

S274625

**IN THE
SUPREME COURT OF CALIFORNIA**

EVERARDO RODRIGUEZ et al.,
Plaintiffs and Appellants,

v.

FCA US, LLC,
Defendant and Respondent.

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

EXHIBITS TO MOTION FOR JUDICIAL NOTICE
Volume 10 of 16 • Pages 554 – 736 of 1937

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ATTORNEYS FOR DEFENDANT AND RESPONDENT
FCA US, LLC

I. Sally's opening remarks

I. Courtney Turman: 1980 VW

19 repair attempts, equipment violations

Repairs didn't last.

Couldn't get hard facts about their legal rights

III. Arlene Schaeffer:

19

Seville

IV. J.A. "Alex" Smariga: 1980 Porsche 914

many problems — 3 severe

Exhaust fell off 8x

Bank of America has put auto loan in abeyance
F.T.C. ^{trade rule} interpretation of the contract terms

Chrysler

Al DAVIS (AF DAVIS)

- Donald Dayton

- Richard Thayer

- ~~David~~ Alley - S. Calif. Coordinator

- Bill

AL DAVIS

DON DAYTON

~~NASSAU~~ N.Y.

1 act for every 2 people

Reduced # of complaints

BOARD

3 voting / 2 nonvoting (1 dealer, 1 Chrysler)

NIASE-certified mechanic

Consumer advocate (acknowledge; AF)

LAY PUBLIC

Rule 703 FTC timeline

40 days

10 days to respond to complaint

Brochure in glove box, statement in owners manual

Posters in dealership

Binding on dealer, manufacturer but not consumer

54 Chrysler Boards nationwide

FTC ~~investig~~ gets copy of independent auditing report

~~1 year~~ started in October

mediation 1st

Arbitration 2nd

Two California Boards

L.A. (South)

SF. (North)

(1981 statistics)

59 started appeal

36 within jurisdiction

10 unfair of SF

26 in favor of consumer

78 started appeal

44 jurisdictional

9 to Chrysler & dealer

35 to Consumer

3% of people who went, referred by dealer

Chacon: what economic incentives does dealer have for going through arbitration

62% adverse (some recovery)

15% adverse dealer

Ran

77% national "won"

76. Calif. "won"

Boite Marketing Research

54% totally

21% somewhat

21% not at all SATISFIED

Cinnci

75% Fair

85% Not Fair.

59% Another Chrysler

90% thinking 557 are should call...

1981 - 1864 # of complaints in 1981

Started March 1979

Had to do this to sell cars

Richard Thayer - 2 cars from N.

Bill Aldey - 2 cars from S.

California recap

9% zone office

23% dealer

18 dealer display

5% news

5% TV

40% other

AUTOCLAP, BBB, DMV, NIMVB

How consumer funds not

AUTOCAP

JAY Gorman

Dealer problems not taken

rep
85%
franchise
new
auto dealers

TOLL FREE LINE : 1800-262-1482

1-213 776-0054

} Recording
device
after
hours.

ADVERTISEMENT: PSAs.

S. CAL newspapers

Chn 2 L.A.

Brochures

Provided dealer members
encouraged to give them to dealers

Receive telephone complaint

↳ written up

↳ send it to dealer

↳ mediation

↳ AUTOCAP panel - some dealers not all

S. California has a specialized
requirement that each dealer
sign up to be bound

Panel decisions are unique

finding on dealer & public info but
not Calif

475 members have signed agreements

\$60,000 budget

Administrative resolution in 95% of cases

rest are sent

1200
59 mediate

3,000 contacts of AUTOCAP

1200 written

59 went to panel (rest were administrative handled)

23 concurred

25 dealt w/ info

5 compromised

6 unresolved - avail info. inadequate

Penelope Longbottom Director, Consumer Relations

CURTIS RAYNOR

NADA

Existence since November, 1979

How long does it take? - It varies

1980 - every 2 month mtg.

1981 - quarterly mtg.

Possibly 45 day turnaround.

Is consumer there at hearing?

No. Everything is done in writing

Each side + a staff report.

- staff
- Panel members
- Guests (only, mtg rep.)

Actual Staffing

3 full time "administrative" resolvers

Promotion / advertising

needs more work.

Milton Andrews

A.I.A.

Why they picked AutoCap.

5 Reasons

1) Existing mature program

2) Conciliation / mediation

Consumer not bound

Don't Co. use

3) Balance bet. industry & mechanical experts and the consumer panel member

AIA in last year
6 cases ^{heard by panel} in last year
16 mfg
10,000

{ 1 case consumer mfg
1 case consumer loss
1 case not yet decided
3 decided for dealer, mfg }

Longbottom:

1980 stats (AUTOCAP)

5,240 logged (written) not counting phone

88% dealer

17% importers

12% went to a panel

78% were mediated by staff

44% consumer

35% dealer, mfg

17% compromise

TOYOTA is putting AUTOCAP info in owner's manual

4th reason: involve both dealer & mfg.

→ Cathie Wright: # of complaints vs # of cars sold
% comparison.

BBB. - Dean Determan

Started in N. Cal. in June 1980

S. Cal in Dec 1980

Get these →

(800) toll free lines in N & S. Cal.

Usually, 1 arbitrator

3 member panel for major (buybacks)

Unique

Neutral arbitrator

Binding arbitration

Consumer can

Survey

93% prefer binding

40% nationally approved binding nature

all disputes relating to vehicle & allegations

of mfg. rep., regardless of mileage

Consumer must still own the car.

BBB bring in technical expertise

when necessary

\$2,000,000 to run // \$20,000 in L.A.

UW - 36,000 + 3 months

GM - unlimited mileage / time

TIME

BBB mediates

14,000 complaints resolved \$500 in 1985 562'

600,000 on "800" WATS LINE

GM will put it in their business manual when they cover the nation.

Customer Satisfaction Survey

Calif. has higher complaint # & buy backs

1981

50 buy backs nationwide

49 } GM figure
23 }

23 in Calif.

"We've never had a default on any decision"

FORD CONSUMER APPEALS BOARD

Richard Dugally

Mr. McKilkey

Bill Baultas - Exec. Sec. N. Cal. FCA

5 Board Members

FORD PEARL
LINCOLN MERC.

3 Consumers

Not case involving sales transaction

" litigation

" consequential damages

Written Statements

526 756

422

55.8% no further action generated

195

25.8% 100% adjust. for 563 cases

139

18.4% mutual conc. adv.

Dealers are encouraged to ~~to~~ display a FCAB
offer Ford can't
resolve the
problem.

+ give to the customer
advertisement

SUNSET, TIME, NEWSWEEK

\$1,41,000 advertising budget

August of 1979 in Calif.
Other states prior to that.

MARY SLOW : CFC.

FCAB: Southern

Consumer can't appear

Uneven results from hearings

Phones overloaded & calls not returned

Used the CFC & Mary's name.

FORD MOTOR CO.
are there at
FCAB.

Ann Stargardter : Chrysler Board; Exec. Sec.

Exec. Sec. Consumer Rep. Technical Rep.

3 Board members -> + in Atty.

Technical expert can inspect the car

Opened July 1980

meet monthly written testimony

She has called some complainants

she gets the mail, assigns the

care no.

"CALL 3"
FOR
ACTION

Rosemary Shahan - Dunlap :
"Motor Vehicles"

120 members

SAN Diego

150 dealerships Court records 1975-1979
7th best market for cars

People are not being told about the arbitra-
tion program.

Nov. 1981 letter - no recourse past zone
manager "

Tribune article

Trying since 1979 to find out about
AUTOCAP & members. Just got names 2/9/82!

- Donna Selnick :

John Barros

Kathleen Hamilton :

Mediation program - need more

Reduce litigation

Corporate attitudes re corp prob.

good
program

Problem

Various different types of programs, each is
different

No excuse

2 general problems

- No consequential or punitive damages.

- No Promotion - eg. to local courts 565 pro

FCMB

Natl dealer magazines
Calling toll free # - you have to ask the
right question

~~FCMB~~

Must still own the car

Must retain possession of a
defective car while waiting

Customer can't participate in the process

Don't inspect any vehicles

Continues for > info. ~~is discouraged~~

Short time to review

AUTOCAP

NOT widely available

Consumers can't participate

BBB arbitration

Best program

NOT a proper response to legislation

other persons or circumstances, shall not be affected thereby. [1977 ch 907 § 1.]

§ 1788.32. [Remedies cumulative: Administrative regulations saved.] The remedies provided herein are intended to be cumulative and are in addition to any other

procedures, rights, or remedies under any other provision of law. The enactment of this title shall not supersede existing administrative regulations of the Director of Consumer Affairs except to the extent that those regulations are inconsistent with the provisions of this title. [1977 ch 907 § 1.]

TITLE 1.7

Consumer Warranties

Chapter

- 1. Consumer Warranty Protection. §§ 1790-1795.7.
- 2. Standards For Warranty Work. §§ 1796, 1796.5
- 3. Mobilehome Warranties. §§ 1797-1797.5.

CHAPTER 1

Consumer Warranty Protection

Article

- 1. General Provisions. §§ 1790-1790.4.
- 2. Definitions. §§ 1791-1791.3.
- 3. Sale Warranties. §§ 1792-1795.7.

ARTICLE 1

General Provisions

§ 1790. Title.

§ 1790.1. Enforceability of waiver.

§ 1790.2. Severability.

§ 1790.3. Construction in case of conflict with Commercial Code.

§ 1790.4. Cumulative remedies.

Cal Forms-6:2, 24:1.

§ 1790. [Title.] This chapter may be cited as the "Song-Beverly Consumer Warranty Act." [1970 ch 1333 § 1.] *Cal Jur 3d Consumer and Borrower Protection Laws § 190; Cal Forms-6:102; Witkin Summary (8th ed) pp 1128, 1277.*

§ 1790.1. [Enforceability of waiver.] Any waiver by the buyer of consumer goods of the provisions of this chapter, except as expressly provided in this chapter, shall be deemed contrary to public policy and shall be unenforceable and void. [1970 ch 1333 § 1.] *Cal Jur 3d Consumer and Borrower Protection Laws § 195; Witkin Summary (8th ed) pp 1150, 1220, 1278.*

§ 1790.2. [Severability.] If any provision of this chapter or the application thereof to any person or circumstance is held unconstitutional, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid

provision or application, and to this end the provisions of this chapter are severable. [1970 ch 1333 § 1.]

§ 1790.3. [Construction in case of conflict with Commercial Code.] The provisions of this chapter shall not affect the rights and obligations of parties determined by reference to the Commercial Code except that, where the provisions of the Commercial Code conflict with the rights guaranteed to buyers of consumer goods under the provisions of this chapter, the provisions of this chapter shall prevail. [1970 ch 1333 § 1.] *Cal Jur 3d Consumer and Borrower Protection Laws § 190; Cal Forms-24:3; Witkin Summary (8th ed) p 1128.*

§ 1790.4. [Cumulative remedies.] The remedies provided by this chapter are cumulative and shall not be construed as restricting any remedy that is otherwise available, and, in particular, shall not be construed to

supplant the provisions of the Unfair Practices Act. [1971 ch 1523 § 1, operative January 1, 1972; 1976 ch 416 § 1.] *Cal Jur 3d*

Consumer and Borrower Protection Laws § 190; Witkin Summary (8th ed) p 1219.

ARTICLE 2

Definitions

§ 1791. Definitions.

§ 1791.1. "Implied warranty of merchantability": "Implied warranty of fitness."

§ 1791.2. "Express warranty".

§ 1791.3. "As is": "With all faults".

§ 1791. [Definitions.] As used in this chapter:

(a) "Consumer goods" means any new product or part thereof that is used or bought for use primarily for personal, family, or household purposes, except for clothing and consumables. "Consumer goods" shall include new and used assistive devices sold at retail.

(b) "Buyer" or "retail buyer" means any individual who buys consumer goods from a person engaged in the business of manufacturing, distributing, or selling such goods at retail. As used in this subdivision, "person" means any individual, partnership, corporation, association, or other legal entity which engages in any such business.

(c) "Clothing" means any wearing apparel, worn for any purpose, including under and outer garments, shoes, and accessories composed primarily of woven material, natural or synthetic yarn, fiber, or leather or similar fabric.

(d) "Consumables" means any product which is intended for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use.

(e) "Distributor" means any individual, partnership, corporation, association, or other legal relationship which stands between the manufacturer and the retail seller in purchases, consignments, or contracts for sale of consumer goods.

(f) "Independent repair or service facility" or "independent service dealer" means any individual, partnership, corporation, association, or other legal entity, not an employee or subsidiary of a manufacturer or distributor, which engages in the business of servicing and repairing consumer goods.

(g) "Manufacturer" means any individual, partnership, corporation, association, or

other legal relationship which manufactures, assembles, or produces consumer goods.

(h) "Place of business" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the distribution point for such goods.

(i) "Retail seller," "seller," or "retailer" means any individual, partnership, corporation, association, or other legal relationship which engages in the business of selling consumer goods to retail buyers.

(j) "Return to the retail seller" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the retail seller's place of business, as defined in subdivision (h).

(k) "Sale" means (1) the passing of title from the seller to the buyer for a price, or (2) a consignment for sale.

(l) "Service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a consumer product.

(m) "Assistive device" means any instrument, apparatus, or contrivance, including any component or part thereof or accessory thereto, which is used or intended to be used, to assist a physically disabled person in the mitigation or treatment of an injury or disease or to assist or affect or replace the structure or any function of the body of a physically disabled person.

(n) "Catalogue or similar sale" means a sale in which neither the seller nor any employee or agent of the seller nor any person related to the seller nor any person with a financial interest in the sale participates in the diagnosis of the buyer's condition or in the selection or fitting of the device. [1970 ch 1333 § 1; 1971 ch 1523 § 2, operative January 1, 1972; 1976 ch 416 § 1.5; 1977 ch 598 § 1; 1979 ch 1023 § 1.] *Cal Jur 3d Consumer and Borrower Protection Laws §§ 191, 201; Cal Forms-6:102.*

24:2, 24:37; *Witkin Summary (8th ed)* pp 1129, 1154.

§ 1791.1. ["Implied warranty of merchantability": "Implied warranty of fitness."] As used in this chapter:

(a) "Implied warranty of merchantability" or "implied warranty that goods are merchantable" means that the consumer goods meet each of the following:

(1) Pass without objection in the trade under the contract description.

(2) Are fit for the ordinary purposes for which such goods are used.

(3) Are adequately contained, packaged, and labeled.

(4) Conform to the promises or affirmations of fact made on the container or label.

(b) "Implied warranty of fitness" means (1) that when the retailer, distributor, or manufacturer has reason to know any particular purpose for which the consumer goods are required, and further, that the buyer is relying on the skill and judgment of the seller to select and furnish suitable goods, then there is an implied warranty that the goods shall be fit for such purpose and (2) that when there is a sale of an assistive device sold at retail in this state, then there is an implied warranty by the retailer that the device is specifically fit for the particular needs of the buyer.

(c) The duration of the implied warranty of merchantability and where present the implied warranty of fitness shall be coextensive in duration with an express warranty which accompanies the consumer goods, provided the duration of the express warranty is reasonable; but in no event shall such implied warranty have a duration of less than 60 days nor more than one year following the sale of new consumer goods to a retail buyer. Where no duration for an express warranty is stated with respect to consumer goods, or parts thereof, the duration of the implied warranty shall be the maximum period prescribed above.

(d) Any buyer of consumer goods injured by a breach of the implied warranty of merchantability and where applicable by a breach of the implied warranty of fitness has the remedies provided in Chapter 6 (com-

mencing with Section 2601) and Chapter 7 (commencing with Section 2701) of Division 2 of the Commercial Code, and, in any action brought under such provisions, Section 1794 of this chapter shall apply. [1970 ch 1333 § 1; 1971 ch 1523 § 3, operative January 1, 1972; 1978 ch 991 § 2; 1979 ch 1023 § 1.5.] *Cal Jur 3d Consumer and Borrower Protection Laws* §§ 192, 193, 194, 203; *Cal Forms-24:1, 24:2; Witkin Summary (8th ed)* pp 1138, 1139, 1140, 1154.

§ 1791.2. ["Express warranty".] (a) "Express warranty" means:

(1) A written statement arising out of a sale to the consumer of a consumer good pursuant to which the manufacturer, distributor, or retailer undertakes to preserve or maintain the utility or performance of the consumer good or provide compensation if there is a failure in utility or performance; or

(2) In the event of any sample or model, that the whole of the goods conforms to such sample or model.

(b) It is not necessary to the creation of an express warranty that formal words such as "warrant" or "guarantee" be used, but if such words are used then an express warranty is created. An affirmation merely of the value of the goods or a statement purporting to be merely an opinion or commendation of the goods does not create a warranty.

(c) Statements or representations such as expressions of general policy concerning customer satisfaction which are not subject to any limitation do not create an express warranty. [1970 ch 1333 § 1; 1978 ch 991 § 2.5.] *Cal Jur 3d Consumer and Borrower Protection Laws* § 196; *Cal Forms-24:2, 24:12, 24:31; Witkin Summary (8th ed)* pp 1131, 1132, 1133, 1136.

§ 1791.3. ["As is": "With all faults".] As used in this chapter, a sale "as is" or "with all faults" means that the manufacturer, distributor, and retailer disclaim all implied warranties that would otherwise attach to the sale of consumer goods under the provisions of this chapter. [1970 ch 1333 § 1.] *Cal Jur 3d Consumer and Borrower Protection Laws* § 195; *Cal Forms-24:2.*

ARTICLE 3

Sale Warranties

§ 1792. Implied warranties: Manufacturer's warranty of merchantability.

§ 1792.1. Manufacturer's warranty of fitness for particular purpose.

§ 1792.2. Retailer's or distributor's warranty of fitness for particular purpose.

- § 1792.3. When waiver allowed.
- § 1792.4. Disclaimer: Contents of written notice: Catalog sales.
- § 1792.5. Effective waiver.
- § 1793. Express warranties.
- § 1793.02. Assistive devices sold at retail: Requisite warranty: Nonexclusiveness of rights and remedies provided.
- § 1793.05. Vehicle manufacturers altering new vehicles into housecars: Warranty responsibility.
- § 1793.1. Contents of written notice.
- § 1793.2. Duty of manufacturer making express warranty: Service and repair facilities, and servicing and repairing nonconforming goods: Buyer's delivery or notice, and transportation of goods to facility: Replacement of goods or reimbursement therefor.
- § 1793.3. Same: Buyer's remedies in absence of service and repair facilities: Option of retail seller to provide service or repair: Manufacturer to provide notice of buyer's courses of action.
- § 1793.35. Same: Replacement of or reimbursement for clothing or consumables.
- § 1793.4. Time for buyer to exercise option for service and repair.
- § 1793.5. Same: Manufacturer's liability to retailer on failing to maintain service facilities.
- § 1793.6. Same: Manufacturer's liability to independent service man performing services or incurring obligations.
- § 1794. Buyer's right to damages: Treble damages: Attorneys' fees.
- § 1794.1. Damages recoverable by retail seller and independent serviceman.
- § 1794.2. When triple damages provisions inapplicable.
- § 1794.3. Effect of unauthorized or unreasonable use of goods.
- § 1794.4. Service contract.
- § 1794.5. Alternative suggestions for repair.
- § 1795. Liability of one, other than manufacturer, making express warranty.
- § 1795.1. Components of air conditioning system.
- § 1795.5. Obligation of distributor or retail seller of used consumer goods on making express warranties: Duration of implied warranties.
- § 1795.6. Tolling the warranty period.
- § 1795.7. Effect of tolling on manufacturer's liability.

Cal Forms-24:31.

§ 1792. [Implied warranties: Manufacturer's warranty of merchantability.] Unless disclaimed in the manner prescribed by this chapter, every sale of consumer goods that are sold at retail in this state shall be accompanied by the manufacturer's and the retail seller's implied warranty that the goods are merchantable. The retail seller shall have a right of indemnity against the manufacturer in the amount of any liability under this section. [1970 ch 1333 § 1; 1971 ch 1523 § 4, operative January 1, 1972; 1978 ch 991 § 3.] *Cal Jur 3d Consumer and Borrower Protection Laws § 192; Cal Forms-6:102, 24:1, 24:21; Witkin Summary (8th ed) pp 1138, 1154.*

§ 1792.1. [Manufacturer's warranty of fitness for particular purpose.] Every sale of consumer goods that are sold at retail in this state by a manufacturer who has reason to

know at the time of the retail sale that the goods are required for a particular purpose and that the buyer is relying on the manufacturer's skill or judgment to select or furnish suitable goods shall be accompanied by such manufacturer's implied warranty of fitness. [1970 ch 1333 § 1; 1971 ch 1523 § 5, operative January 1, 1972; 1978 ch 991 § 4.] *Cal Jur 3d Consumer and Borrower Protection Laws § 193; Witkin Summary (8th ed) pp 1140, 1154.*

§ 1792.2. [Retailer's or distributor's warranty of fitness for particular purpose.] (a) Every sale of consumer goods that are sold at retail in this state by a retailer or distributor who has reason to know at the time of the retail sale that the goods are required for a particular purpose, and that the buyer is relying on the retailer's or distributor's skill or judgment to select or furnish suitable

goods shall be accompanied by such retailer's or distributor's implied warranty that the goods are fit for that purpose.

(b) Every sale of an assistive device sold at retail in this state shall be accompanied by the retail seller's implied warranty that the device is specifically fit for the particular needs of the buyer. [1970 ch 1333 § 1; 1971 ch 1523 § 6, operative January 1, 1972; 1978 ch 991 § 5; 1979 ch 1023 § 2.] *Cal Jur 3d Consumer and Borrower Protection Laws § 193; Cal Forms-24:1; Witkin Summary (8th ed) p 1140.*

§ 1792.3. [When waiver allowed.] No implied warranty of merchantability and, where applicable, no implied warranty of fitness shall be waived, except in the case of a sale of consumer goods on an "as is" or "with all faults" basis where the provisions of this chapter affecting "as is" or "with all faults" sales are strictly complied with. [1970 ch 1333 § 1.] *Cal Jur 3d Consumer and Borrower Protection Laws § 195; Cal Forms-24:1; Witkin Summary (8th ed) pp 1148, 1150.*

§ 1792.4. [Disclaimer: Contents of written notice: Catalog sales.] (a) No sale of goods, governed by the provisions of this chapter, on an "as is" or "with all faults" basis, shall be effective to disclaim the implied warranty of merchantability or, where applicable, the implied warranty of fitness, unless a conspicuous writing is attached to the goods which clearly informs the buyer, prior to the sale, in simple and concise language of each of the following:

(1) The goods are being sold on an "as is" or "with all faults" basis.

(2) The entire risk as to the quality and performance of the goods is with the buyer.

(3) Should the goods prove defective following their purchase, the buyer and not the manufacturer, distributor, or retailer assumes the entire cost of all necessary servicing or repair.

(b) In the event of sale of consumer goods by means of a mail order catalog, the catalog offering such goods shall contain the required writing as to each item so offered in lieu of the requirement of notification prior to the sale. [1970 ch 1333 § 1; 1971 ch 1523 § 6.5, operative January 1, 1972.] *Cal Jur 3d Consumer and Borrower Protection Laws § 195; Cal Forms-24:1, 24:11; Witkin Summary (8th ed) p 1148.*

§ 1792.5. [Effective waiver.] Every sale of goods that are governed by the provisions

of this chapter, on an "as is" or "with all faults" basis, made in compliance with the provisions of this chapter, shall constitute a waiver by the buyer of the implied warranty of merchantability and, where applicable, of the implied warranty of fitness. [1970 ch 1333 § 1; 1971 ch 1523 § 6.5, operative January 1, 1972.] *Cal Jur 3d Consumer and Borrower Protection Laws § 195; Cal Forms-24:1, 24:21; Witkin Summary (8th ed) p 1148.*

§ 1793. [Express warranties.] Except as provided in Section 1793.02, nothing in this chapter shall affect the right of the manufacturer, distributor, or retailer to make express warranties with respect to consumer goods. However, a manufacturer, distributor, or retailer, in transacting a sale in which express warranties are given, may not limit, modify, or disclaim the implied warranties guaranteed by this chapter to the sale of consumer goods. [1970 ch 1333 § 1; 1971 ch 1523 § 7, operative January 1, 1972; 1978 ch 991 § 6; 1979 ch 1023 § 3.] *Cal Jur 3d Consumer and Borrower Protection Laws §§ 195, 196; Cal Forms-6:102, 24:1, 24:12; Witkin Summary (8th ed) p 1148.*

§ 1793.02. [Assistive devices sold at retail: Requisite warranty: Nonexclusiveness of rights and remedies provided.] (a) All new and used assistive devices sold at retail in this state shall be accompanied by the retail seller's written warranty which shall contain the following language: "This assistive device is warranted to be specifically fit for the particular needs of you, the buyer. If the device is not specifically fit for your particular needs, it may be returned to the seller within 30 days of the date of actual receipt by you or completion of fitting by the seller, whichever occurs later. If you return the device, the seller will either adjust or replace the device or promptly refund the total amount paid. This warranty does not affect the protections and remedies you have under other laws." In lieu of the words "30 days" the retail seller may specify any longer period.

(b) The language prescribed in subdivision (a) shall appear on the first page of the warranty in at least 10-point bold type. The warranty shall be delivered to the buyer at the time of the sale of the device.

(c) If the buyer returns the device within the period specified in the written warranty, the seller shall, without charge and within a reasonable time, adjust the device or, if appropriate, replace it with a device that is

specifically fit for the particular needs of the buyer. If the seller does not adjust or replace the device so that it is specifically fit for the particular needs of the buyer, the seller shall promptly refund to the buyer the total amount paid, the transaction shall be deemed rescinded, and the seller shall promptly return to the buyer all payments and any assistive device or other consideration exchanged as part of the transaction and shall promptly cancel or cause to be cancelled all contracts, instruments, and security agreements executed by the buyer in connection with the sale. When a sale is rescinded under this section, no charge, penalty, or other fee may be imposed in connection with the purchase, fitting, financing, or return of the device. (d) With respect to the retail sale of an assistive device to an individual, organization, or agency known by the seller to be purchasing for the ultimate user of the device, this section and subdivision (b) of Section 1792.2 shall be construed to require that the device be specifically fit for the particular needs of the ultimate user.

(e) This section and subdivision (b) of Section 1792.2 shall not apply to any sale of an assistive device which is a catalogue or similar sale or which involves a retail sale price of less than fifteen dollars (\$15).

(f) The rights and remedies of the buyer under this section and subdivision (b) of Section 1792.2 are not subject to waiver under Section 1792.3. The rights and remedies of the buyer under this section and subdivision (b) of Section 1792.2 are cumulative, and shall not be construed to affect the obligations of the retail seller or any other party or to supplant the rights or remedies of the buyer under any other section of this chapter or under any other law or instrument.

(g) Section 1795.5 shall not apply to a sale of used assistive devices, and for the purposes of the Song-Beverly Consumer Warranty Act the buyer of a used assistive device shall have the same rights and remedies as the buyer of a new assistive device.

(h) The language in subdivision (a) shall not constitute an express warranty for purposes of Sections 1793.2 and 1793.3. [1979 ch 1023 § 4.]

§ 1793.05. [Vehicle manufacturers altering new vehicles into housecars: Warranty responsibility.] Vehicle manufacturers who alter new vehicles into housecars shall, in addition to any new product warranty, assume any warranty responsibility of the orig-

inal vehicle manufacturer for any and all components of the finished product which are, by virtue of any act of the alterer, no longer covered by the warranty issued by the original vehicle manufacturer. [1977 ch 873 § 1, operative July 1, 1978.]

§ 1793.1. [Contents of written notice.]

(a) (1) Every manufacturer, distributor, or retailer making express warranties with respect to consumer goods shall fully set forth such warranties in readily understood language and clearly identify the party making such express warranties.

(2) Every work order or repair invoice for warranty repairs or service shall clearly and conspicuously incorporate in 10-point bold-face type the following statement on the face of such work order or repair invoice or on an attachment to the work order or repair invoice: A buyer of this product in California has the right to have this product serviced or repaired during the warranty period. The warranty period will be extended for the number of whole days that the product has been out of the buyer's hands for warranty repairs. If a defect exists within the warranty period, the warranty will not expire until the defect has been fixed. The warranty period will also be extended if the warranty repairs have not been performed due to delays caused by circumstances beyond the control of the buyer, or if the warranty repairs did not remedy the defect and the buyer notifies the manufacturer or seller of the failure of the repairs within 60 days after they were completed. If, after a reasonable number of attempts, the defect has not been fixed, the buyer may return this product for a replacement or a refund subject, in either case, to deduction of a reasonable charge for usage. This time extension does not affect the protections or remedies the buyer has under other laws.

A copy of the work order or repair invoice and any attachment thereto shall be presented to the buyer at the time that warranty service or repairs are made.

(b) Every manufacturer, distributor, or retailer making express warranties and who elects to maintain service and repair facilities within this state pursuant to the provisions of this chapter shall:

(1) At the time of sale, provide the buyer with the name and address of each such service and repair facility within this state; or

(2) At the time of the sale, provide the buyer with the name and address and telephone number of a service and repair facility

central directory within this state, or the toll-free telephone number of a service and repair facility central directory outside this state. It shall be the duty of the central directory to provide, upon inquiry, the name and address of the authorized service and repair facility nearest the buyer; or

(3) Maintain at the premises of retail sellers of the warrantor's consumer goods a current listing of such warrantor's authorized service and repair facilities, or retail sellers to whom the consumer goods are to be returned for service and repair, whichever is applicable, within this state. It shall be the duty of every retail seller provided with such a listing to provide, on inquiry, the name, address, and telephone number of the nearest authorized service and repair facility, or the retail seller to whom the consumer goods are to be returned for service and repair, whichever is applicable. [1970 ch 1333 § 1; 1971 ch 1523 § 8, operative January 1, 1972; 1972 ch 1293 § 1; 1980 ch 394 § 1.] *Cal Jur 3d Consumer and Borrower Protection Laws* §§ 196, 197; *Cal Forms-24:1, 24:12; Witkin Summary (8th ed) p 1277.*

§ 1793.2. [Duty of manufacturer making express warranty: Service and repair facilities, and servicing and repairing nonconforming goods: Buyer's delivery or notice, and transportation of goods to facility: Replacement of goods or reimbursement therefor.] (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.

(2) In the event of a failure to comply with paragraph (1) of this subdivision, be subject to the provisions of Section 1793.5.

(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. [1970 ch 1333 § 1; 1971 ch 1523 § 9, operative January 1, 1972; 1976 ch 416 § 2; 1978 ch 991 § 7.] *Cal Jur 3d Consumer and Borrower Protection Laws* §§ 197, 198, 199; *Cal Forms-24:15, 24:22, 24:23, 24:24; Witkin Summary (8th ed) p 1277.*

§ 1793.3. [Same: Buyer's remedies in absence of service and repair facilities: Option of retail seller to provide service or repair: Manufacturer to provide notice of buyer's courses of action.] 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, 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.

(3) Replace the nonconforming goods with goods that are identical or reasonably equivalent to the warranted goods.

(4) Refund to the buyer the original purchase price less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

(b) Return the nonconforming consumer goods to any retail seller of like goods of the same manufacturer within this state who may 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.

(3) Replace the nonconforming goods with goods that are identical or reasonably equivalent to the warranted goods.

(4) Refund to the buyer the original purchase price less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

(c) Secure the services of an independent repair or service facility for the service or repair of the nonconforming consumer goods, when service or repair of the goods can be economically accomplished. In that event the manufacturer shall be liable to the buyer, or to the independent repair or service facility upon an assignment of the buyer's rights, for the actual and reasonable cost of 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 service dealer 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.

The course of action prescribed in this subdivision shall be available to the buyer only after the buyer has followed the course of action prescribed in either subdivision (a) or (b) and such course of action has not furnished the buyer with appropriate relief. In no event, shall the provisions of this subdivision be available to the buyer with regard to consumer goods with a wholesale price to the retailer of less than fifty dollars (\$50). In no event shall the buyer be responsible or liable for service or repair costs charged by the independent repair or service facility which accepts service or repair of nonconforming consumer goods under this section. Such independent repair or service facility shall only be authorized to hold the manufacturer liable for such costs.

(d) A retail seller to which any nonconforming consumer good is returned pursuant to subdivision (a) or (b) shall have the option of providing service or repair itself or directing the buyer to a reasonably close independent repair or service facility willing to accept service or repair under this section. In the event the retail seller directs the buyer to an independent repair or service facility, the manufacturer shall be liable for the reasonable cost of repair services in the manner provided in subdivision (c).

(e) In the event a buyer is unable to return nonconforming goods to the retailer

due to reasons of size and weight, or method of attachment, or method installation, or nature of the nonconformity, the buyer shall give notice of the nonconformity to the retailer. Upon receipt of such notice of nonconformity the retailer shall, at its option, service or repair the goods at the buyer's residence, or pick up the goods for service or repair, or arrange for transporting the goods to its place of business. The reasonable costs of transporting the goods shall be at the retailer's expense. The retailer shall be entitled to recover all such reasonable costs of transportation from the manufacturer pursuant to Section 1793.5. The reasonable costs of transporting nonconforming goods after delivery to the retailer until return of the goods to the buyer, when incurred by a retailer, shall be recoverable from the manufacturer pursuant to Section 1793.5. Written notice of nonconformity to the retailer shall constitute return of the goods for the purposes of subdivisions (a) and (b).

(f) The manufacturer of consumer goods with a wholesale price to the retailer of fifty dollars (\$50) or more for which the manufacturer has made express warranties shall provide written notice to the buyer of the courses of action available to him under subdivision (a), (b), or (c). [1970 ch 1333 § 1; 1971 ch 1523 § 10, operative January 1, 1972; 1976 ch 416 § 3; 1978 ch 991 § 8.] *Cal Jur 3d Consumer and Borrower Protection Laws* §§ 190, 199, 200; *Cal Forms-24:15, 24:23*; *Witkin Summary (8th ed)* pp 1224, 1278.

§ 1793.35. [Same: Replacement of or reimbursement for clothing or consumables.]

(a) Where the retail sale of clothing or consumables is accompanied by an express warranty and such items do not conform with the terms of the express warranty, the buyer thereof may return the goods within 30 days of purchase or the period specified in the warranty, whichever is greater. The manufacturer may, in the express warranty, direct the purchaser to return nonconforming goods to a retail seller of like goods of the same manufacturer for replacement.

(b) When clothing or consumables are returned to a retail seller for the reason that they do not conform to an express warranty, the retailer shall replace the nonconforming goods where the manufacturer has directed replacement in the express warranty. In the event the manufacturer has not directed replacement in the express warranty, the retailer may replace the nonconforming

goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer for the goods, at the option of the retailer. Costs of reimbursement or replacement are recoverable by a retailer from the manufacturer in the manner provided in Section 1793.5.

(c) Where the retail sale of draperies is not accompanied by an express warranty and the sale of such draperies is accompanied by a conspicuous writing disclaiming the retailer's implied warranty of merchantability on the fabric, the retailer's implied warranty of merchantability shall not apply to the fabric. [1971 ch 1523 § 10.5, operative January 1, 1972; 1978 ch 991 § 8.5.] *Cal Jur 3d Consumer and Borrower Protection Laws* §§ 201, 202; *Cal Forms-24:37*; *Witkin Summary (8th ed)* pp 1129, 1278.

§ 1793.4. [Time for buyer to exercise option for service and repair.] Where an option is exercised in favor of service and repair under Section 1793.3, such service and repair must be commenced within a reasonable time, and, unless the buyer agrees in writing to the contrary, goods conforming to the applicable express warranties shall be tendered within 30 days. Delay caused by conditions beyond the control of the retail seller or his representative shall serve to extend this 30-day requirement. Where such a delay arises, conforming goods shall be tendered as soon as possible following termination of the condition giving rise to the delay. [1970 ch 1333 § 1; 1971 ch 1523 § 11; 1978 ch 991 § 9.] *Cal Jur 3d Consumer and Borrower Protection Laws* § 200; *Cal Forms-24:24*; *Witkin Summary (8th ed)* p 1278.

§ 1793.5. [Same: Manufacturer's liability to retailer on failing to maintain service facilities.] Every manufacturer making express warranties who does not provide service and repair facilities within this state pursuant to subdivision (a) of Section 1793.2 shall be liable as prescribed in this section to every retail seller of such manufacturer's goods who incurs obligations in giving effect to the express warranties that accompany such manufacturer's consumer goods. The amount of such liability shall be determined as follows:

(a) In the event of replacement, in an amount equal to the actual cost to the retail seller of the replaced goods, and cost of transporting the goods, if such costs are incurred plus a reasonable handling charge.

(b) In the event of service and repair, in

an amount equal to that which would be received by the retail seller for like service rendered to retail consumers who are not entitled to warranty protection, including actual and reasonable costs of the service and repair and the cost of transporting the goods, if such costs are incurred, plus a reasonable profit.

(c) In the event of reimbursement under subdivision (a) of Section 1793.3, in an amount equal to that reimbursed to the buyer, plus a reasonable handling charge. [1970 ch 1333 § 1; 1971 ch 1523 § 2, operative January 1, 1972.] *Cal Jur 3d Consumer and Borrower Protection Laws § 200; Witkin Summary (8th ed) p 1278.*

§ 1793.6. [Same: Manufacturer's liability to independent service man performing service or incurring obligations.] 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. [1976 ch 416 § 4.]

§ 1794. [Buyer's right to damages: Treble damages: Attorneys' fees.] 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. [1970 ch 1333 § 1; 1971 ch 1523 § 13, operative January 1, 1972; 1978 ch 991 § 10.] *Cal Jur 3d Consumer and Borrower Protection Laws § 203; Cal Forms-6:102; Witkin Summary (8th ed) pp 1224, 1278.*

§ 1794.1. [Damages recoverable by retail seller and independent serviceman.] (a) Any retail seller of consumer goods injured by the willful or repeated violation of the provisions of this chapter may bring an action for the recovery of damages. Judgment may be entered for three times the amount at which the actual damages are assessed plus reasonable attorney fees.

(b) Any independent serviceman of consumer goods injured by the willful or repeated violation of the provisions of this chapter may bring an action for the recovery of damages. Judgment may be entered for three times the amount at which the actual damages are assessed plus reasonable attorney fees. [1970 ch 1333 § 1; 1976 ch 416 § 5.] *Cal Jur 3d Consumer and Borrower Protection Laws § 204; Witkin Summary (8th ed) pp 1224, 1278.*

§ 1794.2. [When triple damages provisions inapplicable.] 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. [1979 ch 1023 § 6.] *Cal Jur 3d Consumer and Borrower Protection Laws § 203; Witkin Summary (8th ed) pp 1224, 1278.*

§ 1794.3. [Effect of unauthorized or unreasonable use of goods.] The provisions of this chapter shall not apply to any defect or nonconformity in consumer goods caused by the unauthorized or unreasonable use of the

goods following sale. [1970 ch 1333 § 1; 1971 ch 1523 § 15, operative January 1, 1972.] *Cal Forms-24:1; Witkin Summary (8th ed) p 1278.*

§ 1794.4. [Service contract.] Nothing in this chapter shall be construed to prevent the sale of a service contract to the buyer in addition to or in lieu of an express warranty if such contract fully and conspicuously discloses in simple and readily understood language the terms and conditions of such contract. [1970 ch 1333 § 1; 1971 ch 1523 § 16, operative January 1, 1972.] *Cal Forms-24:33.*

§ 1794.5. [Alternative suggestions for repair.] The provisions of this chapter shall not preclude a manufacturer making express warranties from suggesting methods of effecting service and repair, in accordance with the terms and conditions of the express warranties, other than those required by this chapter. [1970 ch 1333 § 1.]

§ 1795. [Liability of one, other than manufacturer, making express warranty.] If express warranties are made by persons other than the manufacturer of the goods, the obligation of the person making such warranties shall be the same as that imposed on the manufacturer under this chapter. [1970 ch 1333 § 1.] *Cal Jur 3d Consumer and Borrower Protection Laws § 197; Cal Forms-6:102; Witkin Summary (8th ed) p 1148.*

§ 1795.1. [Components of air conditioning system.] This chapter shall apply to any equipment or mechanical, electrical, or thermal component of a system designed to heat, cool, or otherwise condition air, but shall not apply to the system as a whole where such a system becomes a fixed part of a structure. [1971 ch 1523 § 16.5, operative January 1, 1972; 1978 ch 991 § 11.] *Cal Jur 3d Consumer and Borrower Protection Laws § 190; Witkin Summary (8th ed) p 1129.*

§ 1795.5. [Obligation of distributor or retail seller of used consumer goods on making express warranties: Duration of implied warranties.] Notwithstanding the provisions of subdivision (a) of Section 1791 defining consumer goods to mean "new" goods, the obligation of a distributor or retail seller of used consumer goods shall be the same as that imposed on manufacturers under this chapter in a sale in which an express warranty is given, except:

(a) It shall be the obligation of the distributor or retail seller making express warran-

ties with respect to used consumer goods (and not the original manufacturer, distributor, or retail seller making express warranties with respect to such goods when new) to maintain sufficient service and repair facilities within this state to carry out the terms of such express warranties.

(b) The provisions of Section 1793.5 shall not apply to the sale of used consumer goods sold in this state.

(c) The duration of the implied warranty of merchantability and where present the implied warranty of fitness with respect to used consumer goods sold in this state, where the sale is accompanied by an express warranty, shall be coextensive in duration with an express warranty which accompanies the consumer goods, provided the duration of the express warranty is reasonable, but in no event shall such implied warranties have a duration of less than 30 days nor more than three months following the sale of used consumer goods to a retail buyer. Where no duration for an express warranty is stated with respect to such goods, or parts thereof, the duration of the implied warranties shall be the maximum period prescribed above.

(d) The obligation of the distributor or retail seller who makes express warranties with respect to used goods that are sold in this state, shall extend to the sale of all such used goods, regardless of when such goods may have been manufactured. [1971 ch 1523 § 17, operative January 1, 1972; 1974 ch 169 § 1; 1978 ch 991 § 12.] *Cal Jur 3d Consumer and Borrower Protection Laws § 205; Cal Forms-24:1, 24:13; Witkin Summary (8th ed) pp 1277, 1278.*

§ 1795.6. [Tolling the warranty period.] (a) Every warranty period relating to an implied or express warranty accompanying a sale or consignment for sale of consumer goods selling for fifty dollars (\$50) or more shall automatically be tolled for the period from the date upon which the buyer either (1) delivers nonconforming goods to the manufacturer or seller for warranty repairs or service or (2), pursuant to subdivision (c) of Section 1793.2 or subdivision (c) of Section 1793.3, notifies the manufacturer or seller of the nonconformity of the goods up to, and including, the date upon which (1) the repaired or serviced goods are delivered to the buyer, (2) the buyer is notified the goods are repaired or serviced and are available for the buyer's possession or (3) the buyer is notified that repairs or

service is completed, if repairs or service is made at the buyer's residence.

(b) Notwithstanding the date or conditions set for the expiration of the warranty period, such warranty period shall not be deemed expired if either or both of the following situations occur: (1) after the buyer has satisfied the requirements of subdivision (a), the warranty repairs or service has not been performed due to delays caused by circumstances beyond the control of the buyer or (2) the warranty repairs or service performed upon the nonconforming goods did not remedy the nonconformity for which such repairs or service was performed and the buyer notified the manufacturer or seller of this failure within 60 days after the repairs or service was completed. When the warranty repairs or service has been performed so as to remedy the nonconformity, the warranty period shall expire in accordance with its terms, including any extension to the warranty period for warranty repairs or service.

(c) For purposes of this section only, "manufacturer" includes the manufacturer's service or repair facility.

(d) Every manufacturer or seller of consumer goods selling for fifty dollars (\$50) or more shall provide a receipt to the buyer showing the date of purchase. Every manufacturer or seller performing warranty repairs or service on the goods shall provide to

the buyer a work order or receipt with the date of return and either the date the buyer was notified that the goods were repaired or serviced or, where applicable, the date the goods were shipped or delivered to the buyer. [1974 ch 844 § 1, operative July 1, 1975; 1980 ch 394 § 2.]

§ 1795.7. [Effect of tolling on manufacturer's liability.] Whenever a warranty, express or implied, is tolled pursuant to Section 1795.6 as a result of repairs or service performed by any retail seller, the warranty shall be extended with regard to the liability of the manufacturer to a retail seller pursuant to law. In such event, the manufacturer shall be liable in accordance with the provisions of Section 1793.5 for the period that an express warranty has been extended by virtue of Section 1795.6 to every retail seller who incurs obligations in giving effect to such express warranty. The manufacturer shall also be liable to every retail seller for the period that an implied warranty has been extended by virtue of Section 1795.6, in the same manner as he would be liable under Section 1793.5 for an express warranty. If a manufacturer provides for warranty repairs and service through its own service and repair facilities and through independent repair facilities in the state, its exclusive liability pursuant to this section shall be to such facilities. [1974 ch 844 § 2, operative July 1, 1975.]

CHAPTER 2

Standards For Warranty Work

[Added by Stats 1978 ch 991 § 13.]

§ 1796. Duty to install new or used goods.

§ 1796.5. Duty to service or repair new or used goods.

§ 1796. [Duty to install new or used goods] Any individual, partnership, corporation, association, or other legal relationship which engages in the business of installing new or used consumer goods, has a duty to the buyer to install them in a good and workmanlike manner. [1978 ch 991 § 13.]

§ 1796.5. [Duty to service or repair new

or used goods.] Any individual, partnership, corporation, association, or other legal relationship which engages in the business of providing service or repair to new or used consumer goods has a duty to the purchaser to perform those services in a good and workmanlike manner. [1978 ch 991 § 13.]

CHAPTER 3

Mobilehome Warranties

§ 1797. Mobilehomes covered by warranty.

§ 1797.1. "Mobilehome."

§ 1797.2. Application of warranty to manufacturer and dealer.

§ 1797.3. Required written warranty: Contents.

§ 1797.4. Additional rights and privileges: Prohibited waiver.

§ 1797.5. Display of notice of warranty.

Cal Forms-24:1.

§ 1797. [Mobilehomes covered by warranty.] After the effective date of this chapter all new mobilehomes sold by a dealer licensed by the Department of Motor Vehicles to a buyer shall be covered by the warranty set forth in this chapter. [1971 ch 1492 § 1.] *Cal Jur 3d Mobile Homes § 12; Cal Forms-24:14.*

§ 1797.1. ["Mobilehome.""] As used in this chapter, "mobilehome" means a vehicle designed and equipped for human habitation and which may be drawn by a motor vehicle only under a permit issued pursuant to Section 35790 of the Vehicle Code and shall include in addition to the structure thereof the plumbing, heating and electrical systems and all appliances and other equipment installed or included therein by the manufacturer or dealer. [1971 ch 1492 § 1.] *Cal Jur 3d Mobile Homes § 12; Cal Forms-24:14.*

§ 1797.2. [Application of warranty to manufacturer and dealer.] The warranty provided for in this chapter shall apply to the manufacturer of the mobilehome as well as to the dealer who sells the mobilehome to the buyer. [1971 ch 1492 § 1.] *44 Cal Jur 3d Mobile Homes § 12.*

§ 1797.3. [Required written warranty: Contents.] The mobilehome warranty from the manufacturer or dealer to the buyer shall be set forth in a separate written document entitled "Mobilehome Warranty," shall be delivered to the buyer by the dealer at the time the contract of sale is signed, and shall contain, but is not limited to, the following terms:

(a) That the mobilehome is free from any substantial defects in materials or workmanship.

(b) That the manufacturer or dealer or both shall take appropriate corrective action at the site of the mobilehome in instances of substantial defects in materials or workmanship which become evident within one year from the date of delivery of the mobilehome to the buyer, provided the buyer or his transferee gives written notice of such defects to the manufacturer or dealer at their

business address not later than 1 year and 10 days after date of delivery.

(c) That the manufacturer and dealer shall be jointly and severally liable to the buyer for the fulfillment of the terms of warranty, and that the buyer may notify either one or both of the need for appropriate corrective action in instances of substantial defects in materials or workmanship.

(d) That the address and the phone number of where to mail or deliver written notices of defects shall be set forth in the document.

(e) That the one-year warranty period applies to the structures, plumbing, heating, electrical systems and all appliances and other equipment installed and included therein by the manufacturer or dealer.

(f) That while the manufacturers of any or all appliances may also issue their own warranties, the primary responsibility for appropriate corrective action under the warranty rests with the dealer and manufacturer, and the buyer should report all complaints to the dealer and manufacturer initially. [1971 ch 1492 § 1; 1973 ch 807 § 1.] *Cal Jur 3d Mobile Homes § 12; Cal Forms-24:14, 24:15, 24:26.*

§ 1797.4. [Additional rights and privileges: Prohibited waiver.] The warranty under this chapter shall be in addition to and not in derogation of all other rights and privileges which such buyer may have under any other law or instrument. The manufacturer or dealer shall not require the buyer to waive his rights under this chapter and any such waiver shall be deemed contrary to public policy and shall be unenforceable and void. [1971 ch 1492 § 1.] *Cal Jur 3d Mobile Homes § 12; Cal Forms-24:14.*

§ 1797.5. [Display of notice of warranty.] Every dealer shall display a notice of reasonable size stating the existence of a one-year warranty and a sample copy of such warranty. The notice shall be posted in each area where purchase orders and conditional sales contracts are written. [1974 ch 1286 § 1, operative July 1, 1975.] *44 Cal Jur 3d Mobile Homes § 12.*

services relating to the maintenance or repair (or both) of a consumer product.

(9) The term "reasonable and necessary maintenance" consists of those operations (A) which the consumer reasonably can be expected to perform or have performed and (B) which are necessary to keep any consumer product performing its intended function and operating at a reasonable level of performance.

(10) The term "remedy" means whichever of the following actions the warrantor elects:

- (A) repair,
- (B) replacement, or
- (C) refund;

except that the warrantor may not elect refund unless (i) the warrantor is unable to provide replacement and repair is not commercially practicable or cannot be timely made, or (ii) the consumer is willing to accept such refund.

(11) The term "replacement" means furnishing a new consumer product which is identical or reasonably equivalent to the warranted consumer product.

(12) The term "refund" means refunding the actual purchase price (less reasonable depreciation based on actual use where permitted by rules of the Commission).

(13) The term "distributed in commerce" means sold in commerce, introduced or delivered for introduction into commerce, or held for sale or distribution after introduction into commerce.

(14) The term "commerce" means trade, traffic, commerce, or transportation—

(A) a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(15) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, or American Samoa. The term "State law" includes a law of the United States applicable only to the District of Columbia or only to a territory or possession of the United States; and the term "Federal law" excludes any State law.

WARRANTY PROVISIONS

Sec. 102. (a) In order to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products, any warrantor warranting a consumer product to a consumer by means of a written warranty shall, to the extent required by rules of the Commission, fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty. Such rules may require inclusion in the written warranty of any of the following items among others:

(1) The clear identification of the names and addresses of the warrantors.

(2) The identity of the party or parties to whom the warranty is extended.

(3) The products or parts covered.

(4) A statement of what the warrantor will do in the event of a defect, malfunction, or failure to conform with such written warranty—at whose expense—and for what period of time.

(5) A statement of what the consumer must do and expenses he must bear.

(6) Exceptions and exclusions from the terms of the warranty.

FEDERAL MAGNUSON-MOSS CONSUMER WARRANTY ACT

(15 United States Code, Sections 2301-2312)



Public Law 93-637
93rd Congress, S. 356
January 4, 1975

An Act

To provide minimum disclosure standards for written consumer product warranties; to define minimum Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act may be cited as the "Magnuson-Moss Warranty—Federal Trade Commission Improvement Act".

TITLE I—CONSUMER PRODUCT WARRANTIES

DEFINITIONS

Sec. 101. For the purposes of this title:

(1) The term "consumer product" means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

(2) The term "Commission" means the Federal Trade Commission.

(3) The term "consumer" means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty (or service contract) applicable to the product, and any other person who is entitled by the terms of such warranty (or service contract) or under applicable State law to enforce against the warrantor (or service contractor) the obligations of the warranty (or service contract).

(4) The term "supplier" means any person engaged in the business of making a consumer product directly or indirectly available to consumers.

(5) The term "warrantor" means any supplier or other person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty.

(6) The term "written warranty" means—

(A) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(B) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking.

which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

(7) The term "implied warranty" means an implied warranty arising under State law (as modified by sections 108 and 104(a)) in connection with the sale by a supplier of a consumer product.

(8) The term "service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration,

services relating to the maintenance or repair (or both) of a consumer product.

(9) The term "reasonable and necessary maintenance" consists of those operations (A) which the consumer reasonably can be expected to perform or have performed and (B) which are necessary to keep any consumer product performing its intended function and operating at a reasonable level of performance.

(10) The term "remedy" means whichever of the following actions the warrantor elects:

- (A) repair,
- (B) replacement, or
- (C) refund;

except that the warrantor may not elect refund unless (i) the warrantor is unable to provide replacement and repair is not commercially practicable or cannot be timely made, or (ii) the consumer is willing to accept such refund.

(11) The term "replacement" means furnishing a new consumer product which is identical or reasonably equivalent to the warranted consumer product.

(12) The term "refund" means refunding the actual purchase price (less reasonable depreciation based on actual use where permitted by rules of the Commission).

(13) The term "distributed in commerce" means sold in commerce, introduced or delivered for introduction into commerce, or held for sale or distribution after introduction into commerce.

(14) The term "commerce" means trade, traffic, commerce, or transportation—

- (A) a place in a State and any place outside thereof, or
- (B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(15) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, or American Samoa. The term "State law" includes a law of the United States applicable only to the District of Columbia or only to a territory or possession of the United States; and the term "Federal law" excludes any State law.

WARRANTY PROVISIONS

Sec. 102. (a) In order to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products, any warrantor warranting a consumer product to a consumer by means of a written warranty shall, to the extent required by rules of the Commission, fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty. Such rules may require inclusion in the written warranty of any of the following items among others:

- (1) The clear identification of the names and addresses of the warrantors.
- (2) The identity of the party or parties to whom the warranty is extended.
- (3) The products or parts covered.
- (4) A statement of what the warrantor will do in the event of a defect, malfunction, or failure to conform with such written warranty—at whose expense—and for what period of time.
- (5) A statement of what the consumer must do and expenses he must bear.
- (6) Exceptions and exclusions from the terms of the warranty.

(7) The step-by-step procedure which the consumer should take in order to obtain performance of any obligation under the warranty, including the identification of any person or class of persons authorized to perform the obligations set forth in the warranty.

(8) Information respecting the availability of any informal dispute settlement procedure offered by the warrantor and a recital, where the warranty so provides, that the purchaser may be required to resort to such procedure before pursuing any legal remedies in the courts.

(9) A brief, general description of the legal remedies available to the consumer.

(10) The time at which the warrantor will perform any obligations under the warranty.

(11) The period of time within which, after notice of a defect, malfunction, or failure to conform with the warranty, the warrantor will perform any obligations under the warranty.

(12) The characteristics or properties of the products, or parts thereof, that are not covered by the warranty.

(13) The elements of the warranty in words or phrases which would not mislead a reasonable, average consumer as to the nature or scope of the warranty.

(b)(1)(A) The Commission shall prescribe rules requiring that the terms of any written warranty on a consumer product be made available to the consumer (or prospective consumer) prior to the sale of the product to him.

(B) The Commission may prescribe rules for determining the manner and form in which information with respect to any written warranty of a consumer product shall be clearly and conspicuously presented or displayed so as not to mislead the reasonable, average consumer, when such information is contained in advertising, labeling, point-of-sale material, or other representations in writing.

(2) Nothing in this title (other than paragraph (3) of this subsection) shall be deemed to authorize the Commission to prescribe the duration of written warranties given or to require that a consumer product or any of its components be warranted.

(3) The Commission may prescribe rules for extending the period of time a written warranty or service contract is in effect to correspond with any period of time in excess of a reasonable period (not less than 10 days) during which the consumer is deprived of the use of such consumer product by reason of failure of the product to conform with the written warranty or by reason of the failure of the warrantor (or service contractor) to carry out such warranty (or service contract) within the period specified in the warranty (or service contract).

(c) No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer's using, in connection with such product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name; except that the prohibition of this subsection may be waived by the Commission if—

(1) the warrantor satisfies the Commission that the warranted product will function properly only if the article or service so identified is used in connection with the warranted product, and

(2) the Commission finds that such a waiver is in the public interest.

The Commission shall identify in the Federal Register, and permit public comment on, all applications for waiver of the prohibition of this subsection, and shall publish in the Federal Register its disposition of any such application, including the reasons therefor.

(d) The Commission may by rule devise detailed substantive warranty provisions which warrantors may incorporate by reference in their warranties.

(e) The provisions of this section apply only to warranties which pertain to consumer products actually costing the consumer more than \$5.

DESIGNATION OF WARRANTIES

SEC. 103. (a) Any warrantor warranting a consumer product by means of a written warranty shall clearly and conspicuously designate such warranty in the following manner, unless exempted from doing so by the Commission pursuant to subsection (c) of this section:

(1) If the written warranty meets the Federal minimum standards for warranty set forth in section 104 of this Act, then it shall be conspicuously designated a "full (statement of duration) warranty".

(2) If the written warranty does not meet the Federal minimum standards for warranty set forth in section 104 of this Act, then it shall be conspicuously designated a "limited warranty".

(b) Sections 102, 103, and 104 shall not apply to statements or representations which are similar to expressions of general policy concerning customer satisfaction and which are not subject to any specific limitations.

(c) In addition to exercising the authority pertaining to disclosure granted in section 102 of this Act, the Commission may by rule determine when a written warranty does not have to be designated either "full (statement of duration)" or "limited" in accordance with this section.

(d) The provisions of subsections (a) and (c) of this section apply only to warranties which pertain to consumer products actually costing the consumer more than \$10 and which are not designated "full (statement of duration) warranties".

FEDERAL MINIMUM STANDARDS FOR WARRANTY

SEC. 104. (a) In order for a warrantor warranting a consumer product by means of a written warranty to meet the Federal minimum standards for warranty—

(1) such warrantor must as a minimum remedy such consumer product within a reasonable time and without charge, in the case of a defect, malfunction, or failure to conform with such written warranty;

(2) notwithstanding section 108(b), such warrantor may not impose any limitation on the duration of any implied warranty on the product;

(3) such warrantor may not exclude or limit consequential damages for breach of any written or implied warranty on such product, unless such exclusion or limitation conspicuously appears on the face of the warranty; and

(4) if the product (or a component part thereof) contains a defect or malfunction after a reasonable number of attempts by the warrantor to remedy defects or malfunctions in such product, such warrantor must permit the consumer to elect either a refund for, or replacement without charge of, such product or part (as the case may be). The Commission may by rule specify for purposes of this paragraph, what constitutes a reasonable number of attempts to remedy particular kinds of defects or malfunctions under different circumstances. If the warrantor replaces a component part of a consumer product, such replacement shall include installing the part in the product without charge.

(b)(1) In fulfilling the duties under subsection (a) respecting a written warranty, the warrantor shall not impose any duty other than notification upon any consumer as a condition of securing remedy of any consumer product which malfunctions, is defective, or does not conform to the written warranty, unless the warrantor has demonstrated in a rulemaking proceeding, or can demonstrate in an administrative or judicial enforcement proceeding (including private enforcement), or in an informal dispute settlement proceeding, that such a duty is reasonable.

(2) Notwithstanding paragraph (1), a warrantor may require, as a condition to replacement of, or refund for, any consumer product under subsection (a), that such consumer product shall be made available to the warrantor free and clear of liens and other encumbrances, except as otherwise provided by rule or order of the Commission in cases in which such a requirement would not be practicable.

(3) The Commission may, by rule define in detail the duties set forth in section 104(a) of this Act and the applicability of such duties to warrantors of different categories of consumer products with "full (statement of duration)" warranties.

(4) The duties under subsection (a) extend from the warrantor to each person who is a consumer with respect to the consumer product.

(c) The performance of the duties under subsection (a) of this section shall not be required of the warrantor if he can show that the defect, malfunction, or failure of any warranted consumer product to conform with a written warranty, was caused by damage (not resulting from defect or malfunction) while in the possession of the consumer, or unreasonable use (including failure to provide reasonable and necessary maintenance).

(d) For purposes of this section and of section 102(c), the term "without charge" means that the warrantor may not assess the consumer for any costs the warrantor or his representatives incur in connection with the required remedy of a warranted consumer product. An obligation under subsection (a)(1)(A) to remedy without charge does not necessarily require the warrantor to compensate the consumer for incidental expenses; however, if any incidental expenses are incurred because the remedy is not made within a reasonable time or because the warrantor imposed an unreasonable duty upon the consumer as a condition of securing remedy, then the consumer shall be entitled to recover reasonable incidental expenses which are so incurred in any action against the warrantor.

(e) If a supplier designates a warranty applicable to a consumer product as a "full (statement of duration)" warranty, then the warranty on such product shall, for purposes of any action under section 110(d) or under any State law, be deemed to incorporate at least the minimum requirements of this section and rules prescribed under this section.

FULL AND LIMITED WARRANTING OF A CONSUMER PRODUCT

SEC. 105. Nothing in this title shall prohibit the selling of a consumer product which has both full and limited warranties if such warranties are clearly and conspicuously differentiated.

SERVICE CONTRACTS

SEC. 106. (a) The Commission may prescribe by rule the manner and form in which the terms and conditions of service contracts shall be fully, clearly, and conspicuously disclosed.

(b) Nothing in this title shall be construed to prevent a supplier or warrantor from entering into a service contract with the consumer

in addition to or in lieu of a written warranty if such contract fully, clearly, and conspicuously discloses its terms and conditions in simple and readily understood language.

DESIGNATION OF REPRESENTATIVES

SEC. 107. Nothing in this title shall be construed to prevent any warrantor from designating representatives to perform duties under the written or implied warranty: *Provided*, That such warrantor shall make reasonable arrangements for compensation of such designated representatives, but no such designation shall relieve the warrantor of his direct responsibilities to the consumer or make the representative a cowarrantor.

LIMITATION ON DISCLAIMER OF IMPLIED WARRANTIES

SEC. 108. (a) No supplier may disclaim or modify (except as provided in subsection (b)) any implied warranty to a consumer with respect to such consumer product if (1) such supplier makes any written warranty to the consumer with respect to such consumer product, or (2) at the time of sale, or within 90 days thereafter, such supplier enters into a service contract with the consumer which applies to such consumer product.

(b) For purposes of this title (other than section 104(a)(2)), implied warranties may be limited in duration to the duration of a written warranty of reasonable duration, if such limitation is conspicuous and is set forth in clear and unmistakable language and prominently displayed on the face of the warranty.

(c) A disclaimer, modification, or limitation made in violation of this section shall be ineffective for purposes of this title and State law.

COMMISSION RULES

SEC. 109. (a) Any rule prescribed under this title shall be prescribed in accordance with section 553 of title 5, United States Code; except that the Commission shall give interested persons an opportunity for oral presentations of data, views, and arguments, in addition to written submissions. A transcript shall be kept of any oral presentation. Any such rule shall be subject to judicial review under section 18(e) of the Federal Trade Commission Act (as amended by section 202 of this Act) in the same manner as rules prescribed under section 18(a)(1)(B) of such Act, except that section 18(e)(3)(B) of such Act shall not apply.

(b) The Commission shall initiate within one year after the date of enactment of this Act a rulemaking proceeding dealing with warranties and warranty practices in connection with the sale of used motor vehicles; and, to the extent necessary to supplement the protections offered the consumer by this title, shall prescribe rules dealing with such warranties and practices. In prescribing rules under this subsection, the Commission may exercise any authority it may have under this title, or other law, and in addition it may require disclosure that a used motor vehicle is sold without any warranty and specify the form and content of such disclosure.

REMEDIES

SEC. 110. (a) (1) Congress hereby declares it to be its policy to encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms.

(2) The Commission shall prescribe rules setting forth minimum requirements for any informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of this title applies. Such rules shall provide for participation in such procedure by independent or governmental entities.

(3) One or more warrantors may establish an informal dispute settlement procedure which meets the requirements of the Commission's rules under paragraph (2). If—

(A) a warrantor establishes such a procedure,

(B) such procedure, and its implementation, meets the requirements of such rules, and

(C) he incorporates in a written warranty a requirement that the consumer resort to such procedure before pursuing any legal remedy under this section respecting such warranty,

then (i) the consumer may not commence a civil action (other than a class action) under subsection (d) of this section unless he initially resorts to such procedure; and (ii) a class of consumers may not proceed in a class action under subsection (d) except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the named plaintiffs (upon notifying the defendant that they are named plaintiffs in a class action with respect to a warranty obligation) initially resort to such procedure. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of rule 23 of the Federal Rules of Civil Procedure. In any civil action arising out of a warranty obligation and relating to a matter considered in such a procedure, any decision in such procedure shall be admissible in evidence.

(4) The Commission on its own initiative may, or upon written complaint filed by any interested person shall, review the bona fide operation of any dispute settlement procedure resort to which is stated in a written warranty to be a prerequisite to pursuing a legal remedy under this section. If the Commission finds that such procedure or its implementation fails to comply with the requirements of the rules under paragraph (2), the Commission may take appropriate remedial action under any authority it may have under this title or any other provision of law.

(5) Until rules under paragraph (2) take effect, this subsection shall not affect the validity of any informal dispute settlement procedure respecting consumer warranties, but in any action under subsection (d), the court may invalidate any such procedure if it finds that such procedure is unfair.

(b) It shall be a violation of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) for any person to fail to comply with any requirement imposed on such person by this title (or a rule thereunder) or to violate any prohibition contained in this title (or a rule thereunder).

(c)(1) The district courts of the United States shall have jurisdiction of any action brought by the Attorney General (in his capacity as such), or by the Commission by any of its attorneys designated by it for such purpose, to restrain (A) any warrantor from making a deceptive warranty with respect to a consumer product, or (B) any person from failing to comply with any requirement imposed on such person by or pursuant to this title or from violating any prohibition contained in this title. Upon proper showing that, weighing the equities and considering the Commission's or Attorney General's likelihood of ultimate success, such action would be in the public interest and after notice to the defendant, a temporary restraining order or preliminary injunction may be granted without bond. In the case of an

action brought by the Commission, if a complaint under section 5 of the Federal Trade Commission Act is not filed within such period (not exceeding 10 days) as may be specified by the court after the issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect. Any suit shall be brought in the district in which such person resides or transacts business. Whenever it appears to the court that the ends of justice require that other persons should be parties in the action, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and to that end process may be served in any district.

(2) For the purposes of this subsection, the term "deceptive warranty" means (A) a written warranty which (i) contains an affirmation, promise, description, or representation which is either false or fraudulent, or which, in light of all of the circumstances, would mislead a reasonable individual exercising due care; or (ii) fails to contain information which is necessary in light of all of the circumstances, to make the warranty not misleading to a reasonable individual exercising due care; or (B) a written warranty created by the use of such terms as "guaranty" or "warranty", if the terms and conditions of such warranty so limit its scope and application as to deceive a reasonable individual.

(d) (1) Subject to subsections (a) (3) and (e), a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this title, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief—

(A) in any court of competent jurisdiction in any State or the District of Columbia; or

(B) in an appropriate district court of the United States, subject to paragraph (3) of this subsection.

(2) If a consumer finally prevails in any action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' 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, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.

(3) No claim shall be cognizable in a suit brought under paragraph (1) (B) of this subsection—

(A) if the amount in controversy of any individual claim is less than the sum or value of \$25;

(B) if the amount in controversy is less than the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit; or

(C) if the action is brought as a class action, and the number of named plaintiffs is less than one hundred.

(e) No action (other than a class action or an action respecting a warranty to which subsection (a) (3) applies) may be brought under subsection (d) for failure to comply with any obligation under any written or implied warranty or service contract, and a class of consumers may not proceed in a class action under such subsection with respect to such a failure except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the person obligated under the warranty or service contract is afforded a reasonable opportunity to cure such failure to comply. In the case of such a class action (other than a class action respecting a warranty to which subsection (a) (3) applies) brought

under subsection (d) for breach of any written or implied warranty or service contract, such reasonable opportunity will be afforded by the named plaintiffs and they shall at that time notify the defendant that they are acting on behalf of the class. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of rule 23 of the Federal Rules of Civil Procedure.

(f) For purposes of this section, only the warrantor actually making a written affirmation of fact, promise, or undertaking shall be deemed to have created a written warranty, and any rights arising thereunder may be enforced under this section only against such warrantor and no other person.

EFFECT ON OTHER LAWS

SEC. 111. (a) (1) Nothing contained in this title shall be construed to repeal, invalidate, or supersede the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or any statute defined therein as an Antitrust Act.

(2) Nothing in this title shall be construed to repeal, invalidate, or supersede the Federal Seed Act (7 U.S.C. 1551-1611) and nothing in this title shall apply to seed for planting.

(b) (1) Nothing in this title shall invalidate or restrict any right or remedy of any consumer under State law or any other Federal law.

(2) Nothing in this title (other than sections 108 and 104(a) (2) and (4)) shall (A) affect the liability of, or impose liability on, any person for personal injury, or (B) supersede any provision of State law regarding consequential damages for injury to the person or other injury.

(c) (1) Except as provided in subsection (b) and in paragraph (2) of this subsection, a State requirement—

(A) which relates to labeling or disclosure with respect to written warranties or performance thereunder;

(B) which is within the scope of an applicable requirement of sections 102, 103, and 104 (and rules implementing such sections), and

(C) which is not identical to a requirement of section 102, 103, or 104 (or a rule thereunder), shall not be applicable to written warranties complying with such sections (or rules thereunder).

(2) If, upon application of an appropriate State agency, the Commission determines (pursuant to rules issued in accordance with section 109) that any requirement of such State covering any transaction to which this title applies (A) affords protection to consumers greater than the requirements of this title and (B) does not unduly burden interstate commerce, then such State requirement shall be applicable (notwithstanding the provisions of paragraph (1) of this subsection) to the extent specified in such determination for so long as the State administers and enforces effectively any such greater requirement.

(d) This title (other than section 102(c)) shall be inapplicable to any written warranty the making or content of which is otherwise governed by Federal law. If only a portion of a written warranty is so governed by Federal law, the remaining portion shall be subject to this title.

EFFECTIVE DATE

SEC. 112. (a) Except as provided in subsection (b) of this section, this title shall take effect 6 months after the date of its enactment but shall not apply to consumer products manufactured prior to such date.

(b) Section 102(a) shall take effect 6 months after the final publication of rules respecting such section; except that the Commission, for good cause shown, may postpone the applicability of such sections until one year after such final publication in order to permit any designated classes of suppliers to bring their written warranties into compliance with rules promulgated pursuant to this title.

(c) The Commission shall promulgate rules for initial implementation of this title as soon as possible after the date of enactment of this Act but in no event later than one year after such date.



NEWS FROM ASSEMBLYWOMAN

SALLY TANNER

60th Assembly District.

FOR IMMEDIATE RELEASE

February 9, 1982

CONTACT: Jay J. DeFuria 916/445-0991

Assemblywoman Sally Tanner (D-El Monte) today held a hearing of the Assembly Committee on Consumer Protection and Toxic Materials in Sacramento to hear from a variety of witnesses about the dispute resolution or arbitration programs established by the automobile industry to handle new car complaints.

"Problems with new cars have been one of the most serious problems for consumers," stated Assemblywoman Tanner. "For the past two years I have been carrying legislation - known as the auto "lemon" bill - which is intended to improve the legal rights of purchasers whose new cars are defective and can't be fixed after repeated attempts. In the course of hearings on this year's "lemon" bill, AB 1787, the automobile industry repeatedly suggested that new legislative remedies were unnecessary and that their dispute resolution programs were a better alternative. Since there wasn't enough time during the regular committee hearings on my bill to fully discuss and explore these dispute programs, I scheduled a special order of business in my committee to do so today," commented Chairwoman Tanner.

"Automobile owners and others who have contacted my office have frequently expressed a lack of awareness of these programs or have indicated a



TANNER

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"Automobile owners and others who have contacted my office have frequently expressed a lack of awareness of these programs or have indicated a negative experience. I feel today's hearing will allow us to get more

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complete information from everyone so that we, as Legislators, can assess whether these programs obviate the need for more effective legal remedies."

The committee heard from automobile owners, from industry and program staff who administer the dispute programs, from public members who have served on these programs, and from consumer representatives with experience in handling new automobile complaints.

Assemblywoman Tanner's "lemon" bill, AB 1787, has passed the Assembly and is currently awaiting a hearing in the Senate Judiciary Committee sometime this Spring.

#

BILL # AB 1787 AUTHOR Tanner CONSULTANT Moseley
POLICY COMMITTEE CP & TM HEARING DATE 4-28-81 BILL 4-22-81
SPONSOR _____ **FILE COPY** SUBJECT Automobile Lemons

SIGNIFICANT PROVISIONS:

This bill would amend the Song-Beverly Consumer Warranty Act by adding a new paragraph to Civil Code Section 1793.2(d) stating that a reasonable number of attempts shall be presumed to have been undertaken when: (1) the same nonconformity (defect) has been subject to repair 4 times by the manufacturer or its agent, or (2) the vehicle has been out of service by reason of repair for a cumulative total of more than 20 days from the time of sale. The twenty days would include any portion of a day the repair shop is open for business and the time period commences after the defect is reported and the shop writes up an estimate of the necessary repairs.

FISCAL IMPACT: Minor.

COMMENTS: 1. Nothing in the bill specifies the critical driving operations ~~the~~ the vehicle. What if the radio or speakers or other non-critical driving operation is a problem? 2. The bill references "nonconforming goods", meaning a "lemon." This is a very broad term; there is no objective standard outlined in the bill to determine if the vehicle is "nonconforming" or conforming. This could be a serious legal problem. 3. The bill holds the manufacturer responsible for replacing the non-conforming vehicle or reimburse its owner for the purchase price. However, it is not proper to assume that the Manufacturer has direct control over its dealers' service operations from whom the customer bought the car.

Staff Recommendation: NO vote.

FILE COPY

File

AB 1787 (TANNER)

The Auto "lemon" Bill

...ing California warranty law, the Song-Beverly Consumer Warranty Act (Civil Code Sections 1790 et seq.,) governs the rights and obligations of the parties involved in a purchase of warranted "consumer goods" (purchased primarily for "personal, family, or household purposes"). Currently, that law entitles a buyer to a refund or a replacement by the manufacturer when a product is not successfully repaired after a "reasonable" number of attempts. The law currently does not provide an objective standard for what is "reasonable".

AB 1787 would:

1. Add a new provision to the Song-Beverly Act which applies only to warranted new motor vehicles (excluding motorcycles, motorhomes, and off-road vehicles) used primarily for personal family or household purposes.

D Specify that, [within the first year of ownership or 12,000 miles, whichever comes first, either 4 repair attempts on the same non-conformity (defect) or a cumulative total of 30 calendar days out of service because of repairs or any defect(s), would be presumed to be "reasonable".

This presumption could be asserted by the buyer in a legal action to obtain a refund or replacement vehicle (minus an amount attributable to the buyer's use). The presumption would be one which affects the burden of proof and would be rebuttable by the manufacturer. Once the buyer proves either the 4 times or 30 days, the burden of proof would shift to the manufacturer to rebut the presumption with facts proving that something more should be adjudged reasonable.

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Under existing California warranty law, the Song-Beverly Consumer Warranty Act (Civil Code Sections 1790 et seq.) governs the rights and obligations of the parties involved in a purchase of warranted "consumer goods" (purchased primarily for "personal, family, or household purposes"). Currently, that law entitles a buyer to a refund or a replacement by the manufacturer when a product is not successfully repaired after a "reasonable" number of attempts. The law currently does not provide an objective standard for what is "reasonable".

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Add a new provision to the Song-Beverly Act which applies only to warranted new motor vehicles (excluding motorcycles, motorhomes, and off-road vehicles) used primarily for personal family or household purposes.

Specify that, within the first year of ownership or 12,000 miles, whichever comes first, either 4 repair attempts on the same non-conformity (defect) or a cumulative total of 30 calendar days out of service because of repairs or any defect(s), would be presumed to be "reasonable".

This presumption could be asserted by the buyer in a legal action to obtain a refund or replacement vehicle (minus an amount attributable to the buyer's use). The presumption would be one which affects the burden of proof and would be rebuttable by the manufacturer. Once the buyer proves either the 4 times or 30 days, the burden of proof would shift to the manufacturer to rebut the presumption with facts proving that something more should be adjudged reasonable.

"Nonconformity" is one which substantially impairs the use, value or safety of the vehicle.

The buyer would be required to directly notify the manufacturer for repair of the same nonconformity once out of the 4 times.

The 30 day limit could be extended only if repairs can't be performed because of conditions beyond the manufacturer's control.

- Require a buyer to first resort to a third party dispute resolution program before he or she could use the "lemon" presumption in a lawsuit - if a program meeting specified criteria has been established by the manufacturer of the buyer's vehicle.
- The criteria for the dispute resolution program are derived from those specified by federal consumer warranty law, the Magnuson-Moss Consumer Warranty Act (15 United States Code, Sections 2301-2310) and its Federal Trade Commission (F.T.C.) regulations (16 Code of Federal Regulations Part 703).

The bill's minimum criteria for a dispute resolution program include requirements for:

- 1) Notifying a buyer about the existence, location and method for using the program, both at the time of sale (in the warranty itself) and later, if a dispute arises.

- 2) Insulating the program from the influence of the manufacturer over any decision making - including adequate funding for the program and qualifications for the program's decision makers.
- 3) The program to be free to the buyer.
- 4) The operation of the program including that:
 - a) A decision generally be reached within 40 days from receipt of a complaint.
 - b) The decision is not binding on the consumer; but, would be on the manufacturer if the consumer chooses to accept it. (Added to Federal criteria by bill).
 - c) A party to the dispute be given the opportunity to refute contradictory evidence offered by the other.
 - d) The manufacturer complete any work required within 30 days. (Added to Federal criteria by bill).
 - e) The time limits on a buyer's right to sue are extended during the period he or she is involved in the dispute program. (Added to Federal criteria by the bill).
- 5) For the keeping of specified records of the program's operation.
- 6) For an annual, independent audit of the program and its implementation - which would be sent to the Department of Motor Vehicles.
- 7) For the availability of statistical summaries concerning the program upon request.

AB 1787
MAJOR CHANGES MADE BY AMENDMENTS ACCEPTED
IN
SENATE JUDICIARY COMMITTEE

1. Define "nonconformity" as one which substantially impairs the use, value or safety of a vehicle.
2. Require the buyer to notify the manufacturer directly at least once out of the 4 times for repair of the same nonconformity. Requires the manufacturer to notify the buyer of the refund/replacement provisions and the direct notice to manufacturer requirement.
3. Permit extension of the 30 day limit, but only for conditions beyond the manufacturer's control.
4. Clarify that the bill only applies to vehicles used primarily for personal, family or household purposes (i.e., non-commercial use).
5. Delete some inconsistencies between the bill's criteria for dispute programs and those in the federal law.

CALIFORNIA LEGISLATURE



ASSEMBLY REPUBLICAN CAUCUS

HON. CAROL HALLETT, MINORITY FLOOR LEADER
HON. BOB NAYLOR, CAUCUS CHAIRMAN
HON. ROSS JOHNSON, CAUCUS VICE CHAIRMAN
HON. PHILLIP D. WYMAN, MINORITY WHIP
HON. GILBERT R. MARGUTH, JR., DEPUTY WHIP
HON. DON SEBASTIANI, CAUCUS SECRETARY

MEMO TO: Brien Benson
FROM: Bill Moseley
DATE: May 7, 1981
SUBJECT: AB 1787, Sally Tanner's Lemon Bill

We have now identified potential costs of \$100,000 in relation to AB 1787. In my opinion, the leadership should make a strong effort to have the bill referred to Ways and Means.

- This would be a GGS coup for us.
- I think it is a bad bill, which will actually harm consumers more than it will help them.
- The auto dealers and manufacturers know we have been working on their side.
- I have told representatives of this lobby that if this bill is killed we would like to get together and perhaps introduce a more meaningful bill.

ANALYSIS OF ASSEMBLY BILL NO. 1787 (Tanner)
As Amended in Assembly April 27, 1981
1981-82 Session

FILE COPY

AB 1787 (Am. 4/27/81)

Fiscal Effect:

Cost: Potential, undeterminable, annual vehicle warranty enforcement costs to the Motor Vehicle Account, State Transportation Fund.

Revenue: None.

Analysis:

This bill clarifies the law pertaining to new vehicle warranties by specifying the circumstances under which a manufacturer or dealer must replace a defective vehicle or otherwise compensate the buyer.

Existing law requires the vehicle manufacturer either to replace the vehicle or refund, on an adjusted basis, its purchase price after a "reasonable" number of attempts to repair the vehicle have failed. This bill defines what shall constitute a reasonable number of such attempts.

 The Department of Motor Vehicles, which licenses vehicle dealers, estimates a potential annual cost of approximately \$48,000 to handle an increase in consumer complaints to the department regarding warranties. In addition, the department could incur costs associated with actions against dealers if this bill results in the department's being able to make more precise determinations of failure to comply with warranty law. This potential cost is undeterminable.

'Lemon' bill gives carmaker 4 tries

By ED MENDEL
SACRAMENTO UNION CAPITOL BUREAU

"The first thing that went wrong was the steering wheel fell in my lap," said Bill Counter of Napa.

He had just bought a new 1979 Cadillac. When passengers put their feet under the seat of his auto, he said, they got grease on them.

He said the first engine went at 2,400 miles, the second at 14,700 miles, and there was more trouble after that.

"I have been at a loss with no recourse," Counter told an Assembly committee Tuesday as it heard the so-called "lemon law."

AB1787 by Assemblywoman Sally Tanner, D El Monte, would require that an auto buyer be given another auto or his money back if a defect is not repaired within four attempts or the auto is out of service for more than 20 days.

Tanner said the bill is needed because existing law requiring replacement or reimbursement does not define the "reasonable number" of repair attempts that must be made first.

Industry representatives said they oppose the bill because it would create lawsuits rather than solve the

problem.

They said the bill does not deal with the key question of who decides whether the defect is fixed.

Officials from General Motors, Ford, Chrysler and Volkswagen of America all said they have recently set up mediation and arbitration programs to resolve new-car disputes.

Tanner's bill won approval in the Consumer Protection and Toxic Materials Committee and was sent to the Ways and Means Committee on a 5-3 vote.

Lou and Kitty Arges of West Sacramento said they bought a 1979 Lincoln. A malfunction made the car prone to suddenly stop running, said Mrs. Arges, and it was towed to the shop 10 or 50 times.

"We bought the car in the Oakland area," her husband said. "We could never drive it there. We were afraid to take it out of town."

The couple said they tried the Better Business Bureau, the district attorney and the state Department of Motor Vehicles before filing a lawsuit as a last resort.

Bill Boutas of Ford said the Argeses are being charged \$1 a day for storage because the car has not been picked up.



Sally Tanner
Setting guideline

"It's our opinion now that the Arges car has been repaired satisfactorily," said Boutas.

Al Davis said Chrysler began a Consumer Satisfaction Board in Long Island in 1979 and set up the final unit in the nationwide network in Houston this month.

He said the five-member boards have a public member, a consumer advocate, a Chrysler representative, a mechanic and a car dealer.

G. Lee Ridgeway said General Motors has been testing a Better Business Bureau mediation program in the Bay area since 1979.

FILE COPY AB 1787

Auto 'Lemon' Aid

A bill that offers relief to Californians who thought they were buying a new car but got a lemon is one step closer to becoming law. AB 1787, better known as the "lemon" bill, has won approval from the Senate Judiciary Committee and has been sent to the Senate floor for a vote. It merits passage.

Under existing California warranty law, a new-car buyer is entitled to a refund or replacement by the manufacturer after a "reasonable" number of attempts have been made to repair the defect. The problem with this law was deciding what constitutes "reasonable." Would two repair attempts be sufficient? Ten? There was no clear definition and, consequently, consumers complained about the law's ineffectiveness.

AB 1787, by Assemblywoman Sally Tanner, D-El Monte, changes all that. The measure defines "reasonable" as four repair attempts on the same problem or a total of 30 days out of service because of any defect within the first year or 12,000 miles, whichever comes first. The consumer must notify the manufacturer of the problem at least once during the course of those repair efforts.

If a new, warranted car meets these specifics, the car is presumed a lemon and the consumer entitled to a refund or replacement. Under certain circumstances, however, the owner of a defective car must go through an arbitration panel funded but not influenced by the automaker. The decision of the panel is not binding on the buyer. If the owner isn't satisfied with a ruling, he or she can sue using the "lemon" presumption.

The benefit of an arbitration panel is that it

must make a decision within 40 days, which is far less time than it would take to go through the judicial system. Obviously, the best solution is for the auto industry to work out the defects before a car is sold, but as long as there are lemons on the road, there is a need for lemon aid.

6/26/82

'Lemon Law' Seen Sales Aid

By SUZANNE CHONEY
Staff Writer, The San Diego Union

AB 1787

Some local car dealers said yesterday the "lemon law" passed by the Legislature this week may help restore sagging car sales and consumer confidence in the auto industry.

"It may cost some dealers more money, but let's face it, the public has a fear of auto dealers as it is," said Jerry Burdett, general sales manager for San Diego Volvo. "Now if consumers feel they are protected, that's got to be good for business."

"I'm fairly sympathetic," said a spokesman for Bob Lewis Volkswagens. "I was a consumer before I was in the auto business, and I know how frustrating it can be" to deal with a problem car.

"It's a fair deal for the consumers and for the dealers," said Jack Olson, general manager of Harloff BMW-Chevrolet in Encinitas. "Dealers need as much protection as consumers. There needs to be guidelines as to what a lemon is, and this law will help provide that."

The measure, AB 1787, by Assemblywoman Sally Tanner, D-El Monte, was approved by the Legislature Thursday, and is awaiting Gov. Brown's signature. If signed into law, it would take effect Jan. 1, 1983.

Under the law, automakers would be required to replace new cars or trucks designated as lemons, or reimburse the buyers.

A "lemon" would be a new vehicle that continues to malfunction after four repair attempts have been made, or be out of service for more than 30 days. Both provisions apply only in the first year or 12,000 miles.

If repair efforts fail to satisfy the customer, the next step would be an arbitration process offered by the manufacturer.

The auto industry initially objected to the bill because it failed to specify what was considered a major or minor defect in making the car a lemon. The bill was amended to provide that the problem had to be a "non-conformity," one which "impairs the use, value or safety of the vehicle," said Jay De Furia, an aide to Tanner.

A broken radio or cigarette lighter would not qualify the car as a lemon, according to the bill, but a car window that did not roll up "could be considered an impairment of the value of the car," De Furia said.

"There are no lemons; there are bad mechanics," said Olson. "The law will give the dealer and the manufacturer a chance to repair the car without having to give the customer a new car. Anything can be repaired on a new car."

Some car dealers, like Larry Salus of Drew Ford, believe the law will only "add to the cost of buying a car," and is "unnecessary."

"There's never been a time when dealers didn't want to see customers happy," he said.

Rosemary Shaban-Dunlap, who helped organize Motor Voters in San Diego after her own problems with a car dealership, also testified on behalf of the lemon law several times, said the bill is "fair and reasonable."

The next step, she said, will be educating consumers and attorneys about the bill, and working for the passage of a similar law for used cars, although she was less optimistic about its chances of success.

The House of Representatives last month overturned a Federal Trade Commission rule that would have required auto dealers to disclose known defects in their used cars.

De Furia said a state bill that would have provided protection to the used car buyer "went down in flames" two years ago. He added that Tanner is not sure whether she will pursue the issue with another bill.

SACRAMENTO UNION
8/12/81

'Lemon' car bill stalled

UNITED PRESS INTERNATIONAL

A bill that would increase rights to owners of new-car "lemons" was delayed in a Senate committee Tuesday when it became obvious that the committee wouldn't support the measure.

Assemblywoman Sally Tanner, D-El Monte, reluctantly agreed to try again to negotiate with the automobile industry on the bill, AB1787. A similar proposal died last year in the same committee under opposi-

tion from the automobile industry.

The latest bill would establish a presumption that any new car out of service for more than 30 days after delivery to the buyer is a lemon and should be replaced or the buyer reimbursed. That presumption could be rebutted in court.

Tanner was at first reluctant to delay a vote on the bill, protesting that she unsuccessfully attempted last year to negotiate a compromise with the auto industry.

AB1787



FILE COPY

AB 1787
'Lemon law'
approved
in Assembly

SACRAMENTO UNION CAPITOL BUREAU

The so-called "lemon law," which would give automobile buyers a replacement or refund when repeated attempts to repair a defective new car fail, was approved 45-22 by the Assembly on Monday and sent to the Senate.

AB1787 by Assemblywoman Sally Tanner, D-El Monte, would require that an auto buyer be given another auto or his money back if a defect is not repaired within four attempts or the auto is out of service for more than 20 days.

Tanner said the bill is needed because existing law requiring replacement or reimbursement does not define the "reasonable number" of repair attempts that must be made first.

Advocates of the bill say it will encourage improved quality control by manufacturers and improved repair service by dealers.

Industry representatives have argued that the bill will create lawsuits because it does not deal with the key question of who decides whether the defect is fixed.

At a hearing in April, officials from General Motors, Ford, Chrysler and Volkswagen of America said mediation and arbitration programs to resolve new-car disputes were in various stages of development

61 pct. turnout in state voting

SACRAMENTO UNION CAPITOL BUREAU

About 61 percent of the eligible state workers cast mail ballots in the recently completed state government collective bargaining elections, according to an official with the Public Employment Relations Board.

Janet Caraway, PERB's Sacramento region director, said Monday that about 72,250 out of a possible 118,112 persons turned in ballots over the 30-day election period, which ran from May 11 to June 11.

Results from the balloting in 20 separate units to determine bargaining agents for state workers will not be known for at least two weeks, Caraway said.

Ballot tabulations are scheduled between June 29 and July 1, said Caraway, who noted the interim period will permit those who may not have received election materials to request and submit duplicate ballots. This interim period also allows for fielding ballot challenges from unions and other questions.

Caraway called the 61 percent "a pretty large turnout," considering the mail election format and the fact

that several units, containing about 66,000 eligible voters, were untested.

Election interest was varied, with a low turnout of 46 percent in the relatively small (1,900) medical and social services support unit, to the 88 percent of eligible voters who cast ballots for either California State Employees Association or Department of Forestry Employees Association in the fire fighter unit.

There also was a strong 85 percent turnout in the 4,800-member professional engineer unit, which saw a three-way contest between CSEA, Professional Engineers in California Government and the League of Engineers and Allied Technical Employees.

Another good showing occurred in the attorney and hearing officer unit, where 77 percent of the eligible workers selected between the Association of California State Attorneys and the Judicial and Legal Coalition, a grouping of CSEA, State Trial Attorneys Association and the Administrative Law Judges Council.

Although the California Association of Highway Patrolmen was uncontested in the highway patrol unit, 67 percent voted.

Senate approves residential-picket bill

SACRAMENTO UNION CAPITOL BUREAU

A bill to restrict residential picketing by farm labor unions, SB609 by Sen Jim Nielsen, R-Woodland, was approved 24-2 by the Senate Monday

The bill would allow residential

picketing by two persons during certain times.

Growers have complained that home picketing is intimidating and puts stress on families. The United Farm Workers, AFL-CIO, says it is a constitutional right.

AB 1787

5/11/92 11:27 AM

Bill for owners of 'lemons' dies

SACRAMENTO (AP) -- The "lemon" bill, an attempt to provide refund or replacement for a new car that didn't work and couldn't be fixed, died quietly in a Senate committee Wednesday for the second straight year.

Assemblywoman Sally Tanner, El Monte, didn't even take her bill to a vote in the Senate Judiciary Committee after it approved an automobile-industry-sponsored amendment that she wouldn't accept.

Although Tanner said she was dropping the bill, the committee chairman, Sen. Omer Rains, D-Ventura, said she could bring it up again next year.

The bill, AB 1787, sponsored by consumer groups and the Brown administration's Consumer Affairs Department, would have strengthened the hand of a buyer of a new car that spent most of its time in the repair shop.

To win a refund or replacement under current law, the customer must have made a "reasonable" number of attempts to repair the defect before going to court.

"Reasonable" is not defined by law, and sponsors of the bill say the word gives manufacturers and dealers too much leeway.

As passed by the Assembly, the bill would have said that if the buyer had made four or more attempts in the first year to repair the same defect, or if the car had been out of service for more than 20 days, the buyer would be judged to have made a "reasonable" number of attempts unless the dealer proved otherwise.

Tanner accepted industry amendments increasing the number of attempts to five.

But she opposed an amendment, sponsored by the Automobile Importers of America, that would tie her bill to arbitration programs sponsored by domestic automakers.

The three major U.S. manufacturers recently have established panels, which include consumer representatives, to hear consumer complaints. The panels have the power to order refunds.

The companies say the pro-

grams are working well, but consumer groups say they have received complaints of delays, difficult access and overall dissatisfaction.

The amendment would have required a customer to go to an arbitration panel, if there was one in the area, and get a decision before being able to take advantage of the new standards in the bill. A customer who didn't go to a panel would have had to operate under the current standard of a "reasonable" number of attempts.

The amendment was submitted to the nine-member committee, and three senators voted for it: Republicans Robert Beverly of Manhattan Beach and Ed Davis of Chatsworth, and Democrat Robert Presley of Riverside.

With the other members absent or abstaining, Rains declared the amendment adopted, and Tanner withdrew her bill.

She said afterward that she opposed requiring customers to take their cases to the company-sponsored panels.

AB1787
SAC Churn
5/26/82

Committee approves

UNITED PRESS INTERNATIONAL

Legislation requiring auto manufacturers to replace new cars that require excessive repairs during their first year of ownership won unanimous approval Tuesday from the Senate Judiciary Committee.

The so-called "lemon bill," similar to one defeated in 1980 by the same panel, was sent to the floor on a vote of 6-0 after its author, Assemblywoman Sally Tanner, D-El Monte, amended it to neutralize

strong opposition from the auto industry.

The measure, AB1787, "would provide additional legal protection for buyers of warranted new cars with defects that repeatedly defy successful repair," Tanner said.

It would require manufacturers to replace or refund the cost of cars that require four or more repairs for the same defect or that have been out of service a total of 30 days during their first year or first 12,000 miles.

'lemon' auto bill

Auto manufacturers were mollified by revisions in the bill that require consumers to notify manu-

facturers at least one of the four times that a car is repeatedly repaired.

NEWS FROM THE



WORLD OF FORD

RELEASE ON INQUIRY

Following is a statement by Richard L. Dugally, western regional manager, Governmental Affairs, Ford Motor Company:

Ford Motor Company strongly opposes passage of AB 1787 relating to new motor vehicle warranties. There are sufficient avenues of recourse now available to consumers and numerous governmental organizations which assure customer satisfaction without the necessity of involving the courts in each repair dispute.

We believe this proposed legislation will greatly increase the number of frivolous and unmeritorious lawsuits filed against motor vehicle manufacturers. Inevitably, an increased dependence upon the over-burdened court system will lead to increased costs for Ford, and, subsequently its customers.

Ford and its dealers have taken great strides in establishing a speedy, inexpensive, and fair system to resolve product disputes as an effective alternative to lengthy and costly dependence on the courts.

#-11

3/30/81





Regional Governmental Affairs Office
Ford Motor Company

State 260 925 L Street
Sacramento California 95814
Telephone 916/442 0111

AB 1787 - Lemon Car Bill

- 1) No exemption for commercial or non-personal/family use. What about police cars, taxis, etc.
- 2) No provisions to reimburse manufacturer if he has to buy the car back after say 10,000 miles of useage.
- 3) On the 20 day section, no provision for delays caused by acts of God, strikes, etc.
- 4) No provision covering abuse or modification by the owner. Four-wheel drives are an example.
- 5) No objective standard outlined in the bill to determine if it's a lemon.
- ~~6) Section 2 should be the same defect. It doesn't say what.~~
- 6) Defects are not aimed at the critical driving operations of the vehicle. What if the radio or speakers are the source of problems. Or the inside dome light.
- ~~7) Why don't we just attempt to repair as the dealer does?~~



MANUFACTURERS ASSOCIATION INDUSTRY ISSUES

Spokesman for California Industry

SUBJECT:

AB 1787 (Tanner)
Automobile Warranties

POSITION: OPPOSE

SUMMARY:

1. Adds to the Civil Code procedures for determining warranties for new automobiles.
2. Declares a warranty in nonconformity if the car has been:
 - a. repaired 4 or more times by the manufacturer or its agents.
 - b. out of service by reason of repair for a cumulative total of 20 days or more.

COMMENTS:

1. Would result in increased owner-manufacturer aggravation and additional litigation.
2. New car buyers are adequately protected by existing manufacturers warranties and current California law.
3. American auto manufacturers have established consumer appeals boards whose decisions are binding on both makers and dealers.
4. Adds more state employees to enforce the new laws. Another layer of government regulation is unnecessary.
5. Would set a dangerous precedent that could be applied to other products in the future.

CONTACT:

JESS BUTCHER

4-22-81 (81-4)
(Revised 5-13-81)



A. E. Davis and Company

925 L Street, Suite 390 • Sacramento, CA 95814 • (916) 441-4140

April 27, 1981

The Honorable Sally Tanner
Chairperson
Assembly Consumer Protection & Toxic Materials Committee
State Capitol - Room 2016
Sacramento, California 95814

Dear Mrs. Tanner:

This letter is to inform you that Chrysler Corporation is opposed to your bill, AB 1787, that would amend the Song-Beverly Warranty Act.

This bill will place an undue burden of time and expense on the aggrieved purchaser by forcing him or her to go to court to prove that the vehicle's nonconformity fits the language of the amendment.

Chrysler has a better idea that doesn't cost the purchaser a cent, not even a postage stamp.

Chrysler has established fifty-four Customer Satisfaction Arbitration Boards (CSAB) covering all 50 states. The purpose is to aid a dissatisfied purchaser to correct a problem that keeps the vehicle from being in conformance with the terms of the express warranty. The features of the CSAB program are -

1. The dealer offers the dissatisfied purchaser a brochure explaining the program which also includes an Appeal form to be filled out by the purchaser and a pre-stamped envelope so he can mail it to the nearest CSAB office.
2. The Board consists of five members - a certified auto mechanic, a consumer advocate, a general public member, a dealer representative, and a Chrysler Corporation employee. After review of each complaint the final decision can be voted on only by the mechanic, consumer advocate and the public member. The decision has ranged from denying that the purchaser has a valid case to ordering Chrysler Corporation to replace the vehicle with a new one. The final decision is binding on both Chrysler and the dealer, but not on the purchaser who has the option of going to court.
3. If the customer is requested to return the nonconforming vehicle to a dealer, he is provided a loan car free of charge.

The Honorable Sally Tanner

-2-

In summary, Mrs. Tanner, we believe this CSAB program is a far better, and certainly less costly, way to get a properly running vehicle back in the hands of its owner than by the procedures facing him in your bill.

We, therefore, respectfully oppose AB 1787.

Sincerely yours,

A handwritten signature in cursive script that reads "A. E. Davis".

A. E. Davis

cc: To All Committee Members

ASSEMBLY COMMITTEE ON CONSUMER PROTECTION AND TOXIC MATERIALS
ASSEMBLYWOMAN SALLY TANNER, Chairwoman

BILL: AB 1787, as amended April 22, 1981 HEARING DATE: April 28, 1981

AUTHOR: Assemblywoman Sally Tanner

SUBJECT: Automobile Warranties

WHAT THE BILL DOES:

AB 1787 would require automobile warrantors to either replace a vehicle or reimburse a buyer if a defect on a new vehicle is not repaired within four repair attempts, or if the car is out of service for more than 20 days.

BACKGROUND:

In December 1979 the Assembly Committee on Labor, Employment and Consumer Affairs conducted a two-day interim hearing on the subject of automobile warranties. Testimony recorded at that hearing revealed, among other things, a high level of consumer frustration with defective new cars and warranty performance. A specific problem noted by the Committee was the practical ineffectiveness of current law in responding to a situation involving repeated repairs and continuing problems with new cars. Although current law states that a manufacturer must provide either a refund or a replacement, if goods aren't repaired after a "reasonable number of attempts," it is unclear what "reasonable" means. Refunds and replacements of new cars are rare.

AB 2705 (Tanner) was introduced last year in response to that reported problem. The bill was passed by the Assembly but was defeated in the Senate Judiciary Committee by one vote. AB 2705 offered a range of specific remedies, including a proposed "standard" for defining "reasonable."

PURPOSE:

To establish a standard for when a "reasonable number of repair attempts" has been undertaken by a new car warrantor.

ANALYSIS

AB 1787 adds language to existing product warranty law to specify when a "reasonable number of attempts" to repair has occurred with regard to new motor vehicles. The proposed standard is:

1. Four attempts by the manufacturer or its agents to repair a single defect; or
2. Twenty days out of service by reason of repair.

Current law permits the warrantor to reduce the value of the refund or replacement by an "amount directly attributable to use by the buyer prior to the discovery of the nonconformity."

Proponents of the legislation maintain that the current law is not useful to consumers who purchase defective vehicles, because auto dealers and manufacturers want endless opportunities to correct defects. Consumer groups argue that the clear standard proposed in AB 1787 offers a reasonable and meaningful remedy to car buyers, will reduce litigation, and will encourage improved quality control by manufacturers and improved repair service by dealers.

Opponents of the measure argue that current law is adequate, that the measure will increase the number of "frivolous and unmeritorious" lawsuits, and that the automotive industry has developed its own dispute resolution mechanisms to deal with complaints.

SUPPORT

Department of Consumer Affairs
Consumers Union
California Consumer Affairs Association
San Francisco Consumer Action
Santa Cruz County District Attorney
Santa Cruz County Consumer Affairs
Los Angeles County Department of Consumer Affairs
Consumer Aid of Shasta, Inc.
Center for Auto Safety
Stanislaus County Department of Consumer Affairs
State Consumer Advisory Council

OPPOSE:

Motor Vehicle Manufacturers Association
Chrysler
General Motors Corporation
California Manufacturers Association
Ford Motor Company

PREPARED BY:
Kathleen Hamilton
April 27, 1981

CALIFORNIA ASSEMBLY BILL 1787

*This legislation is not needed since legal remedies are now available to a consumer:

Current California law provides that a consumer can have a manufacturer replace goods which do not conform to the manufacturer's express warranty, or be reimbursed for those goods by the manufacturer, after a "reasonable" number of repair attempts. In addition, the Magnuson-Moss Act provides a cause of action under federal law for breach of warranty obligations.

*Assembly Bill 1787 requires the manufacturer to provide a consumer with a replacement vehicle or a refund for an unrepaired vehicle when, in fact, it is the dealer's primary responsibility to repair vehicles:

Assembly Bill 1787 amends current California law to establish a presumption, applicable only to motor vehicles, that a "reasonable" number of repair attempts is four (3 for dealer, 1 for manufacturer) to remedy the same nonconformity, or a nonconformity where the vehicle is out of service for a cumulative total of more than twenty days for repair by a dealer. When either of these thresholds is reached, the manufacturer must replace the nonconforming vehicle or reimburse its owner for its purchase price.

It is unreasonable to assume, as this legislation does, that the manufacturer has direct control over its dealers' service operations and employees and, therefore, should bear the burden of the dealer's failure to cure a nonconformity within the specified time limits. In fact, the motor vehicle dealer is an independent businessman operating his own business with his own capital pursuant to a sales and service agreement with the manufacturer.

*This bill possibly imposes an additional cost on not only the manufacturer but, also, on the vast majority of consumers who will never have the opportunity or need to avail themselves of the remedies provided in this bill:

It is difficult to justify the additional cost which may result from a requirement that a consumer be provided with a replacement vehicle or a refund if repair cannot be successfully performed within the arbitrary limit of three or four attempts or twenty days. This legislation could operate to the detriment of the vast majority of consumers by increasing the cost of a motor vehicle without providing any significant benefit in return.

***Intense competition in the motor vehicle manufacturing industry insures high quality vehicles which conform to manufacturers' warranties:**

In today's market, domestic motor vehicle manufacturers must compete, not only with other domestic manufacturers, but with foreign manufacturers as well. Loyal, satisfied customers are essential for a motor vehicle manufacturer's successful competition. Motor vehicle manufacturers recognize they must provide customers with reliable, high quality vehicles which conform to their warranties to compete successfully for customers in the market and to retain the loyalty of previous customers.

May 5, 1981

AB 1787 (Tanner).

This "lemon law" bill simply provides that a new motor vehicle must be replaced or the consumer reimbursed if:

- a) the same nonconformity has not been repaired 4 or more attempts, or
- b) the vehicle has been out of service for a cumulative total of more than 20 days.

The consumers look upon this bill as a way to exert leverage upon the manufacturers and car dealers to resolve any dissatisfaction with a new car.

The dealers and manufacturers are very concerned with resolving problems relating to "lemon" cars and all have established some kind of a third party arbitration program as the most expeditious and fair solution. The dealers have a program called "Autocap" which receives heavy financial support from the dealer organizations. GM employs a third party arbitration and mediation program through the Better Business Bureau. This program was started in the San Francisco Bay Area in February 1979. To date 383 complaints have been heard, 75% of the complaints were resolved through the mediation process -- arbitration was not necessary. Of the 25% that went to binding arbitration, about 2/3's supported GM's position in some fashion and 1/3 the customers position. Since February 1979 GM has bought back 6 cars. The average time to get a decision is 50 days from the time the complaint is filed. A decision is rendered within 10 days following an arbitration hearing. The same procedure is being established in Los Angeles, Sacramento and Fresno this month. Volkswagen of America uses a similar Better Business Bureau arbitration procedure.

AB 1787 is a hoax because it won't do what the consumer groups think it will do, namely, resolve their new car problem in an expeditious manner. Quite the opposite -- it will result in increased litigation and drawn-out court cases which will cost the consumer heavily in time and money.

If AB 1787 were the current law and a consumer told a dealer that he wanted a new car or his purchase price refunded because the car had not been fixed in 4 attempts, the dealer would simply say "take me to court". There would be no reason to arbitrate anything with a law like this. If you happen to be in Los Angeles, the Superior Court has a backlog of 76,000 cases and it takes 53 months to get to court. Compare that with the 50 day average for the GM/Better Business Bureau arbitration plan. The average time in California to get to Municipal Court is 1 year. If the consumer finally gets to court and is awarded a settlement, his attorney will receive 1/3.

AB 1787 (Tanner)

Page two

By comparison, the arbitration programs are free to the consumer. His only cost would be for his attorney if he chooses to employ one. For its part GM does not use attorneys in its Third Party Arbitration Program. GM has pre-committed to arbitrate any instance of a dispute with a customer with respect to the application, administration or interpretation of its new vehicle warranty. In addition, it will arbitrate any instance of a product dispute beyond the warranty period regardless of time or mileage.

It will not arbitrate any case involving:

1. Allegation of fraud
2. Complaints involving damage or personal injury in which there are product liability issues or insurance claims
3. Alleged violations of law.

In addition to consumer groups the author stated in her committee that AB 1787 is supported by the Trial Lawyers. This isn't too surprising as it appears the trial lawyers see the potential for more court cases should AB 1787 become law. The bill is opposed by the New Car Dealers, General Motors Corporation, Ford Motor Company, Chrysler Corporation and Volkswagen of America, all of whom have recognized the competitive necessity to resolve consumer complaints as expeditiously and fairly as possible at no cost to the consumer. The California Manufacturers Association is also opposed to AB 1787.

MAY 15 1981

GOVERNMENTAL AFFAIRS

Ford Parts and Service Division

May 11, 1981

Mr. R. L. Degally

cc: Mr. H. W. Masterson

Mr. W. A. Smith

Subject: Floor Statement Input in Debate of California A.B. 1787

Listed below are some general observations you may wish to make known to
 as requested in your May 4 note to H. W. Masterson.

• Complex vehicle repairs, undertaken on the basis of unreliable symptom description, leads to problem isolation and fix by the process of elimination. Vehicle manufacturers have been unable to train away the diagnostic weaknesses that makes this system necessary due to ever changing vehicle technology.

• Numerical limitations on attempted repairs could have at least two adverse results:

1. Extensive over-repair which likely would lead to increased costs, thereby decreasing manufacturers' interest in extending warranties. The consumer loses.

2. Harsher interpretation of "commercially acceptable" definition related to marginal problems. Where we now try to repair beyond "commercially acceptable" to achieve owner satisfaction, we would likely desist since attempting a fix would be admitting a problem.

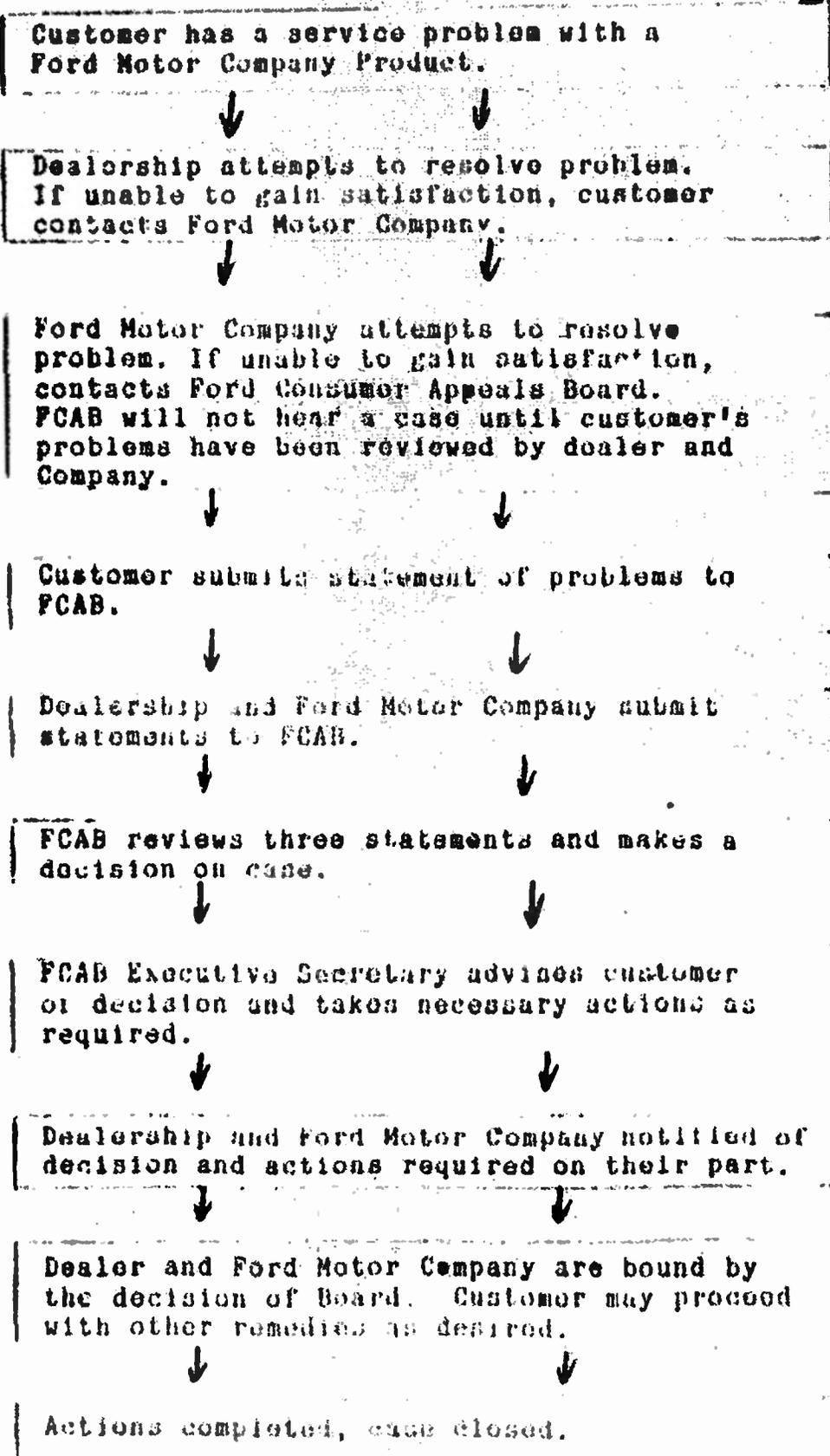
• A.B. 1787 would increase litigation instead of improving the accuracy of repairs. It is punitive rather than corrective.

• While not a Ford issue, the 30 day time factor for repair completion would seem to be anti-competitive in that smaller manufacturers may not be able to support the network of parts depots required to insure the required parts availability.

I hope these points are useful to you. Please call me if you have any questions on extension 44291.

R. Weed

FORD CONSUMER APPEALS BOARD



MANUFACTURERS & SOCIAL
INDUSTRY ISSUES

ASSEMBLY FLOOR - MAY 14

GOVERNMENTAL AFFAIRS

SUBJECT: AB 1787 (Tanner) **POSITION:** **OPPOSE**
Automobile Warranties

SUMMARY:

1. Adds to the Civil Code procedures for determining warranties for new automobiles.
2. Declares a warranty is nonconformity if the car has been:
 - a. repaired 4 or more times by the manufacturer or its agents.
 - b. out of service by reason of repair for a cumulative total of 20 days or more.

COMMENTS:

1. Would result in increased owner-manufacturer aggravation and additional litigation.
2. New car buyers are adequately protected by existing manufacturers warranties and current California law.
3. American auto manufacturers have established consumer appeals boards whose decisions are binding on both makers and dealers.
4. Adds more state employees to enforce the new laws. Another layer of government regulation is unnecessary.
5. Would set a dangerous precedent that could be applied to other products in the future.

CONTACT: **JESS BURCHER**

4-22-81 (81-4)
(Revised 5-13-81)

INDUSTRY INSIGHTS

Refunds, Returns,
Exchanges Here!



The California Legislature is currently considering AB 1787 by Assemblywoman Sally Tanner. The bill clarifies the California Civil Code in determining warranty responsibilities for automobile manufacturers.

Under the bill, a warranty is declared to be in nonconformity if the car has been repaired four or more times by the manufacturer or its agents, or has been out of service for repairs for 20 days or more. While this sounds like a good consumer bill, a thoughtful evaluation of the measure reveals that it will increase aggravation between the buyer and the manufacturer and result in additional litigation.

The sad part about this situation is that American auto manufacturers have been making great strides in consumer relations by establishing consumer appeals boards whose decisions are binding on both makers and dealers. The dangerous part is the bill would set a terrible precedent that could be applied to other products in the future. It doesn't take much imagination to figure out the number of state employees that could be added to enforce new laws providing another layer of government regulation.

Historically, American manufacturers have provided adequate warranties and the consumer-seller relationship has been completed without government regulation. Adding a third-party bureaucracy can lead only to further government empire-building.

A similar bill by Assemblywoman Tanner was defeated in the California Senate last year. AB 1787 deserves the same fate. —Jess J. Butcher

PG&E Requests \$325 Million Increase

PG&E has filed an application (A. 60616) for a \$325.7 million increase in electric rates to cover energy costs from Aug. 1, 1981 to Nov. 30. In its application, the utility asked that the increase go into effect Aug. 1, with a four month amortization period. The total increase requested is 27.4%, with the residential class getting a 10.4% increase and large light and power receiving a 38.4% increase.

The rate design proposed by PG&E in this case is essentially the same as in its last ECAC case (see Sacramento Report, Feb. 13). The utility is proposing that non-residential rates be increased by 2.013¢ per kilowatt hour, that industrial rates go up 2.43¢ per kWh, that first central go up 4.25¢ kWh and that Tier III rates be increased 6.72¢ per kWh.

PG&E believes that the Tier III rate should not exceed the residential marginal cost and uses the marginal cost as a cap. The rest of the increase was spread to lifeline and Tier II to maintain a 38% differential between tiers. It has been this association's position that there is nothing magic about a 38% differential, and that if the top tier is held at the marginal rate, then the differential should be narrowed to provide residential customers pay for their share of the costs.

PG&E further proposed a tiered-lifeline rate ECAC rate for rate of use (RWU) customers. Its rationale is that the utility has to incur significant TCW costs in order to deliver peak power associated with peak period consumption.

TOXICS UPDATE

Contrary to what was reported in our article on *Direction 87* last week, an industry-backed siting bill has been introduced. The bill, SB 1049, Montoya, D-Whittier, would authorize the Department of Health Services to issue disposal site permits and would preempt local governments from controlling hazardous waste facilities. The bill has not been heard yet by its policy committee, Senate Health & Welfare, and automatically becomes a two year bill.

Three superfund bills await action by their respective fiscal committees. SB 788, Presley, D-Riverside, the administration's bill, was put over by the Senate Finance Committee for two weeks. SB 618, Carpenter, D-Santa Ana, the industry-sponsored bill, has not yet been scheduled for hearing, but must be heard by the Senate Finance Committee. The compromise bill sponsored by the Assembly leadership, AB 69, Tanner, D-El Monte, awaits a hearing in the Assembly Ways & Means Committee.

AB 1543 (Tanner), which creates a hazardous waste siting council and makes major changes in the present hazardous waste management system has not been scheduled for hearing yet in the Assembly Ways & Means Committee. This association is working with the author to develop suitable amendments to the bill.

SACRAMENTO REPORT

USPS 782-400

Published weekly by CALIFORNIA MANUFACTURERS ASSOCIATION, 923 12th Street, P.O. Box 1138, Sacramento, California 95805 (916) 441-5120

John M. Heldack, Chairman of the Board
Robert T. Monagan, President
Jeanne Mann, Editor
Renee Kutzer, Assistant Editor

The Sacramento Report is published monthly (including a special issue) by the California Manufacturers Association. Reprint permission granted with charge given to source.

The California Manufacturers Association is a nonprofit organization representing the interests of California manufacturers and processors before the Legislature and state regulatory agencies.

BACKGROUND INFORMATION

AB 1787 (Tanner)

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.

NO SPONSOR - The bill has been introduced as a result of the author's personal interest & commitment

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

See attached

- (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 2705 (Tanner) - 1980 - was similar in intent, but significantly more comprehensive

2. Purpose

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

Current law provides for a refund or replacement of a warranted good if it is not repaired in a "reasonable number" of repair attempts. The bill defines "reasonable" to make the refund or replacement remedy one that can actually be used.

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 - for more info pls contact Kati Hamilton - 50991

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

Note: The Assembly Comm. on Lab. Employment & Consumer Affairs conducted a two day interim in San Diego on this fall 1979 -

AB 1787 (Tanner)
 As amended May 24
 Civil Code
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MOTOR VEHICLE WARRANTIES
-REPLACEMENT OR REFUND-

HISTORY

Source: Author

Prior Legislation: AB 2705 (1980) - held in
 this committee

Support: Los Angeles City Attorney; KPIX; KABC;
 Long Beach Independent Press-Telegram;
 Santa Barbara News Press; State Consumer
 Advisory Council; Department of Consumer
 Affairs; California Consumer Affairs
 Association; Cal-Pirg San Diego; National
 Council of Senior Citizens; Motor Voters,
 San Diego; AFL-CIO, State Federation;
 State Building and Construction Trades
 Council of California; United Steelworkers
 of America; Baldwin Park Chamber of
 Commerce; Santa Cruz County District
 Attorney; Consumer Union, San Francisco;
 San Francisco Consumer Action; County of
 Los Angeles, Department of Consumer
 Affairs; California Federation of Women's
 Clubs, Orange District; Consumer Aid of
 Shasta County; Colusa County Board of
 Supervisors; Stanislaus County, Office of
 Consumer Affairs; Los Angeles Private
 Investigation & Patrol Service; California
 Teamsters Public Affairs Council; Center
 for Auto Safety; Chico Consumer Protection
 Agency; Lemon-Aid, San Diego; Consumer
 Federation of California; Legal Aid
 Society of San Mateo County; Consumer
 Coalition

(More)

Opposition: Ford; Chrysler; General Motors;
California Auto Dealers Ass'n;
California Manufacturers Ass'n; Motor
Vehicles Manufacturers Ass'n; American
Honda Motor Co.; Calif. Conference of
Machinists

Assembly floor vote: Ayes 48 - Noes 22.

KEY ISSUE

SHOULD THERE BE A PRESUMPTION THAT A NEW MOTOR VEHICLE WHICH, WITHIN ITS FIRST YEAR, HAS BEEN REPAIRED UNDER AN EXPRESS WARRANTY FOUR OR MORE TIMES FOR THE SAME DEFECT OR WHICH HAS BEEN OUT OF SERVICE FOR WARRANTY REPAIR MORE THAN 30 CALENDAR DAYS SHOULD BE REPLACED OR THE PURCHASER REIMBURSED BY THE MANUFACTURER?

PURPOSE

The Song-Beverly Consumer Warranty Act provides a mechanism whereby a consumer can enforce the terms of an express (written) warranty issued by a manufacturer. The Act provides that a manufacturer who is unable to service or repair goods to conform to his express warranty after a "reasonable" number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill would create a rebuttable presumption that a reasonable number of attempts have been undertaken if, within one year or 12,000 miles, the same defect had been subject to repair four or more times by the manufacturer, or if the vehicle had been out of service for warranty repair for more than 30 calendar days since its delivery to the buyer.

(More)

The presumption could not, however, be asserted where a qualified (as defined) third party dispute resolution process existed until the buyer attempted to resolve his dispute through that process.

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

COMMENT

1. Limited by the Song-Beverly Act

This bill would amend the Song-Beverly Consumer Warranty Act, and would apply only to those transactions covered by the Act.

(a) Not applicable to commercial vehicles

The Song-Beverly Act applies only to "consumer goods," defined as products "used or bought for use primarily for personal, family, or household purposes"

Thus, vehicles used for commercial purposes are not subject to the Act, and would not be subject to this bill.

(b) Only applicable to terms of express warranty

The purpose of the Song-Beverly Act is to provide a consumer with a means of enforcing the terms of the manufacturer's own warranty. Nothing which is not covered by that warranty is subject to the provisions of the Act.

(More)

Thus, this bill would apply only to those vehicles or parts of vehicles covered by the manufacturer's warranty. If the vehicle was sold "as is," or the vehicle was warranted but the defect arose in a part of the vehicle not covered by the warranty, the bill would not apply.

2. Excluded vehicles

The bill's provisions would not cover motorcycles, motor homes or off-road vehicles, even though they were "consumer goods" as defined by the Song-Beverly Act and were subject to the other provisions of the Act.

3. Nature of remedy

(a) Rebuttable presumption of reasonable number

The Song-Beverly Act imposes the duty of replacement or reimbursement on the warrantor who fails to repair the defect in the goods as promised by his warranty after a "reasonable number of attempts."

This bill would create a rebuttable presumption affecting the burden of proof that a reasonable number of attempts for a new motor vehicle would be four or 30 calendar days -- within one year after delivery or 12,000 miles, whichever came first. The presumption could be overcome by a showing on the part of the warrantor that four attempts or 30 days were not reasonable in that particular case.

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(b) Replacement or reimbursement

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Under the Song-Beverly Act if the warrantor fails to repair the goods after a reasonable number of attempts, he 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 defect.

(c) Enforcement by litigation

The Song-Beverly Act is not enforced by any government agency. If a warrantor fails to meet the terms of the Act, the consumer's only remedy is to go to court.

4. Need for bill

Proponents state that current law does not protect consumers who purchase defective vehicles, because dealers and manufacturers never admit, perhaps because of the cost of the vehicle, that they have made a "reasonable number" of attempts to repair it and are now willing to replace it or reimburse the consumer.

Proponents say that the clear standard proposed in this bill would offer a more effective remedy to the consumer, and would encourage improved quality control by manufacturers and improved repair service by dealers.

5. Resorting to dispute resolution process

The presumption created by this bill could not be asserted where a qualified (as defined) third party dispute resolution process was available until after the buyer "resorted" to that process.

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(a) Federal requirement of resorting
to process

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Federal law regulating consumer warranties - the Magnuson-Moss Act - requires a consumer, before he can sue under that Act, to resort to a qualified dispute resolution process if one is available.

AB 1787 would impose a similar requirement on a person wishing to take advantage of presumption in the bill, and would incorporate by reference the federal definitions of a qualified dispute resolution process and of what constitutes "resorting."

(b) Definition of qualified dispute resolution
process

The bill incorporates by reference eight columns of federal regulations describing the procedures of a qualified dispute resolution process, including such matters as the composition of the decision-making panel (no more than one-third connected with the warrantor), the duties of the process to collect information from the disputing parties, the rights of the parties to make an oral presentation, etc.

In addition the bill would require that the process be governed by a board at least one-half of whose member would be consumers, that the decision of the process be binding on the warrantor, and that the warrantor be required to fulfill the terms of the decision within 30 days.

SHOULD THE BILL ADOPT ALL OF THE
COMPLEXITIES OF THE FEDERAL REGULATIONS IN
ITS DEFINITION OF A QUALIFIED PROCESS?

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(c) Definition of "resort"

The federal regulations provide that the process must act to resolve the dispute within 40 days after the time the buyer has notified it of the dispute. That period may be extended only if the buyer failed to provide adequate information about the complaint, or if the buyer had made no attempt to seek redress directly from the warrantor.

The requirement that the buyer resort to the process is satisfied 40 days after the dispute has been submitted (unless the time has been legally extended) or when the process has made a decision, whichever occurs first.

The bill incorporates this definition by reference.

(d) Exceptions to this requirement

The bill would excuse the buyer from resorting to a dispute resolution process before asserting the presumption if no qualified process was available or if the buyer failed to receive timely notification of the availability of the process.

In addition the buyer could assert the presumption if he were dissatisfied with the decision of the dispute resolution

(More)

process or if the warrantor failed to fulfill promptly the terms of that decision.

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6. Manufacturers' dispute resolution processes

Ford, Chrysler, General Motors all oppose the bill and state that consumer problems are being handled by their own appeal procedures.

(a) Ford

Ford has an appeal board composed of two dealers and three consumer representatives. A consumer with a service problem must first go to the dealer, and then contact the Ford Motor Company. If the problem is not resolved, he makes his case in writing to the appeal board. A decision of the board is binding on the dealer and on Ford, but not on the consumer.

(b) Chrysler

Chrysler has arbitration boards covering all 50 states. The boards are composed of a mechanic, a consumer advocate, a member of the general public, a dealer, and a Chrysler employee, but only the first three vote on decisions. The decisions are binding on Chrysler and the dealer, but not on the consumer.

(c) General Motors

General Motors has had a third-party arbitration and mediation program through the Better Business Bureau in the Bay Area

(More)

since 1979. It has heard 383 complaints, 1
and GM has bought 6 cars. The same 7
procedure is being established in Los 8
Angeles, Sacramento, and Fresno. 7

The Chrysler program may meet all of the standards for a dispute resolution process set out in this bill, but the programs of Ford and GM would apparently not.

7. Same non-conformity

The bill would define "reasonable number" as four attempts to repair the "same non-conformity" or defect.

Ford Motor Company proposed last year that the term "same non-conformity" be defined as a non-conformity caused by the failure of the same part. Ford argued that a vehicle may experience a similar condition (such as an inability to start) at different times during the warranty period due to totally different causes. However, an inability to start because of a defective starter and a similar failure from a defective battery would not be considered to be the same non-conformity under either Ford's warranty or the Song-Beverly Act.

Proponents state that a more accurate example would be a defective transmission which could result from the failure of one of a number of transmission parts. They say that four attempts to produce a working transmission should be the limit of reasonableness, regardless of how many transmission parts were defective.

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AB 1787 (Tanner)
Page 10

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8. Technical amendment

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On page , line , strike out "required" and
insert: defined

AB 1787 (Tanner)
As amended July 7
Civil Code
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MOTOR VEHICLE WARRANTIES
-REPLACEMENT OR REFUND-

HISTORY

Source: Author

Prior Legislation: AB 2705 (1980) - held in this
Committee

Support: Los Angeles City Attorney; KPIX; KABC; Long Beach Independent Press-Telegram; Santa Barbara News Press; State Consumer Advisory Council; Department of Consumer Affairs; California Consumer Affairs Association; Cal-Pirg San Diego; National Council of Senior Citizens; Motor Voters, San Diego; AFL-CIO, State Federation; State Building and Construction Trades Council of California; United Steelworkers of America; Baldwin Park Chamber of Commerce; Santa Cruz County District Attorney; Consumer Union, San Francisco; San Francisco Consumer Action; County of Los Angeles, Department of Consumer Affairs; California Federation of Women's Clubs, Orange District; Consumer Aid of Shasta County; Colusa County Board of Supervisors; Stanislaus County, Office of Consumer Affairs; Los Angeles Private Investigation & Patrol Service; California Teamsters Public Affairs Council; Center for Auto Safety; Chico Consumer Protection Agency; Lemon-Aid, San Diego; Consumer Federation of California; Legal Aid, San Diego; Consumer Federation of California; Legal Aid Society of San Mateo County; Consumer Coalition

(More)

Opposition: Ford; Chrysler; General Motors; California
Auto Dealers Ass'n.; California Manu-
facturers Ass'n.; Motor Vehicles
Manufacturers Ass'n.; America Honda Motor
Co.; Calif. Conference of Machinists

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Assembly floor vote: Ayes 48 - Noes 22.

KEY ISSUE

SHOULD THERE BE A PRESUMPTION THAT A NEW MOTOR VEHICLE WHICH HAS BEEN REPAIRED UNDER AN EXPRESS WARRANTY FOUR OR MORE TIMES FOR THE SAME DEFECT OR WHICH HAS BEEN OUT OF SERVICE FOR WARRANTY REPAIR MORE THAN 20 SHOP DAYS SHOULD BE REPLACED OR THE PURCHASER REIMBURSED BY THE MANUFACTURER?

PURPOSE

The Song-Beverly Consumer Warranty Act provides a mechanism whereby a consumer can enforce the terms of an express (written) warranty issued by a manufacturer. The Act provides that a manufacturer who is unable to service or repair goods to conform to his express warranty after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill would create a rebuttable presumption that a reasonable number of attempts have been undertaken if the same defect had been subject to repair four or more times by the manufacturer, or if the vehicle had been out of service for repair for more than 20 shop days since its delivery to the buyer.

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

COMMENT

1. Limited by the Song-Beverly Act

This bill would amend the Song-Beverly Consumer Warranty Act, and would apply only to those transactions covered by the Act.

(a) Only applicable to consumer goods

The Song-Beverly Act applies only to "consumer goods," defined as a product "used or bought for use primarily for personal, family, or household purposes...."

This bill would apply to any "new motor vehicle" - defined in Veh. C. Sec. 415 as any vehicle which is self-propelled - but only if used or bought for use primarily for personal, family, or household purposes. Thus, vehicles used for commercial purposes would not be subject to this bill.

(b) Only applicable to terms of express warranty

The purpose of the Song-Beverly Act is to provide a consumer with a means of enforcing the terms of the manufacturer's own warranty. Nothing which is not covered by that warranty is subject to the provisions of the Act.

Thus, this bill would apply only to those vehicles or parts of vehicles covered by the manufacturer's warranty. If the vehicle was sold "as is," this bill would not apply to that vehicle. If the vehicle was warrantied, but the defect arose in a part of the vehicle not covered by the warranty, the bill would not apply.

2. Nature of remedy

(a) Rebuttable presumption of reasonable number

The Song-Beverly Act imposes the duty of replacement or reimbursement on the warrantor who fails to repair the defect in the goods as promised by his warranty after a "reasonable number of attempts."

This bill would create a rebuttable presumption that a reasonable number of attempts for a new motor vehicle would be four or twenty shop days. The presumption could be overcome by a showing on the part of the warrantor that four attempts or twenty days were not reasonable in that particular case.

(b) Replacement or reimbursement

Under the Song-Beverly Act if the warrantor fails to repair the goods after a reasonable number of attempts, he 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 defect.

(c) Enforcement by litigation

The Song-Beverly Act is not enforced by any governmental agency. If a warrantor fails to meet the terms of the Act, the consumer's only remedy is to go to court.

3. Need for bill

Proponents state that current law does not protect consumers who purchase defective vehicles, because dealers and manufacturers never admit, perhaps because of the cost of the vehicle, that they have

made a "reasonable number" of attempts to repair it and are now willing to replace it or reimburse the consumer.

Proponents say that the clear standard proposed in this bill would offer a more effective remedy to the consumer, and would encourage improved quality control by manufacturers and improved repair service by dealers.

4. Same non-conformity

The bill would define "reasonable number" as four attempts to repair the "same non-conformity" or defect.

Ford Motor Company proposes that the term "same non-conformity" be defined as a non-conformity caused by the failure of the same part. Ford argues that a vehicle may experience a similar condition (such as an inability to start) at different times during the warranty period due to totally different causes. In Ford's example, however, an inability to start because of a defective starter and a similar failure from a defective battery could not be considered the same non-conformity.

Proponents state that a more accurate example would be a defective transmission which could result from the failure of one of a number of transmission parts. They say that four attempts to produce a working transmission should be the limit of reasonableness, regardless of how many transmission parts were defective.

5. Non-conformity with Song-Beverly

The bill is out of conformity with the Song-Beverly Act in two minor respects.

(a) Period of reasonable time

Other parts of the Song-Beverly Act define "reasonable time" as 30 calendar days. This bill, on the other hand, uses a standard of 20 days during which the service facility is open for business.

(b) Delay beyond the control of the warrantor

Where the Act refers to the 30 day period, it provides that delay caused by conditions beyond the control of the warrantor shall extend the period. This bill does not contain such a provision.

SHOULD NOT THIS BILL INCLUDE SUCH A PROVISION?

6. Manufacturer's appeal boards

Ford, Chrysler, General Motors all oppose the bill and state that consumer problems are being handled by their own appeal procedures.

(a) Ford

Ford has an appeal board composed of two dealers and three consumer representatives. A consumer with a service problem must first go to the dealer, and then contact with Ford Motor Company. If the problem is not resolved, he makes his case in writing to the appeals board. A decision of the board is binding on the dealer and on Ford, but not on the consumer.

(b) Chrysler

Chrysler has arbitration boards covering all 50 states. The boards are composed of a mechanic, a consumer advocate, a member of the general public, a dealer, and a Chrysler employee, but only the first three vote on decisions. The decisions are binding on Chrysler and the dealer, but not on the consumer.

(c) General Motors

General Motors has had a third-party arbitration and mediation program through the Better Business Bureau in the Bay Area since 1979. It has heard 383 complaints, and GM has brought 6 cars. The same procedure is being established in Los Angeles, Sacramento, and Fresno.

7. Technical amendment

On page 4, line 10, strike out "shop" and insert:
"facility"

Rich Deaally

CALIFORNIA ADVOCATES, INC.

Port Executive Bldg., 925 L Street, Suite 390, Sacramento, CA 95814 (916) 441-5080

FORD MOTOR CO.
SACRAMENTO

JUN - 1 1981

GOVERNMENTAL AFFAIRS

June 1, 1981

Members, California State Assembly

Subject: AB 1787 (Tanner) - New Motor Vehicle Warranties

The California Automobile Dealers Association is opposed to AB 1787 (Tanner), the "lemon law" bill. On behalf of two thousand franchised new car dealer members, our reasons for opposing this bill are as follows:

1. The automobile industry has established a variety of workable programs for settling consumer complaints;
2. AB 1787 would create disputes rather than resolve them;
3. Additional litigation undoubtedly would ensue;
4. The price of new vehicles eventually would increase;
5. Existing law provides sufficient remedy to consumers, particularly in light of last year's statutory requirement for providing notice of warranty rights to the customer. (AB 2263, Civil Code 1793.1);
6. The number of vehicles which cannot be corrected to the customer's satisfaction is very small, given the total volume of retail sales in California each year.

We believe that enactment of AB 1787 would be adverse to the consumer's interests. It would encourage litigation rather than negotiation or arbitration in attempted settlement of such disputes.

Sincerely,

Robert J. Beckus
Robert J. Beckus

Loren V. Smith
Loren V. Smith

OFFICE OF
CITY ATTORNEY
CITY HALL EAST
LOS ANGELES, CALIFORNIA 90012



BURT PINES
CITY ATTORNEY

June 24, 1981

The Honorable Omer Rains
Chairman, Senate Judiciary Committee
State Capitol
Sacramento, California 95814

Re: AB 1787 (Tanner)

Dear Omer:

The purpose of this letter is to urge your Committee to support AB 1787 which strengthens existing warranty law regarding new automobiles. This bill, which has become known as the "Lemon Bill," was introduced by Assemblywoman Sally Tanner in response to complaints from consumers who have experienced serious problems with defective new cars. The City Attorney's Office has also received many complaints about new cars with major defects from people who have spent literally scores of hours and hundreds of dollars attempting to get their cars repaired.

Current law entitles a consumer to a full refund or replacement of a new motor vehicle if a defect in the car is not fixed after a "reasonable" number of repair attempts. AB 1787 simply specifies that "reasonable" means four repair attempts or 20 days out of service.

By clarifying the meaning of the law, AB 1787 would provide both consumers and manufacturers with a clear standard for new car warranties and reduce the area of dispute. In addition, the bill would assist consumers to obtain fair redress for defective new cars that are not properly repaired.

The Honorable Omer Rains
Page 2.

For these reasons, I hope AB 1787 will receive your
vote when it is heard by the Senate Judiciary Committee.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Burt Pines", written over a horizontal line.

BURT PINES
City Attorney

BP:ae

cc: Members, Senate Judiciary Committee
Assemblywoman Sally Tanner



Regional Governmental Affairs Office
Ford Motor Company

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

June 30, 1981

Honorable Sally Tanner
Member of the Assembly
State Capitol - Room 2016
Sacramento, California 95814

Dear Assemblywoman Tanner:

Attached is a current news release on the progress and operation of the Ford Consumer Appeals Boards throughout the country. I thought you might find this of interest in connection with your Assembly Bill 1787.

Also attached is a story in today's Sacramento Bee regarding Ford's test program which will guarantee lifetime warranty on car repairs. The program will start July 1, 1981 at only three dealerships in the Chattanooga area, and obviously under carefully limited conditions; but at least it's a start in the right direction.

Best personal regards.

Sincerely,

RICHARD L. DUGALLY
Regional Manager
Governmental Affairs

RLD:cme

cc: Jim Austin
Al Davis
Lee Ridgeway
Loren Smith

Attachments

bcc: Mr. Richard Thomson ✓

NEWS FROM THE



WORLD OF FORD

FORD MOTOR CO.
SACRAMENTO
JUN 29 1981

IMMEDIATE RELEASE GOVERNMENTAL AFFAIRS

A consumer-appeals program established by Ford Motor Company in 1977 is proving decisively that customers have a strong voice when it comes to resolving automotive product performance or service disputes.

The first Ford Consumers Appeals Board was established in North Carolina in September, 1977. Since then, six other boards have been set up in major population areas throughout the country.

The success of the boards can be illustrated by the number of customers who have called on them for assistance in resolving disputes with dealerships.

In 1980, the seven boards completed action on 1,938 cases -- bringing to 3,346 the total number of decisions since the consumer appeals board program began. The totals are significant considering that four of the boards have been operating only since mid-1979.

Even more significant is the fact that in addition to the 1,938 cases reviewed by the boards in 1980, another 319 cases submitted for consideration were resolved by the customer, company and dealer prior to review by the boards and eliminated the need for board action.

"The very existence of the boards has encouraged dealers and Ford service representatives to be more sensitive to service disputes and resolve them before they ever reach the board," said N. A. Smith, manager, Owner Relations and Service Development Office, Ford Parts and Service Division. "The board gives customers clout and constantly reminds dealers and Ford representatives of the importance of resolving service-related disputes locally.

-more-



"In my opinion, our customers are happier if their complaints can be resolved quickly and efficiently by their local dealer. If that isn't possible, our customers may have a case reviewed before the third-party panel without initiating costly and time-consuming court action and without going through a lot of red tape."

The Ford Consumer Appeals Boards are composed of five voluntary members who include three consumer representatives, a Ford dealer and Lincoln-Mercury dealer. All dealers in board locations have agreed to abide by the board's decisions, which are reached by a simple majority vote. The decisions are based on written statements by all parties concerned and are binding on the dealer and Ford Motor Company, but not on the customer.

The boards consider service and product related cases only but will not handle cases in litigation, those involving sales or delivery problems, personal injury, property damage or claims for consequential damage.

"Eligible cases may involve any vehicle produced by Ford Motor Company regardless of age or mileage," Mr. Smith noted.

Ford Consumer Appeals Boards are located in Bellevue, Wash., serving Washington and Oregon; Milpitas, Calif., serving northern California, and Pico Rivera, Calif., serving southern California; Merrifield, Va., serving Metro Washington, D.C., Maryland, and Virginia; South Hackensack, N.J., serving New Jersey; and Charlotte, N.C., serving customers in North and South Carolina.

#

6/5/81

Q. What's the purpose of the Ford Consumer Appeals Boards?

A. The Ford Consumer Appeals Board concept is designed to supplement the company's other complaint-handling procedures. The purpose of the boards is increased customer satisfaction--the satisfaction of knowing a product performance or service complaint will be heard by an impartial board whose members are independent of Ford Motor Company.

Q. How do the boards function?

A. Each board has a voluntary panel of five members, including three consumer representatives, a Ford dealer and a Lincoln-Mercury dealer. The boards review cases monthly and reach decisions by a simple majority vote. Decisions of the boards are binding on the company and its dealers, but not on the customer who is free to pursue other avenues of appeal.

Q. How can a customer contact the board?

A. Through a toll-free telephone number (800-241-8450) or by mail to the address listed for the board serving them.

Q. What happens when a customer contacts the board?

A. If the case appears to qualify, the owner is sent a one-page form to document pertinent information regarding the nature of the complaint. The customer completes the form and mails it to a special P.O. Box administered by the Ford Parts and Service district office. Upon receipt of the customer's statement, it is screened to insure that it qualifies. Then an acknowledgement postcard is sent to the customer telling him that the dealer or a factory representative may contact him in a further attempt to resolve his complaint.

The customer's dealer receives a similar form so that the dealer's version of the problem can be obtained. At the monthly board meetings, the board reviews the statements and supporting evidence for each case and, if sufficient information is presented, votes on a decision. If the ruling is against the dealer and/or Ford, the remedy is initiated within 30 days.

Q. Do the boards usually side with the company?

A. No. The boards have not hesitated to recommend actions which favor customers. These actions have ranged from simple service corrections costing only a few dollars to decisions to replace vehicles.

Q. What kind of cases do the boards consider?

A. The boards deal with product performance - service-related cases only and will not handle cases in litigation or those involving sales or delivery problems, personal injury or property damage, or claims for consequential damages.

Q. What benefits does the company get from the consumer appeals boards?

A. As self-regulating mechanisms, the boards help the company and its dealers become more closely attuned to the needs of their customers. Their very existence means that our dealers and our own personnel are perceived as taking the extra steps required to resolve issues to the satisfaction of customers before they ever get to the boards for a decision.

Q. Should a customer go directly to a consumer appeals board if he has a service problem?

A. If a customer experiences a service-related problem with a Ford or a

Lincoln-Mercury vehicle, he first should talk to the dealer. In most instances, the dealer is eager to resolve a service complaint to help preserve a customer's good will. If the problem is not resolved satisfactorily, the customer should then contact the Ford Parts and Service District Office serving his area to obtain company assistance. If he still remains dissatisfied, then he may contact the Ford Consumer Appeals Board.

- Q. Have Ford Consumer Appeals Board decisions generally been more favorable to the customer or to the company and dealer?
- A. Inasmuch as a case has already been reviewed several times by the dealer and by Ford Motor Company before it reaches the board, the board, more often than not, finds that the case was properly handled before it reached the board.
- Q. Are board members paid?
- A. No. We do, however, reimburse them for travel expenses, long distance telephone calls, or any other expenses they incur directly related to participating in the board meeting.
- Q. What happens if a board member cannot attend a meeting for any reason?
- A. All boards have alternate members who can fill in when a regular member is unable to attend.
- Q. How many cases do they handle at each meeting?
- A. The number varies. In 1960 the boards reviewed an average of 25 cases per meeting.

- Q. Can a customer present his or her case in person?
- A. As an established operating procedure, neither customers nor dealers present their cases to the boards in person. In exceptional situations and if they desire, however, boards may ask a customer to present his case in person.
- Q. How does a customer present his case?
- A. A written statement expressing his complaint, actions taken to date and what he expects is submitted by the customer along with any supporting documents such as copies of repair orders, repair estimates, previous letters and the like.
- Q. How long does it take for a case to be brought before the board?
- A. It has averaged about 37 working days from the time the customer returns the completed statement until the board, which meets once a month, reviews the case - obviously much faster than a legal proceeding.
- Q. What happens if a dealer refuses to abide by the FCAE ruling?
- A. Dealers have agreed to bear financial responsibility in cases where the board determined they had been delinquent and this has not been a problem. Ford, however, would stand behind all decisions.
- Q. What are your plans for future expansion to other states?
- A. Various expansion plans are currently under review.
- Q. Where are the boards now located?
- A. Currently there are seven Ford Consumer Appeals Boards serving eight states and the District of Columbia. (See attached statistical information)

SOUTHERN CALIFORNIA FCAB

Established in July of 1979 as the sixth Ford Consumer Appeals Board.

FCAB Mail Address

P.O. Box A
Pico Rivera, California 90660

Area served: Southern California

Executive Secretary: W. A. Nolan

Board Members:

Howard Board, president, Board Ford, Whittier, Calif.

Helen Sachs, president, Sachs and Sons Lincoln-Mercury, Downey, Calif.

Ronald Melendez, consumer affairs director, County of Orange, Santa Ana, Calif.

Billy Meyers, chairman, Department of Mechanical Technology, Citrus College,
Azusa, Calif.

Susan Huguenor, deputy city attorney, Consumer Protection Unit, San Diego City
Attorney's Office, San Diego, Calif.

NORTHERN CALIFORNIA FCAB

Established in July of 1979 as the seventh Ford Consumer Appeals Board.

FCAB Mail Address

P.O. Box 909
Milpitas, California 95035

Area covered: Northern California

Executive Secretary: W. J. Boultas

Board Members:

Edmund Bartlett, president, Sun Valley Ford, Concord, Calif.

Charles Hilton, president, Town and Country Lincoln-Mercury, Sacramento, Calif.

Don Cosgrove, manager, California State Auto Association, Automotive Technical
Services, San Francisco, Calif.

David J. Van Edgou, Inspector of Automobile Equipment, State of California --
Department of General Services, Fleet Administration Division,
Sacramento, Calif.

Elizabeth Sullivan, member, Consumer Cooperative of Berkeley, Calif.

Ford testing lifetime warranty

A lifetime guarantee on repairs for your car? Impossible? Yes, right now, impossible. But Detroit has been moving in that direction for several years and earlier this month (June), a tentative test program which could transform today's "impossible" into tomorrow's "possible" was announced by Ford Motor Co.

If it works, your savings over a typical 10 years and 100,000 miles of driving could amount to several thousands of dollars. And it might work, for: upkeep is becoming relatively less expensive; troubleshooting tools are getting better; makers and dealers appear finally to be approaching agreement on how much a repair should cost, how long it should take and how best to fix what's wrong so it stays fixed.

REPAIR COSTS today are 25 percent to 30 percent less than in 1950 and 65 percent to 70 percent less than in 1925. What's more, if you're conservative in your driving and conscientious in your upkeep, today's cars can run 140,000 to 150,000 miles, way above their former top distances.

The auto dealer's slogan, "Pay Now, or Pay Later" is to be taken seriously. Even with cautious car handling and careful upkeep, major breakdowns will cost you rising totals as your car ages.

For a typical compact, average repair costs climb relentlessly from about \$175 annually in your first year (at today's prices and assuming 10,000 miles a year) to nearly \$490 a year in your 10th year of operation. By your fifth year (50,000 miles) your annual upkeep may near \$300 and by your eighth, be close to \$400.



Your
money's
worth

Sylvia Porter

These figures do not take inflation into consideration. (Even with "only" an 8 percent annual inflation rate, your 10th year costs might top \$1,000).

TO SMOOTH OUT these often all-at-once big costs, Detroit has long offered a variety of factory, dealer and independent "warranties."

In the early 1960s, Chrysler actually adopted a five-year, 50,000-mile free contract — good even if the car was traded. Within a few years, though, high expenses forced Detroit to end such long-term giveaways, leaving the field to independents which sold upkeep policies through dealerships.

In the late 1970s, domestic makers began selling — as an optional extra — "extended service protection" against maintenance costs. These warranties (usually requiring a lump payment plus a set fee for each repair) typically have a three-year and 36,000- or 50,000-mile maximum, and end if you trade the car.

Now Ford is testing another step: guaranteeing repair work for the life of the car, under carefully limited conditions. The program is being tested at

just three dealerships in the Chattanooga, Tenn., area.

WORK DONE UNDER a car's initial (free) warranty is NOT covered. But any upkeep performed under an extended service (optional extra cost) program IS eligible. The guarantee ends if the car is sold or traded, or if repairs are done at a non-Ford dealership or with non-Ford parts.

There are also many "exceptions": parts replaced under scheduled maintenance, such as points, spark plugs, condensers, filters and emissions-control valves. "Exclusions" include: items which normally wear out, such as brake linings, clutch facings, and windshield wiper blades, plus batteries, fluids and, of course, parts damaged by accident or abuse.

While this test is a tiny step forward, basic to any eventual workable warranty is the disparity between what the manufacturer pays a dealer for work done and the higher price the dealer charges a customer for identical repairs. But even here, there's a tinkle bell of progress.

AS OF JULY 1 (tomorrow), an Idaho law requires automakers to pay dealers at the same rate for warranty repairs that customers must pay if the auto is not under warranty. When makers and dealers agree on costs of repairs, lifetime car warranties will be next.

Manufacturers will have a bigger incentive to make the cars right in the first place; and if the equipment does break, the dealers will have the incentive to fix it right, for the first time, too.

What you and I will save in time alone is mind-boggling. And in dollars . . . And in aggravation. Move on, Detroit.

NEW MOTOR VEHICLE BOARD

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



RECEIVED
 JUL 14 1981
FORD MOTOR CO.
 SACRAMENTO

July 10, 1981

RECEIVED CAR DEALERS ASSN

JUL 23 1981

GOVERNMENTAL AFFAIRS

Senator Alan Sieroty
 State Capitol
 Room 5072
 Sacramento, CA 95814

Dear Senator Sieroty:

I am a member of the New Motor Vehicle Board of the State of California. In May of 1974, Governor Ronald Reagan appointed me to a four year term. In April of 1978, Governor Edmund G. Brown Jr. reappointed me to another four year term. As a member of the New Motor Vehicle Board for the past seven years, and as a car dealer for the past thirty years, I have spent many hours away from my business, working to insure the motor vehicle industry in the State of California is responsive to the needs of the California consumer.

As a member of the New Motor Vehicle Board, I have been intricately involved in the development of the procedures, policies, and standards which directly relate to the welfare of the California consumer, (which necessarily includes the viability of the California car dealer, who is a valuable economic asset to each community of this state).

While I have never had the opportunity of meeting Assemblywoman Tanner, I share some of her concerns. However, I do not believe AB 1787 will be cost-efficient or an effective remedy to the consumer. Therefore, I am respectfully submitting to you Senator Sieroty my opposition to AB 1787.

First of all, present law offers adequate procedures and protection for the new motor vehicle consumer. Civil Code Section 1793.2 currently provides that after a reasonable number of attempts, a manufacturer "shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer . . .". What constitutes a reasonable number of attempts will vary depending upon the facts of the particular case. I therefore believe the determination of what is a reasonable number of attempts should be left to a case-by-case evaluation.

Secondly, the New Motor Vehicle Board is mandated pursuant to Vehicle Code Section 3050(c) to:

Consider any matter concerning the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative . . . submitted by any person . . .

Under this mandate, the Board has developed an efficient and effective consumer complaint program whereby it has resolved thousands of consumer complaint problems without the necessity of formal expensive litigation. The Board's staff both formally and informally are resolving 80% of the consumer complaints which are annually filed with the Board. In addition to the consumer complaint program, the Board has devised a formal "Petition" procedure that may be employed against a motor vehicle licensee, whether it be a manufacturer, distributor, or dealer, for the protection of motor vehicle consumers.

Thirdly, the language of AB 1787 does not indicate what agency or agencies would be responsible for administering the amendments to Civil Code Section 1793.2. It does appear likely an increase in disputes will result from this legislation. The resolution of these disputes will require the involvement of either the judicial system or a state agency. Unfortunately, the judicial system is experiencing significant overload problems which result in delays of many months, if not several years. In addition to significant delays, the consumer would be required to expend their own money on attorney fees and services in order to properly pursue their judicial remedy. In many instances, this alternative will not be available due to expense and delays.

In the event the judicial system is not a viable alternative, the consumer's only other alternative is to look to a state agency to enforce the law. Since the bill does not designate an agency to deal with these problems, the consumer may not have a remedy. I believe, however, in light of the Board's mandate mentioned above, the Board may end up adjudicating claims arising under the proposed law. The costs of such a program, while very speculative at this point, could result in an unreasonable burden being placed on the Board's already scarce resources. For this reason, I must, as a member of the New Motor Vehicle Board, oppose AB 1787.

I realize the Legislature is in recess during the month of July and early August, however, due to the significance of this legislation, I would be more than happy to meet with you in your district or anywhere that would be convenient for you to discuss AB 1787.

Please do not hesitate to call me if I may be of assistance to you in any way. My business phone at Vandenberg Motors is (916) 452-4331, and my home phone is (916) 487-2060.

Very truly yours,


JOHN B. VANDENBERG
Board Member
New Motor Vehicle Board

cc: Assemblywoman Tanner

FORD E.M.C.
FORD MOTOR CO.
SACRAMENTO

JUL 16 1981

GOVERNMENTAL AFFAIRS

AB 1787

Page 4 - Line 14

Motor vehicle manufacturers and motor vehicle dealers who offer dispute resolution mechanisms that contain the following criteria shall be exempt:

- 1) Third party mechanism to resolve disputes between the owner and the manufacturer or between the owner and the dealer
- 2) All expenses involved in the administration of the mechanisms to be paid by the manufacturer or the dealer
- 3) Decision of the third party must be binding on at least the manufacturer or dealer.



Regional Governmental Affairs Office
Ford Motor Company

Suite 280 - 925 L Street
Sacramento, California 95814
Telephone: 916/442-0111

July 23, 1981

Mr. Richard Thomson
Chief Counsel
Senate Judiciary Committee
State Capitol - Room 2046
Sacramento, California 95814

RE: Assembly Bill 1787

Dear Richard:

Per our telephone conversation, attached is the following material on Assembly Bill 1787 (Lemon car bill):

- (1) General Motors statement
- (2) Motor Vehicle Manufacturers Association analysis
- (3) California Manufacturers Association issues paper
- (4) California Manufacturers Association Report editorial
- (5) California Automobile Dealers Association letter
- (6) New Motor Vehicle Board letter
- (7) Ford news release statement of opposition
- (8) Ford brief problem paper
- (9) Ford floor statement input
- (10) Ford chart on resolving customer service problems
- (11) Ford Consumer Appeals Board brochure
- (12) Proposed General Motors amendments

Page Two
Richard Thomson
July 23, 1981

Assembly Bill 1787

In addition to this material, there are six serious problem areas that should be dealt with by amendments:

(1) Commercial vehicles (fleet, taxi, police, etc.) should be excluded.

(2) The 20 day provision should be changed to 30 days to conform with existing sections of the law.

(3) The 20 days provision should be extended for reasons beyond the control of the manufacturer or dealer (strikes, acts of God, etc.).

(4) Emission equipment warranties (now required for 50,000 miles or 5 years) should be excluded.

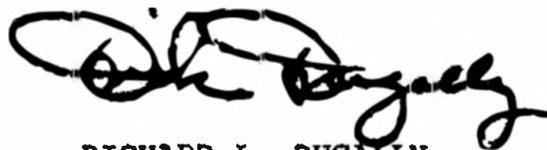
(5) The definition of "same nonconformity" should be narrowed to be for the same "part" (i.e., if car doesn't start easily or at all, it could be several different parts causing the problem). The "same nonconformity" is too vague.

(6) There should be some provision to exclude the buy-back if there has been customer abuse, misuse, modification or alteration.

I appreciate your interest in our analysis of this measure. As soon as I receive our Office of General Counsel's language on proposed amendments, you will receive a copy.

If you need to contact me, please don't hesitate to call me at home: (916) 481-1511. My secretary, Cheryl Ewing, will know where to reach me next week in Atlanta.

Sincerely,



RICHARD L. DUGALLY
Regional Manager
Governmental Affairs

RLD:cme

Attachments



Regional Governmental Affairs Office
Ford Motor Company

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

July 24, 1981

Mr. Richard Thomson
Chief Counsel
Senate Judiciary Committee
State Capitol - Room 2046
Sacramento, California 95814

RE: Assembly Bill 1787

Dear Richard:

Attached are the proposed amendments to Assembly Bill 1787 which we discussed yesterday. These were just received from our Office of General Counsel in Dearborn.

I plan to personally deliver a copy to Assemblywoman Tanner next week in Atlanta and Kathi Hamilton is receiving a copy today. These may not be all of the amendments that we will recommend, as I will just have to wait until our Chief Counsel responsible for warranty legislation returns from vacation.

Thank you for your continued interest.

Sincerely,

A handwritten signature in black ink that reads "Richard L. Dugally".

RICHARD L. DUGALLY
Regional Manager
Governmental Affairs

RLD:cme

cc: Honorable Sally Tanner
Jim Austin
Al Davis
Kathi Hamilton
Lee Ridgeway
Loren Smith

Attachments

JUL 24 1981

GOVERNMENTAL AFFAIRS

R. L. Dugally

Re: California AB 1787

In reviewing California AB 1787, we find that there are several unworkable definitions and overly extensive remedies which should be clarified. Specifically, we believe that there are six basic problems with this legislation which could be remedied through proper language additions.

1. In keeping with the spirit of the Song-Beverly Warranty Act, the bill should clearly exclude commercial vehicles from its coverage. The Song-Beverly Act applies only to consumer goods; however, the proposed legislation is applicable to new vehicles, without defining that term. Accordingly, new vehicles should be defined.

2. The proposed language requires repurchase of a vehicle if it is out of service for 20 days by reason of a non-conformity. This conflicts with the existing Song-Beverly language which provides that a product must be repaired within 30 days. Accordingly, the 20-day provision should be extended to 30 days to conform with the existing law.

3. Similarly, the existing law provides an extension to the 30-day period for delays caused by conditions beyond the control of the manufacturer or his representatives. We believe this similar provision should be added to the proposed new language.

4. As the Song-Beverly Act in general and this proposed addition in particular are intended to apply to the express warranty provided by the manufacturer, there should be a clear exclusion of any statutorily required warranties. To include such warranties in this legislation would potentially conflict with other federal and state laws.

5. The proposed addition refers in several instances to the same non-conformity without defining that term. It is quite conceivable that a vehicle may experience a similar condition (such as an inability to start) at different times during the warranty period due to totally different causes. We believe that consistent with the intention of this legislation, the term "same non-conformity" should be defined as a non-conformity caused by a failure of the same part.

6. The new legislation would require the repurchase of a vehicle based upon an inability to repair under the warranty. Certainly, it could not be the legislative intent to cover vehicles the failures on which have been caused directly by the owner. Thus,

the buy-back provision should not be applicable in instances where there has been customer abuse, negligence or modification or alteration to the vehicle.

Accordingly, the proposed additional legislation should be revised to read as follows:

"It shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties if (1) the same non-conformity has been subject to repair ~~twice~~ or more times ~~by the dealer, and one time~~ by the manufacturer, or (2) the vehicle is out of service by reason of a non-conformity which has, since the delivery of the vehicle to the buyer, been subject to repair by the dealer for a cumulative total of more than 30 days. In computing the 30 days pursuant to this section, a day shall mean a calendar day or any portion thereof that the dealer's repair shop is open for business. The 30 days shall commence on the day when, after the defect is first reported or known, a written estimate of the cost of repairing such defect is first prepared. Delays caused beyond the control of the manufacturer or its representatives shall serve to extend the 30-day requirement.

The foregoing provision shall not be applicable to any statutorily required warranties, or in instances where the vehicle has been subject to ^{customer} abuse, negligence, or modification or alteration.

For purposes of this section, the following definitions shall apply:

(a) "New vehicle" shall mean only a new passenger vehicle or motor truck not exceeding 6,000 pounds gross weight that has not been previously titled or registered, has not been substantially used or damaged and that is sold for personal, household or family use.

(b) NOTE: TAPE RECORDED. LANGUAGE WILL BE SUPPLIED NEXT WEEK. *D. J. Kelly*

Each of these provisions which have been revised by us should be acceptable to the state legislature.

Stewart M. Weiner
Senior Attorney

July 25, 1987

Consumer Committee
of State Hospital

Lacrimator, call 958

attn:
Name, Marie
Bennett, L. Bennett,
Mark, Peter,
Pierce, Natalie
L. Perry
Michigan

Re: AB 1787 "Simon Bill"

Dear Sirs:

I cannot imagine that you
need to be URGED to pass this bill.

There are thousands of children in
this state. I am a very small one and
the few thousand dollars due to a
mistake in the law.

What have to bear the responsibility of
our "product".

Some groups, such as churches, people
like myself, do not wish a law to force
them to accept these responsibilities.
Others do, like auto manufacturers being a
prime example.

Oh yes Sirs, I believe you can reject
marriage - and what your bill is
really all about what it?

I will thank you in advance - sincerely,

Marie Bennett 1155 So. State #301
92343



California Chamber of Commerce • 1027 10th St. • P.O. Box 1736 • Sacramento, CA 95808 • (916) 444-6670

July 28, 1981

The Honorable Sally Tanner
California State Assembly
California State Capitol, Rm. 2016
Sacramento, California 95814

RE: AB 1787 Warranties, scheduled for
hearing August 11 before the Senate
Judiciary Committee

Dear Ms. Tanner:

The California Chamber of Commerce opposes AB 1787 as amended
July 7, 1981.

We find this legislation adds another layer of regulations that
could only further complicate and burden the Department of
Consumer Affairs under the State of California.

We feel that there are adequate remedies available to the
consumer other than attempting to further legislate warranty
requirements.

AB 1787 is arbitrary in its designation of the number of times
the automobile should be repaired and the length of time the
automobile is out of service.

We are urging the committee members to vote "no" on this legislation.

Sincerely,

Warren J. Hayes, Director
Consumer Affairs

WJH/pb

cc: Senate Judiciary Committee

July 31, 1981

AB 1787

SUBJECT: Proposed California "Lemon Law"

CHAIRMAN

N. KELLY

1ST VICE CHAIRMAN

G. WHITEHEAD

2ND VICE CHAIRMAN

Y. SUZUKI

TREASURER

H. LAMM

SECRETARY

N. I FAN

MEMBERS

ALFA ROMEO

BMW

FIAT

HONDA

SUZU

JAGUAR ROVER TRIUMPH

LOTUS

MAZDA

MINI

NISSAN

PEUGEOT

RENAULT

ROLLS ROYCE

SAAB-SCANIA

SUBARU

TOYOTA

VOLVO

ASSOCIATE MEMBERS

BRIDGESTONE

DUNLOP

GOODYEAR

PIRELLI

SPENCER

STV

TOYO TIRE

YOKOHAMA RUBBER

PRESIDENT

G. NIELD

Enclosed is a copy of California Assembly Bill 1787. This bill would amend the existing Civil Code §1793.2 by adding a new paragraph to subsection (d) which would create a presumption that four attempts to correct the same "nonconformity" or a vehicle's being out of service more than 20 business days during the warranty period would trigger the warrantor's duty to replace or repurchase the warranted vehicle.

Dealer, manufacturer, and importer sources in California report that the present sentiment is that the bill is likely to pass.

We have been informed that an important hearing on the bill will be held on August 11, 1981 by the California Senate Judiciary Committee. A few industry representatives are planning to attend and testify. In view of the discussions at the Board of Directors and Lawyers Committee meetings earlier this month in Colorado Springs, AIA is planning to testify and discuss the following points:

1. To the extent the bill is aimed at getting the attention of the motor vehicle industry to consumer dissatisfaction with service experience, the bill should recognize the efforts of much of the industry towards resolving such problems by adopting the following additional provision:

~~This is the proposed amendment that Sally Jenner is unwilling to accept.~~

Not presented to Sally yet.

"Motor vehicle manufacturers or dealers who offer dispute resolution mechanisms that contain the following criteria shall be exempt.

1. Third party mechanism to resolve disputes between the owner and the manufacturer or between the owner and the dealer;
2. All expenses involved in the administration of the mechanism to be paid by the manufacturer or the dealer;
3. Decision of the third party must be binding on at least the manufacturer or the dealer."

2. The bill establishes bad policy in the following respects:
 - a. the quantifying of a finite number of attempts to correct a mechanical problem is impossible due to the wide variety and varying complexities of different parts or components of modern motor vehicles;
 - b. some failures, even if never fixed, simply do not rise to the level where replacement or repurchase of the entire vehicle is appropriate, e.g. car clock;
 - c. some discretionary or "goodwill" repair attempts would no longer be undertaken for fear of triggering the repurchase or replacement right, e.g. repeated efforts to locate and eliminate odd noises, or repeated efforts to improve fuel economy;

- d. consumer expectations of a defect-free or new car would be raised to an unrealistic level, with resulting consumer dissatisfaction with the industry and the law;
- e. the claimant would be relieved of his normal burden of proving his case but would instead be able to rely on an arbitrary fact to shift the burden to the warrantor, which is unfair and unreasonable and contrary to long established rules of law; the result would be to make it easy for a consumer to get rid of a car that no longer suited the consumer because of factors having nothing to do with warranty service, e.g. exterior color, or model features such as a sedan instead of a station wagon.

3. Technical Defects of the Bill

- a. with regard to the four attempts to fix:
 - i. provision should be made for notice from the consumer to the warrantor after two unsuccessful attempts to fix with an opportunity for a person employed or designated by the warrantor to be present at further fix attempts;
 - ii. "nonconformity" should be more specifically defined in terms of parts or components, so as to avoid different problems being considered within the same fix attempts.
- b. with regard to the 20 days out of service:
 - i. such a provision discriminates against those companies that have warranty durations longer than the current standard 12-month period;

- d. consumer expectations of a defect-free or new car would be raised to an unrealistic level, with resulting consumer dissatisfaction with the industry and the law;
- e. the claimant would be relieved of his normal burden of proving his case but would instead be able to rely on an arbitrary fact to shift the burden to the warrantor, which is unfair and unreasonable and contrary to long established rules of law; the result would be to make it easy for a consumer to get rid of a car that no longer suited the consumer because of factors having nothing to do with warranty service, e.g. exterior color, or model features such as a sedan instead of a station wagon.

3. Technical Defects of the Bill

- a. with regard to the four attempts to fix:
 - i. provision should be made for notice from the consumer to the warrantor after two unsuccessful attempts to fix with an opportunity for a person employed or designated by the warrantor to be present at further fix attempts;
 - ii. "nonconformity" should be more specifically defined in terms of parts or components, so as to avoid different problems being considered within the same fix attempts.
- b. with regard to the 20 days out of service:
 - i. such a provision discriminates against those companies that have warranty durations longer than the current standard 12-month period;

- ii. no recognition is made of the effect of those warranties which also have a mileage duration limit;
 - iii. unlike the four attempts provision, this provision does not make clear that the 20 days cumulative out of service must be for the same "nonconformity";
 - iv. provisions should be made for notice from the consumer to the warrantor after seven cumulative days out of service;
 - v. no allowance is made for delays caused by events beyond the warrantor's control, e.g. work stoppages or transportation failures;
 - vi. if the point of this provision is the inconvenience to the consumer, a more appropriate remedy would be the furnishing of a comparable car after the 20 days out of service, especially combined with the warranty extension provision already in the law; repurchase or replacement is simply too drastic.
- c. It should be made clear that the law applies only to voluntary express warranties, not implied warranties nor warranties required by statutes, e.g. emissions warranties.

Individual AIA Members are urged to testify in addition to the AIA testimony. Industry sources in California agree that if there is any significant chance of turning the legislature around on this bill, that chance would be enhanced by a large turnout at the hearing, even if individual companies only submitted or read brief statements.

Also, it would be helpful if AIA Members alerted their dealers in California to the existence of, and problems with, this bill. Anticipated dealer problems, in addition to the points noted above include:

- the administrative burden which would fall on the dealers in handling the increased warranty disputes and repurchase or replacement of vehicles where necessary;
- the time and emotional energy required to deal with increased and probably unrealistic consumer expectations; and
- increased financial liability arising out of those cases where repurchase or replacement is required because of service deficiencies rather than product deficiencies.

Comments on the points listed above or additional points which you believe ought to be raised should be communicated to me or Milton D. Andrew (202-347-6007), who is expected to be the AIA representative at the August 11 hearing.



George C. Nield
President

MA:pvm



Regional Governmental Affairs Office
Ford Motor Company

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

August 4, 1981

Mr. Richard Thomson
Chief Counsel
Senate Judiciary Committee
State Capitol - Room 2046
Sacramento, California 95814

RE: Assembly Bill 1787

Dear Richard:

Last week I sent you Ford's proposed amendments to Assembly Bill 1787 which were forwarded to me by our Office of General Counsel. One of the paragraphs was missing because the tape was garbled.

Here is that section, which is to be inserted in section (b), page 2 of Mr. Weiner's memorandum to me:

- (b) "Same nonconformity" shall mean a condition which is caused by a failure of the same part.

I apologize for any inconvenience this may have caused the Committee.

Sincerely,

RICHARD L. DUGALLY
Regional Manager
Governmental Affairs

RLD:cme

cc: Honorable Sally Tanner
Jim Austin
Al Davis
Kathi Hamilton
Lee Ridgeway
Loren Smith

TRIUMPH Motorcycles America Inc.

6 August 1981

Re: **AB1787**
We Oppose

Hon. Omer Rains, Chairman
Senate Judiciary Committee
State Capitol
Sacramento, CA 95814

Dear Senator Rains

We are informed that the above-numbered Assembly Bill, the so-called "Lemon Law," will come before your Judiciary Committee next week.

The Bill requires the repurchase or replacement of a motor vehicle after a "reasonable" number of attempts to conform the unit to the applicable express warranties.

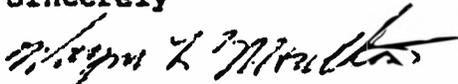
We, like most motor vehicle manufacturers and distributors, are dependent upon our dealer network for warranty repair, and it is perhaps true that there are some whose mechanics are more skilled than others. However, there is little reason why a problem cannot be worked out with reasonable cooperation on the part of all concerned -- the manufacturer or distributor, the dealer, and the vehicle owner.

If a motor vehicle cannot be repaired by the dealer after a reasonable number of attempts, then any manufacturer or distributor will repurchase or replace the vehicle voluntarily. We have all had to do this on occasion. But to give the consumer the added impetus of AB1787 will serve no purpose but to encourage consumers -- not all of whom are models of patience and rectitude -- to fly to their lawyers over any sticky mechanical problem that may arise. This can only serve to jam already-crowded court calendars with picayune complaints over matters which could have been settled justly with the application of time and patience. It seems clear to us that such a law will serve no purpose but to fatten the purses of the legal fraternity.

Indeed, the Californian doesn't need additional laws to protect his consumer rights -- the statute books are already full of them.

May we urge you and your colleagues to give this Bill your most dispassionate assessment in order that you also may foresee the complications which can arise from the passage of this proposed legislation.

Sincerely



Wayne L. Moulton
President

cc Mr. Richard Thomson, Judiciary Committee Consultant
Hon. Sally Tanner

TOYOTA
TOYOTA MOTOR SALES, U.S.A., INC.

TELEPHONES
(213) 770-1730
(213) 532-5010
TELEX 673146

2055 WEST 190TH STREET
TORRANCE CALIFORNIA 90509

August 6, 1981

Mr. Richard Thomson
Senate Judiciary Committee
State Capitol
Sacramento, CA 95814

Dear Mr. Thomson:

I am writing to you regarding California Assembly Bill 1787 which the Senate Judiciary Committee is scheduled to consider on Tuesday, August 11.

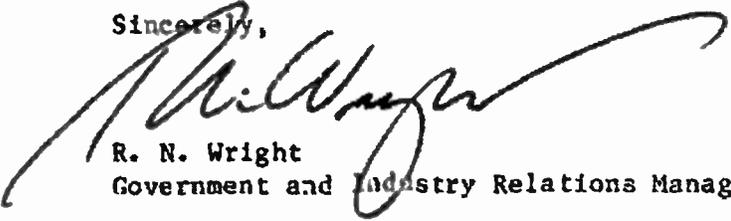
We believe that the proposed legislation does not consider the complexities inherent in automobiles and the automobile service and repair industry. For example, AB 1787 does not address the matter of customer-abused vehicles or overly sensitive reactions to minor problems.

AB 1787 would also discourage discretionary or "goodwill" attempts by the dealer to repair a vehicle. Such attempts would no longer be undertaken for fear of triggering the repurchase or replacement right.

We believe that existing laws adequately and reasonably protect the rights of consumers, manufacturers and dealers, and that manufacturers have already developed systems to respond effectively and fairly to customers with after-sale problems.

For these reasons, Toyota Motor Sales, U.S.A. opposes AB 1787. We urge that you vote against this bill.

Sincerely,



R. N. Wright
Government and Industry Relations Manager

RNW:jk

TRIUMPH Motorcycles America Inc.

6 August 1981

Re: **AB1787**
~~We Oppose~~

Hon. Omer Rains, Chairman
Senate Judiciary Committee
State Capitol
Sacramento, CA 95814

Dear Senator Rains

We are informed that the above-numbered Assembly Bill, the so-called "Lemon Law," will come before your Judiciary Committee next week.

The Bill requires the repurchase or replacement of a motor vehicle after a "reasonable" number of attempts to conform the unit to the applicable express warranties.

We, like most motor vehicle manufacturers and distributors, are dependent upon our dealer network for warranty repair, and it is perhaps true that there are some whose mechanics are more skilled than others. However, there is little reason why a problem cannot be worked out with reasonable cooperation on the part of all concerned -- the manufacturer or distributor, the dealer, and the vehicle owner.

If a motor vehicle cannot be repaired by the dealer after a reasonable number of attempts, then any manufacturer or distributor will repurchase or replace the vehicle voluntarily. We have all had to do this on occasion. But to give the consumer the added impetus of AB1787 will serve no purpose but to encourage consumers -- not all of whom are models of patience and rectitude -- to fly to their lawyers over any sticky mechanical problem that may arise. This can only serve to jam already-crowded court calendars with picayune complaints over matters which could have been settled justly with the application of time and patience. It seems clear to us that such a law will serve no purpose but to fatten the purses of the legal fraternity.

Indeed, the Californian doesn't need additional laws to protect his consumer rights -- the statute books are already full of them.

May we urge you and your colleagues to give this Bill your most dispassionate assessment in order that you also may foresee the complications which can arise from the passage of this proposed legislation.

Sincerely

Wayne L. Moulton
President

cc Mr. Richard Thomson, Judiciary Committee Consultant
Hon. Sally Tanner

MAILGRAM SERVICE CENTER
MIDDLETOWN, VA. 2264

 Mailgram 

4-043661M219 08/07/81 ICS KACOAMR OAK SACR
347 PD OAKLAND CALIF

RICHARD THOMPSON
CONSULTANT
SENATE JUDICIARY COMMITTEE
STATE CAPITOL
SACRAMENTO CALIF 95814

AB 1787 (TANNER)

FOR YOUR INFORMATION WANTED YOU TO KNOW KAISER ALUMINUM
& CHEMICAL CORPORATION HAS TAKEN THE POSITION OF OPPOSING
AB 1787 AND HAS SENT THE FOLLOWING MESSAGE TO MEMBERS OF THE
SENATE JUDICIARY COMMITTEE.

I HOPE YOU WILL VOTE NO ON AB 1787 (TANNER) WHEN IT COMES
BEFORE THE SENATE JUDICIARY COMMITTEE ON AUGUST 11.

WE BELIEVE THIS 'WARRANTY' BILL WILL NOT DO WHAT IT HOPES
TO DO IN PROTECTING CONSUMERS AGAINST DEFECTIVE CARS, BUT
RATHER WILL DELAY THE RESOLUTION OF VALID CONSUMER COMPLAINTS
AND POSSIBLY INCREASE THE COST OF ALL NEW CARS.

THE PRESENT SONG-VEVERLY ACT AND VOLUNTEER MANUFACTURER AND
DEALER WARRANTIES ALREADY PROVIDE MECHANISMS FOR RESOLVING
CUSTOMER COMPLAINTS AND THEIR FLEXIBILITY ALLOWS FOR MEDIATION
OR BINDING ARBITRATION. MANDATING A DEALER TO REPURCHASE AN
AUTOMOBILE AFTER FOUR ATTEMPTS TO CORRECT A POSSIBLY MINOR
PROBLEM WILL SURELY INCREASE THE LIKELIHOOD OF COSTLY AND TIME-
CONSUMING LITIGATION. THESE COSTS WOULD ULTIMATELY HAVE TO BE
RECOUPED BY INCREASED AUTOMOBILE PRICES.

THE CONSUMER IS PRESENTLY VERY WELL PROTECTED BY PRESENT
LAW AND VOLUNTARY WARRANTY PROVISIONS. AB 1787 RAISES THE REAL
POSSIBILITY OF UNDERMINING THIS PROTECTION BY SETTING THE STAGE
FOR PROTRACTED LAWSUITS INSTEAD. AB 1787 IS NOT IN THE BEST
INTERESTS OF THE CONSUMER. PLEASE VOTE AGAINST IT.

R L SPEES
VICE PRESIDENT - PUBLIC AFFAIRS
WESTERN REGION
KAISER ALUMINUM & CHEMICAL CORPORATION
300 LAKESIDE DRIVE
OAKLAND CALIF 94643
TLX 335315

BOYDEN, COOLURIS, HAUSER & SAXE

ATTORNEYS AT LAW

455 CAPITOL MALL, SUITE 415
SACRAMENTO, CALIFORNIA 95814
(916) 441-0888

SAN FRANCISCO OFFICE
126 POST STREET, SIXTH FLOOR
SAN FRANCISCO, CALIFORNIA 94108
(415) 398-1784

August 7, 1981

FILE NO. 220.20

The Honorable Omer L. Rains
Chairman, Senate Judiciary Committee
State Capitol
Room 5082
Sacramento, CA 95814

Dear Mr. Rains:

This office represents the Western Vehicle Leasing Association, formerly the California Vehicle Leasing Association, a regional trade association comprised of approximately 250 lessors and entities providing services to the leasing community. The Association's membership involved in leasing, the vast majority of whom are based in California, lease in excess of 200,000 vehicles to consumers and businesses throughout the state.

We are writing on behalf of the Association to express its strong opposition to A.B. 1787 which your committee will hear on Tuesday, August 11. This opposition stems not so much from the intent behind the measure which we perceive to be to provide greater specificity to a presently existing provision but rather from the Association's analysis that the bill as presently drafted simply fails to achieve its perceived objective.

Particularly troublesome is the concept that a vehicle out of service by reason of repairs for a cumulative period of more than 20 days may be returned for reimbursement of funds paid. This open ended provision ignores potential abusive treatment by the user as well as the results of accidents and the like which bear no relationship to a failure on the part of the manufacturer to deliver a merchantable product.

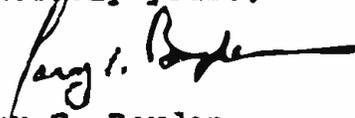
Additionally, the Association is concerned that this measure will be abused by certain elements of the consumer public. Insofar as leasing itself is concerned, it must be remembered that the lessor is the owner. Thus, in addition to a myriad of reasons why a lessor would not wish to terminate a lease, not the least of which is that lessors will often have a negative cash flow early in the lease and that even where this is not the case a reimbursement after deducting for use may leave the lessor with a loss, the lessor community

The Honorable Omer L. Rains
August 7, 1981
Page Two

finds itself caught in the middle between the lessee and the manufacturer. And this bill in its present form certainly leaves entirely unclear the rights of the respective parties in a leasing context. For instance, must a lessor return the vehicle and terminate the lease at the request of the lessee when the presumptions are satisfied? Similarly, may the innocent lessor recover its losses resulting from a termination? Given the rapid growth of leasing, this failure to deal with the rights of all affected parties should not be legislatively sanctioned.

The Association would like to express its appreciation for your consideration of its thoughts in this matter.

Sincerely yours,



Cary C. Boyden

CCB:jk

cc: Edward M. Davis
Robert G. Beverly
John T. Doolittle
Milton Marks
Nicholas C. Petris
Robert B. Presley
David A. Roberti
Alan G. Sieroty
Sally Tanner
Richard Thomson ✓
Western Vehicle Leasing Association
Bruce Williams



A. E. Davis and Company

925 L Street, Suite 390 • Sacramento, CA 95814 • (916) 441-4140

August 7, 1981

To the Members of Senate Judiciary Committee:

Chrysler Corporation urges you to vote NO on AB 1787 (Tanner), the so-called "Lemon" bill, when it is heard by you on Tuesday, August 11.

Here's why.

This bill would place a great time and expense burden on the car purchaser by forcing him or her to go to court to prove that the vehicle's nonconformity fits the language of the proposed amendment contained in AB 1787. We understand that Superior Court cases in Los Angeles now take more than four years to come to trial. This certainly indicates the potential for a purchaser becoming very angry with the court system, his attorney, as well as the dealer and manufacturer because of the delay.

Chrysler can't afford any dissatisfied purchasers, so it has established a procedure of using third parties to resolve, in a matter of weeks instead of years, disputes between the purchaser and the dealer over an unrepaired component of the vehicle during the warranty period. This is accomplished through Customer Satisfaction Arbitration Boards (CSAB). These consist of five members - a certified auto mechanic, a consumer advocate, a public member, a dealer representative and a Chrysler employee. After review of each complaint received from a dissatisfied purchaser, the final decision can be voted on only by the mechanic, consumer advocate and the public member. The decisions, so far, have ranged all the way from denying that the purchaser has a valid case to ordering the dealer and Chrysler to replace the vehicle with a new one. Replacement has taken place in four instances in New York, West Virginia and Missouri involving three passenger cars and one pick-up truck, so this system works and in a matter of weeks, not years as would be the case under AB 1787. The final decision is binding on Chrysler and the dealer, but not on the customer who still has the option of going to court.

In summary, we believe this Chrysler CSAB program is a far better way, and certainly less costly in time and money to the car owner, to get a satisfactory resolution to the problem of the so-called "Lemon" car than the long, drawn out method embodied in AB 1787.

Chrysler again respectfully urges a NO vote on AB 1787.

Thank you.

Sincerely,

A.E. Davis

CALIFORNIA ADVOCATES, INC.

Park Executive Bldg., 825 L Street, Suite 300, Sacramento, CA 95814 (916) 441-5050

August 7, 1981

Members, Senate Committee on Judiciary

Subject: AB 1787 (Tanner) - New Motor Vehicle Warranties

The California Automobile Dealers Association is opposed to AB 1787 (Tanner), the "lemon law" bill. On behalf of two thousand franchised new car dealer members, our reasons for opposing this bill are as follows:

1. The automobile industry has established a variety of workable programs for settling consumer complaints;
2. AB 1787 would create disputes rather than resolve them;
3. Additional litigation undoubtedly would ensue;
4. The price of new vehicles eventually would increase;
5. Existing law provides sufficient remedy to consumers, particularly in light of last year's statutory requirement for providing notice of warranty rights to the customer. (AB 2263, Civil Code 1793.1);
6. The number of vehicles which cannot be corrected to the customer's satisfaction is very small, given the total volume of retail sales in California each year.

We believe that enactment of AB 1787 would be adverse to the consumer's interests. It would encourage litigation rather than negotiation or arbitration in attempted settlement of such disputes.

Sincerely,


Robert J. Beckus


Loren V. Smith

Manly



1020 N STREET, SACRAMENTO, CALIFORNIA 95814
445-4465



August 10, 1981

Honorable Omer L. Rains
Chairman
Senate Judiciary Committee
State Capitol, Room 5082
Sacramento, CA 95814

Dear Senator Rains:

I would like to express the support of the Department of Consumer Affairs for Assemblywoman Sally Tanner's AB 1787, the new automobile "lemon" bill. AB 1787 will be brought up for your consideration on Tuesday, August 11 in the Senate Judiciary Committee.

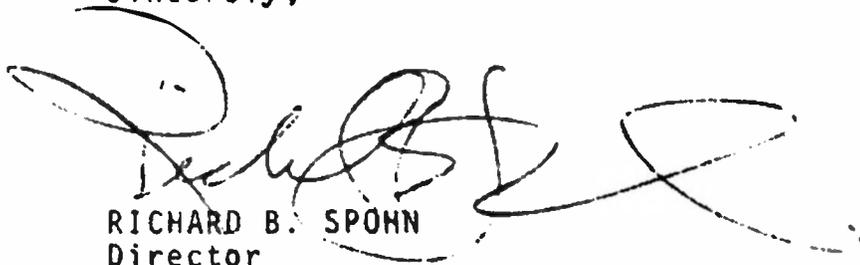
The merchantability of new automobiles and the inability to obtain satisfactory repair of defects during, or even after the warranty period, have been serious and expensive problems for new car purchasers. The existing warranty laws have failed to protect such purchasers from having to make numerous trips to the dealer and being left without the use of their car, sometimes for long periods of time, in order to have the same defect or a series of defects repeatedly repaired. In some cases, the warranty will expire, leaving the frustrated purchaser with a vehicle that still has expensive, uncorrected (unsuccessfully repaired) defects -- a so-called "lemon."

California's current warranty law provides the new car purchaser with a right to a replacement vehicle or a refund when a vehicle cannot be fixed. However, that provision is ambiguous. AB 1787 would amend existing law to add that four repair attempts on the same defect or a total of 20 days in the repair shop during the warranty period, are to be used as criteria for establishing at what point a vehicle is sufficiently defective so as to give rise to the consumer's existing right to a replacement vehicle or a refund. In so doing the bill will help clear up the ambiguity in the existing warranty law and encourage automobile manufacturers and their dealers to improve the quality of their new automobiles and to truly correct defective conditions in the cars they sell as quickly as possible.

Senator Omer Rains
Page 2

AB 1787 is a modest proposal which, while not a panacea, will improve a difficult, frustrating, and expensive consumer problem and merits your support.

Sincerely,



RICHARD B. SPOHN
Director

cc: Members & Consultant, Senate Judiciary Committee
Assemblywoman Sally Tanner



American Honda Motor Co., Inc.
100 W. Alondra Blvd. • P.O. Box 970
Gardena, California 90247 • (213) 327-8280

August 10, 1981

California Senate
State Capitol
Sacramento, CA 95814

This letter is written to set forth American Honda's position with regards to Assembly Bill 1787. In general, we, as members of the Automobile Importers of America (AIA), share the concerns expressed in the AIA's August 6th letter to the Chairman and the Members of the Judiciary Committee, although we doubt that a compulsory loaner car provision would solve the other serious problems inherent in the proposed legislation.

Rather than repeat those concerns, let me make a few observations from our unique standpoint as the only major U. S. distributor of both automobiles and motorcycles. American Honda is a consumer oriented company. We have demonstrated this basic corporate philosophy throughout the years. We feel that this has been the corner stone of our success in this country and world-wide.

Because of this position, American Honda believes the intent of Assembly Bill 1787 in attempting to clarify Section 1793.2 of the Civil Code is appropriate. This clarification, however, from an administrative and practical point of view, causes us some concern.

1. The timelines (20 days) and number of attempts (four) do not take into consideration the possible technical complexity of a repair problem or whether the problem is major or minor. The proposal also lacks the flexibility needed in situations involving customer preceptions of problems, especially where the problem might not actually exist.
2. There is no mechanism for notification to the manufacturer or distributor that "the clock" has started on a specific repair problem. A manufacturer's first notice could be the request to reimburse the customer.

August 10, 1981
American Honda's position
on Assembly Bill 1787
Page 2

Even the dealer may not know the number of attempts that have been made to correct a particular nonconformity, if the customer has visited several dealers in an attempt to have the problem resolved. The manufacturer or distributor must have the opportunity to assist the consumer and the dealer before the "time/attempt" period has expired.

3. No allowance is made for delays caused by events beyond the warrantor's control, i.e., work stoppages, transportation failures, etc.

American Honda feels that the current laws adequately protect the consumer, while maintaining a fair balance with both the dealer and manufacturer. We realized many years ago that it is in our own best interest to assure customer satisfaction with our products and this philosophy has paid dividends in repeat sales. We pledge to continue this corporate position well into the future.

Thank you for this opportunity to present our views. I would appreciate the opportunity at tomorrow's hearing to make a brief oral statement and to answer any questions you may have.

Very truly yours,

AMERICAN HONDA MOTOR CO., INC.



Richard B. Thomas
National Service Manager
Automobile/Motorcycle/Power Products

RBT:jdc

August 19, 1981

The Honorable Sally Tanner
and the Members of the
Senate Judiciary Committee
State Capitol
Sacramento, California 95814

Re: Assembly Bill 1787

Dear Mrs. Tanner and Members
of the Senate Judiciary Committee:

We are writing jointly to tell you of Chrysler Corporation's new policy on the 1982 product warranty.

When Chrysler first announced their customer satisfaction board there was some apprehension, as may be expected with such a major undertaking. However, after installation of fifty-four boards and two years of experience we can point with pride to some very significant accomplishments:

1. Excellent dealer support with 95% participation;
2. Positive national and local media coverage;
3. Satisfied owners, a majority of whom indicate an intention to again purchase Chrysler products;
4. A growing consumer awareness that Chrysler Corporation and its dealers are concerned about customer programs;
5. Reduced litigation and small claims action.

Due to the favorable experience with the Chrysler customer satisfaction board, Chrysler Corporation plans to make this procedure a part of Chrysler's 1982 product warranty. By providing an arbitration option for our

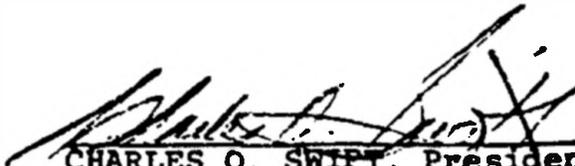
The Honorable Sally Tanner
and the Members of the
Senate Judiciary Committee

August 19, 1981
Page Two

customers, we are confident that more warranty problems will be resolved without the necessity of costly litigation. This will result in a substantial increase in customer satisfaction.

We are extremely confident the car buying public will recognize these positive steps toward consumer satisfaction.

Mrs. Tanner and Members of the Senate Judiciary Committee, please allow us to meet with you individually and/or together to express our concerns. We also wish to reconfirm our feelings that AB 1787 as presently written will drive California automobile dealers into economic chaos, a situation which is perilously close to where we are now.



CHARLES O. SWIFT, President
Swift World of Cars and
Member of Chrysler Arbitration Board



JOHN B. VANDENBERG, President
The Vandenberg Companies and
Member of the California
New Motor Vehicle Board

SENATE COMMITTEE ON JUDICIARY

August 25, 1981

Suggested amendments to Assembly Bill 1787 (Tanner) as amended
July 7, 1981

Delete Page 4 and insert:

(e) It shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle, excluding motorcycles, motor homes, or off-road vehicles, to the applicable voluntary express warranties if within the first 12 months or 12,000 miles, whichever occurs sooner, after delivery to the buyer the same major nonconformity has been subject to repair five or more times by the warrantor or its agents after written notice to the warrantor. A same major nonconformity is any malfunction of the same component or part which renders the motor vehicle inoperable or unusable.

If a third party dispute resolution mechanism exists to resolve disputes between the buyer and warrantor or its agent, this presumption may not be asserted by the buyer until a written complaint is filed with and a decision rendered by such third party. All decisions shall be binding on the warrantor or its agent and shall be rendered within 60 days unless an extension is agreed to by parties to the dispute. All expenses involved in administration of the dispute resolution mechanism shall be paid by the warrantor or its agent.

If a dispute resolution mechanism is not available or the buyer is dissatisfied with the non-binding third party decision, the buyer may assert this presumption in an action for relief provided for in this section. The warrantor or its agent may rebut this presumption by producing evidence (1) that there was and is no nonconformity, or (2) that the vehicle's nonconformity, if any, has been cured, or

(3) that the nonconformity, if any, was and is a minor nonconformity that does not and will not render the motor vehicle inoperable or unusable and an offer to provide fair compensation in money has been communicated to the buyer, or (4) that the nonconformity, if any, was the proximate result of unauthorized or unreasonable use of the vehicle following sale, or (5) other justifiable cause.



Consumer Action 1417 Irving Street, San Francisco 94122 • (415) 685-2772

March 16, 1982

Senate Judiciary Committee
State Capitol
Sacramento, CA 95814

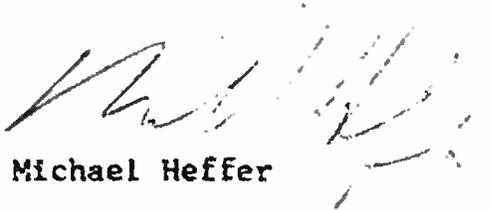
Dear People:

Please make sure that San Francisco Consumer Action is recorded as a supporter of Assembly Bill 1787 (Tanner).

Consumer Action is a non-profit consumer advocacy group.

Thank you.

Sincerely yours,



Michael Heffer



State of Connecticut
HOUSE OF REPRESENTATIVES
STATE CAPITOL
HARTFORD, CONN. 06115

REPRESENTATIVE JOHN WOODCOCK
FOURTEENTH DISTRICT

P.O. BOX 684
SOUTH WINDSOR, CONNECTICUT 06074

MEMBER
ENERGY AND PUBLIC UTILITIES COMMITTEE
FINANCE, REVENUE AND BONDING COMMITTEE
JUDICIARY COMMITTEE
STATE CAPITOL
TELEPHONE
566-8650

May 11, 1982

Mr. Jay J. DeFuria
Assembly Committee on Consumer
Protection and Toxic Materials
State Capitol
Room 4146
Sacramento, California 95811

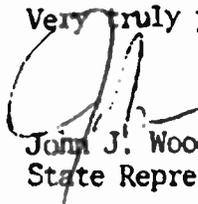
RE: Connecticut "Lemon Law"

Dear Mr. DeFuria:

In response to your recent request, I enclose a copy of the Connecticut "Lemon Law," which has received the approval of the Connecticut General Assembly, and which is awaiting Governor William A. O'Neill's signature. I further enclose a copy of the Office of Legislative Research's analysis as to this bill.

Thank you for your continued interest; and if you have any questions or comments, please do not hesitate to contact me.

Very truly yours,


John J. Woodcock, III
State Representative

JJK:ca

Enclosures -

File No. 700
(Reprint of File No. 362)

Substitute House Bill No. 5729
As Amended by House Amendment
Schedule "A"

State of Connecticut
House of Representatives

The seal of the State of Connecticut House of Representatives is centered between the words "State of Connecticut" and "House of Representatives". It features a shield with a figure holding a bow and arrow, with a banner below it that reads "QUI PRO DOMINA JUSTITIA SEQUITUR".

Approved by the Legislative Commissioner

AN ACT CONCERNING AUTOMOBILE WARRANTIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 (NEW) (a) As used in this act: (1)
2 "Consumer" means the purchaser, other than for
3 purposes of resale, of a motor vehicle, any person
4 to whom such motor vehicle is transferred during
5 the duration of an express warranty applicable to
6 such motor vehicle, and any other person entitled
7 by the terms of such warranty to enforce the
8 obligations of the warranty; and (2) "motor
9 vehicle" means a passenger motor vehicle or a
10 passenger and commercial motor vehicle, as defined
11 in subdivisions (35) and (36) of section 14-1 of
12 the general statutes, as amended, which is sold in
13 this state.

14 (b) If a new motor vehicle does not conform
15 to all applicable express warranties, and the
16 consumer reports the nonconformity to the
17 manufacturer, its agent or its authorized dealer
18 during the term of such express warranties or
19 during the period of one year following the date
20 of original delivery of the motor vehicle to a
21 consumer, whichever is the earlier date, the
22 manufacturer, its agent or its authorized dealer
23 shall make such repairs as are necessary to
24 conform the vehicle to such express warranties,

25 notwithstanding the fact that such repairs are
26 made after the expiration of such term or such
27 one-year period.

28 (c) If the manufacturer, or its agents or
29 authorized dealers are unable to conform the motor
30 vehicle to any applicable express warranty by
31 repairing or correcting any defect or condition
32 which substantially impairs the use and value of
33 the motor vehicle to the consumer after a
34 reasonable number of attempts, the manufacturer
35 shall replace the motor vehicle with a new motor
36 vehicle or accept return of the vehicle from the
37 consumer and refund to the consumer the full
38 purchase price including all collateral charges,
39 less a reasonable allowance for the consumer's use
40 of the vehicle. A reasonable allowance for use
41 shall be that amount directly attributable to use
42 by the consumer prior to his first report of the
43 nonconformity to the manufacturer, agent or dealer
44 and during any subsequent period when the vehicle
45 is not out of service by reason of repair. It
46 shall be an affirmative defense to any claim under
47 this act (1) that an alleged nonconformity does
48 not substantially impair such use and value or (2)
49 that nonconformity is the result of abuse,
50 neglect or unauthorized modifications or
51 alterations of a motor vehicle by a consumer.

52 (d) It shall be presumed that a reasonable
53 number of attempts have been undertaken to conform
54 a motor vehicle to the applicable express
55 warranties, if (1) the same nonconformity has been
56 subject to repair four or more times by the
57 manufacturer or its agents or authorized dealers
58 within the express warranty term or during the
59 period of one year following the date of original
60 delivery of the motor vehicle to a consumer,
61 whichever is the earlier date, but such
62 nonconformity continues to exist or (2) the
63 vehicle is out of service by reason of repair for
64 a cumulative total of thirty or more calendar days
65 during such term or during such period, whichever
66 is the earlier date. The term of an express
67 warranty, such one-year period and such thirty-day
68 period shall be extended by any period of time
69 during which repair services are not available to
70 the consumer because of a war, invasion, strike or
71 fire, flood or other natural disaster.

72 (e) Nothing in this act shall in any way
73 limit the rights or remedies which are otherwise
74 available to a consumer under any other law.

SEN AMENDMENT A

LCC No. 3812

General Assembly

February Session, A.D., 1982

Offered by SEN. MUSTONE, 13th District

SEN. SULLIVAN, 16TH DIST.

To Subst. House Bill No. 5729 File No. 700 Calendar No. 0474

Entitled "AN ACT CONCERNING AUTOMOBILE WARRANTIES."

In line 40, after the period, insert the following:

"Refunds shall be made to the consumer, and lienholder if any, as their interests may appear."

After line 74, insert the following:

"(f) If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of title 16 Code of Federal Regulations Part 703, as from time to time amended, the provisions of subsection (c) of this section concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure."



OLR BILL ANALYSIS
SPECIAL ANALYSIS

File No. 700 (Previously
File No. 362)
4/28/82

SHB 5729 (as amended by House "A" and Senate "A")
General Law Committee

AN ACT CONCERNING AUTOMOBILE WARRANTIES

AMENDED BILL SUMMARY: This bill would require a manufacturer of a new passenger carrying car, van or truck or the manufacturer's agent or authorized dealer to repair all defects covered by a written warranty if reported by the purchaser during the warranty period or within one year of the vehicle's delivery date, whichever is earlier. If the vendors are unable to repair a defect which substantially impairs the vehicle's use and value after a reasonable number of attempts, the bill would require the manufacturer to either replace the vehicle or refund the full purchase price and collateral charges, less an allowance for the consumer's use. A refund would be made to the consumer and to anyone holding a lien on the vehicle. If a manufacturer has established an informal dispute settlement mechanism that complies in all respects with relevant Federal Trade Commission regulations, the bill would require a consumer to attempt to settle the dispute through this mechanism before the bill's provisions requiring a refund or replacement would apply. The bill would specify that the manufacturer would have the following affirmative defenses in any suit to have a vehicle replaced or to recover the cost of a vehicle:

1. The defect does not substantially impair the vehicle's use and value.
2. The defect was caused by the consumer's abuse, neglect or unauthorized modification of the vehicle.

The bill would specify that a "reasonable number of attempts" have been undertaken when:

- 1) the same problem has been subject to repair four or more times during the warranty period or within one year of the vehicle's delivery date, whichever is earlier; or
- 2) the vehicle has been out of service for repair for a cumulative total of 30 calendar days during the same period.

In addition, the bill would extend the term of a written warranty, the one-year period following the vehicle's delivery and the 30-day period for repair for the period of time during which repair services are unavailable due to war, invasion, strike or fire, flood or other natural disasters.

Finally, the bill would not limit other rights or remedies available to a consumer under any other law.

*House Amendment "A" eliminates everything after the enacting clause and rewrites the bill as summarized above. The Amendment differs from the original bill by:

- 1) requiring replacement or refund only for defects which substantially impair the vehicle's use and value;
- 2) increasing the allowance for the customer's use of the vehicle from the consumer's use before to the first report of a defect to the consumer's use before this first report and during any subsequent period when the vehicle is not out of service for repair;
- 3) changing the amount of time the vehicle must be out of service for repair from 20 business days to 30 calendar days;
- 4) allowing the extension of the warranty period, one-year period following delivery and the 30-day period because of natural or other disasters; and
- 5) establishing the affirmative defenses for manufacturers in any claim arising under the bill's provisions.

*Senate Amendment "A" adds the provision concerning the informal dispute settlement mechanism.

EFFECTIVE DATE: October 1, 1982

COMMENT

Informal Dispute Settlement Mechanisms

The Federal Trade Commission regulations were issued under the authority of the Magnuson-Moss Warranty Act. They must be complied with only if the manufacturer refers to such a mechanism in the warranty. The mechanism's provide a means to mediate disputes between consumers and warrantors. The regulations:

- 1) establish requirements for consumer notification;
- 2) require the mechanism to be insulated from the manufacturer's influence and that the decision-makers not be associated in any way with a party to a dispute;
- 3) require that the mechanism be free to the consumer; and
- 4) generally require that a dispute be settled within 40 days.

DD:dkl:sre

cc: Senate Judiciary Committee
Automotive Importers Assn.
California Chamber of Commerce
California Dealers Association
California Manufacturers Assn.
Chrysler Corporation
General Motors Corporation 
Motor Vehicle Manufacturers Assn.

bcc: Jay DeFuria
Jerry Giaquinta (Toyota)
Steve Lending (Datsun)

Regional Governmental Affairs Office
Ford Motor Company

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

May 20, 1982

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

Subject: Assembly Bill 1787

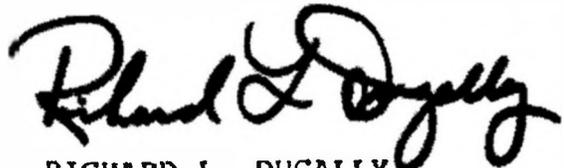
Dear Assemblywoman Tanner:

Ford Motor Company continues to have problems with your Assembly Bill 1787, as amended on July 7, 1981, including your proposed amendments received by this office on May 18, 1982. In fact, we have some suggested amendments of our own which we would like to discuss with you and your staff. (see attachment)

I therefore recommend that you allow us some time on Monday to discuss our suggestions with you and your staff. We prefer to do this rather than try to rewrite the bill before the Senate Judiciary Committee. If the dealers and other manufacturers also have some problems, they should also be at the same meeting.

Thank you for your consideration of our request.

Sincerely,



RICHARD L. DUGALLY
Regional Manager
Governmental Affairs

RLD:cme

Attachment

MAY 20 1982

FORD MOTOR COMPANY POSITION

on

California AB 1787

GOVERNMENTAL AFFAIRS

In reviewing California AB 1787, we find that there are several unworkable definitions and overly extensive remedies which should be clarified. Specifically, we believe that there are six basic problems with this legislation which could be remedied through proper language additions.

1. In keeping with the spirit of the Song-Beverly Warranty Act, the bill should clearly exclude commercial vehicles from its coverage. The Song-Beverly Act applies only to consumer goods; however, the proposed legislation is applicable to new vehicles, without defining that term. Accordingly, new vehicles should be defined.

2. Similarly, the existing law provides an extension to the 30-day period for delays caused by conditions beyond the control of the manufacturer or his representatives. We believe this similar provision should be added to the proposed new language.

3. As the Song-Beverly Act in general and this proposed addition in particular are intended to apply to the express warranty provided by the manufacturer, there should be a clear exclusion of any statutorily required warranties. To include such warranties in this legislation would potentially conflict with other federal and state laws.

4. The proposed addition refers in several instances to the same non-conformity without defining that term. It is quite conceivable that a vehicle may experience a similar condition (such as an inability to start) at different times during the warranty period due to totally different causes. We believe that consistent with the intention of this legislation, the term "same non-conformity" should be defined as a non-conformity caused by a failure of the same part.

5. The new legislation would require the repurchase of a vehicle based upon an inability to repair under the warranty. Certainly, it could not be the legislative intent to cover vehicles the failures on which have been caused directly by the owner. Thus, the buy-back provision should not be applicable in instances where there has been customer abuse, negligence or modification or alteration to the vehicle.

Accordingly, the proposed additional legislation should be revised to read as follows:

"It shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties if (1) the same non-conformity has been subject to repair three or more times by the dealer, and one time by the manufacturer; or (2) the vehicle is out of service by reason of a non-conformity which has, since the delivery of the vehicle to the buyer, been subject to repair by the dealer for a cumulative total of more than 30 calendar days. In computing the 30 days pursuant to this section, a day shall mean a full calendar day that the dealer's repair shop is open for business. The 30 days shall commence on the day when, after the defect is first reported or known, a written estimate of the cost of repairing such defect is first prepared. Delays caused beyond the control of the manufacturer or its representatives shall serve to extend the 30-day requirement.

The foregoing provision shall not be applicable to any statutorily required warranties, or in instances where the vehicle has been subject to customer abuse, negligence, or modification or alteration.

For purposes of this section, the following definitions shall apply:

- (a) "New vehicle" shall mean only a new passenger vehicle or motor truck not exceeding 6,000 pounds gross weight that has not been previously titled or registered, has not been substantially used or damaged and that is sold for personal, household or family use.
- (b) "Same non-conformity" shall mean a condition which is caused by a failure of the same part.

6. The legislation fails to provide any incentive for a repairing dealer to notify the manufacturer of a potential claim for replacement since there is no provision in the law for the courts to allocate some of the burden on the dealer. Thus it is possible for a dealer to "use up" the four repair attempts without ever requesting assistance from the manufacturer. Therefore, without any knowledge of the problem, the manufacturer is forced to suffer the entire cost of replacement or repurchase.

The bill should be revised to include a requirement that the repairing dealer must notify the manufacturer of a potential problem prior to the expiration of the 30-day repair period or the fourth repair is attempted. Further, the courts should be given the discretion to allocate the cost involved in any replacement or repurchase that it orders under the law between the dealer and the manufacturer where appropriate.

MAJOR DIFFERENCES BETWEEN PRIOR VERSION AND NEW VERSION OF AB 1787

The new amended version:

- 1) Changes the 20 shop days to 30 calendar days (to conform with the other provisions of Song-Beverly).
- 2) Excludes motorcycles, motorhomes and off-road vehicles (asked for by the industry).
- 3) Limits the bill's provisions (4 times, 30 days) to only the first year of ownership or 12,000 miles whichever occurs first (asked for by the industry because of emergence of longer warranties).
- 4) Adds a provision for third party dispute resolution which requires the consumer to first resort to a program which meets specified criteria before being able to use the "lemon" bill's presumption in any lawsuit (asked for by the industry and Senate Judiciary Committee).

The criteria are based on those prescribed by federal warranty law with a few additions. The additions are:

- a) The federal law's criteria as of January 1, 1982 are used (to provide a fixed standard that isn't subject to change without California legislative action).
- b) Decisions are binding on the manufacturer (like Chrysler program).
- c) The manufacturer has a maximum time limit of 30 days to complete work required by a decision (to prevent delay).
- d) The statute of limitations on a consumer's legal rights would be extended for the time during which the consumer is resorting to the dispute program (so the consumer's rights would not be jeopardized).
- e) Not only the actual decision, but also the documents used by a program in reaching a decision could later be used in a legal action if the decision is not accepted by the consumer. (Permits a court to see on what basis the actual decision was reached by a program).
- f) That the annual program audit and information be sent to our Department of Motor Vehicles as well as the Federal Trade Commission (so California will have direct access to the information).



1000 N STREET, SACRAMENTO, CALIFORNIA 95814



May 24, 1982

Honorable Omer L. Rains
Chairman
Senate Judiciary Committee
State Capitol, Room 2032

Dear Senator Rains:

The Department of Consumer Affairs strongly supports **AB 1787** (Tanner), which would amend California's existing consumer product warranty law as it pertains to new automobile warranties, a major source of consumer complaints. The bill is scheduled to be heard in your committee on Tuesday, May 25th, at 1:30 p.m.

California's Song-Beverly Consumer Warranty Act (Civil Code Sections 1790-1795.7) states that a manufacturer or its representative who is unable to service or repair a warranted product to conform to the applicable warranty after a reasonable number of attempts must either replace the product or reimburse the purchase price (minus depreciation) to the buyer (Civil Code Section 1793.2(d)). This Act applies to the sale of both new and used motor vehicles covered by a written warranty.

The problem that occurs with so-called "lemons" -- which have one or a series of defects that are never properly corrected despite repeated repair attempts -- is that there are no criteria to enable the parties (or a court) to determine what is a "reasonable number of attempts." The buyer may be required to continue taking the defective automobile back into the dealer throughout the entire warranty period (12 months/12,000 miles) only to have his or her warranty expire with the automobile still not functioning properly. At that point the buyer may be forced to bear the cost for any additional repair attempts, which still may be unsuccessful in correcting the problem(s) with the automobile.

AB 1787 would amend the Song-Beverly Act by adding a new subsection stating that in the case of a new automobile, a reasonable number of attempts shall be presumed to have been undertaken when, within one year of delivery to the buyer or 12,000 miles, whichever occurs first, the same nonconformity has been subject to repair four or more times, or the vehicle is out of service by reason of repair of nonconformities for more than thirty calendar days.

Honorable Omer L. Rains
Page two

AB 1787 would also provide that if the manufacturer or dealer has established a qualified third party dispute resolution process (as defined in the bill), and if the buyer receives timely notification of the availability of the process, the provisions defining a reasonable number of attempts to repair may not be asserted by the buyer until after the buyer has first resorted to the dispute resolution process.

AB 1787 provides a reasonable and equitable remedy for a major and recurring problem -- the persistently malfunctioning new automobile. We urge your support of this bill.

Should you wish to discuss this measure further, please contact our Legislative Unit at 322-4292.

Sincerely,



RICHARD B. SPOHN
Director

cc: Members, Senate Judiciary Committee
Assemblywoman Sally Tanner



NEWS FROM ASSEMBLYWOMAN

SALLY TANNER

60th Assembly District

FACT SHEET

AB 1787 (TANNER) - "LEMON" BILL

Last year, in response to hundreds of letters from consumers who had experienced serious and frustrating problems with defective new automobiles, Assemblywoman Sally Tanner introduced AB 2705. The bill became known as the "lemon" bill because it offered specific protections to purchasers of cars that repeatedly defy repair of defects. The bill was passed by the Assembly, but was defeated in the Senate Judiciary Committee by a single vote.

In spite of the bill's narrow defeat, the outcry from the consuming public for this kind of protection became more and more pronounced as the bill moved through the Legislature. For that reason, Assemblywoman Tanner reintroduced the "lemon" bill on March 27, 1981.

WHAT THE BILL DOES

- Amends the Song-Beverly Warranty Act, Civil Code Section 1793.2
- Pertains only to new motor vehicles.
- Adds simple language to existing warranty law. Current law states that a consumer is entitled to a refund or replacement if a warranted product is not repaired after "a reasonable number of repair attempts."
- Specifies that a "reasonable number of attempts" shall be four times by the manufacturer or its agents - or 20 cumulative days out of service.

AB 1787 is offered as a simple and reasonable solution to the very real problem experienced by car buyers when - for whatever reason - their new cars don't function properly.

For more information, contact Mike Ross in Assemblywoman Tanner's Capitol office at 916/445-7783.

SACRAMENTO ADDRESS
State Capitol Room 3016
Sacramento, CA 95814
(916) 445-7783

DISTRICT ADDRESS
11100 Valley Boulevard
El Monte, CA 91731
(213) 442-9100

ASSEMBLY THIRD READING

1787 (Tanner) As Amended: April 27, 1981

ASSEMBLY ACTIONS:

COMMITTEE	C. P. & T. M.	VOTE	5-3	COMMITTEE	VOTE
Ayes:	Chacon, Elder, Katz, Sher, Tanner			Ayes:	
Nays:	Konnyu, Wright, Sebastiani			Nays:	

DIGEST

This bill requires automobile warrantors to either replace a vehicle or reimburse the buyer if a defect on a new vehicle is not repaired within four attempts, or if the car is out of service for more than 20 days since the delivery of the vehicle to the buyer. In computing the 20 days, a day would mean a calendar day or any portion of a calendar day that the service shop is open for business. The 20 days would begin on the day when, after the defect is first reported or known, a written estimate of the cost of repairing the defect is first prepared.

FISCAL EFFECT

None

COMMENTS

The Assembly Committee on Labor, Employment and Consumer Affairs conducted an interim hearing in December 1979 on the subject of automobile warranties. Testimony at the hearing revealed a high level of consumer frustration with defective new cars and warranty performance. A specific problem was the practical ineffectiveness of current law in responding to a situation involving repeated repairs and continuing problems with new cars. Although current law states that a manufacturer must provide either a refund or a replacement if goods are not repaired after a "reasonable number of attempts," it is not clear what "reasonable" means, and refunds and replacements of new cars are rare.

This bill establishes a standard for when a "reasonable" number of repair attempts has been undertaken by a new car warrantor. Consumer groups maintain that current law is not useful because auto dealers and manufacturers want endless opportunities to correct defects. Proponents of the bill argue that the clear standard proposed in this bill offers a reasonable and meaningful remedy to car buyers, will reduce litigation, and will encourage improved quality control by manufacturers and improved repair service by dealers.

Opponents argue that current law is adequate, that this bill will increase the number of frivolous and unmeritorious lawsuits, and that the automotive industry has developed its own dispute resolution mechanism to deal with complaints.

5/7/81
22/fh/AFA-3:47

ASSEMBLY OFFICE OF RESEARCH

AB 1787

ASSEMBLY THIRD READING

1787 (Tanner) As Amended: April 27, 1981

ASSEMBLY ACTIONS:

COMMITTEE C. P. & T. M. VOTE 5-3 COMMITTEE _____ VOTE _____Ayes: Chacon, Elder, Katz, Sher,
Tanner

Ayes:

Nays: Konnyu, Wright, Sebastiani

Nays:

DIGEST

This bill requires automobile warrantors to either replace a vehicle or reimburse the buyer if a defect on a new vehicle is not repaired within four attempts, or if the car is out of service for more than 20 days since the delivery of the vehicle to the buyer. In computing the 20 days, a day would mean a calendar day or any portion of a calendar day that the service shop is open for business. The 20 days would begin on the day when, after the defect is first reported or known, a written estimate of the cost of repairing the defect is first prepared.

FISCAL EFFECT

None

COMMENTS

The Assembly Committee on Labor, Employment and Consumer Affairs conducted an interim hearing in December 1979 on the subject of automobile warranties. Testimony at the hearing revealed a high level of consumer frustration with defective new cars and warranty performance. A specific problem was the practical ineffectiveness of current law in responding to a situation involving repeated repairs and continuing problems with new cars. Although current law states that a manufacturer must provide either a refund or a replacement if goods are not repaired after a "reasonable number of attempts," it is not clear what "reasonable" means, and refunds and replacements of new cars are rare.

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5/7/81
22/fh/AFA-3:47

ASSEMBLY OFFICE OF RESEARCH

AB 1787

REVISED
ANALYSIS OF ASSEMBLY BILL NO. 1787 (Tanner)
As Amended in Assembly April 27, 1981
1981-82 Session

AB 1787 (Am. 4/27/81 REVISED)

Fiscal Effect:

Cost: No added cost.

Revenue: None.

Analysis:

This bill clarifies the law pertaining to new vehicle warranties by specifying the circumstances under which a manufacturer or dealer must replace a defective vehicle or otherwise compensate the buyer.

Existing law requires the vehicle manufacturer either to replace the vehicle or refund, on an adjusted basis, its purchase price after a "reasonable" number of attempts to repair the vehicle have failed. This bill defines what shall constitute a reasonable number of such attempts.

The Department of Motor Vehicles, which licenses vehicle dealers, anticipates no additional cost as a result of this bill.

ASSEMBLY COMMITTEE ON CONSUMER PROTECTION AND TOXIC MATERIALS
ASSEMBLYWOMAN SALLY TANNER, Chairwoman

BILL: AB 1787, as amended April 22, 1981 HEARING DATE: April 28, 1981

AUTHOR: Assemblywoman Sally Tanner

SUBJECT: Automobile Warranties

WHAT THE BILL DOES:

AB 1787 would require automobile warrantors to either replace a vehicle or reimburse a buyer if a defect on a new vehicle is not repaired within four repair attempts, or if the car is out of service for more than 20 days.

BACKGROUND:

In December 1979 the Assembly Committee on Labor, Employment and Consumer Affairs conducted a two-day interim hearing on the subject of automobile warranties. Testimony recorded at that hearing revealed, among other things, a high level of consumer frustration with defective new cars and warranty performance. A specific problem noted by the Committee was the practical ineffectiveness of current law in responding to a situation involving repeated repairs and continuing problems with new cars. Although current law states that a manufacturer must provide either a refund or a replacement, if goods aren't repaired after a "reasonable number of attempts," it is unclear what "reasonable" means. Refunds and replacements of new cars are rare.

AB 2705 (Tanner) was introduced last year in response to that reported problem. The bill was passed by the Assembly but was defeated in the Senate Judiciary Committee by one vote. AB 2705 offered a range of specific remedies, including a proposed "standard" for defining "reasonable."

PURPOSE:

To establish a standard for when a "reasonable number of repair attempts" has been undertaken by a new car warrantor.

ANALYSIS

AB 1787 adds language to existing product warranty law to specify when a "reasonable number of attempts" to repair has occurred with regard to new motor vehicles. The proposed standard is:

1. Four attempts by the manufacturer or its agents to repair a single defect; or
2. Twenty days out of service by reason of repair.

Current law permits the warrantor to reduce the value of the refund or replacement by an "amount directly attributable to use by the buyer prior to the discovery of the nonconformity."

Proponents of the legislation maintain that the current law is not useful to consumers who purchase defective vehicles, because auto dealers and manufacturers want endless opportunities to correct defects. Consumer groups argue that the clear standard proposed in AB 1787 offers a reasonable and meaningful remedy to car buyers, will reduce litigation, and will encourage improved quality control by manufacturers and improved repair service by dealers.

Opponents of the measure argue that current law is adequate, that the measure will increase the number of "frivolous and unmeritorious" lawsuits, and that the automotive industry has developed its own dispute resolution mechanisms to deal with complaints.

SUPPORT

Department of Consumer Affairs
Consumers Union
California Consumer Affairs Association
San Francisco Consumer Action
Santa Cruz County District Attorney
Santa Cruz County Consumer Affairs
Los Angeles County Department of Consumer Affairs
Consumers Aid of Shasta, Inc.
Center for Auto Safety
Stanislaus County Department of Consumer Affairs
State Consumer Advisory Council

OPPOSE:

Motor Vehicle Manufacturers Association
Chrysler
General Motors Corporation
California Manufacturers Association
Ford Motor Company

PREPARED BY:
Kathleen Hamilton
April 27, 1981



EDITORIAL

This editorial is presented in the public interest. Our station welcomes comments on its editorials and recognizes its obligation to present over these facilities the opposing views of a responsible spokesperson in order to achieve a balanced presentation on the issue.

EDITORIAL #2999

Telecast: 6/10/81 - Sign On, Noon News, John Davidson Show, 6PM News,
Sign Off
6/14/81 - Sign On, Between 2 and 5PM, 6:30PM News, Sign Off

By: Art Kern, Vice President and General Manager

THE LEMON BILL

Have you ever bought a "lemon"? California consumer agencies get thousands of complaints every year from people who've bought cars that have something wrong with them.

This is a letter from a Pleasant Hill viewer. She says she bought her first new car a year ago. After she started driving the car, she found out that there were all sorts of things wrong with it--bad brakes, a defective wheel bearing, a leaky rear window, and shaky seats. She's been to the repair shop ten times, and she's still got the bad brakes and the shaky seats.

Well, where does that leave her? Nowhere, because even though there's a law that's supposed to help, it doesn't. California consumers can get a refund or a replacement for any product, including a car, if it's not fixed after a "reasonable number" of tries. The trouble is, the law doesn't say what that "reasonable number" is.

There's a bill in the legislature that could change all that. It's known as The Lemon Bill, and it says that after four tries to fix the same problem during the warranty period, a consumer can get a refund or a new car. That sounds like a stiff penalty, but that's what it's going to take to get lemons off the road.

Assemblywoman Sally Tanner is the author of The Lemon Bill. We want her to know that we support the bill, so we're going to send her a copy of this editorial. If you agree that California doesn't need any more lemons, except the kind that grow on trees, write to me at Channel Five and I'll see that Assemblywoman Tanner gets your letters. I'm Art Kern.

EDITORIAL

FOR THE PEOPLE OF LOS ANGELES AND THE SAN ANTONIO AREA
KABC RADIO 790
3321 South La Cienega Boulevard, Los Angeles, California 90016 (213) 557-7275

KABC RADIO 790

3321 South La Cienega Boulevard, Los Angeles, California 90016 (213) 557-7275

481-30

"STOPPING THE MERRY-GO-ROUND"

There is probably no better time to buy a new car because American made autos are getting better every day. Still, whether domestic or foreign, once in a while a lemon is produced. And when that happens, KABC believes the consumer should not be permanently stuck with it.

Getting a new car which is beyond repair might not happen very often, but when it does, the buyer should be able to get either a refund or replacement. In fact, present law does state that you're entitled to those options if a warranted product isn't repaired after a reasonable number of attempts. The problem is who determines what is reasonable.

According to the mail the KABC Ombudsman Service receives, the car buyer has absolutely no say and ends up on a lively merry-go-round of repairs. And while the dealer or manufacturer might be providing service with a smile, it is no laughing matter for the car owner. It means time off from work, days being late, being without transportation, not to mention the danger of driving a defective car.

Assemblywoman Sally Tanner is now sponsoring legislation which specifies that a reasonable number of repair attempts should be three times by the dealer and one time by the manufacturer or a total of 20 days out of service. To KABC, that sounds like a fair solution, but a similar measure failed last year. This time round, we hope the legislature realizes this bill is in no way punitive to the auto industry. It merely recognizes that a car is an expensive purchase, and consumers are entitled to their money's worth.

(Broadcast on Wed. Apr. 22, at 3:56a, 6:20a, 7:20a, 8:20a, 10:56a, and 1:55p, 5:55p, 11:56p.

INDEPENDENT/PRESS-TELEGRAM

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Editorials

Legislature gets second try at creating lemon aid

Last year when freshman Assemblywoman Sally Tanner, D-Loe Angeles, was a little bit green, she tried to remedy a yellow situation, the problem of getting stuck with bad cars, commonly referred to as lemons.

Current state and federal law requires manufacturers to replace defective vehicles after "a reasonable number of repairs." But the ill-defined wording in the laws has meant that consumers stuck with lemons have often had to go to court to get a new car.

Last year, Assemblywoman Tanner-sponsored AB 2705, which defined a lemon as a car that, within the first year or 12,000 miles, has a major defect the repair of which would cost more than 5 percent of the purchase price; has a repairable defect that happens three times; or is in the shop 20 days. The manufacturer of a lemon would have to provide a new car, less the cost of depreciation at 10 cents a mile.

The Assembly passed AB 2705. But by a close vote, the bill failed to make it out of the state Senate Judiciary Committee. Assemblywoman Tanner attributes this defeat to the bill's being too complicated. In addition to the complicated definition of a "reasonable number of repairs," the bill contained a lot of other language that troubled the lawyer-legislators on the Judiciary Committee.

The assemblywoman believes the answer is a new, simplified version of last year's bill. AB 1787 will be heard first by the Assembly's new Consumer Protection and Toxic Materials committee chaired, as it happens, by Sally Tanner. It contains a definition of a reasonable number of repairs that is essentially the same as last year's, but gives

the dealer and manufacturer several chances to repair the car before it is declared a lemon.

Assemblywoman Tanner is confident the Assembly will pass her bill, and believes the newly simplified language of the bill will bring it through the senate Judiciary Committee. Although the Senate is less consumer-oriented than the Assembly, Mrs. Tanner plans to send along to senators copies of letters she has received from disgruntled California car buyers. She figures the letters will be persuasive.

Last year some opponents of the bill argued that it would create a burden on the already beleaguered American auto industry. But any industry that stands behind its products, either voluntarily or through force of law, is not going to suffer. In the long run, its reputation will gain, and so will sales. That would be good for Detroit, and good for consumers.



SALLY TANNER
Defining a lemon

June 3, 1981

What is a lemon?

Assemblywoman Sally Tanner (D-EI Monte) is determined to define the word "lemon." In the process she also hopes to define "reasonable."

The citrus fruit does not concern Tanner. She has a new automobile in mind: At what point does it become a lemon? She is not satisfied with what the current state law says about it. The existing consumer product warranty law says only that a manufacturer or its agent must provide a refund or a replacement "after a reasonable number" of efforts to repair a non-working product.

What is "reasonable?" Ah, there's the rub.

That's where Sally Tanner, chairwoman of the Assembly Committee on Con-

sumer Protection and Toxic Materials, comes in. She decided that a new motor vehicle becomes a "lemon" when four attempts at repairs have failed, or when the car has been out of service for 20 cumulative days since its purchase.

That, in her mind, not only defines a "lemon," it also defines "reasonable."

She tried this on the Legislature last year. Her amendment got through the Assembly, but it conked out in the Senate Judiciary Committee. She's trying again this year.

We have no idea whether four repair attempts or 20 days of immobility comprise a fair definition of "lemon," but we do admire Sally Tanner for trying to get the Legislature to stop playing a game of Chicken with the word "reasonable."

The GM lemon crop is so sour that even the company's own top executives are making wry faces in public

By Ralph Nader
The Register and Tribune

GENERAL MOTORS is having serious quality control problems with its cars. The giant auto manufacturer's recent lemon crop is so unsettling that the company's chief executives have admitted their worries publicly. According to the Wall Street Journal, GM president James McDonald conceded that the X cars are plagued "with uneven doors, shabby paint jobs and other problems that do not match the quality standards of foreign competitors."

It is not just difficulties with what GM chairman Roger Smith called the "fit and finish." Customers are having trouble with their power steering, transmissions and electrical systems. Consumer Reports has published a reader survey showing a much worse than average frequency of repair for the X models.

We can notice this reaction by the GM car-owner complaints that we receive. Four years ago, Chrysler car complaints were way out of proportion to its market share. Now it seems to be GM that is receiving more than a lion's share of customer indignation.

In particular, GM cannot seem to match its Cadillac quality with its Cadillac price. A page-one article in *Automotive*

News, ordinarily a meek industry trade journal, started with these words:

"General Motors may have a time bomb on its hands with its new Cadillac V-8-6-4. Of the numerous customers interviewed by *Automotive News*, most said the car can die on the road without warning. Others said the car slows down as if to stall and then jerks forward unexpectedly. Still others reported engine fires."

The magazine reported that some dealers "are in effect buying back the cars equipped with the V-8-6-4 from very dissatisfied customers."

These complaints do not come just from individual owners. *Automotive News* reports that Jack Schwartz of Gaines Service Leasing Corp. in New York purchased 2,700 of the V-8-6-4 cars for his limousine business. Schwartz says he has had "nothing but headaches" with every one. "The dealer can't fix it and neither can we," he told the magazine. "I could give you a list of 20 people who own Cadillacs and never want to hear the name again," New Jersey Cadillac owner Arthur Pailent told the reporter.

Complaints about GM lemons that my consumer group receive are detailed and forthright. "Something is drastically wrong with the construction, design or engineering of the new V-8-6-4 Cadillacs," sums up a Toledo, Ohio, buyer. From Wayne, N.J., a man writes, "The Cadillac

division should hang its head in shame for perpetrating this hoax on people who were loyal to them. No wonder the Japanese are able to displace the Americans as reliable suppliers of quality vehicles."

A taxicab operator in El Paso, Texas, purchased four 1980 Oldsmobile Cutlass Diesels. All four vehicles are out of service because of major engine problems and the customer complains that Oldsmobile is refusing to treat this matter seriously.

GM dealers are caught in the middle. They do not build the cars that GM pushes them to sell. Yet they receive the first brunt of their customers' ire. An Allentown, Pa., woman was careful to make this distinction when she wrote: "The dealer has given me excellent service (on her 1980 Citation), but I am thoroughly discouraged with the Chevrolet Motor Company."

Perhaps this is why more people are resorting to filing consumer class actions against General Motors or using the federal warranty law to achieve some measure of justice. Unless the chief executives of this company become more sensitive to the quality of the vehicles' engineering, GM will continue to use its shareholders' money to pay for bumper lemon crops. GM is very large, indeed, but by the same token it has a great deal to lose.

CONFIRMED SUPPORT FOR LEMON BILL

Department of Consumer Affairs

State Consumer Advisory Council

California Consumer Affairs Association

Cal-Pirg, San Diego

National Council Sr. Citizens

Motor Voters, San Diego

AFL-CIO, State Federation

State Building and Construction Trades Council of California

United Steelworkers of America

Los Angeles City Attorney

Baldwin Park Chamber of Commerce

Santa Cruz County District Attorney

Consumers Union, San Francisco

San Francisco Consumer Action

County of Los Angeles, Dept. of Consumer Affairs

California Federation of Women's Clubs, Orange District

Consumer Aid of Shasta County

Colusa County Board of Supervisors

Stanislaus County, Office of Consumer Affairs

Los Angeles Private Investigation & Patrol Service

California Teamsters Public Affairs Council

Center for Auto Safety

Chico Consumer Protection Agency

Lemon-Aid, San Diego

Consumer Federation of California

Legal Aid Society of San Mateo County

Consumer Coalition

RE: Helen
3745 E. Eden St
La Mesa, Calif

ADM

92041

nan
er
pital
Calif 95814

April 13, 1980
La Mesa, Calif

77

cc: Lemon Legislation X

Received your letter asking about our lemon cars. The whole story would be a book, it has been a terrible experience. We have been unhappy for 2 1/2 years. I drive my car every day and everytime I get in it I get upset. I have had night mares that I'd be driving down the freeway and the car would break in half. When you buy a new car you're supposed to be proud and have trouble free driving.

On July 31, 1977 we bought our first new car, a Dodge Aspen Special Edition Wagon. It was a beautiful car. It had quadraphonic stereo, air conditioning, cruise control, split seats etc. We traded in a 1972 Dodge truck with over 100,000 miles on it and it had given us good service. That's why we picked the Aspen. It had the same 318 engine. We got \$1,000.00 for the truck, paid an extra

#94.00. The ⁽²⁾ payments were #23267 for 36 months we made 6 payments which totaled \$1,395.02 We drove the car for a couple days and it started falling apart.

1. It surged and pinged and lunged fixed at least 5 times and was never right.
2. Had all kinds of noises and thumps never found out what caused most of them creaked many times.
3. The muffler assembly came loose. At this time I crawled under the car to see what the noise had been and happened to notice the bolts on the leaf springs were too short and had no nuts on them. I called the dealer and they said I had to wait two weeks for an appointment. I told them it was dangerous so they took it to check it out. All they wanted to fix were the bolts and muffler. I fought to have the service manager drive it. He drove it half a block and then he said they'd have to keep it. Note: this car was "New Car Prepped" and this problem was not caught (see enclosure #1).
4. All of the tires had to be replaced the steel belts were bad.
5. All the shocks had to be replaced.

- (3)
6. The car looked like it was going down the freeway sideways. It actually hurt your arms to drive it over any distance of 10 miles.
 7. It fish tailed badly always never could get it fixed over 8 to 10 attempts!
 8. The rear axle assemble had to be realigned and finally replaced (I believe)
 9. The tail gate (lift gate) latch had to be re aligned, and the bracket shimmed was always hard to close.
 10. The left door jam had to be lined up
 11. The seat had to be fixed. The bolts kept working loose. It never was right and it was fixed 4 or 5 times
 12. Clock, dome light and dash lights didn't work - dash had to be re-wired.
 13. Heater didn't work right fixed
 14. Carpet on back of seats and in rear came unglued - fixed twice.
 15. Transmission shifted so hard it jerked and hurt my back
 16. Bumps in top
 17. Rust in various spots inside & out.
 18. Cruise control wouldn't hold even speeds. They

They had the car ⁽⁴⁾ 2 weeks
we had it one day and had
to take it back.

19. Raw gas gds., was carburator
fixed many times never
right.

20. The bolts came out of the
stabilizing braces in the front
from the fenders to the fire
wall. Note we got a recall on this
a couple weeks after it happened.

21. pinged going up hills

22. Never got more than 10 mpg

23. Driving down street and all
of a sudden it felt like you
were hitting a curb never right
(Note the dealer told me the
factory rep had driven the
car and said it was all
right.)

24. Two days later I was
driving home from work and
heard a loud noise and took
it in immediately, the left front
brake and wheel bearing had
come apart.

In the 5 months plus we
had the car, we drove it,
maybe 3 days a week, I
think we drove it 3 weeks
straight one time. The car was
continuously worked on. Every
time I drove it something
else fell off or came loose.

(5)

My husband called and demanded to talk to the Sales manager to complain. He told him we bought a new car and it was falling apart. He (the sales manager) said "If you wanted a perfect car you should have bought a Mercedes." This didn't help my husband's disposition any. He went to the General manager and understandably was very upset. He demanded they ship the car back to Chrysler Corp and give us our money back. He said (C.D.S.M.) it couldn't be done. My husband caused a scene and they wouldn't talk to him anymore. I took over negotiations. In all the time I spent up there, the mechanics service manager kept saying Aspens were no good, they were not made right. The factory wasn't tooled right to make them. I wouldn't have another Aspen. They kept saying the Diplomat was a better car, new factory, new equipment etc. and they had little trouble with them. At this time we tried to get the dealer to do something again. He said it was too late to get a new car and impossible to get our money

back I had ⁽⁶⁷⁾ the feeling that if I kept driving that car it was going to kill me!! I was scared to death I got together with the general manager and he was willing to trade cars for a Diplomat. At the end of 5 months our Aspen not repairable it was not worth what we owed on it. We lost our down payment, all the money we had paid on it and had to pay \$500.00 more to get the Diplomat wagon. The general manager said he never wanted to see that car (the Aspen) again. We thought our troubles were over we just got a new set!!

Note: This means we paid tax and license fees etc on 2 cars in 5 months. We're talking close to a \$1000.00 dollars

On Mar 8 1978. We signed another contract and lost at this point approximately \$3000.00

They put a stereo, cruise control and we paid extra for that they kept it 4 or 5 days to make sure it was O.K. We drove it for about a month

Here we go again!

1. Front fan belt loose.
2. License plate no bolts fixed 3 times still loose & rattle,

3. Cigarette lighter unit fell out when used fixed 4 or 5 times
4. Stereo switches channel isn't clear one speaker functions sometimes and is very static. The speaker covers fell over and were fixed about 3 times but not the stereo or speaker because it was factory installed - (they the dealer installed it)
5. Lock on box in back fell out was fixed
6. Noise in rear left - shocks.
7. Clunking noise underfoot while driving - still does you can feel it with your feet.
8. Speedometer off between 6 + 7 miles fixed 5 or 6 times still is off.
9. Cruise control doesn't hold fixed 3 or 4 times still doesn't hold.
10. Driver windshield wiper doesn't work right fixed + shim put in - still bad.
11. Rust on door jam - fixed.
12. Rust on tail gate painted 3 or 4 times still there.
13. Tail gate never worked right
14. Tail gate doesn't fit. It was fixed 5 or 6 times still doesn't fit - it has been fooled with so much now the catch is broken and is very difficult to close. The hinges have been

moved etc. (8)

15. The transmission didn't shift right was very sluggish was replaced. Second one was all right for a couple months, it started shifting in to neutral by it self not on steering column just the transmission they said they would order me a new one I waited 7 weeks and heard nothing. I was driving a car every day on the freeway at peak traffic that went into neutral any time it felt like it. I went up there to see someone and got the run around. I was very upset and called Calping (Calif Public Interest Research Group) explained to them I was driving a car that was dangerous. In 15 minutes I got a phone call from the dealer they had a transmission bring my car in and they would give me a loaner. That transmission was bad also it was replaced. The present transmission is not working it shifts into 1st gear but then it can wait 50 or 70 miles until it shifts to any other gear no matter what you do. Its been adjusted twice. Still is bad.

15. There's a loud clunk of metal when turning sharp more pronounced to left. Still does.

(9)

16. The horn stopped working was fixed twice then said nothing was wrong. still doesn't work right
17. The electronic ignition computer went out. We went through hell with the car in July or Aug. couldn't go over 20 mph. There was so much smoke coming out we pulled into the fire station and had the fireman cut it out. There was no fire. The service dept said they couldn't take it for a couple weeks that we had water in our gas and it cost \$280.00 to clean everything out. I took a day off from work paying some one to take my place I wanted to see the water. Well there was not any. They took the carburetor apart the spark plugs off (they were carboned up) They finally took the ignition computer off. They didn't have any in stock so they took one off a wrecked Aspen and put it on my Diplomat. They said they'd order me a new one. I'm still waiting!
18. Heat risers making noise fixed or adjusted 5 or 6 times
19. The odometer went crazy over 35 miles it would flip to 100 then 200 miles etc.

1107
I went to the San Diego Zoo
which is 12 miles and it
registered over 300 miles. It
was replaced.

20. We keep blowing one fuse
that is our tail & side lights +
dash lights they took everything
out and couldn't find anything
wrong with the wiring - the
head liners never been right
since.

21. This car also looks like its
going down the street
sideways.

We went to look at other
cars Ford, G.M. Toyota,
Datsun etc. These people just
laughed offered us \$2000 or
\$3000 dollars. We would lose
4 to \$5000 dollars. We cannot
afford this.

We went to the State Dept of
Consumer affairs they
couldn't do anything. We
went to the auto motive division
they sent us to the D.M.V. they
said we could challenge
the dealers bond but again
at a loss.

We went to an attorney. We
told him the whole story. He
said that we should of had
him at the exchange of cars,
that we would have to put

everything done. (111) dates, times & names who said what & when. He said I would have to go to a psychiatrist to prove I was upset, also that it would take 3 to 6 years to get to court it would have to go to superior court and would probably cost another \$4000.00 to \$5000.00 dollars maybe more. We had a case for court but all we'd get out of it is self satisfaction. He said we would probably do better on our own and to try T.V. action lines etc.

I have been working with Calping to see if we can get some satisfaction.

We get our mail from Chrysler to two different names my husband's transposed - H. R. Everett - R. Helmer

After having purchase two new cars and having the same problems. We feel that we have given Chrysler Corp. ample opportunity to repair or produce a functional automobile and we want our money back not just part of it but all of it.

Thank You

Mr. & Mrs. Richard Helmer
8745 Eldon St. La Mesa, Calif.

phone 714-469-4458

920410

ENROLLED BILL MEMORANDUM TO GOVERNOR	DATE 7-6-82
BILL NO. AB 1787	AUTHOR Tanner

Vote—Senate _____ Unanimous

Ayes— 28

Noes— 4 - Richardson, Seymour, Schmitz, Speraw

Vote—Assembly _____ Unanimous

Ayes— 48

Noes— 22 - Baker, Costa, Duffy, Filante, Floyd, Frazee, Frizzelle, Hallett, Ivers, Johnson, Kelley, Konnyu, La Follette, Lancaster, Lewis, Marguth, Naylor, Rogers, Sebastini, D. Stirling, Wright, Wyman

AB 1787 - Tanner

Under existing law, a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill would provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle (excluding motorcycles, motorhomes, and off-road vehicles) to the applicable express warranties if within one year or 12,000 miles (1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has directly notified the manufacturer of the need for repair, as specified; or (2) the vehicle is out of service by reason of repair for a cumulative total of more than 30 calendar days since the delivery of the vehicle to the buyer. The bill would provide that the presumption may not be asserted by the buyer until after the buyer has resorted to an existing qualified third party dispute resolution process.

SPONSOR

Author

SUPPORT

Department of Consumer Affairs

The Senate Democratic Caucus analysis contains a list of proponents.

Recommendation	APPROVE
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OPPOSITION

Automobile Importers of America (per Senate Democratic Caucus analysis)

STATE FISCAL IMPACT

None

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JULY 1988
37-00-1888

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DEPUTIES

Sacramento, California

June 29, 1982

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

Assembly Bill No. 1787

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.



1020 N STREET, SACRAMENTO, CALIFORNIA 95814



ENROLLED BILL REPORT

AGENCY State & Consumer Services	BILL NUMBER AB 1787
DEPARTMENT, BOARD OR COMMISSION Department of Consumer Affairs	AUTHOR Tanner

SUBJECT: New Car Warranties

HISTORY, SPONSORSHIP & RELATED LEGISLATION:

AB 1787 would amend California's existing consumer product warranty law as it pertains to new automobiles.

In December 1979, the Assembly Committee on Labor, Employment and Consumer Affairs held a two-day interim hearing on the subject of automobile warranties. A high level of consumer frustration with defective new cars and warranty performance was expressed, specifically regarding the practical ineffectiveness of current law in response to repeated repairs and problems with new cars. AB 2705 (Tanner) was introduced in 1980 in response to the problem, but was defeated in the Senate Judiciary Committee by one vote.

AB 1787 was introduced March 27, 1981. It passed from the Assembly on June 15, 1981, as amended, and, after extensive compromise efforts between various consumer and industry groups, passed the Senate Judiciary Committee (6-0).

ANALYSIS

A. SPECIFIC FINDINGS

Current law states that manufacturers or their representatives must replace a product or reimburse the buyer after "a reasonable number of attempts" to service or repair the product, without criteria to determine "a reasonable number of attempts."

AB 1787 would establish a reasonable number of attempts to have been undertaken to conform a new vehicle (excluding motorcycles, motor-homes, and off-road vehicles) to the applicable warranties, if within one year or 12,000 miles (1) the same nonconformity has been subject to repair 4 or more times by the manufacturer or its agents and the buyer has directly notified the manufacturer of the need for repair; or (2) the vehicle is out of service by reason of repair for a cumulative total of more than 30 calendar days since delivery to the buyer.

AB 1787 would further provide that if the manufacturer or dealer has a qualified third party dispute resolution process, as defined in the bill, and if the buyer received timely notification of the availability of the process, the provisions defining a reasonable number of attempts to repair may not be asserted by the buyer until after the buyer has

(cont.)

RECOMMENDATION:

S/C-N

DEPARTMENT DIRECTOR <i>[Signature]</i>	DATE <i>6/29/81</i>	AGENCY SECRETARY <i>[Signature]</i>	DATE <i>7-2-81</i>
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first resorted to the dispute resolution process.

B. FISCAL IMPACT

None on this Department.

C. VOTE

Assembly: 58-6
Senate: 28-4

D. HUMAN & CIVIL RIGHTS IMPACT

Warranty legislation was enacted to improve the adequacy of information available to consumers, prevent deception, promote choice, and improve competition and service in the marketing and repair or replacement of consumer products. AB 1787 seeks to protect the interests of participants in a retail transaction in which thousands of dollars are involved and basic means of transportation are inhibited.

E. RECOMMENDATION: Sign

AB 1787 provides California consumers with a reasonable and equitable remedy for a major problem. Current law is not useful to consumers who purchase defective vehicles because of the often limitless opportunities afforded dealers and manufacturers to correct defects. The standards proposed in AB 1787 offer a reasonable remedy to car buyers and will encourage improved quality control by manufacturers and improved repair service by dealers.

ENROLLED BILL REPORT

Business and Transportation Agency

DEPARTMENT Motor Vehicles	AUTHOR Tanner	BILL NUMBER AB 1787
SUBJECT Warranties		

SUMMARY: Requires the manufacturer to replace a vehicle or reimburse the buyer if a nonconformity is not repaired after a reasonable number of attempts.

DETAILED ANALYSIS: The Civil Code currently requires a manufacturer to replace merchandise or reimburse the buyer if after a reasonable number of attempts to repair the item it fails to conform to the warranty. However, there is no specific definition of "reasonable number of repair attempts" and in the case of new motor vehicles, replacement or total reimbursement is rare.

This bill would require a manufacturer to replace a new motor vehicle or reimburse the buyer if the vehicle did not conform to the warranty after a reasonable number of attempts have been made to correct a non-conformity.

For purposes of this bill, "new motor vehicle" would mean a new motor vehicle which is used primarily for personal, family, or household purposes, but would not include motorcycles, motorhomes, or off-highway vehicles. The bill would require the presumption that a "reasonable number of attempts" have been made to conform a new motor vehicle to the warranty if, within one year from delivery of the vehicle to the buyer or 12,000 miles, whichever occurs first, either the same nonconformity has been subject to repair four or more times and the buyer has at least once notified the manufacturer of the need for repair, or the vehicle is out of service, as specified, for a cumulative total of more than 30 days. The term "nonconformity" would mean a nonconformity that substantially impairs the use, value, or safety of the new motor vehicle.

Before a manufacturer would be required to replace or refund a vehicle's purchase price, the bill would require the matter to be referred to a qualified third party dispute resolution process, as specified, if one exists. The requirements for the dispute resolution process would include the yearly submission of a report to the Department of Motor Vehicles on the annual audit required by Federal Trade Commission regulations on informal dispute resolution procedures.

COST ANALYSIS: No anticipated fiscal impact on this department. Based upon information obtained from the Federal Trade Commission, the Department of Motor Vehicles has determined the annual audit report specified in this measure would not require any action by this department. The Department of Motor Vehicles would only be a repository for the reports.

LEGISLATIVE HISTORY: This bill is sponsored by the author as a result of interim hearings conducted in 1979. The vote on this measure was Assembly, Ayes 48 - Noes 22, Senate, Ayes 28 - Noes 4.

RECOMMENDATION	<i>C. Sawyer for W. Alexis</i>		
SIGN			
Department	Date	Agency	Date
KS:mc 7-6-82	7/7/82	<i>Robert O. ...</i>	7.7.82

RECOMMENDATION: SIGN

The purchase of a new motor vehicle represents a major investment for most people. This measure should provide a degree of protection for that investment which is not presently available.

For further information, please contact:

Doris V. Alexis, Director
Day Phone: 445-5281
Evening Phone: 441-4980

For technical information, please contact:

Roger Hagen, Chief, Division of Registration Services
and Compliance Enforcement
Day Phone: 445-6340
Evening Phone: 1-652-6161

Leonard Bleier, Legislative Liaison Officer
Day Phone: 445-9492
Evening Phone: 448-3190

THIRD READING

<p style="text-align: center;">SENATE DEMOCRATIC CAUCUS</p> <p style="text-align: center;">SENATOR PAUL B. CARPENTER Chairman</p>	<p>Bill No.: AB 1787 Amended: 6-3-82</p> <p>Author: Tanner (D)</p> <p>Vote Required: Majority</p> <p>Assembly Floor Vote: 48-22</p>
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SUBJECT: Warranties

POLICY COMMITTEE: Judiciary

AYES: (6) Doolittle, Robbins, Sieroty, Watson, Davis, Rains

NOES: (0)

SUMMARY OF LEGISLATION:

Under existing law, a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill provides that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle, excluding motorcycles, motor-homes, and off-road vehicles, to the applicable express warranties if within one year or 12,000 miles whichever occurs first (1) the same nonconformity has been subject to repair 4 or more times by the manufacturer or its agents; and the buyer after being notified by the manufacturer of the requirement has at least once directly notified the manufacturer of the need for the repair of the nonconformity or, (2) the vehicle is out of service by reason of repair for a cumulative total of more than 30 days since the delivery of the vehicle to the buyer. The bill provides that the presumption may not be asserted by the buyer until after the buyer has resorted to an existing qualified third party dispute resolution process, as defined. The bill also provides that a manufacturer shall be bound by a decision of the third party process if the buyer elects to accept it, and that if the buyer is dissatisfied with the third party decision the buyer may assert the presumption in an action to enforce the buyer's rights, as specified.

FISCAL EFFECT: No state cost.

PROPOSERS: (Verified by author 6-2-82)

Los Angeles City Attorney
KPIX
KABC
Long Beach Independent Press-Telegram
Santa Barbara News Press
State Consumer Advisory Council

CONTINUED

PROPOSERS, continued:

Department of Consumer Affairs
 California Consumer Affairs Association
 Cal-Ping San Diego
 National Council of Senior Citizens
 Motor Voters, San Diego
 AFL-CIO, State Federation
 State Building and Construction Trades Council of California
 United Steelworkers of America
 Baldwin Park Chamber of Commerce
 Santa Cruz County District Attorney
 Consumer Union, San Francisco
 San Francisco Consumer Action
 County of Los Angeles, Department of Consumer Affairs
 California Federation of Women's Clubs, Orange District
 Consumer Aid of Shasta County
 Colusa County Board of Supervisors
 Stanislaus County, Office of Consumer Affairs
 Los Angeles Private Investigation & Patrol Service
 California Teamsters Public Affairs Council
 Center for Auto Safety
 Chico Consumer Protection Agency
 Lemon-Aid, San Diego
 Consumer Federation of California
 Legal Aid Society of San Mateo County
 Consumer Coalition

(Ford, Chrysler, General Motors, California
 Auto Dealers Association, Motor Vehicle
 Manufacturers Association, American Honda
 Motor Co., California Conference of
 Machinists are neutral)

OPPOSERS:

Automobile Importers of America

ARGUMENTS IN SUPPORT:

Proponents state that current law does not protect consumers who purchase defective vehicles, because dealers and manufacturers never admit, perhaps because of the cost of the vehicle, that they have made a "reasonable number" of attempts to repair it and are now willing to replace it or reimburse the consumer.

Proponents say that the clear standard proposed in this bill would offer a more effective remedy to the consumer, and would encourage improved quality control by manufacturers and improved repair service by dealers.

288 Orig. Governor
& Legislative
A-C

S & T
1625 SILVERWOOD TERRACE
LOS ANGELES, CALIFORNIA 90026
(213) 660-4365

AB 1787

July 4, 1982

Gov. Edmund Brown, Jr.
State Capitol
Sacramento, California 95814

Dear Governor Brown:

I was very pleased to have the opportunity to talk to you the other day at Jim Daniel and Ed Taylor's home. I am very supportive of your campaign for the U.S. Senate. There is a crying need for fair representation of all groups in Washington, as you so ably spoke.

I was also pleased to discuss with you my support of the Sally Tanner "Lemon Law" for consumer protection of automotive problems. As a consumer with a current and on-going car problem that the new law will not help, I feel strongly that consumer laws such as this are important to Californians.

I hope that this necessary legislation is presented to you soon for a quick implementation.

I hope that I can be of further help to you during the coming general election.

Sincerely,

Alex Smariga
Alex Smariga
1625 Silverwood Terrace
Los Angeles, California 90026

SACRAMENTO ADDRESS
ROOM 4146, STATE CAPITOL
SACRAMENTO 95814
(916) 445-7783

DISTRICT OFFICE ADDRESS
1100 VALLEY BOULEVARD
SUITE 106
EL MONTE, CA 91731
(213) 442-9100



Assembly California Legislature

SALLY TANNER
ASSEMBLYWOMAN, SIXTIETH DISTRICT
CHAIRWOMAN

COMMITTEE ON CONSUMER PROTECTION AND TOXIC MATERIALS

COMMITTEES:
CONSUMER PROTECTION AND
TOXIC MATERIALS
EDUCATION
GOVERNMENTAL ORGANIZATION
LABOR AND EMPLOYMENT
SUBCOMMITTEES:
AMUSEMENT RIDE SAFETY
EDUCATIONAL REFORM
CHILD LABOR
SELECT COMMITTEE:
FAIR EMPLOYMENT PRACTICES
MEMBER:
JOINT COMMITTEE ON THE ARTS
HAZARDOUS WASTE MANAGEMENT
COUNCIL

June 30, 1982

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

RE: AB 1787 - Consumer Warranties
on New Motor Vehicles - Refund
or Replacement Remedy

Dear Governor Brown:

Assembly Bill 1787 has been passed by the Legislature and is before you for your approval and signature.

For years one of the most frustrating and expensive problems experienced by California's consumers has been the inability to obtain satisfactory redress when the new cars they purchase fail to operate properly and are not repaired despite repeated or sustained attempts by the manufacturer or its dealers. While our present Song-Beverly Consumer Warranty Act gives the buyer a right to obtain a refund or replacement from the manufacturer if a consumer product, including a motor vehicle, cannot be successfully repaired after a "reasonable number of attempts", it has not been effective in resolving this serious problem for new car purchasers.

AB 1787, often referred to as the "lemon" automobile bill, would amend this provision of the Song-Beverly Act as it relates to specified new motor vehicles and provide objective criteria for determining when the "reasonable" number of repairs standard has been reached and the buyer has the right to a refund or replacement.

-continued-

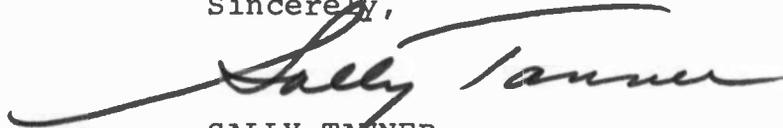
The bill also provides, however, that before a buyer could assert this presumption, he or she must first utilize informal dispute resolution programs to resolve the problem, if such a program exists and meets criteria specified in the bill.

AB 1787 represents the culmination of over 3 years of legislative effort to provide more meaningful protection for new car buyers whose cars don't work and can't be fixed within a reasonable time. The provisions of the bill will help not only the consumer car buyer, but also the auto industry, by providing a means for restoring buyer confidence in, and sales of, new motor vehicles.

AB 1787 is supported by a long list of consumer organizations and leaders from all over California. It has also been supported by a great many individual consumers, hundreds of whom have written to me about their new car problems.

I respectfully request that you approve AB 1787 and sign it into California law.

Sincerely,

A handwritten signature in cursive script that reads "Sally Tanner". The signature is written in black ink and is positioned above the typed name.

SALLY TANNER
Assemblywoman, 60th District

ST:mb

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **RODRIGUEZ v. FCA**
US

Case Number: **S274625**

Lower Court Case Number: **E073766**

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: **smckenzie@horvitzlevy.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
MOTION	S274625_MJN_FCA.PDF
ADDITIONAL DOCUMENTS	Vol. 07 MJN Exhs. 1-256.PDF
ADDITIONAL DOCUMENTS	Vol. 08 MJN Exhs. 257-367.PDF
ADDITIONAL DOCUMENTS	Vol. 09 MJN Exhs. 368-553.PDF
ADDITIONAL DOCUMENTS	Vol. 10 MJN Exhs. 554-736.PDF
ADDITIONAL DOCUMENTS	Vol. 11 MJN Exhs. 737-954.PDF
ADDITIONAL DOCUMENTS	Vol. 12 MJN Exhs. 955-1149.PDF
ADDITIONAL DOCUMENTS	Vol. 13 MJN Exhs. 1150-1387.PDF
ADDITIONAL DOCUMENTS	Vol. 14 MJN Exhs. 1388-1577.PDF
ADDITIONAL DOCUMENTS	Vol. 15 MJN Exhs. 1578-1840.PDF
ADDITIONAL DOCUMENTS	Vol. 16 MJN Exhs. 1841-1937.PDF

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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.

2/8/2023

Date

/s/Shane McKenzie

Signature

McKenzie, Shane (228978)

Last Name, First Name (PNum)

Horvitz & Levy LLP

Law Firm