

No. S274625

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

EVERARDO RODRIGUEZ and JUDITH V. ARELLANO,

Plaintiffs and Appellants,

v.

FCA US, LLC,

Defendant and Respondent.

California Court of Appeal, Fourth District, Division Two, Civil No. E073766
Appeal from Riverside County Superior Court
Case No. RIC1807727
Honorable Jackson Lucky, Judge Presiding

**EXHIBITS IN SUPPORT OF
MOTION FOR JUDICIAL NOTICE
Volume 1 of 6 / Pages 1 to 289 of 1389**

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INDEX OF EXHIBITS

Exhibit	Date	Document	Volume	Page (MJN)
A.		FCA US, LLC Volume 1 of 5 Exhibits To Motion For Judicial Notice Court of Appeal (E073766)	1	4
B.		FCA US, LLC Volume 2 of 5 Exhibits To Motion For Judicial Notice Court of Appeal (E073766)	2	291
C.		FCA US, LLC Volume 3 of 5 Exhibits To Motion For Judicial Notice Court of Appeal (E073766)	3	531
D.		FCA US, LLC Volume 4 of 5 Exhibits To Motion For Judicial Notice Court of Appeal (E073766)	4	721
E.		FCA US, LLC Volume 5 of 5 Exhibits To Motion For Judicial Notice Court of Appeal (E073766)	4	901
F.	1982	Legislative history materials for Assembly Bill 1787 (1981-1982 Reg. Sess.) Stats. 1982, ch. 388, § 1	5	931

Exhibit	Date	Document	Volume	Page (MJN)
G.	1988	Legislative history materials for Assembly Bill 4513 (1987-1988 Reg. Sess.) Stats. 1988, ch. 697, § 1	6	1170
H.	1998	Legislative history materials for Assembly Bill 1848 (1997-1998 Reg. Sess.) Stats. 1998, ch. 503, § 1	6	1220
I.	2000	Legislative history materials for Senate Bill 1718 (1999-2000 Reg. Sess.) Stats. 1995, ch. 503, § 1.	6	1274
J.	2007	Legislative history materials for Senate Bill 234 (2007-2008 Reg. Session), Stats. 2007, ch. 151, § 2	6	1361

E073766

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO**

EVERARDO RODRIGUEZ et al.,
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v.

FCA US, LLC,
Defendant and Respondent.

APPEAL FROM RIVERSIDE COUNTY SUPERIOR COURT
JACKSON LUCKY, JUDGE • CASE No. RIC1807727

**EXHIBITS TO MOTION FOR JUDICIAL NOTICE
Volume 1 of 5 • Pages 00001 – 00286 of 00923**

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DECLARATION OF JAN S. RAYMOND

I, Jan Raymond declare:

I am an attorney licensed to practice by the California State Bar, State Bar number 88703, and admitted to practice in the United States Federal Court for the Eastern District of California. My business is researching legislative history and interpreting legislative intent, I have over 15 years experience in legislative research and analysis of legislative intent.

In cooperation with persons working under my supervision, I undertook to research the legislative history of the following project. All use of the word project in this declaration refers to legislative research addressed to this focus:

Civil Code Sections 1791(o), 1791.2(a)(1), 1794(a)&(b) & 1795.7

In particular:

Chapter 1333, Statutes of 1970

Enacting Civil Code Sections 1791.2(a)(1) and 1794.

Chapter 1523, Statutes of 1971

Enacting 1795.5 and amending 1794

Chapter 169, Statutes of 1974

Enacting 1795.5(d)

Chapter 991, Statutes of 1978

Enacting 1791(o)

Chapter 385, Statutes of 1982

Repealing and reenacting 1794

Chapter 728, Statutes of 1983

Amending 1795.5

Chapter 1047, Statutes of 1985

Amending 1791(o)

Chapter 1280, Statutes of 1987

Adding 1793.2(d)(2) and amending 1794

Chapter 1265, Statutes of 1993

Amending 1791(o)

Chapter 196, Statutes of 1998

Amending 1791(o).

We report in a series of bound volumes. This Volume 1 contains discussion and materials regarding the 1970, 1971 and 1974 enactments.

At all times, all persons working on this project operated under instructions to locate all documents available pertinent to the legislative bill or bills which led to this enactment.

(888) 676-1947

Declaration of Jan Raymond

Page 1 of 5

For definitions of the legislative terms used in this declaration, visit the California law page at

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1 This research was compiled in the days immediately prior to the date of this declaration,
2 and reflects all the documents, and sources available during that time pertinent to this
3 project.

4 The documents listed are the substantive documents collected pertinent to the history of
5 this project. The term "substantive documents" as used in the previous sentence refers
6 to those documents relevant to the scope of the project. Some documents regarding the
7 legislative bills related to this project may not be forwarded in this report. Documents not
8 forwarded may include fiscal analyses addressing the budgetary impact of legislation,
9 documents addressing other portions of legislation not directly relevant to the project,
10 documents addressing simple support, or opposition to the legislation, or other
11 documents unlikely to be helpful in understanding the substantive purpose of the
12 legislation. The complete collection of documents is organized in generally chronological
13 order and sequentially numbered.

14 All documents listed are included with this declaration, except as otherwise noted in this
15 declaration. Unless otherwise noted in this declaration all documents were obtained at
16 one of the following sources; legislative offices at the State Capitol, the California State
17 Library, the California State Archives, or libraries at the University of California at Davis.
18 References to "bill file" as used in this declaration refer to files maintained regarding the
19 legislation that is the subject of the document collection. Some documents copied from
20 microfilm originals may be of poor quality; all copies included with this report are the best
21 available copies.

22 In this list of documents the abbreviation SFA is short for Office of Senate Floor
23 Analyses, and ARC is short for Assembly Republican Caucus.

24 The following documents accompany this declaration:

25 **1970 Chapter 1333**

26 Excerpt regarding Senate Bill 272 (Song) from the Senate Final History, 1970
27 Regular Session. Page 1

28 SB 272 as introduced February 2, 1970. Page 3

Documents regarding SB 272 as introduced from the bill file of the author, ten
pages. Page 6

Senate Committee on Business and Professions analysis of SB 272 as
proposed to be amended. Page 16

SB 272 as amended in the Senate March 17, 1970. Page 18

Letter dated March 31 regarding SB 272 as amended March 17 from the bill file
of the author, one page. Page 21

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Declaration of Jan Raymond

Page 2 of 5

For definitions of the legislative terms used in this declaration, visit the California law page at

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MJN/6

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1	SB 272 as amended in the Senate April 6, 1970.	Page 22
2	Documents regarding SB 272 as amended April 6 from the bill file of the author,	
3	five pages.	Page 25
4	SB 272 as amended in the Senate May 25, 1970.	Page 30
5	Documents regarding SB 272 as amended May 25 from the bill file of the	
6	author, seven pages.	Page 34
7	SB 272 as amended in the Assembly July 16, 1970.	Page 41
8	SB 272 as amended in the Assembly July 30, 1970.	Page 45
9	Assembly Commerce and Public Utilities Committee analysis of SB 272 as	
10	amended July 29, 1970, dated 8/3/70.	Page 49
11	Documents regarding SB 272 as amended July 30 from the bill file of the	
12	author, seventeen pages. (The first two pages of this group of documents, the	
13	memo on Senator Song's letterhead dated August 3, 1970, were also found in	
14	the file of the Assembly Committee on Commerce and Public Utilities.)	Page 50
15	SB 272 as amended in the Assembly August 14, 1970.	Page 67
16	Documents regarding SB 272, undated and press clippings, from the bill file of	
17	the author, sixteen pages.	Page 72
18	Selected document regarding SB 272 from the enrolled bill file of former	
19	Governor Ronald Reagan, fourteen pages.	Page 88
20	Press clipping from the bill file of the author, one page.	Page 102
21	Chapter 1333, Statutes of 1970.	Page 103
22	Post enactment documents and Legislative Counsel opinions from the bill file of	
23	the author, fifty-one pages.	Page 106
24	<u>1971 Chapter 1523</u>	
25	Excerpt regarding Senate Bill 742 (Song) from the Senate Final History, 1971	
26	Regular Session.	Page 157
27	SB 742 as introduced March 29, 1971.	Page 159
28	Documents regarding SB 742 as introduced from the bill file of the author,	
	twenty-nine pages.	Page 163

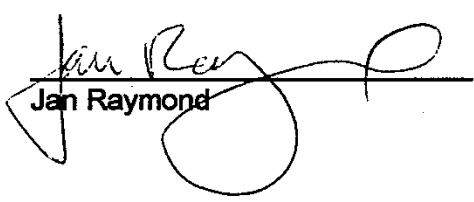
1	SB 742 as amended in the Senate June 8, 1971.	Page 192
2	Senate Committee on Judiciary analysis of SB 742 as amended June 8.	Page 197
3	Documents regarding SB 742 as amended June 8 from the bill file of the	
4	author, twenty-three pages.	Page 201
5	Assembly Committee on Judiciary analysis of SB 742 as proposed to be	
6	amended, analysis dated 9/27/71.	Page 224
7	SB 742 as amended in the Senate Assembly September 30, 1971.	Page 226
8	Documents regarding SB 742 as amended September 30 from the bill file of the	
9	author, three pages.	Page 231
10	Selected document regarding SB 742 from the enrolled bill file of former	
11	Governor Ronald Reagan, eight pages.	Page 234
12	Chapter 1523, Statutes of 1971.	Page 242
13	<u>1974 Chapter 169</u>	
14	Excerpt regarding Senate Bill 1602 (Song) from the Senate Final History,	
15	19773-74 Regular Session.	Page 247
16	SB 1602 as introduced January 22, 1974.	Page 249
17	Document regarding SB 1602 as introduced from the bill file of the Senate	
18	Committee on Judiciary, one page.	Page 251
19	Document regarding SB 1602 found in the bill files of the author and the	
20	Assembly Committee on Judiciary, one page.	Page 252
21	Legislative Counsel letter dated January 21 from the bill file of the author, two	
22	pages.	Page 253
23	Senate Committee on Judiciary analysis of SB 1602 as introduced.	Page 255
24	Senate Republican Caucus Third Reading analysis of SB 1602 as introduced.	Page 257
25	Assembly Committee on Judiciary Bill Analysis Worksheet on SB 1602, from	
26	the committee bill file, one page.	Page 258
27	Assembly Committee on Judiciary analysis of SB 1602 for hearing 3/26/74.	Page 259
28	Selected document regarding SB 1602 from the enrolled bill file of former	
	Governor Ronald Reagan, three pages.	Page 261

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2
3
4
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6
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13
14
15
16
17
18
19
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21
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23
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25
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Letter dated April 18, 1974 from the bill file of the author, one page. Page 264
Chapter 169, Statutes of 1974. Page 265
Excerpt regarding Chapter 169 from the Summary Digest for 1974. Page 267
This collection ends with page 268

I declare under penalty of perjury the foregoing is true and correct.

Executed at Davis California, April 3, 2000.


Jan Raymond

CALIFORNIA LEGISLATURE

AT SACRAMENTO

1970 REGULAR SESSION

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

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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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. 18—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.

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SENATE BILL

No. 272

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.

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4th District Court of Appeal Division 2.

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

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
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 purchase,
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 of a
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

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."

Article 3. Sale Warranties

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.

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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,
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 war-
16 ranties.

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 warranties,
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.

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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.

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(1) Some warranties are drafted in technical and complex language which is intended to confuse the public. The buyer is never

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.

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"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."

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Page Three

"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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Document received by the CA 4th District Court of Appeal Division 2.

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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Page Three

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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**California Council of
Airconditioning and Refrigeration Contractors Associations**

2230 SOUTH HILL STREET • LOS ANGELES, CALIFORNIA 90007 • (213) 748-8448



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

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Senator Alfred H. Song

Page - 2 -
February 18, 1970 C

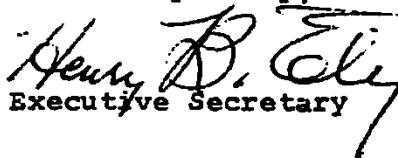
systems are poorly installed and that the public is put upon. Gradually, through the application of the Standards and through our organization taking complaints against the contractors, we believe that we are improving the residential applications.

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

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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

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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,

Henry - B. Elly
Executive Secretary

HBE:S:lgs

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SB 272 (Song)
To Be Amended

B. & P. Code
Civil Code Warranties

S
B

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.

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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.

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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. S B 2 7 2

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.

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document received by the CA 4th District Court of Appeal Division 2.

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.

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 trans-
actions.

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

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4th District Court of Appeal Division 2.

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.

Article 2. Definitions

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."

Article 3. Sale Warranties

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.

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4th District Court of Appeal Division 2.

1 (c) 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.

27 (b) In the event of service and repair, in an amount equal
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.

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

36 1772. If additional warranties are made by persons other
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
49 may be entered for three times the amount at which the actual
50 damages are assessed plus reasonable attorney fees.

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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

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Document received by the CA 4th District Court of Appeal Division 2.

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.

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.

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A 4th District Court of Appeal Division 2.

1 the invalid provision or application, and to this end the provisions of this chapter are severable.

2 1753. 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

12 1755. As used in this chapter:

13 (a) "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.

14 (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.

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

16 (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.

17 (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, but does not include any contractor subject to the provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

18 1756. As used in this chapter:

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

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

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

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

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

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

25 (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

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

2 1757. 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. 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 in a sale "as is" or "with all faults."

Article 3. Sale Warranties

1760. Every sale or consignment 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.

1761. 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.

1762. 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 1761, be accompanied by an implied warranty that the goods are fit for that purpose.

1763. 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.

1764. 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:

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

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

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MJN/33

4th District Court of Appeal Division 2.

1 (c) 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.

27 (b) In the event of service and repair, in an amount equal
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.

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

36 1772. If additional warranties are made by persons other
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
49 may be entered for three times the amount at which the actual
50 damages are assessed plus reasonable attorney fees.

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EDITORIAL

Chuck

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 Son'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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KFWB RADIO 98 **GROUP**

WESTINGHOUSE BROADCASTING COMPANY INC.

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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

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MJN/36

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Page Two

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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SENATOR ALFRED H. SONG
State Capitol
Sacramento, California 95814

Contact: Richard Thomson
Phone: (916) 445-3386

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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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; Appropriation—No; Fiscal Committee—No.

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4th District Court of Appeal Division 2.

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1752. 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. 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. As used in this chapter:

(a) "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.

(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, but does not include any contractor subject to the provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

1756. 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.

1757. 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. 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 in a sale "as is" or "with all faults."

Article 3. Sale Warranties

1760. Every sale or consignment 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.

1761. 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.

1762. 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 1761, be accompanied by an implied warranty that the goods are fit for that purpose.

1763. 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.

1764. 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:

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District Court of Appeal Division 2.

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.

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A 4th District Court of Appeal Division 2.

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REPLY TO:
STATE CAPITOL
SACRAMENTO 95814
(916) 448-3886

LEGISLATIVE OFFICE
STATE BUILDING
LOS ANGELES 90012
(213) 626-8840

DISTRICT OFFICE
2337 So. GARFIELD AVENUE
MONTEREY PARK 91784
(213) 734-3823

California State Senate

ALFRED H. SONG
STATE SENATOR
TWENTY-EIGHTH SENATORIAL DISTRICT

COMMITTEES
BUSINESS AND PROFESSIONS
CHAIRMAN
HEALTH AND WELFARE
INDUSTRIAL RELATIONS
JUDICIARY
MEMBER
CALIFORNIA LAW REVISION
COMMISSION
STATE ALLOCATION BOARD

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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MJN/44

Compliments of
Senator Alfred H. Song
28th Senatorial District

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 California 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. Whitmore, R-Orange County, provided a personal example.

Whitmore 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

4th District Court of Appeal Division 2.

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MJN/45

SENATOR ALFRED H. SONG
State Capitol
Sacramento, California 95814

Contact: Richard Thomson
Phone: (916) 445-3386

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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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 of 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 manufacturers 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

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MJN/48

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California Legislature

Senate Committee on Business and Professions

ALFRED H. SONG
CHAIRMAN

JAMES A. CATHCART
CONSULTANT
VICKI BIANFRE
SECRETARY
Room 2044
STATE CAPITOL
SACRAMENTO 95814
(916) 445-3435

M E M O

TO: ALFRED H. SONG

FROM: JIM CATHCART

DATE: JULY 6, 1970

Re: SB 920

SB 920 was first heard on May 22, 1970. The bill was on file to be heard every week since that time. On July 2, 1970, the author submitted essentially a new bill. The bill is again placed on file to be heard July 9.

Attached is a memo to the Committee Chairman dated May 15, 1970, from the President pro Tempore.

Also attached is a copy of the Committee Rules. You might be interested in the following rules:

Rule #6 states that "A majority vote of the Committee shall be required to table a bill, remove it from the table and reconsider a vote on the bill."

Rule #12 provides that "Any bill laid on the table shall not be removed at a subsequent meeting unless one (1) day's notice of intention to remove the same from the table shall have been first given to the Committee and the author of the bill."

Rule #14 provides that "Any measure that has been printed in the file for three (3) consecutive meeting dates and has not presented by the author or his authorized representative, shall be automatically dropped from the file and considered tabled."

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JOHN MARKS
VIRGIL L. LAMAR
JAMES A. CATHCART
WILLIAM L. COMBS
JAMES L. LAMAR
JAMES L. LAMAR
ROBERT S. STEVENSON
LAWRENCE E. WALSH
JANICE WHITMORE

California Legislature

Senate Committee

III

Business and Professions

ALFRED H. SONG
CHAIRMAN

JAMES A. CATHCART
CONSULTANT
VICKI BIASTRE
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ROOM 2044
STATE CAPITOL
SACRAMENTO 95814
(916) 445-3111

July 9, 1970

M E M O R A N D U M

TO: MEMBERS OF THE SENATE COMMITTEE
ON BUSINESS AND PROFESSIONS

FROM: James A. Cathcart

RE: Comparison of SB 272 (Song) and
SB 920 (Marks) concerning
Proposed Warranty Legislation

	<u>SB 272 (Song)</u>	<u>SB 920 (Marks)</u>
Disclosure Provisions for express warranties	Yes	Yes
Prohibition against disclaiming implied warranty, merchantability, and "fitness of use"	Yes	No
Enforcement of warranty offer	Yes	No
Recourse to consumer for non- compliance of warranty by manufacturer, retailer	Yes	No
Recourse to retailer for non- compliance of warranty by manufacturer	Yes	No

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**JAN RAYMOND
LEGISLATIVE HISTORY AND LEGISLATIVE INTENT
1 (888) 676-1947**

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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; Appropriation—No; Fiscal Committee—No.

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4th District Court of Appeal Division 2.

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.

Article 2. Definitions

15 1755. As used in this chapter:

16 (a) "Consumer goods" means any motor vehicle, machine,
17 appliance, device, product, or commodity or like product that
18 is used or bought for use primarily for personal, family, or
19 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: but does not include any contractor subject
37 to the provisions of Chapter 9 (commencing with Section
38 7000) of Division 3 of the Business and Professions Code.

39 1756. As used in this chapter:

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

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

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

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

48 (4) Are adequately contained, 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" be
20 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 commendation
23 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 1757

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.

Article 3. Sale Warranties

36 1760. Every Unless disclaimed in the manner prescribed by
37 this chapter, every sale or consignment of consumer goods by a
38 manufacturer in this state shall be accompanied by an implied
39 warranty that the goods are merchantable, except that no
40 such implied warranty accompanies the sale of consumer
41 goods that are sold on an "as is" or "with all faults" basis,
42 provided the provisions of this chapter affecting "as is" or
43 "with all faults" sales are strictly complied with.

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

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1762. 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 1761, be accompanied by an implied warranty that the goods are fit for that purpose.

1763. 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.

1764. (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:

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

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

(c) (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.

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.

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

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

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

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 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. 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. 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.

1769. If the manufacturer fails to does not provide service and repair facilities within this state as required in pursuant to subdivision (a) of Section 1768, 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 warranties 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 service or repair 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. 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.

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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.

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4th District Court of Appeal Division 2.

MJN/55

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 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.

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

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

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MJN/56

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4th District Court of Appeal Division 2.

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 unconstitutional,
5 such invalidity shall not affect other provisions or applica-
6 tions 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.

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
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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.

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A 4th District Court of Appeal Division 2.

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.

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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California State Senate

ALFRED H. SONG
STATE SENATOR
TWENTY-EIGHTH SENATORIAL DISTRICT

COMMITTEES
BUSINESS AND PROFESSIONS
CHAIRMAN
HEALTH AND WELFARE
INDUSTRIAL RELATIONS
JUDICIARY

MEMBER
CALIFORNIA LAW REVISION
COMMISSION
STATE ALLOCATION BOARD

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.

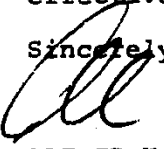
One brief additional point. What is the very worst that could happen to a manufacturer or a retailer under this bill?

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."

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

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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

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Honorable Alfred H. Song - p. 4 - #16549

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

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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).

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Honorable Alfred H. Song - p. 6 - #16549

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."

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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

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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
Legislative Counsel

By 
Carl M. Arnold
Deputy Legislative Counsel

CMA:ad

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SENATOR ALFRED H. SONG
State Capitol
Sacramento, California 95814

Contact: Richard Thomson
Phone: (916) 445-3386

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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Page Two

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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SB 272

P.O. BOX 790

31111 AGOURA ROAD, WESTLAKE VILLAGE, CALIFORNIA 91360

(213) 889-1500

hot water generators and allied products

TELEX: 67-3308

August 12, 1970

Governor Ronald Reagan
State Capitol
Sacramento, Ca. 95814

Dear Governor Reagan:

Re: Senate Bill #272

The bill introduced by Senator Alfred Song contains passages which are onerous and practically confiscatory to manufacturers.

1. We naturally do not object to a manufacturer being responsible for his product not performing the function for which it is designed, and for which it is sold. He is now under implied warranty laws. We do, however, object to the requirement that the product be repaired within 30 days or the buyer's money is to be returned, presumably as alleged by the buyer.

Approximately 80-90% of the service on a product such as we manufacture is caused by installation oversights or inability of the customer to read simple operating instructions. This bill would permit the customer to allege that the product is defective and be entitled to a return of his money within 30 days.

In the light of the contents of the above statement, it is quite apparent that the manufacturer is not usually in error and not responsible for operating problems, quite to the contrary.

2. This portion of the bill would cause a manufacturer to pay out exorbitant and irresponsible labor charges far beyond his margin of profit and would be confiscatory in that sense.
3. Perhaps the worst portion of the bill is that it entitles the buyer, or the retailer, to sue the manufacturer for three times the cost of the product plus attorney fees. This is absurd and ridiculous, in light of the above facts. Why is the manufacturer the only whipping boy?

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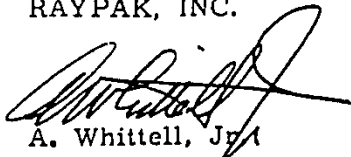
4. It appears that Senator Song entertains the belief that all manufacturers are villains and blood suckers out to fleece the public, whereas we find most manufacturers to have a high sense of morality. If not, they cannot survive in business.
5. The bill overlooks completely the responsibilities of the retail-installer (in our case) and of the consumer.

With due respect we ask that you do all that you can to prevent the passage of this dangerous bill. If you must satisfy the political need of passing a bill for consumerism purposes, then it should proceed along the lines of what the federal government is now doing, which is requiring a full disclosure of warranty terms and gimmicks. This, we feel, would be in the best interest of the consumer.

We might add that as manufacturers of a wide variety of products for the last 21 years, we have been most lenient in allowing service charges over and above our warranties, and believe that Senator Song's bill is an insult to the intelligence of the honest manufacturers in this state. If a manufacturer is not honest he will surely fail in business, and in a short period of time. If he is honest and conducts his business efficiently he may survive but certainly not if he is subjected to the confiscatory approach of this bill.

Very truly yours,

RAYPAK, INC.



A. Whittell, Jr.
President

bw

cc: Governor Ronald Reagan

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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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Page Three

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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LEGISLATIVE HISTORY AND LEGISLATIVE INTENT
1 (888) 676-1947**

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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 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 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.

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A 4th District Court of Appeal Division 2.

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.

1753 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

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

1756

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.

1757

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.

1758

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

1760

1792. Unless disclaimed in the manner prescribed by this chapter, every sale or consignment of consumer goods by a manufacturer in this state in this state by a manufacturer

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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) : (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 1771 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

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4th District Court of Appeal Division 2

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 1760 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 1760 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 1760, 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 1760 and 1760.

50 1773. Any buyer of consumer goods injured by a willful
51 warranty protection, including actual and reasonable costs of
52 the service and repair, plus a 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 1771
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 1776
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

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A 9th District Court of Appeal Division 2.

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 of the Civil Code as added by Section 1*
 15 *of this act is repealed.*

Senate Bill No. 272

Passed the Senate August 20, 1970

Secretary of the Senate

Passed the Assembly August 19, 1970

Chief Clerk of the Assembly

This bill was received by the Governor this _____

day of _____, 1970, at _____ o'clock _____ a.

Private Secretary of the Governor

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A 4th District Court of Appeal Division 2.

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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. 11-15, 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 ~~product~~ pursuant to which the warrantor undertakes to preserve or maintain the utility or performance of ~~the consumer 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.

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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.

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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 disclaimer 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*

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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.

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(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.

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2 column head:

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

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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.

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.

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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.

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Document received by the CA 4th District Court of Appeal Division 2.

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 wilful 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.

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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 fair treatment and, as Ralph Nader says, "to preserve the free-enterprise economy by making the market work better."

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Hearing on Warranties Told of 'Slipshod' Work

Los Angeles Times

Contractor Claims
Manufacturers Cut
Quality to Compete

BY WILLIAM ENDICOTT
Times Staff Writer

A State Senate committee investigating warranties was told Tuesday that manufacturers of air conditioning and heating units often engage in "slipshod" production methods to meet price competition.

Sacramento contractor Bob Cruse, testifying before the Committee on Business and Professions headed by Sen. Alfred H. Song (D-Monterey Park), asserted:

"If we, as contractors, could get a product that had adequate, reasonable and sensible quality control, actual consumer cost could be reduced."

Clarence Tver, another Sacramento contractor, also testified that manufacturers are trying to sell at the lowest possible price and consequently "there's really not much incentive for building a quality piece of equipment."

Two-Day Hearing Ends

The committee ended a two-day hearing in the state Building and focused attention at its morning session on the air conditioning and heating industry.

Tver said that although many warranties guarantee a product to be "free from defects in workmanship," they do not provide for labor costs to correct defects when they do occur.

The result, he said, is that contractors who have installed the equipment and thus must answer directly to the buyer often wind up "paying for someone else's mistakes."

Much of the testimony at the morning session revolved around the question of who should be responsible for warranty service — the manufacturer, distributor, retailer or installing contractor.

RETAILERS COMPLAIN

Appliance, Auto Warranties Come Under Fire in Probe

BY RICHARD WEST
Times Staff Writer

Page 1

An appliance retailer Monday complained to a State Senate committee investigating warranties that he had to sell the same defective refrigerator five times before the manufacturer would take it off his hands.

"We do not get backed up by the manufacturer," Virgil Galtier told Sen. Alfred H. Song (D-Monterey Park) and his Committee on Business and Professions.

Automobile warranties came in for most of the criticism as the two-day hearing opened in the State Building. They were characterized by one witness as "not worth the paper they are printed on."

Committee members wondered aloud at the end of Monday's session why auto dealers invited to appear

and answer complaints about car warranties failed to show up.

Song urged the dealers to appear when the hearing resumes today.

Patrick J. Hilligan, former Republican political figure who represents the Ford Motor Co. here, was scheduled to testify Monday afternoon, but he also failed to appear.

General Motors sent a written statement to the committee.

Song said his committee hoped to present measures to the next Legislature to remedy the warranty situation.

He indicated the committee was studying a possible statute to force dealers to honor warranties and even requiring a bond from them to insure that warranty work is performed.

Please Turn to Page 18, Col. 1

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 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 por-

Please Turn to Page 18, Col. 2

Los Angeles Times articles reporting the hearing on warranties held by the Senate Business and Professions Committee on November 4 and 5, 1969, and the passage of SB 272 by the Legislature less than 10 months later.

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SENATOR ALFRED H. SONG — 28th SENATORIAL DISTRICT



A REPORT TO THE PEOPLE

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.

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(continued on page 4)

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Document received by the CA 4th District Court of Appeal Division 2.

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(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.

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Answer: Then the bill requires him to reimburse his retailers for their full expenses in servicing his warranties.

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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 fair treatment and, as Ralph Nader says, "to preserve the free-enterprise economy by making the market work better."

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ENROLLED BILL REPORT

Agriculture & Services Agency

Department, Board or Commission Professional and Vocational Standards	AUTHOR Song and Karabian	BILL NUMBER SB-272				
<p>SUBJECT:</p> <p>This bill enacts the Consumer Warranty Protection Act.</p> <p>HISTORY, SPONSORSHIP AND RELATED LEGISLATION:</p> <p>The sponsor is unknown. A related bill AB-292, currently in enrollment, concerns the same general subject.</p> <p>ANALYSIS:</p> <p>A. Specific Findings</p> <p>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 warranties. 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'd)</p> <p>The last approved position of this department was Not Favor. The vote in the Senate was 24-5 and in the Assembly 64-1.</p> <p>RECOMMENDATION</p> <p>Sign. 000088</p> <table border="1"> <tr> <td>Department Director <i>[Signature]</i></td> <td>DATE 3-31-70</td> <td>Agency Secretary <i>[Signature]</i></td> <td>DATE 3-31-70</td> </tr> </table>			Department Director <i>[Signature]</i>	DATE 3-31-70	Agency Secretary <i>[Signature]</i>	DATE 3-31-70
Department Director <i>[Signature]</i>	DATE 3-31-70	Agency Secretary <i>[Signature]</i>	DATE 3-31-70			

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ENROLLED BILL REPORT

Agriculture & Services Agency

Department, Board or Commission Professional and Vocational Standards	AUTHOR Song and Karabian	BILL NUMBER SB-272
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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.

RECOMMENDATION

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Department Director	DATE	Agency Secretary	DATE SEP 1960
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REPLY TO:
STATE CAPITOL
SACRAMENTO 95814
(916) 443-3388

LEGISLATIVE OFFICE
STATE BUILDING
LOS ANGELES 90612
(213) 620-8840

DISTRICT OFFICE
2337 80. GARFIELD AVENUE
MONTEREY PARK 91754
(213) 724-3829

California State Senate

ALFRED H. SONG
STATE SENATOR
TWENTY-EIGHTH SENATORIAL DISTRICT

SB 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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Honorable Ronald Reagan

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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

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STATE CAPITOL
SACRAMENTO, CALIFORNIA 95814
TEL.: (916) 445-1720

DISTRICT OFFICE
1811 SO. PACIFIC COAST HIGHWAY
REDONDO BEACH, CALIF. 90277
TEL.: 398-8522

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
ROBERT G. BEVERLY

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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.

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(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 which exorress 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: When 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 or 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.

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(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.

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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.

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 ^{repair} ~~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.

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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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Page Three

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.

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A CALIFORNIA COMPANY ... SERVING CALIFORNIA AND THE WEST



P. O. Box 594, Hollister, Calif. 95023

AUGUST 28, 1970

THE HONORABLE RONALD REAGAN
GOVERNOR, STATE OF CALIFORNIA
STATE HOUSE,
SACRAMENTO, CALIFORNIA

DEAR GOVERNOR REAGAN:

THE ATTACHED FILE WITH SENATOR BRADLEY'S LETTER IS SELF-EXPLANATORY.

AS YOU CAN SEE, SENATOR BRADLEY DOES, ON OCCASION VOTE AGAINST A BILL WHICH HAS NO MERIT. (MY PERSONAL CONVICTIONS ARE THAT HE ERRED IN NOT SUPPORTING YOUR TAX BILL, BUT HIS THINKING IS VERY STRAIGHT ON SENATE BILL NO. 272.)

I BELIEVE YOU WILL AGREE THAT MR. TOM CLARK OF TELEDYNE-LAARS IN HIS LETTER OF AUGUST 6TH VERY ACCURATELY POINTS UP THE INEQUITIES OF THE PROPOSED LEGISLATION AND I HASTEN TO JOIN THE RANKS OF THE MANY MANUFACTURERS WHO ARE OF SIMILAR FEELING.

THE UNANIMITY OF OPINION AMONG COMPANIES, LARGE AND SMALL, ON THE INADEQUACY

★ HOLLISTER

OF SENATE BILL NO. 272 SHOULD ENCOURAGE AND ASSURE YOUR VETO OF THIS LEGISLATION.

NONE OF US SHOULD FEAR A PRODUCT WARRANTY AND I, FOR ONE, FAVOR ACCOUNTABILITY WHEN WE FAIL A VALUED CUSTOMER, BUT SENATOR SONG'S BILL IS A LEGAL "BUCKET OF WORMS" WHICH IS BADLY IN NEED OF EDITORIAL REVISION.

SINCERELY,

NICOLET OF CALIFORNIA, INC.

C. FRED WORKMAN
EXECUTIVE VICE-PRESIDENT

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CLARK L. BRADLEY
SENATOR
FOURTEENTH SENATORIAL DISTRICT
SANTA CLARA AND ALAMEDA COUNTIES

August 26, 1970

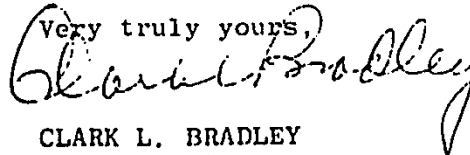
C. Fred Workman, Executive Vice-President
Nicolet of California, Inc.
Post Office Box 594
Hollister, California 95023

Dear Mr. Workman:

Just a note to acknowledge your letter of August 22nd
and a copy of the letter from Mr. Tom Clark to Assembly-
man John Stull regarding Senate Bill 272.

I share your concern in regard to this legislation, and
am pleased to tell you that I voted against this measure.
It passed the Senate and the last I heard of it it was
pending on third reading file in the Assembly. Assuming
it has passed the Assembly, I would strongly urge that
you write to the Governor and ask him to veto the bill.

Very truly yours,



CLARK L. BRADLEY
State Senator

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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.

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Los Angeles Times

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6—Part II FRIDAY MORNING, SEPTEMBER 11, 1970

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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

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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 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.

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 consumer goods. However, a manu-

facturer, 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

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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

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California State Senate

ALFRED H. SONG
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2193-1
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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 falls 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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Mr. Fred A. McCanlies

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December 4, 1970

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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RE SB 272 (Ch. 1333) OF 1970

- #2 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?

#3
- #1 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.? #5
- #1 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)?

#1 4. If a public utility contracts for the work for effectuating the manufacturer's express warranty, what is the obligation, if any, under the bill?
- #1 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?

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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?

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STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL

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Sacramento, California

OCT 1 1971

Honorable Richard D. Hayden
Assembly Chamber

Consumer Warranties (S.B. 742) - #19493

Dear Mr. Hayden:

You have asked the following questions relating to the warranty obligations of a manufacturer of heating and cooling equipment.

QUESTION NO. 1

What would be the warranty obligations of a manufacturer of heating and cooling equipment under Senate Bill 742, as amended June 8, 1971, if enacted, if the Section 1795.1 that the bill would add to the Civil Code were deleted?¹

OPINION AND ANALYSIS NO. 1

S.B. 742 proposes several changes to the Song-Beverly Consumer Warranty Act (Ch. 1 (commencing with Sec. 1790, Title 1.7, Pt. 4, Div. 3, Civ. C.).

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

¹ S.B. 742, as amended June 8, 1971, shall be designated hereafter as S.B. 742.

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MJN/126

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Honorable Richard D. Hayden - p. 2 - #12493

Subdivision (a) of Section 1791 of the Civil Code 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."

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 everything 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.), 156 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 heating and cooling equipment which has 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.

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Honorable Richard D. Hayden - p. 3 - #19493

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."

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.

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

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MJN/128

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Honorable Richard D. Hayden - p. 4 - #19493

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 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.).

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MJN/129

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Honorable Richard D. Hayden - p. 5 - #19493

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 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.

Thus, we think the act at present applies to manufacturers of heating and cooling equipment, whether or not such appliances or machines become a part of real property during the period of warranty coverage.

S.B. 742 among other things proposes to add the following section to the Civil Code, as part of the Song-Beverly Consumer Warranty Act:

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

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MJN/130

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Honorable Richard D. Hayden - p. 6 - #19493

"1795.1. No requirement of this chapter shall apply to any equipment or any part thereof which is a component of a system designed to heat, cool, or otherwise condition air where such a system shall become a fixed part of a structure."

Thus, if enacted, S.B. 742 would remove from the provisions of the Song-Severly Consumer Warranty Act heating and cooling equipment and any part thereof which is a component of a system designed to heat, cool, or otherwise condition air where such a system becomes a fixed part of a structure. However, the act would, if S.B. 742, as amended, is enacted, continue to apply to heating and cooling equipment and any part thereof which does not become a fixed part of a structure and which otherwise qualifies as consumer goods.

If S.B. 742 were enacted without Section 1795.1, there would be no change in the act's present applicability to manufacturers of heating and cooling equipment whose warranty obligations would be the same as presently provided by the act, except as such obligations would otherwise be modified by the enactment of S.B. 742.

S.B. 742, if enacted, would add subdivision (c) to Section 1791.1 of the Civil Code. This proposed subdivision reads as follows:

"1791.1. * * *

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

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MJN/131

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Honorable Richard D. Hayden - p. 7 - #19493

The Song-Beverly Consumer Warranty Act is at present silent as to the duration of the implied warranties of merchantability and fitness arising under the act. The addition of subdivision (c) to Section 1791.1 of the Civil Code would establish specific limitations on the duration of such implied warranties.

Thus, if S.B. 742 is enacted, we think the effect of proposed subdivision (c) of Section 1791.1 on manufacturers of heating and cooling equipment which is covered by the act, would be to limit the duration of the implied warranties of merchantability and fitness to the term of an express warranty accompanying such equipment if the duration of the express warranty is reasonable. Furthermore, such implied warranties could not, under the terms of the proposed subdivision, have a duration of less than 60 days nor more than one year; and where the duration of the express warranty is not limited, the duration of an implied warranty is one year.

S.B. 742 proposes to add subdivision (b) to Section 1793.1 of the Civil Code as follows:

"1793.1. * * *

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

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

"(2) At the time of sale, provide the buyer with the name and address and telephone number of the service and repair facility central directory within this state. It shall be the duty of the central directory to provide, upon inquiry, the name and address of the authorized service and repair facility nearest the buyer; or

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MJN/132

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Honorable Richard D. Hayden - p. 8 - #19493

"(3) Maintain at the premises of retail sellers of the warrantor's consumer goods a current listing of such warrantor's authorized service and repair facilities, or retail sellers to whom the consumer goods are to be returned for service and repair, whichever is applicable, within this state. It shall be the duty of every retail seller provided with such a listing to provide, on inquiry, the name, address, and telephone number of the nearest authorized service and repair facility, or the retail seller to whom the consumer goods are to be returned for service and repair, whichever is applicable."

We think the effect of proposed subdivision (b) of Section 1793.1 of the Civil Code would be to require, in part, manufacturers making express warranties on heating and cooling equipment who elect to maintain service and repair facilities in California to furnish and maintain the information set forth in paragraphs (1), (2) and (3) of the subdivision quoted above.

S.B. 742 would, if enacted, amend Section 1793.3 of the Civil Code as follows:

"1793.3. If the manufacturer making of consumer goods sold in this state for which the manufacturer has made an express warranties warranty does not provide service and repair facilities within this state pursuant to subdivision (a) of Section 1793.2, the buyer of such manufacturer's nonconforming goods may follow the course of action prescribed in either subdivision (a) or (b), below, as follows:

"(a) Return the defective nonconforming 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

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MJN/133

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Honorable Richard D. Hayden - p. 9 - #19493

nonconforming goods or is unable to effect the service or repair of the goods in accordance with the terms and conditions of the warranty so as to effect conformity with applicable express warranties, the such 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 nonconformity.

"(b) Return the defective article nonconforming consumer good 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 Replacement, service, or repair shall be at the option of the retail seller.

"(c) In the event a buyer is unable to return nonconforming goods to the retailer due to reasons of size and weight, or method of attachment, or method of installation, or nature of the nonconformity, the buyer shall give notice of the nonconformity to the retailer. Upon receipt of such notice of nonconformity the retailer shall, at its option, service or repair the goods at the buyer's residence, or pick up the goods for service or repair, or arrange for transporting the goods to its place of business. Costs of transporting the goods shall be at the retailer's expense. The retailer shall be entitled to recover all such costs of transportation from the manufacturer pursuant to Section 1793.5. Costs of transporting nonconforming goods after delivery to the retailer until return of the goods to the buyer, when incurred by a retailer, shall be recoverable from the manufacturer pursuant to Section 1793.5. Written notice of nonconformity to the retailer shall constitute return of the goods for the purposes of subdivision (a) and (b)." (Stricken language is in existing law and underlined language would be added.)

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MJN/134

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Honorable Richard D. Hayden - p. 10 - #19493

Proposed subdivision (c), among other things, expressly recognizes that there may be situations covered by the Song-Beverly Consumer Warranty Act in which the buyer is unable to retain defective goods because of the method by which the goods were attached or installed. Thus, this subdivision would, in absence of other provisions, apply to goods such as heating and cooling equipment which becomes a fixed part of the structure.

We think proposed subdivision (c) of Section 1793.3 of the Civil Code would with respect to heating and cooling equipment covered by the act impose upon manufacturers of such equipment various duties relating to the return of nonconforming goods.

QUESTION NO. 2

What would be the warranty obligations on manufacturers of heating and cooling equipment if S.B. 742 was enacted without deleting Section 1795.1 of the act?

OPINION AND ANALYSIS NO. 2

As indicated above in Opinion and Analysis No. 1, it is our opinion that proposed Section 1795.1 of the Civil Code would remove from the provisions of the Song-Beverly Consumer Warranty Act heating and cooling equipment or any part thereof which is a component of a heating and cooling system presently covered by the act where such a system became a fixed part of a structure.

However, the act would, if S.B. 742 is enacted, continue to apply to heating and cooling equipment and any part thereof which does not become a fixed part of a structure and which otherwise qualifies as consumer goods.

The sale of goods, which includes heating and cooling equipment used for personal, family, or household use, is governed in part by the provisions of the Uniform Commercial Code (see Vol. 1, California Commercial Law, C.E.B., at pp. 4, 31; Secs. 2102, 2105, 2202, Com. C.).

Consumer goods covered by the Song-Beverly Consumer Warranty Act are also covered by the Commercial Code, unless there is a conflict, in which case those provisions of the

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Honorable Richard D. Hayden - p. 11 - #19493

Song-Beverly Consumer Warranty Act prevail (Sec. 1790.3, Com. C.). Consequently, heating and cooling equipment excluded from the act would be governed by the warranty provisions of the Commercial Code.

Under the Uniform Commercial Code, when goods are sold on the basis of a sample or a description of the goods and the sample or description is made part of the bargain, there is created an express warranty that the goods shall conform to the sample or the description (Sec. 2313, Com. C.). The description need not be contained in the contract itself. It may appear on an invoice or in an advertisement such as a sale brochure (see Smith v. Zimbalist, 2 Cal. App. 2d 324, 333; Lane v. C.A. Swanson & Sons, 136 Cal. App. 2d 210, 215).

Unless the parties explicitly exclude it, every sales contract contains a warranty, implied by law, that the goods are of merchantable quality, if the seller is a merchant with respect to goods of that kind (Sec. 2314, Com. C.). Section 2314 of the Commercial Code also establishes a six part standard of merchantability. The section reads as follows:

"2314. (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

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MJN/136

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Honorable Richard D. Hayden - p. 12 - #19493

"(d) Be, 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."

"Merchant" is defined as "a person who deals in goods of the kind or otherwise by his occupation holds himself out as having skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill" (Sec. 2104, Com. C.). This definition, in our opinion, would encompass a manufacturer of heating and cooling equipment.

Another implied warranty that may arise in special circumstances is that the goods are fit for a particular purpose (Sec. 2315, Com. C.). There are three essential elements that must be present before this warranty will arise: seller's knowledge, buyer's reliance, and seller's selection or furnishing of the goods (Vol. 1, California Commercial Law, C.E.B., at p. 242). The seller must have reason to know of the buyer's special purpose and the buyer must actually rely on the seller's skill and judgment in selecting or furnishing the goods.

These warranties may be modified or excluded by the seller's or manufacturer's disclaimers of warranties. Disclaimers of both implied and express warranties are, however, construed strictly against the seller (Vol. 1, California Commercial Law, C.E.B., at p. 251).

Section 2316 of the Commercial Code states, in part, in essence, that words of warranty and words of disclaimer are to be construed whenever reasonable as consistent with each other, but that if such a construction is unreasonable, the warranty prevails.

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MJN/137

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Honorable Richard D. Hayden - p. 13 - #19493

A disclaimer clause excluding all warranties, express or implied, is not sufficient to negate the express warranty of conformity to description or sample (Vol. 1, California Commercial Law, C.R.S., at pp. 254-255).

Although the seller has a right to restrict implied warranties, he cannot do so by stealth. To be effective, a disclaimer of implied warranties must be "conspicuous" (Sec. 2315, Com. C.). As defined in Section 1201 of the Commercial Code, "conspicuous" means "so written that a reasonable person against whom it is to operate ought to have noticed it." Section 2315 also requires that any disclaimer of the implied warranty of merchantability must mention merchantability, and if in writing be conspicuous.

The buyer of goods is entitled under the Uniform Commercial Code to inspect delivered goods before acceptance, unless the sales contract provides otherwise or it is in its terms inconsistent with the right of inspection (Sec. 2513, Com. C.).

The buyer of goods that do not conform to the contract sample or description or are a breach of one of the warranties, implied or express, has a remedy of damages (Secs. 2711-2713, Com. C.). For breach of warranty the buyer's measure of damages "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." (Sec. 2714, Com. C.) The buyer further may be entitled to recover incidental and consequential damages (Sec. 2714, Com. C.).

Very truly yours,

George H. Murphy
Legislative Counsel

By
Edward R. Cohen
Deputy Legislative Counsel

ERC:sc

Two copies to Alfred H. Song,
pursuant to Joint Rule 14.

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Sacramento, California
March 2, 1971

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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).

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MJN/140

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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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MJN/141

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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.

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MJN/143

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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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MJN/144

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.

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00148

MJN/145

Document received by the CA 4th District Court of Appeal Division 2.

"(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.

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MJN/146

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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."

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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.

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MJN/148

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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.

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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.

000133

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MJN/150

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.

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MJN/151

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Honorable Alfred H. Song - p. 13 - #19381

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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MJN/152

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Honorable Alfred H. Song - p. 14 - #19381

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

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MJN/153

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Honorable Alfred H. Song - p. 15 - #19381

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."

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MJN/154

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Honorable Alfred H. Song - p. 16 - #19381

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.

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Honorable Alfred H. Song - p. 17 - #19381

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).

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MJN/156

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Honorable Alfred H. Song - p. 18 - #19381

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
Deputy Legislative Counsel

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MJN/157

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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:

* 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).

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MJN/158

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"(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.

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MJN/159

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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.

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MJN/160

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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

000144

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MJN/161

Document received by the CA 4th District Court of Appeal Division 2.

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).

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

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MJN/162

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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."

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MJN/163

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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

000147

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MJN/164

Document received by the CA 4th District Court of Appeal Division 2.

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.)

000148

00168

MJN/165

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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.

000149

00163

MJN/166

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"(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.

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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"

000151

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MJN/168

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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

000152

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?

000153

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MJN/170

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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

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MJN/171

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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."

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MJN/172

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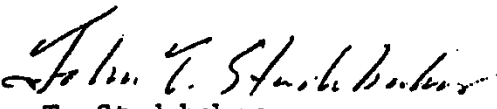
It is clear from this section that warranty work performed by a retail seller is ultimately at the expense of the manufacturer, not the buyer. The retail seller is to perform the work at his expense and then look to the manufacturer for reimbursement and his right to reimbursement is enforceable in a 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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MJN/173

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CALIFORNIA LEGISLATURE

AT SACRAMENTO
1971 REGULAR SESSION

SENATE FINAL HISTORY

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

CONVENED JANUARY 4, 1971
ADJOURNED SINE DIE JANUARY 3, 1972

DAYS IN SESSION _____ 199
CALENDAR DAYS _____ 365

Bill Signing Period Expires 12 O'clock Midnight January 1, 1972

Laws Become Effective March 4, 1972

Last Day for Filing Referendum March 3, 1972

LT. GOVERNOR ED REINECKE
President of the Senate

SENATOR JAMES R. MILLS
President pro Tempore

Compiled Under the Direction of

DARRYL R. WHITE
Secretary of the Senate

by
DAVID H. KNEALE
History Clerk

000157

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MJN/174

Document received by the CA 4th District Court of Appeal Division 2.

S.B. No. 742—Song.

An act to amend Sections 1791, 1791.1, 1792, 1792.1, 1792.2, 1792.4, 1792.5, 1793, 1793.1, 1793.2, 1793.3, 1793.35, 1793.4, 1793.5, 1794, 1794.2, 1794.3, and 1794.4 of, and to add Sections 1790.4, 1793.35, 1795.1, and 1795.5 to, the Civil Code, relating to consumer warranties.

Mar. 29—Read first time.
 Mar. 31—To Com. on JUD.
 June 8—From committee with author's amendments. Read second time.
 Amended. Re-referred to committee.
 June 16—From committee: Do pass.
 June 17—Read second time. To third reading.
 June 21—Read third time. Passed. To Assembly.
 June 22—In Assembly. Read first time. Held at desk.
 June 23—To Com. on JUD.
 Sept. 29—From committee: Do pass as amended.
 Sept. 30—Read second time. Amended. To second reading.
 Oct. 1—Read second time. To third reading.
 Oct. 7—Read third time. Passed. To Senate.
 Oct. 7—In Senate. To unfinished business.
 Nov. 1—Senate refuses to concur in Assembly amendments. To unfinished business. Senate appoints Conference Committee: Senators Song, Cologne, Collier.
 Nov. 2—Assembly appoints Conference Committee: Messrs. Beverly, Warren, Fenton. Senate adopts conference report.
 Nov. 3—Assembly adopts conference report. To enrollment.
 Nov. 9—Enrolled. To Governor at 3 p.m.
 Nov. 16—Approved by Governor. Chapter 1523.

S.B. No. 743—Song.

An act to amend Section 132a and 4553 of the Labor Code, relating to workmen's compensation.

Mar. 29—Read first time.
 Mar. 31—To Com. on I.R.
 Jan. 3—From committee without further action.

S.B. No. 744—Lagomarsino.

An act to amend Sections 12021.5, 12028, and 12032 of, and to repeal Section 12033 of, the Penal Code, relating to weapons.

Mar. 29—Read first time.
 Mar. 31—To Com. on JUD.
 May 7—From committee: Amend, and re-refer to committee.
 May 10—Read second time. Amended. Re-referred to committee.
 May 12—From committee: Do pass.
 May 13—Read second time. To third reading.
 May 20—Read third time. Passed. To Assembly.
 May 21—In Assembly. Read first time. Held at desk.
 May 24—To Com. on CRIMJ.
 July 14—From committee with author's amendments. Read second time.
 Amended. Re-referred to committee.
 Aug. 12—From committee with author's amendments. Read second time.
 Amended. Re-referred to committee.
 Sept. 22—From committee: Do pass as amended.
 Sept. 23—Read second time. Amended. To second reading.
 Sept. 24—Read second time. To third reading.
 Oct. 12—Read third time. Passed. To Senate.
 Oct. 12—In Senate. To unfinished business.
 Oct. 13—Senate concurs in Assembly amendment. To enrollment.
 Oct. 19—Enrolled. To Governor at 2:30 p.m.
 Oct. 29—Approved by Governor. Chapter 1271.

000158

00172

MJN/175

Document received by the CA 4th District Court of Appeal Division 2.

Introduced by Senator Song

March 29, 1971

President of the Senate

REFERRED TO COMMITTEE ON JUDICIARY

Speaker of the Assembly

An act to amend Sections 1791, 1791.1, 1792, 1792.1, 1792.2, 1793, 1793.1, 1793.2, 1793.3, 1793.4, 1793.5, 1794, 1794.2, 1794.3, and 1794.4 of, and to add Sections 1790.4 and 1795.5 to, the Civil Code, relating to consumer warranties.

LEGISLATIVE COUNSEL'S DIGEST

SB 742, as introduced, Song (Jud.). Consumer warranties. Amends, adds various secs., Civ.C. Revises various provisions of Song-Beverly Consumer Warranty Act. Operative on January 1, 1972. Vote—Majority; Appropriation—No; Fiscal Committee—No.

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

Approved _____, 1971

- 1 SECTION 1. Section 1790.4 is added to the Civil Code, to
- 2 read:
- 3 1790.4. The remedies provided by this chapter are cum-
- 4 mulative and shall not be construed as restricting any remedy
- 5 that would otherwise be available to a party entitled to relief
- 6 under the provisions of this chapter.
- 7 SEC. 2. Section 1791 of the Civil Code is amended to read:
- 8 1791. As used in this chapter:
- 9 (a) "Consumer goods" means any new mobilehome, motor
- 10 vehicle, machine, appliance, or like product, or part thereof
- 11 that is used or bought for use primarily for personal, family,
- 12 or household purposes. "Consumer goods" also means any
- 13 new good or product the retail sale of which is accompanied
- 14 by an express warranty to the retail buyer thereof and such
- 15 product is used or bought for use primarily for personal,
- 16 family, or household purposes.
- 17 (b) "Buyer" or "retail buyer" means any individual who
- 18 buys consumer goods from a person engaged in the business
- 19 of manufacturing, distributing, or selling such goods at retail.
- 20 As used in this subdivision, "person" means any individual,
- 21 partnership, corporation, association, or other legal entity
- 22 which engages in any such business.

Governor

000159

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MJN/176

4th District Court of Appeal Division 2.

1 (c) "Manufacturer" means any individual, partnership, cor-
2 poration, association, or other legal relationship which manu-
3 factures, assembles, or produces, or gathers consumer goods.

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

8 (e) "Retail seller," "seller," or "retailer" means any indi-
9 vidual, partnership, corporation, association, or other legal re-
10 lationship which engages in the business of selling new goods
11 to retail buyers.

12 SEC. 3. Section 1791.1 of the Civil Code is amended to
13 read:

14 1791.1. As used in this chapter:

15 (a) "Implied warranty of merchantability" or "implied
16 warranty that goods are merchantable" means that the con-
17 sumer goods meet each of the following:

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

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

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

23 ~~(4)~~

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

25 ~~(5)~~

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

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

35 (c) *The duration of the implied warranty of merchantability*
36 *and where present the implied warranty of fitness shall in no*
37 *event be in excess of one year following the sale of new con-*
38 *sumer goods to a retail buyer.*

39 (d) *Any buyer of consumer goods injured by a breach of the*
40 *implied warranty of merchantability and where applicable by*
41 *a breach of the implied warranty of fitness may bring an action*
42 *for the recovery of damages pursuant to the provisions of*
43 *Chapter 7 (commencing with Section 2701) of Division 2 of*
44 *the Commercial Code, and, in such action, the provisions of*
45 *subdivision (b) of Section 1794 of this chapter shall apply.*

46 SEC. 4. Section 1792 of the Civil Code is amended to read:
47 1792. Unless disclaimed in the manner prescribed by this
48 chapter, every sale or consignment for sale of consumer goods
49 *that are sold at retail in this state by a manufacturer shall be*
50 *accompanied by an the manufacturer's implied warranty that*
51 *the goods are merchantable.*

1 SEC. 5. Section 1792.1 of the Civil Code is amended to
2 read:

3 1792.1. Every sale or consignment for sale of consumer
4 goods *that are sold at retail* in this state by a manufacturer
5 who has reason to know at the time of the retail sale or con-
6 signment that the goods are required for a particular purpose
7 and that the buyer is relying on the manufacturer's skill or
8 judgment to select or furnish suitable goods shall be accom-
9 panied by *such manufacturer's an* implied warranty of fitness.

10 SEC. 6. Section 1792.2 of the Civil Code is amended to
11 read:

12 1792.2. Every sale or consignment for sale of consumer
13 goods *that are sold at retail* in this state ~~made through by~~ a
14 retailer or distributor who has reason to know at the time of
15 ~~the retail sale or consignment~~ that the goods are required for
16 a particular purpose, and that the buyer is relying on the re-
17 tailer's or distributor's skill or judgment to select or furnish
18 suitable goods; shall; ~~in lieu of the warranty of the manufac-~~
19 ~~turer under Section 1792.1, be accompanied by an such re-~~
20 ~~tailer's or distributor's implied warrant that the goods are fit~~
21 ~~for that purpose.~~

22 SEC. 7. Section 1793 of the Civil Code is amended to read:

23 1793. Nothing in this chapter shall affect the right of the
24 manufacturer, distributor, or retailer to make express war-
25 ranties with respect to consumer goods. However, a manufac-
26 turer, distributor, or retailer, ~~making express warranties~~ may
27 not, by such express warranties, limit the application of or,
28 modify, or ~~disclaim~~ the implied warranties guaranteed by
29 this chapter to the sale of consumer goods.

30 SEC. 8. Section 1793.1 of the Civil Code is amended to
31 read:

32 1793.1. (a) Every manufacturer, distributor, or retailer
33 making express warranties with respect to consumer goods
34 shall fully set forth such warranties in readily understood
35 language and clearly identify the party making such express
36 warranties.

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

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

44 (2) At the time of sale, provide the buyer with the name and
45 address and telephone number of the service and repair facility
46 central directory within this state. It shall be the duty of the
47 central directory to provide, upon inquiry, the name and ad-
48 dress of the authorized service and repair facility nearest the
49 buyer; or

50 (3) Provide the retail seller of such manufacturer's con-
51 sumer goods with a current listing of that manufacturer's
52 authorized service and repair facilities within the state. It

1 shall be the duty of every retail seller provided with such a
2 listing to provide, on inquiry, the name, address, and tele-
3 phone number of the authorized service and repair facility
4 nearest the buyer.

5 SEC. 9. Section 1793.2 of the Civil Code is amended to
6 read:

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

10 (1) shall maintain Maintain or cause to be maintained in
11 this state sufficient service and repair facilities to carry out
12 the terms of such warranties ; ; or

13 (2) shall be Be subject to the provisions of Section 1793.5.

14 (b) Where such service and repair facilities are maintained
15 in this state and service or repair of the goods is necessary
16 because they do not comply conform with the applicable ex-
17 press warranties, service and repair shall be commenced within
18 a reasonable time following receipt of the goods by the manu-
19 facturer or its representative in this state. Costs of trans-
20 porting nonconforming goods, for purposes of service or re-
21 pair, shall be at the manufacturer's expense. Unless the buyer
22 agrees in writing to the contrary, the goods must be returned,
23 at the manufacturer's expense, in merchantable condition serv-
24 iced or repaired so as to conform to the applicable warranties
25 within 30 days. Delay caused by conditions beyond the con-
26 trol of the manufacturer or his representatives shall serve to
27 extend this 30-day requirement. Where such delay arises, de-
28 livery of merchantable conforming goods shall be made tend-
29 ered as soon as possible following termination of the condition
30 giving rise to the delay.

31 (c) Should the manufacturer or its representative in this
32 state be unable to make such return of merchantable service
33 or repair the goods to conform to the applicable express war-
34 ranties, he the manufacturer shall either replace the goods or
35 reimburse the buyer in an amount equal to the purchase price
36 paid by the buyer, less that amount directly attributable to
37 use by the buyer prior to the discovery of the defect noncon-
38 formity.

39 SEC. 10. Section 1793.3 of the Civil Code is amended to
40 read:

41 1793.3. If the manufacturer making of consumer goods
42 sold in this state for which the manufacturer has made an
43 express warranties warranty does not provide service and re-
44 pair facilities within this state pursuant to subdivision (a) of
45 Section 1793.2, the buyer of such manufacturer's nonconform-
46 ing goods may follow the course of action prescribed in either
47 subdivision (a) or (b), below, as follows:

48 (a) Return the defective nonconforming consumer goods to
49 the retail seller thereof for replacement, or for service or re-
50 pair in accordance with the terms and conditions of the ex-
51 press warranty. Such replacement, service, or repair shall be
52 at the option of the retail seller. If the retail seller is unable

1 to replace the defective article with merchantable nonconform-
2 ing goods or is unable to effect the service or repair of the
3 goods in accordance with the terms and conditions of the war-
4 ranty so as to effect conformity with applicable express war-
5 ranties, the such retail seller shall reimburse the buyer in an
6 amount equal to the purchase price paid by the buyer, less
7 that amount directly attributable to use by the buyer prior to
8 discovery of the defect nonconformity.

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

15 (c) In the event a buyer is unable to return nonconforming
16 goods due to reasons of size and weight, or method of attach-
17 ment, or method of installation, written notice of nonconform-
18 ity to the retailer shall constitute return of the goods for the
19 purposes of subdivisions (a) and (b).

20 SEC. 11. Section 1793.4 of the Civil Code is amended to
21 read:

22 1793.4. Where an option is exercised in favor of service and
23 repair under Section 1793.3, such service and repair must be
24 commenced within a reasonable time, and, unless the buyer
25 agrees in writing to the contrary, the goods must be returned
26 in merchantable condition conforming to the applicable express
27 warranties shall be tendered within 30 days. Delay caused by
28 conditions beyond the control of the retail seller or his repre-
29 sentatives representative shall serve to extend this 30-day re-
30 quirement. Where such a delay arises, delivery of merchantable
31 conforming goods shall be made tendered as soon as possible
32 following termination of the condition giving rise to the delay.

33 SEC. 12. Section 1793.5 of the Civil Code is amended to
34 read:

35 1793.5. Every manufacturer making express warranties
36 who does not provide service and repair facilities within this
37 state pursuant to subdivision (a) of Section 1793.2 shall be
38 liable as prescribed in this section to every retail seller of such
39 manufacturer's goods who incurs obligations in giving effect
40 to the express warranties that accompany such manufacturer's
41 consumer goods. The amount of such liability shall be deter-
42 mined as follows:

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

47 (b) In the event of service and repair, in an amount equal
48 to that which would be received by the retail seller for like
49 service rendered to retail consumers who are not entitled to
50 warranty protection, including actual and reasonable costs of
51 the service and repair and the cost of transporting the goods,
52 if such costs are incurred, plus a reasonable profit.

000162

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

4 SEC. 13. Section 1794 of the Civil Code is amended to read:
5 1794. Any buyer of consumer goods injured by a willful
6 violation of the provisions of this chapter may bring an action
7 for the recovery of damages. Judgment may be entered for
8 three times the amount at which the actual damages are
9 assessed, plus reasonable attorney fees, and

10 (a) judgment may be entered for three times the amount
11 at which the actual damages are assessed, and

12 (b) reasonable attorney fees may be awarded.

13 SEC. 14. Section 1794.2 of the Civil Code is amended
14 to read:

15 1794.2. The triple damages provisions of this chapter (a)
16 Subdivision (a) of Section 1794 shall not apply to a cause of
17 action commenced or maintained pursuant to Section 382 of
18 the Code of Civil Procedure or pursuant to Section 1781 of
19 this code.

20 (b) Subdivision (a) of Section 1794 shall not apply to
21 judgment based solely on a breach of implied warranty of
22 merchantability or, where present, the implied warranty of
23 fitness.

24 SEC. 15. Section 1794.3 of the Civil Code is amended
25 to read:

26 1794.3. The provisions of this chapter shall not apply:

27 (a) To any defect or nonconformity in consumer goods
28 caused by the unauthorized or unreasonable use of the goods
29 following sale; or

30 (b) To any defect or nonconformity in consumer goods
31 caused by the negligent installation of the goods by a person
32 other than the manufacturer or his representative authorized
33 by him to install his goods.

34 SEC. 16. Section 1794.4 of the Civil Code is amended
35 to read:

36 1794.4. Nothing in this chapter shall be construed to pre-
37 vent the sale of a service contract to the buyer in addition to
38 or in lieu of an express warranty if such contract fully and
39 conspicuously discloses in simple and readily understood
40 language the terms and conditions of such contract.

41 SEC. 17. Section 1795.5 is added to the Civil Code, to read:

42 1795.5. Notwithstanding the provisions of subdivision (a)
43 of Section 1791 defining consumer goods to mean "new"
44 goods, if a distributor or retail seller of used consumer goods
45 makes express warranties with respect to used goods that are
46 sold in this state, the obligation of such distributor or retail
47 seller shall be the same as that imposed on the manufacturer
48 under this chapter, except:

49 (a) It shall be the obligation of the distributor or retail
50 seller making express warranties with respect to used con-
51 sumer goods (and not the original manufacturer, distributor
52 or retail seller making express warranties with respect to such

1 goods when new) to maintain, or cause to be maintained, suffi-
2 cient service and repair facilities within this state to carry out
3 the terms of such express warranties.

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

6 (c) The duration of the implied warranty of merchant-
7 ability and where present the implied warranty of fitness with
8 respect to used consumer goods sold in this state, where the
9 sale is accompanied by an express warranty, shall in no event
10 be in excess of three months following the retail sale of such
11 used consumer goods.

12 SEC. 18. The provisions of this act shall become operative
13 on January 1, 1972 and shall apply to sales of consumer goods
14 occurring on and after January 1, 1972, provided such con-
15 sumer goods are manufactured on or after March 1, 1971.

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MJN/179

SENATE COMMITTEE ON JUDICIARY

BACKGROUND INFORMATION

SB 742

1. Source

- (a) What group, organization, governmental agency, or other person, if any, requested the introduction of the bill?

THE PEOPLE OF CALIFORNIA

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

THE SPECIAL INTERESTS

- (c) If a similar bill has been introduced at a previous session of the Legislature, what was its number and the year of its introduction?

2. Purpose

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

INJUSTICE

If you have any further background information or material relating to the bill, please enclose a copy of it or state where the information or material is available.

SEAN MCCARTHY

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2183, AS SOON AS POSSIBLE. IN ANY CASE, PLEASE RETURN IT NOT LATER THAN 10 DAYS BEFORE THE SCHEDULED HEARING OF THE BILL.

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MJN/180

Document received by the CA 4th District Court of Appeal Division 2.

To: AHS

From: RT

RE: SB 742, amending Song-Beverly Act.

Some 90% of this bill consists merely of rewording current provisions of the Act to increase clarity. Examples: the bill adds provisions to specifically include goods that become fixtures and to exclude suits for breach of an implied warranty from the triple damage section. We believe the Act said this anyway, but now it is in black and white.

The following, however, are changes in substance:

1) The Act presently could be interpreted as applying to used as well as new goods. SB 742 limits the coverage to new goods, but adds a section requiring those who issue new express warranties on used goods to provide service on their warranties under the terms of this Act. (Sec. 1795.5).

2) SB 742 makes the definition of "implied warranty" in the Act conform with that in the U.C.C. by deleting the phrase: "are free from defects of materials or workmanship." While the duration of an implied warranty under the U.C.C. is "a reasonable time", SB 742 sets a 1 year maximum for purposes of the Act, thus permitting warrantors to cost their implied warranty liability. (Sec. 1791.1).

3) The Act gives the warrantor the option of maintaining service and repair facilities in the state. If the warrantor selects this option, SB 742 would require him to inform his customers of the names and addresses of these facilities. (Sec. 1793.1(b)).

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MJN/181

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4) Under the Act consumer goods are narrowly defined as "any motor vehicle, machine, appliance, or like product that is used or bought for use primarily for personal, family, or household purposes." This has given rise to many difficult questions on coverage:

Are campers covered? Yes, we think so.

How about sailboats? Your guess is as good as mine.

Are automobile tires covered? No, but we certainly think they should be..

SB 742 solves most of those problems by expanding the definition of consumer goods to include "any new good or product the retail sale of which is accompanied by an express warranty to the retail buyer." Thus, if SB 742 passes, the test of coverage in most cases will simply be whether the consumer received an express warranty when he bought the product.

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MJN/182

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DEWITT M. MANNING
CAMERON B. AIKENS (SIS 1556)
A.J. GETZ
WALTER F. MAUDER, JR.
GEORGE E. LEAVER
KENNETH J. MURPHY, JR.
JOEL A. GOLDMAN
JOSEPH E. BERBERICH

GETZ, AIKENS & MANNING
ATTORNEYS AT LAW
5435 WILSHIRE BLVD
LOS ANGELES, CALIFORNIA 90048

TELEPHONE
653-4323

April 6, 1971

Mr. Richard C. Thomson,
Administrative Assistant to
Senator Alfred H. Song
State Capitol
Sacramento, California 95814

Re: SB 272


Dear Mr. Thomson:

In accordance with our discussion, I enclose herewith a copy of the Chevrolet OK Used Vehicle Warranty and the Ford Dealer A-1 Used Car Guarantee. I believe that you would qualify these as "service contracts" rather than "warranties". However, you will observe that the word "warranty" is used, and as I told you, both Chevrolet and Ford dealers have a considerable investment via national advertising and local advertising, as well as long use in these warranties.

Again, I urge on behalf of the dealers, the complete exclusion of used vehicles from the implied warranty provisions of the above statute.

Thank you again for your courteous attention and response to our discussion.

Sincerely yours,



DEWITT M. MANNING of
GETZ, AIKENS & MANNING

IMM:vj
Enclosures

cc: Mr. James A. Gorman
cc: Mr. Donley Brady
cc: Mr. Stephen Snow
cc: Kent H. Redwine, Esq.
cc: Mr. Richard E. Arnold

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MJN/183

Document received by the CA 4th District Court of Appeal Division 2.

SONG-BEVERLY CONSUMER WARRANTY ACT

PROPOSALS OF

NORTHERN CALIFORNIA MOTOR CAR DEALERS ASSOCIATION, INC.,

FOR AMENDMENTS

Northern California Motor Car Dealers Association, Inc., a voluntary non-profit association of approximately 900 enfranchised new car dealers, proposes the following amendments to the Song-Beverly Consumer Warranty Act (Title 1.7, Part 4, Division 3, Civil Code Sections 1790-1795):

The Association is concerned that Section 1791 (a) apparently defines consumer goods to include used, as well as new goods, and, while Section 1791 (e) defines "retailer" as one engaged in the business of selling new goods, it appears that these provisions would subject such a retailer to the responsibilities of the Act when he sold used goods. Thus, the Act appears to be discriminatory in that it would not control the activities of persons engaged solely in the sale of used goods.

Since the overall objective of the Act appears to be to regularize the responsibilities of manufacturers, distributors, and retailers with regard to their express warranties as to goods, it is submitted that this Act should not concern itself with used or reconditioned merchandise.

We, therefore, propose that Section 1791 (a) be amended to read as follows:

1791. (a) "Consumer goods" mean: any new motor vehicle, machine, appliance, or like product that is used or bought for use primarily for personal, family, or household purposes.

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MJN/185

Document received by the CA 4th District Court of Appeal Division 2.

If it be thought desirable that the Act shall apply to used goods, then it is submitted that the present reading of Section 1791.1 (a) (3) imposes excessive and dangerous burdens upon a retailer.

The reason that a consumer can purchase a three-year-old or a five-year-old automobile at a reduced price is because its value has declined by use, and it is more likely to contain defects of materials, accumulated from the passage of time, and the reasonable expectations of a consumer should not be that such an article would be free from defects of materials or workmanship at the time of such late re-sale.

Therefore, we propose that, if the Act continues to regulate sales of used goods, this section should be amended as follows:

1791.1. (a) (3) In the case of new goods,
that the same are free from defects of
materials or workmanship.

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MJN/186

Document received by the CA 4th District Court of Appeal Division 2.

A technical problem, which could prove to be rather grievous to automobile dealers, arises from the placement, in Section 1791.2, as an express warranty, of the requirement that goods sold by sample or model shall conform to such sample or model.

We recognize that the draftsmen of the Act drew upon the provisions of Sections 2313, 2314, and 2315 of the Commercial Code, in defining express and implied warranties, but, by reason of other provisions of the Act, the consequences to an automobile dealer in a sale by sample or model may have been unforeseen. It is our understanding that the implied warranties, other than fitness for a particular purpose, are imposed, in a sale of new goods, only upon the manufacturer, and not upon a retail seller (see Section 1792, 1792.1, and 1792.2). However, a retailer can make express warranties and is required to make them in writing (Section 1793.1).

In a sale by sample or model, the necessity explicitly to state the express warranty compelled by Section 1791.2 (a) (2) is not regularly observed.

A large number of new motor vehicles are sold every year upon the basis of production orders of specifically equipped vehicles. The customer enters the dealer's floor, examines a new sedan, and desires a vehicle of the same body style, but equipped with special components of his own designation, such as axle ratio, motor size, transmission, etc., color combinations, special equipment, such as stereo, radio, air conditioning, etc. Based upon the customer's examination of the displayed vehicle, a vehicle is ordered to be produced by the factory. We apprehend that it may be contended that this is a sale by sample or model. The result would be that the dealer, in ordering such a vehicle, is involving himself in express warranties, not otherwise defined, and which ought to be the responsibility of the manufacturer, rather than that of the dealer.

Accordingly, we propose an amendment as follows:

1791.1. (a) (6) In the event of any
sample or model, that the whole of the

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goods conformas to such sample or
model.

1791.2. (a)...(2) Stricken in its
entirety.

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The Act creates rights and responsibilities between a manufacturer, distributor, or retailer and the buyer of goods.

The Association is concerned that this beneficial purpose may be utilized to impose unknown and additional responsibilities toward third persons not involved in the transaction itself, as, for example, personal injury claimants.

Case law and other legislation adequately define and establish the rights of third persons, such as personal injury claimants, against manufacturers, distributors, and retailers of goods, and we submit that the intention of this Act is not to govern or change such rights and obligations. For that reason, we propose that the Act be amended by adding a section as follows:

1791.1. (c) The implied warranties
defined in this section shall inure only
to the contractual benefit of the buyer,
his personal representatives, heirs at law,
and beneficiaries, and to no other person.

SEE
IT'S
PROBLEM
1
Division 2

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If the Act continues to control sales of used goods, it may be argued that a retail seller can protect himself from the responsibility of implied warranties in every instance by selling his goods on an "as is" or "with all faults" basis.

It is the fact that it has been the practice of many motor vehicle dealers to sell used vehicles on an "as is" basis, and this common practice has been made palatable to the consumer by affording a limited or qualified benefit, frequently called a "warranty", whereunder, for a limited period of time, such as thirty days, the seller agrees to share with the buyer the cost of any necessary repair or replacement to certain components of the vehicle. This type of agreement essentially amounts to the affording of a discount under defined circumstances, which the buyer can enjoy, even though the overall risk of the quality and performance of the goods is on the buyer.

Such arrangements represent a substantial benefit to a buyer, and yet, the Association apprehends that the strong wording presently contained in Section 1792.4 (a) (1), (2), and (3), is inconsistent with an effort by a retailer to afford such a benefit in the face of an "as is" sale. Both the seller and the buyer are told, in effect, "whole hog or none".

We propose that a section be added, to read as follows:

1792.6. Nothing in Section 1792.3,
1792.4, or 1792.5 shall affect the right
of a manufacturer, distributor, or retailer
to afford to a buyer, on a sale of consumer
goods "as is" or "with all faults", a written
limited agreement or guarantee to share the
cost of necessary repair parts and labor
under conditions as to time and identity of

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MJN/190

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such parts and labor and the percentage
of the cost thereof to be shared, which
shall be expressly defined in such written
agreement or guarantee in readily under-
stood language, clearly identifying the
party making such limited agreement or
guarantee.

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document received by the CA 4th District Court of Appeal Division 2.

The Association is concerned with regard to the construction to be placed upon words appearing in Section 1793.3 (b). This covers the buyer's option to tender a defective article to any seller of like goods of the same manufacturer, other than the retailer who sold the article to him. The last sentence of said section reads:

"Such replacement, service, or repair shall be at the option of the retail seller."

It is unclear whether this provision gives such retailer of like goods the option to refuse any of the three choices or compels him to render to the buyer one of the three choices.

It is submitted that this language requires clarification, but the Association has no specific proposal to make to remove the ambiguity from the intent of the Legislature, without knowing the actual intent of the Legislature.

*NOT Your
PROBLEM*

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The Act makes no special provision for the time within which actions may be brought for breach of its provisions.

We anticipate that actions under the treble damage section of the Act (1794), could be brought within three years, but it appears to the Association that the implied warranties prescribed by Section 1791.1 would become implied terms of the written agreement for the sale of a vehicle, and, hence, would have a four-year limitations period.

We submit that such an extended period of time with respect to warranties which concern the state of the goods at the time of sale, is excessive and will give rise to difficult questions of proof of facts, if, for example, three and one-half years after sale, a contention be made that the article was initially defective.

Therefore, we would propose that a more stringent period of limitations be imposed to compel a consumer to take his position with regard to such claims at a time when the parties are reasonably able to prove or disprove the facts. Accordingly, we propose that the statute be amended by adding a section to be numbered 1794.6, as follows:

1794.6. No action shall be maintained
by any retail buyer for the breach of any
implied warranty of merchantability under
the provisions of Sections 1792, 1792.1, or
1792.2, unless the same shall be commenced
within one year from the date of sale of the
goods.

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MJN/193

Document received by the CA 4th District Court of Appeal Division 2.

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ROBERT G. PARTRIDGE, SR.
1903-1963

April 14, 1971

The Honorable Alfred H. Song
California State Senate
State Capitol
Sacramento, California 95814

Re: Amendments To Song-Beverly
Consumer Warranty Act
Req. 6550

My dear Senator Song:

This office represents Northern California
Motor Car Dealers Association, Inc., a voluntary, non-
profit association of dealers in new motor vehicles.

Previous communications of the views of the
Association with regard to the impact of the Song-
Beverly Consumer Warranty Act in the field of new and
used motor vehicles have played some part in the
formulation of the amendments which you have proposed
to the Act, and the proposed amendment referenced as
above does obviate many points of concern to the retail
automobile industry.

However, there are two or three points to
which we would ask you to direct your attention:

Duration or Enforcement of
Implied Warranties

Proposed new Section 1791.1 (c) reads as
follows:

"(c) The duration of the implied
warranty of merchantability and where
present the implied warranty of fit-
ness shall in no event be in excess of
one year following the sale of new
consumer goods to a retail buyer."

Proposed new Section 1795.5 (c) reads as
follows:

000177

MJN/194

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The Honorable Alfred H. Song
California State Senate
Page 2
April 14, 1971

"(c) The duration of the implied warranty of merchantability and where present the implied warranty of fitness with respect to used consumer goods sold in this state, where the sale is accompanied by an express warranty, shall in no event be in excess of three months following the retail sale of such used consumer goods."

We consider it extremely desirable that there be a limitation of time within which complaints with respect to breaches of implied warranty may be asserted against a manufacturer or a seller. However, we feel that the two foregoing amendments add a new dimension to the law with regard to implied warranties. The Act adopts, substantially verbatim, most of the implied warranties recognized by Sections 2314 and 2315 of the Commercial Code of the State of California.

It is our understanding of the law with regard to implied warranties that these are applicable only to the condition of the goods at the time of sale. We recognize that a latent defect may appear only at a later date, but it must tend to show that the defective condition existed at the time of sale, and, according to our understanding, the courts have never viewed implied warranties as representing continuing obligations of future duration.

One of the implied warranties is "that the goods are fit for the ordinary purposes for which such goods are used". If we apply the proposed amendments to this implied warranty, it would follow that, if, for reasons not traceable to the condition of the goods at time of sale, the article became unfit for use, within a one-year period in the case of new goods, or within a three-month period in the case of used goods the warrantor could be held liable for this developing condition.

We urge you, therefore, to consider revising the cited sections, so that they will not refer to the

000178

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MJN/195

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The Honorable Alfred H. Song
California State Senate
Page 3
April 14, 1971

"duration of the implied warranty...", etc., but, rather, establish a period of limitation within which an action must be brought for the assertion of any such claim. We submit that, since such a warranty must be deemed to refer to the condition of the goods at time of sale, there is no disadvantage to the consumer in requiring him to assert failures attributable to the condition of the goods at time of sale in a seasonable fashion.

The expression of duration of the warranty contained in the above-cited amendments does not, in fact, prevent the claimant from bringing an action for asserted breach of an implied warranty for a two- or four-year period after the expiration of the duration, and this seems to us to defeat your intent in propounding these amendments.

Liability for Non-Performance of
Express Warranties

Section 1794, both in the original Act and as amended, is unclear with respect to the identity of the person who may be held responsible for the non-performance of an express warranty.

In the case of certain kinds of consumer goods, such as small or major household appliances, manufacturers not infrequently establish their own factory service outlets somewhere in the state. In the case of automobile manufacturers, this is not done; rather, the manufacturer compels all enfranchised dealers to agree to perform warranty work. The customer is then transacting his warranty business with an entity other than the manufacturer.

If the dealer is unable to repair or replace the defect, is he subject to suit for treble damages and attorneys fees by the customer? If the cause of complaint is not capable of repair within thirty days because of unavailability of parts, etc., to the individual dealer for reasons which are not excusable on the part of the manufacturer, is the repairing dealer then to be subject to the extraordinary damage?

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MJN/196

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The Honorable Alfred H. Song
California State Senate
Page 4
April 14, 1971

We raise these questions and submit that Section 1794 should be clarified to establish the responsibility for treble damages and attorneys fees against the manufacturer, and not against the repairing dealer, but that, if it be the intent to impose direct responsibility, under certain conditions, against the repairing dealer, those conditions should be spelled out and limited to circumstances where he, rather than the manufacturer, is the source of fault. The only circumstances which we can foresee where dealer liability would be justifiable, would be incompetent performance or inexcusable delay on his part, and we request that clarification of the policy of the Legislature in these regards should be essential to the proper execution of responsibilities and the avoidance of the involvement of dealers in treble damage suits, where the fault is that of the manufacturer.

Warranties On Used Vehicle Sales

The amendments to the Act have removed used goods from the general application of the Act, but reinsert responsibilities on the sale of used goods, where the dealer makes an express warranty of any kind.

We previously pointed out that, while it is readily possible for vehicle dealers to sell all used cars on an "as is" basis and, thus, be free of responsibility for implied warranties, of any kind, it has been common practice to afford to the customer some limited protection, and that this has been to the advantage of the consumer. Most commonly, such protection has been in the form of a limited "guarantee", affording to the customer, for a thirty-day or similar period, a discount or sharing of the cost of parts or services necessary to repair the vehicle.

These used car guarantees have proven useful and advantageous, but the policy of the present Act and the proposed amendments thereto appear to tell both sellers and the buying public that they may not have the advantage of this type of protection in an "as is" sale. We urge again that the Act is not in the best

000180

The Honorable Alfred H. Song
California State Senate
Page 5
April 14, 1971

interest of consumers in this context. In informal discussions with Mr. Thompson, of your staff, we gathered that, in proposing these amendments, you felt that customers would be confused or misled by the use of such limited guarantees, and that the policy of the state should be against their use in an "as is" sale. However, it was suggested that there was nothing inconsistent about a dealer electing to comply with the provisions of Section 1794.4, which permits "the sale of a service contract" to a buyer. It seems to us that the distinction is a purely semantical one, (except for the apparent requirement that the "service contract" be sold to the buyer). Is there any policy reason why the service contract may not be furnished without separate compensation, and, if this is so, is the customer any more or less confused or misled by the semantical distinction between the words "used car guarantee" and "service contract", as long as either of these fully and conspicuously disclose, in simple and readily understandable language, the terms and conditions?

We have commented on the use of the words "duration of the implied warranty..." in Section 1795.5 (c), but we have this additional comment: In the case of a sale of used goods, if the dealer does give any warranty whatsoever, however limited, this extension of the implied warranties compels him to guarantee that the vehicle is, and will remain, fit for use for a period of three months, and we submit that this compounds the problem of furnishing the purchaser of an "as is" vehicle with any protection by discount or sharing of repair costs on a percentage basis, or for a period of time less than that compelled by the implied warranty.

In substance, what we are saying is that, in an effort to protect consumers, the aspects of the law just discussed will force motor vehicle dealers to cut customers adrift by arbitrarily selling every used vehicle on a raw "as is" basis, without any assistance in the event of ensuing defects, and this is not in the interest of the consuming public.

We would invite your consideration of these comments in the further formulation and refinement of

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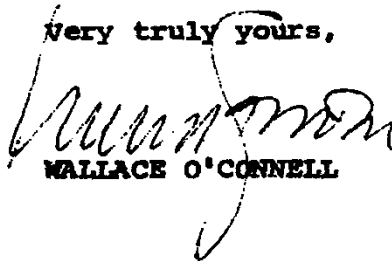
MJN/198

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The Honorable Alfred H. Song
California State Senate
Page 6
April 14, 1971

the proposed amendments to the Song-Beverly Consumer
Warranty Act.

Very truly yours,



WALLACE O'CONNELL

rfb

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SD 742

April 16, 1971

Mr. Wallace O'Connell
Partridge O'Connell & Partridge
Attorneys at Law
2400 Shell Building
100 Bush Street
San Francisco, California 94104

Dear Mr. O'Connell:

Senator Song has asked me to reply to your letter regarding the Song-Beverly Consumer Warranty Act.

You raise some very interesting points with respect to the duration of implied warranties. Perhaps the language we use in the Act and in SB 742 is not sufficiently clear.

We certainly agree with you that under the Uniform Commercial Code the defect, for the purposes of implied warranties, must exist at the time of sale. We intended to retain this concept in our Act, and we would expect that a plaintiff would have to show the defect to have existed at time of sale in order to prevail under our Act.

The periods of duration in Sections 1791.1 and 1795.5 are limitations on the time in which a latent defect may surface and create liability for the warrantor. After the expiration of these periods the warrantor is no longer responsible for those defects existing at time of sale under the terms of our Act. This is reinforced by Section 1794.3 which provides that the Act shall not apply to any defect caused by unauthorized or unreasonable use.

Should we abandon this approach for your suggestion of a statute of limitations, we would, of course, have to greatly extend the specified periods in order to achieve an equitable result. I doubt that this would be welcomed by many manufacturers.

We will, however, continue to examine the sections to improve their wording, and we will continue to welcome any suggestions you may have.

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Mr. Wallace O'Connell

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April 16, 1971

We do not share your views that Section 1794 is unclear with respect to liability, at least as far as the automobile industry is concerned. Automobile dealers certainly qualify as manufacturers' service facilities under the terms of Section 1793.2 (a) (1). Thus, for the purpose of the Act, the dealer is the agent of the manufacturer.

As a practical matter, were a consumer to sue under the Act, he would certainly name both the dealer and the manufacturer. Allocation of the blame between these two parties would, as before, have to be settled between the two of them.

Our basic philosophy in proposing this Act was to limit the processes of our free enterprise system as little as possible. We believe that the relationship between dealer and manufacturer should be determined on the basis of free negotiation, and we see no need to interfere in this process.

Your final point, as to the value of present used car warranties, is to a large extent a question of public policy that will be decided by the Legislature. You may be correct that the distinction between a warranty and a service contract is purely one of semantics, but such is often the most important kind. I believe that the words "guarantee" and "warranty" do possess a meaning that "service contract" does not share.

In short, we think that an "as is" sale, with or without a service contract, will better inform the public as to what they are actually buying than a sale accompanied by the express warranties presently used in the used car trade.

These are our initial feelings. Senator Song has asked me to assure you, however, that his mind is not closed on any of these subjects, and that he finds suggestions such as these most important in the development of good legislation.

Sincerely,

RICHARD THOMSON
Administrative Assistant

RT/ny

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SHEPPARD, MULLIN, RICHTER & HAMPTON

ATTORNEYS AT LAW

458 SOUTH OLIVE STREET
LOS ANGELES, CALIFORNIA 90013

(213) 670-1700

CARLE SHEPLAW

May 17, 1971

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JAMES C. SHEPPARD
(1998-1964)

10938
Calif.

Mr. Robert M. Shillito
California Retailers Association
1127 Eleventh Street
Sacramento, California 95814

Re: SB 742

Dear Bob:

Enclosed are rough draft amendments to SB 742
for the meeting on May 19.

The amendments cover the points raised last
week.

Cordially,

Prentice O'Leary and
Randolf Aires

POL/RA:cjl
Enclosures

cc: Clive Bradford
A. E. Davis
John Garvin, Esquire
Mr. Don Gazzaniga
Robert Jordan
Adrian Kraton, Esquire
Winston H. Pickett, Esquire
James G. Van Maren

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MJN/202

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Section 2:

Delete Line 12, page 1 through line 16
Starting with "Consumer goods" in Line 12.

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MJN/203

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Section 2:

- 1) In Page 1, Line 13 before "new" add "other"
- 2) In Page 1, Line 13 after "product" add "which has a retail sales price of \$25.00 or more and"

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Section 3:

- 1) Page 2, Line 37 after "be" add:

"less than 60 days nor"

- 2) Page 2, Line 38 change "." to "," and add:

"and the implied warranty of merchantability and where present the implied warranty of fitness shall be ~~presumed to be~~ co-extensive in duration with an express warranty which accompanies the consumer good or product provided that the duration of that express warranty is reasonable"

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MJN/205

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Section 8:

Page 3, Line 50, strike Lines 50 and 51 in their entirety and substitute:

"Maintain at the premises of retail sellers' of the warrantor's consumer goods a current listing of that warrantor's"

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MJN/206

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Section 9:

Delete sentence starting on Page 4, Line 19, starting with "costs" through Line 21, ending with "expenses."

Substitute at Page 4, Line 30 a new subsection (c) to read as follows:

"(c) In the event a buyer is unable to deliver nonconforming goods to the manufacturer's service and repair facility due to reasons of size and weight, or method of attachment, or method of installation, the buyer shall give notice of the nonconformity to the manufacturer or its representative at the service and repair facility in this state nearest to the buyer's residence. After receipt of such notice of nonconformity, the manufacturer may, at its option, service or repair the goods at the buyer's residence, pick up the goods for service or repair, or instruct the buyer how and where to ship the nonconforming goods. If the buyer is instructed to ship the goods, the manufacturer shall reimburse the buyer for costs of transporting the goods. Costs of transporting goods after delivery to the manufacturer until return of the goods to the buyer shall be at the manufacturer's expense. It shall be presumed that a buyer is ^{not} able to deliver nonconforming goods to the nearest service and repair facility of the manufacturer if such goods are ^{weigh} less than 10 cubic feet in size and 70 pounds in weight."

Page 4, Line 31, strike (c) and add (d)

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Section 10:

Page 4, Line 48 after "(a)" add "(1)"

Page 5, between Line 8 and Line 9 add:

(2) In the event a buyer is unable to deliver nonconforming goods to the retail seller due to reasons of size and weight, or method of attachment, or method of installation, the buyer shall give notice of the nonconformity to the retail seller. After receipt of such notice of nonconformity, the retail seller may, at its option, service or repair the goods at the buyer's residence, pick up the goods for service or repair, or instruct the buyer how and where to ship the nonconforming goods. If the buyer is instructed to ship the goods, the retail seller shall reimburse the buyer for costs of transporting the goods; the retail seller shall be entitled to recover all such costs of transportation from the manufacturer pursuant to Section 1793.5. Costs of transporting goods after delivery to the retail seller until return of the goods to the buyer also shall be collectable from the manufacturer pursuant to Section 1793.5. It shall be presumed that a buyer is ^{or} able to deliver nonconforming goods to the retail seller if such goods are ^{more} ~~less~~-than 10 cubic feet in size and 70 pounds in weight."

Strike Page 5, Line 15 through Line 19

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LEGISLATIVE HISTORY AND LEGISLATIVE INTENT
1 (888) 676-1947

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President of the Senate

Speaker of the Assembly

Approved _____, 1971

Governor

AMENDED IN SENATE JUNE 8, 1971

SENATE BILL

No. 742

Introduced by Senator Song.

March 29, 1971

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Sections 1791, 1791.1, 1792, 1792.1, 1792.2, 1792.4, 1793, 1793.1, 1793.2, 1793.3, 1793.4, 1793.5, 1794, 1794.2, 1794.3, and 1794.4 of, and to add Sections 1790.4, 1793.35, 1795.1, and 1795.5 to, the Civil Code, relating to consumer warranties.

LEGISLATIVE COUNSEL'S DIGEST

SB 742, as amended, Song (Jud.). Consumer warranties. Amends, adds various secs., Civ.C. Revises various provisions of Song-Beverly Consumer Warranty Act. Operative on January 1, 1972. Vote—Majority; Appropriation—No; Fiscal Committee—No.

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

- 1 SECTION 1. Section 1790.4 is added to the Civil Code, to
- 2 read:
- 3 1790.4. The remedies provided by this chapter are cum-
- 4 mulative and shall not be construed as restricting any remedy
- 5 that would otherwise be available to a party entitled to relief
- 6 under the provisions of this chapter.
- 7 SEC. 2. Section 1791 of the Civil Code is amended to read:
- 8 1791. As used in this chapter:
- 9 (a) "Consumer goods" means any new mobilehome, motor
- 10 vehicle, machine, appliance, like product, or part thereof
- 11 that is used or bought for use primarily for personal, family,
- 12 or household purposes. "Consumer goods" also means any
- 13 new good or product, *except for soft goods and consumables,*
- 14 *the retail sale of which is accompanied by an express warranty*
- 15 *to the retail buyer thereof and such product is used or bought*
- 16 *for use primarily for personal, family, or household purposes.*
- 17 *Soft goods and consumables, the retail sale of which is accom-*
- 18 *panied by an express warranty, shall be subject to the provi-*
- 19 *sions of Section 1793.35.*
- 20 (b) "Buyer" or "retail buyer" means any individual who
- 21 buys consumer goods from a person engaged in the business

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MJN/210

4th District Court of Appeal Division 2.

1 of manufacturing, distributing, or selling such goods at retail.
2 As used in this subdivision, "person" means any individual,
3 partnership, corporation, association, or other legal entity
4 which engages in any such business.

5 (c) "Manufacturer" means any individual, partnership, cor-
6 poration, association, or other legal relationship which manu-
7 factures, assembles, or produces consumer goods.

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

12 (e) "Retail seller," "seller," or "retailer" means any indi-
13 vidual, partnership, corporation, association, or other legal re-
14 lationship which engages in the business of selling consumer
15 goods to retail buyers.

16 (f) "Soft goods" means any pliable product substantially
17 composed of woven material, natural or synthetic yarn or
18 fiber, textile, or similar product.

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

25 SEC. 3. Section 1791.1 of the Civil Code is amended to
26 read:

27 1791.1. As used in this chapter:

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

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

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

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

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

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

45 (c) The duration of the implied warranty of merchantability
46 and where present the implied warranty of fitness shall in no
47 event be in excess of one year following the sale of new con-
48 sumer goods to a retail buyer, be coextensive in duration with
49 an express warranty which accompanies the consumer good or
50 product, provided the duration of the express warranty is
51 reasonable; but in no event shall such implied warranty have

1 a duration of less than 60 days nor more than one year follow-
2 ing the sale of new consumer goods to a retail buyer. Where
3 no duration for an express warranty is stated with respect to
4 consumer goods, or parts thereof, the duration of the implied
5 warranty shall be the maximum period prescribed above.

6 (d) Any buyer of consumer goods injured by a breach of the
7 implied warranty of merchantability and where applicable by
8 a breach of the implied warranty of fitness may bring an action
9 for the recovery of damages pursuant to the provisions of
10 Chapter 7 (commencing with Section 2701) of Division 2 of
11 the Commercial Code, and, in such action, the provisions of
12 subdivision (b) of Section 1794 of this chapter shall apply.

13 SEC. 4. Section 1792 of the Civil Code is amended to read:

14 1792. Unless disclaimed in the manner prescribed by this
15 chapter, every sale or consignment for sale of consumer goods
16 that are sold at retail in this state shall be accompanied by
17 the manufacturer's implied warranty that the goods are
18 merchantable.

19 SEC. 5. Section 1792.1 of the Civil Code is amended to
20 read:

21 1792.1. Every sale or consignment for sale of consumer
22 goods that are sold at retail in this state by a manufacturer
23 who has reason to know at the time of the retail sale that the
24 goods are required for a particular purpose and that the
25 buyer is relying on the manufacturer's skill or judgment to
26 select or furnish suitable goods shall be accompanied by such
27 manufacturer's implied warranty of fitness.

28 SEC. 6. Section 1792.2 of the Civil Code is amended to
29 read:

30 1792.2. Every sale or consignment for sale of consumer
31 goods that are sold at retail in this state by a retailer or dis-
32 tributor who has reason to know at the time of the retail sale
33 that the goods are required for a particular purpose, and that
34 the buyer is relying on the retailer's or distributor's skill or
35 judgment to select or furnish suitable goods shall be accom-
36 panied by such retailer's or distributor's implied warrant
37 warranty that the goods are fit for that purpose.

38 SEC. 6.5. Section 1792.4 of the Civil Code is amended to
39 read:

40 1792.4. (a) No sale of consumer goods, governed by the
41 provisions of this chapter, on an "as is" or "with all faults"
42 basis, shall be effective to disclaim the implied warranty of
43 merchantability or, where applicable, the implied warranty of
44 fitness, unless a conspicuous writing is attached to the goods
45 which clearly informs the buyer, prior to the sale, in simple
46 and concise language of each of the following:

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

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

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(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.

SEC. 7. Section 1793 of the Civil Code is amended to read: 1793. 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 making express warranties may not limit, modify, or disclaim the implied warranties guaranteed by this chapter to the sale of consumer goods.

SEC. 8. Section 1793.1 of the Civil Code is amended to read:

1793.1. (a) 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.

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

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

(2) At the time of sale, provide the buyer with the name and address and telephone number of the service and repair facility central directory within this state. It shall be the duty of the central directory to provide, upon inquiry, the name and address of the authorized service and repair facility nearest the buyer; or

(3) Provide the retail seller of such manufacturer's consumer goods with a current listing of that manufacturer's consumer goods a current listing of such warrantor's authorized service and repair facilities within the, or retail sellers to whom the consumer goods are to be returned for service and repair, whichever is applicable, within this state. It shall be the duty of every retail seller provided with such a listing to provide, on inquiry, the name, address, and telephone number of the nearest authorized service and repair facility nearest the buyer, or the retail seller to whom the consumer goods are to be returned for service and repair, whichever is applicable.

SEC. 9. Section 1793.2 of the Civil Code is amended to read:

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

(1) Maintain 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 1793.5.

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

(c) It shall be the duty of the buyer to deliver nonconforming goods to the manufacturer's service and repair facility within this state, unless, due to reasons of size and weight, or method of attachment, or method of installation, or nature of the nonconformity, such delivery cannot reasonably be accomplished. Should the buyer be unable to effect return of nonconforming goods for any of the above reasons, he shall notify the manufacturer or its nearest service and repair facility within the state. Written notice of nonconformity to the manufacturer or its service and repair facility shall constitute return of the goods for purposes of this section. Upon receipt of such notice of nonconformity the manufacturer shall, at its option, service or repair the goods at the buyer's residence, or pick up the goods for service and repair, or arrange for transporting the goods to its service and repair facility. All costs of transporting the goods when, pursuant to the above, a buyer is unable to effect return shall be at the manufacturer's expense. Costs of transporting nonconforming goods after delivery to the service and repair facility until return of the goods to the buyer shall be at the manufacturer's expense.

(d) Should the manufacturer or its representative in this state be unable to service or repair the goods to conform to the applicable express warranties, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

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1 SEC. 10. Section 1793.3 of the Civil Code is amended to
2 read:

3 1793.3. If the manufacturer of consumer goods sold in this
4 state for which the manufacturer has made an express war-
5 ranty does not provide service and repair facilities within this
6 state pursuant to subdivision (a) of Section 1793.2, the buyer
7 of such manufacturer's nonconforming goods may follow the
8 course of action prescribed in either subdivision (a) or (b)
9 below, as follows:

10 (a) Return the nonconforming consumer goods to the
11 retail seller thereof for replacement, or for service or re-
12 pair in accordance with the terms and conditions of the ex-
13 press warranty. Such replacement, service, or repair shall be
14 at the option of the retail seller. If the retail seller is unable
15 to replace the nonconforming goods or is unable to service or
16 repair the goods so as to effect conformity with applicable ex-
17 press warranties, such retail seller shall reimburse the buyer
18 in an amount equal to the purchase price paid by the buyer,
19 less that amount directly attributable to use by the buyer prior
20 to discovery of the nonconformity.

21 (b) Return the nonconforming consumer good to any retail
22 seller, within this state, of like goods of the same manufacturer
23 for replacement, or for service or repair. Replacement, service,
24 or repair shall be at the option of the retail seller.

25 ~~(c) In the event a buyer is unable to return nonconforming~~
26 ~~goods due to reasons of size and weight, or method of attach-~~
27 ~~ment, or method of installation, written notice of nonconform-~~
28 ~~ity to the retailer shall constitute return of the goods for the~~
29 ~~purposes of subdivisions (a) and (b).~~

30 (c) In the event a buyer is unable to return nonconforming
31 goods to the retailer due to reasons of size and weight, or
32 method of attachment, or method of installation, or nature of
33 the nonconformity, the buyer shall give notice of the noncon-
34 formity to the retailer. Upon receipt of such notice of noncon-
35 formity the retailer shall, at its option, service or repair the
36 goods at the buyer's residence, or pick up the goods for service
37 or repair, or arrange for transporting the goods to its place
38 of business. Costs of transporting the goods shall be at the
39 retailer's expense. The retailer shall be entitled to recover all
40 such costs of transportation from the manufacturer pursuant
41 to Section 1793.5. Costs of transporting nonconforming goods
42 after delivery to the retailer until return of the goods to the
43 buyer, when incurred by a retailer, shall be recoverable from
44 the manufacturer pursuant to Section 1793.5. Written notice
45 of nonconformity to the retailer shall constitute return of the
46 goods for the purposes of subdivisions (a) and (b).

47 SEC. 10.5. Section 1793.35 is added to the Civil Code, to
48 read:

49 1793.35 (a) Where the retail sale of soft goods or consum-
50 ables is accompanied by a express warranty and such items

1 do not conform with the terms of the express warranty, the
2 buyer thereof may return the goods within 30 days of purchase
3 or the period specified in the warranty, whichever is greater.
4 The manufacturer may, in the express warranty, direct the
5 purchaser to return nonconforming goods to a retail seller of
6 like goods of the same manufacturer for replacement.

7 (b) When soft goods or consumables are returned to a retail
8 seller for the reason that they do not conform to an express
9 warranty, the retailer shall replace the nonconforming goods
10 where the manufacturer has directed replacement in the ex-
11 press warranty. In the event the manufacturer has not
12 directed replacement in the express warranty, the retailer may
13 replace the nonconforming goods or reimburse the buyer in
14 an amount equal to the purchase price paid by the buyer for
15 the goods, at the option of the retailer. Costs of reimbursement
16 or replacement are recoverable by a retailer from the manu-
17 facturer in the manner provided in Section 1793.5.

18 SEC. 11. Section 1793.4 of the Civil Code is amended to
19 read:

20 1793.4. Where an option is exercised in favor of service and
21 repair under Section 1793.3, such service and repair must be
22 commenced within a reasonable time, and, unless the buyer
23 agrees in writing to the contrary, goods conforming to the
24 applicable express warranties shall be tendered within 30 days.
25 Delay caused by conditions beyond the control of the retail
26 seller or his representative shall serve to extend this 30-day
27 requirement: Where such a delay arises, conforming goods
28 shall be tendered as soon as possible following termination of
29 the condition giving rise to the delay.

30 SEC. 12. Section 1793.5 of the Civil Code is amended to
31 read:

32 1793.5. Every manufacturer making express warranties
33 who does not provide service and repair facilities within this
34 state pursuant to subdivision (a) of Section 1793.2 shall be
35 liable as prescribed in this section to every retail seller of such
36 manufacturer's goods who incurs obligations in giving effect
37 to the express warranties that accompany such manufacturer's
38 consumer goods. The amount of such liability shall be deter-
39 mined as follows:

40 (a) In the event of replacement, in an amount equal to the
41 actual cost to the retail seller of the replaced goods, and cost
42 of transporting the goods, if such costs are incurred 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 actual and reasonable costs of
48 the service and repair and the cost of transporting the goods,
49 if such costs are incurred, plus a reasonable profit.

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

SEC. 13. Section 1794 of the Civil Code is amended to read:
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, and

(a) Judgment may be entered for three times the amount at which the actual damages are assessed, and

(b) Reasonable attorney fees may be awarded.

SEC. 14. Section 1794.2 of the Civil Code is amended to read:

1794.2. (a) Subdivision (a) of Section 1794 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 1781 of this code.

(b) Subdivision (a) of Section 1794 shall not apply to judgment based solely on a breach of implied warranty of merchantability or, where present, the implied warranty of fitness.

1794.2. The triple damages provisions of this chapter (a) Subdivision (a) of Section 1794 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 1781 of this code.

(b) Subdivision (a) of Section 1794 shall not apply to judgment based solely on a breach of implied warranty of merchantability or, where present, the implied warranty of fitness.

SEC. 15. Section 1794.3 of the Civil Code is amended to read:

1794.3. The provisions of this chapter shall not apply:

(a) To any defect or nonconformity in consumer goods caused by the unauthorized or unreasonable use of the goods following sale; or

(b) To any defect or nonconformity in consumer goods caused by the negligent installation of the goods by a person other than the manufacturer or his representative authorized by him to install his goods.

SEC. 16. Section 1794.4 of the Civil Code is amended to read:

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 of such contract.

SEC. 16.5. Section 1795.1 is added to the Civil Code, to read:

1795.1. No requirement of this chapter shall apply to any equipment or any part thereof which is a component of a system designed to heat, cool, or otherwise condition air where such a system shall become a fixed part of a structure.

SEC. 17. Section 1795.5 is added to the Civil Code, to read:

1795.5. Notwithstanding the provisions of subdivision (a) of Section 1791 defining consumer goods to mean "new" goods, if a distributor or retail seller of used consumer goods makes express warranties with respect to used goods that are sold in this state, the obligation of such distributor or retail seller shall be the same as that imposed on the manufacturer under this chapter, except:

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

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

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

SEC. 18. The provisions of this act shall become operative on January 1, 1972 and shall apply to sales of consumer goods occurring on and after January 1, 1972, provided such consumer goods are manufactured on or after March 1, 1971.

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JAN RAYMOND
LEGISLATIVE HISTORY AND LEGISLATIVE INTENT
1 (888) 676-1947

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93 742 (Song)
(As amended June 8)
Civil Code

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CONSUMER WARRANTIES

HISTORY

Source: Author

Prior Legislation: None

Support: Calif. Retailers Ass'n., Calif. Manufacturers
Ass'n.

Opposition: No known

DIGEST

Revises various provisions of the Song-Beverly
Consumer Warranty Act (Act) in the manner set forth
below.

Expands definition of consumer goods to mean any
new mobilehome or part thereof as well as any
new good or product the retail sale of which is
accompanied by an express warranty where such good
is used or bought for use primarily for personal,
family, and household purposes. Defines and exempts
soft goods and consumables from the definition of
"consumer goods" and provides that where such goods
are sold accompanied by an express warranty and do
not conform to such warranty the buyer may return
the goods within 30 days of purchase, or the period
specified in the warranty, whichever is greater,
for replacement or reimbursement of the purchase
price. Details method whereby retailers giving
effect to such warranties may recover costs of such
service from the manufacturer. (subds. (a), (f) and
(g), Sec. 1791 and Sec. 1793.35, Civ. C.).

Eliminates the requirement that goods be free from
defects of materials or workmanship from the
definition of implied warranty of merchantability
(Sec. 1791.1, Civ. C.).

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SB 742 (Song)
Page Two

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Provides that the duration of implied warranties shall be coextensive with that stated for an express warranty, provided such duration is reasonable and is not less than 60 days nor more than 1 year following sale. Where no duration for an express warranty is stated, the implied warranties have a duration of 1 year (subd. (c), Sec. 1791.1, Civ. C.).

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Limits remedies for breach of implied warranties to those provided in the Commercial Code and permits the award of reasonable attorneys' fees in such action (subd. (d), Sec. 1791.1, Civ. C.).

Requires manufacturers making express warranties and who elect to maintain service and repair facilities within this state to provide buyers with the name and address of such service and repair facilities (subd. (b), Sec. 1793.1, Civ. C.).

Declares it the duty of the buyer to deliver nonconforming consumer goods to the manufacturer's service and repair facility unless, due to reasons of size and weight, method of attachment, method of installation, or the nature of the nonconformity, such delivery cannot be reasonably accomplished. Where the buyer is unable to return goods for any of the above reasons, specifies the duty of the manufacturer to service and repair the goods for any of the above reasons and specifies the duty of the manufacturer to service and repair the goods upon written notice from the buyer. Costs of transporting the goods are at the manufacturers expense. Makes similar provisions with respect to retail sellers who give effect to manufacturer's warranties where the manufacturer does not maintain service and repair facilities in this state (subd. (c), Sec. 1793.2 and 1793.3, Civ. C.).

Prohibits the award of treble damages where a judgment is based only upon breach of implied warranties (subd. (b), Sec. 1794.2, Civ. C.).

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SB 742 (Song)
Page Three

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Exempts equipment, and parts thereof, of a system
designed to heat, cool, or otherwise condition air
where the system becomes a fixed part of a structure
(Sec. 1795.1, Civ. C.).

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Exempts consumer goods that are defective or fail
to conform to express warranties where the defect
or nonconformity is caused by negligent installation
of the goods by a person other than the manufacturer
of his representative authorized to install the
goods (subd. (b), Sec. 1794.3, Civ. C.).

Includes used consumer goods if the seller makes
express warranties with respect to such goods.
Requires the person making such warranties to main-
tain service and repair facilities within this
state. Specifies the duration of implied warranties
accompanying the sale of used consumer goods to be
coextensive in duration with an express warranty of
reasonable duration but not less than 30 nor more
than 90 days following sale. Where no duration
is specified in the express warranty, the implied
warranties have a duration of 90 days. (Sec. 1795.5,
Civ. C.)

Makes numerous technical non-substantive changes.

PURPOSE

Clarify ambiguities that have arisen under the
provisions of the Song-Beverly Consumer Warranty
Act.

COMMENT

1. Existing law defines consumer good to mean
any motor vehicle, machine, appliance, or like
product used or bought for use primarily for
personal, family, or household purposes (subd. (a),
Sec. 1791, Civ. C.).

This bill clarifies that definition by restricting
the definition to new goods and by adding
mobilehomes, parts of new goods, and any new

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SB 742 (Song)

Page Four

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good or product which is accompanied by an express warranty and is used or bought for use primarily for personal, family, or household purposes.

2. This bill adds a new section to the Act governing the obligations of persons making express warranties with respect to used consumer goods.

In essence, the bill requires the person making such warranties to maintain service and repair facilities in the state to carry out the terms of the warranty should the goods fail to conform. Eliminates the responsibility of retailers of like goods of the same manufacturer to give effect to warranties accompanying the sale of used goods. Provides a minimum duration of 30 days and a maximum of 90 days for implied warranties with respect to used goods.

3. This bill clarifies the obligation of manufacturers and, where applicable, retailers, with respect to allocation of costs incurred in transporting, servicing, or repairing nonconforming consumer goods. Establishes an independent obligation of manufacturers of soft goods and consumables where such goods do not conform to the manufacturers express warranty, and exempts installed air conditioning equipment and component parts from the provisions of the Act.
4. This bill and SB 1324, which is before the committee today, both amend the provisions of the Act, if both are passed they should be "double-joined" to remove any conflict.

See the analysis of SB 1324 for a comparison of these bills.

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DEPARTMENT OF PROFESSIONAL AND VOCATIONAL STANDARDS

1020 N STREET
SACRAMENTO

June 11, 1971

The Honorable William E. Coombs
Member of the Senate
Room 2082, State Capitol
Sacramento, California 95814

Dear Senator Coombs:

We regret that we must oppose S.B. 1324 dealing with warranties for consumer goods and services. Our primary concern is the provisions of the bill which deal with implied warranties. The original warranty act includes failure of the consumer good to conform to a sample or model under the express warranty section of the act which extends added protection to the consumer. S.B. 1324 has the effect of restating existing law by regarding the sample and model provisions as only an implied warranty.

This bill also limits enforcement of implied warranties to the purchaser and his heirs. The benefits of the warranty would be denied to a third party beneficiary although all parties to the original transaction may be aware the consumer good is being purchased for the benefit of a third party. This provision could present problems in the common situation where a parent purchases a motor vehicle or other consumer goods or services for a member of his household.

I will be happy to have a representative of the department discuss the matter with you in more detail if you wish.

Sincerely,

LEIGHTON HATCH
Director

LH:mm

cc: The Honorable Alfred H. Song
Chairman, Senate Judiciary Committee

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MEMO

June 14, 1971

To: Dick Thompson
From: Bob Shillito
Subject: SB 742 - Proposed Amendment

On Page 3, between lines 21 and 22, insert Section 6.6.
Section 1791.5 of the Civil Code is amended to read: 1791.5.
Every sale of consumer goods, ~~consumer~~ governed by the
provisions of this chapter, on an "as is" or

Background

That prevents conflict between the section that defines
consumer goods in the beginning of the bill and existing
section in the law 1792.5. We did a similar thing for
1791.4 and we forgot to do it for 1792.5. There will be a
serious conflict in the law if this amendment is not made
as to the "as is" situation.

Comment re Amendments 11 and 13

In 11 they have changed the term "store location" which
we had proposed, to the term "retail seller."

In 13 it has been changed from "store location" to "retail
seller" -- this gives a slightly different interpretation.
From a practical standpoint it is probably okay, but some
readers of the law may misunderstand the intent. Con-
cerned with individual stores which are a part of one retail
seller and not with different retail sellers.

RMS/hg

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Sears, Roebuck and Co.

PACIFIC COAST LAW OFFICES

900 SOUTH FREMONT AVENUE

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GENERAL ATTORNEY
576-4766

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R. STANLEY HALL 576-4451
RANDOLF H. AINES 576-4451
MICHAEL N. PENNELL 576-4451
GERALD H. GENARD 576-4451
IRWIN G. ARKY 576-4451
JOSEPH L. DAVIS 576-4451

June 14, 1971

Mr. Robert Shillito
Executive Vice President
California Retailers Association
1127 Eleventh Street
Sacramento, California 95814

Re: S.B. 742 Amendments

Dear Bob:

You will notice that Amendment 9 as marked in Senate Journal of June 8 takes care of the problem with the sale of "as is" goods which was engendered by the additional definition for "consumer goods," in Section 2 of S.B. 742. Although we discussed it, we forgot to include a similar amendment to take care of Section 1792.5 of the Civil Code, also dealing with sales on an "as is" basis. If such an amendment is not made, we will have a conflict between Section 1791(a) and Section 1792.5 and also between Sections 1792.4 and 1792.5 of the Civil Code. I would suggest the following amendment:

On Page 3, between lines 21 and 22, insert
"Sec. 6.6. Section 1792.5 of the Civil Code is amended to read:
1792.5. Every sale of consumer goods, governed by the provisions of this chapter, on an 'as is' or 'with all faults' basis made in compliance with the provisions of this chapter shall constitute a waiver by the buyer of the implied warranty of merchantability and, where applicable, of the implied warranty of fitness."

The other comment I have is that in Amendment 11, our suggested language included the term "store locations." This has been changed to "retail sellers." Also, in Amendment 13, our suggested term "store location" has been changed to "retail seller." From a practical standpoint, this is probably alright. The change in terms does give a slightly different interpretation and some readers of the law may misunderstand the intent. We are concerned with individual stores which are part of one retail seller and not with different retail sellers. We would like to be able to give a list of all of our stores within the state and then supply the name, address and telephone number of the particular store nearest the buyer.

RMS	LDH	WC	AAK	AEK
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Page 2
Mr. Robert Shillito

The amendments to S.B. 742 are otherwise acceptable.

Very truly yours,

Randolf H. Aires
Randolf H. Aires

RHA/nak

cc: Vincent Jones
John Garvin
Prentice O'Leary

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WILLIAM S. COMSTOCK
DIRECTOR OF PUBLIC AFFAIRS

ASSOCIATION OF HOME APPLIANCE MANUFACTURERS
20 NORTH WACKER DRIVE • CHICAGO, ILLINOIS 60606
TELEPHONE 312-236-2921

June 15, 1971

Mr. Richard Thompson
c/o Senator Alfred H. Song
State Capitol
Sacramento, California 95814

Dear Mr. Thompson:

As we discussed on the telephone last week, AHAM's members have been concerned over possible interpretations of Section 1793.2(a) of the Song-Beverly Warranty Act.

Despite the analysis of the Legislative Counsel of California last August (p. 7, #16549) that the language "caused to be maintained" could encompass an agreement with another person -- and your assurance that the legislators had no intent to affect franchise agreements -- many major appliance manufacturers have interpreted the legislation differently. These interpretations have necessitated changes in distribution policies and procedures that increased costs of doing business in California without improving warranty service to consumers. Because of this interpretation, one home laundry manufacturer has discontinued distribution of his product in California.

After reviewing the act and discussing the matter with several AHAM members, I believe the question could be resolved with slight modification to Section 1793.2(a)(1). We respectfully suggest that this section be amended to read:

"(1) Shall maintain or cause to be maintained through arrangements with distributors, dealers, service outlets or other qualified organizations in this state sufficient service and repair facilities to carry out the terms of such warranties, or"

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Mr. Richard Thompson
June 15, 1971

Page 2

Thank you for your help and consideration. Please let me know when AHAM can be of assistance to you and your associates.

Sincerely,



William S. Comstock
Director of Public Affairs

WSC:mkk

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MONTGOMERY WARD

Regional Law Department—2825 E. 14th St., Oakland, California 94616, 533-1300

July 7, 1971

Mr. Robert M. Shillito
California Retailers Association
1127 Eleventh Street
Sacramento, California 95814

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Re: S.B. 742

Dear Bob:

The amended version of S.B. 742 is certainly a distinct improvement over its original version. If at all possible, however, two technical amendments should be considered concerning the manufacturer's liability to a retail seller under Section 1793.5 as it applies to soft goods or consumables under Section 1793.35.

While Section 1793.35 sets forth the retailer's measure of recovery against the manufacturer as provided in Section 1793.5, the latter section, especially Sub-section (c) could lead to some ambiguity or conflict, depending upon court interpretation, therefore, I propose the following amendments:

1. Page 7, Line 34, after the words "Section 1793.2" add:-

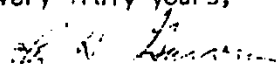
"Or who does not reimburse or replace any goods or consumables sold to the buyer pursuant to Section 1793.35"

2. Page 8, Line 2, after the words "Section 1793.3" add:-

"Or Section 1793.35".

The above amendments are not of extreme importance, but they would clarify and resolve the possible conflict between the two sections. If this bill has not as yet passed the Senate, then perhaps these technical amendments should be considered.

Very truly yours,


John H. Garvin,
Attorney.

cc: Messrs. Randolph H. Aires
Prentice L. O'Leary

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SB 742

August 2, 1971

Mr. Alan S. Koenig
Attorney At Law
Berkeley Neighborhood Legal Services
2229 Fourth Street
Berkeley, California 94710

Dear Mr. Koenig:

Thank you for your letter regarding the Song-Beverly Consumer Warranty Act.

Your question as to whether the Act applies to the sale of used goods points out an embarrassing flaw in the drafting of the Act. No where is this made clear. We have an opinion from our Legislative Counsel, however, that as the definition of "retail seller" in Section 1791 speaks of "the business of selling new goods", the Act applies to sale of new goods only.

We are presently attempting to pass amendments clarifying this point. Enclosed is a copy of SB 742 which limits the Act to the sale of new goods but extends its protection to the sale of those used goods which are accompanied by an express warranty. This bill has already passed the Senate.

The Act does not create warranties that did not previously exist, but rather provides machinery for the enforcement of pre-existing warranties. Thus, if the courts have not held that used goods are covered by an implied warranty of merchantability before this Act, they have no reason to do so now.

There are no official publications interpreting the Act, but I am enclosing an explanation prepared by our office.

Sincerely,

ALFRED H. SONG

AHS/ny
Enclosures

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LAW OFFICES OF
BERKELEY NEIGHBORHOOD LEGAL SERVICES

2229 FOURTH STREET
BERKELEY, CALIFORNIA 94710

TELEPHONE (415) 841-9274

ALAN S. KOENIG
ATTORNEY AT LAW

21 July 1971

Senator Alfred H. Song
State Capitol
Sacramento, California 95814

RE: Song-Beverly Consumer Warranty Act

Dear Senator Song:

As a legal services attorney specializing in consumer problems, I commend your sponsorship of remedial legislation in this area.

I have two questions that have arisen in the context of a particular case, and I believe they are not answered by the literal terms of the Act:

(1) Does it apply to the sale of used goods?

(2) Is there an implied warranty of merchantability in the sale of goods, new or used, by a retailer to a buyer?

If the answer to the first question is yes, the language of Civil Code § 1791(e) would seem to dictate that the Act applies to a business that sells new goods only and to a business that sells new and used goods (presumably without distinction as to whether a particular sale is of new or used merchandise), but not to a company dealing only in second-hand items.

The problem raised by my second question is that there is, as far as I know, no California case or statute explicitly providing for the existence of an implied warranty of merchantability in the sale of used goods. Civil Code § 1792, of course, does create such a warranty in a sale by a manufacturer, but not by a retailer.

Just to round out the picture, there are two cases holding that there is an implied warranty of fitness in the sale of used goods, Lindberg v. Cutches, 334 P.2d 701 (1959) (used airplane) and Drumar Mining Co., Ltd. v. Morris Ravine Mining Co., 92 P.2d 424 (1939) (mining equipment).

I would very much appreciate copies of or directions to any

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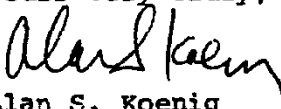
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Senator Alfred H. Song
page 2

interpretative aids or legislative history as well as your comments.
Because these questions relate to a particular case, I am under some,
although not severe, time pressure.

Thank you for your attention to this matter.

Yours very truly,


Alan S. Koenig

ASK/rhu

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STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL

COPY

Sacramento, California

AUG 31 1971

Honorable Carlos J. Moorhead
Assembly Chamber

Consumer Warranties
(S.B. 742) - #18239

Dear Mr. Moorhead:

You have asked several questions relating to changes in the Song-Beverly Consumer Warranty Act (Ch. 1 (commencing with Sec. 1790), Title 1.7, Pt. 4, Div. 3, Civ. C.) proposed by Senate Bill No. 742, as amended in Senate June 8, 1971. We shall answer these questions separately.

QUESTION NO. 1

What is the effect on manufacturers, distributors, and retail sellers of air conditioning units of proposed subdivision (c) which S.B. 742, as amended, would, if enacted, add to Section 1791.1 of the Civil Code?

OPINION AND ANALYSIS NO. 1

Generally, the Song-Beverly Consumer Warranty Act imposes new warranty obligations on manufacturers, distributors and retail 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:

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Honorable Carlos J. Moorhead - p. 2 - #18239

"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.)

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 everything 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,

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MJN/231

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COPY

Honorable Carlos J. Moorhead - p. 3 - #18239

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 which has 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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MJN/232

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Honorable Carlos J. Moorhead - p. 4 - #18239

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.).

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

000214

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MJN/233

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Honorable Carlos J. Moorhead - p. 5 - #18239

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 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.).

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.).

000215

MJN/234

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Honorable Carlos J. Moorhead - p. 6 - #18239

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 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.

Thus, we think the act at present applies to manufacturers, distributors and retail sellers of air conditioning units, whether or not such appliances or machines become a part of real property during the period of warranty coverage.

S.B. 742, as amended, among other things proposes to add the following section to the Song-Beverly Consumer Warranty Act:

"1795.1. No requirement of this chapter shall apply to any equipment or any part thereof which is a component of a system designed to heat, cool, or otherwise condition air where such a system shall become a fixed part of a structure." (Civ. C.)

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

000216

MJN/235

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Honorable Carlos J. Moorhead - p. 7 - #18239

Thus, if enacted, S.B. 742, as amended, would remove from the provisions of the Song-Beverly Consumer Warranty Act air conditioning equipment and any part thereof which is a component of a system designed to heat, cool, or otherwise condition air where such a system becomes a fixed part of a structure. However, the act would, if S.B. 742, as amended, is enacted, continue to apply to air conditioning equipment and any part thereof which does not become a fixed part of a structure and which otherwise qualifies as consumer goods.

We now turn to a consideration of the impact of proposed subdivision (c) of Section 1791.1 of the Civil Code on such equipment and any parts thereof. This proposed subdivision reads as follows:

"1791.1. * * *

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

* * * (Civ. C.)

The Song-Beverly Consumer Warranty Act is at present silent as to the duration of the implied warranties of merchantability and fitness arising under the act. The addition of subdivision (c) to Section 1791.1 of the Civil Code would establish specific limitations on the duration of such implied warranties.

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MJN/236

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Honorable Carlos J. Moorhead - p. 8 - #18239

Thus, if S.B. 742, as amended, is enacted, we think the effect of proposed subdivision (c) of Section 1791.1 on manufacturers, distributors, and retail sellers of air conditioning equipment which does not become a fixed part of a structure and which is otherwise covered by the act, would be to limit the duration of the implied warranties of merchantability and fitness to the term of an express warranty accompanying such equipment if the duration of the express warranty is reasonable. Furthermore, such implied warranties could not, under the terms of the proposed subdivision, have a duration of less than 60 days nor more than one year; and where the duration of the express warranty is not limited, the duration of an implied warranty is one year.

QUESTION NO. 2

What is the effect on manufacturers, distributors and retail sellers of air conditioning units of proposed subdivision (b) which S.B. 742, as amended, would, if enacted, add to Section 1793.1 of the Civil Code?

OPINION AND ANALYSIS NO. 2

S.B. 742, as amended, proposes to add a subdivision (b) to Section 1793.1 of the Civil Code as follows:

"1793.1. * * *

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

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

"(2) At the time of sale, provide the buyer with the name and address and telephone number of the service and repair facility central directory within this state. It shall be the duty of the central directory to provide, upon inquiry, the name and address of the authorized service and repair facility nearest the buyer; or

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MJN/237

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Honorable Carlos J. Moorhead - p. 9 - #18239

"(3) Maintain at the premises of retail sellers of the warrantor's consumer goods a current listing of such warrantor's authorized service and repair facilities, or retail sellers to whom the consumer goods are to be returned for service and repair, whichever is applicable, within this state. It shall be the duty of every retail seller provided with such a listing to provide, on inquiry, the name, address, and telephone number of the nearest authorized service and repair facility, or the retail seller to whom the consumer goods are to be returned for service and repair, whichever is applicable."

As was the case in the discussion above, the impact of this proposed language would, because of proposed Section 1795.1 of the Civil Code which would also be added by S.B. 742, as amended, fall only upon manufacturers, distributors and retail sellers of air conditioning equipment and any part thereof which does not become a fixed part of a structure and which otherwise comes within the provisions of the Song-Beverly Consumer Warranty Act.

Accordingly, we think the effect of proposed subdivision (b) of Section 1793.1 of the Civil Code would be to require such persons making express warranties on such equipment who elect to maintain service and repair facilities in California to furnish and maintain the information set forth in paragraphs (1), (2) and (3) of the subdivision quoted above.

QUESTION NO. 3

What is the effect on manufacturers, wholesale and retail sellers of air conditioning units of proposed subdivision (c) which S.B. 742, as amended, would, if enacted, add to Section 1793.1 of the Civil Code?

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MJN/238

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Honorable Carlos J. Moorhead - p. 10 - #18239

OPINION AND ANALYSIS NO. 3

S.B. 742, as amended, would, if enacted, amend Section 1793.3 of the Civil Code as follows:

"1793.3. If the manufacturer making of consumer goods sold in this state for which the manufacturer has made an express warranty does not provide service and repair facilities within this state pursuant to subdivision (a) of Section 1793.2, the buyer of such manufacturer's nonconforming goods may follow the course of action prescribed in either subdivision (a) or (b), below, as follows:

"(a) Return the defective nonconforming 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 nonconforming goods or is unable to effect the service or repair of the goods in accordance with the terms and conditions of the warranty so as to effect conformity with applicable express warranties, the such 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 nonconformity.

"(b) Return the defective article nonconforming consumer good 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 Replacement, service, or repair shall be at the option of the retail seller.

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MJN/239

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Honorable Carlos J. Moorhead - p. 11 - #13239

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

Proposed subdivision (c), among other things, expressly recognizes that there may be situations covered by the Song-Beverly Consumer Warranty Act in which the buyer is unable to return defective goods because of the method by which the goods were attached or installed. Thus, this subdivision would, in absence of other provisions, apply to goods such as air conditioning equipment which becomes a fixed part of the structure. But, as we have seen above, S.B. 742, as amended, also proposes the addition of Section 1795.1 to the Civil Code which excludes such equipment as well as parts thereof from the provisions of the act.

The proposed subdivision thus would not apply to a manufacturer, distributor, or retail seller of air conditioning equipment or any part thereof which is a component of an air conditioning system which becomes a fixed part of a structure.

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MJN/240

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Honorable Carlos J. Moorhead - p. 12 - #18239

Accordingly, we think proposed subdivision (c) of Section 1793.3 of the Civil Code would with respect to other types of air conditioning equipment impose upon manufacturers and retailers of such equipment various duties relating to the return of nonconforming goods.

QUESTION NO. 4

What is the effect on manufacturers, wholesalers and retail sellers of air conditioning units of proposed subdivision (a) which S.B. 742, as amended, would, if enacted, add to Section 1794 of the Civil Code?

OPINION AND ANALYSIS NO. 4

S.B. 742, as amended, proposes the following amendments to Section 1794 of the Civil Code:

"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, and

"(a) judgment may be entered for three times the amount at which the actual damages are assessed, and

"(b) reasonable attorney fees may be awarded."

We think that proposed subdivision (a) is merely a restructured version of the first part of the second sentence of Section 1794 and thus does not make any substantive change in the Song-Beverly Consumer Warranty Act as that act applies to manufacturers, distributors, and retail sellers of air conditioning equipment.

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MJN/241

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Honorable Carlos J. Moorhead - p. 13 - #18239

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QUESTION NO. 5

What is the effect on manufacturers, distributors and retail sellers of air conditioning equipment of proposed Section 1793.1 of the Civil Code which S.B. 742, as amended, would, if enacted, add to the Song-Beverly Consumer Warranty Act?

OPINION AND ANALYSIS NO. 5

As indicated above in Opinion and Analysis No. 1, it is our opinion that proposed Section 1793.1 of the Civil Code would remove from the provisions of the Song-Beverly Consumer Warranty Act air conditioning equipment or any part thereof which is a component of an air conditioning system presently covered by the act where such a system became a fixed part of a structure.

Very truly yours,

George R. Murphy
Legislative Counsel

By
John T. Studebaker
Deputy Legislative Counsel

JTS:db

Two copies to Honorable Alfred H. Song,
pursuant to Joint Rule 34.

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ASSEMBLY COMMITTEE ON JUDICIARY

CHARLES WARREN, CHAIRMAN

SB 742

SB 742 (Song) (analysis written on the basis of amendments to be presented at hearing.)

Consumer Warranties - revises various provisions of Consumer Warranty Act of 1970. (Song-Beverly Consumer Warranty Act)

Existing law defines consumer goods as being any motor vehicle, machine, appliance or like product used or bought for use primarily for personal, family, or household purposes.

SB 742 defines consumer goods to mean any new mobile home or part thereof as well as any new goods or products, except textiles and products intended for consumption by individuals, the retail sale of which is accompanied by express warranty where such good is used or bought for use primarily for personal, family, or household purposes.

"Soft goods" and "consumables" (textiles, etc.) are exempted from the definition of consumer goods. However, if such sale is accompanied by an expressed warranty and they do not conform to such warranty, the buyer may return the goods within 30 days of purchase, or the period specified in the warranty, whichever is greater, for replacement or reimbursement of the purchase price.

Existing law partially defines implied warranty "to be free from defects of material and workmanship". SB 742 eliminates the requirement that goods "be free from defects of materials or workmanship" from the definition of implied warranty of merchantability. Section 1 of the bill is being amended so that one relying on implied warranty may rely on present revisions of Uniform Commercial Code for protection if not covered by this bill.

Section 3 of the bill is being amended to limit the remedies for breach of implied warranties to those provided in the Commercial Code. Permits the award of reasonable attorneys' fees in such action. The bill prohibits the award for treble damages where judgment is based only upon breach of implied warranties.

SB 742 exempts equipment and parts thereof of a system designed to heat, cool, or otherwise condition air when the system becomes a part of the fixed structure.

SB 742 exempts consumer goods that are defective or fail to conform to expressed warranties where the defect or non-conformities is caused by negligent installation of the goods by persons other than the manufacturer or his representative.

9/27/71

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MJN/244

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SB 742

The bill provides a person making expressed warranties to maintain service and repair facilities in the state to carry out the terms of the warranty to the goods failing to conform. It eliminates the responsibility of retailers of like goods of the same manufacturer to give effect to warranties accompanying the sale of used goods.

SB 742 spells out the obligations of manufacturer and retailers with respect to allocation of cost incurred in transporting, servicing, or repairing non-conforming goods.

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MJN/245

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AMENDED IN ASSEMBLY SEPTEMBER 30, 1971

AMENDED IN SENATE JUNE 8, 1971

SENATE BILL

No. 742

Introduced by Senator Song

March 29, 1971

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Sections 1791, 1791.1, 1792, 1792.1, 1792.2, 1792.4, 1792.5, 1793, 1793.1, 1793.2, 1793.3, 1793.4, 1793.5, 1794, 1794.2, 1794.3, and 1794.4 of, and to add Sections 1790.4, 1793.35, 1795.4, and 1795.5 to, the Civil Code, relating to consumer warranties.

LEGISLATIVE COUNSEL'S DIGEST

SB 742, as amended, Song (Jud.). Consumer warranties.

Amends, adds various secs., Civ.C.

Revises various provisions of Song-Beverly Consumer Warranty Act.

Operative on January 1, 1972.

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

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

- 1 SECTION 1. Section 1790.4 is added to the Civil Code, to
- 2 read:
- 3 1790.4. The remedies provided by this chapter are cum-
- 4 mulative and shall not be construed as restricting any remedy
- 5 that would otherwise be available to a party entitled to relief
- 6 under the provisions of this chapter is otherwise available.
- 7 SEC. 2. Section 1791 of the Civil Code is amended to read:
- 8 1791. As used in this chapter:
- 9 (a) "Consumer goods" means any new mobilehome, motor
- 10 vehicle, machine, appliance, like product, or part thereof
- 11 that is used or bought for use primarily for personal, family,
- 12 or household purposes. "Consumer goods" also means any
- 13 new good or product, except for soft goods and consumables,
- 14 the retail sale of which is accompanied by an express warranty
- 15 to the retail buyer thereof and such product is used or bought
- 16 for use primarily for personal, family, or household purposes.
- 17 Soft goods and consumables, the retail sale of which is accom-
- 18 panied by an express warranty, shall be subject to the provi-
- 19 sions of Section 1793.35.

00243

MJN/246

44th District Court of Appeal Division 2.

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(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, or produces 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 consumer goods to retail buyers.

(f) "Soft goods" means any pliable product substantially composed of woven material, natural or synthetic yarn or fiber, textile, or similar product.

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

SEC. 3. Section 1791.1 of the Civil Code is amended to read:

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 adequately contained, packaged, and labeled.

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

(b) "Implied warranty of fitness" means 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.

(c) The duration of the implied warranty of merchantability and where present the implied warranty of fitness shall be co-extensive in duration with an express warranty which accompanies the consumer good or product goods, provided the duration of the express warranty is reasonable; but in no event shall such implied warranty have a duration of less than 60

days nor more than one year following the sale of new consumer goods to a retail buyer. Where no duration for an express warranty is stated with respect to consumer goods, or parts thereof, the duration of the implied warranty shall be the maximum period prescribed above.

(d) Any buyer of consumer goods injured by a breach of the implied warranty of merchantability and where applicable by a breach of the implied warranty of fitness may bring an action for the recovery of damages pursuant to the provisions of Chapter 6 (commencing with Section 2601) and Chapter 7 (commencing with Section 2701) of Division 2 of the Commercial Code, and, in such action, the provisions of subdivision (b) of Section 1794 of this chapter shall apply.

SEC. 4. Section 1792 of the Civil Code is amended to read: 1792. Unless disclaimed in the manner prescribed by this chapter, every sale or consignment for sale of consumer goods that are sold at retail in this state shall be accompanied by the manufacturer's implied warranty that the goods are merchantable.

SEC. 5. Section 1792.1 of the Civil Code is amended to read:

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

SEC. 6. Section 1792.2 of the Civil Code is amended to read:

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

SEC. 6.5. Section 1792.4 of the Civil Code is amended to read:

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

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

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

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

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

9 SEC. 6.5. Section 1792.5 of the Civil Code is amended to
10 read:

11 1792.5. Every sale of consumer goods that are governed by
12 the provisions of this chapter, on an "as is" or "with all
13 faults" basis, made in compliance with the provisions of this
14 chapter, shall constitute a waiver by the buyer of the implied
15 warranty of merchantability and, where applicable, of the im-
16 plied warranty of fitness.

17 SEC. 7. Section 1793 of the Civil Code is amended to read:

18 1793. Nothing in this chapter shall affect the right of the
19 manufacturer, distributor, or retailer to make express war-
20 ranties with respect to consumer goods. However, a manufac-
21 turer, distributor, or retailer making express warranties may
22 not limit, modify, or disclaim the implied warranties guaran-
23 teed by this chapter to the sale of consumer goods.

24 SEC. 8. Section 1793.1 of the Civil Code is amended to
25 read:

26 1793.1. (a) Every manufacturer, distributor, or retailer
27 making express warranties with respect to consumer goods
28 shall fully set forth such warranties in readily understood
29 language and clearly identify the party making such express
30 warranties.

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

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

38 (2) At the time of sale, provide the buyer with the name and
39 address and telephone number of the service and repair facility
40 central directory within this state. It shall be the duty of the
41 central directory to provide, upon inquiry, the name and ad-
42 dress of the authorized service and repair facility nearest the
43 buyer; or

44 (3) Maintain at the premises of retail sellers of the warran-
45 tor's consumer goods a current listing of such warrantor's au-
46 thorized service and repair facilities, or retail sellers to whom
47 the consumer goods are to be returned for service and repair,
48 whichever is applicable, within this state. It shall be the duty
49 of every retail seller provided with such a listing to provide, on
50 inquiry, the name, address, and telephone number of the near-
51 est authorized service and repair facility, or the retail seller to

1 whom the consumer goods are to be returned for service and
2 repair, whichever is applicable.

3 SEC. 9. Section 1793.2 of the Civil Code is amended to
4 read:

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

8 (1) Maintain or cause to be maintained in this state suffi-
9 cient service and repair facilities to carry out the terms of
10 such warranties; or

11 (2) Be subject to the provisions of Section 1793.5.

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

25 (c) It shall be the duty of the buyer to deliver nonconform-
26 ing goods to the manufacturer's service and repair facility
27 within this state, unless, due to reasons of size and weight, or
28 method of attachment, or method of installation, or nature of
29 the nonconformity, such delivery cannot reasonably be accom-
30 plished. Should the buyer be unable to effect return of noncon-
31 forming goods for any of the above reasons, he shall notify the
32 manufacturer or its nearest service and repair facility within
33 the state. Written notice of nonconformity to the manufac-
34 turer or its service and repair facility shall constitute return
35 of the goods for purposes of this section. Upon receipt of
36 such notice of nonconformity the manufacturer shall, at its
37 option, service or repair the goods at the buyer's residence, or
38 pick up the goods for service and repair, or arrange for trans-
39 porting the goods to its service and repair facility. All costs
40 of transporting the goods when, pursuant to the above, a buyer
41 is unable to effect return shall be at the manufacturer's ex-
42 pense. Costs of transporting nonconforming goods after de-
43 livery to the service and repair facility until return of the
44 goods to the buyer shall be at the manufacturer's expense.

45 (d) Should the manufacturer or its representative in this
46 state be unable to service or repair the goods to conform to
47 the applicable express warranties, the manufacturer shall
48 either replace the goods or reimburse the buyer in an amount
49 equal to the purchase price paid by the buyer, less that amount
50 directly attributable to use by the buyer prior to the discovery
51 of the nonconformity.

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MJN/248

4th District Court of Appeal Division 2.

000229

1 SEC. 10. Section 1793.3 of the Civil Code is amended to
2 read:

3 1793.3. If the manufacturer of consumer goods sold in this
4 state for which the manufacturer has made an express war-
5 ranty does not provide service and repair facilities within this
6 state pursuant to subdivision (a) of Section 1793.2, the buyer
7 of such manufacturer's nonconforming goods may follow the
8 course of action prescribed in either subdivision (a) or (b),
9 below, as follows:

10 (a) Return the nonconforming consumer goods to the
11 retail seller thereof for replacement, or for service or re-
12 pair in accordance with the terms and conditions of the ex-
13 press warranty. Such replacement, service, or repair shall be
14 at the option of the retail seller. If the retail seller is unable
15 to replace the nonconforming goods or is unable to service or
16 repair the goods so as to effect conformity with applicable ex-
17 press warranties, such retail seller shall reimburse the buyer
18 in an amount equal to the purchase price paid by the buyer,
19 less that amount directly attributable to use by the buyer prior
20 to discovery of the nonconformity.

21 (b) Return the nonconforming consumer good to any retail
22 seller, within this state, of like goods of the same manufacturer
23 for replacement, or for service or repair. Replacement, service,
24 or repair shall be at the option of the retail seller.

25 (c) In the event a buyer is unable to return nonconforming
26 goods to the retailer due to reasons of size and weight, or
27 method of attachment, or method of installation, or nature of
28 the nonconformity, the buyer shall give notice of the noncon-
29 formity to the retailer. Upon receipt of such notice of noncon-
30 formity the retailer shall, at its option, service or repair the
31 goods at the buyer's residence, or pick up the goods for service
32 or repair, or arrange for transporting the goods to its place
33 of business. Costs of transporting the goods shall be at the
34 retailer's expense. The retailer shall be entitled to recover all
35 such costs of transportation from the manufacturer pursuant
36 to Section 1793.5. Costs of transporting nonconforming goods
37 after delivery to the retailer until return of the goods to the
38 buyer, when incurred by a retailer, shall be recoverable from
39 the manufacturer pursuant to Section 1793.5. Written notice
40 of nonconformity to the retailer shall constitute return of the
41 goods for the purposes of subdivisions (a) and (b).

42 SEC. 10.5. Section 1793.35 is added to the Civil Code, to
43 read:

44 1793.35. (a) Where the retail sale of soft goods or consum-
45 ables is accompanied by a express warranty and such items
46 do not conform with the terms of the express warranty, the
47 buyer thereof may return the goods within 30 days of purchase
48 or the period specified in the warranty, whichever is greater.
49 The manufacturer may, in the express warranty, direct the
50 purchaser to return nonconforming goods to a retail seller of
51 like goods of the same manufacturer for replacement.

1 (b) When soft goods or consumables are returned to a retail
2 seller for the reason that they do not conform to an express
3 warranty, the retailer shall replace the nonconforming goods
4 where the manufacturer has directed replacement in the ex-
5 press warranty. In the event the manufacturer has not
6 directed replacement in the express warranty, the retailer may
7 replace the nonconforming goods or reimburse the buyer in
8 an amount equal to the purchase price paid by the buyer for
9 the goods, at the option of the retailer. Costs of reimbursement
10 or replacement are recoverable by a retailer from the manu-
11 facturer in the manner provided in Section 1793.5.

12 SEC. 11. Section 1793.4 of the Civil Code is amended to
13 read:

14 1793.4. Where an option is exercised in favor of service and
15 repair under Section 1793.3, such service and repair must be
16 commenced within a reasonable time, and, unless the buyer
17 agrees in writing to the contrary, goods conforming to the
18 applicable express warranties shall be tendered within 30 days.
19 Delay caused by conditions beyond the control of the retail
20 seller or his representative shall serve to extend this 30-day
21 requirement. Where such a delay arises, conforming goods
22 shall be tendered as soon as possible following termination of
23 the condition giving rise to the delay.

24 SEC. 12. Section 1793.5 of the Civil Code is amended to
25 read:

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 1793.2 shall be
29 liable as prescribed in this section to every retail seller of such
30 manufacturer's goods who incurs obligations in giving effect
31 to the express warranties that accompany such manufacturer's
32 consumer goods. The amount of such liability shall be deter-
33 mined 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, and cost
36 of transporting the goods, if such costs are incurred plus a
37 reasonable handling charge.

38 (b) In the event of service and repair, in an amount equal
39 to that which would be received by the retail seller for like
40 service rendered to retail consumers who are not entitled to
41 warranty protection, including actual and reasonable costs of
42 the service and repair and the cost of transporting the goods,
43 if such costs are incurred, plus a reasonable profit.

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

47 SEC. 13. Section 1794 of the Civil Code is amended to read:
48 1794. Any buyer of consumer goods injured by a willful
49 violation of the provisions of this chapter may bring an action
50 for the recovery of damages, and

51 (a) Judgment may be entered for three times the amount
52 at which the actual damages are assessed, and

District Court of Appeal Division 2.

00246

MJN/249

(b) Reasonable attorney fees may be awarded.

Sec. 14. Section 1794.2 of the Civil Code is amended to read:

1794.2. (a) Subdivision (a) of Section 1794 shall not apply to a cause of action commenced or maintained pursuant to Section 352 of the Code of Civil Procedure or pursuant to Section 1781 of this code.

(b) Subdivision (a) of Section 1794 shall not apply to a judgment based solely on a breach of implied warranty of merchantability or, where present, the implied warranty of fitness.

Sec. 15. Section 1794.3 of the Civil Code is amended to read:

1794.3. The provisions of this chapter shall not apply:

(a) To any defect or nonconformity in consumer goods caused by the unauthorized or unreasonable use of the goods following sale; or

(b) To any defect or nonconformity in consumer goods caused by the negligent installation of the goods by a person other than the manufacturer or his representative authorized by him to install his goods.

Sec. 16. Section 1794.4 of the Civil Code is amended to read:

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 of such contract.

~~Sec. 16.5. Section 1795.1 as added to the Civil Code, to read:~~

~~1795.1. No requirement of this chapter shall apply to any equipment or any part thereof which is a component of a system designed to heat, cool, or otherwise condition air where such a system shall become a fixed part of a structure.~~

Sec. 17. Section 1795.5 is added to the Civil Code, to read:

1795.5. Notwithstanding the provisions of subdivision (a) of Section 1791 defining consumer goods to mean "new" goods, if a distributor or retail seller of used consumer goods makes express warranties with respect to used goods that are sold in this state, the obligation of such distributor or retail seller shall be the same as that imposed on the manufacturer under this chapter, except:

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

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

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

Sec. 18. The provisions of this act shall become operative on January 1, 1972, and shall apply to sales of consumer goods occurring on and after January 1, 1972, provided such consumer goods are manufactured on or after March 1, 1971.

REPLY TO:
STATE CAPITOL
SACRAMENTO 95814
(916) 445-3386

DISTRICT OFFICE
2337 SO. GARFIELD AVENUE
MONTEPEY PARK 91734
(213) 724-3825

Senate
California Legislature

ALFRED H. SONG

LOS ANGELES COUNTY
TWENTY-EIGHTH SENATORIAL DISTRICT

CHAIRMAN
SENATE COMMITTEE ON JUDICIARY

COMMITTEES
BUSINESS AND PROFESSIONS
HEALTH AND WELFARE
JUDICIARY
LOCAL GOVERNMENT

COMMISSIONS
JOINT COMMITTEE,
REVISION OF PENAL CODE
JOINT COMMITTEE,
SEISMIC SAFETY
CALIFORNIA LAW REVISION
COMMISSION

DATE: October 4, 1971
TO: Assemblyman Beverly
FROM: Senator Song
RE: SB 742

The one point of question on this bill that arose during committee hearings was the effect of SB 742 on the air conditioning industry.

The bill, as amended in the Assembly on September 30th, makes no change whatever as far as the relationship of the Song-Beverly Consumer Warranty Act to the heating and air conditioning industry. The amendment of September 30th deleted an exemption for this industry, and now the bill does no more than maintain the status quo in this area.

000231

MJN/251

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FLOOR STATEMENT

I ask for approval of this conference committee report on SB 742.

This bill is a clean-up measure for the Song-Beverly Consumer Warranty Act that we passed last year.

Save for one section, this bill is not controversial, and, in fact, passed the Assembly unanimously.

The controversial section would exclude such heating and air-conditioning equipment as is built into a home from coverage of the Act. The reason for this is that the Act delineates the rights and responsibilities of manufacturers, retailers, and consumers, and is not designed to regulate the various contractors and subcontractors that handle air-conditioning equipment. These contractors are presently regulated by the Contractors State License Law.

The bill as it passed the Senate contained the exclusion. It was deleted by the Assembly.

The conference committee compromise restores the exclusion, but provides that when a retailer of such equipment warrants it, that retailer-warrantor would be responsible for its warranty under the terms of the Act. This distinguishes the situation in which a consumer purchases his equipment from Sears (still covered) from that in which he deals with a tract developer who in turn has dealt with a series of contractors (not covered).

This compromise is acceptable to the retailers and the air-conditioning industry. No organization or individual has expressed

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MJN/252

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Page Two

any opposition to me.

I ask for an "aye" vote.

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CALIFORNIA RETAILERS ASSOCIATION

1127 11TH STREET • SACRAMENTO 95814 • 916-443-1975

ROBERT M. SHILLITO EXECUTIVE VICE PRESIDENT

OFFICERS
PRESIDENT JOHN BROCK
VICE PRESIDENTS
PRENTIS C. HALE
SAMUEL LEASK, III
TREASURER
WILLIAM R. BREUNER
SECRETARY
MERLYN CARPENTER
CHAIRMAN OF THE
EXECUTIVE COMMITTEE
ARDERN R. BATCHELDER

BOARD OF DIRECTORS

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OAKLAND
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MALCOLM BROCK CO
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STOCKTON
MERLYN CARPENTER
WILLIS STATIONERY STORE
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RICHARD F. COZAD
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BURLINGAME
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DALY BROS
EUREKA
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ALPHA BETA ACME MARKETS, INC.
LA HABRA
ROBERT M. ELLIOTT
MONTGOMERY WARD & CO
OAKLAND
BERNARD M. FAUBER
B. S. KREBS COMPANY
LOS ANGELES
WESTON P. FIGGINS
BULLOCK &
LOS ANGELES
EDWARD S. FINKELSTEIN
MACY'S CALIFORNIA
SAN FRANCISCO
H. H. GAUER
ATKINS
SAN FRANCISCO
PRENTIS C. HALE
BROADWAY-HALE STORES, INC.
SAN FRANCISCO
LESLIE I. HARRIS
THE HARRIS COMPANY
SAN BERNARDINO
PHILIP M. HAWLEY
BROADWAY DEPARTMENT STORES
LOS ANGELES
R. E. HILSON
HILSON'S
MARTINEZ
FRED B. HUDDMAN
DERMOND &
LOS ANGELES
VERNON F. HURD
HOLMAN & DEPT. STORE
PACIFIC GROVE
VINCENT W. JONES
BEATTY HOBBS & CO
LOS ANGELES
E. W. KAUFFMAN
F. W. WOOLWORTH CO
BURLINGAME
L. F. KORNATKA
AMTAC MERCHANDISING CORPORATION
OAKLAND
RICHARD M. KOSTER
MARKET HAVIT
LOS ANGELES
ROGER M. LAVERTY, JR.
FOURTHMART INC
LOS ANGELES
SAMUEL LEASK, III
SAMUEL LEASK & SONS
SANTA CRUZ
CARL LIVINGSTON
LIVINGSTON BROS
SAN FRANCISCO
ANGUS M. McLEOD
HENSLEY &
SANTA MONICA
WILLIAM E. McNEANY
HONTHURST &
SANTA ROSA
THEODORE MERIAM
M. OMER & CO
CHICO
JOHN J. NEWBERRY, JR.
J. J. NEWBERRY CO
NEW YORK
KENNETH O. OLSEN
YONS GROCERY COMPANY
LOS ANGELES
ALBERT RALPHS, JR.
RALPHS GROCERY COMPANY
LOS ANGELES
MILTON R. SAGE
SAGE & COMPANY
SAN BERNARDINO
GEORGE A. SCOTT
WALKER SCOTT COMPANY
SAN DIEGO
JAMES L. STELL
LUCKY STONES, INC.
SAN LEANDRO
GEOFFREY SWABE
SWAB COMPANY
LOS ANGELES
R. R. VAN KLECK
J. C. PINNEY COMPANY
SAN FRANCISCO
VAILE G. YOUNG
HUFFMAN
LONG BEACH

November 3, 1971

The Honorable Ronald Reagan
Governor
State of California
State Capitol
Sacramento, California 95814

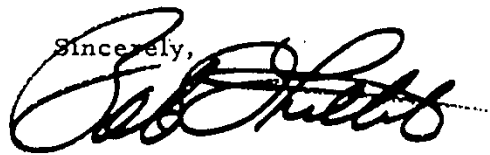
Re: SB 742, Consumer Warranties

Dear Governor Reagan:

California Retailers Association respectfully requests
your signing subject bill into law.

The legislation supplements the Song-Beverly Con-
sumer Warranty Act approved by you in 1970 and will
strengthen and extend warranty protection to California
consumers.

Sincerely,



Robert M. Shillito
Executive Vice President

RMS/hg

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STATE CAPITOL
SACRAMENTO, CALIFORNIA 95814
TEL.: (916) 449-1720

DISTRICT OFFICE
1811 SO. PACIFIC COAST HIGHWAY
REDONDO BEACH, CALIF. 90277
TEL.: 378-8922

COMMITTEES
CHAIRMAN,
CRIMINAL JUSTICE
CONSTITUTIONAL
AMENDMENTS
FINANCE AND INSURANCE
LOCAL GOVERNMENT

Assembly California Legislature

ROBERT G. BEVERLY
ASSEMBLYMAN, FORTY-SIXTH DISTRICT

November 4, 1971

The Honorable Ronald Reagan
Governor, State of California
State Capitol
Sacramento, California

Re: Senate Bill 742


Dear Governor Reagan:

Senate Bill 742 is now before you for your consideration.

This measure revises and clarifies various provisions of the Consumer Warranty Act of 1970. This 1970 legislation, also designated the Song-Beverly Consumer Warranty Act, is perhaps the major consumer bill of the 1970 Session and has received widespread publicity and comment in the press, legal journals and trade papers.

In my opinion Senate Bill 742 improves the existing act and deserves your early approval.

Respectfully,


ROBERT G. BEVERLY

RGB:mn

cc: Senator Alfred H. Song

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REPLY TO:
STATE CAPITOL
SACRAMENTO 95814
(916) 445-3386

DISTRICT OFFICE
2337 SO. GARFIELD AVENUE
MONTEREY PARK 91754
(213) 724-3825

Senate
California Legislature

ALFRED H. SONG

LOS ANGELES COUNTY
TWENTY-EIGHTH SENATORIAL DISTRICT

CHAIRMAN
SENATE COMMITTEE ON JUDICIARY

COMMITTEES
BUSINESS AND PROFESSIONS
HEALTH AND WELFARE
JUDICIARY
LOCAL GOVERNMENT

COMMISSIONS
JOINT COMMITTEE,
REVISION OF PENAL CODE
JOINT COMMITTEE,
SEISMIC SAFETY
CALIFORNIA LAW REVISION
COMMISSION

November 5, 1971

The Honorable Ronald Reagan
Governor of California
State Capitol
Sacramento, California 95814

Re: SB 742

Dear Governor Reagan:

SB 742 has passed the Legislature and has been sent to your office for your approval.

Last year the Song-Beverly Consumer Warranty Act was enacted, containing, like most new pieces of legislation, its share of loopholes and ambiguities. The present bill, SB 742, is a clean-up bill. Its sole purpose is to clarify what is presently law so that manufacturers, retailers, and consumers will have a more accurate idea of the nature of their rights and responsibilities.

Specifically:

- Section 1791 (a) amends present law to make clear which classes of products fall within the definition of "consumer goods" in the Song-Beverly Act.
- Section 1791.1 specifies the duration of implied warranties attaching to products also covered by an express warranty, thus permitting warrantors to cost accurately their warranty obligations.
- Section 1793.1 clarifies the responsibilities of the warrantors maintaining service and repair facilities to notify their customers of the location of these service and repair facilities.
- Sections 1793.2 and 1793.3 restate the rules determining who is to pay the costs of transporting defective products to and from the facility at which the warranty servicing takes place.

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The Honorable Ronald Reagan -2-

November 5, 1971

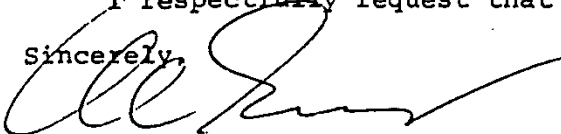
- Sections 1791 and 1795.5 distinguish the differences in the way the Act applies to new and to used goods.

There are numerous other changes sharpening the language, clarifying intent, and making sure that the Song-Beverly Act conforms with definitions in the Uniform Commercial Code.

SB 742 has been examined in detail with representatives of the California Retailers Association, California Manufacturers, General Motors, General Electric, and the Chamber of Commerce. These organizations support the bill. There is no known opposition.

I respectfully request that you sign this bill into law.

Sincerely,



ALFRED H. SONG

AHS/ny

Enclosure

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CALIFORNIA MANUFACTURERS ASSOCIATION

923 • 12TH STREET • ROOM 300 • SACRAMENTO, CALIFORNIA 95814 • PHONE (916) 443-8107

MAIL ADDRESS:
P.O. BOX 1133
SACRAMENTO CA 95808

November 4, 1971

The Honorable Ronald Reagan
Governor of California
State Capitol
Sacramento, California

Dear Governor Reagan:

California Manufacturers Association strongly urges you to sign
into law SB 742 by Senator Alfred Song.

This bill is essential to clarify and correct several features
of the Song-Beverly Consumer Warranty Act passed by the Legislature
and signed by you in 1970.

Last year's act seemed to be subject to misinterpretation by
both manufacturers and retailers, as well as the ultimate customers
because its provisions were not couched in readily understood language.
SB 742 clarifies this and should provide clear guidelines to all
parties involved in a retail transaction in the State of California.

Again, we urge you to sign SB 742 into law.

Thank you.

Sincerely yours,

A. E. Davis

A. E. Davis
Vice President

AED:mmm

cc: Senator Alfred Song

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Document received by the CA 4th District Court of Appeal Division 2.

ENROLLED BILL REPORT

AGENCY Agriculture and Services	BILL NUMBER SB 742
DEPARTMENT, BOARD OR COMMISSION Department of Consumer Affairs	AUTHOR Song

SUBJECT:

Deals with consumer warranties. This bill is designed to clarify and refine the Consumer Warranty Act of 1970.

HISTORY, SPONSORSHIP AND RELATED LEGISLATION:

The Song-Beverly Consumer Warranty Act was enacted in the 1970 legislative session and becomes operative January 1, 1972. AB 742 is the cleanup bill, with several substantive changes in areas that were omitted or were ambiguous in the original Act. Interest groups and associations affected by the Act supplied input to this bill. There were no directly related bills.

ANALYSIS:

A. Specific Findings

"Consumer goods" are better defined as new goods purchased primarily for personal, family, or household purposes. Mobilehomes (one of this department's major complaint areas) are specifically included under the Act. Implied warranties are redefined and limited to one year. Soft wear items (clothing), are given a limited exclusion from the Act, which we believe to be appropriate. The triple damages section is made inapplicable to a breach of the implied warranties. Several minor technical changes are made which do not increase or decrease the protection of the consumer. We believe the total effect of the bill is to provide a more workable Act than the original version. The consumer is provided protection and oppressive responsibilities are not imposed upon the manufacturer and supplier of consumer goods. As an example, the primary duty of returning non-conforming goods to the manufacturer or his representative is placed upon the buyer. The manufacturer does have the duty when he offers an express warranty of insuring, reimbursement, or replacement of goods under the warranty. This is not unreasonable because the express warranty is only offered at the option of the manufacturer. Enforcement is via civil action.

B. Fiscal Analysis

No fiscal impact to this department.

This department maintained an approved neutral position.

RECOMMENDATION:

Sign			
DEPARTMENT DIRECTOR <i>Donald W. Thompson</i>	DATE 11-5-71	AGENCY SECRETARY <i>Earl C. [Signature]</i>	DATE NOV 8 1971

DISTRICT OFFICE
P. O. DRAWER 1270
INDIO, CALIFORNIA
92201
TELEPHONE: 347-8530

CAPITOL ADDRESS
STATE CAPITOL
SACRAMENTO, CALIFORNIA
95814
TELEPHONE: 445-9781

SENATOR
GORDON COLOGNE
THIRTY-SIXTH SENATORIAL DISTRICT
CHAIRMAN, SENATE COMMITTEE ON WATER RESOURCES

COMMITTEES
WATER RESOURCES
CHAIRMAN
BUSINESS AND PROFESSIONS
JUDICIARY
NATURAL RESOURCES AND
WILDLIFE
REVENUE AND TAXATION

California State Senate

November 8, 1971

The Honorable Ronald Reagan
Governor, State of California
State Capitol
Sacramento, California

Dear Governor:

Senate Bill 742 is now before you for your consideration, and this is to urge your signature on the measure. This legislation is a cleanup vehicle to improve the Song-Beverly Consumer Warranty Act of 1970 and has the support of the California Manufacturers' Association and the California Retail Association.

Your favorable consideration of Senate Bill 742 will be appreciated.

Yours very truly,

GORDON COLOGNE



GC:ac

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ENROLLED BILL MEMORANDUM TO GOVERNOR	DATE November 11, 1971
BILL NO. SB 742	AUTHOR Song

Vote—Senate

Ayes— 31

Noes— 2—Bradley and Richardson

Vote—Assembly

Ayes—

Noes— Unanimous

SB 742 makes several clarifying amendments to the Consumer Warranty Act of 1970.

The California Manufacturers Association and the California Retailers Association request approval.

The Department of Consumer Affairs recommends approval.

Assemblyman Beverly and Senator Cologne request approval.

Recommendation APPROVE	Legislative Secretary <i>John T. Kehoe</i>
---------------------------	---

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SEC. 11. The Superintendent of Public Instruction shall adopt rules and regulations necessary for the effective administration of Sections 3 to 15, inclusive, of this act.

The regulations adopted by the superintendent shall set forth the standards and criteria to be used in the evaluation of project applications submitted by school districts.

The standards and criteria adopted by the superintendent, among other items, shall include a statement of specific goals to be sought in the program both in terms of pupil achievement and the requirements for evaluation of the program.

SEC. 12. Participating districts, on forms prescribed by the Superintendent of Public Instruction, may apply for funds to conduct the study program pursuant to Sections 3 to 15, inclusive, of this act.

The application shall contain, but not be limited to:

(a) A description of the method of evaluation to be used to demonstrate the success of the study.

(b) Provisions for identification of the students' requirement of such services and criteria which will be used by the district to evaluate the students' academic progress.

SEC. 13. The participating districts shall submit reports to the Superintendent of Public Instruction at the times, in the manner, and in the form prescribed by him.

SEC. 14. At the end of the three years' duration of the study programs, the Superintendent of Public Instruction shall submit to the Governor and the Legislature a report, including within it an evaluation of the study programs.

SEC. 15. The Superintendent of Public Instruction and the participating school districts may utilize such federal funds as may be available for the purposes of the study program.

SEC. 16. There is hereby appropriated from the General Fund in the State Treasury to the Superintendent of Public Instruction the sum of five hundred thousand dollars (\$500,000), for expenditure and allocation as follows:

- (a) For the purposes of Sections 1 and 2 of this act, during the 1971-1972 fiscal year..... \$75,000.
- (b) For the purposes of Sections 3 to 15, inclusive, of this act, during the 1972-1973, 1973-1974, and 1974-1975 fiscal years..... \$425,000.

SEC. 17. Sections 3 to 15, inclusive, of this act shall become operative on July 1, 1972.

CHAPTER 1522

An act to add Sections 11017.1 and 53069.6 to the Government Code, relating to civil actions by the state.

[Approved by Governor November 16, 1971. Filed with Secretary of State November 16, 1971.]

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

SECTION 1. Section 11017.1 is added to the Government Code, to read:

11017.1. Each state agency shall take all practical and reasonable steps to recover civil damages for the negligent, willful, or unlawful damaging or taking of state property under the jurisdiction of the state agency, including the institution of appropriate legal action.

SEC. 2. Section 53069.6 is added to the Government Code, to read:

53069.6. Each local agency, as defined in Section 54951, shall take all practical and reasonable steps to recover civil damages for the negligent, willful, or unlawful damaging or taking of property of the local agency, including the institution of appropriate legal action.

CHAPTER 1523

An act to amend Sections 1791, 1791.1, 1792, 1792.1, 1792.2, 1792.4, 1792.5, 1793, 1793.1, 1793.2, 1793.3, 1793.4, 1793.5, 1794, 1794.2, 1794.3, and 1794.4 of, and to add Sections 1790.4, 1793.35, 1795.1, and 1795.5 to, the Civil Code, relating to consumer warranties.

[Approved by Governor November 16, 1971. Filed with Secretary of State November 16, 1971.]

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

SECTION 1. Section 1790.4 is added to the Civil Code, to read:

1790.4. The remedies provided by this chapter are cumulative and shall not be construed as restricting any remedy that is otherwise available.

SEC. 2. Section 1791 of the Civil Code is amended to read: 1791. As used in this chapter:

(a) "Consumer goods" means any new mobilehome, motor vehicle, machine, appliance, like product, or part thereof that is used or bought for use primarily for personal, family, or household purposes. "Consumer goods" also means any new good or product, except for soft goods and consumables, the retail sale of which is accompanied by an express warranty to the retail buyer thereof and such product is used or bought for use primarily for personal, family, or household purposes. Soft goods and consumables, the retail sale of which is accompanied by an express warranty, shall be subject to the provisions of Section 1793.35.

(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, or produces consumer goods.

(d) "Distributor" means any individual, partnership, corporation, association, or other legal relationship which stands

0002242

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 consumer goods to retail buyers.

(f) "Soft goods" means any pliable product substantially composed of woven material, natural or synthetic yarn or fiber, textile, or similar product.

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

SEC. 3. Section 1791.1 of the Civil Code is amended to read:

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 adequately contained, packaged, and labeled.

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

(b) "Implied warranty of fitness" means 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.

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

(d) Any buyer of consumer goods injured by a breach of the implied warranty of merchantability and where applicable by a breach of the implied warranty of fitness may bring an action for the recovery of damages pursuant to the provisions of Chapter 6 (commencing with Section 2601) and Chapter 7 (commencing with Section 2701) of Division 2 of the Commercial Code, and, in such action, the provisions of subdivision (b) of Section 1794 of this chapter shall apply.

SEC. 4. Section 1792 of the Civil Code is amended to read:

1792. Unless disclaimed in the manner prescribed by this chapter, every sale or consignment for sale of consumer goods that are sold at retail in this state shall be accompanied by the manufacturer's implied warranty that the goods are merchantable.

SEC. 5. Section 1792.1 of the Civil Code is amended to read:

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

SEC. 6. Section 1792.2 of the Civil Code is amended to read:

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

SEC. 6.5. Section 1792.4 of the Civil Code is amended to read:

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

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

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

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

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

SEC. 6.5. Section 1792.5 of the Civil Code is amended to read:

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

SEC. 7. Section 1793 of the Civil Code is amended to read:
 1793. 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 making express warranties may not limit, modify, or disclaim the implied warranties guaranteed by this chapter to the sale of consumer goods.

SEC. 8. Section 1793.1 of the Civil Code is amended to read:

1793.1. (a) 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.

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

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

(2) At the time of sale, provide the buyer with the name and address and telephone number of the service and repair facility central directory within this state. It shall be the duty of the central directory to provide, upon inquiry, the name and address of the authorized service and repair facility nearest the buyer; or

(3) Maintain at the premises of retail sellers of the warrantor's consumer goods a current listing of such warrantor's authorized service and repair facilities, or retail sellers to whom the consumer goods are to be returned for service and repair, whichever is applicable, within this state. It shall be the duty of every retail seller provided with such a listing to provide, on inquiry, the name, address, and telephone number of the nearest authorized service and repair facility, or the retail seller to whom the consumer goods are to be returned for service and repair, whichever is applicable.

SEC. 9. Section 1793.2 of the Civil Code is amended to read:

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

(1) Maintain 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 1793.5.

(b) Where such service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not conform with the applicable express warranties, service and repair shall be commenced within a reasonable time by the manufacturer or its representative in this state. Unless the buyer agrees in writing to the contrary, the goods must be serviced or repaired so as to conform to the applicable warranties within 30 days. Delay caused by condi-

tions beyond the control of the manufacturer or his representatives shall serve to extend this 30-day requirement. Where such delay arises, conforming goods shall be tendered as soon as possible following termination of the condition giving rise to the delay.

(c) It shall be the duty of the buyer to deliver nonconforming goods to the manufacturer's service and repair facility within this state, unless, due to reasons of size and weight, or method of attachment, or method of installation, or nature of the nonconformity, such delivery cannot reasonably be accomplished. Should the buyer be unable to effect return of nonconforming goods for any of the above reasons, he shall notify the manufacturer or its nearest service and repair facility within the state. Written notice of nonconformity to the manufacturer or its service and repair facility shall constitute return of the goods for purposes of this section. Upon receipt of such notice of nonconformity the manufacturer shall, at its option, service or repair the goods at the buyer's residence, or pick up the goods for service and repair, or arrange for transporting the goods to its service and repair facility. All costs of transporting the goods when, pursuant to the above, a buyer is unable to effect return shall be at the manufacturer's expense. Costs of transporting nonconforming goods after delivery to the service and repair facility until return of the goods to the buyer shall be at the manufacturer's expense.

(d) Should the manufacturer or its representative in this state be unable to service or repair the goods to conform to the applicable express warranties, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

SEC. 10. Section 1793.3 of the Civil Code is amended to read:

1793.3. If the manufacturer of consumer goods sold in this state for which the manufacturer has made an express warranty does not provide service and repair facilities within this state pursuant to subdivision (a) of Section 1793.2, the buyer of such manufacturer's nonconforming goods may follow the course of action prescribed in either subdivision (a) or (b), below, as follows:

(a) Return the nonconforming 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 nonconforming goods or is unable to service or repair the goods so as to effect conformity with applicable express warranties, such 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 nonconformity.

(b) Return the nonconforming consumer good to any retail seller, within this state, of like goods of the same manufacturer

for replacement, or for service or repair. Replacement, service, or repair shall be at the option of the retail seller.

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

Sec. 10.5. Section 1793.35 is added to the Civil Code, to read:

1793.35. (a) Where the retail sale of soft goods or consumables is accompanied by an express warranty and such items do not conform with the terms of the express warranty, the buyer thereof may return the goods within 30 days of purchase or the period specified in the warranty, whichever is greater. The manufacturer may, in the express warranty, direct the purchaser to return nonconforming goods to a retail seller of like goods of the same manufacturer for replacement.

(b) When soft goods or consumables are returned to a retail seller for the reason that they do not conform to an express warranty, the retailer shall replace the nonconforming goods where the manufacturer has directed replacement in the express warranty. In the event the manufacturer has not directed replacement in the express warranty, the retailer may replace the nonconforming goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer for the goods, at the option of the retailer. Costs of reimbursement or replacement are recoverable by a retailer from the manufacturer in the manner provided in Section 1793.5.

Sec. 11. Section 1793.4 of the Civil Code is amended to read:

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, goods conforming to the applicable express warranties shall be tendered within 30 days. Delay caused by conditions beyond the control of the retail seller or his representative shall serve to extend this 30-day requirement. Where such a delay arises, conforming goods shall be tendered as soon as possible following termination of the condition giving rise to the delay.

Sec. 12. Section 1793.5 of the Civil Code is amended to read:

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, and cost of transporting the goods, if such costs are incurred plus a reasonable handling charge.

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

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

Sec. 13. Section 1794 of the Civil Code is amended to read:

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, and

(a) Judgment may be entered for three times the amount at which the actual damages are assessed, and

(b) Reasonable attorney fees may be awarded.

Sec. 14. Section 1794.2 of the Civil Code is amended to read:

1794.2. (a) Subdivision (a) of Section 1794 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 1781 of this code.

(b) Subdivision (a) of Section 1794 shall not apply to a judgment based solely on a breach of implied warranty of merchantability or, where present, the implied warranty of fitness.

Sec. 15. Section 1794.3 of the Civil Code is amended to read:

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

Sec. 16. Section 1794.4 of the Civil Code is amended to read:

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 of such contract.

Sec. 16.5. Section 1795.1 is added to the Civil Code, to read:

1795.1. No requirement of this chapter shall apply to any equipment or any part thereof which is a component of a system designed to heat, cool, or otherwise condition air where such a system shall become a fixed part of a structure, unless an express warranty respecting such component has been made by the retailer thereof, in which event it shall be the duty of the retailer to give effect to the provisions of this chapter.

SEC. 17. Section 1795.5 is added to the Civil Code, to read:

1795.5. Notwithstanding the provisions of subdivision (a) of Section 1791 defining consumer goods to mean "new" goods, if a distributor or retail seller of used consumer goods makes express warranties with respect to used goods that are sold in this state, the obligation of such distributor or retail seller shall be the same as that imposed on the manufacturer under this chapter, except:

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

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

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

SEC. 18. The provisions of this act shall become operative on January 1, 1972, and shall apply to sales of consumer goods occurring on and after January 1, 1972, provided such consumer goods are manufactured on or after March 1, 1971.

CHAPTER 1524

An act to amend Section 1241.7 of the Code of Civil Procedure, relating to eminent domain for state highways.

[Approved by Governor November 16, 1971. Filed with Secretary of State November 16, 1971.]

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

SECTION 1. Section 1241.7 of the Code of Civil Procedure is amended to read:

1241.7. (a) Except as provided in subdivision (b), notwithstanding any other provision of law to the contrary, the

fact that property is appropriated for public use as a state, regional, county, or city park or recreation area, or wildlife or waterfowl management area as presently established by the Department of Fish and Game pursuant to Section 1525 of the Fish and Game Code, or historic site included in the National Register of Historic Places or state-registered landmarks, or as an ecological reserve as provided for in Article 4 (commencing with Section 1580) of Chapter 5 of Division 2 of the Fish and Game Code, establishes a rebuttable presumption of its having been appropriated for the best and most necessary public use. The presumption established by this section is a presumption affecting the burden of proof.

(b) When property appropriated for a public use as a state, regional, county, or city park or recreation area, or wildlife or waterfowl management area as presently established by the Department of Fish and Game pursuant to Section 1525 of the Fish and Game Code, or historic site included in the National Register of Historic Places or state-registered landmarks, or as an ecological reserve as provided for in Article 4 (commencing with Section 1580) of Chapter 5 of Division 2 of the Fish and Game Code, is sought to be acquired for state highway purposes, or for public utility route or structure purposes, and such park or recreational area, or wildlife or waterfowl management area, or historic site, or ecological reserve was dedicated to or established for park or recreational purposes, or as a wildlife or waterfowl management area, or as an historic site included in the National Register of Historic Places or state-registered landmarks, or as an ecological reserve as provided for in Article 4 (commencing with Section 1580) of Chapter 5 of Division 2 of the Fish and Game Code, prior to the initiation of highway route location studies, or public utility route or structure location studies, an action for declaratory relief may be brought only by the public agency owning such park or recreational area, or wildlife or waterfowl management area, or historic site, or ecological reserve in the superior court to determine the question of which public use is the best and most necessary public use for such property. Such action for declaratory relief shall be filed and served within 120 days after publication by the California Highway Commission or the public utility in a newspaper of general circulation pursuant to Section 6061 of the Government Code, and delivery of a written notice to the public agency owning such park or recreational area, or wildlife or waterfowl management area, or historic site, or ecological reserve by the California Highway Commission or public utility that a proposed route or site or an adopted route includes park land or recreational area, or a wildlife or waterfowl management area, or an historic site, or an ecological reserve owned by that agency. In such declaratory relief action, the resolution of the California Highway Commission shall not be conclusive evidence of the matters set forth in Section 103 of the Streets and Highways Code. Such action for declaratory relief shall have preference over all other civil actions in the matter of setting the same for hear-

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CALIFORNIA LEGISLATURE

AT SACRAMENTO

1973-74 REGULAR SESSION

SENATE FINAL HISTORY

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

CONVENED JANUARY 8, 1973

ADJOURNED SINE DIE NOVEMBER 30, 1974

DAYS IN SESSION..... 254
CALENDAR DAYS..... 635

LT. GOVERNOR JOHN L. HARMER
President of the Senate

SENATOR JAMES R. MILLS
President pro Tempore

Compiled Under the Direction of
DARRYL R. WHITE
Secretary of the Senate

By
DAVID H. KNEALE
History Clerk

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S.B. No. 1601—Song and Dymally.

An act to amend Sections 5116, 5125, and 5127 of, and to repeal Sections 5117 and 5130 of, the Civil Code, relating to civil law.

1974

- Jan. 22—Introduced. Read first time. To print.
- Jan. 25—From print.
- Jan. 29—To Com. on JUD.
- June 10—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
- June 12—From committee: Do pass. (Ayes 7. Noes 0.)
- June 13—Read second time. To third reading.
- June 24—Read third time. Passed. To Assembly. (Ayes 36. Noes 0. Page 11257.)
- June 25—In Assembly. Read first time. To Com. on JUD.
- Aug. 13—Set, first hearing. Hearing canceled at the request of author.
- Aug. 19—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
- Aug. 20—Set, first hearing. Further hearing to be set.
- Aug. 21—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
- Aug. 26—From committee: Do pass as amended. (Ayes 6. Noes 0.) Read second time. Amended. To third reading.
- Aug. 28—Read third time. Passed. To Senate. (Ayes 72. Noes 0. Page 17796.)
- Aug. 28—In Senate. To unfinished business.
- Aug. 31—Senate concurs in Assembly amendment. To enrollment. (Ayes 28. Noes 0. Page 14126.)
- Sept. 5—Enrolled. To Governor at 5 p.m.
- Sept. 23—Approved by Governor.
- Sept. 23—Chaptered by Secretary of State. Chapter 1206, Statutes of 1974.

S.B. No. 1602—Song.

An act to amend Section 1795.5 of the Civil Code, relating to consumer warranties.

1974

- Jan. 22—Introduced. Read first time. To print.
- Jan. 25—From print.
- Jan. 29—To Com. on JUD.
- Feb. 27—From committee: Do pass. (Ayes 15. Noes 0.)
- Feb. 28—Read second time. To third reading.
- Mar. 4—Read third time. Passed. To Assembly. (Ayes 30. Noes 0. Page 8246.)
- Mar. 5—In Assembly. Read first time. Held at desk.
- Mar. 6—To Com. on JUD.
- Mar. 28—From committee: Do pass. To Consent Calendar.
- April 1—Read second time. To Consent Calendar.
- April 4—Read third time. Passed. To Senate. (Ayes 72. Noes 0. Page 11783.)
- April 4—In Senate. To enrollment.
- April 9—Enrolled. To Governor at 3 p.m.
- April 17—Approved by Governor.
- April 17—Chaptered by Secretary of State. Chapter 169, Statutes of 1974.

S.B. No. 1603—Robbins (Coauthor: Assemblyman Boatwright).

An act to repeal Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of, and to add Chapter 3 (commencing with Section 8200) to Division 1 of Title 2 of, the Government Code, relating to notaries public.

1974

- Jan. 23—Introduced. Read first time. To print.
- Jan. 28—From print.
- Jan. 29—To Com. on G.O.
- Feb. 26—Set, first hearing. Hearing canceled at the request of author.
- Nov. 30—From committee without further action.

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Introduced by Senator Song

January 22, 1974

An act to amend Section 1795.5 of the Civil Code, relating to consumer warranties.

LEGISLATIVE COUNSEL'S DIGEST

SB 1602, as introduced, Song. Consumer warranties: used goods.

States that obligations of a distributor or retail seller of used goods sold in this state under the Song-Beverly Consumer Warranty Act extend to sales of all used goods regardless of when such goods may have been manufactured.

States that this act does not constitute a change in, but is declaratory of, existing law.

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

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

- 1 SECTION 1. Section 1795.5 of the Civil Code is
- 2 amended to read:
- 3 1795.5. Notwithstanding the provisions of subdivision
- 4 (a) of Section 1791 defining consumer goods to mean
- 5 "new" goods, if a distributor or retail seller of used
- 6 consumer goods makes express warranties with respect
- 7 to used goods that are sold in this state, the obligation of
- 8 such distributor or retail seller shall be the same as that
- 9 imposed on the manufacturer under this chapter, except:
- 10 (a) It shall be the obligation of the distributor or retail
- 11 seller making express warranties with respect to used
- 12 consumer goods (and not the original manufacturer,
- 13 distributor, or retail seller making express warranties
- 14 with respect to such goods when new) to maintain, or

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1 cause to be maintained, sufficient service and repair
2 facilities within this state to carry out the terms of such
3 express warranties.

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

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

20 (d) *The obligation of the distributor or retail seller*
21 *who makes express warranties with respect to used goods*
22 *that are sold in this state, shall extend to the sale of all*
23 *such used goods, regardless of when such goods may have*
24 *been manufactured.*

25 SEC. 2. The amendment of Section 1795.5 of the Civil
26 Code made by Section 1 of this act does not constitute
27 change in, but is declaratory of, the existing law.

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SENATE COMMITTEE ON JUDICIARY

BACKGROUND INFORMATION

1602

1. Source

- (a) What group, organization, governmental agency, or other person, if any, requested the introduction of the bill?

NONE

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

NONE

- (c) If a similar bill has been introduced at a previous session of the Legislature, what was its number and the year of its introduction?

2. Purpose

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

~~SOME~~ SOME COURTS, CONTRARY TO AUTHORITY, ARE LIMITING THE APPLICATION OF CIVIL CODE § 1745.5 TO GOODS MANUFACTURED AFTER MARCH 1, 1971.

If you have any further background information or material relating to the bill, please enclose a copy of it or state where the information or material is available.

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2046 AS SOON AS POSSIBLE. IN ANY CASE, PLEASE RETURN IT NOT LATER THAN 14 DAYS AFTER RECEIPT.

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SB 1602

The purpose of SB 1602 is, frankly, to correct a piece of sloppy drafting that we committed several years ago. The problem has been brought to our attention by several attorneys.

Most of the Song-Beverly Consumer Warranty Act applies only to the sale of new consumer goods. As the Act imposes duties upon the manufacturers of new goods, we included a provision making the Act apply only to goods manufactured on or after March 1, 1971. This effective date permitted manufacturers to cost their obligations.

Unfortunately, the March 1, 1971, effective date can also be read so as to apply to Civil Code Section 1795.5 --- the section amended by this bill. This is unfortunate because a date of manufacture has no relevance to its provisions. The section imposes no burden on any manufacturer, nor does it affect any manufacturer in any way.

It is the only section of the Act applying to used goods. It only applies to retailers and distributors and only if they choose to warrant the goods they sell. There is no reason for any manufacturing date limitation.

Without SB 1602 a retailer of used goods who wishes to give a warranty may have to meet two different legal standards --- depending on the age of the goods. SB 1602 will place all such goods under a single standard.

There is no ^{known} opposition. I ask for an "aye" vote.

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CHIEF DEPUTY

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OWEN K. KUNS
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RUSSELL L. SPARLING
PRINCIPAL DEPUTIES

3021 STATE CAPITOL
SACRAMENTO 95814

110 STATE BUILDING
LOS ANGELES 90012

From SB 1602

Legislative Counsel of California

GEORGE H. MURPHY

Sacramento, California
January 21, 1974

Honorable Alfred H. Song
Senate Chamber

Consumer Warranties - #372

Dear Senator Song:

Pursuant to your request, we have prepared the attached draft, relating to consumer warranties.

Among other things, the amendment to Section 1795.5 of the Civil Code made by this draft provides that a distributor or retail seller of used consumer goods who makes express warranties with respect to those goods that are sold in this state has the same obligation under the Song-Beverly Consumer Warranty Act as that imposed on a manufacturer except that such obligation extends to the sale of all such used goods regardless of when such goods may have been manufactured.

In addition, the draft provides that this amendment of Section 1795.5 of the Civil Code does not constitute a change in, but is declaratory of, existing law.

However, Section 18 of Chapter 1523 of the Statutes of 1971 provides specifically that the provisions of the Song-Beverly Consumer Warranty Act, including the provisions of Section 1795.5 presumably, apply to sales of consumer goods occurring on and after January 1, 1972, provided such consumer goods are manufactured on or after March 1, 1971.

GERALD ROSS ADAMS
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DEPUTIES

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Honorable Alfred H. Song - p. 2 - #372

In view of Section 18 of Chapter 1523 of the Statutes of 1971, there is a serious question whether the amendment made to Section 1795.5 of the Civil Code by this draft is in fact declaratory of existing law.

Moreover, if this amendment is not declaratory of existing law, there is a constitutional question raised by the amendment to Section 1795.5 made by this draft relating to the impairment of the obligation of contracts. (Sec. 16, Art. I, Cal. Const., Sec. 10 (1), Art. I, U.S. Const.)

Very truly yours,

George H. Murphy
Legislative Counsel

By *James A. Marsala*
James A. Marsala
Deputy Legislative Counsel

JAM:mlb

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SB 1602 (Song)
As introduced
Civil Code

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CONSUMER WARRANTIES
-USED GOODS-

HISTORY

Source: Author
Prior Legislation: None
Support: Unknown
Opposition: No Known

DIGEST

Specifies that, for purposes of the Song-Beverly Consumer Warranty Act, the obligation of the distributor or retail seller who makes express warranties with respect to used goods that are sold in this state shall extend to the sale of all such goods regardless of when such goods may have been manufactured.

Specifies that the bill is declaratory of existing law.

PURPOSE

Avoid judicial constructions which would limit the applicability of the Song-Beverly Consumer Warranty Act to used goods manufactured after March 1, 1971.

COMMENT

1. It is contended by the proponents of this measure that some courts, contrary to the author's intent, are limiting the application of the provisions of the Song-Beverly Consumer Warranty Act relating to used goods, to include only goods which were manufactured after March 1, 1971.

(more)

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SB 1602 (Song)
Page two

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This bill therefore specifies, as a declaration 1
of existing law, that the obligation of the dis- 6
tributor or retail seller who makes express war- 0
ranties with respect to used goods that are sold 2
in this state shall extend to the sale of all
such used goods, regardless of when the goods
may have been manufactured.

Section 1795.5 of the Civil Code, which is
amended by the bill and governs the application
of the warranty act to used goods, was added to
the warranty act in 1971 by Chapter 1523 of the
Statutes of 1971. Section 18 of that Chapter
reads, in part, as follows:

The provisions of this act...shall apply
to sales of consumer goods occurring on
and after January 1, 1972, provided such
consumer goods are manufactured on or
after March 1, 1971.

Considering the provisions of Section 18, it is
questionable that the bill is declaratory of
existing law.

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ASSEMBLY COMMITTEE ON JUDICIARY

Bill Analysis

Work Sheet

RE: Bill No. SB 1002 (Long)

Please complete this form and return it to the Assembly Committee on Judiciary as soon as possible.

1. Origin of the bill:

- (a) What is the source of the bill? (What person, organization or governmental entity, if any, requested introduction?)

AUTHOR

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

NO

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

NO

2. Problem or deficiency in the present law which the bill seeks to remedy:

SEE ATTACHMENT

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

4. Hearing:

- (a) Approximate amount of time necessary for hearing. 90 MINUTES
(b) Preference for date of hearing. 3/26
(c) Names of witnesses to testify at the hearing.

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ASSEMBLY COMMITTEE ON JUDICIARY
CHARLES WARREN, CHAIRMAN

BILL DIGEST

BILL: SB 1602

HEARING DATE: 3/26/74

AUTHOR: Song

SUBJECT: Consumer Warranties -- Used Goods

BILL DESCRIPTION:

The Song/Beverly Consumer Warranty Act applies to consumer goods manufactured on or after March 1, 1971. Although the Act primarily relates to new consumer goods, it does include a section on used goods.

SB 1602 relates to the used good section of the Act. The used good section of the Act applies to distributors and retail sellers. It does not apply to manufacturers.

This bill makes clear that the distributor's or retailer's obligation under express warranties for used goods extends to all used goods, irrespective of the date of manufacture.

The bill contains a provision stating that the bill is simply declaratory of existing law.

COMMENT:

The apparent purpose of the bill is to clarify existing law. Under the present language of the above Act, it is probable that the March 1, 1971 date of manufacture would apply to used goods as well as new goods. Since the used goods section of the Act only applies to retailers and distributors who choose to make express warranties, the date of manufacture would not be relevant.

(CONTINUED)

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SB 1602
Page 2

The proponent of the bill indicates that unless the Act is clarified, a retailer who makes an express warranty under the Act would have to satisfy different legal standards according to the date of manufacture.

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REPLY TO:
STATE CAPITOL
SACRAMENTO 95814
(916) 445-3366

DISTRICT OFFICE
2337 S. OAKFIELD AVENUE
MONTEREY PARK 91754
(213) 724-3825

Senate
California Legislature

ALFRED H. SONG

LOS ANGELES COUNTY
TWENTY-EIGHTH SENATORIAL DISTRICT

CHAIRMAN
SENATE COMMITTEE ON JUDICIARY

COMMITTEES
BUSINESS AND PROFESSIONS
HEALTH AND WELFARE
JUDICIARY
LOCAL GOVERNMENT

COMMISSIONS
STATE ADVISORY HEALTH COUNCIL
STATE JUDICIAL COUNCIL

April 12, 1974

The Honorable Ronald Reagan
Governor of California
State Capitol Building
Sacramento, California 95814

RE: SB 1602

Dear Governor Reagan:

SB 1602 has been passed by the Legislature on a unanimous vote of each House and has been forwarded to you for your approval.

The purpose of this bill is, frankly, to correct a piece of sloppy drafting which we placed in the Song-Beverly Consumer Warranty Act several years ago.

Under the present language of the Act, it is probable that the March 1, 1971 date of manufacture would apply to used goods as well as new goods. Since the used goods section of the Act only applies to retailers and distributors who choose to make express warranties, the date of manufacture would not be relevant.

Unless the Act is clarified by SB 1602, a retailer of used goods who makes an express warranty under the Act would have to satisfy different legal standards according to the date of manufacture.

There is no known opposition.

I respectfully request that you sign this bill into law.

Sincerely,

Alfred H. Song
ALFRED H. SONG

AHS/ny

Enclosure

000261

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Document received by the CA 4th District Court of Appeal Division 2.

ENROLLED BILL REPORT

AGENCY Agriculture and Services		BILL NUMBER SB 1602	
DEPARTMENT, BOARD OR COMMISSION Department of Consumer Affairs		AUTHOR Song	
SUBJECT: Technical amendment to Song-Beverly Consumer Warranty Act.			
HISTORY, SPONSORSHIP, AND RELATED LEGISLATION:			
<p>The Song-Beverly Consumer Warranty Act passed in 1971 established existing law as to implied warranties accompanying the retail sale of used consumer goods. As it is not entirely clear in one area, SB 1602 is simply a clarification of what has been in practice assumed as existing law. SB 1602 is sponsored by the author. There are no related bills in this session, and there is no opposition to this piece of legislation.</p>			
ANALYSIS:			
<u>Specific Findings</u>			
<p>Makes it clear that implied warranties will arise by operation of the Song-Beverly Consumer Warranty Act on the retail sale of used consumer goods where the retailer has made an express warranty regarding such goods, regardless of the year in which the used goods were originally manufactured.</p>			
<p>The retail sale of used goods which are expressly warranted by the retailer is the critical event as to the operation of the act. If the sale occurs after the effective date of the act, the act operates to supply implied warranties of merchantability and, where applicable, implied warranties of fitness. The date of original manufacture of the goods is irrelevant to the purposes of the act. SB 1602 makes this point clear and should be beneficial in the interpretation of the act.</p>			
<u>Fiscal Analysis</u>			
No fiscal impact on this department.			
VOTE: Senate: 30-0 Assembly: 72-0			
RECOMMENDATION:			
SIGN		000262	
DEPARTMENT DIRECTOR	DATE	AGENCY SECRETARY	DATE
<i>P. J. [Signature]</i>	4-16-74	<i>[Signature]</i>	APR 17 1974

99D-16 (Rev. 1/71)

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ENROLLED BILL MEMORANDUM TO GOVERNOR		DATE	April 17, 1974
BILL NO.	SB 1603	AUTHOR	Song

Vote—Senate ☒ Unanimous

Ayes—
Noes—

Vote—Assembly ☒ Unanimous

Ayes—
Noes—

SB 1603 states that the obligations of a distributor or retail seller of used goods sold in this state under the Song-Beverly Consumer Warranty Act extend to sales of all used goods regardless of when such goods may have been manufactured.

The Department of Consumer Affairs recommends approval.

The Legal Affairs Unit recommends approval.

Recommendation	Legislative Secretary	000263
Approve	<i>[Signature]</i>	

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x

SB 1602
SS

April 18, 1974

Mr. Richard E. Elbrecht
Attorney at Law
P. O. Box 1185
Santa Cruz, California 95061

Dear Mr. Elbrecht:

You may be interested in our SB 1602, a copy of which is enclosed.

By keeping a low profile and avoiding unnecessary debate, we managed to guide this bill through the legislature without arousing any opposition. The Governor signed it on April 17, and it is now Chapter 169 of the Statutes of 1974.

I hope this will prove useful to you.

Sincerely,

RICHARD C. THOMSON
Administrative Assistant

RCT/ny

Enclosure

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Document received by the CA 4th District Court of Appeal Division 2.

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

SECTION 1. The heading of Chapter 10.5 (commencing with Section 10570) of Division 9 of the Health and Safety Code is amended to read:

CHAPTER 10.5. RECORDING CERTIFICATION OF FOREIGN BIRTHS
AND DEATHS

SEC. 2. Section 10570 of the Health and Safety Code is amended to read:

10570. A certification of birth or of birth data issued by an agency of the government of the United States to authenticate a birth of a child to a United States citizen outside of the United States may be recorded in the office of a county recorder in the last county of permanent residence of one or both parents of the child if the last permanent residence in the United States of one or both parents of the child was in California. A certification of death or death data issued by an agency of the government of the United States to authenticate the death of a United States citizen outside of the United States may be recorded in the office of the county recorder in the last county of permanent residence if the last permanent residence in the United States of such citizen was in California.

SEC. 3. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section nor shall there be any appropriation made by this act, because financing is provided by Section 27361 and Sections 27365 through 27369, inclusive, of the Government Code.

CHAPTER 169

*An act to amend Section 1795.5 of the Civil Code, relating to
consumer warranties.*

[Approved by Governor April 17, 1974. Filed with
Secretary of State April 17, 1974.]

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

SECTION 1. Section 1795.5 of the Civil Code is amended to read:

1795.5. Notwithstanding the provisions of subdivision (a) of Section 1791 defining consumer goods to mean "new" goods, if a distributor or retail seller of used consumer goods makes express warranties with respect to used goods that are sold in this state, the obligation of such distributor or retail seller shall be the same as that imposed on the manufacturer under this chapter, except:

(a) It shall be the obligation of the distributor or retail seller making express warranties with respect to used consumer goods

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Document received by the CA 4th District Court of Appeal Division 2.

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

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

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

(d) The obligation of the distributor or retail seller who makes express warranties with respect to used goods that are sold in this state, shall extend to the sale of all such used goods, regardless of when such goods may have been manufactured.

SEC. 2. The amendment of Section 1795.5 of the Civil Code made by Section 1 of this act does not constitute a change in, but is declaratory of, the existing law.

CHAPTER 170

An act to amend Section 265 of the Health and Safety Code, relating to crippled children, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 17, 1974. Filed with
Secretary of State April 17, 1974.]

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

SECTION 1. Section 265 of the Health and Safety Code is amended to read:

265. Annually the board of supervisors of each county shall appropriate for services for handicapped children of the county, including diagnosis, treatment, and therapy services for physically handicapped children in public schools, exclusive of administrative costs, a sum of money not less than that represented by a rate of one-tenth of one mill (\$.0001) on each dollar of the assessed valuation of the taxable property in the county, except that whenever the department on or before May 1st of any year certifies to the board of supervisors a smaller amount needed for such

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CALIFORNIA LEGISLATURE
1973-74 REGULAR SESSION

and

1973-74 SECOND EXTRAORDINARY SESSION

SUMMARY DIGEST

of

Statutes Enacted and Resolutions (Including Proposed
Constitutional Amendments) Adopted in 1974

and

1969-1974 Statutory Record



DARRYL R. WHITE
Secretary of the Senate

JAMES D. DRISCOLL
Chief Clerk of the Assembly

Compiled by
GEORGE H. MURPHY
Legislative Counsel

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Requires the Board of Medical Examiners to review and report to the Legislature at specified time, on various aspects of acupuncture.

To take effect immediately, urgency statute.

Ch. 166 (AB 2080) Kapiloff. Property taxation.

Eliminates exceptions to general requirement that county tax collector collect all property taxes.

Repeals provision authorizing county board of supervisors to require either assessor or tax collector to collect taxes on unsecured property.

Makes conforming changes.

Ch. 167 (AB 2764) Mobley. School district construction funds.

Provides for the addition of voted increase in maximum tax rate, to be effective commencing with 1973-74 fiscal year, which has a termination date and whose sole purpose was providing construction funds, to the maximum general purpose tax rate otherwise applicable to school districts.

To become operative July 1, 1974.

To take effect immediately, urgency statute.

Ch. 168 (SB 1405) Alquist. Foreign death records.

Authorizes the recording in the county recorder's office of death certification or data issued by an agency of the federal government to authenticate the death of a United States citizen abroad in the last county of permanent residence if the last permanent residence of such person was in California, and limits the recording of birth certification or birth data, issued by an agency of the government of the United States to authenticate a birth of a child to a United States citizen outside of the United States, to the last county of permanent residence if the last permanent residence of one or both parents of the child was in California.

Provides that notwithstanding Section 2231 of the Revenue and Taxation Code there shall be no reimbursement and no appropriation is made by this act because of a specified reason.

Ch. 169 (SB 1602) Song. Consumer warranties: used goods.

States that obligations of a distributor or retail seller of used goods sold in this state under the Song-Beverly Consumer Warranty Act extend to sales of all used goods regardless of when such goods may have been manufactured.

States that this act does not constitute a change in, but is declaratory of, existing law.

Ch. 170 (SB 1574) Mills. Crippled children services program.

Authorizes the Department of Health, upon approval of the Director of Finance, to approve a county appropriation in excess of two-tenths mill (\$.0002) on each dollar of assessed valuation of the taxable property in the county for crippled children services within the county, if the county expresses an intent to appropriate additional funds and the state is able to match such appropriation on a 3:1 ratio within the current state appropriation for its program.

To take effect immediately, urgency statute.

Ch. 171 (AB 2190) Maddy. Trust proceedings notice.

Defines classes of persons who must be given notice in trust proceedings. Prescribes circumstances in which court may require additional notice or appoint a guardian of a beneficiary or beneficiary class.

Ch. 172 (AB 2670) Lanterman. Air pollution control: variances.

Revises provisions governing the conduct of hearings and notices re variances from air pollution control regulations of air pollution control districts.

Permits variances which include schedules of increments of progress, as defined.

Requires, where the air pollution control board adopts a rule or regulation limiting emissions as of a future date, specified notice to persons emitting pollutants which would exceed such limits, and that the person shall submit a schedule of increments of progress leading to compliance. Provides that such rule or regulation may itself contain a schedule of increments of progress and that, in such event, only persons who cannot comply

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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **RODRIGUEZ v. FCA
US**

Case Number: **S274625**

Lower Court Case Number: **E073766**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **ctobisman@gmsr.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	Petitioners' Opening Brief on the Merits
REQUEST FOR JUDICIAL NOTICE	Petitioners' Motion for Judicial Notice
ADDITIONAL DOCUMENTS	Exhibits in Support of Motion for Judicial Notice Volume 1
ADDITIONAL DOCUMENTS	Exhibits in Support of Motion for Judicial Notice Volume 2
ADDITIONAL DOCUMENTS	Exhibits in Support of Motion for Judicial Notice Volume 3
ADDITIONAL DOCUMENTS	Exhibits in Support of Motion for Judicial Notice Volume 4
ADDITIONAL DOCUMENTS	Exhibits in Support of Motion for Judicial Notice Volume 5
ADDITIONAL DOCUMENTS	Exhibits in Support of Motion for Judicial Notice Volume 6

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

10/11/2022

Date

/s/Chris Hsu

Signature

Tobisman, Cynthia (197983)

Last Name, First Name (PNum)

Greines Martin Stein & Richland LLP

Law Firm