

No. S266034

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

LISA NIEDERMEIER,  
Plaintiff and Respondent,

v.

FCA US LLC,  
Defendant and Appellant.

California Court of Appeal, Second District, Division One  
Civil No. B293960  
Appeal from Los Angeles County Superior Court  
Case No. BC638010  
Honorable Daniel Murphy

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**EXHIBITS TO MOTION FOR JUDICIAL NOTICE  
VOLUME 1 OF 9, Pages 1-295 of 2617**

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Introduced by Senator Song

February 2, 1970

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Title 1.3 (commencing with Section 1750) to Part 4 of Division 3 of the Civil Code, relating to consumer goods transactions.

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

1 SECTION 1. Title 1.3 (commencing with Section 1750) is  
2 added to Part 4 of Division 3 of the Civil Code, to read:

3  
4 TITLE 1.3. CONSUMER WARRANTIES

5  
6 CHAPTER 1. CONSUMER WARRANTY PROTECTION

7  
8 Article 1. General Provisions

9  
10 1750. This chapter may be cited as the "Song Consumer  
11 Warranty Protection Act."

12 1751. Any waiver by the buyer of consumer goods of the  
13 provisions of this chapter, except as expressly provided in  
14 this chapter, shall be deemed contrary to public policy and  
15 shall be unenforceable and void.

16 1752. If any provision of this chapter or the application  
17 thereof to any person or circumstance is held unconstitu-  
18 tional, such invalidity shall not affect other provisions or ap-  
19 plications of this chapter which can be given effect without  
20 the invalid provision or application, and to this end the pro-  
21 visions of this chapter are severable.

LEGISLATIVE COUNSEL'S DIGEST

SB 272, as introduced, Song (Jud.). Consumer goods transactions. Adds Title 1.3 (commencing with Sec. 1750), Pt. 4, Div. 3, Civ.C. Enacts "Song Consumer Warranty Protection Act." Establishes obligations of manufacturers, distributors, and sellers of consumer goods, and rights of buyers thereof, with respect to particular transactions.

Vote—Majority; Appropriation—No; Fiscal Committee—No.



LIS-1a

1 1753. The provisions of this chapter shall not affect the  
 2 rights and obligations of parties determined by reference to  
 3 the Commercial Code except that, where the provisions of the  
 4 Commercial Code conflict with the rights guaranteed to buyers  
 5 of consumer goods under the provisions of this chapter, the  
 6 provisions of this chapter shall prevail.

### 7 Article 2. Definitions

8  
 9  
 10 1755. As used in this chapter:

11 (a) "Consumer goods" means any motor vehicle, machine,  
 12 appliance, device, product, or commodity that is used or  
 13 bought for use primarily for personal, family, or household  
 14 purposes.

15 (b) "Buyer" or "retail buyer" means any person who  
 16 buys consumer goods from a person engaged in the business  
 17 of manufacturing, distributing, or selling such goods at retail.

18 (c) "Manufacturer" means any individual, partnership,  
 19 corporation, association, or other legal relationship which  
 20 manufactures, assembles, produces, or gathers consumer goods.

21 (d) "Distributor" means any individual, partnership, cor-  
 22 poration, association, or other legal relationship which stands  
 23 between the manufacturer and the retail seller in purchases,  
 24 consignments, or contracts for sale of consumer goods.

25 (e) "Retail seller," "seller," or "retailer" means any indi-  
 26 vidual, partnership, corporation, association, or other legal  
 27 relationship which engages in the business of selling new goods  
 28 to retail buyers.

29 1756. As used in this chapter:

30 (a) "Implied warranty of merchantability" or "implied  
 31 warranty that goods are merchantable" means that the con-  
 32 sumer goods meet each of the following:

33 (i) Pass without objection in the trade under the contract  
 34 description.

35 (ii) Are fit for the ordinary purposes for which such goods  
 36 are used.

37 (iii) Are free from defects of materials or workmanship.

38 (iv) Are adequately contained, packaged, and labeled.

39 (v) Conform to the promises or affirmations of fact made  
 40 on the container or label.

41 (b) "Implied warranty of fitness" means that when the  
 42 retailer, distributor, or manufacturer has reason to know any  
 43 particular purpose for which the consumer goods are required,  
 44 and further, that the buyer is relying on the skill and judg-  
 45 ment of the seller to select and furnish suitable goods, then  
 46 there is an implied warranty that the goods shall be fit for  
 47 such purpose.

48 1757. As used in this chapter, a sale "as is" or "with all  
 49 faults" means that the manufacturer, distributor, and retailer  
 50 disclaim all implied warranties that would otherwise attach to

1 the sale of consumer goods under the provisions of this chap-  
 2 ter. In the absence of any express warranties accompanying  
 3 the sale, the buyer assumes the entire risk as to the quality and  
 4 performance of the goods purchased in a sale "as is" or "with  
 5 all faults."

### 6 Article 3. Sale Warranties

7  
 8 1760. Every sale of consumer goods by a manufacturer in  
 9 this state shall be accompanied by an implied warranty that  
 10 the goods are merchantable, except that no such implied war-  
 11 ranty accompanies the sale of consumer goods that are sold on  
 12 an "as is" or "with all faults" basis, provided the provisions  
 13 of this chapter affecting "as is" or "with all faults" sales are  
 14 strictly complied with.

15 1761. Every sale of consumer goods in this state by a man-  
 16 ufacturer who has reason to know at the time of the sale that  
 17 the goods are required for a particular purpose and that the  
 18 buyer is relying on the manufacturer's skill or judgment to  
 19 select or furnish suitable goods shall be accompanied by an  
 20 implied warranty of fitness.

21 1762. Every sale of consumer goods in this state made  
 22 through a retailer or distributor who has reason to know at the  
 23 time of sale that the goods are required for a particular pur-  
 24 pose and that the buyer is relying on the retailer's or dis-  
 25 tributor's skill or judgment to select or furnish suitable goods,  
 26 shall, in lieu of the warranty of the manufacturer under Sec-  
 27 tion 1761, be accompanied by an implied warranty that the  
 28 goods are fit for that purpose.

29 1763. No implied warranty of merchantability and, where  
 30 applicable, no implied warranty of fitness shall be waived,  
 31 except in the case of a sale of consumer goods on an "as is"  
 32 or "with all faults" basis where the provisions of this chapter  
 33 affecting "as is" or "with all faults" sales are strictly com-  
 34 plied with.

35 1764. No sale of consumer goods on an "as is" or "with  
 36 all faults" basis shall be effective to disclaim the implied war-  
 37 ranty of merchantability or, where applicable, the implied  
 38 warranty of fitness, unless a conspicuous writing is attached  
 39 to the goods which clearly informs the buyer in simple and  
 40 concise language of each of the following:

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

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

45 (c) Should the goods prove defective following their pur-  
 46 chase, the buyer and not the manufacturer, distributor, or re-  
 47 tailer assumes the entire cost of all necessary servicing or  
 48 repair.



1 1765. Every sale of consumer goods on an "as is" or "with  
2 all faults" basis made in compliance with the provisions of  
3 this chapter shall constitute a waiver by the buyer of the im-  
4 plied warranty of merchantability and, where applicable, of  
5 the implied warranty of fitness.

6 1766. Nothing in this chapter shall affect the right of the  
7 manufacturer, distributor, or retailer to make additional war-  
8 ranties with respect to consumer goods. However, a manufac-  
9 turer, distributor, or retailer, may not, by such additional  
10 warranties, limit the application of or modify the warranties  
11 guaranteed by this chapter to the sale of consumer goods.

12 1767. Every manufacturer, distributor, or retailer making  
13 additional warranties with respect to consumer goods shall  
14 express such additional warranties in clear and concise terms  
15 and clearly identify the party making such additional warran-  
16 ties.

17 1768. (a) Every manufacturer of consumer goods which  
18 are sold in this state and for which there exists a warranty,  
19 either express or implied in law, shall maintain in this state  
20 sufficient service and repair facilities to carry out the terms of  
21 such warranties.

22 (b) Where such service and repair facilities are maintained  
23 in this state and service or repair of the goods is necessary  
24 because they do not comply with the applicable warranties,  
25 service and repair shall be commenced within a reasonable  
26 time following receipt of the goods by the manufacturer or its  
27 representative in this state. Unless the buyer agrees in writing  
28 to the contrary, the goods must be returned, at the manufac-  
29 turer's expense, in merchantable condition within 30 days.

30 (c) Should the manufacturer be unable to make such return  
31 of merchantable goods, he shall either replace the goods or  
32 reimburse the buyer in an amount equal to the purchase price  
33 paid by the buyer, less that amount directly attributable to  
34 use by the buyer prior to discovery of the defect. However, in  
35 no event shall such deduction from the purchase price be made  
36 for defective goods forwarded to the manufacturer or his rep-  
37 resentative in this state within 30 days of their purchase.

38 1769. If the manufacturer fails to provide service and re-  
39 pair facilities within this state as required in subdivision (a)  
40 of Section 1768, the buyer may follow the course of action  
41 prescribed in either subdivision (a) or (b), below, as follows:

42 (a) Return the defective consumer goods to the retail seller  
43 thereof for replacement, or for service or repair in accordance  
44 with the terms and conditions of the warranties. Such replace-  
45 ment, service, or repair shall be at the option of the buyer. If  
46 the retail seller is unable to replace the defective article with  
47 merchantable goods or is unable to service or repair the goods  
48 in accordance with the terms and conditions of the warranty,  
49 the retail seller shall reimburse the buyer in an amount equal  
50 to the purchase price paid by the buyer, less that amount

1 directly attributable to use by the buyer prior to discovery of  
2 the defect. However, in no event shall such deductions from the  
3 purchase price be made for defective goods returned to the  
4 retail seller within 30 days of their purchase.

5 (b) Return the defective article to the nearest retail seller  
6 of like goods of the manufacturer for replacement, or for serv-  
7 ice or repair in accordance with the terms and conditions of  
8 the warranties. Such replacement, service, or repair shall be at  
9 the option of the retail seller.

10 1770. Where an option is exercised in favor of service and  
11 repair under Section 1769, such service and repair must be  
12 commenced within a reasonable time, and, unless the buyer  
13 agrees in writing to the contrary, the goods must be returned  
14 in merchantable condition within 30 days.

15 1771. Every manufacturer who fails to provide service and  
16 repair facilities within this state as required by this chapter  
17 shall be liable as prescribed in this section to every retail seller  
18 of such manufacturer's goods who incurs obligations in giving  
19 effect to the warranties that accompany such manufacturer's  
20 consumer goods. The amount of such liability shall be deter-  
21 mined as follows:

22 (a) In the event of replacement, in an amount equal to the  
23 actual cost to the retail seller of the replaced goods, plus a  
24 reasonable handling charge.

25 (b) In the event of service and repair, in an amount equal  
26 to that which would be received by the retail seller for like  
27 service rendered to retail consumers who are not entitled to  
28 warranty protection, including, where applicable, the cost of  
29 parts, servicing, labor, storage, overhead, and a reasonable  
30 profit.

31 (c) In the event of reimbursement under subdivision (a)  
32 of Section 1769, in an amount equal to that reimbursed to the  
33 buyer, plus a reasonable handling charge.

34 1772. If additional warranties are made by persons other  
35 than the manufacturer of the goods, the obligation of the  
36 person making such additional warranties shall be the same  
37 as that imposed on the manufacturer under Sections 1768 and  
38 1769.

39 1773. Any buyer of consumer goods injured by a willful  
40 violation of the provisions of this chapter may bring an action  
41 for the recovery of damages. Judgment may be entered for  
42 three times the amount at which the actual damages are as-  
43 sessed, plus reasonable attorney fees.

44 1774. Any retail seller of consumer goods injured by the  
45 willful or repeated violation of the provisions of this chapter  
46 may bring an action for the recovery of damages. Judgment  
47 may be entered for three times the amount at which the actual  
48 damages are assessed plus reasonable attorney fees.



Introduced by Senator Song  
(Coauthor: Assemblyman Karabian)

February 2, 1970

REFERRED TO COMMITTEE ON JUDICIARY

*An act to add Title 1.3 (commencing with Section 1750) to Part 4 of Division 3 of the Civil Code, relating to consumer goods transactions.*

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

- 1 SECTION 1. Title 1.3 (commencing with Section 1750) is
- 2 added to Part 4 of Division 3 of the Civil Code, to read:
- 3
- 4 TITLE 1.3. CONSUMER WARRANTIES
- 5
- 6 CHAPTER 1. CONSUMER WARRANTY PROTECTION
- 7
- 8 Article 1. General Provisions
- 9
- 10 1750. This chapter may be cited as the "Song Consumer
- 11 Warranty Protection Act."
- 12 1751. Any waiver by the buyer of consumer goods of the
- 13 provisions of this chapter, except as expressly provided in
- 14 this chapter, shall be deemed contrary to public policy and
- 15 shall be unenforceable and void.
- 16 1752. If any provision of this chapter or the application
- 17 thereof to any person or circumstance is held unconstitu-
- 18 tional, such invalidity shall not affect other provisions or ap-
- 19 plications of this chapter which can be given effect without

LEGISLATIVE COUNSEL'S DIGEST

SB 272, as amended, Song (Jud.). Consumer goods transactions. Adds Title 1.3 (commencing with Sec. 1750), Pt. 4, Div. 3, Civ.C. Enacts "Song Consumer Warranty Protection Act." Establishes obligations of manufacturers, distributors, and sellers of consumer goods, and rights of buyers thereof, with respect to particular transactions.

Vote—Majority; Appropriation—No; Fiscal Committee—No.



LIS-1b

1 the invalid provision or application, and to this end the pro-  
 2 visions of this chapter are severable.  
 3 1753. The provisions of this chapter shall not affect the  
 4 rights and obligations of parties determined by reference to  
 5 the Commercial Code except that, where the provisions of the  
 6 Commercial Code conflict with the rights guaranteed to buyers  
 7 of consumer goods under the provisions of this chapter, the  
 8 provisions of this chapter shall prevail.

### 10 Article 2. Definitions

11  
 12 1755. As used in this chapter:

13 (a) "Consumer goods" means any motor vehicle, machine,  
 14 appliance, device, product, or commodity that is used or  
 15 bought for use primarily for personal, family, or household  
 16 purposes.

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

23 (c) "Manufacturer" means any individual, partnership,  
 24 corporation, association, or other legal relationship which  
 25 manufactures, assembles, produces, or gathers consumer goods.

26 (d) "Distributor" means any individual, partnership, cor-  
 27 poration, association, or other legal relationship which stands  
 28 between the manufacturer and the retail seller in purchases,  
 29 consignments, or contracts for sale of consumer goods.

30 (e) "Retail seller," "seller," or "retailer" means any indi-  
 31 vidual, partnership, corporation, association, or other legal  
 32 relationship which engages in the business of selling new goods  
 33 to retail buyers.

34 1756. As used in this chapter:

35 (a) "Implied warranty of merchantability" or "implied  
 36 warranty that goods are merchantable" means that the con-  
 37 sumer goods meet each of the following:

38 (i)

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

41 (ii)

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

44 (iii)

45 (3) Are free from defects of materials or workmanship.

46 (iv)

47 (4) Are adequately contained, packaged, and labeled.

48 (v)

49 (5) Conform to the promises or affirmations of fact made  
 50 on the container or label.

51 (b) "Implied warranty of fitness" means that when the  
 52 retailer, distributor, or manufacturer has reason to know any

1 particular purpose for which the consumer goods are required,  
 2 and further, that the buyer is relying on the skill and judg-  
 3 ment of the seller to select and furnish suitable goods, then  
 4 there is an implied warranty that the goods shall be fit for  
 5 such purpose.

6 1757. As used in this chapter, a sale "as is" or "with all  
 7 faults" means that the manufacturer, distributor, and retailer  
 8 disclaim all implied warranties that would otherwise attach to  
 9 the sale of consumer goods under the provisions of this chap-  
 10 ter. In the absence of any express warranties accompanying  
 11 the sale, the buyer assumes the entire risk as to the quality and  
 12 performance of the goods purchased in a sale "as is" or "with  
 13 all faults."

### 14 Article 3. Sale Warranties

15  
 16 1760. Every sale or *consignment* of consumer goods by a  
 17 manufacturer in this state shall be accompanied by an implied  
 18 warranty that the goods are merchantable, except that no  
 19 such implied warranty accompanies the sale of consumer  
 20 goods that are sold on an "as is" or "with all faults" basis,  
 21 provided the provisions of this chapter affecting "as is" or  
 22 "with all faults" sales are strictly complied with.

23 1761. Every sale or *consignment* of consumer goods in this  
 24 state by a manufacturer who has reason to know at the time  
 25 of the sale or *consignment* that the goods are required for a  
 26 particular purpose and that the buyer is relying on the manu-  
 27 facturer's skill or judgment to select or furnish suitable goods  
 28 shall be accompanied by an implied warranty of fitness.

29 1762. Every sale or *consignment* of consumer goods in this  
 30 state made through a retailer or distributor who has reason  
 31 to know at the time of sale or *consignment* that the goods are  
 32 required for a particular purpose and that the buyer is rely-  
 33 ing on the retailer's or distributor's skill or judgment to select  
 34 or furnish suitable goods, shall, in lieu of the warranty of the  
 35 manufacturer under Section 1761, be accompanied by an im-  
 36 plied warranty that the goods are fit for that purpose.

37 1763. No implied warranty of merchantability and, where  
 38 applicable, no implied warranty of fitness shall be waived,  
 39 except in the case of a sale of consumer goods on an "as is"  
 40 or "with all faults" basis where the provisions of this chapter  
 41 affecting "as is" or "with all faults" sales are strictly com-  
 42 plied with.

43 1764. No sale or of consumer goods on an "as is" or "with  
 44 all faults" basis shall be effective to disclaim the implied war-  
 45 ranty of merchantability or, where applicable, the implied  
 46 warranty of fitness, unless a conspicuous writing is attached  
 47 to the goods which clearly informs the buyer, *prior to the*  
 48 *sale*, in simple and concise language of each of the following:

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

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

1 (e) Should the goods prove defective following their pur-  
2 chase, the buyer and not the manufacturer, distributor, or re-  
3 tailer assumes the entire cost of all necessary servicing or  
4 repair.

5 1765. Every sale of consumer goods on an "as is" or "with  
6 all faults" basis made in compliance with the provisions of  
7 this chapter shall constitute a waiver by the buyer of the im-  
8 plied warranty of merchantability and, where applicable, of  
9 the implied warranty of fitness.

10 1766. Nothing in this chapter shall affect the right of the  
11 manufacturer, distributor, or retailer to make additional war-  
12 ranties with respect to consumer goods. However, a manufac-  
13 turer, distributor, or retailer, may not, by such additional  
14 warranties, limit the application of or modify the warranties  
15 guaranteed by this chapter to the sale of consumer goods.

16 1767. Every manufacturer, distributor, or retailer making  
17 additional warranties with respect to consumer goods shall  
18 express such additional warranties in clear and concise terms  
19 and clearly identify the party making such additional warran-  
20 ties.

21 1768. (a) Every manufacturer of consumer goods which  
22 are sold in this state and for which there exists a warranty,  
23 either express or implied in law, shall maintain in this state  
24 sufficient service and repair facilities to carry out the terms of  
25 such warranties.

26 (b) Where such service and repair facilities are maintained  
27 in this state and service or repair of the goods is necessary  
28 because they do not comply with the applicable warranties,  
29 service and repair shall be commenced within a reasonable  
30 time following receipt of the goods by the manufacturer or its  
31 representative in this state. Unless the buyer agrees in writing  
32 to the contrary, the goods must be returned, at the manufac-  
33 turer's expense, in merchantable condition within 30 days.

34 (c) Should the manufacturer be unable to make such return  
35 of merchantable goods, he shall either replace the goods or  
36 reimburse the buyer in an amount equal to the purchase price  
37 paid by the buyer, less that amount directly attributable to  
38 use by the buyer prior to discovery of the defect. However, in  
39 no event shall such deduction from the purchase price be made  
40 for defective goods forwarded to the manufacturer or his rep-  
41 resentative in this state within 30 days of their purchase.

42 1769. If the manufacturer fails to provide service and re-  
43 pair facilities within this state as required in subdivision (a)  
44 of Section 1768, the buyer may follow the course of action  
45 prescribed in either subdivision (a) or (b), below, as follows:

46 (a) Return the defective consumer goods to the retail seller  
47 thereof for replacement, or for service or repair in accordance  
48 with the terms and conditions of the warranties. Such replace-  
49 ment, service, or repair shall be at the option of the buyer. If  
50 the retail seller is unable to replace the defective article with  
51 merchantable goods or is unable to service or repair the goods  
52 in accordance with the terms and conditions of the warranty,

1 the retail seller shall reimburse the buyer in an amount equal  
2 to the purchase price paid by the buyer, less that amount  
3 directly attributable to use by the buyer prior to discovery of  
4 the defect. However, in no event shall such deductions from the  
5 purchase price be made for defective goods returned to the  
6 retail seller within 30 days of their purchase.

7 (b) Return the defective article to the nearest retail seller  
8 of like goods of the manufacturer for replacement, or for serv-  
9 ice or repair in accordance with the terms and conditions of  
10 the warranties. Such replacement, service, or repair shall be at  
11 the option of the retail seller.

12 1770. Where an option is exercised in favor of service and  
13 repair under Section 1769, such service and repair must be  
14 commenced within a reasonable time, and, unless the buyer  
15 agrees in writing to the contrary, the goods must be returned  
16 in merchantable condition within 30 days.

17 1771. Every manufacturer who fails to provide service and  
18 repair facilities within this state as required by this chapter  
19 shall be liable as prescribed in this section to every retail seller  
20 of such manufacturer's goods who incurs obligations in giving  
21 effect to the warranties that accompany such manufacturer's  
22 consumer goods. The amount of such liability shall be deter-  
23 mined as follows:

24 (a) In the event of replacement, in an amount equal to the  
25 actual cost to the retail seller of the replaced goods, plus a  
26 reasonable handling charge.

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28 to that which would be received by the retail seller for like  
29 service rendered to retail consumers who are not entitled to  
30 warranty protection, including, where applicable, the cost of  
31 parts, servicing, labor, storage, overhead, and a reasonable  
32 profit.

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34 of Section 1769, in an amount equal to that reimbursed to the  
35 buyer, plus a reasonable handling charge.

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37 than the manufacturer of the goods, the obligation of the  
38 person making such additional warranties shall be the same  
39 as that imposed on the manufacturer under Sections 1768 and  
40 1769.

41 1773. Any buyer of consumer goods injured by a willful  
42 violation of the provisions of this chapter may bring an action  
43 for the recovery of damages. Judgment may be entered for  
44 three times the amount at which the actual damages are as-  
45 sessed, plus reasonable attorney fees.

46 1774. Any retail seller of consumer goods injured by the  
47 willful or repeated violation of the provisions of this chapter  
48 may bring an action for the recovery of damages. Judgment  
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50 damages are assessed plus reasonable attorney fees.





AMENDED IN SENATE APRIL 6, 1970  
AMENDED IN SENATE MARCH 17, 1970

SENATE BILL

No. 272

Introduced by Senator Song  
(Coauthor: Assemblyman Karabian)

February 2, 1970

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19 plications of this chapter which can be given effect without

LEGISLATIVE COUNSEL'S DIGEST

SB 272, as amended, Song (Jud.). Consumer goods transactions. Adds Title 1.3 (commencing with Sec. 1750), Pt. 4, Div. 3, Civ.C. Enacts "Song Consumer Warranty Protection Act." Establishes obligations of manufacturers, distributors, and sellers of consumer goods, and rights of buyers thereof with respect to particular transactions.

Vote—Majority; Appropriations, Fiscal Committee—No.

LEGISLATIVE INTENT SERVICE

(800) 666-1917

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1 the invalid provision or application, and to this end the pro-  
2 visions of this chapter are severable.

3 1753. The provisions of this chapter shall not affect the  
4 rights and obligations of parties determined by reference to  
5 the Commercial Code except that, where the provisions of the  
6 Commercial Code conflict with the rights guaranteed to buyers  
7 of consumer goods under the provisions of this chapter, the  
8 provisions of this chapter shall prevail.

## 9 Article 2. Definitions

10 1755. As used in this chapter:

11 (a) "Consumer goods" means any motor vehicle, machine,  
12 appliance, device, product, or commodity that is used or  
13 bought for use primarily for personal, family, or household  
14 purposes.

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

21 (c) "Manufacturer" means any individual, partnership,  
22 corporation, association, or other legal relationship which  
23 manufactures, assembles, produces, or gathers consumer goods.

24 (d) "Distributor" means any individual, partnership, cor-  
25 poration, association, or other legal relationship which stands  
26 between the manufacturer and the retail seller in purchases,  
27 consignments, or contracts for sale of consumer goods.

28 (e) "Retail seller," "seller," or "retailer" means any indi-  
29 vidual, partnership, corporation, association, or other legal  
30 relationship which engages in the business of selling new goods  
31 to retail buyers, *but does not include any contractor subject to*  
32 *the provisions of Chapter 9 (commencing with Section 7000)*  
33 *of Division 3 of the Business and Professions Code.*

34 1756. As used in this chapter:

35 (a) "Implied warranty of merchantability" or "implied  
36 warranty that goods are merchantable" means that the con-  
37 sumer goods meet each of the following:

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

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

42 (3) Are free from defects of materials or workmanship.

43 (4) Are adequately contained, packaged, and labeled.

44 (5) Conform to the promises or affirmations of fact made  
45 on the container or label.

46 (b) "Implied warranty of fitness" means that when the  
47 retailer, distributor, or manufacturer has reason to know any  
48 particular purpose for which the consumer goods are required,  
49 and further, that the buyer is relying on the skill and judg-  
50

1 ment of the seller to select and furnish suitable goods, then  
2 there is an implied warranty that the goods shall be fit for  
3 such purpose.

4 1757. As used in this chapter, a sale "as is" or "with all  
5 faults" means that the manufacturer, distributor, and retailer  
6 disclaim all implied warranties that would otherwise attach to  
7 the sale of consumer goods under the provisions of this chap-  
8 ter. In the absence of any express warranties accompanying  
9 the sale, the buyer assumes the entire risk as to the quality and  
10 performance of the goods purchased in a sale "as is" or "with  
11 all faults."

## 12 Article 3. Sale Warranties

13 1760. Every sale or consignment of consumer goods by a  
14 manufacturer in this state shall be accompanied by an implied  
15 warranty that the goods are merchantable, except that no  
16 such implied warranty accompanies the sale of consumer  
17 goods that are sold on an "as is" or "with all faults" basis,  
18 provided the provisions of this chapter affecting "as is" or  
19 "with all faults" sales are strictly complied with.

20 1761. Every sale or consignment of consumer goods in this  
21 state by a manufacturer who has reason to know at the time  
22 of the sale or consignment that the goods are required for a  
23 particular purpose and that the buyer is relying on the manu-  
24 facturer's skill or judgment to select or furnish suitable goods  
25 shall be accompanied by an implied warranty of fitness.

26 1762. Every sale or consignment of consumer goods in this  
27 state made through a retailer or distributor who has reason  
28 to know at the time of sale or consignment that the goods are  
29 required for a particular purpose and that the buyer is rely-  
30 ing on the retailer's or distributor's skill or judgment to select  
31 or furnish suitable goods, shall, in lieu of the warranty of the  
32 manufacturer under Section 1761, be accompanied by an im-  
33 plied warranty that the goods are fit for that purpose.

34 1763. No implied warranty of merchantability and, where  
35 applicable, no implied warranty of fitness shall be waived,  
36 except in the case of a sale of consumer goods on an "as is"  
37 or "with all faults" basis where the provisions of this chapter  
38 affecting "as is" or "with all faults" sales are strictly com-  
39 plied with.

40 1764. No sale of consumer goods on an "as is" or "with  
41 all faults" basis shall be effective to disclaim the implied war-  
42 ranty of merchantability or, where applicable, the implied  
43 warranty of fitness, unless a conspicuous writing is attached  
44 to the goods which clearly informs the buyer, prior to the  
45 sale, in simple and concise language of each of the following:

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

48 (b) The entire risk as to the quality and performance of  
49 the goods is with the buyer.  
50

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

5 1765. Every sale of consumer goods on an "as is" or "with all faults" basis made in compliance with the provisions of this chapter shall constitute a waiver by the buyer of the implied warranty of merchantability and, where applicable, of the implied warranty of fitness.

10 1766. Nothing in this chapter shall affect the right of the manufacturer, distributor, or retailer to make additional warranties with respect to consumer goods. However, a manufacturer, distributor, or retailer, may not, by such additional warranties, limit the application of or modify the warranties guaranteed by this chapter to the sale of consumer goods.

16 1767. Every manufacturer, distributor, or retailer making additional warranties with respect to consumer goods shall express such additional warranties in clear and concise terms and clearly identify the party making such additional warranties.

21 1768. (a) Every manufacturer of consumer goods which are sold in this state and for which there exists a warranty, either express or implied in law, shall maintain in this state sufficient service and repair facilities to carry out the terms of such warranties.

26 (b) Where such service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not comply with the applicable warranties, service and repair shall be commenced within a reasonable time following receipt of the goods by the manufacturer or its representative in this state. Unless the buyer agrees in writing to the contrary, the goods must be returned, at the manufacturer's expense, in merchantable condition within 30 days.

34 (c) Should the manufacturer be unable to make such return of merchantable goods, he shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to discovery of the defect. However, in no event shall such deduction from the purchase price be made for defective goods forwarded to the manufacturer or his representative in this state within 30 days of their purchase.

42 1769. If the manufacturer fails to provide service and repair facilities within this state as required in subdivision (a) of Section 1768, the buyer may follow the course of action prescribed in either subdivision (a) or (b), below, as follows:

46 (a) Return the defective consumer goods to the retail seller thereof for replacement, or for service or repair in accordance with the terms and conditions of the warranties. Such replacement, service, or repair shall be at the option of the buyer. If the retail seller is unable to replace the defective article with merchantable goods or is unable to service or repair the goods in accordance with the

11 the retail seller shall 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 discovery of the defect. However, in no event shall such deductions from the purchase price be made for defective goods returned to the retail seller within 30 days of their purchase.

17 (b) Return the defective article to the nearest retail seller of like goods of the manufacturer for replacement, or for service or repair in accordance with the terms and conditions of the warranties. Such replacement, service, or repair shall be at the option of the retail seller.

12 1770. Where an option is exercised in favor of service and repair under Section 1769, such service and repair must be commenced within a reasonable time, and, unless the buyer agrees in writing to the contrary, the goods must be returned in merchantable condition within 30 days.

17 1771. Every manufacturer who fails to provide service and repair facilities within this state as required by this chapter shall be liable as prescribed in this section to every retail seller of such manufacturer's goods who incurs obligations in giving effect to the warranties that accompany such manufacturer's consumer goods. The amount of such liability shall be determined as follows:

24 (a) In the event of replacement, in an amount equal to the actual cost to the retail seller of the replaced goods, plus a reasonable handling charge.

27 (b) In the event of service and repair, in an amount equal to that which would be received by the retail seller for like service rendered to retail consumers who are not entitled to warranty protection, including, where applicable, the cost of parts, servicing, labor, storage, overhead, and a reasonable profit.

33 (c) In the event of reimbursement under subdivision (a) of Section 1769, in an amount equal to that reimbursed to the buyer, plus a reasonable handling charge.

36 1772. If additional warranties are made by persons other than the manufacturer of the goods, the obligation of the person making such additional warranties shall be the same as that imposed on the manufacturer under Sections 1768 and 1769.

41 1773. Any buyer of consumer goods injured by a willful violation of the provisions of this chapter may bring an action for the recovery of damages. Judgment may be entered for three times the amount at which the actual damages are assessed, plus reasonable attorney fees.

46 1774. Any retail seller of consumer goods injured by the willful or repeated violation of the provisions of this chapter may bring an action for the recovery of damages. Judgment may be entered for three times the amount at which the actual damages are assessed plus reasonable attorney fees.

AMENDED IN SENATE MAY 25, 1970  
AMENDED IN SENATE APRIL 6, 1970  
AMENDED IN SENATE MARCH 17, 1970

SENATE BILL

No. 272

Introduced by Senator Song  
(Coauthor: Assemblyman Karabian)

February 2, 1970

REFERRED TO COMMITTEE ON JUDICIARY

*An act to add Title 1.3 (commencing with Section 1750) to Part 4 of Division 3 of the Civil Code, relating to consumer goods transactions.*

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

1 SECTION 1. Title 1.3 (commencing with Section 1750) is  
2 added to Part 4 of Division 3 of the Civil Code, to read:

3  
4 TITLE 1.3. CONSUMER WARRANTIES

5  
6 CHAPTER 1. CONSUMER WARRANTY PROTECTION

7  
8 Article 1. General Provisions

9  
10 1750. This chapter may be cited as the "Song Consumer  
11 Warranty Protection Act."

12 1751. Any waiver by the buyer of consumer goods of the  
13 provisions of this chapter, except as expressly provided in  
14 this chapter, shall be deemed contrary to public policy and  
15 shall be unenforceable and void.

LEGISLATIVE COUNSEL'S DIGEST

SB 272, as amended, Song (Jud.). Consumer goods transactions.  
Adds Title 1.3 (commencing with Sec. 1750), Pt. 4, Div. 3, Civ.C.  
Enacts "Song Consumer Warranty Protection Act." Establishes  
obligations of manufacturers, distributors, and sellers of consumer  
goods, and rights of buyers thereof, with respect to particular trans-  
actions.

To become operative February 1, 1971.

Vote—Majority; Appropriati

Fiscal Committee No.

LEGISLATIVE INTENT SERVICE

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1 1752. If any provision of this chapter or the application  
2 thereof to any person or circumstance is held unconstitu-  
3 tional, such invalidity shall not affect other provisions or ap-  
4 plications of this chapter which can be given effect without  
5 the invalid provision or application, and to this end the pro-  
6 visions of this chapter are severable.

7 1753. The provisions of this chapter shall not affect the  
8 rights and obligations of parties determined by reference to  
9 the Commercial Code except that, where the provisions of the  
10 Commercial Code conflict with the rights guaranteed to buyers  
11 of consumer goods under the provisions of this chapter, the  
12 provisions of this chapter shall prevail.

### 13 Article 2. Definitions

14 1755. As used in this chapter:

15 (a) "Consumer goods" means any motor vehicle, machine,  
16 appliance, device, product, or commodity that is used or  
17 bought for use primarily for personal, family, or household  
18 purposes.

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

25 (c) "Manufacturer" means any individual, partnership,  
26 corporation, association, or other legal relationship which  
27 manufactures, assembles, produces, or gathers consumer goods.

28 (d) "Distributor" means any individual, partnership, cor-  
29 poration, association, or other legal relationship which stands  
30 between the manufacturer and the retail seller in purchases,  
31 consignments, or contracts for sale of consumer goods.

32 (e) "Retail seller," "seller," or "retailer" means any indi-  
33 vidual, partnership, corporation, association, or other legal  
34 relationship which engages in the business of selling new goods  
35 to retail buyers, but does not include any contractor subject to  
36 the provisions of Chapter 9 (commencing with Section 7000)  
37 of Division 3 of the Business and Professions Code.

38 1756. As used in this chapter:

39 (a) "Implied warranty of merchantability" or "implied  
40 warranty that goods are merchantable" means that the con-  
41 sumer goods meet each of the following:

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

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

46 (3) Are free from defects of materials or workmanship.

47 (4) Are adequately contained, packaged, and labeled.

48 (5) Conform to the promises or affirmations of fact made  
49 on the container or label

1 (b) "Implied warranty of fitness" means that when the  
2 retailer, distributor, or manufacturer has reason to know any  
3 particular purpose for which the consumer goods are required,  
4 and further, that the buyer is relying on the skill and judg-  
5 ment of the seller to select and furnish suitable goods, then  
6 there is an implied warranty that the goods shall be fit for  
7 such purpose.

8 1757. As used in this chapter, a sale "as is" or "with all  
9 faults" means that the manufacturer, distributor, and retailer  
10 disclaim all implied warranties that would otherwise attach to  
11 the sale of consumer goods under the provisions of this chap-  
12 ter. In the absence of any express warranties accompanying  
13 the sale, the buyer assumes the entire risk as to the quality and  
14 performance of the goods purchased in a sale "as is" or "with  
15 all faults."

### 16 Article 3. Sale Warranties

17 1760. Every sale or consignment of consumer goods by a  
18 manufacturer in this state shall be accompanied by an implied  
19 warranty that the goods are merchantable, except that no  
20 such implied warranty accompanies the sale of consumer  
21 goods that are sold on an "as is" or "with all faults" basis,  
22 provided the provisions of this chapter affecting "as is" or  
23 "with all faults" sales are strictly complied with.

24 1761. Every sale or consignment of consumer goods in this  
25 state by a manufacturer who has reason to know at the time  
26 of the sale or consignment that the goods are required for a  
27 particular purpose and that the buyer is relying on the manu-  
28 facturer's skill or judgment to select or furnish suitable goods  
29 shall be accompanied by an implied warranty of fitness.

30 1762. Every sale or consignment of consumer goods in this  
31 state made through a retailer or distributor who has reason  
32 to know at the time of sale or consignment that the goods are  
33 required for a particular purpose and that the buyer is rely-  
34 ing on the retailer's or distributor's skill or judgment to select  
35 or furnish suitable goods, shall, in lieu of the warranty of the  
36 manufacturer under Section 1761, be accompanied by an im-  
37 plied warranty that the goods are fit for that purpose.

38 1763. No implied warranty of merchantability and, where  
39 applicable, no implied warranty of fitness shall be waived,  
40 except in the case of a sale of consumer goods on an "as is"  
41 or "with all faults" basis where the provisions of this chapter  
42 affecting "as is" or "with all faults" sales are strictly com-  
43 plied with.

44 1764. No sale of consumer goods on an "as is" or "with  
45 all faults" basis shall be effective to disclaim the implied war-  
46 ranty of merchantability or, where applicable, the implied  
47 warranty of fitness, unless a conspicuous writing is attached  
48 to the goods which clearly informs the buyer, prior to the  
49 sale, in simple and concise language of each of the following:

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

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

5 (c) Should the goods prove defective following their pur-  
6 chase, the buyer and not the manufacturer, distributor, or re-  
7 tailer assumes the entire cost of all necessary servicing or  
8 repair.

9 1765. Every sale of consumer goods on an "as is" or "with  
10 all faults" basis made in compliance with the provisions of  
11 this chapter shall constitute a waiver by the buyer of the im-  
12 plied warranty of merchantability and, where applicable, of  
13 the implied warranty of fitness.

14 1766. Nothing in this chapter shall affect the right of the  
15 manufacturer, distributor, or retailer to make additional war-  
16 ranties with respect to consumer goods. However, a manufac-  
17 turer, distributor, or retailer, may not, by such additional  
18 warranties, limit the application of or modify the warranties  
19 guaranteed by this chapter to the sale of consumer goods.

20 1767. Every manufacturer, distributor, or retailer making  
21 additional warranties with respect to consumer goods shall  
22 express such additional warranties in clear and concise terms  
23 and clearly identify the party making such additional warran-  
24 ties.

25 1768. (a) Every manufacturer of consumer goods which  
26 are sold in this state and for which there exists a warranty,  
27 either express or implied in law, shall maintain *or cause to be*  
28 *maintained* in this state sufficient service and repair facilities  
29 to carry out the terms of such warranties.

30 (b) Where such service and repair facilities are maintained  
31 in this state and service or repair of the goods is necessary  
32 because they do not comply with the applicable warranties,  
33 service and repair shall be commenced within a reasonable  
34 time following receipt of the goods by the manufacturer or its  
35 representative in this state. Unless the buyer agrees in writing  
36 to the contrary, the goods must be returned, at the manufac-  
37 turer's expense, in merchantable condition within 30 days. *De-*  
38 *lay caused by conditions beyond the control of the manufac-*  
39 *turer or his representatives shall serve to extend this 30-day*  
40 *requirement. Where such delay arises, delivery of merchant-*  
41 *able goods shall be made as soon as possible following termina-*  
42 *tion of the condition giving rise to the delay.*

43 (c) Should the manufacturer be unable to make such return  
44 of merchantable goods, he shall either replace the goods or  
45 reimburse the buyer in an amount equal to the purchase price  
46 paid by the buyer, less that amount directly attributable to  
47 use by the buyer prior to discovery of the defect. However, in  
48 no event shall such deduction from the purchase price be made  
49 for defective goods forwarded to the manufacturer or his rep-  
50 resentative in this state within 30 days of their purchase.

1 1769. If the manufacturer fails to provide service and re-  
2 pair facilities within this state as required in subdivision (a)  
3 of Section 1768, the buyer may follow the course of action  
4 prescribed in either subdivision (a) or (b), below, as follows:

5 (a) Return the defective consumer goods to the retail seller  
6 thereof for replacement, or for service or repair in accordance  
7 with the terms and conditions of the warranties. Such replace-  
8 ment, service, or repair shall be at the option of the buyer  
9 retail seller. If the retail seller is unable to replace the defec-  
10 tive article with merchantable goods or is unable to service or  
11 repair the goods in accordance with the terms and conditions  
12 of the warranty, the retail seller shall reimburse the buyer in  
13 an amount equal to the purchase price paid by the buyer, less  
14 that amount directly attributable to use by the buyer prior to  
15 discovery of the defect. However, in no event shall such deduc-  
16 tions from the purchase price be made for defective goods  
17 returned to the retail seller within 30 days of their purchase.

18 (b) Return the defective article to the nearest retail seller  
19 any retail seller, within this state, of like goods of the same  
20 manufacturer for replacement, or for service or repair in ac-  
21 cordance with the terms and conditions of the warranties. Such  
22 replacement, service, or repair shall be at the option of the  
23 retail seller.

24 1770. Where an option is exercised in favor of service and  
25 repair under Section 1769, such service and repair must be  
26 commenced within a reasonable time, and, unless the buyer  
27 agrees in writing to the contrary, the goods must be returned  
28 in merchantable condition within 30 days. *Delay caused by*  
29 *conditions beyond the control of the manufacturer or his rep-*  
30 *resentatives shall serve to extend this 30-day requirement.*  
31 *Where such delay arises, delivery of merchantable goods shall*  
32 *be made as soon as possible following termination of the con-*  
33 *dition giving rise to the delay.*

34 1771. Every manufacturer who fails to provide service and  
35 repair facilities within this state as required by this chapter  
36 shall be liable as prescribed in this section to every retail seller  
37 of such manufacturer's goods who incurs obligations in giving  
38 effect to the warranties that accompany such manufacturer's  
39 consumer goods. The amount of such liability shall be deter-  
40 mined as follows:

41 (a) In the event of replacement, in an amount equal to the  
42 actual cost to the retail seller of the replaced goods, plus a  
43 reasonable handling charge.

44 (b) In the event of service and repair, in an amount equal  
45 to that which would be received by the retail seller for like  
46 service rendered to retail consumers who are not entitled to  
47 warranty protection, including, where applicable, the cost of  
48 parts, servicing, labor, storage, overhead, and a reasonable  
49 profit.

50 (c) In the event of reimbursement under subdivision (a)  
51 of Section 1769, in an amount equal to that reimbursed to the  
52 buyer, plus a reasonable handling charge.



- 1 1772. If additional warranties are made by persons other
- 2 than the manufacturer of the goods, the obligation of the
- 3 person making such additional warranties shall be the same
- 4 as that imposed on the manufacturer under Sections 1768 and
- 5 1769.
- 6 1773. Any buyer of consumer goods injured by a willful
- 7 violation of the provisions of this chapter may bring an action
- 8 for the recovery of damages. Judgment may be entered for
- 9 three times the amount at which the actual damages are as-
- 10 sessed, plus reasonable attorney fees.
- 11 1774. Any retail seller of consumer goods injured by the
- 12 willful or repeated violation of the provisions of this chapter
- 13 may bring an action for the recovery of damages. Judgment
- 14 may be entered for three times the amount at which the actual
- 15 damages are assessed plus reasonable attorney fees,
- 16 *SEC. 2. This act shall become operative on February 1,*
- 17 *1971.*



AMENDED IN ASSEMBLY JULY 16, 1970

AMENDED IN SENATE MAY 25, 1970

AMENDED IN SENATE APRIL 6, 1970

AMENDED IN SENATE MARCH 17, 1970

SENATE BILL

No. 272

Introduced by Senator Song  
(Coauthor: Assemblyman Karabian)

February 2, 1970

REFERRED TO COMMITTEE ON JUDICIARY

*An act to add Title 1.3 (commencing with Section 1750) to Part 4 of Division 3 of the Civil Code, relating to consumer goods transactions.*

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

1 SECTION 1. Title 1.3 (commencing with Section 1750) is  
2 added to Part 4 of Division 3 of the Civil Code, to read:

3

4 TITLE 1.3. CONSUMER WARRANTIES

5

6 CHAPTER 1. CONSUMER WARRANTY PROTECTION

7

8 Article 1. General Provisions

9

10 1750. This chapter may be cited as the "Song Consumer  
11 Warranty Protection Act."

12 1751. Any waiver by the buyer of consumer goods of the  
13 provisions of this chapter, except as expressly provided in

LEGISLATIVE COUNSEL'S DIGEST

SB 272, as amended, Song (Jud.). Consumer goods transactions.  
Adds Title 1.3 (commencing with Sec. 1750), Pt. 4, Div. 3, Civ.C.  
Enacts "Song Consumer Warranty Protection Act." Establishes  
obligations of manufacturers, distributors, and sellers of consumer  
goods, and rights of buyers thereof, with respect to particular trans-  
actions.

To become operative February

Makes act applicable only to consumer goods sold on or after March

1, 1971.

Vote—Majority; Appropriations; Fiscal Committee—No.

LEGISLATIVE INTENT SERVICE (800) 666-1917



1 this chapter, shall be deemed contrary to public policy and  
2 shall be unenforceable and void.

3 1752. If any provision of this chapter or the application  
4 thereof to any person or circumstance is held unconstitu-  
5 tional, such invalidity shall not affect other provisions or ap-  
6 plications of this chapter which can be given effect without  
7 the invalid provision or application, and to this end the pro-  
8 visions of this chapter are severable.

9 1753. The provisions of this chapter shall not affect the  
10 rights and obligations of parties determined by reference to  
11 the Commercial Code except that, where the provisions of the  
12 Commercial Code conflict with the rights guaranteed to buyers  
13 of consumer goods under the provisions of this chapter, the  
14 provisions of this chapter shall prevail.

### 15 Article 2. Definitions

16 1755. As used in this chapter:

17 (a) "Consumer goods" means any motor vehicle, machine,  
18 appliance, device, product, or commodity or like product that  
19 is used or bought for use primarily for personal, family, or  
20 household purposes.

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

27 (c) "Manufacturer" means any individual, partnership,  
28 corporation, association, or other legal relationship which  
29 manufactures, assembles, produces, or gathers consumer goods.

30 (d) "Distributor" means any individual, partnership, cor-  
31 poration, association, or other legal relationship which stands  
32 between the manufacturer and the retail seller in purchases,  
33 consignments, or contracts for sale of consumer goods.

34 (e) "Retail seller," "seller," or "retailer" means any indi-  
35 vidual, partnership, corporation, association, or other legal  
36 relationship which engages in the business of selling new goods  
37 to retail buyers, but does not include any contractor subject  
38 to the provisions of Chapter 9 (commencing with Section  
39 7000) of Division 3 of the Business and Professions Code.

40 1756. As used in this chapter:

41 (a) "Implied warranty of merchantability" or "implied  
42 warranty that goods are merchantable" means that the con-  
43 sumer goods meet each of the following:

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

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

48 (3) Are free from defects of materials or workmanship.

49 (4) Are adequately packaged and labeled.

1 (5) Conform to the promises or affirmations of fact made  
2 on the container or label.

3 (b) "Implied warranty of fitness" means that when the  
4 retailer, distributor, or manufacturer has reason to know any  
5 particular purpose for which the consumer goods are required,  
6 and further, that the buyer is relying on the skill and judg-  
7 ment of the seller to select and furnish suitable goods, then  
8 there is an implied warranty that the goods shall be fit for  
9 such purpose.

10 1757. (a) "Express warranty" means that the consumer  
11 goods:

12 (1) Conform to any affirmation of fact or promise made re-  
13 lating to such goods.

14 (2) In the event of any description, that the goods shall con-  
15 form to such description.

16 (3) In the event of any sample or model, that the whole of  
17 the goods shall conform to such sample or model.

18 (b) It is not necessary to the creation of an express war-  
19 ranty that formal words such as "warrant" or "guarantee"  
20 be used or that a specific intention to make a warranty be  
21 present, but an affirmation merely of the value of the goods or  
22 a statement purporting to be merely an opinion or commenda-  
23 tion of the goods does not create a warranty.

24 (c) Statements or representations such as expressions of  
25 general policy concerning customer satisfaction which are not  
26 subject to any limitation do not create an express warranty.

27 1767

28 1758. As used in this chapter, a sale "as is" or "with all  
29 faults" means that the manufacturer, distributor, and retailer  
30 disclaim all implied warranties that would otherwise attach to  
31 the sale of consumer goods under the provisions of this chap-  
32 ter. In the absence of any express warranties accompanying  
33 the sale, the buyer assumes the entire risk as to the quality and  
34 performance of the goods purchased in a sale "as is" or "with  
35 all faults." ter.

### 36 Article 3. Sale Warranties

37 1760. Every Unless disclaimed in the manner prescribed by  
38 this chapter, every sale or consignment of consumer goods by a  
39 manufacturer in this state shall be accompanied by an implied  
40 warranty that the goods are merchantable, except that no  
41 such implied warranty accompanies the sale of consumer  
42 goods that are sold on an "as is" or "with all faults" basis,  
43 provided the provisions of this chapter affecting "as is" or  
44 "with all faults" sales are strictly complied with.

45 1761. Every sale or consignment of consumer goods in this  
46 state by a manufacturer who has reason to know at the time  
47 of the sale or consignment that the goods are required for a  
48 particular purpose and that the buyer is relying on the manu-  
49 facturer's skill or judgment to select or furnish suitable goods  
50 shall be accompanied by an implied warranty of fitness.

1 1762. Every sale or consignment of consumer goods in this  
2 state made through a retailer or distributor who has reason  
3 to know at the time of sale or consignment that the goods are  
4 required for a particular purpose and that the buyer is rely-  
5 ing on the retailer's or distributor's skill or judgment to select  
6 or furnish suitable goods, shall, in lieu of the warranty of the  
7 manufacturer under Section 1761, be accompanied by an im-  
8 plied warranty that the goods are fit for that purpose.

9 1763. No implied warranty of merchantability and, where  
10 applicable, no implied warranty of fitness shall be waived,  
11 except in the case of a sale of consumer goods on an "as is"  
12 or "with all faults" basis where the provisions of this chapter  
13 affecting "as is" or "with all faults" sales are strictly com-  
14 plied with.

15 1764. (a) No sale of consumer goods on an "as is" or "with  
16 all faults" basis shall be effective to disclaim the implied war-  
17 ranty of merchantability or, where applicable, the implied  
18 warranty of fitness, unless a conspicuous writing is attached  
19 to the goods which clearly informs the buyer, prior to the  
20 sale, in simple and concise language of each of the following:

21 (a)

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

24 (b)

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

27 (c)

28 (3) Should the goods prove defective following their pur-  
29 chase, the buyer and not the manufacturer, distributor, or re-  
30 tailer assumes the entire cost of all necessary servicing or  
31 repair.

32 (b) *In the event of sale of consumer goods by means of a*  
33 *mail order catalog, the catalog offering such goods shall con-*  
34 *tain the required writing as to each item so offered in lieu of*  
35 *the requirement of notification prior to the sale.*

36 1765. Every sale of consumer goods on an "as is" or "with  
37 all faults" basis made in compliance with the provisions of  
38 this chapter shall constitute a waiver by the buyer of the im-  
39 plied warranty of merchantability and, where applicable, of  
40 the implied warranty of fitness.

41 1766. (a) Nothing in this chapter shall affect the right of  
42 the manufacturer, distributor, or retailer to make additional  
43 express warranties with respect to consumer goods. However,  
44 a manufacturer, distributor, or retailer, may not, by such ad-  
45 ditional express warranties, limit the application of or modify  
46 the implied warranties guaranteed by this chapter to the sale  
47 of consumer goods.

48 (b) *For purposes of this chapter, implied warranties may be*  
49 *limited in duration to the duration of an express warranty of*  
50 *reasonable duration, if such limitation is set forth in clear and*  
51 *unmistakable language and prominently displayed on the face*  
52 *of the warranty.*

1 1767. Every manufacturer, distributor, or retailer making  
2 additional ~~express~~ warranties with respect to consumer goods  
3 shall ~~express such additional~~ *make such* warranties in clear  
4 and concise terms and clearly identify the party making such  
5 additional ~~express~~ warranties.

6 1768. (a) Every manufacturer of consumer goods which  
7 are sold in this state and for which there exists a warranty,  
8 either express or implied in law, shall ~~an express warranty~~  
9 *shall:* (1) maintain or cause to be maintained in this state suf-  
10 ficient service and repair facilities to carry out the terms of  
11 such warranties, or (2) *be subject to the provisions of Section*  
12 *1771.*

13 (b) Where such service and repair facilities are maintained  
14 in this state and service or repair of the goods is necessary  
15 because they do not comply with the applicable warranties,  
16 service and repair shall be commenced within a reasonable  
17 time following receipt of the goods by the manufacturer or its  
18 representative in this state. Unless the buyer agrees in writing  
19 to the contrary, the goods must be returned, at the manufac-  
20 turer's expense, in merchantable condition within 30 days. De-  
21 lay caused by conditions beyond the control of the manufac-  
22 turer or his representatives shall serve to extend this 30-day  
23 requirement. Where such delay arises, delivery of merchant-  
24 able goods shall be made as soon as possible following termina-  
25 tion of the condition giving rise to the delay.

26 (c) Should the manufacturer be unable to make such return  
27 of merchantable goods, he shall either replace the goods or  
28 reimburse the buyer in an amount equal to the purchase price  
29 paid by the buyer, less that amount directly attributable to  
30 use by the buyer prior to discovery of the defect. ~~However, in~~  
31 ~~no event shall such deduction from the purchase price be made~~  
32 ~~for defective goods forwarded to the manufacturer or his rep-~~  
33 ~~resentative in this state within 30 days of their purchase.~~

34 1769. If the manufacturer fails to ~~does not~~ provide service  
35 and repair facilities within this state ~~as required in pursuant~~  
36 to subdivision (a) of Section 1768, the buyer may follow the  
37 course of action prescribed in either subdivision (a) or (b),  
38 below, as follows:

39 (a) Return the defective consumer goods to the retail seller  
40 thereof for replacement, or for service or repair in accordance  
41 with the terms and conditions of the ~~warranties express war-~~  
42 ~~ranty.~~ Such replacement, service, or repair shall be at the  
43 option of the retail seller. If the retail seller is unable to re-  
44 place the defective article with merchantable goods or is un-  
45 able to service or repair the goods in accordance with the terms  
46 and conditions of the warranty, the retail seller shall reim-  
47 burse the buyer in an amount equal to the purchase price paid  
48 by the buyer, less that amount directly attributable to use by  
49 the buyer prior to discovery of the defect. ~~However, in no~~  
50 ~~event shall such deductions from the purchase price be made~~  
51 ~~for defective goods returned to the retail seller within 30 days~~  
~~of purchase.~~

1 (b) Return the defective article to any retail seller, within  
2 this state, of like goods of the same manufacturer for replace-  
3 ment, or for service or repair in accordance with the terms  
4 and conditions of the warranties *express warranty*. Such re-  
5 placement, service, or repair shall be at the option of the retail  
6 seller.

7 1770. Where an option is exercised in favor of service and  
8 repair under Section 1769, such service and repair must be  
9 commenced within a reasonable time, and, unless the buyer  
10 agrees in writing to the contrary, the goods must be returned  
11 in merchantable condition within 30 days. Delay caused by  
12 conditions beyond the control of the manufacturer or his rep-  
13 resentatives shall serve to extend this 30-day requirement.  
14 Where such delay arises, delivery of merchantable goods shall  
15 be made as soon as possible following termination of the con-  
16 dition giving rise to the delay.

17 1771. Every manufacturer who fails to provide service and  
18 repair facilities within this state as required by this chapter  
19 pursuant to subdivision (a) of Section 1768 shall be liable as  
20 prescribed in this section to every retail seller of such manu-  
21 facturer's goods who incurs obligations in giving effect to the  
22 *express warranties* that accompany such manufacturer's con-  
23 sumer goods. The amount of such liability shall be determined  
24 as follows:

25 (a) In the event of replacement, in an amount equal to the  
26 actual cost to the retail seller of the replaced goods, plus a  
27 reasonable handling charge.

28 (b) In the event of service and repair, in an amount equal  
29 to that which would be received by the retail seller for like  
30 service rendered to retail consumers who are not entitled to  
31 warranty protection, including, where applicable, the cost of  
32 parts, servicing, labor, storage, overhead, and a reasonable  
33 profit.

34 (c) In the event of reimbursement under subdivision (a)  
35 of Section 1769, in an amount equal to that reimbursed to the  
36 buyer, plus a reasonable handling charge.

37 1772. If additional *express warranties* are made by per-  
38 sons other than the manufacturer of the goods, the obligation  
39 of the person making such additional warranties shall be the  
40 same as that imposed on the manufacturer under Sections  
41 1768 and 1769.

42 1773. Any buyer of consumer goods injured by a willful  
43 violation of the provisions of this chapter may bring an action  
44 for the recovery of damages. Judgment may be entered for  
45 three times the amount at which the actual damages are as-  
46 sessed, plus reasonable attorney fees.

47 1774. Any retail seller of consumer goods injured by the  
48 willful or repeated violation of the provisions of this chapter  
49 may bring an action for the recovery of damages. Judgment  
50 may be entered for three times the amount at which the actual  
51 damages are assessed plus reasonable attorney fees.

1 1775. The triple damages provisions in Section 1773 and  
2 Section 1774 shall not apply to class actions.

3 1776. The provisions of this chapter shall not apply to any  
4 defect in consumer goods caused by the unauthorized or un-  
5 reasonable use of the goods following sale.

6 1777. Nothing in this chapter shall be construed to prevent  
7 the sale of a service contract to the buyer in addition to or in  
8 lieu of an *express warranty* if such contract fully and con-  
9 spicuously discloses in simple and readily understood language  
10 the terms and conditions.

11 Sec. 2. This act shall become operative on February only  
12 apply to consumer goods sold on or after March 1, 1971.

AMENDED IN ASSEMBLY JULY 30, 1970

AMENDED IN ASSEMBLY JULY 16, 1970

AMENDED IN SENATE MAY 25, 1970

AMENDED IN SENATE APRIL 6, 1970

AMENDED IN SENATE MARCH 17, 1970

SENATE BILL

No. 272

Introduced by Senator Song  
(Coauthor: Assemblyman Karabian)

February 2, 1970

REFERRED TO COMMITTEE ON JUDICIARY

*An act to add Title 1.3 (commencing with Section 1750) to Part 4 of Division 3 of the Civil Code, relating to consumer goods transactions.*

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

1 SECTION 1. Title 1.3 (commencing with Section 1750) is  
2 added to Part 4 of Division 3 of the Civil Code, to read:

3  
4  
5  
6  
7  
8  
9

TITLE 1.3. CONSUMER WARRANTIES

CHAPTER 1. CONSUMER WARRANTY PROTECTION

Article 1. General Provisions

10 1750. This chapter may be cited as the "Song Consumer  
11 Warranty Protection Act."

12 1751. Any waiver by the buyer of consumer goods of the  
13 provisions of this chapter, except as expressly provided in

LEGISLATIVE COUNSEL'S DIGEST

SB 272, as amended, Song (Jud.). Consumer goods transactions.  
Adds Title 1.3 (commencing with Sec. 1750), Pt. 4, Div. 3, Civ.C.  
Enacts "Song Consumer Warranty Protection Act." Establishes  
obligations of manufacturers, distributors, and sellers of consumer  
goods, and rights of buyers thereof, with respect to particular trans-  
actions.

Makes act applicable only to goods sold on or after March  
1, 1971.

Vote—Majority; Appropriation, Fiscal Committee—No.

LEGISLATIVE INTENT SERVICE (800) 666-1917

LS-11

1 this chapter, shall be deemed contrary to public policy and  
2 shall be unenforceable and void.

3 1752. If any provision of this chapter or the application  
4 thereof to any person or circumstance is held unconstitu-  
5 tional, such invalidity shall not affect other provisions or ap-  
6 plications of this chapter which can be given effect without  
7 the invalid provision or application, and to this end the pro-  
8 visions of this chapter are severable.

9 1753. The provisions of this chapter shall not affect the  
10 rights and obligations of parties determined by reference to  
11 the Commercial Code except that, where the provisions of the  
12 Commercial Code conflict with the rights guaranteed to buyers  
13 of consumer goods under the provisions of this chapter, the  
14 provisions of this chapter shall prevail.

15 Article 2. Definitions

16 1755. As used in this chapter:

17 (a) "Consumer goods" means any motor vehicle, machine,  
18 appliance, or like product that is used or bought for use pri-  
19 marily for personal, family, or household purposes.

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

26 (c) "Manufacturer" means any individual, partnership,  
27 corporation, association, or other legal relationship which  
28 manufactures, assembles, produces, or gathers consumer goods.

29 (d) "Distributor" means any individual, partnership, cor-  
30 poration, association, or other legal relationship which stands  
31 between the manufacturer and the retail seller in purchases,  
32 consignments, or contracts for sale of consumer goods.

33 (e) "Retail seller," "seller," or "retailer" means any indi-  
34 vidual, partnership, corporation, association, or other legal  
35 relationship which engages in the business of selling new goods  
36 to retail buyers.

37 1756. As used in this chapter:

38 (a) "Implied warranty of merchantability" or "implied  
39 warranty that goods are merchantable" means that the con-  
40 sumer goods meet each of the following:

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

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

45 (3) Are free from defects of materials or workmanship.

46 (4) Are adequately contained, packaged, and labeled.

47 (5) Conform to the promises or affirmations of fact made  
48 on the container or label.

49

50



1 (b) "Implied warranty of fitness" means that when the  
2 retailer, distributor, or manufacturer has reason to know any  
3 particular purpose for which the consumer goods are required,  
4 and further, that the buyer is relying on the skill and judg-  
5 ment of the seller to select and furnish suitable goods, then  
6 there is an implied warranty that the goods shall be fit for  
7 such purpose.

8 1757. (a) "Express warranty" means that the consumer  
9 goods:

10 (1) Conform to any affirmation of fact or promise made re-  
11 lating to such goods.

12 (2) In the event of any description, that the goods shall  
13 conform to such description.

14 (3)

15 1757. (a) "Express warranty" means:

16 (1) A statement arising out of a sale to the consumer of a  
17 consumer good pursuant to which the manufacturer, distrib-  
18 utor, or retailer undertakes to preserve or maintain the utility  
19 or performance of the consumer good or provide compensation  
20 if there is a failure in utility or performance; or

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

23 (b) It is not necessary to the creation of an express war-  
24 ranty that formal words such as "warrant" or "guarantee"  
25 be used or that a specific intention to make a warranty be  
26 present, but an affirmation merely of the value of the goods or  
27 a statement purporting to be merely an opinion or commenda-  
28 tion of the goods does not create a warranty.

29 (c) Statements or representations such as expressions of  
30 general policy concerning customer satisfaction which are not  
31 subject to any limitation do not create an express warranty.

32 1758. As used in this chapter, a sale "as is" or "with all  
33 faults" means that the manufacturer, distributor, and retailer  
34 disclaim all implied warranties that would otherwise attach to  
35 the sale of consumer goods under the provisions of this chap-  
36 ter.

37 Article 3. Sale Warranties

38 1760. Unless disclaimed in the manner prescribed by this  
39 chapter, every sale or consignment of consumer goods by a  
40 manufacturer in this state shall be accompanied by an implied  
41 warranty that the goods are merchantable.

42 1761. Every sale or consignment of consumer goods in this  
43 state by a manufacturer who has reason to know at the time  
44 of the sale or consignment that the goods are required for a  
45 particular purpose and that the buyer is relying on the manu-  
46 facturer's skill or judgment to select or furnish suitable goods  
47 shall be accompanied by an implied warranty of fitness.

48 1762. Every sale or consignment of consumer goods in this  
49 state made through a retailer or distributor who has reason

1 to know at the time of sale or consignment that the goods are  
2 required for a particular purpose and that the buyer is rely-  
3 ing on the retailer's or distributor's skill or judgment to select  
4 or furnish suitable goods, shall, in lieu of the warranty of the  
5 manufacturer under Section 1761, be accompanied by an im-  
6 plied warranty that the goods are fit for that purpose.

7 1763. No implied warranty of merchantability and, where  
8 applicable, no implied warranty of fitness shall be waived,  
9 except in the case of a sale of consumer goods on an "as is"  
10 or "with all faults" basis where the provisions of this chapter  
11 affecting "as is" or "with all faults" sales are strictly com-  
12 plied with.

13 1764. (a) No sale of consumer goods on an "as is" or "with  
14 all faults" basis shall be effective to disclaim the implied war-  
15 ranty of merchantability or, where applicable, the implied  
16 warranty of fitness, unless a conspicuous writing is attached  
17 to the goods which clearly informs the buyer, prior to the  
18 sale, in simple and concise language of each of the following:

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

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

23 (3) Should the goods prove defective following their pur-  
24 chase, the buyer and not the manufacturer, distributor, or re-  
25 tailer assumes the entire cost of all necessary servicing or  
26 repair.

27 (b) In the event of sale of consumer goods by means of a  
28 mail order catalog, the catalog offering such goods shall con-  
29 tain the required writing as to each item so offered in lieu of  
30 the requirement of notification prior to the sale.

31 1765. Every sale of consumer goods on an "as is" or "with  
32 all faults" basis made in compliance with the provisions of  
33 this chapter shall constitute a waiver by the buyer of the im-  
34 plied warranty of merchantability and, where applicable, of  
35 the implied warranty of fitness.

36 1766. (a) Nothing in this chapter shall affect the right of  
37 the manufacturer, distributor, or retailer to make express  
38 warranties with respect to consumer goods. However, a manu-  
39 facturer, distributor, or retailer, may not, by such express  
40 warranties, limit the application of or modify the implied  
41 warranties guaranteed by this chapter to the sale of consumer  
42 goods.

43 (b) For purposes of this chapter, implied warranties may be  
44 limited in duration to the duration of an express warranty of  
45 reasonable duration, if such limitation is set forth in clear and  
46 unmistakable language and prominently displayed on the face  
47 of the warranty.

48 1767. Every manufacturer, distributor, or retailer making  
49 express warranties with respect to consumer goods shall make  
50 such warranties in clear and concise terms and clearly identify  
51 the party making such express warranties.

1 1768. (a) Every manufacturer of consumer goods which  
2 are sold in this state and for which there exists an express  
3 warranty shall: (1) maintain or cause to be maintained in this  
4 state sufficient service and repair facilities to carry out the  
5 terms of such warranties, or (2) be subject to the provisions  
6 of Section 1771.

7 (b) Where such service and repair facilities are maintained  
8 in this state and service or repair of the goods is necessary  
9 because they do not comply with the applicable warranties,  
10 service and repair shall be commenced within a reasonable  
11 time following receipt of the goods by the manufacturer or its  
12 representative in this state. Unless the buyer agrees in writing  
13 to the contrary, the goods must be returned, at the manufac-  
14 turer's expense, in merchantable condition within 30 days. De-  
15 lay caused by conditions beyond the control of the manufac-  
16 turer or his representatives shall serve to extend this 30-day  
17 requirement. Where such delay arises, delivery of merchant-  
18 able goods shall be made as soon as possible following termina-  
19 tion of the condition giving rise to the delay.

20 (c) Should the manufacturer be unable to make such return  
21 of merchantable goods, he shall either replace the goods or  
22 reimburse the buyer in an amount equal to the purchase price  
23 paid by the buyer, less that amount directly attributable to  
24 use by the buyer prior to discovery of the defect.

25 1769. If the manufacturer does not provide service and  
26 repair facilities within this state pursuant to subdivision (a)  
27 of Section 1768, the buyer may follow the course of action  
28 prescribed in either subdivision (a) or (b), below, as follows:

29 (a) Return the defective consumer goods to the retail seller  
30 thereof for replacement, or for service or repair in accordance  
31 with the terms and conditions of the express warranty. Such  
32 replacement, service, or repair shall be at the option of the  
33 retail seller. If the retail seller is unable to replace the de-  
34 fective article with merchantable goods or is unable to service  
35 or repair *effect the service or repair of* the goods in accordance  
36 with the terms and conditions of the warranty, the retail seller  
37 shall reimburse the buyer in an amount equal to the purchase  
38 price paid by the buyer, less that amount directly attributable  
39 to use by the buyer prior to discovery of the defect.

40 (b) Return the defective article to any retail seller, within  
41 this state, of like goods of the same manufacturer for replace-  
42 ment, or for service or repair in accordance with the terms  
43 and conditions of the express warranty. Such replacement,  
44 service, or repair shall be at the option of the retail seller.

45 1770. Where an option is exercised in favor of service and  
46 repair under Section 1769, such service and repair must be  
47 commenced within a reasonable time, and, unless the buyer  
48 agrees in writing to the contrary, the goods must be returned  
49 in merchantable condition within 30 days. Delay caused by  
50 conditions beyond the control of the manufacturer or his rep-  
51 resentatives shall serve to extend this 30-day requirement.

1 Where such delay arises, delivery of merchantable goods shall  
2 be made as soon as possible following termination of the con-  
3 dition giving rise to the delay.

4 1771. Every manufacturer who fails to provide service and  
5 repair facilities within this state pursuant to subdivision (a)  
6 of Section 1768 shall be liable as prescribed in this section to  
7 every retail seller of such manufacturer's goods who incurs  
8 obligations in giving effect to the express warranties that ac-  
9 company such manufacturer's consumer goods. The amount  
10 of such liability shall be determined as follows:

11 (a) In the event of replacement, in an amount equal to the  
12 actual cost to the retail seller of the replaced goods, plus a  
13 reasonable handling charge.

14 (b) In the event of service and repair, in an amount equal  
15 to that which would be received by the retail seller for like  
16 service rendered to retail consumers who are not entitled to  
17 warranty protection, including, where applicable, the cost of  
18 parts, servicing, labor, storage, overhead, and a reasonable  
19 profit.

20 (c) In the event of reimbursement under subdivision (a)  
21 of Section 1769, in an amount equal to that reimbursed to the  
22 buyer, plus a reasonable handling charge.

23 1772. If express warranties are made by persons other than  
24 the manufacturer of the goods, the obligation of the person  
25 making such additional warranties shall be the same as that  
26 imposed on the manufacturer under Sections 1768 and 1769.

27 1773. Any buyer of consumer goods injured by a willful  
28 violation of the provisions of this chapter may bring an action  
29 for the recovery of damages. Judgment may be entered for  
30 three times the amount at which the actual damages are as-  
31 sessed, plus reasonable attorney fees.

32 1774. Any retail seller of consumer goods injured by the  
33 willful or repeated violation of the provisions of this chapter  
34 may bring an action for the recovery of damages. Judgment  
35 may be entered for three times the amount at which the actual  
36 damages are assessed plus reasonable attorney fees.

37 1775. The triple damages provisions in Section 1773 and  
38 Section 1774 shall not apply to class actions.

39 1775. *The triple damages provisions of this chapter shall  
40 not apply to a cause of action commenced or maintained pur-  
41 suant to Section 382 of the Code of Civil Procedure.*

42 1776. The provisions of this chapter shall not apply to any  
43 defect in consumer goods caused by the unauthorized or un-  
44 reasonable use of the goods following sale.

45 1777. Nothing in this chapter shall be construed to prevent  
46 the sale of a service contract to the buyer in addition to or in  
47 lieu of an express warranty if such contract fully and con-  
48 spicuously discloses in simple and readily understood language  
49 the terms and conditions.

50 SEC. 2. This act shall only apply to consumer goods sold  
51 on or after March 1, 1971

1 SEC. 3. Section 1775 is added to Article 3 (commencing  
2 with Section 1760) of Chapter 1 of Title 1.3 of Part 4 of Divi-  
3 sion 3 of the Civil Code, as enacted by Section 1 of this act, to  
4 read:

5 1775. *The triple damages provisions of this chapter shall  
6 not apply to a cause of action commenced or maintained pur-  
7 suant to Section 382 of the Code of Civil Procedure or pur-  
8 suant to Section 1780 or 1781 of this code.*

9 SEC. 4. Section 3 of this act shall become operative only  
10 if Assembly Bill No. 292 of the 1970 Regular Session is en-  
11 acted and adds Sections 1780 and 1781 to the Civil Code as  
12 part of Title 1.5 (commencing with Section 1750) of Part 4  
13 of Division 3 of such code, and in such case shall become oper-  
14 ative on March 1, 1971 or at the same time as such sections  
15 and title become operative, whichever is later, at which time  
16 Section 1775 of the Civil Code as added by Section 1 of this  
17 act is repealed.



AMENDED IN ASSEMBLY AUGUST 14, 1970  
AMENDED IN ASSEMBLY JULY 30, 1970  
AMENDED IN ASSEMBLY JULY 16, 1970  
AMENDED IN SENATE MAY 25, 1970  
AMENDED IN SENATE APRIL 6, 1970  
AMENDED IN SENATE MARCH 17, 1970

SENATE BILL

No. 272

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Introduced by Senator Song  
( Coauthor: Assemblyman Karabian (Coauthors: Assemblymen  
Karabian and Beverly) )

February 2, 1970

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REFERRED TO COMMITTEE ON JUDICIARY

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*An act to add Title 4.3 (commencing with Section 1750) 1.7  
(COMMENCING WITH SECTION 1790) to Part 4 of Di-  
vision 3 of the Civil Code, relating to consumer goods trans-  
actions.*

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

1 SECTION 1. Title 4.3 (commencing with Section 1750) 1.7  
2 (commencing with Section 1790) is added to Part 4 of Division  
3 3 of the Civil Code, to read :

LEGISLATIVE COUNSEL'S DIGEST

SB 272, as amended, Song (Jud.). Consumer goods transactions.  
Adds Title 4.3 1.7 (commencing with Sec. 1750 1790 ), Pt. 4, Div. 3,  
Civ.C.

Enacts "Song-Beverly Consumer Warranty Protection Act." Estab-  
lishes obligations of manufacturers, distributors, and sellers of con-  
sumer goods, and rights of buyers thereof, with respect to particular  
transactions.

Makes act applicable only to consumer goods sold on or after March  
1, 1971 and makes specified provisions of act applicable only to con-  
sumer goods manufactured on or after March 1, 1971.

Changes certain provisions of act contingent upon enactment of AB  
292.

Vote—Majority; Appropriat

LEGISLATIVE INTENT SERVICE  
Fiscal Committee—No.

(800) 666-1917



TITLE 13. 17. CONSUMER WARRANTIES

CHAPTER 1. CONSUMER WARRANTY PROTECTION

Article 1. General Provisions

1750. This chapter may be cited as the "Song Consumer Warranty Protection Act."

1751. Any waiver by the buyer of consumer goods of the 1790. This chapter may be cited as the "Song-Beverly Consumer Warranty Act."

1790.1. Any waiver by the buyer of consumer goods of the provisions of this chapter, except as expressly provided in this chapter, shall be deemed contrary to public policy and shall be unenforceable and void.

1752 1790.2. If any provision of this chapter or the application thereof to any person or circumstance is held unconstitutional, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

1753 1790.3. The provisions of this chapter shall not affect the rights and obligations of parties determined by reference to the Commercial Code except that, where the provisions of the Commercial Code conflict with the rights guaranteed to buyers of consumer goods under the provisions of this chapter, the provisions of this chapter shall prevail.

Article 2. Definitions

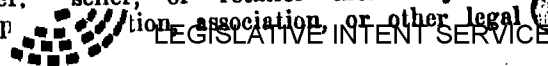
1755 1791. As used in this chapter: (a) "Consumer goods" means any motor vehicle, machine, appliance, or like product that is used or bought for use primarily for personal, family, or household purposes.

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

(c) "Manufacturer" means any individual, partnership, corporation, association, or other legal relationship which manufactures, assembles, produces, or gathers consumer goods.

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

(e) "Retail seller," "seller," or "retailer" means any individual, partnership, corporation, association, or other legal



1 relationship which engages in the business of selling new goods 2 to retail buyers.

3 1756 4 1791.1. As used in this chapter: 5 (a) "Implied warranty of merchantability" or "implied 6 warranty that goods are merchantable" means that the con- 7 sumer goods meet each of the following:

8 (1) Pass without objection in the trade under the contract 9 description.

10 (2) Are fit for the ordinary purposes for which such goods 11 are used.

12 (3) Are free from defects of materials or workmanship.

13 (4) Are adequately contained, packaged, and labeled.

14 (5) Conform to the promises or affirmations of fact made 15 on the container or label.

16 (b) "Implied warranty of fitness" means that when the 17 retailer, distributor, or manufacturer has reason to know any 18 particular purpose for which the consumer goods are required, 19 and further, that the buyer is relying on the skill and judg- 20 ment of the seller to select and furnish suitable goods, then 21 there is an implied warranty that the goods shall be fit for 22 such purpose.

23 1757 24 1791.2. (a) "Express warranty" means:

25 (1) A written statement arising out of a sale to the con- 26 sumer of a consumer good pursuant to which the manufac- 27 turer, distributor, or retailer undertakes to preserve or main- 28 tain the utility or performance of the consumer good or 29 provide compensation if there is a failure in utility or per- 30 formance; or

31 (2) In the event of any sample or model, that the whole of 32 the goods conforms to such sample or model.

33 (b) It is not necessary to the creation of an express war- 34 ranty that formal words such as "warranty" or "guarantee" 35 be used or that a specific intention to make a warranty be 36 present, but an affirmation merely of the value of the goods or 37 a statement purporting to be merely an opinion or commendation 38 of the goods does not create a warranty.

39 (c) Statements or representations such as expressions of 40 general policy concerning customer satisfaction which are not 41 subject to any limitation do not create an express warranty.

42 1758 43 1791.3. As used in this chapter, a sale "as is" or "with all 44 faults" means that the manufacturer, distributor, and retailer 45 disclaim all implied warranties that would otherwise attach to 46 the sale of consumer goods under the provisions of this chap- 47 ter.

Article 3. Sale Warranties

48 49 1760 50 1792. Unless disclaimed in the manner prescribed by this 51 chapter, every sale or consignment of consumer goods by a 52 manufacturer in this state in this state by a manufacturer

1 shall be accompanied by an implied warranty that the goods  
2 are merchantable.

3 1761

4 1792.1. Every sale or consignment of consumer goods in  
5 this state by a manufacturer who has reason to know at the  
6 time of the sale or consignment that the goods are required for  
7 a particular purpose and that the buyer is relying on the  
8 manufacturer's skill or judgment to select or furnish suitable  
9 goods shall be accompanied by an implied warranty of fitness.

10 1762

11 1792.2. Every sale or consignment of consumer goods in  
12 this state made through a retailer or distributor who has reason  
13 to know at the time of sale or consignment that the goods are  
14 required for a particular purpose and that the buyer is rely-  
15 ing on the retailer's or distributor's skill or judgment to select  
16 or furnish suitable goods, shall, in lieu of the warranty of the  
17 manufacturer under Section 1761 1792.1, be accompanied by  
18 an implied warranty that the goods are fit for that purpose.

19 1763

20 1792.3. No implied warranty of merchantability and,  
21 where applicable, no implied warranty of fitness shall be  
22 waived, except in the case of a sale of consumer goods on an  
23 "as is" or "with all faults" basis where the provisions of this  
24 chapter affecting "as is" or "with all faults" sales are strictly  
25 complied with.

26 1764

27 1792.4. (a) No sale of consumer goods on an "as is" or  
28 "with all faults" basis shall be effective to disclaim the implied  
29 warranty of merchantability or, where applicable, the implied  
30 warranty of fitness, unless a conspicuous writing is attached  
31 to the goods which clearly informs the buyer, prior to the  
32 sale, in simple and concise language of each of the following:

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

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

37 (3) Should the goods prove defective following their pur-  
38 chase, the buyer and not the manufacturer, distributor, or re-  
39 tailer assumes the entire cost of all necessary servicing or  
40 repair.

41 (b) In the event of sale of consumer goods by means of a  
42 mail order catalog, the catalog offering such goods shall con-  
43 tain the required writing as to each item so offered in lieu of  
44 the requirement of notification prior to the sale.

45 1765

46 1792.5. Every sale of consumer goods on an "as is" or  
47 "with all faults" basis made in compliance with the provisions  
48 of this chapter shall constitute a waiver by the buyer of the  
49 implied warranty of merchantability and, where applicable, of  
50 the implied warranty of fitness.

51 1766: (a)



1 1793. Nothing in this chapter shall affect the right of  
2 the manufacturer, distributor, or retailer to make express  
3 warranties with respect to consumer goods. However, a manu-  
4 facturer, distributor, or retailer, may not, by such express  
5 warranties, limit the application of or modify the implied  
6 warranties guaranteed by this chapter to the sale of consumer  
7 goods.

8 (b) For purposes of this chapter, implied warranties may be  
9 limited in duration to the duration of an express warranty of  
10 reasonable duration, if such limitation is set forth in clear and  
11 unmistakable language and prominently displayed on the face  
12 of the warranty.

13 1767

14 1793.1. Every manufacturer, distributor, or retailer mak-  
15 ing express warranties with respect to consumer goods shall  
16 make such warranties in clear and concise terms fully set forth  
17 such warranties in readily understood language and clearly  
18 identify the party making such express warranties.

19 1768

20 1793.2. (a) Every manufacturer of consumer goods which  
21 are sold in this state and for which there exists an express  
22 warranty shall: (1) shall maintain or cause to be main-  
23 tained in this state sufficient service and repair facilities to  
24 carry out the terms of such warranties, or (2) shall be subject  
25 to the provisions of Section 1774 1793.5.

26 (b) Where such service and repair facilities are maintained  
27 in this state and service or repair of the goods is necessary  
28 because they do not comply with the applicable warranties,  
29 service and repair shall be commenced within a reasonable  
30 time following receipt of the goods by the manufacturer or its  
31 representative in this state. Unless the buyer agrees in writing  
32 to the contrary, the goods must be returned, at the manufac-  
33 turer's expense, in merchantable condition within 30 days. De-  
34 lay caused by conditions beyond the control of the manufac-  
35 turer or his representatives shall serve to extend this 30-day  
36 requirement. Where such delay arises, delivery of merchant-  
37 able goods shall be made as soon as possible following termina-  
38 tion of the condition giving rise to the delay.

39 (c) Should the manufacturer be unable to make such return  
40 of merchantable goods, he shall either replace the goods or  
41 reimburse the buyer in an amount equal to the purchase price  
42 paid by the buyer, less that amount directly attributable to  
43 use by the buyer prior to discovery of the defect.

44 1769: If the manufacturer does not provide service and  
45 1793.3. If the manufacturer making express warranties

46 does not provide service and repair facilities within this state  
47 pursuant to subdivision (a) of Section 1768 1793.2, the buyer  
48 may follow the course of action prescribed in either subdivision  
49 (a) or (b), below, as follows:

50 (a) Return the defective consumer goods to the retail seller  
51 thereof for replacement, or for service or repair in accordance  
52 with the terms and conditions of the express warranty. Such

1 replacement, service, or repair shall be at the option of the  
2 retail seller. If the retail seller is unable to replace the de-  
3 fective article with merchantable goods or is unable to effect  
4 the service or repair of the goods in accordance with the terms  
5 and conditions of the warranty, the retail seller shall reimburse  
6 the buyer in an amount equal to the purchase price paid by  
7 the buyer, less that amount directly attributable to use by the  
8 buyer prior to discovery of the defect.

9 (b) Return the defective article to any retail seller, within  
10 this state, of like goods of the same manufacturer for replace-  
11 ment, or for service or repair in accordance with the terms  
12 and conditions of the express warranty. Such replacement,  
13 service, or repair shall be at the option of the retail seller.

14 1770

15 1793.4. Where an option is exercised in favor of service  
16 and repair under Section 1769 1793.3, such service and repair  
17 must be commenced within a reasonable time, and, unless the  
18 buyer agrees in writing to the contrary, the goods must be re-  
19 turned in merchantable condition within 30 days. Delay caused  
20 by conditions beyond the control of the manufacturer retail  
21 seller or his representatives shall serve to extend this 30-day  
22 requirement. Where such delay arises, delivery of merchant-  
23 able goods shall be made as soon as possible following termina-  
24 tion of the condition giving rise to the delay.

25 1771. Every manufacturer who fails to provide service and

26 1793.5. Every manufacturer making express warranties  
27 who does not provide service and repair facilities within this  
28 state pursuant to subdivision (a) of Section 1768 1793.2 shall  
29 be liable as prescribed in this section to every retail seller of  
30 such manufacturer's goods who incurs obligations in giving  
31 effect to the express warranties that accompany such manu-  
32 facturer's consumer goods. The amount of such liability shall  
33 be determined as follows:

34 (a) In the event of replacement, in an amount equal to the  
35 actual cost to the retail seller of the replaced goods, plus a  
36 reasonable handling charge.

37 (b) In the event of service and repair, in an amount equal  
38 to that which would be received by the retail seller for like  
39 service rendered to retail consumers who are not entitled to  
40 warranty protection, including, where applicable, the cost of  
41 parts, servicing, labor, storage, overhead, and a reasonable  
42 profit.

43 (c) In the event of reimbursement under subdivision (a)  
44 of Section 1769, in an amount equal to that reimbursed to the  
45 buyer, plus a reasonable handling charge.

46 1772. If express warranties are made by persons other than  
47 the manufacturer of the goods, the obligation of the person  
48 making such additional warranties shall be the same as that  
49 imposed on the manufacturer under Sections 1768 and 1769.

50 1773. Any buyer of consumer goods injured by a willful  
51 warranty protection, in actual and reasonable costs of  
52 the service and repair, reasonable profit.

1 (c) In the event of reimbursement under subdivision (a)  
2 of Section 1793.3, in an amount equal to that reimbursed to  
3 the buyer, plus a reasonable handling charge.

4 1794. Any buyer of consumer goods injured by a willful  
5 violation of the provisions of this chapter may bring an action  
6 for the recovery of damages. Judgment may be entered for  
7 three times the amount at which the actual damages are as-  
8 sessed, plus reasonable attorney fees.

9 1774

10 1794.1. Any retail seller of consumer goods injured by the  
11 willful or repeated violation of the provisions of this chapter  
12 may bring an action for the recovery of damages. Judgment  
13 may be entered for three times the amount at which the actual  
14 damages are assessed plus reasonable attorney fees.

15 1775

16 1794.2. The triple damages provisions of this chapter shall  
17 not apply to a cause of action commenced or maintained pur-  
18 suant to Section 382 of the Code of Civil Procedure.

19 1776

20 1794.3. The provisions of this chapter shall not apply to  
21 any defect in consumer goods caused by the unauthorized or  
22 unreasonable use of the goods following sale.

23 1777

24 1794.4. Nothing in this chapter shall be construed to pre-  
25 vent the sale of a service contract to the buyer in addition to  
26 or in lieu of an express warranty if such contract fully and  
27 conspicuously discloses in simple and readily understood  
28 language the terms and conditions.

29 ~~SEC. 2. This act shall only apply to consumer goods sold  
30 on or after March 1, 1971.~~

31 ~~SEC. 3. Section 1775 is added to Article 3 (commencing  
32 with Section 1760) of Chapter 1 of Title 1.3 of Part 4 of Divi-  
33 sion 3 of the Civil Code, as enacted by Section 1 of this act, to  
34 read:~~

35 1775. The triple damages provisions of this chapter shall

36 1794.5. The provisions of this chapter shall not preclude  
37 a manufacturer making express warranties from suggesting  
38 methods of effecting service and repair, in accordance with  
39 the terms and conditions of the express warranties, other than  
40 those required by this chapter.

41 1795. If express warranties are made by persons other  
42 than the manufacturer of the goods, the obligation of the  
43 person making such warranties shall be the same as that im-  
44 posed on the manufacturer under this chapter.

45 ~~SEC. 2. This act shall apply to consumer goods sold on or  
46 after March 1, 1971. However, Sections 1792 to 1793.1 of the  
47 Civil Code, inclusive, enacted by Section 1 of this act, shall  
48 only apply to consumer goods manufactured on or after March  
49 1, 1971.~~

50 ~~SEC. 3. Section 1794.2 is added to Article 3 (commenc-  
51 ing with Section 1792) of Chapter 1 of Title 1.7 of Part 4 of~~

1 *Division 3 of the Civil Code, as enacted by Section 1 of this*  
2 *act, to read:*

3 *1794.2. The triple damages provisions of this chapter shall*  
4 *not apply to a cause of action commenced or maintained pur-*  
5 *suant to Section 382 of the Code of Civil Procedure or pur-*  
6 *suant to Section 1780 or 1781 of this code.*

7 *Sec. 4. Section 3 of this act shall become operative only*  
8 *if Assembly Bill No. 292 of the 1970 Regular Session is en-*  
9 *acted and adds Sections 1780 and 1781 to the Civil Code as*  
10 *part of Title 1.5 (commencing with Section 1750) of Part 4*  
11 *of Division 3 of such code, and in such case shall become oper-*  
12 *ative on March 1, 1971 or at the same time as such sections*  
13 *and title become operative, whichever is later, at which time*  
14 *Section ~~1775~~ 1794.2.2 of the Civil Code as added by Section 1*  
15 *of this act is repealed.*



## CHAPTER 1333

*An act to add Title 1.7 (commencing with Section 1790) to Part 4 of Division 3 of the Civil Code, relating to consumer goods transactions.*

[Approved by Governor September 17, 1970. Filed with Secretary of State September 17, 1970.]

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

SECTION 1. Title 1.7 (commencing with Section 1790) is added to Part 4 of Division 3 of the Civil Code, to read:

## TITLE 1.7. CONSUMER WARRANTIES

## CHAPTER 1. CONSUMER WARRANTY PROTECTION

## Article 1. General Provisions

1790. This chapter may be cited as the "Song-Beverly Consumer Warranty Act."

1790.1. Any waiver by the buyer of consumer goods of the provisions of this chapter, except as expressly provided in this chapter, shall be deemed contrary to public policy and shall be unenforceable and void.

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

1790.3. The provisions of this chapter shall not affect the rights and obligations of parties determined by reference to the Commercial Code except that, where the provisions of the Commercial Code conflict with the rights guaranteed to buyers of consumer goods under the provisions of this chapter, the provisions of this chapter shall prevail.

## Article 2. Definitions

1791. As used in this chapter:

(a) "Consumer goods" means any motor vehicle, machine, appliance, or like product that is used or bought for use primarily for personal, family, or household purposes.

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

(c) "Manufacturer" means any individual, partnership, corporation, association, or other legal relationship which manufactures, assembles, produces, or finishes goods.

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

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

1791.1. As used in this chapter:

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

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

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

(3) Are free from defects of materials or workmanship.

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

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

(b) "Implied warranty of fitness" means that when the retailer, distributor, or manufacturer has reason to know any particular purpose for which the consumer goods are required, and further, that the buyer is relying on the skill and judgment of the seller to select and furnish suitable goods, then there is an implied warranty that the goods shall be fit for such purpose.

1791.2. (a) "Express warranty" means:

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

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

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

(c) Statements or representations such as expressions of general policy concerning customer satisfaction which are not subject to any limitation do not create an express warranty.

1791.3. As used in this chapter, a sale "as is" or "with all faults" means that the manufacturer, distributor, and retailer disclaim all implied warranties that would otherwise attach to the sale of consumer goods under the provisions of this chapter.



## Article 3. Sale Warranties

1792. Unless disclaimed in the manner prescribed by this chapter, every sale or consignment of consumer goods in this state by a manufacturer shall be accompanied by an implied warranty that the goods are merchantable.

1792.1. Every sale or consignment of consumer goods in this state by a manufacturer who has reason to know at the time of the sale or consignment that the goods are required for a particular purpose and that the buyer is relying on the manufacturer's skill or judgment to select or furnish suitable goods shall be accompanied by an implied warranty of fitness.

1792.2. Every sale or consignment of consumer goods in this state made through a retailer or distributor who has reason to know at the time of sale or consignment that the goods are required for a particular purpose and that the buyer is relying on the retailer's or distributor's skill or judgment to select or furnish suitable goods, shall, in lieu of the warranty of the manufacturer under Section 1792.1, be accompanied by an implied warranty that the goods are fit for that purpose.

1792.3. No implied warranty of merchantability and, where applicable, no implied warranty of fitness shall be waived, except in the case of a sale of consumer goods on an "as is" or "with all faults" basis where the provisions of this chapter affecting "as is" or "with all faults" sales are strictly complied with.

1792.4. (a) No sale of consumer goods on an "as is" or "with all faults" basis shall be effective to disclaim the implied warranty of merchantability or, where applicable, the implied warranty of fitness, unless a conspicuous writing is attached to the goods which clearly informs the buyer, prior to the sale, in simple and concise language of each of the following:

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

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

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

(b) In the event of sale of consumer goods by means of a mail order catalog, the catalog offering such goods shall contain the required writing as to each item so offered in lieu of the requirement of notification prior to the sale.

1792.5. Every sale of consumer goods on an "as is" or "with all faults" basis made in compliance with the provisions of this chapter shall constitute a waiver by the buyer of the implied warranty of merchantability and, where applicable, of the implied warranty of fitness.

1793. Nothing in this chapter shall affect the right of the manufacturer, distributor, or retailer to make express warranties with respect to consum

factorer, distributor, or retailer, may not, by such express warranties, limit the application of or modify the implied warranties guaranteed by this chapter to the sale of consumer goods.

1793.1. Every manufacturer, distributor, or retailer making express warranties with respect to consumer goods shall fully set forth such warranties in readily understood language and clearly identify the party making such express warranties.

1793.2. (a) Every manufacturer of consumer goods which are sold in this state and for which there exists an express warranty: (1) shall maintain or cause to be maintained in this state sufficient service and repair facilities to carry out the terms of such warranties, or (2) shall be subject to the provisions of Section 1793.5.

(b) Where such service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not comply with the applicable warranties, service and repair shall be commenced within a reasonable time following receipt of the goods by the manufacturer or its representative in this state. Unless the buyer agrees in writing to the contrary, the goods must be returned, at the manufacturer's expense, in merchantable condition within 30 days. Delay caused by conditions beyond the control of the manufacturer or his representatives shall serve to extend this 30-day requirement. Where such delay arises, delivery of merchantable goods shall be made as soon as possible following termination of the condition giving rise to the delay.

(c) Should the manufacturer be unable to make such return of merchantable goods, he shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to discovery of the defect.

1793.3. If the manufacturer making express warranties does not provide service and repair facilities within this state pursuant to subdivision (a) of Section 1793.2, the buyer may follow the course of action prescribed in either subdivision (a) or (b), below, as follows:

(a) Return the defective consumer goods to the retail seller thereof for replacement, or for service or repair in accordance with the terms and conditions of the express warranty. Such replacement, service, or repair shall be at the option of the retail seller. If the retail seller is unable to replace the defective article with merchantable goods or is unable to effect the service or repair of the goods in accordance with the terms and conditions of the warranty, the retail seller shall 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 discovery of the defect.

(b) Return the defective article to any retail seller, within this state, of like goods of the same manufacturer for replacement, or for service or repair in accordance with the terms



and conditions of the express warranty. Such replacement, service, or repair shall be at the option of the retail seller.

1793.4. Where an option is exercised in favor of service and repair under Section 1793.3, such service and repair must be commenced within a reasonable time, and, unless the buyer agrees in writing to the contrary, the goods must be returned in merchantable condition within 30 days. Delay caused by conditions beyond the control of the retail seller or his representatives shall serve to extend this 30-day requirement. Where such delay arises, delivery of merchantable goods shall be made as soon as possible following termination of the condition giving rise to the delay.

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

(a) In the event of replacement, in an amount equal to the actual cost to the retail seller of the replaced goods, plus a reasonable handling charge.

(b) In the event of service and repair, in an amount equal to that which would be received by the retail seller for like service rendered to retail consumers who are not entitled to warranty protection, including actual and reasonable costs of the service and repair, plus a reasonable profit.

(c) In the event of reimbursement under subdivision (a) of Section 1793.3, in an amount equal to that reimbursed to the buyer, plus a reasonable handling charge.

1794. Any buyer of consumer goods injured by a willful violation of the provisions of this chapter may bring an action for the recovery of damages. Judgment may be entered for three times the amount at which the actual damages are assessed, plus reasonable attorney fees.

1794.1. Any retail seller of consumer goods injured by the willful or repeated violation of the provisions of this chapter may bring an action for the recovery of damages. Judgment may be entered for three times the amount at which the actual damages are assessed plus reasonable attorney fees.

1794.2. The triple damages provisions of this chapter shall not apply to a cause of action commenced or maintained pursuant to Section 382 of the Code of Civil Procedure.

1794.3. The provisions of this chapter shall not apply to any defect in consumer goods caused by the unauthorized or unreasonable use of the goods following sale.

1794.4. Nothing in this chapter shall be construed to prevent the sale of a service contract to the buyer in addition to or in lieu of an express warranty if such contract fully and conspicuously discloses in simple and readily understood language the terms and conditions.

1794.5. The provisions of this chapter shall not preclude a manufacturer making express warranties from suggesting methods of effecting service and repair, in accordance with the terms and conditions of the express warranties, other than those required by this chapter.

1795. If express warranties are made by persons other than the manufacturer of the goods, the obligation of the person making such warranties shall be the same as that imposed on the manufacturer under this chapter.

SEC. 2. This act shall apply to consumer goods sold on or after March 1, 1971. However, Sections 1792 to 1793.1 of the Civil Code, inclusive, enacted by Section 1 of this act, shall only apply to consumer goods manufactured on or after March 1, 1971.

SEC. 3. Section 1794.2 is added to Article 3 (commencing with Section 1792) of Chapter 1 of Title 1.7 of Part 4 of Division 3 of the Civil Code, as enacted by Section 1 of this act, to read:

1794.2. The triple damages provisions of this chapter shall not apply to a cause of action commenced or maintained pursuant to Section 382 of the Code of Civil Procedure or pursuant to Section 1780 or 1781 of this code.

SEC. 4. Section 3 of this act shall become operative only if Assembly Bill No. 292 of the 1970 Regular Session is enacted and adds Sections 1780 and 1781 to the Civil Code as part of Title 1.5 (commencing with Section 1750) of Part 4 of Division 3 of such code, and in such case shall become operative on March 1, 1971 or at the same time as such sections and title become operative, whichever is later, at which time Section 1794.2 of the Civil Code as added by Section 1 of this act is repealed.

#### CHAPTER 1334

*An act relating to the attendance of pupils in school districts, and declaring the urgency thereof, to take effect immediately.*

[Approved by Governor September 17, 1970. Filed with Secretary of State September 17, 1970.]

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

SECTION 1. Notwithstanding Section 5103 of the Education Code, the San Francisco Unified School District may maintain one or more of its elementary schools for a length of time of up to seven days less than the other elementary schools of the district if the purpose of such action is to permit the implementation of an educational program which requires an unusual amount of curriculum planning by the certificated personnel of the district.

SEC. 2. The Legislature hereby finds and declares that the special nature of the educational program undertaken in the



CALIFORNIA LEGISLATURE

AT SACRAMENTO

1970 REGULAR SESSION

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SENATE FINAL HISTORY

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

CONVENED JANUARY 5, 1970

ADJOURNED SINE DIE SEPTEMBER 23, 1970

DAYS IN SESSION ..... 150  
CALENDAR DAYS ..... 262

Bill Signing Period Expires 12 O'clock Midnight September 20, 1970

Laws Become Effective November 23, 1970

Last Day for Filing Referendum November 22, 1970

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*President pro Tempore*  
SENATOR JACK SCHRADER

LT. GOVERNOR ED REINECKE  
*President of the Senate*

*Compiled Under the Direction of*

DARRYL R. WHITE  
*Secretary of the Senate*

by  
J. ROY GABRIEL  
*History Clerk*

( 8 )

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LEGISLATIVE INTENT SERVICE





## 270—Teale.

An act to amend Section 28150 of the Government Code, relating to compensation of county officers.

- Feb. 2—Read first time.
- Feb. 3—To Com. on L.GOV.
- April 1—From committee: Do pass.
- April 2—Read second time. To third reading.
- April 3—Read third time. Passed. To Assembly.
- April 3—In Assembly. Read first time. Held at desk.
- April 6—To Com. on L.GOV.
- Aug. 21—From Assembly without further action.

## 271—Teale.

An act to add Section 25208.7 to the Government Code, relating to county taxes on ski-lift use.

- Feb. 2—Read first time.
- Feb. 3—To Com. on REV. & TAX.
- Aug. 21—From committee without further action.

## 272—Song (Coauthors: Assemblymen Karabian and Beverly).

An act to add Title 1.7 (commencing with Section 1790) to Part 4 of Division 3 of the Civil Code, relating to consumer goods transactions.

- Feb. 2—Read first time.
- Feb. 3—To Com. on JUD.
- Feb. 25—Withdrawn from Com. on JUD. and re-referred to Com. on B. & P.
- Mar. 17—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
- April 6—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
- May 22—From committee: Do pass as amended.
- May 25—Read second time. Amended. To third reading.
- June 24—Read third time. Passed. To Assembly.
- June 25—In Assembly. Read first time. Held at desk.
- June 29—To Com. on C. & P.U.
- July 16—From committee with authors' amendments. Read second time. Amended. Re-referred to committee.
- July 30—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
- Aug. 14—From committee: Do pass as amended. Read second time. Amended. To third reading.
- Aug. 19—Read third time. Passed. To Senate.
- Aug. 19—In Senate. To unfinished business.
- Aug. 20—Senate concurs in Assembly amendment. To enrollment.
- Sept. 8—Enrolled. To Governor at 9:30 a.m.
- Sept. 17—Approved by Governor. Chapter 1333.

## 273—Dolwig, Alquist, and Petris (Coauthor: Assemblyman Knox).

An act to add Section 30661 to the Streets and Highways Code, relating to the southern crossing.

- Feb. 2—Read first time.
- Feb. 3—To Com. on TRANS.
- Aug. 21—From committee without further action.



SB 272 (Song)  
To Be Amended

B. & P. Code  
Civil Code Warranties

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HISTORY: SB 272 was an outgrowth of an investigation done by this committee of November, 1969 on the subject of warranties. SB 436 is a companion bill.

It has been generally found that aside from consumer complaints on auto repairs, the single largest category of consumer complaints from such agencies as the Attorney General's office, the Better Business Bureau, Radio and T.V. action lines, and the Division of Consumer Affairs have concerned themselves with warranty problems. Attached for the committee information is the background report which was submitted to the committee in November, 1969.

PROPOSED LEGISLATION: SB 272 enacts the Song Consumer Warranty Protection Act.

SB 272 establishes the fact that all consumer goods in this state shall be accompanied by an implied warranty, of fitness and merchantability, except if the manufacturer chooses to sell his goods "as is" or "with all faults." In every case, the implied warranty of fitness and merchantability cannot be disclaimed unless the buyer is clearly informed by conspicuous writing prior to the sale that the good is sold on an "as is" or "with all faults" basis.

The manufacturer, distributor or retailer of consumer goods may not, by additional warranties, limit or modify their implied warranties or fitness and ability. This does not; however, preclude the making of additional warranties.

If Manufacturers of consumer goods sell goods for which there exist a warranty, they are required to have sufficient service and repair facilities to carry out the terms of such warranties. Such repair of a warranty product must take place within a period of 30 days. If the manufacturer is unable to make the return good merchantable within 30 days, the manufacturer is required either to reimburse the buyer in the amount equal to the purchase price less the amount of usage by the buyer or replace the good with a new one.



If the manufacturer fails to provide service and repair facilities, then the buyer may return defective goods for replacement or service at his option to the retailer. If the retailer is unable to either repair or replace the good, he will reimburse the buyer in the amount equal to the purchase price less the amount of usage by the buyer. In any case, unless the buyer agrees in writing on the contrary, the goods must be returned in merchantable condition within 30 days.

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When the manufacturer fails to provide service and repair facilities within the state, he is held liable for the retailers cost in making the good merchantable to the buyer.

Any buyer of consumer goods by willful violation of the provisions of SB 272 may bring action for the recovery of damages, and judgment may be entered for 3 times the amount of actual damage assessed plus attorney fees. The same holds true for any retail seller of consumer goods injured by willful or repeated violation of the provisions of SB 272.

POSITIONS: California Manufacturers Association, and the California Retailer Association are opposed to this measure.



COMMERCE AND PUBLIC UTILITIES COMMITTEE

Robert E. Badham, Chairman

Senate Bill 272 - Song, as amended  
July 29, 1970

STAFF ANALYSIS  
8/3/70

DESCRIPTION

Senate Bill 272 would enact the "Song Consumer Warranty Protection Act".

ANALYSIS

The measure defines "consumer goods" as any motor vehicle, machine, appliance or like product that is used or bought for use, primarily for personal, family, or household purpose. Senate Bill 272 also defines "implied warranty of merchantability", "implied warranty of fitness" and "express warranty". Among other provisions, S.B. 272 would require a manufacturer of consumer goods sold in this state for which there exists an express warranty to either maintain or cause to be maintained in this state sufficient service and repair facilities to carry out the terms of the warranty or, be liable to a retail seller for the repair, replacement, or reimbursement of the purchase price of the goods incurred by the retail seller under the provisions of the bill.

The measure specifies that for violations of the act judgments may be entered for three times the amount at which the actual damages are assessed plus reasonable attorney fees.

Senate Bill 272 is the result of a 1969 interim study of the Senate Business and Professions Committee on the subject of warranties. Senate Committee staff states "that aside from consumer complaints on auto repairs, the single largest category of consumer complaints from such agencies as the Attorney General's office, the Better Business Bureau, Radio and T.V. action lines, and the Division of Consumer Affairs have concerned themselves with warranty problems".

California Manufacturers Association, and the California Retailers Association are opposed to S.B. 272.

California Manufacturers Association states that the Act is full of ambiguities making the measure difficult to interpret and that the provision that a manufacturer must provide in-state service is unreasonable.

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APPENDIX A - CALIFORNIA COMMERCIAL CODE**§ 2202. [Final Written Expression: Parol or Extrinsic Evidence.]**

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

- (a) By course of dealing or usage of trade (Section 1205) or by course of performance (Section 2208); and
- (b) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

**§ 2313. [Express Warranties by Affirmation, Promise, Description, Sample.]**

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warranty" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

**§ 2314. [Implied Warranty: Merchantability; Usage of Trade.]**

(1) Unless excluded or modified (Section 2316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) Pass without objection in the trade under the contract description; and

(b) In the case of fungible goods, are of fair average quality within the description; and

(c) Are fit for the ordinary purposes for which such goods are used; and

(d) Run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) Are adequately contained, packaged, and labeled as the agreement may require; and

(f) Conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (Section 2316) other implied warranties may arise from course of dealing or usage of trade.

**§ 2315. [Implied Warranty: Fitness for Particular Purpose.]**

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.



AP-1

**§ 2316. [Exclusion or Modification of Warranties.]**

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this division on parol or extrinsic evidence (Section 2202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subdivision (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subdivision (2)

(a) Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) When the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) An implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this division on liquidation or limitation of damages and on contractual modification of remedy (Sections 2718 and 2719).

**§ 2508. [Cure by Seller of Improper Tender or Delivery; Replacement.]**

(1) Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

**§ 2601. [Buyer's Rights on Improper Delivery.]**

Subject to the provisions of this division on breach in installment contracts (Section 2612) and unless otherwise agreed under the sections on contractual limitations of remedy (Sections 2718 and 2719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

(a) Reject the whole; or

(b) Accept the whole; or

(c) Accept any commercial unit or units and reject the rest.

**§ 2714. [Buyer's Damages for Breach in Regard to Accepted Goods.]**

(1) Where the buyer has accepted goods and given notification (subdivision (3) of Section 2607) he may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.



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**§ 2715. [Buyer's Incidental and Consequential Damages.]**

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

**§ 2716. [Buyer's Right to Specific Performance or Replevin.]**

(1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

**§ 2717. [Deduction of Damages From the Price.]**

The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

**§ 2719. [Contractual Modification or Limitation of Remedy.]**

(1) Subject to the provisions of subdivisions (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) The agreement may provide for remedies in addition to or in substitution for those provided in this division and may limit or alter the measure of damages recoverable under this division, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts; and

(b) Resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this code.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.



AR3

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Honorable Robert E. Badham, Chairman  
 Assembly Committee on Commerce and  
 Public Utilities  
 5128 State Capitol  
 Sacramento, California 95814

SB 272 - Warranties

Dear Mr. Badham:

Subject bill is scheduled for hearing in your Commerce and  
 Public Utilities Committee on Monday, July 20.

Please be advised that California Retailers Association is  
 OPPOSED to SB 272.

Respectfully yours,

Robert M. Shillito  
 Executive Vice President

RMS:me

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Bob Shillito

Hon. Kent Stacey

5160

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# California State Senate

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ALFRED H. SONG  
 STATE SENATOR  
 TWENTY-EIGHTH SENATORIAL DISTRICT

August 3, 1970

TO: Members, Assembly Committee on  
Commerce and Public Utilities

RE: SB 272

When my SB 272 was presented before the Assembly Committee on Commerce and Public Utilities on Monday, August 3rd, I received the impression that a section of the bill may have been misinterpreted. In order to insure that the bill is fully understood, permit me to emphasize the following.

SB 272 gives the manufacturer a series of choices. The first choice is whether or not he wishes to issue an express warranty. If, and only if, he issues an express warranty, does he face the second choice.

This choice requires the manufacturer either to maintain authorized service facilities or to fully reimburse his retailers for servicing his (the manufacturer's) warranty.

In actuality, the option of maintaining authorized service facilities is in the bill as a benefit to the manufacturer. This provision does not require him to rent one foot of space or to hire one employee. Rather, it permits him to select

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certain retailers or certain repair dealers out of the many dealing with his products to handle warranty servicing. It allows him to restrict the number of retailers to whom he would be liable for warranty work.

Many manufacturers (Sony, RCA, Sunbeam, etc.) presently use a system of authorized service facilities. Though Al Davis seemed to have missed the point in committee, elimination of this option would bring the California Manufacturers Association down on him in force.

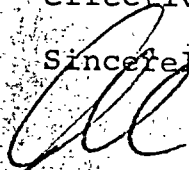
One brief additional point. What is the very worst that could happen to a manufacturer or a retailer under this bill?

The worst that could happen to a manufacturer is that he would have to sell his products without an express warranty. This might be the only choice for the small, out-of-state manufacturer, but it is a better choice than having California consumers stuck with his worthless warranties.

The worst that would happen to a retailer is that he might have to inform a manufacturer that he could no longer sell the manufacturer's goods or could no longer sell them with an express warranty. This might cause a deterioration in the relationship between manufacturer and retailer, but that is better than having California citizens suckered by false promises.

My staff and I have worked hard on this bill. It is good, effective legislation. I ask for your "aye" vote.

Sincerely,



ALFRED H. SONG

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Sacramento, California  
August 7, 1970

Honorable Alfred H. Song  
Senate Chamber

## Consumer Warranties (S.B. 272) - #16549

Dear Senator Song:

You have submitted a memorandum with respect to Senate Bill No. 272, as amended in Assembly July 30, 1970, relating to consumer goods transactions, and have asked whether statements of the legal effect of the bill that are made in the memorandum are accurate.

For convenience, we have divided the statements in the memorandum with respect to the legal effect of S.B. 272 into four categories and have framed the statements as questions addressed to the last amended form of S.B. 272, if enacted.

### QUESTION NO. 1

With respect to express warranties, would a manufacturer have a series of choices, the first of which is whether or not he wishes to issue an express warranty?

### OPINION NO. 1

It is our opinion that with respect to express warranties, a manufacturer would have a series of choices, the first of which is whether or not he wishes to issue an express warranty.

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ANALYSIS NO. 1

S. B. 272 relates to consumer goods transactions and would add Title 1.3 (commencing with Section 1750) to Part 4 of Division 3 of the Civil Code,\* entitled the Song Consumer Warranty Protection Act (hereafter referred to as the act). Generally, the act establishes obligations of manufacturers, distributors, and sellers of consumer goods, and rights of buyers thereof, with respect to particular transactions.

With respect to express warranties, Section 1757 makes the following definition:

"1757. (a) 'Express warranty' means:

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

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

"(b) It is not necessary to the creation of an express warranty that formal words such as 'warrant' or 'guarantee' be used or that a specific intention to make a warranty be present, but an affirmation merely of the value of the goods or a statement purporting to be merely an opinion or commendation of the goods does not create a warranty.

"(c) Statements or representations such as expressions of general policy concerning customer satisfaction which are not subject to any limitation do not create an express warranty."

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\* Unless otherwise indicated, all section references are to the Civil Code.



Sections 1766, 1767, and 1768 contain provisions pertinent to the question of whether a manufacturer would have a choice of whether or not to make an express warranty. These sections provide, in part, as follows:

"1766. (a) Nothing in this chapter shall affect the right of the manufacturer, distributor, or retailer to make express warranties with respect to consumer goods. However, a manufacturer, distributor, or retailer, may not, by such express warranties, limit the application of or modify the implied warranties guaranteed by this chapter to the sale of consumer goods.

\* \* \*" (Emphasis added.)

"1767. Every manufacturer, distributor, or retailer making express warranties with respect to consumer goods shall make such warranties in clear and concise terms and clearly identify the party making such express warranties." (Emphasis added.)

"1768. (a) Every manufacturer of consumer goods which are sold in this state and for which there exists an express warranty shall: (1) maintain or cause to be maintained in this state sufficient service and repair facilities to carry out the terms of such warranties, or (2) be subject to the provisions of Section 1771.

\* \* \*" (Emphasis added.)

We think it is clear from the underlined portion of the above-quoted provisions of Section 1766 that a manufacturer has a right to choose whether or not to make an express warranty as defined by the bill, and that only if the manufacturer so chooses will provisions such as those of Sections 1767 and 1768 become applicable.

Paragraphs (1) and (2) of subdivision (a) of Section 1768, by the use of the alternative word "or," in our opinion, clearly furnish alternatives which



the manufacturer may choose to follow in cases where there exists an express warranty (see Houge v. Ford, 44 Cal. 2d 706).

Accordingly, it is our opinion that with respect to express warranties, a manufacturer would have a series of choices, the first of which is whether or not he wishes to issue an express warranty.

QUESTION NO. 2

Is it only if the manufacturer issues an express warranty that there arises a second choice relating to the duty of the manufacturer under Section 1768?

OPINION NO. 2

It is our opinion that it is only if the manufacturer issues an express warranty that there arises a second choice relating to the duty of the manufacturer under Section 1768.

ANALYSIS NO. 2

Sections 1768 and 1771 provide, in pertinent part, as follows:

"1768. (a) Every manufacturer of consumer goods which are sold in this state and for which there exists an express warranty shall: (1) maintain or cause to be maintained in this state sufficient service and repair facilities to carry out the terms of such warranties, or (2) be subject to the provisions of Section 1771.

"(b) Where such service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not comply with the applicable warranties, service and repair shall be commenced within a reasonable time following receipt of the goods by the manufacturer or its representative in this state. . . .

\* \* \*" (Emphasis added.)

"1771. Every manufacturer who fails to provide service and repair facilities within .



this state pursuant to subdivision (a) of Section 1768 shall be liable as prescribed in this section to every retail seller of such manufacturer's goods who incurs obligations in giving effect to the express warranties that accompany such manufacturer's consumer goods. The amount of such liability shall be determined as follows:

\* \* \*

As indicated in Analysis No. 1, above, we think that Section 1768 applies only to cases where, with respect to sales of consumer goods in California, there exists an express warranty. Subdivision (a) of Section 1768 furnishes alternatives which a manufacturer may choose to follow in complying with the section. Under such provisions, we think that the manufacturer of consumer goods sold in California for which there exists an express warranty may choose either to (1) maintain or cause to be maintained in this state the specified service and repair facilities or (2) be subject to the provisions of Section 1771.

However, since the mandatory word "shall" is used in Section 1768, we think it is clear that such manufacturer is required to come within either paragraph (1) or (2) of subdivision (a) of Section 1768.

While the matter is not entirely clear in view of the language in Section 1771 relating to "[e]very manufacturer," the reference in that section to subdivision (a) of Section 1768 and the specific reference in paragraph (2) of subdivision (a) of Section 1768 to Section 1771, in our opinion, would similarly be construed as making Section 1771 applicable only in those cases to which Section 1768 applies, i.e., where a manufacturer sells consumer goods in California and there exists an express warranty for such goods (see McGrath v. Kaelin, 66 Cal. App. 41).



Thus, it is our opinion that it is only if the manufacturer issues an express warranty that there arises a second choice relating to the duty of the manufacturer under Section 1768.

QUESTION NO. 3

Is the manufacturer's second choice, relating to duties under Section 1768, that of either maintaining the specified service and repair facilities or fully reimbursing retailers for servicing with respect to the express warranty of the manufacturer?

OPINION AND ANALYSIS NO. 3

While we think that it is correct in a general sense to state that the manufacturer's second choice is either to maintain the specified service and repair facilities or to fully reimburse retailers for servicing with respect to the express warranty of the manufacturer, certain technical points should be made.

Section 1768 specifies that either maintaining such facilities or causing such facilities to be maintained is sufficient (par. (1), subd. (a), Sec. 1768). In addition, such facilities are required to be maintained in California under the section.

With respect to the full reimbursement aspects of the question, the manufacturer's liability to the retail seller is more specifically defined in Section 1771, which we think can reasonably be said to require full reimbursement to the retail seller for servicing the goods. More specifically, subdivision (b) of Section 1771 provides that the amount of the manufacturer's liability in the event of service and repair shall be "in an amount equal to that which would be received by the retail seller for like service rendered to retail consumers who are not entitled to warranty protection, including, where applicable, the cost of parts, servicing, labor, storage, overhead, and a reasonable profit."





QUESTION NO. 4

Do the provisions of subdivision (a) of Section 1768 require the manufacturer to establish facilities, by renting space or hiring employees, for service and repair in this state where the goods are sold in this state with an express warranty?

OPINION NO. 4

It is our opinion that the provisions of subdivision (a) of Section 1768 do not require the manufacturer to establish facilities, by renting space or hiring employees, for service and repair in this state where the goods are sold in this state with an express warranty.

ANALYSIS NO. 4

As previously stated, we think that paragraphs (1) and (2) of subdivision (a) of Section 1768 present alternatives to a manufacturer with respect to consumer goods sold in California where there exists an express warranty.

Those alternatives, one of which would become applicable to such a manufacturer, are either (1) to maintain or cause to be maintained in this state the specified service and repair facilities or (2) to be subject to the provisions of Section 1771.

In our opinion, neither alternative expressly or by necessary implication imposes a duty on the manufacturer to establish facilities, by renting space or hiring employees, for service and repair in this state.

Under paragraph (1) of the subdivision, the manufacturer could "cause to be maintained" in this state the specified service and repair facilities. Such language could encompass an agreement with another person who would establish such repair facilities. Under paragraph (2) of this subdivision, the second alternative under Section 1768, payment of a sum of money in the events



Honorable Alfred H. Song - p. 8 - #16549

specified in Section 1771 is the obligation imposed on the manufacturer.

Thus, it is our opinion that the provisions of subdivision (a) of Section 1768 do not require the manufacturer to establish facilities, by renting space or hiring employees, for service and repair in this state where the goods are sold in this state with an express warranty.

Very truly yours,

George H. Murphy  
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By   
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CMA:ad



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Sacramento, California  
January 5, 1971

## Consumer Goods Transactions - #18909

Dear Senator Cologne:

You have asked us several questions relating to the application of the Song-Beverly Consumer Warranty Act\* (Sec. 1790 et seq., Civ. C.) to sales of heating and air-conditioning equipment. We shall answer these questions in series.

### QUESTION NO. 1

Is an installing dealer a manufacturer within the meaning of subdivision (c) of Section 1791 of the Civil Code?

### OPINION AND ANALYSIS NO. 1

Section 1791 of the Civil Code defines "manufacturer," "distributor," and "retail seller" for the purposes of the Song-Beverly Consumer Warranty Act as follows:

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\* This act was added by Chapter 1333, Statutes of 1970, and generally applies to consumer goods sold on or after March 1, 1971. However, Sections 1792 to 1793.1 of the Civil Code, inclusive, only apply to consumer goods manufactured on or after March 1, 1971 (Sec. 2, Ch. 1333, Stats. 1970).



"(c) 'Manufacturer' means any individual, partnership, corporation, association, or other legal relationship which manufactures, assembles, produces, or gathers consumer goods.

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

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

For these purposes "consumer goods" are defined as follows:

"(a) 'Consumer goods' means any motor vehicle, machine, appliance, or like product that is used or bought for use primarily for personal, family or household purposes." (Sec. 1791, Civ. C.)

As we view these definitions, a manufacturer is a person who manufactures, assembles, produces or gathers motor vehicles, machines, appliances or like products that are used or bought for use primarily for personal, family or household purposes.

In the absence of information about the nature of an installing dealer's activities, we cannot categorically state whether such a dealer would come within this definition of "manufacturer."

Normally, in view of the preceding, we would think that a dealer who purchases for resale heating or air conditioning equipment having the characteristics of consumer goods and who, as part of a sale to the consumer, delivers such equipment which he purchased for resale to his customer's home and there installs it, would come within the definition of "retail seller" rather than "manufacturer."

An installing dealer of a machine, appliance or like product would, however, be a "manufacturer" of a product which he in fact manufactured, produced, assembled or gathered.



QUESTION NO. 2

Assuming an installing dealer comes within the definition of a manufacturer under subdivision (c) of Section 1791 of the Civil Code, would his liability and responsibility under the Song-Beverly Consumer Warranty Act be in lieu of the liability of a person (hereinafter referred to as equipment supplier) who supplies equipment to the installing dealer which is incorporated into installed consumer goods manufactured by the installing dealer?

OPINION NO. 2

In our opinion, should an installing dealer come within the definition of a manufacturer under subdivision (c) of Section 1791 of the Civil Code, his liability and responsibility under the Song-Beverly Consumer Warranty Act would not be in lieu of an equipment supplier's liability, since the act would not apply to the equipment supplier.

ANALYSIS NO. 2

Assuming an installing dealer would come within the definition of a manufacturer, such dealer would necessarily manufacture, assemble, produce, or gather the consumer goods he sells (subd. (c) Sec. 1791, Civ. C.). He would in some manner incorporate into the equipment or machinery he sells as consumer goods those goods he buys from the equipment supplier. Thus, the goods received from the equipment supplier would to some extent lose their identity in the process.

Furthermore, the dealer-manufacturer would be using the goods received from the supplier not for personal, family or household purposes, but for his own commercial purposes. Such goods would not, therefore, be "consumer goods" within the definition stated above.

Since the equipment supplier would only be providing components which are not consumer goods, but which become part of the consumer goods to be marketed by a manufacturer, we do not think any liability would arise under the act as to the supplier.

Accordingly, we do not think that the dealer-manufacturer's liability and responsibility under the Song-Beverly Consumer Warranty Act would be in lieu of an equipment supplier's liability, since the act would not apply to the equipment supplier under these circumstances.



QUESTION NO. 3

What is the duration of implied warranties arising under the Song-Beverly Consumer Warranty Act with respect to new consumer goods purchased and retained by the buyer?

OPINION AND ANALYSIS NO. 3

The Song-Beverly Consumer Warranty Act is silent as to duration of the implied warranties of merchantability and fitness which arise under the act with respect to new consumer goods purchased and retained by the buyer. Thus, we must look elsewhere for rules in this connection that may be applicable to such warranties.

Statutory periods of limitation of actions applicable to implied warranty actions were recently discussed in Howe v. Pioneer Mfg. Co. (1968), 262 Cal. App. 2d 330, at p. 339, as follows:

"Preliminarily, it should be noted that the one-year limitation of subdivision 3 of section 340 of the Code of Civil Procedure is applicable to the claims for damages for personal injuries whether predicated on negligence or breach of an express or an implied warranty. In Mack v. Hugh W. Comstock Associates, Inc. (1964) 225 Cal. App. 2d 583 [37 Cal. Rptr. 466], the court stated: 'The complaint alleged breaches of both express and implied warranties and consequential damages to person and property. Code of Civil Procedure section 337, subdivision 1, would cover the express warranties and provides a four-year statute of limitations. Code of Civil Procedure section 339, subdivision 1, would cover the implied warranties and provides a two-year statute. (Riesen v. Leeder, 193 Cal. App. 2d 580 [14 Cal. Rptr. 469].) However, we believe that where the damages to person or property, in addition to the warranted product, result from a breach of warranty, the more specific sections of Code



of Civil Procedure sections 340 and 338\* relating to the tortious injury or damage to person or property determine the statutory period... ."

Depending, therefore, on the type of damages involved, the period after accrual of the cause of action for a breach of implied warranty during which an action must be brought may be one, two, or three years.

The time when a cause of action based on an implied warranty theory accrues may depend on the type of damages sought. With respect to the time of the accrual of a cause of action for damages to the warranted goods, it has been said:

"... The general rule is that this date is the time of the sale from which the warranty is implied. This rule has been criticized, since under it the statute may run before the buyer knows of the breach of warranty. The rule is particularly severe when applied to a middleman or retailer, who purchases only for resale and thus is not himself likely to discover defects which appear only upon use. The amelioration generally suggested is that the statute should begin to run when the purchaser discovers, or reasonably should discover, the defect.

"California has long indicated a tendency to achieve this equitable result by construing the warranty, where possible, as prospective, thus deferring the commencement of the statutory period until the warranted future event fails to materialize, i.e., the date of discovery of the defect. The like rule has recently been applied to the implied warranty running in favor of one in a situation comparable to that of a middleman." (Rissen v. Leeder (1961), 193 Cal. App. 2d 580, at 582.)

The rule quoted above, construing a warranty as prospective, has been applied in motor vehicle cases (Wyatt v. Cadillac Motor Car Division (1956), 145 Cal. App. 2d 423, at 426).

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\* Section 338, Code of Civil Procedure provides for a three year period of limitation.



The time of accrual with respect to damages for personal injuries was discussed in Howe v. Pioneer Mfg. Co., supra, at page 340:

"Generally, the right to bring and prosecute an action arises immediately upon the commission of the wrong claimed, and the statute of limitations runs from that time; thus, a cause of action in tort arises when the wrongful act is committed, not at the time of discovery of the act. Where personal injury is claimed as the proximate result of a defective product or defective condition created by the defendant, the cause of action does not accrue until the date of injury, and computation of the one-year period of limitations commences at that time.

"It is the general rule that the applicable statute of limitations begins to run even though the plaintiff is ignorant of his cause of action or of the identity of the wrongdoer."

However, in Warrington v. Charles Pfizer & Co. (1969), 274 Cal. App. 2d 564, at 567, the court said:

"[A]nalysis of some of the cases show that if the unawareness of the injury is induced by fraud, or there is some valid excuse for the ignorance, or there is a lack of actual and perceptible trauma (thus in Rubino, cited for the strict rule--the fact was plaintiff ate canned peas and became violently ill almost immediately thereafter--immediate illness after food poisoning is perceptible trauma)--or in the case of insidious and creeping disease the strict rule will not be applied. There is, too, a line of cases holding that when no perceptible trauma is involved, and there is a silent and insidious onset of the injury or its effects, the cause accrues only when there is knowledge or means of knowledge which should alert the injured.

"In addition, there appears to be a definite trend toward the discovery rule and away from the strict rule in respect of the time for the accrual of the cause of action for personal injuries."





Finally, with respect to damages to property other than the warranted property, a court of appeals in Avner v. Longridge Estates (1969), 272 Cal. App. 2d 607, stated at 616-617:

"As a general rule a cause of action arises when the wrongful act was committed and not at the time of the discovery; the statute commences to run even though a plaintiff is ignorant that he has a cause of action. To avoid the harsh and unjust effects of this rule, the courts have made exceptions, the pertinent exception being in '[a]ctions based on progressively developing or continuing wrongs where nature, extent or permanence of the harm are difficult to discover.' Further, the rule is that a new and separate cause of action arises with each new subsidence, with any applicable limitations statute running separately for each new separate subsidence.

\* \* \*

"Only when the consequential damage is sufficiently appreciable to a reasonable man may we hold an owner to a duty of expeditiously pursuing his remedies."

#### QUESTION NO. 4

Can a manufacturer, subject to the express warranty provisions of the Song-Beverly Consumer Warranty Act, refuse to replace, reimburse, or service or repair defective consumer goods if the buyer does not physically return the goods to the manufacturer's service facility or to a retail seller when no such facilities have been established?

#### OPINION AND ANALYSIS NO. 4

Sections 1793.2 and 1793.3 of the Civil Code provide:

"1793.2. (a) Every manufacturer of consumer goods which are sold in this state and for which there exists an express warranty: (1) shall maintain or cause to be maintained in this state sufficient service and repair facilities to carry out the terms of such warranties, or (2) shall be subject to the provisions of Section 1793.5.

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



buyer agrees in writing to the contrary, the goods must be returned, at the manufacturer's expense, in merchantable condition within 30 days. Delay caused by conditions beyond the control of the manufacturer or his representatives shall serve to extend this 30-day requirement. Where such delay arises, delivery of merchantable goods shall be made as soon as possible following termination of the condition giving rise to the delay.

"(c) Should the manufacturer be unable to make such return of merchantable goods, he shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to discovery of the defect." (Emphasis added.)

"1793.3. If the manufacturer making express warranties does not provide service and repair facilities within this state pursuant to subdivision (a) of Section 1793.2, the buyer may follow the course of action prescribed in either subdivision (a) or (b), below, as follows:

"(a) Return the defective consumer goods to the retail seller thereof for replacement, or for service or repair in accordance with the terms and conditions of the express warranty. Such replacement, service, or repair shall be at the option of the retail seller. If the retail seller is unable to replace the defective article with merchantable goods or is unable to effect the service or repair of the goods in accordance with the terms and conditions of the warranty, the retail seller shall 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 discovery of the defect.

"(b) Return the defective article to any retail seller, within this state, of like goods of the same manufacturer for replacement, or for service or repair in accordance with the terms and conditions of the express warranty. Such replacement, service, or repair shall be at the option of the retail seller." (Emphasis added.)



Whether or not the manufacturer makes sufficient service and repair facilities available, both Sections 1793.2 and 1793.3 require that the manufacturer or retail seller, as the case may be, receive the defective goods from the buyer. Thus, we think that, as a general rule, the buyer must return the defective goods as a condition to receiving the relief provided by the act.\*

However, the act does not preclude a manufacturer making suggestions as to alternate methods of affecting service and repair (Sec. 1794.5, Civ. C.).

Finally, situations could arise in which it would be impossible for the buyer to return the goods as, for example, where the goods are destroyed without the fault of the buyer. We think that in such situations relief from the requirement of returning the goods could be afforded by the courts under traditional contract rules (Sec. 3531, Civ. C.; 12 Cal. Jur. 2d Contracts, Sec. 239).

#### QUESTION NO. 5

May a manufacturer subject to the provisions of the Song-Beverly Consumer Warranty Act relating to the implied warranties of merchantability and fitness disclaim liability under such warranties where the goods have been improperly or unlawfully installed or where the goods installed are not capable of performing the heating or cooling functions contemplated because of the miscalculations of the installer?

#### OPINION AND ANALYSIS NO. 5

The terms "implied warranty of merchantability" and "implied warranty of fitness" are defined for the purposes of the Song-Beverly Consumer Warranty Act as follows:

"1791.1. As used in this chapter:

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

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

---

\*This condition, of course, would not necessarily apply to other theories of relief which may be available to the buyer under other provisions of law.



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

"(3) Are free from defects of materials or workmanship.

"(4) Are adequately contained, packaged, and labeled.

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

"(b) 'Implied warranty of fitness' means that when the retailer, distributor, or manufacturer has reason to know any particular purpose for which the consumer goods are required, and further, that the buyer is relying on the skill and judgment of the seller to select and furnish suitable goods, then there is an implied warranty that the goods shall be fit for such purpose."

No provision is made in the act for partial or conditional disclaimers of liability under such warranties. Rather, a manufacturer may elect to disclaim both types of warranties by meeting various requirements (see Secs. 1792.3 and 1792.4, Civ. C.).

Though a manufacturer may not condition liability under implied warranties, a manufacturer would not be liable in the following situations:

"1794.3. The provisions of this chapter shall not apply to any defect in consumer goods caused by the unauthorized or unreasonable use of the goods following sale." (Civ. C.).

Thus, even though a manufacturer could not partially disclaim liability under the implied warranty of merchantability where goods have been improperly or unlawfully installed, no such liability arises where a defect is caused by unreasonable use.



With respect to a manufacturer's liability under the implied warranty of fitness where an installer miscalculates the heating or cooling requirements for a satisfactory installation, Section 1792.2 of the Civil Code provides:

"1792.2. Every sale or consignment of consumer goods in this state made through a retailer or distributor who has reason to know at the time of sale or consignment that the goods are required for a particular purpose and that the buyer is relying on the retailer's or distributor's skill or judgment to select or furnish suitable goods, shall, in lieu of the warranty of the manufacturer under Section 1792.1, be accompanied by an implied warranty that the goods are fit for that purpose."

We think that where heating or air conditioning equipment performs according to the specifications established by the manufacturer but is inadequate to do the job required by the buyer because the installer miscalculated the buyer's needs, the buyer could look to the installer under the implied warranty of fitness provided for under the act.

QUESTION NO. 6

Does the Song-Beverly Consumer Warranty Act apply to new as well as used goods?

OPINION NO. 6

In our opinion, the Song-Beverly Consumer Warranty Act applies only to consumer goods sold as new goods.

ANALYSIS NO. 6

There is no express provision in the Song-Beverly Consumer Warranty Act which states that the act applies only to new goods or to used as well as new goods.

The Song-Beverly Consumer Warranty Act, generally, provides various implied and express warranty rights to a "buyer" of consumer goods (see Secs. 1792, 1792.1, 1792.2, 1793.2, 1793.3, and 1793.4, Civ. C.). The term "buyer"



is defined as follows:

"1791. \* \* \*

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

\* \* \* " (Civ. C.; emphasis added.)

"Manufacturer," "distributor," and "retail seller" are defined for the purposes of this act as follows:

"1791. \* \* \*

"(c) 'Manufacturer' means any individual, partnership, corporation, association, or other legal relationship which manufactures, assembles, produces, or gathers consumer goods.

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

"(e) 'Retail seller,' 'seller,' or 'retailer' means any individual, partnership, corporation, association, or other legal relationship which engages in the business of selling new goods to retail buyers." (Civ. C.; emphasis added.)

To "manufacture" goods is to modify or change natural substances, so that they become articles of value or use (Baltimore & O.S.W.R. Co. v. Cavanaugh (1904), 71 N.E. 239, at 241). Thus, a new and different article must emerge from manufacturing (Charles Marchand Co. v. Higgins (1940), 36 F. Supp. 792, at 795).

If a "buyer" purchases consumer goods from a "manufacturer," he is purchasing goods from one who has created something new, and if a "buyer" purchases such



goods from a "retail seller" he purchases from one engaged in the business of selling new goods.

In view of these considerations, we think that the intent of the Legislature in enacting the Song-Beverly Consumer Warranty Act was to provide rights to a retail buyer of consumer goods sold as new.

QUESTION NO. 7

Does the Song-Beverly Consumer Warranty Act apply to sales by a California manufacturer outside of this state or to a sale by a California manufacturer within this state where the goods are to be resold at retail outside the state?

OPINION NO. 7

In our opinion, the Song-Beverly Consumer Warranty Act would not apply to sales by a California manufacturer outside of this state where the goods are sold at retail outside the state nor to a sale by a California manufacturer within this state where the goods are resold at retail outside the state.

ANALYSIS NO. 7

The implied warranty duties of a manufacturer apply only to sales or consignments of consumer goods "in this state by a manufacturer" (Secs. 1792 and 1792.1, Civ. C.). Also, express warranty duties of a manufacturer apply only to consumer goods "which are sold in this state" (Sec. 1793.2, Civ. C.).

We think, then, that the Song-Beverly Consumer Warranty Act is intended to apply to those consumer goods manufactured in California or elsewhere which ultimately are sold to a buyer in a retail sales transaction in this state (see Subd. (b), Sec. 1791, Civ. C.).

Thus, in our opinion the act would not apply to a sale of consumer goods by a California manufacturer outside of this state where the goods are also sold at retail outside the state.

Likewise, we do not think the act is applicable where goods are sold in this state for resale but are to be resold at retail outside the state.

QUESTION NO. 8

If a manufacturer is required to reimburse a buyer under subdivision (c) of Section 1793.2 of the Civil Code, does the purchase price, with reference to which such reimbursement is made, include value given for services such as installation?



OPINION NO. 8

In our opinion, the amount reimbursed pursuant to subdivision (c) of Section 1793.2 of the Civil Code is to be based only on the purchase price of the goods.

ANALYSIS NO. 8

Subdivision (c) of Section 1793.2 of the Civil Code relates only to consumer goods for which there is an express warranty, and provides:

"(c) Should the manufacturer be unable to make such return of merchantable goods, he shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to discovery of the defect."

Reimbursement of the purchase price under this provision is an alternative to replacing the defective goods where a manufacturer cannot by service or repair cure defects in goods which have been returned to the manufacturer. These alternatives all relate to putting the buyer in the position he would have enjoyed had the goods been free of defect.

There is nothing in the Song-Beverly Consumer Warranty Act to indicate that a buyer under the act would be reimbursed for anything but the purchase price of the consumer goods which were defective.

Thus, in our opinion\*, the amount reimbursed pursuant to subdivision (c) of Section 1793.2 of the Civil Code in the case of express warranties is to be based only on the purchase price of the goods.

QUESTION NO. 9

What is to prevent a retail seller from receiving compensation for express warranty work from both the buyer and from the manufacturer under Section 1793.5 of the Civil Code?

\* In reaching our conclusion we have not considered whether the buyer would have a remedy under other provisions of law for consequential damages such as the cost of installation.





OPINION NO. 9

In our opinion, any requirement by a retail seller that a buyer pay to the seller any sum for warranty work for which a manufacturer is liable to the seller under Section 1793.5 of the Civil Code would violate the buyer's right to have such work performed at the manufacturer's expense and would subject the seller to an action brought by the buyer for treble damages under Section 1794 of the Civil Code.

ANALYSIS NO. 9

Section 1793.5 of the Civil Code provides:

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

"(a) In the event of replacement, in an amount equal to the actual cost to the retail seller of the replaced goods, plus a reasonable handling charge.

"(b) In the event of service and repair, in an amount equal to that which would be received by the retail seller for like service rendered to retail consumers who are not entitled to warranty protection, including actual and reasonable costs of the service and repair, plus a reasonable profit.

"(c) In the event of reimbursement under subdivision (a) of Section 1793.3, in an amount equal to that reimbursed to the buyer, plus a reasonable handling charge."



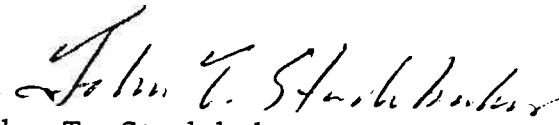
It is clear from this section that warranty work performed by a retail seller is ultimately at the expense of the manufacturer, not the buyer. The retail seller is to perform the work at his expense and then look to the manufacturer for reimbursement and his right to reimbursement is enforceable in a treble damages action for willful violation of the manufacturer's duty to reimburse the seller (Sec. 1794.1, Civ. C.).

In view of these provisions, we think that for a retail seller to require compensation from a buyer for performing warranty work abridges the buyer's rights under the act to have warranty work performed at the manufacturer's expense. This abridgement could, we think, subject the retail seller to liability for damages, including, in a proper case, liability under Section 1794 of the Civil Code, which reads as follows:

"1794. Any buyer of consumer goods injured by a willful violation of the provisions of this chapter may bring an action for the recovery of damages. Judgment may be entered for three times the amount at which the actual damages are assessed, plus reasonable attorney fees."

Very truly yours,

George H. Murphy  
Legislative Counsel

By   
John T. Studebaker  
Deputy Legislative Counsel

JTS:mls



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Honorable Alfred H. Song  
Senate Chamber

## Consumer Goods Transactions -#19381

Dear Senator Song:

You have asked us several questions relating to the Song-Beverly Consumer Warranty Act (Sec. 1790 et seq., Civ. C.)\* We shall answer these questions in series.

### QUESTION NO. 1

Does the Song-Beverly Consumer Warranty Act apply to equipment such as air conditioning equipment, dishwashers, built-in ranges, and water heaters which becomes a part of real property?

### OPINION NO. 1

It is our opinion that the act would apply to equipment having the characteristics of an appliance or machine which is used primarily for personal, family or household purposes, even though such equipment might be so installed as to become a part of real property.

\* This act was added by Chapter 1333, Statutes of 1970, and generally applies to consumer goods sold on or after March 1, 1971. However, Sections 1792 to 1793.1 of the Civil Code, inclusive, only apply to consumer goods manufactured on or after March 1, 1971 (Sec. 2, Ch. 1333, Stats. 1970).



ANALYSIS NO. 1

Generally, the Song-Beverly Consumer Warranty Act establishes new warranty obligations of manufacturers, distributors, and sellers of consumer goods, and provides new rights for the buyers of such goods.

The act defines several terms pertinent to this discussion in Section 1791 of the Civil Code. This section provides:

"1791. As used in this chapter:

"(a) 'Consumer goods' means any motor vehicle, machine, appliance, or like product that is used or bought for use primarily for personal, family, or household purposes.

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

"(c) 'Manufacturer' means any individual, partnership, corporation, association, or other legal relationship which manufactures, assembles, produces, or gathers consumer goods.

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

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

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The terms "appliance" and "machine" used in the definition of "consumer goods" above have been defined by the courts as follows:

"The word "appliance" includes every thing applied or used as a means to an end. . . . 'It is common knowledge that refrigerators, ranges, washers, a dryer and freezer are "appliances" . . . They are generally considered as any household or office utensil, apparatus, instrument, or machine that utilizes a power supply, especially electric current, as a vacuum cleaner, a refrigerator, a toaster, an air conditioner. . . ." (Winter Park Appliance Center, Inc. v. Walling Crate Co. (1967-Fla.), 196 So. 2d 198, at 199).

"The term 'machine' includes every mechanical device or combination of mechanical powers and devices to perform some function and produce a certain effect or result. . . . (Corning et al v. Burden, 14 L. ed. 683, at 690) . . ."

We think that the terms "appliance" and "machine," as so defined, are more than broad enough to include air conditioning equipment, dishwashers, ranges, and water heaters, which have the characteristics of an appliance or machine. Thus, to the extent certain types of such equipment would be within such definition of appliance or machine and are used primarily for personal, family, or household purposes, the sales thereof would come within the terms of the act.

However, questions as to the applicability of the act could be raised with respect to an installation of such equipment which is so installed as to become a part of real property.

By its terms the definition of consumer goods is broad enough to include appliances, machines or like products whether or not affixed to real property.

Also, while the term "consumer goods" has been defined in other areas of California law to include things which are to be affixed to real property (see Sec. 1761, Civ. C., added by Ch. 1550, Stats. 1970, and Secs. 9105 and 9109, Com. C.), no indication is given in subdivision (a) of Section 1791 of the act, quoted above, that such items are to be excluded from "consumer goods."

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Furthermore, there is a rule of statutory construction which is pertinent here. In this regard, a remedial statute must be given a liberal construction, so as to effectuate its object and purpose. "[S]uch an act will be construed, when its meaning is doubtful, so as to suppress the mischief at which it is directed, and to advance or extend the remedy provided, and bring within the scope of the law every case which comes clearly within its spirit and policy." (In re Makings (1927), 200 Cal. 474, at 478-479).

For the reasons set forth below, we think the act is clearly remedial in character in that it provides new protection to consumers in the field of warranties.

Generally speaking, the act relates to warranties in transactions involving the sale of consumer goods. The warranties covered by the act are: (1) an implied warranty of merchantability imposed on manufacturers of consumer goods, (2) an implied warranty of fitness imposed on manufacturers of such goods, (3) an implied warranty of fitness imposed on distributors or retail sellers of such goods in lieu of the implied warranty of fitness imposed on manufacturers, and (4) an express warranty made by manufacturers\* of consumer goods.

Under the act a sale or consignment of consumer goods by a manufacturer is accompanied by an implied warranty of merchantability (see subd. (a), Sec. 1791.1 and Sec. 1792, Civ. C.) and, where applicable, by an implied warranty of fitness (see subd. (b), Sec. 1791.1 and Sec. 1792.1). Also, a sale or consignment of such goods by a retailer or distributor may involve an implied warranty of fitness which is in lieu of such warranty of the manufacturer (Sec. 1792.2). Such warranties may be waived only in the manner provided for in the act (see Secs. 1792.3, 1792.4, and 1792.5, Civ. C.).

Unlike implied warranties arising under provisions of the Commercial Code (see e.g., Secs. 2314 and 2315, U.C.C.), which may be modified by an express warranty (see Sec. 2316, U.C.C.) and which may be displaced by inconsistent express warranty provisions (see Sec. 2317, U.C.C.), implied warranties provided for in the Song-Beverly Consumer Warranty Act may not be limited in application or modified by express warranties. (Sec. 1793, Civ. C.)

With respect to express warranties (see Sec. 1791.2, Civ. C.), the act imposes various duties on manufacturers, distributors, and retail sellers. Under Section 1793.2 of

\* Also covered are warranties made by distributors and retail sellers.



the Song-Beverly Consumer Warranty Act, a manufacturer of consumer goods sold in this state for which an express warranty exists must either maintain or cause to be maintained in this state service and repair facilities to honor the warranty terms or reimburse retail sellers of such goods to whom the buyer may look for service and repair, replacement, or reimbursement according to the warranty terms when the manufacturer does not maintain service and repair facilities in this state for doing the warranty work (see Secs. 1793.3 and 1793.5, Civ. C.). Whether the buyer looks to the manufacturer or a retail seller for service and repair, replacement, or reimbursement under the express warranty, the act requires the buyer to return the goods to the manufacturer or the retail seller, as the case may be (Secs. 1793.2 and 1793.3, Civ. C.).

The act provides that a buyer of consumer goods may, among other things, enforce his right to service and repair, replacement, or reimbursement under express warranties, in a triple damage action for a willful violation of the act (Sec. 1794, Civ. C.; see Opinion and Analysis No. 8).

As stated above, the act requires a buyer to return the goods to the manufacturer or a retail seller as a condition to the buyer's right of service and repair, replacement, or reimbursement under an express warranty (see Secs. 1793.2 and 1793.3, Civ. C.).

It could be contended that this requirement indicates legislative intent to limit the act to goods which can be removed from a household and shipped to the manufacturer or retail seller for warranty work. However, the act does not require a manufacturer to make express warranties. Also the act permits the use of service contracts\* in addition to or in lieu of express warranties (Sec. 1794.4, Civ. C.). Thus the requirement for return of the goods does not limit the application of the act to movable consumer goods.

Also, as pointed out above, the act deals not only with express warranties but with implied warranties as well. There is nothing in the act which would affect

\*This could provide for warranty services at the residence of the purchaser.

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the application of these implied warranty provisions to goods that cannot be removed from real property.

In view of the remedial character of the act, we think that a court, in applying the rule of liberal construction, would not limit the scope of the act by confining the definition of "consumer goods" to only those goods which remain movable during the period of warranty coverage (i.e., goods not a part of real property), but, rather, would give full effect to the policy of protecting consumers by applying the act to goods, which are otherwise within the definition, without regard to the factor of mobility during the warranty period.

#### QUESTION NO. 2

Does a privately-owned public utility which helps to sell gas air-conditioning and other gas appliances manufactured by another party by programs of advertising, bill inserts, and other activities fall within the term "distributor" as such term is defined under the Song-Beverly Consumer Warranty Act?

#### OPINION NO. 2

In our opinion, a privately-owned public utility which helps to sell gas air-conditioning and other gas appliances manufactured by another party by programs of advertising, bill inserts, and other activities does not fall within the term "distributor" as such term is defined under the Song-Beverly Consumer Warranty Act.

#### ANALYSIS NO. 2

The Song-Beverly Consumer Warranty Act generally establishes duties upon manufacturers, distributors, and retail sellers with respect to sales of consumer goods to buyers.

Section 1791 of the act defines various terms (including "distributor") for the purposes of the act as follows:

"1791. As used in this chapter:

"(a) 'Consumer goods' means any motor vehicle, machine, appliance, or like product that is used or bought for use primarily for personal, family, or household purposes.





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

"(c) 'Manufacturer' means any individual, partnership, corporation, association, or other legal relationship which manufactures, assembles, produces, or gathers consumer goods.

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

"(e) 'Retail seller,' 'seller,' or 'retailer' means any individual, partnership, corporation, association, or other legal relationship which engages in the business of selling new goods to retail buyers." (Emphasis added; Civ. C.)

We shall assume here that the gas appliances, the sale of which a privately-owned public utility promotes, are consumer goods within the meaning of the definition quoted above (see Analysis No. 1).

In order to be distributor within the meaning of subdivision (d) of Section 1791, a person must stand between a manufacturer and retail seller in purchases, consignments, or contracts for the sale of consumer goods. Thus, a "distributor" must be directly involved in the transmission of consumer goods between a manufacturer and retail seller whether by means of a purchase, consignment or contract for the sale of consumer goods.

If a privately-owned public utility merely promotes the sale of consumer goods by advertising and related means, it would not be a distributor since it would not purchase, take on consignments or contract for the sale of consumer goods.



Thus, in our opinion, a privately-owned public utility which helps to sell gas air-conditioning and other gas appliances manufactured by another party by programs of advertising, bill inserts, and other activities does not fall within the term "distributor" as such term is used in the act.

QUESTION NO. 3

What does the term "other legal relationship" mean as used in subdivision (d) of Section 1791 of the Song-Beverly Consumer Warranty Act?

OPINION AND ANALYSIS NO. 3

We think the term "other legal relationship" as used in subdivision (d) of Section 1791 of the act (quoted above in Analysis No. 2) means some legally recognized entity other than an individual, partnership, corporation, or association. Such relationships could include joint ventures (see 28 Cal. Jur. 2d Joint Ventures), joint stock companies, and business trusts (see 28 Cal. Jur. 2d Joint Stock Companies and Business Trusts).

QUESTION NO. 4

Does the definition of "buyer" in subdivision (b) of Section 1791 of the Song-Beverly Consumer Warranty Act include general contractors, subdivision developers, commercial developers, and industrial customers?

OPINION AND ANALYSIS NO. 4

A "buyer" within the meaning of subdivision (b) of Section 1791 of the act (quoted above in Analysis No. 2) is an individual who buys consumer goods from specified persons. Thus the buyer makes a purchase of goods which are to be used primarily for personal, family, or household purposes (subd. (a), Sec. 1791, Civ. C.).

Unless a general contractor, subdivision developer, commercial developer, or industrial customer is (1) an individual and (a) buys goods, otherwise within the definition of consumer goods, primarily for his own personal, family, or household purposes as opposed to business or commercial purposes, such persons would not come within the definition of "buyer" set forth in subdivision (b) of Section 1791 of the act.

In answering this question we have limited our consideration to whether a general contractor, subdivision developer, commercial developer or industrial customer is a "buyer" within the meaning of the act and have not considered whether the purchaser of a house in which consumer goods are installed would be a "buyer."



QUESTION NO. 5

Do the duties imposed by the Song-Beverly Consumer Warranty Act upon manufacturers, distributors, and retail sellers of consumer goods apply to general contractors, subdivision developers, and commercial developers?

OPINION AND ANALYSIS NO. 5

As indicated above, the various duties imposed under the Song-Beverly Consumer Warranty Act (see the discussion above in Analysis No. 1) apply generally to manufacturers, distributors, and retail sellers of consumer goods.

Thus, to be subject to the duties imposed under the act, general contractors, subdivision developers, and commercial developers would have to fall within the definitions of "manufacturer," "distributor," and "retail seller" quoted above in Analysis No. 2 (see subds. (c), (d), and (e), Sec. 1791, Civ. C.).

In the absence of information about the kinds of business transactions entered into by general contractors, subdivision developers, or commercial developers, we cannot, of course, determine whether any such persons would fall within the definitions mentioned above.

However, we think that a commercial developer would, by definition, be dealing, if at all, with goods to be used for commercial or business purposes rather than for personal, family, or household purposes. Thus, we doubt that the duties imposed under the act would apply to a commercial developer.

QUESTION NO. 6

If a privately-owned public utility voluntarily effectuates a manufacturer's warranty, does the utility become liable under the express or implied warranty provisions of the act?\*

\* We shall only discuss the general applicability of the Song-Beverly Consumer Warranty Act here, recognizing that under certain circumstances a different conclusion might be reached, based on other principles of law.



OPINION AND ANALYSIS NO. 6

We assume here that by "voluntarily effectuates a manufacturer's warranty" you mean voluntarily performing acts which a manufacturer is obligated to perform under the warranty provisions of the act.

The Song-Beverly Consumer Warranty Act generally imposes, as was discussed above in Analysis No. 1, various warranty duties upon manufacturers, distributors, and retail sellers of consumer goods.

If a privately-owned public utility does not otherwise fall within the definition of a manufacturer, distributor or retail seller with respect to a retail sale of consumer goods, it would not, in our opinion, by merely voluntarily giving effect to a manufacturer's warranties become subject to any duties imposed under the act.

QUESTION NO. 7

If a privately-owned public utility contracts with a manufacturer for the work of effectuating the manufacturer's express warranty, what are the obligations of the utility, if any, under the act?\*

OPINION NO. 7

In our opinion, the act would not impose duties on a privately-owned utility which contracts with a manufacturer to act as the representative of the manufacturer in performing the manufacturer's express warranty duties created by the act.

ANALYSIS NO. 7

As discussed above in Analysis No. 1, a manufacturer of consumer goods sold in this state for which an express warranty exists must either (1) maintain or cause to be maintained in this state service and repair facilities to honor the warranty terms or (2) reimburse retail sellers of such goods to whom the buyer may look for service and repair, replacement, or reimbursement under the warranty when the manufacturer does not maintain or cause to be maintained such facilities in this state (see Secs. 1793.3 and 1793.5, Civ. C.).

\* We shall only discuss the general applicability of the Song-Beverly Consumer Warranty Act here, recognizing that under certain circumstances a different conclusion might be reached, based on other principles of law.



Where the manufacturer causes to be maintained service and repair facilities in this state by contracting with a privately-owned public utility to give effect to the manufacturer's express warranties, the act imposes the following duties:

"1793.2

\* \* \*

"(b) Where such service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not comply with the applicable warranties, service and repair shall be commenced within a reasonable time following receipt of the goods by the manufacturer or its representative in this state. Unless the buyer agrees in writing to the contrary, the goods must be returned, at the manufacturer's expense, in merchantable condition within 30 days. Delay caused by conditions beyond the control of the manufacturer or his representatives shall serve to extend this 30-day requirement. Where such delay arises, delivery of merchantable goods shall be made as soon as possible following termination of the condition giving rise to the delay.

"(c) Should the manufacturer be unable to make such return of merchantable goods, he shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to discovery of the defect." (Emphasis added; Civ. C.)

While a privately-owned public utility could become the representative in this state of a manufacturer for the purposes of service and repair, there is nothing in the provisions quoted above which imposes duties on such representatives. Rather, the duties are imposed upon the manufacturer. Furthermore, there is no other provision in the act which imposes duties on such representatives.

Thus, in our opinion, the Song-Beverly Consumer Warranty Act would not impose duties upon a privately-owned public utility which contracts with a manufacturer to act as the representative of the manufacturer in performing the manufacturer's express warranty duties created by the act.



QUESTION NO. 8

If a privately-owned public utility sells consumer goods and contracts with an independent contractor for installation, does the public utility have any liability under the provisions of the Song-Beverly Consumer Warranty Act for (1) the consumer goods or (2) the installation work?

OPINION AND ANALYSIS NO. 8

If a privately-owned public utility engages in retail selling of consumer goods manufactured by others to buyers, we think that the liability of the company, if any, would arise from liability imposed under the act upon retail sellers (see subd. (e), Sec. 1791, Civ. C.).

As a retail seller of consumer goods, a privately-owned public utility could incur liability under the express warranty provisions of the act.

The duties and liabilities of a retail seller discussed above in Analysis No. 1 where the manufacturer of consumer goods elects not to maintain or cause to be maintained in this state service and repair facilities would thus be applicable. Section 1793.3 of the act sets forth these duties as follows:

"1793.3. If the manufacturer making express warranties does not provide service and repair facilities within this state pursuant to subdivision (a) of Section 1793.2, the buyer may follow the course of action prescribed in either subdivision (a) or (b), below, as follows:

"(a) Return the defective consumer goods to the retail seller thereof for replacement, or for service or repair in accordance with the terms and conditions of the express warranty.



Such replacement, service, or repair shall be at the option of the retail seller. If the retail seller is unable to replace the defective article with merchantable goods, or is unable to effect the service or repair of the goods in accordance with the terms and conditions of the warranty, the retail seller shall 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 discovery of the defect.

~~\*\*\* (Civ. C.) \*\*\*~~

Reimbursement of the purchase price under Section 1793.3 is an alternative to replacing the defective goods where the retail seller cannot by service or repair cure defects in goods which have been returned to the retail seller. These alternatives all relate to putting the buyer in the position he would have enjoyed had the goods been free of defect.

There is nothing in the Song-Beverly Consumer Warranty Act to indicate that a buyer under the act would be reimbursed under an express warranty for anything but the purchase price of the consumer goods which were defective.

Thus, the amount reimbursed pursuant to Section 1793.3 where the retail seller properly performs his duty is to be based only on the purchase price of the goods. And, of course, the manufacturer of the consumer goods with respect to which the retail seller is obliged under the act to make reimbursement is required to compensate the retail seller for such expenditures (Sec. 1793.5, Civ. C.).

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If, however, a retail seller willfully violates the duties he owes to the buyer under Section 1793.3, Section 1794 of the act would be applicable. This section provides:

"1794. Any buyer of consumer goods injured by a willful violation of the provisions of this chapter may bring an action for the recovery of damages. Judgment may be entered for three times the amount at which the actual damages are assessed, plus reasonable attorney fees."  
(Emphasis added; Civ. C.)

The Song-Beverly Consumer Warranty Act does not set forth the components of "actual damages" for the purposes of Section 1794. However, Section 1790.3 of the act does provide:

"1790.3. The provisions of this chapter shall not affect the rights and obligations of parties determined by reference to the Commercial Code except that, where the provisions of the Commercial Code conflict with the rights guaranteed to buyers of consumer goods under the provisions of this chapter, the provisions of this chapter shall prevail."  
(Civ. C.)

In view of this section, we think the warranty provisions of the Song-Beverly Consumer Warranty Act are to be read against the framework of warranty provisions in the Commercial Code.

While the Song-Beverly Consumer Warranty Act does not establish the measure of "actual damages" for the willful breach of express warranty duties created by the act, the Commercial Code does specify the measure of damages for breach of an express warranty. Thus, we think the pertinent damages provisions of the Commercial





Code are to be applied in measuring "actual damages" for the purposes of the treble damage provisions of Section 1794 in a case of willful violation of express warranty duties. In this regard, Sections 2714 and 2715 of the Commercial Code provide in part:

"2714.

\* \* \*

"(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

"(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

"2715. (1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

"(2) Consequential damages resulting from the seller's breach include

"(a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

"(b) Injury to person or property proximately resulting from any breach of warranty."



In view of these provisions, we think that a buyer injured by willful violations on the part of a retail seller of the express warranty provisions of the Song-Beverly Consumer Warranty Act applicable to retail sellers, may recover, in a proper case, damages relating to (1) the consumer goods as well as (2) the installation work. Furthermore, by virtue of Section 1794 of the Song-Beverly Consumer Warranty Act, the amount of actual damages so determined would be trebled.

In addition to express warranty liability, a privately-owned public utility could, as a retail seller, become subject to provisions of the act relating to the implied warranty of fitness\*. In this regard Section 1792.2 of the Song-Beverly Consumer Warranty Act provides:

"1792.2. Every sale or consignment of consumer goods in this state made through a retailer or distributor who has reason to know at the time of sale or consignment that the goods are required for a particular purpose and that the buyer is relying on the retailer's or distributor's skill or judgment to select or furnish suitable goods, shall, in lieu of the warranty of the manufacturer under Section 1792.1\*\*, be accompanied by an implied warranty that the goods are fit for that purpose."

\* The implied warranty of fitness applicable to retail sellers may be disclaimed, but only in the manner set forth in the act (see Sec. 1772.4, Civ. C.).

\*\* Section 1792.1 creates an implied warranty of fitness as against a manufacturer where the manufacturer has reason to know at the time of sale or consignment that the goods are required for a particular purpose and the buyer is relying on the manufacturer's skill or judgment to select or furnish suitable goods.



While the Song-Beverly Consumer Warranty Act imposes implied warranty of fitness liability on a retail seller of consumer goods under the circumstances described in Section 1792.2, the act does not, as in the case of express warranties, impose any positive duties under this implied warranty such as the duties of service or repair, replacement or reimbursement. Thus, we do not think that the treble damages remedy established in Section 1794, quoted above, applies to such implied warranty liability since the act does not, in this respect, contain any provisions which may be willfully violated.

However, as discussed above, the Commercial Code does provide for the recovery of damages for breach of warranty. As we concluded with respect to express warranty liability, a retail seller could, in a proper case, be liable under the damages provisions of the Commercial Code for actual damages relating to (1) the consumer goods as well as (2) the installation work. We think this conclusion is equally applicable to the implied warranty of fitness liability imposed under the act on retail sellers.

QUESTION NO. 9

Does the treble damages provision of Section 1794 of the Song-Beverly Consumer Warranty Act apply to manufacturers, distributors, and retail sellers?

OPINION AND ANALYSIS NO. 9

As discussed above in Opinion and Analysis No. 8, Section 1794 of the act applies to willful violations of the specific duties imposed under the Song-Beverly Consumer Warranty Act.

The act imposes various duties on manufacturers, distributors, and retail sellers. (See Analysis No. 1 for general discussion of these duties).



We think that if a manufacturer, distributor or retail seller willfully violates any of the various duties imposed upon them under the act, the treble damages provision of Section 1794 would be applicable.

QUESTION NO. 10

Is the liability of manufacturers, distributors, and retail sellers under Section 1794 of the Song-Beverly Consumer Warranty Act joint and several?

OPINION NO. 10

In our opinion, any liability of manufacturers, distributors, and retail sellers under Section 1794 of the Song-Beverly Consumer Warranty Act is several.

ANALYSIS NO. 10

The Song-Beverly Consumer Warranty Act, as indicated above in Analysis No. 1, imposes various duties on manufacturers, distributors, and retail sellers of consumer goods. The duties are distinct and separate as to the various parties taking part in a consumer goods transaction. Nowhere in the act is there provision for joint undertakings with respect to any of the duties imposed upon manufacturers, distributors or retail sellers.

Accordingly, we think that any liability of a manufacturer, distributor or retail seller under Section 1794 of the act would be several, and not joint and several.

Very truly yours,

George H. Murphy  
Legislative Counsel

By *John T. Studebaker*  
John T. Studebaker  
Deputy Legislative Counsel

JTS : fmj



California Council of  
Airconditioning and Refrigeration Contractors Associations

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February 18, 1970

Senator Alfred H. Song  
State Capitol  
Sacramento, California 95814

Dear Al:

It was a pleasure to be at your party the other night, and all of us enjoyed ourselves very much.

Our industry is most interested in your Senate Bill 272 entitled "Song Consumer Warranty Protection Act." We believe there is much in the bill which merits our support; however, we wish to call to your attention certain problems under the bill.

It is not clear whether section 1755 (a) which defines coverage under the Act, includes products such as airconditioning equipment to be permanently attached as an improvement to the real estate. I would lean towards an interpretation that it was only personal property which was covered.

If it includes equipment subject to the Contractors State License Law, we would be opposed to such a section as 1768 (a) which provides that each manufacturer "shall maintain in this State sufficient service and repair facilities to carry out the terms of such warranties." This section raises a great many problems, particularly to those of our installing contractors who either independently maintain service departments or are dealers for manufacturers and carry out the terms of the warranties themselves.

In addition, if improvements to realty are covered, many repairs which a manufacturer would make would be subject to the Contractors State License Law and normally require that the manufacturer be licensed as a contractor. Would this law permit the manufacturer to engage in repair work without a contractor's license?

As you know, we maintain the Airconditioning and Refrigeration Center, and in cooperation with the industry we have developed "Airconditioning Standards-Residential," a copy of which is enclosed. We feel that many residential airconditioning

A-1



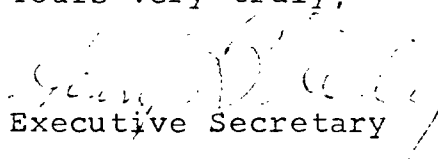
systems are poorly installed and that the public is put upon. Gradually, through the application of the Standards and through our organization taking complaints against the contractors, we believe that we are improving the residential applications.

We particularly wish to point out in "Airconditioning Standards-Residential" the provisions we have relating to warranties. They are found in Appendix A on blue page 15 under "Electrical Application and Installation, and Appendix A, page 10, the last blue page in the book under "Gas and Gas-Electric Installation and Application." We enclose, for your convenience, copies of these two warranties.

We would be happy to consult with you so that a program could be developed for warranties and guarantees where improvements to real property are involved.

We would appreciate hearing from you as to whether or not under the present law, it is intended to cover improvements to real property.

Yours very truly,

  
Executive Secretary

HBE:lgs  
Enclosure



## APPENDIX A

### Warranties

The contractor warrants to the purchaser that the system has adequate capacity to the conditioned space during heating and cooling operations at the stated design temperatures when supplied with adequate electric power and operated in accordance with instructions. This warranty shall also include assurance of readily available and adequate service.

The dealer shall perform a check, performance test and start-up at the time of first occupancy or beneficial use. The start-up shall include complete user's operating instructions and responsibilities.

For a one-year period after such start-up, the dealer shall provide without charge replacement parts and service, as well as preventive maintenance inspections at three-month intervals.

Customer will be offered an additional 4-year standard maintenance contract on parts and labor, as well as four (4) preventive maintenance calls per year. This service will run concurrently with the manufacturer's 5-year warranty on the compressor. The cost for this extended maintenance contract shall be in accordance with prevailing industry rates.

Accidents through no fault of the contractor, misuse or abuse of the equipment, will void these warranties.

- 15 -

## APPENDIX A

### Warranties

The installing contractor warrants to the purchaser that the system has adequate capacity to heat and/or cool the conditioned spaces at the stated design temperatures when supplied with adequate electric power and gas volume and when operated according to instructions. This warranty shall also include assurance of readily available and adequate service.

The dealer or installing contractor shall perform a check, performance test and start-up at the time of first occupancy or beneficial use. The start-up shall include complete user's operating instructions.

The customer shall be provided with an unconditional warranty on parts and labor on the entire installation for one year from start-up date, and an additional four-year warranty, parts and labor, on the sealed absorption unit. Customer will be offered an additional four-year standard maintenance contract on parts and labor, as well as four preventive maintenance calls per year. This service will run concurrently with the manufacturer's five-year warranty on the sealed absorption unit. The cost for this extended maintenance contract shall be in accordance with prevailing industry rates.

Accidents through no fault of the contractor, misuse or abuse of the equipment, will void these warranties.

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LEGISLATIVE INTENT SERVICE (800) 666-1917



A-3

x

March 2, 1970

Calif. Council of Airconditioning  
and Refrigeration Contractors Assn.  
2220 South Hill Street  
Los Angeles, California 90007

Attn: Mr. Henry B. Ely

Dear Henry:

Thank you for your letter regarding my SB 272.

While there may be some borderline cases, my bill applies to situations in which a consumer purchases a product from a retail seller. This would obviously cover purchases of certain air conditioning equipment, but I believe that it would clearly exclude situations involving contractors. This bill, unlike our SB 1166 of last year, does not involve relationships between contractors, subcontractors, etc.

Sincerely,

ALFRED H. SONG

AHS/laj

(800) 666-1917

LEGISLATIVE INTENT SERVICE



A-4



California Council of  
Airconditioning and Refrigeration Contractors Associations

2220 SOUTH HILL STREET • LOS ANGELES, CALIFORNIA 90007 • (213) 748-8448



March 12, 1970

Senator Alfred H. Song  
State Capitol  
Sacramento, California 95814

Dear Al:

Your answer regarding my letter of February 18, concerning your Senate Bill 272, indicates that your intent in the "Song Consumer Warranty Protection Act" is to protect the consumer who purchases a product from a retail seller, and is intended to exclude situations involving contractors.

Without repeating again the detailed considerations made in my letter of February 18, may I suggest an amendment such as this to clarify your intent that contractors and subcontractors are not involved in the purposes of the bill:

This language could be added to Section 1755--

(a) on Page 2 Line 14 of the bill as introduced February 2, 1970:

"Consumer goods" does not include installations ~~required to be installed~~ by a licensed contractor *licensed under* pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

Your inclusion of this suggested amendment will specifically clarify the intent and scope of the Song Consumer Warranty Protection Act.

Sincerely,

Executive Secretary

HBE:S:lgs

LEGISLATIVE INTENT SERVICE (800) 666-1917



A-5

March 31, 1970

Mr. Henry B. Ely  
Calif. Council of Airconditioning  
and Refrigeration Contractors Assn.  
2220 South Hill Street  
Los Angeles, California 90007

Dear Henry:

Thank you for your suggested amendments to my SB 272.

I believe the best way to handle this would be to specifically exclude contractors, as defined in the Business and Professions Code, from the definition of "retail seller" in section 1755 (e). I will have amendments drawn up to do this in the near future.

Sincerely,

ALFRED H. SONG

AHS/laj

C  
O  
P  
Y





THOMAS C. LYNCH  
ATTORNEY GENERAL

STATE OF CALIFORNIA



CHARLES A. O'NEILL  
CHIEF DEPUTY ATTORNEY GENERAL  
T. A. WESTERHALL, JR.  
CHIEF ASSISTANT ATTORNEY GENERAL  
DIVISION OF CIVIL LAW  
ARLO E. SMITH  
CHIEF ASSISTANT ATTORNEY GENERAL  
DIVISION OF CRIMINAL LAW  
MILES J. RUBIN  
SENIOR ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
**Department of Justice**  
STATE BUILDING, LOS ANGELES 90012

March 11, 1970

Consumer Fraud Unit

*Handwritten:* Smith 11/11

Senator Alfred H. Song  
State Capitol  
Room 3021  
Sacramento, California 95814

Attention: Jim Cathcart

Re: White Sewing Machine Company

Dear Mr. Cathcart:

Enclosed re above-indicated matter for your information.

Very truly yours,

THOMAS C. LYNCH  
Attorney General

HERSCHEL T. ELKINS  
Deputy Attorney General

HTE:bc

encl

LEGISLATIVE INTENT SERVICE (800) 666-1917



A-8

KNX

CBS Radio  
A Division of Columbia Broadcasting System, Inc.  
6121 Sunset Boulevard  
Los Angeles, California 90028  
(213) 469-1212

Dear Mrs. Harkins:

Thank you for writing Action Reporter about your problem.

The volume of mail we receive on the subject of consumer problems (including new car warranties, automotive accessory and parts warranties and auto repairs) suggests this is a major problem. Unfortunately, our research into these subjects suggests that problems such as yours cannot be solved without changes in the law.

The California Attorney General's consumer fraud unit has asked our cooperation in compiling statistical data on these subjects and for that reason we have taken the liberty of forwarding your letter to that agency. The Attorney General does not represent individuals in their legal actions, but the office does seek information from California citizens to determine if there is a "pattern" in these abuses. Once such a pattern is established, the Attorney General may bring lawsuits on behalf of California citizens and also can propose new laws to your legislators in Sacramento.

I'm sorry we cannot be of assistance in your case, but it is our hope that this mutual cooperation with the California Attorney General will result in increased consumer protection.

Sincerely,  
KNX ACTION REPORTER

Sylvia Chase, Investigator

cc: Mr. Herschel T. Elkins  
217 West 1st Street  
Los Angeles, California 90012

Mrs. John M. Harkins  
442 South Ashwood  
Ventura, California 93003

February 25, 1970

(800) 666-1917

LEGISLATIVE INTENT SERVICE



A-9

2/25/70

442 S. Ashwood  
Ventura, California 93003  
19 February 1970

Radio Station KNX Action Reporter  
Los Angeles, California

Dear Sir:

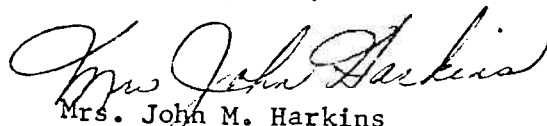
Enclosed is a copy of a letter with the attachment thereto that I wrote to the White Sewing Machine Company, 11750 Berea Rd., Cleveland, Ohio, 44111, stating the problem of trying to get the sewing machine repaired in accordance with the terms of the Warranty.

Also enclosed is a copy of their reply to that letter.

Investigation as to how an Authorized White Sewing Machine Dealer with access to White Sewing Machine Warranties can issue and guarantee service falsely will be appreciated. Since the White Sewing Machine Company states they will bring action only against the dealers, is this being done? Is the Warranty card obsolete? The Warranty was not by the dealer; it was sold as guaranteed by the White Sewing Machine Company. I feel there is possibly false advertising in connection with the sales of these machines.

Could you help in any way. It will be appreciated.

Sincerely yours,



Mrs. John M. Harkins  
442 S. Ashwood  
Ventura, California 93003

CC Chamber of Commerce Ventura  
Chamber of Commerce Oxnard  
District Attorney, Ventura

LEGISLATIVE INTENT SERVICE (800) 666-1917



442 S. Ashwood  
Ventura, Calif. 93003  
3 February 1970

White Sewing Machine Corporation  
Cleveland, Ohio

Dear Sir:

Attached is a copy of the Warranty and the Certificate and Registration for a White Sewing Machine purchased at the White Dealer in Ventura, California in December 1968. At the time of purchase, it was stated that the machine was for a gift for my daughter-in-law residing in San Louis Obispo, California. I was assured that service on the machine was no problem because it could be taken into any White Dealer and the Warranty would be honored.

When the reverse sew button was pushed, it stuck in the down position and something within the head of the machine dropped (it could be heard). My daughter-in-law took the machine into the White in San Louis Obispo and was told to take it to wherever she had bought it. No service of any kind was available to her.

This machine is no good in this condition and I feel the money paid for it should be refunded as your warranty is apparently no good and the service is not available. Your immediate attention to this matter will be appreciated.

Sincerely,

Mrs. John M. Harkins  
442 S. Ashwood  
Ventura, Calif. 93003

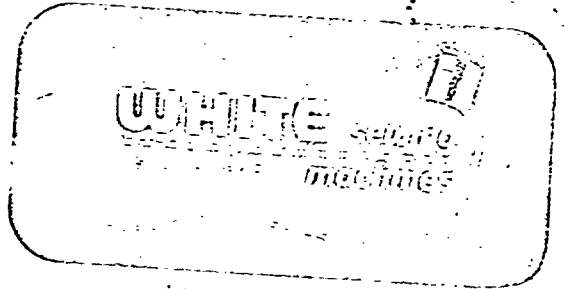
P. S. The White Dealer formerly located on Main St. in Ventura, California is no longer in business.

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A-11

# Warranty Certificate and Registration for



NAME OF ORIGINAL PURCHASER <i>Paul &amp; Kathie Hopkins</i>	DATE OF PURCHASE <i>Dec. 1968</i>
MODEL NUMBER <i>190</i>	SERIAL NUMBER <i>S-A3 4694 H</i>
AUTHORIZED DEALER SIGNATURE <i>[Signature]</i>	
SIGNATURE <i>[Signature]</i>	

## WARRANTY WHITE Sewing Machines CERTIFICATE

WE WARRANT to the original purchaser of this new White Sewing Machine (serial number entered on reverse side) that it is built of first class materials and workmanship. Should any part of this sewing mechanism (excepting needles, pulleys, belts, attachments or electrical equipment) be found defective within twenty (20) years from date of purchase, it will be exchanged for a new part, providing only that the machine is used under normal household conditions and not damaged by tinkering, fire, water or accident.



**ELECTRICAL EQUIPMENT** is warranted in accordance with the standard practices covering household electrical equipment and appliances, i.e., the exchange of any defective electrical part (excepting lamp bulbs) for a period of one year from date of original purchase.

**THIS WARRANTY** is valid only if signed by an authorized White Sewing Machine dealer after the serial number of the machine and date of purchase have been entered in the spaces provided.

This warranty is in lieu of any other warranties, express or implied, and the obligation under this warranty shall not include any liability for direct, indirect or consequential damages.

WHITE SEWING MACHINE CORPORATION  
CLEVELAND, OHIO  
WHITE SEWING MACHINE PRODUCTS, LTD.  
TORONTO, CANADA

PRINTED IN U.S.A.

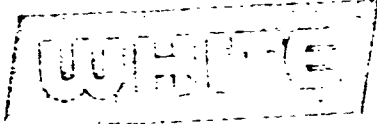
PART NO. 70118

LEGISLATIVE INTENT SERVICE (800) 666-1917

A-12



for the best in home sewing



SEWING MACHINE COMPANY 11750 BEREA RD. CLEVELAND, OHIO 44111 PHONE (216) 252-3300

February 16, 1970

Mrs. John M. Harkins  
442 South Ashwood  
Ventura, California 93003

Dear Mrs. Harkins:

I believe you may have a problem. The model, as identified on your warranty card, does not correspond to any of our models. The warranty form used in your case has been obsolete for several years.

You must understand that the White Sewing Machine Company does not have jurisdiction over independent dealers. We sell strictly on a wholesale basis to independent dealers. When a situation of this type occurs, we immediately bring action against the dealer who uses this deception to sell off-brand merchandise.

We are very sorry, but we cannot honor the warranty on your machine.

Thank you for writing.

Sincerely yours,

WHITE SEWING MACHINE COMPANY

M. Arendash  
Sales - Service

LEGISLATIVE INTENT SERVICE (800) 666-1917



IT'S SO EASY TO SEW ON A WHITE

A-13



OFFICE OF THE ATTORNEY GENERAL

Department of Justice

STATE BUILDING, LOS ANGELES 90012

May 12, 1970

Consumer Fraud Unit

Senator Alfred H. Song  
State Capitol  
Room 3021  
Sacramento, California 95814

Re: Complaint of Noel D. Stairs - Odometer Reading

Dear Senator Song:

The attached re above-indicated matter forwarded  
to your office.

Very truly yours,

THOMAS C. LYNCH  
Attorney General

HERSCHEL T. ELKINS  
Deputy Attorney General

HTE:bc

Attachment

LEGISLATIVE INTENT SERVICE (800) 666-1917



A-14

1634 1/2 257th. Street  
Harbor City  
California. 90710.

3rd. May. 1970

Office of the Attorney General  
107 So. Broadway  
Los Angeles  
California.

Dear Sirs,

Re: 1966 Dodge Monaco - Licence # TGT116  
Vehicle I.D.# DP23G63202677

I enclose a copy of a letter to Chrysler Motors, Dodge Division, which I trust is self-explanatory. In September 1969 I purchased the vehicle from Vern Holmes Inc. Atlantic Avenue, Long Beach, with 44,111 miles recorded on the odometer and this was verified on the sales contract.

The previous registered owner Mr. Jack A. Reed, 4524 W. 133rd. Street, Hawthorne, has given me to understand that he traded the vehicle to Mel Burns (Ford Dealer) 2055 Long Beach Blvd, Long Beach, approximately one year ago with some 60,000 miles recorded on the odometer.

I trust you will look into this matter.

Sincerely,

*Noel D. Stairs*

Noel D. Stairs,

Enc.

LEGISLATIVE INTENT SERVICE (800) 666-1917



F-15

16 1/2 257th Street  
Hawthorne City,  
California. 90710

3rd. May. 1970

Chrysler Motors Corporation  
Dodge Division  
1600 E. Orangethorpe Ave  
Fullerton.  
California. 92631.

Attention: John T. Level - Customer Relations Manager.

Re: 1966 Dodge Monaco.

Dear Mr. Level,

Further to my letter of March 28th. and your reply dated 2nd. April, I was contacted by your Service Representative Mr. R. Saylor and I met him at Tom Roady Dodge, Gardena as requested. We discussed the matter at length, but I feel to no avail.

No doubt Mr. Saylor has informed you by now that I have traced and contacted the previous registered owner of the vehicle in question, and have been given to understand that the vehicle had covered approximately 60,000 miles when it was traded in to a dealer - not Vern Holmes - approximately 1 year ago! The vehicle was sold to me approximately 6 months ago with 44,111 registered on the odometer and the Factory Warranty was transferred to me!

I visited Mr. Holmes and informed him of the previous owners statement concerning the mileage and requested that he accept return of the vehicle and refund my money in full. At the same time I asked him how he managed to get the Factory Warranty transferred, and he informed me that before selling a vehicle as being protected by Factory Warranty, he checks with the factory who have service records on all vehicles manufactured and sold by them. When I discussed the matter with Mr. Saylor, he confirmed this procedure. Therefore I submit that - although this does not vindicate Vern Holmes in any way - through the negligence and incompetence of Dodge Division Chrysler Motors, I now find myself the owner of an unsatisfactory motor car. I would not have considered purchasing this vehicle had I known that it had covered in excess of 60,000 miles.

Like the majority of people I am sick and tired of unethical business methods, and the incompetence of many people engaged in business, also the complete apathy and indifference shown when one complains ~~not~~ about poor merchandise and/or lack of Service. Since my last letter to you I have had to spend on this vehicle, another \$81.45 bringing the total spend - excluding gas - since September of last year to \$753.40. I have also had work carried out under "Factory Warranty" to the approximate value of \$400.00 - all this on top of a purchase price of \$1895.00.

I have no intention of letting the matter rest here, I will do my utmost to obtain redress. If I fail, well at least my efforts may save some other unsuspecting person from making similar mistakes. I would take this opportunity to mention that I purchased my previous two Dodges - one of which I still have - from Glen E. Thomas Inc, of Long Beach, whom I found to be reputable dealers, I should obviously have gone back to them. Also I have found Tom Roady Dodge Inc a reputable company; in fact their Service Manager, Mel Dekay, has shown more interest in the vehicle and has shown me personally more consideration than anyone else with whom I have come in contact regarding this unfortunate state of affairs.

Trusting to hear from you at your earliest convenience.

Sincerely,

*N. D.*

Noel D. Stairs.

*Copy to Vern Holmes.*

F-116

x

June 11, 1970

Mr. Floyd R. Burton  
521 W. Fernfld Drive  
Monterey Park, California 91754

Dear Mr. Burton:

Thank you for your letter regarding my warranty bills.

Since I introduced my bills, a lot of people have written to me of experiences like yours. There is a real need for good legislation in this field, and I am hopeful that my bills will be passed by the Senate.

Sincerely,

ALFRED H. SONG

AHS/laj

(800) 666-1917

LEGISLATIVE INTENT SERVICE



A-17

4-5-78

Floyd R. Burton  
521 W. Fernfld Drive  
Monterey Park, Calif. 91754

Honorable Alfred H. Seng  
State Senator  
28 Senatorial District

Dear Sir, Congratulations on regaining  
your seat in the California Senate.  
You are doing a fine job out our  
State Capitol.

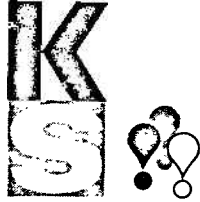
I wish to report we purchased  
a Corning Ware electric coffee pot,  
automatic and their best pot sells for  
around \$38.00, we have had this coffee  
pot for 2 or 3 years and purchased through  
Blue Chip Stamps. My best is the handle  
broke and we had to purchase a new  
pot and handle to replace same as it  
is ~~glued~~ attached to the pot. This cost us  
another \$10.95 when just a handle would  
be much less expensive to replace. I thought  
this could be of interest in helping to  
get your Warranty Bill through.

Most Sincerely, Floyd R. Burton

LEGISLATIVE INTENT SERVICE (800) 666-1917



A-18



Floyd R. Jurton  
721-6095

**KEELER ADVERTISING SPECIALTIES** GIFTS  
CALENDARS

Phone 530-0523  
1813 South Manchester  
Anaheim, California  
92805

LEGISLATIVE INTENT SERVICE (800) 666-1917



A-19

# THE A. F. HOLDEN COMPANY

INDUSTRIAL FURNACES  
ELECTRODE FURNACES  
POT FURNACES



SALT BATH CONVEYORS  
SALT BATHS

2195 SOUTH MILFORD ROAD MILFORD, MICHIGAN

Mailing Address: P. O. BOX 367

August 3, 1970

Senator Alfred H. Song  
U. S. Senate  
Sacramento, California

Subject: Warranty Bill for Gas Systems

Dear Senator Song:

In looking through the report we received through GAMA (Gas Appliance Manufacturers Association), we have to assume that this bill is based on household commodities rather than industrial furnaces. Basically, our work as a company does not come under GAMA or Underwriters' Laboratories because all equipment is for heavy industrial duty applications.

Drawing SP-90-4 was originally laid out for Factory Insurance Association (FIA) and then subsequently for Factory Mutual Company (FM). These are two principal sources of inspection of new industrial furnaces, who set up the fundamentals, standards or conditions separate and distinct from industry.

1. Originally, all large manufacturers we dealt with used the JIC standards.
2. Later, they added additional data to the JIC standards such as the additions to the control sequence panel to prevent access to any sequence panel or any control panel without the services of an electrician or qualified individual -- and in some cases, interlocks between two doors.

Drawing SP-90-4 indicates strictly the sequence of operations, including the necessary purge time, depending on the Btu input for gas fuel systems, which may equal from 750,000 through 30,000,000 Btu. Therefore, the number of constant pilots using a pressurized gas-air system controls the fact that all these relays must be positive, whether 1 through 12, prior to the opening of a safety shut-off valve -- which cannot be opened unless all relays are functional.

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LEGISLATIVE INTENT SERVICE (800) 666-1917





THE A. F. HOLDEN COMPANY

Senator Song

- 2 -

August 3, 1970

The sequence or control panel, accordingly, references the activation of air, the conclusion of the purge cycle, and the activation of the ignition system, which may have 1 through 12 lights on the sequence panel. Unless all the lights are indicative of the relay operation, the safety shut-off valve cannot be opened.

The pressure switch relates to failure of either high gas - low gas or air, which often is interlocked with the relay and the safety shut-off valve. All of our industrial applications, for firms on either the New York Stock Exchange or American Stock Exchange, have indicated specifications which are required for any bid and also for production operations.

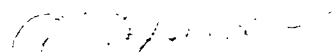
Large industry as such have clauses in their contracts containing a withholding portion variable from 10 to 15% until the equipment is fully operational. All electrical and piping drawings are stamped with either FM or FIA approval with reservations based on final inspection at the site of the operational equipment.

It does not seem to me, having been in this field since 1925, that there should be any penalties covering the four items listed in the GAMA letter of July 28, particularly where this equipment is used by qualified engineering personnel at the plant site, for which operational instructions are completed and for which all safety provisions have been provided to the customer's specifications.

Typical drawings for the stated needs of industrial plant requirements are listed and enclosed.

Very truly yours,

THE A. F. HOLDEN COMPANY



A. F. Holden - Treasurer

AFH:lm

Enclosures: SP-90-4 - SP-90-2, SP-90-5

SPSW-1, SPLW-2 (2 sheets)

T-14-1, T-15-1

SP-LNP-200, SP-1550, SP-1551, SP-5017

SPW-AG-3000, -1, SPW-CAT-3100, SPW-DAT-3201

SPW-LW-3400, SPW-LWB-3450, SPW-LWC-3460, SPW-R2-3500

SPW-TT-3600, SPW-401-3800, SPW-401-3801 & -2 & -3

SPW-501G-3900

A-21

(800) 666-1917

LEGISLATIVE INTENT SERVICE



x

August 6, 1970

Mr. A. F. Holden  
The A. F. Holden Company  
P. O. Box 367  
Milford, Michigan

Dear Mr. Holden:

Thank you for your letter regarding my warranty bills.

My bills apply only to consumer goods sold through retail outlets to consumers. Thus, I am certain that none of your products would be affected.

Sincerely,

ALFRED H. SONG

AHS/laj

(800) 666-1917

LEGISLATIVE INTENT SERVICE



A-22

STATE CAPITOL  
SACRAMENTO 95834  
(916) 443-3366

LEGISLATIVE OFFICE  
STATE BUILDING  
LOS ANGELES 90012  
(213) 620-5540

DISTRICT OFFICE  
2037 SO. GARFIELD AVENUE  
MONTEREY PARK 91754  
(213) 724-6625



# California State Senate

ALFRED H. SONG

STATE SENATOR

TWENTY-EIGHTH SENATORIAL DISTRICT

CLIP  
BUSINESS AND PROFESSIONS  
CHAIRMAN  
HEALTH AND WELFARE  
INDUSTRIAL RELATIONS  
JUDICIARY  
MEMBER  
CALIFORNIA LAW REVISION  
COMMISSION  
STATE ALLOCATION BOARD

October 1, 1970

Dear Mrs. Hernández:

The enclosed newsletter is devoted to a bill that I succeeded in steering through the California Legislature this year. I believe that it is an important bill. If it becomes a law, it will help all of us to receive fair value for our money when we go shopping.

Suppose you buy an appliance or some other product that doesn't work properly, but which comes with a written warranty promising free repairs. My bill requires the manufacturer to designate places in California where you can obtain those repairs and directs that the repair work be completed within 30 days. Further details of this bill, which will make California the first state in the nation to protect its citizens against deceptive warranties, are described in the newsletter.

It takes <sup>some</sup> skill and quite a bit of work to pass a bill, particularly one like this which breaks new ground. I was able to push it through because I have served in the Senate and Assembly long enough to know how the Legislature operates. There, as in every profession, experience produces the skill necessary to get the job done.

My best wishes to you and yours.

Sincerely,

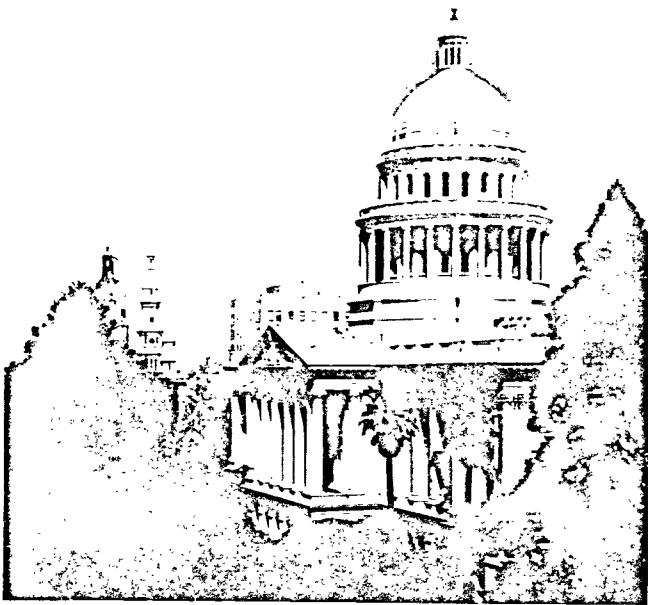
ALFRED H. SONG

AHS/ny

LEGISLATIVE INTENT SERVICE (800) 666-1917



A-23



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SENATOR ALFRED H. SONG — 28th SENATORIAL DISTRICT



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A REPORT TO THE PEOPLE

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## SONG WARRANTY BILL PASSES LEGISLATURE

This is the story of a bill that was approved by a majority of the members of the Senate Business and Professions Committee, the California Senate, the Assembly Committee on Commerce and Public Utilities, and the California Assembly. Eighty-nine legislators are recorded as voting for the bill and only six against. That is a pretty hefty majority, and it is the result of a great deal of study, effort, skill, luck, and compromise.

My bill, SB 272, began with the background investigation done in preparation for the special hearing on warranties held by my Committee last fall. This research and the hearing convinced me that too many Californians were losing hard-earned money because of phoney warranties, and that we needed a tough law to end this abuse.

After the hearing, I began to write the first draft of SB 272. I started from scratch because no other government, federal or state, had adopted a law in this field. In fact, by passing SB 272, the California Legislature blazed a path that other states are sure to follow in years to come.

I presented my bill to the Legislature early in February. It was the 272nd bill introduced in the Senate this year, and thus it was designated Senate Bill (SB) 272. The bill was assigned to the Business and Professions Committee for its first hearing.

Two days before the hearing, the roof fell in. The opponents of the bill suddenly appeared. There were representatives of the California Manufacturers Association, the Retailers Association, Sears, Montgomery Ward, J. C. Penneys, and Kaiser Industries. General Motors even sent a lawyer from Detroit. At that first meeting they spent their time shouting that I was trying to put them all out of business.

We had other meetings, however, as I moved the bill through the Senate and to the Assembly. Once they realized that I was determined to pass SB 272, they sat down quietly with me and we went over the bill section by section, word by word. They admitted the need to end warranty abuses, and I accepted a series of amendments that, without weakening the bill, brought it more in line with current business practices.

Meanwhile, I conducted an intensive educational campaign among the members of the Assembly, explaining my bill and reminding them of the times that I had voted for bills of theirs. As a result of this, and of the amendments, SB 272 was approved by the Assembly on a vote of 65-1, and was sent to the Governor for his signature.

The following are questions that I have frequently been asked about warranties and SB 272.

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[continued on page 4]

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LEGISLATIVE INTENT SERVICE



1. What is a warranty?

Answer: A warranty (or guaranty) is a pledge by the manufacturer that the products he makes are of good quality. It is usually in the form of a written statement, attached to the product in the form of a tag or booklet, in which the manufacturer promises to make repairs if the product is defective.

2. Why does a manufacturer give a warranty?

Answer: To sell his products. Warranties are an advertising gimmick, a sales aid. If, for example, you go shopping for a washing machine, and one brand comes with a warranty while another does not, you will probably choose the brand with the warranty because the warranty appears to insure the quality of that machine.

3. Are there warranty abuses?

Answer: Indeed there are! Mrs. Virginia Knauer, President Nixon's Special Assistant for Consumer Affairs, reports that warranty problems are the leading cause of the complaints reaching her office. During its interim hearing last fall, the Senate Business and Professions Committee cataloged the following consumer abuses:

(a) The warranty fails to state any method of obtaining repairs for the defective product.

(b) Neither manufacturer nor retailer accepts responsibility for the warranty.

(c) The warranty is good only if the purchaser (you or I) ships the defective product at his own expense to Cincinnati, Ohio.

(d) The warranty is written in confusing or misleading language.

(e) Warranty repair work takes months to complete.

(f) The local retailer/repairer refuses to do any warranty work because he is not fully reimbursed by the manufacturer.

The common cause of these abuses is the desire of a few manufacturers to receive the advertising benefit of a warranty without having to pay for it.

4. How does SB 272 solve these warranty problems?

Answer: First, the bill requires the manufacturer to choose authorized service facilities in California to handle his warranty work. These may consist of certain of the retailers presently carrying his goods, independent repair dealers with whom he makes an agreement, or special facilities which he sets up. Many manufacturers

(Sony, RCA, Sunbeam, Panasonic, etc. presently use this system.

5. What if the manufacturer fails to designate these service facilities?

Answer: Then the bill requires him to reimburse his retailers for their full expenses in servicing his warranties.

6. How does this benefit the consumer?

Answer: Under SB 272, the consumer has only to return his defective product to the nearest service facility or retailer in order to receive the service promised by the warranty. No more prepaid shipments to Bayonne, New Jersey; no more struggles to make the manufacturer or retailer do warranty work.

7. How else does the bill benefit the consumer?

Answer: It requires warranty repairs to be completed within 30 days, unless the consumer agrees to a longer period.

It requires that warranties be written in "readily understood language."

It also permits any consumer or retailer injured by a *wilfull* breach of this chapter to sue for triple damages.

8. When does this go into effect?

Answer: The bill applies to the products you buy on or after March 1, 1971.

9. Doesn't this bill place an extra burden on the retailer?

Answer: Yes, but it also gives him the right to recover his full expenses from the manufacturer for making warranty repairs—a right which he does not presently enjoy.

10. Does this bill place an additional burden on the manufacturer?

Answer: It certainly does, but only if he chooses to increase his sales by issuing a warranty with his products. If he desires the benefit he must under this bill accept the related responsibility.

When we go shopping, we are entitled to fair dealing. We should receive a dollar's worth of goods for every dollar we spend. My bill, and most consumer legislation, attempts to insure that treatment and, as Ralph Nader says, "to preserve the free-enterprise economy by making the market work better."



AMENDED IN ASSEMBLY AUGUST 14, 1970  
AMENDED IN ASSEMBLY JULY 30, 1970  
AMENDED IN ASSEMBLY JULY 16, 1970  
AMENDED IN SENATE MAY 25, 1970  
AMENDED IN SENATE APRIL 6, 1970  
AMENDED IN SENATE MARCH 17, 1970

SENATE BILL

No. 272

**Introduced by Senator Song**

( Coauthor: Assemblyman Karabian ( Coauthors: Assemblymen  
Karabian and Beverly ) )

February 2, 1970

REFERRED TO COMMITTEE ON JUDICIARY

*An act to add Title 1.3 (commencing with Section 1750) 1.7  
(COMMENCING WITH SECTION 1790) to Part 4 of Division  
3 of the Civil Code, relating to consumer goods trans-  
actions.*

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

- 1 SECTION 1. Title 1.3 (commencing with Section 1750) 1.7
- 2 (commencing with Section 1790) is added to Part 4 of Division
- 3 3 of the Civil Code, to read:

**LEGISLATIVE COUNSEL'S DIGEST**

SB 272, as amended, Song (Jud.). Consumer goods transactions.  
Adds Title 1.3 1.7 (commencing with Sec. 1750 1790 ), Pt. 4, Div. 3,  
Civ.C.

Enacts "Song-Beverly Consumer Warranty Protection Act." Estab-  
lishes obligations of manufacturers, distributors, and sellers of con-  
sumer goods, and rights of buyers thereof, with respect to particular  
transactions.

Makes act applicable ~~only~~ to consumer goods sold on or after March  
1, 1971 and makes specified provisions of act applicable only to con-  
sumer goods manufactured on or after March 1, 1971.

Changes certain provisions of act contingent upon enactment of AB  
292.

Vote—Majority; Appropriation—No; Fiscal Committee—No.

*Page 1 (of 8) of the final working copy of SB 272. This draft of the  
bill was approved by the Legislature and sent to the Governor for his signature.*

A-26



LARY W. ATCHISON  
ALICE L. ATCHISON  
1031 LOMA VERDE  
MONTEREY PARK, CALIF.  
November 2, 1970

Alfred T. Bong  
State Senator  
2317 So. Garfield  
Monterey Park, California 91754

Dear Mr. Bong:

In reference to Senate Bill No. 678 there are some parts of this bill that to me suffer from ambiguity.

For instance, 1768(b) "where such service and repair facilities are maintained in this state and service or repair of goods is necessary because they do not comply with applicable warranties, service and repair shall be completed within a reasonable time following receipt of the goods by the manufacturer or its representative in this state." This would indicate that the goods would be held over to the service facility by the buyer. For that, "While the buyer agrees in writing to the contrary, the goods may be returned at the manufacturer's expense, in respect of the condition within 30 days." In the case of return, what is the manufacturer's expense or the cost of repair and service or labor?

In the event the manufacturers do not cover only parts is the intent of this bill to force the manufacturer to supply labor? For instance, in T.V. most manufacturers do not labor for 90 days, however, the parts are warranted for one year and in the case of the picture tube two or three years. In refrigerators most warranties are for one year and parts and labor, but the sealed system or compressor are warranted up to ten years without labor.

In 1768(c) you mention "prior to discovery of defect." Is this a defect discovered during the life of the warranty or is it a defect that may be discovered long after the warranty has expired?

In 1768(a) who is to determine how many repair facilities are sufficient to carry out the terms of the warranty?

I would appreciate an answer to these questions.

Sincerely,



Larry Atchison

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REPLY TO  
STATE SENATOR  
ALFRED H. SONG  
MONTEREY PARK, CALIF. 91754  
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FACSIMILE (415) 724-1111  
MAIL ROOM (415) 724-1111  
OFFICE (415) 724-1111  
LEGISLATIVE COUNSEL (415) 724-1111  
CLERK (415) 724-1111  
STATE ALTERNATE (415) 724-1111

STATE SENATOR  
ALFRED H. SONG  
MONTEREY PARK, CALIF. 91754  
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STATE ALTERNATE (415) 724-1111

# California State Senate

ALFRED H. SONG  
STATE SENATOR  
TWENTY-FIFTH SENATORIAL DISTRICT

November 19, 1970

Mr. Larry Atchison  
1031 Loma Verde  
Monterey Park, California 91754

Dear Mr. Atchison:

Senator Song has asked me to reply to your letter regarding SB 272. I note from the section numbers that you cite that you do not have the final version of the bill, and so I am enclosing one.

In general, the purpose of SB 272 is to make manufacturers live up to the terms of their own warranties. Thus, under this bill, no warrantor is required to provide more services than he himself promises to provide (save, of course, that he cannot use his express warranty to disclaim the implied warranty on this product).

To go to your specific questions, section 1793.2 (b) deals with the question of time. It provides that the warrantor is not responsible until the defective product has been delivered to him or his representative. It further provides that he must bear the cost of the return and all other costs that he promised to bear in his written warranty.

If a manufacturer warrants various parts of his products for various periods of his time, he is responsible for what he has promised to do, save that his promises must not be less than the implied warranty normally attaching to goods.

With respect to section 1793.2 (c) the discovery of a defect or any other event that occurs after the expiration of the warranty is, by definition, not covered by the warranty and thus not enforceable under the terms of this act.

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Mr. Larry Atchison

-2-

November 19, 1970

California State Senate

The term "sufficient service and repair facilities" in section 1793.2 (a) is deliberately vague because of the great variety of circumstances that this bill will cover. Enforcement of the act will be by a civil suit. Thus, the judge will have to decide whether, considering the nature of the product, the extent of the distribution, the number of the retailers handling it, etc., the repair facilities provided were in fact sufficient.

I will be happy to attempt to answer any further questions you may have.

Sincerely,

RICHARD THOMSON  
Administrative Assistant

RT/ny

Enclosure

(800) 666-1917

LEGISLATIVE INTENT SERVICE



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277

March 19, 1971

Mr. Larry Atchison  
1031 Loma Verde  
Monterey Park, CA 91754

Dear Mr. Atchison:

Thank you for your letter regarding my SB 272.

I asked Mr. Sean McCarthy, Counsel to my Senate Judiciary Committee, to analyze the Zenith Warranty you enclosed. He reported the following:

(1) The fact that express warranties have been made by Zenith serves to make them liable for any defect in their product that constitutes a breach of the implied warranty of merchantability and, if present, the implied warranty of fitness. To the extent that Zenith's express warranty would limit its liability on the implied warranty it is ineffective.

Example: If defective parts or tubes result in a breach of the implied warranty of merchantability and such defective parts or tubes are not discovered until the fourth month following purchase, the express warranty limiting liability to a 90-day period would be without legal effect. Cost of labor necessary to effect conformity with implied warranty requirements would also be at Zenith's expense.

(2) To the extent cabinets etc., of Zenith manufacture are defective and the defect constitutes a breach of the implied warranty of merchantability, the fact that Zenith has limited its liability via the express warranty to parts, tubes etc., would be of no legal effect.

(3) The first paragraph of the Zenith warranty directs the purchaser to return defective goods to the authorized dealer from whom the purchase was made. To the extent

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such authorized dealer is not Zenith's designated service and repair facility such direction on the part of Zenith is without legal effect, and is in fact misleading.

(4) The third paragraph would have absolutely no legal effect unless the reason for delay in returning conforming goods was within the meaning of Section 1793.2 (b), this notwithstanding the disclaimer in the second paragraph to the extent it denies responsibility for transportation costs in returning conforming goods.

(5) The attempt to disclaim the implied warranty of merchantability and the implied warranty of fitness in the "conditions and exclusions" Section is in violation of the Song Act. The fact that Zenith has chosen to make an express warranty serves to deny them the ability to disclaim implied warranties.

I trust that this will answer your questions on the subject.

Sincerely,

ALFRED H. SONG

AHS/ny



LARY W. ATCHISON  
ALICE L. ATCHISON  
1031 LOMA VERDE  
MONTEREY PARK, CALIF.

March 8, 1971

California State Senate  
Mr. Alfred H. Song  
State Senator  
Twenty-Eighth Senatorial District  
State Capitol  
Sacramento, California 95814

Dear Mr. Song:

Last November I wrote you in regards to Senate Bill No. 272. Mr. Richard Thompson answered my letter. In the second paragraph he said, "Thus, under this bill, no warrantor is required to provide more services than he himself promises to provide", then he goes on to say he cannot disclaim the implied warranty.

Enclosed is a warranty where the manufacturer warrants only parts and excludes labor and transportation expense. I then assume the only obligation of the manufacturer is to make replacement parts available.

I would appreciate your comments.

Very truly yours,



Lary Atchison

LA/lf

enclosure

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## WARRANTY

Zenith Radio Corporation warrants the parts and tubes in any Zenith radio receiver, phonographic reproducer or combination thereof to be free from defects in workmanship and material arising from normal usage. It's obligation under this warranty is limited to replacing any such parts or tubes of the receiver, reproducer or combination which, after regular installation and under normal usage and service, shall be returned within ninety (90) days from the date of original purchase of the set to the authorized dealer from whom the purchase was made and which shall be found to have been thus defective in accordance with the policies established by Zenith Radio Corporation.

The obligation of Zenith Radio Corporation is limited to making replacement parts available to the purchaser, and does not include either the making or furnishing of any labor in connection with the installation of such replacement parts nor does it include responsibility for any transportation expense.

Zenith Radio Corporation assumes no liability and shall not be liable in any respect for failure to perform or delay in performing its obligations with respect to the above warranty if such failure or delay results, directly or indirectly, from any preference, priority, or allocation order issued by the Government, or because of any other act of the Government, or by war, conditions of war, inadequate transportation facilities, conditions of weather, acts of God, strikes, lockouts, Governmental controls, or Zenith's reasonable requirements for manufacturing purposes, or any cause beyond its control or occurring without its fault, whether the same kind or not.

### CONDITIONS AND EXCLUSIONS

This warranty is expressly in lieu of all other agreements and warranties, expressed or implied, and Zenith Radio Corporation does not authorize any person to assume for it the obligations contained in this warranty and neither assumes nor authorizes any representative or other person to assume for it any other liability in connection with such Zenith radio receiver, phonographic reproducer, combination or parts or tubes thereof.

The warranty herein extends only to the original consumer purchaser and is not assignable or transferable and shall not apply to any radio receiver, phonographic reproducer, combination or parts or tubes thereof which have been repaired or replaced by anyone else other than an authorized Zenith dealer, service contractor or distributor, or which have been subject to alteration, misuse, negligence or accident, or to the parts or tubes of any receiver which have had the serial number or name altered, defaced or removed.



ALFRED H. SONG  
Chairman

ANTHONY C. BEILENSON  
CLARK L. BRADLEY  
GORDON COLOGNE  
GEORGE DEL. MEJIAN  
ARLEN GREGGIO

NICHOLAS C. PETRIS  
Vice Chairman

RONALD L. GRUNSKY  
JOHN W. HOLMDAHL  
ROBERT J. LAGOMARSINO  
GEORGE R. MOSCONE  
ROBERT S. STEVENS  
GEORGE N. ZENOVICH

# California Legislature

## Senate Committee on Judiciary

ROOM 2191, STATE CAPITOL  
SACRAMENTO, CALIFORNIA 95814  
TELEPHONE: 445-5957

BION M. GREGORY, CHIEF COUNSEL  
SEAN E. MCCARTHY, COUNSEL

March 12, 1971

~~Mr. Richard Thomson  
Administrative Assistant to Senator Song  
State Capitol, Room 3048  
Sacramento, California~~

~~re: Zenith Radio Corporation Warranty~~

~~Dear Richard:~~

~~A four minute review of the Zenith Warranty reveals  
the following defects:~~

(1) The fact that express warranties have been made by Zenith serves to make them liable for any defect in their product that constitutes a breach of the implied warranty of merchantability and, if present, the implied warranty of fitness. To the extent that Zenith's express warranty would limit its liability on the implied warranty it is ineffective.

Example; If defective parts or tubes result in a breach of the implied warranty of merchantability and such defective parts or tubes are not discovered until the fourth month following purchase, the express warranty limiting liability to a 90-day period would be without legal effect. Cost of labor necessary to effect conformity with implied warranty requirements would also be at Zenith's expense.

(2) To the extent cabinets etc., of Zenith manufacture are defective and the defect constitutes a breach of the implied warranty of merchantability, the fact that Zenith has limited its liability via the express warranty to parts, tubes etc., would be of no legal effect.

(3) The first paragraph of the Zenith warranty directs the purchaser to return defective goods to the authorized dealer from whom the purchase was made. To the extent such authorized dealer is not Zenith's designated service and repair facility such direction on the part of Zenith is without legal effect, and is in fact misleading.

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Mr. Richard Thomson  
March 12, 1971  
Page two

(4) The third paragraph would have absolutely no legal effect unless the reason for delay in returning conforming goods was within the meaning of Section 1793.2 (b), this notwithstanding the disclaimer in the second paragraph to the extent it denies responsibility for transportation costs in returning conforming goods.

~~(5) The last sentence of the second paragraph to the extent it denies responsibility for transportation costs in returning conforming goods is without legal effect.~~

(6) The attempt to disclaim the implied warranty of merchantability and the implied warranty of fitness in the "conditions and exclusions" Section is in violation of the Song Act. The fact that Zenith has chosen to make an express warranty serves to deny them the ability to disclaim implied warranties.



R. Thomson



REPLY TO  
LEGISLATIVE COUNSEL  
SACRAMENTO 95814  
916/431-7118

X

LEGISLATIVE COUNSEL  
STATE BUILDING  
LOS ANGELES 90012  
213/620-3343

□

DISTRICT OFFICE  
2017 G. GAYFIELD AVENUE  
MONTEREY PARK 91754  
213/724-3325

□

LEGISLATIVE COUNSEL  
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LEGISLATIVE COUNSEL  
STATE BUILDING  
LOS ANGELES 90012  
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LEGISLATIVE COUNSEL  
STATE BUILDING  
LOS ANGELES 90012  
213/620-3343

# California State Senate

ALFRED H. SONG  
STATE SENATOR  
TWENTY-FOURTH SENATORIAL DISTRICT

December 4, 1970

Mr. Fred A. McCanlies  
Southern California Gas Company  
720 West Eighth Street  
Los Angeles, California

Dear Mr. McCanlies:

At Senator Song's request I am submitting your questions to our Legislative Counsel for his opinion. In the meantime, as these opinions take some time to prepare, you may be interested in our opinion of the intent of SB 272 with respect to the subjects you raise.

In general, interpretation of the bill is considerably easier if one remembers (1) that it is based upon the Commercial Code which has been in effect in California for the last eight years, and (2) that the purpose of this bill is not to impose new duties on manufacturers, but rather to insure that the manufacturer lives up to the promises that he himself makes in his own warranties. If the Southern California Gas Company issues no warranties on the products it sells to the ultimate consumer, and if no implied warranties attach under the provisions of the Commercial Code, it is not covered by this bill.

Now for your specific questions:

1. Clearly, no public utility is covered by SB 272 unless it warrants consumer goods, as defined in Section 1791(a), to the ultimate consumer. The electricity and gas supplied by utilities equally clearly fall outside the definition of consumer goods.
2. The "buyer" contemplated by this Act is the ultimate individual consumer. Commercial relationships between such business entities as contractors, developers, etc.,

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are presently regulated by the Commercial Code and SB 272 makes no change in these relationships.

3. The bill makes any warrantor liable for his own warranty (Section 1795). Any relationship between the warrantor and a third party, such as a public utility, is beyond the scope of this Act. The exception, of course, is that no agreement between a warrantor and a third party for servicing his warranty can contravene the provisions of this Act. A utility becomes liable under express warranty provisions if it issues an express warranty. It becomes liable under the implied warranty of fitness provisions if it is presently liable under identical provisions in the Commercial Code.

4. SB 272 would not alter any relationship that a public utility may have with the manufacturer of appliances or with the appliance installers unless the utility takes it upon itself to issue a warranty on the quality of either the product or the installation work.

5. It is our opinion that the bill applies both to personal property and to appliances which are installed in a residence such as hot water heaters, etc. Section 1793.3 is intended to determine the point at which the liability of the warrantor begins. It is not intended to restrict the bill only to those products which may be easily transported.

6. Section 1794 permits the consumer to bring an action against the warrantor and any other party who wilfully violates the provisions of this Act. The amount he may receive would be based on his actual loss resulting from the failure of the warrantor and his agents to fulfill the promises made in the warranty.

I trust this will be helpful.

Sincerely,

RICHARD C. THOMSON  
Legislative Aide

RCT/laj

BC: LEGISLATIVE COUNSEL

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March 3, 1971

Mr. Fred A. McCanlies  
Pacific Lighting Service Company  
Southern California Gas Company  
1100 "O" Street  
Sacramento, California

Dear Mr. McCanlies:

After only three months we have finally received the opinion I requested for you regarding the application of SB 272 to public utilities.

I find nothing in it that contradicts my own understanding of the bill, or the answers that I personally supply to your questions. This, however, does go into the subject in considerable depth, and I trust that it will be helpful.

Sincerely,

RICHARD THOMSON  
Administrative Assistant

RT/ny



x

December 9, 1970

Mr. Gerhard Sagasser  
2101 Lindauer Drive  
La Habra, California 90632

Dear Mr. Sagasser:

Senator Song has asked me to reply to your letter regarding SB 272.

The intent of this bill is to require the person who issues a warranty, whether he be the manufacturer or some other party, to provide the service that he himself promises in his own warranty. Thus, the question of whether SB 272 imposes any new legal responsibilities upon the wholesaler, manufacturer, retailer, or installer, depends on whether any or all of these parties have issued a warranty upon which the consumer relies.

In general, this bill does not alter the present relationship between manufacturer and installer. The manufacturer would become legally responsible for failures due to faulty installation only if he were foolhardy enough to warrant the installation work.

Sincerely,

RICHARD THOMSON  
Administrative Assistant

RT/ny

(800) 666-1917

LEGISLATIVE INTENT SERVICE



A-39

2101 Lindauer Drive  
La Habra, California 90632  
December 3, 1970

The Honorable Alfred H. Song  
2337 So. Garfield Avenue  
Monterey Park, California 91754

Dear Senator Song:

Regarding your Senate Bill No. 272, the Song-Beverly Consumer Warranty Act, we are glad to see that you took the initiative in bringing into public view the obligations that manufacturers have when marketing their product in the State of California.

State and federal laws for consumer protection may be quite necessary; however, it appears that during the last few years our Mr. and Mrs. Consumer also admit more readily that they usually get what they pay for . . . . AND ARE THEREFORE WILLING TO SPEND MORE FOR A QUALITY PRODUCT. And it is obvious that a manufacturer should then back up his product to the fullest extent of his advertising and warranty claims.

After reading and studying your senate bill for some time, I ask that you, or one of your aides, take the time to answer a few questions. As an employee of a manufacturer of heating and cooling equipment, and being somewhat involved in our company's general warranties, I would like to know the intent of your senate bill in regards to unitary air conditioning equipment (i.e. forced air furnaces, remote as well as packaged air conditioning units), realizing that the courts will eventually test, interpret, and most likely change (misinterpret?) some of intends of your bill.

Whatever that may turn out to be, we have already experienced a number of consumer references to your SB 272, stating that "faulty merchandise" had caused their heating or cooling unit to malfunction or fail . . . . requesting their equipment to be replaced or repaired at no charge, etc., etc., even if a particular unit had performed satisfactorily for several months or years.

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These people are, of course, ignoring or not aware of the fact that between the manufacturer and the eventual user are a number of people who share some responsibility towards that particular product. An architect or mechanical engineer will design and apply the system (external to the unit we manufacture). A general contractor will then, through a heating/air conditioning contractor, have the unit installed. This sub-contractor has to depend on his people's know-how and skill to install the system correctly. And then the matter is finally in the hands of the consumer who, we hope, will follow the installer's and manufacturer's instructions to service the equipment periodically . . . . .

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December 3, 1970

In other words, there are many phases of equipment application, proper sizing and selection, installation and maintenance, plus knowledgeable service that are not in our, the manufacturers, control beyond the insistence that the installation instructions, as well as local and other codes, are followed to assure adequate equipment and system performance.

SB 272 has also been referred to by many dealers (state licensed heating and air conditioning contractors) who now feel they can no longer be held responsible for manufacturing defects, which in many cases, are problems caused by lack of proper installation techniques and inadequate equipment start-up procedures.

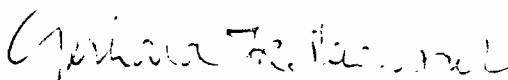
Your bill seems to support this kind of reasoning by specifically holding only the manufacturer responsible for parts and labor during the stated (or implied) warranty period.

I could find no provisions in SB 272 which would exclude unitary air conditioning equipment and forced air heating units, but I assume that Article 3, Paragraph 1794.3 could be interpreted as a clause to protect manufacturers from having to assume responsibility for poor installations, inadequate maintenance/service, as well as equipment usage contrary to a manufacturer's instructions.

Your intent in SB 272 to protect consumers from shoddy merchandise is commendable. However, it does not seem to define areas of responsibility for the wholesaler, retailer, installer and user.

I am looking forward to your reply.

Sincerely,

  
Gerhard Sagasser

/spw

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A-41

MILTON MITCHELL  
SEYMOUR GOLD

MITCHELL & GOLD  
ATTORNEYS AT LAW  
1009 EXECUTIVE LIFE BUILDING  
9777 WILSHIRE BOULEVARD  
BEVERLY HILLS, CALIFORNIA 90212

TELEPHONE  
272-4423  
273-1744

February 1, 1971

Senator Alfred H. Song  
Senate Post Office  
Sacramento, California 59814

Re: Song-Beverly Consumer Warranty Act  
Senate Bill No. 272  
Civil Code 1790

Dear Senator Song:

I have some clients engaged in the manufacturing business in the toy, hobby, craft and game items field. Certain questions have been presented to me and I am asking your assistance as to the interpretation of the Song-Beverly Consumer Warranty Act.

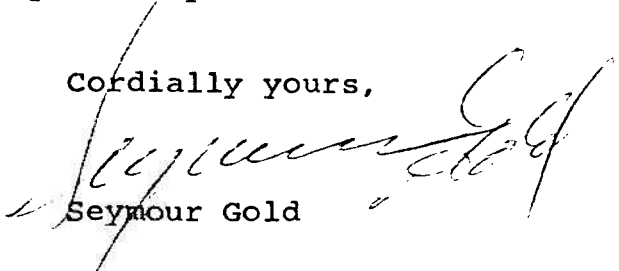
Our client is greatly concerned about the applicability of this law to him (and to other toy manufacturers similarly situated).

Have you had a Legislative Counsel opinion that may be helpful to me in interpreting this law for the benefit of my clients. There are five questions, among others, that have been presented to me, and I am enclosing an excerpt of the recent urgent letter to that effect.

My associate counsel is going to be in Los Angeles during the week of February 7, 1971, and I would, therefor, appreciate any advice you could give me prior to that date, so that I may in turn, hopefully, quiet the concern of our clients.

Enclosed for your convenience is a self-addressed stamped envelope. Thank you for your cooperation in this matter.

Cordially yours,

  
Seymour Gold

SG:c  
Enclosure

cc: Walter Karabian  
Robert Beverly

A-42

(800) 666-1917

LEGISLATIVE INTENT SERVICE



This new law necessarily warrants substantial concern on our part. I would appreciate receiving a copy of the law and any legislative reports as soon as possible.

Certain questions occur to me at this time.

1. Does this law apply to goods sold in interstate commerce.

2. Does Aurora become subject to this law only because it has a plant in California and is qualified to do business there or does the mere shipment of goods into California by any company subject it to the law.

3. Must the facilities for servicing the consumer goods be located in California or is it sufficient that these services are available at a designated address in the United States.

4. If the service facility must be located in California, will more than one be required.

5. How broadly inclusive is the act as to Aurora's products that is, does it include all of Aurora's toy, hobby, craft and game items or would it apply solely to products such as model motor-ing, model airplane motors and similar products. In this connection definitions of the act must be very carefully examined and determined

whether any of the Aurora products are involved.

In the meantime I will check with the Toy Manufacturers Association general counsel in New York to ascertain whether they are aware of the new statute and their views on its effect on the toy industry.

I would like to discuss this with you when I am in Los Angeles during the week of February 7th.



*cc  
1793.7  
in this state  
reads*

February 2, 1971

Mr. Seymour Gold  
Attorney at Law  
1009 Executive Life Building  
9777 Wilshire Blvd.  
Beverly Hills, California 90212

Dear Mr. Gold:

Thank you for your letter regarding my SB 272. I do not have an opinion from Legislative Council that answers the specific questions you raised, but the answers are certainly clear to me and I believe that they are clear from the text of the bill.

(1) Does this law apply to goods sold in interstate commerce? The law applies to consumer goods sold in California. (Section 1793.2 (a)).

(2) Does Aurora become subject to this law only because it has a plant in California and is qualified to do business there, or does the mere shipment of goods into California by any company subject it to the law? This law applies to consumer goods sold in California regardless of the point of manufacture. Any product sold outside of California is outside the scope of the Act. The sale of any consumer goods in California will probably be affected by this law.

(3) Must the facilities for servicing the consumer goods be located in California or is it sufficient that these services are available at a designated address in the United States? If the manufacturer chooses the option of maintaining service and repair facilities under Section 1793.2 (a), these facilities must be within the state. Service and repair facilities outside the borders of California do not under any circumstances meet the requirement of this Act.

(4) If the service facilities must be located in California, will more than one be required? The Act in Section 1793.2 (a) refers to "sufficient" service and repair facilities. This question of numbers was deliberately left vague because of the large number of products and sales patterns to be covered by the Act. Sufficient

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facilities would be the number a reasonable man would consider necessary to handle the warranty work on your products.

(5) How broadly inclusive is the Act to Aurora's products? The Act applies to all consumer goods sold on a retail basis in California. I assume that this would cover all of Aurora's products that are sold in the state. The degree of responsibility, if any, imposed on Aurora by the Act would depend on the nature of the warranties given with your products.

In general, your consideration of the effect the Song-Beverly Consumer Warranty Act will have on your business will be most fruitful if you start by looking at the warranties you give with your products. The purpose of this Act is to require the warrantor to live up to the promises that he himself makes, and the provisions of this Act should be read accordingly.

I would be happy to answer any further questions.

Sincerely,



SANDLER AND ROSEN

COUNSELLORS AT LAW

RAYMOND C. SANDLER  
NELSON ROSEN  
GERALD G. WOLFSON  
MELISSA ARENBERG

TELEPHONE  
212-141-0000  
FAX NUMBER 212-141-0001

SUITE 510 GATEWAY WEST CENTURY CITY  
1801 AVENUE OF THE STARS  
LOS ANGELES, CALIFORNIA 90067

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February 22, 1971

Honorable Alfred H. Song  
Senator, California Legislature  
State Capitol Building  
Sacramento, California 95814

Attention: Mr. Ernie Moreno, Administrative Assistant

Re: Song-Beverly Consumer Warranty Act

Dear Mr. Moreno:

I would greatly appreciate if you would advise me if there are any reports of either the Senate Business and Professions Committee and/or the Assembly Committee on Commerce which set forth the legislative history on the above Act.

I am interested in obtaining any material of the Legislature which would assist in the interpretation and construction of the Act.

If you are able, with propriety, to advise me of the position of Senator Song's office on the following questions, I would appreciate very much such advice:

1. Does the Act cover used consumer goods sold by a retail seller to a retail buyer where the retail seller also engages in the business of selling new goods to retail buyers?

2. Under Section 1795 if an express warranty is made by a retail seller, is the obligation imposed upon such retail seller by Section 1795 limited to the performance and fulfillment of such express warranty, as distinguished from also charging such retail seller with the implied warranties (merchantability and warranty of fitness for a particular purpose, under Sections 1792 and 1792.1) which are imposed on the manufacturer under Chapter 1333?

I recognize that you may not be in position to answer my inquiries. However, in the hope that perhaps you have had

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Honorable Alfred H. Song  
Attention: Mr. Ernie Moreno  
February 22, 1971  
Page Two

numerous inquiries and that some published material has been issued by your office, I make the foregoing request.

I enclose a self-addressed, stamped envelope for your convenience in responding. Thank you for your cooperation.

Sincerely yours,

Nelson Rosen

NR/kmr

Enclosure

LEGISLATIVE INTENT SERVICE (800) 666-1917



A-47

February 23, 1971

Richard Thomson  
Counselor at Law  
Suite 510 Gateway West Century City  
1001 Avenue of the Stars  
Los Angeles, California 90067

Dear Mr. Rosen:

Your company has asked me to reply to your letter regarding SB 272. I am enclosing a copy of the Act and an explanation that we have prepared.

To answer the first of your specific questions, we believe that the Act applies only to new goods sold in California. Section 1791 (e) does not clearly cover the retail seller handling both new and used goods, but we think that the thrust of this section is that only the sale of new goods is covered.

As for your second question, I agree that section 1795 is unfortunately ambiguous. The intent of the section is to hold the retail seller only to those provisions relating to express warranties. Of course, the retailer does have a specific duty as to the warranty of fitness for a particular purpose under section 1792.2, but in general the liability for breach of implied warranty remains with the manufacturer as specified as by the Commercial Code.

We are presently drafting amendments to the bill to clarify this point. As amended SB 272 will clearly indicate that it does not alter the implied warranty obligations established by the Commercial Code save that no one will be permitted to disclaim the implied warranty on consumer goods by means of an express warranty.

If we can be of any further help, please feel free to write.

Sincerely,

RICHARD THOMSON  
Administrative Assistant

RT: [unclear]

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LEGISLATIVE INTENT SERVICE (800) 666-1917



CORPORATION

February 22, 1971

6-6-1

Hon. Alfred Song  
State Senate  
State Capitol Building  
Sacramento, California

Dear Senator Song:

In your recent address to the Los Angeles Chapter of the National Association of Service Managers you very kindly offered to answer questions as to your interpretation of SB272. If you will, please, we have such a question.

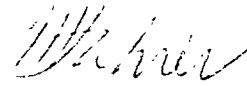
A copy of our guarantee form 39958R1 is attached and you will note that during the first year we guarantee free parts replacement and complete heater replacement during the first five years. These replacements are available to plumber-dealers (who retail the product) from our 46 franchised distributors throughout California.

Since our guarantee specifically excludes labor costs and assuming our distributors and dealers are highly effective in servicing its replacement provisions, does SB272 require us to go any further than this?

Your comments will certainly be most appreciated. Many thanks.

Very truly yours

A. O. SMITH Corporation  
PRODUCT SERVICE DIVISION



P. H. Fahrer  
Manager

PHF:mp

Attachment

LEGISLATIVE INTENT SERVICE (800) 666-1917



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# Five Year Guarantee

This certificate properly filled out shall constitute a guarantee and agreement between A. O. SMITH Corporation and the owner as follows:

If within one year after original installation of water heater any part or portion shall prove upon examination by the Corporation to be defective in material or workmanship, the Corporation will repair or exchange such part or portion, at our option. If the glass-lined steel tank in the heater leaks due to rust, corrosion or other chemical action of water within the first five years after original installation of the heater, the Corporation will supply a complete new heater, of equivalent size and grade, and then current model. The replacement heater would be furnished with a guarantee extension sufficient to cover the unexpired portion of the original installation.

All replacements shall be F.O.B. cars at destination, and the purchaser shall be liable for local delivery charges, removal and installation costs.

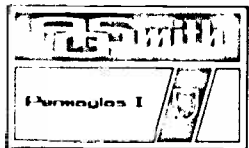
This guarantee shall apply only while the heater remains installed in its original location in accordance with local plumbing and building codes, ordinances and regulations, where such installation includes a pressure relief valve and a temperature relief valve, or a combination pressure and temperature relief valve, and when the heater has been used only (a) at temperatures not exceeding the maximum setting of its thermostat; (b) at ordinary tap water pressure not exceeding pressure ratings shown on the heater and (c) for DOMESTIC purposes.

THIS GUARANTEE IS LIMITED TO A PERIOD OF ONE YEAR FROM DATE OF ORIGINAL INSTALLATION WHEN THE WATER HEATER HAS BEEN USED FOR COMMERCIAL, INSTITUTIONAL, INDUSTRIAL OR ANY OTHER NON-DOMESTIC PURPOSE

Any accident to the water heater, any misuse, abuse or alteration of it, any operation of it in a modified form, or any attempt to repair leaks will void this guarantee.

NO OTHER GUARANTEE OR WARRANTY, EITHER EXPRESS OR IMPLIED, HAS BEEN OR WILL BE MADE IN BEHALF OF THE CORPORATION WITH RESPECT TO THE HEATER OR THE INSTALLATION, OPERATION, REPAIR OR REPLACEMENT OF THE HEATER. THE CORPORATION SHALL NOT BE LIABLE BY VIRTUE OF THIS GUARANTEE OR OTHERWISE FOR DAMAGE TO ANY PERSONS OR PROPERTY

THIS GUARANTEE APPLIES ONLY TO MODEL S KGA AND KGL



KANKAKEE, ILL.

A-50

MODEL NO.

SERIAL NO.

DATE INSTALLED \_\_\_\_\_

DEALER'S NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY AND STATE \_\_\_\_\_

# A. O. Smith Permaglas I

## gas water heater INSTRUCTIONS

### FACT TAG

This water heater has been designed and manufactured by the A. O. Smith Corporation, Consumer Products Division, Kankakee, Illinois. We made every effort to build this water heater to high quality standards. You should receive years of satisfactory and dependable service when it is operated according to these instructions.

It is the responsibility of the individual from whom you purchased this heater to describe the features of this new water heater to you. Also ask him to explain the guarantee which accompanies this water heater, who will service it under the guarantee, and the cost, if any, of these services to you.

This manual covers features, specifications, installation requirements, guarantee, safety precautions and other points which will help you to take full advantage of the many conveniences it has to offer. Please read all of this information carefully and ask any other person who is to use it to do likewise.

If for any reason you have any unanswered questions relating to your new Permaglas water heater, contact the individual from whom you purchased it. Should you fail to obtain the information requested from him please write to:

Marketing Department  
A. O. Smith Corporation  
Consumer Products Division  
P. O. Box 28  
Kankakee, Illinois 60901

Should it be necessary to write, please include the model and serial number of your water heater, the name and address of the concern from whom you purchased it, and the approximate date of purchase.



KEEP THIS GUARANTEE AND MANUAL HANDY FOR FUTURE REFERENCE WHENEVER MAINTENANCE, ADJUSTMENT OR SERVICE IS REQUIRED. BE SURE YOUR DEALER HAS FILLED IN THIS GUARANTEE.

MODELS KGA and KGL

FORM NO. 39958 REV. 1

## INSTALLATION

The heater must be installed in accordance with local codes and utility requirements. In the absence of local codes, it is suggested that the recommended practices set forth in the ANSI booklet Z21.30 "Installation of Gas Appliances and Gas Piping" be followed.

The heater must be connected to a chimney. The vent pipe from the heater to the chimney must be the same diameter as the outlet of the draft diverter on the heater and should slope upward to the chimney at least 1/4 inch per foot.

The heater must be installed with a minimum of two (2) inches clearance from combustible surfaces to prevent a possible fire hazard condition.

Flammable items, pressurized containers or any other potential fire hazardous articles must never be placed on or adjacent to the water heater. Open containers of flammable material should not be stored or used in the same room with the water heater.

An accumulation of lint or other foreign material that restricts or blocks the air openings to the heater or burner will, by reducing the amount of air necessary for combustion, create a hazardous condition.

### GAS CONNECTIONS

Refer to recommended installation as shown. Before attaching the gas line to the water heater, be sure that all gas pipe used is clean on the inside. If dirt and scale from the gas pipe gets into the thermostat, the gas valve in the thermostat will fail to close properly causing the water heater to overheat. Care must be taken not to apply too much pressure when attaching gas supply pipe to thermostat gas inlet, in order to prevent damage to the thermostat.

### AIR ADJUSTMENT

All except 75 and 100 gallon models are designed with a fixed primary air setting that requires no adjustment. All 75 and 100 gallon models should have the main burner air shutter adjusted to obtain a blue flame. To adjust: Loosen air shutter locknut, operate main burner, rotate air shutter to obtain blue flame. Tighten locknut.

Heaters using L.P. gas will have a blue-orange color flame. The tips of the flame will have a slight yellow tint. This is a normal and approved characteristic.

### PILOT ADJUSTMENT (UNREGULATED MODELS ONLY)

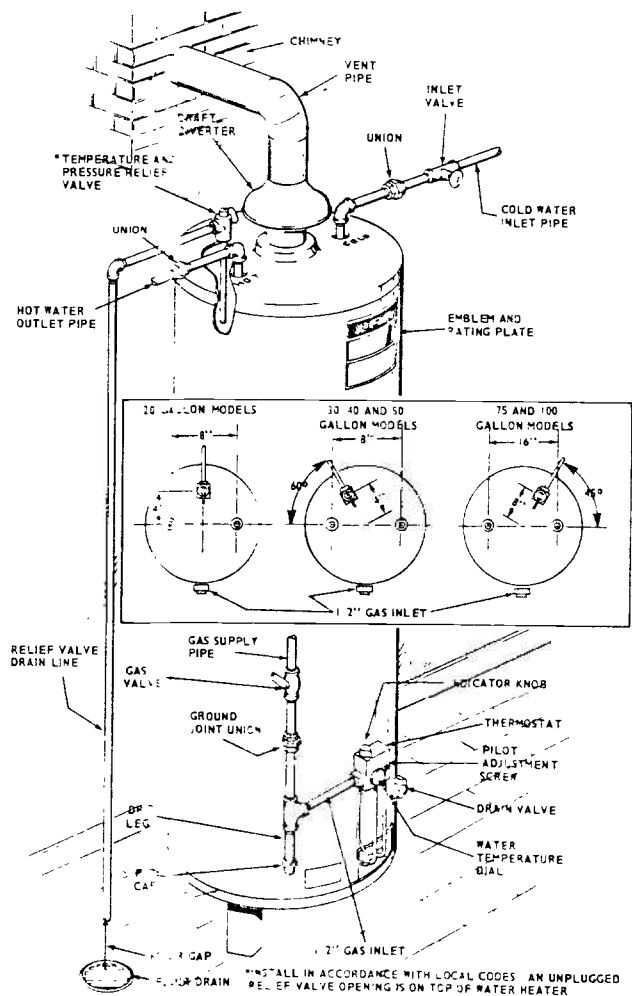
The pilot adjustment valve is factory preset for satisfactory operation under most conditions. If further adjustment is deemed necessary, proceed as follows:

1. Remove pilot adjustment screw cap.

2. Turn pilot adjustment screw, see illustration, clockwise (to right) until flame moves away from thermocouple end.
3. Slowly turn screw counterclockwise (to left) until a soft blue flame surrounds the end of the thermocouple.
4. Replace pilot adjustment screw cap.

### RELIEF VALVE

An unplugged relief valve opening is provided on top of the water heater for installing a temperature and pressure relief valve. An approved (A.S.M.E. or A.G.A.) 3/4" x 3/4" temperature and pressure relief valve must be installed in the opening. The drain line of this valve should terminate near a suitable drain. Do not thread, plug, or cap the end of this drain line. Pressure rating of relief valve must not exceed the working pressure shown on the rating plate of the heater.



### OPERATION

#### FILLING

1. Close the water heater drain valve by turning handle to right (clockwise).
2. Fully open the cold water inlet pipe valve allowing the heater and piping to be filled.
3. Open a nearby hot water faucet to permit the air in the system to escape.

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4. Close the hot water faucet after water starts to flow.
5. The heater is ready to be lighted.

## LIGHTING

Lighting and operating instructions are on a plate attached to the water heater. For convenience, these instructions are repeated here.

1. Fill heater with water, see FILLING instructions.
2. Turn thermostat indicator knob to OFF position, see illustration.
  - This shuts off gas supply to heater.
  - Wait five minutes for any gas that might be in the combustion chamber to clear the heater.
  - If closed, open gas valve in gas supply pipe.
  - Turn indicator knob to PILOT position.
3. Depress indicator knob and light pilot.
  - Continue holding indicator knob for one minute after pilot is lit. Pilot flame should remain on when knob is released.
  - Adjust pilot as described under PILOT ADJUSTMENT.
4. Turn indicator knob to ON position.
  - Main burner will ignite.
  - Adjust main burner air shutter to obtain a blue flame, see AIR ADJUSTMENT.
5. Set water temperature dial to desired temperature, see TEMPERATURE REGULATION.
6. Repeat these instructions if it is necessary to relight heater.

## MAIN BURNER ADJUSTMENT (75 AND 100 GAL. MODELS ONLY)

1. With the main burner ignited, turn the indicator knob slowly toward the Pilot position until the proper input has been obtained.
2. Loosen the stop locking screw.
3. Rotate the adjustment stop ring clockwise until it contacts the indicator knob stop.
4. Tighten the stop locking screw.

## TEMPERATURE REGULATION

The water heater is equipped with a thermostat with an automatic temperature control, see illustration.

The water temperature dial is factory set for WARM water temperature but may be adjusted as desired.

The water temperatures produced in the tank for each setting are approximately:

- 120° - WARM
- 160° - HOT

For general household usage, the mid-point setting will be satisfactory. However, the knob may be set to any position which satisfies temperature requirements.

## CONDENSATION

Whenever the water heater is filled with cold water there will usually be a certain amount of condensation formed on the cooler tank surfaces. Drops of water may fall on the floor shield or the hot burner surfaces producing a sizzling sound. This is normal and will disappear as the water in the tank becomes heated.

Condensation appearing in the vent pipe (water dripping from draft diverter) during heater operation is evidence of poor vent action. Possible causes are too long a vent pipe or improper chimney operation.

## TO SHUTOFF GAS

The gas supply to the heater may be shutoff by:

1. Turning the thermostat indicator knob on the thermostat to the OFF position, see illustration.
- or-
2. By closing the gas valve in the gas supply pipe, see illustration.

## DRAINING

If the heater is to be shut off and exposed to freezing temperatures, it must be drained. Water, if left in the tank and allowed to freeze, will expand and damage the heater.

1. Turn off the gas and cold water inlet valve to the water heater.
2. Open a nearby hot water faucet and the heater drain valve.
  - Be careful to grasp the drain valve handle so that the hand is not exposed to hot water.
  - If desired, a hose may be connected to the drain valve to carry the water away.
3. The drain valve must be left open during the shutdown period.
  - To restart heater, refer to the foregoing FILLING instructions.

## MAINTENANCE

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To assure long life and efficiency, the water heater tank must have a small amount of water drained periodically.

Once a month the drain valve should be opened and the water allowed to run until it flows clean.

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LEGISLATIVE INTENT SERVICE





This will help to prevent sediment build up in the tank bottom. Once a month the temperature and pressure relief valve should be checked to insure that it is in operating condition. Lift the lever at the top of the valve several times until the valve seats properly and operates freely.

**CAUTION:** The water passing out of the valve during this checking operation may be extremely hot.

## CHECKLIST

Before contacting your dealer, check the water heater to see if the apparent malfunction is caused by some external fault. Consulting this checklist may eliminate the need for a repair call and restore hot water service.

### HIGH TEMPERATURE LIMIT SWITCH (ENERGY CUTOFF)

All models have a factory installed non-adjustable limit switch that guards against excessive water temperatures.

If the high limit switch should open, it would reclose automatically when the tank water temperature drops. However, the heater must be relit as the main and pilot burners have been extinguished as a safety measure. Follow the LIGHTING instructions in this manual or on the side of the heater. Adjust the water temperature dial to a lower setting.

Continued pilot outage, preceded by higher than usual water temperatures, is evidence of high limit switch operation. It is important that your dealer be contacted to determine the reason for operation.

### NOT ENOUGH OR NO HOT WATER

1. Check to see if the pilot flame is lit.
  - To relight the pilot, follow the instructions on the heater or in this manual.
  - Check to see if the gas valve in the gas supply pipe is partially closed or the water temperature dial is set too low.
  - Check to see if thermostat indicator knob is in ON position, see illustration.
2. Look for leaking or open hot water faucets. Check for excessive usage.
3. Your gas company can check the gas input rate to the heater to see that it is correct. An underfired heater will not produce hot water at its normal recovery rate.
4. If the heater was installed when incoming water temperatures were warm, colder incoming temperatures will create the effect of less hot water.
5. The thermostat may be set too low. Refer to TEMPERATURE REGULATION for details of water temperature adjustment.

**WARNING!** DO NOT ATTEMPT TO OPERATE HEATER WITH COLD WATER INLET VALVE CLOSED.

6. If you cannot determine the cause of the problem, contact your dealer.

### WATER TEMPERATURE IS TOO HOT

1. The water temperature dial may be set too high. Refer to TEMPERATURE REGULATION for adjustment details.
2. If lower control settings do not reduce the water temperature, contact your dealer.

### GAS SMELL AT THE HEATER

1. Close the gas valve in the gas supply pipe near the heater, see illustration. The thermostat includes a gas valve (indicator knob) which can be closed.
2. Call your gas company.

### WATER LEAKAGE IS SUSPECTED

1. Check to see if the heater drain valve is tightly closed.
  2. The apparent leakage might be condensation. In warm or humid locations condensation can accumulate and run from within the heater or its piping.
- NOTE:** When a water heater is first installed and filled, the bottom head of the tank might condense water. The water accumulation, if excessive, can drip into the floor shield. During normal operation there may be occasions when large quantities of water are drawn, chilling the tank bottom. This too can result in condensation.
3. If the leakage is from the temperature and pressure relief valve or its drain line, it may represent a normal condition. In some installations a "closed system" may be created by a check valve or a water meter containing a check valve. In these installations the relief valve will periodically operate. Continuous relief valve leakage should be investigated by your dealer.

**If you cannot identify or correct the source of water leakage:**

- Shutoff the gas valve in the gas supply pipe at the heater.
- Close the cold water inlet valve to the heater.
- Contact your dealer.

### WATER HEATER MAKES SOUNDS

1. Occasional excessive condensation, as explained under LEAKAGE, can cause a sizzling sound as the moisture is vaporized by the gas flame. This is a normal sound and may be disregarded.
2. A sediment accumulation may be causing a rumbling noise. Contact your dealer for details of flushing the heater.
3. If you cannot identify or remedy the condition, contact your dealer.

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x

SB 272

April 2, 1971

C

Mr. P. H. Fahrer  
Manager  
A. O. Smith Corporation  
7250 South Cicero Ave.  
Chicago, Illinois 60629

O

Dear Mr. Fahrer:

My apologies for not replying sooner. The following is our interpretation of how SB 272 would effect your warranty.

First, of course, the disclaimer of the implied warranty would be invalid under Section 1793 of our Act.

P

Second, the provision that "the purchaser shall be liable for local delivery charges, removal and installation costs" is contrary to the Act. During the extent of the implied warranty, defined by the Uniform Commercial Code as a reasonable time, the warrantor is liable for all costs arising out of his actions to put his product back into merchantable condition. Thus, the warrantor would be liable for transportation costs and labor. After the expiration of the implied warranty, the warrantor can limit his liability with respect to parts and labor, but he can still be required by our Act to pay transportation costs arising out of the servicing of his warranty.

Y

We realize that certain failures in drafting the original bill has led to confusion in interpreting the Act. To cure this, we have introduced clarifying amendments this year, a copy of which is enclosed. We believe these will be passed, and some of the language is directly applicable to your situation.

Your letter does not specify whether you will have authorized service facilities under the terms of the Act. If you do, nothing in this Act restricts your ability to contract with them as to what

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Mr. P. H. Fahrer

-2-

April 2, 1971

percentage if any labor costs they must absorb.

If you have any questions, please feel free to write. I will endeavor to make a prompt reply.

Sincerely,

RICHARD THOMSON  
Administrative Assistant

C

RT/ny

Enclosure

O

P

Y

LEGISLATIVE INTENT SERVICE (800) 666-1917



A-55

RICHARDS, WATSON & HEMMERLING

RICHARDSON, DILLON  
GLENN, HENNING  
EDWARD W. HEMMERLING  
EDWARD W. HEMMERLING  
GILBERT W. HENNING  
LARRY R. HENNING  
EDWARD W. HEMMERLING  
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TWENTY-THIRD FLOOR  
615 SOUTH F STREET, S.W.  
WASHINGTON, D.C. 20004  
TELEPHONE: 555-4800  
TELEFAX: 555-8800

February 23, 1971

Honorable Robert G. Beverly  
California State Assembly  
P. O. Box 46  
Sacramento, California

Re: Song-Beverly Consumer Warranty Act

Dear Bob:

One of our clients, Hehr Manufacturing Company, has asked us to advise them whether the above Act applies to their business and, if so, what their responsibilities are under this Act. This client manufactures windows, vents and other fittings for mobile homes, motor homes, campers, and vacation trailers. Most of their sales are to manufacturers of mobile homes, motor homes, etc., but they make occasional sales at retail to the public.

The Act defines "consumer goods" as meaning "...any motor vehicle, machine, appliance, or like product that is used or bought for use primarily for personal, family or household purposes" (Civil Code § 1791(a)). Would this include a window purchased from our client for installation in a self-propelled motor home ("camper") used for family purposes? Would it include a window purchased for installation in a family vacation trailer which is not self-propelled? Would it include a window purchased for installation in a sixteen-foot wide, three bedroom "mobile" home which is designed for permanent or semi-permanent use at one site?

We would appreciate any assistance you could offer us in constraining the definition of "consumer goods" in the Act. Any legislative history, legislative counsel's opinion or other information you could furnish would be helpful in responding to our client's request for advice. Mr. Watson suggests that, if no legislative counsel opinion is presently available that sheds any light on the subject, that you consider asking legislative counsel for an opinion as to whether windows, vents, etc., manufactured for incorporation into mobile homes, trailers and campers, constitute "consumer goods" within the meaning of the Act.

Very truly yours,

*James J. Cook*  
JAMES J. COOK

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AUG 2 1971

RICHARD E. GUGGENHIME  
PAUL T. WOLF  
ROBERT C. HARRIS  
ALBERT M. MONACO  
LAWRENCE C. BAKER  
LOUIS H. HEILBRON  
ROBERT J. WHITE  
EDWARD W. ROSSON  
FRANK H. SLOSS  
JULIAN N. STERN  
GEORGE A. BLACKSTONE  
MICHAEL J. CULLEN  
LLOYD W. DINKELSPIEL, JR.  
RICHARD E. TAVLIAN  
CHARLES H. CLIFFORD  
WILLIAM R. MACKAY  
WEYMAN I. LUNDQUIST  
THOMAS B. MCGUIRE  
JERRY H. ROBINSON  
VICTOR A. HEBERT  
M. LAURENCE POPOFSKY  
JOHN H. CUTLER  
RICHARD L. GOFF  
CURTIS M. CATON

HELLER, EHRMAN, WHITE & McAULIFFE

ATTORNEYS

THIRTIETH FLOOR • WELLS FARGO BUILDING  
44 MONTGOMERY STREET • SAN FRANCISCO, CALIFORNIA 94104

E. S. HELLER (1889-1926)  
F. M. McAULIFFE (1911-1957)

SIDNEY M. EHRMAN  
JEROME B. WHITE  
JOSEPH D. TOOHIG  
F. WHITNEY TENNEY  
DONALD W. FALCONER  
OF COUNSEL

July 30, 1971

CABLE: HELPOW

TELEPHONE: AREA 415  
981-5000

Senator Albert H. Song  
2337 S. Garfield Avenue  
Monterey Park, California 90754

Assemblyman Robert G. Beverly  
1611 Pacific Coast Highway  
Redondo Beach, California 90277

Gentlemen:

I have been assigned the task of determining the meaning and implications of the recently enacted Song-Beverly Act (Civil Code Title 1.7, Chapter 1). Just as with any recently enacted legislation, it is quite difficult to determine the meaning and implications of such acts without the comments, notes and other writings of those who have authored and enacted them.

Therefore, I would greatly appreciate you sending me any individual comments you might have as to the meaning and implications of the Act as well as any legislative committee reports regarding the Act, legislative conferee reports regarding the Act, recorded and transcribed debates, whether in committee or on either of the Houses' floors, and any other writings which may explain any portion of the Song-Beverly Consumer Warranty Act.

After receiving and reviewing the items which you can send me, I would like to personally speak with you by telephone regarding any further questions I may have concerning the meaning of the Song-Beverly Act.

Thank you very much for your courtesy and help regarding this matter.

Sincerely,

*William Weiner*  
William Weiner

for HELLER, EHRMAN, WHITE & McAULIFFE

LEGISLATIVE INTENT SERVICE (800) 666-1917



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OSGOODE HALL LAW SCHOOL

4700 KEELE STREET, DOWNSVIEW 463, ONTARIO, Canada

State Senator Alvin C. Long  
California Legislature  
State Capitol  
Sacramento, California  
S.S.A., 95814

March 2, 1971.

Sir,

I have just finished reading Canada Bill No. 172 (The  
Long-Overly-Consumer-Committee Act), which is in my  
opinion a well-acted bill. I do not have a great  
impression on comparative Canadian legislation in other  
states.

It reminds me I am preparing a speech in partial completion  
of my list of laws to be on the subject "Regulation  
of the Consumer Parties in Canada" under the supervision of  
Prof. J. J. S. L. J.

I would appreciate it if you could refer me to any of  
the regulatory work on your bill. Were any special  
legislation held? How could I get a copy of the local bills  
in your jurisdiction? Could you also refer me to the laws  
of any other states affecting the consumer parties.  
I am familiar with the F.I.C. reports on the subject  
and will be with the hearings on the U.S. version bill  
3374.

Finally I would be interested in knowing whether you  
have any other things by the manufacturers of consumer  
products to have your act of a manufacturer, I  
could be of help in this area.

Thank you for your interest in my work.

Yours sincerely,  
*Louis J. Romano*  
Louis J. Romano

LEGISLATIVE INTENT SERVICE (800) 666-1917



March 10, 1971

Mr. Louis J. Romero  
York University  
Osgoode Hall Law School  
4700 Keele Street  
Downsview 463, Ontario, Canada

Dear Mr. Romero:

Thank you for your kind letter regarding our SB 272.

I'm afraid that I cannot send you much in the way of useful information regarding the preparation on our bill. Senator Long did hold an investigatory hearing on the subject of consumer warranties at which various witnesses testified to the problems of warranty enforcement, but the hearing in itself did not lead to the bill. Nor did we look to the time of year that the bill can come down one day and work the bill based on our knowledge of the problem and our own judgment of what results could be both practical and fair.

We have had no suggestions that SB 272 might be unconstitutional and we expect no challenge along these lines.

We are presently preparing amendments to clarify certain parts of the act. If you would like copies of these amendments, a copy of the committee hearing, or an answer to any specific question on the bill, please let me know.

Sincerely,

Richard Thomson  
Administrative Assistant

RT/ny

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March 1, 1971

Mr. Ed Lankat  
Capitol Motors  
2830 Broadway  
Sacramento, California 95817

Dear Mr. Lankat:

This is to confirm our phone conversation of February 26 that SB 272 applies to the sale of new consumer goods only. I admit that the language in the bill itself is not all that clear. However, we have an opinion from our Legislative Counsel that the only goods covered are new goods, and we are presently preparing amendments to clarify this point.

Sincerely,

RICHARD THOMSON  
Administrative Assistant

RT/ny

Enclosures

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BETTER BUSINESS BUREAU



of Los Angeles, Ltd.

MAR 4 1971

417 SOUTH HILL STREET

LOS ANGELES, CALIFORNIA 90013

ORANGE COUNTY OFFICE  
1818 WEST CHAPMAN AVE., ORANGE, CALIF. 92668

SAN FERNANDO VALLEY OFFICE  
14545 VICTORY BLVD., VAN NUYS, CALIF. 91401

March 3, 1971

The Honorable Senator Alfred H. Song  
2320 South Garfield Ave.  
Monterey Park, California 91754

Re: Senate Bill 272

Dear Senator Song:

Subsequent to the enactment of the Consumer Warranty Act, which became effective March 1, 1971, the Bureau has received numerous requests for information on the new law from both retailers (particularly new car dealers) and media. I have attempted to obtain information from Deputy Attorney General Herschel Elkins, and he suggested that I contact your office.

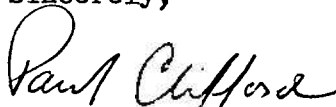
One dealer who has, for some time, offered a ninety day 50/50 warranty on his used cars, wants to know if he should discontinue this warranty. Specifically, although he qualifies his "expressed" warranty, does an "implied" warranty exist which holds the dealer fully responsible for all defects, since the automobile is not sold "as is?"

With regard to advertising, must all terms and conditions of an advertised guarantee be disclosed and, if so, does this disclosure eliminate the "implied" warranty of merchantability? Also, how would the advertised statement, "Lifetime Warranty", be considered under the provisions of the new law? In addition, must advertised used cars be described by a phrase such as, "Sold As Is" or "With All Faults", and, if this is the case, what would be the duration and conditions of the "implied" warranty if such disclaimer were not included in the advertisement?

Finally, I am enclosing a copy of our "Standards for Advertising and Selling Automobiles" and request that you review Paragraph #23, which pertains to the advertising of guarantees and warranties. Does this section conflict with the Consumer Warranty Protection Act and, if this is the case, do you have any suggestions as to how the section might be revised so that it does not conflict with the intent of the new law?

The Bureau would greatly appreciate your comments and suggestions at your earliest convenience.

Sincerely,

  
Paul Clifford  
Automotive Manager

PC:kr

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LEGISLATIVE INTENT SERVICE (800) 666-1917



March 11, 1971

Mr. Paul Clifford  
Automotive Manager  
Better Business Bureau  
417 South Hill Street  
Los Angeles, California 90013

Dear Mr. Clifford:

Thank you for your letter regarding SB 272.

While the language of our act is not particularly clear on the question, we believe that it only applies to the sale of new goods and that the sale of used goods fall outside its scope. We have an opinion from our Legislative Counsel backing up this interpretation, and this year we will be introducing legislation to further clarify this point.

The act has no provisions regulating advertising. Thus, the present legal standards apply.

Under the Uniform Commercial Code and our Act, however, a statement in an advertisement such as "one year's free service" would create an express warranty enforceable under the terms of the Act even though no written warranty was attached to the product itself. In general no advertising statement would effect the implied warranties, and our act requires that in "as is" sales the words "as is" or "with all faults" be attached to the product itself. These provisions, of course, apply to the sale of new goods only.

I am enclosing a copy of an explanation of the act prepared by our staff, and I would be happy to answer any other questions you might have.

Sincerely,

ALFRED H. SONG

AES/ny

Enclosure

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# California Automotive Wholesalers' Ass'n. INCORPORATED

926 J STREET, SUITE 1308, SACRAMENTO, CALIFORNIA 95814 • PHONE (916) 446-4091

1971

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  - 1968 ROBERT H. BAIRD
  - 1969 W. R. BARNARD
  - JAMES E. HAMILTON  
Executive Vice President

March 18, 1971

Hon. Alfred H. Song  
State Capitol Building  
Sacramento, California 95814

Dear Senator:

Your consumer warranty act of 1970 which became effective March 1, 1971, is a matter of keen interest to the 500 wholesalers, warehouse distributors, manufacturers and rebuilders of automotive replacement parts, who constitute our membership.

The Act defines consumer goods as any "motor vehicle, machine appliance, or like product" which is used or bought for use primarily" for personal, family or household purposes."

We therefore wish to know whether the definition of consumer goods includes the component parts of motor vehicles, such as engine parts, fuel pumps, starters, carburetors, brake shoes, and the thousands of other replacement parts our members handle.

Most of the typical automotive wholesalers sales are made to garages, service stations, motor car dealers and fleets, but as much as 75% of their total volume may be done direct to the consumer.

Please give us either a statement of your intent concerning the status of auto replacement parts under the Act, or a ruling by the Attorney General as to whether or not they are included in your definition of consumer goods.

Sincerely yours,

James E. Hamilton/ik

Executive Vice President

cc: Charles Kennedy  
Vern Bacciarini

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2B272

March 26, 1971

Mr. James E. Hamilton  
Executive Vice President  
California Automotive Wholesalers' Assn.  
926 "J" Street Suite 130E  
Sacramento, California 95814

Dear Mr. Hamilton:

Thank you for your letter regarding the Song-Severly Consumer  
Warranty Act.

It was certainly our intent to include component parts of motor  
vehicles under the coverage of the Act when such parts are sold  
on a retail basis to consumers. We believe that the retail sale  
of such parts is presently covered by the Act, and we will shortly  
be introducing clarifying amendments, one a provision of which we  
will specifically list parts under the definition of consumer  
goods.

Sincerely,

ALFRED H. SONG

AMS/ny

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# INSTITUTE OF HEATING & AIR CONDITIONING INDUSTRIES

5107 West First Street

Los Angeles, California 90004

467-1158

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Gerson D. Ribnick  
*Executive Director*

Mrs. Rickey Gamore  
*Executive Secretary*

A. B. Wicks  
*Code Consultant*

March 24, 1971

Mr. Richard Thompson  
Administrative Assistant  
Senator Al Song  
Sacramento, Ca 95814

Dear Richard:

Enclosed are two warranty policies effective as March 1, 1971 by two major national manufacturers. I would like yours and perhaps Shawns comments as to these in relationship to the Act.

Your efforts have been very helpful in clearing up some of these issues.

Sincerely,

Gerson D. Ribnick  
Executive Director

rg  
cc: H. Brown

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FILE

TO:

SONG-BEVERLY CONSUMER WARRANTY ACT

The Song-Beverly Consumer Warranty Act becomes effective on March 1, 1971. Under this act, suppliers of consumer products which are sold with a warranty in California become, under certain circumstances, subject to new and additional responsibilities.

In our view, the products of the X Y Z Products Group are ordinarily not be subject to the provisions of this act, since:

- (a) In the case of X Y Z heating and air conditioning and water heating products which are installed in a residence under circumstances where the user purchases the residence and not the products individually, there has been no sale of the X Y Z products at retail, since the buyer is purchasing the residence and not the individual products installed in the residence; and
- (b) The act does not apply unless the goods which become defective within the warranty period are returned to the place of business of the retailer. It is not anticipated by X Y Z that this requirement will be met by buyers of X Y Z heating, air conditioning and water heating products.

Accordingly, X Y Z will, commencing March 1, 1971, sell its products to you on the understanding that the products will be resold by you under circumstances where the Song-Beverly Consumer Warranty Act will not apply. If the goods are to be resold by you under circumstances where the Song-Beverly Consumer Act would apply, and X Y Z could incur the responsibilities of the manufacturer under that Act, the products will be sold to you subject to a further charge. A schedule of the additional charges under such circumstances will be furnished on request.

X Y Z intends to continue to sell its products with manufacturer's warranties and to perform such warranties as it has in the past.

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Mr. Gerson Ribnick  
Institute of Heating and Air-  
Conditioning Industries, Inc.  
5107 West First Street  
Los Angeles, Ca. 90044

Dear Gerson:

As you have requested, the following can be conveyed at the March 18 California warranty meeting regarding warranty policy.

ABC will continue to offer an expressed warranty covering replacement parts, as follows. All component parts, whether for heating or air-conditioning equipment, are warranted to the original purchaser for a period of one year from date of purchase. Heating elements on furnaces carry a ten (10) year warranty, pro-rated one and nine, at a rate of 10% a year of current price. Compressors on all air-conditioning equipment carry a five year warranty, again from date of purchase. All labor for changeout is excluded from the  warranty. This clearly expressed warranty will be made available to all purchasers at time of purchase.

Yours very truly



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March 26, 1971

Mr. Gerson D. Ribnick  
Executive Director  
Institute of Heating & Air  
Conditioning Industries  
5107 West First Street  
Los Angeles, California 90004

Dear Gerson:

The following is our opinion of the two cases you submitted.

ABC's warranty meets the requirements of the Song Act save that it cannot require the customer to pay for labor during the period of the implied warranty. We went over this point several times at the meeting, so you know that the duration of an implied warranty is for a "reasonable time" with, after our amendments, a maximum period of one year. During this time ABC would be responsible for labor costs, though after the implied warranty expires, he can write his express warranty any way he chooses.

The same objection may apply to the "pro-rate" clause relating to the heating elements. Here again, ABC must replace them without charge during the period of the implied warranty, though it can pro-rate costs after the implied warranty has expired.

XYZ, on the other hand, appears to us to be heading for a willful violation of the Act. The question of whether XYZ makes retail sales to consumers is a question of fact that should be carefully explored by the company. If XYZ has any direct dealings with the home owner, such as giving him an XYZ warranty, a court may well hold that XYZ has made a retail sale.

The question is, to whom does the home owner turn when the water heater breaks down? If he turns to XYZ, it will be strong evidence that a retail sale has occurred. If, on the other hand, he turns to the contractor who built the house, there has probably not been a retail sale.

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If an XYZ product has been sold at retail to a consumer, then the terms of the Song Act apply to that product, and XYZ will be liable under the terms of the Act. The fact that the product may not be easily moved does not bar liability. As you know, this provision, which we admit is poorly worded, determines who pays for which service rather than which goods are covered by the Act.

The fact that XYZ makes a different arrangement with its distributors for those goods sold at retail as opposed to those that are not is perfectly acceptable under the terms of the Act. As far as we are concerned XYZ can make any arrangements with its distributors that it chooses to make. However, the nature of the arrangement with the distributor does not control the liability under the Act. If an XYZ product is sold at retail to a consumer, XYZ is liable under the Act regardless of the nature of the arrangement it made with its distributor on that particular product.

In general, we believe that unless XYZ revises its warranty arrangements, it may well find itself liable to triple damages under the terms of the Act.

Sincerely,

RICHARD THOMSON  
Administrative Assistant

RT/ny

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6-Part II

MONDAY MORNING, AUGUST 4, 1969

★

*The Times' official position on issues is expressed only in the two columns below. Other material on this and the next page is the opinion of the individual writer or cartoonist and does not necessarily reflect that of The Times unless otherwise indicated.*

## Warranty Legislation Proposed

**ISSUE:** *Should the State Legislature enact legislation which would require manufacturers to stand behind their products?*

"Satisfaction guaranteed or your money back."

This straight-from-the-shoulder guarantee should sound familiar. It is usually part of the small-print warranty included with most products sold in the economy.

Unfortunately, in many cases, the consumer gets neither satisfaction nor his money back.

Just ask the unhappy purchaser of an air conditioner that makes more noise than cool air, a repaired roof that still leaks or a new automobile with an expensive thirst for oil.

But a growing number of consumers—and some legislators—believe strongly that this is an unnecessary state of affairs.

So does The Times. And that is why we view with favor the intent of legislation proposed by State Sen. Alfred Song (D-Monterey Park) that would require manufacturers to pick up the costs involved in making good on warranties and guarantees.

Although the Song bill (SB 1166) was submitted at the request of installation contractors stuck with defective warranti-

eed equipment, it can open the way for a deep probe into the entire field of warranties.

Song is obtaining an interim study of SB 1166 before his Senate Business and Professions Committee—the same group that earlier rejected this proposed piece of legislation.

"We need to take a long, hard look at the subject of warranties," Song contends. "Some of them appear to be no more than advertising gimmicks that aren't worth the paper they are printed on. Everyone who buys an auto or an appliance receives a warranty as a guarantee that he is getting what he pays for. I believe that my committee should check on how good that guarantee actually is."

We believe Song is talking to the point. The solution, however, may require both state and federal legislation. For the Federal Trade Commission has been juggling complaints and recommendations concerning alleged auto sales and service frauds for years without taking appropriate action.

California's senators, nevertheless, have an ideal opportunity between sessions to prepare legislation which will protect their constituents. They should not forget that those same constituents are also voting consumers.

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PRESS RELEASE  
Senator Alfred H. Song  
State Capitol, Room 2054  
Sacramento, California 95814

FOR IMMEDIATE RELEASE  
October 24, 1969

An automobile owner complained to a representative of the manufacturer that his new car was defective. The representative agreed, said that the warranty covered the situation, and told the owner to take his car to any dealer for repairs. The owner went to six dealers, all of whom refused to touch the car. Reason: the manufacturer does not reimburse enough money for warranty repairs to make such work profitable.

An appliance dealer purchased certain color television sets, fully covered by warranties, from a manufacturer. When he tested the sets, he found that a manufacturing defect seriously distorted the picture. The dealer asked the manufacturer to replace the sets under the terms of the warranty. The manufacturer refused, saying that the sets met his manufacturing standards. The dealer's solution: sell the sets at a discount and pass the problem on to the customer.

These are only two of the many cases in which warranties have failed to protect the consumer, according to State Senator Alfred H. Song (D - 28th Dist.). Song is Chairman of the Senate Committee on Business and Professions which has scheduled public hearings on the subject of warranties for November 3rd and 4th in Los Angeles.

"Many warranties are simply advertising gimmicks to help sell the product," Song said. "They are not intended to protect the purchaser. In fact, some warranties are drawn up with the purpose of providing as little protection as possible."

Song stated that four methods are commonly used by some manufacturers to reduce expenses resulting from warranties.

(1) Some warranties are drafted in technical and complex language which is intended to confuse the public. The buyer is never

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told specifically what in the way of parts, labor or shipping is covered by such a warranty. As a result, the manufacturer can interpret the terms of the warranty as he chooses.

(2) Many warranties go into effect only if the buyer sends a registration card to the manufacturer within a few days of the purchase. He often must include the serial number of the product. Occasionally, however, the manufacturer places the serial number in a position where the average person cannot find it.

(3) Frequently, warranties are good only as long as the buyer abides by certain conditions. A typical condition is that the product be serviced at specific intervals by a "factory-authorized dealer". By piling condition upon condition, the manufacturer can whittle a warranty down to almost nothing.

(4) Finally, a retail dealer can add his warranty to that of the manufacturer for a maximum of confusion and a minimum of protection. An advertisement proclaiming: "For three days only - a two-year parts and labor replacement warranty", often means that the buyer is shuttled back and forth between the manufacturer and the dealer without receiving satisfaction.

"This is not a blanket indictment," Song said. "The majority of warranties represents an honest effort by manufacturers to insure their customers against shoddy workmanship. A few, however, come close to being fraud, and our committee is concerned with these and with what protection the consumer may have against them."

If you buy an appliance that does not work and neither the dealer nor the manufacturer honors the warranty, what can you do? According to Song, your chances are quite limited.

"There is no effective remedy aside from the courts," he said. "Certain private and government agencies collect complaints of shady business dealings, but they will not act to reimburse the customer. AFD



"Some people threaten to stop their payments until the retailer makes repairs. This usually does not work, because the retailer has already discounted the debt to a bank, and has no more interest in the matter.

"Filing suit in court is the best alternative for the consumer," Song stated, "if he is willing to accept the time, trouble and expenses involved. The law in this field, however, is not clear, and the litigant must take his chances."

Song said that the purpose of the hearing before the Business and Professions Committee is to collect the information necessary for a future clarification of California law. "The rights and responsibilities of the manufacturer, the retailer and the consumer should be well-defined and known to all parties," he said. "I plan to introduce legislation on this subject next year."

The hearing will begin on November 3rd in Room 115 of the Old State Building, 217 West First Street, Los Angeles. It is open to the public.

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PRESS RELEASE  
SENATOR ALFRED H. SONG  
State Capitol  
Room 2054  
Sacramento, California 95814

FOR IMMEDIATE RELEASE

February 2, 1970

A major innovation in consumer protection was presented to the California Legislature today by State Senator Alfred H. Song (D - 28th District). Song's proposal for the first time would give legal assistance to the purchaser who attempts to enforce the terms of a warranty or guarantee.

Under Song's plan, the consumer who purchased defective goods covered by a warranty could have them repaired or replaced by returning them to the retailer. The manufacturer of the goods would be liable to the retailer for the cost of servicing the warranty.

"Many warranties," Song said, "are simply advertising gimmicks to help sell the product. They are not intended to protect the buyer. In fact, some warranties are drawn up with the purpose of providing as little protection as possible.

"My files are full of letters from people who bought defective automobiles or appliances, who tried to have them fixed under a warranty and who experienced everything from lengthy delays to flat refusals. These people need legal protection."

The bill, known as the "Song Consumer Warranty Protection Act," defines the rights and responsibilities of the buyer, the retailer, and the manufacturer of consumer goods. It is based on testimony given before the Senate Committee on Business and Professions during its hearings on warranties this fall.

"No manufacturer has to offer any warranty or guarantee on his goods," Song said. "Most manufacturers do because it is good advertising. I believe that when a manufacturer chooses to advertise by means of a warranty, he should be legally bound to live up to the terms of his warranty."

The Song Act applies to the makers, sellers and buyers of any motor vehicle, appliance or other product that is used primarily for

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personal or household purposes. The manufacturer of such goods has three alternatives

- He can sell his products on an "As Is" or "With All Faults" basis if he clearly indicates that the buyer assumes the entire risk as to the quality and performance of the goods. This relieves the manufacturer of all responsibilities.

- He can market his goods without any formal warranty or disclaimer. Under the Act, he is then responsible for the goods being free from defects and fit for normal use for a reasonable time. This is known in law as an implied warranty.

- He can attach an express warranty to his products making specific promises as to parts and service. If he does, the Song Act would bind him to the terms of his warranty.

Many manufacturers of consumer goods have established service facilities in California to handle warranty work. Those who have would be required by the Act to repair, replace or reimburse the buyer for the goods within 30 days, unless the buyer agrees in writing to the contrary. This limitation would apply only to repairs covered by express or implied warranties.

If the manufacturer fails to provide such service facilities, and yet offers warranties with his products, the customer would have the following protection under the Song Act.

The buyer would be able to return the defective consumer goods to the retailer from which he bought them. He could then ask for either replacement or for the repair services promised by the warranty. If the retailer was unable to comply, he would pay his customer the fair market value of the purchase.

When this was not convenient, the buyer could go to any retailer who handled the same kind of products. He could then have his defective goods either repaired or replaced at the option of the retailer.

"This places a definite burden on the retailer," Song said. "An owner of an appliance store might be required to pay out a substantial amount of money by servicing warranties. This Act protects the retailer

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by making the manufacturer liable to him for every penny expended in warranty work.

"The real question here," Song continued, "is whether the retailer or the consumer can best deal with a manufacturer who fails to live up to his warranties. Clearly, the answer is the retailer. He, unlike the consumer, has the economic muscle to make the manufacturer listen."

Any buyer or retailer who suffered financial injury because of an intentional violation of the provisions of this Act would be able to sue for triple damages and costs.

"Our present statutes on warranties," Song said, "are vague and in conflict with various court decisions. They fail to protect the consumer and the retailer, and they set no standard to guide the manufacturer. My Act clarifies the rights and responsibilities of all parties. I am hopeful that it will receive widespread support throughout California."

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A-76



SENATOR ALFRED H. SONG  
State Capitol  
Sacramento, California 95814

Contact: Richard Thomson  
Phone: (916) 445-3386

April 28, 1970

FOR IMMEDIATE RELEASE

SENATOR SONG POLL FAVORS BETTER CONSUMER PROTECTION

Sacramento -- Stronger consumer protection laws are favored overwhelmingly in a poll by Senator Alfred H. Song (D - Monterey Park) of residents of his 28th Senatorial District.

Eighty-eight per cent of those responding in the poll, which was sent by mail to all registered voters, indicated the State should have an agency to receive and investigate complaints of fraud of unethical business practices, and eighty-five per cent said the agency should have the power to file suit in court to force the seller to make good any injury to the buyer.

Seventy per cent stated retail stores should be legally responsible to carry out the terms of a manufacturer's warranty or guarantee.

Song is chairman of the Senate Business and Professions Committee which held public hearings on warranties and consumer protection. He has introduced sixteen consumer bills this year.

Ranking next to consumer protection, sixty-nine percent of those polled indicated they favor legislation to ban the sale of motor vehicles with internal combustion engines, and seventy-one per cent said they would not object to paying \$100. for a completely effective smog control device.

"Our analysis of the returns," Song said, "indicates that the majorities in these issues are equally large among both registered Democrats and registered Republicans."

The poll showed that more than seventy-five per cent believe that the State should take some action to hold down spiraling medical



costs, though there was no consensus on the method. Those responding were divided almost evenly between a system of voluntary price standards, compulsory price standards, and a state-operated health insurance plan.

In the field of taxes, those polled supported a reduction in the local property tax by a two to one margin even at the cost of higher income and sales taxes. Withholding won a 55% to 36% approval.

The voters were also asked about their choices for Governor and U. S. Senator in this year's election. For Governor the results were Reagan - 47%, Unruh - 21%, Yorty - 4%, and other, not sure, or not voting 28%.

While fifty-three per cent of those responding were registered Democrats, Song pointed out that the poll was taken in January before the campaigns had begun.

For U. S. Senator the results were Murphy - 30%, Brown - 17%, Tunney - 7%, and other, not sure, or not voting - 46%. Remarking on the difference between the support for Brown and Tunney, Song said that half of his district lay within that of Congressman George Brown, Jr. and that the people there were "naturally enthusiastic about George."

"What interests me," Song said, "is how much less support Murphy has than Reagan. Remember that the poll was taken before Murphy's connection with the Technicolor Corporation was disclosed."

Song said that more than ten thousand people, or roughly six per cent of the registered voters in the 28th Senatorial District, had returned their questionnaire.

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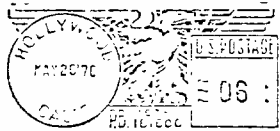
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EDITORIAL

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# EDITORIAL

Aired: May 20, 1970

Warranty Guaranteed by Law

Gordon Davis, Vice President

State Senator Alfred Song investigated guarantees and warranties here in Los Angeles last fall.

He found some manufacturers back their products with a warranty as good as gold.

He also found a lot of others issue warranties and guarantees that are no more than worthless paper....simply gimmicks to help sell their products. When buyers try to claim repairs or replacements, they are met with the runaround: double talk, extra charges and stalling for months.

As a result of those abuses, the senator has written a new law, called the "Song Warranty Consumer Protection Act". It's number is SB 272.

In essence, SB 272 says that any product sold in California must be what it's purported to be and do what it's sold to do. The law would make the manufacturer responsible.

If the product didn't work, the manufacturer would have to fix it or return the buyer's money within 30 days. The law would also protect the retailer from getting stuck for making good on the manufacturer's warranty.

If the manufacturer refused to make good on the product as represented, the law would allow the buyer or retailer to sue the manufacturer for three times the price of the product, plus all attorney fees, and costs.

Good companies would have no worry. They already back their products with integrity. But Song's bill would wreak havoc with the chiselers and sharpshooters who have looted California's marketplace for years.

The bill comes up for hearing tomorrow before the Senate Business and Professions Committee in Sacramento.

KFWB believes that Senator Song's bill, SB 272, would guarantee that the public would get what it pays for. That makes it a good bill. If you'd like to add your support, contact the Senate Business and Professions Committee, Sacramento.

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SENATOR ALFRED H. SONG  
State Capitol  
Sacramento, California 95814

Contact: Richard Thomson  
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May 22, 1970

FOR IMMEDIATE RELEASE

SONG COMMITTEE PASSES TOUGH CONSUMER BILLS

Sacramento -- A package of bills which provide major new protections for consumers purchasing products with a warranty or guarantee has advanced an important step in the State Legislature.

The measures, including SB 272 by Senator Alfred H. Song (D - Monterey Park), were given a "do pass" recommendation by the Senate Business and Professions Committee over vigorous opposition by the California Manufacturing Association. They now go to the full Senate for its approval.

The Song bill would, for the first time, give effective assistance to the purchaser who attempts to enforce the terms of a warranty or guarantee.

Under the Song legislation, the consumer who purchases defective goods covered by a warranty has the legal right to have the goods repaired or replaced if he returns them to the retailer. The bill makes the manufacturer liable to the retailer for the full cost of servicing the warranty.

Song, who is also chairman of the Business and Professions Committee, said:

"This committee took a long, hard look at warranties last fall.

"We found that some manufacturers back up their products with a warranty that is as good as gold. We also found that others issue warranties and guarantees that are no more than worthless paper --- primarily gimmicks to help sell their products. When buyers of products with bad warranties try to claim their repairs or replacements, they are met with a run-around treatment, double

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talk, extra charges, and stall tactics up to six months."

Song said that as a result of these abuses he and his colleagues introduced the bills that the committee just passed.

"Good companies will not have to worry," Song said, "for they already back up their products with integrity. These bills are aimed at the chislers and sharpshooters who have plagued California's marketplace for years."

SB 272 provides that any product sold in California must be what it is purported to be and do what it is sold to do. The bill makes the manufacturer responsible if the produce does not work; it must be fixed or the buyer's money returned within 30 days. It also protects the retailer from getting stuck for the cost of making good on the manufacturer's warranty. If the manufacturer refuses to make good on the product as represented, the bill would allow the buyer or the retailer to sue the manufacturer for three times the cost of the product, plus all attorney fees.

Song's committee also passed his SB 436 which prevents manufacturers from disclaiming warranties unless they sell the goods on an "as is" basis.

The committee voted out SB 921 by Senator Milton Marks (R - San Francisco) which provides that consumers do not lose the benefit of their warranties just because they fail to send a registration card back to the manufacturer.

Also approved was SB 1351 by Senator Anthony Beilenson (D - Beverly Hills) which requires automobile manufacturers to reimburse dealers for the full cost of making warranty repairs thus insuring that the dealers will make warranty repairs.

"My committee did its duty today for all consumers," Song said. "I am very hopeful that the full Senate will do likewise when these bills come before it during the next few weeks."

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## Senate Passes Warranty Bill

### Sacramento

A comprehensive consumer warranty protection act, first in California's history, cleared the Senate yesterday despite a claim it would impose a "fantastic degree of burden" on manufacturers.

By a 24-5 vote, the Senate approved the "Song Consumer Warranty Protection Act," which would require that all consumer goods sold in California be protected by an implied warranty or else that the sale be specified as "with faults."

Senator Alfred Song Democrat, Monterey Park, the bill's author, termed it a "first step in the right direction" toward protecting consumers against the practice of making sale warranties "little more than sales gimmicks."

The measure would require

consumer goods manufacturers, including carmakers, to have California repair facilities to maintain goods sold here.

That provision came in for heated opposition from Senator Clark L. Bradley (Rep-San Jose), who said it would put "a fantastic degree of burden" on manufacturers, especially those out-of-state.

Song responded that had been considered by the Senate Business and Professions Committee which he heads, during its lengthy study of warranties.

"It was the determination of our committee that the manufacturer would be in a better position to be inconvenienced, if I may use that term," Song said.

The measure was sent to the Assembly.

*Associated Press*



SENATOR ALFRED H. SONG  
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Sacramento, California 95814

Contact: Richard Thomson  
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June 25, 1970

FOR IMMEDIATE RELEASE

STATE SENATE PASSES SONG WARRANTY BILL

Sacramento -- A bill requiring manufacturers to stand behind their warranties passed the California State Senate today by a vote of 24 to 5. The bill, SB 272, was introduced by Senator Alfred H. Song (D - Monterey Park).

One opponent, Senator Clark L. Bradley (R - San Jose) condemned the bill for "going too far" and "causing unnecessary inconvenience and hardship to manufacturers".

Voting in favor of the bill were 15 Democrats and 9 Republicans. Five Republicans opposed it.

In his argument to his fellow Senators Song said:

"Virtually every special interest is represented in Sacramento for the purpose of protecting itself but not the buying public.

"We, the elected representatives, are vested with the responsibility of protecting the public's interest.

"The choice is really a simple one. I would choose to inconvenience the manufacturer rather than the consumer, if such a choice is to be made.

"There are no laws in California specifically designed to protect the consumer. This bill is a step in the right direction".

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The bill now goes to the Assembly where, according to Song, it will probably be assigned to the Assembly Committee on Commerce and Public Utilities. Song said that he foresaw difficulties in winning the committee's approval.

"The bill is strongly opposed by the California Manufacturers Association", Song said.

SB 272 provides that any product sold in California must be what it is purported to be and do what it is sold to do. The bill makes the manufacturer responsible if the product does not work; it must be fixed or the buyer's money returned within 30 days. It also protects the retailer from getting stuck for the cost of making good on the manufacturer's warranty. If the manufacturer refuses to make good on the product as represented, the bill would allow the buyer or the retailer to sue the manufacturer for three times the cost of the product, plus attorney fees.

The bill is based on public testimony given before the Senate Business and Professions Committee, of which Song is chairman, during the committee's hearings on warranties last fall.

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SENATOR ALFRED H. SONG  
State Capitol  
Sacramento, California 95814

Contact: Richard Thomson  
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August 10, 1970

FOR IMMEDIATE RELEASE

SONG WARRANTY BILL PASSES ASSEMBLY COMMITTEE

A comprehensive consumer warranty protection act, first in California's history, cleared the Assembly Committee on Commerce and Public Utilities at a special meeting of the committee today.

The bill's author, Senator Alfred H. Song (D-Monterey Park), won approval after agreeing to accept several minor clarifying amendments.

The bill, SB 272, now goes before the full Assembly where a hard-fought battle is expected.

Song's bill had been vigorously opposed by Al Davis, lobbyist for the California Manufacturers Association. Davis told the committee that the bill would place too heavy a burden on small, out-of-state manufacturers.

Song replied that if a manufacturer wants the advertising benefit of having a warranty, he should pay the costs of servicing his warranty instead of pushing them off on the Californians who buy his products.

"There are always lobbyists here representing the manufacturers," Song said. "I am here to represent the people who pay their hard-earned money for a product that doesn't work. They

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need the protection that my bill gives."

The Song bill would make manufacturers live up to the terms of their warranties.

Under the bill retail stores would be responsible for getting defective products promptly repaired if the manufacturer fails to maintain his own repair facilities. The manufacturer in turn would have to reimburse the retailer for his full expenses in making warranty repairs.

When asked about the bill's chances before the full Assembly, Song indicated that the vote will probably be close. "This will be a real test of commitment to the cause of consumer protection," he said. "The outcome may well depend on the public support we receive."

The bill is based on extensive public hearings on warranty problems held last fall by the Senate Committee on Business and Professions.

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THE CONSUMER

# Solid Warranties Promised in State Bill

BY ALEXANDER AUERBACH  
*Times Staff Writer*

A bill to give California consumers the strongest warranty protection in the nation has passed by the Assembly and the Senate and is awaiting action by Gov. Reagan.

Under provisions of the bill, SB 272, every sale of a consumer item would be covered by a warranty, either expressed or implied. The bill is sponsored by Sen. Alfred Song (D-Monterey Park.)

Manufacturers would have to set up service facilities within the state to cover repairs under warranty, and would have to make repairs within 30 days.

The warranty or guarantee (the terms are synonymous) must be

written in simple, easily understood language.

If the item is not covered by a written warranty, it is still subject to an implied warranty—that is, the item is understood to be fit for the task it is intended for, and suitable for sale. Now, for example, a camera "warranty" can include a disclaimer saying that the maker doesn't guarantee that the thing will take pictures or is even good enough to sell.

The bill also allows both the consumer and retailer to sue the manufacturer for triple damages plus costs for willful violation of its provisions.

The bill would only cover goods manufactured and sold after March 1, 1971, to give sellers time to bring

their practices in conformity with the new rules.

According to one of Song's researchers, no other state has a law giving the consumer similar protection concerning warranties.

The manufacturer or seller could still offer goods without warranty, but must state conspicuously, in writing, that they are for sale "as is," or "with all faults," and that the buyer assumes the entire risk as to quality and performance and any cost of repairs or service.

That would be enough to scare off most customers, but as Song notes, manufacturers now give written warranties "primarily to advertise their products and to give the pur-

Please Turn to Page 11, Col. 1

## WARRANTY BILL

Continued from 8th Page  
chaser a sense of security at the time of sale. Express warranties are basically sales aids."

They are badly abused Song adds. Mrs. Virginia Knauer, the President's special assistant for consumer affairs, says that warranty problems are the leading cause of complaints that come to her office.

During hearings on SB 272 Song found that frequently the warranty fails to tell the customer how to obtain repairs for a defective product, and whether the maker or retailer is responsible for the warranty.

Often the warranty is written in "confusing or misleading terms," Song adds, or is written to actually diminish the protection normally available under the usual implied warranty.

The warranty may be good only if the consumer ships the product at his expense to a factory across the country, and the work may take months to complete.

Or the retailer who is supposed to do the repair work under the manufacturer's warranty refuses to do it, because the manufacturer won't pay him enough to make a fair profit on the work.

If the manufacturer chooses to give a warranty in writing, then he must either set up repair facilities

in the state or must pay dealers to make the repairs.

If the seller, not the manufacturer, gives the customer a warranty of his own, then the warranty must state that it is the dealer who gives the guarantee and that it's the dealer who will do the repairs.

The bill does put additional burdens on both the retailer and the manufacturer, Song says, since the dealer might have to drop a written guarantee the manufacturer can't back up. But it also gives the retailer the right to recover the cost of doing warranty work.

If the manufacturer wants the benefit of advertising a written warranty, says Song, he must accept the responsibility.

# Los Angeles Times

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6—Part II FRIDAY MORNING, SEPTEMBER 11, 1970

★

## Consumer Bill Should Become Law

*ISSUE: Should Gov. Reagan sign a bill providing California consumers with the strongest warranty protection in the nation?*

Legislation spelling out a solid set of ground rules for that most quarrelsome of trios—manufacturer, retailer and consumer—awaits Gov. Reagan's signature.

As protection for consumers, we believe that Senate Bill 272 deserves a gubernatorial signature. The bill will also clear up much of the small-print confusion in many of the guarantees attached to consumer products sold in the state.

State Sen. Alfred Song (D-Monterey Park), sponsor of the bill, contends it will provide California's consumer with the strongest warranty protection in the nation.

The primary aim of the measure is to make certain both the manufacturer and the seller of a consumer item stand back of products sold the public.

Under its provisions, every consumer product, from autos to coffee pots, would be covered by a warranty — either expressed or implied. Written guarantees would have to be in easily understood language.

A manufacturer, who would be required

to make repairs within 30 days, would have several service options: setting up facilities within California; contracting with independent service firms, or paying dealers to make repairs. Under any of these, the purchaser would be assured of a workable product—not false promises or a complicated procedure under which repair or replacement requires an unpleasant confrontation.

It would still be possible to sell without warranty, provided the seller made clear in writing that the product is for sale "as is" or "with all faults."

In cases of wilful breach of warranty, any consumer or retailer could sue for triple damages, if the claim was not a class action.

The legislation on the governor's desk is a compromise measure developed during an interim session committee hearing. Business groups, which took part in the debate, are not particularly enthusiastic. But they are not opposed.

Since the Nixon Administration has withdrawn support of proposed legislation permitting class-action suits to recover damages for product misrepresentation so as not to overload federal courts, it is up to the states to protect their own consumers. SB 272 should become part of California law.

COMPLIMENTS OF  
ALFRED H. SONG  
MEMBER CALIFORNIA STATE LEGISLATURE

A-89

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# Mrs. Knauer: Brash Grandma Who Speaks for Housewives

BY ALEXANDER AUERBACH  
Times Staff Writer

Mrs. Virginia H. Knauer looks like the classic American grandmother, and comes on like a Republican ward heeler. As the President's special assistant for consumer affairs, she's a little of both.

Mrs. Knauer, who swept through Los Angeles Wednesday to tape a guest spot on a TV show, moved into public life 15 years ago, when her husband was campaigning for district attorney in Philadelphia. She would go to opposition rallies and "reply" from a jeep-mounted public address system.

She is today equally unabashed at stating her case, and equally aware of the political realities of her job, which exists at the pleasure of President Nixon.

## Major Complaints

Most complaints that come into her office concern autos with "shoddy workmanship in the first place or shoddy repairs," or household appliances, which "fall apart before the warranty expires, but the warranty doesn't mean what it says."

Her staff—"we're authorized to have 19, but we have 35, with the extras borrowed from other departments"—receives about 4,000 letters a month, and fires off volleys of its own to manufacturers mentioned in the complaints.

"It's amazing what a response a letter gets when it's on White House stationery," she says, with her disarming, dimpled smile.

While she may enjoy deflating industry's self-image, her loyalty to President Nixon is puncture-proof,

and references to his name and office sprinkle her speech like some political doxology.

"The President gave me personal responsibility," she will say. Or she will explain that "the President himself" wants something done. She starts work each day at 7:30 a.m. with a meeting at the White House, "in the Roosevelt Room, that's right across from the Oval room, and if both doors are open we can see the President at work, and often he joins us."

Please Turn to Page 17, Col. 7

# MRS. KNAUER

Continued from 14th Page

She is obviously quite happy with the arrangement. Asked about the suggestion that an independent consumer agency be set up, Mrs. Knauer replied:

"I think this office should be in the White House, so it can speak with the authority of the President and get things done because he wants them done."

Not surprisingly, that is President Nixon's view also.

But if Mrs. Knauer is an astute politician, she also is a tremendously energetic woman determined to get on with doing her job as she sees it.

Prior to entering her White House job she ran the Pennsylvania Bureau of Consumer Protection, one of the toughest state consumer protection agencies in the nation.

On moving to Washington, she says, she "discovered that a great many states have no consumer protection departments at all, have no money, have no manpower and have no laws to provide for one."

## Codifying Laws

To correct that, her agency is codifying all the state consumer protection laws in the nation, so that if a state decides it needs a law in a certain area of fraud it can find out quickly what other states have tried.

Within the next few days her office will be announcing a set of consumer education guidelines for use in schools, ranging from kindergarten to high school, to "turn the coming generation into more sophisticated shoppers.

We teach them how to earn money, but until now we haven't taught them how to manage that money and spend it wisely."

But kindergarten kids? Yup, and as a mother and grandmother Mrs. Knauer speaks from first-hand experience. Her granddaughter is now an old hand at nine, but a few years ago the tot went with Mrs. Knauer on a shopping trip and taught her a lesson.

"We went into the food store and she picked up the same brands and sizes her mother bought. When we went to buy her a dress, she looked to see that there was enough material in the hem. Kids are great imitators. All we have to do is show them the right way to shop."

Later her office expects to help release some of the best-researched products available to the consumer.

Before Uncle Sam buys, he tests, whether it be hearing aids for the Veterans Administration, carpets for federal buildings, shoelaces for GI's or ballpoint pens for tax collectors. Until now, however, these test results have not been made public for the general benefit of the payers who paid for it.

"The President gave personal responsibility, develop a policy on the release of product information," Mrs. Knauer says, and her office will have a plan for him in August. "I expect this will result in an executive order on the release of information," she adds.

But if you can't wait until then for advice, you can always write a letter to Mrs. Knauer's granddaughter.

A-910

March 12, 1970

### *Bill on Product Warranties Planned by Administration*

*By a WALL STREET JOURNAL Staff Reporter*

WASHINGTON—The Nixon Administration plans to propose legislation to improve product warranties.

The bill basically would authorize the Federal Trade Commission to require certain disclosures by manufacturers of what their warranties cover or don't cover, Richard McLaren, Assistant Attorney General, told the Senate Consumer subcommittee. The bill also would require that anything labeled a "warranty" or "guarantee" must guarantee that the product is fit for the use intended. Many warranties currently disclaim any guarantee of fitness.

The Administration bill would cover all consumer products costing \$25 or more, Mr. McLaren said. The Consumer subcommittee is considering a broader warranty bill, which would set minimum requirements for guarantees on all consumer products with mechanical or electrical parts.

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Mirror of opinion

**Teeth for the consumer**

As more and more consumers find themselves stuck with more and more products or services that won't work or work poorly, the need grows for laws to protect them. Consumer-minded men like Ralph Nader, Sen. Philip Hart, Benjamin Rosenthal and others are swamped with letters from gypped, deceived and frustrated consumers. It is rare that anything can be offered them, except sympathy. Even the government's office for consumer affairs, run by Virginia Knauer, has no enforcement power against dishonest companies and merchants; only recently has the White House given Mrs. Knauer a measure of "power" — she can forward letters of consumer complaint to the companies cited.

Currently pending before Congress is a bill which should add a few sharp teeth to consumers' rights. The Magnuson-Moss Consumer Products Guarantee Act will give the buyer of, say a television, the guarantee that the machine will work well and for a reasonable length of time — for the duration designated. Theoretically, this is the ethic under which the public has been buying its goods all along; but under the Uniform Commercial Code, which holds in 49 of 50 states, the merchant can place an express guaran-

tee on his product in place of an implied warranty. In laymen's terms, this means that a can-opener that had an implied warranty, which would last for a number of years, can be strapped with an express guarantee that will see the product through for only, say, six months, which is hardly long enough, as many luckless consumers find out.

The Magnuson-Moss bill would cut out this kind of nonsense. It would create minimum federal standards if the manufacturer decides to give a warranty or guarantee on his product.

Thus, it would prohibit the manufacturer from limiting his liability. If a merchant says, "I guarantee my product," his words mean exactly that: he guarantees his product. The Magnuson-Moss bill would further allow a consumer to bring court action against a manufacturer and have the latter pay attorney fees if he loses the case.

It is incredible that laws like these are needed, since the Federal Trade Commission, Mrs. Knauer, even Mr. Nixon in his recent consumer message, are presumably looking out for the American consumer. But the presumption cannot be depended on when the unaware consumer walks into the marketplace.—Washington Post

*Xtian Science Monitor March 10, 1970*





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# California State Senate

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ALFRED H. SONG  
STATE SENATOR  
TWENTY-FIFTH SENATORIAL DISTRICT

August 3, 1970

TO: Members, Assembly Committee on  
Commerce and Public Utilities

RE: SB 272

When my SB 272 was presented before the Assembly Committee on Commerce and Public Utilities on Monday, August 3rd, I received the impression that a section of the bill may have been misinterpreted. In order to insure that the bill is fully understood, permit me to emphasize the following.

SB 272 gives the manufacturer a series of choices. The first choice is whether or not he wishes to issue an express warranty. If, and only if, he issues an express warranty, does he face the second choice.

This choice requires the manufacturer either to maintain authorized service facilities or to fully reimburse his retailers for servicing his (the manufacturer's) warranty.

In actuality, the option of maintaining authorized service facilities is in the bill as a benefit to the manufacturer. This provision does not require him to rent one foot of space or to hire one employee. Rather, it permits him to select

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certain retailers or certain repair dealers out of the many dealing with his products to handle warranty servicing. It allows him to restrict the number of retailers to whom he would be liable for warranty work.

Many manufacturers (Sony, RCA, Sunbeam, etc.) presently use a system of authorized service facilities. Though Al Davis seemed to have missed the point in committee, elimination of this option would bring the California Manufacturers Association down on him in force.

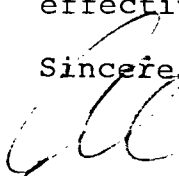
One brief additional point. What is the very worst that could happen to a manufacturer or a retailer under this bill?

The worst that could happen to a manufacturer is that he would have to sell his products without an express warranty. This might be the only choice for the small, out-of-state manufacturer, but it is a better choice than having California consumers stuck with his worthless warranties.

The worst that would happen to a retailer is that he might have to inform a manufacturer that he could no longer sell the manufacturer's goods or could no longer sell them with an express warranty. This might cause a deterioration in the relationship between manufacturer and retailer, but that is better than having California citizens suckered by false promises.

My staff and I have worked hard on this bill. It is good, effective legislation. I ask for your "aye" vote.

Sincerely,



ALFRED H. SONG

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2014

Preliminary Sections:

- 1 (a) This chapter may be cited as the "Song Consumer Warranty Protection Act."
- 1 (b) Any waiver by the buyer of consumer goods of the provisions of this chapter except as expressly provided herein shall be deemed contrary to public policy and shall be unenforceable and void.
- 1 (c) If any provision of this chapter or the application thereof to any person or circumstance is held unconstitutional, the remainder of the chapter and the application of such provisions to other persons or circumstances shall not be affected thereby.
- 1 (d) The provisions of this act shall not affect the rights and obligations of parties determined by reference to the Commercial Code except that where the provisions of the Commercial Code conflict with the rights guaranteed to buyers of consumer goods under the provisions of this chapter the provisions of this chapter shall prevail.
- 2 (a) Definitions:
  1. Consumer Good: "Consumer Good" or "Consumer Goods" means any motor vehicle, machine, appliance, device, product

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or commodity that is used or bought for use primarily for personal, family or household purposes.

2. Buyer: "Buyer" or "Retail Buyer" means any person who buys consumer goods from a person engaged in the business of manufacturing, distributing or selling such goods at retail.

3. Manufacturer: "Manufacturer" means any individual, partnership, corporation, association or other legal relationship which manufactures, assembles, produces or gathers consumer goods.

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

5. Retail Seller: "Retail Seller" or "Seller" or "Retailer" means any individual, partnership, corporation, association or other legal relationship which engages in the business of selling new goods to retail buyers.

6. Implied Warranty of Merchantability: "Implied Warranty of merchantability" or "Implied Warranty that goods are merchantable", means that the consumer goods must be at least such as:

(a) Pass without objection in the trade under the contract description; and

(b)

(b) Are fit for the ordinary purposes for which such goods are used; and

(c) Are free from defects of materials or workmanship; and

(d) Are adequately contained, packaged and labeled;

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and

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

7. Implied Warranty of Fitness: "Implied Warranty of Fitness" means that when the retailer, distributor or manufacturer has reason to know any particular purpose for which the consumer goods are required and further, that the buyer is relying on the skill and judgement of the seller to select and furnish suitable goods, then there is an implied warranty that the goods shall be fit for such purpose.

8. Sale "AS IS" or "WITH ALL FAULTS": Sale "AS IS" or "WITH ALL FAULTS" means that the manufacturer, distributor and retailer disclaim all implied warranties that would otherwise attach to the sale of consumer goods under the provisions of this chapter. In the absence of any express warranties accompanying the sale, the buyer assumes the entire risk as to the quality and performance of the goods purchased on an "AS IS" or "WITH ALL FAULTS" basis.

1. ✓ Every sale of consumer goods by a manufacturer in this state shall be accompanied by an implied warranty that the goods are merchantable, except that no such implied warranty accompanies the sale of consumer goods that are sold on an "AS IS" or "WITH ALL FAULTS" basis, provided the provisions of this chapter affecting "AS IS" or "WITH ALL FAULTS" sales are strictly complied with.
2. ✓ Every sale of consumer goods in this state by a manufacturer who has reason to know at the time of the sale that the goods are required for a particular purpose and that

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and that the buyer is relying on the manufacturer's skill or judgement to select or furnish suitable goods shall be accompanied by an implied warranty of fitness.

2. (a)

If the sale is made through a retailer or distributor, and that retailer or distributor has reason to know at the time of sale that the goods are required for a particular purpose and that the buyer is relying on the retailer's or distributor's skill or judgement to select or furnish suitable goods, then, in lieu of the manufacturer, that retailer or distributor shall be deemed to have impliedly warranted that the goods are fit for that purpose.

3.

The implied warranty of merchantability and, where applicable, the implied warranty of fitness are expressly made non-waiveable, except in the case of a sale of consumer goods on an "AS IS" or "WITH ALL FAULTS" basis, provided the provisions of this chapter affecting "AS IS" or "WITH ALL FAULTS" sales are strictly complied with.

4. No sale or consumer goods on an "AS IS" or "WITH ALL FAULTS" basis shall be effective to disclaim the implied warranty of merchantability or where applicable the implied warranty of fitness, unless

(a) a conspicuous writing is attached to the goods which clearly informs the buyer in simple and concise language that;

(i) the goods are being sold on an "AS IS" or "WITH ALL FAULTS" basis; and

(ii) the entire risk as to the quality and performance of the goods is with the buyer; and

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

5. Every sale of consumer goods on an "AS IS" or "WITH ALL FAULTS" basis, made in compliance with the provisions of this chapter shall constitute a waiver by the buyer, of the implied warranty of merchantability and where applicable the implied warranty of fitness.

6. Nothing in this chapter shall affect the right of the manufacturer, distributor or retailer to make additional warranties with respect to consumer goods, but a manufacturer distributor or retailer, may not, by such additional warranties modify or limit the application of the warranties guaranteed by this chapter to the sale of consumer goods.

7. Every manufacturer, distributor or retailer making additional warranties with respect to consumer goods shall express such additional warranties in clear and concise terms and clearly identify the party making such additional warranties.

8. Every manufacturer of consumer goods which are sold in this state and for which there exists a warranty, either expressed or implied in law, shall maintain in this state sufficient service and repair facilities to carry out the terms of such warranties.

9. Where such service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not comply with the implied warranty of fitness, such service and repair must be commenced within a reasonable time following



receipt of the goods by the manufacturer or its representative in this state, and unless buyer agrees in writing to the contrary, the goods must be returned, at the manufacturer's expense, in merchantable condition within 30 days. Should the manufacturer be unable to return merchantable goods, he shall;

(i) replace; or

(ii) 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 discovery of the defect, provided that in no event shall such deduction from the purchase price be made for defective goods forwarded to the manufacturer or his representative in this state within 30 days of their purchase.

10 (a) Failure to provide the required service and repair facilities within this state shall create the following option in the buyer:

1. Return the defective article to the retail seller from whom the defective good was purchased for;

(i) replacement; or

(ii) service or repair in accordance with the terms and conditions of the warranties;  
at the option of the buyer.

(iii) If the retail seller is unable to replace the defective article with merchantable goods or is unable to service or repair the goods in accordance with the terms and conditions of the warranty, the retail seller shall reimburse the buyer in the amount equal to the purchase price paid by the buyer less that

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amount directly attributable to use by the buyer prior to discovery of the defect, provided that in no event shall such deductions from the purchase price be made for defective goods returned to the retail seller within 30 days of their purchase.

2. Return the defective article to the nearest retail seller of like goods of the manufacturer for:

- (i) replacement; or
  - (ii) service or repair, in accordance with the terms and conditions of the warranties;
- at the option of the retail seller.

10 (b) Where the option is exercised in favor of service and repair under 10 (a) 1 or 2 above, such service and repair must be commenced within a reasonable time, and unless buyer agrees in writing to the contrary the goods must be returned in merchantable condition within 30 days.

11. Every manufacturer who fails to provide, when required by this chapter, service and repair facilities within this state shall be liable to every retail seller of that manufacturer's goods who incurs obligations in giving effect to the warranties that accompany that manufacturer's consumer goods, in the following manner:

(a) in the event of replacement in an amount equal to the actual cost to the retail seller of the replaced goods, plus a reasonable handling charge.

(b) in the event of service and repair, in the amount equal to that which would be received by the retail seller for like service rendered to retail consumers who are not entitled to warranty

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protection, including where applicable the cost of parts, servicing, labor, storage overhead and a reasonable profit.

(c) in the event of reimbursement under option 10 (a) (1) (iii) above, in an amount equal to that reimbursed to the buyer, plus a reasonable handling charge.

12. In the event of additional warranties made by persons other than the manufacturer of the goods the obligation of the person making such additional warranties shall be the same as that imposed on manufactures under sections 8, 9 and 10 of this chapter.

13. Any buyer of consumer goods injured by a willful violation of the provisions of this chapter may bring an action for the recovery of damages. Judgement may be entered for three times the amount at which the actual damages are assessed plus reasonable attorney fees.

14. Any retail seller of consumer goods injured by the willful or repeated violation of the provisions of this chapter may bring an action for the recovery of damages. Judgement may be entered for three times the amount at which the actual damages are <sup>[Asses]</sup> assessed plus reasonable attorney fees.



# SENATOR ALFRED H. SONG

## 28th Senatorial District

### Questionnaire Response

SENATOR  
ALFRED H. SONG

TOTALS WILL NOT ADD TO 100% BECAUSE NOT EVERYONE ANSWERED EVERY QUESTION.

		ANSWERS	
		YES	NO
		%	%
1.	How long have you lived in California?		
	a. Less than 1 year	1	
	b. 1 - 5 years	2	
	c. 5 - 10 years	6	
	d. More than 10 years	90	
2.	For those who have moved here from other states: Do you like living in California more than in your former home?		
	a. Prefer California	55	
	b. Prefer another state	5	
	c. Lived here all my life	19	

#### AIR POLLUTION

Experts tell us that about 80% of the smog in the air is produced by the internal combustion engines in our automobiles. Last year, the Senate passed a bill to ban the sale of these engines after 1974, which would have forced the automobile manufacturers to switch to a clean-air system such as steam, electricity or gas turbine. While the bill was defeated in the Assembly, it will be introduced again in 1970.

3.	If you were a Legislator, would you vote for this bill?	69	25
4.	If someone invented a smog control device for our present automobiles that was completely effective but which cost \$100.00, would you favor a law requiring every automobile owner to purchase and install one?	71	24

#### CONSUMER PROTECTION

This is a field in which I have been active as Chairman of the Business and Professions Committee. We held public hearings on warranties and consumer protection, and I will be introducing legislation on the subject next year.

5.	Should the State have an agency which receives and investigates complaints of fraud or unethical business practices committed by those who sell to the public?	88	10
6.	Should this agency have the power to file a suit in court in order to force the seller to make good his injuries to the buyer?	85	10
7.	Many products, such as automobiles and appliances, come with some form of guarantee or warranty from the manufacturer as to free parts or repairs. Some manufacturers do not make good on these guarantees. Should the retail store that sells the product be legally responsible to carry out the terms of the manufacturer's guarantee?	70	26

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HEALTH CARE

I have been concerned about the high cost of medical care for some time, and last year I introduced a bill to provide prepaid health care for every working person. The bill would have enabled those who work and pay taxes to receive at least as much medical care as those on welfare. It did not pass, but I intend to introduce new legislation in 1970.

8.	The cost of a one-day stay in a hospital is expected to rise above \$100.00 within five years. Other medical costs will doubtless rise as much. What should the State do to cope with this?	%	
	a. Nothing. Just stay out . . . . .	8	
	b. Appoint a commission of doctors and laymen to set voluntary price standards . . . . .	26	
	c. Regulate medical prices and fees by law . . . . .	31	
	d. Establish a state-run health insurance plan . . . . .	21	
	e. Not sure or other . . . . .	10	
9.	Many countries have health insurance plans that are operated by the government. California has such a program for welfare recipients - Medi-Cal. Would you favor a voluntary health insurance plan, administered by the State, that provided the benefits of Medi-Cal to all Californians at a reasonable cost to the subscriber?	YES %	NO %
		65	24
10.	Would you want this plan to be compulsory for everyone if it would bring the costs down? . . . . .	40	48

TAXES

Many of us believe that local property taxes are too high. Most property tax money goes for schools, and the most effective method of property tax relief would be to obtain the necessary school support funds from state taxes instead of the property tax.

At present, local tax rates differ widely from one school district to the next. A district with little to tax will have higher rates and raise less money per pupil than a district that can tax industry or expensive homes.

One solution is to equalize both the property tax rates and the amount of support per student by having the State collect and distribute the money. This would help poor districts such as Baldwin Park at the expense of wealthy districts such as Beverly Hills. Another solution would be to cut the local property taxes and pay for our schools with higher sales and income taxes.

11.	Do you favor a reduction in the local property tax if state taxes have to be increased to make up the difference? . . . . .	61	31
12.	If your answer to No. 11 is "YES", would you prefer a state property tax or higher income and sales taxes?		
	a. State Property Tax . . . . .	13	
	b. Higher Income and Sales Tax . . . . .	52	
13.	Those opposing more state support for schools say that any increase in state aid would weaken the power of our local school boards. If this were true (and you can argue it both ways), would you change your answer to question No. 11? . . .	11	70
14.	The United States Government deducts part of our Federal income tax from every paycheck, and many believe that the State should withhold our State income tax in the same way. Those in favor say this will insure that everyone earning money in California pays his share of taxes. Those opposed argue that taxes should hurt as much as possible and that withheld taxes don't hurt enough. Do you agree that the State should withhold State income tax from our paychecks? . . . . .	55	36

POLITICS

The answers to these questions may give us a vague preview of the outcome of next year's elections.

15.	Who is your choice for Governor in 1970? [CHOOSE ONE]	%
	a. San Francisco Mayor Joseph Alioto . . . . .	6
	b. Governor Ronald Reagan . . . . .	47
	c. Assembly Democratic Leader Jess Unruh . . . . .	21
	d. Los Angeles Mayor Sam Yorty . . . . .	4
	e. Other or not sure . . . . .	15
16.	Who is your choice for United States Senator in 1970? [CHOOSE ONE]	
	a. Congressman George E. Brown, Jr. . . . .	17
	b. State College President S. I. Hayakawa . . . . .	20
	c. Senator George Murphy . . . . .	30
	d. Congressman John V. Tunney . . . . .	7
	e. Other or not sure . . . . .	19

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*San Francisco*

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# California State Senate

COMMITTEES  
BUSINESS AND PROFESSIONS  
CHAIRMAN  
HEALTH AND WELFARE  
INDUSTRIAL RELATIONS  
JUDICIARY  
  
MEMBER  
CALIFORNIA LAW REVISION  
COMMISSION  
STATE ALLOCATION BOARD

ALFRED H. SONG  
STATE SENATOR  
TWENTY-EIGHTH SENATORIAL DISTRICT

May 25, 1970

Dear Friend:

A few weeks ago you received my newsletter telling about the bills I introduced on warranties. This is a progress report on these bills.

As the enclosed clipping from the Sacramento Bee describes, my bills were passed by the Senate Business and Professions Committee over the vigorous opposition of General Motors and the California Manufacturers Association. This Association represents the giant corporations that make such products as refrigerators, radios, washing machines, and automobiles, and it and General Motors are very tough people to have against you.

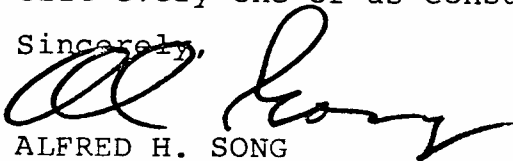
My bills say that when you buy an appliance, an automobile, or other product that is defective and is covered by a warranty, you have the legal right to have it repaired or replaced if you return it to the retail seller. The bills protect the retailer by making the manufacturer liable to him for the full cost of servicing the warranty.

The California Manufacturers Association says that these bills are unnecessary restrictions on big business. I say that they protect us from the shady operator and the company that wants to make promises it won't live up to.

Moving my bills from the Business and Professions Committee to the full Senate is just the first step. I hope to be able to secure enough votes from my fellow Senators to pass them into the Assembly. After that, with such powerful forces in opposition, the way will be far from smooth.

I promise, though, that I will do all that I can to pass these bills and have them signed into law. They would benefit every one of us consumers in California.

Sincerely,



ALFRED H. SONG

AHS/ls

Enclosure

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# Protection For Purchasers

## Measure Requiring Manufacturers To Stand Behind Warranties Reaches State Senate Floor

By James Dufur

Bills requiring manufacturers to stand behind their warranties reached the Senate today.

The bills were approved yesterday afternoon by the Senate Business and Professions Committee.

Opposition was voiced by representatives of General Motors, the California Manufacturers Association, the

California Automatic Firearms Association and the California Council of Air Conditioning and Refrigeration Contractors Association at a committee hearing.

In many cases, Sen. Alfred H. Song, D-Los Angeles County, committee chairman and author of the major bill, SB 272, offered to meet objections through making minor changes in the bills.

But Stuart D. Willson of

Detroit, an attorney for GM, told Song that even after making several amendments to SB 272 — and some other bills — GM will still be opposed.

Sean McCarthy, who has been working with Song's office in drafting some of the legislation, said SB 272 would require manufacturers to stand behind their warranties and, in some cases, to retain facilities in Califor-

nia to make repairs.

If there are no facilities in the state, he said, repairs would have to be assured within 30 days or the buyer must get his money back, less a reduction for the time he has used the product.

### Escape Clause

McCarthy said that if a manufacturer does not want to stand behind a warranty, he must include a notice on

his product that the consumer is buying it "as is" or "with all faults."

A. E. Davis, a vice president of the manufacturers association, was concerned that such a warning could "scare away" some consumers and also could prevent some retailers from stocking their shelves with such products.

He also was concerned

over some exemptions provided in SB 272.

Song noted the legislation stems from recent hearings by the committee concerning a failure of manufacturers and dealers to stand behind their warranties. He said a major problem involved automobiles, and one committee member, Sen. James E. Whetmore, R-Orange County, provided a personal example.

Whetmore said his daughter, a student in the University of Southern California, tried to get a new automobile she purchased in Orange County repaired by a dealer near USC and, at first, was unsuccessful.

He said he had to intervene and added that one reason he is strongly backing the legislation is that a consumer should not have to be a prominent person or attorney to get a dealer to make repairs promised in a warranty.

Other bills approved by the committee include SB 921, Marks, which would not require a consumer to mail in a purchase notice to the manufacturer to gain the benefit of a warranty, as long as the consumer can provide the date of purchase.

## The Sacramento Bee

Locally owned and operated for 113 years

JAMES McCLATCHY, founder, editor, 1857-1883

C. K. McCLATCHY, editor, president, 1883-1936



VOL. 226—No. 37,015

Friday, May 22, 1970

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APPLIES ONLY TO WARRANTY OBLIGATIONS ON CONSUMER GOODS

- 1) Sections 1755, 1756, and 1757 (p.2, line 16 et seq.) provide definitions which have either been taken from or are similar to those in the Uniform Commercial Code.
- 2) Sections 1760 through 1765 (p.3, line 18 et seq.) prohibit disclaimers of the implied warranty of merchantability or implied warranties of fitness unless the goods are clearly labeled as being sold on an "as is" or "with all faults" basis.
- 3) Section 1766 (p.4, line 14) provides that no express warranty can be used to reduce the protection offered by implied warranties. Section 1767 (p.4, line 20) requires that express warranties be stated in clear and concise language and clearly identify the maker of the warranty.
- 4) Section 1768(a) (p.4, line 25) requires - as an option - every manufacturer of consumer goods to provide sufficient repair facilities to service his warranties.  
Section 1768(b) (p.4, line 30) provides that the buyer of defective goods which are sent to such a service center must receive the goods back in merchantable condition within 30 days - unless he agrees otherwise or unless circumstances beyond the control of the manufacturer cause delay.  
Section 1768(c) (p.4, line 43) provides that if the manufacturer cannot repair and return the goods that quickly, he shall either replace the goods or reimburse the buyer for the purchase price less use.

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5. Section 1769 (p.5, line 1) applies only to manufacturers who do not provide the service centers required in Section 1768. The buyer of defective goods from such a manufacturer may avail himself of the following:

Section 1769(a) (p.5, line 5) - the buyer may return the defective goods to the retailer which sold them for replacement, repair, or reimbursement at the retailer's option.

Section 1769(b) (p.5, line 18) - the buyer may return the goods to any California retailer handling the same brand of goods for replacement or repair at the retailer's option. Liability under (a) and (b) is limited to the terms of the warranty.

Section 1770 (p.5, line 24) provides that goods repaired under Section 1769 must be returned within 30 days - same as Section 1768(b)

6) Section 1771 (p.5, line 34) requires the manufacturer to reimburse the retailer for the full amount the retailer lost in servicing the manufacturer's warranty.

7) Section 1772 (p.6, line 1) applies the provisions of this Act to makers of warranties other than the manufacturer.

8) Sections 1773 and 1774 (p.6, line 6 et seq.) provide triple damages for willful breach.

To avoid any possible conflict with pending federal legislation, the effective date of this bill is February 1, 1971.

==###

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SB 272 (Song) is supported by the following organizations:

1. Association of California Consumers
2. California State Electronics Association
3. Office of the Attorney General
4. Plumbing-Heating-Cooling Contractors of California

Editorial Support:

1. L. A. Times
2. Westinghouse Broadcasting

*Repair facilities in the state  
- Optional  
Sunbeam products  
Consumer v. Retailer v. Manufacturer*



Gentlemen:

I have again reviewed S.B. 272, as tentatively amended, and also reviewed S.3074, as it passed the U.S. Senate. I have the following major comments:

1. The definition of "express warranty" as contained in Section 1757 does not fit the intent of the bill. We are dealing with express warranties against defect or malfunction, not Commercial Code concepts of express warranty. That already is the law.

S. 3074 makes a similar mistake, l. 3. p. 2, and then spends considerable effort remedying it by modifying the definition where it matters, see ". . . warranting . . . against defect or malfunction . . .", l. 20-22, p. 4 and see; l. 11-13, p. 7; l. 11-12, p. 8; l. 18-19, p. 9 etc.

Thus, in Section 1757(a) "express warranty" should be defined as:

"(1) a ~~written~~ statement arising out of a sale to the consumer of ~~a~~ consumer <sup>goods</sup> ~~product~~ pursuant to which the warrantor undertakes to preserve or maintain the utility or performance of ~~the~~ consumer <sup>goods</sup> ~~product~~ or provide compensation if there is a failure in utility or performance." [From S.B. 920, Section 1737.1(b)]

Section 1757(b) and (c) remain unchanged.

2. I cannot, in good conscience, abide with the result of the change to 1768, which allows manufacturers to sluff off their duties under their own warranties onto retailers. The result of the 1769 duties on retailers is not going to hurt Sears, Penney's or Wards, however it may well destroy our competition.



Section 1769 will require each retailer selling manufacturer warranted goods to maintain a cash float to cover repairs, replacements or reimbursements under the manufacturer's warranty. How can a small retailer handle this load?

Further, how can a small retailer make use of Section 1771? By filing a lawsuit at great expense? By threatening to discontinue carrying the manufacturer's line? Can we seriously consider that the manufacturer will care?

Further, what of the small to medium manufacturer against the medium to large retailer. Suppose he is sued by the retailer who has replaced or reimbursed when it would have been cheaper to repair; or repaired at huge expense instead of replaced. He has no defense, nor does he have the muscle to resist the claim.

In short, as previously expressed this is not too bad a bill for the "big", but a disaster for the "littles".

I have no solution because the choice is so unsatisfactory. If manufacturers are required to maintain service facilities, then the smaller manufacturer is excluded from the state; however if retailers must bear the burden, the small retailer is excluded.

Perhaps, an answer is that under 1769 the retailer need only forward the goods to the manufacturer or replace at the retailer's option. This suggestion requires great changes in Sections 1770 and 1771. Other than that, I have no suggestions.

3. Section 1775 should be amended to read:

"No class action may be brought under the provisions of Sections 1773 and 1774."

In summary, although it sounds trite, this bill is federal stuff. Only the federal government can effectively handle the national and international problems created by service and repair facility requirement bills. In all good faith, this area ought to be studied--not to establish that legislation is needed--but rather how to draft such legislation without drafting an anti-competitive bill.



## SB 272

SB 272 is based on an extensive interim hearing by the Senate Committee on Business and Professions into consumer warranty problems. As well as surviving the normal legislative procedure, the bill has been subjected to a word by word scrutiny by attorneys and representatives of the California Manufacturers Association and the California Retailers Association in a series of meetings with Senator Song and his staff. As a result of these meetings, the bill has been significantly amended to make it a workable and beneficial piece of legislation.

### Common Questions

(1) What is an implied warranty?

Answer: A warranty is a statement by the manufacturer or other party regarding the nature of goods for sale. Unless specifically disclaimed, all goods for sale carry an implied warranty that they are fit for the ordinary purposes for which such goods are used, and the seller is liable if they are not. This is already part of the Commercial Code and is not affected by SB 272.

(2) What is an express warranty?

Answer: A written statement by the manufacturer or other party guaranteeing the life of his product and/or offering service or compensation if the product is defective.

(3) Why do manufacturers give express warranties?

Answer: Primarily to advertise their products and to give the purchaser a sense of security at the time of sale. Express warranties are basically sales aids.

(4) Are there warranty abuses?

Answer: Indeed there are. Mrs Virginia Knauer, President Nixon's Special Assistant for Consumer Affairs, reports that warranty problems are the leading cause of the complaints reaching her office. During its interim hearing last fall, the Senate Business and Professions Committee cataloged the following consumer abuses:

(a) The warranty fails to state any method of obtaining repairs for the defective product.

(b) Neither manufacturer nor retailer accepts responsibility for the warranty.



(c) The warranty is good only if the purchaser ships the defective product at his own expense to Cincinnati, Ohio.

(d) The warranty is written in confusing or mis-leading terms.

(e) The warranty is written in such a manner as to give less protection than the normal implied warranty attached to goods in commerce.

(f) Warranty repair work takes months to complete.

(g) The local retailer/repairer refuses to do any warranty work because he is not fully reimbursed by the manufacturer.

The common cause of these abuses is the desire of a few manufacturers to receive the advertising benefit of an express warranty without having to pay for it.

(5) What safeguards does SB 272 provide against these problems with express warranties?

Answer: First, the bill gives the manufacturer a choice of designating authorized service facilities in California to handle his warranty work. These may consist of certain of the retailers presently carrying his goods, independent repair dealers with whom he makes an agreement, or special facilities which he establishes. Many manufacturers (Sony, RCA, Sunbeam, Panasonic, etc.) presently use this system.

(6) What if the manufacturer fails to designate these service facilities?

Answer: Then the bill requires him to reimburse his retailers for their full expenses in servicing his warranties.

(7) How does this benefit the consumer?

Answer: Under SB 272, the consumer has only to return his defective product to the nearest service facility or retailer in order to receive the service promised by the warranty. No more prepaid shipments to Bayonne, New Jersey or complementary disclaimers of responsibility by manufacturer and retailer.

(8) How else does the bill benefit the consumer?

Answer: It requires warranty repairs to be completed within 30 days, unless the consumer agrees to a longer period.

It requires that warranties be written in "readily understood

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language".

It also permits any consumer or retailer injured by a willfull breach of this chapter to sue for triple damages (but not in class actions.)

(9) Suppose a distributor or retailer makes his own express warranty? Is the manufacturer responsible for servicing it?

Answer: No. The bill provides that the maker of the warranty is responsible for servicing it. The bill also requires the maker of the warranty to clearly identify himself on the warranty.

bill  
(10) Doesn't this/place an extra burden on the retailer?

Answer: Yes, but it also gives him the right of full recovery from the manufacturer for warranty work which he does not presently enjoy.

At worst, he might be forced to inform the manufacturer that he could no longer sell the manufacturer's goods with an express warranty. This might possibly cause a few conflicts in the relationship between manufacturer and retailer, but that is better than having California citizens suckered by false promises and not know where to turn in order to obtain redress.

(11) Does the bill place an additional burden on the manufacturer?

Answer: It does, but only if he chooses to issue an express warranty and receive the benefit therefrom. If he wants the benefit, the bill requires him to accept the related responsibility.

The worst that could happen to a manufacturer is that he would have to sell his products without an express warranty. This might be the only choice for the small, out-of-state manufacturer, but it is a better choice than having California consumers stuck with his worthless warranties.

#####



x

August 24, 1970

C  
O  
P  
Y  
  
Honorable Ronald Reagan  
Governor  
State of California  
Sacramento, California 95814

Re: SB 272

Dear Governor Reagan:

This bill was passed by the Senate on a vote of 24-5, the Assembly by 65-1, and has been sent to you for your approval.

I am enclosing two explanatory pieces which describe the main provisions of SB 272. There are three points, however, that I wish to emphasize.

First, the bill deals only with the retail sale of "consumer goods", a term which is rather narrowly defined. Non-retail sales of consumer goods, retail sales of non-consumer goods, and all non-retail commercial transactions will continue to be regulated by the Commercial Code and would not be affected by SB 272.

Second, the bill only affects those manufacturers who choose to give written warranties with their consumer goods. Further, it requires them to provide only those services that they themselves have promised in their warranties. The purpose of the bill is to permit the buyer of a defective product to obtain this promised service with relative convenience and thus eliminate the situation in which enforcement of the warranty becomes (as the warrantor knows and intends) more difficult and expensive than the purchase of a new product.

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LEGISLATIVE INTENT SERVICE



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Honorable Ronald Reagan

-2-

August 24, 1970

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Third, the bill has been scrutinized by representatives of the California Retailers Association, the California Manufacturers Association, General Motors, J. C. Penney, Montgomery Ward, etc. We had four formal sessions, each lasting several hours, and numerous informal meetings at which the bill was examined section by section, word by word. As a result of these meetings, we accepted a series of amendments, both of language and substance. The amendments eliminated the opposition in the Assembly and have made the bill acceptable at least to both Retailers and Manufacturers.

I believe that this is an important piece of legislation that will benefit many Californians. I respectfully request that you sign this bill into law.

Sincerely,

ALFRED H. SONG

AHS/laj

Enclosure

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE



A-116



August 12, 1970

EXPLANATION OF SB 272

SB 272 applies to manufacturers who choose to give express warranties with the sale of their consumer products. These manufacturers gain considerable advertising benefit from these warranties. SB 272 would impose the responsibility upon the manufacturers to live up to the terms of their warranties.

The bill gives the manufacturer a series of choices. He must first choose whether or not he wishes to issue an express warranty. If, and only if, he issues an express warranty, does he face the second choice.

This choice requires the manufacturer either to maintain authorized service facilities or to fully reimburse the actual, reasonable cost of all his retailers for servicing his (the manufacturer's) warranty.

The option of maintaining authorized service facilities is in the bill as a benefit to the manufacturer while still requiring him to provide convenient service for the consumer. It permits him to select certain retailers or certain repair dealers out of the many dealing with his products to handle warranty servicing. It allows him to restrict the number of retailers to whom he would be liable for warranty work. Many manufacturers (Sony, RCA, Sunbeam, etc.) presently use a system of authorized service facilities.

If the manufacturer declines this option, the bill then makes him liable to all his retailers for their full expenses in servicing his warranties.

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In this alternative the following rights are created:

a. The consumer has the right to return the defective goods to the retailer for repair or replacement (as the retailer chooses) in accordance with the terms of the warranty.

b. The retailer, in turn, has the right to collect from the manufacturer his full, actual and reasonable costs in servicing the manufacturer's warranty.

This is the major provision of SB 272.

The bill also does the following:

- (1) Prohibits disclaimers of implied warranties.
- (2) Requires that warranty repairs must be completed within 30 days, unless the consumer agrees in writing to a longer period.
- (3) Requires that express warranties shall be written in clear and concise terms and clearly identify the party making the warranty.
- (4) Permits any consumer or retailer injured by a wilful breach of this chapter to sue for triple damages, but prohibits triple damage claims in class actions.

SB 272 substantially aids the consumer with warranty problems, which are by far the most common cause of consumer complaints.

The bill does place extra burden on the retailer of handling warranty problems, but it also gives him the right of full recovery which he does not presently enjoy. Also, as between the retailer and the consumer, the retailer is in a far better position to deal with the manufacturer.

The bill does place the responsibility on manufacturers to

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live up to the terms of their warranties. And so they should. No manufacturer has to issue an express warranty. He does so because it is good advertising. It is his choice. SB 272 says that if he chooses this benefit he must also accept the related responsibility.

One brief additional point. What is the very worst that could happen to a manufacturer or retailer under this bill?

The worst that could happen to a manufacturer is that he would have to sell his products without an express warranty. This might be the only choice for the small, out-of-state manufacturer, but it is a better choice than having California consumers stuck with his worthless warranties.

The worst that could happen to a retailer is that he might have to inform a manufacturer that he could no longer sell the manufacturer's goods or could no longer sell them with an express warranty. This might possibly cause a few conflicts in the relationship between manufacturer and retailer, but that is better than having California citizens suckered by false promises, not knowing where to turn in order to obtain redress.

The fears that have been expressed by certain manufacturers have little basis in fact. Businesses such as Sears have long enjoyed the reputation of standing behind their warranties, obviously with no adverse effect on their very successful business. General Electric subscribes to this principle. In other words, the reputable manufacturer has nothing to fear. Lets give the consumer a break.

#####

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# Hearing on Warranties Told of 'Slipshod' Work

Los Angeles Times

Contractor Claims  
Manufacturers Cut  
Quality to Compete

BY WILLIAM ENDRICH

## RETAILERS COMPLAIN

### Appliance, Auto Warranties Come Under Fire in Probe

BY RICHARD WEST  
Los Angeles Times

Page 1

Appliance and auto retailers are complaining that manufacturers are cutting quality to compete in a market that is becoming increasingly price-sensitive. The retailers say that the quality of work is slipping, and that the manufacturers are not doing enough to protect their warranties. The retailers are also complaining that the manufacturers are not doing enough to protect their customers. The retailers are also complaining that the manufacturers are not doing enough to protect their customers. The retailers are also complaining that the manufacturers are not doing enough to protect their customers.

Please Turn to Page 13, Col. 1

## THE CONSUMER

### Solid Warranties Promised in State Bill

BY ALEXANDER AUERBACH  
Los Angeles Times

Consumers will have more protection under a new state law that promises to make warranties more meaningful. The law will require manufacturers to provide more detailed information about their products and their warranties. The law will also require manufacturers to provide more detailed information about their products and their warranties. The law will also require manufacturers to provide more detailed information about their products and their warranties.

Under the new law, consumers will be able to easily understand the language of warranties.

If the term is not explained in a warranty, it is still subject to a court's interpretation. This is a problem because consumers often do not know what the terms mean. For example, a warranty might say "the maker doesn't guarantee that the thing will take me even if it's broken enough to sell." The bill also allows both the consumer and retailer to sue the manufacturer for false promises, plus a possible civil action against the manufacturer.

The bill also allows both the consumer and retailer to sue the manufacturer for false promises, plus a possible civil action against the manufacturer.

their practices in accordance with the provisions.

According to one of the bill's authors, the bill is designed to protect consumers from the "slipshod" work that is being done by manufacturers.

The bill also allows both the consumer and retailer to sue the manufacturer for false promises, plus a possible civil action against the manufacturer.

The bill also allows both the consumer and retailer to sue the manufacturer for false promises, plus a possible civil action against the manufacturer.

Please Turn to Page 13, Col. 1

...includes reporting the hearing on a report...  
...Committee on Natural Resources...  
...legislature less than 100 days after...

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SENATE

6/24/70

Dist.		Aye	No
13	Alquist	✓	
26	Beilenson	✓	
14	Bradley		✓
38	Burgener	✓	
16	Burns	✓	
22	Carrell		
1	Collier		
36	Cologne		✓
20	Coombs		
23	Cusanovich	✓	
27	Danielson	✓	
37	Deukmejian	✓	
32	Dills	✓	
12	Dolwig		
29	Dymally	✓	
17	Grunsky		
21	Harmer		✓
33	Kennick	✓	
24	Lagomarsino		
9	Marks	✓	
2	Marler		✓
4	McCarthy	✓	
40	Mills	✓	
10	Moscone	✓	
7	Nejedly	✓	
11	Petris	✓	
19	Richardson		✓
5	Rodda	✓	
34	Schmitz		
39	Schrade	✓	
8	Sherman		
6	Short		
28	Song	✓	
25	Stevens	✓	
18	Stiern		
3	Teale	✓	
30	Walsh	✓	
15	Way		
31	Wedworth	✓	
35	Whetmore	✓	

Ayes 24  
Noes 5

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A121

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# Legislative Council of California

GEORGE H. MURPHY

May 7, 1970

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DEPUTIES

Honorable Alfred H. Song  
Senate Chamber

S.B. 272 - Conflict

Dear Senator Song:

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. 292 - Hayes

Enactment of these measures in their present form may give rise to a serious legal problem which probably can be avoided by appropriate amendments.

We urge you to consult our office in this regard at your earliest convenience.

Very truly yours,

George H. Murphy  
Legislative Counsel

cc: Committee  
named above  
Each lead author  
concerned

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1. Under the definition of "Distributor" [Section 1791(d)], reference is made to parties which stand between the manufacturer and the retail seller. Do we, as a public utility, fall within this definition by reason of our programs of advertising, bill inserts, and other activities which help to sell gas air conditioning and any other gas appliance? What responsibility do we have if we recommend a particular type of appliance which is subsequently purchased? What does "other legal relationship" mean in the definition?
2. Under the definition of "Buyer". [Section 1791(b)], do general contractors, subdivision developers, commercial developers and industrial customers differ from the ordinary "retail buyer"? Does the law apply to general contractors, etc.?
3. If a public utility effectuates a manufacturer warranty, does the utility become liable for obligations under the "Express Warranty" provision (Section 1791.2) or under the implied warranty of fitness provision (Section 1792.1)?  
If a public utility contracts for the work for effectuating the manufacturer's express warranty, what is the obligation, if any, under the bill?
4. If a public utility merchandises an appliance, e.g. gas lights, and contracts with an independent contractor for installation, does the public utility have any liability under the provision of the bill for 1) the appliance, or 2) the installation work?



5. Does the bill apply to personal property only as compared to installation of equipment which becomes a part of a residence and thus a fixture, e.g. air conditioning equipment, dishwashers, built-in ranges, water heaters, etc.?

Under 1793.3 it is contemplated that the buyer must return the defective goods to the retail seller. It is not feasible to move installed fixtures and it could well be inferred that such items should thus not be considered to be "consumer goods".

6. What is the extent of the application of the triple provision in Section 1794? Does it apply to manufacturers, distributors, retail sellers and "other legal relationships" and, if so, are they joint and severably liable? Does it apply to the cost of the merchandise, the installation costs, the cost repair, or all of these?





**AUTHOR'S COPY**

Date: 1/21/70

Request No. 974

**LEGISLATIVE COUNSEL'S DIGEST**

SB 272, as introduced,

Song

Bill No.

Author

Committee

Consumer goods transactions.

General Subject

Adds Title 1.3 (commencing with Sec. 1750),  
Pt. 4, Div. 3, Civ. C.

Enacts "Song Consumer Warranty Protection Act."

Establishes obligations of manufacturers, distributors,  
and sellers of consumer goods, and rights of buyers thereof,  
with respect to particular transactions.

Vote - Majority; Appropriation - No; Fiscal Committee - No.

LEGISLATIVE COUNSEL

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27580-001 12 1970 (12 TO SET) L.T. O&P

Preliminary Sections:

1 (a) This chapter may be cited as the "Song Consumer Warranty Protection Act."

1 (b) Any waiver by the buyer of consumer goods of the provisions of this chapter except as expressly provided herein shall be deemed contrary to public policy and shall be unenforceable and void.

1 (c) If any provision of this chapter or the application thereof to any person or circumstance is held unconstitutional, the remainder of the chapter and the application of such provisions to other persons or circumstances shall not be affected thereby.

1 (d) The provisions of this act shall not affect the rights and obligations of parties determined by reference to the Commercial Code except that where the provisions of the Commercial Code conflict with the rights guaranteed to buyers of consumer goods under the provisions of this chapter the provisions of this chapter shall prevail.

2 (a) Definitions:

1. Consumer Good: "Consumer Good" or "Consumer Goods" means any motor vehicle, machine, appliance, device, product



or commodity that is used or bought for use primarily for personal, family or household purposes.

2. Buyer: "Buyer" or "Retail Buyer" means any person who buys consumer goods from a person engaged in the business of manufacturing, distributing or selling such goods at retail.

3. Manufacturer: "Manufacturer" means any individual, partnership, corporation, association or other legal relationship which manufactures, assembles, produces or gathers consumer goods.

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

5. Retail Seller: "Retail Seller" or "Seller" or "Retailer" means any individual, partnership, corporation, association or other legal relationship which engages in the business of selling new goods to retail buyers.

6. Implied Warranty of Merchantability: "Implied Warranty of merchantability" or "Implied Warranty that goods are merchantable", means that the consumer goods must be at least such as:

- (a) Pass without objection in the trade under the contract description; and
- (b) Are fit for the ordinary purposes for which such goods are used; and
- (c) Are free from defects of materials or workmanship; and
- (d) Are adequately contained, packaged and labeled;

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and

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

7. Implied Warranty of Fitness: "Implied Warranty of Fitness" means that when the retailer, distributor or manufacturer has reason to know any particular purpose for which the consumer goods are required and further, that the buyer is relying on the skill and judgement of the seller to select and furnish suitable goods, then there is an implied warranty that the goods shall be fit for such purpose.

3. Sale "AS IS" or "WITH ALL FAULTS": Sale "AS IS" or "WITH ALL FAULTS" means that the manufacturer, distributor and retailer disclaim all implied warranties that would otherwise attach to the sale of consumer goods under the provisions of this chapter. In the absence of any express warranties accompanying the sale, the buyer assumes the entire risk as to the quality and performance of the goods purchased on an "AS IS" or "WITH ALL FAULTS" basis.

1. Every sale of consumer goods by a manufacturer in this state shall be accompanied by an implied warranty that the goods are merchantable, except that no such implied warranty accompanies the sale of consumer goods that are sold on an "AS IS" or "WITH ALL FAULTS" basis, provided the provisions of this chapter affecting "AS IS" or "WITH ALL FAULTS" sales are strictly complied with.

2. Every sale of consumer goods in this state by a manufacturer who has reason to know at the time of the sale that the goods are required for a particular purpose and that

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and that the buyer is relying on the manufacturer's skill or judgement to select or furnish suitable goods shall be accompanied by an implied warranty of fitness.

2 (a) If the sale is made through a retailer or distributor, and that retailer or distributor has reason to know at the time of sale that the goods are required for a particular purpose and that the buyer is relying on the retailer's or distributor's skill or judgement to select or furnish suitable goods, then, in lieu of the manufacturer, that retailer or distributor shall be deemed to have impliedly warranted that the goods are fit for that purpose.

3. The implied warranty of merchantability and, where applicable, the implied warranty of fitness are expressly made non-waiveable, except in the case of a sale of consumer goods on an "AS IS" or "WITH ALL FAULTS" basis, provided the provisions of this chapter affecting "AS IS" or "WITH ALL FAULTS" sales are strictly complied with.

4. No sale of consumer goods on an "AS IS" or "WITH ALL FAULTS" basis shall be effective to disclaim the implied warranty of merchantability or where applicable the implied warranty of fitness, unless

(a) a conspicuous writing is attached to the goods which clearly informs the buyer in simple and concise language that;

(i) the goods are being sold on an "AS IS" or "WITH ALL FAULTS" basis; and

(ii) the entire risk as to the quality and performance of the goods is with the buyer; and

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

5. Every sale of consumer goods on an "AS IS" or "WITH ALL FAULTS" basis, made in compliance with the provisions of this chapter shall constitute a waiver by the buyer, of the implied warranty of merchantability and where applicable the implied warranty of fitness.

6. Nothing in this chapter shall affect the right of the manufacturer, distributor or retailer to make additional warranties with respect to consumer goods, but a manufacturer, distributor or retailer, may not, by such additional warranties modify or limit the application of the warranties guaranteed by this chapter to the sale of consumer goods.

7. Every manufacturer, distributor or retailer making additional warranties with respect to consumer goods shall express such additional warranties in clear and concise terms and clearly identify the party making such additional warranties.

8. Every manufacturer of consumer goods which are sold in this state and for which there exists a warranty, either expressed or implied in law, shall maintain in this state sufficient service and repair facilities to carry out the terms of such warranties.

9. Where such service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not comply with the implied warranty of fitness, such service and repair must be commenced within a reasonable time following



receipt of the goods by the manufacturer or its representative in this state, and unless buyer agrees in writing to the contrary, the goods must be returned, at the manufacturer's expense, in merchantable condition within 30 days. Should the manufacturer be unable to return merchantable goods, he shall;

(i) replace; or

(ii) 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 discovery of the defect, provided that in no event

shall such deduction from the purchase price be made

for defective goods forwarded to the manufacturer

or his representative in this state within 30 days

of their purchase.

10 (a) Failure to provide the required service and repair facilities within this state shall create the following option in the buyers:

1. Return the defective article to the retail seller from whom the defective good was purchased for;

(i) replacement; or

(ii) service or repair in accordance with the terms and conditions of the warranties;

at the option of the buyer.

(iii) If the retail seller is unable to replace the defective article with merchantable goods or is unable to service or repair the goods in accordance with the terms and conditions of the warranty, the retail

seller shall reimburse the buyer in the amount equal to the purchase price paid by the buyer less that

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amount directly attributable to use by the buyer prior to discovery of the defect, provided that in no event shall such deductions from the purchase price be made for defective goods returned to the retail seller within 30 days of their purchase.

2. Return the defective article to the nearest retail seller of like goods of the manufacturer for:

- (i) replacement; or
- (ii) service or repair, in accordance with the terms and conditions of the warranties; at the option of the retail seller.

10 (b) Where the option is exercised in favor of service and repair under 10 (a) 1 or 2 above, such service and repair must be commenced within a reasonable time, and unless buyer agrees in writing to the contrary the goods must be returned in merchantable condition within 30 days.

11. Every manufacturer who fails to provide, when required by this chapter, service and repair facilities within this state shall be liable to every retail seller of that manufacturer's goods who incurs obligations in giving effect to the warranties that accompany that manufacturer's consumer goods, in the following manner:

(a) in the event of replacement in an amount equal to the actual cost to the retail seller of the replaced goods, plus a reasonable handling charge.

(b) in the event of service and repair, in the amount equal to that which would be received by the retail seller for like service rendered to retail consumers who are not entitled to warranty

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protection, including where applicable the cost of parts, servicing, labor, storage overhead and a reasonable profit.

(c) in the event of reimbursement under option 10 (a) (1) (iii) above, in an amount equal to that reimbursed to the buyer, plus a reasonable handling charge.

12. In the event of additional warranties made by persons other than the manufacturer of the goods the obligation of the person making such additional warranties shall be the same as that imposed on manufactures under sections 8, 9 and 10 of this chapter.

13. Any buyer of consumer goods injured by a willful violation of the provisions of this chapter may bring an action for the recovery of damages. Judgement may be entered for three times the amount at which the actual damages are assessed plus reasonable attorney fees.

14. Any retail seller of consumer goods injured by the willful or repeated violation of the provisions of this chapter may bring an action for the recovery of damages. Judgement may be entered for three times the amount at which the actual damages are <sup>Asses</sup> assessed plus reasonable attorney fees.

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# Legislative Counsel of California

GEORGE H. MURPHY

Sacramento, California  
September 4, 1970

Honorable Ronald Reagan  
Governor of California  
State Capitol  
Sacramento, California

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## REPORT ON ENROLLED BILL

S. B. 272                      SONG. Adds Title 1.7 (commencing with Sec. 1790), Pt. 4, Div. 3, Civ. C., re consumer goods transactions.


SUMMARY:                      See Legislative Counsel's Digest on attached copy of bill as adopted.

FORM:                              Approved.

CONSTITUTIONALITY:              Approved.

TITLE:                              Approved.

George H. Murphy  
Legislative Counsel

  
By  
Bion M. Gregory  
Deputy Legislative Counsel

BMG:st

Two copies to Honorable Alfred H. Song,  
pursuant to Joint Rule 34.

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE-1

GOVERNOR'S OFFICE

Sacramento.....

Subject: ~~A.B.~~ 272  
S.B. ....

Please reply forthwith

OK  
EG

*ca - no v. ...*

The attached bill has been received at this office for Governor Reagan's consideration.

The Governor will appreciate an analysis of this bill, together with your recommendations.

LEGISLATIVE SECTION

17970-401 1-68 2M OSP

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE-2

# ENROLLED BILL REPORT

Agriculture & Services Agency

Department, Board or Commission Professional and Vocational Standards	AUTHOR Song and Karabian	BILL NUMBER SB-272
--	-----------------------------	-----------------------

**SUBJECT:**

This bill enacts the Consumer Warranty Protection Act.

**HISTORY, SPONSORSHIP AND RELATED LEGISLATION:**

The sponsor is unknown. A related bill AB-292, currently in enrollment, concerns the same general subject.

**ANALYSIS:**

**A. Specific Findings**

Defines consumer goods as any motor vehicle, machine, appliance, product, or commodity used or bought primarily for personal, family, or household purposes. Provides that every sale or consignment of consumer goods by a manufacturer in this state shall, unless the sale is on an "as is" or "with all faults" basis, be accompanied by an implied warranty that the goods meet all of the following requirements: Will pass without objection in the trade under the contract description, are fit for the ordinary purposes for which such goods are used, are free from defects of materials or workmanship, are adequately contained, packaged, and labeled, and conform to the promises or affirmations of fact made on the container or label. Provides that every sale or consignment of consumer goods in this state by a manufacturer or through a retailer or distributor shall, if the manufacturer, retailer, or distributor has reason to know that the goods are required for a particular purpose and that the buyer is relying on the skill or judgment of the manufacturer, retailer, or distributor to furnish suitable goods, be accompanied by an implied warranty that the goods are fit for that purpose. With respect to sales on an "as is" or "with all faults" basis, excludes above described warranties of merchantability and fitness only if a conspicuous writing is attached to the goods which clearly informs the buyer that the goods are sold on such a basis, that the entire risk as to quality and performance is on the buyer, and that the buyer assumes all costs of service or repair. Requires manufacturers of consumer goods sold in this state for which an express or implied warranty exists to maintain sufficient service and repair facilities in this state to carry out such warranty. Requires manufacturers to perform such service and repair within a reasonable time after the goods have been returned to him or his representative and, unless the buyer has agreed otherwise in writing, to return the goods to the buyer in merchantable condition within 30 days. Requires the manufacturer, if he is unable to so return the goods (Cont.)

The last approved position of this department was Not Favor. The vote in the Senate was 24-5 and in the Assembly 64-1.

**RECOMMENDATION**

Sign.

PE 3

Department Director

DATE

Agency Secretary

DATE

*[Signature]*

8-31-70

*[Signature]*

SEP 9 1970

# ENROLLED BILL REPORT

Agriculture & Services Agency

Department, Board or Commission

AUTHOR

BILL NUMBER

Professional and Vocational Standards

Song and Karabian

SB-272

## ANALYSIS:

### A. Specific Findings (Cont'd.)

to either replace them or reimburse the buyer for their purchase price less any amount attributable to use by the buyer prior to discovery of the defect. Gives the buyer the following options if the manufacturer fails to provide service and repair service facilities in this state: (a) To return the goods to the retail seller for replacement, service or repair under the warranty, in which case the seller has the same obligations as the manufacturer; (b) to return the goods to the nearest retail seller of like goods of the manufacturer for replacement, service, or repair. Makes the manufacturer who fails to provide the required repair and service facilities liable to the retail seller for the latter's costs of performing under the warranty. Gives buyers and retailers injured by willful violations a cause of action for treble damages, plus attorneys fees.

### B. Financial Effect

Effect on this department is indeterminate. Could result in added complaint workload to the Consumers Affairs Division.

LEGISLATIVE INTENT SERVICE (800) 666-1917



## RECOMMENDATION

PE-4

Department Director

DATE

Agency Secretary

DATE

SEP 2 1970

STATE CAPITOL  
SACRAMENTO, CALIFORNIA 95814  
TEL. (916) 445-1720

DISTRICT OFFICE  
1611 SO. PACIFIC COAST HIGHWAY  
REDONDO BEACH, CALIF. 90277  
TEL. 378-8522

COMMITTEES

CHAIRMAN, FINANCE AND  
INSURANCE

LOCAL GOVERNMENT

REVENUE & TAXATION

# Assembly California Legislature

ROBERT G. BEVERLY  
ASSEMBLYMAN, FORTY-SIXTH DISTRICT

August 31, 1970

Honorable Ronald Reagan  
Governor of California  
State Capitol  
Sacramento, California

Re: Senate Bill 272

Dear Governor Reagan:

Senate Bill 272 is now before you for your consideration.

Although Senator Song is the principal author of this measure, I am co-author and carried the bill on the Assembly floor. This is major consumer legislation and in fact, if signed into law, will make California a pioneer in enacting strong statutory support to require manufacturers to live up to their express warranties.

Although the measure was initially opposed by representatives of manufacturers and retailers, it is my understanding that in its present form it is no longer opposed.

Your early approval of this legislation will be appreciated.

Respectfully,

  
ROBERT G. BEVERLY

RGB:kmp

(800) 666-1917

LEGISLATIVE INTENT SERVICE



65

REPLY TO:  
STATE CAPITOL  
SACRAMENTO 95814  
(916) 445-3386

LEGISLATIVE OFFICE  
STATE BUILDING  
LOS ANGELES 90012  
(213) 620-5540

DISTRICT OFFICE  
2337 SO. GARFIELD AVENUE  
MONTEREY PARK 91754  
(213) 724-3825

# California State Senate

ALFRED H. SONG  
STATE SENATOR  
TWENTY-EIGHTH SENATORIAL DISTRICT

53 B. 272  
COMMITTEES  
BUSINESS AND PROFESSIONS  
CHAIRMAN  
HEALTH AND WELFARE  
INDUSTRIAL RELATIONS  
JUDICIARY  
MEMBER  
CALIFORNIA LAW REVISION  
COMMISSION  
STATE ALLOCATION BOARD

August 24, 1970

Honorable Ronald Reagan  
Governor  
State of California  
Sacramento, California 95814

Re: SB 272

Dear Governor Reagan:

This bill was passed by the Senate on a vote of 24-5, the Assembly by 65-1, and has been sent to you for your approval.

I am enclosing two explanatory pieces which describe the main provisions of SB 272. There are three points, however, that I wish to emphasize.

First, the bill deals only with the retail sale of "consumer goods", a term which is rather narrowly defined. Non-retail sales of consumer goods, retail sales of non-consumer goods, and all non-retail commercial transactions will continue to be regulated by the Commercial Code and would not be affected by SB 272.

Second, the bill only affects those manufacturers who choose to give written warranties with their consumer goods. Further, it requires them to provide only those services that they themselves have promised in their warranties. The purpose of the bill is to permit the buyer of a defective product to obtain this promised service with relative convenience and thus eliminate the situation in which enforcement of the warranty becomes (as the warrantor knows and intends) more difficult and expensive than the purchase of a new product.

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PE-6

Honorable Ronald Reagan

-2-

August 24, 1970

Third, the bill has been scrutinized by representatives of the California Retailers Association, the California Manufacturers Association, General Motors, J. C. Penney, Montgomery Ward, etc. We had four formal sessions, each lasting several hours, and numerous informal meetings at which the bill was examined section by section, word by word. As a result of these meetings, we accepted a series of amendments, both of language and substance. The amendments eliminated the opposition in the Assembly and have made the bill acceptable at least to both Retailers and Manufacturers.

I believe that this is an important piece of legislation that will benefit many Californians. I respectfully request that you sign this bill into law.

Sincerely,



ALFRED H. SONG

AHS/laj

Enclosure

(800) 666-1917

LEGISLATIVE INTENT SERVICE



PE-7



SB 272

SB 272 is based on an extensive interim hearing by the Senate Committee on Business and Professions into consumer warranty problems. As well as surviving the normal legislative procedure, the bill has been subjected to a word by word scrutiny by attorneys and representatives of the California Manufacturers Association and the California Retailers Association in a series of meetings with Senator Song and his staff. As a result of these meetings, the bill has been significantly amended to make it a workable and beneficial piece of legislation.

Common Questions

(1) What is an implied warranty?

Answer: A warranty is a statement by the manufacturer or other party regarding the nature of goods for sale. Unless specifically disclaimed, all goods for sale carry an implied warranty that they are fit for the ordinary purposes for which such goods are used, and the seller is liable if they are not. This is already part of the Commercial Code and is not affected by SB 272.

(2) What is an express warranty?

Answer: A written statement by the manufacturer or other party guaranteeing the life of his product and/or offering service or compensation if the product is defective.

(3) Why do manufacturers give express warranties?

Answer: Primarily to advertise their products and to give the purchaser a sense of security at the time of sale. Express warranties are basically sales aids.

(4) Are there warranty abuses?

Answer: Indeed there are. Mrs Virginia Knauer, President Nixon's Special Assistant for Consumer Affairs, reports that warranty problems are the leading cause of the complaints reaching her office. During its interim hearing last fall, the Senate Business and Professions Committee cataloged the following consumer abuses:

(a) The warranty fails to state any method of obtaining repairs for the defective product.

(b) Neither manufacturer nor retailer accepts responsibility for the warranty.



(c) The warranty is good only if the purchaser ships the defective product at his own expense to Cincinnati, Ohio.

(d) The warranty is written in confusing or mis-leading terms.

(e) The warranty is written in such a manner as to give less protection than the normal implied warranty attached to goods in commerce.

(f) Warranty repair work takes months to complete.

(g) The local retailer/repairer refuses to do any warranty work because he is not fully reimbursed by the manufacturer.

The common cause of these abuses is the desire of a few manufacturers to receive the advertising benefit of an express warranty without having to pay for it.

(5) What safeguards does SB 272 provide against these problems with express warranties?

Answer: First, the bill gives the manufacturer a choice of designating authorized service facilities in California to handle his warranty work. These may consist of certain of the retailers presently carrying his goods, independent repair dealers with whom he makes an agreement, or special facilities which he establishes. Many manufacturers (Sony, RCA, Sunbeam, Panasonic, etc.) presently use this system.

(6) What if the manufacturer fails to designate these service facilities?

Answer: Then the bill requires him to reimburse his retailers for their full expenses in servicing his warranties.

(7) How does this benefit the consumer?

Answer: Under SB 272, the consumer has only to return his defective product to the nearest service facility or retailer in order to receive the service promised by the warranty. No more prepaid shipments to Bayonne, New Jersey or complementary disclaimers of responsibility by manufacturer and retailer.

(8) How else does the bill benefit the consumer?

Answer: It requires warranty repairs to be completed within 30 days, unless the consumer agrees to a longer period.

It requires that warranties be written in "readily understood

PE-1



language".

It also permits any consumer or retailer injured by a wilfull breach of this chapter to sue for triple damages (but not in class actions.)

(9) Suppose a distributor or retailer makes his own express warranty? Is the manufacturer responsible for servicing it?

Answer: No. The bill provides that the maker of the warranty is responsible for servicing it. The bill also requires the maker of the warranty to clearly identify himself on the warranty.

bill  
(10) Doesn't this place an extra burden on the retailer?

Answer: Yes, but it also gives him the right of full recovery from the manufacturer for warranty work which he does not presently enjoy.

At worst, he might be forced to inform the manufacturer that he could no longer sell the manufacturer's goods with an express warranty. This might possibly cause a few conflicts in the relationship between manufacturer and retailer, but that is better than having California citizens suckered by false promises and not know where to turn in order to obtain redress.

(11) Does the bill place an additional burden on the manufacturer?

Answer: It does, but only if he chooses to issue an express warranty and receive the benefit therefrom. If he wants the benefit, the bill requires him to accept the related responsibility.

The worst that could happen to a manufacturer is that he would have to sell his products without an express warranty. This might be the only choice for the small, out-of-state manufacturer, but it is a better choice than having California consumers stuck with his worthless warranties.

#####

PE-10



August 12, 1970

EXPLANATION OF SB 272

SB 272 applies to manufacturers who choose to give express warranties with the sale of their <sup>CONSUMER</sup> products. These manufacturers gain considerable advertising benefit from these warranties. SB 272 would impose the responsibility upon the manufacturers to live up to the terms of their warranties.

The bill gives the manufacturer a series of choices. He must first choose whether or not he wishes to issue an express warranty. If, and only if, he issues an express warranty, does he face the second choice.

This choice requires the manufacturer either to maintain authorized service facilities or to fully reimburse the actual, reasonable cost of all his retailers for servicing his (the manufacturer's) warranty.

In actuality, the option of maintaining authorized service facilities is in the bill as a benefit to the manufacturer. This provision does not require him to rent one foot of space or to hire one employee. Rather, it permits him to select certain retailers or certain <sup>REPAIR</sup> ~~retail~~ dealers out of the many dealing with his products to handle warranty servicing. It allows him to restrict the number of retailers to whom he would be liable for warranty work. Many manufacturers (Sony, RCA, Sunbeam, etc.) presently use a system of authorized service facilities.

If the manufacturer declines this option, the bill then makes him liable to all his retailers for their full expenses in servicing his warranties.

DE-11



In this alternative the following rights are created:

a. The consumer has the right to return the defective goods to the retailer for repair or replacement (as the retailer chooses) in accordance with the terms of the warranty.

b. The retailer, in turn, has the right to collect from the manufacturer his full, actual and reasonable costs in servicing the manufacturer's warranty.

This is the major provision of SB 272.

The bill also does the following:

- (1) Prohibits disclaimers of implied warranties.
- (2) Requires that warranty repairs must be completed within 30 days, unless the consumer agrees in writing to a longer period.
- (3) Requires that express warranties shall be written in clear and concise terms and clearly identify the party making the warranty.
- (4) Permits any consumer or retailer injured by a wilful breach of this chapter to sue for triple damages, but prohibits triple damage claims in class actions.

SB 272 substantially aids the consumer with warranty problems, which are by far the most common cause of consumer complaints.

The bill does place extra burden on the retailer of handling warranty problems, but it also gives him the right of full recovery which he does not presently enjoy. Also, as between the retailer and the consumer, the retailer is in a far better position to deal with the manufacturer.

The bill does place the responsibility on manufacturers to

PE-12



live up to the terms of their warranties. And so they should. No manufacturer has to issue an express warranty. He does so because it is good advertising. It is his choice. SB 272 says that if he chooses this benefit he must also accept the related responsibility.

One brief additional point. What is the very worst that could happen to a manufacturer or retailer under this bill?

The worst that could happen to a manufacturer is that he would have to sell his products without an express warranty. This might be the only choice for the small, out-of-state manufacturer, but it is a better choice than having California consumers stuck with his worthless warranties.

The worst that could happen to a retailer is that he might have to inform a manufacturer that he could no longer sell the manufacturer's goods or could no longer sell them with an express warranty. This might possibly cause a few conflicts in the relationship between manufacturer and retailer, but that is better than having California citizens suckered by false promises and not know where to turn in order to obtain redress.

Much of the expressed fears is, in actuality, relatively groundless. Congress is, as you know, working in this area of consumer protection. Businesses such as Sears have long enjoyed the reputation of standing behind their warranties, obviously with no adverse effect on their very successful business. General Electric subscribes to this principle. In other words, the reputable manufacturer has nothing to fear. Lets give the consumer a break.

#####

PE-13



ENROLLED BILL MEMORANDUM TO GOVERNOR	DATE September 11, 1970
BILL NO. SB 272	AUTHOR Song & Karabian

Vote—Senate 24  
 Ayes— 5 - Bradley, Cologne, Harmer, Marler, Richardson  
 Noes—

Vote—Assembly  
 Ayes— 64  
 Noes— 1 - Ketchum

SB 272 establishes the obligations of manufacturers, distributors, and sellers of consumer goods, and rights of the buyers thereof, with respect to warranties.

The California Manufacturers Association has no substantial objections to approval. The Association feels that the bill is poorly drafted (per Al Davis).

Herb Ellingwood recommends approval.

The Department of Professional and Vocational Standards recommends approval.

Assemblyman Beverly requests approval.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



Recommendation APPROVE	Legislative Secretary <i>[Signature]</i>	PE-14
---------------------------	---	-------

To: Honorable Ronald Reagan  
Governor of California

From: Office of the Attorney General

By Peter G. DeMauro  
Deputy Attorney General

Bill Report

S. B. No. 272

September 1 , 1970 .

We have examined the above bill and find no substantial  
legal objection thereto.



3987-582 9-67 6M SETS 15P

(800) 666-1917

LEGISLATIVE INTENT SERVICE



PE-15



Volume 1

# Journal of the Assembly

Legislature of the State of California  
1970 Regular Session  
January Fifth to September Twenty-third



BOB MONAGAN  
Speaker of the Assembly

W. CRAIG BIDDLE  
Majority Floor Leader

CHARLES J. CONRAD  
Speaker pro Tempore of the Assembly

JOHN J. MILLER  
Minority Floor Leader

JAMES D. DRISCOLL  
Chief Clerk of the Assembly



LEGISLATIVE INTENT SERVICE

(800) 666-1917

### Consumer Protection

Governor's Office, Sacramento  
March 5, 1970

*To the Honorable Members of the California Legislature:*

The fundamental tenets of our free American way of life are rooted in the competitive free enterprise system. It has brought this nation the highest standard of living ever known to man.

Free enterprise has prospered in our society because, on the whole, it has served our people honestly and fairly.

Over the years, it has stimulated and encouraged the inventor, the manufacturer, the merchandiser and financier to seek out and provide for the demands of the buying public with constantly improving goods and services.

The fact that this nation's free enterprise system has survived the continued attempts at harassment and interference by bureaucratic government down through the decades—and continues, today, to meet the growing and evermore complex needs of our technological society—is a tribute to its virility and inherent rightness.

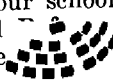
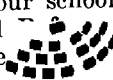
There will be some persons, of course, who will always try to misuse and exploit the system through dishonest and unethical operating methods. And while these unrepresentative few must be brought into line, or put out of business, we must, at the same time, be scrupulously careful not to penalize the vast multitude of hard working, honest and legitimate businessmen for the sins of the few.

The policy of this Administration, therefore, is that government does have a proper, indeed, vital, role to play in looking out for the consumer interests of private citizens, so long as this does not interfere with, or impair, the legitimate, balanced workings of our competitive free enterprise system.

Keeping this policy in mind, I am today asking your approval of a far-reaching series of legislative and administrative proposals which will further strengthen the state's overall program to protect consumers and legitimate businessmen from the unscrupulous entrepreneur.

I want to emphasize at the outset that even as we accelerate our programs in this area, the best protection for the consumer is that he be fully armed with the facts about fair value, full measure and safety.

For, in the final analysis, the consumer will be better able to protect his interests as he becomes better able to understand the workings of the marketplace. I am pleased that business also recognizes this need, and is stepping up its own efforts to inform the public. This Administration will continue to encourage the intensification of such programs by better business bureaus, chambers of commerce, trade organizations and businesses themselves.

In my State-of-the-State message, I said that an important part of our consumer protection program would focus on the need to develop consumer education courses in our schools. We are now working with the Commission on Educational  on this matter to determine how consumer education can be  on this matter to determine education process, at all levels.

In my view, there are five basic areas in which government must take the responsibility to protect both the consumer and the legitimate businessman:

- 1) Consumer protection against fraud. With the growth of corporate enterprise and the complexities of our economic system, individuals often have too little opportunity to investigate the integrity of a business before making a purchase.
- 2) The consumer's right to know that the goods he purchases are safe for himself and his family.
- 3) The consumer's assurance that he has the most advantageous selection and free choice in the marketplace—the result of true competition, without conspiracy or artificial restraints.
- 4) Adequate and responsive channels through which he can present legitimate grievances. Such channels are available through our court system as well as the more direct mechanism of boards, bureaus and commissions empowered to act on consumer complaints in specific areas.
- 5) Consumer education to help buyers become more competent in exercising free choice among the goods and services available to them.

With respect to consumer fraud, California has a myriad of laws on the books to deal with the fraudulent businessman. However, even though California has been a leader in aggressively prosecuting such cases—from get-rich-quick schemes and blue-sky land promotions to deceptive advertising and dishonest home improvement rackets—they are becoming increasingly more difficult to control because of their diversity.

Law enforcement in the area of consumer fraud is spread over an immense field—the State Attorney General's Office, 58 county district attorneys (3 with consumer fraud units), and some 1500 local city attorneys and police jurisdictions. How much intelligence is exchanged between these agencies? What gaps exist between jurisdictions? What better techniques are there in detection and prosecution of fraud?

Because we need answers to these questions, I will soon appoint a special fact finding task force of experts to investigate the problems associated with consumer fraud—to sift through the facts and fictions—and to make recommendations for significantly improving our statewide enforcement capabilities. The findings will surely contribute greatly to enabling California lawmakers and law enforcement officials to deal more effectively with fraud.

Before moving on to the list of specific legislative proposals in our program for this year, I would first like to briefly review the progress we made during the 1969 session.

Last year, I signed into law a number of major administration-backed consumer protection measures. As a result, California consumers are now receiving more protection against:

- Unsolicited merchandise in the mail.
- Unscrupulous merchants who try to force citizens to pay for things they haven't ordered and don't want.
- being charged for unrequested goods and services on lost or unsolicited credit cards.

- Unethical land promoters.
- Fly-by-night swimming pool contractors.

This year, I am urging your approval of another important legislative package to further strengthen the Administration's consumer protection program.

#### *Tax Consultants*

As federal and state income tax returns have become more complicated for the average citizen to fill out, tax consulting offices have multiplied to meet the growing taxpayer demand for such services.

There are indications that some tax consulting firms are selling computerized information, including mailing addresses, gained from clients—but without the expressed knowledge or approval of these clients—to organizations which, in turn, use the information for their own purposes.

Because I believe this to be an intolerable invasion of privacy—especially where the private and confidential client-professional relationship exists—I intend to propose legislation which will make such a practice unlawful.

I have asked Senator Lou Cusanovich to introduce the measure on behalf of the Administration.

#### *Tire Standards*

Because worn tires are much more likely to fail and skid particularly on wet surfaces, they constitute a particular hazard to safety on the highway.

California does not now prescribe standards for vehicle tires after they have been sold or installed for the first time.

To better protect tire users, Assemblyman Jerry Lewis has submitted an Administration bill, AB 733, which will permit setting high safety standards for all tires, resold or new, in use on motor vehicles in the state.

The law will define the minimum amount of tire tread and durability necessary for a vehicle to operate safely on our highways. It will also prohibit the sale of used and recap tires which fail to meet safety standards established by the California Highway Patrol.

#### *Excessive Medical Services*

Assemblyman James Hayes will author a particularly important bill which will enable the Boards of Medical and Dental Examiners to take disciplinary action against those who impose unnecessary or excessive services on their patients.

The legislation will apply to such persons as doctors, dentists, physical therapists, psychologists, and others in the healing arts field.

With this authority, the state will be better able to prevent excessive expenditures of Medi-Cal funds, and to help curb similar practices against the private patient.

#### *Sanitation and Health*

Assemblyman Tom Hom is carrying legislation, AB 910, to make sanitation and health requirements uniform for all grocery stores and retail food markets, throughout the state.

The bill will protect virtually every citizen—young or old—who has occasion to make food purchases by upgrading the minimum sanitation requirements in these establishments, particularly relating to perishable foods. It deserves support.

#### *Franchise Industry*

The growing popularity of the franchise industry has prompted some shady operators and confidence men to enter the field. Complaints received by my office, the Department of Corporations, and the Attorney General have all pointed to the need for legislation in this field.

Senator Clark Bradley will submit an Administration bill which will require that sellers of franchises fully disclose the financial capabilities of the firms they represent, and clearly spell out the obligations of the franchise buyer.

The legislation will combat the problem of misleading and deceptive practices engaged in by those franchisors whose activities reflect unfairly on the rest of the industry.

#### *Protection for the Insured*

At the present time, property insurers may cancel residential fire and homeowner protection policies at their pleasure, without giving a reason for such cancellation. Recently we have witnessed instances where policies were summarily cancelled on a broad scale in areas hit by fires as well as by urban riots.

When an insurer contracts to provide one, two or three years of insurance protection he should be bound by that contract unless the insured violates the contract.

Therefore, I am calling for passage of administration-sponsored legislation which would restrict the cancellation of such property insurance, while protecting the right of cancellation for such specified reasons as non-payment of premiums, conviction of an arrest arising out of acts increasing the hazard insured against, discovery of fraud or misrepresentation in obtaining the insurance, and physical changes in the property which make it uninsurable.

This legislation, AB 165, to protect the insurance-buying public, is being carried by Assemblyman Robert Beverly.

#### *Industrial Loans*

Because the deposits of thrift holders in industrial loan companies are not insured (unlike those in banks and savings and loan institutions), I am asking your approval of a bill which will guarantee that the accounts of small investors in financially troubled firms of this type be protected from loss—up to \$10,000.



The consumer confusion and hardship which results when a company fails, emphasizes the need for legislation which will guarantee greater consumer protection against such losses.

The bill will be introduced by Senator Lewis Sherman.

#### *Automotive Repairs*

I also believe much more must be done in the field of automotive repair service. There have been too many consumer complaints alleging fraudulent practices in this field.

I know that a number of the problems which appear to exist in this area are of as much concern to the responsible members of the industry as they are to the consumer.

I, therefore, call upon the responsible members of the automotive repair service industry to join us in finding a way to give the consumer protection in this field. The fraudulent practices are not only adversely affecting the public, but are—at the same time—giving the majority of the industry a name and a reputation which they do not deserve.

Failure to act quickly on this recommendation can only lead to the imposition of what might be considered overly restrictive and unnecessarily costly laws.

#### *Department of Consumer Affairs*

I have already submitted to you a detailed reorganization plan which will create the first Department of Consumer Affairs of any state in the nation.

Actually, the origins of the plan go back to 1967, shortly after I assumed office, when we began implementing a number of key recommendations by the Little Hoover Commission to revitalize the Department of Professional and Vocational Standards.

Originally established in 1929 as a licensing agency for professional practitioners, the department was seen by Governor Young as a legitimate means through which government could exercise various degrees of control and regulation over certain professions which, in turn, could, and did, influence the public's health, safety and well-being.

It was a good step.

Unfortunately, over the years and down through the course of various administrations, things changed until the department was ultimately criticized by the Little Hoover Commission as a gathering of bodies representing self-serving interest groups.

As a part of our continuing program to revitalize the department, we created a new Division of Consumer Affairs last year. It included the Office of Consumer Counsel.

In renaming the department, to be more appropriately known and operated as the Department of Consumer Affairs, Californians will be able to direct consumer complaints to a more easily identifiable central contact point in state government.

The change in orientation also will enable citizens to call the new department and know that their complaints will be processed there, or referred to the proper agency.



Besides enhancing the coordination of the state's many consumer protection activities, the reorganization will increase the number of public members on many regulatory boards and commissions in the new department—a step which is absolutely necessary if we are to give the people a greater direct voice in the regulatory process.

#### *Overall State Program*

Finally, I want to make it clear that while the proposals I have outlined are necessary if the state is to exercise greater muscle in the consumer protection field, the fact remains that the day-to-day activities of literally thousands of dedicated state employees, from one end of California to the other, are already—*today*—responsible for protecting a vast galaxy of interests of the buying public.

The scope of any legislative package in this field must be seen, therefore, against the immense backdrop of the state's current overall consumer protection functions—ranging from the Department of Motor Vehicles' protection of citizens from false advertising in the sale of automobiles, to the Department of Insurance protecting citizens from arbitrary cancellation of their car insurance, to the Real Estate Department protecting funds in escrow, and to the Department of Public Health protecting citizens against a myriad of substances dangerous to health.

And, these are only a few examples, out of the dozens upon dozens which could be cited.

We *are* protecting the interests of the consumer and the legitimate businessman. To allege otherwise is to simply ignore the facts.

The program I have presented to you *will further strengthen* our demonstrated commitment to equitable and responsible consumer protection.

Respectfully,

RONALD REAGAN, Governor

#### RECEIPT

I acknowledge receipt this 5th day of March, 1970, at 4:25 p.m. o'clock of Governor Reagan's message on Consumer Protection, delivered to me personally by Isabel Gassett of the Governor's Legislative Office.

JAMES D. DRISCOLL

Chief Clerk of the Assembly

#### BIRTHDAY GREETINGS EXTENDED TO ASSEMBLYMAN BRIGGS

Mr. Barnes announced that yesterday was the birthday of Assemblyman John V. Briggs, of the 35th District, whereupon the Members of the Assembly joined in extending best wishes and birthday greetings to Mr. Briggs.

#### APPOINTMENTS TO SUBCOMMITTEES OF LOCAL GOVERNMENT COMMITTEE

Speaker pro Tempore Conrad announced that Speaker Monagan had appointed (800) 666-1917 seven subcommittees of the Assembly Local Government Committee:

**Review of  
Selected 1970  
California  
Legislation**

(800) 666-1917

LEGISLATIVE INTENT SERVICE



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FEB 3 1971

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The 1970 Regular Session adjourned September 23, 1970. In accordance with California Constitution article 4, section 8, the majority of the 1,628 bills enacted went into effect on the 61st day after adjournment—November 23, 1970. Where effective dates differ, the review will be so noted.



## Introduction

This review of significant 1970 California Legislation is intended to be a brief analysis of the important enactments of the 1970 Regular Session. Despite the fact that 1970 was an election year, which might have reduced the output of the legislature, the 1970 session set a record as the longest in California's history. It was an important and productive session from the standpoint of major legislation in the fields of Consumer Protection, Business Regulations, and Environmental Protection.

In the field of Consumer Protection, the California attorney should become familiar with the new Consumers Legal Remedies Act, (see page 344); and the Consumer Warranty Act, (see page 347). In the field of Business Regulations, important legislation which should be reviewed include the Franchise Investment Act, (see page 296); and the Fictitious Business Name revisions, (see page 340).

Important revisions of California Civil Procedure include changes to property exemptions which afford protection to debtors' property from attachment and execution, (see pages 319-328); significant changes to *CCP §581a* regarding dismissal of civil actions, (see page 313); and new provisions to allow depositions for discovery in arbitration proceedings, (see page 333).

In Domestic Relations law, a new concept of quasi-community property has been enacted and courts are now permitted more flexibility when dividing community property, (see page 396). In the field of Property law, the legislature enacted a major reform in California landlord-tenant law, (see page 428); and a new procedure for arbitration in eminent domain cases, (see page 437). Finally, in the field of Taxation, new legislation includes increased interest rates for non-payment of state income tax, (see page 453); and a federal conformity measure reforming the "hobby loss" exemptions, (see page 461).

The major legislation included in this review is organized topically under fifteen titles listed in the Table of Contents rather than by California Code titles as in previous C.E.B. publications. However, a Table of Code Sections is included at page 488 to enable the reader to find a particular change immediately. Each summary is written in an





*Introduction*

effort to provide the reader with the significant additions or modifications enacted, a review of the law immediately prior to the 1970 change, and, when possible, some indication of legislative purpose. Also included in most of the summaries are references to collateral sources of information concerning the specific law, particularly WITKIN, which is generally within immediate access of most California attorneys.

The Editors of the Pacific Law Journal have done their utmost to assure the accuracy of this review, and hopefully, it will provide worthwhile information to all of its readers. Special appreciation is extended to the members of the administration and faculty of McGeorge School of Law who have assisted us in this effort, and especially Professor Horace Cecchetti for his helpful advice; to the California Continuing Education of the Bar for their assistance; to many of the members of the California Legislature and their staffs who patiently took the time to give assistance; and deserving special recognition, Tom Couris, David Robison, David Johnson and Brian Taugher of the Law Journal staff for their individual efforts in helping to publish this review.

*Thomas Eres*  
*Legislation Editor*



- (4) The seller has ceased from engaging in such offensive methods, acts or practices, or will do so within a reasonable time if immediate cessation is impossible.

The consumer may request injunctive relief without compliance with the 30 day notice procedure. If the plea is later amended to include damages the 30 day written notice requirement as above must be met.

Attempts to comply with the provisions of this Section by a person receiving a demand shall be construed to be an offer to compromise and shall be inadmissible as evidence; furthermore, such attempts to comply with a demand shall not be considered an admission of engaging in an act or practice declared unlawful by Section 1770. Evidence of compliance or attempts to comply with the provisions of this Section may be introduced by a defendant for the purpose of showing good faith.

There is a 3 year statute of limitations from the date of the commission of such method, act, or practice (*Section 1783*).

No award of damages may be given where the seller rectified the problem and the violation was a bona fide error (*Section 1784*). (The Legislature also enacted Chapter 1348 which added Sections 1750-1757 to the Civil Code. However, these Sections are not in conflict with the Sections in Chapter 1550 and therefore Government Code §9605 will not apply. Both Chapters will become effective November 23, 1970.)

### Consumer Protection; sales warranties

Civil Code §§1790-1795 (new).

SB 272; STATS 1970, Ch 1333

(Effective March 1, 1971)

Chapter 1333 adds Title 1.7 (*Sections 1790-1795*) to the Civil Code. Article 1 (*Sections 1790-1790.3*) identifies the title as the Song-Beverly Consumer Warranty Act. Any waiver of the provisions of this Act by a buyer of consumer goods, except as expressly provided, shall be unenforceable and void as it will be deemed contrary to public policy (*Section 1790.1*).

Article 2 (*Sections 1791-1791.3*) defines terms used in this Title. Consumer goods means any motor vehicle, machine, appliance, or like product that is used or bought for use primarily for personal, family, or household purposes. Distributor means any individual, partnership, corporation, association, or other legal relationship which stands between the manufacturer and the retail seller in purchases, consignments,



### *Consumer Protection*

or contracts for sale of consumer goods. A retail seller is any individual, partnership, corporation, association, or other legal relationship which engages in the business of selling new goods to retail buyers.

Article 3 applies to sales warranties. Section 1792 provides that unless disclaimed in the manner provided by this Act, every sale or consignment of consumer goods in this state shall be accompanied by an implied warranty that the goods are merchantable [Section 1791.1, subsection (a)]. Section 1792.1 provides that where the manufacturer knows the buyer is purchasing consumer goods for a specific purpose and that the buyer is relying on the manufacturer's skill or judgment to select suitable goods an implied warranty of fitness shall accompany the goods [Section 1791.1, subsection (b)].

Pursuant to Sections 1792.3 to 1792.5 only in instances where goods are sold "as is" or "with all faults" are waivers of implied warranties permissible. To sell goods "as is" or "with all faults" the seller must clearly inform the buyer in writing. Such writing must include: (1) that the goods are being sold "as is" or "with all faults," and (2) that the entire risk as to the quality and performance of the goods is with the buyer, and (3) that should the goods prove defective, the buyer and not the manufacturer, distributor, or retailer assumes the entire cost of all necessary servicing or repair.

Sections 1793 to 1793.5 provide that a manufacturer, distributor, or retailer may make express warranties in respect to consumer goods; however, any express warranty may not limit the implied warranties guaranteed by this Chapter. Every manufacturer who sells goods within this state and makes express warranties shall maintain or cause to be maintained within this state sufficient repair facilities to carry out the terms of such warranties. If the manufacturer does not conform to this repair provision he shall be liable to every retail seller who incurs an obligation in giving effect to such express warranties. When the consumer elects to exercise a warranty for service and repairs, such service and repair must commence within a reasonable time and returned in merchantable condition within 30 days, or when circumstances beyond the manufacturer's control prevent such reasonable return the period may be extended an additional 30 days.

Pursuant to Section 1794 any buyer injured by a willful violation of this Title shall be entitled to treble damages plus reasonable attorney's fees. Section 1794.1 provides that any retail seller injured by the willful or repeated violation of the provisions of this title is entitled to treble damages, plus reasonable attorney's fees. However, these Sections are



not applicable to actions brought under Section 382 of the Code of Civil Procedure (*Representative actions*).

The provisions of this title do not apply to any defect in consumer goods caused by the unauthorized or unreasonable use of the goods following sale (*Section 1794.3*).

Any express warranties made by persons other than the manufacturer of the goods obligate the person making such warranties to the same standards and penalties of the manufacturer.

### Warranties; sales of consumer goods

Commercial Code §§2800, 2801 (new).  
SB 921; STATS 1970, Ch 972

Sections 2800 and 2801 are added to division 2 of the California Commercial Code, relating to commercial sales.

They provide that in any retail sale of consumer goods, a written warranty or guarantee as to the condition or quality of the goods shall not be unenforceable solely because the buyer failed to complete and return a form to the seller or manufacturer as proof of purchase of the goods. The buyer may waive the provisions of the Section, but any unwritten waiver is unenforceable and void.

Previously, a seller could expressly demand as a condition precedent to existence of a warranty that the buyer complete and return the proof of purchase form, though this condition had to be explicit in the contract of sale. Failure to do so would prevent the warranty from arising.

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References:

- 1) CAL. COMM. CODE §2314, 2317.
- 2) 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Sales* §23 (7th ed. 1960).

### Retail Installment Credit; creditor's statement

Civil Code §1810.1 (amended).  
SB 26; STATS 1970, Ch 304  
(*Effective January 1, 1971*)

Section 1810.1 requires a creditor to deliver a written disclosure statement to a customer before the first transaction is made on any open end credit account (*See Unruh Act, Sections 1801-1812.10*). This statement must include an explanation of conditions under which a finance charge may be imposed, methods of determining the balance sub-



PUBLIC HEARING  
SENATE COMMITTEE ON BUSINESS AND PROFESSIONS  
CALIFORNIA STATE LEGISLATURE

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Los Angeles, California

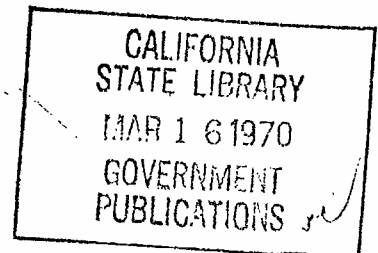
November 3 and 4, 1969

SUBJECT: INTERIM HEARING ON MANUFACTURER'S WARRANTIES

Committee Members:

Chairman:	Senator Alfred H. Song
Vice Chairman:	Senator Milton Marks
	Senator Gordon Cologne
	Senator William E. Coombs
	Senator H. L. Richardson
	Senator Lewis F. Sherman
	Senator Robert S. Stevens
	Senator Lawrence E. Walsh
	Senator James E. Whetmore

Secretary:	Vicki Biastre
Committee Consultant:	James A. Cathcart



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MONDAY, NOVEMBER 3, 1969, 10:00 O'CLOCK A.M.

CHAIRMAN SONG: The hearing will come to order, please. This is an interim hearing of the Senate Committee on Business and Professions.

At the present time the only other member present due to a variety of other demands is the Vice Chairman of this committee, to my right, Senator Milton Marks of San Francisco County. To his right is the Committee Consultant, Jim Cathcart; and to my left is the Committee Secretary, Vicki Biastre.

The subject today of course is the subject of warranties and I think that most of us are impelled to ask ourselves just what is a warranty. According to the dictionary as I read it, a warranty is defined as a guarantee, a security, authorization and assurance that the real estate or other property is as represented; a guarantee that the facts are as stated in regard to an insurance risk. We can paraphrase this of course in many many ways.

In other words, when a person buys a washing machine, a dish washer, a television, a radio set or an automobile or countless other things, would it be reasonable for this buyer to expect that the item purchased will in fact work? I think so, I think just about all of us would agree with that basic proposition.

What if the appliance or other item fails to work? This is the question we are concerned with. Or what if it works for a few days or a few weeks and then fails to function thereafter for reasons which aren't apparent? Who should be responsible at that point? Should it be the retailer, the wholesaler, the contractor, or should it be the manufacturer who brought this thing into being



in the original instance?

After assuming the manufacturer is to be held responsible, over what period of time and subject to what conditions? Should some kind of reasonable bond be required of any kind of manufacturers? This thought occurs to me because of the recent receipt of a letter from a water heater contractor who apparently installed a number of water heaters manufactured by the Hoyt Water Heater Company that's gone bankrupt.

So here are a number of Hoyt water heaters that have been installed with no manufacturer of course to stand behind the warranty that accompanied the sale of each and every water heater. So should a bond be required? If so, what would be a reasonable bond and under what conditions?

As far as I know and our representative from the Attorney General's Office can certainly clarify this for us, there is in California no particular statutory law governing express warranties. Case law of course is somewhat vague and in doubt and of course we are dealing here with the subject of express warranties and not the subject of implied warranties. This committee is seeking facts. This committee is in fact a fact-finding body in order to determine if new laws are needed with all the ramifications necessary to make such laws fair and just. I believe without any question that the consumer should get what he pays for. The sellers and manufacturers on the other hand should be entitled to make a fair profit. These are from my point of view the necessary ground rules that we're going to follow during the course of the hearings today and tomorrow.

Based upon the information, the evidence, the testimony we



hear over the next two days, it may be entirely possible that certain measures will be introduced during the course of the next session in Sacramento. And keeping all these things in mind I would also like to advise the audience that the hearings are going to be transcribed in their entirety. If any of you are interested in obtaining a copy of the transcript, please communicate your wishes to Jim Cathcart, the Committee Consultant, State Capitol, Sacramento. If there is any cost for it, it will be at the most on a cost basis for you.

We also have written agendas of the hearings with witnesses all named and the order will be generally followed because according to the thinking of our consultant this will make a more orderly presentation. So if you're scheduled to be the last witness, there's no other motive but to present an orderly hearing at the present time. We're going to make one other alteration and that is that I'm going to call one witness out of order because in thinking about this again we think it might make the most sense. I might also announce before we begin with our named witnesses here that if there are any others among you who would like to be heard, and of course necessarily presupposing there's enough time, you certainly will be given the opportunity.

Madam Reporter, I have before me, and I think all members of the Committee also have, a statement on warranties prepared by the Consultant. I would like this marked Exhibit A and included at this point in the record.

(Exhibit A reads as follows:)

*(See p. 169) These pages are marked 4-9*

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CHAIRMAN SONG: Our first witness at this point, ladies and gentlemen, will be a Deputy Attorney General of the State of California, Consumer Fraud Division, Mr. Herschel T. Elkins. Mr. Elkins.

MR. ELKINS: Thank you, Mr. Chairman. Most of the warranty complaints that are filed with the Attorney General's Office concern automobiles, the sale of new automobiles, the sale of used automobiles, and automotive repairs. We keep our records according to the company against whom the complaint is filed so we don't have any statistics, but in each of our three offices these involve always one of the three top number of complaints.

The new car warranty problems involve a number of areas. One is the phantom warranty. That is, whatever the problem that the customer relates, he's informed that it's not covered by the warranty. The second one is the expensive warranty. That's where the customer finds that the warranty work is free but that non-warranty work is conveniently found and the customer suspects he would have received the same bill even in the absence of the warranty. And the third problem is the stall where the customer finds that on warranty work his car is pushed to the end of the line and that it may be weeks before the car is returned to him, and then exhibiting the same problems it had when the customer brought the car in. Sometimes the problem has been fixed only temporarily and customers have taken their cars to be fixed ten or fifteen times with the same complaint.

Less than an hour ago I received a call from a doctor who had taken a car in for a period of ten months with a serious leak in the station wagon. The car kept getting flooded. In this case



the automobile dealer was most cooperative until he went out of business, and then he found some difficulty trying to get some help from the other dealers.

We have had problems in which the following occurs: An individual sells an automobile. The customer and the automobile dealer have some difficulty. He turns to the manufacturer and says, "Look at the car." The manufacturer's representative says, "Yes, you do have a problem. We understand it, and obviously the relations between you and the dealer are not so good. You take the car to another dealer and we'll pay for it." And he went around from dealer to dealer and could find no dealer who was willing to fix that automobile. What is the reason? The reason, and this was also the testimony before the United States Senate, is that the dealers state they do not get enough money from the manufacturer to take care of the warranties, that their profit margin on non-warranty work is much higher than warranty work, that they can't afford to take the warranty work. If they have sold the car they have made some profit out of it and hence they feel a little more obligation. But otherwise they feel that the manufacturer is not fair in setting the rate.

CHAIRMAN SONG: Mr. Elkins, let me interrupt at this juncture. Have you thought about the possibility of imposing a statutory burden on the selling dealer with reference to warranties, of course?

MR. ELKINS: The warranties, and you are correct in your initial statement, Senator, there is no statute in regard to express warranties. The warranty in this case is by the manufacturer and not by the dealer. If you had the warranty by the

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dealer this might well in fact solve the problem, but here again you come to a tremendous price bind. Can the dealer really, or can many dealers afford to give an express warranty on automobiles in which we find quite often a vast number of automobiles have to be called back because of repair. Now of course the dealer can always turn to the manufacturer again.

CHAIRMAN SONG: The ultimate effect of course would be the dealer in effect giving an express warranty but my thought was this, that if a dealer sells an automobile subject to a warranty issued by the manufacturer, how about imposing upon the dealer statutorily a requirement to make good on the manufacturer's warranty? This would necessarily be following in my thinking a sort of a negotiation between the dealer and the manufacturer. Why should the member of the public have to bear the burden of this?

MR. ELKINS: That would certainly solve a part of the problem and I agree with you. One of the other problems, of course, involves the tremendous mobility we have in California. So we find individuals buying a car from a particular dealer and then maybe going to other dealers in the State for the warranty. Of course they would not have any express warranty, but I think that would solve, might solve part of the problem, yes.

SENATOR MARKS: May I ask a question?

CHAIRMAN SONG: Senator Marks.

SENATOR MARKS: What is the effect then of the warranty that manufacturer puts out? You see ads all the time of "This car is warrantied for 36,000 miles," or something of that kind, for



various things, and of course the type gets very small as to what the warranty consists of. What is the effect of this warranty? Is the buyer protected at all?

MR. ELKINS: Well, you know I just read a few months ago an article in one of the local magazines, industry magazines, automobile dealers, and the dealers were bitterly complaining against the Chrysler Company for the five-year warranty and in this industry magazine they said, "Everyone knows an automobile can't last that long without substantial problems and they're putting the burden on us because our reputation is at stake. People come back to us."

SENATOR MARKS: Isn't the automobile dealer the agent of the manufacturer?

MR. ELKINS: Well, probably. The manufacturer claims that the dealer is independent. However, in regard to the warranty he has, I think, been named as the agent since the manufacturer will send the individual back to the dealer for work and the manufacturer supposedly guarantees to the dealer that he will pay him for the work that he does. The problem really doesn't involve as much the legal aspect of who has the responsibility on the warranty, because the manufacturer is not about to go out of business, but the problem is a practical one of the dealer who says he is the middleman and as you know finds this tremendous difficulty. One of the reasons that we have not brought actions against some of the dealers in whom we have found some of these problems is that we are not sure where the responsibility really lies because sometimes we find the dealers are in the middle. Now in this particular case I mentioned where the doctor called



about an hour ago, that car apparently cannot be fixed. In ten months he has been in eighteen times to have the dealer fix it. I mean they have apparently attempted to fix the car and just can't be fixed, and what's going to happen for the next two or three years -- he has an attorney and the attorney took forty-five days to get an appointment with the manufacturer. No one can fix that automobile but the manufacturer is not going to give him another automobile or allow him a certain amount on a trade. They have taken that as a position. Now I don't know what the answer is. I'm not sure that the express warranty on the part of the dealer will solve it completely. It may in part.

You know, of course, most dealers, and this is something that happens in no other industry, charge the customer for putting the automobile in a condition so he can take it. You know the dealer's preparation charges may be \$30.00, \$50.00, \$100.00. I have never heard of an industry where someone comes in to buy an automobile and he is charged to have the dealer supply him the product so he can use it. But this is the only way the dealer apparently can get over that difficulty that he has, the expense he has.

SENATOR MARKS: It would appear to me this is about the best example of an agency representation because the automobile dealer operates what's called an agency of the manufacturer, and the manufacturer has the right to take it away from him at any time he so desires or within certain conditions, so I would assume if you get a warranty from the General Motors or Ford or Chrysler or anybody else, American Motors or anybody else, that that warranty can be exercised by the customer.





MR. ELKINS: I would assume, and there have been some actions against automobile dealers and also against manufacturers on warranties, but those are implied, now that I think of it.

CHAIRMAN SONG: In this particular case you examined the warranty, didn't you, the warranty agreement?

MR. ELKINS: Yes.

CHAIRMAN SONG: And in your judgment --

MR. ELKINS: Not in the one I heard this morning, but I have examined warranties of the same kind.

CHAIRMAN SONG: Let's say a Chrysler warranty.

MR. ELKINS: Yes.

CHAIRMAN SONG: You have looked at it very carefully?

MR. ELKINS: Yes, I have.

CHAIRMAN SONG: And in the particular case you talked about involving a great deal of frustration obviously, did you conclude that there was a breach of the warranty there?

MR. ELKINS: I have no doubt there was a breach of the warranty and as a matter of fact neither the original dealer nor the manufacturer have denied it. They just don't fix it.

CHAIRMAN SONG: What, if anything, have you attempted to do with reference to the manufacturer in that case?

MR. ELKINS: Well, in the particular case I mentioned, this only happened within the hour, so you know I don't have that material, but we have had a similar problem before and so far all that we have had is that in effect the manufacturer has blamed the dealer for the problem and the dealer has blamed the manufacturer for the problem.

CHAIRMAN SONG: Have you ever filed a lawsuit joining both



parties? After all, if we say the dealer is the agent, the manufacturer is certainly the principal.

MR. ELKINS: We did this, we have filed an action against both Chrysler and General Motors in regard to advertising processes. We find an interesting thing now, we find that manufacturer often put in advertisements in newspapers, sometimes without even telling the dealers as a matter of fact, and these actions are now pending. We named the manufacturer. We have not named the manufacturer or the dealer in these other problems with regard to warranty and it's still in our file. It's still pending because we are not sure. We don't like to file an action until we are sure who we should file it against and that it is proper to file it, and this is a difficult area. It is a difficult area for several reasons.

It is the same problem we have with automobile repairs. Sometimes it takes a matter of expertise. We get the complaint after the man has gone in eighteen times and you don't often know what the fact situations are.

But we're working now on a particular case with a particular manufacturer in which we now find, and we think this is a case of manufacturer responsibility where no one else apparently is going to fix this automobile, and it's a matter that we are quite concerned with. We don't have a case filed.

CHAIRMAN SONG: What you say is somewhat discouraging. If you after many many months devoting your entire working hours to this particular problem, and I assume you have been, find it difficult to determine where liability lies in certain instances, I don't know what this committee can do.



MR. ELKINS: Let me say this, Senator: Number one, of course we have a very small staff which operates over a large number of areas. We could technically I'm sure at this time bring an action against the dealer and name the manufacturer, but we don't do that until we are sure we have a pattern, that it is apparent that it isn't just a case that happened in one or two instances. We are very careful before we bring lawsuits, and we are just not ready to bring a lawsuit here.

CHAIRMAN SONG: What kind of lawsuit generally, for breach of implied warranty or breach of contract?

MR. ELKINS: In our case it would be, and here again is one of the reasons we haven't brought it, is this, we have to also determine what we are going to ask for, and one of the things we would ask for there -- it is difficult to ascertain. We seek to get an injunction to prohibit, the manufacturer I assume, from continuing to warrant an automobile if he does not take the responsibility or assert some responsibility in making sure that the dealers who are not the sellers of the automobile will take care of the automobile, but that's one of our difficulties. One of the reasons that we haven't brought the lawsuit is that we don't know who to bring it against, and what do we ask for in the injunction?

CHAIRMAN SONG: And the absence of any statute?

MR. ELKINS: And the absence of any statute. Another problem here, too, of course, is that we have a difficulty, certainly the customer has. It's very expensive to bring an action in the courts on a warranty particularly on an automobile warranty unless there has been an accident, and then he is suing for a



great deal of money and it is worth the cost and the trouble to bring it, but here it is extremely difficult. He buys an automobile. How do you bring an action against the dealer or manufacturer? The customer finds it difficult.

CHAIRMAN SONG: If the absence of any statutory provision compounds your difficulties, certainly you must have been thinking about legislation you would like to suggest to us, haven't you?

MR. ELKINS: We have been thinking. We do not have any specific legislation at the moment, but we will have it, that is -- well, let me say this in regard to the problem: This is the way we approach all the problems. We take a look at the problem that has been brought before us. We have many problems. We had 6,000 written complaints and 23,000 telephone complaints covering all sorts of areas. We have suggested certain legislation in those areas that create for us the greatest problem and automobile repairs is by far the greatest problem that we have. So we sought legislation in that area. In some of the other areas we also sought legislation. In different areas we have taken the approach of bringing lawsuits against various companies to see if that would solve the problem, and in many cases it has. But before we bring it we have to make that determination. Certainly we have been considering the possibility of legislation. We have been considering the possibility of bringing an action, but in each of these cases we have to make sure that this is the proper approach, and at the moment we haven't as yet finally decided. We will, however, certainly be happy to give the results of anything we come up



with as this project continues.

CHAIRMAN SONG: That would be appreciated.

SENATOR MARKS: The thing that disturbs me, I think these warranties are express warranties. They aren't implied. An express warranty -- I don't have copies of them in front of me, but I have read them and they say that if you do certain things within a certain number of miles that certain repairs and certain things will be done, and they make certain exceptions as to what is not included, but these are express warranties.

MR. ELKINS: What I meant is the actions that have been brought usually have been brought as the result of accidents that have occurred and there various theories have been used, strict liability, implied warranties which are not covered under the express warranties and so forth. Most of the law seems to be on the implied aspect. The express warranty is an interesting thing. Most people think when they get a warranty from an automobile dealer that they have something more than they would have in the absence of a warranty. This is not true. The express warranty takes away from the warranties that an individual would normally have because it limits it. It says, "We expressly warrant the following things and the customer specifically waives the things which are not covered in the express warranty." So there is somewhat of a limiting factor there.

SENATOR MARKS: In other words, is it your position with respect to the express warranties that the Attorney General has no authority to come in and represent the people of the State of California in the instances where an express warranty has not been lived up to?



MR. ELKINS: That's not our position. The position is trying to establish -- let's take a factual situation. A man goes in to buy an automobile. There is an express warranty. The company and he are in disagreement. The matter apparently isn't being fixed. He now goes around to other dealers to try to get the warranty fixed. Nobody at any time says, "All right, we're not going to fix it. Here's the express warranty, but our position is we are not going to honor the warranty." The position is, either it is not part of the warranty or "We have done as much as we could and this person is unreasonable."

In this particular case that I mentioned, the manufacturer took a look at the automobile, decided that there was a problem, recognized that it wouldn't be fixed and said, "All right, you go to another dealer who didn't sell you the automobile." Now that dealer, you know, has never seen the man before and he says, "I'm not going to fix your automobile because I know that I'm not going to get paid for it by the company. At least it's going to cost me more than it's worth. Why don't you go back to the dealer? I'm not going to do it." Now, it's difficult for us to bring an action against the second dealer since he was not the seller. The manufacturer I think should be responsible because it's the manufacturer's warranty and he has warranted that this automobile will be fixed at any of these places, but before we bring an action against the manufacturer in such a case, we want to make sure this is a pattern, that this wasn't simply an exception, and it is very difficult to get evidence in these matters in regard to every dealer to find out if this is a pattern, but I will assure you, Senator Marks, that if this is



a pattern, that we get substantial evidence that as a pattern this is the behavior, we'll bring the necessary action. Getting evidence is a very difficult thing.

CHAIRMAN SONG: Well, what about that one person who took his car around to six dealers? What kind of a pattern are you looking for? You mean many many other similar complaints?

MR. ELKINS: Well, no, complaints in regard to a different person than this particular individual, because you know in each case there are peculiarities, and again we have a difficulty. We have, as I say, a small staff and a large number of problems. If only one individual is involved, usually the pattern is that he brings the action and he can bring an action in this case. He can bring an action against the dealer or the manufacturer. We don't have the staff or facilities to bring an action in regard to every claim, even ones we think are justified, where we can't find the pattern, because otherwise we would have 6,000 actions to bring and we just can't do it. We are above our head now because of lack of staff on major problems. So we do not bring an action until we find that there is this pattern. This man may be very peculiar. As I say, we are sure of our evidence there that they would not fix it, but trying to show this has happened to other people is something that we have to analyze before we bring it. That's about it.

Now, turning from new cars for a moment, we have the problem with used car sales, and on used car sales we have a pattern of a type of warranty which isn't found in the new car business, and that is a ten percent off parts and labor or fifty percent off parts and labor, but the work has to be done at the dealer's



place of business, and in our investigation that we have now, one pending in an action we may bring against one particular dealer, it turns out that the company actually makes a substantial profit on the work that's done. In other words, it's again a warranty without any meaning since the company has within its power to determine what the amounts are going to be that are charged and where does someone prove he is getting ten, twenty or thirty percent off the parts since he has to go back to the original dealer. This has been a problem.

The automobile repair warranty, again this problem is so broad that in regard to the auto repair itself, I think it might be an exercise in futility to go into the warranty aspect of it.

The complaints other than automobiles are much less in numbers. It may be in part because we haven't brought any cases against appliance dealers or manufacturers and people don't think of our office. I don't know the reason, but we have not had certainly the number of complaints in regard to appliances.

The problems we have had, however, are the following: We have had a great deal of problem with door-to-door sales warranties. In other words, lifetime guarantees on carpets and lifetime guarantees on all sorts of things. On the carpets we find that two types of guarantees, a ten-year guarantee by a manufacturer if the customer can prove that the reason that the carpet is falling apart is owing to the negligence of the manufacturer -- almost an impossible task. The second is warranty by the dealer which adds to a warranty for ten years against everything that happens to the carpet and there frequently the company goes out of business, very frequently.





SENATOR MARKS: Let me ask one more question.

CHAIRMAN SONG: Senator Marks, before you begin, I would like to introduce another member who just arrived, Senator Lawrence Walsh of Los Angeles County. Senator Marks.

SENATOR MARKS: If a person goes in to an automobile dealer to have a car fixed within the period of the warranty, so-called warranty, in force and the dealer says, "No, I won't fix it," or doesn't fix it, what would you advise that person to do? What would you advise the automobile owner to do? He can't wait for a chain of circumstances. He probably has one car.

MR. ELKINS: He has several avenues. One of them is to bring a legal action.

SENATOR MARKS: Against whom?

MR. ELKINS: Against the dealer and the manufacturer I would assume since it is the manufacturer's warranty and he can't get it fixed. But the difficulty is, this is very expensive and most people can't do it.

SENATOR MARKS: You wouldn't advise him to go to the Attorney General?

MR. ELKINS: Certainly, we would be most happy if he would so we can get additional evidence. Obviously he should certainly complain to us but the difficulty you have here, is what is he going to do? He's faced with the problem. He wants to make sure that he gets his money back. We can't guarantee that he gets his money back. We can't operate as an adjustment agency and say, "All right, manufacturer, we have a case. We have made the determination. You haven't been before a court at all, we don't have any pattern, but, you know, give him the money." If he would



come to our office though or if he would send it in, we would do one of several things. If we have a pattern we would bring an action, or we could contact the manufacturer and the dealers and find out what the situation is, and we have subpoena power and we could subpoena their records and see what can occur.

As I say, we are engaged with two manufacturers now in court, and there may be another action, Senator Marks. I'm not saying there won't be, but we need a bit more evidence and some more time and some more people.

Back to the appliances, the other problems in regard to the appliances are the weasel-worded warranty which seems to take something away after it gives it, the parts warranty which says that parts can be fixed, but you will have to pay for the labor, and this is a problem particularly with refrigerators in which the part may be very small, but the labor is quite costly. The difficulty with many of these warranty problems is that the customer doesn't realize the extent of the warranty. He assumes that if something is warrantied it will be fixed and he doesn't realize that it may cost him \$50.00 or \$100.00 to fix the appliance. This is an additional problem.

We also have a problem of distance. We find individuals go to the store and he buys an appliance from Pennsylvania and finally he sees in the warranty that in order to get the part fixed he has to send it to Pennsylvania and with it usually some small amount of money to cover postage or something. It often takes months before he gets it back if he gets it back, if it is fixed. He has no one he can turn to in town.

I have just seen some recent advertisements by companies I



have never heard of in fact, who have now established in the State of California and elsewhere agents for service, as Senator Marks was commenting, where they have listed on the back of their warranty fifty or sixty places throughout the country where these can be fixed. That's a vast improvement and perhaps that might be required of out-of-state warranties.

CHAIRMAN SONG: Mr. Elkins, what do you think of requiring a bond on the part of each and every manufacturer who does business in the State of California? Do you think this might facilitate the honoring of the warranty agreements?

MR. ELKINS: It might in regard particularly to companies that go out of business.

CHAIRMAN SONG: What about the manufacturer of a certain automobile who refuses to perform by this indirect method of his dealers all declining to perform?

MR. ELKINS: I don't think a bond in regard to automobile manufacturers would be too much of a help, for this reason, it isn't the lack of financial responsibility by the manufacturers that we are dealing with. It's very difficult in your law practice and I'm sure you've gone against bonding companies, it's more trouble than suing the company itself. The only reason you go against the bonding company is if the company goes out of business. That is a danger in regard to many smaller companies. It is a danger in regard to some of the appliance companies. I don't think it is a danger in regard to automobile manufacturers.

CHAIRMAN SONG: What about criminal statutes, have you thought about that?

MR. ELKINS: No, I haven't. We hadn't really considered

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that. No, I haven't really considered the criminal statutes. It might be a possibility, I don't know.

CHAIRMAN SONG: Very well, you will make available to this committee the products of your research and your thinking in this particular line, will you not?

MR. ELKINS: Certainly.

CHAIRMAN SONG: If possible before the next session?

MR. ELKINS: Certainly.

CHAIRMAN SONG: Any other questions of Mr. Elkins? Thank you very much.

The next witness is Mrs. Sidter who has something to tell us on the subject of television warranties. Is she present? (No response) Is Royce O. Norgaard present?

MR. NORGAARD: Yes.

CHAIRMAN SONG: Will you come forward, please?

MR. NORGAARD: Well, I don't know much about protocol.

CHAIRMAN SONG: Tell us who you are, first.

MR. NORGAARD: I am Royce Norgaard. I'm here as a private citizen to discuss something about new car warranties. More particularly my complaint is the feeling that the industry just doesn't take seriously its own warranties, and I think I can illustrate one practice that can be used to avoid fulfillment of these warranties.

I have had a couple of experiences concerning one car that show the whole industry can simply ignore the warranty or anything it says. At least this is my allegation. If you have a particular problem that you as a consumer feel is clearly covered by warranty they can say, "Well, you are in error." Or



they can supposedly admit the warranty is misleading, or they can say that the language means quite the opposite of what it says, or they can just arrogantly refuse to act and say, "I don't care what the warranty says, I'm not going to fix it."

CHAIRMAN SONG: This has apparently occurred. Tell us about your specific experience.

MR. NORGAARD: I realize I have been generalizing. I don't know if I can use the board here or not. I think I could perhaps make the example more convincing.

CHAIRMAN SONG: If you feel it would help.

MR. NORGAARD: First I'll try to tell about it. During the last 30,000 miles of the 50,000 mile warranty three dealers looked at the car and volunteered that the front suspension bushings were shot and had to be replaced. They all insisted this was not covered by the warranty. Well, I read the warranty and it enumerates a lot of things including front and rear suspension components. This is clear language.

Finally I was able to get ahold of the factory's service representative and sought an explanation of how these could not be covered. Well, since I was referring to the warranty he did, too, and he said, "You see where self trim and appearance items are excluded from any warranty at all?" I said I did. He said, "Well, these parts have rubber in them and therefore we have always interpreted it that way." Later he said he never heard of this happening. You run into inconsistencies in the machinations to avoid honoring the warranty. I thought that maybe he misunderstood the problem. The part in question is a vital part of the front suspension which on most cars has an



upper and a lower arm assembly that allows the wheel to move up and down with the car. Now if the arm is going to move it has to have a pivot, hinge or bushing or something, and I think any engineer would contend or agree this is all part of the suspension. If any of those parts were left out your car wouldn't run. The wheel would come off. You would have a disaster, and yet this man who should know simply dismissed it as a piece of trim under the car.

Well, I don't want to carry this out too long, but I was upset. I paid the \$50.00 for the repair bill, but I outlined the situation to the factory, sent them a letter and surprisingly I got three letters back, all form letters. The final one referred me back to the dealer so there I was. I was still unhappy.

I had to get it off my chest so I came to the State Attorney General's Office and this is the latest development of that.

There was one other case. I have front wheel bearing troubles. Again they are covered clearly in the warranty, but everybody in the dealership pretended a lack of reading skill at the time and said they were really excluded, but the factory admitted these were covered. So this time I had that taken care of. But these are really small things. My budget was faced with some small surprises, but I think it's the overall situation, the ethical effect on everyone. When a man feels that a large corporation has exploited him he's apt to reflect that attitude in his business, may be toward an insurance claim or something. I see something a little deeper than just a \$50.00 bill that you



haven't expected, and I think this is the reason that I've kept thinking about this so I came here to appear and that's about it.

CHAIRMAN SONG: Thank you, Mr. Norgaard. Any questions? Thank you. Is Gerald Silver here? (No response.) Is Virgil Gaither present?

MR. GAITHER: Senator, this is Mr. Ralph Johonnot, and in the absence of Mrs. Sidter he is prepared to speak for her if this is permissible, on television.

CHAIRMAN SONG: For Miss whom?

MR. GAITHER: Mrs. Sidter on television warranties.

CHAIRMAN SONG: Go ahead. Will you identify yourself?

MR. JOHONNOT: Yes, I am Ralph Johonnot. I am executive vice-president of the California State Electronics Association. We had asked Mrs. Sidter to come and testify today because it's one of the odd type of warranty problems that we have run into in the television warranty. It seems in California on color television sets, they started out with a one-year guarantee on all parts, and then it went to a two-year on the picture tube and one year on parts, and then it went to three years on the picture tube and one year on the small parts. No labor was covered under any television guarantee. When competition forced manufacturers to go from the one-year to the two-year and three-year there was products in the distributors' warehouses that were sold to dealers such as independents and your mass merchandisers that only had a one-year guarantee from the manufacturer. Second and third year guarantees were added by the selling dealer. When a person purchased one of these products they were led to believe that there was a three-year



unconditional guarantee on the picture tube in this case.

CHAIRMAN SONG: How were they led to believe this? Was it in writing?

MR. JOHONNOT: Normally through a sale contract. Now, nowhere in the sales contract was it disclosed that this warranty was one-year with the manufacturer and two years with some second party or possibly third party. In Mrs. Sidter's case, for example, I believe the set was purchased from White Front. The invoice did not state -- stated it had a three-year guarantee. It did not state who the guarantee was with. The independent dealer took the picture tube out, took it to the manufacturer and he said, "We only warrantied the picture tube for one year. You must go back to the person who sold it." So he took the picture tube to the sales company and the company that had sold it, and he said, "We don't guarantee the picture tube. You must go to the one who does our authorized service." And there he took the picture tube and they said, "We can't replace this picture tube without authority to replace it from White Front," and White Front said, "We have to turn you back over to Universal. You will have to put the picture tube back in the set and take the whole set to our representative to repair it," so there was two labor charges built up against it.

No place was it disclosed that when they bought this set that the warranty had to be performed by a certain person or certain service company.

CHAIRMAN SONG: Do you have a copy of that sales contract with you?

MR. JOHONNOT: No, I don't, because she had agreed to be





here this morning and I think she was bringing it. I could get it and mail it to you, I'm sure.

CHAIRMAN SONG: We would certainly like to see it.

MR. JOHONNOT: All right. Senator Song, there's one other thing regarding picture tubes. Could I quickly mention it?

CHAIRMAN SONG: Surely.

MR. JOHONNOT: In California we have through laws passed regarding grading of picture tubes, both black and white and color. We had very little trouble with the law after it was passed in California in getting warranties of replacements for proper grades until the later years of color. The problem lies, and I'll have to describe what grading is. An "AA" would be all new. "A" would be all rebuilt except the glass and "B" would be just a part put in this glass envelope. A product can be sold to a dealer from a distributor. The picture tube can fail before it is ever sold. The manufacturer can, and it's stated in his warranty, replace this tube with a rebuilt tube. Therefore the consumer is starting out with a brand new set with a rebuilt tube in it.

If at some time within this warranty period the tube fails, and there have been many questions brought up because in our laws also of California we must disclose on the invoice what grade of tube it is when it is replaced. This is under California law. And when the consumer sees that the picture tube has been replaced with an inferior quality, it is a great problem, but it is stated in the manufacturer's warranty it can be replaced with a rebuilt part. But when the product is brand new and they start off with a brand new set with a rebuilt part in it, it's a problem.



That's my testimony, sir.

CHAIRMAN SONG: Any questions? Well, you are certainly pointing to a serious problem here and this opens up of course a number of other considerations. How far should the government attempt to go in attempting to dictate in effect to the parties just what their contracts should provide? Basically I think we want to conform to this principle of free enterprise, and to adults contracting presumably should know what they are doing, but obviously this isn't the case. I think there's an undeniable disparity in terms of bargaining powers and the powers of comprehension obviously between the manufacturer and the ordinary buyer of an appliance. So this does pose a rather knotty problem, and I'm sure that we all recognize this, and just what the legislature can attempt to do that would be reasonable of course remains to be seen. Thank you very much for coming down. Is there anything you would like to say, sir?

MR. GAITHER: Well, I was asked by Ralph who is our executive director -- I happen to be the president of the California State Electronic Association which is the television association of service dealers primarily, and I do have a fairly large sales organization selling appliances also, and he asked me if I would present some of the problems which we've had. Well, I would like to preface this with this statement, that we have many of them and directly related to the subjects you are talking about here on appliances, but the one big thing for a non-servicing appliance dealer, that is, who is a television service dealer who knows what service is and how service should be performed, to see the way that customers are handled by some of the major



service organizations for major appliance distributors, it makes you a little heartsick.

You sell a washer on a Wednesday, for instance, to a lady with five children and on Friday afternoon she calls up and it isn't running, it's full of clothes, full of water, and you call the appliance manufacturer, and again I'm stating that we do not do appliance service, but we do do television service, so we are familiar with caring for our customers' wants and desires. So you call them on Friday afternoon and you get the usual answer that they probably could get there on Tuesday or Wednesday of the next week, and this is not an isolated case, this is a continuing thing.

It is the same thing with refrigeration. The average customer is in a panic situation when the refrigerator goes out, particularly in the summertime.

CHAIRMAN SONG: That's understandable. May I ask you this, Mr. Gaither, as part of the television service industry so to speak and the regulatory body, how are you brought face to face with these other problems?

MR. GAITHER: I'm sorry, I didn't understand you, Senator.

CHAIRMAN SONG: You are talking about refrigerators and washing machines and you are actually with television, are you not?

MR. GAITHER: No, I'm sorry, you didn't understand what I said. I am with a television service association but I also have a sales organization and do sell appliances and in our organization we service the televisions but we do not service appliances. When we sell them we farm it out or let the



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manufacturer take care of the service.

The point that I was trying to bring out is that the service leaves a lot to be desired, particularly --

CHAIRMAN SONG: The kind of service provided by the manufacturer?

MR. GAITHER: That's right, on the appliances.

CHAIRMAN SONG: Can you name one of them just for purposes of illustration?

MR. GAITHER: I researched on particular refrigerator that we sold.

CHAIRMAN SONG: Who was it manufactured by?

MR. GAITHER: It was manufactured by Norge and distributed by J. N. Cezan who is the local distributor.

CHAIRMAN SONG: And you were the retailer?

MR. GAITHER: We were the retailer.

CHAIRMAN SONG: And the service was to be done by some other agency representing the manufacturer?

MR. GAITHER: That is right, for which we paid them -- I believe the year's service cost us \$14.95 -- for the year's service.

CHAIRMAN SONG: Do you add this onto the sales price?

MR. GAITHER: Yes, that's included in the sales price.

SENATOR WALSH: Mr. Chairman, might I ask a question?

CHAIRMAN SONG: Senator Walsh.

SENATOR WALSH: Are the purchasers aware of the fact that you farm the service representation out either to the manufacturer or to a subsidiary organization to take care of it? Are they notified of this?



MR. GAITHER: They are because we use that as sort of -- it sounds real good. The customer likes to have one year's manufacturer's service on this or one year manufacturer's service on parts. They are informed, yes, sir.

SENATOR WALSH: Let's get down to the meat of it. You have one year's manufacturer's service. Do you name the manufacturer and amplify that the manufacturer is the one that's going to service this, or some other organization is going to service it other than yourself as an appliance dealer? Most people will take it for granted, and I think that's the meat of this whole hearing here as to misrepresentation on service and warranties, the person that goes in to a store or an appliance store, whether it is refrigerators or what, figure they are dealing with that representative that's selling that item and they look to him to back up the warranty, whether it's a manufacturer's warranty or what. The average person will automatically assume, unless it's spelled out, and I think that's where we are getting to the contract itself, whether it is spelled out, who is going to back that item up? If we are going to pay for a warranty, how do we get service? How do we have our equipment or our appliance taken care of, and I think that's the crux of the whole thing, is to notify the people who is going to do this. If we just merchandise the item and then say, "We told you that the manufacturer was going to back you up," they look to the person that sold it to them or the person they are purchasing from to back them up.

MR. GAITHER: You are one hundred percent right, and this is the crux of the problem. We are the middleman. We inform

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the customer at the time of sale who is going to do the warranty, whether it is a manufacturer's warranty -- if it is television we do this, we tell them it is our own service, which they know as a rule, but on appliances we inform them, but when the problem arises, it's us, it is the selling dealer that's sitting in the middle, and now my complaint, and what I was trying to register here, is that we do not get backed up by the manufacturer.

I have here a refrigerator that I sold five times. I have three different customers. I didn't get a chance, I was behind in my work, I didn't get a chance to research the first two, but I have the last three that it was sold to. Finally we returned it, this Norge refrigerator --

CHAIRMAN SONG: Are you talking about the same refrigerator?

MR. GAITHER: The same refrigerator.

CHAIRMAN SONG: You sold it five times you say?

MR. GAITHER: Five times. It spent most of its time in the J. N. Cezan Company in the service department.

CHAIRMAN SONG: Each time at a reduced price I assume?

MR. GAITHER: We were trying to get our money out of it, believe me.

SENATOR WALSH: Did you sell this as new or used?

MR. GAITHER: This refrigerator was out -- the second day out it would not work. Cezan who has the warranty on it would pick it up and take it in. They would keep it, take it back to the customer and it wouldn't work. We would replace it with a new refrigerator. Cezan would take it back down, check it out, perfect.



CHAIRMAN SONG: I think Senator Walsh's question was, did you sell this particular refrigerator, the one in question, again the second time as a used one?

MR. GAITHER: No, sir, we did not. We were given a new warranty on the set from J. N. Cezan.

CHAIRMAN SONG: Well, it was used, wasn't it?

MR. GAITHER: This is a debatable question. This is done with returned clothing.

CHAIRMAN SONG: Well, it might be debatable after one or two days' use, but you say you sold it five times.

MR. GAITHER: It never was sold. Every --

CHAIRMAN SONG: You made deliveries to the buyer.

MR. GAITHER: We made deliveries, but then we always replaced it with another refrigerator and we finally returned it to Cezan and finally got credit on it.

CHAIRMAN SONG: Well, obviously you had quite a problem there and so did five different buyers.

MR. GAITHER: They certainly did.

SENATOR MARKS: May I ask a question?

CHAIRMAN SONG: Senator Marks.

SENATOR MARKS: What is it when you go into an appliance store and you see a sign that says "Two-year factory warranty"? What does that mean?

MR. GAITHER: Three-year factory --

SENATOR MARKS: Or whatever it is, two, three -- I went into a store recently and saw a sign over a refrigerator, "Two-year factory warranty." Maybe it was three years, but it said "Factory warranty." Do you use that term, "Factory warranty"?



MR. GAITHER: We don't use that term on a display ad, no, sir.

SENATOR MARKS: It wasn't a display ad. It was in the store. It was on the wall right near the refrigerator.

MR. GAITHER: No, sir.

SENATOR MARKS: When you talk about a warranty, what do you say?

MR. GAITHER: When we talk about a warranty, we state explicitly what the warranties are, what the manufacturer gives. Now, let's take the refrigerator in point here. This carries a year's factory parts and service and five years on the sealed unit. Now, the sealed unit is replaced, but the labor for replacing it would be chargeable. Now, that we state and that is spelled out in the manual that the customer gets.

SENATOR MARKS: Did you have any signs up saying this particular piece of property is warrantied for a period of time, or do you ever put in your ads "Two-year warranty," or "Three-year warranty", "Five-year warranty, six-month warranty"?

MR. GAITHER: Yes, at different times in different ads we state the warranty.

SENATOR MARKS: When you say "Warranty", do you just say "Warranty"?

MR. GAITHER: No, we spell out the warranty.

SENATOR MARKS: Do you say, "This is a warranty of the manufacturer," "Warranty of ourselves," "Warranty of the distributor," or that it is a warranty of somebody else? How does the customer know who the warranty is coming from?

MR. GAITHER: At the point of sale the customer is very





definitely told who will do the warranty work, but now in a display ad I don't believe you would spell it out. Let's say you are advertising a washer that had a year's parts and service and five years on the transmission. You would say that washer had a year's part and service and five years on the transmission.

SENATOR MARKS: And the customers -- who would the customers go to?

MR. GAITHER: They would be informed of who was carrying it, but nine times out of ten they come to us of course.

SENATOR MARKS: The thing I find confusing is, I go and buy a refrigerator and say there is a warranty, a two or three-year warranty. Do I look to you, do I look to the manufacturer, who do I look to?

MR. GAITHER: Well, again I repeat that they are told who is to do the warranty work, but again the average customer will come to the dealer. Does this answer your question? Nine out of ten of them will come to the dealer.

SENATOR MARKS: Is it your position the dealer is or is not responsible?

MR. GAITHER: I'm not saying that, sir. I'm saying we bend over backwards. I'm complaining that the manufacturer doesn't back us up.

SENATOR MARKS: If you sell a refrigerator are you responsible, and then it is up to you to look to the manufacturer?

MR. GAITHER: No, we are not responsible.

SENATOR MARKS: Who is responsible?

MR. GAITHER: The manufacturer who has the warranty.

SENATOR MARKS: Do you tell that to the customer?



MR. GAITHER: Not in those words, no, sir. You wouldn't make the sale if you did.

SENATOR MARKS: I assume you wouldn't, but if the customer wants to come in and buy a refrigerator, you don't tell him if he wants to buy a refrigerator manufactured in New York he has to go back to New York to have it fixed, do you?

MR. GAITHER: No, sir.

SENATOR MARKS: What do you tell him?

MR. GAITHER: All distributors have local services.

SENATOR MARKS: I see. Well, I don't get answers to the problems for the customer.

CHAIRMAN SONG: Well, it would appear to me obviously that there are instances, and I think I can speak with all possible candor here, where retailers for the purposes of making a sale are actually contributing to the problem. When you say that you sold the same troublesome refrigerator five times and you feel that the manufacturer was remiss in the sense that he did not stand behind the warranty, it would seem to me that you did play at least a small contributing role in instance there.

MR. GAITHER: Senator Song, from the first time I tried to get credit on the refrigerator -- the refrigerator cost me \$391.00 --

CHAIRMAN SONG: Conceded now, but every time you were selling it to an unwitting member of the public you were recreating the same troublesome scene because of the profit consideration. I don't blame you for that.

MR. GAITHER: Right, and I'm not a refrigeration service man, and when I take it to the factory service and the factory



service says, "This is repaired. It's like new, we will issue a full warranty on it," I can only assume that they are correct.

CHAIRMAN SONG: But it wasn't new.

MR. GAITHER: No.

CHAIRMAN SONG: What would you recommend in terms of new law that would protect the public as well as the retailers?

MR. GAITHER: I would recommend one very basic thing, that the warranties are more clearly stated in the manuals that are given to the customers, and specifically state in there where it can be filled in for the customers, who to call, who is to do the service, so that the problems that we're talking about here would be alleviated to a large extent, if the customer knew exactly -- at the point of sale when you are talking to a customer you can say, "Now, this is a Whirlpool washer I am selling you. You have factory service on it. Whirlpool will take care of it." If you ask the customer two days from then who was to take care of it he probably couldn't answer you because he's all taken up with buying this new appliance. I say it should be stated in the warranty manual. There should be a space for it left in there and the wording of the warranty and the guarantee should be simplified. The average customers cannot understand a warranty.

CHAIRMAN SONG: How about the sales contract as pointed out by the other witness here? Should the sales contract also provide as a matter of law that "The undersigned dealer is in no way responsible for the warranty," spell it out very clearly? Apparently his sister had a problem there. The sale contract mentioned the word "Warranty" but she had to go through three or



four different places and never received satisfaction. Now would you like that in view of the fact that it might prevent a sale on your part?

MR. GAITHER: I don't think -- I wouldn't demand -- I wouldn't like that in the contract, no.

SENATOR WALSH: Mr. Chairman.

CHAIRMAN SONG: Senator Walsh.

SENATOR WALSH: I would like to just exemplify a typical situation that happens between the -- I think the appliance dealer is not quite showing his responsibility, as well as the manufacturer here. I have noticed in several instances since television first hit the market where appliance dealers with bank backing flooring contracts will negotiate and enter into an agreement with the manufacturer. They will walk in and take over a big building. They'll have nothing in it except the overhead and the lease agreement and they'll get a year's free flooring or six months' free flooring from the manufacturer. They'll move in carloads of televisions or appliances. They will have their office space set up and their help which is salesmen usually on commissions, some guaranteed salary and commission, and they'll have a beautiful appliance display with whatever the commodity may be. The factory says, "We'll floor you," so they are in there with the sets and the beauty of the thing, and the attraction and the advertising in the newspapers, and the grand opening and the whole bit, and they'll turn around, unload the equipment and they'll be gone in six months. Some of them last longer. Some of them last several years, but they have no facilities whatsoever. They either farm it out to some other



organization which will immediately on a damage or repair call on the particular appliance charge them for a service call to and from, and they'll immediately charge them for the labor. The tubes or whatever it is that needs to be replaced in the thing will be factory warranted which they will send in to the factory and try to get credit for or will get credit for on a small \$2.00 or \$3.00 tube on a television set or whatever the case may be. You'll get a ten or fifteen dollar service call, you'll get your labor which will run approximately the same, and here you are supposed to have a piece of merchandise that's supposed to be warranted and taken care of, and every time you turn around it's a \$20.00, \$30.00 or \$40.00 bill, but you got your tube for nothing. You got whatever the cost of the manufacturer of the tube, or whatever the amounts of tubes or resistors or whatever they are in there, and I'm talking about small tubes that will go wrong in a TV set or some small part of a washing machine or an appliance of some type, and you still get knocked for something that's supposed to be in good working order for a certain warranty of time. You still have to pay the freight. And then again you have the other case where you'll buy something in one area of town that may be within your residential jurisdiction of house calls or repairs and then a person may move over to the other side of town so his warranty is still in effect, but he has to get some other dealer that handles the same brand in some other area, and they say, "You have to go back to the person you bought it from." If you do, the service call is much greater because they have to come a further distance. It seems to me that this is more or less a non-responsibility on the appliance



dealers' part in conjunction with the manufacturer with their flooring plans and everything else, loading up the general public with a commodity and then standing back and one is looking at the other and saying, "Well, we don't want any restrictions on our part that may implicate us in not being responsible because we want to protect the sale and get this merchandise out." Now that's what you're telling us. You don't want anything in there stating you are responsible for it. You want a space left that the manufacturer is responsible for it, but you don't want to amplify it because it may kill the sale and the general public is a victim of the entire situation. He's confused. He doesn't read the fine print. He gets a piece of merchandise and he doesn't know who to look to.

And you take in large selling organizations, car dealers, sure there's problems with that because the dealer himself will park the car in the back and say, "Come back, we'll call you when the car is ready." They'll move it out and mess around with it and do as little as they can because they are working on volume and they don't want to back their automobiles up, to a certain extent. Other dealers will check the car out and do as much as they can. You take a fast-moving dealer, he just gets the cars out and I feel it's the same way, but they have a certain responsibility as a dealer. They have a large investment which is in fact their own service department, their own mechanics, and you can go into any other phase -- I've had franchises myself, which were construction equipment franchises. We had to provide our own parts, we were backed up by warranty from the factory, we had to carry a certain amount of moving



parts, and service, as part of the condition of the sale, service the equipment that was out on the job in the field regardless of where it was, or make arrangements for some other dealer in that area to take care of it and bill us back, and I don't think this is the case in the appliance business. And that's probably why the complaints have come in so great that it has created a hearing on this. The appliance dealers in conjunction with the manufacturers can confuse the situation so bad that nobody knows where to turn and everybody is just off and on their way running with the profit structure and you've got the merchandise and will try to work it out later, and that's all there is to it. In the meantime a person has invested \$300.00, \$400.00, \$500.00, \$600.00 in a type of commodity that he's buying for his home. He has taken it home, and he's stuck with it for whatever time until he gets the thing fixed, which he's going to pay the service call plus labor and he'll get his ten cent part into it.

Now, if the part is not the right part or it may be another weak part contributing to the main problem of the set or whatever it happens to be, then you have to call them back and then you have to argue with them about another service call, and I know of one complaint that I've got that stands out very readily in my mind where the warranty is almost gone, and the situation has never changed. It still continues on and on and they've replaced nearly everything -- it has been in to the shop or to a shop, not the party that sold it because they don't have the facilities, they don't have the floor space for it, they've got floor space for new merchandise, uncrate it in the back, ship it out, sell it, ship it out and bring in new merchandise



and continue this thing on and work out these problems later on. So I don't think that the responsibility is there with the actual dealer because the largest percentage of dealers do not have their own repair shops just like you stated, and they either service it out or argue with the customer that "You've got to go to the factory and we're having problems getting through to the factory," so I think it's a conjunction between the two.

CHAIRMAN SONG: That was not a question directed to this witness?

SENATOR WALSH: I didn't ask a question, I simply made a statement, Mr. Chairman.

CHAIRMAN SONG: That was a statement. Mr. Gaither, I have a couple of questions here. You say you would like to recommend in the way of a new law, some law requiring the manufacturer to state his warranty in clear simple and understandable English. That's the essence of your recommendation, isn't that correct?

MR. GAITHER: Yes, sir.

CHAIRMAN SONG: You are a retailer and as such generally speaking find yourself so to speak in the middle. Now, I'm certainly in agreement with you about easily understood written warranties, but as a retailer though, and I'm somewhat discouraged by your attitude here, you say you do not want a law requiring that the sales contract set forth very clearly in simple and understandable English who is going to be responsible for the warranty. In other words, you don't want to say much about it.

MR. GAITHER: I'm sorry, I misunderstood you then. I





thought you said, "Would you want it put on the contract that the manufacturer was the only one responsible".

CHAIRMAN SONG: Who is going to be responsible, and if in any particular case it's going to be the manufacturer, shouldn't the sales contract so recite?

MR. GAITHER: Yes, I agree with that. Oh, certainly, I misunderstood your question. I'm not against it stating who is responsible for the service. I thought you --

CHAIRMAN SONG: And in very simple and understandable English?

MR. GAITHER: Oh, certainly.

CHAIRMAN SONG: Senator Marks.

SENATOR MARKS: This would be on the contract; in other words, you would not be against having on the contract a statement in large enough type that people could read it who is responsible for various things?

MR. GAITHER: It should be on there. There's no argument about that. I misunderstood the question.

SENATOR MARKS: You would have no objection to requiring as a condition of sale and before the customer signs that he will be notified by the dealer what the conditions of the warranty are?

MR. GAITHER: Full disclosure on warranty.

SENATOR MARKS: Full disclosure.

MR. GAITHER: I see no objection to that. That would be very good.

CHAIRMAN SONG: Very well. Thank you very much.

MR. GAITHER: May I reply to one thing that the Senator said?



CHAIRMAN SONG: You want to reply to what?

MR. GAITHER: Not reply, but give you a point of information on television service.

CHAIRMAN SONG: A point of information on the speech.

MR. GAITHER: This has been an extreme problem on television service. The set is sold to -- now the average set is sold through the dealer and the only warranties that are on that set are for parts for one year. This has been historical. If you get a shipment of fifteen colored sets into your store, you open them up, and if half of them don't work, you fix them as a dealer. The manufacturer assumes no responsibility. This has been historical. This is in a state of change at the present time. RCA is experimenting in the Indianapolis area and in the Western States with paying the dealer to service the sets. This is in an experimental state at this time, and Admiral has just instituted this. Now there's experimentation in this, the manufacturer paying the dealer to take care of the inoperative sets in his store and in the customer's home. I thought I might add that.

CHAIRMAN SONG: All right. Thank you very much. Is Shirley Goldinger here?

MRS. GOLDINGER: Yes.

CHAIRMAN SONG: Will you speak right into the microphone and identify yourself, please?

MRS. GOLDINGER: My name is Shirley Goldinger and I'm here testifying as a housewife and a homemaker. I'm a former home service director for a major appliance company. I taught home-making in the Los Angeles City Schools for two years, and I'm



now a housewife with two children and am active in consumer groups. I am president of the Association of California Consumers in Southern California, but there will be others testifying for the Association's viewpoint. I'm going to testify on things that have happened just to me as a homemaker.

With few exceptions in my experience most warranties are not worth the paper that they are printed on. To understand many of these you need both a law and engineering degree to have someone explain them to you, so I would echo what has been said before and said by committee members, that warranties really need to be simplified and stated in very simple language. Why should a homemaker have to fill out a card that says you must get this back within five days or your warranty isn't valid, and I have here with me, and I'm probably one of the few people who never mails a warranty card back. I save them and I have all of my own and I'll leave them with you so that you can see if these things are not filled out and mailed within five, ten, and some of them are fifteen days, that your warranty is not valid.

The person that you buy the appliance from or the manufacturer doesn't give you the opportunity to say at the end of five, ten or fifteen days, "I don't like the way this thing is operating, come take it back," and it seems to me that if they are going to tell you that the warranty is not valid unless it is mailed in within a very short period of days, the card attached to it, that you should have the same kind of rights. So many of the cards --

CHAIRMAN SONG: Ma'am, why did you adopt the practice of not mailing in these cards?



MRS. GOLDINGER: Because I hoped that someday somebody would do something about all of this, so you can't imagine how excited and impressed I am with the fact that you are holding this hearing.

CHAIRMAN SONG: Have you had any problems?

MRS. GOLDINGER: I have had lots of them, lots of them, but I've tried --

CHAIRMAN SONG: You are going to tell us about some of them.

SENATOR MARKS: I don't --

CHAIRMAN SONG: Senator Marks.

SENATOR MARKS: I have gotten these cards and I have sent them in because I feel this puts the manufacturer or the dealer or somebody on notice that they better live up to their warranty. I don't see how that hurts me. I don't warrant that I'm happy with the product. I'm just stating that I'm complying with their requirements and that I let them know, let the manufacturer or dealer know that I have this piece of property. I don't see anything wrong with the piece of paper.

MRS. GOLDINGER: Senator Marks, I agree with you, but the only thing that I disagree with is that somebody says to you that unless this is mailed promptly -- sometimes I bought a house that was sitting vacant for a year. It was a new house, newly built, and I came in and the warranty card says that this is only effective if you mail it in right after this particular item has been purchased. Well, does that mean that that new stove, let's say, is no longer in warranty? What can I do about it? I just felt that it was unfair, that something should be done that gives you warranty coverage for a new



appliance even if it is outside the period of time, if it's never been used.

SENATOR MARKS: It may be an implied warranty in any case.

SENATOR WALSH: Mr. Chairman.

CHAIRMAN SONG: Senator Walsh.

SENATOR WALSH: Wouldn't you go so far as to say they are working on a percentage basis? I imagine that a certain percentage of people will react just like you do or have extenuating circumstances that it was delivered on a certain day. You signed a receipt for it and it was never used, but it may be due to shipment. I know I've received things much later and all you have to say is that you didn't receive it due to a freight company or something, but whatever the extenuating circumstance is, that if say twenty-two percent of these warranties are not mailed, which I think is a very conservative amount, that is twenty-two percent of their product they don't have to fool with. The consumer has it, he owns it and he can do what he wants with it.

MRS. GOLDINGER: I think this is so, but the thing, too, that I'm asking is that people don't put on these warranty cards that if you don't mail it back within five days -- I think it should be something much more reasonable.

CHAIRMAN SONG: How about thirty days?

MRS. GOLDINGER: Thirty days would seem to me to be more reasonable.

CHAIRMAN SONG: So in other words, it is a time factor. You don't believe the condition per se is unreasonable?

MRS. GOLDINGER: No, I don't. I just think it should be



something that is not difficult to comply with. The other thing that is interesting on the cards that you do mail back for many of these appliances they are not interested in knowing how you feel about the way the appliance operates. What they are asking you is where did you buy it and from whom did you buy it, your age, the number of people in your house, the approximate value of your house --

SENATOR WALSH: Confusion.

MRS. GOLDINGER: Why do they want to know how much your house cost? I don't understand what that has to do with the operation of your appliance, or how many people, or your age. I resent being asked my age on a card I'm going to mail back. What does that have to do with my dishwasher?

CHAIRMAN SONG: A woman resents that under any circumstances.

MRS. GOLDINGER: Some of these things are foolishness. If they want to ask me, "How do you feel your appliance is operating?" Or "Are you getting complete satisfaction in the operation of the appliance?" That one makes more sense. This is kind of nonsensical, don't you think?

CHAIRMAN SONG: Very well. Having failed to send those cards in, tell us about the problems you have had after that?

MRS. GOLDINGER: All right. I'm more interested in telling you about some of these others that have come with them or attached to the cards. I purchased a Master Antenna set for my home with a year's warranty, and the place was out of business before the year was up and there was no one to service it. Not only would no one come to service it, but I had to then put another one in because no one would service it. No one would



come and service someone else's work, and so then I was told if I bought another directional antenna of some kind, then I would get service with it. So I was very much interested in what you had to say about a bond. Perhaps this would help the homemaker who puts some kind of an appliance or in this case it was a TV antenna system in, and then the company goes out of business. Perhaps then she would have something to come back to. Right now there's nothing you can do about it.

In another case there was an intercom system that was in this existing house. There was no one to service this because it was not a well-known brand, and I finally called someone who represented another office of this particular company, and they called someone in the Valley for me who came three months later. Well, my front doorbell was connected to the intercom system. Can you imagine doing without a front doorbell for three months because no one would come out and service it?

CHAIRMAN SONG: Of course you are distinguishing reluctance to provide service from performance under a warranty agreement though, are you not?

MRS. GOLDINGER: Well, but the intercom then would have a year's warranty, but I couldn't find anybody to stand behind it.

CHAIRMAN SONG: Was it a written warranty?

MRS. GOLDINGER: It is a printed warranty.

CHAIRMAN SONG: Do you have that with you?

MRS. GOLDINGER: Yes, I have that with me.

CHAIRMAN SONG: And they refused to honor --

MRS. GOLDINGER: It isn't they refused, they said there was no one in my immediate area to service it.



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