

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 12 of 16 • Pages N955 – 1149 of 1937**

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ATTORNEYS FOR DEFENDANT AND RESPONDENT
FCA US, LLC

JUN 10 1986

Bill Number Assembly Bill 3611 Date May 19, 1986
Author Tanner Tax Sales and Use
Board Position Support Related Bills _____

BILL SUMMARY:

This bill would add Section 1793.25 to the Civil Code to require the board to reimburse the manufacturer of a new motor vehicle for an amount equal to the sales tax which the manufacturer includes in making restitution to the buyer of the new motor vehicle upon receipt of satisfactory proof that the retailer of that motor vehicle has paid the sales tax to the state on the retail sale of that motor vehicle.

Section 1793.2 of the Civil Code would be amended to add paragraph (2) to subdivision (d) to provide that if the manufacturer or its representative in this state is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer is required, at the option of the buyer, either to replace the new motor vehicle or make restitution to the buyer. Any restitution made to the buyer can be reduced by that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

ANALYSIS

In General

Existing law provides that the amount upon which tax is computed does not include the amount charged for merchandise returned by customers if the full sales price, including that portion designated as "sales tax" is refunded either in cash or credit and the customer, in order to obtain the refund or credit, is not required to purchase other property at a price greater than the amount charged for the property that is returned. Refund or credit of the entire amount is deemed to be given when the purchase price, less rehandling and restocking costs, is refunded or credited to the customer.

Existing law also provides that the amount upon which the tax is computed does not include the amount credited or refunded by the seller to the consumer on account of defects in merchandise sold to the consumer. If, however, defective merchandise is accepted as part payment for other merchandise and an additional allowance or credit is given on account of its defective condition, only the amount allowed or credited on account of defects may be excluded from taxable gross receipts. The amount allowed as the "trade in" value must be included in the measure of tax.

In addition, existing law provides that any overpayment of sales taxes must be refunded to the person who paid those taxes to the state.

BACKGROUND

Effective January 1, 1983, the Legislature amended Section 1793.2 of the Civil Code to incorporate legislation commonly known as the California "Lemon Law". The law provides an arbitration process for disputes between manufacturers and consumers of new cars purported to have major manufacturing defects. If the mediator rules in favor of the consumer, the manufacturer is required by law to either replace the automobile or reimburse the purchase price less an amount attributable to use prior to the discovery of the defect.

This arbitration process raises sales and use tax questions as to the availability of the deduction for returned merchandise and/or defective merchandise. The dealer who sold the defective motor vehicle to the buyer may not be eligible for either of the deductions if the defective motor vehicle is returned to the manufacturer or some other dealer and the manufacturer or some other dealer replaces the motor vehicle or reimburses the buyer for the purchase price, assuming of course that the dealer and the manufacturer are separate legal entities.

COMMENTS

a. Enactment of this bill will result in insignificant administrative costs being incurred by the Board in notifying taxpayers and informing the board staff of the provisions of this bill.

Analysis Prepared by: Rey Obligation 322-7086
Contact: Margaret Shedd Boatwright 322-2376

May 28, 1986
0053F

ASSEMBLY THIRD READING

AB 3611 (Tanner) - As Amended: May 19, 1986

ASSEMBLY ACTIONS:

COMMITTEE	CON. PRO.	VOTE	5-0	COMMITTEE	W. & M.	VOTE	20-1
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Ayes:

Ayes: Vasconcellos, Baker, Agnos,
Bader, Calderon, Connelly, Eaves,
Herger, Hill, Isenberg, Johnson,
Johnston, Leonard, Lewis,
Margolin, McClintock, O'Connell,
Peace, Roos, M. Waters

Nays:

Nays: D. Brown

DIGEST

Existing law generally provides that a manufacturer who is unable to service or repair consumer goods, including motor vehicles, so that they conform to the applicable express warranties after a reasonable number of attempts - must either replace those goods or reimburse the buyer in an amount equal to the purchase price, less the amount directly attributable to the buyer's use prior to the discovery of the nonconformity (defect).

In 1982, the law was amended by AB 1787 (Tanner), commonly referred to as the "lemon" bill or "lemon" law. That legislation specifies that for new motor vehicles, a "reasonable number of attempts" is presumed to be either four or more repair attempts on the same major defect or more than 30 days out of service for service/repair of one or more major defects, within the first year or 12,000 miles of use.

That law also contains provisions which, under specified circumstances, require a buyer to notify the manufacturer directly of a continuing defect and to use a dispute resolution program meeting specified minimum standards, prior to asserting the "lemon presumption" (4 times/30 days = "reasonable number of repair attempts") in a legal action to obtain a vehicle replacement or refund.

This bill amends that law and related laws to:

- 1) Amend the definition of a "new motor vehicle" which is covered by the "lemon" law, to specifically include a dealer-owned vehicle and a "demonstrator" or other vehicle that is sold with a manufacturer's new car warranty, and to substitute a more specific definition for excluded off-road and commercial vehicles.

- continued -

- 2) Clarify that the vehicle buyer may assert the "lemon presumption" in any civil action, small claims court action or other formal or informal proceeding.
- 3) Expressly provide that the vehicle buyer has the choice of whether she or he receives a replacement vehicle or a refund for a defective "lemon" vehicle.
- 4) Specifically provide, for new motor vehicles, what is included in the replacement option and the refund option, as follows:
 - a) If a replacement vehicle is chosen by the buyer, it must be a new vehicle substantially identical to the vehicle replaced, accompanied by all normal new vehicle express and implied warranties. The manufacturer must bear the cost of any vehicle price increases, any sales tax, license and registration fees incurred as a result of the replacement and any incidental damages to which the buyer is entitled under the law, such as reasonable repair, towing and rental car costs actually incurred by the buyer.
 - b) If a refund is chosen by the buyer, it must consist of the full contract price paid or payable by the buyer, as well as charges for transportation, installed options, sales tax, license, registration and other official fees, and specified incidental damages, such as reasonable repair, towing or rental car costs actually incurred by the buyer - less the amount directly attributable to the buyer's use of the defective vehicle prior to discovery of the defect.
- 5) Require that the dispute resolution programs:
 - a) Provide the provisions of California's "lemon" law and the provisions of federal law which govern the operation of such programs to dispute decisionmakers.
 - b) Render decisions which incorporate consideration of those provisions.
 - c) Provide for an inspection and report on a vehicle by an independent expert at no cost to the buyer, when such is requested by a majority of the program's decisionmakers.
- 6) Require the Board of Equalization to reimburse the manufacturer in an amount equal to the sales tax paid for vehicles for which the manufacturer provides the specified refund to the buyer.
- 7) Authorize the Board of Equalization to adopt whatever rules and regulations it deems necessary or appropriate to carry out this reimbursement requirement.

- continued -

- 8) Require the California New Motor Vehicle Board (NMVB) to certify each dispute resolution program that is used to arbitrate "lemon" vehicle disputes as complying with the state's prescribed minimum standards prior to that program's use.
- 9) Require the NMVB to designate a certified dispute process to arbitrate "lemon" disputes if the manufacturer or distributor does not use one itself.
- 10) Permit the NMVB to suspend or revoke its certification when it determines a program does not comply with the state's minimum standards.
- 11) Require a vehicle manufacturer or distributor that uses a dispute resolution program and seeks to have it certified to provide the NMVB with any information the NMVB deems necessary in order for it to perform its certification responsibility.

FISCAL EFFECT

According to the Legislative Analyst, this bill will result in:

- Cost:
- 1) Potential cost in the range of \$50,000 to \$100,000 to the NMVB to certify arbitration programs, fully offset by fees charged to vehicle manufacturers and distributors.
 - 2) Unknown absorbable costs to the Board of Equalization to reimburse sales tax amounts in restitution (refund) settlements for defective vehicles.
- Revenues:
- 1) Unknown revenues generated by fees charged to manufacturers and distributors to offset program costs of the NMVB.
 - 2) Unknown revenue loss to the General Fund from sales tax reimbursements to vehicle manufacturers for restitution (refund) settlements on defective vehicles.

COMMENTS

- 1) This bill is sponsored by its author to strengthen existing "lemon" law protections, to eliminate inequities that have occurred from that law's implementation and to ensure that owners of seriously defective new cars can obtain a fair, impartial and speedy hearing on their complaints.

The bill is supported by the Consumer Federation of California, Consumers Union, California Public Interest Research Group (Cal PIRG), the San Francisco District Attorney, the Board of Equalization, the New Motor Vehicle Board, and several consumers and attorneys.

- continued -

The author and proponents state that since the effective date of the "lemon" law over three years ago, there have been numerous complaints from new car buyers concerning its implementation. While these complaints reflect continued dissatisfaction with the manufacturer's own resolution of disputes regarding defective new vehicles, they have also alleged that the dispute resolution programs financed by the manufacturers are not operated impartially. Consumers have complained of: long delays in obtaining a hearing (beyond the prescribed 40-60 day time limit); unequal access to the arbitration process; unreasonable decisions that do not appear to even acknowledge the existence, much less the use, of the "lemon" law's provisions or provide an adequate amount of reimbursement even when a refund decision is ordered.

- 2) The bill is opposed by Chrysler Corporation and the Automobile Importers of America (AIA).

Opponents of the bill state that the number of consumers dissatisfied with the current arbitration processes is small relative to the number of arbitrations. They argue that the manufacturers have invested a large amount of money to adequately fund these arbitration processes, the processes comply with the state's prescribed standards, they feel the programs are working very well and, if additional refinements are needed, they are willing to work cooperatively to that end.

WAYS AND MEANS COMMITTEE ANALYSIS

MAY 27 1986

Author: Tanner

Amended: 05/19/86

Bill No.: AB 3611

Policy Committee: Consumer Protection

Vote: 5-0

Urgency: No

Hearing Date: 05/28/86

State Mandated Local Program: No

Staff Comments by:

Disclaimed:

Tom Higgins

Existing law, known as the "lemon law" which amended the Song-Beverly Warranty Act, establishes remedies for the consumer whose newly purchased vehicle is substantially impaired.

The bill provides that the option of replacement or restitution, as specified, is expressly with the buyer.

This bill requires the New Motor Vehicle Board (which has auto dealers on it) to certify "third party" dispute resolution programs used for arbitration by manufacturers and consumers. The New Motor Vehicle Board will be able to ensure compliance with the lemon law and FTC guidelines without cost to the state, adding uniformity and consistency to the arbitration process.

Note: This bill was substantially amended, deleting provisions that created a state-run arbitration process.

This bill requires manufacturers to reimburse consumers for all costs associated with the purchase of the automobile when restitution or replacement is made, including towing, transportation, prorated DMV regional costs and sales tax.

This bill requires the BOE to refund the sales tax and the DMV to refund the prorated, unused portion of registration fees. The BOE and the DMV may adopt necessary rules and regulations for the purpose.

Fiscal:

This bill provides for the New Motor Vehicle Board to assess annual fees for the costs of certifying arbitration programs. The DMV and the BOE will have absorbable costs for refunding fees and taxes.

TH:djc

WAYS AND MEANS COMMITTEE ANALYSIS

MAY 27 1986

Author: Tanner

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Vote: 5-0

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Fiscal:

This bill provides for the New Motor Vehicle Board to assess annual fees for the costs of certifying arbitration programs. The DMV and the BOE will have absorbable costs for refunding fees and taxes.

TH:djc

Legislative Analyst
May 24, 1986

ANALYSIS OF ASSEMBLY BILL NO. 3611 (Tanner)
As Amended in Assembly May 19, 1986
1985-86 Session

AB 3611 (Am. 5/19/86)

Fiscal Effect:

- Cost:
1. Potential cost in the range of \$50,000 to \$100,000 to the New Motor Vehicle Board to certify arbitration processes. Costs fully offset by fees charged to manufacturers and distributors of motor vehicles.
 2. Unknown absorbable costs to the State Board of Equalization to reimburse sales tax in restitution settlements.
- Revenue:
1. Unknown revenues generated by fees charged to manufacturers and distributors to offset program costs of the New Motor Vehicle Board.
 2. Unknown revenue loss to the General Fund from sales tax reimbursements to vehicle manufacturers.

Analysis:

This bill changes current law pertaining to vehicle warranty procedures. Specifically, the bill:

- Requires the manufacturer of a motor vehicle, at the option of the buyer, to replace a defective motor vehicle or make restitution if the manufacturer is unable to service or repair the vehicle after a reasonable number of attempts by the buyer.

AB 3611--contd

- Requires the New Motor Vehicle Board (NMVB) to certify the arbitration processes used to resolve vehicle warranty disputes. Authorizes the board to revoke or suspend any arbitration process if it does not comply with specified standards.
- Authorizes the board to charge fees to manufacturers, distributors, and their branches to fund the board's costs.
- 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 the NMVB potentially could incur annual costs in the range of \$50,000 to \$100,000 to certify arbitration processes. These costs, however, will be fully offset by fees collected from the manufacturers and distributors of motor vehicles.

The BOE will incur unknown costs to reimburse the sales tax to the manufacturer in vehicle restitution settlements. These costs would be absorbable.

Unknown revenue loss to the General Fund from sales tax reimbursements made to manufacturers and distributors of defective new motor vehicles.

83/s8

Date of Hearing: April 3, 1986

AB 3611

ASSEMBLY COMMITTEE ON CONSUMER PROTECTION
ROBERT C. FRAZEE, Chairman

AB 3611 (Tanner) - As Introduced: February 20, 1986

ASSEMBLY ACTIONS:

COMMITTEE _____ CON. PRO. _____ VOTE _____ COMMITTEE _____ VOTE _____

Ayes:

Ayes:

Nays:

Nays:

SUBJECT

Vehicle warranties: defective ("lemon") new cars.

DIGEST

Existing law, the California Song-Beverly Consumer Warranty Act, generally provides that a manufacturer who is unable to service or repair consumer goods, including motor vehicles, so that they conform to the applicable express warranties after a reasonable number of attempts - must either replace those goods or reimburse the buyer in an amount equal to the purchase price, less the amount directly attributable to the buyer's use prior to the discovery of the nonconformity (defect).

In 1982, those provisions of the Song-Beverly Act were amended by AB 1787 (Tanner), commonly referred to as the "lemon bill" or "lemon law." That legislation specified that with respect to defined new motor vehicles, a "reasonable number of attempts" would be presumed to be either 4 or more repair attempts on the same major defect or more than 30 days out of service for service/repair of one or more major defects, within the first year or 12,000 miles of use.

That bill also enacted provisions which, under specified circumstances, required a buyer to directly notify the manufacturer of a continuing defect and to utilize a dispute resolution program meeting specified minimum standards, prior to asserting the "lemon presumption" (4 times/30 days = "reasonable number of repair attempts") in a legal action to obtain a vehicle replacement or refund.

This bill would amend that law and related laws to:

- continued -

AB 3611

- 1) Expressly provide that the vehicle buyer gets to choose whether she or he receives a replacement vehicle or a refund;
- 2) Specifically provide, for new motor vehicles, what is included in the replacement option and the refund option, as follows:
 - a) If a replacement vehicle is chosen by the buyer, it must be a new vehicle substantially identical to the vehicle replaced, accompanied by all normal new vehicle express and implied warranties. The manufacturer must bear the cost of any vehicle price increases and any sales tax, license and registration fees incurred as a result of the replacement.
 - b) If a refund is chosen by the buyer, it must consist of the full contract price paid or payable by the buyer, together with charges for transportation, installed options, sales tax, and license, registration and other official fees - less the amount directly attributable to a buyer's use of the defective vehicle prior to discovery of the defect.
- 3) Add statutory provisions to require the Board of Equalization and the Department of Motor Vehicles to refund the sales tax and the unused portion (pro rata) of the vehicle registration and license fees, respectively, to a manufacturer who has either replaced the vehicle or made the refund provided for under the bill's new warranty law provisions. The bill's provisions would also authorize both the Board and the Department to adopt whatever rules and regulations they deem necessary or appropriate to carry out these refund requirements.
- 4) Require the California New Motor Vehicle Board to certify each dispute resolution process used to arbitrate "lemon" vehicle disputes as complying with the state's prescribed minimum standards before that process could be used to fulfill the requirement for its use under the "lemon" law's provisions. The dispute resolution process would be required to provide the Board with any information the Board deemed necessary in order for it to perform its certification responsibility. The bill's provisions would permit the Board to suspend or revoke its certification when it determines a process does not comply with the state's minimum standards.
- 5) Require the New Motor Vehicle Board to provide arbitration itself, which meets the state's minimum standards for resolving disputes arising between a new motor vehicle purchaser and its manufacturer, or distributor. Provide that this state arbitration provision does not limit any of the buyer's other legal remedies except that the buyer is not entitled to a second qualified arbitration.

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- 6) Provide that a new motor vehicle buyer may request formal arbitration of vehicle disputes with manufacturers by the New Motor Vehicle Board and that specified conditions must be met prior to the Board's granting of an arbitration request.
- 7) Authorize the New Motor Vehicle Board to establish filing fees for cases when the Board arbitrates disputes, including a fixed annual fee to be charged to the Board's regulated vehicle manufacturers and distributors. Also, authorize the Board to order a party to a state arbitration to pay the other party's filing fees under specified circumstances.
- 8) Amend the definition of a "new motor vehicle" which is covered by the "lemon law", to specifically include dealer-owned vehicles and "demonstrators" sold with a manufacturers' new car warranties, and to substitute a more specific definition for excluded "off-road" vehicles.

FISCAL EFFECT

Unknown. This is a fiscal committee measure. The bill provides for sales tax refunds and pro-rata refunds of unused portions of vehicle license and registration fees, and for certification and arbitration by the New Motor Vehicle Board. The Board estimates first year start-up costs of approximately \$610,000 with an ongoing \$649,000 operational cost per year thereafter. The Board expects to fund these costs through its authority to assess annual fees from its regulated manufacturers and distributors and the filing fees for conducting arbitrations.

STAFF COMMENTS

- 1) This bill is sponsored by its author to strengthen existing "lemon" law protections, to eliminate inequities that have occurred from that law's implementation and to ensure that owners of seriously defective new cars can obtain a fair, impartial and speedy hearing on their complaints.

The bill is supported by the Consumer Federation of California, Consumers Union, California Public Interest Research Group (Cal PIRG), the San Francisco District Attorney, a member of the State Board of Equalization, the New Motor Vehicle Board, and several consumers and attorneys.

The author and proponents state that since the effective date of the "lemon" law over 3 years ago, there have been numerous complaints from new car buyers concerning its implementation. While these complaints reflect continued

- continued -

dissatisfaction with the manufacturer's own resolution of disputes regarding defective new vehicles, they have also alleged that the dispute resolution programs financed by the manufacturers are not operated impartially. Consumers have complained of: long delays in obtaining a hearing (beyond the prescribed 40-60 day time limit); unequal access to the arbitration process; unreasonable decisions that do not appear to even acknowledge the existence of, much less use, the "lemon" law's provisions or provide an adequate amount of reimbursement even when a refund decision is ordered.

- 2) The bill is opposed by Ford Motor Company, Chrysler Corporation, the Automobile Importers of America, the Motor Vehicle Manufacturers Association and the Recreational Vehicle Industry Association.

Opponents of the bill state that the number of consumers dissatisfied with the current arbitration processes is small relative to the number of arbitrations. They argue that the manufacturers have invested a large amount of money to adequately fund these arbitration processes, that they comply with the state's prescribed standards, that they feel the programs are working very well and that if additional refinements are needed that they are willing to work cooperatively to that end.

In particular, the opponents question the need for a state-operated arbitration option, as provided for in the bill. They argue that in the two other states which have state arbitration provisions (Connecticut and Texas) there are serious backlogs, supporting their view that the state is ill-equipped to perform this role. They also contend that having a state arbitration alternative which will be paid for by manufacturers, will be a disincentive for the continued operation of the programs they currently finance.

WAYS AND MEANS COMMITTEE ANALYSIS

Author: Tanner

Amended: 05/19/86

Bill No.: AB 3611

Policy Committee: Consumer Protection

Vote: 5-0

Urgency: No

Hearing Date: 05/28/86

State Mandated Local Program: No

Staff Comments by:

Disclaimed:

Tom Higgins

Existing law, known as the "lemon law" which amended the Song-Beverly Warranty Act, establishes remedies for the consumer whose newly purchased vehicle is substantially impaired.

The bill provides that the option of replacement or restitution, as specified, is expressly with the buyer.

This bill requires the New Motor Vehicle Board (which has auto dealers on it) to certify "third party" dispute resolution programs used for arbitration by manufacturers and consumers. The New Motor Vehicle Board will be able to ensure compliance with the lemon law and FTC guidelines without cost to the state, adding uniformity and consistency to the arbitration process.

Note: This bill was substantially amended, deleting provisions that created a state-run arbitration process.

This bill requires manufacturers to reimburse consumers for all costs associated with the purchase of the automobile when restitution or replacement is made, including towing, transportation, prorated DMV regional costs and sales tax.

This bill requires the BOE to refund the sales tax and the DMV to refund the prorated, unused portion of registration fees. The BOE and the DMV may adopt necessary rules and regulations for the purpose.

Fiscal:

This bill provides for the New Motor Vehicle Board to assess annual fees for the costs of certifying arbitration programs. The DMV and the BOE will have absorbable costs for refunding fees and taxes.

TH:djc

ANALYSIS OF ASSEMBLY BILL NO. 3611 (Tanner)
As Amended in Assembly May 19, 1986
1985-86 Session

Fiscal Effect:

- Cost:
1. Potential cost in the range of \$50,000 to \$100,000 to the New Motor Vehicle Board to certify arbitration processes. Costs fully offset by fees charged to manufacturers and distributors of motor vehicles.
 2. Unknown absorbable costs to the State Board of Equalization to reimburse sales tax in restitution settlements.
- Revenue:
1. Unknown revenues generated by fees charged to manufacturers and distributors to offset program costs of the New Motor Vehicle Board.
 2. Unknown revenue loss to the General Fund from sales tax reimbursements to vehicle manufacturers.

Analysis:

This bill changes current law pertaining to vehicle warranty procedures. Specifically, the bill:

- Requires the manufacturer of a motor vehicle, at the option of the buyer, to replace a defective motor vehicle or make restitution if the manufacturer is unable to service or repair the vehicle after a reasonable number of attempts by the buyer.

- Requires the New Motor Vehicle Board (NMVB) to certify the arbitration processes used to resolve vehicle warranty disputes. Authorizes the board to revoke or suspend any arbitration process if it does not comply with specified standards.
- Authorizes the board to charge fees to manufacturers, distributors, and their branches to fund the board's costs.
- 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 the NMVB potentially could incur annual costs in the range of \$50,000 to \$100,000 to certify arbitration processes. These costs, however, will be fully offset by fees collected from the manufacturers and distributors of motor vehicles.

The BOE will incur unknown costs to reimburse the sales tax to the manufacturer in vehicle restitution settlements. These costs would be absorbable.

Unknown revenue loss to the General Fund from sales tax reimbursements made to manufacturers and distributors of defective new motor vehicles.

83/s8

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AB 3611--contd

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Unknown revenue loss to the General Fund from sales tax reimbursements made to manufacturers and distributors of defective new motor vehicles.

83/s8

Date of Hearing: April 3, 1986

AB 3611

ASSEMBLY COMMITTEE ON CONSUMER PROTECTION
ROBERT C. FRAZEE, Chairman

AB 3611 (Tanner) - As Introduced: February 20, 1986

ASSEMBLY ACTIONS:

COMMITTEE _____ CON. PRO. _____ VOTE _____ COMMITTEE _____ VOTE _____

Ayes:

Ayes:

Nays:

Nays:

SUBJECT

Vehicle warranties: defective ("lemon") new cars.

DIGEST

Existing law, the California Song-Beverly Consumer Warranty Act, generally provides that a manufacturer who is unable to service or repair consumer goods, including motor vehicles, so that they conform to the applicable express warranties after a reasonable number of attempts - must either replace those goods or reimburse the buyer in an amount equal to the purchase price, less the amount directly attributable to the buyer's use prior to the discovery of the nonconformity (defect).

In 1982, those provisions of the Song-Beverly Act were amended by AB 1787 (Tanner), commonly referred to as the "lemon bill" or "lemon law." That legislation specified that with respect to defined new motor vehicles, a "reasonable number of attempts" would be presumed to be either 4 or more repair attempts on the same major defect or more than 30 days out of service for service/repair of one or more major defects, within the first year or 12,000 miles of use.

That bill also enacted provisions which, under specified circumstances, required a buyer to directly notify the manufacturer of a continuing defect and to utilize a dispute resolution program meeting specified minimum standards, prior to asserting the "lemon presumption" (4 times/30 days = "reasonable number of repair attempts") in a legal action to obtain a vehicle replacement or refund.

This bill would amend that law and related laws to:

- continued -

AB 3611

- 1) Expressly provide that the vehicle buyer gets to choose whether she or he receives a replacement vehicle or a refund;
- 2) Specifically provide, for new motor vehicles, what is included in the replacement option and the refund option, as follows:
 - a) If a replacement vehicle is chosen by the buyer, it must be a new vehicle substantially identical to the vehicle replaced, accompanied by all normal new vehicle express and implied warranties. The manufacturer must bear the cost of any vehicle price increases and any sales tax, license and registration fees incurred as a result of the replacement.
 - b) If a refund is chosen by the buyer, it must consist of the full contract price paid or payable by the buyer, together with charges for transportation, installed options, sales tax, and license, registration and other official fees - less the amount directly attributable to a buyer's use of the defective vehicle prior to discovery of the defect.
- 3) Add statutory provisions to require the Board of Equalization and the Department of Motor Vehicles to refund the sales tax and the unused portion (pro rata) of the vehicle registration and license fees, respectively, to a manufacturer who has either replaced the vehicle or made the refund provided for under the bill's new warranty law provisions. The bill's provisions would also authorize both the Board and the Department to adopt whatever rules and regulations they deem necessary or appropriate to carry out these refund requirements.
- 4) Require the California New Motor Vehicle Board to certify each dispute resolution process used to arbitrate "lemon" vehicle disputes as complying with the state's prescribed minimum standards before that process could be used to fulfill the requirement for its use under the "lemon" law's provisions. The dispute resolution process would be required to provide the Board with any information the Board deemed necessary in order for it to perform its certification responsibility. The bill's provisions would permit the Board to suspend or revoke its certification when it determines a process does not comply with the state's minimum standards.
- 5) Require the New Motor Vehicle Board to provide arbitration itself, which meets the state's minimum standards for resolving disputes arising between a new motor vehicle purchaser and its manufacturer, or distributor. Provide that this state arbitration provision does not limit any of the buyer's other legal remedies except that the buyer is not entitled to a second qualified arbitration.

- continued -

- 6) Provide that a new motor vehicle buyer may request formal arbitration of vehicle disputes with manufacturers by the New Motor Vehicle Board and that specified conditions must be met prior to the Board's granting of an arbitration request.
- 7) Authorize the New Motor Vehicle Board to establish filing fees for cases when the Board arbitrates disputes, including a fixed annual fee to be charged to the Board's regulated vehicle manufacturers and distributors. Also, authorize the Board to order a party to a state arbitration to pay the other party's filing fees under specified circumstances.
- 8) Amend the definition of a "new motor vehicle" which is covered by the "lemon law", to specifically include dealer-owned vehicles and "demonstrators" sold with a manufacturers' new car warranties, and to substitute a more specific definition for excluded "off-road" vehicles.

FISCAL EFFECT

Unknown. This is a fiscal committee measure. The bill provides for sales tax refunds and pro-rata refunds of unused portions of vehicle license and registration fees, and for certification and arbitration by the New Motor Vehicle Board. The Board estimates first year start-up costs of approximately \$610,000 with an ongoing \$649,000 operational cost per year thereafter. The Board expects to fund these costs through its authority to assess annual fees from its regulated manufacturers and distributors and the filing fees for conducting arbitrations.

STAFF COMMENTS

- 1) This bill is sponsored by its author to strengthen existing "lemon" law protections, to eliminate inequities that have occurred from that law's implementation and to ensure that owners of seriously defective new cars can obtain a fair, impartial and speedy hearing on their complaints.

The bill is supported by the Consumer Federation of California, Consumers Union, California Public Interest Research Group (Cal PIRG), the San Francisco District Attorney, a member of the State Board of Equalization, the New Motor Vehicle Board, and several consumers and attorneys.

The author and proponents state that since the effective date of the "lemon" law over 3 years ago, there have been numerous complaints from new car buyers concerning its implementation. While these complaints reflect continued

- continued -

dissatisfaction with the manufacturer's own resolution of disputes regarding defective new vehicles, they have also alleged that the dispute resolution programs financed by the manufacturers are not operated impartially. Consumers have complained of: long delays in obtaining a hearing (beyond the prescribed 40-60 day time limit); unequal access to the arbitration process; unreasonable decisions that do not appear to even acknowledge the existence of, much less use, the "lemon" law's provisions or provide an adequate amount of reimbursement even when a refund decision is ordered.

- 2) The bill is opposed by Ford Motor Company, Chrysler Corporation, the Automobile Importers of America, the Motor Vehicle Manufacturers Association and the Recreational Vehicle Industry Association.

Opponents of the bill state that the number of consumers dissatisfied with the current arbitration processes is small relative to the number of arbitrations. They argue that the manufacturers have invested a large amount of money to adequately fund these arbitration processes, that they comply with the state's prescribed standards, that they feel the programs are working very well and that if additional refinements are needed that they are willing to work cooperatively to that end.

In particular, the opponents question the need for a state-operated arbitration option, as provided for in the bill. They argue that in the two other states which have state arbitration provisions (Connecticut and Texas) there are serious backlogs, supporting their view that the state is ill-equipped to perform this role. They also contend that having a state arbitration alternative which will be paid for by manufacturers, will be a disincentive for the continued operation of the programs they currently finance.

APR 8 1986

Bill Number Assembly Bill 3611 Date February 20, 1986
Author Tanner Tax Sales and Use
Board Position _____ Related Bills _____

BILL SUMMARY:

This bill would add Section 6902.2 to the Revenue and Taxation Code to require the board to refund the sales tax to the vehicle manufacturer upon receipt of satisfactory proof that the sales tax has been paid to the state on the sale of a new motor vehicle, and that the new motor vehicle has been replaced by the manufacturer or that the manufacturer has made restitution to the buyer, as provided in paragraph (2) of subdivision (d) of Section 1793.2 of the Civil Code.

Section 1793.2 of the Civil Code would be amended to add paragraph (2) to subdivision (d) to provide that if the manufacturer or its representative in this state is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer is required, at the option of the buyer, either to replace the new motor vehicle or make restitution to the buyer. Any restitution made to the buyer can be reduced by that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

ANALYSIS

In General

Existing law provides that the amount upon which tax is computed does not include the amount charged for merchandise returned by customers if the full sales price, including that portion designated as "sales tax" is refunded either in cash or credit and the customer, in order to obtain the refund or credit, is not required to purchase other property at a price greater than the amount charged for the property that is returned. Refund or credit of the entire amount is deemed to be given when the purchase price, less rehandling and restocking costs, is refunded or credited to the customer.

Existing law also provides that the amount upon which the tax is computed does not include the amount credited or refunded by the seller to the consumer on account of defects in merchandise sold to the consumer. If, however, defective merchandise is accepted as part payment for other merchandise and an additional allowance or credit is given on account of its defective condition, only the amount allowed or credited on account of defects may be excluded from taxable gross receipts. The amount allowed as the "trade in" value must be included in the measure of tax.

cc Sally
P. 112

913 3611 979

In addition, existing law provides that any overpayment of sales taxes must be refunded to the person who paid those taxes to the state.

BACKGROUND

Effective January 1, 1983, the Legislature amended Section 1793.2 of the Civil Code to incorporate legislation commonly known as the California "Lemon Law". The law provides an arbitration process for disputes between manufacturers and consumers of new cars purported to have major manufacturing defects. If the mediator rules in favor of the consumer, the manufacturer is required by law to either replace the automobile or reimburse the purchase price less an amount attributable to use prior to the discovery of the defect.

This arbitration process raises sales and use tax questions as to the availability of the deduction for returned merchandise and/or defective merchandise. The dealer who sold the defective motor vehicle to the buyer may not be eligible for either of the deductions if the defective motor vehicle is returned to the manufacturer or some other dealer and the manufacturer or some other dealer replaces the motor vehicle or reimburses the buyer for the purchase price, assuming of course that the dealer and the manufacturer are separate legal entities.

COMMENTS

a. This bill would conflict with Section 6901, which requires any overpayment of taxes to be refunded to the person who paid them. That is, in a situation covered under the California "Lemon Law", this bill would grant the manufacturer the right to recover reimbursement of the sales tax from the state for sales tax refunded to the buyer, even though the manufacturer did not make the original sale and did not pay the sales tax on that sale to the state.

The basic foundation of the Sales and Use Tax Law is that sales tax is imposed upon retailers for the privilege of selling tangible personal property at retail in this state. This has been and currently remains a sensitive issue since past litigation has attempted and would probably continue to attempt to overturn this basic concept. Enactment of Section 6902.2 could be that necessary tool to overturn this basic concept.

b. Enactment of this legislation would also be expensive to administer since the board would have to examine both the dealer's and the manufacturer's records to verify that the sales tax on the sale of the motor vehicle found to be

defective was remitted by the dealer to the state and that the manufacturer had refunded similar amount to the buyer. This would require special efforts outside the normal audit procedure, resulting in extra time expended by the board staff.

Analysis Prepared by: Rey Obligation 322-7086 March 28, 1986
Contact: Margaret Shedd Boatwright 322-2376 0053F

Rey Obligation

MSB JOD JMS

3/5/86

ASSEMBLY COMMITTEE ON CONSUMER PROTECTION

ROBERT C. FRAZEE, CHAIRMAN

MAR - 6 1986

Bill Analysis Work Sheet

(Please return at least 10 working days prior to hearing date)

DATE: 3-5, 1986

TO: ASSEMBLYPERSON Jaxnew

BILL NO.: AB 3611

HEARING DATE: 4/3/86

IS THIS BILL PROPOSED TO BE AMENDED? YES ? NO

AUTHOR'S AMENDMENTS PRIOR TO HEARING:

An Author may amend a bill at any time prior to a hearing; however, author's amendments shall be submitted to the committee secretary at least three (3) working days prior to the hearing at which the bill is set. For a Thursday hearing, amendments shall be submitted to the committee secretary (IN LEGISLATIVE COUNSEL FORM) prior to 2:00 PM on Friday. This procedure will enable committee staff to reanalyze the bill and to have the amended version in print before the hearing. NOTE: Please inform and, if possible provide even non-legislative Counsel form drafts to the committee consultant as soon as possible.

If it is necessary for an author to submit amendments within three (3) working days of the hearing, the author shall clear such amendments with the Chairman.

When amendments which have not been cleared by the Chairman are submitted within three (3) working days of the hearing, the bill will be held over until the next regularly scheduled hearing of the Committee.

CONTACT PERSON(S)
YOUR OFFICE

Arnie Peters 50991

CONTACT PERSON(S)
SPONSOR'S OFFICE

Please return to : Assembly Consumer Protection Committee
Betty Johnson, Committee Secretary
1100 J Street, Room 570
324-2721

Principal Consultant, Jay J. DeFuria
Associate Consultant, David H. Grafft

rev.1/86

sent
3/7/86

3/5/86

ASSEMBLY COMMITTEE ON CONSUMER PROTECTION
Robert C. Frazee, Chairman

BACKGROUND INFORMATION REQUEST

Measure: AB 3611

Author : Assemblywoman Tanner

1. Origin of the bill:

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

Assemblywoman Tanner

- b. Has a similar bill been before either this session or a previous session of the legislature? If so, please identify the session, bill number and disposition of the bill.

AB 1787, Chapter 388, 1982

- c. Has there been an interim committee report on the bill? If so, please identify the report.

No

2. What is the problem or deficiency in the present law which the bill seeks to remedy? Disciplines present administration of auto manufacturer-run arbitration programs under the "lemon law" by requiring they be certified and by creating a competing state-run arbitration process. Ensures that owners of "lemon" cars will be reimbursed their sales tax and unused license and registration.

3. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committee staff.

Jay DeFuria probably has more background material than we do.

4. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill.

5. If you plan substantive amendments to this bill prior to hearing, please explain briefly the substance of the amendments to be prepared.

Don't know at this time

6. List the witnesses you plan to have testify.

Don't know at this time (Probably Donna Selnick)

RETURN THIS FORM TO: ASSEMBLY COMMITTEE ON CONSUMER PROTECTION
Phone 324-2721

Bill No. AB 3611

SUPPORT

OPPOSE

7/11/85 12 persons on letter

[illegible]

LEGISLATIVE
ADVOCATESSACRAMENTO
CALIFORNIA 95814TELEPHONE
916 444-6034

May 22, 1986

Honorable Sally Tanner
Room 4146
State Capitol
Sacramento, CA. 95814Subject: Opposition to AB 3611 being heard in Assembly Ways and Means Committee on May 28, 1986

Dear Sally,

On behalf of our client, the Automobile Importers of America (AIA), we are opposed to your AB 3611 which amends California's New Car Lemon Law. As you know, AIA members include most of the companies importing foreign automobiles from Europe and Asia.

Our opposition is based upon the following concerns:

1) State certification of manufacturers' third party dispute resolution programs.

On page 10 and 11, AB 3611 requires that if a manufacturer does not utilize a third party dispute process which has been certified by the New Motor Vehicle Board (NMVB) as meeting the Federal Trade Commission's 703 provisions, the NMVB shall designate one for customers to use.

If the Better Business Bureau process currently used by many AIA members was not certified, the NMVB would have to send import car buyers to either Ford, Chrysler, or the Southern California AutoCap dispute arbitration programs. No other programs are currently established in the state.

It would be highly anti-competitive to require customers from one manufacturer to use the dispute resolution program of another.

There is also the problem of overloading the "certifiable" programs, and what happens if none of these programs wants to take on customer problems of another manufacturer? Finally, what happens if none of the existing mechanisms meet the state's certification standards?

2) State certification to the FTC's 703 regulations which are currently in transition.

In February, 1986, the FTC noticed its intent to establish an Advisory Committee to review and revise the current 703 regulations relating to the Lemon Law. This Advisory Committee will be formulated during the summer of 1986 and will subsequently recommend new 703 regulations to be adopted by the FTC.

With this in mind, AB 3611 will be requiring certification to future 703 regulations which are in a state of flux. What are the consequences of AB 3611 if you don't agree with these new rules?

3) Certification by the New Motor Vehicle Board

The NMVB was established to arbitrate disputes between auto manufacturers and dealers. Any certification by the state of the New Car Lemon Law should be done by the Department of Consumer Affairs which traditionally handles issues relating to consumer protection and which is the Department currently undertaking an analysis of the state's Lemon Law.

4) Manufacturers' rebate of new vehicle license and registration fees.

On pages 4 and 5, AB 3611 requires the manufacturers' to reimburse the consumer for license and registration fee if the buyer elects to have a replacement vehicle or receive a refund for the vehicle. Your May 19 amendment removed the opportunity for the manufacturer to recover these fees from the Department of Motor Vehicles.

This gives the DMV an unfair windfall because it will receive additional license fees for the replacement vehicle or when the consumer buys a new vehicle. It is also an inequitable charge to the auto manufacturers which could cost hundreds of dollars per case.

These fees should be returned just as the sales taxes are refunded. At a minimum, the DMV should provide a credit to the consumer if the Department is unwilling to provide for a refund.

5) Clarification amendments needed relating to buyer's option provisions

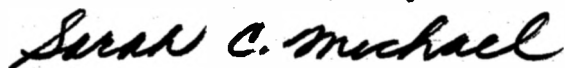
As drafted on pages 4 and 5, AIA is opposed to the provisions which allow a consumer full discretion over whether he receives a replacement vehicle or refund if the manufacturer cannot repair a particular problem within the terms of the lemon law.

Not only is the term vague with regards to what it means to replace the buyer's vehicle "with a new motor vehicle substantially identical", no consideration is given to the amount directly attributable to "use" by the buyer prior to the time of nonconformity. As written, this section also precludes other options for settlement which may be mutually satisfactory to both the buyer and the manufacturer.

I have attached a recommended amendment to this section which still allows the buyer the option of a refund under any circumstance, but would allow a manufacturer to consider prior use of a vehicle when determining what constitutes a replacement vehicle.

Thank you for your consideration of these concerns.

Sincerely,



Sarah C. Michael

cc: Members, Assembly Ways and Means Committee



A. E. Davis and Company

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

August 18, 1986

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

Dear Sally:

Chrysler Corporation now supports your AB 3611 as you agreed to amend it last Thursday.

We appreciate your graciousness in accepting the amendments that Chrysler had sought. I am pleased that Alan Huss was out here last week to be able to articulate Chrysler's concerns that existed at that time.

Chrysler will be among the first to seek certification under AB 3611 and will continue to make its dispute resolution system the most effective in the country.

Kindest regards,

A. E. Davis

cc: Members, Senate Appropriation Committee

cc ARNIP
Sally

Support 988

August 11, 1986

AUG 12 1985

Senator Alfred Alquist
State Capitol
Sacramento, CA 95814

Re: Support for A.B. 3611 (Tanner)

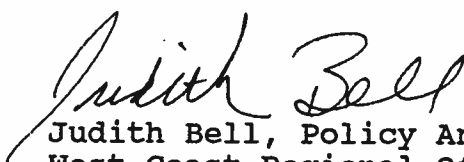
Dear Senator Alquist:

Consumers Union, nonprofit publishers of Consumer Reports magazine, urges you to support A.B. 3611 (Tanner) when it is heard on the Senate floor. This bill would strengthen the existing "lemon law" to provide additional protections to new car buyers.

While present law provides that manufacturers unable to repair defects must either replace the vehicle or reimburse the buyer, A.B. 3611 explicitly allows buyers to choose which remedy they prefer. The bill also provides for arbitration through the New Motor Vehicles Board, so that disputes between buyers and manufacturers can be efficiently resolved, and the buyer's interest protected.

The preceding changes would put buyers on more equal footing with manufacturers in the bargaining process and help ensure that buyers get what they pay for-- a new and well-functioning automobile. We urge you to support this important strengthening of our "lemon" law.

Sincerely,



Judith Bell, Policy Analyst
West Coast Regional Office
Consumers Union of U.S., Inc.

cc: ~~Assemblywoman Sally Tanner~~

Vaun Wilmott, Office of Senate Third Reading Analyses



Consumer Federation of California

P.O. Box 27066, Los Feliz Station, Los Angeles, California 90027

AUG 12 1985

August 11, 1986

President

Mary Solow
827 Tigertail Road
Los Angeles, Calif. 90049
472-5884

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Dan Swinton
Jeane Thom
Jerry Vercruse
Jackie Walsh
Susan Woods

LEGISLATIVE ADVOCATE

Harry Snyder
1535 Mission Street
San Francisco, Calif. 94103
(415) 431-6747

Senator Alfred Alquist
State Capitol
Sacramento, CA 95814

Re: Support for A.B. 3611 (Tanner)

Dear Senator Alquist:

The Consumer Federation of California, representing 150 organizations and thousands of California consumers, urges you to support A.B. 3611 (Tanner) when it is heard by the full Senate. This bill would make important changes to California's "lemon law."

There are many problems with current dispute mechanisms for new car owners stuck with a vehicle with major defects. Under A.B. 3611 (Tanner) these "lemon" owners would be able to submit their complaint to the New Motor Vehicles Board for arbitration. In addition, the bill would allow the owner to choose whether they preferred to have their costs reimbursed or the "lemon" vehicle replaced.

These are important changes to a valuable consumer protection statute. We urge you to support this measure.

Sincerely,

Harry Snyder, Legislative Advocate
Consumer Federation of California

cc: ~~Assemblymember Bill Tanner~~

Mary Solow
Vaun Wilmott, Office of Senate Third Reading
Analyses

3611
MAR 31 1986

MOTOR VEHICLE MANUFACTURERS ASSOCIATION
of the United States, Inc.

300 NEW CENTER BUILDING • DETROIT, MICHIGAN 48202 • AREA 313-872-4311
1107 9th ST., SUITE 1030 • SACRAMENTO, CALIFORNIA 95814 • AREA 916-444-3767

ROGER B. SMITH, *Chairman*
THOMAS H. HANNA, *President and Chief Executive Officer*

March 27, 1986

The Honorable Sally Tanner
California Assembly
State Capitol, Room 4146
Sacramento CA 95814

Dear Assemblywoman Tanner:

The Motor Vehicle Manufacturers Association of the United States, Inc. (MVMA)* appreciates this opportunity to express its views about Assembly Bill 3611.

As you know, the members of MVMA have in recent years put forth a tremendous effort to resolve consumer complaints. A key element to the resolution of consumer problems has been the operation of informal dispute settlement mechanisms which have gone a long way toward resolving complaints in an expeditious manner. The establishment of an additional mechanism, in the form of a state-run arbitration program, would serve to impose additional costs and administrative burdens on the dispute resolution costs while being of dubious benefit to consumers who presently have access to manufacturers' informal dispute resolution systems.

Moreover, other states' efforts to conduct dispute resolution programs have been unsuccessful and in some instances have resulted in greater confusion and inconvenience to consumers. A Connecticut newspaper article describing some of that state's problems with its arbitration system is attached.

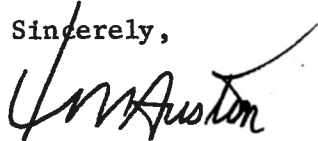
Currently manufacturers make every effort to satisfy California customers and accommodate their particular interests if and when there is a need to replace a vehicle or reimburse a consumer. MVMA believes that

*MVMA is the trade association of U.S. automobile, truck and bus manufacturers. Its member companies, which produce more than 98 percent of all domestic motor vehicles are: AM General Corporation; American Motors Corporation; Chrysler Corporation; Ford Motor Company; General Motors Corporation; Honda of America Mfg., Inc.; M.A.N. Truck & Bus Corporation; Navistar International Corporation; PACCAR Inc.; Volkswagen of America, Inc., and Volvo North America Corporation.

March 27, 1986

an arbitration system run by the state will only create an additional layer of bureaucracy between consumers and their satisfaction. The purpose of an informal dispute program is to help consumers expedite their motor vehicle problems. These proposed amendments could lead to greater frustration and delay to the consumer.

Sincerely,



James W. Austin
Public Affairs Manager
Pacific Coast Region

JWA/eb

cc: Members, Assembly Consumer Protection Committee
Jay DeFuria, Consultant

AB 3611



A. E. Davis and Company

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

May 21, 1986

MAY 22 1986

The Honorable Sally Tanner
California State Assembly
State Capitol
Sacramento, CA 95814

Dear Sally:

AB 3611 OPPOSITION

When you amended your AB 3611 in Assembly Consumer Protection Committee on April 3 both Tom Metevier of Chrysler and I thought our concerns were pretty well satisfied.

Upon close inspection of the April 15 amended version we find that is not the case. Therefore, we are still opposed to AB 3611 in its present form. The May 19 version which just came into my hands doesn't make significant enough changes to modify our position.

Our concerns go to these areas:

--The fee for Dealer Board certification of the third-party dispute resolution processes has no guidelines nor cap. It appears to have no requirement that the fee be reasonably related to the staff time and money spent to certify each process.

--The voluntary nature of arbitrations is destroyed by the requirement that a manufacturer must have a process in place or have one assigned to him if he doesn't. Under present law none is required.

--If Chrysler operates the only certified third-party process and no other manufacturer's process obtains certification then the board shall designate the Chrysler process as the arbitration process that General Motors, Ford and all other manufacturers must use. This simply can not be meant.

As soon as I receive suggestions and language from Chrysler, Sally, on possible changes in this bill, I'll be in touch.

Cordially,

A. E. Davis

cc Sally
Kenie

OPPO 993



MAR 20 1986

Regional Governmental Affairs Office
Ford Motor Company

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

March 19, 1986

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

Re: Assembly Bill 3611
OPPOSE

Dear Assemblywoman Tanner:

Ford Motor Company opposes passage of your Assembly Bill 3611, relating to new motor vehicle warranties. We wish to specifically comment on two provisions of your proposal:

- state-run arbitration boards
- the option given to owners for either the state-run program or the manufacturer's program

Performance of State Boards

The presence of state-run arbitration boards, in addition to the manufacturer's arbitration board creates confusion for the consumer; unnecessary delays in resolving concerns; additional workload for field offices; and adds financial burden to both the manufacturer as well as the consumer. Experience to date has shown that state-run programs are unable to handle the volume of cases received on a timely basis. A good example is the Texas board which is currently running a backlog of over 200 cases. State filing fees required could impose significant financial considerations. We do not see the necessity to establish or expand a state agency to handle what we are already doing at no cost to the taxpayers.

Sam Jennings
cc. Sally
Arnie

OPPOSE 994

Page Two of Two
Honorable Sally Tanner
March 19, 1986

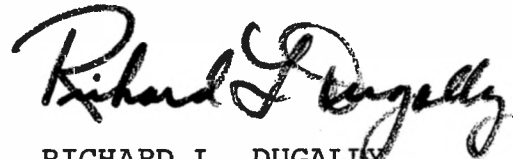
Assembly Bill 3611

Option for Both Programs

We think giving owners the option for both programs leads to confusion of the public in general, as well as increasing a customer's expectation with the arbitration process. Which program's decision is the final one? Who's program has more clout, authority, etc.? What are the requirements of each? How does one apply for either? Who's procedures are simpler? In an already complicated process, two programs add to the confusion and may be increasing owner expectations as well.

Thank you for the opportunity to comment on this proposal.

Sincerely,



RICHARD L. DUGALLY
Regional Manager
Governmental Affairs

RLD:cme

cc: Assembly Consumer Protection Committee
Governor's Office

PROPOSED AMENDMENTS TO AB 3611 (AMENDED MAY 19, 1986)

On page 4, on line 18, after the word "shall" strike out the coma and the following: at the option of the

On page 4, on line 19, strike out the word buyer,

On page 4, line 22, remove the period after (B) and insert a semicolon, and the following:

provided, however, that the buyer shall be free to elect restitution in lieu of replacement and in no event shall the customer be compelled to accept a replacement vehicle that the customer finds unsatisfactory.

On page 4, line 23, strike out "When the buyer exercises the option," and insert In the case

On page 4, line 26, strike out "The manufacturer shall bear the"

On page 4, strike out line 27

On page 4, line 28, strike out "over the price of the vehicle replaced."

On page 4, Strike out line 39 and insert In the case of

On page 5, line 12, insert the following:

The replacement made or the amount to be paid by the manufacturer to the buyer under this paragraph shall be reduced by that amount directly attributable to use by the prior to the discovery of the nonconformity.

On page 5, line 18, after the word or insert the following:

the vehicle's first



STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 1799, SACRAMENTO, CALIFORNIA 95808)

(916) 445-3956

May 20, 1986

WILLIAM M. BENNETT
First District, Kentfield

CONWAY H. COLLIS
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

RICHARD NEVINS
Fourth District, Pasadena

KENNETH CORY
Controller, Sacramento

DOUGLAS D. BELL
Executive Secretary

MAY 19 1986

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

Dear Assemblywoman Tanner:

Your Assembly Bill 3611, which would, in part, provide for a refund of the sales and use tax to consumers who purchased a defective automobile, was recently reviewed by the State Board of Equalization. The Board voted to support this bill, if amended.

The Board certainly supports the intent of AB 3611, and has provided amendments to your staff which would address the Board's concerns as reflected in our analysis of the February 20, 1986 version of the bill. We appreciate your consideration of these amendments and would like to offer our continued assistance.

Sincerely,

Douglas D. Bell

Douglas D. Bell
Executive Secretary

DDB:so

cc: Honorable John Vasconcellos, Chairman
Assembly Ways and Means Committee
Assembly Ways and Means Committee Members

Support 997

ROGER DICKINSON
ATTORNEY AT LAW
801 12TH STREET, SUITE 500
SACRAMENTO, CALIFORNIA 95814
(916) 443-2745

April 3, 1986

The Honorable Sally Tanner
California State Assembly
State Capitol
Sacramento, CA 95814

Re: AB3611


Dear Assemblywoman Tanner:

Allow me to take this opportunity to inform you of my support for AB3611 which would amend the "lemon law" by establishing state certification of private arbitration programs and a state-run arbitration program along with other changes.

As a lawyer who regularly represents consumers who have been the unfortunate recipients of defective and unrepaired motor vehicles, I have had the opportunity to observe the patterns and practices of existing automobile arbitration programs closely. No program of which I am aware comports with the F.T.C. rules for dispute resolution mechanisms. Some of the major departures from the rules include no opportunity for consumers to see information submitted by the dealer or manufacturer, failure to comply with time requirements, and failure to consider and award all appropriate and available remedies. Additional problems arise as a result of the practices of programs to attempt to "mediate" rather than process consumer complaints for arbitration, to fail to decide cases unless the consumer allows pre-disposition repairs after a complaint is filed, and to fail to train and instruct arbitrators adequately.

If the arbitration programs, which, after all, stand as a prerequisite to pursuit of legal action, are to fulfill their desired role, they must operate in a manner that assures fairness and impartiality. To date, the automobile manufacturers have proven unable on their own to deliver such programs. AB3611 is a necessary step to provide a meaningful opportunity for relief to deserving car buyers.

Sincerely,


ROGER DICKINSON
Attorney at Law

AB 3611

MAY 28 1986



Consumer Federation of California

P.O. Box 27066, Los Feliz Station, Los Angeles, California 90027
May 23, 1986

President
Mary Solow
827 Tigertail Road
Los Angeles, Calif. 90049
(213) 472-5884

Secretary
Geri Stone

Treasurer
Kathleen Kinnick

Vice Presidents
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Regene Mitchell
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Evelyn Stein
Dan Swinton
Jeane Thom
Jerry Veracruz
Jackie Walsh
Susan Woods

Assembly Member Vasconcellos
State Capitol
Sacramento, CA 95814

LEGISLATIVE ADVOCATE
Harry Snyder
1535 Mission Street
San Francisco, Calif. 94103
(415) 431-6747

Re: Support for A.B. 3611 (Tanner)

Dear Assembly Member Vasconcellos:

The Consumer Federation of California, representing 150 organizations and thousands of California consumers, urges you to support A.B. 3611 (Tanner) when it is heard by the Assembly Ways and Means Committee on May 28th. This bill would make important changes to California's "lemon law."

There are many problems with current dispute mechanisms for new car owners stuck with a vehicle with major defects. Under A.B. 3611 (Tanner) these "lemon" owners would be able to submit their complaint to the New Motor Vehicles Board for arbitration. In addition, the bill would allow the owner to choose whether they preferred to have their costs reimbursed or the "lemon" vehicle replaced.

These are important changes to a valuable consumer protection statute. We urge you to support this measure.

Sincerely,

Harry Snyder
Harry Snyder, Legislative Advocate
Consumer Federation of California

cc: Assemblywoman Sally Tanner
Consultant, Assembly Ways and Means Committee
Mary Solow

Support 999



Consumer Federation of California

P.O. Box 27066, Los Feliz Station, Los Angeles, California 90027

March 28, 1986

President

Mary Solow
827 Tigertail Road
Los Angeles, Calif. 90049
(213) 472-5884

Secretary

Geri Stone

Treasurer

Kathleen Kinnick

Vice Presidents

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Susan Woods

Assemblywoman Sally Tanner

State Capitol

Sacramento, CA 95814

Re: Support for A.B. 3611 (Tanner)

Dear Assemblywoman Tanner,

The Consumer Federation of California representing 150 organizations and millions of Californians urges you to support A.B. 3611 (Tanner) when it is heard by the Assembly Consumer Protection Committee on April 3, 1986. This bill will strengthen our current "lemon law," and provide additional protections to new car buyers.

Presently, when manufacturers are unable to repair a defective car, they must either replace the car, or give the buyer a refund. However, buyers are not given the right to choose which remedy they prefer. A.B. 3611 explicitly allows the buyer to choose whether he wants a replacement car, or a refund.

The bill also ensures that the manufacturer, not the buyer, bears the loss of any increase in cost of a replacement vehicle. It also explicitly provides that the manufacturer pays the sales tax, license fees, and registration fees for the replacement.

This bill protects new car buyers' rights to full and fair compensation for defective cars. We urge your support of this important measure.

Sincerely,

Harry M. Snyder, Legislative Advocate
Consumer Federation of California

cc: Assemblywoman Sally Tanner
Consultant, Assembly Consumer Protection Committee
Committee Members

LEGISLATIVE ADVOCATE

Harry Snyder
1535 Mission Street
San Francisco, Calif. 94103
(415) 431-6747

cc: memo
Sally

1000!
Support

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MAR 31 1986



Publisher of Consumer Reports

MAY 28 1986

May 23, 1986

Assembly Member Vasconcellos
State Capitol
Sacramento, CA 95814

Re: Support for A.B. 3611 (Tanner)

Dear Assembly Member Vasconcellos:

Consumers Union, nonprofit publishers of Consumer Reports magazine, urges you to support A.B. 3611 (Tanner) when it is heard by the Assembly Ways and Means Committee on May 28th. This bill would strengthen the existing "lemon" law to provide additional protections to new car buyers.

While present law provides that manufacturers unable to repair defects must either replace the vehicle or reimburse the buyer, A.B. 3611 explicitly allows buyers to choose which remedy they prefer. The bill also provides for arbitration through the New Motor Vehicles Board, so that disputes between buyers and manufacturers can be efficiently resolved, and the buyer's interest protected.

The preceding changes would put buyers on more equal footing with manufacturers in the bargaining process and help ensure that buyers get what they pay for-- a new and well-functioning automobile. We urge you to support this important strengthening of our "lemon" law.

Sincerely,

Judith Bell, Policy Analyst
West Coast Regional Office
Consumers Union of U.S., Inc.

cc: Assemblywoman Sally Tanner
Consultant, Assembly Ways and Means Committee

Support
1001
AB 3611



Publisher of Consumer Reports

March 28, 1986

3611
MAR 31 1986

Assemblywoman Sally Tanner
State Capitol
Sacramento, CA 95814

Re: Support for A.B. 3611 (Tanner)

Dear Assemblywoman Tanner,

Consumers Union, nonprofit publishers of Consumer Reports magazine, urges you to support A.B. 3611 when it is heard by the Assembly Consumer Protection Committee on April 3, 1986. This bill would strengthen the existing "lemon" law, to provide additional protections to new car buyers.

While present law provides that manufacturers unable to repair defects must either replace the vehicle or reimburse the buyer, A.B. 3611 explicitly allows buyers to choose which remedy they prefer. The bill also provides for arbitration through the New Motor Vehicle Board, so that disputes between buyers and manufacturers can be efficiently resolved, and the buyer's interest protected.

These measures would put buyers on more equal footing with manufacturers in the bargaining process, and help ensure that buyers get what they pay for. We urge your support of this important strengthening of our "lemon law."

Sincerely,

Judith Bell
Policy Analyst
West Coast Regional Office
Consumers Union of U.S., Inc.

cc: Assemblywoman Sally Tanner
Consultant, Assembly Consumer Protection Committee
Committee Members

cc - Annie
Sally

June 12, 1986

Honorable Bill Lockyer
State Senate
State Capitol
Sacramento, CA 95814

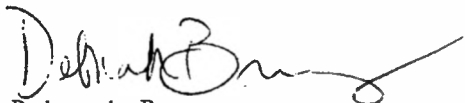
Dear Senator Lockyer:

I am writing to ask for your assistance in sending AB 3611 (Tanner) - a bill to give California's new car Lemon Law a tune-up - to the Judiciary Committee. The bill was put over in Rules Committee this week and will come up on June 18.

The original Lemon Law - also authored by Assemblywoman Tanner - went to the Judiciary Committee so we feel it is appropriate that the "Lemon Law II" also be considered by the committee. The original bill amended the Song-Beverly Warranty Act. I understand that warranty issues are now often referred to the Insurance, Claims and Corporations Committee. The follow-up bill, however, deals primarily with the functioning of the arbitration process that the consumer must go through to resolve the problem. The Judiciary Committee members have the appropriate expertise to deal with the issues the bill addresses.

I have enclosed a fact sheet outlining the bill's provisions. Please feel free to contact me if you have any questions or need more information. I hope that we can count on your assistance.

Sincerely,



Deborah Bruns
Legislative Advocate

FACT SHEET ON AB 3611 (LEMON LAW II)

In 1982, legislation authored by Assemblywoman Tanne amended the Song-Beverly Warranty Act to establish remedies for the consumer whose newly purchased vehicle is substantially impaired. This amendment is known as the "Lemon Law". The Lemon Law requires consumers and manufacturers to use arbitration through a "qualified" third party dispute resolution program before resorting to costly, protracted litigation in resolving their disputes.

CalPIRG's research, however, indicates that the Lemon Law has not entirely solved consumers' problems with defective new cars. The many cases we have followed indicate a consistent pattern of problems with the arbitration process. Unfortunately, for many consumers, arbitration becomes another hurdle to cross rather than a final resolution of the problem. AB 3611 is designed to address the following problems:

Arbitration panels do not abide by Lemon Law provisions. Many decisions take much longer than the 40 day limit and the programs often do not use the criteria set in the law as a basis for awarding refund or replacement nor do they comply with FTC guidelines for such programs. Some do not even train their arbitrators in the Lemon Law. Many panels also rely on mechanics supplied by the manufacturer--an obvious conflict of interest.

AB 3611 requires that the arbitration programs be certified and de-certified by the New Motor Vehicle Board to ensure compliance with state law and FTC guidelines. The arbitration panels must render decisions which are based in substantial part on Lemon Law criteria. The bill originally also set up a state-run arbitration program to offer consumers an alternative arbitration process. However, in order to address concerns raised by dealers and manufacturers, that provision was amended out of the bill in policy committee. The bill also ensures that independent technical automotive experts can be made available.

Consumers' costs are not reimbursed. Some arbitration boards insist that the consumer take a replacement car even though the consumer would prefer a refund, or vice versa. Furthermore, consumers often must pay such costs as sales tax, license and registration fees, rental car charges and towing fees.

AB 3611 gives the buyer the option to choose either a refund or a replacement and specifies that the manufacturer is responsible for sales tax and license and registration fees as well as incidental damages such as rental car charges and towing fees. The manufacturer who refunds the sales tax may seek a refund from the Board of Equalization.

Honorable



MAR 12 1986

CONWAY H. COLLIS

MEMBER, STATE BOARD OF EQUALIZATION

March 10, 1986

Assemblywoman Sally Tanner
Room 4146, State Capitol
Sacramento, CA 95814

Dear Ms. Tanner,

I have reviewed Assembly Bill 3611, and strongly support it.

I am particularly interested in testifying on the sales tax refund aspect of your bill, if that would be helpful to you.

Sincerely,

Conway
Conway H. Collis
Vice-Chairman
State Board of Equalization

CHC:rmc

cc: State Senator Gary Hart
Mr. Joe Caves
John Meade

3/25/86
Gretchen
called to say
Mr. Collis in
meeting in S.F. on
4/3 so unable to
come to testify

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SACRAMENTO, CA 95808
(916) 445-4154

☐ SAN FRANCISCO
350 MC ALLISTER STREET, SUITE 2056
SAN FRANCISCO, CA 94102
(415) 557-1699

1005
Support

NEW MOTOR VEHICLE BOARD

1507 - 21st Street, Suite 330
Sacramento, CA 95814
(916) 445-1888



March 26, 1986

The Honorable Sally Tanner
Assemblywoman, Sixtieth District
State Capitol
Sacramento, CA 95814

Re: AB 3611

Dear Assemblywoman Tanner:

On behalf of the New Motor Vehicle Board, I would like to express the Board's support of AB 3611. In particular, the Board supports sections 4, 5, and 6 of the bill, which contain provisions which relate to the establishment of a process whereby the Board will arbitrate new motor vehicle warranty disputes.

If I can be of any assistance in this regard, please do not hesitate to contact me.

Sincerely,


SAM W. JENNINGS
Chief Administrative Law Judge/
Executive Secretary

SWJ:ht

cc: Assembly Consumer Protection Committee

STAN NAPARST

ATTORNEY AT LAW

901-A Santa Fe Avenue
Albany, California 94706
(415) 525-2086

March 12, 1986

Assemblyman Tom Bates
State Capitol
Sacramento, CA 95814

Dear Tom:

SUBJECT: AB 3611 (Tanner)

I am writing you to urge you to support AB 3611 which will be heard in the Assembly Consumer Protection Committee, on April 3, 1986 at 1:30 p.m.

This bill strengthens the existing car lemon law by providing, among other things, that:

1. The State will set up an arbitration program in addition to the presently existing ones that some car manufacturers have set up. Existing law allows the manufacturers to set up an arbitration program, but these programs often are worthless. If the new motor vehicle is found to be a lemon the buyer will have the option of replacement or refund. Now the manufacturers screw around and people have to go to court and wait for years before they get any satisfaction. Most people cannot afford to pay lawyers and court costs to litigate their just claims. The manufacturers know this and they stretch things out to get rid of the claims.

2. Motorcycles and motor homes, used for personal use, that have to be brought in for repair for 4 or more times or are out of service for 30 days or more are presumed to be lemons. This provision is necessary because existing law exempts these vehicles. They are used for personal transportation and there is no reason for the exclusion.

I think that you might propose an amendment that would make it explicit that

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Support 1007

cc amie
call

lessees of vehicles have a right to refund or replacement. Existing law provides that leased cars are covered by Song-Beverly. Notwithstanding this, in one of my cases GM refused to arbitrate. They said that they are not required to arbitrate and therefore they refused to do so. Therefore, my client had to sue them. She has to continue to make monthly payments even though she has to store the car because it is not safe to drive.

Sincerely yours,



STANLEY NAPARST

c.c. Assemblywoman Tanner

7-3611

ELECTRONIC REPRESENTATIVES ASSOCIATION

NORTHERN CALIFORNIA CHAPTER

all mail to
PO BOX 321 SFRAN
94101

March 10, 1986

Hon. Sally Tanner
State Capitol
Sacramento Ca. 95814

MAR 12 1986

Dear Assemblywoman Tanner:

Thank you for the copy of AB 23611.

I have written the following copy into our newsletter this month:

The Chinese Calendar does not have a "Year of the Lemon". In Sacramento, the year of the lemon is 1986. Assemblywoman Tanner has brought a new Lemon Law revision to the Legislature.

We should support her. She is setting up better ways to handle new car problems for us.

Our Chapter consists of 275 small businesses in the sales & marketing business. We are on the road 95% of the time. We have trouble enough with our technical products helping engineers manufacture tomorrow's new computers in Silicon Valley. We don't need defective automobiles to impede us, or cause needless expenses.

What you are mandating the auto firms to do, we have been doing as a standard practice within our industry.

Thank you for AB 3611.

Very sincerely,



S.S. Fishman
Government Affairs Committee

cc Annie
Sally

Support 1009

MAR 11 1986

10 March 1986

Honorable Sally Tanner
California State Assembly
State Capitol
Sacramento, CA 95814

Dear Assembly Member Tanner:

We are very pleased to see you are once again introducing a bill to protect consumers of new automobiles. We too have received a number of complaints about the operation of the original lemon law, and believe that new legislation is essential to solving the serious problems that have arisen.

As you requested, we have reviewed AB 3611 and have the following comments and suggestions.

A. Allowing for Consumer's Use of Vehicle

Section 1793.2(d)(1) states that when a manufacturer reimburses a buyer for a nonconforming product in an amount equal to the purchase price paid by the buyer, the manufacturer is entitled to offset that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

The definition of "use by the buyer prior to discovery of the nonconformity," is the subject of much disagreement, and is consequently one the greatest problem areas for consumers seeking fair restitution.

In order to avoid the current problems with the lack of definition, we recommend this portion of the law be amended to specifically state a formula for calculating the amount of offset for use. A fair formula would be: multiply the total contract price of the vehicle by a fraction having as its denominator 100,000 miles and its numerator the number of miles the vehicle traveled prior to the time buyer first notified the manufacturer's agent of the problem which gave rise to the nonconformity.

B. Refund of Consumer's Costs

Section 1793.2(d)(2)(A) and Section 1793.2(d)(2)(B) both address several very important problems by giving the buyer the option to elect either refund or replacement, and by specifying the manufacturer's responsibility to pay for sales tax, license fees, registration fees and other official fees.

However, there are two other out-of-pocket expenses, towing fees and rental car charges, which the consumer often bears as a result of the inoperative vehicle. These incidental damages are not being clearly defined in this section causes disputes over the manufacturer's responsibility to pay for

them. We recommend that the bill explicitly provide for the consumer to be compensated for towing and rental car charges as well as incidental damages.

C. Manufacturer Notification

Section 1793.2(e)(1) allows a car manufacturer, in some situations, to require direct notice to the manufacturer in the event of a defect or malfunction that cannot be repaired.

The current provisions do not define when the buyer must give direct notice to the manufacturer. This has caused buyers to be denied refund or replacement awards because some arbitration boards have claimed the manufacturer did not receive adequate notice of its agent's repeated failure to effect repairs. The buyer is then required to submit to additional repairs to allow the manufacturer the opportunity to repair the vehicle.

This lack of clarification often causes the buyer to go through yet one other repair in a long list of attempts. At what point direct notice to the manufacturer should occur needs to be defined in order to ensure that the manufacturer has adequate notice and that the buyer has to go through no more than four repair attempts or have his/her vehicle out of service for longer than 30 days.

We recommend this section be amended to: "...the buyer directly notify the manufacturer of the need for the repair of the nonconformity after 3 repair attempts or 15 calendar days out of service."

D. Definition of New Motor Vehicle

Section 1793.2(e)(4)(B) clarifies the definition of a new motor vehicle. Specifically including dealer owned and demonstrator vehicles solves an important problem with the current lemon law.

E. Arbitration Criteria

Vehicle Code Sections 3050(e) and 3050(f) discuss the certification process of third party dispute programs and arbitration by the New Motor Vehicle Board.

We would like to commend your innovative use of an existing agency to set up a state run arbitration program as well as a procedure for ensuring other third party dispute programs comply with the law.

However, since the arbitration boards have been, by far, the most serious problem with the original lemon law, we would like to see further protections written into the statute. In addition to the qualifications for third party dispute programs as set forth in the FTC 703 regulations, we believe it is imperative that any arbitrator expected to make decisions about new car warranty disputes, be adequately trained in and take into account the lemon law amendment to the Song Beverly Warranty Act.

One of the most common complaints about the arbitration decisions is that

arbitrators do not use "four or more repair attempts or repair service longer than 30 days for the same major defect" as a criteria for awarding refund or buy back to the consumer. In fact, according to the Attorney General's Consumer Division, the Better Business Bureau has a policy which purposely does not include lemon law as a part of its training of arbitrators.

A policy such as this, or simply lack of lemon law information to the arbitrators defeats one of the purposes of the lemon law, which is to clarify what is meant by a "reasonable number of attempts" to repair a new motor vehicle. Arbitration becomes another hurdle to cross, rather than a final resolution of the problem. For these reasons, we recommend an amendment making training in and use of the lemon law by the arbitration programs explicit.

Further, in response to the "fairness" complaint by consumers, we recommend that each and every third party dispute program be required to utilize an independent technical automotive expert to review complaints and be available for consultation and examination of the vehicles in question.

F. Record Keeping

With respect to record keeping by the New Motor Vehicle Board in its role certifying third party dispute resolution programs, we recommend that the records include:

1. An index of disputes by brand name and model.
2. At intervals of no more than six months, the Board compile and maintain statistics indicating the record of manufacturer compliance with arbitration decisions.
3. The number of refunds or replacements awarded.

A summary of these statistics should be available as public record.

G. Funding

Vehicle Code Section 3050.8(a) establishes a fee to be paid by the buyer for filing an arbitration application. While such a fee appears necessary in order to adequately fund a state run program, we suggest that a cap of \$50 be placed on any arbitration fee to the consumer.

I am currently looking into the various ways that the arbitration can be funded (including cases without merit), and will comment fully on this issue at a later date.


H. Used Lemons

Finally, AB 3611 has no provisions for what the manufacturers are allowed to do with vehicles that they buy back from the consumer because they are defective. Without any regulation, a manufacturer may resell the same vehicle, with conceivably the same major defects, only this time as a used car. An unsuspecting used car buyer may not only be stuck with a lemon, but with a vehicle that is unsafe.

The law should be amended to include: "No motor vehicle which is returned to the manufacturer and which requires replacement or refund shall be resold without clear and conspicuous written disclosure that the vehicle was returned. In addition, no motor vehicle may be resold until the New Motor Vehicle Board determines that the vehicle is no longer defective."

I would like to close by thanking you for your dedication to this important consumer issue. We would be very interested in working with you closely to pass a strong Lemon Law II, and would be glad to help draft the language necessary to add our recommendations to the bill.

Sincerely,


Carmen Gonzalez
Statewide Consumer Program Director

March 31, 1986

Assembly Committee on Consumer Protection
The Honorable Robert Frazee, Chairman
State Capitol
Sacramento, CA 95814

Dear Assemblyman Frazee:

California's new car Lemon Law needs a tune-up, and I am writing to ask you to be the mechanic by supporting AB 3611 (Tanner) and strengthening amendments suggested in the attached fact sheet. The bill will be considered in the Consumer Protection Committee on Thursday, April 3.

If you're not already convinced by the numerous stories in the newspapers and on television that the Lemon Law needs reform, then read the following true story (the names have been changed):

Gary and Rebecca Kirchner purchased their new car in March, 1984 for \$13,000.

After having various defects repaired (for instance, the fuel pump was replaced four times), the Kirchners found that when driving along the freeway at 55 miles per hour, their \$13,000 new car stalled--lost power, just like that--for 6-10 seconds. This happened intermittently, sometimes on the freeway, and sometimes when decelerating. They were told that it was a faulty computer part. But even after "repairs," the problem recurred.

These weren't the only problems. Various malfunctions required the Kirchners to take their new car into the shop, on warranty, to have much of the engine replaced (the manifold was replaced twice).

It was clear to the Kirchners that they had a lemon, and they read that the state had a law which, they thought, gave them some rights as lemon owners: if four or more repair attempts are made on the same problem on a new car, or if the car is out of service for a total of 30 days (for any number of problems), then the owners could get a refund or replacement.

As required by the law, they asked for arbitration. Though the law says the arbitration hearings must occur within 40 days, the Kirchners had to wait three months.

Finally, a year after they bought the car, they got an arbitration hearing. It seemed like a pretty clear case: the car had been in the shop more than 100 days, and it was still stalling on the freeway. They expected a refund or replacement.

But the arbitrator, who was purposely not trained in the specifics of the Lemon Law, allowed the manufacturer to deduct an amount for the time the Kirchners owned the car. Even though the law says the consumer is to be charged for "use" only until the defects in the car first surfaced, the arbitrator used the current blue book value of the car--nearly a year after the Kirchners first took the car in for repairs.

Feeling slighted by the law, the Kirchners refused the offer of \$5000--less than half the purchase price. ("We paid \$8000 to use a defective car for a year?" they thought). The manufacturer made a new offer: an extended warranty to fix the car "one more time" with a new "miracle part" that would stop the stalling. Lacking the time or money to go to court, the Kirchners finally gave in and accepted the offer.

Ninety days after the miracle fix, the car started stalling on the freeway again. The Kirchners gave up and traded the car in.

If this was an isolated incident--just one couple's experience with the Lemon Law--it would be a horror story. But this is a common experience. That makes it a disaster.

AB 3611, and the strengthening amendments in the attached fact sheet, would address many of the problems consumers are having with the Lemon Law. CalPIRG asks for your support when this bill is heard in the Consumer Protection Committee on Thursday.

If you have any questions, feel free to call me in the Los Angeles office, or Bob Shireman at the Legislative office.

Sincerely,

Carmen Gonzalez
Consumer Program Director

cc: Assemblywoman Tanner
Members of the Consumer Protection Committee.

FACT SHEET: IMPROVING THE NEW CAR LEMON LAW**BACKGROUND**

California's warranty law, the Song-Beverly Warranty Act, applies to all consumer products that are sold with written warranties. While the written warranty is in effect, manufacturers are responsible for making any necessary repairs, and are required to refund the purchase price or replace the product if it cannot be repaired after a "reasonable number of attempts."

In 1982, legislation authored by Assemblywoman Sally Tanner 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 the "Lemon Law" and establishes remedies for the consumer whose newly purchased vehicle is substantially impaired.

The Lemon Law amendment went into effect in January, 1983 and applies to new motor vehicles that are primarily for personal or family use. The Lemon Law does not apply to used cars.

The Lemon Law requires consumers and manufacturers to use arbitration through a "qualified" third party dispute resolution program before resorting to costly, protracted litigation in resolving their disputes.

However, the Lemon Law is not providing consumers with a fair and speedy remedy for their lemon car problems. There are a number of problems with the law, some of which are addressed by reform legislation:

PROBLEM #1: ARBITRATION PANELS DO NOT ABIDE BY LEMON LAW PROVISIONS

Many decisions take much longer than the 40 day limit written in the Lemon Law. Arbitration programs often do not use the criteria set forth in the law (i.e. four or more repair attempts or service longer than 30 days) as a basis for awarding refund or replacement. Some arbitration programs do not even train their arbitrators in the Lemon Law, which means they are making decisions without taking into consideration state law. Finally, many programs do not fully comply with the Federal Trade Commission's guidelines for third party dispute resolution programs, despite provisions in the Lemon Law requiring them to do so.

AB 3611 (Tanner) requires that arbitration programs be certified by the New Motor Vehicle Board as meeting the requirements of the Lemon Law, including the FTC arbitration guidelines. The bill provides for the Board to establish its own arbitration program. Consumers would have the option of using a certified program or the Board's program, but not both. If a certified program fails to meet the procedural requirements of the law, a consumer could ask the Board to take over the arbitration.

In addition, the bill should be amended to require arbitrators to use the

Lemon Law criteria in making their decisions. In order to evaluate the programs' effectiveness, arbitration boards should be required to keep detailed records, open to public inspection.

PROBLEM #2: 'DEDUCTION FOR USE' PROVISION ABUSED.

When the manufacturer reimburses the consumer the purchase price of the vehicle, the manufacturer is entitled to deduct an amount directly attributable to use of the car by the consumer prior to discovery of the problem. The calculation of this deduction has been a major source of disagreement between manufacturers and new car buyers. Manufacturers often seek an unreasonably high deduction by using commercial car rental rates. Furthermore, the time at which the deduction for use ends often is decided unfavorably against the consumer.

AB 3611 does not address this problem.

The bill should be amended to limit the deduction to no more than an amount equal to the fraction of the number of miles driven by the consumer before the consumer first notified the dealer of the problem, over an assumed car life of 100,000 miles.

PROBLEM #3: CONSUMERS' COSTS NOT REIMBURSED.

After ruling for the consumer, some arbitration boards insist that the consumer take a replacement car even though they would prefer a refund, or vice-versa. Furthermore, consumers often must pay such costs as sales taxes and license fees on the lemon car, or must pay rental car charges and towing fees because of a defect that was the responsibility of the manufacturer.

AB 3611 gives the buyer the option of choosing either a replacement or a refund. If the buyer opts for a refund, the purchase price plus sales tax and unused license and registration fees must be refunded by the manufacturer. If the buyer opts for a replacement, the manufacturer must pay the sales tax and license and registration fees for the replacement vehicle. Provisions are added to tax and vehicle license law to allow the manufacturer to recover refunded sales tax and unused license and registration fees from the state.

The bill should be amended to ensure that consumers also are reimbursed for towing and rental car charges, as well as any other incidental damages necessitated by the defective automobile.

PROBLEM #4: ARBITRATORS RELY ON MANUFACTURER'S EXPERTS

Because arbitrators generally do not have expertise in auto mechanics, they often rely on mechanics supplied by the manufacturer to provide an evaluation of the supposed lemon car. These mechanics obviously have a conflict of interest.

AB 3611 does not address this problem.

The bill should be amended so that independent technical experts, who do not have an interest in any party in the proceeding, are used.

PROBLEM #5: CONSUMER NOT AWARE MANUFACTURER MUST BE NOTIFIED.

Current law requires the consumer to directly notify the manufacturer of the problem with the automobile, but the law does not say how or when to do so. This has caused buyers to be denied refund or replacement because some arbitration programs have claimed the manufacturer did not receive adequate notice of its dealer's repeated failure to repair the vehicle. The buyer is then required to submit to still more repairs in order to allow the manufacturer additional opportunities to repair the vehicle.

AB 3611 does not address this problem.

It is unrealistic to expect the consumer to know how and when to notify the manufacturer. Instead, the bill should be amended to require the dealer--who is the one doing the repairs--to notify both the consumer and the manufacturer once the car has been in the shop three times for the same problem or 15 days for any number of problems (during the one year/12,000 mile period). The dealer's failure to notify the manufacturer should not in any way jeopardize the consumer's rights under the law.

PROBLEM #6: CONSUMERS NOT PROTECTED FROM USED LEMONS.

There are no provisions in current law for what manufacturers may do with lemon vehicles which have been bought back from consumers. Without regulation, a manufacturer may resell the same vehicle as a used car without fixing or informing the consumer of the major defects.

AB 3611 does not address this problem.

The bill should be amended to prohibit the resale of unrepaired lemons, and to require disclosure that the car was a lemon.

Improve that lemon law

SAN FRANCISCO EXAMINER, November 17, 1985

AFTER THREE YEARS of mixed results, California's "lemon law," designed to protect buyers of defective automobiles, is in need of a tuneup. The law is by no means a total failure, but it has loopholes large enough to drive, say, a subcompact through.

Assemblywoman Sally Tanner, D-El Monte, who wrote the bill, plans to submit revisions to the Legislature in January. She says such changes are needed to ensure that consumers who buy "lemons" will get their vehicles fixed or replaced, or receive cash value -- and in a reasonable amount of time.

The law now entitles the buyer of a new car to a replacement or refund if the vehicle is less than a year old or has been driven fewer than 12,000 miles; if the malfunction is covered by warranty and significantly reduces the auto's value or safety; and if four or more attempts have been made to correct the problem or the auto has been out of service more than 30 days for repairs.

Those provisions seem reasonable, but there is a further requirement that has caused some problems: Buyers must go through arbitration before they can use the lemon law or seek redress in the courts. There are four arbitration panels statewide, all funded by car manufacturers.

Consumers have complained that the panels allow the manufacturer too many chances to repair the vehicles, that claims have been unfairly denied and that panel decisions are reached too slowly. Moreover, there is no state agency to monitor the panels' compliance with pertinent federal guidelines.

We commend Tanner's efforts to revise the law, and particularly her suggestion that a state-operated arbitration program is in order. The current panels, run in large degree by auto manufacturers, are unlikely to enjoy the full confidence of the consumers they are supposed to protect.

State of California

Memorandum

To : 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

HTE/ot

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

Quipped to D.O. (Per S.T.) 4-11-86
cc Sally
unip

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APR 3 1986

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Jeffrey J Fuller
Deputy Attorney General

(415) 624-5478
ATSS 8-454-5478

Quipped to D.O. (Per S.T.) 4-11-86
cc Sally
unip

CALIFORNIA CONSUMER AFFAIRS ASSOCIATION

c/o Evelyn Stein, 33 Eastwind, # 7, Marina Del Rey, CA 90291

March 31, 1986

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

AB 3611 (Vehicle Warranties)

Dear Mrs. Tanner:

Thank you for the opportunity to comment on AB 3611 and your continuing interest in improving the ability of consumers to obtain a fair and equitable resolution of new car disputes.

Complaints received from consumers concerning their experiences with various dispute resolution mechanisms clearly indicate that problems exist with the way the mechanisms are operating and that improvements are needed. We commend and appreciate your effort to address these problems in AB 3611.

AB 3611 would improve existing law in several ways:

- By providing that the buyer, rather than the manufacturer, has the option of choosing either restitution for, or replacement of, a non-conforming vehicle. Since it is the buyer who has been damaged, this seems only fair.
- By clarifying existing law and mitigating the "lemon" owner's financial loss by requiring that the buyer be reimbursed for collateral expenses and charges such as, for example, sales tax, license and registration fees, and transportation.
- By eliminating a current source of dispute by including dealer owned vehicles and demonstrators within the definition of new motor vehicles.

These provisions will help consumers and should be retained.

We agree that there is a need for state certification of dispute resolution mechanisms and for the collection of data to provide a basis for their evaluation. That function could be placed with the Department of Consumer Affairs or the Attorney General's office, rather than the New Motor Vehicle Board.

Honorable Sally Tanner
March 31, 1986
Page 2

If there is to be a statewide alternative dispute resolution panel, and we are not certain one is necessary, we would prefer a forum other than the New Motor Vehicle Board.

The Board, which is statutorily required to have at least four new car dealers on its nine member panel, does not itself meet the criteria for a dispute resolution mechanism stated in 16 CFR part 703, as required by California Civil Code Section 1793.2 (e) (3). Section 703 states in relevant part:

"When three or more members are deciding a dispute, at least two-thirds shall be persons having no direct involvement in the manufacture, distribution, sale or service of any product."

Moreover, the Bill leaves unclear where and how frequently the Board would meet and, therefore, whether it would be sufficiently accessible to consumers or have the requisite capacity to decide, in a timely manner, the number of disputes which may be anticipated.

Finally, the new Motor Vehicle Board is an expensive mechanism. Each of its nine members is entitled to \$100 per diem plus travel and expenses for each meeting.

We would like to point out that Section 703 does not permit consumers to be charged a fee for the use of the mechanism. AB 3611 not only allows such a charge but provides that a consumer may be required to pay the manufacturer's fees under circumstances which can be broadly interpreted. This may have a chilling effect on the consumer's willingness to avail himself of the remedy offered by any statewide arbitration panel, and thereby seriously diminish its value. Moreover, the amount of the fee consumers must pay remains unstated and thus, in effect, unlimited.

In our opinion, assuring that existing dispute resolution mechanisms meet both the spirit and the letter of the state "lemon law" should be given the highest priority. We suggest that this might best be accomplished by mandating that all manufacturers selling automobiles in California be required to maintain dispute resolution programs which conform to existing state law.

Thank you for considering our views.

Sincerely,



EVELYN STEIN
Member, Legislative Committee



BETTER BUSINESS BUREAU
INLAND CITIES, INC.

orig  SAC

MAR 31 1986

March 27, 1986

The Honorable Sally Tanner
Member of the Assembly
11000 Valley Blvd., Suite 106
El Monte, CA 91731

APR 9 1986

ASSEMBLY BILL 3611

I've reviewed AB 3611 in detail, and we're pleased with the revisions that have been made.

I have one comment that I would like to ask you to consider:

The bill requires a filing fee of consumers who request arbitration. It also provides for charging manufacturers, distributors, and branches of each, a fixed annual fee for New Motor Vehicle Board arbitration of consumer disputes.

We believe it is inappropriate to impose an annual fee on a manufacturer who may never use Board arbitration. We suggest instead that you fund the program in one of two other ways: either by (a) the filing fees for individual cases only, or (b) an annual fee charged to manufacturers and distributors who maintain dispute resolution programs certified by Department of Motor Vehicles.

In the first case, filing fees would be charged only for use actually made of arbitration. In the second case, manufacturers who maintain qualified programs would bear the cost of funding Board arbitration only to the extent that the Board incurs costs to certify manufacturers' programs. They would not pay for services they do not use.

Thank you for your consideration.



WILLIAM G. MITCHELL
President

cc Sally
ar m-e

APR 2 1986
4B3611

CALIFORNIA CONSUMER AFFAIRS ASSOCIATION

c/o Evelyn Stein, 33 Eastwind, # 7, Marina Del Rey, CA 90291

March 31, 1986

APR 2 - 1986

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

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cc annie
Sally

Honorable Sally Tanner
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Thank you for considering our views.

Sincerely,



EVELYN STEIN
Member, Legislative Committee

Connecticut General Assembly



JOINT COMMITTEE ON LEGISLATIVE MANAGEMENT
OFFICE OF LEGISLATIVE RESEARCH
(203) 566-8400

18-20 TRINITY STREET
HARTFORD, CONNECTICUT 06106

AN GREEN
DIRECTOR

February 4, 1986

86-R-0037

TO: Honorable John J. Woodcock, III
FROM: Office of Legislative Research
Mark E. Ojakian, Research Analyst
RE: Lemon Law Arbitration Cases

*Lemon Law
Arbitration*

You asked:

1. how many pending lemon law arbitration cases exceed the 60-day limit,
2. what the Department of Consumer Protection perceives to be problem areas if there are delays in holding arbitration hearings, and
3. what steps the department is taking to rectify any problems in scheduling hearings.

SUMMARY

Of the 32 lemon law arbitration cases scheduled for hearings through March 5, 31 exceed the 60-day limit. The Department of Consumer Protection indicates that the basic problem areas are staffing, the prescreening process, and the pool of technical experts. To reduce the current backlog of arbitration cases, the department has proposed hiring additional consumer information representatives, prescreening cases on weekends, and hiring a technical expert.

ARBITRATION CASES

The law requires an arbitration panel to render a decision after a hearing in a lemon law case within 60 days of a consumer's filing a request for arbitration, CGS § 42-181(c). The department currently has 32 cases scheduled for a hearing from January 28 to March 5. Of these cases, 31

exceed the 60-day limit by an average of about 25 days. Enclosed is a copy of the current docket of lemon law cases.

DEPARTMENT RESPONSE TO DELAYS

The department has identified three basic problem areas which have caused scheduling delays.

Staffing Levels

The department indicates that the lemon law unit does not have adequate staff to monitor all the deadlines throughout the process. If deadlines are not met at various stages, the hearings will probably not be held within the statutory time limit.

The department has hired a temporary consumer information representative effective December 31, 1985 through June 5, 1986. His responsibilities will include scheduling and staffing of hearings and monitoring cases throughout the process. They have also included an additional consumer information representative as a budget option in the governor's FY 1986-87 budget.

Prescreening Process

The law requires a panel of three arbitrators to review a consumer's request for arbitration and determine eligibility within five days of the filing date, Conn. Agencies Reg. § 42-102-8. This prescreening panel is distinct from the arbitration panel that hears the case. The department indicates that the prescreening process is very time consuming due to the number of cases and the availability of arbitrators and it is difficult to complete this process within the five days. A delay in the initial stage leads to a delay in the entire process.

The department has begun scheduling arbitrators on Saturdays to review all cases received during that week.

Technical Experts

The law requires that a pool of volunteer technical experts be available to assist arbitration panels in lemon law cases. According to the department, the pool has diminished causing difficulty in scheduling. Some of the original pool of technical experts has indicated that they will not serve without compensation thereby eliminating them from consideration.

The department has suggested paying technical experts for their services to ensure an adequate number and help alleviate scheduling difficulties. Toward this end they have

included the hiring of a technical expert as a budget option in the governor's FY 1986-87 budget. This technical expert would replace the volunteer pool of experts.

MEO:npp

8

Enclosure

MR. PETERS,

FOLLOWING OUR DISCUSSION,
WE WERE ADVISED THAT
THE GOVERNOR'S OFFICE
APPROVED A DIRECTED
POSITION OF "OPPOSE
UNLESS AMENDED THEN
NEUTRAL".

I WILL LEAVE YOU THE
ATTACHED; HOWEVER
AS I INDICATED DMV
WILL NOT SPEAK IN
OPPOSITION TOMORROW.

PLEASE CALL IF YOU NEED
TO DISCUSS FURTHER.

THANK YOU, BILL

OFFICE OF THE DIRECTOR

DEPARTMENT OF MOTOR VEHICLES

P. O. BOX 11828

SACRAMENTO, CA 95853



April 2, 1986

APR 2 1986

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

Dear Assemblywoman Tanner:

The Department of Motor Vehicles is opposed to certain provisions contained in your bill, AB 3611, as introduced.

This bill would require the Department of Motor Vehicles to reimburse vehicle license and registration fees on a prorated basis whenever a manufacturer replaces or reimburses the buyer under the provisions of the "Lemon Law". The bill also specifies that any vehicle purchased solely for "commercial or industrial use" would not meet the definition requirements of a new motor vehicle for purposes of Lemon Law consideration.

If this bill were enacted, the department would be required to process complex refund applications. Since the license fees would already be transmitted to the cities and counties, a costly and involved refund process would have to be initiated. Therefore, not only would local governments lose revenues, but additional administrative costs would be incurred both locally and at the state level.

Requiring the department to refund fees which were in fact due and collected upon a new vehicle's first operation would be in direct conflict with other laws governing vehicle registration and vehicle license fee collections, and existing refund transactions. Further, such fees constitute a tax lien which accrues to, and follows, the vehicle and the vehicle's owner.

The department feels that when a new vehicle purchaser prevails in an action, he or she should recover any registration fees from the manufacturer. This would avoid complex refund transactions and possibly a substantial revenue loss to the state.

We have also identified a concern with the bill in that there is no definition of "commercial or industrial use" in the vehicle code. Current law defines a commercial vehicle as a vehicle of a type required to be registered under this code used or maintained for the transportation of persons for hire, compensation or profit or designed, used, or maintained primarily for the transportation of property. The provision of this bill which exempts a vehicle purchased solely for commercial or industrial use is unclear and may cause confusion by the public.

The department does agree that the "Lemon Law" should be strengthened to ensure that consumers' rights are better protected. A position of NEUTRAL could be recommended if the attached suggested amendments were adopted. These amendments would delete the provisions of the bill that requires DMV to refund the vehicle registration and license fees and those provisions which require the Board of Equalization to refund the sales tax. These amendments also exempt a vehicle registered to a business enterprise, rather than purchased for commercial or industrial use, from the definition of a new motor vehicle for purposes of the Lemon Law.

I would be pleased to discuss these issues with you or your staff at your earliest convenience.

Respectfully,

A handwritten signature in cursive script, appearing to read "W. J. Bleier" or similar, with a small flourish at the end.

LEONARD M. BLEIER
Legislative Liaison Officer

cc: Assembly Consumer Protection

SUGGESTED AMENDMENTS

to AB 3611

as introduced February 20, 1986

AMENDMENT #2

On page 7, line 2 after the word "vehicle", DELETE:

~~purchased solely for commercial or industrial use~~

and INSERT:

registered to a business enterprise

AMENDMENT #2

On page 7, DELETE lines 3 through 30 in their entirety.

AMENDMENT #3

On page 7, line 31, DELETE:

~~SEC. 1.~~

and INSERT:

SEC. 2.

AMENDMENT #4

On page 9, line 38, DELETE:

~~SEC. 2.~~

and INSERT:

SEC. 3.

AMENDMENT #5

On page 10, line 29, DELETE:

~~SEC. 3.~~

and INSERT:

SEC. 4.

AMENDMENT #6

On page 11, DELETE lines 11 through 25 in their entirety.

JUL 11 1985

JUL 15 1985

Dear Ms. Tanner:

We, the undersigned, would like to thank you for your continuing efforts to put "teeth" in to the California automobile lemon law. As residents of this state we do deserve and need better protection against the power, insensitivity, and unscrupulousness shown by many automobile manufacturers.

Sincerely,

Karen J. Peterson 713 Dover Ave, Modesto 95351

Name

Address

Brenda Robert

320 N. Quincy Rd - Turlock

Barbara Olson

411 Redwood Ave - Mod, Ca 95354

Michael J. Hamrell

2015 Belhaven - Turlock

M. Christensen

2110 Regent Ct. Modesto, Ca 95350

Mona Morris

1945 Xavier Ave Turlock, CA 95300

Maria Chevarria

8609 Laird St. Patterson CA 95363

Blanche McFadden

4108 Semadon Dr.

Colleen Brunsell

Modesto Ca 95356

Kimi Costa

5600 Chenault, Modesto Ca 95354

6644 E. Lathrop Rd. Mta CA 95336

Steve Jackson

2501 Calzagno Ceres CA 95307

Jan B. McKibick

1417 Roosevelt Dr., Modesto, Ca 95350

Support 1033

MR. AND MRS. HARRY A. SHAW
3002 JANAE WAY
HEMET, CA 92343

MAR 19

March, 17, 86

Assemblywoman Tanner:

Thank you for your recent letters in answer to my previous letter. My first letter to you was neat and without errors. That was because I had help with the typing and spelling. Please forgive all the errors but here goes.

Enclosed please find a copy of a letter being sent to all the consumer Protection Committee as you requested. As you will see there are lots of errors. However it will show how I was treated by the Mfg. and the poor results I received from a poorly trained Arbitrator. In my case I feel I was treated very badly by the Mfg. and the Arbitrator. On My second trip to Arbitration the Arbitrator admitted to me that he was not a mechanic but just sitting and riding in my car he was able to tell me there was nothing wrong with my car and wrote it all off. I have been an Aircraft mechanic and a precision machinist all my life and I feel I can determine when something mechanical is working correctly or not. However the arbitrator who was not a mechanic at all could tell more than I could without even driving the car. I wish I was that good I'd be a lot richer than I am now.

Also please note the part I have underlined in the last paragraph of the letter.

Hope this will be of some help and anything else I can do to help please call on me and if I can I will.

Thank You
Harry A. Shaw

Harry A. Shaw

*cc'd to
Sally -*

Supp 1034

March, 17, 86
3002 Janae Way
Hemet, Ca. 92343

To whom it May Concern:

I am writing to request you vote for AB 3611.

I have never before written for anything political but this time I finally have had it.

I am sixty seven years old and trying to live on social Security, and as an end result do not have the money for attorneys.

I purcjased a new olds two years ago from my Local Dealer who is Mike Reade of Hemet. As it turned out after the first three miles I was in trouble and owned a pure "LEMON". After twenty seven trips in fourteen months with all kinds of problems, some of them as much ten times repeated I finally tried the "LEMON LAW".

Just as I was leaving on a vacation the Arbitration came up for review. Then G.M. decided there was trouble with the vehicle and then wanted to fix it. As I didn't want to cancell my plans I was reluctant to let them start then after waiting fourteen months. So then the G. M. representative nastilly told me he would have to tell the Arbitrator that I woudn't let them fix the car. Which he did at the Arbitation. This of course went against me and the Arbitator refused a buy back or replacement even though the car was well within that catagory as the law is written.

He only made G. M. repair car. I was assured the car would not break down and could use it for my trip. I then was towed in twenty five miles in Oregon and had to make four long distance phone calls to get it repaired.

The G. M. Representative even told me on the side away from the Arbitrator that he had been trairnd by G. M. and he new how to "handle people". This how the manufacturers are getting around the "LEMON LAW".¹⁵

I now have Thirty Four shop orders on this car and continued repeat problems which keep returning. I returned to Arbitration again and then Arbitrator got mad at me because I told him he was not enforcing the law as it was written. He then let G. M. off the hook completely and wrote me off.

Now the warranty has run out and I now have to pay for all repairs and then try and get my money back from and extended warranty. I now find my warranty was not G. M. as I thought I was being sold by the dealer/. I paid five hundred and ninety five dollars for this contract and then found the outfit didn't even have the name or address on the contract. Only a phone number and a Post Office box number. I now Find it almost impossibl to collect from them. They are New Dealer Associates, Box 2649, Oakland Ca. 94614. I tride to cancell the contract before I used and get my money back and was refused. Then the first time I tried to use it I received a form letter with ten different reasons on for non payment. I was refused payment because ther were no parts insatalled only adjustments. These parts where insalled, (in six weeks), previously by another dealer and as I said did not stay in adjustment for the forth time and I tried another dealer.

G. M. has spent Hundreds of dollars and possibly thousands to fight me all the way rather than exchange this car or give in to the "LEMON" law. They paid seven hundred dollars rental car fees, Hundreds of dollars for parts and completely replaced some smaller units. Most of these where all worked on over four times, and one ten times. Transmission and diferenti- now loosening up for fourth time. Dasbord now coming loose fou

time, oil leaks f^{or} third time. Cruise con^trol was worked on ten times. Also had replaced valve assemblys on transmission and differential, power steering pump, steering coloum parts, gasgets, engine mounts repaced, car actually had bent wheels and all four wheels replaced, (yellow) dash, for check engine replaced four times, chimes replaced, paint peeled from hood repainted three times to correct it, power door lock control replaced, occasionally chimes ring when blowing horn never corrected, solonoid relaced three times.

As you can see I believe I own and am stuck with a poorly assemled car. As I mentioned I am not a rich man but I did talk to an attorney whom agreed I might have a case but it would cost me three thousand dollars and a long time to go to, court, which I could not afford. I cant even afford to trade the car in at this time.

I am sending a copy of this to all on the consumer protection committee so Assembly woman, or Assemblyman as it may be I request you vote as I mentioned before. I am also requesting you to make an addition to the law, if possible, or to pass some form of legislation to have a committee to review all the cases in the Lemon law that the consumers have lost in the last three years to see if the law was enforced by the poorly trained arbitators and if not have the decisions reversed to correct it as the law was written and stop the Mfgs. from getting around the law. For once lets one law that is enforced as it should be.

Please forgive all the typing errors ect. but feel free to use this letter in any way it will help to corrcet this injustice and to make the Mfgs. quit robbing the public. Lets seperate the men from the boys and make them give us quality insyead of just advertising iton T. V.

Respectfully yours
Harry A. Shaw.

Harry A. Shaw

P. S., EVEN MR. GOODWRECH COULDN'T FIX THIS CAR.

Sour report on Lemon Law draws tart remarks

By Phil Blumenkrantz
Staff Reporter

The state Department of Consumer Protection is faking its legal mandate to hear consumers' Lemon Law claims expeditiously, the author of the law says.

State Rep. John J. Woodcock III, D-Windsor, said a new state report, prepared at his request, shows the consumer department is taking an average of 25 days more than legally allowed to hold arbitration hearings. Woodcock said the department most either speed up the process or be stripped of Lemon Law responsibility.

Woodcock based his remarks on a report by the state Office of Legislative Research, which found that the consumer department's Lemon Law arbitration unit exceeded a 60-day legal limit for decisions in 31 of 32 cases awaiting hearings. The report said consumers are waiting

an average of 85 days to have Lemon Law claims heard by the unit, which was created to speed up settlements and to relieve the need for consumers to go to court or to manufacturers with their problems.

One consumer requested a hearing Nov. 21. But according to the report, his case isn't scheduled to be heard until Feb. 25.

Woodcock is considering asking the General Assembly to transfer responsibility to the American Arbitration Association.

"The department is not meeting the standards under the law," said Woodcock. "It's an embarrassment."

Long waits increase both the costs and the frustrations of consumers with major car problems, said the state representative. Wendy Cobb, director of the Lemon Law unit, said she could not discuss the report. Neither Joan Jordan, acting division chief of the consumer department's

product safety unit, which oversees the arbitration panel, nor Dorothy Quirt, executive assistant to the commissioner of the department, could be contacted.

In November the Department of Consumer Protection released its own "report card," saying consumers almost always won in disputes with automakers in its auto dispute settlement program and that the Lemon Law was generally working.

But the research office's report said consumer department officials claim they don't have enough workers to keep track of deadlines and that the consumer department is having trouble assembling panels to screen complaints for eligibility. Once things get off to a slow start, other deadlines are missed, the report said.

The Department of Consumer Protection, the report said, apparently also was having trouble finding technical experts required under state law to assist arbitrators. The experts, who originally worked

as volunteers, are in some cases now refusing to work without money. State law allows volunteers only.

The report says the consumer department has proposed hiring additional help, working on weekends and hiring a paid technical expert to move cases more quickly.

But Woodcock said the backlog is insurmountable because under state law, the consumer department can refer extra cases to the regional office of the American Arbitration Association, a private, non-profit organization.

He said he has repeatedly suggested the option to the department. But no cases have been referred, according to the association's regional director, Karen Jalkut. Jalkut said her organization could meet the 60-day deadline unless it were flooded with complaints from the consumer department.

Until last year consumers either had to

go to court or to an arbitrator for the refund or replacement of a new, faulty vehicle not fixed after four or more repair efforts. Since last spring under a revision in the law, consumers have been able to take their claims to the consumer department's arbitration panel.

Consumers are waiting up to 91 days for decisions, according to Mark E. Ojakian, a research analyst who prepared the research unit's report at Woodcock's request.

Woodcock fears the backlog will continue to grow as consumers begin filing a new round of Lemon Law complaints on 1986 vehicles.

The Consumer Protection department has come under criticism during the past year from state legislators, particularly over reports of a six-to-eight-week backlog in handling certain types of general retail complaints. That backlog has been reduced in recent months.

JOHN K. VAN DE KAMP
Attorney General

State of California
DEPARTMENT OF JUSTICE



P. O. Box 944255
Sacramento 94244-2550

1515 K STREET, SUITE 511
SACRAMENTO 95814
(916) 445-9555

March 18, 1986

MAR 20 1986

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

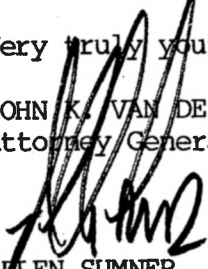
Dear Assemblywoman Tanner:

AB 3611 - Consumer

The Attorney General's Office has no position on AB ³⁶¹¹~~3416~~ at this time. I am, however, forwarding the enclosed analysis for your information. If we can be of further assistance, please let me know.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General


ALLEN SUMNER
Senior Assistant Attorney General
(916) 324-5477

AS:nt

ec D.O.
Sally
ARKIP

may 12 1986

No Position 1038

Memorandum

To : Jeff Fuller
Legislative Unit
Sacramento

Date : 2/4/86

File No.:

Herschel T. Elkins
Assistant Attorney General
Consumer Law Section

Telephone: ATSS 677-2097
(213) 736-2097

From : Office of the Attorney General
LOS ANGELES

Subject: In Re: Bill Analysis

BILL NO. AB3611
AUTHOR: Tanner

ANALYST: Herschel T. Elkins
Assistant Attorney General
Consumer Law Section
ATSS 677-2097 - (213) 736-2097

I. Summary of Bill and Existing Law

California's present Lemon Law provides for certain remedies to consumers when defects cannot be fixed in a reasonable time. AB3611, sometimes called Lemon Law II, proposes a number of changes. Since there are so many changes, I will discuss them by paragraph and make a comment as to each (or "no comment" if I have no relevant information):

Civil Code-section 1793.2(d) - Gives the consumer the option of replacement of a motor vehicle or restitution. Some consumers lose faith in an automobile or a manufacturer when chronic problems occur. With those consumers, only restitution is meaningful. Others prefer replacement since the consumer anticipates purchasing a new car after receiving restitution. That new car might cost more and, under restitution, the consumer would have to pay for use of the automobile prior to discovery of the defect. The requested change is reasonable.

When the buyer exercises the option of replacement, the manufacturer is to replace with a new vehicle "substantially identical" to the vehicle replaced. That could create a problem if there is a new model year and automobiles of the previous year are not available. Perhaps, the term "substantially identical" should be further defined.

Civil Code section 1793.2(e) - Under present law, a third party dispute resolution process is one that complies with the FTC's minimum requirements. The new proposal requires that the new Motor Vehicle Board certify that those dispute resolution

processes qualify. Some of the resolution processes presently operating do not appear to qualify. However, it does not cost the consumer any money to seek arbitration under such procedures and it is only binding upon the manufacturer. The effect of the non-certification is discussed below.

There is a new definition of "new motor vehicle" which appears to add motorcycles and some motor homes to the definition. It also clarifies that "new motor vehicle" includes demonstrators and dealer owned vehicles. Adding motorcycles and some motor homes appears to be a good idea. I am not aware of any manufacturers who are not presently including dealer owned vehicles and demonstrators but a clarification could be worthwhile.

Revenue and Taxation Code section 6902.2 - This provides that the Franchise Tax Board refund sales tax to the vehicle manufacturer when a vehicle has been replaced following arbitration. Without this provision, it could be argued that sales tax would be obtained twice on what is basically the same transaction. I understand that manufacturers have been told informally by the Franchise Tax Board that they need not pay double sales tax under present law. However, that issue is not certain and AB3611 should certainly help.

Revenue and Taxation Code section 10902 - Seeks to avoid double license fees and is certainly warranted.

Vehicle Code section 3050(e) - This section allows the new Motor Vehicle Board to arbitrate disputes under the Lemon Law. Under this section, the arbitration is available to a consumer in lieu of other third party arbitration. It is unclear whether this arbitration is binding on the consumer. It is also unclear where the arbitration is to take place but it appears to contemplate that the board itself, minus the new motor vehicle dealers who are on the board, are to be the arbitrators. I seriously doubt that the members would have the time to do this, and I presume they would appoint hearing officers and review the recommendations, also a time consuming process.

Vehicle Code section 3050(f) - Provides for the board's certification of third party dispute resolution processes and states that certification is a condition precedent for application of the requirement that the consumer seek arbitration before litigation in order to take advantage of the presumptions in the Lemon Law. That is basically the same as present law's requirement for compliance with FTC standards except for the certification process.

Vehicle Code section 3050.8 - This new section sets forth the procedure for use of the board's arbitration process. Presently, the consumer pays no fee for arbitration. If, however, the consumer chooses the board, there will be a fee, perhaps a substantial one. Of course, the consumer need not choose board arbitration.

Prior to arbitration, the board is to establish informal mediation. If the mediation fails, the board, without a hearing and without any testimony, makes a preliminary statement as to whether the buyer's position in unresolved disputes is meritorious, not meritorious or as yet undetermined. I do not understand the purpose of that proposal. Since it is the board that will make the determination following the arbitration, a preliminary statement as to the merits of the controversy would seem to be unwarranted.

The consumer can request arbitration by the board if he or she has not previously used a third party resolution process (hopefully, the section refers to previous use of a third party resolution process regarding the same automobile) or, if the consumer has used such a process and has convinced the board that the process did not qualify for certification. Thus, if a manufacturer continues to use a present process which does not qualify for certification, it knows in advance that the consumer can seek two sets of arbitration prior to any litigation.

Vehicle Code section 3050.9(a) - Although the consumer is charged a fee, the board is to establish a schedule of fees to be charged to fund fully the costs associated with the arbitration. The schedule fees shall include a fixed annual fee to be charged to manufacturers and distributors. It is unclear what portion of the total fees are to be funded by the annual fee and there is no direct provision which requires manufacturers and distributors to pay (the bill states they will be charged but there is no section stating they must pay). If manufacturers and distributors are to be charged, and required to pay, a fee even if they have established a certified arbitration procedure, I believe the bill should set forth justification for a double arbitration and some criteria for the fee. Is each manufacturer or distributor to pay the same amount? Are the amounts to depend upon the number of arbitrations against each or the number of sales by each?, etc.

Vehicle Code section 3050.9(b) - This section provides that if the manufacturer or distributor has been unreasonable with respect to a consumer's claim, the board may require reimbursal of fees and if the board determines that the consumer's position was without merit and brought in bad faith, the consumer may be required to reimburse the manufacturer for "any fees paid to the board as a result of the filing of the request for arbitration".

Since I do not know what fee will be paid by the manufacturer or distributor apart from the annual fee, it is difficult to determine whether this would have a chilling effect on consumers. Certainly, the threat of such payment might chill consumers if the board, prior to any testimony, has already classified the buyer's position as not meritorious. The board may take the position that once it determines, without a hearing, that there is no merit in the buyer's position, the request for arbitration may be regarded by the board as bad faith.

Vehicle Code section 42234.5 - Relates to the division of registration fees between the buyer and the manufacturer who replaces a vehicle or makes restitution.

II. Background Information

Some consumers have been dissatisfied with the present arbitration processes in automobile cases, particularly since some of those operated by the manufacturers (or by organizations set up and controlled by the manufacturers) have procedures that may not be equitable. In addition, some consumers distrust organizations which are controlled or set up by the manufacturers against whom they are complaining. Hence, in several states, there have been discussions concerning the possibility of setting up an arbitration organized by independent party, a state agency. In another subject matter covered by this bill, some consumers have argued that they should have the right, and not the manufacturer, to determine whether a car should be replaced or a refund made.

III. Impact of the Bill

The bill would probably increase the work load of the new Motor Vehicle Board and may cause some manufacturers to abandon recourse to a separate arbitration mechanism.

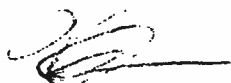
IV. Recommendation

W.

I believe that further study need be made. The Consumer Law Section has been investigating present third party arbitration mechanisms. The procedure to be used by the new Motor Vehicle Board is rather sketchy and it is difficult to determine whether this would be a preferable system. For example, we do not know how much will be paid by the consumer for arbitration (at present the consumer pays nothing). We do not know whether live testimony will be permitted, whether hearings can be obtained

within a reasonable distance from the consumer's home, whether the board will appoint a hearing officer to recommend decisions to the board or whether the board will hear the matter itself, whether the board will hire mechanics to test the automobiles (some present arbitration procedures utilize mechanics), whether hearings will be actually conducted by individuals or by panels and whether the arbitration decision is binding (at present, the arbitration is only binding on the manufacturer). Since the consumer would have the option as to the arbitration procedure chosen, the bill would not harm the consumer unless manufacturers chose to abandon their own efforts in favor of the new procedure.

Since we do have substantial information concerning the arbitration process, our section would be happy to share that information at any meeting involving the proponents and opponents.


HERSCHEL T. ELKINS
Assistant Attorney General

HTE/pt



A. E. Davis and Company

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

MAR 27 1986

March 27, 1986

The Honorable Sally Tanner
California State Assembly
State Capitol
Sacramento, CA 95814

Dear Sally:

Re: Your AB 3611

A month ago you wrote a thoughtful and comprehensive letter concerning the introduction of your AB 3611 to amend the current so-called "Lemon Law", originally enacted in 1982. As you recall, Al Davis and Chrysler Corporation worked diligently with you and your staff to create a workable Arbitration Board program.

Over these intervening years Chrysler people have strived to improve the Chrysler arbitration system so that it complies with both the Federal and State laws and regulations and implements basic principles of fairness for the consumer.

The large percentage of cases that come to the Board's attention are successfully settled. Only a small proportion result in letters or phone calls to their legislators. We certainly would not claim that the system is working perfectly, but we do maintain that it is working satisfactorily and that the law really does not need significant change.

Surely, creating a new state bureau or agency to perform the arbitration board function would only serve to confuse the public, if it is designed to serve as an alternative choice. Two parallel systems seem not very efficient, and certainly more costly. If a state-run system is to supplant the private sector system, one should be aware of the comparative slowness and inefficiency of this approach. In at least one state with a state-run dispute resolution process, the backlog of cases has exceeded one full year.

Sally, we appreciate your conscientious concern for California consumers and we of Chrysler share that concern. We will have two of our top spokesmen out from Detroit to explain our evaluation of the various changes proposed in your bill. In the bill's present form we must register Chrysler's opposition.

Thank you for your consideration.

Very truly yours,

LeRoy E. Lyon, Jr.

cc Sam
Arnold
Sally

1044
M. P. Rose

LEGISLATIVE
ADVOCATESSACRAMENTO
CALIFORNIA 95814TELEPHONE
916 444-6034

March 27, 1986

Honorable Sally Tanner
Room 4146
State Capitol
Sacramento, CA. 95814

Subject: Opposition to AB 3611 being heard in Assembly Consumer Protection Committee on April 3, 1986.

Dear Sally,

On behalf of our client, the Automobile Importers of America (AIA), we are opposed to your AB 3611 which amends California's New Car Lemon Law. As you know, AIA members include most of the foreign automobile manufacturers in Europe and Japan.

We are strongly opposed to the provisions in AB 3611 which create a state-run arbitration program. This we feel would duplicate the various manufacturers' arbitration programs which currently serve thousands of consumers. While not all consumers are totally satisfied, and some problems have occurred in the administration of the mechanisms, in general, we believe that the programs are working well enough to continue to warrant the significant manufacturers' costs associated with them. Other points of opposition to AB 3611 are:

o The need for a state-run arbitration program has not been demonstrated and is premature. Currently, the Department of Consumer Affairs is undertaking an evaluation of California lemon law process. AIA members have agreed to work cooperatively with the Department as well as your office in those areas where changes may be needed. AB 3611, we feel, circumvents this cooperative government-industry approach to improve upon current programs.

o Experience in the states of Connecticut and Texas has demonstrated that state-run programs are unable to handle lemon law cases on a timely basis. Attached is a study done by the Connecticut Office of Legislative Research which indicates that 31 out of 32 pending cases before its Department of Consumer

R. Sam
Amie
Sally

March 27, 1986
Honorable Sally Tanner
Page two

Protection exceed the 60-day limit. In Texas there is a backlog of more than 200 cases pending before its state-run arbitration program.

o AIA is also opposed to provisions in AB 3611 which require that the automobile manufacturers' programs be certified by the New Motor Vehicle Board as meeting the requirements of the Federal Trade Commission regulations. Any standards or regulations are subject to different interpretations. It would be impossible to administer a federal program that was subject to interpretations by 50 different states. Because of this potential and confusingly no-win situation, we would oppose any action which would have the State of California certifying compliance with a federal standard.

o In addition, AIA is opposed to the section in AB 3611 as currently written which allows a consumer full discretion over whether he receives a replacement vehicle or refund if the manufacturer cannot repair a particular problem within the terms of the lemon law. Not only is the term vague with regards to what it means to replace the buyer's vehicle "with a new motor vehicle substantially identical", no consideration is given to the amount directly attributable to use by the buyer prior to the time of nonconformity. As written, this section also precludes other options for settlement which may be mutually satisfactory to both the buyer and the manufacturer.

On January 29, 1986, AIA organized a meeting of both domestic and foreign manufacturers to meet with your staff and representatives from the Department of Consumer Affairs to discuss our programs and to indicate a willingness to review the kinds of complaints that your office, the Department and others have received about our lemon law arbitration programs. We also stated that we are willing to work with you on making any changes which may be needed. Again, we would like to reiterate our request for a cooperative approach to look at these problems.

Sincerely,



Sarah C. Michael
Automobile Importers of America

cc: Members, Assembly Committee on Consumer Protection
Department of Consumer Affairs

Amendment 8

On page 9, line 8, strike out "SEC.3." and insert:

(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, in so far as those provisions are not inconsistent with this section.

SEC. 3. Section 7102 of the Revenue and Taxation Code is amended to read:

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

(a) (1) All revenues, less refunds, derived under this part at the 4% percent rate, including the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of motor

vehicle fuel which would not have been received if the sales and use tax rate had been 5 percent and if motor vehicle fuel, as defined for purposes of the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301)), had been exempt from sales and use taxes, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance shall be transferred during each fiscal year to the Transportation Planning and Development Account in the State Transportation Fund for appropriation pursuant to Section 99312 of the Public Utilities Code.

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

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

(B) For the 1987-88 and each subsequent fiscal year, from the increase in state revenues due to the imposition of sales and use taxes on fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8801)), as determined pursuant the method specified in paragraph (1) to determine the increase in state revenues due to the imposition sales and use taxes on motor vehicle fuel.

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

(c) The estimate required by subdivision (a) shall be based on taxable transactions occurring during a calendar year, and the transfers required by subdivision (a) shall be made during the fiscal year that commences during that same calendar year. Transfers required by paragraph (1) of subdivision (a) shall be made quarterly. Transfers required by paragraph (2) of subdivision (a) shall be made annually during the last quarter of the fiscal year.

SEC. 4.

Amendment 9

On page 11, line 14, strike out "SEC.4." and insert:

SEC.5.

Amend = use Independent board
if ~~not~~ not certified - give them
a list of independent boards
that are certified.

Freeze 703

(| | | | | |)

Memorandum

To : Mr. Gary Jugum

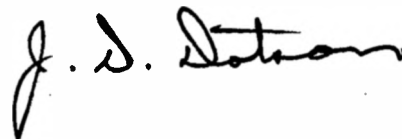
Date : June 17, 1986

JUN 19 1986

From : J. D. Dotson

Subject: Assembly Bill 3611

Will you please review the attached proposed statutory provisions drafted for inclusion in Assembly Bill 3611. If you believe that these proposed amendments adequately meet our needs, let me know and they will be provided to the author.

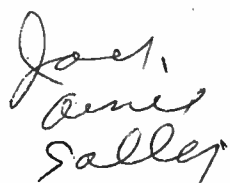


JDD:j
Attachment

cc: Mr. Robert Nunes
Mr. Glenn Bystrom
Mrs. Margaret Boatwright

RECEIVED

JUN 17 1986

G. A. LEGAL

Section 1793.25 of the Civil Code

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

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

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

Section 7102 of the Revenue and Taxation Code

Section 7102 of the Revenue and Taxation Code is amended to read:

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

a. etc.

0090F

AB 3611

CODER & TUEL
ATTORNEYS AT LAW
8801 FOLSOM BOULEVARD
SUITE 172
SACRAMENTO, CALIFORNIA 95826

HOUSTON N. TUEL, JR.
MICHAEL G. CODER
THOMAS M. MATHIOWETZ

June 16, 1986

TELEPHONE
(916) 383-5520

JUN 17 1986

Honorable Sally Tanner
California State Assembly
State Capitol
Sacramento, CA 95814

Re: AB 3611

Dear Mrs. Tanner:

At the request of the Northern California Motor Car Dealers Association, I have reviewed AB 3611, as amended in the Assembly on May 19, 1986, and have detected what I consider to be an inconsistency in the bill's definition of a "new motor vehicle". I assume the problem is merely the result of a drafting oversight.

The bill says that only vehicles purchased "primarily" for personal, family, or household purposes are covered. But it also provides that vehicles purchased "exclusively" for commercial purposes are not covered, thereby condemning vehicles bought for mostly but not exclusively commercial purposes to a grey-area limbo.

I doubt it is your intent to extend the coverage of California's "lemon law" to vehicles purchased primarily for business. If my assumption is correct, the aforementioned ambiguity in AB 3611 could easily be cured by changing "solely" in the last line of proposed Section 1793.2 (e)(4)(B) to "primarily". If my assumption is incorrect, I would recommend that the proposed definition of a "new motor vehicle" be amended to make it clear that a new motor vehicle is one to be used for a personal, family, or household purpose even if such purpose was not the primary one.

I offer these suggestions solely for the purpose of eliminating unnecessary interpretation squabbles in the event AB 3611 is enacted, and I thank you in advance for considering these comments.

Very truly yours,

Houston N Tuel Jr.
Houston N. Tuel, Jr.

HNT:kh

cc: Loren Smith
Stephen Snow
Jay Gorman
Walter Bruder

fax
Carrie
Sally

May 29, 1986

M E M O R A N D U M

TO: Arnie Peters
FR: Carmen Gonzalez
RE: Amendments to AB 3611

As we discussed yesterday, I have contacted several other states to gather information on what formula they use to determine deduction for use. Wyoming's law defines the point in time at which the useful life of the vehicle ended, but does not define what the cost per mile is for consumer use. Massachusetts, Montana and Connecticut all use a formula which multiplies the total price of the vehicle by a fraction having as its numerator the number of miles on the vehicle prior to the manufacturer's acceptance of its return, and its denominator 100,000 miles. Vermont's Lemon Law, however, uses the same formula, except the numerator is the number of miles traveled up to the first repair attempt.

Based on my discussions with the Attorney General's office and Lemon Law attorneys Dan Abott and Donna Selnick, CalPIRG suggests the language be amended in Section 1793.2(d)(1) on page 4 of the May 19 version of the bill -- as follows:

(d) (1) Except as provided in paragraph (2), if the manufacturer or its representative in this state does not service or repair the goods to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity. In determining the amount attributable to use by the buyer, the following formula shall be utilized: multiply the total cash price of the vehicle by a fraction having as its denominator 120,000 miles and its numerator the number of miles the vehicle traveled prior to the time the buyer first notified the manufacturer's authorized service and repair facility of the problem which gave rise to the nonconformity.

It should be noted that the denominator of 120,000 suggested is based on the Department of Transportation's annual publication, Cost of Operating A Car, which estimates the average life of a vehicle at 120,000 miles.

LEGISLATIVE COUNSEL No. 15525

REQUEST OF _____

ASSEMBLYWOMAN SALLY TANNER

Per Marty Hinman

AMENDMENT--AB 3611

Combine RN 9689 per marked attachments.

Any question, contact Arnie Peters at 5-0991.

ATTACHMENTS:

AB 3611

Form letter requesting amendments

1-page typed draft

RN 9689

Vehicles

5/14/86

This will acknowledge your request received on the date indicated. Please examine the above statement to determine if it correctly sets forth your request.

Any question with respect to this request may be directed to

Mr. Moqu at 56931

to whom it has been assigned.

BION M. GREGORY
Legislative Counsel

23368

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MAY 16 1986

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PAGE NO. 1

Substantive

**AMENDMENTS TO ASSEMBLY BILL NO. 3611
AS AMENDED IN ASSEMBLY APRIL 15, 1986**

Amendment 1

In line 1 of the title, after "of" insert:

, and to add Section 1793.25 to,

Amendment 2

In line 1 of the title, strike out "to add" and strike out line 2 of the title

Amendment 3

In line 3 of the title, strike out "Sections" and insert:

Section

Amendment 4

In line 4 of the title, strike out "and 42234.5"

Amendment 5

On page 4, line 3, after "then" insert:

for any of these reasons

Amendment 6

On page 4, line 38, after "replacement" insert:

, plus any incidental damages to which the buyer is entitled under Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer

Amendment 7

On page 5, line 4, after the third "fees" insert:

, plus any incidental damages to which the buyer is entitled under Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer

Amendment 8

On page 5, line 35, strike out "in any action to enforce the" strike out lines 36 and 37 and insert:

, and it may be asserted by the buyer in any civil action, small claims court action, or other formal or informal proceeding.

Amendment 9

On page 7, line 4, after "(E)" insert:

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

(F)

Amendment 10

On page 7, line 8, strike out "the provisions of"

Amendment 11

On page 7, line 9, strike out "(F)" and insert:

(G)

Amendment 12

On page 7, line 10, strike out "(f)" and insert:

(e)

Amendment 13

On page 7, strike out lines 28 to 40, inclusive, on page 8, strike out lines 1 to 15, inclusive, in line 16, strike out "SEC. 4." and insert:

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

1793.25. (a) Notwithstanding Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, the State Board of Equalization shall reimburse the manufacturer of a new motor vehicle for an amount equal to the sales tax which the manufacturer includes in making restitution to the buyer pursuant to subparagraph (B) of paragraph (2) of subdivision (d) of Section 1793.2, when satisfactory proof is provided that the retailer of the motor vehicle for which the manufacturer is making restitution has reported and paid the sales tax on the gross receipts from the sale of that motor vehicle. The State Board of Equalization may adopt rules and regulations that it deems necessary or

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RM 86 015525 PAGE NO. 3

appropriate to carry out, facilitate compliance with, or prevent circumvention or evasion of, this section.

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

SEC. 3.

Amendment 14

On page 10, line 19, strike out "for certification" and insert:

to enable the board to perform its duties under this subdivision

Amendment 15

On page 11, line 30, strike out "SEC. 5." and insert:

SEC. 4.

Amendment 16

On page 12, strike out lines 15 to 29, inclusive

- 0 -

AMENDMENTS TO AB 3611
AS AMENDED IN ASSEMBLY APRIL 15, 1986
(Corrected copy 5/12/86)

1. Add the following amendments to LCR 009689:

a) On page 4, line 3, after "them" insert:
for any of these reasons

b) On page 5, line 35, strike out "in any action to enforce
the" and strike out lines 36 to 37, inclusive, and insert:

, and may be asserted by the buyer in any civil action, small
claims court action or other formal or informal proceeding.

c) On page 7, line 8, strike out "the provisions of"

d) On page 7, line 10, strike out "(f)" and insert:

(e)

2. Make the changes shown on LCR 009689

AMENDMENTS TO ASSEMBLY BILL NO. 3611
AS AMENDED IN ASSEMBLY APRIL 15, 1986

Amendment 1

In line 1 of the title, after "of" insert:

, and to add Section 1793.25 to,

Amendment 2

In line 1 of the title, strike out "to add" and
strike out line 2 of the title

Amendment 3

In line 3 of the title, strike out "Sections"
and insert:

Section

Amendment 4

In line 4 of the title, strike out "and 42234.5"

Amendment 5

On page 4, line 34, after "replacement" insert:

, plus any incidental damages to which the buyer is
entitled under Section 1794, including, but not limited to,
reasonable repair, towing, and rental car costs actually
incurred by the buyer

Amendment 6

On page 4, line 40, after the third "fees"
insert:

, plus any incidental damages to which the buyer is
entitled under Section 1794, including, but not limited to,
reasonable repair, towing, and rental car costs actually
incurred by the buyer

Amendment 7

On page 6, line 40, after "(E)" insert:

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

(F)

Amendment 8

On page 7, line ⁹5, strike out "(F)" and insert:

(G)

Amendment 9

On page 7, strike out lines ¹²⁸24 to 40, inclusive, on page 8, strike out lines 1 to ¹¹⁵11, inclusive, in line ¹¹⁶11, strike out "SEC. 4." and insert:

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

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

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

SEC. 3.

Amendment 10

On page 10, line ¹¹⁹15, strike out "for certification" and insert:

to enable the board to perform its duties under this subdivision

Amendment 11

On page 11, line ³⁰26, strike out "SEC. 5." and

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86125 12:24
RN 86 009689 PAGE NO. 3

insert:

SEC. 4.

Amendment 12

On page 12, strike out lines ~~11~~ to ~~25~~, inclusive

- 0 -

115 129

LEGISLATIVE COUNSEL

No. 09689

REQUEST OF

ASSEMBLYWOMAN SALLY TANNER

Per letter

AMENDMENT--

Amend AB 3611 per attached.

Any question, contact Marty at 5-7783.

ATTACHMENTS:

1-page letter

2-page typed draft

no fused

Vehicle Warranties

5/1/86

This will acknowledge your request received on the date indicated. Please examine the above statement to determine if it correctly sets forth your request.

Any question with respect to this request may be directed to

B. M. Gregory 5-6931

to whom it has been assigned.

BION M. GREGORY
Legislative Counsel

43559
RECORD #

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MAY 5 1986 86125 12:24
RN 86 009689 PAGE NO. 1
SubstantiveAMENDMENTS TO ASSEMBLY BILL NO. 3611
AS AMENDED IN ASSEMBLY APRIL 15, 1986

Amendment 1

In line 1 of the title, after "of" insert:

, and to add Section 1793.25 to,

Amendment 2

In line 1 of the title, strike out "to add" and
strike out line 2 of the title

Amendment 3

In line 3 of the title, strike out "Sections"
and insert:

Section

Amendment 4

In line 4 of the title, strike out "and 42234.5"

Amendment 5

On page 4, line 34, after "replacement" insert:

, plus any incidental damages to which the buyer is
entitled under Section 1794, including, but not limited to,
reasonable repair, towing, and rental car costs actually
incurred by the buyer

Amendment 6

On page 4, line 40, after the third "fees"
insert:, plus any incidental damages to which the buyer is
entitled under Section 1794, including, but not limited to,
reasonable repair, towing, and rental car costs actually
incurred by the buyer

Amendment 7

On page 6, line 40, after "(E)" insert:

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

(F)

Amendment 8

On page 7, line 5, strike out "(F)" and insert:

(G)

Amendment 9

On page 7, strike out lines 24 to 40, inclusive, on page 8, strike out lines 1 to 11, inclusive, in line 12, strike out "SEC. 4." and insert:

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

SEC. 3.

Amendment 10

On page 10, line 15, strike out "for certification" and insert:

to enable the board to perform its duties under this subdivision

Amendment 11

On page 11, line 26, strike out "SEC. 5." and

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86125 12:24
RN 86 009689 PAGE NO. 3

insert:

SEC. 4.

Amendment 12

On page 12, strike out lines 11 to 25, inclusive

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APR 10 1986

RN 86 007863
Substantive

86100 20:17
PAGE NO. 1

AMENDMENTS TO ASSEMBLY BILL NO. 3611

Amendment 1

In the heading, strike out "Member Tanner" and
insert:

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

Amendment 1.5

In lines 3 and 4 of the title, strike out
"3050.7, 3050.8, 3050.9," and insert:

3050.9

Amendment 2

In line 5 of the title, after "vehicles" insert:

, and making an appropriation therefor

Amendment 3

On page 2, line 13, strike out "paragraph (1) of
this" strike out line 14, and insert:

this paragraph, a manufacturer may enter

Amendment 4

On page 2, strike out line 32 and insert:

(1), be subject to

Amendment 5

On page 2, line 34, strike out "such"

Amendment 6

On page 3, line 5, strike out "must" and insert:

shall

Amendment 7

On page 3, line 8, strike out "serve to"

Amendment 8

On page 3, line 9, strike out "such"

Amendment 9

On page 3, strike out line 12 and insert:

(c) The buyer shall deliver

Amendment 10

On page 3, line 16, strike out "such"

Amendment 11

On page 3, lines 17 and 18, strike out "Should the buyer be unable to effect return of" and insert:

If the buyer cannot return the

Amendment 12

On page 3, line 19, strike out "the above reasons, he" and insert:

these reasons, he or she

Amendment 13

On page 3, line 24, strike out "such"

Amendment 13.5

On page 3, line 24, after "nonconformity" insert a comma

Amendment 14

On page 3, lines 29 and 30, strike out ", pursuant to the above, a buyer is unable to effect return" and insert:

a buyer cannot return them

Amendment 15

On page 3, line 36, strike out "should" and insert:

if

Amendment 16

On page 3, line 37, strike out "be unable to" and insert:

does not

Amendment 17

On page 6, line 12, strike out "Complies" and

insert:

meets all of the following criteria:

(A) Complies

Amendment 17.5

On page 6, line 15, strike out "at 16" and

insert:

in Part 703 of Title 16 of

Amendment 18

On page 6, line 16, strike out "Part 703; that renders" and insert:

•
(B) Renders

Amendment 19

On page 6, line 18, strike out "; that prescribes" and insert:

•
(C) Prescribes

Amendment 20

On page 6, line 20, strike out "; and that" strike out lines 21 to 23, inclusive, and insert:

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

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

(F) Has

Amendment 21

On page 7, lines 22 and 23, strike out ". The" and insert:

, the

Amendment 22

On page 9, strike out lines 5 to 20, inclusive, in line 21, strike out "(f)" and insert:

(e)

Amendment 23

On page 9, line 26, strike out "Each third-party dispute" strike out line 27 and insert:

Each new motor vehicle manufacturer, manufacturer branch, distributor, or distributor branch that utilizes a third-party dispute resolution process, and that seeks to have that process certified by the board, shall

Amendment 24

On page 9, line 33, after the period insert:

If a manufacturer, manufacturer branch, distributor, or distributor branch does not utilize a certified third-party dispute resolution process, the board shall designate a certified third-party dispute resolution process to arbitrate, at the expense of the manufacturer, manufacturer branch, distributor, or distributor branch, the disputes of consumers who have purchased new motor vehicles which were initially acquired from that manufacturer, manufacturer branch, distributor, or distributor branch.

Amendment 25

On page 9, line 34, strike out "such" and insert:

third-party dispute resolution

Amendment 26

On page 9, strike out lines 38 to 40, inclusive, on page 10, strike out lines 1 to 28, inclusive, in line 29, strike out "SEC. 6." and insert:

SEC. 5.

Amendment 27

On page 10, line 31, strike out "(a)"

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Amendment 28

On page 10, strike out line 33 and insert:

the certification of third-party dispute resolution
processes conducted pursuant to

Amendment 29

On page 10, strike out lines 39 and 40, on page
11, strike out lines 1 to 10, inclusive, in line 11,
strike out "SEC. 7." and insert:

SEC. 6.

Amendment 30

On page 11, line 14, strike out "who"

- 0 -

JACK I. HORTON
ANN MACKEY
CHIEF DEPUTIES

JAMES L. ASHFORD
JERRY L. BASSETT
STANLEY M. LOURIMORE
EDWARD K. PURCELL
JOHN T. STUDEBAKER

DAVID D. ALVES
JOHN A. CORZINE
C. DAVID DICKERSON
ROBERT CULLEN DUFFY
ROBERT D. GRONKE
SHERWIN C. MACKENZIE, JR.
TRACY O. POWELL, II
JIMMIE WING

PRINCIPAL DEPUTIES

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(916) 445-3057

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

Legislative Counsel of California

BION M. GREGORY

May 6, 1986

Assemblywoman Sally Tanner ✓

A.B. 3611 - Conflict

Supplemental

was

The above measure, introduced by you, which ~~is now~~
set for hearing in the Assembly Consumer Protection Committee
appears to be in conflict with the following other measure(s):
S.B. 1174-Seymour

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

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

Very truly yours,
BION M. GREGORY
LEGISLATIVE COUNSEL

cc: Committee
named above
Each lead author
concerned

MARTIN L. ANDERSON
PAUL ANTILLA
CHARLES C. ASBILL
AMELIA I. BUDD
EILEEN J. BUXTON
SHARON D. COLLINS
HENRY J. CONTRERAS
BEN E. DALE
JEFFREY A. DELAND
CLINTON J. DEWITT
FRANCES S. DORBIN
MAUREEN S. DUNN
LAWRENCE H. FEIN
SHARON R. FISHER
JOHN FOSSETTE
HARVEY J. FOSTER
CLAY FULLER
ALVIN D. GRESS
THOMAS R. HEUER
MICHAEL J. KERSTEN
L. DOUGLAS KINNEY
VICTOR KOZIELSKI
EVE B. KROTINGER
ROMULO I. LOPEZ
JAMES A. MARSALA
PETER MELNICOE
ROBERT G. MILLER
JOHN A. MOGER
VERNE L. OLIVER
EUGENE L. PAINE
MARGUERITE ROTH
MICHAEL B. SALERNO
MARY SHAW
ANN ELLIOTT SHERMAN
RUSSELL L. SPARLING
WILLIAM K. STARK
MARK FRANKLIN TERRY
JEFF THOM
PHILLIP TORRES
MICHAEL H. UPSON
RICHARD B. WEISSBERG
DANIEL A. WEITZMAN
THOMAS D. WHELAN
CHRISTOPHER ZIRKLE
DEPUTIES

1071
Conflicts

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Legislative Counsel of California

BION M. GREGORY

April 1, 1986

Assemblywoman Sally Tanner ✓

A.B. 3611 - Conflict

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CHRISTOPHER ZIRKLE
DEPUTIES

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

A.B. 3834- Stirling
A.B. 3835- Stirling

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

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

Very truly yours,
BION M. GREGORY
LEGISLATIVE COUNSEL

cc: Committee
named above
Each lead author
concerned

1072

January 1986

LEMON BILL

THE LEMON BILL THAT WILL BE SENT TO LEGISLATIVE COUNSEL NEXT WEEK FOR DRAFTING IS INTENDED TO DEAL WITH PROBLEMS THAT HAVE ARISEN SINCE AB 1787 WAS CHAPTERED.

THE BILL WILL HAVE TWO BASIC FEATURES:

- 1) IT WILL CLARIFY SEVERAL PROVISIONS OF THE SONG-BEVERLY CONSUMER PROTECTION ACT RELATING TO REFUNDS FOR "LEMON" CARS. IN PRACTICE, WHAT HAS OCCURRED IS THAT WHEN A NEW MOTOR VEHICLE IS FOUND TO BE A "LEMON" THE MANUFACTURER OFTEN REFUNDS THE PURCHASE PRICE OF THE CAR. SALES TAX, LICENSE FEES AND REGISTRATION FEES, WHICH, FOR A VEHICLE IN THE \$10 - 15,000 PRICE RANGE, EQUAL ABOUT \$1,000 ARE NOT REFUNDED, HOWEVER.

THIS HARDLY SEEMS FAIR. IT AMOUNTS TO A PENALTY ON THE BUYER FOR HAVING PURCHASED A "LEMON."

THE PROPOSED BILL WILL PROVIDE THAT WHEN A MANUFACTURER REFUNDS THE PURCHASE PRICE OF A "LEMON" THE SALES TAX, LICENSE FEE AND REGISTRATION FEE MUST ALSO BE REFUNDED. PROVISIONS WILL ALSO BE ADDED THAT ALLOW THE MANUFACTURER TO APPLY TO THE BOARD OF EQUALIZATION FOR REIMBURSEMENT OF THE SALES TAX AND TO THE DEPARTMENT OF MOTOR VEHICLES FOR REIMBURSEMENT OF THE LICENSE FEE AND REGISTRATION FEE.

- 2) SECONDLY, THE BILL WILL ESTABLISH A STATE-RUN ARBITRATION PROCESS ADMINISTERED BY THE NEW MOTOR VEHICLE BOARD. THE PRESENT ARBITRATION BOARDS RUN BY THE AUTO MANUFACTURERS HAVE NOT WORKED WELL. IT APPEARS THAT NONE OF THESE ARBITRATION BOARDS MEET THE CRITERIA AND REPORTING REQUIREMENTS OF THE FEDERAL TRADE COMMISSION REGULATIONS, WHICH THEY ARE REQUIRED TO MEET. THIS PORTION OF THE BILL WILL:

- a) REQUIRE ALL ARBITRATION BOARDS TO BE CERTIFIED BY THE NEW MOTOR VEHICLE BOARD.
- b) REQUIRE THE BOARD TO ESTABLISH A STATE-RUN ARBITRATION PROCESS.
- c) ALLOW THE CONSUMER TO CHOOSE TO USE EITHER A MANUFACTURER-RUN ARBITRATION PROCESS OR THE PROCESS RUN BY THE NEW MOTOR VEHICLE BOARD, BUT NOT BOTH.
- d) REQUIRE THE CONSUMER TO AGREE TO INFORMAL MEDIATION BEFORE ARBITRATION TAKES PLACE UNDER THE NEW MOTOR VEHICLE BOARD.
- e) AUTHORIZE THE NEW MOTOR VEHICLE BOARD TO CHARGE MANUFACTURERS AND CONSUMERS FEES TO USE ARBITRATION.



NEWS FROM ASSEMBLYWOMAN

SALLY TANNER

60th Assembly District.

CONTACT: DOROTHY RICE
(916) 445-0991

FOR IMMEDIATE RELEASE
MAY 6, 1986

Assemblywoman Sally Tanner (D-El Monte) today announced that her bill to block the construction of large-scale waste-to-energy projects in the San Gabriel Valley was approved by the Assembly Natural Resources Committee. Earlier this year the same Committee defeated two related measures. The Tanner waste-to-energy bill -- AB 3612 -- is the only measure of its type to make it out of an Assembly policy committee.

Assemblywoman Tanner stated, "This is a major victory for San Gabriel Valley residents. I described our air and water quality problems to the members of the Assembly Natural Resources Committee, and I described the fact that the Valley currently landfills over half of the trash which is produced throughout Los Angeles County. These facts persuaded Committee members that the environmental problems in the San Gabriel Valley are unique -- there is simply no disputing the fact that we have virtually the worst air quality in the nation. To build large trash-burners in an area with serious air pollution problems does not make sense."

AB 3612, which is co-authored by area Assemblymembers Mountjoy, Hill, and Lancaster, and Senator Campbell, would prohibit the construction of waste-to-energy projects which will generate over 30 megawatts of electricity in an area which has experienced a specific number of smog episodes over the last three years, and which landfills over twice as much trash as the area generates. The Tanner bill is drafted to apply only to the San Gabriel Valley. The two projects which would be affected by



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1076

Assemblywoman Tanner concluded, "I am not opposed to waste-to-energy projects. In fact, throughout my years in the Legislature I have championed alternatives to land disposal. But those of us who live and breathe in the San Gabriel Valley have come to recognize that we have a serious and unique problem when it comes to air quality. We simply cannot continue to take most of Los Angeles County's trash, and if the large trash-burners are built in the Valley there will be no way we can ever break this cycle."



NEWS FROM ASSEMBLYWOMAN

SALLY TANNER

60th Assembly District

CONTACT: CASS LUKE
(818) 442-9100

April 8, 1986
FOR IMMEDIATE RELEASE

Legislation to provide additional protection to new car buyers by strengthening California's "Lemon Law" was unanimously passed by the Assembly Consumer Protection Committee.

Assemblywoman Sally Tanner (D-El Monte) who authored the original "Lemon Law" explained that the amendments she submitted are designed to eradicate some of the inequities that became evident after the law was originally enacted in 1982.

Mrs. Tanner said that one of the major complaints she received about the law was the ineffectiveness of the dispute resolution process. "Many consumers felt that they were not being treated fairly by the arbitration boards because the boards are financed by the auto manufacturer." Tanner added that in many cases the arbitration boards failed to decide disputes in a timely manner and the decisions do not often provide fair and reasonable reimbursement when a manufacturer buys a lemon back.

"AB 3611 puts more teeth into the consumers ability to deal with a lemon car," the Assemblywoman stated. "The original "Lemon Law" was the first of its kind to give the consumer a viable recourse to dealing with the purchase of a defective, unsafe car. The amendments I introduced will strengthen the law and make it more effective for the California consumer."

Assembly bill 3611 has the following key provisions:



TANNER

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Assembly bill 3611 has the following key provisions:

- requires that the auto manufacturer-run arbitration boards must be certified by the state as meeting the requirements of state law and federal regulations
- allows the New Motor Vehicle Board to designate a certified arbitration

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1079

process if the manufacturer does not have one

--gives the consumer the option of replacement or refund when his or her car is found to be a lemon

--requires that the refund include the sales tax, unused license and registration fees be paid on the lemon car. Under present law, taxes and fees paid on the purchase of a new car are not refunded when the manufacturer buys a lemon back.

AB 3611 will be heard next in the Assembly Ways and Means Committee.

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NEWS FROM ASSEMBLYWOMAN

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1082

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NEWS FROM ASSEMBLYWOMAN

SALLY TANNER

60th Assembly District

CONTACT: CASS LUKE
(818) 442-9100

April 8, 1986
FOR IMMEDIATE RELEASE

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"AB 3611 puts more teeth into the consumers ability to deal with a lemon car," the Assemblywoman stated. "The original "Lemon Law" was the first of its kind to give the consumer a viable recourse to dealing with the purchase of a defective, unsafe car. The amendments I introduced will strengthen the law and make it more effective for the California consumer."

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"AB 3611 puts more teeth into the consumers ability to deal with a lemon car," the Assemblywoman stated. "The original "Lemon Law" was the first of its kind to give the consumer a viable recourse to dealing with the purchase of a defective, unsafe car. The amendments I introduced will strengthen the law and make it more effective for the California consumer."

Assembly bill 3611 has the following key provisions:

- requires that the auto manufacturer-run arbitration boards must be certified by the state as meeting the requirements of state law and federal regulations
- allows the New Motor Vehicle Board to designate a certified arbitration

MORE MORE MORE

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(213) 442-9100

process if the manufacturer does not have one

--gives the consumer the option of replacement or refund when his or her car is found to be a lemon

--requires that the refund include the sales tax, unused license and registration fees be paid on the lemon car. Under present law, taxes and fees paid on the purchase of a new car are not refunded when the manufacturer buys a lemon back.

AB 3611 will be heard next in the Assembly Ways and Means Committee.

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Assemblymen fume as senator hurries voting

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and Jeff Rabin
Bee Capitol Bureau

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See SCHMITZ, page A5

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While a final agreement on a 50-50 proposition is expected next week, Margolies said, "The measure is scheduled to be passed late next year."

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Assembles In Eight Minutes.

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Amended - Marty

AMENDED IN ASSEMBLY APRIL 15, 1986

CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

ASSEMBLY BILL

No. 3611

*Pg 7 - RV
Pg 11 - fees*

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

February 20, 1986

and to add Section 1793.256,

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 49924.3 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
s for vehicles for which a manufacturer provides to the
ver a replacement or ~~reimbursement~~ restitution, as
pecified, and thereby makes an appropriation of amounts
ecessary to pay those claims. *The bill also requires the State
ard of Equalization to refund sales tax to the manufacturers
vehicles for which the manufacturer provides a
lacement or makes restitution and, thereby, makes an
ropriation of amounts necessary to pay those claims.*
Vote: majority %. Appropriation: yes. Fiscal committee:
s. State-mandated local program: no.

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

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

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

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

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

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.

for 4 days of those reasons

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

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

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

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

(B) When the buyer exercises the option of 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. #7
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.~~ #8

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

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

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

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

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

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

(D) *Provides* written materials to those individuals who conduct investigations and who make, or participate 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 (C) ~~(F)~~ *Has* been certified by the New Motor Vehicle
10 Board pursuant to subdivision (1) 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.

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

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

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

3050. The board shall do all of the following:

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

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

(c) Consider any matter concerning the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative pursuant to Chapter 4 (commencing with Section 11700) of Division 5 submitted by any person. 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 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 1790) 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~~

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) of Section 1793.2 of the Civil Code.

(f) (e) Certify that each third-party dispute resolution process used for the arbitration of disputes pursuant to paragraph (2) of subdivision (e) of Section 1793.2 of the Civil Code is a qualified third-party dispute resolution process as provided in paragraph (3) of subdivision (e) of Section 1793.2 of the Civil Code. ~~Each third-party dispute resolution process that applies for certification shall~~ Each new motor vehicle manufacturer, manufacturer branch, distributor, or distributor branch that utilizes a third-party dispute resolution process, and that seeks to have that process certified by the board, shall provide to the board any and all information that the board determines is necessary for certification. Certification of any particular third-party dispute resolution process is a condition precedent to the application of paragraph (2) of subdivision (e) of Section 1793.2 of the Civil Code with respect to that process. If a manufacturer, manufacturer branch, distributor, or distributor branch does not utilize a certified third-party dispute resolution process, the board shall designate a certified third-party dispute resolution process to arbitrate, at the expense of the manufacturer, manufacturer branch, distributor, or distributor branch, the disputes of consumers who have purchased new motor vehicles which were initially acquired from that manufacturer, manufacturer branch, distributor, or distributor branch. The board may suspend or revoke the certification of any such third-party dispute resolution process upon a determination that the process does not comply with all the requirements of paragraph (3) of subdivision (e) of Section 1793.2 of the Civil Code.

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

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 (e)
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.

30 SEC. 7. 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

chapter.

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

SEC. 7.

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

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

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CORRECTIONS

Digest—Page 2.

Text—Page 12.

WAYS AND MEANS COMMITTEE ANALYSIS

Author: Tanner

Amended: 05/19/86

Bill No.: AB 3611

Policy Committee: Consumer Protection

Vote: 5-0

Urgency: No

Hearing Date: 05/28/86

State Mandated Local Program: No

Staff Comments by:

Disclaimed:

Tom Higgins

Existing law, known as the "lemon law" which amended the Song-Beverly Warranty Act, establishes remedies for the consumer whose newly purchased vehicle is substantially impaired.

The bill provides that the option of replacement or restitution, as specified, is expressly with the buyer.

This bill requires the New Motor Vehicle Board (which has auto dealers on it) to certify "third party" dispute resolution programs used for arbitration by manufacturers and consumers. The New Motor Vehicle Board will be able to ensure compliance with the lemon law and FTC guidelines without cost to the state, adding uniformity and consistency to the arbitration process.

Note: This bill was substantially amended, deleting provisions that created a state-run arbitration process.

This bill requires manufacturers to reimburse consumers for all costs associated with the purchase of the automobile when restitution or replacement is made, including towing, transportation, prorated DMV regional costs and sales tax.

This bill requires the BOE to refund the sales tax and the DMV to refund the prorated, unused portion of registration fees. The BOE and the DMV may adopt necessary rules and regulations for the purpose.

Fiscal:

This bill provides for the New Motor Vehicle Board to assess annual fees for the costs of certifying arbitration programs. The DMV and the BOE will have absorbable costs for refunding fees and taxes.

TH:djc

Legislative Analyst
May 24, 1986

ANALYSIS OF ASSEMBLY BILL NO. 3611 (Tanner)
As Amended in Assembly May 19, 1986
1985-86 Session

AB 3611 (Am. 5/19/86)

Fiscal Effect:

- Cost:
1. Potential cost in the range of \$50,000 to \$100,000 to the New Motor Vehicle Board to certify arbitration processes. Costs fully offset by fees charged to manufacturers and distributors of motor vehicles.
 2. Unknown absorbable costs to the State Board of Equalization to reimburse sales tax in restitution settlements.
- Revenue:
1. Unknown revenues generated by fees charged to manufacturers and distributors to offset program costs of the New Motor Vehicle Board.
 2. Unknown revenue loss to the General Fund from sales tax reimbursements to vehicle manufacturers.

Analysis:

This bill changes current law pertaining to vehicle warranty procedures. Specifically, the bill:

- Requires the manufacturer of a motor vehicle, at the option of the buyer, to replace a defective motor vehicle or make restitution if the manufacturer is unable to service or repair the vehicle after a reasonable number of attempts by the buyer.

AB 3611--contd

- Requires the New Motor Vehicle Board (NMVB) to certify the arbitration processes used to resolve vehicle warranty disputes. Authorizes the board to revoke or suspend any arbitration process if it does not comply with specified standards.
- Authorizes the board to charge fees to manufacturers, distributors, and their branches to fund the board's costs.
- 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 the NMVB potentially could incur annual costs in the range of \$50,000 to \$100,000 to certify arbitration processes. These costs, however, will be fully offset by fees collected from the manufacturers and distributors of motor vehicles.

The BOE will incur unknown costs to reimburse the sales tax to the manufacturer in vehicle restitution settlements. These costs would be absorbable.

Unknown revenue loss to the General Fund from sales tax reimbursements made to manufacturers and distributors of defective new motor vehicles.

83/s8

Date of Hearing: April 3, 1986

AB 3611

ASSEMBLY COMMITTEE ON CONSUMER PROTECTION
ROBERT C. FRAZEE, Chairman

AB 3611 (Tanner) - As Introduced: February 20, 1986

ASSEMBLY ACTIONS:

COMMITTEE _____ CON. PRO. _____ VOTE _____ COMMITTEE _____ VOTE _____

Ayes:

Ayes:

Nays:

Nays:

SUBJECT

Vehicle warranties: defective ("lemon") new cars.

DIGEST

Existing law, the California Song-Beverly Consumer Warranty Act, generally provides that a manufacturer who is unable to service or repair consumer goods, including motor vehicles, so that they conform to the applicable express warranties after a reasonable number of attempts - must either replace those goods or reimburse the buyer in an amount equal to the purchase price, less the amount directly attributable to the buyer's use prior to the discovery of the nonconformity (defect).

In 1982, those provisions of the Song-Beverly Act were amended by AB 1787 (Tanner), commonly referred to as the "lemon bill" or "lemon law." That legislation specified that with respect to defined new motor vehicles, a "reasonable number of attempts" would be presumed to be either 4 or more repair attempts on the same major defect or more than 30 days out of service for service/repair of one or more major defects, within the first year or 12,000 miles of use.

That bill also enacted provisions which, under specified circumstances, required a buyer to directly notify the manufacturer of a continuing defect and to utilize a dispute resolution program meeting specified minimum standards, prior to asserting the "lemon presumption" (4 times/30 days = "reasonable number of repair attempts") in a legal action to obtain a vehicle replacement or refund.

This bill would amend that law and related laws to:

- continued -

AB 3611

- 1) Expressly provide that the vehicle buyer gets to choose whether she or he receives a replacement vehicle or a refund;
- 2) Specifically provide, for new motor vehicles, what is included in the replacement option and the refund option, as follows:
 - a) If a replacement vehicle is chosen by the buyer, it must be a new vehicle substantially identical to the vehicle replaced, accompanied by all normal new vehicle express and implied warranties. The manufacturer must bear the cost of any vehicle price increases and any sales tax, license and registration fees incurred as a result of the replacement.
 - b) If a refund is chosen by the buyer, it must consist of the full contract price paid or payable by the buyer, together with charges for transportation, installed options, sales tax, and license, registration and other official fees - less the amount directly attributable to a buyer's use of the defective vehicle prior to discovery of the defect.
- 3) Add statutory provisions to require the Board of Equalization and the Department of Motor Vehicles to refund the sales tax and the unused portion (pro rata) of the vehicle registration and license fees, respectively, to a manufacturer who has either replaced the vehicle or made the refund provided for under the bill's new warranty law provisions. The bill's provisions would also authorize both the Board and the Department to adopt whatever rules and regulations they deem necessary or appropriate to carry out these refund requirements.
- 4) Require the California New Motor Vehicle Board to certify each dispute resolution process used to arbitrate "lemon" vehicle disputes as complying with the state's prescribed minimum standards before that process could be used to fulfill the requirement for its use under the "lemon" law's provisions. The dispute resolution process would be required to provide the Board with any information the Board deemed necessary in order for it to perform its certification responsibility. The bill's provisions would permit the Board to suspend or revoke its certification when it determines a process does not comply with the state's minimum standards.
- 5) Require the New Motor Vehicle Board to provide arbitration itself, which meets the state's minimum standards for resolving disputes arising between a new motor vehicle purchaser and its manufacturer, or distributor. Provide that this state arbitration provision does not limit any of the buyer's other legal remedies except that the buyer is not entitled to a second qualified arbitration.

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- 6) Provide that a new motor vehicle buyer may request formal arbitration of vehicle disputes with manufacturers by the New Motor Vehicle Board and that specified conditions must be met prior to the Board's granting of an arbitration request.
- 7) Authorize the New Motor Vehicle Board to establish filing fees for cases when the Board arbitrates disputes, including a fixed annual fee to be charged to the Board's regulated vehicle manufacturers and distributors. Also, authorize the Board to order a party to a state arbitration to pay the other party's filing fees under specified circumstances.
- 8) Amend the definition of a "new motor vehicle" which is covered by the "lemon law", to specifically include dealer-owned vehicles and "demonstrators" sold with a manufacturers' new car warranties, and to substitute a more specific definition for excluded "off-road" vehicles.

FISCAL EFFECT

Unknown. This is a fiscal committee measure. The bill provides for sales tax refunds and pro-rata refunds of unused portions of vehicle license and registration fees, and for certification and arbitration by the New Motor Vehicle Board. The Board estimates first year start-up costs of approximately \$610,000 with an ongoing \$649,000 operational cost per year thereafter. The Board expects to fund these costs through its authority to assess annual fees from its regulated manufacturers and distributors and the filing fees for conducting arbitrations.

STAFF COMMENTS

- 1) This bill is sponsored by its author to strengthen existing "lemon" law protections, to eliminate inequities that have occurred from that law's implementation and to ensure that owners of seriously defective new cars can obtain a fair, impartial and speedy hearing on their complaints.

The bill is supported by the Consumer Federation of California, Consumers Union, California Public Interest Research Group (Cal PIRG), the San Francisco District Attorney, a member of the State Board of Equalization, the New Motor Vehicle Board, and several consumers and attorneys.

The author and proponents state that since the effective date of the "lemon" law over 3 years ago, there have been numerous complaints from new car buyers concerning its implementation. While these complaints reflect continued

- continued -

dissatisfaction with the manufacturer's own resolution of disputes regarding defective new vehicles, they have also alleged that the dispute resolution programs financed by the manufacturers are not operated impartially. Consumers have complained of: long delays in obtaining a hearing (beyond the prescribed 40-60 day time limit); unequal access to the arbitration process; unreasonable decisions that do not appear to even acknowledge the existence of, much less use, the "lemon" law's provisions or provide an adequate amount of reimbursement even when a refund decision is ordered.

- 2) The bill is opposed by Ford Motor Company, Chrysler Corporation, the Automobile Importers of America, the Motor Vehicle Manufacturers Association and the Recreational Vehicle Industry Association.

Opponents of the bill state that the number of consumers dissatisfied with the current arbitration processes is small relative to the number of arbitrations. They argue that the manufacturers have invested a large amount of money to adequately fund these arbitration processes, that they comply with the state's prescribed standards, that they feel the programs are working very well and that if additional refinements are needed that they are willing to work cooperatively to that end.

In particular, the opponents question the need for a state-operated arbitration option, as provided for in the bill. They argue that in the two other states which have state arbitration provisions (Connecticut and Texas) there are serious backlogs, supporting their view that the state is ill-equipped to perform this role. They also contend that having a state arbitration alternative which will be paid for by manufacturers, will be a disincentive for the continued operation of the programs they currently finance.

Recommendation:

Do pass consent.

TH:djc

ASSEMBLY THIRD READING

AB 3611 (Tanner) -- As Amended: May 19, 1986

ASSEMBLY ACTIONS:

COMMITTEE	CON. PRO.	VOTE 5-0	COMMITTEE	W. & M.	VOTE 20-1
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Ayes:

Ayes: Vasconcellos, Baker, Agnos,
Bader, Calderon, Connelly, Eaves,
Herger, Hill, Isenberg, Johnson,
Johnston, Leonard, Lewis,
Margolin, McClintock, O'Connell,
Peace, Roos, M. Waters

Nays:

Nays: D. Brown

DIGEST

Existing law generally provides that a manufacturer who is unable to service or repair consumer goods, including motor vehicles, so that they conform to the applicable express warranties after a reasonable number of attempts - must either replace those goods or reimburse the buyer in an amount equal to the purchase price, less the amount directly attributable to the buyer's use prior to the discovery of the nonconformity (defect).

In 1982, the law was amended by AB 1787 (Tanner), commonly referred to as the "lemon" bill or "lemon" law. That legislation specifies that for new motor vehicles, a "reasonable number of attempts" is presumed to be either four or more repair attempts on the same major defect or more than 30 days out of service for service/repair of one or more major defects, within the first year or 12,000 miles of use.

That law also contains provisions which, under specified circumstances, require a buyer to notify the manufacturer directly of a continuing defect and to use a dispute resolution program meeting specified minimum standards, prior to asserting the "lemon presumption" (4 times/30 days = "reasonable number of repair attempts") in a legal action to obtain a vehicle replacement or refund.

This bill amends that law and related laws to:

- 1) Amend the definition of a "new motor vehicle" which is covered by the "lemon" law, to specifically include a dealer-owned vehicle and a "demonstrator" or other vehicle that is sold with a manufacturer's new car warranty, and to substitute a more specific definition for excluded off-road and commercial vehicles.

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- 2) Clarify that the vehicle buyer may assert the "lemon presumption" in any civil action, small claims court action or other formal or informal proceeding.
- 3) Expressly provide that the vehicle buyer has the choice of whether she or he receives a replacement vehicle or a refund for a defective "lemon" vehicle.
- 4) Specifically provide, for new motor vehicles, what is included in the replacement option and the refund option, as follows:
 - a) If a replacement vehicle is chosen by the buyer, it must be a new vehicle substantially identical to the vehicle replaced, accompanied by all normal new vehicle express and implied warranties. The manufacturer must bear the cost of any vehicle price increases, any sales tax, license and registration fees incurred as a result of the replacement and any incidental damages to which the buyer is entitled under the law, such as reasonable repair, towing and rental car costs actually incurred by the buyer.
 - b) If a refund is chosen by the buyer, it must consist of the full contract price paid or payable by the buyer, as well as charges for transportation, installed options, sales tax, license, registration and other official fees, and specified incidental damages, such as reasonable repair, towing or rental car costs actually incurred by the buyer - less the amount directly attributable to the buyer's use of the defective vehicle prior to discovery of the defect.
- 5) Require that the dispute resolution programs:
 - a) Provide the provisions of California's "lemon" law and the provisions of federal law which govern the operation of such programs to dispute decisionmakers.
 - b) Render decisions which incorporate consideration of those provisions.
 - c) Provide for an inspection and report on a vehicle by an independent expert at no cost to the buyer, when such is requested by a majority of the program's decisionmakers.
- 6) Require the Board of Equalization to reimburse the manufacturer in an amount equal to the sales tax paid for vehicles for which the manufacturer provides the specified refund to the buyer.
- 7) Authorize the Board of Equalization to adopt whatever rules and regulations it deems necessary or appropriate to carry out this reimbursement requirement.

- continued -

- 8) Require the California New Motor Vehicle Board (NMVB) to certify each dispute resolution program that is used to arbitrate "lemon" vehicle disputes as complying with the state's prescribed minimum standards prior to that program's use.
- 9) Require the NMVB to designate a certified dispute process to arbitrate "lemon" disputes if the manufacturer or distributor does not use one itself.
- 10) Permit the NMVB to suspend or revoke its certification when it determines a program does not comply with the state's minimum standards.
- 11) Require a vehicle manufacturer or distributor that uses a dispute resolution program and seeks to have it certified to provide the NMVB with any information the NMVB deems necessary in order for it to perform its certification responsibility.

FISCAL EFFECT

According to the Legislative Analyst, this bill will result in:

- Cost:
- 1) Potential cost in the range of \$50,000 to \$100,000 to the NMVB to certify arbitration programs, fully offset by fees charged to vehicle manufacturers and distributors.
 - 2) Unknown absorbable costs to the Board of Equalization to reimburse sales tax amounts in restitution (refund) settlements for defective vehicles.
- Revenues:
- 1) Unknown revenues generated by fees charged to manufacturers and distributors to offset program costs of the NMVB.
 - 2) Unknown revenue loss to the General Fund from sales tax reimbursements to vehicle manufacturers for restitution (refund) settlements on defective vehicles.

COMMENTS

- 1) This bill is sponsored by its author to strengthen existing "lemon" law protections, to eliminate inequities that have occurred from that law's implementation and to ensure that owners of seriously defective new cars can obtain a fair, impartial and speedy hearing on their complaints.

The bill is supported by the Consumer Federation of California, Consumers Union, California Public Interest Research Group (Cal PIRG), the San Francisco District Attorney, the Board of Equalization, the New Motor Vehicle Board, and several consumers and attorneys.

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The author and proponents state that since the effective date of the "lemon" law over three years ago, there have been numerous complaints from new car buyers concerning its implementation. While these complaints reflect continued dissatisfaction with the manufacturer's own resolution of disputes regarding defective new vehicles, they have also alleged that the dispute resolution programs financed by the manufacturers are not operated impartially. Consumers have complained of: long delays in obtaining a hearing (beyond the prescribed 40-60 day time limit); unequal access to the arbitration process; unreasonable decisions that do not appear to even acknowledge the existence, much less the use, of the "lemon" law's provisions or provide an adequate amount of reimbursement even when a refund decision is ordered.

- 2) The bill is opposed by Chrysler Corporation and the Automobile Importers of America (AIA).

Opponents of the bill state that the number of consumers dissatisfied with the current arbitration processes is small relative to the number of arbitrations. They argue that the manufacturers have invested a large amount of money to adequately fund these arbitration processes, the processes comply with the state's prescribed standards, they feel the programs are working very well and, if additional refinements are needed, they are willing to work cooperatively to that end.

SPQ 9-0
ab-Richardson

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)

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:

(More)

- (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.

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 020241

BILL SUMMARY

VEHICLE WARRANTIES/"LEMON LAW"

This bill requires the New Motor Vehicle Board (NMVB) to certify third party arbitration processes that require manufacturers to replace or provide restitution for manufactured defective vehicles. The NMVB would be authorized to charge a fee for any costs incurred from the certification activity. This bill also requires the Board of Equalization (BOE) to refund the sales tax collected on a defective vehicle. In addition, the bill creates the Automobile Warranty Arbitration Certification Program, as specified.

SUMMARY OF CHANGE

This version of the bill makes the following major changes from the previous analysis of May 19, 1986.

The proposed amendments (August 11) would create the Automobile Warranty Arbitration Certification Program to assure the owner or lessee of a new motor vehicle is covered by a new motor vehicle warranty or service contract as specified. In addition, this amendment requires that all expenses, salaries, and other costs incurred or sustained to administer the program be paid out of the Automobile Warranty Arbitration Program Certification Fund, which would be created if this legislation is enacted.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year)						Code Fund
		(Dollars in Thousands)						
		FC	1986-87	FC	1987-88	FC	1988-89	
0860/Bd. of Equal	SO	S	\$.5	S	\$1	S	\$1	001/Gen.
1149/Retail Sales and Use Taxes		-----No Fiscal Impact-----						001/Gen.
1150/Automotive Repair	SO	C	40	C	80	C	80	008/AWAPCF
2740/Motor Vehicles	SO	-----No Fiscal Impact-----						054/NMVB

ANALYSIS

A. Specific Findings

Existing law provides for an arbitration process for disputes between manufacturers and consumers of new cars purported to have manufacturing defects.

(Continued)

POSITION:	Department Director	Date
Neutral		
Principal Analyst	Program Budget Manager	Governor's Office
(263) R.A. Gibbs	LaFenus Stancell	Position noted
<i>Robert A. Gibbs</i>	<i>Walter L. Clark</i>	Position approved
CJ:PH/0039A/0529C-1		Position disapproved
		by: date:
BILL ANALYSIS/ENROLLED BILL REPORT		
Form DF-43 (Rev 03/86 500 Bu)		

BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DF-43

AUTHOR	AMENDMENT DATE	BILL NUMBER
Tanner, et al.	As proposed RN 86 020241	AB 3611

ANALYSIS

A. Specific Findings (Continued)

This bill require the NMVB to certify to the qualification of third party arbitration processes that requires a manufacturer to replace or provide restitution for a defective vehicle. The NMVB would be authorized to charge a fee to cover any costs incurred.

Under current law, the sales tax is imposed on retailers for the privilege of selling tangible personal property at retail. In the event that merchandise is returned by a customer, the retailer must refund the full sales price, including sales tax, to the customer. If the Board of Equalization (BOE) finds that tax has been overpaid, that amount of overpayment is credited or refunded by the State to the retailer.

This bill provides that the manufacturer of a new vehicle that has been sold at retail and found defective could seek reimbursement from the State for the amount of sales tax that has been paid by the purchase of that vehicle to a retailer, in the event that the manufacturer has replaced the vehicle or has made restitution to the buyer. However, the buyer may elect restitution in lieu of replacement and in no event shall the buyer be required to accept a replacement vehicle that the buyer finds unsatisfactory. The changes are at the request of the Board of Equalization as clarifying technical amendments.

This bill would create the Automobile Warranty Arbitration Certification Program for the purpose of assuring the owner or lessee of a new motor vehicle that is covered by a new motor vehicle warranty or service contract is covered, as specified.

The bill specifies that all salaries, expenses and other costs that are required to administer the program shall be paid from the Automobile Warranty Arbitration Program Certification Fund which is created for this purpose.

The bill would require the Bureau of Automotive Repair to certify or decertify an automobile warranty arbitration program if the bureau determines the program does not substantially comply with specified criteria.

The bill would require the bureau to monitor and inspect certified programs on a regular basis to determine whether the programs meet the certification standards as specified.

The bill requires the bureau to provide the legislature a biennial report on the effectiveness of the program.

The bill requires that the bureau, on or before June 30 of each calendar year, report to the New Motor Vehicle Board on each manufacturer of a new motor vehicle sold, leased, or otherwise distributed in this state.

(Continued)

BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

Tanner, et al.

As proposed RN 86 020241

AB 3611

ANALYSIS

A. Specific Findings (Continued)

The bill would require the board to administer the collection of fees to be paid for the purpose of this program. All fees collected will be deposited into the special fund.

Offering a sales tax refund to the manufacturer as proposed by the bill could diverge from the basic foundation of the sales tax that it is imposed on the retailer.

B. Fiscal Analysis

According to the Department of Motor Vehicles (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 abased on the number of serious complaints received by the Department of Consumer Affairs 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 money refunded offsets the sales tax previously collected and remitted to the BOE by the dealers.

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.

According to the Bureau of Automotive Repair, it will require 2 positions and approximately \$80,000 annually to implement this bill. However, there are no funds appropriated in the bill for this purpose.

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BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DF-43

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.

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CJ:PH/0039A/0529C2

BILL ANALYSIS/ENROLLED BILL REPORT--(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
Sales tax per vehicle
Potential Sales Tax Refund

242
x \$600
\$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



A. E. Davis and Company

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

AB 3611

August 18, 1986

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

Dear Sally:

Chrysler Corporation now supports your AB 3611 as you agreed to amend it last Thursday.

We appreciate your graciousness in accepting the amendments that Chrysler had sought. I am pleased that Alan Huss was out here last week to be able to articulate Chrysler's concerns that existed at that time.

Chrysler will be among the first to seek certification under AB 3611 and will continue to make its dispute resolution system the most effective in the country.

Kindest regards,

A. E. Davis

cc: Members, Senate Appropriation Committee

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

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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Appropriations Fiscal Summary

Author: Tanner **Amended:** 7/9/86 **Bill #:** AB 3611
 & ICR 020241

Hearing Date: 8/11/86

Summary Prepared by: Ed Derman

 Bill Summary:

This bill creates a new Automobile Warranty Arbitration Certification Program, to be administered by the Bureau of Automotive Repair, effective 7/1/88. Program costs would be paid from fees imposed on manufacutuers and distributors. The bill also permits a buyer to elect restitution, including fees and taxes paid for the vehicle, rather than replacement of a defective new motor vehicle. The Board of Equalization would reimburse the manufacturer for the sales tax paid on such vehicles.

Fiscal Impact by Fiscal Year
(Dollars in thousands)

<u>Department</u>	<u>1986-87</u>	<u>1987-88</u>	<u>1988-89</u>	<u>Fund</u>
Sales tax	Unknown annual reductions			General
Revenues	----- \$800 annual reduction -----			STF*

*New Motor Vehicle Board Account, State Transportation Fund

CHAIRMAN'S RECOMMENDATION: Amend and do pass.

The New Motor Vehicle Board Account loss is a completely unintentional effect of the bill, and derives from the way the latest amendments were drafted. Author will propose simple amendments to correct the error. The sales tax reduction stems from the reimbursement for returned vehicles. Registration and license fees would not be reimbursed to the manufacturer. Other costs in the bill either are absorbable or offset by fees.

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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2/8/2023

Date

/s/Shane McKenzie

Signature

McKenzie, Shane (228978)

Last Name, First Name (PNum)

Horvitz & Levy LLP

Law Firm