, family, or household purposes. *'New motor vehicle' includes the chassis, chassis cab, and that portion of a motor home devoted to its propulsion,* but does not include any portion designed, used, or maintained primarily for human habitation, *a dealer-owned vehicle and a 'demonstrator' or other motor vehicle sold with a manufacturer's new car warranty* but does not include a motorcycle or a motor vehicle which is not registered under the Vehicle Code because it is to be operated or used exclusively off the highways. A 'demonstrator' is a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type." (Emphasis added.)

At issue in BMW's appeal is the court's pretrial ruling Jensen's car came "within a new car definition and [was] entitled to new car protections of the Song-Beverly Act." Both parties and the amici assert the language of the statute is clear; they disagree on its meaning.

BMW maintains section 1793.22, subdivision (e)(2) clearly describes five categories of "new motor vehicles" to include the chassis, chassis cab, the portion of a motor home devoted to propulsion, a dealer-owned vehicle, and a demonstrator. It contends the phrase "or other motor vehicle sold with a manufacturer's new car warranty" clarifies the word "demonstrator" and is not intended as a separate category.

BMW says the Legislature "could not have intended for the language to mean the equivalent of '*every* motor vehicle sold with . . . any remainder of the manufacturer's new car warranty' as such an interpretation would be detrimental to the interests of consumers." (Emphasis in original.)

Jensen argues the plain language of the statute sets forth six categories of "new motor vehicles." She says the Legislature intended the phrase "other motor vehicle sold with a manufacturer's new car warranty" as a "separate category of vehicle with no history of use by a manufacturer's employee, as a daily rental car or as a demonstrator."

The key to statutory interpretation is applying the seemingly plastic rules of construction in proper sequence. (*Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1238.) First, we must examine the actual language of the statute, giving the words their ordinary, everyday meaning. (*Ibid.*) If the words are reasonably free from ambiguity and uncertainty, the language controls. (*Id.* at p. 1239; *Wingfield v.*

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(1972) 29 Cal.App.3d 209, 219.) If the meaning of the words is not clear, we must take the second step and refer to the legislative history. (*Halbert's Lumber, Inc. v. Lucky Stores, Inc., supra*, at p. 1239.) "The final step -- and one which we believe should only be taken when the first two steps have failed to reveal clear meaning -- is to apply reason, practicality, and common sense to the language at hand. If possible, the words should be
interpreted to make them workable and reasonable [citations], in accord with common sense and justice, and to avoid an absurd result [citations]." (*Id.* at pp. 1239-1240.)

We conclude the words of section 1793.22 are reasonably free from ambiguity and cars sold with a balance remaining on the manufacturer's new motor vehicle warranty are included within its definition of "new motor vehicle." The use of the word "or" in the statute indicates "demonstrator" and "other motor vehicle" are intended as alternative or separate categories of "new motor vehicle" if they are "sold with a manufacturer's new car warranty." (*White v. County of Sacramento* (1982) 31 Cal.3d 676, 680.) However, because the peculiar grammatical structure of this section makes BMW's argument at least superficially plausible, we also consider the legislative history.

Having reviewed the amendments to former section 1793.2, documents relating to those legislative proceedings, and the statutory scheme as a whole, we conclude the plain meaning and the legislative intent are one and the same.

The 1982 amendment to former section 1793.2 was popularly known as "The Lemon Law." Specifically designed to deal with defective cars, the amendment applied the "repair and replace" provisions of Song-Beverly to "new motor vehicles" bought for personal rather than commercial use. (Stats. 1982, ch. 388, § 1, p. 1720.)

In 1987, the Legislature clarified the scope of former section 1793.2, subdivision (e)(4)(B), by expressly including within the definition of "'New motor vehicle'" a "dealer-owned vehicle and a 'demonstrator' or other motor vehicle sold with a manufacturer's new car warranty" except a motorcycle, a motor home, or an unlicensed off-road vehicle. [2/] The 1987 amendment defines a demonstrator as "a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type." [3/] The 1987 amendments also clarified the manufacturer's responsibility on resale of vehicles returned under the Act, i.e., "lemons," requiring the manufacturer to disclose the nature of the nonconformity, correct the nonconformity, and "warrants to the new buyer or lessee in writing for a period of one year that the motor vehicle is free of that nonconformity." (Stats. 1987, ch. 1280, § 2, pp. 4561-4562.)

In 1988, the Legislature added "the chassis, chassis cab, . . . that portion of a motorhome devoted to its propulsion, . . . " to the list of new motor vehicles covered by the provisions of the Lemon Law. (Stats. 1988, ch. 697, § 1, p. 2319.) Effective January 1, 1993, the definition was moved without change to section 1793.22, subdivision (e)(2). (Stats. 1992, ch. 1232, § 7.)

In 1991, the Legislature closed another loophole by expanding the scope of California law to cover vehicles returned under other states' Lemon Laws: "[N]o person shall sell, *either at wholesale or retail*, lease, or transfer a motor vehicle transferred by a buyer or lessee to a manufacturer pursuant to paragraph (2) of subdivision (d) or *a similar statute of any other state*, unless the nature of the nonconformity . . . is clearly and conspicuously disclosed to the prospective buyer, lessee, or transferee, the nonconformity is corrected, and the manufacturer warrants to the new buyer, lessee or transferee in writing for a period of one year that the motor vehicle is free of that nonconformity." (Stats. 1991, ch. 689, § 10, emphasis added.)

These amendments show the Legislature has systematically attempted to address warranty problems unique to motor vehicles, including transferability and mobility. As this case demonstrates, there is a national wholesale market for previously owned cars, including those under manufacturers' warranty.

In support of its reading of section 1793.22, subdivision (e)(2), BMW quotes from the 1987 Department of Consumer Affairs, Enrolled Bill Report: "This bill includes within the protection of the lemon law dealer-owned vehicles and 'demonstrator' vehicles sold with a manufacturer's new car warranty." (See Dept. Consumer Affairs, Enrolled Bill Rep. on Assem. Bill No. 2057 (Sept. 25, 1987) p. 5.)

Without citing authority in support of the proposition, BMW also contends the *absence* of legislative history means the Legislature did not intend to enact so sweeping an expansion in the warranty protection available under the Act. It says "[i]t is inconceivable that the manufacturers would have supported or remained neutral on the [1987] bill if the definition of 'new motor vehicle' had been expanded in the manner found by the lower court here." [4/]

We reject this contention. It is difficult enough to derive legislative intent from statements *actually made* in documents associated with the legislative process. As the court observed in *Halbert's Lumber*, "[The language of the statute] has been lobbied for, lobbied against, studied, proposed, drafted, restudied, redrafted, voted on in committee, amended, reamended, analyzed, reanalyzed, voted on by two houses of the Legislature, sent to a conference committee, and, after perhaps more lobbying, debate and analysis, finally signed 'into law' by the Governor. The same care and scrutiny does not befall the committee reports, caucus analyses, authors' statements, legislative counsel digests and other documents which make up a statute's 'legislative history.'" (6 Cal.App.4th at p. 1238.) Given the nature of the process, we conclude no inference of

legislative intent may be drawn from the lack of legislative history on this particular statutory provision.

Next, BMW argues the trial court's interpretation of the Act's definition of a "new motor vehicle" creates an "untenable conflict" with the general definitions of new and used vehicles found in Vehicle Code sections 430 and 665, [5] a result to be avoided in statutory construction. Whether a specific statute supplants a general statute is a question of legislative intent. Absent an express declaration, the legislative intent is evidenced by whether the two statutes deal with the same subject matter. (*People v. Hopkins* (1978) 78 Cal.App.3d 316, 319; see, e.g., *Gilbert v. Municipal Court* (1977) 73 Cal.App.3d 723, 726-727 [different legislative intent found where one statute addressed illicit drug use and the other addressed dangerous driving].)

The Vehicle Code definitions of new and used vehicles apply to the entire code, including regulation of vehicle sales, registration, and operation. (Veh. Code, § 100.) The Act deals with significantly different subject matter -- consumer protection through enforcement of express warranties. Accordingly, we find no inherent conflict given the different subject matter and statutory purposes.

BMW also argues the trial court's construction of the section 1793.22 definition of "new motor vehicles" to include used cars conflicts with the definition of "consumer goods" found in section 1791, subdivision (a). [6] The definition of "consumer goods" as "new products" dates back to 1971. (Stats. 1971, ch. 1523, § 2, p. 3001.) The Legislature added the more specific definition of "new motor vehicle" to former section 1793.2 in 1987. (Stats. 1987, ch. 1280, § 2, p. 4561.) Under well-recognized rules of statutory construction, the more specific definition found in the current section 1793.22 governs the more general definition found in section 1791. (*Natural Resources Defense Council, Inc. v. Arcata Nat. Corp.* (1976) 59 Cal.App.3d 959, 965.)

Our conclusion section 1793.22 includes cars sold with a balance remaining on the new motor vehicle warranty is consistent with the Act's purpose as a remedial measure. (*Kwan v. Mercedes-Benz of North America, Inc.* (1994) 23 Cal.App.4th 174, 184.) It is also consistent with the Department of Consumer Affairs's regulations which interpret the Act to protect "any individual to whom the vehicle is transferred during the duration of a written warranty." (Cal. Code Regs., tit. 16, § 3396.1, subd. (g).)

Addressing the final step in statutory construction which applies reason, practicality, and common sense to the language in question (*Halbert's Lumber, Inc. v. Lucky Stores, Inc., supra*, 6 Cal.App.4th at p. 1239), BMW argues the Legislature could not have intended to grant protection to every used car with a balance remaining on the new car warranty because of the economic impact on consumers. Specifically BMW maintains "[t]he subsequent owner would have the benefit of all of Song-Beverly's generous presumptions, without having undertaken the same risks as the purchaser of a really new car. Further, while the subsequent purchaser (perhaps third or fourth in the line of owners) will receive the benefit of these presumptions, the manufacturer will find it tremendously more difficult to raise defenses under Song-Beverly -- such as the defense that the owner used the vehicle unreasonably -- because it will be harder to trace multiple owners and determine their use or abuse of the vehicle." BMW contends the increased costs will result in higher car prices or the shortening of warranties to the statutory minimum. It argues "[t]hese alternatives would inevitably result in a manifest decline in trade and commerce in this state, creating great inconvenience for consumers. It is impossible that the legislature intended this highly intractable result." [7]

We acknowledge manufacturers such as BMW incur costs in honoring express warranties to service and repair the cars they sell in this state. We also presume the decision to offer a warranty of a specified length involves weighing the benefit of increased sales against the cost of providing service and repair for the effective duration of the warranty. It may be the equation factors in the impact of resale during the warranty period. However, as noted by BMW, manufacturers are free to change the terms of express warranties they offer. The Act merely reflects the Legislature's intent to make car manufacturers live up to their express warranties, whatever the duration of coverage.

B. Jensen Had a Cause of Action Against BMW.

Turning from the definition of "new motor vehicle," BMW argues Jensen had no cause of action against BMW because, pursuant to section 1795.5, an express warranty made by the dealer on a used vehicle does not impose liability on the manufacturer. It argues there was no privity between BMW and Jensen even if the car were viewed as a new vehicle under the Act. BMW maintains it made no representations to Jensen that she was covered by the remainder of the new car warranty. Jensen knew she was buying a used car "in spite of the fact that sales personnel of the leasing dealer apparently represented to [her] that the unexpired portion of the manufacturer's original limited warranty would be applicable to the vehicle." We reject this argument for several reasons.

First, the Act applies to new motor vehicle manufacturers who make express warranties. (§§ 1791.2 and 1793.2.) There is no privity requirement.

Second, to the extent BMW's argument challenges the jury's implied factual finding that Jensen's vehicle was covered by BMW's express written warranty, we conclude the record

supports that finding. The leasing dealer told Jensen she would receive the 36,000-mile warranty on top of the miles that were on the car. The salesman gave her a copy of BMW's warranty. Moreover, the word "WARRANTY" appeared prominently on Roseville BMW's repair orders. According to Hearty, the service manager, the dealership typically noted occasions when repairs were made for purposes of good will. No such notation appeared on the repair orders relating to Jensen's brakes. The jury apparently rejected testimony BMW provided Jensen warranty repair as a gesture of good will.

C. There Was No Instructional Error.

BMW argues the court erred in failing to read a portion of the civil penalty instruction and in rejecting proposed instructions on the burden of proof and warranty rights of lessees of used cars.

The court orally gave the jury a lengthy instruction on civil penalty which listed factors the jury could consider in determining whether BMW's decision "not to replace the vehicle or refund the purchase price was based upon a good faith and reasonable belief that the facts imposing such an obligation to replace or refund were not present in this case." The court inadvertently omitted one of the factors contained in the written instruction which read: "Whether BMW of North America reasonably believed that the vehicle conformed to the applicable express warranty and that there were no unresolved problems with the vehicle." When the omission was called to the court's attention, it directed the jury to go over page 45 of the written instructions (which had been provided to the jury), the second page of the civil penalty instruction.

We conclude BMW suffered no prejudice from the court's omission. Alerted to its possible mistake, the court immediately directed the jury to a specific page in the written instructions. We presume the jury followed the court's instruction to review the civil penalty instruction carefully. (See *People v. Harris* (1994) 9 Cal.4th 407, 426.)

The court rejected an instruction proposed by BMW concerning the warranty rights of lessees of used vehicles leased from a dealer with the balance of a manufacturer's new car warranty. BMW argues the instruction "would have correctly informed the jury that a manufacturer cannot be held liable under Song-Beverly unless it is first established that [the consumer] had leased a *new* motor vehicle." (Emphasis in original.) Inasmuch as the court ruled *in limine* that Jensen's car was "entitled to new car protections of the Song-Beverly Act," we conclude the court properly refused the proffered instruction.

BMW also contends the court erred in rejecting an instruction on the burden of proof of breach of express warranty. BMW cites a proposed instruction on breach of *implied* warranty, but we find no proposed instruction on the burden of proof of *express* warranty among the instructions offered and refused by the court. At trial BMW stipulated that all the instructions were satisfactory, with two exceptions. BMW's objections related to issues presented in jury instructions rejected by the court. We conclude BMW's stipulation applied to the instruction on express warranty because BMW did not propose a separate instruction on that issue.

D. References to the "Lemon Law" Did Not Constitute Misconduct.

Before trial, the court granted BMW's motion to exclude reference to the term "Lemon Law" or "lemon" in describing the litigation or Jensen's vehicle. However, Jensen used the term "Lemon Law" in response to a question on direct examination. Her attorney used the term on three occasions during cross-examination. He also referred to "Lemon Law" 11 times in closing argument. The record includes no reference to Jensen's car being a "lemon." BMW did not object to the use of the term "Lemon Law" by Jensen or her attorney.

BMW unsuccessfully raised the issue of attorney misconduct in its motion for new trial. The court did not find the references to "Lemon Law" an abuse of its *in limine* order and decided the alleged misconduct was insufficient to warrant a new trial. We conclude there was no error in this ruling because BMW failed to object to the use of the term at trial. (*Grimshaw v. Ford Motor Co.* (1981) 119 Cal.App.3d 757, 798.)

Misconduct of counsel in argument may not be raised on appeal absent a timely objection and request for admonition during trial *unless* the misconduct was too serious to be cured. (*Grimshaw v. Ford Motor Co., supra*, 119 Cal.App.3d at p. 797; 7 Witkin, Cal. Procedure (3d ed. 1985) Trial, §§ 207 and 209, pp. 209 and 211.) We decline BMW's invitation to excuse its failure to object.

First, although the court granted BMW's *in limine* motion regarding use of the term "Lemon Law" during trial, the Act is commonly referred to as the "Lemon Law." (See, e.g., *Ibrahim v. Ford Motor Co.* (1989) 214 Cal.App.3d 878, 882.) We are unpersuaded by the suggestion the term is inflammatory and prejudicial when used interchangeably with the name of the Act.

Second, we reject BMW's assertion it would have been futile to object to the use of the term by Jensen's attorney because the "proverbial bell had been rung." On this record there is no reason to conclude a timely objection and admonition would have been ineffective to cure whatever harm occurred, and, more importantly, to prevent further reference to what BMW considered an inflammatory term.

E. The Special Verdict Form Was Not Defective.

"In all cases the court may direct the jury to find a special verdict in writing, upon all, or any of the issues, . . ." (Code Civ. Proc., § 625.) "The special verdict must present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those conclusions of

fact must be so presented as that nothing shall remain to the court but to draw from them conclusions of law." (Code Civ. Proc., § 624.)

In this case, the court gave the jury a special verdict form which asked three questions:

"1. What is the total amount, if any, of actual damage suffered by plaintiff, less any amount directly attributable either to use by plaintiff prior to the discovery of the nonconformity or use by plaintiff after the date of her effective revocation of acceptance of the vehicle?

"2. Do you find that defendant BMW of North America, Inc., willfully failed to meet its obligations under the Song-Beverly Warranty Act? Yes _____ No ___

"3. If answer to question No. 2 is 'yes,' what amount do you award as a civil penalty (limited to a maximum of two times the amount specified in answer No. 1): _____."

BMW challenged the special verdict form in its motion for new trial on the ground it failed to submit for jury resolution the primary issue of BMW's liability under the Act. BMW argued the special verdict should have included the question, "Did defendant violate the Song-Beverly Warranty Act?" Counsel for BMW submitted a declaration stating he believed the court determined that the verdict form would begin with that question. He also stated the court clerk typed the final version of the special verdict form and neither counsel was given an opportunity to review it before it was submitted to the jury.

The court rejected BMW's challenge on grounds the parties approved the special verdict form and the form was not prejudicially defective. We conclude the court did not err in denying BMW's motion.

Without considering the effect of the stipulation, BMW waived any objection to the special verdict form by failing to object before the court discharged the jury. (*Woodcock v. Fontana Scaffolding & Equip. Co.* (1968) 69 Cal.2d 452, 456, fn. 2.) BMW's counsel acknowledged he learned of the alleged defect in the special verdict form for the first time when the verdict was read. His declaration does not explain the reason he did not object at that stage in the proceedings -- when the court could have corrected any defect in the form and sent the jury back to complete its deliberations.

In any event, the omission of a specific question on whether BMW violated the Act is not fatal to the validity of the verdict. The case went to trial on the first, second, and fifth causes of action involving violation of the Song-Beverly Consumer Warranty Act and its federal counterpart. The court instructed the jury it could award various items of damage "[i]f under the court's instructions, [it found] the plaintiff [was] entitled to a verdict against the defendant, . . ." In this context, the words "if any" in the first question of the special verdict form plainly indicate the jury was free to find no damage if it found BMW did not violate the Act. A finding of $29,351 in damages presupposes BMW's failure to comply with its statutory obligations. Moreover, the response "yes" to the second question indicates the jury concluded BMW not only violated the Act, but violated it willfully. The special verdict would have been ambiguous on the question of BMW's simple violation of the Act if the jury had responded "no" to the second question.

F. The Civil Penalty Is Not Time-Barred.

BMW argues the civil penalty under section 1794, subdivision (c), [8/] is barred by Code of Civil Procedure section 340, subdivision (1), which establishes a one-year limitations period for "[a]n action upon a statute for a penalty or forfeiture, when the action is given to an individual, or to an individual and the state, except when the statute imposing it prescribes a different limitation." An action for damages under the Act is governed by the four-year limitations period for breach of warranty in sales contracts set forth in Commercial Code section 2725. [9/] (*Krieger v. Nick Alexander Imports, Inc.* (1991) 234 Cal.App.3d 205, 211.)

BMW challenges the limitations period for the civil penalty provisions of the Act for the first time on appeal, claiming the issue is a question of law involving uncontradicted facts. Ordinarily, an appellate court will not consider procedural defects or erroneous rulings in connection with affirmative defenses "where an objection could have been, but was not, presented to the lower court by some appropriate method." (9 Witkin, Cal. Procedure, Appeal, *supra*, § 311, p. 321.) As BMW notes, there is an exception to the general rule "where the theory presented for the first time on appeal involves only a legal question determinable from facts which not only are uncontroverted in the record, but which could not be altered by the presentation of additional evidence." (*Redevelopment Agency v. City of Berkeley* (1978) 80 Cal.App.3d 158, 167.) Application of the general rule is a matter left to the appellate court's discretion. (*Ibid.*)

Here, there are conflicting inferences regarding the date the action accrued under the Act. BMW claims Jensen discovered the breach of express warranty in mid-1990 when she wrote BMW about the recurring brake problem. Jensen argues her right to a civil penalty accrued in December 1991 when BMW refused to provide reimbursement or replacement. We exercise our discretion to address the limitations question because under either factual scenario, the civil penalty would be available under the four-year limitations period found in Commercial Code section 2725 and barred by the one-year limitations period of Code of Civil Procedure section 340, subdivision (1).

We conclude the discretionary civil penalty under section 1794, subdivision (c), is governed by the four-year limitations period of Commercial Code section 2725. Code of Civil Procedure

6 Cal.App.4th at p. 1238), it is clear the Legislature intended the word "expenses" to cover items not included in the detailed statutory definition of "costs." However, because the scope of the term "expenses" is uncertain, we turn to legislative history for clues about the Legislature's intent. (*Ibid.*)

The Legislature added the "costs and expenses" language to section 1794 in 1978. (Stats. 1978, ch. 991, § 10, p. 3065.) An analysis by the Assembly Committee on Labor, Employment, and Consumer Affairs states: "Indigent consumers are often discouraged from seeking legal redress due to court costs. The addition of awards of 'costs and expenses' by the court to the consumer to cover such out-of-pocket expenses as filing fees, expert witness fees, marshall's fees, etc., should open the litigation process to everyone." (Assem. Com. on Labor, Employment & Consumer Affairs, Anal. of Assem. Bill No. 3374 (May 24, 1978) p. 2.)

In *Ripley v. Pappadopoulos* (1994) 23 Cal.App.4th 1616, we stated that the "Legislature has reserved to itself the power to determine selectively the types of actions and circumstances in which expert witness fees should be recoverable as costs and such fees may not otherwise be recovered in a cost award." (*Id.* at p. 1625.) In this case, the Legislature amended section 1794 to provide for the recovery of "costs *and* expenses." The legislative history indicates the Legislature exercised its power to permit the recovery of expert witness fees by prevailing buyers under the Act and within the meaning of *Ripley*.

The trial court denied Jensen's request for expert witness fees based on the legal determination those fees were barred by Code of Civil Procedure section 1033.5. For this reason, we remand the case to permit the court to determine whether the amount of fees sought by Jensen were "reasonably incurred by the buyer in connection with the commencement and prosecution of [this] action." (§ 1794, subd. (d).)

DISPOSITION

The portion of the judgment denying Jensen's request for expert witness fees is reversed and remanded with directions to determine whether those fees were reasonably incurred. The judgment is affirmed in all other respects. Jensen shall recover costs and attorney fees on appeal.

BROWN, J.

We concur:
SIMS, Acting P.J.
SCOTLAND, J.

Footnotes:

1. All statutory references are to the Civil Code unless otherwise specified.

2. Defective used cars are addressed by a separate section of the Act. (§ 1795.5.)

3. BMW notes the court in *Ibrahim* v. *Ford Motor Co.* (1989) 214 Cal.App.3d 878, 885, footnote 6, read the 1987 amendment as adding "dealer-owned 'demonstrator' vehicles and certain portions of motorhomes."

4. There is another equally plausible explanation for the Legislature's silence. If the Legislature and auto industry already assumed the Act applied to all vehicles sold with unexpired manufacturers' warranties regardless of whether there had been a transfer of ownership, the amended language would not involve a significant change in the scope of the statute.

5. Former Vehicle Code section 430, cited by BMW, defined "new vehicle" as "a vehicle constructed entirely from new parts that has never been sold and operated, or registered with the department, or registered with the appropriate agency of authority, or sold and operated upon the highways of any other state, District of Columbia, territory or possession of the United States, or foreign state, province, or country. . . ." The Legislature amended section 430 in 1994 to read: "A 'new vehicle' is a vehicle constructed entirely from new parts that has never been the subject of a retail sale, or registered with the department, or registered with the appropriate agency or authority of any other state, District of Columbia, territory or possession of the United States, or foreign state, province, or country."

Vehicle Code section 665 defines "used vehicle" as "a vehicle that has been sold, or has been registered with the department, or has been sold and operated upon the highways, or has been registered with the appropriate agency of authority, of any other state, District of Columbia, territory or possession of the United States or foreign state, province or country, or unregistered vehicles regularly used or operated as demonstrators in the sales work of a dealer or unregistered vehicles regularly used or operated by a manufacturer in the sales or distribution work of such manufacturer. . . ."

6. Under that provision, "consumer goods" means "any new product or part thereof that is used, bought, or leased for use primarily for personal, family, or household purposes, except for clothing and consumables. 'Consumer goods' shall include new and used assistive devices sold at retail."

7. Amici in support of BMW cite Lemon Laws in Connecticut, New York, and Wyoming which apply new vehicle protections to previously owned vehicles. Connecticut law covers "any person to whom [a] motor vehicle is transferred during the duration of an express warranty applicable to such motor vehicle." (Conn. Gen. Stat., § 42-179, subd. (a)(1).) New York recently amended its consumer warranty statutes to provide a right of action against the manufacturer where the motor vehicle was "subject to a manufacturer's express warranty at the time of original delivery and either (i) was purchased, leased or transferred in this state within either the first eighteen thousand miles of operation or two years from the date of original delivery, whichever is earlier, or (ii) is

registered in this state." (N.Y. Gen. Bus. Law, § 198-a.) Wyoming's definition of a "consumer" includes any person "[t]o whom a motor vehicle is transferred during the term of an express warranty applicable to the motor vehicle." (Wyo. Stat., vol. 9, § 40-17-101.) However, neither BMW nor its amici provide examples of consequences adverse to the manufacturers in states such as these where consumer warranty law provides coverage for previously owned vehicles still subject to the original manufacturer's warranty.

8. Section 1794, subdivision (c), provides: "If the buyer establishes that the failure to comply was willful, the judgment may include, in addition to the amounts recovered under subdivision (a), a civil penalty which shall not exceed two times the amount of actual damages. This subdivision shall not apply in any class action under Section 382 of the Code of Civil Procedure or under Section 1781, or with respect to a claim based solely on a breach of an implied warranty."

9. Commercial Code section 2725 reads in part: "(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. . . . [¶] (2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered."

10. Section 1790.3 reads: "The provisions of this chapter shall not affect the rights and obligations of parties determined by reference to the Commercial Code except that, where the provisions of the Commercial Code conflict with the rights guaranteed to buyers of consumer goods under the provisions of this chapter, the provisions of this chapter shall prevail."

11. See pages 30-31, *ante*.

12. We grant Jensen's request that we take judicial notice of the court's order awarding fees, costs, and prejudgment interest filed on May 23, 1994. (Evid. Code, § 452, subd. (d).)

KEENE & ASSOCIATES

MEMORANDUM

Date: 7/6/95

To: Gordon Hart, Senate Judiciary Committee

From: Scott Keene

Re: AB 1381 (Speier)

On behalf of my client, Toyota Motor Sales, USA, we wish to express our concern about three matters resulting from the July 3rd amendments to this measure.

1. Clarity -- In terms of the obligation to: retitle a buyback vehicle, request for DMV to brand the title, and affix a decal to such vehicles, it is only fair that manufacturers should be well-advised of their obligations. In the past, this area of the law has caused a great deal of confusion for manufacturers and consumers alike. Presumably, establishing some "bright line" criteria was the original purpose of this legislation. As the bill passed the Assembly, it contained four bright line situations that trigger the measure's operative provisions. Unfortunately, the July 3rd amendments struck the language containing the bright line criteria (Page 3 lines 27-39 and page 4, line 1-16). These bright line criteria was instead replaced with the paragraph (c) (page 4) which simply invites more uncertainty and potential litigation. Toyota urges the committee to integrate the bright line criteria into paragraph (c).

2. What If DMV Fails To Act? Under paragraph (c) a manufacturer must "request" DMV to brand the ownership certificate. In CA and other states with infamous "sophistocated" computer systems, the DMV is often notoriously slow in acting on a manufacturer's request. Must the manufacturer hold the car for several months until DMV gets through its backlog of paperwork and processing? Can the bill be amended to proceed with a transfer if DMV has not acted within a reasonable period of time?

3. Vicarious Liability For 3rd Party Tampering With Decals -- Section 6 of the bill requires the manufacturer to affix a decal with the notation that the vehicle is a "factory buyback." However, once the vehicle is transferred, manufacturers have no control over the removal of these decals in the chain of commerce. Even though it is unlawful for any person to remove the decal, how can manufacturer's protect themselves from liability if the decal is in fact tampered with? There are no penalties associated with removing the decal. There notice itself does not state that it is unlawful to remove the decal.

We hope that these views are helpful to you as your prepare your analysis of this

measure, and to the committee in their deliberations. If we can be of any further assistance relative to this measure please do not hesitate to let me know.

cc: Richard Steffen
Peter Welch

CALIFORNIA
MOTOR CAR DEALERS
ASSOCIATION

GOVERNMENT AFFAIRS OFFICE
915 L Street, Suite 1480, Sacramento, CA 95814
916/441-2599 • FAX 916/441-5612

July 7, 1995

The Honorable Charles Calderon
Chairman, Senate Judiciary Committee
Room 4039
The State Capitol
Sacramento, CA 95814

Re: A.B. 1381 (Speier) Factory Buyback Disclosures
Position: SUPPORT/SPONSOR
Hearing: Tues. July 11, 1995, Senate Judiciary Comm.

Dear Chuck:

The California Motor Car Dealers Association (CMCDA) is a statewide trade association that represents the interests 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.

Under current law, if a manufacturer or dealer sells a vehicle that is "known or should be known to have been required by law" to be replaced or repurchased under provisions of the "lemon" law or other warranty laws, a disclosure of that fact must be made to the buyer; and, if the vehicle is ultimately retitled in the name of the buyer, the ownership certificate is supposed to be inscribed with the notation "WARNTY RET". However, current law contains no disclosure requirements for vehicles that are bought back by a manufacturer as a "goodwill" gesture. Recent enforcement actions brought by DMV against manufacturers and dealers and a hearing held last year by the Assembly Consumer Protection, Governmental Efficiency & Economic Development Committee highlighted the fact that compliance with current law is both technically and substantively difficult.

A.B. 1381 revises, reforms, and expands the current Automotive Consumer Notification Act in the following manner:

- It greatly expands existing law by providing that any manufacturer who repurchases a "lemon" vehicle, or assists a dealer or lienholder to buyback such a vehicle must:

  1. Cause the vehicle to be retitled in the manufacturer's name (this will insure that the manufacturer's name appears in the ownership title chain and will insure that the title has already been branded prior to the vehicle being reintroduced into the stream of commerce);
  2. Cause DMV to brand the vehicle's title with the inscription "factory buyback" (many consumers have complained that the current inscription "WARNTY RET" is meaningless); and,
  3. Affix a decal, prescribed by DMV, to the vehicle's doorframe which will indicate that the vehicle's title has been branded (because ownership certificates are not always present at the time of sale of a used vehicle, the doorframe decal will act as an additional consumer notice).

- It requires any manufacturer who repurchases, or assists a dealer or lienholder to repurchase a motor vehicle in order to resolve an express warranty dispute between the buyer and the manufacturer (regardless of whether the vehicle was required to be repurchased under the "lemon" law) to give a new, detailed statutory notice to the subsequent transferee.

- It requires any dealer who acquires for resale a motor vehicle with knowledge that the vehicle was repurchased by the manufacturer in order to resolve an express warranty dispute (regardless of whether the vehicle technically qualifies as a "lemon") to give the new, detailed statutory notice. This is a broad expansion of existing law which only requires a dealer to give a warranty buyback disclosure in circumstances where the vehicle was "required by law" to be repurchased.

- It repeals an ambiguous and unfair provision in current law that requires a dealer to brand the title to a vehicle when the vehicle "should be known [to the dealer] to have been required by law to be replaced or . . . accepted for restitution." It is the manufacturer, not the dealer, who is required by law to repurchase a vehicle when the manufacturer is unable to conform it to express warranties after a reasonable number of repair attempts. Moreover, when a manufacturer repurchases a vehicle from a complaining consumer, it is the manufacturer, not the dealer, who makes the determination whether the vehicle was "required by law" to be repurchased or simply repurchased as a "goodwill" gesture. A dealer should only be held liable for a failure to disclose the buyback status of a vehicle when the dealer has actual knowledge of the vehicle's status. Otherwise, a dealer could be held liable in situations where a manufacturer decides that a vehicle was repurchased as a "goodwill" gesture, but a court later determines that the vehicle was "required by law" to be repurchased and the manufacturer's decision not to brand the vehicle's title was therefore erroneous. AB 1381 holds a dealer strictly liable for his or her failure to disclose what he actually

knows about a vehicle's buyback status -- and does not require a dealer to second guess the manufacturer's decision whether to brand the title. However, the bill contains language [see Sec. 1, proposed Civil Code §1793.23 (f)] which specifically provides that the dealer disclosure requirements of A.B. 1381 are in addition to all other dealer disclosure requirements and would not relieve a dealer from his or her duty to comply with any other disclosure laws. For example, A.B. 1381 would not permit a dealer to suppress material facts which could mislead or deceive a consumer if not communicated.

- It requires a manufacturer to provide proof of title branding in order to obtain a tax refund from the Board of Equalization for a "lemon" buyback.

- Finally, it contains a provision that the bill only applies to vehicles reacquired by a manufacturer on or after the effective date of the bill.

Predicated upon the foregoing, we urge your "Aye" vote on A.B. 1381 when it is heard before the Senate Judiciary Committee on Tuesday, July 11, 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 Senate Judiciary Committee
Gordon Hart, Consultant to the Senate Judiciary Committee
Ralph Simoni, California Advocates, Inc.

MOTOR VOTERS

1500 West El Camino Avenue, Suite 419 • Sacramento, CA 95833-1945 • Tel: 916-920-5464 • Fax: 916-920-5465

July 7, 1995

Honorable Charles M. Calderon
Chairman, Senate Judiciary Committee
California State Senate
P.O. Box 942848
Sacramento, CA 94248-0001

RE: AB 1381 (Speier), as amended July 3: OPPOSE UNLESS AMENDED

Dear Senator Calderon:

Motor Voters is a non-profit auto safety and consumer advocacy organization working in partnership with other national organizations to curb illegal auto "lemon laundering" of defective vehicles.

Motor Voters urges you to oppose AB 1381, unless amended to address the following:

- It would allow manufacturers to brand vehicles with the term "factory buyback." This terminology would not be so critical, since consumers seldom see the title before purchase, except that it is repeated in the written notice form.

  Under existing law, prospective buyers should receive a notice stating that "THIS MOTOR VEHICLE HAS BEEN RETURNED TO THE DEALER OR MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS." (§ 1795.8 [c].) But under AB 1381, they would instead receive a notice that the vehicle has been branded a "factory buyback" and that the "nonconformity" has been corrected. This is a huge step backwards. The term "factory buyback" is confusing at best. At its worst, it is fraudulently misleading. A "factory buyback" could mean a vehicle was repurchased merely because the original owner failed to make payments, or because it had been a rental.

The legal term "nonconformity" is also confusing, and carries far less import than "defect."

The notice provided under AB 1381 would give buyers a false sense of security when a vehicle is truly defective. Even the most dangerously defective vehicle, with bad brakes or faulty steering, would be deceptively characterized as merely a "factory buyback."

▸ AB 1381 would allow manufacturers and dealers to avoid providing any written disclosure, no matter how defective the vehicle, when the manufacturer has agreed to buy it back. The bill requires a written notice for prospective buyers only when a vehicle is bought back "**in order to resolve an express warranty dispute.**" This new language would limit the existing law, which requires a separate, written notice whenever a vehicle is bought back under any warranty law. Manufacturers have taken the position that a "dispute" does not exist until a court order has been issued. Anything short of that is a "voluntary agreement." Since the worst lemons are usually bought back prior to a court order, this loophole would allow dangerously defective lemons to be resold without any written disclosure.

▸ Under AB 1381, California could become an unwitting accomplice to lemon laundering, with manufacturers shipping vehicles from other states, where titles are branded "defective vehicle buyback," to California, where they could be retitled with the relatively innocuous "factory buyback." Then they could then be resold in our state or shipped to other states.

Because any state with a weaker 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--Ohio, North Carolina, Iowa, and Pennsylvania--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.

Respectfully yours,

Rosemary Shahan

Rosemary Shahan
President

Attention : Gordon Hart

Consumers Union

Publisher of Consumer Reports

July 7, 1995

The Honorable Charles Calderon
California State Senate
P.O. Box 942848
Sacramento, CA 94248-0001

Re: AB 1381 (Speier), as amended July 3: **OPPOSE, UNLESS AMENDED**
Hearing: July 11, Senate Judiciary Committee

Dear Senator Calderon:

Consumers Union, the nonprofit publisher of *Consumer Reports* magazine, urges you to oppose AB 1381, unless the bill is amended as described below. This bill, while well-intended, would in fact weaken existing law providing notice to consumers regarding purchases of automobiles with serious safety defects.

The bill sets forth the conditions upon which automobile manufacturers must (1) "brand" the title certificate of a repurchased motor vehicle because of a serious defect and (2) provide a separate, written notice to the subsequent buyer of a repurchased vehicle. Our concerns with the bill are as follows:

1. Narrow scope of title "branding" requirement.

Civil Code Section 1795.8 currently requires title branding of vehicles repurchased by manufacturers from consumers if the vehicle "is *known or should be known* to have been required by law to be replaced or required by law to be accepted for restitution" (emphasis added) due to the inability of the manufacturer to meet its warranty obligations under Civil Code Section 1793.2 (or any other state law).

AB 1381, however, eliminates the "known or should be known" standard in current law. This change would apparently only require title branding of vehicles repurchased after arbitration or court proceedings, which is too narrow a universe. Deletion of this language would provide a loophole for manufacturers who could claim that absent an arbitration decision or court order, they would never "know" that a vehicle should be repurchased. Thus, vehicles repurchased prior to such formal proceedings would never have their titles branded--a perverse result since the worst lemon vehicles are repurchased prior to any formal proceeding. Six other states have recognized this fact by simply requiring title branding of all vehicles repurchased by a manufacturer.

Suggested amendment: Clear and unambiguous language requiring title branding for *all* repurchased vehicles, as done in 6 other states: Connecticut, Indiana, Iowa, New York, Ohio and Utah.

1535 Mission Street San Francisco, CA 94103 • (415) 431-6747

2. Narrow scope of written notice requirement.

AB 1381 would require notice to subsequent buyers only if "an *express* warranty *dispute*" (emphasis added) existed and resulted in a repurchase of the vehicle. Again, this language would exempt the worst lemons--those repurchased prior to the initiation of formal proceedings. 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. Furthermore, the notice requirement should also cover breach of implied, not simply express warranties, as provided for in current law for title branding (Civ. Code § 1795.8).

Suggested amendment: Clear and unambiguous language requiring notice for *all* repurchased vehicles, as done in 11 other states: Connecticut, Florida, Georgia, Indiana, Iowa, Kansas, Minnesota, New York, North Carolina, Oregon, and Utah. This suggested amendment would also take care of the express vs. implied warranty issue, by making it moot.

3. "Factory buyback" gives insufficient information to consumers.

Existing law has a clear, simple notice statement to consumers: "This motor vehicle has been returned to the dealer or manufacturer due to a defect in the vehicle pursuant to consumer warranty laws" (Civ. Code § 1795.8). This statement is used in both the title documents and the separate written notice to consumers. Earlier versions of the bill required the term "lemon buyback" to be used in the title documents, which also gives consumers clear notice of the defective nature of the automobile. (The National Association of Attorneys General's (NAAG) Model Bill on this issue uses the term "defective vehicle," which we believe is also more informative to consumers.)

The bill now, however, uses the term "factory buyback", a nice euphemism that conceals the true defective nature of the vehicle. This euphemism is especially dangerous because other states use stronger terms in their title branding statutes. Thus, auto companies will have a perverse incentive to ship lemons from other states to California in order to have them re-branded as innocuous-sounding "factory buybacks" rather than as "defective vehicles."

Suggested amendment: Use the term "lemon buyback" or "defective vehicle" or retain existing law statement in Civil Code Section 1795.8.

4. Confusing language in notice requirement.

AB 1381 further weakens existing law by substituting a confusing and inconsistent disclosure statement for the clear language in Civil Code Section 1795.8. The bill calls for title branding because of a manufacturer's "inability to conform the vehicle to applicable warranties." However, the written notice to subsequent buyers has a box stating that title has been "permanently branded" *and* that the "nonconformity experienced by the original owner . . . has been corrected." This is unclear and

confusing to consumers because if the vehicle was branded, it would mean the manufacturer was *unable* to correct the nonconformity--yet the notice would state that the nonconformity "had been corrected."

Suggested amendment: Keep existing law disclosure statement, but retain the bill's concept of listing the actual nonconformities and repairs attempted. Or, adopt the NAAG Model Bill disclosure language: "This is a used vehicle. It was previously returned to the manufacturer or authorized dealer in exchange for a replacement vehicle or a refund because it was alleged or found to have the following nonconformities:"

We believe our suggested amendments are necessary to ensure that consumers continue to be protected from the recycling of defective autos.

Very truly yours,

Earl Lui
Staff Attorney

cc: Assemblymember Speier

G E O R G E R S T E F F E S I N C

Legislative Advocates

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July 11, 1995

The Honorable Jackie Speier
Member of the Assembly
State Capitol, Room 4140
Sacramento, CA 95814

Dear Assemblymember Speier:

I am writing on behalf of our client, the Association of International Automobile Manufacturers ("AIAM"), a trade association representing manufacturers, importers and distributors of automobiles made in the United States and abroad, to express our concern with AB 1381 as amended July 3, 1995.

As you know, AIAM has previously supported this legislation, as we thought it provided a good balance between the increasing consumer vehicle history disclosure requirements placed on manufacturers and providing manufacturers clear definitions and guidance as to when vehicles fall under the mandate of AB 1381. However, the most recent amendments retain the former while deleting the latter. We believe the deletion of the clear guidance standards as to when a title must be branded and notice given to consumers will only continue to create confusion and foment litigation.

Additionally, we are concerned that requiring manufacturers to title trade assist vehicles in their name before reselling the repurchased vehicle will cause disruption in current business practices without providing any attendant benefit to consumers. Trade assist vehicles are not factory buyback vehicles within the definition of the California Lemon Law.

We believe that the upshot of the July 3 amendments and the trade assist vehicles titling requirement will have the unintended consequence of reducing "goodwill" actions by manufacturers. Cautious manufacturers will buy back only those vehicles they are required to under the law and will brand every repurchased vehicle, creating a substantial disincentive to buy vehicles back under a goodwill policy.

Finally, we believe the so-called decal requirement is impractical. It is our opinion that it will be impossible to ensure that a decal placed on the vehicle will remain on the vehicle. While manufacturers are interested in ensuring full

subsequent purchasers. For this reason we believe AB 1381 should be amended to protect manufacturers from liability for removal of the decal, once the first repurchaser has attested to its being on the car when purchased.

For these reasons we are unable to support AB 1381 when in is heard in the Senate Judiciary Committee on July 12, 1995. While we are not actively opposing this bill at this time, we do reserve the right to do so at a future date. Thank you for your understanding of our position and substantial efforts on this issue this session.

Sincerely,

Timothy J. Howe

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FAX TRANSMISSION

DATE: July 13

TO: Gordon Hart

FROM: Rosemary Shalan

NUMBER OF PAGES (including this one): 7

COMMENTS: Re: AB 1381 (Speier)

P.S. Thank you + the Committee for the time to evaluate the new amendments.

Dear Gordon:

To follow:

1. A preliminary analysis of the new amendments to AB 1381.

2. Motor Voters' language to define a "buyback," with an exemption for legitimate "customer satisfaction" programs. Language closely tracks Attorneys General bill and Indiana's law.

3. Letter from the American Automobile Manufacturers Association to DMV

On the question whether auto manufacturers buy back lemons when consumers have not even made a request--a recent example:

Today I received a call from Chris Haggard (510-847-1901). After the dealer made 4 or 5 repair attempts for brake rotors that warp and cause the entire vehicle to vibrate rather dramatically, the manufacturer contacted him and offered to buy the vehicle back. Chris Haggard had not made a buyback request.

Q: Should consumer witnesses expect time to testify on the 18th?

Q: Is AB 1383 on calendar?

Memo to: AB 1381 Working Group
Re: Preliminary Analysis of Auto Industry's 7/12/95 II amendments to AB 1381
Please Note: Your Further Comments Are Needed ASAP
From: Rosemary Shahan, Motor Voters

There is progress on AB 1381 regarding the definition of dealer. The existing language regarding a "defect" in the vehicle has also been returned to the disclosure notice. However, Amendments 1, 2, and 3 would allow manufacturers and dealers to evade branding and written disclosure under the Automotive Consumer Notification Act on virtually 100% of lemon vehicles by:

Amendment 1

▸ Adding a new requirement that a vehicle is not branded unless it was required by law to be replaced or accepted for restitution "due to the **failure** of the **manufacturer** to conform" the vehicle to applicable warranties.

Even if various **dealers** had made 20 failed repair attempts, if the **manufacturer** had not attempted to repair the nonconformity and failed, it would not be subject to branding.

This would have the perverse effect of encouraging manufacturers to evade branding a lemon by simply not attempting a repair. It puts the control over which vehicles are branded squarely in the manufacturers' hands. They can buy back seriously defective vehicles when they have not even attempted a repair, then resell them at a profit in the used vehicle market without having to brand their titles.

Existing law requires disclosure on the titling documents "due to the inability of the dealer or manufacturer to conform the vehicle to warranties." This includes dealers, and does not require a "failure," but rather an "inability," which is vague but broader than failure. When a vehicle has a faulty component and all available replacement parts have the same defect, a dealer or manufacturer may be "unable" to conform a vehicle even when the manufacturer has not "failed" to do so. Those vehicles would be branded under existing law, but not under AB 1381.

Amendment 2

▸ Adding a new requirement that disclosure is not provided to subsequent purchasers unless the "vehicle was reacquired by the vehicle's manufacturer **in response to a request by the last retail owner or lessee**" that the vehicle be replaced or accepted for restitution.

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. Lemon owners are not in a position to resist signing such a representation, since they are generally desperate to have their vehicles bought back. They also may not understand the implications. Even if they do, it does not harm them directly, so they may give in to pressure.

Amendment 3

▸ Providing dealers a convenient "out" for failing to provide the disclosure notice, by creating a new requirement that the dealer "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** that it be replaced or accepted for restitution..." This would require the dealer to have knowledge of the communication between the manufacturer and the lemon owner. Dealers are seldom privy to such communications. This would allow dealers to evade the notice requirement simply by maintaining they thought the vehicle was bought back as a "customer satisfaction" gesture, and they had no knowledge of a **request**. They cannot be expected to know the nature of the communication between the manufacturer and the lemon owner, particularly if the manufacturer sends the dealer a copy of a written document, signed by the lemon owner, agreeing that the lemon was bought back due to the manufacturer's **offer**.

▸ Creating a two-tiered system on the disclosure form, one for "voluntary buybacks" that are not branded (potentially virtually all vehicles) and another for vehicles that are branded.

Even though a vehicle may have been subject to 20 failed brake repair attempts by several different **dealers**, it would not be branded a "factory buyback." (See above.) Therefore, the box that would be checked is: "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:"

The implication would be that since the second box was **not** checked, stating "THIS VEHICLE WAS REPURCHASED BY THE VEHICLE'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,'" that therefore the vehicle was **not** defective.

This would be quite deceptive and misleading.

MOTOR VOTERS' PROPOSED AMENDMENT TO AB 1381

This amendment would close the "lemon loopholes" while allowing for legitimate customer satisfaction buybacks, such as Saturn's 30-day satisfaction guarantee. It is identical to the National Association of Attorneys General Working Group on Lemon Resales Model Bill language, with the exception of the "customer satisfaction buyback" exemption.

As used in this chapter, a "buyback vehicle" means a motor vehicle that has been replaced, reacquired, or repurchased by a manufacturer, or a finance or lender subsidiary of a manufacturer, or a nonresident manufacturer's agent or an authorized dealer, either under Civil Code Section 1793 or a similar statute of another state or by judgment, decree, arbitration award, settlement agreement or voluntary agreement in California or another state, but does not include a motor vehicle that was repurchased pursuant to a guaranteed repurchase or satisfaction program advertised by the manufacturer and was not alleged or found to have a nonconformity that substantially impaired the use, value, or safety of the new motor vehicle to the buyer or lessee.

American Automobile Manufacturers Association

Chrysler Corporation · Ford · General Motors

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

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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.

["lemon law" loophole]

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.

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

CALIFORNIA MOTOR CAR DEALERS ASSOCIATION

GOVERNMENT AFFAIRS OFFICE
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COPY

July 14, 1995

The Honorable Charles Calderon
Chairman, Senate Judiciary Committee
Room 4039
The State Capitol
Sacramento, CA 95814

Re: A.B. 1381 (Speier) Factory Buyback Disclosures
Position: SUPPORT/SPONSOR
Hearing: Tues. July 18, 1995, Senate Judiciary Comm.

Dear Senator Calderon:

The California Motor Car Dealers Association (CMCDA) is a statewide trade association that represents the interests 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 revises, reforms, and expands the current Automotive Consumer Notification Act in the following manner:

- Greatly expands existing law by providing that any manufacturer who repurchases a "lemon" vehicle, or assists a dealer or lienholder to buy back such a vehicle must:

  1. Cause the vehicle to be retitled in the manufacturer's name (this will insure that the manufacturer's name appears in the ownership title chain and will insure that the title has already been branded prior to the vehicle being reintroduced into the stream of commerce);
  2. Cause DMV to brand the vehicle's title with the inscription "factory buyback" (many consumers have complained that the current inscription "WARNTY RET" is meaningless); and,
  3. Affix a decal, prescribed by DMV, to the vehicle's doorframe which will indicate that the vehicle's title has been branded (because ownership certificates are not always present at the time of sale of a used vehicle, the doorframe decal will act as an additional consumer notice).

- Requires any manufacturer who repurchases, or assists a dealer or lienholder to repurchase a motor vehicle because it did not conform to express warranties (regardless of whether the vehicle was required to be repurchased under the "lemon" law) to give a new, detailed statutory notice to the subsequent transferee.

- Requires any dealer who acquires for resale a motor vehicle and knows or should have known that the vehicle was reacquired by the manufacturer from the last retail owner because it did not conform with express warranties (regardless of whether the vehicle technically qualifies as a "lemon") to give the new, detailed statutory notice. This is a broad expansion of existing law which only requires a dealer to give a warranty buyback disclosure in circumstances where the vehicle was "required by law" to be repurchased.

- Requires any person, including any dealer, who sells a vehicle that has a branded lemon law title to disclose that fact prior to the sale.

- Requires a manufacturer to provide proof of title branding in order to obtain a tax refund from the Board of Equalization for a "lemon" buyback.

Predicated upon the foregoing, we urge your "Aye" vote on A.B. 1381 when it is heard before the Senate Judiciary Committee on Tuesday, July 18, 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 Senate Judiciary Committee
Gordon Hart, Consultant to the Senate Judiciary Committee
Ralph Simoni, California Advocates, Inc.

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July 17, 1995

MEMO TO: Members, Senate Judiciary Committee

FROM: Tim Howe/ Association of International Automobile Manufacturers

SUBJECT: **AB 1381 - Oppose, unless amended**

Our client, the Association of International Automobile Manufacturers ("AIAM"), a trade association representing manufacturers, importers and distributors of automobiles made in the United States and abroad, opposes AB 1381. (1)

Before the July 3 amendments removing the "clear, bright" lines governing when a title must be branded, AIAM supported this legislation. We thought it provided a good balance between increasing the vehicle history disclosure requirements to consumers and providing manufacturers clear definitions and guidance as to when vehicles fall under the mandates of AB 1381 and the California Lemon Law. However, the most recent amendments retain the former while deleting the latter. We believe the deletion of the clear guidance standards as to when a title must be branded and notice given to consumers will only continue to create confusion and foment litigation.

Additionally, we are concerned that requiring manufacturers to title trade-assist vehicles in their name before reselling the repurchased vehicle will cause disruption in current business practices without providing any attendant benefit to consumers. Trade assist vehicles are not factory buy back vehicles within the definition of the California Lemon Law.

We believe that the upshot of the two most recent amendments and the trade assist vehicles titling requirement will have the unintended consequence of reducing "goodwill" actions by manufacturers. Cautious manufacturers will buy back only those vehicles they are required to under the law and will brand every repurchased vehicle. In other words, we believe that AB 1381 will create a substantial disincentive for manufacturers to buy back vehicles under either a trade-assist or goodwill policy.

For these reasons AIAM opposes AB 1381 in its current form. Adoption by the Committee of the "clear, bright" line guidelines dropped by the July 3 amendments, however, would move AIAM from an oppose to support position on this bill.

(1) Nissan does not join in these comments.

S T E F F E S

AB 1381 D

JUL 18 1995

KEENE & ASSOCIATES

COUNSELORS AT LAW & PUBLIC POLICY

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SCOTT R. KEENE
(916) 552-7991

Date: 7/18/95

To: Members, Senate Judiciary Committee

From: Scott Keene

Re: AB 1381 (Speier) -- **Opposed**
Hearing: July 18, 1995
Item # 10

On behalf of our client, Toyota Motor Sales, U.S.A., Inc. we join various consumer groups in urging a no vote on AB 1381 (Speier). This legislation began with two notable policy objectives. First, to better notify consumers about vehicles that were purchased pursuant to state lemon laws and later resold. Second, to better inform individuals with responsibility for notifying consumers of their disclosure obligations.

1) The remedial benefits of the measure before you are mainly limited to narrowing the responsibilities of the sponsors in the consumer disclosure process, particularly commercial entities who are in direct privity with consumers. As such, we agree that the measure's primary result is to diminish the scope of existing law.

2) While reducing the sponsor's responsibility for disclosure, the burdens on manufacturers are increased and ill-defined. Objective standards that were originally contained in the measure to trigger the manufacturers' new disclosure responsibilities have been eliminated. The four triggers that were contained in the bill prior to the July 3rd amendments have been replaced with existing law factors that are well-proven to be ambigious--to the detriment of consumers, manufacturers and regulators alike.

AB 1381 fails to accomplish its intended goals. It represents an unfair shifting of responsibilities. And it is unclear. The measure should be rejected in favor of a more reasoned approach to addressing a problem that is of significant consumer and industrial importance.

AB1381.WPD

-SO

MOTOR VOTERS
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July 21, 1995

Mr. Frank Zolin, Director
California Department of Motor Vehicles
2415 First Avenue
Sacramento, CA 95818

Dear Mr. Zolin:

At a July 18 Senate Judiciary Committee hearing on AB 1381 (Speier), the following representations were made to committee members concerning the existing Automotive Consumer Notification Act:

"The [existing] law is so vague that virtually anything can be labeled a 'goodwill' buyback. And when you take a car back as a 'goodwill' buyback you don't have to label it anything and you don't have to tell a prospective buyer or a subsequent buyer that you took it back."

"The present law is drafted in such a way that it allows for a car to be bought back as a 'goodwill' buyback even though it may be a lemon."

These remarks are transcribed verbatim from a videotape of the hearing. Is it the position of the Department of Motor Vehicles that such statements would be an accurate interpretation of the existing law? If so, under what authority is the DMV bringing its case against Chrysler Motor Corporation?

I would appreciate your prompt response.

Sincerely,

Rosemary Shahan

Rosemary Shahan
President

cc: The Senate Judiciary Committee

CALIFORNIA
MOTOR CAR DEALERS
ASSOCIATION

GOVERNMENT AFFAIRS OFFICE
915 L Street, Suite 1480, Sacramento, CA 95814
916/441-2599 • FAX 916/441-5612

MEMORANDUM

To : Jackie Speier
cc : Richard Steffen, Chief of Staff
Gordon Hart, Consultant, Senate Judiciary Committee
From : Peter Welch
Date : July 28, 1995
Re : AB 1381 (Speier) - Factory Buyback Disclosures

After reviewing the provisions of AB 1381, as amended in Senate July 23, 1995, we notice two technical problems with the recent amendments as follows:

1. On page 5, line 16, the term "factory buyback" should be stricken and replaced with the term "Lemon Law Buyback" to make it consistent with the other amendments.

2. Because the word "VEHICLES'S" was stricken on page 5, line 36 and replaced with the word "ITS", the disclosure language required under subdivision (b) of proposed Civil Code Section 1793.24 is now different than the disclosure language required under subdivision (f) of proposed Civil Code Section 1793.23 [see page 4, lines 27 to 33]. If not corrected to make the disclosures identical, a dealer or other transferee of a title branded vehicle would be required to give both disclosures because of the difference in wording.

C-552

attn: Gordon Hart

Center for Auto Safety
Consumer Action
Consumer Federation of America
Consumers Union
Motor Voters

August 1, 1995

Assemblywoman Jackie Speier
California State Assembly
P.O. Box 942849
Sacramento, CA 94249-0001

Re: AB 1381 (Speier): Support If Further Amended

Dear Assemblywoman Speier:

As you know, each of our organizations has been in opposition to AB 1381. However, we recognize that several key concerns were addressed when the bill was amended in the following ways:

- ► Remedies for victims of lemon laundering were restored, by unanimous vote of the Assembly Transportation Committee and by subsequent amendments

- ► Various obvious "lemon loopholes"--exempting seriously defective lemon vehicles from title branding and disclosure to consumers--have been eliminated

- ► The bill has been made expressly prospective, in order to avoid jeopardizing pending litigation, including the DMV's current action against Chrysler

- ► The designation "**factory** buyback" was amended, by vote of the Senate Judiciary Committee, to "**Lemon Law** Buyback"

In light of these changes, which have greatly improved the bill for consumers, we have re-evaluated our opposition. We would like to support the bill, but one important issue remains.

C-53

When you presented the bill before the Senate Judiciary Committee on July 18, you indicated that the major "defect" in existing law is that it "allows" manufacturers to characterize lemon vehicles as merely "goodwill" buybacks.

While we disagree with your interpretation of existing law, we do agree that clearing up any ambiguity that allows manufacturers to resell defective lemons as "goodwill" buybacks is the most serious issue that the bill needs to address. However, the bill as currently amended does not accomplish that purpose. As you indicated on July 18, AB 1381 would allow auto manufacturers to decide which vehicles are lemons and which are "goodwill" buybacks.

As your report "Bitter Fruit" documents, manufacturers cannot be trusted to make that determination. They seize upon any conceivable ambiguity as an excuse to make lemons appear to be peaches. But instead of clearing up ambiguity, AB 1381 adds to it.

Auto manufacturers themselves contend that the bill as currently worded is confusing. The Association of International Automobile Manufacturers writes that "We believe that the deletion of the clear guidance standards as to when a title must be branded and notice given to consumers will only continue to create confusion and foment litigation."

Toyota also writes separately that the bill as currently amended "simply invites more uncertainty and potential litigation."

When the very auto manufacturers who are responsible for making the determination between "lemon" and "goodwill" find AB 1381 to be confusing, it simply doesn't do the job. We agree with the AIAM and Toyota that the bill as currently amended adds, rather than reduces, ambiguity and invites litigation.

We are particularly concerned that the bill as currently amended fails to require disclosure to prospective buyers when manufacturers initiate the repurchase. This would permit manufacturers to evade disclosing defects to California used car buyers when the companies know certain vehicles have serious, incurable flaws. Since tens of thousands of vehicles have been bought back under such circumstances, the sheer numbers involved are quite significant.

For example, in 1993 Nissan contacted owners of its 1987-1990 minivans and offered to buy them back. Repeated failed recall attempts had made the repairs so expensive, the auto company decided it was cost-effective to repurchase the minivans, which were prone to engine fires. About 33,000 vehicles were affected. Under AB 1381, title to the vehicles should be branded, but if Nissan resold them, the company and its dealers would not have to provide the Warranty Buyback Notice to prospective buyers because the vehicles were reacquired in response to the

manufacturer's offer, and not "in response to a request by the buyer or lessee" §1793.23 (d) and (e). In fact, the minivan owners were largely unaware that previous recalls had not remedied the problem, and were therefore unlikely to make a request. Because buyers seldom see the title to a vehicle, the disclosure notice is critical.

Similarly, Saturn notified nearly 2,000 Saturn owners that it wished to buy back their vehicles because contaminated coolant from one supplier had damaged certain components. While such "pre-emptive" buybacks benefit original owners, under AB 1381 they could harm subsequent buyers, because the manufacturer and its dealers would not be required to provide notice.

Surely it is not the intent of AB 1381 that manufacturers and dealers could evade the notice requirement when the manufacturer knows a line of vehicles is defective, and simply contacts the original owners before they make a "request."

For the above reasons, we propose the following language, based on statutes in other states and the model bill proposed by the National Association of Attorneys General Working Group on Resold Lemons. It would eliminate the ambiguity concerning which vehicles are "lemons" or "goodwill" buybacks. It specifically includes so-called "voluntary" repurchases. At the same time, it provides an exemption for legitimate "goodwill" buybacks.

The language is enclosed for your review. If the bill is so amended, we would then be pleased to give AB 1381 our support.

Center for Auto Safety

Consumer Federation of America

Consumer Action

Motor Voters

Consumers Union

Please reply to: Cher McIntyre, Associate Director of Advocacy, Consumer Action, 523 W. 6th Street, Suite 1105, Los Angeles, CA 90014. Phone: 213-624-4631.

cc: Members, Senate Judiciary Committee; Committee Consultant Gordon Hart; Members, Senate Appropriations Committee

PROPOSED AMENDMENTS TO AB 1381 (As amended 7/23/95)

Amendment 1

On page 3, line 16, insert:

(c) *For purposes of this section and Section 1793.24, a "buyback" vehicle means a motor vehicle that has been replaced, reacquired, or repurchased by a manufacturer, or a finance or lender subsidiary of a manufacturer, or a nonresident manufacturer's agent or an authorized dealer, either under the Song Beverly Consumer Warranty Act (Civil Code §1793) or a similar statute of another state or by judgment, decree, arbitration award, settlement agreement or voluntary agreement in California or another state. "Buyback" vehicle does not include a motor vehicle that was repurchased pursuant to a guaranteed repurchase or satisfaction program advertised by the manufacturer, provided the vehicle was not alleged or found to have a nonconformity that substantially impaired the use, value or safety of the new motor vehicle to the buyer or lessee.*

Amendment 2

On page 3, commencing with line 16:

(e) *(d)* 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~~ *of a buyback vehicle* 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~~.

Amendment 3

On page 3, commencing with line 38:

~~(d)~~ *(e)* 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,~~ *of a buyback vehicle* shall, prior to sale, lease, or other transfer of the vehicle, execute and deliver to the

subsequent transferee a notice and obtain the transferee's written acknowledgement of a notice, as prescribed by Section 1793.24.

Amendment 4

On page 4, commencing with line 8:

(e)*(f)* 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,~~ *a buyback vehicle,* shall, prior to the sale, lease or other transfer, execute and deliver to the subsequent transferee a notice and obtain the transferee's written acknowledgement of a notice, as prescribed by Section 1793.24.

Amendment 6

On page 5, line 11: manufacturer of the ~~reacquired~~ *buyback* vehicle

Amendment 7

On page 5, lines 15-16:

(2) ~~Whether~~ *That* the title to the vehicle has been inscribed with the notation ~~"factory buyback"~~ *"Lemon Law Buyback."*

Amendment 8

On page 5, commencing with line 30, Under "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.~~

~~☐~~

Amendment 9

On page 8, commencing with line 26:

(7) A ~~motor vehicle that has been reacquired under circumstances described in subdivision (e) of Section 1793.23 of the Civil Code,~~ *buyback vehicle*, 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."

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.

TWENTY-FIVE YEARS OF ADVOCACY

1970 CENTER FOR AUTO SAFETY 1995

2001 S STREET, NW SUITE 410 WASHINGTON, DC 20009-1160 (202) 328-7700

7/10

LEMON ALERT: SAVE THE CALIFORNIA LEMON LAW FROM AUTO INDUSTRY ATTACK

Since California passed the first lemon law in 1981, over 50,000 Californians have gotten their lemons bought back. Because the lemon law has forced them to buy back so many lemons, car companies want to kill it. Rather than fix lemons, auto companies want to repeal the lemon law and substitute a watered down law that would stick owners, not manufacturers, with lemons.

Greased by well heeled auto industry lobbyists working behind the scenes, two anti-consumer bills (AB 1381 & 1383) have already passed the Assembly and are headed for the Senate. If they pass, consumers will be at the mercy of auto companies who can sell lemons with impunity. Even if they buy back an occasional bright yellow lemon under AB 1383, auto companies can launder and resell it without notice of its lemon history to another unsuspecting consumer as an executive or program car under AB 1381, sponsored by car dealers who sell the recycled lemons.

AB 1381 & 1383 are authored by Assemblywoman Jackie Speier of San Mateo and backed by the car companies. Under present California lemon law, manufacturers are responsible for lemons for the length of the warranty or at least 4 years. If they willfully refuse to honor the warranty and consumers are forced to take them to court, auto makers are liable for a civil penalty up to twice actual damages depending on how bad the companies acted. Although civil penalties are seldom imposed, their presence makes car companies obey the law. AB 1383 eliminates the civil penalty and cuts back lemon replacement to 2 years by substituting a cumbersome arbitration procedure modeled after New Jersey which awards only 18 (eighteen) buybacks per year. No wonder the car companies love AB 1383; they would go from buying back 5,000 lemons per year in California to less than 500.

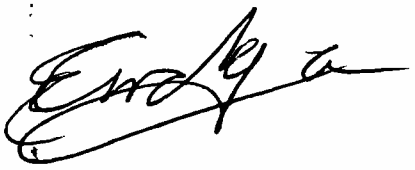
What can you do – speak up & defend your lemon rights. Send a letter even if it only says "Stop AB 1381 & 1383. Don't let auto companies rip off Californians and stick us with their lemons."

Write immediately to:
Honorable Charles M Calderon
Chairman
Senate Judiciary Committee
Room 4039, State Capitol
Sacramento CA 95814

Contact your state Senator and Assemblyperson.
Write, call or best of all, go in and meet with them or their staff. Say you want stronger lemon laws, not weaker ones.
Send copies of your letters to Motor Voters, 1500 W. El Camino Ave #419, Sacramento CA 95833, a local consumer group leading the fight for lemon rights in California.

" Stop AB 1381 & 1383. Don't let auto companies rip off Californians and stick us with their lemons."

Enrique Hernandez AGE 30



AB 1381

Save Your Lemon Law - It's Good For Business!

AB 1383

DO YOU PLAN TO EVER BUY A NEW OR USED CAR IN CALIFORNIA AGAIN?
WHAT CAN YOU DO TO KEEP AUTO COMPANIES FROM TRAMPLING YOUR RIGHTS?

Write ASAP to the Chairman of the Judiciary Committee and send a copy to Motor Voters. We will make copies of consumers' letters and distribute them to members of the committee and the news media.

If you have any questions or would like a copy of the bills, call Motor Voters at 916-759-9440.

SAMPLE LETTER

(This is just to get your juices flowing. The more individualized your letter is, the better. Your message does not have to be long. If you wish, just writing "I am opposed to AB 1381 and AB 1383. Stop the auto industry from ripping off California consumers!" gets the point across. Handwritten letters are fine.)

Honorable Charles M. Calderon
Chairman, Senate Judiciary Committee
State Capitol
P.O. Box 942848
Sacramento, CA 94248

Be Very Wary
MY LAST VW MISTAKE
(415) 457-0592

Dear Senator Calderon:

I am writing in opposition to two anti-consumer bills, AB 1381 and AB1383. I am outraged that the auto industry would try to weaken my rights under the lemon law, and also make it legal to dump defective lemon vehicles in California.

Over the years, I have had a number of negative experiences with car dealers and manufacturers. [Feel free to expand on this.] They do not live up to their responsibilities, even now when they face penalties for their illegal acts.

AB 1383 would eliminate the penalties for manufacturers who sell defective products then refuse to buy them back. Car companies try to wear people down so that they give up and take a loss. Then the vehicles just get passed on. This bill would let them get away with that.

While arbitration may work in some cases, consumers should not be forced into an unfair system. I do not trust the administration bureaucrats to come up with a fair system that would be a substitute for being able to pursue my rights in court.

AB 1381 would allow manufacturers to foist defective lemon cars onto used car buyers without disclosing that they are lemons. The industry is trying to get these loopholes at a time when the DMV is bringing cases against them. They should be penalized for exposing motorists to dangerously defective vehicles. They are a menace, not only to the people riding in them, but also to others on the road.

California's lemon law needs to be made stronger, not weaker.

Please protect our Families From This Industry!

Rand Knox
392 Woodland Avenue

Sign and Mail Today or Compose Your Own Lemon Law Story

RE: AB 1391 & AB 13 & CHAIRMAN CALDERON:

EVEN FLORIDA, A CONSERVATIVE STATE PROTECTS ITS CONSUMERS BETTER THAN DOES CALIFORNIA - GET GOING!

Rand Knox
392 Woodland Avenue
San Rafael, CA 9490

Au

Office of the Attorn

- What is a Vehicle Lease?
- Do lower payments guarantee a better deal with leasing than buying?
- What is my payment based on?
- Am I paying interest?
- Are there other charges?
- What should I be wary of?

Although [illegible] make auto leasing appear to be an attractive alternative to financing the purchase of a car, the lack of disclosure, the technical and complex language, and the greed of some car salesmen, cause car leasing to be an option that is fraught with many pitfalls for the average consumer.

Florida Attorney General Bob Butterworth has received almost 2,000 complaints from consumers, many of whom have been pressured into auto leasing, not been credited for their trade-in vehicles, or have complained of being defrauded in other ways. Be aware that once you sign a lease, you have **no legal right to cancel.**

The following questions and answers are designed to help you make informed decisions when considering auto leasing:

What is a Vehicle Lease?
A lease is a long-term rental agreement. You are paying for the right to drive a vehicle for the term of the lease, but **you do not own it.** In most instances, you will be responsible for all maintenance on the vehicle, and your insurance rates will usually be higher.

Do lower payments guarantee a better deal with leasing than buying?
Not necessarily. The monthly payments should be significantly less because you don't *own* the vehicle.

What is my payment based on?
Your payment is based on a capitalized cost or "Cap Cost." This is just fancy terminology for the price of the car. The ***lower*** the cap cost, the lower your monthly payment. Cap cost may be the same as the sticker price of the car, but **you can negotiate** for a lower cap cost, just like you can to buy it, so don't be afraid to **shop around.** Make sure that you get the dealer to provide the amount of the cap cost **in writing!** The cap cost is **reduced** by the amount of cash or trade equity that you put into the deal that exceeds inception and acquisition fees. Therefore, it is important that you obtain the amount of your trade allowance **in writing** to ensure you receive the proper credit.

If manufacturer rebates or dealer coupons are offered, such credit should also reduce the cap cost.

LEGISLATIVE INTENT SERVICE (800) 666-1917

Am I paying interest? YES. In leasing, the "interest rate" is called the money factor. The **lower** the money factor, the lower your monthly payment. The money factor will usually range from .0021 to .0046. Ask the dealer to put your money factor **in writing**. Then you can multiply it by 2400 to calculate the interest rate. Remember that even the money factor is **negotiable !**

Are there other charges? If you desire to get out of your lease early, you are likely to be charged an "Early Termination Penalty". At the end of the lease term, you will generally have an option to purchase the car for the amount of the Purchase Option or Residual Value. This amount is disclosed to you at the outset of the lease. The purchase option is often substantially higher than the actual value of the vehicle at the end of the lease term. Therefore, you may opt to simply return the car, but you will probably be charged a fee for mileage that exceeds the mileage allowance stated in your lease agreement, plus any physical damage to the vehicle.

What should I be wary of?

- Leasing a car without shopping around.
- Relying on verbal promises made by salesmen or Lease Managers (whose profit motive may well out-weigh their motive for veracity).
- Giving the salesman a deposit before you thoroughly read, reread, understand and are satisfied with the completed lease agreement.
- Entering into an "open-end" lease which may **require** you to pay an extra sum of money based upon the fair market value of the car at the end of the lease term (most leases are "closed-end," so you don't have to buy it at the end).
- Paying a lot of extra money for an extended service contract when your new car warranty will provide coverage for the major portion of the lease term.

The Florida Legislature recently adopted a measure, sponsored by Senator Peter Weinstein and Representative Lars Hafner, that will significantly aid consumers in this area. The Motor Vehicle Lease Disclosure Act mandates that essential terms such as the capitalized cost and trade-in amounts be clearly stated on the lease contract. We believe this new law will assist consumers in understanding these very complex financial transactions.

To file a complaint or request further information, please write to:

Office of the Attorney General
Robert A. Butterworth
4000 Hollywood Boulevard
Suite 505-S
Hollywood, FL 33021

M-6

TWENTY-FIVE YEARS OF ADVOCACY

CENTER FOR AUTO SAFETY

2001 S STREET, NW SUITE 410 WASHINGTON, DC 20009-1160 (202) 328-7700

LEMON ALERT: SAVE THE CALIFORNIA LEMON LAW FROM AUTO INDUSTRY ATTACK

Since California passed the first lemon law in 1981, over 50,000 Californians have gotten their lemons bought back. Because the lemon law has forced them to buy back so many lemons, car companies want to kill it. Rather than fix lemons, auto companies want to repeal the lemon law and substitute a watered down law that would stick owners, not manufacturers, with lemons.

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Write immediately to:
Honorable Charles M Calderon
Chairman
Senate Judiciary Committee
Room 4039, State Capitol
Sacramento CA 95814

Contact your state Senator and Assemblyperson.
Write, call or best of all, go in and meet with them or their staff. Say you want stronger lemon laws, not weaker ones.
Send copies of your letters to Motor Voters, 1500 W. El Camino Ave #419, Sacramento CA 95833, a local consumer group leading the fight for lemon rights in California.

AB 1381
AB 1383

MR & MRS SAMUEL RUBINSON
19531 RINALDI ST. #39
NORTHRIDGE, CA. 91326-1640

DEAR SIR,
PLEASE STOP AB 1381 + 1383
THANK YOU

Appropriations Committee Fiscal Summary
Valerie Brown, Vice Chair

Hearing Date: May 17, 1995 **AB 1381** ***(Speier)***

Vote: Transportation, 14-0 As Amended April 26, 1995

Bill Summary

This bill would make various changes and clarifications relating to buy-back vehicles ("lemons"), including:

- o require manufacturers to retitle buy-back vehicles in the name of the manufacturer and to place notice on the driverside door that the vehicle is a "lemon buy-back".
- o requiring the Department of Motor Vehicles to note on the title of buy-back vehicles "lemon buy-back".

Fiscal Impact		
Provision	**1995-96**	**1996-97**
1. Programming costs to DMV.	**Costs.** $95,000 in the first year, $7,000 annually thereafter ***(Motor Vehicle Account).***	

Comments

1. ***Existing law*** requires a manufacturer to replace or refund the cost of a defective vehicle under specified conditions. Existing law also requires the dealer or manufacturer to disclose to a new buyer that a vehicle was a "buy-back" vehicle.

2. This bill is a follow up to an investigation, hearing and reports by the Assembly Consumer Protection, Governmental Efficiency and Economic Development Committee. A 1994 Committee report, entitled "Bitter Fruit" noted, among other things, that vehicle manufacturers and dealers have recycled buy-back vehicles, without warning consumers that they were buying "lemons".

Consultant: Linda Lye

Appropriations Committee Fiscal Summary

AB 1381 (Speier)

Hearing Date: 8/23/95 **Amended:** 8/21/95

Consultant: Ed Derman **Policy Vote: Judic 7-0**

BILL SUMMARY:

AB 1381 modifies the disclosure requirements for defective automobiles which are subsequently resold. Among the new requirements is that the vehicle manufacturer have the vehicle re-titled in the manufacturer's name, and that the title be branded as a "Lemon Law Buyback".

Fiscal Impact (in thousands)

Major Provisions	1995-96	1996-97	1997-98	Fund
Branding of returned automobile	$96	$7 ongoing cost		Motor Vehicle

STAFF COMMENTS:

Currently, when an automobile is not able to operate in conformity to the vehicle's warranty after a specified number of attempts to repair the car, the vehicle must be repurchased by the vehicle manufacturer or dealer. If the vehicle is resold, the retail buyer must be provided a specific written notice that the vehicle was returned due to a defect in the vehicle, and the title issued after the purchase by a retail buyer is branded a "Warranty Return". Under this bill, after the vehicle is returned, the manufacturer must place the vehicle in its name, the title of the vehicle would be branded with the term "Lemon Law Buyback", and a decal indicating the title brand would be attached to the car. In addition, subsequent buyers of cars which were returned to the dealer or manufacturer due to an expressed warranty would receive a specific disclosure of the car's status.

DMV estimates that it would incur one-time costs of $96,000 (1) for data processing changes related to changing the brand on titles on returned vehicles from "Warranty Return" to "Lemon Buyback", (2) to adopt regulations and (3) make other related implementation changes. DMV estimates that ongoing costs to DMV to administer the revised program would be about $7,000 annually.

DEPARTMENT OF FINANCE BILL ANALYSIS

ED

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."

Analyst/Principal (0751) G. Jerome	Date	Program Budget Manager Wallis L. Clark	Date
	8/18/95	for	8/18/95
Department Deputy Director			Date

SF-1

LIS - 13

Governor's Office:	By:	Date:	Position Noted / Position Approved / Position Disapproved

BILL ANALYSIS — Form DF-43 (Rev 03/95 Buff)

BTH:AB1381.751 08/18/95 12:52 PM

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	PROP 98	FC	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) 1995-1996	FC	1996-1997	FC	1997-1998	Fund Code
2740/DMV	SO		C	$96	S	$7	S	$7	0044

Fund Code: Title
0044 Motor Vehicle Account, STF

SF-2

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

THIRD READING

Bill No: AB 1381
Author: Speier (D)
Amended: 8/21/95 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE: 7-0, 7/18/95
AYES: Campbell, Mello, O'Connell, Petris, Solis, Wright, Leslie
NOT VOTING: Lockyer, Calderon

SENATE APPROPRIATIONS COMMITTEE: 9-0, 8/23/95
AYES: Johnston, Alquist, Dills, Hughes, Kelley, Killea, Leonard, Leslie, Polanco
NOT VOTING: Calderon, Lewis, Mello, Mountjoy,

ASSEMBLY FLOOR: 75-0, 6/1/95

SUBJECT: Vehicles: Automotive Consumer Notification Act

SOURCE: California Motor Car Dealers Association

DIGEST: This bill enacts the Automotive Consumer Notification Act.

ANALYSIS: 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 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. (more)

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

CONTINUED

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 "lemon law buyback."

3. Manufacturers would have a new obligation to affix a decal with the term "lemon law 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.

CONTINUED

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 "lemon law buyback", and the other box is for other vehicles reacquired after the last retail owner of the vehicle requested its repurchase.

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

SUPPORT: (Verified 8/24/95)

California Motor Car Dealers Association

ARGUMENTS IN SUPPORT: 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.

RJG:jk 8/24/95 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
****** END ******

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
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THIRD READING

Bill No: AB 1381
Author: Speier (D)
Amended: ~~7/23/95~~ in Senate
Vote: 21 8/21

SENATE JUDICIARY COMMITTEE: 7-0, 7/18/95
AYES: Campbell, Mello, O'Connell, Petris, Solis, Wright, Leslie
NOT VOTING: Lockyer, Calderon

SENATE APPROPRIATIONS COMMITTEE:

ASSEMBLY FLOOR: 75-0, 6/1/95

SUBJECT: Vehicles: Automotive Consumer Notification Act

SOURCE: California Motor Car Dealers Association

DIGEST: This bill enacts the Automotive Consumer Notification Act.

ANALYSIS: 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 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. (more)

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:

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CONTINUED

"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 "lemon law buyback."

3. Manufacturers would have a new obligation to affix a decal with the term "lemon law 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

SFA-3

CONTINUED

sentence. One of the boxes is for vehicles branded as "lemon law buyback", and the other box is for other vehicles reacquired after the last retail owner of the vehicle requested its repurchase.

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

SUPPORT: (Verified >) 8/24 Richard

California Motor Car Dealers Association

OPPOSITION: (Verified >) 8/24

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

ARGUMENTS IN SUPPORT: 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.

SFA-4

ARGUMENTS IN OPPOSITION: 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.

RJG:jk 8/23/95 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
****** END ******

SFA-5

CONTINUED

SENATE FLOOR ANALYSES WORKSHEET CONSULTANT: AJ

THIRD READING / CONSENT / (DO AHEAD)

Bill No.: AB 1381
Author: Spiering (D)
Amended: 7/23 Senate
Vote Required:: 21

SEN. Jud COM.: Vote 7-0, Date 7/18
SEN. APPROP. COM.: Vote _____, Date _____ / 28.8 / NONFISCAL
SEN. FLOOR: Vote _____, Date _____ / ASSY FLOOR: Vote 75-0, Date 6/1

SUBJECT: Vehicles: Automotive Consumer Notification Act
SOURCE: Motor Car Dealers Assn.

DIGEST: This bill enacts the Automotive Consumer Notification Act

ANALYSIS: B1, B2

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

SUPPORT: Verification Date _____

(Dem)
#1

OPPOSITION: Verification Date _____

#2

ARGUMENTS IN SUPPORT: C1

ARGUMENTS IN OPPOSITION: D

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SENATE JUDICIARY COMMITTEE
Charles M. Calderon, Chairman
1995-96 Regular Session

A
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1

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.

(more)

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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 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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(more)

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 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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(more)

Persons selling such vehicles must disclose in writing at 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; "Lemon Law Buyback."

   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. "Lemon Law Buyback"

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;

   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.

"Lemon Law Buyback"

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(more)

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 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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(more)

will make it much easier for car dealers to fulfill disclosure obligations, and that, as a result, cons 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 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?

(more)

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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 form 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.

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.

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(more)

b. Under existing law, there does not have to be a ' 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 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.

#1

Support: California Motor Car Dealers Association*

#2

Opposition: Center for Auto Safety; Motor Voters*; Consumers Union*; Consumer Action*; Consumer Federation of America; Association of International Automobile

(more)

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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

Prior Legislation: SB 788 (1989) Chaptered
SB 2568 (1991) Vetoed
SB 1762 (1992) Chaptered

****

SFA-15

STATE AND CONSUMER SERVICES AGENCY — BILL ANALYSIS

Department	Author	Bill Number
CONSUMER AFFAIRS	Speier	AB 1381
Sponsor	**Related Bills**	**Amended Date**
CA. Motor Car Dealers Ass'n.	AB 1383	6/14/95

Subject
Motor vehicles: warranty

CHANGE OF POSITION

Bill Description:

Existing law:

- Known as the **New Car Lemon Law** [Civ.C. 1793.2(d)] and the **Tanner Consumer Protection Act** [Civ.C. § 1793.22]:
  - Requires the manufacturer of a new motor vehicle that is a "lemon" to replace the vehicle or give the buyer a refund.
  - Defines a vehicle as a "lemon" if, within one year or 12,000 miles, whichever comes first, either (1) the same defect has been subject to repair four or more times, or (2) the vehicle is in repair for a total of more than 30 days. (The defect must substantially impair the use, value, or safety of the vehicle.)
  - Requires the Board of Equalization (BOE) to reimburse manufacturers for any sales tax the manufacturer reimburses to the buyer when making restitution on a "lemon."
  - Requires disputes to be submitted to a third-party dispute resolution process, if the manufacturer has one, before pursuing civil action.
- Known as the **Automotive Consumer Notification Act** [Civ.C. § 1795.8], 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 pursuant to the New Car Lemon Law, or pursuant to any other warranty law of this state, another state, or federal law.
- Requires the registration and titling documents of a lemon to state that the vehicle was returned to a dealer or manufacturer pursuant to a consumer warranty law due to a defect, including vehicles with out-of-state title [Veh.C. § 4453(b)(7)].

FEE / / FISCAL / / REPORT / /

DEPARTMENTS THAT MAY BE AFFECTED
Department of Motor Vehicles

STATE MANDATE /X/ GOVERNOR'S APPOINTMENT / /

DEPARTMENT DIRECTOR POSITION		AGENCY SECRETARY POSITION		GOVERNOR'S OFFICE USE	
___ S	_X_ O	___ S	_X_ O	POSITION APPROVD.	___
___ SIA	___ OUA	___ SIA	___ OUA	POSITION DISAPP.	___
___ N	___ NP	___ N	___ NP	POSITION NOTED	___
___ NIA	___ NAR	___ NIA	___ NAR		
___ DEFER		___ DEFER			

DEPARTMENT DIRECTOR DATE: Marjorie M. Berta

AGENCY SECRETARY DATE: Grace Stuen 6/30/95

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This bill would:

- Revise the **Automotive Consumer Notification Act** to instead require disclosure and "branding" of a lemon if the vehicle was reacquired (1) after written request to the manufacturer for replacement or refund, (2) during arbitration or a lawsuit, or within six months thereafter, or (3) pursuant to a court order or decision by a third-party dispute resolution process.

- Revise the notice to the buyer.

- Revise the registration to state "lemon buyback."

- Require a decal stating "lemon buyback" on the left doorframe of the vehicle. The Department of Motor Vehicles (DMV) would be required to provide the decals to manufacturers.

- Require the BOE to reimburse the manufacturer for any sales tax paid to or for the buyer when providing a replacement of the vehicle, as well as when making restitution as under the current law.

- Apply only to "lemons" reacquired on or after the effective date of this bill (January 1, 1996).

Background:

This bill, dubbed the "lemon laundering" bill by opponents, is sponsored by the Motor Car Dealers Association. Similar legislation was sponsored by the Motor Car Dealers in 1990 and vetoed by Governor Deukmejian (Rosenthal, SB 2568). SB 2568 would have decreased the number of vehicles subject to disclosure and branding to those that were the subject of a court order or a decision rendered by a third-party dispute resolution process.

According to the Center for Auto Safety, "lemon laundering" is one of the biggest consumer problems nationwide. A 1994 report issued by the Assembly Consumer Protection Committee ("Bitter Fruit") found that manufacturers and dealers have recycled vehicles in California without warning consumers that they are buying lemons. The report also found "that manufacturers have circumvented disclosure laws by reacquiring vehicles before arbitration, and laundering lemons through auctions (because current law does not require the manufacturer or dealer to take title to a reacquired vehicle)."

Specific Findings:

- **This bill would require buybacks to have been formally negotiated or in a formal process of negotiation in order to be subject to disclosure and branding.** Many lemons are reacquired purely through oral negotiations, and prospective buyers would have no notice that there was a problem.

- **As a result, the bill encourages more oral negotiations of buybacks, which could speed the process for original buyers but would hurt future buyers of that vehicle**, who would not be informed of the problem. If this happens, a significant number of lemons would not be disclosed and branded as such.

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Manufacturers would have a great incentive to encourage such informal buybacks, since they would be able to easily dispose of (launder) lemons to unsuspecting buyers.

- **Cars bought back through oral negotiations are often the worst lemons, since the manufacturer will buy it back because it realizes that it will not win in arbitration or a lawsuit.** Lemons bought back as a result of informal (oral) negotiations should emphatically not be excluded from disclosure or branding.

- **The bill requires consumers to jump through a new hoop -- to conduct the return of a lemon in writing -- and they would have no way of knowing the consequences to future buyers if they conduct the negotiations orally.** Given the choice, most consumers will choose to call rather than send a letter. This is especially true when they are already very frustrated from having to deal with a lemon and want immediate action. For their part, manufacturers encourage calls by setting up toll-free numbers especially for this purpose.

- **The bill lowers the standard for dealer disclosure.** The bill (on page 4, line 28), the bill requires any dealer who "knowingly purchases for resale a vehicle that has been reacquired due to an express warranty dispute between the last retail owner and the manufacturer" to provide notice to prospective buyers. The standard for disclosure in the current law is "knows or should have known" (Civ.C. § 1795.8, which this bill would repeal.)

- **The decal would be in a very unobtrusive place -- on the left doorframe, which used car buyers do not ordinarily inspect and would not think to look.** We prefer the requirement contained in the model lemon disclosure law adopted by the National Association of Attorneys General. The model law, which has been adopted by several states, requires the decal to be on the windshield, which is clearly more visible and provides meaningful disclosure.

- **The bill proposes a more restrictive definition of "dealer" (for purposes of disclosure obligations).** The bill defines "dealer" by reference to Vehicle Code § 285, and thus limits "dealer" to persons licensed by the Department of Motor Vehicles. For purposes of lemon disclosure, the current law (Civ.C. § 1795.8, which this bill would repeal) is preferable as it defines "dealer" more broadly. Vehicle Code § 285 is limited to licensed dealers and also contains, by reference to § 286, a number of exclusions which the Civil Code definition does not. (For instance, the Civil Code definition only excludes banks and other financial institutions, and state and local government agencies. In contrast, the Vehicle Code provisions exempt persons who export motor vehicles, persons temporarily retained as auctioneers, and others.) The net effect would be to restrict disclosure of lemons to licensed dealers -- unlike the more broadly drafted Civil Code definition.

- **We see no reason to limit disclosure and branding to buybacks that occurred "within six months" of an arbitration proceeding or lawsuit.** This would give manufacturers an incentive to wait six months and a day to reacquire the vehicle, at which point they

would not have to brand it. We see no reason not to include these vehicles, which are still lemons regardless of when they were reacquired.

- **The notice to buyers would be couched in more neutral terms.** Current law requires the titling documents to include a disclosure, acknowledged by the buyer, stating, "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 also would instead require the manufacturer to check one (or both) of two boxes. The first box would state, "This vehicle was reacquired by the vehicle's manufacturer in resolution of a warranty dispute between the original owner/lessee and the manufacturer." This language (reacquired . . . in resolution of a warranty dispute") is more neutral (and less blameful of manufacturer fault) than the current "returned due to a defect."

  The second box would state, "The title to this vehicle has been permanently branded with the notation 'lemon 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." [In order to resell a lemon buyback, the defect must be corrected and disclosed, and the manufacturer must guarantee in writing that the vehicle is free of that defect: Civ.C. § 1793.22(f)].

Fiscal Impact:

None to this department. The Department of Motor Vehicles may incur some costs, due to the requirement that the department distribute the decals to manufacturers.

Support:

California Motor Car Dealers Association (sponsor)
Association of International Automobile Manufacturers

Opposition:

American Automobile Manufacturers Association
Center for Auto Safety
Consumers Union
Motor Voters

Arguments:

Pro: Proponents argue that a more aggressive vehicle labeling and disclosure program would benefit consumers.

The Association of International Automobile Manufacturers supports the bill but wants the disclosure to read, "Manufacturer's buyback" rather than "lemon buyback."

Con: Opponents argue that the bill does not include informal buybacks. Many buybacks are negotiated orally, and these would not

be subject to disclosure and branding. Further, the Center argues that the industry keeps inadequate buyback records.

The American Automobile Manufacturers Association opposes the current version, but no one was available to discuss those concerns in detail.

Please see Specific Findings for our concerns.

Recommendation: OPPOSE. This bill would significantly weaken current consumer protections.

Prepared by: Gale Baker, Analyst. Telephone: 322-4294
Ray Saatjian, Deputy Director Telephone: 327-5196

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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."

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STATE AND CONSUMER SERVICES AGENCY — **BILL ANALYSIS**

Department	Author	Bill Number
CONSUMER AFFAIRS	Speier	AB 1381
Sponsor	**Related Bills**	**Amended Date**
CA. Motor Car Dealers Ass'n.	AB 1383	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 of 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.

FEE / / FISCAL / / REPORT / /

DEPARTMENTS THAT MAY BE AFFECTED
Department of Motor Vehicles, Arbitration Review Program

STATE MANDATE /X/

DEPARTMENT DIRECTOR POSITION

___	S	___	O
___	SIA	___	OUA
___	N	XX	NP
___	NIA	___	NAR
___	DEFER		

GOVERNOR'S APPOINTMENT / /

AGENCY SECRETARY POSITION

___	S	___	O
___	SIA	___	OUA
X	N	___	NP
___	NIA	___	NAR
___	DEFER		

GOVERNOR'S OFFICE USE

POSITION APPROVD.	___
POSITION DISAPP.	___
POSITION NOTED	___

DEPARTMENT DIRECTOR DATE: Margie M. Burton 5/22/95

AGENCY SECRETARY DATE: Original signed by JOANNE BOVEE MAY 23 1995 Assistant Secretary

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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

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DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: April 26, 1995
POSITION: Neutral

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.

COMMENTS

Finance notes that this bill would impose an estimated $96,000 in additional costs on the DMV to implement the bill, but provides no appropriation to cover the costs.

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 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 buy back".
- 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.

Analyst/Principal	Date	Program Budget Manager	Date
(0751) G. Jerome	5/11/95 MH	Wallis L. Clark	5/11/95

Department Deputy Director — Date

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Governor's Office: By: Date: Position Noted / Position Approved / Position Disapproved

BILL ANALYSIS — Form DF-43 (Rev 03/95 Buff)

BTH:AB1381.751 05/11/95 10:36 AM

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED) Form DF-43

AUTHOR	AMENDMENT DATE	BILL NUMBER
J. Speier	April 26, 1995	AB 1381

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) PROP 98	FC	1994-1995	FC	1995-1996	FC	1996-1997	Fund Code
2740/DMV	SO				S	$96	S	$7	0044

Fund Code: Title
0044 Motor Vehicle Account, STF

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SUPPLEMENTAL ANALYSIS

Business, Transportation & Housing Agency

DEPARTMENT	AUTHOR	BILL NO.
Motor Vehicles	Speier	AB 1381
SPONSOR	**RELATED BILLS**	**AMENDED DATE**
Author	Identified in original analysis	April 5, 1995
SUBJECT		
Vehicles: Automotive Consumer Notification Act		

These amendments would:

- *specify that the manufacturer must obtain* the title of a "lemon buy back" in the manufacturer's name prior to sale, lease, or other transfer rather than the previously specified resale;
- specify that the disclosure document be signed by the transferee rather than the buyer;
- specify that a person damaged by a manufacturer not complying with the "lemon buy back" provisions may bring action, and if successful shall recover as part of the judgment reasonable expenses and attorney fees. The remedies provided in this section are cumulative and do not restrict any remedy otherwise available, and;
- require the department to issue a decal for the manufacturers to affix to the vehicle and specify the manner in which it is to be affixed to the vehicle.

COST ANALYSIS: Revised detailed fiscal analysis attached.

ARGUMENTS FOR:

1. This bill would strengthen the disclosure provision to consumers as contained in current law.
2. If complied with, this bill would assure that a title is branded before resale or lease of a vehicle returned to the manufacturer because of warranty nonconformities.

Support for this bill would come from the motoring public and consumer advocacy groups.

ARGUMENTS AGAINST:

1. The department's concerns expressed by the previously suggested amendment language have not been resolved.
2. Language should be added to require a copy of the disclosure notice to be submitted with the transfer application. This would add some enforcement enhancement to the disclosure requirement.

DEPARTMENTS THAT MAY BE AFFECTED:

CONSUMER AFFAIRS

STATE MANDATE ____ GOVERNOR'S APPOINTMENT ___ LEGISLATIVE APPOINTMENT ___

DEPARTMENT POSITION A				AGENCY POSITION				GOVERNOR'S OFFICE USE
___	S	___	O	___	S	___	O	
___	SA	___	OUA	___	SA	___	OUA	Position Approved ___
___	N	___	NP	___	N	___	NP	Position Disapproved ___
_X_	NA	___	NAR	X	NA	___	NAR	Position Noted ___
		___	DEFER			___	DEFER	
DEPARTMENT		DATE		AGENCY		DATE		BY: DATE:
Original Signed by Maureen Zolin		5-1-95		Original Signed by Michael B. Dorais		5/8/95		

SFA-2b

3. Remedies to stop manufacturers from taking vehicles out of state before branding, to identify unsafe vehicles, and to establish a felony offense are absent.

4. Manufacturers and dealers would oppose the proposed brand as making the vehicle unsaleable.

5. In light of recent negative publicity regarding warranty returns, manufacturers and dealers may see this bill as punitive.

6. The requirement to affix a label to a vehicle would be unenforceable.

7. This bill does not contain a mechanism for the department to recover its implementation costs.

Opposition to this bill would come from dealers and manufacturers.

RECOMMENDED POSITION: The department's recommended position of **NEUTRAL, IF AMENDED** remains valid.

This bill would strengthen California's lemon law by amending the current consumer automobile return statutes, and by adding clarity to the Automobile Consumer Notification Act.

This bill would more clearly define and clarify those conditions that require the title of a vehicle to be branded. Under this bill, the department would continue its current practice of branding titles for specified conditions, and add a new titling brand for vehicles with identified safety defects.

AB 1381 would require the manufacturer to title a vehicle in the manufacturer's name reflecting "lemon buy back" or "lemon buy back - safety defect", as appropriate. Any violation of this provision and related provisions of this bill would be a felony.

The attached suggested amendments would:

- provide further clarifying language regarding the requirements for dealers, manufacturers and the Department of Motor Vehicles, and;

- request an appropriation for implementation costs.

Note: This amendment language is consistent with the provisions contained in the department's 1995 legislative proposal B -95-59 which was approved in concept.

For further information, please contact:

Helen L. Fager
Legislative Liaison Office
657-6518

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SUGGESTED AMENDMENT LANGUAGE
AB 1381
AS AMENDED APRIL 5, 1995

AMENDMENT #1

On page 2, line 1, after "SECTION 1.", **INSERT:**

Section 1793.22 of the Civil Code is amended to read:

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

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

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

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

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

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

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

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

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

(6) Provides, at the request of the arbitrator or a majority of the arbitration panel, for an inspection and written report on the condition of a nonconforming motor vehicle, at not cost to the buyer, by an automobile expert who is independent of the manufacturer.

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

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

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

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

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

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

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

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

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

SEC. 2.

AMENDMENT #2

On page 3, line 18, after "SEC." **DELETE:**

~~2. Section 1795.8 of the Civil Code is repealed.~~

and **INSERT:**

SEC. 3. Section 1795.8 of the Civil Code is amended to read:

1795.8. (a) The Legislature finds and declares that the expansion of state warranty laws covering new and used cars has given important and valuable protection to consumers; that in states without this valuable warranty protection used and irreparable motor vehicles are inundating the marketplace; that other states have addressed this problem by requiring notices on the title of these vehicles warning consumers that the motor vehicles were repurchased by a dealer or manufacturer because either the vehicle could not be repaired in a reasonable length of time or the dealer or manufacturer was not willing to repair the vehicle; that these notices serve the interests of consumers who have a right to information relevant to their buying decisions; and 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. Therefore, the Legislature hereby enacts the Automotive Consumer Notification Act.

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(b) For purposes of this section, the following definitions apply:

(1) "~~d~~ Dealer" means any person engaged in the business of selling, offering for sale, or negotiating the retail sale of new or used motor vehicles 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. "Dealer" does not include a bank or other financial institution, or the state, its agencies, bureaus, boards, commissions, authorities, or any of its political subdivisions. A person shall be deemed to be engaged in the business of selling used motor vehicles if the person has sold more than four used motor vehicles in the preceding 12 months.

(2) "Motor vehicle" means a vehicle as defined in Section 415 of the Vehicle Code.

(3) "Nonconformity" means a defect, malfunction or condition that fails to conform to the warranty, but does not include a defect, malfunction or condition that results from an accident, abuse, neglect, modification, or alteration of the motor vehicle by persons other than the manufacturer or its authorized service agent.

(4) "Safety defect" means any defect or condition, normally covered by a vehicle warranty, which is likely to cause death or serious bodily injury or which otherwise substantially impairs or poses a risk to the safe operation of a motor vehicle. "Safety defects" include but are not limited to: malfunctions or failures of the braking system, steering system, engine, suspension system, or transmission.

(5) "Substantially impair" means to render the motor vehicle unfit, unreliable, or unsafe for warranted or ordinary use, or to significantly diminish the value of the vehicle.

(c) ~~Any~~ No person, including any dealer or manufacturer, ~~selling~~ shall sell a motor vehicle in this state this 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 pursuant to subdivision (d) of Section 1793.2 or 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 dealer or manufacturer due to the inability of the dealer or manufacturer to conform the vehicle to warranties required by any other applicable law of this state, any other state, or federal law shall disclose that fact to the buyer in writing prior to the purchase and a dealer or manufacturer shall 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."~~ repurchased by the manufacturer or manufacturer's agent because it had a nonconformity which was not or could not be repaired, or within one year from delivery to the original retail buyer or 12,000 miles on the odometer of the vehicle, either the same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for the repair of the nonconformity or the vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery of the vehicle to the buyer, unless:

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(1) the manufacturer has obtained a title in its name reflecting "lemon buy back" or "lemon buy back - safety defect", as appropriate, pursuant to subdivision (e) (2) of this section and Section 4453 (b) (7) of the Vehicle Code.

(2) The manufacturer provides the same express warranty it provided to the original purchaser, provided that the term of the warranty is not less than 12,000 miles or 12 months after the date of resale.

(3) The manufacturer provides the consumer with a written notice pursuant to Vehicle Code Section 11713.11.

(d) The disclosure requirement in subdivision (c) is cumulative with all other consumer notice requirements, and does not relieve any person, including any dealer or manufacturer, from complying with any other applicable law, including any comparable automobile warranty laws in other states.

(e) (1) (A) Whenever a vehicle is repurchased by, replaced by, or returned to a manufacturer or dealer due to an identified safety defect, the ownership certificate and record of the vehicle shall be branded with the words "lemon buy back - safety defect".

(B) Whenever a vehicle is repurchased by, replaced by, or returned to a manufacturer or dealer due to an identified defect not affecting the safety of the vehicle, the ownership certificate and record of the vehicle shall be branded with the words "lemon buy back".

(2) When a vehicle titled or registered in California has been repurchased by or returned to the manufacturer or a California dealer due to a "safety defect", or other identified defect not affecting the safety of the vehicle, the manufacturer shall immediately apply to the California Department of Motor Vehicles for a title in the name of the manufacturer. As part of the application, the manufacturer shall provide in writing on a form approved by the department: (1) the reason for the repurchase or return including the nature of the defect, and (2) a statement that the vehicle shall not be resold in this state unless the safety defect is repaired. The department shall brand the title issued to the manufacturer, and all subsequent titles to the motor vehicle with the words "lemon buy back - safety defect" or "lemon buy back", as appropriate.

~~(d)~~ (f) The disclosure requirement in subdivision (c) is cumulative with all other consumer notice requirements, and does 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 or comparable automobile warranty laws in other states.

(g) Any violation of the provisions of this section pertaining to a vehicle repurchased by, replaced by, or returned to a manufacturer or dealer due to an identified safety defect, shall be a felony.

AMENDMENT #3

On page 3, line 19, after "SEC.", **DELETE:**

~~3.~~

SFA-32

and **INSERT:**

4.

AMENDMENT #4

On page 4, line 12, after "(7)", **INSERT:**

(A)

AMENDMENT #5

On page 4, line 12, before "under", **INSERT:**

by a manufacturer or dealer

AMENDMENT #6

On page 4, line 18, before "registration", **INSERT:**

certificate of ownership and

AMENDMENT #7

On page 4, line 21, **INSERT:**

(B) A motor vehicle returned to a dealer or manufacturer, for which the dealer or manufacturer is required to include as part of the titling documents of the vehicle the disclosure statement set forth in Civil Code section 1795.8. If the defect resulting in the return of a vehicle to a dealer or manufacturer could affect the safe operation of the vehicle, this shall be reflected on the vehicle record and any title and registration card by the designation "lemon buy back - safety defect".

(c)

AMENDMENT #8

On page 4, line 30, after "SEC.", **DELETE:**

4.

and **INSERT:**

5.

AMENDMENT #9

On page 4, line 34, after "used", **DELETE:**

~~cars~~

and **INSERT:**

motor vehicles

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AMENDMENT #10

On page 5, line 12, after "(b)", **INSERT:**

For purposes of this section, the following definitions apply:

(1) "Dealer" means any person engaged in the business of selling, offering for sale, or negotiating the retail sale of new or used motor vehicles 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. "Dealer" does not include a bank or other financial institution, or the state, its agencies, bureaus, boards, commissions, authorities, or any of its political subdivisions. A person shall be deemed to be engaged in the business of selling used motor vehicles if the person has sold more than four used motor vehicles in the preceding 12 months.

(2) "Motor vehicle" means a vehicle as defined in Section 415 of the Vehicle Code.

(3) "Nonconformity" means a defect, malfunction or condition that fails to conform to the warranty, but does not include a defect, malfunction or condition that results from an accident, abuse, neglect, modification, or alteration of the motor vehicle by persons other than the manufacturer or its authorized service agent.

(4) "Safety defect" means any defect or condition, normally covered by a vehicle warranty, which is likely to cause death or serious bodily injury or which otherwise substantially impairs or poses a risk to the safe operation of a motor vehicle. "Safety defects" include but are not limited to: malfunctions or failures of the braking system, steering system, engine, suspension system, or transmission.

(5) "Substantially impair" means to render the motor vehicle unfit, unreliable, or unsafe for warranted or ordinary use, or to significantly diminish the value of the vehicle.

AMENDMENT #11

On page 5, line 12, **DELETE:**

~~(b)~~

and **INSERT:**

(c)

AMENDMENT #12

On page 5, line 18, **DELETE:**

~~ownership certificate~~

and **INSERT:**

certificate of ownership and registration

SFA-34

AMENDMENT #13

On page 5, line 19, after "back", **DELETE:**

~~; and~~

and **INSERT:**

or "lemon buy back - safety defects", as appropriate. The manufacturer or dealer shall

AMENDMENT #14

On page 5, line 37, **DELETE:**

~~(e)~~

and **INSERT:**

(d)

AMENDMENT #15

On page 6, line 1, after "execute", **INSERT:**

under the penalty of perjury

AMENDMENT #16

On page 6, line 3, after "of", **DELETE:**

~~a~~

and **INSERT:**

the

AMENDMENT #17

On page 6, line 4, after "11713.11.", **INSERT:**

A copy of the acknowledgment notice signed by the buyer and the manufacturer shall be submitted to the department as part of the application to transfer ownership.

AMENDMENT #18

On page 6, line 5, **DELETE:**

~~(d)~~

and **INSERT:**

(e)

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AMENDMENT #19

On page 6, line 9, after "execute", **INSERT:**

under the penalty of perjury

AMENDMENT #20

On page 6, line 12, after "of", **DELETE:**

a

and **INSERT:**

the

AMENDMENT #21

On page 6, line 13, after "11713.11.", **INSERT:**

A copy of the acknowledgment notice signed by the buyer and the dealer shall be submitted to the department as part of the application to transfer ownership.

(f)

AMENDMENT #22

On page 6, line 33, after "SEC.", **DELETE:**

~~5.~~

and **INSERT:**

6.

AMENDMENT #23

On page 8, line 33, after "SEC.", **DELETE:**

~~6.~~

and **INSERT:**

7.

AMENDMENT #24

On page 9, line 6, after "SEC.", **DELETE:**

~~7.~~

and **INSERT:**

8.

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AMENDMENT #25

On page 9, line 9, after "SEC.", **DELETE:**

~~8.~~

and **INSERT:**

9. The sum of ninety five thousand eight hundred two dollars ($95,802) is hereby appropriated to the Department of Motor Vehicles from the Motor Vehicle Account in the State Transportation Fund for purposes of implementing the provisions of this act.

SEC. 10.

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FISCAL STATEMENT
AB 1381
AS AMENDED APRIL 5, 1995

- The department would be required to change its "warranty return" brand to "lemon buy back".
- The department would be required to transfer title into the manufacturer's name. Each of these applications would contain a statement of facts identifying that the vehicle is a buy back and to be branded.

Assumptions:

1. EDP would require 677 hours @ $50 per hour to modify the programs to brand the title/registration card and to mark the record.
2. The department would process approximately 2,000 manufacturer transfers due to warranty buy backs. 50% (1,000) of the transfers would be processed in the field offices at a Motor Vehicle Field Representative (A) level and 50% of the transfers would be processed in headquarters by a Motor Vehicle Technician (B). The transfers in field office would take approximately 6.5 minutes and in headquarters they would take 10 minutes.
3. 13% would be returned for incomplete statements regarding the buy back. The transfers in field office would take approximately 6.5 minutes and in headquarters they would take 10 minutes.
4. Field offices would require 1 minute talk time per application.
5. 2% of the transfers would have to be corrected in headquarters. Each transaction would take 5.5 minutes at the Motor Vehicle Technician (B) level.
6. The Forms Management Unit would have to obtain the decal for distribution to the manufacturer. The cost for each decal would be $.12.
7. Regulations would be required to administer the provisions of the bill. To complete the regulatory process would require .5 PY at the Staff Services Analyst level in the Program and Policy Administration Division.
8. Program and Policy Administration Division would require .25 PY at the Manager III level for program administration.
9. Program and Policy Administration Division would develop the informational memo and update affected manuals. Administration Division would print the information and Headquarters Operations Division would distribute the material. An additional memo would be sent to industry at a cost of $2,500.
10. Department personnel would not verify application of the decal.

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DEPARTMENT OF MOTOR VEHICLES
LEGISLATION ANALYSIS
FISCAL DETAIL

BILL NO: AB 1381

TITLE: **Vehicles: Automotive Consumer Notifications Act**
DIVISION: Departmental Summary
SECTION:

Amendment Date: 4•5•95

SALARIES & WAGES	PERSONNEL YEARS 95/96	96/97	97/98	EXPENDITURES 95/96	96/97	97/98
Administration	0.0	0.0	0.0	0	0	0
Headquarters Operations	0.1	0.1	0.1	2,862	2,862	2,862
Program and Policy Adm	1.1	0.0	0.0	27,590	0	0
Field Operations	0.1	0.1	0.1	2,524	2,524	2,524
EDP Services	0.0	0.0	0.0	0	0	0
TOTAL SALARIES AND WAGES	1.3	0.2	0.2	$32,976	$5,386	$5,386
Partial Year Adjust	0.0	0.0	0.0	0	0	0
Salary Savings	0.0	0.0	0.0	0	0	0
NET SALARIES AND WAGES	1.3	0.2	0.2	$32,976	$5,386	$5,386
STAFF BENEFITS DETAIL:						
OASDI				2,432	397	397
Dental				577	94	94
Health & Welfare				4,097	670	670
Retirement				3,229	527	527
Workers Compensation				1,033	169	169
IDL				204	34	34
NDL				82	13	13
Unemploy Insurance				53	9	9
Other				184	30	30
Life Insurance				18	3	3
Vision Insurance				155	25	25
Medicare Insurance				12	2	2
SUBTOTAL	XXXX	XXXX	XXXX	$12,076	$1,973	$1,973
TOTAL PERSONAL SERVICES	1.3	0.2	0.2	$45,052	$7,359	$7,359
OPERATING EXP/EQUIP	XXXX	XXXX	XXXX	50,750	0	240
TOTAL EXPENDITURES	1.3	0.2	0.2	$95,802	$7,359	$7,599

DEPARTMENT OF MOTOR VEHICLES
LEGISLATION ANALYSIS
FISCAL DETAIL

BILL NO: AB 1381

TITLE: **Vehicles: Automotive Consumer Notifications Act**
DIVISION: Departmental Summary
SECTION:

OPERATING EXP/EQUIP.	EXPENDITURES 95/96	96/97	97/98
General Expense	0	0	0
Printing	12,000	0	0
Communications	0	0	0
Postage	2,500	0	0
Insurance	0	0	0
Travel: In-state	0	0	0
Travel: Out-of state	0	0	0
Training	0	0	0
Facilities Operations	0	0	0
Utilities	0	0	0
Cons & Prof Svcs: Interdept'l	0	0	0
Cons & Prof Svcs: External	0	0	0
Consolidated Data Centers	0	0	0
Data Processing	33,850	0	0
Central Administrative Svcs - Prorata	0	0	0
Equipment	0	0	0
OTHER ITEMS OF EXPENSE:	0	0	0
Vehicle Operations	0	0	0
Tabs & Stickers	2,400	0	240
Bicycle Indicia	0	0	0
License Plates	0	0	0
TOTAL OPERATING EXP/EQUIP	$50,750	$0	$240

CONCURRENCE IN SENATE AMENDMENTS

AB 1381 (Speier) - As Amended: August 21, 1995

ASSEMBLY VOTE: 75-00 (June 1, 1995) SENATE VOTE: 36-0 (September 1, 1995)

Original Committee Reference: TRANS.

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]

As passed by the Assembly, this bill:

1) Revised and recast the Automotive Consumer Notification Act, moving it from the Civil Code to the Vehicle Code.

2) Required 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) Were reacquired during or within six months after the conclusion of arbitration or litigation; or

   c) Were reacquired within six months after the buyer made a written request to the manufacturer for replacement or a refund.

3) Required 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.

4) Required 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. Required the new buyer to sign notice.

5) Applied 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) Provided 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.

The Senate amendments:

1) Make legislative findings and declarations.

2) Delete the provision that allows any person damaged by the failure of a manufacturer or dealer to comply with provisions in the bill to have the same rights as those provided to a buyer of consumer goods by provisions relating to warranty.

3) Require that a specified decal to be affixed by a manufacturer to a motor vehicle be either on the left front door frame of the vehicle or, if the vehicle does not have a left front door frame, in a location designated by DMV.

4) Modify the Warranty Buyback Notice.

5) Specify that this act must apply only to vehicles re-acquired by a manufacturer on or after January 1, 1996 and must not affect any proceeding relating to vehicles reacquired prior to January 1, 1996.

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.

Analysis prepared by: John Stevens / atrans / 445-1616

FN 019623

AB 1381-- VEHICLE BUY BACKS

MR. CHAIRMAN, MEMBERS:

AB 1381 IMPROVES DISCLOSURES THAT MUST BE PROVIDED TO CONSUMERS WHEN A DEALER RESELLS A VEHICLE PREVIOUSLY REPURCHASED FROM THE ORIGINAL OWNER BY THE MANUFACTURER.

THE DMV AND THE ASSEMBLY CONSUMER PROTECTION COMMITTEE HAVE BOTH DOCUMENTED THAT HUNDREDS OF CONSUMERS HAVE PURCHASED CARS FROM DEALERS WITHOUT THE KNOWLEDGE THAT THESE CARS HAD BEEN BOUGHT BACK BY THE MANUFACTURER AND THAT SOME OF THESE VEHICLES WERE RECYCLED LEMONS--THAT IS--THE CARS HAD MECHANICAL PROBLEMS WHICH COULD NOT BE FIXED AFTER A REASONABLE NUMBER OF REPAIR ATTEMPTS.

AT TIMES THE FAILURE TO DISCLOSE A CAR'S PRIOR HISTORY WAS CLEARLY ILLEGAL UNDER EXISTING LAW, AT OTHER OTHER TIMES THIS FAILURE TO DISCLOSE WAS A PRODUCT OF VAGUENESS IN THE LAW AND/OR SLIPPERY SALES PRACTICES AT AUTO AUCTIONS WHICH SERVED TO COVER A VEHICLE'S PAPER TRAIL. AT TIMES EVEN THE DEALER WAS UNAWARE THAT THE VEHICLE ON THE LOT WAS A LEMON PACKAGED AS A PEACH.

AB 1381, WHICH IS SPONSORED BY THE CALIFORNIA MOTOR CAR DEALERS ASSOCIATION, IMPROVES CONSUMER PROTECTION AS FOLLOWS:

1. ANY VEHICLE REPURCHASED BY THE MANUFACTURER DUE TO CUSTOMER DISATISFACTION CANNOT BE RESOLD UNLESS IT IS ACCOMPANIED BY A DISCLOSURE FORM THAT LISTS THE REASON OR REASONS WHY THE VEHICLE WAS REPURCHASED. ANY REPAIRS MADE TO THE VEHICLE TO CORRECT CITED PROBLEMS WOULD ALSO BE LISTED. THIS FORM WOULD BE SIGNED BY THE MANUFACTURER, THE DEALER AND THE BUYER.

UNDER CURRENT LAW THERE IS NO SUCH DISCLOSURE FORM.NOR IS DISCLOSURE REQUIRED OF MOST BUY BACK TRANSACTIONS.

2. THE BILL ALSO REQUIRES THAT ANY VEHICLE BOUGHT BACK UNDER CURRENT LAW PROVISIONS WHICH TRIGGER BRANDING BE BRANDED IN THE MANUFACTURER'S NAME. CURRENTLY, THE ORIGINAL OWNER'S NAME STAYS ON THE BRANDED TITLE UNTIL THE VEHICLE IS SOLD TO A SECOND CONSUMER.

AB 1381'S BRANDING PROVISION ALSO REQUIRES THAT DMV RETITLE THE VEHICLE WITH THE TERM, " FACTORY BUYBACK " AND THAT A " FACTORY BUYBACK " DECAL WOULD HAVE TO BE AFFIXED ON THE LEFT DOOR JAMB.

THE TERM USED IN CURRENT LAW IS " WARRANTY RETURN " WHICH IS CONFUSING, AT BEST. ALSO, UNDER CURRENT LAW, THERE IS NO DECAL USED.

3. FINALLY, THE BILL RESTRICTS REFUNDS OF SALES TAX ON BUY BACKS TO BRANDED VEHICLES. THIS PROVISON CLARIFIES CURRENT LAW.

AZ

MY INTENT WITH THIS BILL IS TO PROVIDE CONSUMERS WITH A VERY IMPORTANT DISCLOSURE DOCUMENT REGARDING THEIR POSSIBLE PURCHASE OF A VEHICLE WHICH SOMEONE ELSE DID NOT WANT. IT'S A MATTER OF BUYER BE INFORMED!

I HAVE WORKED WITH THE CQNSUMER ATTORNEYS OF CALIFORNIA WHO, AFTER THIS LATEST SET OF AMENDMENTS, ARE NO LONGER IN OPPOSITION TO THE BILL.

WITH ME TODAY IS PETER WELCH, REPRESENTING CALIFORNIA CAR DEALERS. I ASK FOR YOUR AYE VOTE.

short version....

AB 1381-- VEHICLE BUY BACKS

concurrence in Senate Amendments

MR. SPEAKER, MEMBERS:

AB 1381 IMPROVES DISCLOSURES THAT MUST BE PROVIDED TO CAR BUYERS WHEN A DEALER RESELLS A VEHICLE PREVIOUSLY REPURCHASED FROM THE ORIGINAL OWNER BY THE MANUFACTURER.

THE SENATE AMENDMENTS SIMPLY:

1. REWORDED THE BRAND THAT WOULD APPEAR ON TITLE, DISCLOSURE FORMS AND ON A DECAL AFFIXED TO THE LEFT DOOR JAMB. SPECIFICALLY, INSTEAD OF " LEMON BUY BACK, " THE WORDING WOULD BE " lEMON lAW BUYBACK. " THIS WORDING IS IN SHARP CONTRAST TO THE CURRENT LAW NEBULOUS TERM: WRNTY RTD.

2. SPECIFIED THAT THE BILL ONLY APPLY TO VEHICLES RE-ACQUIRED BY A MANUFACTURER ON OR AFTER JANUARY 1, 1996.

3. AND MAINTAINED EXISTING CIVIL REMEDIES FOR CONSUMERS AGGRIEVED BY RECYCLED LEMON.

THE DMV HAS DOCUMENTED THAT HUNDREDS AND HUNDREDS OF CONSUMERS HAVE PURCHASED CARS FROM DEALERS WITHOUT THE KNOWLEDGE THAT THESE CARS HAD BEEN BOUGHT BACK BY THE

A4

MANUFACTURER AND THAT SOME OF THESE VEHICLES WERE RECYCLED LEMONS--THAT IS--THE CARS HAD MECHANICAL PROBLEMS WHICH COULD NOT BE FIXED AFTER A REASONABLE NUMBER OF REPAIR ATTEMPTS.

THIS BILL IS SPONSORED BY THE CALIFORNIA MOTOR CAR DEALERS ASSOCIATION. OUR CAR DEALERS DON'T LIKE THE VAGUENESS IN CURRENT LAW WHICH, ON PAPER, ALLOWS PEACHES TO BECOME LEMONS..THAT IS THERE IS SOME QUESTION ON WHEN BUYBACK STATUS HAS TO BE REVEALED.THIS VAGUENESS TRIGGERS LAWSUITS.

AB 1381 REQUIRES THAT ALL MANUFACTURER BUYBACKS BE DISCLOSED TO THE DEALER AND TO THE BUYER. THE DISCLOSURE PROVIDES INFORMATION ON PROBLEMS, REPAIRS MADE AND A STATEMENT ON WHETHER OR NOT THE CAR WAS BOUGHT BACK UNDER PROVISIONS OF THE LEMON LAW.

THIS BILL HAS NOT HAD ANY NEGATIVE VOTES IN EITHER HOUSE.

MEMBERS, WHEN IT COMES TO CONTEMPLATING THE PURCHASE OF A LOW-MILEAGE USED CAR, LET'S KICK THE TIRES AND LOOK FOR THE LEMON DECAL. I ASK FOR YOUR AYE VOTE.

AB 1381-- VEHICLE BUY BACKS

MR. CHAIRMAN, MEMBERS:

AB 1381 IMPROVES DISCLOSURES THAT MUST BE PROVIDED TO CONSUMERS WHEN A DEALER RESELLS A VEHICLE PREVIOUSLY REPURCHASED FROM THE ORIGINAL OWNER BY THE MANUFACTURER.

THE DMV HAS DOCUMENTED THAT HUNDREDS OF CONSUMERS HAVE PURCHASED CARS FROM DEALERS WITHOUT THE KNOWLEDGE THAT THESE CARS HAD BEEN BOUGHT BACK BY THE MANUFACTURER AND THAT SOME OF THESE VEHICLES WERE RECYCLED LEMONS--THAT IS--THE CARS HAD MECHANICAL PROBLEMS WHICH COULD NOT BE FIXED AFTER A REASONABLE NUMBER OF REPAIR ATTEMPTS.

THE DMV WHICH WOULD ENFORCE THE PROVISIONS OF THE BILL HAS A NEUTRAL POSITION ON THE BILL, WHICH IS SPONSORED BY THE CALIFORNIA MOTOR CAR DEALERS ASSOCIATION.

DIFFERENCES WITH THE CALIFORNIA CONSUMER ATTORNEYS HAVE BEEN WORKED OUT...WITH ME TODAY IS PETER WELCH OF THE MOTOR CAR DEALERS...I ASK FOR YOUR AYE VOTE.

AL

----------ADDITIONAL INFORMATION---------

AB 1381 IMPROVES CONSUMER PROTECTION AS FOLLOWS:

1. ANY VEHICLE REPURCHASED BY THE MANUFACTURER DUE TO CUSTOMER DISATISFACTION CANNOT BE RESOLD UNLESS IT IS ACCOMPANIED BY A DISCLOSURE FORM THAT LISTS THE REASON OR REASONS WHY THE VEHICLE WAS REPURCHASED. ANY REPAIRS MADE TO THE VEHICLE TO CORRECT CITED PROBLEMS WOULD ALSO BE LISTED. THIS FORM WOULD BE SIGNED BY THE MANUFACTURER, THE DEALER AND THE BUYER.

UNDER CURRENT LAW THERE IS NO SUCH DISCLOSURE FORM.NOR IS DISCLOSURE REQUIRED OF MOST BUY BACK TRANSACTIONS.

2. THE BILL ALSO REQUIRES THAT ANY VEHICLE BOUGHT BACK UNDER CURRENT LAW PROVISIONS WHICH TRIGGER BRANDING BE BRANDED IN THE MANUFACTURER'S NAME. CURRENTLY, THE ORIGINAL OWNER'S NAME STAYS ON THE BRANDED TITLE UNTIL THE VEHICLE IS SOLD TO A SECOND CONSUMER.

AB 1381'S BRANDING PROVISION ALSO REQUIRES THAT DMV RETITLE THE VEHICLE WITH THE TERM, " LEMON LAW BUYBACK " AND THAT A " LEMON LAW BUYBACK " DECAL WOULD HAVE TO BE AFFIXED TO THE LEFT DOOR JAMB.

THE TERM USED IN CURRENT LAW IS " WARRANTY RETURNED " WHICH IS CONFUSING, AT BEST. ALSO, UNDER CURRENT LAW, THERE IS NO DECAL

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CHANGE THE STANDARD UNDER WHICH A FACTORY BUYBACK IS DETERMINED TO BE A LEMON.

THIS BILL SIMPLY PROVIDES THAT ALL FACTORY BUYBACKS BE DISCLOSED ON AN EASY TO READ FORM SIGNED BY THE FACTORY REPRESENTATIVE, THE DEALER AND THE BUYER. LEMONS UNDER CURRENT LAW REMAIN LEMONS UNDER AB 1381.

AB 1381 PRESENTS THIS VERY CLEAR AND SIMPLE QUESTION TO YOU: MEMBERS. SHOULD YOUR CAR BUYING CONSTITUENTS BE TOLD THAT A VEHICLE THEY MAY WANT TO BUY FROM A DEALER WAS PREVIOUSLY BOUGHT BACK BY THE FACTORY FOR AN IDENTIFIED REASON? IF YOU BELIEVE CAR BUYERS SHOULD BE LEFT IN THE DARK WHEN IT COMES TO PURCHASING A LOW-MILEAGE CAR WITH PRIOR OWNER PROBLEMS THAT MAY RANGE FROM DISSATISFACTION WITH THE PAINT JOB TO FAULTY HYDRAULIC BRAKES....IF YOU BELIEVE CAR DEALERS IN YOUR DISTRICT SHOULD BE SUBJECT TO LITIGATION WHEN A CAR BUYER LATER DISCOVERS THAT HE OR SHE OWNS A BUYBACK CAR? IF YOU BELIEVE BUYBACKS SHOULD REMAIN A SECRET, THEN VOTE " NO. " IF YOU WANT TO REDUCE LITIGATION, IF YOU WANT DEALERS AND CONSUMERS TO KNOW THE BUYBACK HISTORY OF A CAR, THEN VOTE " YES. "

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AB 1381 improves disclosures that must be made to a car buyer when a dealer resells a vehicle previously repurchased from the original owner by the manufacturer.

THE SENATE AMENDMENTS SIMPLY:

1. REWORDED THE TERM " LEMON BUY BACK " TO " LEMON LAW BUYBACK. " THIS WORDING WHICH WOULD APPEAR ON DISCLOSURE STATEMENTS, A DECAL AFFIXED TO THE LEFT DOOR FRAME AND THE TITLE IS IN SHARP CONTRAST TO THE CURRENT LAW NEBULOUS TERM: " WARNTY RTD. "

2. SPECIFIED THAT THE BILL ONLY APPLY TO CARS RE-ACQUIRED BY A MANUFACTURER ON OR AFTER JANUARY 1, 1996.

3. MAINTAINED EXISTING CIVIL REMEDIES FOR CONSUMERS AGGRIEVED BY A RECYCLED LEMON.

MR. SPEAKER, MEMBERS, THIS BILL WHICH IS SPONSORED BY THE CALIFORNIA MOTOR CAR DEALERS ASSOCIATION AND WHICH HAS NOT HAD A SINGLE " NO " VOTE, HAS BEEN UNFAIRLY DENTED BY AN INACCURATE CLAIM IN THE REPUBLICAN ANALYSIS THAT THIS BILL WILL AUTOMATICALLY MAKE A FACTORY BUYBACK A " LEMON. " THIS BILL DOES NOT AMEND CALIFORNIA'S LEMON LAW. THIS BILL DOES NOT REQUIRE THAT ALL MANUFACTURER BUYBACKS BE BRANDED AS LEMONS. THIS BILL DOES NOT

AB 1381--LEMON BUY BACKS

MR. SPEAKER, MEMBERS:

THE DMV AND THE ASSEMBLY CONSUMER PROTECTION COMMITTEE HAVE BOTH DOCUMENTED THAT HUNDREDS OF CONSUMERS HAVE PURCHASED CARS FROM DEALERS WITHOUT THE KNOWLEDGE THAT THESE CAR WERE RECYCLED LEMONS--THAT IS--THE CARS WERE PREVIOUSLY REPURCHASED FROM A DISATISFIED OWNER BY THE MANUFACTURER.

IN A REPORT ENTITLED, BITTER FRUIT, THE CONSUMER PROTECTION COMMITTEE LAST YEAR DETAILED HOW CONSUMERS HAD UNKNOWINGLY PURCHASED LOW MILEAGE CARS WITH HISTORIES OF BRAKE PROBLEMS.

AT TIMES THE FAILURE OF THE DEALER TO DISCLOSE THE PRIOR HISTORY OF A CAR WAS CLEARLY ILLEGAL UNDER EXISTING LAW, AT OTHER OTHER TIMES THE FAILURE TO DISCLOSE WAS A PRODUCT OF EITHER VAGUENESS IN THE LAW, OR SLIPPERY SALES PRACTICES AT AUTO AUCTIONS WHICH SERVED TO COVER A VEHICLE'S PAPER TRAIL. AT TIMES EVEN THE DEALER WAS UNAWARE THAT THE VEHICLE ON THE LOT WAS A LEMON, NOW PACKAGED AS A PEACH.

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AB 1381, WHICH IS SPONSORED BY THE CALIFORNIA MOTOR CAR DEALERS ASSOCIATION, DRAWS A VERY BRIGHT LINE OF COMPLIANCE FOR DEALERS AND MANUFACTURERS...A LINE THAT WILL PROMOTE CONSUMER PROTECTION BY REQUIRING THAT...

1. ANY VEHICLE THAT HAS BEEN REPURCHASED BY THE MANUFACTURER TO RESOLVE A WARRANTY DISPUTE CANNOT BE RESOLD UNLESS IT IS ACCOMPANIED BY A DISCLOSURE FORM THAT LISTS THE REASON WHY THE VEHICLE WAS REPURCHASED. THIS FORM WOULD BE SIGNED BY THE MANUFACTURER, THE DEALER AND THE BUYER. CURRENTLY THERE IS NO SUCH DISCLOSURE FORM..NOR IS DISCLOSURE REQUIRED ON MOST BUYBACK CASES. WITH THE SUPPORT OF DEALERS AND MANUFACTURERS, AB 1381 PROVIDES FOR DISCLOSURE IN ALL CASES.

2. THE BILL ALSO REQUIRES BRANDING OF ANY VEHICLE THAT WAS BOUGHT BACK UNDER ORDER OF A COURT OR ARBITRATION PANEL, OR IF IT WERE REPURCHASED WITHIN SIX MONTHS AFTER THE CONCLUSION OF ARBITRATION, OR LITIGATION; OR IT IF WERE REPURCHASED WITHIN SIX MONTHS AFTER THE BUYER MADE A WRITTEN REQUEST FOR REPLACEMENT OR REFUND.

THIS BRANDING REQUIRES THAT THE MANUFACTURER RETITLE THE VEHICLE WITH THE TERM, " LEMON BUYBACK " AND A " LEMON BUYBACK " DECAL WOULD HAVE TO BE AFFIXED ON THE LEFT DOOR JAMB.

All

3. FINALLY, THE BILL SPECIFIES THAT CONSUMERS DAMAGED BY A MANUFACTURER OR DEALER'S FAILURE TO DISCLOSE OR BRAND WOULD BE ABLE TO SEEK RELIEF IN COURT AND WOULD BE ENTITLED TO CIVIL PENALTIES.

THE BILL WAS APPROVED IN TRANSPORTATION 14-0 AND IN APPROPRIATIONS 15-0. AB 1381 IS SPONSORED BY THE CAR DEALERS. I ASK FOR YOUR AYE VOTE.

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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.

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A. Summary of Provisions

Section (1) defines a number of key terms, the most significant of which is the determination of what constitutes a "Buyback Vehicle." This term is broadly defined to include vehicles which are repurchased by dealers or manufacturers, whether as a result of a formal adjudicatory proceeding or a voluntary settlement. Definitions of "consumer," "dealer," "manufacturer" and of what constitutes a "violation" are also included.

Section (2) states the two disclosure requirements which are the primary consumer protection provisions of the statute. First, a window sticker is required to be placed on the windshield of the vehicle, indicating that the vehicle was previously sold and was returned for alleged defects which must be listed on the form. The size of the form and the print size are also specified. A second, similar, disclosure is required to be included in the contract or attached to the contract. The type size and form of this disclosure are also specified and the consumer must acknowledge the disclosure by signing the boxed area in which it is contained.

Section (3) requires that a manufacturer or dealer accepting the return of a buyback vehicle stamp the words "Defective Vehicle Buyback" clearly and conspicuously on the face of the original title and then submit a copy of the stamped title to the Department of Motor Vehicles. The Department of Motor Vehicles is required to maintain a listing of these vehicles and in the case of any subsequent requests for a new title for the vehicle, stamp "Defective Vehicle Buyback" on the face of the new title.

Section (4) outlines the private remedies available under this chapter. It allows for the recovery of actual damages or the value of the consideration at the election of the consumer, costs and attorneys fees, exemplary damages of up to 3 times the value of the actual damages or the consideration and other equitable relief. Privity is also eliminated as a bar to recovery against a wrongdoer several steps removed in the chain of title.

Section (5) sets forth provisions for enforcement by state attorneys general which include the authority to enjoin violations, recover damages on behalf of injured consumers, recover civil penalties of up to $10,000 per violation and obtain other equitable relief.

Section (6) makes a violation of the chapter an unfair or deceptive trade practice.

Section (7) indicates that the powers and remedies of the act are in addition to the powers and remedies already available under existing law and are not intended to be exclusive.

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Section (8) states the legislative intent that the act is remedial legislation and is liberally construed to effectuate its purpose.

from NAAG analysis —

undisclosed buyback vehicles which have been [illegible] another state.

The title branding is done in a way that is the least burdensome for manufacturers and dealers by allowing them to stamp the titles rather than submitting them to the Department of Motor Vehicles and waiting for a new stamped title to issue. (Note: this may not be possible in all states since some jurisdictions may currently require the submission of the original title to the Department of Motor Vehicles).

It is anticipated that there may be opposition to the concept of permanently branding the title rather than the use of a disclosure form which could be removed after the defects are repaired. The concept of allowing the removal of required disclosures was considered and rejected by the working group. In most cases, vehicles are bought back or replaced only after multiple unsuccessful attempts at repairing the conditions or defects. After each repair attempt, the manufacturer or dealer probably believed that the repair had successfully resolved the problem, only for the condition to occur once again. Therefore, allowing for the removability of lemon history disclosures based upon a manufacturer's or dealer's certification that the defect had been cured, however well intentioned, does not adequately protect subsequent purchasers.

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.

Sections (4), (5) and (6) provide for private and state enforcement. These sections may be enacted together as they exist in the proposed legislation, or may be selectively adopted. For example, in some jurisdictions, incorporating the state unfair trade practices statute (in Section 6) may provide an adequate basis for private relief and for state investigation and enforcement, without having to adopt Sections (4) and (5).

The recoverable private damages in Section (4) are intended to be comprehensive and to reflect the seriousness with which violations are viewed. Since knowledge of a vehicle's lemon history could affect not only the price paid, but whether the consumer purchases the vehicle at all, the consumer is entitled to recover the full consideration as actual damages and up to three times the value of the consideration as exemplary damages.

In addition, by removing lack of privity as a bar to an action, consumers would be entitled to take legal action directly against the person or company in the chain of title which removed a disclosure statement.

AS

Memo To: Richard Steffen, Office of Assemblywoman Jackie Speier
From: Rosemary Shahan, Motor Voters
Re: Draft language for bill regarding selling of repurchased vehicles without disclosure

You asked for my reaction regarding your draft language, which you indicated you wish to submit to Legislative Counsel soon.

Motor Voters supports strengthening consumer protection in the area of vehicle sales and resales. Given auto manufacturers' record of repeatedly violating existing law, there is no question that strong measures are needed to reduce illegal resales of seriously defective vehicles.

While the concept of providing additional information to potential purchasers is good, the way the bill is drafted raises some significant concerns. For example, there is no assurance that the information provided by the manufacturer would be accurate. In addition,

THIS BILL, AS DRAFTED, WOULD WEAKEN EXISTING LAW BY:

Providing in 1 (d) that "There shall be no release of information on the names and addresses of consumers of record." This would make it virtually impossible for individual consumers to verify whether the information provided by the manufacturer to the DMV is accurate. It would create a serious new impediment to consumers wishing to trace the ownership of their vehicles, and to remedial legal action.

THIS BILL, AS DRAFTED, WOULD ALSO ENCOURAGE MANUFACTURERS TO CONTINUE VIOLATING CALIFORNIA LAW BY FAILING TO PROVIDE ANY PENALTIES FOR NON-COMPLIANCE.

Given auto manufacturers' well-publicized record of ignoring existing law, despite current (albeit inadequate) penalties, this is a major shortcoming.

AKo

CENTER FOR AUTO SAFETY
2001 S STREET, NW SUITE 410 WASHINGTON, DC 20009-1160 202-328-7700

March 6, 1995

Jackie Speier, Chairperson
Committee on Consumer Protection,
Governmental Efficiency & Economic Development
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0001

Dear Assemblywoman Speier:

In 1970, when the Center for Auto Safety (CAS) wrote the first Lemon Book, we pointed out "lemon owners were marketplace victims with neither rights nor remedies."[1] We called for the creation of "a just system to resolve complaints cheaply and quickly for all car buyers -- new and used." To help consumers with lemons, states led by California and Connecticut began passing their own lemon laws in 1982 after the Federal lemon law was weakened by auto industry lobbyists. Our 1970 and 1980 Lemon Books plus testimony of CAS staff in many states played a major role in the passage of these lemon laws. Yet as we pointed out in the 1990 Lemon Book:

> The auto companies diluted the effectiveness of state lemon laws by setting up industry-run arbitration boards to decide when to order a refund for a lemon. These industry boards more often resembled kangaroo courts than fair and impartial tribunals. But consumer groups such as Motor Voters and legislators such as John Woodcock of Connecticut fought back to get the auto company fox out of the arbitration chicken coop by setting up independent, state-run boards through Lemon Law II's in states such as New York, Connecticut, Minnesota, Vermont and Massachusetts.

Since California passed its landmark lemon law in 1982, other states have moved ahead of California with their "Lemon Law II's" to strengthen their original lemon laws and to block such loopholes as industry-run arbitration used by the auto companies. While other states have enacted consumer protection provisions for safety lemons (one unsuccessful repair attempt of a safety system), independent state-run arbitration, and coverage for used cars and business vehicles, California has fallen behind in consumer protection. (See enclosed 1992 CAS survey of state lemon laws.) As you recognize, California's lemon law sorely needs an overhaul.

Our review of AB 1383, your bill to overhaul the California lemon law, shows that it has major flaws that outweigh its benefits. If adopted as presently drafted, AB 1383 will weaken, rather than strengthen, auto lemon protection in California. Its companion bill on lemon laundering, resale of bought-back lemons, also represents a step backward in that it creates a loophole through which the worst lemons will drive.

[1]The 1970 Lemon Book was based on analysis of over 4,000 consumer complaints received by Ralph Nader. In the 25 years since then, CAS and Mr. Nader have received over a half-million auto complaints and have the biggest repository of information on lemons in America.

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On the whole, California consumers would be better off with the present law and all its warts than under AB 1383. The primary flaw is that AB 1383 relies on a modified form of industry-run arbitration. No matter how many constraints one puts on industry-run arbitration, one cannot correct its inherent bias in favor of industry. To make matters worse, AB 1383 forces the consumer to resort to arbitration before going to court. This substantially increases the already high transaction costs for consumers seeking relief under the lemon laws. Finally, by conditioning access to the courts on application for arbitration, the bill might vitiate the class action mechanism as an efficient way of redressing the injuries of lemon owners.

The lemon buyback bill, AB 1381, also represents a major step backward in consumer protection by not covering lemons bought back before arbitration or litigation. Our 20 years of experience with Federal and state lemon laws shows that auto makers buy back the egregious, bright yellow lemons rather than go to arbitration or litigation. By exempting these vehicles from coverage, AB 1381 assures that the worst lemons that are bought back will reappear on California roads without any indication to the purchasers of their checkered past.

"Independent" Private Arbitration Leaves Auto Fox In Charge of Arbitration Chicken Coop

The single greatest defect in the lemon arbitration bill stems from Section 2 of AB 1383 which sets forth the basic framework for a third-party "independent" arbitration program. Alternative dispute resolution programs funded by manufacturers are independent in name only. State-run arbitration programs have historically been much more even-handed in their treatment of consumer/manufacturer disputes. What is more, they have been much more responsive to the public's need for full, frank, and accurate information about the rules of the programs, as well as the consequences of submitting to lemon arbitration.

Although AB 1383 attempts to provide some safeguards aimed at ensuring some measure of independence in the process, there remain a number of loopholes through which a manufacturer can exercise its influence. As the bill currently reads, it prohibits "ownership interest in, control of, [and] influence over" the arbitration program. However, the portions defining how to prevent such undue influence provide only that the manufacturer satisfy their funding obligation under the contract in advance, that the manufacturer and arbiter can share no personnel, and that the manufacturer cannot base its decision whether to renew its agreement with the arbiter on the latter's determinations in the process. Yet this is little, if any, different from the way programs such as BBB and Autosolve have operated. Indeed, with minor modification, all of the present manufacturer arbitration programs could qualify as "independent" programs under AB 1383. Even the Ford and Chrysler programs are run through an independent contractor in Wisconsin who could easily modify its operation to qualify with AB 1383.

AB 1383 takes a band-aid approach to arbitration by attempting to patch up the tried and failed BBB, AUTOSOLVE, Ford Dispute Settlement Board and Chrysler Customer Arbitration Board and make them work. The problem is that they cannot be made to work anywhere near as well as the independent state run programs such as that of Washington or Florida. The reason why

car companies fight independent state run programs so hard is that they force the manufacturer to buy back more lemons.

There are countless ways for an auto company to exert its influence beyond the reach of AB 1383 provisions. Our experience with manufacturer programs shows that when you plug one hole in the dike, two others spring up. No matter how narrowly the law defines proper conduct in the private arbitration process, an ingenious manufacturer will invariably find a way to skew the results in its favor. Some of the influence channels include the adequacy of funding, selection of arbitrators, quality of training, revolving doors, and conflicts of interest.

AB 1383 Forces Consumers To Use So-Called Independent Arbitration

To make matters worse, AB 1383 makes submission to the so-called "independent" arbitration a prior resort to going to the courts. This eliminates an important check and balance on the efficiency of operation of arbitration, regardless of whether it's state or manufacturer run. If arbitration is well run, both quickly and fairly, consumers will not go to court. But if arbitration is unfair, biased or slow, consumers must have the right to seek judicial redress. By requiring prior resort, AB 1383 creates an incentive for auto companies to make arbitration ineffective so that consumers will get frustrated, go away and trade in their lemons. Permitting direct access to the courts creates an incentive for manufacturers to make arbitration work.

As long as the process is elective, lemon owners can forego the time and expense entailed in pursuing an avenue of relief in which manufacturers hold inordinate sway over the results. Under AB 1383, however, a consumer must demonstrate to the court that she has applied for resolution through a biased private arbitration program before she can even try to vindicate her rights in a court of law. In this regard, the proposed legislation is actually worse for consumers than existing California law.

Moreover, when the process is mandatory, the bill's provisions making arbitration non-binding and allowing the use of legal counsel in the process become meaningless. Traditionally, the purpose of allowing a consumer the option of repudiating an arbiter's adverse decision is to permit the consumer to seek redress anew in court with a clean slate. Consumers also have this option under AB 1383, but without the attendant benefits. Despite barring the introduction of evidence about the arbitration in a court, the judicial decisionmaker will always know (1) that the consumer has gone through arbitration and (2) that the consumer did not obtain a satisfactory result. The consumer's mere presence in court indicates that he or she has somehow "lost" earlier in the process.

Similarly, because the lemon owner knows that arbitration is a big first step in litigation, the smart consumer will invariably want to have legal representation during arbitration for fear of the effect of an adverse decision. This will run up the costs of a process intended to be both simple and inexpensive. In addition, because AB 1383 explicitly denies consumers the opportunity to recover attorney's fees in arbitration -- which more progressive states allow -- arbitration might ultimately cost the consumer more than the process is worth.

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AB 1383 Endangers Consumer Class Actions

By requiring arbitration before vindicating one's rights in state court, AB 1383 raises some serious concerns about the continued vitality of the class action mechanism as a way to mete out justice in the lemon context. Class actions permit the courts to dispose of common claims in an effective and efficient manner, as in the Toyota Camry pulsating brake class action filed California in 1988. That class action returned approximately $100 million to consumers.

By imposing an arbitration requirement on lemon vehicle owners in California, the proposed legislation suggests that every consumer must exhaust alternative dispute resolution before going to court. This may very well foreclose the opportunity for such aggregated treatment, and thus greatly increase costs for the courts and consumers. Must every putative class member in a class action demonstrate that she has gone through arbitration? If so, lemon class actions would become meaningless, since the judgment could bind only those owners who have filed for arbitration, while leaving lemon owners with the same vehicle defect who have not taken that additional step to proceed on an individual basis. It simply makes no sense that such a formality should jeopardize concerns for judicial economy and equal treatment for similar injuries.

The Few Substantive Improvements in AB 1383 Are Weaker Than Other States

AB 1383 purports to extend the lemon coverage period to 2 years or 24,000 miles. In fact, it does not do so because it requires the first repair attempt to occur within 1 year or 12,000 miles. Most other states with 2 year or 24,000 periods do not require the first repair attempt to occur within the first year or 12,000 miles. Even states with longer lemon coverage provision periods do not impose that limitation. For example, Hawaii and Vermont extend coverage to the entire length of the manufacturer's express warranty - typically, 3 years or 36,000 or sometimes even longer. If a California had 5 brake repair attempts at 13,000, 15,000, 17,000, 19,000 and 21,000 miles, he or she would not have a lemon under AB 1383. But if that person lived in Washington or one of the other more progressive states, he or she would be covered by the lemon law.

AB 1383 also purports to extend lemon coverage to vehicles used for business use but limits it to small businesses or professionals that buy no more than one vehicle per year. Thus the husband and wife who run a small business or are professionals cannot buy a new vehicle for their business and themselves and get lemon protection. Many other states and the Federal warranty law do not make any distinction between business use and personal use vehicles. Some states which do set limits such as Washington cover small businesses with up to 10 vehicles in their fleet.

AB 1381 Creates New Loopholes for Laundering Lemon Buybacks

AB 1381, the proposed lemon disclosure bill, requires only vehicles repurchased due to a court order or arbitration award, or falling under the four repair/thirty day presumption to bear some

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sort of mark that the vehicle is a lemon. Our experience with thousands of cases shows that a significant percentage of repurchased lemons do not fall into either of these categories. More troublesome is the fact that these voluntarily repurchased lemons are much worse lemons than those bought back after arbitration or litigation.

Indeed, common sense tells one that a manufacturer will buy back the very worst lemons as part of a private agreement without waiting for an arbitration award or a court decision. It only stands to reason that the manufacturer would settle a case early on when the manufacturer knows it would lose. As the bill currently reads, these vehicles would not be covered by the disclosure requirements. A provision demanding that manufacturers and dealers record and label even those cars which are bought back informally would more adequately serve the interests of California consumers.

Further, AB 1381 would block the main avenue of redress open to victims of illegal lemon laundering. By shifting its provisions from the Song-Beverly Warranty Act to the Vehicle Code, AB 1381 would eliminate remedies traditionally available to wronged consumers.

Recommendations

Rather than going forward with AB 1383 and 1381 as drafted, consumers in California would be better served by a "Lemon Law II" which strengthens the known substantive weaknesses of the present law, rather than adopting a band-aid approach that preserves an admittedly flawed process. AB 1383 leaves the fox in charge of the chicken coop and hopes he will improve his behavior.

We strongly urge you to look to the innovations other states have made in this area before the legislative debate begins. Our suggestions for improvement include:

(1) Creation of independent state-run arbitration financed by a $5 fee on purchase of new cars.

(2) Extension of the statutory period for lemon status to twenty four months or the express warranty, whichever is longer.

(3) Protection for safety lemons by providing for refund or replacement where a vehicle is subject to the same repair twice for a major safety problem such as brake or steering failure. Consumers should not have to risk their lives three times before lemon coverage applies.

(4) Protection for used lemons.

(5) Protection for bumper to bumper lemons such as provided in Arkansas and Ohio where 5-8 repair attempts for different problems invoke the lemon presumption.

(6) A provision making violation of the lemon law a violation of the Unfair Trade Practices Act.

(7) Award of attorney fees in arbitration to level the playing field with the manufacturer.

(8) A clear statement that whatever changes in current law AB 1383 might effect will not create an "arbitration exhaustion" requirement for class action purposes. As noted above, such a requirement would disserve the interests of California consumers and lead to additional litigation which a class action could have disposed of in a single suit; and

(9) A more comprehensive lemon label requirement for those defective vehicles a manufacturer or dealer buys back, and a private right of action for consumers harmed by the failure to label lemons. This would give consumers the two most effective tools against unscrupulous lemon-launderers -- information and recourse to the courts.

As residents of the state with the most vehicles, California consumers deserve the nation's best lemon law, not one of the weakest.

Sincerely,

Ralph Nader
Founder
Center for Auto Safety

Clarence M. Ditlow
Executive Director
Center for Auto Safety

Authors of The Lemon Books

Enclosure

CAS PICKS BEST *(Washington)* AND WORST *(Colorado)* OF STATE LEMON LAWS

When it comes to lemon laws, some state legislatures resemble automakers — i.e., they make lemons. In a December 1992 study of state lemon laws, the Center for Auto Safety (CAS) picked Colorado as having the worst lemon law in the nation. Among the many bad provisions in Colorado's lemon law, consumers are liable for the automakers' attorney fees, the manufacturer and not the consumer has the option of choosing a refund or a replacement, any lawsuit must be brought within one year from the date of delivery, the law does not recognize a safety lemon, and the consumer must prove that the defect(s) in the vehicle substantially impaired both its value and use. Coloradans are best advised not to use their state's lemon law and to use only the Uniform Commercial Code (UCC) and the federal Magnuson-Moss Warranty Act. (See insert details on 5th Edition *"CAS Lemon Litigation Manual"* on how to win cases under state and federal lemon laws.)

CAS' survey picked Washington as the state with the best lemon law in the country. Among its winning features are: mandatory attorney fees, the second longest coverage period of two years/24,000 miles of any state, a safety lemon provision requiring refund or replacement after the same safety problem is diagnosed twice, independent state-run arbitration funded by a $5 license fee, noncompliance with the lemon law designated a violation of the Unfair and Deceptive Acts and Practices, coverage of leased vehicles, providing the consumer with repair orders that include general description of problem reported by consumer as well as diagnosis and description of repair work, provision of a free loaner car during court appeals of an arbitration award, recovery of all collateral charges and any incidental costs including alternative transportation, and coverage for business vehicles in fleets of less than ten. The one provision where Washington is not up to snuff is in offsets for use where its lemon law uses 100,000 rather than 120,000 miles as the useful life and does not restrict the offset to the mileage at which the nonconformity first appeared. Washington consumers could also benefit from passage of a used car lemon law which other states have enacted.

Earlier leaders in state lemon laws are falling behind as more progressive states passed better lemon laws (**IMPACT**, *Vol. 13, No. 2; Vol. 8, No. 1).* For example, California does not provide for safety lemons, has a short coverage of 12 months/12,000 miles when 21 states have longer limits, does not cover business vehicles, fails to provide for independent arbitration, certifies inadequate manufacturer-run arbitration programs and forces consumers to use them at risk of losing their lemon presumption, inadequately covers leased vehicles and has no used car lemon law. Sadly, California has moved to the bottom half of the states in lemon protection.

Four states with moderate lemon laws cripple their usefulness by requiring consumers to forfeit rights under other laws if they pursue remedies under the lemon law (**IMPACT**, *Vol. 15, No. 3).* Georgia requires consumers to give up their rights under the UCC if they elect to pursue arbitration. Illinois bars UCC actions while North Dakota bars any other actions where the consumer elects to proceed and settle under the lemon law. New Mexico's statute forecloses UCC remedies from any consumer who "seeks enforcement" of its lemon law.

While several states provide lemon coverage for two years or 24,000 miles, Vermont is the clear winner in length of coverage which is defined as the length of the express warranty. Ohio came up with winning provision to take care of the bumper-to-bumper lemon by defining a lemon as being one where there are eight repair attempts for any defects within one year/18,000 miles in addition to the traditional 30 days out of service. Thus in Ohio, a consumer with a lemon that has eight repair attempts for different problems can say "Enough!" without waiting for the vehicle to accumulate 30 days in the garage. Wisconsin is a clear cut winner in providing for mandatory treble damages where the consumer has to sue the manufacturer and prevails.

The following table from CAS' survey illustrates the number of states that go beyond the *basic* new car lemon law of four repair attempts for the same problem or 30 days out of service for the same problem during the shorter of one year/12,000 miles. The factors in the survey were: (1) Length — the period of use of the vehicle during which repair attempts or days out of service could be compiled to create a presumption of a lemon; (2) Safety — vehicle presumed to be a lemon if one unsuccessful repair attempt of a major safety defect or system such as brakes and steering; (3) State-run arbitration programs versus manufacturer run programs; (4) Mandatory award of attorney fees for prevailing consumer; (5) Leased vehicles specifically covered; and (6) Award of civil penalty or treble damages. Points were subtracted if state lemon laws compromised rights under the UCC ✦

State Lemon Law Survey

Length	Safety	State-Run Arbitration	Mandatory Attorney Fees	Leased Vehicles	Civil Penalty
21	11	14	18	26	22

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From Mark Anderson

Reasons civil penalty must stay as it is:

1. Willful conduct by mnfg would increase.

Whenever the corporation stands to gain from the wrongdoing, it is not enough to require that it do what it should have done in the first place. If the worst that can happen is that it will be forced to do that, why not try the scheme again knowing most people:

a. won't find an attorney
b. will settle for money back even if they file suit
c. jury might not award any or much in way of a civil penalty.

2. Policy will be to never to buy back or replace vehicles forcing every consumer to go to the state run program knowing there will be no penalty if they don't.

3. Kwan already provides mnfg with an out if they had a good faith belief that they had no obligation to buy back or replace the vehicle.

Kwan v MB (1994) 23 CA4th 174, 28 CR2d 371.

4. Civil penalty is limited to twice damages (this is less typically less than $60,000).

Punitive damages have a higher standard, but damages are UNLIMITED. Do the mnfgs want to go for unlimited punitive damages & a higher standard.

5. Kwan ruled out emotional distress damages too.

A24

From Mark Anderson

Examples of grounds for civil penalty.

1. Refusal to buy back or replace a particular lemon vehicle.

   Ibrahim v Ford Motor Co (1989) 214 CA3d 878, 263 CR 64.
   Kwan v Mercedes Benz, (1994)

   a. Failure to evaluate repair history
   b. Denying defect exists when the mnfg and dealer know it exists, especially when it is a known problem with that model defect.

2. Having a policy of never buying back or replacing lemon vehicles or almost never & then on unfair terms (Mercedes Benz & BMW of NA).

3. Ostensibly buying back or replacing a lemon vehicle but on terms which don't even approximate lemon law terms

   a Eg, '93 Saturn which was an obvious lemon. Unsophisticated owner is told by dealer they will replace it. Instead of replacing it with a new one and swapping collateral under the same loan, the dealer writes the owner a SmartLease with a payment $110/mo MORE per month and no credit is given to the buyer for his down payment & payments on the '93 Saturn (about $8,500).

4. Refusing warranty repairs.

5. Failure to have a policy on buy backs or replacements.

6. Having a policy of reselling lemons without title branding, without making repairs, or without ensuring the subsequent buyer is given disclosure

7. Falsifying or concealing the repair history.

8. Destroying repair records after a short time.

9. At arbitration, failing to produce the entire repair history. Or altering the repair history.

10. Having a policy of making entries such as NO PROBLEM FOUND when there is a problem

11. Entering NORMAL when there is a defect.

12. Not providing repair orders to the owner & then refusing to give up repair orders. Taking in vehicles for repair, but refusing to write up the recurring complaint.

Note: Like fraud, you can't try to come up with a laundry list to cover all examples.

ACS

WILLIAM M. KRIEG
Attorney at Law
1330 "L" Street, Ste. G
Fresno, CA 93721

Tel. (209) 441-7465
Fax (209) 441-7488

April 12, 1995

Honorable Richard Katz
Chairman, Assembly Transportation Committee
Room 3146, State Capital
Sacramento, CA 95814

RE: AB1381

Dear Chairman 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.

A26

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 Transportation Committee

A27

COPY

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".

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.

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.

D R A F T:May 9, 1995

PROPOSED LEGISLATIVE LANGUAGE FOR CALIFORNIA LEMON LAW

I. State Arbitration Program

Delete Section 472(e) of the Business and Profession Code and replace it with a new 472(c) as follows:

(c) "State-certified, new car arbitration" means the arbitration process which operates in accordance with §1793.22 of the Civil Code and this chapter.

Delete Sections 472.1, 472.2, 472.3, 472.4 and renumber 472.5.

Delete Section 1793.22(c)-(d)(9) of the California Civil Code and insert new Section 1793.22(c) as follows:

(c) All manufacturers shall submit to a state-certified, new car arbitration, if such arbitration is requested by the consumer within 24 months from the date of original delivery to such consumer of a new motor vehicle. State-certified, new car arbitration shall be performed by professional arbitrators or arbitration firms appointed by the Department of Consumer Affairs and operating in accordance with the regulations promulgated pursuant to this section, and shall result in a written finding of whether the motor vehicle in dispute meets the standards set forth by this Act for vehicles that are required to be replaced or refunded. Said finding shall be issued within 45 days of receipt by the Department of Consumer Affairs of a request by a consumer for state-certified arbitration under this section. The Department of Consumer Affairs shall promulgate rules and regulations governing the proceedings of state-certified, new car arbitration which shall promote fairness and efficiency. Such rules and regulations shall include, but not be limited to, a requirement of the personal objectivity of the arbitrators in the results of the disputes they will hear, and the protection of the right of each party to present its case and to be in attendance during any presentation made by the other party. The records and discussion of the state-certified, new car arbitration shall be admissible in any subsequent action brought by either party in suing over the matter considered in said arbitration.

Renumber Section 1793.22(e) as 1793.22(d).

Either the manufacturer or consumer may bring a de novo appeal of the state certificate new car arbitration decision.

A31

June 15, 1995

To:Cindy Galli
From:Richard Steffen
Re:Lemon Law bills.

I am sorry that you have not read Bitter Fruit which puts the laundered lemon issue in proper perspective. Jackie will give you a copy--I have faxed you the summary page.

Apparently someone has been misinforming the media regarding Assemblywoman Speier's lemon law bills. No lemon law attorney would oppose them; however, the rumor mill has flamed fires of suspicion and, as such, we believe the press may misunderstand these bills.

First, AB 1381, amended yesterday, provides broad protections to consumers who may be confronted with the purchase of a vehicle that has been repurchaed by the factory. The bill does the following:

--All vehicles repurchased by a manufacturer--no exemptions--could not be resold in California unless a written disclosure stating the reasons for the buyback accompanies the vehicle. Currently, the law only requires vehicles repurchased under the Lemon law to be disclosed(no detail on how disclosure is to be made) to the buyer--most vehicles are repurchased before the lemon law kicks in. The Lemon law directs that a vehicle that has been subject to four similar failed repair attempts in the first year, or 12,000 miles, or in the shop for 30 consecutive days is presumed to be a lemon and, thus, the consumer may request arbitration with the the manufacturer--the manufacturer doesn't have to comply, in which case, the consumer can sue in court. AB 1381 provides for 100% disclosure--no exemptions.

--Vehicles repurchased due to a court order, a law suit, through arbitatration, or within six months after the conclusion of a lawsuit or arbitration must be branded as a "lemon buy back." Currently the branding is " warranty returned " and only applies to those vehicles which meet the lemon law presumption. The title is to be branded and the left car door jamb is to have a permanent decal which reads: " lemon buy back. "

--All existing law civil penalties are left in place by AB 1381.

AB 1383 repeals the state-certified Arbitration Review Program which is rated as unfair by most consumers who have gone through it. We have yet to fashion a state-run review program which is supported by consumers and manufacturers.I believe the rumors center around the unresolved issues in creating a new and improved arbitration program.

Any questions, please call at 916-445-8020

Jackie's District Office phone: 415-871-4100
220 South Spruce Ave, Suite 101
So. San Francisco

A32

CONSUMER ATTORNEYS OF CALIFORNIA

Representing consumers since 1962

Donald C. Green
Chief Legislative Advocate
Bob Wilson
Legislative Advocate
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Wayne McClean
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Mary E. Alexander
President-Elect

Nancy Drabble
Legislative Counsel
Nancy Peverini
Associate Legislative Counsel
Lea-Ann Tratten
Legal Analyst

July 5, 1995

Assemblymember Jackie Speier
State Capitol, Room 4140
Sacramento, CA 94249-0001

RE: AB 1381 (Speier) OPPOSE UNLESS AMENDED

Dear Assemblymember Speier:

The Consumer Attorneys Of California has reviewed AB 1381, which is scheduled to be heard before the Senate Judiciary Committee on July 11, 1995.

While we appreciate the recent amendments, we do have concerns with the July 3 substantive amendments. We think that the following suggested amendments will greatly improve the bill's goal: informing consumers of repurchased lemons.

The heart of the buyback language should be the same language as the current Civil Code Section 1795.8 (c) provisions in order to ensure dealers' obligations to disclose.

The new amendments to AB 1381 establish a two tier duty system with sharply differing obligations depending upon if you are a dealer or a manufacturer. Unfortunately, these changes drastically limit the current obligations, particularly of dealers.

Under current law--Civil Code Section 1795.8 (c):

(1) any person, including a dealer or manufacturer, selling a vehicle that is known or should be known to have been required by law to be replaced or accepted for restitution

(a) due to the inability to conform to the Lemon Law provisions (Civil Code Section 1793.2 (d)) or

(b) that does not conform to warranties required by any other applicable law of California, other states or federal law

Legislative Department

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(2) must disclose that fact in writing.

In contrast, the new AB 1381 language:

(1) Completely changes the lemon branding obligations of dealers. Under current law, both manufacturers and dealers must meet the notice requirements. Under the new provisions in AB 1381, a dealer only must do so if he or she has been given notice by the manufacturer. And the current obligation of a dealer if he or she "knew or should have known" is deleted. Current law makes policy sense because, although dealers will argue that they are not in the best position to know the vehicle is a lemon, the dealer makes a profit from selling the vehicle and therefore has a higher obligation to the consumer. An analogy can be found in product liability law. Those in the stream of commerce who profit from the sale of the product have an obligation to the consumer for all defects. Further, if a dealer is absolved from the lemon branding requirements (except for a narrow exception), he or she has absolutely no incentive to vigorously find out whether or not the vehicles are lemon buy backs.

(2) Only applies to manufacturers and dealers (with separate obligations on both); It is important that "any person" be included because the current law's broad definition includes partnerships, corporations, captive finance companies, and others who legitimately should be included in the lemon branding provisions.

(3) Only covers express warranties. (See AB 1381's 1793.23 (d) and (e).) This is a major change from current law because some warranty actions are based on implied warranties. The implied warranty may be fitness for a particular purpose or a warranty of merchantability.

CAOC recommends that the current obligation language for any person found in Section 1795.8 (c) be substituted.

The designation of "factory buyback" (versus the previous "lemon buyback") is not sufficient to adequately notify consumers.

Under current law, when a manufacturer or its representative buys back a vehicle because of noncompliance with Civil Code Section 1793.2 (d) (2)--the heart of the lemon law--he or she is required to "clearly and conspicuously disclose" that fact in writing. Recent amendments change the required inscription from "lemon buy back" to "factory buy back." While abuses occur under current law, CAOC is very concerned that consumers simply will not know the meaning of factory buyback. Consumers know what the term "lemon" stands for; a factory buyback is a nebulous term that could mean anything. One could even think that a factory buy back includes a car sold to a rental agency and bought back after the agency rented the car for a year. We request that the designation return to "lemon buyback," which is consistent with the term used in many other states. Another

alternative is the National Association of Attorney Generals' recommendation of "Defective Vehicle Buyback."

It is crucial that a clause be inserted in AB 1381 which states that the bill's provisions are prospective only and have no affect on pending litigation.

Currently, the Department of Motor Vehicles is involved in litigation and may notify owners of thousands of vehicles throughout the State of California that their vehicles were repurchased by the manufacturers pursuant to the Lemon Law and that the titles should have been branded. Chrysler is contesting the DMV's enforcement action, and of course would like a change in law to help in their legal arguments. It is extremely important that AB 1381 not be used as a legal tool to assist these manufacturers in their efforts to keep such consumers from being notified. We request that language be inserted to state that the bill's provisions are prospective and have no impact on pending litigation.

If you or a member of your staff would like to discuss this issue further, please feel free to contact me or one of our legislative representatives in Sacramento.

Sincerely,

Wayne McClean

Wayne McClean
President

cc: Senate Judiciary Committee

KEENE & ASSOCIATES

POLICY BRIEF

SCOTT R. KEENE
(916) 552-7991

Date: 7/6/95

To: Members, Senate Judiciary Committee

From: Scott Keene

Re: AB 1381 (Speier) -- **Request For Amendments**
Hearing: July 11, 1995
Item # 20

On behalf of my client, Toyota Motor Sales, USA, we wish to express our concern about four matters resulting from recent amendments to this measure.

1. Clarity -- In terms of the obligation to: retitle a buyback vehicle, request for DMV to brand the title, and affix a decal to such vehicles, it is only fair that manufacturers should be well-advised of their obligations. In the past, this area of the law has caused a great deal of confusion for manufacturers and consumers alike. Presumably, establishing some "bright line" criteria was the original purpose of this legislation. As the bill passed the Assembly, it contained four bright line situations that trigger the measure's operative provisions. Unfortunately, the July 3rd amendments struck the language containing the bright line criteria (Page 3 lines 27-39 and page 4, line 1-16). These bright line criteria was instead replaced with the paragraph (c) (page 4) which simply invites more uncertainty and potential litigation. **Toyota urges the committee to reinsert the bright line criteria that were deleted from the bill with the July 3rd amendments.**
(See, committee analysis, page 4)

2. Fair Content Of Consumer Notice -- The terminology proposed for the content of the disclosure, particularly the label is a matter of much dispute. "Factory buyback" is the current term used in the measure. Consumer interests are insisting of the use of the terms "defective vehicle" or "lemon buyback." While Toyota is supportive of the existing language, we can accept the following changes in an effort to fully advise consumers without **unduly stigmatizing** repurchased vehicles.

1201 K STREET, SUITE 1150
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 448-1511

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For cases where the vehicle has been repurchased -- following the instigation of arbitration proceedings (by arbitration decision or settlement) -- the label should accurately state that the "this vehicle was repurchased pursuant to state lemon law." In other cases, the label should state that the vehicle is a "factory buyback." Such compromise language is a reflective balance between competing policy concerns and interests. On the one hand,consumers are provided fair disclosure, where appropriate, in cases where the lemon law has been invoked. In situations where the lemon law has not been invoked, the term "factory buyback" is both fair and accurate (e.g., consumer satisfaction buybacks).

3. What If DMV Fails To Act? Under paragraph (c) a manufacturer must "request" DMV to brand the ownership certificate. In CA and other states with processing problems and delays, the DMVs are often slow in acting on a manufacturer's request. Must the manufacturer hold the car for several months until DMV gets through its backlog of paperwork and processing? **Can the bill be amended to proceed with a transfer if DMV has not acted within a reasonable period of time**? (Committee analysis pp. 5-6)

4. Vicarious Liability For 3rd Party Tampering With Decals -- Section 6 of the bill requires the manufacturer to affix a decal with the notation that the vehicle is a "factory buyback." However, once the vehicle is transferred, manufacturers have no control over the removal of these decals in the chain of commerce. Even though it is unlawful for any person to remove the decal, how can manufacturer's protect themselves from liability if the decal is in fact tampered with? There are no penalties associated with removing the decal. There notice itself does not state that it is unlawful to remove the decal. **The bill should be amended to specify the consequences of DMV's failure to timely brand title.** (See, committee analysis, page 6(c))

We hope that these views are helpful to you in your deliberations. If we can be of any further assistance relative to this measure please do not hesitate to let us know.

Consumers Union

Publisher of Consumer Reports

July 7, 1995

The Honorable Charles Calderon
California State Senate
P.O. Box 942848
Sacramento, CA 94248-0001

Re: AB 1381 (Speier), as amended July 3: **OPPOSE, UNLESS AMENDED**
Hearing: July 11, Senate Judiciary Committee

Dear Senator Calderon:

Consumers Union, the nonprofit publisher of *Consumer Reports* magazine, urges you to oppose AB 1381, unless the bill is amended as described below. This bill, while well-intended, would in fact weaken existing law providing notice to consumers regarding purchases of automobiles with serious safety defects.

The bill sets forth the conditions upon which automobile manufacturers must (1) "brand" the title certificate of a repurchased motor vehicle because of a serious defect and (2) provide a separate, written notice to the subsequent buyer of a repurchased vehicle. Our concerns with the bill are as follows:

1. Narrow scope of title "branding" requirement.

Civil Code Section 1795.8 currently requires title branding of vehicles repurchased by manufacturers from consumers if the vehicle "is *known or should be known* to have been required by law to be replaced or required by law to be accepted for restitution" (emphasis added) due to the inability of the manufacturer to meet its warranty obligations under Civil Code Section 1793.2 (or any other state law).

AB 1381, however, eliminates the "known or should be known" standard in current law. This change would apparently only require title branding of vehicles repurchased after arbitration or court proceedings, which is too narrow a universe. Deletion of this language would provide a loophole for manufacturers who could claim that absent an arbitration decision or court order, they would never "know" that a vehicle should be repurchased. Thus, vehicles repurchased prior to such formal proceedings would never have their titles branded--a perverse result since the worst lemon vehicles are repurchased prior to any formal proceeding. Six other states have recognized this fact by simply requiring title branding of all vehicles repurchased by a manufacturer.

Suggested amendment: Clear and unambiguous language requiring title branding for *all* repurchased vehicles, as done in 6 other states: Connecticut, Indiana, Iowa, New York, Ohio and Utah.

A3X

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2. Narrow scope of written notice requirement.

AB 1381 would require notice to subsequent buyers only if "an *express* warranty *dispute*" (emphasis added) existed and resulted in a repurchase of the vehicle. Again, this language would exempt the worst lemons--those repurchased prior to the initiation of formal proceedings. 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. Furthermore, the notice requirement should also cover breach of implied, not simply express warranties, as provided for in current law for title branding (Civ. Code § 1795.8).

Suggested amendment: Clear and unambiguous language requiring notice for *all* repurchased vehicles, as done in 11 other states: Connecticut, Florida, Georgia, Indiana, Iowa, Kansas, Minnesota, New York, North Carolina, Oregon, and Utah. This suggested amendment would also take care of the express vs. implied warranty issue, by making it moot.

3. "Factory buyback" gives insufficient information to consumers.

Existing law has a clear, simple notice statement to consumers: "This motor vehicle has been returned to the dealer or manufacturer due to a defect in the vehicle pursuant to consumer warranty laws" (Civ. Code § 1795.8). This statement is used in both the title documents and the separate written notice to consumers. Earlier versions of the bill required the term "lemon buyback" to be used in the title documents, which also gives consumers clear notice of the defective nature of the automobile. (The National Association of Attorneys General's (NAAG) Model Bill on this issue uses the term "defective vehicle," which we believe is also more informative to consumers.)

The bill now, however, uses the term "factory buyback", a nice euphemism that conceals the true defective nature of the vehicle. This euphemism is especially dangerous because other states use stronger terms in their title branding statutes. Thus, auto companies will have a perverse incentive to ship lemons from other states to California in order to have them re-branded as innocuous-sounding "factory buybacks" rather than as "defective vehicles."

Suggested amendment: Use the term "lemon buyback" or "defective vehicle" or retain existing law statement in Civil Code Section 1795.8.

4. Confusing language in notice requirement.

AB 1381 further weakens existing law by substituting a confusing and inconsistent disclosure statement for the clear language in Civil Code Section 1795.8. The bill calls for title branding because of a manufacturer's "inability to conform the vehicle to applicable warranties." However, the written notice to subsequent buyers has a box stating that title has been "permanently branded" *and* that the "nonconformity experienced by the original owner . . . has been corrected." This is unclear and

confusing to consumers because if the vehicle was branded, it would mean the manufacturer was *unable* to correct the nonconformity--yet the notice would state that the nonconformity "had been corrected."

Suggested amendment: Keep existing law disclosure statement, but retain the bill's concept of listing the actual nonconformities and repairs attempted. Or, adopt the NAAG Model Bill disclosure language: "This is a used vehicle. It was previously returned to the manufacturer or authorized dealer in exchange for a replacement vehicle or a refund because it was alleged or found to have the following nonconformities:"

We believe our suggested amendments are necessary to ensure that consumers continue to be protected from the recycling of defective autos.

Very truly yours,

Earl Lui
Staff Attorney

cc: Assemblymember Speier ✓

RS

Center for Auto Safety
Consumer Action
Consumer Federation of America
Consumers Union
Motor Voters

August 1, 1995

Assemblywoman Jackie Speier
California State Assembly
P.O. Box 942849
Sacramento, CA 94249-0001

Re: AB 1381 (Speier): Support If Further Amended

Dear Assemblywoman Speier:

As you know, each of our organizations has been in opposition to AB 1381. However, we recognize that several key concerns were addressed when the bill was amended in the following ways:

- Remedies for victims of lemon laundering were restored, by unanimous vote of the Assembly Transportation Committee and by subsequent amendments

- Various obvious "lemon loopholes"--exempting seriously defective lemon vehicles from title branding and disclosure to consumers--have been eliminated

- The bill has been made expressly prospective, in order to avoid jeopardizing pending litigation, including the DMV's current action against Chrysler

- The designation "**factory** buyback" was amended, by vote of the Senate Judiciary Committee, to "**Lemon Law** Buyback"

In light of these changes, which have greatly improved the bill for consumers, we have re-evaluated our opposition. We would like to support the bill, but one important issue remains.

441

When you presented the bill before the Senate Judiciary Committee on July 18 you indicated that the major "defect" in existing law is that it "allows" manufacturers to characterize lemon vehicles as merely "goodwill" buybacks.

While we disagree with your interpretation of existing law, we do agree that clearing up any ambiguity that allows manufacturers to resell defective lemons as "goodwill" buybacks is the most serious issue that the bill needs to address. However, the bill as currently amended does not accomplish that purpose. As you indicated on July 18, AB 1381 would allow auto manufacturers to decide which vehicles are lemons and which are "goodwill" buybacks.

As your report "Bitter Fruit" documents, manufacturers cannot be trusted to make that determination. They seize upon any conceivable ambiguity as an excuse to make lemons appear to be peaches. But instead of clearing up ambiguity, AB 1381 adds to it.

Auto manufacturers themselves contend that the bill as currently worded is confusing. The Association of International Automobile Manufacturers writes that "We believe that the deletion of the clear guidance standards as to when a title must be branded and notice given to consumers will only continue to create confusion and foment litigation."

Toyota also writes separately that the bill as currently amended "simply invites more uncertainty and potential litigation."

When the very auto manufacturers who are responsible for making the determination between "lemon" and "goodwill" find AB 1381 to be confusing, it simply doesn't do the job. We agree with the AIAM and Toyota that the bill as currently amended adds, rather than reduces, ambiguity and invites litigation.

We are particularly concerned that the bill as currently amended fails to require disclosure to prospective buyers when manufacturers initiate the repurchase. This would permit manufacturers to evade disclosing defects to California used car buyers when the companies know certain vehicles have serious, incurable flaws. Since tens of thousands of vehicles have been bought back under such circumstances, the sheer numbers involved are quite significant.

For example, in 1993 Nissan contacted owners of its 1987-1990 minivans and offered to buy them back. Repeated failed recall attempts had made the repairs so expensive, the auto company decided it was cost-effective to repurchase the minivans, which were prone to engine fires. About 33,000 vehicles were affected. Under AB 1381, title to the vehicles should be branded, but if Nissan resold them, the company and its dealers would not have to provide the Warranty Buyback Notice to prospective buyers because the vehicles were reacquired in response to the

manufacturer's offer, and not "in response to a request by the buyer or lessee" §1793.23 (d) and (e). In fact, the minivan owners were largely unaware that previous recalls had not remedied the problem, and were therefore unlikely to make a request. Because buyers seldom see the title to a vehicle, the disclosure notice is critical.

Similarly, Saturn notified nearly 2,000 Saturn owners that it wished to buy back their vehicles because contaminated coolant from one supplier had damaged certain components. While such "pre-emptive" buybacks benefit original owners, under AB 1381 they could harm subsequent buyers, because the manufacturer and its dealers would not be required to provide notice.

Surely it is not the intent of AB 1381 that manufacturers and dealers could evade the notice requirement when the manufacturer knows a line of vehicles is defective, and simply contacts the original owners before they make a "request."

For the above reasons, we propose the following language, based on statutes in other states and the model bill proposed by the National Association of Attorneys General Working Group on Resold Lemons. It would eliminate the ambiguity concerning which vehicles are "lemons" or "goodwill" buybacks. It specifically includes so-called "voluntary" repurchases. At the same time, it provides an exemption for legitimate "goodwill" buybacks.

The language is enclosed for your review. If the bill is so amended, we would then be pleased to give AB 1381 our support.

Center for Auto Safety

Consumer Federation of America

Consumer Action

Motor Voters

Consumers Union

Please reply to: Cher McIntyre, Associate Director of Advocacy, Consumer Action, 523 W. 6th Street, Suite 1105, Los Angeles, CA 90014. Phone: 213-624-4631.

cc: Members, Senate Judiciary Committee; Committee Consultant Gordon Hart; Members, Senate Appropriations Committee

A43

PROPOSED AMENDMENTS TO AB 1381 (As amended 7/23/95)

Amendment 1

On page 3, line 16, insert:

(c) *For purposes of this section and Section 1793.24, a "buyback" vehicle means a motor vehicle that has been replaced, reacquired, or repurchased by a manufacturer, or a finance or lender subsidiary of a manufacturer, or a nonresident manufacturer's agent or an authorized dealer, either under the Song Beverly Consumer Warranty Act (Civil Code §1793) or a similar statute of another state or by judgment, decree, arbitration award, settlement agreement or voluntary agreement in California or another state. "Buyback" vehicle does not include a motor vehicle that was repurchased pursuant to a guaranteed repurchase or satisfaction program advertised by the manufacturer, provided the vehicle was not alleged or found to have a nonconformity that substantially impaired the use, value or safety of the new motor vehicle to the buyer or lessee.*

Amendment 2

On page 3, commencing with line 16:

(e) *(d)* 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~~ *of a buyback vehicle* 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~~.

Amendment 3

On page 3, commencing with line 38:

(~~d~~) *(e)* 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,~~ *of a buyback vehicle* shall, prior to sale, lease, or other transfer of the vehicle, execute and deliver to the

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subsequent transferee a notice and obtain the transferee's written acknowledgement of a notice, as prescribed by Section 1793.24.

Amendment 4

On page 4, commencing with line 8:

(e)*(f)* 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,~~ *a buyback vehicle,* shall, prior to the sale, lease or other transfer, execute and deliver to the subsequent transferee a notice and obtain the transferee's written acknowledgement of a notice, as prescribed by Section 1793.24.

Amendment 6

On page 5, line 11: manufacturer of the ~~reacquired~~ *buyback* vehicle

Amendment 7

On page 5, lines 15-16:

(2) ~~Whether~~ *That* the title to the vehicle has been inscribed with the notation ~~"factory buyback"~~ *"Lemon Law Buyback."*

Amendment 8

On page 5, commencing with line 30, Under "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.~~

~~☐~~

Amendment 9

On page 8, commencing with line 26:

(7) A ~~motor vehicle that has been reacquired under circumstances described in subdivision (e) of Section 1793.23 of the Civil Code,~~ *buyback vehicle*, 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."

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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

MEMORANDUM

To : Chuck Storm
From : Peter Welch
Date : September 7, 1995
Re : AB 1381 (Speier) - Assembly Transportation Committee Republican Analysis

We have just reviewed a copy of the Assembly Transportation Committee Republican Analysis of AB 1381 and take issue with the following items presented in that analysis:

1. AB 1381 does not amend California's "Lemon Law" (Civil Code Sections 1793.2 and 1793.22). Rather, AB 1381 revamps the California's Automotive Consumer Notification Act [Civil Code Section 1795.8] -- which specifies conditions under which dealers and manufacturers must disclosure the physical condition of a vehicle repurchased by a manufacturer because of a warranty dispute between the consumer and the vehicle's manufacturer.

2. Under existing law a manufacturer must give a statutory notice to the subsequent purchaser of a repurchased motor vehicle and brand the title if the vehicle "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 pursuant to subdivision (d) of Section 1793.2 ..." [see Civil Code Section 1795.8(c)].

As initially passed by the Assembly, AB 1381 changed this standard to one which would only require a manufacturer or dealer to give notice to the subsequent purchaser and brand the title under limited circumstances -- the car was ordered to be repurchased by a court or arbitration order; it was repurchased during the pendency of "lemon" law litigation/arbitration proceeding or with in six months of such a proceeding; or, the vehicle was repurchased within 6 months of a written request by the original owner to the manufacturer (referred to in the analysis as the "clear bright lines" standards). A number of the auto manufacturers were dissatisfied with the so call "bright lines" standards as initially passed by the Assembly and we attempted to satisfy those concerns with the June 14, 1995 Senate amendments. However, those amendments did not satisfy all of the auto manufacturers.

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Thereafter, we ran into a firestorm of opposition from consumer groups and the Consumer Attorneys of California on a myriad of issues, including the so called "bright lines" standards which those groups opposed on the same grounds that Governor Deukmejian vetoed a similar bill we sponsored in 1990 (SB 2569 - attached is a copy of the veto message).

As a result of the opposition and the will of the Senate Judiciary Committee, AB 1381 was again amended to reinstate the disclosure standard contained in current law. However, a handful of automobile manufacturers have fallaciously argued that the Senate amendments will expose them to expanded liability for a failure on their part to disclosure the "lemon" status of a repurchased vehicle. Such arguments are groundless in that the AB 1381 standard for auto manufacturer liability is identical to that under current law. Statements contained in the Republican analysis that AB 1381 will "give rise to confusion and opens the door for litigation" are incorrect. The fact of the matter is that the disclosure standard for "lemon" law buybacks remains the same as under current law and General Motors and Chrysler have both already been sued by DMV for their flagrant failure to disclose the "lemon" law status of vehicles to a host of California consumers and car dealers who unwittingly purchased such vehicles.

3. The Republican analysis claims that AB 1381 "makes an original manufacturers buyback automatically a lemon ..." This statement is also incorrect. Under the provisions of AB 1381, only vehicles that are "required by law to be repurchased" must be have their titles branded and a door frame notice attached [see subdivision (c) of Civil Code Section 1393.23]. Manufacturer "goodwill" buybacks will not require title branding or door frame notices. However, under the provisions of AB 1381 [see subdivisions (d) and (e) of Civil Code Section 1793.23], the next retail purchaser of any vehicle that has been repurchased by a manufacturer in response to a request from the original owner that the vehicle be replaced because it did not conform to an express warranty (whether the vehicle qualifies as a "lemon" or simply a "goodwill" repurchase), must be given a notice described in Civil Code Section 1793.24.

AB 1381 is no longer opposed by the Center for Auto Safety or Motor Voters (attached is their latest letter which states a "Support If Further Amended" position). The American Automobile Manufacturers Association did not testify against the bill at any of the hearings and their letter to Jackie Speier of September 6, 1995 raises "concerns" but does not state an oppose position. (whether the vehicle qualifies as a "lemon" or simply a "goodwill" repurchase)

****

AB 1381 clarifies and strengthens the existing Automotive Consumer Notification Act (see attached memo) and as such is a good consumer bill that should be supported by the Assembly Republican Caucus.

ASSEMBLY
CALIFORNIA LEGISLATURE
K. Jacqueline Speier
Representing
San Mateo County

September 17, 1995

Governor Pete Wilson
State Capitol
Sacramento, CA 95814

Dear Governor Wilson:

I respectfully request your signature on AB 1381 which strengthens the disclosure process involved when a vehicle, repurchased by the factory or a dealer from the original owner is resold to a second buyer.

This measure is sponsored by the California Motor Car Dealers Association whose members seek not only greater clarity in the law in terms of what must be disclosed when reselling a buyback vehicle, but also standardization of disclosure. This bill provides for a user-friendly form which allows for an explanation of why the vehicle was bought back and what repairs were performed to correct cited problems. Current law mandates a 23-word disclosure statement which provides no meaningful information to the dealer or the buyer.

The need for the bill was underscored by a series of investigations by DMV which led to charges being filed against General Motors and Chrysler regarding violations for failing to disclose to second buyers that they had purchased a factory buyback vehicle. General Motors paid $330,000 in a settlement with the state while the Chrysler case is awaiting the decision of the administrative law judge. AB 1381 specifies that its provisions apply to vehicles repurchased after January 1, 1996, so the bill does not impact any pending DMV actions.

The key to AB 1381 is that it provides that every vehicle that is bought back cannot be resold unless accompanied by a completed disclosure form. The form provides that a buyback vehicle must be identified as one that was either repurchased due to specified problems described on the form, or repurchased as a " Lemon Law p Buyback ". In the past manufacturers have resold many buyback cars without disclosure, claiming the law only required disclosure on vehicles repurchased under the Lemon Law.

These undisclosed sales have triggered numerous legal actions on the part of private attornies as well as the DMV. In brief,

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South San Francisco, CA 94080
(415) 871-4100

AB 1381 and its " mandated paper trail " should reduce litigation centered around the resale of buyback vehicles.

I must emphasize that the bill does not amend the current Lemon Law which determines when a vehicle qualifies for legal action that could result in an order that the vehicle be repurchased. The decision process for branding vehicles as lemons is not affected by this bill; however, the measure does require that true lemon vehicles have their titles branded in the name of the manufacturer and that a " Lemon Law Buyback " decal be affixed to the left door frame.

AB 1381's disclosure process will reduce litigation associated with disputes over the disclosure of a buyback vehicle's history.

Toyota is neutral on the bill. The American Automobile Manufacturers Association wrote me on 9/6/95 to say it would support the bill if I changed the term that appears on the disclosure form and the title from " Lemon Law Buyback " to " Manufacturer Buyback. " I did not accept this amendment as the proposed name change serves to confuse consumers and dealers alike. " Lemon Law Buyback " is a subset of " Manufacturer Buyback " and is clearly a major improvement over the current law term of " Warnty Rtd. "

I have attached an investigative report, Bitter Fruit, by the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development which details the reasons why this bill is needed.

All the best,

Jackie Speier

Jackie Speier
State Assemblywoman

STATE OF CALIFORNIA
STATE BOARD OF EQUALIZATION
450 N Street, Sacramento, California
(P.O. Box 942759, Sacramento, CA 94279-0001)
Telephone: (916) 445-1441
Facsimile: (916) 445-2388

October 21, 1994

Honorable Jackie Speier
Assemblywoman, Nineteenth District
State Capitol, Room 4140
Sacramento, CA 95814

Dear Assemblywoman Speier:

Mr. Glenn Brank of the Assembly Office of Research requested that we write to you regarding our experience with the lemon law. We receive claims for refund filed pursuant to the lemon law from vehicle manufacturers for the recovery of sales tax.

The requirements for the claim are as follows:

1. The claim must be filed by the manufacturer pursuant to the lemon law (if this is not the case, any other claim must be filed by the selling dealer and is covered under Revenue and Taxation Code Regulation 1655, Returned Merchandise);

2. Proof must be provided that the sales tax has been previously remitted to the State;

3. The purchaser must have been reimbursed previous to the filing of the claim and in accordance with Civil Code Section 1793.2. This includes the sales price of the vehicle, documentation fee, sales tax and license fee, less the allowable usage deduction (as defined by the statute);

4. The purchaser must have been given the choice of cash restitution versus vehicle replacement. This is usually verified through a statement obtained from the purchaser attesting to have been given this option.

Since July 1990, we have received 3,925 claims for refund from manufacturers. Of the claims received, 94% are from major domestic manufacturers and 6% are from various smaller/foreign manufacturers. We receive on average 50 to 100 claims per month. As an example, during the months of August and September of this year we received 117 lemon law claims. Unfortunately, I am unable to provide these figures from specific manufacturers as I have been informed by the Board's Legal staff that this information is confidential under the Sales and Use Tax Law.

The above totals only include lemon law transactions for which specific claims for refund were filed by the manufacturer. We often are not aware of many lemon law vehicle transactions for which no claim for refund is filed by the manufacturer, but rather the dealer has taken a deduction on their sales and use tax return.

It is our understanding, from information obtained from the Department of Motor Vehicles (DMV), that until recent action taken by DMV against one of the major domestic manufacturers, none of the manufacturers were branding DMV titles. We have also been informed that DMV is considering action against several other companies for the same violations.

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. 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 with a trade-in. 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 amounts; 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.

If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

Glenn A. Bystrom
Deputy Director
Sales and Use Tax Department

GAB:ama
115BB

cc: Honorable Brad Sherman
Honorable Matthew K. Fong
Board Member, First District
Honorable Ernest J. Dronenburg, Jr.
Honorable Gray Davis
Mr. Burton W. Oliver

BG-2

STEVEN B. SOLOMON
Attorney at Law

1800 Trousdale Drive
Burlingame, CA 94010

Tel: (415) 692-7812 Fax: (415) 692-0618

TRANSMITTAL MEMO

TO: Mr. Richard Steffen
Office of the Hon. Jackie Speier
State Capitol
Sacramento, CA 95814

DATE: Jan. 5, 1995

SUBJECT: Proposed Resale Lemon Bill.

Rosemary Shahan sent me a copy of Assemblywoman Speier's prop resale emon bill, and I forward the following comments.

As background, I am a consumer lemon law attorney in Burlingame, CA, practicing for over ten years and have handled hundreds of lemon law cases.

The Intent Statement of the proposed bill struck me as superficial considering the underlying concerns about resold lemon vehicles when the vehicle's lemon history is not disclosed to the buyer -- namely, protecting Californians from death and injury from defective vehicles, and assuring that buyers receive the full market value of what they purchase.

From my research, six states and the District of Columbia require **title branding** of resold lemons (e.g. Alabama and South Dakota specify language on the title "THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO ITS WARRANTY.").

In addition, 20 states regulate the resale of lemons from their own **and** other states. Of those states, Vermont, Pennsylvania, Ohio and Minnesota mandate that **NO** prior lemon vehicle with a serious safety defect may be resold in that state.

I was also puzzled about why the proposed bill addressed only "repurchases" of lemons. In addition, car makers also **replace** lemons. Moreover, the proposed bill contains no penalties for non-compliance, and does not appear to **mandate** the repo ng of reacquired lemons before they are resold to California consumers.

I propose simplifying and strengthening this proposed bill as follows:

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"If a new motor vehicle (per Civil Code section 1793.22(e)(2)) has been acquired by a manufacturer under the provisions of Civil Code section 1790 et seq., or a similar statute of another state, whether as the result of legal action, an informal dispute mechanism, or voluntary resolution of a warranty dispute, it may not be resold in this state unless:

(a) The manufacturer discloses in writing to the subsequent purchaser the fact that the motor vehicle was returned under the provisions of Civil Code section 1790 et seq., the nature of the nonconformities, and the name and address of the former owner;

(b) The manufacturer discloses in writing to the subsequent purchaser that the identified nonconformities have been repaired, and provides the same express written warranty provided to the original purchaser, for one year and/or 12,000 miles from the date of subsequent purchase;

(c) The manufacturer returns the title of the new motor vehicle to the Department of Motor Vehicles on forms proscribed by the Department, along with an application for title in the name of the manufacturer. The Department shall brand the title issued to the manufacturer, and all subsequent titles to the new motor vehicle, with the following statement:

> "THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO ITS WARRANTY."

The manufacturer is prohibited from reselling a new motor vehicle in California that has been identified as having a serious safety defect.

A violation of this [chapter] shall constitute prima facie evidence of an unfair or deceptive act or practice under California law."

Thank you for the opportunity to provide input on this important public policy issue. If I can be of any further assistance, please feel free to contact me.

Very truly yours,

Steven B. Solomon, Esq.

cc: Nancy Peverini, CTLA
Rosemary Shahan, Motor Voters

BG-4

STEVEN B. SOLOMON
Attorney at Law
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TRANSMITTAL MEMO

TO: Ms. Rosemary Shahan DATE: Jan. 13
MOTOR VOTERS
1500 West El Camino Ave., #419
Sacramento, CA 95833-1945

SUBJECT: COMMENTS ON PROPOSED LEMON RESALE STATUTE.

I re-reviewed various state lemon resale laws, and came [illegible] conclusion that the better law is one that more generally [illegible] the universe of manufacturer-reacquired lemons than is [illegible] [illegible] ific that it would exclude sources of these vehi [illegible] [illegible], Montana's statute (sec. 61-4-525) provides:

"A motor vehicle which is returned to the [illegible] and which requires replacement or refund may no[illegible] this state without disclosure . . ."

Thus, the Montana statute would probably incorporate [illegible] maker [illegible] assistance" offers, voluntary resolution of [illegible] [illegible] etc. Compare this statute with a more detailed versi[illegible] [illegible] (sec. 4-90-412):

"If a motor vehicle has been replaced or repurch[illegible] a manufacturer as the result of a court judgme[illegible] arbitration award, or any voluntary agreement [illegible] between a manufacturer and a consumer that [illegible] [illegible] consumer complaint has been investigated and [illegible] pursuant to this subchapter [the lemon law] or a similar law of another state . . ."

[illegible], North Dakota (sec. 51-07-22(3)) w[illegible] the only state I saw that [illegible] violation of the lemon resale [illegible] law a criminal misdem[illegible].

My res[illegible] to Kemnitzer's [illegible] of the lemon resale law is that it is needlessly detailed. The [illegible] mandated [illegible] in subsection (c) seems useful only for a [illegible] [illegible] comparison, the Massachusetts lemon resal[illegible] contains one of the most detailed disclosure provi[illegible] [illegible] [illegible] sec [illegible].04(2[illegible]), but it only requires listing [illegible] [illegible] defects were repaired, the right to obt[illegible] the orig[illegible] owner's name and address from the [illegible] dealer's sel[illegible] and general information [illegible] [illegible] law.

BG
5

Moreover, brand[illegible] a title "LEMON LAW BUYBACK" is not an especially informative designation for consumers. My preference is, as Alabama and [illegible]th Dako[illegible] mandate, "THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO ITS WARRANTY."

Of the seven states and District of Columbia that require title branding for resold lemons, D.C., New Jersey and Vermo[illegible] not specify any particular language. The states of Indiana, [illegible] and Connecticut require some form of "MANUFACTURER BUYBACK . . ."

Why, for goodness sakes, would the DMV and the Dept. of Consumer Affairs want copies of all repair records made to all resold lemons, per Kennitzer's subsection (g)? It is sufficient that the seller have this information available to the potential buyer.

I hope this feedback is some help to you. Please feel free to contact me for any further assistance.

Very truly yours,

Steven B. Solomon, Esq.

P.S. Late flash -- the CTIA Forum editor called yesterday, and is interested in publishing an article I wrote last year about the Sherman v. GMC case.

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American Automobile Manufacturers Association

Chrysler Corporation · Ford · General Motors

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

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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 Speier, 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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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

ZOLIN.DOC

BG-9

AIAM
World's Leading Automakers™

March 13, 1995

Mr. Frank Zolin, Director
California Department of Motor Vehicles
2415 First Avenue
Sacramento, CA 95818

Dear Mr. Zolin:

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.

ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS, INC
1001 19TH ST. NORTH ■ SUITE 1200 ■ ARLINGTON, VA 22209 ■ TELEPHONE 703.525.7788 ■ FAX 703.525.8817

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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

BG-11

OFFICE OF THE DIRECTOR
DEPARTMENT OF MOTOR VEHICLES
P. O. BOX 932328
SACRAMENTO, CA 94232-3280

April 12, 1995

Mr. John T. Whatley
Assistant General Counsel
Association of International
Automobile Manufacturers, Inc.
1001 19th Street North, Suite 1200
Arlington, VA 22209

Dear Mr. Whatley:

Your letter to me of March 13, 1995, asks that the Department of Motor Vehicles reconsider its decision to notify subsequent purchasers of vehicles repurchased under the California lemon law.

As you are probably aware, California statutes require the department to place on the face of both the ownership and registration documents an indication that the vehicle has been returned to a dealer or manufacturer pursuant to consumer warranty laws, as it applies to a "lemon" vehicle. We recognize that not all vehicles returned to the dealer or manufacturer are "lemons." Thus, if the Department of Motor Vehicles has knowledge that a vehicle has been returned pursuant to consumer warranty laws as a "lemon," it has no discretion and must brand the title. Also, if the department previously inadvertently failed to properly brand the titles of some vehicles and it is subsequently brought to our attention, then we must take steps to correct this oversight. And finally, when consumer complaints are filed and an investigation reveals prior lemon law repurchases, the department must act appropriately.

We can assure you that the only vehicle titles to be branded are those that:

- have been repurchased pursuant to the provision of the warranty law.
- sales tax reimbursement was requested from the Board of Equalization. (It is our interpretation of the statute that a refund of tax can only occur for the repurchased vehicle under the "lemon" law.)
- the manufacturer has indicated the vehicle is a warranty return. Or,
- when as a result of arbitration, mediation, or other third party adjudication or determination, that the vehicle has been determined to be a "lemon."

As I have repeatedly stated, the department will welcome and accept any information from any manufacturer seeking input as to which vehicles should or should not be title branded.

Enclosed are the published departmental guidelines provided to help the industry comply with the law. These two documents are in addition to the published federal guidelines. There is also additional information provided in the publications from the Department of Consumer Affairs. We feel that there is sufficient guidance available to the regulated industry to achieve the compliance needed in this area.

Finally, it is our full intention to work closely with the Legislature, the industry, and any other interested parties to address the needed enhancements to the consumer warranty statutes. We have already begun providing information and technical assistance to the Legislature.

I will be happy to meet with members of your organization at any mutually convenient time regarding this matter.

Sincerely,

ORIGINAL SIGNED BY
FRANK S. ZOLIN

FRANK S. ZOLIN
Director

Enclosures

cc: Assemblywoman K. Jacqueline Speier
William G. Brennan

BG-13

1.950 VEHICLES RETURNED TO DEALERS UNDER CONSUMER WARRANTY LAWS (LEMON LAW—CC §§1793.2, 1795.8)

Vehicle manufacturers are required to replace a new motor vehicle or make restitution, if the vehicle does not conform to applicable warranties.

Any dealer selling a vehicle in this state that is known to have been replaced or accepted for restitution under the consumer warranty laws of this state or any other state or federal law, shall include a disclosure statement **signed by the new owner** in the titling documents. This includes vehicles with out of state documents that have been similarly branded and for which the dealer has knowledge of the vehicle's return under consumer warranty laws.

The disclosure statement may be on a Statement of Facts (REG 256), or dealer's letterhead. It ***cannot*** be signed by an attorney-in-fact and ***must*** be worded as follows:

"This motor vehicle has been returned to the dealer or manufacturer due to a defect in the vehicle, pursuant to consumer warranty laws."

The procedure is:

If the application is...	*and...*	*then technicians will key code "R" in the Prior History field on the Data Collection Screen, and...*
submitted by a dealer	contains California or out of state titling documents with a disclosure statement	continue processing. **DO NOT RDF** for disclosure statement.
	contains California or out of state titling documents, branded with a consumer warranty message, but does not contain a disclosure statement	RDF for disclosure statement.
submitted by an individual (non-dealer)	contains titling documents, either out-of-state or California, with a written disclosure statement or branded with a consumer warranty message	continue processing. **DO NOT RDF** for disclosure statement.

Code "R" will cause the message "WARRANTY RETURN" to print on the registration card/title. The Registration Card produced from headquarters may be printed with "WARNTY RET." This message is stored in Subrecord E, Record Condition Code 49, Reason 10 (R67 inquiry). An R61 inquiry will display the following message: "Veh returned to Dlr or Mfg due to defect pursuant to Consumer Warranty Laws."

2.020 CONSUL CORPS—USED VEHICLE

Process as a "Customer Demands Certificate of Title" sale, as outlined in § 2.015 of this handbook, except instruct the consular official to submit the application directly to the Department of State (refer to § 1.030 of this handbook for address and detailed Consul Corps procedures).

REFERENCE: RM § 17.640.

2.030 VEHICLES RETURNED TO DEALER UNDER CONSUMER WARRANTY LAW (LEMON LAW)

Statutes require the department to mark the records of those vehicles returned to the dealer or manufacturer as described in Civil Code § 1793.2 (commonly known as the "lemon law"). These are vehicles which do not conform to applicable warranties even after a number of attempts to repair them. The front of the titles and registration cards for these vehicles will be marked "WARNTY RET" by the department.

When selling a vehicle which was returned under this law, a Statement of Facts (REG 256)* must be must be signed by the new owner (powers of attorney are not acceptable in these cases) and included with the application. The statement must indicate the following:

> *"This motor vehicle has been returned to the dealer or manufacturer due to a defect in the vehicle, pursuant to consumer warranty laws."*

*This statement may also be made on dealer letterhead.

BG-15

Law Offices of
LAWRENCE J. HUTCHENS

9556 FLOWER STREET
SUITE #1
BELLFLOWER, CALIFORNIA 90706-5708
(310) 804-0600
FAX (310) 804-0603

May 12, 1995

MARK F. ANDERSON
Kemnitzer, Dickinson, Anderson & Barron
368 Hayes Street
San Francisco, California 94102-4477

Dear Mr. Anderson,

As per our conversation of today I have reviewed my past cases involving Nissan Motor Corporation. The cases I have handled in the past ten years consist of the following:

1. Gallo vs. Nissan Motor Corporation

This case involved a vehicle warranted by Nissan which suddenly accelerated in the Long Beach Marina Shopping Center and crashed into a tree. It was tried in municipal court and resulted in a defense verdict.

2. Nguyen vs. Nissan Motor Corporation

This involved a vehicle which was subject to repeated repairs for a problem with the front end causing the car to pull to the right. It was settled after the judicial arbitration for actual damages and attorney fees of less than $5,000.00.

3. Cortez vs. Nissan Motor Corporation

Ms. Cortez's vehicle had been in for many transmission repairs which were unsuccessful. The case settled for a actual damages and a civil penalty along with attorney fees and cost less than $8,000.00.

4. Lara vs. Nissan Motor Corporation

Ms. Lara, a young first time buyer, was plagued with serious car problems that never were repaired after numerous attempts. Nissan's response to her request to replace or repurchase the car was an arrogant refusal. This case settled for a actual damages and a substantial civil penalties at the mandatory settlement conference.

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5. Villareal vs. Nissan Motor Corporation

The arbitration award is attached for your review. The case was settled for significantly less than the arbitration award.

6. Regan vs. Nissan Motor Corporation

This was the first year of the Nissan Van. This car's interior temperature was over 105 degrees even with the air conditioning on high. Nissan attempted to fix the problem by designing an engine heat shield which prevented the heat from the engine, which was located in the passenger compartment, from making the interior so uncomfortable. This attempt at redesigning the van was unsuccessful. The case settled near the time of the at the judicial arbitration for a repurchase of the vehicle and less than $4,000.00 in attorney fees.

7. Hamilton vs. Nissan Motor Corporation

This case settled early on for his actual damages and minimal attorney fees.

8. Kelly vs. Nissan Motor Corporation

This case settled after the judicial arbitration for [redacted] near the arbitration award of $6,500.00 and approximately $3,000.00 in attorney fees and costs.

It must be emphasized that this is every case that I ever filed against Nissan. Before I filed the first three cases I called Nissan and asked if I could meet with someone at Nissan since I had three cases that I wanted to avoid filing. Their response was they had no one who could talk to me.

I have had no case with Nissan in the past 3 years and only one in the past 5 years.

Very truly yours,

Lawrence J. Hutchens

LJH/ys
enc

JUDICIAL ARBITRATION & MEDIATION SERVICES, INC.
500 N. State College Blvd., Suite 600
P.O. Box 14095
Orange, CA 92668

(714) 939-1300

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

RICHARD C. VILLAREAL, Plaintiff, vs. NISSAN MOTOR CORPORATION IN U.S.A., et al., Defendants.	CASE NO. X53 89 17 AWARD OF ARBITRATOR C.C.P. 1141.10 et seq. C.R.C. 1600 et seq.

The undersigned arbitrator, pursuant to stipulation, heard the cause on 04/24/89 and having considered the evidence of the parties, awards in full settlement of all claims submitted to arbitration as follows:

AS TO CLAIM OF PLAINTIFF AGAINST DEFENDANT, NISSAN MOTOR CORPORATION IN U.S.A.:

1. June 5, 1986, was the delivery "in-service" date for commencement of Defendant, NISSAN MOTOR CORPORATION

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IN U.S.A.'S (hereinafter "NISSAN") express warranty pursuant to the Song-Beverly Consumer Warranty Act on Plaintiff's purchase of a new 1986 pickup truck from dealership Defendant Nissan of Cypress (hereinafter "CYPRESS").

2. During the express warranty period, Plaintiff experienced an intermittent engine hesitation or surging described in Nissan Service Bulletin TS87-135 "as if the ignition is shut off for less than a second and then turned back on." Plaintiff's testimony was that he experienced the problem when he drove at a constant speed of 65 M.P.H. and the vehicle shutoff down to 5 to 10 M.P.H. He was almost rear-ended on the freeway. Plaintiff took the vehicle into Cypress for repair of this problem 10 or 11 times over a 13 month period. The vehicle was taken in 2 or 3 times within the first 12,000 miles and 6 or 7 times within the first year. The last time was September 14, 1987. Cypress' Terry Griebel first noticed the problem on August 4, 1987, and had fuel pump replaced. In October, 1987, Nissan's Gary Bretzman again noticed the problem and ordered replacement of the throttle body unit. Since Plaintiff refused to pick up the vehicle after September 14, 1987, the vehicle was resold.

The arbitrator rules that the repair problem continuously reported by Plaintiff was a "nonconformity" which substantially impaired the use, value, or safety of Plaintiff's new motor vehicle. See Civil Code, Sec. 1793.2(e)(4)(A).

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3. Plaintiff does not need the rebuttable presumption contained in Civil Code, Sec. 1793.2(e)(1), which presumption "shall not be construed to limit those <the buyer's> rights." (Emphasis added). Besides the 10 or 11 times Plaintiff took the vehicle into Cypress for repair of the nonconformity, he "directly notified" the manufacturer NISSAN by telephone on September 24, 1987, and by letter on September 29, 1987. The arbitrator rules that neither NISSAN nor CYPRESS was able to repair the vehicle's nonconformity "after a reasonable number of attempts." See Civil Code, Sec. 1793.2(d).

4. Plaintiff is entitled to actual damages but is entitled to the additional civil penalty of Civil Code, Sec. 1794 (c) only if NISSAN'S failure to comply with Civil Code, Sec. 1743.2(d) was "willful." The arbitrator has studied the cases submitted by the attorneys, Hale vs. Morgan, (1978) 22 Cal. 3d 388 and Troensegaard v. Silvercrest Industries (1985) 175 Ca. App. 3d 218, and concludes that NISSAN'S failure to comply was willful. Time had run out for Plaintiff to wait any longer because the "reasonable number of attempts" made to repair were unsuccessful. Pursuant to Civil Code Sec. 1793.2(d), NISSAN was required to either replace the vehicle or reimburse the Plaintiff in the statutory amount required. Instead NISSAN offered Plaintiff a trade-out which would require him to pay for a different vehicle than the 1968 pickup truck. NISSAN'S conduct was not malicious but it was deliberate.

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BG 20

The arbitrator rules that the willfulness of Civil Code, Sec. 1793.2(d) is not analagous to the wrongdoer's mental state required for punitive damges. The fact that CYPRESS (the dealership) made a continuous good faith effort to correct the nonconformity does not absolve NISSAN (the manufacturer) from its deliberate failure to comply by EITHER REPLACING THE VEHICLE OR REIMBURSING THE PLAINTIFF.

5. The arbitrator rules that Plaintiff is entitled to statutory attorney's fees because this case was "pending" on January 1, 1988.

6. Award is therefore in favor of Plaintiff, VILLAREAL, and against defendant, NISSAN, for damages computed as follows:

Downpayment	$ 1,200.00
16 monthly payments	$ 3,091.36
Deficiency balance	$ 1,292.39

Total actual damages	$ 5,583.75
Statutory civil penalty	11,169.50
Statutory attorney fees	5,594.00
TOTAL	$22,347.25

Plus costs of $617.60.

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AS TO CLAIM OF CROSS-COMPLAINANT NISSAN OF CYPRESS AGAINST CROSS-DEFENDANT NISSAN MOTOR CORPORATION IN U.S.A.:

Since attorneys fees were not prayed for or stipulated to, costs only are awarded in favor of NISSAN OF CYPRESS.

DATED: May 9, 1989

Samuel M. Kirbens

SAMUEL M. KIRBENS, Arbitrator

In order that your award may be entered by our Judgment Section, PLEASE CLEARLY SHOW THE FULL NAMES OF THE PARTIES FOR WHOM AND AGAINST WHOM THE JUDGMENT IS RENDERED. Please make a disposition as to all parties and cross-complaints (should there be one) in the action.

All money awards should be clearly set forth. It must be clear to anyone reading the judgment to whom that sum is due and from whom.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

KAREN KELLY,

Plaintiff(s),

vs.

NISSAN MOTORS, CORP., UNIVERSAL CITY NISSAN, INC.

Defendant(s).

NO. WEC 118 629

AWARD OF ARBITRATOR
SECTION 1141.10 C.C.P.

The undersigned arbitrator appointed pursuant to the provisions of Section 1141.10 of the Code of Civil Procedure and Rule 1605 California Rules of Court, having been duly sworn and having heard the cause on November 17, , 19 88 , and having considered the evidence of the parties, awards in full settlement of all claims submitted to arbitration as follows:

Judgment is awarded to Plaintiff, KAREN KELLY, against Defendants, NISSAN MOTORS, A CORP., UNIVERSAL CITY NISSAN, INC., in the sum of $6,500.00.

Each party to bear own fees and costs.

☐ Costs are awarded to _____ in the sum of $ _____

DATED: 11/29/88

Arbitrator HUEY P. SHEPARD

NOTE: Counsel are reminded that when this award is entered it operates as a final judgment of the matter. Therefore, when appropriate, a Satisfaction of Judgment should be filed with the clerk of the court.

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SJA 004/R4-81 PS 1-83

PG 3

All money awards should be clearly set forth. It must be clear to everyone reading the judgment to whom that sum is due and from whom.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

CASE NUMBER
NEC 61620

Roberta J. Cortez

Plaintiff(s),

vs.

Nissan Motor Corporation, et al

Defendant(s).

AWARD OF ARBITRATOR
SECTION 1141.10 C.C.P.

The undersigned arbitrator appointed pursuant to the provisions of Section 1141.10 of the Code of Civil Procedure and Rule 1605 California Rules of Court, having been duly sworn and having heard the cause on June 26 and July 11, , 19 90 , and having considered the evidence of the parties, awards in full settlement of all claims submitted to arbitration as follows:

Judgement in favor of Plaintiff Roberta J. Cortez against Defendants Nissan Motor Corporation in U.S.A., and Wondries Nissan in the amount of $19,800.00.

Credit has been given Defendant in the above Judgement per CC 1793.2(d)(2)(c).

☒ Costs are awarded to Plaintiff per cost bill to be filed. in the sum of $

DATED: July 24, 1990

Thomas I. Friedman
ARBITRATOR
Thomas I. Friedman

NOTE: Counsel are reminded that when this award is entered it operates as a final judgment of the matter. Therefore, when appropriate, a Satisfaction of Judgment should be filed with the clerk of the court.

UNIFORM ARBITRATION PROGRAM
SUPERIOR COURT—NORTHEAST DISTRICT
300 East Walnut Street, Room 1008
Pasadena, CA 91101

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F039/R7-89

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MAC FADEN

TO ARBITRATORS

... that your award may be entered by our Judgments Section, IT MUST CLEARLY SHOW THE FULL NAMES OF THE PARTIES IN FAVOR OF WHOM AND AGAINST WHOM THE JUDGMENT IS TO BE ENTERED. Please make a disposition as to all parties and cross-complaints (should there be one) in the action.

All money awards should be clearly set forth. It must be clear to anyone reading the judgment to whom that sum is due and from whom.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

RONALD RAGAN

Plaintiff(s).

vs.

NISSAN MOTOR CORPORATION, et al

Defendant(s).

NO. SW C 95657

AWARD OF ARBITRATOR
SECTION 1141.10 C.C.P.

The undersigned arbitrator appointed pursuant to the provisions of Section 1141.10 of the Code of Civil Procedure and Rule 1605 California Rules of Court, having been duly sworn and having heard the cause on

OCTOBER 4, , 19 88 , and having considered the evidence of the parties, awards in full settlement of all claims submitted to arbitration as follows:

Judgment for Plaintiff, RONALD RAGAN, and against Defendants, NISSAN MOTOR CORPORATION in U.S.A. and TORRANCE NISSAN, jointly and severally in the sum of $9,404.38, in compensatory damages plus attorney fees in the sum of $3,000. + 500 fee.

☐ Costs are awarded to _____ in the sum of $ _____

DATED: OCTOBER 4, 1988

Arbitrator NEWELL BARRETT, JUDGE RETIRED

NOTE: Counsel are reminded that when this award is entered it operates as a final judgment of the matter. Therefore, when appropriate, a Satisfaction of Judgment should be filed with the clerk of the court.

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F039/1-87

BG-25

Rosner, Law & McGee

Attorneys at Law
2643 Fourth Avenue
San Diego, CA 92103
(619) 232-5811
FAX (619) 232-4125

Hall[illegible] D. Rosner
Dou[illegible]as D. Law
Will[illegible]n R. McGee

Linda M. Ellavsky
Legal Administrator

May 12, 1995

VIA FAX NO. (415)861-3151
AND U.S. MAIL

Mark F. Anderson
Kemnitzer, Dickinson, Anderson & Barron
368 Hayes Street
San Francisco, California 94102

Re: Lemon Law Claims With Nissan Motor Corporation in USA

Dear Mark:

This correspondence is in follow-up to our telephone conversation of May 11, 1995 regarding our law firm's experience with Nissan Motor Corporation in USA concerning Lemon Law claims. As you are aware, Douglas Law and myself practice Lemon Law enforcement on a full-time basis. In dealing with automobile manufacturers, including Nissan Motor Corporation in USA, it is our practice and goal to achieve a money back refund or replacement for our clients. It is only in the most egregious of circumstances that we will not settle a case unless a civil penalty is paid by the automobile manufacturer.

For example, over the past three years our law firm has represented approximately 12 clients against Nissan Motor Corporation in USA. Of those cases, all were settled prior to trial, except one. Of those cases which were settled prior to trial, none involved the payment of a civil penalty by Nissan Motor Corporation in USA.

I personally conducted the jury trial in December 1994 of the one case against Nissan Motor Corporation in USA which our firm did take to trial. In that case, I and my client felt strongly that a civil penalty was called for and a civil penalty of $8,000 was requested to settle the case; Nissan Motor Corporation in USA refused to pay any civil penalty. Following a three day trial, the jury awarded my client a refund of his money, and assessed a $15,000 civil penalty. (I have enclosed a summary from Trial Trends magazine of this case.)

As we discussed, I am offended and incredulous at the representations made by Nissan Motor Corporation in USA to Assemblyperson Speier that the Lemon Law attorneys

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in southern california representing consumers extract and/or extort civil penalty damages from automobile manufacturers as a condition of settling a claim. My experience and knowledge of the practice in southern California is directly to the contrary.

It is my experience and opinion that the threat and potential of a jury assessing a civil penalty under the current Lemon Law is most instrumental in leading the automobile manufacturers to offer our clients, and consumers in general, a refund of their money or a vehicle replacement without protracted and expensive litigation. The effectiveness and value of the civil penalty which is written into the Song-Beverly Consumer Warranty Act is clearly demonstrated, not by how often such penalties are paid and/or assessed, but rather by the fact that such penalties rarely need to be paid and/or assessed.

Do not hesitate to contact me if I can be of any further assistance in this matter.

Very truly yours,

WILLIAM R. McGEE

WRM/sm

THOMAS CUSICK VS. NISSAN MOTOR CORPORATION

Case Number:	672516
Plaintiff Attorney:	Rosner, Law and McGee, San Diego, by William R. McGee
Defendant Attorney:	Rucker, Clarkson and McCashin, Los Angeles, by James P. McCashin
Plaintiff Expert:	None
Defendant Expert:	Gary Malloy (Engineer-Nissan Motor Corporation), Los Angeles Robert Landis (Engineer-Nissan Motor Corporation), Los Angeles
Court:	San Diego Superior
Judge:	Hon. Arthur W. Jones

On January 19, 1993, plaintiff Thomas Cusick purchased a new Nissan King Cab pick-up truck from Mossy Nissan. Plaintiff reported an engine knock less than a month later, at 305 miles, whereupon the main bearings of the engine were replaced. After one more month, at 603 miles, plaintiff again reported an engine knock, which resulted in replacement of the short block. Six months later, at 3,555 miles, plaintiff reported an engine noise, but the dealership determined that the noise was normal and made no repairs. Two months later, at 4,389 miles, plaintiff again reported an engine noise, whereupon it was determined that certain pistons were undersized and needed to be replaced. Prior to completion of these repairs, plaintiff retained counsel and demanded that defendant repurchase his vehicle pursuant to the 'lemon law' provision of the Song-Beverly Consumer Warranty Act. At that time, plaintiff's vehicle had been in the shop undergoing warranty repairs for a cumulative total of thirty-two days. Defendant responded by requesting a vehicle inspection and recommending use of its state-certified arbitration program if plaintiff was dissatisfied with defendant's response.

Plaintiff contended: that there was substantial impairment of the use, value and safety of the vehicle and that defendant's authorized repair facility failed to conform the vehicle to its warranties after a reasonable number of repair attempts. Plaintiff contended further that defendant refused to repurchase his vehicle and that such refusal was willful within the meaning of the Song-Beverly Act, entitling plaintiff to a civil penalty.

Defendant contended: that the engine noises reported by plaintiff did not constitute a substantial impairment of vehicle's use, value or safety, that the final repair attempt corrected any defects, and that the vehicle had been repaired within a reasonable number of attempts. Defendant contended further that its request to inspect the vehicle did not amount to a refusal to repurchase nor was there any willful violation of the Song-Beverly Act.

Plaintiff asked the jury to award $12,406 and to assess a civil penalty of up to two times the amount of plaintiff's actual damages. Defendant asked for a defense verdict.

Damages:	$12,406-cash price of vehicle plus incidental damages.
Settlement Talks:	Plaintiff demanded $37,500, inclusive of attorney's fees and costs. Defendant offered $15,000, per C.C.P. 998, with costs and reasonable attorney's fees to be determined by the court.
RESULT:	PLAINTIFF'S VERDICT RETURNED FOR $27,406 ON DECEMBER 22, 1994 ($12,406-ACTUAL DAMAGES; $15,000-CIVIL PENALTY).

Jury Poll: 12-0

The jury was out two hours after a four-day trial.

Note: Plaintiff's motion for statutory costs and attorney's fees in the amount of $33,000 was granted.

LAW OFFICES
SUSAN JOHNSON BATES
4 NORTH SECOND STREET, SUITE 825
SAN JOSE, CALIFORNIA 95113

(408) 286-0700

May 16, 1995

Mark Anderson
Attorney at Law
368 Hayes Street
San Francisco CA 94102

Dear Mark:

In response to your question as to whether my office has ever received a civil penalty from Nissan, the answer is no. I have been handling consumer law cases, specifically the Lemon Law cases since approximately 1985, and have never filed a suit against Nissan.

My practice is to meet with the consumers who are having problems, give them a copy of the law involved so that they understand a little bit better the process, and tell them what they can do to resolve the matter themselves. I only take a case after the consumers are unable to resolve the matter themselves. Of the cases I take, most all of them settle and no civil penalty is requested.

If the legislature removes the civil penalty and there are no punitive damages available, there would be absolutely no incentive for the dealers or manufacturers to settle. The great disparity between a consumer and the dealers and/or manufacturers should not be forgotten. No one mentions the unrecoverable cost suffered by the consumers if they have to go through litigation. The financial and emotional expense to the consumer can hardly be measured against the dealers and manufacturers to whom litigation is simply a cost of doing business. The juries, who are ordinary citizens, are the ones who award civil penalties, if there are any.

Jackie Speir has been concerned about consumers, so certainly she will not be taken in by the manufacturers' position that the civil penalty should be removed. Also, Ralph Nader had an interesting article in the Post Record within the last few days concerning the large corporations who had expressed concern about the costs of litigation to the corporations. Mr. Nader compared their comments with the reports they filed with the SEC, wherein they specifically stated that the litigation costs of product liabilities would not have a significant impact on the financial

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status of the corporations. The civil penalties in the Lemon Law cases are so small in relationship to the dealers' and manufacturers' profits, that they seem hardly significant in the overall scheme. The civil penalty gives the consumer a little bit of clout.

Thanks for your efforts in monitoring the legislation.

Very truly yours,

SUSAN JOHNSON BATES

SJB/ajd

BG-30

ELVA C. WALLACE
Attorney at Law
(714) 634-0766
Fax (714) 634-1255

1717 S. State College Blvd., Suite 135, Anaheim, CA 92806

May 18, 1995

Mark F. Anderson
KENITZER, DICKINSON, ANDERSON & BARRON
368 Hayes Street
San Francisco, CA 94102

Re: Inquiry Concerning Nissan Settlements

Dear Mark:

In response to your 05-17-95 request for a list of Nissan cases I have had in the last five years, I submit the following list, which may be incomplete as our closed file inventory does not list the defendants' names (an oversight I am correcting):

Navarro v. Nissan (still in litigation)
Aghyans v. Nissan
McKay v. Nissan
Yanez v. Nissan
Hunt v. Nissan
*Hauser v. Nissan
*Mathisen v. Nissan

* I'm not positive these were Nissan cases and the files are in storage.

All of my Nissan cases have settled before trial. In my initial demands, I request only single damages and attorney's fees, and **none of the settlements has ever included any amount of civil penalty.** Although I rate the single damage settlements as "equitable" they have always included the statutory offset for pre-discovery mileage and cannot be classified as "generous."

If you need more information, please contact me.

Sincerely,

Elva C. Wallace

ECW/ab

BG-31

CLARKSON & BOATMAN

A Professional Law Corporation
1205 MARSH STREET
SAN LUIS OBISPO, CALIFORNIA 93401

PHILIP R. CLARKSON
SUZAN E. BOATMAN

TELEPHONE
(805)781-3525
FACSIMILE
(805)543-1337

May 18, 1995 SENT VIA FAX (415/861-3151)

Mark F. Anderson
KEMNITZER, DICKINSON, ANDERSON & BARRON
368 Hayes Street
San Francisco, CA 94102

Dear Mr. Anderson:

In response to your inquiry about Nissan cases, I have had only three cases against Nissan in the past fifteen years. I would be very interested if Nissan is presenting any information regarding my cases to the legislature because Nissan insisted on the settlements in two of my cases being confidential. This precludes me from giving you specifics about the amounts of settlements and precludes them from doing the same. Please do let me know if they are revealing this confidential information as an action against Nissan may be appropriate. Without revealing the amount of the settlement, I can briefly tell you about the three cases.

The first case was King vs. Nissan and involved complete brake failure on three occasions. A service manager for the Nissan dealership also experienced this intermittent condition on one occasion. My expert in this case also experienced complete brake failure during a test drive. Despite this verification of the problem and the seriousness of the condition, Nissan refused to refund Ms. King her money and did not settle this case until extensive litigation had occurred.

The second case was Dodd vs. Nissan in which a pickup truck sustained unexplained engine damage. The district service manager for Nissan fabricated evidence for the Better Business Bureau arbitration hearing to the effect that my client had intentionally let oil out of the vehicle and run it without oil. He did this by, after one repair attempt for which he was present, asking the dealer service manager to put silicone on the oil plug and oil filter. When the car then came in again to be transported down to the arbitration hearing, the same district service manager asked the same dealer service manager to loosen the oil filter, thus breaking the silicone bead. He then testified at the arbitration hearing under penalty of perjury that the vehicle had been returned by my client with the silicone bead broken. He thus committed perjury which we established in the first two days of trial. When Nissan realized that the testimony of the arbitrator and the dealer

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service manager was so devastating, they immediately settled the case. I will also point out that Nissan tremendously over-litigated this case. For example, Nissan's attorney took four days to take the depositions of my two clients.

My final case was Reisenwitz vs. Nissan. In this case, the vehicle had an emissions malfunction which caused the vehicle not to comply with California smog requirements. He had the car in at least eight time in nine months and 14,000 miles. My expert checked the car twice and on both occasions the car failed emissions tests. Despite this, Nissan refused to refund my client his money. My client's lease obligation was twenty to twenty-one thousand dollars. We settled this case for $37,500.00 which covered the lease obligation, other incidental and consequential damages, attorneys fees, costs, and expenses. It is obvious that there was not a huge consideration given to any civil penalty in this resolution.

I considered each of these cases quite egregious and obviously feel that without a civil penalty Nissan will continue to treat deserving consumers in an undeserving way.

Yours very truly,

Philip R. Clarkson/248

PHILIP R. CLARKSON

lgb

AG-33

Facsimile
(818) 784-1523

Law Offices of
Alan R. Golden
16830 Ventura Boulevard, Suite 500
Encino, California 91436-1796

Telephone:
(818) 784-1224

May 18, 1995

By fax to (415) 861-3151

Mark F. Anderson, Esq.
Kemnitzer, Dickinson, Anderson & Barron

Re: Nissan "Lemon Law" cases

Dear Mark:

Since becoming a sole practitioner in January 1994, I have had three Nissan matters. I have no record of what prior Nissan cases I may have been involved with in the many years before then. The three are:

Rosen v. Nissan, etc., et al, Los Angeles County Superior Court case no. SC 011008. This involved a 1990 Nissan 300ZX turbo that suffered from continual drivetrain "shudder" and wore out brakes/rotors every 6 - 7,000 miles. I associated in as counsel for trial purposes in around February 1994. Nissan hard-balled the discovery from start to finish, requiring three separate appearances before a discovery referee appointed by the court. We either completely or partially won each, and Nissan was fined once and almost fined a second time.

We settled the case in July 1994 before a jury was selected during the trial. The case had certain problems with regard to whether the plaintiff was the true "purchaser" under the Act, and some others. Accordingly, the settlement - which included all fees and costs awarded (fee time plus costs had reached an astounding $65,000, but there never was an attempt to settle for anywhere near that amount), and was in exchange for a return of the car to Nissan with clear title - totalled only $53,000.00. At no time was a penalty demanded.

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Kane v. Nissan, etc., et al, Los Angeles County Superior Court case no. BC 118454: This is a case involving a 1993 Sentra that has continually stalled and, on occasion, "surged," since 4,000 miles on the odometer. The client went through Autoline arbitration in September 1994 before she came to me. The arbitrator found the complaints to be true, but ordered "repair" as the remedy although it had been in for these complaints nine times in the first 15 months/17,000 miles on the odometer. I filed suit for her in December 1994.

I was speaking to opposing counsel about the case in January 1995, at which time I had done the initial work to start the case, filed the complaint, propounded written discovery, and had correspondence with opposing counsel and others. I had around 15 hours total time then. Nissan had all of the repair history and could have settled the case at that time without penalty for less than $18,000.00 plus minimal fees/costs. We received no response. In April 1995, I wrote to opposing counsel and demanded a penalty of around $8,000.00 in addition to actual damages and fees/costs through that date (up to a total of around $9,000.00 at my ordinary non-contingent billing rate of $255.00 per hour). By then, there had been a good deal more of written discovery and my client's deposition had been taken. Still no response to date.

I have been holding a discovery motion for around a month now (opposing counsel has given me extensions) for the express purpose of receiving a settlement proposal. This is an aggravated case of clear liability, and we have been asking for a very small penalty, all with no offer to date.

Lustig v. Nissan, etc., et al, Los Angeles County Superior Court case no. BC 124167: This is a 1992 NX2000 that has had numerous problems over its 45,000 mile history (11 separate repair attempts). The passenger window has continually fallen out of its track or otherwise remained misaligned, and was seen on six separate occasions before suit was filed. The door was worked on several times as well. This condition eventually led

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to the door moving forward and crushing the right-front fender when opened. We then filed suit in March 1995. Discovery is in the early stages. This case undoubtedly can be settled at this stage for actual damages only and still-low fees/costs. No offer has ever been made to my client directly or through this office.

I am unable to attend the May 23rd hearing and am very glad that you are on the job. The proposal to eliminate civil penalties and to turn everything over to a state-run arbitration program would be a guaranty that consumers could expect a total stonewall approach from manufacturers until the very end. Contrary to what Nissan appears to be claiming, I have noticed recently - at least from some of the other manufacturers - that there is more and more an attempt to settle quickly (and sometimes even reasonably) at an early stage in the cases where liability is clear. From my somewhat limited perspective, it seems that Nissan has not taken that approach.

Very truly yours,

LAW OFFICES OF ALAN R. GOLDEN

By Alan R. Golden
ARG:mos

RG-36

LAMONICA & FOLEY
ATTORNEYS AT LAW
TWO CENTURY PLAZA
2049 CENTURY PARK EAST
SUITE 1100
LOS ANGELES, CALIFORNIA 90067
TEL: (310) 556-0633
FAX: (310) 556-3259

May 22, 1995

BY FAX AND U.S. MAIL

Mark Anderson
KEMNITZER DICKINSON ANDERSON
& BARRON
368 Hayes Street
San Francisco, CA 94102

Re: AB 1383

Dear Mark:

This office has handled one Song-Beverly case against Nissan. The name of the case was Guandique vs. Nissan Motor Corporation in U.S.A.. It was filed in Los Angeles Superior Court, Central District, Case No. BC 101086. A civil penalty was requested. However, the case settled for approximately $12,000.00, including attorneys fees and costs.

Please let me know what additional information you require, if any.

Very truly yours,

Denise V. Foley

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TAYLOR & HODGES
A PROFESSIONAL LAW CORPORATION

CLIFTON HODGES
NORMAN F. TAYLOR
BRIA PETERSON-SMITH
LISA A. PISANIELLO
ALESSANDRA WALBERT

425 W. BROADWAY
SUITE 220
GLENDALE, CA 91204
TEL (818) 244-3905
FAX (818) 244-6052

VIA FACSIMILE/U.S.MAIL

May 22, 1995

Mark Anderson Esq.
Kemnitzer, Dickinson, Anderson & Barron
368 Hayes Street
San Francisco, California 94102

Re: Nissan Motor Corp and Civil Code Sec. 1794

Dear Mr. Anderson:

It has been brought to my attention that in-house counsel for Nissan, Pete Pitterle has given House Representative Jackie Speier the impression that Nissan cannot settle cases in pre-litigation because plaintiff attorneys insist upon a civil penalty, [found at Civil Code Section 1794] as a condition of settlement, making it impossible to settle cases. As a consequence Nissan must resort to litigation thereby incurring astronomical defense costs. Contrary to this position, and in our vast experiences with Nissan, this is far from the case.

In the last seven years, Taylor & Hodges has represented forty seven (47) consumers who had Song-Beverly Consumer Warranty Act [hereinafter ACT] claims against Nissan. I don't believe there is another firm in California who has litigated with Nissan under the ACT anymore than we. Attached hereto is a list of the names of those cases. Only recently have any o.if these cases resolved without the necessity of filing a lawsuit, while most required filing because of Nissan's denials. I believe we are very qualified to comment on Nissan's apparent policies, and actual practices as measured by our experience. In all but perhaps three cases on the enclosed list, we made efforts to resolve these cases with Nissan before filing a lawsuit. Prior to 1993 Nissan had a policy to REFUSE SETTLING ANY CASES IN PRELITIGATION THEREBY FORCING THE CONSUMER INTO LITIGATION.

Beginning in the later part of 1993 Nissan apparently decided it was more cost effective to attempt resolution of cases brought pursuant to the ACT in prelitigation, and for the first time began to respond to our requests to settle without inviting the lawsuit. Please note well, our present demands to Nissan include a request for a civil penalty, but a majority of these claims resolve for

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restitution, incidental and consequential damages as set forth in the ACT, plus attorneys fees. The point here is, even though there is a demand for civil penalty in the initial demand letter, 90% of the time it does not interfere with settlement negotiations. Since 1993, Nissan has settled 10 claims with this firm in prelitigation, and denied 5. As stated earlier, prior to 1993 Nissan fought every claim and unnecessarily forced litigation.

In the last one and a half years only one client has insisted on recovery of civil penalty for Nissan's blatant violation of the ACT. In that case, prelitigation negotiations were bypassed and the lawsuit is presently being prosecuted in Superior Court. Otherwise we have about 6 open cases at present with Nissan, 5 which were denied by Nissan in prelitigation. In 8 years, we have had only one trial with Nissan under the ACT. Prior to 1993, Nissan would settle most cases just before trial. Cases are typically delayed by Nissan for as long as possible, while they send multiple "lowball" offers hoping the consumer will weaken with time and accept something less than the statute permits. Meanwhile attorneys fees on both sides escalate. This is Nissan's strategy, a costly one by choice.

If Nissan has spent large sums annually defending actions brought by consumers pursuant to the ACT, 9 times out of 10 it has been Nissan's own doing.

For anyone to represent that Nissan cannot settle cases in prelitigation because attorneys are holding out for civil penalty is nothing short of a lie. The civil penalty provision has been a great inducement for manufacturers, including Nissan, to comply with the Act. Indeed, that was one of its original purposes.

I hope the above is of some assistance in setting the record straight concerning Nissan's practices as it relates to the Act for the past several years. I also trust it will demonstrate that Mr. Pitterle is being less than truthful when he attempts to lay blame at the plaintiffs bar door step for Nissan's litigation expenses etc.

Very truly yours,

TAYLOR & HODGES
A Professional Corporation

By _____
NORMAN F. TAYLOR

NFT:el
Enclosure (as stated)

TAYLOR & HODGES

CASE LIST RE: NISSAN
As of May 18, 1995

Bazinet vs. Nissan
Beauvais vs. Nissan
Belingay vs. Nissan
Berman vs. Nissan
Bick vs. Nissan
Bobo vs. Nissan
Bobadilla vs. Nissan
Buezo vs. Nissan
Burns vs. Nissan
Cassin vs. Nissan
Chanaud vs. Nissan
Chilson vs. Nissan
Choudry vs. Nissan
Corroa vs. Nissan
Dhillon vs. Nissan
Eldridge vs. Nissan
Estudillo vs. Nissan
Francis vs. Nissan
Garcia vs. Nissan
Hanger vs. Nissan
Hernandez vs. Nissan
Kessler vs. Nissan
Maldonado vs. Nissan
Martinelli vs. Nissan
McMullen vs. Nissan
Moss vs. Nissan
Moussavi vs. Nissan
Nairn vs. Nissan
Niemiec vs. Nissan
Opyd vs. Nissan
Panian vs. Nissan
Panganiban vs. Nissan
Pinzon vs. Nissan
Quinn vs. Nissan
Rose vs. Nissan
Rowan vs. Nissan
Sands vs. Nissan
Short vs. Nissan
Simon vs. Nissan
Singh vs. Nissan
Stephens vs. Nissan
Stevens vs. Nissan
St. Vincent vs. Nissan
Vasquez vs. Nissan
Vasquez vs. Nissan
Wade vs. Nissan
Wainess vs. Nissan
Walton vs. Nissan

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CIVIL PENALTIES PAID BY NISSAN[1]

	Number	Amount
Settlements:	**5**	**$5,000 range**
	2	**Amounts confidential[2]**
Jury Verdict:	**1**	**$15,000[3]**

[1] Based on a survey of the leading lemon law plaintiffs' attorneys in California who at least 80% of such cases filed every year. This survey was compiled by Mark F Anderson, San Francisco, phone 415 861 2334.

[2] King v Nissan and Dodd v Nissan (San Luis Obispo). See letter from plaintiff's attorney Phil Clarkson re these cases. At Nissan's insistence, the amounts paid in settlement are confidential.

[3] Cusick v Nissan (San Diego County). See letter from plaintiff's attorney Bill McGee.

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Summary of Nissan Lemon Law Cases May 22, 1995

Law Firm	# Cases	# Pending	Settled w/ No Penalty	Settled w/ Civil Pen	# Jury Trials
Taylor/Hodges Glendale, CA	47[1]	6	38	3[2]	1 (def verdict)
Lawrence Hutchens Orange County	8[3]	0	6	2[4]	1 (def verdict)
Phil Clarkson San Luis Obispo	3[5]	0	1	2[6]	

[1] In the last seven years

[2] This is an estimate of the number of cases in which Nissan paid something more than actual damages; Nissan often characterized the payment as something other than civil penalty (such as inconvenience). In any event, penalties paid were less than $5,000 per case.

[3] In the past 10 years

[4] A JAMS arbitrator awarded a penalty of $11,000 in Villareal v Nissan in 1989. The case settled for substantially less. The case of Lara v Nissan settled at a settlement conference for a substantial civil penalty; Nissan had refused to repurchase an obvious lemon vehicle.

[5] In the past 15 years

[6] In two of Phil Clarkson's cases, Nissan insisted on confidentiality clausees in the settlement agreements so Mr Clarkson cannot disclose the amounts paid by Nissan.

In one of these cases, Dodd v Nissan, plaintiff proved that the Nissan district service manager had intentionally tampered with the evidence having the dealer service manager loosen an oil filter (so he could testify the owner left it loose). He then testified at BBB arbitration he found it loose. He thus committed perjury which plaintiff established during the first two days of trial. When Nissan realized its impossible position at trial, it settled the case. Pre-trial, Nissan's attorneys over-litigated the case taking, for example, four days to take the depositions of the two plaintiffs.

P. 2 Summary of Nissan Lemon Law Cases

Law Firm	# Cases	# Pending	Settled w/ No Penalty	Settled w/ Civil Pen	# Jury Trials
Alan R Golden Encino	3[7]	2	1		
Rosner, Law & McGee, San Diego	12[8]	0	11		1[9]
Elva Wallace Anaheim	7[10]	0	7		
LaMonica & Foley Los Angeles	1		1		
Mark F Anderson San Francisco	5	1	4		
Bryan Kemnitzer San Francisco	4	0	4		
Totals:	90[11]	9	73	7	3

[7] Since January 1994

[8] Past 3 years

[9] In Cusick v Nissan, plaintiff felt that Nissan's behavior was egregious in refusing to buy back an obvious lemon pickup. Nissan offered $15,000 plus fees & costs pre-trial; plaintiff would have accepted $37,500 inclusive of fees & costs. The jury awarded $27,406 including a $15,000 penalty. The court awarded $33,000 fees & costs. Total verdict: $60,406 on a case Nissan could have settled for $37,500 pre-trial.

[10] In the past seven years

[11] Daneen Flynn, Walnut Creek, and Susan Bates, San Jose, both plaintiffs' lemon law attorneys report having handled no Nissan cases.

CALIFORNIA MOTOR CAR DEALERS ASSOCIATION

GOVERNMENT AFFAIRS OFFICE
915 L Street, Suite 1480, Sacramento, CA 95814
916/441-2599 • FAX 916/441-5612

COPY

July 14, 1995

The Honorable Charles Calderon
Chairman, Senate Judiciary Committee
Room 4039
The State Capitol
Sacramento, CA 95814

Re: A.B. 1381 (Speier) Factory Buyback Disclosures
Position: SUPPORT/SPONSOR
Hearing: Tues. July 18, 1995, Senate Judiciary Comm.

Dear Senator Calderon:

The California Motor Car Dealers Association (CMCDA) is a statewide trade association that represents the interests 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 revises, reforms, and expands the current Automotive Consumer Notification Act in the following manner:

- Greatly expands existing law by providing that any manufacturer who repurchases a "lemon" vehicle, or assists a dealer or lienholder to buy back such a vehicle must:

  1. Cause the vehicle to be retitled in the manufacturer's name (this will insure that the manufacturer's name appears in the ownership title chain and will insure that the title has already been branded prior to the vehicle being reintroduced into the stream of commerce);
  2. Cause DMV to brand the vehicle's title with the inscription "factory buyback" (many consumers have complained that the current inscription "WARNTY RET" is meaningless); and,
  3. Affix a decal, prescribed by DMV, to the vehicle's doorframe which will indicate that the vehicle's title has been branded (because ownership certificates are not always present at the time of sale of a used vehicle, the doorframe decal will act as an additional consumer notice).

- Requires any manufacturer who repurchases, or assists a dealer or lienholder to repurchase a motor vehicle because it did not conform to express warranties (regardless of whether the vehicle was required to be repurchased under the "lemon" law) to give a new, detailed statutory notice to the subsequent transferee.

- Requires any dealer who acquires for resale a motor vehicle and knows or should have known that the vehicle was reacquired by the manufacturer from the last retail owner because it did not conform with express warranties (regardless of whether the vehicle technically qualifies as a "lemon") to give the new, detailed statutory notice. This is a broad expansion of existing law which only requires a dealer to give a warranty buyback disclosure in circumstances where the vehicle was "required by law" to be repurchased.

- Requires any person, including any dealer, who sells a vehicle that has a branded lemon law title to disclose that fact prior to the sale.

- Requires a manufacturer to provide proof of title branding in order to obtain a tax refund from the Board of Equalization for a "lemon" buyback.

Predicated upon the foregoing, we urge your "Aye" vote on A.B. 1381 when it is heard before the Senate Judiciary Committee on Tuesday, July 18, 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 Senate Judiciary Committee
Gordon Hart, Consultant to the Senate Judiciary Committee
Ralph Simoni, California Advocates, Inc.

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33921 Calle De Bonanza
San Juan Capistrano, CA 92675
August 2, 1995
(714) 493-2868

K. Jacqueline Speier, Assemblywoman
State Capitol
Sacramento, CA 94249-0001

Dear Ms. Speier:

Last year you were most helpful concerning the problem we and the Gajefskis were having with Ford Motor Company as regards the F350 Ford Crew Cab "lemon" which was sold to us initially and resold to the Gajefskis, not as a lemon, but as a "buy-back" with only three or four minor items listed.

However, it is my understanding that you are now singing the "auto-industry song"--consumers be damned! Perhaps you can afford to make lemonade with all the automotive lemons which are sold and resold to unsuspecting customers daily, but many of us don't have that prerogative. Moreover, if our elected representatives don't protect consumer interests and go so far as to block court action on behalf of auto interests, then the consumer is really being screwed!

Without strong consumer-protection clauses and stringent auto-industry penalties and government regulation, AB 1381 and AB 1383 should not be passed.

Sincerely,

Derva and Linc Snider

CC: Wm Craven, Bill Morrow, David Horowitz, Motor Voters

Mrs. Derva Snider
Mr. Linc Snider
33921 Calle De Bonanaz
San Juan Capistrano, CA 92675

Dear Derva and Linc Snider:

I am quite disturbed by the apparent attempt of Motor Voters to misinform the public about my legislation to strengthen the lemon law. I have enclosed the current version of AB 1381 for your review. This bill significantly increases disclosure to consumers regarding the purchase of a vehicle which has previously been repurchased by the manufacturer.

Please be aware that auto manufacturers are opposed to AB 1381, not Consumers Union, Consumer Action, the California Consumer Attorneys Association, and other leading consumer groups.

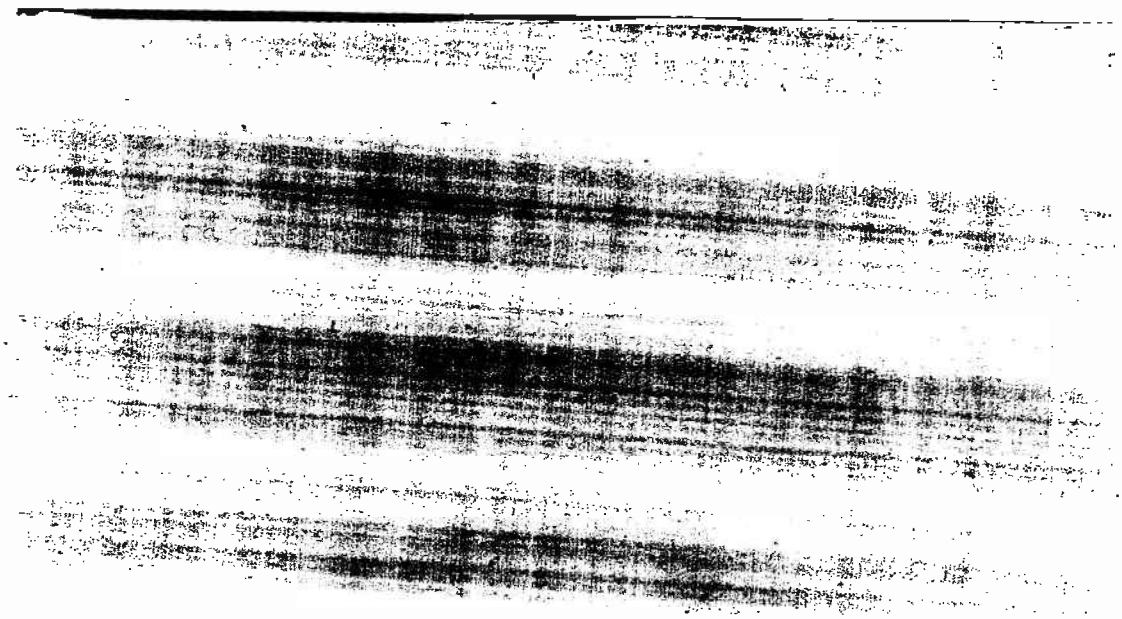
AB 1383, my other lemon vehicle bill, is intended to set up the strongest, state-run arbitration program in the country. The bill is being drafted by the Center for Public Interest Law, one of the leading consumer advocacy groups in the nation. AB 1383 will be the subject of numerous meetings during the remainder of 1995 and will not be heard in a legislative committee until April or May of 1996. In its current form, AB 1383 is opposed by the auto manufacturers as well as numerous consumer groups. My goal is to craft a law which requires all manufacturers to submit to a state-controlled arbitration program and to have decisions rendered within 45 days. Private attorneys may lose business if the state produces a sound arbitration program. Motor Voters appears more concerned about attorney fees than consumer good.

All the best,

Jackie Speier
State Assemblywoman

State Capitol
Sacramento, CA 94249-0001
(916) 445-8020

220 South Spruce Avenue
South San Francisco, C
(415) 871-4100



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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

MEMORANDUM

To : Members of the Assembly
From : Peter Welch
Date : September 6, 1995
Re : **AB 1381 (Speier) Vehicle Buyback Disclosures**
Status: Concurrence In Senate Amendments
Position: SPONSOR/SUPPORT

On behalf of California's franchised new car dealers, we urge you to concur with Senate amendments to AB 1381. As amended, AB 1381 revises, reforms, and expands the current Automotive Consumer Notification Act in the following manner:

- Clarifies and expands existing law by providing that any automobile manufacturer who repurchases a "lemon" vehicle, or assists a dealer or lienholder to buy back such a vehicle must:

  1. Cause the vehicle to be retitled in the manufacturer's name (this will insure that the manufacturer's name appears in the ownership title chain and that the title has already been branded prior to the vehicle being reintroduced into the stream of commerce);
  2. Cause DMV to brand the vehicle's title with the inscription "Lemon Law Buyback" (many consumers have complained that the current inscription "WARNTY RET" is meaningless); and,
  3. Affix a decal, prescribed by DMV, to the vehicle's doorframe that indicates that the vehicle's title has been branded (because ownership certificates are not always present at the time of sale of a used vehicle, the doorframe decal will act as an additional consumer notice).

- Requires any manufacturer who repurchases, or assists a dealer or lienholder to repurchase a motor vehicle because it did not conform to express warranties (regardless of whether the vehicle was required to be repurchased under the "lemon" law) to give a new, detailed statutory notice to the subsequent transferee.

- Requires any dealer who acquires for resale a motor vehicle and knows or should have known that the vehicle was reacquired by the manufacturer from the last retail owner because it did not conform with express warranties (regardless of whether the vehicle

technically qualifies as a "lemon") to give the new, detailed statutory notice. This is a broad expansion of existing law, which only requires a dealer to give a warranty buyback disclosure in circumstances where the vehicle was "required by law" to be repurchased.

- Requires any person, including any dealer, who sells a vehicle that has a branded lemon law title to disclose that fact prior to the sale.

- Requires a manufacturer to provide proof of title branding in order to obtain a tax refund from the Board of Equalization for a "lemon" buyback.

AB 1381 is opposed by a handful of automobile manufacturers who fallaciously argue that Senate amendments to the bill will expose them to expanded liability for a failure on their part to disclosure the "lemon" status of a repurchased vehicle. Such arguments are groundless in that the AB 1381 standard for auto manufacturer liability is identical to that under current law.

Predicated upon the foregoing, we urge your "Aye" vote in concurrence with Senate amendments to AB 1381.

CALIFORNIA
MOTOR CAR DEALERS
ASSOCIATION

GOVERNMENT AFFAIRS OFFICE
915 L Street, Suite 1480, Sacramento, CA 95814
916/441-2599 • FAX 916/441-5612

MEMORANDUM

To : Members of the Assembly
From : Peter Welch
Date : September 11, 1995
Re : **AB 1381 (Speier) Vehicle Buyback Disclosures - Concurrence**
Position: SPONSOR/SUPPORT

On behalf of California's 1700 franchised new car dealers, we urge you to concur with Senate amendments to AB 1381 which clarifies and reforms the current Automotive Consumer Notification Act. AB 1381 does the following:

- Requires any automobile manufacturer who repurchases a "lemon" vehicle to: (1) retitled the vehicle in the manufacturer's name; and, (2) affix a decal to the vehicle's doorframe which indicates that the vehicle's title has been branded.

- Shields reputable manufacturers and dealers from liability by setting forth a simple disclosure form which will identify a manufacturer buyback vehicle as either: (1) a "Lemon Law Buyback"; or, (2) one that was simply repurchased by the manufacturer at the request of the original owner (known in the industry as a "goodwill" buyback).

- Changes DMV title brand for "lemon" vehicles from the current meaningless inscription "WARNTY RET" to "Lemon Law Buyback".

- Requires any person, including any dealer, who sells a vehicle that has a branded lemon law title to disclose that fact prior to the sale.

Contrary to the opponents claims, AB 1381 **does not** do the following:

- It **does not** amend California's "Lemon" law.
- It **does not** require manufacturers to brand the title of all vehicles repurchased from dissatisfied consumers.
- It **does not** change the standard under which a manufacturer buyback vehicle is determined to be a "lemon".

AB 1381 provides a meaningful mechanism under which consumers can make informed purchase decisions when buying or leasing a vehicle which was the subject of a factory buyback. We urge your "Aye" vote.

Headquarters • 420 Culver Boulevard, Playa del Rey, California 90293 • 213/306-6232 • FAX 213/301-8396

PHOTO BY MICHAEL MACOR/THE CHRONICLE

...stand kiosk opened in downtown San Francisco ...y and give an unfair edge to the city's two dailies

...p Newsstands

...yet func-

...kiosks are a ...eared ...for down- ...are cloaked ...of the sym- ...t-high ad ...f a pro- ...sort to off-

...o be 90 ki- ...70 of the ki- ...wstands de- ...metal ...town; within ...ve of the

...y at Powell ...crane lift a ...to a flatbed ...od nearby ...owd of sup- ...tenders in ...isor Angela ...ayor Frank

...tyle and inter- ...ance our repu- tation as a world-class city," Jordan said. With one eye on the election, he added that they "serve as a strong symbol of my administration's efforts to improve the look and cleanliness of our city."

Not everyone was so enamored with the sleek structures, which on Market Street rise nearly 20 feet from the cast-iron base to the ornamental fiberglass flourish at the top.

A handful of sign-carrying protesters were at the back of the crowd. Others, more adventurous, stood for picturesque effect directly behind the speakers. "If a kiosk falls, will you hear it?" read one sign; another warned, "Kiosks will kill mom and pop stores."

Several protesters said they were there in support of the San Francisco Independent, a free newspaper that has been feuding with the afternoon San Francisco Examiner and the San Francisco Newspaper Agency, the business arm of The Chronicle and the Examiner.

At issue: The newsstands will be

KIOSKS: Page A22 Col. 1

...want agencies should be doing to find ways to provide higher quality of service at lower costs."

A merger could help the two cities save about $1 million a year because there would be only one administrative staff. Positions would be cut through attrition, Tye said.

The Menlo Park Fire Protection District operates in Menlo Park, Atherton, East Palo Alto and unincorporated Redwood City, on an annual budget of $11 million and a staff of 92. The Redwood City Fire Department has an annual budget of $7.5 million and a staff of 73.

The new organization would have only one fire

MERGER: Page A22 Col. 4

Governor Ratifies Law on Lemons

By Greg Lucas
Chronicle Sacramento Bureau

Sacramento

Car shoppers may have an easier time avoiding lemons under a bill signed yesterday by Governor Wilson.

Starting next year, the new law requires that vehicles repurchased by the manufacturer and then resold must carry forms describing problems found by the original owner and repairs made to fix those problems.

"Vehicle buyers deserve to know the history of any car or truck that a factory repurchased from the original owner," said the bill's author, Assemblywoman Jackie Speier, D-South San Francisco. "(This law) will insure that someone else's lemon will not be passed on in secrecy to an unsuspecting buyer."

Under current state law, a new car is branded a

BILLS: Page A22 Col. 1

...se Funds for Jordan's Campaign

...by's campaign.

Paskin said she didn't know the envelope contained cash, something that would have been against the law. The money was later returned, but not before the district attorney got briefly involved (via one of Jordan's opponents).

But that was then. This is now — and these days, Jordan's campaign is trying to keep its costs down.

For example, the campaign's official fund-raiser, **Bill Nurge**, will give up his guaranteed $10,000-plus-a-month contract and instead be paid a commission on the money he brings in.

"The notion that we could hire a fund-raiser and give him the responsibility to raise $2 million was a fallacy," Reilly said.

Paskin's return to the fold is already generating chuckles and barbs from opponents like Brown's campaign manager **Jack Davis**.

"Wendy was a barracuda four years ago. Now that she's the mayor's wife and has a lot to say about who sits on the mayor's commissions or who gets appointed, the barracuda will become a Great White.... Hold onto your wallet," chided Davis.

He should know, he worked with Paskin and Jordan four years ago.

COMPASSION CRUSADE: Arianna Huffington, the stellar Republican author, cultural commentator and zillionaire wife of failed GOP Senate candidate **Michael**

Paskin

Huffington

Huffington, stopped by The Chronicle yesterday to:

A) Pitch her latest project, the Center for Effective Compassion. (We need more of it.)

B) Offer a few observations on the current field of GOP presidential contenders. (They all lack compassionate visions.)

And C) Tell us she hopes her

M&R: Page A22 Col. 1

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daredevil flights over the San Francisco waterfront by the Blue Angels flying team.

Flights by the Blue Angels and civilian aerobatic performers today are only practice runs for the real thing tomorrow and Sunday.

The flights on all three days start at 11:30 a.m. and run until 2:30 p.m. today and tomorrow and until 1:30 p.m. on Sunday.

The flights by the Blue Angels

The carrier Hornet will be open for public viewing from 10 a.m. to 4 p.m. today, tomorrow and Sunday. There will be a public commemoration at 3:30 p.m. tomorrow for World War II veterans who accompanied an earlier Hornet aircraft carrier on the historic 1942 raid on Tokyo.

Another highlight of Fleet Week will be a parade of 11 Navy, Coast Guard and foreign warships under the Golden Gate Bridge and

Many of the ships will be open for public viewing at Piers 27, 35 and 45 on the northern waterfront in San Francisco on Sunday between 10 a.m. and 4 p.m.

Practice flights yesterday by the Angels grounded westbound flights out of San Francisco International Airport for more than an hour. Military rules give the stunt team precedence over airspace for their afternoon practice, airport spokesman Ron Wilson said.

Court Fires Kings County Judge

By Harriet Chiang
Chronicle Legal Affairs Writer

A Kings County judge who had been disciplined three times before has been removed from the bench by the California Supreme Court for handling cases involving friends and creditors.

The court found that Municipal Court Judge Glenda Doan "displayed moral turpitude, dishonesty and corruption."

In removing her from the bench, the judges agreed with a special hearing officer that she is "the most disciplined judge in the State of California."

The court followed the recommendations of the state Commission on Judicial Performance that Doan be ousted from the bench.

Voted into office in 51, is the only judge i Central Valley town o She is the second jud this year. San Diego C rior Court Judge G. De was removed in July f report gifts he had r making false stateme investigators.

The state Supreme that Doan had impro fered in criminal ma half of her former g relatives of friends wi had financial dealing found that she had fal loans on her financi forms.

Doan had been three times before

BILLS: Wilson Signs 'Lemon Buyback' Law

From Page A21

lemon if a specific problem cannot be fixed in four tries in one year or 30 days in the shop. The buyer is then given a replacement or refund by the manufacturer.

The vehicle can be resold by the manufacturer, but only after it has been repaired and its title changed so future buyers are aware that it was a lemon.

Speier's bill is aimed at the practice of some manufacturers of buying back the faulty autos and reselling them before they are listed as lemons, without telling buyers about their history.

A 1994 study by the Assembly Consumer Protection Committee, which Speier chairs, found that hundreds of Californians had been sold lemons without being informed of the fact by the manufacturers.

A remarketed car that falls under the state's definition of a lemon will also carry a decal saying it is a "lemon law buyback." The same notification will go on the vehicle's title.

In other action, the governor signed a measure by Senator Tom Hayden, D-Santa Monica, that would prevent people charged with domestic violence from avoiding a guilty plea.

Currently, a person accused of misdemeanor domestic violence can volunteer to undergo counseling and thereby avoid having to enter a guilty plea or stand trial. Under Hayden's law, defendants will have to admit guilt or stand trial. If they plead guilty, their sentencing includes some probation and counseling.

Wilson also signed into law a measure by Assemblyman Jim Cunneen, R-San Jose, that prevents paragliders and mountain bikers from suing public agencies or public employees if they injure themselves on public property.

Public agencies and public workers are already immune from liability for injuries sustained by people who ride animals, boat, cross-country or downhill ski, ride in horse competitions or rodeos, surf, water ski and whitewater raft on public property.

Cunneen's measure was sponsored by the Midpeninsula Regional Open Space District, which has seen an increase in accidents over the past two years. Ninety percent of those accidents required emergency assistance.

The governor also signed a bill that saves Marin County roughly $4 million by limiting the amount of property tax revenue it devotes to special education in local schools to $5 million.

KIOSKS: Protests Over Deal With Toilet Makers

From Page A21

operated by independent contractors paid by the agency, whose papers are the main product sold. The newsstand deal continues an agreement that let the agency install the metal shacks now slated for extinction.

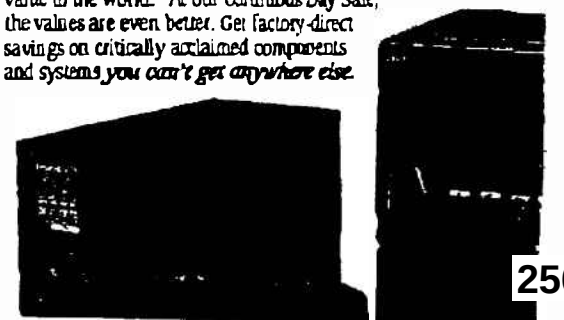
"It's terrible, rotten. San [illegible]

critic asked for such permits last year, leading skeptics to suggest that the suit is merely the latest hurdle in a well-planned series of obstacles by businesses that do not want competition from kiosk advertising.

would be if the sidewalk is too narrow for a kiosk that size."

Also politely enthusiastic was Chris Camperlini, who sells his homemade jewelry near the cable car turnaround.

"They look good and they're not intrusive," Camperlini said. "Hey, at least they're not ugly. Look at that old newsstand — it looks like a refrigerator."



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.

BG-53

ASSEMBLY BILL NO. 1381 1995 REGULAR SESSION CHAPTER 503

8020 ✓

AUTHOR Speier

DATE RECEIVED September 20 1995

LAST DAY TO ACT October 16 1995

✓✓	LC			___	IR			___	PUC		
___	BTH	✓		___	LEGAL			___	DPA		
✓	CAL-EPA	✓		___	OPR			___	CD&ED		
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___ VETO RECEIPT ___ INITIALS

ACTION OF GOVERNOR October 3 1995

AB 1381 1995 CHAPTER 503

LIS - 18

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AB1381

ASSEMBLY
CALIFORNIA LEGISLATURE

K. Jacqueline Speier

Representing
San Mateo County

September 17, 1995

Governor Pete Wilson
State Capitol
Sacramento, CA 95814

Dear Governor Wilson:

I respectfully request your signature on AB 1381 which strengthens the disclosure process involved when a vehicle, repurchased by the factory or a dealer from the original owner is resold to a second buyer.

This measure is sponsored by the California Motor Car Dealers Association whose members seek not only greater clarity in the law in terms of what must be disclosed when reselling a buyback vehicle, but also standardization of disclosure. This bill provides for a user-friendly form which allows for an explanation of why the vehicle was bought back and what repairs were performed to correct cited problems. Current law mandates a 23-word disclosure statement which provides no meaningful information to the dealer or the buyer.

The need for the bill was underscored by a series of investigations by DMV which led to charges being filed against General Motors and Chrysler regarding violations for failing to disclose to second buyers that they had purchased a factory buyback vehicle. General Motors paid $330,000 in a settlement with the state while the Chrysler case is awaiting the decision of the administrative law judge. AB 1381 specifies that its provisions apply to vehicles repurchased after January 1, 1996, so the bill does not impact any pending DMV actions.

The key to AB 1381 is that it provides that every vehicle that is bought back cannot be resold unless accompanied by a completed disclosure form. The form provides that a buyback vehicle must be identified as one that was either repurchased due to specified problems described on the form, or repurchased as a " Lemon Law p Buyback ". In the past manufacturers have resold many buyback cars without disclosure, claiming the law only required disclosure on vehicles repurchased under the Lemon Law.

These undisclosed sales have triggered numerous legal actions on the part of private attornies as well as the DMV. In brief,

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AB 1381 and its " mandated paper trail " should reduce litigation centered around the resale of buyback vehicles.

I must emphasize that the bill does not amend the current Lemon Law which determines when a vehicle qualifies for legal action that could result in an order that the vehicle be repurchased. The decision process for branding vehicles as lemons is not affected by this bill; however, the measure does require that true lemon vehicles have their titles branded in the name of the manufacturer and that a " Lemon Law Buyback " decal be affixed to the left door frame.

AB 1381's disclosure process will reduce litigation associated with disputes over the disclosure of a buyback vehicle's history.

Toyota is neutral on the bill. The American Automobile Manufacturers Association wrote me on 9/6/95 to say it would support the bill if I changed the term that appears on the disclosure form and the title from " Lemon Law Buyback " to " Manufacturer Buyback. " I did not accept this amendment as the proposed name change serves to confuse consumers and dealers alike. " Lemon Law Buyback " is a subset of " Manufacturer Buyback " and is clearly a major improvement over the current law term of " Warnty Rtd. "

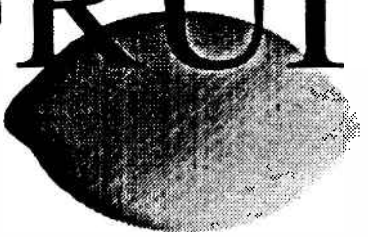
I have attached an investigative report, Bitter Fruit, by the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development which details the reasons why this bill is needed.

All the best,

Jackie Speier
State Assemblywoman

BITTER FRUIT

Final Report on How Consumers Unknowingly Buy Lemon Vehicles



November 30, 1994

PE 4

CALIFORNIA LEGISLATURE
ASSEMBLY COMMITTEE ON
CONSUMER PROTECTION,
GOVERNMENTAL EFFICIENCY
AND ECONOMIC DEVELOPMENT

JACKIE SPEIER
CHAIR

P.O. Box 942849
Sacramento, CA 94249-0001
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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

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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.

PC 1

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

pC-15

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

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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.

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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.

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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

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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.

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Deputies

Sacramento, California

September 20, 1995

Honorable Pete Wilson
Governor of California
Sacramento, CA 95814

Assembly Bill No. 1381

Dear Governor Wilson:

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

Very truly yours,

Bion M. Gregory
Legislative Counsel

By
Marguerite Roth
Principal Deputy

MRR:nd

Two copies to Honorable K. Jacqueline Speier, pursuant to Joint Rule 34.

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STATE AND CONSUMER SERVICES AGENCY **ENROLLED BILL REPORT**

DEPARTMENT	AUTHOR	BILL NUMBER
Consumer Affairs	Speier	AB 1381

Bill Description:

Existing law, known as the **New Car Lemon Law** [Civ.C. 1793.2(d)] and the **Tanner Consumer Protection Act** [Civ.C. § 1793.22]:

- Defines a new vehicle as a "lemon" if, within one year or 12,000 miles, whichever comes first, (1) a defect has been subject to repair four or more times, or (2) the vehicle has been in repair for a total of more than 30 days. (The defect must substantially impair the use, value, or safety of the vehicle.)
- Requires the manufacturer of a lemon to replace the vehicle or give the buyer a refund.
- Requires the Board of Equalization (BOE) to reimburse manufacturers for sales tax refunded to the buyer when making restitution on a lemon.
- Requires lemon disputes to go through a third-party dispute resolution process, if the manufacturer has one, before pursuing civil action.
- Prohibits the resale of a lemon without correcting the defect, disclosing it, and guaranteeing that the vehicle will be free of that defect for one year.

Existing law, known as the **Automotive Consumer Notification Act** [Civ.C. § 1795.8]:

- Requires anyone who sells a motor vehicle that is known or should be known to have been required by law to be replaced or accepted for restitution due to the inability to conform the vehicle to warranties pursuant to the Lemon Law, or any other law of this state, another state, or federal law, to disclose that fact to the buyer in writing prior to sale.
- Requires the titling documents to include a separate document signed by the buyer stating that the vehicle has been returned to the dealer or manufacturer due to a defect, pursuant to consumer warranty laws, and requires the registration card to state the same. [Veh.C. § 4453(b)(7)].

This bill would revise the Automotive Consumer Notification Act, as follows:

Branding: Requires a manufacturer who reacquires a lemon to retitle the vehicle in the manufacturer's name, ask the DMV to brand the title and registration "Lemon Law Buyback," and put a decal on the car stating that the title has been so branded.

Vote: **ASSEMBLY**			Vote: **SENATE**		
Floor: (CONCURRENCE)	Aye 63	No 10	Floor:	Aye 37	No 0
Policy Committee:	Aye 14	No 0	Policy Committee:	Aye 7	No 0
Fiscal Committee:	Aye 15	No 0	Fiscal Committee:	Aye 9	No 0

RECOMMENDATION TO GOVERNOR: SIGN X VETO ___ DEFER TO OTHER AGENCY ___

DEPARTMENT DIRECTOR: DATE: 9/21/95

For MARJORIE M. BERTE
Director

AGENCY SECRETARY DATE: 9/21/95

EBR 11/91

LEGISLATIVE INTENT SERVICE (800) 666-1917

As under the current law, this requirement would apply to any vehicle which the manufacturer knows or should have known was "required by law" to be bought back.

Notice to the New Buyer:

- Requires anyone who sells, leases or transfers a vehicle that was required to be bought back (i.e., a branded vehicle) to disclose to the new buyer that the vehicle was bought back due to a defect, pursuant to consumer warranty laws, and that the title has been branded "Lemon Law Buyback."

- Requires a manufacturer who buys back a motor vehicle at the buyer's request because it did not conform to express warranties to give the next buyer a different notice than the one above. This notice would include a statement of the problem and any repairs made to fix it.

- Requires anyone else who acquires a vehicle for resale and knows or should have known that the vehicle was bought back at the buyer's request to give the new buyer the same notice.

Sales Tax:

Requires the BOE to reimburse the manufacturer for sales tax on a lemon that is replaced, as well as when making restitution.

Effective Date:

Applies only to lemons reacquired on or after January 1, 1996.

Specific Findings:

The Department of Consumer Affairs opposed the June 14, 1995, version of the bill. Since then, various amendments have resolved most of our prior concerns. The current version is much improved vis-a-vis its impact upon consumers, though parts of it are confusing (as discussed below).

The bill would establish one standard for when "branding" and one kind of disclosure would be required, and another for when a second disclosure would be required.

Branding

Branding of the registration and title would be required if the manufacturer knew or had reason to know the vehicle was required by law to be bought back. **This is only a rewording of the current law, with no substantive change.**

Under current practice, manufacturers sometimes avoid branding of lemons by categorizing them as "goodwill" buybacks rather than as having been "required by law" to be bought back. Consumer groups, however, argue that the manufacturer is "required by law" to buy back the vehicle as long as the lemon presumption is met, whether or not the buyback was voluntary or forced through arbitration or other legal proceedings.

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This bill would retain the "required by law" language, and so manufacturers could still avoid branding vehicles that they choose to categorize as "goodwill" buybacks. This will continue to be an issue next year. There should be greater specificity in this area, but the problem is getting consumer interests and industry to agree as to when buybacks should be disclosed as "lemons."

What is new (and improved) about the branding requirement is that:

- A **decal** will now be required on the vehicle itself (attached to the left front doorframe or another location determined by the DMV, if there is no left front doorframe), indicating that the vehicle is a "Lemon Law Buyback."

- The title and registration brand will be **more explicit**, i.e., it will have to say, "Lemon Law Buyback," rather than merely stating that the vehicle has been "returned due to a defect, pursuant to consumer warranty laws."

- The disclosure to the new buyer will also be **more explicit,** as it will now state that the title has been branded with the notation "Lemon Law Buyback."

These changes should enhance the force of the disclosure to the consumer, when that disclosure is made.

Second Disclosure

A different disclosure, including the defect and any repairs to fix it, would be required when the seller knows or should have known that the vehicle was bought back at the request of the buyer because it did not conform to express warranties.

The two different disclosure requirements are confusing. One disclosure would be required for buybacks that were "required by law," and another for buybacks that were requested by the consumer. We are not sure how manufacturers will decide when a vehicle was "required by law" to be bought back, and when they will decide that the buyback was done at the request of the consumer.

The result could be positive or negative, depending on how the manufacturers interpret the term "at the request of the buyer." More vehicles may be disclosed as "buybacks" if manufacturers interpret "at the request of the buyer" to mean informal or "goodwill" buybacks (buybacks requested by the consumer, either orally or in writing, without the matter actually having gotten to arbitration).

On the other hand, it is possible that manufacturers may use this requirement to their advantage and that even fewer vehicles will be branded than are now. Whether or not the buyback is voluntary or forced through settlement, at some point, the consumer may have requested the buyback. If this happens, we may see manufacturers categorizing fewer buybacks as "required by law," and many as "requested by the consumer," because they will not have to brand the vehicle and disclose it as a lemon, but only have to disclose that it was bought back due to a "problem." This would be an undesirable result.

There is another possible problem with this second disclosure form. The form is only required when the buyback was consumer-initiated [see proposed § 1793.24(a)], yet it includes two disclosures, one of which would apply to consumer-initiated buybacks and the other to buybacks that were "required by law" (i.e., they were branded).

The first box states, in very understated terms, that the vehicle was bought back at the consumer's request "due to the problem(s) listed below." The second box proclaims (in all caps) that the vehicle was bought back due to a "defect" (rather than "problem") pursuant to consumer warranty laws, and that the title has been branded "Lemon Law Buyback." Since the bill does not require this disclosure form to be used in the case of branded vehicles, we wonder whether this second box will ever be checked.

Again, there are two possible results. Branded vehicles would still have to be sold with the other disclosure form required in the bill, which states almost exactly the same thing as this disclosure but does not include the defect, repairs, and statement of the guarantee. However, manufacturers still have to disclose this information somewhere, since under current law a lemon cannot be resold without disclosing the defect, correcting it, and guaranteeing that the vehicle will be free of that defect for at least one year. The second disclosure form in this bill would fulfill that requirement, and manufacturers may opt to use it even though they are not required to with this bill.

The other possibility is that they will use another form for vehicles that were "required by law" to be bought back, and limit their use of this second form to buybacks "requested by the consumer." This may work to their advantage, because the first statement on the second disclosure form looks much less serious than the second.

The potential harm may be that the categories used in this bill, and on that form, are arbitrary. Both categories of vehicles may have experienced equally serious problems, and both may have technically qualified as "lemons" under the lemon law. Yet the disclosure required for a buyback "requested by the consumer" is relatively understated, and may not serve to adequately inform the new buyer of the seriousness of the previous problem (which has now supposedly been corrected).

We may be "nit-picking" the bill, but feel that these issues should be pointed out. It remains to be seen how manufacturers will deal with these issues if the bill is enacted. Although as a whole this bill appears to be an improvement over the current law, there is certainly still room for improvement in this area.

Fiscal Impact:

None to this department. The Department of Motor Vehicles expects to incur $96,000 for FY 1995/96, and ongoing costs of $7,000 yearly. The Board of Equalization states that the bill will have no fiscal impact.

Support:

California Motor Car Dealers Association (sponsor)

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Association of International Automobile Manufacturers

Support if Amended:

Consumers Union
Consumer Federation
Consumer Action
Motor Voters
Center for Auto Safety

Opposition:

American Automobile Manufacturers Association
Association of International Automobile Manufacturers
Ford Motor Company

Neutral:

Department of Finance

Other:

Department of Motor Vehicles: "Concerns," but they are not strong enough to oppose the bill.

Arguments:

Pro: Proponents argue that a more aggressive vehicle branding and disclosure program would benefit consumers and remove loopholes in the current law.

Con: The latest amendments have resolved most of the concerns of the consumer groups (Consumers Union, Consumer Action, Center for Auto Safety, and Motor Voters). They are still concerned, however, that the bill will allow manufacturers to decide which vehicles are lemons and which are "goodwill" buybacks, as under the current law (see Specific Findings).

Consumer groups also argue that there will be no disclosure if the manufacturer initiates a recall buyback, as Nissan and Saturn have done. In 1993, Nissan offered to buy back 1987-90 minivans due to failed recall attempts which made repairs very expensive. Saturn offered to buy back about 2,000 Saturns because contaminated coolant had damaged certain components. Consumer groups argue that while these buybacks benefit the original owners, the defects would not have to be disclosed to the next buyers. (For what it is worth, however, manufacturers do not disclose these as "lemons" under the current law, either, choosing to categorize them as "goodwill buybacks.")

The Association of International Automobile Manufacturers (AIAM) supported the June 14 version, which would have required buybacks to have been formally negotiated or in a form process of negotiation (arbitration, judgment, settlement) in order to be branded and disclosed as a lemon. (The department opposed this version, as it would have exempted lemons reacquired purely through oral negotiations, and prospective buyers would have had no notice that there was a problem.)

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The AIAM opposes the current version, which returns the branding requirement to the same standard as in the current law, at the request of the trial lawyers (Consumer Attorneys of California). Manufacturers and consumer groups agree that the current law is too vague and subjective, but disagree as to which vehicles ought to be disclosed and branded as lemons. The AIAM argues that the current version will only continue to create confusion and foment litigation.

There were 10 negative votes on Assembly concurrence, all Republican. The Republican analysis recommended an "oppose" position, due to the Senate amendments which gave rise to opposition from the vehicle manufacturers listed above. (The Senate amendments, however, removed most of our concerns with the bill.)

Recommendation: SIGN. We have some reservations with the bill. It does not resolve the current deficiency with the branding requirement, and we are unsure as to when manufacturers will choose to make one disclosure or the other. However, certain aspects of the bill improve disclosure to the consumer, and in this respect the bill is an improvement over the current law.

Prepared by: Gale Baker, Analyst. Telephone: 322-4294
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ENROLLED BILL REPORT

Business, Transportation & Housing Agency

DEPARTMENT	AUTHOR	BILL NO.
Motor Vehicles	Speier	AB 1381
SPONSOR	**RELATED BILLS**	**DATE LAST AMENDED**
Author	None known	August 21, 1995
SUBJECT		
Vehicles: Automotive Consumer Notification Act		

NOTE: THIS ANALYSIS ONLY ADDRESSES THOSE PROVISIONS OF THE BILL THAT IMPACT THE PROGRAMS OF THE DEPARTMENT OF MOTOR VEHICLES.

THE EBR IS BASED ON THE LAST AMENDED VERSION OF THE BILL. THE ENROLLED BILL WAS NOT AVAILABLE.

SUMMARY: Would establish new reporting requirements for manufacturers so that branding and notice would occur on "Lemon" buy-back vehicles.

IMPACT ASSESSMENT: Existing law requires a manufacturer to disclose to a consumer if a motor vehicle was previously returned pursuant to consumer warranty law due to a defect. That fact must also be reported to the department so that the vehicle can be identified as such on the face of the ownership certificate (title) and registration card. Existing law does not specify the notation that must be made. The department currently brands such registration documents with the phrase 'WARRANTY RETURN".

This bill would:

- provide that a vehicle reacquired by a manufacturer, or by a dealer or lienholder with the assistance of the manufacturer due to the inability of the manufacturer to conform the vehicle to applicable warranties pursuant to the Civil Code, shall be retitled in the name of the manufacturer and have the title branded as a "Lemon Law Buyback". Civil Code Section 1793.2(d) states that the vehicle is reacquired after a reasonable number of attempts to conform the vehicle to warranties and that the manufacturer shall promptly replace the vehicle;

- specify that a manufacturer who reacquires a vehicle or assists a dealer or lienholder to acquire a vehicle in response to a request from the last retail purchaser or lessee due to failure to conform to express warranties must provide notification to the subsequent transferee and obtain the transferee's acknowledgment of the notification. In these cases, title branding is not necessarily required;

- define a "dealer" for purposes of this legislation to include any person engaged in the selling, offering for sale, or negotiating the retail sale of a used vehicle. Dealer would include brokers, agent for another, officers, agents, and employees of the person and any combination or association of dealers;

- require that the notice to be used for a reacquired vehicle, as specified, is revised to reflect the two separate buyback options. This section, including the specifications for the notification, would require that the manufacturer provide an executed copy of the notice to their transferee including a dealer, and each transferee to whom the motor vehicle is transferred prior to its sale to a retail buyer or lessee; and,

- specify that the provisions of this bill would apply only to vehicles reacquired by a manufacturer on or after January 1, 1996.

The department would incur costs of $104,552 in FY 95/96 with annual ongoing costs of $7,359.

VOTE: ASSEMBLY FLOOR	Aye __75_	No __0__	VOTE: SENATE FLOOR	Aye 37	No 0
Policy Cmte.	Aye __14_	No __0__	Policy Cmte.	Aye __7__	No __0__

RECOMMENDATION: SIGN

DEPARTMENT	DATE	AGENCY	DATE
Frank Zolin	9-12-95	Campbell	9-15-95

wp

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ARGUMENTS PRO:

1. Vehicle manufacturers would be required to title a returned vehicle in their name and have the titles of specified vehicles branded with a "Lemon Law Buyback" notation.

2. While only subsequent purchasers of "Lemon Law" vehicles are currently notified of a vehicle that is a lemon, the proposed legislation would specify that all purchasers of reacquired vehicles, whether a lemon or not, would be notified of the problem of which the original purchaser complained.

3. Vehicle manufacturers would be required to affix a decal with the term "Lemon Law Buyback" to a reacquired vehicle's left doorframe.

Support for this bill comes from the California Motor Car Dealers Association.

ARGUMENTS CON:

1. Section 1793.2(d) of the Civil Code states only that the vehicle must be reacquired after a *reasonable number of attempts* to conform the vehicle to warranties. It also states that the manufacturer shall *promptly replace* the vehicle. These terms are non specific and will be difficult to use as grounds for disciplinary action when non complinace is encountered.

2. Because it is not required that a copy of the notice accompany the application for transfer of ownership, enforcement efforts of the department will be complicated.

3. A lost or removed decal will raise problems in assigning proper blame since the point at which the decal was removed will be extremely difficult to determine.

4. There is no mechanism in this bill for the department to recover its implementation or ongoing costs.

5. There is no provision for a delayed operative date to allow the department to complete the required programming.

There is no officially stated opposition to this bill. However, it is recognized that the vehicle manufacturing industry believes that branding a vehicle significantly reduces the value of buy-back vehicles and is, in fact, unnecessary since they would not be reselling a vehicle if it were not considered safety defect and mechanical defect free.

RECOMMENDATION: SIGN

This bill would require a manufacturer to obtain a title in their name for all vehicles reacquired for warranty related defects and to affix a decal on the door frame which incorporates the notation "Lemon Law Buyback." While it is acknowledged that this measure is not a complete fix for the numerous consumer protection issues relative to warranty return vehicles, AB 1381 does provide enhanced protections for purchasers of such vehicles.

For further information, please contact:

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PE-26

DEPARTMENT OF FINANCE ENROLLED BILL REPORT

AMENDMENT DATE: August 21, 1995
RECOMMENDATION: Sign
SPONSOR: California Motor Car Dealers Association
ASSEMBLY: 63/10
SENATE: 37/0

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.

COMMENTS

Finance has no fiscal concerns with this bill and would recommend signature on the bill because provisions in this bill attempt to protect subsequent buyers of vehicles returned to manufacturers as "lemons."

Analyst/Principal (0751) G. Jerome	Date	Program Budget Manager Wallis L. Clark	Date
Jerome	9/20/95	Wallis L Clark	9/20/95
Department Deputy Director			Date
Duane M. Cummins	9/21/95		PE-27

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	PROP 98	FC	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) 1995-1996	FC	1996-1997	FC	1997-1998	Fund Code
2740/DMV	SO		C	$96	S	$7	S	$7	0044

Fund Code: Title
0044 Motor Vehicle Account, STF

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SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
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THIRD READING

Bill No: AB 1381
Author: Speier (D)
Amended: 8/21/95 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE: 7-0, 7/18/95
AYES: Campbell, Mello, O'Connell, Petris, Solis, Wright, Leslie
NOT VOTING: Lockyer, Calderon

SENATE APPROPRIATIONS COMMITTEE: 9-0, 8/23/95
AYES: Johnston, Alquist, Dills, Hughes, Kelley, Killea, Leonard, Leslie, Polanco
NOT VOTING: Calderon, Lewis, Mello, Mountjoy,

ASSEMBLY FLOOR: 75-0, 6/1/95

SUBJECT: Vehicles: Automotive Consumer Notification Act

SOURCE: California Motor Car Dealers Association

DIGEST: This bill enacts the Automotive Consumer Notification Act.

ANALYSIS: 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

CONTINUED

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 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. (more)

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

CONTINUED

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 "lemon law buyback."

3. Manufacturers would have a new obligation to affix a decal with the term "lemon law 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.

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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 "lemon law buyback", and the other box is for other vehicles reacquired after the last retail owner of the vehicle requested its repurchase.

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

SUPPORT: (Verified 8/24/95)

California Motor Car Dealers Association

ARGUMENTS IN SUPPORT: 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.

RJG:jk 8/24/95 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
****** END ******

PE 32

California Legislature

Senate Rules Committee

BILL LOCKYER
Chairman

OFFICE OF SENATE FLOOR ANALYSES
Rick Rollens, Director
David L. Wilkening, Chief Deputy Director

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Revises and recasts the Automotive Consumer Notification Act.

Chapter 503, Statutes of 1995

AB 1610* (Archie-Hudson-D) - Home Solicitation Contracts

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Provides that a lender or seller in a retail installment contract which encumbers the buyer's home as security for payment under the contract, who is required to use a revised specified form after October 1, 1995 to make the disclosure, is able to use that form to achieve compliance with the disclosure laws for contracts entered before October 1, 1995.

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AB 1653 (Horcher-I) - Credit Services Organizations

Revises the definition of persons exempt from the Credit Services Act of 1984 to delete licensed lending organizations, as specified, and to provide that all other exempt organizations may charge no fee for credit services, as specified.

(Failed passage in Assembly Banking and Finance Committee)

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FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

PLAINTIFF/PETITIONER:
DEFENDANT/RESPONDENT:

CASE NUMBER:

DECLARATION

I, Sherrie Moffet-Bell, am the the Program Chief for the Arbitration Certification Program of the Department of Consumer Affairs of the State of California, located at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834.

The April 10, 1997 letter affixed hereto accurately reflects the current position of the Department of Consumer Affairs Arbitration Certification Program on negative equity.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 7/22/2019

Sherrie Moffet-Bell
(TYPE OR PRINT NAME)


(SIGNATURE OF DECLARANT)

☐ Attorney for ☐ Plaintiff ☐ Petitioner ☐ Defendant
☐ Respondent ☑ Other *(Specify)*:
Program Chief, DCA-ACP

State of California Department of Consumer Affairs

MEMORANDUM

To: PETER BRIGHTBILL
Chief, Arbitration Review Program

Date: April 10, 1997

From: JOHN C. LAMB/Legal Services Unit

Re: "Negative Equity" in Arbitrators' Replacement/Repurchase Decisions – Margaret Bowers' February 17, 1997 Letter

You asked me to respond to Peggy Bowers' letter on behalf of Ford Motor Company which argues that the buyer of a defective vehicle should not be reimbursed for "negative equity" under a repurchase decision in a lemon law arbitration proceeding.

As described in Ms. Bowers' letter, "negative equity" is the difference between the loan balance on the buyer's trade-in and the value which the dealer and the buyer have assigned to the trade-in, when that difference is financed as part of the buyer's purchase (or lease) of a new vehicle. This so-called "negative equity" becomes an issue when the new vehicle is defective and an arbitrator orders its repurchase. Ms. Bowers argues that the "negative equity" is not part of the purchase price paid by the buyer, and that the manufacturer therefore is not required to reimburse it in this situation.

As explained in detail below, I have concluded that any "negative equity" is part of the actual price payable by the buyer, and that the manufacturer therefore is required to reimburse it as part of a repurchase decision. I also have concluded that reimbursing "negative equity" does not unjustly enrich the buyer and is not unfair to the manufacturer. Finally, I have concluded that some dealers' practice of "rolling" a buyer's "negative equity" into the purchase price of a new vehicle is probably unlawful and may not create an enforceable obligation against the buyer to repay the "negative equity" amount.

I. BACKGROUND

A. PURCHASE TRANSACTIONS WHERE "NEGATIVE EQUITY" IS FINANCED

Automobile dealers often agree to pay off the amount due on a trade-in in order to close a deal, even though the dealer knows that the pay-off amount might be greater than the trade-in's true value. The dealer either adds the amount paid to the price of the new vehicle, inflates the value of the trade-in so that its net value equals the amount of the "negative equity," or uses some combination of these techniques to include the amount of "negative equity" in the amount financed.

It is essential to understand that the new vehicle's purchase price, the value of the trade-in, and the amount of "negative equity" usually are not "hard" numbers, even though they appear to be after the fact. The amount assigned to "negative equity" to be financed may vary depending on the agreed price of the purchased vehicle and the agreed value of the trade-in vehicle. This in turn may be a function of factors that are not related to the trade-in's actual value, such as: the buyer's awareness and bargaining skills, the dealer's impression of the salability of the trade-in, the current sales performance of the new vehicle,

and even whether the dealer is having a successful month. When the buyer is negotiating the purchase, his or her focus will not be on these factors, but rather on the amount of monthly payments, and possibly, on the total amount to be financed and the annual percentage rate.

In the course of the purchase negotiations, the dealer may adjust the purchase price to compensate for the amount to be allowed on the trade-in and the amount of "negative equity" that the dealer will have to pay. In the end, the buyer will be responsible for paying a stated amount, which will be the sum of the agreed purchase price and the amount of the "negative equity" that is financed. In reading the following analysis, it should be remembered that these amounts often are highly fluid until the buyer signs the contract.

B. THE ARP'S PRESENT POSITION ON "NEGATIVE EQUITY"

In October 1996, I reviewed a Program Summary submitted by the Council of Better Business Bureaus ("CBBB") as part of a manufacturer's application for certification. The ARP was particularly concerned about the applicant's proposal that arbitrators be permitted to deduct the "negative equity" in trade-ins when making awards in cases involving leased vehicles.

I concluded that California law does not allow an arbitrator to deduct any "negative equity" in a lessee's trade-in from an award in a decision to repurchase or replace a defective leased vehicle. The ARP communicated this position to the CBBB, and subsequently, to the several certified arbitration programs.

My analysis, repeated in the margin in relevant part,[1] continues to be an accurate

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[1] The Song-Beverly Act ("Act") and the Arbitration Review Program regulations ("regulations") do not allow an arbitration award that requires restitution or replacement to be reduced by the amount of negative equity in the buyer's or lessee's trade-in. Civil Code §§ 1793.2(d)(2)(A)-(C) strictly limit permissible deductions in replacement and repurchase situations: the only deduction permitted is an offset for use calculated pursuant to the formula at CC § 1793.2(d)(2)(C). The regulations, at 16 CCR § 3398.11(c), also allow deduction for the buyer's/lessee's over-use or abuse of the vehicle.

These are the only deductions permitted by California law. Indeed, the purpose of 16 CCR § 3398.11(c) was to counter some arbitrators' practice of not strictly applying §§ 1793.2(d)(2) (A)-(C)s' remedies, and to require manufacturers to adhere to them in repurchase/replacement decisions. (See Initial Statement of Reasons, Arbitration Program Certification Regulations, California Department of Consumer Affairs, p. 25 (May 23, 1989).)

Deducting for negative equity in a trade-in is impermissible for another reason: it effectively penalizes the consumer for the manufacturer's inability to conform the vehicle to the manufacturer's express warranties. This is contrary to the philosophy behind the Act and the regulations, as expressed in the Commercial Code and the regulations' Final Statement of Reasons. The Commercial Code's Article 2 remedy provisions, incorporated into the Act by CC § 1794(b), are to be liberally administered "to the end that the aggrieved party [here, the consumer] may be put in as good a position as if the other party [here, the manufacturer/warrantor] had fully performed ...." (Com. Code § 1106; see CC § 1794(b).)

This concept also is woven into the regulations. The Final Statement of Reasons states: "In transactions in which the manufacturer has been unable to carry out the terms of its warranty -- has been unable to repair a vehicle after a reasonable number of attempts -- it is more appropriate to place the burden on the manufacturer, than on the consumer who is not responsible for the default." (Final Statement of Reasons,

legal interpretation of the Act and regulations. My expanded analysis in response to Ms. Bowers' letter provides additional persuasive support for this analysis and its conclusions.

B. FORD'S ARGUMENTS

Ms. Bowers' letter argues that "negative equity" is not part of the purchase price of the defective vehicle. She also argues that not allowing "negative equity" to be deducted from the reimbursement award (or in her terms, requiring the manufacturer to refund the "negative equity") is unjust to the manufacturer and creates a windfall to the consumer. She apparently agrees with the ARP's position that "negative equity" cannot be deducted from the purchase price that the arbitrator orders to be reimbursed. (Bowers letter, page 1.)

Whether "negative equity" is part of the purchase price turns on the following language in CC § 1793.2(d)(2)(B):

> "In the case of restitution, the manufacturer shall make restitution in an amount equal to the actual price paid or payable by the buyer," including incidental damages and numerous other charges, but excluding nonmanufacturer items installed by a dealer or the buyer. (Emphasis added.)

Ignoring the words "or payable," Ms. Bowers argues that the intent of the quoted language is to require the manufacturer to reimburse the consumer for the costs incurred in the present transaction. In her view, "Amounts refinanced from another loan on a trade-in ... are not part of the vehicle price paid by the buyer." (Bowers letter , page 2.) She concludes that the manufacturer therefore is not deducting "negative equity" from the purchase price of the vehicle; rather, in her view, the manufacturer is determining the actual price paid by the buyer for the vehicle.

Ms. Bowers' unjust enrichment and windfall arguments follow from this conclusion.

II. ANALYSIS

A. REIMBURSING THE AMOUNT OF "NEGATIVE EQUITY" FINANCED DOES NOT UNJUSTLY ENRICH THE BUYER AND IS NOT UNFAIR TO THE MANUFACTURER

Ms. Bowers argues that requiring the manufacturer to reimburse so-called "negative equity" in a repurchase situation would result in a windfall to the buyer and would be

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Arbitration Program Certification Regulations, California Department of Consumer Affairs, Responses to Objections/Recommendations [incidental damages], p. 28 (September 13, 1989).)

Allowing the consumer's arbitration award to be reduced by the amount of the negative equity in the consumer's trade-in clearly does not put the consumer in as good a position as if the manufacturer had fully performed by making the defective vehicle conform to the express warranties, and impermissibly puts the burden for the manufacturer's failure on the consumer.

Finally, the proposed deduction for negative equity essentially would require the lessee to waive the rights described above. Any waiver of the Act's provisions by the consumer is expressly prohibited by the Act. (CC § 1790.1.)

inequitable to the manufacturer. The practical consequence of requiring the manufacturer to reimburse "negative equity" is not as Ms. Bowers states. This becomes clear when the totality of the purchase transaction and the buyer's obligation thereunder is considered, rather than just the terms of the arbitrator's decision.

As explained at I.A., the amount of "negative equity" can be highly arbitrary, even in a transaction where the buyer is a skillful negotiator. The amount of "negative equity" may be determined by factors which have no direct relationship to the true fair market value of the trade-in or the unpaid balance on the loan for which the trade-in stood as security. In practice, dealers often agree to pay off the amount due on a trade-in in order to close a deal, even though the dealer knows that the pay-off amount is greater than the trade-in's value. In effect, the dealer takes a calculated risk that the buyer will fulfill his or her obligations under the new purchase contract.

If the vehicle conforms to the manufacturer's warranties, the buyer will pay off the amount of "negative equity," together with the purchase price, over the course of the contract. In this situation, all parties will have benefitted from the dealer's action: the buyer benefits by paying off the total debt and having a properly functioning vehicle; the dealer and manufacturer benefit by making the sale; and, the manufacturer often also benefits by collecting interest on the amount of "negative equity" financed.

However, on occasion, vehicles prove to be defective, and the manufacturer is unable to conform them to the warranties that it has given as part of the purchase transaction. In this situation, the dealer has miscalculated the risk, and the manufacturer has failed to fulfill its warranty obligations. The buyer should not be forced to bear the burden of the dealer's miscalculation or the manufacturer's inability to conform the vehicle to its own warranties.

Reducing this conceptual conclusion to hard reality, the fact is that many buyers will not be able to pay off the amount of "negative equity" that is financed, and thus will be required to accept a replacement vehicle rather than the reimbursement awarded. This practical reality violates the regulations' mandate that decisions must be fair (16 CCR § 3398.10(a)), as well as the Act's requirement that the buyer must be able to choose reimbursement in lieu of replacement (see page 5). It also may be unfair to the buyer, since the amount of "negative equity" that the buyer now must pay may have been manipulated by the dealer (perhaps, with the buyer's unwitting concurrence) during the purchase negotiations.

Finally on this point, Ms. Bowers argues that the manufacturer should not be responsible for "debt the consumer incurred that was completely unrelated to the purchase of the vehicle at issue." This misrepresents the true nature of the "negative equity," which is inextricably intertwined with all aspects of the purchase transaction. Financing the "negative equity" also is related to the purchase of the new vehicle because otherwise the purchase could not occur. Further, both the manufacturer and the dealer benefit by making the sale, as explained above.

In sum, when the totality of the transaction is considered, requiring reimbursement of the buyer's total contractual obligation (purchase price plus "negative equity") does not provide the buyer a windfall and is not inequitable to the manufacturer. Rather, this

conclusion properly places the burden of the manufacturer's inability to repair the warranted vehicle on the manufacturer, avoids imposing an essentially arbitrary obligation on the buyer, and assures that the buyer does not lose the option to choose reimbursement instead of replacement.[2]

B. FORD'S CONCLUSIONS WOULD VIOLATE THE SONG-BEVERLY ACT AND THE ARP'S REGULATIONS, AND WOULD NOT BE PRACTICAL

To accept Ms. Bowers' conclusion that "negative equity" is not part of the purchase price payable by the buyer would violate the Song-Beverly Act ("Act") and the ARP's regulations.

First, as explained above, requiring the buyer to pay off the "negative equity" in order to accept a repurchase decision in many cases will force the buyer to accept a replacement vehicle instead. This would violate CC § 1793.2(d)(2)'s requirement that the buyer must be able to choose reimbursement in lieu of replacement.

Second, interpreting the Act so that the buyer is required to choose replacement instead of restitution effectively requires the buyer to waive a provision of the Act, which is prohibited by CC § 1790.1.

Third, Ms. Bowers' interpretation would improperly deprive the arbitrator of decision-making authority. Her letter states that where it is clear that "negative equity" has been rolled into the financing of the new vehicle, the manufacturer is able to determine the respective amounts of the purchase price and the "negative equity." (Bowers letter, page 2.) The amount of the purchase price is key to the buyer's recovery in an arbitration proceeding, and allowing the manufacturer to make this determination would constitute an improper delegation of decision-making authority under 16 CCR §§ 3398.10 and 3398.11. Section 3398.10(a) states that "The arbitrator shall render a ... decision ...." (Emphasis added.) Section 3398.11(d) allows the arbitrator to delegate only the ministerial function of calculating the amount of the mileage offset, but emphasizes that the decision-making function "... shall be performed by the arbitrator only."

Finally, assuming for the sake of argument that the financed "negative equity" is not part of the purchase price, the arbitrator would be faced with a host of practical problems. For example, the arbitrator would have to identify the actual purchase price and the amount of "negative equity" that was financed, which the dealer often has obfuscated in the purchase documents. Once this determination was made, the arbitrator would be required to calculate the amount of the "negative equity" already repaid, and the amount still owing. In calculating this, the arbitrator would have to choose and apply a "legally proper and fair" method of calculating unearned interest on a loan that is terminated early through no fault of the borrower. This might be the Rule of 78s, the constant yield method, a pro rata payoff

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[2] If manufacturers truly feel that reimbursing buyers for "negative equity" in these situations is unfair, the solution seems obvious: manufacturers could enter into agreements with their dealers (who are their agents) requiring that whenever a manufacturer is required to reimburse any "negative equity" under a lemon law decision, the dealer must reimburse the manufacturer in the same amount.

method, or some other method of calculating unearned interest. Making these choices and calculations are well beyond the expertise of the arbitrators whom I have observed.

In light of all of these legal and practical problems, as well as the following legal analysis, Ms. Bowers' interpretation of "negative equity" is incorrect and should be rejected.

C. THE COMMERCIAL CODE AND THE SONG-BEVERLY ACT REQUIRE THAT "NEGATIVE EQUITY" BE REIMBURSED

The plain language of CC § 1793.2(d)(2)(B) requires that the manufacturer reimburse the buyer for the so-called "negative equity" in the buyer's trade-in, when that amount is financed as part of the purchase of a vehicle that is defective, and when an arbitrator orders restitution. The phrase "... the manufacturer shall make restitution in an amount equal to the actual price ... payable by the buyer" is not susceptible to any other interpretation.

Assuming for purposes of argument that the quoted phrase is susceptible to a different interpretation, the same conclusion is required by the Commercial Code, CC § 1793.2(d)(2)(B)'s legislative history and the rules of statutory construction.

1. Commercial Code

The Commercial Code's ("Code's") remedies in sales transactions provide the framework for, and are incorporated into, the Act's remedy provisions. Therefore, it is helpful to look to the Code to explain terms used in the Act.

In Commercial Code terminology, a buyer whose vehicle meets the lemon law criteria and who has requested replacement or reimbursement has "revoked acceptance" of the sale.[3] Under CC § 1794(b)(2), a buyer in such a situation has the remedies specified in Commercial Code §§ 2711-2713.

Commercial Code § 2711 describes the buyer's remedies after the buyer has revoked acceptance of goods for breach of warranty, including damages for "nondelivery." (Clark & Smith, The Law of Product Warranties, Remedies of the Buyer After Proper Rejection or Revocation, ¶ 7.04[1].) This remedy is to be "liberally administered to the end that the aggrieved party be put in as good a position as if the other party had fully performed." (Com. Code § 1106(1); see Com. Code § 2711, Official Comment 3.)

The buyer's nondelivery damages are based on the buyer's "total legal obligation" under the contract. (Com. Code §§ 2711, 2173(1), 1201(11), 2301.) In order to understand the buyer's total legal obligation under the contract, the contract terms must be viewed in their full commercial environment and in the context of the full factual surroundings of the transaction. (Hawkland, Uniform Commercial Code Series, General Obligations and Construction of Contract, Sec. 2-301:01 (Callaghan & Company 1984).) Thus, the buyer's total legal obligation under the contract would include the buyer's obligation to repay "negative equity" that was financed as part of the purchase transaction, even if this obligation is not clear on the face of the contract.

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[3] In few, if any, situations would a lemon law-required replacement or reimbursement situation not be one in which the buyer could justifiably revoke acceptance under the Commercial Code.

Ford's argument that "negative equity" is "not part of the actual vehicle price paid by the buyer" therefore is irrelevant. Whether or not "negative equity" is part of the actual price of the vehicle, it is part of the buyer's total contractual obligation.

Turning to the Act, its provisions, even more specifically than the Code, are to be construed to protect consumers (see Rules of Statutory Construction, below).

Applying the foregoing Code principles to the Act illuminates the meaning of the phrase "actual price paid or payable by the buyer" in CC § 1793.2(d)(2)(B). Where the Code uses the buyer's broadly defined "total legal obligation" under the contract as the basis for determining the buyer's damages, the Act uses "the actual price paid or payable by the buyer" as the basis for determining the amount of restitution to which the buyer is entitled. Just as the buyer's "total legal obligation" would include any "negative equity" financed as part of the new vehicle purchase if the buyer were revoking acceptance, so does the "actual price ... payable by the buyer" include any "negative equity" financed as part of the new purchase when the buyer is entitled to restitution under the lemon law.

To conclude otherwise ignores the Act's underpinnings in the Code, defeats the Act's purpose of protecting consumers, and destroys the symmetry between the two sets of remedy provisions.

2. Legislative History

Civil Code § 1793.2(d)(2)(B) originated as part of AB 3611 (Tanner) in 1986. Assemblywoman Tanner, the author of the original "lemon law," sought to remedy problems with the lemon law as enacted, including dispute resolution programs' failing to award adequate reimbursement in refund decisions. (Assembly Third Reading Analysis, AB 3611 as amended May 19, 1986.)

In the section that ultimately became CC § 1793.2(d)(2)(B), the bill provided:

> "[T]he manufacturer shall make restitution in an amount equal to the full contract price paid or payable by the buyer, including [other charges and fees]."

The Senate Judiciary Committee's analysis of this section stated that "The purpose of this bill is to provide for greater fairness both in automobile arbitration and in resulting restitution to the consumer." (Senate Committee on Judiciary Analysis, AB 3611 as amended May 19, 1996.) The Department of Consumer Affairs supported the bill because it would "require[] that the buyer be made 'whole' where he/she elects reimbursement or replacement" (Letter to Hon. Sally Tanner, June 26, 1986), and because one of the problems addressed by the bill was that buyers often were not made "whole" under the then-current law (Department of Consumer Affairs, Bill Analysis, AB 2057 as amended June 11, 1987).

On August 11, 1986, the section that ultimately became CC § 1793.2(d)(2)(B) was amended to read as it does today, including replacing the phrase "full contract" with the word "actual." No obtainable legislative analysis comments on this amendment. However, the clear effect of the amendment is to implement the Code's policy, described above, that the buyer's "total legal obligation" under the contract can transcend the description of the

transaction in the contract.[4]

3. Rules of Statutory Construction

Ms. Bowers argues for Ford's interpretation of CC § 1793.2(d)(2)(b) by ignoring the phrase "or payable by the buyer."

A basic rule of statutory construction requires that the plain meaning of a statute be given effect unless a compelling reason exists not to do so:

> "[I]f statutory language is 'clear and unambiguous there is no need for construction and courts should not indulge in it.' [Citation.] Unless defendants can demonstrate that the natural and customary import of the statute's language is either 'repugnant to the general purview of the act,' or for some other compelling reason, should be disregarded, this court must give effect to the statute's 'plain meaning.'" (Tiernan v. Trustees of California State Universities (1982) 33 Cal.3d 211, 218-219 [188 Cal.Rptr. 115, 120].)

Here, the language at issue is clear and unambiguous, and Ford cannot establish that the language is repugnant to the Act's purview or that there is a compelling reason to disregard it.

The Act is a remedial measure that is intended for the protection of the consumer, and is to be construed to bring its benefits into action. (Kwan v. Mercedes-Benz (1994) 28 Cal.Rptr.2d 371, 377.) "Remedial statutes are construed to promote their purposes and protect persons within their purview. Relief will be granted unless clearly forbidden by statute." (Booth v. Robinson (1983) 195 Cal.Rptr. 130, 135.)

Interpreting the phrase "payable by the buyer" to exclude "negative equity" from the amount payable by the buyer under the contract would violate these rules because: (a) the buyer would not be made whole and the arbitration proceeding and resulting restitution would not be fair (see discussion of Legislative History, above); (b) the buyer, whom the Act is designed to protect, would be penalized rather than protected (see next paragraph); and, (c) interpreting the phrase to include "negative equity" is not forbidden by the statute.

In fact, as explained on page 4, excluding any "negative equity" from the amount payable by the buyer under the contract would effectively penalize the buyer for the manufacturer's inability to conform the vehicle to its express warranties.

On the other hand, interpreting the phrase broadly to include all amounts payable by the buyer under the contract (other than those amounts explicitly excluded) furthers the Act's purpose of protecting the consumer. This interpretation also is consistent with the Kwan and Booth courts' instructions and the preceding legal analysis.

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[4] AB 3611 ultimately died in the Senate Appropriations Committee for reasons unrelated to its substance. Present CC § 1793.2(d)(2)(B) was enacted by AB 2057 (Tanner) in 1987 (Stats. 1987, ch. 1280). Probably because the language of § 1793.2(d)(2)(B) was finalized in AB 3611, the analyses of AB 2057 contain mere rote recitations of the section's contents, and do not reveal useful analysis or legislative intent.

D. DEALERS' PRESENT PRACTICE OF FINANCING "NEGATIVE EQUITY" MAY BE UNLAWFUL AND MAY NOT CREATE AN ENFORCEABLE OBLIGATION

When a dealer finances a buyer's so-called "negative equity" (or "rolls" it into the amount financed), the dealer typically adds the amount of "negative equity" to the purchase price, or inflates the stated value of the trade-in to show that its net value equals the "negative equity." In either case, the "negative equity" is financed as part of the purchase transaction, and the buyer pays the additional amount financed as part of the regular monthly loan payment.

The following demonstrates that these dealer practices probably violate the California Automobile Sales Finance (Rees-Levering) Act (CC §§ 2981-2984.4) ("RL Act") and the California Finance Lenders Law (Financial Code 22000-22780) ("CFL Law").

1. Financing "Negative Equity" Probably Violates the Rees-Levering Act

a. Background

The Rees-Levering Act "... regulates the sale and financing of automobiles" and also applies "... if the transaction is a subterfuge to avoid the Act." (Hernandez v. Atlantic Finance Co. (1980) 164 Cal.Rptr. 279, 281, 288-289.) The purpose of the RL Act is to "protect purchasers of motor vehicles against excessive charges by requiring full disclosure of all items of costs, and its provisions are mandatory." (Story v. Gateway Chevrolet Co. (1965) 47 Cal.Rptr. 267, 270.)

The following RL Act provisions are the most pertinent here: those requiring disclosure of the terms of the sale, those regulating "side loans," those prohibiting acceleration of the debt absent the buyer's default, and those on the buyer's remedies.

The conditional sale contract is at the heart of installment sales covered by the RL Act, and its contents are dictated by the CC § 2982. Required contract disclosures include the cash price, the value of the buyer's trade-in, and the amount financed.

The "cash price" is the amount for which the seller would sell the vehicle for cash at the time and place of the sale. (CC § 2981(e).) The total of the cash price, document preparation fees, smog certification fees, service contract charges and taxes must be disclosed in the contract as the "total cash price." (CC § 2982(a)(1).)

The net agreed value of the buyer's trade-in and any remaining amount of the downpayment to be paid by the buyer also must be disclosed in the contract. (CC § 2982(a)(6).)

The difference between the total cash price (plus other amounts not relevant here), minus the total amount of the buyer's downpayment, must be disclosed in the contract as the "amount financed." (CC § 2982(a)(8).) This is the amount that the buyer must repay, along with interest, over the life of the contract.

b. Violations

The amounts described immediately above are the key Rees-Levering contract disclosures because they establish the terms of the buyer's obligation. Notably, these disclosures do not accommodate "negative equity" that is "rolled" into the amount financed.

The seller cannot properly add the amount of "negative equity" to the cash price because then the amount disclosed does not meet the RL Act's definition of "cash price." The seller cannot properly inflate the value of the buyer's trade-in because then the disclosure of the trade-in's net agreed value is inaccurate. Inaccurate disclosure of the trade-in's net agreed value, in turn, makes the disclosure of the amount financed inaccurate. This violates both CC § 2982(a) and the Truth in Lending Act (15 USC §§ 1632(a), 1638(a),(b); 12 CFR §§ 226.17(a),(b).)

The RL Act does recognize that sometimes the buyer may need assistance in making the downpayment or a payment toward the purchase price. CC § 2982.5 provides the means for the seller to disclose and to assist the buyer in obtaining such loans (called "side loans"). Under § 2982.5, the seller can assist the buyer to obtain a loan from a third party for all or part of the downpayment, or for part of the purchase price, as long as the amount and terms of the side loan are separately disclosed. (CC §§ 2982.5(b),(d).)

By "rolling" the "negative equity" into the amount financed, the seller actually is assisting the buyer to obtain a side loan to pay part of the downpayment or the purchase price. Therefore, the terms of such a loan properly should be disclosed separately as required by CC §§ 2982.5(b),(d). Failure to do so violates these sections.

Violating CC § 2982(a)'s disclosure provisions is very significant in terms of the RL Act's remedies. In the worst case for the seller, violation of § 2982(a)'s disclosure requirements renders the contract unenforceable and the buyer can recover the total amount paid, including the agreed cash value of the trade-in. (CC §§ 2983, 2983.1.) The buyer can either keep the vehicle or rescind the contract. (CC § 2983.1.) In the more likely case, the contract remains enforceable, but the buyer is excused from paying the unpaid finance charge. (CC § 2983.1.)

Two other RL Act provisions deserve mention. CC § 2983.3(a) prohibits acceleration of any amount due under the contract absent the buyer's default. CC § 2982(*l*) allows the buyer to repay the entire indebtedness evidenced by the contract at any time without penalty. Arguably, requiring the buyer to pay the amount of "negative equity" financed in order to accept a reimbursement decision would violate one or both of these prohibitions. A violation of § 2982(*l*) entitles the buyer to recover three times the amount of finance charge paid. (CC § 2983.1.)

2. Financing "Negative Equity" Probably Violates the California Finance Lenders Law

a. Background

The Rees-Levering discussion suggests that dealers who roll "negative equity" into the amount financed are violating that Act. In California's scheme for regulating consumer

credit transactions, the only other mechanism that dealers might use to finance "negative equity" is to make loans under the CFL Law. Since dealers are rarely licensed as finance lenders, such loans would be unlawful and probably would be uncollectible. A cursory review of relevant CFL Law provisions follows.

Under the CFL Law, a consumer loan is a loan that the borrower intends to use for personal, family or household purposes, or a loan of less than $5,000 for any purpose. (FC §§ 22203, 22204.) "Finance lenders" make consumer loans (FC § 22009), and must be licensed by the Department of Corporations before doing so (FC § 22100). Finance lenders can make motor vehicle loans. (See FC §§ 22328, 22329.)

b. Violations

A loan by a dealer to a buyer to finance the buyer's "negative equity" raises several legal issues. First, the dealer most likely is not licensed as a finance lender, and thus is violating the CFL Law. (FC § 22100.) Second, because separate disclosures are not made for the "negative equity" loan, the Truth in Lending Act's disclosure requirements are violated. (15 USC §§ 1638(a),(b); 12 CFR §§ 226.17(a),(b).) Third, if the interest rate is more than 10 percent, the loan is usurious because an unlicensed finance lender cannot quality for the CFL Law's usury exemption. (See FC §§ 22100, 22002.) Fourth, requiring the buyer to repay the "negative equity" in order to accept the arbitrator's reimbursement decision is effectively the same as accelerating the maturity of the loan in the absence of the buyer's default. This is prohibited by FC § 22329(b). Finally, making a loan subject to the CFL Law without being licensed would constitute a wilful violation of the CFL Law. Wilful violation of the CFL Law in the making or collecting of a loan renders the loan contract void, and the lender cannot recover the principal or any other charges. (FC § 22750; see FC §§ 22752, 22753 (other sanctions for violating the CFL Law).)

3. Professor Brown's Deck Hypothetical is Inapposite

Ford's letter included a memorandum in support of its position from Professor Jim Brown of the University of Wisconsin (Milwaukee), a consultant to Ford's Dispute Settlement Board ("DSB"). Professor Brown poses a hypothetical where the buyer purchases a $20,000 vehicle and borrows an additional $10,000 in connection with the financing of the vehicle to add a deck to the buyer's house. In this hypo, the DSB then orders that the vehicle be repurchased, and bases its restitution award on the $30,000 borrowed (less an offset for mileage). Essentially, Professor Brown concludes that the buyer would be unjustly enriched by such an award.

This set of facts could not arise under a proper application of California law. As explained above, the Rees-Levering Act "... regulates the sale and financing of automobiles" (Hernandez v. Atlantic Finance Co., supra; emphasis added), and thus any such loan would be unlawful under the RL Act. California's Unruh Act provides for the financing of home improvements through retail installment contracts (CC §§ 1802.2, 1802.6), but requires complete disclosure of the terms of the loan (CC §§ 1803.1-1803.3). The Unruh Act disclosures and contract are distinct from those required by the RL Act. (CC §§ 1803.1-1803.3.) Thus, the terms of the deck loan, if made in compliance with the Unruh Act, would be separately disclosed and documented.

In the unlikely event that the dealer were to roll the amount of the buyer's deck into the financing of the vehicle, the transaction would face the problems outlined in the above discussion of the CFL Law.

Finally, it is possible for the buyer to obtain a loan from a third-party source (e.g., an equity line, a finance lender, or a financial institution), and to pay the vehicle's full purchase price at the time of delivery. In such a case, the dealer would prepare a "one-pay" contract that would document the purchase price of the vehicle. If the vehicle proved to be defective, the arbitrator could use the purchase price recorded on the contract to determine the restitution amount. It is highly improbable that the memorialized purchase price in this situation would include any other amount (e.g., "negative equity" or funds borrowed to build a deck). For example, why would a buyer use an equity line to make a lump sum payment for a new vehicle plus the "negative equity" from another vehicle, instead of simply paying off the other vehicle with the equity line funds?

In sum, Professor Brown's hypothetical is not realistic under California law. To the extent that his analysis applies to "negative equity" that was financed as part of the purchase price, other parts of this memorandum establish that including the "negative equity" as part of the "price ... payable by the buyer" is the correct interpretation of California law.

III. CONCLUSION

Ford argues that financed "negative equity" should not be reimbursed in a restitution decision because it is not part of the defective vehicle's purchase price. For all of the reasons stated herein, this conclusion is incorrect and should be rejected.

To the contrary, the foregoing legal analysis establishes that under the California Commercial Code and the Song-Beverly Act, any financed "negative equity" is part of the "actual price ... payable by the buyer," and that restitution should be based on that total amount.

Fairness dictates the same conclusion because: the amount of "negative equity" financed may not correspond to the true difference between the trade-in's fair market value and the amount owing on the loan; the buyer may not be able to accept restitution if he or she must pay the "negative equity" out of pocket; and, it is the manufacturer's inability to conform the vehicle to its warranties that has prevented the buyer from paying off the amount of negative equity over the expected life of the loan.

*****

I hope that this memorandum is helpful. Please let me know if you would like to discuss any aspect of my analysis.

cc: Richard Elbrecht
Bob Miller

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

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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.

s/ Chris Hsu

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STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

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Case Number: **S266034**
Lower Court Case Number: **B293960**

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Date

/s/Chris Hsu

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