

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 14 of 16 • Pages 1388 – 1577 of 1937

HORVITZ & LEVY LLP

LISA PERROCHET (BAR No. 132858)
JOHN A. TAYLOR, JR. (BAR No. 129333)
*SHANE H. MCKENZIE (BAR No. 228978)
3601 WEST OLIVE AVENUE, 8TH FLOOR
BURBANK, CALIFORNIA 91505-4681
(818) 995-0800 • FAX: (844) 497-6592
lperrochet@horvitzlevy.com
jtaylor@horvitzlevy.com
smckenzie@horvitzlevy.com

CLARK HILL LLP

DAVID L. BRANDON (BAR No. 105505)
555 SOUTH FLOWER STREET, 24TH FLOOR
LOS ANGELES, CALIFORNIA 90071
(213) 891-9100 • FAX: (213) 488-1178
dbrandon@clarkhill.com

CLARK HILL LLP

GEORGES A. HADDAD (BAR No. 241785)
505 MONTGOMERY STREET, 13TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111
(415) 984-8500 • FAX: (415) 984-8599
ghaddad@clarkhill.com

ATTORNEYS FOR DEFENDANT AND RESPONDENT
FCA US, LLC

1989 Cal. Legis. Serv. 862 (West)

CALIFORNIA LEGISLATIVE SERVICE 1989-90

REGULAR SESSION (1989 Laws)

Additions are indicated by <<+ UPPERCASE +>>

Deletions by <<- *** ->>

CHAPTER 862

S.B.No. 788

MOTOR VEHICLES—SALE OF VEHICLES RETURNED AS DEFECTIVE—DISCLOSURE

AN ACT to add Section 1795.8 to the Civil Code, and to amend Section 4453 of the Vehicle Code, relating to consumer warranties.

[Approved by Governor September 25, 1989.]

[Filed with Secretary of State September 26, 1989.]

LEGISLATIVE COUNSEL'S DIGEST

SB 788, Rosenthal. Motor vehicle warranties: disclosure.

Under existing law, every manufacturer or its representative in this state is required to either replace a new motor vehicle or make restitution to the consumer of the new motor vehicle if the new motor vehicle does not conform to applicable express warranties after a reasonable number of attempts to service or repair the vehicle, as specified. Existing law also provides that no person shall sell or lease a motor vehicle transferred by a buyer or lessee to a manufacturer under the above provisions unless the nature of the nonconformity experienced by the original buyer or lessee is, among other things, clearly and conspicuously disclosed.

This bill would specifically require any person including a manufacturer or dealer selling a motor vehicle that is known or should be known to have been required by law to be replaced or required by law to be accepted for restitution by a dealer or manufacturer due to the inability of the dealer or manufacturer to conform the vehicle to applicable warranties, as specified, to disclose that fact to the buyer in writing prior to the purchase and would require a dealer or manufacturer to include as part of the titling documents of the vehicle a specifically worded disclosure statement setting forth the fact that the vehicle has been returned to the dealer or manufacturer due to a defect in the vehicle, as specified.

Existing law requires a registration card for a vehicle to contain upon its face specified information, including the identification of specified motor vehicles such as a motor vehicle formerly operated as a taxicab.

This bill would require that motor vehicles returned to a dealer or manufacturer pursuant to consumer warranty laws due to an unrepaired defect be identified on the face of the registration card.

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

CA CIVIL § 1795.8

SECTION 1. Section 1795.8 is added to the Civil Code, to read:

1795.8. (a) The Legislature finds and declares that the expansion of state warranty laws covering new and used cars has given important and valuable protection to consumers; that in states without this valuable warranty protection used and irreparable motor vehicles are inundating the marketplace; that other states have addressed this problem by requiring notices on the titles of these vehicles warning consumers that the motor vehicles were repurchased by a dealer or manufacturer because either the vehicle could not be repaired in a reasonable length of time or the dealer or manufacturer was not willing to repair the vehicle; that these notices serve the interests of consumers who have a right to information relevant to their buying decisions; and that the disappearance of these notices upon the transfer of title from another state to this state encourages the transport of “lemons” to this state for sale to the drivers of this state. Therefore, the Legislature hereby enacts the Automotive Consumer Notification Act.

(b) For purposes of this section, “dealer” means any person engaged in the business of selling, offering for sale, or negotiating the retail sale of used motor vehicles or selling motor vehicles as a broker or agent for another, including the officers, agents, and employees of the person and any combination or association of dealers. “Dealer” does not include a bank or other financial institution, or the state, its agencies, bureaus, boards, commissions, authorities, or any of its political subdivisions. A person shall be deemed to be engaged in the business of selling used motor vehicles if the person has sold more than four used motor vehicles in the preceding 12 months.

(c) Any person, including any dealer or manufacturer, selling a motor vehicle in this state that is known or should be known to have been required by law to be replaced or required by law to be accepted for restitution by a manufacturer due to the inability of the manufacturer to conform the vehicle to applicable warranties pursuant to subdivision (d) of Section 1793.2 or that is known or should be known to have been required by law to be replaced or required by law to be accepted for restitution by a dealer or manufacturer due to the inability of the dealer or manufacturer to conform the vehicle to warranties required by any other applicable law of this state, any other state, or federal law shall disclose that fact to the buyer in writing prior to the purchase and a dealer or manufacturer shall include as part of the titling documents of the vehicle the following disclosure statement set forth as a separate document and signed by the buyer:

“THIS MOTOR VEHICLE HAS BEEN RETURNED TO THE DEALER OR MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS.”

(d) The disclosure requirement in subdivision (c) is cumulative with all other consumer notice requirements, and does not relieve any person, including any dealer or manufacturer, from complying with any other applicable law, including any requirement of paragraph (5) of subdivision (e) of Section 1793.2 or comparable automobile warranty laws in other states.

CA VEHICLE § 4453

SEC. 2. Section 4453 of the Vehicle Code is amended to read:

4453. (a) The registration card shall contain upon its face, the date issued, the name and residence or business address of the owner and of the legal owner, if any, the registration number assigned to the vehicle, and a description of the vehicle as complete as that required in the application for registration of the vehicle.

(b) A motor vehicle of a type included in this subdivision shall be identified as such on the face of the registration card, whenever the department is able to ascertain that fact, at the time application is made for initial registration or transfer of ownership of the vehicle.

(1) A motor vehicle rebuilt and restored to operation which was previously declared to be a total loss salvage vehicle because the cost of repairs exceeds the retail value of the vehicle.

(2) A motor vehicle rebuilt and restored to operation which was previously reported to be dismantled pursuant to Section 11520.

(3) A motor vehicle previously registered to a law enforcement agency and operated in law enforcement work.

(4) A motor vehicle formerly operated as a taxicab.

(5) A motor vehicle manufactured outside of the United States and not intended by the manufacturer for sale in the United States.

(6) A park trailer, as defined in subdivision (f) of Section 799.24 of the Civil Code, which when moved upon the highway is required to be moved under a permit pursuant to Section 35780.

<<+(7) A MOTOR VEHICLE RETURNED TO A DEALER OR MANUFACTURER PURSUANT TO A CONSUMER WARRANTY LAW DUE TO A DEFECT, INCLUDING VEHICLES WITH OUT-OF-STATE TITLING DOCUMENTS THAT REFLECT A RETURN.>>>

(c) The director may modify the form, arrangement, and information appearing on the face of the registration card and may provide for standardization and abbreviation of fictitious or firm names on the registration card whenever the director finds that the efficiency of the department will be promoted by so doing, except that general delivery or post office box numbers shall not be permitted as the address of the registered owner unless there is no other address.

CA LEGIS (1989) 862

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VOLUME 1
CALIFORNIA LEGISLATURE
AT SACRAMENTO
1991-92 REGULAR SESSION

SENATE FINAL HISTORY

SHOWING ACTION TAKEN IN THIS SESSION ON ALL SENATE BILLS
CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT RESOLUTIONS
AND SENATE RESOLUTIONS

CONVENED DECEMBER 3, 1990
ADJOURNED SINE DIE NOVEMBER 30, 1992

DAYS IN SESSION.....	284
CALENDAR DAYS.....	728

LT. GOVERNOR
President of the Senate

SENATOR DAVID ROBERTI
President pro Tempore

Compiled Under the Direction of
RICK ROLLENS
Secretary of the Senate

By
DAVID H. KNEALE, ESQ.
History Clerk

S.B. No. 1761—Petrus.

An act to amend Sections 9149, 9149.1, 9149.2, 9149.6, 9149.7, 9149.12, and 9149.17 of the Government Code, relating to the Historic State Capitol Commission.

1992

Feb. 20—Introduced. Read first time. To Com. on RLS. for assignment. To print.

Feb. 22—From print. May be acted upon on or after March 23.

Mar. 5—To Com. on RLS.

April 30—From committee with author's amendments. Read second time. Amended. Re-referred to committee.

May 7—From committee with author's amendments. Read second time. Amended. Re-referred to committee.

May 14—Set for hearing May 30.

May 22—From committee: Do pass as amended, but first amend, and re-refer to Com. on APPR. (Ayes 3. Noes 0. Page 6086.)

May 26—Read second time. Amended. Re-referred to Com. on APPR.

Nov. 30—From committee without further action.

S.B. No. 1762—Marks.

An act to amend Sections 472, 472.1, 472.2, 472.3, and 472.4 of the Business and Professions Code, and to amend Sections 1793.2, 1794, 1795.6, and 1795.8 of, and to add Section 1793.22 to, the Civil Code, and to supplement Items 2660-001-853 and 2660-101-853 of Section 2.00 of the Budget Act of 1992, relating to transportation, and making an appropriation therefor.

1992

Feb. 20—Introduced. Read first time. To Com. on RLS. for assignment. To print.

Feb. 22—From print. May be acted upon on or after March 23.

Mar. 5—To Com. on REV. & TAX.

Mar. 10—Set for hearing April 1.

Mar. 31—Set, first hearing. Hearing canceled at the request of author.

May 7—Withdrawn from committee. Re-referred to Com. on JUD.

May 7—Joint Rule 61 (b) (6) suspended.

May 7—Set for hearing May 12.

May 11—From committee with author's amendments. Read second time. Amended. Re-referred to committee.

May 12—Hearing postponed by committee.

May 14—Joint Rule 61 (b) (6) suspended.

May 14—Set for hearing May 26.

May 18—From committee with author's amendments. Read second time. Amended. Re-referred to committee.

May 27—From committee: Do pass as amended. (Ayes 7. Noes 0. Page 6154.) Read second time. Amended. To third reading.

May 28—Joint Rule 61 (b) (10) suspended.

June 1—To Special Consent Calendar.

June 4—Read third time. Passed. (Ayes 36. Noes 0. Page 6286.) To Assembly.

June 8—In Assembly. Read first time. Held at Desk.

June 11—To Com. on CON.PRO., G.E. & E.D.

June 25—From committee: Do pass. To Consent Calendar.

June 26—Read second time. To Consent Calendar.

June 28—Read third time. Passed. (Ayes 71. Noes 0. Page 7913.) To Senate.

June 29—In Senate. Ordered returned to Assembly for further action.

June 29—In Assembly. Action rescinded whereby bill passed and to Senate. Placed on inactive file on motion of Assembly Member Speier.

Aug. 29—From inactive file to third reading file. Read third time. Amended. To third reading.

Aug. 31—Read third time. Amended. To third reading. Read third time. Passed. (Ayes 68. Noes 0. Page 9984.) To Senate.

Aug. 31—In Senate. To unfinished business. Senate concurs in Assembly amendments. (Ayes 39. Noes 0. Page 8227.) To enrollment.

Sept. 17—Enrolled. To Governor at 2 p.m.

Sept. 29—Approved by Governor

Sept. 30—Chaptered by Secretary of State. Chapter 1232, Statutes of 1992.

Introduced by Senator Marks

February 20, 1992

An act to amend Section 32151 of the Revenue and Taxation Code, relating to alcoholic beverage taxes, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1762, as introduced, Marks. Excise taxes: alcoholic beverages.

Existing law provides for excise taxes on alcoholic beverages, including taxes of 1¢ per wine gallon for still wines containing less than 14% absolute alcohol by volume and 2¢ per wine gallon for still wines containing more than 14% absolute alcohol by volume. It also provides that the revenues from those taxes are deposited in the Alcohol Beverage Control Fund.

This bill would impose an excise tax on fortified wines, as defined, of 38¢ per wine gallon, and would also impose compensating floor stock taxes.

This bill would take effect immediately as a tax levy, but would become operative on July 1, 1992.

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

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

- 1 SECTION 1. Section 32151 of the Revenue and
- 2 Taxation Code is amended to read:
- 3 32151. Except as otherwise provided in this part, an
- 4 excise tax is imposed upon all beer and wine sold in this
- 5 State or pursuant to Section 23384 of the Business and
- 6 Professions Code by a manufacturer, wine grower, or
- 7 importer, or sellers of beer or wine selling beer or wine

1 with respect to which no tax has been paid within areas
2 over which the United States Government exercises
3 jurisdiction; at the following rates:

4 (a) On all beer, sixty-two cents (\$0.62) for every barrel
5 containing 31 gallons and at a proportionate rate for any
6 other quantity until July 1, 1959, and on and after July 1,
7 1959, one dollar and twenty-four cents (\$1.24) for every
8 barrel containing 31 gallons and at a proportionate rate
9 for any other quantity.

10 (b) On all still wines containing not more than 14
11 percent of absolute alcohol by volume, one cent (\$0.01)
12 per wine gallon and at a proportionate rate for any other
13 quantity.

14 (c) On all still wines containing more than 14 percent
15 of absolute alcohol by volume, two cents (\$0.02) per wine
16 gallon and at a proportionate rate for any other quantity.

17 (d) *On all fortified wines, thirty-eight cents (\$0.38)*
18 *per wine gallon and at a proportionate rate for any other*
19 *quantity. For purposes of this subdivision, "fortified*
20 *wine" means a still wine produced with the addition of*
21 *wine spirits, brandy, or alcohol and containing, not solely*
22 *as a result of natural fermentation, more than 14 percent*
23 *of absolute alcohol by volume when bottled or packaged,*
24 *except that the term does not include any wine that is*
25 *both sealed and capped by cork enclosure and aged two*
26 *or more years.*

27 (e) On champagne, sparkling wine, excepting
28 sparkling hard cider, whether naturally or artificially
29 carbonated, thirty cents (\$0.30) per wine gallon and at a
30 proportionate rate for any other quantity.

31 ~~(e)~~

32 (f) On sparkling hard cider, two cents (\$0.02) per
33 wine gallon and at a proportionate rate for any other
34 quantity.

35 ~~(f)~~

36 (g) Except with respect to beer in the internal
37 revenue bonded premises of a beer manufacturer, for the
38 privilege of possessing or selling beer on which a tax not
39 greater than at the rate of sixty-two cents (\$0.62) per
40 barrel has been paid under this part, a floor stock tax of

1 sixty-two cents (\$0.62) per barrel, and at a proportionate
2 rate for any other quantity, is hereby imposed on all beer
3 possessed at 12.01 a.m. on July 1, 1959, by every person
4 licensed under Division 9 of the Business and Professions
5 Code. On or before July 31, 1959, each person subject to
6 the tax imposed by this subdivision shall prepare and file
7 with the board, on a form prescribed by the board, a
8 return showing the amount of beer possessed by him at
9 12.01 a.m. on July 1, 1959, that is subject to the tax imposed
10 by this subdivision, and such other information as the
11 board deems necessary for the proper administration of
12 this part. The taxpayer shall deliver the return, together
13 with a remittance of the amount of tax due, to the office
14 of the board on or before July 31, 1959.

15 All the provisions of this part relating to excise taxes are
16 applicable also to the tax imposed by this subdivision, to
17 the extent that they are not inconsistent with this
18 subdivision.

19 *(h) For the privilege of possessing or selling fortified*
20 *wine, as defined by subdivision (d), on which a tax not*
21 *greater than the tax in effect on June 30, 1992, has been*
22 *paid under this part, a floor stock tax of thirty-eight cents*
23 *(\$0.38) per wine gallon is hereby imposed on all those*
24 *fortified wines possessed at 12:01 a.m. on July 1, 1992, by*
25 *every person licensed under Division 9 (commencing*
26 *with Section 23000) of the Business and Professions Code.*
27 *On or before July 31, 1992, each person subject to the tax*
28 *imposed by this subdivision shall prepare and file with*
29 *the board, on a form prescribed by the board, a return*
30 *showing the amount of those fortified wines possessed by*
31 *him or her at 12:01 a.m. on July 1, 1992, that are subject*
32 *to the tax imposed by this subdivision, and any other*
33 *information as the board deems necessary for the proper*
34 *administration of this part. The taxpayer shall deliver the*
35 *return, together with a remittance of the amount of the*
36 *tax due, to the office of the board on or after July 31, 1992.*

37 All the provisions of this part relating to excise taxes are
38 applicable also to the tax imposed by this subdivision, to
39 the extent they are not inconsistent with this subdivision.

40 SEC. 2. This act provides for a tax levy within the

1 meaning of Article IV of the Constitution and shall go into
2 immediate effect. However, the provisions of this act
3 shall become operative on July 1, 1992.

O

Introduced by Senator Marks Davis

February 20, 1992

An act to amend Section ~~32151~~ of the Revenue and Taxation Code, relating to alcoholic beverage taxes, to take effect immediately, tax levy: 1794 of the Civil Code, relating to consumer warranties.

LEGISLATIVE COUNSEL'S DIGEST

SB 1762, as amended, Marks Davis. ~~Excise taxes: alcoholic beverages~~ Consumer warranties: civil penalties.

Existing law requires manufacturers of new motor vehicles or their representatives to either make warranty repairs to a defective vehicle within a reasonable number of attempts or replace the vehicle, as specified. These provisions are contained in the Song-Beverly Consumer Warranty Act. Existing law authorizes civil penalties for willful violations of that act and, unless the manufacturer maintains a specified 3rd-party dispute resolution process, for any violation of the above obligations respecting warranty repairs.

This bill would expressly make the above exemption from civil penalties respecting motor vehicle manufacturers applicable to the provisions authorizing civil penalties for willful violations of the Song-Beverly Consumer Warranty Act.

Existing law provides for excise taxes on alcoholic beverages, including taxes of 1¢ per wine gallon for still wines containing less than 14% absolute alcohol by volume and 2¢ per wine gallon for still wines containing more than 14% absolute alcohol by volume. It also provides that the revenues from those taxes are deposited in the Alcohol Beverage Control Fund.

This bill would impose an excise tax on fortified wines, as defined, of 38¢ per wine gallon, and would also impose compensating floor stock taxes.

This bill would take effect immediately as a tax levy, but would become operative on July 1, 1992.

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

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

1 ~~SECTION 1.~~ Section 32151 of the Revenue and
2 SECTION 1. Section 1794 of the Civil Code is
3 amended to read:

4 1794. (a) Any buyer of consumer goods who is
5 damaged by a failure to comply with any obligation
6 under this chapter or under an implied or express
7 warranty or service contract may bring an action for the
8 recovery of damages and other legal and equitable relief.

9 (b) The measure of the buyer's damages in an action
10 under this section shall include the rights of replacement
11 or reimbursement as set forth in subdivision (d) of
12 Section 1793.2, and the following:

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

17 (2) Where the buyer has accepted the goods, Sections
18 2714 and 2715 of the Commercial Code shall apply, and
19 the measure of damages shall include the cost of repairs
20 necessary to make the goods conform.

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

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

section, the buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action.

(e) (1) Except as otherwise provided in this subdivision *and subdivision (f)*, if the buyer establishes a violation of paragraph (2) of subdivision (d) of Section 1793.2, the buyer shall recover damages and reasonable attorney's fees and costs, and may recover a civil penalty of up to two times the amount of damages.

(2) If the manufacturer maintains a qualified third-party dispute resolution process which substantially complies with subdivision (e) of Section 1793.2, the manufacturer shall not be liable for any civil penalty pursuant to this subdivision.

(3) After the occurrence of the events giving rise to the presumption established in paragraph (1) of subdivision (e) of Section 1793.2, the buyer may serve upon the manufacturer a written notice requesting that the manufacturer comply with paragraph (2) of subdivision (d) of Section 1793.2. If the buyer fails to serve the notice, the manufacturer shall not be liable for a civil penalty pursuant to this subdivision.

~~(4)~~

(3) If the buyer serves the notice described in paragraph ~~(3)~~ (2) and the manufacturer complies with paragraph (2) of subdivision (d) of Section 1793.2 within 30 days of the service of that notice, the manufacturer shall not be liable for a civil penalty pursuant to this subdivision.

~~(5)~~

(4) If the buyer recovers a civil penalty under subdivision (c), the buyer may not also recover a civil penalty under this subdivision for the same violation.

(f) If a manufacturer maintains a qualified third-party dispute resolution process that substantially complies with subdivision (e) of Section 1793.2, the manufacturer

1 shall not be liable for any civil penalty under this section
2 for a violation of paragraph (2) of subdivision (d) of
3 Section 1793.2.

4 Taxation Code is amended to read:

5 32151. Except as otherwise provided in this part, an
6 excise tax is imposed upon all beer and wine sold in this
7 State or pursuant to Section 23384 of the Business and
8 Professions Code by a manufacturer, wine grower, or
9 importer, or sellers of beer or wine selling beer or wine
10 with respect to which no tax has been paid within areas
11 over which the United States Government exercises
12 jurisdiction, at the following rates:

13 (a) On all beer, sixty-two cents (\$0.62) for every barrel
14 containing 31 gallons and at a proportionate rate for any
15 other quantity until July 1, 1959, and on and after July 1,
16 1959, one dollar and twenty-four cents (\$1.24) for every
17 barrel containing 31 gallons and at a proportionate rate
18 for any other quantity.

19 (b) On all still wines containing not more than 14
20 percent of absolute alcohol by volume, one cent (\$0.01)
21 per wine gallon and at a proportionate rate for any other
22 quantity.

23 (c) On all still wines containing more than 14 percent
24 of absolute alcohol by volume, two cents (\$0.02) per wine
25 gallon and at a proportionate rate for any other quantity.

26 (d) On all fortified wines, thirty-eight cents (\$0.38)
27 per wine gallon and at a proportionate rate for any other
28 quantity. For purposes of this subdivision, "fortified
29 wine" means a still wine produced with the addition of
30 wine spirits, brandy, or alcohol and containing, not solely
31 as a result of natural fermentation, more than 14 percent
32 of absolute alcohol by volume when bottled or packaged,
33 except that the term does not include any wine that is
34 both sealed and capped by cork enclosure and aged two
35 or more years.

36 (e) On champagne, sparkling wine, excepting
37 sparkling hard cider, whether naturally or artificially
38 carbonated, thirty cents (\$0.30) per wine gallon and at a
39 proportionate rate for any other quantity.

40 (f) On sparkling hard cider, two cents (\$0.02) per

wine gallon and at a proportionate rate for any other quantity.

(g) Except with respect to beer in the internal revenue bonded premises of a beer manufacturer, for the privilege of possessing or selling beer on which a tax not greater than at the rate of sixty/two cents (\$.62) per barrel has been paid under this part, a floor stock tax of sixty/two cents (\$.62) per barrel, and at a proportionate rate for any other quantity, is hereby imposed on all beer possessed at 12:01 a.m. on July 1, 1959, by every person licensed under Division 9 of the Business and Professions Code. On or before July 31, 1959, each person subject to the tax imposed by this subdivision shall prepare and file with the board, on a form prescribed by the board, a return showing the amount of beer possessed by him at 12:01 a.m. on July 1, 1959, that is subject to the tax imposed by this subdivision, and such other information as the board deems necessary for the proper administration of this part. The taxpayer shall deliver the return, together with a remittance of the amount of tax due, to the office of the board on or before July 31, 1959.

All the provisions of this part relating to excise taxes are applicable also to the tax imposed by this subdivision, to the extent that they are not inconsistent with this subdivision.

(h) For the privilege of possessing or selling fortified wine, as defined by subdivision (d), on which a tax not greater than the tax in effect on June 30, 1992, has been paid under this part, a floor stock tax of thirty/eight cents (\$.38) per wine gallon is hereby imposed on all those fortified wines possessed at 12:01 a.m. on July 1, 1992, by every person licensed under Division 9 (commencing with Section 23000) of the Business and Professions Code. On or before July 31, 1992, each person subject to the tax imposed by this subdivision shall prepare and file with the board, on a form prescribed by the board, a return showing the amount of those fortified wines possessed by him or her at 12:01 a.m. on July 1, 1992, that are subject to the tax imposed by this subdivision, and any other information as the board deems necessary for the proper

1 administration of this part. The taxpayer shall deliver the
2 return, together with a remittance of the amount of the
3 tax due, to the office of the board on or after July 31, 1992.

4 All the provisions of this part relating to excise taxes are
5 applicable also to the tax imposed by this subdivision, to
6 the extent they are not inconsistent with this subdivision.

7 SEC. 2. This act provides for a tax levy within the
8 meaning of Article IV of the Constitution and shall go into
9 immediate effect. However, the provisions of this act
10 shall become operative on July 1, 1992.

O

AMENDED IN SENATE MAY 18, 1992

AMENDED IN SENATE MAY 11, 1992

SENATE BILL

No. 1762

Introduced by Senator Davis

February 20, 1992

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1762, as amended, Davis. Consumer warranties: civil penalties.

Existing law requires manufacturers of new motor vehicles or their representatives to either make warranty repairs to a defective vehicle within a reasonable number of attempts or replace the vehicle, as specified. These provisions are contained in the Song-Beverly Consumer Warranty Act. Existing law authorizes civil penalties for willful violations of that act and, unless the manufacturer maintains a specified 3rd-party dispute resolution process, for any violation of the above obligations respecting warranty repairs.

This bill would expressly make the above exemption from civil penalties respecting motor vehicle manufacturers applicable to the provisions authorizing civil penalties for willful violations of the Song-Beverly Consumer Warranty Act, *unless the manufacturer willfully failed to acknowledge and act promptly upon communications regarding claims, or willfully took action to coerce or intimidate a claimant.*

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

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

1 SECTION 1. Section 1794 of the Civil Code is
2 amended to read:

3 1794. (a) Any buyer of consumer goods who is
4 damaged by a failure to comply with any obligation
5 under this chapter or under an implied or express
6 warranty or service contract may bring an action for the
7 recovery of damages and other legal and equitable relief.

8 (b) The measure of the buyer's damages in an action
9 under this section shall include the rights of replacement
10 or reimbursement as set forth in subdivision (d) of
11 Section 1793.2, and the following:

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

16 (2) Where the buyer has accepted the goods, Sections
17 2714 and 2715 of the Commercial Code shall apply, and
18 the measure of damages shall include the cost of repairs
19 necessary to make the goods conform.

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

29 (d) If the buyer prevails in an action under this
30 section, the buyer shall be allowed by the court to recover
31 as part of the judgment a sum equal to the aggregate
32 amount of costs and expenses, including attorney's fees
33 based on actual time expended, determined by the court
34 to have been reasonably incurred by the buyer in
35 connection with the commencement and prosecution of
36 such the action.

37 (e) (1) Except as otherwise provided in this
38 subdivision and subdivision (f), if the buyer establishes a

1 violation of paragraph (2) of subdivision (d) of Section
2 1793.2, the buyer shall recover damages and reasonable
3 attorney's fees and costs, and may recover a civil penalty
4 of up to two times the amount of damages.

5 (2) After the occurrence of the events giving rise to
6 the presumption established in paragraph (1) of
7 subdivision (e) of Section 1793.2, the buyer may serve
8 upon the manufacturer a written notice requesting that
9 the manufacturer comply with paragraph (2) of
10 subdivision (d) of Section 1793.2. If the buyer fails to
11 serve the notice, the manufacturer shall not be liable for
12 a civil penalty pursuant to this subdivision.

13 (3) If the buyer serves the notice described in
14 paragraph (2) and the manufacturer complies with
15 paragraph (2) of subdivision (d) of Section 1793.2 within
16 30 days of the service of that notice, the manufacturer
17 shall not be liable for a civil penalty pursuant to this
18 subdivision.

19 (4) If the buyer recovers a civil penalty under
20 subdivision (c), the buyer may not also recover a civil
21 penalty under this subdivision for the same violation.

22 (f) If a manufacturer maintains a qualified third-party
23 dispute resolution process that substantially complies
24 with subdivision (e) of Section 1793.2, the manufacturer
25 shall not be liable for any civil penalty under this section
26 for a violation of paragraph (2) of subdivision (d) of
27 Section 1793.2. However, this subdivision shall not
28 relieve an automobile manufacturer from liability for
29 civil penalties under subdivision (c) for either of the
30 following:

31 (1) Willfully failing to acknowledge and act reasonably
32 promptly upon communications with respect to claims
33 arising under paragraph (2) of subdivision (d) of Section
34 1793.2.

35 (2) Willfully taking any action to coerce or intimidate
36 any claimant with respect to claims arising under
37 paragraph (2) of subdivision (d) of Section 1793.2.

AMENDED IN SENATE MAY 27, 1992

AMENDED IN SENATE MAY 18, 1992

AMENDED IN SENATE MAY 11, 1992

SENATE BILL

No. 1762

Introduced by Senator Davis

February 20, 1992

An act to amend Section ~~1794~~ 1793.05 of the Civil Code, relating to consumer warranties.

LEGISLATIVE COUNSEL'S DIGEST

SB 1762, as amended, Davis. Consumer warranties: ~~civil penalties vehicles.~~

Existing law provides that vehicle manufacturers who alter new vehicles into housecars shall, in addition to any new product warranty, assume any warranty responsibility of the original vehicle manufacturer for any and all components of the finished product which are, by virtue of any act of the alterer, no longer covered by the warranty issued by the original vehicle manufacturer.

This bill would make a technical, nonsubstantive change in that provision.

Existing law requires manufacturers of new motor vehicles or their representatives to either make warranty repairs to a defective vehicle within a reasonable number of attempts or replace the vehicle, as specified. These provisions are contained in the Song/Beverly Consumer Warranty Act. Existing law authorizes civil penalties for willful violations of that act and, unless the manufacturer maintains a specified 3rd-party dispute resolution process, for any violation of the above obligations respecting warranty repairs.

This bill would expressly make the above exemption from civil penalties respecting motor vehicle manufacturers

applicable to the provisions authorizing civil penalties for willful violations of the Song/Beverly Consumer Warranty Act, unless the manufacturer willfully failed to acknowledge and act promptly upon communications regarding claims; or willfully took action to coerce or intimidate a claimant.

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

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

1 **SECTION 1.** Section 1794 of the Civil Code is
2 **SECTION 1.** Section 1793.05 of the Civil Code is
3 amended to read:

4 1793.05. Vehicle manufacturers who alter new
5 vehicles into housecars shall, in addition to any new
6 product warranty, assume any warranty responsibility of
7 the original vehicle manufacturer for any and all
8 components of the finished product which are, by virtue
9 of any act of the alterer, no longer covered by the
10 warranty issued by under the original vehicle
11 manufacturer.

12 amended to read:

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

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

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

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

30 (c) Except as provided in subdivision (f), if the buyer

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

9 (d) If the buyer prevails in an action under this
10 section, the buyer shall be allowed by the court to recover
11 as part of the judgment a sum equal to the aggregate
12 amount of costs and expenses, including attorney's fees
13 based on actual time expended, determined by the court
14 to have been reasonably incurred by the buyer in
15 connection with the commencement and prosecution of
16 the action.

17 (e) (1) Except as otherwise provided in this
18 subdivision and subdivision (f), if the buyer establishes a
19 violation of paragraph (2) of subdivision (d) of Section
20 1793.2, the buyer shall recover damages and reasonable
21 attorney's fees and costs, and may recover a civil penalty
22 of up to two times the amount of damages.

23 (2) After the occurrence of the events giving rise to
24 the presumption established in paragraph (1) of
25 subdivision (e) of Section 1793.2, the buyer may serve
26 upon the manufacturer a written notice requesting that
27 the manufacturer comply with paragraph (2) of
28 subdivision (d) of Section 1793.2. If the buyer fails to
29 serve the notice, the manufacturer shall not be liable for
30 a civil penalty pursuant to this subdivision.

31 (3) If the buyer serves the notice described in
32 paragraph (2) and the manufacturer complies with
33 paragraph (2) of subdivision (d) of Section 1793.2 within
34 30 days of the service of that notice, the manufacturer
35 shall not be liable for a civil penalty pursuant to this
36 subdivision.

37 (4) If the buyer recovers a civil penalty under
38 subdivision (e), the buyer may not also recover a civil
39 penalty under this subdivision for the same violation.

40 (f) If a manufacturer maintains a qualified third-party

1 dispute resolution process that substantially complies
2 with subdivision (e) of Section 1793.2, the manufacturer
3 shall not be liable for any civil penalty under this section
4 for a violation of paragraph (2) of subdivision (d) of
5 Section 1793.2. However, this subdivision shall not relieve
6 an automobile manufacturer from liability for civil
7 penalties under subdivision (e) for either of the
8 following:

9 (1) Willfully failing to acknowledge and act reasonably
10 promptly upon communications with respect to claims
11 arising under paragraph (2) of subdivision (d) of Section
12 1793.2.

13 (2) Willfully taking any action to coerce or intimidate
14 any claimant with respect to claims arising under
15 paragraph (2) of subdivision (d) of Section 1793.2.

AMENDED IN SENATE MAY 27, 1992

AMENDED IN SENATE MAY 18, 1992

AMENDED IN SENATE MAY 11, 1992

SENATE BILL

No. 1762

Introduced by Senator Davis

February 20, 1992

An act to amend Section ~~1794~~ 1793.05 of the Civil Code, relating to consumer warranties.

LEGISLATIVE COUNSEL'S DIGEST

SB 1762, as amended, Davis. Consumer warranties: ~~civil penalties vehicles.~~

Existing law provides that vehicle manufacturers who alter new vehicles into housecars shall, in addition to any new product warranty, assume any warranty responsibility of the original vehicle manufacturer for any and all components of the finished product which are, by virtue of any act of the alterer, no longer covered by the warranty issued by the original vehicle manufacturer.

This bill would make a technical, nonsubstantive change in that provision.

Existing law requires manufacturers of new motor vehicles or their representatives to either make warranty repairs to a defective vehicle within a reasonable number of attempts or replace the vehicle, as specified. These provisions are contained in the Song/Beverly Consumer Warranty Act. Existing law authorizes civil penalties for willful violations of that act and, unless the manufacturer maintains a specified 3rd-party dispute resolution process, for any violation of the above obligations respecting warranty repairs.

This bill would expressly make the above exemption from civil penalties respecting motor vehicle manufacturers

applicable to the provisions authorizing civil penalties for willful violations of the Song/Beverly Consumer Warranty Act, unless the manufacturer willfully failed to acknowledge and act promptly upon communications regarding claims; or willfully took action to coerce or intimidate a claimant.

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

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

1 **SECTION 1.** Section 1794 of the Civil Code is
2 **SECTION 1.** Section 1793.05 of the Civil Code is
3 amended to read:

4 1793.05. Vehicle manufacturers who alter new
5 vehicles into housecars shall, in addition to any new
6 product warranty, assume any warranty responsibility of
7 the original vehicle manufacturer for any and all
8 components of the finished product which are, by virtue
9 of any act of the alterer, no longer covered by the
10 warranty issued by under the original vehicle
11 manufacturer.

12 amended to read:

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

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

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

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

30 (c) Except as provided in subdivision (f), if the buyer

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

9 (d) If the buyer prevails in an action under this
10 section, the buyer shall be allowed by the court to recover
11 as part of the judgment a sum equal to the aggregate
12 amount of costs and expenses, including attorney's fees
13 based on actual time expended, determined by the court
14 to have been reasonably incurred by the buyer in
15 connection with the commencement and prosecution of
16 the action.

17 (e) (1) Except as otherwise provided in this
18 subdivision and subdivision (f), if the buyer establishes a
19 violation of paragraph (2) of subdivision (d) of Section
20 1793.2, the buyer shall recover damages and reasonable
21 attorney's fees and costs, and may recover a civil penalty
22 of up to two times the amount of damages.

23 (2) After the occurrence of the events giving rise to
24 the presumption established in paragraph (1) of
25 subdivision (e) of Section 1793.2, the buyer may serve
26 upon the manufacturer a written notice requesting that
27 the manufacturer comply with paragraph (2) of
28 subdivision (d) of Section 1793.2. If the buyer fails to
29 serve the notice, the manufacturer shall not be liable for
30 a civil penalty pursuant to this subdivision.

31 (3) If the buyer serves the notice described in
32 paragraph (2) and the manufacturer complies with
33 paragraph (2) of subdivision (d) of Section 1793.2 within
34 30 days of the service of that notice, the manufacturer
35 shall not be liable for a civil penalty pursuant to this
36 subdivision.

37 (4) If the buyer recovers a civil penalty under
38 subdivision (e), the buyer may not also recover a civil
39 penalty under this subdivision for the same violation.

40 (f) If a manufacturer maintains a qualified third-party

1 dispute resolution process that substantially complies
2 with subdivision (e) of Section 1793.2, the manufacturer
3 shall not be liable for any civil penalty under this section
4 for a violation of paragraph (2) of subdivision (d) of
5 Section 1793.2. However, this subdivision shall not relieve
6 an automobile manufacturer from liability for civil
7 penalties under subdivision (e) for either of the
8 following:

9 (1) Willfully failing to acknowledge and act reasonably
10 promptly upon communications with respect to claims
11 arising under paragraph (2) of subdivision (d) of Section
12 1793.2.

13 (2) Willfully taking any action to coerce or intimidate
14 any claimant with respect to claims arising under
15 paragraph (2) of subdivision (d) of Section 1793.2.

AMENDED IN ASSEMBLY AUGUST 29, 1992

AMENDED IN SENATE MAY 27, 1992

AMENDED IN SENATE MAY 18, 1992

AMENDED IN SENATE MAY 11, 1992

SENATE BILL

No. 1762

Introduced by Senator Davis Marks

February 20, 1992

An act to amend Section 1793.05 of the Civil Code, relating to consumer warranties. An act to amend Sections 472, 472.1, 472.2, 472.3, and 472.4 of the Business and Professions Code, and to amend Sections 1793.2, 1794, 1795.6, and 1795.8 of, and to add Section 1793.22 to, the Civil Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1762, as amended, **Davis Marks**. Consumer warranties: vehicles.

Existing law contains provisions regulating motor vehicle warranties.

This bill would provide that a portion of those provisions shall be known and may be cited as the Tanner Consumer Protection Act. This bill would also make technical changes in AB 3374, contingent upon the prior enactment of that bill.

Existing law provides that vehicle manufacturers who alter new vehicles into housecars shall, in addition to any new product warranty, assume any warranty responsibility of the original vehicle manufacturer for any and all components of the finished product which are, by virtue of any act of the alterer, no longer covered by the warranty issued by the original vehicle manufacturer.

This bill would make a technical, nonsubstantive change in that provision.

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

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

1 **SECTION 1.** Section 1793.05 of the Civil Code is
2 amended to read:

3 1793.05. Vehicle manufacturers who alter new
4 vehicles into housecars shall, in addition to any new
5 product warranty, assume any warranty responsibility of
6 the original vehicle manufacturer for any and all
7 components of the finished product which are, by virtue
8 of any act of the alterer, no longer covered by the
9 warranty issued under the original vehicle manufacturer.

10 **SECTION 1.** Section 472 of the Business and
11 Professions Code is amended to read:

12 472. Unless the context requires otherwise, the
13 following definitions govern the construction of this
14 chapter:

15 (a) "New motor vehicle" means a new motor vehicle
16 as defined in subparagraph (B) of paragraph (4) of
17 subdivision (e) of Section 1793.2 paragraph (2) of
18 subdivision (e) of Section 1793.22 of the Civil Code.

19 (b) "Manufacturer" means a new motor vehicle
20 manufacturer, manufacturer branch, distributor, or
21 distributor branch required to be licensed pursuant to
22 Article 1 (commencing with Section 11700) of Chapter 4
23 of Division 5 of the Vehicle Code.

24 (c) "Qualified third party dispute resolution process"
25 means a third party dispute resolution process which
26 operates in compliance with paragraph (3) of
27 subdivision (e) of Section 1793.2 subdivision (d) of
28 Section 1793.22 of the Civil Code and this chapter and
29 which has been certified by the department pursuant to
30 this chapter.

31 **SEC. 2.** Section 472.1 of the Business and Professions
32 Code is amended to read:

33 472.1. The department shall establish a program for
34 certifying each third-party dispute resolution process
35 used for the arbitration of disputes pursuant to

paragraph ~~(2)~~ of subdivision ~~(e)~~ of Section 1793.2 subdivision (c) of Section 1793.22 of the Civil Code. In establishing the program, the department shall do all of the following:

(a) Prescribe and provide forms to be used to apply for certification under this chapter.


(b) Establish a set of minimum standards which shall be used to determine whether a third-party dispute resolution process is in substantial compliance with paragraph ~~(3)~~ of subdivision ~~(e)~~ of Section 1793.2 subdivision (d) of Section 1793.22 of the Civil Code and this chapter.

(c) Prescribe the information which each manufacturer, or other entity, that operates a third-party dispute resolution process shall provide the department in the application for certification. In prescribing the information to accompany the application for certification, the department shall require the manufacturer, or other entity, to provide only that information which the department finds is reasonably necessary to enable the department to determine whether the third-party dispute resolution process is in substantial compliance with paragraph ~~(3)~~ of subdivision ~~(e)~~ of Section 1793.2 subdivision (d) of Section 1793.22 of the Civil Code and this chapter.

(d) Prescribe the information that each qualified third-party dispute resolution process shall provide the department, and the time intervals at which the information shall be required, to enable the department to determine whether the qualified third-party dispute resolution process continues to operate in substantial compliance with paragraph ~~(3)~~ of subdivision ~~(e)~~ of Section 1793.2 subdivision (d) of Section 1793.22 of the Civil Code and this chapter.

SEC. 3. Section 472.2 of the Business and Professions Code is amended to read:

472.2. (a) Each manufacturer may establish, or otherwise make available to buyers or lessees of new motor vehicles, a qualified third-party dispute resolution process for the resolution of disputes pursuant to



1 paragraph ~~(2)~~ of subdivision ~~(e)~~ of Section 1793.2
2 subdivision (c) of Section 1793.22 of the Civil Code. A
3 manufacturer that itself operates the third-party dispute
4 resolution process shall apply to the department for
5 certification of that process. If the manufacturer makes
6 the third-party dispute resolution process available to
7 buyers or lessees of new motor vehicles through contract
8 or other arrangement with another entity, that entity
9 shall apply to the department for certification. An entity
10 that operates a third-party dispute resolution process for
11 more than one manufacturer shall make a separate
12 application for certification for each manufacturer that
13 uses that entity's third-party dispute resolution process.
14 The application for certification shall be accompanied by
15 the information prescribed by the department.

16 (b) The department shall review the application and
17 accompanying information and, after conducting an
18 onsite inspection, shall determine whether the
19 third-party dispute resolution process is in substantial
20 compliance with paragraph ~~(3)~~ of subdivision ~~(e)~~ of
21 Section 1793.2 subdivision (d) of Section 1793.22 of the
22 Civil Code and this chapter. If the department
23 determines that the process is in substantial compliance,
24 the department shall certify the process. If the
25 department determines that the process is not in
26 substantial compliance, the department shall deny
27 certification and shall state, in writing, the reasons for
28 denial, and the modifications in the operation of the
29 process that are required in order for the process to be
30 certified.

31 (c) The department shall make a final determination
32 whether to certify a third-party dispute resolution
33 process or to deny certification not later than 90 calendar
34 days following the date the department accepts the
35 application for certification as complete.

36 SEC. 4. Section 472.3 of the Business and Professions
37 Code is amended to read:

38 472.3. (a) The department, in accordance with the
39 time intervals prescribed pursuant to subdivision (d) of
40 Section 9889.71 472.1, but at least once annually, shall

1 review the operation and performance of each qualified
2 third-party dispute resolution process and determine,
3 using the information provided the department as
4 prescribed pursuant to subdivision (d) of Section 9889.71
5 472.1 and the monitoring and inspection information
6 described in subdivision (c) of Section 9889.71 472.4,
7 whether the process is operating in substantial
8 compliance with ~~paragraph (3) of subdivision (e) of~~
9 ~~Section 1793.2 subdivision (d) of Section 1793.22~~ of the
10 Civil Code and this chapter. If the department
11 determines that the process is in substantial compliance,
12 the certification shall remain in effect.

13 (b) If the department determines that the process is
14 not in substantial compliance with ~~paragraph (3) of~~
15 ~~subdivision (e) of Section 1793.2 subdivision (d) of~~
16 ~~Section 1793.22~~ of the Civil Code or this chapter, the
17 department shall issue a notice of decertification to the
18 entity which operates the process and shall send a copy
19 of that notice to any manufacturer affected by the
20 decertification. The notice of decertification shall state
21 the reasons for the issuance of the notice and prescribe
22 the modifications in the operation of the process that are
23 required in order for the process to retain its certification.

24 (c) A notice of decertification shall take effect 180
25 calendar days following the date the notice is served on
26 the manufacturer, or other entity, which uses the process
27 that the department has determined is not in substantial
28 compliance with ~~paragraph (3) of subdivision (e) of~~
29 ~~Section 1793.2 subdivision (d) of Section 1793.22~~ of the
30 Civil Code or this chapter. The department shall
31 withdraw the notice of decertification prior to its
32 effective date if the department determines, after a
33 public hearing, that the manufacturer, or other entity,
34 which uses the process has made the modifications in the
35 operation of the process required in the notice of
36 decertification and is in substantial compliance with
37 ~~paragraph (3) of subdivision (e) of Section 1793.2~~
38 ~~subdivision (d) of Section 1793.22~~ of the Civil Code and
39 this chapter.

40 SEC. 5. Section 472.4 of the Business and Professions

1 *Code is amended to read:*

2 472.4. In addition to any other requirements of this
3 chapter, the department shall do all of the following:

4 (a) Establish procedures to assist owners or lessees of
5 new motor vehicles who have complaints regarding the
6 operation of a qualified third-party dispute resolution
7 process.

8 (b) Establish methods for measuring customer
9 satisfaction and to identify violations of this chapter,
10 which shall include an annual random postcard or
11 telephone survey by the department of the customers of
12 each qualified third-party dispute resolution process.

13 (c) Monitor and inspect, on a regular basis, qualified
14 third-party dispute resolution processes to determine
15 whether they continue to meet the standards for
16 certification. Monitoring and inspection shall include, but
17 not be limited to, all of the following:

18 (1) Onsite inspections of each qualified third-party
19 dispute resolution process not less frequently than twice
20 annually.

21 (2) Investigation of complaints from consumers
22 regarding the operation of qualified third-party dispute
23 resolution processes and analyses of representative
24 samples of complaints against each process.

25 (3) Analyses of the annual surveys required by
26 subdivision (b).

27 (d) Notify the Department of Motor Vehicles of the
28 failure of a manufacturer to honor a decision of a qualified
29 third-party dispute resolution process to enable the
30 Department of Motor Vehicles to take appropriate
31 enforcement action against the manufacturer pursuant to
32 Section 11705.4 of the Vehicle Code.

33 (e) Submit a biennial report to the Legislature
34 evaluating the effectiveness of this chapter, make
35 available to the public summaries of the statistics and
36 other information supplied by each qualified third party
37 dispute resolution process, and publish educational
38 materials regarding the purposes of this chapter.

39 (f) Adopt regulations as necessary and appropriate to
40 implement this chapter and ~~paragraph (3) of subdivision~~

1 ~~(e) of Section 1793.2~~ subdivision (d) of Section 1793.22 of
2 the Civil Code.

3 SEC. 6. Section 1793.2 of the Civil Code is amended
4 to read:


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

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

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

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

37 (3) Make available to authorized service and repair
38 facilities sufficient service literature and replacement
39 parts to effect repairs during the express warranty
40 period.



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

(c) The buyer shall deliver nonconforming goods to the manufacturer's service and repair facility within this state, unless, due to reasons of size and weight, or method of attachment, or method of installation, or nature of the nonconformity, delivery cannot reasonably be accomplished. If the buyer cannot return the nonconforming goods for any of these reasons, he or she shall notify the manufacturer or its nearest service and repair facility within the state. Written notice of nonconformity to the manufacturer or its service and repair facility shall constitute return of the goods for purposes of this section. Upon receipt of that notice of nonconformity, the manufacturer shall, at its option, service or repair the goods at the buyer's residence, or pick up the goods for service and repair, or arrange for transporting the goods to its service and repair facility. All reasonable costs of transporting the goods when a buyer cannot return them for any of the above reasons 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), 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

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

6 (2) If the manufacturer or its representative in this
7 state is unable to service or repair a new motor vehicle,
8 as that term is defined in ~~subparagraph (B) of paragraph~~
9 ~~(4) of subdivision (e) paragraph (2) of subdivision (e) of~~
10 *Section 1793.22*, to conform to the applicable express
11 warranties after a reasonable number of attempts, the
12 manufacturer shall either promptly replace the new
13 motor vehicle in accordance with subparagraph (A) or
14 promptly make restitution to the buyer in accordance
15 with subparagraph (B). However, the buyer shall be free
16 to elect restitution in lieu of replacement, and in no event
17 shall the buyer be required by the manufacturer to
18 accept a replacement vehicle.

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

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

1 reasonable repair, towing, and rental car costs actually
2 incurred by the buyer.

3 (C) When the manufacturer replaces the new motor
4 vehicle pursuant to subparagraph (A), the buyer shall
5 only be liable to pay the manufacturer an amount directly
6 attributable to use by the buyer of the replaced vehicle
7 prior to the time the buyer first delivered the vehicle to
8 the manufacturer or distributor, or its authorized service
9 and repair facility for correction of the problem that gave
10 rise to the nonconformity. When restitution is made
11 pursuant to subparagraph (B), the amount to be paid by
12 the manufacturer to the buyer may be reduced by the
13 manufacturer by that amount directly attributable to use
14 by the buyer prior to the time the buyer first delivered
15 the vehicle to the manufacturer or distributor, or its
16 authorized service and repair facility for correction of the
17 problem that gave rise to the nonconformity. The
18 amount directly attributable to use by the buyer shall be
19 determined by multiplying the actual price of the new
20 motor vehicle paid or payable by the buyer, including
21 any charges for transportation and
22 manufacturer-installed options, by a fraction having as its
23 denominator 120,000 and having as its numerator the
24 number of miles traveled by the new motor vehicle prior
25 to the time the buyer first delivered the vehicle to the
26 manufacturer or distributor, or its authorized service and
27 repair facility for correction of the problem that gave rise
28 to the nonconformity. Nothing in this paragraph shall in
29 any way limit the rights or remedies available to the
30 buyer under any other law.

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

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

18 (2) If a qualified third-party dispute resolution process
19 exists, and the buyer receives timely notification in
20 writing of the availability of that qualified third-party
21 dispute resolution process with a description of its
22 operation and effect, the presumption in paragraph (1)
23 may not be asserted by the buyer until after the buyer has
24 initially resorted to the qualified third-party dispute
25 resolution process as required in paragraph (3).
26 Notification of the availability of the qualified third-party
27 dispute resolution process is not timely if the buyer
28 suffers any prejudice resulting from any delay in giving
29 the notification. If a qualified third-party dispute
30 resolution process does not exist, or if the buyer is
31 dissatisfied with that third-party decision, or if the
32 manufacturer or its agent neglects to promptly fulfill the
33 terms of the qualified third-party dispute resolution
34 process decision after the decision is accepted by the
35 buyer, the buyer may assert the presumption provided in
36 paragraph (1) in an action to enforce the buyer's rights
37 under subdivision (d). The findings and decision of a
38 qualified third-party dispute resolution process shall be
39 admissible in evidence in the action without further
40 foundation. Any period of limitation of actions under any

1 federal or California laws with respect to any person shall
2 be extended for a period equal to the number of days
3 between the date a complaint is filed with a third-party
4 dispute resolution process and the date of its decision or
5 the date before which the manufacturer or its agent is
6 required by the decision to fulfill its terms if the decision
7 is accepted by the buyer, whichever occurs later.

8 (3) A qualified third-party dispute resolution process
9 shall be one that does all of the following:

10 (A) Complies with the minimum requirements of the
11 Federal Trade Commission for informal dispute
12 settlement procedures as set forth in Part 703 of Title 16
13 of the Code of Federal Regulations, as those regulations
14 read on January 1, 1987.

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

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

21 (D) Provides arbitrators who are assigned to decide
22 disputes with copies of, and instruction in, the provisions
23 of the Federal Trade Commission's regulations in Part
24 703 of Title 16 of the Code of Federal Regulations as those
25 regulations read on January 1, 1987, Division 2
26 (commencing with Section 2101) of the Commercial
27 Code, and this chapter.

28 (E) Requires the manufacturer, when the process
29 orders, under the terms of this chapter, either that the
30 nonconforming motor vehicle be replaced if the buyer
31 consents to this remedy or that restitution be made to the
32 buyer, to replace the motor vehicle or make restitution
33 in accordance with paragraph (2) of subdivision (d).

34 (F) Provides, at the request of the arbitrator or a
35 majority of the arbitration panel, for an inspection and
36 written report on the condition of a nonconforming
37 motor vehicle, at no cost to the buyer, by an automobile
38 expert who is independent of the manufacturer.

39 (G) Takes into account, in rendering decisions, all
40 legal and equitable factors, including, but not limited to,

the written warranty, the rights and remedies conferred in regulations of the Federal Trade Commission contained in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1, 1987, Division 2 (commencing with Section 2101) of the Commercial Code; this chapter, and any other equitable considerations appropriate in the circumstances. Nothing in this chapter requires that, to be certified as a qualified third-party dispute resolution process pursuant to this section, decisions of the process must consider or provide remedies in the form of awards of punitive damages or multiple damages, under subdivision (e) of Section 1794, or of attorney's fees under subdivision (d) of Section 1794, or of consequential damages other than as provided in subdivisions (a) and (b) of Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.


(H) Requires that no arbitrator deciding a dispute may be a party to the dispute and that no other person, including an employee, agent, or dealer for the manufacturer, may be allowed to participate substantively in the merits of any dispute with the arbitrator unless the buyer is allowed to participate also. Nothing in this paragraph prohibits any member of an arbitration board from deciding a dispute.

(I) Obtains and maintains certification by the Department of Consumer Affairs pursuant to Chapter 9 (commencing with Section 472) of Division 1 of the Business and Professions Code.

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

(A) "Noneconformity" means a noneconformity which substantially impairs the use, value, or safety of the new motor vehicle to the buyer or lessee.

(B) "New motor vehicle" means a new motor vehicle which is used or bought for use primarily for personal, family, or household purposes. "New motor vehicle" includes the chassis, chassis cab, and that portion of a motor home devoted to its propulsion, but does not



1 include any portion designed, used, or maintained
2 primarily for human habitation; a dealer/owned vehicle
3 and a "demonstrator" or other motor vehicle sold with a
4 manufacturer's new car warranty but does not include a
5 motorcycle or a motor vehicle which is not registered
6 under the Vehicle Code because it is to be operated or
7 used exclusively off the highways. A "demonstrator" is a
8 vehicle assigned by a dealer for the purpose of
9 demonstrating qualities and characteristics common to
10 vehicles of the same or similar model and type.

11 (G) "Motorhome" means a vehicular unit built on, or
12 permanently attached to, a self/propelled motor vehicle
13 chassis, chassis cab, or van, which becomes an integral
14 part of the completed vehicle, designed for human
15 habitation for recreational or emergency occupancy.

16 (5) (A) Except as provided in subparagraph (B), no
17 person shall sell, either at wholesale or retail, lease, or
18 transfer a motor vehicle transferred by a buyer or lessee
19 to a manufacturer pursuant to paragraph (2) of
20 subdivision (d) or a similar statute of any other state,
21 unless the nature of the nonconformity experienced by
22 the original buyer or lessee is clearly and conspicuously
23 disclosed to the prospective buyer, lessee, or transferee;
24 the nonconformity is corrected, and the manufacturer
25 warrants to the new buyer, lessee, or transferee in writing
26 for a period of one year that the motor vehicle is free of
27 that nonconformity.

28 (B) Except for the requirement that the nature of the
29 nonconformity be disclosed to the transferee,
30 subparagraph (A) does not apply to the transfer of a
31 motor vehicle to an educational institution if the purpose
32 of the transfer is to make the motor vehicle available for
33 use in automotive repair courses.


34 SEC. 7. Section 1793.22 is added to the Civil Code, to
35 read:

36 1793.22. (a) This section shall be known and may be
37 cited as the Tanner Consumer Protection Act.

38 (b) It shall be presumed that a reasonable number of
39 attempts have been made to conform a new motor
40 vehicle to the applicable express warranties if, within one

1 year from delivery to the buyer or 12,000 miles on the
2 odometer of the vehicle, whichever occurs first, either
3 (1) the same nonconformity has been subject to repair
4 four or more times by the manufacturer or its agents and
5 the buyer has at least once directly notified the
6 manufacturer of the need for the repair of the
7 nonconformity or (2) the vehicle is out of service by
8 reason of repair of nonconformities by the manufacturer
9 or its agents for a cumulative total of more than 30
10 calendar days since delivery of the vehicle to the buyer.
11 The 30-day limit shall be extended only if repairs cannot
12 be performed due to conditions beyond the control of the
13 manufacturer or its agents. The buyer shall be required
14 to directly notify the manufacturer pursuant to
15 paragraph (1) only if the manufacturer has clearly and
16 conspicuously disclosed to the buyer, with the warranty
17 or the owner's manual, the provisions of this section and
18 that of subdivision (d) of Section 1793.2, including the
19 requirement that the buyer must notify the
20 manufacturer directly pursuant to paragraph (1). This
21 presumption shall be a rebuttable presumption affecting
22 the burden of proof, and it may be asserted by the buyer
23 in any civil action, including an action in small claims
24 court, or other formal or informal proceeding.

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



1 process decision after the decision is accepted by the
2 buyer, the buyer may assert the presumption provided in
3 subdivision (b) in an action to enforce the buyer's rights
4 under subdivision (d) of Section 1793.2. The findings and
5 decision of a qualified third-party dispute resolution
6 process shall be admissible in evidence in the action
7 without further foundation. Any period of limitation of
8 actions under any federal or California laws with respect
9 to any person shall be extended for a period equal to the
10 number of days between the date a complaint is filed
11 with a third-party dispute resolution process and the date
12 of its decision or the date before which the manufacturer
13 or its agent is required by the decision to fulfill its terms
14 if the decision is accepted by the buyer, whichever occurs
15 later.

16 (d) A qualified third-party dispute resolution process
17 shall be one that does all of the following:

18 (1) Complies with the minimum requirements of the
19 Federal Trade Commission for informal dispute
20 settlement procedures as set forth in Part 703 of Title 16
21 of the Code of Federal Regulations, as those regulations
22 read on January 1, 1987.

23 (2) Renders decisions which are binding on the
24 manufacturer if the buyer elects to accept the decision.
25 (3) Prescribes a reasonable time, not to exceed 30 days
26 after the decision is accepted by the buyer, within which
27 the manufacturer or its agent must fulfill the terms of its
28 decisions.

29 (4) Provides arbitrators who are assigned to decide
30 disputes with copies of, and instruction in, the provisions
31 of the Federal Trade Commission's regulations in Part
32 703 of Title 16 of the Code of Federal Regulations as those
33 regulations read on January 1, 1987, Division 2
34 (commencing with Section 2101) of the Commercial
35 Code, and this chapter.

36 (5) Requires the manufacturer, when the process
37 orders, under the terms of this chapter, either that the
38 nonconforming motor vehicle be replaced if the buyer
39 consents to this remedy or that restitution be made to the
40 buyer, to replace the motor vehicle or make restitution

1 in accordance with paragraph (2) of subdivision (d) of
2 Section 1793.2.

3 (6) Provides, at the request of the arbitrator or a
4 majority of the arbitration panel, for an inspection and
5 written report on the condition of a nonconforming
6 motor vehicle, at no cost to the buyer, by an automobile
7 expert who is independent of the manufacturer.

8 (7) Takes into account, in rendering decisions, all legal
9 and equitable factors, including, but not limited to, the
10 written warranty, the rights and remedies conferred in
11 regulations of the Federal Trade Commission contained
12 in Part 703 of Title 16 of the Code of Federal Regulations
13 as those regulations read on January 1, 1987, Division 2
14 (commencing with Section 2101) of the Commercial
15 Code, this chapter, and any other equitable
16 considerations appropriate in the circumstances. Nothing
17 in this chapter requires that, to be certified as a qualified
18 third-party dispute resolution process pursuant to this
19 section, decisions of the process must consider or provide
20 remedies in the form of awards of punitive damages or
21 multiple damages, under subdivision (c) of Section 1794,
22 or of attorneys' fees under subdivision (d) of Section 1794,
23 or of consequential damages other than as provided in
24 subdivisions (a) and (b) of Section 1794, including, but
25 not limited to, reasonable repair, towing, and rental car
26 costs actually incurred by the buyer.

27 (8) Requires that no arbitrator deciding a dispute may
28 be a party to the dispute and that no other person,
29 including an employee, agent, or dealer for the
30 manufacturer, may be allowed to participate
31 substantively in the merits of any dispute with the
32 arbitrator unless the buyer is allowed to participate also.
33 Nothing in this subdivision prohibits any member of an
34 arbitration board from deciding a dispute.

35 (9) Obtains and maintains certification by the
36 Department of Consumer Affairs pursuant to Chapter 9
37 (commencing with Section 472) of Division 1 of the
38 Business and Professions Code.

39 (e) For the purposes of subdivision (d) of Section
40 1793.2 and this section, the following terms have the

1 following meanings:

2 (1) "Nonconformity" means a nonconformity which
3 substantially impairs the use, value, or safety of the new
4 motor vehicle to the buyer or lessee.

5 (2) "New motor vehicle" means a new motor vehicle
6 which is used or bought for use primarily for personal,
7 family, or household purposes. "New motor vehicle"
8 includes the chassis, chassis cab, and that portion of a
9 motor home devoted to its propulsion, but does not
10 include any portion designed, used, or maintained
11 primarily for human habitation, a dealer-owned vehicle
12 and a "demonstrator" or other motor vehicle sold with a
13 manufacturer's new car warranty but does not include a
14 motorcycle or a motor vehicle which is not registered
15 under the Vehicle Code because it is to be operated or
16 used exclusively off the highways. A "demonstrator" is a
17 vehicle assigned by a dealer for the purpose of
18 demonstrating qualities and characteristics common to
19 vehicles of the same or similar model and type.

20 (3) "Motor home" means a vehicular unit built on, or
21 permanently attached to, a self-propelled motor vehicle
22 chassis, chassis cab, or van, which becomes an integral
23 part of the completed vehicle, designed for human
24 habitation for recreational or emergency occupancy.

25 (f) (1) Except as provided in paragraph (2), no
26 person shall sell, either at wholesale or retail, lease, or
27 transfer a motor vehicle transferred by a buyer or lessee
28 to a manufacturer pursuant to paragraph (2) of
29 subdivision (d) of Section 1793.2 or a similar statute of any
30 other state, unless the nature of the nonconformity
31 experienced by the original buyer or lessee is clearly and
32 conspicuously disclosed to the prospective buyer, lessee,
33 or transferee, the nonconformity is corrected, and the
34 manufacturer warrants to the new buyer, lessee, or
35 transferee in writing for a period of one year that the
36 motor vehicle is free of that nonconformity.

37 (2) Except for the requirement that the nature of the
38 nonconformity be disclosed to the transferee, paragraph
39 (1) does not apply to the transfer of a motor vehicle to
40 an educational institution if the purpose of the transfer is


1 to make the motor vehicle available for use in automotive
2 repair courses.

3 SEC. 8. Section 1793.22 of the Civil Code, as added by
4 Assembly Bill No. 3374, is amended to read:

5 1793.22. (a) This section shall be known and may be
6 cited as the Tanner Consumer Protection Act.

7 (b) It shall be presumed that a reasonable number of
8 attempts have been made to conform a new motor
9 vehicle to the applicable express warranties if, within one
10 year from delivery to the buyer or 12,000 miles on the
11 odometer of the vehicle, whichever occurs first, either
12 (1) the same nonconformity has been subject to repair
13 four or more times by the manufacturer or its agents and
14 the buyer has at least once directly notified the
15 manufacturer of the need for the repair of the
16 nonconformity or (2) the vehicle is out of service by
17 reason of repair of nonconformities by the manufacturer
18 or its agents for a cumulative total of more than 30
19 calendar days since delivery of the vehicle to the buyer.
20 The 30-day limit shall be extended only if repairs cannot
21 be performed due to conditions beyond the control of the
22 manufacturer or its agents. The buyer shall be required
23 to directly notify the manufacturer pursuant to
24 paragraph (1) only if the manufacturer has clearly and
25 conspicuously disclosed to the buyer, with the warranty
26 or the owner's manual, the provisions of this section and
27 that of subdivision (d) of Section ~~1793.25~~ 1793.2,
28 including the requirement that the buyer must notify the
29 manufacturer directly pursuant to paragraph (1). This
30 presumption shall be a rebuttable presumption affecting
31 the burden of proof, and it may be asserted by the buyer
32 in any civil action, including an action in small claims
33 court, or other formal or informal proceeding.

34 (c) If a qualified third-party dispute resolution process
35 exists, and the buyer receives timely notification in
36 writing of the availability of that qualified third-party
37 dispute resolution process with a description of its
38 operation and effect, the presumption in subdivision (b)
39 may not be asserted by the buyer until after the buyer has
40 initially resorted to the qualified third-party dispute



1 resolution process as required in subdivision (d).
2 Notification of the availability of the qualified third-party
3 dispute resolution process is not timely if the buyer
4 suffers any prejudice resulting from any delay in giving
5 the notification. If a qualified third-party dispute
6 resolution process does not exist, or if the buyer is
7 dissatisfied with that third-party decision, or if the
8 manufacturer or its agent neglects to promptly fulfill the
9 terms of the qualified third-party dispute resolution
10 process decision after the decision is accepted by the
11 buyer, the buyer may assert the presumption provided in
12 subdivision (b) in an action to enforce the buyer's rights
13 under subdivision (d) of Section 1793.2. The findings and
14 decision of a qualified third-party dispute resolution
15 process shall be admissible in evidence in the action
16 without further foundation. Any period of limitation of
17 actions under any federal or California laws with respect
18 to any person shall be extended for a period equal to the
19 number of days between the date a complaint is filed
20 with a third-party dispute resolution process and the date
21 of its decision or the date before which the manufacturer
22 or its agent is required by the decision to fulfill its terms
23 if the decision is accepted by the buyer, whichever occurs
24 later.

25 (d) A qualified third-party dispute resolution process
26 shall be one that does all of the following:

27 (1) Complies with the minimum requirements of the
28 Federal Trade Commission for informal dispute
29 settlement procedures as set forth in Part 703 of Title 16
30 of the Code of Federal Regulations, as those regulations
31 read on January 1, 1987.

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

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

38 (4) Provides arbitrators who are assigned to decide
39 disputes with copies of, and instruction in, the provisions
40 of the Federal Trade Commission's regulations in Part

1 703 of Title 16 of the Code of Federal Regulations as those
2 regulations read on January 1, 1987, Division 2
3 (commencing with Section 2101) of the Commercial
4 Code, and this chapter.

5 (5) Requires the manufacturer, when the process
6 orders, under the terms of this chapter, either that the
7 nonconforming motor vehicle be replaced if the buyer
8 consents to this remedy or that restitution be made to the
9 buyer, to replace the motor vehicle or make restitution
10 in accordance with paragraph (2) of subdivision (d) of
11 Section 1793.2.

12 (6) Provides, at the request of the arbitrator or a
13 majority of the arbitration panel, for an inspection and
14 written report on the condition of a nonconforming
15 motor vehicle, at no cost to the buyer, by an automobile
16 expert who is independent of the manufacturer.

17 (7) Takes into account, in rendering decisions, all legal
18 and equitable factors, including, but not limited to, the
19 written warranty, the rights and remedies conferred in
20 regulations of the Federal Trade Commission contained
21 in Part 703 of Title 16 of the Code of Federal Regulations
22 as those regulations read on January 1, 1987, Division 2
23 (commencing with Section 2101) of the Commercial
24 Code, this chapter, and any other equitable
25 considerations appropriate in the circumstances. Nothing
26 in this chapter requires that, to be certified as a qualified
27 third-party dispute resolution process pursuant to this
28 section, decisions of the process must consider or provide
29 remedies in the form of awards of punitive damages or
30 multiple damages, under subdivision (c) of Section 1794,
31 or of attorneys' fees under subdivision (d) of Section 1794,
32 or of consequential damages other than as provided in
33 subdivisions (a) and (b) of Section 1794, including, but
34 not limited to, reasonable repair, towing, and rental car
35 costs actually incurred by the buyer.

36 (8) Requires that no arbitrator deciding a dispute may
37 be a party to the dispute and that no other person,
38 including an employee, agent, or dealer for the
39 manufacturer, may be allowed to participate
40 substantively in the merits of any dispute with the

1 arbitrator unless the buyer is allowed to participate also.
2 Nothing in this subdivision prohibits any member of an
3 arbitration board from deciding a dispute.

4 (9) Obtains and maintains certification by the
5 Department of Consumer Affairs pursuant to Chapter 9
6 (commencing with Section 472) of Division 1 of the
7 Business and Professions Code.

8 (e) For the purposes of subdivision (d) of Section
9 1793.2 and this section, the following terms have the
10 following meanings:

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

14 (2) "New motor vehicle" means a new motor vehicle
15 which is used or bought for use primarily for personal,
16 family, or household purposes. "New motor vehicle"
17 includes the chassis, chassis cab, and that portion of a
18 motor home devoted to its propulsion, but does not
19 include any portion designed, used, or maintained
20 primarily for human habitation, a dealer-owned vehicle
21 and a "demonstrator" or other motor vehicle sold with a
22 manufacturer's new car warranty but does not include a
23 motorcycle or a motor vehicle which is not registered
24 under the Vehicle Code because it is to be operated or
25 used exclusively off the highways. A "demonstrator" is a
26 vehicle assigned by a dealer for the purpose of
27 demonstrating qualities and characteristics common to
28 vehicles of the same or similar model and type.

29 (3) "Motor home" means a vehicular unit built on, or
30 permanently attached to, a self-propelled motor vehicle
31 chassis, chassis cab, or van, which becomes an integral
32 part of the completed vehicle, designed for human
33 habitation for recreational or emergency occupancy.

34 ~~(e)~~

35 (f) (1) Except as provided in paragraph (2), no
36 person shall sell, either at wholesale or retail, lease, or
37 transfer a motor vehicle transferred by a buyer or lessee
38 to a manufacturer pursuant to paragraph (2) of
39 subdivision (d) of Section 1793.2 or a similar statute of any
40 other state, unless the nature of the nonconformity

1 experienced by the original buyer or lessee is clearly and
2 conspicuously disclosed to the prospective buyer, lessee,
3 or transferee, the nonconformity is corrected, and the
4 manufacturer warrants to the new buyer, lessee, or
5 transferee in writing for a period of one year that the
6 motor vehicle is free of that nonconformity.

7 (2) Except for the requirement that the nature of the
8 nonconformity be disclosed to the transferee, paragraph

9 (1) does not apply to the transfer of a motor vehicle to
10 an educational institution if the purpose of the transfer is
11 to make the motor vehicle available for use in automotive
12 repair courses.

13 *SEC. 9. Section 1794 of the Civil Code is amended to*
14 *read:*

15 1794. (a) Any buyer of consumer goods who is
16 damaged by a failure to comply with any obligation
17 under this chapter or under an implied or express
18 warranty or service contract may bring an action for the
19 recovery of damages and other legal and equitable relief.

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

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

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

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

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

1 section, the buyer shall be allowed by the court to recover
2 as part of the judgment a sum equal to the aggregate
3 amount of costs and expenses, including attorney's fees
4 based on actual time expended, determined by the court
5 to have been reasonably incurred by the buyer in
6 connection with the commencement and prosecution of
7 such action.

8 (e) (1) Except as otherwise provided in this
9 subdivision, if the buyer establishes a violation of
10 paragraph (2) of subdivision (d) of Section 1793.2, the
11 buyer shall recover damages and reasonable attorney's
12 fees and costs, and may recover a civil penalty of up to
13 two times the amount of damages.

14 (2) If the manufacturer maintains a qualified
15 third-party dispute resolution process which substantially
16 complies with ~~subdivision (e) of Section 1793.2~~ Section
17 1793.22, the manufacturer shall not be liable for any civil
18 penalty pursuant to this subdivision.

19 (3) After the occurrence of the events giving rise to
20 the presumption established in ~~paragraph (1) of~~
21 ~~subdivision (e) of Section 1793.2~~ subdivision (b) of
22 Section 1793.22, the buyer may serve upon the
23 manufacturer a written notice requesting that the
24 manufacturer comply with paragraph (2) of subdivision
25 (d) of Section 1793.2. If the buyer fails to serve the notice,
26 the manufacturer shall not be liable for a civil penalty
27 pursuant to this subdivision.

28 (4) If the buyer serves the notice described in
29 paragraph (3) and the manufacturer complies with
30 paragraph (2) of subdivision (d) of Section 1793.2 within
31 30 days of the service of that notice, the manufacturer
32 shall not be liable for a civil penalty pursuant to this
33 subdivision.

34 (5) If the buyer recovers a civil penalty under
35 subdivision (c), the buyer may not also recover a civil
36 penalty under this subdivision for the same violation.

37 **SEC. 10.** Section 1795.6 of the Civil Code is amended
38 to read:

39 1795.6. (a) Every warranty period relating to an
40 implied or express warranty accompanying a sale or

consignment for sale of consumer goods selling for fifty dollars (\$50) or more shall automatically be tolled for the period from the date upon which the buyer either (1) delivers nonconforming goods to the manufacturer or seller for warranty repairs or service or (2), pursuant to subdivision (c) of Section 1793.2 or ~~subdivision (e) of Section 1793.3~~ *Section 1793.22*, notifies the manufacturer or seller of the nonconformity of the goods up to, and including, the date upon which (1) the repaired or serviced goods are delivered to the buyer, (2) the buyer is notified the goods are repaired or serviced and are available for the buyer's possession or (3) the buyer is notified that repairs or service is completed, if repairs or service is made at the buyer's residence.

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

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

(d) Every manufacturer or seller of consumer goods selling for fifty dollars (\$50) or more shall provide a receipt to the buyer showing the date of purchase. Every manufacturer or seller performing warranty repairs or service on the goods shall provide to the buyer a work order or receipt with the date of return and either the date the buyer was notified that the goods were repaired

1 or serviced or, where applicable, the date the goods were
2 shipped or delivered to the buyer.

3 *SEC. 11. Section 1795.8 of the Civil Code is amended*
4 *to read:*

5 1795.8. (a) The Legislature finds and declares that
6 the expansion of state warranty laws covering new and
7 used cars has given important and valuable protection to
8 consumers; that in states without this valuable warranty
9 protection used and ~~irreparable~~ *irreparable* motor
10 vehicles are inundating the marketplace; that other states
11 have addressed this problem by requiring notices on the
12 titles of these vehicles warning consumers that the motor
13 vehicles were repurchased by a dealer or manufacturer
14 because either the vehicle could not be repaired in a
15 reasonable length of time or the dealer or manufacturer
16 was not willing to repair the vehicle; that these notices
17 serve the interests of consumers who have a right to
18 information relevant to their buying decisions; and that
19 the disappearance of these notices upon the transfer of
20 title from another state to this state encourages the
21 transport of "lemons" to this state for sale to the drivers
22 of this state. Therefore, the Legislature hereby enacts the
23 Automotive Consumer Notification Act.

24 (b) For purposes of this section, "dealer" means any
25 person engaged in the business of selling, offering for sale,
26 or negotiating the retail sale of used motor vehicles or
27 selling motor vehicles as a broker or agent for another,
28 including the officers, agents, and employees of the
29 person and any combination or association of dealers.
30 "Dealer" does not include a bank or other financial
31 institution, or the state, its agencies, bureaus, boards,
32 commissions, authorities, or any of its political
33 subdivisions. A person shall be deemed to be engaged in
34 the business of selling used motor vehicles if the person
35 has sold more than four used motor vehicles in the
36 preceding 12 months.

37 (c) Any person, including any dealer or manufacturer,
38 selling a motor vehicle in this state that is known or
39 should be known to have been required by law to be
40 replaced or required by law to be accepted for restitution

by a manufacturer due to the inability of the manufacturer to conform the vehicle to applicable warranties pursuant to subdivision (d) of Section 1793.2 or that is known or should be known to have been required by law to be replaced or required by law to be accepted for restitution by a dealer or manufacturer due to the inability of the dealer or manufacturer to conform the vehicle to warranties required by any other applicable law of this state, any other state, or federal law shall disclose that fact to the buyer in writing prior to the purchase and a dealer or manufacturer shall include as part of the titling documents of the vehicle the following disclosure statement set forth as a separate document and signed by the buyer:

"THIS MOTOR VEHICLE HAS BEEN RETURNED TO THE DEALER OR MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS."

(d) The disclosure requirement in subdivision (c) is cumulative with all other consumer notice requirements, and does not relieve any person, including any dealer or manufacturer, from complying with any other applicable law, including any requirement of ~~paragraph (5) of subdivision (e) of Section 1793.2~~ subdivision (f) of Section 1793.22 or comparable automobile warranty laws in other states.

SEC. 12. Section 8 makes technical corrections to Section 1793.22 of the Civil Code, as added by AB 3374. It shall become operative only if AB 3374 is enacted and adds Section 1793.22 to the Civil Code and this bill is enacted after AB 3374, in which case Section 7 shall not become operative.

AMENDED IN ASSEMBLY AUGUST 31, 1992

AMENDED IN ASSEMBLY AUGUST 29, 1992

AMENDED IN SENATE MAY 27, 1992

AMENDED IN SENATE MAY 18, 1992

AMENDED IN SENATE MAY 11, 1992

SENATE BILL

No. 1762

Introduced by Senator Marks

February 20, 1992

An act to amend Sections 472, 472.1, 472.2, 472.3, and 472.4 of the Business and Professions Code, and to amend Sections 1793.2, 1794, 1795.6, and 1795.8 of, and to add Section 1793.22 to, the Civil Code, and to supplement *Items 2660-001-853 and 2660-101-853 of Section 2.00 of the Budget Act of 1992*, relating to ~~vehicles~~ *transportation*, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1762, as amended, Marks. Consumer warranties: vehicles.

(1) Existing law contains provisions regulating motor vehicle warranties.

This bill would provide that a portion of those provisions shall be known and may be cited as the Tanner Consumer Protection Act. This bill would also make technical changes in AB 3374, contingent upon the prior enactment of that bill.

(2) Under existing law, funds in the Petroleum Violation Escrow Account, as defined in federal law, and other federal oil overcharge funds, have been disbursed to this state by the federal government and deposited in the Federal Trust Fund. The Budget Act of 1992 appropriates \$2,500,000 of Petroleum Violation Escrow Account Funds to the Department of

Transportation for a specified ridesharing program.

This bill would transfer \$150,000 of that amount to a specified item of the Budget Act of 1992 and appropriate it for the Bay Area Telecommuting Development Program.

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

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

1 SECTION 1. Section 472 of the Business and
2 Professions Code is amended to read:
3 472. Unless the context requires otherwise, the
4 following definitions govern the construction of this
5 chapter:

6 (a) "New motor vehicle" means a new motor vehicle
7 as defined in paragraph (2) of subdivision (e) of Section
8 1793.22 of the Civil Code.

9 (b) "Manufacturer" means a new motor vehicle
10 manufacturer, manufacturer branch, distributor, or
11 distributor branch required to be licensed pursuant to
12 Article 1 (commencing with Section 11700) of Chapter 4
13 of Division 5 of the Vehicle Code.

14 (c) "Qualified third party dispute resolution process"
15 means a third party dispute resolution process which
16 operates in compliance with subdivision (d) of Section
17 1793.22 of the Civil Code and this chapter and which has
18 been certified by the department pursuant to this
19 chapter.

20 SEC. 2. Section 472.1 of the Business and Professions
21 Code is amended to read:

22 472.1. The department shall establish a program for
23 certifying each third-party dispute resolution process
24 used for the arbitration of disputes pursuant to
25 subdivision (c) of Section 1793.22 of the Civil Code. In
26 establishing the program, the department shall do all of
27 the following:

28 (a) Prescribe and provide forms to be used to apply for
29 certification under this chapter.

30 (b) Establish a set of minimum standards which shall
31 be used to determine whether a third-party dispute

1 resolution process is in substantial compliance with
2 subdivision (d) of Section 1793.22 of the Civil Code and
3 this chapter.

4 (c) Prescribe the information which each
5 manufacturer, or other entity, that operates a third-party
6 dispute resolution process shall provide the department
7 in the application for certification. In prescribing the
8 information to accompany the application for
9 certification, the department shall require the
10 manufacturer, or other entity, to provide only that
11 information which the department finds is reasonably
12 necessary to enable the department to determine
13 whether the third-party dispute resolution process is in
14 substantial compliance with subdivision (d) of Section
15 1793.22 of the Civil Code and this chapter.

16 (d) Prescribe the information that each qualified
17 third-party dispute resolution process shall provide the
18 department, and the time intervals at which the
19 information shall be required, to enable the department
20 to determine whether the qualified third-party dispute
21 resolution process continues to operate in substantial
22 compliance with subdivision (d) of Section 1793.22 of the
23 Civil Code and this chapter.

24 SEC. 3. Section 472.2 of the Business and Professions
25 Code is amended to read:

26 472.2. (a) Each manufacturer may establish, or
27 otherwise make available to buyers or lessees of new
28 motor vehicles, a qualified third-party dispute resolution
29 process for the resolution of disputes pursuant to
30 subdivision (c) of Section 1793.22 of the Civil Code. A
31 manufacturer that itself operates the third-party dispute
32 resolution process shall apply to the department for
33 certification of that process. If the manufacturer makes
34 the third-party dispute resolution process available to
35 buyers or lessees of new motor vehicles through contract
36 or other arrangement with another entity, that entity
37 shall apply to the department for certification. An entity
38 that operates a third-party dispute resolution process for
39 more than one manufacturer shall make a separate
40 application for certification for each manufacturer that

1 uses that entity's third-party dispute resolution process.
2 The application for certification shall be accompanied by
3 the information prescribed by the department.

4 (b) The department shall review the application and
5 accompanying information and, after conducting an
6 onsite inspection, shall determine whether the
7 third-party dispute resolution process is in substantial
8 compliance with subdivision (d) of Section 1793.22 of the
9 Civil Code and this chapter. If the department
10 determines that the process is in substantial compliance,
11 the department shall certify the process. If the
12 department determines that the process is not in
13 substantial compliance, the department shall deny
14 certification and shall state, in writing, the reasons for
15 denial and the modifications in the operation of the
16 process that are required in order for the process to be
17 certified.

18 (c) The department shall make a final determination
19 whether to certify a third-party dispute resolution
20 process or to deny certification not later than 90 calendar
21 days following the date the department accepts the
22 application for certification as complete.

23 SEC. 4. Section 472.3 of the Business and Professions
24 Code is amended to read:

25 472.3. (a) The department, in accordance with the
26 time intervals prescribed pursuant to subdivision (d) of
27 Section 472.1, but at least once annually, shall review the
28 operation and performance of each qualified third-party
29 dispute resolution process and determine, using the
30 information provided the department as prescribed
31 pursuant to subdivision (d) of Section 472.1 and the
32 monitoring and inspection information described in
33 subdivision (c) of Section 472.4, whether the process is
34 operating in substantial compliance with subdivision (d)
35 of Section 1793.22 of the Civil Code and this chapter. If
36 the department determines that the process is in
37 substantial compliance, the certification shall remain in
38 effect.

39 (b) If the department determines that the process is
40 not in substantial compliance with subdivision (d) of

1 Section 1793.22 of the Civil Code or this chapter, the
2 department shall issue a notice of decertification to the
3 entity which operates the process and shall send a copy
4 of that notice to any manufacturer affected by the
5 decertification. The notice of decertification shall state
6 the reasons for the issuance of the notice and prescribe
7 the modifications in the operation of the process that are
8 required in order for the process to retain its certification.

9 (c) A notice of decertification shall take effect 180
10 calendar days following the date the notice is served on
11 the manufacturer, or other entity, which uses the process
12 that the department has determined is not in substantial
13 compliance with subdivision (d) of Section 1793.22 of the
14 Civil Code or this chapter. The department shall
15 withdraw the notice of decertification prior to its
16 effective date if the department determines, after a
17 public hearing, that the manufacturer, or other entity,
18 which uses the process has made the modifications in the
19 operation of the process required in the notice of
20 decertification and is in substantial compliance with
21 subdivision (d) of Section 1793.22 of the Civil Code and
22 this chapter.

23 SEC. 5. Section 472.4 of the Business and Professions
24 Code is amended to read:

25 472.4. In addition to any other requirements of this
26 chapter, the department shall do all of the following:

27 (a) Establish procedures to assist owners or lessees of
28 new motor vehicles who have complaints regarding the
29 operation of a qualified third-party dispute resolution
30 process.

31 (b) Establish methods for measuring customer
32 satisfaction and to identify violations of this chapter,
33 which shall include an annual random postcard or
34 telephone survey by the department of the customers of
35 each qualified third-party dispute resolution process.

36 (c) Monitor and inspect, on a regular basis, qualified
37 third-party dispute resolution processes to determine
38 whether they continue to meet the standards for
39 certification. Monitoring and inspection shall include, but
40 not be limited to, all of the following:

1 (1) Onsite inspections of each qualified third-party
2 dispute resolution process not less frequently than twice
3 annually.

4 (2) Investigation of complaints from consumers
5 regarding the operation of qualified third-party dispute
6 resolution processes and analyses of representative
7 samples of complaints against each process.

8 (3) Analyses of the annual surveys required by
9 subdivision (b).

10 (d) Notify the Department of Motor Vehicles of the
11 failure of a manufacturer to honor a decision of a qualified
12 third-party dispute resolution process to enable the
13 Department of Motor Vehicles to take appropriate
14 enforcement action against the manufacturer pursuant to
15 Section 11705.4 of the Vehicle Code.

16 (e) Submit a biennial report to the Legislature
17 evaluating the effectiveness of this chapter, make
18 available to the public summaries of the statistics and
19 other information supplied by each qualified third party
20 dispute resolution process, and publish educational
21 materials regarding the purposes of this chapter.

22 (f) Adopt regulations as necessary and appropriate to
23 implement this chapter and subdivision (d) of Section
24 1793.22 of the Civil Code.

25 SEC. 6. Section 1793.2 of the Civil Code is amended
26 to read:

27 1793.2. (a) Every manufacturer of consumer goods
28 sold in this state and for which the manufacturer has
29 made an express warranty shall:

30 (1) (A) Maintain in this state sufficient service and
31 repair facilities reasonably close to all areas where its
32 consumer goods are sold to carry out the terms of those
33 warranties or designate and authorize in this state as
34 service and repair facilities independent repair or service
35 facilities reasonably close to all areas where its consumer
36 goods are sold to carry out the terms of the warranties.

37 (B) As a means of complying with this paragraph, a
38 manufacturer may enter into warranty service contracts
39 with independent service and repair facilities. The
40 warranty service contracts may provide for a fixed

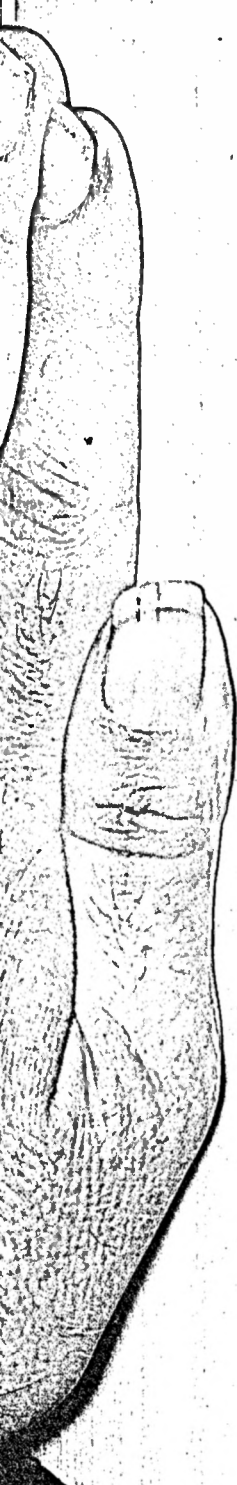
1 schedule of rates to be charged for warranty service or
2 warranty repair work. However, the rates fixed by those
3 contracts shall be in conformity with the requirements of
4 subdivision (c) of Section 1793.3. The rates established
5 pursuant to subdivision (c) of Section 1793.3, between the
6 manufacturer and the independent service and repair
7 facility, shall not preclude a good faith discount which is
8 reasonably related to reduced credit and general
9 overhead cost factors arising from the manufacturer's
10 payment of warranty charges direct to the independent
11 service and repair facility. The warranty service contracts
12 authorized by this paragraph shall not be executed to
13 cover a period of time in excess of one year, and may be
14 renewed only by a separate, new contract or letter of
15 agreement between the manufacturer and the
16 independent service and repair facility.

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

19 (3) Make available to authorized service and repair
20 facilities sufficient service literature and replacement
21 parts to effect repairs during the express warranty
22 period.

23 (b) Where those service and repair facilities are
24 maintained in this state and service or repair of the goods
25 is necessary because they do not conform with the
26 applicable express warranties, service and repair shall be
27 commenced within a reasonable time by the
28 manufacturer or its representative in this state. Unless
29 the buyer agrees in writing to the contrary, the goods
30 shall be serviced or repaired so as to conform to the
31 applicable warranties within 30 days. Delay caused by
32 conditions beyond the control of the manufacturer or his
33 representatives shall serve to extend this 30-day
34 requirement. Where delay arises, conforming goods shall
35 be tendered as soon as possible following termination of
36 the condition giving rise to the delay.

37 (c) The buyer shall deliver nonconforming goods to
38 the manufacturer's service and repair facility within this
39 state, unless, due to reasons of size and weight, or method
40 of attachment, or method of installation, or nature of the



1 nonconformity, delivery cannot reasonably be
2 accomplished. If the buyer cannot return the
3 nonconforming goods for any of these reasons, he or she
4 shall notify the manufacturer or its nearest service and
5 repair facility within the state. Written notice of
6 nonconformity to the manufacturer or its service and
7 repair facility shall constitute return of the goods for
8 purposes of this section. Upon receipt of that notice of
9 nonconformity, the manufacturer shall, at its option,
10 service or repair the goods at the buyer's residence, or
11 pick up the goods for service and repair, or arrange for
12 transporting the goods to its service and repair facility.
13 All reasonable costs of transporting the goods when a
14 buyer cannot return them for any of the above reasons
15 shall be at the manufacturer's expense. The reasonable
16 costs of transporting nonconforming goods after delivery
17 to the service and repair facility until return of the goods
18 to the buyer shall be at the manufacturer's expense.

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

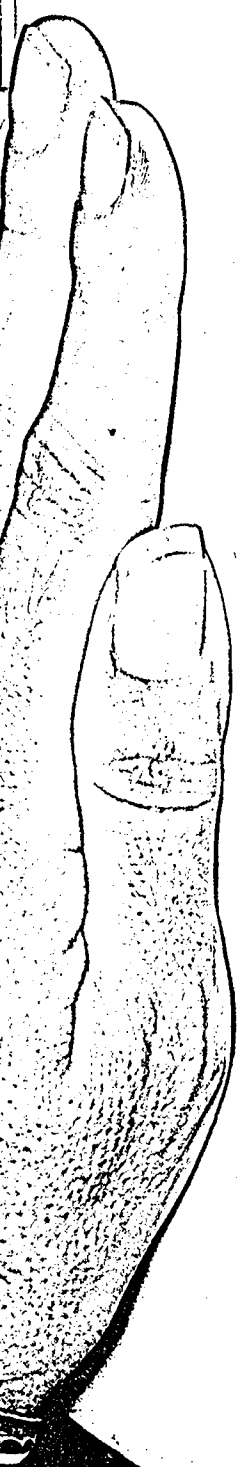
28 (2) If the manufacturer or its representative in this
29 state is unable to service or repair a new motor vehicle,
30 as that term is defined in paragraph (2) of subdivision (e)
31 of Section 1793.22, to conform to the applicable express
32 warranties after a reasonable number of attempts, the
33 manufacturer shall either promptly replace the new
34 motor vehicle in accordance with subparagraph (A) or
35 promptly make restitution to the buyer in accordance
36 with subparagraph (B). However, the buyer shall be free
37 to elect restitution in lieu of replacement, and in no event
38 shall the buyer be required by the manufacturer to
39 accept a replacement vehicle.

40 (A) In the case of replacement, the manufacturer shall

1 replace the buyer's vehicle with a new motor vehicle
2 substantially identical to the vehicle replaced. The
3 replacement vehicle shall be accompanied by all express
4 and implied warranties that normally accompany new
5 motor vehicles of that specific kind. The manufacturer
6 also shall pay for, or to, the buyer the amount of any sales
7 or use tax, license fees, registration fees, and other official
8 fees which the buyer is obligated to pay in connection
9 with the replacement, plus any incidental damages to
10 which the buyer is entitled under Section 1794, including,
11 but not limited to, reasonable repair, towing, and rental
12 car costs actually incurred by the buyer.

13 (B) In the case of restitution, the manufacturer shall
14 make restitution in an amount equal to the actual price
15 paid or payable by the buyer, including any charges for
16 transportation and manufacturer-installed options, but
17 excluding nonmanufacturer items installed by a dealer or
18 the buyer, and including any collateral charges such as
19 sales tax, license fees, registration fees, and other official
20 fees, plus any incidental damages to which the buyer is
21 entitled under Section 1794, including, but not limited to,
22 reasonable repair, towing, and rental car costs actually
23 incurred by the buyer.

24 (C) When the manufacturer replaces the new motor
25 vehicle pursuant to subparagraph (A), the buyer shall
26 only be liable to pay the manufacturer an amount directly
27 attributable to use by the buyer of the replaced vehicle
28 prior to the time the buyer first delivered the vehicle to
29 the manufacturer or distributor, or its authorized service
30 and repair facility for correction of the problem that gave
31 rise to the nonconformity. When restitution is made
32 pursuant to subparagraph (B), the amount to be paid by
33 the manufacturer to the buyer may be reduced by the
34 manufacturer by that amount directly attributable to use
35 by the buyer prior to the time the buyer first delivered
36 the vehicle to the manufacturer or distributor, or its
37 authorized service and repair facility for correction of the
38 problem that gave rise to the nonconformity. The
39 amount directly attributable to use by the buyer shall be
40 determined by multiplying the actual price of the new



1 motor vehicle paid or payable by the buyer, including
2 any charges for transportation and
3 manufacturer-installed options, by a fraction having as its
4 denominator 120,000 and having as its numerator the
5 number of miles traveled by the new motor vehicle prior
6 to the time the buyer first delivered the vehicle to the
7 manufacturer or distributor, or its authorized service and
8 repair facility for correction of the problem that gave rise
9 to the nonconformity. Nothing in this paragraph shall in
10 any way limit the rights or remedies available to the
11 buyer under any other law.

12 SEC. 7. Section 1793.22 is added to the Civil Code, to
13 read:

14 1793.22. (a) This section shall be known and may be
15 cited as the Tanner Consumer Protection Act.

16 (b) It shall be presumed that a reasonable number of
17 attempts have been made to conform a new motor
18 vehicle to the applicable express warranties if, within one
19 year from delivery to the buyer or 12,000 miles on the
20 odometer of the vehicle, whichever occurs first, either

21 (1) the same nonconformity has been subject to repair
22 four or more times by the manufacturer or its agents and
23 the buyer has at least once directly notified the
24 manufacturer of the need for the repair of the
25 nonconformity or (2) the vehicle is out of service by
26 reason of repair of nonconformities by the manufacturer
27 or its agents for a cumulative total of more than 30
28 calendar days since delivery of the vehicle to the buyer.
29 The 30-day limit shall be extended only if repairs cannot
30 be performed due to conditions beyond the control of the
31 manufacturer or its agents. The buyer shall be required
32 to directly notify the manufacturer pursuant to
33 paragraph (1) only if the manufacturer has clearly and
34 conspicuously disclosed to the buyer, with the warranty
35 or the owner's manual, the provisions of this section and
36 that of subdivision (d) of Section 1793.2, including the
37 requirement that the buyer must notify the
38 manufacturer directly pursuant to paragraph (1). This
39 presumption shall be a rebuttable presumption affecting
40 the burden of proof, and it may be asserted by the buyer

1 in any civil action, including an action in small claims
2 court, or other formal or informal proceeding.

3 (c) If a qualified third-party dispute resolution process
4 exists, and the buyer receives timely notification in
5 writing of the availability of that qualified third-party
6 dispute resolution process with a description of its
7 operation and effect, the presumption in subdivision (b)
8 may not be asserted by the buyer until after the buyer has
9 initially resorted to the qualified third-party dispute
10 resolution process as required in subdivision (d).
11 Notification of the availability of the qualified third-party
12 dispute resolution process is not timely if the buyer
13 suffers any prejudice resulting from any delay in giving
14 the notification. If a qualified third-party dispute
15 resolution process does not exist, or if the buyer is
16 dissatisfied with that third-party decision, or if the
17 manufacturer or its agent neglects to promptly fulfill the
18 terms of the qualified third-party dispute resolution
19 process decision after the decision is accepted by the
20 buyer, the buyer may assert the presumption provided in
21 subdivision (b) in an action to enforce the buyer's rights
22 under subdivision (d) of Section 1793.2. The findings and
23 decision of a qualified third-party dispute resolution
24 process shall be admissible in evidence in the action
25 without further foundation. Any period of limitation of
26 actions under any federal or California laws with respect
27 to any person shall be extended for a period equal to the
28 number of days between the date a complaint is filed
29 with a third-party dispute resolution process and the date
30 of its decision or the date before which the manufacturer
31 or its agent is required by the decision to fulfill its terms
32 if the decision is accepted by the buyer, whichever occurs
33 later.

34 (d) A qualified third-party dispute resolution process
35 shall be one that does all of the following:

36 (1) Complies with the minimum requirements of the
37 Federal Trade Commission for informal dispute
38 settlement procedures as set forth in Part 703 of Title 16
39 of the Code of Federal Regulations, as those regulations
40 read on January 1, 1987.

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

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

7 (4) Provides arbitrators who are assigned to decide
8 disputes with copies of, and instruction in, the provisions
9 of the Federal Trade Commission's regulations in Part
10 703 of Title 16 of the Code of Federal Regulations as those
11 regulations read on January 1, 1987, Division 2
12 (commencing with Section 2101) of the Commercial
13 Code, and this chapter.

14 (5) Requires the manufacturer, when the process
15 orders, under the terms of this chapter, either that the
16 nonconforming motor vehicle be replaced if the buyer
17 consents to this remedy or that restitution be made to the
18 buyer, to replace the motor vehicle or make restitution
19 in accordance with paragraph (2) of subdivision (d) of
20 Section 1793.2.

21 (6) Provides, at the request of the arbitrator or a
22 majority of the arbitration panel, for an inspection and
23 written report on the condition of a nonconforming
24 motor vehicle, at no cost to the buyer, by an automobile
25 expert who is independent of the manufacturer.

26 (7) Takes into account, in rendering decisions, all legal
27 and equitable factors, including, but not limited to, the
28 written warranty, the rights and remedies conferred in
29 regulations of the Federal Trade Commission contained
30 in Part 703 of Title 16 of the Code of Federal Regulations
31 as those regulations read on January 1, 1987, Division 2
32 (commencing with Section 2101) of the Commercial
33 Code, this chapter, and any other equitable
34 considerations appropriate in the circumstances. Nothing
35 in this chapter requires that, to be certified as a qualified
36 third-party dispute resolution process pursuant to this
37 section, decisions of the process must consider or provide
38 remedies in the form of awards of punitive damages or
39 multiple damages, under subdivision (c) of Section 1794,
40 or of attorneys' fees under subdivision (d) of Section 1794,

1 or of consequential damages other than as provided in
2 subdivisions (a) and (b) of Section 1794, including, but
3 not limited to, reasonable repair, towing, and rental car
4 costs actually incurred by the buyer.

5 (8) Requires that no arbitrator deciding a dispute may
6 be a party to the dispute and that no other person,
7 including an employee, agent, or dealer for the
8 manufacturer, may be allowed to participate
9 substantively in the merits of any dispute with the
10 arbitrator unless the buyer is allowed to participate also.
11 Nothing in this subdivision prohibits any member of an
12 arbitration board from deciding a dispute.

13 (9) Obtains and maintains certification by the
14 Department of Consumer Affairs pursuant to Chapter 9
15 (commencing with Section 472) of Division 1 of the
16 Business and Professions Code.

17 (e) For the purposes of subdivision (d) of Section
18 1793.2 and this section, the following terms have the
19 following meanings:

20 (1) "Nonconformity" means a nonconformity which
21 substantially impairs the use, value, or safety of the new
22 motor vehicle to the buyer or lessee.

23 (2) "New motor vehicle" means a new motor vehicle
24 which is used or bought for use primarily for personal,
25 family, or household purposes. "New motor vehicle"
26 includes the chassis, chassis cab, and that portion of a
27 motor home devoted to its propulsion, but does not
28 include any portion designed, used, or maintained
29 primarily for human habitation, a dealer-owned vehicle
30 and a "demonstrator" or other motor vehicle sold with a
31 manufacturer's new car warranty but does not include a
32 motorcycle or a motor vehicle which is not registered
33 under the Vehicle Code because it is to be operated or
34 used exclusively off the highways. A "demonstrator" is a
35 vehicle assigned by a dealer for the purpose of
36 demonstrating qualities and characteristics common to
37 vehicles of the same or similar model and type.

38 (3) "Motor home" means a vehicular unit built on, or
39 permanently attached to, a self-propelled motor vehicle
40 chassis, chassis cab, or van, which becomes an integral

1 part of the completed vehicle, designed for human
2 habitation for recreational or emergency occupancy.

3 (f) (1) Except as provided in paragraph (2), no
4 person shall sell, either at wholesale or retail, lease, or
5 transfer a motor vehicle transferred by a buyer or lessee
6 to a manufacturer pursuant to paragraph (2) of
7 subdivision (d) of Section 1793.2 or a similar statute of any
8 other state, unless the nature of the nonconformity
9 experienced by the original buyer or lessee is clearly and
10 conspicuously disclosed to the prospective buyer, lessee,
11 or transferee, the nonconformity is corrected, and the
12 manufacturer warrants to the new buyer, lessee, or
13 transferee in writing for a period of one year that the
14 motor vehicle is free of that nonconformity.

15 (2) Except for the requirement that the nature of the
16 nonconformity be disclosed to the transferee, paragraph
17 (1) does not apply to the transfer of a motor vehicle to
18 an educational institution if the purpose of the transfer is
19 to make the motor vehicle available for use in automotive
20 repair courses.

21 SEC. 8. Section 1793.22 of the Civil Code, as added by
22 Assembly Bill No. 3374, is amended to read:

23 1793.22. (a) This section shall be known and may be
24 cited as the Tanner Consumer Protection Act.

25 (b) It shall be presumed that a reasonable number of
26 attempts have been made to conform a new motor
27 vehicle to the applicable express warranties if, within one
28 year from delivery to the buyer or 12,000 miles on the
29 odometer of the vehicle, whichever occurs first, either
30 (1) the same nonconformity has been subject to repair
31 four or more times by the manufacturer or its agents and
32 the buyer has at least once directly notified the
33 manufacturer of the need for the repair of the
34 nonconformity or (2) the vehicle is out of service by
35 reason of repair of nonconformities by the manufacturer
36 or its agents for a cumulative total of more than 30
37 calendar days since delivery of the vehicle to the buyer.
38 The 30-day limit shall be extended only if repairs cannot
39 be performed due to conditions beyond the control of the
40 manufacturer or its agents. The buyer shall be required

1 to directly notify the manufacturer pursuant to
2 paragraph (1) only if the manufacturer has clearly and
3 conspicuously disclosed to the buyer, with the warranty
4 or the owner's manual, the provisions of this section and
5 that of subdivision (d) of Section 1793.2, including the
6 requirement that the buyer must notify the
7 manufacturer directly pursuant to paragraph (1). This
8 presumption shall be a rebuttable presumption affecting
9 the burden of proof, and it may be asserted by the buyer
10 in any civil action, including an action in small claims
11 court, or other formal or informal proceeding.

12 (c) If a qualified third-party dispute resolution process
13 exists, and the buyer receives timely notification in
14 writing of the availability of that qualified third-party
15 dispute resolution process with a description of its
16 operation and effect, the presumption in subdivision (b)
17 may not be asserted by the buyer until after the buyer has
18 initially resorted to the qualified third-party dispute
19 resolution process as required in subdivision (d).
20 Notification of the availability of the qualified third-party
21 dispute resolution process is not timely if the buyer
22 suffers any prejudice resulting from any delay in giving
23 the notification. If a qualified third-party dispute
24 resolution process does not exist, or if the buyer is
25 dissatisfied with that third-party decision, or if the
26 manufacturer or its agent neglects to promptly fulfill the
27 terms of the qualified third-party dispute resolution
28 process decision after the decision is accepted by the
29 buyer, the buyer may assert the presumption provided in
30 subdivision (b) in an action to enforce the buyer's rights
31 under subdivision (d) of Section 1793.2. The findings and
32 decision of a qualified third-party dispute resolution
33 process shall be admissible in evidence in the action
34 without further foundation. Any period of limitation of
35 actions under any federal or California laws with respect
36 to any person shall be extended for a period equal to the
37 number of days between the date a complaint is filed
38 with a third-party dispute resolution process and the date
39 of its decision or the date before which the manufacturer
40 or its agent is required by the decision to fulfill its terms

1 if the decision is accepted by the buyer, whichever occurs
2 later.

3 (d) A qualified third-party dispute resolution process
4 shall be one that does all of the following:

5 (1) Complies with the minimum requirements of the
6 Federal Trade Commission for informal dispute
7 settlement procedures as set forth in Part 703 of Title 16
8 of the Code of Federal Regulations, as those regulations
9 read on January 1, 1987.

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

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

16 (4) Provides arbitrators who are assigned to decide
17 disputes with copies of, and instruction in, the provisions
18 of the Federal Trade Commission's regulations in Part
19 703 of Title 16 of the Code of Federal Regulations as those
20 regulations read on January 1, 1987, Division 2
21 (commencing with Section 2101) of the Commercial
22 Code, and this chapter.

23 (5) Requires the manufacturer, when the process
24 orders, under the terms of this chapter, either that the
25 nonconforming motor vehicle be replaced if the buyer
26 consents to this remedy or that restitution be made to the
27 buyer, to replace the motor vehicle or make restitution
28 in accordance with paragraph (2) of subdivision (d) of
29 Section 1793.2.

30 (6) Provides, at the request of the arbitrator or a
31 majority of the arbitration panel, for an inspection and
32 written report on the condition of a nonconforming
33 motor vehicle, at no cost to the buyer, by an automobile
34 expert who is independent of the manufacturer.

35 (7) Takes into account, in rendering decisions, all legal
36 and equitable factors, including, but not limited to, the
37 written warranty, the rights and remedies conferred in
38 regulations of the Federal Trade Commission contained
39 in Part 703 of Title 16 of the Code of Federal Regulations
40 as those regulations read on January 1, 1987, Division 2

1 (commencing with Section 2101) of the Commercial
2 Code, this chapter, and any other equitable
3 considerations appropriate in the circumstances. Nothing
4 in this chapter requires that, to be certified as a qualified
5 third-party dispute resolution process pursuant to this
6 section, decisions of the process must consider or provide
7 remedies in the form of awards of punitive damages or
8 multiple damages, under subdivision (c) of Section 1794,
9 or of attorneys' fees under subdivision (d) of Section 1794,
10 or of consequential damages other than as provided in
11 subdivisions (a) and (b) of Section 1794, including, but
12 not limited to, reasonable repair, towing, and rental car
13 costs actually incurred by the buyer.

14 (8) Requires that no arbitrator deciding a dispute may
15 be a party to the dispute and that no other person,
16 including an employee, agent, or dealer for the
17 manufacturer, may be allowed to participate
18 substantively in the merits of any dispute with the
19 arbitrator unless the buyer is allowed to participate also.
20 Nothing in this subdivision prohibits any member of an
21 arbitration board from deciding a dispute.

22 (9) Obtains and maintains certification by the
23 Department of Consumer Affairs pursuant to Chapter 9
24 (commencing with Section 472) of Division 1 of the
25 Business and Professions Code.

26 (e) For the purposes of subdivision (d) of Section
27 1793.2 and this section, the following terms have the
28 following meanings:

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

32 (2) "New motor vehicle" means a new motor vehicle
33 which is used or bought for use primarily for personal,
34 family, or household purposes. "New motor vehicle"
35 includes the chassis, chassis cab, and that portion of a
36 motor home devoted to its propulsion, but does not
37 include any portion designed, used, or maintained
38 primarily for human habitation, a dealer-owned vehicle
39 and a "demonstrator" or other motor vehicle sold with a
40 manufacturer's new car warranty but does not include a

1 motorcycle or a motor vehicle which is not registered
2 under the Vehicle Code because it is to be operated or
3 used exclusively off the highways. A "demonstrator" is a
4 vehicle assigned by a dealer for the purpose of
5 demonstrating qualities and characteristics common to
6 vehicles of the same or similar model and type.

7 (3) "Motor home" means a vehicular unit built on, or
8 permanently attached to, a self-propelled motor vehicle
9 chassis, chassis cab, or van, which becomes an integral
10 part of the completed vehicle, designed for human
11 habitation for recreational or emergency occupancy.

12 (f) (1) Except as provided in paragraph (2), no
13 person shall sell, either at wholesale or retail, lease, or
14 transfer a motor vehicle transferred by a buyer or lessee
15 to a manufacturer pursuant to paragraph (2) of
16 subdivision (d) of Section 1793.2 or a similar statute of any
17 other state, unless the nature of the nonconformity
18 experienced by the original buyer or lessee is clearly and
19 conspicuously disclosed to the prospective buyer, lessee,
20 or transferee, the nonconformity is corrected, and the
21 manufacturer warrants to the new buyer, lessee, or
22 transferee in writing for a period of one year that the
23 motor vehicle is free of that nonconformity.

24 (2) Except for the requirement that the nature of the
25 nonconformity be disclosed to the transferee, paragraph
26 (1) does not apply to the transfer of a motor vehicle to
27 an educational institution if the purpose of the transfer is
28 to make the motor vehicle available for use in automotive
29 repair courses.

30 SEC. 9. Section 1794 of the Civil Code is amended to
31 read:

32 1794. (a) Any buyer of consumer goods who is
33 damaged by a failure to comply with any obligation
34 under this chapter or under an implied or express
35 warranty or service contract may bring an action for the
36 recovery of damages and other legal and equitable relief.

37 (b) The measure of the buyer's damages in an action
38 under this section shall include the rights of replacement
39 or reimbursement as set forth in subdivision (d) of
40 Section 1793.2, and the following:

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

5 (2) Where the buyer has accepted the goods, Sections
6 2714 and 2715 of the Commercial Code shall apply, and
7 the measure of damages shall include the cost of repairs
8 necessary to make the goods conform.

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

17 (d) If the buyer prevails in an action under this
18 section, the buyer shall be allowed by the court to recover
19 as part of the judgment a sum equal to the aggregate
20 amount of costs and expenses, including attorney's fees
21 based on actual time expended, determined by the court
22 to have been reasonably incurred by the buyer in
23 connection with the commencement and prosecution of
24 such action.

25 (e) (1) Except as otherwise provided in this
26 subdivision, if the buyer establishes a violation of
27 paragraph (2) of subdivision (d) of Section 1793.2, the
28 buyer shall recover damages and reasonable attorney's
29 fees and costs, and may recover a civil penalty of up to
30 two times the amount of damages.

31 (2) If the manufacturer maintains a qualified
32 third-party dispute resolution process which substantially
33 complies with Section 1793.22, the manufacturer shall not
34 be liable for any civil penalty pursuant to this subdivision.

35 (3) After the occurrence of the events giving rise to
36 the presumption established in subdivision (b) of Section
37 1793.22, the buyer may serve upon the manufacturer a
38 written notice requesting that the manufacturer comply
39 with paragraph (2) of subdivision (d) of Section 1793.2.
40 If the buyer fails to serve the notice, the manufacturer

1 shall not be liable for a civil penalty pursuant to this
2 subdivision.

3 (4) If the buyer serves the notice described in
4 paragraph (3) and the manufacturer complies with
5 paragraph (2) of subdivision (d) of Section 1793.2 within
6 30 days of the service of that notice, the manufacturer
7 shall not be liable for a civil penalty pursuant to this
8 subdivision.

9 (5) If the buyer recovers a civil penalty under
10 subdivision (c), the buyer may not also recover a civil
11 penalty under this subdivision for the same violation.

12 SEC. 10. Section 1795.6 of the Civil Code is amended
13 to read:

14 1795.6. (a) Every warranty period relating to an
15 implied or express warranty accompanying a sale or
16 consignment for sale of consumer goods selling for fifty
17 dollars (\$50) or more shall automatically be tolled for the
18 period from the date upon which the buyer either (1)
19 delivers nonconforming goods to the manufacturer or
20 seller for warranty repairs or service or (2), pursuant to
21 subdivision (c) of Section 1793.2 or Section 1793.22,
22 notifies the manufacturer or seller of the nonconformity
23 of the goods up to, and including, the date upon which
24 (1) the repaired or serviced goods are delivered to the
25 buyer, (2) the buyer is notified the goods are repaired or
26 serviced and are available for the buyer's possession or
27 (3) the buyer is notified that repairs or service is
28 completed, if repairs or service is made at the buyer's
29 residence.

30 (b) Notwithstanding the date or conditions set for the
31 expiration of the warranty period, such warranty period
32 shall not be deemed expired if either or both of the
33 following situations occur: (1) after the buyer has
34 satisfied the requirements of subdivision (a), the
35 warranty repairs or service has not been performed due
36 to delays caused by circumstances beyond the control of
37 the buyer or (2) the warranty repairs or service
38 performed upon the nonconforming goods did not
39 remedy the nonconformity for which such repairs or
40 service was performed and the buyer notified the

1 manufacturer or seller of this failure within 60 days after
2 the repairs or service was completed. When the warranty
3 repairs or service has been performed so as to remedy the
4 nonconformity, the warranty period shall expire in
5 accordance with its terms, including any extension to the
6 warranty period for warranty repairs or service.

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

9 (d) Every manufacturer or seller of consumer goods
10 selling for fifty dollars (\$50) or more shall provide a
11 receipt to the buyer showing the date of purchase. Every
12 manufacturer or seller performing warranty repairs or
13 service on the goods shall provide to the buyer a work
14 order or receipt with the date of return and either the
15 date the buyer was notified that the goods were repaired
16 or serviced or, where applicable, the date the goods were
17 shipped or delivered to the buyer.

18 SEC. 11. Section 1795.8 of the Civil Code is amended
19 to read:

20 1795.8. (a) The Legislature finds and declares that
21 the expansion of state warranty laws covering new and
22 used cars has given important and valuable protection to
23 consumers; that in states without this valuable warranty
24 protection used and irreparable motor vehicles are
25 inundating the marketplace; that other states have
26 addressed this problem by requiring notices on the titles
27 of these vehicles warning consumers that the motor
28 vehicles were repurchased by a dealer or manufacturer
29 because either the vehicle could not be repaired in a
30 reasonable length of time or the dealer or manufacturer
31 was not willing to repair the vehicle; that these notices
32 serve the interests of consumers who have a right to
33 information relevant to their buying decisions; and that
34 the disappearance of these notices upon the transfer of
35 title from another state to this state encourages the
36 transport of "lemons" to this state for sale to the drivers
37 of this state. Therefore, the Legislature hereby enacts the
38 Automotive Consumer Notification Act.

39 (b) For purposes of this section, "dealer" means any
40 person engaged in the business of selling, offering for sale,

1 or negotiating the retail sale of used motor vehicles or
2 selling motor vehicles as a broker or agent for another,
3 including the officers, agents, and employees of the
4 person and any combination or association of dealers.
5 "Dealer" does not include a bank or other financial
6 institution, or the state, its agencies, bureaus, boards,
7 commissions, authorities, or any of its political
8 subdivisions. A person shall be deemed to be engaged in
9 the business of selling used motor vehicles if the person
10 has sold more than four used motor vehicles in the
11 preceding 12 months.

12 (c) Any person, including any dealer or manufacturer,
13 selling a motor vehicle in this state that is known or
14 should be known to have been required by law to be
15 replaced or required by law to be accepted for restitution
16 by a manufacturer due to the inability of the
17 manufacturer to conform the vehicle to applicable
18 warranties pursuant to subdivision (d) of Section 1793.2
19 or that is known or should be known to have been
20 required by law to be replaced or required by law to be
21 accepted for restitution by a dealer or manufacturer due
22 to the inability of the dealer or manufacturer to conform
23 the vehicle to warranties required by any other
24 applicable law of this state, any other state, or federal law
25 shall disclose that fact to the buyer in writing prior to the
26 purchase and a dealer or manufacturer shall include as
27 part of the titling documents of the vehicle the following
28 disclosure statement set forth as a separate document and
29 signed by the buyer:

30 "THIS MOTOR VEHICLE HAS BEEN RETURNED
31 TO THE DEALER OR MANUFACTURER DUE TO A
32 DEFECT IN THE VEHICLE PURSUANT TO
33 CONSUMER WARRANTY LAWS."

34 (d) The disclosure requirement in subdivision (c) is
35 cumulative with all other consumer notice requirements,
36 and does not relieve any person, including any dealer or
37 manufacturer, from complying with any other applicable
38 law, including any requirement of subdivision (f) of
39 Section 1793.22 or comparable automobile warranty laws
40 in other states.

1 SEC. 12. *Notwithstanding Items 2660-001-853 and*
2 *2660-101-853 of Section 2.00 of the Budget Act of 1992, one*
3 *hundred fifty thousand dollars (\$150,000) appropriated*
4 *from the Petroleum Violation Escrow Account by Proviso*
5 *2 of Item 2660-001-853 is hereby transferred to Item*
6 *2660-101-853 and appropriated for the Bay Area*
7 *Telecommuting Development Program.*

8 SEC. 13. Section 8 makes technical corrections to
9 Section 1793.22 of the Civil Code, as added by AB 3374.
10 It shall become operative only if AB 3374 is enacted and
11 adds Section 1793.22 to the Civil Code and this bill is
12 enacted after AB 3374, in which case Section 7 shall not
13 become operative.

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Volume 3

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1992

Constitution of 1879 as Amended

**Measures Submitted to Vote of Electors,
Primary Election, June 2, 1992
and General Election, November 3, 1992**

**General Laws, Amendments to the Codes, Resolutions,
and Constitutional Amendments passed by the
California Legislature**

**1991-92 Regular Session
1991-92 First Extraordinary Session
1991-92 Second Extraordinary Session**



Compiled by
BION M. GREGORY
Legislative Counsel

CHAPTER 1232

An act to amend Sections 472, 472.1, 472.2, 472.3, and 472.4 of the Business and Professions Code, and to amend Sections 1793.2, 1794, 1795.6, and 1795.8 of, and to add Section 1793.22 to, the Civil Code, and to supplement Items 2660-001-853 and 2660-101-853 of Section 2.00 of the Budget Act of 1992, relating to transportation, and making an appropriation therefor.

[Approved by Governor September 29, 1992. Filed with
Secretary of State September 30, 1992]

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

SECTION 1. Section 472 of the Business and Professions Code is amended to read:

472. Unless the context requires otherwise, the following definitions govern the construction of this chapter:

(a) "New motor vehicle" means a new motor vehicle as defined in paragraph (2) of subdivision (e) of Section 1793.22 of the Civil Code.

(b) "Manufacturer" means a new motor vehicle manufacturer, manufacturer branch, distributor, or distributor branch required to be licensed pursuant to Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 of the Vehicle Code.

(c) "Qualified third party dispute resolution process" means a third party dispute resolution process which operates in compliance with subdivision (d) of Section 1793.22 of the Civil Code and this chapter and which has been certified by the department pursuant to this chapter.

SEC. 2. Section 472.1 of the Business and Professions Code is amended to read:

472.1. The department shall establish a program for certifying each third-party dispute resolution process used for the arbitration of disputes pursuant to subdivision (c) of Section 1793.22 of the Civil Code. In establishing the program, the department shall do all of the following:

(a) Prescribe and provide forms to be used to apply for certification under this chapter.

(b) Establish a set of minimum standards which shall be used to determine whether a third-party dispute resolution process is in substantial compliance with subdivision (d) of Section 1793.22 of the Civil Code and this chapter.

(c) Prescribe the information which each manufacturer, or other entity, that operates a third-party dispute resolution process shall provide the department in the application for certification. In prescribing the information to accompany the application for certification, the department shall require the manufacturer, or other entity, to provide only that information which the department

finds is reasonably necessary to enable the department to determine whether the third-party dispute resolution process is in substantial compliance with subdivision (d) of Section 1793.22 of the Civil Code and this chapter.

(d) Prescribe the information that each qualified third-party dispute resolution process shall provide the department, and the time intervals at which the information shall be required, to enable the department to determine whether the qualified third-party dispute resolution process continues to operate in substantial compliance with subdivision (d) of Section 1793.22 of the Civil Code and this chapter.

SEC. 3. Section 472.2 of the Business and Professions Code is amended to read:

472.2. (a) Each manufacturer may establish, or otherwise make available to buyers or lessees of new motor vehicles, a qualified third-party dispute resolution process for the resolution of disputes pursuant to subdivision (c) of Section 1793.22 of the Civil Code. A manufacturer that itself operates the third-party dispute resolution process shall apply to the department for certification of that process. If the manufacturer makes the third-party dispute resolution process available to buyers or lessees of new motor vehicles through contract or other arrangement with another entity, that entity shall apply to the department for certification. An entity that operates a third-party dispute resolution process for more than one manufacturer shall make a separate application for certification for each manufacturer that uses that entity's third-party dispute resolution process. The application for certification shall be accompanied by the information prescribed by the department.

(b) The department shall review the application and accompanying information and, after conducting an onsite inspection, shall determine whether the third-party dispute resolution process is in substantial compliance with subdivision (d) of Section 1793.22 of the Civil Code and this chapter. If the department determines that the process is in substantial compliance, the department shall certify the process. If the department determines that the process is not in substantial compliance, the department shall deny certification and shall state, in writing, the reasons for denial and the modifications in the operation of the process that are required in order for the process to be certified.

(c) The department shall make a final determination whether to certify a third-party dispute resolution process or to deny certification not later than 90 calendar days following the date the department accepts the application for certification as complete.

SEC. 4. Section 472.3 of the Business and Professions Code is amended to read:

472.3. (a) The department, in accordance with the time intervals prescribed pursuant to subdivision (d) of Section 472.1, but at least once annually, shall review the operation and performance of each qualified third-party dispute resolution process and

determine, using the information provided the department as prescribed pursuant to subdivision (d) of Section 472.1 and the monitoring and inspection information described in subdivision (c) of Section 472.4, whether the process is operating in substantial compliance with subdivision (d) of Section 1793.22 of the Civil Code and this chapter. If the department determines that the process is in substantial compliance, the certification shall remain in effect.

(b) If the department determines that the process is not in substantial compliance with subdivision (d) of Section 1793.22 of the Civil Code or this chapter, the department shall issue a notice of decertification to the entity which operates the process and shall send a copy of that notice to any manufacturer affected by the decertification. The notice of decertification shall state the reasons for the issuance of the notice and prescribe the modifications in the operation of the process that are required in order for the process to retain its certification.

(c) A notice of decertification shall take effect 180 calendar days following the date the notice is served on the manufacturer, or other entity, which uses the process that the department has determined is not in substantial compliance with subdivision (d) of Section 1793.22 of the Civil Code or this chapter. The department shall withdraw the notice of decertification prior to its effective date if the department determines, after a public hearing, that the manufacturer, or other entity, which uses the process has made the modifications in the operation of the process required in the notice of decertification and is in substantial compliance with subdivision (d) of Section 1793.22 of the Civil Code and this chapter.

SEC. 5. Section 472.4 of the Business and Professions Code is amended to read:

472.4. In addition to any other requirements of this chapter, the department shall do all of the following:

(a) Establish procedures to assist owners or lessees of new motor vehicles who have complaints regarding the operation of a qualified third-party dispute resolution process.

(b) Establish methods for measuring customer satisfaction and to identify violations of this chapter, which shall include an annual random postcard or telephone survey by the department of the customers of each qualified third-party dispute resolution process.

(c) Monitor and inspect, on a regular basis, qualified third-party dispute resolution processes to determine whether they continue to meet the standards for certification. Monitoring and inspection shall include, but not be limited to, all of the following:

(1) Onsite inspections of each qualified third-party dispute resolution process not less frequently than twice annually.

(2) Investigation of complaints from consumers regarding the operation of qualified third-party dispute resolution processes and analyses of representative samples of complaints against each process.

(3) Analyses of the annual surveys required by subdivision (b).

(d) Notify the Department of Motor Vehicles of the failure of a manufacturer to honor a decision of a qualified third-party dispute resolution process to enable the Department of Motor Vehicles to take appropriate enforcement action against the manufacturer pursuant to Section 11705.4 of the Vehicle Code.

(e) Submit a biennial report to the Legislature evaluating the effectiveness of this chapter, make available to the public summaries of the statistics and other information supplied by each qualified third-party dispute resolution process, and publish educational materials regarding the purposes of this chapter.

(f) Adopt regulations as necessary and appropriate to implement this chapter and subdivision (d) of Section 1793.22 of the Civil Code.

SEC. 6. 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) (A) 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 those 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 the warranties.

(B) As a means of complying with 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 those contracts shall be in conformity with the requirements of subdivision (c) of Section 1793.3. The rates established pursuant to subdivision (c) of Section 1793.3, between the manufacturer and the independent service and repair facility, shall not preclude a good faith discount which is reasonably related to reduced credit and general overhead cost factors arising from the manufacturer's payment of warranty charges direct to the independent service and repair facility. The warranty service contracts authorized by this paragraph shall not be executed to cover a period of time in excess of one year, and may be renewed only by a separate, new contract or letter of agreement between the manufacturer and the independent service and repair facility.

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

(3) Make available to authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period.

(b) Where those service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not conform with the applicable express warranties, service and repair shall be commenced within a reasonable time by the manufacturer or its representative in this state. Unless the buyer

agrees in writing to the contrary, the goods shall be serviced or repaired so as to conform to the applicable warranties within 30 days. Delay caused by conditions beyond the control of the manufacturer or his representatives shall serve to extend this 30-day requirement. Where delay arises, conforming goods shall be tendered as soon as possible following termination of the condition giving rise to the delay.

(c) The buyer shall deliver nonconforming goods to the manufacturer's service and repair facility within this state, unless, due to reasons of size and weight, or method of attachment, or method of installation, or nature of the nonconformity, delivery cannot reasonably be accomplished. If the buyer cannot return the nonconforming goods for any of these reasons, he or she shall notify the manufacturer or its nearest service and repair facility within the state. Written notice of nonconformity to the manufacturer or its service and repair facility shall constitute return of the goods for purposes of this section. Upon receipt of that notice of nonconformity, the manufacturer shall, at its option, service or repair the goods at the buyer's residence, or pick up the goods for service and repair, or arrange for transporting the goods to its service and repair facility. All reasonable costs of transporting the goods when a buyer cannot return them for any of the above reasons 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), 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.

(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 paragraph (2) of subdivision (e) of Section 1793.22, to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle in accordance with subparagraph (A) or promptly make restitution to the buyer in accordance with subparagraph (B). However, the buyer shall be free to elect restitution in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle.

(A) In the case of replacement, the manufacturer shall replace the buyer's vehicle with a new motor vehicle substantially identical to 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 or use tax, license fees, registration fees, and other official fees which the buyer is obligated to pay in connection with the replacement, 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.

(B) In the case of restitution, the manufacturer shall make restitution in an amount equal to the actual price paid or payable by the buyer, including any charges for transportation and manufacturer-installed options, but excluding nonmanufacturer items installed by a dealer or the buyer, and including any collateral charges such as sales tax, license fees, registration fees, and other official fees, 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.

(C) When the manufacturer replaces the new motor vehicle pursuant to subparagraph (A), the buyer shall only be liable to pay the manufacturer an amount directly attributable to use by the buyer of the replaced vehicle prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. When restitution is made pursuant to subparagraph (B), the amount to be paid by the manufacturer to the buyer may be reduced by the manufacturer by that amount directly attributable to use by the buyer prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. The amount directly attributable to use by the buyer shall be determined by multiplying the actual price of the new motor vehicle paid or payable by the buyer, including any charges for transportation and manufacturer-installed options, by a fraction having as its denominator 120,000 and having as its numerator the number of miles traveled by the new motor vehicle prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. Nothing in this paragraph shall in any way limit the rights or remedies available to the buyer under any other law.

SEC. 7. Section 1793.22 is added to the Civil Code, to read:

1793.22. (a) This section shall be known and may be cited as the Tanner Consumer Protection Act.

(b) It shall be presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within one year from delivery to the buyer or 12,000 miles on the odometer of the vehicle, whichever occurs first, either (1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for the repair of the nonconformity or (2) the vehicle is out of service by

reason of repair of nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery of the vehicle to the buyer. The 30-day limit shall be extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer or its agents. The buyer shall be required to directly notify the manufacturer pursuant to paragraph (1) only if the manufacturer has clearly and conspicuously disclosed to the buyer, with the warranty or the owner's manual, the provisions of this section and that of subdivision (d) of Section 1793.2, including the requirement that the buyer must notify the manufacturer directly pursuant to paragraph (1). This presumption shall be a rebuttable presumption affecting the burden of proof, and it may be asserted by the buyer in any civil action, including an action in small claims court, or other formal or informal proceeding.

(c) If a qualified third-party dispute resolution process exists, and the buyer receives timely notification in writing of the availability of that qualified third-party dispute resolution process with a description of its operation and effect, the presumption in subdivision (b) may not be asserted by the buyer until after the buyer has initially resorted to the qualified third-party dispute resolution process as required in subdivision (d). Notification of the availability of the qualified third-party dispute resolution 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 that third-party decision, or if the manufacturer or its agent neglects to promptly fulfill the terms of the qualified third-party dispute resolution process decision after the decision is accepted by the buyer, the buyer may assert the presumption provided in subdivision (b) in an action to enforce the buyer's rights under subdivision (d) of Section 1793.2. The findings and decision of a qualified third-party dispute resolution process 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 if the decision is accepted by the buyer, whichever occurs later.

(d) A qualified third-party dispute resolution process shall be one that does all of the following:

(1) Complies with the minimum requirements of the Federal Trade Commission for informal dispute settlement procedures as set forth in Part 703 of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1987.

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

(3) Prescribes a reasonable time, not to exceed 30 days after the

decision is accepted by the buyer, within which the manufacturer or its agent must fulfill the terms of its decisions.

(4) Provides arbitrators who are assigned to decide disputes with copies of, and instruction in, the provisions of the Federal Trade Commission's regulations in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1, 1987, Division 2 (commencing with Section 2101) of the Commercial Code, and this chapter.

(5) Requires the manufacturer, when the process orders, under the terms of this chapter, either that the nonconforming motor vehicle be replaced if the buyer consents to this remedy or that restitution be made to the buyer, to replace the motor vehicle or make restitution in accordance with paragraph (2) of subdivision (d) of Section 1793.2.

(6) Provides, at the request of the arbitrator or a majority of the arbitration panel, for an inspection and written report on the condition of a nonconforming motor vehicle, at no cost to the buyer, by an automobile expert who is independent of the manufacturer.

(7) Takes into account, in rendering decisions, all legal and equitable factors, including, but not limited to, the written warranty, the rights and remedies conferred in regulations of the Federal Trade Commission contained in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1, 1987, Division 2 (commencing with Section 2101) of the Commercial Code, this chapter, and any other equitable considerations appropriate in the circumstances. Nothing in this chapter requires that, to be certified as a qualified third-party dispute resolution process pursuant to this section, decisions of the process must consider or provide remedies in the form of awards of punitive damages or multiple damages, under subdivision (c) of Section 1794, or of attorneys' fees under subdivision (d) of Section 1794, or of consequential damages other than as provided in subdivisions (a) and (b) of Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

(8) Requires that no arbitrator deciding a dispute may be a party to the dispute and that no other person, including an employee, agent, or dealer for the manufacturer, may be allowed to participate substantively in the merits of any dispute with the arbitrator unless the buyer is allowed to participate also. Nothing in this subdivision prohibits any member of an arbitration board from deciding a dispute.

(9) Obtains and maintains certification by the Department of Consumer Affairs pursuant to Chapter 9 (commencing with Section 472) of Division 1 of the Business and Professions Code.

(e) For the purposes of subdivision (d) of Section 1793.2 and this section, the following terms have the following meanings:

(1) "Nonconformity" means a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle to the buyer or lessee.

(2) "New motor vehicle" means a new motor vehicle which is used or bought for use primarily for personal, family, or household purposes. "New motor vehicle" includes the chassis, chassis cab, and that portion of a motor home devoted to its propulsion, but does not include any portion designed, used, or maintained primarily for human habitation, a dealer-owned vehicle and a "demonstrator" or other motor vehicle sold with a manufacturer's new car warranty but does not include a motorcycle or a motor vehicle which is not registered under the Vehicle Code because it is to be operated or used exclusively off the highways. A "demonstrator" is a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type.

(3) "Motor home" means a vehicular unit built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab, or van, which becomes an integral part of the completed vehicle, designed for human habitation for recreational or emergency occupancy.

(f) (1) Except as provided in paragraph (2), no person shall sell, either at wholesale or retail, lease, or transfer a motor vehicle transferred by a buyer or lessee to a manufacturer pursuant to paragraph (2) of subdivision (d) of Section 1793.2 or a similar statute of any other state, unless the nature of the nonconformity experienced by the original buyer or lessee is clearly and conspicuously disclosed to the prospective buyer, lessee, or transferee, the nonconformity is corrected, and the manufacturer warrants to the new buyer, lessee, or transferee in writing for a period of one year that the motor vehicle is free of that nonconformity.

(2) Except for the requirement that the nature of the nonconformity be disclosed to the transferee, paragraph (1) does not apply to the transfer of a motor vehicle to an educational institution if the purpose of the transfer is to make the motor vehicle available for use in automotive repair courses.

SEC. 8. Section 1793.22 of the Civil Code, as added by Assembly Bill No. 3374, is amended to read:

1793.22. (a) This section shall be known and may be cited as the Tanner Consumer Protection Act.

(b) It shall be presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within one year from delivery to the buyer or 12,000 miles on the odometer of the vehicle, whichever occurs first, either (1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for the repair of the nonconformity or (2) the vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery of the vehicle to the buyer. The 30-day limit shall be extended only

if repairs cannot be performed due to conditions beyond the control of the manufacturer or its agents. The buyer shall be required to directly notify the manufacturer pursuant to paragraph (1) only if the manufacturer has clearly and conspicuously disclosed to the buyer, with the warranty or the owner's manual, the provisions of this section and that of subdivision (d) of Section 1793.2, including the requirement that the buyer must notify the manufacturer directly pursuant to paragraph (1). This presumption shall be a rebuttable presumption affecting the burden of proof, and it may be asserted by the buyer in any civil action, including an action in small claims court, or other formal or informal proceeding.

(c) If a qualified third-party dispute resolution process exists, and the buyer receives timely notification in writing of the availability of that qualified third-party dispute resolution process with a description of its operation and effect, the presumption in subdivision (b) may not be asserted by the buyer until after the buyer has initially resorted to the qualified third-party dispute resolution process as required in subdivision (d). Notification of the availability of the qualified third-party dispute resolution 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 that third-party decision, or if the manufacturer or its agent neglects to promptly fulfill the terms of the qualified third-party dispute resolution process decision after the decision is accepted by the buyer, the buyer may assert the presumption provided in subdivision (b) in an action to enforce the buyer's rights under subdivision (d) of Section 1793.2. The findings and decision of a qualified third-party dispute resolution process 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 if the decision is accepted by the buyer, whichever occurs later.

(d) A qualified third-party dispute resolution process shall be one that does all of the following:

(1) Complies with the minimum requirements of the Federal Trade Commission for informal dispute settlement procedures as set forth in Part 703 of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1987.

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

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

(4) Provides arbitrators who are assigned to decide disputes with

copies of, and instruction in, the provisions of the Federal Trade Commission's regulations in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1, 1987, Division 2 (commencing with Section 2101) of the Commercial Code, and this chapter.

(5) Requires the manufacturer, when the process orders, under the terms of this chapter, either that the nonconforming motor vehicle be replaced if the buyer consents to this remedy or that restitution be made to the buyer, to replace the motor vehicle or make restitution in accordance with paragraph (2) of subdivision (d) of Section 1793.2.

(6) Provides, at the request of the arbitrator or a majority of the arbitration panel, for an inspection and written report on the condition of a nonconforming motor vehicle, at no cost to the buyer, by an automobile expert who is independent of the manufacturer.

(7) Takes into account, in rendering decisions, all legal and equitable factors, including, but not limited to, the written warranty, the rights and remedies conferred in regulations of the Federal Trade Commission contained in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1, 1987, Division 2 (commencing with Section 2101) of the Commercial Code, this chapter, and any other equitable considerations appropriate in the circumstances. Nothing in this chapter requires that, to be certified as a qualified third-party dispute resolution process pursuant to this section, decisions of the process must consider or provide remedies in the form of awards of punitive damages or multiple damages, under subdivision (c) of Section 1794, or of attorneys' fees under subdivision (d) of Section 1794, or of consequential damages other than as provided in subdivisions (a) and (b) of Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

(8) Requires that no arbitrator deciding a dispute may be a party to the dispute and that no other person, including an employee, agent, or dealer for the manufacturer, may be allowed to participate substantively in the merits of any dispute with the arbitrator unless the buyer is allowed to participate also. Nothing in this subdivision prohibits any member of an arbitration board from deciding a dispute.

(9) Obtains and maintains certification by the Department of Consumer Affairs pursuant to Chapter 9 (commencing with Section 472) of Division 1 of the Business and Professions Code.

(e) For the purposes of subdivision (d) of Section 1793.2 and this section, the following terms have the following meanings:

(1) "Nonconformity" means a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle to the buyer or lessee.

(2) "New motor vehicle" means a new motor vehicle which is used or bought for use primarily for personal, family, or household purposes. "New motor vehicle" includes the chassis, chassis cab, and

that portion of a motor home devoted to its propulsion, but does not include any portion designed, used, or maintained primarily for human habitation, a dealer-owned vehicle and a “demonstrator” or other motor vehicle sold with a manufacturer’s new car warranty but does not include a motorcycle or a motor vehicle which is not registered under the Vehicle Code because it is to be operated or used exclusively off the highways. A “demonstrator” is a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type.

(3) “Motor home” means a vehicular unit built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab, or van, which becomes an integral part of the completed vehicle, designed for human habitation for recreational or emergency occupancy.

(f) (1) Except as provided in paragraph (2), no person shall sell, either at wholesale or retail, lease, or transfer a motor vehicle transferred by a buyer or lessee to a manufacturer pursuant to paragraph (2) of subdivision (d) of Section 1793.2 or a similar statute of any other state, unless the nature of the nonconformity experienced by the original buyer or lessee is clearly and conspicuously disclosed to the prospective buyer, lessee, or transferee, the nonconformity is corrected, and the manufacturer warrants to the new buyer, lessee, or transferee in writing for a period of one year that the motor vehicle is free of that nonconformity.

(2) Except for the requirement that the nature of the nonconformity be disclosed to the transferee, paragraph (1) does not apply to the transfer of a motor vehicle to an educational institution if the purpose of the transfer is to make the motor vehicle available for use in automotive repair courses.

SEC. 9. Section 1794 of the Civil Code is amended to read:

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

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

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

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

(c) If the buyer establishes that the failure to comply was willful, the judgment may include, in addition to the amounts recovered under subdivision (a), a civil penalty which shall not exceed two

times the amount of actual damages. This subdivision shall not apply in any class action under Section 382 of the Code of Civil Procedure or under Section 1781, or with respect to a claim based solely on a breach of an implied warranty.

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

(e) (1) Except as otherwise provided in this subdivision, if the buyer establishes a violation of paragraph (2) of subdivision (d) of Section 1793.2, the buyer shall recover damages and reasonable attorney's fees and costs, and may recover a civil penalty of up to two times the amount of damages.

(2) If the manufacturer maintains a qualified third-party dispute resolution process which substantially complies with Section 1793.22, the manufacturer shall not be liable for any civil penalty pursuant to this subdivision.

(3) After the occurrence of the events giving rise to the presumption established in subdivision (b) of Section 1793.22, the buyer may serve upon the manufacturer a written notice requesting that the manufacturer comply with paragraph (2) of subdivision (d) of Section 1793.2. If the buyer fails to serve the notice, the manufacturer shall not be liable for a civil penalty pursuant to this subdivision.

(4) If the buyer serves the notice described in paragraph (3) and the manufacturer complies with paragraph (2) of subdivision (d) of Section 1793.2 within 30 days of the service of that notice, the manufacturer shall not be liable for a civil penalty pursuant to this subdivision.

(5) If the buyer recovers a civil penalty under subdivision (c), the buyer may not also recover a civil penalty under this subdivision for the same violation.

SEC. 10. Section 1795.6 of the Civil Code is amended to read:

1795.6. (a) Every warranty period relating to an implied or express warranty accompanying a sale or consignment for sale of consumer goods selling for fifty dollars (\$50) or more shall automatically be tolled for the period from the date upon which the buyer either (1) delivers nonconforming goods to the manufacturer or seller for warranty repairs or service or (2), pursuant to subdivision (c) of Section 1793.2 or Section 1793.22, notifies the manufacturer or seller of the nonconformity of the goods up to, and including, the date upon which (1) the repaired or serviced goods are delivered to the buyer, (2) the buyer is notified the goods are repaired or serviced and are available for the buyer's possession or (3) the buyer is notified that repairs or service is completed, if repairs or service is made at the buyer's residence.

(b) Notwithstanding the date or conditions set for the expiration

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

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

(d) Every manufacturer or seller of consumer goods selling for fifty dollars (\$50) or more shall provide a receipt to the buyer showing the date of purchase. Every manufacturer or seller performing warranty repairs or service on the goods shall provide to the buyer a work order or receipt with the date of return and either the date the buyer was notified that the goods were repaired or serviced or, where applicable, the date the goods were shipped or delivered to the buyer.

SEC. 11. Section 1795.8 of the Civil Code is amended to read:

1795.8. (a) The Legislature finds and declares that the expansion of state warranty laws covering new and used cars has given important and valuable protection to consumers; that in states without this valuable warranty protection used and irreparable motor vehicles are inundating the marketplace; that other states have addressed this problem by requiring notices on the titles of these vehicles warning consumers that the motor vehicles were repurchased by a dealer or manufacturer because either the vehicle could not be repaired in a reasonable length of time or the dealer or manufacturer was not willing to repair the vehicle; that these notices serve the interests of consumers who have a right to information relevant to their buying decisions; and that the disappearance of these notices upon the transfer of title from another state to this state encourages the transport of "lemons" to this state for sale to the drivers of this state. Therefore, the Legislature hereby enacts the Automotive Consumer Notification Act.

(b) For purposes of this section, "dealer" means any person engaged in the business of selling, offering for sale, or negotiating the retail sale of used motor vehicles or selling motor vehicles as a broker or agent for another, including the officers, agents, and employees of the person and any combination or association of dealers. "Dealer" does not include a bank or other financial institution, or the state, its agencies, bureaus, boards, commissions, authorities, or any of its political subdivisions. A person shall be deemed to be engaged in the business of selling used motor vehicles if the person has sold more

than four used motor vehicles in the preceding 12 months.

(c) Any person, including any dealer or manufacturer, selling a motor vehicle in this state that is known or should be known to have been required by law to be replaced or required by law to be accepted for restitution by a manufacturer due to the inability of the manufacturer to conform the vehicle to applicable warranties pursuant to subdivision (d) of Section 1793.2 or that is known or should be known to have been required by law to be replaced or required by law to be accepted for restitution by a dealer or manufacturer due to the inability of the dealer or manufacturer to conform the vehicle to warranties required by any other applicable law of this state, any other state, or federal law shall disclose that fact to the buyer in writing prior to the purchase and a dealer or manufacturer shall include as part of the titling documents of the vehicle the following disclosure statement set forth as a separate document and signed by the buyer:

"THIS MOTOR VEHICLE HAS BEEN RETURNED TO THE DEALER OR MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS."

(d) The disclosure requirement in subdivision (c) is cumulative with all other consumer notice requirements, and does not relieve any person, including any dealer or manufacturer, from complying with any other applicable law, including any requirement of subdivision (f) of Section 1793.22 or comparable automobile warranty laws in other states.

SEC. 12. Notwithstanding Items 2660-001-853 and 2660-101-853 of Section 2.00 of the Budget Act of 1992, one hundred fifty thousand dollars (\$150,000) appropriated from the Petroleum Violation Escrow Account by Proviso 2 of Item 2660-001-853 is hereby transferred to Item 2660-101-853 and appropriated for the Bay Area Telecommuting Development Program.

SEC. 13. Section 8 makes technical corrections to Section 1793.22 of the Civil Code, as added by AB 3374. It shall become operative only if AB 3374 is enacted and adds Section 1793.22 to the Civil Code and this bill is enacted after AB 3374, in which case Section 7 shall not become operative.

May 6, 1992

Honorable David Roberti, Chair
Senate Rules Committee
State Capitol, Room 400

Dear David:

I apologize because as a result of scheduling conflicts I am unable to personally appear in Committee this afternoon regarding my request for a waiver of Joint Rule 61 (b)(6) so that Senate Bill 1762 may be heard after the May 8 deadline.

As proposed to be amended, this bill is of great importance to the automobile industry, which - as you know - is being hit very hard by the current recession. An early resolution of conflicting code provisions in the area of consumer warranties would be of benefit to consumers as well as to the industry, which is a major employer in the state of California

I respectfully ask for your indulgence, as this bill would be heard less than one week after the deadline.

Cordially,

MILTON MARKS

May 4, 1992

Honorable Lucy Killea, Chair
Subcommittee on Bonded Indebtedness
and Methods of Financing
4062 State Capitol Building
Sacramento, California 95814

Dear Lucy:

The purpose of this letter is to request that Scott Keene be permitted to present my Senate Bill 1789 today in your committee.

Unfortunately, due to a scheduling conflict, I will not be able to personally attend the committee meeting.

Thank you for your favorable consideration of my request.

Cordially,

MILTON MARKS

MM:js

APR 5 - 1992

Allen's P.C.B. Inc.

ABC rules changes would needlessly hurt retailers

302 P.62
The Department of Alcoholic Beverage Control's laundry list of proposed changes in state regulations presents many concerns for members of the industry.

Of particular concern are the amendments to Rule 106, which would change the way retailers could promote their businesses and sell their products. Oral testimony was taken Feb. 19, with members of the California Retail Liquor Dealers Association among those participating. Written testimony must be submitted by April 20.

Rule 106-d would limit the value of consumer "gifts" that include references to alcohol beverages to \$1 per unit of distilled spirits and wine and 25 cents for beer. We argued that a simple calculation would more than a dollar.

Rule 106-f would severely limit a retailer's ability to host winemaker dinners or other events. Advertisement of promotion of such events would be limited to inside the licensed premises. CRLDA is proposing that "inside the licensed premises" include an in-house newsletter.

Representatives of the California Restaurant Association, in their testimony at the February 19th hearing, noted that if a rule is good for the overall economics of this industry and does not affect the public's welfare, then the ABC Department should be supportive of that rule. The department is taking the advice under consideration.

AS YOU ARE PROBABLY aware, the California Legislature is up and running. To date, the California Retail Liquor Dealers Association has identified over 95 bills that directly affect off-sale licensees. A few of the more important bills are:

Assembly Bill 2960, sponsored by Assemblyman Jim Costa, would allow any wholesaler of alcohol beverages to avoid

having to accept product returns or exchanges resulting from broken containers or spoiled product. All the wholesaler would need to do is provide a breakage and spoilage allowance to the retailer on the wholesaler's sales invoice.

The statutory breakage allowance would be ".001 percent of the purchase price." This translates to an allowance equal to one penny for every \$1,000 of product purchased. If certain statutory language appears on the invoice, the bill precludes a retailer from making any further claim for breakage or spoilage on both for the products or for the invoice, presumably even if the retailer purchases order contains contrary language.

BUSINESS WISE

Judy Ashley

Because use of the breakage and spoilage "allowance" language on invoices would be discretionary, those wholesalers who want to accept product returns or exchanges in accordance with Section 23104, in order to assure that spoiled products do not remain in the marketplace, may continue to do so. However, if a wholesaler elects to use the breakage allowance mechanism with any one of its customers, it must use it with all of its customers.

The bill does not provide distilleries, wineries, or breweries with the right to use the breakage allowance mechanism; and in the

event that a supplier distributes through a wholesaler who elects to use the breakage allowance language, such supplier may be specifically prohibited from contractually requiring the wholesaler to accept product returns or exchanges from retailers.

Assembly Bill 28X by Assemblyman Richard Katz has its primary support from the California law enforcement community. This bill would impose a 30 percent annual license fee surcharge without a sunset provision and without effective limitation of the funding to the ABC Department. It also requires the "unconditional" signing of ABC investigators who voluntarily participate in the program January 1, 1993. The ABC Department, as well as law enforcement and the retail association opposing the bill, the measure was defeated in the Assembly Ways and Means Committee, but is under consideration to re-hear the bill was granted.

Senate Bill 1617 by Sen. Mike Thompson would provide for an additional tied-house exemption allowing winegrowers who produce less than 100,000 gallons of wine per year to sell their wine in licensed restaurants owned or operated by the winegrowers and located anywhere in California.

Senate Bill 1762 by Sen. Milton Marks would impose a floor stocks tax and increase the state excise tax for fortified wines containing over 14 percent alcohol.

Assembly Bill 2400 sponsored by Assemblyman Steve Peace would cap all check cashing fees to 2 percent and limit the charge for federal, state, and local government checks to \$1. The California Retail Liquor Dealers Association, the California Check Cashers Association, and others are all opposed to the measure.

Assembly Bill 3335 by Assembly Member James Brulte proposes to amend the "Petition to Condition" license procedure to require an

administrative hearing whenever a license condition is imposed that does not relate to an alcohol beverage aspect of the licensee's business. The bill is being sponsored by coin-operated games marketers.

THE STATE COMPENSATION

Insurance Fund reports that there are over 200 pending pieces of legislation pertaining to workers' comp reform. CRLDA has been monitoring several bills dealing with stress claims, which seem to be on the rise, particularly in Southern California (attorneys have targeted TV advertising to collect on this profitable market).

Most major carriers now have a fraud hotline. Workers' comp fraud laws, which went into effect Jan. 1, make it a felony for anyone to knowingly make a false or fraudulent statement or to submit a false report or any other document for the purpose of obtaining or denying workers' comp benefits.

The law applies to everyone: doctors, lawyers, employees, and employers. The penalties are stiff: up to five years in state prison and/or up to a \$50,000 fine. If you are insured with the State Fund, you may want to call your local office and get their poster concerning workers' comp fraud to display where your employees can read it.

A reminder that effective Jan. 1 the law required that you give an injured employee an employee claim form within one working day of your date of knowledge of the injury. Store policy should dictate that any injury be reported to you within 12 hours of occurrence. You should also notify your carrier of all claims within one working day.

Judy Ashley is executive director of the California Retail Liquor Dealers Association. 1483

Jack I. Horton
Ann Mackey
Chief Deputies

James L. Ashford
John T. Studebaker
Jimmie Wing

David D. Alves
John A. Corzine
C. David Dickerson
Robert Cullen Duffy
Robert D. Gronke
James A. Marsala
Robert G. Miller
Verne L. Oliver
Tracy O. Powell II
Marguerite Roth
Michael H. Upson
Daniel A. Weitzman
Christopher Zirkle
Principal Deputies

State Capitol, Suite 3021
Sacramento, CA 95814-4996
(916) 445-3057
Telecopier: (916) 324-6311

Legislative Counsel of California

BION M. GREGORY

May 15, 1992

Gerald Ross Adams
Martin L. Anderson
Paul Antilla
Charles C. Asbill
Joe J. Ayala
Raneene P. Belisle
Lara K. Bierman
Diane F. Boyer-Vine
Ann M. Burastero
Eileen J. Buxton
Gwynnne L. Byrd
Emilia Cutrer
Ben E. Dale
Jeffrey A. DeLand
Clinton J. deWitt
Frances S. Dorbin
Maureen S. Dunn
Sharon R. Fisher
John Fossette
Harvey J. Foster
Clay Fuller
Patricia R. Gates
Debra Zidich Gibbons
Alvin D. Gress
Maria H. Hanke
Jana T. Harrington
Baldev S. Heir
David B. Judson

Michael R. Kelly
Michael J. Kersten
L. Douglas Kinney
S. Lynne Klein
Eve B. Krotinger
Aubrie LaBrie
Victoria K. Lewis
Diana G. Lim
Jennifer Loomis
Romulo I. Lopez
Kirk S. Louie
Francisco A. Martin
Peter Melnicoe
John A. Moger
Donna L. Neville
Sharon Reilly
Michael B. Salerno
Keith Schulz
William K. Stark
Ellen Sward
Mark Franklin Terry
Jeff Thom
Elizabeth M. Warf
Richard B. Weisberg
Thomas D. Whelan
Belinda Whitsett
Jack G. Zorman

Deputies

Honorable Milton Marks

S.B. 1762 — Conflict

The above measure, introduced by you, which is now set for hearing in the
Senate Judiciary Committee

appears to be in conflict with the following other measure(s):

A.B. 2678 - Tanner

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

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

Very truly yours,
BION M. GREGORY
LEGISLATIVE COUNSEL

By: Corrections Section
Ph. 5-0430

cc: Committee
named above
Each lead author
concerned

OFFICE OF LEGISLATIVE COUNSEL

November 18, 1992

Honorable Delaine Eastin

A.B. 118 — ConflictSupplemental

The above measure, introduced by you, which is now set for hearing in the
Senate Business and Professions Committee

appears to be in conflict with the following other measure(s):

A.B.	66(1x)	- Vasconcellos	S.B.	51	- Torres
A.B.	701	- No Author	S.B.	1500	- No Author
A.B.	892	- Tanner	S.B.	1720	- Rosenthal
A.B.	1077	- Bronzan(92:913)	S.B.	1762	- Marks(92:1232)
A.B.	2120	- Cortese	S.B.	1813	- Russell(92:1350)
		(92:196)	S.B.	2040	- Calderon
A.B.	2347	- Frazee (92:294)	(92:1135)		
A.B.	2353	- Areias	S.B.	2044	- Boatwright
A.B.	2392	- Moore(92:910)	(92:1135)		
A.B.	2473	- No Author			
A.B.	3745	- Speier(92:1059)			

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

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

Very truly yours,
BION M. GREGORY
LEGISLATIVE COUNSEL

By: Corrections Section
Ph. 5-0430

cc: Committee
named above
Each lead author
concerned

TRW Inc.

Executive Offices
One Space Park
Redondo Beach, CA 90278
213.812.4691

September 10, 1992

The Honorable Pete Wilson
Governor, State of California
The State Capitol
Sacramento, CA 95814

Subject: SB 1762 (Marks) -- Support

Dear Governor Wilson:

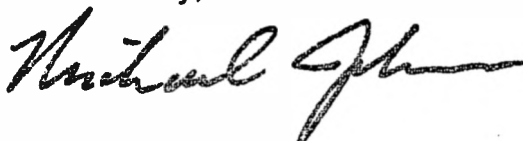
On behalf of TRW, I would like to urge you to sign SB 1762 (Marks), which was approved by the legislature this past session.

SB 1762, will make technical corrections to the current vehicle "lemon" law. The measure will allocate \$150,000 in State Petroleum Violations Escrow Account (PVEA) funds to help underwrite the Bay Area Telecommuting Development Program (BATDP). The BATDP is a partnership between the Federal Highway Administration, the Federal Transit Administration, the San Francisco Metropolitan Transportation Commission, Pacific Bell, and other public and private sector interests in the Bay Area. It is the most comprehensive telecommuting program ever undertaken, and it is expected to yield numerous results which will make it easier for employers to establish or participate in cost-effective telecommuting programs.

The BATDP has already received a Federal grant of \$337,000, and Pacific Bell has committed over \$500,000. These additional State funds will make it possible for the BATDP to explore additional issues, including the questions of whether telecommuting work centers can be established and operated without public subsidy.

For these reasons we urge your signature of SB 1762.

Sincerely,



Michael Jackson
Director, Government Affairs

cc: Senator Milton Marks

SENATE REVENUE & TAXATION COMMITTEE
Senator Leroy F. Greene, Chairman

SB 1762 - Marks
As introduced

Hearing: April 1, 1992

Fiscal: YES

SUBJECT: Alcoholic Beverage Taxes: Fortified wine tax increased
to 38 cents per gallon

DIGEST -- WHAT THE BILL DOES

EXISTING LAW imposes a tax on wine distributed for consumption in California at the following rates: 1 cent per gallon for dry wine (14% alcohol or less); 2 cents per gallon for sweet wine (more than 14% alcohol); 30 cents per gallon for sparkling wine. Proceeds from the tax are deposited in the Alcohol Beverage Control Fund

Last year's AB 30 (Murray) imposed a surtax on wine at a rate of 19 cents per gallon for dry wine and 18 cents per gallon for sweet wines (for a total of 20 cents for each type of wine), with the proceeds to be deposited in the General Fund.

THIS BILL would impose a tax on "fortified wine" of 38 cents per gallon (instead of the present "regular" tax of 2 cents). The total state tax on fortified wines would be 56 cents per gallon (38 cents for the regular tax and 18 cents for the AB 30 surtax). Fortified wine would be defined as still wine of more than 14% alcohol produced by the addition of wine spirits, brandy, or alcohol, excluding wine which is "both sealed and capped by cork enclosure and aged two or more years." The new fortified wine tax would be imposed beginning July 1, 1992.

A floor stocks tax would also be imposed on inventories of fortified wine in the hands of sellers at the time the tax is imposed.

FISCAL EFFECT:

Board of Equalization estimates that the additional revenue from the new tax would be \$18,933. This estimate is based on an estimate of 4,573,000 gallons of still wine over 14%, of which only 1% is estimated to be fortified wine. [Note that 1% of 4.5 million gallons is 45,000 of fortified wine -- staff believes that this is a very low estimate. If 20% of the over 14% wine is fortified wine, then the revenue estimate would be \$375,000.]

The board also estimates administrative costs at nearly \$200,000 annually, with an additional \$175,000 one-time cost for

administering the floor stocks tax. Note that if the Board estimates are correct, at best the additional revenue from the tax would barely offset the costs of administering the tax.

COMMENTS:

A. Purpose of the bill

The bill is intended to create a price discrimination against consumption of "skid row" wines. The idea is as old as the "sin tax" itself--if a product which society frowns on is taxed sufficiently, consumption is reduced, and the harm done by the product to the consumer is correspondingly lessened.

B. SB 1762 relies on regressivity for its effect

Generally, regressivity (where the tax is a higher percentage of income the lower the income) is a sign of poor tax policy. Alcoholic beverage taxes, which are levied at a flat rate per gallon regardless of price, are usually considered very regressive. But the tax proposed by this bill is additionally regressive since it is intentionally focused on the product typically consumed by poor people addicted to alcohol. (By the definition of "fortified wine," non-"screw-cap" wines consumed by the more well-to-do would continue to be taxed at only 20 cents per gallon.) Whether this "super-regressivity" is a bad thing, however, is a question of public policy. If poor, alcoholic individuals can be forced to consume less of the product because it is more expensive, then the bill achieves its intended result. (Of course, the market for these products is not strictly limited to poor alcoholics--individuals who consume the product in moderation are not at risk, but must pay the higher tax.)

C. BOE suggests technical amendment

The date for filing the floor stocks tax (page 3, line 36) presently reads "on or after July 31, 1992." The word "after" should be changed to "before."

Support and Opposition:

Opposition: California Wine Institute
Department of Finance

Consultant: Martin Helmke



AMENDMENTS TO SENATE BILL NO. 1762
AS AMENDED IN ASSEMBLY AUGUST 29, 1992

Amendment 1

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

, and to supplement Items 2660-001-853 and 2660-101-853 of
Section 2.00 of the Budget Act of 1992

Amendment 2

In line 5 of the title, strike out "vehicles"
and insert:

transportation, and making an appropriation therefor

Amendment 3

On page 27, line 27, after "SEC. 12." insert:

Notwithstanding Items 2660-001-853 and
2660-101-853 of Section 2.00 of the Budget Act of 1992,
one hundred fifty thousand dollars (\$150,000) appropriated
from the Petroleum Violation Escrow Account by Proviso 2
of Item 2660-001-853 is hereby transferred to Item
2660-101-853 and appropriated for the Bay Area
Telecommuting Development Program.

SEC. 13.

- 0 -

Revised - as amended 9228916

SENATE THIRD READING

SB 1762 (Marks)

SENATE VOTE: 36-0

ASSEMBLY ACTIONS:

COMMITTEE _____ CONPRO _____ VOTE 8-0 COMMITTEE _____ VOTE _____

DIGEST

Existing law:

- 1) Provides for the specific warranty responsibilities in the sale of a motor vehicle.
- 2) Provides for a federal fund (the Petroleum Violation Escrow Account -- PVEA) into which is deposited the proceeds from court cases and settlements relating to price fixing by oil companies during the 1970s.

This bill:

- 1) Provides that a portion of those provisions regarding warranty responsibilities in the sale of a motor vehicle be known as the Tanner Consumer Protection Act; and makes other conforming changes in sections of law regarding motor vehicle warranty responsibilities.
- 2) Revises the agreement reached on PVEA funds for 1992-1993 (incorporated in the recently-passed Budget Bill, AB 979) as follows:
 - a) Amends the 1992 Budget Act to reduce the PVEA appropriation to the Department of Transportation (Caltrans) for ridesharing from \$2.5 million to \$2.35 million.
 - b) Direct the \$150,000 in PVEA funds reduced from the ridesharing appropriation to the Bay Area Telecommuting Development Program, a telecommuting initiative of the Metropolitan Transportation Commission and the 680/580 Corridor Transportation Association.

FISCAL EFFECT

Redirection of \$150,000 in PVEA funds; no net change in total PVEA appropriations.

COMMENTS

The August 31, 1992 amendments revise the negotiated PVEA agreement by reducing the Governor's Caltrans item and directing those funds to a telecommuting project in the Bay Area.

Kate Riley
445-7278:atrans

SB 1762
Page 1

DRAFT

PROPOSED AMENDMENTS TO SENATE BILL NO. 1762

Legislative Counsel No. 9228916

~~(Kate)~~
Baker

The proposed amendments revise the agreement reached on Petroleum Violation Escrow Account (PVEA) funds for 1992-1993 (incorporated in the recently-passed Budget Bill, AB 979) as follows:

- 1) Amend the 1992 Budget Act to reduce the PVEA appropriation to the Department of Transportation (Caltrans) for ridesharing from \$2.5 million to \$2.35 million.
- 2) Direct the \$150,000 in PVEA funds reduced from the ridesharing appropriation to the Bay Area Telecommuting Development Program, a telecommuting initiative of the Metropolitan Transportation Commission and the 680/580 Corridor Transportation Association. (Blackhawk)

SACRAMENTO ADDRESS
ROOM 5035
STATE CAPITOL
95814
PHONE (916) 445-1412

SAN FRANCISCO ADDRESS
711 VAN NESS AVENUE
SUITE 310
94102
PHONE: (415) 474-0308

MARIN ADDRESS
30 N. SAN PEDRO ROAD
SUITE 160
SAN RAFAEL, CA 94903
PHONE: (415) 478-6612



SENATOR MILTON MARKS

THIRD SENATORIAL DISTRICT

REPRESENTING
SAN FRANCISCO - MARIN

IN THE

S e n a t e

CHAIR

**Senate Majority Caucus
and**

Senate Committee on Elections and Reapportionment

August 31, 1992

Honorable William Baker
State Capitol, Room 3126
Sacramento, CA 95814

Dear Bill,

I just wanted you to know that your amendment to my SB 1762 reducing the Governor's PVEA appropriation by \$150,000 to fund a telecommuting project in your district is fine on the basis of a commitment that my staff received from Del Pierce that the Governor's office and the Department of Finance have signed off on this change.

Also, you and Richard Katz need to clear the way with the necessary members on the Senate side so there is not a problem with attempts to reopen the entire PVEA process.

Cordially,

A handwritten signature in cursive script that reads "Milton Marks".

MILTON MARKS

copy: Honorable Richard Katz
Kevin Sloat
Steve Olson
Del Pierce

STANDING COMMITTEES
ELECTIONS AND REAPPORTIONMENT (CHAIR)
BANKING, COMMERCE, AND
INTERNATIONAL TRADE
HOUSING AND URBAN AFFAIRS
JUDICIARY
NATURAL RESOURCES AND WILDLIFE

SUBCOMMITTEES
RIGHTS OF THE DISABLED (CHAIR)
ADMINISTRATION OF JUSTICE
CENSUS
MINORITIES AND WOMEN AND THE
1990 REAPPORTIONMENT
OFFSHORE OIL AND GAS DEVELOPMENT

SELECT COMMITTEES
MARITIME INDUSTRY (CHAIR)
CALIFORNIA'S WINE INDUSTRY
CITIZEN PARTICIPATION IN GOVERNMENT
PACIFIC RIM

JOINT COMMITTEES
ARTS
FISHERIES AND AQUACULTURE
LEGISLATIVE BUDGET COMMITTEE
REFUGEE RESETTLEMENT, INTERNATIONAL
MIGRATION AND COOPERATIVE DEVELOPMENT
STATE'S ECONOMY
1992 CALIFORNIA QUINCENTENNIAL
OF THE VOYAGES OF
CHRISTOPHER COLUMBUS

COMMISSIONS
CALIFORNIA STATE GOVERNMENT
ORGANIZATION AND ECONOMY
STATUS OF WOMEN

SPECIAL COMMITTEE
DEVELOPMENTAL DISABILITIES AND
MENTAL HEALTH

ITEM
225

MEMORANDUM

Date : August 31, 1992

To : Joy Skalbeck

From : Scott Keene

Subject : Floor Statement Re SB 1762 -- Senate Concurrence

LATE LAST WEEK THE SENATE APPROVED AND SENT TO THE GOVERNOR, AB 3374 WHICH, AMONG OTHER THINGS, TOMBSTONED THE STATE LEMON LAW IN THE NAME OF ASSEMBLYMEMBER TANNER. AS A PART OF THESE TECHNICAL CHANGES LEG. COUNSEL MADE SEVERAL CROSS-REFERENCING ERRORS. THE ASSEMBLY AMENDMENTS SIMPLY CORRECT THE CROSS-REFERENCING ERRORS IN AB 3374. THERE IS NO OPPOSITION.

Appropriations Fiscal Summary

Author: Marks Amended: 3/31/92 Bill #: SB 1789

Hearing Date: 4/27/92 Policy Committee Vote: NR & W 7-0

Summary Prepared By: Bob Franzoia

Bill Summary: SB 1789, an urgency measure, would, notwithstanding any other provision of law, make specified projects eligible for consideration for revenue bond financing under the California Urban Waterfront Area Restoration Financing Authority (CUWARFA).

Fiscal Impact by Fiscal Year (Dollars in thousands)

<u>Department</u>	<u>1992-93</u>	<u>1993-94</u>	<u>1994-95</u>	<u>Fund</u>
Treasurer	----- See staff comments -----			CUWARFAF*

* California Urban Waterfront Area Restoration Financing Authority Fund

STAFF COMMENTS:

The CUWARFA has the authority to issue revenue bonds to finance eligible projects. The CUWARFA establishes criteria for the selection of projects to receive financial assistance. This criteria is based on the economic soundness of the project and a reasonable expectation that all financial obligations of the projects can be met by participating parties. Because projects can be submitted directly to the CUWARFA, it is unnecessary to statutorily make these projects eligible for consideration.

As a result of changes in federal tax code provisions, in particular the Tax Reform Act of 1986, the CUWARFA has had difficulty in issuing revenue bonds. Since 1985, the CUWARFA has issued just \$3.3 million in revenue bond financing.

4-225 Revised Draft

ASSEMBLY CONSUMER PROTECTION, GOVERNMENTAL
EFFICIENCY AND ECONOMIC DEVELOPMENT COMMITTEE
REPUBLICAN ANALYSIS

SB 1762 (Marks) -- CONSUMER WARRANTIES: VEHICLES

Version: 8/31/92

Vice-Chair: David Knowles

Analyzed: 8/31/92

Vote: Majority

SUMMARY: Adds language which double-joins sections of law dealing with what is commonly known as the "lemon law" regarding motor vehicle warranties and renames a portion of these provisions as the Tanner Consumer Protection Act. Adds an appropriation to shift \$150,000 of PVEA funds to enhance the scope of the Bay Area Telecommuting Development Program from the \$2.5 million ride share program (Budget line item 2660-001-853 Program 30). FISCAL EFFECT: See Summary above.

POTENTIAL EFFECTS: Not only does this memorialize a long standing Member of the Assembly (Sally Tanner), outstanding and warm human being it corrects an oversight in the allocation of PVEA funds.

SUPPORT: Metropolitan Transportation Commission, 680/580 Corridor Transportation Association.

OPPOSITION: Unknown.

GOVERNOR'S POSITION: Unknown.

COMMENTS:

- o Assembly Amendments delete existing language pertaining to the "lemon law" and simply tombstones the Lemon Law in honor of Assemblywoman Sally Tanner and changes appropriate cross-references in other code sections.
- o The above proposal makes no changes to law.
- o The \$150,000 PVEA money is leveraged by Federal and private funds.

Senate Republican Floor vote -- 6/4/92

(36-0) Ayes: All Republicans except
Abs./N.V.: Craven, Davis

Assembly Republican Floor vote -- 6/28/92

(71-0) Ayes: All Republicans except
Abs./N.V.: Woodruff

SB 1762 CONCURRENCE STATEMENT

MR. PRESIDENT AND MEMBERS:

LATE LAST WEEK THE SENATE APPROVED AND SENT TO THE GOVERNOR AB 3374 WHICH, AMONG OTHER THINGS, TOMBSTONED THE STATE LEMON LAW IN THE NAME OF ASSEMBLY MEMBER TANNER. AS A PART OF THESE TECHNICAL CHANGES, SEVERAL CROSS REFERENCING ERRORS OCCURRED.

THSE AMENDMENTS CORRECT THE CROSS REFERENCING ERRORS IN AB 3374 AND, WITH THE AGREEMENT OF THE DEPARTMENT OF FINANCE AND THE GOVERNOR'S OFFICE, REDIRECT \$150,000 FROM THE GOVERNOR'S RIDE SHARE PROGRAM TO THE BAY AREA TELECOMMUTING DEVELOPMENT PROGRAM AN INITIATIVE OF THE METROPOLITAN TRANSPORTATION COMMISSION AND THE 680/580 CORRIDOR TRANSPORTATION PROGRAM.

THERE IS NO OPPOSITION AND I ASK FOR YOUR AYE VOTE.

NOTE: THIS PROJECT WAS ORIGINALLY INCLUDED IN THE PVEA AGREEMENT AND WAS INADVERTENTLY DROPPED FROM THE BUDGET.

September 14, 1992

Honorable Pete Wilson
Governor of California
State Capitol, First Floor
Sacramento, CA 95814

Dear Governor Wilson:

I respectfully request that you sign Senate Bill 1762.

This legislation is critically important to correct chaptering problems that will occur when Assembly Bill 3374 is signed. The problem inadvertently created by AB 3374 affects some 30 sections of California's "Lemon Law".

Additionally, at the request of Assemblyman Baker, the bill would appropriate PVEA funds that were a part of the budget agreement and were inadvertently omitted. When I agreed to this amendment, I was assured that it had been approved by Tom Hayes and by members of your staff.

If you have questions or need additional information, please let me know.

There is no opposition to Senate Bill 1762. It passed the Assembly on a vote of 56-0 and the Senate concurrence vote was 39-0. Thank you for your consideration of this important measure.

Cordially,

MILTON MARKS

STATE BOARD OF EQUALIZATION
LEGISLATIVE BILL ANALYSIS (SHORT FORM)

Bill Number: SB 1762 Date Amended: 05/11/92
Author: Davis Tax: Alcoholic Beverage
Position: Neutral Related Bills: _____

- [] We are following the bill but will not prepare a standard analysis on it in its present form.
- [] The current amendment(s) does(do) not affect our previous analysis and we have no further comment(s).
- [X] The bill, as amended, is no longer within the scope of responsibility of the Board.
- [] See comments.

COMMENTS:

This bill would exempt manufacturers of new vehicles from civil penalties under the Song-Beverly Consumer Warranty Act provided they maintain a third-party dispute resolution process to resolve warranty repair disagreements on defective vehicles.

Analysis prepared by: *KAB* Kevin Beile 323-7169
CONTACT: Margaret S. Shedd 322-2376
mcr

May 19, 1992

SENATE REVENUE & TAXATION COMMITTEE
Senator Leroy F. Greene, Chairman

SB 1762 - Marks
As introduced

Hearing: April 1, 1992

Fiscal: YES

SUBJECT: Alcoholic Beverage Taxes: Fortified wine tax increased to 38 cents per gallon

DIGEST -- WHAT THE BILL DOES

EXISTING LAW imposes a tax on wine distributed for consumption in California at the following rates: 1 cent per gallon for dry wine (14% alcohol or less); 2 cents per gallon for sweet wine (more than 14% alcohol); 30 cents per gallon for sparkling wine. Proceeds from the tax are deposited in the Alcohol Beverage Control Fund

Last year's AB 30 (Murray) imposed a surtax on wine at a rate of 19 cents per gallon for dry wine and 18 cents per gallon for sweet wines (for a total of 20 cents for each type of wine), with the proceeds to be deposited in the General Fund.

THIS BILL would impose a tax on "fortified wine" of 38 cents per gallon (instead of the present "regular" tax of 2 cents). The total state tax on fortified wines would be 56 cents per gallon (38 cents for the regular tax and 18 cents for the AB 30 surtax). Fortified wine would be defined as still wine of more than 14% alcohol produced by the addition of wine spirits, brandy, or alcohol, excluding wine which is "both sealed and capped by cork enclosure and aged two or more years." The new fortified wine tax would be imposed beginning July 1, 1992.

A floor stocks tax would also be imposed on inventories of fortified wine in the hands of sellers at the time the tax is imposed.

FISCAL EFFECT:

Board of Equalization estimates that the additional revenue from the new tax would be \$18,933. This estimate is based on an estimate of 4,573,000 gallons of still wine over 14%, of which only 1% is estimated to be fortified wine. [Note that 1% of 4.5 million gallons is 45,000 of fortified wine -- staff believes that this is a very low estimate. If 20% of the over 14% wine is fortified wine, then the revenue estimate would be \$375,000.]

The board also estimates administrative costs at nearly \$200,000 annually, with an additional \$175,000 one-time cost for

administering the floor stocks tax. Note that if the Board estimates are correct, at best the additional revenue from the tax would barely offset the costs of administering the tax.

COMMENTS:

A. Purpose of the bill

The bill is intended to create a price discrimination against consumption of "skid row" wines. The idea is as old as the "sin tax" itself--if a product which society frowns on is taxed sufficiently, consumption is reduced, and the harm done by the product to the consumer is correspondingly lessened.

B. SB 1762 relies on regressivity for its effect

Generally, regressivity (where the tax is a higher percentage of income the lower the income) is a sign of poor tax policy. Alcoholic beverage taxes, which are levied at a flat rate per gallon regardless of price, are usually considered very regressive. But the tax proposed by this bill is additionally regressive since it is intentionally focused on the product typically consumed by poor people addicted to alcohol. (By the definition of "fortified wine," non-"screw-cap" wines consumed by the more well-to-do would continue to be taxed at only 20 cents per gallon.) Whether this "super-regressivity" is a bad thing, however, is a question of public policy. If poor, alcoholic individuals can be forced to consume less of the product because it is more expensive, then the bill achieves its intended result. (Of course, the market for these products is not strictly limited to poor alcoholics--individuals who consume the product in moderation are not at risk, but must pay the higher tax.)

C. BOE suggests technical amendment

The date for filing the floor stocks tax (page 3, line 36) presently reads "on or after July 31, 1992." The word "after" should be changed to "before."

Support and Opposition:

Opposition: California Wine Institute
Department of Finance

Consultant: Martin Helmke



STATE BOARD OF EQUALIZATION
LEGISLATIVE BILL ANALYSIS

DRAFT

Bill Number: SB 1762 Date Introduced: 2/20/92
Author: Marks Tax Alcoholic beverage
Board Position: Related Bills:

ANALYSIS

BILL SUMMARY:

This bill would impose an excise tax on fortified wines at the rate of 38¢ per gallon beginning July 1, 1992, and an equivalent compensating floor stock tax on inventory, due July 31, 1992.

ANALYSIS:

Current Law:

Section 32151 of the Alcoholic Beverage Tax Law currently imposes excise taxes upon all beer, wine, and distilled spirits sold in this state. Wine products are taxed at the following rates:

Still wine containing not more than 14% alcohol - 1¢ per wine gallon;

Still wine containing more than 14% alcohol - 2¢ per wine gallon;

Champagne and sparkling wine - 30¢ per wine gallon;

In addition, Section 32220 imposes a surtax on alcoholic beverages which took effect July 15, 1991. The surtax applies to wine at the following rates:

Still wine not more than 14% alcohol by volume - 19¢ per wine gallon;

Still wine containing more than 14% alcohol by volume - 18¢ per wine gallon;

Sparkling hard cider - 18¢ per wine gallon

Proposed Law:

This bill would create an additional category of wine products called fortified wines and impose a tax at a higher tax rate than is presently in effect.

Revenues from the excise tax and the floor stock tax would be deposited in the existing Alcoholic Beverage Control Fund.

Background:

The rate of excise tax on still wine products had been the same from 1937 until July 15, 1991, when Assembly Bill 30 (Chapter 86, Statute of 1991) added an additional surtax on wine. Champagne and sparkling hard cider excise taxes had also remained the same from 1955 until addition of the surtax.

Comments:

1. The bill adds a new class of wine products called fortified wines. The bill defines fortified wines as "a still wine produced with the addition of wine spirits, brandy, or alcohol and containing, not solely as a result of natural fermentation, more than 14 percent of absolute alcohol by volume when bottled or packaged, except that the term does not include any wine that is both sealed and capped by cork enclosure and aged two or more years." This definition may result in difficulties for taxpayers in identifying "fortified wine" and accurately reporting and paying taxes thereon. A separate category for fortified wines would further add to taxpayer confusion and result in additional recordkeeping, since it would deviate from current federal classifications.
2. The bill would impose a floor stock tax. A floor stock tax of the equivalent 38¢ per gallon is to be imposed on inventory on hand as of 12:01 a.m. on July 1, 1992. Since the floor stock tax also applies to inventory on hand at bars, the bill should be amended to read "2:01 a.m." for more reasonable and equitable accounting for the inventory. Most bars operate until the legal limit of 2 a.m. and it would not be practical or fair to their profits to have inventory counted at 12:01 a.m. The selling prices of drinks after 12:01 a.m. would not reflect the increased cost imposed by the floor stock tax.
3. Tax on fortified wine would be highest among beer and wine products. Fortified wines are currently being taxed as wine containing more than 14% alcohol. Since July 15, 1991, the excise tax rate on such wine has been 20¢ per gallon (2¢ per gallon excise tax plus 18¢ per gallon surtax). This amendment would replace the 2¢ per gallon rate with a 38¢ per gallon rate, for total excise taxes of 56¢ (38¢ per gallon excise tax plus 18¢ per gallon surtax).

4. There is an inconsistency between the date the floor stock tax return is due and the payment of the floor stock tax. Line 27, page 3, of the amendment states that a return showing the amount of fortified wine in inventory on July 1, 1992 is to be filed on or "before" July 31, 1992. However, line 36, page 3 states that the taxpayer shall deliver the return, together with a remittance of the amount of tax due, to the office of the board on or "after" July 31, 1992. A change should be made on line 36 to read on or "before" July 31, 1992 as was probably the intent of the author.

COST ESTIMATE:

Cost information is pending on this bill.

REVENUE ESTIMATE:

Revenue estimates are pending on this bill. The gallonage of fortified wines is not yet available, but will be obtained from industry sources.

Analysis prepared by: Kevin Beile
Contact: Margaret S. Shedd
mcr

KAB AC
323-7169 March 9, 1992
322-23708
3/10/92

SENATE COMMITTEE ON REVENUE AND TAXATION
LEROY GREENE, CHAIRMAN

BACKGROUND INFORMATION REQUEST

Measure: SB 1762

Author : Senator Marks

1. Origin of the bill:

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

Harry - 5-14-12 - Sen. Marks upon.

- 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.

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

2. What is the problem or deficiency in the present law which the bill seeks to remedy?

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.

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.

6. List the witnesses you plan to have testify.

RETURN THIS FORM TO: SENATE COMMITTEE ON REVENUE AND TAXATION
Phone 445-5-3808

STAFF PERSON TO CONTACT:

Mauldin

M

AMENDMENT DATE: Original
POSITION: Oppose

BILL NUMBER: SB 1762
AUTHOR: Marks

BILL SUMMARY

EXCISE TAXES: ALCOHOLIC BEVERAGES

This bill would raise the excise tax on sweet wines from 20¢ to 56¢ per gallon.

FISCAL SUMMARY

<u>FISCAL SUMMARY</u>		SO	(Fiscal Impact by Fiscal Year)								
		LA									
		CO									
Code/Department	RV	(Dollars in Thousands)									
Agency or Revenue	LC	PROP	1991-92		1992-93		1993-94		Code		
<u>Type</u>	<u>LR</u>	<u>98</u>	<u>FC</u>	<u>1991-92</u>	<u>FC</u>	<u>1992-93</u>	<u>FC</u>	<u>1993-94</u>	<u>Fund</u>		
1102-Excise Tax on Beer & Wine	RV				U	\$2,100	U	\$1,734	001/GF		
0860-Board of Equalization	SO		C	\$78	C	\$363	C	\$173	001/GF		

COMMENTS

- According to the author's office, the intent of this bill is to reinstate the 2:1 distinction between the rates for sweet and dry wines. However, instead of raising the rate from the current 20¢ to 40¢ per gallon, this bill would raise the rate to 56¢ per gallon.
- The National Average rate is \$1.07 per gallon for sweet wines and \$0.71 per gallon for dry wines. While this bill would not put California above the National Average, the National dry/sweet wine ratio is 1.5:1, compared to the nearly 3:1 ratio imposed by this bill.
- This bill actually adds an additional category under sweet wines and taxes these products at the new, higher rate. This deviates from current federal classifications and would further add to taxpayer confusion and result in additional recordkeeping.

Analyst/Principal (723) Laurie Noia	Date 3/26/92	Program Budget Manager Wallis L. Clark	Date 3/26/92
<i>Laurie Noia</i>		<i>Wallis L. Clark</i>	
Department Deputy Director			Date

Governor's Office: By:	Date:	Position Noted _____
		Position Approved _____
		Position Disapproved _____

BILL ANALYSIS
FR\BA\SB1726.723

Form DF-43 (Rev 03/92 Buff)

AUTHOR

AMENDMENT DATE

BILL NUMBER

Marks

Original

SB 1762

ANALYSIS

A. Specific Findings

Existing law levies excise taxes on the sale of alcoholic beverages. All of the revenue is currently deposited in the State's General Fund. The tax rates for wine products had not changed since 1937 when the rates were 1¢ and 2¢ per gallon for dry and sweet wines, respectively. AB 30 (Chapter 86, Statutes of 1991) added a surtax to wines which raised the total tax rate to 20¢ per gallon for both dry and sweet wines.

SB 1762 would add a division to the existing law which would define fortified wines and assign a separate excise tax to all wines which qualify as "fortified". Currently, fortified wines are taxed as sweet wines (wines with an alcohol content of 14% or higher) at 20¢ per gallon (2¢ per gallon excise tax plus 18¢ per gallon surtax). This bill would substitute the 2¢ per gallon rate with a 38¢ per gallon rate for total excise taxes of 56¢ per gallon (38¢ per gallon excise tax plus 18¢ per gallon surtax).

The bill defines fortified wines as a "still wine produced with the addition of wine spirits, brandy, or alcohol and containing, not solely as a result of natural fermentation, more than 14 percent of absolute alcohol by volume when bottled or packaged, except that the term does not include any wine that is both sealed and capped by cork enclosure and aged two or more years." This may result in difficulties for taxpayers in identifying "fortified" wine.

SB 1762 would also require all licensed persons to pay a floor stock tax on their inventories of fortified wines as of July 1, 1992. The floor stock tax prevents companies from "stockpiling" the taxed commodity before the effective date of the tax increase and from making large windfall profits by selling the low-tax items at the same elevated price at which the higher-tax items are sold.

The bill states that the taxpayer shall remit the floor stock tax to the board on or after July 31, 1992. This should be amended to read "on or before" July 31, 1992.

B. Fiscal Analysis

The degree to which General Fund revenues are impacted depends on the percentage of fortified wines in the sweet wine category. Assuming that fortified wines account for 80 percent of all sweet wines, General Fund revenues would increase \$2.1 million and \$1.7 million in 1992-93 and 1993-94, respectively. The 1992-93 estimate includes approximately \$245,000 from the floor stock tax provision. Estimated gallonage subject to the floor stock tax is 15% of the estimated annual distribution for fortified wines. We assumed that sales tax revenues would remain unchanged since expenditures will merely shift from other taxable items to alcoholic beverages.

The increase in the excise tax rate would presumably be passed on to consumers through price increases, and the typical reaction is a decline in consumption. However, we estimate that this decline would have a minimal effect on General Fund revenues and have excluded its impact from this estimate.

The Board of Equalization (BOE) has estimated General Fund costs of \$78,387 in 1991-92 and \$363,399 in 1992-93. Ongoing costs for increased staff are estimated to be \$172,521.

DISTILLED
SPIRITS
COUNCIL
OF THE
UNITED
STATES

March 10, 1992

The Honorable Leroy F. Greene
Chairman, Committee on Revenue and Taxation
California State Senate
State Capitol - Room 4072
Sacramento, California 95814

Dear Mr. Chairman:

Last year's attempt by the federal government to squeeze more revenue from the overtaxed liquor industry has proved disastrous for America's state governments. Additional tax increases promise to compound the damage already done, and as a result I strongly urge you to oppose all tax increases on the liquor industry both at the federal level and in your state.

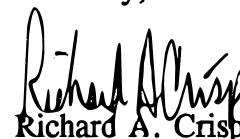
Taxes on liquor are now so high (42% of the price of a typical bottle of liquor) that any additional tax increases lower sales and actually reduce overall tax collections. In 1991, for example, the federal government enacted an eight-percent increase in the federal excise tax (FET) on liquor to add almost \$140 million to FY 1991 tax collections. Instead, the federal government collected \$225 million less than expected. It collected \$86 million less than it did in 1990, before the FET increase took effect.

It is the states that suffer most from these unwarranted taxes. The 1991 FET increase, for example, cost the states 26,000 jobs, \$25 million in additional unemployment compensation, and \$60 million in lost tax revenues. Any further liquor tax increases at the state level will simply mirror the effects of the FET increase and magnify the damage already done.

Attached, please find an advertisement summarizing revenue losses due to the 1991 FET increase on liquor and a "Fact Sheet" detailing the economics of the liquor industry in your state. Again, I strongly urge you to oppose all tax increases on the liquor industry both at the federal level and in your state.

If I can provide you with additional information on this most important issue, please do not hesitate to call me directly at (202) 628-3544.

Sincerely,



Richard A. Crisp
Director, State Government Relations

RAC:bp
Attachments

NO NEW TAXES

That's what the federal government got when it raised the
liquor excise tax...

NO NEW TAXES

That's Right!

Despite the January 1991 8% federal excise tax increase,
liquor tax revenues for FY 1991
FELL \$225 million short of
government projections.

With the tax increase, government expected to
collect \$139 million **MORE** than with no
tax increase; instead it actually collected
\$86 million **LESS!**

Taxes on liquor are now so high that any new tax
severely depresses sales - resulting in
diminishing tax revenues - not new tax income.

A law to raise liquor taxes
is not a rational law...

**IT'S THE LAW OF
DIMINISHING RETURNS!**

The Distilled Spirits Council of the U.S.

California Economic Fact Sheet, 1992

California's liquor tax burden is high:

- o Federal, state and local taxes now account for 38% of the 1991 retail price of a typical bottle of liquor (\$3.46 of the \$9.01 price for a 750 ml bottle at 80 proof).
- o State and local taxes alone account for 14% of the California price. Federal taxes account for 24% (\$2.16/750 ml bottle) after the 1991 federal excise tax (FET) increase.
- o Liquor taxes constitute 43% of state revenues from all beverage alcohol, but liquor accounts for less than 31% of total alcohol consumed in the state. The liquor revenue burden per gallon of actual alcohol is \$9.97.
- o California raised the liquor excise tax by 65% to \$3.30/gallon in July 1991.

Historically, liquor tax hikes have caused sales to fall, affecting state revenues:

- o Initial impact estimates for the January 1991 8% federal tax increase suggest it raised state liquor prices 2.8% and cut employment in the state by 2,800 jobs.
- o The 19% liquor FET increase of October 1985 was followed by a 5.6% decline in the tax base nationwide. California lost \$9.8 million in revenue while its citizens paid an additional \$61 million to the federal government in higher liquor taxes.

California's liquor industry is in a downturn:

- o Apparent consumption of liquor is down 13% in California over the last 10 years, an average drop of 1.3% per year.
- o Nationwide, liquor apparent consumption has fallen an average of 2.0% annually from 1981 to 1990.

Industry's contributions to the state treasury are significant:

- o State revenues from the alcohol beverage industry yielded \$460 million to the California treasury in 1990, with 43% (\$200 million) from liquor alone.
- o Directly and indirectly the alcohol beverage industry generated \$2.1 billion in state and local revenues for California during 1987.
- o Corporate and personal income taxes paid by industry add substantially to state tax revenues.

The alcohol beverage industry plays an important role in the state economy:

- o The combined economic contribution generated by the alcohol beverage industry to California's gross state product was \$31,000 million in 1987.
- o California's beverage alcohol industry generates \$7,400 million in wages annually, and accounts for 454 thousand direct and indirect employment opportunities.
- o Alcohol beverage sales are important to small business.
 - Eating and drinking places, small retail establishments and convenience stores employ large numbers of lower skilled workers in California.
 - Statewide, 57% of on-premise drinking places and 67% of beverage alcohol stores are small establishments employing four or fewer people.
- o Fifty-four liquor producers and bottlers play important roles in the economies of eighteen California counties, especially in San Mateo, Fresno, Kern and Stanislaus counties.

Raising California's liquor taxes further would be poor fiscal policy:

- o Liquor demand in California is unstable, making liquor sales an unreliable tax base.
- o Demand would shrink significantly if a further liquor excise tax was imposed. This would depress sales, reducing the expected revenue gain from the tax hike.
- o A liquor tax increase would ripple through California's economy. By reducing retail sales, a liquor tax hike would reduce employment, payroll and indirect revenues as well as increase state unemployment outlays.

SENATE REVENUE & TAXATION COMMITTEE
Senator John Garamendi, Chairman

SB 2686 - Marks
As introduced

Hearing: May 16, 1990

Fiscal: YES

SUBJECT: Alcoholic Beverage Taxes: Fortified wine tax increased to 66 cents per gallon

DIGEST -- WHAT THE BILL DOES

EXISTING LAW taxes wine distributed for consumption in California at three rates: wine of 14% or less alcohol is taxed at 1 cent per gallon; wine of more than 14% alcohol is taxed at 2 cents per gallon; sparkling wine is taxed at 30 cents per gallon.

THIS BILL would increase the tax on "fortified wine" from 2 cents to 66 cents per gallon. Fortified wine would be defined as still wine of more than 14% alcohol produced by the addition of wine spirits, brandy, or alcohol. The definition would exclude wine which is "both sealed and capped by cork enclosure" and aged two or more years.

A floor stocks tax would also be imposed on inventories of fortified wine in the hands of sellers at the time the tax is imposed.

The proceeds of the new tax would be deposited in a new County Alcohol and Drug Rehabilitation Fund, for allocation to counties by population, to be used for drug and alcohol rehabilitation programs.

FISCAL EFFECT:

Board of Equalization estimates that the additional revenue from the new tax would be \$5.1 million. In addition there would be one-time floor stocks tax of \$771,000, state sales tax revenue of \$280,000 and local sales tax of \$74,000.

This estimate would appear to be based on total sweet wine gallonage, not the somewhat more limited fortified wine gallonage. Nor does the estimate appear to assume that the new tax (a 3,200% increase over the old 2 cent tax) would cause a reduction in consumption--one of the apparent objectives of this bill.

The board has also estimated the administrative cost at slightly over \$200,000 annually. The board indicates that there would be an increased administrative cost for the dis-

tributor/taxpayer, in that the classification of "fortified wines" would be peculiar to California and separate books and records would have to be kept.

There would be a General Fund loss, since the entire 66 cents tax would be deposited in the new County Alcohol and Drug Rehabilitation Fund, including the 2 cents per gallon which currently goes to the General Fund.

COMMENTS:

A. Purpose of the bill

The bill is intended to generate funds for a new drug and alcohol rehabilitation fund. It is also intended to create a price discrimination against consumption of "skid row" wines. The idea is as old as the "sin tax" itself--if a product which society frowns on is taxed sufficiently, consumption is reduced, and the harm done by the product to the consumer is correspondingly lessened.

B. Regressivity can be a virtue

As indicated above, the intent of the bill is to reduce consumption of skid-row wines, upon which many of society's most unfortunate citizens subsist. Generally one sign of a poor tax is regressivity--where the tax is a higher percentage of income the lower the income. Alcoholic beverage taxes, which are a flat rate per gallon regardless of price, are usually considered very regressive. But the tax proposed by this bill is additionally regressive since it is focused on the product typically consumed by poor people addicted, one way or another, to alcohol. Whether this super-regressivity is a bad thing, however, is in the eye of the beholder. If poor, alcoholic individuals can be forced to consume less of the product because it is more expensive, then that is arguably a positive effect. (Of course, the market for these products is not strictly limited to poor alcoholics--individuals who consume the product in moderation are not at risk, but must pay the higher tax.)

C. A user fee rather than a tax?

Since the proceeds of this tax increase will be used for the particular purpose of drug and alcohol rehabilitation, programs closely related to the products which will be subject to the tax, it may be appropriate to consider the tax a "user fee" in the sense that those who use the taxed products are likely to be in the potential client group of the funded program. This would remove the revenue from the Gann

appropriations limit. However the proceeds would continue to be subject to most of the provisions of Proposition 98 (i.e., during times of "excess revenue", an equivalent amount would be shifted to school programs; and when revenues are not "excess" somewhat over 40% would go to schools.)

Support and Opposition:

Opposition: California Wine Institute
Department of Finance

Consultant: Martin Helmke

AMENDMENTS TO SENATE BILL NO. 1762

Amendment 1

In line 1 of the title, strike out "32151 of the Revenue and Taxation" strike out lines 2 and 3 and insert:

1794 of the Civil Code, relating to consumer warranties.

Amendment 2

On page 1, strike out line 1 and insert:

SECTION 1. Section 1794 of the Civil Code is amended to read:

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

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

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

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

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

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

(e) (1) Except as otherwise provided in this subdivision and subdivision (f), if the buyer establishes

a violation of paragraph (2) of subdivision (d) of Section 1793.2, the buyer shall recover damages and reasonable attorney's fees and costs, and may recover a civil penalty of up to two times the amount of damages.

(2) If the manufacturer maintains a qualified third-party dispute resolution process which substantially complies with subdivision (e) of Section 1793.2, the manufacturer shall not be liable for any civil penalty pursuant to this subdivision.

(3) After the occurrence of the events giving rise to the presumption established in paragraph (1) of subdivision (e) of Section 1793.2, the buyer may serve upon the manufacturer a written notice requesting that the manufacturer comply with paragraph (2) of subdivision (d) of Section 1793.2. If the buyer fails to serve the notice, the manufacturer shall not be liable for a civil penalty pursuant to this subdivision.

(4) If the buyer serves the notice described in paragraph (2) and the manufacturer complies with paragraph (2) of subdivision (d) of Section 1793.2 within 30 days of the service of that notice, the manufacturer shall not be liable for a civil penalty pursuant to this subdivision.

(5) If the buyer recovers a civil penalty under subdivision (c), the buyer may not also recover a civil penalty under this subdivision for the same violation.

(f) If a manufacturer maintains a qualified third-party dispute resolution process that substantially complies with subdivision (e) of Section 1793.2, the manufacturer shall not be liable for any civil penalty under this section for a violation of paragraph (2) of subdivision (d) of Section 1793.2.

Amendment 3

On page 1, strike out lines 2 to 7, inclusive,
and strike out pages 2 to 4, inclusive

- 0 -

AMENDMENTS TO SENATE BILL NO. 1762

Amendment 1

In line 1 of the heading, strike out "Marks" and insert:

Davis

Amendment 2

In line 1 of the title, strike out "32151 of the Revenue and Taxation" strike out lines 2 and 3 and insert:

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

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(d) If the buyer prevails in an action under this section, the buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including

attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action.

(e) (1) Except as otherwise provided in this subdivision and subdivision (f), if the buyer establishes a violation of paragraph (2) of subdivision (d) of Section 1793.2, the buyer shall recover damages and reasonable attorney's fees and costs, and may recover a civil penalty of up to two times the amount of damages.

(2) If the manufacturer maintains a qualified third-party dispute resolution process which substantially complies with subdivision (e) of Section 1793.2, the manufacturer shall not be liable for any civil penalty pursuant to this subdivision.

(3) After the occurrence of the events giving rise to the presumption established in paragraph (1) of subdivision (e) of Section 1793.2, the buyer may serve upon the manufacturer a written notice requesting that the manufacturer comply with paragraph (2) of subdivision (d) of Section 1793.2. If the buyer fails to serve the notice, the manufacturer shall not be liable for a civil penalty pursuant to this subdivision.

(4) If the buyer serves the notice described in paragraph (3) (2) and the manufacturer complies with paragraph (2) of subdivision (d) of Section 1793.2 within 30 days of the service of that notice, the manufacturer shall not be liable for a civil penalty pursuant to this subdivision.

(5) If the buyer recovers a civil penalty under subdivision (c), the buyer may not also recover a civil penalty under this subdivision for the same violation.

(f) If a manufacturer maintains a qualified third-party dispute resolution process that substantially complies with subdivision (e) of Section 1793.2, the manufacturer shall not be liable for any civil penalty under this section for a violation of paragraph (2) of subdivision (d) of Section 1793.2.

Amendment 4

On page 1, strike out lines 2 to 7, inclusive, and strike out pages 2 to 4, inclusive

- 0 -

and
damages
and
reasonable
attorney's fees
and costs

KEMNITZER, DICKINSON, ANDERSON
& BARRON
ATTORNEYS AT LAW
901 F STREET, SUITE 100
SACRAMENTO, CA 95814
(916) 442-3603

BRYAN KEMNITZER
A Professional Corporation
ROGER DICKINSON
MARK F. ANDERSON
NANCY BARRON

OF COUNSEL
DONNA S. SELNICK

RECEIVED
MAY 11 1992
Ans'd.....

SAN FRANCISCO OFFICE
368 HAYES STREET
SAN FRANCISCO, CA 94102
(415) 861-2265

May 8, 1992

Senator Ed Davis
California State Legislature
Room 5052
State Capitol
Sacramento, CA

Re: SB 1762

Dear Senator Davis:

I regret to inform you that I oppose SB 1762 which would amend the Song-Beverly Consumer Warranty Act, Civil Code §1790, et seq., to prohibit a civil penalty against an automobile manufacturer who willfully violates the Act as long as that manufacturer has a state-certified dispute resolution program. The bill would have the unwarranted and unjustified effect of allowing automobile manufacturers to escape liability for willful conduct in denying consumers their rights under the Act no matter how egregious that conduct is. By creating this loophole in the law, automobile manufacturers will be free to treat consumers in a cavalier and oppressive fashion which will defeat the purpose of the "lemon law".

By way of background, our firm concentrates 90% or more of its practice on representing buyers in automobile warranty or sales tactics cases. We have handled numerous cases where new cars have proven to be "lemons" and the automobile manufacturer has denied the consumer their right to a refund or replacement as required by law. In the past seven and a half years of private practice, I have represented or counseled hundreds of consumers. In addition, I represented the successful consumers in Ibrahim v. Ford Motor Co. (1989) 214 Cal.App.3d 878, the only appellate case which interprets the provisions of the "lemon law". Prior to entering private practice, I was staff counsel to the Department of Consumer Affairs for seven and a half years, working in areas including the Song-Beverly Consumer Warranty Act. As such, I am personally familiar with the legislative history of the amendments made to the Act in 1982 and 1987.

Sen. Ed Davis
May 8, 1992
Page Two

The Song-Beverly Act has long contained the civil penalty provision contained in Civil Code §1794 (c) which permits a penalty of up to two times actual damages for a willful violation of the Act. In 1987, because the dispute resolution or "arbitration" programs of the manufacturers were such shams, Assemblywoman Sally Tanner carried legislation to amend the Act to provide that such programs had to be certified by the State and that manufacturers which did not have programs could be subject to a civil penalty without any willful behavior. These changes were embodied in Civil Code §1794 (e).

Thus, beginning in 1988, there were two grounds on which a civil penalty could be imposed: (1) if the manufacturer committed a willful violation of the Act, or (2) if the manufacturer failed to have a certified dispute resolution program. There was and is no conflict or inconsistency between these two provisions. The first is designed to address willful or wrongful conduct by the manufacturer. The second is designed to address the failure of manufacturers to have meaningful dispute resolution programs.

SB 1762, by eliminating the civil penalty for willfulness as to those manufacturers which have certified dispute resolution programs, would open the door to permit such manufacturers to treat consumers in the most despicable or egregious manner imaginable without fear. The current incentive of the civil penalty provision for willful conduct to treat consumers in a courteous and responsive manner would be lost. For example, under SB 1762, if a manufacturer's representatives totally ignored a consumer or used intimidating or coercive tactics with a consumer, there would be no penalty as long as the manufacturer had a certified dispute resolution program.

There is no justification to relieve manufacturers from liability for such behavior just because they have a dispute resolution program. In fact, if anything, SB 1762 will encourage manufacturers to not resolve disputes with consumers before they reach a dispute resolution program, but to stonewall consumers in the hope that they will give up.

Under current law, consumers in appropriate cases are properly compensated for their actual damages because manufacturers must carefully evaluate the circumstances. SB 1762 represents nothing more than a thinly-disguised attempt by the automobile manufacturers to avoid compensating consumers fully and completely under the law by removing the potential that the manufacturer will be penalized if it unreasonably fails to give a consumer relief.

Sen. Ed Davis
May 8, 1992
Page Three

I would be pleased to discuss the bill with you further. If you have any questions or wish to discuss the matter further, please let me know.

Sincerely,



ROGER DICKINSON
Attorney at Law

RD/mm

cc: Members, Senate
Judiciary Committee



Publisher of Consumer Reports

May 11, 1992

The Honorable Ed Davis
California State Senate
State Capitol
Room 5052
Sacramento, CA 95814

Re: SB 1762 - Opposition

Dear Senator Davis:

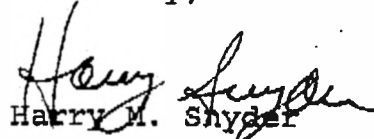
Consumers Union opposes SB 1762 because it reduces the accountability of automobile manufacturers. Senator Davis, this is not a clean-up bill. This is a major undercutting of California consumer rights for the second most costly purchase consumers make.

California car buyers have a difficult, frustrating and often costly experience when their new cars have defects. SB 1762 would make matters worse because manufacturers would not face any penalty for willfully failing to comply with their contractual, legal obligations. If your bill becomes law, auto manufacturers would only have to replace or repair their defective product, no matter how badly they treat the purchaser. There is a great disparity in power now which leaves consumers nearly at the mercy of car makers. Your bill would take away the one hammer consumers have to get fair treatment.

This bill, and the process by which it is being presented (germainness, no bill in print before hearing day) is not in keeping with your distinguished public career. I urge you to reconsider carrying this bill and to give us the opportunity to meet with you before this bill is moved in any form.

Thank you for your consideration.

Sincerely,


Harry M. Snyder

cc: Senator Bill Lockyer

MAY 11 '92 05:22PM CONSUMERS UNION/WCRO 415 4310906



Publisher of Consumer Reports

West Coast Regional Office
San Francisco, California

NOTE OUR NEW FAX NUMBER
415/431-0906

FAX TRANSMITTAL SHEET

Page 1 of _____ pages (including cover sheet)

DATE:

05-11-92

TO:

SENATOR BILL LOCKYER

FROM:

HARRY SNYDERComments: _____

If there are problems with this FAX, please call

Carol

KEENE & ASSOCIATES
Counselors At Law and Public Policy
One City Centre
770 L Street, Suite 960
Sacramento, California 95814

Telephone
(916) 448-1511

Facsimile
(916) 441-4925

May 11, 1992

Senator Bill Lockyer
State Capitol
Sacramento, CA 94105

Re: SB 1762 (DAVIS)
Senate Judiciary Committee -- Hearing May 12, 1992

Dear Senator Lockyer:

On behalf of my client, Toyota Motor Sales USA, I am writing to express support for SB 1762. This bill would reconcile internal conflicts in Civil Code section 1794 with respect to the imposition of civil penalties for a violation of the state's lemon law.

Under current law, a manufacturer who intentionally violates the buy-back or repair provisions of the lemon law may be subject to civil penalties under two separate theories. First, a civil penalty may be imposed under subsection (c) where the failure to comply with the act is willful. Second, a civil penalty may be imposed under subdivision (e) where there is a violation of the duty to buy back or repair the vehicle.

In 1987, the Legislature added provisions establishing a statutory arbitration scheme for resolving lemon law disputes. Consistent with this notion of informal dispute resolution, and in an effort to encourage arbitration, the Legislature provided that a manufacturer is not liable for a civil penalty under subdivision (e) where it maintains a bona fide third party dispute resolution process.

Through an obvious drafting omission, the arbitration exemption was not extended under subdivision (c). This bill corrects this oversight and extends the exemption under subsection (e) to subsection (c) only as to the duty to buyback or repair. The change does not interfere with the imposition of civil penalties on a manufacturer for the willful violation of any other provision of the act, such as for fraud or for a breach of the manufacturer's obligation to abide by the arbitration decision. SB 1762 simply recognizes the existing doctrine that one should not be deemed in bad faith for submitting disputes to arbitration.

Sincerely,



Scott R. Keene

**SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1991-92 Regular Session**

SB 1762 (Davis)
As amended May 11
Hearing date: May 12, 1992
Civil Code
ART

CONSUMER WARRANTIES: MOTOR VEHICLES

HISTORY

Source: Various Auto Manufacturers and Importers

Prior Legislation: None

Support: Toyota Motor Sales, USA

Opposition: Kemnitzer, Dickinson, Anderson & Barron, attorneys
at law; Consumers Union

KEY ISSUE

SHOULD AUTO MANUFACTURERS, WHO HAVE IMPLEMENTED A THIRD-PARTY
DISPUTE RESOLUTION PROCESS, NOT BE SUBJECT TO A CIVIL PENALTY FOR A
WILLFUL FAILURE TO REPAIR AND/OR REPLACE A NEW MOTOR VEHICLE?

Existing law, the Song-Beverly Warranty Act, requires manufacturers
of consumer goods, including new motor vehicles, to comply with
certain requirements when they sell goods in the State of California
and expressly warrant these goods.

(More)

Existing law provides that if an automobile manufacturer is unable to service or repair a new motor vehicle with express warranties after a reasonable number of attempts, it shall offer the buyer to either replace the new motor vehicle or make restitution.

Existing law provides that the buyer may elect restitution in lieu of replacement, and cannot be required by the manufacturer to accept a replacement vehicle.

Existing law provides that in the case of replacement, the manufacturer shall replace the buyer's vehicle with a new motor vehicle substantially identical to the vehicle being replaced.

Existing law requires the Department of Consumer Affairs to certify each third party dispute resolution process used to arbitrate a dispute.

Existing law provides that a buyer may collect a specified civil penalty for the willful failure of a manufacturer to correct a new motor vehicle to conform to certain warranties.

Existing law allows new motor vehicle buyers to assert a rebuttable presumption affecting the burden of proof in any civil action or other formal or informal proceeding. This rebuttable presumption surmises that a reasonable number of attempts have been made to conform a new motor vehicle to express warranties if, within one year from delivery to the buyer or 12,000 miles on the odometer of the vehicle, whichever occurs first: (1) the non-conformity has been subject to repair four or more times or (2) the vehicle was out of service by reason of repair of nonconformities more than 30 calendar days.

Existing law provides that the rebuttable presumption can only be asserted by the buyer if he or she has first resorted to an existing qualified third party resolution process provided by the manufacturer.

Existing law provides that if a buyer establishes that a manufacturer/seller of goods willfully fails to comply with the above provisions, the judgment in a civil action shall include, in addition to damages, a civil penalty two times the amount of actual damages. The buyer shall also be entitled to costs and expenses, including attorney's fees.

Existing law also provides that a manufacturer who maintains a qualified third-party dispute resolution process shall not be liable for any civil penalty.

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This bill would expressly make the above exemption from civil penalties respecting motor vehicle manufacturers applicable to the provisions authorizing civil penalties for willful violations of the Song-Beverly Warranty Act.

The purpose of this bill is to exempt manufacturers who implement a third-party dispute resolution process from potential liability for willful violations of the Song-Beverly Warranty Act.

COMMENT

1. Background

In 1970, this Legislature enacted the Song-Beverly Consumer Warranty Act (Stats. 1907 ch 1333). In general, the Act sets forth the rights and responsibilities of the purchasers and sellers of consumer goods with regard to express and implied warranties. As originally enacted, a manufacturer who is unable to service or repair consumer goods to conform to applicable warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer. The Act also provides that if the buyer establishes that the "failure to comply" was "willful", any subsequent court judgment may include a civil penalty not exceeding two times the amount of damages.

In 1982, this Legislature enacted the "Lemon Law" by defining the phrase "reasonable number of attempts." The act was amended to provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable warranties if, within one year or 12,000 miles, (1) the same nonconformity has been subject to repair 4 or more times by the manufacturer after notification or (2) the vehicle is out of service for a cumulative total of more than 30 days since delivery. The presumption may not be asserted unless the buyer has first resorted to an existing third party dispute resolution process.

In 1987, because of "questionable" dispute resolution or "arbitration" programs by the manufacturers, this Legislature again acted to amend the Act to require that such programs had to be certified by the State and that manufacturers which did not have programs could be subject to a civil penalty without any willful behavior. It, in addition, granted manufacturers immunity from civil penalties where they maintain a qualified third-party dispute resolution process that operates in compliance with the certification standards.

(More)

2. Stated need for legislation

The sponsors of this bill, a coalition of auto manufacturers and importers with certified arbitration programs, believe that policy conflicts arise from "the recognition in subdivision (e)(2) that manufacturers who maintain qualified third-party programs are entitled to immunity from civil penalty liability for refusing to service, repair or reimburse buyers vs. the uncertainty whether the manufacturers are also liable for a willful failure to comply under subdivision (c). In other words, if manufacturers' immunity exists for submitting a dispute to arbitration, under what specific circumstances is the same manufacturer liable for a "willful" violation"? In practical terms, manufacturers are endlessly threatened for "willfully violating the act" where, in disputed matters, they purposefully encourage claimants to utilize the arbitration process."

According to the sponsors, this bill is needed to "harmonize" the above statutory conflicts by specifying that the current civil penalty exemption for manufacturers with third-party dispute resolution processes covers potential liability for willful statutory violations.

3. No conflict or inconsistency with the two civil penalty provisions

The sponsors of this bill contend that there is a policy conflict in recognizing both the willful injury civil penalty provisions and the immunity from civil penalty liability granted to manufacturers who maintain qualified third-party programs. They contend that the notion of willful injury is wholly inconsistent with good faith arbitration. "Where manufacturers voluntarily develop and are forced to abide by bona fide third-party dispute resolution processes, it is contradictory to consequently penalize him [the manufacturer] for "knowing of his obligation but intentionally declining to fulfill them" by encouraging the utilization of the approved process."

A manufacturer that has a dispute resolution program may be encouraged to ignore a consumer or intimidate or coerce a consumer into resorting to the third-party dispute resolution program when the manufacturers knows perfectly well that the consumer is owed some relief but instead of remedying the problem for the consumer immediately, stonewalls the entire dispute forcing the consumer into arbitration.

The manufacturer has an obligation to repair and conform a new motor vehicle, and if unable to, to replace with a new vehicle regardless of whether it has an arbitration process. Eliminating the willful injury violation would encourage manufacturers to

(More)

ignore consumers and their claims in order to push them towards arbitration.

While the Legislature wanted to create an incentive for manufacturers to develop and adhere to certified dispute resolution alternatives, it did not intent to abrogate the manufacturers obligation under the Song-Beverly Warranty Act to repair, and conform a new motor vehicle or reimburse the buyer. The dispute resolution programs are for the purpose of assisting the parties, i.e., buyer and manufacturer, when negotiations are at an impasse; they are not to preclude an auto manufacturer from fulfilling its responsibilities and obligations under the Song-Beverly Warranty Act.

SHOULD MANUFACTURERS WITH THIRD PARTY DISPUTE RESOLUTION PROCESSES BE HELD LIABLE FOR WILLFUL VIOLATIONS OF THE SONG-BEVERLY WARRANTY ACT?

4. Opposition

This bill is opposed by the law firm of Kemnitzer, Dickinson, Anderson & Barron. This law firm concentrates 90% or more of its practice to representing buyers in automobile warranty or sales tactics cases.

It is the attorneys' opinion that "SB 1762, by eliminating the civil penalty for willfulness as to those manufacturers which have certified dispute resolution programs, would open the door to permit such manufacturers to treat consumers in the most despicable or egregious manner imaginable without fear. The current incentive of the civil penalty provision for willful conduct to treat consumers in a courteous and responsive manner would be lost. For example, under SB 1762, if a manufacturer's representatives totally ignored a consumer or used intimidating or coercive tactics with a consumer, there would be no penalty as long as the manufacturer has a certified dispute resolution program. . . . SB 1762 represents nothing more than a thinly-disguised attempt by the automobile manufacturers to avoid compensating consumers fully and completely under the law by removing the potential that the manufacturer will be penalized if it unreasonably fails to give a consumer relief.

Thus, it is quite possible for a manufacturer with a qualified dispute resolution program to willfully violate the Song-Beverly Act by declining to fulfill them."



THE APEX GROUP

915 L Street
Suite 1460
Sacramento, California
USA 95814
T. (916) 444-3116
F. (916) 444-7841

May 12, 1992

The Honorable Bill Lockyer
Chair, Senate Judiciary Committee
State Capitol, Rm 2032
Sacramento, CA 95814

Robert T. Monagan
David G. Ackerman
Paul P. Gladfelty

Dear Bill:

On behalf of Nissan Motor Corporation in USA this letter is to inform you of their support for SB 1762 (Davis) which would amend provisions of the Song-Beverly Act. The measure is designed to resolve inconsistencies in the code relating to the use of certified third-party dispute programs.

We would be pleased to discuss this issue further with you or your staff.

Sincerely yours,

PAUL P. GLADFELTY

PPG/pr

cc: Member, Senate Judiciary Committee
Senator Ed Davis

AMENDMENTS TO SENATE BILL NO. 1762
AS AMENDED IN SENATE MAY 11, 1992

Amendment 1

On page 3, line 7, strike out "such" and
insert:

the

Amendment 2

On page 4, line 3, after the period insert:

However, this subdivision shall not relieve an automobile manufacturer from liability for civil penalties under subdivision (c) for either of the following:

(1) Willfully failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under paragraph (2) of subdivision (d) of Section 1793.2.

(2) Willfully taking any action to coerce or intimidate any claimant with respect to claims arising under paragraph (2) of subdivision (d) of Section 1793.2.

- 0 -

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL

COPY

May 15, 1992

Honorable Milton Marks

S.B. 1762 — Conflict

The above measure, introduced by you, which is now set for hearing in the
Senate Judiciary Committee

appears to be in conflict with the following other measure(s):

A.B. 2678 - Tanner

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

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

Very truly yours,
BION M. GREGORY
LEGISLATIVE COUNSEL

By: Corrections Section
Ph. 5-0430

cc: Committee
named above
Each lead author
concerned

KEMNITZER, DICKINSON, ANDERSON
& BARRON

ATTORNEYS AT LAW

901 F STREET, SUITE 100
SACRAMENTO, CA 95814
(916) 442-3603

BRYAN KEMNITZER
A Professional Corporation
ROGER DICKINSON
MARK F. ANDERSON
NANCY BARRON

SAN FRANCISCO OFFICE
368 HAYES STREET
SAN FRANCISCO, CA 94102
(415) 861-2265

OF COUNSEL

May 18, 1992

DONNA S. SELNICK

Scott Keane, Esq.
770 "L" Street, Suite 960
Sacramento, CA 95814

Re: SB 1762

Dear Scott:


The purpose of this letter is to reiterate my position regarding SB 1762 as amended as I expressed it to you on May 12, 1992. I do not support or endorse the bill. The amendments are inadequate to address the fundamental problems I have with the bill.

However, I have agreed to "suspend" my opposition to the bill for purposes of its hearing in the Senate Judiciary Committee on the representation of Ann Sheehan of the Department of Consumer Affairs that the Department would sponsor immediate discussions to address a wide range of issues concerning the Song-Beverly Consumer Warranty Act and your representation that you and members of the manufacturer's coalition will participate in such discussions with the intent of reaching a consensus regarding the issues raised.

The above reflects the position I intend to convey to the Senate Judiciary Committee at the time of the hearing on the bill.

If you have any questions or wish to discuss this matter further, please let me know.

Sincerely,


ROGER DICKINSON
Attorney at Law

RD/mm

cc: Hon. Senator Ed Davis
Hon. Senator Bill Lockyer
Andrea Rosa-Tedla
Ann Sheehan
Harry Snyder

**SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1991-92 Regular Session**

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SB 1762 (Davis)
As amended May 18
Hearing date: May 26, 1992
Civil Code
ART

CONSUMER WARRANTIES: MOTOR VEHICLES

HISTORY

Source: Various Auto Manufacturers and Importers

Prior Legislation: None

Support: Toyota Motor Sales, USA

Opposition: Kemnitzer, Dickinson, Anderson & Barron, attorneys
at law; Consumers Union

KEY ISSUE

SHOULD AUTOMOBILE MANUFACTURERS, WHO MAINTAIN A QUALIFIED
THIRD-PARTY DISPUTE RESOLUTION PROCESS, NOT BE SUBJECT TO A CIVIL
PENALTY FOR A WILLFUL FAILURE TO REPAIR AND/OR REPLACE A NEW MOTOR
VEHICLE?

SHOULD THE ABOVE IMMUNITY NOT BE APPLICABLE IF THE AUTO
MANUFACTURER, (1) WILLFULLY FAILS TO ACKNOWLEDGE AND ACT REASONABLY
PROMPTLY UPON COMMUNICATIONS REGARDING CLAIMS OR (2) WILLFULLY TAKES
AN ACTION TO COERCE OR INTIMIDATE A CLAIMANT?

Existing law, the Song-Beverly Warranty Act, requires manufacturers
of consumer goods, including new motor vehicles, to comply with
certain requirements when they sell goods in the State of California
and expressly warrant these goods.

(More)

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Existing law provides that in the case of replacement, the manufacturer shall replace the buyer's vehicle with a new motor vehicle substantially identical to the vehicle being replaced.

Existing law requires the Department of Consumer Affairs to certify each third party dispute resolution process used to arbitrate a dispute.

Existing law provides that a buyer may collect a specified civil penalty for the willful failure of a manufacturer to correct a new motor vehicle to conform to certain warranties.

Existing law allows new motor vehicle buyers to assert a rebuttable presumption affecting the burden of proof in any civil action or other formal or informal proceeding. This rebuttable presumption surmises that a reasonable number of attempts have been made to conform a new motor vehicle to express warranties if, within one year from delivery to the buyer or 12,000 miles on the odometer of the vehicle, whichever occurs first: (1) the non-conformity has been subject to repair four or more times or (2) the vehicle was out of service by reason of repair of nonconformities more than 30 calendar days.

Existing law provides that the rebuttable presumption can only be asserted by the buyer if he or she has first resorted to an existing qualified third party resolution process provided by the manufacturer.

Existing law provides that if a buyer establishes that a manufacturer/seller of goods willfully fails to comply with the above provisions, the judgment in a civil action shall include, in addition to damages, a civil penalty two times the amount of actual damages. The buyer shall also be entitled to costs and expenses, including attorney's fees.

Existing law also provides that a manufacturer who maintains a qualified third-party dispute resolution process shall not be liable for any civil penalty.

This bill would expressly make the above exemption from civil penalties respecting motor vehicle manufacturers applicable to the provisions authorizing civil penalties for willful violations of the Song-Beverly Warranty Act.

(More)

This immunity would not be applicable where a automobile manufacturer has (1) willfully failed to acknowledge and act reasonably promptly upon communications regarding claims or (2) willfully took action to coerce or intimidate a claimant.

The purpose of this bill is to exempt manufacturers who implement a third-party dispute resolution process from potential liability for willful violations of the Song-Beverly Warranty Act.

COMMENT

1. Background

In 1970, this Legislature enacted the Song-Beverly Consumer Warranty Act (Stats. 1907 ch 1333). In general, the Act sets forth the rights and responsibilities of the purchasers and sellers of consumer goods with regard to express and implied warranties. As originally enacted, a manufacturer who is unable to service or repair consumer goods to conform to applicable warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer. The Act also provides that if the buyer establishes that the "failure to comply" was "willful", any subsequent court judgment may include a civil penalty not exceeding two times the amount of damages.

In 1982, this Legislature enacted the "Lemon Law" by defining the phrase "reasonable number of attempts." The act was amended to provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable warranties if, within one year or 12,000 miles, (1) the same nonconformity has been subject to repair 4 or more times by the manufacturer after notification or (2) the vehicle is out of service for a cumulative total of more than 30 days since delivery. The presumption may not be asserted unless the buyer has first resorted to an existing third party dispute resolution process.

In 1987, because of "questionable" dispute resolution or "arbitration" programs by the manufacturers, this Legislature again acted to amend the Act to require that such programs be certified by the State and that manufacturers which did not have programs could be subject to a civil penalty without any willful behavior. It, in addition, granted manufacturers immunity from civil penalties where they maintain a qualified third-party dispute resolution process that operates in compliance with the certification standards.

(More)

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The sponsors of this bill, a coalition of auto manufacturers and importers with certified arbitration programs, believe that policy conflicts arise from "the recognition in subdivision (e)(2) that manufacturers who maintain qualified third-party programs are entitled to immunity from civil penalty liability for refusing to service, repair or reimburse buyers vs. the uncertainty whether the manufacturers are also liable for a willful failure to comply under subdivision (c). In other words, if manufacturers' immunity exists for submitting a dispute to arbitration, under what specific circumstances is the same manufacture liable for a "willful" violation"? In practical terms, manufacturers are endlessly threatened for "willfully violating the act" where, in disputed matters, they purposefully encourage claimants to utilize the arbitration process."

According to the sponsors, this bill is needed to "harmonize" the above statutory conflicts by specifying that the current civil penalty exemption for manufacturers with third-party dispute resolution processes covers potential liability for willful statutory violations.

3. No conflict or inconsistency with the two civil penalty provisions

The sponsors of this bill contend that there is a policy conflict in recognizing both the willful injury civil penalty provisions and the immunity from civil penalty liability granted to manufacturers who maintain qualified third-party programs. They contend that the notion of willful injury is wholly inconsistent with good faith arbitration. "Where manufacturers voluntarily develop and are forced to abide by bona fide third-party dispute resolution processes, it is contradictory to consequently penalize him [the manufacturer] for "knowing of his obligation but intentionally declining to fulfill them" by encouraging the utilization of the approved process."

An automobile manufacturer that has a dispute resolution program may be encouraged to ignore a consumer or intimidate or coerce a consumer into resorting to the third-party dispute resolution program when the manufacturers knows perfectly well that the consumer is owed some relief but instead of remedying the problem for the consumer immediately, stonewalls the entire dispute forcing the consumer into arbitration.

(More)

The manufacturer has an obligation to repair and conform a new motor vehicle, and if unable to, to replace with a new vehicle regardless of whether it has an arbitration process. Eliminating the willful injury violation would encourage manufacturers to ignore consumers and their claims in order to push them towards arbitration.

While the Legislature wanted to create an incentive for manufacturers to develop and adhere to certified dispute resolution alternatives, it did not intent to abrogate the manufacturers obligation under the Song-Beverly Warranty Act to repair, and conform a new motor vehicle or reimburse the buyer. The dispute resolution programs are for the purpose of assisting the parties, i.e., buyer and manufacturer, when negotiations are at an impasse; they are not to constrain an auto manufacturer from fulfilling its responsibilities and obligations under the Song-Beverly Warranty Act.

SHOULD MANUFACTURERS WITH THIRD PARTY DISPUTE RESOLUTION PROCESSES BE HELD LIABLE FOR WILLFUL VIOLATIONS OF THE SONG-BEVERLY WARRANTY ACT?

4. Immunity exemptions

This bill would not relieve an automobile manufacturer from liability for civil penalties for engaging in the following conduct:

- (a) willfully failing to acknowledge and act reasonably promptly upon communications regarding claims or;
- (b) willfully taking any action to coerce or intimidate any claimant regarding claims.

These exemptions were included in the bill to address concerns expressed by the opposition to this bill. However, the opposition believes that the amendments are inadequate to address the fundamental problems with the bill.

5. Moving spot bill

Representations have been made to committee staff that further meetings will be held with interested parties, e.g. Department of Consumer Affairs, automobile manufacturers and practicing attorneys, to address a wide range of issues concerning the automobile "lemon laws" within the Song-Beverly Consumer Warranty Act. It is expected that further substantive amendments are to be made to this bill.

(More)

6. Opposition

This bill is opposed by the law firm of Kemnitzer, Dickinson, Anderson & Barron. This law firm concentrates 90% or more of its practice to representing buyers in automobile warranty or sales tactics cases.

It is the attorneys' opinion that "SB 1762, by eliminating the civil penalty for willfulness as to those manufacturers which have certified dispute resolution programs, would open the door to permit such manufacturers to treat consumers in the most despicable or egregious manner imaginable without fear. The current incentive of the civil penalty provision for willful conduct to treat consumers in a courteous and responsive manner would be lost. For example, under SB 1762, if a manufacturer's representatives totally ignored a consumer or used intimidating or coercive tactics with a consumer, there would be no penalty as long as the manufacturer has a certified dispute resolution program. . . . SB 1762 represents nothing more than a thinly-disguised attempt by the automobile manufacturers to avoid compensating consumers fully and completely under the law by removing the potential that the manufacturer will be penalized if it unreasonably fails to give a consumer relief.

Thus, it is quite possible for a manufacturer with a qualified dispute resolution program to willfully violate the Song-Beverly Act by declining to fulfill them."

☐ STATE CAPITOL
SACRAMENTO, CA 95814
TELEPHONE: (916)
445-8873

☐ DISTRICT OFFICE
11145 TAMPA AVENUE
SUITE 218
NORTHRIDGE, CA 91326
TELEPHONE: (818) 368-1171



ED DAVIS

NINETEENTH SENATORIAL DISTRICT
REPRESENTING PORTIONS OF LOS ANGELES,
SANTA BARBARA, AND VENTURA COUNTIES

California State Senate

May 27, 1992

TO: LEGISLATIVE COUNSEL

FROM: CHARLES FENNESSEY (5-8873)

Please gut amend Senate Bill 1762 as follows:

§ 1793.25. Reimbursement to manufacturer of new motor vehicle for sales tax after restitution to buyer
(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 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 or tangible personal property pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

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

Added Stats 1987 ch 1280 § 3.

Collateral References:

Cal Jur 3d (Rev) Consumer and Borrower Protection Laws § 350.

COMMITTEES:

APPROPRIATIONS
JUDICIARY
VICE CHAIRMAN
BANKING AND COMMERCE
INSURANCE, CLAIMS AND
CORPORATIONS
NATURAL RESOURCES
& WILDLIFE

SELECT COMMITTEES:

MOTION PICTURE, TELEVISION,
COMMERCIAL & RECORDING
INDUSTRIES

JOINT COMMITTEES:

FIRE, POLICE, EMERGENCY AND
DISASTER SERVICES
LEGISLATIVE ETHICS
PRISON CONSTRUCTION
& OPERATIONS

STRIKE "FOR"

INSERT "IN"

Discussion Amendments For SB 1762
To Address Concerns Raised By Roger Dickenson

*into a
certified arbitration
program*

Nothing contained in this act shall be construed as relieving an automobile manufacturer from civil penalty liability under Section 1974(c) ~~for wilfully~~: (1) failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under Section 1973.2(d)(2) or; 2) taking any action to coerce or intimidate any claimant with respect to claims arising under Section 1973.2(d)(2).

*for any other wilful
violation of the Act,
included, But not limited
to, wilfully*

presumption from one year to 2 years

**SB 1762 AMENDMENTS
DRAFT BACKGROUND STATEMENT
PROPOSED CHANGES CIVIL CODE SECTION 1794**

These amendments are designed to reconcile statutory conflicts in Civil Code Section 1794 with respect to the imposition of civil penalties for an auto manufacturer's violation of the California Lemon Law.

1. Origin Of The Bill

A. Source Of The Bill - This measure is sponsored by a coalition of auto manufacturers and importers with certified arbitration programs who are adversely impacted by the contradictory treble damages provisions in Civil Code Section 1794.

B. Past Legislation - In 1970, the Legislature enacted the Song-Beverly Consumer Warranty Act (Stats. 1907 ch 1333). In general, the Act sets forth the respective rights and responsibilities of the purchasers and sellers of consumer goods with regard to express and implied warranties. Under the original law, a manufacturer who is unable to service or repair consumer goods to conform to applicable warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer. Under Civil Code Section subsection (c) the act also provides that if the buyer establishes that the "failure to comply" was "willful," any subsequent court judgment may include a civil penalty not exceeding two times the amount of damages.

The original Song-Beverly Act did not contain any specific provisions dealing with the responsibilities of automobile manufacturers. California's so-called Lemon Law was first enacted in 1982 in an effort to define the phrase "reasonable number of attempts." In 1982, the act was amended to provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable warranties if, within one year or 12,000 miles, (1) the same nonconformity has been subject to repair 4 or more times by the manufacturer after notification or (2) the vehicle is out of service for a cumulative total of more than 30 days since delivery. (Stats. 1982, ch. 388). The presumption may not be asserted unless the buyer has first resorted to an existing third party dispute resolution process.

2. The Problems In Current Law

A. The 1987 Civil Penalty Amendments

In 1987, the act was again amended to require the state Bureau of Automotive Repair to establish a program for the certification of third-party dispute resolution programs. (Stats. 1987, ch 1280) However, these amendments also resulted in two conflicting sets of policy changes in Section 1794 regarding the award of civil

penalties. The first important changes with respect to civil penalties are contained in Section 1794 subdivisions (e)(1) and (e)(2).

B. Subdivision (e)(1)

Unlike Subdivision (c), which authorizes a civil penalty for any willful "failure to comply" -- Subdivision (e)(1) limits civil penalties for "a violation of paragraph (2) of subdivision (d)."¹ Accordingly, civil penalties may be imposed for a manufacturer's breach of its duty to repair and conform the goods or reimburse the buyer.

C. Subdivision (e)(2)

However, in subdivision (e)(2) the Legislature simultaneously granted manufacturers immunity from civil penalties under subdivision (e)(1) where they maintain a qualified third-party dispute resolution process that operates in compliance with the certification standards. The policy reasons for granting immunity under these circumstances are twofold. First, the Legislature wanted to create an incentive for manufacturers to develop and adhere to certified dispute resolution alternatives. Second, the notion of willful injury is wholly inconsistent with good faith arbitration. Where manufacturers voluntarily develop and are forced to abide by bona fide third-party dispute resolution processes, it is contradictory to consequently penalize him for "knowing of his obligation but intentionally declining to fulfill them" by encouraging the utilization of the approved process.²

D. Policy Conflicts With Subsection (c)

Policy conflicts arise from the recognition in subdivision (e)(2) that manufacturers who maintain qualified third-party programs are entitled to immunity from civil penalty liability for refusing to service, repair or reimburse buyers vs. the uncertainty whether the manufacturers are also liable for a willful failure to comply under subdivision (c). In other words, if manufacturers' immunity exists for submitting a dispute to arbitration, under what specific circumstances is the same manufacturer liable for a "willful" violation? In practical terms, manufacturers are endlessly threatened for "willfully violating the act" where, in disputed matters, they purposefully encourage claimants to utilize the arbitration process.

¹ Section 1793.2 (d)(2) provides that if the manufacturer is unable to service or repair the goods to conform to the express warranties after a reasonable number of attempts, the manufacturer shall either replace the goods or reimburse the buyer.

² In Ibrahim v. Superior Court (1989) 214 Cal.App. 3d 878, 894 the Court Of Appeal held that liability for a "willful violation" under subdivision (c) may be imposed where the manufacturer "knew of its obligations but intentionally declined to fulfill them."

3. Proposed Changes

The proposed amendment to Section 1794 attempts to harmonize the above statutory conflicts by specifying that the current civil penalty exemption for third party dispute resolution processes covers potential liability for willful statutory violations.

--

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RN9216295 PAGE 1
Substantive

AMENDMENTS TO SENATE BILL NO. 1762

Amendment 1

In line 1 of the title, strike out "32151 of the Revenue and Taxation" strike out lines 2 and 3 and insert:

1794 of the Civil Code, relating to consumer warranties.

Amendment 2

On page 1, strike out line 1 and insert:

SECTION 1. Section 1794 of the Civil Code is amended to read:

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

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

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

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

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

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

(e) (1) Except as otherwise provided in this subdivision and subdivision (f), if the buyer establishes

a violation of paragraph (2) of subdivision (d) of Section 1793.2, the buyer shall recover damages and reasonable attorney's fees and costs, and may recover a civil penalty of up to two times the amount of damages.

(2) If the manufacturer maintains a qualified third-party dispute resolution process which substantially complies with subdivision (e) of Section 1793.2, the manufacturer shall not be liable for any civil penalty pursuant to this subdivision.

(3) After the occurrence of the events giving rise to the presumption established in paragraph (1) of subdivision (e) of Section 1793.2, the buyer may serve upon the manufacturer a written notice requesting that the manufacturer comply with paragraph (2) of subdivision (d) of Section 1793.2. If the buyer fails to serve the notice, the manufacturer shall not be liable for a civil penalty pursuant to this subdivision.

(4) If the buyer serves the notice described in paragraph (2) and the manufacturer complies with paragraph (2) of subdivision (d) of Section 1793.2 within 30 days of the service of that notice, the manufacturer shall not be liable for a civil penalty pursuant to this subdivision.

(5) If the buyer recovers a civil penalty under subdivision (c), the buyer may not also recover a civil penalty under this subdivision for the same violation.

(f) If a manufacturer maintains a qualified third-party dispute resolution process that substantially complies with subdivision (e) of Section 1793.2, the manufacturer shall not be liable for any civil penalty under this section for a violation of paragraph (2) of subdivision (d) of Section 1793.2.

Amendment 3

On page 1, strike out lines 2 to 7, inclusive,
and strike out pages 2 to 4, inclusive

- 0 -

Discussion Amendments For SB 1762
To Address Concerns Raised By Roger Dickenson

Nothing contained in this act shall be construed as relieving an automobile manufacturer from civil penalty liability under Section 1974(c) for wilfully: (1) failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under Section 1973.2(d)(2) or; 2) taking any action to coerce or intimidate any claimant with respect to claims arising under Section 1973.2(d)(2).

CIVIL P

①
wilful
"of the act"
②

③
violate
H(d)(2)
④
breach/repair

↓
running

T.P.

AMENDMENTS TO SENATE BILL NO. 1762
AS AMENDED IN SENATE MAY 18, 1992

Amendment 1

In line 1 of the title, strike out "1794" and
insert:

1793.05

Amendment 2

On page 2, strike out line 1 and insert:

SECTION 1. Section 1793.05 of the Civil Code
is amended to read:

1793.05. Vehicle manufacturers who alter new
vehicles into housecars shall, in addition to any new
product warranty, assume any warranty responsibility of
the original vehicle manufacturer for any and all
components of the finished product which are, by virtue of
any act of the alterer, no longer covered by the warranty
issued ~~by~~ under the original vehicle manufacturer.

Amendment 3

On page 2, strike out lines 2 to 38, inclusive,
and strike out page 3

- 0 -

UNFINISHED BUSINESS

SENATE RULES COMMITTEE

Office of
Senate Floor Analyses
1020 N Street, Suite 524
445-6614

Bill No. SB 1762
Author: Marks (D)
Amended: 8/31/92
Vote Required: 21

Committee Votes:

Senate Floor Vote: Page 6286, 6/4/92

COMMITTEE: JUDICIARY		
BILL NO.:	SB 1762	
DATE OF HEARING:	5-26-92	
SENATORS:	AYE	NO
Calderon		
Leslie	✓	
Marks	✓	
Petris		
Presley	✓	
Roberti		
Royce	✓	
Torres	✓	
Watson		
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	7	0

Senate Bill 1762—An act to amend Section 1793.05 of the Civil Code, relating to consumer warranties.

Bill read third time, passed, and ordered transmitted to the Assembly.

AYES (36)—Senators Alquist, Ayala, Bergeson, Beverly, Boatwright, Calderon, Davis, Deddeh, Dills, Cecil Green, Bill Greene, Leroy Greene, Hart, Hill, Johnston, Keene, Killea, Kopp, Leonard, Leslie, Lockyer, Maddy, Marks, McCorquodale, Mello, Morgan, Petris, Presley, Roberti, Rogers, Rosenthal, Royce, Russell, Thompson, Torres, and Watson.

NOES (0)—None.

Assembly Floor Vote: 68-0, 9/1/92

SUBJECT: Consumer warranties: vehicles

SOURCE: Author

DIGEST: The provisions of this bill were deleted in the Assembly. As it left the Senate the bill made grammatical changes in the Civil Code relative to original vehicle manufacturers.

As amended, this bill would tombstone provisions of existing law as the "Tanner Consumer Protection Act."

The bill also amends the 1992 Budget Act to reduce the PVEA appropriation to Caltrans for ridesharing from \$2.5 million to \$2.35 million.

The bill then directs the \$150,000 in PVEA funds reduced from the ridesharing appropriation to the Bay Area Telecommuting Development Program, which is a telecommuting initiative of the Metropolitan Transportation Commission and the 680/580 Corridor Transportation Association.

ANALYSIS: Existing law contains provisions regulating motor vehicle warranties.

This bill would provide that a portion of those provisions shall be known and may be cited as the "Tanner Consumer Protection Act". This bill would also make technical changes in AB 3374, contingent upon the prior enactment of that bill.

Comments

The August 31, 1992 amendments revise the negotiated PVEA agreement by reducing the Governor's Caltrans item and directing those funds to a telecommuting project in the Bay Area.

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

Redirection of \$150,000 in PVEA funds. No net change in total PVEA

RJG:tb 8/31/92 Senate Floor Analyses

SPECIAL CONSENT

SENATE RULES COMMITTEE

Office of
Senate Floor Analyses
1020 N Street, Suite 524
445-6614

Bill No. SB 1762
Author: Davis (R)
Amended: 5/27/92
Vote Required: 21

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY		
BILL NO.: SB 1762		
DATE OF HEARING: 5-26-92		
SENATORS:	AYE	NO
Calderon		
Leslie	✓	
Marks	✓	
Petris		
Presley	✓	
Roberti		
Royce	✓	
Torres	✓	
Watson		
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	7	0

Assembly Floor Vote:

SUBJECT: Vehicles: warranties

SOURCE: Author

DIGEST: This bill makes a grammatical change in the Civil Code relative to original vehicle manufacturers.

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

RJG:ctl 5/27/92 Senate Floor Analyses

Date of Hearing: June 24, 1992

WK DR
SB 1762

ASSEMBLY COMMITTEE ON CONSUMER PROTECTION,
GOVERNMENTAL EFFICIENCY AND ECONOMIC DEVELOPMENT
K. Jacqueline Speier, Chair

SB 1762 (Davis) - As Amended: May 27, 1992

SUBJECT

Consumer warranties: vehicles

DIGEST

Existing law provides for the specific warranty responsibilities of vehicle manufacturers who alter new vehicles into housecars.

This bill would make a grammatical, nonsubstantive change in that provision.

FISCAL EFFECT

Unknown

Mary Lucille-Kaems
324-7440
conpro

SB 1762
Page 1

SB 1762 is a spot that is being saved as a possible 'trailer' vehicle - the bill is non-fiscal.

Options:

1. Hear and pass to floor on 6/24/92 then put on Inactive;
2. Keep for possible hearing 7/1/92 (we have been granted a special hearing on the 1st but aren't advertising it so people won't pull their bills on the 24th.

We still don't have everything from the Senate and think we will get more referrals next week after our hearing.

BOBBI REED

Assembly Committee on Consumer Protection
Governmental Efficiency & Economic Development
State Capitol
(916) 324-7440

Recycled Paper

File
SB 1762

ASSEMBLY CONSUMER PROTECTION, GOVERNMENTAL
EFFICIENCY AND ECONOMIC DEVELOPMENT COMMITTEE
REPUBLICAN ANALYSIS

SB 1762 (Davis) -- CONSUMER WARRANTIES: VEHICLES

Version: 5/27/92

Vice-Chair: David Knowles

Analyzed: 06/17/92

Vote: Majority

SUMMARY: Makes a grammatical change in the Civil Code relative to original manufacturers. FISCAL EFFECT: Unknown.

POTENTIAL EFFECTS: THIS IS A SPOT BILL to be used on the Assembly Floor as a potential budget-related vehicle.

SUPPORT: Unknown.

OPPOSITION: Unknown.

GOVERNOR'S POSITION: Unknown.

COMMENTS:

- o The author has asked, and the committee chair has concurred, that the committee move this bill to the Assembly Floor, then placed on the Inactive File, in case it is needed as a budget vehicle.

Senate Republican Floor vote -- 6/4/92

(36-0) Ayes: All Republicans except

Abs./N.V.: Craven, Davis

Assembly Republican Committee vote

CP,GE&ED -- 6/24/92

(>) Ayes: >

Noes: >

Abs.: >

N.V.: >

THIRD READING

SB 1762

Davis (R)

5/27/92

21

SUBJECT: Vehicles: warranties

SOURCE: Author

DIGEST: This bill makes a grammatical change in the Civil Code relative to original vehicle manufacturers.

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

RJG:ctl 5/27/92 Senate Floor Analyses

SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1991-92 Regular Session

SB 1762 (Davis)
As amended May 18
Hearing date: May 26, 1992
Civil Code
ART

CONSUMER WARRANTIES: MOTOR VEHICLES

HISTORY

Source: Various Auto Manufacturers and Importers

Prior Legislation: None

Support: Toyota Motor Sales, USA

Opposition: Kemnitzer, Dickinson, Anderson & Barron, attorneys
at law; Consumers Union

KEY ISSUE

SHOULD AUTOMOBILE MANUFACTURERS, WHO MAINTAIN A QUALIFIED
THIRD-PARTY DISPUTE RESOLUTION PROCESS, NOT BE SUBJECT TO A CIVIL
PENALTY FOR A WILLFUL FAILURE TO REPAIR AND/OR REPLACE A NEW MOTOR
VEHICLE?

SHOULD THE ABOVE IMMUNITY NOT BE APPLICABLE IF THE AUTO
MANUFACTURER, (1) WILLFULLY FAILS TO ACKNOWLEDGE AND ACT REASONABLY
PROMPTLY UPON COMMUNICATIONS REGARDING CLAIMS OR (2) WILLFULLY TAKES
AN ACTION TO COERCE OR INTIMIDATE A CLAIMANT?

Existing law, the Song-Beverly Warranty Act, requires manufacturers
of consumer goods, including new motor vehicles, to comply with
certain requirements when they sell goods in the State of California
and expressly warrant these goods.

(More)

Existing law provides that if an automobile manufacturer is unable to service or repair a new motor vehicle with express warranties after a reasonable number of attempts, it shall offer the buyer to either replace the new motor vehicle or make restitution.

Existing law provides that the buyer may elect restitution in lieu of replacement, and cannot be required by the manufacturer to accept a replacement vehicle.

Existing law provides that in the case of replacement, the manufacturer shall replace the buyer's vehicle with a new motor vehicle substantially identical to the vehicle being replaced.

Existing law requires the Department of Consumer Affairs to certify each third party dispute resolution process used to arbitrate a dispute.

Existing law provides that a buyer may collect a specified civil penalty for the willful failure of a manufacturer to correct a new motor vehicle to conform to certain warranties.

Existing law allows new motor vehicle buyers to assert a rebuttable presumption affecting the burden of proof in any civil action or other formal or informal proceeding. This rebuttable presumption surmises that a reasonable number of attempts have been made to conform a new motor vehicle to express warranties if, within one year from delivery to the buyer or 12,000 miles on the odometer of the vehicle, whichever occurs first: (1) the non-conformity has been subject to repair four or more times or (2) the vehicle was out of service by reason of repair of nonconformities more than 30 calendar days.

Existing law provides that the rebuttable presumption can only be asserted by the buyer if he or she has first resorted to an existing qualified third party resolution process provided by the manufacturer.

Existing law provides that if a buyer establishes that a manufacturer/seller of goods willfully fails to comply with the above provisions, the judgment in a civil action shall include, in addition to damages, a civil penalty two times the amount of actual damages. The buyer shall also be entitled to costs and expenses, including attorney's fees.

Existing law also provides that a manufacturer who maintains a qualified third-party dispute resolution process shall not be liable for any civil penalty.

This bill would expressly make the above exemption from civil penalties respecting motor vehicle manufacturers applicable to the provisions authorizing civil penalties for willful violations of the Song-Beverly Warranty Act.

(More)

This immunity would not be applicable where a automobile manufacturer has (1) willfully failed to acknowledge and act reasonably promptly upon communications regarding claims or (2) willfully took action to coerce or intimidate a claimant.

The purpose of this bill is to exempt manufacturers who implement a third-party dispute resolution process from potential liability for willful violations of the Song-Beverly Warranty Act.

COMMENT

1. Background

In 1970, this Legislature enacted the Song-Beverly Consumer Warranty Act (Stats. 1907 ch 1333). In general, the Act sets forth the rights and responsibilities of the purchasers and sellers of consumer goods with regard to express and implied warranties. As originally enacted, a manufacturer who is unable to service or repair consumer goods to conform to applicable warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer. The Act also provides that if the buyer establishes that the "failure to comply" was "willful", any subsequent court judgment may include a civil penalty not exceeding two times the amount of damages.

In 1982, this Legislature enacted the "Lemon Law" by defining the phrase "reasonable number of attempts." The act was amended to provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable warranties if, within one year or 12,000 miles, (1) the same nonconformity has been subject to repair 4 or more times by the manufacturer after notification or (2) the vehicle is out of service for a cumulative total of more than 30 days since delivery. The presumption may not be asserted unless the buyer has first resorted to an existing third party dispute resolution process.

In 1987, because of "questionable" dispute resolution or "arbitration" programs by the manufacturers, this Legislature again acted to amend the Act to require that such programs be certified by the State and that manufacturers which did not have programs could be subject to a civil penalty without any willful behavior. It, in addition, granted manufacturers immunity from civil penalties where they maintain a qualified third-party dispute resolution process that operates in compliance with the certification standards.

2. Stated need for legislation

The sponsors of this bill, a coalition of auto manufacturers and importers with certified arbitration programs, believe that policy conflicts arise from "the recognition in subdivision (e)(2) that manufacturers who maintain qualified third-party programs are entitled to immunity from civil penalty liability for refusing to service, repair or reimburse buyers vs. the uncertainty whether the manufacturers are also liable for a willful failure to comply under subdivision (c). In other words, if manufacturers' immunity exists for submitting a dispute to arbitration, under what specific circumstances is the same manufacture liable for a "willful" violation"? In practical terms, manufacturers are endlessly threatened for "willfully violating the act" where, in disputed matters, they purposefully encourage claimants to utilize the arbitration process."

According to the sponsors, this bill is needed to "harmonize" the above statutory conflicts by specifying that the current civil penalty exemption for manufacturers with third-party dispute resolution processes covers potential liability for willful statutory violations.

3. No conflict or inconsistency with the two civil penalty provisions

The sponsors of this bill contend that there is a policy conflict in recognizing both the willful injury civil penalty provisions and the immunity from civil penalty liability granted to manufacturers who maintain qualified third-party programs. They contend that the notion of willful injury is wholly inconsistent with good faith arbitration. "Where manufacturers voluntarily develop and are forced to abide by bona fide third-party dispute resolution processes, it is contradictory to consequently penalize him [the manufacturer] for "knowing of his obligation but intentionally declining to fulfill them" by encouraging the utilization of the approved process."

An automobile manufacturer that has a dispute resolution program may be encouraged to ignore a consumer or intimidate or coerce a consumer into resorting to the third-party dispute resolution program when the manufacturers knows perfectly well that the consumer is owed some relief but instead of remedying the problem for the consumer immediately, stonewalls the entire dispute forcing the consumer into arbitration.

(More)

The manufacturer has an obligation to repair and conform a new motor vehicle, and if unable to, to replace with a new vehicle regardless of whether it has an arbitration process. Eliminating the willful injury violation would encourage manufacturers to ignore consumers and their claims in order to push them towards arbitration.

While the Legislature wanted to create an incentive for manufacturers to develop and adhere to certified dispute resolution alternatives, it did not intent to abrogate the manufacturers obligation under the Song-Beverly Warranty Act to repair, and conform a new motor vehicle or reimburse the buyer. The dispute resolution programs are for the purpose of assisting the parties, i.e., buyer and manufacturer, when negotiations are at an impasse; they are not to constrain an auto manufacturer from fulfilling its responsibilities and obligations under the Song-Beverly Warranty Act.

SHOULD MANUFACTURERS WITH THIRD PARTY DISPUTE RESOLUTION PROCESSES BE HELD LIABLE FOR WILLFUL VIOLATIONS OF THE SONG-BEVERLY WARRANTY ACT?

4. Immunity exemptions

This bill would not relieve an automobile manufacturer from liability for civil penalties for engaging in the following conduct:

- (a) willfully failing to acknowledge and act reasonably promptly upon communications regarding claims or;
- (b) willfully taking any action to coerce or intimidate any claimant regarding claims.

These exemptions were included in the bill to address concerns expressed by the opposition to this bill. However, the opposition believes that the amendments are inadequate to address the fundamental problems with the bill.

5. Moving spot bill

Representations have been made to committee staff that further meetings will be held with interested parties, e.g. Department of Consumer Affairs, automobile manufacturers and practicing attorneys, to address a wide range of issues concerning the automobile "lemon laws" within the Song-Beverly Consumer Warranty Act. It is expected that further substantive amendments are to be made to this bill.

(More)

6. Opposition

This bill is opposed by the law firm of Kemnitzer, Dickinson, Anderson & Barron. This law firm concentrates 90% or more of its practice to representing buyers in automobile warranty or sales tactics cases.

It is the attorneys' opinion that "SB 1762, by eliminating the civil penalty for willfulness as to those manufacturers which have certified dispute resolution programs, would open the door to permit such manufacturers to treat consumers in the most despicable or egregious manner imaginable without fear. The current incentive of the civil penalty provision for willful conduct to treat consumers in a courteous and responsive manner would be lost. For example, under SB 1762, if a manufacturer's representatives totally ignored a consumer or used intimidating or coercive tactics with a consumer, there would be no penalty as long as the manufacturer has a certified dispute resolution program. . . . SB 1762 represents nothing more than a thinly-disguised attempt by the automobile manufacturers to avoid compensating consumers fully and completely under the law by removing the potential that the manufacturer will be penalized if it unreasonably fails to give a consumer relief.

Thus, it is quite possible for a manufacturer with a qualified dispute resolution program to willfully violate the Song-Beverly Act by declining to fulfill them."


STATE BOARD OF EQUALIZATION
LEGISLATIVE BILL ANALYSIS (SHORT FORM)

Bill Number: SB 1762 Date Amended: 05/11/92
Author: Davis Tax: Alcoholic Beverage
Position: Neutral Related Bills: _____

- [] We are following the bill but will not prepare a standard analysis on it in its present form.
- [] The current amendment(s) does(do) not affect our previous analysis and we have no further comment(s).
- [X] The bill, as amended, is no longer within the scope of responsibility of the Board.
- [] See comments.

COMMENTS:

This bill would exempt manufacturers of new vehicles from civil penalties under the Song-Beverly Consumer Warranty Act provided they maintain a third-party dispute resolution process to resolve warranty repair disagreements on defective vehicles.

Analysis prepared by:  Kevin Beile 323-7169 May 19, 1992
CONTACT: Margaret S. Shedd 322-2376
mcr

ASSEMBLY COMMITTEE ON CONSUMER PRO., GOVT. EFFICIENCY, ECON. DEVELOP
K. Jacqueline Speier, Chair

BACKGROUND INFORMATION REQUEST

Measure: SB 1762

Author : Senator Davis

1. Origin of the bill:

- a. Who is the source of the bill? What person, organization, or governmental entity requested introduction?
Auto manufacturers Scott Keene 448-1511

- 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.
Chapter 1333, Statutes of 1970

- 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?

Technical clean-up to clarify Civil Code Section 1793.05

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.

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.

6. List the witnesses you plan to have testify.

RETURN THIS FORM TO: ASSEMBLY COMMITTEE ON CONSUMER PRO., GOVT. EFFICIENCY,
ECON. DEVELOP
Phone 324-7440 ATTN: BOBBI REED, ROOM 4140

STAFF PERSON TO CONTACT: Charles Fennessey 5-8873

ASSEMBLY CONSUMER PROTECTION, GOVERNMENTAL
EFFICIENCY AND ECONOMIC DEVELOPMENT COMMITTEE
REPUBLICAN ANALYSIS

SB 1762 (Davis) -- CONSUMER WARRANTIES: VEHICLES

Version: 5/27/92

Vice-Chair: David Knowles

Analyzed: 06/17/92

Vote: Majority

SUMMARY: Makes a grammatical change in the Civil Code relative to original manufacturers. FISCAL EFFECT: Unknown.

POTENTIAL EFFECTS: THIS IS A SPOT BILL to be used on the Assembly Floor as a potential budget-related vehicle.

SUPPORT: Unknown.

OPPOSITION: Unknown.

GOVERNOR'S POSITION: Unknown.

COMMENTS:

- o The author has asked, and the committee chair has concurred, that the committee move this bill to the Assembly Floor, then placed on the Inactive File, in case it is needed as a budget vehicle.

Senate Republican Floor vote -- 6/4/92

(36-0) Ayes: All Republicans except

Abs./N.V.: Craven, Davis

Assembly Republican Committee vote

CP,GE&ED -- 6/24/92

(>) Ayes: >

Noes: >

Abs.: >

N.V.: >

Date of Hearing: June 24, 1992

SB 1762

ASSEMBLY COMMITTEE ON CONSUMER PROTECTION,
GOVERNMENTAL EFFICIENCY AND ECONOMIC DEVELOPMENT
K. Jacqueline Speier, Chair

SB 1762 (Davis) - As Amended: May 27, 1992

SUBJECT

Consumer warranties: vehicles

DIGEST

Existing law provides for the specific warranty responsibilities of vehicle manufacturers who alter new vehicles into housecars.

This bill would make a grammatical, nonsubstantive change in that provision.

FISCAL EFFECT

Unknown

STATE BOARD OF EQUALIZATION
LEGISLATIVE BILL ANALYSIS (SHORT FORM)

Bill Number: SB 1762 Date Amended: 05/11/92
Author: Davis Tax: Alcoholic Beverage
Position: Neutral Related Bills: _____

- ☐ We are following the bill but will not prepare a standard analysis on it in its present form.
- ☐ The current amendment(s) does(do) not affect our previous analysis and we have no further comment(s).
- ☒ The bill, as amended, is no longer within the scope of responsibility of the Board.
- ☐ See comments.

COMMENTS:

This bill would exempt manufacturers of new vehicles from civil penalties under the Song-Beverly Consumer Warranty Act provided they maintain a third-party dispute resolution process to resolve warranty repair disagreements on defective vehicles.

Analysis prepared by: *KAB* Kevin Beile 323-7169
CONTACT: Margaret S. Shedd 322-2376
mcr

May 19, 1992

SPECIAL CONSENT

SENATE RULES COMMITTEE

Office of
Senate Floor Analyses
1020 N Street, Suite 524
445-6614

Bill No. SB 1762
Author: Davis (R)
Amended: 5/27/92
Vote Required: 21

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY		
BILL NO.: SB 1762		
DATE OF HEARING: 5-26-92		
SENATORS:	AYE	NO
Calderon		
Leslie	✓	
Marks	✓	
Petris		
Presley	✓	
Roberti		
Royce	✓	
Torres	✓	
Watson		
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	7	0

Assembly Floor Vote:

SUBJECT: Vehicles: warranties

SOURCE: Author

DIGEST: This bill makes a grammatical change in the Civil Code relative to original vehicle manufacturers.

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

RJG:ctl 5/27/92 Senate Floor Analyses

SACRAMENTO ADDRESS

ROOM 5035
STATE CAPITOL
95834
PHONE (916) 445-1482
SAN FRANCISCO ADDRESS
78 VAN NESS AVENUE
SUITE 310
94102
PHONE (415) 474-0308
MARIN ADDRESS
30 N. SAN PEDRO ROAD
SUITE 180
SAN RAFAEL, CA 94903
PHONE (415) 479-6642



**SENATOR
MILTON MARKS**

THIRD SENATORIAL DISTRICT

REPRESENTING
SAN FRANCISCO - MARIN

IN THE

S e n a t e

CHAIR

**Senate Majority Caucus
and**

Senate Committee on Elections and Reapportionment

September 14, 1992

Honorable Pete Wilson
Governor of California
State Capitol, First Floor
Sacramento, CA 95814

Dear Governor Wilson:

I respectfully request that you sign Senate Bill 1762.

This legislation is critically important to correct chaptering problems that will occur when Assembly Bill 3374 is signed. The problem inadvertently created by AB 3374 affects some 30 sections of California's "Lemon Law".

Additionally, at the request of Assemblyman Baker, the bill would appropriate PVEA funds that were a part of the budget agreement and were inadvertently omitted. When I agreed to this amendment, I was assured that it had been approved by Tom Hayes and by members of your staff.

If you have questions or need additional information, please let me know.

There is no opposition to Senate Bill 1762. It passed the Assembly on a vote of 56-0 and the Senate concurrence vote was 39-0. Thank you for your consideration of this important measure.

Cordially,

MILTON MARKS

STANDING COMMITTEES

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HOUSING AND URBAN AFFAIRS
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MINORITIES AND WOMEN AND THE
1990 REAPPORTIONMENT
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CALIFORNIA'S WINE INDUSTRY
CITIZEN PARTICIPATION IN GOVERNMENT
PACIFIC RIM

JOINT COMMITTEES

ARTS
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LEGISLATIVE BUDGET COMMITTEE
REFUGEE RESETTLEMENT INTERNATIONAL
MIGRATION AND COOPERATIVE DEVELOPMENT
STATE'S ECONOMY
1992 CALIFORNIA QUINCENTENNIAL
OF THE VOYAGES OF
CHRISTOPHER COLUMBUS

COMMISSIONS

CALIFORNIA STATE GOVERNMENT
ORGANIZATION AND ECONOMY
STATUS OF WOMEN

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Deputies

State Capitol, Suite 3021
Sacramento CA 95814-4906
(916) 445-3057
Telecopier (916) 324-6311

Sacramento, California

September 24, 1992

Honorable Pete Wilson
Governor of California
Sacramento, CA

REPORT ON ENROLLED BILL

S.B. 1762 **MARKS. Consumer warranties: vehicles: telecommuting.**

SUMMARY: **See Legislative Counsel's Digest on the bill as adopted.**

FORM: **Approved.**

CONSTITUTIONALITY: **See Comments.**

TITLE: **Approved.**

COMMENTS: **The single subject rule is contained in Section 9 of Article IV of the California Constitution, which provides, in pertinent part, as follows:**

"SEC. 9. A statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void. . . ."

In applying the single subject rule, the California Supreme Court, in the case of Harbor v. Deukmejian, 43 Cal. 3d 1078 (hereafter Harbor), held, among other things, that Chapter 268 of the Statutes of 1984 (S.B. 1379), a bill "relating to fiscal affairs and making an appropriation therefor," which amended,

repealed, or added approximately 150 sections contained in more than 20 codes and legislative acts was invalid as a violation of the single subject provision of Section 9 of Article IV of the California Constitution (Harbor, supra, pp. 1095-1101).

In summarizing the holdings of the prior cases involving the single subject rule, the court in Harbor stated that a measure complies with the single subject rule if its provisions are either functionally related to one another or are reasonably germane to one another or the objects of the enactment (Harbor, supra, p. 1100). In concluding that S.B. 1379 complied with neither of these standards, the court held that a bill that encompasses matters of excessive generality violates the purpose and intent of the single subject rule and that "fiscal affairs" as the subject of the bill and "statutory adjustment" to the budget as its object suffers from that same defect (Harbor, supra, p. 1100). In refining the "reasonably germane" standard, the court has looked to whether the various parts of the subject legislation bear "a common concern, 'general object,' or 'general subject'" (quoting Brosnahan v. Brown, 32 Cal. 3d 236, 247) or whether those parts reflect a consistent theme or purpose (Raven v. Deukmejian, 52 Cal. 3d 336, 348).

Sections 1 to 11, inclusive, of this bill would amend various sections of the Business and Professions Code and amend sections of, and add a section to, the Civil Code, relating to motor vehicle warranties.

Section 12 of the bill would transfer, from a specified item of the Budget Act of 1992, to another item of that act, \$150,000 of funds from the Petroleum Violation Escrow Account that were appropriated for a ridesharing program and appropriate those funds, instead, for the Bay Area Telecommuting Development Program.

We are unable to identify any functional relationship between those provisions, or to ascertain any manner in which the provisions can be fairly characterized as "reasonably germane" to one another or the objects of the bill, so as to satisfy the criteria described above. While it may be argued that the various provisions of the bill have in common that they each relate to transportation, it is our view that this connection is inadequate for this purpose, in light of

the holding of the Harbor court that a bill that encompasses matters of "excessive generality" violates the single subject rule (Harbor, supra, p. 1100).

We recognize that it is difficult to determine with certainty whether, pursuant to the two criteria identified by the Harbor court, a particular bill complies with the single subject rule. However, based upon those criteria and the foregoing discussion, it is our opinion that this bill would not comply with the single subject rule and, accordingly, would violate Section 9 of Article IV of the California Constitution.

Bion M. Gregory
Legislative Counsel

BY 
Martin L. Anderson
Deputy Legislative Counsel

MLA:kg

Two copies to Honorable Milton Marks,
pursuant to Joint Rule 34.

ENROLLED BILL REPORT

9/9/92

Business, Transportation & Housing Agency

DEPARTMENT

AUTHOR

BILL NUMBER

Transportation

Marks

SUBJECT

SB 1762

Bay Area Telecommuting Development Program

SUMMARY: Transfers money appropriated to the Department for ridesharing to the Bay Area Telecommuting Development Program.

ANALYSIS:**A. Policy:**

SB 1762 deals primarily with motor vehicle warranties. However, a last minute amendment dealing with the Department's appropriations from the Petroleum Violation Escrow Account (PVEA) was added to the bill. This analysis considers only this latter provision.

Under existing law, money from federal oil overcharge funds in the Petroleum Violation Escrow Account (PVEA) is made available to states to fund energy-saving projects. The Budget Act of 1992 appropriated \$2.5 million in PVEA funds to the Department to fund a vanpooling program.

This bill would transfer \$150,000 of the \$2.5 million and appropriate it to the Bay Area Telecommuting Development Program.

B. Fiscal:

This bill would result in a \$150,000 reduction to the Department's program for administering grants to fund state employee vanpools. This reduction means \$150,000 in grants (equal to about 7 vans) will not be available for state-sponsored rideshare programs.

SPONSOR: Author**ARGUMENTS PRO & CON:**Arguments in Support of the Bill:

1. Transferring the \$150,000 from the vanpool program will not have a significant impact on the overall program.
2. The bill passed the Legislature unanimously.

Arguments in Opposition to the Bill:

1. The reduction in the amount of funds for the vanpool program could have a corresponding reduction in the effectiveness of the program.
2. The Department of Finance is opposed to the bill.

RECOMMENDATION

SIGN

DEPARTMENT

DATE

AGENCY

DATE

Warren Weber

9/10/92

Sign
Michael B. Davis

9-11-92

1571

RECOMMENDATION:

The Department recommends SIGN because:

The PVEA transfer will not have a significant impact on the Department.

**FOR FURTHER INFORMATION CONTACT WARREN WEBER (O) 654-2808
(H) 422-9223**

Prepared by: JDawson/jsd
654-2397

STATE AND CONSUMER SERVICES AGENCY

NO ENROLLED BILL REPORT REQUIRED

DEPARTMENT
Consumer Affairs

AUTHOR
Marks

BILL NUMBER
SB 1762

- ☒ Technical bill - No program or fiscal changes to existing program. No analysis required. No recommendation on signature.
- ☐ Bill as enrolled no longer within scope of responsibility or program of this Department.
- ☐ Analysis not required of this bill. Not within the scope of responsibility of this department.

Comments:

SB 1762 would separate the new car lemon law, currently contained in a subdivision of Civil Code § 1793.2, into a new section, and entitle it the Tanner Consumer Protection Act, after the author of the original lemon law legislation (enacted in 1982). The bill also makes conforming changes in Business and Professions Code provisions relating to the certification of lemon law programs.

The bill also makes technical corrections to AB 3374 (Epple), relating to motor vehicle service contracts, if AB 3374 is enacted first.

The remainder of the bill contains trailer provisions to the Budget Act. Those provisions would transfer funds from the Department of Transportation for use by the Bay Area Telecommuting Development Program. We DEFER to the Department of Finance and the Department of Transportation on these aspects of the bill.

RECOMMENDATION

Defer to the Department of Finance & the Department of Transportation

DEPARTMENT DIRECTOR

DATE

AGENCY SECRETARY

DATE

9/4/92

DEPARTMENT OF FINANCE ENROLLED BILL REPORT

AMENDMENT DATE: August 31, 1992
RECOMMENDATION: Defer to BT&H Agency

BILL NUMBER: SB 1762
AUTHOR: Marks

Assembly: Not Available
Senate: 39/00

BILL SUMMARY

CONSUMER WARRANTIES

This bill would amend current law (Song-Beverly Consumer Warranty Act) relating to written warranties including sections pertaining to the California Lemon Law, by renaming various sections of law to the "Tanner Consumer Protection Act". This bill would make other minor and conforming technical changes related to renumbering various sections of existing law. This bill would also transfer \$150,000 appropriated from the Petroleum Violation Escrow Account (PVEA) in the 1992 Budget Act for the Department of Transportation (Caltrans) to the Bay Area Telecommuting Development Program. This bill also makes technical revisions to AB 3374 contingent upon prior enactment of that bill.

FISCAL SUMMARY

<u>FISCAL SUMMARY</u>		SO	<u>(Fiscal Impact by Fiscal Year)</u>							
		LA								
		CO								
Code/Department		RV	(Dollars in Thousands)							
Agency or Revenue		LC	PROP	1992-93		1993-94		1994-95		Code
Type		LR	98	FC		FC		FC		Fund
2660/Caltrans		SO		B	(\$150)		--		--	853*

* PVEA

COMMENTS

- o Caltrans reports no concerns because the shift of \$150,000 for telecommuting purposes should reduce traffic congestion in a similar manner as ridesharing. Finance (DOF) is fiscally neutral, and defers to the Business, Transportation and Housing (BT&H) Agency for a policy recommendation on the shift of PVEA funding.
- o Finance believes retitling the various sections of existing law to be known as the "Tanner Consumer Protection Act" is a policy issue.
- o Finance deferred to Department of Insurance Advisor on AB 3374.

Analyst/Principal (752) Tom Sheehy Date 9/14/92 Program Budget Manager Date
Wallis L. Clark

for Department Deputy Director Date 9/14/92

ENROLLED BILL REPORT
FR\BA\SB1726.723

Form DF-43 (Rev 03/92 Pink)

AUTHOR

AMENDMENT DATE

BILL NUMBER

Marks

August 31, 1992

SB 1762

ANALYSIS

A. Specific Findings

Existing law contains provisions dealing with consumer protection related to written warranties for various consumer products including motor vehicles. The provisions deal with descriptions of new motor vehicles, manufacturers, and the third party process involved with resolving disputes between a consumer and a manufacturer.

This bill would amend various sections of the Civil Code in order to refer to these sections as the "Tanner Consumer Protection Act". The bill makes other conforming changes to the Civil Code which are minor in nature. Due to the revisions of the Civil Code made by this bill, other conforming changes are made to various sections of the Business and Professions Code by renumbering them to conform to the revised Civil Code.

Current law provides that funds in the PVEA account are disbursed to the State of California and deposited in the Federal Trust Fund. The Budget Act of 1992 (Chapter 587/92) appropriated PVEA funds to the Department of Transportation for a ridesharing program.

This bill would authorize a transfer of \$150,000 of the PVEA funds provided Caltrans to be utilized for the Bay Area Telecommuting Program. Caltrans reports no concerns with the shift in PVEA funding because telecommuting will also reduce traffic congestion.

B. Fiscal Analysis

The Department of Consumer Affairs has indicated that this bill would not have a fiscal impact on the Arbitration Review Program within their department.

This bill would authorize a transfer of \$150,000 of these appropriated PVEA funds to be utilized for the Bay Area Telecommuting Program. The Budget Act of 1992 (Chapter 587/92) appropriated \$2,500,000 of PVEA funds to the Department of Transportation for a ridesharing program. In addition, Caltrans was budgeted \$11.9 million in PVEA funding for various other fuel efficiency purposes.

UNFINISHED BUSINESS

SENATE RULES COMMITTEE

Office of
Senate Floor Analyses
1020 N Street, Suite 524
445-6614

Bill No. SB 1762
Author: Marks (D)
Amended: 8/31/92
Vote Required: 21

Committee Votes:

Senate Floor Vote: Page 6286, 6/4/92

COMMITTEE: JUDICIARY		
BILL NO.:	SB 1762	
DATE OF HEARING:	5-26-92	
SENATORS:	AYE	NO
Calderon		
Leslie	✓	
Marks	✓	
Parris		
Presley	✓	
Roberti		
Royce	✓	
Torres	✓	
Watson		
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	7	0

Senate Bill 1762—An act to amend Section 1793.05 of the Civil Code, relating to consumer warranties.

Bill read third time, passed, and ordered transmitted to the Assembly.

AYES (36)—Senators Alquist, Ayala, Bergeson, Beverly, Boatwright, Calderon, Davis, Deddeh, Dills, Cecil Green, Bill Greene, Leroy Greene, Hart, Hill, Johnston, Keene, Killea, Kopp, Leonard, Leslie, Lockyer, Maddy, Marks, McCorquodale, Mello, Morgan, Petris, Presley, Roberti, Rogers, Rosenthal, Royce, Russell, Thompson, Torres, and Watson.

NOES (0)—None.

Assembly Floor Vote: NOT AVAILABLE

SUBJECT: Consumer warranties: vehicles

SOURCE: Author

DIGEST: The provisions of this bill were deleted in the Assembly. As it left the Senate the bill made grammatical changes in the Civil Code relative to original vehicle manufacturers.

As amended, this bill would tombstone provisions of existing law as the "Tanner Consumer Protection Act."

The bill also amends the 1992 Budget Act to reduce the PVEA appropriation to Caltrans for ridesharing from \$2.5 million to \$2.35 million.

The bill then directs the \$150,000 in PVEA funds reduced from the ridesharing appropriation to the Bay Area Telecommuting Development Program, which is a telecommuting initiative of the Metropolitan Transportation Commission and the 680/580 Corridor Transportation Association.

ANALYSIS: Existing law contains provisions regulating motor vehicle warranties.

This bill would provide that a portion of those provisions shall be known and may be cited as the "Tanner Consumer Protection Act". This bill would also make technical changes in AB 3374, contingent upon the prior enactment of that bill.

CONTINUED

Comments

The August 31, 1992 amendments revise the negotiated PVEA agreement by reducing the Governor's Caltrans item and directing those funds to a telecommuting project in the Bay Area.

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

Redirection of \$150,000 in PVEA funds. No net change in total PVEA

RJG:tb 8/31/92 Senate Floor Analyses

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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ADDITIONAL DOCUMENTS	Vol. 09 MJN Exhs. 368-553.PDF
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Cynthia Tobisman Greines Martin Stein & Richland LLP 197983	ctobisman@gmsr.com	e-Serve	2/8/2023 6:13:45 PM
David Brandon Clark Hill LLP 105505	dbrandon@clarkhill.com	e-Serve	2/8/2023 6:13:45 PM
Radomir Kirnos Knight Law Group, LLP 283163	rogerk@knightlaw.com	e-Serve	2/8/2023 6:13:45 PM
Arlyn Escalante Rosner, Barry & Babbitt, LLP 272645	arlyn@rbblawgroup.com	e-Serve	2/8/2023 6:13:45 PM
Shane Mckenzie	smckenzie@horvitzlevy.com	e-	2/8/2023 6:13:45

Horvitz & Levy, LLP 228978		Serve	PM
Hallen Rosner Rosner, Barry & Babbitt, LLP 109740	hal@rbblawgroup.com	e-Serve	2/8/2023 6:13:45 PM
Lisa Perrochet Horvitz & Levy LLP 132858	lperrochet@horvitzlevy.com	e-Serve	2/8/2023 6:13:45 PM
Rebecca Nieto Greines Martin Stein & Richland LLP	rnieto@gmsr.com	e-Serve	2/8/2023 6:13:45 PM
Chris Hsu Greines Martin Stein & Richland LLP	chsu@gmsr.com	e-Serve	2/8/2023 6:13:45 PM
John Taylor Horvitz & Levy LLP 129333	jtaylor@horvitzlevy.com	e-Serve	2/8/2023 6:13:45 PM

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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