

No. S266034

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

LISA NIEDERMEIER,
Plaintiff and Respondent,

v.

FCA US LLC,
Defendant and Appellant.

California Court of Appeal
Second Appellate District, Division One
No. B293960
Superior Court of Los Angeles County
Hon. Daniel S. Murphy, Judge
No. BC638010

EXHIBITS TO FCA US LLC'S MOTION FOR JUDICIAL NOTICE

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Attorneys for Defendant and Appellant FCA US LLC

Exhibits To FCA's Motion For Judicial Notice		
Exhibit	Description	Pages
A	Legislative History for Assembly Bill 3560 of 1982	3-70
B	Legislative History for Assembly Bill 1367 of 1987	71-303
C	Order, <i>Niedermeier v. FCA US LLC</i> , Case No. BC638010 (Sup. Ct. Nov. 28, 2018)	304-07

ASSEMBLY BILL

No. 3560

Introduced by Assemblywoman Tanner

March 15, 1982

An act to add Section 1794 to, and to repeal Sections 1794 and 1794.2 of, the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 3560, as introduced, Tanner. Warranties.

Existing provisions of the Song-Beverly Consumer Warranty Act specify remedies for a willful breach of consumer warranties including a right to recover 3 times actual damages plus attorney's fees.

This bill would provide that a buyer of consumer goods shall have specified remedies for a failure to comply with warranty or related obligations, including damages measured in accordance with provisions of the Commercial Code, plus attorney's fees, and in certain cases if the failure to comply was willful, in addition to actual damages a penalty not to exceed 2 times actual damages.

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

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

- 1 SECTION 1. Section 1794 of the Civil Code is
- 2 repealed.
- 3 ~~1794. Any buyer of consumer goods injured by a~~
- 4 ~~willful violation of the provisions of this chapter or a~~
- 5 ~~willful violation of the implied or express warranty or~~
- 6 ~~service contract may bring an action for the recovery of~~
- 7 ~~three times the amount of actual damages and other legal~~
- 8 ~~and equitable relief, and, if the buyer prevails in any~~



1 action brought under this section, he or she may be
2 allowed by the court to recover as part of the judgment
3 a sum equal to the aggregate amount of costs and
4 expenses (including attorney's fees based on actual time
5 expended) determined by the court to have been
6 reasonably incurred by the plaintiff for or in connection
7 with the commencement and prosecution of such action.

8 SEC. 2. Section 1794 is added to the Civil Code, to
9 read:

10 1794. (a) Any buyer of consumer goods who is
11 damaged by a failure to comply with any obligation
12 under this chapter or under an implied or express
13 warranty or service contract may bring an action for the
14 recovery of damages and other legal and equitable relief.

15 (b) The measure of the buyer's damages in an action
16 under this section shall be as follows:

17 (1) Where the buyer has rightfully rejected or
18 justifiably revoked acceptance of the goods or has
19 exercised any right to cancel the sale, Sections 2711, 2712,
20 and 2713 of the Commercial Code shall apply.

21 (2) Where the buyer has accepted the goods, Sections
22 2714 and 2715 of the Commercial Code shall apply, and
23 the measure of damages shall include the cost of repairs
24 necessary to make the goods conform.

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

33 (d) If the buyer prevails in an action under this
34 section, the buyer may be allowed by the court to recover
35 as part of the judgment a sum equal to the aggregate
36 amount of costs and expenses, including attorney's fees
37 based on actual time expended, determined by the court
38 to have been reasonably incurred by the buyer in
39 connection with the commencement and prosecution of
40 such action, unless the court in its discretion determines



1 that such an award of attorney's fees would be
2 inappropriate.

3 SEC. 3. Section 1794.2 of the Civil Code is repealed.
4 ~~1794.2.~~ The provision of Section ~~1794~~ authorizing the
5 recovery of three times the amount of the buyer's actual
6 damages shall not apply to either of the following:

7 (a) A cause of action commenced or maintained
8 pursuant to Section 382 of the Code of Civil Procedure or
9 pursuant to Section 1781 of this code.

10 (b) A judgment based solely on a breach of the
11 implied warranty of merchantability, or, where present,
12 the implied warranty of fitness.

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Assembly Bill No. 3560

CHAPTER 385

An act to add Section 1794 to, and to repeal Sections 1794 and 1794.2 of, the Civil Code, relating to warranties.

[Approved by Governor July 4, 1982. Filed with
Secretary of State July 4, 1982.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3560, Tanner. Warranties.

Existing provisions of the Song-Beverly Consumer Warranty Act specify remedies for a willful breach of consumer warranties including a right to recover 3 times actual damages plus attorney's fees.

This bill would provide that a buyer of consumer goods shall have specified remedies for a failure to comply with warranty or related obligations, including damages measured in accordance with provisions of the Commercial Code, plus attorney's fees, and in certain cases if the failure to comply was willful, in addition to actual damages a penalty not to exceed 2 times actual damages.

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

SECTION 1. Section 1794 of the Civil Code is repealed.

SEC. 2. Section 1794 is added to the Civil Code, to read:

1794. (a) Any buyer of consumer goods who is damaged by a failure to comply with any obligation under this chapter or under an implied or express warranty or service contract may bring an action for the recovery of damages and other legal and equitable relief.

(b) The measure of the buyer's damages in an action under this section shall be as follows:

(1) Where the buyer has rightfully rejected or justifiably revoked acceptance of the goods or has exercised any right to cancel the sale, Sections 2711, 2712, and 2713 of the Commercial Code shall apply.

(2) Where the buyer has accepted the goods, Sections 2714 and 2715 of the Commercial Code shall apply, and the measure of damages shall include the cost of repairs necessary to make the goods conform.

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

(d) If the buyer prevails in an action under this section, the buyer



may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action, unless the court in its discretion determines that such an award of attorney's fees would be inappropriate.

SEC. 3. Section 1794.2 of the Civil Code is repealed.

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VOLUME 2
CALIFORNIA LEGISLATURE
AT SACRAMENTO

KELLER & STALLARD
P. O. BOX 1817
WOODLAND, CA 95695

1981-82 REGULAR SESSION
1981-82 FIRST EXTRAORDINARY SESSION

ASSEMBLY FINAL HISTORY

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

Assembly Convened December 1, 1980
Recessed December 2, 1980
Recessed April 9, 1981
Recessed July 7, 1981
Recessed July 10, 1981
Recessed September 15, 1981
Recessed April 1, 1982
Recessed June 30, 1982
Reconvened January 5, 1981
Reconvened April 20, 1981
Reconvened July 10, 1981
Reconvened August 10, 1981
Reconvened January 4, 1982
Reconvened April 12, 1982
Reconvened August 2, 1982
Adjourned September 1, 1982
Adjourned Sine Die November 30, 1982
Legislative Days..... 248

HON. WILLIE L. BROWN, JR.
Speaker

HON. LEO T. McCARTHY
Speaker pro Tempore
HON. MIKE ROOS
Majority Floor Leader

HON. TOM BANE
Assistant Speaker pro Tempore
HON. ROBERT W. NAYLOR
Minority Floor Leader

Compiled Under the Direction of
JAMES D. DRISCOLL
Chief Clerk

GUNVOR ENGLE
History Clerk

LEGISLATIVE INTENT SERVICE (800) 666-1917



A.B. No. 3559—Thurman.

An act to add Section 5408.5 to the Business and Professions Code, relating to outdoor advertising.

1982

- Mar. 15—Read first time. To print.
 Mar. 16—From printer. May be heard in committee April 15.
 Mar. 25—Referred to Com. on B. & P.
 April 27—From committee chairman, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.
 April 28—Re-referred to Com. on B. & P.
 May 20—Joint Rule 61 suspended. From committee: Do pass. To Consent Calendar. (May 4.)
 May 24—Read second time. To Consent Calendar.
 May 28—Read third time, passed, and to Senate. (Ayes 69. Noes 0. Page 13858.)
 June 1—In Senate. Read first time. To Com. on RLS. for assignment.
 June 2—Referred to Com. on TRANS.
 June 9—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on TRANS.
 Aug. 5—From committee: Do pass. (Ayes 6. Noes 0.)
 Aug. 9—Read second time. To third reading.
 Aug. 17—Read third time, passed, and to Assembly. (Ayes 37. Noes 0. Page 13306.)
 Aug. 18—In Assembly. Concurrence in Senate amendments pending. Ordered to Special Consent Calendar.
 Aug. 23—Senate amendments concurred in. To enrollment. (Ayes 78. Noes 0. Page 17507.)
 Aug. 26—Enrolled and to the Governor at 5 p.m.
 Sept. 7—Approved by the Governor.
 Sept. 8—Chaptered by Secretary of State—Chapter 771, Statutes of 1982.

A.B. No. 3560—Tanner.

An act to add Section 1794 to, and to repeal Sections 1794 and 1794.2 of, the Civil Code, relating to warranties.

1982

- Mar. 15—Read first time. To print.
 Mar. 16—From printer. May be heard in committee April 15.
 Mar. 30—Referred to Com. on C.P. & T.M.
 April 28—From committee: Do pass. To Consent Calendar. (April 27.)
 April 29—Read second time. To Consent Calendar.
 May 6—Read third time, passed, and to Senate. (Ayes 66. Noes 0. Page 12892.)
 May 6—In Senate. Read first time. To Com. on RLS. for assignment.
 May 13—Referred to Com. on JUD.
 June 16—From committee: Do pass. To Consent Calendar.
 June 17—Read second time. To Consent Calendar.
 June 21—Read third time, passed, and to Assembly. (Ayes 32. Noes 0. Page 11182.)
 June 21—In Assembly. To enrollment.
 June 22—Enrolled and to the Governor at 4 p.m.
 July 4—Approved by Governor.
 July 4—Chaptered by Secretary of State—Chapter 385, Statutes of 1982.



ASSEMBLYWOMAN SALLY TANNER, CHAIRWOMAN

HEARING DATE:

AB 3560 (Tanner), as introduced March 15, 1982

April 27, 1982

SUBJECT:

Consumer warranties: consolidation of buyer's remedies.

DIGEST:

Existing state and federal laws provide buyers of consumer goods with legal remedies for breach of an express or implied warranty and for violations of consumer warranty laws. These laws permit a buyer to recover actual damages, equitable relief, legal costs (including attorney's fees) and in some cases, treble damages.

This bill would consolidate all of these existing buyer's remedies and incorporate them into a single, rewritten provision of California's Song-Beverly Consumer Warranty Act.

FISCAL EFFECT:

This is not a fiscal bill.

STAFF COMMENTS:

1. A buyer's remedies for willful (intentional) and non-willful (negligent) breaches of warranty or violations of warranty law are found in California's Song-Beverly Act, the California Commercial Code, state general contract laws, and the federal Magnuson-Moss Consumer Warranty Act.
2. This bill is sponsored by the Department of Consumer Affairs. The sponsor states that because the buyer's rights are located in different statutes, buyers and sellers are both often unaware they even exist. Legal enforcement can also be difficult and confusing.

The sponsor states that consolidating all of these remedies in a single state law will make them more accessible to all of the parties to a consumer transaction and thereby foster less misunderstanding and more voluntary resolution of disputes.

3. This bill would not create any new buyer remedies which do not already exist. The bill does, however, clarify one aspect of California's Commercial Code by specifically including the cost of repairs which are necessary to make goods conform to the warranty where the buyer has accepted non-conforming goods.

PREPARED BY:

AB 3560

Jay DeFuria
April 26, 1982



AB 3560 (Tanner)
As introduced
Civil Code
RT

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B

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0

CONSUMER WARRANTIES
-REMEDIES-

HISTORY

Source: Dept. of Consumer Affairs

Prior Legislation: None

Support: Unknown

Opposition: No Known

Assembly floor vote: Ayes 66 - Noes 0.

(800) 666-1917

KEY ISSUE

SHOULD EXISTING REMEDIES FOR THE ENFORCEMENT OF A CONSUMER WARRANTY BE RECODIFIED IN A SINGLE SECTION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT?

LEGISLATIVE INTENT SERVICE

PURPOSE

Under existing law remedies for breach of a consumer warranty are found in the Commercial Code, general contract law, and the federal Magnuson-Moss Act, as well as in the Song-Beverly Consumer Warranty Act. No single provision of law states all of these remedies

This bill would repeal and reenact the remedies provision of the Song-Beverly Act so as to state all existing remedies for the breach of a consumer warranty. The bill would neither add to nor subtract from remedies under existing law.

(More)

The purpose of the bill is to provide a single section which judges and attorneys may consult in order to find the existing remedies for a breach of a consumer warranty.

COMMENT

1. Need for bill

Plaintiffs point out that provisions regarding the enforcement of promises contained in warranties are presently to be found in four separate areas of the codes. The Commercial Code contains provisions with respect to any warranty, whether or not the buyer of the goods in question is a consumer. The Song-Beverly Act contains provisions applicable only to warranties received by consumers. The federal Magnuson-Moss Act contains similar but not identical provisions to those in Song-Beverly. And, in addition, there are other applicable provisions in those Civil Code sections relating to general contract law.

As a result of this dispersion, and a lack of cross-referencing, both litigants and judges have had difficulty in determining exactly what remedies were available to plaintiffs in breach warranty cases.

2. Benefit to warrantors

The clarification of available remedies would be of benefit mainly to the recipient of a warranty. The bill also contains, however, provisions of benefit to the issuer of the warranty.

(More)

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First, under the existing language in Song-Beverly, there are no limits on the kind or extent of damages that may be awarded except those which an individual judge may impose. This bill would adopt the contract measure of damages, as provided in Commercial Code Sections 2711 through 2715, for awards under Song-Beverly.

Second, the bill would clarify language in Song-Beverly to make it explicit that courts would have discretion not to award attorney's fees whenever such an award would be inappropriate.

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LEGISLATIVE INTENT SERVICE


SENATE COMMITTEE ON JUDICIARY

BACKGROUND INFORMATION

AB 3560

MAY 15 1982

1. Source

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

*California Department of Consumer Affairs - sponsor
322-4292: Mary Ann Moore / Richard Elbrecht*

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

None

- (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?

AB 3324 (Fenton) - 1980

2. Purpose

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

The lack of accessibility and coherency surrounding a consumer's existing legal remedies for breach of warranty and violation of warranty laws which makes it difficult to understand and enforce the current law. This bill is designed to incorporate all the existing legal remedies in a single section of California's Song-Bernet Act.

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.

See attached -

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



1020 N STREET, SACRAMENTO, CALIFORNIA 95814

(916) 445-5126



EXPLANATION AND ANALYSIS OF

AB 3560 (Tanner)

A Consumer Law "Housekeeping" Bill
On Buyer Remedies for Breach of Warranty

March 1982

LEGISLATIVE INTENT SERVICE (800) 666-1917



SP-2

AB 3560 (Tanner) is sponsored by the Department of Consumer Affairs.

This bill is essentially a consumer law "housekeeping" bill whose function is to make our consumer warranty law more coherent, rational, understandable and effective.

The bill does not add to the law any substantive legal obligation that is not already present in one or more of our consumer warranty statutes.

The bill's purpose and function is to consolidate and restate in a single section of the Song-Beverly Consumer Warranty Act the remedies now available to buyers under the Song-Beverly Act and other California and federal laws.

This bill strives to make the song-Beverly Act more coherent, rational and intelligible. Both those who extend consumer product warranties, and those who receive them, have a vital interest in the coherence, rationality and intelligibility of the law.

Explanation of Warranty Remedies Provision

Civil Code §§ 1794 and 1794.2, part of the Song-Beverly Act, express the basic rules on buyer remedies:

1794. Any buyer of consumer goods injured by a willful violation of the provisions of this chapter or a willful violation of the implied or express warranty or service contract may bring an action for the recovery of three times the amount of actual damages and other legal and equitable relief, and, if the buyer prevails in any action brought under this section, he or she may be allowed by the court to recover as part of the judgment a sum equal



to the aggregate amount of costs and expenses (including attorney's fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action.

1794.2. The provision of Section 1794 authorizing the recovery of three times the amount of the buyer's actual damages shall not apply to either of the following:

(a) A cause of action commenced or maintained pursuant to Section 382 of the Code of Civil Procedure or pursuant to Section 1781 of this code.

(b) A judgment based solely on a breach of the implied warranty of merchantability, or, where present, the implied warranty of fitness.

AB 3~~650~~⁶⁵⁰ would consolidate §§ 1794 and 1794.2 and would enact a new § 1794 which would provide as follows:

1794. (a) Any buyer of consumer goods who is damaged by a failure to comply with any obligation under this chapter or under an implied or express warranty or service contract may bring an action for the recovery of damages and other legal and equitable relief.

(b) The measure of the buyer's damages in an action under this section shall be as follows:

(1) Where the buyer has rightfully rejected or justifiably revoked acceptance of the goods or has exercised any right to cancel the sale, Sections 2711, 2712 and 2713 of the Commercial Code shall apply.

(2) Where the buyer has accepted the goods, Sections 2714 and 2715 of the Commercial Code shall apply, and the measure of damages shall include the cost of repairs necessary to make the goods conform.

(c) If the buyer establishes that the failure to comply was willful, the judgment may include, in addition to the amounts recovered under subdivision (a), a civil penalty which shall not exceed two times the amount of actual damages. This subdivision shall not apply in any class action under Section 382

SP4



of the Code of Civil Procedure or Section 1781 of this code, or with respect to a claim based solely on a breach of an implied warranty.

(d) If the buyer prevails in an action under this section, the buyer may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action, unless the court in its discretion determines that such an award of attorney's fees would be inappropriate.

The purpose and effect of revised § 1794 is to provide a clear statement, in a single section of the Song-Beverly Act, of the buyer's basic remedies for breach of warranty and violation of the Act.

As the accompanying chart illustrates, the bill does not confer any remedy that buyers do not already enjoy -- whether under the federal Magnuson-Moss Consumer Warranty Act, the California Commercial Code, the general contract law of California, or the Song-Beverly Act.

The bill does restate and consolidate these remedies at a single location within the Song-Beverly Act, thus making them more accessible to all of the participants in retail sale transactions, including manufacturers, distributors, retailers, consumers, attorneys, others who advise consumers, and judges, including particularly Small Claims Court judges and court personnel.

The bill is not intended to foster more litigation over consumer warranties, and the Department of Consumer Affairs does not believe it will have that effect. Indeed, there is now no great



abundance of litigation under the Song-Beverly Act, either at the trial or appellate level. To the best of our knowledge, there is not a single reported appellate decision under the Song-Beverly Act, despite the fact that it has been on the books for about ten years.

We believe that the effect of this bill will be to foster the voluntary resolution of disputes by better defining the consequences to both parties if a resolution is not achieved. We believe that a greater degree of certainty in remedies that are available to the buyer will help resolve problems in a fair and equitable way, and will also reduce the chance of litigation. It is where the law and its consequences are uncertain that real problems are either not resolved, or that expensive litigation ensues.

At the hearings before the Assembly Committee on Labor, Employment and Consumer Affairs at San Diego in December, 1979, in which the Committee invited comment on new and used car automobile sale problems, a variety of witnesses testified to the inadequacy of our present laws. There was widespread agreement among those testifying that our present consumer warranty laws do not provide remedies that are adequate.

As the accompanying chart shows, however, the range of available legal remedies is quite broad. Yet, because they are spread among many different statutes, they are not reasonably accessible to buyers and their attorneys. A good example is the provision that motivated this amendment. While the Magnuson-Moss Act grants courts the power to assess actual damages and reasonable attorney's

SP 6



fees upon a finding of a breach of warranty that is not willful, the Song-Beverly Act requires a finding of "willfulness" before an award of attorney's fees can be made. The amendment to the remedy section originated in a complaint from a buyer who had prevailed in a suit but was not awarded a reasonable attorney's fee because the judge felt that the court did not have the power to make such an award unless the court could properly find that the breach of warranty was "willful".

Under present law, therefore, buyers would be well advised to proceed under both the federal Magnuson-Moss Consumer Warranty Act as well as the California Song-Beverly Warranty Act, taking their chances with each. But these elements of chance and "game" are unacceptable as a matter of public policy, we believe. Whether a particular buyer is treated justly depends less on the actual merits of his or her case than on the sophistication of his or her lawyer. Since our consumer warranty laws must be relatively self-executing in order to be successful, we find it difficult to accept uncertainties of this kind.

Warrantors too have a vital interest in achieving a reasonable degree of certainty in remedies. Now, the provision on damages in the Song-Beverly Act is open-ended. There are no limits on the kind or extent of damages that may be awarded, except those which an individual judge may impose. That too is a degree of uncertainty that we find difficult to accept. The uncertainty can cut both ways for all parties to a consumer warranty transaction, since the uncertainty will make it difficult to assess the risks

SP7



of trial and will result in settlements that will depend on factors other than the real merits of the case.

As a result of the amendment proposed by the Association of California Insurance Companies, which we have accepted, the contract measure of damages, as set forth in §§ 2711-2715 of the California Commercial Code, would apply in all actions under the Song-Beverly Act. And to resolve a major unresolved question under the California Commercial Code, the bill explicitly states that the buyer's damages may include the necessary costs of repairs.

By cross-referencing to and incorporating the Commercial Code provisions on buyer remedies, the bill also brings into play the thousands of court decisions under the Commercial Code, and its predecessors, that have articulated principles of construction and application to the wide range of circumstances and situations that have been presented to the courts in the past. This too will enhance the degree of certainty of result to the benefit of everyone.

From an industry standpoint, the bill is also deserving of support, because of its inclusion of the federal Magnuson-Moss Act's language giving the courts explicit discretion not to award reasonable attorney's fees. While the present text of § 1794 also confers that power, the Magnuson-Moss Act's language is more explicit. Tracking the Magnuson-Moss Act's language will also help eliminate confusion on other points. Unless there is a good policy reason to the contrary, we feel that when both federal and



California statutes address the same issue in the same way, identical statutory language should be employed.

As we have explained above, the bill would include within the remedies language of the Song-Beverly Act an explicit right to recover actual damages (not treble damages) for an ordinary, non-willful breach of warranty, as well as reasonable attorney's fees. As we explained, these remedies are already conferred by the federal Magnuson-Moss Act, but we believe that we should not force consumers to utilize a federal law to enforce their rights in "garden variety" warranty disputes. There is also an industry interest in this particular change, which we would like to explain. Conferring Song-Beverly jurisdiction to resolve disputes in favor of the consumer without a finding of willfulness will also benefit warrantors. Now, in order to proceed under the Song-Beverly Act, consumers and their attorneys must search for proof of "willfulness". Just as a requirement of a finding of fault in divorce cases added to the bitterness and complexity of divorces as well as the length of trials and other personal and social costs, we feel that denying relief without a finding of willfulness tends to force consumers and their attorneys to pursue a less constructive approach to dispute resolution, focusing less on the merits of the problem than on the motivations of the parties. The focus instead ought to be on peaceable dispute resolution, including especially the actual merits of the claim, including the questions of whether there was a defect and whether the defect was covered by the warranty. (Of course, where there is a "willful" breach of



warranty, the courts should have the same power that they presently have to award penalty damages.)

This bill has been carefully developed. It will improve our law. It will make it more coherent, rational and understandable. It will promote voluntary compliance and will help promote the voluntary settlement of disputes.

We urge your support.

Thank you.

RAE:vc
(3/30/82)
Attachment

- (1) Buyer's Remedies Under California and Federal Consumer Warranty Law





1020 N STREET, SACRAMENTO, CALIFORNIA 95814



June 3, 1982

Honorable Omer Rains
Chairman
Senate Judiciary Committee
State Capitol, Room 2032
Sacramento, CA 95814

Dear Senator Rains:

The Department of Consumer Affairs is sponsoring AB 3560 (Tanner), legislation which would amend the Song-Beverly Consumer Warranty Act to provide purchasers of consumer goods with coherent, understandable remedies for violations of California's warranty laws. AB 3560 is scheduled to be heard in your committee on June 15th at 1:30 p.m.

This bill is essentially a consumer law "housekeeping" bill which does not add to existing law any substantive legal obligation that is not already present in consumer warranty statutes.

The bill's purpose and function is to consolidate and restate in a single location in the Song-Beverly Act the remedies now available under the Act and the federal Magnuson-Moss Consumer Warranty Act, the California Commercial Code, and the general contract law of California. The range of available legal remedies is broad, yet because they are spread among many different statutes, they are not reasonably accessible.

Specifically, AB 3560 would consolidate Sections 1794 and 1794.2 of the Civil Code and would enact a new Section 1794 to provide a clear statement of buyers' basic remedies for breach of warranty and violation of the Song-Beverly Act.

We believe the effect of this bill will be to foster the voluntary resolution of disputes by better defining the consequences to both parties if a resolution is not achieved. It is where the law and its consequences are uncertain that real problems are not resolved or that expensive litigation ensues.

The bill would include within the remedy language an explicit right to recover actual damages for an ordinary, non-willful breach of warranty, as well as reasonable attorney's fees. These remedies are already conferred by federal law. Conferring Song-Beverly jurisdiction to resolve disputes without finding of willfulness will benefit warrantors as well as consumers. Currently, in order to proceed, consumers and their attorneys must search for proof of "willfulness," focusing less on a constructive approach to dispute resolution than on the motivations of the parties.

SP-12




Honorable Omer Rains
Page two

This bill has been carefully developed and will improve our law by promoting voluntary compliance and voluntary settlement of disputes.

Included with this letter is a more comprehensive analysis of AB 3560. Should you wish further information, please contact our Legislative Unit at 322-4292.

Sincerely,



RICHARD B. SPOHN
Director

cc: Members, Senate Judiciary Committee
Assemblywoman Sally Tanner

LEGISLATIVE INTENT SERVICE (800) 666-1917



SR 13

CONSENT

SENATE DEMOCRATIC CAUCUS SENATOR PAUL B. CARPENTER Chairman	Bill No.: AB 3560 Amended: Original Author: Tanner (D) Vote Required: Majority Assembly Floor Vote: 66-0
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SUBJECT: Warranties

POLICY COMMITTEE: Judiciary

AYES: (6) Petris, Presley, Sieroty, Watson, Davis, Rains

NOES: (0)

SUMMARY OF LEGISLATION:

Existing provisions of the Song-Beverly Consumer Warranty Act specify remedies for a willful breach of consumer warranties including a right to recover 3 times actual damages plus attorney's fees.

This bill would provide that a buyer of consumer goods shall have specified remedies for a failure to comply with warranty or related obligations, including damages measured in accordance with provisions of the Commercial Code, plus attorney's fees, and in certain cases if the failure to comply was willful, in addition to actual damages a penalty not to exceed 2 times actual damages.

FISCAL EFFECT: None

PROPOSERS: (Verified by author 6-16-82)

Department of Consumer Affairs (sponsor)

OPPOSERS:

ARGUMENTS IN SUPPORT:

Proponents point out that provisions regarding the enforcement of promises contained in warranties are presently to be found in 4 separate areas of the codes. The Commercial Code contains provisions with respect to any warranty, whether or not the buyer of the goods in question is a consumer. The Song-Beverly Act contains provisions applicable only to warranties received by consumers. The federal Magnuson-Moss Act contains similar but not identical provisions to those in Song-Beverly. And, in addition, there are other applicable provisions in those Civil Code sections relating to general contract law.

CONTINUED

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ARGUMENTS IN SUPPORT, Continued:

As a result of this dispersion, and a lack of cross-referencing, both litigants and judges have had difficulty in determining exactly what remedies were available to plaintiffs in breach of warranty cases.

The clarification of available remedies would be of benefit mainly to the recipient of a warranty. The bill also contains, however, provisions of benefit to the issuer of the warranty.

First, under the existing language in Song-Beverly, there are no limits on the kind or extent of damages that may be awarded except those which an individual judge may impose. This bill would adopt the contract measure of damages, as provided in Commercial Code Sections 2711 through 2715, for awards under Song-Beverly.

Second, the bill would clarify language in Song-Beverly to make it explicit that courts would have discretion not to award attorney's fees whenever such an award would be inappropriate.

Assembly Bill 3560—An act to add Section 1794 to, and to repeal Sections 1794 and 1794.5 of, the Civil Code, relating to warranties.
Bill read third time.

Roll Call

The roll was called and the bill was passed by the following vote:

AYES (32)—Senators Ayala, Beverly, Boatwright, Campbell, Craven, Davis, Dills, Doebble, Ellis, Foran, Alex Garcia, Holmdahl, Johnson, Keene, Marks, Mello, Mills, Montoya, Nielsen, O'Keefe, Petris, Rains, Richardson, Robbins, Roberti, Russell, Schmitz, Seymour, Sieroty, Speraw, Stiern, and Watson.

NOES (0)—None.

Bill ordered transmitted to the Assembly.

6-21-82

p. 11182



SENATE REPUBLICAN CAUCUS

SENATOR KENNETH L. MADDY, Chairman

POSITIONS:

Source: Department of Consumer Affairs

BILL NUMBER: AB 3560

AUTHOR: Tanner

AMENDED COPY: Orig.
Majority Vote
CONSENT CALENDAR

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY		
BILL NO.:	AB 3560	
DATE OF HEARING:	6-15-82	
SENATORS:	AYE	NO
TOTAL:	60	

Assembly Floor Vote: 66-0/p. 12892 5-6-82

DIGEST

1 This bill, relating to existing remedies for the enforcement of a
 2 consumer warranty, repeals and reenacts the remedies provisions of
 3 the Song-Beverly Act so as to state all existing remedies. The
 4 bill does not add or subtract from remedies under current law,
 5 but rather consolidates all remedies.

7 FISCAL EFFECT: Appropriation, no. Fiscal Committee, no. Local, no.

9 COMMENTS

11 Under existing law remedies for breach of a consumer warranty are
 12 found in the Commercial Code, general contract law, and the federal
 13 Magnuson-Moss Act, as well as in the Song-Beverly Consumer Warranty
 14 Act. No single provision of law states all of these remedies.

16 Plaintiffs point out that provisions regarding the enforcement of
 17 promises contained in warranties are presently to be found in four
 18 separate areas of the codes. The Commercial Code contains provi-
 19 sions with respect to any warranty, whether or not the buyer of
 20 the goods in question is a consumer. The Song-Beverly Act contains
 21 provisions applicable only to warranties received by consumers.
 22 The federal Magnuson-Moss Act contains similar but not identical
 23 provisions to those in Song-Beverly. And, in addition, there are
 24 other applicable provisions in those Civil Code sections relating
 25 to general contract law.

-Next Page -

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1 As a result of this dispersion, and a lack of cross-referencing,
2 both litigants and judges have had difficulty in determining exactly
3 what remedies were available to plaintiffs in breach of warranty
4 cases.
5

6 According to the Senate Judiciary Committee analysis, the clarifica-
7 tion of available remedies would be of benefit mainly to the
8 recipient of a warranty. The bill also contains, however, provisions
9 of benefit to the issuer of the warranty.
10

11 First, under the existing language in Song-Beverly, there are no
12 limits on the kind or extent of damages that may be awarded except
13 those which an individual judge may impose. This bill would adopt
14 the contract measure of damages, as provided in Commercial Code
15 Sections 2711 through 2715, for awards under Song-Beverly.
16

17 Second, the bill would clarify language in Song-Beverly to make it
18 explicit that courts would have discretion not to award attorney's
19 fees whenever such an award would be inappropriate.
20

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22 6/17/82:mh
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*CALIFORNIA LEGISLATURE
ASSEMBLY COMMITTEE*

on

*CONSUMER PROTECTION AND
TOXIC MATERIALS*

ROOM 4146 STATE CAPITOL
(916) 445-0991

CHAIRWOMAN
SALLY TANNER

June 29, 1982



Honorable Edmund G. Brown, Jr.
Governor of California
State Capitol
Sacramento, California

Dear Governor Brown:

Re: AB 3560: Warranties on consumer goods -
consolidation of buyer's legal remedies

Assembly Bill 3560 has been passed by the Legislature and is before you for your approval and signature.

Under existing law, a buyer's remedies for breach of a consumer warranty are found in the Commercial Code, general contract law, and the federal Magnuson-Moss Act, as well as the Song-Beverly Consumer Warranty Act. Because these remedies are spread throughout several different statutes without cross-referencing, both the parties to a consumer transaction, as well as our judges have difficulty in ascertaining what remedies are available to the buyer for a breach of warranty.

A.B. 3560 would amend California's Song-Beverly Act to incorporate all of the buyer's legal remedies for breach of warranty into a single, comprehensive provision. The bill would also adopt the Commercial Code's contract measure of damages, including necessary costs of repairs, for awards under the Song-Beverly Act. Finally, the bill would clarify that a judge's discretion to award attorney's fees to a prevailing buyer also includes the discretion not to award such fees when such an award would be inappropriate.

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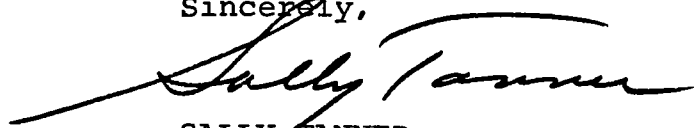
Honorable Edmund G. Brown, Jr.

Page Two

A.B. 3560 was introduced at the request of the Department of Consumer Affairs which supports its enactment. The bill would not create or delete any of the buyer's current legal remedies for breach of warranty, but rather make them more accessible to everyone. The bill has received no opposition.

I respectfully request your approval and signature.

Sincerely,



SALLY TANNER
Assemblywoman, 60th District

ST:mlv

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ASSEMBLYWOMAN SALLY TANNER, CHAIRWOMAN

HEARING DATE:

April 27, 1982

AB 3560 (Tanner), as introduced March 15, 1982

SUBJECT:

Consumer warranties: consolidation of buyer's remedies.

DIGEST:

Existing state and federal laws provide buyers of consumer goods with legal remedies for breach of an express or implied warranty and for violations of consumer warranty laws. These laws permit a buyer to recover actual damages, equitable relief, legal costs (including attorney's fees) and in some cases, treble damages.

This bill would consolidate all of these existing buyer's remedies and incorporate them into a single, rewritten provision of California's Song-Beverly Consumer Warranty Act.

FISCAL EFFECT:

This is not a fiscal bill.

STAFF COMMENTS:

1. A buyer's remedies for willful (intentional) and non-willful (negligent) breaches of warranty or violations of warranty law are found in California's Song-Beverly Act, the California Commercial Code, state general contract laws, and the federal Magnuson-Moss Consumer Warranty Act.
2. This bill is sponsored by the Department of Consumer Affairs. The sponsor states that because the buyer's rights are located in different statutes, buyers and sellers are both often unaware they even exist. Legal enforcement can also be difficult and confusing.

The sponsor states that consolidating all of these remedies in a single state law will make them more accessible to all of the parties to a consumer transaction and thereby foster less misunderstanding and more voluntary resolution of disputes.

3. This bill would not create any new buyer remedies which do not already exist. The bill does, however, clarify one aspect of California's Commercial Code by specifically including the cost of repairs which are necessary to make goods conform to the warranty where the buyer has accepted non-conforming goods.

PREPARED BY:

AB 3560

Jay DeFuria
April 26, 1982

FCA MJN 33



A-3

SENATE COMMITTEE ON JUDICIARY

1981-82 Regular Session

AB 3560 (Tanner)
As introduced
Civil Code
RT

CONSUMER WARRANTIES
-REMEDIES-

HISTORY

Source: Dept. of Consumer Affairs
Prior Legislation: None
Support: Unknown
Opposition: No Known
Assembly floor vote: Ayes 66 - Noes 0.

KEY ISSUE

SHOULD EXISTING REMEDIES FOR THE ENFORCEMENT OF A CONSUMER WARRANTY BE RECODIFIED IN A SINGLE SECTION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT?

PURPOSE

Under existing law remedies for breach of a consumer warranty are found in the Commercial Code, general contract law, and the federal Magnuson-Moss Act, as well as in the Song-Beverly Consumer Warranty Act. No single provision of law states all of these remedies.

This bill would repeal and reenact the remedies provision of the Song-Beverly Act so as to state all existing remedies for the breach of a consumer warranty. The bill would neither add to nor subtract from remedies under existing law.

(More)

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The purpose of the bill is to provide a single section which judges and attorneys may consult in order to find the existing remedies for a breach of a consumer warranty.

COMMENT

1. Need for bill

Plaintiffs point out that provisions regarding the enforcement of promises contained in warranties are presently to be found in four separate areas of the codes. The Commercial Code contains provisions with respect to any warranty, whether or not the buyer of the goods in question is a consumer. The Song-Beverly Act contains provisions applicable only to warranties received by consumers. The federal Magnuson-Moss Act contains similar but not identical provisions to those in Song-Beverly. And, in addition, there are other applicable provisions in those Civil Code sections relating to general contract law.

As a result of this dispersion, and a lack of cross-referencing, both litigants and judges have had difficulty in determining exactly what remedies were available to plaintiffs in breach of warranty cases.

2. Benefit to warrantors

The clarification of available remedies would be of benefit mainly to the recipient of a warranty. The bill also contains, however, provisions of benefit to the issuer of the warranty.

(More)

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First, under the existing language in Song-Beverly, there are no limits on the kind or extent of damages that may be awarded except those which an individual judge may impose. This bill would adopt the contract measure of damages, as provided in Commercial Code Sections 2711 through 2715, for awards under Song-Beverly.

Second, the bill would clarify language in Song-Beverly to make it explicit that courts would have discretion not to award attorney's fees whenever such an award would be inappropriate.

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LEGISLATIVE INTENT SERVICE





1020 N STREET, SACRAMENTO, CALIFORNIA 95814



REQUEST FOR APPROVAL OF PROPOSED LEGISLATION

STATE & CONSUMER SERVICES AGENCY

DEPARTMENT: Consumer Affairs		BILL CONTROL NO.: SCS 82-27	
TITLE: Buyer's Remedies for Warranty Violations			
PROBLEM: Although the Song-Beverly Act was designed to be a comprehensive consumer product warranty act, it currently fails to (1) provide a buyer with a right to his/her actual damages for a warrantor's "nonwilful" (e.g., only negligent) warranty violations, or (2) allow a court to grant reasonable attorney's fees and court costs when the buyer prevails in such legal action. Instead, the buyer must generally seek expert legal representation in order to pursue these remedies for nonwilful warranty violations under other state laws (California Commercial Code, negligence principles) or federal law (Magnuson-Moss Act). A technical amendment is (cont.)			
PROPOSED SOLUTION (and alternatives): Amend the remedy provisions of the Song-Beverly Act to explicitly give the buyer the right to seek actual damages for "nonwilful" warranty violations and, where the buyer prevails in that legal action, reasonable attorney's fees and court costs. To accomplish that, we recommend a consolidation and simplification of the language at Civil Code Sections 1794 and 1794.2 and the enactment of a new Section 1794, which would provide a clear statement, in a single section of the Song-Beverly Act, of the buyer's basic remedies for breach of warranty and violation of the Act, thus making them more accessible to all of the participants in retail sale transactions, including manufacturers, distributors, retailers, consumers, attorneys, others who advise consumers, and			
FISCAL IMPACT: None		CIVIL & HUMAN RIGHTS IMPACT: In general, warranty legislation was enacted to improve the adequacy of information available to consumers, prevent deception and improve competition in the marketing of consumer products. Providing buyers with these remedies would help protect those at a comparative disadvantage in the marketplace. The proposal seeks to advance the mutual best interests of all the participants in a retail warranty transaction.	
LEGISLATIVE HISTORY: This proposal was approved for introduction as part of last year's SCS-81-73, and in 1980 as SCS-80-33. SCS-80-33 was introduced as AB 3324 (Fenton) which eventually failed passage in the Senate Judiciary Committee because of deadline problems.			
SUGGESTED AUTHOR: Assemblyman Byron Sher		GOVERNOR'S OFFICE USE	
DEPARTMENT HEAD:	DATE:	AGENCY HEAD:	DATE:
<i>[Signature]</i>		4/5/81	
99D-5 (Rev. 12/75)		APPROVED AUTHOR:	

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PROBLEM (cont.)

needed to resolve this problem.

PROPOSED SOLUTION (cont.)

judges, including particularly small claims court judges and court personnel. The effect of this bill would be to foster the voluntary resolution of disputes by better defining the consequences to both parties if a resolution is not achieved. A greater degree of certainty in remedies that are available to the buyer would help resolve problems in a fair and equitable way and also reduce the chance of litigation. It is where the law and its consequences are uncertain that real problems are either not resolved, or that expensive litigation ensues.





1020 N STREET, SACRAMENTO, CALIFORNIA 95814

(916) 445-5126



EXPLANATION AND ANALYSIS OF

AB 3324 (Fenton)

A Consumer Law "Housekeeping" Bill
On Warranty Disclosure and Buyer Remedies

October 1980

LEGISLATIVE INTENT SERVICE (800) 666-1917



AB 3324 (Fenton) is sponsored by the Department of Consumer Affairs.

This bill is essentially a consumer law "housekeeping" bill whose function is to make our consumer warranty law more coherent, rational, understandable and effective.

The following analysis will show that this bill will benefit all of the participants in consumer warranty transactions, including manufacturers, retail sellers and consumers.

The bill does not add to the law any substantive legal obligation that is not already present in one or more of our consumer warranty statutes.

The bill's purpose and function is to reconcile federal and California warranty disclosure requirements, and consolidate and restate in a single section of the Song-Beverly Consumer Warranty Act the remedies now available to buyers under the Song-Beverly Act and other California and federal laws.

The bill seeks to advance the mutual best interests of all of the participants in a retail warranty transaction. One of these areas of common interest is the basic coherence, rationality and intelligibility of our laws. This bill strives to make the Song-Beverly Act more coherent, rational and intelligible in two discreet areas: first, warranty disclosure; and second, buyer remedies.

Both those who extend consumer product warranties, and those who receive them have a vital interest in the coherence, rationality and intelligibility of the law in each of these areas.

We will address each of these areas in turn.



Amendment to Warranty Disclosure Provision

The Song-Beverly Consumer Warranty Act (Civil Code §§ 1790-1795.7) is a comprehensive consumer product warranty law. Its scope includes substantive and procedural rights and duties, provisions on disclosure of warranty information, and remedies for breach of warranty and violations of the Act.

As presently written, Civil Code § 1793.1(a), part of the Song-Beverly Act, requires manufacturers, distributors and sellers who issue written warranties in connection with retail sales of goods and services to --

fully set forth such warranties in readily understood language and clearly identify the party making such warranties.

SB 3324 would amend this language to require warrantors to --

fully set forth such warranties in simple and readily understood language, which shall clearly identify the party making such express warranties, and which shall conform to the federal standards for disclosure of warranty terms and conditions set forth in the federal Magnuson-Moss Warranty Federal Trade Commission Improvement Act (15 U.S.C. 2301, et seq.) and in the regulations of the Federal Trade Commission (16 C.F.R. Part 701).

Both the California Song-Beverly Act and the federal Magnuson-Moss Consumer Warranty Act and FTC regulations (15 U.S.C. §§ 2301 and 2312 and 16 C.F.R. Part 701) mandate the disclosure of the terms and conditions of consumer product warranties. However, in our judgment the federal act has preempted the disclosure provisions of the California act at § 1793.1(a). Hence, while the Song-Beverly Act purports to require full disclosure of warranty terms and conditions, it does not have that legal effect.

The proposed amendment would explicitly require the warrantor



to comply with the standards set forth in the FTC regulations on disclosure of warranty terms and conditions, thus making the Song-Beverly Act, again, a comprehensive consumer product warranty law.

Since the Magnuson-Moss Act and the Song-Beverly Act have roughly the same scope of application, the bill would not impose any substantive requirements on California business firms in addition to those to which they are now subjected under federal law.

The major practical effect of the bill would be to educate California firms by informing them of the existence of the federal warranty disclosure requirements, and thus aid in voluntary compliance with the federal law. Now, many California firms appear to be unaware of the federal warranty disclosure requirements.

By including an explicit reference to the federal requirements in the text of the Song-Beverly Act, consumers and others who assist consumers are also more likely to learn about the disclosure requirements.

This bill would also have the legal effect of returning legal power to the DMV to enforce the legal principal that "simple and readily understood" warranty language must be utilized in consumer product warranties. If present § 1793.1(a) is preempted by the Magnuson-Moss Act, motor vehicle dealers who fail to comply with the disclosure provisions of either the federal or California warranty acts are not now subject to DMV licensing action under Vehicle Code § 11713(o). The bill will restore that power. (We have discussed this bill with the legislative personnel at the DMV and they concur in our analysis and objectives.)

Another legal effect of the bill will be to trigger the provisions on private remedies at Civil Code § 1794 upon a



violation of the disclosure standards. If § 1793.1(a) is preempted by the federal warranty act, consumers cannot utilize the remedy provisions of the Song-Beverly Act for disclosure violations, despite the fact that the provisions on remedies purport to apply to all Song-Beverly violations.

The question of preemption arises by virtue of § 111(c) of the federal Magnuson-Moss Act. Under § 111(c) of the federal warranty act, a state requirement which relates to labeling or disclosure with respect to written warranties or performance thereunder is rendered inapplicable to written warranties meeting federal standards if it is within the scope of an applicable requirement of the warranty act governing warranty disclosure provisions, designations or minimum standards (§§ 102, 103, and 104 or rules thereunder) and is not identical to such requirement. State requirements may be declared applicable to such transactions by the FTC, according to paragraph two of this provision, if an appropriate state agency applies and the FTC determines (pursuant to a rulemaking proceeding under §109) that the requirement in question gives more protection to consumers than does the warranty act and that it does not unduly burden interstate commerce. The state requirement will then be applicable to the extent specified by the FTC for as long as the state administers and enforces the requirement effectively. Another exception to § 111(c) is § 111(b), which preserves consumer rights or remedies under state law.

While the FTC has ruled that several of the Civil Code warranty provisions are not preempted (see 42 FR 54004 -- July 9, 1976), there has been no ruling on § 1793.1(a), as a result of which § 1793.1(a) is preempted. (If that subsection were determined



to be exempt from preemption, the other reasons in support of this proposal would still apply.)

The federal warranty disclosure provisions (see the copy of 16 C.F.R. Part 701) require that warranties on consumer products must contain:

The warrantor's name and mailing address.

Who is protected by the warranty, including any limitations (for example, a warranty protecting only the first owner).

Precisely what parts, components, or characteristics or properties the warranty covers and what it excludes.

What items or services the warrantor will pay for, and those, if any, for which the buyer must pay.

When the warranty term begins (if other than the date of purchase).

The warranty's duration (measured, for example, by time).

Whom to contact to obtain warranty service (including names, addresses, and telephone numbers).

Step-by-step instructions to follow to obtain service.

Any expenses the buyer may be required to pay.

The federal warranty disclosure provisions thus supplement and make more certain the Song-Beverly Act's general requirement that the terms and conditions of consumer product warranties in California must be set forth in "readily understood language". The federal provisions establish the specific "ground rules" for the writing of consumer product warranties, and, ultimately, should prove helpful to both warrantors and consumers by eliminating



misunderstandings regarding the scope and content of consumer product warranties.

It would seem to be good public policy to support the implementation of the federal warranty disclosure provisions. As noted above, including explicit reference to the federal provisions will help California firms comply by informing them of the existence of these requirements.

Amendment to Warranty Remedies Provision

Civil Code §§ 1794 and 1794.2, part of the Song-Beverly Act, express the basic rules on buyer remedies:

1794. Any buyer of consumer goods injured by a willful violation of the provisions of this chapter or a willful violation of the implied or express warranty or service contract may bring an action for the recovery of three times the amount of actual damages and other legal and equitable relief, and, if the buyer prevails in any action brought under this section, he or she may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses (including attorney's fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action.

1794.2. The provision of Section 1794 authorizing the recovery of three times the amount of the buyer's actual damages shall not apply to either of the following:

(a) A cause of action commenced or maintained pursuant to Section 382 of the Code of Civil Procedure or pursuant to Section 1781 of this code.

(b) A judgment based solely on a breach of the implied warranty of merchantability, or, where present, the implied warranty of fitness.

SB 3324 would consolidate §§ 1794 and 1794.2 and would enact a new § 1794 which would provide as follows:



1794. (a) Any buyer of consumer goods who is damaged by a failure to comply with any obligation under this chapter or under an implied or express warranty or service contract may bring an action for the recovery of damages and other legal and equitable relief.

(b) The measure of the buyer's damages in an action under this section shall be as follows:

(1) Where the buyer has rightfully rejected or justifiably revoked acceptance of the goods or has exercised any right to cancel the sale, Sections 2711, 2712 and 2713 of the Commercial Code shall apply.

(2) Where the buyer has accepted the goods, Sections 2714 and 2715 of the Commercial Code shall apply, and the measure of damages shall include the cost of repairs necessary to make the goods conform.

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

(d) If the buyer prevails in an action under this section, the buyer may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action, unless the court in its discretion determines that such an award of attorney's fees would be inappropriate.

The purpose and effect of revised § 1794 is to provide a clear statement, in a single section of the Song-Beverly Act, of the buyer's basic remedies for breach of warranty and violation of the Act.

As the accompanying chart illustrates, the bill does not confer any remedy that buyers do not already enjoy -- whether under the federal Magnuson-Moss Consumer Warranty Act, the California



Commercial Code, the general contract law of California, or the Song-Beverly Act.

The bill does restate and consolidate these remedies at a single location within the Song-Beverly Act, thus making them more accessible to all of the participants in retail sale transactions, including manufacturers, distributors, retailers, consumers, attorneys, others who advise consumers, and judges, including particularly Small Claims Court judges and court personnel.

The bill is not intended to foster more litigation over consumer warranties, and the Department of Consumer Affairs does not believe it will have that effect. Indeed, there is now no great abundance of litigation under the Song-Beverly Act, either at the trial or appellate level. To the best of our knowledge, there is not a single reported appellate decision under the Song-Beverly Act, despite the fact that it has been on the books for almost ten years.

We believe that the effect of this bill will be to foster the voluntary resolution of disputes by better defining the consequences to both parties if a resolution is not achieved. We believe that a greater degree of certainty in remedies that are available to the buyer will help resolve problems in a fair and equitable way, and will also reduce the chance of litigation. It is where the law and its consequences are uncertain that real problems are either not resolved, or that expensive litigation ensues.

At the hearings before the Assembly Committee on Labor, Employment and Consumer Affairs at San Diego last December, in which the Committee invited comment on new and used car automobile sale problems, a variety of witnesses testified to the inadequacy



of our present laws. There was widespread agreement among those testifying that our present consumer warranty laws do not provide remedies that are adequate.

As the accompanying chart shows, however, the range of available legal remedies is quite broad. Yet, because they are spread among many different statutes, they are not reasonably accessible to buyers and their attorneys. A good example is the provision that motivated this amendment. While the Magnuson-Moss Act grants courts the power to assess actual damages and reasonable attorney's fees upon a finding of a breach of warranty that is not willful, the Song-Beverly Act is silent. As presently written, the Song-Beverly Act requires a finding of "willfulness". The amendment to the remedy section originated in a complaint from a buyer who had prevailed in a suit but was not awarded a reasonable attorney's fee because the judge felt that the court did not have the power to make such an award unless the court could properly find that the breach of warranty was "willful".

Therefore, under present law, buyers would be well advised to proceed under both the federal Magnuson-Moss Consumer Warranty Act as well as the California Song-Beverly Warranty Act, taking their chances with each. But these elements of chance and "game" are unacceptable as a matter of public policy, we believe. Whether a particular buyer is treated justly depends less on the actual merits of his or her case than on the sophistication of his or her lawyer. Since our consumer warranty laws must be relatively self-executing in order to be successful, we find it difficult to accept uncertainties of this kind.

Warrantors too have a vital interest in achieving a reasonable



degree of certainty in remedies. Now, the provision on damages in the Song-Beverly Act is open-ended. There are no limits on the kind or extent of damages that may be awarded, except those which an individual judge may impose. That too is a degree of uncertainty that we find difficult to accept. The uncertainty can cut both ways for all parties to a consumer warranty transaction, since the uncertainty will make it difficult to assess the risks of trial and will result in settlements that will depend on factors other than the real merits of the case.

As a result of the amendment proposed by the Association of California Insurance Companies, which we have accepted, the contract measure of damages, as set forth in §§ 2711-2715 of the California Commercial Code, would apply in all actions under the Song-Beverly Act. And to resolve a major unresolved question under the California Commercial Code, the bill explicitly states that the buyer's damages may include the necessary costs of repairs.

By cross-referencing to and incorporating the Commercial Code provisions on buyer remedies, the bill also brings into play the thousands of court decisions under the Commercial Code, and its predecessors, that have articulated principles of construction and application to the wide range of circumstances and situations that have been presented to the courts in the past. This too will enhance the degree of certainty of result to the benefit of everyone.

From an industry standpoint, the bill is also deserving of support, because of its inclusion of the federal Magnuson-Moss Act's language giving the courts explicit discretion not to award reasonable attorney's fees. While the present text of § 1794 also



confers that power, the Magnuson-Moss Act's language is more explicit. Tracking the Magnuson-Moss Act's language will also help eliminate confusion on other points. Unless there is a good policy reason to the contrary, we feel that when both federal and California statutes address the same issue in the same way, identical statutory language should be employed.

As we have explained above, the bill would include within the remedies language of the Song-Beverly Act an explicit right to recover actual damages (not treble damages) for an ordinary, non-willful breach of warranty, as well as reasonable attorney's fees. As we explained, these remedies are already conferred by the federal Magnuson-Moss Act, but we believe that we should not force consumers to utilize a federal law to enforce their rights in "garden variety" warranty disputes. There is also an industry interest in this particular change, which we would like to explain. Conferring Song-Beverly jurisdiction to resolve disputes in favor of the consumer without a finding of willfulness will also benefit warrantors. Now, in order to proceed under the Song-Beverly Act, consumers and their attorneys must search for proof of "willfulness". Just as a requirement of a finding of fault in divorce cases added to the bitterness and complexity of divorces as well as the length of trials and other personal and social costs, we feel that denying relief without a finding of willfulness tends to force consumers and their attorneys to pursue a less constructive approach to dispute resolution, focusing less on the merits of the problem than on the motivations of the parties. The focus instead ought to be on peaceable dispute resolution, including especially the actual merits of the claim, including the questions of whether



there was a defect and whether the defect was covered by the warranty. (Of course, where there is a "willful" breach of warranty, the courts should have the same power that they presently have to award penalty damages.) This bill has been carefully developed. It is an example of the working of the legislative process at its best. It will improve our law. It will make it more coherent, rational and understandable. It will promote voluntary compliance and will help promote the voluntary settlement of disputes.



Jay-



1020 N STREET, SACRAMENTO, CALIFORNIA 95814



April 1, 1982

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

Dear Assemblywoman Tanner:

Sally

I would like to thank you for carrying our proposed legis-
lation that would upgrade the Song-Beverly Consumer Warranty
Act in the areas of disclosures and buyer remedies.

To assist you in carrying these bills, we have prepared an
explanation and analysis of each of the respective bills, which
I think you will find quite helpful.

If you have any questions, please feel free to contact
Mary Anne Moore of my staff, who has been designated our legisla-
tive analyst on each of these bills. Both Ms. Moore and Dick
Elbrecht of our Legal Services Unit, who was involved in develop-
ing these proposals, will be prepared to appear with you on behalf
of these measures when they come up for hearing. Ms. Moore will
also be involved in developing additional support for these meas-
ures, including witnesses who will appear at the hearings if
necessary.

While both of these measures are important, I feel that the
remedies bill is the most important, because it would authorize
an award of reasonable attorney's fees without proof of willful-
ness.

It is now necessary to resort to the federal Magnuson-Moss
Consumer Warranty Act to secure an award of attorney's fees, where
the warrantor's default was not a "wilful" default. AB 3560 will
make it possible for California consumers to rely solely on the
Song-Beverly Consumer Warranty Act to recover both damages and a
reasonable attorney's fee if they prevail, without regard to the
wilfulness of the warrantor's breach.

We look forward to working with you on both of these bills.

Sincerely,

Richard B. Spohn

RICHARD B. SPOHN
Director

Attachments

FCA MJN 52

A-22

LEGISLATIVE INTENT SERVICE (800) 666-1917





DEPARTMENT OF
**Consumer
Affairs**

1020 N STREET, SACRAMENTO, CALIFORNIA 95814

(916) 445-5126

EXPLANATION AND ANALYSIS OF

AB 3560 (Tanner)

A Consumer Law "Housekeeping" Bill

On Buyer Remedies for Breach of Warranty

March 1982

LEGISLATIVE INTENT SERVICE (800) 666-1917



AB 3560 (Tanner) is sponsored by the Department of Consumer Affairs.

This bill is essentially a consumer law "housekeeping" bill whose function is to make our consumer warranty law more coherent, rational, understandable and effective.

The bill does not add to the law any substantive legal obligation that is not already present in one or more of our consumer warranty statutes.

The bill's purpose and function is to consolidate and restate in a single section of the Song-Beverly Consumer Warranty Act the remedies now available to buyers under the Song-Beverly Act and other California and federal laws.

This bill strives to make the song-Beverly Act more coherent, rational and intelligible. Both those who extend consumer product warranties, and those who receive them, have a vital interest in the coherence, rationality and intelligibility of the law.

Explanation of Warranty Remedies Provision

Civil Code §§ 1794 and 1794.2, part of the Song-Beverly Act, express the basic rules on buyer remedies:

1794. Any buyer of consumer goods injured by a willful violation of the provisions of this chapter or a willful violation of the implied or express warranty or service contract may bring an action for the recovery of three times the amount of actual damages and other legal and equitable relief, and, if the buyer prevails in any action brought under this section, he or she may be allowed by the court to recover as part of the judgment a sum equal

to the aggregate amount of costs and expenses (including attorney's fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action.

1794.2. The provision of Section 1794 authorizing the recovery of three times the amount of the buyer's actual damages shall not apply to either of the following:

(a) A cause of action commenced or maintained pursuant to Section 382 of the Code of Civil Procedure or pursuant to Section 1781 of this code.

(b) A judgment based solely on a breach of the implied warranty of merchantability, or, where present, the implied warranty of fitness.

AB 3650 would consolidate §§ 1794 and 1794.2 and would enact a new § 1794 which would provide as follows:

1794. (a) Any buyer of consumer goods who is damaged by a failure to comply with any obligation under this chapter or under an implied or express warranty or service contract may bring an action for the recovery of damages and other legal and equitable relief.

(b) The measure of the buyer's damages in an action under this section shall be as follows:

(1) Where the buyer has rightfully rejected or justifiably revoked acceptance of the goods or has exercised any right to cancel the sale, Sections 2711, 2712 and 2713 of the Commercial Code shall apply.

(2) Where the buyer has accepted the goods, Sections 2714 and 2715 of the Commercial Code shall apply, and the measure of damages shall include the cost of repairs necessary to make the goods conform.

(c) If the buyer establishes that the failure to comply was willful, the judgment may include, in addition to the amounts recovered under subdivision (a), a civil penalty which shall not exceed two times the amount of actual damages. This subdivision shall not apply in any class action under Section 382



of the Code of Civil Procedure or Section 1781 of this code, or with respect to a claim based solely on a breach of an implied warranty.

(d) If the buyer prevails in an action under this section, the buyer may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action, unless the court in its discretion determines that such an award of attorney's fees would be inappropriate.

The purpose and effect of revised § 1794 is to provide a clear statement, in a single section of the Song-Beverly Act, of the buyer's basic remedies for breach of warranty and violation of the Act.

As the accompanying chart illustrates, the bill does not confer any remedy that buyers do not already enjoy -- whether under the federal Magnuson-Moss Consumer Warranty Act, the California Commercial Code, the general contract law of California, or the Song-Beverly Act.

The bill does restate and consolidate these remedies at a single location within the Song-Beverly Act, thus making them more accessible to all of the participants in retail sale transactions, including manufacturers, distributors, retailers, consumers, attorneys, others who advise consumers, and judges, including particularly Small Claims Court judges and court personnel.

The bill is not intended to foster more litigation over consumer warranties, and the Department of Consumer Affairs does not believe it will have that effect. Indeed, there is now no great



abundance of litigation under the Song-Beverly Act, either at the trial or appellate level. To the best of our knowledge, there is not a single reported appellate decision under the Song-Beverly Act, despite the fact that it has been on the books for about ten years.

We believe that the effect of this bill will be to foster the voluntary resolution of disputes by better defining the consequences to both parties if a resolution is not achieved. We believe that a greater degree of certainty in remedies that are available to the buyer will help resolve problems in a fair and equitable way, and will also reduce the chance of litigation. It is where the law and its consequences are uncertain that real problems are either not resolved, or that expensive litigation ensues.

At the hearings before the Assembly Committee on Labor, Employment and Consumer Affairs at San Diego in December, 1979, in which the Committee invited comment on new and used car automobile sale problems, a variety of witnesses testified to the inadequacy of our present laws. There was widespread agreement among those testifying that our present consumer warranty laws do not provide remedies that are adequate.

As the accompanying chart shows, however, the range of available legal remedies is quite broad. Yet, because they are spread among many different statutes, they are not reasonably accessible to buyers and their attorneys. A good example is the provision that motivated this amendment. While the Magnuson-Moss Act grants courts the power to assess actual damages and reasonable attorney's



fees upon a finding of a breach of warranty that is not willful, the Song-Beverly Act requires a finding of "willfulness" before an award of attorney's fees can be made. The amendment to the remedy section originated in a complaint from a buyer who had prevailed in a suit but was not awarded a reasonable attorney's fee because the judge felt that the court did not have the power to make such an award unless the court could properly find that the breach of warranty was "willful".

Under present law, therefore, buyers would be well advised to proceed under both the federal Magnuson-Moss Consumer Warranty Act as well as the California Song-Beverly Warranty Act, taking their chances with each. But these elements of chance and "game" are unacceptable as a matter of public policy, we believe. Whether a particular buyer is treated justly depends less on the actual merits of his or her case than on the sophistication of his or her lawyer. Since our consumer warranty laws must be relatively self-executing in order to be successful, we find it difficult to accept uncertainties of this kind.

Warrantors too have a vital interest in achieving a reasonable degree of certainty in remedies. Now, the provision on damages in the Song-Beverly Act is open-ended. There are no limits on the kind or extent of damages that may be awarded, except those which an individual judge may impose. That too is a degree of uncertainty that we find difficult to accept. The uncertainty can cut both ways for all parties to a consumer warranty transaction, since the uncertainty will make it difficult to assess the risks



of trial and will result in settlements that will depend on factors other than the real merits of the case.

As a result of the amendment proposed by the Association of California Insurance Companies, which we have accepted, the contract measure of damages, as set forth in §§ 2711-2715 of the California Commercial Code, would apply in all actions under the Song-Beverly Act. And to resolve a major unresolved question under the California Commercial Code, the bill explicitly states that the buyer's damages may include the necessary costs of repairs.

By cross-referencing to and incorporating the Commercial Code provisions on buyer remedies, the bill also brings into play the thousands of court decisions under the Commercial Code, and its predecessors, that have articulated principles of construction and application to the wide range of circumstances and situations that have been presented to the courts in the past. This too will enhance the degree of certainty of result to the benefit of everyone.

From an industry standpoint, the bill is also deserving of support, because of its inclusion of the federal Magnuson-Moss Act's language giving the courts explicit discretion not to award reasonable attorney's fees. While the present text of § 1794 also confers that power, the Magnuson-Moss Act's language is more explicit. Tracking the Magnuson-Moss Act's language will also help eliminate confusion on other points. Unless there is a good policy reason to the contrary, we feel that when both federal and



California statutes address the same issue in the same way, identical statutory language should be employed.

As we have explained above, the bill would include within the remedies language of the Song-Beverly Act an explicit right to recover actual damages (not treble damages) for an ordinary, non-willful breach of warranty, as well as reasonable attorney's fees. As we explained, these remedies are already conferred by the federal Magnuson-Moss Act, but we believe that we should not force consumers to utilize a federal law to enforce their rights in "garden variety" warranty disputes. There is also an industry interest in this particular change, which we would like to explain. Conferring Song-Beverly jurisdiction to resolve disputes in favor of the consumer without a finding of willfulness will also benefit warrantors. Now, in order to proceed under the Song-Beverly Act, consumers and their attorneys must search for proof of "willfulness". Just as a requirement of a finding of fault in divorce cases added to the bitterness and complexity of divorces as well as the length of trials and other personal and social costs, we feel that denying relief without a finding of willfulness tends to force consumers and their attorneys to pursue a less constructive approach to dispute resolution, focusing less on the merits of the problem than on the motivations of the parties. The focus instead ought to be on peaceable dispute resolution, including especially the actual merits of the claim, including the questions of whether there was a defect and whether the defect was covered by the warranty. (Of course, where there is a "willful" breach of



warranty, the courts should have the same power that they presently have to award penalty damages.)

This bill has been carefully developed. It will improve our law. It will make it more coherent, rational and understandable. It will promote voluntary compliance and will help promote the voluntary settlement of disputes.

We urge your support.

Thank you.

RAE:vc
(3/30/82)
Attachment

- (1) Buyer's Remedies Under California and Federal Consumer Warranty Law



ENROLLED BILL MEMORANDUM TO GOVERNOR		DATE	July 2, 1982
BILL NO.	AB 3560	AUTHOR	Tanner

Vote—Senate Unanimous

Ayes— 32
Noes— 0

Vote—Assembly Unanimous

Ayes— 66
Noes— 0

AB 3560 - Tanner

Existing law provides buyers of consumer goods with legal remedies for breach of an express or implied warranty and for violations of consumer warranty laws. A buyer's remedies for willful breaches of warranty or violations of warranty law are found in the California Song-Beverly Act, the California Commercial Code, state general contract laws, and the federal Magnuson-Moss Consumer Warranty Act.

This bill would consolidate Sections 1794 and 1794.2 of the Civil Code and would enact a new Section 1794 to provide a clear statement of the buyer's basic remedies for breach of warranty and violation of the Song-Beverly Act.

SPONSOR

Department of Consumer Affairs

OPPOSITION

No known opposition

FISCAL IMPACT

None

Recommendation	APPROVE
----------------	---------

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RAY H. WHITAKER
CHIEF DEPUTIES

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SACRAMENTO 95814
(916) 445-3057

8011 STATE BUILDING
107 SOUTH BROADWAY
LOS ANGELES 90012
(213) 620-2550

Legislative Counsel of California

BION M. GREGORY

Sacramento, California
June 23, 1982

Honorable Edmund G. Brown Jr.
Governor of California
Sacramento, CA


Assembly Bill No. 3560

Dear Governor Brown:

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

Very truly yours,

Bion M. Gregory
Legislative Counsel

By 
John T. Studebaker
Principal Deputy

JTS:AB

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

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DAVID D. ALVES
MARTIN L. ANDERSON
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(800) 666-1917
LEGISLATIVE INTENT SERVICE



PEZ

*no concern
V.S.*

GOVERNOR'S OFFICE ENROLLED BILL REPORT REQUEST

Date * 6/21

Bill No. AB 3560

Date Due _____

* Please reply within five working days of above date unless a different due date is indicated.

- TO:
- Business, Transportation & Housing
 - Environmental Quality
 - Finance
 - Food & Agriculture
 - Health & Welfare
 - Industrial Relations
 - Legal Affairs Unit
 - Office of Planning & Research
 - Resources
 - State & Consumer Services
 - Youth & Adult Correctional
 - _____

PEB

The attached bill has been received by this office for the Governor's consideration.

An analysis of this bill, together with your recommendations will be appreciated.

(800) 666-1917

LEGISLATIVE INTENT SERVICE





1020 N STREET, SACRAMENTO, CALIFORNIA 95814



ENROLLED BILL REPORT

AGENCY State & Consumer Services	BILL NUMBER AB 3560
DEPARTMENT, BOARD OR COMMISSION Department of Consumer Affairs	AUTHOR Tanner

SUBJECT: Consumer Warranties: Consolidation of buyers' remedies

HISTORY, SPONSORSHIP & RELATED LEGISLATION:

AB 3560 is sponsored by this Department for the purpose of organizing and clarifying existing remedies for breaches of warranty or violations of warranty law. AB 3560 received no opposing testimony or votes.

ANALYSIS

A. SPECIFIC FINDINGS

Existing state and federal laws (provide buyers of consumer goods with legal remedies for breach of an express or implied warranty and for violations of consumer warranty laws. A buyer's remedies for willful breaches of warranty or violations of warranty law are found in the California Song-Beverly Act, the California Commercial Code, state general contract laws, and the federal Magnuson-Moss Consumer Warranty Act.)

Because buyers' rights are located in different statutes, buyers and sellers are sometimes unaware of them, and legal enforcement can be difficult and confusing.

AB 3560 ^{was bill} would consolidate Sections 1794 and 1794.2 of the Civil Code and would enact a new Section ~~1974~~ ¹⁷⁹⁴ to provide a clear statement of the buyer's basic remedies for breach of warranty and violation of the Song-Beverly Act.]

B. FISCAL IMPACT

None on this Department.

C. VOTE

Assembly: 66-0
Senate: 32-0

D. CIVIL & HUMAN RIGHTS IMPACT

In general, warranty legislation was enacted to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products. Providing buyers

(cont.)

RECOMMENDATION:

SIGN

FCA MJN 65

DEPARTMENT DIRECTOR <i>Gene S. Rayburn</i>	DATE 6/24/82	AGENCY SECRETARY <i>[Signature]</i>	DATE 6/24/82
---	-----------------	--	-----------------

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE-4

with their remedies would help protect those at a comparative disadvantage in the marketplace. AB 3560 seeks to advance the mutual best interest of all participants in a retail warranty transaction.

E. RECOMMENDATION: Sign

Consolidating existing buyers' remedies in a single provision of California's Song-Beverly Consumer Warranty Act will make them more accessible to all of the parties of a consumer transaction, thereby aiding in the voluntary resolution of disputes by better defining the consequences to both parties if a resolution is not achieved.



PE5

MEMBERS
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CALIFORNIA LEGISLATURE ASSEMBLY COMMITTEE

on

CONSUMER PROTECTION AND TOXIC MATERIALS



ROOM 4146 STATE CAPITOL
(916) 445-0991

CHAIRWOMAN
SALLY TANNER

June 29, 1982

Honorable Edmund G. Brown, Jr.
Governor of California
State Capitol
Sacramento, California

Dear Governor Brown:

Re: AB 3560: Warranties on consumer goods -
consolidation of buyer's legal remedies

Assembly Bill 3560 has been passed by the Legislature and is before you for your approval and signature.

Under existing law, a buyer's remedies for breach of a consumer warranty are found in the Commercial Code, general contract law, and the federal Magnuson-Moss Act, as well as the Song-Beverly Consumer Warranty Act. Because these remedies are spread throughout several different statutes without cross-referencing, both the parties to a consumer transaction, as well as our judges have difficulty in ascertaining what remedies are available to the buyer for a breach of warranty.

A.B. 3560 would amend California's Song-Beverly Act to incorporate all of the buyer's legal remedies for breach of warranty into a single, comprehensive provision. The bill would also adopt the Commercial Code's contract measure of damages, including necessary costs of repairs, for awards under the Song-Beverly Act. Finally, the bill would clarify that a judge's discretion to award attorney's fees to a prevailing buyer also includes the discretion not to award such fees when such an award would be inappropriate.

PE-6

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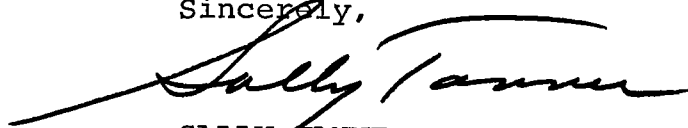
Honorable Edmund G. Brown, Jr.

Page Two

A.B. 3560 was introduced at the request of the Department of Consumer Affairs which supports its enactment. The bill would not create or delete any of the buyer's current legal remedies for breach of warranty, but rather make them more accessible to everyone. The bill has received no opposition.

I respectfully request your approval and signature.

Sincerely,



SALLY TANNER
Assemblywoman, 60th District

ST:mlv

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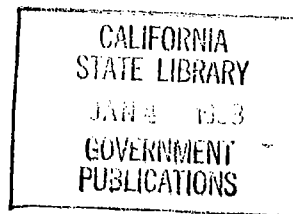


PE7

FCA MJN 68

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Consumer Affairs



Volume 15, Number 3 Winter 1982

Lemon Law Brings Success To State's New Car Buyers

by
Melissa Zermeno

Driving a shiny, new car off the dealer's lot, the new car buyer is filled with hope, pride and visions of many worry-free driving miles ahead. But these high hopes can quickly turn to despair and frustration when something goes wrong that time-consuming or repeated repairs do not fix. Meanwhile, you are stranded on the dealer's front steps, faced with the inconvenience and the cost of getting around without your car. And unless you paid cash for your car, the monthly payments continue to put a dent in your household budget. In short, you may be stuck with a "lemon."

Beginning in January 1983, new car buyers in California will be aided in solving and preventing lemon problems when the "Lemon Law" takes effect. The result of four years of effort by consumer groups and author Assemblywoman Sally Tanner, AB 1787, the Lemon Bill, was signed by the Governor last September.

Since 1970 California's Song-Beverly Consumer Warranty Act has required manufacturers to refund or replace a car that hasn't been repaired after a reasonable number of attempts. The "Lemon Law," which takes effect January 1, amends that Act by clarifying what is considered a reasonable number of attempts to repair a new car that does not function as it should.

According to the lemon law, a new car buyer is generally entitled to a replacement or refund when, within the first year or 12,000 miles (whichever comes first), there is a defect covered under warranty which substantially reduces the use, value or safety of the car, and the car has been subject to four repair attempts for the same defect, or is out of service because of repairs for more than 30 days.

The key to taking advantage of the new automobile lemon law is to know what the main points of the law are and what responsibilities you have.

The importance of keeping careful, accurate repair records in chronological

order cannot be overemphasized. These records may be the only way for you to prove that you have been working with the manufacturer or dealer and that they had a reasonable chance to repair your car. This proof may aid you in having your car successfully repaired and may even mean the difference between losing and winning your case if you should eventually go to court.

The following points should help you:

- Read and understand your warranty and owner's manual. Most warranties will only remain in effect if you maintain and service the car properly.
- Keep complete and accurate records of all repairs and service to your car.
- Be sure the problems you are having with your car are clearly stated on the work order. This can be your most valuable piece of evidence — documenting the problems you had with your car and what repair attempts were made. *Be specific.*
- Notify the dealer and manufacturer of a problem immediately. Information about how to contact the manufacturer — usually called the "district" or "zone" office — can be found in your owner's manual or by asking a dealer.
- Keep records of all contacts with the dealer and manufacturer in your attempt to resolve your complaint.
- Contact a manufacturer's dispute resolution program that meets with Federal Trade Commission guidelines to handle your complaint. This is a required step only if you have been notified in writing of the availability of this program. (As of December, 1982 only one program sponsored by Chrysler appears to comply with the FTC's requirements.)
- If you do not receive satisfaction and you have attempted to resolve your complaint as prescribed in the lemon

(continued on page 7)



RICHARD B. SPOHN

Director's Column

A mordant British wit centuries ago observed that nothing so focuses a man's mind as the imminence of the gallows. As my tour of duty at the Department approaches full term, waves of happy reverie engulf me.

In 1974, DCA was the subject of a book entitled *Deceptive Packaging*, a blistering critique by a major consumer group. Today, DCA is considered to be the premier state consumer agency in the country. That transformation has been the work of scores of dedicated individuals, in and out of government, working together to create a strong, effective consumer agency in California.

We have endeavored to implement the law that created the Department: "The Legislature finds that vigorous representation and protection of consumer interests are essential to the fair and efficient functioning of a free enterprise market economy" (Business and Professions Code § 301).

With the Public Members Act, we made professional and occupational licensing truly a public function. These "lobbyists for the people" (so dubbed by Governor Brown), working with licensee board members and with DCA staff, have completely overhauled the licensing process. Enforcement of the law has doubled and tripled. Exams have been made job-related and non-discriminatory. The entire body

(continued on page 3)



(continued from page 4)

make appointments to see talk show producers, columnists, members of the Capitol Press Corps, Sunday magazine and newspaper editors. Prepare a media kit to leave with reporters which includes a news release announcing your coalition's formation, a fact sheet on your issue, a list of spokespersons and any brochures you may have produced.

The news conference and rally are routine events and they work but you should also try staging other, more creative, events and gather endorsements from as many prominent people as possible. Also ask your local newspapers for in-depth coverage of any actions your elected officials take on your issue and for an editorial.

MORE TIPS TO REMEMBER

- ★ Politicians, like everyone else, want to be loved. They want praise from the hometown folks and newspaper editorials. Find a way to publicly recognize what legislators do — perhaps a "Best Legislator of the Year" award for meaningful reforms and legislative work beyond the call of duty. You might also consider throwing a simple "thank you" reception. Interview your legislator for your newsletter or internal newspaper. Legislators like to have their opinions asked. When published, send a few copies to the legislator's office.
- ★ Never question a legislator's intelligence. You've got to convince them on an issue. Never just say, "Do it because we want you to."
- ★ Timing is important. During the last part of the session when the constitutional deadline is closing in, many decisions, trades and compromises are made. Be ready.
- ★ Develop a long-range program so you're not always reacting to the legislature. If you can anticipate a problem, start talking about it now so you can define, limit and refine the legislative debate.
- ★ One weakness of many citizen-lobbyists is an unwillingness to learn the processes of government. High mindedness is no substitute for professional skill in doing battle.
- ★ Keep a file on each legislator to record votes, personal interests and background, visits by the coalition, stand on the issue, etc.
- ★ Select a limited number of clearly defined targets and focus on them. Try not to spread your group's energy too thin by having a cause-of-the-week.
- ★ Develop staying power. The here-today-gone-tomorrow campaign is a failure.
- ★ Know your issue well. Research your subject and become an expert. If legislators and staffers know your information can be trusted, they will depend on you to provide legislation, position papers and testimony.

(This advice was culled from the speeches and articles of Assemblyman Phil Isenberg (D-Sacramento) and John Gardner, founder of Common Cause.)

HOW TO WRITE SACRAMENTO

Address your letters properly:

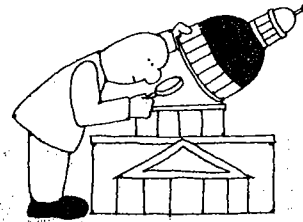
Honorable _____
Governor
State Capitol
Sacramento, CA 95814
Dear Governor _____:

The Honorable _____
California State Senate
State Capitol
Sacramento, CA 95814
Dear Senator _____:

The Honorable _____
California State Assembly
State Capitol
Sacramento, CA 95814
Dear Assemblyman(woman) _____:

1. Write the member at his or her office.
2. Also try addressing your letters directly to legislative staff (or to the member, but to the attention of that staffer).

3. Direct, first person, factual accounts of your own experiences have the greatest impact.
4. Describe how the proposed legislation might affect your life, your community, your business and your family.
5. Compliment the member — you might mention a vote or a speech.
6. Don't ask for more than the member can deliver.
7. Know your legislator and personalize your letters.
8. Show you understand the process by including information about where the bill is in the legislative pipeline and refer to any support you've gained. Ask for the legislator's position on the issue.
9. Send a copy of it to sponsors and co-sponsors of the bill, the committee chair and the appropriate legislative aides.
10. Space your letters for maximum impact and don't write too often.



1981-82 Legislative Session

by Steve Sands
DCA Legislative Director

Over 7,000 bills were introduced during the two-year Legislative Session that ended September 30. Consumers won some of the battles over these bills and lost others. Consumers benefited from the enactment of bills dealing with warranties, cable TV, health care, wills and insurance. On the other hand, 15 of the 17 Assembly bills dealing with energy and utilities reform died in the Senate. Among those bills was AB 2931 (Levine), which would have created a Citizens Utility Board.

Among the key consumer bills enacted was AB 1787 (Tanner), which improved a consumer's warranty rights when he or she has purchased a "lemon" automobile. Assemblywoman Tanner also authored AB 3560, which provided for improved buyers' remedies for failure to comply with warranty obligations, and AB 3561, which simplified and improved warranty language. AB 2452 (Harris) permits a person to adopt a preprinted statutory will or statutory will with trust for the purpose of leaving property to one's spouse, charity

or descendants. AB 2821 (Bates) requires the State Department of Health Services to maintain a comprehensive community-based perinatal services program.

AB 3044 (Imbrecht) enacts the Consumer Cooperative Corporation Law which comprehensively regulates the organization and operation of incorporated consumer cooperatives. SB 1453 (Presley) enacts the Tax Preparers Act, which once again provides for the licensing and regulation of tax preparers.

Three bills that were opposed by consumer groups made it through the Legislature and were vetoed by the Governor. SB 922 (Stiern) would have removed the Contractors State License Board from the Department and would have created it as a new department. SB 1995 (Foran) would have greatly increased the interest rates that could be charged for motor vehicle conditional sales. SB 165 (Ellis) would have eliminated the public member majority on the Board of Architectural Examiners.

LEGISLATIVE INTENT SERVICE (800) 666-1917



ASSEMBLY BILL

No. 1367

Introduced by Assembly Member Tanner

March 4, 1987

An act to amend Section 1794 of the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 1367, as introduced, Tanner. Warranties: remedies.

Existing law provides that any buyer of consumer goods who is damaged by a failure to comply with any obligation under the Song-Beverly Consumer Warranty Act or under an implied or express warranty or service contract may bring an action for the recovery of damages and other legal and equitable relief. Existing law sets forth the measure of the buyer's damages in an action, as specified.

This bill would specify that the measure of the buyer's damages in an action includes, in addition, the rights of replacement or reimbursement, as set forth in specified provisions of the act. The bill would declare that the provision does not constitute a change in, but is declaratory of, existing law.

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

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

- 1 SECTION 1. Section 1794 of the Civil Code is
- 2 amended to read:
- 3 1794. (a) Any buyer of consumer goods who is
- 4 damaged by a failure to comply with any obligation
- 5 under this chapter or under an implied or express
- 6 warranty or service contract may bring an action for the



1 recovery of damages and other legal and equitable relief.
2 (b) The measure of the buyer's damages in an action
3 under this section shall be as follows *include the rights of*
4 *replacement or reimbursement as set forth in subdivision*
5 *(d) of Section 1793.2, and the following:*

6 (1) Where the buyer has rightfully rejected or
7 justifiably revoked acceptance of the goods or has
8 exercised any right to cancel the sale, Sections 2711, 2712,
9 and 2713 of the Commercial Code shall apply.

10 (2) Where the buyer has accepted the goods, Sections
11 2714 and 2715 of the Commercial Code shall apply, and
12 the measure of damages shall include the cost of repairs
13 necessary to make the goods conform.

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

22 (d) If the buyer prevails in an action under this
23 section, the buyer may be allowed by the court to recover
24 as part of the judgment a sum equal to the aggregate
25 amount of costs and expenses, including attorney's fees
26 based on actual time expended, determined by the court
27 to have been reasonably incurred by the buyer in
28 connection with the commencement and prosecution of
29 such action, unless the court in its discretion determines
30 that such an award of attorney's fees would be
31 inappropriate.

32 SEC. 2. The amendment of Section 1794 of the Civil
33 Code made at the 1987-88 Regular Session of the
34 Legislature does not constitute a change in, but is
35 declaratory of, the existing law.

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AMENDED IN SENATE MAY 11, 1988

CALIFORNIA LEGISLATURE—1987-88 REGULAR SESSION

ASSEMBLY BILL

No. 1367

Introduced by Assembly Member Tanner

March 4, 1987

An act to amend Section 1794 of the Civil Code, relating to warranties; 9889.75 of the Business and Professions Code, relating to warranties, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1367, as amended, Tanner. Warranties: remedies motor vehicle third-party dispute resolution.

Existing law provides that any buyer of consumer goods who is damaged by a failure to comply with any obligation under the Song/Beverly Consumer Warranty Act or under an implied or express warranty or service contract may bring an action for the recovery of damages and other legal and equitable relief. Existing law sets forth the measure of the buyer's damages in an action, as specified.

This bill would specify that the measure of the buyer's damages in an action includes, in addition, the rights of replacement or reimbursement, as set forth in specified provisions of the act. The bill would declare that the provision does not constitute a change in, but is declaratory of, existing law.

Under existing law, on July 1, 1988, the Certification Account is created within the Automotive Repair Fund. This account is to be funded by fees imposed upon applicants for licenses as manufacturers or distributors or for renewal of licenses as manufacturers or distributors. The fees are to be collected by the New Motor Vehicle Board and are to be



expended upon appropriation by the Legislature to pay the expenses of the Bureau of Automotive Repair in administering the program for certification of third-party dispute resolution processes. On or before January 1 of each calendar year, the bureau is to determine, as specified, the dollar amount to be collected by the Department of Motor Vehicles and to notify the board of this dollar amount.

This bill would revise the provisions relating to the collection of fees to delete the references to applicants for licenses or renewal of licenses as manufacturers or distributors. The bill would instead require every manufacturer to file a statement in February of each year which contains specified information and to pay a fee within a specified time after written notification by the board. The bill would also make related changes. A penalty would be assessed against the manufacturer for delinquent payments.

This bill would require the bureau to notify the board of the dollar amount necessary to fully fund the third-party dispute resolution process on or before February 1, but would not specify the method by which the board is to determine the dollar amount.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~ $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

- 1 **SECTION 1.** ~~Section 1794 of the Civil Code is~~
- 2 **SECTION 1.** Section 9889.75 of the Business and
- 3 Professions Code, as added by Chapter 1280 of the
- 4 Statutes of 1987, is amended to read:
- 5 9889.75. The New Motor Vehicle Board in the
- 6 Department of Motor Vehicles shall, in accordance with
- 7 the procedures prescribed in this section, administer the
- 8 collection of fees for the purposes of fully funding the
- 9 administration of this chapter.
- 10 (a) There is hereby created in the Automotive Repair
- 11 Fund a Certification Account. Fees collected pursuant to
- 12 this section shall be deposited in the Certification



1 Account and shall be available, upon appropriation by the
2 Legislature, exclusively to pay the expenses incurred by
3 the bureau in administering this chapter. If at the
4 conclusion of any fiscal year the amount of fees collected
5 exceeds the amount of expenditures for that purpose
6 during that fiscal year, the surplus in the Certification
7 Account shall be carried over into the succeeding fiscal
8 year.

9 (b) Beginning July 1, 1988, every applicant for a
10 license as a manufacturer, manufacturer branch,
11 distributor, or distributor branch, and every applicant for
12 the renewal of a license as a manufacturer, manufacturer
13 branch, distributor, or distributor branch, shall
14 accompany the application with and on or before
15 February 1 of each calendar year thereafter, every
16 manufacturer shall file with the New Motor Vehicle
17 Board a statement of the number of motor vehicles sold,
18 leased, or otherwise distributed by or for the applicant
19 manufacturer in this state during the preceding calendar
20 year, and shall, upon written notice, pay to the
21 Department of Motor Vehicles, for each issuance or
22 renewal of the license, an amount prescribed by the New
23 Motor Vehicle Board; but a fee, not to exceed one dollar
24 (\$1) for each motor vehicle sold, leased, or distributed by
25 or for the applicant manufacturer in this state during the
26 preceding calendar year. The total fee paid by each
27 licensee manufacturer shall be rounded to the nearest
28 dollar in the manner described in Section 9559 of the
29 Vehicle Code. No more than one dollar (\$1) shall be
30 charged, collected, or received from any one or more
31 licensees manufacturer pursuant to this subdivision with
32 respect to the same motor vehicle.

33 (c) (1) The fee required by subdivision (b) is due and
34 payable no later than 30 days after the New Motor
35 Vehicle Board has given notice to the manufacturer of
36 the amount due and is delinquent after that time. A
37 penalty of 10 percent of the amount delinquent shall be
38 added to that amount, if the delinquency continues for
39 more than 30 days.

40 (2) In the event that a manufacturer fails to file the



1 *statement required by subdivision (b) by the date*
 2 *specified, the New Motor Vehicle Board shall assess the*
 3 *amount due from the manufacturer by using as the*
 4 *number of motor vehicles sold, leased, or otherwise*
 5 *distributed by or for the manufacturer in this state during*
 6 *the preceding calendar year the total number of new*
 7 *registrations of all motor vehicles sold, leased, or*
 8 *otherwise distributed by or for the manufacturer during*
 9 *the preceding calendar year.*

10 ~~(e)~~

11 (d) On or before ~~January~~ February 1 of each calendar
 12 year, the bureau shall ~~determine the dollar amount, not~~
 13 ~~to exceed one dollar (\$1) per motor vehicle, which shall~~
 14 ~~be collected and received by the Department of Motor~~
 15 ~~Vehicles beginning July 1 of that year, based upon an~~
 16 ~~estimate of the number of sales, leases, and other~~
 17 ~~dispositions of motor vehicles in this state during the~~
 18 ~~preceding calendar year, in order to notify the New Motor~~
 19 ~~Vehicle Board of the dollar amount necessary to fully~~
 20 ~~fund the program established by this chapter during the~~
 21 ~~following fiscal year. The bureau shall notify the New~~
 22 ~~Motor Vehicle Board of the dollar amount per motor~~
 23 ~~vehicle that the New Motor Vehicle Board shall use this~~
 24 ~~information in calculating the amounts of the fees to be~~
 25 ~~collected from applicants manufacturers pursuant to this~~
 26 ~~subdivision section.~~

27 ~~(d)~~

28 (e) For the purposes of this section, "motor vehicle"
 29 means a new passenger or commercial motor vehicle of
 30 a kind that is required to be registered under the Vehicle
 31 Code, but the term does not include a motorcycle, a
 32 motor home, or any vehicle whose gross weight exceeds
 33 10,000 pounds.

34 ~~(e)~~

35 (f) The New Motor Vehicle Board may adopt
 36 regulations to implement this section.

37 *SEC. 2. This act is an urgency statute necessary for*
 38 *the immediate preservation of the public peace, health,*
 39 *or safety within the meaning of Article IV of the*
 40 *Constitution and shall go into immediate effect. The facts*

1 *constituting the necessity are:*

2 *Chapter 1280 of the Statutes of 1987 established a*
3 *program in the Bureau of Automotive Repair to certify*
4 *the operation of third-party dispute resolution processes*
5 *under the state's "Lemon Law" and imposed fees on auto*
6 *manufacturers to fund that program. Both the program*
7 *and fee collections are scheduled to become operative on*
8 *July 1, 1988. In order to establish a more efficient, less*
9 *costly method of collecting fees from auto manufacturers*
10 *to fund the certification program before it begins*
11 *operation, it is necessary that this act take effect*
12 *immediately.*

13 *amended to read:*

14 **1704. (a) Any buyer of consumer goods who is**
15 **damaged by a failure to comply with any obligation**
16 **under this chapter or under an implied or express**
17 **warranty or service contract may bring an action for the**
18 **recovery of damages and other legal and equitable relief.**

19 **(b) The measure of the buyer's damages in an action**
20 **under this section shall include the rights of replacement**
21 **or reimbursement as set forth in subdivision (d) of**
22 **Section 1793.2, and the following:**

23 **(1) Where the buyer has rightfully rejected or**
24 **justifiably revoked acceptance of the goods or has**
25 **exercised any right to cancel the sale, Sections 2711, 2712,**
26 **and 2713 of the Commercial Code shall apply.**

27 **(2) Where the buyer has accepted the goods, Sections**
28 **2714 and 2715 of the Commercial Code shall apply, and**
29 **the measure of damages shall include the cost of repairs**
30 **necessary to make the goods conform.**

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

39 **(d) If the buyer prevails in an action under this**
40 **section, the buyer may be allowed by the court to recover**



1 as part of the judgment a sum equal to the aggregate
2 amount of costs and expenses, including attorney's fees
3 based on actual time expended, determined by the court
4 to have been reasonably incurred by the buyer in
5 connection with the commencement and prosecution of
6 such action, unless the court in its discretion determines
7 that such an award of attorney's fees would be
8 inappropriate.

9 **SEC. 2.** The amendment of Section 1794 of the Civil
10 Code made at the 1987/88 Regular Session of the
11 Legislature does not constitute a change in, but is
12 declaratory of, the existing law.

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AMENDED IN SENATE MAY 31, 1988

AMENDED IN SENATE MAY 11, 1988

CALIFORNIA LEGISLATURE—1987-88 REGULAR SESSION

ASSEMBLY BILL

No. 1367

Introduced by Assembly Member Tanner

March 4, 1987

An act to amend Section 9889.75 of the Business and Professions Code, relating to warranties, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1367, as amended, Tanner. Warranties: motor vehicle third-party dispute resolution.

Under existing law, on July 1, 1988, the Certification Account is created within the Automotive Repair Fund. This account is to be funded by fees imposed upon applicants for licenses as manufacturers or distributors or for renewal of licenses as manufacturers or distributors. The fees are to be collected by the New Motor Vehicle Board and are to be expended upon appropriation by the Legislature to pay the expenses of the Bureau of Automotive Repair in administering the program for certification of third-party dispute resolution processes. On or before January 1 of each calendar year, the bureau is to determine, as specified, the dollar amount to be collected by the Department of Motor Vehicles and to notify the board of this dollar amount. *Existing law provides that the board may adopt regulations to implement the foregoing provisions.*

This bill would revise the provisions relating to the collection of fees to delete the references to applicants for licenses or renewal of licenses as manufacturers or distributors. The bill would instead require every



manufacturer to file a statement ~~in February~~ *on or before May 1* of each year which contains specified information and to pay a fee within a specified time after written notification by the board. The bill would also make related changes. A penalty would be assessed against the manufacturer for delinquent payments.

This bill would require the bureau to notify the board of the dollar amount necessary to fully fund the third-party dispute resolution process on or before February 1, but would not specify the method by which the board is to determine the dollar amount.

This bill would provide that the regulations which the board may adopt to implement the provisions relating to the collection of fees shall include, at a minimum, a formula for calculating the fee to be collected for each motor vehicle and the total amount of fees to be collected from each manufacturer.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

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

1 SECTION 1. Section 9889.75 of the Business and
2 Professions Code, as added by Chapter 1280 of the
3 Statutes of 1987, is amended to read:

4 9889.75. The New Motor Vehicle Board in the
5 Department of Motor Vehicles shall, in accordance with
6 the procedures prescribed in this section, administer the
7 collection of fees for the purposes of fully funding the
8 administration of this chapter.

9 (a) There is hereby created in the Automotive Repair
10 Fund a Certification Account. Fees collected pursuant to
11 this section shall be deposited in the Certification
12 Account and shall be available, upon appropriation by the
13 Legislature, exclusively to pay the expenses incurred by
14 the bureau in administering this chapter. If at the
15 conclusion of any fiscal year the amount of fees collected
16 exceeds the amount of expenditures for that purpose

1 during that fiscal year, the surplus in the Certification
2 Account shall be carried over into the succeeding fiscal
3 year.

4 (b) Beginning July 1, 1988, and on or before February
5 May 1 of each calendar year thereafter, every
6 manufacturer shall file with the New Motor Vehicle
7 Board a statement of the number of motor vehicles sold,
8 leased, or otherwise distributed by or for the
9 manufacturer in this state during the preceding calendar
10 year, and shall, upon written notice *delivered to the*
11 *manufacturer by certified mail, return receipt requested,*
12 pay to the New Motor Vehicle Board a fee, not to exceed
13 one dollar (\$1) for each motor vehicle sold, leased, or
14 distributed by or for the manufacturer in this state during
15 the preceding calendar year. The total fee paid by each
16 manufacturer shall be rounded to the nearest dollar in
17 the manner described in Section 9559 of the Vehicle
18 Code. No more than one dollar (\$1) shall be charged,
19 collected, or received from any one or more
20 manufacturer pursuant to this subdivision with respect to
21 the same motor vehicle.

22 (c) (1) The fee required by subdivision (b) is due and
23 payable no later than 30 days after the New Motor
24 Vehicle Board has given notice to the manufacturer of
25 *manufacturer has received notice of* the amount due and
26 is delinquent after that time. A penalty of 10 percent of
27 the amount delinquent shall be added to that amount, if
28 the delinquency continues for more than 30 days.

29 (2) In the event that a manufacturer fails to file the
30 statement required by subdivision (b) by the date
31 specified, the New Motor Vehicle Board shall assess the
32 amount due from the manufacturer by using as the
33 number of motor vehicles sold, leased, or otherwise
34 distributed by or for the manufacturer in this state during
35 the preceding calendar year the total number of new
36 registrations of all motor vehicles sold, leased, or
37 otherwise distributed by or for the manufacturer during
38 the preceding calendar year.

39 (d) On or before February 1 of each calendar year, the
40 bureau shall notify the New Motor Vehicle Board of the



1 dollar amount necessary to fully fund the program
2 established by this chapter during the following fiscal
3 year. The New Motor Vehicle Board shall use this
4 information in calculating the amounts of the fees to be
5 collected from manufacturers pursuant to this section.

6 (e) For the purposes of this section, "motor vehicle"
7 means a new passenger or commercial motor vehicle of
8 a kind that is required to be registered under the Vehicle
9 Code, but the term does not include a motorcycle, a
10 motor home, or any vehicle whose gross weight exceeds
11 10,000 pounds.

12 (f) The New Motor Vehicle Board may adopt
13 regulations to implement this section. *The regulations*
14 *shall include, at a minimum, a formula for calculating the*
15 *fee, established pursuant to subdivision (b), for each*
16 *motor vehicle and the total amount of fees to be collected*
17 *from each manufacturer.*

18 SEC. 2. This act is an urgency statute necessary for
19 the immediate preservation of the public peace, health,
20 or safety within the meaning of Article IV of the
21 Constitution and shall go into immediate effect. The facts
22 constituting the necessity are:

23 Chapter 1280 of the Statutes of 1987 established a
24 program in the Bureau of Automotive Repair to certify
25 the operation of third-party dispute resolution processes
26 under the state's "Lemon Law" and imposed fees on auto
27 manufacturers to fund that program. Both the program
28 and fee collections are scheduled to become operative on
29 July 1, 1988. In order to establish a more efficient, less
30 costly method of collecting fees from auto manufacturers
31 to fund the certification program before it begins
32 operation, it is necessary that this act take effect
33 immediately.

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compounding.

CHAPTER 203

An act to amend Section 9889.75 of the Business and Professions Code, relating to warranties, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 23, 1988. Filed with
Secretary of State June 23, 1988]

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

SECTION 1. Section 9889.75 of the Business and Professions Code, as added by Chapter 1280 of the Statutes of 1987, is amended to read:

9889.75. The New Motor Vehicle Board in the Department of Motor Vehicles shall, in accordance with the procedures prescribed in this section, administer the collection of fees for the purposes of fully funding the administration of this chapter.

(a) There is hereby created in the Automotive Repair Fund a Certification Account. Fees collected pursuant to this section shall be deposited in the Certification Account and shall be available, upon appropriation by the Legislature, exclusively to pay the expenses incurred by the bureau in administering this chapter. If at the conclusion of any fiscal year the amount of fees collected exceeds the amount of expenditures for that purpose during that fiscal year, the surplus in the Certification Account shall be carried over into the succeeding fiscal year.

(b) Beginning July 1, 1988, and on or before May 1 of each calendar year thereafter, every manufacturer shall file with the New Motor Vehicle Board a statement of the number of motor vehicles sold, leased, or otherwise distributed by or for the manufacturer in this state during the preceding calendar year, and shall, upon written notice delivered to the manufacturer by certified mail, return receipt requested, pay to the New Motor Vehicle Board a fee, not to exceed one dollar (\$1) for each motor vehicle sold, leased, or distributed by or for the manufacturer in this state during the preceding calendar year. The total fee paid by each manufacturer shall be rounded to the nearest dollar in the manner described in Section 9559 of the Vehicle Code. No more than one dollar (\$1) shall be charged, collected, or received from any one or more manufacturer pursuant to this subdivision with respect to the same motor vehicle.

(c) (1) The fee required by subdivision (b) is due and payable no later than 30 days after the manufacturer has received notice of the amount due and is delinquent after that time. A penalty of 10 percent of the amount delinquent shall be added to that amount, if the

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delinquency continues for more than 30 days.

(2) In the event that a manufacturer fails to file the statement required by subdivision (b) by the date specified, the New Motor Vehicle Board shall assess the amount due from the manufacturer by using as the number of motor vehicles sold, leased, or otherwise distributed by or for the manufacturer in this state during the preceding calendar year the total number of new registrations of all motor vehicles sold, leased, or otherwise distributed by or for the manufacturer during the preceding calendar year.

(d) On or before February 1 of each calendar year, the bureau shall notify the New Motor Vehicle Board of the dollar amount necessary to fully fund the program established by this chapter during the following fiscal year. The New Motor Vehicle Board shall use this information in calculating the amounts of the fees to be collected from manufacturers pursuant to this section.

(e) For the purposes of this section, "motor vehicle" means a new passenger or commercial motor vehicle of a kind that is required to be registered under the Vehicle Code, but the term does not include a motorcycle, a motor home, or any vehicle whose gross weight exceeds 10,000 pounds.

(f) The New Motor Vehicle Board may adopt regulations to implement this section. The regulations shall include, at a minimum, a formula for calculating the fee, established pursuant to subdivision (b), for each motor vehicle and the total amount of fees to be collected from each manufacturer.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Chapter 1280 of the Statutes of 1987 established a program in the Bureau of Automotive Repair to certify the operation of third-party dispute resolution processes under the state's "Lemon Law" and imposed fees on auto manufacturers to fund that program. Both the program and fee collections are scheduled to become operative on July 1, 1988. In order to establish a more efficient, less costly method of collecting fees from auto manufacturers to fund the certification program before it begins operation, it is necessary that this act take effect immediately.



VOLUME 1
CALIFORNIA LEGISLATURE
AT SACRAMENTO
1987-88 REGULAR SESSION
1987-88 FIRST EXTRAORDINARY SESSION

ASSEMBLY FINAL HISTORY

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

Assembly Convened December 1, 1986

Recessed December 3, 1986	Reconvened January 5, 1987
Recessed April 9, 1987	Reconvened April 20, 1987
Recessed July 16, 1987	Reconvened August 17, 1987
Recessed September 11, 1987	Reconvened January 4, 1988
Recessed March 24, 1988	Reconvened April 4, 1988
Recessed June 30, 1988	Reconvened August 1, 1988

Adjourned September 1, 1988
Adjourned Sine Die November 30, 1988

Legislative Days..... 246

HON. WILLIE L. BROWN JR.
Speaker

HON. MIKE ROOS
Speaker pro Tempore
HON. THOMAS HANNIGAN
Majority Floor Leader

HON. PHILLIP ISENBERG
Assistant Speaker pro Tempore
HON. PAT NOLAN
Minority Floor Leader

Compiled Under the Direction of
R. BRIAN KIDNEY
Chief Clerk

GUNVOR ENGLE
History Clerk



A.B. No. 1366—Costa.

An act to add Section 391 to the Fish and Game Code, relating to fish and game
1987

- Mar 4—Read first time To print
- Mar 5—From printer May be heard in committee April 4
- Mar 17—Referred to Com on W P & W
- April 29—From committee Amend, and do pass as amended, and re-refer to Com on W & M with recommendation To Consent Calendar (Ayes 12 Noes 0) (April 22)
- April 30—Read second time and amended
- May 5—Re-referred to Com on W & M
- May 28—From committee Do pass To Consent Calendar (May 27)
- June 1—Read second time To Consent Calendar
- June 3—Read third time, passed, and to Senate (Ayes 74 Noes 0 Page 2468)
- June 4—In Senate Read first time To Com on RLS for assignment
- June 11—Referred to Com on N R & W
- June 30—From committee Do pass, and re-refer to Com on APPR with recommendation To Consent Calendar. Re-referred (Ayes 5 Noes 0.)
- July 9—From committee Be placed on second reading file pursuant to Senate Rule 28.8
- July 13—Read second time To third reading
- July 16—Read third time, passed, and to Assembly (Ayes 36 Noes 0 Page 2903)
- July 16—In Assembly To enrollment
- July 20—Enrolled and to the Governor at 4 p.m.
- July 29—Approved by the Governor
- July 30—Chaptered by Secretary of State - Chapter 297, Statutes of 1987

A.B. No. 1367—Tanner.

An act to amend Section 9889.75 of the Business and Profession Code, relating to warranties, and declaring the urgency thereof, to take effect immediately
1987

- Mar 4—Read first time To print
 - Mar 5—From printer May be heard in committee April 4
 - Mar 26—Referred to Com on G E & CON PRO
 - May 20—From committee Do pass To Consent Calendar (May 19)
 - May 21—Read second time To Consent Calendar
 - May 26—Read third time, passed, and to Senate (Ayes 74 Noes 0 Page 2246)
 - May 27—In Senate Read first time To Com on RLS for assignment
 - June 4—Referred to Com on INS., CL. & CORPS.
 - July 2—From committee Do pass To Consent Calendar
 - July 6—Read second time To Consent Calendar
 - July 9—From Consent Calendar To inactive file on motion of Senator Mello
- 1988
- May 5—From inactive file. Re-referred to Com on APPR
 - May 11—From committee chairman, with author's amendments Amend, and re-refer to committee Read second time, amended, and re-referred to Com. on APPR
 - May 19—Withdrawn from committee Re-referred to Com on JUD
 - May 23—In committee Hearing postponed by committee
 - May 27—From committee Amend, and do pass as amended (Ayes 8 Noes 0)
 - May 31—Read second time, amended, and to third reading
 - June 9—Read third time Urgency clause adopted Passed and to Assembly (Ayes 39 Noes 0 Page 6420)
 - June 9—In Assembly Concurrence in Senate amendments pending
 - June 13—Urgency clause adopted Senate amendments concurred in To enrollment (Ayes 75 Noes 0 Page 8327)
 - June 14—Enrolled and to the Governor at 2 p.m.
 - June 23—Approved by the Governor
 - June 23—Chaptered by Secretary of State - Chapter 203, Statutes of 1988



ASSEMBLY COMMITTEE ON GOVERNMENTAL EFFICIENCY AND CONSUMER PROTECTION
RUSTY AREIAS, Chairman

AB 1367 (Tanner) - As Introduced: March 4, 1987

ASSEMBLY ACTIONS:

COMMITTEE G. E. & CON. PRO. VOTE _____ COMMITTEE _____ VOTE _____

Ayes:

Ayes:

Nays:

Nays:

SUBJECT

Warranties: remedies.

DIGEST

Existing law gives the buyer of consumer goods the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's failure to comply with the Song-Beverly Consumer Warranty Act which establishes direct legal relations between the buyer and manufacturer in consumer transactions in California.

This bill clarifies that the buyer's damages in an action under the Song-Beverly Consumer Warranty Act include the rights of replacement or reimbursement.

FISCAL EFFECT

None

COMMENTS

The purpose of this bill, sponsored by the author, is to clarify that a consumer who brings an action to obtain damages under the Song-Beverly Consumer Warranty Act has the right to obtain either a refund or replacement if a warranted product is defective and is not fixed after a reasonable number of attempts as defined.

At issue is an automobile manufacturer's legal argument in a recent "lemon law" case that a plaintiff car buyer can sue only for the remedies specifically referenced in a particular section of the Song-Beverly Act. This bill adds to that section a reference to the code which specifies that the

- continued -

AB 1367



refund/replacement remedy provided for in the "lemon law" is available to a buyer in a lawsuit brought against a warrantor for defective products.

SUPPORT (verified 5/12/87)

None received.

OPPOSITION

None received.



February 6, 1987

MEMORANDUM

TO: Assemblywoman Sally Tanner

FROM: Jay J. DeFuria

SUBJECT: Legislative Proposal: "Clean-up" (clarifying) amendment to your AB 3560 of 1982 (Chapter 385, Statutes of 1982)

ISSUE

As I briefly discussed with you and Arnie in your office recently, an interpretation concerning Civil Code Section 1794 (in the Song-Beverly Consumer Warranty Act) has been broached by an automobile manufacturer's attorney in at least one pending consumer auto "lemon" case which, were it to become accepted, could seriously weaken your lemon law. This problem was brought to my attention by the consumer's attorney (Mr. Brian Kermnitzer-San Francisco) who requested that Section 1794 be amended to clarify its meaning and ward off this dangerous misinterpretation.

BACKGROUND

Civil Code Section 1794 is a provision of the Song-Beverly Act which gives the consumer the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's (or others) failure to comply with Song-Beverly warranty obligations. You authored AB 3560 in 1982 which made some "fine tuning" clarifications to Section 1794 (the bill's sponsor was the Department of Consumer Affairs).

Section 1794 specifies what the measure of damages will be for the buyer in certain circumstances by reference to specified California Commercial Code provisions. However, as you know, Civil Code Section 1793.2 (the "lemon" law) provides a buyer with the right to obtain either a refund ("reimbursement") or replacement if a warranted product is defective and is not fixed after a reasonable number of attempts (4X/30 days for new autos.)

PROBLEM

The misinterpretation problem comes about because Section 1794 does not specifically include the refund/replacement remedy provided to the buyer by Section 1793.2 (nor other remedies



provided for in the Song-Beverly Act). The result has been for the auto manufacturer's attorney to argue in court that a plaintiff car buyer can sue only for the Section 1794 remedies and not for the Section 1793.2 refund/replacement remedy. I think that argument is ludicrous since were it to be accepted, it would drastically reduce any incentive for the manufacturer to offer a refund before a lawsuit, and cause them to argue the refund is an unavailable remedy in a lawsuit. (They argue the buyer only has the right to obtain the difference in value between what the defective car is worth and what it would have been worth without the defects).

THE PROPOSAL

The legislative proposal is simply to amend Civil Code Section 1794 by adding language that would clearly specify that the refund/replacement remedy provided by Section 1793.2 is available to a buyer in a lawsuit brought against a warrantor for defective products.

The language for the amendment would be as follows:

Amend Section 1794(b) of the Civil Code by deleting "as follows:" after the word "shall" and inserting:

include the rights of replacement or reimbursement as set forth in Section 1793.2(d) and the following
(See attached markup)

Because this amendment is a clarification that Section 1794 doesn't preclude Section 1793.2 remedies, and to avoid the possibility of having this proposed amendment construed otherwise, I would also recommend that the following legislative intent be added as uncodified language in the bill:

Sec.2. (of the bill) The amendment of Section 1794 of the Civil Code made at the 1987-88 Regular Session of the Legislature does not constitute a change in, but is declaratory of existing law.

Finally, I would recommend that this proposal be considered for introduction as a separate bill, rather than as an amendment to your 1987 "Lemon Law II" bill. The rationale is that it is a clean-up to your previous non-lemon law legislation and that having it in a separate bill will reduce confusion and keep it separated from any controversy that may attach to your direct lemon law clean-up efforts.

If I can be of further assistance to you on this issue please let me know.

JJD:bj



AB 1367 5-7783 Jenner

5/4 Arnie Peters

problem? yes, Jay write memo. Will send 5/5.

s/o?

5/7 call Jay De Furia. 40258

remedies are cumulative, not exclusive

* Xerox code sections

Clarification for it
wouldn't be misunderstood

5/12 Jenner's Office - secretary

no support or opposition



ASSEMBLY COMMITTEE ON GOVERNMENTAL EFFICIENCY AND CONSUMER PROTECTION
RUSTY AREIAS, Chairman

AB 1367 (Tanner) - As Introduced: March 4, 1987

ASSEMBLY ACTIONS:

COMMITTEE G. E. & CON. PRO. VOTE _____ COMMITTEE _____ VOTE _____

Ayes:

Ayes:

Nays:

Nays:

SUBJECT

Warranties: remedies.

DIGEST

Existing law gives the buyer of consumer goods the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's failure to comply with the Song-Beverly Consumer Warranty Act which establishes direct legal relations between the buyer and manufacturer in consumer transactions in California.

This bill clarifies that the buyer's damages in an action under the Song-Beverly Consumer Warranty Act include the rights of replacement or reimbursement.

FISCAL EFFECT

None

COMMENTS

The purpose of this bill, sponsored by the author, is to clarify that a consumer who brings an action to obtain damages under the Song-Beverly Consumer Warranty Act has the right to obtain either a refund or replacement if a warranted product is defective and is not fixed after a reasonable number of attempts as defined.

At issue is an automobile manufacturer's legal argument in a recent "lemon law" case that a plaintiff car buyer can sue only for the remedies specifically referenced in a particular section of the Song-Beverly Act. This bill adds to that section a reference to the code which specifies that the

- continued -



refund/replacement remedy provided for in the "lemon law" is available to a buyer in a lawsuit brought against a warrantor for defective products.

SUPPORT (verified 5/12/87)

None received.

OPPOSITION

None received.



CONSENT

AB 1367

Tanner (D)

As introduced

Majority

74-0, p. 2246, 5/26/87
(Passed Assembly on Consent)

SUBJECT: Warranties: Remedies

SOURCE: The author

DIGEST: This bill clarifies that the buyer's damages in an action under the Song-Beverly Consumer Warranty Act include the rights of replacement or reimbursement.

ANALYSIS: Existing law gives the buyer of consumer goods the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's failure to comply with the Song-Beverly Consumer Warranty Act which establishes direct legal relations between the buyer and manufacturer in consumer transactions in California.

The purpose of this bill, sponsored by the author, is to clarify that a consumer who brings an action to obtain damages under the Song-Beverly Consumer Warranty Act has the right to obtain either a refund or replacement if a warranted product is defective and is not fixed after a reasonable number of attempts, as defined.

At issue is an automobile manufacturer's legal argument in a recent "lemon law" case that a plaintiff car buyer can sue only for the remedies specifically referenced in a particular section of the Song-Beverly Act. This bill adds to that section a reference to the code which specifies that the refund/replacement remedy provided for in the "lemon law" is available to a buyer in a lawsuit brought against a warrantor for defective products.

FCA MJN 94

CONTINUED



According to the Senate Insurance, Claims and Corporations Committee analysis, this bill was spawned when an automobile manufacturer in a court case argued (unsuccessfully) that a buyer can only sue for the remedies specifically enumerated in Section 1794 of the Civil Code, which does not include replacement or reimbursement remedies.

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

SUPPORT: (Verified 7/2/87)

Attorney General

DLW:ct1 7/2/87 Senate Floor Analyses



SENATOR ALAN ROBBINS, CHAIRMAN

ASSEMBLY BILL NO. 1367 (Tanner) As Introduced March 4, 1987
Civil Code

Source: Author

Prior Legislation: AB 3560 (Chapter 385, Statutes of 1982)

Support: No known

Opposition: No known

SUBJECT

Replacement or reimbursement remedies under the Song-Beverly Consumer Warranty Act.

DIGEST

1] Description: AB 1367 clarifies that the refund or replacement remedies provided by Section 1793.2 of the Civil Code is available to a buyer in an action for damages against a warrantor for a defective product.

The bill further declares that the change made by this bill is declaratory of existing law and does not constitute a change in existing law.

2] Background: Section 1794 of the Civil Code law gives the buyer of consumer goods the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's failure to comply with the Song-Beverly Consumer warranty Act. This section does not specifically mention that the buyer has the specific remedy of replacement of the product or reimbursement for the product. However, Section 1793.2 of the Civil Code provides a replacement or reimbursement remedy for the buyer under specified conditions.

FISCAL EFFECT Fiscal Committee: No

STAFF COMMENTS

This bill was spawned when an automobile manufacturer in a court case argued (unsuccessfully) that a buyer can only sue for the remedies specifically enumerated in Section 1794 of the Civil Code, which does not include replacement or reimbursement remedies.

JIM CATHCART
Consultant

ASSEMBLY BILL NO. 1367

07/01/87



STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL

COPY
Ann

June 3, 1987

Assemblywoman Sally Tanner

A.B. 1367 - Conflict

was

The above measure, introduced by you, which is ~~is now~~ set for hearing in the
Assembly Governmental Efficiency and Consumer Protection ~~Committee~~.
appears to be in conflict with the following other measure(s):

A.B. 2057-Tanner

**ENACTMENT OF THESE MEASURES IN THEIR PRESENT FORM MAY
GIVE RISE TO A SERIOUS LEGAL PROBLEM WHICH PROBABLY CAN BE
AVOIDED BY APPROPRIATE AMENDMENTS.**

**WE URGE YOU TO CONSULT OUR OFFICE IN THIS REGARD AT YOUR
EARLIEST CONVENIENCE.**

Very truly yours,
BION M. GREGORY
LEGISLATIVE COUNSEL

cc: Committee
named above
Each lead author
concerned

FCA MJN 97

LEGISLATIVE INTENT SERVICE (800) 666-1917



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

AB 1367 (Tanner)
As amended May 11
Hearing date: May 24, 1988
Business & Professions Code
GPS

NEW MOTOR VEHICLE ARBITRATION: FEES FOR CERTIFICATION

HISTORY

Source: Author
Prior Legislation: AB 2057 (1987) - Chaptered
Support: Unknown
Opposition: No known
Assembly Floor Vote: Not applicable

KEY ISSUE

SHOULD AUTOMOBILE MANUFACTURERS BE BILLED DIRECTLY BY THE NEW MOTOR VEHICLE BOARD TO SUPPORT THE CERTIFICATION OF THIRD-PARTY DISPUTE RESOLUTION PROGRAMS, THROUGH FEES TO BE DETERMINED ON THE BASIS OF ANNUAL SALES?

PURPOSE

The existing "Lemon Law" establishes procedures whereby the purchaser of a new defective motor vehicle might obtain redress. Central to the process is the submittal of contentions between purchasers and manufacturers to a third-party dispute resolution program. Under AB 2057 (Tanner) of last year, the Bureau of Automotive Repair is charged with the responsibility of certifying the dispute resolution processes to be used in the arbitration of Lemon Law cases. That certification program, operative July 1 of this year, is to be funded by the imposition of fees collected by the Department of Motor Vehicles on every applicant for license or license renewal as a manufacturer or distributor of automobiles. The amount of the fee is to be determined by the new Motor Vehicle Board, based on estimate of need by the Bureau of Automotive Repair and calculated on a

(More)



per-transaction basis not to exceed one dollar per vehicle. A statement of transactions and the appropriate fee is to accompany the application to the Department of Motor Vehicles, which deposits the proceeds in a Certification Account to be appropriated to the Bureau by the Legislature.

This bill would simplify the collection process by requiring the new Motor Vehicle Board to calculate the fees, bill the auto manufacturers only, and collect the fees directly for deposit in the Certification Account. Involvement of the Department of Motor Vehicles, and undue complication of the license application and renewal process, would thereby be avoided.

The purpose of this measure is to establish a more direct and less administratively burdensome method of collecting fees for the certification of Lemon Law dispute resolution programs.

COMMENT

1. The current funding mechanism for the certification program is unduly complicated

Establishing the responsibility of auto manufacturers for defects in products for which they have made an expressed warranty has been the subject of legislative activity for nearly a decade. The essence of a Lemon Law is to provide the purchaser with a statutory framework through which he or she might be made whole for losses incurred in the purchase of an inherently defective automotive product. Under current law, submittal of disputes between a manufacturer and a consumer to a third-party arbitration has become an accepted procedure. However, in the passage of AB 2051, the Legislature recognized the need to ensure that dispute resolution processes as may be offered by the manufacturer meet accepted procedural standards. To this end, the Bureau of Automotive Repair was charged with the certification of the processes to be made available to consumers.

The responsibility of manufacturers to fund the certification program was determined in last year's legislation; however, the manner in which the funding is to be collected seems administratively cumbersome, involving three agencies and tied to the regular licensing and license renewal process of the DMV. The process proposed in this measure is simpler and more direct: manufacturers would inform the New Motor Vehicle Board of their transactions by February 1 of each

(More)



year, would receive a notice of assessment from the Board, and would forward payment for deposit to the certification account within 30 days of notice. A penalty of 10% would be imposed for delinquency. Failure to notify the Board of sales, leases, etc., would result in an assessment paid on the preceding year's transactions. The Bureau would continue to be responsible for calculating the level of funding needed.

2. Nondisclosure of prior year's business may work in favor of some manufacturers

While the procedure proposed seems a reasonable alternative to DMV involvement as currently in effect, there seems to exist a possible loophole whereby manufacturers might reduce their funding liability. A failure to file a record of their transactions results in an assessment based on prior year performance; thus, it may behoove them to decline disclosure of performance in a year relatively more successful than the prior one. While this would have no effect on the state's take, it might result in an unfair assessment upon other manufacturers who would be forced to bear an additional amount of assessment.

SHOULD NOT SOME PENALTY BE IMPOSED FOR FAILURE TO DISCLOSE TRANSACTIONS?

3. Urgency clause needed to ensure that financing provisions are in order prior to effective date of the program

This bill contains an urgency clause, necessary to ensure that the new fee provisions are operative prior to the July 1 effective date of the certification program.



CONCURRENCE IN SENATE AMENDMENTS

AB 1367 (Tanner) - As Amended: May 31, 1988

ASSEMBLY VOTE 74-0 (May 26, 1987) SENATE VOTE 39-0 (June 9, 1988)Original Committee Reference: G. E. & CON. PRO.DIGEST

Urgency statute. 2/3 vote required.

Current law, known as the "Lemon Law", allows automobile manufacturers to establish qualified third party dispute resolution (arbitration) programs, which buyers must use before they can assert the statutory presumption that a vehicle is a lemon in a legal action for replacement or refund.

Current law, operative July 1, 1988, also requires the Bureau of Automotive Repair to establish a program for the certification of the third party dispute resolution programs established, and creates a Certification Account funded through a surcharge on applications for licensure or renewal as manufacturers of distributors of new motor vehicles to pay for the program. On or before January 1 of each calendar year, the bureau is to determine the dollar amount, not to exceed \$1 per vehicle sold, needed to be collected in fees.

As passed by the Assembly, this bill clarified that the buyer's damages in an action under the Song-Beverly Consumer Warranty Act include the rights of replacement and reimbursement.

The Senate amendments delete the contents of the bill as passed by the Assembly and instead require the New Motor Vehicle Board to:

- 1) Adopt regulations including a formula to calculate the fees necessary to fund the certification program for dispute resolution mechanisms.
- 2) Calculate the fees based on information provided by February 1 each year by motor vehicle manufacturers. Failure to file would result in an assessment based on the prior year's figures.
- 3) Bill the auto manufacturers only. Payment would be due within 30 days of notification, with a 10% penalty for delinquency.
- 4) Collect the fees directly for deposit in the Certification Account.

- continued -



FISCAL EFFECT

None

COMMENTS

This bill is an urgency measure created in the Senate, so that it can be enacted before the law it seeks to amend takes effect on July 1, 1988. The bill has not been heard in this form by the Assembly.

The purpose of this measure is to establish a more direct and less administratively burdensome method of collecting the fees necessary to fund the certification of Lemon Law dispute resolution programs. This certification program was created in 1987 with the passage of AB 2057 (Tanner), and will take effect July 1. However, the mechanism AB 2057 established for collecting the fee is excessively cumbersome, involving three agencies and tied to the regular licensing and license renewal process of the DMV.

The process proposed in this measure is simple and more direct: Manufacturers would inform the New Motor Vehicle Board of their transactions by February 1, of each year, would receive a notice of assessment from the Board, and would forward payment for deposit to the certification account within 30 days of notice. A penalty of 10% would be imposed for delinquency. Failure to notify the Board of sales, leases, etc., would result in an assessment paid on the preceding year's transactions.



Larry Doyle
324-7440
ageconpro

Department CONSUMER AFFAIRS	Author Tanner	Bill Number AB 1367
Sponsored by Author	Related Bills AB 2057	Date Last Amended original

SUMMARY

1 Description

BACKGROUND

- 2 History
- 3 Purpose
- 4 Sponsor
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- 43 Amended Language Attached

BILL SUMMARY

Existing law provides that any buyer of consumer goods who is damaged by a manufacturer's failure to comply with any obligation under the Song-Beverly Consumer Warranty Act or under an implied or express warranty or service contract may sue for damages and other legal and equitable relief.

This bill clarifies that the buyer's damages in an action under the Song-Beverly Consumer Warranty Act include the right of replacement or restitution pursuant to the New Car Lemon Law.

Background

The Song-Beverly Consumer Warranty Act provides that if the manufacturer of a consumer product is unable to service or repair the product to repair a nonconformity after a reasonable number of attempts, the manufacturer must either replace the product or reimburse the buyer for the price of the product, less an amount attributable to the buyer's use before discovery of the nonconformity.

The act in Civil Code section 1794, provides that any buyer who is damaged by a manufacturer's failure to comply with any obligation under the act may sue for damages and other legal and equitable relief as specified.

AMENDMENT SUMMARY:

Dept. Director Position <input checked="" type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SIA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> Defer	Agency Sectry. Position <input checked="" type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SIA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> Defer	Governor's Office Use <input checked="" type="checkbox"/> Position Noted <input checked="" type="checkbox"/> Position Approved <input type="checkbox"/> Position Disapproved By: <i>20</i> Date: <i>7/24</i>
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Department Director: *Michael Alley* Date: *6/25/87* Agency Secretary: *[Signature]* Date: *2*

The New Car Lemon Law, which is contained in the Song Beverly Consumer Warranty Act, establishes that a "reasonable number of attempts" to repair a new motor vehicle have been made if, within the first year or 12,000 miles, either (a) the manufacturer has been unable to repair the same nonconformity after four attempts or (2) the vehicle is out of service for repairs for a total of at least 30 days since delivery of the vehicle to the buyer. A vehicle which meets this test is deemed a "lemon," and the buyer has the right to restitution or replacement.

Since the New Car Lemon Law is a part of the Song-Beverly Consumer Warranty Act, buyers of "lemons" have the same remedies (i.e., the right to sue for damages and other legal and equitable relief pursuant to Civil Code section 1794) as do buyers of other consumer goods. However, their remedies are not exclusively those found in Civil Code section 1794.

In a recent lemon law case, the defendant automobile manufacturer argued that the plaintiff car buyer could sue only for the remedies specifically referenced in Civil Code section 1794. That section does not specifically entitle car buyers to restitution or replacement of a "lemon." If this were the case, buyers of "lemons" would be simply be stuck with them.

The Department of Consumer Affairs and other consumer protection representatives believe that the New Car Lemon Law clearly entitles the buyer of a "lemon" restitution or a replacement vehicle, either by award of the manufacturer's lemon law arbitration panel or by court judgment. However, to avoid any future attempts by manufacturers to argue that new car buyers are only entitled to the remedies contained in section 1794, the author has introduced this bill to affirm that the buyer of a "lemon" who brings an action for damages under the Song-Beverly Consumer Warranty Act does have the right to restitution or replacement.

Specific Findings

- o This bill would preclude future arguments by vehicle manufacturers in lemon law cases that the buyer of a "lemon" is not entitled to restitution or replacement because restitution or replacement is not specifically mentioned as a remedy in Civil Code section 1794.
- o This bill would declare that the changes in the bill are declaratory of existing law.

Fiscal Impact

No fiscal impact to the Department of Consumer Affairs.

LEGISLATIVE INTENT SERVICE (800) 666-1917



Socio-Economic Impact

This bill would enhance the effectiveness of the New Car Lemon Law by affirming that buyers of "lemons" are entitled to an award of restitution or replacement in a legal action.

Argument

Interested Parties

Proponents: author (sponsor)
Attorney General

Opponents: None known

The purpose of this bill is set forth under Background, above.

Recommendation

The Department of Consumer Affairs recommends a SUPPORT position on this bill.



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

DEPARTMENT	AUTHOR	BILL NUMBER
Finance	Tanner	AB 1367

SPONSORED BY	RELATED BILLS	AMENDMENT DATE
		May 11, 1988

BILL SUMMARY

AB 1367 is clean-up legislation of Chapter 1280/87 (Tanner) which relates to the Bureau of Automotive Repairs and the Department of Motor Vehicles administration of the motor vehicle third-party dispute resolution process.

SUMMARY OF CHANGES

This bill has not been analyzed previously.

SUMMARY OF COMMENTS

The bureau and the Department of Motor Vehicles indicate that AB 1367 is clean-up legislation and costs associated with the bill will be minor and absorbable within existing resources.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year)			Code Fund
		(Dollars in Thousands)			
		FC 1987-88	FC 1988-89	FC 1989-90	
Consumer Affairs 1150/Bur of Auto. Repair	SO	-----No Fiscal Impact-----			128/Auto Repair
2740/Motor Vehicle	SO	-----No Fiscal Impact-----			044/Mot Veh.

Impact on State Appropriations Limit--No

ANALYSIS

A. Specific Findings

Chapter 1280/87 revised the new car lemon law and required the bureau to certify third party agencies which assist in dispute resolutions. AB 1367 revises the provisions of Chapter 1280/87 related to the collection of fees which provide funding for third party resolutions to delete the references to applicants for licenses or renewal of licenses as manufacturers or distributors. This bill would instead require every manufacturer to file a statement in February of each year which contains specified information and to pay a fee within a specified time after written notification. A penalty may be assessed if the fee is delinquent.

POSITION: Neutral	Department Director	Date
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Principal Analyst (222) R. H. Baker <i>RH Baker 5/18/88</i>	Date 5/18/88	Program Budget Manager Wallis J. Clark <i>MH WJ Clark 5/18/88</i>	Date 5/18/88	Governor's Office Position noted Position approved Position disapproved by: _____ date: _____
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BILL ANALYSIS

Form DF-43 (Rev 03/88 Buff)

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)

Form DF-43

AUTHOR	AMENDMENT DATE	BILL NUMBER
Tanner	May 11, 1988	AB 1367

ANALYSIS

A. Specific Findings (Continued)

The bureau will also be required to notify the New Motor Vehicle Board, which was created by Chapter 1280/87, of the dollar amount necessary to fully fund the third-party dispute resolution process on or before February 1. This bill contains an urgency provision in order to fund the program before it begins operation.

B. Fiscal Analysis

The bureau and the New Motor Vehicle Board (within the Department of Motor Vehicles) indicate that any costs associated with AB 1367 would be minor and absorbable within existing resources.

CJ:BA,AB1367-8/abb



Date of Hearing: May 19, 1987

AB 1367

ASSEMBLY COMMITTEE ON GOVERNMENTAL EFFICIENCY AND CONSUMER PROTECTION
RUSTY AREIAS, Chairman

AB 1367 (Tanner) - As Introduced: March 4, 1987

ASSEMBLY ACTIONS:

COMMITTEE G. E. & CON. PRO. VOTE _____ COMMITTEE _____ VOTE _____

Ayes:

Ayes:

Nays:

Nays:

SUBJECT

Warranties: remedies.

DIGEST

Existing law gives the buyer of consumer goods the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's failure to comply with the Song-Beverly Consumer Warranty Act which establishes direct legal relations between the buyer and manufacturer in consumer transactions in California.

This bill clarifies that the buyer's damages in an action under the Song-Beverly Consumer Warranty Act include the rights of replacement or reimbursement.

FISCAL EFFECT

None

COMMENTS

The purpose of this bill, sponsored by the author, is to clarify that a consumer who brings an action to obtain damages under the Song-Beverly Consumer Warranty Act has the right to obtain either a refund or replacement if a warranted product is defective and is not fixed after a reasonable number of attempts as defined.

At issue is an automobile manufacturer's legal argument in a recent "lemon law" case that a plaintiff car buyer can sue only for the remedies specifically referenced in a particular section of the Song-Beverly Act. This bill adds to that section a reference to the code which specifies that the

- continued -

AB 1367



refund/replacement remedy provided for in the "lemon law" is available to a buyer in a lawsuit brought against a warrantor for defective products.

SUPPORT (verified 5/12/87)

None received.

OPPOSITION

None received.



SUBJECT: Warranties: motor vehicle third-party dispute resolution

SOURCE: Author

DIGEST: This bill provides that automobile manufacturers be billed directly by the vehicle board to support the certification of third-party dispute resolution programs, through fees to be determined on the basis of annual sales.

ANALYSIS: The existing "Lemon Law" establishes procedures whereby the purchaser of a new defective motor vehicle might obtain redress. Central to the process is the submittal of contentions between purchasers and manufacturers to a third-party dispute resolution program. Under AB 2057 (Tanner) of last year, the Bureau of Automotive Repair is charged with the responsibility of certifying the dispute resolution processes to be used in the arbitration of Lemon Law cases. That certification program, operative July 1 of this year, is to be funded by the imposition of fees collected by the Department of Motor Vehicles on every applicant for license or license renewal as a manufacturer or distributor of automobiles. The amount of the fee is to be determined by the new Motor Vehicle Board, based on estimate of need by the Bureau of Automotive Repair and calculated on a per-transaction basis not to exceed one dollar per vehicle. A statement of transactions and the appropriate fee is to accompany the application to the Department of Motor Vehicles, which deposits the proceeds in a Certification Account to be appropriated to the Bureau by the Legislature.

This bill would simplify the collection process by requiring the new Motor Vehicle Board to calculate the fees, bill the auto manufacturers only by certified mail, return receipt requested, and collect the fees directly for deposit in the Certification Account. Involvement of the Department of Motor Vehicles, and undue complication of the license application and renewal process, would thereby be avoided.

This bill also provides the Vehicle Board may adopt specific regulations relative to enforcing this section. The regulations will include a formula for calculating the fees as well as the total amount of fees that may be collected from each manufacturer.

The purpose of this measure is to establish a more direct and less administratively burdensome method of collecting fees for the certification of Lemon Law dispute resolution programs.

Establishing the responsibility of auto manufacturers for defects in products for which they have made an expressed warranty has been the subject of legislative activity for nearly a decade. The essence of a Lemon Law is to provide the purchaser with a statutory framework through which he or she might be made whole for losses incurred in the purchase of an inherently defective automotive product. Under current law, submittal of disputes between a manufacturer and a consumer to a third-party



arbitration has become an accepted procedure. However, in the passage of AB 2057, the Legislature recognized the need to ensure that dispute resolution processes as may be offered by the manufacturer meet accepted procedural standards. To this end, the Bureau of Automotive Repair was charged with the certification of the processes to be made available to consumers.

The responsibility of manufacturers to fund the certification program was determined in last year's legislation; however, the manner in which the funding is to be collected seems administratively cumbersome, involving three agencies and tied to the regular licensing and license renewal process of the DMV. The process proposed in this measure is simpler and more direct: manufacturers would inform the New Motor Vehicle Board of their transactions by May 1 of each year, would receive a notice of assessment from the Board, and would forward payment for deposit to the certification account within 30 days of notice. A penalty of 10% would be imposed for delinquency. Failure to notify the Board of sales, leases, etc., would result in an assessment paid on the preceding year's transactions. The Bureau would continue to be responsible for calculating the level of funding needed.

Prior Legislation:

AB 2057 (Tanner-1987) - Senate Vote 39-0, Pg. 3674, Chaptered.

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

RJG:nf 6/1/88 Senate Floor Analyses



ASSEMBLY COMMITTEE ON GOVERNMENT EFFICIENCY & CONSUMER PROTECTION
REPUBLICAN ANALYSIS

AB 1367 (Tanner) -- CONSUMER REMEDIES ON WARRANTIES
Version: 5/31/88 Chairman: Stan Statham
Recommendation: None Vote: 2/3 Urgency

Summary: Clean-up legislation of Chapter 1280 of 1987 (Tanner) which relates to the Bureau of Automotive Repairs and the Department of Motor Vehicles administration of the motor vehicle third-party dispute resolution process.

Fiscal effect: The department indicates that any costs associated with this measure would be minor and absorbable within existing resources.

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

Comments: Revises the new car lemon law and requires the bureau to certify third party agencies which assist in dispute resolution. The Senate amendments relate to collection of fees which provide funding for third party resolutions to delete the references to applicants for licenses or renewal of licenses as manufacturers or distributors. This measure would instead require every manufacturer to file a statement on or before May first of each year which contains specified information and to pay a fee within a specified time after written notification. A penalty may be assessed if the fee is delinquent.

Assembly Republican Committee Vote:
G.E. & C.P. -- 5/19/87
(8-0) Ayes: Frazee, Grisham, Harvey
Abs.: Stirling
Assembly Floor -- 5/26/87
(74-0) Ayes: All Republicans
Senate Republican Committee Vote:
Ins., Cl. & Corps. -- 7/1/87
(9-0) Ayes: All Republicans
Judiciary -- 5/24/88
(8-0) Ayes: All Republicans
Senate Floor -- 6/9/88
(39-0) Ayes: All Republicans
Consultant: Wess Larson



SENATOR ALAN ROBBINS, CHAIRMAN

ASSEMBLY BILL NO. 1367 (Tanner) As Introduced March 4, 1987
Civil Code

Source: Author
Prior Legislation: AB 3560 (Chapter 385, Statutes of 1982)
Support: No known
Opposition: No known

SUBJECT

Replacement or reimbursement remedies under the Song-Beverly Consumer Warranty Act.

DIGEST

1] **Description:** AB 1367 clarifies that the refund or replacement remedies provided by Section 1793.2 of the Civil Code is available to a buyer in an action for damages against a warrantor for a defective product.

The bill further declares that the change made by this bill is declaratory of existing law and does not constitute a change in existing law.

2] **Background:** Section 1794 of the Civil Code law gives the buyer of consumer goods the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's failure to comply with the Song-Beverly Consumer warranty Act. This section does not specifically mention that the buyer has the specific remedy of replacement of the product or reimbursement for the product. However, Section 1793.2 of the Civil Code provides a replacement or reimbursement remedy for the buyer under specified conditions.

FISCAL EFFECT Fiscal Committee: No

STAFF COMMENTS

This bill was spawned when an automobile manufacturer in a court case argued (unsuccessfully) that a buyer can only sue for the remedies specifically enumerated in Section 1794 of the Civil Code, which does not include replacement or reimbursement remedies.

JIM CATHCART
Consultant

ASSEMBLY BILL NO. 1367

07/01/87



ASSEMBLY CAUCUS

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

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AB 1367 (Tanner)
As amended May 11
Hearing date: May 24, 1988
Business & Professions Code
GPS

NEW MOTOR VEHICLE ARBITRATION: FEES FOR CERTIFICATION

HISTORY

Source: Author
Prior Legislation: AB 2057 (1987) - Chaptered
Support: Unknown
Opposition: No known
Assembly Floor Vote: Not applicable

KEY ISSUE

SHOULD AUTOMOBILE MANUFACTURERS BE BILLED DIRECTLY BY THE NEW MOTOR VEHICLE BOARD TO SUPPORT THE CERTIFICATION OF THIRD-PARTY DISPUTE RESOLUTION PROGRAMS, THROUGH FEES TO BE DETERMINED ON THE BASIS OF ANNUAL SALES?

PURPOSE

The existing "Lemon Law" establishes procedures whereby the purchaser of a new defective motor vehicle might obtain redress. Central to the process is the submittal of contentions between purchasers and manufacturers to a third-party dispute resolution program. Under AB 2057 (Tanner) of last year, the Bureau of Automotive Repair is charged with the responsibility of certifying the dispute resolution processes to be used in the arbitration of Lemon Law cases. That certification program, operative July 1 of this year, is to be funded by the imposition of fees collected by the Department of Motor Vehicles on every applicant for license or license renewal as a manufacturer or distributor of automobiles. The amount of the fee is to be determined by the new Motor Vehicle Board, based on estimate of need by the Bureau of Automotive Repair and calculated on a

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per-transaction basis not to exceed one dollar per vehicle. A statement of transactions and the appropriate fee is to accompany the application to the Department of Motor Vehicles, which deposits the proceeds in a Certification Account to be appropriated to the Bureau by the Legislature.

This bill would simplify the collection process by requiring the new Motor Vehicle Board to calculate the fees, bill the auto manufacturers only, and collect the fees directly for deposit in the Certification Account. Involvement of the Department of Motor Vehicles, and undue complication of the license application and renewal process, would thereby be avoided.

The purpose of this measure is to establish a more direct and less administratively burdensome method of collecting fees for the certification of Lemon Law dispute resolution programs.

COMMENT

1. The current funding mechanism for the certification program is unduly complicated

Establishing the responsibility of auto manufacturers for defects in products for which they have made an expressed warranty has been the subject of legislative activity for nearly a decade. The essence of a Lemon Law is to provide the purchaser with a statutory framework through which he or she might be made whole for losses incurred in the purchase of an inherently defective automotive product. Under current law, submittal of disputes between a manufacturer and a consumer to a third-party arbitration has become an accepted procedure. However, in the passage of AB 2051, the Legislature recognized the need to ensure that dispute resolution processes as may be offered by the manufacturer meet accepted procedural standards. To this end, the Bureau of Automotive Repair was charged with the certification of the processes to be made available to consumers.

The responsibility of manufacturers to fund the certification program was determined in last year's legislation; however, the manner in which the funding is to be collected seems administratively cumbersome, involving three agencies and tied to the regular licensing and license renewal process of the DMV. The process proposed in this measure is simpler and more direct: manufacturers would inform the New Motor Vehicle Board of their transactions by February 1 of each

(More)



year, would receive a notice of assessment from the Board, and would forward payment for deposit to the certification account within 30 days of notice. A penalty of 10% would be imposed for delinquency. Failure to notify the Board of sales, leases, etc., would result in an assessment paid on the preceding year's transactions. The Bureau would continue to be responsible for calculating the level of funding needed.

2. Nondisclosure of prior year's business may work in favor of some manufacturers

While the procedure proposed seems a reasonable alternative to DMV involvement as currently in effect, there seems to exist a possible loophole whereby manufacturers might reduce their funding liability. A failure to file a record of their transactions results in an assessment based on prior year performance; thus, it may behoove them to decline disclosure of performance in a year relatively more successful than the prior one. While this would have no effect on the state's take, it might result in an unfair assessment upon other manufacturers who would be forced to bear an additional amount of assessment.

SHOULD NOT SOME PENALTY BE IMPOSED FOR FAILURE TO DISCLOSE TRANSACTIONS?

3. Urgency clause needed to ensure that financing provisions are in order prior to effective date of the program

This bill contains an urgency clause, necessary to ensure that the new fee provisions are operative prior to the July 1 effective date of the certification program.



SENATOR ALAN ROBBINS, CHAIRMAN

ASSEMBLY BILL NO. 1367 (Tanner) As Introduced March 4, 1987
Civil Code

Source: Author

Prior Legislation: AB 3560 (Chapter 385, Statutes of 1982)

Support: No known

Opposition: No known

SUBJECT

Replacement or reimbursement remedies under the Song-Beverly Consumer Warranty Act.

DIGEST

1] Description: AB 1367 clarifies that the refund or replacement remedies provided by Section 1793.2 of the Civil Code is available to a buyer in an action for damages against a warrantor for a defective product.

The bill further declares that the change made by this bill is declaratory of existing law and does not constitute a change in existing law.

2] Background: Section 1794 of the Civil Code law gives the buyer of consumer goods the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's failure to comply with the Song-Beverly Consumer warranty Act. This section does not specifically mention that the buyer has the specific remedy of replacement of the product or reimbursement for the product. However, Section 1793.2 of the Civil Code provides a replacement or reimbursement remedy for the buyer under specified conditions.

FISCAL EFFECT Fiscal Committee: No

STAFF COMMENTS

This bill was spawned when an automobile manufacturer in a court case argued (unsuccessfully) that a buyer can only sue for the remedies specifically enumerated in Section 1794 of the Civil Code, which does not include replacement or reimbursement remedies.

JIM CATHCART
Consultant

ASSEMBLY BILL NO. 1367

07/01/87



Date of Hearing: May 19, 1987

AB 1367

ASSEMBLY COMMITTEE ON GOVERNMENTAL EFFICIENCY AND CONSUMER PROTECTION
RUSTY AREIAS, Chairman

AB 1367 (Tanner) - As Introduced: March 4, 1987

ASSEMBLY ACTIONS:

COMMITTEE G. E. & CON. PRO. VOTE _____ COMMITTEE _____ VOTE _____

Ayes: Ayes:

Nays: Nays:

SUBJECT

Warranties: remedies.

DIGEST

Existing law gives the buyer of consumer goods the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's failure to comply with the Song-Beverly Consumer Warranty Act which establishes direct legal relations between the buyer and manufacturer in consumer transactions in California.

This bill clarifies that the buyer's damages in an action under the Song-Beverly Consumer Warranty Act include the rights of replacement or reimbursement.

FISCAL EFFECT

None

COMMENTS

The purpose of this bill, sponsored by the author, is to clarify that a consumer who brings an action to obtain damages under the Song-Beverly Consumer Warranty Act has the right to obtain either a refund or replacement if a warranted product is defective and is not fixed after a reasonable number of attempts as defined.

At issue is an automobile manufacturer's legal argument in a recent "lemon law" case that a plaintiff car buyer can sue only for the remedies specifically referenced in a particular section of the Song-Beverly Act. This bill adds to that section a reference to the code which specifies that the

- continued -

AB 1367



refund/replacement remedy provided for in the "lemon law" is available to a buyer in a lawsuit brought against a warrantor for defective products.

SUPPORT (verified 5/12/87)

None received.

OPPOSITION

None received.



Arnie

JUN 8 1987

SENATE COMMITTEE ON INSURANCE, CLAIMS AND CORPORATIONS
ALAN ROBBINS, Chairman

BACKGROUND INFORMATION REQUEST

MEASURE: AB 1367

DATE SENT: 6/5/87

AUTHOR: Tanner

DATE REC'D BACK: 6/16/87

1. Origin of the bill:

a. Who is the source of the bill? What person, organization or governmental entity requested information?

Former Assembly Consumer Affairs Committee Consultant

b. Please identify session and bill number of similar bills:

AB 3560 (1982)

c. Which Legislative Counsel deputy drafted this bill?

Name Mr. Mojer Phone # 5-6931

2. What is the problem or deficiency in the present law which the bill seeks to remedy? How does it do this?

See attached memo

3. Please attach all background material and any correspondence related to the bill.

4. Do you intend to amend this bill? No
(Reminder, Amendments are due to the committee by 1:30pm on the Friday before the hearing)

5. Name of contact person: Arnie Peters

ATTACHMENTS: Yes X NO

PLEASE RETURN TO: Room 5122, State Capitol. Phone 445-0825

FCA MJN 120

LEGISLATIVE INTENT SERVICE (800) 666-1917



February 6, 1987

MEMORANDUM

TO: Assemblywoman Sally Tanner

FROM: Jay J. DeFuria

SUBJECT: Legislative Proposal: "Clean-up" (clarifying) amendment to your AB 3560 of 1982 (Chapter 385, Statutes of 1982)

ISSUE

As I briefly discussed with you and Arnie in your office recently, an interpretation concerning Civil Code Section 1794 (in the Song-Beverly Consumer Warranty Act) has been broached by an automobile manufacturer's attorney in at least one pending consumer auto "lemon" case which, were it to become accepted, could seriously weaken your lemon law. This problem was brought to my attention by the consumer's attorney (Mr. Brian Kermnitzer-San Francisco) who requested that Section 1794 be amended to clarify its meaning and ward off this dangerous misinterpretation.

BACKGROUND

Civil Code Section 1794 is a provision of the Song-Beverly Act which gives the consumer the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's (or others) failure to comply with Song-Beverly warranty obligations. You authored AB 3560 in 1982 which made some "fine tuning" clarifications to Section 1794 (the bill's sponsor was the Department of Consumer Affairs).

Section 1794 specifies what the measure of damages will be for the buyer in certain circumstances by reference to specified California Commercial Code provisions. However, as you know, Civil Code Section 1793.2 (the "lemon" law) provides a buyer with the right to obtain either a refund ("reimbursement") or replacement if a warranted product is defective and is not fixed after a reasonable number of attempts (4X/30 days for new autos.)

PROBLEM

The misinterpretation problem comes about because Section 1794 does not specifically include the refund/replacement remedy provided to the buyer by Section 1793.2 (nor other remedies



provided for in the Song-Beverly Act). The result has been for the auto manufacturer's attorney to argue in court that a plaintiff car buyer can sue only for the Section 1794 remedies and not for the Section 1793.2 refund/replacement remedy. I think that argument is ludicrous since were it to be accepted, it would drastically reduce any incentive for the manufacturer to offer a refund before a lawsuit, and cause them to argue the refund is an unavailable remedy in a lawsuit. (They argue the buyer only has the right to obtain the difference in value between what the defective car is worth and what it would have been worth without the defects).

THE PROPOSAL

The legislative proposal is simply to amend Civil Code Section 1794 by adding language that would clearly specify that the refund/replacement remedy provided by Section 1793.2 is available to a buyer in a lawsuit brought against a warrantor for defective products.

The language for the amendment would be as follows:

Amend Section 1794(b) of the Civil Code by deleting "as follows:" after the word "shall" and inserting:

include the rights of replacement or reimbursement as set forth in Section 1793.2(d) and the following
(See attached markup)

Because this amendment is a clarification that Section 1794 doesn't preclude Section 1793.2 remedies, and to avoid the possibility of having this proposed amendment construed otherwise, I would also recommend that the following legislative intent be added as uncodified language in the bill:

Sec.2. (of the bill) The amendment of Section 1794 of the Civil Code made at the 1987-88 Regular Session of the Legislature does not constitute a change in, but is declaratory of existing law.

Finally, I would recommend that this proposal be considered for introduction as a separate bill, rather than as an amendment to your 1987 "Lemon Law II" bill. The rationale is that it is a clean-up to your previous non-lemon law legislation and that having it in a separate bill will reduce confusion and keep it separated from any controversy that may attach to your direct lemon law clean-up efforts.

If I can be of further assistance to you on this issue please let me know.

JJD:bj



SENATOR ALAN ROBBINS, CHAIRMAN

ASSEMBLY BILL NO. 1367 (Tanner) As Introduced March 4, 1987
Civil Code

Source: Author
Prior Legislation: AB 3560 (Chapter 385, Statutes of 1982)
Support: No known
Opposition: No known

SUBJECT

Replacement or reimbursement remedies under the Song-Beverly Consumer Warranty Act.

DIGEST

1] Description: AB 1367 clarifies that the refund or replacement remedies provided by Section 1793.2 of the Civil Code is available to a buyer in an action for damages against a warrantor for a defective product.

The bill further declares that the change made by this bill is declaratory of existing law and does not constitute a change in existing law.

2] Background: Section 1794 of the Civil Code law gives the buyer of consumer goods the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's failure to comply with the Song-Beverly Consumer warranty Act. This section does not specifically mention that the buyer has the specific remedy of replacement of the product or reimbursement for the product. However, Section 1793.2 of the Civil Code provides a replacement or reimbursement remedy for the buyer under specified conditions.

FISCAL EFFECT Fiscal Committee: No

STAFF COMMENTS

This bill was spawned when an automobile manufacturer in a court case argued (unsuccessfully) that a buyer can only sue for the remedies specifically enumerated in Section 1794 of the Civil Code, which does not include replacement or reimbursement remedies.

JIM CATHCART
Consultant

ASSEMBLY BILL NO. 1367

07/01/87



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

AB 1367 (Tanner)
As amended May 11
Hearing date: May 24, 1988
Business & Professions Code
GPS

NEW MOTOR VEHICLE ARBITRATION: FEES FOR CERTIFICATION

HISTORY

Source: Author
Prior Legislation: AB 2057 (1987) - Chaptered
Support: Unknown
Opposition: No known
Assembly Floor Vote: Not applicable

KEY ISSUE

SHOULD AUTOMOBILE MANUFACTURERS BE BILLED DIRECTLY BY THE NEW MOTOR VEHICLE BOARD TO SUPPORT THE CERTIFICATION OF THIRD-PARTY DISPUTE RESOLUTION PROGRAMS, THROUGH FEES TO BE DETERMINED ON THE BASIS OF ANNUAL SALES?

PURPOSE

The existing "Lemon Law" establishes procedures whereby the purchaser of a new defective motor vehicle might obtain redress. Central to the process is the submittal of contentions between purchasers and manufacturers to a third-party dispute resolution program. Under AB 2057 (Tanner) of last year, the Bureau of Automotive Repair is charged with the responsibility of certifying the dispute resolution processes to be used in the arbitration of Lemon Law cases. That certification program, operative July 1 of this year, is to be funded by the imposition of fees collected by the Department of Motor Vehicles on every applicant for license or license renewal as a manufacturer or distributor of automobiles. The amount of the fee is to be determined by the new Motor Vehicle Board, based on estimate of need by the Bureau of Automotive Repair and calculated on a

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per-transaction basis not to exceed one dollar per vehicle. A statement of transactions and the appropriate fee is to accompany the application to the Department of Motor Vehicles, which deposits the proceeds in a Certification Account to be appropriated to the Bureau by the Legislature.

This bill would simplify the collection process by requiring the new Motor Vehicle Board to calculate the fees, bill the auto manufacturers only, and collect the fees directly for deposit in the Certification Account. Involvement of the Department of Motor Vehicles, and undue complication of the license application and renewal process, would thereby be avoided.

The purpose of this measure is to establish a more direct and less administratively burdensome method of collecting fees for the certification of Lemon Law dispute resolution programs.

COMMENT

1. The current funding mechanism for the certification program is unduly complicated

Establishing the responsibility of auto manufacturers for defects in products for which they have made an expressed warranty has been the subject of legislative activity for nearly a decade. The essence of a Lemon Law is to provide the purchaser with a statutory framework through which he or she might be made whole for losses incurred in the purchase of an inherently defective automotive product. Under current law, submittal of disputes between a manufacturer and a consumer to a third-party arbitration has become an accepted procedure. However, in the passage of AB 2051, the Legislature recognized the need to ensure that dispute resolution processes as may be offered by the manufacturer meet accepted procedural standards. To this end, the Bureau of Automotive Repair was charged with the certification of the processes to be made available to consumers.

The responsibility of manufacturers to fund the certification program was determined in last year's legislation; however, the manner in which the funding is to be collected seems administratively cumbersome, involving three agencies and tied to the regular licensing and license renewal process of the DMV. The process proposed in this measure is simpler and more direct: manufacturers would inform the New Motor Vehicle Board of their transactions by February 1 of each

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year, would receive a notice of assessment from the Board, and would forward payment for deposit to the certification account within 30 days of notice. A penalty of 10% would be imposed for delinquency. Failure to notify the Board of sales, leases, etc., would result in an assessment paid on the preceding year's transactions. The Bureau would continue to be responsible for calculating the level of funding needed.

2. Nondisclosure of prior year's business may work in favor of some manufacturers

While the procedure proposed seems a reasonable alternative to DMV involvement as currently in effect, there seems to exist a possible loophole whereby manufacturers might reduce their funding liability. A failure to file a record of their transactions results in an assessment based on prior year performance; thus, it may behoove them to decline disclosure of performance in a year relatively more successful than the prior one. While this would have no effect on the state's take, it might result in an unfair assessment upon other manufacturers who would be forced to bear an additional amount of assessment.

SHOULD NOT SOME PENALTY BE IMPOSED FOR FAILURE TO DISCLOSE TRANSACTIONS?

3. Urgency clause needed to ensure that financing provisions are in order prior to effective date of the program

This bill contains an urgency clause, necessary to ensure that the new fee provisions are operative prior to the July 1 effective date of the certification program.



ASSEMBLY COMMITTEE ON GOVERNMENTAL EFFICIENCY AND CONSUMER PROTECTION
RUSTY AREIAS, Chairman

AB 1367 (Tanner) - As Introduced: March 4, 1987

ASSEMBLY ACTIONS:

COMMITTEE	<u>G. E. & CON. PRO.</u>	VOTE	COMMITTEE	VOTE
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Ayes:

Ayes:

Nays:

Nays:

SUBJECT

Warranties: remedies.

DIGEST

Existing law gives the buyer of consumer goods the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's failure to comply with the Song-Beverly Consumer Warranty Act which establishes direct legal relations between the buyer and manufacturer in consumer transactions in California.

This bill clarifies that the buyer's damages in an action under the Song-Beverly Consumer Warranty Act include the rights of replacement or reimbursement.

FISCAL EFFECT

None

COMMENTS

The purpose of this bill, sponsored by the author, is to clarify that a consumer who brings an action to obtain damages under the Song-Beverly Consumer Warranty Act has the right to obtain either a refund or replacement if a warranted product is defective and is not fixed after a reasonable number of attempts as defined.

At issue is an automobile manufacturer's legal argument in a recent "lemon law" case that a plaintiff car buyer can sue only for the remedies specifically referenced in a particular section of the Song-Beverly Act. This bill adds to that section a reference to the code which specifies that the

- continued -



refund/replacement remedy provided for in the "lemon law" is available to a buyer in a lawsuit brought against a warrantor for defective products.

SUPPORT (verified 5/12/87)

None received.

OPPOSITION

None received.



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

AB 1367 (Tanner)
As amended May 11
Hearing date: May 24, 1988
Business & Professions Code
GPS

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NEW MOTOR VEHICLE ARBITRATION: FEES FOR CERTIFICATION

HISTORY

Source: Author
Prior Legislation: AB 2057 (1987) - Chaptered
Support: Unknown
Opposition: No known
Assembly Floor Vote: Not applicable

KEY ISSUE

SHOULD AUTOMOBILE MANUFACTURERS BE BILLED DIRECTLY BY THE NEW MOTOR VEHICLE BOARD TO SUPPORT THE CERTIFICATION OF THIRD-PARTY DISPUTE RESOLUTION PROGRAMS, THROUGH FEES TO BE DETERMINED ON THE BASIS OF ANNUAL SALES?

PURPOSE

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This bill would simplify the collection process by requiring the new Motor Vehicle Board to calculate the fees, bill the auto manufacturers only, and collect the fees directly for deposit in the Certification Account. Involvement of the Department of Motor Vehicles, and undue complication of the license application and renewal process, would thereby be avoided.

The purpose of this measure is to establish a more direct and less administratively burdensome method of collecting fees for the certification of Lemon Law dispute resolution programs.

COMMENT

1. The current funding mechanism for the certification program is unduly complicated

Establishing the responsibility of auto manufacturers for defects in products for which they have made an expressed warranty has been the subject of legislative activity for nearly a decade. The essence of a Lemon Law is to provide the purchaser with a statutory framework through which he or she might be made whole for losses incurred in the purchase of an inherently defective automotive product. Under current law, submittal of disputes between a manufacturer and a consumer to a third-party arbitration has become an accepted procedure. However, in the passage of AB 2051, the Legislature recognized the need to ensure that dispute resolution processes as may be offered by the manufacturer meet accepted procedural standards. To this end, the Bureau of Automotive Repair was charged with the certification of the processes to be made available to consumers.

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2. Nondisclosure of prior year's business may work in favor of some manufacturers

While the procedure proposed seems a reasonable alternative to DMV involvement as currently in effect, there seems to exist a possible loophole whereby manufacturers might reduce their funding liability. A failure to file a record of their transactions results in an assessment based on prior year performance; thus, it may behoove them to decline disclosure of performance in a year relatively more successful than the prior one. While this would have no effect on the state's take, it might result in an unfair assessment upon other manufacturers who would be forced to bear an additional amount of assessment.

SHOULD NOT SOME PENALTY BE IMPOSED FOR FAILURE TO DISCLOSE TRANSACTIONS?

3. Urgency clause needed to ensure that financing provisions are in order prior to effective date of the program

This bill contains an urgency clause, necessary to ensure that the new fee provisions are operative prior to the July 1 effective date of the certification program.



AB 1367 EXPLANATION

AB 2057 last year required the Bureau of Automotive Repair to establish a program to certify that arbitration panels run by auto manufacturers under the Lemon Law are run fairly and in accordance with the law. The BAR program is funded by fees imposed on the auto manufacturers.

AB 2057 required the New Motor Vehicle Board to impose the fees (up to \$1.00 per motor vehicle sold in the state) and the Department of Motor Vehicles to collect them.

AB 1367 simplifies the fee system by requiring the New Motor Vehicle Board to calculate the fees, bill the auto manufacturers and collect them directly. The New Motor Vehicle Board thinks this can be done with no cost and simplifies everything. The Bureau of Automotive Repair agrees.

As far as we know, there is no opposition to the bill.

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LEGISLATIVE INTENT SERVICE



AB 1367 - EXPLANATION OF AUTHOR'S AMENDMENTS

- AMENDMENT 1 CHANGES THE DATE ON WHICH MANUFACTURERS MUST REPORT THE NUMBER OF VEHICLES SOLD IN THE STATE DURING THE PAST YEAR FROM FEBRUARY 1 TO MAY 1.**

- AMENDMENT 2 REQUIRES THAT THE NEW MOTOR VEHICLE BOARD BILL EACH MANUFACTURER BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED.**

- AMENDMENT 3 IS A CONFORMING AMENDMENT. IT SPECIFIES THAT THE FEES ARE DUE AND PAYABLE 30 DAYS AFTER THE MANUFACTURER RECEIVES NOTICE OF THE AMOUNT DUE.**

- AMENDMENT 4 REQUIRES THAT IMPLEMENTING REGULATIONS INCLUDE A FORMULA FOR CALCULATING THE FEES EACH YEAR. THIS ENSURES THAT THE NEW MOTOR VEHICLE BOARD WILL NOT HAVE TO ADOPT A NEW REGULATION EACH YEAR SETTING THE SPECIFIC FEE FOR THAT YEAR.**



Sally Tanner

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Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 1367

Amendment 1

In line 1 of the title, strike out "1794 of the Civil Code, relating to" strike out line 2 of the title and insert:

9889.75 of the Business and Professions Code, relating to warranties, and declaring the urgency thereof, to take effect immediately.

Amendment 2

On page 1, strike out line 1 and insert:

SECTION 1. Section 9889.75 of the Business and Professions Code, as added by Chapter 1280 of the Statutes of 1987, is amended to read:

9889.75. The New Motor Vehicle Board in the Department of Motor Vehicles shall, in accordance with the procedures prescribed in this section, administer the collection of fees for the purposes of fully funding the administration of this chapter.

(a) There is hereby created in the Automotive Repair Fund a Certification Account. Fees collected pursuant to this section shall be deposited in the Certification Account and shall be available, upon appropriation by the Legislature, exclusively to pay the expenses incurred by the bureau in administering this chapter. If at the conclusion of any fiscal year the amount of fees collected exceeds the amount of expenditures for that purpose during that fiscal year, the surplus in the Certification Account shall be carried over into the succeeding fiscal year.

(b) Beginning July 1, 1988, every applicant for a license as a manufacturer, manufacturer branch, distributor, or distributor branch, and every applicant for the renewal of a license as a manufacturer, manufacturer branch, distributor, or distributor branch, shall accompany the application with and on or before February 1 of each calendar year thereafter, every manufacturer shall file with the New Motor Vehicle Board a statement of the number of motor vehicles sold, leased, or otherwise distributed by or for the applicant manufacturer in this state during the preceding calendar year, and shall, upon written notice, pay to the Department of Motor Vehicles, for each issuance or renewal of the license, an amount prescribed by the New Motor Vehicle Board, but a

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fee, not to exceed one dollar (\$1) for each motor vehicle sold, leased, or distributed by or for the applicant manufacturer in this state during the preceding calendar year. The total fee paid by each licensee manufacturer shall be rounded to the nearest dollar in the manner described in Section 9559 of the Vehicle Code. No more than one dollar (\$1) shall be charged, collected, or received from any one or more licensees manufacturer pursuant to this subdivision with respect to the same motor vehicle.

(c) (1) The fee required by subdivision (b) is due and payable no later than 30 days after the New Motor Vehicle Board has given notice to the manufacturer of the amount due and is delinquent after that time. A penalty of 10 percent of the amount delinquent shall be added to that amount, if the delinquency continues for more than 30 days.

(2) In the event that a manufacturer fails to file the statement required by subdivision (b) by the date specified, the New Motor Vehicle Board shall assess the amount due from the manufacturer by using as the number of motor vehicles sold, leased, or otherwise distributed by or for the manufacturer in this state during the preceding calendar year the total number of new registrations of all motor vehicles sold, leased, or otherwise distributed by or for the manufacturer during the preceding calendar year.

(c)

(d) On or before January February 1 of each calendar year, the bureau shall determine the dollar amount, not to exceed one dollar (\$) per motor vehicle, which shall be collected and received by the Department of Motor Vehicles beginning July 1 of that year, based upon an estimate of the number of sales, leases, and other dispositions of motor vehicles in this state during the preceding calendar year, in order to notify the New Motor Vehicle Board of the dollar amount necessary to fully fund the program established by this chapter during the following fiscal year. The bureau shall notify the New Motor Vehicle Board of the dollar amount per motor vehicle that the New Motor Vehicle Board shall use this information in calculating the amounts of the fees to be collected from applicants manufacturers pursuant to this subdivision section.

(d)

(e) For the purposes of this section, "motor vehicle" means a new passenger or commercial motor vehicle



of a kind that is required to be registered under the Vehicle Code, but the term does not include a motorcycle, a motor home, or any vehicle whose gross weight exceeds 10,000 pounds.

(e)

(f) The New Motor Vehicle Board may adopt regulations to implement this section.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Chapter 1280 of the Statutes of 1987 established a program in the Bureau of Automotive Repair to certify the operation of third-party dispute resolution processes under the state's "Lemon Law" and imposed fees on auto manufacturers to fund that program. Both the program and fee collections are scheduled to become operative on July 1, 1988. In order to establish a more efficient, less costly method of collecting fees from auto manufacturers to fund the certification program before it begins operation, it is necessary that this act take effect immediately.

Amendment 3

On page 1, strike out lines 2 to 6, inclusive, and strike out page 2

- 0 -



no item #

May 16, 1988

To: Senator Presley
From: Ed Derman

Done!
VED

Re: AB 1367--Motion to rerefer

AB 1367 (Tanner) is a bill in our committee which, as amended, amends the vehicle lemon law. When the bill was heard in Rules to approve an urgency clause, it was rereferred to us. The bill, however, was extensively amended after it was heard in policy committee. Under committee rules, the bill should be rereferred back to policy committee in this case Judiciary.

This will require a floor motion from you on Thursday to withdraw the bill from Appropriations and rerefer the bill to Judiciary. We have notified Rick Rollens to expect your motion.

RECOMMENDATION: Make a floor motion on Thursday to withdraw the bill from Appropriations and rerefer the bill to Judiciary.

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alyzed previously.

ment of Motor Vehicles indicate that AB 1367 is clean-up associated with the bill will be minor and absorbable

EL

(Fiscal Impact by Fiscal Year)

(Dollars in Thousands)

FC	1987-88	FC	1988-89	FC	1989-90	Code Fund
			No Fiscal Impact			128/Auto Repair
			No Fiscal Impact			044/Mot Veh.
			ations Limit--No			

ed the new car lemon law and required the bureau to agencies which assist in dispute resolutions. AB 1367 is of Chapter 1280/87 related to the collection of fees for third party resolutions to delete the references licenses or renewal of licenses as manufacturers or bill would instead require every manufacturer to file a of each year which contains specified information and specified time after written notification. A penalty fee is delinquent.

Department Director Date

Program Budget Manager	Date	Governor's Office
Wallis A. Clark		Position noted
MH Wallis A. Clark	5/15/88	Position approved
		Position disapproved
		by: date:

Form DF-43 (Rev 03/88 Buff)



be required to notify the New Motor Vehicle Board, which
1280/87, of the dollar amount necessary to fully fund
the resolution process on or before February 1. This
policy provision in order to fund the program before it

Motor Vehicle Board (within the Department of Motor
if any costs associated with AB 1367 would be minor and
existing resources.

ement remedies under the Song-Beverly Consumer

.67 clarifies that the refund or replacement remedies
13.2 of the Civil Code is available to a buyer in an
nst a warrantor for a defective product.

es that the change made by this bill is declaratory
is not constitute a change in existing law.

on 1794 of the Civil Code law gives the buyer of
it to bring a legal action to obtain damages and
f damage the consumer has suffered due to a
to comply with the Song-Beverly Consumer warranty
s not specifically mention that the buyer has the
lacement of the product or reimbursement for the
tion 1793.2 of the Civil Code provides a replacement
y for the buyer under specified conditions.

Committee: No

when an automobile manufacturer in a court case
) that a buyer can only sue for the remedies
d in Section 1794 of the Civil Code, which does not
reimbursement remedies.

ASSEMBLY BILL NO. 1367



CONSENT

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	AB 1367
	Author:	Tanner (D)
	Amended:	As introduced
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote:

COMMITTEE: INS/CLAIMS/CORPS		
BILL NO.:	AB 1367	
DATE OF HEARING:	7-1-87	
SENATORS:	AYE	NO
Davis	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Doolittle	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Green	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Keene	<input checked="" type="checkbox"/>	<input type="checkbox"/>
McCorquodale	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Montoya	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Royce	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Deddeh (VC)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robbins (Ch)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
TOTAL:	9	0

Assembly Floor Vote: 74-0, p. 2246, 5/26/87

(Passed Assembly on Consent)

SUBJECT: Warranties: Remedies

SOURCE: The author

DIGEST: This bill clarifies that the buyer's damages in an action under the Song-Beverly Consumer Warranty Act include the rights of replacement or reimbursement.

ANALYSIS: Existing law gives the buyer of consumer goods the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's failure to comply with the Song-Beverly Consumer Warranty Act which establishes direct legal relations between the buyer and manufacturer in consumer transactions in California.

The purpose of this bill, sponsored by the author, is to clarify that a consumer who brings an action to obtain damages under the Song-Beverly Consumer Warranty Act has the right to obtain either a refund or replacement if a warranted product is defective and is not fixed after a reasonable number of attempts, as defined.

At issue is an automobile manufacturer's legal argument in a recent "lemon law" case that a plaintiff car buyer can sue only for the remedies specifically referenced in a particular section of the Song-Beverly Act. This bill adds to that section a reference to the code which specifies that the refund/replacement remedy provided for in the "lemon law" is available to a buyer in a lawsuit brought against a warrantor for defective products.



According to the Senate Insurance, Claims and Corporations Committee analysis, this bill was spawned when an automobile manufacturer in a court case argued (unsuccessfully) that a buyer can only sue for the remedies specifically enumerated in Section 1794 of the Civil Code, which does not include replacement or reimbursement remedies.

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

SUPPORT: (Verified 7/2/87)

Attorney General

DLW:ctl 7/2/87 Senate Floor Analyses



THIRD READING

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	AB 1367
	Author:	Tanner (D)
	Amended:	5/31/88 in Senate
	Vote Required:	2/3 - Urgency

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY		
BILL NO.:	AB 1367	
DATE OF HEARING:	5-24-88	
SENATORS:	AYE	NO
Doolittle	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kean	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marks	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Petris	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Presley	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Richardson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Roberti	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Torres	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Watson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Davis (VC)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lockyer (Ch)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
TOTAL:	8/0	

Assembly Floor Vote: NOT RELEVANT

SUBJECT: Warranties: motor vehicle third-party dispute resolution

SOURCE: Author

DIGEST: This bill provides that automobile manufacturers be billed directly by the vehicle board to support the certification of third-party dispute resolution programs, through fees to be determined on the basis of annual sales.

ANALYSIS: The existing "Lemon Law" establishes procedures whereby the purchaser of a new defective motor vehicle might obtain redress. Central to the process is the submittal of contentions between purchasers and manufacturers to a third-party dispute resolution program. Under AB 2057 (Tanner) of last year, the Bureau of Automotive Repair is charged with the responsibility of certifying the dispute resolution processes to be used in the arbitration of Lemon Law cases. That certification program, operative July 1 of this year, is to be funded by the imposition of fees collected by the Department of Motor Vehicles on every applicant for license or license renewal as a manufacturer or distributor of automobiles. The amount of the fee is to be determined by the new Motor Vehicle Board, based on estimate of need by the Bureau of Automotive Repair and calculated on a per-transaction basis not to exceed one dollar per vehicle. A statement of transactions and the appropriate fee is to accompany the application to the Department of Motor Vehicles, which deposits the proceeds in a Certification Account to be appropriated to the Bureau by the Legislature.

This bill would simplify the collection process by requiring the new Motor Vehicle Board to calculate the fees, bill the auto manufacturers only by

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FCA MJN 143

certified mail, return receipt requested, and collect the fees directly for deposit in the Certification Account. Involvement of the Department of Motor Vehicles, and undue complication of the license application and renewal process, would thereby be avoided.

This bill also provides the Vehicle Board may adopt specific regulations relative to enforcing this section. The regulations will include a formula for calculating the fees as well as the total amount of fees that may be collected from each manufacturer.

The purpose of this measure is to establish a more direct and less administratively burdensome method of collecting fees for the certification of Lemon Law dispute resolution programs.

Establishing the responsibility of auto manufacturers for defects in products for which they have made an expressed warranty has been the subject of legislative activity for nearly a decade. The essence of a Lemon Law is to provide the purchaser with a statutory framework through which he or she might be made whole for losses incurred in the purchase of an inherently defective automotive product. Under current law, submittal of disputes between a manufacturer and a consumer to a third-party arbitration has become an accepted procedure. However, in the passage of AB 2057, the Legislature recognized the need to ensure that dispute resolution processes as may be offered by the manufacturer meet accepted procedural standards. To this end, the Bureau of Automotive Repair was charged with the certification of the processes to be made available to consumers.

The responsibility of manufacturers to fund the certification program was determined in last year's legislation; however, the manner in which the funding is to be collected seems administratively cumbersome, involving three agencies and tied to the regular licensing and license renewal process of the DMV. The process proposed in this measure is simpler and more direct: manufacturers would inform the New Motor Vehicle Board of their transactions by May 1 of each year, would receive a notice of assessment from the Board, and would forward payment for deposit to the certification account within 30 days of notice. A penalty of 10% would be imposed for delinquency. Failure to notify the Board of sales, leases, etc., would result in an assessment paid on the preceding year's transactions. The Bureau would continue to be responsible for calculating the level of funding needed.

Prior Legislation:

AB 2057 (Tanner-1987) - Senate Vote 39-0, Pg. 3674, Chaptered.

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

RJG:nf 6/1/88 Senate Floor Analyses



CONCURRENCE IN SENATE AMENDMENTS

AB 1367 (Tanner) - As Amended: May 31, 1988

ASSEMBLY VOTE 74-0 (May 26, 1987) SENATE VOTE 39-0 (June 9, 1988)Original Committee Reference: G. E. & CON. PRO.DIGEST

Urgency statute. 2/3 vote required.

Current law, known as the "Lemon Law," allows automobile manufacturers to establish qualified third-party dispute resolution (arbitration) programs, which buyers must use before they can assert the statutory presumption that a vehicle is a lemon in a legal action for replacement or refund.

Current law, operative July 1, 1988, also requires the Bureau of Automotive Repair to establish a program for the certification of the third-party dispute resolution programs established, and creates a Certification Account to pay for the program funded through a surcharge on applications for licensure or renewal as manufacturers or distributors of new motor vehicles. On or before January 1 of each calendar year, the bureau is to determine the dollar amount, not to exceed \$1 per vehicle sold, needed to be collected in fees.

As passed by the Assembly, this bill clarified that the buyer's damages in an action under the Song-Beverly Consumer Warranty Act include the rights of replacement and reimbursement.

The Senate amendments delete the contents of the bill as passed by the Assembly and, instead, require the New Motor Vehicle Board to:

- 1) Adopt regulations including a formula to calculate the fees necessary to fund the certification program for dispute resolution mechanisms.
- 2) Calculate the fees based on information provided by February 1 each year by motor vehicle manufacturers. Failure to file would result in an assessment based on the prior year's figures.
- 3) Bill the auto manufacturers only. Payment would be due within 30 days of notification with a 10% penalty for delinquency.
- 4) Collect the fees directly for deposit in the Certification Account.

- continued -



FISCAL EFFECT

None

COMMENTS

- 1) This bill is an urgency measure created in the Senate, so that it can be enacted before the law it seeks to amend takes effect on July 1, 1988. The bill has not been heard in this form by the Assembly.

The purpose of this measure is to establish a more direct and less administratively burdensome method of collecting the fees necessary to fund the certification of Lemon Law dispute resolution programs. This certification program was created in 1987 with the passage of AB 2057 (Tanner), and will take effect July 1. The mechanism AB 2057 established for collecting the fee is excessively cumbersome, however, involving three agencies and tied to the regular licensing and license renewal process of the Department of Motor Vehicles.

- 2) The process proposed in this measure is simple and more direct. Manufacturers would inform the New Motor Vehicle Board of their transactions by February 1, of each year, would receive a notice of assessment from the board, and would forward payment for deposit to the certification account within 30 days of notice. A penalty of 10% would be imposed for delinquency. Failure to notify the board of sales, leases, etc., would result in an assessment paid on the preceding year's transactions.

Larry Doyle
324-7440
6/13/88:ageconpro

AB 1367
Page 2



THIRD READING

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	AB 1367
	Author:	Tanner (D)
	Amended:	5/31/88 in Senate
	Vote Required:	2/3 - Urgency

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY		
BILL NO.:	AB 1367	
DATE OF HEARING:	5-24-88	
SENATORS:	AYE	NO
Doolittle	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kean	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marks	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Petris	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Presley	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Richardson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Roberti	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Torres	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Watson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Davis (VC)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lockyer (Ch)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
TOTAL:	810	

Assembly Floor Vote: NOT RELEVANT

SUBJECT: Warranties: motor vehicle third-party dispute resolution

SOURCE: Author

DIGEST: This bill provides that automobile manufacturers be billed directly by the vehicle board to support the certification of third-party dispute resolution programs, through fees to be determined on the basis of annual sales.

ANALYSIS: The existing "Lemon Law" establishes procedures whereby the purchaser of a new defective motor vehicle might obtain redress. Central to the process is the submittal of contentions between purchasers and manufacturers to a third-party dispute resolution program. Under AB 2057 (Tanner) of last year, the Bureau of Automotive Repair is charged with the responsibility of certifying the dispute resolution processes to be used in the arbitration of Lemon Law cases. That certification program, operative July 1 of this year, is to be funded by the imposition of fees collected by the Department of Motor Vehicles on every applicant for license or license renewal as a manufacturer or distributor of automobiles. The amount of the fee is to be determined by the new Motor Vehicle Board, based on estimate of need by the Bureau of Automotive Repair and calculated on a per-transaction basis not to exceed one dollar per vehicle. A statement of transactions and the appropriate fee is to accompany the application to the Department of Motor Vehicles, which deposits the proceeds in a Certification Account to be appropriated to the Bureau by the Legislature.

This bill would simplify the collection process by requiring the new Motor Vehicle Board to calculate the fees, bill the auto manufacturers only by

CONTINUED

certified mail, return receipt requested, and collect the fees directly for deposit in the Certification Account. Involvement of the Department of Motor Vehicles, and undue complication of the license application and renewal process, would thereby be avoided.

This bill also provides the Vehicle Board may adopt specific regulations relative to enforcing this section. The regulations will include a formula for calculating the fees as well as the total amount of fees that may be collected from each manufacturer.

The purpose of this measure is to establish a more direct and less administratively burdensome method of collecting fees for the certification of Lemon Law dispute resolution programs.

Establishing the responsibility of auto manufacturers for defects in products for which they have made an expressed warranty has been the subject of legislative activity for nearly a decade. The essence of a Lemon Law is to provide the purchaser with a statutory framework through which he or she might be made whole for losses incurred in the purchase of an inherently defective automotive product. Under current law, submittal of disputes between a manufacturer and a consumer to a third-party arbitration has become an accepted procedure. However, in the passage of AB 2057, the Legislature recognized the need to ensure that dispute resolution processes as may be offered by the manufacturer meet accepted procedural standards. To this end, the Bureau of Automotive Repair was charged with the certification of the processes to be made available to consumers.

The responsibility of manufacturers to fund the certification program was determined in last year's legislation; however, the manner in which the funding is to be collected seems administratively cumbersome, involving three agencies and tied to the regular licensing and license renewal process of the DMV. The process proposed in this measure is simpler and more direct: manufacturers would inform the New Motor Vehicle Board of their transactions by May 1 of each year, would receive a notice of assessment from the Board, and would forward payment for deposit to the certification account within 30 days of notice. A penalty of 10% would be imposed for delinquency. Failure to notify the Board of sales, leases, etc., would result in an assessment paid on the preceding year's transactions. The Bureau would continue to be responsible for calculating the level of funding needed.

Prior Legislation:

AB 2057 (Tanner-1987) - Senate Vote 39-0, Pg. 3674, Chaptered.

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

RJG:nf 6/1/88 Senate Floor Analyses



THIRD READING

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	AB 1367
	Author:	Tanner (D)
	Amended:	³¹ 5/30/88 in Senate
	Vote Required:	2/3 - Urgency

Committee Votes:

Senate Floor Vote:

Assembly Floor Vote: NOT RELEVANT

SUBJECT: Warranties: motor vehicle third-party dispute resolution

SOURCE: Author

DIGEST: This bill provides that automobile manufacturers be billed directly by the vehicle board to support the certification of third-party dispute resolution programs, through fees to be determined on the basis of annual sales.

ANALYSIS: The existing "Lemon Law" establishes procedures whereby the purchaser of a new defective motor vehicle might obtain redress. Central to the process is the submittal of contentions between purchasers and manufacturers to a third-party dispute resolution program. Under AB 2057 (Tanner) of last year, the Bureau of Automotive Repair is charged with the responsibility of certifying the dispute resolution processes to be used in the arbitration of Lemon Law cases. That certification program, operative July 1 of this year, is to be funded by the imposition of fees collected by the Department of Motor Vehicles on every applicant for license or license renewal as a manufacturer or distributor of automobiles. The amount of the fee is to be determined by the new Motor Vehicle Board, based on estimate of need by the Bureau of Automotive Repair and calculated on a per-transaction basis not to exceed one dollar per vehicle. A statement of transactions and the appropriate fee is to accompany the application to the Department of Motor Vehicles, which deposits the proceeds in a Certification Account to be appropriated to the Bureau by the Legislature.

This bill would simplify the collection process by requiring the new Motor Vehicle Board to calculate the fees, bill the auto manufacturers only by



certified mail, return receipt requested, and collect the fees directly for deposit in the Certification Account. Involvement of the Department of Motor Vehicles, and undue complication of the license application and renewal process, would thereby be avoided.

This bill also provides the Vehicle Board may adopt specific regulations relative to enforcing this section. The regulations will include a formula for calculating the fees as well as the total amount of fees that may be collected from each manufacturer.

The purpose of this measure is to establish a more direct and less administratively burdensome method of collecting fees for the certification of Lemon Law dispute resolution programs.

Establishing the responsibility of auto manufacturers for defects in products for which they have made an expressed warranty has been the subject of legislative activity for nearly a decade. The essence of a Lemon Law is to provide the purchaser with a statutory framework through which he or she might be made whole for losses incurred in the purchase of an inherently defective automotive product. Under current law, submittal of disputes between a manufacturer and a consumer to a third-party arbitration has become an accepted procedure. However, in the passage of AB 2057, the Legislature recognized the need to ensure that dispute resolution processes as may be offered by the manufacturer meet accepted procedural standards. To this end, the Bureau of Automotive Repair was charged with the certification of the processes to be made available to consumers.

The responsibility of manufacturers to fund the certification program was determined in last year's legislation; however, the manner in which the funding is to be collected seems administratively cumbersome, involving three agencies and tied to the regular licensing and license renewal process of the DMV. The process proposed in this measure is simpler and more direct: manufacturers would inform the New Motor Vehicle Board of their transactions by May 1 of each year, would receive a notice of assessment from the Board, and would forward payment for deposit to the certification account within 30 days of notice. A penalty of 10% would be imposed for delinquency. Failure to notify the Board of sales, leases, etc., would result in an assessment paid on the preceding year's transactions. The Bureau would continue to be responsible for calculating the level of funding needed.

Prior Legislation:

AB 2057 (Tanner-1987) - Senate Vote 39-0, Pg. 3674, Chaptered.

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

SUPPORT: (Verified)

OPPOSITION: (Verified)

ARGUMENTS IN SUPPORT:

ARGUMENTS IN OPPOSITION:

RJG:nf 5/31/88 Senate Floor Analyses



<p>SENATE RULES COMMITTEE</p> <p>Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614</p>	<p>Bill No. <i>RB 1367</i></p> <p>Author: <i>Tanner (D)</i></p> <p>Amended: <i>5/31 (Ch Snats)</i></p> <p>Vote Required: <i>2/3 urgency</i></p>
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SUBJECT: *Warranties: motor vehicle third-party dispute resolution*

SOURCE: *Author*

Assembly Floor Vote: *not relevant*

DIGEST: *A*

SUMMARY: *B1, B2, B3*

FISCAL EFFECT: Appropriation: *no* Fiscal Committee: *no* Local: *no*

SUPPORT: Verification Date _____ *5-7983*

need to verify

OPPOSITION: Verification Date _____

ARGUMENTS IN SUPPORT:

ARGUMENTS IN OPPOSITION:
[Handwritten scribble]



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

AB 1367 (Tanner)
As amended May 11
Hearing date: May 24, 1988
Business & Professions Code
GPS

A
B
1
3
6
7

NEW MOTOR VEHICLE ARBITRATION: FEES FOR CERTIFICATION

HISTORY

Source: Author (TANNER) 9/8/87 39-0 (p3674)
Prior Legislation: AB 2057ⁿ(1987) - Chaptered
Support: Unknown
Opposition: No known
Assembly Floor Vote: Not applicable

KEY ISSUE

A { *This bill provides that*
~~SHOULD~~ AUTOMOBILE MANUFACTURERS BE BILLED DIRECTLY BY THE ~~NEW~~
MOTOR VEHICLE BOARD TO SUPPORT THE CERTIFICATION OF THIRD-PARTY
DISPUTE RESOLUTION PROGRAMS, THROUGH FEES TO BE DETERMINED ON THE
BASIS OF ANNUAL SALES?

PURPOSE

B { The existing "Lemon Law" establishes procedures whereby the
purchaser of a new defective motor vehicle might obtain redress.
Central to the process is the submittal of contentions between
purchasers and manufacturers to a third-party dispute resolution
program. Under AB 2057 (Tanner) of last year, the Bureau of
Automotive Repair is charged with the responsibility of
certifying the dispute resolution processes to be used in the
arbitration of Lemon Law cases. That certification program,
operative July 1 of this year, is to be funded by the imposition
of fees collected by the Department of Motor Vehicles on every
applicant for license or license renewal as a manufacturer or
distributor of automobiles. The amount of the fee is to be
determined by the new Motor Vehicle Board, based on estimate of
need by the Bureau of Automotive Repair and calculated on a

(More)

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per-transaction basis not to exceed one dollar per vehicle. A statement of transactions and the appropriate fee is to accompany the application to the Department of Motor Vehicles, which deposits the proceeds in a Certification Account to be appropriated to the Bureau by the Legislature.

This bill would simplify the collection process by requiring the ~~new Motor Vehicle Board~~ ^{by certified mail, return receipt requested,} to calculate the fees, bill the auto manufacturers only, and collect the fees directly for deposit in the Certification Account. Involvement of the Department of Motor Vehicles, and undue complication of the license application and renewal process, would thereby be avoided.

The purpose of this measure is to establish a more direct and less administratively burdensome method of collecting fees for the certification of Lemon Law dispute resolution programs.

This bill also provides Vehicle Board may adopt specific and regulations relative to enforcing this section. The regulations

COMMENT

1. The current funding mechanism for the certification program is unduly complicated

Establishing the responsibility of auto manufacturers for defects in products for which they have made an expressed warranty has been the subject of legislative activity for nearly a decade. The essence of a Lemon Law is to provide the purchaser with a statutory framework through which he or she might be made whole for losses incurred in the purchase of an inherently defective automotive product. Under current law, submittal of disputes between a manufacturer and a consumer to a third-party arbitration has become an accepted procedure. However, in the passage of AB (2057) the Legislature recognized the need to ensure that dispute resolution processes as may be offered by the manufacturer meet accepted procedural standards. To this end, the Bureau of Automotive Repair was charged with the certification of the processes to be made available to consumers.

The responsibility of manufacturers to fund the certification program was determined in last year's legislation; however, the manner in which the funding is to be collected seems administratively cumbersome, involving three agencies and tied to the regular licensing and license renewal process of the DMV. The process proposed in this measure is simpler and more direct: manufacturers would inform the ~~New Motor Vehicle Board~~ of their transactions by ~~February 1~~ ^{MAY} of each

(More)



→ will include a formula for calculating the fees as well as the total amount of fees that may be collected from each manufacturer.



year, would receive a notice of assessment from the Board, and would forward payment for deposit to the certification account within 30 days of notice. A penalty of 10% would be imposed for delinquency. Failure to notify the Board of sales, leases, etc., would result in an assessment paid on the preceding year's transactions. The Bureau would continue to be responsible for calculating the level of funding needed.

2. Nondisclosure of prior year's business may work in favor of some manufacturers

While the procedure proposed seems a reasonable alternative to DMV involvement as currently in effect, there seems to exist a possible loophole whereby manufacturers might reduce their funding liability. A failure to file a record of their transactions results in an assessment based on prior year performance; thus, it may behoove them to decline disclosure of performance in a year relatively more successful than the prior one. While this would have no effect on the state's take, it might result in an unfair assessment upon other manufacturers who would be forced to bear an additional amount of assessment.

SHOULD NOT SOME PENALTY BE IMPOSED FOR FAILURE TO DISCLOSE TRANSACTIONS?

3. Urgency clause needed to ensure that financing provisions are in order prior to effective date of the program

This bill contains an urgency clause, necessary to ensure that the new fee provisions are operative prior to the July 1 effective date of the certification program.



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40551
RECORD #

30 BF:

MAY 26 1988
RN 88 015688
Substantive

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88147 21:15
PAGE NO. 1

AMENDMENTS TO ASSEMBLY BILL NO. 1367
AS AMENDED IN SENATE MAY 11, 1988

Amendment 1

On page 3, line 15, strike out "February" and
insert:
May

Amendment 2

On page 3, line 20, after "notice" insert:
delivered to the manufacturer by certified mail, return
receipt requested

Amendment 3

On page 3, line 34, strike out "New Motor"
strike out line 35 and insert:
manufacturer has received notice of

Amendment 4

On page 4, line 36, after the period insert:
The regulations shall include, at a minimum, a formula for
calculating the fee, established pursuant to subdivision
(b), for each motor vehicle and the total amount of fees
to be collected from each manufacturer.

- 0 -

LEGISLATIVE INTENT SERVICE (800) 666-1917



Department CONSUMER AFFAIRS	Author Tanner	Bill Number AB 1367
Sponsored by Author	Related Bills AB 2057	Date Last Amended original

SUMMARY

1 Description

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- 2 History
- 3 Purpose
- 4 Sponsor
- 5 Current Practice
- 6 Implementation
- 7 Justification
- 8 Alternatives
- 9 Responsibility
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- 12 Termination

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BILL SUMMARY

Existing law provides that any buyer of consumer goods who is damaged by a manufacturer's failure to comply with any obligation under the Song-Beverly Consumer Warranty Act or under an implied or express warranty or service contract may sue for damages and other legal and equitable relief.

This bill clarifies that the buyer's damages in an action under the Song-Beverly Consumer Warranty Act include the right of replacement or restitution pursuant to the New Car Lemon Law.

Background

The Song-Beverly Consumer Warranty Act provides that if the manufacturer of a consumer product is unable to service or repair the product to repair a nonconformity after a reasonable number of attempts, the manufacturer must either replace the product or reimburse the buyer for the price of the product, less an amount attributable to the buyer's use before discovery of the nonconformity.

The act in Civil Code section 1794, provides that any buyer who is damaged by a manufacturer's failure to comply with any obligation under the act may sue for damages and other legal and equitable relief as specified.

AMENDMENT SUMMARY:

Dept. Director Position <input checked="" type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SIA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> Defer	Agency Sectry. Position <input checked="" type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SIA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> Defer	Governor's Office Use <input checked="" type="checkbox"/> Position Noted <input type="checkbox"/> Position Approved <input type="checkbox"/> Position Disapproved By: <i>SB</i> Date: <i>7/24</i>
--	--	---

Department Director <i>Michael Kelley</i>	Date <i>6/25/87</i>	Agency Secretary signed by KAREN L. MORGAN Assistant Secretary	Date <i>7/2</i>
--	------------------------	--	--------------------



The New Car Lemon Law, which is contained in the Song Beverly Consumer Warranty Act, establishes that a "reasonable number of attempts" to repair a new motor vehicle have been made if, within the first year or 12,000 miles, either (a) the manufacturer has been unable to repair the same nonconformity after four attempts or (2) the vehicle is out of service for repairs for a total of at least 30 days since delivery of the vehicle to the buyer. A vehicle which meets this test is deemed a "lemon," and the buyer has the right to restitution or replacement.

Since the New Car Lemon Law is a part of the Song-Beverly Consumer Warranty Act, buyers of "lemons" have the same remedies (i.e., the right to sue for damages and other legal and equitable relief pursuant to Civil Code section 1794) as do buyers of other consumer goods. However, their remedies are not exclusively those found in Civil Code section 1794.

In a recent lemon law case, the defendant automobile manufacturer argued that the plaintiff car buyer could sue only for the remedies specifically referenced in Civil Code section 1794. That section does not specifically entitle car buyers to restitution or replacement of a "lemon." If this were the case, buyers of "lemons" would be simply be stuck with them.

The Department of Consumer Affairs and other consumer protection representatives believe that the New Car Lemon Law clearly entitles the buyer of a "lemon" restitution or a replacement vehicle, either by award of the manufacturer's lemon law arbitration panel or by court judgment. However, to avoid any future attempts by manufacturers to argue that new car buyers are only entitled to the remedies contained in section 1794, the author has introduced this bill to affirm that the buyer of a "lemon" who brings an action for damages under the Song-Beverly Consumer Warranty Act does have the right to restitution or replacement.

Specific Findings

- o This bill would preclude future arguments by vehicle manufacturers in lemon law cases that the buyer of a "lemon" is not entitled to restitution or replacement because restitution or replacement is not specifically mentioned as a remedy in Civil Code section 1794.
- o This bill would declare that the changes in the bill are declaratory of existing law.

Fiscal Impact

No fiscal impact to the Department of Consumer Affairs.



Socio-Economic Impact

This bill would enhance the effectiveness of the New Car Lemon Law by affirming that buyers of "lemons" are entitled to an award of restitution or replacement in a legal action.

Argument

Interested Parties

Proponents: author (sponsor)
Attorney General

Opponents: None known

The purpose of this bill is set forth under Background, above.

Recommendation

The Department of Consumer Affairs recommends a SUPPORT position on this bill.



INACTIVE

SENATE RULES COMMITTEE

Office of
Senate Floor Analyses
1100 J Street, Suite 120
445-6614

Bill No. AB 1367
Author: Tanner (D)
Amended: As introduced
Vote Required: Majority

Committee Votes:

Senate Floor Vote:

COMMITTEE: INS/CLAIMS/CORPS		
BILL NO.:	AB 1367	
DATE OF HEARING:	7-1-87	
SENATORS:	AYE	NO
Davis	✓	
Doolittle	✓	
Green	✓	
Keene	✓	
McCorquodale	✓	
Montoya	✓	
Royce	✓	
Deddeh (VC)	✓	
Robbins (Ch)	✓	
TOTAL:	9	0

Assembly Floor Vote: 74-0, p. 2246, 5/26/87
(Passed Assembly on Consent)

SUBJECT: Warranties: Remedies

SOURCE: The author

DIGEST: This bill clarifies that the buyer's damages in an action under the Song-Beverly Consumer Warranty Act include the rights of replacement or reimbursement.

ANALYSIS: Existing law gives the buyer of consumer goods the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's failure to comply with the Song-Beverly Consumer Warranty Act which establishes direct legal relations between the buyer and manufacturer in consumer transactions in California.

The purpose of this bill, sponsored by the author, is to clarify that a consumer who brings an action to obtain damages under the Song-Beverly Consumer Warranty Act has the right to obtain either a refund or replacement if a warranted product is defective and is not fixed after a reasonable number of attempts, as defined.

At issue is an automobile manufacturer's legal argument in a recent "lemon law" case that a plaintiff car buyer can sue only for the remedies specifically referenced in a particular section of the Song-Beverly Act. This bill adds to that section a reference to the code which specifies that the refund/replacement remedy provided for in the "lemon law" is available to a buyer in a lawsuit brought against a warrantor for defective products.

FCA MJN 160

CONTINUED



According to the Senate Insurance, Claims and Corporations Committee analysis, this bill was spawned when an automobile manufacturer in a court case argued (unsuccessfully) that a buyer can only sue for the remedies specifically enumerated in Section 1794 of the Civil Code, which does not include replacement or reimbursement remedies.

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

SUPPORT: (Verified 7/2/87)

Attorney General

DLW:ct1 7/2/87 Senate Floor Analyses



JOHN K. VAN DE KAMP
Attorney General

State of California
DEPARTMENT OF JUSTICE



July 10, 1987

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

Don't

Honorable Sally Tanner
Assemblymember, 60th District
State Capitol, Room 4146
Sacramento, CA 95814

Dear Assemblymember Tanner:

Re: AB 1367 - Warranties: Remedies

The Attorney General's office supports AB 1367 which would include the rights of replacement or reimbursement as damages for a consumer who sues under the Song-Beverly Consumer Warranty Act.

Under current law, notwithstanding that the consumer has the right to replacement or reimbursement for a vehicle which cannot be repaired, that right of replacement or reimbursement is not set forth in section 1794 of the Civil Code as damages which may be recoverable by the buyer under the Song-Beverly Consumer Warranty Act. The buyer can only get the difference between the value of the goods as accepted and the value of the goods had they complied with the warranty. This obviously creates an anomalous result which your bill would correct by providing remedies in the damages section of the Song-Beverly Act which are consistent with the provisions of the Act itself.

If we can be of further assistance in supporting the bill, please call me at 324-5478.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

Jeffrey J. Fuller
Deputy Attorney General

JJF:er

LEGISLATIVE INTENT SERVICE (800) 666-1917



CONSENT

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	AB 1367
	Author:	Tanner (D)
	Amended:	As introduced
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote:

COMMITTEE: INS/CLAIMS/CORPS		
BILL NO.:	AB 1367	
DATE OF HEARING:	7-1-87	
SENATORS:	AYE	NO
Davis	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Doolittle	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Green	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Keene	<input checked="" type="checkbox"/>	<input type="checkbox"/>
McCorquodale	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Montoya	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Royce	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Deddeh (VC)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robbins (Ch)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
TOTAL:	9	0

Assembly Floor Vote: 74-0, p. 2246, 5/26/87

(Passed Assembly on Consent)

SUBJECT: Warranties: Remedies

SOURCE: The author

DIGEST: This bill clarifies that the buyer's damages in an action under the Song-Beverly Consumer Warranty Act include the rights of replacement or reimbursement.

ANALYSIS: Existing law gives the buyer of consumer goods the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's failure to comply with the Song-Beverly Consumer Warranty Act which establishes direct legal relations between the buyer and manufacturer in consumer transactions in California.

The purpose of this bill, sponsored by the author, is to clarify that a consumer who brings an action to obtain damages under the Song-Beverly Consumer Warranty Act has the right to obtain either a refund or replacement if a warranted product is defective and is not fixed after a reasonable number of attempts, as defined.

At issue is an automobile manufacturer's legal argument in a recent "lemon law" case that a plaintiff car buyer can sue only for the remedies specifically referenced in a particular section of the Song-Beverly Act. This bill adds to that section a reference to the code which specifies that the refund/replacement remedy provided for in the "lemon law" is available to a buyer in a lawsuit brought against a warrantor for defective products.



According to the Senate Insurance, Claims and Corporations Committee analysis, this bill was spawned when an automobile manufacturer in a court case argued (unsuccessfully) that a buyer can only sue for the remedies specifically enumerated in Section 1794 of the Civil Code, which does not include replacement or reimbursement remedies.

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

SUPPORT: (Verified 7/2/87)

Attorney General

DLW:ctl 7/2/87 Senate Floor Analyses



Consent
~~THIRD READING~~

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	AB 1367
	Author:	Tanner (D)
	Amended:	As introduced
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote:

Assembly Floor Vote: 74-0, p. 2246, 5/26/87
(Passed Assembly on Consent)

SUBJECT: Warranties: Remedies

SOURCE: The author

DIGEST: This bill clarifies that the buyer's damages in an action under the Song-Beverly Consumer Warranty Act include the rights of replacement or reimbursement.

ANALYSIS: Existing law gives the buyer of consumer goods the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's failure to comply with the Song-Beverly Consumer Warranty Act which establishes direct legal relations between the buyer and manufacturer in consumer transactions in California.

The purpose of this bill, sponsored by the author, is to clarify that a consumer who brings an action to obtain damages under the Song-Beverly Consumer Warranty Act has the right to obtain either a refund or replacement if a warranted product is defective and is not fixed after a reasonable number of attempts, as defined.

At issue is an automobile manufacturer's legal argument in a recent "lemon law" case that a plaintiff car buyer can sue only for the remedies specifically referenced in a particular section of the Song-Beverly Act. This bill adds to that section a reference to the code which specifies that the refund/replacement remedy provided for in the "lemon law" is available to a buyer in a lawsuit brought against a warrantor for defective products.

According to the Senate CTC Committee Analyses.

FCA MJN 165

This bill was spawned when an automobile manufacturer in a court case (unsuccessfully) that a buyer can only sue for the remedies which does not



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

SUPPORT: (Verified 7/2/87)

Attorney General

OPPOSITION: (Verified)

~~ARGUMENTS IN SUPPORT:~~

~~ARGUMENTS IN OPPOSITION:~~

DLW:ctl 7/1/87 Senate Floor Analyses



CONSULTANT:

SENATE FLOOR ANALYSES WORKSHEET

<p>SENATE RULES COMMITTEE</p> <p>Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614</p>	<p>Bill No. <i>AB 1367</i></p> <p>Author: <i>James CO</i></p> <p>Amended: <i>as introduced</i></p> <p>Vote Required: <i>majority</i></p>
---	--

SUBJECT: *Warrantor's Remedies*

SOURCE: *The author*

Assembly Floor Vote: *74-0 2246* *PAOC 5/26/87*

DIGEST:

This bill clarifies that the buyer's damages in an action under the Song-Beverly Consumer Warranty Act include the rights of replacement or reimbursement.

Analysis

Existing law gives the buyer of consumer goods the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's failure to comply with the Song-Beverly Consumer Warranty Act which establishes direct legal relations between the buyer and manufacturer in consumer transactions in California.

The purpose of this bill, sponsored by the author, is to clarify that a consumer who brings an action to obtain damages under the Song-Beverly Consumer Warranty Act has the right to obtain either a refund or replacement if a warranted product is defective and is not fixed after a reasonable number of attempts as defined.

At issue is an automobile manufacturer's legal argument in a recent "lemon law" case that a plaintiff car buyer can sue only for the remedies specifically referenced in a particular section of the Song-Beverly Act. This bill adds to that section a reference to the code which specifies that the

refund/replacement remedy provided for in the "lemon law" is available to a buyer in a lawsuit brought against a warrantor for defective products.

PK no no no



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

DEPARTMENT Finance	AUTHOR Tanner	BILL NUMBER AB 1367
SPONSORED BY	RELATED BILLS	AMENDMENT DATE May 11, 1988

BILL SUMMARY

AB 1367 is clean-up legislation of Chapter 1280/87 (Tanner) which relates to the Bureau of Automotive Repairs and the Department of Motor Vehicles administration of the motor vehicle third-party dispute resolution process.

SUMMARY OF CHANGES

This bill has not been analyzed previously.

SUMMARY OF COMMENTS

The bureau and the Department of Motor Vehicles indicate that AB 1367 is clean-up legislation and costs associated with the bill will be minor and absorbable within existing resources.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year)			Code Fund
		(Dollars in Thousands)			
		FC 1987-88	FC 1988-89	FC 1989-90	
Consumer Affairs 1150/Bur of Auto. Repair	SO	-----No Fiscal Impact-----			128/Auto Repair
2740/Motor Vehicle	SO	-----No Fiscal Impact-----			044/Mot Veh.

Impact on State Appropriations Limit--No

ANALYSIS

A. Specific Findings

Chapter 1280/87 revised the new car lemon law and required the bureau to certify third party agencies which assist in dispute resolutions. AB 1367 revises the provisions of Chapter 1280/87 related to the collection of fees which provide funding for third party resolutions to delete the references to applicants for licenses or renewal of licenses as manufacturers or distributors. This bill would instead require every manufacturer to file a statement in February of each year which contains specified information and to pay a fee within a specified time after written notification. A penalty may be assessed if the fee is delinquent.

POSITION: Neutral	Department Director	Date
----------------------	---------------------	------

Principal Analyst (222) R. H. Baker <i>RH Baker</i> 5/18/88	Date	Program Budget Manager Wallis D. Clark <i>MH Wallis D. Clark</i> 5/18/88	Date	Governor's Office Position noted Position approved Position disapproved by: date:
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BILL ANALYSIS

Form DF-43 (Rev 03/88 Buff)

FCA MJN 168



BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

Tanner

May 11, 1988

AB 1367

ANALYSIS

A. Specific Findings (Continued)

The bureau will also be required to notify the New Motor Vehicle Board, which was created by Chapter 1280/87, of the dollar amount necessary to fully fund the third-party dispute resolution process on or before February 1. This bill contains an urgency provision in order to fund the program before it begins operation.

B. Fiscal Analysis

The bureau and the New Motor Vehicle Board (within the Department of Motor Vehicles) indicate that any costs associated with AB 1367 would be minor and absorbable within existing resources.

CJ:BA,AB1367-8/abb



A.B. No. 1367—Tanner.

An act relating to warranties, and declaring the urgency thereof, to take effect immediately.

1988

- June 9—Read third time. Urgency clause adopted. Passed, and to Assembly. (Ayes 39. Noes 0.)
- June 9—In Assembly. Concurrence in Senate amendments pending.

Legislative Counsel's Digest

AB 1367 as amended in Senate May 31, 1988
(Pursuant to Joint Rule 26.5)

AB 1367, as it passed the Assembly, expressly provided that the measure of damages in an action by a buyer of consumer goods for a failure to comply with any obligation under the Song-Beverly Consumer Warranty Act or under an implied or express warranty or service contract includes, in addition to the measure of damages otherwise specified, the rights of replacement or reimbursement.

The Senate amendments, instead, require that every manufacturer, as defined, file a statement on or before May 1 of each year containing specified information and pay the specified fee, used by the Bureau of Automotive Repair, upon appropriation by the Legislature, to administer the program for certification of 3rd-party dispute resolution processes. The amendments also require the bureau to notify the New Motor Vehicle Board of the dollar amount necessary to fully fund the 3rd-party dispute resolution process on or before February 1, and specify that the regulations the board may adopt to implement the provisions relating to the collection of fees include, at a minimum, a formula for calculating the fee to be collected for each motor vehicle and the total amount of fees to be collected from each manufacturer. The amendments declare that the bill is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Substantial substantive change: yes.



CONCURRENCE IN SENATE AMENDMENTS

AB 1367 (Tanner) - As Amended: May 31, 1988

ASSEMBLY VOTE 74-0 (May 26, 1987) SENATE VOTE 39-0 (June 9, 1988)Original Committee Reference: G. E. & CON. PRO.DIGEST

Urgency statute. 2/3 vote required.

Current law, known as the "Lemon Law," allows automobile manufacturers to establish qualified third-party dispute resolution (arbitration) programs, which buyers must use before they can assert the statutory presumption that a vehicle is a lemon in a legal action for replacement or refund.

Current law, operative July 1, 1988, also requires the Bureau of Automotive Repair to establish a program for the certification of the third-party dispute resolution programs established, and creates a Certification Account to pay for the program funded through a surcharge on applications for licensure or renewal as manufacturers or distributors of new motor vehicles. On or before January 1 of each calendar year, the bureau is to determine the dollar amount, not to exceed \$1 per vehicle sold, needed to be collected in fees.

As passed by the Assembly, this bill clarified that the buyer's damages in an action under the Song-Beverly Consumer Warranty Act include the rights of replacement and reimbursement.

The Senate amendments delete the contents of the bill as passed by the Assembly and, instead, require the New Motor Vehicle Board to:

- 1) Adopt regulations including a formula to calculate the fees necessary to fund the certification program for dispute resolution mechanisms.
- 2) Calculate the fees based on information provided by February 1 each year by motor vehicle manufacturers. Failure to file would result in an assessment based on the prior year's figures.
- 3) Bill the auto manufacturers only. Payment would be due within 30 days of notification with a 10% penalty for delinquency.
- 4) Collect the fees directly for deposit in the Certification Account.

- continued -



FISCAL EFFECT

None

COMMENTS

- 1) This bill is an urgency measure created in the Senate, so that it can be enacted before the law it seeks to amend takes effect on July 1, 1988. The bill has not been heard in this form by the Assembly.

The purpose of this measure is to establish a more direct and less administratively burdensome method of collecting the fees necessary to fund the certification of Lemon Law dispute resolution programs. This certification program was created in 1987 with the passage of AB 2057 (Tanner), and will take effect July 1. The mechanism AB 2057 established for collecting the fee is excessively cumbersome, however, involving three agencies and tied to the regular licensing and license renewal process of the Department of Motor Vehicles.

- 2) The process proposed in this measure is simple and more direct. Manufacturers would inform the New Motor Vehicle Board of their transactions by February 1, of each year, would receive a notice of assessment from the board, and would forward payment for deposit to the certification account within 30 days of notice. A penalty of 10% would be imposed for delinquency. Failure to notify the board of sales, leases, etc., would result in an assessment paid on the preceding year's transactions.

Larry Doyle
324-7440
6/13/88:ageconpro

AB 1367
Page 2



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EL MONTE, CA 91731
(618) 442-9100



Assembly California Legislature

SALLY TANNER

ASSEMBLYWOMAN, SIXTIETH DISTRICT

CHAIRWOMAN

COMMITTEE ON ENVIRONMENTAL SAFETY & TOXIC MATERIALS

June 21, 1988

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

Dear Governor Deukmejian:

Assembly Bill 1367 is now before you for your consideration. The measure establishes a more efficient, less costly method of collecting fees to certify "Lemon Law" arbitration.

Last year, you signed my Assembly Bill 2057 which, among other things, required the Bureau of Automotive Repair in the Department of Consumer Affairs to establish a program to certify that auto manufacturer-run arbitration panels under the "Lemon Law" are operated fairly, efficiently and as required by law and Federal Trade Commission regulations. To fund the certification program, AB 2057 authorized the collection of fees from auto manufacturers to be paid on each new motor vehicle sold in the state. These fees would be set by the New Motor Vehicle Board and collected by the Department of Motor Vehicles after consultation with the Bureau of Automotive Repair on its budgetary needs.

Assembly Bill 1367 simplifies the fee collection system by consolidating it in the New Motor Vehicle Board and making a single agency responsible for it. This will make collection of the fees simpler, more straightforward and less costly than would otherwise be the case.

The New Motor Vehicle Board, the Department of Consumer Affairs, the Bureau of Automotive Repair and the Department of Motor Vehicles are all in agreement with AB 1367. There is no known opposition to it.

I urge you to sign the bill into law before July 1, 1988, the date the certification program becomes operative.

Sincerely,

A handwritten signature in cursive script that reads "Sally".

SALLY TANNER
Assemblywoman, 60th District

COMMITTEES:
ENVIRONMENTAL SAFETY &
TOXIC MATERIALS
GOVERNMENTAL ORGANIZATION
LABOR & EMPLOYMENT
WATER, PARKS & WILDLIFE
SUBCOMMITTEES:
ARTS & ATHLETICS
MEMBER:
JOINT COMMITTEE ON
FIRE, POLICE, EMERGENCY
AND DISASTER SERVICES
SELECT COMMITTEE ON
LOW LEVEL NUCLEAR WASTE
GOVERNOR'S TASK FORCE ON
TOXICS, WASTE & TECHNOLOGY

ST:acf

LIS - 15

FCA MJN 173

LEGISLATIVE INTENT SERVICE (800) 666-1917



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DANIEL A. WEITZMAN
THOMAS D. WHELAN
JANA T. WHITGROVE
DEBRA J. ZIDICH
CHRISTOPHER ZIRKLE
DEPUTIES

Sacramento, California
June 27, 1988

Honorable George Deukmejian
Governor of California
Sacramento, CA 95814

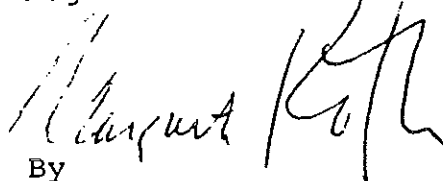
Assembly Bill No. 1367

Dear Governor Deukmejian:

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

Very truly yours,

Bion M. Gregory
Legislative Counsel



By
Marguerite Roth
Principal Deputy

MRR:ls1

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



AB 1367 - CONCURRENCE IN SENATE AMENDMENTS

AB 1367, AS PASSED BY THE ASSEMBLY, MADE A TECHNICAL, CLARIFYING CHANGE TO THE SONG-BEVERLY CONSUMER WARRANTY ACT. IT MADE IT CLEAR THAT EITHER REIMBURSEMENT OR REPLACEMENT OF DEFECTIVE GOODS CAN BE ORDERED BY A COURT WHEN THE BUYER OF THE GOODS SUES THE MANUFACTURER.

THE SENATE AMENDMENTS SIMPLIFY THE FEE SYSTEM, ESTABLISHED BY MY AB 2057 OF LAST YEAR, TO FUND A PROGRAM TO CERTIFY "LEMON LAW" ARBITRATION PANELS. THE BILL NOW CONSOLIDATES THE ASSESSMENT AND COLLECTION OF THE FEES IN THE NEW MOTOR VEHICLE BOARD. THESE DUTIES WERE DIVIDED BETWEEN TWO AGENCIES BY THE BILL PASSED LAST YEAR. THIS SIMPLIFICATION SHOULD MAKE IT LESS COSTLY AND MORE EFFICIENT TO COLLECT THE FEES NEEDED TO RUN THE PROGRAM. THE NEW MOTOR VEHICLE BOARD IS IN SUPPORT OF THE BILL. THERE IS NO OPPOSITION.

I ASK FOR YOUR "AYE" VOTE.

6/13/88



AB 1367 - COMMITTEE STATEMENT

LAST YEAR, I CARRIED A BILL - AB 2057 - WHICH REQUIRED THE BUREAU OF AUTOMOTIVE REPAIR IN THE DEPARTMENT OF CONSUMER AFFAIRS TO ESTABLISH A PROGRAM TO REGULATE "LEMON LAW" ARBITRATION PANELS RUN BY THE AUTO MANUFACTURERS. THE PROGRAM IS FUNDED BY FEES PAID BY THE AUTO MANUFACTURERS. THE NEW MOTOR VEHICLE BOARD SETS THE FEES AND THE DEPARTMENT OF MOTOR VEHICLES COLLECTS THEM.

THIS BILL SIMPLIFIES THE FEE SYSTEM BY CONSOLIDATING THE ASSESSMENT AND COLLECTION OF THE FEES IN THE NEW MOTOR VEHICLE BOARD. THE SIMPLIFICATION SHOULD MAKE IT LESS COSTLY TO COLLECT THE FEES. THE NEW MOTOR VEHICLE BOARD IS IN SUPPORT OF THE BILL. THERE IS NO KNOWN OPPOSITION.

I ASK FOR YOUR "AYE" VOTE.

5/23/88



AB 1367 EXPLANATION

AB 2057 last year required the Bureau of Automotive Repair to establish a program to certify that arbitration panels run by auto manufacturers under the Lemon Law are run fairly and in accordance with the law. The BAR program is funded by fees imposed on the auto manufacturers.

AB 2057 required the New Motor Vehicle Board to impose the fees (up to \$1.00 per motor vehicle sold in the state) and the Department of Motor Vehicles to collect them.

AB 1367 simplifies the fee system by requiring the New Motor Vehicle Board to calculate the fees, bill the auto manufacturers and collect them directly. The New Motor Vehicle Board thinks this can be done with no cost and simplifies everything. The Bureau of Automotive Repair agrees.

As far as we know, there is no opposition to the bill.



AB 1367 - EXPLANATION OF AUTHOR'S AMENDMENTS

- AMENDMENT 1 CHANGES THE DATE ON WHICH MANUFACTURERS MUST REPORT THE NUMBER OF VEHICLES SOLD IN THE STATE DURING THE PAST YEAR FROM FEBRUARY 1 TO MAY 1.

- AMENDMENT 2 REQUIRES THAT THE NEW MOTOR VEHICLE BOARD BILL EACH MANUFACTURER BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

- AMENDMENT 3 IS A CONFORMING AMENDMENT. IT SPECIFIES THAT THE FEES ARE DUE AND PAYABLE 30 DAYS AFTER THE MANUFACTURER RECEIVES NOTICE OF THE AMOUNT DUE.

- AMENDMENT 4 REQUIRES THAT IMPLEMENTING REGULATIONS INCLUDE A FORMULA FOR CALCULATING THE FEES EACH YEAR. THIS ENSURES THAT THE NEW MOTOR VEHICLE BOARD WILL NOT HAVE TO ADOPT A NEW REGULATION EACH YEAR SETTING THE SPECIFIC FEE FOR THAT YEAR.



AB 1367 - COMMITTEE STATEMENT

AB 1367 MAKES A TECHNICAL, CLARIFYING CHANGE TO THE SONG-
BEVERLY CONSUMER WARRANTY ACT. IT MAKES IT CLEAR THAT
REIMBURSEMENT OR REPLACEMENT OF DEFECTIVE GOODS CAN BE ORDERED BY
A COURT WHEN THE BUYER OF THE GOODS SUES THE MANUFACTURER. WHILE
EXISTING LAW ALREADY ALLOWS REIMBURSEMENT OR REPLACEMENT, AT
LEAST ONE MANUFACTURER HAS RECENTLY ARGUED THAT BECAUSE OF THE
WAY TWO SEPARATE SECTIONS OF THE ACT ARE WRITTEN A COURT MAY NOT
ORDER EITHER.

AB 1367 RESTATES EXISTING LAW IN CLEARER TERMS THAN IS NOW
THE CASE. THERE IS NO KNOWN OPPOSITION TO THIS BILL.



ANSYS



CONCURRENCE IN SENATE AMENDMENTS

AB 1367 (Tanner) - As Amended: May 31, 1988

ASSEMBLY VOTE 74-0 (May 26, 1987) SENATE VOTE 39-0 (June 9, 1988)Original Committee Reference: G. E. & CON. PRO.DIGEST

Urgency statute. 2/3 vote required.

Current law, known as the "Lemon Law," allows automobile manufacturers to establish qualified third-party dispute resolution (arbitration) programs, which buyers must use before they can assert the statutory presumption that a vehicle is a lemon in a legal action for replacement or refund.

Current law, operative July 1, 1988, also requires the Bureau of Automotive Repair to establish a program for the certification of the third-party dispute resolution programs established, and creates a Certification Account to pay for the program funded through a surcharge on applications for licensure or renewal as manufacturers or distributors of new motor vehicles. On or before January 1 of each calendar year, the bureau is to determine the dollar amount, not to exceed \$1 per vehicle sold, needed to be collected in fees.

As passed by the Assembly, this bill clarified that the buyer's damages in an action under the Song-Beverly Consumer Warranty Act include the rights of replacement and reimbursement.

The Senate amendments delete the contents of the bill as passed by the Assembly and, instead, require the New Motor Vehicle Board to:

- 1) Adopt regulations including a formula to calculate the fees necessary to fund the certification program for dispute resolution mechanisms.
- 2) Calculate the fees based on information provided by February 1 each year by motor vehicle manufacturers. Failure to file would result in an assessment based on the prior year's figures.
- 3) Bill the auto manufacturers only. Payment would be due within 30 days of notification with a 10% penalty for delinquency.
- 4) Collect the fees directly for deposit in the Certification Account.

- continued -

FISCAL EFFECT

None

COMMENTS

- 1) This bill is an urgency measure created in the Senate, so that it can be enacted before the law it seeks to amend takes effect on July 1, 1988. The bill has not been heard in this form by the Assembly.

The purpose of this measure is to establish a more direct and less administratively burdensome method of collecting the fees necessary to fund the certification of Lemon Law dispute resolution programs. This certification program was created in 1987 with the passage of AB 2057 (Tanner), and will take effect July 1. The mechanism AB 2057 established for collecting the fee is excessively cumbersome, however, involving three agencies and tied to the regular licensing and license renewal process of the Department of Motor Vehicles.

- 2) The process proposed in this measure is simple and more direct. Manufacturers would inform the New Motor Vehicle Board of their transactions by February 1, of each year, would receive a notice of assessment from the board, and would forward payment for deposit to the certification account within 30 days of notice. A penalty of 10% would be imposed for delinquency. Failure to notify the board of sales, leases, etc., would result in an assessment paid on the preceding year's transactions.



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

A
B

1
3
6
7

AB 1367 (Tanner)
As amended May 11
Hearing date: May 24, 1988
Business & Professions Code
GPS

NEW MOTOR VEHICLE ARBITRATION: FEES FOR CERTIFICATION

HISTORY

Source: Author
Prior Legislation: AB 2057 (1987) - Chaptered
Support: Unknown
Opposition: No known
Assembly Floor Vote: Not applicable

KEY ISSUE

SHOULD AUTOMOBILE MANUFACTURERS BE BILLED DIRECTLY BY THE NEW MOTOR VEHICLE BOARD TO SUPPORT THE CERTIFICATION OF THIRD-PARTY DISPUTE RESOLUTION PROGRAMS, THROUGH FEES TO BE DETERMINED ON THE BASIS OF ANNUAL SALES?

PURPOSE

The existing "Lemon Law" establishes procedures whereby the purchaser of a new defective motor vehicle might obtain redress. Central to the process is the submittal of contentions between purchasers and manufacturers to a third-party dispute resolution program. Under AB 2057 (Tanner) of last year, the Bureau of Automotive Repair is charged with the responsibility of certifying the dispute resolution processes to be used in the arbitration of Lemon Law cases. That certification program, operative July 1 of this year, is to be funded by the imposition of fees collected by the Department of Motor Vehicles on every applicant for license or license renewal as a manufacturer or distributor of automobiles. The amount of the fee is to be determined by the new Motor Vehicle Board, based on estimate of need by the Bureau of Automotive Repair and calculated on a

(More)

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per-transaction basis not to exceed one dollar per vehicle. A statement of transactions and the appropriate fee is to accompany the application to the Department of Motor Vehicles, which deposits the proceeds in a Certification Account to be appropriated to the Bureau by the Legislature.

This bill would simplify the collection process by requiring the new Motor Vehicle Board to calculate the fees, bill the auto manufacturers only, and collect the fees directly for deposit in the Certification Account. Involvement of the Department of Motor Vehicles, and undue complication of the license application and renewal process, would thereby be avoided.

The purpose of this measure is to establish a more direct and less administratively burdensome method of collecting fees for the certification of Lemon Law dispute resolution programs.

COMMENT

1. The current funding mechanism for the certification program is unduly complicated

Establishing the responsibility of auto manufacturers for defects in products for which they have made an expressed warranty has been the subject of legislative activity for nearly a decade. The essence of a Lemon Law is to provide the purchaser with a statutory framework through which he or she might be made whole for losses incurred in the purchase of an inherently defective automotive product. Under current law, submittal of disputes between a manufacturer and a consumer to a third-party arbitration has become an accepted procedure. However, in the passage of AB 2051, the Legislature recognized the need to ensure that dispute resolution processes as may be offered by the manufacturer meet accepted procedural standards. To this end, the Bureau of Automotive Repair was charged with the certification of the processes to be made available to consumers.

The responsibility of manufacturers to fund the certification program was determined in last year's legislation; however, the manner in which the funding is to be collected seems administratively cumbersome, involving three agencies and tied to the regular licensing and license renewal process of the DMV. The process proposed in this measure is simpler and more direct: manufacturers would inform the New Motor Vehicle Board of their transactions by February 1 of each

(More)



year, would receive a notice of assessment from the Board, and would forward payment for deposit to the certification account within 30 days of notice. A penalty of 10% would be imposed for delinquency. Failure to notify the Board of sales, leases, etc., would result in an assessment paid on the preceding year's transactions. The Bureau would continue to be responsible for calculating the level of funding needed.

2. Nondisclosure of prior year's business may work in favor of some manufacturers

While the procedure proposed seems a reasonable alternative to DMV involvement as currently in effect, there seems to exist a possible loophole whereby manufacturers might reduce their funding liability. A failure to file a record of their transactions results in an assessment based on prior year performance; thus, it may behoove them to decline disclosure of performance in a year relatively more successful than the prior one. While this would have no effect on the state's take, it might result in an unfair assessment upon other manufacturers who would be forced to bear an additional amount of assessment.

SHOULD NOT SOME PENALTY BE IMPOSED FOR FAILURE TO DISCLOSE TRANSACTIONS?

3. Urgency clause needed to ensure that financing provisions are in order prior to effective date of the program

This bill contains an urgency clause, necessary to ensure that the new fee provisions are operative prior to the July 1 effective date of the certification program.



Arnie

JUN. - 8 1987

SENATE COMMITTEE ON INSURANCE, CLAIMS AND CORPORATIONS
ALAN ROBBINS, Chairman

BACKGROUND INFORMATION REQUEST

MEASURE: AB 1367

DATE SENT: 6/5/87

AUTHOR: Tanner

DATE REC'D BACK: _____

1. Origin of the bill:

a. Who is the source of the bill? What person, organization or governmental entity requested information?

Former Assembly Consumer Affairs Committee Consultant

b. Please identify session and bill number of similar bills:

AB 3560 (1982)

c. Which Legislative Counsel deputy drafted this bill?

Name Mr. Mojer Phone # 5-6931

2. What is the problem or deficiency in the present law which the bill seeks to remedy? How does it do this?

See attached memo

3. Please attach all background material and any correspondence related to the bill.

4. Do you intend to amend this bill? No
(Reminder, Amendments are due to the committee by 1:30pm on the Friday before the hearing)

5. Name of contact person: Arnie Peters

ATTACHMENTS: Yes X NO _____

PLEASE RETURN TO: Room 5122, State Capitol. Phone 445-0825

FCA MJN 186

LEGISLATIVE INTENT SERVICE (800) 666-1917



SENATE INSURANCE, CLAIMS AND CORPORATIONS COMMITTEE

ASSEMBLY BILL NO. 1367

SENATOR ALAN ROBBINS, CHAIRMAN

ASSEMBLY BILL NO. 1367 (Tanner) As Introduced March 4, 1987
Civil Code

Source: Author
Prior Legislation: AB 3560 (Chapter 385, Statutes of 1982)
Support: No known
Opposition: No known

SUBJECT

Replacement or reimbursement remedies under the Song-Beverly Consumer Warranty Act.

DIGEST

1] Description: AB 1367 clarifies that the refund or replacement remedies provided by Section 1793.2 of the Civil Code is available to a buyer in an action for damages against a warrantor for a defective product.

The bill further declares that the change made by this bill is declaratory of existing law and does not constitute a change in existing law.

2] Background: Section 1794 of the Civil Code law gives the buyer of consumer goods the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's failure to comply with the Song-Beverly Consumer warranty Act. This section does not specifically mention that the buyer has the specific remedy of replacement of the product or reimbursement for the product. However, Section 1793.2 of the Civil Code provides a replacement or reimbursement remedy for the buyer under specified conditions.

FISCAL EFFECT Fiscal Committee: No

STAFF COMMENTS

This bill was spawned when an automobile manufacturer in a court case argued (unsuccessfully) that a buyer can only sue for the remedies specifically enumerated in Section 1794 of the Civil Code, which does not include replacement or reimbursement remedies.

JIM CATHCART
Consultant

ASSEMBLY BILL NO. 1367

07/01/87

FCA MJN 187



arnie

AB 1367

Date of Hearing: May 19, 1987

ASSEMBLY COMMITTEE ON GOVERNMENTAL EFFICIENCY AND CONSUMER PROTECTION
RUSTY AREIAS, Chairman

AB 1367 (Tanner) - As Introduced: March 4, 1987

ASSEMBLY ACTIONS:

COMMITTEE	<u>G. E. & CON. PRO.</u>	VOTE	COMMITTEE	VOTE
Ayes:			Ayes:	
Nays:			Nays:	

SUBJECT

Warranties: remedies.

DIGEST

Existing law gives the buyer of consumer goods the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's failure to comply with the Song-Beverly Consumer Warranty Act which establishes direct legal relations between the buyer and manufacturer in consumer transactions in California.

This bill clarifies that the buyer's damages in an action under the Song-Beverly Consumer Warranty Act include the rights of replacement or reimbursement.

FISCAL EFFECT

None

COMMENTS

The purpose of this bill, sponsored by the author, is to clarify that a consumer who brings an action to obtain damages under the Song-Beverly Consumer Warranty Act has the right to obtain either a refund or replacement if a warranted product is defective and is not fixed after a reasonable number of attempts as defined.

At issue is an automobile manufacturer's legal argument in a recent "lemon law" case that a plaintiff car buyer can sue only for the remedies specifically referenced in a particular section of the Song-Beverly Act. This bill adds to that section a reference to the code which specifies that the

- continued -

AB 1367

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refund/replacement remedy provided for in the "lemon law" is available to a buyer in a lawsuit brought against a warrantor for defective products.

SUPPORT (verified 5/12/87)

None received.

OPPOSITION

None received.



SUPPORT/OPOSE



Bill No. _____

SUPPORT

OPPOSE

Attorney General's Office

(800) 660-1917

LEGISLATIVE INTENT SERVICE



NEW MOTOR VEHICLES BOARD

1507 - 21st Street, Suite 330
Sacramento, CA 95814
(916) 445-1888



JUN 15 1988

June 15, 1988

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

RE: Support of Assembly Bill 1367

Dear Governor Deukmejian:

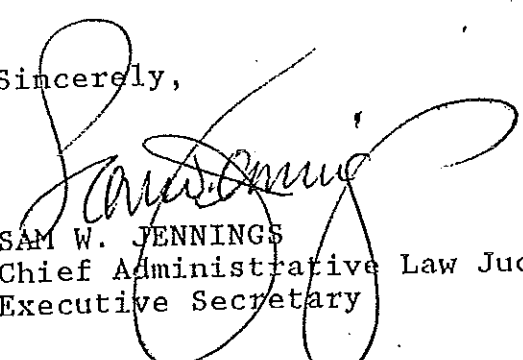
Assembly Bill 1367 (Tanner) is currently on your desk for review. The effect of this legislation is to alter the method by which the fees are collected from new motor vehicle manufacturers and distributors to fund the Bureau of Automotive Repair's third party dispute resolution process certification program. This certification program was established last year by Assembly Bill 2057 (Chapter 1280, Tanner).

AB 1367, if enacted into law, will result in the following:

1. A simplification of the fee collection process;
2. A substantial savings in the costs associated with the fee collection process; and
3. An increase in the efficiency of the services rendered to the constituents involved in this process, specifically the new motor vehicle manufacturers and distributors licensed to do business in California.

The New Motor Vehicle Board is in support of this legislation and respectfully requests your signature on this measure.

Sincerely,


SAM W. JENNINGS
Chief Administrative Law Judge/
Executive Secretary

CC: The Honorable Sally Tanner

FCA MJN 192



AB/367(5)



JOHN K. VAN DE KAMP
Attorney General

State of California
DEPARTMENT OF JUSTICE

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

July 10, 1987

Honorable Sally Tanner
Assemblymember, 60th District
State Capitol, Room 4146
Sacramento, CA 95814

Dear Assemblymember Tanner:

Re: AB 1367 - Warranties: Remedies

The Attorney General's office supports AB 1367 which would include the rights of replacement or reimbursement as damages for a consumer who sues under the Song-Beverly Consumer Warranty Act.

Under current law, notwithstanding that the consumer has the right to replacement or reimbursement for a vehicle which cannot be repaired, that right of replacement or reimbursement is not set forth in section 1794 of the Civil Code as damages which may be recoverable by the buyer under the Song-Beverly Consumer Warranty Act. The buyer can only get the difference between the value of the goods as accepted and the value of the goods had they complied with the warranty. This obviously creates an anomalous result which your bill would correct by providing remedies in the damages section of the Song-Beverly Act which are consistent with the provisions of the Act itself.

If we can be of further assistance in supporting the bill, please call me at 324-5478.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

Jeffrey J. Fuller
Deputy Attorney General

JJF:er

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AMENDMENTS TO ASSEMBLY BILL NO. 1367

Amendment 1

In line 1 of the title, strike out "1794 of the Civil Code, relating to" strike out line 2 of the title and insert:

9889.75 of the Business and Professions Code, relating to warranties, and declaring the urgency thereof, to take effect immediately.

Amendment 2

On page 1, strike out line 1 and insert:

SECTION 1. Section 9889.75 of the Business and Professions Code, as added by Chapter 1280 of the Statutes of 1987, is amended to read:

9889.75. The New Motor Vehicle Board in the Department of Motor Vehicles shall, in accordance with the procedures prescribed in this section, administer the collection of fees for the purposes of fully funding the administration of this chapter.

(a) There is hereby created in the Automotive Repair Fund a Certification Account. Fees collected pursuant to this section shall be deposited in the Certification Account and shall be available, upon appropriation by the Legislature, exclusively to pay the expenses incurred by the bureau in administering this chapter. If at the conclusion of any fiscal year the amount of fees collected exceeds the amount of expenditures for that purpose during that fiscal year, the surplus in the Certification Account shall be carried over into the succeeding fiscal year.

(b) Beginning July 1, 1988, every applicant for a license as a manufacturer, manufacturer branch, distributor, or distributor branch, and every applicant for the renewal of a license as a manufacturer, manufacturer branch, distributor, or distributor branch, shall accompany the application with and on or before February 1 of each calendar year thereafter, every manufacturer shall file with the New Motor Vehicle Board a statement of the number of motor vehicles sold, leased, or otherwise distributed by or for the applicant manufacturer in this state during the preceding calendar year, and shall, upon written notice, pay to the Department of Motor Vehicles, for each issuance or renewal of the license, an amount prescribed by the New Motor Vehicle Board, but a



fee, not to exceed one dollar (\$1) for each motor vehicle sold, leased, or distributed by or for the applicant manufacturer in this state during the preceding calendar year. The total fee paid by each licensee manufacturer shall be rounded to the nearest dollar in the manner described in Section 9559 of the Vehicle Code. No more than one dollar (\$1) shall be charged, collected, or received from any one or more licensees manufacturer pursuant to this subdivision with respect to the same motor vehicle.

(c) (1) The fee required by subdivision (b) is due and payable no later than 30 days after the New Motor Vehicle Board has given notice to the manufacturer of the amount due and is delinquent after that time. A penalty of 10 percent of the amount delinquent shall be added to that amount, if the delinquency continues for more than 30 days.

(2) In the event that a manufacturer fails to file the statement required by subdivision (b) by the date specified, the New Motor Vehicle Board shall assess the amount due from the manufacturer by using as the number of motor vehicles sold, leased, or otherwise distributed by or for the manufacturer in this state during the preceding calendar year the total number of new registrations of all motor vehicles sold, leased, or otherwise distributed by or for the manufacturer during the preceding calendar year.

(c)
(d) On or before January February 1 of each calendar year, the bureau shall determine the dollar amount, not to exceed one dollar (\$1) per motor vehicle, which shall be collected and received by the Department of Motor Vehicles beginning July 1 of that year, based upon an estimate of the number of sales, leases, and other dispositions of motor vehicles in this state during the preceding calendar year, in order to notify the New Motor Vehicle Board of the dollar amount necessary to fully fund the program established by this chapter during the following fiscal year. The bureau shall notify the New Motor Vehicle Board of the dollar amount per motor vehicle that the New Motor Vehicle Board shall use this information in calculating the amounts of the fees to be collected from applicants manufacturers pursuant to this subdivision section.

(d)
(e) For the purposes of this section, "motor vehicle" means a new passenger or commercial motor vehicle



of a kind that is required to be registered under the Vehicle Code, but the term does not include a motorcycle, a motor home, or any vehicle whose gross weight exceeds 10,000 pounds.

(e)
(f) The New Motor Vehicle Board may adopt regulations to implement this section.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Chapter 1280 of the Statutes of 1987 established a program in the Bureau of Automotive Repair to certify the operation of third-party dispute resolution processes under the state's "Lemon Law" and imposed fees on auto manufacturers to fund that program. Both the program and fee collections are scheduled to become operative on July 1, 1988. In order to establish a more efficient, less costly method of collecting fees from auto manufacturers to fund the certification program before it begins operation, it is necessary that this act take effect immediately.

Amendment 3

On page 1, strike out lines 2 to 6, inclusive, and strike out page 2

- 0 -



CONFLICTS





SACRAMENTO ADDRESS
STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 95829-0001
(916) 445-7183

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



Assembly California Legislature

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

April 28, 1988

Honorable David Roberti
Chairman, Senate Rules Committee
State Capitol, Room 400
Sacramento, CA 95814

Dear Senator Roberti:

I would like to request that the Senate Rules Committee approve the addition of an urgency clause to my Assembly Bill 1367 which is now on the inactive file on the Senate floor.

AB 1367 currently contains a non-controversial amendment to California's "Lemon Law", an amendment that has already been enacted by my AB 2057 of last year. That bill also amended the "Lemon Law" and established a program in the Bureau of Automotive Repair (BAR) to certify that "Lemon Law" arbitration panels operated by auto manufacturers are run fairly and in accordance with the law. The BAR certification program will begin July 1, 1988 and be supported with fees paid by motor vehicle manufacturers.

Serious questions have arisen about the fee system established by AB 2057 and whether it will operate efficiently. Since AB 1367 is a bill related in subject matter to AB 2057, I would like to activate the bill, have it referred to the Senate Appropriations Committee, amend it there to correct the problems with the "Lemon Law" fee system and, on an urgency basis, move the bill.

For the above reasons, I respectfully request approval to amend an urgency clause into AB 1367.

Sincerely,

Sally Tanner
SALLY TANNER
Assemblywoman, 60th District

ST:cf

FCA MJN 200

COMMITTEES:
ENVIRONMENTAL SAFETY &
TOXIC MATERIALS
GOVERNMENTAL ORGANIZATION
LABOR & EMPLOYMENT
WATER, PARKS & WILDLIFE
SUBCOMMITTEES:
ARTS & ATHLETICS
MEMBER:
JOINT COMMITTEE ON
FIRE, POLICE, EMERGENCY
AND DISASTER SERVICES
SELECT COMMITTEE ON
LOW LEVEL NUCLEAR WASTE
GOVERNOR'S TASK FORCE ON
TOXICS, WASTE & TECHNOLOGY

LEGISLATIVE INTENT SERVICE (800) 666-1917





Richard L. Dugally

5/23/88

ARNIE -

THIS DATA ALSO
APPLIES TO AB 1367.
FROM A PRACTICAL
STANDPOINT, GETTING THE
DATA FROM MANUFACTURERS
ISN'T GOING TO WORK
IN THE TIMEFRAME
UNDER AB 1367.

THANKS -

Dugally





Office of the General Counsel
Room 1003 WHQ
(313) 323-1978

Ford Motor Company
The American Road
Dearborn, Michigan 48121
May 23, 1988

Ms. Suzanne Giorgi
State of California
New Motor Vehicle Board
1507 21st Street, Room 330
Sacramento, CA 95814

Dear Ms. Giorgi:

We would like to take this opportunity to provide our thoughts on the proposed regulations for the administration of fee collection for the certification account in California. We offer first our general observations and then our recommendations for the revision of specific provisions.

We believe the proper means to quantify the number of new motor vehicles subject to the pre-vehicle assessment is through new vehicle registrations. Registration data reflect accurately the number of new motor vehicles sold and used in California. Unlike other measures, such as manufacturer's reported retail deliveries, registration data do not include vehicles sold to dealers but not sold or leased to actual customers for purposes of statutory coverage.

Vehicles sold in California for use in the state are subject to California's licensing and registration requirements. Each new vehicle is registered with the State. It is the State, through its motor vehicle licensing activity, that is the best source of accurate and current registration data. The registration information Ford Motor Company receives comes from an independent organization (R.L. Polk Co.) which it in turn has received from the State of California. Ford's access to the registration information is subject to a delay of approximately three months. For example, Ford typically would receive full calendar year registration results for the preceding year by early March of the current year.



Since the registration information is collected by the State, we believe the most effective and least burdensome approach would be to require the Department of Motor Vehicles to provide to the New Motor Vehicle Board the number of new motor vehicles registered for the calendar year. If accomplished in this manner, the New Motor Vehicle Board would receive the required information at the earliest possible time. The Board could process the information and mail statements in an efficient, expeditious manner.

Consistent with the above, we offer the following specific recommendations:

Alternative Set I

553.50 (a) Delete and revise consistent with stated position (see above)

(b) Add "provided, however, nothing in this regulation shall preclude the manufacturer or distributor from recovering the amount of fees through direct charges to a dealer, franchisee, or lessor.

Reason: To clarify that while the manufacturer or distributor is obligated to pay the fee, it may recover the expense as a requirement of doing business expense.

553.70 Revise second paragraph by deleting "mailing" and inserting "receipt".

Reason: Process of payment may take time, and, if the mail is misdirected or not delivered properly the company is at risk. If the requirement is changed to "receipt", sufficient time should be available.

Alternative Set II

553.50 (a) Delete "February 1" insert "March 15"

Reason: As discussed above, registration data, the most reliable indicator of covered vehicles, are not available generally until the beginning of March.

(1) Delete "eventually"

(b) See comment to 553.50(b) Alternative Set I



553.60 Delete "or it is determined by the Board that the information that is received is erroneous"

Reason: There is no standard set forth to establish the basis for a finding of erroneous submission. In the event that an erroneous statement is made, the state has ample authority to take corrective actions without this regulation. Further, this measure indicates the State's ability to produce the required information and should form the basis of the regulatory approach for fee collection (See prior discussion).

553.70 See 553.70 Alternative Set I

553.71 Delete.

Reason: This measure exceeds the statutory grant and establishes a grossly excessive penalty in relation to the behavior regulated. Further, this measure presupposes a willful failure to pay. It is possible that the fee assessment may not have been received. A provision for the mailing of a second notice and the possibility of a minor fee (i.e., a possible assessment of interest on the amount not received) seem appropriate in instances involving a invalid reason for non-payment.

We appreciate the opportunity to comment on this matter, and we would be available for any further discussion at your convenience.

Sincerely,


Keith A. Cheresko
Staff Attorney

4592M



AUTHOR'S COPY

FEB 28 1987

87059 11:50

49550

RECORD #

40 BF:

BN 87 006631 PAGE NO. 1

LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, Tanner.

General Subject: Warranties: remedies.

Existing law provides that any buyer of consumer goods who is damaged by a failure to comply with any obligation under the Song-Beverly Consumer Warranty Act or under an implied or express warranty or service contract may bring an action for the recovery of damages and other legal and equitable relief. Existing law sets forth the measure of the buyer's damages in an action, as specified.

This bill would specify that the measure of the buyer's damages in an action includes, in addition, the rights of replacement or reimbursement, as set forth in specified provisions of the act. The bill would declare that the provision does not constitute a change in, but is declaratory of, existing law.

Vote: majority. Appropriation: no. Fiscal

LEGISLATIVE INTENT SERVICE (800) 666-1917



49550

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committee: no. State-mandated local program: no.



AFFIDAVIT COPY

FEB 28 1987

87059 11:50

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RECORD #

30 BF:

RN 87 006631 PAGE NO. 1

An act to amend Section 1794 of the Civil Code,
relating to warranties.

LEGISLATIVE INTENT SERVICE (800) 666-1917



THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1794 of the Civil Code is amended to read:

1794. (a) Any buyer of consumer goods who is damaged by a failure to comply with any obligation under this chapter or under an implied or express warranty or service contract may bring an action for the recovery of damages and other legal and equitable relief.

(b) The measure of the buyer's damages in an action under this section shall be as follows include the rights of replacement or reimbursement as set forth in subdivision (d) of Section 1793.2, and the following:

(1) Where the buyer has rightfully rejected or justifiably revoked acceptance of the goods or has exercised any right to cancel the sale, Sections 2711, 2712, and 2713 of the Commercial Code shall apply.

(2) Where the buyer has accepted the goods, Sections 2714 and 2715 of the Commercial Code shall apply, and the measure of damages shall include the cost of repairs necessary to make the goods conform.

(c) If the buyer establishes that the failure to comply was willful, the judgment may include, in addition to the amounts recovered under subdivision (a), a civil



penalty which shall not exceed two times the amount of actual damages. This subdivision shall not apply in any class action under Section 382 of the Code of Civil Procedure or under Section 1781, or with respect to a claim based solely on a breach of an implied warranty.

(d) If the buyer prevails in an action under this section, the buyer may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action, unless the court in its discretion determines that such an award of attorney's fees would be inappropriate.

SEC. 2. The amendment of Section 1794 of the Civil Code made at the 1987-88 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the existing law.



LEGISLATIVE COUNSEL No. 06631

REQUEST OF _____ ASSEMBLY MEMBER SALLY TANNER
Per letter

BILL--

Draft bill per attached.

Any question, contact Arnie Peters 5-0991.

ATTACHMENTS:

1-page letter from requester; 2-page letter from Jay J. DeFuria; 2-pages Civil Code, Section 1794.

Lemon Law (B)

2/6/87

Typed 2/7/87

This will acknowledge your request received on the date indicated. Please examine the above statement to determine if it correctly sets forth your request.

Any question with respect to this request may be directed to

Mr. Major 5-6931

to whom it has been assigned.

BION M. GREGORY
Legislative Counsel

LEGISLATIVE INTENT SERVICE (800) 666-1917

February 6, 1987

MEMORANDUM

TO: Assemblywoman Sally Tanner

FROM: Jay J. DeFuria

SUBJECT: Legislative Proposal: "Clean-up" (clarifying) amendment to your AB 3560 of 1982 (Chapter 385, Statutes of 1982)

ISSUE

As I briefly discussed with you and Arnie in your office recently, an interpretation concerning Civil Code Section 1794 (in the Song-Beverly Consumer Warranty Act) has been broached by an automobile manufacturer's attorney in at least one pending consumer auto "lemon" case which, were it to become accepted, could seriously weaken your lemon law. This problem was brought to my attention by the consumer's attorney (Mr. Brian Kermnitzer-San Francisco) who requested that Section 1794 be amended to clarify its meaning and ward off this dangerous misinterpretation.

BACKGROUND

Civil Code Section 1794 is a provision of the Song-Beverly Act which gives the consumer the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's (or others) failure to comply with Song-Beverly warranty obligations. You authored AB 3560 in 1982 which made some "fine tuning" clarifications to Section 1794 (the bill's sponsor was the Department of Consumer Affairs).

Section 1794 specifies what the measure of damages will be for the buyer in certain circumstances by reference to specified California Commercial Code provisions. However, as you know, Civil Code Section 1793.2 (the "lemon" law) provides a buyer with the right to obtain either a refund ("reimbursement") or replacement if a warranted product is defective and is not fixed after a reasonable number of attempts (4X/30 days for new autos.)

PROBLEM

The misinterpretation problem comes about because Section 1794 does not specifically include the refund/replacement remedy provided to the buyer by Section 1793.2 (nor other remedies

provided for in the Song-Beverly Act). The result has been for the auto manufacturer's attorney to argue in court that a plaintiff car buyer can sue only for the Section 1794 remedies and not for the Section 1793.2 refund/replacement remedy. I think that argument is ludicrous since were it to be accepted, it would drastically reduce any incentive for the manufacturer to offer a refund before a lawsuit, and cause them to argue the refund is an unavailable remedy in a lawsuit. (They argue the buyer only has the right to obtain the difference in value between what the defective car is worth and what it would have been worth without the defects).

THE PROPOSAL

The legislative proposal is simply to amend Civil Code Section 1794 by adding language that would clearly specify that the refund/replacement remedy provided by Section 1793.2 is available to a buyer in a lawsuit brought against a warrantor for defective products.

The language for the amendment would be as follows:

Amend Section 1794(b) of the Civil Code by deleting "as follows:" after the word "shall" and inserting:

include the rights of replacement or reimbursement as set forth in Section 1793.2(d) and the following
(See attached markup)

Because this amendment is a clarification that Section 1794 doesn't preclude Section 1793.2 remedies, and to avoid the possibility of having this proposed amendment construed otherwise, I would also recommend that the following legislative intent be added as uncodified language in the bill:

Sec.2. (of the bill) The amendment of Section 1794 of the Civil Code made at the 1987-88 Regular Session of the Legislature does not constitute a change in, but is declaratory of existing law.

Finally, I would recommend that this proposal be considered for introduction as a separate bill, rather than as an amendment to your 1987 "Lemon Law II" bill. The rationale is that it is a clean-up to your previous non-lemon law legislation and that having it in a separate bill will reduce confusion and keep it separated from any controversy that may attach to your direct lemon law clean-up efforts.

If I can be of further assistance to you on this issue please let me know.

JJD:bj



§ 1793.5

CONSUMER WARRANTIES
Div. 3

Library References

Sales § 442.
C.J.S. Sales § 374 et seq.

§ 1793.6. Liability of manufacturer to independent service and repair facility

Except as otherwise provided in the terms of a warranty service contract, as specified in subdivision (a) of Section 1793.2, entered into between a manufacturer and an independent service and repair facility, every manufacturer making express warranties whose consumer goods are sold in this state shall be liable as prescribed in this section to every independent serviceman who performs services or incurs obligations in giving effect to the express warranties that accompany such manufacturer's consumer goods whether the independent serviceman is acting as an authorized service and repair facility designated by the manufacturer pursuant to paragraph (1) of subdivision (a) of Section 1793.2 or is acting as an independent serviceman pursuant to subdivisions (c) and (d) of Section 1793.3. The amount of such liability shall be an amount equal to the actual and reasonable costs of the service and repair, including any cost for parts and any reasonable cost of transporting the goods or parts, plus a reasonable profit. It shall be a rebuttable presumption affecting the burden of producing evidence that the reasonable cost of service or repair is an amount equal to that which is charged by the independent serviceman for like services or repairs rendered to service or repair customers who are not entitled to warranty protection. Any waiver of the liability of a manufacturer shall be void and unenforceable.
(Added by Stats.1976, c. 416, p. 1072, § 4.)

Library References

Implied and Constructive Contracts § 6.
C.J.S. Money Paid §§ 1 to 5.

§ 1794. Actions by buyers; measure of damages; civil penalties; costs and expenses; attorney's fees

(a) Any buyer of consumer goods who is damaged by a failure to comply with any obligation under this chapter or under an implied or express warranty or service contract may bring an action for the recovery of damages and other legal and equitable relief.

(b) The measure of the buyer's damages in an action under this section shall be as follows: *include the rights of replacement or reimbursement as set forth in Section 1793.2(d) and the following:*

(1) Where the buyer has rightfully rejected or justifiably revoked acceptance of the goods or has exercised any right to cancel the sale, Sections 2711, 2712, and 2713 of the Commercial Code shall apply.

(2) Where the buyer has accepted the goods, Sections 2714 and 2715 of the Commercial Code shall apply, and the measure of damages shall include the cost of repairs necessary to make the goods conform.

CONSUMER WARRANTY PROTECTION
Pt. 4

§ 1794

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

(d) If the buyer prevails in an action under this section, the buyer may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action, unless the court in its discretion determines that such an award of attorney's fees would be inappropriate. (Added by Stats.1982, c. 385, p. 1716, § 2.)

Historical Note

Former § 1794, added by Stats.1970, c. 1333, p. 2482, § 1, amended by Stats.1971, c. 1523, p. 3007, § 13; Stats.1978, c. 991, p. 3065, § 10, relating to similar subject matter, was repealed by Stats.1982, c. 385, p. 1716, § 1.

Former § 1794, added by Stats.1931, c. 1070, p. 2257, § 1, as part of the Uniform Sales Act, was repealed by Stats.1963, c. 819, p. 1997, § 2, eff. Jan. 1, 1965. See, now, Com.C. § 1102.

Derivation: Former § 1794, added by Stats.1970, c. 1333, p. 2482, § 1, amended by Stats.1971, c. 1523, p. 3007, § 13; Stats. 1978, c. 991, p. 3065, § 10.

Former § 1794.2, added by Stats.1979, c. 1023, p. 3496, § 6.

Former § 1794.2, added by Stats.1970, c. 1333, p. 2483, § 3, amended by Stats.1971, c. 1523, p. 3007, § 14.

Former § 1794.2, added by Stats.1970, c. 1333, p. 2478, § 1.

Forms

See West's California Code Forms, Civil.

Cross References

Attorney's fees and costs, award, see § 1717.
Automobile conditional sales contract, attorney's fees, see § 2983.4.
Buyer's damages for breach in regard to accepted goods, see Commercial Code § 2714.
Credit card holder, award of attorney's fees against issuer or retailer, see §§ 1747.50, 1747.60, 1747.70.
Damages, generally, see §§ 3274, 3281 et seq.

Law Review Commentaries

Mass contracts: Lawful fraud in California. W. David Slawson (1974) 48 So.Cal. L.R. 1.
Products liability: Recovery of economic loss. (1977) 13 C.W.L.R. 297.

Library References

Costs ⊕ 173(1).
Penalties ⊕ 3.
Sales ⊕ 442.

C.J.S. Costs § 2.
C.J.S. Penalties § 2.
C.J.S. Sales § 374 et seq.

Assembly California Legislature

SALLY TANNER
ASSEMBLYWOMAN, SIXTIETH DISTRICT

Date: February 6, 1987

MEMO TO: Legislative Counsel

FROM: Assemblywoman Sally Tanner

by: Arnie Peters 5-0991
(requester)

Please prepare a bill

in accordance with the attached information.

(Amend Section 1794(b) of the Civil Code)

DUE DATE: _____



February 6, 1987

MEMORANDUM

TO: Assemblywoman Sally Tanner

FROM: Jay J. DeFuria

SUBJECT: Legislative Proposal: "Clean-up" (clarifying)
amendment to your AB 3560 of 1982 (Chapter 385,
Statutes of 1982)

ISSUE

As I briefly discussed with you and Arnie in your office recently, an interpretation concerning Civil Code Section 1794 (in the Song-Beverly Consumer Warranty Act) has been broached by an automobile manufacturer's attorney in at least one pending consumer auto "lemon" case which, were it to become accepted, could seriously weaken your lemon law. This problem was brought to my attention by the consumer's attorney (Mr. Brian Kermnitzer-San Francisco) who requested that Section 1794 be amended to clarify its meaning and ward off this dangerous misinterpretation.

BACKGROUND

Civil Code Section 1794 is a provision of the Song-Beverly Act which gives the consumer the right to bring a legal action to obtain damages and other relief because of damage the consumer has suffered due to a manufacturer's (or others) failure to comply with Song-Beverly warranty obligations. You authored AB 3560 in 1982 which made some "fine tuning" clarifications to Section 1794 (the bill's sponsor was the Department of Consumer Affairs).

Section 1794 specifies what the measure of damages will be for the buyer in certain circumstances by reference to specified California Commercial Code provisions. However, as you know, Civil Code Section 1793.2 (the "lemon" law) provides a buyer with the right to obtain either a refund ("reimbursement") or replacement if a warranted product is defective and is not fixed after a reasonable number of attempts (4X/30 days for new autos.)

PROBLEM

The misinterpretation problem comes about because Section 1794 does not specifically include the refund/replacement remedy provided to the buyer by Section 1793.2 (nor other remedies



provided for in the Song-Beverly Act). The result has been for the auto manufacturer's attorney to argue in court that a plaintiff car buyer can sue only for the Section 1794 remedies and not for the Section 1793.2 refund/replacement remedy. I think that argument is ludicrous since were it to be accepted, it would drastically reduce any incentive for the manufacturer to offer a refund before a lawsuit, and cause them to argue the refund is an unavailable remedy in a lawsuit. (They argue the buyer only has the right to obtain the difference in value between what the defective car is worth and what it would have been worth without the defects).

THE PROPOSAL

The legislative proposal is simply to amend Civil Code Section 1794 by adding language that would clearly specify that the refund/replacement remedy provided by Section 1793.2 is available to a buyer in a lawsuit brought against a warrantor for defective products.

The language for the amendment would be as follows:

Amend Section 1794(b) of the Civil Code by deleting "as follows:" after the word "shall" and inserting:

include the rights of replacement or reimbursement as set forth in Section 1793.2(d) and the following
(See attached markup)

Because this amendment is a clarification that Section 1794 doesn't preclude Section 1793.2 remedies, and to avoid the possibility of having this proposed amendment construed otherwise, I would also recommend that the following legislative intent be added as uncodified language in the bill:

Sec.2. (of the bill) The amendment of Section 1794 of the Civil Code made at the 1987-88 Regular Session of the Legislature does not constitute a change in, but is declaratory of existing law.

Finally, I would recommend that this proposal be considered for introduction as a separate bill, rather than as an amendment to your 1987 "Lemon Law II" bill. The rationale is that it is a clean-up to your previous non-lemon law legislation and that having it in a separate bill will reduce confusion and keep it separated from any controversy that may attach to your direct lemon law clean-up efforts.

If I can be of further assistance to you on this issue please let me know.

JJD:bj



CALIF. CIVIL CODE (Song-Beverly Act)

§ 1793.5

CONSUMER WARRANTIES
Div. 3

Library References

Sales ⇨442.
C.J.S. Sales § 374 et seq.

§ 1793.6. Liability of manufacturer to independent service and repair facility

Except as otherwise provided in the terms of a warranty service contract, as specified in subdivision (a) of Section 1793.2, entered into between a manufacturer and an independent service and repair facility, every manufacturer making express warranties whose consumer goods are sold in this state shall be liable as prescribed in this section to every independent serviceman who performs services or incurs obligations in giving effect to the express warranties that accompany such manufacturer's consumer goods whether the independent serviceman is acting as an authorized service and repair facility designated by the manufacturer pursuant to paragraph (1) of subdivision (a) of Section 1793.2 or is acting as an independent serviceman pursuant to subdivisions (c) and (d) of Section 1793.3. The amount of such liability shall be an amount equal to the actual and reasonable costs of the service and repair, including any cost for parts and any reasonable cost of transporting the goods or parts, plus a reasonable profit. It shall be a rebuttable presumption affecting the burden of producing evidence that the reasonable cost of service or repair is an amount equal to that which is charged by the independent serviceman for like services or repairs rendered to service or repair customers who are not entitled to warranty protection. Any waiver of the liability of a manufacturer shall be void and unenforceable. (Added by Stats.1976, c. 416, p. 1072, § 4.)

Library References

Implied and Constructive Contracts ⇨6.
C.J.S. Money Paid §§ 1 to 5.

§ 1794. Actions by buyers; measure of damages; civil penalties; costs and expenses; attorney's fees

(a) Any buyer of consumer goods who is damaged by a failure to comply with any obligation under this chapter or under an implied or express warranty or service contract may bring an action for the recovery of damages and other legal and equitable relief.

(b) The measure of the buyer's damages in an action under this section shall be as follows: *include the rights of replacement or reimbursement as set forth in section 1793.2(a), and the following:*

(1) Where the buyer has rightfully rejected or justifiably revoked acceptance of the goods or has exercised any right to cancel the sale, Sections 2711, 2712, and 2713 of the Commercial Code shall apply.

(2) Where the buyer has accepted the goods, Sections 2714 and 2715 of the Commercial Code shall apply, and the measure of damages shall include the cost of repairs necessary to make the goods conform.

CONSUMER WARRANTY PROTECTION
Pt. 4

§ 1794

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

(d) If the buyer prevails in an action under this section, the buyer may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action, unless the court in its discretion determines that such an award of attorney's fees would be inappropriate. (Added by Stats.1982, c. 385, p. 1716, § 2.)

Historical Note

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Derivation: Former § 1794, added by Stats.1970, c. 1333, p. 2482, § 1, amended by Stats.1971, c. 1523, p. 3007, § 13; Stats. 1978, c. 991, p. 3065, § 10.

Former § 1794.2, added by Stats.1979, c. 1023, p. 3496, § 6.

Former § 1794.2, added by Stats.1970, c. 1333, p. 2483, § 3, amended by Stats.1971, c. 1523, p. 3007, § 14.

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Damages, generally, see §§ 3274, 3281 et seq.

Law Review Commentaries

Mass contracts: Lawful fraud in California. W. David Slawson (1974) 48 So. Cal. L.R. 1.
Products liability: Recovery of economic loss. (1977) 13 C.W.L.R. 297.

Library References

Costs ⇨173(1).
Penalties ⇨3.
Sales ⇨442.

C.J.S. Costs § 2.
C.J.S. Penalties § 2.
C.J.S. Sales § 374 et seq.

CALIF. CIVIL CODE ("Lemon" Law)

§ 1793.2

CIVIL CODE

§ 1793.2. Maintenance of service and repair facilities; service and repair within reasonable time; buyer's duty; inability to service or repair goods to conform; reasonable number of attempts

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

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

As a means of complying with paragraph (1) of this subdivision, a manufacturer shall be permitted to enter into warranty service contracts with independent service and repair facilities. The warranty service contracts may provide for a fixed schedule of rates to be charged for warranty service or warranty repair work, however, the rates fixed by such contracts shall be in conformity with the requirements of subdivision (c) of Section 1793.3. The rates established pursuant to subdivision (c) of Section 1793.3, between the manufacturer and the independent service and repair facility, shall not preclude a good faith discount which is reasonably related to reduced credit and general overhead cost factors arising from the manufacturer's payment of warranty charges direct to the independent service and repair facility. The warranty service contracts authorized by this paragraph shall not be executed to cover a period of time in excess of one year, and may be renewed only by a separate, new contract or letter of agreement between the manufacturer and the independent service and repair facility.

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

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

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

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

(d) Should the manufacturer or its representative in this state be unable to service or repair the goods to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

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

Underline indicates changes or additions by amendment

more than 30 calendar days since delivery of the vehicle to the buyer. The 30-day limit shall be extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer or its agents. The buyer shall be required to directly notify the manufacturer pursuant to subparagraph (A) only if the manufacturer has clearly and conspicuously disclosed to the buyer, with the warranty or the owner's manual, the provisions of this subdivision and that of subdivision (d), including the requirement that the buyer must notify the manufacturer directly pursuant to subparagraph (A). This presumption shall be a rebuttable presumption affecting the burden of proof in any action to enforce the buyer's rights under subdivision (d) and shall not be construed to limit those rights.

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

(3) A qualified third party dispute resolution process shall be one that complies with the Federal Trade Commission's minimum requirements for informal dispute settlement procedures as set forth in the commission's regulations at 16 Code of Federal Regulations Part 703; that renders decisions which are binding on the manufacturer if the buyer elects to accept the decision; that prescribes a reasonable time not to exceed 30 days, within which the manufacturer or its agents must fulfill the terms of those decisions; and that each year provides to the Department of Motor Vehicles a report of its annual audit required by the commission's regulations on informal dispute resolution procedures.

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

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

(B) "New motor vehicle" means a new motor vehicle which is used or bought for use primarily for personal, family, or household purposes, but does not include motorcycles, motorhomes, or off-road vehicles.

(Amended by Stats.1986, c. 547, § 2.)

1986 Legislation.

The 1986 amendment added provisions to end of the second paragraph of subd. (a)(1) relating to contract renew-

al; added subd. (a)(3), and made nonsubstantive lower case changes.

§ 1793.3. Return of nonconforming consumer goods; service, repair, replacement or refund; independent repair or service facilities; notice to buyers

If the manufacturer of consumer goods sold in this state for which the manufacturer has made an express warranty does not provide service and repair facilities within this state pursuant to subdivision (a) of Section 1793.2, or does not make available to authorized service and repair facilities service literature and replacement parts sufficient to effect repair during the express warranty period, the buyer of such manufacturer's nonconforming goods may follow the course of action prescribed in either subdivision (a), (b), or (c), below, as follows:

(a) Return the nonconforming consumer goods to the retail seller thereof. The retail seller shall do one of the following:

(1) Service or repair the nonconforming goods to conform to the applicable warranty.

(2) Direct the buyer to a reasonably close independent repair or service facility willing to accept service or repair under this section.

Asterisks * * * indicate deletions by amendment

3. Decisions in other states

For future judicial constructions of the Uniform Commercial Code by the courts of other adopting states, see Notes of Decisions under section 2-710 Uniform Laws Annotated—Uniform Commercial Code.

Buyer is liable to seller for storage and loss occasioned by refusal to take

delivery, which is the difference between the contract price and sum realized by sale at the nearest market, where seller is ready and willing to deliver goods and, after request, buyer does not within a reasonable time take delivery. *Trilling v. Raffaele* (1954) 41 Pa.Del.Co. 44.

§ 2711. Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods. (1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (Section 2612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(a) "Cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) Recover damages for nondelivery as provided in this division (Section 2713).

(2) Where the seller fails to deliver or repudiates the buyer may also

(a) If the goods have been identified recover them as provided in this division (Section 2502); or

(b) In a proper case obtain specific performance or replevy the goods as provided in this division (Section 2716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (Section 2706). (Stats.1963, c. 819, § 2711.)

California Code Comment

By John A. Bohn and Charles J. Williams

Prior California Law

1. This index section of buyer's remedies has no counterpart in the Uniform Sales Act (former Civil Code §§ 1721-1800).

Under the Uniform Sales Act the basic remedies available to the buy-

er for breach of warranty were listed in former Civil Code § 1789 (recoupment, damages or rescission at the buyer's election) and former Civil Code § 1736 (action for converting or detaining), § 1787 (action for failure to deliver goods) and § 1788 (specific performance).

ble to undermine buyer's liability. *Barack v. U. S.* (C.A.Or.1963) 317 F.2d 610.

In action by plastic stamping company, as buyer, against machinery manufacturer, as seller, to rescind contract for sale of automatic molding press for tube caps, evidence compelled conclusion that manufacturer had failed to make the press commercially operable, as required by a basic term of the contract. *Wheeling Stamping Co. v. Birdsboro Steel Foundry & Mach. Co.* (C.A.Pa.1957) 245 F.2d 752.

In action for breach of contract for failure of defendant to deliver goods ordered,

oral evidence was competent to show that contract was not to become effective until a minimum order had been received. *Win-Et Plastics, Inc. v. Shawray Plastic Corporation* (1953) 0 Mass.App.Dec. 55.

18. — Questions for Jury

Question whether buyers of walk-in refrigeration chamber under conditional sales contract exercised right to rescind contract for breach of warranty within reasonable time was for jury. *Chaplin v. Bessire & Co.* (Ky.1962) 361 S.W.2d 203.

§ 2712. "Cover"; Buyer's Procurement of Substitute Goods.

(1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 2715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy. (Stats.1963, c. 819, § 2712.)

California Code Comment

By John A. Bohn and Charles J. Williams

Prior California Law

1. This section has no statutory counterpart in prior California law.

2. Subdivision (1) introduces the term known as "cover". The concept of cover has been recognized by California courts. *Coates v. Lake View Oil and Refining Co.*, 20 Cal. App.2d 113, 66 P.2d 463 (1937); *Oleese v. Davis*, 124 Cal.App.2d 58, 268 P.2d 175 (1954).

3. Subdivision (2) changes the measure of damages under the Uniform Sales Act. Former Civil Code § 1787(3) established the measure of damages in the absence of circum-

stances showing a greater amount as "the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver." However, the court in *Coates v. Lake View Oil & Refining Co.*, 20 Cal.App.2d 113, 117, 66 P.2d 463, 465 (1937) added the concept of cover to this measure by stating:

" . . . where a seller agrees to sell a buyer an article which has no established market value and the seller breaches his contract to sell and deliver, the buy-

tract price of filter defendant agreed to make and market value of filter of same general type and capacity. *Monacel v. Turner* (1910) 98 P.2d 755, 37 C.A.2d 98.

For breach of contract to deliver goods, buyer could recover difference between agreed price and market value of goods, unless buyer could not supply himself, in which event measure of damages was actual loss sustained by reason of loss of advance or profit through agreements made in reliance upon fulfillment of seller's contract. *Cootes v. Lake View Oil & Refining Co.* (1937) 66 P.2d 463, 29 C.A.2d 113.

Where seller breaches contract to deliver article having no established market value, buyer may purchase similar article or reasonable substitute, and difference between contract price and reasonable market value of substitute purchased is of value in furnishing measure of damages; but, where buyer cannot obtain similar article or reasonable substitute, loss of profits is just element in determination of damages. *Id.*

Under Civ.C. §§ 2308, 2351, the measure of damages for breach of contract to sell personally is the excess, if any, of the value of the property to buyer over the amount which would have been due the seller under the contract if it had been fulfilled, and in estimating such damages the value of the property to the buyer is deemed the price for which he might have bought an equivalent thing in the market nearest to the place where the property ought to have been put in his possession. *S. L. Jones & Co. v. Bond* (1923) 217 P. 725, 191 C. 551.

Under Civ.C. §§ 2300, 2308, as to damages for breach of contract, and section 2351, providing that the value of property to a buyer or owner, deprived of its possession, is the price at which he might have bought an equivalent thing in the market, in buyer's action for seller's refusal to deliver, in which plaintiff did not allege that the goods bought could not be purchased in the open market, he could not recover the amount of profits lost by him through such

default. *Roach Bros. & Co. v. Lactein Food Co.* (1922) 207 P. 410, 57 C.A. 370.

4. Decisions in other states

For future judicial constructions of the Uniform Commercial Code by the courts of other adopting states, see Notes of Decisions under section 2—712 Uniform Laws Annotated—Uniform Commercial Code.

A plaintiff, on satisfactory proof, is entitled to damages for breach of contract in amount of difference between its "cover" and defendant's price to it under breached contract. *Wilfred Co. v. Westmoreland Metal Mfg. Co.* (D.C.Pa.1962) 200 F.Supp. 59.

Where buyers of private bus line were induced to purchase same due to sellers' material misrepresentations, including representations as to the condition of buses, buyers were entitled to recover cost of new buses which they had to purchase because buses supplied by sellers were not in usable condition as represented. *Myers v. Rubin* (1990) 191 A.2d 539, 399 Pa. 393.

Where seller failed to make scheduled deliveries of stone under contract providing that if such deliveries were not made buyer could purchase in the open market, buyer could not recover for cost of idle equipment, labor, supplies, office overhead and other direct expenses due to seller's delay in shipping. *Galt v. Seaboard Const. Co.* (1954) 101 A.2d 752, 375 Pa. 613.

Where buyer reserved right to purchase stone elsewhere if seller failed to meet specified delivery schedule, buyer could recover for the increase in price paid for the stone purchased in the open market upon seller's failure to deliver timely. *Id.*

On a warranty of suitability, measure of damages was loss directly and naturally resulting in ordinary course of events from the breach of warranty, which would include the cost of purchasing and installing units measuring up to the specifications. *John A. Connelly Co. v. Hoffman* (1956) 4 Pa.D. & C.2d 213, 71 Montg. 353.

§ 2713. Buyer's Damages for Non-Delivery or Repudiation.

(1) Subject to the provisions of this division with respect to proof of market price (Section 2723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this division (Section 2715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival. (Stats.1963, c. 819, § 2713.)

California Code Comment

By John A. Bohn and Charles J. Williams

Prior California Law

1. This section modifies prior statutory California law. Former Civil Code § 1787(3) provided that the measure of damages would ordinarily be the difference between the contract price and the market price at the time when the goods ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver. *Es-kew v. California Fruit Exchange*, 203 Cal. 257, 263 Pac. 804 (1928). Subdivision (1) of this section applies the market price at the time when the buyer learns of the breach.

2. The fixing of market price in subdivision (2) adds new language

to California statutory law but is in accord with the general damage provision in Civil Code § 3354 that provides, "In estimating damages . . . , the value of property, to a buyer . . . , deprived of its possession, is deemed to be the price at which he might have bought an equivalent thing in the market nearest to the place where the property ought to have been put into his possession"

Changes from U.C.C. (1962 Official Text)

3. This is section 2-713 of the Official Text without change.

Uniform Commercial Code Comment

Prior Uniform Statutory Provision: Section 67(3), Uniform Sales Act.

Changes: Rewritten.

Purpose of Changes: To clarify the former rule so that:

1. The general baseline adopted in this section uses as a yardstick the market in which the buyer would have obtained cover had he sought that relief. So the place for measuring damages is the place of tender (or the place of arrival if the goods are rejected or their acceptance is revoked after reaching their destination) and the crucial time is the time at which the buyer learns of the breach.

2. The market or current price to be used in comparison with the contract price under this section is the price for goods of the same kind and in the same branch of trade.

3. When the current market price under this section is difficult to prove the section on determination and proof of market price is available to permit a showing of a comparable market price or, where no market price is available, evidence of spot sale prices is proper. Where the unavailability of a market price is caused by a scarcity of goods of the type involved, a good case is normally made for specific performance under this Article. Such scarce-



ing units measuring up to the specifications. *John A. Connelly Co. v. Hoffman* (1950) 4 Pa.D. & C.2d 213, 71 Montg. 353.

23. — Defenses

Where letters formed basis of contract to buy paper, even assuming that buyer told seller that if seller did not sign letter, which provided that buyer was entitled to an allowance, that buyer and seller could not do business and further that seller would not do any business in South Africa but, if seller would compensate buyer, buyer would intercede in seller's behalf, statement did not constitute a valid defense to buyer's action on contract

for the allowance on theory of duress. *Gummed Tapes (PTY) Limited v. Miller* (D.C.Pa.1957) 155 F.Supp. 267.

24. — Counterclaim

Seller of paper, who was unwilling to and had consistently failed to supply buyer with paper under a contract which confirmed allowance to buyer of \$3,800, was not entitled to counterclaim for alleged loss of profits he would have made under the contract in buyer's suit for allowance under contract, since failure to supply goods amounted to a substantial failure of performance of contract. *Gummed Tapes (PTY) Limited v. Miller* (D.C. Pa.1957) 155 F.Supp. 267.

§ 2714. Buyer's Damages for Breach in Regard to Accepted Goods. (1) Where the buyer has accepted goods and given notification (subdivision (3) of Section 2607) he may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable:

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered. (Stats.1963, c. 819, § 2714.)

California Code Comment

By John A. Bohn and Charles J. Williams

Prior California Law

1. Subdivision (1) is in accord with that part of former Civil Code § 1769 which provided that in the absence of express or implied agreement acceptance does not bar an action for damages for breach. Subdivision (1) is also consistent with former Civil Code § 1789(1) (a) which provided the remedy of recoupment for breach of warranty, and § 1789(6) which provided the measure of damages for breach of warranty.

2. The measure of damages for the seller's breach of warranty in subdivision (2) is similar to former Civil Code § 1789(7) which provided that loss due to breach of warranty of quality was ordinarily the difference between the value of the goods at the time of delivery and the value they would have had if they had met the warranty. However, subdivision (2) is broader because it applies to breach of any warranty while section 1789(7) applied only to the warranty of quality.

number of defective tubes sold, showing defects sufficiently material to give buyer right to treat contract as breached, showing that notice had been given with respect to alleged breach within 30 days after delivery as required by contract or within reasonable time as required by statute, or of showing that payments were made in error. *D'Orsay Equipment Co. v. U. S. Rubber Co.* (D. Mass. 1961) 100 F.Supp. 427, affirmed 302 F.2d 777.

41. — Pleading

Complaint of buyer of home permanent preparation seeking recovery from manufacturer for alleged breach of warranty was not defective because of failure to allege that notice of breach of warranty had been given to manufacturer, where more specific statement showed that manufacturer was not seller and that seller was not party. *Ruderman v. Warner-Lambert Pharmaceutical Co.* (1962) 184 A.2d 63, 23 Conn.Supp. 116.

Wife, who sustained injuries when flashlight storage battery exploded in her hands, was not required at pleading stage to elect between an action in assumpsit for breach of warranty by manufacturer and others and a trespass suit for negligence against manufacturer and others. *Cunningham v. Joseph Horne Company* (1961) 170 A.2d 618, 603 Pa. 1.

Complaint against additional defendant in breach of warranty action should state whether the warranty was express or implied, and, if express, whether it was oral or written. *Grove v. York County Gas Co.* (1961) 25 Pa.D. & C.2d 522, 75 York 79.

Complaint against additional defendant in breach of warranty action that a valve "cracked, broke, fractured, or came apart

or separated or broke or disintegrated" was too vague and indefinite to inform defendant wherein he was allegedly negligent. *Id.*

Buyers were not required to restrict their counterclaim to a heating unit which was of the same nature or similar in nature to the unit plaintiff contracted to sell, and were not required to show that the unit they intended to install was the only one which would properly heat their premises; rather all they were required to allege was that the expenses which they would incur as a consequence of plaintiff's breach were those which were reasonably necessary to obtain the results guaranteed by plaintiff. *Connelly v. Hoffman* (1956) 4 Pa.D. & C.2d 213, 71 Montg. 353.

Damages for breach of warranty are sufficiently alleged on a complaint when it states in effect the value of the article as accepted and the value it would have had if it had been as warranted. *Solomon & Son v. Thomas* (1956) 45 Pa.Luz.L.Reg. 263.

A buyer may prove general damages for a breach of warranty, where supported by the pleadings, even though he has pleaded and attempted to prove special damages. *Posey Iron Works, Inc. v. Barletta* (1956) 45 Pa.Luz.L.Reg. 121.

42. — Res judicata

Dismissal of buyers' suit for rescission of their written order to purchase welding machine, wherein damages were claimed for original purchase price of machine and lump sum for repairs, was res judicata in subsequent action for breach of warranty wherein buyers sought consequential damages in addition to purchase price and cost of repairs. *Kiely v. J. A. Cunningham Equipment, Inc.* (1957) 128 A.2d 759, 387 Pa. 598.

§ 2715. Buyer's Incidental and Consequential Damages. (1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty. (Stats.1963, c. 819, § 2715.)

California Code Comment

By John A. Bohn and Charles J. Williams

Prior California Law

1. This section has no counterpart in the USA although it is consistent with rules of damages set forth in former Civil Code § 1787(2) (loss directly and naturally resulting from the breach) and Civil Code § 3300 ("all the detriment proximately caused" by the breach). This section clarifies what damages may be recovered and covers all expenses related to the breach.

2. Subdivision (1) has no statutory counterpart in California law but is in general accord with the cases which allow recovery of incidental damages directly and naturally resulting from the breach. For example see *Walpole v. Prefab Mfg. Co.*, 103 Cal.App.2d 472, 230 P.2d 36 (1951) (damage to good will and expenditures for additional clerical help).

3. The consequential damages provided for in subdivision (2) were recoverable under prior California law. Two examples are the recovery of lost resale profits contemplated at the time of the contract of sale (*Tomlinson v. Wander Seed & Bulb Co.*, 177 Cal.App.2d 462, 2 Cal.Rptr. 310 (1960)) and recovery of damages for time and money spent in efforts to make goods conform to warranty under which they were sold (*Roberts Distributing Co. v. Kaye-Halbert Corp.*, 126 Cal.App. 664, 272 P.2d 886 (1954)).

4. Subdivision (2) (b) is consistent with former Civil Code § 1789 (7) and § 1790. See California Code Comments 2 and 3 to section 2714.

Changes from U.C.C. (1962 Official Text)

5. This is section 2 715 of the Official Text without change.

Uniform Commercial Code Comment

Prior Uniform Statutory Provisions: Subsection (2) (b)—Sections 69(7) and 70, Uniform Sales Act.

Changes: Rewritten.

Purposes of Changes and New Matter:

1. Subsection (1) is intended to provide reimbursement for the buyer who incurs reasonable expenses in connection with the handling of rightfully rejected goods or goods whose acceptance may be justifiably

revoked, or in connection with effecting cover where the breach of the contract lies in non-conformity or non-delivery of the goods. The incidental damages listed are not intended to be exhaustive but are merely illustrative of the typical kinds of incidental damage.

2. Subsection (2) operates to allow the buyer, in an appropriate case, any consequential damages which are the result of the seller's breach. The "tacit agreement" test

caused by a fragment of bone contained in a meat product, although consequential damages may be recovered in an action of assumpsit for breach of warranty, the latter will include only such personal injuries as proximately resulted from the breach. *DeGraff v. Myers Foods, Inc.* (1950) 19 Pa.D. & C.2d 19, 8 Bucks 364, 73 York 14.

18. — Miscellaneous expenses

Where shortly after sale and delivery of goods the transaction was rescinded by mutual agreement of buyer and seller because articles were in a defective condition, and seller agreed to retake goods but it failed to do so, and after almost a year buyer repaired part of appliances and sold them, buyer's course of conduct with respect to repair and sale of appliances constituted a waiver of rescission and buyer was liable for purchase price of appliances which had been sold, but because of unreasonable delay of seller and his assignee in retaking goods, buyer was entitled to retain out of proceeds of sale reasonable storage charges, reasonable cost of moving and transporting goods from one store to another, and reasonable cost of putting appliances in a fit condition for sale. *Walter E. Heller & Co. v. Hammond Appliance Co.* (1959) 151 A.2d 537, 20 N.J. 589.

Manufacturer who has supplied goods which did not answer to warranty of fitness would be permitted to recover from supplier for breach of such warranty, damages consisting of extra man-hours necessary to complete job, amount of overhead attributable to added work and 10-percent profit. *Royal Pioneer Paper Box Mfg. Co. v. Louis De Jonge & Co.* (1955) 115 A.2d 837, 170 Pa.Super. 155.

Remedy of rescission is to put parties back in status quo which means not only a return to plaintiffs of money expended by them, but also of money required to effect a removal of defective material

applied to house. *Marks v. Lohigh Brick-face, Inc.* (1960) 19 Pa.D. & C.2d 699, 73 Dauph. 244.

Where warranted boat sank on launching, cost of transporting boat to launching site, cost of labor to recover it after sinking, expense of travel, at defendant's request, to arrange for return of boat, and losses of a canvas boat top and prescription ground glasses, were recoverable under this section. *Mack v. Coogan* (1958) 8 Pa.Chest. 233.

A buyer who keeps merchandise cannot recover damages from the seller for installing it. *Posey Iron Works, Inc. v. Barletta* (1950) 45 Pa.Luz.L.Reg. 121.

19. — Pleading

Complaint must allege that expenses are fair and reasonable, the fair market value of lost property, and the salvage value of any damaged property. *Mack v. Coogan* (1958) 8 Pa.Chest. 233.

20. — Res judicata

Dismissal of buyers' suit for rescission of their written order to purchase welding machine, wherein damages were claimed for original purchase price of machine and lump sum for repairs, was res judicata in subsequent action for breach of warranty wherein buyers sought consequential damages in addition to purchase price and cost of repairs. *Kiely v. J. A. Cunningham Equipment, Inc.* (1957) 128 A.2d 759, 387 Pa. 598.

21. — Limitation of liability

Clause in contract that seller "assumes no liability for consequential damages of any kind which result from the use or misuse of the equipment" by buyer, his employees or others was effective to exempt seller from liability for consequential damages for breach of warranty. *Pipe Welding Supply Co. v. Gas Atmospheres, Inc.* (D.C. Ohio 1961) 201 F.Supp. 191.

§ 2716. Buyer's Right to Specific Performance or Replevin.

(1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will

be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. (Stats.1963, c. 819, § 2716.)

California Code Comment

By John A. Bohn and Charles J. Williams

Prior California Law

1. This section continues the same remedy of specific performance available under former Civil Code § 1788. However, section 1788 limited the remedy to cases involving specific or ascertained goods. The availability of the remedy is expanded in this section to include "other proper circumstances". Official Comment 1. The California courts have stated that the adoption of former Civil Code § 1788 was also intended to liberalize the use of the remedy of specific performance in California.

Bomberger v. McKelvey, 35 Cal.2d 607, 220 P.2d 729 (1950). This case also indicates the growing tendency to allow specific performance where damages are not the equivalent of the performance.

2. Subdivision (3) giving the buyer the remedy of replevin has no statutory counterpart in prior California law.

Changes from U.C.C. (1962 Official Text)

3. This is section 2-716 of the Official Text without change.

Uniform Commercial Code Comment

Prior Uniform Statutory Provision: Section 68, Uniform Sales Act.

Changes: Rephrased.

Purposes of Changes: To make it clear that:

1. The present section continues in general prior policy as to specific performance and injunction against breach. However, without intending to impair in any way the exercise of the court's sound discretion in the matter, this Article seeks to further a more liberal attitude than some courts have shown in connection with the specific performance of contracts of sale.

2. In view of this Article's emphasis on the commercial feasibility of replacement, a new concept of what are "unique" goods is intro-

duced under this section. Specific performance is no longer limited to goods which are already specific or ascertained at the time of contracting. The test of uniqueness under this section must be made in terms of the total situation which characterizes the contract. Output and requirements contracts involving a particular or peculiarly available source or market present today the typical commercial specific performance situation, as contrasted with contracts for the sale of heirlooms or priceless works of art which were usually involved in the older cases. However, uniqueness is not the sole basis of the remedy under this section for the relief may also be granted "in other proper circumstances" and inability to cover is strong evidence of "other proper circumstances".



should have the property and equity would enforce buyer's interest to prevent unjust enrichment of seller. *Taylor Engines v. All Steel Engines* (C.A.1951) 192 F.2d 171.

9. Relief awarded

Where seller of cattle brought action against buyer on express contract of sale to recover purchase price and buyer admitted contract but alleged that express contract called for delivery of registration papers and records and counter-claimed demanding delivery of registration papers, it was within power of court, under Civ.C. former § 1788, to decree specific performance of contract and to require delivery of the papers. *Price v. McCorn-*

nell (1960) 7 Cal.Rptr. 605, 184 C.A.2d 620.

10. Decisions in other states

For future judicial constructions of the Uniform Commercial Code by the courts of other adopting states, see Notes of Decisions under section 2-716 Uniform Laws Annotated—Uniform Commercial Code.

Interstate Commerce Commission and Public Utility Commission certificate rights are "unique", warranting specific performance of a contract to transfer them. *McCormick Dray Line, Inc. v. Lovell* (1959) 13 Pa.D. & C.2d 161, 6 Lyeoming 55.

§ 2717. Deduction of Damages From the Price. The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract. (Stats.1963, c. 819, § 2717.)

California Code Comment

By John A. Bohn and Charles J. Williams

Prior California Law

1. This section liberalizes the USA rule permitting the buyer to deduct his damages from the purchase price. Former Civil Code § 1789(1) (a) provided the remedy of recoupment which permitted the deduction where damage resulted from a breach of warranty by the seller. Under former Civil Code § 1769 where the buyer accepted the goods, notice of the breach was required to be communicated to the seller within a reasonable time.

2. Under this section a deduction is permitted for any breach

whereas former Civil Code § 1789 (1) (a) applied only to breach of warranty. See Official Comment 1.

3. The requirement that a buyer notify the seller of his intention to make the authorized deduction was not required under prior California law. However, notice of the fact of the breach of warranty was required after acceptance of the goods under former Civil Code § 1769.

Changes from U.C.C. (1962 Official Text)

4. This is section 2-717 of the Official Text without change.

defendant to plaintiff's use, defendant was entitled to credit for the profit, if any, realized by defendant from the use of the cars. *Bray v. Lowery* (1912) 124 P. 1004, 163 C. 256.

3. Deductions or offsets

In action for return of amount deposited by plaintiff on price of soda fountain pumps purchased by him from defendants under contract providing for return of such amount if pumps were not completed and delivered within specified period, defendants were properly allowed offset for pumps delivered to and accepted by plaintiff as against plaintiff's contention that statement in writing, increasing price and extending time for performance of contract by defendants, that all terms and conditions of contract should remain in full force and effect, was promise to restore such amount to plaintiff without any deductions or offsets existing at time of execution of such writing, in view of contract provision for payment of balance of purchase price when specified number of pumps were delivered. *Keller v. Hers* (1951) 239 P.2d 6, 108 C. A.2d 424.

4. Decisions in other states

For future judicial constructions of the Uniform Commercial Code by the courts of

other adopting states, see Notes of Decisions under section 2-717 Uniform Laws Annotated—Uniform Commercial Code.

Uniform Commercial Code was not applicable to contract for sale of corporation and its subsidiaries to be accomplished by the buyer's purchase of all issued and outstanding capital stock of the corporation and its subsidiaries. In re *Carter* (1957) 124 A.2d 908, 390 Pa. 365.

Where goods sold do not comport with requirements of contract, buyer may either reject or accept them, and in latter event, make claim for damages or set off the diminution in value in an action by seller for the purchase price. *National Container Corp. of Pa. v. Royal Corrugated Box Co.* (1956) 119 A.2d 270, 383 Pa. 490.

Where there has been substantial and bona fide performance on an entire contract, but failure in some particulars, not essential to enjoyment of part performed, there may be a recovery of contract price subject to right of defendant to set off damages resulting from the breach. *Ciaciola v. Cianciulli* (1962) 76 Pa.Montg. 419.

§ 2718. Liquidation or Limitation of Damages; Deposits. (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(a) The amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subdivision (1), or

(b) In the absence of such terms, 20 percent of the value of the total performance for which the buyer is obligated under the contract or five hundred dollars (\$500), whichever is smaller.

(3) The buyer's right to restitution under subdivision (2) is subject to offset to the extent that the seller establishes

(a) A right to recover damages under the provisions of this chapter other than subdivision (1), and

(b) The amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subdivision (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this division on resale by an aggrieved seller (Section 2706). (Stats.1963, c. 819, § 2718.)

California Code Comment

By John A. Bohn and Charles J. Williams

Prior California Law

1. This section has no counterpart in the USA.

2. Subdivision (1) establishes the criterion for determining the validity of a liquidated damage clause. This criterion is in more liberal terms than Civil Code § 1670 and § 1671 which apply to contracts in general and under which all clauses fixing damages are void except when "from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage."

The provision of subdivision (1) to the effect that liquidated damages must be reasonable is consistent with prior California law. *Freedman v. Rector, Wardens and Vestrymen of St. Matthias Parish*, 37 Cal. 2d 16, 230 P.2d 629 (1951).

3. Subdivision (2) limits that portion which the seller can keep from any deposit or payment of the buyer. Paragraph (a) has no counterpart in prior California statutory law. Cases decided before the

adoption of this section held that money deposits given as security for performance of a lease were subject to the provisions of Civil Code § 1670 and § 1671 (see Comment 1 above). *Redmon v. Graham*, 211 Cal. 491, 295 Pac. 1031 (1931), *Ricker v. Rombough*, 120 Cal.App. 2d Supp. 912, 261 P.2d 328 (1953). The percentage or monetary limitations of paragraph (b) is entirely new to California law.

4. Subdivision (3) has no statutory counterpart but is in accord with the holding in *Knight v. Marks*, 66 Cal.App. 593, 226 Pac. 931 (1924) that although a lease deposit was invalid as a liquidated damage clause under Civil Code § 1670, the deposit could be applied in satisfaction of unpaid rent.

5. Subdivision (4) has no counterpart in prior California law.

Changes from U.C.C. (1962 Official Text)

6. This is section 2-718 of the Official Text without change.



had actually been specifically manufactured prior to the cancellation and what goods could be readily resold, would permit recovery of "unreasonably large liquidated damages". *Bankin v. Sterner* (1958) 10 Pa.D. & C 24 203, 70 York 195.

Sales contract provision, permitting seller, upon buyer's repudiation of contract prior to delivery of goods under contract, to recover purchase price without showing any identification of goods to contract or resaleability of the goods provided for un-

reasonably large liquidated damages and, therefore, was unconscionable and void. *Id.*

4. — Mitigation of damages

Amicably confessed judgment was properly reopened for determination of actual damages, where damages as assessed gave to plaintiff maximum amount which could be awarded if defendants offered no evidence in mitigation of damages, and there was possibility of mitigation. *Unit Vending Corp. v. Tabin Enterprises* (1961) 168 A.2d 750, 194 Pa.Super. 470.

§ 2719. Contractual Modification or Limitation of Remedy.
(1) Subject to the provisions of subdivisions (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) The agreement may provide for remedies in addition to or in substitution for those provided in this division and may limit or alter the measure of damages recoverable under this division, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts; and

(b) Resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this code.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not. (Stats.1963, c. 819, § 2719.)

California Code Comment

By John A. Bohn and Charles J. Williams

Prior California Law

1. Subdivision (1) is in accord with former Civil Code § 1791 which provided that the parties could vary by express agreement any right, duty, or liability imposed by law. Under both former section 1791 and this section the parties may provide

their own remedies for breach of contract. However, the Commercial Code in subdivisions (2) and (3) imposes certain limitations on the right of the parties to provide their own remedies by agreement.

2. Subdivision (2) provides that where the remedy provided by agree-

contract acknowledged delivery and acceptance of goods purchased, without warranty, guarantee or representation of any kind or nature, could not, regardless of language, limit seller's liability on any warranty made by seller at the time the sales contract was executed. *L. & N. Sales Co. v. Soski* (1958) 146 A.2d 154, 188 Pa. Super. 117.

Limitation in construction contract, wherein contractor warranted that all materials furnished would be free from defects and that they would be installed or applied in a workmanlike manner but stated that its liability for defective material or installation should be limited to replacement or correction, was valid and enforceable. *Magar v. Lifetime, Inc.* (1958) 144 A.2d 747, 187 Pa. Super. 143.

§ 2720. Effect of "Cancellation" or "Rescission" on Claims for Antecedent Breach. Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach. (Stats.1963, c. 819, § 2720.)

California Code Comment

By John A. Bohn and Charles J. Williams

Prior California Law

1. This section has no statutory counterpart in prior California law. Civil Code § 3268 and § 3513 allow waiver of a benefit under a provision of a law or a contract unless the waiver is against public policy. *Patton v. Patton*, 32 Cal.2d 520, 196 P.2d 909 (1948). This section prevents a waiver by the use of cer-

tain words unless a contrary intent is clearly shown. The Official Comment explains what language should be used to show the intent to waive rights.

Changes from U.C.C. (1962 Official Text)

2. This is section 2-720 of the Official Text without change.

Uniform Commercial Code Comment

Prior Uniform Statutory Provision: None.

Purpose:

This section is designed to safeguard a person holding a right of action from any unintentional loss of rights by the ill-advised use of such terms as "cancellation", "rescission", or the like. Once a party's rights have accrued they are not to be lightly impaired by concessions made in business decency and with-

out intention to forego them. Therefore, unless the cancellation of a contract expressly declares that it is "without reservation of rights", or the like, it cannot be considered to be a renunciation under this section.

Cross Reference:

Section 1—107.

Definitional Cross References:

"Cancellation". Section 2—106.
"Contract". Section 1—201.

Cross References

Claims arising from breach, written renunciation, see § 1107.
Waiver of advantage, law established for public reason, see Civil Code § 3513.
Waiver of code provisions, see Civil Code § 3268.

Notes of Decisions

Library references

Sales ⇨04.
C.J.S. Sales § 115 et seq.

isions under section 2—720 Uniform Laws Annotated—Uniform Commercial Code.

Uniform Commercial Code was not applicable to contract for sale of corporation and its subsidiaries to be accomplished by the buyer's purchase of all issued and outstanding capital stock of the corporation and its subsidiaries. In re Carter (1037) 134 A.2d 008, 390 Pa. 365.

I. Decisions in other states

For future judicial constructions of the Uniform Commercial Code by the courts of other adopting states, see Notes of De-

§ 2721. Remedies for Fraud. Remedies for material misrepresentation or fraud include all remedies available under this division for nonfraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy. (Stats.1963, c. 819, § 2721.)

California Code Comment

By John A. Bohn and Charles J. Williams

Prior California Law

1. This section has no statutory counterpart in the USA. The Legislative Counsel has observed that:

"This section is new, and its purpose, according to the comments, is to make the remedy of buyer or seller where there is fraud as broad as, and coextensive with, the remedies where fraud is absent. This section would perhaps change the rule of Civil Code § 3343 stating the so-called 'out of pocket' rule of damages in fraud cases, and substitute or permit the so-called, 'loss of bargain' rule under which the defrauded party is permitted to get the benefits he would have

received if the representation had been true." Sixth Progress Report to the Legislature by the Senate Fact Finding Committee on Judiciary (1959-1961), Part 1, The Uniform Commercial Code, p. 63.

2. The second sentence of this section changes California law. Under former Civil Code § 1789(2), an election of remedies was required between recoupment, damages, or rescission.

Changes from U.C.C. (1962 Official Text)

3. This is section 2 721 of the Official Text without change.

in knowingly misrepresenting quality and colorfastness of product, plaintiffs need not return or offer to return the stone, which had been applied to house, since such an offer would have been a useless gesture and since under § 2-711, plaintiffs had a lien on stone until purchase price had been refunded. *Marks v. Lehigh Brickface, Inc.* (1960) 19 Pa.D. & C.2d 666, 73 Dauph. 244.

3. — Materiality of misrepresentation

Allegedly false representations of seller of business as to what value of prepaid insurance and accounts receivable would be on date of actual transfer were not of such materiality when viewed in light of entire transaction as to warrant rescission. *Lolos v. Berlin* (1958) 153 N.E.2d 636, 338 Mass. 10.

Where buyers of private bus line were induced to purchase same due to sellers' material misrepresentations, including representations as to the condition of buses, buyers were entitled to recover cost of new buses which they had to purchase because buses supplied by sellers were not in usa-

ble condition as represented. *Myers v. Rubin* (1960) 160 A.2d 559, 309 Pa. 363.

4. — Misrepresentation as cause of damage

In buyers' action against sellers to rescind agreement to purchase private bus lines, evidence showed that buyers' failure to achieve anticipated profits could be attributed to causes other than sellers' misrepresentations and, therefore, buyers entitled to rescission were not entitled to recover on alleged loss of profits. *Myers v. Rubin* (1960) 160 A.2d 559, 309 Pa. 363.

5. — Questions for jury

In action by minor buyer of automobile against dealer from which seller purchased another automobile, giving buyer's check and buyer's old automobile as part payment, opinion expressed by dealer's salesman concerning buyer's right to drive the automobile before receiving title, which was then in hands of holder of encumbrance on such automobile, did not justify submission of question of fraud to jury. *Snyder v. Town Hill Motors, Inc.* (1960) 165 A.2d 293, 103 Pa.Super. 578.

§ 2722. Who Can Sue Third Parties for Injury to Goods. Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(a) A right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) Either party may with the consent of the other sue for the benefit of whom it may concern. (Stats.1963, c. 819, § 2722.)



and that, if losses were sustained prior to such approval, they should be sustained by buyer, suit by seller against third party for damages to taxicab was consistent with the agreement, and seller was the proper

person to sue for damages, inasmuch as seller was still owner of the business. *Leist v. Schattie* (1962) 170 A.2d 277, 107 Pa.Super. 456.

§ 2723. Proof of Market Price: Time and Place. (1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (Section 2708 or Section 2713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this division is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this division offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise. (Stats. 1963, c. 819, § 2723.)

California Code Comment

By John A. Bohn and Charles J. Williams

Prior California Law

1. This section has no statutory counterpart in prior California law.

2. Under subdivision (1) the market price is determined at the time the aggrieved party learned of the repudiation. This is different from the measure of damages provided in two former USA sections. In former Civil Code § 1784(3) (seller's remedy for nonacceptance of goods) the market price was determined at the time the goods should have been accepted or, if no time for acceptance was fixed, at the time of the refusal to accept the goods. In former Civil Code § 1787(3)

(buyer's remedy for nondelivery of goods) the market price was determined at the time the goods should have been delivered or, if no time for delivery was fixed, at the time of the refusal to deliver the goods.

3. In actions for anticipatory breach the courts have applied the general measure of damage formula of Civil Code § 3300 which provides for recovery of an amount which will compensate for all detriment proximately caused by the breach or which would be ordinarily likely to result from the breach. *Vitagraph, Inc. v. Liberty Theatres*

Co., 197 Cal. 694, 242 Pac. 709 Changes from U.C.C. (1962 Official Text) (1925).

4. Subdivisions (2) and (3) are new to California statutory law.

5. This is section 2-723 of the Official Text without change.

Uniform Commercial Code Comment

Prior Uniform Statutory Provision: None.
must give suitable notice to the other party.

Purposes: To eliminate the most obvious difficulties arising in connection with the determination of market price, when that is stipulated as a measure of damages by some provision of this Article. Where the appropriate market price is not readily available the court is here granted reasonable leeway in receiving evidence of prices current in other comparable markets or at other times comparable to the one in question. In accordance with the general principle of this Article against surprise, however, a party intending to offer evidence of such a substitute price

This section is not intended to exclude the use of any other reasonable method of determining market price or of measuring damages if the circumstances of the case make this necessary.

Definitional Cross References:

"Action". Section 1-201.
"Aggrieved party". Section 1-201.
"Goods". Section 2-105.
"Notifies". Section 1-201.
"Party". Section 1-201.
"Reasonable time". Section 1-204.
"Usage of trade". Section 1-205.

Cross References

Measure of damages for breach of contract, see Civil Code § 3300.
Non-acceptance or repudiation, damages for, see § 2708.
Non-delivery or repudiation by seller, damages for, see § 2713.

Law Review Commentaries

Remedies of a buyer for breach of contract under the Uniform Commercial Code. 30 N.D.L.Rev. 223 (July 1954).

Notes of Decisions

Library references

Sales §§ 384(2), 418(2).
C.J.S. Sales §§ 484, 546.

1. Decisions in other states

For future judicial constructions of the Uniform Commercial Code by the courts of other adopting states, see Notes of Decisions under section 2-723 Uniform Laws Annotated—Uniform Commercial Code.

§ 2724. Admissibility of Market Quotations. Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general

circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility. (Stats.1963, c. 819, § 2724.)

California Code Comment

By John A. Bohn and Charles J. Williams

Prior California Law

1. This section has no statutory counterpart in the USA.

The section modifies California statutory law by extending the coverage of the Uniform Business Records as Evidence Act (Code of Civil Procedure §§ 1953e to 1953h) by making "reports in official publications or trade journals or in newspapers . . ." admissible as evi-

dence. Under the Uniform Business Records as Evidence Act these reports were admissible only if they were made in the regular course of business. (Code of Civil Procedure § 1953f)

Changes from U.C.C. (1962 Official Text)

2. This is section 2-724 of the Official Text without change.

Uniform Commercial Code Comment

Prior Uniform Statutory Provision: None.

Purposes: To make market quotations admissible in evidence while providing for a challenge of the material by showing the circumstances of its preparation.

No explicit provision as to the weight to be given to market quotations is contained in this section, but such quotations, in the absence of compelling challenge, offer an adequate basis for a verdict.

Market quotations are made admissible when the price or value of goods traded "in any established market" is in issue. The reason of the section does not require that the market be closely organized in the manner of a produce exchange. It is

sufficient if transactions in the commodity are frequent and open enough to make a market established by usage in which one price can be expected to affect another and in which an informed report of the range and trend of prices can be assumed to be reasonably accurate.

This section does not in any way intend to limit or negate the application of similar rules of admissibility to other material, whether by action of the courts or by statute. The purpose of the present section is to assure a minimum of mercantile administration in this important situation and not to limit any liberalizing trend in modern law.

Definitional Cross Reference:

"Goods". Section 2-105.

Cross References

Uniform business records as evidence act, see Code of Civil Procedure § 1953e et seq.

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§ 2709. Action for the Price

Law Review Commentaries

Bank credit plans: Innovations in consumer financing. (1968) 1 Loyola L.Rev. (Calif.) 49.

Notes of Decisions

Acceleration § 5

1. In general

Where a contract to deliver property and render service has been performed and purchaser fails to comply with terms of contract, the contract price is the measure of damages, as it accurately represents extent of vendor's loss. U.S. Industries, Inc. v. Edmond J. Vadnais, General Contractor (1969) 76 Cal Rptr. 44, 270 C.A.2d 520.

3. Ability to perform

Under provision of this section, that, although property in goods have not passed, if they cannot readily be resold for reasonable price, seller may offer to deliver goods to buyer, and, if buyer refuses to receive them, may notify buyer that goods thereafter are held by seller as bailee for buyer and thereafter seller may treat goods as buyer's and may maintain action for price, seller must not only establish tender or waiver thereof but also ability to perform. Walnut Creek Pipe Distributors, Inc. v. Gates Rubber Co. Sales Division (1964) 39 Cal Rptr. 767, 228 C.A.2d 810

7. Conditions precedent

Where manufacturer cancelled distributorship contract with wholesaler pursuant to its expressed terms any covenant on part of manufacturer to repurchase goods in posses-

sion of wholesaler at time of cancellation would have required an offer to resell before becoming enforceable. Walnut Creek Pipe Distributors, Inc. v. Gates Rubber Co. Sales Division (1964) 39 Cal Rptr. 767, 228 C.A.2d 810.

9. Notice

Wholesaler who contended that manufacturer was obliged to accept return of merchandise sold by manufacturer to wholesaler under distributorship contract upon manufacturer's cancellation of contract and to reimburse wholesaler was not entitled to maintain action for price of goods on basis that it held merchandise as bailee for manufacturer where it was not shown that wholesaler notified manufacturer that merchandise was held under bailment. Walnut Creek Pipe Distributors, Inc. v. Gates Rubber Co. Sales Division (1964) 39 Cal Rptr. 767, 228 C.A.2d 810.

9.5. Acceleration

Commercial Code changed law on acceleration, and acceptance of goods without payment does, under the Code, allow seller to sue at once not only for past due payments but for price of all goods then delivered and accepted. Gantry Const. Co., Inc. v. American Pipe & Const. Co. (1975) 122 Cal Rptr. 834, 49 C.A.3d 186.

In action against seller for slander, wherein evidence made issue of fact for jury whether seller had accelerated entire balance by reason of default and whether sum of \$247,634 was then due as stated by seller to third party, trial court erred in instructing, without reference to requirement of reasonable notification, that seller by accepting late payments reinstates contract unless it notified buyer that contract has been cancelled, and instruction was also objectionable for failure to guide jury as to application of doctrine of waiver. Id.

§ 2710. Seller's Incidental Damages

Law Review Commentaries

Economic analysis of the lost-volume retail seller. (1984) 57 So Cal L.R. 283.

Seller's damages: Sales Act and Code results compared. Robert J. Harris (1965) 18 Stan.L.R. 66.

§ 2711. Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods

Law Review Commentaries

Advance payments in contracts for sale of manufactured goods. Richard E. Speidel (1964) 52 C.L.R. 281.

Anticipatory repudiation: Damages in cases of prospective non-performance. Thomas H. Jackson (1978) 31 Stan. L.R. 69.

Bank credit plans: Innovations in consumer financing. (1968) 1 Loyola L.Rev. (Calif.) 49.

Buyer's right to monetary damages. George I. Wallace, 14 UCC L.J. 236 (1982).

Contract performance. Arthur I. Rosett (1975) 22 U.C.L.A. Law Rev. 1083.

"Cooling-off" period in door-to-door sales. Byron D. Sher (1968) 15 U.C.L.A. Law Rev. 717.

Damages for lost profits. Robert L. Dunn (1975) 9 U.S.F.L.R. 415.

Remedy provisions of this Article. Lawrence R. Small. (Spring 1969) 4 Gonzaga L.Rev. 176.

Revocations of acceptance of non-conforming goods. Seller's defenses. Frederick S. Lutz, 13 UCC L.J. 348 (1981).

Notes of Decisions

4. Payments and deposits

Where a consumer has unknowingly purchased a new motor vehicle which cannot be registered because of failure to comply with the Vehicle Code and regulations, this section allows the consumer to cancel the contract and recover money paid. Ops. Atty.Gen., 1973-74 A.J. 14016.

Asterisks * * * indicate deletions by amendment

§ 2712. "Cover"; Buyer's Procurement of Substitute Goods

Law Review Commentaries

A little essay in partial defense of the contract-market differential as a remedy for buyers. David W. Carroll (1984) 57 So Cal L.R. 667.

Anticipatory repudiation. Damages in cases of prospective nonperformance. Thomas H. Jackson (1978) 31 Stan L.R. 69.

Damages for lost profits. Robert L. Dunn (1975) 9 U.S.F.L.Rev. 415.

Remedy provisions of this Article. Lawrence R. Small 4 Gonzaga L.R. 176

Responsive model of contract law. Melvin Aron Eisenberg (1984) 36 Stan L.R. 1107.

Revocations of acceptance of non-conforming goods. Seller's defenses. Frederick S. Lutz, 13 UCC L.J. 348 (1981)

Unity in tort, contract, and property. The model of precaution. Robert Cooley (1985) 73 C.L.R. 1.

Notes of Decisions

1. In general

Concept of cover enables buyer to make reasonable substitute purchases and to recover costs thereof rather than difference between market value and contract price and, at same time, protects seller from consequential damages which could have been mitigated by purchase of substitute goods. *Gerwin v. Southeastern California Ass'n of Seventh Day Adventists* (1970) 92 Cal Rptr. 111, 14 C.A.3d 209

3. Damages

Where seller of raisins necessarily knew, because of applicable federal marketing restrictions, that buyer had a resale contract, buyer did not show that it would ever become liable in damages to buyer on the forward contract, and seller was not shown to have acted in bad faith, damage award to buyer, who did not cover, for seller's nondelivery could be limited to actual economic loss, the amount it expected to make on the complete transaction, as opposed to much greater market-contract differential. *Allied Cannery & Packers, Inc. v. Victor Packing Co.* (App. 1 Dist 1984) 209 Cal Rptr. 60, 162 C.A.3d 905.

§ 2713. Buyer's Damages for Non-Delivery or Repudiation

Law Review Commentaries

A little essay in partial defense of the contract-market differential as a remedy for buyers. David W. Carroll (1984) 57 So Cal L.R. 667.

Anticipatory repudiation. Damages in cases of prospective nonperformance. Thomas H. Jackson (1978) 31 Stan L.R. 69.

Damages for lost profits. Robert L. Dunn (1975) 9 U.S.F.L.Rev. 415

Responsive model of contract law. Melvin Aron Eisenberg (1984) 36 Stan L.R. 1107

Revocations of acceptance of non-conforming goods. Seller's defenses. Frederick S. Lutz, 13 UCC L.J. 348 (1981)

Notes of Decisions

6. Defenses

Where amended cross-complaint of defendant stated a cause of action against cross-defendant for rescission of agreements for alleged sale of press, and it was alleged that agency relationship existed between plaintiff and cross-defendant, and answer to complaint to recover money allegedly due on lease contract covering press was essentially same as amended cross-complaint of defendant, answer stated valid defense. *Amacorp Indus. Leasing Co. v. Robert C. Young Associates, Inc.* (1985) 47 Cal Rptr. 294, 237 C.A.2d 724

8. — Weight and efficiency

Evidence sustained alternative award of \$15,000 for owner's failure to deliver bar equipment and fixtures to plaintiff who had submitted through third party a bid which had been accepted and who testified as to value of such equipment. *Gerwin v. Southeastern California Ass'n of Seventh Day Adventists* (1970) 92 Cal Rptr. 111, 14 C.A.3d 209.

11. Damages—In general

Where suit is between a nonperforming seller and an aggrieved buyer and the injury consists of damage to the

goods themselves and the costs of repair of such damage or a loss of profits that the deal had been expected to yield to the buyer, it is sensible to limit the buyer's rights to those provided by the Uniform Commercial Code, to treat such a breach as an accident is to confuse disappointment with disaster. *S. M. Wilson & Co. v. Smith Intern., Inc.* (C.A. 1978) 587 F.2d 1363.

Even though exporter had contract to sell raisins in foreign market which were to be delivered by domestic packer, exporter was a "buyer," rather than a "broker," within meaning of § 2103, hence, exporter's damages arising out of packer's nondelivery of the raisins were to be computed in accordance with buyer's remedies provisions of § 2713. *Allied Cannery & Packers, Inc. v. Victor Packing Co.* (App. 1 Dist 1984) 209 Cal Rptr. 60, 162 C.A.3d 905.

Where seller of raisins necessarily knew, because of applicable federal marketing restrictions, that buyer had a resale contract, buyer did not show that it would ever become liable in damages to buyer on the forward contract, and seller was not shown to have acted in bad faith, damage award to buyer, who did not cover, for seller's nondelivery could be limited to actual economic loss, the amount it expected to make on the complete transaction, as opposed to much greater market-contract differential. *Allied Cannery & Packers, Inc. v. Victor Packing Co.* (App. 1 Dist 1984) 209 Cal Rptr. 60, 162 C.A.3d 905.

14. — Difference between contract and market price

Possibility of "disastrous" rain damage to raisin crop was clearly foreseeable to experienced sellers of raisins, and thus sellers were properly held liable for damages caused buyer by their breach of contract based on extraordinarily high price of raisins which was caused by rain damage, although price of raisins rose, buyer's damages for cost of cover and lost profits on prospective resale were natural, foreseeable, and inevitable result of sellers' failure to deliver according to contract. *Sun Maid Raisin Growers of California v. Victor Packing Co.* (App. 5 Dist 1983) 194 Cal Rptr. 612, 146 C.A.3d 787.

Underline indicates changes or additions by amendment

§ 2714. Buyer's Damages for Breach in Regard to Accepted Goods

Cross References

Consumer warranties, see Civil Code § 1790 et seq.

Law Review Commentaries

Bank credit plans: Innovations in consumer financing. (1968) 1 Loyola L.Rev. (Calif.) 49.

Choice of law in products liability. Gunther Kuhne (1972) 60 C.L.R. 1.

First line of defense in warranty suits: Failure to give notice of breach. Barkley Clark, 15 UCC L.J. 105 (1982).

Merchant of section 2-314: Who needs him? Ingrid Michelsen Hillinger (1983) 34 Hst.L.J. 747.

Revocations of acceptance of non-conforming goods: Seller's defenses. Frederick S. Lutz, 13 UCC L.J. 348 (1981).

Seller's breach of warranty to repair or replace defective goods. R Bertil Peterson (1978) 63 Com.L.J. 543.

Seller's warranty liability. Olin W. Jones (1978) 6 Pepperdine L.Rev. 85.

Notes of Decisions

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3. Election of remedies

Truck purchaser, suing manufacturer for consequential damages as result of breach of warranty, was not compelled to elect remedies of rescission or damages. *Seely v. White Motor Co.* (1965) 45 Cal.Rptr. 17, 403 P.2d 145, 63 A.C. 1.

15. Defenses

Where amended cross-complaint of defendant stated a cause of action against cross-defendant for rescission of agreements for alleged sale of press, and it was alleged that agency relationship existed between plaintiff and cross-defendant, and answer to complaint to recover money allegedly due on lease contract covering press was essentially same as amended cross-complaint of defendant, answer stated valid defense. *Amacorp Indus. Leasing Co. v. Robert C. Young Associates, Inc.* (1965) 47 Cal.Rptr. 294, 237 C.A.2d 724.

16. Evidence—Admissibility

Disclaimer of consequential damages that was included in manufacturer's standard warranty, which was not included in contract which buyer signed but which was on the reverse side of purchase order, a separate document not shown to have been signed by the buyer or delivered to him at any time, was not binding on the buyer and could not be invoked to prevent the buyer from introducing evidence as to his consequential damages. *Dorman v. International Harvester Co.* (1975) 120 Cal.Rptr. 516, 46 C.A.3d 11.

17. — Weight and sufficiency

Evidence supported court's finding that \$2,500 was reasonable for repair costs in addition to installation costs resulting from defect in plastic pipes sold by defendant manufacturer. *Smith v. Gates Rubber Co. Sales Division* (1965) 47 Cal.Rptr. 307, 237 C.A.2d 766.

19. Damages—In general

A contractual exclusion of liability for consequential damages will not always survive a failure of a limited repair remedy to serve its essential purpose; each case must stand on its own facts. *S. M. Wilson & Co. v. Smith Intern., Inc.* (C.A.1978) 587 F.2d 1363.

Where two large electric motors were specifically designed by manufacturer to be integral part of purchaser's automated cement plant, purchaser relied on manufacturer to supply machines that would operate dependably for expected 20-year life and purchaser could not reasonably have discovered insulation defect until motors failed approximately 3½ years after the first testing, purchaser's formal written notice of breach of warranty was timely where it was served approximately 6 months after electrical windings in rotor failed because of insulation deterioration due to temperature rise in excess of insulation protection provided and after installation of forced ventilation system did not cure problem; action was timely where commenced approximately 11 months after notice. *Kaiser Cement & Gypsum Corp. v. Allis-Chalmers Mfg. Co.* (1973) 111 Cal.Rptr. 210, 35 C.A.3d 948.

21. — Breach of warranty

Electric motor manufacturer's admitted breach of express warranty to repair motors if they proved defective within one year from date of initial operation or 18 months from date of shipment, whichever occurred first, did not absolve manufacturer of all future responsibility; in failing to properly diagnose cause of higher than expected temperature rise and to effect the proper repairs the manufacturer incurred legal liability for the natural consequences of its breach of warranty to repair. *Kaiser Cement & Gypsum Corp. v. Allis-Chalmers Mfg. Co.* (1973) 111 Cal.Rptr. 210, 35 C.A.3d 948.

Allegation that plaintiff big game hunter incurred substantial expense in reliance on defendant rifle manufacturer's warranty that rifle purchased by plaintiff was suitable for big game hunting in foreign country and that defendant manufacturer knew that plaintiff intended to and would incur such expenses in reliance on express warranty was sufficient, for purpose of stating cause of action, to establish fact that plaintiff had been damaged. *Thomas v. Olin Mathieson Chemical Corp.* (1967) 63 Cal.Rptr. 454, 255 C.A.2d 806.

23. — Difference in value

A buyer, upon failure of the limited repair remedy to serve its essential purpose, is entitled to recover the difference between the value of what he should have received and the value of what he got. *S. M. Wilson & Co. v. Smith Intern., Inc.* (C.A.1978) 587 F.2d 1363.

43. Caveat emptor

Seller's argument that principle of caveat emptor should apply to prevent buyer of stolen handgun from recovering damages for the purchase price of the gun was rejected. *De La Hoya v. Slim's Gun Shop* (1978) 146 Cal.Rptr. 68, 80 C.A.3d Supp. 6.

Asterisks * * * indicate deletions by amendment

§ 2715. Buyer's Incidental and Consequential Damages

Law Review Commentaries

A little essay in partial defense of the contract-market differential as a remedy for buyers. David W. Carroll (1984) 57 So Cal L Rev. 677

Damages for lost profits. Robert L. Dunn (1975) 9 U.S.J.L Rev. 415.

First line of defense in warranty suits. Failure to give notice of breach. Barkley Clark. 15 UCC L.J. 105 (1982)

Lost profits in the code. Buyer's dilemmas. Richard Schiro (1979) 52 So Cal L.R. 1727.

Mass contracts. Lawful fraud in California. W. David Stawson (1974) 48 So. Cal. L.R. 1.

Merchant of section 2-314. Who needs him? Ingrid Michelsen Hillinger (1983) 34 Hast L.J. 747.

Products liability. Recovery of economic loss. (1977) 13 C.W.L.R. 297.

Proposal to eliminate damage awards for loss of business profits. Morris G. Shanker (1980) 85 L.J. 83

Revocations of acceptance of non-conforming goods. Seller's defenses. Frederick S. Lutz. 13 UCC L.J. 348 (1981)

Seller's warranty liability. Olin W. Jones (1978) 6 Pepperdine L Rev. 85.

Unity in tort, contract, and property. The model of precaution. Robert Cooter (1985) 73 C.L.R. 1.

Notes of Decisions

- In general 1/2
- Attorneys fees 22
- Foreseeable damages 23
- Loss of profits 5.3
- Mitigation 5.5

1/2. In general

Where peripherals which sat idle because of seller's non-performance, had been ordered before seller made its bid to school district, it was not proper to have award of consequential damages to buyer on buyer's "reliance" on seller's representation, but such award was nonetheless correct where district's notice inviting bids stated that school district had ordered the peripherals, thus giving seller reason to know such fact. Huntington Beach Union High School Dist v. Continental Information Systems Corp. (C.A. 1980) 621 F.2d 353

Where contract for sale of tunnel boring machine was a carefully negotiated contract between parties of relatively equal bargaining power which expressly excluded any liability for consequential damages and where buyer stipulated that he suffered no damages other than consequential damages and seller had attempted to repair the defective machine but was unable to do so, circumstances were not enough to require that the seller absorb losses the buyer plainly agreed to bear and, under the circumstances, the failure of the limited repair remedy to serve its essential purpose did not require that recovery of consequential damages be permitted. S. M. Wilson & Co v. Smith Intern. Inc. (C.A. 1978) 587 F.2d 1363

A contractual exclusion of liability for consequential damages will not always survive a failure of a limited repair remedy to serve its essential purpose, each case must stand on its own facts. Id

Exclusion of incidental and consequential damages is a contract provision separate and distinct from limitation of remedy to repair and must receive separate consideration under California law in contract action. Office Supply Co., Inc. v. Basic Four (D.C. Wis 1982) 538 F.Supp. 776

4. Expenses

Allegation that plaintiff big game hunter incurred substantial expense in reliance on defendant rifle manufacturer's warranty that rifle purchased by plaintiff was suitable for big game hunting in foreign country and that defendant manufacturer knew that plaintiff intended to and would incur such expenses in reliance on express warranty was sufficient, for purpose of stating cause of action, to establish fact that plaintiff had been damaged. Thomas v. Olin Mathieson Chemical Corp (1967) 63 Cal.Rptr. 454, 255 C.A.2d 806

Evidence supported court's finding that \$2,500 was reasonable for repair costs in addition to installation costs resulting from defect in plastic pipes sold by defendant manufacturer. Smith v. Gates Rubber Co. Sales Division (1965) 47 Cal Rptr. 307, 237 C.A.2d 766

5.3. Loss of profits

Where seller of raisins necessarily knew, because of applicable federal marketing restrictions, that buyer had a resale contract, buyer did not show that it would ever become liable in damages to buyer on the forward contract, and seller was not shown to have acted in bad faith, damage award to buyer, who did not cover, for seller's nondelivery could be limited to actual economic loss, the amount it expected to make on the complete transaction, as opposed to much greater market-contract differential. Allied Cannery & Packers, Inc. v. Victor Packing Co. (App 1 Dist 1983) 209 Cal Rptr. 60, 162 C.A.3d 905

In order to recover for loss of prospective profits resulting from seller's failure to perform agreement to sell bar fixtures and equipment, seller must have had knowledge as to purchaser's particular need at time agreement was entered into and knowledge on part of seller at time of breach was insufficient. Gerwin v. Southeastern California Ass'n of Seventh Day Adventists (1970) 92 Cal Rptr. 111, 14 C.A.3d 299

5.5. Mitigation

Chicken feed buyer's alleged failure adequately to mitigate consequential damages did not bar recovery of all consequential damages but barred recovery only of avoidable portion of damages. Carnation Co v. Olivet Egg Ranch (App 1 Dist 1986) 229 Cal Rptr. 261

Chicken feed seller which allegedly breached warranties had burden of proving inadequacy of chicken feed buyer's efforts to mitigate consequential damages according to this section, even though burden of proving extent of loss incurred by way of consequential damages remained with buyer. Carnation Co v. Olivet Egg Ranch (App 1 Dist 1986) 229 Cal Rptr. 261

In order to recover consequential damages other than those which could not have been avoided by cover or otherwise, buyer must have made good faith attempt to mitigate his losses by cover. Gerwin v. Southeastern California Ass'n of Seventh Day Adventists (1970) 92 Cal Rptr. 111, 14 C.A.3d 209.

8. Special damages

Even though business may be new, loss of prospective profits from seller's failure to perform contract of sale may

Underline indicates changes or additions by amendment

be recovered if evidence shows with reasonable certainty both their occurrence and extent thereof. *Gerwin v. South-eastern California Ass'n of Seventh Day Adventists* (1970) 92 Cal.Rptr. 111, 14 C.A.3d 209.

22. Attorney fees

Innocent buyer of handgun that turned out to have been stolen could recover from the seller as damages an amount representing attorney fees the buyer incurred in defending himself against criminal charges arising out of possession of the stolen property. *De La Hoya v. Slim's Gun Shop* (1978) 146 Cal Rptr 68, 80 C.A.3d Supp 6

23. Foreseeable damages

Possibility of "disastrous" rain damage to raisin crop was clearly foreseeable to experienced sellers of raisins, and thus sellers were properly held liable for damages caused buyer by their breach of contract based on extraordinarily high price of raisins which was caused by rain damage; although price of raisins rose, buyer's damages for cost of cover and

lost profits on prospective resale were natural, foreseeable, and inevitable result of sellers' failure to deliver according to contract. *Sun Maid Raisin Growers of California v. Victor Packing Co.* (App. 5 Dist. 1983) 194 Cal Rptr 612, 146 C.A.3d 787.

Particularly in view of fact that it was a gun that was involved, parties to sale of gun could reasonably have contemplated at the time of the sale that if the buyer's possession of it was questioned, and the gun turned out to be stolen, the buyer would be subject to arrest for receiving stolen property; therefore, rule pertaining to damages for breach of contract pursuant to which only such damages are recoverable as may reasonably be supposed to have been foreseeable by the parties to the contract did not preclude buyer of stolen gun from recovering from seller damages representing attorney fees the buyer incurred in extricating himself from charge that he received stolen property. *De La Hoya v. Slim's Gun Shop* (1978) 146 Cal Rptr 68, 80 C.A.3d Supp. 6.

§ 2716. Buyer's Right to Specific Performance or Replevin

Law Review Commentaries

A little essay in partial defense of the contract-market differential as a remedy for buyers. *David W Carroll* (1984) 57 So Cal L Rev. 667.

Profit recovery in assumption, the tort-feasor's profits. *Graham Douthwaite* (1968) 19 *Hast L.J.* 1074.

Remedies of the "financing" buyer. *Richard E. Speidel* (1964) 32 C.L.R. 281, 284.

Responsive model of contract law. *Melvin Aron Eisenberg* (1984) 36 *Stan L.R.* 1107.

"Conversion" is an intentional exercise of dominion over chattel so as to interfere with right of another to control chattel. *Giacomello v Bank of America Nat Trust & Sav. Ass'n* (1965) 46 Cal Rptr. 612, 237 C A 2d 99.

"Conversion" is any act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights thereto. *Iufano v. City and County of San Francisco* (1965) 43 Cal Rptr. 223, 233 A C A 45.

2. Remedies available

Under California law, buyer is entitled to specific performance of sale contract where goods cannot be covered or replaced. *Kaiser Trading Co. v Associated Metal & Minerals Corp.* (D.C.1970) 321 F.Supp. 923, appeal dismissed 443 F.2d 1364.

9. Relief awarded

By ordering specific performance, trial court impliedly found that after reasonable effort plaintiff whose bid for bar fixtures and equipment had been accepted by owner who did not perform was either unable to effect cover or circumstances reasonably indicated that such effort would be unrewarding, and substantial evidence supported such finding. *Gerwin v Southern California Ass'n of Seventh Day Adventists* (1970) 92 Cal.Rptr. 111, 14 C.A.3d 209.

Defendant's detention of property which plaintiff was entitled to recover, after demand for its return, made detention wrongful and entitled plaintiff to such damages as he could prove because of wrongful detention. *Story v. Gateway Chevrolet Co* (1965) 47 Cal Rptr. 267, 237 C.A.2d 705.

Notes of Decisions

1. In general

In action by buyer against seller for breach of contract for sale of toner and developer, hearing was required to determine whether goods were unique or other proper circumstances existed to warrant granting specific performance of contract under this section. *Copylease Corp. of America v. Memorex Corp.* (D.C.N.Y.1976) 408 F.Supp. 758.

Where provisions in contract for purchase of business was subject to alternative interpretations that there was merely an agreement to seek an agreement in future or that there was a binding contract, court in specific performance action should have taken evidence of circumstances and conditions surrounding formation of agreement to indicate which alternative meaning, if any, parties intended. *J M R, Inc v. Hedderly* (1968) 67 Cal.Rptr. 742, 261 C.A.2d 144.

§ 2717. Deduction of Damages From the Price

Law Review Commentaries

First line of defense in warranty suits: Failure to give notice of breach. *Barkley Clark*, 15 *UCC L.J.* 105 (1982).

Revocations of acceptance of non-conforming goods: Seller's defenses. *Frederick S. Lutz*, 13 *UCC L.J.* 348 (1981).

Notes of Decisions

3. Deductions of offsets

Since at time of breach the amount owed on note given for purchase price of helicopter, which was completely

destroyed in fire and which was found to be a defective product, was less than the damages sustained by buyer, the buyer acted reasonably in refusing to make payments on the note pending a judicial determination, and seller was not entitled to interest on the balance after date of destruction. *Hughes Tool Co. v. Max Hinrichs Seed Co.* (1980) 169 Cal Rptr. 160, 112 C.A.3d 194.

Asterisks * * * indicate deletions by amendment

Assembly Bill No. 3560

CHAPTER 385

An act to add Section 1794 to, and to repeal Sections 1794 and 1794.2 of, the Civil Code, relating to warranties.

[Approved by Governor July 4, 1982. Filed with Secretary of State July 4, 1982.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3560, Tanner. Warranties.

Existing provisions of the Song-Beverly Consumer Warranty Act specify remedies for a willful breach of consumer warranties including a right to recover 3 times actual damages plus attorney's fees.

This bill would provide that a buyer of consumer goods shall have specified remedies for a failure to comply with warranty or related obligations, including damages measured in accordance with provisions of the Commercial Code, plus attorney's fees, and in certain cases if the failure to comply was willful, in addition to actual damages a penalty not to exceed 2 times actual damages.

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

SECTION 1. Section 1794 of the Civil Code is repealed.

SEC. 2. Section 1794 is added to the Civil Code, to read:

1794. (a) Any buyer of consumer goods who is damaged by a failure to comply with any obligation under this chapter or under an implied or express warranty or service contract may bring an action for the recovery of damages and other legal and equitable relief.

(b) The measure of the buyer's damages in an action under this section shall be as follows:

(1) Where the buyer has rightfully rejected or justifiably revoked acceptance of the goods or has exercised any right to cancel the sale, Sections 2711, 2712, and 2713 of the Commercial Code shall apply.

(2) Where the buyer has accepted the goods, Sections 2714 and 2715 of the Commercial Code shall apply, and the measure of damages shall include the cost of repairs necessary to make the goods conform.

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

(d) If the buyer prevails in an action under this section, the buyer



may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action, unless the court in its discretion determines that such an award of attorney's fees would be inappropriate.

SEC. 3. Section 1794.2 of the Civil Code is repealed.

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Introduced by Assemblywoman Tanner

March 15, 1982

An act to add Section 1794 to, and to repeal Sections 1794 and 1794.2 of, the Civil Code, relating to warranties.

LEGISLATIVE COUNSEL'S DIGEST

AB 3560, as introduced, Tanner. Warranties.

Existing provisions of the Song-Beverly Consumer Warranty Act specify remedies for a willful breach of consumer warranties including a right to recover 3 times actual damages plus attorney's fees.

This bill would provide that a buyer of consumer goods shall have specified remedies for a failure to comply with warranty or related obligations, including damages measured in accordance with provisions of the Commercial Code, plus attorney's fees, and in certain cases if the failure to comply was willful, in addition to actual damages a penalty not to exceed 2 times actual damages.

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

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

- 1 SECTION 1. Section 1794 of the Civil Code is
- 2 repealed.
- 3 ~~1794. Any buyer of consumer goods injured by a~~
- 4 ~~willful violation of the provisions of this chapter or a~~
- 5 ~~willful violation of the implied or express warranty or~~
- 6 ~~service contract may bring an action for the recovery of~~
- 7 ~~three times the amount of actual damages and other legal~~
- 8 ~~and equitable relief, and, if the buyer prevails in any~~



1 action brought under this section, he or she may be
 2 allowed by the court to recover as part of the judgment
 3 a sum equal to the aggregate amount of costs and
 4 expenses (including attorney's fees based on actual time
 5 expended) determined by the court to have been
 6 reasonably incurred by the plaintiff for or in connection
 7 with the commencement and prosecution of such action.

8 SEC. 2. Section 1794 is added to the Civil Code, to
 9 read:

10 1794. (a) Any buyer of consumer goods who is
 11 damaged by a failure to comply with any obligation
 12 under this chapter or under an implied or express
 13 warranty or service contract may bring an action for the
 14 recovery of damages and other legal and equitable relief.

15 (b) The measure of the buyer's damages in an action
 16 under this section shall be as follows:

17 (1) Where the buyer has rightfully rejected or
 18 justifiably revoked acceptance of the goods or has
 19 exercised any right to cancel the sale, Sections 2711, 2712,
 20 and 2713 of the Commercial Code shall apply.

21 (2) Where the buyer has accepted the goods, Sections
 22 2714 and 2715 of the Commercial Code shall apply, and
 23 the measure of damages shall include the cost of repairs
 24 necessary to make the goods conform.

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

33 (d) If the buyer prevails in an action under this
 34 section, the buyer may be allowed by the court to recover
 35 as part of the judgment a sum equal to the aggregate
 36 amount of costs and expenses, including attorney's fees
 37 based on actual time expended, determined by the court
 38 to have been reasonably incurred by the buyer in
 39 connection with the commencement and prosecution of
 40 such action, unless the court in its discretion determines

1 that such an award of attorney's fees would be
 2 inappropriate.

3 SEC. 3. Section 1794.2 of the Civil Code is repealed.
 4 1794.2. The provision of Section 1794 authorizing the
 5 recovery of three times the amount of the buyer's actual
 6 damages shall not apply to either of the following:

7 (a) A cause of action commenced or maintained
 8 pursuant to Section 382 of the Code of Civil Procedure or
 9 pursuant to Section 1781 of this code.

10 (b) A judgment based solely on a breach of the
 11 implied warranty of merchantability, or, where present,
 12 the implied warranty of fitness.

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1020 N STREET, SACRAMENTO, CALIFORNIA 95814



April 23, 1982

Honorable Sally Tanner
 Chairwoman
 Assembly Consumer Protection and
 Toxic Materials Committee
 State Capitol, Room 4146
 Sacramento, CA 95814

Re: AB 3560

Dear Assemblywoman Tanner:

The Department of Consumer Affairs is sponsoring AB 3560, legislation which would amend the Song-Beverly Consumer Warranty Act to provide purchasers of consumer goods with coherent, understandable remedies for violations of California's warranty laws. AB 3560 is scheduled to be heard in your committee on April 27th at 1:30 p.m.

This bill is essentially a consumer law "housekeeping" bill which does not add to existing law any substantive legal obligation that is not already present in consumer warranty statutes.

The bill's purpose and function is to consolidate and restate in a single location in the Song-Beverly Act the remedies now available under the Act and the federal Magnuson-Moss Consumer Warranty Act, the California Commercial Code, and the general contract law of California. The range of available legal remedies is broad, yet because they are spread among many different statutes, they are not reasonably accessible.

Specifically, AB 3560 would consolidate Sections 1794 and 1794.2 of the Civil Code and would enact a new Section 1794 to provide a clear statement of the buyer's basic remedies for breach of warranty and violation of the Song-Beverly Act.

We believe the effect of this bill will be to foster the voluntary resolution of disputes by better deferring the consequences to both parties if a resolution is not achieved. It is where the law and its consequences are uncertain that real problems are not resolved or that expensive litigation ensues.

The bill would include within the remedy language an explicit right to recover actual damages for an ordinary, non-willful breach of warranty, as well as reasonable attorney's fees. These remedies are already conferred by federal law. Conferring Song-Beverly jurisdiction to resolve disputes without a finding of willfulness will benefit warrantors as well as consumers. Currently, in order to proceed, consumers and their attorneys must search for proof of "willfulness," focusing less on a constructive approach to dispute resolution than on the motivations of the parties.

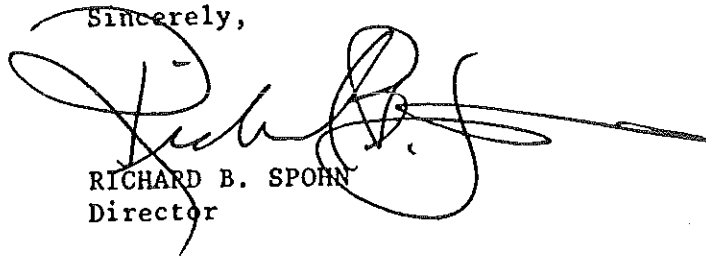
This bill has been carefully developed and will improve our law by promoting voluntary compliance and voluntary settlement of disputes.



Honorable Sally Tanner
Page two

Included with this letter is a more comprehensive analysis of AB 3560.
Should you wish further information, please contact our Legislative Unit at
322-4292.

Sincerely,



RICHARD B. SPOHN
Director

cc: Members, Assembly Consumer Protection and
Toxic Materials Committee

SECTION 1. Chapter 20.5, Division 3, Section 9889.74 of the Business and Professions Code, as added by Assembly Bill 2057 (Chapter 1280) is amended as follows:

Section 9889.74

. . .

(d) Notify the Department of Motor Vehicles of the failure of a manufacturer to honor a decision of a qualified third-party dispute resolution process to enable the department to take appropriate enforcement action against the manufacturer or distributor, pursuant to Section 11705.4 of the Vehicle Code / , or representative, as defined in Section 512 of the Vehicle Code, pursuant to Sections 11727 or 11902 of the Vehicle Code .

SECTION 2. Chapter 20.5, Division 3, Section 9889.75 of the Business and Professions Code, as added by Assembly Bill 2057 (Chapter 1280) is amended as follows:

Section 9889.75

(b) Beginning ~~July 1~~ May 15, 1988, and on or before February 1 of each calendar year thereafter, every applicant for a license as a manufacturer as defined in Business and Professions Code Section 9889.70(c), manufacturer branch distributor or distributor branch and every applicant for the renewal of a license as a manufacturer, manufacturer branch distributor or distributor branch shall accompany the application with file a statement of the number of new motor vehicles sold, leased, or otherwise distributed in this state by or for the applicant manufacturer in this state during the preceding calendar year, and shall pay to the Department of Motor Vehicles for each license



at renewal of the license an amount prescribed by the New Motor Vehicle Board but not to exceed one dollar (\$1) for each motor vehicle sold, leased or distributed by or for the applicant in this state during the preceding calendar year/ upon notice shall pay to the New Motor Vehicle Board a fee prescribed by the New Motor Vehicle Board, but not to exceed one dollar (\$1) for each vehicle. The total fee paid by each licensee shall be rounded to the nearest dollar in the manner described in Section 9559 of the Vehicle Code/

The fee shall be due and payable no later than 30 days after the New Motor Vehicle Board has given notice to the manufacturer of the amount due. No more than one dollar (\$1) shall be charged, collected or received from any one or more ~~licensees~~ manufacturer pursuant to this subdivision with respect to the same motor vehicle. The total fee paid by each manufacturer shall be rounded to the nearest dollar in the manner described in Section 9559 of the Vehicle Code.

(c) If the information required by Section 9889.75(b) is not filed by a manufacturer in the specified time period, the manufacturer shall be assessed a fee based upon the records of the Department of Motor Vehicles. In such event, the number to be used in assessing the fee shall be the total number of new registrations of all motor vehicles sold, leased or otherwise distributed by or for the manufacturer.

(d) The fee is delinquent if the fee is not paid within the time period specified. If the fee is not paid within 20 days after it



becomes delinquent, a penalty shall be added thereto. The penalty shall be 50% of the amount delinquent.

(e) On or before ~~JANUARY~~ February 1 of each calendar year, ~~THE BUREAU SHALL DETERMINE THE DOLLAR AMOUNT NOT TO EXCEED ONE DOLLAR (\$1) PER MOTOR VEHICLE WHICH SHALL BE COLLECTED AND RECEIVED BY THE DEPARTMENT OF MOTOR VEHICLES BEGINNING JULY 1 OF THAT YEAR, BASED UPON AN ESTIMATE OF THE NUMBER OF SALES, LEASES, AND OTHER DISPOSITIONS OF MOTOR VEHICLES IN THIS STATE DURING THE PRECEDING CALENDAR YEAR, IN ORDER TO FULLY FUND THE PROGRAM ESTABLISHED BY THIS CHAPTER DURING THE FOLLOWING FISCAL YEAR.~~ The bureau shall, notify the New Motor Vehicle Board of the dollar amount necessary to fully fund, during the following fiscal years, the program established by this chapter. per motor vehicle that. The New Motor Vehicle Board shall use this information in calculating the amount of fees to be collected from applicants manufacturers pursuant to this subdivision.

(d) For the purposes of this section, "motor vehicle" means a new passenger or commercial motor vehicle of a kind that is required to be registered under the vehicle code, but the term does not include a motorcycle, a motor home, or any vehicle whose gross weight exceeds 10,000 pounds.

(f) The New Motor Vehicle Board may adopt regulations to implement this section. In the event there is more than one entity which would fall within the definition of "manufacturer" (as defined in Business and Professions Code 9889.70(c)) with respect to the same



motor vehicles, the New Motor Vehicle Board may by regulation determine which manufacturer shall be responsible.



Regulations if there is no amendments to B/P 9889.75

Article 1.5 Administration of Fee collection for Certification Account

553.50 Obligation to comply

The reporting of the number of new motor vehicles subject to these regulations and payment of the fees thereof shall be the responsibility of the manufacturer or distributor which authorizes the dealer to sell, lease, or otherwise distribute the new motor vehicles.

The number of the new motor vehicles to be reported as sold, leased, or otherwise distributed by or in behalf of a manufacturer or distributor shall be that number delivered by any dealer including a franchisee or lessor (as those terms are defined in the Vehicle Code), to the consumer of such new motor vehicles.

The number of new motor vehicles sold, leased, or otherwise distributed shall be reported in a written statement which shall be submitted with any application for a license or license renewal as a manufacturer, manufacturer branch, distributor, and distributor branch. Included in the statement shall be the business address and name of a person or persons authorized to receive notices on behalf of the manufacturer or distributor.



NOTE: Authority: Section 9889.75(e), Business and Professions Code; Reference: Section 9889.75(b) and 9889.75(e), Business and Professions Code.



553.60 Payment of fees

Upon receipt of the information required by Section 553.50, the New Motor Vehicle Board shall compute the certification fee pursuant to Business and Professions Code Section 9889.75(c). The New Motor Vehicle Board shall send a written notice to the designated persons of the reporting entities stating the number of vehicles reported and the amount of the fee to be paid.

Payment of the fee shall be made to the New Motor Vehicle Board of the Department of Motor Vehicles no later than thirty (30) days after the date of mailing of the notice.

NOTE: Authority: Section 9889.75(e), Business and Professions Code; Reference: Section 9889.75(c) and 9889.75(e), Business and Professions Code.



553.75 Noncompliance

Noncompliance with any section in this article shall be grounds under which the New Motor Vehicle Board may bring an action under Vehicle Code Section 3050(c).

NOTE: Authority: Section 9889.75(e), Business and Professions Code; Section 3050, Vehicle Code; Reference: Section 9889.75(b) and 9889.75(e), Business and Professions Code. Section 3050(c), Vehicle Code.



553.50 Obligation to comply

The reporting of the number of new motor vehicles subject to these regulations and payment of the fees thereof shall be the responsibility of the manufacturer or distributor which authorizes the dealer to sell, lease, or otherwise distribute the new motor vehicles.

The number of the new motor vehicles to be reported as sold, leased, or otherwise distributed by or in behalf of a manufacturer or distributor shall be that number delivered by any dealer including a franchisee or lessor (as those terms are defined in the Vehicle Code), to the consumer of such new motor vehicles.

The number of new motor vehicles sold, leased, or otherwise distributed shall be reported in a written statement which shall be filed with the New Motor Vehicle Board on or before February 1 of each calendar year. Included in the statement shall be the business address and name of a person or persons authorized to receive notices on behalf of the manufacturer or distributor.

NOTE: Authority: Section 9889.75(f), Business and Professions Code; Reference: Section 9889.75(b) and 9889.75(f), Business and Professions Code.



553.60 Presumption of Liability

If the information required by section 553.50 is not received by the Board within the applicable time period it shall be presumed that the number of new motor vehicles sold or otherwise distributed in this state by or on behalf of the non-reporting entity during the preceding calendar year is equal to the number of new registrations during the period in question of vehicles manufactured or distributed by the non-reporting entity as contained in the records of the Department of Motor Vehicles.

NOTE: Authority: Section 9889.75(f), Business and Professions Code; Reference: Section 9889.75(c), Business and Professions Code.



553.70 Payment of fees

Upon receipt of the information required by Section 553.50, or as determined by section 553.60, the New Motor Vehicle Board shall compute the certification fee pursuant to Business and Professions Code Section 9889.75(e). The New Motor Vehicle Board shall send a written notice to manufactures and distributors subject to fee assessment pursuant to Business and Professions Code Section 9889.75, stating the number of vehicles for which the fee shall be assessed and the amount of the fee to be paid.

Payment of the fee shall be made to the New Motor Vehicle Board no later than thirty (30) days after the date of mailing of the notice.

NOTE: Authority: Section 9889.75(f), Business and Professions Code; Reference: Section 9889.75(b) and 9889.75(e), Business and Professions Code.



553.71 Delinquency of Payment

If the fee is not paid within the time period specified in Section 553.50 such fee is delinquent. If the fee is not paid within 20 days after it becomes delinquent, a penalty shall be added thereto. The penalty shall be 50% of the amount delinquent.

NOTE: Authority: Section 9889.75(f), Business and Professions Code; Reference: Section 9889.75(b) and 9889.75(d), Business and Professions Code.



553.72 Transmittal of Fees By Mail

No penalty shall be imposed for delinquent payment of any fee required to be paid under this article in the event any instrument for effective payment of such fee is placed in the United States mail or in any postal box maintained by the United States Postal Service with sufficient identification, in an envelope with postage thereon prepaid and addressed to the New Motor Vehicle Board, 1507 21st Street, Suite 330, Sacramento, California, 95814 prior to the date the fee becomes delinquent.

NOTE: Authority: Section 9889.75(f), Business and Professions Code; Reference: Section 9889.75(b) and 9889.75(d), Business and Professions Code.



APR 11 1988

NOTICE OF PROPOSED ACTION

Title 13. New Motor Vehicle Board

NOTICE IS HEREBY GIVEN that the New Motor Vehicle Board pursuant to the authority vested in it by Section 9889.75 of the Business and Professions Code, proposes to adopt regulations in Title 13 of the California Administrative Code to implement, interpret, and make specific Business and Professions Code Section 9889.75.

HEARING DATE, TIME and PLACE: May 23, 1988 at 10:00 a.m.

New Motor Vehicle Board
1507 21st Street
Room 302
Sacramento, California 95814

Notice is also given that any person interested may present statements or arguments orally or in writing relevant to the proposed action at the hearing held in Sacramento. Written comments must be submitted no later than the close of the hearing or received by the New Motor Vehicle Board at its office not later than 5 p.m. on May 23, 1988.

The New Motor Vehicle Board upon its own motion or at the instance of any interested person, may thereafter adopt the proposal substantially as described above or may modify such proposal if such modification is sufficiently related to the original text. With the exception of nonsubstantive, technical or grammatical changes, the full text of any modified proposal will be available from the person designated as contact person in this notice at least 15 days prior to the adoption of such a proposal.

INFORMATIVE DIGEST

Assembly Bill 2057, (Chapter Bill 1280, Tanner), 1987 statutes, adds Section 9889.75 to the Business and Professions Code which mandates the New Motor Vehicle Board to establish and administer the collection of fees for the purpose of funding fully the Certification Program for Qualified Third Party Dispute Resolution Processes. Currently, the Boards regulations do not contain any provisions specifying the manner in which the Board is to administer and assess a fee in relation to the Certification Program.

Two alternative sets of Article 1.5, Administration of Fee Collection for Certification Account are being considered by the New Motor Vehicle Board. Only one set of alternative regulations will be adopted. The alternative sets of regulations are being considered simultaneously to allow the timely implementation of the program in view of the pending statutory amendments. The set of regulations to be adopted will be determined by whether or not the revised authorizing statute is enacted.

LEGISLATIVE INTENT SERVICE (800) 666-1917



ALTERNATIVE SET #1

Alternative set number one adds Article 1.5 to Title 13, Administration of Fee Collection for the Certification Account. Alternative set I implements and makes specific Business and Professions Code Section 9889.75 as it currently exists. The statute currently requires manufacturers, as defined in the Business and Professions Code to include manufacturer branches, distributors, and distributor branches, to file a statement with their license application or renewal. The statement will report the number of new motor vehicles which were sold, leased, or otherwise distributed by or for the manufacturer or distributor in this state within the preceding calendar year. From this statement the Board will calculate the fee to be assessed using forty-two cents (\$0.42) per new motor vehicle distributed. Payment of the fees shall be the responsibility of the manufacturer or distributor which authorizes the retail seller, including a dealer, franchisee, or lessor (as those terms are defined in the Vehicle Code) to sell, lease, or otherwise distribute the new motor vehicles. The fee will be due thirty (30) days after the notice from the Board.

ALTERNATIVE SET #II

Alternative set number two adds Article 1.5 to Title 13, Administration of Fee Collection for Certification Account. Alternative set II implements and makes specific Business and Professions Code Section 9899.75 as it is proposed to be amended in AB 1367, which is pending in the Legislature. The proposed statute requires manufacturers, as defined in the Business and Professions Code to include manufacturer branches, distributors, and distributor branches, to file a statement with the Board on or before May 15, 1988 and on or before February 1 every year thereafter. The statement will report the number of new motor vehicles which were sold, leased, or otherwise distributed by or for the manufacturer or distributor in California to consumers of such new motor vehicles. From this statement the fee will be calculated by the Board using forty-two cents (\$0.42) per new motor vehicle distributed. The payment of the fees shall be the responsibility of the manufacturer or distributor which authorizes the retail seller, including a dealer, franchisee, or lessor (as those terms are defined in the Vehicle Code) to sell, lease, or otherwise distribute the new motor vehicles. The fee will be due thirty (30) days after notice from the Board. The proposed regulations also specify the assessment of penalties for late payments and the presumption of number of vehicles distributed in the event a manufacturer or distributor fails to report the number to the Board.

INITIAL STATEMENT OF REASONS:

The New Motor Vehicle Board has prepared a statement of the reasons for the proposed action and has available the information upon which the proposal is based.



TEXT OF PROPOSAL:

Copies of the exact language of the proposed regulations, in a strike out and underlined format, and the initial statement of reasons may be obtained at the hearing or prior to the hearing upon request from the New Motor Vehicle Board at 1507 21st street, Suite 330, Sacramento, California 95814.

FISCAL IMPACT ESTIMATES:

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/ Savings in Federal Funding to the State: None.

Non discretionary Costs/ Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None.

Small Business Impact: Insignificant.

Cost Impact on Private Persons or Entities: Insignificant.

Housing Costs: None.

AUTHORITY AND REFERENCE:

Pursuant to the authority vested by Section 9889.75 of the Business and Professions Code, and to implement, interpret or make specific Section 9889.75 of said Code, the New Motor Vehicle Board is considering creating Chapter 1.5 of Title 13 of the California Administrative Code and adding regulations thereto.

CONSIDERATION OF ALTERNATIVES

The New Motor Vehicle Board must determine that no alternative which it considered would either be more effective than or as effective as and less burdensome on affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determination at the above-mentioned hearing.



CONTACT PERSON:

Inquiries concerning the proposed action and written comments relevant to the proposed action may be directed to:

SUZANNE GIORGI, New Motor Vehicle Board: 1507 - 21st street,
Suite 330; Sacramento, California 95814. Telephone: (916) 445-1888.



Article 1.5 Administration of Fee Collection for Certification Account

ALTERNATIVE SET I

553.50 Obligation to comply

(a) All manufacturers, manufacturer branches, distributors and distributor branches of new motor vehicles (as that term is defined in Business and Professions Code Section 9889.75(d)) are required to submit a written statement with any application for a license or license renewal as a manufacturer, manufacturer branch, distributor, or distributor branch. The statement shall include:

(1) The number of new motor vehicles distributed by the manufacturer or distributor which were eventually sold, leased, or otherwise distributed in California to a consumer of such new motor vehicles during the preceding calendar year;

(2) The name and business address of other manufacturers and distributors who are required to submit a statement reporting the distribution of the same new motor vehicles; and

(3) The business address and name of the person or persons authorized to receive notices on behalf of the manufacturer or distributor.

(b) Payment of the fees pursuant to Business and Professions Code Section 9889.75 shall be the responsibility of the manufacturer or distributor which authorizes the retail seller, including a dealer, franchisee or lessor (as those terms are defined in the Vehicle Code), to sell, lease, or otherwise distribute the new motor vehicles.

NOTE: Authority: Section 9889.75(e), Business and Professions Code; Reference: Sections 9889.75(b) and 9889.75(e), Business and Professions Code; Sections 285, 331.1, and 372, Vehicle Code.

553.70 Payment of fees

The fee to be collected by the New Motor Vehicle Board pursuant to Business and Profession Code Section 9889.75(b) shall be forty-two cents (\$.42) per new motor vehicle sold, leased, or otherwise distributed in California. Upon receipt of the information required by Section 553.50(a), the New Motor Vehicle Board shall send a written notice to manufacturers and distributors subject to the fee assessment stating the number of new motor vehicles distributed by or for the manufacturer or distributor and the amount of the fee to be paid.

Payment of the fee shall be made to the New Motor Vehicle Board in the Department of Motor Vehicles no later than thirty (30) days after the date of mailing of the notice.

NOTE: Authority: Section 9889.75(e), Business and Professions Code; Reference: Sections 9889.75(b), 9889.75(c) and 9889.75(e), Business and Professions Code.



553.75 Noncompliance

The New Motor Vehicle Board may consider any failure of a manufacturer or distributor to comply with any provisions of this Chapter to be good cause to exercise its authority pursuant to Vehicle Code Section 3050(c).

NOTE: Authority: Section 9889.75(e), Business and Professions Code; Section 3050, Vehicle Code; Reference: Sections 9889.75(b) and 9889.75(e), Business and Professions Code; Section 3050(c), Vehicle Code.



Article 1.5 Administration of Fee Collection for Certification Account
(Proposed alternative regulations for an amended statute)

ALTERNATIVE SET II

553.50 Obligation to comply

(a) All manufacturers, manufacturer branches, distributors and distributor branches of new motor vehicles (as that term is defined in Business and Professions Code Section 9889.70(b)) are required to submit a written statement with the New Motor Vehicle Board on or before February 1 of each calendar year. The statement shall include:

(1) The number of new motor vehicles distributed by the manufacturer or distributor which were eventually sold, leased, or otherwise distributed in California to a consumer of such new motor vehicles during the preceding calendar year;

(2) The name and business address of other manufacturers and distributors who are required to submit a statement reporting the distribution of the same new motor vehicles; and

(3) The business address and name of the person or persons authorized to receive notices on behalf of the manufacturer or distributor.

(b) Payment of the fees pursuant to Business and Professions Code Section 9889.75 shall be the responsibility of the manufacturer or distributor which authorizes a retail seller, including a dealer, franchisee, or lessor (as those terms are defined in the Vehicle Code), to sell, lease, or otherwise distribute the new motor vehicles.

NOTE: Authority: Section 9889.75(f), Business and Professions Code; Reference: Sections 9889.75(b) and 9889.75(f), Business and Professions Code; Sections 285, 331.1 and 372 Vehicle Code.

553.60 Presumption of Liability

If the information required by section 553.50 is not received by the Board within the applicable time period or it is determined by the Board that the information that is received is erroneous, it shall be presumed that the number of new motor vehicles sold, leased, or otherwise distributed in this state by or on behalf of the non-reporting entity during the preceding calendar year is equal to the total number of new registrations during the period in question of all vehicles manufactured or distributed by the non-reporting entity as contained in the records of the Department of Motor Vehicles.

NOTE: Authority: Section 9889.75(f), Business and Professions Code; Reference: Section 9889.75(c), Business and Professions Code.



553.70 Payment of fees

The fee to be collected by the New Motor Vehicle Board Pursuant to Business and Professions Code Section 9889.75 (b) shall be forty-two cents (\$0.42) per new motor vehicle sold, leased, or otherwise distributed in California. Upon receipt of the information required by Section 553.50(a), or as determined by section 553.60, the New Motor Vehicle Board shall send a written notice to manufacturers and distributors subject to the fee assessment stating the number of new motor vehicles distributed by the manufacturer or distributor and the amount of the fee to be paid.

Payment of the fee shall be made to the New Motor Vehicle Board no later than thirty (30) days after the date of mailing of the notice.

NOTE: Authority: Section 9889.75(f), Business and Professions Code; Reference: Sections 9889.75(b), 9889.75(c) and 9889.75(e), Business and Professions Code.

553.71 Delinquency of Payment

If the fee is not paid within the time period specified in Section 553.70 such fee is delinquent. If the fee is not paid within twenty (20) days after it becomes delinquent, a penalty shall be added thereto. The penalty shall be 50% of the amount delinquent.

NOTE: Authority: Section 9889.75(f), Business and Professions Code; Reference: Sections 9889.75(b) and 9889.75(d), Business and Professions Code.

553.72 Transmittal of Fees By Mail

No penalty shall be imposed for delinquent payment of any fee required to be paid under this article in the event any instrument for effective payment of such fee is placed in the United States mail or in any postal box maintained by the United States Postal Service with sufficient identification, in an envelope with postage thereon prepaid and addressed to the New Motor Vehicle Board, 1507 21st Street, Suite 330, Sacramento, California, 95814 prior to the date the fee becomes delinquent.

NOTE: Authority: Section 9889.75(f), Business and Professions Code; Reference: Sections 9889.75(b) and 9889.75(d), Business and Professions Code.

553.75 Noncompliance

The New Motor Vehicle Board may consider any failure of a manufacturer or distributor to comply with any provisions of this Chapter to be good cause to exercise its authority pursuant to Vehicle Code Section 3050(c).

NOTE: Authority: Section 9889.75(f), Business and Professions Code; Section 3050, Vehicle Code; Reference: Sections 9889.75(b) and 9889.75(f), Business and Professions Code; Section 3050(c), Vehicle Code.



Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 1367

Amendment 1

In line 1 of the title, after "of" insert:

, and to add Section 1793.25 to,

Amendment 2

In line 1 of the title, after the comma insert:

and to amend Section 7102 of the Revenue and Taxation Code,

Amendment 3

In line 2 of the title, after "warranties"
insert:

, and making an appropriation therefor

Amendment 4

On page 1, strike out line 1 and insert:

SECTION 1. Section 1793.25 is added to the
Civil Code, to read:

1793.25. (a) Notwithstanding Part 1 (commencing
with Section 6001) of Division 2 of the Revenue and
Taxation Code, the State Board of Equalization shall
reimburse the manufacturer of a new motor vehicle for an
amount equal to the sales tax which the manufacturer
includes in making reimbursement to the buyer pursuant to
subdivision (d) of Section 1793.2, when satisfactory proof
is provided that the retailer of the motor vehicle for
which the manufacturer is making reimbursement has
reported and paid the sales tax on the gross receipts from
the sale of that motor vehicle. The State Board of
Equalization may adopt rules and regulations to carry out,
facilitate compliance with, or prevent circumvention or
evasion of, this section.

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

(c) The manufacturer's claim for reimbursement
and the board's approval or denial of the claim shall be



subject to the provisions of Article 1 (commencing with Section 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue and Taxation Code, except Sections 6902.1, 6903, 6907, and 6908 thereof, insofar as those provisions are not inconsistent with this section.

SEC. 2. Section 1794 of the Civil Code is

Amendment 5

On page 2, between lines 31 and 32, insert:

SEC. 2.5. Section 1794 of the Civil Code is amended to read:

1794. (a) Any buyer of consumer goods who is damaged by a failure to comply with any obligation under this chapter or under an implied or express warranty or service contract may bring an action for the recovery of damages and other legal and equitable relief.

(b) The measure of the buyer's damages in an action under this section shall be as follows include the rights of replacement or reimbursement as set forth in subdivision (d) of Section 1793.2, and the following:

(1) Where the buyer has rightfully rejected or justifiably revoked acceptance of the goods or has exercised any right to cancel the sale, Sections 2711, 2712, and 2713 of the Commercial Code shall apply.

(2) Where the buyer has accepted the goods, Sections 2714 and 2715 of the Commercial Code shall apply, and the measure of damages shall include the cost of repairs necessary to make the goods conform.

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

(d) If the buyer prevails in an action under this section, the buyer ~~may~~ shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action, ~~unless the court in its discretion determines that such an award of attorney's fees would be inappropriate.~~



(e) (1) Except as otherwise provided in this subdivision, if the buyer establishes a violation of paragraph (2) of subdivision (d) of Section 1793.2, the buyer shall recover damages and reasonable attorney's fees and costs, and may recover a civil penalty of up to two times the amount of damages.

(2) If the manufacturer maintains a qualified third-party dispute resolution process which substantially complies with subdivision (e) of Section 1793.2, the manufacturer shall not be liable for any civil penalty pursuant to this subdivision.

(3) After the occurrence of the events giving rise to the presumption established in paragraph (1) of subdivision (e) of Section 1793.2, the buyer may serve upon the manufacturer a written notice requesting that the manufacturer comply with paragraph (2) of subdivision (d) of Section 1793.2. If the buyer fails to serve the notice, the manufacturer shall not be liable for a civil penalty pursuant to this subdivision.

(4) If the buyer serves the notice described in paragraph (3) and the manufacturer complies with paragraph (2) of subdivision (d) of Section 1793.2 within 30 days of the service of that notice, the manufacturer shall not be liable for a civil penalty pursuant to this subdivision.

(5) If the buyer recovers a civil penalty under subdivision (c), the buyer may not also recover a civil penalty under this subdivision for the same violation.

SEC. 3. Section 7102 of the Revenue and Taxation Code is amended to read:

7102. The money in the fund shall, upon order of the Controller, be drawn therefrom for refunds under this part, and pursuant to Section 1793.25 of the Civil Code, or be transferred in the following manner:

(a) (1) All revenues, less refunds, derived under this part at the 43/4 percent rate, including the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of motor vehicle fuel which would not have been received if the sales and use tax rate had been 5 percent and if motor vehicle fuel, as defined for purposes of the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301)), had been exempt from sales and use taxes, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance shall be transferred during each fiscal year to the Transportation Planning and Development Account in the State Transportation Fund for appropriation pursuant to Section 99312 of the Public Utilities Code.



(2) If the amount transferred pursuant to paragraph (1) is less than one hundred ten million dollars (\$110,000,000) in any fiscal year, an additional amount equal to the difference between one hundred ten million dollars (\$110,000,000) and the amount so transferred shall be transferred, to the extent funds are available, as follows:

(A) For the 1986-87 fiscal year, from the General Fund.

(B) For the 1987-88 and each subsequent fiscal year, from the state revenues due to the imposition of sales and use taxes on fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)).

(b) The balance shall be transferred to the General Fund.

(c) The estimate required by subdivision (a) shall be based on taxable transactions occurring during a calendar year, and the transfers required by subdivision (a) shall be made during the fiscal year that commences during that same calendar year. Transfers required by paragraphs (1) and (2) of subdivision (a) shall be made quarterly.

SEC. 3.5. Section 7102 of the Revenue and Taxation Code is amended to read:

7102. The money in the fund shall, upon order of the Controller, be drawn therefrom for refunds under this part, and pursuant to Section 1793.25 of the Civil Code, or be transferred in the following manner:

(a) (1) All revenues, less refunds, derived under this part at the $4\frac{3}{4}$ percent rate, including the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of motor vehicle fuel which would not have been received if the sales and use tax rate had been 5 percent and if motor vehicle fuel, as defined for purposes of the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301)), had been exempt from sales and use taxes, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance shall be transferred during each fiscal year to the Transportation Planning and Development Account in the State Transportation Fund for appropriation pursuant to Section 99312 of the Public Utilities Code.

(2) If the amount transferred pursuant to paragraph (1) is less than one hundred ten million dollars (\$110,000,000) in any fiscal year, an additional amount equal to the difference between one hundred ten million



dollars (\$110,000,000) and the amount so transferred shall be transferred, to the extent funds are available, as follows:

(A) For the 1986-87 fiscal year, from the General Fund.

(B) For the 1987-88 and each subsequent fiscal year, from the state revenues due to the imposition of sales and use taxes on fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)).

(b) The following percentage of the amount of all revenues, less refunds, derived under this part attributable to the sale, storage, use, or other consumption of aircraft jet fuel used in propelling aircraft the sale or use of which in this state is subject to the tax imposed by Part 2 (commencing with Section 7301) and which are not subject to refund, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be transferred to the Aeronautics Account in the State Transportation Fund:

(1) For the 1988-89 fiscal year, 50 percent of the amount.

(2) For the 1989-90 fiscal year and each fiscal year thereafter, 100 percent of the amount.

~~(b) The~~

(c) After application of subdivisions (a) and (b), the balance shall be transferred to the General Fund.

~~(e)~~

(d) The estimate required by subdivision (a) subdivisions (a) and (b) shall be based on taxable transactions occurring during a calendar year, and the transfers required by subdivision (a) subdivisions (a) and (b) shall be made during the fiscal year that commences during that same calendar year. Transfers required by paragraphs (1) and (2) of subdivision (a) and subdivision (b) shall be made quarterly.

Amendment 6

On page 2, line 32, strike out "SEC. 2." and insert:

SEC. 4.

Amendment 7

On page 2, line 32, after the first "of" insert:
subdivision (b) of



Amendment 8

On page 2, lines 33 and 34, strike out "at the 1987-88 Regular Session of the Legislature" and insert:

by this act

Amendment 9

On page 2, below line 35, insert:

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 1794 of the Civil Code proposed by both this bill and AB 2057. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 1794 of the Civil Code, and (3) this bill is enacted after AB 2057, in which case Section 2 of this bill shall not become operative.

SEC. 6. Section 3.5 of this bill incorporates amendments to Section 7102 of the Revenue and Taxation Code proposed by both this bill and AB 276. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 7102 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 276, in which case Section 3 of this bill shall not become operative.

- 0 -



AUTHOR TANNER

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<input checked="" type="checkbox"/> BTH	<input type="checkbox"/> LEGAL	<input type="checkbox"/> DPA
<input type="checkbox"/> EQ	<input type="checkbox"/> OLGA	<input type="checkbox"/> ED
<input checked="" type="checkbox"/> FIN	<input checked="" type="checkbox"/> RES	<input type="checkbox"/>
<input type="checkbox"/> F&A	<input checked="" type="checkbox"/> SCS	<input type="checkbox"/>
<input type="checkbox"/> H&W	<input type="checkbox"/> YAC	<input type="checkbox"/>

DATE RECEIVED 6-14 1988

LAST DAY TO ACT 6-26 1988

ACTION OF GOVERNOR 6-23 1988

LIS - 16

FCA MJN 279



Legislative Counsel of California

BION M. GREGORY

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DEPUTIES

Sacramento, California

June 27, 1988

Honorable George Deukmejian
Governor of California
Sacramento, CA 95814

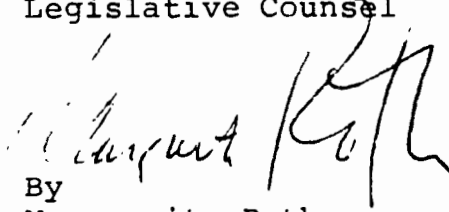
Assembly Bill No. 1367

Dear Governor Deukmejian:

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

Very truly yours,

Bion M. Gregory
Legislative Counsel


By
Marguerite Roth
Principal Deputy

MRR:lsl

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

FCA MJN 280

LEGISLATIVE INTENT SERVICE (800) 666-1917

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Assembly California Legislature

SALLY TANNER

ASSEMBLYWOMAN, SIXTIETH DISTRICT

CHAIRWOMAN

COMMITTEE ON ENVIRONMENTAL SAFETY & TOXIC MATERIALS

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AND DISASTER SERVICES
JOINT COMMITTEE ON
LOW LEVEL NUCLEAR WASTE
GENERAL ASSEMBLY OFFICE
TOXICS, WASTE & TECHNOLOGY

June 21, 1988

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

Dear Governor Deukmejian:

Assembly Bill 1367 is now before you for your consideration. The measure establishes a more efficient, less costly method of collecting fees to certify "Lemon Law" arbitration.

Last year, you signed my Assembly Bill 2057 which, among other things, required the Bureau of Automotive Repair in the Department of Consumer Affairs to establish a program to certify that auto manufacturer-run arbitration panels under the "Lemon Law" are operated fairly, efficiently and as required by law and Federal Trade Commission regulations. To fund the certification program, AB 2057 authorized the collection of fees from auto manufacturers to be paid on each new motor vehicle sold in the state. These fees would be set by the New Motor Vehicle Board and collected by the Department of Motor Vehicles after consultation with the Bureau of Automotive Repair on its budgetary needs.

Assembly Bill 1367 simplifies the fee collection system by consolidating it in the New Motor Vehicle Board and making a single agency responsible for it. This will make collection of the fees simpler, more straightforward and less costly than would otherwise be the case.

The New Motor Vehicle Board, the Department of Consumer Affairs, the Bureau of Automotive Repair and the Department of Motor Vehicles are all in agreement with AB 1367. There is no known opposition to it.

I urge you to sign the bill into law before July 1, 1988, the date the certification program becomes operative.

Sincerely,

SALLY TANNER
Assemblywoman, 60th District

ST:acf

FCA MJN 281

LEGISLATIVE INTENT SERVICE (800) 666-1917



DEPARTMENT
Finance

BILL NUMBER
AB 1367

AUTHOR
Tanner

AMENDMENT DATE
May 31, 1988

SUBJECT

AB 1367 is clean-up legislation for Chapter 1280/87 (Tanner) which relates to the motor vehicle third-party dispute resolution program. This bill modifies the fee collection process which assesses vehicle manufacturers for the cost of operating this program. This program operates within the Bureau of Automotive Repair and the Department of Motor Vehicles.

SUMMARY OF REASONS FOR SIGNATURE

AB 1367 improves the process for the collection of fees to fund the third-party resolution program which is administered by the Bureau of Automotive Repair and the Department of Motor Vehicles. These changes are needed to allow the fees to be collected in sufficient time to begin program operation on July 1, 1988.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year)			Code Fund
		(Dollars in Thousands)			
		FC 1987-88	FC 1988-89	FC 1989-90	
Consumer Affairs 1150/Bur of Auto. Repair	SO	-----No Fiscal Impact-----			128/Auto Repair
2740/Motor Vehicle Impact on State Appropriations Limit--No	SO	-----No Fiscal Impact-----			044/Mot Veh.

ANALYSIS

A. Specific Findings

Chapter 1280/87 revised the new car lemon law and required the bureau to certify third-party agencies which assist in dispute resolutions. AB 1367 revises the provisions of Chapter 1280/87 related to the collection of fees which provide funding for third-party resolutions by requiring every motor vehicle manufacturer to file a statement with the New Motor Vehicle Board, within the Department of Motor Vehicles, on or before May 1 of each year which identifies the number of vehicles sold, leased, or distributed in California. The manufacturer will pay a fee, not to exceed \$1 per vehicle, after written notification from the New Motor Vehicle Board specifying the amount to be paid. A penalty may be assessed if the fee is delinquent.

The Bureau of Automotive Repair will be required to notify the New Motor Vehicle Board of the dollar amount necessary to fund the third-party dispute resolution process on or before February 1 of each year.

(Continued)

RECOMMENDATION:
Sign the bill.

Department Director Date
Nancy Sweet *6/20/88*

Principal Analyst	Date	Program Budget Manager	Date	Governor's Office
<i>RH Baker</i> (222) R. H. Baker	<i>6/14/88</i>	<i>M Hill</i> Wallis L. Clark	<i>6-17-88</i>	Position noted Position approved Position disapproved
CJ:BA, AB1367-8/abb				by: date:

ENROLLED BILL REPORT

Form DF-43 (Rev 03/88 Pink)

FCA MJN 282



BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)

Form DF-43

AUTHOR	AMENDMENT DATE	BILL NUMBER
Tanner	May 11, 1988	AB 1367

ANALYSIS

A. Specific Findings (Continued)

AB 1367 authorizes the New Motor Vehicle Board to adopt regulations which contain a formula for calculating the fee for each motor vehicle and the total amount of fees to be collected from each manufacturer.

B. Fiscal Analysis

The Bureau of Automotive Repair and the New Motor Vehicle Board indicate that any costs associated with AB 1367 would be minor and absorbable within existing resources.

CJ:BA,AB1367-8/abb



DEPARTMENT OF Motor Vehicles	AUTHOR Tanner	BILL NUMBER AB 1367
SUBJECT Warranties: motor vehicle third-party dispute resolution		6-14-88

SUMMARY: Reverses the fee collection system that will fund the Bureau of Automotive Repair's third-party dispute resolution process, a recently added element of the "Lemon Law"; requires the New Motor Vehicle Board, rather than the Department of Motor Vehicles, to collect the fee.

SPONSOR: The bill is sponsored by the author.

IMPACT ASSESSMENT: The bill would transfer, from this department to the New Motor Vehicle Board, the responsibility for administering the fee collection system which, commencing July 1, 1988, will fund the Bureau of Automotive Repair's program for certification of third-party dispute resolution processes. The bureau's program is an expansion of the so-called "Lemon Law". The thrust of existing provisions specifying the fee amount, its disposition, and specific purpose would remain unchanged.

The bill would establish a 10% penalty for late payment of a delinquent fee and would take immediate effect as an urgency statute.

The bill would result in an annual savings of \$7,000 to this department.

ARGUMENTS PRO: If the New Motor Vehicle Board can collect the fee at a lesser cost than this department, the task should be transferred.

No known support.

ARGUMENTS CON: The provisions for the board to bill a licensee who fails to report based on the total new registrations of all motor vehicles distributed by that manufacturer during the preceding year would have no impact on this department if the board uses a Polk report as a source for that information as it has indicated can be done. This department is unsure, however, that the required information is available from that source.

Since this department's records of new vehicle registrations do not contain information that can be traced to determine the manufacturer or distributor of a vehicle, this department is incapable of producing the information if requested by the board.

No known opposition.

RECOMMENDATION

SIGN AS SOON AS POSSIBLE

FCA MJN 284

Department <i>[Signature]</i>	Date <i>6/15/88</i>	Agency <i>John K. Harper</i>	Date <i>6/16/88</i>
----------------------------------	------------------------	---------------------------------	------------------------



ASSEMBLY VOTE: 74-0

SENATE VOTE: 39-0

RECOMMENDATION: SIGN AS SOON AS POSSIBLE.

Though the above argument against the bill is valid, this department has no objection to transferring the fee collection tasks to the New Motor Vehicle Board. However, the transition will be greatly facilitated if it can begin quickly under the bill's urgency language. Such is desirable to avoid both this department and the board sending billing notices to manufacturers.

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ENROLLED BILL REPORT

Analyst: Gale Baker
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AGENCY: STATE AND CONSUMER SERVICES AGENCY	BILL NUMBER: AB 1367
DEPARTMENT, BOARD OR COMMISSION: CONSUMER AFFAIRS	AUTHOR: Tanner

SUMMARY

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Bill Summary

Existing law (Statutes of 1987, Chapter 1280) requires the Bureau of Automotive Repair (BAR) in the Department of Consumer Affairs to certify arbitration programs used for New Car Lemon Law disputes. The certification program, which is due to go into effect July 1, 1988, is to be funded by fees paid by automobile manufacturers and distributors.

Beginning July 1, 1988, every new and renewing applicant for a license as a manufacturer or distributor is required to include with its application a statement of the number of motor vehicles sold, leased or distributed by or for the applicant in California during the previous calendar year and to pay to the Department of Motor Vehicles (DMV) an amount specified by the New Motor Vehicle Board (NMVB), not to exceed \$1 per vehicle.)

By January 1 of each year, the BAR is required to determine the amount of money to be collected by the DMV beginning July 1 of that year, based on an estimate of the number of sales, leases and other dispositions of motor vehicles during the preceding calendar year, to fully fund the certification program. The BAR is required to notify the NMVB of the amount, not to exceed \$1 per vehicle, that the NMVB is to use to calculate the amount of fees to be collected from applicants.

This bill would revise and simplify the method of collecting the fees. Beginning July 1, 1988, and by May 1 of each calendar year thereafter, every manufacturer would be required to file with the NMVB a statement of the number of motor vehicles sold, leased or otherwise distributed by or for the manufacturer in California during the preceding calendar year and, upon written notice, to pay to the NMVB a fee not to exceed \$1 per vehicle sold, leased or distributed by or for the manufacturer in California during the preceding calendar year. The fees would be due no later than 30 days after the manufacturer has received notice of the amount due. A 10 percent penalty would be assessed for fees that are more than 30 days late.

VOTE:	Assembly	Partisan	Senate	Partisan
		R D		R D
Floor:	74-0		Floor:	39-0
Policy Committee:	8-0		Policy Committee:	8-0
Fiscal Committee:	N/A		Fiscal Committee:	N/A

RECOMMENDATION TO GOVERNOR: SIGN VETO NO POSITION DEFER TO OTHER AGENCY FCA MJN 286

DEPARTMENT DIRECTOR: James Carl DATE: 6/17/88 AGENCY SECRETARY: Tanner DATE: 6/20/88

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If a manufacturer fails to file the statement by the date required, the NMVB would be required to assess the amount due from the manufacturer by using the total number of new registrations of all motor vehicles sold, leased or otherwise distributed by or for the manufacturer during the preceding calendar year.

By February 1 of each year, the BAR would be required to notify the NMVB of the amount necessary to fully fund the certification program during the coming fiscal year. The NMVB would use this information in calculating the fees to be assessed manufacturers.

Existing law authorizes the NMVB to adopt regulations to implement its duties with respect to the collection of fees for the above certification program. This bill would require the regulations to include, at a minimum, a formula for calculating the fee for each motor vehicle and the total amount of fees to be collected.

This bill contains an urgency clause.

Background

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

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

AB 2057 (Tanner; Statutes of 1987, Chapter 1280) established a program within the Bureau of Automotive Repair (BAR) to certify Lemon Law arbitration programs. The certification program, which is due to commence July 1, 1988, is to be fully funded by fees collected from motor vehicle manufacturers and distributors and their branches.

The purpose of this bill is to establish a more direct and less burdensome method of collecting fees to fund the certification program.



Specific Findings

This bill would simplify the collection process by requiring the NMVB to calculate the fees, bill the automobile manufacturers, and collect the fees directly for deposit in the Certification Account. Thus, the involvement of the DMV and undue complication of the license application and renewal process would be avoided.

The urgency clause is necessary to ensure that the new fee provisions are operative prior to the July 1 effective date of the certification program.

Fiscal Impact

None to the department.

Argument

Interested Parties

Proponents: Author (sponsor)
New Motor Vehicle Board

Opponents: None known

The purpose of and argument for this bill are set forth under Background and Specific Findings, above.

The Department of Motor Vehicles has no position on the bill yet. The automobile manufacturers have no problems with the bill.

Recommendation

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



THIRD READING

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	AB 1367
	Author:	Tanner (D)
	Amended:	5/31/88 in Senate
	Vote Required:	2/3 - Urgency

Committee Votes:

Senate Floor Vote

COMMITTEE: JUDICIARY		
BILL NO.:	AB 1367	
DATE OF HEARING:	5-24-88	
SENATORS:	AYE	NO
Doolittle		
Keene	✓	
Marks	✓	
Petris	✓	
Presley	✓	
Richardson		
Roberts	✓	
Torres	✓	
Watson		
Davis (VC)	✓	
Lockyer (Ch)	✓	
VIA:	810	

Assembly Floor Vote: NOT RELEVANT

SUBJECT: Warranties: motor vehicle third-party dispute resolution

SOURCE: Author

DIGEST: This bill provides that automobile manufacturers be billed directly by the vehicle board to support the certification of third-party dispute resolution programs, through fees to be determined on the basis of annual sales.

ANALYSIS: The existing "Lemon Law" establishes procedures whereby the purchaser of a new defective motor vehicle might obtain redress. Central to the process is the submittal of contentions between purchasers and manufacturers to a third-party dispute resolution program. Under AB 2057 (Tanner) of last year, the Bureau of Automotive Repair is charged with the responsibility of certifying the dispute resolution processes to be used in the arbitration of Lemon Law cases. That certification program, operative July 1 of this year, is to be funded by the imposition of fees collected by the Department of Motor Vehicles on every applicant for license or license renewal as a manufacturer or distributor of automobiles. The amount of the fee is to be determined by the new Motor Vehicle Board, based on estimate of need by the Bureau of Automotive Repair and calculated on a per-transaction basis not to exceed one dollar per vehicle. A statement of transactions and the appropriate fee is to accompany the application to the Department of Motor Vehicles, which deposits the proceeds in a Certification Account to be appropriated to the Bureau by the Legislature.

This bill would simplify the collection process by requiring the new Motor Vehicle Board to calculate the fees, bill the auto manufacturers only by

CONTINUED

FCA MJN 289

certified mail, return receipt requested, and collect the fees directly for deposit in the Certification Account. Involvement of the Department of Motor Vehicles, and undue complication of the license application and renewal processes, would thereby be avoided.

This bill also provides the Vehicle Board may adopt specific regulations relative to enforcing this section. The regulations will include a formula for calculating the fees as well as the total amount of fees that may be collected from each manufacturer.

The purpose of this measure is to establish a more direct and less administratively burdensome method of collecting fees for the certification of Lemon Law dispute resolution programs.

Establishing the responsibility of auto manufacturers for defects in products for which they have made an expressed warranty has been the subject of legislative activity for nearly a decade. The essence of a Lemon Law is to provide the purchaser with a statutory framework through which he or she might be made whole for losses incurred in the purchase of an inherently defective automotive product. Under current law, submittal of disputes between a manufacturer and a consumer to a third-party arbitration has become an accepted procedure. However, in the passage of AB 2057, the Legislature recognized the need to ensure that dispute resolution processes as may be offered by the manufacturer meet accepted procedural standards. To this end, the Bureau of Automotive Repair was charged with the certification of the processes to be made available to consumers.

The responsibility of manufacturers to fund the certification program was determined in last year's legislation; however, the manner in which the funding is to be collected seems administratively cumbersome, involving three agencies and tied to the regular licensing and license renewal process of the DMV. The process proposed in this measure is simpler and more direct: manufacturers would inform the New Motor Vehicle Board of their transactions by May 1 of each year, would receive a notice of assessment from the Board, and would forward payment for deposit to the certification account within 30 days of notice. A penalty of 10% would be imposed for delinquency. Failure to notify the Board of sales, leases, etc., would result in an assessment paid on the preceding year's transactions. The Bureau would continue to be responsible for calculating the level of funding needed.

Prior Legislation:

AB 2057 (Tanner-1987) - Senate Vote 39-0, Pg. 3674, Chaptered.

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

RJG:nf 6/1/88 Senate Floor Analyses



CALIFORNIA LEGISLATURE

1987-88 REGULAR SESSION

SUMMARY DIGEST

of

Statutes Enacted and Resolutions (Including Proposed
Constitutional Amendments) Adopted in 1988

and

1979-1988 Statutory Record

VOLUME ONE



DARRYL R. WHITE
Secretary of the Senate

R. BRIAN KIDNEY
Chief Clerk of the Assembly

Compiled by
BION M. GREGORY
Legislative Counsel

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calendar year. The bill would apply only to horseracing meetings that commence on or after the effective date of the bill.

The bill would declare that it is to take effect immediately as an urgency statute.

Ch. 200 (AB 3010) Floyd. Electrical generators.

Existing law requires any owner, renter, or lessee who possesses an electric generator to notify the public utility or utility district of the presence of the generator on the premises.

This bill would, instead, require any owner, renter, or lessee who possesses and operates an electrical generator when the generator is connected to a commercial, industrial, or residential structure's electrical system which is connected to the service of a public utility or public utility district to notify the utility of the location of the generator.

Ch. 201 (SB 679) Rosenthal. Telephones: information providers. messages constituting harmful matter.

Under existing law, the Public Utilities Commission is directed to require telephone corporations to offer to residential telephone subscribers a means to delete access to information-access telephone services for a charge of not more than \$5 and to require telephone corporations and information providers to institute a method of handling subscribers' complaints, as specified.

This bill would direct the commission to impose no charge on subscribers for this deletion of access option, to require telephone corporations to refund to subscribers any amounts paid for deletion of access prior to the effective date of this bill, and to determine and implement a method to recompense telephone corporations for the expenses of providing this deletion of access option

The bill would, in addition, direct the commission to require every telephone corporation which furnishes information-access telephone service to make available a separate telephone prefix number for information providers which provide messages constituting harmful matter, as defined, and for those which provide other than messages constituting harmful matter, and to request every information provider to designate which prefix corresponds to its type of messages. The bill would make every information provider which provides messages constituting harmful matter through any telephone number other than one within a prefix assigned to its type of service subject to specified civil penalties. The bill would direct the commission to require the telephone corporation to offer residential subscribers the option of deleting access to the telephone prefix number which accesses messages constituting harmful matter and to determine and implement a method to recompense telephone corporations for the expenses of providing this deletion of access option.

The bill would declare that it is to take effect immediately as an urgency statute.

Ch. 202 (AB 513) Hill. Healing arts: pharmacy.

Existing law defines a manufacturer for purposes of regulating the practice of pharmacy and excepts from that definition a pharmacy which manufactures drugs on the immediate premises where the drug is sold to the ultimate consumer.

This bill would also except from that definition a pharmacy compounding a drug for parenteral therapy, pursuant to a prescription, for delivery to another pharmacy for delivering or administering the drug to a prescription patient under specified conditions.

The bill would require a pharmacy compounding a drug pursuant to that provision to report that information to the board within 30 days of commencing that compounding.

Ch. 203 (AB 1367) Tanner. Warranties. motor vehicle third-party dispute resolution.

Under existing law, on July 1, 1988, the Certification Account is created within the Automotive Repair Fund. This account is to be funded by fees imposed upon applicants for licenses as manufacturers or distributors or for renewal of licenses as manufacturers or distributors. The fees are to be collected by the New Motor Vehicle Board and are

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



to be expended upon appropriation by the Legislature to pay the expenses of the Bureau of Automotive Repair in administering the program for certification of third-party dispute resolution processes. On or before January 1 of each calendar year, the bureau is to determine, as specified, the dollar amount to be collected by the Department of Motor Vehicles and to notify the board of this dollar amount. Existing law provides that the board may adopt regulations to implement the foregoing provisions

This bill would revise the provisions relating to the collection of fees to delete the references to applicants for licenses or renewal of licenses as manufacturers or distributors. The bill would instead require every manufacturer to file a statement on or before May 1 of each year which contains specified information and to pay a fee within a specified time after written notification by the board. The bill would also make related changes. A penalty would be assessed against the manufacturer for delinquent payments.

This bill would require the bureau to notify the board of the dollar amount necessary to fully fund the third-party dispute resolution process on or before February 1, but would not specify the method by which the board is to determine the dollar amount.

This bill would provide that the regulations which the board may adopt to implement the provisions relating to the collection of fees shall include, at a minimum, a formula for calculating the fee to be collected for each motor vehicle and the total amount of fees to be collected from each manufacturer.

This bill would declare that it is to take effect immediately as an urgency statute.

Ch. 204 (AB 2898) Lewis Orange County Harbors, Beaches and Parks District park conversion

Existing provisions of the State Beach, Park, Recreational, and Historical Facilities Bond Act of 1974 require that property acquired with bond act grant funds be used by the grantee only for the purpose for which the funds were requested and that no other use be permitted except by a specific act of the Legislature.

This bill would authorize the Orange County Harbors, Beaches and Parks District, or any successor agency, to convert the Lower Santiago Creek Regional Park, which was acquired with bond act funds, to other uses if the district, or any successor agency, acquires substitute parklands or develops new recreational facilities on existing parklands, as specified. The bill would require the district, or any successor agency, to enter into an agreement with the Department of Parks and Recreation governing the use of the substitute parklands or new recreational facilities prior to the conversion.

The bill would declare that it is to take effect immediately as an urgency statute.

Ch 205 (SB 729) McCorquodale Sales and use tax exemptions. student yearbooks and catalogs

The existing California Sales and Use Tax Law imposes a state tax on the sale or use of tangible personal property unless the sale or use is exempt from the tax. This law provides that any public school, school district, or student organization shall not be considered a retailer for purposes of the law with respect to yearbooks and catalogs prepared for and by it and distributed to students, thereby exempting yearbook and catalog sales to students by these entities from the tax.

This bill would further provide that any county office of education also shall not be considered a retailer with respect to yearbooks and catalogs prepared for and by it and distributed to students, thereby also exempting yearbook and catalog sales to students by any county office of education from the tax.

Under existing law, 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 no reimbursement or appropriation is made to local agencies because revenue losses to local agencies due to the bill, if any, are minor and will not cause any financial burden to local government.

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Vol. 8, No. 3

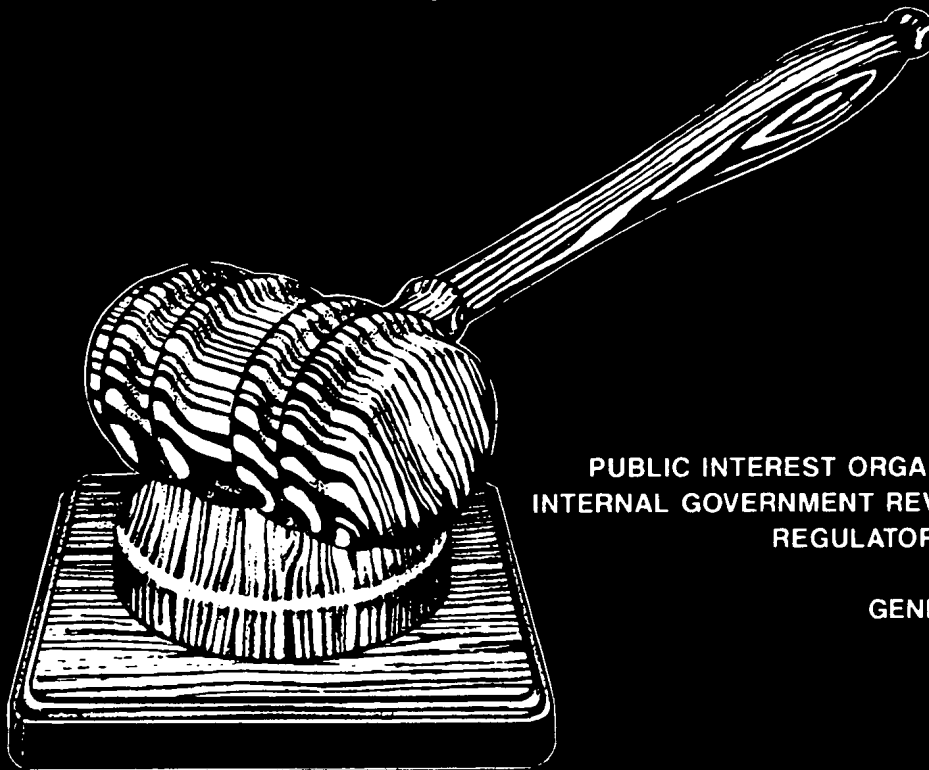
Summer 1988

FEATURE ARTICLE

Access to Public Utility Billing Envelopes :
The Changing Fortunes of Consumer Representation
in PUC Proceedings

COMMENTARY

An Open Letter to Our Colleagues in the Media



PUBLIC INTEREST ORGANIZATION ACTIVITY
INTERNAL GOVERNMENT REVIEW OF AGENCIES
REGULATORY AGENCY ACTION
LITIGATION
GENERAL LEGISLATION

Published by the Center for Public Interest Law
University of San Diego School of Law

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REGULATORY AGENCY ACTION

rights to the water to which it was entitled under several pre-1953 licenses prior to the September 9, 1953 effective date of the statutes, and thus was not being divested of any water rights.

Thus, the appellate court ordered the trial court to issue the appropriate writs commanding the WRCB to "exercise its discretion to conduct proceedings for revocation of licenses 10191 and 10192, subject to its authority to reissue them consistent with section 5946, as construed in this opinion."

On June 22, however, the court granted LAWP's motion for reconsideration and temporarily withdrew its May 23 opinion, in order to consider LAWP's objections to alleged factual errors in the court's original opinion. If the appellate court reinstates its opinion, LAWP has suggested it will appeal the ruling to the California Supreme Court.

RECENT MEETINGS:

At its May meeting, the Board considered a proposed extension of the State Mussel Watch program (SMW), which it has funded since 1977 in conjunction with the DFG. SMW began as a renewable interagency agreement to monitor and analyze mussels for absorbed toxic metals and organics. (See CRLR Vol. 6, No. 3 (Summer 1986) p. 74 for background information.) The program is also designed to provide long-term information on the existence and relative quantities of toxic pollutants such as pesticides. Information from the program is used to track temporal trends and geographic distribution of toxic substances along the California coast. If the Board refunds SMW, the interagency agreement would extend to July 1989. Proposed survey sites for the 1988-89 program tentatively include a continuation of research in ocean areas near the Diablo Canyon Power Plant, the Elk River Treatment Plant, the U.S. Naval Weapons Station at Seal Beach, the San Diego Creek, and San Diego Bay.

Also at its May meeting, the Board considered whether to extend its toxic substances monitoring program (TSMP) designed to detect toxic pollutants in fish and other aquatic organisms. By examining fish livers for metals analysis and flesh for mercury and synthetic organics analyses, TSMP provides the state and regional boards with long-term trends of pollutants and their quantities in fresh surface waters. TSMP also identifies potential problems in inland water areas which might warrant further study. This program also oper-

ates through an interagency agreement with the DFG, which expires in 1989. Streams and lakes sampled under the TSMP include the Russian River, the New River, the Kesterson Reservoir, the Sacramento Slough, the Salton Sea, San Diego Creek, Sweetwater Marsh, and the Tijuana River.

FUTURE MEETINGS:

Workshop meetings are generally held the first Wednesday and Thursday of the month. For exact times and meeting locations, contact Maureen Marche at (916) 445-5240.



INDEPENDENTS

AUCTIONEER COMMISSION

*Executive Officer: Karen Wyant
(916) 324-5894*

The Auctioneer and Auction Licensing Act was enacted in 1982 (AB 1257, Chapter 1499, Statutes of 1982) and established the California Auctioneer Commission to regulate auctioneers and auction businesses in California.

The Act was designed to protect the public from various forms of deceptive and fraudulent sales practices by establishing minimal requirements for the licensure of auctioneers and auction businesses and prohibiting certain types of conduct.

The Auctioneer and Auction Licensing Act provided for the appointment of a seven-member Board of Governors, composed of four public members and three auctioneers, to enforce the provisions of the act and to administer the activities of the Auctioneer Commission. Members of the Board are appointed by the Governor for four-year terms. Each member must be at least 21 years old and a California resident for at least five years prior to appointment. In addition, the three industry members must have a minimum of five years' experience in auctioneering and be of recognized standing in the trade.

The Act provides assistance to the Board of Governors in the form of a council of advisers appointed by the Board for one-year terms. In September 1987, the Board disbanded the council of advisers and replaced it with a new Advisory Council (see CRLR Vol. 7, No. 4 (Fall 1987) p. 99 for background information).

MAJOR PROJECTS:

Proposed Regulations Rejected. On May 2, the Office of Administrative Law (OAL) rejected the Commission's proposed section 3527, Chapter 35, Title 16 of the California Code of Regula-

tions, requiring specific disclosures on consignor contracts. (See CRLR Vol 8, No. 2 (Spring 1988) p. 113; Vol. 8, No. 1 (Winter 1988) p. 99; and Vol. 7, No. 4 (Fall 1987) p. 99 for complete background information.) This marks the second time that OAL has rejected the proposed wording for lack of clarity. According to OAL, consumers may become confused when they are informed that licensed auctioneers are "bonded to the Commission in the amount of \$10,000 for all occurrences." OAL believes this may be construed to mean either that the total maximum bonding coverage is \$10,000, or that the licensee is bonded for \$10,000 for each and every occurrence.

The Commission was scheduled to discuss the rejection and whether to resubmit the language to OAL at its June 30 meeting.

Warnings to Licensees. In May, the Commission warned licensees to carefully review their contracts to assure compliance with section 5776(k) of the Business and Professions Code. Failure to include the information required by section 5776(k) could result in a \$250 fine. Licensees were also cautioned to prominently post the sign required by section 5775(c) at the main entrance of each auction sale. Fines of \$50 for a first violation are being assessed whenever such a violation is observed by the Executive Officer. The sign must be 18" x 24" and state "The [or "this"] auction is being conducted pursuant to section 2328 of the Commercial Code, section 235 of the Penal Code, and the provisions of the California Auctioneer and Auction Licensing Act. California Auctioneer Commission, 1130 K Street, Suite 1120, Sacramento, CA 95814."

FUTURE MEETINGS:

To be announced.

FCA MJN 297

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steward at the track where the meeting is being conducted to be responsible for monitoring the satellite wagering activities at the track and at all satellite wagering facilities receiving the signal. Instead, this bill would require the Board to contract with persons licensed as stewards to perform duties as Board representatives at satellite wagering facilities with an average daily handle of \$100,000 or more, but would prohibit the assigning of more than one steward per event. This bill is pending in the Assembly Committee on Governmental Organization.

SB 2010 (Maddy), as amended May 17, was signed by the Governor on June 8 (Chapter 138, Statutes of 1988). Existing law requires any person claiming money from a parimutuel pool to file a claim with the CHRB within sixty days after the close of a horse racing meeting and requires any unclaimed money from a parimutuel pool to be paid to the Board ninety days after the close of the meeting. This bill requires a person to file a claim for money from a parimutuel pool with the association issuing the ticket within 120 days after the close of the meeting, and deletes the provisions for filing claims with the Board. The bill also requires any unclaimed money from a parimutuel pool to be paid to the Board 120 days after the close of the meeting, with specified exceptions.

SB 532 (Keene), as amended June 13, would authorize the CHRB to permit quarter horse races over distances of up to 5-1/2 furlongs. At this writing, this bill is pending in the Assembly Ways and Means Committee.

The following bills died in committee or were dropped by their authors: *AB 3198 (Bane)*, regarding harness racing at the 22nd District Agricultural Association (Del Mar); and *AB 2318 (Waters)*, regarding state license fees for mixed breed meetings.

FUTURE MEETINGS:

August 26 at Del Mar.
 September 23 at San Mateo.
 October 21 at Arcadia.
 November 18 at Los Angeles.
 December 16 at Los Angeles.

NEW MOTOR VEHICLE BOARD

Executive Officer: Sam W. Jennings
 (916) 445-1888

The New Motor Vehicle Board (NMVB) licenses new motor vehicle dealerships and regulates dealership relocations and manufacturer terminations of franchises. It reviews disciplinary action taken against dealers by the Department of Motor Vehicles. Most licensees deal in cars or motorcycles.

The Board also handles disputes arising out of warranty reimbursement schedules. After servicing or replacing parts in a car under warranty, a dealer is reimbursed by the manufacturer. The manufacturer sets reimbursement rates which a dealer occasionally challenges as unreasonable. Infrequently, the manufacturer's failure to compensate the dealer for tests performed on vehicles is questioned.

The Board consists of four dealer members and five public members. The Board's staff consists of an executive secretary, three legal assistants and two secretaries.

MAJOR PROJECTS:

Proposed Regulations for Third Party Dispute Resolution Certification Program. At its June 22 meeting in Los Angeles, the Board was scheduled to consider proposed new Article 1.5, which (if approved) will be added to its regulations which appear in Title 13, California Code of Regulations. Article 1.5 will implement AB 2057 (Tanner) (Chapter 1280, Statutes of 1987), which added section 9889.75 to the Business and Professions Code. Section 9889.75 requires the NMVB to establish and administer the collection of fees for the purpose of fully funding the Bureau of Automotive Repair's Certification Program for Qualified Third Party Dispute Resolution Processes. (See CRLR Vol. 7, No. 4 (Fall 1987) pp. 40 and 104; and Vol. 7, No. 3 (Summer 1987) pp. 58-59 and 129 for background information on AB 2057.)

The Board has proposed two alternative versions of Article 1.5, and will adopt whichever version is appropriate depending upon whether AB 1367 (Tanner), which would amend section 9889.75, passes the legislature (*see supra* LEGISLATION). Alternative #1 assumes that AB 1367 fails to pass and section 9889.75 remains as it is. Section 9889.75 currently requires manufacturers to file a statement with their license application or renewal submitted to the Department of Motor Vehicles (DMV), which reports

the number of new motor vehicles which were sold, leased, or otherwise distributed by or for the manufacturer or distributor in California within the preceding calendar year. Under Alternative #1, the DMV will calculate the fee to be assessed from this statement, using 42 cents per new motor vehicle distributed, and the manufacturer will be notified by DMV to submit that fee to DMV at the time of license renewal or application.

Alternative #2 assumes that AB 1367 will amend section 9889.75 to require manufacturers to file a statement with the NMVB on or before May 1 of every year, which reports the number of new motor vehicles distributed by the manufacturer which were sold, leased, or otherwise distributed in California during the preceding calendar year. The NMVB would then determine the fee to be assessed per vehicle pursuant to a formula set forth in the proposed regulation. Alternative #2 also sets forth a delinquency period and delinquency penalties which are consistent with AB 1367.

LEGISLATION:

AB 1367 (Tanner), as amended May 31, would amend section 9889.75 of the Business and Professions Code. For purposes of the Certification Account which funds the Bureau of Automotive Repair's program for certification of third party dispute resolution processes, this bill would require every new motor vehicle manufacturer to file a statement on or before May 1 of each year which contains specified information, and to pay a fee within a specified time period after written notification by the NMVB. This bill also requires the NMVB, in adopting regulations to implement section 9889.75, to include a formula for calculating the fee to be collected for each motor vehicle and the total amount of fees to be collected from each manufacturer. (*See supra* MAJOR PROJECTS for related discussion.) AB 1367 was submitted to the Governor for approval on June 14.

AB 3659 (Duplissea), as amended on April 20, would proscribe specified acts relative to advertisements for the sale of vehicles, and would require specified information to be disclosed in those advertisements. The bill would also provide a definition of "manufacturer's suggested retail price" for purposes of those advertisements. This bill passed the Assembly on June 9 and is pending in the Senate Transportation Committee.

AB 4513 (Tanner), as amended April 20, would revise the definition of "motor vehicle" for the purpose of warranties,



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Attorney Misappropriation of Client Funds: Approaches Toward A Solution

The Agencies of California Speak Out About the Office of Administrative Law: A Startling Survey

Letters to the Editor

- **Public Interest Organization Activity**
- **Internal Government Review of Agencies**
- **Regulatory Agency Action**
- **Litigation**
- **General Legislation**

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REGULATORY AGENCY ACTION



STATE & CONSUMER SERVICES AGENCY (Department of Consumer Affairs)

BOARD OF ACCOUNTANCY

*Executive Officer: Della Bousquet
(916) 920-7121*

The Board of Accountancy (BOA), a twelve-member board, regulates, licenses and disciplines public accountants and certified public accountants (PAs and CPAs). Each member serves a four-year term and receives no compensation other than expenses incurred for Board activities. The Board establishes and maintains standards of qualification and conduct within the accounting profession, primarily through its power to license. It is a misdemeanor to practice accountancy without a license in California.

The Board's staff administers and processes the nationally standardized CPA examination. Approximately 16,000 applications are processed each year. Three to four thousand of these applicants successfully complete the entire exam and are licensed.

The current Board officers are President Sam Yellen, Vice President Henry Yee, and Secretary/Treasurer Jeffery Martin. On May 4, Senator Roberti, Chair of the Senate Rules Committee, appointed Joseph C. Tambe of West Covina as one of two Board public members. Mr. Tambe replaces Ralph Buon-Cristiana; his term will expire January 1, 1992.

On June 21, Governor Deukmejian appointed Walter F. Finch of Sacramento to the Board to replace Richard G. Gallup, whose term had expired. Mr. Finch is a public accountant and a member of the Society of California Accountants and the National Society of Public Accountants. His term will expire November 26, 1991.

MAJOR PROJECTS:

Regulatory Changes. BOA scheduled a November 17 hearing in San Francisco to consider the adoption of the following amendments and additions to its regulations, which appear in Chapter 1, Title 16 of the California Code of Regulations.

New section 66.1 would prohibit use of plural terms such as "and company" or "and associates" in a corporate name, unless the firm employs at least one full-time licensee and an assistant or consists of two or more licensees. A similar rule is already in effect for partnerships. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 44 for background information.)

Section 75.7 would be amended to allow the use of the term "CPA" in a corporate name if at least one shareholder is a CPA or has applied for a certificate. The remaining shareholders may be public accountants. This rule also conforms to the existing rule for partnerships.

Changes to section 87.5 would permit the Board's Administrative Committee to order a licensee to complete additional continuing education courses beyond the mandatory eighty hours every two years for minor infractions of the Business and Professions Code. Section 87.6 would permit the Positive Enforcement Committee to order specific courses within the eighty hours for similar minor infractions.

Proposed amendments to section 54 would clarify situations in which client information may be released and would require licensees to respond to Board inquiries by providing specific information within thirty days.

KMG Main Hurdman. The Board recently decided to nonadopt a proposed decision by Administrative Law Judge Ruth Aslte which recommends dismissal of charges brought by BOA against KMG Main Hurdman. According to BOA Executive Officer Della Bousquet, this is the first time any state board has attempted to discipline a major accounting firm. In March 1987, the firm merged with Peat Marwick Mitchell to form what is reported to be the world's largest accounting firm, Peat Marwick Main.

Charges of gross negligence against the firm and several individually named respondents are based on a 1985 audit of Technical Equities Corporation

(TEC). The methods used allegedly did not conform to generally accepted accounting principles and did not reveal TEC's financial instability. TEC went bankrupt in 1986, six months after the respondents issued a "clean opinion" indicating solvency. Earlier this year, Main Hurdman settled out of court with TEC investors for \$17.9 million in a private suit based on related negligence charges.

The Deputy Attorney General is prosecuting the Board's action and both parties submitted briefs on the proposed decision in August. The Board was scheduled to discuss the case in closed sessions on September 20 and October 6 before Administrative Law Judge Frank Britt.

Uniform CPA Examination. On May 25, the National Association of State Boards of Accountancy (NASBA) distributed a discussion memorandum and questionnaire to each state's Board of Accountancy, soliciting their responses to proposed changes in the Uniform CPA Examination.

The proposals, prepared by NASBA's Joint Coordinating Committee and the American Institute of Certified Public Accountants, are as follows: (a) combine the Accounting Theory and Practice sections of the exam and allocate the subjects differently; (b) change the test to an all-objective format (multiple choice, true/false); and (c) shorten the exam from two-and-one-half days to two days.

At the Board's June 29-30 meeting, BOA members expressed concern about the proposed changes and unanimously voted to follow the American Accounting Association's (AAA) opposition to the proposals. In a letter to NASBA's Joint Committee, AAA President William H. Beaver stressed the importance of non-objective testing of individual analysis and judgmental decisions. Mr. Beaver also pointed out that the current format allows a candidate to earn some credit for proper method even if the result is incorrect. In addition to AAA, approximately 70% of the state boards oppose the proposed changes.

NASBA was scheduled to consider the proposals at its regional meeting on September 25-28 in San Francisco, but is not likely to implement any changes in view of the overwhelming opposition.

Abolition of the Minority Representation Committee. In opposition to the Board's prior decision to abolish its Minority Representation Committee, Mr. Franco H. Consolacion, President of the Filipino Accountants Association,





REGULATORY AGENCY ACTION

\$25,000 in 1984. The horse won, and ten days later it came to the stewards' attention that the horse had in fact earned \$25,100 in 1984. Within one day of the receipt of this information, the stewards conducted an investigation and disqualified the horse. A hearing was subsequently conducted by Commissioner Felton of the CHRB as referee, who upheld the stewards' decision. Based on section 1754, Title 4, California Code of Regulations, which requires any protest or complaint against a horse to be made within 72 hours of the race, the horse's owner petitioned for a writ of mandate under Code of Civil Procedure section 1094.5, but the trial court denied the petition.

The Court of Appeal affirmed. It held that the CHRB had acted within a reasonable time in disqualifying the horse, since it was acting under Title 4, CCR, section 1750 (inquiry into complaints by stewards), and section 1592 (disqualification of ineligible horses), to which the 72-hour limitation of section 1754 does not apply. The court further held the CHRB did not engage in surreptitious rulemaking in violation of the Administrative Procedure Act in disqualifying the horse, and that its decision was supported by substantial evidence.

RECENT MEETINGS:

At its August 26 meeting in La Jolla, the CHRB passed a measure requiring that official programs include an indicator as to which horses are currently receiving Lasix medication or have recently been taken off Lasix medication.

FUTURE MEETINGS:

December 16 at Los Angeles.

NEW MOTOR VEHICLE BOARD

Executive Officer: Sam W. Jennings (916) 445-1888

The New Motor Vehicle Board (NMVB) licenses new motor vehicle dealerships and regulates dealership relocations and manufacturer terminations of franchises. It reviews disciplinary action taken against dealers by the Department of Motor Vehicles. Most licensees deal in cars or motorcycles.

The Board also handles disputes arising out of warranty reimbursement schedules. After servicing or replacing parts in a car under warranty, a dealer is reimbursed by the manufacturer. The manufacturer sets reimbursement rates which a dealer occasionally challenges as unreasonable. Infrequently, the manu-

facturer's failure to compensate the dealer for tests performed on vehicles is questioned.

The Board consists of four dealer members and five public members. The Board's staff consists of an executive secretary, three legal assistants and two secretaries.

On August 22, Governor Deukmejian removed automobile dealer Eminiano Reodia from the Board after he failed to explain the suspension of his automobile seller's license by the Department of Motor Vehicles. The Governor had appointed Reodia to the NMVB in 1983.

MAJOR PROJECTS:

Regulations for Third Party Dispute Resolution Certification Program Adopted. The Office of Administrative Law has approved amendments to the NMVB's regulations, which appear in Title 13, California Code of Regulations. These regulations have been adopted pursuant to the passage of AB 1367 (Tanner), which amends the existing statute requiring the NMVB to administer the collection of manufacturers' fees to fund the Bureau of Automotive Repair's (BAR) Certification Program for Qualified Third Party Dispute Resolution Processes. (*See supra* LEGISLATION; *see also* CRLR Vol. 8, No. 3 (Summer 1988) p. 123 for background information.)

New regulatory section 553.50 requires every new motor vehicle manufacturer to file a statement containing specified information by May 1 of each year. Section 553.60 sets forth a presumption of liability if the information required by section 553.50 is not received by the Board within the applicable time period, or it is determined by the Board that the information received is substantially inaccurate. Finally, section 553.70 assesses the fee for each vehicle by dividing the dollar amount necessary to fund BAR's certification program by the number of new motor vehicles sold, leased, or otherwise distributed in California during the preceding calendar year.

LEGISLATION:

AB 582 (Harris), as amended, regulates advertisements for the sale of new motor vehicles by motor vehicle brokers. Under existing law, it is unlawful for a licensed vehicle dealer to advertise or offer for sale any vehicle not actually on the dealer's premises or available to the dealer from the manufacturer or distributor. As specified, this bill makes it lawful to advertise or offer for sale any vehicle, if the advertising dealer has an

enforceable right of delivery of the vehicle from another dealer who has a similar right with the manufacturer or distributor of the vehicle. AB 582 was signed by the Governor on September 30 (Chapter 1583, Statutes of 1988).

AB 4020 (Sher), as amended on August 2, proscribes specified acts by a vehicle dealer licensed under the Vehicle Code relating to advertisements for the sale of vehicles. The bill requires specified information to be disclosed in those advertisements, and makes related changes regarding supplemental price stickers. AB 4020 was also signed by the Governor on September 30 (Chapter 1584, Statutes of 1988).

The following is a status update of bills discussed in CRLR Vol. 8, No. 3 (Summer 1988) at pages 123-24:

AB 1367 (Tanner) amends section 9889.75 of the Business and Professions Code, which requires the NMVB to establish and administer the collection of fees for the purpose of funding BAR's Certification Program for Qualified Third Party Dispute Resolution Processes. Manufacturers are required to file a statement with the NMVB which reports the number of new motor vehicles distributed by the manufacturer which were sold, leased, or otherwise distributed in California during the preceding calendar year. This bill also requires the NMVB to adopt regulations to implement section 9889.75, to include a formula for calculating the fee to be collected for each motor vehicle and the total amount of fees to be collected from each manufacturer. (*See supra* MAJOR PROJECTS for related discussion.) This bill was signed by the Governor on June 23 (Chapter 203, Statutes of 1988).

AB 3659 (Duplissea), as amended August 17, requires specified information to be disclosed in advertisements for the sale of vehicles. This bill also provides a definition of the term "manufacturer's suggested retail price" for purposes of those advertisements. On September 13, this bill was signed by the Governor (Chapter 843, Statutes of 1988).

AB 4513 (Tanner), as amended April 20, revises the definition of "motor vehicle" for the purpose of warranties, to include the chassis and that portion of a motorhome devoted to its propulsion. This bill also defines "motorhome" for warranty purposes. AB 4513 was signed by the Governor on August 29 (Chapter 697, Statutes of 1988).

SB 2863 (Doolittle), as amended on May 5, would have provided that any



2/05/18

FILED
Superior Court Of California
County Of Los Angeles

NOV 28 2018

By Shantal Luqueño Deputy Clerk

Superior Court of California
County of Los Angeles
Department 32

LISA NEIDERMEIER,
Plaintiff,

v.

FCA US LLC; et. al,
Defendants.

Case No.: BC638010

Hearing Date: November 28, 2018

~~TENTATIVE~~ ORDER RE:
MOTION FOR ATTORNEY'S FEES

BACKGROUND

This is a lemon law action under the Song-Beverly Consumer Warranty Act that came for trial on June 5, 2018. The jury found that: Lisa Niedermeier ("Plaintiff") purchased a new motor vehicle manufactured by Defendant FCA US LLC ("Defendant"); Defendant gave Lisa Niedermeier an express written limited warranty; the vehicle had defects covered by the express written limited warranty that substantially impaired the vehicle's use, value or safety to a reasonable buyer, etc. (See Judgment on the Jury Verdict 6/21/18). The jury found total damages of \$39,584.43, and the jury imposed \$59,376.65 as a penalty (Judgment on Jury Verdict ¶9). In total the jury awarded Plaintiff \$98,961.08 ^{from} ~~from~~ Defendant, ~~with interest.~~

EVIDENTIARY OBJECTIONS

The Court OVERRULES Plaintiff's evidentiary objections to the Declaration of Michelle Droeger.

ANALYSIS

2/05/18

1 Plaintiff Lisa Neidermeier ("Plaintiff") moves for attorney`s fees of \$278,983.55 in fees,
 2 costs and expenses. In prosecuting this case, the Plaintiff contends she incurred fees of \$12,750
 3 from the Knight Law Group LLP, (Mikhov Decl. ¶2; Exh. A) and \$147,231.25 in fees from
 4 Hackler Daghighian Martino and Novak ("HDMN"). (Daghighian Decl. ¶9; Exh. A.) Counsel
 5 request an enhancement of .5 in the amount of \$79,990.63. Plaintiff also seeks costs in the
 6 amount of \$39,011.67. (Mikhov Decl. ¶2, Exh. A-B; Daghighian Decl. ¶9, Exh. A.)

7 "The verified time statements of the attorneys, as officers of the court, are entitled to
 8 credence in the absence of a clear indication the records are erroneous." (*Horsford v. Board Of*
 9 *Trustees Of California State University* (2005) 132 Cal.App.4th 359, 396.) If the motion is
 10 supported by evidence, the opposing party must respond with specific evidence showing that the
 11 fees are unreasonable. (*Premier Med. Mgmt. Sys. v. California Ins. Guarantee Ass'n* (2008) 163
 12 Cal.App.4th 550, 560-63.) The Court has discretion to reduce fees that result from inefficient or
 13 duplicative use of time. (*Horsford* at 395.)

14 "The determination of what constitutes a reasonable fee generally 'begins with the
 15 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly
 16 rate....'" "[T]he lodestar is the basic fee for comparable legal services in the community; it may
 17 be adjusted by the court based on factors including, as relevant herein, (1) the novelty and
 18 difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to
 19 which the nature of the litigation precluded other employment by the attorneys, (4) the
 20 contingent nature of the fee award...." (*Graciano v. Robinson Ford Sales, Inc.* (2006) 144
 21 Cal.App.4th 140, 154.)

22 Knight Law Group

23 Plaintiff requests \$12,750 from the Knight Law Group LLP, (Mikhov Decl. ¶2; Exh. A).
 24 Plaintiff submits evidence of their hourly rates (Mikhov Decl. ¶¶17-23.) Given the evidence
 25 submitted by Plaintiff and the Court's experience in similar matters, the Court finds a reasonable

1 hourly rate for an attorney in Los Angeles with approximately 15 years of experience is \$450/hr;
2 approximately 10 years of experience is between \$350/hr; approximately 5 years of experience is
3 \$225/hr. The Court finds that 5 hours at \$450/hour (\$2,250); 6 hours at \$350/hour (\$2,100), and
4 10 hours at \$225/hour (\$2,250) is reasonable based on the billing entries submitted. Counsel's
5 hours were reduced based on the duplication of efforts across Plaintiff's firms and excessive time
6 spent reviewing Plaintiffs' documents.

7 The Court awards the Knight Law Group \$6,600 in reasonable attorney's fees.

8 Hackler Daghighian Martino & Novak, P.C.

9 Plaintiff requests \$147,231.25 from the HDMN, (Daghighian Decl. ¶9; Exh. A). Plaintiff
10 submits evidence of their hourly rates (Daghighian Decl. ¶¶3-8.) Given the evidence submitted
11 by Plaintiff and the Court's experience in similar matters, the Court finds that 150 hours at
12 \$450/hour (\$67,500); .25 hours at \$350/hour (\$87.50), 200 hours at \$250/hour (\$50,000), and
13 3.25 hours at \$75/hour (\$243.75) is reasonable based on the billing entries submitted. Counsel's
14 hours were reduced based on the excessive time billed on the instant motion, block billing, time
15 reviewing the file and duplication of billing entries (Daghighian Reply Decl ¶4).

16 The Court awards HDMN \$117,831.25 in reasonable attorney's fees.

17 Multiplier

18 Plaintiff requests a multiplier based on the contingency nature of the case and the
19 complexity of this case due to delays caused by Defendant. "The purpose of a fee enhancement,
20 or so-called multiplier, for contingent risk is to bring the financial incentives for attorneys
21 enforcing important constitutional rights. . . into line with incentives they have to undertake
22 claims for which they are paid on a fee-for-services basis." (*Ketchum v. Moses* (2001) 24 Cal.
23 4th 1122, 1132.) The Court finds that an upward adjustment to the lodestar is not warranted in
24 this action. This is a straight forward lemon law case. This case did not present any novel or
25 difficult issues, especially for attorneys as experienced as plaintiff's counsel. There is no


1 evidence that plaintiff's counsel was precluded from taking other cases. A downward adjustment
2 to the lodestar is not warranted either as Plaintiff's counsel took this case on a contingency.

3 Costs

4 Except as otherwise expressly provided by statute, a prevailing party is entitled as a
5 matter of right to recover costs in any action or proceeding." (CCP § 1032(b).) "Allowable
6 costs shall be reasonably necessary to the conduct of the litigation rather than merely convenient
7 or beneficial to its preparation." (CCP § 1033.5(c)(2).) "If the items appearing in a cost bill
8 appear to be proper charges, the burden is on the party seeking to tax costs to show that they
9 were not reasonable or necessary." (*Ladas v. California State Auto. Assn.* (1993) 19 Cal. App.
10 4th 761, 774.) "On the other hand, if the items are properly objected to, they are put in issue and
11 the burden of proof is on the party claiming them as costs." (*Ibid.*)

12 In opposition, Defendants do not object to any items in the Memorandum of Costs.
13 Accordingly, the Court GRANTS \$39,011.67 in Costs to Plaintiff as well.

14
15 DATED: November 28, 2018


Honorable Daniel S. Murphy
Judge, Los Angeles Superior Court

PROOF OF SERVICE

I, Matt Gregory, declare as follows:

I am employed in Washington, D.C. I am over the age of eighteen years, and I am not a party to this action. I am personally familiar with the business practice of Gibson, Dunn & Crutcher LLP for collection and processing of correspondence for mailing with the United States Parcel Service. My business address is 1050 Connecticut Avenue, Washington, D.C. 20036. My email address is mgregory@gibsondunn.com. On August 2, 2021, I served the attached Exhibits to FCA US LLC's Motion for Judicial Notice on the parties stated below, by the following means of service:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 2, 2021, in McLean, Virginia.

/s/ Matt Gregory
Matt Gregory

SERVICE LIST

Through TrueFiling

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Office of the Clerk
California Court of Appeal

Through U.S. Mail

Clerk of the Court
For Delivery to:
The Honorable Daniel S. Murphy,
Los Angeles Superior Court
Central District
111 North Hill Street
Los Angeles, CA 90012

STATE OF CALIFORNIA
Supreme Court of California**PROOF OF SERVICE**STATE OF CALIFORNIA
Supreme Court of CaliforniaCase Name: **NIEDERMEIER v. FCA US**Case Number: **S266034**Lower Court Case Number: **B293960**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **tdupree@gibsondunn.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	No. S266034 FCA Answer Brief on the Merits
MOTION	No. S266034 Motion for Judicial Notice
ADDITIONAL DOCUMENTS	Exhibits to Motion for Judicial Notice

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

8/2/2021

Date

/s/Thomas Dupree, Jr.

Signature

Dupree, Jr., Thomas (467195)

Last Name, First Name (PNum)

Gibson Dunn & Crutcher LLP

Law Firm