

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 11 of 16 • Pages 737 – 954 of 1937

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ATTORNEYS FOR DEFENDANT AND RESPONDENT
FCA US, LLC

VOLUME 2
CALIFORNIA LEGISLATURE
AT SACRAMENTO
1985-86 REGULAR SESSION

ASSEMBLY FINAL HISTORY

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

Assembly Convened December 3, 1984	
Recessed December 4, 1984	Reconvened January 7, 1985
Recessed March 28, 1985	Reconvened April 8, 1985
Recessed July 18, 1985	Reconvened August 19, 1985
Recessed September 13, 1985	Reconvened January 6, 1986
Recessed March 20, 1986	Reconvened March 31, 1986
Recessed July 11, 1986	Reconvened August 11, 1986
Recessed September 15, 1986	
Adjourned Sine Die November 30, 1986	
Legislative Days.....	251

HON. WILLIE L. BROWN JR.
Speaker

HON. FRANK VICENCIA
Speaker pro Tempore

HON. MIKE ROOS
Majority Floor Leader

HON. TOM BANE
Assistant Speaker pro Tempore

HON. PAT NOLAN
Minority Floor Leader

Compiled Under the Direction of
JAMES D. DRISCOLL
Chief Clerk

GUNVOR ENGLE
History Clerk

A.B. No. 3610—Rogers.

An act to add Section 6380 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

1986

- Feb. 20—Read first time. To print.
- Feb. 23—From printer. May be heard in committee March 25.
- Mar. 4—Referred to Com. on REV. & TAX.
- Mar. 31—In committee: Hearing postponed by committee.
- April 28—In committee: Set, first hearing. Failed passage.
- Nov. 30—From committee without further action.

A.B. No. 3611—Tanner, Clute, Hauser, Molina, and Moore (Senators Dills, Leroy Greene, McCorquodale, Torres, and Watson, coauthors).

An act to add Article 9.5 (commencing with Section 9889.22) to Chapter 20.3 of Division 3 of the Business and Professions Code, to amend Section 1793.2 of, to add Section 1793.25 to, and to add Chapter 2.1 (commencing with Section 1796.6) to Title 1.7 of Part 4 of Division 3 of, the Civil Code, to amend Section 7102 of the Revenue and Taxation Code, and to amend Sections 3050 and 11723 of the Vehicle Code, relating to vehicles, and making an appropriation therefor.

1986

- Feb. 20—Read first time. To print.
- Feb. 24—From printer. May be heard in committee March 26.
- Mar. 4—Referred to Com. on CON. PRO.
- April 14—From committee: Amend, and do pass as amended, and re-refer to Com. on W. & M. (Ayes 5. Noes 0.) (April 3).
- April 15—Read second time and amended.
- April 17—Re-referred to Com. on W. & M. (Corrected May 12.)
- May 19—From committee chairman, with author's amendments: Amend, and re-refer to Com. on W. & M. Read second time and amended.
- May 20—Re-referred to Com. on W. & M.
- May 29—From committee: Do pass. (Ayes 20. Noes 1.) (May 28).
- June 2—Read second time. To third reading.
- June 4—Read third time, passed, and to Senate. (Ayes 66. Noes 5. Page 7579.)
- June 4—In Senate. Read first time. To Com. on RLS. for assignment.
- June 25—Referred to Com. on JUD.
- July 8—From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 9. Noes 0.).
- July 9—Read second time, amended, and re-referred to Com. on APPR.
- Aug. 11—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on APPR.
- Aug. 13—Referred to APPR. suspense file.
- Aug. 15—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on APPR.
- Aug. 19—Joint Rule 61 suspended.
- Aug. 21—In committee: Set, first hearing. Failed passage.
- Nov. 30—From Senate committee without further action.

ASSEMBLY BILL

No. 3611

Introduced by Assembly Member Tanner

February 20, 1986

An act to amend Section 1793.2 of the Civil Code, to add Sections 6902.2 and 10902 to the Revenue and Taxation Code, and to amend Section 3050 of, and to add Sections 3050.7, 3050.8, 3050.9, and 42234.5 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 3611, as introduced, Tanner. Vehicle warranties.

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

This bill would expressly provide the option of replacement, as described in the bill, or reimbursement, as described in the bill, is in the buyer. The bill would also require the New Motor Vehicle Board to certify arbitration processes and to provide arbitration itself. The bill would authorize the board to establish filing fees for cases when the board itself arbitrates disputes and authorizes the board to order a party to pay the other party's filing fees under specified circumstances.

The bill also requires the department to make a reimbursement of prorated registration and license fees for vehicles for which a manufacturer provides to the buyer a replacement or reimbursement, as specified, and thereby makes an appropriation of amounts necessary to pay those claims.

Vote: majority. Appropriation: yes. Fiscal committee: yes.

State-mandated local program: no.

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

1 SECTION 1. Section 1793.2 of the Civil Code is
2 amended to read:

3 1793.2. (a) Every manufacturer of consumer goods
4 sold in this state and for which the manufacturer has
5 made an express warranty shall:

6 (1) Maintain in this state sufficient service and repair
7 facilities reasonably close to all areas where its consumer
8 goods are sold to carry out the terms of such warranties
9 or designate and authorize in this state as service and
10 repair facilities independent repair or service facilities
11 reasonably close to all areas where its consumer goods are
12 sold to carry out the terms of such warranties.

13 As a means of complying with paragraph (1) of this
14 subdivision, a manufacturer shall be permitted to enter
15 into warranty service contracts with independent service
16 and repair facilities. The warranty service contracts may
17 provide for a fixed schedule of rates to be charged for
18 warranty service or warranty repair work, however, the
19 rates fixed by such contracts shall be in conformity with
20 the requirements of subdivision (c) of Section 1793.3. The
21 rates established pursuant to subdivision (c) of Section
22 1793.3, between the manufacturer and the independent
23 service and repair facility, shall not preclude a good-faith
24 discount which is reasonably related to reduced credit
25 and general overhead cost factors arising from the
26 manufacturer's payment of warranty charges direct to
27 the independent service and repair facility. The warranty
28 service contracts authorized by this paragraph shall not
29 be executed to cover a period of time in excess of one
30 year.

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

34 (b) Where such service and repair facilities are
35 maintained in this state and service or repair of the goods
36 is necessary because they do not conform with the

1 applicable express warranties, service and repair shall be
2 commenced within a reasonable time by the
3 manufacturer or its representative in this state. Unless
4 the buyer agrees in writing to the contrary, the goods
5 must be serviced or repaired so as to conform to the
6 applicable warranties within 30 days. Delay caused by
7 conditions beyond the control of the manufacturer or his
8 representatives shall serve to extend this 30-day
9 requirement. Where such delay arises, conforming goods
10 shall be tendered as soon as possible following
11 termination of the condition giving rise to the delay.

12 (c) It shall be the duty of the buyer to deliver
13 nonconforming goods to the manufacturer's service and
14 repair facility within this state, unless, due to reasons of
15 size and weight, or method of attachment, or method of
16 installation, or nature of the nonconformity, such
17 delivery cannot reasonably be accomplished. Should the
18 buyer be unable to effect return of nonconforming goods
19 for any of the above reasons, he shall notify the
20 manufacturer or its nearest service and repair facility
21 within the state. Written notice of nonconformity to the
22 manufacturer or its service and repair facility shall
23 constitute return of the goods for purposes of this section.
24 Upon receipt of such notice of nonconformity the
25 manufacturer shall, at its option, service or repair the
26 goods at the buyer's residence, or pick up the goods for
27 service and repair, or arrange for transporting the goods
28 to its service and repair facility. All reasonable costs of
29 transporting the goods when, pursuant to the above, a
30 buyer is unable to effect return shall be at the
31 manufacturer's expense. The reasonable costs of
32 transporting nonconforming goods after delivery to the
33 service and repair facility until return of the goods to the
34 buyer shall be at the manufacturer's expense.

35 (d) ~~Should~~ (1) Except as provided in paragraph (2),
36 should the manufacturer or its representative in this state
37 be unable to service or repair the goods to conform to the
38 applicable express warranties after a reasonable number
39 of attempts, the manufacturer shall either replace the
40 goods or reimburse the buyer in an amount equal to the

1 purchase price paid by the buyer, less that amount
2 directly attributable to use by the buyer prior to the
3 discovery of the nonconformity.

4 (2) *If the manufacturer or its representative in this*
5 *state is unable to service or repair a new motor vehicle,*
6 *as that term is defined in subparagraph (B) of paragraph*
7 *(4) of subdivision (e), to conform to the applicable*
8 *express warranties after a reasonable number of*
9 *attempts, the manufacturer shall, at the option of the*
10 *buyer, either promptly replace the new motor vehicle in*
11 *accordance with subparagraph (A) or promptly make*
12 *restitution to the buyer in accordance with subparagraph*
13 *(B).*

14 (A) *When the buyer exercises the option of*
15 *replacement, the manufacturer shall replace the buyer's*
16 *vehicle with a new motor vehicle substantially identical*
17 *to the vehicle replaced. The manufacturer shall bear the*
18 *burden of any increase in the price of the replacement*
19 *over the price of the vehicle replaced. The replacement*
20 *vehicle shall be accompanied by all express and implied*
21 *warranties that normally accompany new motor vehicles*
22 *of that specific kind. The manufacturer also shall pay for,*
23 *or to, the buyer the amount of any sales tax, license fees,*
24 *registration fees, and other official fees which the buyer*
25 *is obligated to pay in connection with the replacement.*

26 (B) *When the buyer exercises the option of*
27 *restitution, the manufacturer shall make restitution in an*
28 *amount equal to the full contract price paid or payable by*
29 *the buyer, including any charges for transportation and*
30 *installed options, and any collateral charges such as sales*
31 *tax, license fees, registration fees, and other official fees.*
32 *The amount to be paid by the manufacturer to the buyer*
33 *under this subparagraph shall be reduced by that amount*
34 *directly attributable to use by the buyer prior to the*
35 *discovery of the nonconformity.*

36 (C) *Nothing in this paragraph shall in any way limit*
37 *the rights or remedies available to the buyer under any*
38 *other law.*

39 (e) (1) *It shall be presumed that a reasonable number*
40 *of attempts have been made to conform a new motor*

1 vehicle to the applicable express warranties if, within one
2 year from delivery to the buyer or 12,000 miles,
3 whichever occurs first, either (A) the same
4 nonconformity has been subject to repair four or more
5 times by the manufacturer or its agents and the buyer has
6 at least once directly notified the manufacturer of the
7 need for the repair of the nonconformity, or (B) the
8 vehicle is out of service by reason of repair of
9 nonconformities by the manufacturer or its agents for a
10 cumulative total of more than 30 calendar days since
11 delivery of the vehicle to the buyer. The 30-day limit shall
12 be extended only if repairs cannot be performed due to
13 conditions beyond the control of the manufacturer or its
14 agents. The buyer shall be required to directly notify the
15 manufacturer pursuant to subparagraph (A) only if the
16 manufacturer has clearly and conspicuously disclosed to
17 the buyer, with the warranty or the owner's manual, the
18 provisions of this subdivision and that of subdivision (d),
19 including the requirement that the buyer must notify the
20 manufacturer directly pursuant to subparagraph (A).
21 This presumption shall be a rebuttable presumption
22 affecting the burden of proof in any action to enforce the
23 buyer's rights under subdivision (d) and shall not be
24 construed to limit those rights.

25 (2) If a qualified third party dispute resolution process
26 exists, and the buyer receives timely notification in
27 writing of the availability of a third party process with a
28 description of its operation and effect, the presumption
29 in paragraph (1) may not be asserted by the buyer until
30 after the buyer has initially resorted to the third party
31 process as required in paragraph (3). Notification of the
32 availability of the third party process is not timely if the
33 buyer suffers any prejudice resulting from any delay in
34 giving the notification. If a qualified third party dispute
35 resolution process does not exist, or if the buyer is
36 dissatisfied with the third party decision, or if the
37 manufacturer or its agent neglects to promptly fulfill the
38 terms of such third party decision, the buyer may assert
39 the presumption provided in paragraph (1) in an action
40 to enforce the buyer's rights under subdivision (d). The

1 findings and decision of the third party shall be
2 admissible in evidence in the action without further
3 foundation. Any period of limitation of actions under any
4 federal or California laws with respect to any person shall
5 be extended for a period equal to the number of days
6 between the date a complaint is filed with a third party
7 dispute resolution process and the date of its decision or
8 the date before which the manufacturer or its agent is
9 required by the decision to fulfill its terms, whichever
10 occurs later.

11 (3) A qualified third party dispute resolution process
12 shall be one that complies with the Federal Trade
13 Commission's minimum requirements for informal
14 dispute settlement procedures as set forth in the
15 Commission's regulations at 16 Code of Federal
16 Regulations Part 703; that renders decisions which are
17 binding on the manufacturer if the buyer elects to accept
18 the decision; that prescribes a reasonable time, not to
19 exceed 30 days, within which the manufacturer or its
20 agents must fulfill the terms of those decisions; and that
21 ~~each year provides to the Department of Motor Vehicles~~
22 ~~a report of its annual audit required by the Commission's~~
23 ~~regulations on informal dispute resolution procedures has~~
24 ~~been certified by the New Motor Vehicle Board pursuant~~
25 ~~to subdivision (f) of Section 3050 of the Vehicle Code.~~

26 (4) For the purposes of *subdivision (d)* and this
27 subdivision the following terms have the following
28 meanings:

29 (A) "Nonconformity" means a nonconformity which
30 substantially impairs the use, value, or safety of the new
31 motor vehicle.

32 (B) "New motor vehicle" means a new motor vehicle
33 which is used or bought for use primarily for personal,
34 family, or household purposes; ~~but does not include~~
35 ~~motorcycles, motorhomes, or off-road vehicles.~~ "New
36 motor vehicle" includes a dealer-owned vehicle and a
37 "demonstrator" or other motor vehicle sold with a
38 manufacturer's new car warranty, but does not include a
39 motorcycle, motorhome, motor vehicle which is not
40 registered under the Vehicle Code because it is to be

1 *operated or used exclusively off the highways, or any*
2 *vehicle purchased solely for commercial or industrial use.*

3 SEC. 2. Section 6902.2 is added to the Revenue and
4 Taxation Code, to read:

5 6902.2. Upon receipt of proof to its satisfaction that
6 sales tax has been paid to the state on the sale of a new
7 motor vehicle, and that the new motor vehicle has been
8 replaced by the manufacturer or that the manufacturer
9 has made restitution to the buyer, as provided by
10 paragraph (2) of subdivision (d) of Section 1793.2 of the
11 Civil Code, the board shall refund the sales tax to the
12 vehicle manufacturer. The board may adopt rules and
13 regulations that it deems necessary or appropriate to
14 carry out, facilitate compliance with, or prevent
15 circumvention or evasion of, this section.

16 SEC. 3. Section 10902 is added to the Revenue and
17 Taxation Code, to read:

18 10902. If a manufacturer of a new motor vehicle
19 replaces the vehicle or makes restitution to the buyer, as
20 provided by paragraph (2) of subdivision (d) of Section
21 1793.2 of the Civil Code, prior to the expiration of the
22 registration year for which the license fee has been paid.
23 The department shall refund that part of the fee which
24 bears the same proportion to the total license fee paid as
25 that part of the registration year beginning on the date
26 the vehicle is transferred to the manufacturer and ending
27 on the date the registration year expires bears to the total
28 registration year of the vehicle. The department may
29 adopt rules and regulations it deems necessary to carry
30 out this section.

31 SEC. 4. Section 3050 of the Vehicle Code is amended
32 to read:

33 3050. The board shall do all of the following:

34 (a) Adopt rules and regulations in accordance with
35 Chapter 3.5 (commencing with Section 11340) of Part 1
36 of Division 3 of Title 2 of the Government Code
37 governing such matters as are specifically committed to
38 its jurisdiction.

39 (b) Hear and consider, within the limitations and in
40 accordance with the procedure provided, an appeal

1 presented by an applicant for, or holder of, a license as a
2 new motor vehicle dealer, manufacturer, manufacturer
3 branch, distributor, distributor branch, or representative
4 when the applicant or licensee submits an appeal
5 provided for in this chapter from a decision arising out of
6 the department.

7 (c) Consider any matter concerning the activities or
8 practices of any person applying for or holding a license
9 as a new motor vehicle dealer, manufacturer,
10 manufacturer branch, distributor, distributor branch, or
11 representative pursuant to Chapter 4 (commencing with
12 Section 11700) of Division 5 submitted by any person. A
13 member of the board who is a new motor vehicle dealer
14 may not participate in, hear, comment, advise other
15 members upon, or decide any matter considered by the
16 board pursuant to this subdivision that involves a dispute
17 between a franchisee and franchisor. After such
18 consideration, the board may do any one or any
19 combination of the following:

20 (1) Direct the department to conduct investigation of
21 matters that the board deems reasonable, and make a
22 written report on the results of the investigation to the
23 board within the time specified by the board.

24 (2) Undertake to arbitrate amicably or resolve any
25 honest difference of opinion or viewpoint existing
26 between any member of the public and any new motor
27 vehicle dealer, manufacturer, manufacturer branch,
28 distributor branch, or representative.

29 (3) Order the department to exercise any and all
30 authority or power that the department may have with
31 respect to the issuance, renewal, refusal to renew,
32 suspension, or revocation of the license of any new motor
33 vehicle dealer, manufacturer, manufacturer branch,
34 distributor, distributor branch, or representative as such
35 license is required under Chapter 4 (commencing with
36 Section 11700) of Division 5.

37 (d) Hear and consider, within the limitations and in
38 accordance with the procedure provided, a protest
39 presented by a franchisee pursuant to Section 3060, 3062,
40 3064, or 3065. A member of the board who is a new motor

1 vehicle dealer may not participate in, hear, comment,
2 advise other members upon, or decide, any matter
3 involving a protest filed pursuant to Article 4
4 (commencing with Section 3060).

5 *(e) Arbitrate disputes which arise between any buyer*
6 *of a new motor vehicle and the new motor vehicle*
7 *manufacturer, manufacturer branch, distributor, or*
8 *distributor branch from which the new motor vehicle was*
9 *initially acquired, where the basis of the dispute concerns*
10 *rights afforded the buyer under the Song-Beverly*
11 *Consumer Warranty Act (Chapter 1 (commencing with*
12 *Section 1790) of Title 1.7 of the Civil Code). This section*
13 *shall not be interpreted in a manner that deprives the*
14 *buyer of a new motor vehicle of any other remedy*
15 *available under any other provision of law, except that a*
16 *buyer of a new motor vehicle who elects to arbitrate a*
17 *dispute under this chapter shall not be entitled to a*
18 *second arbitration in a qualified third-party dispute*
19 *resolution process as that term is used in subdivision (e)*
20 *of Section 1793.2 of the Civil Code.*

21 *(f) Certify that each third-party dispute resolution*
22 *process used for the arbitration of disputes pursuant to*
23 *paragraph (2) of subdivision (e) of Section 1793.2 of the*
24 *Civil Code is a qualified third-party dispute resolution*
25 *process as provided in paragraph (3) of subdivision (e) of*
26 *Section 1793.2 of the Civil Code. Each third-party dispute*
27 *resolution process that applies for certification shall*
28 *provide to the board any and all information that the*
29 *board determines is necessary for certification.*
30 *Certification of any particular third-party dispute*
31 *resolution process is a condition precedent to the*
32 *application of paragraph (2) of subdivision (e) of Section*
33 *1793.2 of the Civil Code with respect to that process. The*
34 *board may suspend or revoke the certification of any such*
35 *process upon a determination that the process does not*
36 *comply with all the requirements of paragraph (3) of*
37 *subdivision (e) of Section 1793.2 of the Civil Code.*

38 SEC. 5. Section 3050.8 is added to the Vehicle Code,
39 to read:

40 3050.8. (a) Any buyer of a new motor vehicle may

1 request the board to formally arbitrate a dispute pursuant
2 to subdivision (e) of Section 3050 by filing a written
3 application with the board and paying the fee established
4 under Section 3050.9. The board shall not grant the
5 request for arbitration unless the board has first done
6 both of the following:

7 (1) Attempted to resolve the dispute by informal
8 mediation as provided in paragraph (2) of subdivision (c)
9 of Section 3050.

10 (2) After informal mediation, classified the buyer's
11 position in unresolved disputes as meritorious, not
12 meritorious, or the merit or lack of merit of the buyer's
13 position is unable to be determined.

14 (b) The board shall not grant a request for arbitration
15 pursuant to subdivision (e) of Section 3050 in any case
16 where the buyer has previously used a qualified
17 third-party dispute resolution process provided by the
18 manufacturer, manufacturer branch, distributor, or
19 distributor branch pursuant to paragraph (2) of
20 subdivision (e) of Section 1793.2 of the Civil Code unless
21 the board determines that the third-party resolution
22 process used by the consumer failed to comply with the
23 procedures necessary for certification with respect to
24 that buyer's arbitration.

25 (c) The arbitration procedures established by the
26 board pursuant to subdivision (e) of Section 3050 shall
27 comply with all of the requirements of paragraph (3) of
28 subdivision (e) of Section 1793.2 of the Civil Code.

29 SEC. 6. Section 3050.9 is added to the Vehicle Code,
30 to read:

31 3050.9. (a) The board shall establish a schedule of
32 fees to be charged to fund fully the costs associated with
33 the arbitration of disputes conducted pursuant to
34 subdivision (e) of Section 3050. The schedule of fees shall
35 include a fixed annual fee, the amount of which shall be
36 determined by the board, which shall be charged each
37 manufacturer, manufacturer branch, distributor, and
38 distributor branch subject to this chapter.

39 (b) If, subsequent to an arbitration, the board
40 determines that the manufacturer or distributor has been

1 unreasonable with respect to a consumer's claim brought
2 pursuant to subdivision (e) of Section 3050, the board
3 may require the manufacturer or distributor to
4 reimburse the consumer for any fees paid to the board as
5 a result of filing the request for arbitration. If, subsequent
6 to the arbitration of a dispute, the board determines that
7 the consumer's position was wholly without merit and
8 brought in bad faith, the consumer may be required to
9 reimburse the manufacturer for any fees paid to the
10 board as a result of the filing of the request for arbitration.

11 SEC. 7. Section 42234.5 is added to the Vehicle Code,
12 to read:

13 42234.5. If a manufacturer of a new motor vehicle
14 replaces the vehicle or who makes restitution to the
15 buyer, as provided by paragraph (2) of subdivision (d) of
16 Section 1793.2 of the Civil Code, prior to the expiration
17 of the registration year for which the license has been
18 paid, the department shall refund that part of the fee
19 which bears the same proportion to the total registration
20 fee paid as that part of the registration year beginning on
21 the date the vehicle is transferred to the manufacturer
22 and ending on the date the registration year expires bears
23 to the total registration year of the vehicle. The
24 department may adopt rules and regulations it deems
25 necessary to carry out this section.

AMENDED IN ASSEMBLY APRIL 15, 1986

CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

ASSEMBLY BILL

No. 3611

Introduced by Assembly Member **Tanner** Members
Tanner, Clute, Hauser, Molina, and Moore
(Coauthors: Senators **Dills, Leroy Greene, McCorquodale,**
Torres, and Watson)

February 20, 1986

An act to amend Section 1793.2 of the Civil Code, to add Sections 6902.2 and 10902 to the Revenue and Taxation Code, and to amend Section 3050 of, and to add Sections ~~3050.7, 3050.8, 3050.9, 3050.9~~ and 42234.5 to, the Vehicle Code, relating to vehicles, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 3611, as amended, Tanner. Vehicle warranties.

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

This bill would expressly provide *that, for new motor vehicles*, the option of replacement, as described in the bill, or ~~reimbursement~~ *restitution*, as described in the bill, is in the buyer. The bill would also require the New Motor Vehicle Board to certify arbitration processes ~~and to provide arbitration itself for disputes relating to warranties~~. The bill would ~~authorize~~ *require* the board to establish ~~filing~~ fees for cases ~~when the board itself arbitrates disputes and authorizes the board to order a party to pay the other party's filing fees under specified circumstances the certification of arbitration processes~~.

The bill also requires the department to make a

~~reimbursement~~ refund of prorated registration and license fees for vehicles for which a manufacturer provides to the buyer a replacement or ~~reimbursement~~ restitution, as specified, and thereby makes an appropriation of amounts necessary to pay those claims. *The bill also requires the State Board of Equalization to refund sales tax to the manufacturers for vehicles for which the manufacturer provides a replacement or makes restitution and, thereby, makes an appropriation of amounts necessary to pay those claims.*

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

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

1 SECTION 1. Section 1793.2 of the Civil Code is
2 amended to read:

3 1793.2. (a) Every manufacturer of consumer goods
4 sold in this state and for which the manufacturer has
5 made an express warranty shall:

6 (1) Maintain in this state sufficient service and repair
7 facilities reasonably close to all areas where its consumer
8 goods are sold to carry out the terms of such warranties
9 or designate and authorize in this state as service and
10 repair facilities independent repair or service facilities
11 reasonably close to all areas where its consumer goods are
12 sold to carry out the terms of such warranties.

13 As a means of complying with ~~paragraph (1) of this~~
14 ~~subdivision, a manufacturer shall be permitted to enter~~
15 *this paragraph, a manufacturer may enter* into warranty
16 service contracts with independent service and repair
17 facilities. The warranty service contracts may provide for
18 a fixed schedule of rates to be charged for warranty
19 service or warranty repair work, however, the rates fixed
20 by such contracts shall be in conformity with the
21 requirements of subdivision (c) of Section 1793.3. The
22 rates established pursuant to subdivision (c) of Section
23 1793.3, between the manufacturer and the independent
24 service and repair facility, shall not preclude a good-faith
25 discount which is reasonably related to reduced credit
26 and general overhead cost factors arising from the

1 manufacturer's payment of warranty charges direct to
2 the independent service and repair facility. The warranty
3 service contracts authorized by this paragraph shall not
4 be executed to cover a period of time in excess of one
5 year.

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

9 (b) Where ~~such~~ service and repair facilities are
10 maintained in this state and service or repair of the goods
11 is necessary because they do not conform with the
12 applicable express warranties, service and repair shall be
13 commenced within a reasonable time by the
14 manufacturer or its representative in this state. Unless
15 the buyer agrees in writing to the contrary, the goods
16 ~~must shall~~ be serviced or repaired so as to conform to the
17 applicable warranties within 30 days. Delay caused by
18 conditions beyond the control of the manufacturer or his
19 representatives shall ~~serve to~~ extend this 30-day
20 requirement. Where ~~such~~ delay arises, conforming goods
21 shall be tendered as soon as possible following
22 termination of the condition giving rise to the delay.

23 ~~(c) It shall be the duty of the buyer to deliver~~

24 (c) The buyer shall deliver nonconforming goods to
25 the manufacturer's service and repair facility within this
26 state, unless, due to reasons of size and weight, or method
27 of attachment, or method of installation, or nature of the
28 nonconformity, ~~such~~ delivery cannot reasonably be
29 accomplished. ~~Should the buyer be unable to effect~~
30 ~~return of~~ If the buyer cannot return the nonconforming
31 goods for any of the above reasons, ~~he~~ these reasons, ~~he~~
32 or she shall notify the manufacturer or its nearest service
33 and repair facility within the state. Written notice of
34 nonconformity to the manufacturer or its service and
35 repair facility shall constitute return of the goods for
36 purposes of this section. Upon receipt of ~~such~~ notice of
37 nonconformity, the manufacturer shall, at its option,
38 service or repair the goods at the buyer's residence, or
39 pick up the goods for service and repair, or arrange for
40 transporting the goods to its service and repair facility.

1 All reasonable costs of transporting the goods when ;
2 ~~pursuant to the above, a buyer is unable to effect return~~
3 ~~a buyer cannot return them~~ shall be at the
4 manufacturer's expense. The reasonable costs of
5 transporting nonconforming goods after delivery to the
6 service and repair facility until return of the goods to the
7 buyer shall be at the manufacturer's expense.

8 (d) (1) Except as provided in paragraph (2), ~~should~~
9 ~~if the manufacturer or its representative in this state be~~
10 ~~unable to~~ *does not* service or repair the goods to conform
11 to the applicable express warranties after a reasonable
12 number of attempts, the manufacturer shall either
13 replace the goods or reimburse the buyer in an amount
14 equal to the purchase price paid by the buyer, less that
15 amount directly attributable to use by the buyer prior to
16 the discovery of the nonconformity.

17 (2) If the manufacturer or its representative in this
18 state is unable to service or repair a new motor vehicle,
19 as that term is defined in subparagraph (B) of paragraph
20 (4) of subdivision (e), to conform to the applicable
21 express warranties after a reasonable number of
22 attempts, the manufacturer shall, at the option of the
23 buyer, either promptly replace the new motor vehicle in
24 accordance with subparagraph (A) or promptly make
25 restitution to the buyer in accordance with subparagraph
26 (B).

27 (A) When the buyer exercises the option of
28 replacement, the manufacturer shall replace the buyer's
29 vehicle with a new motor vehicle substantially identical
30 to the vehicle replaced. The manufacturer shall bear the
31 burden of any increase in the price of the replacement
32 over the price of the vehicle replaced. The replacement
33 vehicle shall be accompanied by all express and implied
34 warranties that normally accompany new motor vehicles
35 of that specific kind. The manufacturer also shall pay for,
36 or to, the buyer the amount of any sales tax, license fees,
37 registration fees, and other official fees which the buyer
38 is obligated to pay in connection with the replacement.

39 (B) When the buyer exercises the option of
40 restitution, the manufacturer shall make restitution in an

1 amount equal to the full contract price paid or payable by
2 the buyer, including any charges for transportation and
3 installed options, and any collateral charges such as sales
4 tax, license fees, registration fees, and other official fees.
5 The amount to be paid by the manufacturer to the buyer
6 under this subparagraph shall be reduced by that amount
7 directly attributable to use by the buyer prior to the
8 discovery of the nonconformity.

9 (C) Nothing in this paragraph shall in any way limit
10 the rights or remedies available to the buyer under any
11 other law.

12 (e) (1) It shall be presumed that a reasonable number
13 of attempts have been made to conform a new motor
14 vehicle to the applicable express warranties if, within one
15 year from delivery to the buyer or 12,000 miles,
16 whichever occurs first, either (A) the same
17 nonconformity has been subject to repair four or more
18 times by the manufacturer or its agents and the buyer has
19 at least once directly notified the manufacturer of the
20 need for the repair of the nonconformity, or (B) the
21 vehicle is out of service by reason of repair of
22 nonconformities by the manufacturer or its agents for a
23 cumulative total of more than 30 calendar days since
24 delivery of the vehicle to the buyer. The 30-day limit shall
25 be extended only if repairs cannot be performed due to
26 conditions beyond the control of the manufacturer or its
27 agents. The buyer shall be required to directly notify the
28 manufacturer pursuant to subparagraph (A) only if the
29 manufacturer has clearly and conspicuously disclosed to
30 the buyer, with the warranty or the owner's manual, the
31 provisions of this subdivision and that of subdivision (d),
32 including the requirement that the buyer must notify the
33 manufacturer directly pursuant to subparagraph (A).
34 This presumption shall be a rebuttable presumption
35 affecting the burden of proof in any action to enforce the
36 buyer's rights under subdivision (d) and shall not be
37 construed to limit those rights.

38 (2) If a qualified third party dispute resolution process
39 exists, and the buyer receives timely notification in
40 writing of the availability of a third party process with a

1 All reasonable costs of transporting the goods when ;
2 ~~pursuant to the above, a buyer is unable to effect return~~
3 ~~a buyer cannot return them~~ shall be at the
4 manufacturer's expense. The reasonable costs of
5 transporting nonconforming goods after delivery to the
6 service and repair facility until return of the goods to the
7 buyer shall be at the manufacturer's expense.

8 (d) (1) Except as provided in paragraph (2), ~~should~~
9 ~~if the manufacturer or its representative in this state be~~
10 ~~unable to does not~~ service or repair the goods to conform
11 to the applicable express warranties after a reasonable
12 number of attempts, the manufacturer shall either
13 replace the goods or reimburse the buyer in an amount
14 equal to the purchase price paid by the buyer, less that
15 amount directly attributable to use by the buyer prior to
16 the discovery of the nonconformity.

17 (2) If the manufacturer or its representative in this
18 state is unable to service or repair a new motor vehicle,
19 as that term is defined in subparagraph (B) of paragraph
20 (4) of subdivision (e), to conform to the applicable
21 express warranties after a reasonable number of
22 attempts, the manufacturer shall, at the option of the
23 buyer, either promptly replace the new motor vehicle in
24 accordance with subparagraph (A) or promptly make
25 restitution to the buyer in accordance with subparagraph
26 (B).

27 (A) When the buyer exercises the option of
28 replacement, the manufacturer shall replace the buyer's
29 vehicle with a new motor vehicle substantially identical
30 to the vehicle replaced. The manufacturer shall bear the
31 burden of any increase in the price of the replacement
32 over the price of the vehicle replaced. The replacement
33 vehicle shall be accompanied by all express and implied
34 warranties that normally accompany new motor vehicles
35 of that specific kind. The manufacturer also shall pay for,
36 or to, the buyer the amount of any sales tax, license fees,
37 registration fees, and other official fees which the buyer
38 is obligated to pay in connection with the replacement.

39 (B) When the buyer exercises the option of
40 restitution, the manufacturer shall make restitution in an

1 amount equal to the full contract price paid or payable by
2 the buyer, including any charges for transportation and
3 installed options, and any collateral charges such as sales
4 tax, license fees, registration fees, and other official fees.
5 The amount to be paid by the manufacturer to the buyer
6 under this subparagraph shall be reduced by that amount
7 directly attributable to use by the buyer prior to the
8 discovery of the nonconformity.

9 (C) Nothing in this paragraph shall in any way limit
10 the rights or remedies available to the buyer under any
11 other law.

12 (e) (1) It shall be presumed that a reasonable number
13 of attempts have been made to conform a new motor
14 vehicle to the applicable express warranties if, within one
15 year from delivery to the buyer or 12,000 miles,
16 whichever occurs first, either (A) the same
17 nonconformity has been subject to repair four or more
18 times by the manufacturer or its agents and the buyer has
19 at least once directly notified the manufacturer of the
20 need for the repair of the nonconformity, or (B) the
21 vehicle is out of service by reason of repair of
22 nonconformities by the manufacturer or its agents for a
23 cumulative total of more than 30 calendar days since
24 delivery of the vehicle to the buyer. The 30-day limit shall
25 be extended only if repairs cannot be performed due to
26 conditions beyond the control of the manufacturer or its
27 agents. The buyer shall be required to directly notify the
28 manufacturer pursuant to subparagraph (A) only if the
29 manufacturer has clearly and conspicuously disclosed to
30 the buyer, with the warranty or the owner's manual, the
31 provisions of this subdivision and that of subdivision (d),
32 including the requirement that the buyer must notify the
33 manufacturer directly pursuant to subparagraph (A).
34 This presumption shall be a rebuttable presumption
35 affecting the burden of proof in any action to enforce the
36 buyer's rights under subdivision (d) and shall not be
37 construed to limit those rights.

38 (2) If a qualified third party dispute resolution process
39 exists, and the buyer receives timely notification in
40 writing of the availability of a third party process with a

1 description of its operation and effect, the presumption
2 in paragraph (1) may not be asserted by the buyer until
3 after the buyer has initially resorted to the third party
4 process as required in paragraph (3). Notification of the
5 availability of the third party process is not timely if the
6 buyer suffers any prejudice resulting from any delay in
7 giving the notification. If a qualified third party dispute
8 resolution process does not exist, or if the buyer is
9 dissatisfied with the third party decision, or if the
10 manufacturer or its agent neglects to promptly fulfill the
11 terms of such third party decision, the buyer may assert
12 the presumption provided in paragraph (1) in an action
13 to enforce the buyer's rights under subdivision (d). The
14 findings and decision of the third party shall be
15 admissible in evidence in the action without further
16 foundation. Any period of limitation of actions under any
17 federal or California laws with respect to any person shall
18 be extended for a period equal to the number of days
19 between the date a complaint is filed with a third party
20 dispute resolution process and the date of its decision or
21 the date before which the manufacturer or its agent is
22 required by the decision to fulfill its terms, whichever
23 occurs later.

24 (3) A qualified third party dispute resolution process
25 shall be one that ~~complies~~ *meets all of the following*
26 *criteria:*

27 (A) *Complies* with the Federal Trade Commission's
28 minimum requirements for informal dispute settlement
29 procedures as set forth in the Commission's regulations ~~at~~
30 ~~16 in Part 703 of Title 16 of Code of Federal Regulations~~
31 ~~Part 703; that renders.~~

32 (B) *Renders* decisions which are binding on the
33 manufacturer if the buyer elects to accept the decision ;
34 ~~that prescribes.~~

35 (C) *Prescribes* a reasonable time, not to exceed 30
36 days, within which the manufacturer or its agents must
37 fulfill the terms of those decisions ; ~~and that has.~~

38 (D) *Provides* written materials to those individuals
39 *who conduct investigations and who make, or participate*
40 *in making, decisions for the process which, at a minimum,*

1 *include the provisions of the Federal Trade Commission's*
2 *regulations in Part 703 of Title 16 of the Code of Federal*
3 *Regulations and the provisions of this chapter.*

4 (E) *Renders decisions which incorporate*
5 *consideration of, and can provide the rights and remedies*
6 *conferred in, the Federal Trade Commission's*
7 *regulations in Part 703 of Title 16 of the Code of Federal*
8 *Regulations and the provisions of this chapter.*

9 (F) *Has been certified by the New Motor Vehicle*
10 *Board pursuant to subdivision (f) of Section 3050 of the*
11 *Vehicle Code.*

12 (4) *For the purposes of subdivision (d) and this*
13 *subdivision the following terms have the following*
14 *meanings:*

15 (A) *"Nonconformity" means a nonconformity which*
16 *substantially impairs the use, value, or safety of the new*
17 *motor vehicle.*

18 (B) *"New motor vehicle" means a new motor vehicle*
19 *which is used or bought for use primarily for personal,*
20 *family, or household purposes. "New motor vehicle"*
21 *includes a dealer-owned vehicle and a "demonstrator" or*
22 *other motor vehicle sold with a manufacturer's new car*
23 *warranty, but does not include a motorcycle, motorhome,*
24 *motor vehicle which is not registered under the Vehicle*
25 *Code because it is to be operated or used exclusively off*
26 *the highways, or any vehicle purchased solely for*
27 *commercial or industrial use.*

28 SEC. 2. *Section 6902.2 is added to the Revenue and*
29 *Taxation Code, to read:*

30 6902.2. *Upon receipt of proof to its satisfaction that*
31 *sales tax has been paid to the state on the sale of a new*
32 *motor vehicle, and that the new motor vehicle has been*
33 *replaced by the manufacturer or that the manufacturer*
34 *has made restitution to the buyer, as provided by*
35 *paragraph (2) of subdivision (d) of Section 1793.2 of the*
36 *Civil Code, the board shall refund the sales tax to the*
37 *vehicle manufacturer. The board may adopt rules and*
38 *regulations that it deems necessary or appropriate to*
39 *carry out, facilitate compliance with, or prevent*
40 *circumvention or evasion of, this section.*

1 SEC. 3. Section 10902 is added to the Revenue and
2 Taxation Code, to read:

3 10902. If a manufacturer of a new motor vehicle
4 replaces the vehicle or makes restitution to the buyer, as
5 provided by paragraph (2) of subdivision (d) of Section
6 1793.2 of the Civil Code, prior to the expiration of the
7 registration year for which the license fee has been paid -
8 ~~The~~, the department shall refund that part of the fee
9 which bears the same proportion to the total license fee
10 paid as that part of the registration year beginning on the
11 date the vehicle is transferred to the manufacturer and
12 ending on the date the registration year expires bears to
13 the total registration year of the vehicle. The department
14 may adopt rules and regulations it deems necessary to
15 carry out this section.

16 SEC. 4. Section 3050 of the Vehicle Code is amended
17 to read:

18 3050. The board shall do all of the following:

19 (a) Adopt rules and regulations in accordance with
20 Chapter 3.5 (commencing with Section 11340) of Part 1
21 of Division 3 of Title 2 of the Government Code
22 governing such matters as are specifically committed to
23 its jurisdiction.

24 (b) Hear and consider, within the limitations and in
25 accordance with the procedure provided, an appeal
26 presented by an applicant for, or holder of, a license as a
27 new motor vehicle dealer, manufacturer, manufacturer
28 branch, distributor, distributor branch, or representative
29 when the applicant or licensee submits an appeal
30 provided for in this chapter from a decision arising out of
31 the department.

32 (c) Consider any matter concerning the activities or
33 practices of any person applying for or holding a license
34 as a new motor vehicle dealer, manufacturer,
35 manufacturer branch, distributor, distributor branch, or
36 representative pursuant to Chapter 4 (commencing with
37 Section 11700) of Division 5 submitted by any person. A
38 member of the board who is a new motor vehicle dealer
39 may not participate in, hear, comment, advise other
40 members upon, or decide any matter considered by the

1 board pursuant to this subdivision that involves a dispute
2 between a franchisee and franchisor. After such
3 consideration, the board may do any one or any
4 combination of the following:

5 (1) Direct the department to conduct investigation of
6 matters that the board deems reasonable, and make a
7 written report on the results of the investigation to the
8 board within the time specified by the board.

9 (2) Undertake to arbitrate amicably or resolve any
10 honest difference of opinion or viewpoint existing
11 between any member of the public and any new motor
12 vehicle dealer, manufacturer, manufacturer branch,
13 distributor branch, or representative.

14 (3) Order the department to exercise any and all
15 authority or power that the department may have with
16 respect to the issuance, renewal, refusal to renew,
17 suspension, or revocation of the license of any new motor
18 vehicle dealer, manufacturer, manufacturer branch,
19 distributor, distributor branch, or representative as such
20 license is required under Chapter 4 (commencing with
21 Section 11700) of Division 5.

22 (d) Hear and consider, within the limitations and in
23 accordance with the procedure provided, a protest
24 presented by a franchisee pursuant to Section 3060, 3062,
25 3064, or 3065. A member of the board who is a new motor
26 vehicle dealer may not participate in, hear, comment,
27 advise other members upon, or decide, any matter
28 involving a protest filed pursuant to Article 4
29 (commencing with Section 3060).

30 ~~(e) Arbitrate disputes which arise between any buyer~~
31 ~~of a new motor vehicle and the new motor vehicle~~
32 ~~manufacturer, manufacturer branch, distributor, or~~
33 ~~distributor branch from which the new motor vehicle was~~
34 ~~initially acquired, where the basis of the dispute concerns~~
35 ~~rights afforded the buyer under the Song/Beverly~~
36 ~~Consumer Warranty Act (Chapter 1 (commencing with~~
37 ~~Section 1700) of Title 1.7 of the Civil Code). This section~~
38 ~~shall not be interpreted in a manner that deprives the~~
39 ~~buyer of a new motor vehicle of any other remedy~~
40 ~~available under any other provision of law, except that~~

1 a buyer of a new motor vehicle who elects to arbitrate a
2 dispute under this chapter shall not be entitled to a
3 second arbitration in a qualified third-party dispute
4 resolution process as that term is used in subdivision (e)
5 of Section 1793.2 of the Civil Code.

6 (f)

7 (e) Certify that each third-party dispute resolution
8 process used for the arbitration of disputes pursuant to
9 paragraph (2) of subdivision (e) of Section 1793.2 of the
10 Civil Code is a qualified third-party dispute resolution
11 process as provided in paragraph (3) of subdivision (e) of
12 Section 1793.2 of the Civil Code. ~~Each third-party dispute~~
13 ~~resolution process that applies for certification shall~~ *Each*
14 *new motor vehicle manufacturer, manufacturer branch,*
15 *distributor, or distributor branch that utilizes a*
16 *third-party dispute resolution process, and that seeks to*
17 *have that process certified by the board, shall provide to*
18 *the board any and all information that the board*
19 *determines is necessary for certification. Certification of*
20 *any particular third-party dispute resolution process is a*
21 *condition precedent to the application of paragraph (2)*
22 *of subdivision (e) of Section 1793.2 of the Civil Code with*
23 *respect to that process. If a manufacturer, manufacturer*
24 *branch, distributor, or distributor branch does not utilize*
25 *a certified third-party dispute resolution process, the*
26 *board shall designate a certified third-party dispute*
27 *resolution process to arbitrate, at the expense of the*
28 *manufacturer, manufacturer branch, distributor, or*
29 *distributor branch, the disputes of consumers who have*
30 *purchased new motor vehicles which were initially*
31 *acquired from that manufacturer, manufacturer branch,*
32 *distributor, or distributor branch. The board may*
33 *suspend or revoke the certification of any such*
34 *third-party dispute resolution process upon a*
35 *determination that the process does not comply with all*
36 *the requirements of paragraph (3) of subdivision (e) of*
37 *Section 1793.2 of the Civil Code.*

38 **SEC. 5.** Section 3050.8 is added to the Vehicle Code,
39 to read:

40 3050.8. (a) Any buyer of a new motor vehicle may

1 request the board to formally arbitrate a dispute pursuant
2 to subdivision (c) of Section 3050 by filing a written
3 application with the board and paying the fee established
4 under Section 3050.9. The board shall not grant the
5 request for arbitration unless the board has first done
6 both of

7 (1) Attempted to resolve the dispute by informal
8 mediation as provided in paragraph (2) of subdivision (c)
9 of Section 3050.

10 (2) After informal mediation; classified the buyer's
11 position in unresolved disputes as meritorious; not
12 meritorious; or the merit or lack of merit of the buyer's
13 position is unable to be determined:

14 (b) The board shall not grant a request for arbitration
15 pursuant to subdivision (c) of Section 3050 in any case
16 where the buyer has previously used a qualified
17 third-party dispute resolution process provided by the
18 manufacturer; manufacturer branch; distributor; or
19 distributor branch pursuant to paragraph (2) of
20 subdivision (c) of Section 1702.2 of the Civil Code unless
21 the board determines that the third-party resolution
22 process used by the consumer failed to comply with the
23 procedures necessary for certification with respect to
24 that buyer's arbitration:

25 (c) The arbitration procedures established by the
26 board pursuant to subdivision (c) of Section 3050 shall
27 comply with all of the requirements of paragraph (2) of
28 subdivision (c) of Section 1702.2 of the Civil Code.

29 SEC. 6.

30 SEC. 5. Section 3050.9 is added to the Vehicle Code,
31 to read:

32 3050.9. (a) The board shall establish a schedule of
33 fees to be charged to fund fully the costs associated with
34 the arbitration of disputes conducted pursuant to the
35 certification of third-party dispute resolution processes
36 conducted pursuant to subdivision (e) of Section 3050.
37 The schedule of fees shall include a fixed annual fee, the
38 amount of which shall be determined by the board, which
39 shall be charged each manufacturer, manufacturer
40 branch, distributor, and distributor branch subject to this

1 chapter.

2 ~~(b)~~ If, subsequent to an arbitration, the board
3 determines that the manufacturer or distributor has been
4 unreasonable with respect to a consumer's claim brought
5 pursuant to subdivision ~~(c)~~ of Section 3050, the board
6 may require the manufacturer or distributor to
7 reimburse the consumer for any fees paid to the board as
8 a result of filing the request for arbitration. If, subsequent
9 to the arbitration of a dispute, the board determines that
10 the consumer's position was wholly without merit and
11 brought in bad faith, the consumer may be required to
12 reimburse the manufacturer for any fees paid to the
13 board as a result of the filing of the request for arbitration.

14 ~~SEC. 7.~~

15 *SEC. 6.* Section 42234.5 is added to the Vehicle Code,
16 to read:

17 42234.5. If a manufacturer of a new motor vehicle
18 replaces the vehicle or who makes restitution to the
19 buyer, as provided by paragraph (2) of subdivision (d) of
20 Section 1793.2 of the Civil Code, prior to the expiration
21 of the registration year for which the license has been
22 paid, the department shall refund that part of the fee
23 which bears the same proportion to the total registration
24 fee paid as that part of the registration year beginning on
25 the date the vehicle is transferred to the manufacturer
26 and ending on the date the registration year expires bears
27 to the total registration year of the vehicle. The
28 department may adopt rules and regulations it deems
29 necessary to carry out this section.

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CORRECTIONS

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ASSEMBLY BILL

No. 3611

Introduced by Assembly Member ~~Tanner~~ Members
Tanner, Clute, Hauser, Molina, and Moore
(Coauthors: *Senators Dills, Leroy Greene, McCorquodale,*
Torres, and Watson)

February 20, 1986

An act to amend Section 1793.2 of the Civil Code, to add Sections 6902.2 and 10902 to the Revenue and Taxation Code, and to amend Section 3050 of, and to add Sections ~~3050.7;~~ ~~3050.8;~~ ~~3050.9;~~ ~~3050.9~~ and 42234.5 to, the Vehicle to vehicles, *and making an*

LEGISLATIVE COUNSEL'S DIGEST

AB 3611, as amended, Tanner. Vehicle warranties.

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

This bill would expressly provide *that, for new motor vehicles*, the option of replacement, as described in the bill, or ~~reimbursement~~ *restitution*, as described in the bill, is in the buyer. The bill would also require the New Motor Vehicle Board to certify arbitration processes ~~and to provide arbitration itself for disputes relating to warranties~~. The bill would ~~authorize~~ *require* the board to establish ~~filing~~ fees for ~~cases when the board itself arbitrates disputes and authorizes the board to order a party to pay the other party's filing fees under specified circumstances the certification of arbitration processes~~.

The bill also requires the department to make a

~~reimbursement~~ refund of prorated registration and license fees for vehicles for which a manufacturer provides to the buyer a replacement or ~~reimbursement~~ restitution, as specified, and thereby makes an appropriation of amounts necessary to pay those claims.

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

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

1 SECTION 1. Section 1793.2 of the Civil Code is
2 amended to read:

3 1793.2. (a) Every manufacturer of consumer goods
4 sold in this state and for which the manufacturer has
5 made an express warranty shall:

6 (1) Maintain in this state sufficient service and repair
7 facilities reasonably close to all areas where its consumer
8 goods are sold to carry out the terms of such warranties
9 or designate and authorize in this state as service and
10 repair facilities independent repair or service facilities
11 reasonably close to all areas where its consumer goods are
12 sold to carry out the terms of such warranties.

13 As a means of complying with ~~paragraph (1) of this~~
14 ~~subdivision, a manufacturer shall be permitted to enter~~
15 ~~this paragraph, a manufacturer may enter~~ into warranty
16 service contracts with independent service and repair
17 facilities. The warranty service contracts may provide for
18 a fixed schedule of rates to be charged for warranty
19 service or warranty repair work, however, the rates fixed
20 by such contracts shall be in conformity with the
21 requirements of subdivision (c) of Section 1793.3. The
22 rates established pursuant to subdivision (c) of Section
23 1793.3, between the manufacturer and the independent
24 service and repair facility, shall not preclude a good-faith
25 discount which is reasonably related to reduced credit
26 and general overhead cost factors arising from the
27 manufacturer's payment of warranty charges direct to
28 the independent service and repair facility. The warranty
29 service contracts authorized by this paragraph shall not
30 be executed to cover a period of time in excess of one

1 year.

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

5 (b) Where ~~such~~ service and repair facilities are
6 maintained in this state and service or repair of the goods
7 is necessary because they do not conform with the
8 applicable express warranties, service and repair shall be
9 commenced within a reasonable time by the
10 manufacturer or its representative in this state. Unless
11 the buyer agrees in writing to the contrary, the goods
12 ~~must~~ shall be serviced or repaired so as to conform to the
13 applicable warranties within 30 days. Delay caused by
14 conditions beyond the control of the manufacturer or his
15 representatives shall ~~serve to~~ extend this 30-day
16 requirement. Where ~~such~~ delay arises, conforming goods
17 shall be tendered as soon as possible following
18 termination of the condition giving rise to the delay.

19 ~~(c) It shall be the duty of the buyer to deliver~~

20 (c) The buyer shall deliver nonconforming goods to
21 the manufacturer's service and repair facility within this
22 state, unless, due to reasons of size and weight, or method
23 of attachment, or method of installation, or nature of the
24 nonconformity, ~~such~~ delivery cannot reasonably be
25 accomplished. ~~Should the buyer be unable to effect~~
26 ~~return of~~ If the buyer cannot return the nonconforming
27 goods for any of ~~the above reasons; he these reasons, he~~
28 ~~or she~~ shall notify the manufacturer or its nearest service
29 and repair facility within the state. Written notice of
30 nonconformity to the manufacturer or its service and
31 repair facility shall constitute return of the goods for
32 purposes of this section. Upon receipt of ~~such~~ notice of
33 nonconformity, the manufacturer shall, at its option,
34 service or repair the goods at the buyer's residence, or
35 pick up the goods for service and repair, or arrange for
36 transporting the goods to its service and repair facility.
37 All reasonable costs of transporting the goods when;
38 ~~pursuant to the above; a buyer is unable to effect return~~
39 ~~a buyer cannot return them~~ shall be at the
40 manufacturer's expense. The reasonable costs of

1 transporting nonconforming goods after delivery to the
2 service and repair facility until return of the goods to the
3 buyer shall be at the manufacturer's expense.

4 (d) (1) Except as provided in paragraph (2), ~~should~~
5 if the manufacturer or its representative in this state ~~be~~
6 ~~unable to~~ *does not* service or repair the goods to conform
7 to the applicable express warranties after a reasonable
8 number of attempts, the manufacturer shall either
9 replace the goods or reimburse the buyer in an amount
10 equal to the purchase price paid by the buyer, less that
11 amount directly attributable to use by the buyer prior to
12 the discovery of the nonconformity.

13 (2) If the manufacturer or its representative in this
14 state is unable to service or repair a new motor vehicle,
15 as that term is defined in subparagraph (B) of paragraph
16 (4) of subdivision (e), to conform to the applicable
17 express warranties after a reasonable number of
18 attempts, the manufacturer shall, at the option of the
19 buyer, either promptly replace the new motor vehicle in
20 accordance with subparagraph (A) or promptly make
21 restitution to the buyer in accordance with subparagraph
22 (B).

23 (A) When the buyer exercises the option of
24 replacement, the manufacturer shall replace the buyer's
25 vehicle with a new motor vehicle substantially identical
26 to the vehicle replaced. The manufacturer shall bear the
27 burden of any increase in the price of the replacement
28 over the price of the vehicle replaced. The replacement
29 vehicle shall be accompanied by all express and implied
30 warranties that normally accompany new motor vehicles
31 of that specific kind. The manufacturer also shall pay for,
32 or to, the buyer the amount of any sales tax, license fees,
33 registration fees, and other official fees which the buyer
34 is obligated to pay in connection with the replacement.

35 (B) When the buyer exercises the option of
36 restitution, the manufacturer shall make restitution in an
37 amount equal to the full contract price paid or payable by
38 the buyer, including any charges for transportation and
39 installed options, and any collateral charges such as sales
40 tax, license fees, registration fees, and other official fees.

1 The amount to be paid by the manufacturer to the buyer
2 under this subparagraph shall be reduced by that amount
3 directly attributable to use by the buyer prior to the
4 discovery of the nonconformity.

5 (C) Nothing in this paragraph shall in any way limit
6 the rights or remedies available to the buyer under any
7 other law.

8 (e) (1) It shall be presumed that a reasonable number
9 of attempts have been made to conform a new motor
10 vehicle to the applicable express warranties if, within one
11 year from delivery to the buyer or 12,000 miles,
12 whichever occurs first, either (A) the same
13 nonconformity has been subject to repair four or more
14 times by the manufacturer or its agents and the buyer has
15 at least once directly notified the manufacturer of the
16 need for the repair of the nonconformity, or (B) the
17 vehicle is out of service by reason of repair of
18 nonconformities by the manufacturer or its agents for a
19 cumulative total of more than 30 calendar days since
20 delivery of the vehicle to the buyer. The 30-day limit shall
21 be extended only if repairs cannot be performed due to
22 conditions beyond the control of the manufacturer or its
23 agents. The buyer shall be required to directly notify the
24 manufacturer pursuant to subparagraph (A) only if the
25 manufacturer has clearly and conspicuously disclosed to
26 the buyer, with the warranty or the owner's manual, the
27 provisions of this subdivision and that of subdivision (d),
28 including the requirement that the buyer must notify the
29 manufacturer directly pursuant to subparagraph (A).
30 This presumption shall be a rebuttable presumption
31 affecting the burden of proof in any action to enforce the
32 buyer's rights under subdivision (d) and shall not be
33 construed to limit those rights.

34 (2) If a qualified third party dispute resolution process
35 exists, and the buyer receives timely notification in
36 writing of the availability of a third party process with a
37 description of its operation and effect, the presumption
38 in paragraph (1) may not be asserted by the buyer until
39 after the buyer has initially resorted to the third party
40 process as required in paragraph (3). Notification of the

1 availability of the third party process is not timely if the
2 buyer suffers any prejudice resulting from any delay in
3 giving the notification. If a qualified third party dispute
4 resolution process does not exist, or if the buyer is
5 dissatisfied with the third party decision, or if the
6 manufacturer or its agent neglects to promptly fulfill the
7 terms of such third party decision, the buyer may assert
8 the presumption provided in paragraph (1) in an action
9 to enforce the buyer's rights under subdivision (d). The
10 findings and decision of the third party shall be
11 admissible in evidence in the action without further
12 foundation. Any period of limitation of actions under any
13 federal or California laws with respect to any person shall
14 be extended for a period equal to the number of days
15 between the date a complaint is filed with a third party
16 dispute resolution process and the date of its decision or
17 the date before which the manufacturer or its agent is
18 required by the decision to fulfill its terms, whichever
19 occurs later.

20 (3) A qualified third party dispute resolution process
21 shall be one that ~~complies~~ *meets all of the following*
22 *criteria:*

23 (A) *Complies* with the Federal Trade Commission's
24 minimum requirements for informal dispute settlement
25 procedures as set forth in the Commission's regulations ~~at~~
26 ~~16 in Part 703 of Title 16 of Code of Federal Regulations~~
27 ~~Part 703; that renders .~~

28 (B) *Renders* decisions which are binding on the
29 manufacturer if the buyer elects to accept the decision ;
30 ~~that prescribes .~~

31 (C) *Prescribes* a reasonable time, not to exceed 30
32 days, within which the manufacturer or its agents must
33 fulfill the terms of those decisions ; ~~and that has .~~

34 (D) *Provides written materials to those individuals*
35 *who conduct investigations and who make, or participate*
36 *in making, decisions for the process which, at a minimum,*
37 *include the provisions of the Federal Trade Commission's*
38 *regulations in Part 703 of Title 16 of the Code of Federal*
39 *Regulations and the provisions of this chapter.*

40 (E) *Renders* decisions which incorporate

1 *consideration of, and can provide the rights and remedies*
 2 *conferred in, the Federal Trade Commission's*
 3 *regulations in Part 703 of Title 16 of the Code of Federal*
 4 *Regulations and the provisions of this chapter.*

5 (F) Has been certified by the New Motor Vehicle
 6 Board pursuant to subdivision (f) of Section 3050 of the
 7 Vehicle Code.

8 (4) For the purposes of subdivision (d) and this
 9 subdivision the following terms have the following
 10 meanings:

11 (A) "Nonconformity" means a nonconformity which
 12 substantially impairs the use, value, or safety of the new
 13 motor vehicle.

14 (B) "New motor vehicle" means a new motor vehicle
 15 which is used or bought for use primarily for personal,
 16 family, or household purposes. "New motor vehicle"
 17 includes a dealer-owned vehicle and a "demonstrator" or
 18 other motor vehicle sold with a manufacturer's new car
 19 warranty, but does not include a motorcycle, motorhome,
 20 motor vehicle which is not registered under the Vehicle
 21 Code because it is to be operated or used exclusively off
 22 the highways, or any vehicle purchased solely for
 23 commercial or industrial use.

24 SEC. 2. Section 6902.2 is added to the Revenue and
 25 Taxation Code, to read:

26 6902.2. Upon receipt of proof to its satisfaction that
 27 sales tax has been paid to the state on the sale of a new
 28 motor vehicle, and that the new motor vehicle has been
 29 replaced by the manufacturer or that the manufacturer
 30 has made restitution to the buyer, as provided by
 31 paragraph (2) of subdivision (d) of Section 1793.2 of the
 32 Civil Code, the board shall refund the sales tax to the
 33 vehicle manufacturer. The board may adopt rules and
 34 regulations that it deems necessary or appropriate to
 35 carry out, facilitate compliance with, or prevent
 36 circumvention or evasion of, this section.

37 SEC. 3. Section 10902 is added to the Revenue and
 38 Taxation Code, to read:

39 10902. If a manufacturer of a new motor vehicle
 40 replaces the vehicle or makes restitution to the buyer, as

1 provided by paragraph (2) of subdivision (d) of Section
2 1793.2 of the Civil Code, prior to the expiration of the
3 registration year for which the license fee has been paid .
4 ~~The~~, *the* department shall refund that part of the fee
5 which bears the same proportion to the total license fee
6 paid as that part of the registration year beginning on the
7 date the vehicle is transferred to the manufacturer and
8 ending on the date the registration year expires bears to
9 the total registration year of the vehicle. The department
10 may adopt rules and regulations it deems necessary to
11 carry out this section.

12 SEC. 4. Section 3050 of the Vehicle Code is amended
13 to read:

14 3050. The board shall do all of the following:

15 (a) Adopt rules and regulations in accordance with
16 Chapter 3.5 (commencing with Section 11340) of Part 1
17 of Division 3 of Title 2 of the Government Code
18 governing such matters as are specifically committed to
19 its jurisdiction.

20 (b) Hear and consider, within the limitations and in
21 accordance with the procedure provided, an appeal
22 presented by an applicant for, or holder of, a license as a
23 new motor vehicle dealer, manufacturer, manufacturer
24 branch, distributor, distributor branch, or representative
25 when the applicant or licensee submits an appeal
26 provided for in this chapter from a decision arising out of
27 the department.

28 (c) Consider any matter concerning the activities or
29 practices of any person applying for or holding a license
30 as a new motor vehicle dealer, manufacturer,
31 manufacturer branch, distributor, distributor branch, or
32 representative pursuant to Chapter 4 (commencing with
33 Section 11700) of Division 5 submitted by any person. A
34 member of the board who is a new motor vehicle dealer
35 may not participate in, hear, comment, advise other
36 members upon, or decide any matter considered by the
37 board pursuant to this subdivision that involves a dispute
38 between a franchisee and franchisor. After such
39 consideration, the board may do any one or any
40 combination of the following:

(1) Direct the department to conduct investigation of matters that the board deems reasonable, and make a written report on the results of the investigation to the board within the time specified by the board.

(2) Undertake to arbitrate amicably or resolve any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer, manufacturer, manufacturer branch, distributor branch, or representative.

(3) Order the department to exercise any and all authority or power that the department may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation of the license of any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative as such license is required under Chapter 4 (commencing with Section 11700) of Division 5.

(d) Hear and consider, within the limitations and in accordance with the procedure provided, a protest presented by a franchisee pursuant to Section 3060, 3062, 3064, or 3065. A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide, any matter involving a protest filed pursuant to Article 4 (commencing with Section 3060).

~~(e) Arbitrate disputes which arise between any buyer of a new motor vehicle and the new motor vehicle manufacturer; manufacturer branch; distributor; or distributor branch from which the new motor vehicle was initially acquired; where the basis of the dispute concerns rights afforded the buyer under the Song/Beverly Consumer Warranty Act (Chapter 1 (commencing with Section 1700) of Title 1.7 of the Civil Code). This section shall not be interpreted in a manner that deprives the buyer of a new motor vehicle of any other remedy available under any other provision of law, except that a buyer of a new motor vehicle who elects to arbitrate a dispute under this chapter shall not be entitled to a second arbitration in a qualified third-party dispute resolution process as that term is used in subdivision (e)~~

1 of Section 1793.2 of the Civil Code.

2 ~~(f)~~

3 (e) Certify that each third-party dispute resolution
4 process used for the arbitration of disputes pursuant to
5 paragraph (2) of subdivision (e) of Section 1793.2 of the
6 Civil Code is a qualified third-party dispute resolution
7 process as provided in paragraph (3) of subdivision (e) of
8 Section 1793.2 of the Civil Code. ~~Each third-party dispute~~
9 ~~resolution process that applies for certification shall~~ Each
10 new motor vehicle manufacturer, manufacturer branch,
11 distributor, or distributor branch that utilizes a
12 third-party dispute resolution process, and that seeks to
13 have that process certified by the board, shall provide to
14 the board any and all information that the board
15 determines is necessary for certification. Certification of
16 any particular third-party dispute resolution process is a
17 condition precedent to the application of paragraph (2)
18 of subdivision (e) of Section 1793.2 of the Civil Code with
19 respect to that process. *If a manufacturer, manufacturer*
20 *branch, distributor, or distributor branch does not utilize*
21 *a certified third-party dispute resolution process, the*
22 *board shall designate a certified third-party dispute*
23 *resolution process to arbitrate, at the expense of the*
24 *manufacturer, manufacturer branch, distributor, or*
25 *distributor branch, the disputes of consumers who have*
26 *purchased new motor vehicles which were initially*
27 *acquired from that manufacturer, manufacturer branch,*
28 *distributor, or distributor branch. The board may*
29 *suspend or revoke the certification of any such*
30 *third-party dispute resolution process upon a*
31 *determination that the process does not comply with all*
32 *the requirements of paragraph (3) of subdivision (e) of*
33 *Section 1793.2 of the Civil Code.*

34 SEC. 5. Section 3050.8 is added to the Vehicle Code,
35 to read:

36 3050.8. (a) Any buyer of a new motor vehicle may
37 request the board to formally arbitrate a dispute pursuant
38 to subdivision (c) of Section 3050 by filing a written
39 application with the board and paying the fee established
40 under Section 3050.9. The board shall not grant the

1 request for arbitration unless the board has first done
2 both of the following:

3 (1) Attempted to resolve the dispute by informal
4 mediation as provided in paragraph (2) of subdivision (c)
5 of Section 3050.

6 (2) After informal mediation, classified the buyer's
7 position in unresolved disputes as meritorious; not
8 meritorious; or the merit or lack of merit of the buyer's
9 position is unable to be determined:

10 (b) The board shall not grant a request for arbitration
11 pursuant to subdivision (c) of Section 3050 in any case
12 where the buyer has previously used a qualified
13 third-party dispute resolution process provided by the
14 manufacturer, manufacturer branch, distributor, or
15 distributor branch pursuant to paragraph (2) of
16 subdivision (c) of Section 1703.2 of the Civil Code unless
17 the board determines that the third-party resolution
18 process used by the consumer failed to comply with the
19 procedures necessary for certification with respect to
20 that buyer's arbitration:

21 (c) The arbitration procedures established by the
22 board pursuant to subdivision (c) of Section 3050 shall
23 comply with all of the requirements of paragraph (3) of
24 subdivision (c) of Section 1703.2 of the Civil Code.

25 **SEC. 6.**

26 **SEC. 5.** Section 3050.9 is added to the Vehicle Code, to
27 read:

28 3050.9. (a) The board shall establish a schedule of
29 fees to be charged to fund fully the costs associated with
30 the arbitration of disputes conducted pursuant to the
31 certification of third-party dispute resolution processes
32 conducted pursuant to subdivision (c) of Section 3050.
33 The schedule of fees shall include a fixed annual fee, the
34 amount of which shall be determined by the board, which
35 shall be charged each manufacturer, manufacturer
36 branch, distributor, and distributor branch subject to this
37 chapter.

38 (b) If, subsequent to an arbitration, the board
39 determines that the manufacturer or distributor has been
40 unreasonable with respect to a consumer's claim brought

1 pursuant to subdivision (c) of Section 2050, the board
2 may require the manufacturer or distributor to
3 reimburse the consumer for any fees paid to the board as
4 a result of filing the request for arbitration. If, subsequent
5 to the arbitration of a dispute, the board determines that
6 the consumer's position was wholly without merit and
7 brought in bad faith, the consumer may be required to
8 reimburse the manufacturer for any fees paid to the
9 board as a result of the filing of the request for arbitration.

10 SEC. 7.

11 SEC. 6. Section 42234.5 is added to the Vehicle Code,
12 to read:

13 42234.5. If a manufacturer of a new motor vehicle
14 replaces the vehicle or who makes restitution to the
15 buyer, as provided by paragraph (2) of subdivision (d) of
16 Section 1793.2 of the Civil Code, prior to the expiration
17 of the registration year for which the license has been
18 paid, the department shall refund that part of the fee
19 which bears the same proportion to the total registration
20 fee paid as that part of the registration year beginning on
21 the date the vehicle is transferred to the manufacturer
22 and ending on the date the registration year expires bears
23 to the total registration year of the vehicle. The
24 department may adopt rules and regulations it deems
25 necessary to carry out this section.

AMENDED IN ASSEMBLY MAY 19, 1986
AMENDED IN ASSEMBLY APRIL 15, 1986

CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

ASSEMBLY BILL

No. 3611

**Introduced by Assembly Members Tanner, Clute, Hauser,
Molina, and Moore**
(Coauthors: Senators Dills, Leroy Greene, McCorquodale,
Torres, and Watson)

February 20, 1986

An act to amend Section 1793.2 of, *and to add Section 1793.25 to*, the Civil Code, ~~to add Sections 6002.2 and 10002 to the Revenue and Taxation Code~~, and to amend Section 3050 of, and to add ~~Sections~~ *Section 3050.9 and 10021.5* to, the Vehicle Code, relating to vehicles, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 3611, as amended, Tanner. Vehicle warranties.

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

This bill would expressly provide that, for new motor vehicles, the option of replacement, as described in the bill, or restitution, as described in the bill, is in the buyer. The bill would also require the New Motor Vehicle Board to certify arbitration processes for disputes relating to warranties. The bill would require the board to establish fees for the certification of arbitration processes.

The bill ~~would also requires~~ *require* the ~~department~~ *State*

Board of Equalization to make a refund of prorated registration and license fees reimburse the manufacturer in an amount equal to the sales tax paid for vehicles for which a manufacturer provides to the buyer a replacement or restitution, as specified ; and . The bill would, thereby makes , make an appropriation of amounts necessary to pay those claims. The bill also requires the State Board of Equalization to refund sales tax to the manufacturers for vehicles for which the manufacturer provides a replacement or makes restitution and, thereby, makes an appropriation of amounts necessary to pay those claims.

Vote: $\frac{3}{4}$. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 1793.2 of the Civil Code is
2 amended to read:

3 1793.2. (a) Every manufacturer of consumer goods
4 sold in this state and for which the manufacturer has
5 made an express warranty shall:

6 (1) Maintain in this state sufficient service and repair
7 facilities reasonably close to all areas where its consumer
8 goods are sold to carry out the terms of such warranties
9 or designate and authorize in this state as service and
10 repair facilities independent repair or service facilities
11 reasonably close to all areas where its consumer goods are
12 sold to carry out the terms of such warranties.

13 As a means of complying with this paragraph, a
14 manufacturer may enter into warranty service contracts
15 with independent service and repair facilities. The
16 warranty service contracts may provide for a fixed
17 schedule of rates to be charged for warranty service or
18 warranty repair work, however, the rates fixed by such
19 contracts shall be in conformity with the requirements of
20 subdivision (c) of Section 1793.3. The rates established
21 pursuant to subdivision (c) of Section 1793.3, between the
22 manufacturer and the independent service and repair
23 facility, shall not preclude a good-faith discount which is
24 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), be subject to Section 1793.5.

(b) Where 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 shall 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 extend this 30-day requirement. Where delay arises, conforming goods shall be tendered as soon as possible following termination of the condition giving rise to the delay.

(c) The buyer shall 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, delivery cannot reasonably be accomplished. If the buyer cannot return the nonconforming goods for any of these reasons, he or she 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 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 a buyer cannot return them *for any of these reasons* shall be at the manufacturer's expense. The reasonable costs of

1 transporting nonconforming goods after delivery to the
2 service and repair facility until return of the goods to the
3 buyer shall be at the manufacturer's expense.

4 (d) (1) Except as provided in paragraph (2), if the
5 manufacturer or its representative in this state does not
6 service or repair the goods to conform to the applicable
7 express warranties after a reasonable number of
8 attempts, the manufacturer shall either replace the goods
9 or reimburse the buyer in an amount equal to the
10 purchase price paid by the buyer, less that amount
11 directly attributable to use by the buyer prior to the
12 discovery of the nonconformity.

13 (2) If the manufacturer or its representative in this
14 state is unable to service or repair a new motor vehicle,
15 as that term is defined in subparagraph (B) of paragraph
16 (4) of subdivision (e), to conform to the applicable
17 express warranties after a reasonable number of
18 attempts, the manufacturer shall, at the option of the
19 buyer, either promptly replace the new motor vehicle in
20 accordance with subparagraph (A) or promptly make
21 restitution to the buyer in accordance with subparagraph
22 (B).

23 (A) When the buyer exercises the option of
24 replacement, the manufacturer shall replace the buyer's
25 vehicle with a new motor vehicle substantially identical
26 to the vehicle replaced. The manufacturer shall bear the
27 burden of any increase in the price of the replacement
28 over the price of the vehicle replaced. The replacement
29 vehicle shall be accompanied by all express and implied
30 warranties that normally accompany new motor vehicles
31 of that specific kind. The manufacturer also shall pay for,
32 or to, the buyer the amount of any sales tax, license fees,
33 registration fees, and other official fees which the buyer
34 is obligated to pay in connection with the replacement,
35 *plus any incidental damages to which the buyer is*
36 *entitled under Section 1794, including, but not limited to,*
37 *reasonable repair, towing, and rental car costs actually*
38 *incurred by the buyer.*

39 (B) When the buyer exercises the option of
40 restitution, the manufacturer shall make restitution in an

1 amount equal to the full contract price paid or payable by
2 the buyer, including any charges for transportation and
3 installed options, and any collateral charges such as sales
4 tax, license fees, registration fees, and other official fees,
5 *plus any incidental damages to which the buyer is*
6 *entitled under Section 1794, including, but not limited to,*
7 *reasonable repair, towing, and rental car costs actually*
8 *incurred by the buyer.* The amount to be paid by the
9 manufacturer to the buyer under this subparagraph shall
10 be reduced by that amount directly attributable to use by
11 the buyer prior to the discovery of the nonconformity.

12 (C) Nothing in this paragraph shall in any way limit
13 the rights or remedies available to the buyer under any
14 other law.

15 (e) (1) It shall be presumed that a reasonable number
16 of attempts have been made to conform a new motor
17 vehicle to the applicable express warranties if, within one
18 year from delivery to the buyer or 12,000 miles,
19 whichever occurs first, either (A) the same
20 nonconformity has been subject to repair four or more
21 times by the manufacturer or its agents and the buyer has
22 at least once directly notified the manufacturer of the
23 need for the repair of the nonconformity, or (B) the
24 vehicle is out of service by reason of repair of
25 nonconformities by the manufacturer or its agents for a
26 cumulative total of more than 30 calendar days since
27 delivery of the vehicle to the buyer. The 30-day limit shall
28 be extended only if repairs cannot be performed due to
29 conditions beyond the control of the manufacturer or its
30 agents. The buyer shall be required to directly notify the
31 manufacturer pursuant to subparagraph (A) only if the
32 manufacturer has clearly and conspicuously disclosed to
33 the buyer, with the warranty or the owner's manual, the
34 provisions of this subdivision and that of subdivision (d),
35 including the requirement that the buyer must notify the
36 manufacturer directly pursuant to subparagraph (A).
37 This presumption shall be a rebuttable presumption
38 affecting the burden of proof ~~in any action to enforce the~~
39 ~~buyer's rights under subdivision (d) and shall not be~~
40 ~~construed to limit those rights, and it may be asserted~~

1 *by the buyer in any civil action, small claims court action,*
2 *or other formal or informal proceeding.*

3 (2) If a qualified third party dispute resolution process
4 exists, and the buyer receives timely notification in
5 writing of the availability of a third party process with a
6 description of its operation and effect, the presumption
7 in paragraph (1) may not be asserted by the buyer until
8 after the buyer has initially resorted to the third party
9 process as required in paragraph (3). Notification of the
10 availability of the third party process is not timely if the
11 buyer suffers any prejudice resulting from any delay in
12 giving the notification. If a qualified third party dispute
13 resolution process does not exist, or if the buyer is
14 dissatisfied with the third party decision, or if the
15 manufacturer or its agent neglects to promptly fulfill the
16 terms of such third party decision, the buyer may assert
17 the presumption provided in paragraph (1) in an action
18 to enforce the buyer's rights under subdivision (d). The
19 findings and decision of the third party shall be
20 admissible in evidence in the action without further
21 foundation. Any period of limitation of actions under any
22 federal or California laws with respect to any person shall
23 be extended for a period equal to the number of days
24 between the date a complaint is filed with a third party
25 dispute resolution process and the date of its decision or
26 the date before which the manufacturer or its agent is
27 required by the decision to fulfill its terms, whichever
28 occurs later.

29 (3) A qualified third party dispute resolution process
30 shall be one that meets all of the following criteria:

31 (A) Complies with the Federal Trade Commission's
32 minimum requirements for informal dispute settlement
33 procedures as set forth in the Commission's regulations in
34 Part 703 of Title 16 of Code of Federal Regulations.

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

37 (C) Prescribes a reasonable time, not to exceed 30
38 days, within which the manufacturer or its agents must
39 fulfill the terms of those decisions.

40 (D) Provides written materials to those individuals

1 who conduct investigations and who make, or participate
2 in making, decisions for the process which, at a minimum,
3 include the provisions of the Federal Trade Commission's
4 regulations in Part 703 of Title 16 of the Code of Federal
5 Regulations and the provisions of this chapter.

6 (E) *At the request of the arbitrator or a majority of*
7 *the arbitration panel, provides for an inspection and*
8 *report on the condition of a nonconforming motor*
9 *vehicle by an automobile expert independent of the*
10 *manufacturer at no cost to the buyer.*

11 (F) Renders decisions which incorporate
12 consideration of, and can provide the rights and remedies
13 conferred in, the Federal Trade Commission's
14 regulations in Part 703 of Title 16 of the Code of Federal
15 Regulations and the provisions of this chapter.

16 ~~(F)~~

17 (G) Has been certified by the New Motor Vehicle
18 Board pursuant to subdivision ~~(f)~~ (e) of Section 3050 of
19 the Vehicle Code.

20 (4) For the purposes of subdivision (d) and this
21 subdivision the following terms have the following
22 meanings:

23 (A) "Nonconformity" means a nonconformity which
24 substantially impairs the use, value, or safety of the new
25 motor vehicle.

26 (B) "New motor vehicle" means a new motor vehicle
27 which is used or bought for use primarily for personal,
28 family, or household purposes. "New motor vehicle"
29 includes a dealer-owned vehicle and a "demonstrator" or
30 other motor vehicle sold with a manufacturer's new car
31 warranty, but does not include a motorcycle, motorhome,
32 motor vehicle which is not registered under the Vehicle
33 Code because it is to be operated or used exclusively off
34 the highways, or any vehicle purchased solely for
35 commercial or industrial use.

36 ~~SEC. 2. Section 6002.2 is added to the Revenue and~~
37 ~~Taxation Code, to read:~~

38 ~~6002.2. Upon receipt of proof to its satisfaction that~~
39 ~~sales tax has been paid to the state on the sale of a new~~
40 ~~motor vehicle, and that the new motor vehicle has been~~

1 *by the buyer in any civil action, small claims court action,*
2 *or other formal or informal proceeding.*

3 (2) If a qualified third party dispute resolution process
4 exists, and the buyer receives timely notification in
5 writing of the availability of a third party process with a
6 description of its operation and effect, the presumption
7 in paragraph (1) may not be asserted by the buyer until
8 after the buyer has initially resorted to the third party
9 process as required in paragraph (3). Notification of the
10 availability of the third party process is not timely if the
11 buyer suffers any prejudice resulting from any delay in
12 giving the notification. If a qualified third party dispute
13 resolution process does not exist, or if the buyer is
14 dissatisfied with the third party decision, or if the
15 manufacturer or its agent neglects to promptly fulfill the
16 terms of such third party decision, the buyer may assert
17 the presumption provided in paragraph (1) in an action
18 to enforce the buyer's rights under subdivision (d). The
19 findings and decision of the third party shall be
20 admissible in evidence in the action without further
21 foundation. Any period of limitation of actions under any
22 federal or California laws with respect to any person shall
23 be extended for a period equal to the number of days
24 between the date a complaint is filed with a third party
25 dispute resolution process and the date of its decision or
26 the date before which the manufacturer or its agent is
27 required by the decision to fulfill its terms, whichever
28 occurs later.

29 (3) A qualified third party dispute resolution process
30 shall be one that meets all of the following criteria:

31 (A) Complies with the Federal Trade Commission's
32 minimum requirements for informal dispute settlement
33 procedures as set forth in the Commission's regulations in
34 Part 703 of Title 16 of Code of Federal Regulations.

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

37 (C) Prescribes a reasonable time, not to exceed 30
38 days, within which the manufacturer or its agents must
39 fulfill the terms of those decisions.

40 (D) Provides written materials to those individuals

1 who conduct investigations and who make, or participate
2 in making, decisions for the process which, at a minimum,
3 include the provisions of the Federal Trade Commission's
4 regulations in Part 703 of Title 16 of the Code of Federal
5 Regulations and the provisions of this chapter.

6 (E) *At the request of the arbitrator or a majority of*
7 *the arbitration panel, provides for an inspection and*
8 *report on the condition of a nonconforming motor*
9 *vehicle by an automobile expert independent of the*
10 *manufacturer at no cost to the buyer.*

11 (F) Renders decisions which incorporate
12 consideration of, and can provide the rights and remedies
13 conferred in, the Federal Trade Commission's
14 regulations in Part 703 of Title 16 of the Code of Federal
15 Regulations and the provisions of this chapter.

16 ~~(F)~~

17 (G) Has been certified by the New Motor Vehicle
18 Board pursuant to subdivision ~~(f)~~ (e) of Section 3050 of
19 the Vehicle Code.

20 (4) For the purposes of subdivision (d) and this
21 subdivision the following terms have the following
22 meanings:

23 (A) "Nonconformity" means a nonconformity which
24 substantially impairs the use, value, or safety of the new
25 motor vehicle.

26 (B) "New motor vehicle" means a new motor vehicle
27 which is used or bought for use primarily for personal,
28 family, or household purposes. "New motor vehicle"
29 includes a dealer-owned vehicle and a "demonstrator" or
30 other motor vehicle sold with a manufacturer's new car
31 warranty, but does not include a motorcycle, motorhome,
32 motor vehicle which is not registered under the Vehicle
33 Code because it is to be operated or used exclusively off
34 the highways, or any vehicle purchased solely for
35 commercial or industrial use.

36 ~~SEC. 2. Section 6002.2 is added to the Revenue and~~
37 ~~Taxation Code, to read:~~

38 ~~6002.2. Upon receipt of proof to its satisfaction that~~
39 ~~sales tax has been paid to the state on the sale of a new~~
40 ~~motor vehicle, and that the new motor vehicle has been~~

1 replaced by the manufacturer or that the manufacturer
2 has made restitution to the buyer, as provided by
3 paragraph (2) of subdivision (d) of Section 1793.2 of the
4 Civil Code; the board shall refund the sales tax to the
5 vehicle manufacturer. The board may adopt rules and
6 regulations that it deems necessary or appropriate to
7 carry out, facilitate compliance with, or prevent
8 circumvention or evasion of, this section.

9 SEC. 3. Section 10902 is added to the Revenue and
10 Taxation Code, to read:

11 10902. If a manufacturer of a new motor vehicle
12 replaces the vehicle or makes restitution to the buyer, as
13 provided by paragraph (2) of subdivision (d) of Section
14 1793.2 of the Civil Code, prior to the expiration of the
15 registration year for which the license fee has been paid,
16 the department shall refund that part of the fee which
17 bears the same proportion to the total license fee paid as
18 that part of the registration year beginning on the date
19 the vehicle is transferred to the manufacturer and ending
20 on the date the registration year expires bears to the total
21 registration year of the vehicle. The department may
22 adopt rules and regulations it deems necessary to carry
23 out this section.

24 SEC. 4.

25 SEC. 2. Section 1793.25 is added to the Civil Code, to
26 read:

27 1793.25. (a) Notwithstanding Part 1 (commencing
28 with Section 6001) of Division 2 of the Revenue and
29 Taxation Code, the State Board of Equalization shall
30 reimburse the manufacturer of a new motor vehicle for
31 an amount equal to the sales tax which the manufacturer
32 includes in making restitution to the buyer pursuant to
33 subparagraph (B) of paragraph (2) of subdivision (d) of
34 Section 1793.2, when satisfactory proof is provided that
35 the retailer of the motor vehicle for which the
36 manufacturer is making restitution has reported and paid
37 the sales tax on the gross receipts from the sale of that
38 motor vehicle. The State Board of Equalization may
39 adopt rules and regulations that it deems necessary or
40 appropriate to carry out, facilitate compliance with, or

1 *prevent circumvention or evasion of, this section.*

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

8 **SEC. 3.** Section 3050 of the Vehicle Code is amended
9 to read:

10 **3050.** The board shall do all of the following:

11 (a) Adopt rules and regulations in accordance with
12 Chapter 3.5 (commencing with Section 11340) of Part 1
13 of Division 3 of Title 2 of the Government Code
14 governing such matters as are specifically committed to
15 its jurisdiction.

16 (b) Hear and consider, within the limitations and in
17 accordance with the procedure provided, an appeal
18 presented by an applicant for, or holder of, a license as a
19 new motor vehicle dealer, manufacturer, manufacturer
20 branch, distributor, distributor branch, or representative
21 when the applicant or licensee submits an appeal
22 provided for in this chapter from a decision arising out of
23 the department.

24 (c) Consider any matter concerning the activities or
25 practices of any person applying for or holding a license
26 as a new motor vehicle dealer, manufacturer,
27 manufacturer branch, distributor, distributor branch, or
28 representative pursuant to Chapter 4 (commencing with
29 Section 11700) of Division 5 submitted by any person. A
30 member of the board who is a new motor vehicle dealer
31 may not participate in, hear, comment, advise other
32 members upon, or decide any matter considered by the
33 board pursuant to this subdivision that involves a dispute
34 between a franchisee and franchisor. After such
35 consideration, the board may do any one or any
36 combination of the following:

37 (1) Direct the department to conduct investigation of
38 matters that the board deems reasonable, and make a
39 written report on the results of the investigation to the
40 board within the time specified by the board.

1 (2) Undertake to arbitrate amicably or resolve any
2 honest difference of opinion or viewpoint existing
3 between any member of the public and any new motor
4 vehicle dealer, manufacturer, manufacturer branch,
5 distributor branch, or representative.

6 (3) Order the department to exercise any and all
7 authority or power that the department may have with
8 respect to the issuance, renewal, refusal to renew,
9 suspension, or revocation of the license of any new motor
10 vehicle dealer, manufacturer, manufacturer branch,
11 distributor, distributor branch, or representative as such
12 license is required under Chapter 4 (commencing with
13 Section 11700) of Division 5.

14 (d) Hear and consider, within the limitations and in
15 accordance with the procedure provided, a protest
16 presented by a franchisee pursuant to Section 3060, 3062,
17 3064, or 3065. A member of the board who is a new motor
18 vehicle dealer may not participate in, hear, comment,
19 advise other members upon, or decide, any matter
20 involving a protest filed pursuant to Article 4
21 (commencing with Section 3060).

22 (e) Certify that each third-party dispute resolution
23 process used for the arbitration of disputes pursuant to
24 paragraph (2) of subdivision (e) of Section 1793.2 of the
25 Civil Code is a qualified third-party dispute resolution
26 process as provided in paragraph (3) of subdivision (e) of
27 Section 1793.2 of the Civil Code. Each new motor vehicle
28 manufacturer, manufacturer branch, distributor, or
29 distributor branch that utilizes a third-party dispute
30 resolution process, and that seeks to have that process
31 certified by the board, shall provide to the board any and
32 all information that the board determines is necessary ~~for~~
33 ~~certification~~ *to enable the board to perform its duties*
34 *under this subdivision.* Certification of any particular
35 third-party dispute resolution process is a condition
36 precedent to the application of paragraph (2) of
37 subdivision (e) of Section 1793.2 of the Civil Code with
38 respect to that process. If a manufacturer, manufacturer
39 branch, distributor, or distributor branch does not utilize
40 a certified third-party dispute resolution process, the

1 board shall designate a certified third-party dispute
2 resolution process to arbitrate, at the expense of the
3 manufacturer, manufacturer branch, distributor, or
4 distributor branch, the disputes of consumers who have
5 purchased new motor vehicles which were initially
6 acquired from that manufacturer, manufacturer branch,
7 distributor, or distributor branch. The board may
8 suspend or revoke the certification of any third-party
9 dispute resolution process upon a determination that the
10 process does not comply with all the requirements of
11 paragraph (3) of subdivision (e) of Section 1793.2 of the
12 Civil Code.

13 **SEC. 5.**

14 **SEC. 4.** Section 3050.9 is added to the Vehicle Code,
15 to read:

16 3050.9. The board shall establish a schedule of fees to
17 be charged to fund fully the costs associated with the
18 certification of third-party dispute resolution processes
19 conducted pursuant to subdivision (e) of Section 3050.
20 The schedule of fees shall include a fixed annual fee, the
21 amount of which shall be determined by the board, which
22 shall be charged each manufacturer, manufacturer
23 branch, distributor, and distributor branch subject to this
24 chapter.

25 **SEC. 6.** Section ~~12231.5~~ is added to the Vehicle Code,
26 to read:

27 ~~12231.5.~~ If a manufacturer of a new motor vehicle
28 replaces the vehicle or makes restitution to the buyer, as
29 provided by paragraph (2) of subdivision (d) of Section
30 1793.2 of the Civil Code, prior to the expiration of the
31 registration year for which the license has been paid, the
32 department shall refund that part of the fee which bears
33 the same proportion to the total registration fee paid as
34 that part of the registration year beginning on the date
35 the vehicle is transferred to the manufacturer and ending
36 on the date the registration year expires bears to the total
37 registration year of the vehicle. The department may
38 adopt rules and regulations it deems necessary to carry
39 out this section.

AMENDED IN SENATE JULY 9, 1986
AMENDED IN ASSEMBLY MAY 19, 1986
AMENDED IN ASSEMBLY APRIL 15, 1986

CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

ASSEMBLY BILL

No. 3611

**Introduced by Assembly Members Tanner, Clute, Hauser,
Molina, and Moore**
(Coauthors: Senators Dills, Leroy Greene, McCorquodale,
Torres, and Watson)

February 20, 1986

An act to amend Section 1793.2 of, and to add Section 1793.25 to, the Civil Code, *to amend Section 7102 of the Revenue and Taxation Code*, and to amend Section 3050 of, and to add Section 3050.9 to, the Vehicle Code, relating to vehicles, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 3611, as amended, Tanner. Vehicle warranties.

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

This bill would expressly provide that, for new motor vehicles, the ~~option of replacement, as described in the bill, or restitution, as described in the bill, is in the~~ buyer *may elect restitution in lieu of replacement*. The bill would also require the New Motor Vehicle Board to certify arbitration processes for disputes relating to warranties. The bill would require the board to establish fees for the certification of arbitration processes.

The bill would also require the State Board of Equalization to reimburse the manufacturer in an amount equal to the sales tax paid for vehicles for which a manufacturer provides to the buyer restitution, as specified. The bill would, thereby, make an appropriation of amounts necessary to pay those claims.

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

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

1 SECTION 1. Section 1793.2 of the Civil Code is
2 amended to read:

3 1793.2. (a) Every manufacturer of consumer goods
4 sold in this state and for which the manufacturer has
5 made an express warranty shall:

6 (1) Maintain in this state sufficient service and repair
7 facilities reasonably close to all areas where its consumer
8 goods are sold to carry out the terms of such warranties
9 or designate and authorize in this state as service and
10 repair facilities independent repair or service facilities
11 reasonably close to all areas where its consumer goods are
12 sold to carry out the terms of such warranties.

13 As a means of complying with this paragraph, a
14 manufacturer may enter into warranty service contracts
15 with independent service and repair facilities. The
16 warranty service contracts may provide for a fixed
17 schedule of rates to be charged for warranty service or
18 warranty repair work, however, the rates fixed by such
19 contracts shall be in conformity with the requirements of
20 subdivision (c) of Section 1793.3. The rates established
21 pursuant to subdivision (c) of Section 1793.3, between the
22 manufacturer and the independent service and repair
23 facility, shall not preclude a good-faith discount which is
24 reasonably related to reduced credit and general
25 overhead cost factors arising from the manufacturer's
26 payment of warranty charges direct to the independent
27 service and repair facility. The warranty service contracts
28 authorized by this paragraph shall not be executed to
29 cover a period of time in excess of one year.

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

3 (b) Where service and repair facilities are maintained
4 in this state and service or repair of the goods is necessary
5 because they do not conform with the applicable express
6 warranties, service and repair shall be commenced
7 within a reasonable time by the manufacturer or its
8 representative in this state. Unless the buyer agrees in
9 writing to the contrary, the goods shall be serviced or
10 repaired so as to conform to the applicable warranties
11 within 30 days. Delay caused by conditions beyond the
12 control of the manufacturer or his representatives shall
13 extend this 30-day requirement. Where delay arises,
14 conforming goods shall be tendered as soon as possible
15 following termination of the condition giving rise to the
16 delay.

17 (c) The buyer shall deliver nonconforming goods to
18 the manufacturer's service and repair facility within this
19 state, unless, due to reasons of size and weight, or method
20 of attachment, or method of installation, or nature of the
21 nonconformity, delivery cannot reasonably be
22 accomplished. If the buyer cannot return the
23 nonconforming goods for any of these reasons, he or she
24 shall notify the manufacturer or its nearest service and
25 repair facility within the state. Written notice of
26 nonconformity to the manufacturer or its service and
27 repair facility shall constitute return of the goods for
28 purposes of this section. Upon receipt of notice of
29 nonconformity, the manufacturer shall, at its option,
30 service or repair the goods at the buyer's residence, or
31 pick up the goods for service and repair, or arrange for
32 transporting the goods to its service and repair facility.
33 All reasonable costs of transporting the goods when a
34 buyer cannot return them for any of these reasons shall
35 be at the manufacturer's expense. The reasonable costs of
36 transporting nonconforming goods after delivery to the
37 service and repair facility until return of the goods to the
38 buyer shall be at the manufacturer's expense.

39 (d) (1) Except as provided in paragraph (2), if the
40 manufacturer or its representative in this state does not

1 service or repair the goods to conform to the applicable
2 express warranties after a reasonable number of
3 attempts, the manufacturer shall either replace the goods
4 or reimburse the buyer in an amount equal to the
5 purchase price paid by the buyer, less that amount
6 directly attributable to use by the buyer prior to the
7 discovery of the nonconformity.

8 (2) If the manufacturer or its representative in this
9 state is unable to service or repair a new motor vehicle,
10 as that term is defined in subparagraph (B) of paragraph
11 (4) of subdivision (e), to conform to the applicable
12 express warranties after a reasonable number of
13 attempts, the manufacturer shall; ~~at the option of the~~
14 ~~buyer~~, either promptly replace the new motor vehicle in
15 accordance with subparagraph (A) or promptly make
16 restitution to the buyer in accordance with subparagraph
17 ~~(B)~~.

18 ~~(A) When the buyer exercises the option of (B);~~
19 ~~provided, however, that the buyer may elect restitution~~
20 ~~in lieu of replacement and in no event shall the buyer be~~
21 ~~required to accept a replacement vehicle that the buyer~~
22 ~~finds unsatisfactory.~~

23 (A) In the case of replacement, the manufacturer shall
24 replace the buyer's vehicle with a new motor vehicle
25 substantially identical to the vehicle replaced. ~~The~~
26 ~~manufacturer shall bear the burden of any increase in the~~
27 ~~price of the replacement over the price of the vehicle~~
28 ~~replaced.~~ The replacement vehicle shall be accompanied
29 by all express and implied warranties that normally
30 accompany new motor vehicles of that specific kind. The
31 manufacturer also shall pay for, or to, the buyer the
32 amount of any sales tax, license fees, registration fees, and
33 other official fees which the buyer is obligated to pay in
34 connection with the replacement, plus any incidental
35 damages to which the buyer is entitled under Section
36 1794, including, but not limited to, reasonable repair,
37 towing, and rental car costs actually incurred by the
38 buyer.

39 ~~(B) When the buyer exercises the option~~ In the case
40 of restitution, the manufacturer shall make restitution in

1 an amount equal to the full contract price paid or payable
2 by the buyer, including any charges for transportation
3 and installed options, and any collateral charges such as
4 sales tax, license fees, registration fees, and other official
5 fees, plus any incidental damages to which the buyer is
6 entitled under Section 1794, including, but not limited to,
7 reasonable repair, towing, and rental car costs actually
8 incurred by the buyer. ~~The amount to be paid by the~~
9 ~~manufacturer to the buyer under this subparagraph shall~~
10 ~~be reduced by that amount directly attributable to use by~~
11 ~~the buyer prior to the discovery of the nonconformity.~~

12 ~~(G)~~

13 *(C) When the manufacturer replaces the new motor*
14 *vehicle pursuant to subparagraph (A), the manufacturer*
15 *may require the buyer to reimburse the manufacturer in*
16 *an amount directly attributable to use by the buyer of the*
17 *replaced vehicle prior to discovery of the nonconformity.*
18 *When restitution is made pursuant to subparagraph (B),*
19 *the amount to be paid by the manufacturer to the buyer*
20 *may be reduced by the manufacturer by that amount*
21 *directly attributable to use by the buyer prior to*
22 *discovery of the nonconformity. Nothing in this*
23 *paragraph shall in any way limit the rights or remedies*
24 *available to the buyer under any other law.*

25 (e) (1) It shall be presumed that a reasonable number
26 of attempts have been made to conform a new motor
27 vehicle to the applicable express warranties if, within one
28 year from delivery to the buyer or 12,000 miles,
29 whichever occurs first, either (A) the same
30 nonconformity has been subject to repair four or more
31 times by the manufacturer or its agents and the buyer has
32 at least once directly notified the manufacturer of the
33 need for the repair of the nonconformity, or (B) the
34 vehicle is out of service by reason of repair of
35 nonconformities by the manufacturer or its agents for a
36 cumulative total of more than 30 calendar days since
37 delivery of the vehicle to the buyer. The 30-day limit shall
38 be extended only if repairs cannot be performed due to
39 conditions beyond the control of the manufacturer or its
40 agents. The buyer shall be required to directly notify the

1 manufacturer pursuant to subparagraph (A) only if the
2 manufacturer has clearly and conspicuously disclosed to
3 the buyer, with the warranty or the owner's manual, the
4 provisions of this subdivision and that of subdivision (d),
5 including the requirement that the buyer must notify the
6 manufacturer directly pursuant to subparagraph (A).
7 This presumption shall be a rebuttable presumption
8 affecting the burden of proof, and it may be asserted by
9 the buyer in any civil action, small claims court action, or
10 other formal or informal proceeding.

11 (2) If a qualified third party dispute resolution process
12 exists, and the buyer receives timely notification in
13 writing of the availability of a third party process with a
14 description of its operation and effect, the presumption
15 in paragraph (1) may not be asserted by the buyer until
16 after the buyer has initially resorted to the third party
17 process as required in paragraph (3). Notification of the
18 availability of the third party process is not timely if the
19 buyer suffers any prejudice resulting from any delay in
20 giving the notification. If a qualified third party dispute
21 resolution process does not exist, or if the buyer is
22 dissatisfied with the third party decision, or if the
23 manufacturer or its agent neglects to promptly fulfill the
24 terms of such third party decision, the buyer may assert
25 the presumption provided in paragraph (1) in an action
26 to enforce the buyer's rights under subdivision (d). The
27 findings and decision of the third party shall be
28 admissible in evidence in the action without further
29 foundation. Any period of limitation of actions under any
30 federal or California laws with respect to any person shall
31 be extended for a period equal to the number of days
32 between the date a complaint is filed with a third party
33 dispute resolution process and the date of its decision or
34 the date before which the manufacturer or its agent is
35 required by the decision to fulfill its terms, whichever
36 occurs later.

37 (3) A qualified third party dispute resolution process
38 shall be one that meets all of the following criteria:

39 (A) Complies with the Federal Trade Commission's
40 minimum requirements for informal dispute settlement

1 procedures as set forth in the Commission's regulations in
2 Part 703 of Title 16 of Code of Federal Regulations.

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

5 (C) Prescribes a reasonable time, not to exceed 30
6 days, within which the manufacturer or its agents must
7 fulfill the terms of those decisions.

8 (D) Provides written materials to those individuals
9 who conduct investigations and who make, or participate
10 in making, decisions for the process which, at a minimum,
11 include the provisions of the Federal Trade Commission's
12 regulations in Part 703 of Title 16 of the Code of Federal
13 Regulations and the provisions of this chapter.

14 (E) At the request of the arbitrator or a majority of the
15 arbitration panel, provides for an inspection and report
16 on the condition of a nonconforming motor vehicle by an
17 automobile expert independent of the manufacturer at
18 no cost to the buyer.

19 (F) Renders decisions which incorporate
20 consideration of, and can provide the rights and remedies
21 conferred in, the Federal Trade Commission's
22 regulations in Part 703 of Title 16 of the Code of Federal
23 Regulations and this chapter.

24 (G) Has been certified by the New Motor Vehicle
25 Board pursuant to subdivision (e) of Section 3050 of the
26 Vehicle Code.

27 (4) For the purposes of subdivision (d) and this
28 subdivision the following terms have the following
29 meanings:

30 (A) "Nonconformity" means a nonconformity which
31 substantially impairs the use, value, or safety of the new
32 motor vehicle.

33 (B) "New motor vehicle" means a new motor vehicle
34 which is used or bought for use primarily for personal,
35 family, or household purposes. "New motor vehicle"
36 includes a dealer-owned vehicle and a "demonstrator" or
37 other motor vehicle sold with a manufacturer's new car
38 warranty, but does not include a motorcycle, ~~motorhome,~~
39 *a motorhome*, or a motor vehicle which is not registered
40 under the Vehicle Code because it is to be operated or

1 used exclusively off the highways, or any vehicle
2 purchased solely for commercial or industrial use. the
3 highways.

4 SEC. 2. Section 1793.25 is added to the Civil Code, to
5 read:

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

21 (b) Nothing in this section shall in any way change the
22 application of the sales and use tax to the gross receipts
23 and the sales price from the sale, and the storage, use, or
24 other consumption, in this state of tangible personal
25 property pursuant to Part 1 (commencing with Section
26 6001) of Division 2 of the Revenue and Taxation Code.

27 ~~SEC. 3.~~

28 (c) *The manufacturer's claim for reimbursement and*
29 *the board's approval or denial of the claim shall be subject*
30 *to the provisions of Article 1 (commencing with Section*
31 *6901) of Chapter 7 of Part 1 of Division 2 of the Revenue*
32 *and Taxation Code, except Sections 6902.1, 6903, 6907,*
33 *and 6908, insofar as those provisions are not inconsistent*
34 *with this section.*

35 SEC. 3. Section 7102 of the Revenue and Taxation
36 Code, as amended by Chapter 41 of the Statutes of 1986,
37 is amended to read:

38 7102. The money in the fund shall, upon order of the
39 Controller, be drawn therefrom for refunds under this
40 part, and pursuant to Section 1793.25 of the Civil Code,

1 or be transferred in the following manner:

2 (a) (1) All revenues, less refunds, derived under this
3 part at the 4¾ percent rate, including the imposition of
4 sales and use taxes with respect to the sale, storage, use,
5 or other consumption of motor vehicle fuel which would
6 not have been received if the sales and use tax rate had
7 been 5 percent and if motor vehicle fuel, as defined for
8 purposes of the Motor Vehicle Fuel License Tax Law
9 (Part 2 (commencing with Section 7301)), had been
10 exempt from sales and use taxes, shall be estimated by the
11 State Board of Equalization, with the concurrence of the
12 Department of Finance shall be transferred during each
13 fiscal year to the Transportation Planning and
14 Development Account in the State Transportation Fund
15 for appropriation pursuant to Section 99312 of the Public
16 Utilities Code.

17 (2) If the amount transferred pursuant to paragraph
18 (1) is less than one hundred ten million dollars
19 (\$110,000,000) in any fiscal year, an additional amount
20 equal to the difference between one hundred ten million
21 dollars (\$110,000,000) and the amount so transferred shall
22 be transferred, to the extent funds are available, as
23 follows:

24 (A) For the 1986-87 fiscal year, from the General
25 Fund.

26 (B) For the 1987-88 and each subsequent fiscal year,
27 from the state revenues due to the imposition of sales and
28 use taxes on fuel, as defined for purposes of the Use Fuel
29 Tax Law (Part 3 (commencing with Section 8601)).

30 (b) The balance shall be transferred to the General
31 Fund.

32 (c) The estimate required by subdivision (a) shall be
33 based on taxable transactions occurring during a calendar
34 year, and the transfers required by subdivision (a) shall
35 be made during the fiscal year that commences during
36 that same calendar year. Transfers required by
37 paragraphs (1) and (2) of subdivision (a) shall be made
38 quarterly.

39 SEC. 4. Section 3050 of the Vehicle Code is amended
40 to read:

1 3050. The board shall do all of the following:

2 (a) Adopt rules and regulations in accordance with
3 Chapter 3.5 (commencing with Section 11340) of Part 1
4 of Division 3 of Title 2 of the Government Code
5 governing such matters as are specifically committed to
6 its jurisdiction.

7 (b) Hear and consider, within the limitations and in
8 accordance with the procedure provided, an appeal
9 presented by an applicant for, or holder of, a license as a
10 new motor vehicle dealer, manufacturer, manufacturer
11 branch, distributor, distributor branch, or representative
12 when the applicant or licensee submits an appeal
13 provided for in this chapter from a decision arising out of
14 the department.

15 (c) Consider any matter concerning the activities or
16 practices of any person applying for or holding a license
17 as a new motor vehicle dealer, manufacturer,
18 manufacturer branch, distributor, distributor branch, or
19 representative pursuant to Chapter 4 (commencing with
20 Section 11700) of Division 5 submitted by any person. A
21 member of the board who is a new motor vehicle dealer
22 may not participate in, hear, comment, advise other
23 members upon, or decide any matter considered by the
24 board pursuant to this subdivision that involves a dispute
25 between a franchisee and franchisor. After such
26 consideration, the board may do any one or any
27 combination of the following:

28 (1) Direct the department to conduct investigation of
29 matters that the board deems reasonable, and make a
30 written report on the results of the investigation to the
31 board within the time specified by the board.

32 (2) Undertake to arbitrate amicably or resolve any
33 honest difference of opinion or viewpoint existing
34 between any member of the public and any new motor
35 vehicle dealer, manufacturer, manufacturer branch,
36 distributor branch, or representative.

37 (3) Order the department to exercise any and all
38 authority or power that the department may have with
39 respect to the issuance, renewal, refusal to renew,
40 suspension, or revocation of the license of any new motor

1 vehicle dealer, manufacturer, manufacturer branch,
2 distributor, distributor branch, or representative as such
3 license is required under Chapter 4 (commencing with
4 Section 11700) of Division 5.

5 (d) Hear and consider, within the limitations and in
6 accordance with the procedure provided, a protest
7 presented by a franchisee pursuant to Section 3060, 3062,
8 3064, or 3065. A member of the board who is a new motor
9 vehicle dealer may not participate in, hear, comment,
10 advise other members upon, or decide, any matter
11 involving a protest filed pursuant to Article 4
12 (commencing with Section 3060).

13 (e) Certify that each third-party dispute resolution
14 process used for the arbitration of disputes pursuant to
15 paragraph (2) of subdivision (e) of Section 1793.2 of the
16 Civil Code is a qualified third-party dispute resolution
17 process as provided in paragraph (3) of subdivision (e) of
18 Section 1793.2 of the Civil Code. Each new motor vehicle
19 manufacturer, manufacturer branch, distributor, or
20 distributor branch that utilizes a third-party dispute
21 resolution process, and that seeks to have that process
22 certified by the board, shall provide to the board any and
23 all information that the board determines is necessary to
24 enable the board to perform its duties under this
25 subdivision. Certification of any particular third-party
26 dispute resolution process is a condition precedent to the
27 application of paragraph (2) of subdivision (e) of Section
28 1793.2 of the Civil Code with respect to that process. If a
29 manufacturer, manufacturer branch, distributor, or
30 distributor branch does not utilize a certified third-party
31 dispute resolution process, the board shall ~~designate a~~
32 *require the manufacturer, manufacturer branch,*
33 *distributor, or distributor branch to select from a list of*
34 *independent, certified third-party dispute resolution*
35 *processes to processes. The selected process shall* arbitrate,
36 at the expense of the manufacturer, manufacturer
37 branch, distributor, or distributor branch, the disputes of
38 consumers who have purchased new motor vehicles
39 which were initially acquired from that manufacturer,
40 manufacturer branch, distributor, or distributor branch.

1 The board may suspend or revoke the certification of any
2 third-party dispute resolution process upon a
3 determination that the process does not comply with all
4 the requirements of paragraph (3) of subdivision (e) of
5 Section 1793.2 of the Civil Code.

6 ~~SEC. 4.~~

7 *SEC. 5.* Section 3050.9 is added to the Vehicle Code,
8 to read:

9 3050.9. The board shall establish a schedule of fees to
10 be charged to fund fully the costs associated with the
11 certification of third-party dispute resolution processes
12 conducted pursuant to subdivision (e) of Section 3050.
13 The schedule of fees shall include a fixed annual fee, the
14 amount of which shall be determined by the board, which
15 shall be charged each manufacturer, manufacturer
16 branch, distributor, and distributor branch subject to this
17 chapter.

AMENDED IN SENATE AUGUST 11, 1986

AMENDED IN SENATE JULY 9, 1986

AMENDED IN ASSEMBLY MAY 19, 1986

AMENDED IN ASSEMBLY APRIL 15, 1986

CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

ASSEMBLY BILL

No. 3611

**Introduced by Assembly Members Tanner, Clute, Hauser,
Molina, and Moore**

**(Coauthors: Senators Dills, Leroy Greene, McCorquodale,
Torres, and Watson)**

February 20, 1986

An act to ~~amend Section 1793.2 of, and to add Section 1793.25 to,~~ add Article 9.5 (commencing with Section 9889.22) to Chapter 20.3 of Division 3 of the Business and Professions Code, to amend Sections 1793.2 and 1794.41 of, to add Section 1793.25 to, and to add Chapter 2.1 (commencing with Section 1796.6) to Title 1.7 of Part 4 of Division 3 of, the Civil Code, to amend Section 7102 of the Revenue and Taxation Code, and to amend ~~Section 3050 of, and to add Section 3050.9 to,~~ Sections 3050 and 11723 of the Vehicle Code, relating to vehicles, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 3611, as amended, Tanner. Vehicle warranties.

(1) Under existing law, the Bureau of Automotive Repair in the Department of Consumer Affairs is required to enforce and administer the Automotive Repair Act which regulates the automotive repair industry.

This bill would, on July 1, 1988, enact the Automobile Warranty Arbitration Program Certification Act to be

administered by the bureau. The act would provide a process for the resolution of disputes between the owner or leasee of a new motor vehicle and the manufacturer or distributor, as specified.

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

The bill would require a manufacturer which has been decertified or which does not operate a certified program, to inform the buyer, in writing, as specified, that a certified automobile warranty program is not available.

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

This bill would require that service and repair of a motor vehicle be performed by a repair facility licensed by the bureau, and would expressly provide that, for new motor vehicles, the buyer may elect restitution in lieu of replacement. The bill would also require the New Motor Vehicle Board to certify arbitration processes for disputes relating to warranties. The bill would require the board to establish fees for the certification of arbitration processes require that when a vehicle is replaced or restitution is made by the manufacturer, the buyer may be required to reimburse the manufacturer, or the manufacturer may reduce the amount of restitution, by an amount directly attributable to the use of the vehicle by the buyer.

The bill would also require the State Board of Equalization to reimburse the manufacturer in an amount equal to the sales tax paid for vehicles for which a manufacturer provides to the buyer restitution, as specified. The bill would, thereby, make an appropriation of amounts necessary to pay those claims.

(3) Under existing law, the New Motor Vehicle Board in

the Department of Motor Vehicles is required to, among other things, hear and consider appeals by a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, from a decision arising from the department. Existing law authorizes the board to require those persons to pay a fee to the department for the issuance or renewal of a license to do business.

This bill would require every manufacturer of new motor vehicles whose sales and leases exceed 1,000 new motor vehicles during a calendar year, to maintain and operate a certified automobile warranty arbitration program, as specified, and would require those manufacturers to report those sales or leases annually to the board on forms prescribed by the board.

The bill would require the board to administer the collection of fees to fund the Automobile Arbitration Warranty and Certification Act and would create the Automobile Warranty and Arbitration Program Certification Fund for deposit of those fees. The bill would require each applicant for a license to pay a fee, determined by the bureau, but not to exceed \$2 for each motor vehicle sold or leased, as specified.

Vote: $\frac{3}{5}$. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

- 1 **SECTION 1.** Article 9.5 (commencing with Section
- 2 9889.22) is added to Chapter 20.3 of Division 3 of the
- 3 Business and Professions Code, to read:
- 4
- 5 Article 9.5. Automobile Warranty Arbitration
- 6 Program Certification
- 7
- 8 9889.22. This article may be cited as the Automobile
- 9 Warranty Arbitration Program Certification Act.
- 10 9889.23. (a) It is the intent of the Legislature to
- 11 create a program to be known as the Automobile
- 12 Warranty Arbitration Certification Program.

1 (b) The purpose of the program is to assure, with
2 respect to the owner or lessee of a new motor vehicle that
3 is covered by a new motor vehicle warranty or service
4 contract, all of the following:

5 (1) The owner or lessee is educated and informed
6 about his or her rights and responsibilities as the owner
7 or lessee of a new motor vehicle.

8 (2) The owner or lessee receives the protections and
9 other benefits, including, but not limited to, automotive
10 repair services that are promised in a new motor vehicle
11 warranty and service contract, and that are conferred by
12 law.

13 (3) The owner or lessee has access to procedures that
14 will fairly and expeditiously resolve disputes involving
15 the performance, service, and repair of a new motor
16 vehicle which is covered by a warranty or service
17 contract.

18 (c) All salaries, expenses, and costs incurred or
19 sustained to administer the program shall be paid from
20 the Automobile Warranty Arbitration Program
21 Certification Fund, created pursuant to subdivision (b)
22 of Section 11723 of the Vehicle Code.

23 9889.24. (a) The bureau shall certify that an
24 automobile warranty arbitration program that has
25 applied for certification and that substantially complies
26 with the criteria described in Section 9889.25, is in
27 compliance with that section, and is deemed to be a
28 certified automobile warranty program within the
29 meaning of subdivision (c) of Section 1796.60 of the Civil
30 Code.

31 If the bureau determines that the program is not in
32 substantial compliance with those criteria, the bureau
33 shall deny certification and shall state, in writing, the
34 reasons for denial and the modifications in the program
35 that are required in order for the program to be certified.

36 (b) The bureau shall decertify a certified automobile
37 warranty arbitration program if the bureau determines
38 that the program does not substantially comply with the
39 criteria described in Section 9889.25. If the bureau
40 determines that the program is not in substantial

1 compliance with one or more of the criteria set forth in
2 Section 9889.25, the bureau shall issue a notice of
3 decertification to the program and to each manufacturer,
4 or other entity, which uses that program. The notice of
5 decertification shall state the reasons for the issuance of
6 the notice, enumerate the criteria set forth in Section
7 9889.25 with which the process is not in compliance, and
8 prescribe the modifications in the program that are
9 required in order for the program to retain its
10 certification. A notice of decertification shall take effect
11 90 calendar days following the date the notice is served
12 on the program and each manufacturer, or other entity,
13 which uses the program. The bureau shall withdraw the
14 notice of decertification prior to its effective date if the
15 bureau determines, after a public hearing, that the
16 program is in substantial compliance with Section
17 9889.25.

18 9889.25. (a) To entitle the program to be and remain
19 certified, an automobile warranty arbitration program
20 does all of the following criteria:

21 (1) Complies with the minimum requirements of the
22 Federal Trade Commission for informal dispute
23 settlement procedures as set forth in Part 703 of Title 16
24 of the Code of Federal Regulations, as those regulations
25 read on July 1, 1986.

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

28 (3) Prescribes a reasonable time, not to exceed 30
29 days, within which the manufacturer or its agent must
30 fulfill the terms of its decisions.

31 (4) Provides written materials to those individuals
32 who conduct investigations and who make, or participate
33 in making, decisions for the program which, at a
34 minimum, include the Federal Trade Commission's
35 regulations in Part 703 of Title 16 of the Code of Federal
36 Regulations as those regulations read on July 1, 1986, the
37 Song-Beverly Consumer Warranty Act Chapter 1
38 (commencing with Section 1790) of Title 1.7 of Part 4 of
39 Division 3 of the Civil Code, and Division 2 (commencing
40 with Section 2101) of the Commercial Code.

1 (5) Provides, at the request of the arbitrator or a
2 majority of the arbitration panel, for an inspection and
3 written report on the condition of a nonconforming
4 motor vehicle, at no cost to the buyer, by an automobile
5 repair facility that is independent of the manufacturer
6 and is licensed by the Bureau of Automotive Repair.

7 (6) Renders decisions which consider and provide the
8 rights and remedies conferred in regulations of the
9 Federal Trade Commission contained in Part 703 of Title
10 16 of the Code of Federal Regulations as those regulations
11 read on July 1, 1986, Division 2 (commencing with
12 Section 2101) of the Commercial Code, and this chapter.

13 (7) Complies with all other qualifications, not
14 inconsistent with this article, prescribed by regulations
15 adopted pursuant to this chapter.

16 (b) Nothing in this article shall be construed as a
17 requirement that to be certified pursuant to this article
18 the decisions of the program must consider or provide
19 remedies in the form of awards of punitive damages, or
20 of multiple damages under subdivision (c) of Section
21 1794 of the Civil Code, or of attorney's fees under
22 subdivision (d) of Section 1794 of the Civil Code, or of
23 consequential damages other than as provided in
24 subdivisions (a) and (b) of Section 1794 of the Civil Code,
25 including, but not limited to, reasonable repair, towing
26 and rental car costs actually incurred by the buyer.

27 9889.26. The bureau shall promulgate, in accordance
28 with the provisions of Chapter 3.5 (commencing with
29 Section 11340) of Part 1 of Division 3 of Title 2 of the
30 Government Code, regulations relating to the
31 certification and decertification of automobile warranty
32 arbitration programs, which shall include, but not be
33 limited to, provisions for all of the following:

34 (a) An application procedure, which shall include an
35 analysis of the materials submitted pursuant to Section
36 9889.28 and an onsite inspection by the bureau to
37 determine compliance with the standards for
38 certification prescribed in Section 9889.25.

39 (b) The submission of information by automobile
40 manufacturers and automobile warranty arbitration

1 *programs, including information to be submitted with*
2 *applications for certification, and information pertaining*
3 *to individual complaints.*

4 *(c) A decertification procedure that shall comply with*
5 *subdivision (b) of Section 9889.24 and shall include onsite*
6 *and other inspections deemed necessary or appropriate.*

7 *(d) An appeals procedure to enable automobile*
8 *warranty arbitration programs to seek and obtain review,*
9 *within the bureau, of decisions to decertify or to refuse to*
10 *grant certification.*

11 *(e) An enforcement procedure which authorizes the*
12 *assessment of administrative fines against automobile*
13 *warranty arbitration programs for failing to comply with*
14 *the standards prescribed in Section 9889.25 or for other*
15 *violations of this article.*

16 *(f) Grounds for the granting and denial of*
17 *certification, and for decertification that are not*
18 *inconsistent with the provisions of this article, if they are*
19 *necessary to carry out the purposes of this article.*

20 *(g) A procedure for annual recertification based on*
21 *initial certification standards.*

22 *(h) A complaint handling procedure to assist owners*
23 *and lessees with complaints regarding the arbitration*
24 *procedure.*

25 *(i) A procedure to measure customer satisfaction and*
26 *to identify violations of this article, which shall include an*
27 *annual random postcard or telephone survey of each*
28 *certified program's customers.*

29 *9889.27. The bureau shall do all of the following:*

30 *(a) On a regular basis, monitor and inspect certified*
31 *automobile warranty arbitration programs to determine*
32 *whether the programs continue to meet certification*
33 *standards. Monitoring and inspection shall include, but*
34 *not be limited to, all of the following:*

35 *(1) Onsite inspections of each certified program not*
36 *more than twice each year.*

37 *(2) Analyses of the results of the annual surveys of*
38 *customers.*

39 *(3) Analyze individual complaint data submitted by*
40 *the program.*

1 (4) Investigation of complaints from consumers about
2 the program.

3 (b) Notify the Department of Motor Vehicles of the
4 failure of a manufacturer, manufacturer branch,
5 distributor, or distributor branch to honor a decision of an
6 automobile warranty arbitration program, to enable that
7 department to take appropriate enforcement action
8 against the manufacturer, manufacturer branch,
9 distributor, or distributor branch pursuant to Section
10 11705.4 of the Vehicle Code.

11 (c) Provide a biennial report to the Legislature
12 evaluating the effectiveness of state certification of
13 automobile warranty arbitration programs and of the
14 other provisions of this article.

15 (d) Provide the public, upon request or by other
16 means, reports summarizing the statistics and other
17 information supplied by automobile warranty arbitration
18 programs pursuant to this article.

19 (e) Inform and educate the public regarding the
20 purposes of this article, and the action and decisions of
21 the bureau made pursuant to this article.

22 9889.28. Each certified automobile warranty
23 arbitration program shall do all of the following:

24 (a) Furnish to the bureau, with its original application
25 for certification, and within 30 days after any revision, the
26 full text of the standards, policies, operating procedures,
27 training manuals, complaint forms, and other materials of
28 any kind that describe, govern, or are used in connection
29 with the operation of the program, including all
30 standardized communications between the program and
31 sponsor, employees, complainants, members of the
32 public, and personnel who investigate complaints and
33 render decisions.

34 (b) Furnish to the bureau, with its original application
35 for certification, and within 30 days after any revision, a
36 description of the manufacturer's or other sponsor's legal
37 and business relationship to the program, together with
38 an identification, title, date, and custodian of any writings
39 that document that relationship, a copy of which writings
40 shall be furnished to the bureau upon request.

1 (c) Notify the bureau of each complaint submitted for
2 mediation, arbitration or other action. Notification shall
3 be made within the time after the program's receipt of
4 the complaint that the bureau may prescribe.
5 Notification shall be made either by completing and
6 submitting a form prescribed by the bureau or, if
7 required by the bureau, by submitting the required
8 information by telecommunications.

9 (d) Notify the bureau of the termination of each
10 complaint that has been submitted for mediation,
11 arbitration or other action, whether by dismissal, decision
12 or otherwise. Notification shall be made within the time
13 after the termination that the bureau may prescribe.
14 Notification shall be made either by completing and
15 submitting a form prescribed by the bureau or, if
16 required by the bureau, by submitting the required
17 information by telecommunications.

18 (e) Provide the bureau with a copy of the statistics
19 required semiannually by Section 703.6 of Title 16 of the
20 Code of Federal Regulations.

21 (f) Provide the bureau with an annual report of the
22 number and type of warranty complaints that have been
23 mediated, arbitrated or dismissed, or in which any other
24 action has been taken by the program, including the
25 name of the manufacturer and the make, model, and
26 model year of the vehicles that were involved.

27 (g) Cooperate with the bureau's staff in efforts to
28 mediate consumer complaints about the arbitration
29 program and in any other manner.

30 (h) Comply with this chapter and the regulations
31 adopted pursuant to this chapter.

32 ~~9889.29.~~ If a manufacturer, manufacturer branch,
33 distributor, or distributor branch does not maintain and
34 operate a certified automobile warranty arbitration
35 program, or if the bureau has determined that a certified
36 program that is operated and maintained by a
37 manufacturer, manufacturer branch, distributor, or
38 distributor branch is not in substantial compliance with
39 one or more of the criteria set forth in Section 9889.25,
40 and the bureau has issued a notice of decertification

1 pursuant to Section 9889.24 and the notice has not been
2 withdrawn, both of the following shall be done:

3 (1) The bureau shall designate a certified automobile
4 warranty arbitration program to arbitrate, at the expense
5 of the manufacturer, manufacturer branch, distributor,
6 or distributor branch, the dispute of the buyer of a new
7 motor vehicle of that manufacturer, manufacturer
8 branch, distributor, or distributor branch.

9 (2) The manufacturer shall provide to the buyer of
10 each new motor vehicle manufactured or distributed by
11 the manufacturer, a notice in writing that a certified
12 automobile warranty program is not available to arbitrate
13 warranty disputes. The notice shall be in the form of an
14 addendum to the warranty or owner's manual which
15 accompanies the new motor vehicle.

16 SEC. 2. Section 1793.2 of the Civil Code is amended to
17 read:

18 1793.2. (a) Every manufacturer of consumer goods
19 sold in this state and for which the manufacturer has
20 made an express warranty shall:

21 (1) Maintain in this state sufficient service and repair
22 facilities reasonably close to all areas where its consumer
23 goods are sold to carry out the terms of such warranties
24 or designate and authorize in this state as service and
25 repair facilities independent repair or service facilities
26 reasonably close to all areas where its consumer goods are
27 sold to carry out the terms of such warranties.

28 As a means of complying with this paragraph, a
29 manufacturer may enter into warranty service contracts
30 with independent service and repair facilities. The
31 warranty service contracts may provide for a fixed
32 schedule of rates to be charged for warranty service or
33 warranty repair work, however, the rates fixed by such
34 contracts shall be in conformity with the requirements of
35 subdivision (c) of Section 1793.3. The rates established
36 pursuant to subdivision (c) of Section 1793.3, between the
37 manufacturer and the independent service and repair
38 facility, shall not preclude a good-faith discount which is
39 reasonably related to reduced credit and general
40 overhead cost factors arising from the manufacturer's

1 payment of warranty charges direct to the independent
2 service and repair facility. The warranty service contracts
3 authorized by this paragraph shall not be executed to
4 cover a period of time in excess of one year.

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

7 (b) Where service and repair facilities are maintained
8 in this state and service or repair of the goods is necessary
9 because they do not conform with the applicable express
10 warranties, service and repair shall be commenced
11 within a reasonable time by the manufacturer or its
12 representative in this state. *Service and repair to a motor*
13 *vehicle shall be performed by an automotive repair*
14 *facility licensed by the Bureau of Automotive Repair*
15 *pursuant to the Automotive Repair Act, Chapter 20.3*
16 *(commencing with Section 9880) of Division 3 of the*
17 *Business and Professions Code.* Unless the buyer agrees in
18 writing to the contrary, the goods shall be serviced or
19 repaired so as to conform to the applicable warranties
20 within 30 days. Delay caused by conditions beyond the
21 control of the manufacturer or his representatives shall
22 extend this 30-day requirement. Where delay arises,
23 conforming goods shall be tendered as soon as possible
24 following termination of the condition giving rise to the
25 delay.

26 (c) The buyer shall deliver nonconforming goods to
27 the manufacturer's service and repair facility within this
28 state, unless, due to reasons of size and weight, or method
29 of attachment, or method of installation, or nature of the
30 nonconformity, delivery cannot reasonably be
31 accomplished. If the buyer cannot return the
32 nonconforming goods for any of these reasons, he or she
33 shall notify the manufacturer or its nearest service and
34 repair facility within the state. Written notice of
35 nonconformity to the manufacturer or its service and
36 repair facility shall constitute return of the goods for
37 purposes of this section. Upon receipt of notice of
38 nonconformity, the manufacturer shall, at its option,
39 service or repair the goods at the buyer's residence, or
40 pick up the goods for service and repair, or arrange for

1 transporting the goods to its service and repair facility.
2 All reasonable costs of transporting the goods when a
3 buyer cannot return them for any of these reasons shall
4 be at the manufacturer's expense. The reasonable costs of
5 transporting nonconforming goods after delivery to the
6 service and repair facility until return of the goods to the
7 buyer shall be at the manufacturer's expense.

8 (d) (1) Except as provided in paragraph (2), if the
9 manufacturer or its representative in this state does not
10 service or repair the goods to conform to the applicable
11 express warranties after a reasonable number of
12 attempts, the manufacturer shall either replace the goods
13 or reimburse the buyer in an amount equal to the
14 purchase price paid by the buyer, less that amount
15 directly attributable to use by the buyer prior to the
16 discovery of the nonconformity.

17 (2) If the manufacturer or its representative in this
18 state is unable to service or repair a new motor vehicle,
19 as that term is defined in subparagraph (B) of paragraph
20 (4) of subdivision (e), to conform to the applicable
21 express warranties after a reasonable number of
22 attempts, the manufacturer shall either promptly replace
23 the new motor vehicle in accordance with subparagraph
24 (A) or promptly make restitution to the buyer in
25 accordance with subparagraph (B); provided, however,
26 that the buyer ~~may~~ *shall be free to* elect restitution in lieu
27 of replacement and in no event shall the buyer be
28 ~~required to accept a replacement vehicle that the buyer~~
29 ~~finds unsatisfactory; required by the manufacturer to~~
30 ~~accept a replacement vehicle.~~

31 (A) In the case of replacement, the manufacturer shall
32 replace the buyer's vehicle with a new motor vehicle
33 substantially identical to the vehicle replaced. The
34 replacement vehicle shall be accompanied by all express
35 and implied warranties that normally accompany new
36 motor vehicles of that specific kind. The manufacturer
37 also shall pay for, or to, the buyer the amount of any sales
38 tax, license fees, registration fees, and other official fees
39 which the buyer is obligated to pay in connection with
40 the replacement, plus any incidental damages to which

1 the buyer is entitled under Section 1794, including, but
2 not limited to, reasonable repair, towing, and rental car
3 costs actually incurred by the buyer.

4 (B) In the case of restitution, the manufacturer shall
5 make restitution in an amount equal to the ~~full contract~~
6 *actual* price paid or payable by the buyer, including any
7 charges for transportation and ~~installed options; and~~
8 *manufacturer-installed options, but excluding*
9 *nonmanufacturer items installed by a dealer or the buyer,*
10 *and including* any collateral charges such as sales tax,
11 license fees, registration fees, and other official fees, plus
12 any incidental damages to which the buyer is entitled
13 under Section 1794, including, but not limited to,
14 reasonable repair, towing, and rental car costs actually
15 incurred by the buyer.

16 (C) When the manufacturer replaces the new motor
17 vehicle pursuant to subparagraph (A), the manufacturer
18 may require the buyer to reimburse the manufacturer in
19 an amount directly attributable to use by the buyer of the
20 replaced vehicle prior to ~~discovery of the time the buyer~~
21 *first delivered the vehicle to the manufacturer or*
22 *distributor, or its authorized service and repair facility for*
23 *correction of the problem that gave rise to the*
24 *nonconformity.* When restitution is made pursuant to
25 subparagraph (B), the amount to be paid by the
26 manufacturer to the buyer may be reduced by the
27 manufacturer by that amount directly attributable to use
28 by the buyer prior to ~~discovery of the time the buyer first~~
29 *delivered the vehicle to the manufacturer or distributor,*
30 *or its authorized service and repair facility for correction*
31 *of the problem that gave rise to the nonconformity.*
32 Nothing in this paragraph shall in any way limit the rights
33 or remedies available to the buyer under any other law.

34 (e) (1) It shall be presumed that a reasonable number
35 of attempts have been made to conform a new motor
36 vehicle to the applicable express warranties if, within one
37 year from delivery to the buyer or 12,000 miles *on the*
38 *odometer of the vehicle,* whichever occurs first, either
39 (A) the same nonconformity has been subject to repair
40 four or more times by the manufacturer or its agents and

1 the buyer has at least once directly notified the
2 manufacturer of the need for the repair of the
3 nonconformity, or (B) the vehicle is out of service by
4 reason of repair of nonconformities by the manufacturer
5 or its agents for a cumulative total of more than 30
6 calendar days since delivery of the vehicle to the buyer.
7 The 30-day limit shall be extended only if repairs cannot
8 be performed due to conditions beyond the control of the
9 manufacturer or its agents. The buyer shall be required
10 to directly notify the manufacturer pursuant to
11 subparagraph (A) only if the manufacturer has clearly
12 and conspicuously disclosed to the buyer, with the
13 warranty or the owner's manual, the provisions of this
14 subdivision and that of subdivision (d), including the
15 requirement that the buyer must notify the
16 manufacturer directly pursuant to subparagraph (A).
17 This presumption shall be a rebuttable presumption
18 affecting the burden of proof, and it may be asserted by
19 the buyer in any civil action, small claims court action, or
20 other formal or informal proceeding.

21 ~~(2) If a qualified third party dispute resolution process~~
22 *(2) If a certified automobile warranty arbitration*
23 *program exists, and the buyer receives timely notification*
24 *in writing of the availability of a third party process the*
25 *program with a description of its operation and effect, the*
26 *presumption in paragraph (1) may not be asserted by the*
27 *buyer until after the buyer has initially resorted to the*
28 *third party process program as required in paragraph (3).*
29 *Notification of the availability of the third party process*
30 *is not timely if the buyer suffers any prejudice resulting*
31 *from any delay in giving the notification. If a qualified*
32 *third party dispute resolution process certified*
33 *automobile warranty arbitration program does not exist,*
34 *or if the buyer is dissatisfied with the third party*
35 *program's decision, or if the manufacturer or its agent*
36 *neglects to promptly fulfill the terms of such third party*
37 *the program's decision, the buyer may assert the*
38 *presumption provided in paragraph (1) in an action to*
39 *enforce the buyer's rights under subdivision (d). The*
40 *findings and decision of the third party program shall be*

1 admissible in evidence in the action without further
2 foundation. Any period of limitation of actions under any
3 federal or California laws with respect to any person shall
4 be extended for a period equal to the number of days
5 between the date a complaint is filed with a ~~third party~~
6 ~~dispute resolution process certified automobile warranty~~
7 ~~arbitration program~~ and the date of its decision or the
8 date before which the manufacturer or its agent is
9 required by the decision to fulfill its terms, whichever
10 occurs later.

11 ~~(3)~~ A qualified third party dispute resolution process
12 shall be one that meets all of the following criteria:

13 ~~(A)~~ Complies with the Federal Trade Commission's
14 minimum requirements for informal dispute settlement
15 procedures as set forth in the Commission's regulations in
16 Part 703 of Title 16 of Code of Federal Regulations:

17 ~~(B)~~ Renders decisions which are binding on the
18 manufacturer if the buyer elects to accept the decision:

19 ~~(C)~~ Prescribes a reasonable time, not to exceed 30
20 days, within which the manufacturer or its agents must
21 fulfill the terms of those decisions:

22 ~~(D)~~ Provides written materials to those individuals
23 who conduct investigations and who make, or participate
24 in making, decisions for the process which, at a minimum,
25 include the provisions of the Federal Trade Commission's
26 regulations in Part 703 of Title 16 of the Code of Federal
27 Regulations and the provisions of this chapter:

28 ~~(E)~~ At the request of the arbitrator or a majority of the
29 arbitration panel, provides for an inspection and report
30 on the condition of a noneconforming motor vehicle by an
31 automobile expert independent of the manufacturer at
32 no cost to the buyer:

33 ~~(F)~~ Renders decisions which incorporate
34 consideration of, and can provide the rights and remedies
35 conferred in, the Federal Trade Commission's
36 regulations in Part 703 of Title 16 of the Code of Federal
37 Regulations and this chapter:

38 ~~(G)~~ Has been certified by the New Motor Vehicle
39 Board pursuant to subdivision (e) of Section 3050 of the
40 Vehicle Code.

1 ~~(4)~~

2 (3) For the purposes of subdivision (d) and this
3 subdivision the following terms have the following
4 meanings:

5 (A) "Nonconformity" means a nonconformity which
6 substantially impairs the use, value, or safety of the new
7 motor vehicle.

8 (B) "New motor vehicle" means a new motor vehicle
9 which is used or bought for use primarily for personal,
10 family, or household purposes. "New motor vehicle"
11 includes a dealer-owned vehicle and a "demonstrator" or
12 other motor vehicle sold with a manufacturer's new car
13 warranty, but does not include a motorcycle, a
14 motorhome, or a motor vehicle which is not registered
15 under the Vehicle Code because it is to be operated or
16 used exclusively off the highways.

17 ~~SEC. 2.~~

18 SEC. 3. Section 1793.25 is added to the Civil Code, to
19 read:

20 1793.25. (a) Notwithstanding Part 1 (commencing
21 with Section 6001) of Division 2 of the Revenue and
22 Taxation Code, the State Board of Equalization shall
23 reimburse the manufacturer of a new motor vehicle for
24 an amount equal to the sales tax which the manufacturer
25 includes in making restitution to the buyer pursuant to
26 subparagraph (B) of paragraph (2) of subdivision (d) of
27 Section 1793.2, when satisfactory proof is provided that
28 the retailer of the motor vehicle for which the
29 manufacturer is making restitution has reported and paid
30 the sales tax on the gross receipts from the sale of that
31 motor vehicle. The State Board of Equalization may
32 adopt rules and regulations that it deems necessary or
33 appropriate to carry out, facilitate compliance with, or
34 prevent circumvention or evasion of, this section.

35 (b) Nothing in this section shall in any way change the
36 application of the sales and use tax to the gross receipts
37 and the sales price from the sale, and the storage, use, or
38 other consumption, in this state of tangible personal
39 property pursuant to Part 1 (commencing with Section
40 6001) of Division 2 of the Revenue and Taxation Code.

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

~~SEC. 3.~~

SEC. 4. Section 1794.41 of the Civil Code is amended to read:

1794.41. No service contract covering any motor vehicle purchased for use in this state may be offered for sale or sold unless all of the following elements exist:

(a) *Service and repair to a motor vehicle must be performed by an automotive repair facility licensed by the Bureau of Automotive Repair pursuant to the Automotive Repair Act, Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code.*

(b) The contract shall contain the disclosures specified in Section 1794.4 and shall disclose in the manner described in that section the buyer's cancellation and refund rights provided by this section.

~~(b)~~

(c) The contract shall be available for inspection by the buyer prior to purchase and either the contract, or a brochure which specifically describes the terms, conditions, and exclusions of the contract, and the provisions of this section relating to contract delivery, cancellation, and refund, shall be delivered to the buyer at or before the time of purchase of the contract. Within 60 days after the date of purchase, the contract itself shall be delivered to the buyer.

~~(c)~~

(d) The contract shall be cancelable by the purchaser under the following conditions:

(1) Unless the contract provides for a longer period, within the first 60 days after receipt of the contract, or within the first 30 days after receipt of the contract with respect to a used motor vehicle without manufacturer

1 warranties, the full amount paid shall be refunded by the
2 seller to the purchaser if the purchaser provides a written
3 notice of cancellation to the person specified in the
4 contract, and if no claims have been made against the
5 contract. If a claim has been made against the contract
6 within the first 60 days after receipt of the contract, or
7 within the first 30 days after receipt of the contract with
8 respect to a used motor vehicle without manufacturer
9 warranties, a pro rata refund, based on either elapsed
10 time or mileage, at the seller's option as indicated in the
11 contract, shall be made by the seller to the purchaser if
12 the purchaser provides a written notice of cancellation to
13 the person specified in the contract.

14 (2) Unless the contract provides for a longer period for
15 obtaining a full refund, after the first 60 days after receipt
16 of the contract, or after the first 30 days after receipt of
17 the contract with respect to a used motor vehicle without
18 manufacturer warranties, a pro rata refund, based on
19 either elapsed time or mileage, at the seller's option as
20 indicated in the contract, shall be made by the seller to
21 the purchaser if the purchaser provides a written notice
22 of cancellation to the person specified in the contract. In
23 addition, the seller may assess a cancellation or
24 administrative fee, not to exceed twenty-five dollars
25 (\$25).

26 (3) If the contract was financed with a vehicle
27 purchase, the seller may make the refund payable to the
28 purchaser, the lender of record, or both.

29 *SEC. 5. Chapter 2.1 (commencing with Section*
30 *1796.6) is added to Title 1.7 of Part 4 of Division 3 of the*
31 *Civil Code, to read:*

32
33 *CHAPTER 2.1. AUTOMOBILE WARRANTY*
34 *ARBITRATION*
35

36 *1796.6. As used in this chapter, the following*
37 *definitions apply:*

38 (a) "Manufacturer" means any individual,
39 partnership, corporation, association, or other legal entity
40 that manufactures, assembles, produces, or distributes

1 *new motor vehicles. The term includes a manufacturer,*
2 *manufacturer branch, distributor, distributor branch, or*
3 *representative subject to Article 1 (commencing with*
4 *Section 11700) of Chapter 4 of Division 5 of the Vehicle*
5 *Code.*

6 (b) "Motor vehicle" means a motor vehicle as defined
7 in subdivision (e) of Section 9880.1 of the Business and
8 Professions Code.

9 (c) "Certified automobile warranty arbitration
10 program" means a program that has been certified by the
11 Bureau of Automotive Repair pursuant to Article 9.5
12 (commencing with Section 9889.22) of Chapter 20.3 of
13 Division 3 of the Business and Professions Code.

14 1796.7. Every manufacturer of new motor vehicles
15 whose volume of sales and leases in this state exceeds
16 1,000 new motor vehicles during a calendar year shall,
17 with respect to new motor vehicles sold or leased during
18 the next succeeding calendar year, maintain and operate,
19 reasonably close to all areas within this state where new
20 motor vehicles of that manufacturer are sold or leased, a
21 certified automobile warranty arbitration program, and
22 shall continue to maintain and operate the program until
23 the expiration of the terms of the express written
24 warranties on all of the new motor vehicles of that
25 manufacturer sold or leased in this state during that
26 calendar year.

27 1796.8. On or before June 30 of each calendar year,
28 each manufacturer of a new motor vehicle sold, leased, or
29 otherwise distributed by or for the manufacturer in this
30 state during the preceding calendar year shall report to
31 the New Motor Vehicle Board, on a form prescribed by
32 the board, the total number of new motor vehicles of that
33 manufacturer sold or leased in this state during the
34 preceding calendar year, together with a breakdown by
35 make, model, and model year, and any other information
36 that the board may require, and shall accompany that
37 report with the fees described in subdivision (b) of
38 Section 11723 of the Vehicle Code.

39 SEC. 6. Section 7102 of the Revenue and Taxation
40 Code, as amended by Chapter 41 of the Statutes of 1986,

1 is amended to read:

2 7102. The money in the fund shall, upon order of the
3 Controller, be drawn therefrom for refunds under this
4 part, and pursuant to Section 1793.25 of the Civil Code, or
5 be transferred in the following manner:

6 (a) (1) All revenues, less refunds, derived under this
7 part at the 4¾ percent rate, including the imposition of
8 sales and use taxes with respect to the sale, storage, use,
9 or other consumption of motor vehicle fuel which would
10 not have been received if the sales and use tax rate had
11 been 5 percent and if motor vehicle fuel, as defined for
12 purposes of the Motor Vehicle Fuel License Tax Law
13 (Part 2 (commencing with Section 7301)), had been
14 exempt from sales and use taxes, shall be estimated by the
15 State Board of Equalization, with the concurrence of the
16 Department of Finance shall be transferred during each
17 fiscal year to the Transportation Planning and
18 Development Account in the State Transportation Fund
19 for appropriation pursuant to Section 99312 of the Public
20 Utilities Code.

21 (2) If the amount transferred pursuant to paragraph
22 (1) is less than one hundred ten million dollars
23 (\$110,000,000) in any fiscal year, an additional amount
24 equal to the difference between one hundred ten million
25 dollars (\$110,000,000) and the amount so transferred shall
26 be transferred, to the extent funds are available, as
27 follows:

28 (A) For the 1986-87 fiscal year, from the General
29 Fund.

30 (B) For the 1987-88 and each subsequent fiscal year,
31 from the state revenues due to the imposition of sales and
32 use taxes on fuel, as defined for purposes of the Use Fuel
33 Tax Law (Part 3 (commencing with Section 8601)).

34 (b) The balance shall be transferred to the General
35 Fund.

36 (c) The estimate required by subdivision (a) shall be
37 based on taxable transactions occurring during a calendar
38 year, and the transfers required by subdivision (a) shall
39 be made during the fiscal year that commences during
40 that same calendar year. Transfers required by

1 paragraphs (1) and (2) of subdivision (a) shall be made
2 quarterly.

3 ~~SEC. 4:~~

4 **SEC. 7.** Section 3050 of the Vehicle Code is amended
5 to read:

6 3050. The board shall do all of the following:

7 (a) Adopt rules and regulations in accordance with
8 Chapter 3.5 (commencing with Section 11340) of Part 1
9 of Division 3 of Title 2 of the Government Code
10 governing such matters as are specifically committed to
11 its jurisdiction.

12 (b) Hear and consider, within the limitations and in
13 accordance with the procedure provided, an appeal
14 presented by an applicant for, or holder of, a license as a
15 new motor vehicle dealer, manufacturer, manufacturer
16 branch, distributor, distributor branch, or representative
17 when the applicant or licensee submits an appeal
18 provided for in this chapter from a decision arising out of
19 the department.

20 (c) Consider any matter concerning the activities or
21 practices of any person applying for or holding a license
22 as a new motor vehicle dealer, manufacturer,
23 manufacturer branch, distributor, distributor branch, or
24 representative pursuant to Chapter 4 (commencing with
25 Section 11700) of Division 5 submitted by any person. A
26 member of the board who is a new motor vehicle dealer
27 may not participate in, hear, comment, advise other
28 members upon, or decide any matter considered by the
29 board pursuant to this subdivision that involves a dispute
30 between a franchisee and franchisor. After such
31 consideration, the board may do any one or any
32 combination of the following:

33 (1) Direct the department to conduct investigation of
34 matters that the board deems reasonable, and make a
35 written report on the results of the investigation to the
36 board within the time specified by the board.

37 (2) Undertake to ~~arbitrate amicably or mediate,~~
38 *arbitrate, or otherwise* resolve any honest difference of
39 opinion or viewpoint existing between any member of
40 the public and any new motor vehicle dealer,

1 manufacturer, manufacturer branch, distributor branch,
2 or representative.

3 (3) Order the department to exercise any and all
4 authority or power that the department may have with
5 respect to the issuance, renewal, refusal to renew,
6 suspension, or revocation of the license of any new motor
7 vehicle dealer, manufacturer, manufacturer branch,
8 distributor, distributor branch, or representative as such
9 license is required under Chapter 4 (commencing with
10 Section 11700) of Division 5.

11 (d) Hear and consider, within the limitations and in
12 accordance with the procedure provided, a protest
13 presented by a franchisee pursuant to Section 3060, 3062,
14 3064, or 3065. A member of the board who is a new motor
15 vehicle dealer may not participate in, hear, comment,
16 advise other members upon, or decide, any matter
17 involving a protest filed pursuant to Article 4
18 (commencing with Section 3060).

19 (e) Certify that each third-party dispute resolution
20 process used for the arbitration of disputes pursuant to
21 paragraph (2) of subdivision (c) of Section 1793.2 of the
22 Civil Code is a qualified third-party dispute resolution
23 process as provided in paragraph (3) of subdivision (c) of
24 Section 1793.2 of the Civil Code. Each new motor vehicle
25 manufacturer, manufacturer branch, distributor, or
26 distributor branch that utilizes a third-party dispute
27 resolution process, and that seeks to have that process
28 certified by the board, shall provide to the board any and
29 all information that the board determines is necessary to
30 enable the board to perform its duties under this
31 subdivision. Certification of any particular third-party
32 dispute resolution process is a condition precedent to the
33 application of paragraph (2) of subdivision (c) of Section
34 1793.2 of the Civil Code with respect to that process. If a
35 manufacturer, manufacturer branch, distributor, or
36 distributor branch does not utilize a certified third-party
37 dispute resolution process, the board shall require the
38 manufacturer, manufacturer branch, distributor, or
39 distributor branch to select from a list of independent,
40 certified third-party dispute resolution processes. The

1 selected process shall arbitrate; at the expense of the
2 manufacturer; manufacturer branch; distributor; or
3 distributor branch; the disputes of consumers who have
4 purchased new motor vehicles which were initially
5 acquired from that manufacturer; manufacturer branch;
6 distributor; or distributor branch. The board may
7 suspend or revoke the certification of any third-party
8 dispute resolution process upon a determination that the
9 process does not comply with all the requirements of
10 paragraph (3) of subdivision (c) of Section 1700.2 of the
11 Civil Code.

12 **SEC. 5.** Section 3050.9 is added to the Vehicle Code;
13 to read:

14 **3050.9.** The board shall establish a schedule of fees to
15 be charged to fund fully the costs associated with the
16 certification of third-party dispute resolution processes
17 conducted pursuant to subdivision (c) of Section 3050.
18 The schedule of fees shall include a fixed annual fee; the
19 amount of which shall be determined by the board;
20 which shall be charged each manufacturer; manufacturer
21 branch; distributor; and distributor branch subject to this
22 chapter.

23 **SEC. 8.** Section 11723 of the Vehicle Code is amended
24 to read:

25 **11723.** (a) The board may require that fees shall be
26 paid to the department for the issuance or renewal of a
27 license to do business as a new motor vehicle dealer,
28 dealer branch, manufacturer, manufacturer branch,
29 distributor, distributor branch, or representative. The
30 fees shall be to reimburse the department for costs
31 incurred in licensing those dealers, manufacturers,
32 distributors, branches, and representatives and for
33 related administrative costs incurred on behalf of the
34 board. The board may also require that an additional fee
35 be paid to the department when the licensee has failed
36 to pay the fee authorized by Section 3016 prior to the
37 expiration of its occupational license and special plates
38 and the licensee utilizes the 30-day late renewal period
39 authorized by subdivision (c) of Section 11717.

40 (b) The board shall administer the collection of fees to

1 be paid to the department pursuant to subdivision (a), in
2 accordance with this subdivision for the purpose of fully
3 funding the administration of the Automobile Artitration
4 Warranty and Certification Act, Article 9.5 (commencing
5 with Section 9889.22) of Chapter 20.3 of Division 3 of the
6 Business and Professions Code, according to the following
7 procedure:

8 (1) The fees collected pursuant to this subdivision
9 shall be paid into the State Treasury to the credit of the
10 Automobile Warranty and Arbitration Program
11 Certification Fund, which is hereby created. The fees
12 shall be available, when appropriated, exclusively to fund
13 the Automobile Warranty and Artitration Certification
14 Program. If at the conclusion of any fiscal year the
15 amount of the fees collected exceeds the amount of the
16 expenditures for this purpose during that fiscal year, the
17 surplus shall be carried over into the succeeding fiscal
18 year.

19 (2) Every applicant for a license as a manufacturer,
20 manufacturer branch, distributor, distributor branch, and
21 representative, and every applicant for the renewal of a
22 license as a manufacturer, manufacturer branch,
23 distributor, distributor branch, and representative, shall
24 accompany the application with a statement of the
25 number of new motor vehicles sold, leased, or otherwise
26 distributed by or for the applicant in this state during the
27 preceding calendar year, including both a total of the
28 number of vehicles and a breakdown by make, model,
29 and model year and any other information that the board
30 may require and shall pay to the department, for each
31 issuance or renewal of the license, an amount prescribed
32 by the board, but not to exceed two dollars (\$2) for each
33 new motor vehicle sold, leased, or distributed by or for
34 the applicant in this state during the fiscal year ending on
35 the preceding June 30. No more than two dollars (\$2)
36 shall be charged, collected, or received from any one or
37 more licensees pursuant to this subdivision with respect
38 to the same motor vehicle.

39 (3) On or before January 1 of each calendar year, the
40 Bureau of Automotive Repair shall determine the dollar

1 amount, not to exceed two dollars (\$2) per motor vehicle,
2 which shall be collected and received by the department
3 during the following calendar year, based on the number
4 of sales, leases, and other dispositions of new motor
5 vehicles which have taken place during the preceding
6 calendar year, in order to fully fund the Automobile
7 Warranty and Arbitration Certification Program during
8 the following fiscal year. The Bureau of Automotive
9 Repair shall notify the board of the dollar amount per
10 motor vehicle that the board shall use in calculating the
11 amounts of the fees to be collected from applicants
12 pursuant to this subdivision.

13 (4) The board may adopt regulations to implement
14 this subdivision.

15 (c) This section shall not apply to dealers,
16 manufacturers, distributors, or representatives of
17 vehicles not subject to registration under this code,
18 except dealers, manufacturers, manufacturer branches,
19 distributors, distributor branches, or representatives of
20 off-highway motorcycles, as defined in Section 436.

21 SEC. 9. The program described in Article 9.5
22 (commencing with Section 9889.22) of Chapter 20.3 of
23 Division 3 of the Business and Professions Code shall
24 commence with the fiscal year beginning July 1, 1988, if
25 and to the extent that funds have been appropriated.
26 However, the bureau may begin to plan and prepare to
27 carry out the program by the adoption of regulations, the
28 promulgation of forms and other activities from and after
29 the effective date of this act.

AMENDED IN SENATE AUGUST 15, 1986

AMENDED IN SENATE AUGUST 11, 1986

AMENDED IN SENATE JULY 9, 1986

AMENDED IN ASSEMBLY MAY 19, 1986

AMENDED IN ASSEMBLY APRIL 15, 1986

CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

ASSEMBLY BILL

No. 3611

**Introduced by Assembly Members Tanner, Clute, Hauser,
Molina, and Moore**
(Coauthors: Senators Dills, Leroy Greene, McCorquodale,
Torres, and Watson)

February 20, 1986

An act to add Article 9.5 (commencing with Section 9889.22) to Chapter 20.3 of Division 3 of the Business and Professions Code, to amend ~~Sections 1793.2 and 1794.11~~ *Section 1793.2* of, to add Section 1793.25 to, and to add Chapter 2.1 (commencing with Section 1796.6) to Title 1.7 of Part 4 of Division 3 of, the Civil Code, to amend Section 7102 of the Revenue and Taxation Code, and to amend Sections 3050 and 11723 of the Vehicle Code, relating to vehicles, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 3611, as amended, Tanner. Vehicle warranties.

(1) Under existing law, the Bureau of Automotive Repair in the Department of Consumer Affairs is required to enforce and administer the Automotive Repair Act which regulates the automotive repair industry.

This bill would; ~~on July 1, 1988,~~ enact the Automobile Warranty Arbitration Program Certification Act to be

administered by the bureau, *commencing January 1, 1988*. The act would provide a process for the resolution of disputes between the owner or ~~leasee~~ lessee of a new motor vehicle and the manufacturer or distributor, as specified.

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

The bill would expressly provide that a violation of the act by a manufacturer, manufacturer branch, distributor, or distributor branch is grounds for decertification only and not grounds for criminal prosecution.

The bill would require a manufacturer which has been decertified or which does not operate a certified program, to inform the buyer, in writing, as specified, that a certified automobile warranty program is not available.

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

This bill would ~~require that service and repair of a motor vehicle be performed by a repair facility licensed by the bureau; and would~~ expressly provide that, for new motor vehicles, the buyer may elect restitution in lieu of replacement. The bill would require that when a vehicle is replaced or restitution is made by the manufacturer, the buyer may be required to reimburse the manufacturer, or the manufacturer may reduce the amount of restitution, by an amount directly attributable to the use of the vehicle by the buyer.

The bill would also require the State Board of Equalization to reimburse the manufacturer in an amount equal to the sales tax paid for vehicles for which a manufacturer provides to the buyer restitution, as specified. The bill would, thereby, make an appropriation of amounts necessary to pay those claims.

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

This bill would require every manufacturer of new motor vehicles ~~whose sales and leases exceed 1,000 new motor vehicles during a calendar year, to maintain and operate a certified automobile warranty arbitration program; as specified, and would require those manufacturers to report those the total number of sales or leases annually to the board on forms prescribed by the board, as specified.~~

The bill would require the board to administer the collection of fees to fund the Automobile Arbitration Warranty and Certification Act and would create the Automobile Warranty and Arbitration Program Certification Fund for deposit of those fees. The bill would require each applicant for a license to pay a fee, determined by the bureau, but not to exceed ~~\$2~~ \$1 for each motor vehicle sold or leased, as specified.

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

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

1 SECTION 1. Article 9.5 (commencing with Section
2 9889.22) is added to Chapter 20.3 of Division 3 of the
3 Business and Professions Code, to read:

4
5 Article 9.5. Automobile Warranty Arbitration
6 Program Certification

7
8 9889.22. This article may be cited as the Automobile
9 Warranty Arbitration Program Certification Act.

10 9889.23. (a) It is the intent of the Legislature to
11 create a program to be known as the Automobile

1 Warranty Arbitration Certification Program.

2 (b) The purpose of the program is to assure, with
3 respect to the owner or lessee of a new motor vehicle that
4 is covered by a new motor vehicle warranty or service
5 contract, all of the following:

6 (1) The owner or lessee is educated and informed
7 about his or her rights and responsibilities as the owner
8 or lessee of a new motor vehicle.

9 (2) The owner or lessee receives the protections and
10 other benefits, including, but not limited to, automotive
11 repair services that are promised in a new motor vehicle
12 warranty and service contract, and that are conferred by
13 law.

14 (3) The owner or lessee has access to procedures that
15 will fairly and expeditiously resolve disputes involving
16 the performance, service, and repair of a new motor
17 vehicle which is covered by a warranty or service
18 contract.

19 (c) All salaries, expenses, and costs incurred or
20 sustained to administer the program shall be paid from
21 the Automobile Warranty Arbitration Program
22 Certification Fund, created pursuant to subdivision (b)
23 of Section 11723 of the Vehicle Code.

24 9889.24. (a) The bureau shall certify that an
25 automobile warranty arbitration program that has
26 applied for certification and that substantially complies
27 with the criteria described in Section 9889.25, is in
28 compliance with that section, and is deemed to be a
29 certified automobile warranty program within the
30 meaning of subdivision (c) of Section 1796.60 of the Civil
31 Code.

32 If the bureau determines that the program is not in
33 substantial compliance with those criteria, the bureau
34 shall deny certification and shall state, in writing, the
35 reasons for denial and the modifications in the program
36 that are required in order for the program to be certified.

37 (b) The bureau shall decertify a certified automobile
38 warranty arbitration program if the bureau determines
39 that the program does not substantially comply with the
40 criteria described in Section 9889.25. If the bureau

determines that the program is not in substantial compliance with one or more of the criteria set forth in Section 9889.25, the bureau shall issue a notice of decertification to the program and to each manufacturer, or other entity, which uses that program. The notice of decertification shall state the reasons for the issuance of the notice, enumerate the criteria set forth in Section 9889.25 with which the process is not in compliance, and prescribe the modifications in the program that are required in order for the program to retain its certification. A notice of decertification shall take effect 90 calendar days following the date the notice is served on the program and each manufacturer, or other entity, which uses the program. The bureau shall withdraw the notice of decertification prior to its effective date if the bureau determines, after a public hearing, that the program is in substantial compliance with Section 9889.25.

9889.25. (a) To entitle the program to be and remain certified, an automobile warranty arbitration program does all of the following criteria:

(1) Complies with the minimum requirements of the Federal Trade Commission for informal dispute settlement procedures as set forth in Part 703 of Title 16 of the Code of Federal Regulations, as those regulations read on July 1, 1986.

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

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

(4) Provides written materials to those individuals who conduct investigations and who make, or participate in making, decisions for the program which, at a minimum, include the Federal Trade Commission's regulations in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on July 1, 1986, the Song-Beverly Consumer Warranty Act Chapter 1 (commencing with Section 1790) of Title 1.7 of Part 4 of

1 Division 3 of the Civil Code, and Division 2 (commencing
2 with Section 2101) of the Commercial Code.

3 (5) Provides, at the request of the arbitrator or a
4 majority of the arbitration panel, for an inspection and
5 written report on the condition of a nonconforming
6 motor vehicle, at no cost to the buyer, by an automobile
7 ~~repair facility that is independent of the manufacturer~~
8 ~~and is licensed by the Bureau of Automotive Repair.~~
9 *expert who is independent of the manufacturer.*

10 (6) Renders decisions which consider and provide the
11 rights and remedies conferred in regulations of the
12 Federal Trade Commission contained in Part 703 of Title
13 16 of the Code of Federal Regulations as those regulations
14 read on July 1, 1986, *the Song-Beverly Consumer*
15 *Warranty Act, Chapter 1 (commencing with Section*
16 *1790) of Title 1.7 of Part 4 of Division 3 of the Civil Code,*
17 *and Division 2 (commencing with Section 2101) of the*
18 *Commercial Code; and this chapter.*

19 (7) Complies with all other qualifications, not
20 inconsistent with this article, prescribed by regulations
21 adopted pursuant to this chapter.

22 (b) Nothing in this article shall be construed as a
23 requirement that to be certified pursuant to this article
24 the decisions of the program must consider or provide
25 remedies in the form of awards of punitive damages, or
26 of multiple damages under subdivision (c) of Section
27 1794 of the Civil Code, or of attorney's fees under
28 subdivision (d) of Section 1794 of the Civil Code, or of
29 consequential damages other than as provided in
30 subdivisions (a) and (b) of Section 1794 of the Civil Code,
31 including, but not limited to, reasonable repair, towing
32 and rental car costs actually incurred by the buyer.

33 9889.26. The bureau shall promulgate, in accordance
34 with the provisions of Chapter 3.5 (commencing with
35 Section 11340) of Part 1 of Division 3 of Title 2 of the
36 Government Code, regulations relating to the
37 certification and decertification of automobile warranty
38 arbitration programs, which shall include, but not be
39 limited to, provisions for all of the following:

40 (a) An application procedure, which shall include an

1 analysis of the materials submitted pursuant to Section
2 9889.28 and an onsite inspection by the bureau to
3 determine compliance with the standards for
4 certification prescribed in Section 9889.25.

5 (b) The submission of information by automobile
6 manufacturers and automobile warranty arbitration
7 programs, including information to be submitted with
8 applications for certification, and information pertaining
9 to individual complaints.

10 (c) A decertification procedure that shall comply with
11 subdivision (b) of Section 9889.24 and shall include onsite
12 and other inspections deemed necessary or appropriate.

13 (d) An appeals procedure to enable automobile
14 warranty arbitration programs to seek and obtain review,
15 within the bureau, of decisions to decertify or to refuse to
16 grant certification.

17 ~~(e) An enforcement procedure which authorizes the~~
18 ~~assessment of administrative fines against automobile~~
19 ~~warranty arbitration programs for failing to comply with~~
20 ~~the standards prescribed in Section 9889.25 or for other~~
21 ~~violations of this article.~~

22 ~~(f)~~

23 (e) Grounds for the granting and denial of
24 certification, and for decertification that are not
25 inconsistent with the provisions of this article, if they are
26 necessary to carry out the purposes of this article.

27 ~~(g)~~

28 (f) A procedure for annual recertification based on
29 initial certification standards.

30 ~~(h)~~

31 (g) A complaint handling procedure to assist owners
32 and lessees with complaints regarding the arbitration
33 procedure.

34 ~~(i)~~

35 (h) A procedure to measure customer satisfaction and
36 to identify violations of this article, which shall include an
37 annual random postcard or telephone survey of each
38 certified program's customers.

39 9889.27. The bureau shall do all of the following:

40 (a) On a regular basis, monitor and inspect certified

1 automobile warranty arbitration programs to determine
2 whether the programs continue to meet certification
3 standards. Monitoring and inspection shall include, but
4 not be limited to, all of the following:

5 (1) Onsite inspections of each certified program not
6 more than twice each year.

7 (2) Analyses of the results of the annual surveys of
8 customers.

9 (3) Analyze ~~individual complaint data a~~
10 ~~representative sample of individual complaints~~
11 submitted by the program.

12 (4) Investigation of complaints from consumers about
13 the program.

14 (b) Notify the Department of Motor Vehicles of the
15 failure of a manufacturer, manufacturer branch,
16 distributor, or distributor branch to honor a decision of an
17 automobile warranty arbitration program, to enable that
18 department to take appropriate enforcement action
19 against the manufacturer, manufacturer branch,
20 distributor, or distributor branch pursuant to Section
21 11705.4 of the Vehicle Code.

22 (c) Provide a biennial report to the Legislature
23 evaluating the effectiveness of state certification of
24 automobile warranty arbitration programs and of the
25 other provisions of this article.

26 (d) Provide the public, upon request or by other
27 means, reports summarizing the statistics and other
28 information supplied by automobile warranty arbitration
29 programs pursuant to this article.

30 (e) Inform and educate the public regarding the
31 purposes of this article, and the action and decisions of
32 the bureau made pursuant to this article.

33 9889.28. Each certified automobile warranty
34 arbitration program shall do all of the following:

35 (a) Furnish to the bureau, with its original application
36 for certification, and within 30 days after any revision, the
37 full text of the standards, policies, operating procedures,
38 training manuals, complaint forms, and other materials of
39 any kind that describe, govern, or are used in connection
40 with the operation of the program, including all

1 standardized communications between the program and
2 sponsor, employees, complainants, members of the
3 public, and personnel who investigate complaints and
4 render decisions.

5 (b) Furnish to the bureau, with its original application
6 for certification, and within 30 days after any revision, a
7 description of the manufacturer's or other sponsor's legal
8 and business relationship to the program ; ~~together with~~
9 ~~an identification, title, date, and custodian of any writings~~
10 ~~that document that relationship; a copy of which writings~~
11 ~~shall be furnished to the bureau upon request.~~

12 ~~(c) Notify the bureau of each complaint submitted for~~
13 ~~mediation, arbitration or other action. Notification shall~~
14 ~~be made within the time after the program's receipt of~~
15 ~~the complaint that the bureau may prescribe.~~
16 ~~Notification shall be made either by completing and~~
17 ~~submitting a form prescribed by the bureau or, if~~
18 ~~required by the bureau, by submitting the required~~
19 ~~information by telecommunications.~~

20 ~~(d) Notify the bureau of the termination of each~~
21 ~~complaint that has been submitted for mediation,~~
22 ~~arbitration or other action, whether by dismissal, decision~~
23 ~~or otherwise. Notification shall be made within the time~~
24 ~~after the termination that the bureau may prescribe.~~
25 ~~Notification shall be made either by completing and~~
26 ~~submitting a form prescribed by the bureau or, if~~
27 ~~required by the bureau, by submitting the required~~
28 ~~information by telecommunications.~~

29 ~~(e)~~

30 (c) *Provide the bureau with those copies of*
31 *complaints submitted for mediation or arbitration as the*
32 *bureau may reasonably prescribe, together with*
33 *documents evidencing the manner of termination of*
34 *those complaints.*

35 (d) Provide the bureau with a copy of the statistics
36 required semiannually by Section 703.6 of Title 16 of the
37 Code of Federal Regulations.

38 ~~(f)~~

39 (e) Provide the bureau with an annual report of the
40 number and type of warranty complaints that have been

1 mediated, arbitrated or dismissed ; ~~or in which any other~~
2 ~~action has been taken by the program; including the~~
3 ~~name of the manufacturer and the make, model, and~~
4 ~~model year of the vehicles that were involved.~~

5 ~~(g) by the program, including the name of the~~
6 ~~manufacturer.~~

7 (f) Cooperate with the bureau's staff in efforts to
8 mediate consumer complaints about the arbitration
9 program and in any other manner.

10 ~~(h) Comply with this chapter~~

11 (g) *Comply with this article* and the regulations
12 adopted pursuant to this ~~chapter~~ *article*.

13 9889.29. (a) If a manufacturer, manufacturer
14 branch, distributor, or distributor branch does not
15 maintain and operate a certified automobile warranty
16 arbitration program, or if the bureau has determined that
17 a certified program that is operated and maintained by a
18 manufacturer, manufacturer branch, distributor, or
19 distributor branch is not in substantial compliance with
20 one or more of the criteria set forth in Section 9889.25,
21 and the bureau has issued a notice of decertification
22 pursuant to Section 9889.24 and the notice has not been
23 ~~withdrawn; both of the following shall be done:~~

24 ~~(1) The bureau shall designate a certified automobile~~
25 ~~warranty arbitration program to arbitrate; at the expense~~
26 ~~of the manufacturer, manufacturer branch, distributor,~~
27 ~~or distributor branch; the dispute of the buyer of a new~~
28 ~~motor vehicle of that manufacturer, manufacturer~~
29 ~~branch, distributor, or distributor branch:~~

30 ~~(2) The withdrawn, the manufacturer shall provide to~~
31 ~~the buyer of each new motor vehicle manufactured or~~
32 ~~distributed by the manufacturer, a notice in writing that~~
33 ~~a certified automobile warranty program is not available~~
34 ~~to arbitrate warranty disputes. The notice shall be in the~~
35 ~~form of an addendum to the warranty or owner's manual~~
36 ~~which accompanies the new motor vehicle.~~

37 (b) *Notwithstanding any other provision of law,*
38 *including, but not limited to, Section 9889.20, a violation*
39 *of this article by a manufacturer, manufacturer branch,*
40 *distributor, or distributor branch whose program is*

1 *certified pursuant to this article is grounds only for the*
2 *decertification of the program and is not grounds for*
3 *criminal prosecution of the manufacturer, manufacturer*
4 *branch, distributor, or distributor branch.*

5 SEC. 2. Section 1793.2 of the Civil Code is amended
6 to read:

7 1793.2. (a) Every manufacturer of consumer goods
8 sold in this state and for which the manufacturer has
9 made an express warranty shall:

10 (1) Maintain in this state sufficient service and repair
11 facilities reasonably close to all areas where its consumer
12 goods are sold to carry out the terms of such warranties
13 or designate and authorize in this state as service and
14 repair facilities independent repair or service facilities
15 reasonably close to all areas where its consumer goods are
16 sold to carry out the terms of such warranties.

17 As a means of complying with this paragraph, a
18 manufacturer may enter into warranty service contracts
19 with independent service and repair facilities. The
20 warranty service contracts may provide for a fixed
21 schedule of rates to be charged for warranty service or
22 warranty repair work, however, the rates fixed by such
23 contracts shall be in conformity with the requirements of
24 subdivision (c) of Section 1793.3. The rates established
25 pursuant to subdivision (c) of Section 1793.3, between the
26 manufacturer and the independent service and repair
27 facility, shall not preclude a good-faith discount which is
28 reasonably related to reduced credit and general
29 overhead cost factors arising from the manufacturer's
30 payment of warranty charges direct to the independent
31 service and repair facility. The warranty service contracts
32 authorized by this paragraph shall not be executed to
33 cover a period of time in excess of one year.

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

36 (b) Where service and repair facilities are maintained
37 in this state and service or repair of the goods is necessary
38 because they do not conform with the applicable express
39 warranties, service and repair shall be commenced
40 within a reasonable time by the manufacturer or its

1 representative in this state. Service and repair to a motor
2 vehicle shall be performed by an automotive repair
3 facility licensed by the Bureau of Automotive Repair
4 pursuant to the Automotive Repair Act, Chapter 20.3
5 (commencing with Section 9880) of Division 3 of the
6 Business and Professions Code. Unless the buyer agrees in
7 writing to the contrary, the goods shall be serviced or
8 repaired so as to conform to the applicable warranties
9 within 30 days. Delay caused by conditions beyond the
10 control of the manufacturer or his representatives shall
11 extend this 30-day requirement. Where delay arises,
12 conforming goods shall be tendered as soon as possible
13 following termination of the condition giving rise to the
14 delay.

15 (c) The buyer shall deliver nonconforming goods to
16 the manufacturer's service and repair facility within this
17 state, unless, due to reasons of size and weight, or method
18 of attachment, or method of installation, or nature of the
19 nonconformity, delivery cannot reasonably be
20 accomplished. If the buyer cannot return the
21 nonconforming goods for any of these reasons, he or she
22 shall notify the manufacturer or its nearest service and
23 repair facility within the state. Written notice of
24 nonconformity to the manufacturer or its service and
25 repair facility shall constitute return of the goods for
26 purposes of this section. Upon receipt of notice of
27 nonconformity, the manufacturer shall, at its option,
28 service or repair the goods at the buyer's residence, or
29 pick up the goods for service and repair, or arrange for
30 transporting the goods to its service and repair facility.
31 All reasonable costs of transporting the goods when a
32 buyer cannot return them for any of these reasons shall
33 be at the manufacturer's expense. The reasonable costs of
34 transporting nonconforming goods after delivery to the
35 service and repair facility until return of the goods to the
36 buyer shall be at the manufacturer's expense.

37 (d) (1) Except as provided in paragraph (2), if the
38 manufacturer or its representative in this state does not
39 service or repair the goods to conform to the applicable
40 express warranties after a reasonable number of

1 attempts, the manufacturer shall either replace the goods
2 or reimburse the buyer in an amount equal to the
3 purchase price paid by the buyer, less that amount
4 directly attributable to use by the buyer prior to the
5 discovery of the nonconformity.

6 (2) If the manufacturer or its representative in this
7 state is unable to service or repair a new motor vehicle,
8 as that term is defined in subparagraph (B) of paragraph
9 (4) of subdivision (e), to conform to the applicable
10 express warranties after a reasonable number of
11 attempts, the manufacturer shall either promptly replace
12 the new motor vehicle in accordance with subparagraph
13 (A) or promptly make restitution to the buyer in
14 accordance with subparagraph (B); provided, however,
15 that the buyer shall be free to elect restitution in lieu of
16 replacement and in no event shall the buyer be required
17 by the manufacturer to accept a replacement vehicle.

18 (A) In the case of replacement, the manufacturer shall
19 replace the buyer's vehicle with a new motor vehicle
20 substantially identical to the vehicle replaced. The
21 replacement vehicle shall be accompanied by all express
22 and implied warranties that normally accompany new
23 motor vehicles of that specific kind. The manufacturer
24 also shall pay for, or to, the buyer the amount of any sales
25 tax, license fees, registration fees, and other official fees
26 which the buyer is obligated to pay in connection with
27 the replacement, plus any incidental damages to which
28 the buyer is entitled under Section 1794, including, but
29 not limited to, reasonable repair, towing, and rental car
30 costs actually incurred by the buyer.

31 (B) In the case of restitution, the manufacturer shall
32 make restitution in an amount equal to the actual price
33 paid or payable by the buyer, including any charges for
34 transportation and manufacturer-installed options, but
35 excluding nonmanufacturer items installed by a dealer or
36 the buyer, and including any collateral charges such as
37 sales tax, license fees, registration fees, and other official
38 fees, plus any incidental damages to which the buyer is
39 entitled under Section 1794, including, but not limited to,
40 reasonable repair, towing, and rental car costs actually

1 incurred by the buyer.

2 (C) When the manufacturer replaces the new motor
3 vehicle pursuant to subparagraph (A), the manufacturer
4 may require the buyer to reimburse the manufacturer in
5 an amount directly attributable to use by the buyer of the
6 replaced vehicle prior to the time the buyer first
7 delivered the vehicle to the manufacturer or distributor,
8 or its authorized service and repair facility for correction
9 of the problem that gave rise to the nonconformity.
10 When restitution is made pursuant to subparagraph (B),
11 the amount to be paid by the manufacturer to the buyer
12 may be reduced by the manufacturer by that amount
13 directly attributable to use by the buyer prior to the time
14 the buyer first delivered the vehicle to the manufacturer
15 or distributor, or its authorized service and repair facility
16 for correction of the problem that gave rise to the
17 nonconformity. Nothing in this paragraph shall in any
18 way limit the rights or remedies available to the buyer
19 under any other law.

20 (e) (1) It shall be presumed that a reasonable number
21 of attempts have been made to conform a new motor
22 vehicle to the applicable express warranties if, within one
23 year from delivery to the buyer or 12,000 miles on the
24 odometer of the vehicle, whichever occurs first, either
25 (A) the same nonconformity has been subject to repair
26 four or more times by the manufacturer or its agents and
27 the buyer has at least once directly notified the
28 manufacturer of the need for the repair of the
29 nonconformity, or (B) the vehicle is out of service by
30 reason of repair of nonconformities by the manufacturer
31 or its agents for a cumulative total of more than 30
32 calendar days since delivery of the vehicle to the buyer.
33 The 30-day limit shall be extended only if repairs cannot
34 be performed due to conditions beyond the control of the
35 manufacturer or its agents. The buyer shall be required
36 to directly notify the manufacturer pursuant to
37 subparagraph (A) only if the manufacturer has clearly
38 and conspicuously disclosed to the buyer, with the
39 warranty or the owner's manual, the provisions of this
40 subdivision and that of subdivision (d), including the

1 requirement that the buyer must notify the
2 manufacturer directly pursuant to subparagraph (A).
3 This presumption shall be a rebuttable presumption
4 affecting the burden of proof, and it may be asserted by
5 the buyer in any civil action, small claims court action, or
6 other formal or informal proceeding.

7 (2) If a certified automobile warranty arbitration
8 program exists, and the buyer receives timely notification
9 in writing of the availability of the program with a
10 description of its operation and effect, the presumption
11 in paragraph (1) may not be asserted by the buyer until
12 after the buyer has initially resorted to the program as
13 required in paragraph (3). Notification of the availability
14 of the third party process is not timely if the buyer suffers
15 any prejudice resulting from any delay in giving the
16 notification. If a certified automobile warranty
17 arbitration program does not exist, or if the buyer is
18 dissatisfied with the program's decision, or if the
19 manufacturer or its agent neglects to promptly fulfill the
20 terms of the program's decision *after the decision is*
21 *accepted by the buyer*, the buyer may assert the
22 presumption provided in paragraph (1) in an action to
23 enforce the buyer's rights under subdivision (d). The
24 findings and decision of the program shall be admissible
25 in evidence in the action without further foundation. Any
26 period of limitation of actions under any federal or
27 California laws with respect to any person shall be
28 extended for a period equal to the number of days
29 between the date a complaint is filed with a certified
30 automobile warranty arbitration program and the date of
31 its decision or the date before which the manufacturer or
32 its agent is required by the decision to fulfill its terms *if*
33 *the decision is accepted by the buyer*, whichever occurs
34 later.

35 (3) For the purposes of subdivision (d) and this
36 subdivision the following terms have the following
37 meanings:

38 (A) "Nonconformity" means a nonconformity which
39 substantially impairs the use, value, or safety of the new
40 motor vehicle.

1 (B) "New motor vehicle" means a new motor vehicle
2 which is used or bought for use primarily for personal,
3 family, or household purposes. "New motor vehicle"
4 includes a dealer-owned vehicle and a "demonstrator" or
5 other motor vehicle sold with a manufacturer's new car
6 warranty, but does not include a motorcycle, a
7 motorhome, or a motor vehicle which is not registered
8 under the Vehicle Code because it is to be operated or
9 used exclusively off the highways.

10 (C) "*Certified automobile warranty arbitration*
11 *program*" means a program that has been certified by the
12 Bureau of Automotive Repair pursuant to Article 9.5
13 (commencing with Section 9889.22) of Chapter 20.3 of
14 Division 3 of the Business and Professions Code.

15 SEC. 3. Section 1793.25 is added to the Civil Code, to
16 read:

17 1793.25. (a) Notwithstanding Part 1 (commencing
18 with Section 6001) of Division 2 of the Revenue and
19 Taxation Code, the State Board of Equalization shall
20 reimburse the manufacturer of a new motor vehicle for
21 an amount equal to the sales tax which the manufacturer
22 includes in making restitution to the buyer pursuant to
23 subparagraph (B) of paragraph (2) of subdivision (d) of
24 Section 1793.2, when satisfactory proof is provided that
25 the retailer of the motor vehicle for which the
26 manufacturer is making restitution has reported and paid
27 the sales tax on the gross receipts from the sale of that
28 motor vehicle. The State Board of Equalization may
29 adopt rules and regulations that it deems necessary or
30 appropriate to carry out, facilitate compliance with, or
31 prevent circumvention or evasion of, this section.

32 (b) Nothing in this section shall in any way change the
33 application of the sales and use tax to the gross receipts
34 and the sales price from the sale, and the storage, use, or
35 other consumption, in this state of tangible personal
36 property pursuant to Part 1 (commencing with Section
37 6001) of Division 2 of the Revenue and Taxation Code.

38 (c) The manufacturer's claim for reimbursement and
39 the board's approval or denial of the claim shall be subject
40 to the provisions of Article 1 (commencing with Section

6901) of Chapter 7 of Part 1 of Division 2 of the Revenue and Taxation Code, except Sections 6902.1, 6903, 6907, and 6908, insofar as those provisions are not inconsistent with this section.

SEC. 4. Section 1704.41 of the Civil Code is amended to read:

1704.41. No service contract covering any motor vehicle purchased for use in this state may be offered for sale or sold unless all of the following elements exist:

(a) Service and repair to a motor vehicle must be performed by an automotive repair facility licensed by the Bureau of Automotive Repair pursuant to the Automotive Repair Act, Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code.

(b) The contract shall contain the disclosures specified in Section 1704.4 and shall disclose in the manner described in that section the buyer's cancellation and refund rights provided by this section.

(c) The contract shall be available for inspection by the buyer prior to purchase and either the contract, or a brochure which specifically describes the terms, conditions, and exclusions of the contract; and the provisions of this section relating to contract delivery, cancellation, and refund, shall be delivered to the buyer at or before the time of purchase of the contract. Within 60 days after the date of purchase, the contract itself shall be delivered to the buyer.

(d) The contract shall be cancellable by the purchaser under the following conditions:

(1) Unless the contract provides for a longer period; within the first 60 days after receipt of the contract; or within the first 30 days after receipt of the contract with respect to a used motor vehicle without manufacturer warranties, the full amount paid shall be refunded by the seller to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract; and if no claims have been made against the contract. If a claim has been made against the contract within the first 60 days after receipt of the contract; or

17 within the first 30 days after receipt of the contract with
2 respect to a used motor vehicle without manufacturer
3 warranties; a pro rata refund; based on either elapsed
4 time or mileage; at the seller's option as indicated in the
5 contract; shall be made by the seller to the purchaser if
6 the purchaser provides a written notice of cancellation to
7 the person specified in the contract.

8 (2) Unless the contract provides for a longer period for
9 obtaining a full refund; after the first 60 days after receipt
10 of the contract; or after the first 30 days after receipt of
11 the contract with respect to a used motor vehicle without
12 manufacturer warranties; a pro rata refund; based on
13 either elapsed time or mileage; at the seller's option as
14 indicated in the contract; shall be made by the seller to
15 the purchaser if the purchaser provides a written notice
16 of cancellation to the person specified in the contract. In
17 addition; the seller may assess a cancellation or
18 administrative fee; not to exceed twenty-five dollars
19 ~~(\$25).~~

20 (3) If the contract was financed with a vehicle
21 purchase; the seller may make the refund payable to the
22 purchaser; the lender of record; or both.

23 SEC. 5.

24 SEC. 4. Chapter 2.1 (commencing with Section
25 1796.6) is added to Title 1.7 of Part 4 of Division 3 of the
26 Civil Code, to read:

27

28 CHAPTER 2.1. AUTOMOBILE WARRANTY
29 ARBITRATION
30

31 1796.6. As used in this chapter, the following
32 definitions apply:

33 (a) "Manufacturer" means any individual,
34 partnership, corporation, association, or other legal entity
35 that manufactures, assembles, produces, or distributes
36 new motor vehicles. The term includes a manufacturer,
37 manufacturer branch, distributor, distributor branch, or
38 representative subject to Article 1 (commencing with
39 Section 11700) of Chapter 4 of Division 5 of the Vehicle
40 Code.

(b) "Motor vehicle" means a ~~motor vehicle as defined in subdivision (e) of Section 9880.1 of the Business and Professions Code.~~ *passenger vehicle or a commercial vehicle with a gross vehicle weight of less than 10,000 pounds, required to be registered with the Department of Motor Vehicles.*

(c) "Certified automobile warranty arbitration program" means a program that has been certified by the Bureau of Automotive Repair pursuant to Article 9.5 (commencing with Section 9889.22) of Chapter 20.3 of Division 3 of the Business and Professions Code.

~~1796.7. Every manufacturer of new motor vehicles whose volume of sales and leases in this state exceeds 1,000 new motor vehicles during a calendar year shall, with respect to new motor vehicles sold or leased during the next succeeding calendar year, maintain and operate; reasonably close to all areas within this state where new motor vehicles of that manufacturer are sold or leased; a certified automobile warranty arbitration program; and shall continue to maintain and operate the program until the expiration of the terms of the express written warranties on all of the new motor vehicles of that manufacturer sold or leased in this state during that calendar year.~~

~~1796.8.~~

~~1796.7.~~ On or before June 30 of each calendar year, each manufacturer of a new motor vehicle sold, leased, or otherwise distributed by or for the manufacturer in this state during the preceding calendar year shall report to the New Motor Vehicle Board, on a form prescribed by the board, the total number of new motor vehicles of that manufacturer sold or leased in this state during the preceding calendar year, together with a breakdown by make, model, and model year, and any other information that the board may require, and shall accompany that report with the fees described in subdivision (b) of Section 11723 of the Vehicle Code.

~~SEC. 6.~~

~~SEC. 5.~~ Section 7102 of the Revenue and Taxation Code, as amended by Chapter 41 of the Statutes of 1986,

1 is amended to read:

2 7102. The money in the fund shall, upon order of the
3 Controller, be drawn therefrom for refunds under this
4 part, and pursuant to Section 1793.25 of the Civil Code, or
5 be transferred in the following manner:

6 (a) (1) All revenues, less refunds, derived under this
7 part at the $4\frac{3}{4}$ percent rate, including the imposition of
8 sales and use taxes with respect to the sale, storage, use,
9 or other consumption of motor vehicle fuel which would
10 not have been received if the sales and use tax rate had
11 been 5 percent and if motor vehicle fuel, as defined for
12 purposes of the Motor Vehicle Fuel License Tax Law
13 (Part 2 (commencing with Section 7301)), had been
14 exempt from sales and use taxes, shall be estimated by the
15 State Board of Equalization, with the concurrence of the
16 Department of Finance shall be transferred during each
17 fiscal year to the Transportation Planning and
18 Development Account in the State Transportation Fund
19 for appropriation pursuant to Section 99312 of the Public
20 Utilities Code.

21 (2) If the amount transferred pursuant to paragraph
22 (1) is less than one hundred ten million dollars
23 (\$110,000,000) in any fiscal year, an additional amount
24 equal to the difference between one hundred ten million
25 dollars (\$110,000,000) and the amount so transferred shall
26 be transferred, to the extent funds are available, as
27 follows:

28 (A) For the 1986-87 fiscal year, from the General
29 Fund.

30 (B) For the 1987-88 and each subsequent fiscal year,
31 from the state revenues due to the imposition of sales and
32 use taxes on fuel, as defined for purposes of the Use Fuel
33 Tax Law (Part 3 (commencing with Section 8601)).

34 (b) The balance shall be transferred to the General
35 Fund.

36 (c) The estimate required by subdivision (a) shall be
37 based on taxable transactions occurring during a calendar
38 year, and the transfers required by subdivision (a) shall
39 be made during the fiscal year that commences during
40 that same calendar year. Transfers required by

1 paragraphs (1) and (2) of subdivision (a) shall be made
2 quarterly.

3 ~~SEC. 7.~~

4 **SEC. 6.** Section 3050 of the Vehicle Code is amended
5 to read:

6 3050. The board shall do all of the following:

7 (a) Adopt rules and regulations in accordance with
8 Chapter 3.5 (commencing with Section 11340) of Part 1
9 of Division 3 of Title 2 of the Government Code
10 governing such matters as are specifically committed to
11 its jurisdiction.

12 (b) Hear and consider, within the limitations and in
13 accordance with the procedure provided, an appeal
14 presented by an applicant for, or holder of, a license as a
15 new motor vehicle dealer, manufacturer, manufacturer
16 branch, distributor, distributor branch, or representative
17 when the applicant or licensee submits an appeal
18 provided for in this chapter from a decision arising out of
19 the department.

20 (c) Consider any matter concerning the activities or
21 practices of any person applying for or holding a license
22 as a new motor vehicle dealer, manufacturer,
23 manufacturer branch, distributor, distributor branch, or
24 representative pursuant to Chapter 4 (commencing with
25 Section 11700) of Division 5 submitted by any person. A
26 member of the board who is a new motor vehicle dealer
27 may not participate in, hear, comment, advise other
28 members upon, or decide any matter considered by the
29 board pursuant to this subdivision that involves a dispute
30 between a franchisee and franchisor. After such
31 consideration, the board may do any one or any
32 combination of the following:

33 (1) Direct the department to conduct investigation of
34 matters that the board deems reasonable, and make a
35 written report on the results of the investigation to the
36 board within the time specified by the board.

37 (2) Undertake to mediate, arbitrate, or otherwise
38 resolve any honest difference of opinion or viewpoint
39 existing between any member of the public and any new
40 motor vehicle dealer, manufacturer, manufacturer

1 branch, distributor branch, or representative.

2 (3) Order the department to exercise any and all
3 authority or power that the department may have with
4 respect to the issuance, renewal, refusal to renew,
5 suspension, or revocation of the license of any new motor
6 vehicle dealer, manufacturer, manufacturer branch,
7 distributor, distributor branch, or representative as such
8 license is required under Chapter 4 (commencing with
9 Section 11700) of Division 5.

10 (d) Hear and consider, within the limitations and in
11 accordance with the procedure provided, a protest
12 presented by a franchisee pursuant to Section 3060, 3062,
13 3064, or 3065. A member of the board who is a new motor
14 vehicle dealer may not participate in, hear, comment,
15 advise other members upon, or decide, any matter
16 involving a protest filed pursuant to Article 4
17 (commencing with Section 3060).

18 **SEC. 8.**

19 **SEC. 7.** Section 11723 of the Vehicle Code is amended
20 to read:

21 11723. (a) The board may require that fees shall be
22 paid to the department for the issuance or renewal of a
23 license to do business as a new motor vehicle dealer,
24 dealer branch, manufacturer, manufacturer branch,
25 distributor, distributor branch, or representative. The
26 fees shall be to reimburse the department for costs
27 incurred in licensing those dealers, manufacturers,
28 distributors, branches, and representatives and for
29 related administrative costs incurred on behalf of the
30 board. The board may also require that an additional fee
31 be paid to the department when the licensee has failed
32 to pay the fee authorized by Section 3016 prior to the
33 expiration of its occupational license and special plates
34 and the licensee utilizes the 30-day late renewal period
35 authorized by subdivision (c) of Section 11717.

36 (b) The board shall administer the collection of fees to
37 be paid to the department ~~pursuant to subdivision (a)~~, in
38 accordance with this subdivision for the purpose of fully
39 funding the administration of the Automobile Artitation
40 Warranty and Certification Act, Article 9.5 (commencing

1 with Section 9889.22) of Chapter 20.3 of Division 3 of the
2 Business and Professions Code, according to the following
3 procedure:

4 (1) The fees collected pursuant to this subdivision
5 shall be paid into the State Treasury to the credit of the
6 Automobile Warranty and Arbitration Program
7 Certification Fund, which is hereby created. The fees
8 shall be available, when appropriated, exclusively to fund
9 the Automobile Warranty and Arbitration Certification
10 Program. If at the conclusion of any fiscal year the
11 amount of the fees collected exceeds the amount of the
12 expenditures for this purpose during that fiscal year, the
13 surplus shall be carried over into the succeeding fiscal
14 year.

15 (2) Every applicant for a license as a manufacturer,
16 manufacturer branch, distributor, distributor branch, and
17 representative, and every applicant for the renewal of a
18 license as a manufacturer, manufacturer branch,
19 distributor, distributor branch, and representative, shall
20 accompany the application with a statement of the
21 number of new motor vehicles sold, leased, or otherwise
22 distributed by or for the applicant in this state during the
23 preceding calendar year, including both a total of the
24 number of vehicles and a breakdown by make, model,
25 and model year and any other information that the board
26 may require and shall pay to the department, for each
27 issuance or renewal of the license, an amount prescribed
28 by the board, but not to exceed ~~two dollars (\$2)~~ one
29 dollar (\$1) for each new motor vehicle sold, leased, or
30 distributed by or for the applicant in this state during the
31 fiscal year ending on the preceding June 30. No more
32 than ~~two dollars (\$2)~~ one dollar (\$1) shall be charged,
33 collected, or received from any one or more licensees
34 pursuant to this subdivision with respect to the same
35 motor vehicle.

36 (3) On or before January 1 of each calendar year, the
37 Bureau of Automotive Repair shall determine the dollar
38 amount, not to exceed ~~two dollars (\$2)~~ one dollar (\$1)
39 per motor vehicle, which shall be collected and received
40 by the department during the following calendar year,

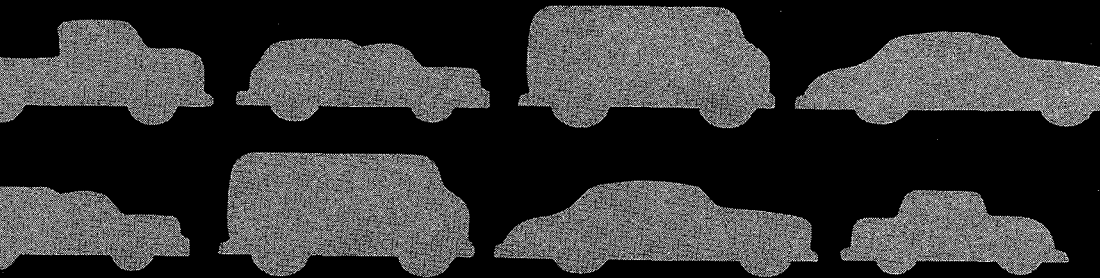
1 based on the number of sales, leases, and other
2 dispositions of new motor vehicles which have taken
3 place during the preceding calendar year, in order to
4 fully fund the Automobile Warranty and Arbitration
5 Certification Program during the following fiscal year.
6 The Bureau of Automotive Repair shall notify the board
7 of the dollar amount per motor vehicle that the board
8 shall use in calculating the amounts of the fees to be
9 collected from applicants pursuant to this subdivision.

10 (4) The board may adopt regulations to implement
11 this subdivision.

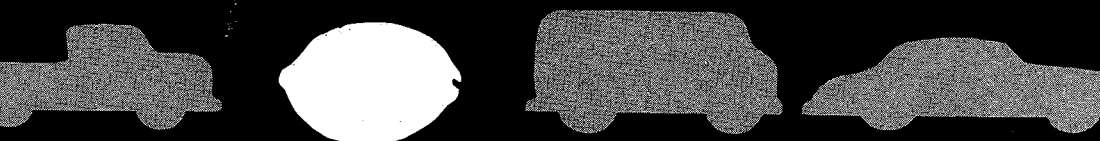
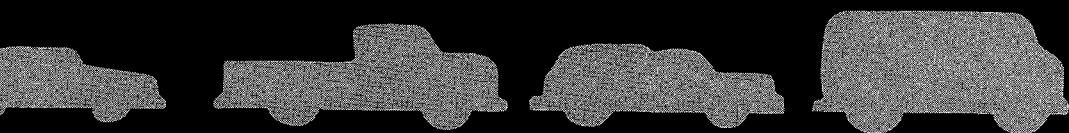
12 (c) This section shall not apply to dealers,
13 manufacturers, distributors, or representatives of
14 vehicles not subject to registration under this code,
15 except dealers, manufacturers, manufacturer branches,
16 distributors, distributor branches, or representatives of
17 off-highway motorcycles, as defined in Section 436.

18 ~~SEC. 9.~~

19 *SEC. 8.* The program described in Article 9.5
20 (commencing with Section 9889.22) of Chapter 20.3 of
21 Division 3 of the Business and Professions Code shall
22 commence ~~with the fiscal year beginning July~~ January 1,
23 1988, if and to the extent that funds have been
24 appropriated. However, the bureau may begin to plan
25 and prepare to carry out the program by the adoption of
26 regulations, the promulgation of forms and other
27 activities from and after the effective date of this act.



Lemon-Aid for New Car Buyers



STATE OF CALIFORNIA
DEPARTMENT OF
**Consumer
Affairs**



George
Deukmejian,
G **852**

In California, a new car which is leased or sold with a written warranty may be returned for a refund or a replacement if it cannot be repaired. The purpose of *Lemon-Aid for New Car Buyers* is to explain how and under what circumstances California's New Car Lemon Law applies.

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What Is the Lemon Law?	2
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Service and Repair Record	14
Contact Record Sheet	16
Check List for New Car Buyers and Lessees	17

This booklet is free by sending a self-addressed, stamped (\$.39), legal-size envelope to *Lemon-Aid for New Car Buyers*, Department of Consumer Affairs, P.O. Box 310, Sacramento, CA 95802.

A free list of other consumer educational materials prepared by the Department of Consumer Affairs is also available upon request.

Lemon-Aid for New Car Buyers

SHIRLEY R. CHILTON
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MARIE SHIBUYA-SNELL
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Editor

The Department of Consumer Affairs wishes to thank the many individuals who provided their technical expertise to this booklet as contributors and reviewers. Special thanks are extended to Melissa Zermeño for her work on this booklet.

WHAT IS THE LEMON LAW?

California has a warranty law, the Song-Beverly Consumer Warranty Act, which applies to all consumer products that either are leased or sold with written warranties. During the time a written warranty is in effect, the manufacturer is responsible for making any necessary repairs, and is required to *refund* the price or *replace* the product if it is fundamentally defective—that is if it cannot be repaired after “a reasonable number of attempts.”

In 1982, the California Legislature amended the Song-Beverly Warranty Act to clarify what is meant by a reasonable number of attempts to repair a new motor vehicle. This amendment is known as California's “New Car Lemon Law.”

The Lemon Law applies *only* to new cars, vans or trucks *sold* in California on or after January 1, 1983, and to new vehicles *leased* after January 1, 1985 for terms exceeding four months. A vehicle must be leased or purchased primarily for personal, family or household use. The law does *NOT* apply to commercial or fleet vehicles, motorcycles, motorhomes or off-road vehicles.

What Is a Lemon?

Under the Lemon Law, you are generally entitled to a refund or replacement vehicle *if*, within the first year or 12,000 miles (whichever comes first):

- Four or more repair attempts are made on the same problem,
- or
- The car is out of service for a total of more than 30 days (not necessarily all at one time) while being repaired for any number of problems.

In addition, the Lemon Law requires that:

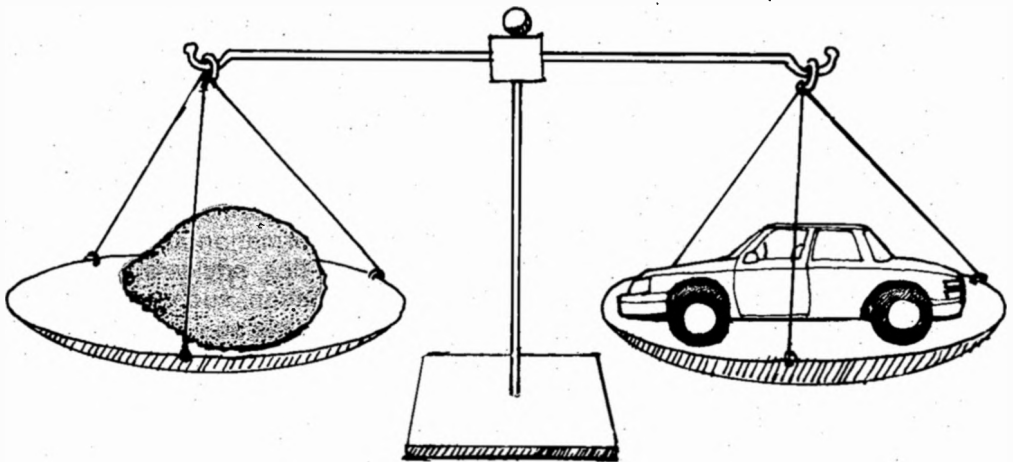
1. The problems you are having are covered by the warranty and substantially reduce the use, value or safety of the car.
2. You notify the *manufacturer* directly about the problems you are having with your car if you are required by the manufacturer to do so (see page 6).
3. A complaint about the problem you are having with your car is submitted to a “qualified” third party dispute resolution program if one exists (see page 6).

The law creates what is known in legal terminology as a presumption; the Lemon Law presumes that you are entitled to a refund or a replacement *if* the manufacturer or its dealer has made a certain number of unsuccessful attempts to repair your car (four or more repair attempts, or more than 30 days out of service).

However, there is an exception (or in legal terminology, the presumption is rebuttable). If the manufacturer can prove that it has not had a reasonable opportunity to repair your car, you may not be entitled to a refund or a replacement vehicle. For example, if the manufacturer can prove that the number of repair attempts was not unreasonable because you did not follow the terms of the warranty or some event (such as a labor strike) prevented timely repairs, the Lemon Law may not help you. In addition, if you abused the car or damaged it in an accident, the Lemon Law will not apply.

Dangerously defective cars may be returned even before the Lemon Law's standards are met. If the problem involves a violation of a vehicle equipment safety standard, a reasonable number of repair attempts may be as few as two, or even one. If you have a problem that involves the safety of your car (such as brake failure or a steering wheel that locks) that is not promptly corrected by the dealer or manufacturer, consider consulting a lawyer for advice.

If you question the safety of your car, contact the National Highway Traffic Safety Administration or the Center for Auto Safety for assistance (see page 9).



YOUR RESPONSIBILITIES

Whether you have purchased or leased your new vehicle, the vehicle is protected by a warranty. To receive the benefits of this warranty, you should service and maintain the car by the terms of the warranty and owner's manual which come with the vehicle. Read your warranty and owner's manual carefully.

The Written Warranty

The written warranty describes the risks and responsibilities the manufacturer assumes if something goes wrong with the car. It tells you if, when and for how long the manufacturer will pay for repairs. It also lists the parts, components, characteristics and services that are covered, and those that are not.

The warranty also lists the responsibilities you assume as the car's owner or lessee. If you want to take advantage of the Lemon Law's protections, you should service your car according to the manufacturer's recommended maintenance schedule. Check your warranty and owner's manual to find out which repairs and service must be done by the dealer. Your warranty might be invalidated by do-it-yourself repairs and service. Having the dealer do this work and keeping copies of the repair records will help prove that you have maintained the car as required by the warranty.

All warranties have some limitations. The manufacturer may not be responsible for repairs caused by your failure to use, maintain or service your car properly. For example, if you do not add oil when it is needed and the engine is damaged, your warranty probably will not cover the repair costs.

If the manufacturer or dealer claims that a problem results from misuse or neglect, but you do not agree, it may be helpful to seek the unbiased opinion of an auto diagnostic center or a competent mechanic.

The Owner's Manual

Don't overlook your owner's manual. It suggests how some problems can be corrected and provides valuable information about the care of your car. Most manuals also give driving tips, advice about the car's special features and other important information, such as the recommended tire pressure and where to find the vehicle's identification number.

Getting Your Car Repaired

If you have a problem with your car, explain the problem to the dealer as completely as you can (see page 5).

If the first repair attempt is not successful, notify the dealer immediately and check the warranty. You may be required to notify the manufacturer directly of the need for further repairs. Information about how to contact the manufacturer's district or zone office can be found in your owner's manual, the warranty, or by asking the dealer.

RECORDS YOU SHOULD KEEP

Keep records of *all* service and repairs from the day you buy or lease your car. You may realize only after a period of time and repeated repairs that your car is a "lemon." This is the wrong time to begin record keeping. Carefully kept records can help show that you have cared for your car as recommended by the warranty and owner's manual.

Two forms are provided in this booklet to help you to keep an accurate and complete repair history of your car—one is for repairs, the other is to record contacts.

1. RECORD ALL REPAIRS AND SERVICE

Keep a record of the date and general nature of *all* repairs and adjustments made to your car, whether performed under warranty or not. Also record maintenance services.

When you bring your car in for repairs, a service writer or manager will give you a written estimate (repair order) before any work is begun. Make sure that all the car's problems are described on the repair order before you sign it.

Give symptoms—*don't diagnose*. For example, if your car is requiring more than the usual amount of oil and you suspect that the rings are worn out, make certain that the repair order says "determine cause of excessive oil consumption," not "do a ring job."

It is a good idea to make a list of your car's problems. Give a copy of this list to the service writer. (Remember to keep a copy for yourself.)

After the work is completed, you will receive an invoice. The invoice states which repairs or services were done, what parts were replaced, and the cost, if any. Make sure that the mileage and dates your car goes in and comes out are written on the invoice. If any of this information is missing, insist that it be added.

Remember, you are entitled to a copy of the repair order when you bring your car in for service, and an invoice when the work is completed. This is your right, regardless of whether or not you are charged for the work performed.

Keep a copy of both the repair order and the final invoice for your records.

2. RECORD ALL CONTACTS

Use the contact record sheet on page 16 of this booklet to keep notes about telephone, letter or personal discussions you have had regarding your car's problems.

After an important conversation, take a minute to write a short letter confirming what was said. Send the letter by certified mail (return receipt requested). Keep a copy of the letter and the mail receipt. This letter may later help you prove what was said, and may also help avoid misunderstandings.

IF REPEATED REPAIR ATTEMPTS FAIL, NOW WHAT?

If repeated attempts to repair your car have failed, read your warranty and owner's manual again. Make sure that you have followed the recommended repair and maintenance procedures. If you have financed the purchase of your car, keep the financing agency informed of the problems and your progress in resolving them. If you have leased your car, also keep the leasing agency informed of the problems and your progress in resolving them.

Work with the Dealer and Manufacturer

If you haven't notified the manufacturer about the problems you are having with your car, do it now. Send letters describing the problems and requesting needed repairs to both the manufacturer and dealer. Include copies of all repair orders and invoices. (Before you are entitled to a refund or replacement under the Lemon Law, you may be required to notify the manufacturer directly at least once that further repairs are needed—check the warranty and any other papers you were given when you received the car.)

You may want to give the dealer and manufacturer another opportunity to honor the warranty and repair the car.

If at any point you have questions or desire additional help, contact the Department of Motor Vehicles, the New Motor Vehicle Board or another agency for assistance (see page 8). The Department of Motor Vehicles licenses dealers and manufacturers and will investigate written complaints, and the New Motor Vehicle Board mediates complaints about new cars.

Third Party Dispute Resolution Programs

Third party dispute resolution programs are arbitration panels set up to resolve difficult car repair problems and avoid lawsuits. In fact, before you can use the Lemon Law in court, you are required to take your complaint to one of these arbitration programs if:

1. You are notified by the manufacturer *in writing* that such a program is available (this information comes in or with the warranty) , and
2. The program is "qualified." To be qualified the program must comply with Federal Trade Commission (FTC) guidelines and additional standards required by the Lemon Law. The FTC rules require that a qualified arbitration program be operated in a fair and impartial manner.

You will not have to pay a fee to use the arbitration program. Usually, you submit your complaint in writing to the program with copies of your records. If the information you give conflicts with that given by the manufacturer, the arbitrators must give you a chance to submit additional information and explain your side of the story.

Ask for a copy of the arbitration program's bylaws so that you will understand the process. Usually your case must be decided within 40 days after the time your complaint is received. You *may* accept or reject the program's decision. If you accept, the manufacturer must accept the decision and has 30 days to comply. There is no appeal process for the manufacturer.

If you do not agree with the arbitration program's decision, you can reject it and go to court to assert your right to a replacement, refund or other relief. You also can go to court if you accept the decision and the manufacturer does not promptly comply with its terms. The time limit on your right to file a lawsuit is extended while your case is involved in the arbitration procedure. If you sue, the judge may consider the program's decision in deciding your case.

You are *required* to use an arbitration program only if you want to use the Lemon Law's standard of what is "a reasonable number of repair attempts" (four or more repairs, or more than 30 days out of service) *and* the arbitration program complies with FTC and Lemon Law requirements. Not all programs offered by manufacturers comply with these requirements. To find out if an arbitration program is qualified, ask the manufacturer or the program.

If a qualified arbitration program is not available, you may choose to use a nonqualifying program. Such a program may be useful as an alternative to costly and lengthy court action. Be careful, these programs differ greatly and may not offer the same safeguards as a qualified arbitration program. For some you submit your case in writing, for others you present your case in person. Some programs may make decisions that are binding on you (this means you normally cannot appeal the decision, even in court); other programs may make decisions that are not binding on either party. Get a copy of the program's bylaws and be sure to evaluate all of your options before turning your problem over to one of these programs.



WHERE TO FIND HELP

Always follow the repair procedures given in your warranty and owner's manual—these documents must contain the names, addresses and telephone numbers of persons to contact, and instructions to follow to obtain service.

If you have followed these procedures and still have a problem, contact the following organizations for information or assistance.

Complaint Area or Service Needed	Organization to Contact
Problem with the dealer, failure to honor the warranty, the quality of repairs performed under warranty, file a complaint, advice about asserting Lemon Law rights:	Department of Motor Vehicles (DMV) Division of Registration and Investigative Services P.O. Box 12689 Sacramento, CA 95852 (or call the DMV office nearest the dealer's location) or New Motor Vehicle Board 1507 21st Street, Suite 330 Sacramento, CA 95814 (916) 445-1888
Information and advice about filing a complaint:	Local district attorney or Local consumer agency or private consumer organization (check the yellow and white pages of your telephone directory under "consumer") or Department of Consumer Affairs Complaint Assistance Unit 1020 N Street, Room 592 Sacramento, CA 95814 (916) 445-0660 (10 a.m. to 3 p.m., weekdays)

Repair order or invoice problems:

Bureau of Automotive Repair
3116 Bradshaw Road
Sacramento, CA 95827
(800) 952-5210 (toll-free)
(or check the telephone listing for
the bureau's office in your area)

Fraud or other questionable
conduct:

Local district attorney
or
Office of the Attorney General
Public Inquiry Unit
1515 K Street
Sacramento, CA 95814
(916) 322-3360
(800) 952-5225 (toll-free)

Safety problems and recall
information:

National Highway Traffic Safety
Administration
400 Seventh Street, S.W.
Washington, D.C. 20590
(800) 424-9393 (toll-free)
or
Center for Auto Safety
2001 S Street, N.W., Suite 410
Washington, D.C. 20009
(202) 328-7700

California lawyers who
specialize in warranty law:

Center for Auto Safety (see above)
or
Local county bar association's
lawyer referral service

Information about pending class
action lawsuits:

Center for Auto Safety (see above)

THE LEMON LAW

Questions and Answers

Q Does the Lemon Law apply to new cars purchased in 1982 or earlier?

A No. The Lemon Law's provisions do not apply to cars purchased in 1982 or earlier. However, other provisions of the Song-Beverly Act regarding refund or replacement do apply to all cars sold with written warranties. In addition, the courts may consider the *principles* of the Lemon Law in deciding whether or not you have a right to a refund or replacement.

Q Does the Lemon Law apply to used cars?

A No, but if a used car is sold or leased with a written warranty, other provisions of the Song-Beverly Act apply. If your warranty-covered used car isn't repaired after a reasonable number of attempts, you may have a right to a refund or replacement from the used car dealer or other warrantor. Even if there is no written warranty, a used car purchaser may be helped by the California Commercial Code and other laws. (See page 8 for organizations to contact for more information.)

Q Does the Lemon Law apply to leased vehicles?

A Yes, but only if the vehicle was leased after January 1, 1985, primarily for personal or family use, and for a term exceeding four months. The obligations of the manufacturer and dealer are substantially the same in both sales and leases.

Q If the manufacturer has failed to fix a major defect after four repair attempts, am I guaranteed a refund or replacement?

A No. The manufacturer has the right to show that four repair attempts were not unreasonable. In addition, if you have abused your car, failed to service your car as recommended, or did not give the manufacturer a reasonable opportunity to repair your car, you may lose your right to a refund or replacement under the provisions of the Lemon Law. However, it is the manufacturer that must prove its claims are valid. This is when accurate record keeping can be invaluable to you.

Q If my car's only defects are ones that do not affect its use, value or safety substantially, am I still entitled to a replacement or refund?

A No, but if a minor defect is covered by your warranty, you are entitled to have it repaired. If the manufacturer or its dealer cannot repair it, you can have your car repaired elsewhere and then file suit in small claims court to recover reasonable repair costs from the manufacturer. All new and used cars sold by a dealer in California are covered by an *implied (unwritten) warranty* created by state law that the vehicle conforms with all applicable equipment and safety standards.

Q Do I have to notify the manufacturer when I take my car in for repairs?

A The warranty and other papers you received when you bought or leased the car will tell you whom you must notify when your car needs repair. This may include the manufacturer. Any time a repair attempt is unsuccessful, be sure to notify the dealer immediately. You also should notify the manufacturer's nearest district office about any major or unresolved problem with your new car. You also may check with the National Highway Traffic Safety Administration or the Center for Auto Safety to see if your car has been recalled (see page 9).

Q When I take my car in for repairs, will the warranty coverage be extended by the length of time my car is in the shop?

A Yes, your warranty and the Lemon Law's protections are extended to include the period from the date when the car is delivered to the dealer through the date when the car is ready to be picked up.

Q If a new problem is discovered after the first year or 12,000 miles, will the Lemon Law be of help?

A No. However, your car's written warranty may specify coverage that is greater than one year or 12,000 miles. If so, while the warranty is in effect, the Song-Beverly Act will give you the right to a replacement or refund if repairs are not made after a reasonable number of attempts.

Q What can I do if I believe I am entitled to a refund or replacement under the Lemon Law but the manufacturer refuses to provide either one?

A A manufacturer will be reluctant to provide a replacement or price refund voluntarily until it is convinced of its legal obligation to do so. Instead, most manufacturers will want to continue trying to repair your car. However, if you legally are entitled to a refund or replacement under the Lemon Law and the manufacturer or its dealer refuses to honor your request, the manufacturer risks paying the penalty for a "willful" (or intentional) violation of the Song-Beverly Warranty Act. Consult a lawyer—warranty law is complicated. If the court determines that the manufacturer is guilty of a willful violation of the Song-Beverly Act, it can award you up to three times your actual losses, reasonable attorney's fees and court costs.

Q If my car can't be repaired after a "reasonable number of attempts," do I need to continue my payments?

A You *may* have a right to withhold payments—it depends on the specifics of your case. Unless your credit contract has specific terms that permit you to withhold payments, you risk having the car repossessed (which may also damage your credit rating). See a lawyer before you stop making payments.

Q If I'm entitled to a refund, will I receive the full purchase price?

A Probably not. A deduction may be made for the value of the use you got from your car before the defect was discovered. The date and mileage when the defect was first noticed and reported are used to determine the end of the useful life of your car. The amount deducted is usually the result of negotiations and compromise between you and the manufacturer. While there is no hard and fast rule for calculating the amount of this deduction, it is not appropriate for you to be charged commercial rental car rates. Again, carefully kept records that include mileage are a real help.

Q What do I need to know about filing a lawsuit for a replacement or refund of my new car?

A You need to consult a lawyer. Filing a lawsuit for a refund or replacement of a car you think is a lemon involves a number of complicated legal steps. Often the lawsuit must be filed within a specific period of time. So, if you think you may need to go to court, don't delay. Of course, this will cost you money—unless the lawyer is willing to represent you on the basis that the lawyer will be paid by the manufacturer or dealer if you win the lawsuit.

GLOSSARY

Calendar Day—includes weekends and holidays. A car left with the dealer on Friday morning and ready to be picked up Monday afternoon has been out of service for four calendar days. A 30-minute wait for an adjustment probably won't count as one day. However, an actual loss of use of the car for more than half a day because it has been necessary to leave the car with the dealer for repairs probably will count as one day.

Dealer—an authorized sales and repair agent for an automobile manufacturer.

District or Zone Office—the manufacturer's regional office. For information on how to contact it, see your owner's manual or warranty, or ask a dealer.

Invoice—an itemized statement given to a customer when repair work is finished. An invoice lists all labor performed, parts replaced or repaired, and any charges.

Leased Vehicles—since January 1, 1985, new vehicles leased primarily for personal, family or household purposes for a term exceeding four months are protected by the Song-Beverly Consumer Warranty Act (including the New Car Lemon Law). *California Civil Code Section 1795.4.*

Lemon—a new car that has not been repaired after a reasonable number of repair attempts.

Lemon Law—defines when a manufacturer has had a reasonable opportunity to repair a new car that does not operate as it should, and entitles the buyer to a refund or replacement of the car. *California Civil Code Section 1793.2(d) and (e)*.

Maintenance Schedule—the regular service and adjustments which need to be made to new cars. Most warranties recommend that the dealer performs this maintenance during the warranty period.

Manufacturer—the company that built or produced the car.

Owner's Manual—a booklet that comes with a new car. It explains how to operate and maintain the vehicle.

Presumption—a legal term meaning that something is assumed to be true if something else is proven. For example, the Lemon Law presumes a car is a "lemon" if the manufacturer has made four or more attempts to repair it and the car is still not working properly. This is true unless the manufacturer can prove that four was really not an excessive number of repair attempts under the circumstances. *California Civil Code Section 1793.2(e)*.

Reasonable Number of Attempts—as defined by the Lemon Law, a reasonable number of attempts have been made when the dealer/manufacturer has tried four separate times to fix the same problem or when the car has been out of service for a total of 30 days to repair one or more problems, where the problems substantially reduce the car's use, value or safety (see page 2).

Refund—the money returned to the buyer of a car that has not been repaired after repeated attempts. Usually the refund is the purchase price minus a deduction for the use of the car before the problem was discovered.

Service Writer—the person in the dealer's repair and service department who writes up the repair order.

Song-Beverly Consumer Warranty Act—a California law that defines the rights and duties of consumers who purchase or lease products with warranties. This law requires a warrantor to begin repairs promptly and complete them within 30 days, and gives a buyer or lessee the right to a refund or replacement if a product covered by warranty cannot be repaired by a manufacturer after a reasonable number of attempts. *California Civil Code Sections 1790-1795.7*.

Third Party Dispute Resolution Program—an arbitration panel established by an auto manufacturer to resolve warranty disputes. Such a program sometimes is called an informal dispute settlement process or mechanism, and is designed to settle disputes without having to go to court (see page 6). *California Civil Code Section 1793.2(e)(3)*.

Warranty—a contract that establishes both a buyer's and manufacturer's responsibility for a product.

Service and Repair Record

[illegible]

[illegible]

Contact Record

[illegible]

CHECK LIST FOR NEW CAR OWNERS AND LESSEES

- ☐ Read your warranty and owner's manual. Pay close attention to the responsibilities you have.
- ☐ Service and maintain your car as required in the warranty and owner's manual.
- ☐ If you notice a problem with your car, contact the dealer immediately.
- ☐ Insist on itemized work orders and final invoices for all car repairs and service. Keep these for your records.
- ☐ Keep a list of all repairs made to your car. Also, write down all telephone and personal contacts with the dealer, manufacturer or other parties (use the record sheets, pages 14-15). Send a letter to confirm important agreements. Keep a copy for your records.
- ☐ If the dealer's repair attempts are not successful, write to the manufacturer's district or zone office. Keep a copy of your letter and the manufacturer's reply for your records.
- ☐ If the dealer and manufacturer are unable to repair the car after a "reasonable number of attempts" (see page 2), inform the dealer and manufacturer of your right to a refund or replacement.
- ☐ If you are required to use a third party dispute resolution program (see page 6), submit your complaint with copies of your records to the program designated by the manufacturer.
- ☐ If you are still dissatisfied, you may want to consider legal action. Contact a lawyer who specializes in warranty law (see page 9).

Department of Consumer Affairs
1020 N Street
Sacramento, CA 95814

STATEMENT AB 3611

AB 3611 AMENDS CALIFORNIA'S FIRST "LEMON LAW" WHICH I AUTHORED IN 1982. THAT LAW HAS BEEN IN EFFECT FOR OVER THREE YEARS AND WE HAVE SUBSTANTIAL EXPERIENCE WITH ITS ADMINISTRATION. BECAUSE OF CONSUMER COMPLAINTS ABOUT ITS OPERATION, I INTRODUCED THIS BILL TO MAKE IT FAIRER. THE BILL HAS TWO MAIN GOALS:

- 1) FIRST, IT WILL MAKE SURE THAT OWNERS OF "LEMON" CARS WILL RECEIVE FULL REFUNDS.
- 2) SECOND, IT ESTABLISHES PROCEDURES TO HELP ASSURE THAT THE ARBITRATION PROGRAMS THAT REVIEW "LEMON" CASES BE RUN FAIRLY.

BRIEFLY, AB 3611, AS I AM PROPOSING TO AMEND IT, DOES THE FOLLOWING:

- IT REQUIRES THAT THE BUREAU OF AUTOMOTIVE REPAIR ESTABLISH A VOLUNTARY CERTIFICATION PROGRAM FOR AUTO WARRANTY ARBITRATION PROGRAMS.
- IF A MANUFACTURER DOES NOT OPERATE A CERTIFIED ARBITRATION PROGRAM, THE MANUFACTURER WOULD BE REQUIRED TO NOTIFY THE CAR BUYER OF THAT FACT AT THE TIME OF PURCHASE.
- IT REQUIRES THE BUREAU OF AUTOMOTIVE REPAIR TO ADOPT REGULATIONS GOVERNING THE CERTIFICATION AND DECERTIFICATION OF AUTO WARRANTY ARBITRATION PROGRAMS, AND TO REPORT BIENNIALY TO THE LEGISLATURE ON THE EFFECTIVENESS OF THE VOLUNTARY STATE CERTIFICATION PROGRAM.
- IT REQUIRES THAT NEW CAR MANUFACTURERS PAY A FEE NOT TO EXCEED \$1 PER VEHICLE SOLD, TO FUND THE CERTIFICATION PROGRAM FOR AUTOMOBILE WARRANTY ARBITRATION PROGRAMS.
- IT ALLOWS A CONSUMER TO REJECT A REPLACEMENT FOR A "LEMON" CAR AND GET A REFUND INSTEAD.
- IT REQUIRES THE MANUFACTURER TO REIMBURSE THE OWNER OF A "LEMON" FOR SALES TAXES, LICENSE AND REGISTRATION FEES AND INCIDENTAL COSTS SUCH AS REPAIR, TOWING AND RENTAL CAR COSTS, AND ALLOWS THE MANUFACTURER TO RECOVER THESE REFUNDED SALES TAXES FROM THE STATE.

THE COSTS OF THE BILL ARE TWOFOLD:

- 1) THE BUREAU OF AUTOMOTIVE REPAIR WILL HAVE COSTS ASSOCIATED WITH CERTIFYING ARBITRATION PROGRAMS. THESE COSTS WILL BE FULLY COVERED BY FEES PAID BY AUTO MANUFACTURERS.
- 2) REFUND OF SALES TAXES. THE COSTS TO THE GENERAL FUND WILL BE SMALL. WHILE THE NUMBER OF "LEMONS" SOLD IN CALIFORNIA IS NOT KNOWN, I ESTIMATE REFUNDS ON ONLY 200 TO 300 VEHICLES A YEAR. SALES TAX REFUNDS ARE ALREADY GIVEN ON ALL OTHER GOODS SOLD TO CONSUMERS. THE COST IN THIS CASE IS MORE THAN JUSTIFIED IF IT CREATES A FAIRER SYSTEM.

I BELIEVE THAT THESE CHANGES TO THE "LEMON LAW" WILL ENSURE THAT IT IS ADMINISTERED MORE FAIRLY THAN IS PRESENTLY THE CASE.
~~IT WILL GIVE THE CONSUMER A BETTER SHAKE THAN HE OR SHE NOW GETS.~~

I ACCEPTED THE ADDITIONAL AMENDMENTS TO THIS BILL IN RESPONSE TO CONCERNS EXPRESSED BY AUTO MANUFACTURERS. I BELIEVE THAT THE AMENDMENTS REMOVE THEIR OPPOSITION.

WITNESSES:

CARMEN GONZALEZ - CalPIRG
RICHARD ELBRECHT - Dept. of Consumer Affairs
SAM JENNINGS - Executive Secretary, New Motor Vehicle Board
MIKE SIEVING

SUPPORT:

CalPIRG
Consumers Union
Consumer Federation of California
New Motor Vehicle Board
Electronic Representatives Assoc.
State Board of Equalization

OPPOSITION:

Ford Motor Company
Chrysler Corporation
Automobile Importers of America
Motor Vehicle Manufacturers Assoc.

8/12/86 Senate Appropriations
(a)

AB 3611 (TANNER)

AB 3611 revises the present "Lemon law" which protects consumers who buy "lemon" cars from auto manufacturers. The bill requires the Bureau of Auto Repair to certify that auto manufacturer-run programs to arbitrate "lemon law" cases are run impartially. It also requires that when a consumer receives a refund for a "lemon" the sales tax on the car also must be refunded.

AB 3611 died on the Senate Appropriations suspense file on August 21. Chairman Boatwright stated that, while the bill had no fiscal consequences, it did have substantial opposition.

There is no opposition to the bill. The following is a list of positions on the bill:

SUPPORT:

CalPIRG
Consumers Union
New Motor Vehicle Board
Consumer Federation of Calif.
State Board of Equalization
Chrysler

NEUTRAL

Dept. of Finance
General Motors
Automobile Importers
Ford Motor Company
Motor Vehicle
Manufacturers Assoc.
Motor Car Dealers
Honda

OPPOSE

None

Fiscal effect of AB 3611:

- 1) Certification program run by Bureau of Auto Repair: Costs of \$300,000 annually; these costs will be completely paid by fees imposed on the auto manufacturers.
- 2) Sales tax refunds - unknown costs, according to the Legislative Analyst. The Department of Finance estimates the amount of these refunds to be about \$145,000 but states that this has no overall fiscal impact on the General Fund because the sales taxes refunded to owners of "lemon" cars were already paid into the General Fund by the automobile dealers who sold the cars.

8/22/86

The only written oppositon we had in our file was:

FORD MOTOR COMPANY (Dick Dugally).....changed to Neutral
CHRYSLER (Al Davis).....changed to Support
MOTOR VEHICLE MANUFACTURERS (Jim Austin).....changed to Neutral
AUTOMOBILE IMPORTERS OF AMERICA (Sara Michael) ..changed to Neutral

Other Opposition:

MOTOR CAR DEALERS (Loren Smith).....changed to Neutral
HONDA (Norma Dillon).....changed to Neutral
with minor amendments

The following persons all stated that their opposition was removed by the amendments that were agreed upon by them and Assemblywoman Tanner on August 12 and which amendments were done in a mock up to be given to Senate Appropriations in that committee on August 13.

Senator Boatwright was not going to let us hear the bill so Assemblywoman Tanner talked to Senator Lockyer (Chair of Senate Judiciary) and he agreed that it was o.k. to amend AB 3611 and not necessary to be returned to his committee, and Senator Lockyer then gave that information to Senator Boatwright, who then passed AB 3611 to the suspense file with amendments.

Dick Dugally:

Dick talked to Barry Brokaw (consultant to Boatwright) indicating that Ford no longer had any opposition.

Lee Ridgeway:

Lee talked to Barry Brokaw and also mentioned to Senator Boatwright that General Motors no longer had any opposition.

Sara Michaels:

Sara talked to Barry Brokaw that Automobile Importers no longer had any opposition to the bill.

Jim Austin:

Jim said that he told Barry Brokaw that night, 8/12, after the meetings that the situation had changed and based on those

discussions and the amendments that they no longer had a problem with the bill. Jim said that Barry told him that the wheels were already put in motion and that things were not going to change.

Loren Smith:

Loren went to neutral when we put in the Bureau of Automotive Repair as the Certifying body. He had never put their objections in a letter.

Proposed Amendments to AB 3611 - As Amended August 11, 1986

- 1) The amendments would delete the requirement in the bill that all auto manufacturers must maintain and operate a certified automobile warranty arbitration program. Participation in the certification program would, therefore, be voluntary.
- 2) The amendments would delete the requirement in the bill that where a manufacturer does not operate a certified arbitration program, a warranty dispute would be referred to a certified arbitration program by the Bureau of Automotive Repair. (The requirement that the manufacturer notify the consumer that they do not operate a certified arbitration program would remain in the bill.)
- 3) The amendments modify the reporting requirements imposed upon certified automobile warranty arbitration programs to only require reporting of actual arbitration and mediation cases.
- 4) The amendments reduce the workload of the Bureau of Automotive Repair by only requiring the Bureau to analyze a sampling of complaints submitted to the Bureau by certified arbitration programs.
- 5) The amendments delete language requiring that auto repairs be done only by ^{State} licensed repair facilities.
- 6) The amendments change the implementation date of the certification program from July 1, 1988, to January 1, 1988.
- 7) The amendments correct a drafting error in the fee collection provision of the bill.

EXPLANATION OF AUTHOR'S AMENDMENTS

- 1) FOUR AMENDMENTS ARE TECHNICAL, CORRECT DRAFTING PROBLEMS OR MAKE CHANGES TO THE SALES TAX REFUND PROVISIONS AS REQUESTED BY THE STATE BOARD OF EQUALIZATION.

TECHNICAL - Numbers 1 & 9

DRAFTING - Number 7

SALES TAX - Number 8

- 2) THE FIVE REMAINING AMENDMENTS, NUMBERS 2 - 6, DELETE THE PROVISIONS OF THE BILL THAT ALLOWS THE BUYER OF A "LEMON" TO CHOOSE REPLACEMENT OR REFUND AND REPLACE THOSE WITH PROVISIONS THAT ALLOW THE BUYER TO REJECT AN UNSATISFACTORY REPLACEMENT VEHICLE, IF IT IS OFFERED, AND REQUEST A REFUND INSTEAD.

7/1/86 Judie -

STATEMENT AB 3611

AB 3611 AMENDS CALIFORNIA'S FIRST "LEMON LAW" WHICH HAS BEEN IN EFFECT FOR OVER THREE YEARS. BECAUSE OF CONSUMER COMPLAINTS WHICH WERE RECEIVED ABOUT THE LAW'S OPERATION, I INTRODUCED THIS BILL. IT HAS TWO MAIN GOALS.

- 1) FIRST, IT WILL MAKE SURE THAT OWNERS OF "LEMON" CARS RECEIVE FULL REFUNDS.
- 2) SECOND, IT REQUIRES THAT THE ARBITRATION PANELS THAT REVIEW "LEMON" CASES WILL BE RUN FAIRLY.

BRIEFLY AB 3611 DOES THE FOLLOWING:

- IT REQUIRES THAT THE NEW MOTOR VEHICLE BOARD CERTIFY THAT AUTO MANUFACTURER RUN ARBITRATION PANELS MEET THE REQUIREMENTS OF CURRENT LAW AND REGULATIONS AND REVOKE THE CERTIFICATION IF THE PANEL IS NOT RUN PROPERLY.
- IT REQUIRES THAT ARBITRATION PANEL MEMBERS MAKE DECISIONS IN CONFORMANCE TO THE "LEMON LAW" AND THAT, IF THEY NEED INDEPENDENT AUTOMOTIVE EXPERTISE, THEY CAN GET IT TO HELP THEM MAKE THEIR DECISION.
- IT REQUIRES THE MANUFACTURER TO REIMBURSE THE OWNER OF A "LEMON" FOR SALES TAXES, LICENSE AND REGISTRATION FEES AND INCIDENTAL COSTS SUCH AS REPAIR, TOWING AND RENTAL CAR COSTS.
- IT ALLOWS THE MANUFACTURER TO RECOVER REFUNDED SALES TAXES FROM THE STATE.

I BELIEVE THAT THESE CHANGES TO THE "LEMON LAW" WILL ENSURE THAT IT IS ADMINISTERED MORE FAIRLY THAN IS PRESENTLY THE CASE. IT WILL GIVE THE CONSUMER A BETTER SHAKE THAN HE OR SHE NOW GETS.

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Consumers Union
Consumer Federation of California
New Motor Vehicle Board
Electronic Representatives Assoc.
State Board of Equalization

OPPOSITION:

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Chrysler Corporation
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Motor Vehicle Manufacturers Assoc.

6/4/86 Assembly Floor

STATEMENT AB 3611

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- IT ALLOWS THE MANUFACTURER TO RECOVER REFUNDED SALES TAXES FROM THE STATE.

THE COSTS OF THE BILL ARE TWOFOLD:

- 1) THE NEW MOTOR VEHICLE BOARD WILL HAVE COSTS ASSOCIATED WITH CERTIFYING ARBITRATION PANELS. THE BOARD TELLS ME THAT THOSE COSTS ARE ABSORBABLE IN THE COMING FISCAL YEAR AND WILL BE COVERED BY FEES ON AUTO MANUFACTURERS IN THE FOLLOWING FISCAL YEARS.
- 2) REFUND OF SALES TAXES. THE COSTS TO THE GENERAL FUND WILL BE SMALL. WHILE THE NUMBER OF "LEMONS" SOLD IN CALIFORNIA IS NOT KNOWN, I ESTIMATE REFUNDS ON ONLY 200 to 300 A YEAR. SALES TAX REFUNDS ARE GIVEN ON ALL OTHER GOODS SOLD TO CONSUMERS. THE COST IN THIS CASE IS MORE THAN JUSTIFIED IF IT CREATES A FAIRER SYSTEM.

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Consumer Federation of California
New Motor Vehicle Board
Electronic Representatives Assoc.
State Board of Equalization

OPPOSITION:

Ford Motor Company
Chrysler Corporation
Automobile Importers of America
Motor Vehicle Manufacturers Assoc.

WITNESSES:

Sam Jennings, Executive Secretary, New Motor Vehicle Board
Debbie Bruns of CalPIRG will be in the audience.

5/28/86 Ways and Means

AB 3611 (TANNER)

AB 3611 revises the present "Lemon law" which protects consumers who buy "lemon" cars from auto manufacturers. The bill requires the Bureau of Auto Repair to certify that auto manufacturer-run programs to arbitrate "lemon law" cases are run impartially. It also requires that when a consumer receives a refund for a "lemon" the sales tax on the car also must be refunded.

AB 3611 died on the Senate Appropriations suspense file on August 21. Chairman Boatwright stated that, while the bill had no fiscal consequences, it did have substantial opposition.

There is no opposition to the bill. The following is a list of positions on the bill:

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Chrysler

NEUTRAL

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Manufacturers Assoc.
Motor Car Dealers
Honda

OPPOSE

None

Fiscal effect of AB 3611:

- 1) Certification program run by Bureau of Auto Repair: Costs of \$300,000 annually; these costs will be completely paid by fees imposed on the auto manufacturers.
- 2) Sales tax refunds - unknown costs, according to the Legislative Analyst. The Department of Finance estimates the amount of these refunds to be about \$145,000 but states that this has no overall fiscal impact on the General Fund because the sales taxes refunded to owners of "lemon" cars were already paid into the General Fund by the automobile dealers who sold the cars.

8/22/86

AB 3611 (TANNER)

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8/22/86

August 22, 1986

The only written oppositon we had in our file was:

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CHRYSLER (Al Davis).....changed to Support
MOTOR VEHICLE MANUFACTURERS (Jim Austin).....changed to Neutral
AUTOMOBILE IMPORTERS OF AMERICA (Sara Michael) ..changed to Neutral

Other Opposition:

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with minor amendments

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Sara Michaels:

Sara talked to Barry Brokaw that Automobile Importers no longer had any opposition to the bill.

Jim Austin:

Jim said that he told Barry Brokaw that night, 8/12, after the meetings that the situation had changed and based on those

discussions and the amendments that they no longer had a problem with the bill. Jim said that Barry told him that the wheels were already put in motion and that things were not going to change.

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STATEMENT AB 3611

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- 1) FIRST, IT WILL MAKE SURE THAT OWNERS OF "LEMON" CARS WILL RECEIVE FULL REFUNDS.
- 2) SECOND, IT ESTABLISHES PROCEDURES TO HELP ASSURE THAT THE ARBITRATION PROGRAMS THAT REVIEW "LEMON" CASES BE RUN FAIRLY.

BRIEFLY, AB 3611, AS I AM PROPOSING TO AMEND IT, DOES THE FOLLOWING:

- IT REQUIRES THAT THE BUREAU OF AUTOMOTIVE REPAIR ESTABLISH A VOLUNTARY CERTIFICATION PROGRAM FOR AUTO WARRANTY ARBITRATION PROGRAMS.
- IF A MANUFACTURER DOES NOT OPERATE A CERTIFIED ARBITRATION PROGRAM, THE MANUFACTURER WOULD BE REQUIRED TO NOTIFY THE CAR BUYER OF THAT FACT AT THE TIME OF PURCHASE.
- IT REQUIRES THE BUREAU OF AUTOMOTIVE REPAIR TO ADOPT REGULATIONS GOVERNING THE CERTIFICATION AND DECERTIFICATION OF AUTO WARRANTY ARBITRATION PROGRAMS, AND TO REPORT BIENNIALY TO THE LEGISLATURE ON THE EFFECTIVENESS OF THE VOLUNTARY STATE CERTIFICATION PROGRAM.
- IT REQUIRES THAT NEW CAR MANUFACTURERS PAY A FEE NOT TO EXCEED \$1 PER VEHICLE SOLD, TO FUND THE CERTIFICATION PROGRAM FOR AUTOMOBILE WARRANTY ARBITRATION PROGRAMS.
- IT ALLOWS A CONSUMER TO REJECT A REPLACEMENT FOR A "LEMON" CAR AND GET A REFUND INSTEAD.
- IT REQUIRES THE MANUFACTURER TO REIMBURSE THE OWNER OF A "LEMON" FOR SALES TAXES, LICENSE AND REGISTRATION FEES AND INCIDENTAL COSTS SUCH AS REPAIR, TOWING AND RENTAL CAR COSTS, AND ALLOWS THE MANUFACTURER TO RECOVER THESE REFUNDED SALES TAXES FROM THE STATE.

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WITNESSES:

CARMEN GONZALEZ - CalPIRG
RICHARD ELBRECHT - Dept. of Consumer Affairs
SAM JENNINGS - Executive Secretary, New Motor Vehicle Board
MIKE SIEVING

SUPPORT:

CalPIRG
Consumers Union
Consumer Federation of California
New Motor Vehicle Board
Electronic Representatives Assoc.
State Board of Equalization

8/12/86 Senate Appropriations
(a)

STATEMENT AB 3611

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- IT REQUIRES THAT NEW CAR MANUFACTURERS PAY A FEE NOT TO EXCEED \$1 PER VEHICLE SOLD, TO FUND THE CERTIFICATION PROGRAM FOR AUTOMOBILE WARRANTY ARBITRATION PROGRAMS.
- IT ALLOWS A CONSUMER TO REJECT A REPLACEMENT FOR A "LEMON" CAR AND GET A REFUND INSTEAD.

- IT REQUIRES THE MANUFACTURER TO REIMBURSE THE OWNER OF A "LEMON" FOR SALES TAXES, LICENSE AND REGISTRATION FEES AND INCIDENTAL COSTS SUCH AS REPAIR, TOWING AND RENTAL CAR COSTS, AND ALLOWS THE MANUFACTURER TO RECOVER THESE REFUNDED SALES TAXES FROM THE STATE.

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WITNESSES:

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8/12/86 Senate Appropriations
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WITNESSES:

DONNA SELNICK, Attorney
SAM JENNINGS, Executive Secretary, New Motor Vehicle Board
CARMEN GONZALEZ - CalPIRG
SUSAN BRITO - Lay Person Carmen brought
PAUL KIESEL - Attorney

SUPPORT:

CalPIRG
Consumers Union
Consumer Federation of California
New Motor Vehicle Board
Electronic Representatives Assoc.
State Board of Equalization

OPPOSITION:

Ford Motor Company
Chrysler Corporation
Automobile Importers of America
Motor Vehicle Manufacturers Assoc.

7/1/86 Senate Judiciary)

STATEMENT AB 3611

AB 3611 AMENDS CALIFORNIA'S FIRST "LEMON LAW" WHICH I AUTHORED IN 1982. THAT LAW HAS BEEN IN EFFECT FOR OVER THREE YEARS AND WE HAVE SUBSTANTIAL EXPERIENCE WITH ITS ADMINISTRATION. BECAUSE OF CONSUMER COMPLAINTS ABOUT ITS OPERATION, I INTRODUCED THIS BILL TO MAKE IT FAIRER. THE BILL HAS TWO MAIN GOALS:

- 1) FIRST, IT WILL MAKE SURE THAT OWNERS OF "LEMON" CARS WILL RECEIVE FULL REFUNDS.
- 2) SECOND, IT REQUIRES THAT THE ARBITRATION BOARDS THAT REVIEW "LEMON" CASES BE RUN FAIRLY.

BRIEFLY, AB 3611 DOES THE FOLLOWING:

- IT REQUIRES THAT THE NEW MOTOR VEHICLE BOARD CERTIFY THAT AUTO MANUFACTURER-RUN ARBITRATION PANELS MEET THE REQUIREMENTS OF CURRENT LAW AND REGULATIONS.
- IT AUTHORIZES REVOCATION OF A CERTIFICATION IF ARBITRATION PANELS ARE NOT RUN PROPERLY.
- IT REQUIRES THAT ARBITRATION PANEL MEMBERS MAKE DECISIONS IN CONFORMANCE WITH THE "LEMON LAW" AND THAT, IF THEY NEED INDEPENDENT AUTOMOTIVE EXPERTISE, THEY CAN GET IT TO HELP THEM MAKE THEIR DECISION.
- IT ALLOWS A CONSUMER TO REJECT A REPLACEMENT FOR A "LEMON" CAR AND GET A REFUND INSTEAD.
- IT REQUIRES THE MANUFACTURER TO REIMBURSE THE OWNER OF A "LEMON" FOR SALES TAXES, LICENSE AND REGISTRATION FEES AND INCIDENTAL COSTS SUCH AS REPAIR, TOWING AND RENTAL CAR COSTS.
- IT ALLOWS THE MANUFACTURER TO RECOVER REFUNDED SALES TAXES FROM THE STATE.

I BELIEVE THAT THESE CHANGES TO THE "LEMON LAW" WILL ENSURE THAT IT IS ADMINISTERED MORE FAIRLY THAN IS PRESENTLY THE CASE. IT WILL GIVE THE CONSUMER A BETTER SHAKE THAN HE OR SHE NOW GETS.

WITNESSES:

DONNA SELNICK, Attorney
SAM JENNINGS, Executive Secretary, New Motor Vehicle Board
CARMEN GONZALEZ - CalPIRG
SUSAN BRITO - Lay Person Carmen brought
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7/1/86 Senate Judiciary)

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BRIEFLY AB 3611 DOES THE FOLLOWING:

- IT REQUIRES THAT THE NEW MOTOR VEHICLE BOARD CERTIFY THAT AUTO MANUFACTURER RUN ARBITRATION PANELS MEET THE REQUIREMENTS OF CURRENT LAW AND REGULATIONS AND REVOKE THE CERTIFICATION IF THE PANEL IS NOT RUN PROPERLY.
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New Motor Vehicle Board
Electronic Representatives Assoc.
State Board of Equalization

OPPOSITION:

Ford Motor Company
Chrysler Corporation
Automobile Importers of America
Motor Vehicle Manufacturers Assoc.

6/4/86 Assembly Floor

STATEMENT AB 3611

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STATEMENT AB 3611

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- IT REQUIRES THE MANUFACTURER TO REIMBURSE THE OWNER OF A "LEMON" FOR SALES TAXES, LICENSE AND REGISTRATION FEES AND INCIDENTAL DAMAGES SUCH AS REPAIR, TOWING AND RENTAL CAR COSTS.
- IT ALLOWS THE MANUFACTURER TO RECOVER REFUNDED SALES TAXES FROM THE STATE.

THE COSTS OF THE BILL ARE TWOFOLD:

- 1) THE NEW MOTOR VEHICLE BOARD WILL HAVE COSTS ASSOCIATED WITH CERTIFYING ARBITRATION PANELS. THE BOARD TELLS ME THAT THOSE COSTS ARE ABSORBABLE IN THE COMING FISCAL YEAR AND WILL BE COVERED BY FEES ON AUTO MANUFACTURERS IN THE FOLLOWING FISCAL YEARS.
- 2) REFUND OF SALES TAXES. THE COSTS TO THE GENERAL FUND WILL BE MODEST. ASSUMING THE AVERAGE COST OF AN AUTOMOBILE IS \$ 12,000 AND THAT REFUNDS ARE MADE ON 300 "LEMONS" A YEAR, THE COST WOULD BE, \$ 200,000. SALES TAX REFUNDS ARE GIVEN ON ALL OTHER GOODS SOLD TO CONSUMERS. THE COST IN THIS CASE IS MORE THAN JUSTIFIED IF IT CREATES A FAIRER SYSTEM.

SUPPORT:

CalPIRG
Consumers Union
Consumer Federation of California
New Motor Vehicle Board
Electronic Representatives Assoc.
State Board of Equalization

OPPOSITION:

Ford Motor Company
Chrysler Corporation
Automobile Importers of America
Motor Vehicle Manufacturers Assoc.

WITNESSES:

Sam Jennings, Executive Secretary, New Motor Vehicle Board
Debbie Bruns of CalPIRG will be in the audience.

5/28/86 Ways and Means

STATEMENT AB 3611

AB 3611 REVISES SEVERAL ASPECTS OF CALIFORNIA'S "LEMON LAW." JUDGING FROM THE CONSUMER COMPLAINTS THAT HAVE BEEN RECEIVED, THESE REVISIONS ARE NEEDED TO MAKE THE OPERATION OF THE "LEMON LAW" FAIRER TO CONSUMERS.

BRIEFLY AB 3611 DOES THE FOLLOWING:

- REQUIRES THAT AUTO MANUFACTURER-RUN ARBITRATION PANELS BE CERTIFIED BY THE NEW MOTOR VEHICLE BOARD. IN ORDER TO BE CERTIFIED, THE PANELS WOULD HAVE TO:
 - 1) MEET THE REQUIREMENTS OF FEDERAL TRADE COMMISSION REGULATIONS.
 - 2) BE INFORMED CONCERNING THE PROVISIONS OF THESE REGULATIONS AND THE "LEMON LAW" AND MAKE DECISIONS CONSISTENT WITH THOSE PROVISIONS.
 - 3) HAVE AVAILABLE INDEPENDENT AUTOMOTIVE EXPERTS.
- GIVES THE OWNER OF A "LEMON" CAR THE OPTION OF REPLACEMENT OR REFUND.
- REQUIRES THE MANUFACTURER TO REIMBURSE THE OWNER OF A "LEMON" FOR SALES TAXES, LICENSE AND REGISTRATION FEES AND INCIDENTAL DAMAGES SUCH AS REPAIR, TOWING AND RENTAL CAR COSTS.
- ALLOWS THE MANUFACTURER TO RECOVER REFUNDED SALES TAXES FROM THE STATE.

THE COSTS OF THE BILL ARE TWOFOLD:

- 1) THE NEW MOTOR VEHICLE BOARD WILL HAVE COSTS ASSOCIATED WITH CERTIFYING ARBITRATION PANELS. THE BOARD TELLS ME THAT THOSE COSTS ARE ABSORBABLE IN THIS FISCAL YEAR AND CAN BE COVERED BY FEES ON AUTO MANUFACTURERS IN THE FOLLOWING FISCAL YEARS.
- 2) REFUND OF SALES TAXES. THE COSTS TO THE GENERAL FUND WILL BE MODEST. ASSUMING THE AVERAGE COST OF AN AUTOMOBILE IS \$_____ AND THAT REFUNDS ARE MADE ON _____ "LEMONS" A YEAR, THE COST WOULD BE \$_____. SALES TAX REFUNDS ARE GIVEN ON ALL OTHER GOODS SOLD TO CONSUMERS. THE COST IN THIS CASE IS MORE THAN JUSTIFIED IF IT CREATES A FAIRER SYSTEM.

SUPPORT:

CalPIRG
Consumers Union
Consumer Federation of California
New Motor Vehicle Board
Electronic Representatives Assoc.
State Board of Equalization

OPPOSITION:

Ford Motor Company
Chrysler Corporation
Automobile Importers of America
Motor Vehicle Manufacturers Assoc.

WITNESSES:

Sam Jennings, Executive Secretary, New Motor Vehicle Board

5/28/86 Ways and Means

STATEMENT AB 3611

IN 1982 I AUTHORED CALIFORNIA'S FIRST "LEMON LAW." THAT LAW HAS BEEN IN EFFECT FOR OVER THREE YEARS AND WE HAVE SUBSTANTIAL EXPERIENCE WITH ITS ADMINISTRATION. JUDGING FROM THE CONSUMER COMPLAINTS THAT HAVE BEEN RECEIVED, THE "LEMON LAW" NEEDS SOME CHANGES TO MAKE IT FAIRER. THE MOST FREQUENT COMPLAINT IS ABOUT THE OPERATION OF THE ARBITRATION PANELS WHICH ARE FUNDED BY THE AUTO MANUFACTURERS.

AB 3611 MAKES THE FOLLOWING CHANGES TO THE "LEMON LAW:"

- IT REQUIRES THAT AUTO MANUFACTURER-RUN ARBITRATION PANELS BE CERTIFIED BY THE NEW MOTOR VEHICLE BOARD. THE PANELS WOULD HAVE TO MEET THE REQUIREMENTS OF FEDERAL TRADE COMMISSION REGULATIONS TO BE CERTIFIED.
- IT AUTHORIZES THE NEW MOTOR VEHICLE BOARD TO ESTABLISH A STATE-RUN ARBITRATION PROCESS. CONSUMERS CAN CHOOSE TO USE MANUFACTURER-RUN OR STATE-RUN ARBITRATION, BUT NOT BOTH.
- IF THE BUYER OPTS FOR ARBITRATION BY THE NEW MOTOR VEHICLE BOARD THE DISPUTE MUST FIRST BE HANDLED BY INFORMAL MEDIATION. IF MEDIATION FAILS, ARBITRATION MAY BE REQUESTED.
- WHEN A NEW MOTOR VEHICLE IS FOUND TO BE A "LEMON," THE BUYER HAS THE OPTION OF REPLACEMENT OR REFUND.
- IF A REFUND IS GIVEN, THE PURCHASE PRICE, SALES TAX AND UNUSED LICENSE AND REGISTRATION FEES MUST ALSO BE REFUNDED.
- IF THE "LEMON" IS REPLACED, THE MANUFACTURER MUST PAY THE SALES TAX AND LICENSE AND REGISTRATION FEES FOR THE REPLACEMENT VEHICLE.
- THE BILL ALLOWS THE MANUFACTURER TO RECOVER REFUNDED SALES TAXES AND UNUSED LICENSE AND REGISTRATION FEES FROM THE STATE.

I BELIEVE THAT THESE CHANGES TO THE "LEMON LAW" WILL ENSURE THAT IT IS ADMINISTERED MORE FAIRLY THAN IS PRESENTLY THE CASE. IT WILL GIVE THE CONSUMER A BETTER SHAKE THAN HE OR SHE NOW GETS.

SUPPORT:

CalPIRG
Consumers Union
Consumer Federation of California
New Motor Vehicle Board
Electronic Representatives Assoc.
Conway H. Collis/Board of Equalization

OPPOSITION:

Ford Motor Company
Chrysler Corporation
Automobile Importers of America
Motor Vehicle Manufacturers Assoc.
DMV unless amended

WITNESSES:

DONNA SELNICK, Attorney
SAM JENNINGS, Executive Secretary, New Motor Vehicle Board
CARMEN GONZALEZ - CalPIRG (Calif. Public Interest Research Group)

BOB SHIREMAN, CalPIRG will be available also
For extra witness if needed:
PAUL KIESEL (Keesel), Attorney Beverly Hills

(4/3/86 Consumer Protection)

THESE AMENDMENTS:

- 1) STRIKE THE PROVISIONS OF THE BILL THAT SET UP A STATE-RUN ARBITRATION PROCESS.
- 2) LEAVE INTACT THE NEW MOTOR VEHICLE BOARD'S AUTHORITY TO CERTIFY MANUFACTURER-RUN ARBITRATION.
- 3) ALLOW THE NEW MOTOR VEHICLE BOARD TO DESIGNATE A CERTIFIED ARBITRATION PROCESS THAT A CONSUMER CAN USE IF THE AUTO MANUFACTURER THAT MADE HIS OR HER VEHICLE DOES NOT HAVE A CERTIFIED PROCESS.

SHER'S AMENDMENT Re standards for New Motor Vehicle Board for certification must be the FTC standards as well as all California laws including the lemon law.

Consumer Protection Committee 4/3/86

THESE AMENDMENTS:

- 1) STRIKE THE PROVISIONS OF THE BILL THAT SET UP A STATE-RUN ARBITRATION PROCESS.
- 2) LEAVE INTACT THE NEW MOTOR VEHICLE BOARD'S AUTHORITY TO CERTIFY MANUFACTURER-RUN ARBITRATION.
- 3) ALLOW THE NEW MOTOR VEHICLE BOARD TO DESIGNATE A CERTIFIED ARBITRATION PROCESS THAT A CONSUMER CAN USE IF THE AUTO MANUFACTURER THAT MADE HIS OR HER VEHICLE DOES NOT HAVE A CERTIFIED PROCESS.

Manny - Here's our list of issues.

ISSUES RAISED BY AUTO MANUFACTURERS ON AB 3611

- Bob

1. Program has been successful; not very many complaints.

--The complaints that Carmen has, the cases that Donna has, and the other witnesses are indicative of systematic policies not in compliance with the state law.

--There's no way to know just what the level of satisfaction is because manufacturer's are not reporting that information...

2. Our programs are in compliance with the law.

--Donna can go down the list of noncompliance with Rule 703. These are not just individual cases, but patterns of serious nonconformity.

3. We are certified by the FTC.

--We have called the FTC in San Francisco and Washington D.C. and they say they DO NOT certify programs. There is no enforcement of this rule.

4. There will be conflicts between state and federal interpretations of the FTC Rule 703.

--[Donna] Federal Warranty Act only encourages warrantors to use these guidelines, unless certain things are in the warranty. The California law is what makes it required. If California doesn't enforce it, no one will. There is no conflict.

5. "Refund or replacement" option for consumers prohibits other remedies such as another repair attempt or a monetary settlement.

--Not true. This aspect of the law is not changed by this bill. If the arbitration panel thinks that another repair is warranted, then that can be their decision (they are, in effect, ruling that there had not already been a "reasonable number of attempts"). It is only in ruling that there has been a reasonable number of attempts and that therefore the consumer should get a refund or replacement that this bill gives the consumer the choice.

6. The dealer should be liable for some of this.

--That should be worked out in agreements between the manufacturers and the dealers, who are their own authorized repair facilities. The consumer should not be placed in the middle of this dispute.

7. Evidence from Connecticut and Texas indicates that the state-run program will be a mess; too much bureaucracy; manufacturers here won't have their own programs; two programs will confuse the public...

--Sam should address these questions.



COUNCIL OF BETTER BUSINESS BUREAUS, INC.
THE INTERNATIONAL ASSEMBLY OF BETTER BUSINESS BUREAUS

APR 3 - 1986

TESTIMONY BY
DEAN W. DETERMAN
Vice President
Mediation/Arbitration Division
BEFORE THE
ASSEMBLY CONSUMER AFFAIRS COMMITTEE

Sacramento, CA
April 3, 1986

I represent Better Business Bureau AUTO LINE, the nation's largest out-of-court dispute settlement program. We resolve new car complaints under the provisions of the federal Magnuson-Moss Warranty Act, specifically under FTC Rule 703. There are currently 12 manufacturers representing 20 car/truck lines that write BBB AUTO LINE into their warranties. They include: AMC-Jeep, Audi, all divisions of General Motors, Honda, Jaguar, Nissan, Peugeot, Porsche, Renault, Rolls-Royce-Bentley, Saab, Volkswagen, Volvo.

From October '84 to September '85 (the FTC reporting period under Rule 703), BBB AUTO LINE settled 12,716 consumer complaints through its 14 California Bureaus. This number does not include GM-FTC Consent Order which is a separate program. Of these 12,716 cases, 9,977 (78.5%) were closed through Bureau mediation while 2,739 (21.5%) were arbitrated. From October '85 to February of this year, we settled an additional 5,852 cases, 4,321 (74%) in mediation and 1,531 (26%) in arbitration.

The BBB AUTO LINE Program provides California consumers with broader coverage and greater remedies than those provided by the California Lemon Law. In fact, the manufacturers' voluntary exposure to replacement-repurchase in AUTO LINE exceeds that of any repair/replace legislation in the country.

The minimum BBB AUTO LINE coverage is 36,000 miles or 36 months from date of delivery for repairs and 24,000 miles/24 months for the buy back remedy. Many manufacturers offer their customers even broader coverage than these minimums.

The BBB AUTO LINE Program places no minimum requirements in the path of a consumer who believes he or she has a lemon. The California Lemon Law places the burden on the consumers to prove that their car has been repaired 4 times for the same failure, or was down for 30 or more days in the shop before they can assert their legal rights under the law.

Under BBB AUTO LINE, California consumers are free to request repurchase of their cars for any alleged defect, regardless of repair attempts or down time.

A survey of all California AUTO LINE arbitrations from October '85 to February '86 shows that 231 California consumers got repurchase awards through the BBB AUTO LINE Program. Based on the age and mileage of these cars, a minimum of 134 or 58% could not have qualified under the California Lemon Law.

Another survey of California buy back cases from September '85 thru November '85, reveals that 532 consumers who requested buy backs, 125 or 23% of them received buy backs. Thus, one out of four consumers got what they asked for but more than three out of four consumers got something, because 78% accepted the arbitrator's decision. These repurchased cars had been driven an average of 23,125 miles at the time of repurchase and the average repurchase price was \$10,695.56. BBB AUTO LINE arbitrators assessed an average useage deduction of \$2,158.90, which represents an allowance of less than 10¢ per mile. Under the Massachusetts/Connecticut Lemon Law formulas for useage, the average deduction would have been at a rate of 12.9% per mile.

The BBB AUTO LINE Program is funded entirely by business, its service is free to consumers - the California taxpayer pays nothing. A critical thing, too is that all of these decisions are made by a cross-section of California residents, all volunteers paid nothing after an in-person hearing.

In Massachusetts, Connecticut and Texas where the legislature has provided for a state-run mechanism, consumers have fared better under BBB AUTO LINE.

In Connecticut the state Office of Legislative Research found that the consumer department's Lemon Law arbitration unit exceeded the 60-day legal limit for decisions in 31 of 32 cases awaiting hearings. The reports said consumers are waiting an average of 85 days to have Lemon Law claims heard.

Our Texas Bureau reports that the state program is six months to a year behind and is referring consumers to the Better Business Bureau.

In Massachusetts, the state has failed to set up a program in over two years and is also referring cases to the Better Business Bureau.

State of California

Department of Justice

Memorandum

Jeff Fuller
Legislative Unit
Sacramento

Date : 4/2/86

File No.:

Telephone: ATSS 677-209
(213) 736-20

Herschel T. Elkins
Assistant Attorney General
Consumer Law Section

from : Office of the Attorney General
LOS ANGELES

Subject: In Re: Lemon Law Arbitration

AB 3611

We have recently conducted an examination of the arbitration procedures now taking place pursuant to the Song-Beverly Consumer Warranty Act. Civil Code section 1793.2(e) provided for an arbitration mechanism which would avoid court battles for most consumers in lemon law cases. It had been assumed that the major automobile manufacturers would attempt to utilize a qualified third party dispute resolution procedure pursuant to such statute. Alas, such is not the case. Since there have been legislative suggestions that lemon law procedures be changed, you may be interested in our findings.

There are four current automobile third party dispute mechanisms in California: The Better Business Bureau, Autocap, Chrysler Customer Arbitration Board and the Ford Appeals Board. The Better Business Bureau is the largest dispute resolution procedure. It has stated that it is not a lemon law mechanism. The Better Business Bureau carefully avoids any training of volunteer arbitrators in the lemon law; reference is not made to the lemon law and no change in this training is anticipated. Despite the fact that section 1795.4 of the Civil Code includes leased vehicles in lemon law procedures, the BBB will not arbitrate cases in which there are requests for buy backs on leased vehicles. The Southern California Ford Appeals Board also will not handle buy back requests on leased vehicles. The Chrysler Customer Arbitration Board does handle requests for buy backs in leases but awards such an insignificant amount of buy backs generally that this inclusion is not significant. The New York Attorney General has found that the Chrysler Board does not comply with FTC arbitration standards. Our examination supports that position. The Chrysler procedure is totally unacceptable and was a shocking experience for our representatives who watched the proceeding. We have not yet reviewed Autocap. Thus, in the majority of cases, there does not appear to be an adequate lemon law arbitration procedure in California.


HERSCHEL T. ELKINS
Assistant Attorney General

ETE/dt

State of California

Department of Justice
Office of the Attorney General
Legislative Affairs Unit
1515 K Street, Suite 511
Sacramento, CA 95814



Jeffrey J Fuller
Deputy Attorney General

(916) 324-5478
ATSS 8-454-5478

c Sally
unip

Memorandum

To : Jeff Fuller
Legislative Unit
Sacramento

Date : 4/2/86

File No.:

Telephone: ATSS 677-209
(213) 736-20

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HERSCHEL T. ELKINS
Assistant Attorney General

BTE/dt

State of California

Department of Justice
Office of the Attorney General
Legislative Affairs Unit
1515 K Street, Suite 511
Sacramento, CA 95814



Jeffrey J Fuller
Deputy Attorney General

(916) 324-5478
ATSS 8-454-5478

c Sally
unip

APR 3-1986

During the 1985 calendar year GM had over 600,000 vehicles in California that were less than two years old and therefore potentially eligible for arbitration under the lemon law if anything was found to be wrong. 9,244 of the owners of those vehicles applied to the BBB for mediation or arbitration. The local BBB's resolved 10,571 cases in 1985. 81% were resolved by mediation with only 1,966 or 0.3% of those potentially eligible actually going to arbitration. The BBB's resolution of a customer's dispute averages 40 days.

In 1985 we bought back over 400 vehicles.

Lee called to
say this sentence is confidential for
you only.
WHL.

Sally - for your information,
as we discussed.

G. LEE RIDGEWAY

GENERAL MOTORS CORPORATION
INDUSTRY-GOVERNMENT RELATIONS
1170 PARK EXECUTIVE BUILDING
925 L STREET
SACRAMENTO, CAL. 95814

(916) 444-5788

AB 3611
FACT SHEET CONCERNING FISCAL
IMPACT TO THE NEW MOTOR VEHICLE BOARD

AB 3611, as amended in the Assembly on April 15, 1986, contains an amendment to Vehicle Code section 3050, pursuant to which the New Motor Vehicle Board is charged with the responsibility of certifying that the existing third-party dispute resolution processes (arbitration panels) comply with the requirements of section 1793.2 of the Civil Code.

At present, no similar certification process exists in California. As such, the precise fiscal impact upon the Board, should AB 3611 be enacted, remains unclear. It is the Board's position that the approved budget for fiscal year 1986-87 will provide the Board adequate appropriations to operate this certification program for the first six months of 1987. Prior to the period of time during which the Board determines its fiscal requirements for FY 1987-88, the cost data concerning the operation of the certification program should be readily available. As such, the Board, the Legislature, as well as the Governor, will be able to have input into controlling these costs by development of the Board's budget for FY 1987-88.

AB 3611 Ways and Means 5/28/86

do pass 20 - 1 (Dennis Brown opposed)

6/11/86

Sally:

6-11-86

Rick Rollins who makes the recommendations to Senate Rules Committee where a bill should be assigned, said that even with this letter that he will still

recommend that AB 3611 be

assigned to Insurance, Claims and Corporations.

I understand that this afternoon 1:30, Rm. 113, Senate Rules will decide on this assignment as well as others.

Senator Petris has a copy of this letter.

Annie knows of this too.

MARTY HINMAN

Assemblywoman Sally Tanner

Room 4146

445-7783

SACRAMENTO ADDRESS
STATE CAPITOL
SACRAMENTO 95814
(916) 445-7783

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11100 VALLEY BOULEVARD
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EL MONTE, CA 91731
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Assembly California Legislature

SALLY TANNER

ASSEMBLYWOMAN, SIXTIETH DISTRICT

CHAIRWOMAN

COMMITTEE ON ENVIRONMENTAL SAFETY & TOXIC MATERIALS

June 9, 1986

COMMITTEES:

AGING AND LONG TERM CARE
ENVIRONMENTAL SAFETY &
TOXIC MATERIALS
GOVERNMENTAL ORGANIZATION
LABOR & EMPLOYMENT
SUBCOMMITTEES:
HAZARDOUS WASTE DISPOSAL
ALTERNATIVES
SPORTS & ENTERTAINMENT
TOXIC DISASTER PREPAREDNESS

MEMBER:

JOINT COMMITTEE ON
FIRE, POLICE, EMERGENCY
AND DISASTER SERVICES
GOVERNOR'S TASK FORCE ON
TOXICS, WASTE & TECHNOLOGY
SELECT COMMITTEE ON
LOW LEVEL NUCLEAR WASTE

Honorable David Roberti
President Pro Tempore
State Capitol - Room 205

Dear Senator Roberti:

The purpose of this letter is to request that AB 3611, my bill to revise the operation of the California "Lemon Law", be referred to the Senate Judiciary Committee. I believe that the Judiciary Committee is the most suitable committee to hear the bill for the following reasons:

1) The Senate Judiciary Committee has heard all "Lemon Law" bills that have been introduced since 1981.

2) The bill revises the arbitration procedures which are used under current law to determine whether a car is a "lemon". Dispute resolution in these cases is carried out by arbitration panels run by the auto manufacturers. The bill requires that these arbitration procedures be certified by the New Motor Vehicle Board as meeting the requirements of the "Lemon Law" and Federal Trade Commission regulations.

The bill also revises the terms under which "lemon" car owners are compensated to ensure that refunds cover items like sales tax and license fees so that the consumer does not end up having to absorb these costs of owning a "lemon".

3) The bill does not affect the provisions of new car warranties, their terms or conditions or the consumer's rights or manufacturer's duties under these warranties.

*Senate Rates
14.
(pg. 101)
Insurance/
Claims &
Corp.*

Because the bill is a "due process" bill that seeks to ensure that fair and impartial decisions are made on "lemon" cars, and because the bill does not relate directly to warranties, I believe that a referral to the Senate Judiciary Committee is the most appropriate referral. That committee has the greatest expertise on matters of due process and just compensation and will give the bill an in-depth, substantive and productive hearing.

Thank you for your courtesy.

Sincerely,

SALLY TANNER
Assemblywoman, 60th District

ST:amh

cc. Senator Petris
Lockyer

SACRAMENTO ADDRESS
STATE CAPITOL
SACRAMENTO 95814
(916) 445-7783

DISTRICT OFFICE ADDRESS
11100 VALLEY BOULEVARD
SUITE 106
EL MONTE, CA 91731
(818) 442-9100



Assembly California Legislature

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

June 9, 1986

COMMITTEES

AGING AND LONG TERM CARE
ENVIRONMENTAL SAFETY &
TOXIC MATERIALS
GOVERNMENTAL ORGANIZATION
LABOR & EMPLOYMENT
SUBCOMMITTEES
HAZARDOUS WASTE DISPOSAL
ALTERNATIVES
SPORTS & ENTERTAINMENT
TOXIC DISASTER PREPAREDNESS

MEMBER

JOINT COMMITTEE ON
FIRE, POLICE, EMERGENCY
AND DISASTER SERVICES
GOVERNOR'S TASK FORCE ON
TOXICS, WASTE & TECHNOLOGY
SELECT COMMITTEE ON
LOW LEVEL NUCLEAR WASTE

Honorable David Roberti
President Pro Tempore
State Capitol - Room 205

Dear Senator Roberti:

The purpose of this letter is to request that AB 3611, my bill to revise the operation of the California "Lemon Law", be referred to the Senate Judiciary Committee. I believe that the Judiciary Committee is the most suitable committee to hear the bill for the following reasons:

1) The Senate Judiciary Committee has heard all "Lemon Law" bills that have been introduced since 1981.

2) The bill revises the arbitration procedures which are used under current law to determine whether a car is a "lemon". Dispute resolution in these cases is carried out by arbitration panels run by the auto manufacturers. The bill requires that these arbitration procedures be certified by the New Motor Vehicle Board as meeting the requirements of the "Lemon Law" and Federal Trade Commission regulations.

The bill also revises the terms under which "lemon" car owners are compensated to ensure that refunds cover items like sales tax and license fees so that the consumer does not end up having to absorb these costs of owning a "lemon".

3) The bill does not affect the provisions of new car warranties, their terms or conditions or the consumer's rights or manufacturer's duties under these warranties.

Because the bill is a "due process" bill that seeks to ensure that fair and impartial decisions are made on "lemon" cars, and because the bill does not relate directly to warranties, I believe that a referral to the Senate Judiciary Committee is the most appropriate referral. That committee has the greatest expertise on matters of due process and just compensation and will give the bill an in-depth, substantive and productive hearing.

Thank you for your courtesy.

Sincerely,

SALLY TANNER
Assemblywoman, 60th District

ST:amh

June 4, 1986

June 4, 1986

ASSEMBLY JOURNAL

7579

mbly
e vote, Assembly Member

o close the doors, and to bring

L NO. 2634 BY UNANIMOUS

ed unanimous consent to take
, for purpose of consideration

t to amend Sections 7551 and 7554 of
ns, and declaring the urgency thereof,

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Stirling
Tanner
Tucker
Vasconcellos
Vicencia
Waters, Maxine
Waters, Norman
Wright
Wyman
Mr. Speaker

The roll was called, and the Assembly concurred in the above Senate amendments by the following vote:

AYES—70

Agnos	Eaves	Jones	Rogers
Allen	Farr	Katz	Roos
Areias	Felando	Kelley	Seastrand
Bader	Ferguson	Killea	Sebastiani
Baker	Filante	Kleh	Sher
Bane	Floyd	Konnyu	Statham
Bates	Frazee	La Follette	Stirling
Bradley	Frizzelle	Lancaster	Tanner
Brown, Dennis	Grisham	Leonard	Tucker
Calderon	Hannigan	Lewis	Vasconcellos
Campbell	Harris	Margolin	Vicencia
Chacon	Hauser	McAlister	Waters, Maxine
Clute	Herger	Mojonnier	Waters, Norman
Condit	Hill	Moore	Wright
Connelly	Hughes	Nolan	Wyman
Cortese	Isenberg	O'Connell	Mr. Speaker
Costa	Johnson	Papan	
Duffy	Johnston	Peace	

NOES—None

Above bill ordered enrolled.

THIRD READING OF ASSEMBLY BILLS (RESUMED)

ASSEMBLY BILL NO. 3611 (Tanner)—An act to amend Section 1793.2 of, and to add Section 1793.25 to, the Civil Code, and to amend Section 3050 of, and to add Section 3050.9 to, the Vehicle Code, relating to vehicles, and making an appropriation therefor.

Bill read third time, and passed by the following vote:

AYES—66

Agnos	Elder	Jones	Roos
Allen	Farr	Katz	Seastrand
Areias	Felando	Kelley	Sebastiani
Bader	Filante	Killea	Sher
Baker	Floyd	Kleh	Statham
Bane	Frazee	Konnyu	Stirling
Bates	Frizzelle	La Follette	Tanner
Calderon	Grisham	Lancaster	Tucker
Campbell	Hannigan	Leonard	Vasconcellos
Chacon	Harris	Margolin	Vicencia
Clute	Hauser	McAlister	Waters, Maxine
Condit	Hayden	Mojonnier	Waters, Norman
Connelly	Herger	Nolan	Wright
Cortese	Hill	O'Connell	Wyman
Costa	Hughes	Papan	Mr. Speaker
Duffy	Isenberg	Peace	
Eaves	Johnston	Rogers	

NOES—5

Bradley	Ferguson	Lewis
Brown, Dennis	Johnson	

Bill ordered transmitted to the Senate.

ASSEMBLY BILL NO. 3763 (Wright)—An act to add Sections 17052.12 and 23615 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

6/11/86

AB 3611 in Senate Rules Committee for assignment

Letter- MOTION/TO SEND TO JUDICIARY failed 2-0
/By Petris

AYE-- PETRIS and MELLO

NO -- None

SUBSTITUTE MOTION/TO SEND TO INSURANCE, CLAIMS & CORPORATIONS
/By Doolittle

AYE-- Doolittle & Roberti

NO--- Petris & Mello

They needed 3 votes to pass and Senator Craven was not there.

~~THEX~~ AB 3611 was put over to June 18 for assignment.

6/18/86 Senator Roberti not in Rules Committee so they did
not hear any discussion bills so put this over
to 6/25

Marty

6/11/86

The reason that the lemon bill clearly states that it applies to vehicles for use primarily for personal use is because this comes under the Song-Beverly Warranty Act which relates only to items for personal use.

6666

SENATE JOURNAL

July 2, 1986

JUDICIARY

BILL NO.	: AB 3449	:	AB 3466	:	AB 3483	:	AB 3485
ACTION VOTED ON	: Do pass and re-refer to Com on APPR. rec. Consent	:	Do pass as amended and re-refer to Com on APPR. rec. Consent	:	Do pass as amended and re-refer to Com on APPR. rec. Consent	:	Do pass as amended and re-refer to Com on APPR. rec. Consent
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Marks	: X :	:	X :	:	X :	:	X :
Petris	: X :	:	X :	:	X :	:	X :
Presley	: X :	:	X :	:	X :	:	X :
Richardson	: X :	:	Ab.:	:	Ab.:	:	Ab.:
Roberti	: Ab.:	:	X :	:	X :	:	Ab.:
Torres	: Ab.:	:	X :	:	X :	:	X :
Watson	: Ab.:	:	X :	:	X :	:	X :
Davis(V.Chair)	: X :	:	X :	:	X :	:	X :
Lockyer(Chair)	: X :	:	X :	:	X :	:	X :
	: Ayes: 8	:	Ayes: 10	:	Ayes: 10	:	Ayes: 9
	: Noes: 0	:	Noes: 0	:	Noes: 0	:	Noes: 0

07/01/86
Date of Hearing

Bill Rocker
Chairman

AB-3611

JUDICIARY

BILL NO.	: AB 3611	: AB 3689	: AB 3717	: AB 3755
ACTION VOTED ON	: Do pass as amended and re-refer to Com on APPR.	: Do pass as amended and re-refer to Com on APPR.	: Do pass and re-refer to Com on APPR. Consent	: Do pass and re-refer to Com on APPR.
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Doolittle	: Aye : No : X :	: Aye : No : X :	: Aye : No : X :	: Aye : No : X :
Keene	: X :	: X :	: X :	: X :
Marks	: X :	: X :	: X :	: X :
Petris	: X :	: Ab. :	: Ab. :	: Ab. :
Presley	: X :	: X :	: Ab. :	: X :
Richardson	: Ab. :	: Ab. :	: Ab. :	: Ab. :
Roberti	: Ab. :	: Ab. :	: Ab. :	: X :
Torres	: X :	: X :	: X :	: X :
Watson	: X :	: X :	: X :	: X :
Davis(V.Chair)	: X :	: X :	: X :	: X :
Lockyer(Chair)	: X :	: X :	: X :	: X :
	: Ayes: 9	: Ayes: 8	: Ayes: 7	: Ayes: 9
	: Noes: 0	: Noes: 0	: Noes: 0	: Noes: 0

07/01/86
Date of Hearing

Bier Lockman
Chairman

July 2, 1986

SENA

[illegible]

07/01/86
Date of Hearing

BILL NO.	: AB 3883
ACTION VOTED ON	: Do pass as
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	: re-refer to
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	: APPR. rec.
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	: Aye : No
Doolittle	: X :
Keene	: X :
Marks	: X :
Petris	: X :
Presley	: X :
Richardson	: Ab. :
Roberti	: X :
Torres	: X :
Watson	: X :
Davis(V.Chair)	: X :
Lockyer(Chair)	: X :
	: Ayes: 10
	: Noes: 0

07/01/86
Date of Hearing

Law Offices

Slatter & Slatter

A Professional Corporation

7 Lemon
JUL 10 1985

Vann H. Slatter
Lindsay Kohut Slatter
Paul Robert Kiesel

July 7, 1986

Assemblywoman Sally Tanner
State Capitol
Assembly Mail Room
Sacramento, CA 95814

Dear Ms. Tanner:

This is for your review.

Faithfully yours,



PAUL ROBERT KIESEL

/ser

Lemon file
N.

Debbie
Carmen
Jag
cc Anna

Tougher auto 'lemon law' easily passes Senate

By ROBERT SCHWANEBERG

Legislation intended to toughen New Jersey's three-year-old "lemon law" by allowing buyers of defective new cars to go directly to court passed the Senate yesterday, 39-0.

The bill (S-1509), sponsored by Sen. Edward O'Connor (D-Hudson), now goes to the Assembly for further consideration.

The bill would repeal that section of the lemon law that requires new car buyers, who believe they are stuck with a "lemon," to go through an informal arbitration procedure before they may file a lawsuit against the manufacturer.

"Consumers are frustrated by the law as it stands now," O'Connor said. "People who have tried to make a claim under the existing procedure say it takes too long and is too expensive."

Passed in 1983, the lemon law provided that if a new car or motorcycle must go back to the shop four times for

Measure would repeal arbitration, let consumer go straight to court

the same defect or is out of service more than 30 days for multiple defects, the buyer can demand a replacement vehicle or his money back. Before the buyer may go to court to enforce those remedies, however, he must go through an informal arbitration procedure, if the company provides one.

"The way it is now, the arbitration process can go on for many months," O'Connor said. "In most cases, the arbitrator gives the manufacturer one more chance to fix the car and the consumer ends up hiring a lawyer and taking the case to court."

Consumer Affairs Director James Barry announced last fall that while the law was intended to provide speedy relief to buyers of defective automobiles,

allow lemon law cases for any amount to be heard in small claims court.

O'Connor noted that small claims courts have evening hours, which are more convenient for people who must work during the day, and do not require the parties to be represented by lawyers.

The bill also requires manufacturers to identify all cars and motorcycles returned under the lemon law before they may be resold. Such vehicles would have to carry a label stating why they were returned and whether they have been "rehabilitated." O'Connor explained. Violators would face \$1,000 fines.

It also provides that when a manufacturer replaces a "lemon" car or motorcycle, a bank that had written the loan on the original vehicle would have a lien on the replacement vehicle.

O'Connor explained that is to assure lenders their rights are protected and prevent the lemon law from inadvertently chilling the issuance of credit.

the arbitration procedure had proven to be "extremely cumbersome." He said the process can take so long that some buyers of defective new cars "unload" them on unsuspecting purchasers who, because they are buying used cars, have no protection under the lemon law.

Barry recommended that the lawmakers remove the arbitration requirement and allow the consumer to go straight to small claims court, where cases tend to move faster than in the civil courts.

O'Connor's bill makes both those changes to the law. Although cases in small claims court normally cannot be for more than \$1,000, the bill would

BILL ANALYSIS ACTION

JUL 28 1985

Date: July 15, 1986

Bill No.: AB 3611

Date introduced/
amended: July 9, 1986

Author: Tanner

Tax: Sales and Use

Position: Support

Related Bills: _____

- ☐ We have no interest in the bill in its present form and will not prepare an analysis.
- ☐ We are following the bill but have no comment on its present form.
- ☐ The current amendment(s) does(do) not affect our previous analysis and we have no further comment(s).
- ☐ Our previous analysis is still accurate, however, we would like to comment on the current amendment(s) to the bill. See comments below.
- ☒ See comments.

COMMENTS:

These amendments specify, in part, that the refund to consumers of the equivalent amount of the sales tax paid on their new car would be paid for out of the Retail Sales Tax Fund. This change was proposed by the State Board of Equalization as a clarifying technical amendment.

Please direct any further inquiries to: Margaret Shedd Boatwright
(322-2376)

Legislative Analyst
August 19, 1986

ANALYSIS OF ASSEMBLY BILL NO. 3611 (Tanner)
As Amended in Senate August 15, 1986
1985-86 Session

AB 3611 (Am. 8/15/86)

Fiscal Effect:

Cost: Potential costs up to \$150,000 in 1987-88 (half year) and up to \$300,000 annually thereafter to the Automobile Warranty Arbitration Program Certification Fund for the Bureau of Automotive Repair (BAR) to certify arbitration programs; fully offset by fees paid by arbitration program applicants.

Revenue:

1. Unknown annual fee revenues paid by arbitration program applicants.
2. Unknown annual revenue loss to the General Fund from sales tax reimbursements to vehicle manufacturers.

Analysis:

This bill requires the Bureau of Automotive Repair (BAR) to establish an automobile warranty certification program. This program will primarily involve vehicle manufacturers, distributors and dealers. The bill also changes current law pertaining to vehicle warranty procedures. Specifically, the bill:

- Requires BAR to (1) certify the arbitration programs for resolution of vehicle warranty disputes, (2) authorizes the board to revoke or suspend any arbitration program if it does not meet specified standards, (3) notify the Department of Motor Vehicles (DMV) of

cc Annie
D.O.

AB 3611--contd

failures of manufacturer, distributor, or their branches to comply with arbitration decisions, (4) inform the public of the arbitration program, and (5) provide the Legislature with a biennial report evaluating the effectiveness of the program.

- Requires arbitration programs to provide the bureau with specified information regarding their activities.
- Requires motor vehicle manufacturers to replace defective vehicles or make restitutions if the manufacturer is unable to service or repair the vehicles after a reasonable number of buyer requests. The buyer, however, would be free to take restitution in place of a replacement vehicle.
- Authorizes BAR to charge fees, up to \$1 per new motor vehicle sold, leased or distributed by an arbitration program applicant to fund its program costs. Such fees would be deposited by the New Motor Vehicle Board (NMVB) into the Automobile Warranty and Arbitration Program Certification Fund.
- Requires the State Board of Equalization (BOE) to reimburse the manufacturer of a new motor vehicle any sales tax returned to the buyer as part of restitution for a defective vehicle.

AB 3611--contd

Fiscal Effect

Our analysis indicates that BAR could incur half-year costs up to \$150,000 in 1987-88 and full-year costs up to \$300,000 annually thereafter to certify arbitration programs. These costs, however, would be fully offset by fees paid by arbitration program applicants.

The BOE would incur unknown, probably minor, absorbable costs to reimburse the sales tax to the manufacturer in vehicle restitution settlements.

Moreover, the bill would result in an unknown revenue loss to the General Fund from sales tax reimbursements made to manufacturers and distributors of defective new motor vehicles.

82/s8

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

DEPARTMENT
Finance

AUTHOR
Tanner, et al

BILL NUMBER
AB 3611

SPONSORED BY

RELATED BILLS

AMENDMENT DATE
As proposed
RN 86 021015

BILL SUMMARY

VEHICLE WARRANTIES/"LEMON LAW"

This bill requires the Bureau of Automotive Repair (BAR) to certify third party arbitration processes that require manufacturers to replace or provide restitution for manufactured defective vehicles. The New Motor Vehicle Board (NMVB) would be authorized to charge a fee for any costs incurred from the certification activity. Fees would be deposited in the Automobile Warranty and Arbitration Program Certification Fund out of which program costs would be funded, however, the bill contains no appropriation.

SUMMARY OF COMMENTS

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

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)						Code Fund
	LA	(Dollars in Thousands)						
	CO							
	RV	FC	1986-87	FC	1987-88	FC	1988-89	
0860/Bd. of Equal	SO	S	--	S	\$0.5	S	\$1	001/Gen.
1149/Retail Sales and Use Taxes		-----No Fiscal Impact-----						001/Gen.
1150/BAR	SO	C	--	C	158	C	293	499/AWAPCF
2740/Motor Vehicles	RV	U	--	U	150	U	300	499/AWAPCF
2740/Motor Vehicles	SO	-----No Fiscal Impact-----						054/NMVB

ANALYSIS

A. Specific Findings

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

AB 3611 would, on January 1, 1988, enact the Automobile Warranty Arbitration Program Certification Act to be administered by BAR. The act would provide a process for the resolution of disputes between the owner or leasee of a new motor vehicle and the manufacturer or distributor.

(Continued)

POSITION:
Neutral

Department Director

Date

Principal Analyst
(222) B. R. Cohen

Date

Program Budget Manager

Date

Governor's Office

Position noted

Position approved

Position disapproved

by:

date:

CJ:PH/0039A/0529C-1

BILL ANALYSIS/ENROLLED BILL REPORT

Form DF-43 (Rev 03/86 500 Bu)

AUTHOR

AMENDMENT DATE

BILL NUMBER

Tanner, et al.

As proposed RN 86 021015

AB 3611

ANALYSIS

A. Specific Findings (Continued)

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

The bill would require a manufacturer which has been decertified or which does not operate a certified program to inform the buyer, in writing, that a certified automobile warranty program is not available.

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

AB 3611 requires that service and repair of a motor vehicle be performed by a repair facility independent of the manufacturer, and would expressly provide that, for new motor vehicles, the buyer may elect restitution in lieu of replacement. The bill would require that when a vehicle is replaced or restitution is made by the manufacturer, the buyer may be required to reimburse the manufacturer, or the manufacturer may reduce the amount of restitution, by an amount directly attributable to the use of the vehicle by the buyer.

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

AB 3611 requires every manufacturer of new motor vehicles whose sales and leases exceed 1,000 new motor vehicles during a calendar year to maintain and operate a certified automobile warranty arbitration program and would require those manufacturers to report those sales or leases annually to the NMVB on forms prescribed by the NMVB.

The bill would require the NMVB to administer the collection of fees to fund the Automobile Warranty Arbitration Program and Certification Act and would create the Automobile Warranty and Arbitration Program Certification Fund for deposit of those fees. The bill would require each applicant for a license to pay a fee, determined by BAR but not to exceed \$1 for each motor vehicle sold or leased.

(Continued)

AUTHOR

AMENDMENT DATE

BILL NUMBER

Tanner, et al.

As proposed RN 86 021015

AB 3611

ANALYSIS**A. Specific Findings (Continued)****B. Fiscal Analysis**

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

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

Computation:

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

There would be no revenue loss to the General fund since the sales tax previously collected and remitted to the BOE by the dealers remains in the General Fund. The manufacturer refunds the sales tax to the purchaser.

According to the DMV any costs that would be incurred by the NMVB are indeterminate and should any costs arise they would be offset by the fee authorized by this bill.

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

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

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

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

DEPARTMENT AUTHOR BILL NUMBER
Finance Tanner, et al AB 3611

SPONSORED BY RELATED BILLS AMENDMENT DATE
As proposed
RN 86 021015

BILL SUMMARY

VEHICLE WARRANTIES/"LEMON LAW"

This bill requires the Bureau of Automotive Repair (BAR) to certify third party arbitration processes that require manufacturers to replace or provide restitution for manufactured defective vehicles. The New Motor Vehicle Board (NMVB) would be authorized to charge a fee for any costs incurred from the certification activity. Fees would be deposited in the Automobile Warranty and Arbitration Program Certification Fund out of which program costs would be funded, however, the bill contains no appropriation.

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Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year)						Code Fund
		(Dollars in Thousands)						
		FC	1986-87	FC	1987-88	FC	1988-89	
0860/Bd. of Equal 1149/Retail Sales and Use Taxes	SO	S	--	S	\$0.5	S	\$1	001/Gen.
		-----No Fiscal Impact-----						001/Gen.
1150/BAR	SO	C	--	C	158	C	293	499/AWAPCF
2740/Motor Vehicles	RV	U	--	U	150	U	300	499/AWAPCF
2740/Motor Vehicles	SO	-----No Fiscal Impact-----						054/NMVB

ANALYSIS

A. Specific Findings

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

AB 3611 would, on January 1, 1988, enact the Automobile Warranty Arbitration Program Certification Act to be administered by BAR. The act would provide a process for the resolution of disputes between the owner or leasee of a new motor vehicle and the manufacturer or distributor.

(Continued)

POSITION:
Neutral

Department Director Date

Principal Analyst
(222) B. R. Cohen

Date

Program Budget Manager

Date

Governor's Office

Position noted

Position approved

Position disapproved

by:

date:

CJ:PH/0039A/0529C-1

BILL ANALYSIS/ENROLLED BILL REPORT

Form DF-43 (Rev 03/86 500 Bu)

938

AUTHOR

AMENDMENT DATE

BILL NUMBER

Fanner, et al.

As proposed RN 86 021015

AB 3611

ANALYSIS**A. Specific Findings (Continued)**

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

The bill would require a manufacturer which has been decertified or which does not operate a certified program to inform the buyer, in writing, that a certified automobile warranty program is not available.

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

AB 3611 requires that service and repair of a motor vehicle be performed by a repair facility independent of the manufacturer, and would expressly provide that, for new motor vehicles, the buyer may elect restitution in lieu of replacement. The bill would require that when a vehicle is replaced or restitution is made by the manufacturer, the buyer may be required to reimburse the manufacturer, or the manufacturer may reduce the amount of restitution, by an amount directly attributable to the use of the vehicle by the buyer.

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

AB 3611 requires every manufacturer of new motor vehicles whose sales and leases exceed 1,000 new motor vehicles during a calendar year to maintain and operate a certified automobile warranty arbitration program and would require those manufacturers to report those sales or leases annually to the NMVB on forms prescribed by the NMVB.

The bill would require the NMVB to administer the collection of fees to fund the Automobile Warranty Arbitration Program and Certification Act and would create the Automobile Warranty and Arbitration Program Certification Fund for deposit of those fees. The bill would require each applicant for a license to pay a fee, determined by BAR but not to exceed \$1 for each motor vehicle sold or leased.

(Continued)

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BILL ANALYSIS/ENROLLED BILL PORT--(Continued) - Form DF-43
 AUTHOR AMENDMENT DATE BILL NUMBER

Tanner, et al.

As proposed RN 86 021015

AB 3611

ANALYSIS

A. Specific Findings (Continued)

B. Fiscal Analysis

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

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

Computation:

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

There would be no revenue loss to the General fund since the sales tax previously collected and remitted to the BOE by the dealers remains in the General Fund. The manufacturer refunds the sales tax to the purchaser.

According to the DMV any costs that would be incurred by the NMVB are indeterminate and should any costs arise they would be offset by the fee authorized by this bill.

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

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

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

CJ:PH/0039A/0529C3

ANALYSIS OF ASSEMBLY BILL NO. 3611 (Tanner)
As Amended in Senate August 15, 1986
1985-86 Session

AB 3611 (Am. 8/15/86)

Fiscal Effect:

Cost: Potential costs up to \$150,000 in 1987-88 (half year) and up to \$300,000 annually thereafter to the Automobile Warranty Arbitration Program Certification Fund for the Bureau of Automotive Repair (BAR) to certify arbitration programs; fully offset by fees paid by arbitration program applicants.

Revenue: 1. Unknown annual fee revenues paid by arbitration program applicants.
2. Unknown annual revenue loss to the General Fund from sales tax reimbursements to vehicle manufacturers.

Analysis:

This bill requires the Bureau of Automotive Repair (BAR) to establish an automobile warranty certification program. This program will primarily involve vehicle manufacturers, distributors and dealers. The bill also changes current law pertaining to vehicle warranty procedures. Specifically, the bill:

- Requires BAR to (1) certify the arbitration programs for resolution of vehicle warranty disputes, (2) authorizes the board to revoke or suspend any arbitration program if it does not meet specified standards, (3) notify the Department of Motor Vehicles (DMV) of

cc annie
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failures of manufacturer, distributor, or their branches to comply with arbitration decisions, (4) inform the public of the arbitration program, and (5) provide the Legislature with a biennial report evaluating the effectiveness of the program.

- Requires arbitration programs to provide the bureau with specified information regarding their activities.
- Requires motor vehicle manufacturers to replace defective vehicles or make restitutions if the manufacturer is unable to service or repair the vehicles after a reasonable number of buyer requests. The buyer, however, would be free to take restitution in place of a replacement vehicle.
- Authorizes BAR to charge fees, up to \$1 per new motor vehicle sold, leased or distributed by an arbitration program applicant to fund its program costs. Such fees would be deposited by the New Motor Vehicle Board (NMVB) into the Automobile Warranty and Arbitration Program Certification Fund.
- Requires the State Board of Equalization (BOE) to reimburse the manufacturer of a new motor vehicle any sales tax returned to the buyer as part of restitution for a defective vehicle.

Fiscal Effect

Our analysis indicates that BAR could incur half-year costs up to \$150,000 in 1987-88 and full-year costs up to \$300,000 annually thereafter to certify arbitration programs. These costs, however, would be fully offset by fees paid by arbitration program applicants.

The BOE would incur unknown, probably minor, absorbable costs to reimburse the sales tax to the manufacturer in vehicle restitution settlements.

Moreover, the bill would result in an unknown revenue loss to the General Fund from sales tax reimbursements made to manufacturers and distributors of defective new motor vehicles.

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Legislative Analyst
August 7, 1986

ANALYSIS OF ASSEMBLY BILL NO. 3611 (Tanner)
As Amended in Senate July 9, 1986 and
As Further Amended by LCR No. 020241
1985-86 Session

AB 3611 (Am. 7/9/86 and LCR No. 020241)

Fiscal Effect:

Cost: Potential annual cost up to \$150,000 to the Automobile Warranty Arbitration Program Certification Fund for the Bureau of Automotive Repair (BAR) to certify arbitration programs; fully offset by fees paid by arbitration program applicants.

Revenue: 1. Unknown annual fee revenues paid by arbitration program applicants.
2. Unknown annual revenue loss to the General Fund from sales tax reimbursements to vehicle manufacturers.

Analysis:

This bill requires the Bureau of Automotive Repair (BAR) to establish an automobile warranty certification program. This program will primarily involve vehicle manufacturers, distributors and dealers. The bill also changes current law pertaining to vehicle warranty procedures. Specifically, the bill:

- Requires BAR to (1) certify the arbitration programs for resolution of vehicle warranty disputes, (2) authorizes the board to revoke or suspend any arbitration program if it does not meet specified standards, (3) notify the Department of Motor Vehicles (DMV) of failures of manufacturer, distributor, or

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AB 3611--contd

their branches to comply with arbitration decisions, (4) inform the public of the arbitration program, and (5) provide the Legislature with a biennial report evaluating the effectiveness of the program.

- Directs BAR to designate an arbitration program to resolve disputes if a manufacturer, distributor, or branch does not establish a certified program.
- Requires arbitration programs to provide the bureau with specified information regarding their activities.
- Requires motor vehicle manufacturers to replace defective vehicles or make restitutions if the manufacturer is unable to service or repair the vehicles after a reasonable number of buyer requests. The buyer, however, would be free to take restitution in place of a replacement vehicle.
- Authorizes BAR to charge fees, up to \$2 per new motor vehicle sold, leased or distributed by an arbitration program applicant to fund its program costs. Such fees would be deposited by the New Motor Vehicle Board (NMVB) into the Automobile Warranty and Arbitration Program Certification Fund.
- Requires the State Board of Equalization (BOE) to reimburse the manufacturer of a new motor vehicle any sales tax returned to the

AB 3611--contd

buyer as part of restitution for a defective vehicle.

Fiscal Effect

Our analysis indicates that BAR could incur annual costs in the range of \$100,000 to \$150,000 to certify arbitration programs. These costs, however, would be fully offset by fees paid by arbitration program applicants.

The BOE would incur unknown, probably minor, absorbable costs to reimburse the sales tax to the manufacturer in vehicle restitution settlements.

Moreover, the bill would result in an unknown revenue loss to the General Fund from sales tax reimbursements made to manufacturers and distributors of defective new motor vehicles.

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ANALYSIS OF ASSEMBLY BILL NO. 3611 (Tanner)
As Amended in Senate July 9, 1986 and
As Further Amended by LCR No. 020241
1985-86 Session

AB 3611 (Am. 7/9/86 and LCR No. 020241)

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Salix

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SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1985-86 Regular Session

AB 3611 (Tanner)
As amended May 19
Civil Code/Vehicle Code
DRS

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CONSUMER PROTECTION
-ARBITRATION PROCEEDINGS FOR DEFECTIVE
AUTOMOBILES-

HISTORY

Source: California Public Interest Research Group
(CalPIRG)

Prior Legislation: None

Support: Unknown

Opposition: No known

Assembly Floor Vote: Ayes 66 - Noes 5

KEY ISSUE

SHOULD ARBITRATION PROCEEDINGS OVER DEFECTIVE
AUTOMOBILES BE SUBJECT TO STRICTER REGULATIONS
DESIGNED TO ADD GREATER FAIRNESS?

SHOULD CONSUMERS WHO PURCHASE DEFECTIVE
AUTOMOBILES BE ENTITLED TO RECOVER ADDITIONAL,
INCIDENTAL COSTS RELATING TO THE AUTOMOBILES?

PURPOSE

California's "Lemon Laws" currently require a
consumer who believes his automobile is defective

(More)

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to resort first to a third party resolution process in order to recover damages from the manufacturer.

- (1) Existing law requires such third part resolution processes to comply with "minimum requirements" of the Federal Trade Commission's (FTC) dispute settlement regulations.

This bill would further require third party resolution processes to (1) conform to the FTC's guidelines concerning the provision of written materials and decision making; (2) conform to the FTC's guidelines concerning rights and remedies; and (3) provide for inspection of a "lemon" by an independent automobile expert.

- (2) Existing law gives the manufacturer the option of replacing a vehicle or making restitution, and it provides that such restitution may be reduced by an amount attributable to the buyer's use of the car.

This bill would provide for restitution at the option of the buyer, and would require that such restitution include incidental damages such as tax, license, and registration fees, and costs associated with repair, towing, or car rental.

The purpose of this bill is to provide for greater fairness both in automobile arbitration and in resulting restitution to the consumer.

(More)

COMMENT

1. Asserted need

According to the sponsor, CalPIRG, California's "Lemon Laws" do not provide adequate compensation to buyers of defective automobiles. They assert that some manufacturer-sponsored arbitration panels, such as Ford's Consumer Appeals Board and Chrysler's Consumer Satisfaction Board, do not offer consumers equitable treatment.

Moreover, CalPIRG states that when arbitration panels award restitution in lieu of replacement to the buyer, those panels typically deduct an inordinate amount from the award for the buyer's prior use of the car.

CalPIRG asserts that this bill would provide consumers with more equitable treatment and fairer awards from arbitration panels.

2. New requirements for arbitration panels

According to CalPIRG, existing regulations governing consumer arbitration panels are overly broad and have resulted in a lack of consistency among, and fairness by, such arbitration panels. They point out that some arbitration processes are conducted by panels comprising many members, while others are presided over by only one arbitrator. They also argue that some manufacturer-sponsored panels are unfair.

This bill would require arbitration panels to meet a number of new criteria, including:

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- (1) certification by the New Motor Vehicle Board;
- (2) conformity with FTC guidelines concerning decisions, rights, and remedies; and
- (3) provision, at the request of the arbitrator panel, for a car inspection by an independent automobile expert.

The bill permits the New Motor Vehicle Board to charge annual fees for certifying arbitration panels.

3. New damages

CalPIRG asserts that current provisions for recovery of damages from manufacturers are too limited. Most arbitration panels, base a restitution award only on the cars purchase price, less any amount attributable to the buyer's use of the vehicle.

This bill would permit consumers to seek restitution of tax, license and registration fees, and costs associated with towing, repair, or car rental.

The bill permits manufacturers to seek reimbursement from the Board of Equalization for any sales tax they return to a consumer.

4. Restitution at buyer's option

Under existing law, the manufacturer of a defective car may, at its discretion, either replace a defective car or make restitution to the buyer of its purchase cost. According to CalPIRG, most manufacturers prefer to replace

(More)

a car rather than make restitution. Thus, although the buyer may be reluctant to accept another car from the same manufacturer, under existing law he has no choice under arbitration.

This bill would give the buyer the option of accepting either a replacement car or restitution of the purchase price and incidental costs.

5. Appropriation

Because this bill requires the Board of Equalization to reimburse car manufacturers who make restitution of sales taxes to buyers, it would make an appropriation of amounts necessary to pay those claims.

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **RODRIGUEZ v. FCA
US**

Case Number: **S274625**

Lower Court Case Number: **E073766**

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Last Name, First Name (PNum)

Horvitz & Levy LLP

Law Firm