## S274625

# IN THE SUPREME COURT OF CALIFORNIA

#### EVERARDO RODRIGUEZ et al.,

Plaintiffs and Appellants,

v.

#### FCA US, LLC,

Defendant and Respondent.

AFTER A DECISION BY THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION TWO CASE NO. E073766

# EXHIBITS TO MOTION FOR JUDICIAL NOTICE Volume 8 of 16 • Pages 257 – 367 of 1937

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#### **VOLUME 1**

#### CALIFORNIA LEGISLATURE

#### AT SACRAMENTO

#### 1979-80 REGULAR SESSION

#### ASSEMBLY FINAL HISTORY

#### SYNOPSIS OF

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

#### Assembly Convened December 4, 1978

Recessed December 5, 1978
Recessed April 5, 1979
Recessed July 20, 1979
Recessed September 14, 1979
Recessed March 27, 1980
Recessed July 16, 1980

Reconvened January 2, 1979 Reconvened April 16, 1979 Reconvened August 20, 1979 Reconvened January 7, 1980 Reconvened April 7, 1980 Reconvened August 18, 1980

Adjourned August 31, 1980 Adjourned Sine Die November 30, 1980

#### HON, LEO T. McCARTHY Speaker

HON. JOHN T. KNOX Speaker pro Tempore HON. WILLIE L. BROWN JR. Majarity Floor Leader HON. TOM BANE
Assistant Speaker pro Tempore
HON. CAROL HALLETT
Minority Floor Leader

Compiled Under the Direction of JAMES D. DRISCOLL Chief Clerk

> GUNVOR ENGLE History Clerk

A.B. No. 2704—Maxine Waters.

An act relating to poison control centers, and making an appropriation therefor. 1980

Read first time Referred to Com on HEALTH. To print. From printer. May be heard in committee April 3

Маг.

Nov. 30-From committee without further action.

A.B. No. 2705—Tanner, Filante, Gage, Harris, Kapiloff, Lockyer, Moore, Perino, Rosenthal, Torres, and Maxine Waters (Senators Greene, Roberti, Sieroty, and Watson, coauthors). An act to add Chapter 4 (commencing with Section 1797.100) to Title 1.7 of Part

4 of Division 3 of the Civil Code, relating to vehicles

1980

Мат. Read first time.

Mar. Mar.

3—Read first time.

4—Referred to Com. on L., E., & C.A. To print.

5—From printer. May be heard in committee April 4.

7—From committee chairman, with author's amendments: Amend, and re-refer to Com. on L., E., & C.A. Read second time and amended. Re-referred to Com. on L., E., & C.A.

8—In committee: Hearing postponed by committee.

129—In committee: Hearing postponed by committee.

1—In committee: Hearing postponed by committee.

1—Joint Rule 61 suspended.

5—From committee: Assignen with author's amendments. April

April

April May

May

From committee chairman, with author's amendments: Amend, and May re-refer to Com. on L., E., & C.A. Read second time and amended. Re-referred to Com. on L., E., & C.A. May

From committee: Amend, and do pass as amended. (Ayes 8. Noes 2.) May

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(May 6)
Read second time and amended. Ordered returned to second reading

May

Read second time. To third reading.
-Read third time, passed, and to Senate. (Ayes 57. Noes 14 Page May 14887.)

May In Senate. Read first time Referred to Com. on JUD

May -From committee chairman, with author's amendments: Amend, and **Tune** re-refer to committee Read second time, amended, and re-referred to Com. on JUD.

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In committee: Set, first hearing. Failed passage.

-In committee: Set, second hearing. Hearing canceled at the request Tune of author.

In committee: Reconsideration granted. June

From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred lune to Com. on JUD.

In committee: Set, final hearing. Failed passage. July Nov.

From Senate committee without further action.

## Introduced by Assemblywoman Tanner

March 3, 1980

REFERRED TO COMMITTEE ON LABOR, EMPLOYMENT, AND CONSUMER AFFAIRS

An act to add Section 6377 to the Revenue and Taxation Code and to add Chapter 7 (commencing with Section 3200) to Division 2 of the Vehicle Code, relating to vehicles.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2705, as introduced, Tanner (L., E., & C.A.). Vehicles, new: warranty of merchantability.

(1) Existing law provides that, unless disclaimed, a manufacturer's warranty of merchantability shall accompany

every retail sale of consumer goods.

This bill would provide, in addition, that no vehicle manufacturer or dealer may disclaim the warranty of merchantability on a new vehicle and that the occurrence of a major noncorrectable defect, the required repair three or more times of a single correctable defect, or any repairs which cause a vehicle to be out of service more than 20 days within the fi rstyear or 12,000 miles after delivery to the purchaser, whichever occurs sooner, shall render the vehicle presumably nonmerchantable unless caused by abuse or collision. It would also provide for notice to the purchaser, examination of an alleged defective condition by the manufacturer or representative, and the circumstances under which the presumption of nonmerchantability becomes inclusive. In the event of nonmerchantability, the manufacturer would be

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required to either refund the purchase price or substitute another vehicle of the same or comparable model. The bill would provide that a replacement of the defective vehicle shall be a transaction exempt from sales and use taxes.

The bill would provide various civil penalties and would specify that its provisions shall be in addition to any other rights of the purchaser and shall not be subject to waiver.

(2) Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are automatically incorporated into the local taxes. Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding these provisions, no obligation is incurred nor appropriation made by this bill for any tax losses to local agencies resulting from this bill for specified reasons.

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

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

SECTION 1. Section 6377 is added to the Revenue 1 and Taxation Code, to read:

6377. There are exempted from the taxes imposed by 4 this part the gross receipts from the sale of, and the storage, use, or other consumption of, any vehicle furnished as a replacement under Section 3217 of the Vehicle Code.

SEC. 2. Chapter 7 (commencing with Section 3200) is added to Division 2 of the Vehicle Code, to read:

Chapter 7. New Motor Vehicle Warranties

12 13 Article 1. General Provisions

3200. As used in the chapter, "new vehicle" means 15 only a new passenger vehicle or motor truck not 16

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1 exceeding 6,000 pounds gross weight.

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3201. As used in this chapter, "price paid by the 3 purchaser" means the original purchase price of a new 4 vehicle, including the value of any traded vehicle. 5 involved in the transaction.

3202. As used in this chapter, "major correctable 7 defect" means a defect in a new vehicle which would cost 8 the purchaser of the vehicle more than 3 percent of the 9 price paid for the vehicle to repair if the purchaser were 10 paying the cost of the repair, and which when repaired 11 in a normal fashion would not leave any permanent 12 adverse effects on the performance or utility of the 13 vehicle.

3203. As used in this chapter, "major noncorrectable defect" means a defect in a vehicle which would cost the 16 purchaser more than 3 percent of the price paid for the vehicle to repair if the purchaser were paying the cost of 18 the repair, and which, when repaired in the normal fashion, would have a permanent adverse effect on the performance or utility of the vehicle.

## Article 2. Warranty Provisions

3210. No vehicle manufacturer, or a dealer on behalf of such manufacturer, shall disclaim, exclude, or restrict the warranty of merchantability of a new vehicle.

3211. Any new vehicle that, within the first 12 months or 12,000 miles, whichever occurs sooner, has a major noncorrectable defect, requires the repair of a single major correctable defect three or more times, or is out of service by reason of repair by a dealer for a cumulative total of more than 20 days since delivery of the vehicle to 33 the purchaser, shall be presumed to be nonmerchantable. In computing the 20 days pursuant to this section, a day shall mean a calendar day or any portion thereof that the 36 dealer's service shop is open for business.

3212. The presumption of nonmerchantability of a 38 new vehicle provided by Section 3211 may be rebutted by a showing that the condition of the motor vehicle 40 resulted from abuse by the purchaser, collision, or other

1 condition outside of the control of the vehicle 2 manufacturer or the dealer.

3213. The original purchaser of a new vehicle shall furnish the vehicle manufacturer notice by registered mail, return receipt requested, with a copy to the dealer from whom the new vehicle was originally purchased, as soon as practicable, a statement of the condition or conditions that are alleged to render the vehicle nonmerchantable under Section 3211 and of the purchaser's decision to exercise the rights provided by Section 3217.

3214. Within 20 days after the receipt of a notice under Section 3213, the vehicle manufacturer or representative thereof shall either examine the vehicle at a place which is within 20 miles of the purchaser's residence or pay for transporting the vehicle to a place designated by the vehicle manufacturer for examination and examine the vehicle at that place and shall notify the purchaser in writing that the vehicle manufacturer either: (a) finds no defect, (b) finds a defect but believes it is due to abuse or collision, (c) finds a defect but can and will put the vehicle in a merchantable condition and will agree to a four-month, or 4,000-mile, whichever occurs sooner, extension of the purchaser's rights under this chapter, or (d) accepts the purchaser's determination that the vehicle is nonmerchantable.

3215. If the vehicle manufacturer notifies the purchaser that the vehicle can be put in a merchantable condition pursuant to Section 3214, the purchaser shall make the vehicle available within three working days after such notification for such repair before any rights vest pursuant to this chapter. If the condition that rendered the vehicle nonmerchantable continues to exist after repair, the vehicle shall be conclusively presumed nonmerchantable.

36 3216. If any examination or repair, for mechanical malfunction, by a vehicle manufacturer, a representative thereof, or a dealer pursuant to this chapter within the first 12 months or 12,000 miles, whichever occurs sooner, results in possession of a new vehicle by such

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1 manufacturer, representative, or dealer for more than 2 five days with the subsequent loss of use by the purchaser, 3 the vehicle manufacturer shall on the sixth day furnish 4 the use of a substitute vehicle without cost to the purchaser other than for necessary fuel and oil during this intervening time or, at its option, compensate the purchaser for renting a substitute vehicle.

3217. In the case of a nonmerchantable new vehicle, 9 the vehicle manufacturer shall, at its option, return the price paid by the purchaser less any depreciation 11 incurred by abuse or collision, or shall furnish a new 12 vehicle of the same model or a comparable model if the model year has changed and the vehicle manufacturer is 14 not able to substitute a motor vehicle of the same model year to the purchaser, delivered to the purchaser's 16 residence, which vehicle shall be warranted by the manufacturer as though originally purchased at the time of such delivery.

3218. Whenever a purchaser of a new vehicle notifies 20 the vehicle manufacturer of the nonmerchantability of the vehicle pursuant to Section 3211 and the manufacturer wrongfully refuses to replace the motor 23 vehicle pursuant to Section 3217, the purchaser may 24 bring an action to recover the price paid for the vehicle 25 less any depreciation incurred by abuse or collision, plus 26 the cost of a rental vehicle, if any, required during the pendency of the dispute, and may also recover reasonable attorney fees incident to such action.

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3219. No vehicle manufacturer shall exclude in the sale of any new vehicle in California any warranty issued with respect to the sale of a comparable vehicle in any other state.

The cost of any replacement or repair of a new 34 vehicle required by this chapter shall be borne by the vehicle manufacturer and shall not be directly or indirectly passed on to the dealer.

3221. Nothing in this chapter shall prevent a vehicle 38 manufacturer from increasing the price of a new vehicle 39 offered for sale in California by the amount reasonably necessary to meet any costs incurred pursuant to this

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chapter; provided, that the vehicle manufacturer shall furnish the Attorney General verified actuarial data supporting any such price increase before it is put into 4

3222. Any dealer or vehicle manufacturer making a repair on a new vehicle shall inform the purchaser in writing at the time of delivery of the vehicle after repair the nature of any defect repaired by such dealer or manufacturer. Such writing shall contain sufficient detail 10 that a determination can be made whether the purchaser of the vehicle may have any rights pursuant to this chapter.

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3223. Every purchaser of a new vehicle shall be furnished by the dealer selling the vehicle with a written statement of the purchaser's rights under this chapter and the address of the vehicle manufacturer or manufacturer's nearest representative in California.

3224. Any dealer who fails to provide the information required by Section 3222 or 3223 shall be liable for a civil penalty of one hundred dollars (\$100) for each such failure, to be collected in the name of the State of California upon action of the Attorney General. 22

3225. Any dealer or vehicle manufacturer who knowingly falsifies a statement under Section 3222 shall be liable for a civil penalty not exceeding one thousand dollars (\$1,000) to be collected in the name of the State of California upon action of the Attorney General.

3226. The provisions of this chapter shall be in addition to and not in derogation of any other rights which the purchaser of a new vehicle may have under any other law or instrument. Any waiver by a purchaser of a new vehicle of any right created by this chapter shall be void and of no effect whatsoever.

SEC. 3. Notwithstanding Section 2230 of the Revenue 35 and Taxation Code, no appropriation shall be made in this act nor shall any obligation be incurred pursuant to this act for the reimbursement of local agencies for revenue losses due to the sales and use tax exemption contained in Section 6377 of the Revenue and Taxation Code as added by Section 1 of this act since the transactions to

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which the exemption shall apply are for the purpose of replacing property the sale or use of which had been subject to sales or use taxes and are of a nature which would generally not have occurred without the provisions of this act, and therefore do not result in an actual loss of substantial tax revenue for local agencies.

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## **AMENDED IN ASSEMBLY APRIL 7, 1980**

CALIFORNIA LEGISLATURE—1979-80 REGULAR SESSION

## ASSEMBLY BILL

No. 2705

Introduced by Assemblywoman Tanner Assemblymen Tanner, Harris, Kapiloff, Lockyer, Moore, Perino, Rosenthal, Torres, and Maxine Waters

(Coauthors: Senators Greene, Sieroty, and Watson)

March 3, 1980

REFERRED TO COMMITTEE ON LABOR, EMPLOYMENT, AND CONSUMER AFFAIRS

An act to add Section 6377 to the Revenue and Taxation Code and to add Chapter 7 (commencing with Section 3200) to Division 2 of the Vehicle Chapter 4 (commencing with Section 1797.100) to Title 1.7 of Part 4 of Division 3 of the Civil Code, relating to vehicles.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2705, as amended, Tanner (L., E., & C.A.). Vehicles, new: warranty of merchantability.

(1) Existing law provides that, unless disclaimed, a manufacturer's warranty of merchantability shall accompany every retail sale of consumer goods.

This bill would provide, in addition, that no vehicle manufacturer or dealer may disclaim the warranty of merchantability on a new vehicle and that the occurrence of a major noncorrectable defect, the required repair three or more times of a single correctable defect, or any repairs which cause a vehicle to be out of service more than 20 days within the first year or 12,000 miles after delivery to the purchaser, whichever occurs sooner, shall render the vehicle presumably

nonmerchantable unless caused by abuse or collision. It would also provide for notice to the purchaser, examination of an alleged defective condition by the manufacturer or representative, and the circumstances under which the presumption of nonmerchantability becomes inclusive conclusive. In the event of nonmerchantability, the manufacturer would be required to either refund the purchase price or substitute another vehicle of the same or comparable model. The bill would provide that a replacement of the defective vehicle shall be a transaction exempt from sales and use taxes.

The bill would provide various eivil penalties and would specify that its provisions shall be in addition to any other rights of the purchaser and shall not be subject to waiver.

(2) Counties and eities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are automatically incorporated into the local taxes. Section 2230 of the Revenue and Taxation Gode provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, netwithstanding these provisions, no obligation is incurred nor appropriation made by this bill for any tax losses to local agencies resulting from this bill for specified reasons.

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

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

1 SECTION 1. Section 6377 is added to the Revenue 2 and Taxation Code, to read:

3 6377. There are exempted from the taxes imposed by
4 this part the gross receipts from the sale of, and the
5 storage; use, or other consumption of, any vehicle
6 furnished as a replacement under Section 3217 of the
7 Vehicle Code.

8 SEC. 2. Chapter 7 (commencing with Section 3200) is 9 added to Division 2 of the Vehicle Code, to read:

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#### CHAPTER 7

SECTION 1. Chapter 4 (commencing with Section 1797.100) is added to Title 1.7 of Part 4 of Division 3 of the Civil Code, to read:

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#### CHAPTER 4. NEW MOTOR VEHICLE WARRANTIES

#### Article 1. General Provisions

 3200.

1797.100. As used in the chapter, "new vehicle" means only a new passenger vehicle or motor truck not exceeding 6,000 pounds gross weight.

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1797.101. As used in this chapter, "price paid by the purchaser" means the original purchase price of a new vehicle, including the value of any traded vehicle involved in the transaction.

1797.102. As used in this chapter, "major correctable defect" means a defect in a new vehicle which would cost the purchaser of the vehicle more than 3 percent of the price paid for the vehicle to repair if the purchaser were paying the cost of the repair, and which when repaired in a normal fashion would not leave any permanent adverse effects on the performance or utility of the vehicle.

1797.103. As used in this chapter, "major noncorrectable defect" means a defect in a vehicle which would cost the purchaser more than 3 percent of the price paid for the vehicle to repair if the purchaser were paying the cost of the repair, and which, when repaired in the normal fashion, would have a permanent adverse effect on the performance or utility of the vehicle.

## Article 2. Warranty Provisions

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1797.110. No vehicle manufacturer, or a dealer on

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behalf of such manufacturer, shall disclaim, exclude, or restrict the warranty of merchantability of a new vehicle. 3 3211

1797.111. Any new vehicle that, within the first 12 months or 12,000 miles, whichever occurs sooner, has a major noncorrectable defect, requires the repair of a single major correctable defect three or more times, or is out of service by reason of repair by a dealer for a 9 cumulative total of more than 20 days since delivery of 10 the vehicle to the purchaser, shall be presumed to be 11 nonmerchantable. In computing the 20 days pursuant to 12 this section, a day shall mean a calendar day or any 13 portion thereof that the dealer's service shop is open for business.

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1797.112. The presumption of nonmerchantability of a new vehicle provided by Section 3211 1797.111 may be rebutted by a showing that the condition of the motor vehicle resulted from abuse by the purchaser, collision, or other condition outside of the control of the vehicle manufacturer or the dealer.

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1797.113. The original purchaser of a new vehicle shall furnish the vehicle manufacturer notice by registered mail, return receipt requested, with a copy to the dealer from whom the new vehicle was originally purchased, as soon as practicable, a statement of the condition or conditions that are alleged to render the vehicle nonmerchantable under Section 3211 1797.111 and of the purchaser's decision to exercise the rights provided by Section 3217 1797.117.

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Within 20 days after the receipt of a notice under Section 3213 1797.113 the vehicle manufacturer or representative thereof shall either examine the vehicle at a place which is within 20 miles of the purchaser's residence or pay for transporting the vehicle to a place designated by the vehicle manufacturer for examination and examine the vehicle at that place and shall notify the purchaser in writing that the vehicle manufacturer 7.

either: (a) finds no defect, (b) finds a defect but 2 believes it is due to abuse or collision, (c) finds a defect 3 but can and will put the vehicle in a merchantable 4 condition and will agree to a four-month, or 4,000-mile. 5 whichever occurs sooner, extension of the purchaser's 6 rights under this chapter, or (d) accepts the purchaser's determination that the vehicle is nonmerchantable.

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1797.115. If the vehicle manufacturer notifies the purchaser that the vehicle can be put in a merchantable condition pursuant to Section 3214 1797.114, the purchaser shall make the vehicle available within three working days after such notification for such repair 14 before any rights vest pursuant to this chapter. If the condition that rendered the vehicle nonmerchantable continues to exist after repair, the vehicle shall be conclusively presumed nonmerchantable.

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1797.116. If any examination or repair, for mechanical malfunction, by a vehicle manufacturer, a representative thereof, or a dealer pursuant to this chapter within the first 12 months or 12,000 miles, whichever occurs sooner, results in possession of a new vehicle by such 24 manufacturer, representative, or dealer for more than five days with the subsequent loss of use by the purchaser, the vehicle manufacturer shall on the sixth day furnish the use of a substitute vehicle without cost to the purchaser other than for necessary fuel and oil during this intervening time or, at its option, compensate the purchaser for renting a substitute vehicle.

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1797.117. In the case of a nonmerchantable new vehicle, the vehicle manufacturer shall, at its option, return the price paid by the purchaser less any depreciation incurred by abuse or collision, or shall furnish a new vehicle of the same model or a comparable model if the model year has changed and the vehicle manufacturer is not able to substitute a motor vehicle of the same model year to the purchaser, delivered to the purchaser's residence, which vehicle shall be warranted

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by the manufacturer as though originally purchased at 2 the time of such delivery.

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1797.118. Whenever a purchaser of a new vehicle 4 manufacturer 5 notifies the vehicle of 6 nonmerchantability of the vehicle pursuant to Section 3211 1797.111 and the manufacturer wrongfully refuses to 8 replace the motor vehicle pursuant to Section 8217 1797.117, the purchaser may bring an action to recover 10 the price paid for the vehicle less any depreciation 11 incurred by abuse or collision, plus the cost of a rental 12 vehicle, if any, required during the pendency of the 13 dispute, and may also recover reasonable attorney fees incident to such action. 14

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1797.119. No vehicle manufacturer shall exclude in 17 the sale of any new vehicle in California any warranty issued with respect to the sale of a comparable vehicle in any other state.

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1797.120. The cost of any replacement or repair of a 22 new vehicle required by this chapter shall be borne by the vehicle manufacturer and shall not be directly or indirectly passed on to the dealer.

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1797.121. Nothing in this chapter shall prevent a 27 vehicle manufacturer from increasing the price of a new vehicle offered for sale in California by the amount reasonably necessary to meet any costs incurred pursuant to this chapter; provided, that the vehicle manufacturer shall furnish the Attorney General verified actuarial data supporting any such price increase before it is put into effect.

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1797.122. Any dealer or vehicle manufacturer making a repair on a new vehicle shall inform the purchaser in writing at the time of delivery of the vehicle after repair the nature of any defect repaired by such dealer or manufacturer. Such writing shall contain sufficient detail that a determination can be made whether the purchaser

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1 of the vehicle may have any rights pursuant to this chapter.

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1797.123. Every purchaser of a new vehicle shall be furnished by the dealer selling the vehicle with a written statement of the purchaser's rights under this chapter and the address of the vehicle manufacturer or manufacturer's nearest representative in California.

8224. Any dealer who fails to provide the information required by Section 3222 or 3223 shall be liable for a civil penalty of one hundred dollars (\$100) for each such failure, to be collected in the name of the State of California upon action of the Attorney General.

3225. Any dealer or vehicle manufacturer who knowingly falsifies a statement under Section 3222 shall 16 be liable for a civil penalty not exceeding one thousand dollars (\$1,000) to be collected in the name of the State of California upon action of the Attorney General.

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1797.124. The provisions of this chapter shall be in addition to and not in derogation of any other rights which the purchaser of a new vehicle may have under any other law or instrument. Any waiver by a purchaser of a new vehicle of any right created by this chapter shall be void and of no effect whatsoever.

SEC. 3. Notwithstanding Section 2230 of the Revenue 27 and Taxation Code, no appropriation shall be made in this act nor shall any obligation be incurred pursuant to this act for the reimbursement of local agencies for revenue 30 losses due to the sales and use tax exemption contained in Section 6377 of the Revenue and Taxation Code as 32 added by Section 1 of this act since the transactions to 33 which the exemption shall apply are for the purpose of replacing property the sale or use of which had been subject to sales or use taxes and are of a nature which would generally not have occurred without the provisions of this act, and therefore do not result in an actual loss of substantial tax revenue for local agencies.

# AMENDED IN ASSEMBLY MAY 5, 1980 AMENDED IN ASSEMBLY APRIL 7, 1980

CALIFORNIA LEGISLATURE—1979-80 REGULAR SESSION

## ASSEMBLY BILL

No. 2705

Introduced by Assemblymen Tanner, Harris, Kapiloff, Lockyer, Moore, Perino, Rosenthal, Torres, and Maxine Waters

(Coauthors: Senators Greene, Sieroty, and Watson)

March 3, 1980

REFERRED TO COMMITTEE ON LABOR, EMPLOYMENT, AND CONSUMER AFFAIRS

An act to add Chapter 4 (commencing with Section 1797.100) to Title 1.7 of Part 4 of Division 3 of the Civil Code, relating to vehicles.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2705, as amended, Tanner (L., E., & C.A.). Vehicles, new: warranty of merchantability.

Existing law provides that, unless disclaimed, a manufacturer's warranty of merchantability shall accompany every retail sale of consumer goods.

This bill would provide, in addition, that no vehicle manufacturer or dealer may disclaim the warranty of merchantability on a new vehicle and that the occurrence of a major noncorrectable defect, as defined, the required repair three or more times of a single major correctable defect, as defined, or any repairs of a major correctable or noncorrectable defect which cause a vehicle to be out of

service more than 20 days within the first year or 12,000 miles after delivery to the purchaser, whichever occurs sooner, shall render the vehicle presumably nonmerchantable unless caused by abuse or collision. It would also provide for notice to the purchaser of the vehicle of such person's rights pursuant to the bill, and provide for notice to the specified manufacturer's representative, examination of an alleged defective condition by the manufacturer or representative, and the circumstances under which the presumption of nonmerchantability becomes conclusive. In the event of nonmerchantability, the manufacturer would be required to either refund the purchase price or substitute another vehicle of the same or comparable model.

The bill would specify that its provisions shall be in addition to any other rights of the purchaser and shall not be subject to waiver.

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

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

1 SECTION 1. Chapter 4 (commencing with Section 2 1797.100) is added to Title 1.7 of Part 4 of Division 3 of the 3 Civil Code, to read:

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## CHAPTER 4. NEW MOTOR VEHICLE WARRANTIES

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## Article 1. General Provisions

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1797.100. As used in the chapter, "new vehicle" means only a new passenger vehicle or motor truck not exceeding 6,000 pounds gross weight.

1797.101. As used in this chapter, "price paid by the purchaser" means the original purchase price of a new vehicle, including the value of any traded vehicle involved in the transaction.

1797.102. As used in this chapter, "major correctable defect" means a defect in a new vehicle which would cost the purchaser of the vehicle more than 3 5 percent of the price paid for the vehicle to repair if the purchaser were

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paying the cost of the repair, and which when repaired in a normal fashion would not leave any permanent adverse effects on the performance basic functioning, performance, or utility of the vehicle.

1797.103. As used in this chapter, "major noncorrectable defect" means a defect in a vehicle which would cost the purchaser more than 3 5 percent of the price paid for the vehicle to repair if the purchaser were paying the cost of the repair, and which, when repaired in the normal fashion, would have a permanent adverse effect on the performance basic functioning, performance, or utility of the vehicle.

## Article 2. Warranty Provisions

1797.110. No vehicle manufacturer, or a dealer on behalf of such manufacturer, shall disclaim, exclude, or restrict the warranty of merchantability of a new vehicle.

1797.111. Any new vehicle that, within the first 12 months or 12,000 miles, whichever occurs sooner, has a major noncorrectable defect, requires the repair of a single major correctable defect three or more times, or is out of service by reason of repair of a major correctable or noncorrectable defect by a dealer for a cumulative total of more than 20 days since delivery of the vehicle to the purchaser, shall be presumed to be nonmerchantable. In computing the 20 days pursuant to this section, a day shall mean a calendar day or any portion thereof that the dealer's service shop is open for business.

1797.112. The presumption of nonmerchantability of a new vehicle provided by Section 1797.111 may be rebutted by a showing that the condition of the motor vehicle resulted from abuse by the purchaser, collision, or other condition outside of the control of the vehicle manufacturer or the dealer.

1797.113. The original purchaser of a new vehicle shall furnish the vehicle manufacturer manufacturer's nearest zone representative with a notice by registered mail, return receipt requested, with a copy to the dealer from whom the new vehicle was originally purchased, as

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soon as practicable, a statement of the condition or conditions that are alleged to render the vehicle nonmerchantable under Section 1797.111 and of the purchaser's decision to exercise the rights provided by Section 1797.117.

1797.114. Within 20 days after the receipt of a notice under Section 1797.113, the vehicle manufacturer or representative thereof shall either examine the vehicle at a place which is within 20 miles of the authorized dealership nearest the purchaser's residence or pay for 11 transporting the vehicle to a place designated by the vehicle manufacturer for examination and examine the vehicle at that place and shall notify the purchaser in writing that the vehicle manufacturer either: (a) finds no defect, (b) finds a defect but believes it is due to 16 abuse or collision, (c) finds a defect but can and will put the vehicle in a merchantable condition and will agree to a four-month, or 4,000-mile, whichever occurs sooner, extension of the purchaser's rights under this chapter, or (d) accepts the purchaser's determination that the vehicle is nonmerchantable.

1797.115. If the vehicle manufacturer notifies the purchaser that the vehicle can be put in a merchantable condition pursuant to Section 1797.114, the purchaser shall make the vehicle available within three working days after such notification for such repair before any rights vest pursuant to this chapter. If the condition that rendered the vehicle nonmerchantable continues to exist after repair, the vehicle shall be conclusively presumed nonmerchantable.

1797.116. If any examination or repair, for mechanical malfunction, by a vehicle manufacturer, a representative thereof, or a dealer pursuant to this chapter within the first 12 months or 12,000 miles, whichever occurs sooner, results in possession of a new vehicle by such 36 manufacturer, representative, or dealer for more than five business days with the subsequent loss of use by the purchaser, the vehicle manufacturer shall on the sixth business day furnish the use of a substitute vehicle without cost to the purchaser other than for necessary **—5— AB** 2705

fuel and oil during this intervening time or, at its option, compensate the purchaser for renting a substitute vehicle. 3

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1797.117. In the case of a nonmerchantable new vehicle, the vehicle manufacturer shall, at its option. return the price paid by the purchaser less any depreciation incurred by abuse or collision which is the fault of the purchaser and any depreciation occurring that is attributable to normal use by the purchaser. The depreciation shall be calculable at a rate not to exceed 10 cents (\$0.10) per mile, but it shall not be calculated on any car on the first 3,000 miles of travel, or shall furnish a new vehicle of the same model or a comparable model if the model year has changed and the vehicle manufacturer is not able to substitute a motor vehicle of the same model year to the purchaser, delivered to the purchaser's residence, which vehicle shall be warranted by the manufacturer as though originally purchased at 19 the time of such delivery.

1797.118. Whenever a purchaser of a new vehicle the vehicle manufacturer nonmerchantability of the vehicle pursuant to Section 1797.111 and the manufacturer wrongfully refuses to replace the motor vehicle pursuant to Section 1797.117, the purchaser may bring an action to recover the price paid for the vehicle less any depreciation incurred by abuse or collision which is the fault of the purchaser, plus the cost of a rental vehicle, if any, required during the pendency of the dispute, and may also recover reasonable attorney fees and costs incident to such action.

1797.119. No vehicle manufacturer shall exclude in the sale of any new vehicle in California any warranty issued with respect to the sale of a comparable vehicle in any other state.

1707.120. The cost of any replacement or repair of a new vehicle required by this chapter shall be borne by the vehicle manufacturer and shall not be directly or indirectly passed on to the dealer.

1797.121. Nothing in this chapter shall prevent a vehicle manufacturer from increasing the price of a new

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vehicle offered for sale in California by the amount reasonably necessary to meet any costs incurred pursuant 3 to this chapter; provided; that the vehicle manufacturer shall furnish the Attorney General verified actuarial data supporting any such price increase before it is put into 6 effect. to this chapter.

1797.122. Any dealer or vehicle manufacturer making a repair on a new vehicle shall inform the purchaser in writing at the time of delivery of the vehicle after repair 10 the nature of any defect repaired by such dealer or 11 manufacturer. Such writing shall contain sufficient detail 12 that a determination can be made whether the purchaser 13 of the vehicle may have any rights pursuant to this chapter.

1797.123. Every purchaser of a new vehicle shall be furnished by the dealer selling the vehicle with a written statement of the purchaser's rights under this chapter and the address of the vehicle manufacturer or manufacturer's nearest representative in California.

1797.124. The provisions of this chapter shall be in addition to and not in derogation of any other rights which the purchaser of a new vehicle may have under 23 any other law or instrument. Any waiver by a purchaser of a new vehicle of any right created by this chapter shall be void and of no effect whatsoever.

# AMENDED IN ASSEMBLY MAY 12, 1980 AMENDED IN ASSEMBLY MAY 5, 1980 AMENDED IN ASSEMBLY APRIL 7, 1980

CALIFORNIA LEGISLATURE—1979-80 REGULAR SESSION

## ASSEMBLY BILL

No. 2705

Introduced by Assemblymen Tanner, Harris, Kapiloff, Lockyer, Moore, Perino, Rosenthal, Torres, and Maxine Waters

(Coauthors: Senators Greene, Sieroty, and Watson)

#### March 3, 1980

REFERRED TO COMMITTEE ON LABOR, EMPLOYMENT, AND CONSUMER AFFAIRS

An act to add Chapter 4 (commencing with Section 1797.100) to Title 1.7 of Part 4 of Division 3 of the Civil Code, relating to vehicles.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2705, as amended, Tanner (L., E., & C.A.). Vehicles, new: warranty of merchantability.

Existing law provides that, unless disclaimed, a manufacturer's warranty of merchantability shall accompany every retail sale of consumer goods.

This bill would provide, in addition, that no vehicle manufacturer or dealer may disclaim the warranty of merchantability on a new vehicle and that the occurrence of a major noncorrectable defect, as defined, the required repair three or more times of a single major correctable defect, as defined, or any repairs of a major correctable or

noncorrectable defect which cause a vehicle to be out of service more than 20 days within the first year or 12,000 miles after delivery to the purchaser, whichever occurs sooner, shall render the vehicle presumably nonmerchantable unless caused by abuse or collision. It would also provide for notice to the purchaser of the vehicle of such person's rights pursuant to the bill, and provide for notice to the specified manufacturer's representative, examination of an alleged defective condition by the manufacturer or representative, and the circumstances under which the presumption of nonmerchantability becomes conclusive. In the event of nonmerchantability, the manufacturer would be required to either refund the purchase price or substitute another vehicle of the same or comparable model.

The bill would specify that its provisions shall be in addition to any other rights of the purchaser and shall not be subject to waiver.

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

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

SECTION 1. Chapter 4 (commencing with Section 1797.100) is added to Title 1.7 of Part 4 of Division 3 of the Civil Code, to read:

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## Chapter 4. New Motor Vehicle Warranties

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## Article 1. General Provisions

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1797.100. As used in the chapter, "new vehicle" means only a new passenger vehicle or motor truck not exceeding 6,000 pounds gross weight.

1797.101. As used in this chapter, "price paid by the purchaser" means the original purchase price of a new vehicle, including the value of any traded vehicle 15 involved in the transaction.

1797.102. As used in this chapter, "major correctable 16 defect" means a defect in a new vehicle which would cost 17 the purchaser of the vehicle more than 5 percent of the 18

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price paid for the vehicle to repair if the purchaser were paying the cost of the repair, and which when repaired in a normal fashion would not leave any permanent adverse effects on the basic functioning, performance, or utility of the vehicle.

1797.103. As used in this chapter, "major noncorrectable defect" means a defect in a vehicle which would cost the purchaser more than 5 percent of the price paid for the vehicle to repair if the purchaser were paying the cost of the repair, and which, when repaired in the normal fashion, would have a permanent adverse effect on the basic functioning, performance, or utility of the vehicle.

## Article 2. Warranty Provisions

1797.110. No vehicle manufacturer, or a dealer on behalf of such manufacturer, shall disclaim, exclude, or restrict the warranty of merchantability of a new vehicle.

1797.111. Any new vehicle that, within the first 12 months or 12,000 miles, whichever occurs sooner, has a major noncorrectable defect, requires the repair of a single major correctable defect three or more times, or is out of service by reason of repair of a major correctable or noncorrectable defect by a dealer for a cumulative total of more than 20 days since delivery of the vehicle to the purchaser, shall be presumed to be nonmerchantable. In computing the 20 days pursuant to this section, a day shall mean a calendar day or any portion thereof that the dealer's service shop is open for business.

1797.112. The presumption of nonmerchantability of a new vehicle provided by Section 1797.111 may be rebutted by a showing that the condition of the motor vehicle resulted from abuse by the purchaser, collision, or other condition outside of the control of the vehicle manufacturer or the dealer.

1797.113. The original purchaser of a new vehicle shall furnish the vehicle manufacturer's nearest zone representative with a notice by registered mail, return receipt requested, with a copy to the dealer from whom

the new vehicle was originally purchased, as soon as practicable, a statement of the condition or conditions that are alleged to render the vehicle nonmerchantable under Section 1797.111 and of the purchaser's decision to exercise the rights provided by Section 1797.117.

1797.114. Within 20 days after the receipt of a notice under Section 1797.113, the vehicle manufacturer or representative thereof shall either examine the vehicle at the authorized dealership nearest the purchaser's residence or pay for transporting the vehicle to a place designated by the vehicle manufacturer for examination and examine the vehicle at that place and shall notify the purchaser in writing that the vehicle manufacturer either: (a) finds no defect, (b) finds a defect but believes it is due to abuse or collision, (c) finds a defect but can and will put the vehicle in a merchantable condition and will agree to a four-month, or 4,000-mile, whichever occurs sooner, extension of the purchaser's rights under this chapter, or (d) accepts the purchaser's determination that the vehicle is nonmerchantable.

1797.115. If the vehicle manufacturer notifies the purchaser that the vehicle can be put in a merchantable condition pursuant to Section 1797.114, the purchaser shall make the vehicle available within three working days after such notification for such repair before any rights vest pursuant to this chapter. If the condition that rendered the vehicle nonmerchantable continues to exist after repair, the vehicle shall be conclusively presumed nonmerchantable.

1797.116. If any examination or repair, for mechanical malfunction, by a vehicle manufacturer, a representative thereof, or a dealer pursuant to this chapter within the first 12 months or 12,000 miles, whichever occurs sooner, results in possession of a new vehicle by such manufacturer, representative, or dealer for more than five business days with the subsequent loss of use by the purchaser, the vehicle manufacturer shall on the sixth business day furnish the use of a substitute vehicle without cost to the purchaser other than for necessary fuel and oil during this intervening time or, at its option,

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1797.117. In the case of a nonmerchantable new vehicle, the vehicle manufacturer shall, at its option, return the price paid by the purchaser less any depreciation incurred by abuse or collision which is the fault of the purchaser and any depreciation occurring that is attributable to normal use by the purchaser. The depreciation shall be calculable at a rate not to exceed 10 cents (\$0.10) per mile, but it shall not be calculated on any car on the first 3,000 miles of travel, or shall furnish a new vehicle of the same model or a comparable model if the model year has changed and the vehicle manufacturer is not able to substitute a motor vehicle of the same model year to the purchaser, delivered to the purchaser's residence, which vehicle shall be warranted by the manufacturer as though originally purchased at the time of such delivery.

1797.118. Whenever a purchaser of a new vehicle notifies the vehicle manufacturer of the nonmerchantability of the vehicle pursuant to Section 1797.111 and the manufacturer wrongfully refuses to replace the motor vehicle pursuant to Section 1797.117, the purchaser may bring an action to recover the price paid for the vehicle less any depreciation incurred by abuse or collision which is the fault of the purchaser, plus the cost of a rental vehicle, if any, required during the pendency of the dispute, and may also recover reasonable attorney fees and costs incident to such action.

If the purchaser does not prevail in such action and the court finds that the purchaser knew or should have known at the inception of the action that there was no reasonable probability that the purchaser would prevail, the court may, in its discretion, award costs and reasonable attorney's fees based on actual time expended to the party against whom a claim under this chapter is asserted at trial.

1797.119. No vehicle manufacturer shall exclude in the sale of any new vehicle in California any warranty issued with respect to the sale of a comparable vehicle in

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any other state.

1797.121. Nothing in this chapter shall prevent a vehicle manufacturer from increasing the price of a new vehicle offered for sale in California by the amount reasonably necessary to meet any costs incurred pursuant to this chapter.

1797.122. Any dealer or vehicle manufacturer making a repair on a new vehicle shall inform the purchaser in writing at the time of delivery of the vehicle after repair 10 the nature of any defect repaired by such dealer or 11 manufacturer. Such writing shall contain sufficient detail 12 that a determination can be made whether the purchaser 13 of the vehicle may have any rights pursuant to this 14 chapter.

1797.123. Every purchaser of a new vehicle shall be furnished by the dealer selling the vehicle with a written statement of the purchaser's rights under this chapter and the address of the vehicle manufacturer or 19 manufacturer's nearest representative in California.

1797.124. The provisions of this chapter shall be in addition to and not in derogation of any other rights which the purchaser of a new vehicle may have under any other law or instrument. Any waiver by a purchaser 24 of a new vehicle of any right created by this chapter shall 25 be void and of no effect whatsoever.

AMENDED IN SENATE JUNE 16, 1980
AMENDED IN ASSEMBLY MAY 12, 1980
AMENDED IN ASSEMBLY MAY 5, 1980
AMENDED IN ASSEMBLY APRIL 7, 1980

CALIFORNIA LEGISLATURE-1979-80 REGULAR SESSION

## ASSEMBLY BILL

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No. 2705

Introduced by Assemblymen Tanner, Filante, Gage, Harris, Kapiloff, Lockyer, Moore, Perino, Rosenthal, Torres, and Maxine Waters

(Coauthors: Senators Greene, Roberti, Sieroty, and Watson)

March 3, 1980

REFERRED TO COMMITTEE ON LABOR, EMPLOYMENT, AND CONSUMER AFFAIRS

An act to add Chapter 4 (commencing with Section 1797.100) to Title 1.7 of Part 4 of Division 3 of the Civil Code, relating to vehicles.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2705, as amended, Tanner (L., E., & C.A.). Vehicles, new: warranty of merchantability.

Existing law provides that, unless disclaimed, a manufacturer's warranty of merchantability shall accompany every retail sale of consumer goods.

This bill would provide, in addition, that no vehicle manufacturer or dealer may disclaim the warranty of merchantability on a new vehicle and that the occurrence of a major noncorrectable defect, as defined, the required repair

three or more times of a single major correctable defect, as defined, or any repairs of a major correctable or noncorrectable defect which cause a vehicle to be out of service more than 20 days within the first year or 12,000 miles after delivery to the purchaser buyer, whichever occurs presumably shall render the vehicle nonmerchantable unmerchantable unless caused by abuse er, collision or condition outside of the control of the vehicle manufacturer or dealer. It would also provide for notice to the purchaser buyer of the vehicle of such person's rights pursuant to the bill, and provide for notice to the specified manufacturer's representative, examination of an alleged defective condition by the manufacturer or representative, and the circumstances under which the presumption of nonmerchantability unmerchantability becomes conclusive. In the event of nonmerchantability unmerchantability, the manufacturer would be required to either refund the purchase price or substitute another vehicle of the same or comparable model.

The bill would specify that its provisions shall be in addition to any other rights of the purchaser buyer and shall not be subject to waiver.

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

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

SECTION 1. Chapter 4 (commencing with Section 1797.100) is added to Title 1.7 of Part 4 of Division 3 of the Civil Code, to read:

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## CHAPTER 4. NEW MOTOR VEHICLE WARRANTIES

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## Article 1. General Provisions

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1797.100. This chapter shall be known and may be cited as the "New Motor Vehicle Warranty Act."

11 1797.101. As used in the chapter, "new vehicle" 12 means only a new passenger vehicle or motor truck not 13 exceeding 6,000 pounds gross weight.

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<del>1707.101.</del>

1797.102. As used in this chapter, "price paid by the purchaser" buyer" means the original purchase price of a new vehicle; including the value of any traded vehicle involved in the transaction. vehicle and its accessories, including the value of any vehicle traded in.

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1797.103. As used in this chapter, "major correctable defect" means a defect in a new vehicle which would cost the purchaser buyer of the vehicle more than 5 percent of the price paid for the vehicle to repair if the purchaser buyer were paying the cost of the repair, and which when repaired in a normal fashion would not leave have any permanent adverse effects effect on the basic functioning, performance, or utility of the vehicle.

<del>1707.103.</del>

1797.104. As used in this chapter, "major noncorrectable defect" means a defect in a vehicle which would cost the purchaser buyer more than 5 percent of the price paid for the vehicle to repair if the purchaser buyer were paying the cost of the repair, and which, when repaired in the normal fashion, would have a permanent adverse effect on the basic functioning, performance, or utility of the vehicle.

## Article 2. Warranty Provisions

1797.110. No vehicle manufacturer, or a dealer on behalf of such manufacturer, shall disclaim, exclude, or restrict the warranty of merchantability of a new vehicle.

1797.111. Any new vehicle that, within the first 12 months or 12,000 miles, whichever occurs sooner, has a major noncorrectable defect, requires the repair of a single major correctable defect three or more times, or is out of service by reason of repair of a major correctable or noncorrectable defect by a dealer for a cumulative total of more than 20 days since delivery of the vehicle to the purchaser buyer, shall be presumed to be nonmerchantable unmerchantable. In computing the 20 days pursuant to this section, a day shall mean a calendar

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day or any portion thereof that the dealer's service shop is open for business.

1797.112. The presumption of nonmerchantability unmerchantability of a new vehicle provided by Section 1797.111 may be rebutted by a showing that the condition of the motor vehicle resulted from abuse by the purchaser buyer, collision, or other condition outside of the control of the vehicle manufacturer or the dealer.

1797.113. The original purchaser If the original buyer of a new vehicle believes that a new vehicle is unmerchantable, the buyer shall furnish to the vehicle 12 manufacturer's nearest zone area representative with a a 13 written notice by registered mail; return receipt 14 requested (return receipt requested), with a copy to the dealer from whom the new vehicle was originally 16 purchased, as soon as practicable, a statement of describing the condition or conditions that are alleged to 17 18 render the vehicle nonmerchantable under Section 19 1797-111 and of the purchaser's decision to exercise the rights provided by Section 1797.117: unmerchantable under Section 1797.111.

1797.114. Within 20 days after the receipt of a notice 23 under Section 1797.113, the vehicle manufacturer or 24 representative thereof its representative shall either examine the vehicle at the authorized dealership nearest 26 the purchaser's buyer's residence or pay for transporting the vehicle to a place designated by the vehicle manufacturer for examination and, shall promptly examine the vehicle at that place, and shall notify the purchaser buyer in writing that the vehicle manufacturer either: (a) finds no defect, (b) finds a defect but 32 believes it is due to abuse of collision, or condition outside its control, which abuse, collision, or shall be described with reasonable 34 condition particularity, or, (c) finds a defect but can and will put 36 the vehicle in a merchantable condition and will agree to a four/month, or 4.000/mile an extension of four months or 4,000 miles, whichever occurs sooner, extension of the 39 purchaser's of the buyer's rights under this chapter, or (d) accepts the purchaser's buyer's determination that

the vehicle is nonmerchantable unmerchantable.

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1797.115. If the vehicle manufacturer notifies the 3 purchaser buyer under Section 1797.114 that the vehicle 4 can be put in a merchantable condition pursuant to 5 Section 1707.114, the purchaser condition, the buyer shall 6 make the vehicle available at the authorized dealership nearest the buyer's residence within three working days after such notification for such repair before any rights 9 vest pursuant to this chapter under Section 1797.117. If rendered condition that the nonmerchantable unmerchantable continues to exist after repair, the vehicle shall be conclusively presumed nonmerchantable, to be unmerchantable.

1797.116. If any examination or repair; for for, or repair of, a mechanical malfunction; by a vehicle manufacturer. æ representative thereof representative, or a dealer pursuant to this chapter within the first 12 months or 12,000 miles, whichever occurs sooner, results in the possession of a new vehicle 20 by such manufacturer, representative, or dealer for more than five business days with the subsequent a resulting 22 loss of use by the purchaser buyer, the vehicle manufacturer shall on the sixth business day furnish to the buyer the use of a substitute vehicle without cost to the purchaser other than for necessary fuel and oil during this intervening time or, at its option, without cost, other than for fuel and oil, until the new vehicle is returned to the buyer or, at its option, shall compensate the purchaser buyer for renting a substitute vehicle.

1707-117. In the case of a nonmerchantable new vehiele

1797.117. If a new vehicle is unmerchantable and the buyer has complied with Sections 1797.113 to 1797.115, inclusive, the vehicle manufacturer shall, at its option, return either (a) restore to the buyer the price paid by the purchaser buyer less any depreciation incurred by abuse or collision which is the fault of the purchaser buyer and any depreciation occurring that is attributable to normal use by the purchaser. The depreciation shall be ealeulable at a rate not to exceed 10 cents (\$0.10) per

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mile, but it shall not be calculated on any car on the first 3,000 miles of travel, or shall furnish buyer or (b) furnish 3 to the buyer, at the buyer's residence, a new vehicle of 4 the same model or (or a comparable model if the model year has changed and the vehicle manufacturer is not able to substitute a motor vehicle of the same model year to the purchaser, delivered to the purchaser's residence buyer), which vehicle shall be warranted by the manufacturer as though originally purchased at the time 9 10 of such delivery. The depreciation shall be calculated at 11 a rate not to exceed 10 cents (\$0.10) per mile, but shall not be calculated on any car on the first 3,000 miles of 12 13 travel.

1707.118. Whenever a purchaser of a new vehicle vehiele manufacturer the nonmerchantability of the vehicle pursuant to Section 1707.111 and the manufacturer wrongfully refuses to replace the motor vehicle pursuant to Section 1707.117; the purchaser

1797.118. If the manufacturer wrongfully refuses to either restore the price or replace the vehicle when required by Section 1797.117, Chapter 6 (commencing with Section 2601) and Chapter 7 (commencing with Section 2701) of Division 2 of the Commercial Code shall apply, and the buyer may bring an action to recover the price paid for the vehicle less any depreciation incurred by abuse or collision which is the fault of the purchaser; plus the east of a rental vehicle, if any, required during the the depreciation authorized under Section 1797.117 plus the cost, if any, of renting a substitute vehicle under Section 1797.116 if a substitute vehicle is required during the pendency of the dispute, and may also recover reasonable attorney attorney's fees and costs incident to such action.

If the purchaser buyer does not prevail in such action and the court finds that the purchaser buyer knew or should have known at the inception of the action that 38 there was no reasonable probability that the purchaser buyer would prevail, the court may, in its discretion, award costs and reasonable attorney's fees based on

**—7—** AB 2705

actual time expended to the party against whom a claim under this chapter is asserted at trial.

1797.119. No vehicle manufacturer shall exclude in the sale of any new vehicle in California any warranty issued with respect to the sale of a comparable vehicle in any other state.

1797.121. Nothing in this chapter shall prevent a vehicle manufacturer from increasing the price of a new vehicle offered for sale in California by the amount reasonably necessary to meet any costs incurred pursuant to this chapter.

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1797.122. Any dealer or vehicle manufacturer making a repair on a new vehicle shall inform the purchaser furnish to the buyer in writing, at the time of delivery of the vehicle after repair the nature of any defect repaired by such dealer or manufacturer. Such writing shall contain sufficient detail that a determination can be made whether the purchaser of the vehicle may have any 19 rights pursuant to this chapter.

1707.123. Every purchaser of a new vehicle shall be furnished by the dealer selling the vehicle with a written statement of the purchaser's rights under this chapter and the address of the vehicle manufacturer or, voucher or receipt describing the exact malfunction or malfunctions, their cause if known, and the exact nature of the work performed and the parts supplied.

1797.123. Every dealer shall furnish to the buyer, at the time of sale, a document which shall contain the full text of this chapter headed by the words, "New Motor Vehicle Warranty Act" in at least 16-point bold type, and the following notice in at least 14-point bold type: "Notice to Buyer: In order to avail yourself of the rights and remedies under this law, you must send a written notice to the manufacturer's nearest area representative by registered mail (return receipt requested) with a copy to the dealer describing the problem. See Section 1797.113 for a statement of your duties, and see Sections 1797.114 through 1797.117 for a statement of the manufacturer's duties." The document shall also include the name and address of the dealer and the name and address of the

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vehicle manufacturer's nearest area representative in California.

1797.124. The provisions of this chapter shall be in addition to and not in derogation of any other rights which the purchaser or remedies which the buyer of a 6 new vehicle may have under any other law or instrument. Any waiver by a purchaser of a new vehicle of any right buyer of any right or remedy created by this chapter shall be void and of no effect whatsoever.

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AMENDED IN SENATE JUNE 27, 1980
AMENDED IN SENATE JUNE 16, 1980
AMENDED IN ASSEMBLY MAY 12, 1980
AMENDED IN ASSEMBLY MAY 5, 1980
AMENDED IN ASSEMBLY APRIL 7, 1980

CALIFORNIA LEGISLATURE—1979-80 REGULAR SESSION

# **ASSEMBLY BILL**

No. 2705

Introduced by Assemblymen Tanner, Filante, Gage, Harris, Kapiloff, Lockyer, Moore, Perino, Rosenthal, Torres, and Maxine Waters

(Coauthors: Senators Greene, Roberti, Sieroty, and Watson)

March 3, 1980

REFERRED TO COMMITTEE ON LABOR, EMPLOYMENT, AND CONSUMER

AFFAIRS

An act to add Chapter 4 (commencing with Section 1797.100) to Title 1.7 of Part 4 of Division 3 of the Civil Code, relating to vehicles.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2705, as amended, Tanner (L., E., & C.A.). Vehicles, new: warranty of merchantability.

Existing law provides that, unless disclaimed, a manufacturer's warranty of merchantability shall accompany every retail sale of consumer goods.

This bill would provide, in addition, that no vehicle manufacturer or dealer may disclaim the warranty of

merchantability on a new vehicle and that the occurrence of a major noncorrectable defect, as defined, the required repair three or more times of a single major eorreetable defect, as defined, or any repairs of a major correctable or noncorrectable defect which cause a vehicle to be out of service more than 20 days within the first year or 12,000 miles after delivery to the date of first use or purchase by the buyer, whichever occurs sooner, shall render the vehicle presumably rebuttably presumed unmerchantable unless caused by abuse, collision or condition outside of the control of the vehicle manufacturer or dealer. It would also provide for notice to the buyer of the vehicle of such person's rights pursuant to the bill, and provide for notice to the specified manufacturer's representative, examination of an alleged defective condition by the manufacturer or representative, and the circumstances under which the presumption of unmerchantability becomes conclusive. In the event of unmerchantability, the manufacturer would be required to either refund the purchase price or substitute another vehicle of the same or comparable model.

The bill would specify that its provisions shall be in addition to any other rights of the buyer and shall not be subject to waiver.

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

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

SECTION 1. Chapter 4 (commencing with Section 1797.100) is added to Title 1.7 of Part 4 of Division 3 of the Civil Code, to read: 3 4 5 CHAPTER 4. New Motor Vehicle Warranties 6 7 CHAPTER 4. NEW MOTOR VEHICLE WARRANTIES 8 Article 1. General Provisions 9. 10 1797.100. This chapter shall be known and may be 11 cited as the "New Motor Vehicle Warranty Act."

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1797.101. As used in the chapter, "new vehicle" means only a new passenger vehicle or motor truck not exceeding 6,000 pounds gross weight that has not previously been titled or registered, has not been substantially used or damaged, and is sold for personal, household, or family use.

1797.102. As used in this chapter, "price paid by the buyer" means the cash price fixed in the contract and paid by the buyer to the selling dealer, including any 10 downpayment, allowance on a traded vehicle, if any, and balance due; and excluding finance and insurance charges, service contracts, and equipment from other

suppliers installed by the dealer. 13

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1797.103. As used in this chapter, "major defect" 15 means a malfunction adversely affecting the basic performance or utility of a new vehicle which is caused by a defect in factory material or workmanship which has a warranty reimbursement cost of repair as established by the manufacturer of the vehicle for parts and labor of more than 5 percent of the price paid by the buyer.

# Article 2. Warranty Provisions

1797.110. No vehicle manufacturer, or a dealer on behalf of such manufacturer, shall disclaim, exclude, or restrict the implied warranty of merchantability of a new vehicle; provided, that a manufacturer or dealer may limit the duration of such implied warranty to the duration of its express written warranty of the vehicle, as provided in subdivision (c) of Section 1791.1 of the Civil Code.

1797.111. A vehicle shall be presumed to be unmerchantable if, within the first 12 months or 12,000 miles from the date of first use or purchase by the buyer, whichever occurs sooner, one of the following occurs:

- (a) The vehicle requires the repair of the same major defect three or more times.
- (b) The vehicle is out of service by reason of repair of 39 a major defect by a dealer for a cumulative total of more than 20 days after delivery of the vehicle to the buyer. In

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computing the 20 days pursuant to this section, a day shall mean a calendar day or any portion thereof that the dealer's service shop is open for business. The 20 days shall commence on the day when, after the defect is first reported or known, a written estimate of the cost of repairing such defect is first prepared.

1797.112. The presumption of unmerchantability of a new vehicle under Section 1797.111 shall be a rebuttable presumption affecting the burden of producing evidence, and it may be rebutted by proving that the condition of the motor vehicle resulted from abuse by the buyer, collision, or other condition outside of the control of the vehicle manufacturer or of the dealer, or as provided in Section 604 of the Evidence Code

14 provided in Section 604 of the Evidence Code. 15 1797.113. If the original buver of a new

1797.113. If the original buyer of a new vehicle believes that a new vehicle is unmerchantable, the buyer shall furnish to the nearest branch of the manufacturer for service matters a written notice by registered mail (return receipt requested), with a copy to the dealer from whom the new vehicle was originally purchased, as soon as practicable, describing the condition or conditions that are alleged to render the vehicle unmerchantable under Section 1797.111.

1797.114. Within 30 days after the receipt of a notice under Section 1797.113, the vehicle manufacturer or its representative shall either examine the vehicle at the authorized dealership where the buyer purchased the vehicle, at the authorized dealership nearest the buyer's residence, or at another place designated by the manufacturer near such residence, and shall notify the buyer in writing that the manufacturer either (a) finds no defect, (b) finds a defect but believes it is due to a cause specified in Section 1797.112, (c) finds a defect but can and will repair the defective part thereof and will warrant any replacement part for four months or 4,000 miles or until the expiration of the vehicle warranty, whichever is longer, or (d) accepts the buyer's allegation that the vehicle is unmerchantable as defined in Section 1797.111. If the vehicle cannot be driven to the place of examination, the manufacturer shall designate how it

shall be otherwise transported there and shall pay the costs of such transportation.

1797.115. If the manufacturer notifies the buyer that the defect can be repaired pursuant to Section 1797.112. the buyer shall make the vehicle available at a time mutually agreed upon in good faith between the buyer and the manufacturer for such repair before any rights vest under Section 1797.117. If the condition that rendered the vehicle unmerchantable as defined in Section 1797.111 continues to exist after repair, the vehicle shall be conclusively presumed to unmerchantable unless the reason for such continuance 13 is within the provisions of Section 1797.112.

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1797.116. If any examination or repair, for mechanical 15 malfunction, by a manufacturer, a representative 16 thereof, or a dealer pursuant to this chapter within the first 12 months or 12,000 miles described in Section 1797.111, whichever occurs sooner, results in possession of a new vehicle by such manufacturer, representative, or dealer for more than five business days with the subsequent loss of use by the buyer, the vehicle manufacturer shall, commencing on the sixth business day thereafter and until the examination or repair is completed and the vehicle made available to the buyer, provide a substitute vehicle of similar quality at no cost to the buyer, except that the cost of fuel and oil for the substitute vehicle shall be paid by the buyer.

1797.117. In the case of a new vehicle that is unmerchantable pursuant to Section 1797.111, the manufacturer, at its option shall (a) return the price paid by the buyer to the selling dealer, as evidenced by the invoice to the buyer, less any depreciation occurring from reasons included in Section 1797.112 or from lack of maintenance or severe usage, and less any depreciation occurring attributable to normal use and possession by the purchaser calculable at a rate not to exceed 10 cents (\$0.10) per mile or two dollars (\$2) per day, or (b) shall 38 furnish a substitute new or used vehicle of the same model and model year, or comparable model if the model year has changed and the manufacturer is not able to

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provide a vehicle of the same model year, in as good condition as the original vehicle but free from major defects, delivered to the buyer's residence, which substitute vehicle shall be warranted for the remaining duration of the warranty on the original vehicle as of the 6 time of delivery for examination pursuant to Section 7 1797.114.

Whenever a buyer of a new vehicle notifies 1797.118. the manufacturer of the unmerchantability of the vehicle pursuant to Section 1797.111 and the manufacturer fails to promptly examine the vehicle and notify the buyer 12 pursuant to Section 1797.114 or wrongfully refuses to 13 refund the price paid for the vehicle or replace the vehicle pursuant to Section 1797.117, the buyer may bring an action to recover the refund provided for in Section 1797.117, plus the costs of substitute transportation, as defined in Section 1797.116, required during the 17 pendency of the dispute. The prevailing party in such litigation may be awarded reasonable attorney fees and 20 costs incident to such action if the court finds that the other party knew or should have known at the inception 21 of the action that there was no reasonable basis for such other party to prevail. Any such award of attorney fees 23 shall be based on actual time expended. 24

1797.119. No manufacturer shall exclude in the sale of any new vehicle in California any warranty issued with respect to the sale of a comparable vehicle in any other state, except any warranty required by federal or state or local law and not applicable in California.

1797.120. Nothing in this chapter shall prevent a vehicle manufacturer from increasing the price of a new vehicle offered for sale in California by the amount reasonably necessary to meet any costs incurred pursuant to this chapter.

1797.121. Any dealer or other repair station making a warranty repair on a new vehicle within the period prescribed in Section 1797.111 shall furnish to the buyer at the time the repair is completed and the vehicle made available to the buyer, a copy of the repair order with a statement of parts used, labor operations performed, and

<del>-7-</del> AB 2705

warranty reimbursement cost of repair as established by the manufacturer. If a repair in such period is not a warranty repair, a copy of the repair order with a statement of the parts used, labor operations performed, and cost to the buyer shall be furnished by the buyer.

1797.122. Every buyer of a new vehicle in California shall be furnished by the dealer selling the vehicle at the time of sale with a written statement as follows:

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"If your car is found to have a major defect, you may be entitled to a refund of your purchase price or a replacement of your vehicle under the New Motor Vehicle Warranty Act (Civil Code Section 1797.100, et seq.)"

Such statement shall also contain the address of the manufacturer's branch referred to in Section 1797.113.

1797.123. The provisions of this chapter shall be in addition to and not in derogation of any other rights or remedies which the buyer of a new vehicle may have under any other law or instrument. Any waiver by a buyer of any right or remedy created by this chapter shall be void.

## Article 1. General Provisions

1707.100. This chapter shall be known and may be eited as the "New Motor Vehicle Warranty Act."

1707.101. As used in the chapter, "new vehicle" means only a new passenger vehicle or motor truck not execeding 6,000 pounds gross weight.

1707.102. As used in this chapter, "price paid by the buyer" means the original purchase price of a new vehicle and its accessories; including the value of any vehicle traded in.

1707-103. As used in this chapter, "major correctable defect" means a defect in a new vehicle which would cost 36 the buyer of the vehicle more than 5 percent of the price 37 paid for the vehicle to repair if the buyer were paying the 38 cost of the repair, and which when repaired in a normal 39 fashion would not have any permanent adverse effect on the basic functioning; performance; or utility of the 1

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vehiele.

1707.104. As used in this chapter, noncorrectable defect" means a defect in a vehicle which would cost the buyer more than 5 percent of the price paid for the vehicle to repair if the buyer were paying the eest of the repair, and which, when repaired in the normal fashion, would have a permanent adverse effect on the basic functioning, performance, or utility of the vehiele.

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## Article 2. Warranty Provisions

1707.110. No vehicle manufacturer, or a dealer on

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behalf of such manufacturer, shall disclaim, exclude, or restrict the warranty of merchantability of a new vehicle. 1707.111. Any new vehicle that, within the first 12 months or 12,000 miles, whichever occurs sooner, has a major noncorrectable defect, requires the repair of a single major correctable defect three or more times, or is 20 out of service by reason of repair of a major correctable or noncorrectable defect by a dealer for a cumulative 22 total of more than 20 days since delivery of the vehicle to the buyer, shall be presumed to be unmerchantable. In computing the 20 days pursuant to this section, a day shall mean a calendar day or any portion thereof that the

1707.119. The presumption of unmerchantability of a new vehicle provided by Section 1707.111 may be rebutted by a showing that the condition of the motor vehicle resulted from abuse by the buyer, collision, or other condition outside of the control of the vehicle manufacturer or the dealer.

26 dealer's service shop is open for business.

1707.113. If the original buyer of a new vehicle believes that a new vehicle is unmerchantable, the buyer 35 shall furnish to the vehicle manufacturer's nearest area 36 representative a written notice by registered mail 37 (return receipt requested), with a copy to the dealer 38 from whom the new vehicle was originally purchased, as soon as practicable, describing the condition or

conditions that are alleged to render the vehicle

unmerchantable under Section 1707.111.

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1707.114. Within 20 days after the receipt of a notice 3 under Section 1707.113, the vehicle manufactures or its 4 representative shall either examine the vehicle at the authorized dealership nearest the buyer's residence or 6 pay for transporting the vehicle to a place designated by 7 the vehicle manufacturer for examination, shall promptly 8 examine the vehicle at that place, and shall notify the 9 buyer in writing that the vehicle manufacturer either: 10 (a) finds no defect, (b) finds a defect but believes it is 11 due to abuse, collision, or condition outside its control, 12 which abuse, collision, or condition shall be described 13 with reasonable particularity, or, (e) finds a defect but 14 can and will put the vehicle in a merchantable condition and will agree to an extension of four months or 4,000 miles, whichever occurs sooner, of the buyer's rights under this chapter, or (d) accepts the buyer's determination that the vehicle is unmerchantable.

1707.115. If the vehicle manufacturer notifies the buyer under Section 1707.114 that the vehicle can be put in a merchantable condition, the buyer shall make the vehicle available at the authorized dealership nearest the 23 buyer's residence within three working days after such 24 notification for such repair before any rights vest under Section 1707.117. If the condition that rendered the vehicle unmerchantable continues to exist after repair, the vehicle shall be conclusively presumed to be unmerchantable.

1707.115. If any examination for, or repair of, a mechanical malfunction by a vehicle manufacturer, its representative, or a dealer pursuant to this chapter within the first 12 months or 12,000 miles, whichever occurs sooner, results in the possession of a new vehicle by such manufacturer, representative, or dealer for more than five business days with a resulting loss of use by the buyer, the vehicle manufacturer shall on the sixth business day furnish to the buyer the use of a substitute 38 vehicle without cost, other than for fuel and oil, until the 39 new vehicle is returned to the buyer or, at its option, shall compensate the buyer for renting a substitute vehicle.

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1707.117. If a new vehicle is unmerchantable and the 2 buyer has complied with Sections 1707.113 to 1707.115, 3 inclusive, the vehicle manufacturer shall, at its option, 4 either (a) restore to the buyer the price paid by the 5 buyer less any depreciation incurred by abuse or collision 6 which is the fault of the buyer and any depreciation 7 occurring that is attributable to normal use by the buyer. 8 or (b) furnish to the buyer, at the buyer's residence, a 9 new vehicle of the same model (or a comparable model 10 if the model year has changed and the vehicle 11 manufacturer is not able to substitute a motor vehicle of 12 the same model year to the buyer), which vehicle shall 13 be warranted by the manufacturer as though originally purchased at the time of such delivery. The depreciation shall be ealeulated at a rate not to exceed 10 conts (\$0.10) per mile, but shall not be ealeulated on any ear on the first 3,000 miles of travel.

1707:118. If the manufacturer wrongfully refuses to either restore the price or replace the vehicle when 20 required by Section 1707.117. Chapter 6 (commencing with Section 2601) and Chapter 7 (commencing with 22 Section 2701) of Division 2 of the Commercial Code shall apply, and the buyer may bring an action to recover the price paid for the vehicle loss the depreciation authorized under Section 1707.117 plus the cost, if any, of renting a substitute vehicle under Section 1707.116 if a substitute vehicle is required during the pendency of the dispute, and may also recover reasonable attorney's fees and costs incident to such action.

If the buyer does not prevail in such action and the court finds that the knew or should have the of the action that Was no

that the would , the court may. award costs and

34 fees based on actual time to the

36 whom a claim under this at trial 37 No shall

38 the sale of any new

39 issued with to the sale of a 40 any other state.

1707.121. Nothing in this chapter shall prevent a 2 vehicle manufacturer from increasing the price of a new 3 vehicle offered for sale in California by the amount reasonably necessary to meet any costs incurred pursuant to this chapter.

1707.122. Any dealer or vehicle manufacturer making a repair on a new vehicle shall furnish to the buyer in writing, at the time of delivery of the vehicle after repair, a voucher or receipt describing the exact malfunction or malfunctions, their cause if known, and the exact nature of the work performed and the parts supplied.

1707.123. Every dealer shall furnish to the buyer, at the time of sale, a document which shall contain the full text of this chapter headed by the words, "New Motor Vehicle Warranty Act" in at least 16/point bold type, and the following notice in at least 14/point bold type: "Notice to Buyer: In order to avail yourself of the rights and remedies under this law, you must send a written notice to the manufacturer's nearest area representative by registered mail (return receipt requested) with a copy to the dealer describing the problem. See Section 1707.113 for a statement of your duties, and see Sections 1707.114 through 1707:117 for a statement of the manufacturer's duties." The document shall also include the name and address of the dealer and the name and address of the vehicle manufacturer's nearest area representative in California.

1707.124. The provisions of this chapter shall be in addition to and not in derogation of any other rights or remedies which the buyer of a new vehicle may have under any other law or instrument. Any waiver by a buyer of any right or remedy by this

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# ASSEMBLY COMMITTEE ON LA R, EMPLOYMENT, & CONSUMER ASSEMBLYMAN BILL LOCKYER, Chairman

HEARING DATE: May 6, 1980

BILL: AB 2705 (As amended May 5, 1980)

AUTHOR: Tanner

SUBJECT: Automobile Sales: Replacements and Refunds

## BACKGROUND

On occasion, a purchaser of a new motor vehicle may have the misfortune of accepting a product which is inherently defective, one which has one or a number of malfunctioning parts or systems which render the vehicle unusable. The law recognizes the possibility that such problems do occur in the conveyance of consumer products and so provides remedies. Under the Commercial Code of the State of California, a buyer may "revoke acceptance" of the product "whose nonconformity substantially impairs its value to him" (Sec. 2608). If the nonconformity is established, the buyer is entitled to recover as much of the price as paid plus damages. Under the terms of the Song-Beverly Act, the buyer is entitled to replacement of the goods or reimbursement if the manufacturer cannot service or repair the product "after a reasonable number of attempts". (Civil Code Sec. 1793.2). The federal Magnuson-Moss Act also requires, as a minimum standard for warranties, that warrantors make some provision for refund or replacement after a reasonable number of attempts to remedy; furthermore, it directs the Federal Trade Commission to establish by regulation what constitutes a reasonable number of attempts (15 USC 2304 (a) (4)).

These provisions create a solid theoretical basis for remedy, but in real life they have been less than effective in protecting the consumer stuck with a "lemon". The central problem lies in establishing the nonconformity of the goods, in proving that the vehicle is so defective as to render it useless because it cannot be fixed after a reasonable number of tries. What constitutes reasonable tries? The California law is silent, and the FTC has yet to establish a federal criterion. Revocation of acceptance, or actions under the Song-Beverly provisions, now lead to time-consuming court actions, the cost of which can exceed the value of the vehicle.

It should be noted, however, that individual dealers and manufacturers do often acknowledge the fact that they've sold a "lemon", and replace or (less frequently) reimburse without any need for recourse to the law.

#### BILL

AB 2705 establishes that a vehicle is unmerchantable, a "lemon", if within the first 12 months or 12,000 miles:

- 1. It has a major noncorrectable defect, which is defined as a defect costing more than 5% of the purchase price and having permanent adverse effect on the performance or utility of the vehicle; or
- 2. It has a major correctable defect which has been repaired three or more times, such defect also defined as costing more than 5% of the price but not leaving a permanent adverse effect after repair; or
- 3. It has been out of service for 20 or more shop days for repairs of a major correctable or uncorrectable defect.

The owner of such a vehicle is entitled to a refund less any depreciation caused by abuse, collision, or normal use (at the rate of 10¢ per mile over 3,000 miles), or replacement of the unmerchantable vehicle with a new identical or comparable model.

The bill requires that the buyer provide the manufacturer's zone representative with notice by registered mail that the car is a lemon; the manufacturer then has 20 days to examine it at the nearest authorized dealership and agree or disagree. If the manufacturer thinks it can be fixed, the buyer must deliver the car for repair within three days; if time in the shop exceeds five business days, the buyer is entitled to a loaner vehicle. Failure to fix the car, or over 20 days in the shop, establishes that it is a "lemon". Failure of the manufacturer to replace or refund entitles the buyer to an action for recovery plus fees. Manufacturers may increase prices to cover the cost of the act. Dealers and manufacturers at time of purchase must inform buyers of this act, and at time of repair must supply sufficient information regarding the defect for the buyer to determine whether or not he or she has a lemon.

### ANALYSIS

- 1. This bill, heard in the Committee two weeks ago, now contains amendments suggested by industry representatives. At the time of the initial hearing, the author, industry, and staff agreed to meet in an attempt to eliminate points of disagreement. While efforts were made to be responsive to industry problems with the measure, auto manufacturers still object to the basic notion of the bill. They believe that the standards are unfair, and will result in increased incidents of litigation.
- 2. If one agrees that there is a need to statutorily define a "lemon", then the problem that remains is setting the terms. Is 5% of purchase price too high or low in establishing that a defect is substantive? Is "20 days in the shop" a reasonable period of time to repair a car? What if a delay occurs through no fault of the dealer or manufacturer—strikes, fires, parts lost in shipping, etc? Is the language in this bill sufficient in stating that a defect must be fundamental to the utility of the vehicle, e.g., an engine problem but not a faulty radio?

- 3. Dealers and manufacturers fear that unscrupulous customers will attempt to return purchases because they've abused or damaged them, or simply because they regret the deal they've made. Good faith is impossible to legislate, of course, but perhaps some penalty provision should be included to deter consumers from false claims. Likewise, perhaps a "treble damages" provision, as found in Song-Beverly, should be created to cover dealers or manufacturers who openly ignore or reject the terms of this bill.
- 4. AB 2705 is modeled after the Lemon Law of the State of Kentucky.

SUPPORT: Dept. of Consumer Affairs

California Consumer Affairs Association

Chico Consumer Protection Agency Santa Cruz County Consumer Affairs

OPPOSE: Ford Motor Co.

General Motors

Motor Car Dealers Association

Motor Vehicle Manufacturers Association California Automobile Dealers Association

Consultant: Greg Schmidt

(mh)

# NATE COMMITTEE ON JUDICIA

# BACKGROUND INFORMATION

AB 2705

## 1. Source

(a) What group, organization, governmental agency, or other person, if any, requested the introduction of the bill? unavailable, his address.

Author's bill

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

See attached list.

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

None

# 2. Purpose

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

Present warranties are not sufficient to enable dissatisfied automobile owners to return their "lemon" cars.

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

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2046 AS SOON AS POSSIBLE. THE COMMITTEE STAFF CANNOT SET THE BILL FOR A HEARING UNTIL THIS FORM HAS BEEN RETURNED.



# MANUFACTURERS ASSOCIATION INDUSTRY ISSUES

Spokesman for California Industry

SUBJECT:

AB 2705/(Tanner) New Motor Vehicle - Warranties

POSITION: Oppose

SUMMARY:

- 1. Adds to <u>Civil Code</u> compulsory procedures for manufacturers and dealers relating to <u>merchantability</u> of new automobiles.
- 2. Declares a new vehicle <u>nonmerchantable</u> if it requires repair of a "single major correctable defect" three or more times, or out of service more than 20 days.
- 3. Establishes complicated procedure between manufacturer, dealer and buyer to satisfy presumption of nonmerchantability.

COMMENTS:

- 1. Legislative language vague and ambiguous that would result in increased owner-manufacturer aggravation and increased litigation.
- 2. Buyers of new automobiles are adequately protected by existing manufacturers warranties and current California law.
- 3. Auto manufacturers are continuously improving product dispute procedures and another layer of government regulation is unnecessary.
- 4. Ford Motor Company has established in California a Consumer Appeals Board whose decisions are <u>binding</u> on Ford and its dealers.
- 5. General Motors has recently initiated a third-party arbitration program for handling unresolved customer warranty complaints.
- 6. Product repair disputes do not belong in court. The sums involved are normally modest-frequently less than the full cost of the court proceeding.

CONTACT:

Jess Butcher

5-9-80 (80-7) Revised 6-4-80 Dear Sirs or Mam.

I am writing this letter with the hope and fath in my state Government.

My direct concern in writing this is BILL AB 2705 written by Sally Tamer, D-EL Monte. & This Bill, to good to be true, pertains to lemon automobiles, of which I have one.

My car, 1979 Mustang Cobra, is on its' second engine, its' second turbo charger, its' second set of rod bearings, and its' also burnt a valve. This car is advertized to get 24 miles per gallon in town and 38 onthe open highway. When actuality it gets 17 in town and 24 on the highway, if I am lucky. This car has 5700 miles on it and is in the 6th month of warranty.

This is no longer the car I payed \$6500 for. I have complained to the company (Ed Chovanes Ford). I have asked them to replace the car, they won't. I even asked them to put me in a used car that I could trust they won't. The reason, I payed \$6500 for the car and they will only give me \$4000 for it and I owe \$4800. This car depredated \$2500 in six months. Help me \$

I can only hope to try and make you understand the position that I am in. Recently laidoff from work, Mack Truck Inc., I have to sell the car and canet, without lieing about the cars track record.

Even today as I write this letter the car is in the shops, 36 days in the shop.

Please pass Bill AB 2705 for all Californians with the same problems.

The time has come to help the little guy.

I belive this Bill if passed could give more trust in American cars. to the people.

Thomas S. Gray 21458 Gary Dr. Castro Vally Calif. 94546 Please Kelp Me ! Jomas Ilhay Ms. Mary Burke 746 E. Holly Rialto, CA 92376

June 10, 1980

Senator Robert Wilson The Capitol, Room 2065 Sacramento, CA 95814

Dear Senator Wilson:

I would appreciate your support of Assembly Bill 2705 when it comes before the Judiciary Committee on June 24.

I purchased a new car in July, 1979 from BMC in Riverside and have experienced a continuous and expensive battle with repairs ranging from a rebuilt carburetor at 245 miles, a new clutch at 2524 miles, overheating at 3790 miles, a rear main seal and transmission replaced at 4484 miles, the heater stuck and an oil pan gasket and overdrive gasket were replaced at 5554 miles, the overdrive was replaced at 6,000 miles, an oil leak at 7745 miles, the brakes were replaced at 8186 miles, the alternator and vacuum system was replaced at 9382 miles and the alternator was replaced again at 9584 miles. The car has been towed to Riverside three times since July.

I have written the Consumer Protection Agency, New Vehicle Board in Sacramento, have filed complaints with the Better Business Bureau and Automotive Consumer Action Program (AUTOCAP) and have written letters to the Consumer Affairs Division of BMC in California and New Jersey and have received no satisfaction.

If you need any further information please feel free to contact me as I have kept a very detailed file on the repairs, correspondence, etc.

I appreciate your time and attention to this matter.

Sincerely,

Mary Burke

Mary Burke

amend 482705 as follows.

p.3 - 1797.117 - ask The fallowing to the end of the section -

no depreciation shall be calculated on any car for the first 3000 miles or first 90 days of use, depending upon which method of measuring depreciation is used:

Monday - 3 pm.



6-16-80

To: Richard Thomson

Consultant

Senate Judiciary Committee

Attached is a section-bysection analysis of Assembly Bill 2705.

Sorry it is so late in getting to you, but it was just received in my office at 11:00 a.m. this morning.

RICHARD L. DUGALLY Regional Manager Governmental Affairs Richard: 6/12/80

These amendments have been sent to Leg. Counsel this afternoon.

I have asked for them back by

1:00 PM tomorrow (I probably
won't get them). The amendments
were prepared by Dick Elbrecht
of Dept. of Consumer Affairs.

They are mostly nonsubstantive
in nature.

from the desk of Mary Vasos (as amended in assembly May 12, 1980)

AMENDED IN ASSEMBLY MAY 12, 1980 AMENDED IN ASSEMBLY MAY 5, 1980 AMENDED IN ASSEMBLY APRIL 7, 1980

CALIFORNIA LEGISLATURE-1979-80 REGULAR SESSION

## ASSEMBLY BILL

No. 2705

Introduced by Assemblymen Tanner, Harris, Kapiloff, Lockyer, Moore, Perino, Rosenthal, Torres, and Maxine Waters

(Coauthors: Senators Greene, Sieroty, and Watson)

March 3, 1980

REFERRED TO COMMITTEE ON LABOR, EMPLOYMENT, AND CONSUMER AFFAIRS

An act to add Chapter 4 (commencing with Section 1797.100) to Title 1.7 of Part 4 of Division 3 of the Civil Code, relating to vehicles.

## LEGISLATIVE COUNSEL'S DICEST

AB 2705, as amended, Tanner (L., E., & C.A.). Vehicles, new: warranty of merchantability.

Existing law provides that, unless disclaimed, a manufacturer's warranty of merchantability shall accompany every retail sale of consumer goods.

This bill would provide, in addition, that no vehicle manufacturer or dealer may disclaim the warranty of merchantability on a new vehicle and that the occurrence of a major noncorrectable defect, as defined, the required repair three or more times of a single major correctable defect, as defined, or any repairs of a major correctable or

noncorrectable defect which cause a vehicle to be out of service more than 20 days within the first year or 12,000 miles after delivery to the purchaser, whichever occurs sooner, shall render the vehicle presumably nonmerchantable unless caused by abuse or collision. It would also provide for notice to the purchaser of the vehicle of such person's rights pursuant to the bill, and provide for notice to the specified manufacturer's representative, examination of an alleged defective condition by the manufacturer or representative, and the circumstances under which the presumption of nonmerchantability becomes conclusive. In the event of nonmerchantability, the manufacturer would be required to either refund the purchase price or substitute another vehicle of the same or comparable model.

The bill would specify that its provisions shall be in addition to any other rights of the purchaser and shall not be subject to waiver.

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

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

SECTION 1. Chapter 4 (commencing with Section 1797.100) is added to Title 1.7 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 4. NEW MOTOR VEHICLE WARRANTIES

Article I. General Provisions

Nehrich Warment, and in the chapter, "new vehicle"

1797.100. As used in the chapter, "new vehicle"

10 means only a new passenger vehicle or motor truck not

11 exceeding 6,000 pounds gross weight.

12 1797.101. As used in this chapter, "price paid by the 13 parchaser" means the original purchase price of a new 14 vehicle, including the value of any traded vehicle traded in the transaction.

16 1797.102. As used in this chapter, "major correctable defect" means a defect in a new vehicle which would cost the purchaser of the vehicle more than 5 percent of the

price paid for the vehicle to repair if the purchaser-were paying the cost of the repair, and which when repaired 3 in a normal fashion would not leave any permanent adverse effects on the basic functioning, performance, or utility of the vehicle.

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1797.103. As used in this chapter, noncorrectable defect" means a defect in a vehicle which would cost the winchaser more than 5 percent of the price paid for the vehicle to repair if the problem were paying the cost of the repair, and which, when repaired in the normal fashion, would have a permanent adverse effect on the basic functioning, performance, or utility of the vehicle.

#### Article 2. Warranty Provisions

1797.110. No vehicle manufacturer, or a dealer on behalf of such manufacturer, shall disclaim, exclude, or restrict the warranty of merchantability of a new vehicle.

1797.111. Any new vehicle that, within the first 12 months or 12,000 miles, whichever occurs sooner, has a major noncorrectable defect, requires the repair of a single major correctable defect three or more times, or is out of service by reason of repair of a major correctable or noncorrectable defect by a dealer for a cumulative total of more than 20 days since delivery of the vehicle to the prechaser, shall be presumed to be now merchantable. 28 In computing the 20 days pursuant to this section, a day shall mean a calendar day or any portion thereof that the 30 dealer's service shop is open for business.

1797.112. The presumption of nonmerchantability of 32 a new vehicle provided by Section 1797.111 may be 33 rebutted by a showing that the condition of the motor 34 vehicle resulted from abuse by the pyrchaser, collision, or 35 other condition outside of the control of the vehicle manufacturer or the dealer

1797.113. The original purchaser of a new vehicle Chaser A shall furnish the vehicle manufacturer's nearest zone area representative with a notice by registered mail (return receipt requested) with a copy to the dealer from whom

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**AB** 2705

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the new vehicle was originally purchased, as soon as practicable, a statement of the condition or conditions that are alleged to render the vehicle noninerchantable under Section 1797.111, and of the purchaser's decision to exercise the rights provided by Section 1797.117. 1797.114. Within 20 days after the receipt of a notice under Section 1797.113, the vehicle manufacturer or its representative thereof shall either examine the vehicle at the authorized dealership nearest the -purchaser's luyer's 10 residence or pay for transporting the vehicle to a place designated by the vehicle manufacturer for examination, and examine the vehicle at that place and shall notify the luyer 13 purchaser in writing that the vehicle manufacturer 14 either: (a) finds no defect, (b) finds a defect but believes it is due to abuse or collision (c) finds a defect 16 but can and will put the vehicle in a merchantable condition and will agree to lour-month, or 4,000-miles. whichever occurs sooner, extension of the purchaser's lugaria rights under this chapter, or (d) accepts the purchaser's luquis 20 determination that the vehicle is non merchantable.

1797.115. If the vehicle manufacturer notifies the luyer under 22 purchaser that the vehicle can be put in a merchantable 23 condition pursuant to Section 1797.114 the purchaser the luy
24 shall make the vehicle available within three working 25 days after such notification for such repair before any 26 rights vest pursuant to this chapter. If the condition that 27 rendered the vehicle negmerchantable continues to exist after repair, the vehicle shall be conclusively presumed to be nonmerchantable.

for, or repair of, a 1797.116. If any examination or repair, for mechanical malfunction by a vehicle manufacturer, grepresentative, thereof, or a dealer pursuant to this chapter within the first 12 months or 12,000 miles, whichever occurs sooner, 34 results in possession of a new vehicle by such 35 manufacturer, representative, or dealer for more than 36 five business days with the subsequent loss of use by the luner, purchaser, the vehicle manufacturer shall on the sixth business day furnish the use of a substitute vehicle without cost to the purchaser other than for necessary.

40 fuel and oil during this intervening time or, at its option, shall

I until the new schiel to returned to the lugary

compensate the purchaser for renting a substitute [INSERT D] vehicle. 1797.117. The the case of a nonmerchantable new--vehicle, the vehicle manufacturer shall, at its option, either (2) rest 5 return the price paid by the pyrchaser less any to the depreciation incurred by abuse or collision which is the fault of the purchaser and any depreciation occurring that is attributable to normal use by the parchaser. The 9) depreciation shall be calculated at a rate not to exceed 10 10 cents (\$0.10) per mile, but it shall not be calculated on 11) any car on the first 3,000 miles of travel of shall furnish to the luyer of 12 a new vehicle of the same model or a comparable model 13 if the model year has changed and the vehicle manufacturer is not able to substitute a motor vehicle of the same model year to the purchase), delivered to the purchaser's residence, which vehicle shall be warranted 17 by the manufacturer as though, originally purchased at the time of such delivery. The depreciation shall be calculated lete. 19 1797.118 If Whenever a purchaser of a new vehicle-20 notifies the\_ vehicle manufacturer of the nonmerchantability of the vehicle pursuant to Section-1797.111 and the manufacturer wrongfully refuses to eithe lestore 23 replace the motor vehicle purdiant to Section 1797.117, the price or 24 the purchaser may bring an action to recover the price paid for the vehicle less and depreciation incurred by

26 abuse of collision which is the fault of the purchaser plus 16, and the cust of

27 the cost of rental vehicle it any required during the reining a sub
28 pendency of the dispute, and may also recover shipte vehicle

29 reasonable atternor fees and costs incident to such action.

If a substitute 30 If the wirehaser does not prevail in such action and the rehicle is court finds that the purchaser knew or should have known at the inception of the action that there was no reasonable probability that the purchases would prevail, the court may, in its discretion, award costs and reasonable attorney's fees based on actual time expended 36 to the party against whom a claim under this chapter is 37 asserted at trial. 38 1797.119. No vehicle manufacturer shall exclude in 39 the sale of any new vehicle in California any warranty issued with respect to the sale of a comparable vehicle in

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and the 1797.113

AB 2705 any other state. 1797.121. Nothing in this chapter shall prevent a vehicle manufacturer from increasing the price of a new 4 vehicle offered for sale in California by the amount 5 reasonably necessary to meet any costs incurred pursuant to this chapter. 1797.122. Any dealer or vehicle manufacturer making a repair on a new vehicle shall interm the purchaser in writing at the time of delivery of the vehicle after repair [FMF + F] 10 the nature of any defect repaired by such dealer or 11 manufacturer. Such writing shall contain sufficient detail-12 that a determination can be made whether the purchaser (13 of the vehicle may have any rights pursuant to this 14 -chapter [ ansert G] 1797.123. A Every purchaser of a new vehicle shall be 16 furnished by the dealer selling the vehicle with a written-17 statement of the purchaser's rights under this chapter 18 and the address of the vehicle manufacturer or manufacturer's nearest representative in California.
1797.124. The provisions of this chapter shall be in 21 addition to and not in derogation of any other rights of Uncolies 22 which the purchaser of a new vehicle may have under 23 any other law or instrument. Any waiver by a purchaser luyer 24 of a new vehicle of any right created by this chapter shall 25 be void and of no effect whatsoever. # words "Mew Motor Which Manarty act" in at least 16-point lola try, and the following notice in at least 14 Spour loles type: "Motion to luga: In . order to arail paresely of the rights and Unedies under this law, you must send a written notice total manufactures's meanest area representatus ly legisteres mais Cretium seccipt requested with a copy to the dealer describing the problem. See Sutron 1797.113 for a statement of your duties, and see Sucharie 1997.114 through 1797.117 for a statement the manufactures duties. " Sull document shall also include the man and address of the dealer and the Maral \$321 FORD MOTOR CO.

-JUH 1 6 1980

MAN CHICA

Office of the General Counsel
June 12, 1980

GODERNMENTAL AFFAIRS

NE Dick Dugally

Subject: California AB 2705

This bill to add to California's laws on warranties contains unworkable definitions, overly expensive remedies and conflicts with federal law.

Section 1797.100 defines a "new vehicle" simply as "new vehicle," though limiting the term to cars and light trucks. This definition opens the possibility that dealer demonstrators and flood damaged and salvaged vehicles, sold as such but not previously registered, would qualify for the protection of this bill. We do not believe this is intended or would be fair. Further, no distinction is made between new vehicles sold to private individuals and those sold to fleet customers. In many instances fleet customers bargain for lower prices in return for lesser warranty protection. We believe this flexibility should be retained. We suggest this definition be revised to read

"1797.100. As used in this chapter, 'new vehicle' means only a new passenger vehicle or motor truck not exceeding 6000 pounds gross weight that has not previously been titled or registered, has not been substantially used or damaged and that is sold for personal, household or family use."

Section 1797.101 defines "price paid by the purchaser" which then becomes the base for determining whether a repair cost passes a given threshold. This definition will result in different "prices paid" by different purchasers for identical units depending on individual dealers' pricing actions and the availability or earning of various incentives or rebates. Moreover, the price is made to depend on the value of the trade-in, whether the dealer over or under allowed on the trade and regardless of the basis for value selected. Further it is not clear whether "price paid" includes finance and other charges that are an integral part of the bargain. To avoid these variables and hew to a figure knowable to the party - the manufacturer - to be held responsible, we suggest this definition be revised to read

"1797.101. As used in this chapter 'price of the vehicle' means the manufacturer's suggested list price for the vehicle (exclusive of delivery charges) at the time it is sold to the purchaser."

Sections 1797.102 and 1979.103 seek to define "major correctible" and "major non-correctible" defects in terms of a percentage of the price of the vehicle, cost to repair and result of repair. Unfortunately, the definition is vague as to what constitutes a defect, the threshold cost of repair is top low in light of today's inflationary prices and wages, will raise disputes as to how a repair should be made (what is "normal"?) and is indefinite as to how the effect of repair is to be judged. Again the person to be held responsible is kept in the dark. To partially cure these deficiencies we suggest these definitions be revised to read:

"1797.102. As used in this chapter 'major correctible defect' means a malfunction for a particular reason in a particular part of a new vehicle because of a defect in factory material or workmanship which has a warranty reimbursement cost of repair to the manufacturer of the vehicle for parts and labor of more than 10% of the price of the vehicle, and which, when repaired in the manner specified by the manufacturer in its shop manuals and instructions to dealers meets the manufacturer's established material and performance specifications for that part."

"1797.103. As used in this chapter, 'major non-correctible defect' means a malfunction for a particular reason in a particular part of a new vehicle because of a defect in factory material or workmanship which has a warranty reimbursement cost of repair to the manufacturer of the vehicle for parts and labor of more than 10% of the price of the vehicle and which when repaired in the manner specified by the manufacturer in its shop manuals and instructions to dealers meets the manufacturer's established material and performance specifications for that part."

Mith the revised definitions, a manufacturer can keep accurate track of the cost of repairs all of which (being within 12 month/12,000 miles) are covered by warranty if a "defect" is involved. It also can assure itself that any repairs are performed in a proper manner and that in fact a defect existed for which it is responsible. Further, the revised definition makes it clearer that two repairs are not for the same defect, even if made to the transmission, where two different parts of the transmission are involved or where two different adjustments are made to the same part. An automobile is a very complex piece of machinery subject to wide variations in usage and a series of adjustments must sometimes be made and "proven out" for a sub-assembly to work at its optimum level:

Section 1797.110 prohibits a manufacturer or dealer from restricting the implied warranty of merchantability. This is in conflict with the federal Magnuson Moss Act and is totally minecessary to the design of the bill which is keyed to a 12/12,000 period of protection. We suggest this section be revised to read:

"1797.110. No vehicle manufacturer, or a dealer on behalf of such manufacturer, shall disclaim, exclude or restrict the implied warranty of merchantability of a new vehicle, provided that a manufacturer or dealer can limit the duration of such implied warranty to the duration of its express written limited warranty of the vehicle as provided in the Magnuson Moss Warranty Act, 15 USC \$2308(b)."

Section 1797.111 provides for a presumption of "non-merchantability" if a major non-correctible defect occurs or if a "single" major correctible defect must be repaired three times or is out of service for major correctible or non-correctible repairs for an aggregate of more than 20 days during which "the dealer's shop is open for any period of time." This provision would appear to apply to second owners - at least is not limited to original owners - for whom the vehicle would not be a "new. vehicle," needs clarification that a repair of a single defect means the same repair of the same defect, leaves in doubt when a day out of service is to be counted and appears to allow the customer, whose vehicle is operable to "dump" his car at a dealership, without scheduling it in and without regard to the needs of other vehicles in for service. To obviate these difficulties to some extent, we suggest that this section be revised to read:

> "1797.111. Any new vehicle that, while owned by the original purchaser and within the first 12 months or 12,000 miles from first use or purchase by such purchaser, whichever occurs sooner, has a major. non-correctible defect, requires the same repair of the same major correctible defect in the same part three or more times, or is out of service by reason of repair of a major correctible or non-correctible defect by a dealer for a cumulative total of more than 20 days since the scheduled delivery of the vehicle to the dealer for repair, shall be presumed to be non-merchantable. In computing the 20 days pursuant to this section, a day shall mean a weekday, Monday through Friday, excluding national legal holidays."

Section 1797.112 provides for rebuttal of the presumption of non-merchantability and is acceptable except that it appears to charge the manufacturers with the sins of the dealer which are beyond its control. We suggest this section be revised to read "1797.112. The presumption of non-merchantability of a new vehicle provided by Section 1797.111 may be rebutted by a showing that the condition of the motor vehicle resulted from abuse by the purchaser, collision, failure of the dealer to follow the manufacturer's shop manuals and instructions in making a repair or other condition outside of the control of the manufacturer or dealer."

Section 1797.113 provides for notice of alleged nonmerchantability to be given to the "manufacturer's nearest zone representative." This is difficult to ascertain for owners. We suggest that the phrase "nearest branch of the manufacturer for service matters" be substituted. Such branch offices are listed in the Owner's Manuals or other literature provided by almost all manufacturers with new vehicles.

Section 1797.114 gives the manufacturer a tight 20 days after receipt of notice of alleged non-merchantability to examine the vehicle and respond to the notice, limits the place of inspection to the nearest dealership although the selling dealership should be involved and requires the manufacturer to pay for transporting the vehicle to any other place without specifying how that payment is to be computed. Further, in a response to the notice which admits an excusable defect, the manufacturer is limited to only two of the excuses provided in Section 1797.112. In addition, if a defect is acknowledged and repaired, the manufacturer must extend the warranty for 4 months/ 4.000 miles regardless of "out of service" days or the fact that the warranty had only two weeks to run when the notice of defect Lastly, the standard of repair is "merchantable was given. condition of the [whole] vehicle" - a term not anywhere defined. This whole section results in inefficiency and increased costs. We suggest it be revised to read

> "1797.114. As soon as practicable after receipt of a notice under Section 1797.113, the manufacturer or representative thereof shall either examine the vehicle at the dealership where the purchaser purchased the vehicle or the nearest or other dealership near to the purchaser's residence or to another place designated by the manufacturer near to such residence and shall notify the purchaser in writing that the manufacturer either (a) finds no defect, (b) finds a defect but believes it is due to a cause specified in Section 1797.112, (c) finds a defect but can and will repair the defective part to meet the manufacturer's established material and performance specifications therefor and will warrant any replacement parts for 4 months or 4,000 miles or until the expiration of the vehicle warranty whichever is longer, or (d) accepts the purchaser's allegation that the vehicle is "nonmerchantable" as defined in Section 1797.111.

the vehicle cannot be driven to the place of examination, the manufacturer shall designate how it shall be otherwise transported there and shall pay the costs of such transportation."

With such revision the manufacturer is given the same time frame as is given the purchaser in Section 1797.113, has the flexibility to schedule the examination where it can best be done without inconvenience to the purchaser, retains all justifications for malfunctions provided elsewhere and provides objective or acceptable bases for determining success of repair and transport costs payable.

Section 1797.115 provides for the manufacturer to make repairs if it agrees a correctible defect exists but again provides tight timing that may not be justified or convenient and makes a conclusive presumption of defect without regard to possible reoccurrence of excuses allowed for in Section 1797.112. We suggest this Section be revised to read:

"1797.115. If the manufacturer notifies the purchaser that the defective part can be repaired to meet the manufacturer's established material and performance specifications therefor pursuant to Section 1797.114, the purchaser shall make the vehicle available at a time mutually agreed upon in good faith between the purchaser and the manufacturer for such repair before any rights vest pursuant to this chapter. If the condition that rendered the vehicle non-merchantable as defined in Section 1797.111 continues to exist after repair, the vehicle shall be conclusively presumed to be so non-merchantable unless the reason for such continuance is within the provisions of Section 1797.112."

Section 1797.116 provides for substitute transportation if repair of a defect takes a longer period than prescribed. but is vague as to when such period commences and prescribes a needlessly expensive substitute (which expenses will be passed on to California purchasers as provided for in the bill). To avoid these problems we suggest this section be rewritten to read

"1797.116. If any examination or repair, for mechanical malfunction, by a manufacturer, a representative thereof, or a dealer pursuant to this chapter within the first 12 months or 12,000 miles described in Section 1797.111, whichever occurs sooner, results in possession of a new vehicle by such manufacturer, representative or dealer for more than five business days after the day the vehicle was scheduled by such manufacturer, representative or dealer for examination or repair

with the subsequent loss of use by the purchaser, the vehicle manufacturer shall, commencing on the Bixth business day thereafter and until the examination or repair is completed and the vehicle made available to the purchaser, provide any required substitute transportation at its expense by bus, taxi or substitute vehicle whichever is least expensive but necessary and reasonable in the circumstances. The costs of fuel and oil for any substitute vehicle shall be paid and borne by the purchaser."

Section 1797.117 provides, as to a "non-merchantable" vehicle that the manufacturer shall provide a replacement vehicle or refund the price paid by the purchaser less depreciation at not more than 10 cents per mile after the first 3000 miles. the "price paid" is not clearly defined (though this time the actual price paid is the relevant price) and the provision ignores the fact that depreciation accumulates from the passage of time even if the vehicle is driven but little and from condition of the vehicle apart from both time and mileage. The provision even makes the manufacturer liable for collision damage inflicted by the negligence of others. If providing a substitute vehicle is elected a new unit with a 12/12,000 warranty must be provided even though the original vehicle gave 10/10,000 of good service. before becoming "non-merchantable." We suggest that, to be fair, this section should be revised to read:

> "1797.117. In the case of a new vehicle that is non-merchantable pursuant to Section 1797.111, the manufacturer, at its option, shall return the price paid by the purchaser to the selling dealer (including downpayment, allowance on traded vehicle, if any, and balance due but excluding finance and insurance charges, service contracts and equipment from other suppliers installed by the dealer) as evidenced by the invoice to the purchaser, less any depreciation occurring from reasons included in Section 1797. 112 or from lack of maintenance or hard use and any depreciation occurring attributable to normal use and possession by the purchaser calculable at a rate not to exceed 10 cents (\$0.10) per mile and \$2.00 per day where the price paid by the purchaser is under \$8,000 and \$5 a day where the price paid by the purchaser is \$8,000 or more, or shall furnish a substitute new or used vehicle of the same model and model year (or comparable model if the model year has changed and the manufacturer is not able to provide a vehicle of the same model year) in as good condition as the original vehicle, but merchantable as defined in this Act, delivered to the purchaser's residence,

which substitute vehicle shall be warranted for the remaining duration of the warranty on the original vehicle as of the time of delivery for examination pursuant to Section 1797.114."

Section 1797.118 gives the purchaser a right to sue a manufacturer who wrongfully will not replace the vehicle, pursuant to Section 1797.117. This provision ignores the manufacturer's right to make a refund and contains the same deficiencies as Section 1797.117 in defining depreciation and as Section 1797.116 as to substitute transportation. In addition the section provides wildly discriminatory tests as to when the loser of such litigation shall pay costs and attorneys' fees. Accordingly, we suggest this section be revised to read:

"1797.118. Whenever a purchaser of a new vehicle notifies the manufacturer of the nonmerchantability of the vehicle pursuant to Section 1797.111 and the manufacturer wrongfully refuses to refund the price paid for the vehicle or replace the vehicle pursuant to Section 1797.117 the purchaser may bring an action. to recover the refund provided for, in Section 1797.117, plus the costs of substitute transportation, as defined in Section 1797.116, required during the pendency of the dispute. The prevailing party in such litigation may be awarded reasonable attorney fees and costs incident to such action if the court finds that the other party knew or should have known at the inception of the action that there was no reasonable basis for such other party to prevail .. Any such award shall be based on actual time expended."

Section 1797.119 provides that a manufacturer cannot exclude, on the sale of a new vehicle in California any warranty given on the sale of a comparable vehicle in any other state. This makes sense only as to the basic vehicle and corrosion warranties but not as to the 49 state emissions warranty not valid in California or peculiar noise, bumper or other similar warranties required in different states. We suggest that the section be revised to read:

"1797.119. No manufacturer shall exclude in the sale of any new vehicle in California any warranty issued with respect to the sale of a comparable vehicle in any other state, except any warranty required by federal or state or local law and not applicable in California."

Section 1797.121 providing for passing on of increased costs in California caused by the bill is all right as it is.

Section 1797.122 requires the manufacturer or dealer to advise the purchaser after each repair of the nature of the defect in a manner sufficient for the purchaser to determine whether he has any rights under the bill. The manufacturer is in no position to advise a purchaser of what repairs were made or on what diagnosis they were based. Only the dealer can do that. Nor can the dealer know what write-up will be sufficient to advise any given customer of what was done or what his rights may be. We suggest this section be revised to read:

"1797.122. Any dealer or other repair station making a warranty repair on a new vehicle within the period prescribed in Section 1797.111 shall, at the time such dealer or station submits a claim for reimbursement to the manufacturer, mail a copy thereof to the purchaser. If a repair in such period is not a warranty repair, the dealer or station shall give the purchaser a copy of the repair order for the same with a statement of the parts used and labor operations performed."

Section 1797.123 requires the selling dealer to give each purchaser of a new vehicle a written statement of the purchaser's rights under the bill and the address of the manufacturer for submitting complaints. This in effect is requiring the attorney for the dealer to advise a purchaser of his legal rights - a clear conflict of interest. Further each dealer's attorney will have his own way of drafting such advice. If the manufacturer tries to help achieve a uniform disclosure the conflict of interest is intensified. In wrestling with the same problem under the Magnsuon Moss Act, the Federal Trade Commission concluded that only a uniform, generalized, prescribed disclosure was appropriate. We suggest that this section be revised to read

"1797.123. Every purchaser of a new vehicle in California shall be furnished by the dealer selling the vehicle with a written statement that "If you are dissatisfied with the condition or performance of your vehicle after warranty repairs have been made, you may have rights under [Calif. Code Reference]. Such statement shall also contain the address of the manufacturer's branch referred to in Section 1797.113."

We have no objection to Section 1797.124.

The foregoing revisions point out the difficulty of providing a feasible law of this nature. We continue to believe no such law is required and that if any "remedy" is felt needed to aid purchasers in obtaining proper warranty service, it is best provided by a simple, inexperienced format for determining the facts of each individual complaint. Ford's consumer Appeals Boards in California have been established for that purpose and give evidence that they are working as wall there as earlier and continuing Ford Boards in other states. Certainly such an approach is preferable to the formal court litigation envisioned by this bill. We believe California would do well to wait and see how our Boards operate and, quite conceivably, adopt that approach as mandatory for all.

Tloyd T. Williams, Jr. Assistant General Counsel Automotive Distribution

LTW/n



# CALIFORNIA TRIAL LAWYERS ASSOCIATION

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June 12, 1980

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Honorable Sally Tanner Room 5144 State Capitol Sacramento, CA 95814

> AB-2705 / as\_amended 5/12/80\_\_\_\_ Vehicle Warranty

Dear Assemblywoman Tanner:

Re:

Our association supports your legislation, AB 2705, as amended May 12, 1980, dealing with the warranty of merchantability on new vehicles. We believe your legislation will be of significant assistance to consumers faced with the unfortunate prospect of repairing or replacing a "lemon" automobile.

If we may be of any assistance with this legislation, please do not hesitate to call.

JAMES L. FRAVAL, Exec. Dir.
California Total Lawyers Association

JLF: 1re

cc: Honorable Bob Wilson, Chairman Senate Judiciary Committee



### 1020 N STREET, SACRAMENTO, CALIFORNIA 95814 (916) 445-4465



June 16, 1980

Honorable Sally Tanner Member of the Assembly State Capitol, Room 5144 Sacramento, CA 95814

### Dear Assemblywoman Tanner:

I would like to express the Department of Consumer Affairs' support of AB 2705, your new automobile "lemon" warranty legislation. AB 2705 will be heard in the Senate Judiciary Committee on June 17, 1980, at 1:30 p.m.

The merchantability of new automobiles and the inability to obtain satisfactory repairs on defects during, or even after, the warranty period has been a serious and expensive problem for purchasers of new vehicles. The present warranty laws have failed to protect purchasers from having to make repeated trips to the dealer and being left without the use of their cars, in order to have the same defects repaired. In some cases, the warranty period will expire, leaving the frustrated purchaser with a vehicle that still has an expensive or even non-correctable defect (the so-called "lemon").

AB 2705 would help to alleviate this problem by providing objective criteria for determining what major defects are noncorrectable and when a new vehicle is unmerchantable. The bill would provide a definite timeframe and procedure for correcting recurring defects and gives the manufacturer the economic incentive, which is presently lacking, to cure the defective condition with satisfactory warranty repairs.

The bill has been significantly amended in response to concerns which have been raised by the automobile manufacturers. We believe AB 2705 is a moderate approach to a serious and continuing consumer problem and is one of the most important consumer protection bills in the current legislative session.

If you wish to discuss this measure in greater detail or desire our testimony, please contact our Legislative Coordinator, Steve Fishbein, at 322-4292.

Sincerely,

RICHARD B. SPOHN

Director

cc: Members, Senate Judiciary Committee



Possible amendment re: 20 days

Add to section 1797.111, page 4

Computation of the twenty days shall commence when a major correctable or newscreetable defect is first reported and a work order estimate prepared, regardless of whether the vehicle is out of service at the dealer's shop, or out of service in the purchaser's possession.

CHARLES B. KILMER President CHARLES G. HILTON First Vice President GEORGE H. OLSEN, JR. Second Vice President ROBERT C. LEWIS Treasurer EDWARD B. LANDIS Secretary STEPHEN F. SNOW JAMES B. WOULFE

NADA Director

June 16, 1980

Executive Vice President The Honorable Bob Wilson, Chairman Senate Committee on Judiciary State Capitol, Room 2065 Sacramento, CA 95814

Subject:

(Tanner) AB 2705

Dear Senator Wilson:

I am writing on behalf of the two thousand franchised new car dealers represented by our association and our sister organization, the Motor Car Dealers Association of Southern California.

We wish to urge your opposition to AB 2705 (Tanner) when it is heard before the Senate Judiciary Committee. reasons for opposing this bill are as follows:

- The number of vehicles which cannot be corrected to the customers satisfaction is very small, given the total volume of retail sales in California each year.
- The bill would eventually result in an increase in the cost of all new vehicles.
- The problems raised by this bill would ultimately fall upon California dealers, given the one-sided nature of most automotive franchise agreements.
- The language is vague and confusing. Serious legal questions arise about financing, repurchase agreements, insurance, legal liability, etc.
- In addition to an abundance of existing legal remedies, there are an increasing number of industry programs by both manufacturers and dealer/ public organizations to settle such disputes.

Accordingly, we urge your opposition to AB 2705.

Sincerely,

Moce Stephen F. Snow

Executive Vice President

cc: Richard Thomson

# SENATE COMMIÇ E ON JUDICIARY

### -80 REGULAR SESSION

AB 2705 (Tanner) As amended June 16 Civil Code	A B
RT Code	2 7
MOTOR VEHICLE WARRANTIES	5

### HISTORY

REPLACEMENTS & REFUNDS-

Source: Author

Prior Legislation: None

Support: Calif. Consumer Affairs Ass'n.; Santa Cruz
County Consumer Affairs; County of LA
Dept. of Consumer Affairs; San Francisco
District Attorney; Santa Cruz District
Attorney; Dept. of Consumer Affairs;
Town of Fairfax; Consumer Advisory
Council of the Dept. of Consumer
Affairs; San Francisco Consumer Action
Group

Opposition: Ford Motor Company; Motor Vehicle Mfrs.
Ass'n.; Calif. Auto Dealer Ass'n.;
General Motors; Chrysler Corp.;
California Manufacturers Ass'n.

### KEY ISSUE

SHOULD AN AUTOMOTIVE MANUFACTURER HAVE TO REPLACE OR REFUND THE PRICE OF A VEHICLE WHICH IS UNMERCHANTABLE AS DEFINED?

AB 2705 (Tanner)
Page Two

A B

27

### **PURPOSE**

Existing law requires a manufacturer to abide by the terms of his own warranty. Under both federal and state law the buyer is entitled to replacement of the goods or reimbursement if the manufacturer cannot service or repair the product "after a reasonable number of attempts." However, nothing in existing law requires an automobile manufacturer to replace, or reimburse the price of a vehicle which fails to meet a specific statutory standard.

This bill would require the manufacturer to replace, or reimburse the price of, a vehicle which had, during the first 12 months or 12,000 miles, a major noncorrectable defect (as defined), a major correctable defect (as defined) which had been repaired three or more times, or had been out of service for 20 or more shop days for repairs.

The purpose of the bill is to provide an effective remedy for the automobile buyer who purchases a "lemon."

### COMMENT

# 1. Definition of "lemon"

This bill would apply only to new passenger vehicles or trucks of less than 6,000 pounds.

Under this bill an unmerchantable vehicle ("lemon") would be one which within the first 12 months or 12,000 miles -

(a) had a "major non-correctable defect," defined as a defect which would cost more than 5% of the vehicle's price to repair and which, once repaired,

would have a permanent adverse affect on the basic functioning of the vehicle;

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- (b) required the repair three or more times of a single "major correctable defect," defined as a defect which would cost more than 5% of the vehicle's price to repair, but which would leave no permanent adverse affect; or
- (c) was out of service a total of more than 20 shop days for the repair of major correctable or noncorrectable defects.

Five percent of a \$6,000 car is \$300; 5% of \$10,000 is \$500.

WITH TODAY'S PRICES, ARE \$300 DEFECTS SUFFICIENTLY MAJOR TO JUSTIFY REPLACEMENT OF THE VEHICLE?

# 2. Procedure for replacing "lemon"

If the buyer had a "lemon," as defined, he would obtain replacement or reimbursement as follows:

- (a) The buyer would notify the manufacturer's area representative and the dealer by registered mail of the conditions alleged to make the vehicle a "lemon."
- (b) Within 20 days the manufacturer's representative would examine the vehicle and notify the buyer in writing that he found no defect, found a defect which was a buyer's responsibility, a defect which could be repaired, or a defect which indeed made the vehicle unmerchantable.

5

- (c) If the manufacturer notified the buyer that the vehicle could be repaired, the buyer would deliver the vehicle for repair within 3 working days. If, however, the defect continued after the repairs had been completed, the vehicle would be conclusively presumed to be unmerchantable.
- (d) Where a vehicle was deemed unmerchantable by agreement of the manufacturer or because of the failure of repairs, the manufacturer would at his option either restore to the buyer the purchase price less depreciation or replace the "lemon" with a new vehicle of the same or comparable model.

# 3. Enforcement provisions

If the manufacturer refused to replace or reimburse, he could be sued by the buyer for the price of the vehicle less depreciation, the cost of renting substitute vehicles, and attorney's fees.

SHOULD NOT THE BUYER BE PERMITTED TO ASK FOR TRIPLE DAMAGES AGAINST THE MANUFACTURER WHO INTENTIONALLY FAILS TO COMPLY?

If the buyer did not prevail in his suit, and the court found that he knew or should have known that there was no reasonable probability of success, the court could award reasonable attorney's fees to the defendant.

At present, Ford has a successful arbitration program to handle such disputes, and General Motors has recently initiated one.

SHOULD NOT THE BILL ENCOURAGE THE BUYER TO SETTLE HIS DISPUTES THROUGH ARBITRATION, BY, FOR EXAMPLE,

AB	27	05	(Tar	nner)
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TOLLING THE STATUTES OF LIMITATIONS ON A SUIT UNDER THIS BILL FOR THE PERIOD THAT THE MATTER HAD BEEN SUBMITTED TO ARBITRATION?

# 4. Limits on manufacturer's responsibility

The bill provides that the manufacturer would not be responsible if the condition of the vehicle resulted from abuse by the buyer, collision, or other conditions outside the control of the manufacturer or the dealer.

# 5. Cost of the program

The bill would require a manufacturer to provide all the warranty protection on a vehicle sold in California that he had offered on a comparable vehicle sold in any other state.

However, the bill specifically states that the manufacturer could increase the price of a new vehicle sold here by the amount "reasonably necessary" to meet the costs of this program.

# 6. Right to substitute vehicle

The bill would provide that at any time during the first 12 months or 12,000 miles, the possession of a vehicle for repairs by the dealer or manufacturer for more than 5 business days would entitle the buyer to a substitute vehicle.

The substitute vehicle would either be provided by the manufacturer without costs, other than for gas and oil, or the manufacturer would compensate the buyer for renting a substitute vehicle.

AB 27	705	(Tanner)
Page		

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# 7. Other provisions

# (a) <u>Definition of "depreciation"</u>

The bill would define "depreciation," for the purpose of determining the amount of reimbursement, as any loss of value incurred by abuse, by collision which was the buyer's fault, or by normal use. The latter would be calculated at a rate not to exceed 10¢ a mile but it would not be computed on the first 3,000 miles of travel.

# (b) Description of repairs

The bill would require the dealer or manufacturer making any repair to give the buyer a written description of the malfunction, its cause if known, and the repairs performed and parts supplied.

# (c) Notice to the buyer of this bill

The bill would require a new car dealer to supply to a buyer a written summary of the provisions of this bill.

\*\*\*\*\*

1117 Marlin Drive Roseville, CA. 95678 June 26, 1980

Senate Judiciary Committee Attn: Senator Bob Wilson, Vice Chairman Room 4203 State Capitol Building Sacramento, CA. 95814

Dear Judiciary Committee Members:

May I submit the attached "volume" to you as an argument in support of AB 2705. The California auto buyer desperately needs the protection of AB 2705.

I have contacted the Ford representative several times since the purchase of my 1979 Ford Fairmont (see attached) and am now told that the warranty has expired. The problems have not been corrected although my contacts started shortly after my purchase.

AB 2705 is the only answer. The manufacturers are demanding a price for their product that, in my judgement, mandates that they provide me with a quality built product.

On behalf of all automobile owners who have purchased "lemons" and have no recourse for correction I urge a vote of support on AB 2705 by not only you, but all members of the Senate Judiciary Committee.

Regardless of the arguments from the automobile lobbyists, they do not correct manufacturers' defects until there is some action by an authority above them and I think that my story is a perfect example of just that.

Thank you.

Sincerely

John R. Pursell

Enclosures

Certified mail with return receipt.

1117 Marlin Drive Roseville, CA. 95678 September 16, 1979

Mr. Robert Lewis
Ford Motor Company
Parts & Service Division
San Jose District
P. O. Box 1740
San Jose, CA. 95108

Dear Mr. Lewis:

An economist recently wrote that until the American worker starts to improve the quality of his work, his wages will not significantly increase and as a result our economy will continue its downward slippage. We seem to face a dichotomy as citizens of this country in that spiraling economy and the rising cost of products are running at a higher rate than our efforts to attempt to catch up in our income.

As American purchasers you and I rightfully expect that when we purchase a commodity such as an automobile, and at the going market price, there should be no serious problems with that product. Occasionally, however, corrective action is required of that product and this is normally taken care of by the manufacturer under a limited warranty system. We then assume that those honoring warranty will make every cooperative effort to take the necessary corrective action.

I have owned five Ford autos in the past eight years. Two of them were excellent cars and I still own one of them - a 1973 Galaxie. My other car, a 1979 Fairmont Futura, is proving to be a disaster. Previous to this car I owned a Granada and an LTD II. Both of these cars had several serious problems which cost me considerable dollars to repair because I allowed the local servicing agencies to convince me that nothing was seriously wrong. Naturally these problems climaxed after the warranty had expired, one of them within days of the expiration.

As a result of these previous problems I am determined that I will not accept these "put-off" types of statements again and that I will have the problems corrected within the warranty time period or I will have this automobile replaced with another without any additional cost to me.

Because of the previous and current problems I am once again seriously thinking about purchasing a foreign made auto where the quality control seems to be of a higher caliber. I realize that this is not a threat to you, but I find it regrettable that we have to help the foreign economy by such an act when we should be concerned with our own country's welfare in this respect.

Specifically, as to my current problems, I wish to report the following series of events and concerns:

-2-

I have driven the Fairmont a little over 5000 miles, and to date I have taken the car to the garage for service on three (3) different occasions. The following events occurred during those three visits and many of the problems have been corrected, but major ones still exist.

FIRST VISIT: They had the car for three days.

Complaints were:

Car hard to start
Serious banging sound in left front
suspension
Trunk lid out of alignment
Rattle in the dash
Excessive popping in the converter
Dip stick falling off
Oil leaking from the engine
Eight other minor items.

All items listed were supposedly corrected while actually only three were put into proper condition. When I inquired about the serious suspension banging noise I was told they could not find the problem. Their response to the dash rattle was that a gear in the Odometer was causing the problem and they had ordered a new one to be replaced when it arrived. I was also told that the converter popping was normal with all 1979 models.

SECOND VISIT: They had the car for another three days.

Complaints were:

Car hard to start
Serious banging sound in left front
suspension
Loud popping in converter
Dash rattle
(I did not list any of the other
minor items this time)

During this visit the Odometer was replaced but at an angle instead of vertically. In making the replacement the steering column was marred and the dash sheen was dulled by some form of chemical or grease. I discovered on the following day that the trip meter did not function. I was told that the carburetor could not be repaired and that a new one was ordered for replacement of the existing one. I was again told that the suspension banging was a normal occurrence. I then became annoyed and suggested that I did not believe that the Ford Motor Company would produce a product that banged in such a manner that people on the streets (and my neighbors) look at this new car and wonder what is making such an unusual and loud sound.

THIRD VISIT: (I sat with the car on this trip to oversee the work and was there for some seven hours.)

Complaints were:

Car hard to start
Serious banging sound in left front
suspension
Loud popping in converter
Trip meter not functioning
(I didn't attempt to get a solution
to the rattle in the dash.)

At the start of this visit I informed the check-in person that I wanted to go with the mechanic for a road test in order to point out my concerns BEFORE he started working on the car. This did not occur. After two hours of waiting, I was informed that the car was ready to go. I inquired about the loud suspension banging and was told that they could find nothing wrong and that this was a normal occurrence. I asked if they had resolved the popping noise and they stated that with the replacement of the carburetor this would solve the problem, but again, all 1979 models have some popping.

At this point I demanded that we go on a road test together, and this did happen. I demonstrated the suspension problem and was told that, under certain conditions, a steering arm could cause this sound. When we returned, the serviceman tried to show me the arm that caused this to occur. It was at this point that he realized he could not show me how this occurred and he had the car placed on the service rack again for further examination. I was then allowed to walk under the car with the mechanic in search of the problem. He started looking under the RIGHT suspension because the write-up man had stated this was the problem area. When I had the mechanic look under the left suspension he found that the bracket which holds the front torsion bar had only one of three bolts holding the bar to the frame. The other two bolts were missing because the holes had not been drilled for this purpose. Further, the bracket was broken and was the source of the banging sound due to the separation of parts under certain conditions.

I also asked the serviceman if he had corrected the trip meter problem and was informed that it was now working properly. I asked if he had tried to reset it and he said he had not. When he did try to reset it he found that it would not function. His solution to this problem was to order yet another speedometer head.

Following the installation of the new carburetor I took a trip to Washington State. The car performed reasonably well (except for the popping noise) until I reached the Seattle area. When I attempted to use the car on the second day of arrival I had trouble keeping the engine running and after several attempts to see the Seattle area I returned to my motel fearing that the car would breakdown completely and leave me stranded. Fortunately,

September 16, 1979

there was a Ford service garage a half block away and after being on foot all day Sunday I took the car first thing Monday morning. They found that a vacuum plug had blown out.

After returning from the Washington trip I looked under the car and saw a part hanging down. Upon investigation I found that the idle arm of the emergency brake had fallen off and was hanging by the brake cables. I also noticed that, after an uphill grade, it smells like the car is burning underneath.

I took the car to Suburban Ford for further correction and they informed me that they would only work on the carburetor problem and I would have to return to Senator Ford for all other corrections (The location of my first three visits). I choose not to return to a garage which is unable to repair this car. This car will be the equivalent of two years old, and in only three months it is falling apart. I have a work schedule that makes it difficult for me to make the 40 minute one way trip to Senator Ford and to then wait for the repairs to take place. I think my letter to this point accurately explains why I refuse to return to Senator Ford. My position requires many miles of driving, how can I depend upon this auto to place me at the point of destination; why should I be forced to drive the 1973 Ford as the dependable car when I have a 1979 in my garage?

I continue to have the following problems along with new ones:

Complaints:

Car hard to start
Popping worse than ever in the converter
Odometer not corrected
Car lurches during traveling motion'
Starting to use oil
Trunk leaks water (discovered this after
going through a car wash)
Brake falling off.

And, for a four cylinder, stick shift, I am getting about 22 miles to the gallon.

It is not, and has not been my practice to complain, much less go to the extent of writing a letter such as this, but I have reached my limit and I must protest the repair conditions, as well as the car. As I said before, I believe that we are entitled to a quality product since we certainly pay a quality price, and that we are entitled to service without the service personnel disputing our word as to the problems, telling us that these deficiencies are "normal" and otherwise treating us as though we were some kind of uninformed fools. I have in the past been an auto, aircraft and heavy duty equipment mechanic which should qualify me for recognizing mechanical problems when I see them.

I cannot afford to lose the use of this car and the hours of transporting as well as waiting for it. I plead with you to give me assistance in making final corrections of the problems and all of them prior to the expiration of the warranty this time.

I support the economist in that we must demand quality in the items we purchase, and we must, as workers, put more quality into our work efforts in the interest of our economy. Recognizing that labor unions can cause difficulty for corporations in demanding more of the worker, we must still attempt to stop the indifference that appears to exist on the assembly lines which produce the product I am now fighting to make whole, correct, and safe. I want to continue to use Ford products but when my friends ask about the new car I am not going to lie and tell them it is a fine automobile. A poor endorsement does not give consideration to the purchase of Ford products now or in the future.

I can assure you that this car will be brought up to acceptable conditions in one manner or another, and I feel confident that you will see that this occurs.

Thank you for your cooperation and patience in reading this lengthy statement. My address and my phone number are listed below.

John R. Pursell 1117 Marlin Drive Roseville, CA. 95678 Office: (916) 481-7403

Home: (916) 782-4023

Sincerely,

Original signed by

John R. Pursell

cc: Lloyd Winger, Owner Senator Ford, Inc. 3801 Florin Rd. Sacramento, CA. 95823 Mr. Robert Lewis
Ford Motor Company
Parts and Service Division
San Jose District
P.O. Box 1740
San Jose, CA. 95108

Dear Mr. Lewis:

Comments.

On September 16, 1979 I wrote you concerning the performance of my 1979 Ford Fairmont. A copy of that letter is enclosed as a reminder of the events that occured up to this date.

I wish to update that letter by reporting on the events subsequent to that letter. Following your urging to return to Senator Ford I was dealt with directly by Woody who expressed a genuine concern over the problems I was having and took personal directive control of the needed repairs.

The garage had the car for two days and during that time they they realigned the trunk area and lid in order to make the lid and fenders level with each other. I later discovered that they did not succeed in sealing the trunk and it still leaks water into the interior. The garage also replaced the carburetor at this time.

Following this visit more problems developed with the carburetor not staying in tune. When I inquired of Woody regarding this trait and the frequency that I might expect it to occur he informed me that they were only having about a 30% success in their repair efforts. I was also still getting sulfurous fumes from the converter. I contacted Woody regarding these problems and once again I took the car to Senator Ford for the replacement of the cateletic converter and a further tuneup of the carburetor.

Following this visit the car performed rather well for several weeks and then once again the stench of the converted started but much worse than before. I also smelled raw gas on two occassions while driving along the highway. This time I took the car to the Suburban Ford agency where they informed me that I needed a new carburetor. This has been ordered and will be placed on the car this week.

My concern and my question of you and the Ford Motor Company is:
What happens once the warranty on the car expires and I still
need to have the carburetor replaced along with the converter
and whatever else proceeds to fall off of the car?

I have never had this kind of carburation problems in any of the previous cars and in my new Chevrolet pickup so it must be this particular car and/or model that is the lemon of the crop. Your suggests and response will be greatly appreciated.

Sincerely,

Original signed by:

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Jan Dolale Polela

# From the desk of Jack Pursell

i failed to also report that the vacum plug blew off once again and the same events occured as I report happened in my trip to Seattle last year:

It appears that the plug is nothing more than a rubber sleeve closed on one end that slips over a tube. Seems like this kind of thing needs to be redesigned if they blow off that easily.

Jack



Ford Parts and Service Division Ford Motor Company

San Jose District Office Capitol and Main Milpitas, California 95035 Mailing Address: P.O. Box 1740 San Jose, California 95109

January 30, 1980

Mr. Jack Pursell 1117 Marlin Drive Roseville, California 95678

Dear Mr. Pursell:

We have received and appreciate your recent letter outlining your personal observations about your '79 Fairmont.

You may be assured that we welcome constructive criticism from individuals such as yourself. Careful consideration of the impressions and recommendations of the consumer plays a vital role in our efforts to improve our vehicles. Ford Motor Company recognizes that the needs and demands of the buying public must be met to be successful in today's market.

Thank you for taking the time to let us know how you feel about our products.

Very truly yours,

J. N. W. Brown

Owner Relations

/mg

1117 Marlin Drive Roseville, CA. 95678 June 25, 1980

Department of Motor Vehicles Investigation Section 5209 North Avenue Carmichael, CA. 95608

New Motor Vehicle Board 1401 - 21st Street Suite 407 Sacramento, CA. 95814

I am filing this complaint regarding my 1979 Ford Fairmont automobile as a continuing saga of my story, as well as the many American consumers who struggle to obtain a manufactured product that delivers what it is touted to provide by those who design, advertise and market said products.

If you will start with the rather lengthy letter to Mr. Robert Lewis, sales representative for the Ford Motor Company, and then read the followup letter from me to Mr. Lewis dated January 21, 1980, you will have a picture of the issues before you. I shall then pick up with the narrative as of the January date.

Having become completely disgusted with the inability of the service department of Senator Ford to properly repair the carburetion problems, I took my car to the Suburban Ford Service Department. On December 27, 1979, this dealer replaced - for the second time - the carburetor. The net result was that for roughly a three week period the car performed rather well and as would be expected. The same symptoms then began to develop and by the end of February the carburetor was no longer in proper adjustment, the auto choke would not function, and the fumes returned signaling improper combustion in the engine. I have not, and will not go into the discomfort experienced by passengers when inhaling the strong fumes, particularly in the back seat, and the fact that I have to ride with some ventilation because of it.

I then took the car to a local service station and asked that they make some adjustments. They informed me that this particular model of carburetor requires special tools and gauges to make those adjustments and they were not equipped to do this type of service. I continued to have problems with the car and on June 3, 1980 I returned to Suburban Ford and again asked that they correct the problem I was experiencing.

After the repairs were made I discussed the work accomplished with the garage personnel and was assured that all of my problems were over because their very best mechanic had made the adjustments. My wife then tried to drive the car out of the garage - it stalled on her - it stalled again in heavy traffic several times before she was finally able to keep it moving.

I returned to the garage the following morning, informed them of what had occurred and told them that as soon as I had time I would return the car and ask that they again try to correct the problems. I did just that on June 9th and was told that they could no longer work on the car since it was now well past warranty. (My worst fears had now been realized and it appears that I've been had.)

Since I was planning to take a long trip the following week I again went to a service station and asked them to help me with my problem. I was told again that they did not have the special tools to make such adjustments and further, that making the adjustments would not correct the problem since the adjustments are know to last no more than a few days at best. I have been told by both a service station mechanic and a Ford garage mechanic that the only cure for this carburetor is to replace it with a different model. The model (2700) has an enrichment rod made of a synthetic material which, upon getting hot, warps, thus throwing the adjustment out of alignment. I was also told that some seven customers of the service station have the identical problem and only one solved his problem by replacing the 2700 model carb with a different brand and model.

We took our trip from Sacramento, California to Seattle, Washington and experienced further difficulties with the carburetion system. Namely, the engine would diesel when I attempted to shut it off and along with this was a repeat of my earlier experience (which first occurred during a prior trip to Seattle when the car was very new) wherein a sponge rubber cap which slides over a fitting attached to the manifold dropped to the pavement during one of the dieseling sequences. When this happens the car loses considerable vacuum and refuses to run without a rapid acceleration of the engine. This happened three times during a two day period and I finally purchased a clamp, and applied it to the cap to prevent the cap from blowing off when back pressure occurred in the manifold.

As I understand the emission control regulations in California, the manufacturer is responsible for delivering a combustion system that is proper and adjustable regardless of any warranty by the manufacturer.

June 25, 1980

Department of Motor Vehicles/
New Motor Vehicle Board -3-

If this is the case then I believe that the following events should occur:

- 1. The Ford Motor Company should recall all of the Model 2700 carbs and replace them with equipment that will properly function.
- 2. That failing, then the company should reimburse me, and other Ford owners with the same problem, for the cost of the Holly carb and installation charges, and stand behind that carb.
- 3. The California agencies that control smog emission should place Ford on notice to correct this problem and stand behind their obligation to provide proper carburetion-combustion systems.

Finally, as evidence that the Ford Motor Company has written me off, I enclose a copy of the response to my second letter to Mr. Lewis. Their courteous language reeks of an attitude that tells me "get off their backs" because they are no longer interested in my problems. When I purchased this car I was seriously thinking of a Toyota. I bought the Ford because my wife and I both decided we should "support the American auto manufacturers." Look what it got us. I might add that I am still supporting American auto dealers however, and am now driving a 1980 Chevrolet Silverado pickup - my first Chevrolet. We couldn't be more pleased with it.

I have been told that the manufacturers are only required to make one replacement correction of an item that has failed. Continually replacing the bad item with another bad item is not the solution to our problems.

Thankfully the California Legislature is trying to pass a "lemon bill" that copes with cases such as mine. That legislation is AB 2705 (Sally Tanner). If you review the attached information regarding my problem, you will understand why the California resident desperately needs such legislation.

May I have a response as to the direction I should pursue to have a fair adjustment to my auto problem?

Department of Motor Vehicles/ New Motor Vehicle Board -4

June 25, 1980

Thank you for your time and your consideration. I have tried to explain in detail the problems I have faced with this automobile, however, I know I have not included everything. My last call to Mr. Lewis' office prior to my Seattle trip last week, gave me no satisfaction - I did not talk to Mr. Lewis, I was given no suggestions for avenues to pursue. I repeat, "I've been written off."

Sincerely,

John R. Pursell

cc: Assemblyman Eugene A. Chappie
Senator Ray Johnson
Assemblywoman Sally Tanner
Ford Consumer Appeals Board,
David J. Van Egdon, Sacramento
Center for Auto Safety, Washington D.C.
National Highway Traffic Safety
Administration, Washington D.C.
Robert Lewis, Parts & Service Division,
Ford Motor Co., San Jose
J. N. W. Brown, Owner Relations
Ford Motor Company, San Jose

Enclosures

### **NEW MOTOR VEHICLE BOARD**

1401 - 21st Street Suite 407 Sacramento, CA 95814 916/445-1888

# COMPLAINT

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COMPLAINANT (Name) HOME TELEPHONE NO.
John R. Pursell  ADDRESS  BUSINESS TELEPHONE NO.
1117 Marlin Drive Roseville, CA. 95678 (916) 481-7403
Senator Ford Inc. (916):391-3000
ADDRESS
3801 Florin Road Sacramenot, CA.
Ford Fairmont Futura 1979 JF 9K93Y186742
DATE OF PURCHASE CURRENT MILEAGE LIC. NO.
5-2-79
NAME OF DEALER'S AGENT WITH WHOM YOU DISCUSSED PROBLEM
Woody at Senator Ford and Service Manager at Suburban Ford in Sacramento  BASIS OF COMPLAINT (Use reverse side of form if more space is required)
There were a number of other problems one of which was a bracket that had
not been drilled for two of three holes thus weakening and eventually
breaking and causing constant mis-alighnment of the front wheel assembly.
This in turn wore out a set of tire in just 14,000 miles. The major problem
is the carburetor in that ( and by the admission of Woody) cannot be kept
in proper tune. This car has had two new carbs, installed since pruchase
and the problem remains. The car is hard to start, deseils, blows a vacum
plug periodically and otherwise functions in a most unsatisfactory manner.
The worst of the situation is that the service managers imply that I don't
know how to start and rive a car after more than 43 years of driving as
well as being an aviation and auto mechanic in past years. I have discussed
this problem with my local mechanic who advises me that he has worked on
Replace the carburetor now in the car with a Holly carburetor that will
correct this problem. This has been done by my local mechanic for another
car with the same problem. Or, give me the price for replacement and I
will have the work done. Also have Ford Motor Co. correct this problem in
all such models as well as requiring a clamp to be placed on the vacum plu
. IMPORTANT NOTICE: Sections 20 and 3000 of the California Vehicle Code make it uplayful to use a false or fictitious name or knowingly make

IMPORTANT NOTICE: Sections 20 and 3000 of the California Vehicle Code make it unlawful to use a false or fictitious name or knowingly make any false statement or knowingly conceal any material fact in any document filed with the New Motor Vehicle Board.

Date June 25-1980

Signature

John Plusty

seven other identical carbs in Ford cars and all have the same problem. He also advises me that he has consulted with another mechanic who has experienced the same problem with this particular carburetor. He tells me that the rich mixture control rod in the body of the carb. is made of a synthetic material which, when the car gets hot, warps thus knocking the fine-tune out of alignment.

When I had early-on experience with the carb. I asked the garage who was going to pay for keeping the car in tune after the warranty ran out and received no answer except that they assured me that they could correct the problem. Woody informed me that they were having less than a 30% success in correcting the problem with this particular model of carburetor.

I have enclosed a running history of the problems I have experienced with this car.

Incidently, as a result of this carburetor problem I frequently experience excessive and chocking fumes emitting from the converter into the car indicating poor combustion in the engine.

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Figure 1. The state of the property of the proper

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Burger State Comment



Office Location

# Di on of Compliance - Consumer Compliance

I wish to file a complaint against the licensee named below. I understand that the Department of Motor Vehicles does not represent private citizens seeking return of their money or other personal remedies.

FOR DEPARTMENT USE ONLY
Dir./Dm./Mfg./Dist. No.
ACR Number Assigned
MARC Code

OFFICE: _520	9 North Ave Carmichael CA. 95608	ACR Number Assigned
PERSON FILING COMPLAINT	Name John R. Pursell	CAmme Phone Number 916 481-7403  CAmme Phone Number 916 782-4023
NAME OF DEALER	Business Name Senator Ford, Inc.  Address 3801 Florin Doad	Phone Number (916) 391-3000 City Sacramento, CA.
VEHICLE	7527011 75705070	
There not breat this lem mana instant to sain a serve and avia with Ford as a	NYOUR COMPLAINT (include a copy of any papers you have - contract, purchase were a number of other problems one of been drilled for two of three bolts thus aking and causing constant mis-alignment in turn wore out a set of tires in just is the carburetor in that (and by the adager) cannot be kept in proper tune. This called since purchase and the problem state, deseils, blows a vacum plug period; a most unsatisfactory manner. The worst of the car after more than 43 years of the car after more than 43 years. It may local mechanic who advised me that he with this same carburetor and all have the occuring in my car. He also advised me ther mechanic who reports similar experience.	s weakening and eventually of the front wheel assembly.  t 14,000 miles. The major probdemission of the garage service are has had two new carburetor ill remains. The car is hard ically and otherwise functions of the situation is that the lat I do not know how to start of driving as well as being an have discussed this problem he has worked on seven other at that he has consulted with
	Private Attorney District Attorney  Name	Other Phone
	of Motor Vehicles. I further certify the information given is true and correct to lift requested to do so in any action brought by the Department of Motor Vehicles  Signature of Complainant  Signature of Complainant	Driver's License Number B1511679
	Oifice Location Ci	<b>356</b>

me that the rich mixture control rod embodied in the carb. itself is made of a synthetic material. When the car gets hot this plactic material warps and the fine tunning then disappears. This occurs after the first use of the car following each attempt to retune the car. This action all causes excessive and at time chocking fumes coming from the converter and into the car.

When I had early-on experiences with this carburetor I asked the garage forman what was going to occur if they couldn't correct this problem and the warranty ran out. His response was (At Senator Ford) that they were having less than a 30% success in correcting this problem while at Suburban Ford they told me that I would have to get a special authorization from Ford Motor Co. to have any additional work done beyond the warranty period.

I have enclosed a running history of the problems I have experienced with this car.

I have been advised by my local mechanic that he found that the only way to correct this problem was to replace the existing model carburetor with a Holly Carb. He has done this with success in one instance.

RECOMMENDATION

Ford Motor Co. Should recall all cars with this model Carburetor and replace them with a model that will stay in tune. They should also be required to put a clamp on the vacum plug fitting so that it does not blow off whenever there is back pressure in the manifold.



June 30, 1980

Regional Governmental Affairs Office Ford Motor Company

Suite 260 – 925 L Street Sacramento, California 95814 Telephone: 916/442-0111

Honorable Sally Tanner Member of the Assembly State Capitol - Room 5144 Sacramento, California 95814

RE:

Assembly Bill 2705 OPPOSE

Dear Assemblywoman Tanner:

Ford Motor Company continues to oppose your Assembly Bill 2705, relating to new car warranties, as amended on June 27, 1980.

We believe no such law is needed to aid purchasers in obtaining proper warranty service, as there are sufficient statutes on the books. We also believe that Ford's Consumer Appeals Boards in California provide additional protection to new car buyers, and from all of our experience to date, these Boards are effective and cost efficient. Certainly such an approach is preferable to the formal litigation envisioned by your bill.

Ford appreciates your using some of our suggested amendments to clarify drafting and procedural problems. Your bill, however, is still not necessary and we feel it will deprive consumers of many rights they currently have by requiring litigation to resolve vehicle service complaints.

Sincerely,

RICHARD L. DUGALLY Regional Manager

Governmental Affairs

RLD: cme

cc: Members, Senate Judiciary Committee

bcc: Mr. Richard Thomson

### DISTRICT ATTORNEY



# COUNTY OF SANTA CRUZ

GOVERNMENTAL CENTER

(408) 425-2071 CRIMINAL (408) 425-2225 CHILD SUPPORT

ARTHUR DANNER III
DISTRICT ATTORNEY

RAY BELGARD
CHIEF INSPECTOR

P. O. BOX 1159 701 OCEAN STREET SANTA CRUZ, CALIFORNIA 95061

June 26, 1980

Robert Wilson Chairman Senate Judiciary Committee State Capitol Sacramento, CA 95814

Dear Senator Wilson:

AB 2705 will be heard in Senate Judiciary on Tuesday morning, July 1, 1980. This bill, if enacted, would provide consumers in California with a recourse from lemon automobiles.

Kathie Klass, Consumer Coordinator on my staff has appeared before your committee with interest in improving the automobile warranty laws in the area of "lemon" vehicles.

The Consumer Affairs Division receives between 40-50 complaints annually regarding recurring problems in new vehicles that seem to be unrepairable. Technically the Department of Motor Vehicles, (DMV) has jurisdiction on warranty complaints, otherwise the number of complaints would be higher in my office. The Consumer Affairs staff specializes in those problems that are beyond the jurisdiction of DMV. This bill will provide a recourse for consumers and your constiuents who have purchased lemon vehicles.

It is also my feeling that this bill will assist the auto industry in the following ways.

- 1. It will force them to evaluate and improve their quality control.
- 2. It will strengthen the relationship between the dealer and the factory representative.

3. The manufacturer will have to produce replacement parts at the time a vehicle is manufactured, (my office has been told that replacement parts are not manufacturered until after the initial new car production rush is completed.)

I appreciate your attention on the matter and encourage your "aye" vote.

Please don't hesitate to call me if I can be of assistance.

Sincerely,

Arthur Danner III District Attorney

AD/db

# SENATE COMMITTEE ON JUDICIARY

### 1979-80 REGULAR SESSION

AB 2705 (Tanner) As amended June 27 Civil Code

A

### MOTOR VEHICLE WARRANTIES -REPLACEMENTS & REFUNDS-

### HISTORY

Author Source:

Prior Legislation: None

Calif. Consumer Affairs Ass'n; Santa Cruz Support: County Consumer Affairs; County of LA Dept. of Consumer Affairs; San Francisco District Attorney; Santa Cruz District Attorney; Dept. of Consumer Affairs; Town of Fairfax; Consumer Advisory Council of the Dept. of Consumer Affairs;

San Francisco Consumer Action Group

Opposition: Ford Motor Company; Motor Vehicle Mfrs. Ass'n; Calif. Auto Dealer Ass'n; General Motors; Chrysler Corp.; California Manufacturers Ass'n

### KEY ISSUE

SHOULD AN AUTOMOTIVE MANUFACTURER HAVE TO REPLACE OR REFUND THE PRICE OF A VEHICLE WHICH IS UNMERCHANTABLE AS DEFINED?

### **PURPOSE**

Existing law requires a manufacturer to abide by the terms of his own warranty. Under both federal and state law the buyer is entitled to replacement of the goods or reimbursement if the manufacturer cannot service or repair the product "after a reasonable number of attempts." However, nothing

AB 2705 (Tanner) Page Two A B

in existing law requires an automobile manufacturer to replace, or reimburse the price of a vehicle which fails to meet a specific statutory standard.

This bill would require the manufacturer to replace, or reimburse the price of, a vehicle which had, during the first 12 months or 12,000 miles, a major defect (as defined) that had been repaired three or more times, or which had been out of service for 20 or more shop days for repairs.

The purpose of the bill is to provide an effective remedy for the automobile buyer who purchases a "lemon."

### COMMENT

# 1. Adoption of Ford language

The Assistant General Counsel of Ford Motor Co. in Detroit has prepared a nine-page, single-spaced analysis of this bill. In that analysis he redrafted practically every section as a way of showing both the existence and the method of eliminating technical problems.

The author has wisely redrafted this bill to adopt a great deal of the Ford draft. As a result, the bill's language has been much improved, and it is relatively free of technical difficulties.

# 2. Definition of "lemon"

This bill would apply only to new passenger vehicles or trucks of less than 6,000 pounds, sold for personal, family, or household use.

Under this bill an unmerchantable vehicle ("lemon") would be one which within the first 12 months or 12,000 miles -

(b) was out of service a total of more than 20 shop days for the repair of major defects. The 20 days would run from the preparation of the work order.

Existence of either condition would create a presumption of unmerchantability which could be rebutted pursuant to Evidence Code sec. 604.

Five percent of a \$6,000 car is \$300; 5% of \$10,000 is \$500. Ford Motor Co. has suggested that 10% would be more reasonable.

WITH TODAY'S PRICES, ARE \$300 DEFECTS SUFFICIENTLY MAJOR TO JUSTIFY REPLACEMENT OF THE VEHICLE?

# 3. Procedure for replacing "lemon"

If the buyer had a "lemon," as defined, he would obtain replacement or reimbursement as follows:

- (a) The buyer would notify the manufacturer's nearest branch for service matters and the dealer by registered mail of the conditions alleged to make the vehicle a "lemon."
- (b) Within 30 days after receipt the manufacturer's representative would examine the vehicle and notify the buyer in writing that he found no defect, found a defect which was the buyer's responsibility, a defect which could be repaired, or a defect which indeed made the vehicle unmerchantable.
- (c) If the manufacturer notified the buyer that the vehicle could be repaired, the buyer

B

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would deliver the vehicle for repair at a time mutually agreed upon. If, however, the defect continued after the repairs had been completed, the vehicle would be conclusively presumed to be unmerchantable.

(d) Where a vehicle was deemed unmerchantable by agreement of the manufacturer or because of the failure of repairs, the manufacturer would at his option either restore to the buyer the purchase price less depreciation or replace the "lemon" with a new or used vehicle of the same or comparable model.

# 4. Enforcement provisions

If the manufacturer refused to replace or reimburse, or to examine the vehicle, he could be sued by the buyer for the price of the vehicle less depreciation, and the cost of renting substitute vehicles.

If the court found that the losing party knew or should have known that there was no reasonable probability of success, the court could award reasonable attorney's fees to the prevailing party.

# 5. Limits on manufacturer's responsibility

The bill provides that the manufacturer would not be responsible if the condition of the vehicle resulted from abuse by the buyer, collision, or other conditions outside the control of the manufacturer or the dealer.

# 6. Cost of the program

The bill would require a manufacturer to provide all the warranty protection on a vehicle sold in California that he had offered on a comparable

AB 2705 (Tanner) Page Five A B

vehicle sold in any other state.

2 7 0

However, the bill specifically states that the manufacturer could increase the price of a new vehicle sold here by the amount "reasonably necessary" to meet the costs of this program.

# 7. Right to substitute vehicle

The bill would provide that at any time during the first 12 months or 12,000 miles, the possession of a vehicle for repairs by the dealer or manufacturer for more than 5 business days would entitle the buyer to a substitute vehicle.

The substitute vehicle would be provided by the manufacturer without cost to the buyer, other than for gas and oil.

## 8. Other provisions

# (a) Definition of "depreciation"

The bill would define "depreciation," for the purpose of determining the amount of reimbursement, as any loss of value incurred by abuse, by collision which was the buyer's fault, by lack of maintenance, by hard use or by normal use. "Normal use" would be calculated at a rate not to exceed 10¢ a mile or \$2 a day, but it would not be computed on the first 3,000 miles or first 90 days.

SHOULD NOT DEPRECIATION BE COUNTED ON ALL USE?

# (b) Description of repairs

The bill would require the dealer or manufacturer making any repair to give the buyer a copy of the repair order, including the warranty reimbursement cost of repair.

AB 2705 Page Six		A
(c)	Notice to the buyer of this bill  The bill would require a new car dealer to supply to a buyer a written notice of the existence of the provisions of this bill.	2 7 0 5

Ta mer OK'd as to tor.

RECEIVED LEGISLATIVE COUNSEL

Jun 30 2 33 PM '80

AMENDMENTS TO ASSEMBLY BILL 2705

AS AMENDED IN SENATE JUNE 27, 1980

AMENDMENT 1

On page 6 of the printed bill, line 7, as amended in the Senate June 27, 1980, after "1797.114." insert:

No depreciation shall be calculated on any car for the first 3,000 miles or first 90 days of use, depending upon which method of measuring depreciation is used.

### STATE OF CALIFORNIA

Supreme Court of California

### PROOF OF SERVICE

# STATE OF CALIFORNIA

Supreme Court of California

Case Name: RODRIGUEZ v. FCA

US

Case Number: **S274625**Lower Court Case Number: **E073766** 

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Date

# /s/Shane McKenzie

Signature

### McKenzie, Shane (228978)

Last Name, First Name (PNum)

### Horvitz & Levy LLP

Law Firm